

**REFERENCE CHART FOR IMMIGRATION CONSEQUENCES
OF SELECT VERMONT CRIMINAL OFFENSES**

Offense	Aggravated Felony (AF) [Ground For Deportation]	Relating To Controlled Substances (CS) [Grounds For Deportation And Inadmissibility]	Crime Involving Moral Turpitude (CIMT) [Grounds For Deportation And Inadmissibility]	Domestic Violence (DV); Firearms (FA); Crime Against Children (CAC); Other Grounds [Grounds For Deportation]	ALTERNATE PLEAS AND PRACTICE TIPS
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Disclaimer: This brief guide is intended as an introductory tool for criminal defense attorneys representing noncitizen defendants. This guide does not purport to provide legal advice or to give an opinion as to the immigration consequences that might result from a criminal disposition in a particular case. The analysis and suggestions offered do not create a lawyer-client relationship and are not a substitute for the individual research and personalized representation that is essential to every case. Immigration consequences of crimes are a complex, unpredictable and constantly changing area of law in which there are few guarantees. Accordingly, defense practitioners should consult with an expert and obtain up-to-date information upon which to rely.

Crimes Involving Motor Vehicles					
23 VSA 674 Operating vehicle after suspension or revocation of license	No		No		
23 VSA 1201 Operating vehicle under the influence of intoxicating liquor or other substance	No		No. Neither does it become a CIMT with repeated offenses.		
23 VSA 1094 Operation without consent of owner; aggravated operation without consent of owner	No		Subsection 1094(a) should not be a CIMT since no permanent taking is required. Subsection 1094(b)(3)(C) would be a CIMT if the underlying felony were a CIMT.		Avoid a record of conviction that indicates permanent taking. Avoid subsection (b)(3). Safest approach would be to plead to “operating, using or continuing to operate” language in subsections (a) or (b).
23 VSA 1091 Negligent operation; grossly negligent operation	No.		No		
Crimes Against Property					
13 VSA 608 Assault and Robbery	Subsection (b), would be a crime of violence AF with 365 days or more sentence. Subsection (a) constitutes an AF theft offense,		Yes	Subsection (b) probably constitutes a FA offense.	If possible, keep sentence to 364 days or less. If dangerous weapon is involved and cannot avoid subsection (b) conviction, avoid

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	with 365 days or more sentence,				identifying weapon and any language in record of conviction indicating <u>use</u> of weapon.
13 VSA 1201 Burglary	Yes, would constitute AF theft offense, if the underlying offense involves theft with a 1 year sentence. This may also constitute a crime of violence AF, if the underlying felony is a crime of violence with a 1 year sentence.		Yes, if the underlying offense is intent to commit theft or some other offense that involves moral turpitude.		Keep sentence to 364 days or less to avoid AF. Avoid underlying crime of theft or other offense that is a CIMT Consider pleading to felony trespass, 13 VSA 3705, but avoid subsection (c).
13 VSA 2501 Grand larceny	Yes with 1 year sentence.		Yes, regardless of actual sentence.		If possible, consider pleading to trespass, 13 VSA 3705, but avoid subsection (c).
13 VSA 2502 Petit larceny	Yes with 1 year sentence.		Yes, regardless of actual sentence		If possible, consider pleading to trespass, 13 VSA 3705, but avoid subsection (c).
13 VSA 2503 Larceny from the person	Yes with 1 year sentence.		Yes, regardless of actual sentence.		If possible, consider pleading to trespass, 13 VSA 3705, but avoid subsection (c).
13 VSA 2575 Retail Theft	Yes with 1 year sentence.		Yes, regardless of actual sentence.		If possible, consider pleading to trespass, 13 VSA 3705, but avoid subsection (c).
13 VSA 2582 Theft of services	Yes with 1 year sentence.		Yes, regardless of actual sentence		If possible, consider pleading to trespass, 13 VSA 3705, but avoid

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					subsection (c).
13 VSA 3701 Unlawful Mischief (intent to damage property and damages property) (felony or misdemeanor)	Might be a crime of violence AF under subsection (d) with a sentence of 365 days or more. Subsection (d) probably constitutes an AF explosives offense.		Probably not a CIMT, unless convicted under subsection (d).	FA offense probably triggered under subsection (d)'s "damage to any property by means of an explosive."	Avoid a conviction under subsection (d) and get a sentence for 364 days or less.
13 VSA 3705 Unlawful Trespass (felony or misdemeanor)	No		Not a CIMT unless convicted under subsection (c), in which case it may constitute a CIMT.	Possible DV or CAC offense triggered if, under subsection (c), the record of conviction establishes that the underlying court order violated is a domestic TRO or involving a child.	Safer alternate plea to other crimes against property offenses. If cannot avoid conviction under subsection (c), keep record of conviction clear of identifying underlying court order.

Crimes Against the Person

13 VSA 2311 Aggravated murder	Yes, regardless of sentence.		Yes	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	
13 VSA 2301 Murder in the first degree	Yes, regardless of sentence.		Yes	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	

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<i>13 VSA 2301</i> Murder in the second degree	Yes, regardless of sentence.		Yes	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	
<i>13 VSA 2304 and State v. Shabazz, 169 Vt. 448 (1999).</i> Voluntary manslaughter (Requiring unlawful killing with extremely reckless conduct that disregards the probable consequence of taking human life.)	No		Yes	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	
<i>13 VSA 2304 and State v. Brooks, 163 Vt. 245 (1995).</i> Involuntary manslaughter (Requiring unlawful killing with a mens rea of recklessness or criminal negligence.)	No		A CIMT if mens rea is recklessness.	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	Avoid identifying a mens rea greater than criminal negligence in the record of conviction.
<i>13 VSA 3253</i> Aggravated Sexual Assault	Yes, would constitute an AF crime of violence with 365 days or more sentence. Subsection (4) would most probably constitute AF rape		Yes	FA offense triggered under subsection (a)(5). CAC under subsection (a)(8). DV grounds triggered if record of conviction identifies spouse or other protected	

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	regardless of sentence. Subsection (8) would constitute an AF sexual abuse of a minor regardless of sentence.			household member as victim.	
13 VSA 3252 Sexual Assault	Yes, AF crime of violence with 365 days or more sentence. Under subsections (3) and (4) would constitute an AF sexual abuse of a minor regardless of sentence. Subsections (1) and (2) most probably constitute AF rape regardless of sentence.		Yes	Possible DV depending on whether record of conviction identifies victim as protected household member. CAC offense triggered under subsections (3) and (4).	
13 VSA 1024 Aggravated Assault	Subsections (a)(2) and (3) would be crime of violence AFs with a sentence of 365 days or more. Subsections (a)(1) and (4) are possible crime of violence AFs.	Subsection (a)(3) probably triggers a CS offense.	Yes, unless under subsection (a)(4).	FA offense triggered by (a)(2). Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	A conviction under subsection (a)(1) with reckless mens rea avoids a crime of violence AF. Note, however, that (a)(1) constitutes a CIMT regardless of mens rea.
13 VSA 1023 Simple Assault	Might be deemed a crime of violence AF if receives 365 days sentence, particularly if removal proceedings are		Subsection (a)(1) would be a CIMT, if the mens rea is identified as “purposely” or “knowingly.” Subsection (a)(3) is possibly a CIMT.	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member	Subsection (a)(1) avoids a CIMT so long as the record of conviction does not specifically identify the mens rea involved. If the mens rea is

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	later held outside the jurisdiction of the Second Circuit Court of Appeals.			or child. Subsection (a)(2) may trigger FA offense.	identified, consider pleading to attempted reckless assault or reckless assault, which are <u>not</u> CIMTs. Note that a plea to simple assault by mutual affray carries a maximum sentence of less than one year and therefore would not trigger a CIMT ground for deportation <u>IF</u> this is the first CIMT conviction. To avoid a possible AF, keep sentence to 364 days or less.
13 VSA 1025 Recklessly endangering another person	Would not constitute a crime of violence AF in the Second Circuit. ¹		Yes	FA offense triggered if the record of conviction indicates use of firearm. Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	Avoid a sentence of 365 days to protect your client against a possible AF if he or she is placed in removal proceedings outside of the Second Circuit.

¹ The Second Circuit has ruled that a misdemeanor can only be a crime of violence under 18 U.S.C. § 16(a) if force or threatened use of force is an explicit element of the statute. *Chrzanoski v. Ashcroft*, 327 F.3d 188 (2d Cir. 2003). However, other circuits have not yet decided this issue, including the First Circuit, and may interpret this offense to constitute a crime of violence AF with a sentence of 365 days.

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13 VSA 1026 Disorderly Conduct	No		No		Safer alternative to other crimes against persons offenses.
13 VSA 1027 Disturbing peace by use of telephone	No		Possible CIMT if record of conviction establishes “knowing” and “menacing”.	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	Keep record of conviction from identifying specific intent involved. Note that because the maximum sentence is less than one year, it will not trigger a CIMT ground of deportation IF this is the first CIMT conviction.
13 VSA 2405 Kidnapping (felony)	Yes, crime of violence AF with 365 days or more sentence.		Yes	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	
13 VSA 2407 Unlawful restraint in the first degree (felony)	Yes, crime of violence AF with 365 days or more sentence. Subsection (a)(2) may constitute AF involuntary servitude regardless of sentence.		Yes	Possible DV and CAC offense depending on whether record of conviction identifies victim as protected household member or child.	
13 VSA 2406 Unlawful restraint in the second degree (felony)	Subsection (a)(3) might be deemed a crime of violence AF with 365 days or more sentence.		Might be a CIMT	Possible DV and CAC offense if the record of conviction identifies victim as a protected household member	

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13 VSA 1043 First degree aggravated domestic assault (felony)	Would be deemed a crime of violence AF with 365 days or more sentence.		Yes	or child. DV offense if protected household members under federal law are the same under the laws of Vermont or if the record of conviction specifies a protected person under federal law. Subsection (a)(2) would constitute a FA offense.	To avoid a DV offense, keep the record of conviction from identifying the relationship of the victim.
13 VSA 1044 Second degree aggravated domestic assault (felony)	Might be deemed a crime of violence AF if receives 365 days sentence, particularly if removal proceedings are later held outside the jurisdiction of the Second Circuit Court of Appeals.		Yes	DV offense if protected household members under federal law are the same under the laws of Vermont or if the record of conviction specifies a protected person under federal law. Possible DV or CAC offense triggered if, under subsection (a)(1), the record of conviction establishes that the underlying court order violated is a domestic TRO or involving a child.	To avoid a DV offense, keep the record of conviction from identifying the relationship of the victim.
13 VSA 1042 Domestic assault	Might be deemed a crime of		Probably a CIMT	DV offense if protected	To avoid a DV offense, keep the

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(misdemeanor)	violence AF if receives 365 days sentence, particularly if removal proceedings are later held outside the jurisdiction of the Second Circuit Court of Appeals.			household members under federal law are the same under the laws of Vermont or if the record of conviction specifies a protected person under federal law.	record of conviction from identifying the relationship of the victim. To avoid a possible AF, keep sentence to 364 days or less.
Crimes Involving Weapons					
13 VSA 4009 Negligent use of a gun	No.		Probably not a CIMT.	Constitutes a FA offense.	Avoid firearms offense. Try to plea to misprision pursuant to 13 VSA 8 .
13 VSA 4011 Aiming gun at another	This would not constitute a crime of violence AF in the Second Circuit. ²		Possible CIMT.	Constitutes a FA offense.	Consider pleading to misprision pursuant to 13 VSA 8 . To avoid a possible AF outside of the Second Circuit, seek term of imprisonment of 364 days or less and clear the record of conviction that establishes that the firearm was discharged.
Crimes Against Law Enforcement					
13 VSA 1028 Assault of Law Enforcement Officer	A first time offense would not constitute a crime of violence AF in the Second Circuit, but see note below. A second offense might be a crime of violence AF with a sentence of 1 year or more if the second offense		Probably a CIMT.	Possible FA offense if convicted of underlying aggravated assault.	See tips for simple and aggravated assault.

² The Second Circuit has ruled that a misdemeanor can only be a crime of violence under 18 U.S.C. § 16(a) if force or threatened use of force is an explicit element of the statute. *Chrzanoski v. Ashcroft*, 327 F.3d 188 (2d Cir. 2003). However, other circuits have not yet decided this issue, including the First Circuit, and may interpret this offense to constitute a crime of violence AF with a sentence of 365 days.

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	is a felony (and not simply an enhanced misdemeanor).				
13 VSA 1028a Assault of Correctional Officer	Same result as the analysis for 13 VSA 1028. See discussion above.		Probably a CIMT.	Possible FA offense if convicted of underlying aggravated assault.	See tips for simple and aggravated assault.
13 VSA 3001 Impeding public officers (felony)	Probably not a crime of violence AF.		Probable CIMT if use of a weapon is established in the record of conviction.	Possible FA offense if record of conviction indicates involvement of a weapon.	Avoid referencing or identifying the specific weapon in the record of conviction.
13 VSA 3018 Hindering arrest (misdemeanor)	No		No		Safer alternative plea to other offenses involving law enforcement.
13 VSA 3017 Resisting Arrest (attempting to prevent lawful arrest of self) (misdemeanor)	No		No		Safer alternative plea to other offenses involving law enforcement.
Crimes Involving Controlled Substances					
13 VSA 4234 Possession or selling or dispensing depressant, stimulant, and narcotic drugs	Under subsection (a)(1), would probably not be deemed an AF drug trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense. Under subsections (a)(2)-(4) and (b), would probably	Would be considered a CS offense if the record of conviction establishes a controlled substance as defined in 21 USC 802.			Avoid identifying specific drug in the record of conviction if possible. Avoid identifying amount of drugs involved. **Exception to the above is that if the offense involves 30 grams or less of marijuana, state with specificity in the record of conviction.** If dispensing drugs without

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	be deemed an AF drug trafficking offense if the record of conviction establishes a controlled substance as defined in 21 USC 802.				remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking. As an alternative, try to plea to misprision pursuant to 13 VSA 8 if possible.
13 VSA 4235 Possession or selling or dispensing hallucinogenic drugs	Under subsection (b)(1), would probably not be deemed an AF drug trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense. Under subsections (b)(2)-(4) and (c) would probably be deemed an AF drug trafficking offense if the record of conviction establishes a controlled substance as defined in 21 USC 802.	Would be considered a CS offense if the record of conviction establishes a controlled substance as defined in 21 USC 802.			Avoid identifying specific drug in the record of conviction if possible. Avoid identifying amount of drugs involved. **Exception to the above is that if the offense involves 30 grams or less of marijuana, state with specificity in the record of conviction.** If dispensing drugs without remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking. As an alternative, try to plea to misprision pursuant to 13 VSA 8 if possible.

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13 VSA 4231 Possession or selling or dispensing cocaine (misdemeanor or felony)	Under subsection (a)(1), would probably not be deemed an AF drug trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense. Subsections (a)(2)-(3), (b), and (c) would be deemed an AF drug trafficking offense.	Yes	No CIMT under subsection (a). A conviction under subsection (b) would constitute a CIMT.		As an alternative, try to plea to misprision pursuant to 13 VSA 8 if possible. If dispensing drugs without remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking.
13 VSA 4232 Possession or selling or dispensing LSD	Under subsection (a)(1), would probably not be deemed an AF drug trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense. Subsections (a)(2)-(4), (b), and (c) would be deemed an AF drug trafficking offense.	Yes	No CIMT under subsection (a). A conviction under subsection (b) would constitute a CIMT.		As an alternative, try to plea to misprision pursuant to 13 VSA 8 if possible. If dispensing drugs without remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking.
13 VSA 4233 Possession or	Under subsection (a)(1), would	Yes	No CIMT under subsection (a).		As an alternative, try to plea to

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selling or dispensing Heroin	probably not be deemed an AF drug trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense. Subsections (a)(2)-(4), (b), and (c) would be deemed an AF drug trafficking offense.		A conviction under subsection (b) would constitute a CIMT.		misprision pursuant to 13 VSA 8 if possible. If dispensing drugs without remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking.
13 VSA 4234a Possession or selling or dispensing Methamphetamine	Subsection (a)(1) would probably not be deemed an AF drug trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense. Subsections (a)(2)-(3), (b), and (c) would be deemed an AF drug trafficking offense.	Yes	No CIMT under subsection (a). A conviction under subsection (b) would constitute a CIMT.		As an alternative, try to plea to misprision pursuant to 13 VSA 8 if possible. If dispensing drugs without remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking.
13 VSA 4235a Possession or selling or dispensing Ecstasy	Subsection (a)(1) would probably not be deemed an AF drug	Yes	No CIMT under subsection (a). A conviction under		As an alternative, try to plea to misprision pursuant to 13 VSA 8 if

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(misdemeanor or felony)	trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense. Subsections (a)(2)-(4) and (b) would be deemed an AF drug trafficking offense.		subsection (b) would constitute a CIMT.		possible. If dispensing drugs without remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking.
13 VSA 4230(a) Possession and cultivation of Marijuana	Would probably not be deemed an AF drug trafficking offense, but it may constitute an AF drug trafficking offense if the conviction is for a second or subsequent possession offense.	Yes for inadmissibility purposes. For deportability purposes, would be a CS offense only if the record of conviction establishes possession of more than 30 grams of marijuana or if more than one offense involves possession of 30 grams or less of marijuana.	No		If offense involves 30 grams or less of marijuana, clearly identify amount of drug in the record of conviction. As an alternative, try to plea to misprision pursuant to 13 VSA 8 if possible.
13 VSA 4230(b)(1) Selling or dispensing of Marijuana (misdemeanor)	Probably would be deemed an AF drug trafficking offense since maximum term of imprisonment is two years (which constitutes a federal felony).	Yes	Yes		If offense involves 30 grams or less of marijuana, clearly identify amount of drug in the record of conviction. As an alternative, try to plea to

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					<p>misprision pursuant to 13 VSA 8 if possible.</p> <p>If dispensing drugs without remuneration, specifying that in the record of conviction may avoid an interpretation of trafficking.</p>
Crimes Involving Fraud					
<p>13 VSA 1801 Forgery and counterfeiting of papers, documents, etc.</p>	<p>Yes where loss to victim exceeds \$10,000.</p>		<p>Yes</p>		<p>Keep record of conviction clear of amount of loss to victim if loss exceeds \$10,000. If loss is less than \$10,000, make sure record of conviction specifically identifies loss involved.</p>
<p>13 VSA 2030 Identity Theft</p>	<p>Yes where loss to victim exceeds \$10,000. Also an AF theft offense where the sentence is for a year or more</p>		<p>Yes</p>		<p>Plead to generic theft with no element of fraud and a sentence of 364 days or less.</p> <p>Keep record of conviction clear of amount of loss to victim if loss exceeds \$10,000. If loss is less than \$10,000, make sure record of conviction specifically identifies loss</p>

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					involved.
23 VSA 203 Counterfeiting or misusing number plates, registration certificates or operating license	Yes where loss to victim exceeds \$10,000.		Yes		Keep record of conviction clear of amount of loss to victim if loss exceeds \$10,000. If loss is less than \$10,000, make sure record of conviction specifically identifies loss involved.
13 VSA 2006 False statement as to financial ability	Yes where loss to victim exceeds \$10,000.		Yes		Keep record of conviction clear of amount of loss to victim if loss exceeds \$10,000. If loss is less than \$10,000, make sure record of conviction specifically identifies loss involved.
13 VSA 2007 Receiving value upon false statement	Yes where loss to victim exceeds \$10,000.		Yes		Keep record of conviction clear of amount of loss to victim if loss exceeds \$10,000. If loss is less than \$10,000, make sure record of conviction specifically identifies loss involved.
13 VSA 2008 False statement as to present validity of prior statement	Yes where loss to victim exceeds \$10,000.		Yes		Keep record of conviction clear of amount of loss to victim if loss

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					exceeds \$10,000. If loss is less than \$10,000, make sure record of conviction specifically identifies loss involved.
Miscellaneous					
13 VSA 2632(a) Prohibited Acts, including prostitution and prostitution-promoting acts (misdemeanor)	Might be an AF prostitution-promoting offense under (a)(2), (3), (5), (9)	No	Would probably be a CIMT.	Would probably trigger inadmissibility based on prostitution offense.	
13 VSA 2601 Lewd and lascivious conduct (felony)	No	No	Would probably be a CIMT	If the record of conviction shows victim is a child, would probably constitute CAC.	
13 VSA 2601 Lewd and lascivious conduct with child (felony)	Would probably be an AF sex abuse offense with a child.	No	Yes	Would probably constitute CAC.	
13 VSA 9 Attempts (felony or misdemeanor)	An attempt to commit an AF would be deemed an AF.	If the underlying offense involves a CS, then would be a CS offense.	An attempt to commit a CIMT would probably be a CIMT	If the underlying offense involves a FA, then would probably be deemed a FA offense	Plea to misprision (concealing a felony) as an alternative pursuant to 13 VSA 8
13 VSA 1404 Conspiracy (felony)	A conspiracy to commit an AF would be deemed an AF.	If the underlying offense involves a CS, then would be a CS offense.	A conspiracy to commit a CIMT would probably be a CIMT	If the underlying offense involves a FA, then would be a CS offense.	Plea to misprision (concealing a felony) as an alternative pursuant to 13 VSA 8
13 VSA 7 Inciting to commit a felony (felony)	Would probably be deemed an AF if the underlying offense is an AF	If the underlying offense involves a CS, then would probably be a CS offense.	Would probably be a CIMT.	If the underlying offense involves a FA, then would probably be a CS offense.	Plea to misprision (concealing a felony) as an alternative pursuant to 13 VSA 8
13 VSA 8 Compounding	No.	Would probably not be a CS	Might be deemed a CIMT.	Would probably not be a FA	A safer alternative to a firearms or

**REFERENCE CHART FOR IMMIGRATION CONSEQUENCES
OF SELECT VERMONT CRIMINAL OFFENSES**

Offense	Aggravated Felony (AF) [Ground For Deportation]	Relating To Controlled Substances (CS) [Grounds For Deportation And Inadmissibility]	Crime Involving Moral Turpitude (CMT) [Grounds For Deportation And Inadmissibility]	Domestic Violence (DV); Firearms (FA); Crime Against Children (CAC); Other Grounds [Grounds For Deportation]	ALTERNATE PLEAS AND PRACTICE TIPS
felony (misprision)		offense.		offense.	controlled substance offense.