

**CRIMES OF VIOLENCE UNDER §2L1.2**  
**Updated 10/5/09**

This list was created to assist attorneys in determining whether or not a prior conviction is a crime of violence warranting a **16 level** enhancement under U.S.S.G. §2L1.2(b)(1)(A)(ii). This list will be updated on a monthly basis. It will attempt to include the most recent 5<sup>th</sup> Circuit decisions, government concessions at the appellate level and district court decisions at the trial level. The district court decisions will be taken from the brief abstracts sent by the appellate section and from the trial attorneys themselves. The purpose of this list being to provide attorneys with a quick reference on crimes of violence under 2L1.2 as well as informing attorneys that an issue has already been researched, written, and litigated, successfully or unsuccessfully. An effort will be made to provide a point of contact and to indicate if an appeal is pending. While the focus of this list is crimes of violence warranting a 16 level enhancement, a few selected aggravated felonies will be included as well as a few cases from other districts and some important drug cases. ***For additions or corrections, please contact: [Anne Berton@fd.org](mailto:Anne.Berton@fd.org), or [Lupe Maldonado@fd.org](mailto:Lupe.Maldonado@fd.org).***

Disclaimer: This list should not be used as a substitute for thorough research by each attorney. Although every effort will be made to keep the list updated, it may not be complete. This list includes 5<sup>th</sup> Circuit decisions and district court decisions in the Western District. It does not include decisions from other circuits or districts. Also, it does not include all possible arguments regarding each prior conviction. Finally, even if an offense is listed as a crime of violence, attorneys should review the listed case and look at the **reasoning** behind the court's decision. You may still have a viable objections or you may want to object to preserve the issue or challenge the court's reasoning.

**Alabama**

**Alaska**

**Arizona<sup>1</sup>**

**Aggravated Assault (Class 6 Felony)**, ARIZ. REV. STAT. ANN §13-1204  
Contact Attorney: Jim Langell (Please note this case is from the 10<sup>th</sup> Circuit)  
**Not a Crime of Violence/Not an Aggravated Felony/Not a Felony**

**Aggravated Assault on Law Enforcement Officer**  
Contact Attorney: Reggie Trejo  
**Not a Crime of Violence/Not an Aggravated Felony/Agreement Reached for 4 Level Enhancement**

**Aggravated Assault Serious Physical Injury**, ARIZ. REV. STAT. ANN § 13-1204 (A)(1)  
Contact Attorney: Joseph Cordova  
**Not a Crime of Violence**

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<sup>1</sup>The Ninth Circuit disagrees with the Fifth Circuit's holding in *US v. Mungia-Portillo* and has held that Aggravated Assault under ARIZ. REV. STAT. §13-1204(A)(11) is not a crime of violence. *US v. Esparza-Herrera*, No. 07-30490, –F3.d–, 2009 WL 455512 (9<sup>th</sup> Cir. 2009).

**Aggravated Assault with a Deadly Weapon**, ARIZ. REV. STAT. ANN §13-1203

Contact Attorney: Santiago Hernandez

**Not a Crime of Violence/Not an Aggravated Felony/4 Level Enhancement Imposed**

**Attempted Aggravated Assault**, ARIZ. REV. STAT. §13-1204 and §13-1001

Contact Attorney: Margarito G. Rodriguez

**Not a Crime of Violence**

**Burglary in the Second Degree**, ARIZ. REV. STAT. ANN §13-1507(1998)

Contact Attorney: Robert Castaneda & Mike Gorman

**Crime of Violence**

**Sexual Assault**, ARIZ. REV. STAT. §13-1406

Contact Attorney: Christine Kelso

**Not a Crime of Violence/ Not an Aggravated Felony/ 4 Level Enhancement Imposed**

## Arkansas

**Battery in the Second Degree**, ARK. CODE ANN. §5-13-202

Contact Attorney: Sandra S. Lewis

Appellate Attorney: Philip Lynch

**Not a Crime of Violence**

**Burglary,**

1. ARK CODE ANN. §5-39-201(a)(1987)

*US v. Mendoza-Sanchez*, 456 F.3d 479 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

2. ARK CODE ANN. §5-39-201(2004)

Contact Attorney: Todd Durden

**Not a Crime of Violence**

## California

**Assault with a Deadly Weapon**

1. CAL. PENAL CODE §245(a)(1)

*US v. Sanchez-Ruedas*, No. 05-40804, 452 F.3d 409 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

2. CAL. PENAL CODE §245(a)(1)

*US v. Robles-Enriquez*, 194 Fed. Appx. 189(5<sup>th</sup> Cir. 2007)(unpub.)

**Crime of Violence**

**Assault with Intent to Commit a Felony**, CAL. PENAL CODE §220(a)

*US v. Rojas-Gutierrez*, No. 06-50584, 510 F.3d 545 (5<sup>th</sup> Cir. 2007)

**Crime of Violence**

**Attempted Robbery**, CAL. PENAL CODE §211

Contact Attorney: Sandra S. Lewis

**Not A Crime of Violence**

## **Burglary**

1. CAL. PENAL CODE §459

Contact Attorney: Ahilan T. Arulanantham (contact Anne Berton)

**Not a Crime of Violence**

2. CAL. PENAL CODE §459

Contact Attorney: Reginaldo Trejo, Jr.

Appellate Attorney: Carolyn Fuentes

**Crime of Violence/appealed/affirmed 10/5/06**

3. CAL. PENAL CODE §459

*US v. Murillo-Lopez*, No. 04-41397, 444 F.3d 337, (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

4. CAL. PENAL CODE §459

Contact Attorney: Tyron Mansfield & Erik Hanshew

Appellate Attorney: Carolyn Fuentes

**Crime of Violence**

5. CAL. PENAL CODE §459

*US v. Ortega-Gonzaga*, No. 06-40493, 490 F.3d 393 (5<sup>th</sup> Cir. 2007)

**Not a Crime of Violence**

6. CAL. PENAL CODE §459

*US v. Gonzalez-Terrazas*, No. 07-50375, 529 F.3d 293 (5<sup>th</sup> Cir. 2008)

**Not a Crime of Violence**

**Corporal Injury to a Spouse**, CAL. PENAL CODE §273.5

Contact Attorney: Rebecca Reyes

**Crime of Violence**

**False Imprisonment**, CAL. PENAL CODE §236 AND 237

Contact Attorney: Horatio Aldredge

**Not a Crime of Violence/Not an Aggravated Felony**

**First Degree Robbery**, CAL. PENAL CODE §211, 212.5, and 12022(a)(1)

*US v. Estrada-Borjas*, No. 05-40739, 174 Fed. Appx. 820(5<sup>th</sup> Cir. 2006)(unpub)

**Crime of Violence**

**Kidnapping**, CAL. PENAL CODE §207(a)

*US v. Moreno-Flores*, No. 07-50833, 542 F.3d 445 (5<sup>th</sup> Cir. 2008)

**Not a Crime of Violence**

**Lewd Conduct With a Minor**, CAL. PENAL CODE §288(b)

*US v. Olivas-Pena*, No. 05-11371, 202 F. Appx. 656 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

**Oral Copulation, Victim Unconscious and Sexual Penetration, Victim Unconscious**,

CAL. PENAL CODE §288a(f) and 289 (d)

*US v. Raya-Romero*, No. 04-40447, 157 Fed. Appx. 703 (5<sup>th</sup> Cir. 2005) (unpublished)

**Not a Crime of Violence b/c not supported by the record**

**Oral Copulation of a Minor, §288a(b)(1)**

*Us v. Munoz-Ortenza*, No. 07-51344, –F.3d—, 2009 WL 693146 (5<sup>th</sup> Cir. 2009)

**Not a Crime of Violence**

**Possession of a Deadly Weapon, CAL. PENAL CODE §1202 (a)**

*US v. Medina-Anicacio*, No. 01-41171, 325 F.3d 638 (5<sup>th</sup> Cir. 2003)

**Not a Crime of Violence/ Not an Aggravated Felony**

**Rape, CAL. PENAL CODE §261(c) (1991)**

*US v. Gomez-Gomez*, No. 05-41461, 547 –F.3d– 242 (5<sup>th</sup> Cir. 2008)

**Crime of Violence**

**Robbery**

1. CAL. PENAL CODE §211

Contact Attorney: Christine W. Kelso

**Not a Crime of Violence**

2. CAL. PENAL CODE §211

Contact Attorney: Bill Fry

**Not a Crime of Violence**

3. CAL. PENAL CODE §211

*US v. Tellez-Martinez*, No. 06-50647, 517 F.3d 813 (5<sup>th</sup> Cir. 2008)

Contact Attorney: John Calhoun

Appellate Attorney: Henry Bemporad

**Crime of Violence/Appeal Filed/Affirmed/Petition for Rehearing/Denied  
3-18-08**

**Sexual Battery, CAL. PENAL CODE §243.4 (1998)<sup>2</sup>**

*US v. Bonilla-Mungia*, No. 03-41751, 422 F.3d 316 (5<sup>th</sup> Cir. 2005)

**Possibly Not a Crime of Violence/Remanded: 200 Fed.Appx. 376 (5<sup>th</sup> Cir. 2006)(unpub.)**

**Taking Vehicle without Consent, CAL. PENAL CODE §10851(a)**

*Gonzalez v. Dueñas-Alvarez*, 127 S.Ct. 815 (2007)

**Aggravated Felony**

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<sup>2</sup> The Ninth Circuit held that a sexual battery conviction under CAL. PENAL CODE § 243.4(a) does not constitute a crime of violence. *US v. Lopez-Montanez*, No. 04-50260, 421 F.3d 926 (9<sup>th</sup> Cir. 2005).

## **Unlawful Sexual Intercourse with a Minor<sup>3 4</sup>**

1. CAL. PENAL CODE §261.5

*US v. Morales-Macias*, 131 Fed. Appx. 433 (5<sup>th</sup> Cir. 2005)(unpub.)

Contact Attorney: Manuel Pacheco

Appellate Attorney: Donna Coltharp

**Crime of Violence at Resentencing**

2. CAL. PENAL CODE §261.5

*US v. Lopez-Garcia*, No. 05-40061, 163 Fed. Appx. 306 (5<sup>th</sup> Cir. 2006)(unpub.)

**Crime of Violence**

3. CAL. PENAL CODE §261.5

*US v. Eusebio-Giron*, No. 05-51000, 186 Fed. Appx. 507, (5<sup>th</sup> Cir. 2006)(unpub.)

Contact Attorney: Anne Berton

Appellate Attorney: Carolyn Fuentes

**Crime of Violence/appeal/affirmed 6-22-06**

4. CAL. PENAL CODE §261.5

*US v. Diaz-Vela*, No. 06-40939, 224 Fed. Appx. 381(5<sup>th</sup> Cir. 2007)(unpub.)

**Crime of Violence**

5. CAL. PENAL CODE §261.5(c)

*US v. Vigil-Sanchez*, No. 06-41313, 246 Fed. Appx. 854 (5<sup>th</sup> Cir. 2007)(unpub.)

**Crime of Violence**

6. CAL. PENAL CODE §261.5(c)

*US v. Lopez-De Leon*, No. 06-41553, 513 F.3d 472 (5<sup>th</sup> Cir. 2008)

**Crime of Violence**

## **Colorado**

**Attempted Second Degree Kidnapping**, COLO. REV. STAT. §18-3-302(1)

*US v. Cervantes-Blanco*, No. 06-50738, 504 F.3d 576 (5<sup>th</sup> Cir. 2007)

Contact Attorney: Margarito Rodriguez

Appellate Attorney: Judy Madewell

**Not a Crime of Violence/Appealed/Remanded**

**Conspiracy to Distribute or Manufacture a Controlled Substance**, COLO. REV. STAT. §18-18-405(1)(a)

Contact Attorney: Reggie Trejo

**Not a Drug Trafficking Offense**

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<sup>3</sup>The Ninth Circuit held that CAL. PENAL CODE § 261.5(c) is overly inclusive and, therefore, is not a crime of violence. *US v. Rodriguez-Guzman*, No. 06-10585, 506 F.3d 738 (9<sup>th</sup> Cir. 2007).

<sup>4</sup>The Ninth Circuit held that CAL. PENAL CODE §§261.5(c), 286(b)(1), 288a(b)(1), 289(h) do not constitute sexual abuse of a minor and, therefore, are not aggravated felonies. *Estrada-Espinoza v. Mukasey*, –F.3d–, 2008 WL 4615681 (9<sup>th</sup> Cir. 2008). (*Note there is a Circuit Split/Preserve the Issue*)

**Criminal Attempt to Commit Assault in the Second Degree**, COLO. REV. STAT. §18-2-101 and §18-3-203

Contact Attorney: Rita Rodriguez

**Not a Crime of Violence**

**First Degree Criminal Trespass**

1. COLO. REV. STAT. § 18-4-502

*US v. Delgado-Enriquez*, No. 98-51003, 188 F.3d 592 (5<sup>th</sup> Cir. 1999)

**Crime of Violence** (*Note: 16 levels imposed back then but should now probably be an aggravated felony and an 8 level increase, depending on the sentence.*)

2. COLO. REV. STAT. § 18-4-502

Contact Attorney: Edgar Holguin

**Aggravated Felony (8 level Enhancement Imposed)**

**First Degree Criminal Trespass-Auto with Intent to Commit a Crime**, COLO. REV. STAT. § 18-4-502

Contact Attorney: Selena Solis

Appellate Attorney: Carolyn Fuentes

**Aggravated Felony - Appeal Pending**

**Menacing**

1. COLO. REV. STAT. §18-3-206

*US v. Landeros-Arreola*, No. 00-50512, 260 F.3d 407 (5<sup>th</sup> Cir. 2001)

**Not an Aggravated Felony**

2. COLO. REV. STAT. §18-3-206

Contact Attorney: Maureen Franco

**Not a Crime of Violence**

3. COLO. REV. STAT. §18-3-206

Contact Attorney: Manuel Acosta-Rivera

Appellate Attorney: Henry Bemporad

**Not a Crime of Violence at Resentencing/Not an Aggravated Felony/ 4 Level Enhancement Imposed**

**Misdemeanor Assault**, COLO. REV. STAT. §18-3-204

Contact Attorney: Anne Berton

**Not a Crime of Violence**

**Misdemeanor Third Degree Sexual Assault**, COLO. REV. STAT. §18-3-404

Contact Attorney: Edgar Holguin

**Not a Crime of Violence**

**Misdemeanor Unlawful Sexual Contact**, COLO. REV. STAT. §18-3-404

Contact Attorney: Marie Romero-Martinez

Appellate Attorney: Carolyn Fuentes

**Government conceded Not a Crime of Violence**

**Second Degree Burglary: Dwelling**, COLO. REV. STAT. §18-4-203(2)(a) (1998)

Contact Attorney: Anne Berton

Appellate Attorney: Carolyn Fuentes

**Crime of Violence/appeal/affirmed 7-13-06**

**Second Degree Sexual Assault**, COLO. REV. STAT. §18-3-403  
*US v. Palomares-Candela*, No. 03-10535, 104 Fed. Appx. 957 (5<sup>th</sup> Cir. 2004)(unpub.)  
**Not a Crime of Violence**

## Connecticut

**Second Degree Assault**, CONN. GEN. STAT. § 53a-60(a)(2)  
*US v. Torres-Diaz*, No. 05-40090, 438 F.3d 529 (5<sup>th</sup> Cir. 2006)  
**Crime of Violence**

## Delaware

## District of Columbia

## Florida

### **Aggravated Battery,**

1. FLA. STAT. §784.045 (1998)  
*US v. Gonzalez-Chavez*, No. 04-40173, 432 F.3d 334 (5<sup>th</sup> Cir. 2005)  
**Crimes of Violence/Appeal/ Vacated & Remanded**

2. FLA. STAT. §784.045 (1998)  
Contact Attorney: Edgar Holguin  
**Not a Crime of Violence/Not an Aggravated Felony/4 Level Enhancement Imposed**

3. FLA. STAT. §784.03(1)(a)(1), 784.045(1)(a)(2)  
*US v. Dominguez*, No. 06-40292, 479 F.3d 345(5<sup>th</sup> Cir. 2007)  
**Crime of Violence**

4. FLA. STAT. §784.045(1)(b)  
*US v. Thompson*, No. 07-50512, 269 Fed. Appx. 363 (5<sup>th</sup> Cir. 2008)(unpub)  
Contact Attorney: Erik Hanshew  
Appellate Attorney: Henry Bemporad  
**Crime of Violence/ Appeal Pending**

**Aggravated Stalking**, FLA. STAT. §784.048(4)  
*US v. Insaulgarat*, No. 02-40917, 378 F.3d 456 (5<sup>th</sup> Cir. 2004)  
**Not a Crime of Violence**

### **Battery of a Police Officer,**

1. FLA. STAT. §784.07/784.03  
Contact Attorney: Maureen Franco  
**Not a Crime of Violence**

2. FLA. STAT. §784.07/784.03  
*US v. Robledo-Leyva*, No. 08-50140, 307 Fed. Appx. 859 (5<sup>th</sup> Cir. 2009)  
**Crime of Violence**

### **Burglary,**

1. FLA. STAT. §810.02(1), (3)(b)(2004)  
Contact Attorney: Frances Cusack & Brad Bogan  
**Not a Crime of Violence**

2. FLA. STAT. §810.02(1), (3)(2005)  
*US v. Castillo-Morales*, No. 07-40053, 507 F.3d 873 (5<sup>th</sup> Cir. 2007)  
**Crime of Violence**

3. FLA. STAT. §810.02(3)(1995)  
*US v. Gomez-Guerra*, No. 05-41789, 485 F.3d 301 (5<sup>th</sup> Cir. 2007)  
**Not a Crime of Violence**

4. FLA. STAT. §810.02  
Contact Attorney: Erik Hanshew  
Appellate Attorney: Judy Madewell  
**Crime of Violence/Appeal Pending**

**Committing a Lewd and Lascivious Act Upon a Child Under the Age of 16 Years**,  
Fla. Stat. §800.04(2)(1999)  
Contact Attorney: Anne Berton  
**Not a Crime of Violence**

**DUI/Manslaughter and DUI/Bodily Injury**, FLA. STAT. §316.193 (3)(c)(2) & (3)  
*US v. Valenzuela*, No. 03-20395, 389 F.3d 1305 (5<sup>th</sup> Cir. 2004)  
**Not a Crime of Violence**

## Georgia

**Family Violence Battery**, GA. CODE ANN. §16-5-23.1 (f)  
*US v. Lopez-Hernandez*, No. 02-21078, 112 Fed. Appx. 984 (5<sup>th</sup> Cir. 2004)(unpub.)  
**Not a Crime of Violence**

## Hawaii

### Idaho

**Attempted Robbery and Battery**, IDAHO CODE ANN §§18-6501, 18-6502, 18-306,  
18-909 and 18-903  
Contact Attorney: Margarito Rodriguez  
**Not a Crime of Violence/Aggravated Felony 9 Level Enhancement Imposed**

**Rape**, IDAHO CODE ANN § 18-6101(1)  
*US v. Villa-Delgado*, No. 07-50677, 265 Fed. Appx. 251 (5<sup>th</sup> Cir. 2008)  
Contact Attorney: Edgar Holguin  
Appellate Attorney: Judy Madewell  
**Crime of Violence/Appeal/Affirmed 2-8-08**

## Illinois

### Aggravated Battery

1. 720 ILL. STAT. CH. 38 §12-4(b)(1)  
Contact Attorney: Selena Solis  
Appellate Attorney: Henry Bemporad  
**Not a Crime of Violence at Resentencing**

2. 720 ILL. COMP. STAT. § 5/12-4 (1996)

Contact Attorney: William E. Hermesmeier & Joseph Cordova  
Appellate Attorney: Donna Coltharp

**Crime of Violence./Appealed/Remanded**

3. 720 ILL. COMP. STAT. §5/12-4

*US v. Gomez-Vargas*, 111 Fed.Appx. 741 (5th Cir. 2004)(unpub.)

**Not a Crime of Violence**

4. 720 ILL. COMP. STAT. §5/12-4

*US v. Aguilar-Delgado*, No. 04-40309, 120 Fed.Appx 522 (5<sup>th</sup> Cir. 2004)(unpub.)

**Not a Crime of Violence**

5. 720 ILL. STAT. CH. 38 §12-4(a)(1986)

Contact Attorney: Bill Ibbotson

**Not a Crime of Violence**

6. 720 ILL. STAT. CH. 38 §12-4(b)(1)

Contact Attorney: Rebecca Reyes

**Not a Crime of Violence/ 8 Level Enhancement Imposed**

7. 720 ILL. COMP. STAT. §5/12-4(b)(1)(1995)

*US v. Velasco*, No. 05-10451, 465 F.3d 633 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

**Aggravated Stalking**, 720 ILL. STAT. CH. 38§12-7.4

Contact Attorney: Selena Solis

Appellate Attorney: Judy Madewell

**Gov't Conceded-Not a Crime of Violence/Remanded/ 4 Levels Imposed**

**Domestic Battery**, 720 ILL. COMP. STAT. §5/12-3.2 (1996)

Contact Attorney: Santiago D. Hernandez

**Not a Crime of Violence**

**Domestic Battery and Battery Causing Bodily Harm**, 720 ILL. COMP. STAT. §5/12-3.2-A-1; 5/12-3-A-1

Contact Attorney: Randall Lockhart

**Not a Crime of Violence**

## **Indiana**

**Aiding Attempted Battery with a Deadly Weapon**, IND. CODE §35-42-2-1 (2004)

*US v. Juarez-Mejia*, No. 08-10699, 2009 WL 1971604 (5<sup>th</sup> Cir. 2009)(unpub)

**Crime of Violence**

## **Iowa**

**Assault with Intent to Commit Sexual Abuse**, IOWA CODE ANN. §709.11 (West 2003)

Contact Attorneys: Christina Norton, Manuel Pacheco, and Bill Fry

**Not a Crime of Violence**

**Going Armed with Intent**, IOWA CODE §708.8

Contact Attorney: Reginaldo Trejo

**Not a Crime of Violence**

## Kansas

**Aggravated Battery**, KAN. STAT. §21-3414(a)(1)(C)  
*Larin-Ulloa v. Gonzalez*, No. 462 F.3d 456 (5<sup>th</sup> Cir. 2006)  
**Not an Aggravated Felony**

**Aggravated Indecent Liberties with a Child**, KAN. STAT. §21-3504(a)(3)  
Contact Attorney: Manuel Acosta  
Appellate Attorney: Philip Lynch  
**Crime of Violence/Appealed/Appeal Dsmissed by Client**

**Aggravated Sexual Battery**, KAN. STAT. §21-3518  
*US v. Matute-Galdamez*, No. 03-41728, 111 Fed. Appx. 264 (5<sup>th</sup> Cir. 2004)(unpub.)  
**Not a Crime of Violence**

**Attempted Aggravated Sexual Battery**, KAN. STAT. §21-3518  
*US v. Meraz-Enriquez*, No. 04-40607, 442 F.3d 331 (5<sup>th</sup> Cir. 2006)  
**Not a Crime of Violence**

**Indecent Solicitation of a Child**, KAN. STAT. §21-3510  
*US v. Ramos-Sanchez*, No. 05-50943, 483 F.3d 400 (5<sup>th</sup> Cir. 2007)  
Contact Attorney: Selena Solis  
Appellate Attorney: Judy Madewell  
**Crime of Violence/ Appeal/ Affirmed 4-2-07**

## Kentucky

**Assault**, KY. REV. STAT. ANN §508025(1)(a)(1)  
Contact Attorney: Reggie Trejo  
**Not a Crime of Violence/Eight Level Enhancement Imposed**

**Misdemeanor 4<sup>th</sup> Degree Assault**, KY. REV. STAT. ANN. §508.030  
Contact Attorney: Clare Koontz  
**Government conceded at trial level Not a Crime of Violence**

## Louisiana

**Unauthorized Entry of Inhabited Dwelling**, LA. REV. STAT. ANN. 14:62.3  
Contact Attorney: Dan Ramirez  
**Not a Crime of Violence/Aggravated Felony 8 Level Enhancement Imposed**

## Maine

## Maryland

## Massachusetts

**Assault and Battery,**

1. MASS. GEN. LAWS CH. 265, §13A  
*Andrade v. Gonzalez*, No. 04-30247, 459 F.3d 538 (5<sup>th</sup> Cir. 2006)  
**Aggravated Felony**

2. MASS. GEN. LAWS CH. 265, §13A  
*US v. Deras-Rodriguez*, No. 05-50222, 173 Fed. Appx. 355 (5<sup>th</sup> Cir. 2006)(unpub.)  
Contact Attorney: Frances Cusack  
Appellate Attorney: Henry Bemporad  
**Crime of Violence/Appeal/Affirmed 4-15-06**

**Assault and Battery with a Deadly Weapon**, MASS. GEN. LAWS CH. 265, §15A(b)  
Contact Attorney: Frank Morales  
**Not a Crime of Violence**

**Indecent Assault and Battery of a Minor**, MASS. GEN. LAWS CH 265§13B  
*US v. Castillo-Suarez*, No. 05-41242, 215 Fed. Appx. 361 (5<sup>th</sup> Cir. 2007)(unpub.)  
**Crime of Violence**

## Michigan

**Attempted Assault with a Deadly Weapon**, MICH. COMP. LAWS §750.82  
*US v. Avila-Nava*, No. 06-51190, 237 Fed. Appx. 925 (5<sup>th</sup> Cir. 2007) (unpub.)  
Contact Attorney: Rita Rodriguez  
Appellate Attorney: Henry Bemporad  
**Crime of Violence/Appeal Pending**

**Attempted Home Invasion**, MICH. COMP. LAWS § 750.110  
Contact Attorney: Rebecca Reyes and Bruce Weathers  
**Not a Crime of Violence/ Not an Aggravated Felony**

**Felonious Assault**, MICH. COMP. LAWS §750.82  
*US v. Saucedo-Roman*, No. 05-41013, 202 F. Appx. 723 (5<sup>th</sup> Cir. 2006)  
**Crime of Violence**

## Minnesota

**First Degree Damage to Property (Gross Misdemeanor)**, MINN. STAT. §609.13  
Contact Attorney: Tyrone Mansfield  
**Not a Felony/No Enhancement**

**Terroristic Threats** , MINN. STAT. §609.713 (2000)  
*US v. Naranjo-Hernandez*, No. 03-41081, 133 Fed. Appx. 96 (5<sup>th</sup> Cir. 2005) ( unpub.)  
**Not Crime of Violence**

**Third Degree Sexual Contact**, MINN. STAT. §609.344  
*US v. Fernandez-Cusco*, No. 05-40289, 447 F.3d 382 (5<sup>th</sup> Cir. 2006)  
**Crime of Violence**

## Mississippi

## Missouri

**Burglary**, MO. REV. STAT. § 569.160 (1997)  
*US v. Carbajal-Diaz*, No. 06-41491, 508 F.3d 804 (5<sup>th</sup> Cir. 2007)  
**Crime of Violence**  
**Sexual Assault**, MO. REV. STAT. §566.040 (1)  
*US v. Sarmiento-Funes*, No. 03-40741, 374 F3d. 336 (5<sup>th</sup> Cir. 2004)  
**Not a Crime of Violence**

## Montana

**Sexual Intercourse Without Consent**, MONT. CODE ANN. § 45-5-503(1)  
Contact Attorney: Sandra Lewis  
**Not a Crime of Violence**

## Nebraska

**Aiding and Abetting Burglary**, NEB. REV. STAT. §28-507  
*US v. Medellin-Herrera*, No. 08-50773, 2009 WL 1259037 (5<sup>th</sup> Cir. 2009)(unpub.)  
**Crime of Violence**

## Nevada

**Invasion of the Home**, NEV. REV. STAT. §205.067  
Contact Attorney: Edgar Holguin  
**Not a Crime of Violence**

## New Hampshire

## New Jersey

**Aggravated Assault**, N.J. STAT. ANN. § 2C:12-1b(7)  
*US v. Ramirez*, No. 07-40442, -F.3d-, 2009 WL 189071 (5<sup>th</sup> Cir. 2009)  
**Crime of Violence**

## New Mexico

**Aggravated Assault with a Deadly Weapon**, N.M. STAT. § 30-3-1  
Contact Attorney: Horacio Aldredge  
Appellate Attorney: Phil Lynch  
**Crime of Violence/Appealed/Appeal Dismissed by Client**

**Aggravated Battery**, N.M. STAT. §30-3-5  
Contact Attorney: William Hermesmeyer & Clare Koontz  
Appellate Attorney: Donna Coltharp  
**Crime of Violence/Remanded**

**Child Abuse**, N.M. STAT. §30-06-01  
Contact Attorney: Erik Hanshew  
**Not an Aggravated Felony/Four Level Enhancement Imposed**

**Criminal Sexual Penetration**, N.M. STAT. §30-9-1 (c)  
Contact Attorney: Anne Berton  
**Not a Crime of Violence**

## New York

**Attempted Gang Assault in the Second Degree**, N.Y. PENAL LAW § 120.06  
Contact Attorney: William Fry  
**Not a Crime of Violence**

**Attempted Assault in the Second Degree**, N.Y. PENAL LAW § 120.05  
*US v. Neri-Hernandes*, No. 06-41173, 504 F.3d 587 (5 Cir. 2007)  
**Crime of Violence**

**Attempted Manslaughter**, N.Y. PENAL LAW §125.15  
*US v. Bonilla*, No. 06-40894, 524 F.3d 647 (5<sup>th</sup> Cir. 2008)  
**Not a Crime of Violence**

**Criminal Possession of Stolen Property in the Third Degree**, N.Y. PENAL LAW § 165.50  
*Burke v. Mukasey*, No. 06-60710 509 F.3d 695 (5<sup>th</sup> Cir. 2007)  
**Aggravated Felony**

**First Degree Manslaughter**, N.Y. PENAL LAW §125.20  
*US v. Segovia-Portillo*, No. 07-40094, 270 Fed. Appx. 367 (5<sup>th</sup> Cir. 2008)(unpub.)  
**Crime of Violence**

**Rape in the Third Degree**, N.Y. PENAL LAW §130.25-2  
*US v. Gonzalez-Alonzo*, No. 05-51538, 204 Fed Appx. 359 (5<sup>th</sup> Cir. 2006)(unpub.)  
Contact Attorney: John Calhoun  
Appellate Attorney: Judy Madewell  
**Crime of Violence - appeal pending**

**Second Degree Assault**, N.Y. PENAL LAW §120.05  
Contact Attorney: Santiago Hernandez and Bruce Weathers  
**Not a Crime of Violence/Not an Aggravated Felony**

**Second Degree Kidnapping**, N.Y. PENAL LAW §135.20  
*US v. Iniguez-Barba*, No. 06-50434, 485 F.3d 790 (5<sup>th</sup> Cir. 2007)  
Contact Attorney: Robert Castaneda  
Appellate Attorney: Donna Coltharp  
**Crime of Violence-appeal pending**

## North Carolina

### Breaking and Entering

1. N.C. GEN. STAT. §14-54(a)  
Contact Attorney: Marie Romero-Martinez  
Appellate Attorney: Phil Lynch  
**Government Conceded at Appellate Level that it is Not a Crime of Violence/  
8 Levels Imposed**

2. N.C. GEN. STAT. §14-54  
Contact Attorney: Abe Hernandez  
Appellate Attorney: Phil Lynch  
**Crime of Violence/Appeal Pending**

**Involuntary Manslaughter**, N.C. GEN. STAT. §14-18(1994)  
Contact Attorney: Anne Berton & Bruce Weathers  
**Not a Crime of Violence/Not an Aggravated Felony/4 Levels Imposed**

**Taking Indecent Liberties with a Child**, N.C. GEN. STAT. §14-202.1 (a)(1)  
*US v. Izaguirre-Flores*, No. 04-40276, 405 F3d 270, (5<sup>th</sup> Cir. 2005)  
**Crime of Violence**

## North Dakota

## Ohio

**Aggravated Burglary**, OHIO REV. CODE ANN. §2911.11(A)(1)(2001)  
*US v. Ramirez*, No. 08-41192, 2009 WL 3016157 (5<sup>th</sup> Cir. 2009)(unpub.)  
**Not a Crime of Violence**

## Oklahoma

### Indecent or Lewd Acts with a Child

1. OKLA. STAT. TIT. 21, §1123(A)(4)  
Contact Attorney: Frank Morales  
Appellate Attorney: Donna Coltharp  
**Crime of Violence/Appealed/Affirmed**

2. OKLA. STAT. TIT. 21, §1123(A)(4)  
*US v. Lerma-Galindo*, No. 06-50149, 209 Fed. Appx. 375 (5<sup>th</sup> Cir. 2006)(unpub.)  
Contact Attorney: Joseph Cordova  
Appellate Attorney: Henry Bemporad  
**Crime of Violence/Appealed/Affirmed**

3. OKLA. STAT. TIT. 21, §1123(A)(4)  
*US v. Balderas-Rubio*, No. 06-41153, 499 F.3d 470 (5<sup>th</sup> Cir. 2007)  
**Crime of Violence**

**Maiming**, OKLA. STAT. TIT. 21, §751  
Contact Attorney: Francisco “Frank” Morales  
**Not a Crime of Violence**

## Oregon

**Third Degree Robbery**, OR. REV. STAT. §164.395  
*US v. Cuevas-Jacome*, No. 07-51492, 2009 WL 536441 (5<sup>th</sup> Cir. 2009)(unpub.)  
**Crime of Violence**

## Pennsylvania

### Terroristic Threats

1. 18 PA. CONS. STAT. §2706 (2003)  
*United States v. Martinez-Paramo*, 380 F.3d 799 (5<sup>th</sup> Cir. 2004)  
**Not Crime of Violence**

2. 18 PA. CONS. STAT. §2706(a)  
*US v. Ortiz-Gomez*, No. 08-40292, -F.3d-, 2009 WL 604133 (5<sup>th</sup> Cir. 2009)  
**Not a Crime of Violence**

## Rhode Island

**Third Degree Sexual Assault**, R.I. GEN. LAWS §11-37-6 (2004)  
Contact Attorney: Bill Fry  
**Crime of Violence**

## South Carolina

### **Assault and Battery of a High and Aggravated Nature (ABHAN)**

1. *US v. Guerrero-Robledo*, No. 07-41151, 565 F.3d 940 (5<sup>th</sup> Cir. 2009), petition for cert. filed (July 7, 2009)

**Crime of Violence**

2. *US v. Pegueros-Aguilar*, No. 08-41285, 2009 WL 2591367 (5<sup>th</sup> Cir. 2009)

**Crime of Violence**

## South Dakota

## Tennessee

**Attempted Kidnapping**, TENN. CODE ANN. § 39-13-303

*US v. Gonzalez-Ramirez*, No. 04-51355, 477 F.3d 310 (5<sup>th</sup> Cir. 2007)

**Crime of Violence**

**Aggravated Assault (Reckless)**, TENN. CODE ANN. §39-13-102

*US v. Mungia-Portillo*, No. 06-40273, 484 F.3d 813 (5<sup>th</sup> Cir. 2007)

**Crime of Violence** (*Note: There is a Circuit Split/Preserve the Issue. See US v. Esparza-Herrera, No. 07-30490, -F.3d-, 2009 WL 455512 (9<sup>th</sup> Cir. 2009)*)

**Aggravated Burglary**, TENN. CODE ANN §39-14-403

*US v. Herrera-Montes*, No. 06-41426, 490 F.3d 390 (5<sup>th</sup> Cir. 2007)

**Not a Crime of Violence**

**Facilitation of Aggravated Assault**

Contact Attorney: Bill Fry

Appellate Attorney: Carolyn Fuentes

**Crime of Violence/Appeal Pending**

**Facilitation of Aggravated Robbery**, TENN. CODE ANN. §39-11-403

*US v. Trejo-Palacios*, 418 F. Supp. 2d 915 (S.D. Tex. 2006)

**Not Crime of Violence/It is an Aggravated Felony/ 8 Levels Imposed**

**Reckless Aggravated Assault**, TENN. CODE ANN. §39-13-102

Contact Attorney: Selena Solis

**Not a Crime of Violence**

## Texas

**Aggravated Assault**, TEX. PENAL CODE ANN. §22.02

*US v. Ramirez*, 367 F.3d 274 (5<sup>th</sup> Cir. 2004)

**Crime of Violence**

**Aggravated Assault with a Deadly Weapon**

1. TEX. PENAL CODE ANN §22.02

*US v. Guillen-Alvarez*, No. 05-41787, 489 F.3d 197(5<sup>th</sup> Cir. 2007)

**Crime of Violence**

2. TEX. PENAL CODE ANN §22.02(a)(4) (1993)  
Contact Attorney: Anne Berton and Mike Gorman  
**Not a Crime of Violence** (*Note: There may be some arguments to the pre-1994 statute*)

**Aggravated Assault with a Motor Vehicle**, Tex. Penal Code Ann. §22.01(a)(1), 22.02  
*US v. Fuentes-Berlanga*, No. 04-41163, 149 Fed. Appx. 258(5<sup>th</sup> Cir. 2005)(unpub.)  
**Crime of Violence**

**Aggravated Assault of a Peace Officer**

1. TEX. PENAL CODE ANN. §22.02(a)(2) (1979)  
*US v. Fierro-Reyna*, No. 05-51198, 466 F.3d 324 (5<sup>th</sup> Cir. 2006)  
**Not a Crime of Violence**

2. TEX. PENAL CODE ANN. §22.02(a)(2)  
*US v. Antuna-Moran*, No. 06-40103, 488 F.3d 1048 (5<sup>th</sup> Cir. 2007)  
**Not a Crime of Violence**

**Aggravated Kidnapping**, TEX. PENAL CODE ANN. §20.04  
Contact Attorney: Christine W. Kelso  
**Crime of Violence**

**Aggravated Robbery of an Elderly Person**, TEX. PENAL CODE ANN. §29.03(a)(3)(A)  
(1998)  
*US v. Garcia-Aguirre*, No. 05-50318, slip copy, 2006 WL 509400 (5<sup>th</sup> Cir.)(unpub.)  
Contact Attorney: Frances Cusack  
Appellate Attorney: Henry Bemporad  
**Crime of Violence-Affirmed 3/1/06**

**Aggravated Sexual Assault of a Child**, TEX. PENAL CODE ANN. §22.021  
*US v. Rayo-Valdez*, No. 02-10010, 302 F.3d 314 (5<sup>th</sup> Cir. 2002)  
**Crime of Violence**

**Arson,**

1. TEX. PENAL CODE ANN. §28.02 (1993)  
*US v. Velez-Alderete*, No.08-20557, -F.3d-, 2009 WL 1519693 (5<sup>th</sup> Cir. 2009)  
**Crime of Violence**

2. TEX. PENAL CODE ANN. §28.02  
*US v. Pulliro*, No. 09-20032, 2009 WL 2998825 (5<sup>th</sup> Cir. 2009)(unpub.)  
**Crime of Violence**

**Assault,**

1. TEX. PENAL CODE ANN. §22.01(a)(1) (misd)  
*US v. Villegas-Hernandez*, No. 05-40988, 468 F.3d 874 (5<sup>th</sup> Cir. 2006)  
**Not a Crime of Violence/ Not an Aggravated Felony**

2. TEX. PENAL CODE ANN. §22.01(a)(1)  
*US v. Davila-Solis*, No. 06-40826, 217 Fed. Appx. 402 (5<sup>th</sup> Cir. 2007)(unpub.)  
**Not an Aggravated Felony**

**Assault on a Public Servant-Third Degree**, TEX. PENAL CODE ANN. §22.01  
Contact Attorney: Santiago D. Hernandez  
**Not a Crime of Violence**

**Attempted Aggravated Assault-Third Degree**, TEX. PENAL CODE ANN. §22.02  
Contact Attorney: Tyrone T. Mansfield  
**Not a Crime of Violence**

**Attempted Indecency with a Child**, TEX. PENAL CODE §21.11  
*US v. Rivera-Perez*, 322 F.3d 350 (5<sup>th</sup> Cir. 2003)  
**Crime of Violence Despite Being a Misdemeanor Under §12.44**

**Burglary of a Building**, TEX. PENAL CODE ANN. §30.02 (1990), applying 1974 version  
*US v. Rodriguez-Rodriguez*, No. 02-20697, 388 F.3d 466 (5<sup>th</sup> Cir. 2004)  
**Not a Crime of Violence**

**Burglary of Habitation (TEX. PENAL CODE §30.02(a)(3) is not a Crime of Violence, see below)**

1. TEX. PENAL CODE ANN. §30.02(a)(1) (2000)  
*US v. Garcia-Mendez*, No. 04-41152, 420 F.3d 454 (5<sup>th</sup> Cir. 2005)  
**Crime of Violence**

2. TEX. PENAL CODE §30.02  
*US v. Valdez-Maltos*, No. 05-40869, 443 F.3d 910 (5<sup>th</sup> Cir. 2006)  
**Crime of Violence**

3. TEX. PENAL CODE ANN. §30.02(a)(3)  
*US v. Castro*, No. 07-40094, 272 Fed. Appx. 385 (5<sup>th</sup> Cir. 2008)  
**Crime of Violence**

4. TEX. PENAL CODE ANN. §30.02(a)(3)  
Contact Attorney: Erik Hanshew  
**Not a Crime of Violence**

5. TEX. PENAL CODE ANN. §30.02(a)(3)  
*US v. Herrera-Montes*, No. 06-41426, 490 F.3d 390 (5<sup>th</sup> Cir. 2007)  
**Not a Crime of Violence (Although this case deals with a Tennessee statute, it is identical to Texas statute 30.02(a)(3)).**

6. TEX. PENAL CODE ARTICLE 1389 OR 1390 (1963)  
*US v. Montoya-Beltran*, No. 07-51410, slip copy, 2008 WL 3876507 (5<sup>th</sup> Cir. 2008)  
Contact Attorney: Bill Fry  
Appellate Attorney: Carolyn Fuentes  
**Not a Crime of Violence**

7. TEX. PENAL CODE ANN. §30.02  
Contact Attorney: Darren Ligon  
**Not a Crime of Violence/Eight Levels Imposed**

8. TEX. PENAL CODE ANN. §30.02(a)(1)  
*US v. Cardenas-Cardenas*, No. 08-40210, 543 F.3d 731, 2008 WL 4353084 (5<sup>th</sup> Cir. 2008)

**Crime of Violence**

9. TEX. PENAL CODE ANN. §30.02(a)(3)  
*US v. Beltran-Ramirez*, No. 07-50218, 266 Fed. Appx. 371 (5<sup>th</sup> Cir. 2008)(unpub.)

**Not A Crime of Violence**

10. TEX. PENAL CODE ANN. §30.02(a)(3)  
*US v. Castro*, No. 07-40762, 272 Fed. Appx. 385 (5<sup>th</sup> Cir. 2008)(unpub.)

**Not a Crime of Violence**

11. TEX. PENAL CODE ANN. §30.02(a)(3)  
*US v. Constante*, No. 07-41004, 544 F.3d 584 (5<sup>th</sup> Cir. 2008)

**Not a Crime of Violence under 18 USC §924(e)**

**Consensual Sexual Intercourse with Person Less Than 17**, TEX. PENAL CODE §22.011(a)(2)

*US v. Alvarado-Hernandez*, No. 05-50994, 465 F.3d 188 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

**Criminal Mischief**, TEX. PENAL CODE §28.03 (a)(3)

*US v. Landeros - Gonzalez*, No. 01-10066, 262 F.3d 424 (5<sup>th</sup> Cir. 2001)

**Not a Crime of Violence/Not an Aggravated Felony**

**Criminally Negligent Homicide**, TEX. PENAL CODE ANN. §19.05

*US v. Dominguez-Ochoa*, No. 03-40260, 386 F.3d 639 (5<sup>th</sup> Cir. 2004)

**Not a Crime of Violence**

**Child Endangerment**, TEX. PENAL CODE ANN. §22.041 (c)

*US v. Calderon-Pena*, No. 02-20331, 383 F.3d 254 (5<sup>th</sup> Cir. 2004)

**Not a Crime of Violence**

**Deadly Conduct,**

1. TEX. PENAL CODE ANN. §22.05(b)(1)

*US v. Hernandez-Rodriguez*, No. 05-51429, 467 F.3d 492 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

2. TEX. PENAL CODE ANN. §22.05(b)(2)

Contact Attorney: Robert Castaneda and Bruce Weathers

**Not a Crime of Violence/4 Level Enhancement Imposed**

**Driving While Intoxicated**, TEX. PENAL CODE §49.04

*US v. Chapa-Garza*, 243 F.3d 921 (5<sup>th</sup> Cir. 2001) see also 262 F.3d 479 (5<sup>th</sup> Cir. 2001)

**Not a Crime of Violence/ Not an Aggravated Felony**

**Indecency with a Child**

1. TEX. PENAL CODE §21.11 (a)(1)

*US v. Velazquez-Overa*, 100 F.3d 418 (5<sup>th</sup> Cir. 1996)

**Aggravated Felony**

2. TEX. PENAL CODE §21.11(a)(2) **(by Exposure)**

*US v. Zavala-Sustaita*, 214 F.3d 601 (5<sup>th</sup> Cir. 2000)

**Aggravated Felony**

3. TEX. PENAL CODE §21.11 (a)(1)  
*US v. Guerrero-Delgado*, No. 06-40227, 202 Fed. Appx. 780 (5<sup>th</sup> Cir. 2006)  
(unpub.)

**Crime of Violence**

4. TEX. PENAL CODE 21.11(a)(1991)  
*US v. Nino-Jaramillo*, No. 05-20496, 200 Fed. Appx.348 (5<sup>th</sup> Cir. 2006)(unpub.)

**Crime of Violence**

5. TEX PENAL CODE §21.11(a)  
*US v. Figueroa-Hernandez*, 212 Fed. Appx. 326 (5<sup>th</sup> Cir. 2007)(unpub.)

**Crime of Violence**

6. TEX PENAL CODE §21.11(a)  
*US v. Lopez-Cortez*, No. 07-40561, 269 Fed. Appx. 360 (5<sup>th</sup> Cir. 2008)(unpub)

**Crime of Violence**

7. TEX PENAL CODE §21.11(a)(1)  
*US v. Najera-Najera*, No. 07-10464, 519 F.3d 509 (5<sup>th</sup> Cir. 2008)

**Crime of Violence**

8. TEX PENAL CODE §21.11(a)(1)  
*US v. Ayala*, No. 07-41149, 542 F.3d 494 (5<sup>th</sup> Cir. 2008), cert. denied, 129 S.Ct. 1388 (2009)

**Crime of Violence**

9. TEX PENAL CODE §21.11(a)(1)  
*US v. Rivera-Castaneda*, No. 08-41071, 2009 WL 2515523 (5<sup>th</sup> Cir. 2009)(unpub)

**Crime of Violence**

10. TEX. PENAL CODE §21.11  
*US v. Cruz*, No. 08-40788, 2009 WL 2903706, (5<sup>th</sup> Cir. 2009)(unpub.)

**Crime of Violence**

### **Injury to a Child**

1. TEX. PENAL CODE ANN. §22.04  
*US v. Garcia-Cantu*, No. 01-41029, 302 F.3d 308 (5<sup>th</sup> Cir. 2002)  
**Not a Crime of Violence/Not an Aggravated Felony/4 Level Enhancement Imposed**

2. TEX. PENAL CODE ANN. §22.04  
Contact Attorney: Manuel Acosta  
Appellate Attorney: Judy Madewell  
**Not a Crime of Violence at Resentencing/Not an Aggravated Felony/ 4 Level Enhancement Imposed**

3. TEX. PENAL CODE ANN. §22.04  
*US v. Vasquez-Torres*, No. 04-41172, 134 Fed. Appx 648 (5<sup>th</sup> Cir. 2005)(unpub.)  
**Not a Crime of Violence/Not an Aggravated Felony/4 Level Enhancement Imposed**

4. TEX. PENAL CODE ANN. §22.04  
Contact Attorney: Molly Roth  
Appellate Attorney: Henry Bemporad  
**Not a Crime of Violence at Resentencing/Not an Aggravated Felony/ 4 Level Enhancement Imposed**

5. TEX. PENAL CODE ANN. §22.04 (a)(3)  
*Perez-Munoz v. Keisler*, No. 06-60440, 507 F.3d 357 (5<sup>th</sup> Cir. 2007)  
**Crime of Violence**

6. **(By Criminal Negligence)**, TEX. PENAL CODE ANN. §22.04  
Contact Attorney: Reggie Trejo  
**Not an Aggravated Felony/Four Level Enhancement Imposed**

**Intoxicated Assault**, TEX. PENAL CODE ANN. §49.07 (1994)  
*US v. Vargas-Duran*, No. 02-20116, 356 F.3d 598 (5<sup>th</sup> Cir. 2004)  
**Not a Crime of Violence**

**Intoxication Manslaughter**, TEX. PENAL CODE ANN. §49.08  
*US v. Iovino*, No. Crim. A. B-05-602, 405 F. Supp.2d 771 (S.D. Tex. 2005)  
**Not a Crime of Violence**

**Kidnapping**, TEX. PENAL CODE ANN. §20.03  
Contact Attorney: Rita Rodriguez  
Appellate Attorney: Carolyn Fuentes  
**Crime of Violence/appeal pending**

**Possession of Short-Barrel Firearm**, TEX. PENAL CODE §46.05  
*US v. Diaz-Diaz*, No. 02-20392, 327 F.3d 410 (5<sup>th</sup> Cir. 2003)  
**Aggravated Felony**

#### **Retaliation**

1. TEX. PENAL CODE ANN. §36.06 (a)  
*US v. Martinez-Mata*, No. 03-40490, 393 F.3d 625 (5<sup>th</sup> Cir. 2004)  
**Not a Crime of Violence**

2. TEX. PENAL CODE ANN. §36.06(1995)  
*US v. Acuna-Cuadros*, No. 03-20345, 385 F.3d 875 (5<sup>th</sup> Cir. 2004)  
**Not a Crime of Violence**

3. TEX. PENAL CODE ANN. §36.06(a)(1)(A)  
Contact Attorney: Margarito Rodriguez  
Appellate Attorney: Judy Madewell  
**Not an Aggravated Felony (Gov't conceded)(Four Level Enhancement Imposed)**

**Robbery**, TEX. PENAL CODE ANN. §29.02  
*US v. Santiesteban-Hernandez*, No. 05-50399, 469 F.3d 376 (5<sup>th</sup> Cir. 2006)  
**Crime of Violence**

## **Sexual Assault**

1. TEX. PENAL CODE ANN. §22.011(a)(2)

Contact Attorney: Molly Roth

Appellate Attorney: Judy Madewell

**Crime of Violence**

2. TEX. PENAL CODE §22.011

*US v. Martinez-Vega*, No. 05-41498, 471 F.3d 559 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

3. TEX. PENAL CODE ANN. §22.011(a)(1)

*US v. Luciano-Rodriguez*, No. 04-41016, 442 F.3d 320 (5<sup>th</sup> Cir. 2006), reh'g en banc denied, -F3.d- (5<sup>th</sup> Cir. Aug 3, 2006)

**Not a Crime of Violence**

4. TEX. PENAL CODE ANN. §22.011(a)(2)

*US v. Alvarado-Hernandez*, No. 05-50994, 465 F.3d 188 (5<sup>th</sup> Cir. 2006)

**Crime of Violence**

5. Attempted Sexual Assault

*US v. Rosas-Aguilar*, No. 06-50850, 223 Fed. Appx. 350 (5<sup>th</sup> Cir. 2007) (unpub.)

**Crime of Violence**

## **Sexual Assault of a Child,**

1. TEX. PENAL CODE §22.011(c)(1)

*US v. Flores-Morales*, 209 Fed. Appx. 438 (5<sup>th</sup> Cir. 2006)(unpub.)

**Crime of Violence**

2. TEX. PENAL CODE §22.01(a)(2)(A) and (c)(1)

*US v. Castro-Guevara*, No. 08-40796, -F.3d-, 2009 WL 2006811 (5<sup>th</sup> Cir. 2009)

**Crime of Violence (Noting possible tension between *US v. Alvarado-Hernandez* and *US v. Lopez-DeLeon*.)**

## **Theft from a Person, TEX. PENAL CODE §31.03**

*US v. Luna-Montoya*, No. 02-41444, 80 Fed.Appx. 334 (5<sup>th</sup> Cir. 2003)(unpub.)

**Not a Crime of Violence**

## **Unauthorized Use of a Motor Vehicle,**

1. TEX. PENAL CODE ANN. §31.07 (a)

*US v. Armendariz-Moreno*, No. 07-40225, -F.3d-, 2009 WL 1653551 (5<sup>th</sup> Cir. 2009)

**Not an Aggravated Felony (following remand in *Armendariz-Moreno v. United States*, 129 S.Ct. 993 (2009))**

2. TEX. PENAL CODE ANN. §31.07 (a)

*US v. Lopez-Solis*, No. 07-51091, 2009 WL 2447790 (5<sup>th</sup> Cir. 2009)

**Not an Aggravated Felony**

3. TEX. PENAL CODE §31.07(a)

*US v. Reyes-Figueroa*, No. 08-40108, 282 Fed.Appx. 330 (5<sup>th</sup> Cir. 2009)(unpub.)

**Not an Aggravated Felony**

**Unlawfully Carrying a Firearm**, TEX. PENAL CODE §42.02(c)  
*US v. Hernandez-Neave*, No. 01-50059, 291 F.3d 296 (5<sup>th</sup> Cir. 2001)  
**Not an Aggravated Felony**

**Unlawful Restraint**, TEX. PENAL CODE ANN. § 22.01 and 20.01 (1999)  
*US v. Hernandez-Rodriguez*, No. 03-41524, 135 Fed. Appx 661 (5<sup>th</sup> Cir. 2005)  
**Not a Crime of Violence**

## Utah

## Vermont

## Virginia

**Grand Larceny**, VA. CODE ANN. §18.2-95  
*US v. Argumedo-Perez*, No. 08-10132, 2009 WL 1262429 (5<sup>th</sup> Cir. 2009)(unpub.)  
**Not an Aggravated Felony**

**Shooting into an occupied dwelling**, VA. CODE ANN. §18.5-279  
*US v. Alfaro*, No. 04-40176, 408 F3d 204 (5<sup>th</sup> Cir. 2005)  
**Not a Crime of Violence**

## Washington<sup>5</sup>

### **Assault in the Second Degree**

1. WASH. REV. CODE §9A.36.021(1)(c) (West 1988 & Supp. 1995)  
Contact Attorney: Todd Durden and Brad Bogan  
**Not a Crime of Violence**

2. WASH. REV. CODE §9A.36.021(1)(e)  
*US v. Magdaleno-Sanchez*, No. 05-50047, 169 Fed. Appx. 830 (5<sup>th</sup> Cir. 2006)(unpub.)  
Contact Attorney: Anne T. Berton  
Appellate Attorney: Carolyn Fuentes  
**Crime of Violence/Remanded 3-2-06/appeal pending**

**Assault in the Fourth Degree**, WASH. REV. CODE §9A.36.041(1)  
*US v. Sanchez-Torres*, 136 Fed. Appx. 644 (5<sup>th</sup> Cir. 2005)  
**Not Four Level Crime of Violence Based on 3 or More Misdemeanor Crimes of Violence**

**Attempted Residential Burglary**, WA REV. CODE §9A.52.025  
*US v. Ruiz Santos*, No. 07-51464, 2009 WL 2391511 (5<sup>th</sup> Cir. 2009)  
**Crime of Violence**

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<sup>5</sup>**Fourth Degree Assault**, §9A.36.041(1) & (2) (2004)  
*US v. Sanchez-Torres*, 136 Fed. Appx 644 (5<sup>th</sup> Cir. 2005)  
**Not a Crime of Violence under 2L1.2(b)(1)(E)**

**Residential Burglary**, WASH. REV. CODE §9A.52.025

Contact Attorney: Marina Douenat

**Not a Crime of Violence (Four Level Enhancement imposed)**

**Second Degree Manslaughter**, WASH. REV. CODE §9A.32.070(1) (West 1988)

Contact Attorney: Todd Durden and Brad Bogan

**Not a Crime of Violence**

**West Virginia**

**Wisconsin**

**Wyoming**

**FEDERAL**

**Assault on Federal Officer**, 18 USC § 111

Contact Attorney: Erik Hanshew

**Crime of Violence**

**Conspiring to Commit Mail Fraud, Wire Fraud, Bank Fraud, and Money Laundering**, 18 USC § 371, 1341, 1343, 1344, 1956(h)

*Nijhawan v. Holder*, No. 08-495, 129 S.Ct. 2294 (2009)

**Aggravated Felony (pursuant to 8 USC 1101(a)(43)(m)(i) (“an offense that involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000))**

**Using a Telephone to Facilitate a Conspiracy to Distribute Marijuana and/or Cocaine**, 21 USC §843(b)

*US v. Pillado-Chaparro*, No. 08-30192, –F.3d–, 2008 WL 4228232 (5<sup>th</sup> Cir. 2008)

**Drug Traffick Offense under 2L1.2(b)(1)(A)(i)**

## A FEW SELECTED DRUG CASES:

### U.S.S.C.

#### **State Drug Possession**

*Lopez v. Gonzalez* No. 05-547, 127 S.Ct. 625 (2006)

**Not a Drug Trafficking Offense under §2L1.2 (b)(1)(A)(i) and Not an Aggravated Felony**

### California

#### **Offer to Transport, Sell, Furnish, Administer, or Give Away a Controlled Substance, Cal. Health & Safety Code §11379(a)**

*US v. Garza-Lopez*, No. 03-41750, 410 F.3d 268 (5th Cir. 2005)

**Not a Drug Trafficking Offense under §2L1.2 (b)(1)(A)(i)**

**Note: For Illegal Reentry Offenses Committed on or after November 1, 2008, Offer to Sell Under 2L1.2, Application Note 1(B)(iv) is a Drug Trafficking Offense.**

#### **Possession of Cocaine Base for Sale, Cal. Health & Safety Code §11351.5**

*US v. Mosso-Guzman*, No.08-50684, 2009 WL 1675476 (5th Cir. 2009)(unpub.)

**Drug Trafficking Offense under §2L1.2 (b)(1)(A)(i)**

#### **Purchase for Sale, Cal. Health & Safety Code §11351**

*US v. Palacios-Quinonez*, No. 05-10323, 431 F.3d 471 (5th Cir. 2005)

**Drug Trafficking Offense under §2L1.2 (b)(1)(A)(i)**

#### **Second State Conviction for Possession, Cal. Health & Safety Code §11352**

*US v. Cepeda-Rios*, No. 07-50731, 530 F.3d 333 (5<sup>th</sup> Cir. 2008)

**Aggravated Felony (Note there is a Circuit Split/Preserve the Issue)**

#### **Unlawful Transport, Import, Sale, Administration or Gift of Controlled Substance, Cal. Health & Safety Code §11352**

*US v. Gutierrez-Ramirez*, No. 03-41742, 405 F.3d 352 (5th Cir. 2005)

**Not a Drug Trafficking Offense under §2L1.2 (b)(1)(A)(i)**

### Georgia

#### **Trafficking Methamphetamine, GA. Code Ann. §16-13-31(e) (1999)**

*US v. Gutierrez-Bautista*, No. 06-40486, 507 F.3d 305 (5<sup>th</sup> Cir. 2007)

**Drug Trafficking Offense Under §2L1.2(b)(1)(A)**

### New Mexico

#### **Conspiracy to Commit Trafficking of a Controlled Substance, N.M. Stat. §30-31-20**

Attorney: Anne Berton

**Not a Drug Trafficking Offense under 2L1.2(b)(1)(B) (b/c could have been by “barter or giving away of”)**

#### **Criminal Solicitation to Commit Trafficking, N.M. STAT. §30-31-20(A)(2) (1978)**

Contact Attorney: Rita Rodriguez

**Not a Drug Trafficking Offense**

**Distribution of Marijuana (Cause the Transfer) and Criminal Solicitation to Commit Distribution of Marijuana**, N.M. STAT. §30-31-22(A)(1)(C)  
Contact Attorney: Anne Berton and Mike Gorman  
**Not a Drug Trafficking under 2L1.2(b)(1)(B)**

## **New York**

**Attempted Criminal Sale of Controlled Substance**, N.Y. Penal Law §220.39  
Contact Attorney: Rita Rodriguez  
**Not an Aggravated Felony/Four Level Enhancement Imposed**

## **North Carolina**

**Transporting Marijuana**, N.C. Gen Stat §90-95(h)  
*US v. Lopez-Salas*, No. 06-41637, 513 F.3d 174 (5<sup>th</sup> Cir. 2008)  
**Not a Drug Trafficking Offense Under 2L1.2 (b)(1)(A)**

## **Ohio**

**Drug Trafficking Offense**, Ohio Rev. Code Ann. §2925.03(A)(2)  
*US v. Fuentes-Oyervides*, No. 07-41007, 541 F.3d 286 (5<sup>th</sup> Cir. 2008)  
**Drug Trafficking Offense Under §2L1.2(b)(1)(B)**

## **Oregon**

**Delivery of a Controlled Substance**, OR. REV. STAT §475.992(1)  
*US v. Salamanca-Rosas*, No. 08-51055, 2009 WL 2482067 (5<sup>th</sup> Cir. 2009)  
**Drug Trafficking under 2L1.2(b)(1)(A)**

## **Texas**

**Delivery of a Controlled Substance**, Tex. Health & Safety Code §481.112

1. *US v. Gonzalez*, No. 05-41221, 484 F.3d 712 (5<sup>th</sup> Cir. 2007)  
**Not a Drug Trafficking Offense under §2L1.2 (b)(1)(A)& (B)**
2. *US v. Morales-Martinez*, No. 06-40467, 496 F.3d 356 (5<sup>th</sup> Cir. 2007)  
**Not a Drug Trafficking Offense Under §2L1.2 (b)(1)(A)**
3. *US v. Fuentes*, No. 06-20325, 245 Fed. Appx. 358 (5<sup>th</sup> Cir. 2007)(unpub.)  
**Not an Aggravated Felony**

**Knowing and Intentional Delivery of Cocaine**, TEX. PENAL CODE ANN §481.112(a)  
*US v. Price*, No. 07-40040, 516 F.3d 285 (5<sup>th</sup> Cir. 2008)  
**Not a Drug Trafficking Offense 2K2.1(a)(2) but may apply under 2L1.2(b)(1)(A)(i)**

**Possession of a Controlled Substance**, Tex. Health & Safety Code §481.115  
*US v. Estrada-Mendoza*, 475 F.3d 258 (5<sup>th</sup> Cir. 2007)  
**Not an Aggravated Felony**

**Possession with Intent to Deliver a Controlled Substance**, Tex. Health & Safety Code §481.112(a)  
*US v. Ford*, 06-20142, 509 F.3d 714 (5<sup>th</sup> Cir. 2007)  
**Drug Trafficking Offense under 2K2.1(a)(4)(A) but may apply under 2L1.2(b)(1)(A)(i)**

**Possession of Marijuana, 2,000 lbs. or less but over 50 lbs.,** Tex. Health & Safety Code §481.12(b)(5)  
*Arce Vences v. Mukasey*, No. 06-6003, 512 F.3d 167 (5<sup>th</sup> Cir. 2007)  
**Not an Aggravated Felony**

**Second State Conviction for Possession,** Tex. Health & Safety Code §481.115  
*US v. Andrade-Aguilar*, No. 07-41132, –F.3d–, 2009 WL 1464151 (5<sup>th</sup> Cir. 2009)  
**Not an Aggravated Felony (b/c second conviction committed before first one became final)**

## Utah

**Attempted Distribution of a Controlled Substance (Arrange to Distribute),** UTAH  
CODE ANN. §58-37-8(1)(a)(ii)  
Contact Attorney: Anne Berton and Mike Gorman  
**Not Drug Trafficking under 2L1.2(b)(1)(A)**