

MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF NOVEMBER 30, 2017) –SIXTH CIRCUIT AND EASTERN DISTRICT OF MICHIGAN CASES – PAGE 1

Johnson v United States, 135 Sct 2551 (2015) changed the landscape as to what is a crime of violence under ACCA (for felon in possession cases) and under USSG 4B1.2(a) (for career offender in drug cases), as well as many other cases. This list is intended to be the start of your research if you have a case with this issue. Please note that inchoate crimes (attempts and conspiracies) before 2015 and cases involving the elements clause before 2010 (when Johnson v United States, 559 US 133 (2010) was decided) may be subject to challenge. Also, effective August 1, 2016, §4B1.2 was amended to eliminate the residual clause and burglary of a dwelling for the definition of “Crime of Violence”

If you litigate a case involving this issue in the EDMI or Sixth Circuit please let us know so we can keep the list up to date.

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	<p><u>ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):</u></p> <p><u>(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--</u></p> <p><u>(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or</u></p> <p><u>(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and</u></p> <p><u>(C) the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.</u></p>	<p><u>GUIDELINES “Crime of Violence” USSG 4B1.2(a) (effective August 1, 2016):</u></p> <p><u>(a) The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that--</u></p> <p><u>(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or</u></p> <p><u>(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).</u></p>
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	<p><u>ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):</u></p> <p><u>(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--</u></p>	<p><u>GUIDELINES “Crime of Violence” USSG 4B1.2(a) (effective August 1, 2016):</u></p> <p><u>(a) The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that --</u></p> <p><u>(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or</u></p>
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MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF NOVEMBER 30, 2017) –SIXTH CIRCUIT AND EASTERN DISTRICT OF MICHIGAN CASES – PAGE 2

Johnson v United States, 135 Sct 2551 (2015) changed the landscape as to what is a crime of violence under ACCA (for felon in possession cases) and under USSG 4B1.2(a) (for career offender in drug cases), as well as many other cases. This list is intended to be the start of your research if you have a case with this issue. Please note that inchoate crimes (attempts and conspiracies) before 2015 and cases involving the elements clause before 2010 (when Johnson v United States, 559 US 133 (2010) was decided) may be subject to challenge.

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(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and	
(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.	

<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C):</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
Aggravated Assault 750.81(a)(1)		<u>Aggravated assault is enumerated but it cannot be a crime of violence because it is punishable by no more than one year in jail and a crime of violence must be punishable by a term exceeding one year.</u>
Aggravated Stalking 750.411i(2)		
Armed Robbery 750.529	US v Willis, 2017 WL 3457159 (EDMI 2017), J Levy – NO - but pending reconsideration	<u>Robbery is an enumerated offense</u> US v Tibbs, 685 Fed Appx 456, 461 (6 th Cir 2017) – YES -under residual clause of guidelines

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**MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF NOVEMBER 30, 2017) –SIXTH CIRCUIT
AND EASTERN DISTRICT OF MICHIGAN CASES – PAGE 3**

Johnson v United States, 135 Sct 2551 (2015) changed the landscape as to what is a crime of violence under ACCA (for felon in possession cases) and under USSG 4B1.2(a) (for career offender in drug cases), as well as many other cases. This list is intended to be the start of your research if you have a case with this issue. Please note that inchoate crimes (attempts and conspiracies) before 2015 and cases involving the elements clause before 2010 (when Johnson v United States, 559 US 133 (2010) was decided) may be subject to challenge.

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<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C):</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
		US v Goodrich ___ F3d ___ (10/2/17 6 th Cir) – YES - but unpublished
Assault with Intent to commit CSC Involving penetration 750.520(G)		US v France, 394 Fed Appx 246, 249-50 (6 th Cir 2010) – NO – under guidelines – but maybe under modified categorical approach
Assault with intent to do Great Bodily Harm 750.84(a)	US v Colbert, 2017 WL 491935 (EDMI 2017) –YES, J Edmunds	US v Raybon 867 F3d 625 (6th Cir 2017) (Goldsmith) – YES US v Wilson, 13-20373, R 92 – YES – (EDMI 2015) Goldsmith US v Thompson, 12-20656 (EDMI 2015) – YES, J Goldsmith US v Saron, 2009 WL 1957485 (EDMI) (2009) – J Roberts – YES but no discussion
Assault With Intent to Murder 750.83	US V Willis, 13-20303 (ED MI 8-11-17_ Levy – NO – but reconsideration pending	
	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C):</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a) (effective August 1, 2016):</u>

**MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF NOVEMBER 30, 2017) –SIXTH CIRCUIT
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<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C);</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
<u>Assault With Intent to Rob Armed 750.89 Assault With Intent to Rob Armed 750.89</u>	<u>US v Goodrich, ___ F3d ___ No 16-1795, (6th Cir 2017) – YES – Categorically under guidelines residual clause, but unpublished</u>	<u>US v Goodrich, ___ F3d ___ No 16-1795, (6th Cir 2017) – YES – Categorically under guidelines residual clause, but unpublished</u>
<u>Assault With Intent to Rob Unarmed 750.88 Assault With Intent to Rob Unarmed 750.88</u>	<u>US v Tirrell, 120 F3d 670 (7th Cir 1997) - YES US v Tirrell, 120 F3d 670 (7th Cir 1997) – YES</u>	
<u>Attempt 750.92 Attempt 750.92</u>	<u>James v US, 550 US 192 (2007) – ACCA – FL att burglary – YES but overruled by Johnson 2015 James v US, 550 US 192 (2007) – ACCA – FL att burglary – YES but or</u>	<u>Commentary USSG 4B1.2 cmt n 1; US v Stinson 508 US 36, 45 (1993) Commentary USSG 4B1.2 cmt n 1; US v Stinson 508 US 36, 45 (1993)</u>
<u>Attempt Breaking & Entering 750.110 Attempt Breaking & Entering 750.110</u>	<u>Govt stippped – NO - US v Bailey 04-80920, R46 (ED MI 2016) – O’Meara Govt stippped – NO - US v Bailey 04-80920, R46 (ED MI 2016) – O’Meara</u>	<u>No-2016 amendment to § 4B1.2 eliminated burglary as COV US v Sanders 2016 WL 75600 (6th Cir 2016) – B&E OCC dwelling – YES</u>

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<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C);</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
<u>Attempt Extortion 750.531 Attempt Extortion 750.531</u>		<u>Extortion is an enumerated offense</u> Extortion is an enumerated offense
<u>Attempt Home Invasion 750.110a Attempt Home Invasion 750.110a</u>		<u>No-2016 amendment to § 4B1.2 eliminated burglary as COV</u> <u>US v Stephens, 2016 WL 3194689 (6th Cir 2016) YES, but</u> <u>Y</u>
<u>Attempt Larceny From a Person 750.357 Attempt Larceny From a Person 750.357</u>	<u>US v Taylor, 696 F3d 628, 631-33 (6th Cir 2012) qualifies only under residual clause</u> US v Taylor, 696 F3d 628, 631-33 (6th Cir 2012) qualifies only under residual clause	
<u>Attempt Robbery Unarmed 750.530 Attempt Robbery Unarmed 750.530</u>	<u>YES- US v Tirrell, 120 F3d 670 (7th Cir 1997) - categorically</u> YES- US v Tirrell, 120 F3d 670 (7th Cir 1997)- categorically	

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<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C);</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
<u>Bank Robbery 750.531Bank Robbery 750.531</u>		<u>US v Sexton, 2016 WL 26633 (ED MI 2016) - guidelines Drain – YES – under elements clause. But see USA v. Goodson, 700 Fed.Appx 417 (6th Cir. 2017) We recognize that the question of whether Michigan bank robbery qualifies under the use-of-force clause presents a difficult and close question. Having reviewed the record, however, we have no doubt that the crime of bank robbery qualifies as a predicate offense under the residual clause of the GuidelinesUS v Sexton, 2016 WL 26633 (ED MI 2016) – guidelines Drain – YES – under elements clause</u>
<u>Breaking & Entering 750.110Breaking & Entering 750.110</u>	<u>US v Ritchey, 840 F3d 310 (6th Cir 2016) – NO –Post 1994 statute broader than generic burglary and its not divisible under Mathis v US, 136 Sct 2243 (2016) (NOTE that this decision is limited to the post 1994 B & E statute)US v Ritchey, 840 F3d 310 (6th Cir 2016) – NO –Post 1994 Sstatute broader than generic burglary and its not divisible under Mathis v US, 136 Sct 2243 (2016) (NOTE that this decision is limited to the post 1994 B & E statute)</u>	<u>No-2016 amendment to § 4B1.2 eliminated burglary as COVUS v Sanders, 2016 WL 75600 (6th Cir 2016) – YES</u>
<u>Carjacking</u>		

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<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C):</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
<u>750.529 Carjacking</u> <u>750.529</u>		
<u>Carrying a Weapon w/Unlawful Intent</u> <u>750.226</u> <u>Carrying a Weapon w/Unlawful Intent</u> <u>750.226</u>	<u>NO – government conceded - U.S. v. Gomez, 2017 WL 1640371 (ED MI 2016) J Ludington</u> <u>NO government conceded – J Ludington</u>	<u>NO – US v Martin 15-20112, R24 (ED MI 2015) J Lawson</u> <u>NO – US v Martin 15-20112, R24 (ED MI 2015) J Lawson</u>
<u>Criminal Sexual Conduct 1°</u> <u>750.5206</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C):</u>	<u>Forcible sex offenses are enumerated</u> <u>GUIDELINES "Crime of Violence" USSG 4B1.2(a) (effective August 1, 2016):</u>
<u>Criminal Sexual Conduct 2°</u> <u>750.520 Criminal Sexual Conduct 1°</u> <u>750.5206</u>		<u>US v Bartee 529 F3d 357, 360 (6th Cir 2008) – NO – Sexual contact involving another felony under elements clause; remanded under modified categorical approach</u> <u>Forcible sex offenses are enumerated</u>

**MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF NOVEMBER 30, 2017) –SIXTH CIRCUIT
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<u>Criminal Sexual Conduct 3°</u>		<u>US v Gomez, 628 Fed Appx 400 (6th Cir 2015) – YES -under 2L1.2 – sex crimes against children count whether or not use of force is an element (but pre-Johnson and see dissent)</u>
<u>Criminal Sexual Conduct 4°</u> <u>750.520eCriminal Sexual Conduct 2°</u> <u>750.520</u>	<u>Evans – NO –378 Fed Appx 485, 487-88 (6th Cir 2010) TN Statutory Rape</u> <u>Vanbuhler v US 2016 WL 4011237 (EDMI 2016) (Lawson) – YES – under mod. categorical approach</u>	<u>US v Bartee 529 F3d 357, 360 (6th Cir 2008) – NO – Sexual contact involving another felony under elements clause; remanded under modified categorical approach Guidelines–</u>
<u>Discharge of a Firearm from a Vehicle</u> <u>750.234aCriminal Sexual Conduct 3°</u>		<u>US v Gomez, 628 Fed Appx 400 (6th Cir 2015) – YES -under 2L1.2 – sex crimes against children count whether or not use of force is an element (but pre Johnson and see dissent)</u>
<u>Domestic Violence 3°</u> <u>750.81(4)Criminal Sexual Conduct 4°</u> <u>750.520e</u>	<u>Kearney v US, 2016 WL 1407817 (ED MI 2016) (Tarnow) - NO</u> <u>Evans – NO –378 Fed Appx 485, 487-88 (6th Cir 2010) TN Statutory Rape</u> <u>Vanbuhler v US 2016 WL 4011237 (EDMI 2016) (Lawson) – YES – under mod. categorical approach</u>	<u>YES – Morris, 14-20427 (R 150, ED MI 2015) Ludington (pre-Johnson)</u>

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<u>Escape</u> <u>750.193(1) Discharge</u> <u>of a Firearm from a</u> <u>Vehicle</u> <u>750.234a</u>		Walkaway prison escape -NO – Gibbs 626 F3d 344, 353 (6th Cir 2010)
<u>Felonious Assault</u> <u>750.82 Domestic</u> <u>Violence 3^d</u> <u>750.81(4)</u>	<u>US v Mosley, 339 Fed Appx 568 (6th Cir 2009) – YES</u> <u>Kearney v US, 2016 WL 1407817 (ED MI 2016) (Tarnow) – NO</u>	<u>US v Harris 853 F3d 318, 321 (6th Cir 2017) – YES - under</u> <u>elements clause</u> <u>In re Mosley, No. 16-1634 (6th Cir 2016) – YES</u> YES – Morris, 14-20427 (R-150, ED MI 2015) Ludington (pre-Johnson)
<u>Fleeing and Eluding</u> <u>750.479a Escape</u> <u>750.193(1)</u>	<u>NO - Govt stippled US v Bailey 04-80920, R 46 (EDMI 2016)</u> <u>O'Meara</u> <u>Walkaway prison escape – NO – Gibbs 626 F3d 344, 353 (6th Cir 2010)</u>	US v Martin, 378 F3d 578, 582 (6th Cir 2004) – NO
<u>Home Invasion</u> <u>750.110a Felonious</u> <u>Assault</u> <u>750.82</u>	<u>3^d - US v Quarles, 850 F3d 836 (6th Cir 2017) – YES petition for</u> <u>writ of certiorari pending 17-778 US v Mosley, 339 Fed Appx</u> <u>(6th Cir 2009) – YES</u> <u>In re Mosley, No. 16-1634 (6th Cir 2016) – YES</u>	<u>No-2016 amendment to § 4B1.2 eliminated burglary as COV,</u> <u>negating US v Gibbs, 626 F3d 344, 353 (6th Cir 2010)</u> <u>2^d - US v Hart 104 F Appx 469 (6th Cir 2004) – YES – also US v</u> <u>Howard, 327 Fed Appx 573 (6th Cir 2009) US v Harris 853 F3d</u> <u>318, 321 (6th Cir 2017) – YES – under elements clause</u>

Commented [AW1]: I deleted the Tennant case. The WL cite was wrong

Commented [AW2]: I deleted the Tennant case—Judge Roberts order denied a pretrial motion for determination on the issue. said it would be until the guidelines were amended and defendant was sentenced after amendment.

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<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C):</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
<u>Larceny from a Person 750.357 Fleeing and Eluding 750.479a</u>	NO Govt stippped US v Bailey 04-80920, R 46 (EDMI 2016) O'Meara US v Martin, 378 F3d 578, 582 (6 th Cir 2004) – NO	<u>YES</u> -US v Payne 163 F3d 371 (6 th Cir 1998) (also attempts, both under the former residual clause)
<u>Manslaughter with a Motor Vehicle 750.321 Home Invasion 750.410a</u>	US v Culbertson, 389 Fed Appx 515 (6 th Cir 2010) - NO 2° US v Hart 104 F Appx 469 (6 th Cir – <u>YES</u> – also US v Howard, 327 Fed Appx 573 (6 th Cir 2009) 3° US v Quarles, 850 F3d 836 (6 th Cir 2017) – <u>YES</u> 2° US v Gibbs – YES 626 F3d 344, 353 (6 th Cir 2010) – NO	YES – 2° US v Tennant, 2016-WL-3213311 (ED MI 2016) – J Roberts
<u>Negligent Homicide 750.324</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C):</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a) (effective August 1, 2016):</u>
<u>Prison Escape 750.193 Larceny from a Person 750.357</u>		US v Gibbs 626 F3d 344 (6 th Cir 2010) – NO <u>YES</u> –US v Payne 163 F3d 371 (6 th Cir 1998) (also attempts, both under the former residual clause)
<u>Resisting & Obstructing</u>	NO -US v Love, 364 Fed Appx 955 (6 th Cir 2010) US v Culbertson, 389 Fed Appx 515 (6 th Cir 2010) – NO	US v Mosley, 575 F3d 603, 606-07 (6 th Cir 2009) – NO US v Brown, 15-20396, R 26 (ED MI 2016) Drain –NO US v Gibbs 626 F3d 344, 354 (6 th Cir 2010) -NO

MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF NOVEMBER 30, 2017) –SIXTH CIRCUIT AND EASTERN DISTRICT OF MICHIGAN CASES – PAGE 11

Johnson v United States, 135 S Ct 2551 (2015) changed the landscape as to what is a crime of violence under ACCA (for felon in possession cases) and under USSG 4B1.2(a) (for career offender in drug cases), as well as many other cases. This list is intended to be the start of your research if you have a case with this issue. Please note that inchoate crimes (attempts and conspiracies) before 2015 and cases involving the elements clause before 2010 (when Johnson v United States, 559 US 133 (2010) was decided) may be subject to challenge.

If you litigate a case involving this issue in the EDMI or Sixth Circuit please let us know so we can keep the list up to date.

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<u>MI Offense</u>	<u>ACCA "Violent Felony" 18 USC 924(e)(2) (B) and (C);</u>	<u>GUIDELINES "Crime of Violence" USSG 4B1.2(a)</u>
<u>750.81d (formerly 750.479) Manslaughter with a Motor Vehicle 750.324</u>		
<u>Unarmed Robbery 750.530 Negligent Homicide 750.324</u>	<u>US v Matthews – YES under force clause but see dissent – 689 Fed Appx 840 (6th Cir 2017), cert petition pending US v Mekediak, 510 Fed Appx 348 (6th Cir 2013) – YES under residual clause</u>	<u>Robbery is an enumerated offense US v Lamb, 16-20077, R 31 (EDMI 2017) – NO – J Roberts</u>
<u>Prison Escape 750.193</u>	<u>US v Gibbs 626 F3d 344 (6th Cir 2010) – NO</u>	
<u>Resisting & Obstructing 750.81d (formerly 750.479)</u>	<u>US v Mosley, 575 F3d 603, 606-07 (6th Cir 2009) – NO – US v Brown, 15-20396, R 26 (ED MI 2016) Drain – NO – US v Gibbs 626 F3d 344, 354 (6th Cir 2010) – NO – US v Love, 364 Fed Appx 955 (6th Cir 2010)</u>	

MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF NOVEMBER 30, 2017) –SIXTH CIRCUIT AND EASTERN DISTRICT OF MICHIGAN CASES – PAGE 12

Johnson v United States, 135 Sct 2551 (2015) changed the landscape as to what is a crime of violence under ACCA (for felon in possession cases) and under USSG 4B1.2(a) (for career offender in drug cases), as well as many other cases. This list is intended to be the start of your research if you have a case with this issue. Please note that inchoate crimes (attempts and conspiracies) before 2015 and cases involving the elements clause before 2010 (when Johnson v United States, 559 US 133 (2010) was decided) may be subject to challenge.

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<u>Unarmed Robbery 750.530</u>	<u>US v Matthews — YES under force clause but see dissent — 689 Fed Appx 840 (6th Cir 2017), cert petition pending US v Mekediak, 510 Fed Appx 348 (6th Cir 2013) — YES under residual clause US v Lamb, 16-20077, R 31 (EDMI 2017) — NO — J Roberts</u>	<u>Robbery is an enumerated offense</u>

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