

**MICHIGAN OFFENSES WHICH ARE – OR ARE NOT – CRIMES OF VIOLENCE (AS OF DECEMBER 21, 2018) –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><b>ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):</b></p> <p><b>(B)</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--</p> <p><b>(i)</b> has as an element the use, attempted use, or threatened use of physical force against the person of another; or <b>(ii)</b> 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 <b>(C)</b> the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.</p>	<p><b>GUIDELINES “Crime of Violence” USSG 4B1.2(a) (effective August 1, 2016):</b></p> <p><b>(a)</b> The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that--</p> <p><b>(1)</b> has as an element the use, attempted use, or threatened use of physical force against the person of another, or <b>(2)</b> 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 <a href="#">26 U.S.C. § 5845(a)</a> or explosive material as defined in <a href="#">18 U.S.C. § 841(c)</a>.</p>
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MI Offense	ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):	GUIDELINES “Crime of Violence” USSG 4B1.2(a)
Aggravated Assault 750.81(a)(1)		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
Armed Robbery 750.529	US v Willis, 2017 WL 3457159 (EDMI 2017), J Levy – <b>NO</b> - but relief denied on other grounds Powers v US, No. 12-20443 (EDMI 2018), 2018 WL 6571223, J Goldsmith- <b>NO</b>	Robbery is an enumerated offense US v Tibbs, 685 Fed Appx 456, 461 (6 <sup>th</sup> Cir 2017) – <b>YES</b> -under residual clause of guidelines US v Goodrich ___ F3d ___ (10/2/17 6 <sup>th</sup> Cir) – <b>YES</b> - but unpublished
Assault on a Prison Employee 750.197c(1)		<b>NO</b> - US v Mayfield, 17-20591 – J Ludington – no written opinion but see R 39, Pg ID 146, and J&C, R 42
Assault with Intent to commit CSC Involving penetration 750.520(G)		US v France, 394 Fed Appx 246, 249-50 (6 <sup>th</sup> Cir 2010) – <b>NO</b> – 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) – <b>YES</b> , J Edmunds	US v Raybon 867 F3d 625 (6th Cir 2017) (Goldsmith) – <b>YES</b> US v Wilson, 13-20373, R 92 – <b>YES</b> – (EDMI 2015) Goldsmith

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MI Offense	ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):	GUIDELINES “Crime of Violence” USSG 4B1.2(a)
		US v Thompson, 12-20656 (EDMI 2015) – YES, J Goldsmith US v Saron, 2009 WL 1957485 (EDMI) (2009) – J Roberts – <b>YES</b> but no discussion
Assault With Intent to Rob Armed 750.89		US v Goodrich, ___ F3d ___ No 16-1795, (6 <sup>th</sup> Cir 2017) – <b>YES</b> – Categorically under guidelines residual clause, but unpublished
Assault With Intent to Rob Unarmed 750.88	US v Tirrell, 120 F3d 670 (7 <sup>th</sup> Cir 1997) - <b>YES</b>	
Attempt 750.92	James v US, 550 US 192 (2007) – ACCA – FL att burglary – <b>YES but overruled by Johnson 2015</b>	Commentary USSG 4B1.2 cmt n 1; US v Stinson 508 US 36, 45 (1993)
Attempt Breaking & Entering 750.110	Govt stiped – <b>NO</b> - US v Bailey 04-80920, R46 (ED MI 2016) – O’Meara	No-2016 amendment to § 4B1.2 eliminated burglary as COV
Attempt Extortion 750.531		Extortion is an enumerated offense
Attempt Home Invasion 750.110a		No-2016 amendment to § 4B1.2 eliminated burglary as COV

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MI Offense	ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):	GUIDELINES “Crime of Violence” USSG 4B1.2(a)
Attempt Larceny From a Person 750.357	US v Taylor, 696 F3d 628, 631-33 (6 <sup>th</sup> Cir 2012) qualifies only under residual clause	
Attempt Robbery Unarmed 750.530	<b>YES-</b> US v Tirrell, 120 F3d 670 (7 <sup>th</sup> Cir 1997) - categorically	
Bank Robbery 750.531		US v Sexton, 2016 WL 26633 (ED MI 2016) - guidelines Drain – <b>YES</b> – under elements clause. But see USA v. Goodson, 700 Fed.Appx 417 (6 <sup>th</sup> 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 Guidelines
Breaking & Entering 750.110	US v Ritchey, 840 F3d 310 (6 <sup>th</sup> Cir 2016) – <b>NO</b> –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)	No-2016 amendment to § 4B1.2 eliminated burglary as COV
Carjacking 750.529		

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MI Offense	ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):	GUIDELINES “Crime of Violence” USSG 4B1.2(a)
Carrying a Weapon w/Unlawful Intent 750.226	<b>NO</b> – government conceded - U.S. v. Gomez, 2017 WL 1640371(ED MI 2016) J Ludington	<b>NO</b> – US v Martin 15-20112, R24 (ED MI 2015) J Lawson
Criminal Sexual Conduct 2° 750.520		US v Bartee 529 F3d 357, 360 (6 <sup>th</sup> Cir 2008) – <b>NO</b> – Sexual contact involving another felony under elements clause; remanded under modified categorical approach
Criminal Sexual Conduct 4° 750.520e	Evans – <b>NO</b> –378 Fed Appx 485, 487-88 (6 <sup>th</sup> Cir 2010) TN Statutory Rape Vanbuhler v US 2016 WL 4011237 (EDMI 2016) (Lawson) – <b>YES</b> – under mod. categorical approach	
Discharge of a Firearm from a Vehicle 750.234a		
Domestic Violence 3° 750.81(4)	Kearney v US, 2016 WL 1407817 (ED MI 2016) (Tarnow) - <b>NO</b>	<b>NO</b> – Morris, __F3d__16-1349, only under the now deleted residual clause and not otherwise, overruling J Ludington
Escape 750.193(1)		Walkaway prison escape - <b>NO</b> – Gibbs 626 F3d 344, 353 (6 <sup>th</sup> Cir 2010)
Felonious Assault 750.82	US v Mosley, 339 Fed Appx 568 (6 <sup>th</sup> Cir 2009) – <b>YES</b>	US v Harris 853 F3d 318, 321 (6 <sup>th</sup> Cir 2017) – <b>YES</b> - under elements clause In re Mosley, No. 16-1634 (6 <sup>th</sup> Cir 2016) – <b>YES</b>

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MI Offense	ACCA “Violent Felony” 18 USC 924(e)(2) (B) and (C):	GUIDELINES “Crime of Violence” USSG 4B1.2(a)
Fleeing and Eluding 750.479a	<b>NO</b> - Govt stippled US v Bailey 04-80920, R 46 (EDMI 2016) O’Meara	US v Martin, 378 F3d 578, 582 (6th Cir 2004) – NO
Home Invasion 750.110a	<b>3° - US v Quarles, 850 F3d 836 (6<sup>th</sup> Cir 2017) –YES petition for writ of certiorari pending 17-778</b>	No-2016 amendment to § 4B1.2 eliminated burglary as COV, negating US v Gibbs, 626 F3d 344, 353 (6 <sup>th</sup> Cir 2010) 2° - US v Hart 104 F Appx 469 (6th Cir 2004) – YES – also US v Howard, 327 Fed Appx 573 (6th Cir 2009)
Larceny from a Person 750.357		<b>YES</b> -US v Payne 163 F3d 371 (6 <sup>th</sup> Cir 1998) (also attempts, both under the former residual clause)
Manslaughter with a Motor Vehicle 750.321	US v Culbertson, 389 Fed Appx 515 (6 <sup>th</sup> Cir 2010) - <b>NO</b>	
Prison Escape 750.193		US v Gibbs 626 F3d 344 (6th Cir 2010) – <b>NO</b>
Resisting & Obstructing 750.81d (formerly 750.479)	<b>NO</b> -US v Love, 364 Fed Appx 955 (6 <sup>th</sup> Cir 2010)	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

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Solicitation to Murder 750.157b	NO -US v Ellis, No. 12-20228, 2018 WL 6082977 (EDMI 2018), J Hood	
Unarmed Robbery 750.530	US v Matthews – <b>YES to pre-2004 statute under force clause but see dissent</b> – 689 Fed Appx 840 (6 <sup>th</sup> Cir 2017), cert denied; US v Ellis, No. 12-20228, 2018 WL 6082977 (EDMI 2018), J Hood (same) US v Mekediak, 510 Fed Appx 348 (6 <sup>th</sup> Cir 2013) – <b>YES under residual clause</b>	NO to post-2004 statute - Robbery is an enumerated offense but if statute encompasses conduct beyond generic definition of offense it is not a predicate offense– also not under elements clause. US v Harris, No. 17-20821(R 23) (J Leitman) US v Lamb, 16-20077, R 31 (EDMI 2017) – NO – J Roberts US v Ervin, No. CR 13-23-BLG-SPW, 2016 WL 4073052, at *10 (D. Mont. July 28, 2016) - NO