

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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UPCOMING EVENTS

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The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

ONE DAY TO PROTECT NEW YORKERS: IMMIGRATION RELIEF FOR MINOR OFFENSES

On April 12, 2019, Gov. Andrew Cuomo signed the “One Day to Protect New Yorkers” bill into law as part of the budget. **Effective immediately**, the new law amends the Penal Law (§70.15) to provide that **the maximum sentence for a Class A Misdemeanor is now 364 days**. This is good news for noncitizens who may be removable from the United States for a simple conviction for a Class A Misdemeanor. The new amendments go even further and state that the change in possible maximum sentence is **retroactive by operation of law**. Lastly, the Criminal Procedure Law (§§440.10, 440.20) has also been amended to provide sentencing relief for other than Class A Misdemeanors (e.g. a felony plea with a definite sentence of local jail time) and to provide procedural mechanisms for 440 motions that may now be necessary in some cases to ameliorate the immigration consequences of a prior sentence.

How does the “364 days” sentence help your noncitizen client?

1. The change eliminates the possibility of the dreaded “Aggravated Felony” classification for misdemeanor theft offenses, crimes of violence and other Class A misdemeanor aggravated felonies where the sentence imposed is “one year or longer.” We have always advised that if your client must plead guilty to an A Misdemeanor with the maximum jail time of one year, ask for a sentence of 364 days to avoid the Aggravated Felony conviction. This is now codified into law. (Example: Petit Larceny with the maximum sentence is no longer an AF!)

2. The change eliminates removability for a **single** misdemeanor “crime involving moral turpitude” (CIMT) conviction committed



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within 5 years of being admitted to the U.S. (Example: Petit Larceny committed with 5 years of admission, no other prior convictions, regardless of the sentence imposed, is no longer deportable!)

3. The change no longer prohibits those with over 10 years' presence in the U.S., who do not have a Green Card, from seeking relief in immigration court simply on the basis of a prior misdemeanor CIMT conviction. (Example: Client, not in lawful immigration status, placed in removal proceedings, has been in U.S. over 10 years with immediate relative who is USC or LPR who will suffer "extreme and unusual" hardship if client is deported, is now allowed to ask for relief!)

BEWARE!! These amendments relate *only* to certain grounds of removal. **The other criminal grounds of removal based on the nature of the offense, rather than the sentence, still apply:**

- More than one CIMT at any time and regardless of sentence
- Felony convictions that are AFs and CIMTs
- Controlled substance offenses (CSOs) - all levels
- Crimes of Domestic Violence (CODVs)
- Crimes of Stalking
- Crimes against Children (CACs)
- Firearms offenses (FOs)

Post-Conviction Relief under Penal Law Article 440

We already know that for Immigration purposes, a conviction is still a conviction unless it is vacated on the legal merits of the case or on constitutional grounds. The Criminal Procedure Law is now amended to provide that past misdemeanor convictions may be vacated pursuant to a rebuttable presumption of unconstitutionality (i.e. cruel and unusual punishment under the NY State Constitution) to permit re-pleading and resentencing.

In addition, other past misdemeanor sentences of less than one year may be set aside to allow resentencing under NYCPL §440.20 based on a showing that the judgment and sentence entered under prior law is likely to result in negative collateral consequences.

Where appropriate, counsel can now bring 440 motions to vacate a sentence where the sentence itself makes that conviction a removable offense. How these amendments will be interpreted in the immigration context has yet to be seen. It is anticipated that ICE will be challenging the retroactivity provisions of the new statute as well as vacatur of convictions based on the "rebuttable presumption" of a constitutional violation. Stay tuned and, as always, **CALL THE RIAC!**