

STATUTORY “VIOLENT FELONY”/“CRIME OF VIOLENCE” CHEAT SHEET

**Federal Defender’s Office
Middle District of Florida**

June 2019

	18 U.S.C. § 924(e)(2)(B)	18 U.S.C. § 16	18 U.S.C. § 924(c)(3)	18 U.S.C. § 3559(c)(2)
Application	Defines “Violent Felony” for ACCA sentence enhancement for conviction under 18 U.S.C. § 922(g) (firearm possession by prohibited person, e.g. convicted felon)	Defines “Crime of Violence” for several statutes, including safety valve, immigration, bail, & restitution	Defines “Crime of Violence” for §924(c) conviction— “using or carrying a firearm during and in relation to any crime of violence . . . for which the person may be prosecuted in federal court or possessing a firearm in furtherance of any such crime”	Defines “Serious Violent Felony” for 21 U.S.C. § 851 enhancements post-First Step Act
Elements (Force) Clause	Crime punishable by >1yr that “has as an element the use, attempted use, or threatened use of physical force against the person of another”	“an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another”	a felony offense that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another”	any other offense punishable by a maximum term of imprisonment of 10 years or more — for which the offender served a term of imprisonment of more than 12 months — that has as an element the use, attempted use, or threatened use of physical force against the person of another or
Enumerated Offenses Clause	“burglary, arson, or extortion, involves use of explosives”	None	None	include the following offenses — <i>numerous limitations & exceptions are noted on next chart</i> — for which Deft. served more than 12 months’ imprisonment: murder; manslaughter; assault with intent to commit rape; aggravated sexual abuse and sexual abuse; abusive sexual contact; kidnapping; aircraft piracy; robbery; carjacking; extortion; arson; firearms use; firearms possession; attempt, conspiracy, or solicitation to commit any of the above offenses;

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Residual Clause	a felony offense that “otherwise involves conduct that presents a serious potential risk of physical injury to another”	a felony offense “that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”	a felony offense “that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense”	any other offense punishable by a maximum term of imprisonment of 10 years or more — for which the offender served a term of imprisonment of more than 12 months — that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense. BUT § 3559(c)(3)(A) adds that an offense described in this residual clause does NOT qualify “if the defendant establishes by clear and convincing evidence that — (i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and (ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person”
Constitution, Residual Clause, & Categorical/Modified Cat. Approach	ACCA’s residual clause is unconstitutional; & Categorical/Modified Cat. Approach applies in determining if offense qualifies as “VF” under ACCA. <i>See Samuel Johnson v. U.S.</i> , 135 S. Ct. 2551 (2015) <i>Descamps v. U.S.</i> , 133 S. Ct. 2276 (2013)	§16(b)’s residual clause is unconstitutional; & Categorical/Modified Categorical Approach applies in determining if offense qualifies as “COV” under §16(b) <i>See Dimaya v. Sessions</i> , 138 S. Ct. 1204 (2018)	§ 924(c)(2)(b) residual clause is unconstitutional; & Categorical/Modified Categorical Approach applies in determining if offense qualifies as “COV” under § 924(c). <i>See Davis v US</i> , 139 S. Ct. 2319 (2019), <i>Abrogating Ovalles v. US</i> , 905 F.3d 1231 (11th Cir. 2018) (en banc)	<i>We shall see</i>

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The “SERIOUS VIOLENT FELONY” offenses ENUMERATED in 18 U.S.C. § 3559(c)(2), for purposes of recidivist drug enhancements under 21 U.S.C. §§ 841, 851, 7 960 include the following Federal or State offenses, by whatever designation and wherever committed, for which the offender served a term of imprisonment of more than 12 months

abusive sexual contact (as described in sections 2244 (a)(1) and (a)(2));

aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242);

aircraft piracy (as described in section 46502 of Title 49);

arson defined as an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

BUT § 3559(c)(3)(B) adds that arson does NOT qualify if the defendant establishes by clear and convincing evidence that —

(i) the offense posed no threat to human life; & (ii) the defendant reasonably believed the offense posed no threat to human life.

assault with intent to commit murder (as described in section 113(a));

any offense that would be a felony violation of section 113 of title 18, United States Code, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months;

assault with intent to commit rape defined as an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

carjacking (as described in section 2119);

extortion defined as an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

firearms use defined as an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

firearms possession (as described in section 924(c));

kidnapping defined as an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

manslaughter other than involuntary manslaughter (as described in section 1112);

murder (as described in section 1111);

robbery (as described in section 2111, 2113, or 2118);

BUT § 3559(c)(3)(A) adds that robbery does NOT qualify if the defendant establishes by clear and convincing evidence —

(i) no use or threat of use of a firearm or other dangerous weapon was involved in the offense; & (ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person;

attempt, conspiracy, or solicitation to commit any of the above offenses.

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- 18 U.S.C. § 924(e)(2)(B) (ACCA)** increases statutory penalties for felon in possession from 0-10 years to 15-Life, if Defendant has 3 or more **serious drug offenses**, i.e., an offenses under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, or an offenses under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law; and/or
- violent felonies**, i.e., any crime punishable by > 1 year imprisonment, 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 — (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (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*~~
- 18 U.S.C. § 3553(f)** First Step Act of 2018 expanded safety valve relief to Defendants who are convicted of “boat cases,” pursuant to 46 U.S.C. §§ 70503 and 70506, and to Defendants who have up to four criminal history points, BUT the following are excluded: (i) any person with a prior conviction that is scored with three criminal history points, pursuant to USSG § 4A1.1(a); and (ii) any person with a prior conviction that is scored with two criminal history points, which is determined to be a “violent offense,” as defined in 18 U.S.C. § 16.
- 18 U.S.C. § 16** defines “crime of violence” for purposes of the new safety valve exclusion 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) ~~any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.**~~

* See *Samuel Johnson v. U.S.*, 135 S. Ct. 2551 (2015) (holding the ACCA’s residual clause is unconstitutionally void for vagueness).

** See *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (holding that the residual clause in § 16(b) is unconstitutionally void for vagueness).