

# RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

September 2020

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## In This Issue:

**Aggravated Felonies:  
Crime of Violence**

## UPCOMING EVENTS

**Oneida County Bar  
Association, “Immigration  
Update: Post-Conviction  
Relief”**

**September 30, 2020  
3:00 pm – 5:00 pm  
online**

**Contact Diane Parslow  
To register**

**NYSACDL series  
“Law @ Lunch”  
TBD in October 2020.**

*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.*

Wearing our masks, we continue delving in to the category of “aggravated felonies”...

### **AGGRAVATED FELONIES: “THE LIST” INA 101(a)(43) The term “aggravated felony” means—**

We are skipping over a few of these (offenses relating to money laundering, explosive devices and firearms trafficking) because many of these types of offenses are charged under federal law and prosecuted in federal court.

Moving to a frequently charged aggravated felony ground ...

**(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at least one year;**

18 USC §16 defines a “crime of violence” (COV) as (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) – THIS subsection was held unconstitutional by SCOTUS in *Sessions v. Dimaya*, 138 S.Ct. 1204(2018).

**What NY offenses are “crimes of violence?”**

Aggravated Felonies that depend on a sentence of one year or longer (i.e. COVs) **no longer** include Misdemeanors, thanks to the One Day to Protect New Yorkers Act. We are, therefore, only referring to Felony offenses in this ground of Aggravated Felonies.

### **New York COVs**

PL Article 120:

- *All felony assault offenses* with the exception of Vehicular Assault (120.03, 120.04 and 120.04-A)
- Menacing 1<sup>st</sup> (120.13); Menacing a Police Officer (120.18); Felony Stalking (120.55, 120.60)

**Onondaga County  
Assigned Counsel  
Program NUTS N BOLTS  
Series**

**October 13, 2020  
10:00 am – 12:00 pm  
online**

**Contact Joelle Dougherty  
To register**



**CONTACT US!**

**Tel. (315)356-5794  
Fax (315)356-5795**

**Sharon Ames, Esq.  
sames@ocgov.net  
CELL: (315)272-0505**

**Tina Hartwell, Esq.  
thartwel@ocgov.net  
CELL: (315)264-9217**

**Chief Defenders & Assigned  
Counsel Administrators:**

**Contact the RIAC2 to schedule  
your 2020 training, lunch hour or  
other session in your  
office/county.**

**We will provide CLE credit!**

PL Article 121:

- Strangulation (121.12, 121.13, 121.13-A)

PL Article 125:

- Aggravated Vehicular Homicide (125.14)
- Manslaughter (125.20, 125.21, 125.22)
- Murder (125.25, 125.26, 125.27)

PL Article 130:

- Rape (130.25(3)), Crim. Sex. Act (130.40(3))
- Aggravated Sex Abuse (130.65-a, 130.66, 130.67, 130.70)

PL Article 135:

- Unlawful Imprisonment 1<sup>st</sup> (135.10)
- Kidnapping (135.20, 135.25)

PL Article 140:

- Burglary (140.25)(1)(c)), 140.30(3))

PL Article 145:

- Criminal Mischief (145.05, 145.10, 145.12)

PL Article 150:

- Arson (150.05, 150.10, 150.15, 150.20)

PL Article 160:

- Robbery (160.05, 160.10, 160.15)

PL Article 265:

- Crim. Poss. Weapon (265.02(1), 265.03(1), 265.04)

Other Considerations:

- The sentence **must be ONE YEAR OR LONGER**. This includes re-sentencing on a Violation of Probation.
- Subdivisions matter.
- Offenses may be “crimes of violence” at any level (including misdemeanors), and if committed against a “domestic relation” will make your client deportable for a “crime of **domestic violence**” (CODV). This is a separate ground of deportability.
- Most, if not all, of these offenses are also “crimes involving moral turpitude” (CIMT) and therefore could make your client deportable on CIMT grounds, depending on your client’s circumstances.

Strategies to Avoid these Aggravated Felony Grounds of Removal:

- Get a sentence of 364 days or less;
- Plead to an offense that does not involve **intentional** use of physical force (e.g. reckless or negligent *mens rea*, e.g.), although the higher the level of offense, the greater the chance that even reckless conduct will constitute a COV. Try for the class A misdemeanor as this is no longer an AF.

**As always, contact the RIAC at the earliest possible moment  
in your client’s case!**