

APPENDIX

APPENDIX A**State Non-Aggravated Robbery Statutes With
a Force Alternative at the Time of 18 U.S.C.
§ 924(e)(2)(B)(i)'s Enactment Which Did Not
Meet the Elements Clause for Reasons
Unrelated to Overcoming Resistance*****1. Robbery statutes that are indivisible
as to force and fear, and fear of injury to
property is the least culpable conduct**

California: Cal. Penal Code § 211 (West 1970) (defining robbery as “accomplished by means of force or fear”); § 212 (defining “fear” as either “1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or, 2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery”); *United States v. Dixon*, 805 F.3d 1193, 1198 (9th Cir. 2015) (holding § 211 is indivisible regarding “force or fear”)

Idaho: Idaho Code Ann. § 18-6501 (1979) (defining robbery as “accomplished by means of force or fear”);

* Unless indicated, there have been no material changes to the quoted language in the statutes listed in Appendices A, B, and C, between the date cited and today. Although a few of the statutes have been renumbered or recodified since the date cited, the relevant statutory language highlighted in these Appendices has remained the same. Appendices A, B, and C list statutes in effect at the time of 18 U.S.C. § 924(e)(2)(B)(i)'s enactment in 1986. Appendix D includes additional aggravated robbery statutes enacted after 1986.

§ 18-6502 (defining the “[f]ear which constitutes robbery” as “either: 1. the fear of an unlawful injury to the person or property of the person robbed, or of any relative of his, or member of his family; or, 2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery”); Idaho Criminal Jury Instructions. ICJI 501 (“Robbery”) (Idaho Law Foundation, Inc. 1995) (stating that the sixth element of the offense is that the taking be “by the intentional use of force or fear to overcome the will of [name of victim]”); ICJI 502 (“Robbery – Fear Defined”) (defining “fear” as “[the fear of an unlawful injury to the person or property of (name of victim)] [or] [the fear of an unlawful injury to the person or property]” of any relative, family member, or person in the company of the victim at the time)

Nevada: Nev. Rev. Stat. Ann. § 200.380 (Michie 1986) (defining robbery as an unlawful taking of property “by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery”); *United States v. Edling*, 895 F.3d 1153, 1156-57 (9th Cir. 2018) (holding that Nevada robbery “sweeps more broadly” than the elements clause because the “least of the acts criminalized” is “the taking of someone’s personal property by instilling fear of injury to property,” and the elements clause requires the use, attempted use, or threatened use of “physical force against *the person*”)

2. Robbery statutes in which a robbery-by-force or robbery-by-assault may be committed by “any” bodily impact or contact

Arizona: Ariz. Rev. Stat. § 13-1902(A) (1978) (defining robbery as a taking of property from the person or presence of another, against his will, in which “such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property”); § 13-1901(1) (defining “force” to mean “*any* physical act directed against a person as a means of gaining control of property”) (emphasis added)

Arkansas: Ark. Code § 41-2103(1) (1977) (defining robbery as “employ[ing] or threaten[ing] to immediately employ physical force upon another” during a theft or immediately thereafter); § 41-2101 (defining “physical force” to mean “*any* bodily impact, restraint, or confinement, or the threat thereof”) (emphasis added); *United States v. Eason*, 829 F.3d 633, 641-42 (8th Cir. 2016) (“[W]e cannot conclude that the degree of force necessary to commit robbery in Arkansas rises to the level of physical force required to establish a crime of violence for ACCA purposes,” since the legislature has defined “physical force” under Arkansas law as “any . . . [b]odily impact, restraint, or confinement”); *see also United States v. Pettis*, 888 F.3d 962, 964-65 (8th Cir. 2018) (noting that *Eason* held the Arkansas statutory definition requires only the “merest touch”)

Iowa: Iowa Code Ann. § 711.1(1)(a) (West 1978) (defining robbery as “[c]ommit[ting] an assault upon

another” to assist or further an intended theft or escape therefrom); § 708.1 (defining “assault” to include “[a]ny act . . . which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act”); *State v. Spears*, 312 N.W.2d 79, 80-81 (Iowa Ct. App. 1981) (confirming that subsection (a) can be satisfied by a mere offensive touching); *United States v. Jones*, 2016 WL 41869269, at *4 (D. Minn. Aug. 8, 2016) (holding that Iowa robbery is not a “violent felony” because of § 708.1’s definition of “assault”)

Michigan: Mich. Comp. Laws Ann. § 750.530 (West 1968) (defining robbery as a taking of money or other property which may be the subject of larceny from the person or presence of another “by force and violence or by assault or putting in fear”); *People v. Terry*, 553 N.W.2d 23, 24-25 (Mich. Ct. App. 1993) (per curiam) (considering the meaning of “assault” and stating “it is clear that defendant spit on [the victim] to ‘harm or embarrass him,’ and, thus, his action constituted violence under the statute”); *People v. Boyd*, 300 N.W.2d 760, 762 (Mich. Ct. App. 1980) (per curiam) (“the throwing of liquid, alleged to be urine, into the face of another person constitutes the use of ‘violence’, thereby satisfying the requirements of the statute”); *People v. Tolliver*, 207 N.W.2d 458, 460 (Mich. Ct. App. 1973) (holding “force and violence, assault or putting in fear” are alternative means of violating a single indivisible element); *United States v. Ervin*, 198 F. Supp. 3d 1169, 1179-80 (D. Mont. July 28, 2016) (holding that Michigan’s model jury instruction on robbery supports

finding of indivisibility because “it does not suggest the jury must unanimously agree on either force and violence, or assault, or putting in fear”)

Ohio: Ohio Rev. Code Ann. § 2911.02(A) (Anderson Supp. 1985) (defining robbery as “[u]s[ing] or threaten[ing] the immediate use of force against another” in attempting or committing a theft offense or in fleeing immediately after the attempt or offense); § 2901(A) (“[f]orce means *any* violence, compulsion, or constraint physically exerted by *any* means upon or against a person or thing”) (emphasis added); *United States v. Yates*, 866 F.3d 723, 727-32 (6th Cir. 2017) (holding that Ohio’s third degree robbery offense by “force” is not a “crime of violence” under the Guidelines because of the “expansive” statutory definition of “force”); *Perez v. United States*, 885 F.3d 984, 989-90 (6th Cir. 2018) (confirming that *Yates* “turned on Ohio’s broad definition of force” which does not satisfy *Curtis Johnson*)

Pennsylvania: 18 Pa. Cons. Stat. Ann. § 3701(a)(1)(v) (1983) (defining third degree robbery as “physically tak[ing] or remov[ing] property from the person of another by force however slight,” in the course of committing a theft); *United States v. Peppers*, ___ F.3d ___, 2018 WL 3827213, at **14-16 (3d Cir. Aug. 13, 2018) (holding that since the “force however slight” language “has been interpreted to include ‘any amount of force applied to a person while committing a theft[,]’” and “[t]he degree of actual force is immaterial, so long as it is sufficient to separate the victim from his property,” [*Commonwealth v. Brown*, 484 A.2d

[738,] 741 [(Pa. 1984)], Pennsylvania’s robbery statute suffers from the same issues the Supreme Court identified with Florida’s battery statute in *Johnson 2010*. Both laws proscribe *the merest touching*, which is insufficient conduct to meet the ‘physical force’ requirement under the ACCA’s elements clause”) (emphasis added)

3. Robbery statutes that can be satisfied by snatching (without touching, using no more force than necessary to take the item)

District of Columbia: D.C. Code § 22-281 (1981) (defining robbery as a taking “by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear”); *United States v. Sheffield*, 832 F.3d 296, 314-15 (D.C. Cir. 2016) (citing “stealthy seizure” clause as confirmation that “D.C.’s robbery statute includes offenses that fail to qualify as crimes of violence under section 4B1.2”)

Georgia: Ga. Code Ann. § 16-8-40(a) (Michie 1984) (defining robbery as a taking of property from another with intent to commit theft, “(1) By use of force; (2) By intimidation, by the use of threat or coercion, or by placing such person in fear of immediate serious bodily injury to himself or to another; or (3) By sudden snatching”); *United States v. Fluker*, 891 F.3d 541, 549 & n.3 (4th Cir. 2018) (recognizing that Georgia’s robbery statute is indivisible and can be committed by snatching, which does not require any more

force than is necessary to remove an item from the victim's grasp)

Maine: Me. Rev. Stat. Ann. tit. 17-A, § 651(1)(B)-(C) (West 1983) (defining robbery under § 651(1)(C) as “us[ing] physical force on another with the intent” to “prevent or overcome resistance” or “compel the person in control of the property to give it up,” during a theft or attempt to commit a theft); *Raymond v. State*, 467 A.2d 161, 163-65 (Me. 1983) (“By clear and plain meaning of the words of section 651, the Maine legislature has dictated that the mere act of snatching a purse from the hand of a victim is a sufficient act of physical force for robbery”; all that is necessary is sufficient force to produce victim “awareness”; the drafters of the Maine Criminal Code “made a conscious decision that *any* physical force” with intent to “compel the person in control of the property to give it up,” suffices “to raise a theft offense to the level of robbery”); *United States v. Rembert*, 658 A.2d 656, 657-58 (Me. 1995) (explaining that the term “physical force” in § 651 simply requires “offensive physical contact”); *United States v. Mulkern*, 854 F.3d 87, 92-94 (1st Cir. 2017) (holding that “[t]he word ‘any’” used by the Maine Supreme Court in *Raymond* “is a powerful beacon to us here,” making clear that § 651(C) does not require a showing of the *Curtis Johnson* level of force; “something short of that will do”; the divisible offense under §651(1)(B)(1) for “threaten[ing] to use force” likewise does not meet the ACCA’s elements clause since it requires the same amount of force)

Massachusetts: Mass. Gen. Laws ch. 265, § 19(b) (1985) (defining robbery as the taking of money or property from the person of another, or from his immediate control, “by force and violence, or by assault and putting in fear”); *Commonwealth v. Jones*, 283 N.E.2d 840, 844-45 (Mass. 1972) (“[S]o long as the victim is aware of the application of force which relieves him of his property . . . , the requisite degree of force is present to make the crime robbery”; there need not be resistance by the victim); *United States v. Starks*, 861 F.3d 306, 317-19 (1st Cir. 2017) (accepting the government’s concession that the statute is indivisible, and holding Massachusetts robbery is “categorically not a violent felony” since the minimum conduct is snatching)

APPENDIX B

**State Aggravated Robbery or Enhancement
Statutes at the Time of 18 U.S.C.
§ 924(e)(2)(B)(i)'s Enactment Which Required
the Use, Attempted Use, Display, Threat,
or Representation of a Weapon**

Alaska: Alaska Stat. § 11.41.500(a)(2) (1980) (using or attempting to use a dangerous instrument or representing that the defendant or another participant is armed with such an instrument)

Arizona: Ariz. Rev. Stat. Ann. § 13-1904(A)(2) (1978) (using or threatening to use a deadly weapon or dangerous instrument)

Arkansas: Ark. Stat. § 41-2102(1)(a) (1977) (representing that one is armed with a deadly weapon)

Colorado: Colo. Rev. Stat § 18-4-302(1)(b) (1986) (using a deadly weapon to put a person in reasonable fear of death or bodily injury)

Connecticut: Conn. Gen. Stat. Ann. § 53a-134(a)(3) (West Supp. 1985) (using or threatening the use of a dangerous instrument); § 53a-134(a)(4) (displaying or threatening the use of a firearm)

Delaware: Del. Code Ann. tit. 11, § 832(a)(2) (1979) (displaying what appears to be a deadly weapon); § 832(a)(3) (using or threatening the use of a dangerous instrument)

Georgia: Ga. Code. Ann. § 16-8-41(a) (1984) (using an offensive weapon, or any replica, article, or device having the appearance of such weapon)

Idaho: Idaho Code § 19-2520 (Supp. 1985) (displaying, using, threatening, or attempting to use a firearm or other deadly weapon while committing a robbery)

Kentucky: Ky. Rev. Stat. Ann. § 515.020(1)(c) (Michie 1985) (using or threatening the immediate use of a dangerous instrument upon any person who is not a participant in the crime)

Louisiana: La. Rev. Stat. Ann. § 14:64.1(A) (1986) (leading a victim to reasonably believe one is armed with a dangerous weapon)

Maryland: Md. Code Ann. § 488 (Michie 1982) (robbing with a dangerous or deadly weapon); *United States v. Redrick*, 841 F.3d 478, 484 (D.C. Cir. 2016) (Maryland armed robbery under § 488 requires the use of a dangerous or deadly weapon)

Michigan: Mich. Comp. Laws § 750.529 (West 1968) (assaulting and robbing while being armed with an article used or fashioned in a manner to lead the victim to reasonably believe the article is a dangerous weapon)

Mississippi: Miss. Code Ann. § 97-3-79 (1972) (exhibiting a deadly weapon)

Missouri: Mo. Rev. Stat. § 569.020(1)(3) (1979) (using or threatening the immediate use of a dangerous instrument against any person); § 569.020(1)(4)

(displaying or threatening to use what appears to be a deadly weapon or dangerous instrument)

New Hampshire: N.H. Rev. Stat. Ann. § 636:1(III)(b) (1986) (reasonably appearing to be armed with a deadly weapon)

New York: N.Y. Penal Law § 160.10(2)(b) (McKinney 1975) (displaying what appears to be a firearm); § 160.15(3) (using or threatening the immediate use of a dangerous instrument); § 160.15(4) (displaying what appears to be a firearm)

North Carolina: N.C. Gen. Stat. § 14-87(a) (1986 Supp.) (possessing, using, or threatening to use any firearm or other dangerous weapon); *State v. Gaither*, 587 S.E.2d 505, 508 (N.C. Ct. App. 2003) (holding that the firearm must be used or threatened to be used; mere possession is insufficient)

North Dakota: N.D. Cent. Code § 12.1-22.01(2) (1985) (firing a firearm, exploding or hurling a destructive device, or directing the force of any other dangerous weapon against another)

Oklahoma: Okla. Stat. tit. 21, § 801 (West 1982) (using a firearm, dangerous weapon, or imitation firearm that would lead a victim to believe it is a real firearm)

Oregon: Or. Rev. Stat. § 164.405(1)(a) (1985) (representing that one is armed with a dangerous or deadly weapon); § 165.415(1)(b) (using or attempting to use a dangerous weapon)

Rhode Island: R.I. Gen. Laws § 11-39-1 (1981)
(using a dangerous weapon)

Tennessee: Tenn. Code Ann. § 39-2-501 (1982)
(using a deadly weapon) (repealed 1989)

Texas: Tex. Penal Code § 29.03(a)(2) (West 1974)
(using or exhibiting a deadly weapon)

Utah: Utah Code Ann. § 76-6-302(1)(a) (1975) (using a firearm, knife, or deadly weapon); § 76-6-302(1)(a) (1989) (amending provision to require using or threatening to use a dangerous weapon)

Virginia: Va. Code Ann. § 18.2-53.1 (1982) (using or displaying a firearm in committing a felony)

Washington: Wash. Rev. Code § 9A.56.200(1)(b) (1985) (displaying what appears to be a firearm or other deadly weapon)

West Virginia: W. Va. Code Ann. § 61-2-12 (Michie 1984) (threatening or presenting firearms or other deadly weapons, or using a dangerous weapon or device)

Wisconsin: Wis. Stat. Ann. § 943.32(2) (West 1982) (using or threatening to use a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe that it is a dangerous weapon)

Wyoming: Wyo. Stat. § 6-2-401(c)(ii) (1983) (using or exhibiting a deadly weapon or simulated deadly weapon)

APPENDIX C

**State Aggravated Robbery or
Enhancement Statutes at the Time of
18 U.S.C. § 924(e)(2)(B)(i)'s Enactment
Which Required Threatening, Inflicting,
or Putting in Fear of Bodily Injury**

Alabama: Ala. Code § 13A-8-41(a)(2) (Michie 1982)
(causing serious physical injury)

Alaska: Alaska Stat. § 11.41.500(a)(3) (1980) (caus-
ing or attempting to cause serious physical injury)

Arkansas: Ark. Stat. § 41-2102(1)(b) (1977) (in-
flicting or attempting to inflict death or serious physi-
cal injury)

Connecticut: Conn. Gen. Stat. Ann. § 53a-
134(a)(1) (West 1985) (causing serious physical injury)

Delaware: Del. Code Ann. tit. 11, § 832(a)(1)
(1979) (causing physical injury)

Hawaii: Haw. Rev. Stat. § 708-840(1)(a) (1985) (at-
tempting to kill, or inflicting or attempting to inflict
serious bodily injury)

Indiana: Ind. Code § 35-42-5-1 (1986) (causing
bodily injury is a Class B felony; causing serious bodily
injury is a Class A felony)

Kansas: Kan. Stat. Ann. § 21-3427 (1981) (inflict-
ing bodily harm)

Kentucky: Ky. Rev. Stat. Ann. § 515.020(1)(a)
(Michie 1985) (causing physical injury)

Maine: Me. Rev. Stat. Ann. tit. 17-A, § 651(1)(D) (West 1983) (inflicting or attempting to inflict bodily injury)

Michigan: Mich. Comp. Laws § 750.529 (West 1968) (inflicting serious injury)

Minnesota: Minn. Stat. § 609.245 (1986) (inflicting bodily harm)

Missouri: Mo. Rev. Stat. § 569.020(1)(1) (1979) (causing serious physical injury)

New Hampshire: N.H. Rev. Stat. Ann. § 636:1(III)(c) (1986) (inflicting or attempting to inflict death or serious injury)

New Jersey: N.J. Stat. Ann. § 2C:15-1(b) (West 1982) (attempting to kill, or inflicting or attempting to inflict serious bodily injury)

New York: N.Y. Penal Code § 160.10(2)(a) (McKinney 1975) (causing physical injury); § 160.15(1) (causing serious physical injury)

North Dakota: N.D. Cent. Code § 12.1-22-01(2) (1985) (menacing another with serious bodily injury or inflicts bodily injury)

Ohio: Ohio Rev. Code Ann. § 2911.01(A)(2) (Anderson Supp. 1985) (inflicting or attempting to inflict serious physical harm)

Oregon: Or. Rev. Stat. § 165.415(1)(c) (1985) (causing or attempting to cause serious physical injury)

Pennsylvania: 18 Pa. Cons. Stat. Ann. § 3701(a)(1)(i) (1983) (inflicting serious bodily injury); § 3701(a)(1)(ii) (threatening or putting another in fear of immediate serious bodily injury); § 3701(a)(1)(iv) (inflicting bodily injury, or threatening or putting another in fear of immediate bodily injury)

Texas: Tex. Penal Code Ann. § 29.03(a)(1) (1974) (causing serious bodily injury to another)

Utah: Utah Code Ann. § 76-6-302(1)(b) (1978) (causing serious bodily injury)

Vermont: Vt. Stat. Ann. tit. 13, § 608(c) (1974) (causing bodily injury)

Washington: Wash. Rev. Code § 9A.56.200(1)(c) (1985) (inflicting bodily injury)

West Virginia: W. Va. Code Ann. § 61-2-12 (Michie 1984) (committing partial strangulation, suffocation, striking, beating, or “other violence”)

Wyoming: Wyo. Stat. § 6-2-401(c)(i) (1983) (inflicting or attempting to inflict serious bodily injury)

APPENDIX D**State Aggravated Robbery or Enhancement
Statutes Promulgated After 18 U.S.C.
§ 924(e)(2)(B)(i)'s Enactment Which Contain
Either a Use/Threat of a Weapon, or
Bodily Injury Element**

California: Cal. Penal Code § 12022.53 (West 2010) (providing additional term of imprisonment for use of a firearm during certain felonies, including robbery); Cal. Penal Code § 12022.7 (2010) (providing additional term of imprisonment for inflicting great bodily injury during a felony or attempted felony, unless infliction of great bodily injury is an element of the offense)

Delaware: Del. Code Ann. tit. 11, § 832(a)(5) (West 2016) (threatening death upon another)

Illinois: 720 Ill. Comp. Stat. 5/18-2(a)(3) (West 2000) (discharging a firearm); para. 18-2(a)(4) (discharging a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person); 720 Ill. Comp. Stat. 5/18-1(b)(1) (West 2013) (indicating one is armed with a firearm or other dangerous weapon)

Louisiana: La. Stat. Ann. § 14:64.3 (1999) (providing an enhancement if a dangerous weapon is used during a robbery); § 14:64.4(A)(1) (2001) (inflicting serious bodily injury)

Maryland: Md. Code Ann., Crim. Law § 3-403 (West 2005) (displaying a written instrument claiming

that the person is in possession of a dangerous weapon)

Michigan: Mich. Comp. Laws § 750.529 (West 2004) (representing possession of a weapon)

Minnesota: Minn. Stat. Ann. § 609.245(2) (West 1994) (implying possession of a dangerous weapon)

Nebraska: Neb. Rev. Stat. § 28-1205(1)(a), (3) (2009) (designating using a firearm or other deadly weapon to commit a felony as a separate offense requiring a consecutive sentence)

Ohio: Ohio Rev. Code Ann. § 2911.01(A)(1) (West 1996) (using a deadly weapon or displaying, brandishing, or indicating one possesses a deadly weapon)

Oklahoma: Okla. Stat. Ann. tit. 21, § 797(1) (West 2001) (inflicting serious bodily injury); § 797(2) (threatening immediate serious bodily injury); § 797(3) (putting a person in fear of immediate serious bodily injury)

Rhode Island: R.I. Gen. Laws Ann. § 11-39-1 (1991) (using a dangerous weapon or injuring a victim)

South Dakota: S.D. Codified Laws § 22-30-6 (2005) (using a dangerous weapon); § 22-30-6 (2007) (adding using a physical object simulating a dangerous weapon)

Tennessee: Tenn. Code Ann. § 39-13-402(a)(1) (1989) (accomplishing with a deadly weapon, or displaying an article used or fashioned to lead the victim to reasonably believe it is a deadly weapon);

§ 39-13-402(a)(2) (causing serious bodily injury); § 39-13-403(a) (accomplishing with a deadly weapon and causing serious bodily injury)

Texas: Tex. Penal Code Ann. § 29.03(a)(3) (West 1989) (causing bodily injury, or threatening or placing another in fear of imminent bodily injury, if the victim is 65 years or older or disabled)

West Virginia: W. Va. Code Ann. § 61-2-12(b) (West 2000) (placing a victim in fear of bodily injury)
