

Introduction to Kentucky's Immigration Chart and Basic Immigration Concepts

The Supreme Court's ruling in *Padilla v. Kentucky* requires defense counsel to provide affirmative, competent advice to a noncitizen defendant regarding the immigration consequences of a guilty plea; absent such advice, a noncitizen defendant may raise claims of ineffective assistance of counsel.¹

The Kentucky Department of Public Advocacy (DPA) responded immediately to the requirements of *Padilla* through implementation of tiered system of immigration training and support for its defenders throughout the state of Kentucky. Each DPA office has one person designated as the immigration specialist. These specialists receive on-going training from renowned national expert, Dan Kesselbrenner, on the intersection of criminal and immigration law. These specialists are expected to share the training they receive and field basic immigration questions as they arise in their respective offices.

DPA also created a position through the Equal Justice Works/Public Defender Corps program for Public Defender Corps fellow, Kate Benward, to receive on-going immigration training and support from Dan Kesselbrenner. She works as a more specialized contact person for each office's designated immigration specialists. Anyone from any DPA office can contact Kate directly with specific questions about a case and client or with general questions about immigration that Kate can advise on or consult with outside immigration experts as needed. She provides continued training and outreach to the immigration specialists in each office.

The immigration chart is a crucial part of DPA's strategic plan to ensure that all of its public defenders are able to provide competent, affirmative advice to non-citizens about the consequences of criminal conviction. This tool will be made available on-line and in hard copy, and can be consulted by DPA attorneys to enable them to more effectively advise their clients about the immigration consequences of a criminal conviction. Public defenders will receive on-going support and training on the immigration concepts used in the chart as well as updates in the law that will affect the immigration advice offered in the chart.

I. Introduction to the immigration chart

This chart is intended to be a tool that provides generalized advice about the adverse immigration consequences that flow from conviction of selected Kentucky offenses. It cannot be relied on as a definitive advice about the immigration consequences of a conviction; the purpose of the chart is to allow criminal defense attorneys to minimize the immigration risks of a given criminal charge and in some instances provide tips that allow a defense attorney to craft a safer plea for the client.

This article will discuss the terminology used in the chart as well as some of the basic immigration concepts that a criminal defense attorney must be familiar with in order to effectively advise clients on the immigration consequences of a criminal conviction.

II. Client intake and determining immigration status

¹ 130 S. Ct. 1473 (2010).

To begin analysis of your client's immigration and defense goals, you will need to gather facts about the client's immigration status, which can be ascertained through a client intake sheet.² It is always important to see if the defendant's family can retain an immigration expert with whom you can confer. The types of immigration statuses to look for include U.S. citizen, legal permanent resident (green card holder), lawful non-immigrant (e.g. H1B visa), refugees and asylees, temporary protected status, and undocumented (including non-citizens who have lost their status). It is also important to find out about your client's entire criminal history and whether she has been deported before.

III. Deportability and inadmissibility

After ascertaining your client's immigration status, you will need to consider the categories of "deportability"³ and inadmissibility"⁴ in working to achieve your client's defense/immigration goals.

Deportability: A non-citizen who has been admitted to the United States and gained legal status through the Department of Homeland Security is concerned with avoiding deportation. This includes both the category of immigrant (e.g. legal permanent resident (LPR)) and non-immigrants (e.g. visitors and students admitted to the U.S. on short term visas). Lawfully admitted immigrant and non-immigrants can lose this status and be deported if convicted of a deportable offense. An admitted person's highest priority is to avoid becoming deportable based on conviction of an aggravated felony (AF). The next priority is to avoid the grounds of deportability that are triggered by the following: crimes of domestic violence, stalking, certain judicial finding of a violation of certain DV protection orders, firearms offense, a crime involving moral turpitude (2 convictions after admission, one conviction with max sentence of one year, committed within 5 years of admission), conviction of an offense relating to controlled substance (except less than 30 g. marijuana), drug addict or abuser any time after admission, or conviction for running non-USC prostitution business. If an LPR is not convicted of an aggravated felony, she might still be eligible for some forms of relief if convicted of only a deportable offense.

Inadmissibility: The grounds of inadmissibility apply to those non-citizens who came into the United States without appearing before an immigration officer (i.e. crossed the border without inspection) and to someone seeking to immigrate to the U.S., who may seek to apply for admission to the United States in the future. Someone who did not present herself to an immigration official lacks documentation permitting her to stay in the United States and is already deportable. This person's primary concern is maintaining eligibility to gain legal status in the future, or avoiding the grounds of inadmissibility.

The grounds of inadmissibility are triggered by both convictions and non-convictions. The first major ground of inadmissibility applies to a non-citizen convicted of, or who formally admits to, a crime involving moral turpitude (CIMT). There is a *petty offense exception* to inadmissibility for a crime involving moral turpitude if the client does not have a prior

² Defenders can find a sample intake form at: <http://defendingimmigrants.org> (Item number 7 under *Padilla v. Kentucky*: Basic Materials).

³ The grounds of deportability are listed in 8 USC § 1227(a).

⁴ The grounds of inadmissibility are listed in 8 USC § 1182(a).

conviction for a crime involving moral turpitude, the conviction carries the maximum sentence of a year or less, and the sentence imposed was six months or less. Another exception to automatic inadmissibility for a crime involving moral turpitude is for a “youthful offender,” which includes a non-citizen convicted as an adult of only one crime of moral turpitude that was committed while under the age of 18, and the conviction or imprisonment occurred at least five years ago.

Further grounds of inadmissibility that do not require a criminal conviction include offenses relating to a controlled substances, evidence that the person is a drug addict or drug abuser, and if the Government has a “reason to believe” the person was or helped a drug trafficker, or engaging in prostitution. Inadmissibility is also triggered where a non-citizen receives a five year aggregate sentence for two or more convictions of any type.

There is no per se bar on aggravated felonies, grounds of domestic violence, child abuse, stalking, or firearms; however, many of these offenses are likely to fall into another category of inadmissibility, such as a crime involving moral turpitude.

Examples of deportability v. inadmissibility:

Your client is charged with the offense of carrying concealed deadly weapon (KRS 527.020). A conviction for this offense has a different effect for an admitted person (e.g. LPR) versus an undocumented person:

- As an LPR, the primary goal is to avoid *deportability*: so the client must avoid a conviction for even a minor offense that comes under the deportability grounds, which includes the offense of carrying a concealed deadly weapon (referred to in the chart as a FO), which would make the LPR deportable.
- For a person with no lawful status (undocumented), there are no inadmissibility grounds based on a domestic violence conviction, child abuse, stalking, or firearms offenses, UNLESS the conviction would also be a crime of moral turpitude (e.g. assault with a deadly weapon). Here, carrying a concealed deadly weapon is not a crime of moral turpitude, so it could be a safe plea for the undocumented client.

It should be noted that for a client with lawful status, her concern is generally the category of deportability, not inadmissibility; however, if the client leaves the country *after* becoming inadmissible, she will be denied readmission to the country and should be advised not to leave the U.S. if she is convicted of an offense that makes her inadmissible.

IV. Aggravated felony (AF)

All non-citizens, whether concerned with deportability or inadmissibility, should avoid an aggravated felony conviction. An aggravated felony under immigration law can be either a felony or misdemeanor, and refers to the category of offense that carries the most severe immigration consequences. If convicted of an aggravated felony, a non-citizen will face

mandatory detention, nearly certain deportation, and ineligibility for most forms of relief.⁵ For instance, a person who is deportable but not convicted of an aggravated felony might be eligible to seek a waiver of deportability and remain in the U.S. despite her conviction. But if convicted of an aggravated felony, almost all forms of relief are barred, including asylum, waiver for long-time permanent residents and cancellation of removal. In addition, if the non-citizen returns illegally to the United States, he or she will face criminal penalties of up to 20 years in federal prison.

The chart distinguishes between the different kinds of aggravated felonies—some aggravated felonies are such regardless of the sentence imposed, and other offenses constitute aggravated felonies only if the sentence imposed is over a year or a certain dollar amount is met.

Common criminal offenses that are aggravated felonies, regardless of the sentence, include murder, rape, sexual abuse of a minor, drug-trafficking crimes (covers wide range of drug offenses, not just drug-trafficking), felon in possession of a firearm, child pornography, and deceit or fraud where the loss to the victim exceeds \$10,000. These offenses have been generically defined by immigration and federal circuit courts, and the state offenses must fit this generic definition in order to qualify as an aggravated felony.

Theft, burglary, crimes of violence (COV)⁶, perjury, bribery of a witness, obstruction of justice, alien smuggling, forgery, counterfeiting, and altering a VIN are generally aggravated felonies where a sentence of 365 days or more is imposed. The chart indicates that where this category of aggravated felony applies, a sentence of **364 days** or less will avoid the one year threshold and potentially save your client from an aggravated felony conviction.

V. **Crime involving moral turpitude (CIMT)**

Crimes involving Moral Turpitude (CIMT) trigger both grounds of deportability and inadmissibility, but unlike an aggravated felony conviction, a CIMT conviction does not make a non-citizen removable in every case. This category has been vaguely defined as a “reprehensible act” with a *mens rea* of at least recklessness.⁷ If the statute does not have as an element specific intent, deliberateness, willfulness, or recklessness, then it will not be considered a CIMT.

Crimes involving moral turpitude have been interpreted to include crimes involving theft or an intent to defraud; an intent to cause bodily harm; reckless crimes that result in serious bodily harm; some drug trafficking offenses; and most offenses involving sexual conduct.

⁵ There are several exceptions to this bar, including applicants for the “T” or “U” visas (for persons who are victims of alien smuggling or a serious crime and who cooperate with authorities in prosecuting the crime). See 8 USC § 1101(a)(15)(T) and (U)l.

⁶ Crimes of Violence (COV) constitute an aggravated felony where a sentence imposed is one year (365) days or more. A crime of violence is defined in 18 U.S.C. § 16 a & b:

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 16 (a) applies to either a misdemeanor or felony conviction, and requires that the statute have physical force as an element of the offense. 18 U.S.C. § 16(a) requires a felony conviction, but physical force need not be an element of the offense.

⁷ *Matter of Silva-Trevino*, 24 I&N Dec. 687 (AG 2008).

VI. **Controlled substance offense (CSO)**

Controlled substance offenses (CSO) trigger the grounds of deportability and inadmissibility. The category includes offenses “relating to” a controlled substance as defined by federal law and is broadly interpreted by immigration courts.⁸

Deportability for Controlled Substance Offenses: A non-citizen convicted of an offense relating to a controlled substance is deportable and subject to removal from the United States. A noncitizen with a solicitation conviction will also fall under the controlled substances ground of deportability. There is an exception for a conviction of a “single offense involving possession for one’s own use of thirty grams or less of marijuana.”⁹ The exception has been expanded to apply where a person has two convictions, one for possession of marijuana and one for possession of drug paraphernalia, where, “the paraphernalia in question was merely an adjunct to the offender’s simple possession or ingestion of 30 grams or less of marijuana.”¹⁰ It should be noted that in making such a determination, the immigration judge can now look at the factual details of the conduct underlying these convictions to determine whether the exception should in fact apply, so it cannot necessarily be relied on as a “safe plea” where a structured plea agreement is belied by the underlying facts of the case.

Inadmissibility for controlled substance offenses: A single conviction for any controlled substance offense triggers inadmissibility, but a conviction is not even necessary for a non-citizen to become inadmissible—it is sufficient for the non-citizen to make a formal, knowing, admission of a drug offense to a Department of State or an INS official. There is no exception for 30 grams or less of marijuana like there is for drug deportability, but a person with only one conviction of possession of less than 30 grams of marijuana may be eligible to apply for a “waiver of inadmissibility” based on hardship to relatives.

VII. **Crimes against children (CAC)**

A crimes against children conviction triggers the grounds of deportability. The deportability grounds for a CAC conviction will only apply where the minor age of the child is an element of the statute of conviction. Though a CAC is not a specific ground of inadmissibility, it could also qualify as a CIMT.

VIII. **Crimes of Domestic Violence (CODV)**

Crimes of domestic violence triggers the grounds of deportability (is not a specific ground of inadmissibility unless also a crime of moral turpitude). In order to qualify as a CODV, the offense must qualify as “crime of violence” (discussed *supra* in footnote 4) and the offense must

⁸ Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), other than a single offense involving possession for one’s own use of 30 grams or less of marijuana, is deportable. INA § 237(a)(2)(B)(i).

⁹ 8 U.S.C. § 1227(a)(2)(B)(i), INA § 237(a)(2)(B)(i).

¹⁰ *Matter of Davey*, 26 I&N Dec. 37, 41 (BIA 2012).

have been committed against a person with whom the non-citizen shares a domestic relationship as defined in the Immigration Code.¹¹

IX. Firearms offense (FO)

A firearms offense (FO) triggers the grounds of deportability and is broadly defined to include the purchase, sale, possession use, ownership, or carrying of a firearm or destructive device. A FO is not a specific ground of inadmissibility.

X. Record of conviction (ROC)

The record of conviction(ROC) refers to the documents that can be reviewed by the immigration judge, and is generally limited to the statutory definition of the crime, charging documents (only those counts which defendant plead to, not dismissed counts or charges), the written plea agreement, transcript of plea colloquy and any explicit finding of court to which defendant assented.¹² The ROC does not include prosecutors' remarks, the police report (unless included in an *Alford* plea or otherwise relied upon for factual basis), or the presentence report.

XI. Divisible statutes

A statute is "divisible" if it criminalizes offenses that both carry immigration consequences and do not. Divisible statutes can be used to the client's advantage to construct a plea that limits damage to her immigration status.

Once your client enters immigration proceedings, the immigration judge will look to see if the non-citizen's prior conviction carries immigration consequences (e.g. an aggravated felony or crime involving moral turpitude). Immigration courts apply what is called the "categorical approach," in making this determination. This limits the initial inquiry to the elements of the actual conviction as defined by statute and case law, and not the actual conduct of the defendant.

In the case where a statute covers multiple offenses and one of them does not trigger immigration consequences, the court will look to the statute to see whether it is divisible. Currently the Board of Immigration Appeals (BIA) holds that a statute is divisible if it "contains an element or elements that could be satisfied either by removable or non-removable conduct."¹³ In cases of divisibility, immigration courts apply what is called the "modified categorical approach." This means that the immigration judge can consult the record of conviction to determine whether the defendant was necessarily convicted of an offense that triggers the immigration consequences. The Government has the burden of showing that a non-citizen is deportable, and if the criminal statute is divisible with a vague record of conviction that makes it

¹¹ 8 § U.S.C. 1227 (a)(2)(E)(i.) (Includes a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.)

¹² See *Shepard v. United States*, 544 U.S. 13, 26 (2005).

¹³ *Matter of Lanferman*, 25 I&N Dec. 721, 727 (BIA 2012).

so that the Government cannot show by clear and convincing evidence that the non-citizen is deportable, then the person could have an argument against deportation.

Where there is a divisible statute, defense counsel should attempt to obtain a plea to the section of the statute that does not carry the adverse immigration consequence. If that is not possible, counsel should attempt to create a vague record of conviction by not specifying which section of the statute the client is being convicted under and to omit any specific facts from the record of conviction. It is specifically helpful to not let the record of conviction reflect that an offense involved violence, a domestic relationship between the defendant and victim, or whether there was a minor victim.

It should be noted that keeping the record vague may not necessarily help the noncitizen whose concern is inadmissibility or whether she qualifies for status or relief, because in most circuits the noncitizen has the burden of proving admissibility or eligibility for relief.

Example of how to use a divisible statute:

Below is a section from the chart analyzing KRS 218A.1404. This is a classic divisible statute because it contains three separate prongs under which a person could be convicted. Section (1) will result in an aggravated felony (AF) and a crime involving moral turpitude (CIMT); section (2) is probably not an AF or CIMT; and section (3) could be an AF, depending on what is reflected in the record of conviction.

KRS 218A.1404	Prohibited Activities relating to Controlled Substances; penalties— Violation of provisions (1) or (3) shall be guilty of Class D felony for first offense; Class C Felony for subsequent offenses; violation of (2) guilty of Class A Misdemeanor for first offense and Class D felony for subsequent offenses.	(1)-AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802. (2)-Not AF unless defendant has prior drug conviction (which has become final) and is prosecuted as recidivist under the statute that corresponds to federal recidivist possession felonies under 21 U.S.C.§844(a)). (3)-Probably AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	(1)-CIMT. (2)Probably not CIMT. <i>Matter of Abreu-Semino</i> , 12 I & N Dec. 775 (BIA 1968)(Not CIMT if no evil intent.) (3)CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	Divisible statute-do not specify section or plead to safer sections (2) or (3) to avoid AF and CIMT. (1)-To potentially avoid AF, allocate to “possess” or “transfer of small amount of marijuana for no remuneration.” (3)-Allocate to ‘prescribes’ or ‘administers’ (terms not contained in 21 U.S.C.§841(a)(1)).
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In negotiating a plea deal with the prosecution, the defense attorney whose client is concerned with deportability and/or inadmissibility could attempt to obtain a plea under section (2), regardless of the facts of the underlying conviction. A prosecutor might agree to concede to this through creative plea negotiation, such as agreeing to not give your client credit for time served or a longer sentence in exchange for a conviction under section (2). Under the modified categorical approach, the reviewing immigration judge would be limited to the documents contained in the record of conviction, and so it would be of paramount importance to ensure that no extraneous information about the underlying factual allegations are excluded from the record of conviction.

If it was not possible to get the conviction under (2), the next best thing is to leave the record of conviction as vague as possible and to not specify under which prong the client was convicted (in the case of a client concerned with deportability).

A statute can also be divisible if the language is disjunctive, as in section (3) of KRS 218A.1404. Here, a safer plea would contain the language “prescribes” or “administers” (as opposed to “dispense” or “distribute”) because this language is not included in the federal definitions of a controlled substance offense. This could preserve an argument in immigration court that the statute under which the client was convicted is not an aggravated felony.

XII. Convictions and sentences under immigration law

A sentence is defined as “any formal judgment of guilt entered by a court where the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty,”¹⁴ whether this time is served in jail, probated or suspended. A juvenile court disposition is not a conviction, nor is a pre-plea diversion such as a deferred prosecution under KRS 218A.14151. A “restraint on liberty” has even been interpreted to include court fines,¹⁵ so generally it is in a client’s best interest to avoid a conviction by obtaining a deferred prosecution or an informal agreement with the prosecution that does not include a court order.

XIII. Conclusion

This chart and the terms discussed above contain a brief overview of a complex area of law that will continue to be updated as the law changes. Please don’t hesitate to contact me if you have questions, disagree with an analysis, have updates on new relevant case law, or want to suggest ideas of “safer” pleas.” All input is welcome. Send e-mails to: kate.benward@ky.gov.

¹⁴ Definition of “term of imprisonment” at INA § 101(a)(48)(B), 8 USC § 1101(a)(48)(B).

¹⁵ *Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008).

QUICK REFERENCE CHART FOR DETERMINING CONSEQUENCES OF SELECTED KENTUCKY OFFENSES

Prepared by Kate Benward, Public Defender Corps Fellow, Department of Public Advocacy and Dan Kesselbrenner, National Immigration Project.

STATUTE	OFFENSE	AGGRAVATED FELONY (AF)?	CRIME INVOLVING MORAL TURPITUDE (CMT)?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CHAPTER 189A: DRIVING UNDER THE INFLUENCE					
KRS 189A.010	Operating motor vehicle [...]while under the influence of alcohol, a controlled substance , or other substance which impairs driving ability.	Not AF.	Not CMT (unless ROC reflects that DUI conviction occurred while driver had actual knowledge that his driver's license was suspended or otherwise restricted). <i>Marmolejo-</i>	1(c), (d), & (e)-CSO if ROC establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid CSO, make sure that ROC states that defendant was under the influence of <i>alcohol</i> , <u>not</u> a controlled substance.

			<i>Campos v. Holder</i> , 558 F.3d 903 (9 th Cir. 2009)).		
KRS 189A.090	Operating motor vehicle while license is revoked or suspended for driving under the influence.	Not AF.	2(c)-CIMT if driving under the influence while license is DUI revoked or suspended. <i>Marmolejo-Campos v. Holder</i> , 558 F.3d 903 (9 th Cir. 2009).		
KRS 189A.345	Penalties for violation of hardship license and ignition interlock device.	Not AF.	Not CIMT.		
Chapter 218A: Controlled Substances					

KRS 218A.140	Prohibited acts relating to controlled substances; penalties— Class D felony.	1(a)-Possibly AF (Drug trafficking) (Federal felony under 21 U.S.C.§843(a)(3) “to knowingly or intentionally acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.”) 1(b)-Could be AF (see 1(a)); 1(c)- Could be AF (see 1(a)); 1(d)- Could be AF (see 1(a)); 1(e)- Could be AF (see 1(a)); 1(f)- Could be AF (see 1(a)); 1(g)-)- Could be AF (see 1(a)); (2)-Probably AF (Drug trafficking)(21 U.S.C.§841 (a)(2), it is a federal felony to “create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance”); (3)-Probably not AF. (4)-Possibly AF (see 1(a)).	1(a)-CIMT 1(b)-CIMT. 1(c)-CIMT. 1(d)-CIMT. 1(e)-CIMT. 1(f)-Probably CIMT. 1(g)-Probably not CIMT.	1(a)-(g)CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; (2)-CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; (3)- CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; (4)-Possibly CSO.	To avoid CSO or AF, negotiate pre-plea diversion. (1)(a)-(c) Allocute to ‘ <i>attempt</i> ’ to obtain. Divisible statute—do not specify section or plead to safer sections, (1)(a)-(c) with allocation to <i>attempt to obtain</i> ; or (3), or (4). (2)-To possibly avoid AF (Drug Trafficking), affirmatively allocute to ‘ <i>possess</i> ,’ ‘ <i>prescribe</i> ,’ or ‘ <i>administer</i> ’ (terms not contained in 21 U.S.C. §841(a)(1). If alternative plea to non-controlled substance offense is not possible, omit name of substance from ROC.
KRS 218A.1401	Selling controlled substances (other than synthetic cannabinoid or piperazines or salvia) to minor; penalties are class C felony for first offense; Class B felony for any subsequent offense unless more severe trafficking charge applies.	AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21U.S.C.§802.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802. Possibly CAC.	To avoid CSO or AF, negotiate pre-plea diversion. To potentially avoid AF for drug trafficking, allocute to “transfer of small amount of marihuana for no remuneration.” If alternative plea to non-controlled substance offense is not possible, omit name of substance from ROC.
KRS 218A.1402	Criminal conspiracy to commit offense in KRS	If underlying offense is AF, charge of conspiracy will be	CIMT if underlying	CSO if record of conviction	To avoid CSO or AF, negotiate pre-plea diversion.

	Chapter 218A subject to same penalties as provided for underlying offense.	AF. <i>See Matter of Aruna</i> , 24 I&N Dec. 452 (BIA 2008).	offense is CIMT.	establishes a controlled substance as defined in 21 U.S.C.§802.	To potentially avoid AF for drug trafficking, allocute to “transfer of a small amount of marihuana for no remuneration.” If alternative plea to non-controlled substance offense is not possible, omit name of substance from ROC.
KRS 218A.1403	Advertising controlled substance; penalties—First Offense Class B misdemeanor; Class A misdemeanor for each subsequent offense.	Not AF.	Not CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid AF, do not let ROC reflect elements of 21 U.S.C.§843(c):“Knowingly place in any newspaper, magazine, handbill, or other publications, any written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a schedule I controlled substance.”
KRS 218A.1404	Prohibited activities relating to controlled substances; penalties— violation of provisions (1) or (3) shall be guilty of Class D felony for first offense; Class C felony for subsequent offenses; violation of (2) shall be guilty of Class A misdemeanor for first offense and Class D felony for subsequent offenses.	(1)-AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; (2)-Not AF unless defendant has prior drug conviction (which has become final) and is prosecuted as recidivist under the statute that corresponds to federal recidivist possession felonies under 21 U.S.C.§844(a); (3)-Probably AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	(1)-CIMT. (2)-Probably not CIMT. <i>Matter of Abreu-Semino</i> , 12 I & N Dec. 775 (BIA 1968)(Not CIMT if no evil intent); (3)-CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	Divisible statute-do not specify section or plead to safer sections (2) & (3) to avoid AF and CIMT. (1)-To potentially avoid AF, allocute to “possess” or “transfer of small amount of marijuana for no remuneration.” (3)-Allocute to ‘prescribes’ or ‘administers’ (terms not contained in 21 U.S.C.§841(a)(1)).
KRS 218A.1405	Use and investment of drug-related income; penalties—Class D felony and other penalties.	Probably AF (Drug trafficking) if ROC establishes a controlled substance as defined in 21 U.S.C.§802 (Corresponds with Controlled Substances	Probably CIMT.	CSO if record of conviction establishes a controlled substance as	To potentially avoid AF and CSO, plead to non-controlled substance related offense such as KRS 517.020, Deceptive Business Practices.

		Act 21 U.S.C.§854).		defined in 21 U.S.C.§802.	
KRS 218A.1411	Trafficking in controlled substance in or near school; penalty—Class D felony, unless more severe penalty in chapter is set forth.	AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid CSO or AF, negotiate pre-plea diversion. To avoid AF, plead to simple possession.
KRS 218A.1412	Trafficking in controlled substance first degree; penalties— First offense Class C felony; Class B felony for second or subsequent offense.	AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid AF, plead to simple possession.
KRS 218A.1413	Trafficking in controlled substance second Degree; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21U.S.C.§802.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid AF, plead to simple possession.
KRS 218A.1414	Trafficking in controlled substance third degree; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21U.S.C.§802.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	Allocute to “transfer of small amount of marihuana for no remuneration” to potentially avoid AF drug trafficking.
KRS 218A.1415	Possession of controlled substance first degree; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	Not AF except 1(g)-AF(Drug trafficking).	Probably not CIMT.	CSO if record of conviction establishes a controlled substance as	To avoid CSO, enter pre-plea diversion pursuant to KRS 218A.14151. Avoid conviction under section 1(g) because it will be AF.

				defined in 21 U.S.C. §802.	
KRS 218A.1416	Possession of controlled substance second degree; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	Not AF.	Probably not CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	To avoid CSO, enter pre-plea diversion pursuant to KRS 218A.14151.
KRS 218A.1417	Possession of Controlled Substance Third Degree; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	Not AF.	Probably not CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	To avoid CSO, enter pre-plea diversion pursuant to KRS 218A.14151.
KRS 218A.1418	Theft of a controlled substance; penalties—First offense Class D felony if substance value < \$300; Class C felony for second and subsequent offense if value > \$300.	AF (Theft) if sentence of more than 364 days imposed.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	Plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less to avoid AF. To avoid CSO consider alternative plea to Theft, (with sentence of 364 days or less), Theft by deception (amount under \$10,000), Trespass, or Disorderly Conduct.
KRS 218A.1421	Trafficking in marijuana; penalties—8 oz. or less, class A misd.; 8 oz.-5 lbs. is Class D felony for first offense, Class C felony for second offense; Trafficking in 5 lbs. or more is Class C felony for first offense, Class B felony for second offense.	AF (Drug trafficking).	CIMT.	CSO.	Allocute to ‘transfer’ small amount of marihuana for no remuneration’ to potentially avoid AF (Drug trafficking). To avoid AF (Drug trafficking) consider plea to possession of marijuana (less than 30 grams)(KRS 218A.1422).
KRS 218A.1422	Possession of marijuana; penalty—Class A misdemeanor.	Not AF.	Probably not CIMT.	Is CSO for inadmissibility purposes.	Obtain pre-plea diversion to avoid CSO. Affirmatively allocute to amount less than 30

				For deportability purposes, is CSO only if record of conviction establishes possession of more than 30 grams of marihuana.	grams.
KRS 218A.1423	Marijuana cultivation; penalties—cultivation of five (5) or more plants of marijuana is: (a) For a first offense a Class D felony; (b) For a second or subsequent offense a Class C felony; (3) Marijuana cultivation of fewer than five (5) plants is: (a) For a first offense a Class A misdemeanor; (b) For a second or subsequent offense a Class D felony.	AF(Drug trafficking).	Probably CIMT.	CSO.	To avoid AF consider plea to possession of marijuana (under 30 grams) (KRS 218A.1422).
KRS 218A.1432	Manufacturing Methamphetamine; penalties—First offense Class B felony; Class A felony for second and subsequent offense.	AF(Drug trafficking).	CIMT.	CSO.	
KRS 218A.1437	Unlawful possession of a methamphetamine precursor; Prima Facie Evidence of Intent; penalties—First Offense Class D Felony; Class C	Probably AF(Drug trafficking).	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21	

	felony for each subsequent offense.			U.S.C.§802.	
KRS 218A.1438	Unlawful distribution of a methamphetamine precursor; penalties—Class D felony for first offense, Class C felony for each subsequent offense.	AF (Drug trafficking).	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1439	Trafficking in or transferring a Dietary Supplement; exceptions; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	Possibly AF (Drug trafficking).	Probably CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1441	Controlled substance endangerment to a Child—First Degree; penalty—Class A felony.	AF(COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	CAC. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1442	Controlled substance endangerment to a child—Second Degree; penalty—Class B felony.	AF (COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	CAC. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1443	Controlled substance endangerment to a child—Third Degree; penalty—Class C felony.	AF (COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	CAC. CSO if record of conviction establishes a controlled substance as defined in 21	

				U.S.C.§802.	
KRS 218A.1444	Controlled substance endangerment to a child—Fourth Degree; penalty—Class D felony.	AF (COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	CAC. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To potentially avoid AF, plead to <i>attempt</i> to reduce to Class A Misdemeanor and obtain sentence of 364 days or less so long as ROC does not reflect defendant convicted of manufacturing.
KRS 218A.1450	Trafficking in salvia—Class A misdemeanor.	Not AF (not currently a controlled substance as defined in 21 U.S.C.§802).	Probably not CIMT.	Not CSO (not currently a controlled substance as defined in 21 U.S.C.§802).	
KRS 218A.1451	Possession of salvia—Class B misdemeanor.	Not AF (not currently a controlled substance as defined in 21 U.S.C.§802).	Probably not CIMT.	Not CSO (not currently a controlled substance as defined in 21 U.S.C.§802).	
KRS 218A.1452	Salvia cultivation—Class A misdemeanor.	Not AF (not currently a controlled substance as defined in 21U.S.C.§802).	Probably not CIMT.	Not CSO (not currently a controlled substance as defined in 21 U.S.C.§802).	
KRS 218A.1453	Trafficking in substituted cathinones—Class A misdemeanor.	AF if included as a controlled substance in 21 U.S.C.§802. Note: three synthetic stimulants that are used to make bath salts, including: Mephedrone, 3,4 methylenedioxypropylone (MDPV) and Methylone are temporarily included as Schedule I controlled substances.	Possibly CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS	Possession of substituted	Not AF.	Probably not	CSO if record	

218A.1454	cathinones—Class A misdemeanor.		CIMT.	of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1455	Manufacturing substituted cathinones	AF (Drug trafficking).	Probably CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.180	Distribution by practitioner or pharmacist; prescription requirements; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	Probably not AF.	Probably not CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.200	Record-keeping and inventory requirements; penalties—First offense Class A misdemeanor; Class D felony for subsequent offenses.	Not AF (Misdemeanor offense under 21 U.S.C. 842(c)).	Probably not CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.210	Controlled substances may be possessed only in original container; penalties—First offense Class B misdemeanor; Class A misdemeanor for subsequent offenses.	Not AF.	Probably not CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.282	Forgery of a prescription—First Offense Class D felony;	Probably AF (Forgery) if sentence of 364 or more days imposed; possibly AF (Drug	CIMT.	Could be CSO if record of conviction	To potentially avoid AF if charged with first offense, plead to <i>attempt</i> to reduce to Class A misdemeanor and obtain sentence of 364 days

	Class C felony for second and subsequent offense.	trafficking).		establishes a controlled substance as defined in 21 U.S.C.§802.	or less. To avoid potential AF (Drug trafficking), ensure that ROC does not establish substance was <i>acquired</i> or <i>obtained</i> (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).
KRS 218A.284	Criminal possession of a forged prescription— First offense Class D felony; Class C felony for second or subsequent offense.	Probably AF (Forgery) if sentence of more than 364 days imposed. Possibly AF (Drug trafficking).	Probably CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid potential AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i> . (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).
KRS 218A.286	Theft, criminal possession, trafficking, or unlawful possession of a prescription or blank— First offense Class D felony; Class C felony for second or subsequent offense.	(1)Probably not AF; (2) Probably not AF; (3)-Probably not AF.	(1)-Probably not CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	Divisible statute—do not specify section of statute client is convicted under. (1)-To potentially avoid AF (Drug trafficking) by ensuring that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i> (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”). To avoid potential AF(Theft), ensure that ROC does not reflect the “taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership...” (2)-To potentially avoid AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i> (21 U.S.C. 843(a)(3); (3)-To potentially avoid AF (Drug trafficking), ensure that ROC does not

					<p>establish controlled substance was <i>acquired</i> or <i>obtained</i> (21 U.S.C. 843(a)(3)).</p> <p>To ensure that conviction under (1)-(3) is not AF (Forgery), plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less to avoid AF.</p> <p>To avoid CIMT, ensure that ROC does not reflect “a specific intent to effect a permanent taking of another’s property without consent.” <i>See Matter of Grazley</i>, 14 I&N Dec. 330, 333 (BIA 1973).</p>
KRS 218A.320	Criminal possession of a medical record; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	Possibly AF (Drug trafficking).	Probably CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	<p>To avoid potential AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i>. (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).</p>
KRS 218A.322	Theft of a medical record; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	Probably not AF.	Probably not CIMT.	Not CSO.	<p>To avoid potential AF (Theft), ensure that ROC does not reflect the “taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership...” <i>See Matter of Garcia-Madruga</i>, 24 I&N Dec. 436, 440-441 (BIA 2008).</p> <p>To avoid potential CIMT, ensure that ROC does not reflect “a specific intent to effect a permanent taking of another’s property without consent.” <i>See Matter of Grazley</i>, 14 I&N Dec. 330, 333 (BIA 1973).</p>
KRS 218A.324	Criminal falsification of a medical record; penalties—First offense Class D felony; Class C felony for second or	Probably AF (Forgery); Could be AF (Drug trafficking).	Probably not CIMT.	Probably CSO if record of conviction establishes a controlled	To avoid AF (Forgery), plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less to avoid AF.

	subsequent offense.			substance as defined in 21 U.S.C. §802.	To avoid potential AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i> . (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).
KRS 218A.350	Prohibited practices concerning substances that simulate controlled substances; penalties—First offense Class A misdemeanor; Class D felony for subsequent offenses.	(1)-Probably not AF; (2)-Probably not AF; (3)-Probably not AF; (4)-Probably not AF.	Probably not CIMT. <i>See</i> Umang Desai, A44 828 446 2007 (BIA March 20, 2007); (Westlaw cite: 2007 WL 1180517)(unpublished) (Not crime of moral turpitude where defendant falsely purported chocolate to be laced with the hallucinogen psilocybin).	Probably not CSO if record of conviction does not establish it is a controlled substance as defined in 21 U.S.C. §802.	Probably not AF because a counterfeit substance is defined in 21 U.S.C. §802(7) is not identical to the prohibited activity in KRS 218A.350.
KRS 218A.500	Possession of drug paraphernalia; penalties—First offense Class A misdemeanor; Class D felony for subsequent offenses.	Not AF.	Probably not CIMT.	Probably CSO.	To potentially avoid CSO, where client is charged with possession of 30 grams or less marijuana, let ROC reflect that “the paraphernalia in question was merely an adjunct to the offender's simple possession or ingestion of 30 grams or less of marijuana.”
Chapter 506: INCHOATE OFFENSES					
KRS 506.010	Criminal Attempt—Class C felony when the crime attempted is a violation of KRS 521.020 or 521.050; Class B felony when the crime attempted is a Class A	An attempt to commit an AF would be deemed an AF.	An attempt to commit a CIMT would probably also be considered a CIMT.	Conviction would be CSO or FO if underlying conviction would be.	If client is charged with a Class C or D felony, under KRS 506.010(4)(d), if a sentence of 364 days or less, an attempt will not be categorized as AF(COV), so is a much safer plea.

	felony or capital offense; Class C felony when the crime attempted is a Class B felony; Class A misdemeanor when the crime attempted is a Class C or D felony; Class B misdemeanor when the crime attempted is a misdemeanor.				
KRS 506.030	Criminal Solicitation— Penalties (2)(a) Class C felony where the crime solicited is a violation of KRS 521.020 or 521.050; (b) Class B felony when the crime solicited is a Class A felony or capital offense; (c) Class C felony where the crime solicited is a Class B felony; (d) Class A misdemeanor when the crime solicited is a Class C or D felony; (e) Class B misdemeanor when the crime solicited is a misdemeanor.	AF if the crime solicited is AF.	Likely CIMT if the underlying offense is CIMT.	CSO if underlying offense is CSO. <i>Matter of Zorilla</i> , 24 I&N Dec. 768 (BIA 2009) (holds that solicitation is a CSO outside Ninth Circuit. <i>But see U.S. v. Dolt</i> , 27 F.3d 235 (6 th Cir. 1994)(Holding that solicitation to traffic in cocaine is not a controlled substance offense under §4B1.1).	If underlying offense is a Class C or D felony, try to avoid AF(COV) under KRS 506.030(2)(d) by obtaining sentence of 364 days or less.

KRS 506.040	Criminal Conspiracy— Penalties Class C felony where the conspiratorial agreement is a violation of KRS 521.020 or 521.050; (b)Class B felony when the conspiratorial agreement is a Class A felony or capital offense; (c)Class C felony where the crime solicited is a Class B felony; (d) Class A misdemeanor when conspiratorial agreement is a Class C or D felony; (e)Class B misdemeanor when the conspiratorial agreement is a misdemeanor.	AF if the underlying offense is an AF.	CIMT if underlying offense is a CIMT.	CSO, FO, or CAC, etc. if underlying offense is the same.	If underlying charge is a Class C or D felony, try to avoid AF (COV) under KRS 506.040(2)(d) by obtaining sentence of 364 days or less.
KRS 506.080	Criminal Facilitation- Please contact kate.benward@ky.gov for advice on this charge.				
KRS 506.120	Engaging in organized crime— Penalties Class B felony, unless the offense involves only the theft or acquisition of retail merchandise for the purpose of reselling the stolen merchandise, in which case it is a Class C felony.	1(a-f): AF(RICO offense) if more than 364 day sentence imposed; 1(g): AF(Commercial bribery) or AF(RICO offense) if more than 364 day sentence imposed; 1(h-i): AF (Theft) if more than 364 day sentence imposed; 3(a): Likely AF(Commercial bribery) if more than 364 day sentence imposed; 3(b):AF(Prostitution offense); 3(c) & (i): AF(Theft) if more than 364 day sentence imposed;	CIMT.	3(e)-CSO	Divisible statute: do not specify section. 1(i) &(h): To avoid AF (theft) plead to ‘attempt’ with a maximum 364 day sentence. 3(a): Do not allocute to violating KRS 521.020; Instead allocute to violating KRS 514.080(1) (b) (c)(d)(e)(f) and amount < \$10,000 to avoid AF (Theft). 3(d): If pleading to gambling offense cannot be avoided, keep record clear of facts satisfying elements of 18 U.S.C.§1955.

		3(d): AF(Gambling) if more than 364 day sentence imposed; 3(e): AF (drug trafficking); 3(f): Possibly AF(RICO offense) if more than 364 day sentence imposed.			3(e) should reflect trafficking in liquors or spirits so as to avoid CSO. 3(a) or (f) could be safer pleas to avoid AF.
KRS 506.140	Criminal Gang Recruitment Penalties—Class A misdemeanor and Class D felony for a second or subsequent offense.	Possibly AF if more than 364 day sentence imposed.	Might be CIMT. <i>See</i> Guillermo Gonzalez-Sanchez a.k.a. Guillermo Gonzalez, A042 447 416 (BIA May 26, 2011)(Westlaw cite: 2011 WL 2470980) (unpublished opinion)		
Chapter 507: CRIMINAL HOMICIDE					
KRS 507.020	Murder—Capital offense.	AF(COV) under 1(a); Probably AF(COV) under 1(b).	1(a)-CIMT. 1(b)- likely to be CIMT.	CODV if committed against spouse or similarly situated family member; CAC if record of conviction identifies victim as child. FO if ROC establishes use of a firearm.	Divisible statute: 1(b) may be marginally safer plea.
KRS 507.030	Manslaughter—First degree—Class B felony.	AF(COV).	CIMT (crime in which bodily harm is caused or threatened by an intentional act).	CODV if committed against spouse or similarly situated family member; CAC if record of	To preserve an argument against CIMT, plead to <i>attempted</i> manslaughter.

				conviction identifies victim as child. FO if firearm used.	
KRS 507.040	Manslaughter—Second degree—Class C felony.	Possibly be AF(COV) under (a); Probably AF under (b).	Probably CIMT.	CODV if committed against spouse or similarly situated family member; CAC under (1)(b).	Divisible statute: section (a) is a safer plea to avoid CAC. Attempt to plead down to Reckless Homicide to prevent AF.
KRS 507.050	Reckless Homicide—Class D felony	Not AF <i>U.S. v. Portela</i> , 469 F.3d 496 (6 th Cir. 2006) (“crime requiring only recklessness does not qualify as a ‘crime of violence’ under 18 U.S.C. §16 and is therefore not an AF)	Likely CIMT but not yet decided: <i>Sagr v. Holder</i> , 548 F.3d 414 (6 th Cir. 2009).	CODV if committed against spouse or similarly situated family member; CAC if record of conviction identifies victim as child. FO if firearm used.	
Chapter 507A: FETAL HOMICIDE					
KRS 507A.020	Fetal Homicide—First degree—Capital offense.	AF(COV) under 1(a); Very likely AF under 1(b).	CIMT.	CODV if committed against spouse or similarly situated family member; CAC if record of conviction identifies victim as child.	Divisible statute-conviction under 1(b) could be marginally safer plea.
KRS 507A.030	Fetal Homicide—Second degree—Class B felony.	AF(COV).	CIMT (crime in which bodily harm is caused or threatened by an intentional act).	Probably CAC.	
KRS	Fetal Homicide—Third	Likely AF.	Likely CIMT.	Probably CAC.	

507A.040	degree—Class C felony.				
KRS 507A.050	Fetal Homicide—Fourth degree—Class D felony.	Not AF. <i>See U.S. v. Portela</i> , 469 F.3d 496 (6 th Cir. 2006)(holding that crime requiring only recklessness does not qualify as a ‘crime of violence’ under 18 U.S.C. 16 and is therefore not an AF).	Likely CIMT, but not yet decided. <i>Saqr v. Holder</i> , 548 F.3d 414 (6 th Cir. 2009).	Probably CAC.	
Chapter 508: ASSAULT AND RELATED OFFENSES					
KRS 508.010	Assault—First degree—Class B felony.	1(a)-AF (COV). 1(b)- Likely AF (COV).	1(a)-CIMT. 1(b)-Very likely CIMT. <i>See In re Fualaau</i> , 21 I. & N. Dec. 475, 478 (BIA 1996) (an assault involving a <i>reckless</i> state of mind is a crime of moral turpitude if it results in ‘the infliction of serious bodily injury.’)	Could be FO if record of conviction shows firearm used under 1(a). Could be CODV if victim was spouse or similarly situated individual; CAC if assault against a child.	Divisible statute—ensure that ROC reflects dangerous instrument (not a firearm) under 1(a) to avoid FO; 1b <i>could</i> be safer plea-allocate to ‘wantonly.’
KRS 508.020	Assault—Second degree—Class C felony.	1(a) and 1(b)-AF (COV); 1(c)-likely AF (COV).	Likely CIMT.	Could be FO if record of conviction shows firearm used under (1(b) or (c). Could be CODV if victim was spouse or similarly situated individual; CAC if ROC establishes assault against a child.	1(b) with allocation to ‘dangerous instrument’ could be safer plea to avoid CIMT because not <i>serious</i> physical injury. <i>See In re. Fualaau</i> , 21 I. & N. Dec. 475, 478 (BIA 1996) (stating that an assault involving a reckless state of mind is a crime of moral turpitude if it results in ‘the infliction of <i>serious</i> bodily injury.’); <i>See Matter of Medina</i> , 15 I. & N. Dec. 611 (BIA 1976)(the use of a deadly weapon turns an assault into CIMT). 1(c) could be safer plea for CIMT—allocate to a dangerous instrument (not deadly weapon) (see above <i>Matter of Medina</i>).

					Plead to <i>attempt</i> for section 1(c) <i>See Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006)(a person cannot intend to commit a reckless act; therefore an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT).
KRS 508.025	Assault—Third degree—Class D felony.	1(a)-Possibly AF(COV); 1(b)-Likely not AF.	Probably CIMT, especially if record of conviction shows injury or special knowledge of victim or assault with deadly weapon. <i>See Matter of Danesh</i> , 19 I & N Dec. 669, 670 (BIA 1988)(holding that the fact that the assault was on a peace officer was a key element in establishing a CIMT.)	Could be FO if record of conviction shows firearm used under (1)(a).	Divisible statute; 1(a): Allocute to ‘recklessly’ with a ‘dangerous instrument’ (not firearm or deadly weapon); ‘intentionally’ causing physical injury is an AF (COV). 1(a)-To decrease CIMT risk, consider alternative offense of an <i>attempt</i> to ‘recklessly with a dangerous instrument’. <i>See Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006); Under 1(b) ensure ROC does not reflect the mental state of intent and the use of physical force. To avoid AF, plead to EED which becomes Class B misd with 364 or less day sentence imposed.
KRS 508.030	Assault—Fourth degree—Class A misdemeanor.	1(a)-Not AF(COV) if sentence of 364 or fewer days imposed. 1(b)-Not AF if sentence of 364 or fewer days imposed. Even if 365 day sentence imposed, likely not AF because no intentional use of physical force required.	1(a)-Likely not CIMT if ‘wantonly.’ <i>See Matter of Solon</i> , 24 I. & N. Dec. 239, 241 (BIA 2007) (“Offenses characterized as ‘simple assaults’ are generally not considered to be crimes involving moral	Could be FO if ROC shows use of firearm under (1)(b).Could be CODV if victim was spouse or similarly situated individual; CAC if assault against a child.	Divisible statute. Under (1)(a) allocute to “wantonly.” Under (1)(b) allocute to ‘dangerous instrument’ (not deadly weapon). Keep ROC clear of reference to domestic violence and deadly weapon or firearm. To avoid AF—obtain sentence of 364 days or less. To decrease CIMT risk, consider alternative offense of an <i>attempt</i> . <i>See Gill v. INS</i> , 420

			<p>“turpitude.”) 1(b)-May be CIMT if ROC reflects recklessness with a deadly weapon. <i>See Matter of Medina</i>, 15 I&N Dec. 611 (BIA 1976).</p>		F.3d 82 (2d Cir. 2006).
KRS 508.032	<p>Assault— Enhancement—May be prosecuted as Class D felony if it is the third or subsequent offense of assault in the 4th degree under KRS 508.030 within 5 years and the relationship between the perpetrator and victim meets definition of family member.</p>	Probably (COV) if sentence of 365 or more days imposed.	<p>Probably CIMT. <i>See In Re. Tran</i>, 21 I&N Dec. 291(BIA 1996)(infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards).</p>	<p>If the victim was a current or former spouse or similarly situated individual, most likely CODV. If the victim was a child, conviction might be CAC.</p>	
KRS 508.040	<p>Assault under extreme emotional disturbance (EED)— Class D felony when it would be assault in the first or second degree if not committed under influence of EED; Class B misdemeanor when it would be assault in the 4th degree not committed under the influence of an extreme emotional disturbance.</p>	Probably not AF.	<p>Likely not CIMT if committed under EED.</p>	<p>If the victim was a current or former spouse or similarly situated individual, might also be CODV. If the victim was a child, conviction might be CAC. FO if ROC establishes use of a firearm.</p>	<p>Obtain sentence of 364 days or less to preclude any possibility of AF (COV).</p>

KRS 508.050	Menacing— Class B misdemeanor.	Not AF if sentence of 364 days or less imposed.	Likely not CIMT, but not yet decided <i>See</i> <i>Singh v. Holder</i> , 321 Fed. Appx. 473 (6 th Cir.2009) (unpublished (Supports finding that Menacing is not CIMT: ‘the apprehension variety of assault is less morally turpitudinous than the attempted-battery variety, as it requires no intention to physically harm another person.’)	If the victim was a current or former spouse or similarly situated individual, might also be CODV. If the victim was a child, conviction might be CAC. FO if ROC establishes use of a firearm.	Obtain sentence of 364 days or less to avoid AF (COV). Do not let ROC reflect use of firearm or familial relation to the victim.
KRS 508.060	Wanton Endangerment— Class D felony.	Possibly AF (COV).	Likely not CIMT. <i>Matter of Solon</i> , 24 I&N Dec. 239, 242 (BIA 2007)(As the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude). <i>See</i>	CAC if victim is child. FO if offense involves firearm. CODV if spouse or other similarly situated family member.	Ensure that ROC does not establish firearm or relation of victim to the defendant. To further avoid CIMT, plead to <i>attempt</i> . <i>See</i> <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006).

			<p><i>also Matter of Falaau, 21 I. & N. Dec. 475 (BIA 1996)(The BIA held that to find moral turpitude, the element of a reckless state of mind must be coupled with an offense involving the infliction of serious bodily injury).</i></p>	
KRS 508.070	Wanton Endangerment in the 2 nd degree—Class A misdemeanor.	Not AF if 364 or less day sentence imposed.	<p>Possibly CIMT. <i>Matter of Solon, 24 I&N Dec. 239, 242 (BIA 2007)(As the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude). See also Matter of Falaau, 21 I. & N. Dec. 475 (BIA 1996)(The BIA held that to find moral turpitude, the element of a reckless state of</i></p>	<p>Ensure that ROC does not establish firearm or relation of victim to the defendant.</p> <p>To further avoid CIMT, plead to <i>attempt</i>. See <i>Gill v. INS, 420 F.3d 82 (2d Cir. 2006).</i></p> <p>Obtain sentence of 364 days or less to avoid possible AF.</p>

			mind must be coupled with an offense involving the infliction of serious bodily injury). <i>But see Matter of M</i> , 3 I&N Dec. 272 (BIA 1948)(found property damage offense was CIMT because was not one “where the act was merely accompanied by negligence or carelessness, but one which was perpetrated maliciously and wantonly”)		
KRS 508.075	Terroristic Threatening— First degree—Class C felony.	May be AF(COV).	Probably CIMT.	May be CAC under 1(a)(1-3). Could be FO if ROC reflects firearm.	Let ROC establish that no force was used.
KRS 508.078	Terroristic Threatening— Second degree—Class D felony.	May be AF(COV).	Probably CIMT.	May be CAC under 1(a)(1-3). Could be FO if ROC reflects firearm.	Divisible statute; 1(b) may be safer plea to avoid AF. To avoid CODV or CAC, keep age/relationship of victim out of ROC. Let ROC establish that no force was used to possibly avoid AF.
KRS 508.080	Terroristic Threatening— Third degree—Class A misdemeanor.	Not AF if sentence of 364 or less days imposed.	Probably CIMT.	CAC if victim is child. CODV if spouse or other similarly	Obtain sentence of 364 days or less.

				situated family member. FO if offense involves firearm.	
KRS 508.100	Criminal Abuse—First degree—Class C felony.	1(a)-Probably not AF(COV); 1(b)Probably not AF; 1(c)-Probably not AF(COV) (statute does not require active use of force).	CIMT.	CAC if ROC reflects victim is a child; possibly CODV if ROC reflects victim is spouse or similarly situated family member.	Divisible statute-Allocute to ‘permits’ and not ‘abuses;’ 1(b) likely safer plea to avoid AF.
KRS 508.110	Criminal Abuse—Second degree—Class D felony.	1(a)-Probably not AF(COV); 1(b)-Probably AF (COV); 1(c)-Probably AF(COV).	CIMT.	CAC if ROC reflects victim is a child; possibly CODV if ROC reflects victim is spouse or similarly situated family member.	Divisible statute: allocute to ‘permits’ and not ‘abuses;’ To possibly avoid CIMT, plead to <i>attempt</i> . See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006). 1(b) is likely a safer plea to avoid AF.
KRS 508.120	Criminal Abuse—Third degree—Class A misdemeanor.	Probably not AF.	Probably CIMT.	CAC if ROC reflects victim is a child and possibly CODV if ROC reflects victim is spouse or similarly situated family member.	To avoid CIMT, plead to <i>attempt</i> . See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006). To foreclose possibility of AF, obtain sentence of 364 days or less.
KRS 508.140	Stalking—First Degree—Class D felony.	Possibly AF(COV).	Probably CIMT.	“Stalking” is deportable offense; could be CAC if victim is child or CODV if victim is spouse or similarly situated family	Do not let ROC establish the use of a firearm.

				member. Also deportable offense as “violation of order of protection” under (1)(b)1(A); Could be FO offense under (1)(b)(4).	
KRS 508.150	Stalking—Second Degree—Class A misdemeanor.	Not AF if sentence of 364 or less days imposed.	Probably CIMT.	“Stalking” is a deportable offense. Could be CAC if victim is child or CODV if victim is spouse or similarly situated family member.	To avoid AF, obtain sentence of 364 days or less.
KRS 508.160	Disarming a police officer —Class D felony	Possibly AF(COV).	Probably CIMT. <i>See Matter of Danesh</i> , 19 I & N Dec. 669, 670 (BIA 1988)(Holding that the fact that the assault was on a peace officer was a key element in establishing a CIMT.)	Could be FO offense.	Plead to <i>attempt</i> and obtain sentence of 364 days or less to potentially avoid AF.
Chapter 509: KIDNAPPING AND RELATED OFFENSES					
KRS 509.020	Unlawful Imprisonment—First Degree—Class D felony.	Probably AF(COV).	Probably CIMT. <i>See In Re. Luis A. Nunez Ramos A.K.A Luis Nunez</i> , (Westlaw	Probably CODV if ROC identifies victim as a protected household	Plead to <i>attempt</i> with sentence of 364 days or less to potentially avoid AF (COV).

			<p>cite: 2010 WL 3780667) (unpublished opinion)(Finding that there is no evidence that the Fifth Circuit Court of Appeals would not view an identical New York statute (NY Penal Law § 135.10) to be a crime of moral turpitude).</p>	<p>member; CAC if ROC establishes offense committed against a child.</p>	
<p>KRS 509.030</p>	<p>Unlawful Imprisonment—Second Degree—Class A misdemeanor.</p>	<p>Probably AF(COV) unless sentence of 364 days or less days imposed.</p>	<p>Probably CIMT. <i>See</i> Carlos Armando Bojorquez-Montante, A41 830 630 (BIA May 12, 2005) (Westlaw cite: 2005 WL 1848329) (unpublished opinion) (unlawful imprisonment statute that does not have element of injury or bodily harm is still crime of moral turpitude).</p>	<p>Possibly CAC or CODV if ROC identifies victim as a protected household member or child.</p>	<p>Obtain sentence of 364 days or less to avoid AF(COV).</p>
<p>KRS 509.040</p>	<p>Kidnapping—Class B felony when victim is released alive and in safe place prior to trial; Class A felony when victim is</p>	<p>1(a)-Probably AF(COV); 1(b)-Probably AF(COV); 1(c)-Probably AF(COV); 1(d)-Probably AF (COV); 1(e)-Probably AF (COV);</p>	<p>Probably CIMT.</p>	<p>Possibly CAC or CODV if ROC identifies victim as a protected</p>	<p>Divisible statute: 1(f) might be safer plea to avoid AF.</p>

	alive but suffered serious physical injury during the kidnapping, or as a result of not being released in a safe place, or as a result of being released in any circumstances which are intended, known, or should have been known to cause or lead to serious physical injury. Capital offense when victim is not released alive but subsequently dies...	1(f)-Could be AF(COV); <i>See</i> Wei Ly Bokel, A076 325 301(BIA January 13, 2009)(Westlaw cite: 2009 WL 263140) (unpublished opinion) (“International parental kidnapping does not categorically present a [‘material, important, or significant’] possibility that physical force would be used in the course of its commission.”) (2)(a)-AF(COV); 2(b)-AF (COV); 2(c)-AF (COV).		household member or child.	
KRS 509.070	Custodial Interference— Class D felony unless the person taken from lawful custody is returned voluntarily by the defendant.	(1)-Possibly AF(COV) if sentence of 365 or more days imposed.	Likely CIMT.	Possible CAC or CODV if ROC identifies victim as a protected household member or child.	Divisible statute: allocute to “entices” to avoid possible AF (COV). Plead to ‘attempt’ with sentence of 364 days or less to ensure not an AF (COV).
KRS 509.080	Criminal Coercion— Class A misdemeanor.	Probably not AF.	Probably CIMT.	Possible CAC or CODV if ROC identifies victim as a protected household member or child.	Obtain sentence of 364 days or less to avoid AF.
Chapter 510: SEXUAL OFFENSES					
KRS 510.040	Rape—First degree— Class B felony unless victim is under twelve (12) years old or receives a serious physical injury, in which case it is a Class A felony.	1(a)-AF(COV) and AF(Rape). 1(b)(1) AF(Rape); 1(b)(2) AF(Sexual abuse of a minor) & AF(Rape).	CIMT.	CAC if convicted under 1(b)(2).	

KRS 510.050	Rape—Second degree— Class C felony.	(1)(a)-AF(Sexual abuse of a child) & AF(Rape); 1(b)-AF(Rape).	CIMT.	CAC if convicted under (1)(a).	
KRS 510.060	Rape—Third degree— Class D felony.	1(a)-AF(Rape); 1(b)-AF(Rape) & and AF(Sexual abuse of a minor); 1(c)-AF(Rape) & AF (Sexual abuse of a minor); 1(d)-AF(Rape) and AF(Sexual abuse of a minor); 1(e)-AF(Rape).	CIMT.	CAC if convicted under 1(b),(c),(d).	
KRS 510.070	Sodomy—First degree— Class B felony unless the victim is less than twelve (12) years old or receives a serious physical injury, in which case it is a Class A felony.	1(a)-AF(COV) and AF(Rape); 1(b)(1)-AF(Rape); 1(b)(2)-AF(Rape) and (AF) Sexual abuse of a minor).	CIMT.	CAC if convicted under 1(b).	
KRS 510.080	Sodomy—Second degree—Class C felony.	1(a) AF (Rape and Sexual abuse of a minor). 1(b)-(Rape)	CIMT.	CAC if convicted under 1(a).	
KRS 510.090	Sodomy—Third degree—Class D felony.	1(a)-AF(Rape) 1(b)-AF(Rape); & AF(Sexual abuse of a minor); 1(c)-AF(Rape) and AF(Sexual abuse of a minor); 1(d) –AF-(Rape) & AF(Sexual abuse of a minor); 1(e)-AF (Rape) (Lack of consent defined in KRS 510.020(3)(e), includes any person “under the care or custody of a state or local agency pursuant to court order...)	CIMT.	CAC if convicted under 1(b), (c), (d).	
KRS 510.100	Sodomy—Fourth degree—Class A misdemeanor.	(1)-Not AF.	Not CIMT.		(unconstitutional statute)
KRS	Sexual Abuse—First	1(a)-AF(COV) & AF(Rape);	CIMT.	CAC under	Divisible statute.

510.110	degree—Class D felony, unless the victim is less than twelve (12) years old, in which case it is a Class C felony.	1(b)(1)-AF(Rape); 1(b)(2)-(Rape and Sexual abuse of a minor); 1(b)(3)-AF(Rape); 1(c)(1)- AF(Sexual abuse of a minor); 1(c)(2)-Probably AF(Sexual abuse of a minor); 1(c)(3)-Probably AF(Sexual abuse of a minor). 1(d)-AF(Sexual abuse of a minor). <i>In Re. Pedro Rodriguez-Rodriguez</i> , 22 I & N Dec. 991 (1999)(finding that indecency with a child by exposure in the presence of a child by one intent on sexual arousal constitutes sexual abuse of a minor, AF).		1(a), (b),(c)(1); Probably CAC under 1(c)(2), (3) and (d).	Likely safer plea under 1(c)(2),(3) & 1(d) because there is no intent for sexual arousal and no physical contact required and does not require the use of “persuasion, inducement, enticement, or coercion of a child to engage in, or assist another to engage in sexually explicit conduct or rape, etc. as defined in 18 U.S.C. §3509 (a)(8) and some of the guiding definitions followed by <i>In Re. Pedro Rodriguez-Rodriguez</i> , 22 I & N Dec. 991 (1999). Under 1(d) do not allocute to sexual contact.
KRS 510.120	Sexual Abuse—Second degree—Class A misdemeanor.	1(a)-Not AF. 1(b)-Probably AF(Sexual abuse of a minor); 1(c)-Not AF.	Probably CIMT. <i>See Mehboob v. Att’y Gen. of U.S.</i> , 549 F.3d 272 (3d Cir. 2008)(holding that moral turpitude inheres in sex offenses involving minors under the age of 16 notwithstanding the lack of any <i>mens rea</i> requirement with respect to the age of the victim).	1(b): CAC	1(a)&(c)-Obtain sentence of 364 days or less to preclude possibility of COV. Section 1(b)-Keep ROC clear of facts establishing sexual abuse of a minor.
KRS 510.130	Sexual Abuse—Third degree—Class B	(1)-Possibly AF if victim is a minor.	CIMT if crime involves a minor.	CAC if victim is a minor.	

	misdemeanor.	Note: In Ninth Circuit, will be AF Sexual abuse of a minor if the record reflects (1) the mens rea of 'knowingly'; (2) a sexual act; (3) with a minor between ages of 12-16; and (4) an age difference of at least four years between the defendant and minor as defined by 18 U.S.C. §2243. <i>Estrada-Espinoza v. Mukasey</i> , 546 F.3d 1147, 1159 (9th Cir.2008) (<i>en banc</i>), abrogated on other grounds by <i>United States v. Aguila-Montes de Oca</i> , 655 F.3d 915 (9th Cir.2011) (<i>en banc</i>).	Otherwise, probably not CIMT (no <i>mens rea</i>).		
KRS 510.140	Sexual Misconduct—Class A misdemeanor.	Not AF.	Probably CIMT.	CODV if the victim was a current or former spouse or similarly situated individual.	Obtain sentence of 364 days or less to preclude possibility of COV.
KRS 510.148	Indecent Exposure—First Degree—Class B misdemeanor for first offense; Class A misdemeanor for second offense, if committed within three (3) years of the first conviction; Class D felony for the third offense, if committed within three (3) years of the second conviction; and Class D felony if it was committed within three (3) years of the	Not AF.	CIMT.	1(a)-Likely CAC. <i>See Matter of Velazquez-Herrera</i> , 24 I&N Dec. 503 (BIA 2008) (“[We] interpret the term ‘crime of child abuse’ broadly to mean any offense involving an intentional, knowing,	

	prior conviction.			reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child's physical or mental well-being, including sexual abuse or exploitation [...]also including acts that induce (or omissions that permit) a child to engage in prostitution, pornography, or other sexually explicit conduct)	
KRS 510.150	Indecent Exposure—Second Degree—Class B misdemeanor.	Not AF.	Probably CIMT.		
KRS 510.155	Unlawful use of electronic means—Class D felony.	Probably AF.	CIMT.	Likely CAC. <i>See Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008).</i>	Could be safer to plead to section (1) with an allocation to section KRS 531, which contains offenses that do not necessarily require the sexual exploitation of a child (e.g. KRS 531.060, “Promoting sale of obscenity”)
CHAPTER 511: BURGLARY AND RELATED OFFENSES					
KRS 511.020	Burglary—First Degree—Class B felony.	AF.	CIMT.	1(a)-FO	
KRS 511.030	Burglary—Second Degree—Class C felony.	AF.	CIMT.		
KRS	Burglary—Third	AF.	Possibly CIMT.		To minimize CIMT risk, consider alternative

511.040	Degree—Class D felony.		<i>Matter of M-</i> , 2 I&N Dec. 721 (BIA 1946)(“The determinative factor is whether the crime intended to be committed at the time of entry or prior to breaking in involves moral turpitude”).		offense of Criminal Trespass. If that is not possible, specify in the record that the underlying offense is NOT a CIMT. If that is not possible, leave record of conviction vague as to what was the underlying crime intended.
KRS 511.050	Possession of Burglar’s Tools—Class A misdemeanor.	Not AF, unless term of imprisonment imposed is 365 days or more, in which case might be attempted burglary or AF(Theft).	Probably CIMT if record of conviction establishes that the offense intended to be committed was CIMT.		Divisible statute: Section 1(b) may be safer plea because it lacks intent. To avoid attempted “burglary” or AF(Theft), obtain sentence of 364 days or less. To minimize CIMT risk, consider alternative offense of Criminal Trespass. If that is not possible, specify in the record that the underlying offense is NOT a CIMT. If that is not possible, leave ROC vague as to what was the underlying crime intended.
KRS 511.060	Criminal Trespass—First degree—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 511.070	Criminal Trespass—Second degree—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 511.080	Criminal Trespass Third degree—a violation.	Not AF.	Not CIMT.		
Chapter 512: CRIMINAL DAMAGE TO PROPERTY					
KRS	Criminal Mischief—First	Probably AF.	Probably CIMT.		Divisible statute as to AF: allocute to

512.020	degree—Class D felony.		<i>See Matter of M</i> , 3 I&N Dec. 272 (BIA 1948) (property damage offense was CIMT because it was “perpetrated maliciously and wantonly”); <i>contra Matter of N-</i> , 8 I&N Dec. 272, 273 (BIA 1948) (Alien’s vandalism offense was not CIMT).		“wantonly” and/or “deface” which might be safer pleas.
KRS 512.030	Criminal Mischief—Second degree—Class A misdemeanor.	Probably not AF.	Possibly CIMT (see above).		Divisible statute as to AF: allocute to “wantonly” and/or “deface” which might be safer pleas. Obtain sentence of 364 days or less to avoid AF.
KRS 512.040	Criminal Mischief—Third Degree—Class B misdemeanor.	Not AF.	May be CIMT (see above).		Divisible statute: 1(b) likely safer to avoid CIMT as no damage or destruction of property is required.
KRS 512.050	Criminal Use of Noxious substance—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 512.060	Criminal Possession of noxious substance—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 512.070	Criminal Littering—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 512.080	Unlawfully Posting Advertisements—a violation.	Not AF.	Not CIMT.		
Chapter 513: ARSON AND RELATED OFFENSES					
KRS 513.020	Arson—First degree—Class A felony.	AF.	CIMT.		
KRS	Arson—Second degree—	AF.	CIMT.		

513.030	Class B felony.				
KRS 513.040	Arson—Third degree— Class D felony.	AF. <i>See U.S. v. Corona</i> , 108 F.3d 565, 568(5 th Cir. 1997)(Agreeing with the Fourth Circuit that “maliciously” as used in 18 U.S.C. § 844(i) includes “wanton and willful burnings without justification or excuse”)	CIMT.		
KRS 513.060	Burning Personal Property to Defraud Insurer—Class D Felony	AF.	CIMT.		
Chapter 514: THEFT AND RELATED OFFENSES					
KRS 514.030	Theft by unlawful taking or disposition; penalties— (2) Class A misdemeanor unless value is over \$500, in which case it is Class D felony; (2)(a)Theft of Firearm— Class D felony; (2)(b) The property is anhydrous ammonia—Class D felony; theft with intent to manufacture meth is Class B felony for first offense, and Class A felony for each subsequent offense. (2)(c) Theft of property valued over \$10,000 is Class C felony.	(2)-AF only if sentence of more than 364 days imposed; 2(a)- AF; 2(b)-AF; 2(c)-AF.	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by less than one year, with six month or less sentence imposed).	2(a)-FO offense. 2(b)-CSO (Intent to manufacture meth)	(2)-(for Class A misdemeanor)- Obtain sentence of 364 days or less to avoid AF. If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less. To avoid CIMT, consider alternative offenses such as Disorderly Conduct, Trespass. If charged with Class A misd, plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor or otherwise obtain sentence of less than six months (<i>petty offense exception</i>).
KRS 514.040	Theft by deception— Class A misdemeanor unless value of property or services or amount of check	1(a)-AF if ROC reflects amount of \$10,000 or more. <i>See Matter of Garcia-Madruga</i> , 24 I&N Dec. 436	CIMT unless offense qualifies as <i>petty offense exception</i> (misd.		To avoid AF (fraud) allocute to amount less than \$10,000. (Note that to avoid AF fraud dollar amount must still be under \$10,000 even if charge

	is more than \$500 but less than \$10,000, in which case it is a Class D felony. If value is \$10,000 or more, it is a Class C felony.	(BIA 2008)(Defining “fraud offense” as “the taking or acquisition of property with consent that has been fraudulently obtained;” “Theft” defined as “the taking of, or exercise of control over, property without consent and with the criminal intent to deprive the owner of the rights and benefits of ownership.”) 1(b)-see above; 1(c)-see above; 1(d)-see above; (6)-AF if amount is \$10,000 or greater. (7)- AF if amount is \$10,000 or greater.	punishable by less than six months).		reduced to ‘attempt.’ <i>See Matter of Onyido, 22 I & N Dec. 552 (BIA 1999).</i> To avoid CIMT, consider alternative offenses such as Disorderly Conduct, Trespass. If charged with Class A, plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor with sentence of less than six months (<i>petty offense exception</i>).
KRS 514.050	Theft of property lost, mislaid, or delivered by mistake—Class A misdemeanor unless the value of the property is more than \$500 but less than \$10,000, in which case it is a class D felony. Over \$10,000 is a Class C felony.	1(a)-Could be AF (Theft) if sentence of more than 364 days imposed or AF(Fraud) if amount is \$10,000 or greater. 1(b)-See 1(a).	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by less than one year with less than six month sentence imposed).		To avoid AF(Theft), obtain sentence of 364 days or less. To avoid AF(Fraud), allocute to amount less than \$10,000. If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010), which will reduce offense to Class A misdemeanor, and obtain sentence of 364 days or less. Note that to avoid AF(Fraud), dollar amount must still be under \$10,000 even if charge reduced to ‘attempt.’ <i>See Matter of Onyido, 22 I & N Dec. 552 (BIA 1999).</i> To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass. If charged with Class A, obtain sentence of less than six months to qualify as <i>petty offense exception</i> .
KRS	Theft of Property Lost,	1(a)-Could be AF(Theft) if	CIMT unless		To avoid AF(Theft), obtain sentence of 364

514.050	<p>Mislaid, or Delivered by Mistake—Class A misdemeanor unless the value of the property is more than \$500 but less than \$10,000, in which case it is a class D felony. Over \$10,000 is a Class C felony.</p>	<p>sentence of more than 364 days imposed or AF(Fraud) if amount is \$10,000 or greater. 1(b)-See 1(a).</p>	<p>offense qualifies as <i>petty offense exception</i> (misd. punishable by less than one year with less than six month sentence imposed).</p>	<p>days or less.</p> <p>To avoid AF(Fraud), allocute to amount less than \$10,000.</p> <p>If charged with Class C or D offense, plead to <i>attempt</i>, which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less (KRS 506.010). Note that to avoid AF fraud dollar amount must still be under \$10,000 even if charge reduced to ‘attempt.’ See <i>Matter of Onyido</i>, 22 I & N Dec. 552 (BIA 1999).</p> <p>To avoid CIMT, consider alternative offenses such as Disorderly Conduct, Trespass.</p> <p>If charged with Class A misdemeanor, obtain sentence of less than six months to qualify as <i>petty offense exception</i>.</p>
KRS 514.060	<p>Theft of Services—Class A misdemeanor unless the value of services is (a) \$500 or more but less than \$10,000, in which case it is a Class D felony; (c) \$10,000 or more is a class C felony.</p>	<p>1(a)-Possibly AF if sentence of more than 364 days imposed and loss to victim exceeds \$10,000. 1(b)(1)-Probably not AF. 1(b)(2)-Probably not AF. 1(b)(3)-Probably not AF. 1(b)(4)-Possibly AF if sentence of more than 364 days imposed and loss to victim exceeds \$10,000. 1(c)-Possibly AF if loss to victim exceeds \$10,000.</p>	<p>1(a)-CIMT. 1(b)(1)-(3)-Probably not CIMT 1(b)(4)-CIMT. 1(c)-Probably CIMT.</p>	<p>Divisible statute. 1(b) (1),(2), &(3) may be safer pleas to avoid AF and CIMT (no fraud, deprivation or intent to deprive).</p> <p>Obtain sentence at 364 days or less to avoid AF (theft); specify dollar amount under \$10,000 to avoid AF(Fraud).</p> <p>If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010(4)(d) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less. (Note that to avoid AF fraud dollar amount must still be under \$10,000 even if charge reduced to ‘attempt.’ See <i>Matter of Onyido</i>, 22 I & N Dec. 552 (BIA 1999)).</p> <p>To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass.</p>
KRS	Possession, use, or transfer	2(a)-Not AF;	2(a)-Probably	To foreclose possibility of AF, obtain

514.065	of device for theft of telecommunications services— Class A misdemeanor; Class D felony if the defendant has previously been convicted of violating the section.	2(b)-Probably not AF.	Not CIMT; 2(B)-Probably not CIMT.		sentence of 364 days or less.
KRS 514.070	Theft by failure to make required disposition of property— Class A misdemeanor unless value is over \$500 and less than \$10,000, which is Class D felony; Over \$10,000 is Class C felony.	AF(Fraud) if loss to victim exceeds \$10,000.	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by less than one year with less than six month sentence imposed).		If charged with Class A obtain sentence of less than six months to qualify as <i>petty offense exception</i> . To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass.
KRS 514.080	Theft by extortion— Class A misdemeanor unless value of property obtained is: \$500 or more but less than \$10,000, in which case it is Class D misdemeanor; over \$10,000 is a Class C felony.	1(a)-AF; 1(b)-If sentence of more than 364 days imposed AF(Theft); also probably AF (COV) <i>See James v. United States</i> , 550 U.S. 192, 196 (2007) (one could imagine an extortion scheme where the [...] risk of physical injury to another approaches zero. But that does not mean that the offense [...] is categorically nonviolent); 1(c)- see above. 1(d)- see above. 1(e)- see above. 1(f)- see above.	CIMT.		Obtain sentence of 364 days or less to avoid AF (Theft) or (COV) conviction.
KRS 514.090	Theft by labor already rendered— Class A misdemeanor unless the value is over \$500 or more but less than \$10,000, in which case it is a Class D felony; If amount	Probably not AF. <i>See United States v. Espinoza-Cano</i> , 456 F.3d 1126, 1131 (9th Cir. 2006)(Theft of labor generally not a ‘Theft’ offense).	CIMT.		To avoid AF, obtain sentence of 364 days or less. If charged with Class A, obtain total sentence of less than six months to qualify as <i>petty offense exception</i> .

	is \$10,000 or more, it is a Class C felony.				To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass.
KRS 514.100	Unauthorized use of automobile or other propelled vehicle— Class A misdemeanor unless Defendant has previously been convicted of the offense or of KRS 514.030 for having stolen an automobile, in which case it is Class D felony.	Probably AF(Theft) if sentence of more than 364 days imposed.	Probably not CIMT if there is no showing that a “permanent taking” was involved.		
KRS 514.110	Receiving Stolen Property— Class A misdemeanor unless The value is \$500 or more but less than \$10,000, which is Class D felony; the value is \$10,000 or more, which is Class C felony; the property is a firearm, which is Class D felony; the property is anhydrous ammonia, regardless of value, which is Class D felony unless proven to be for manufacture of meth, which makes it a Class B for first offense, Class A for each subsequent offense.	3(a)-Possibly not AF <i>See</i> Edgar Uribe-Rocha, A.K.A., Edgar Uribe, A018 620 522 (October 28, 2010)((Westlaw cite: 2010 WL 4500864)(unpublished opinion)(“the <i>mens rea</i> of ‘knowledge or belief’ is an essential element of a ‘receipt of stolen property’ aggravated felony and does not include a ‘reason to believe’ or equivalent.”); <u>Knowledge or belief defined:</u> <i>Matter of Bahta</i> , 22 I&N Dec. 1381, 1385 (BIA 2000)(The general rule is that there is an aggravated felony where there is knowledge or “evidence demonstrating that a reasonable person would have realized that the goods had been stolen.”). 3(b)-Possibly not AF (see above); 3(c)-Possibly not be AF (see above);	Probably not CIMT. <i>See Matter of K-</i> , 2 I&N Dec. 90 (BIA 1944)(finding that receipt of stolen goods without knowledge they are stolen or without intent to deprive owner of his possession is not a crime involving moral turpitude).	3(c)-FO	To avoid FO, avoid conviction under 3(c). A conviction under 3(d) will likely be a ‘drug trafficking’ aggravated felony. To potentially avoid AF, allocute to “having a reason to believe” that property was stolen rather than “knowing that it has been stolen.”

		3(d)-Probably AF(Drug trafficking).			
KRS 514.120	Obscuring identity of machine or other property—Class A misdemeanor unless value of property is more than \$500 but less than \$10,000, in which case it is Class D felony; or more than \$10,000 which is Class C felony.	(a)-Not AF. (b)-Not AF.	Not CIMT.		
KRS 514.140	Theft of mail matter—Class D felony.	1(a)-AF (Theft) if sentence of more than 364 days imposed; 1(b)-AF (Theft) if sentence of more than 364 days imposed; AF (Fraud) if amount exceeds \$10,000. 1(c)-AF(Theft) if sentence of more than 364 days imposed; or AF (Fraud) if amount exceeds \$10,000. (d)AF(Theft) if sentence of more than 364 days imposed; (e) AF(Theft) if sentence of more than 364 days imposed; (f) AF(Theft) if sentence of more than 364 days imposed.	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010(4)(d)) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 514.150	Possession of stolen mail matter—Class D Felony.	Possibly not AF. <i>See</i> Edgar Uribe-Rocha, A.K.A., Edgar Uribe, A018 620 522 (October 28, 2010)((Westlaw cite: 2010 WL 4500864)(unpublished opinion)(“the <i>mens rea</i> of ‘knowledge or belief’ is an essential element of a ‘receipt of stolen property’ aggravated felony and does not include a ‘reason to believe’ or equivalent.”)	Probably not CIMT. <i>See Matter of K-</i> , 2 I& N Dec. 90 (BIA 1944)(finding that receipt of stolen goods without knowledge they are stolen or without intent to		To potentially avoid AF, allocute to “having a reason to believe” that property was stolen rather than “knowing that it has been stolen.”

		<u>Knowledge or belief defined:</u> <i>Matter of Bahta</i> , 22 I&N Dec. 1381, 1385 (BIA 2000)(The general rule is that there is an aggravated felony where there is knowledge or “evidence demonstrating that a reasonable person would have realized that the goods had been stolen.”)	deprive owner of his possession is not a crime involving moral turpitude).		
KRS 514.160	Theft of identity— Class D felony.	1(a)- Possibly not AF. <i>Matter of Garcia-Madruga</i> , 24 I&N Dec. 436, 438-40 (BIA 2008)(Holding that “to be considered an aggravated felony, a theft offense requires that the stolen property be obtained from the owner “without consent.”) 1(b)AF (Fraud) if amount is \$10,000 or more. 1(c)AF(Fraud) if amount is over \$10,000. 1(d)Possibly not AF (see section 1(a) above). 1(e)Possibly not AF (see section 1(a) above).	CIMT.		To further avoid AF, do not let ROC reflect that defendant knew the identification belonged to another person. <i>See Flores-Figueroa v. United States</i> , 556 U.S. 646, 647 (2009)(Holding that Government must show that the defendant knew that the means of identification at issue belonged to another person where adverb ‘knowingly’ applies to the entire action in the sentence).
KRS 514.170	Trafficking in stolen identities—Class C felony.	Could be AF(Forgery)or (Counterfeiting) if ROC reflects forgery or counterfeiting; otherwise possibly not AF because offense does not require property be obtained from owner without consent. <i>Matter of Garcia-Madruga</i> , 24 I&N Dec. 436, 438-40 (BIA 2008).	CIMT.		To avoid AF, allocute to sell, transfer, purchase, or possess, <u>not</u> manufacture.

Chapter 515: ROBBERY

KRS 515.020	Robbery— First degree— Class B felony.	AF(COV).	CIMT.	1(b)-Probably FO if ROC reflects use of firearm.	Do not let ROC reflect use of firearm.
KRS 515.030	Robbery—Second degree— Class C felony.	AF(COV).	CIMT.	Probably FO if ROC reflects use of firearm.	Do not let ROC reflect use of firearm. Plead to <i>attempt</i> to bring down to A misd and obtain sentence of 364 days or less to avoid AF (COV).
Chapter 516: FORGERY AND RELATED OFFENSES					
KRS 516.020	Forgery—First degree— Class C felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.030	Forgery—Second degree— Class D felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.040	Forgery—Third degree— Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	CIMT.		To avoid CIMT, plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor or otherwise obtain sentence of less than six months (<i>petty offense exception</i>).
KRS 516.050	Criminal Possession of forged instrument—First degree—Class C felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.060	Criminal possession of forged instrument—Second degree—Class D felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.070	Criminal Possession of forged instrument—Third degree—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	CIMT.		To avoid CIMT, Plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor or otherwise obtain sentence of less than six months (<i>petty offense exception</i>).
KRS 516.090	Possession of forgery device—Class D felony.	AF.	1(a)-Probably not CIMT.		Divisible statute—to possibly avoid CIMT, section (a) may be safer because intent not an

			1(b)-CIMT.		element of the offense. To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.108	Criminal simulation—First degree—Class D felony.	Not AF unless loss to victim exceeds \$10,000.	CIMT.		
KRS 516.110	Criminal simulation—Second degree—Class A misdemeanor.	1(a)-Not AF unless loss to victim exceeds \$10,000; 1(b)-Not AF unless loss to victim exceeds \$10,000; 1(c)-Not AF unless loss to victim exceeds \$10,000.	CIMT.		Avoid possible AF by obtaining sentence of 364 days or less. Ensure that ROC does not reflect loss to victim that exceeds \$10,000.
KRS 516.120	Using Slugs—First degree—Class D Felony	Not AF.	CIMT.		
KRS 516.130	Using Slugs—Second Degree—Class B Misdemeanor	Not AF.	1(a)- CIMT; 1(b)- Probably CIMT.		Divisible statute-section 1(b) may be safer to avoid CIMT.
Chapter 517: BUSINESS AND COMMERCIAL FRAUDS					
KRS 517.020	Deceptive business practices—Class A misdemeanor.	Not AF unless loss to victim exceeds \$10,000.	1(a)-Probably CIMT. 1(b)-Probably CIMT. 1(c)-Probably CIMT. 1(d)-Probably CIMT. 1(e)-Probably CIMT.		
KRS 517.030	False Advertising—Class A Misdemeanor	Not AF.	Probably CIMT.		
KRS 517.040	Bait Advertising—Class A Misdemeanor	Not AF.	Probably not CIMT.		
KRS 517.050	Falsifying Business Records—Class A Misdemeanor	AF if loss to victim exceeds \$10,000.	CIMT.		
KRS 517.060	Defrauding Secured Creditors	AF if loss to victim exceeds \$10,000 (Class C felony).	Probably CIMT.		
KRS	Defrauding Judgment	AF if loss exceeds \$10,000.	CIMT.		

517.070	Creditors—Class A Misdemeanor				
KRS 517.080	Fraud in Insolvency—Class A Misdemeanor	AF if loss exceeds \$10,000.	(a)- Probably CIMT. (b)-Probably CIMT (c)-Probably CIMT.		
KRS 517.090	Issuing False Financial Statement—Class A Misdemeanor	AF if loss exceeds \$10,000.	CIMT.		
KRS 517.100	Receiving Deposits in Failing Financial Institution—Class D Felony	Not AF.	Possibly CIMT.		
KRS 517.110	Misapplication of Entrusted Property—Class A Misdemeanor	Probably AF if sentence of 365 days or more imposed.	CIMT.		To avoid possibility of AF (Theft), obtain sentence of 364 days or less.
KRS 517.120	Operating a Sham or Front Company—Class D Felony	Not AF.	Not CIMT.		
Chapter 518: MISCELLANEOUS CRIMES AFFECTING BUSINESSES; OCCUPATIONS, AND PROFESSIONS					
KRS 518.020	Commercial Bribery—Class A Misdemeanor	Not AF unless sentence of 365 days or more imposed.	CIMT.		To avoid AF, obtain sentence of 364 days or less.
KRS 518.030	Receiving Commercial Bribe—Class A Misdemeanor	Not AF unless sentence of 365 days or more imposed.	CIMT.		To avoid AF, obtain sentence of 364 days or less.
KRS 518.040	Sports Bribery—Class D Felony	AF (commercial bribery).	CIMT.		To avoid AF, plead to <i>attempt</i> and obtain sentence of 364 days or less.
KRS 518.050	Receiving Sports Bribery—Class D Felony	Possibly AF (commercial bribery).	CIMT.		To foreclose possibility of AF, plead to <i>attempt</i> and obtain sentence of 364 days or less.
KRS 518.060	Tampering with or Rigging Sports Contest—Class A Misdemeanor	(a) Probably not AF; (b) Possibly AF if loss to victim exceeds \$10,000.	Not CIMT.		
KRS 518.070	Ticket Scalping—a Violation	Not AF.	Not CIMT.		
KRS 518.090	Assault of Sports Official—Class A misdemeanor, Class D felony for second or subsequent offense or if defendant assembles five (5)	Class A misdemeanor- Not AF if sentence of 364 days or less imposed; Class D felony-AF (COV)	Possibly CIMT. <i>See Matter of Danesh</i> , 19 I & N Dec. 669, 670 (BIA		

	or more persons to assault the official.		1988)(Holding that the fact that the assault was on a peace officer was a key element in establishing a CIMT.)		
Chapter 519: OBSTRUCTION OF PUBLIC ADMINISTRATION					
KRS 519.020	Obstructing Governmental Operations—Class A Misdemeanor	AF if sentence of 365 days or more is imposed.	Probably not CIMT.		To avoid AF, obtain sentence of 364 days or less
KRS 519.030	Compounding a Crime—Class A Misdemeanor	AF if loss exceeds \$10,000 or if sentence of 365 days or more is imposed.	Not CIMT.	KRS 519.030	Compounding a Crime—Class A Misdemeanor
KRS 519.040	Falsely Reporting an Incident—Class A Misdemeanor	Not AF.	(a)-Possibly CIMT. (b)-Probably CIMT. (c)-Probably CIMT. (d)-Probably CIMT. (e)-Probably CIMT <i>See Matter of Kochlani, 24 I&N Dec. 128, 130-131 (BIA 2007)(Moral turpitude[...] inheres in crimes that involve inherently deceptive conduct and that result in the impairment of governmental functions or other significant</i>		

			societal harm, whether or not the specific intent to defraud is an element of the crime).		
KRS 519.050	Impersonating a Public Servant—Class A Misdemeanor	AF(Fraud) if loss to victim exceeds \$10,000.	Probably not CIMT. <i>See Matter of H</i> , 1 I&N Dec. 509 (BIA 1943)(The act of impersonating a Federal officer in and of itself does not involve moral turpitude).		
KRS 519.055	Impersonating a Peace Officer—Class D Felony	AF(Fraud) if loss to victim exceeds \$10,000.	Probably not CIMT. <i>See Matter of H</i> , 1 I&N Dec. 509 (BIA 1943)(The act of impersonating a Federal officer in and of itself does not involve moral turpitude).		
KRS 519.060	Tampering with Public Records—Class D Felony	AF(Fraud) if loss to victim exceeds \$10,000.	Probably CIMT.		
KRS 519.070	Tampering with a Prisoner Monitoring Device—Class D Felony	Possibly AF (Obstruction of justice) <i>See In Re. Cesar Duran-Morales</i> , 2008 WL 1924674 (BIA 2008)(“Escaping or attempting to escape from custody imposed as a result of being been arrested for or charged with a felony may be	Probably CIMT <i>See Matter of Kochlani</i> , 24 I&N Dec. 128, 130-131 (BIA 2007)(Moral turpitude[...] inheres in crimes		To avoid AF, plead to <i>attempt</i> and obtain sentence of 364 days or less.

		construed as obstruction of justice...”).	that involve inherently deceptive conduct and that result in the impairment of governmental functions or other significant societal harm, whether or not the specific intent to defraud is an element of the crime).		
Chapter 520: ESCAPE AND OTHER OFFENSES RELATING TO CUSTODY					
KRS 520.015	Attempting to escape from penitentiary—Class D felony.	Probably AF (COV) if sentence of more than 364 days imposed. <i>United States v. Aragon</i> , 983 F.2d 1306, 1313 (4 th Cir. 1993)(“the crime of assisting or instigating the escape or attempted rescue of a prisoner is a crime of violence as defined in § 16(b)”).	Possibly CIMT based on whether aggravating factors exist. <i>See Matter of B-</i> , 5 I&N Dec. 538 (BIA 1953)(absent aggravating circumstances, “an attempt to escape from prison [...]is not a crime involving moral turpitude.”)		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less. To avoid CIMT, keep ROC void of details that could be construed as aggravating, such as an assault.
KRS 520.020	Escape—First degree—Class C felony.	Probably AF(Obstruction of justice) <i>See Cesar Duran-Morales</i> , A41777177 (April 10, 2008 BIA)(Westlaw cite: 2008 WL 1924674)(unpublished	Possibly CIMT based on whether aggravating factors exist <i>See Matter of B-</i> , 5 I&N Dec. 538		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less. To avoid CIMT, keep ROC void of details that could be construed as aggravating, such

		opinion)(“Escaping or attempting to escape from custody imposed as a result of being been arrested for or charged with a felony may be construed as obstruction of justice...”); <u>or</u> AF (COV) if sentence of 364 or more days imposed.	(BIA 1953)(absent aggravating circumstances, “an attempt to escape from prison [...]is not a crime involving moral turpitude.”)		as an assault.
KRS 520.030	Escape—Second degree—Class D felony.	Probably AF(Obstruction of justice) <i>See</i> Cesar Duran-Morales, A41777177 (April 10, 2008 BIA)(Westlaw cite: 2008 WL 1924674)(unpublished opinion)(“Escaping or attempting to escape from custody imposed as a result of being been arrested for or charged with a felony may be construed as obstruction of justice...”); <u>or</u> AF(COV) if sentence of 364 or more days imposed.	Could be CIMT based on whether aggravating factors exist. <i>Matter of B-</i> , 5 I&N Dec. 538 (BIA 1953)(absent aggravating circumstances, “an attempt to escape from prison [...]is not a crime involving moral turpitude.”)		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less. To avoid CIMT, keep ROC void of details that could be construed as aggravating, such as an assault.
KRS 520.040	Escape—Third degree—Class B misdemeanor.	Not AF.	Probably not CIMT.		
KRS 520.050	Promoting contraband—First degree—Class D felony.	Probably not AF.	Probably not CIMT.	Possibly CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	Foreclose possibility of CSO by affirmatively allocating to non-controlled substance.
KRS 520.060	Promoting contraband—Second degree—Class A misdemeanor.	Not AF.	Probably not CIMT.	Possibly CSO if record of conviction	

				establishes a controlled substance as defined in 21 U.S.C. § 802.	
KRS 520.070	Bail Jumping—First degree—Class D felony.	AF(Bail jumping) if ROC establishes underlying charge involves a sentence of two years or more imprisonment that could be imposed; OR an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more. 8 U.S.C. 1101(a)(43)(Q) &(T).	Not CIMT.		
KRS 520.080	Bail Jumping—Second degree—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 520.090	Resisting Arrest—Class A Misdemeanor	1(a)-AF(COV) if sentence of 364 days or more imposed; 1(b)-Not AF.	Probably CIMT. <i>See Matter of Danesh.</i> 19 I&N Dec. 669 (BIA 1988)(Agg Assault conviction was a crime involving moral turpitude because “bodily injury” was an essential element of the pertinent statute, which indicated that sufficient force must have been used to cause		Divisible statute-avoid AF by pleading to section 1(b). Consider alternative plea to Assault 4 (KRS 508.030) or Disorderly conduct (KRS 525.055).

			harm to the police officer”)		
KRS 520.095	Fleeing or evading police—First degree—Class D felony.	1(a)(1)-Possibly AF (COV); 1(a)(2)-Probably AF(COV); 1(a)(3)-Possibly AF(COV). 1(a)(4)- AF(COV). 1(b)(1)-Probably not AF. 1(b)(2)-AF (COV).	1(a)(1)-Possibly not CIMT; 1(a)(2)-Probably CIMT; 1(a)(3)-Probably not CIMT; 1(a)(4)-CIMT. 1(b)(1)-Probably CIMT; 1(b)(2)-CIMT.	1(a)(1)-CODV. 1(b)(1)-CODV.	Divisible statute-do not state which section defendant is pleading to potentially avoid CIMT or AF. Safer to plead 1(a)(3) to possibly avoid CIMT. To possibly avoid AF, safer to plead to 1(a)(1), 1(a)(2), 1(a)(3)(safest), and 1(b)(1).
KRS 520.100	Fleeing or evading police—Second degree—Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 520.120	Hindering prosecution or apprehension—First degree—Class D felony.	Probably AF(Obstruction of justice).	Probably CIMT.		
KRS 520.130	Hindering Prosecution or Apprehension—Second Degree—Class A Misdemeanor	Probably AF(Obstruction of justice).	Probably CIMT.		
Chapter 521: BRIBERY AND CORRUPT INFLUENCES					
KRS 521.020	Bribery of public servant—Class C felony.	1(a)-Probably not AF. 1(b)-Probably not AF.	Probably CIMT.		
KRS 521.030	Soliciting unlawful compensation—Class B misdemeanor.	Not AF.	Probably CIMT.		
KRS 521.040	Unlawful compensation for assistance in public matters—Class A misdemeanor.	1(a)-Not AF. 1(b)-Not AF.	1(a)-Probably not CIMT. 1(b)-Probably CIMT.		
KRS 521.050	Providing a pecuniary benefit for bribery of a public servant—Class C felony.	Not AF.	Probably not CIMT.		
Chapter 522: ABUSE OF PUBLIC OFFICE					
KRS 522.020	Official misconduct—First degree—Class A	1(a)-Not AF; 1(b)-Not AF;	1(a)-Not CIMT; 1(b)-Probably not		To foreclose any possibility of AF, obtain sentence of 364 or fewer days.

	misdemeanor.	1(c)-Not AF.	CIMT; 1(c)-Not CIMT.		
KRS 522.030	Official misconduct— Second degree—Class B misdemeanor.	1(a)-Not AF; 1(b)-Not AF; 1(c)-Not AF.	1(a)-Not CIMT; 1(b)-Not CIMT; 1(c)-Not CIMT.		
KRS 522.040	Misuse of Confidential Information—Class D Felony	1(a)-Not AF. 1(b)-Not AF. 1(c)-Not AF.	1(a)-Not CIMT. 1(b)-Not CIMT. 1(c)-Not CIMT.		
KRS 522.050	Abuse of public trust— Penalties—Class D felony if value of public property is less than \$10,000; Class C felony if value of public money is \$10,000 or more but less than \$100,000; Class B felony if value of public money is \$100,000 or more.	AF(Fraud) if loss to victim exceeds \$10,000.	CIMT.		To avoid AF, plead to Class D offense, where loss to victim is less than \$10,000 or if unable to obtain conviction for Class D felony, do not let ROC for Class C felony, allocute to \$10,000 so that amount will not <i>exceed</i> \$10,000.
Chapter 523: PERJURY AND RELATED OFFENSES					
KRS 523.020	Perjury—First degree— Class D felony.	AF(Perjury).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 523.030	Perjury—Second degree— Class A misdemeanor.	AF(Perjury) if sentence of more than 364 days imposed.	CIMT.		Obtain sentence of 364 or fewer days to avoid AF.
KRS 523.040	False swearing—Class B misdemeanor.	Not AF.	Possibly CIMT.		
KRS 523.100	Unsworn falsification to authorities—Class B misdemeanor.	1(a)-Not AF; 1(b)-Not AF; 1(c)-Not AF.	1(a)- CIMT; 1(b)-CIMT; 1(c)-CIMT.		
KRS 523.110	Giving peace officer a false name or address—Class B misdemeanor.	Not AF.	CIMT.		
Chapter 524: INTERFERENCE WITH JUDICIAL ADMINISTRATION					
KRS 524.020	Bribing a witness—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.030	Bribe receiving by witness—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor,

					and obtain sentence of 364 days or less.
KRS 524.040	Intimidating a participant in the legal process—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.050	Tampering with a witness—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.055	Retaliating against a participant in the legal process—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.060	Bribing a juror—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.070	Bribe Receiving by a Juror—Class D Felony	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.090	Jury tampering—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.100	Tampering with Physical Evidence—Class D Felony	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.110	Simulating legal process—Class B Misdemeanor	Not AF unless loss to victim exceeded \$10,000.	Probably CIMT.		
KRS 524.130	Unauthorized practice of law—Class B misdemeanor.	Not AF.	Not CIMT.		
Chapter 525: RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES					
KRS 525.020	Riot—First degree—Class D felony.	AF(COV).	Probably not CIMT. <i>See In the Matter of O</i> , 4 I & N Dec. 301 (BIA 1951)(Not CIMT if the act is not “premeditated.”)		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 525.030	Riot—Second degree—Class A Misdemeanor	Not AF.	Probably not CIMT. <i>See In the Matter of O</i> , 4 I		Obtain sentence of 364 days or less to ensure that conviction is not an AF.

			& N Dec. 301 (BIA 1951)(Not CIMT if the act is not “premeditated.”)		
KRS 525.040	Inciting to Riot—Class A Misdemeanor	Not AF.	Probably not CIMT. <i>See In the Matter of O</i> , 4 I & N Dec. 301 (BIA 1951)(Not CIMT if the act is not “premeditated.”)		Obtain sentence of 364 days or less to ensure that conviction is not an AF.
KRS 525.050	Unlawful assembly—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.055	Disorderly conduct—First degree—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 525.060	Disorderly conduct—Second degree—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.070	Harassment—Class B misdemeanor.	Not AF (so long as sentence does not exceed 364 days).	1(a)-Probably CIMT; 1(b)-Probably CIMT; 1(c)-Not CIMT; 1(d)-Not CIMT; 1(e)-Not CIMT; 1(f)(1)-Probably CIMT; 1(f)(2)-Not CIMT; 1(f)(3)-Not CIMT.	If the victim was a current or former spouse or similarly situated individual, might be CODV.	Divisible statute as to CIMT—do not allocute to 1(f)(2), especially not ‘theft.’ Also safer to avoid 1(a) &(b).
KRS 525.080	Harassing communications—Class B misdemeanor.	Not AF.	Probably not CIMT.		
KRS 525.090	Loitering—a violation.	Not AF.	Not CIMT.	1(b)-Could be CSO if ROC establishes a	Do not let ROC name a controlled substance to avoid CSO.

				controlled substance as defined in 21 U.S.C. § 802.	
KRS 525.100	Public intoxication—Class B misdemeanor.	Not AF.	Not CIMT.	Could be CSO if ROC establishes a controlled substance as defined in 21 U.S.C. §802.	Do not let ROC name a controlled substance to avoid CSO.
KRS 525.105	Desecration of venerated objects—First degree—Class C felony.	Not AF.	Possibly CIMT.		
KRS 525.110	Desecration of venerated objects—Second degree—Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 525.113	Institutional vandalism—Class D felony.	Probably AF (COV).	Probably CIMT. <i>See</i> Rafal Baczewski, A95 946453 (January 12, 2007 BIA) (Westlaw cite: 2007 WL 275860) (Unpublished opinion) (“Any hate crime is, by its very nature, contrary to the accepted rules of morality and the duties owed between persons or to society in general.”)		Divisible statute as to AF: allocute to “desecrate” or “deface” to potentially avoid AF (COV). To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 525.115	Violating graves—Class D felony.	1(a)- Probably AF (COV); 1(b)-Probably AF (COV); 1(c)- Probably AF (COV).	Probably CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS	Abuse of a corpse--Class A	AF(Fraud) if prosecuted as	Probably CIMT.		To avoid AF (Fraud) affirmatively allocute to

525.120	misdemeanor, unless the act attempted or committed involved sexual intercourse or deviate sexual intercourse with the corpse or the deliberate failure to prepare, bury, or cremate a corpse after the acceptance of remuneration in accordance with any contract negotiated, in which case it is a Class D felony.	failure to perform contract with acceptance of remuneration and loss to victim exceeds \$10,000.			loss to victim that is less than \$10,000.
KRS 525.125	Cruelty to animals—First degree—Class D felony.	Probably not AF.	Not CIMT.		To foreclose possibility of AF(COV) obtain sentence of 364 days or less.
KRS 525.130	Cruelty to animals—Second degree—Class A misdemeanor.	1(a)-Could be AF(COV) if sentence of more than 364 days imposed; 1(b)-Not AF; 1(c)-Not AF(COV).	Probably CIMT.		1(a)-To foreclose possibility of AF, obtain sentence of 364 days or less; let ROC reflect that animal was not “the property of another.”
KRS 525.135	Torture of dog or cat—Class A misdemeanor for the first offense and a Class D felony for each subsequent offense if the dog or cat suffers physical injury as a result of the torture, and a Class D felony if the dog or cat suffers serious physical injury or death as a result of the torture.	Class A misd-Not AF (COV) unless sentence of 364 days or greater imposed. Class D felony-Probably AF(COV).	Probably CIMT.		Class A misd-obtain sentence of 364 days or less. To possibly avoid AF (COV), let ROC reflect that animal was not “the property of another.”
KRS 525.140	Obstructing a highway or other public passage—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.145	Disrupting meetings and processions—First degree—Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS	Disrupting meetings and	Not AF.	Not CIMT.		

525.150	processions—Class B misdemeanor.				
KRS 525.155	Interference with a funeral—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.160	Failure to disperse—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.200	Assault on a service animal—First degree—Class D felony.	Probably AF (COV).	Probably CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less. To possibly avoid AF (COV), let ROC reflect that animal was not “the property of another.”
KRS 525.205	Assault on a service animal—Second degree—Class B misdemeanor.	Not AF.	Probably CIMT.		
Chapter 526: EAVESDROPPING AND RELATED OFFENSES					
KRS 526.020	Eavesdropping—Class D felony.	Not AF.	Not CIMT.		
KRS 526.030	Installing eavesdropping device—Class D felony.	Not AF.	Not CIMT.		
KRS 526.040	Possession of eavesdropping device—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 526.050	Tampering with private communications—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 526.060	Divulging illegally obtained information—Class A misdemeanor.	Not AF.	Not CIMT.		
Chapter 527: OFFENSES RELATING TO FIREARMS AND WEAPONS					
KRS 527.020	Carrying Concealed Deadly Weapon—Class A misdemeanor, unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used, or displayed, in which case it is a Class D felony.	Class A misd-Not AF; Class D felony-AF(Firearm offense) <i>See Matter of Vasquez-Muniz</i> , 23 I&N Dec. 207 (BIA 2002)(Possession of a firearm by a convicted felon is an aggravated felony as described in 18 U.S.C. §	Probably not CIMT. <i>See</i> Eduardo Zuniga-Gallardo, A098 939 09 (January 2, 2009 BIA)(Westlaw cite: 2009 WL 263114)	FO offense if ROC establishes firearm or destructive device as defined in 18 U.S.C. § 921(a)(3).	If charged with Class A misdemeanor, obtain sentence of 364 days or less.

		922(g)(1)).	(Unpublished opinion) (“Typically convictions for unlawfully possessing a concealed firearm have not been held to constitute crimes involving moral turpitude absent evidence that the alien unlawfully possessed the firearm with the intent of harming someone.”)		
KRS 527.030	Defacing a firearm—Class A misdemeanor.	Not AF.	Not CIMT.	Probably FO if record of conviction establishes firearm or destructive device (as defined in 18 USC § 921(a)).	
KRS 527.040	Possession of firearm by convicted felon—Class D felony unless the firearm possessed is a handgun in which case it is a Class C felony.	AF(Firearm offense) <i>See Matter of Vasquez-Muniz</i> , 23 I&N Dec. 207 (BIA 2002)(Possession of a firearm by a convicted felon is an aggravated felony as described in 18 U.S.C. § 922(g)(1)).	Probably not CIMT. <i>See</i> Eduardo Zuniga-Gallardo, A098 939 09 (January 2, 2009 BIA)(Westlaw cite: 2009 WL 263114) (Unpublished opinion) (“Typically	FO if record of conviction establishes firearm or destructive device (as defined in 18 U.S.C. 921(a)).	

			convictions for unlawfully possessing a concealed firearm have not been held to constitute crimes involving moral turpitude absent evidence that the alien unlawfully possessed the firearm with the intent of harming someone.”)		
KRS 527.050	Possession of defaced firearm—Class A misdemeanor.	Not AF.	Not CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 U.S.C. §921(a)).	
KRS 527.070	Unlawful Possession of a Weapon on School Property; Posting of Sign; exemptions—Class D Felony	Not AF.	Probably not CIMT. <i>See</i> Eduardo Zuniga-Gallardo, A098 939 09 (January 2, 2009 BIA)(Westlaw cite: 2009 WL 263114) (Unpublished opinion) (“Typically convictions for unlawfully possessing a concealed	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	Divisible statute—allocute to ‘booby trap device’ or ‘deadly weapon’ (not a firearm or dangerous weapon as defined in 26 U.S.C. § 5845) to potentially avoid FO offense.

			firearm have not been held to constitute crimes involving moral turpitude absent evidence that the alien unlawfully possessed the firearm with the intent of harming someone.”)		
KRS 527.080	Using restricted ammunition during the commission of a crime— Penalties—(a) Class D felony if no shot is fired; (b) Class C felony if a shot is fired and no person is killed or wounded thereby; (c) Class B felony if a shot is fired and a person other than the defendant or an accomplice of the defendant is wounded by the shot; and (d) A Class A felony if a shot is fired and a person other than the defendant or an accomplice of the defendant is killed by the shot.	AF(COV) if the underlying felony is one that, “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense” under 18 U.S.C. § 16(b).	Probably CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	To potentially avoid AF(COV), allocute to commission of a crime in which there is not a substantial risk that physical force against person or property of another.
KRS 527.100	Possession of handgun by minor—First offense class A misdemeanor; each subsequent Offense Class D felony.	Class A misd- Probably not AF; Class D felony—If ROC establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5),	Not CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	

		(j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, probably AF(Firearm offense).			
KRS 527.110	Unlawfully providing handgun to juvenile or permitting juvenile to possess handgun—Class D felony.	1(a)- Not AF. 1(b)- If ROC establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, might be AF (firearm offense).	Probably not CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	To potentially avoid AF, not let ROC reflect that offense was in violation of KRS 527.040 (Possession of firearm by convicted felon).
KRS 527.200	Use of a weapon of mass destruction—First degree—Class A felony.	Probably AF(COV).	Probably CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	Allocute to form of ‘destructive device’ that does not meet the definition of 26 U.S.C. § 5845 to potentially avoid firearm offense (FO).
KRS 527.205	Use of a weapon of mass destruction—Second degree—Class B felony.	Probably AF (COV).	CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	Allocute to form of ‘destructive device’ that does not meet the definition of 26 U.S.C. § 5845 to potentially avoid firearm offense (FO).
KRS 527.210	Use of weapon of mass destruction—Third degree—Class C felony.	Probably AF (COV).	CIMT.	FO if record of conviction establishes	Allocute to form of ‘destructive device’ that does not meet the definition of 26 U.S.C. § 5845 to potentially avoid firearm offense

				firearm or destructive device (as defined in 18 USC 921(a)).	(FO).
Chapter 528: GAMBLING					
KRS 528.020	Promoting gambling—First degree—Class D felony.	Probably AF(Gambling) <i>See</i> Carlos Calderon-Figueroa, a.k.a. Carlos Calderon, A28 981170 (April 21, 2006) (Westlaw cite: 2006 WL 1558706)(Unpublished opinion) (One ‘conducts’ an illegal gambling business within the meaning of 18 U.S.C.§ 1955(a) by performing any necessary function in the gambling operation, other than that of a mere bettor.)	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	Plead to <i>attempt</i> and obtain sentence of 364 days or less to avoid aggravated felony.
KRS 528.030	Promoting gambling—Second degree—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	Avoid AF by obtaining sentence of 364 days or less.
KRS 528.040	Conspiracy to promote gambling—Class D felony.	Possibly AF(Gambling) if record of conviction shows that offense is one “described in” 18 U.S.C.§1955.	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	To foreclose any possibility of an AF(Gambling), plead to <i>attempt</i> and obtain sentence of 364 days or less. Also, ensure that ROC does not reflect that defendant ‘conduct[ed] an illegal gambling business’ as defined in 18 U.S.C.§1955(a).
KRS 528.050	Possession of gambling records—First degree—Class D felony.	Possibly AF(Gambling) if record of conviction shows that offense is one	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	To foreclose any possibility of an AF(Gambling), plead to <i>attempt</i> and obtain sentence of 364 days or less. Also, ensure that ROC does not reflect that defendant ‘conduct[ed] an illegal gambling

		“described in” 18 U.S.C.§1955.			business’ as defined in 18 U.S.C. § 1955(a).
KRS 528.060	Possession of gambling records—Second degree— Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF(Gambling).
KRS 528.070	Permitting gambling— Class B misdemeanor.	Not AF.	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		
KRS 528.080	Possession of gambling device—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF(Gambling).
KRS 528.110	Horse races, messenger betting prohibited—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF (gambling). Ensure that ROC does not reflect that defendant ‘conduct[ed] an illegal gambling business’ as defined in 18 U.S.C.§1955(a) (i.e. allocute to wagering of money as a bettor.)
KRS 528.120	Off-track acceptance of money for pari-mutuel wagering—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. <i>See Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF (gambling). Ensure that ROC does not reflect that defendant ‘conduct[ed] an illegal gambling business’ as defined in 18 U.S.C. § 1955(a) (i.e. allocute to wagering of money as a bettor.)
Chapter 529: PROSTITUTION OFFENSES					
KRS 529.020	Prostitution—Class B misdemeanor.	Not AF.	CIMT.	Probably is prostitution inadmissibility	
KRS 529.040	Promoting prostitution— Class A misdemeanor unless the person managed, supervised, controlled, or	Class A misd- Not AF. Class D felony- AF (Prostitution).	CIMT.	Probably is prostitution Inadmissibility	

	owned, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two (2) or more prostitutes, in which case it is a Class D felony.				
KRS 529.070	Permitting prostitution—Class B misdemeanor.	Probably not AF.	Probably not CIMT.	Possibly prostitution inadmissibility.	
KRS 529.080	Loitering for prostitution purposes—First offense is a Violation; Class B misdemeanor for second and subsequent offenses.	Not AF.	Probably CIMT (Unless client has no other CIMT and sentence is less than six months, will qualify for petty offense exception).	Possibly prostitution inadmissibility.	
KRS 529.100	Human trafficking—Class C felony unless it involves serious physical injury to a trafficked person, in which case it is Class B felony.	12(a)-AF(COV) & AF(Trafficking in persons); 12(b)-AF(COV) & AF(Trafficking in persons).	CIMT.	Could be CAC if ROC reflects age of victim is less than 18.	Allocute affirmatively that age of victim was over 18.
KRS 529.110	Promoting human trafficking—Class D felony unless victim is under eighteen (18), in which case it is Class C felony.	12(a)-AF(COV) & AF(Trafficking in persons); 12(b)-AF(COV) & AF(Trafficking in persons).	CIMT.	Could be CAC if ROC reflects age of victim is less than 18.	Allocute affirmatively that age of victim was over 18.
Chapter 530: FAMILY OFFENSES					
KRS 530.010	Bigamy—Class D felony.	Not AF.	1(a)- CIMT. 1(b)-Possibly not CIMT. <i>See In the Matter of E---- 2 I. & N. Dec. 328, 337 (BIA 1945) (A conviction</i>		To possibly avoid CIMT, 1(b) may be safer plea if ROC does not name other state (other state’s bigamy law might not contain requirement of a “guilty mind”).

			for bigamy is a crime of moral turpitude is required to have a “guilty mind”).		
KRS 530.020	Incest—2(a)-Class C felony if committed by two consenting adults; 2(b)- Class B felony if committed on a victim who is: (1)Less than eighteen (18) years of age; or (2)Incapable of consent because he or she is physically helpless or mentally incapacitated; 2(c)-Class A felony if (1) committed on a victim less than twelve (12) years of age; or (2) The victim receives serious physical injury.	2(a)-Not AF; 2(b)(1)-AF; 2(b)(2)-AF; 2(c)(1)-AF; 2(c)(2)-AF.	2(a)-Probably CIMT; 2(b)(1)-CIMT; 2(b)(2)-CIMT; 2(c)(1)-CIMT; 2(c)(2)-CIMT.	2(b)(1)-Probably CAC; 2(c)(1)-CAC.	To possibly avoid AF-Statute is divisible-if client cannot obtain conviction under 2(a), do not allow ROC to reflect under which section client was convicted.
KRS 530.030	Concealing birth of infant— Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 530.040	Abandonment of minor— Class D felony.	Not AF.	Possibly not CIMT. <i>See Rodriguez-Castro v. Gonzales</i> , 427 F.3d. 316 (5 th Cir. 2005) (Is not a crime of moral turpitude where “intentionally” refers only to the offender's act of leaving the child unattended by another...)	CAC.	

KRS 530.050	Nonsupport and flagrant nonsupport—nonsupport Class A misdemeanor; flagrant non-support Class is D felony.	Not AF.	Not CIMT.		
KRS 530.060	Endangering welfare of minor—Class A misdemeanor.	Not AF.	Possibly CIMT.	CAC.	To avoid CIMT, affirmatively allocate to “fails” rather than “refuses.”
KRS 530.064	Unlawful transaction with a minor—First degree—Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity; (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and (c) Class A felony if the minor so used incurs physical injury thereby.	1(a)-AF(Sexual abuse of a minor) 1(b)-Probably not AF.	1(a)-CIMT. 1(b)-Probably CIMT.	1(a)-Probably CAC. 1(b)-CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; Possibly CAC.	To possibly avoid CSO, keep the name of the controlled substance out of the ROC.
KRS 530.065	Unlawful transaction with a minor—Second degree—Class D felony.	Possibly AF if ROC establishes offense that qualifies as an AF.	Possibly CIMT if ROC establishes offense that qualifies as a CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802. Possibly CAC.	Keep ROC free of reference to nature of the offense minor is induced, assisted, or caused to perform. Allocate to “any other criminal activity” to keep ROC free of direct reference to AF or CIMT.

KRS 530.070	Unlawful transaction with a minor—Third degree—Class A misdemeanor.	(a)-Not AF; (b)-Possibly AF if ROC establishes “criminal activity” is an AF; (c)- Not AF; (d)- Not AF.	(a)-Not CIMT. (b)-Not CIMT unless ROC establishes “criminal activity” is a CIMT. (c)-Not CIMT. <i>See In the Matter of C. 2 I&N Dec. 220 (BIA 1944).</i> (d)-Not CIMT	(b)-could be CSO if ROC establishes that “other criminal activity” involves a controlled substance as defined in 21 U.S.C.§802.	(b)-Avoid AF and/or CIMT by keeping ROC clear of any mention of criminal activity that qualifies as AF or CIMT, preferably allocating to “other criminal activity.”
KRS 530.080	Endangering the welfare of an incompetent person—Class A misdemeanor.	Not AF.	Probably CIMT.		
Chapter 531: PORNOGRAPHY					
KRS 531.020	Distribution of obscene matter—Class B misdemeanor unless defendant possesses more than one unit of material defined in the chapter, in which case it shall be Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 531.030	Distribution of obscene matter to minors—Class A misdemeanor unless the defendant has previously been convicted of this section or KRS 531.020, in which case it is a Class D felony.	AF.	CIMT.	Possibly CAC.	
KRS 531.040	Using Minors to Distribute Obscene Material—Class A misdemeanor unless the defendant has previously been convicted of this	AF.	CIMT.	Possibly CAC.	

	section or KRS 531.030, which case it is Class D felony.				
KRS 531.050	Advertising obscene material—Class B misdemeanor.	Not AF.	Probably not CIMT.		
KRS 531.060	Promoting sale of obscenity—Class B misdemeanor for the first offense; Class A misdemeanor for the second offense; Class D felony for each subsequent offense.	Not AF.	Probably not CIMT.		
KRS 531.090	Voyeurism—Class A misdemeanor.	Not AF.	Probably CIMT.	Might be CAC if the victim is a minor; keep age out of ROC.	To be certain to avoid AF for section 1(a)(3), obtain sentence of 364 days or less. Keep age out of ROC if the victim is a minor.
KRS 531.100	Video voyeurism- Class D felony.	Not AF.	Probably CIMT.	CAC if the victim is a minor; keep age out of ROC.	Keep age out of ROC if the victim is a minor.
KRS 531.310	Use of a minor in a sexual performance—Class C felony if the minor so use is less than eighteen (18) years old; Class B felony if the minor is less than sixteen (16) years old; Class A felony if the minor involved in the sexual performance incurs physical injury thereby.	AF(Child pornography) & AF(Sexual abuse of a minor).	CIMT.	CAC.	
KRS 531.320	Promoting a sexual performance by a minor—Class C felony if minor is less than eighteen (18) years old; Class B felony if minor involved is less than sixteen (16) years old; Class A felony if the minor	AF(Child pornography) & AF(Sexual abuse of a minor).	CIMT.	CAC.	

	involved in the sexual performance incurs physical injury thereby.				
KRS 531.335	Possession of matter portraying a sexual performance by a minor— Class D Felony.	AF(Child pornography).	CIMT.	CAC.	
KRS 531.340	Distribution of matter portraying a sexual performance by a minor— Class D felony for the first offense; Class C felony for each subsequent offense.	AF(Child pornography).	CIMT.	CAC.	
KRS 531.350	Promoting sale of material portraying a sexual performance by a minor— Class A misdemeanor for the first offense; Class D felony for second offense; Class C felony for each subsequent offense.	AF(Child pornography).	CIMT.	Could be CAC.	
KRS 531.360	Advertising material portraying a sexual performance by a minor— Class D felony for second offense; Class C felony for each subsequent offense.	AF(Child pornography).	CIMT.	Could be CAC.	
KRS 531.370	Using minors to distribute material portraying a sexual performance by a minor— Class D felony unless defendant has been previously convicted of a violation of this section or KRS 531.030, in which case it shall be a Class C felony.	AF(Child pornography).	CIMT.	Could be CAC.	