

# THEFT & PROPERTY CRIMES CHART: DELAWARE

Prepared by the clerks of the Philadelphia Immigration Court  
Last Updated November 28, 2016

| Possible Charges of Removability  | Maximum Sentence             | Aggravated Felony?   | Crime Involving Moral Turpitude? | Other |
|---|------------------------------|--|----------------------------------|-------|
| <b>11 Del. Code § 767 (Unlawful Sexual Conduct, 3<sup>rd</sup> Degree)</b> A person is guilty of unlawful sexual contact in the third degree when the person has sexual contact with another person or causes the victim to have sexual contact with the person or a third person and the person knows that the contact is either offensive to the victim or occurs without the victim's consent. |                              |  |                                  |       |
| <b>Aggravated Felony: Sexual Abuse of a Minor</b><br>237(a)(2)(A)(iii)/<br>101(a)(43)(A)  | Up to 1 year incarceration.  | <b>Sexual Abuse of a Minor: NO</b><br><br>Under the formal categorical approach, § 767 does not constitute sexual abuse of a minor because it has no element requiring that the victim be under the age of 18. (b) (5) |                                  |       |
| <b>11 Del. Code § 768 (Unlawful Sexual Contact, 2<sup>nd</sup> Degree)</b> A person is guilty of unlawful sexual contact in the second degree when the person intentionally has sexual contact with another person who is less than 18 years of age or causes the victim to have sexual contact with the person or a third person.  |                              |  |                                  |       |
| <b>Aggravated Felony: Sexual Abuse of a Minor</b><br>237(a)(2)(A)(iii)/<br>101(a)(43)(A)  | Up to 3 years incarceration. | <b>Sexual Abuse of a Minor: Likely YES</b><br><br>A violation of § 768 categorically constitutes sexual abuse of a minor because it requires the victim be under the age of 18. (b) (5)                                |                                  |       |

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| <b>11 Del Code § 765 (Indecent Exposure, 1<sup>st</sup> Degree):</b> (a) A male is guilty of indecent exposure in the first degree if he exposes his genitals or buttocks to a person who is less than 16 years of age under circumstances in which he knows his conduct is likely to cause affront or alarm. |                             |  |                                  |  |
| <b>Crime of Child Abuse:</b><br>237(a)(2)(E)<br><br><b>Aggravated Felony: Sexual Abuse of a Minor</b><br>237(a)(2)(A)(iii)/<br>101(a)(43)(A)  | Up to 1 year incarceration. | <b>Sexual Abuse of a Minor: Possibly NO</b><br><br>In (b) (5) the Third Circuit noted, without commenting upon, the BIA's determination that a violation of § 765 did not constitute an aggravated felony. (b) (5) |                                  | <b>Child Abuse: Likely YES</b><br><br>A violation of § 765 categorically constitutes a crime of child abuse. (b) (5) |

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| <b>11 Del. Code § 602(b) (Aggravated Menacing)</b> A person is guilty of aggravated menacing when by displaying what appears to be a deadly weapon that person intentionally places another person in fear of imminent physical injury. |                              |  |                                  |       |
| <b>Aggravated Felony: Crime of Violence</b><br>237(a)(2)(A)(iii)/<br>101(a)(43)(F)  | Up to 5 years incarceration. | <b>Crime of Violence: Likely YES</b><br><br>A violation of § 602(b) categorically constitutes a crime of violence pursuant to 18 USC § 16(a) because it involves the threatened use of physical force. (b) (5) |                                  |       |

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| <b>11 Del. Code § 612 (Assault, 2<sup>nd</sup> Degree)</b> (a)(2) A person is guilty of assault in the second degree when: (2) The person recklessly or intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument [Note that § 612(a) is lengthy and has 12 subsections.] |                              |   |                                  |       |
| <b>Aggravated Felony: Crime of Violence</b><br>237(a)(2)(A)(iii)/<br>101(a)(43)(F)   | Up to 8 years incarceration. | <b>Crime of Violence: Likely NO</b><br><br>As § 612 includes a <i>mens rea</i> of recklessness, it does not categorically constitute a crime of violence under 18 USC § 16(a) or (b). (D) (5) |                                  |       |

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| <p><b>11 Del Code § 861 (Forgery):</b> (a) A person is guilty of forgery when, intending to defraud, deceive or injure another person, or knowing that the person is facilitating a fraud or injury to be perpetrated by anyone, the person:</p> <p>(1) Alters any written instrument of another person without the other person's authority; or</p> <p>(2) Makes, completes, executes, authenticates, issues or transfers any written instrument which purports to be the act of another person, whether real or fictitious, who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case or to be a copy of an original when no original existed; or</p> <p>(3) Possesses a written instrument, knowing that it was made, completed or altered under circumstances constituting forgery.</p> |   |   |  |       |
| <p><b>Aggravated Felony: Forgery</b><br/>237(a)(2)(A)(iii)/101(a)(43)(R)</p> <p><b>CIMT</b><br/>212(a)(2)(A)(i)(I)<br/>237(a)(2)(A)(i)</p>  | <p>Classification of forgery depends on the instrument forged.</p> <p>First Degree, Class F Felony: up to 3 years incarceration.</p> <p>Second Degree, Class G Felony: up to 2 years.</p> <p>Third Degree, Class A Misdemeanor: up to 1 year.</p> | <p><b>Forgery: YES</b></p> <p>The Third Circuit read INA § 101(a)(43)(R) broadly due to its “relating to” language, and adopted the minority view of fraud, which encompasses intents to “deceive or injure,” along with an intent to defraud. Thus a violation of § 861 categorically constitutes an offense relating to forgery.</p> <p>(b) (5)</p> | <p><b>Likely YES</b></p> <p>A violation of subsections (a)(1) and (b)(3) (classifying the crime as a class a misdemeanor) of § 861 constitutes a CIMT because it requires an intent to defraud, or knowledge of participating in fraud, and fraud is a universally recognized CIMT. (b) (5)</p> <p>(b) (5)</p> |       |

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| <p><b>11 Del C. § 621(a)(1) (Terroristic Threatening):</b> (a) A person is guilty of terroristic threatening when that person commits any of the following: (1) The person threatens to commit any crime likely to result in death or in serious injury to person or property; [...]</p> |  |                    |   |       |
| <p><b>CIMT</b><br/>212(a)(2)(A)(i)(I)<br/>237(a)(2)(A)(i)</p>  | <p>Up to 1 year, except where the victim is a person 62 years of age or older, then up to 2 years.</p> |                    | <p><b>Likely YES</b></p> <p>A violation of paragraph (a)(1) of § 621 is categorically a CIMT because it necessarily includes the intent to threaten or intimidate the victim, as clarified by Delaware case law.</p> <p>(b) (5)</p> |       |

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| <b>11 Del C. § 824 (Burglary, 3<sup>rd</sup> Degree):</b> A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein. |                                  |  |                                  |       |
| <b>Aggravated Felony: Theft or Burglary</b><br>237(a)(2)(A)(iii)/<br>101(a)(43)(G)   | Up to three years incarceration. | <b>Theft or Burglary: Likely YES</b><br><br>The Third Circuit found a violation of § 824 constituted an aggravated felony when the term of imprisonment was at least one year; the Court did not address and Petitioner did not argue that § 824 did not constitute a theft or burglary offense. (b) (5) |                                  |       |

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| <b>11 Del C. § 841 (Theft):</b> (a) A person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it. Theft includes the acts described in this section, as well as those described in §§ 841A--846 of this title.<br>(b) A person is guilty of theft if the person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of theft, and fraudulently converts same to the person's own use. |  |  |   |       |
| <b>CIMT</b><br>212(a)(2)(A)(i)(I)<br>237(a)(2)(A)(i)<br><br><b>Aggravated Felony: Theft or Burglary</b><br>237(a)(2)(A)(iii)/<br>101(a)(43)(G)  | Classification of theft depends upon age and ability of victim, as well as worth of property stolen.<br><br>Class B Felony: not less than 2, up to 25 years.<br><br>Class D Felony: up to 8 years.<br><br>Class F Felony: up to 3 years.<br><br>Class A Misdemeanor: up to 1 year. | <b>Theft or Burglary: Possibly YES</b><br><br>The BIA used the modified categorical approach to determine that the respondent took property with the intent to "appropriate" it, and that his conviction constituted an aggravated felony under the BIA's definition. However, they applied the modified categorical approach pursuant to <u>Silva-Trevino</u> , now vacated. <u>Matter of Jagan Bruce</u> , 2008 WL 5537827 (BIA 2008), <u>unpublished</u> , <u>citing Matter of Silva-Trevino</u> , 24 I&N Dec. 687 (A.G. 2008), <u>vacated by Matter of Silva Trevino</u> , 26 I&N 550 (A.G. 2011). | <b>Possibly NO</b><br><br>As § 841 does not require a permanent taking, it is not categorically a CIMT. However, the BIA applied the modified categorical approach to determine that in this instance, the respondent had intended a permanent taking and thus had committed a CIMT. <u>Matter of Jagan Bruce</u> , 2008 WL 5537827 (BIA 2008), <u>unpublished</u> , <u>citing Matter of Silva-Trevino</u> , 24 I&N Dec. 687 (A.G. 2008), <u>vacated by Matter of Silva Trevino</u> , 26 I&N 550 (A.G. 2011). |       |

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## **NOTES:**

- **Trafficking in Controlled Substances & Gerbier**

In Gerbier v. Holmes, 280 F.3d 297 (2002), the Third Circuit outlined its framework for determining whether a conviction constitutes a controlled substance aggravated felony pursuant to INA § 101(a)(43)(B). The Court determined that the petitioner's conviction for trafficking in cocaine, pursuant to 16 Del. C. § 4753A, which encompassed both possession and trafficking conduct, did not constitute an aggravated felony. However, in 2011, § 4753A was repealed, as part of a revision of Delaware's Controlled Substances Act. Since then, neither the BIA nor the Third Circuit has determined which sections of Delaware's updated controlled substances statutes constitute a controlled substances aggravated felony. The analytical framework set forth in Gerbier still stands.

- **Sentencing**

Delaware's sentencing laws are found in Chapter 42 of Title 11 of the Delaware Crimes Code. Felony sentences are found in 11 Del. C. § 4205; misdemeanor sentences are found in § 4206.