



akron bar  
association®

# **New Lawyer Training**

## **Introduction to Criminal Law**

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## Introduction to Criminal Outline

### 1) Criminal Appointment List

- Apply through the Akron Bar Association
- Malpractice Insurance
- Photo Identification
- Experience level dictates types of felony appointment eligibility

### 2) Building Experience

- Ohio Administrative Code 120-1-10
  - Misdemeanors – General Requirements
    - Clinical Education Program on Criminal Law
    - Six Hours of Continuing Education in Criminal Law
    - One-year experience in Criminal Law
  - Felonies – General Requirements
    - Twelve Hour of Continuing Education in Criminal Law Biannually
    - Felony OVI's Require Separate Training
  - Felonies of the Fourth or Fifth Degree
    - One Year of Experience Practicing Criminal Law
  - Felonies of the Third Degree
    - One Year of Experience Practicing Criminal Law
    - Within in Six Years – 1) Lead Trial Counsel for One Jury Trial; or 2) Co-Counsel in Two or More Jury Trials
  - Aggravate Murder; Murder; Felonies of the First and Second Degree
    - Three Years of Experience Practicing in Criminal Law
    - Within in Ten Years – 1) Lead Trial Counsel Two Jury Trials with on being a Felony; or 2) Lead Trial Counsel One Felony Jury Trial and Co-Counsel in Two Additional Jury Trials
  - Life Sentence Cases
    - Five Years of Experience Practicing Criminal Law
    - Within Ten Years – 1) Lead Counsel in Five Felony Jury Trials with Minimum of Three Felonies of the First or Second Degree; or 2) Lead Counsel in Three Jury Trials with One Being a Felony of the Third Degree and Co-Counsel in Five More Jury Trials with Minimum of Three being felonies of the First or Second Degree.
  - Capital Cases
    - Special Certification through the Supreme Court of Ohio
- Acquiring Experience
  - Attend or Join Criminal Law Section of the Akron Bar Association
  - Attend Call Days for the Judges in the Common Pleas Courthouse
  - Consider Contacting More Experienced Attorneys about Co-Counseling

### 3) Conduct with Opposing Counsel

- Adversarial and Respectful – must advocated for a client while being respectful of opposing prosecutor
- Preparation – understand the facts and law surrounding your case prior to conversing with the prosecutor

### 4) Fourth Amendment Basics

- **Search** – governmental intrusion into an area where persona reasonable and justifiable expectation of privacy

- **Types** – Warrant and Warrantless

- **Warrant**

- Neutral and Detached Magistrate
- “Four Corners” – review by Judge limited to document in evaluating sufficient probable cause
  - i. Anticipatory permissible
  - ii. Reliability and Credibility of Information Sources
- Franks Hearing – material misrepresentation by officers
  - i. False statement
  - ii. Intentionally or recklessly included
  - iii. Material to issuing of warrant

- **Warrantless**

- **Search Incident to Lawful Arrest** – arrestee’s entire person; if arrest violates constitution then any subsequent search violates the constitution;
- **Automobile Exception** – Police may search entire vehicle if they have cause to believe it contains contraband or fruits, instrumentalities, or evidence of a crime (i.e. marijuana smell). **Carroll v. United States**. Includes passengers belongings, trunks, boxes, packages
- **Plain View** – 1) legitimately on premise; 2) evidence, fruits of instrumentalities or contraband; 3) Plain View; 4) probable cause to believe that item evidence or contraband
- **Consent** – must be voluntary and intelligent
- **Stop and Frisk** - 1) reasonable suspicion of criminal activity; 2) reasonably believes armed and dangerous
- **Hot Pursuit** – permitted to search suspected meth labs; chase fleeing felons; etc.

- **Administrative**

- **Inventory Searches** – must be part of established department policy

- **Public Schools** – Permissible if: 1) offers moderate chance of finding evidence of wrongdoing; 2) reasonably related to objectives of the search; 3) Not excessively intrusive
  - **Parolees** - diminished expectation of privacy (includes probation)
- **Seizures** – individual must believe that he or she is not free to leave
  - Voluntary – individual free to terminate interaction with law enforcement
  - Investigatory
    - Reasonable Suspicion – specific and articulable facts
      - Florida v. J.L. – descriptive and predictive
    - Scope – No longer than necessary to conduct limited investigation to verify suspicions. Terry Stop.
    - Types of Seizures
      - **Automobile Stops** – seizure of both driver and passengers; must have at least reasonable suspicion; check points permissible – 1) based on neutral and articulable standard; 2) designed to serve particular problem pertaining to automobiles and mobility; Traffic Violation – may stop car for traffic violation even if officer; Dog Sniffs – reasonable time to effectuate traffic stop
      - **Occupant of Home** – police may detain individual who is located in a home during the execution of a search warrant; May not search unless probable cause exists or person named in the warrant
  - Custodial – Occur after probable cause for arrest arises
- **Arrests** – police take person into **custody** against his or her will for purposes of criminal prosecution or interrogation
  - **Felony** – permissible with reasonable grounds to believe felony committed
  - **Misdemeanor** – committed in officer's presence
  - **Homes** – warrant required for person's home or third party's home

#### 5) Fifth and Sixth Amendment

- Fifth – protects against compelled self-incrimination; attaches once a custodial detention occurs
  - Watch for client's who are interrogated on body camera, while being detained by handcuffs
- Sixth – Provides an individual the right to counsel; limited to adversary judicial proceedings; protects against government using an informant to illicit statements from a client who has already been charged with a criminal offense; Offense specific

#### 6) Motions in Limine

- Ohio Rules of Evidence – available online
- The rules become more and more important as you handle more significant criminal cases.

#### 7) Trial

- Speedy Trial Rights – 6<sup>th</sup> Amendment does not have specific time limit; O.R.C. 2945.71
- O.R.C. 2901.22 – Criminal Mental States
  - Purposely
  - Knowingly
  - Recklessly
  - Negligently
  - Strict Liability
- Elements of the Crime
- Rules of Criminal Procedure
  - Amendments to the Indictment
  - Criminal Rule 29 Motion for Acquittal
  - Motion for Separate Trials
- O.R.C. 2923.03 - Complicity
  - Does not require specific notice in the indictment
  - Permitted to apply broadly