

New Judges  
Orientation: Part II  
*Municipal/County Track*

May 13-15, 2025  
Thomas J. Moyer  
Ohio Judicial Center,  
Columbus



THE SUPREME COURT *of* OHIO  
JUDICIAL COLLEGE





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**New Judges Orientation: Part II – Municipal/County Track**  
**May 12-15, 2025**  
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**AGENDA**

**TUESDAY, MAY 13, 2025**

- 1:00 OVI Motions to Suppress**  
Hon. Brian F. Hagan, *Rocky River Municipal Court*
- 3:00 Break**
- 3:15 Evidence**  
Hon. Brian F. Hagan, *Rocky River Municipal Court*
- 4:30 Municipal/County Track Adjourns**

**WEDNESDAY, MAY 14, 2025**

- 8:30 Fines, Costs, and Restitution**  
Hon. Joshua Berkowitz, *Hamilton County Municipal Court*
- 10:30 Break**
- 10:45 Domestic Violence**  
Hon. Thomas A. Januzzi, *Oberlin Municipal Court*
- 12:15 Lunch (45-minute lunch)**
- 1:00 Domestic Violence, continued**
- 1:30 Traffic**  
Hon. Carla J. Baldwin, *Youngstown Municipal Court*  
Hon. Terri L. Stupica, *Chardon Municipal Court*
- 2:45 Break**
- 3:00 Traffic, continued**
- 4:30 Municipal/County Adjourns**

**THURSDAY, MAY 15, 2025**

- 9:00 Small Group Roundtables**  
Hon. Teresa L. Ballinger, *Marion Municipal Court*  
Hon. James A. Fields, *Fairfield County Municipal Court*
- 11:00 Break
- 11:15 Trial Skills Workshop**  
Hon. Todd L. Grace, *Athens Municipal Court*  
Hon. Thomas M. Hanna, Retired, *Kettering Municipal Court*
- 12:15 Lunch (**45-minute lunch**)
- 1:00 Trial Skills Workshop, continued**  
Hon. Todd L. Grace, *Athens Municipal Court*  
Hon. Thomas M. Hanna, Retired, *Kettering Municipal Court*
- 3:00 Program Concludes

## FACULTY BIOGRAPHIES

**CARLA J. BALDWIN** was elected as a Judge in Youngstown Municipal Court in 2017. She has served as Administrative and Presiding Judge of Youngstown Municipal Court since the fall of 2018. She presides over misdemeanor criminal cases and traffic cases and Drug Court.

The Judge received her Bachelor of Arts degree in Political Science from Capital University (Columbus, OH). She obtained her Juris Doctorate degree from Thomas M. Cooley Law School (Lansing, MI) with a concentration in Litigation. She has been a member of the Ohio Bar since 2008.

She most recently worked as a full-time Magistrate in Mahoning County Juvenile Court where she presided over Mental Health Court. Prior to this appointment she worked for the Mahoning County Prosecutor's Office as an Assistant County Prosecutor in both the Criminal and Juvenile Divisions. Judge Baldwin is a faculty member for All Rise, the national leader in helping jurisdictions across the country ensure substance use and mental health disorders are addressed in treatment courts that promote treatment and recovery for our most vulnerable. She is also a member of the Pretrial Practitioner Network with the Center for Effective Public Policy which provide training and technical assistance to communities who seek to achieve fair, just and equitable pretrial practices.

She presently serves on the Executive Board of the Ohio Judicial Conference, as a Trustee for the Ohio State Bar Foundation and is the immediate Past President of the Mahoning County Bar Association.

Judge Baldwin and her husband Brandon are proud lifelong residents of Youngstown.

Judge Carla J. Baldwin made history on November 7, 2017, when she became the first African-American female elected as judge in Mahoning County.

**TERESA L. BALLINGER**, Marion County Municipal Court Judge, was born in Marion, Ohio and graduated from Pleasant High School in 1975. She attended Ohio Dominican University in Columbus, Ohio and received a BA in Psychology/Social Work in 1979. In 1984, Judge Ballinger returned to Ohio Dominican and completed an education program.

Judge Ballinger began her professional career as a case worker in 1979 at the Marion County Job and Family Services. In 1980, she accepted a position as a social worker for the Marion City Schools. From 1984 through 1995, she taught Social Studies and Special Education at Pleasant High School.

Judge Ballinger attended law school from 1990 through 1993, receiving her JD in 1994, and was admitted into the practice of law in the state of Ohio in November of 1994. She began her legal career in private practice with Ted Coulter, Steve Phillips and Brent Yager on South Main Street in Marion, Ohio.

In December of 2004, Judge Ballinger was appointed to the Marion County Municipal Court and, thereafter in November of 2005, was elected to her first term as Judge of the Marion County Municipal Court. She is currently serving her fourth term.

The Judge's professional activities include the following: Trustee of the Ohio Municipal and County Judges Association; Ohio Supreme Court Specialized Dockets Commission; Ohio State

Bar Association; Marion County Bar Association; Marion Ohio Rotary Club; Junior Service Guild; Women's Business Council; and member Marion Matters Inc.

Since Judge Ballinger has taken the bench in the Marion Municipal Court, she instituted a victim assistant program at the court, commenced an aggressive collections program to capture past-due fines and costs, established a probation fee to supplement the probation budget, created a "driving-under-suspension" docket to assist and guide individuals in the acquiring a valid driver's license, and implemented three specialized dockets to address mental health, substance abuse, and veteran offender issues.

Judge Ballinger and her husband, John Shank, reside in Marion, Ohio. She has two sons, three step children and nine grandchildren. She enjoys hiking, pickleball, and spending time with her grandchildren.

**JOSH BERKOWITZ** serves on the Hamilton County Municipal Court, 4th District. Judge Berkowitz hears cases from all over Hamilton County in one of Ohio's busiest courts. These include criminal, civil, & traffic cases.

Before taking the bench, Judge Berkowitz served as an Assistant Hamilton County Prosecutor in the felony/trial division. Judge Berkowitz also served as Law Director for the City of Norwood, where he was the city's Chief Legal Officer.

Judge Josh Berkowitz was born & raised in Cincinnati and is a graduate of Elder High School, The Ohio State University, & Capital University Law School.

**JAMES A. FIELDS** was appointed to the Bench by Governor John Kasich and began serving on April 30, 2015. He was elected to complete an unexpired term in 2016 and has since been re-elected to two six-year terms commencing in 2018 and 2024.

Judge Fields has been the Presiding/Administrative Judge since September of 2015. He presides over four specialty dockets: Drug Court; Mental Health Court; Patriot (Veterans') Court; and Special Abilities Court, the latter in cooperation with the Fairfield County Board of Developmental Disabilities.

Prior to his service on the Bench, Judge Fields was a partner at Fields and Innocenti (1997 - 2015), and an Associate at Price and Jones (1988-1997).

Judge Fields earned his BA in American Studies, (Political Science, History and Literature) from Earlham College and his Juris Doctorate from Capital University School of Law. He is admitted to the United States Supreme Court, the Supreme Court of Ohio, and the United States District Court for the Southern District of Ohio. He is a member of the Ohio State Bar Association and the Fairfield County Bar Association and served on the Board of Trustees of the Association of Municipal and County Judges of Ohio from 2018-2025.

**TODD L. GRACE** is in his ninth year as Athens County Municipal Court Judge. Prior to taking the bench, he served for 13 years as a Magistrate in Athens County Juvenile Court while maintaining a private law practice in Athens. During his time at Athens Municipal Court, Judge Grace has significantly expanded the Court's diversion programs and has moved the Court progressively towards digital files and digital court management processes. Judge Grace has served on task forces and workgroups for the Ohio Supreme Court and the Ohio Judicial Conference including the areas of Bail/Bond reform, Model Bond Schedule, New Judge Mentoring Program, Continuing Jury Operations, and Remote Hearings.

In March 2020, with the coronavirus pandemic, Judge Grace and Athens County Municipal Court set up the framework for resolving cases through video conferencing. The Court was able to accept changes of pleas, conduct preliminary hearings, and conduct motion hearings. On May 1st, the Court resumed its pre-trial docket, by Zoom. The practitioners quickly adjusted and more cases were being resolved throughout May and progress was demonstrated on many other cases throughout that time. With the lifting of the Governor's stay at home Order at the end of May, the Court transitioned to a hybrid system where many court participants are still appearing by Zoom, but those who need to appear in person, or just prefer to appear in person, are able to do so. Each of these transitions has required problem solving and flexibility, and Judge Grace is extremely thankful to have the staff and practitioners that have made it possible to transition (somewhat) smoothly through each of these changes.

Judge Grace and his wife, Sarah, have four children ranging from 11 to 23 years old. As you might expect, they do not feel like they can ever get enough done or get enough sleep.

**BRIAN F. HAGAN** was elected Judge of the Rocky River Municipal Court in November 2007, re-elected in November 2013 and November 2019 and has served as the court's Administrative/Presiding Judge in 2008, 2010, 2012, 2014, 2016, 2018, 2020, 2022 and currently 2024. Previously, Judge Hagan was in private practice for more than twenty-six years and served as Rocky River Municipal Court Acting Judge, Magistrate, and Referee. He was elected twice to the Rocky River City Council, where he held office from January 1, 2004, through December 31, 2007. He was Council President from August 2006 to the end of his term and was chairman of the Contract-Government and Judicial Committee. Judge Hagan served as Special Counsel for the Ohio Attorney General's Office for 12 years and was in the Judge Advocate General's (JAG) Corps in the Ohio Military Reserve.

Judge Hagan is a member and past President of the Northern Ohio Municipal Judges Association. In addition, he is a member of the Association of Municipal/County Judges of Ohio, elected to the AMCJO Board of Trustees in 2014. Judge Hagan currently serves as Treasurer of AMCJO, having served as Secretary in 2015 and 2019. Second Vice-President 2016 and 2020, First Vice-President 2017 and 2021 and President 2022. He also serves as a faculty member for the Supreme Court of Ohio Judicial College.

Judge Hagan was the recipient of the 2023 President's Award for Judicial Excellence from the AMCJO.

Judge Hagan was the former Co-Chair of the Cuyahoga County Behavioral Health and Criminal Justice Initiative (fka Cuyahoga County Mental Health Court Initiative), and is the Founding Member and current President of the West Shore Bar Association.

Judge Hagan earned his BS Accounting and Business Administration from St. Francis College (now University) in Pennsylvania and his JD from Cleveland Marshall College of Law at Cleveland State University.

**THOMAS M. HANNA** is retired from Kettering Municipal Court where he began serving as Judge in 2000, after having served there as Acting Judge since 1992. Judge Hanna was also Acting Judge in Dayton Municipal Court for two years, from 1987 until 1989. Before and during his time as Acting Judge, he was in private practice from 1981 until 1999. Judge Hanna received his BSBA from the University of Dayton, his MBA from Capital University, and his JD from the University of Dayton School of Law.

**THOMAS A. JANUZZI** has been the judge of the Oberlin Municipal Court since 2002 and will be completing his fourth term on December 31, 2025. Judge Januzzi received his Bachelor of Science in Business Administration from Ashland College 1979 and his Juris Doctor from Cleveland Marshall College of Law at Cleveland State University 1982. Prior to taking the bench, he practiced law from 1982-2001. He was a partner in the law firm of Trigilio, Stephenson & Januzzi in Lorain, Ohio and served as an acting judge in Oberlin Municipal Court from 1991-2001. He also served as a law clerk, volunteer mediator, arbitrator, and receiver in the Lorain County Common Pleas Court.

Judge Januzzi served as a trustee of the Association of Municipal and County Judges of Ohio, on several of the association's committees, and as the chair of the Rules of Superintendence and Rules of Practice Committee. He is also an active member of the Ohio Judicial Conference, where he serves on the Judicial Ethics and Professionalism, Criminal Law and Procedure, Legislative Committee and Court Administration Committees. Judge Januzzi has also served on The Supreme Court of Ohio Advisory Committee on Case Management, Time Guidelines Subcommittee. He is the past president of Lorain County Bar Association and served on the Advisory Committee for the Lorain County Court of Common Pleas Office of Dispute Resolution and on the Lorain County Bar Association Legal Ethics Committee.

Judge Januzzi is active in community outreach where he has presented at local high schools on Roles in the Justice System and Underage Drinking, has been a volunteer judge for Oberlin High School Street Law Mock Court program and Amherst High School Mock Trial program, and has been a participant in the Lorain County Bar Association Mock Court program. He also speaks to local civic and community groups. Judge Januzzi has prepared numerous Power Point presentations on a variety of topics which are on the Oberlin Municipal Court website. Judge Januzzi is also a frequent presenter for Lorain County Bar Association seminars including recently OVI seminars and Marsy's Law.

Judge Januzzi has been a teacher for Parish School of Religion for the past 10 years for St. Joseph Catholic Church in Amherst, Ohio for the 8th grade confirmation students and teacher of Parish School of Religion for Sacred Heart of Jesus Catholic Church in Oberlin for the past 7 years.

Judge Januzzi has written four articles for the OJC publication For the Record: Plea Bargaining – 1st Quarter 2011; Ex Parte Communications 1st Quarter 2013; The “Sleep-Driving” Defense submitted for publication in 1st Quarter 2014 and Calming the Municipal Court Accused 3rd Quarter 2018.

Tom and his wife, Margie, have been married for 43 years and have four daughters ages 41, 39, 37, and 35 and Fifteen (15) grandchildren [9 girls and 6 boys].

Tom is eligible to run for a 5<sup>th</sup> term next year but has decided to leave full time employment to spend more time with his good wife and family including the grandchildren and Tom's 95 year old mother who is in Assisted Living.

**TERRI STUPICA** has presided over the Chardon Municipal Court since January 2012. She earned her undergraduate degree at John Carroll University in 1984 and her J.D. from Cleveland-Marshall College of Law in 1987, after attending Loyola Marymount Law School in her second year as a non-matriculating student. She is a member of the Ohio Bar Association and Geauga County Bar Association, serving as president last year. She is past Chair of the Supreme Court of Ohio Commission on Continuing Legal Education and is a member of the Supreme Court Case Management Advisory Committee, Ohio Judicial Conference Traffic Law and Judicial Ethics, Professionalism and Diversion Committees. She has served as a Supreme Court Mentor to New

Lawyers from 2011 through 2014. She is a founding member of the Geauga County Opiate Task Force and a member of the U.S. District Attorney's Heroin and Opioid Action Plan Committee. Judge Stupica is active speaking at numerous forums throughout Ohio, including Judicial Conference Courses, Ohio Women's Bar Foundation Leadership Institute, Lake Erie College, Lakeland Community College, American Legion Post 459, Rotary and Kiwanis clubs, D.A.R.E graduations at elementary schools and at high school health classes, regarding substance abuse and leadership. Finally, she has judged Notre Dame Cathedral Latin's mock trials since 2012.

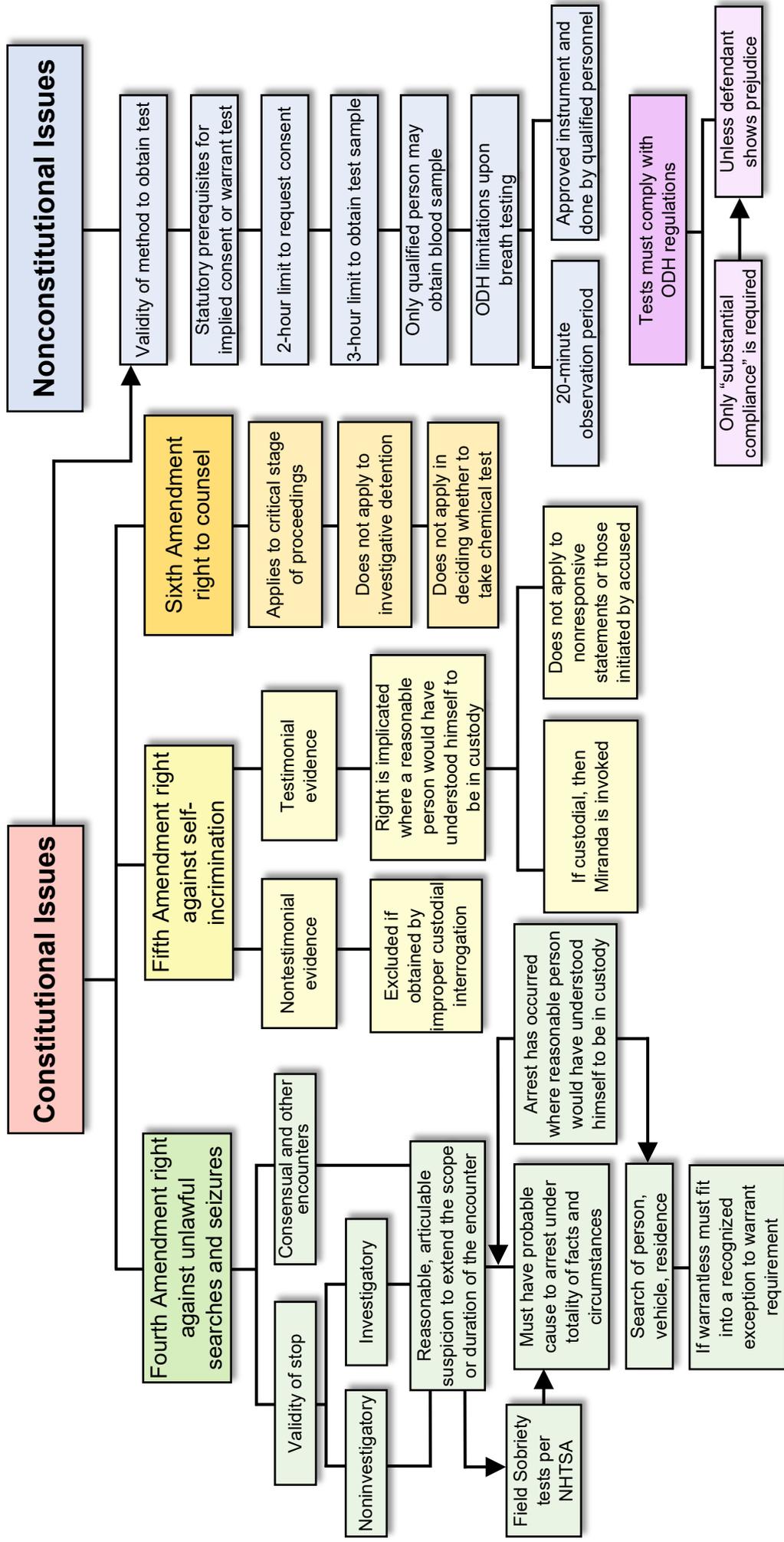


# OVI Motions to Suppress

**Hon. Brian F. Hagan**  
*Rocky River Municipal Court*



# Common Grounds for OVI Motion to Suppress Evidence in a Nutshell



**MOTIONS TO SUPPRESS IN OVI CASES**

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## A. **NATURE AND TIMING OF MOTION**

1. A motion to suppress is used to exclude evidence secured illegally in violation of a constitutional right. In OVI cases, the admissibility of chemical tests, as well as field sobriety tests for determining probable cause, must also be determined by means of a suppression motion. A plea of no contest to the relevant charge preserves the issue on appeal.

### **Criminal Rule 12(C) and Traffic Rule 11(B)**

2. Distinguish a motion in limine which is generally made before or early in a jury trial and seeks a protective order against irrelevant, inadmissible, or prejudicial matters. It is generally a tentative, interlocutory, and precautionary ruling and must be preserved by a timely objection at trial. Unlike a ruling on a motion to suppress, the defendant's plea of no contest waives an erroneous ruling on a motion in limine.

*State v. Grubb* (1986) 28 Ohio St.3d 199, 200-202, 503 N.E.2d 142, citing *Black's Law Dictionary* (5<sup>th</sup> Ed. 1979)

3. The motion to suppress is a pretrial motion which must be filed within 35 days after arraignment or seven days before trial, whichever is *earlier*. The court may extend the time in the interest of justice.

### **Criminal Rule 12(C)(3) and 12(D)**

4. The defendant's failure to timely submit the suppression motion within the time requirement, or prior to any extension granted, constitutes a waiver of the issue.

### **Criminal Rule 12(H)**

5. The court may grant relief from the waiver for good cause shown.

### **Criminal Rule 12(D) and (H)**

6. The defendant's request for leave to file an untimely motion should include the reasons for the court to grant it. The motion may be overruled without a hearing where the defendant fails to provide justification for its lateness.

*State v. DiFabio* (7<sup>th</sup> Dist. Mahoning County), 2017-Ohio-8028, ¶16 (motion filed 20 days late with no explanation of grounds)

*State v. Fuller* (4<sup>th</sup> Dist. Gallia County), 2011-Ohio-860, ¶¶13-17 (motion filed five weeks after counsel was appointed and two days before trial)

7. If the defendant anticipates that additional time will be required to prepare a suppression motion, the best practice is to request an extension before the due date. In the event the time limit has already passed, the defendant should file a

motion for leave to file the motion instanter along with a copy of the proposed motion.

See e.g., *State v. Perry* (3d Dist. Marion County), 2012-Ohio-4656, ¶17 (although there is no requirement to attach the proposed motion, the failure to do so deprived the trial court of the opportunity to see if there was just cause to grant leave)

8. The decision of whether to allow an untimely motion is within the sound discretion of the trial court and as such, the standard of review is abuse of discretion. This connotes more than an error of law or judgment and it implies that the court's attitude is unreasonable, arbitrary, or unconscionable.

*Akron v. Milewski* (9<sup>th</sup> Dist. Summit County 1985), 21 Ohio App.3d 140, 142, 487 N.E.2d 582  
*State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144, 16 A.L.R.4th 344

9. Factors to consider include: (a) the degree of lateness, (b) whether and when a trial has been set, (c) whether and when the state's discovery has been requested and provided, (d) whether the motion is potentially meritorious, and (e) whether the state will be prejudiced by granting the leave.

See e.g., *State v. Bryson* (5th Dist. Licking County), 85 N.E.3d 1123, 2017-Ohio-830  
*State v. Jones* (8<sup>th</sup> Dist. Cuyahoga County), 2010-Ohio-2777  
*State v. Rush* (5<sup>th</sup> Dist. Delaware County), 2013 WL 21694004  
*State v. Merritt* (6<sup>th</sup> Dist. Ottawa County 1998), 126 Ohio App.3d 711, 711 N.E.2d 279

10. The court may permit the defendant to orally supplement the motion during the suppression hearing where the additional issues stem from common facts and disposing of them will support judicial economy.

See Crim. R. 47 (motion "shall be in writing unless the court permits it to be made orally")  
*State v. Spurlock* (9<sup>th</sup> Dist. Lorain County), 2013-Ohio-5369  
*State v. Wells* (6<sup>th</sup> Dist. Wood County 1983), 11 Ohio App.3d 217, 219-220, 464 N.E.2d 596

## **B. CONTENT**

1. The motion must state with particularity the grounds upon which it is made, and the relief or order sought. It must be supported by a memorandum containing citations to relevant authority.

### **Criminal Rule 47**

2. In order to suppress evidence obtained in a warrantless search or seizure, the defendant must:
  - a. Demonstrate the lack of a warrant, *and*

- b. Raise the grounds for challenging the search or seizure in such a manner as to give the state notice of the basis for the challenge.

*Xenia v. Wallace* (1988), 37 Ohio St.3d 216, 219, 524 N.E.2d 889, paragraphs one and two of the syllabus. (To suppress evidence in a warrantless search, the defendant must (1) demonstrate the lack of a warrant, and (2) raise the grounds challenging the validity of the search or seizure so as to give notice to the prosecutor of the basis of the challenge.)

3. To be entitled to a hearing, the defendant must state the motion's "legal and factual bases with *sufficient particularity* to place the prosecutor and the court on notice of the issues to be decided."

*State v. Schindler*, 70 Ohio St.3d 54, 1994-Ohio-452, 636 N.E.2d 319, syllabus (and stating that a "virtual copy" of the sample motion appearing in *Ohio Driving Under the Influence Law*, and supported by some underlying facts, was sufficient to raise issues of compliance with chemical testing regulations to warrant a hearing).

4. What is *sufficient particularity*?

Many courts disapprove of a "laundry list" or "shotgun approach" to alleging grounds, particularly where no specific facts support the same.

See e.g., *State v. Plunkett* (12<sup>th</sup> Dist. Wood County), 2008-Ohio-1014, appeal not allowed, 119 Ohio St.3d 1411, 2008-Ohio-3880, 891 N.E.2d 770

*Norwood v. Kahn* (1<sup>st</sup> Dist. Hamilton County), 2007-Ohio-2799, appeal not allowed, 115 Ohio St.3d 1474, 2007-Ohio-5735, 875 N.E.2d 628

*State v. Hensley* (3d Dist. Auglaize County 1992), 75 Ohio App.3d 822, 829, 600 N.E.2d 849 (the burden of specificity "is not satisfied by merely wrapping the administrative code in a folder and filing it")

5. But, in *State v. Codeluppi*, the Ohio Supreme Court clarified that, "*Shindler* does not require that a defendant set forth the basis for suppression in excruciating detail. Instead, the question is whether the language used provides sufficient notice to the state. After all, '[t]he motion to suppress is merely a procedural vehicle to 'put the ball into play' and serve notice that the defendant intends to have the state meet its legislatively mandated burden of demonstrating compliance with any and all challenged regulations and requirements.'"

*State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.2d 691, ¶13, citing *Weiler & Weiler, Baldwin's Ohio Driving Under the Influence Law*, §9:13, (2012-2013)

6. To narrow the issues, the trial court may inquire before the hearing as to the actual scope of the motion. It may also grant a continuance to allow the state the opportunity to adequately prepare for the motion hearing.

## C. **BURDEN OF PROOF**

Allocation of the burden of production and the burden of proof varies according to the type of evidence to be suppressed:

## 1. *FOURTH AMENDMENT VIOLATIONS*

- a. The defendant must demonstrate the lack of a warrant and adequately raise the grounds upon which the seizure or search is challenged so as to give the prosecutor notice of the same.
- b. Once the defendant has demonstrated the lack of a warrant and given adequate notice of the grounds for the motion, the prosecution bears the burden of going forward with the evidence and the burden of proof as to whether probable cause existed for the search or seizure.

*Xenia v. Wallace* (1988), 37 Ohio St.3d 216, 524 N.E.2d 889, paragraphs one and two of the syllabus.

- c. Where the defense meets its initial burden, the state must show by a *preponderance of the evidence* that the warrantless search or seizure fits within a well-defined exception to the Fourth Amendment warrant requirement.

*Athens v. Wolf* (1974), 38 Ohio St.2d 237, 313 N.E.2d 405, 67 O.O. 2d 317  
*City of Rocky River v. Horvath* (8<sup>th</sup> Dist. Cuyahoga County), 2002 WL 538755, \*5, appeal not allowed, 96 Ohio St.3d 1494, 2002-Ohio-4534, 774 N.E.2d 767

## 2. *ADMISSIBILITY OF CHEMICAL TESTS*\*

- a. In the prosecution of an OVI, BAC, OVUAC offense, or equivalent vehicle-related offense, the court may admit evidence of the:
  - i. concentration of alcohol or drugs or combination of the same in a person's blood, breath, or urine at the time of the alleged violation,
  - ii. as shown by a chemical analysis of the bodily substance withdrawn *within three hours* of the alleged violation,
    - (a) when the person submits to the test at the request of law enforcement under RC 4511.191 implied consent provisions [the person must be asked to submit to the test *within two hours* of the violation], **or**
    - (b) the blood or urine sample is obtained pursuant to warrant, **and**
  - iii. the blood sample is withdrawn by a qualified person listed in the statute, **and**
  - iv. the bodily substance is analyzed in accordance with methods approved by the Ohio Director of Health,

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\*Under RC 4511.19(D)(1)(a), the court may admit evidence of the results in the prosecution of an RC 4511.19(A)(1)(a), or equivalent vehicle-related offense, of a blood or urine test withdrawn and analyzed by a health care provider if accompanied by expert testimony. Further under RC 4511.19(D)(2), the court may admit evidence in such of offense of test results below the per se limits set forth in RC 4511.19 which is to be considered with other competent evidence.

- v. by an individual having a valid permit issued by the Ohio Director of Health

**RC 4511.19(D)(1)(b)**

- b. The Ohio Department of Health has regulations for obtaining and testing bodily substances for the concentration of alcohol and drugs in a person's body and sets forth the qualifications for those who may conduct the test. They are codified in Ohio Adm. Code 3701-53.

- c. In a pretrial motion to suppress test results, the state has the burden of proof as to the facts necessary to show the test was done in accordance with the established law to the extent the defendant takes issue with the legality of the test. The state also has the burden of going forward with the evidence to prove it has complied with each foundation requirement alleged in the motion as having not been fulfilled.

***State v. Gasser* (3d Dist. Paulding County 1980), 5 Ohio App.3d 217, 451 N.E.2d 249, paragraphs one and two of the syllabus**

- d. Rigid compliance with Department of Health regulations is not necessary for test results to be admissible. The results of a chemical test administered in *substantial compliance* with the regulations is admissible unless there is a showing of *prejudice* to the defendant with anything less than strict compliance.

***State v. Plummer* (1986), 22 Ohio St.3d 292, 294, 490 N.E.2d 902**

- e. Appellate courts have held that the extent of the state's burden to show substantial compliance with chemical testing regulations depends upon the degree of specificity of the violations alleged by the defendant. Where the defendant's motion raises only *general* claims, the burden on the state is fairly *slight* and it is only required to demonstrate, in general terms, that it substantially complied with the regulations. Unless the defendant raises a *specific* issue, specific evidence is not required. The Supreme Court has not addressed this particular issue.

***State v. Johnson* (12<sup>th</sup> Dist. Fayette County), 137 Ohio App.3d 847, 852, 739 N.E.2d 1249**

***State v. Yeaples* (3d Dist. Seneca County), 180 Ohio App.3d 720, 2009-Ohio-184, 907 N.E.2d 333, appeal not allowed, 122 Ohio St.3d 1410, 2009-Ohio-2751, 907 N.E.2d 1194**

***State v. Horton* (10th Dist. Franklin County), 2014-Ohio-4584, appeal not allowed, 142 Ohio St.3d 1465, 2015-Ohio-1896, 30 N.E.3d 974**

- f. If the motion sufficiently raises an issue involving the Department of Health regulations, the state must show substantial compliance with the regulations to create a *presumption of admissibility*. The burden then *shifts* to the defendant to *rebut* the presumption by showing he was prejudiced by anything less than substantial compliance.

*State v. Crothers* (12<sup>th</sup> Dist. Clinton County), 2004-Ohio-2299, appeal not allowed, 103 Ohio St.3d 1464, 2004-Ohio-5056, 103 Ohio St.3d 1464

### 3. ADMISSIBILITY OF FIELD SOBRIETY TESTS

- a. Three standard field sobriety tests are recognized in Ohio. They are (i) *horizontal gaze nystagamus*, (ii) *walk-and-turn*, and (iii) *one-leg-stand*.
- b. In order for field sobriety tests to be admissible to show probable cause to arrest, the state must show by *clear and convincing evidence* that they were administered in *substantial compliance* with the applicable testing standards.

RC 4511.19(D)(4)(b)

- c. Generally, the standards are those set forth in the NHTSA (National Highway Traffic Safety Administration) manual.
- d. A few appellate districts have held that where the motion challenges the legality of the tests in *general* terms, the state's burden of proof is *slight*, requiring only general testimony that the officer substantial complied with the standards. The Supreme Court has declined to weigh in on the issue. [Compare appellate court decisions cited in C.2.e. above]

*See e.g., State v. Deluca* (12<sup>th</sup> Dist. Butler County), 2017-Ohio-1235, ¶11  
*State v. Hoffman* (7<sup>th</sup> Dist. Mahoning County), 2017-Ohio-8024, ¶¶17-18 appeal not allowed, 152 Ohio St.3d 1423, 2018-Ohio-923, 93 N.E.3d 1004

## D. THE MOTION HEARING

1. Provided that notice requirements are met, the court should conduct an oral hearing on the motion and take sworn testimony. The motion to suppress is a pretrial motion and should not be merged with the trial on the merits.
2. The trial court is not bound by the Rules of Evidence except those with respect to privilege. The court may rely on hearsay and other evidence, even though the same would not be admissible at trial.

Evidence Rule 101(C)(1); Evid. R. 104(A)

*State v. Edwards* (2005), 107 Ohio St.3d 169, 2005-Ohio-6180, 837 N.E.2d 752, ¶14

3. When ruling on the motion to suppress, the trial court determines the weight of the evidence and the credibility of the witnesses.

*State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, 39 O.O.2d 366, paragraph one of the syllabus

Where factual issues are involved in determining the motion, the court shall state its *essential findings* on the record. But to invoke this rule, a party must ask the court to state its essential findings of fact. The appellate court must accept the trial court's findings of fact *if* they are supported by competent, credible evidence.

**Criminal Rule 12(F)**

*Bryan v. Knapp* (1986), 21 Ohio St. 3d 64, 488 N.E.2d 142

*State v. Fanning* (1982) 1 Ohio St.3d 19, 437 N.E.2d 583

4. The court may *orally state* its findings on the record rather than reducing them to writing. In that event, the court should issue a written order stating the motion is overruled for the reasons set forth on the record.

*State v. Thompson* (12<sup>th</sup> Dist. Butler County), 1993 WL 61764

5. However, the trial court's error in failing to provide its essential findings of fact is not prejudicial where the record provides the appellate court with a sufficient basis to review the assignments of error.

*Bryan v. Knapp* (1986), 21 Ohio St. 3d 64, 65, 488 N.E.2d 142

**E. GROUNDS FOR MOTION**

1. A motion to suppress in driving under the influence cases can be based on one or more grounds including:
  - a. *Constitutional grounds* related to any of the following:
    - i. Fourth Amendment right against unlawful searches and seizures and Fourteenth Amendment due process claims
      - (a) Improper stop as well as the length and/or scope of detention,
      - (b) Lack of probable cause to and/or arrest
      - (c) The fruits of a search not subject to a recognized exemption to the warrant requirement
    - ii. Fifth Amendment right to not be compelled to testify against oneself and Sixth Amendment right to counsel
      - (a) Defendant not advised of *Miranda* warnings
      - (b) Evidence improperly obtained after *Miranda* warnings and/or in violation of right to counsel
  - b. *Nonconstitutional grounds* relating to noncompliance with either or both of the following:
    - i. Statutory and Ohio Department of Health testing regulations
    - ii. Standardized procedures for conducting field sobriety tests (to the extent the results are used to support probable cause to arrest)

2. Traditionally, motions to suppress are reserved for constitutional issues. However, Ohio requires that the admissibility of chemical test results must also be determined by means of a pretrial motion to suppress. If not so challenged, the defendant *waives* the right to object to the admissibility of chemical test results at trial. However, evidentiary objections to chemical tests on issues of competency, relevancy, authenticity, and credibility may still be offered at trial.

*State v. French* (1995), 72 Ohio St.3d 446, 1995-Ohio-32, 650 N.E.2d 887

## F. **THE STOP**

### 1. *CONSTITUTIONAL IMPLICATIONS*

- a. A traffic stop implicates the Fourth and Fourteenth Amendments because “stopping an automobile and detaining its occupants constitutes a seizure within the meaning of those amendments, even though the purpose of the stop is limited and the resulting detention quite brief.”

*Delaware v. Prouse* (1979), 440 U.S. 648, 654, 99 S.Ct. 1391, 59 L.Ed.2d 660, citing *United States v. Brignoni-Ponce* (1975), 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (striking down stop where officer observed no violations or suspicious activity but stopped vehicle to check the driver’s license and vehicle registration)  
*Berkemer v. McCarty* (1984), 468 U.S. 420, 436, 104 S.Ct. 3138, 3148, 82 L.Ed.2d 317 (a stop significantly curtails the “freedom of action” of the driver and passengers since it is generally a crime to ignore an officer’s signal to stop, or having been stopped, to drive away without permission)

- b. The Fourth Amendment imposes a *standard of reasonableness* upon the exercise of discretion by government officials which usually requires at a minimum that the facts upon which an intrusion is based be capable of measurement against an *objective* standard, whether this be probable cause or a less stringent test.

*Delaware v. Prouse* (1979), 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660

- c. If the stop is deemed unconstitutional, the evidence obtained pursuant to it must be suppressed as “fruit of the poisonous tree.”

*Wong Sun v. United States* (1963), 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441

### 2. *TYPES OF TRAFFIC STOPS*

There are different types of traffic stops. The main ones are the noninvestigatory traffic and the investigatory stops.

3. *NONINVESTIGATORY TRAFFIC STOPS*

- a. The most common stop is a *noninvestigatory traffic stop*. It occurs when an officer observes a violation of the traffic code and effectuates a stop.

*State v. Moeller* (12<sup>th</sup> Dist. Butler County), 2000 WL 1577287, citing *Whren v. United States* (1996), 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89  
*State v. Downs* (6<sup>th</sup> Dist. Wood County), 2004-Ohio-3003, ¶11-12

- b. This type of stop may be supported by *probable cause* – that is, a reasonable ground for belief of guilt, **or** by the lesser standard of *reasonable and articulable suspicion*. Whenever law enforcement witnesses a traffic violation there is probable cause to make a stop. [examples: excessive or slow speed, failure to obey traffic device or sign, weaving, lane violation, and equipment and license plate violations]

*State v. Mays*, 119 Ohio St. 3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶23-34 (A trooper who observed defendant twice cross the white edge had both reasonable and articulable suspicion and probable cause for the stop. “[A]n officer who has probable cause necessarily has a reason and articulable suspicion, which is all the officer needs to justify a stop.”)

- c. There does *not* need to be a conviction on the underlying offense to justify the stop. It is only necessary that the officer have a *reasonable belief* that a violation was committed.

See e.g., *State v. Burnett* (1<sup>st</sup> Dist. Hamilton County), 2012-Ohio-1631, ¶8 (“the fact that Burnett could not ultimately be convicted of violating the lane-change ordinance is not determinative of whether the officers had acted reasonably in stopping and citing her for the offense”)

- d. DE MINIMUS VIOLATIONS

*Any* traffic violation – even a *minor* one – can form a sufficient basis upon which to stop a vehicle.

*City of Strongsville v. Spoonamore* (8<sup>th</sup> Dist. Cuyahoga County), 2006-Ohio-4884, ¶12 (“any argument relating to the ‘minor’ nature of a traffic violation necessarily concedes that a violation has occurred”)

- e. PRETEXTUAL STOP

As long as a legitimate basis for the stop exists, the *subjective intent* or *motivation* of the officer does not invalidate it.

*Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89  
*Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 1996-Ohio-431, 665 N.E.2d 1091

Query: Should racial profiling render an otherwise valid search impermissible? In *State v. Bella-Mancilla*, the minority opinion argued that it should. The defendant claimed he was singled out for “driving while Mexican” in a marked lanes violation stop. The minority said a court could conclude, under the Ohio

Constitution Article 1, Section 14, that even if reasonable suspicion exists, pretextual racial profiling is an impermissible basis for a seizure requiring application of the exclusionary rule. The majority disagreed and the Ohio Supreme Court declined to hear the case on appeal.

***State v. Bella-Mancilla* (10<sup>th</sup> Dist. Franklin County), 2017-Ohio-8003, appeal not allowed, 152 Ohio St.3d 1424, 2018-Ohio-923, 93 N.E.3d 1005**

f. OFFICER'S MISTAKE OF LAW

An officer may be mistaken in fact or law in making a stop. The Fourth Amendment tolerates *reasonable mistakes*. But the officer must have a particularized and objective basis to suspect the defendant broke the law.

***Heien v. North Carolina* (2014), 135 S.Ct. 530, 539, 190 L.Ed.2d 475 (The officer issued a warning ticket to defendant for a broken brake light which led to his arrest for trafficking in cocaine. The officer was mistaken because the defendant's other brake light was working satisfying the law. The Court said, "The Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or law—must be objectively reasonable. We do not examine the subjective understanding of the particular officer involved.")**

**See also *State v. Fisher* (3d Dist. Auglaize County), 2017-Ohio-5485 (officer made reasonable mistake of law that anyone in park after hours was trespassing)**

g. NOT EVERY NONINVESTIGATORY STOP IS VALID

Many cases can be found where the predicate stop was not valid and resulted in the granting of a motion to suppress.

**See *Weiler & Weiler, Ohio Driving Under the Influence Law*, §§9:24-9:28 (2023-2024), for examples**

4. THE INVESTIGATORY TRAFFIC STOP

- a. The second major type of traffic stop is an *investigatory traffic stop*. It is sometimes called a non-traffic violation stop and has also been referred to as "the motorized equivalent of a *Terry* stop."

***State v. Downs* (6<sup>th</sup> Dist. Wood County), 2004-Ohio-3003, ¶12**

- b. The investigative stop exception to the Fourth Amendment permits an officer to stop a driver when the officer has a *reasonable suspicion* based on *specific, articulable facts* that an offense has been or is being committed.

***State v. Slider* (11<sup>th</sup> Dist. Portage County), 2008-Ohio-2318, ¶17, citing *Terry v. Ohio*, (1968), 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889**

***State v. Downs* (6<sup>th</sup> Dist. Wood County), 2004-Ohio-3003, ¶12, citing *Delaware v. Prouse* (1979), 440 U.S. 640, 673, 99 S.Ct. 1391, 59 L.Ed.2d 660**

- c. Whether the officer had reasonable suspicion requires an evaluation of the *totality of the circumstances* surrounding the stop.

***State v. Freeman* (1980), 64 Ohio St.2d 291, 414 N.E.2d 1044, 18 O.O.3d 472,**

paragraph one of the syllabus, cert. denied by *Freeman v. Ohio* (1981), 454 U.S. 822, 102 S.Ct. 107, 70 L.Ed. 94

- d. In an investigatory stop, the officer does not necessarily observe a specific traffic violation but has sufficient reason to believe a criminal act has occurred or is occurring and the officer seeks to confirm or refute his suspicion.

*State v. Moeller* (12<sup>th</sup> Dist. Butler County), 2000 WL 1577287

- e. Again, the standard is an *objective* one. The officer must be able to point to *specific, articulable facts* that, along with the rational inferences from the facts, reasonably warrant the intrusion.

*State v. Andrews* (1991), 57 Ohio St.3d 86, 87, 565 N.E.2d 1271, cert. denied by *Andrews v. Ohio* (1991), 501 U.S. 1220, 111 S.Ct. 2833, 115 L.Ed.2d 1002, and citing *Terry v. Ohio* (1968), 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L.Ed.2d 889

- f. Reasonable suspicion, regardless of the type of stop, is a *lesser standard* than that of probable cause required to make an arrest.

*State v. Evans* (1993), 67 Ohio St.3d 405, 411, 618 N.E.3d 162

- g. Some examples of investigatory stops involve persons seen driving after being observed to be intoxicated, “substantial” weaving within lane, slow speed, impeding traffic, suspicious movements in an area known for drug transactions, and stopping or parking in a commercial area after hours.

See Weiler & Weiler, *Ohio Driving Under the Influence Law*, § 9:30 (2023-2024)

- h. THE INVESTIGATORY STOP—POLICE BROADCASTS OR BULLETINS

The United States Supreme Court states that law enforcement’s conduct in relying on a flyer or bulletin is subject to a standard of reasonableness, balancing the nature and quality of the intrusion against the importance of the governmental interest used to justify the intrusion.

It provided a *three-step analysis* for assessing the propriety of the stop:

- i. The flyer or bulletin must be issued from a police source possessing an articulable and reasonable suspicion of unlawful activity;
- ii. The flyer or bulletin must be objectively reviewed by the law enforcement recipients of the information to determine if they can rely upon it; and
- iii. The stop must not be significantly more intrusive than would have been permitted the issuing department.

*United States v. Hensley* (6<sup>th</sup> Cir. Ky. 1985), 469 U.S. 221, 229, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985), on remand, (6<sup>th</sup> Cir. 762 F.2d 1012)

See also *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 1999-Ohio-68, 720

**N.E.2d 507, paragraph one of the syllabus (when officer makes a stop relying solely on a dispatch, the state must prove the facts precipitating the dispatch justified a reasonable suspicion of criminal activity)**

Note – where an officer *independently* observes a traffic violation or impaired driving before initiating the stop, the reliability of the broadcast is irrelevant.

See e.g., *City of Brecksville v. O’Toole* (8<sup>th</sup> Dist. Cuyahoga County), 1998 WL 474186

i. INVESTIGATORY STOP—CITIZEN AND INFORMANT TIPS

- a. In *Maumee v. Weisner*, the Ohio Supreme Court upheld a stop based upon call from a motorist who was following the defendant’s vehicle and provided its make, color, and license plate number and described it as “weaving all over the road.” The caller identified himself to dispatch and gave his name and phone numbers. The Court said that (1) when an officer making an investigatory stop relies solely upon a police dispatch, the state must demonstrate that the facts precipitating the stop justified a reasonable suspicion of criminal activity and (2) a telephone tip, without more, can create reasonable suspicion justifying the stop where the tip has *sufficient indicia of reliability*.

*Maumee v. Weisner*, 87 Ohio St.3d 295, 1999-Ohio-68, 720 N.E.2d 507

- b. In *State v. Tidwell*, a trooper had the vehicles involved in an accident pull into a nearby Speedway lot. A customer in the Speedway doorway called him about another vehicle in the lot, yelling “Hey, you need to stop that vehicle. That lady is drunk.” The customer left the store and remained unknown and unnamed.

The officer gestured for the woman to stop and asked her to roll down her window, turn off the car, and hand him the car key. He noted a strong odor of alcohol in the vehicle and that the defendant’s eyes were bloodshot and glassy. The defendant was slow in producing her license and maintained a blank stare. She denied drinking but had slow, slurred speech and was sometimes unintelligible.

The Ohio Supreme Court assessed the reasonableness of the stop by considering the totality of the circumstances. It concluded the stop was reasonable as: (1) the citizen, although unidentified, initiated face-to-face contact with the officer making no attempt to conceal his identity and without knowing whether his identity might later be discovered; (2) the tip was communicated contemporaneously with the crime’s occurrence making the informant recognize that the immediate reaction from the officer would prove him right or wrong; (3) because the tip was communicated contemporaneously, the encounter gave the office no apparent cause to question the informant’s motive; (4) to the extent the officer’s training and experience showed the defendant’s blank stare was consistent with impaired driving, the officer’ observation lent credence to the customer’s report; and (5) the officer effectuated the stop only after

watching the defendant drive at an unusually slow speed towards a heavy traffic road. The Court concluded the stop was reasonable.

*State v. Tidwell*, 65 Ohio St.3d 57, 2021-Ohio-2072, 2021-Ohio-2072

j. INVESTIGATORY STOP—RANDOM PLATE CHECKS

An officer may run a random plate check on a vehicle even without reasonable, articulable suspicion that an offense has occurred or is occurring. There is no expectation of privacy regarding the plate.

*Kansas v. Glover (2020)*, 140 S.Ct. 1183, 206 L.Ed.2d 412. Deputy on routine patrol had reasonable suspicion to stop truck where its plate came back to the defendant who had a revoked license in the State of Kansas. States have a vital interest in ensuring that only those qualified to do so are permitted to operate a vehicle and that licensing requirements are being observed. Here, the officer drew the “commonsense inference” that the defendant was likely the driver of the vehicle, providing reasonable suspicion for the stop. The fact that the registered owner of a vehicle is not always the driver did not negate the reasonableness of the officer’s inference. Further, the officer possessed no exculpatory evidence (such as knowing the owner is in his mid-sixties although the driver appears to be in her mid-twenties) to rebut the inference.

*State v. Simon* (11<sup>th</sup> Dist. Stark County), 2011-Ohio-2360, quoting *Cardwell v. Lewis* (1974), 417 U.S. 583, 590, 94 S.Ct. 2494, 41 L.Ed.2d 325, 60 Ohio Op.2d 69 (“One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one’s residence or the repository of personal effects. A car has little capacity for escaping public scrutiny.”)  
See also *City of Rocky River v. Saleh* (8<sup>th</sup> Dist. Cuyahoga County), 139 Ohio App.3d 313, 743 N.E.2d 944

k. INVESTIGATORY STOP—SOBRIETY CHECKPOINTS

Although constitutionally implicated seizures, checkpoints have been upheld as long as they involve no more than an initial stop and the associated preliminary questioning and observation by checkpoint officers. The trial court must perform a *balancing test* involving several factors:

- i. There must be support in the record of a grave governmental concern, such as to prevent accidents occasioned by drunk driving,
- ii. The checkpoint program must reasonably advance the state interest, and have proper guidelines and limits on police discretion in selecting vehicles to be stopped, *and*
- iii. The degree of intrusion on the motorist must be slight.

*Michigan Department of State Police v. Sitz* (1990), 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (upholding Michigan’s highway sobriety checkpoint program under which all vehicles passing through checkpoints at selected sites were stopped and drivers briefly examined for signs of intoxication)

- iv. A checkpoint is constitutionally invalid where it was not operated solely to detect drunken drivers but as a pretext to stop drivers who

had not violated traffic laws to question them in an attempt to gain reasonable suspicion to search cars for narcotics. The program, set up as a trap for drivers attempting to exit prior to the advertised checkpoint, did not effectively serve a government purpose outweighing its intrusiveness.

*United States v. Huguenin* (6<sup>th</sup> Cir. 1998), 154 F.3d 547, 1998 FED App. 0256P

- v. Checkpoints are invalid when they are not truly random or fail to establish and follow established guidelines.

See e.g., *State v. Stoneking* (7<sup>th</sup> Dist. Belmont County), 2001-Ohio-3206 (vehicle safety check based on an indecipherable log and with no explanation or verification)

*State v. Blackburn* (Clark County 1993), 63 Ohio Misc. 2d 211, 620 N.E. 2d 319 (state did not establish any guidelines for site selection and publicity were established and followed, or that the seizures were sufficiently time-limited)

#### 5. *NONSTOP "STOPS"*

Although approaching a *stationary* vehicle is not a literal stop, the officer's intrusion must be justified by reasonable suspicion of unlawful activity or other exigent circumstances.

*State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, cert. denied by *Bobo v. Ohio* (1988), 488 U.S. 910, 109 S.Ct. 264, 102 L.Ed.2d 252

- a. Officers on routine patrol can approach and investigate occupants of stationary vehicles.
- b. Such circumstances are labeled *consensual encounters* and unlike investigatory stops or arrests, Fourth Amendment guarantees are not implicated.

*Florida v. Bostik* (1991), 501 U.S. 429, 111 S.Ct. 2382, 2386, 115 L.Ed. 389

- c. An overlapping type of police encounter is where an officer acts in a *community caretaking function*. If an officer is legitimately engaged in such a function, an encounter with a citizen may be justified even in the absence of criminal activity.

*State v. Norman* (3d Dist. Auglaize County 1999), 136 Ohio App.3d 46, 53, 109-Ohio-961, 735 N.E.2d 953

*Cady v. Dombrowski* (1973), 413 U.S. 433, 447, 93 S.Ct. 2523, 37 L.Ed.2d 796

## G. DURATION AND SCOPE OF THE STOP

### 1. TWO STAGES BEFORE ARREST

Law enforcement encounters generally involve *two* stages before arrest:

- a. The *stop*, and
- b. The *investigative detention* following the stop

While the initial stop may be valid, a further detention of the suspect may not be. There may be issues involving the duration of the stop, its scope, or both.

### 2. DURATION OF STOP

In general, the duration of the stop is limited to the *time necessary to effectuate the purpose of the stop*, including the time necessary to run a computer check of the person's license, registration, and plates.

*Delaware v. Prouse* (1979), 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660

### 3. CONTINUATION OF STOP

The stop may continue longer when *additional facts* are encountered that give rise to *reasonable, articulable suspicion of criminal activity* beyond that which caused the initial stop.

See also *State v. Bennett* (8<sup>th</sup> Dist. Cuyahoga County), 2006-Ohio-4274, appeal not allowed, 114 Ohio St.3d 1425, 2007-Ohio-2904, 868 N.E.2d 679, cert. denied by *Bennett v. Ohio* (2007), 552 U.S. 1002, 128 S.Ct. 517, 169 L.Ed.2d 360 (reasonable suspicion involves some minimal level of objective level of objective justification for making a stop -- something more than an unparticularized suspicion or hunch but less than the level of suspicion required for probable cause)

### 4. DOG SNIFFS

- a. A police dog sniff conducted during a lawful traffic stop that reveals no information other than the location of a substance the person has no right to possess does not violate the Fourth Amendment.

*Illinois v. Caballes* (2005), 543 U.S. 405, 125 S.Ct. 844, 160 L.Ed.2d 842

- b. However, in the absence of reasonable suspicion, police may not *extend* an otherwise completed stop to conduct a dog sniff.

*Rodriguez v. U.S.* (2015), 135 S.Ct. 1609, 191 L.Ed.2d 492

## H. PROBABLE CAUSE TO ARREST

1. The term "arrest" is derived from the French term "arreter," which means to "stop" or "stay," and signifies the restraint of a person. It occurs when the following four elements are involved:

- a. the intent to arrest,
- b. under real or pretended authority,
- c. accompanied by an actual or constructive seizure or detention of the person,
- d. which is so understood by the person arrested

***State v. Barker* (1978), 53 Ohio St.2d 135, 37 N.E.2d 1324, 7 O.O.3d 213, cert. denied, (1978) 439 U.S. 913, 99 S.Ct. 285, 58 L.Ed.2d 260**

***State v. Darrah* (1980), 64 Ohio St. 2d 22, 412 N.E.2d 1328, 18 O.O. 3d 193 (the action of state trooper in stopping truck driver and issuing citation for failure to stop at weigh station did not constitute arrest)**

2. It is important to determine *when* the arrest occurred. In *Cleveland v. Oles*, the Ohio Supreme Court addressed the certified question of whether the United States and Ohio constitutions require law enforcement to provide *Miranda* warnings to a suspect who is removed from his vehicle and placed in the front seat of a police vehicle for questioning. The Court declined to establish a bright-line test but held that such questioning does *not* rise to the level of a custodial interrogation where:

- a. the intrusion is minimal,
- b. the questioning and detention are brief, and
- c. the interaction is nonthreatening or nonintimidating.

The relevant inquiry is not whether a reasonable person would not have felt free to leave, but *whether he or she would have understood himself to be in custody*.

***Cleveland v. Oles*, 152 Ohio St.3d 1, 2017-Ohio-5834, 92 N.E.3d 810**

3. In order to be valid, an arrest must be supported by *probable cause* which requires a determination of:

. . . whether, *at the moment the arrest was made*, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed the offense.

***Beck v. State of Ohio* (1964), 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964)**

4. *In making such determination, the court must look at the totality of the facts and circumstances* surrounding the arrest.

***State v. Homan*, 89 Ohio St.3d 421, 427, 2000-Ohio-212, 732 N.E.2d 952, 89 Ohio St.3d 421, 427, 2000-Ohio-212, 732 N.E.2d 952, superseded by statute on other grounds as stated in *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, 863 N.E.2d 155, citing *Beck v. Ohio* (1964), 379 U.S. 89, 91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142**

***State v. Miller* (11<sup>th</sup> Dist. Lake County 1997), 117 Ohio App.3d 750, 691 N.E.2d 703**

***State v. Brandenburg* (1987), 41 Ohio App.3d 109, 534 N.E.2d 906**

5. An officer shall arrest and detain, until a warrant be obtained, a person found violating within the officer's territorial jurisdiction a state law or municipal ordinance.

**RC 2935.03(A)**

- a. The term "found violating" means that the offense was committed within the officer's presence. This is often referred to as the "view requirement."

*Hoover v. Garfield Heights Municipal Court* (1986), 802 F.2d 168, cert. denied, (1987) 480 U.S. 949, 107 S.Ct. 1610, 94 L.Ed.2d 796

- b. The word "view" is not to be taken literally, as the propriety of the arrest is not restricted to the visual observation of the offense. The officer may rely on all his physical senses in determining whether an offense has been committed.

*State v. Allen* (1981), 2 Ohio App.3d 441, 442 N.E.2d 784

- c. There are exceptions to the requirement that a misdemeanor offense be committed in the presence of the officer prior to affecting a warrantless arrest. The most common example are accidents where the defendant admits to operating the vehicle and visibly appears to be under the influence.

*Oregon v. Szakovits* (1972), 32 Ohio St.2d 271, 291 N.E.2d 742, 61 O.O.2d 496 (Involving two separate accidents where officers arrived afterwards. On the scene both motorists admitted to driving and appeared to be under the influence. On the basis of what they saw and heard; the officers could reasonably conclude each had been operating a vehicle shortly before the accidents.)

- d. To constitute a valid, warrantless arrest:

. . . what is required . . . is not that the arresting officer have absolute knowledge that a misdemeanor is being committed in the sense of possessing evidence sufficient to support a conviction after trial, but, rather, that he be in a position to form a reasonable belief that a misdemeanor is being committed, based upon evidence perceived through his own senses.

*City of Columbus v. Lenear* (1984), 16 Ohio App.3d 466, 476 N.E.2d 1085, paragraph one of the syllabus

6. Numerous factors support probable cause to arrest coupled with an officer's previous experience in dealing with drunken drivers. A frequently cited list is:
  - a. The time and day of the stop (Friday or Saturday night as opposed to, e.g., Tuesday morning)
  - b. The location of the stop (whether near establishments selling alcohol)
  - c. Any indicia of erratic driving before the stop that may indicate a lack of coordination (speeding, weaving, unusual braking, etc.)
  - d. Whether there is a cognizable report that the driver may be intoxicated
  - e. The condition of the suspect's eyes (bloodshot, glassy, glazed, etc.)

- f. Impairments of the suspect's ability to speak (slurred, overly deliberate speech, etc.)
- g. The odor of alcohol coming from the interior of the car, or, more significantly, on the suspect's person or breath
- h. The intensity of the odor, as described by the officer ("very strong," "strong," "moderate," slight," etc.)
- i. The suspect's demeanor (belligerent, uncooperative, etc.)
- j. Any actions by the suspect after the stop that might indicate lack of coordination (dropping keys, falling over, stumbling, fumbling for wallet, etc).
- k. The suspect's admission of alcohol consumption, the number of drinks had, and the amount of time in which they were consumed, if given.

***State v. Evans* (11<sup>th</sup> Dist. Geauga County 1998), 127 Ohio App.3d 56, 711 N.E.2d 761 (Although this case dealt with the propriety of prolonging the investigative detention, it is useful in evaluating probable cause to arrest.)**

7. In addition to the factors listed above, *the defendant's performance* on standardized field sobriety tests may be considered for purposes of probable cause to arrest.

- a. Also, the defendant's *refusal to take the tests* may also be factored into the probable cause to arrest analysis.

***State v. Wardle* (7<sup>th</sup> Dist. Mahoning County), 2017-Ohio-9238**

- b. RC 4511.19 states that *substantial compliance* with the testing protocol, as shown by *clear and convincing evidence*, is required:

(D)(4)(b) In any criminal prosecution \* \* \* for a violation of division (A) or (B) of this section, \* \* \* if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by *clear and convincing evidence* that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, *including, but not limited to*, any testing standards then in effect that were set by the national highway safety administration, all of the following apply:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution\*\*\*

(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate. (emphasis added)

- c. There are other issues surrounding the admissibility of field sobriety tests including whether and in what manner the NHTSA manual is to be admitted. Since the NHTSA manual does not carry the force of law as the Administrative Code does, the state must produce some evidence of the testing standards.

***State v. Bish* (7<sup>th</sup> Dist. Mahoning County), 191 Ohio App.3d 661, 2010-Ohio-6804, ¶44, 947 N.E.2d 257**

- d. It is generally held that what is required is competent testimony regarding the manual or relevant portions of it.

***State v. Nickelson* (6<sup>th</sup> Dist. Huron County), 2001 WL 1028878**

***State v. Brown* (11<sup>th</sup> Dist. Trumbull County), 166 Ohio App.3d 638, 2006-Ohio-1172, 852 N.E.2d 1228**

- e. Frequently, reviewing courts find any error in the admission of field sobriety tests to be harmless in light of other evidence adduced.

***State v. Homan*, 89 Ohio St.3d 421, 427, 2000-Ohio-212, 732 N.E.2d 952, superseded by statute on other grounds, *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251**

***State v. Russo* (9<sup>th</sup> Dist. Medina County), 2009-Ohio 6914**

- f. Further, even where the test results themselves are suppressed for a lack of compliance with applicable standards, the officer's *observations* made while administering "nonscientific tests," the walk-and-turn and one-leg-stand, are still admissible at trial as "lay testimony of intoxication."

***State v. Schmitt*, 101 Ohio St.3d 79, 2004-Ohio-37, 801 N.E.2d 446, ¶10**

***Wickliffe v. Kirara* (11<sup>th</sup> Dist. Lake County), 2007-Ohio-2304, ¶19 (defendant's inability to focus on stimulus during HGN was a physiological factor about which the officer could testify)**

- g. The *results* of FST's include the officer's opinion as to whether the person passed or failed the test, the number of clues demonstrated, and the statistical likelihood that the person was under the influence of alcohol and had a BAC over the legal limit. Conversely, *observations* include whether the defendant was unable to focus steadily on the stimulus or swayed during the test, which the officer may testify about even if the test was not administered in substantial compliance with testing standards. So, observations that the defendant could not hold himself steady, lost his balance, stumbled or swaggered when walking, stepped off the line, could not follow simple directions, or used his arms for balance, are all admissible as *lay evidence of intoxication* even though the results themselves are inadmissible.

**See *Columbus v. Bickis* (10<sup>th</sup> Dist. Franklin County), 2010-Ohio-3208, ¶16**

## I. SEARCHES

1. The Fourth Amendment provides the “right of people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures. In order to preserve this right, searches are to be conducted pursuant to a warrant supported by probable cause and issued by an independent judicial officer. There are certain exceptions commonly encountered in OVI cases.

### 2. AUTOMOBILE EXCEPTION

- a. There is an *automobile exception* to the warrant requirement when there is probable cause to believe the automobile contains contraband or evidence of criminal activity. The exception is limited and justified by the exigency created by a vehicle’s mobility.

*Carroll v. U.S.*, 267 U.S. 132, 147, 45 S.Ct. 280, 69 L.Ed. 543, 39 A.L.R. 790

- b. The reasoning is that vehicles are open to the public view and are subject to a great degree of governmental regulation.

*Cardwell v. Lewis* (1974), 417 U.S. 583, 590, 94 S.Ct. 2494, 41 L.Ed.2d 325

- c. Officers who have legitimately stopped an automobile and have probable cause to believe contraband is concealed somewhere inside it may conduct a warrantless vehicle search as thoroughly as could be authorized by warrant.

*United States v. Ross* (1982), 456 U.S. 798, 823, 102 S.Ct. 2157, 72 L.Ed.2d 572

### 3. ODOR OF MARIJUANA

- a. The smell of marijuana alone by a person qualified to recognize its odor is sufficient to establish probable cause for a search.

*United States v. Ross* (1982), 456 U.S. 798, 825, 102 S.Ct. 2157, 72 L.Ed.2d 572. (If probable cause justifies the search, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. probable cause to believe the automobile contains contraband or evidence of criminal activity. The exception is limited and justified by the exigency created by a vehicle’s mobility.

*U.S. v. Ross.*, 456 U.S. 798, 825, 102 S.Ct. 2157, 72 L.Ed. 2d 572  
*State v. Welch*, 18 Ohio St.3d 88, 480 N.E.2d 384

- b. There are limits on the scope of the search. The odor of burnt marijuana in the passenger compartment of a vehicle does not in itself justify a search of the trunk.

*State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985

- c. Query: How will the changing law on marijuana affect these issues?

### 3. PLAIN VIEW

- a. An officer may seize incriminating evidence in *plain view* in a vehicle if:
  - i the initial intrusion affording the officer plain view was lawful,
  - ii discovery of the evidence was inadvertent, and
  - iii the incriminating nature of the evidence was immediately apparent.

***Texas v. Brown* (1983), 460 U.S. 730, 739, 103 S.Ct. 1515, 75 L.Ed.2d 502**

- b. The incriminating nature of an object is immediately apparent when an officer has probable cause to associate it with criminal activity. Officers may rely on their specialized knowledge, training, and experience in ascertaining probable cause to satisfy the immediately apparent requirement.

***State v. Gordon* (1986), 25 Ohio St.3d 301, 496 N.E.2d 925, paragraph four of the syllabus**

### 4. CONSENT

- a. A search conducted pursuant to *valid consent* is constitutionally permissible.

***Schneekloth v. Bustamonte* (1973), 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854**

- b. The state must demonstrate consent by clear and positive evidence that consent was “freely and voluntarily” given.

***State v. Posey* (1988), 40 Ohio St.3d 420, 427, 534 N.E.2d 61**

### 5. SEARCH INCIDENT TO ARREST

- a. Another exception is a search incident to a lawful arrest.

***Agnello v. United States* (1925), 269 U.S. 20, 30, 46 S.Ct. 4, 70 L.Ed. 145**

- b. This exception is based on the interests of officer safety and evidence preservation.

***United States v. Robinson* (1973), 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427**

- c. Police may search a vehicle incident to an occupant’s arrest only if the person is within reaching distance of the passenger compartment at the time of search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.

***Arizona v. Gant* (2009), 556 U.S. 332, 350, 129 S.Ct. 1710, 173 L.Ed.2d 485**

d. INVENTORY SEARCHES

- i. It is lawful for police to conduct an inventory search of an automobile that is impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the vehicle and its contents.

*South Dakota v. Opperman* (1976), 428 U.S. 3643, 3099, 96 S.Ct. 3092, 49 L.Ed.2d 1000

- ii. A routine inventory search is not unreasonable when performed pursuant to standard police practice and the evidence does not demonstrate that it was merely a pretext for an evidentiary search.

*South Dakota v. Opperman* (1976), 428 U.S. 3643, 96 S.Ct. 3092, 49 L.Ed.2d 1000

- iii. An inventory search of the vehicle's trunk does not contravene the Fourth Amendment.

*State v. Robinson* (1979) 58 Ohio St.2d 478, 480, 12 Ohio Op.3d 394, 391 N.E.2d 317, cert. denied by *Robinson v. Ohio* (1979) 448 U.S. 942, 100 S.Ct. 297, 62 L.Ed.2d 309

- iv. An inventory search becomes problematic when it is turned into a purposeful means of discovering evidence of a crime

**J. FIFTH AMENDMENT PROTECTIONS**

1. The Fifth Amendment to the United States Constitution provides "No person . . . shall be compelled in any criminal case to be a witness against himself."
2. Prior to any custodial interrogation, the suspect must be warned of his right to remain silent, the fact that any statements made by him can be used against him, that he has a right to have an attorney present for questioning, and that an attorney will be appointed for him if he cannot afford one.

*Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974

3. *Custodial interrogation* refers to questions initiated by an officer after the defendant has been taken into custody or deprived of his freedom in some meaningful way.

*Oregon v. Mathiason* (1977), 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 317

4. Questioning at the scene incident to traffic stop or accident is generally *not* custodial in nature.

*State v. Buchholtz* (1984), 11 Ohio St.3d 24, 464 N.E.2d 1222

5. But where an individual, although not placed under arrest, is treated in a manner that renders him in custody for practical purposes (eg. being handcuffed and placed in the back of police cruiser), he is entitled to *Miranda* warnings.

*State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, cert. denied by *Ohio v. Farris* (2007), 549 U.S. 1252, 127 S.Ct. 1371, 167 L.Ed.2d 159 (Officer patted down defendant, took his car keys, told him to enter the cruiser and that he was going to search him due to a marijuana smell, such that defendant was not free to leave the scene.)  
But see *Cleveland v. Oles*, 152 Ohio St.3d.1, 2017-Ohio-5834, 92 N.E.3d 810 (declining to establish a bright-line rule)

6. Recall that the relevant inquiry is “whether a reasonable person would have understood himself or herself to be ‘in custody.’”

*Cleveland v. Oles*, 152 Ohio St.3d. 1, 2017-Ohio-5834, 92 N.E.3d 810

#### 7. *Miranda* warning and physical evidence

- a. The general rule is that *Miranda* protects against violations against self-incrimination (statements) and not to physical evidence seized as a result of the statement.

*United States v. Patance* (2004), 542 U.S. 630, 124 S.Ct. 2620, 159 L.Ed.2d 667

- b. However, the Ohio Supreme Court has held that Article I, Section 10 of the Ohio Constitution provides greater protection than the Fifth Amendment to the United States Constitution and requires that physical evidence obtained the direct result of custodial statements made without a *Miranda* warning should also be excluded.

*State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, cert. denied by *Ohio v. Farris* (2007), 549 U.S. 1252, 127 S.Ct. 1371, 167 L.Ed.2d 159 (The odor of burnt marijuana in the passenger compartment of a vehicle did not by itself justify search of the trunk.)

## K. **SIXTH AMENDMENT PROTECTIONS**

1. In all criminal prosecutions, the accused is entitled to assistance of counsel for his defense and evidence obtained in derogation of such right must be suppressed.
2. Once the defendant asks for counsel, further interrogation is prohibited unless the defendant himself initiates further conversation or knowingly and voluntarily waives his right to counsel.

*Oregon v. Bradshaw* (1983), 462 U.S. 1039, 1035 S.Ct. 2830, 77 L.Ed.2d 405

3. The defendant’s right to counsel *does not* apply to chemical tests to determine alcohol level or sobriety.

*Fairborn v. Mattachione* (1995), 72 Ohio St.3d 345, 1995-Ohio-207, 650 N.E.2d  
See also *City of Richmond Heights v. Myles* (8<sup>th</sup> Dist. Cuyahoga County), 2006-Ohio-542

## L. CHEMICAL TESTS

1. Admissibility of chemical test results may have both constitutional and nonconstitutional implications.
2. The initial inquiry is the *propriety of the method* by which the test was taken. Obtaining a chemical test of a person's bodily substance implicates the Fourth Amendment and due process.

*Schmerber v. California* (1966), 384 U.S. 757, 86 S. Ct. 1826, 16 L.Ed. 2d 908

3. In Ohio, a defendant's chemical test can be obtained in one of seven manners:

a. *Implied consent* – there are three types of implied consent

- i. Consent as most commonly encountered under RC 4511.191(A)(2) – the defendant is arrested for OVI, the officer reads the BMV 2255 warning, and the defendant agrees to take test (note that a *constructive arrest* may arise in accident situations where the defendant is taken to a hospital for treatment)
- ii. Dead or unconscious person—RC 4511.191(A)(4)
- iii. Forced blood draw under RC 4511.191(A)(5)(a)—applicable to certain repeat OVI offenders.

**The constitutional validity of RC 4511.191(A)(5)(a) is doubtful in light of *Birchfield v. North Dakota* (2016), 136 S.Ct. 2160, 195 L.Ed.2d 560 (holding, inter alia, that laws imposing criminal sanctions for a defendant's failure to submit to a blood test violate the Fourth Amendment)**

- b. *Express consent* – the person is asked by law enforcement to submit to a chemical test and voluntarily agrees to do so. Usually arises in the context of motor vehicle accidents. Whether the consent is voluntary is a question of fact determined by the totality of the circumstances. This must be demonstrated by clear and convincing evidence.

*Schneckloth v. Bustamonte* (1973), 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed. 2d 854.

- c. *Warrant* – RC 4511.19(D)(1)(b) authorizes the admission of a blood or urine specimen obtained from the defendant pursuant to a search warrant.

- d. *Warrantless search under exigent circumstances* – in *Schmerber v. California*, the United States Supreme Court authorized a warrantless blood draw in an OVI stating, (1) the government must have a clear indication rather than a mere chance that incriminating evidence will be found, (2) there must be a search warrant or exigent circumstances such as the imminent destructions of evidence, and (3) the methods used to extract the evidence must be reasonable and performed in a reasonable manner.

*Schmerber v. California* (1966), 384 U.S. 757, 86 S. Ct. 1826, 16 L.Ed. 2d 908

In *Birchfield v. North Dakota*, the Court held that the natural metabolism of alcohol in the blood does not present a *per se* exigency justifying an exception to the warrant requirement. Rather, exigency is to be determined on a case-by-case basis based upon the totality of the circumstances.

***Birchfield v. North Dakota* (2016), 136 S.Ct. 2160, 195 L.Ed.2d 560**

- e. *Request from law enforcement to health care provider under RC 2317.02(B)(2)(a) and RC 2317.022* – these statutes provide a means for law enforcement to obtain chemical test results from the accused’s medical provider. The officer must submit a written statement to the health care provider stating an official criminal investigation has begun against the person and request copies of records pertaining to any tests or test results administered to the person to test for the presence of alcohol or drugs in the person’s blood or urine

**But see *State v. Little* (3d Dist. Auglaize County), 2014-Ohio-4871, 23 N.E.2d 237 appeal not allowed, 142 Ohio St.2d 1466, 2015-Ohio-1896, 30 N.E.2d 974, and *State v. Clark* (3d Dist. Hancock County), 2014-Ohio-4873, 23 N.E.2d 218**  
**See also *State v. Saunders* (5<sup>th</sup> Dist. Morrow County), 2017-Ohio-7348 (a suspect has a reasonable expectation of privacy in his medical records regarding the tests to determine the presence or level of alcohol or drugs in his blood, breath, and urine, thus mandating law enforcement compliance with Fourth Amendment warrant requirements)**  
**But see *State v. Gubinich* (9<sup>th</sup> Dist. Medina County), 2022-Ohio-2815 (court applied a “good faith” exception to exclusionary rule)**

- 4. For tests obtained under statutory implied consent or warrant provisions, a court may admit evidence on the concentration of alcohol and/or drugs of abuse in the defendant’s blood, breath or urine as shown by chemical analysis of the same drawn within *three hours* of the time of the alleged violation. But the defendant’s consent to testing must still be obtained within *two hours* of the violation.

**RC 4511.19(D)**

- 5. The admissibility of chemical tests based upon statutory and administrative code requirements, although not rising to the level of constitutional considerations, must be determined by a pretrial motion. This requirement is based upon considerations of judicial economy.
- 6. As such, the failure to challenge the admissibility of the tests will cause their results to be automatically admitted into evidence at trial.

***State v. French* (1995), 72 Ohio St.3d 446, 650 N.E.2d 886**

- 7. The sample of blood, breath or urine must be analyzed by an individual possessing a valid permit issued by the Director of Health, in accordance with the Department of Health Regulations contained in Ohio Administrative Code §3701-53. There are detailed requirements depending upon the type of test taken and the equipment used for the test.

8. The test for admissibility is *substantial compliance* with the administrative regulations. A showing by the state of substantial compliance with the regulations is sufficient for admissibility unless the defendant can prove he or she was *prejudiced* by lack of literal compliance.

*State v. Plummer* (1986), 22 Ohio St.3d 292, 490 N.E.2d 902

9. Moreover, a defendant may not attack the *general reliability* of a legislatively approved breath-testing device as a valid, scientific means of determining blood alcohol levels.

*State v. Vega* (1984), 12 Ohio St.3d 185, 465 N.E.2d 1303

## M. APPEALS

1. An adverse ruling on a motion to suppress is not a final, appealable order for the defense and, as such, the defendant has no direct right of appeal. Conviction and sentence must be imposed prior to an appeal being taken.
2. The entry of a no contest plea does not preclude the defendant from asserting upon appeal that the trial court prejudicially erred in ruling on the motion to suppress. To preserve the issue for appeal, sentence must be imposed on the particular charge the defendant seeks to challenge.

**Criminal Rule 12(I)**

3. The state may appeal as a matter of right from any decision granting a motion to suppress evidence. The appeal must be filed within *7 days* of the date of the entry of the order granting the motion.

**Criminal Rule 12(K)**

4. The state must certify the appeal is not being taken for purposes of delay, and that the ruling on the motion has rendered that state's proof with regard to the pending charge so weak that any reasonable possibility of effective prosecution has been destroyed. Failure of the state to comply will result in dismissal of the appeal.

**Criminal Rule 12(K)**

5. There are three methods of challenging the ruling on a motion to suppress:
  - a. First, the appellant may challenge the trial court's findings of fact.
    - i. In that case the appellate court must determine if the findings are against the manifest weight of the evidence.

*State v. DeJohn* (5<sup>th</sup> Dist. Perry County), 2007-Ohio-163 citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E.2d 583

*State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141

*State v. Guysinger* (1993), 86 Ohio App.3d, 621 N.E.2d 726

- ii. The trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate the credibility of witnesses.

*State v. Clay* (1973), 34 Ohio St.2d 250, 63 Ohio Op.2d 250, 398 N.E.2d 137

- b. Second, the appellant may argue that the trial court failed to apply the appropriate test or correct law to the findings of fact.
- c. Third, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, the appellant may argue that the trial court incorrectly decided the ultimate or final issue raised in the motion to suppress. In reviewing this type of claim, the appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate standard in any given case.

*DeJohn, supra*, citing *State v. Curry* (1994) 95 Ohio App.3d 93, 96, 641 N.E.2d 1172  
*State v. Claytor* (1993) 85 Ohio App.3d 623, 627, 620 N.E.2d 906  
*State v. Guysinger* (1993) 86 Ohio App.3d, 621 N.E.2d 726

**MOTION TO SUPPRESS CHECKLIST**  
**Fourth Amendment Grounds in OVI Cases**

Originally prepared by the late Judge K. J. Montgomery,  
who presided over the Shaker Heights Municipal Court for 27 years.

Updated by Judge Anne Walton Keller, Shaker Heights Municipal Court

Preface by Robert G. Walton, Esq.

Updated August 10, 2023

## Principles and Standards

1. Many motions to suppress evidence in OVI cases contain Fourth Amendment grounds alleging that the defendant was subjected to an unreasonable and warrantless seizure.
2. In most OVI cases there are typically three stages of detention (seizure): (1) the stop of a vehicle, (2) the OVI investigation, and (3) the OVI arrest. The greater the intrusion the more suspicion required to justify it under the Fourth Amendment.
3. The stop of a vehicle typically requires reasonable suspicion that a driver has engaged in a traffic, equipment or registration violation, or some other criminal activity. Expanding the scope of the stop to investigate a driver for OVI requires a reasonable suspicion that the driver's ability to operate a car is noticeably impaired by the influence of alcohol and/or a drug of abuse. An OVI investigation begins when the officer starts to focus on impairment, i.e. he asks the driver to perform "pre-exit" divided attention tests or asks the driver to exit the car to perform SFSTs (Standardized Field Sobriety Tests.) An OVI arrest requires probable cause (more than reasonable suspicion but less than proof beyond a reasonable doubt) that a driver's ability to operate a car is noticeably impaired by the influence of alcohol and/or a drug of abuse.
4. As to each stage of the detention the applicable inquiry is the "totality of facts and circumstances." The trial judge looks at the "whole picture" to determine whether or not the required degree of suspicion has been established by competent and credible evidence. The court should consider the "good and the bad" based upon evidence adduced during direct and cross examination of the witnesses (which often involves the use of a "dash-cam" or "body-cam" videotape and the "NHTSA Manual") and the credibility of the witnesses.
5. When a motion to suppress contains a factual and legal basis, the prosecution has the burden of going forward with the evidence and proving (by a preponderance of the evidence) that the officer acted in a constitutionally lawful manner relative to each ground.
6. Evidence submitted during a suppression hearing usually includes subjective testimony (based on an officer's police reports and memory) and objective evidence such as a "dash-cam" or "body-cam" videotape. The tape will usually contain audio produced by in-car and body microphones. These types of evidence should be carefully compared.
7. The NHTSA Manual (National Highway Traffic Safety Administration DWI Detection & Standardized Field Sobriety Testing Participant Manual, 2023 Edition) contains extensive information concerning the three phases of OVI detection.
  - A. Phase One: "vehicle in motion" and "the stopping sequence".
  - B. Phase Two: "personal contact" (observing the driver and talking to him before he is ordered out of the car) and "the exit sequence".

C. Phase Three: “pre-arrest screening” (SFSTs and observations made during those tests). The Manual sets forth various clues that an officer might look for during each stage of detection. The officer uses his senses (sight, hearing and smell) to detect the clues. Because sensory observations are “extremely short lived” in the memory, the Manual stresses the importance of making written notes in the field and preparing narrative reports shortly after an arrest.

8. SFSTs must be administered in “substantial compliance” with the NHTSA standardized procedures in order for a court to consider the “results” of the tests in determining probable cause or admit evidence of the “results” at trial. The prosecution must prove “substantial compliance” by clear and convincing evidence. Note that probable cause for an OVI arrest can be proven even if the “results” of the tests are deemed inadmissible and/or in the absence of any SFSTs.

9. The NHTSA Manual does not constitute an exhaustive list of all clues that may or may not support an officer’s decision concerning each stage of a detention. However, it does contain a practical guide which will assist a judge in determining from the evidence whether the required degree of suspicion has been established with respect to each stage. An officer may testify that he observed a clue but cross-examination may reveal that the clue did not exist (e.g., testimony about slurred speech contradicted by the audio portion of a videotape).

10. A “checklist” of what clues did or did not exist is a useful tool in determining the “totality of facts and circumstances” surrounding each stage of a detention. The Motion to Suppress Hearing Notes which follow provides such a “checklist.” The checklist is a useful tool for defense lawyers, prosecutors and judges.

**MOTION TO SUPPRESS HEARING NOTES**

**Case Name** \_\_\_\_\_ **v.** \_\_\_\_\_

**Case No.** \_\_\_\_\_ **Hearing Date** \_\_\_\_\_

This packet contains information based on the NHTSA DWI Detection and Standardized Field Sobriety Testing (SFST) Participant Manual, Rev., February, 2023 (“Manual”). It provides guidance concerning the three phases of OVI detection: Phase I, Vehicle in Motion, upon which an officer may claim reasonable suspicion to stop a vehicle; Phase II, Personal Contact, upon which an officer may claim sufficient cause exists to begin an OVI investigation; and Phase III, Pre Arrest Screening, upon which an officer may claim probable cause to arrest a driver for OVI.

**Judge’s Notes:**

**Law:** In order for results of SFSTs to be admitted in evidence, an officer must have substantially complied with the field sobriety test procedures. R. C. 4511.19(D)(4)(b). The prosecution must prove such compliance by clear and convincing evidence.

Hearsay is admissible in a suppression hearing. *Maumee v. Weisner*, 87 Ohio St. 3d 295, 298 (1999)

**PHASE I  
VEHICLE IN MOTION (AND STOPPING SEQUENCE)**

**Summary:** In this phase, the officer is observing a vehicle in motion and how it stops when pulled over, during which time the officer may see initial cues of a possible OVI violation. The officer may simply notice a moving traffic, equipment, or registration violation. Perhaps the vehicle may exhibit unusual driving actions like weaving or slow speed. Driving requires “divided attention” which simply means needing to concentrate on two or more things simultaneously. The OVI driver’s divided attention is impaired. Reactions could be slowed, judgment or vision impaired and coordination may be poor. Based on the conduct (a simple traffic law infraction and/or OVI cues), the officer may develop REASONABLE SUSPICION to make a stop. The stopping sequence may or may not provide indicia of impairment. *Based on reasonable suspicion, the officer may move to Phase II, Personal Contact.*

**SESSION 5  
COMMON VEHICLE IN MOTION CUES**

**Summary:** The following cues have been listed as predictors of impaired driving and are listed beginning at Session 5 pg. 7 of the Manual.

<b>PROBLEMS MAINTAINING PROPER LANE POSITION [Pg. 7]</b>	<b>OBSERVED [✓]</b>	<b>NOTES</b>
Weaving		
Weaving across lane lines		
Straddling a lane line		
Swerving		
Turning with wide radius		
Drifting		
Almost striking object or vehicle		
Other		
<b>SPEED AND BRAKING PROBLEMS [Pg. 8]</b>	<b>OBSERVED [✓]</b>	<b>NOTES</b>
Stopping problems –too far, short or jerky		
Accelerating or decelerating rapidly		
Varying speed		
Slow speed – 10 m.p.h. / under the limit		
Other		

<b>VIGILANCE PROBLEMS [Pg. 9]</b>	<b>OBSERVED</b>	<b>NOTES</b>
	[✓]	
Driving in opposing lanes/wrong way on one-way street		
Slow response to traffic signal lights		
Slow/failure to respond to officer's signals		
Stopping in lane for no apparent reason		
Driving without headlights at night		
Failure to signal/signaling inconsistently with action		
Other		
<b>JUDGMENT PROBLEMS [Pg. 10]</b>	<b>OBSERVED</b>	<b>NOTES</b>
	[✓]	
Following too closely (tailgating)		
Improper or unsafe lane change		
Illegal or improper turn-too fast, jerky, sharp, etc.		
Driving on other than designated roadway-on shoulder, off road entirely, straight in turn only lanes, etc.		
Stopping inappropriately in response to officer		
Inappropriate or unusual behavior (throwing objects, arguing, etc.)		
Appearing to be impaired		
Other		

**STOPPING SEQUENCE**

**Summary:** Based upon the officer's observation of a traffic, registration, or equipment violation, and/or the cues listed above, the officer may have formed REASONABLE SUSPICION TO STOP THE VEHICLE. Cues reinforcing or giving rise to a suspicion of impairment may be exhibited during the driver's response to the command to stop because stopping places additional demands on driver's ability to divide attention. The relevant cues begin Session 5 pg. 19 of the Manual.

STOPPING INAPPROPRIATELY IN RESPONSE TO OFFICER [Pg. 19]	OBSERVED <input checked="" type="checkbox"/>	NOTES
Attempts to flee		
Does not respond to stopping request		
Responds slowly to stopping request		
Weaves abruptly		
Strikes the curb/other object while stopping		
Stops suddenly		
New violations during stopping sequence		
Other		

POST STOP CLUES [Pg. 5, Visual Detection of DWI Motorists, Attachment to Session 5]	OBSERVED [✓]	NOTES
Difficulty with motor vehicle controls		
Fumbling with driver license or registration		
Difficulty exiting the vehicle		
Repeating questions or comments		
Swaying, unsteady, or balance problems		
Leaning on the vehicle or other object		
Slurred speech		
Slow to respond to officer/officer must repeat		
Provides incorrect information, changes answers		
Odor of alcoholic beverage from the driver		
Other		

**PHASE II**  
**PERSONAL CONTACT (AND EXIT FROM VEHICLE)**

**Summary:** In this phase the officer is determining if there is sufficient cause to instruct the suspect to step from the vehicle for further testing and then observe the exit. Sometimes, the officer's decision is based on the vehicle in motion, stopping sequence, and the officer's interview/observations of the suspect. Other times it is based only on the interview/observations (such as where the car is stopped for equipment or tag issues or where the vehicle is stationary from an accident when the officer comes to the scene.) Officer observations are based upon officer senses and divided attention tests which require the subject to concentrate on two or more things at the same time. Based on SUFFICIENT CAUSE, the officer may request the driver to exit the vehicle and move to Phase III, SFSTs.

Note: Sometimes, an officer begins an OVI investigation before asking the driver to exit the vehicle. The commencement of an OVI investigation requires reasonable suspicion that the driver is OVI.

**SESSION 6  
SENSORY CLUES**

**Summary:** During Phase II, the officer makes sensory observations about the driver. Listing of these clues begin at Session 6 pg. 5 of the Manual.

<b>SIGHT CLUES [Pg. 5, 6]</b>	<b>OBSERVED</b>  ✓	<b>NOTES</b>
Bloodshot eyes		
Soiled clothing		
Fumbling fingers		
Alcohol containers		
Drugs/drug paraphernalia		
Bruises, bumps or scratches		
Unusual actions		
<b>HEARING CLUES [Pg. 6, 7]</b>	<b>OBSERVED</b>  ✓	<b>NOTES</b>
Slurred speech		
Admission of drinking		
Inconsistent responses		
Abusive language		
Unusual statements		
<b>SMELL CLUES [Pg. 7]</b>	<b>OBSERVED</b>  ✓	<b>NOTES</b>
Alcoholic beverages		
Marijuana		
Cover up odors like breath sprays		
Unusual odors		

### INTERVIEW/QUESTIONING TECHNIQUES APPLYING CONCEPT OF DIVIDED ATTENTION - CLUES

**Summary:** The suspect must concentrate on two or more things at the same time. The activities include questioning techniques in which the officer may ask for two things at once, interrupt, distract or ask unusual questions. Activities also include psychophysical (mind/body) tasks like the Alphabet, Reverse Number Count, and Finger Dexterity tests. See: Session 6 of the Manual.

**Note:** Officer should always inquire about medical conditions that may mimic alcohol or drug impairment. See: Session 6, Pg. 13.

**QUESTIONING**

**Summary:** Officer asks questions to divide attention, such as asking for two things simultaneously, asking interrupting or distracting questions, or asking unusual questions.

SUSPECT RESPONSE TO QUESTIONS [Pg. 11, 12]	OBSERVED [✓]	NOTES
Forgets to produce 2 documents requested at the same time [Pg. 11]		
Produces documents not requested [Pg. 11]		
Fails to see requested documents while searching for them [Pg. 11]		
Fumbles/drops wallet, purse, license, registration [Pg. 11]		
Is unable to retrieve documents with fingertips [Pg. 11]		
Ignores officer's questions while looking for items [Pg. 12]		
Forgets to resume item search after answering a question [Pg. 12]		
Gives grossly incorrect answer [Pg. 12]		
Cannot answer an unusual question (like what is your middle name) [Pg. 12]		
Other		

**ALPHABET TEST**

**Summary:** This test requires suspect to recite a part of the alphabet. By telling suspect to begin and end on letters other than A and Z, the suspect's attention is divided as the person must concentrate to begin at an unusual starting point and, while reciting, remember where to stop. Test instructions can be found in Session 6 pg. 13, 14 of the Manual.

<b>DEMONSTRATIONS AND INSTRUCTIONS [Pg. 13, 14]</b>	<b>ACTUAL INSTRUCTIONS GIVEN</b>	<b>NOTES</b>
Officer tells subject to recite alphabet beginning with a letter other than A and stopping at a letter other than Z		
Officer listens and observes suspect perform test		

<b>INDICATORS OF IMPAIRMENT</b>	<b>OBSERVED?</b>	<b>NOTES</b>
Recites letters out of order		
Omits letters		
Stops during the recitation totally		
Stops during the recitation and starts over		
Begins or ends improperly		

**REVERSE NUMBER COUNT TEST**

**Summary:** This test requires the suspect to count out loud 15 or more numbers in reverse sequence. Test instructions can be found in Session 6 pg. 14 of the Manual.

<b>DEMONSTRATIONS AND INSTRUCTIONS [Pg. 14]</b>	<b>ACTUAL INSTRUCTIONS GIVEN</b>	<b>NOTES</b>
Officer tells subject to count down from one number to another in reverse sequence		
Officer listens and observes suspect perform test		

<b>INDICATORS OF IMPAIRMENT</b>	<b>OBSERVED?</b>	<b>NOTES</b>
Recites numbers out of order		
Omits numbers		
Stops during the recitation totally		
Stops during the recitation and starts over		
Begins or ends improperly		

**FINGER DEXTERITY TEST**

**Summary:** Subject is asked to touch the tip of thumb in turn to the tip of each finger on the same hand simultaneously counting up “1, 2, 3, 4” then reversing directions on the fingers while simultaneously counting down “4,3,2,1.” This is a divided attention test. Test instructions can be found in Session 6 pg. 15 of the Manual.

DEMONSTRATIONS AND INSTRUCTIONS [Pg. 15]	ACTUAL INSTRUCTIONS GIVEN	NOTES
Officer tells subject to count and touch his/her fingers		
Officer demonstrates by counting out loud while touching thumb to fingers as described in summary		
Officer listens and observes suspect perform test		

INDICATORS OF IMPAIRMENT	CLUE OBSERVED?	NOTES
Counts out of order		
Does not correctly touch fingers to thumb		
Omits numbers		
Adds additional counts		
Stops counting out loud		
Stops totally		
Stops and starts test over		

**EXIT SEQUENCE**

**Summary:** An officer may instruct a suspect to exit a vehicle to ensure either party's safety, which always takes precedent over all other concerns. However, if based on the TOTALITY of the facts THE OFFICER HAS A REASONABLE SUSPICION THE SUSPECT IS IMPAIRED by alcohol and/or a drug of abuse, the officer may instruct suspect to exit for further testing. The suspect is usually not under arrest when instructed to exit. Driver's exit and walk from vehicle may provide evidence of impairment. Exit clues can be found in Session 6 pg. 16 of the Manual.

SUSPECT'S ACTIONS [Pg. 16]	OBSERVED [✓]	NOTES
Shows angry or unusual reactions		
Cannot follow instructions		
Cannot open vehicle door		
Leaves the vehicle in gear		
"Climbs" out of vehicle		
Leans against vehicle		
Keeps hands on vehicle for balance		

### **PHASE III PRE-ARREST SCREENING**

**Summary:** In this phase, the officer administers three validated psychophysical SFSTs's– the One-Leg Stand (OLS), the Walk and Turn (WAT), and the Horizontal Gaze Nystagmus (HGN) tests. Based on these tests and on ALL other evidence from Phases I and II the officer decides if there is PROBABLE CAUSE TO ARREST THE SUSPECT FOR OVI. *From Phase I, evidence has been gathered from the initial observation of the vehicle in motion and observation of the stop. From Phase II, evidence has been gathered from face-to-face observation and interview and observation of the exit from the vehicle. Phase III adds the SFST performance results as the final evidence in the determination of probable cause.*

**SESSION 8  
HORIZONTAL GAZE NYSTAGMUS TEST (HGN)**

**Summary:** Horizontal Gaze Nystagmus is an involuntary jerking occurring as eyes gaze toward the side and about which the subject is unaware. In the HGN test, the officer observes the eyes of the subject as the subject follows a slowly moving object horizontally with his/her eyes. The officer is to use the tip of a pen, penlight, or other similar object, whichever contrasts with the background, hold it 12 – 15 inches from subject’s nose and slightly above eye level and move slowly. The officer looks for 3 indicators of impairment in each eye (**a total of 6 clues**): if the eye cannot follow a moving object smoothly, if jerking is distinct and sustained when the eye is at maximum deviation, or if the angle of onset of jerking is within 45 degrees of center. (*Nystagmus may also be due to other causes, including seizure medication, other drugs or, if eyes behave differently, a medical condition.*) HGN information and test instructions can be found in Session 8 pg. 23-40 of the Manual.

OPTIMAL TEST CONDITIONS	ACTUAL INSTRUCTIONS/ACTIONS OF THE OFFICER	SUBSTANTIAL COMPLIANCE WITH CONDITIONS?	NOTES ABOUT WHAT SUSPECT DID
Officer checked there was no wind, dust or other eye irritants? [Pg. 56]			
Officer checked there were no visual distractions impeding test (suspect was faced away from rotating or strobe lights and passing traffic)? [Pg. 56]			
Officer directed suspect to remove glasses? [Pg. 25]			

INSTRUCTION/INITIAL POSITIONING: [Pg. 25]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
Checks for eyeglasses [Pg. 25]				
Verbal Instructions: [Pg. 25]				
Officer says, "I am going to check your eyes."				
Officer says, "Put feet together and your hands at your side."				
Officer says, "Keep your head still, look at the stimulus and follow it with your eyes only."				
Officer says, "Keep looking at the stimulus until I tell you the test is over."				

TESTING: PRELIMINARY CHECK [Pg. 33-35 of 95]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
Officer positions stimulus approx. 12 – 15 inches from suspect's nose and slightly above eye level. [Pg. 25]				
Officer checks to see that both pupils are equal in size ( <i>Unequal size may indicate head injury</i> ) [Pg. 26]				
Officer checks for "resting" nystagmus – jerking as eyes look straight ahead ( <i>May indicate medical impairment or drugs like PCP</i> ). [Pg. 26]				
Officer moves stimulus smoothly across suspect's entire field of vision to see if eyes track together or one lags behind the other ( <i>Lack of tracking together may indicate medical disorder, injury, or blindness</i> ). [Pg. 26]				
Officer begins looking for all 3 clues (below) on left eye. This is then repeated on the right eye. [Pg. 27]				

**NOTE:** There should be a clear, distinguishable break between the check for equal tracking and lack of smooth pursuit [Pg. 26].

<b>CLUE 1: LACK OF SMOOTH PURSUIT</b> Subject's eyes are checked to see if they move side to side smoothly or noticeably jerking. [Pg. 30-32]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
1. Officer moves stimulus smoothly at a speed requiring about 2 seconds bringing suspect's <u>left eye</u> from center to as far to the right side as it can go. [Pg. 32]				
2. Officer, while moving stimulus looks at suspect's left eye to see if it is pursuing stimulus smoothly. [Pg. 31]				
3. Officer moves stimulus smoothly all the way back across the subject's face bringing suspect's right eye to as far to the left side as it can go. [Pg. 31]				
4. Officer while moving stimulus looks at suspect's right eye to see if it pursues smoothly. [Pg. 31]				
5. Officer repeats the above steps.				
<b>Officer notes if lack of smooth pursuit found in left eye (1 clue) or right eye (1 clue). Total clues observed: [Pg. 31]</b>				
TOTAL CLUES OBSERVED:				

**Note:** Move to the right to look for clues in left eye and move to the left to look for clues in right eye.

**Note:** The stimulus must be moved steadily at a speed that takes approximately two seconds to bring the eye from the center to the side [Pg. 32]

<b>CLUE 2: DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION</b> Suspect's eyes are checked to see if they exhibit distinct and sustained jerking when the eye is held at max deviation for at least 4 seconds. [Pg. 33-34]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
1. Officer checks left eye by moving stimulus to the right until eye has gone as far to the side as possible and holds eye at that position at least 4 but less than 30 seconds. [Pg. 33]				
2. While at max deviation, officer checks for distinct and sustained nystagmus. [Pg. 33-34]				
3. Officer moves stimulus across suspect's face to check the right eye holding eye at max deviation at the left and holds eye at that position at least 4 but less than 30 seconds. [Pg. 33]				
4. While at max deviation, officer checks for distinct and sustained nystagmus. [Pg. 33-34]				
5. Officer repeats the above steps.				
<b>Officer notes if distinct and sustained nystagmus found in left eye (1 clue) or right eye (1 clue). Total clues observed:</b>				
TOTAL CLUES OBSERVED:				

CLUE 3: ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES: Suspect's eyes are checked to see if they start to jerk prior to a 45 degree angle. [Pg. 35-37]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
1. Officer moves the stimulus towards the right (suspect's left eye) at a speed that would take about 4 seconds for the stimulus to travel from center to approximately 45 degrees [Pg. 37]				
2. Officer watches eye for any sign of jerking and, if seen, stops and verifies that the jerking continues. Officer is careful to check to see that some white of the eye is still showing on the side closest to ear to be sure the eye has not been taken further than 45 degrees. [Pg. 36-37]				
3. Officer moves the stimulus to the left (suspect's right eye) at a speed that would take about 4 seconds for the stimulus to travel from center to approximately 45 degrees. [Pg. 37]				
4. Officer watches eye for any sign of jerking and, if seen, stops and verifies that the jerking continues. [Pg. 37]				
5. Officer repeats the above steps.				
<b>Officer notes if onset of nystagmus prior to 45 degrees found in left eye (1 clue) or right eye (1 clue). Total clues observed:</b>				
TOTAL CLUES OBSERVED:				

TESTING VERTICAL NYSTAGMUS:	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
Suspect's eyes are checked to see if they jerk up and down when the eyes gaze upward at maximum elevation. [Pg. 40]				
1. Officer positions stimulus horizontally, 12-15 inches in front of suspect's nose.				
2. Officer says, "Hold your head still and follow the object with your eyes only."				
3. Officer raises the stimulus until the suspect's eyes are elevated as far as possible and holds there for about 4 seconds.				
4. Officer watches eyes in this position for jerking.				
<b>Officer notes if vertical nystagmus is observed during 4 second hold.</b>				
TOTAL CLUES OBSERVED:				

TOTAL NUMBER OF CLUES OBSERVED ON HGN (max 6 – Vertical <u>not</u> included)		
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<b>BASED ON THE OFFICER'S CONDUCT COURT FINDS:</b>	<b>SUBSTANTIAL COMPLIANCE TEST RESULTS ADMISSIBLE</b>	<b>NO SUBSTANTIAL COMPLIANCE TEST RESULTS INADMISSIBLE</b>
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### WALK AND TURN TEST (WAT)

**Summary:** In the walk and turn test, the subject is directed to take nine steps, heel-to-toe, along a straight line. After taking these steps, the suspect must turn on one foot and return, in the same manner, in the opposite direction. The officer looks for eight indicators of impairment: (1) if the suspect cannot keep balance while listening to instructions, (2) begins before the instructions are finished, (3) stops while walking, (4) does not touch heel-to-toe, (5) steps off the line, (6) uses arms to balance, (6) makes an improper turn or (8) takes an incorrect number of steps. The officer is to observe the suspect from a safe distance and limit movement which may distract the suspect during the test. If the suspect has difficulty with the test (for example, steps off the line), the officer gives instructions to continue from that point, not from the beginning. WAT test information and instructions can be found in Session 8 pg. 41-48 of the Manual.

TEST CONDITIONS [Pg. 41]	ACTUAL INSTRUCTIONS/ACTIONS OF THE OFFICER	SUBSTANTIAL COMPLIANCE WITH CONDITIONS?	NOTES ABOUT WHAT SUSPECT DID
Officer directed suspect to reasonably dry, hard, level, non-slippery surface? [Pg. 42]			
Officer limited movement during test so as not to distract suspect? [Pg. 46]			
Officer provided sufficient room for suspect to complete nine heel-to-to steps? [Pg. 41]			
Officer noted if suspect was over 65. If yes, what did officer do? [Pg. 41]			
Officer inquired if suspect had back, leg or inner ear problems? If yes, what did officer do? [Pg. 41]			
Officer determined if suspect wearing heels more than 2" height and, if so, gave opportunity to remove shoes? [Pg. 41]			

Note: Original research study recommended this test be performed on a dry, hard, level, non-slippery surface and relatively safe conditions. If not, the research recommends: 1) the subject be asked to perform the test elsewhere, or 2) Only HGN be administered. [Pg. 41]. Also applies to OLS [Pg. 49]

<b>INSTRUCTIONS/INITIAL POSITIONING:</b> Subject stands heel-to-toe, arms at sides, listens to instructions. This divides attention between balancing task (maintaining stance) and info processing task (listening and remembering instructions). [Pg. 42-43]	<b>ACTUAL INSTRUCTIONS GIVEN</b>	<b>SUBSTANTIAL COMPLIANCE WITH INSTRUCTIONS?</b>	<b>SUBJECT'S RESPONSE/REACTION</b>
A. Officer says, "Place your left foot on the line." (Real or imaginary) Officer demonstrates the above			
B. Officer says, "Place your right foot on the line ahead of the left foot, with heel of right foot against toe of left foot." Officer demonstrates the above			
C. Officer says, "Place your arms down at your sides." Officer demonstrates the above			
D. Officer says, "Maintain this position until I have completed the instructions. Do not start to walk until told to do so."			
E. Officer says, "Do you understand the instructions so far?" (Make sure suspect indicates understanding.)			

DEMONSTRATIONS AND INSTRUCTIONS FOR WALKING STAGE [Pg. 43]	ACTUAL INSTRUCTIONS GIVEN	SUBSTANTIAL COMPLIANCE?	SUBJECT'S RESPONSE/REACTION
Officer says, "When I tell you to start, take nine heel-to-toe steps on the line, turn and take nine heel-to-toe steps down the line."			
Officer demonstrates heel-to-toe steps.			
Officer says, "When you turn, keep the front foot on the line, and turn by taking a series of small steps with the other foot."			
Officer demonstrates the turn.			
Officer says, "While you are walking: Keep your arms at your sides; Watch your feet at all times; and Count your steps out loud."			
Officer says, "Once you start walking, don't stop until you have completed the test."			
Officer says, "Do you understand the instructions?" (Make sure suspect indicates understanding.)			
Officer says, "Begin, the test."			
<i>If suspect has difficulty with test (for example, steps off the line) officer instructs to continue from that point, not from the beginning.</i>			

INDICATORS OF IMPAIRMENT/SUSPECT'S TEST PERFORMANCE 8 CLUES POSSIBLE (2 or more clues indicates prohibited BAC [Pg. 47])	CLUE OBSERVED?	DETAILS OF CLUE OBSERVATION
1. <b>Cannot keep balance while listening to instructions.</b> Suspect must balance heel-to-toe on line while listening. If suspect does not maintain heel-to-toe position and feet break apart, this is a clue. Suspect's use of arms or swaying while still heel-to-toe is <u>not</u> a clue. [Pg. 44]		
2. <b>Starts before instructions finished.</b> If suspect begins to walk before told to begin, this is a clue (provided the subject has been properly instructed not to start walking until told to begin). [Pg. 44]		
3. <b>Stops while walking.</b> Requires suspect to actually stop walking. Walking slowly is not a clue. [Pg. 45]		
4. <b>Does not touch heel-to-toe.</b> Suspect leaves a space of more than one half inch between heel and toe on <u>any</u> step is a clue. [Pg. 45]		
5. <b>Steps off the line.</b> Suspect steps so one foot is <u>entirely</u> off the line. [Pg. 45]		
6. <b>Uses arms to balance.</b> Suspect raises <u>one</u> or both arms more than 6" from sides to maintain balance. [Pg. 45]		
7. <b>Improper turn.</b> Suspect: removes front foot from line while turning <u>or</u> does not turn as demonstrated (spins, pivots, etc.) [Pg. 45]		
8. <b>Incorrect number of steps.</b> Suspect takes more or fewer than 9 steps in either direction. [Pg. 45]		
TOTAL NUMBER CLUES OBSERVED (max 8) <sup>1</sup> :		SUSPECT TEST RESULT:

<b>BASED ON THE OFFICER'S CONDUCT COURT FINDS:</b>	<b>SUBSTANTIAL COMPLIANCE TEST RESULTS ADMISSIBLE</b>	<b>NO SUBSTANTIAL COMPLIANCE TEST RESULTS INADMISSIBLE</b>
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<sup>1</sup> **Note:** If suspect exhibits the same clue more than once during the WAT or OLS it is to be recorded as only one clue.

### ONE-LEG STAND TEST (OLS)

**Summary:** In the one-leg stand test, the suspect is instructed to stand and raise one leg, either leg, with foot approximately 6 inches off the ground keeping raised foot parallel to ground. Suspect further instructed while looking at raised foot to count out loud by thousands (one thousand-one, one thousand-two, etc.) until told to put the foot down. The officer is to time the test for 30 seconds. The officer looks for 4 indicators of impairments: (1) swaying while balancing, (2) using arms to balance, (3) hopping to maintain balance, and (4) putting the foot down. This divides suspect's attention between balancing (standing on one foot) and small muscle group (counting out loud). The officer is to observe the suspect from a safe distance and remain motionless during the test so as not to interfere. If the suspect puts the foot down, the officer gives instructions to pick the foot up again and to continue counting from the point at which the foot touched the ground. OLS test information and instructions can be found in Session 8 pg. 49-53 of the Manual.

TEST CONDITIONS [Pg. 49-53]	ACTUAL INSTRUCTIONS/ACTIONS OF THE OFFICER	SUBSTANTIAL COMPLIANCE WITH CONDITIONS?	NOTES ABOUT WHAT SUSPECT DID
Officer directed suspect to reasonably dry, hard, level, non-slippery surface? [Pg. 49]			
Officer limited movement during test so as not to distract suspect? [Pg. 53]			
Officer noted if suspect was over 65? [Pg. 49]			
Officer inquired if suspect had back, leg or inner ear problems? If yes, what did officer do? [Pg. 49]			
Officer determined if suspect was overweight by 50 or more pounds? If yes, what did officer do? [Pg. 49]			
Officer determined if suspect as wearing heels more than 2 inches high and, if so, gave opportunity to remove shoes? [Pg. 49]			

<b>INSTRUCTIONS/INITIAL POSITIONING:</b> Subject stands feet together, arms at sides, listens to instructions. This divides attention between balancing task (maintaining stance) and info processing task (listening and remembering instructions). <b>[Pg. 50]</b>	<b>ACTUAL INSTRUCTIONS GIVEN</b>	<b>SUBSTANTIAL COMPLIANCE WITH INSTRUCTIONS?</b>	<b>SUBJECT'S RESPONSE/REACTION</b>
A. Officer says, "Please stand with your feet together and your arms down at the sides, like this." [Pg. 50]			
Officer demonstrates the above. [Pg. 50]			
B. Officer says, "Do not start to perform the test until I tell you to do so." [Pg. 50]			
C. Officer says, "Do you understand the instructions so far?" (Make sure suspect indicates understanding.) [Pg. 50]			

DEMONSTRATIONS & INSTRUCTIONS FOR BALANCE & COUNTING STAGE [Pg. 49-51]	ACTUAL INSTRUCTIONS GIVEN	SUBSTANTIAL COMPLIANCE?	SUBJECT'S RESPONSE/REACTION
Officer says, "When I tell you to start, raise one leg, either leg, with the foot approximately six inches off the ground, keeping your foot parallel to the ground [Pg. 50]			
Officer demonstrates the above. [Pg. 50]			
Officer says, "Keep both legs straight and your arms at your side." [Pg. 51]			
Officer says, "While holding that position, count out loud in the following manner: 'one thousand one, one thousand two, one thousand three, ' and so on until told to stop." [Pg. 51]			
Officer demonstrates count, as follows: "one thousand and one, one thousand and two, one thousand and three, etc." [Pg. 51]			
Officer says, "Keep your arms at your sides at all times and keep watching the raised foot." [Pg. 51]			
Officer says, "Do you understand?" (Make sure suspect indicates understanding) [Pg. 51]			
Officer says, "Go ahead and perform the test." [Pg. 51]			
Officer times the test for 30 seconds. Officer stops the test after 30 seconds. [Pg. 51]			
<i>If the subject puts the foot down he/she is told to pick the foot up again and resume counting from the point at which the foot touched the ground [Pg. 51]</i>			

INDICATORS OF IMPAIRMENT/SUSPECT'S TEST PERFORMANCE 4 CLUES POSSIBLE (2 or more clues indicates prohibited BAC) [Pg. 53]	CLUE OBSERVED	DETAILS OF CLUE OBSERVATION
1. The suspect sways while balancing. This refers to side-by-side or back-and-forth motion while the suspect maintains the one-leg stand position. [Pg. 51]		
2. Uses arms for balance. Suspect moves one or both arms 6 or more inches from the side of the body in order to keep balance. Slight tremors do not count. [Pg. 51]		
3. Hopping. Suspect is able to keep one foot off the ground, but resorts to hopping in order to maintain balance. [Pg. 52]		
4. Puts foot down. The suspect is not able to maintain the one-leg stand position, putting the foot down one or more times during the 30-second count. [Pg. 52]		
<i>If suspect can't do the test, record observed clues and document the reason for not completing the test, e.g. suspect's safety.</i> [Pg. 52].		
TOTAL NUMBER OF CLUES OBSERVED (max 4):		

<b>BASED ON THE OFFICER'S CONDUCT COURT FINDS:</b>	<b>SUBSTANTIAL COMPLIANCE TEST RESULTS ADMISSIBLE</b>	<b>NO SUBSTANTIAL COMPLIANCE TEST RESULTS INADMISSIBLE</b>
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# Evidence

**Hon. Brian F. Hagan**  
*Rocky River Municipal Court*





## Evidence Hypotheticals

THE SUPREME COURT of OHIO

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### Motion in Limine vs. Motion to Suppress

On the morning you are to start an OVI trial, the defendant files a motion in limine to challenge the BAC results obtained from a blood draw.

- Is this a proper motion?
- What if the state only disclosed the results one week earlier?

THE SUPREME COURT of OHIO

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### Hearsay and the Witness who Just Testified

Victim just completed their testimony in an assault case. The state's next witness is the detective who investigated the case and is at trial table with the prosecutor. The prosecutor asks the detective the following question:

"Detective, during your interview with the victim, tell the jury what they said to you about who punched them in the nose."

Defendant objects, strenuously, on hearsay grounds. There are no hearsay exceptions (victim is a very cool customer). The judge asks the prosecutor to respond.

Would the detective's answer constitute hearsay?

THE SUPREME COURT of OHIO

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### Continuance of Criminal Trial

The defendant in a criminal case wants a continuance. The victim opposes a continuance, and so does the prosecutor.  
What factors should you consider?

What about Marsy's law - does that come into play? For example, does the victim have a right to be heard? How about "veto" power?

THE SUPREME COURT of OHIO

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### Prior Convictions

In trial for a menacing by stalking (MBS) charge, the prosecution wants to introduce evidence of the defendant's two prior convictions to domestic violence against the same victim. Defense objects.

How should the court rule?

THE SUPREME COURT of OHIO

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### Prior Convictions II

Defendant has been charged with sexual imposition, enhanced to an m-1 based upon defendant's prior conviction to sexual imposition against a different victim.

At trial, the prosecution presents a certified copy of a journal entry to establish that the defendant was previously convicted of sexual imposition. Is that enough to prove the prior for enhancement purposes?

THE SUPREME COURT of OHIO

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### Prior Conviction III

Can the defendant avoid having the name and nature of a prior qualifying conviction brought to the jury's attention by stipulating to the prior and moving the court to exclude any evidence of the prior from the jury's consideration?

THE SUPREME COURT of OHIO

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### Defendant's Out of Court Statements

In trial for DV, prosecution wants to admit calls defendant made to the alleged victim from the jail, in which the defendant apologizes for the "wrong" that resulted in defendant's arrest. The defense objects on the grounds that the calls are more prejudicial than probative. How should the court rule?

THE SUPREME COURT of OHIO

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### Expert Report, Medical Records, or Both?

The plaintiff in a motor vehicle accident negligence case produced their medical records and called their ER doctor as an expert. The ER doc also produced an "expert report," but the report did not contain some information that was in the medical records. Defendant objects to any testimony from this expert beyond the report. How do you rule?

THE SUPREME COURT of OHIO

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Failure to Rule Upon Motion

A party files a motion that is never ruled on.

What is the result?

THE SUPREME COURT of OHIO

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Demonstrative Evidence

One of the parties wants to use demonstrative evidence in their opening statement that they do not intend on introducing in evidence and did not identify in discovery do you allow it?

THE SUPREME COURT of OHIO

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# **Fines, Costs, and Restitution**

**Hon. Joshua Berkowitz**  
*Hamilton County Municipal Court*















# **Domestic Violence**

**Hon. Thomas A. Januzzi**  
*Oberlin Municipal Court*



# Domestic Violence

PART TWO

May 14, 2025  
Tom Januzzi Judge  
Oberlin Municipal Court  
Cell 440-787-5989

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## Questions/Concerns

This session is intended to help you answer any questions or concerns that you may have as a result of your first several months on the bench. Please feel free to ask questions at any time. Others may have the same questions



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## How are you doing?

1. Take meaningful breaks, if possible
2. Take your vacation days
3. Hire a good Judicial Assistant
4. Exercise
5. Meditate or pray
6. Cancel your newspaper subscriptions and don't read the newspaper or [Stop caring so much about what other people think]

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### Bullying examples

Stanley                      Road Rage  
Milk money                Fast Lane

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### Marsy's Law

Ohio Supreme Court Home Page  
**Click Link:**  
**MARSY'S LAW RESOURCES** to assist crime victims. **Forms to request notification and apply for restitution are here.**  
**Link:**  
**Marsy's Law and Crime Victim Rights**  
**Links:**  
**Understanding Marsy's Law Judicial Guide to Protecting the Rights of Crime Victims** (2024)  
**Understanding Marsy's Law Quick Reference Guide for Judges** (2024)  
**Victim Rights Request Form**

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### Marsy's Law - continued

Ohio Judicial Conference Website  
Member Log In  
[It should say Welcome Judge]  
Resources  
Tools and Bench Aids  
Marsy's Law and Crime Victims Rights  
Takes you to same link as Ohio Supreme Court link **Marsy's Law and Crime Victim Rights**

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Ohio Supreme Court Bench Cards, Guides and Toolkits

Ohio Supreme Court Website  
Judicial Officers/Judges/Bench Cards, Guides and Toolkits/Municipal and County Courts

- > **Domestic Violence & Firearms Prohibition**
- > **Domestic Violence in Later Life**
- > **Non-Fatal Strangulation/Suffocation: Four Common Myths** (2025)
- > **Non-Fatal Strangulation/Suffocation: What Every Judge Should Know** (2025)
- > **Protection Orders Overview Card** (2018)
- > **Protection Orders: Statutes & Rules Reference Chart** (2019)
- > **Understanding Marsy's Law Judicial Guide to Protecting the Rights of Crime Victims** (2024)
- > **Understanding Marsy's Law Quick Reference Guide for Judges** (2024)
- > **Victims Rights Poster** (2018)

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**Ohio Supreme Court's Website –  
News from the Supreme Court of Ohio  
IN DEPTH**

**New Options for Domestic Violence Victims**

*Among the latest advances are laws that take domestic violence more seriously and give victims a greater voice. And services include a self-help website for seeking protection through courts and finding in-person legal guidance.*

By **Kathleen Maloney** | November 2023

<https://www.courtnewsOhio.gov/inDepth/2023/November/default.asp>

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Ohio Supreme Court Website

- ▶ **Laws & Rules**
- ▶ **Local Rules of Court**
- ▶ **Ohio Constitution**
- ▶ **Ohio Revised Code**
- ▶ **Ohio Administrative Code**
- ▶ **Ohio Rules of Court**
- ▶ **Proposed Rule Amendments**
- ▶ **U.S. Constitution**

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## Post Conviction No Contact Order [Not limited to DV]

### What it is

Condition of  
Suspended  
Sentence  
Condition of  
Community Control  
[Probation]

### What it isn't

Protection Order  
Separate criminal  
offense  
Condition of Bond

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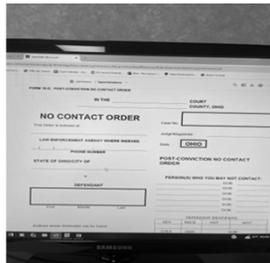
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## Procedure to implement a No Contact Order

Include reference in the  
Sentencing Entry  
Attach or incorporate by  
reference the Order  
The Form is in the Rules of  
Superintendence

FORM 10-G: POST  
CONVICTION NO CONTACT  
ORDER



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## The No Contact Order - Can it be referenced in the Sentencing Entry

Can you reference the No Contact Order in the Entry or  
does it need to be in the Sentencing Entry?

What? Why can't you just reference the entry? It's in the  
Ohio Supreme Court Rules of Superintendence as a  
separate entry or order isn't it?

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The No Contact Order- Can it be referenced in the Sentencing Entry - continued

State of Ohio v Thomas Fourdyce 9<sup>th</sup> District Court of Appeals Case No.25CA012212:

"The court concludes it is without jurisdiction to consider the attempted appeal. Specifically, the trial court has not fully resolved the case against appellant in one journal entry and, therefore, it has not issued a final judgment of conviction."..."According to the Ohio Supreme Court , the judgment must be contained in one document. See *State v. Baker*, 2008-Ohio-3330.

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Enforcement – No Contact Order [The arrest]

R.C. 2951.08(A)(4)During ...community control, any peace officer may **arrest** ... without a warrant if reasonable ground to believe the person has violated:

(4) A condition that prohibits the person from contacting or communicating with any specified individual;

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Post Arrest Procedure

Within 3 business days after **...arrest ...the arresting ...officer, ... or the department or agency of the arresting officer shall notify the chief P.O. or ...of the arrest.**

Within thirty days of being notified that ... officer has made an **arrest** ...the chief probation officer ... *promptly* shall bring the person ... before the judge or magistrate ...

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Who is a victim? -or- When is a victim a victim?

The Ohio Constitution defines a "victim" as a person against whom a criminal offense or delinquent act is committed or who is directly and proximately harmed by the offense or act.

"Criminal offense" means an alleged act or omission committed by a person that is punishable by incarceration and is not eligible to be disposed of by the traffic violations bureau. 2930.01 (A)

Does a person have to be charged with an offense for their to be a victim?

Who decides who the victim is?

When is it decided who the victim is?

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**People v James** Court of Appeals of Michigan, October 11, 2018 326 Mich. App. 98 931 N.W.2d 50

With respect to reason, we point out the obvious— an **unreported crime** is still a *crime*, and the **victim** of an **unreported crime** is still a *victim*.



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There are no easy DV cases  
[You will never see photos like this]



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### Father –Daughter Argument

Dad – 6' 205 pounds 58 years old

Daughter 5'4 112 pounds 20 years old

Dad has a prior DV that was dismissed. The docket reads "At the request of the victim matter is dismissed without prejudice". Named/labeled victim was spouse. The charge was never re-filed.

Daughter has no criminal record.

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### Father – Daughter Argument - Facts

Mother's written statement:

Dad was angry and walking through the house. Daughter was in the extra bedroom upstairs doing her nails with the door shut. Dad walked in and yelled "are you finished yet" then he walked out then he went back in the room & started unplugging everything and she was not being angry then Dad was backing her into a corner yelling & calling her names. She pushed him and then I got him out of the room. Dad was looking for an argument. Daughter was not doing anything wrong. It just got out of hand.

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### Additional facts

Dad's version [read aloud from report]

Daughter version [read aloud from report]

Dad refused to provide a written statement.  
Dad does not want a temporary protection order.  
Dad refused to fill out the lethality assessment.

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### Who is the victim?

Must/should you accept the Officer's conclusion that:

1. Daughter was primary aggressor
2. Daughter should be charged



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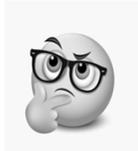
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### DV ARRESTS – JUDGE'S ROLE

Do the police have unfettered discretion to arrest a person for DV?

Does/Is the judge required to accept the decision of the police and accept the charge filed by the police?



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Police officer is given discretion as to whether to make an arrest and who to arrest

**2935.03 Arrest and detention until warrant can be obtained**

(B)(3)  
Preferred arrest rules based on who is the "Primary Physical Aggressor"

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### Primary Physical Aggressor

2935.03(B)(3)(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the primary physical aggressor in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer ... in addition to any other relevant circumstances, should consider all of the following:

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- (i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;
- (ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;
- (iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;
- (iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

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### R.C. 2935.03 Authority to Arrest without Warrant

One of the most important provisions in the Ohio Revised Code to protect innocent persons from detention



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### 48-hour review

The accused has a right to judicial review when arrested without warrant [within 48 hours]  
Gerstein v Pugh 420 U.S. 103 (1975)



Judges don't have weekends and holidays off



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### R.C. 2935.03(B)(1)- What offenses apply

What offenses apply?

- Offense of violence [R.C. 2901.01(a)(9)]
- Child Enticement 2905.05
- Public Indecency 2907.09
- Domestic Violence 2919.25
- Protection Order Violation 2929.27
- Stalking 2903.211
- Felony Drug Abuse offense

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### R.C. 2935.03(B)(1)- What standard does law enforcement use to arrest?

(3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has **reasonable grounds** to believe that the offense of domestic violence or the offense of violating a protection order has been committed and **reasonable cause** to believe that a particular person is guilty of committing the offense if any of the following occurs:

- (i) A person signs a written statement that another has committed the offense of DV or Violation of TPO

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R.C. 2935.03(B)(1)- What standard does law enforcement use to arrest? - continued

- (ii) No written statement but the officer, based upon own knowledge and observation or based upon any other information, including trustworthy information given by victim, concludes that there are reasonable grounds to believe that the offense of DV or TPO has been committed and reasonable cause to believe that the person is guilty
- (iii) No written statement but officer witnessed the person in question commit the offense

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Reasonable Cause – What does that mean?

One court has held that "reasonable cause" is the same as probable cause

State v Gipp 2024-Ohio-1076 (2<sup>nd</sup> District Montgomery County)

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Can a court find [Can there be] Reasonable Cause to arrest and the court not find Probable Cause?

Judge Januzzi: Yes

This is why we have the review by the neutral magistrate

Why?  
Examples:

- (a) The TPO not removed from NCIC
- (b) Rule 4 option
- (c) Elements of offense charged not present [elements of another offense present]

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Even if Reasonable Cause = Probable Cause –  
Judge is not bound by Police finding of  
Reasonable Cause

The statutory language reads Reasonable  
Cause not Probable Cause

The statute instructs the officer to obtain a  
warrant. The police officer uses information  
available to the officer. The court is not limited to  
the information provided by the officer

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Police are very unhappy when Judge does  
not find probable cause

That does not mean the  
police did something  
wrong

[But it could mean that]

Usually the police do not get it  
wrong, but the rule is  
necessary to comply with the  
constitution and to protect the  
citizenry from inappropriate  
police action whether from  
ignorance, weakness or  
indifference

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Judge has duty



In order to make the  
statute relevant and  
meaningful the judge must  
[should] make an  
independent review and  
make the finding of PC or  
no PC or schedule a Rule 4  
hearing

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### Rule 4

Before ruling on a request for a warrant the issuing authority may require the complainant to appear personally and may examine under oath the complainant and any witnesses.

Release and schedule hearing if Judge is not satisfied with the information provided by the police

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### Consequences of an arrest and a charge can be irreversible

An arrest is a traumatic event and a record of arrest is sometimes as consequential as a conviction



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### John and Mary #1

John and Mary living together in a romantic relationship for 4 years. They are not married. It is 2008. John accused of striking Mary in the face. John and Mary have separate bank accounts, and each pay their own bills. Each of them has their own car and each has job. They have no children together.

Is Mary a Family or Household Member under R.C. 2919.25(F)?

Yes. Parties living together and in a romantic relationship is enough. You do not need to look at sharing of bills and other factors

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John and Mary #2

Same couple as Example #1. John was convicted of the DV in Example #1. It is now 2025. After the 2008 DV conviction the couple continued to reside with each other but no longer have a romantic relationship. They sleep in separate beds in separate rooms. Mary told John until he apologizes and admits he was wrong for the 2008 event that she will not sleep with him or show him any physical affection. During an argument John flicks a lit cigarette at Mary. The police charge John with DV F-4. The complaint claims injury to Mary from the lit cigarette but there is no sign of injury on Mary and no photographs were taken.

- 1. Is Mary [still] a Family or Household Member? R.C. 2919.25(F)
- 2. Can Mary request a TPO if she is not a FHM? R.C. 2903.213
- 3. What is the procedure for the TPO hearing? R.C. 2919.26 or 2903.213

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John and Mary #3

Assume John and Mary are living together in a romantic relationship and Mary is a FHM

A complaint is filed that reads: John, in the presence of Mary, knowingly by threat of force, knowingly caused Mary, a family or household member, to believe that John will cause imminent physical harm to Mary, to wit: John told Mary he would "beat her ass so that she would be in pain for at least 3 days" in violation of R.C. 2919.25(C) M-1.

- 1. Is the charge of R.C. 2919.25(C) the correct charge?
- 2. Is the degree of offense the correct degree? R.C. 2919.25(D)
- 3. Could John have been charged with any other offense based on the facts? R.C. 2903.21

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Example #4

John has been charged with Domestic Violence several times with Mary as the victim. Earlier this year John was charged with Strangulation and F-3 DV in the court you serve. At the time John was also on felony probation for another DV that occurred two years ago. John has received no sanction for the probation violation by the Common Pleas Court because the Common Pleas Court is waiting to see if John is convicted of the Strangulation and F-3 DV. You heard the preliminary hearing and bound the case over to the County. You set a bond at \$50,000.00 cash or surety and ordered John to house arrest with work privileges. You also ordered a TPO and required John to be connected to the GPS prior to release and remain connected to the GPS until further order of the court and established protection zones.

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Example #4 - Continued

About a month after the case was bound over to the County, John successfully petitioned the CP court to amend his bond to a personal bond and to remove the requirement of the GPS. In addition, Mary, through an attorney, petitioned the court to terminate the TPO which was granted.

John is now appearing for arraignment on the new charges of Domestic Violence F-3, Felonious Assault F-2 and Aggravated Menacing M-1 with Mary as the victim. In this case John is accused of shooting a gun 4 times into a vehicle that Mary was driving after Mary left the house and jumped in a car to escape John after he accused Mary of being a whore and pulled out the gun and followed her out of the house firing the four shots into the vehicle. Mary was not physically injured.

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Questions Example #4

Mary appears in open court and asked to be heard. Do you let her speak?

Victim's Right to be Heard [R.C. 2930.09(A)(1)] The victim, victim's representative, and victim's attorney have the right to be heard at any public proceeding, other than a grand jury proceeding, in which any right of the victim is implicated.

Mary begs you to release John and let him come home. She says she is not afraid of him. She does not want another TPO and if one is granted she will ask the Common Pleas Court to terminate the TPO again.

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The prosecutor asks you to issue a TPO upon the court's own motion. Will you consider the request?

R.C. 2919.26(D)(1) Upon the filing of a complaint or indictment that alleges a violation of ...any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, ...the court, upon its own motion, may issue a TPO as a pretrial condition ... if it finds that the safety and protection of the complainant, alleged victim, or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender.

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Mary insists that she does not want the TPO. Mary claims that John would not hurt her and was only trying to scare her and begs you to let John come home because he helps take care of their 16-year-old developmentally disabled son. Does this make a difference to you?

2919.26(C)(1) "...If the court finds that the safety and protection of the complainant, alleged victim, or any other family or household member of the alleged victim may be impaired by the continued presence of the alleged offender, the court may issue a temporary protection order, as a pretrial condition of release..."

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### What are the bond considerations?

R.C. 2919.251(B) To the extent that information about any of the following is available to the court, the court shall consider all of the following, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in section 2937.011 of the Revised Code, before setting bail for a person who appears before the court pursuant to division (A) of this section:

- (1) ...history of domestic violence or history of other violent acts;
- (2) ...the mental health of the person;
- (3) ...history of violating the orders of any court ...;
- (4) ...threat to any other person;
- (5) ...access to deadly weapons or a history of using deadly weapons;

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### 2919.251 - continued

- (6) ...history of abusing alcohol or any controlled substance;
- (7) ...severity of the ... violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;
- (8) Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;

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2919.251 - continued

- (9) Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including but not limited to, stalking, surveillance, or isolation of the alleged victim;
- (10) Whether the person has expressed suicidal or homicidal ideations;
- (11) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

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Can you consider a "no bond" hold?

R.C. 2937.222 - (A) On the motion of the prosecuting attorney or on the judge's own motion, the judge shall hold a hearing to determine whether an accused person charged with ... a felony of the first or second degree ... shall be denied bail. The judge shall order that the accused be detained until the conclusion of the hearing. . .



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John appears without an attorney at arraignment and asks that you immediately transfer the case to Common Pleas Court. He says he will get a better bond and CP will terminate his GPS and TPO. Will you transfer the case to the CP without John being represented by counsel? If you do, what happens if he cannot make bond?

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R.C. 2937.011 (J)(2)- (J)(1) A person who has been arrested, either pursuant to a warrant or without a warrant, and who has not been released on bail, shall be brought before a judicial officer for an initial bail hearing not later than the second court day following the person's arrest. That bail hearing may be combined with the initial appearance provided for in the Rules of Criminal Procedure.

(2) If, at the initial bail hearing before a judicial officer, the defendant was not represented by counsel, and if the defendant has not yet been released on bail, the court shall hold a second bail hearing on the second court day following the initial bail hearing. An indigent defendant shall be afforded representation by appointed counsel at the state's expense at this second bail hearing.

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#### Example #5

On October 20, 2023 Aaron is charged with Domestic Violence M-1 and Strangulation F-5. You here the case and bind it over to the County. You set bond at \$25,000.00 cash or surety with GPS and Alcohol monitors You also issue a DVTPO. Aaron posts bond immediately and is connected to a GPS and Alcohol monitors but petitions the CP Court to amend the bond which is granted in part to require the state to pay for GPS and Alcohol monitors.

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#### Example #5 - continued

On December 5 Aaron filed a Motion to Terminate the DVTPO at CP. The Motion was granted on December 13.  
On December 20, 2023 an indictment was returned for DV M-1, Strangulation F-4 [why F-4? See 2903.18(C)(3) – either family or household member or dating relationship; (A)(3)(4); R.C. 3113.31(A)(8)]and Child Endangering M-1.  
Aaron then petitioned the CP court to terminate the GPS and Alcohol monitors. On January 16, 2024 CP terminated the GPS and added a condition that Aaron have "no negative contact" with the Victim.

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Example #5 - continued

The case is scheduled for PTC at CP on May 3, 2024 and Jury Trial on May 13, 2024.

On Monday April 22, 2024 when you arrive you see that Victim in the CP court case has been arrested for DV M-1 and that Aaron is the labeled victim for the new case against CP Victim. The allegation is that CP Court Victim scratched Aaron because he would not give her Vape Pen back to her. Aaron said that CP Court Victim scratched him on the arm and the back and on his scrotum.

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Example #5 - continued

Aaron called the police. CP Victim was not present when police arrived on Sunday morning at 10:15 A.M. Aaron said he believed that CP Victim was on her way to church. The police stopped her and arrested her. CP Victim did not deny scratching Aaron but no details were in the Victim's verbal statement. No written statement from CP victim was taken.

Aaron is 6'0 200 pounds and athletically built. CP victim – now labeled Defendant in this case is 5' 99 pounds

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Example #5 - continued

Aaron appears in court and sits next to the prosecutor. The [his] victim advocate is seated in the general seating area. Defendant [CP Victim] appears without counsel. You call the case and begin to explain the charges and procedure. Aaron interrupts and immediately begins to tell you what happened. What do you tell Aaron?

Aaron has filed a Motion for Protection Order. Do you grant it?

What should bond be? What are the considerations? R.C. 2919.251

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Example #6

John and Mary have 2 children, ages 2 and 4. There are unmarried and do not live together. They were drinking at a bar and decided to rent a room for the night. Mary's mother was watching the children. John and Mary began arguing about texts that Mary was receiving at the bar. John accused Mary of cheating. John pinned Mary to the ground and spit in her face and called her a whore. Mary attempted to get John off by scratching him in the face causing his face and hand to bleed. John smacked Mary in the face with a closed fist before getting up. John went outside to have a cigarette. Mary called 911.

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Example #6 - Continued

When the police arrived, they spoke to John first who was in the motel parking lot. He told the police Mary attacked him and scratched him in the face causing his face to bleed. They have a history of domestic disputes, and the police are familiar with them. Less than 1 year ago John and Mary were both charged with DV in another incident where both received reduced charges of DCP M-4. Mary explained how John had pinned her and slapped her. She admitted scratching him. The police determined that Mary was the "primary aggressor" [See R.C. 2935.03(B)(3)(b)(d)] and arrested Mary. John was not arrested because the police did not observe any signs of injuries to Mary. The police report says that they were both drunk.

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Questions on Example #6

Who is the victim?

Victim: A person against whom the criminal offense or delinquent act is committed or someone who has been directly and proximately harmed by the commission of a criminal offense or delinquent act, other than the person who committed the criminal offense or delinquent act. [Ohio Constitution, Article I, Section 10a(D)] A victim may be identified by the law enforcement officer during the investigation. A person who has not previously been identified as a victim by law enforcement must affirmatively identify himself or herself to law enforcement, the prosecutor, and the court to exercise victim's rights. [R.C. 2930.044]

Criminal Offense: An alleged act or omission that is punishable by incarceration and is not eligible to be disposed of by the Traffic Violations Bureau. [R.C. 2930.01(A)]

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Can the judge **not** accept the charge?

Procedure under R.C. 2935.03 - (B)(1) When there is reasonable ground to believe that an offense of violence, ...the offense of domestic violence as defined in section 2919.25 of the Revised Code, the offense of violating a protection order as defined in section 2919.27 of the Revised Code, ...has been committed ...a peace officer ... may arrest and detain **until a warrant can be obtained** any person who the peace officer has **reasonable cause** to believe is guilty of the violation.

State of Ohio v Denise Collins in the materials. Procedure not followed.

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What options does the judge have? Does the judge have to accept the charge that the police arrested someone for? Is the judge required to make an independent finding of probable cause?

Under 2935.03(B)(1) the police are supposed to arrest and hold until a warrant can be obtained. [In our jurisdiction they do not].

Criminal Rule 4(A)(1) If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

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"...Before ruling on a request for a warrant, the issuing authority may require the complainant to appear personally and may examine under oath the complainant and any witnesses. The testimony shall be admissible at a hearing on a motion to suppress, if it was taken down by a court reporter or recording equipment..."

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Marsy's Law: Who is given the Victim's Rights form? When?

2930.04(D) At the time of its initial contact with a victim of a criminal offense or delinquent act, or as soon as practicable following the initial contact, the law enforcement agency responsible for investigating the criminal offense or delinquent act shall provide the victim in writing, or provide access to, as specified in division (E)(2) of this section, all of the following information:

- (1) "... victim's rights under this section and ...under Ohio Constitution, ...including the right to exercise those rights through counsel;
- (2) The availability of crisis intervention services, housing, and emergency and medical services, or contact information ...that can direct victims to local resources;

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Marsy's Law: Who is given the Victim's Rights form? When? - continued

(3) "...procedures and resources available for the protection of the victim, including protection orders issued by the courts;

(4) Information ...victim services programs...;

(5) The police report number, if applicable, business telephone number of the law enforcement agency ...and the office address and business telephone number of the prosecutor in the victim's case, ...

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BOND AND TPO

- |  |   |
|--|---|
| 1. What should Mary's Bond be?   | BOND<br>R.C. 2919.251                     |
| 2. Motion for TPO filed by police [complainant] or by John. What procedure is followed for the TPO hearing? What is the standard to be used? | TPO<br>R.C. 2919.26(C)<br>R.C. 2919.26(D) |

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### Example #7

Frankie and Johnny were lovers. They have no children but have lived together in a high rise for 3 years sharing household chores and expenses. One night Johnny came home late from his 3-11 shift with no explanation and Frankie began questioning him. Johnny said he did not come home because he saw Carlos, another resident of the apartment complex, enter their apartment after he left for work that afternoon. Johnny said he thought Frankie was sleeping with Carlos so he decided to find someone else for the night. Frankie tried to explain to Johnny that the only reason Carlos came into the apartment was to ask Frankie for some relationship advice about Carlos' girlfriend and that nothing happened. Johnny wasn't buying it.

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### Example #7 - Continued

Johnny told Frankie he was going to kill her and after he was done with her he was going to take out Carlos too. Johnny took out a gun which had blanks in it and shot it in the air, then dropped the gun, charged her, pinned her on the bed and placed his hands around her neck for 4-5 seconds making it difficult for her to breathe. Johnny then calmed down and left the room. Several of the other residents in the apartment called 911 after hearing the gunshot. The police arrived and charged Carlos. Since they could not find Johnny they contact you and ask for a warrant for several charges. Johnny is a convicted felon.

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### Questions Example #7

What are or should the charges be?	R.C. 2919.25(A) – Domestic Violence M-1, F-4, F-3?
	R.C. 2921.03 – Aggravated Menacing M-1
	R.C. 2903.18 – Strangulation F-3?
	R.C. 2919.25(C) – Domestic Violence M-4, M-2, M-1?
	R.C. 2923.13 Weapons Under Disability F-3

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Questions for Example #7 - Continued

When Johnny is arrested, Frankie appears in court and asks to speak. Let her speak?

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Questions for Example #7 - continued

When she speaks Frankie begs that the charges be dismissed and recants saying that Johnny did not choke her and that it was her fault that Johnny got mad and it was her fault and she doesn't blame him. Dismiss the charges? Crim. R. 48(A); R.C. 2930.06(A)(4)

Frankie says she does not want a protection order. Should you/can you still issue a protection order?

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Questions for Example #7 - continued

During the arraignment you learn that Frankie is 4 months pregnant and that Johnny was aware of it. Does this make a difference as to what the DV charge should be? R.C. 2919.25(D)(5)

Johnny says that he has no place else to stay, that they just moved to the area and that his parents are both deceased, he has no friends in the area and he will be homeless if you order him to leave the apartment. Do you consider this?

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Example #8

Ralph and Alice are engaged and have a 7-month-old child. Ralph is 21 and Alice is 19. They live in a one-bedroom apartment with the 7-month-old. Alice is struggling with post partum anxiety or depression, and Ralph has an unspecified learning disability but does have a job. He has an 8<sup>th</sup> grade education and has been working as a cook at a restaurant.

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Example #8

On the evening in question the baby had what is commonly known as a "poop explosion". Alice asked Ralph to change the baby's diaper, but Ralph refused. Alice had just returned home with the baby after picking the baby up at her mom's house after her waitressing job. Alice was extremely exhausted and did not have a good day at work and was in dire need of some rest. Alice has not been sleeping because the baby is not a good sleeper at night.

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Example #8 - Continued

When Ralph refused to help with the baby Alice told him that he was good for nothing and he was a wimp if he couldn't change the baby's poopy diaper. Alice proceeded to begin to change the baby's diaper but realized that she could not reach the wipes and asked Ralph to help. Ralph responded "Do it yourself". Alice took the baby into the bathroom and put the baby in the shower to clean the baby. While Alice was in bathroom, Ralph entered and admittedly "hip-checked" Alice into the wall while Alice was holding the baby telling her "One of these days Bang Zoom-to the Moon." Alice reacted by swinging at Ralph causing his glasses to fly off and leaving a cut from his glasses and a red mark on his face. The police investigated and charged Alice with DV M-1.

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Questions for Example #8

1. Alice claims self-defense but her attorney hasn't been to a Criminal CLE in 4 years and didn't know about Crim. R. 12.2- Let her raise the defense?

RULE 12.2. Notice of Self-Defense. Whenever a defendant in a criminal case proposes to offer evidence or argue self-defense, defense of another, or defense of that person's residence, the defendant shall, not less than ... fourteen days before trial in a misdemeanor case, give notice in writing of such intent. The notice shall include specific information as to any prior incidents or circumstances upon which defendant intends to offer evidence related to conduct of the alleged victim, and the names and addresses of any witnesses defendant may call at trial to offer testimony related to the defense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant related to the defense, unless the court determines that in the interest of justice such evidence should be admitted.

Effective Date: July 1, 2022

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Questions for Example #8 - continued

2. Let the jury hear about Alice's post-partum depression/anxiety?

3. After Alice was charged, Temporary Custody was granted to Ralph's mother. Grant TPO against Alice? Include the child?

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Example #9

Elroy is 50 years old. He is single and never been married. Elroy has struggled with mental health issues his entire life. He enjoys listening to hard rock and hip-hop music. Elroy lives with his mother and father. His father is 76. He and his mother get along but Elroy and his father George do not get along. George, is very religious and can't stand Elroy's music. He is constantly battling with Elroy to keep his music down and arguing about the lyrics in the music which are against George's religious beliefs. In the past three years Elroy has been charged with DV 3 times with his father George as the victim.

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Example #9 - continued

Each time the police have arrested Elroy and each time the prosecutor has dismissed the charges against Elroy at the request of his parents. The last time the prosecutor asked to dismiss the charge, you hesitated and wanted to know what plan the family had that this would not continue to happen. You were assured that Elroy would have another place to live and George and mother would not permit Elroy to live with them anymore. You permit another dismissal on the representation that the parents will not allow Elroy to live with them anymore.

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Example #9 - Continued

Several months later, Wednesday November 26, the night before Thanksgiving, you receive a request from the police for a warrant for another DV charge. The police are tired of arresting Elroy only to have the charges dismissed. The allegation is that Elroy moved back to the house in October and that he had threatened to kill his father after yet another argument about Elroy's music. Elroy was not home when the police arrived. The court is closed until Monday following Thanksgiving.

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Questions for Example #9

1. Do you issue a warrant for Elroy's arrest?
2. If not, what do you do?
3. If so, do you set a bond?
4. If you set a bond, what bond do you set?
5. You decide to issue a warrant. The police execute the warrant on Thanksgiving Day while the family is eating thanksgiving dinner. When the police arrive everything seems peaceful between the family members and they are just getting ready to carve the turkey. The parents are upset that Elroy was arrested. They hire an attorney and the attorney calls you at home asking for a bond for Elroy. R.C. 2919.251(A)

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Questions for Example #9 - continued

6. Elroy appears for arraignment on Monday morning and mother, but not father appears in court.

What questions do you have for the prosecutor? [Marsy's Law Quick Reference for Judges – Supreme Court Website]

7. The father appears and want to be heard. Let him speak?

8. You let father speak. He tells you that Elroy has been back home and that he is now on "meds" but failed to take his "meds" and that is why he acted out. The Father wants you to release Elroy and let him come back home and order him to take his "meds".

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THE END

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# Traffic

**Hon. Carla J. Baldwin**  
*Youngstown Municipal Court*

**Hon. Terri L. Stupica**  
*Chardon Municipal Court*



**OHIO JUDICIAL COLLEGE  
NEW JUDGES ORIENTATION  
TRAFFIC LAW  
JUDGE CARLA J. BALDWIN – YOUNGSTOWN MUNICIPAL COURT  
JUDGE TERRI L. STUPICA – CHARDON MUNICIPAL COURT  
May 14, 2025**

**I. BMV Issues and Suspensions**

- A. How to read a LEADS-Everything you need to know  
Visit [www.bmv.ohio.gov](http://www.bmv.ohio.gov)
- B. Dealing with the BMV- Modifying Entries and Renewals
  - i. Modifications by Journal Entry
    - a. Things to include in Entry
    - b. Certified copies to more than BMV
  - ii. Renewal of Driver's Licenses expiring during License Suspensions
  - iii. Early termination of Ignition Interlock conditions
  - iv. Suspension Termination Entries
- C. The "2006" Letter and [bmv.ohio.gov](http://bmv.ohio.gov)- the Keys to the Kingdom
  - i. Tells all you need to know to re-validate a driver
  - ii. How to get a List from [ohiobmv.com](http://ohiobmv.com)
  - iii. Refer to Nicastro/Walton materials on OJC website
- D. Installment Payment Plans and Driving Privileges
  - i. ORC 4510.021-"Limiteds" Section**
  - ii. ORC 4510.10- Installment Payment Plans**
    - a. How to set them up**
    - b. In a pending case**
    - c. As a new Civil case**
    - d. Setting standards**
    - e. Non-compliance ideas**
    - f. If only money-go to the Bureau!!!!**
- E. Traffic Intervention Programs- Getting Them Valid Again
  - i. TIP-DIP-LIP-The idea of the Court as a vehicle to validity
  - ii. Funding for Staffing- cost assessment
  - iii. Prosecutorial Arrangement for advance charge modifying**
  - iv. Screening at Arraignment or first Pretrial-[bmv.ohio.gov](http://bmv.ohio.gov) copies for Court and Defendant**
  - v. Setting up Installment Plans or other needs**
  - vi. Plea and return with valid license**
  - vii. "Judicial Patience"-How long should we wait?"**
  - viii. Using Probation as a Post Sentencing validation tool**
  - ix. Hypotheticals?**

F. Child Support Suspensions-Who, What, and Where and new change

G. 12 Point Suspensions and others you can help with

**H. Any Other BMV issues you want to talk about?**

## **II. Traffic Court Issues from Arraignment to Trial to Sentencing**

### **A. General Traffic Arraignment Issues**

- i. Explanation of Penalties-Use of sentencing charts
- ii. Explanation of Pleas and Rights of Counsel
- iii. Use of Pre-Arraignment Videotape Explanation
- iv. Not Guilty by Fax/letter-Traffic Rules say within 4 days of ticket, but change by local rule?
- v. Plea of Not Guilty by Court for “Problem Defendants”

### **B. OVI Arraignments**

- i. Explanation of all penalties-OVI, BAC and OVI/Refusal**
- ii. Right to an ALS Hearing, if Counsel not present**
- iii. CDL Ramifications, if any, at arraignment-BMV Policy**
- iv. Judicial Pretrial Suspensions- 4511.196**

### **C. Other Arraignment Issues**

- i. Release of seized/towed vehicle- Pre-trial Immobilization?\  
Also, immobilization waiver for family member**
- ii. Limited Driving Privileges after hard time-35 days to ask?-4511.191**
- ii. Waivers of time and other statutory time issues
- iv. Failure to appear-Warrant Blocks versus License Forfeiture (and forfeitures may now be gone)**
- v. DUS-State Code vs. different local ordinance?**

### **D. Issues in Pretrial process**

- i. Discovery-Under Criminal Rules
- ii. Motion Time Frames- 35 days after Arraignment?
- iii. Motions to Preserve Evidence- Video/Audio
- iv. All Continuances MUST be in writing-Traffic Rule 18
- v. Pro Se explanation if going to Trial-CYA**
- vi. Continuances to achieve Plea Bargain Preconditions**
- vii. Plea Bargaining-NOL, Unsafe Vehicles, and “certain acts prohibited”**

### **E. The Plea Process-Criminal R 11 and Traffic R. 10**

- i. Explanation of penalties and/or amended penalties
- ii. “Predicate Priors” and escalation of offenses
- iii. Waiving the amended Citation
- iv. Waivers of Rights and Counsel in Writing
- v. “Serious Offenses” MUST be in writing
- vi. Pleas by a Group at once- why not?
- vii. “The Spiel” and Reversal Insurance
- viii. Absentia Pleas- Old, out of town, etc.
- ix. Consent or Stipulation to Guilty *DON'T DO THAT!!*

x. The Allocution-what if his name is not Al? “*Serrano*” and other recent discussions and cases on the “no contest” plea

**F. the Pro Se Traffic Trial (also works for criminal as well)**

- i. Explanation of Procedure including Objections/Strikes**
- ii. Argumentation versus Evidence**
- iii. Defendant’s narrative testimony**
- iv. Make findings of fact- their day in Court.**
- v. Judicial Notice of Radar/Laser-remember that *iceberg* but recent 8<sup>th</sup> District case- *Rodojev*, 2018-Ohio-5028**

**G. Sentencing Issues**

- i. To Pass for Sentence or Not?**
  - a. Multiple OVI-how about DUS?**
  - b. Restitution Issues**
  - c. Give a chance to avoid a 12 Point**
  - d. Victim’s Rights- Marsy’s Law?**
  - e. State code vs. local ordinance?**
  - f. Now BMV Procedure on Interlock cases**
  - g. Physical Control, ALS and the double \$475 fee**
  - h. Any others?**
- ii. Sentencing Tools**
  - a. Interlock and Plates when optional**
  - b. The infamous “3 in 7” Rule**
  - c. House Arrest.**  
"Day-Timer" may still be out there
  - e. SCRAM-what every wife wants**
  - f. IDAT and IDIAM Funds-how much you got?**
  - g. Probation- what works and does not FOR YOU?**

**H. Fines, Costs, CDL issues, and Points**

- i. know if it is an MM, M4, or more**
- ii Mandatory Fines and what cannot be suspended.**
- iii. Points-probably assessed by your computer, but know the numbers**
- iv. Speeding points and the sliding scale**
- v. The “Thou shalt not play with Points” law**
- vi. CDL ramifications- disqualification and privilege**

**I Collection of fines and costs- the Bench Card and what you can and cannot due as to indigency, payment hearings, Warrants blocks and forfeitures.**

**And as always, if you need help or have a question, feel free to call OR email us at:  
JUDGE CARLA J. BALDWIN – YOUNGSTOWN MUNICIPAL COURT  
330-742-8855 – cbaldwin@youngstownohio.gov  
JUDGE TERRI L. STUPICA – CHARDON MUNICIPAL COURT  
440-286-2670 - TStupica@CO.GEAUGA.OH.US**

In the \_\_\_\_\_ Municipal/County Court  
\_\_\_\_\_ County, Ohio  
STATE OF OHIO

STATE OF OHIO/CITY OF \_\_\_\_\_

Case# \_\_\_\_\_

Vs.

**JUDGE** \_\_\_\_\_  
**JOURNAL ENTRY FOR IGNITION  
INTERLOCK DEVICE AND NOTICE TO**

**DEFENDANT**

Defendant \_\_\_\_\_  
Ohio OL# \_\_\_\_\_  
DOB \_\_\_\_\_

\_\_\_\_\_ Defendant has been sentenced for an OVI violation in this case. Defendant's license has been suspended by separate Entry. Defendant is granted Limited Driving Privileges, without Interlock, to commence with the date of this Entry, which will expire on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ Defendant is ordered to have installed, and operate only a vehicle equipped with an Ignition Interlock Device (IID), Said device will be installed by Defendant on a selected vehicle by \_\_\_\_\_, 20\_\_. Defendant is to appear at a BMV Registrar with a certified copy of this Entry, and a Certificate of Installation from the IID provider, and Defendant's license, if in his or her possession. The Registrar will then issue to Defendant a Restricted License as set forth in O.R.C.4510.022 (D).

\_\_\_\_\_ Upon issuance of the Restricted License, Defendant is granted Unlimited Driving Privileges as set forth in O.R.C. 4510.022 (C). Upon completion of same, the Court orders with this Entry that Defendant's suspension shall now terminate on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ Defendant is granted Limited Driving Privileges, as set forth by separate Entry. Defendant is to have in Defendant's possession a copy of the separate Entry issued by this Court specifying the Limited Driving Privileges.

**NOTICE AND WARNING TO DEFENDANT: DEFENDANT HAS BEEN ADVISED THAT  
IN THE EVENT OF AN IID VIOLATION, INCLUDING OPERATING A VEHICLE NOT  
EQUIPPED WITH AN IID, TAMPERING WITH AN IID, OPERATING BEYOND THE  
SCOPE OF GRANTED PRIVILEGES, OR HAVING A POSITIVE ALCOHOL TEST ON  
THE IID VEHICLE PROHIBITING ITS STARTING, THAT DEFENDANT MAY FACE  
ADDITIONAL SANCTIONS, INCLUDING INCREASING THE LENGTH OF THE  
SUSPENSION, OR WEARING AN ALCOHOL MONITORING DEVICE.  
IT IS SO ORDERED.**

\_\_\_\_\_  
**DEFENDANT**

\_\_\_\_\_  
**JUDGE**

Order See Journal VOL \_\_\_\_\_ PAGE \_\_\_\_\_

IN THE \_\_\_\_\_ MUNICIPAL/COUNTY COURT  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO  
CITY OF \_\_\_\_\_  
OF \_\_\_\_\_

CASE # \_\_\_\_\_  
NOTICE OF ALLEGED VIOLATION

Vs. INTERLOCK IGNITION DEVICE

DEFENDANT \_\_\_\_\_  
Ohio OL# \_\_\_\_\_  
DOB \_\_\_\_\_

**] NOTICE IS GIVEN TO DEFENDANT THAT:**

It has been alleged that you have violated the terms of usage of your Ignition Interlock Device (IID) with regard to your license suspension in this case. It is alleged that you have violated the terms of your IID by:  
\_\_\_\_\_ operating a vehicle not equipped with an IID  
\_\_\_\_\_ operating the IID vehicle beyond the scope of your privileges  
\_\_\_\_\_ tampering with the IID device  
\_\_\_\_\_ operating the IID vehicle with a positive alcohol reading  
preventing the vehicle from starting

**IF THE ALLEGED VIOLATION IS TRUE, YOU WILL FACE ADDITIONAL SANCTIONS, INCLUDING INCREASING THE LENGTH OF YOUR LICENSE SUSPENSION, OR BEING REQUIRED TO WEAR A CONTINUOUS ALCOHOL MONITORING DEVICE. YOU HAVE THE RIGHT TO APPEAL THIS SANCTION IF YOU DISPUTE THE ALLEGED VIOLATION. AN APPEAL MUST BE FILED WITHIN FOURTEEN (14) DAYS OF THIS NOTICE, BY FILING AN APPEAL AND REQUEST FOR HEARING IN WRITING WITH THE COURT IN THIS CASE. THE JUDGE MAY GRANT A HEARING TO HEAR YOUR APPEAL. IF YOU DO NOT FILE AN APPEAL, YOU WILL BE NOTIFIED OF THE ADDITIONAL SANCTION WHICH WILL BE IMPOSED.**

DATE OF NOTICE \_\_\_\_\_ Issued by

\_\_\_\_\_  
JUDGE/MAGISTRATE

IN THE \_\_\_\_\_ MUNICIPAL/COUNTY COURT  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO  
CITY OF \_\_\_\_\_  
Vs.  
\_\_\_\_\_

CASE# \_\_\_\_\_

JOURNAL ENTRY ON INTERLOCK  
IGNITION DEVICE (IID)  
VIOLATION

This matter came before the Court on the Ignition Interlock Device (IID) violation  
For which Defendant was issued Notice on \_\_\_\_\_, 20\_\_\_. The Court  
Takes the following action:

\_\_\_\_\_ Defendant did not file an Appeal. The Court orders Sanction as listed  
Below.

\_\_\_\_\_ Defendant filed a timely Appeal. The Court \_\_\_ did \_\_\_ did not conduct  
Conduct a Hearing, and takes the following action:

\_\_\_\_\_ Defendant committed no violation. No Sanctions are imposed, and any  
Sanction imposed from that Notice is vacated.

\_\_\_\_\_ The Court finds a violation occurred, and imposes the following  
Sanction:

\_\_\_\_\_ Defendant's License Suspension is increased, and the License  
Suspension in this case shall now terminate on \_\_\_\_\_.

\_\_\_\_\_ As the violation occurred within 60 days of the termination of the  
Suspension, the Suspension is increased for 60 additional days.

\_\_\_\_\_ Defendant is to wear a Continuous Alcohol Monitor for a period of  
\_\_\_\_\_ days, to commence by \_\_\_\_\_, 2017.

The Clerk is to send a certified copy of this Order to the BMV, Defendant, and  
Defendant's Attorney, if any.  
IT IS SO ORDERED

Order See Journal Vol \_\_\_\_\_ Page \_\_\_\_\_

\_\_\_\_\_  
JUDGE/MAGISTRATE

**IN THE PARMA MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO**

**State of Ohio**

**CITY OF**

**Vs.**

CASE NO.

JUDGMENT ENTRY

*Name of Defendant*

**OHIO OL #**

**DOB -**

***(name of person)* is authorized to renew his/her driver's license and/or automobile registration/license plates which presently expire on *(date)*, if he/she is in full compliance with all State requirements applicable to issuance of driver's licenses and driving privileges, except for the suspension order by this Court for an OVI/BAC violation occurring on *(date)*, conviction date of *(date)* . Defendant is authorized to take any written and/or driving tests, if necessary, to continue Defendant's license status.**

\_\_\_\_\_  
Judge

***This same entry can be modified as needed for any impediment, including clearing a 12 Point Suspension as a result of a points assessed conviction (Compliance Suspensions), or to retest to re-obtain license status.***

*Traffic Law and OVI Sentencing - Page 8*

**IN THE PARMA MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO**

**State of Ohio**

**CITY OF**

**vs.**

**(Name)**

**License #**

**DOB**

**CASE NO. 16TRD**

**JUDGMENT ENTRY**

**(Name) is authorized to take all necessary steps to obtain his/her driver's license and/or automobile registration/license plates which expired on (date), if he/she is in full compliance with all State requirements applicable to issuance of driver's licenses and driving privileges, except for unpaid Reinstatement Fees, for which the Court has established an Installment Payment Plan by separate Entry. Defendant is authorized to take any written and/or driving tests, if necessary, to restore Defendant's license status. Upon obtaining issued License Status, he is granted privileges to drive to, from, and in course of employment, and for all resident family medical, dental, or AA, until said Plan Fees are paid in full.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Judge**

**ORDER SEE JOURNAL VOLUME \_\_\_\_\_, PAGE \_\_\_\_\_**

# THE PARMA MUNICIPAL COURT CUYAHOGA COUNTY, OHIO

STATE OF OHIO  
CITY OF

CASE #  
**JOURNAL ENTRY**

DEFENDANT NAME  
OHIO OL #  
DOB

The Defendant, having been placed under a Court imposed Suspension resulting from the same facts and circumstances leading to the Administrative License Suspension (ALS) in the above captioned matter,  
It is Ordered that the Administrative License Suspension in this case be terminated, and that no ALS Reinstatement Fee be collected by the Bureau of Motor Vehicles.

\_\_\_\_\_  
JUDGE KENNETH R. SPANAGEL

ORDER SEE JOURNAL VOL. \_\_\_\_\_ PAGE \_\_\_\_\_

**IN THE PARMA MUNICIPAL COURT  
CUYAHOGA COUNTY OHIO**

**NAME:**

Ohio OL/ID#

DOB:

SS #:xxx-xx-1234

BOMV FILE #

**CASE NO. 22-CVH-#  
JUDGMENT ENTRY**

**Petitioner**

vs.

REGISTRAR,  
BUREAU OF MOTOR VEHICLES

**Defendant**

This matter came before the Court upon the petition of the Petitioner for Relief under O.R.C. 4507.021. The Court finds from the evidence that the Defendant has accumulated 12 points within a two-year period and is subject to the six-month license suspension under said section. The Court further finds that it is in the best interest of the Petitioner and the State that the Defendant should be granted limited driving privileges as hereinafter set forth. Said privileges shall continue for the balance of said suspension. Petitioner has been advised of the requirements of recompliance at the end of the suspension period.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petitioner's license is hereby suspended for a period of six months commencing *(DATE)*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petitioner is granted limited driving privileges during the period of said suspension as follows:  
To and from and in the course of employment; church services; all medical, including medical, dental, and AA, if any, for Petitioner and any resident family members; and for necessities on *(day)* from *(time period)*

\_\_\_\_\_  
Judge Kenneth R. Spanagel

**PARMA MUNICIPAL COURT**

5555 Powers Boulevard  
Parma, Ohio 44129  
887-7400

**STATE OF OHIO  
IN THE PARMA MUNICIPAL COURT  
COUNTY OF CUYAHOGA**

Traffic Case No.  
Ticket No.

**APPLICATION FOR CONSENT OF COURT TO ENTER PLEA OF  
GUILTY WITHOUT PERSONAL APPEARANCE**

*The undersigned, pursuant to Traffic Rule 19 and local Parma Court Rule, hereby makes separate application to the Court for consent to enter a plea of guilty, to waive trial and to make payment of fine and costs, without personal appearance, relative to the following described traffic law violation and, in the event this application is granted, the undersigned does herewith enter a plea of guilty to the charge, waiving his/her right to trial by Court or Jury and his/her right to appeal.*

**Ticket No. Cause: Violation of Sec. No. O.R.C./Cod. Ord. of**  
The reason for this request is: \_\_\_\_\_

X \_\_\_\_\_  
**Applicant's Signature**

The Court finds for good cause shown does hereby consent to waiver of personal appearance and orders the Clerk of Courts to receive from the above applicant the fine and costs shown below along with applicant's plea of guilty, waiver of appearance and trial by Court or Jury.

Fine: \$ \_\_\_\_\_ Court Costs: \$ \_\_\_\_\_ TOTAL: \$ \_\_\_\_\_

\_\_\_\_\_  
**Judge**

**4510.021 Granting limited driving privileges.**

(A) Unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code, a court may grant limited driving privileges for any purpose described in division (A) of this section during any suspension imposed by the court. In granting the privileges, the court shall specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges shall be for any of the following limited purposes:

- (1) Occupational, educational, vocational, or medical purposes;
- (2) Taking the driver's or commercial driver's license examination;
- (3) Attending court-ordered treatment;
- (4) Any other purpose the court determines to be appropriate.***
- (4) Attending any court proceeding related to the offense for which the offender's suspension was imposed;
- (5) Transporting a minor to a child care provider, day-care, preschool, school, or to any other location for purposes of receiving child care.

(B) Unless expressly authorized by a section of the Revised Code, a court may not grant limited driving privileges during any suspension imposed by the bureau of motor vehicles. To obtain limited driving privileges during a suspension imposed by the bureau, the person under suspension may file a petition in a court of record in the county in which the person resides. A person who is not a resident of this state shall file any petition for privileges either in the Franklin County municipal court or in the municipal or county court located in the county where the offense occurred. If the person who is not a resident of this state is a minor, the person may file the petition either in the Franklin county juvenile court or in the juvenile court with jurisdiction over the offense. If a court grants limited driving privileges as described in this division, the privileges shall be for any of the limited purposes identified in division (A) of this section.

(C) When the use of an immobilizing or disabling device is not otherwise required by law, the court, as a condition of granting limited driving privileges, may require that the person's vehicle be equipped with an immobilizing or disabling device, except as provided in division (C) of section 4510.43 of the Revised Code. When the use of restricted license plates issued under section 4503.231 of the Revised Code is not otherwise required by law, the court, as a condition of granting limited driving privileges, may require that the person's vehicle be equipped with restricted license plates of that nature, except as provided in division (B) of that section.

(D) When the court grants limited driving privileges under section 4510.31 of the Revised Code or any other provision of law during the suspension of the temporary instruction permit or probationary driver's license of a person who is under eighteen years of age, the court may include as a purpose of the privilege the person's practicing of driving with the person's parent,

guardian, or other custodian during the period of the suspension. If the court grants limited driving privileges for this purpose, the court, in addition to all other conditions it imposes, shall impose as a condition that the person exercise the privilege only when a parent, guardian, or custodian of the person who holds a current valid driver's or commercial driver's license issued by this state actually occupies the seat beside the person in the vehicle the person is operating.

(E) Before granting limited driving privileges under this section, the court shall require the offender to provide proof of financial responsibility pursuant to section 4509.45 of the Revised Code.

**4510.10. Reinstatement fees payment plan or payment extension plan**

(A) As used in this section, "reinstatement fees" means the fees that are required under section 4507.1612, 4507.45, 4509.101, 4509.81, 4511.191, 4511.951, or any other provision of the Revised Code, or under a schedule established by the bureau of motor vehicles, in order to reinstate a driver's or commercial driver's license or permit or nonresident operating privilege of an offender under a suspension.

(B) Reinstatement fees are those fees that compensate the bureau of motor vehicles for suspensions, cancellations, or disqualifications of a person's driving privileges and to compensate the bureau and other agencies in their administration of programs intended to reduce and eliminate threats to public safety through education, treatment, and other activities. The registrar of motor vehicles shall not reinstate a driver's or commercial driver's license or permit or nonresident operating privilege of a person until the person has paid all reinstatement fees and has complied with all conditions for each suspension, cancellation, or disqualification incurred by that person.

(C) When a municipal court or county court determines in a pending case involving an offender that the offender cannot reasonably pay reinstatement fees due and owing by the offender relative to one or more suspensions that have been or will be imposed by the bureau of motor vehicles or by a court of this state, the court, by order, may undertake an installment payment plan or a payment extension plan for the payment of reinstatement fees due and owing to the bureau in that pending case. The court shall establish an installment payment plan or a payment extension plan under this division in accordance with the requirements of divisions (D) (1) and (2) of this section.

(D) Independent of the provisions of division (C) of this section, an offender who cannot

reasonably pay reinstatement fees due and owing by the offender relative to a suspension that has been imposed on the offender may file a petition in the municipal court, county court, or, if the person is under the age of eighteen, the juvenile division of the court of common pleas in whose jurisdiction the person resides or, if the person is not a resident of this state, in the Franklin county municipal court or juvenile division of the Franklin county court of common pleas for an order that does either of the following, in order of preference:

(1) Establishes a reasonable payment plan of not less than fifty dollars per month, to be paid by the offender to the registrar of motor vehicles or an eligible deputy registrar, in all succeeding months until all reinstatement fees required of the offender are paid in full. If the person is making payments to a deputy registrar, the deputy registrar shall collect a service fee of ten dollars each time the deputy registrar collects a payment to compensate the deputy registrar for services performed under this section. The deputy registrar shall retain eight dollars of the service fee and shall transmit the reinstatement payments, plus two dollars of each service fee, to the registrar in the manner the registrar shall determine.

(2) If the offender, but for the payment of the reinstatement fees, otherwise would be entitled to operate a vehicle in this state or to obtain reinstatement of the offender's operating privileges, permits the offender to operate a motor vehicle, as authorized by the court, until a future date upon which date all reinstatement fees must be paid in full. A payment extension granted under this division shall not exceed one hundred eighty days, and any operating privileges granted under this division shall be solely for the purpose of permitting the offender occupational or "family necessity" privileges in order to enable the offender to reasonably acquire the delinquent reinstatement fees due and owing.

(E) If a municipal court, county court, or juvenile division enters an order of the type described in division (C) or division (D)(1) or (2) of this section, the court, at any time after the issuance of the order, may determine that a change of circumstances has occurred and may amend the order as justice requires, provided that the amended order also shall be an order that is permitted under division (C) or division (D)(1) or (2) of this section.

(F) If a court enters an order of the type described in division (C), (D)(1), (D)(2), or (E) of this section, during the pendency of the order, the offender in relation to whom it applies is not subject to prosecution for failing to pay the reinstatement fees covered by the order.

(G) In addition to divisions (A) to (F) of this section, the registrar, with the approval of the director of public safety and in accordance with Chapter 119. of the Revised Code, may adopt rules that permit a person to pay reinstatement fees in installments

in accordance with this division. The rules may contain any of the following provisions:

- (1) A schedule establishing a minimum monthly payment amount;
- (2) If the person otherwise would have valid driving privileges but for the payment of the reinstatement fees, the registrar may record the person's driving privileges as "valid" so long as the person's installments are current.
- (3) If the person's installments are not current, the registrar may record the person's driving privileges as "suspended" or "failure to reinstate," as appropriate.
- (4) Any other provision the registrar reasonably may prescribe.

(H) Reinstatement fees are debts that may be discharged in bankruptcy.

#### **WARRANT BLOCKS:**

##### **4507.091 Ineligibility for license due to outstanding municipal, county, or mayor's court arrest warrant.**

(A) A municipal court, county court, or mayor's court, at the court's discretion, may order the clerk of the court to send to the registrar of motor vehicles a report containing the name, address, and such other information as the registrar may require by rule, of any person for whom an arrest warrant has been issued by that court and is outstanding. Upon receipt of such a report, the registrar shall enter the information contained in the report into the records of the bureau of motor vehicles. Neither the registrar nor any deputy registrar shall issue a temporary instruction permit or driver's or commercial driver's license to the person named in the report, or renew the driver's or commercial driver's license of such person, until the registrar receives notification from the municipal court, county court, or mayor's' court that there are no outstanding arrest warrants in the name of the person. The registrar also shall send a notice to the person who is named in the report, via regular first class mail sent to the person's last known address as shown in the records of the bureau, informing the person that neither the registrar nor any deputy registrar is permitted to issue a temporary instruction permit or driver's or commercial driver's license to the person, or renew the driver's or commercial driver's license of the person, until the registrar receives notification that there are no outstanding arrest warrants in the name of the person.

(B) A clerk who reports an outstanding arrest warrant in accordance with division (A) of this section immediately shall notify the registrar when the warrant has been executed and returned to the issuing court or has been canceled. The clerk shall charge and collect from the person named in the executed or canceled arrest warrant a processing fee of fifteen dollars to cover the costs of the bureau in administering this section. The clerk shall transmit monthly all such processing fees to the registrar for deposit into the state bureau of motor vehicles fund created by section 4501.25 of the Revised Code. Upon receipt of such notification, the registrar shall cause the report of that outstanding arrest warrant to be removed from the records of the bureau and, if there are no other outstanding arrest warrants issued by a municipal court, county court, or mayor's

court in the name of the person and the person otherwise is eligible to be issued a driver's

or commercial driver's license or to have such a license renewed, the registrar or a deputy registrar may issue a driver's license or commercial driver's license to the person named in the executed or canceled arrest warrant, or renew the driver's or commercial driver's license of such person.

(C) Neither the registrar, any employee of the bureau, a deputy registrar, nor any employee of a deputy registrar is personally liable for damages or injuries resulting from any error made by a clerk in entering information contained in a report submitted to the registrar under this section.

(D) Any information submitted to the registrar by a clerk under this section shall be transmitted by means of an electronic data transfer system.

#### **LICENSE FORFEITURES:**

##### **4510.22 Suspension of license for failure to appear or to pay fine.**

(A) If a person who has a current valid Ohio driver's, commercial driver's license, or temporary instruction permit is charged with a violation of any provision in sections 4511.01 to 4511.76, 4511.84, 4513.01 to 4513.65, or 4549.01 to 4549.65 of the Revised Code that is classified as a misdemeanor of the first, second, third, or fourth degree or with a violation of any substantially equivalent municipal ordinance and if the person either fails to appear in court at the required time and place to answer the charge or pleads guilty to or is found guilty of the violation and fails within the time allowed by the court to pay the fine imposed by the court, the court shall declare the forfeiture of the person's license. Thirty days after the declaration of forfeiture, the court shall inform the registrar of motor vehicles of the forfeiture by entering information relative to the forfeiture on a form approved and furnished by the registrar and sending the form to the registrar. The court also shall forward the person's license, if it is in the possession of the court, to the registrar. The registrar shall impose a class F suspension of the person's driver's or commercial driver's license, or temporary instruction permit for the period of time specified in division (B)(6) of section 4510.02 of the Revised Code on any person who is named in a declaration received by the registrar under this section. The registrar shall send written notification of the suspension to the person at the person's last known address and, if the person is in possession of the license, order the person to surrender the person's license or permit to the registrar within forty-eight hours. No valid driver's or commercial driver's license shall be granted to the person after the suspension, unless the court having jurisdiction of the offense that led to the suspension orders that the forfeiture be terminated. The court shall order the termination of the forfeiture if the person thereafter appears to answer the charge and pays any fine imposed by the court or pays the fine originally imposed by the court. The court shall inform the registrar of the termination of the forfeiture by entering information relative to the termination on a form approved and furnished by the registrar and sending the form to

the registrar. The person shall pay to the bureau of motor vehicles a fifteen-dollar reinstatement fee to cover the costs of the bureau in administering this section. The registrar shall deposit the fee into the state bureau of motor vehicles fund created by section 4501.25 of the Revised Code.

(B) In addition to suspending the driver's or commercial driver's license or permit of the person named in a declaration of forfeiture, the registrar, upon receipt from the court of the copy of the declaration of forfeiture, shall take any measures that may be necessary to ensure that neither the registrar nor any deputy registrar accepts any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. However, for a motor vehicle leased by a person named in a declaration of forfeiture, the registrar shall not implement the preceding sentence until the registrar adopts procedures for that implementation under section 4503.39 of the Revised Code. The period of denial of registration or transfer shall continue until such time as the court having jurisdiction of the offense that led to the suspension orders the forfeiture be terminated. Upon receipt by the registrar of an order terminating the forfeiture, the registrar also shall take any measures that may be necessary to permit the person to register a motor vehicle owned or leased by the person or to transfer the registration of such a motor vehicle, if the person later makes application to take such action and otherwise is eligible to register the motor vehicle or to transfer its registration. The registrar shall not be required to give effect to any declaration of forfeiture or order terminating a forfeiture provided by a court under this section unless the information contained in the declaration or order is transmitted to the registrar by means of an electronic transfer system. The registrar shall not restore the person's driving or vehicle registration privileges until the person pays the reinstatement fee as provided in this section. The period of denial relating to the issuance or transfer of a certificate of registration for a motor vehicle imposed pursuant to this division remains in effect until the person pays any fine imposed by the court relative to the offense.

### **Criminal Rule 11. Pleas, Rights Upon Plea**

(A) Pleas. A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

(B) Effect of guilty or no contest pleas. With reference to the offense or offenses to which the plea is entered:

- (1) The plea of guilty is a complete admission of the defendant's guilt.
- (2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.
- (3) When a plea of guilty or no contest is accepted pursuant to this rule, the court,

except as provided in divisions (C) (3) and (4) of this rule, shall proceed with sentencing under Crim.R. 32.

(C) Pleas of guilty and no contest in felony cases.

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being re-advised that he or she has the right to be represented by retained counsel, or pursuant to Crim.R. 44 by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose

sentence accordingly; or (c) if the offense is determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence

accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

(D) Misdemeanor cases involving serious offenses. In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being re-advised that he or she has the right to be represented by retained counsel, or pursuant to Crim.R. 44 by appointed counsel, waives this right.

(E) Misdemeanor cases involving petty offenses. In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty. The counsel provisions of Crim.R. 44(B) and (C) apply to division (E) of this rule.

(F) Negotiated plea in felony cases. When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court.

(G) Refusal of court to accept plea. If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

(H) Defense of insanity. The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

#### **Traffic Rule 10. Pleas; Rights upon Plea**

(A) **Pleas.** A defendant may plead not guilty, guilty or, with the consent of the court, no contest. All pleas may be made orally. If a defendant refuses to plead, the court shall

enter a plea of not guilty on behalf of the defendant.

**(B) Effect of guilty or no contest pleas.** With reference to the offense or offenses to which the plea is entered:

- (1) The plea of guilty is a complete admission of the defendant's guilt.
- (2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the complaint and such plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.
- (3) When a plea of guilty or no contest is accepted pursuant to this rule, the court shall proceed with sentencing under Criminal Rule 32.

**(C) Misdemeanor cases involving serious offenses.** In misdemeanor cases involving serious offenses, the court may refuse to accept a plea of guilty or no contest and shall not accept such plea without first addressing the defendant personally and informing him of the effect of the pleas of guilty, no contest, and not guilty and determining that he is making the plea voluntarily. Where the defendant is unrepresented by counsel, the court shall not accept a plea of guilty or no contest unless the defendant, after being re-advised that he has the right to be represented by retained counsel, or pursuant to Criminal Rule 44 by appointed counsel, waives this right.

**(D) Misdemeanor cases involving petty offenses.** In misdemeanor cases involving petty offenses, except those processed in a traffic violations bureau, the court may refuse to accept a plea of guilty or no contest and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty. This information may be presented by general orientation or pronouncement. The counsel provisions of Criminal Rule 44(B), (C) and (D) apply to this subdivision.

**(E) Refusal of court to accept plea.** If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

**(F) Immediate trial.** Upon written consent of defendant and the prosecuting attorney, trial may be conducted immediately after the acceptance of a plea at arraignment. If the defendant seeks a continuance, or demands a jury trial where such right exists, the court shall cause the case to be set for trial.

## **Traffic Rule 13. Traffic Violations Bureau**

**(A) Establishment and operation of traffic violations bureau.** Each court shall establish a traffic violations bureau. The juvenile division of the court of common pleas may establish a violations bureau pursuant to Traffic Rule 13.1. The court shall appoint its clerk as violations clerk. If there is no clerk, the court shall appoint any appropriate person of the municipality or county in which the court sits. The violations bureau and violations clerk shall be under the direction and control of the court. Fines and costs shall be paid to, receipted by, and accounted for by the violations clerk. The violations bureau shall accept appearance, waiver of trial, plea of guilty, and payment of fine and costs for offenses within its authority.

**(B) Authority of violations bureau.** All traffic offenses except those listed in this division may be disposed of by a traffic violations bureau. The following traffic offenses shall not be processed by a traffic violations bureau:

- (1) Indictable offenses;
- (2) Operating a motor vehicle while under the influence of alcohol or any drug of abuse;
- (3) Leaving the scene of an accident;
- (4) Driving while under suspension or revocation of a driver's or commercial driver's license;
- (5) Driving without being licensed to drive when jail is a possible penalty;
- (6) A third moving traffic offense within a twelve-month period when jail is a possible penalty;
- (7) Failure to stop and remain standing upon meeting or overtaking a school bus stopped on the highway for the purpose of receiving or discharging a school child;
- (8) Willfully eluding or fleeing a police officer;
- (9) Drag racing.

**(C) Schedule of fines.** The court shall establish and publish a schedule of fines and costs for all offenses. The schedule shall be distributed to all law enforcement agencies operating within the jurisdiction of the court and shall be prominently displayed at the place in the violations bureau where fines are paid.

- (D) (1) Defendant's appearance, plea, and waiver of trial.** At any time prior to arraignment or thereafter with leave of court, a defendant charged with an offense that can be processed by a traffic violations bureau may do either of the following:
- (a) Appear in person at the traffic violations bureau, sign a plea of guilty and waiver of trial provision of the ticket, and pay the total amount of the fine and costs;
  - (b) Sign the guilty plea and waiver of trial provision of the ticket and mail the ticket and a check, money order, or other approved form of payment for the total amount of the fine and costs to the traffic violations bureau;

- (2) A court may establish a procedure for accepting, through its traffic violations bureau,

guilty pleas, waivers of trial, and payments of fines and costs by telephone or other electronic means. The form of payment accepted by telephone or other electronic means shall be approved by the bureau.

**(3)** Remittance of the fine and costs to the traffic violations bureau by any means other than personal appearance by the defendant at the bureau constitutes a guilty plea and waiver of trial whether or not the guilty plea and waiver of trial provision of the ticket are signed by the defendant.

**(E) Records.** All cases processed in the violations bureau shall be numbered and recorded for identification and statistical purposes. In any statistical reports required by law, the number of cases disposed of by the violations bureau shall be listed separately from those disposed of in open court.

**(F) Hours of operation; personnel.** The court shall appoint law enforcement officer as a deputy violations bureau clerk to act as violations clerk when the violations clerk is not on duty.

**A BRIEF OVERVIEW OF  
CHILD SUPPORT SUSPENSIONS  
HOW THEY HAPPEN AND HOW THEY GET CLEARED**

**Note: All processes are driven by automation and computer creation on existence of factors**

- 1. Driver goes into arrearage status by meeting both of the following:
    - i. \$500 or more in total arrearage**
    - ii. 3 months of non-payment****
  - 2. When this happens a Form 4049 is generated to Obligor which lists all of the possible sanctions, including Driver and Professional License Suspensions and criminal charges**
  - 3. If payments are then made, no problem; if no payment, then each County has its own guidelines on when to suspend licenses**
  - 4. If local County guidelines then occur, BMV is notified to suspend license (literally done by the touch of one button on a computer)**
  - 5. Once suspension occurs, each County has its own guidelines and policies as to their requirements to reinstate license.**
  - 6. When license is reinstated, a Form 4042 is generated to notify BMV to lift suspension ( I am unsure if a 1 button reinstatement can be done- I do not think so)**
  - 7. License is restored when BMV processes the Form 4042, or Obligor files copy with BMV (may have to be certified copy?)**
- Guidelines provide that once ONLY, the guidelines may be varied upon, if circumstances are determined to exist that merit it, to reinstate license even if local County guidelines for reinstatement do not exist.**
- Municipal and County Court Judges and Magistrates do not have authority to grant limited privileges for a Child Support Suspension- may only be granted if CSEA Contempt proceedings are pending by the DR or Juvenile Judge or Magistrate. Juvenile and/or Domestic Relations Magistrates or Judges do not have the authority to order CSEA to reinstate license based on some concept of “substantial compliance” that does not meet CSEA local guidelines for reinstatement of license**

Predicate Motor Vehicle Offenses  
Aka “Predicate Priors”

In general, under 4511.99, State Code traffic offenses are Minor

**Misdemeanors.** However, if a Defendant has prior convictions within the year prior to the date of offense (as calculated between date of conviction at back end and date of offense at front end) of predicate motor vehicle offenses, aka "Predicate Priors", the penalties escalate to

M4- if one prior conviction in a year; M3- If two prior convictions in a year "Predicate Priors" are defined in 4511.01 III as: Predicate motor vehicle or traffic offense" means any of the following: (1)A violation of section 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78, or 4511.84 of the Revised Code;

(2)A violation of division (A)(2) of section 4511.17, divisions (A) to (D) of section 4511.51, or division (A) of section 4511.74 of the Revised Code;

(3)A violation of any provision of sections 4511.01 to 4511.76 of the Revised Code for which no penalty otherwise is provided in the section that contains the provision violated;

(4)Effective January 1, 2017, a violation of section 4511.214 of the Revised Code;

(5)Effective January 1, 2017, a violation of a municipal ordinance that is substantially similar to any section or provision set forth or described in division (III) (1), (2), (3), or (5) of this section.

Note first that there is reference in (6) to any comparable Municipal Ordinances. Numbers for those vary, but LEADS conviction Information should match a state code charge

*Traffic Law and OVI Sentencing - Page 25*

In essence, almost ALL moving violations and 4511 violations are predicate priors. The best way to look at it is to list those offenses that ARE NOT offenses which escalate the penalty.

They are (all are 4511.);

.121-Weigh Scale violations; .13-Signal Lights;.131-Reversible Lanes violations; .14-Jaywalking;.15-Flashing signal lights; 17-Tampering with lights (some see(2)(A)); .19-OVI offenses; .201-Reasonable control when towing farm equipment; .203-Wrongful Entrustment; .251-Drag Racing; .45-FTY Right of Way to safety vehicles; .512-Personal Mobility Devices; .62-Grade Crossings; .63-Stopping at grade crossings; .64-Handicapped Parking; .74-Placing materials on a road; .75- Stopping for School Bus

#### **SPEEDING OFFENSE ESCALATION-LIMITED TO PRIOR SPEEDING OFFENSES**

**However, note that Speeding offenses are only escalated by prior speeding convictions-4511.21(P). To escalate, if a Defendant has two prior speeding violations in a year it becomes an M4 (the first two are Minor Misdemeanors), and an M3 if Defendant has three speeding convictions in the last year. However, also note that section (P)(2) makes a speed an M4 if certain speed limits are exceeded-if more than 35 in a business district (25 zone?), 50 in other municipal streets (35?), or 35 in a school zone, they are automatically an M4.SPEEDING OFFENSES CAN ESCALATE OTHER VIOLATIONS ABOVE, BUT ONLY SPEEDS CAN ESCALATE ANOTHER SPEED**

#### **HYPOTHETICAL #1**

License Status as of 05/15/24: SUSPENDED

Your driver license expiration date is: September 11 2023

You have no driving privileges.

Any requests concerning the issuance of a driver's license or registration  
Will be denied.

You are required to pay a total of \$360.00 reinstatement/processing fee.  
Please submit your check or money order, made payable to Treasurer, State  
of Ohio with the enclosed Reinstatement Fee Payment Receipt, BMV-2005 or  
BMV-2007. Please DO NOT SEND CASH.

BMV CASE NUMBER: SJ05000740 - JUDGMENT SUSPENSION  
OFFENSE DATE: JAN 06 2018  
MUST FILE SR22 OR BOND UNTIL FEB 02 2025

BMV CASE NUMBER: SJ05000740 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: JAN 06 2022  
FOM 1-6-22 TO INDEFINITE  
MUST FILE SR22 OR BOND UNTIL FEB 02 2024

BMV CASE NUMBER: LF06004341 - LICENSE SUSPENSION / FORFEITURE  
\$15.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER: NC06020539 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: May 7, 2019 2019  
SUSPENDED MAY 17 2023 TO May 17,2026  
\$300.00 REINSTATEMENT FEE REQUIRED  
MUST FILE SR22 OR BOND UNTIL MAR 17 2026

BMV CASE NUMBER: S106017346 - 12 POINT SUSPENSION  
\$30.00 REINSTATEMENT FEE REQUIRED  
MUST FILE SR22 OR BOND UNTIL AUG 08 2024  
REMEDIAL DRIVING COURSE REQUIRED

Visit our website for course information at:

[www.drivertraining.ohio.gov](http://www.drivertraining.ohio.gov)

DRIVER LICENSE EXAMINATION REQUIRED

BMV CASE NUMBER: WB06092409 - WARRANT BLOCK

\$15.00 PROCESSING FEE REQUIRED

PARMA MUNICIPAL COURT CASE: 6 D 02940 PHONES: 440-887-7400

For additional information, please call the Ohio BMV at 614-752-7500.

**Hypothetical #1A-same as above, except license expires on 5-12-2025  
but all FRA filings and suspensions other than a 12 point FRA have  
expired as of 5-15-24**

**Hypothetical #2-has ID, no license**

You have no driving privileges.

Any requests concerning the issuance of a driver's license or registration will be denied.

You are required to pay a total of \$2595.00 reinstatement/processing fees. Please submit your check or money order, made payable to Ohio Treasurer, with the enclosed Reinstatement Fee Payment Receipt, BMV-2005 or BMV-2007. Please DO NOT SEND CASH. THIS LETTER MAY INCLUDE CASES THAT HAVE NOT TAKEN EFFECT. THE REINSTATEMENT/PROCESSING FEE IS INCLUDED IN THE ABOVE TOTAL. PLEASE REFER TO THE NOTICE OF SUSPENSION FOR SPECIFIC CASE INFORMATION.

BMV CASE NUMBER:NC03027196 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: FEB 19 2021  
\$125.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER:NC04042352 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: DEC 22 2021  
SUSPENDED JAN 20, 2021 TO JAN 20, 2024  
MUST FILE FRA/SR22 UNTIL JAN 20, 2025  
\$300.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER:S104006534 - 12 POINT SUSPENSION  
\$30.00 REINSTATEMENT FEE REQUIRED  
REMEDIAL DRIVING COURSE REQUIRED  
Visit our website for course information at:  
[www.drivertraining.ohio.gov](http://www.drivertraining.ohio.gov)  
DRIVER LICENSE EXAMINATION REQUIRED

BMV CASE NUMBER:NC04158176 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: MAY 28 2004  
\$550.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER:S104029878 - 12 POINT SUSPENSION  
Suspended 7-1-22 to 1-1-23  
FRA FILING REQUIRED  
\$30.00 REINSTATEMENT FEE REQUIRED  
REMEDIAL DRIVING COURSE REQUIRED  
Visit our website for course information at:  
[www.drivertraining.ohio.gov](http://www.drivertraining.ohio.gov)  
DRIVER LICENSE EXAMINATION REQUIRED

BMV CASE NUMBER:NC05019616 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: NOV 19 2003 \$300.00 REINSTATEMENT FEE REQUIRED

### **HYPOTHETICAL #3**

Your License Status as of 5-15-24: SUSPENDED license expires 1-15-25

Your registration privileges are suspended.  
You have no driving privileges.  
You are required to pay a total of \$275.00 reinstatement/processing fees.  
Please submit your check or money order, made payable to  
Ohio Treasurer, with the enclosed Reinstatement Fee  
Payment Receipt, BMV-2005 or BMV-2007. Please DO NOT SEND CASH.  
THIS LETTER MAY INCLUDE CASES THAT HAVE NOT TAKEN EFFECT. THE  
REINSTATEMENT/PROCESSING FEE IS INCLUDED IN THE ABOVE TOTAL. PLEASE REFER  
TO THE NOTICE OF SUSPENSION FOR SPECIFIC CASE INFORMATION.

BMV CASE NUMBER:KS12013432 - CHILD SUPPORT SUSPENSION  
\$25.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER:LF12047858 - LICENSE SUSPENSION / FORFEITURE  
SUSPENDED JUN 21 2021 TO INDEFINITE  
\$25.00 REINSTATEMENT FEE REQUIRED  
COURT ORDER RELEASE REQUIRED  
AVON LAKE MUNICIPAL CRT CASE:TRD1200317A PHONE:440-930-4103

BMV CASE NUMBER:NC13001586 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: NOV 03 2021  
SUSPENDED FEB 08. 2022 TO FEB 8, 2023  
\$150.00 REINSTATEMENT FEE REQUIRED  
MUST MAINTAIN SR22 OR BOND UNTIL FEB 08 2024

BMV CASE NUMBER:LF13019475 - LICENSE SUSPENSION / FORFEITURE  
SUSPENDED JAN 31 2013 TO INDEFINITE  
\$25.00 REINSTATEMENT FEE REQUIRED  
COURT ORDER RELEASE REQUIRED  
AVON LAKE MUNICIPAL CRT CASE:TRD1200873 PHONE:440-930-4103

BMV CASE NUMBER:KS14028190 - CHILD SUPPORT SUSPENSION  
\$25.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER:KS14028192 - CHILD SUPPORT SUSPENSION  
SUSPENDED OCT 27 2014 TO INDEFINITE  
\$25.00 REINSTATEMENT FEE REQUIRED  
LORAIN PHONE: 440-284-4401

#### **HYPOTHETICAL #4**

Your License Status as of 05/15/2024: SUSPENDED

Your driver license expiration date is: May 15 2025  
You have no driving privileges.  
You are required to pay a total of \$2065.00 reinstatement/processing fees.  
Please submit your check or money order, made payable to  
Ohio Treasurer, with the enclosed Reinstatement Fee  
Payment Receipt, BMV-2005 or BMV-2007. Please DO NOT SEND CASH.  
THIS LETTER MAY INCLUDE CASES THAT HAVE NOT TAKEN EFFECT. THE  
REINSTATEMENT/PROCESSING FEE IS INCLUDED IN THE ABOVE TOTAL.  
PLEASE REFER TO THE NOTICE OF SUSPENSION FOR SPECIFIC CASE  
INFORMATION.

BMV CASE NUMBER:0194738G - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: DEC 30 2019  
\$115.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER:0188604H - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: AUG 14 2019  
\$300.00 REINSTATEMENT FEE REQUIRED

BMV CASE NUMBER:NC07079600 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: OCT 08 2002  
\$550.00 REINSTATEMENT FEE REQUIRED  
THE REQUIREMENTS TO COMPLY WITH S111023056 HAVE BEEN SATISFIED.

BMV CASE NUMBER:NC15040572 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: JAN 10 2000  
SUSPENDED MAY 08 2019 TO MAY 08 2024  
\$550.00 REINSTATEMENT FEE REQUIRED  
MUST MAINTAIN SR22 OR BOND UNTIL MAY 08 2024

BMV CASE NUMBER:NC15040573 - NON-COMPLIANCE SUSPENSION  
OFFENSE DATE: JAN 29 2020  
SUSPENDED MAY 08 2022 TO MAY 08 2024  
\$550.00 REINSTATEMENT FEE REQUIRED  
MUST MAINTAIN SR22 OR BOND UNTIL MAY 08 2024

**Hypothetical #5-License expires 5-13-2025**

Your License Status as of 5-15-24:Suspended

You are required to pay a total of \$1035.00 reinstatement/processing fees.

Please submit your check or money order, made payable to Ohio Treasurer, with the enclosed Reinstatement Fee Payment Receipt, BMV-2005 or BMV-2007. Please DO NOT SEND CASH. THIS LETTER MAY INCLUDE CASES THAT HAVE NOT TAKEN EFFECT. THE REINSTATEMENT/PROCESSING FEE IS INCLUDED IN THE ABOVE TOTAL. PLEASE REFER TO THE NOTICE OF SUSPENSION FOR SPECIFIC CASE INFORMATION.

BMV CASE NUMBER:WB15010301 - WARRANT BLOCK  
\$15.00 PROCESSING FEE REQUIRED  
PARMA MUNICIPAL COURT CASE:4C12301 PHONE:440-887-7400

BMV CASE NUMBER:WB15028200 - WARRANT BLOCK  
\$15.00 PROCESSING FEE REQUIRED  
ELYRIA MUNICIPAL COURT CASE:2014CRB02474 PHONE:440-326-1800

BMV CASE NUMBER:WB15050867 - WARRANT BLOCK  
OFFICIAL COURT RELEASE REQUIRED  
\$15.00 PROCESSING FEE REQUIRED  
BEREA MUNICIPAL COURT CASE:4C05642 PHONE:440-826-5860

BMV CASE NUMBER:D114029216 - FIRST OVI  
\$475.00 REINSTATEMENT FEE REQUIRED  
PARMA MUNICIPAL COURT CASE: 4C12301 PHONE:440-887-7400  
MUST PROVIDE VALID PROOF OF INSURANCE INDICATING CURRENT COVERAGE THROUGH THE END DATE OF SUSPENSION, OR IF REINSTATING AFTER THE END DATE OF SUSPENSION, COVERAGE MUST BE CURRENT AT TIME OF REINSTATEMENT.

BMV CASE NUMBER:D115005343 - FIRST OVI  
SUSPENDED SEP 20 2022 TO SEP 19 2025  
\$475.00 REINSTATEMENT FEE REQUIRED  
PARMA MUNICIPAL COURT CASE: 4C05642 PHONE:440-826-5860  
MUST PROVIDE VALID PROOF OF INSURANCE INDICATING CURRENT COVERAGE THROUGH THE END DATE OF SUSPENSION, OR IF REINSTATING AFTER THE END DATE OF SUSPENSION, COVERAGE MUST BE CURRENT AT TIME OF REINSTATEMENT.

BMV CASE NUMBER:S115001757 - 12 POINT SUSPENSION  
\$40.00 REINSTATEMENT FEE  
REQUIRED MUST FILE SR22 OR BOND UNTIL APR 07 2020  
DRIVER LICENSE EXAMINATION REQUIRED

# RECENT CASE LAW RELATING TO TRAFFIC AND MISCELLANEOUS CRIMINAL ISSUES

**Over the last few years there I've collected approximately 400 cases. I've only started with case 298, which covers case law from 2022 forward. If you would like the others, you can email me and I'll send you the others**

298. *DuBose vs. McGuffey, 2022-Ohio-8: when setting a financial bond under criminal rule 46, public safety is not a factor to consider in setting the amount of a monetary bond. The court should look at defendant's financial ability to post a bond; however, there may be other ways to consider a factor but not call it "public safety"* .

299. State vs. Patterson, 2022-Ohio-1167 (4-7-22, 8<sup>th</sup>): attorney provided ineffective assistance of counsel by failing to file a motion to avoid the imposition of mandatory drug finds based upon indigency.

300. State vs. Meyer, 2022-Ohio-1226 (4-13-22, 5<sup>th</sup>): trial court erred proceeding to trial was pro se defendant without a valid waiver of his sixth amendment right to counsel were appellant made no affirmative waiver of counsel.

301. State vs. Avonts, 2022-Ohio-1265 (4-15-22, 6<sup>th</sup>): claim of judicial bias in OVI sentencing lacked merit where presentence investigation discovered appellants prior OVI convictions.

302. State vs. Hampton, 2022-Ohio-1380 (4-27-22, 1<sup>st</sup>): granting of motion to suppress on drug charges was not air where state failed to provide specific facts to justify stop. Ofc. Millie relied on fact that defendant was driving at a distance behind another vehicle at less than a car length for every 10 mph.

303. Cleveland vs. Kopilchak, 2022-Ohio-1408 (4-28-22, 8<sup>th</sup>): appeal of denial of bond for failing to appear for community control hearing on domestic violence conviction was not a final appealable order.

304. State vs. Harris, 2022-Ohio-1021 (3-30-22, 1<sup>st</sup>): domestic violence plea was not validly made as court did not advise appellant of his constitutional right to confrontation, notwithstanding a signed plea agreement.

305. State vs. Neyhard, 2022-Ohio-1098 (3-31-22, 11<sup>th</sup>): denial of motion to suppress was error in improper handling firearm and motor vehicle charge where although officer had reasonable cause to make a stop, stop was unreasonably prolong while waiting for backup to perform a canine free air snap since there was no suspicion of drug activity other than driving in a high crime area.

306. Halloran s. Martin 2022-Ohio-3 (12-30-21, 5<sup>th</sup>): in a habeas corpus with a \$100,000 bond set for three first and third degree misdemeanors, writ granted and bill reduced to \$10,000 were bail set was excessive, based on defendant's financial resources, his consent to a protection order at his bail hearing and that court had ordered a scam unit on defendant

307. InRe Gibson, 2022-Ohio-853 (3-18-22, 1<sup>st</sup>): in a conviction for direct criminal contempt for unauthorized recording of court proceedings, trial court erred by denying appellant's motion for return of his property, being a cell phone and iPad.

308. State vs. Jackson, 2022-Ohio-187 (1-27-22, 8<sup>th</sup>): trial court did not err in granting motion to suppress cents it was no reasonable suspicion for a stop when I did the vehicle stopped by the officer know the driver match the descriptions from dispatch upon which you relied to make a stop, no is the encounter consensual, and the weapon foundering search was not in plain view.

309. State vs. Curry, 2022-Ohio-627 (3-4-22, 1<sup>st</sup>): grant of motion to suppress on weapons offense for weapon found in trunk of vehicle was error, where officer testified he had training to distinguish the owners of marijuana emanating from the trunk, which was sufficient to support the trunk search.

310. 311, State vs. White, 2022-Ohio-665 (3-8-22, 10<sup>th</sup>): trial court erred in imposing suspended sentence on theft charge since appellant was unrepresented by counsel at the revocation hearing, never advised of his right to counsel, and was not asked whether he wish to waive that right.

312. State vs. Morris, 2022-Ohio-94 (1-14-22, 2<sup>nd</sup>): denial of motion to suppress was not air are during a valid traffic stop driver was arrested for Ovi I, the vehicle could not be driven, and passenger voluntarily consented to open her purse after agreeing to be taken to police officer by officer.

313. State vs Massey, 2022-Ohio-122 (1-18-22, 12<sup>th</sup>): offices traffic stop on drug possession not supported by a lawful reason; although officer new defendant had license suspended, he found it was no longer suspended, and defendant did not voluntarily consent to search a vehicle or purse.

313. State vs. Lules, 2022-Ohio-1414 (4-29-22, 1<sup>st</sup>): conviction for DUS, ACD, and Hit Skip was error because court did not inform defendant of the effect of his plea; however his confession of ACD and that he fled the accident were permitted to stand.

314. State vs. Guildon, 2021-Ohio-4553 (12-27-21, 7<sup>th</sup>): trial court did not err in criminal trespass case by denying defendant's oral motion recuse due to impartiality based on defendant's claim of over 50 appearances before the judge; defendant failed to file an affidavit of disqualification.

315. State vs. Cintron, 2022-Ohio-305 (2-3-22, 8<sup>th</sup>): on conviction for misdemeanor breaking and entering, trial court erred in issuing a community control condition that appellant pay child support, where the offense is not share relationship with the child support issue.

316. State vs. Minor, 2022-Ohio-327 (2-7-22, 9<sup>th</sup>): denial of motion to suppress as untimely was error where appellant demonstrated good cause of the untimely filing sends dash cam video was delayed due to Covid 19 for cautions until the deadline for filing motions expired, and nothing in the record suggested counsel was derelict in his efforts to obtain the discovery in a timely manner.

317. State vs. Peel, 2022-Ohio-362 (2-9-22, 1<sup>st</sup>): trial court did not err in finding appellant not guilty of aggravated menacing, but guilty of disorderly conduct as a lesser included offense.

318. State vs. K.S., 2022-Ohio-365 (2-9-22, 9<sup>th</sup>): denial of application to seal record for obstructing justice at five was air since defendant was an eligible offender and that offense is not precluded from sealing.

319. State vs. Estridge, 2022-Ohio-208 (1-28-22, 2<sup>nd</sup>): trial court erred in accepting guilty plea for M1 drug possession without first obtaining a valid waiver of right to counsel. No waiver can be inferred where original charge of felony possession was dismiss pursuant to plea agreement in which appellant was represented by counsel, but no indication that appellant was represented by counsel in the plea.

320. State vs. Benge, 2021-Ohio-4226 (12-3-21, 5<sup>th</sup>): granting of motion to suppress was not air where troopers had no reasonable suspicion of a traffic violation or dash cam did not show a violation of failing to stop at a stop bar.

321. State vs. Bullis, 2022-Ohio-159 (1-24-22, 12<sup>th</sup>): denial of motion to set aside forfeiture was not air where defendant did not challenge the forfeiture order in a direct appeal, and a motion to vacate canopy used as a substitute for timely direct appeal.

322. State vs. Brunk, 2021-Ohio-4270 (12-6-21, 5<sup>th</sup>): denial of motion to suppress was not air since officer had reasonable cause to make a traffic stop, and smell of raw marijuana odor prior to search provided probable cause to search the vehicle.

323. State vs. Lively, 2022-Ohio-462 (2-16-22, 5<sup>th</sup>): denial of motion to seal grand theft conviction was not air since appellant was statutorily ineligible for the sealing of the record.

324. State vs. Jones, 2022-Ohio-561 (2-18-22, 4<sup>th</sup>): denial of motion to suppress was not air officer had reasonable suspicion to make a stop or window tenant break like violations, and offices requiring driver to exit vehicle did not constitute an unreasonable search and seizure, and detection of raw marijuana odor provided probable cause to search the vehicle, even if no marijuana was found.

325. State vs. Powers, 2021-Ohio-4357 (12-13-21, 12<sup>th</sup>): in conviction of M1 assault, trial court did not err by conducting a competency hearing or a psychological assessment where appellant's interactions demonstrated he understood the nature objective of the proceedings and he was capable assisting in his own defense.

326. State vs. Conde, 2021-Ohio-4230 (12-3-21, 2<sup>nd</sup>): trial court erred in revoking community control for nonpayment of restitution were court failed to make a finding that his failure to pay was willful whether despite a bona fide effort an alternative means of punishment would not be adequate.

327. State vs. Williams, 2021-Ohio-4203 (11-30-21, 5<sup>TH</sup>): on assaulting DV conviction, court did not err in granting defendant's motion to represent himself with the court engaged in an extensive colloquy with defendant and made a sufficient inquiry in determining that defendant fully understood and intelligently relinquished his right to counsel.

328. State vs. Krankovich, 2021-Ohio-4297 (11-22-21, 7<sup>th</sup>): on conviction for aggravated menacing and resisting arrest defendant was denied her rights to a jury trial since she timely filed a jury demand and never made a written waiver of that right.

329. State vs. Hetrick, 2022-Ohio-1993 (6-13-22, 11<sup>th</sup>): denial of application to seal record of attempted failure to comply and OVI was not air The OVI conviction is precluded from sealing as well as the attempted failure to comply.

330. State vs. Love, 2022-Ohio-1454 (3-28-22, 7<sup>th</sup>): conviction for Ovi I relating to drug of abuse reversed. Law-enforcement did not obtain a chemical test, she said she had "slipped up", but any admission not referring to a specific drug of abuse is only speculative no contraband was found in defendant's vehicle.

331. State vs. White, 2022-Ohio-1635 (5-16-22, 11<sup>th</sup>): misdemeanor assault conviction reversed after bench trial although counsel a demanded a jury trial. Record shows defendant did not formally waive his right to a jury trial. Once a jury trial is demanded court may not conduct a bench trial as defendant makes a knowing and voluntary waiver of his right to a jury trial.

332. State vs. Hart, 2022-Ohio-1706 (5-23-22, 12<sup>th</sup>): trial court erred in denying application is to seal record for 1998 convictions for breaking and entering in safe cracking court found appellant was not an eligible offender because of two misdemeanor convictions. State conceded air and none of the offenses excluded him as an eligible offender.

333. State vs. Tincher, 2022-Ohio-1701 (5-23-22, 9<sup>th</sup>): OVI conviction reversed. An informant identified as, and a door – or call 911 stating she saw female stumbling all over the place exit a bar and drive away

location of by was provided unbeknownst to the dispatcher these events was seen by EMs boyfriend not her trial court erred in granting motion to suppress both a 911 operator in the officer were aware of the EF's ID, making the trip more reliable. Officer was able to locate defendant's vehicle exactly where EF reported it would be.

334. *Cleveland vs. Rudolph*, 2022-Ohio-2363 (7-7-22, 8<sup>th</sup>): because the victim asserted his rights under Marcy's law by requesting notice and opportunity be heard at all public proceedings court erred in sensing Rudolph to not having a license and failure to control after he damaged victim's car.

335. *State vs. Freeman*, 2022-Ohio-2364 (7-7-22, 8<sup>th</sup>): after two counts of felonious assault after shooting in the leg were dismissed, court erred by denying Freeman's motion requesting the return of firearm for lack of jurisdiction trial court retains continuing jurisdiction to consider a motion for return of property after conclusion of case.

336. *State vs. Mickey*, 2022-Ohio-2396 (7-11-22, 9<sup>th</sup>): after being sentenced for F5 BNE three days later state mode to reschedule sensing because victim wanted to be present and request restitution. Defendant argued the court second sensing with \$329 and restitution violated double jeopardy original sentence 1 include restitution so it was legally improper. As such court had authority to reopen the matter in order restitution without violating the Double Jeopardy Clause.

337. *State vs. Edwards* (7-11-22, 12<sup>th</sup>): The trial court erred by granting appellee's motion to suppress contraband seized from both inside and outside a vehicle appellee was seen driving while having a suspended driver's license where the evidence seized from inside the vehicle was in plain view and the evidence seized outside the vehicle was abandoned and appellee had no legitimate expectation of privacy in the area where the contraband was located in a grassy area between a restaurant parking lot and a public street.

338. *State vs. Brooks*, 2022-Ohio-2478 (7-21-22, Supreme Court): Criminal law—2018 Am.Sub.H.B. H.B. 228 must be applied to all pending and new trials that occur on or after its effective date, March 28, 2019, irrespective of when the underlying alleged criminal conduct occurred (shifted burden of self-defense to Prosecution)

339. *State vs Bill*, 2022-Ohio-2599 (7-29-22, 2<sup>nd</sup>): The trial court did not commit reversible error when it imposed court costs in its judgment entry without informing appellant at sentencing that she would be required to pay court costs.

340. *Cleveland vs. Marsh*, 2022-Ohio-2587 (7-29-22, 8<sup>th</sup>): Aggravated menacing; misdemeanor; continuance; ineffective assistance of counsel; prejudice; App.R. 16(A)(7). The appellant has not provided any specific instances of deficient conduct by trial counsel or that outcome of the trial would have been different, and therefore, the appellant failed to sustain the burden to demonstrate the existence of ineffective assistance of counsel warranting a new trial.

341. *State vs. Yontz*, 2022-Ohio-2745 (8-11-22, Supreme Court): R.C. 2951.041—Intervention-in-lieu-of-conviction ("ILC") supervision—Order denying the modification of the conditions of ILC is not a final, appealable order—Court of appeals' judgment vacated.

342. *State vs. Allen*, 2022-Ohio-1872 (6-3-22, 2<sup>nd</sup>): The trial court failed to comply with the requirements of Crim.R. 11(E) when it failed to inform appellant that his guilty plea constituted a complete admission of guilt. Additionally, the trial court erred when it provided appellant with material misinformation regarding the maximum sentence he faced if he pled guilty to three "petty offense" misdemeanors.

343. *State vs. Burke*, 2022-Ohio-2166 (6-24-22, 2<sup>nd</sup>): The trial court did not err in denying appellant's motion to suppress, as the police did not improperly extend the duration of a lawful stop of appellant's vehicle. Moreover, police may detain a stopped driver beyond a normal time frame if they encounter additional facts giving rise to a reasonable, articulable suspicion of criminal activity beyond that which

prompted the initial stop. Such facts existed here. The police officer also had probable cause to search based on his observation of marijuana shakes on appellant's person, his perception of a marijuana odor emanating from appellant's person and the car trunk, and appellant's admission that he had smoked marijuana earlier in the evening, which all occurred before a dog alerted to drugs during a free-air sniff. Given these holdings, it is unnecessary to consider whether a dog's free-air sniff is insufficient grounds for probable cause due to the legalization of hemp or medical marijuana, which may result in the dog's inability to distinguish between legal and illegal substances.

344. *State vs. Haley*, 2022-Ohio-2188 (6-27-22, 5<sup>th</sup>): In order to prolong a traffic stop to accommodate the arrival of a canine unit, a police officer must have a reasonable articulable suspicion to extend the detention.

345. *State vs. Sloan*, 2022-Ohio-1930 (5-31-22, 4<sup>th</sup>): Appellant entered guilty plea based on incorrect information about his ability to pursue an appeal (His attorney made him plead guilty, where he wanted to appeal the Motion to Suppress).

346. *Swann vs. State*, 2022-Ohio-1977 (6-10-22, 6<sup>th</sup>): Trial court is required to hold an evidentiary hearing on a petition for relief from firearms disability.

347. *State vs. Mirkin*, 2022-Ohio-2229 (6-23-22, 4<sup>th</sup>): importuning, R.C. 2907.07; unauthorized use of a computer, R.C. 2913.04; sealing a criminal record, R.C. 2953.32; eligibility to have a record seal is reviewed de novo; grant or denial of motion to seal record is reviewed under an abuse of discretion standard of review

348. *State vs. Osterman*, 2022-Ohio-2751 (8-10-22, 1<sup>st</sup>): The trial court violated defendant's right to a jury trial by conducting a bench trial because defendant's counsel's acknowledgement of the jury waiver was insufficient to meet the "open court" requirement under R.C. 2945.05. SEE ALSO *State vs. Graham*, 2022-Ohio-4752 (12-23-22, 7<sup>th</sup>)

349. *State vs. McVean* 2022-Ohio-2753 (8-10-22, 1<sup>st</sup>): SEALING OF RECORDS – R.C. 2953.61: Where defendant was acquitted of OVI but convicted of speeding and defendant filed an application to seal both records, the state presented no governmental interest in maintaining records that outweighed defendant's interest in sealing, and the state presented no objection to sealing despite being given multiple chances to do so, the trial court abused its discretion in denying defendant's application to seal his records. [But see DISSENT: The record fails to demonstrate that the judge who presided over defendant's bench trial six months earlier that resulted in the OVI acquittal and the speeding conviction acted arbitrarily, unreasonably, or unconscionably when he determined the state's need to access the records for case consideration if defendant was again charged with OVI outweighed the defendant's general privacy interest in sealing the records.

350. *State vs. W.C.*, 2022-Ohio-3235 (9-15-22, 8<sup>th</sup>): denial of motion to seal record reversed because the trial court failed to make the findings required by section 2953.32(C)(1).

351. *State vs. Dean*, 2022-Ohio-2803 (8-12-22, 2<sup>nd</sup>): No Contest plea was improperly accepted with the court did not explain that a no contest plea was admission of facts but not guilt, and it could not be used against defendant in subsequent proceedings. SEE ALSO *State gvs. Sanchez*, 2022-Ohio-2721 (8-8-22, 3<sup>rd</sup>).

352. *State vs. Seifert*, 2022-Ohio-2901 (8-18-22, 5<sup>th</sup>): community control condition prohibiting defendant from owning dogs for one year was not unreasonable – second time in 18 days the dogs writ large..

353. *State vs. Forbes*, 2022-Ohio-2871 (8-18-22, 8<sup>th</sup>): double jeopardy barred a conviction for OVI in Common Pleas Court where defendant was Artie convicted of OVI and Municipal Court for the same incident.

354. State vs. Sponsler, 2022-Ohio-2916 (8-22-22, 3<sup>rd</sup>): waiver of counsel was ineffective where defendant did not execute a written waiver pursuant to criminal rule 44(C) and no records indicating the waiver.

355. State vs. Lewis, 2022-Ohio-3006 (8-29-22, 11<sup>th</sup>): denial of motion to suppress reversed where officer did not have reasonable suspicion to continue a traffic stop to investigate with a registered owner was the US was driving because the officer determined defendant was not the registered owner. Further actions to detain driver were improper.

356. State vs. Dunlap, 2022-Ohio-3007 (8-29-22, 11<sup>th</sup>): in another Defendant in #355, denial of motion to suppress reversed since officer did not have reasonable suspicion to continue a traffic stop to indicate whether defendant owner who was do US was driving because after officer determined defendant was a passenger further actions to detain or were improper.

357. State vs. Lewis, 2022-Ohio-3468 (9-30-22, 9<sup>th</sup>): domestic violence conviction reversed, because the court erred by failing to provide defendant with his right to allocution prior to sentencing. SEE ALSO State vs. Farhat, 2022-Ohio-1716 (5-23-22, 11<sup>th</sup>) SEE ALSO State vs., Terrell, 2022-Ohio-3165 (9-9-22, 2<sup>nd</sup>).

358. State vs. Patrick, 2022-Ohio-3470 (9-30-22, 9<sup>th</sup>): trial court did not err in calling alleged victim of domestic violence as a courts witness, since the court's decision to call a witness on its own motion pursuant to evidence rule 614(A) is within its discretion and reversed only for an abuse of discretion.

359.. State vs. Rasool, 2022-Ohio-3409 (9-28-22, 1<sup>st</sup>): trial court did not err in suppressing evidence where the court find that the officer failed to administer the FST's properly an officer's credibility was dismissed by the inconsistencies in testimony and inability to recall critical details.

360. State vs. Kotouch, 9-14-2022 (9-14-22, 7<sup>th</sup>): granting of motion to suppress on ATV driving on County Road with OVI charge, also like reasonable suspicion to initiate a traffic stop for an act not prohibited by statute. Nowhere in a statute is an ATV prohibited from being operated on County roads, but only on state highways.

361. State vs. Wilson (9-14-22, Supreme Court): conviction of DUS was not supported by the evidence sense, although license was suspended, she was not operating the vehicle when she was arrested was sitting in the driver's seat of a vehicle with the engine running but she was not operating the vehicle since she had been sleeping in the parked vehicle with the engine running but she was not driving the vehicle since it was not moving.

362. State vs. Corn (2022-Ohio-3095 (9-6-22, 9<sup>th</sup>): grant of motion to suppress was error are, what officer was performing community caretaking function when he stopped to check in a vehicle that was stopped on the Burma Road, found defendant parked on the Burma 10:00 PM with odor of alcohol on lit cigarette hanging in his mouth red bloodshot and glassy eyes, and slurred speech, and admission to consumption.

363. State vs. Shoaf, 2022-Ohio-3605 (10-11-22, 3<sup>rd</sup>): denial of motion to suppress was not error since there was reasonable suspicion of offenses and the officers received a tip from an identified citizen informant.

364. State vs. Sanchez, 2022-Ohio-2721 (8-8-22, 3<sup>rd</sup>): trial court failed to comply with criminal rule 11(b)(2) for not addressing defendant personally and that he understood the effect of the plea of no contest. SEE ALSO State vs. Allen, 2022-Ohio-1872 (6-3-22, 2<sup>nd</sup>), was similar result on accepting a guilty plea. AND ALSO Lakewood vs. Hocter, 2023-Ohio-375 (2-3-23, 8<sup>th</sup>). AS WELL AS Cleveland vs. martin, 2023-Ohio-448 (2-16-23, 8<sup>th</sup>). AS WELL AS State vs. Jackson, 2022-Ohio-3662 (10-14-22, 2<sup>nd</sup>).

365. State vs. McVean, 2022-Ohio-2753 (8-10-22, 1<sup>st</sup>): denial of application to seal a acquittal of an Ovi I offense meeting conviction was error.

366. State vs. Thames, 2022-Ohio-1715 (5-23-22, 11<sup>th</sup>): on animal cruelty charges, reimbursement of County Humane Society is not restitution, but a reimbursement.

367. State vs. McDonald, 2023-Ohio-197 (1-24-23, 5<sup>th</sup>): trial court erred in denying motion to dismiss on speedy trial grounds since speedy trial time had expired before defendant suppression hearing was ever held in the record is devoid of information important to determine otherwise including lack of any state response to two request for discovery

368. State vs. Hensley, 2023-Ohio-119 (1-17-23, 12<sup>th</sup>): trial court erred in ordering defendant to pay restitution to victims insurer of \$14,635 the insurance company paid to victim pursuant to insurance policy since the insurer is not itself a victim under Marcy's law or statute.

369. State vs. Folsom, 2023-Ohio-55 (1-11-23, 1<sup>st</sup>): award of restitution of \$4000 on criminal damaging conviction by defendant hitting the micro victim's vehicle was error since restitution is limited to the amount of economic loss suffered by the victim as a direct and proximate result of the offense, and the award exceeded the amount of economic loss caused by defendant's actions, the damages awarded for/tires and certain the gas tank were not a direct and proximate result of defendants act of hitting the victim's rear bumper.

370. State vs. Brasher, 2022-Ohio-4703 (12-28-22, Supreme Court): it was error are for trial court to grant the victim's mandamus action to enforce a right to restitution under Marcy's law, since victim should have appealed the portion of defendant sentencing denying restitution because she had standing to do so.

371. State vs. Brown, 2022-Ohio-4689 (12-27-22, 3<sup>rd</sup>): trial court erred in ordering \$11,896.08 in restitution since the amount is beyond the amount of the theft that the amended indictment charged defendant with (amended to theft to more than \$1000 but less than \$7500).

372. State vs. Nicholson, 2022-Ohio-4598 (12-21-22, 1<sup>st</sup>): in order restitution reversed because trial court failed to hold a hearing even though defendant disputed the amount of restitution. SEE ALSO State vs., Green., 2022-Ohio-4524 (12-22-22, 8<sup>th</sup>)

373. Warrensville Hts. Vs Parker, 2022-Ohio-4507 (12-15-22, 8<sup>th</sup>): no error found in disorderly conduct conviction for denial of speedy trial dismissal. A defendant statutory right to speedy trial may be waived, with or without defendant's consent by defendant's counsel. SEE ALSO South Euclid vs. Njoku, 2022-Ohio-4388 (12-8-22, 8<sup>th</sup>)

374. State vs. Myles, (2022-Ohio-4504 (12-15-22, 8<sup>th</sup>):in bench conviction for domestic violence, no error with the admission of defendants 911 call and victim's written statement. The 911 call was admissible as a present sense impression exception to the hearsay rule.

375. State vs. Coffelt, 2022-Ohio-4622 (12-13-22, 7<sup>th</sup>): trial court erred in ceiling record of conviction, since appellant had a pending community control sensor another matter and community control constitutes a pending criminal proceeding, precluding grant of an application to seal a record.

376. State vs. Yerkey, 2022-Ohio-4298 (12-5-22, Supreme Court): in conviction of violating a protection order, trial court erred in ordering restitution for victims wages lost as a result of victims voluntary attendance at court proceedings, since lost wages are not a direct and proximate result of the violation crime.

377. Cleveland vs. Figueroa, 2022-Ohio-4012 (11-10-22, 8<sup>th</sup>): and criminal damaging conviction, imposition of \$1800 restitution for damage to victim's vehicle was not error. The trial court was not

required to consider defendant's ability to pay for that the victim had car insurance to offset the restitution amount. There is no legal authority requiring the trial court to offset any restitution award by any potential insurance coverage.

378. State vs. Graves, 2022-Ohio-4130 (11-17-22, 5<sup>th</sup>): defendant was convicted of an OVI and then pled to possession of hashish. Defendant did not incur double jeopardy since OVI/Drugs and possession of how she's constitute separate violations each requiring proof of the fact the other did not.

379. State vs. Brock, 2022-Ohio-3439 (9-29-22, 10<sup>th</sup>): jury conviction for disorderly conduct reversed. The jury instructions regarding disorderly conduct plainly erred by omitting the elements of "engaged in fighting, and threatening harm to persons or property, or in violent or turbulent behavior".

380. Independence vs. Ismail, 2022-Ohio-3742 (10-22-22, 8<sup>th</sup>): conviction the Municipal Court for bad check vacated. The amount of check was \$7500, which is a will we write her directly what you think you may give you will you and you but you the place felony which is Common Pleas jurisdiction.

381. Cleveland vs. Thurman, 2023-Ohio-301 (2-2-23, 8<sup>th</sup>): OVI conviction reversed as the court erred by denying appellant's motion to dismiss based on speedy trial violation.

382. State vs. A.K.H, 2023-Ohio-220 (1-26-23, 8<sup>th</sup>): denial of sealing of records affirmed. Defendant was not an eligible offender based upon his history of criminal convictions.

383. Akron vs. Berenato, 2023-Ohio-296 (2-1-23, 9<sup>th</sup>): conviction of disorderly conduct, as amended from domestic violence reversed. Defendant was not a US citizen did not speak English's primary language, but spoke Chinese. Defendant was not properly arraigned and advised of the nature of the proceedings, he was not informed of his right to counsel and rights of silence are right to jury trial. While interpreter was present at the plea hearing now interpreter was secured for previous appearances there is no evidence indicating he was on able to understand those proceedings in a meaningful way.

384. State vs. Caldwell, 2023-Ohio-355 (2-1-23, 4<sup>th</sup>): Court erred by awarding restitution of \$16,613 evidence presented at the value of the truck was 8000 to 10,000, which was significantly more than victim's actual loss.

385. Peninsula vs. Lockert, 2023-Ohio-440 (2-15-23, 9<sup>th</sup>): conviction of criminal trespass and criminal damaging where defendant represented herself reversed. Trial court failed to ensure that defendant voluntarily, knowingly, and intelligently waived the right to counsel. There is no indication the court explained the dangers and disadvantages of self representation prior to commencement of the charge, nor was it shown that defendant was advised of the nature of the charges, possible punishments, possible defenses and mitigating circumstances.

386. State vs. Mcdonald, 2023-Ohio-464 (2-16-23, 8<sup>th</sup>): conviction for charges resulting from traffic stop and search a vehicle reversed. Window tint violations provide reasonable suspicion or probable cause for a stop. The fact trooper did not test the tent is not determinative.

387. State vs. Neal, 2023-Ohio-584 (3-1-23, 1<sup>st</sup>): sufficient circumstantial evidence presented to sustain OVI conviction. Defendant in driver's seat of a wrecked car after hearing a crash mere minutes before, notwithstanding two occupants of the vehicle exiting from the car. The testimony of the two occupants was found to be "incredible".

388. State vs. Huelsman, 2023-Ohio-649 (3-3-23, 2<sup>nd</sup>): defendant asserted sovereign citizen" defenses on driving without a license. Conviction affirmed.

389. State vs. Kunkle, 2023-Ohio-661 (3-3-23, 6<sup>th</sup>): conviction for domestic violence and other charges affirmed. It was not improper for the officer to walk up to appellant's residence and knocked on the door.

Once on the porch, officer witnessed appellant committing domestic violence, giving him authority to arrest without a warrant.

390. *State vs. Cruz*, 2023-Ohio-833 (3-14-23, 9<sup>th</sup>): OVI conviction reversed. An ambulance over and activated lights on the ambulance, with deputy later arriving in making arrest. The court erred by finding one of the paramedics wasn't competent to testify because he was not in a police marked car or distinctive uniform the court erred by suppressing the paramedics testimony relating to their pre-sentence observations and actions.

391. *State vs. Pope*, 2023-Ohio-865 (3-17-23, 6<sup>th</sup>): trial court properly denied attorney's motion for leave to file a motion to suppress. The motion was filed two days prior to trial even though trial had been set for months. Last-minute change of counsel is insufficient to establish good cause for the untimely motion filing.

392. *State vs. Glaspy*, 2023-Ohio-1073 (3-31-23, 9<sup>th</sup>): Court erred by failing to inform defendant of a right to a jury trial as to the DUS charge. There was sufficient evidence to find her guilty of ACD, a minor misdemeanor. SEE ALSO *State vs. Graham*, 2022-Ohio-4752 (12-23-22, 7<sup>th</sup>).

393. *State vs. Lauer*, 2023-Ohio-1076 (3-31-23, 9<sup>th</sup>): criminal mischief conviction reversed victim did not attend trial, but deputy testified state did not present any other evidence establishing defendant is the person who committed the offense at most, the state established defendant of the same last name as that is the alleged that offender. Ineffective assistance of counsel for failing to move for acquittal at the end of the states case.

394. *State vs. Abdalla*, 2023-Ohio-1054 (3-31-23, 1<sup>st</sup>): trial court did not err by not giving interpreter required oath until close of evidence.

395. *State vs. Strojny*, 2023-Ohio-1016 (3-24-23, 7<sup>th</sup>): plea in conviction vacated. Counsel was not present at sentencing, Judge demonstrated possible bias. Appellate court noted defendant's right to file an affidavit of prejudice on remand.

396. *State vs. S.D.L.*, 2023-Ohio-929 (3-23-23, 8<sup>th</sup>): trial court failed to hold required hearing to seal record, as defendant was an eligible offender.

397. *State vs. Angers*, 2023-Ohio-369 (2-9-23, 8<sup>th</sup>): the imposition of a driver's license suspension for a community control sanction is violative of law.

398. *State vs. Lovelace*, 2023-Ohio-339 (2-6-23, 12<sup>th</sup>): denial of motion to dismiss on speedy trial grounds was proper, where court put on the record the reasons for an eight day delay due to the court's busy schedule. SEE ALSO *State vs. Bean-Deflumer*, 2023-Ohio-230 (1-26-23, 5<sup>th</sup>).

399. *Cleveland vs. Boyd*, 2023-Ohio-459 (2-16-23, 8<sup>th</sup>): on conviction for criminal mischief regarding removal of a political sign at a gas station, trial court could order mental health or anger management counseling, but could not order a substance assessment or substance treatment. SEE ALSO *State vs. Clemons*, 2022-Ohio-4395 (12-8-22, 8<sup>th</sup>).

400. *Sate vs. Sayers*, 2023-Ohio-672 (3-6-23, 11<sup>th</sup>): proceedings for community control violation instituted before end of community control, are not terminated if defendant is brought to court after the community control period has terminated.

401. *Cleveland Vs. Byrd*, 2022-Ohio-4635 (12-22-22, 8<sup>th</sup>): officer stop defendant for traffic violation, decided to give a warning. However, as detaining the vehicle until a canine could arrive was not a reasonable time to detain the vehicle on the traffic violation for the warning.

402. State vs. Kay, 2023-Ohio-2862 (8-17-22, 5<sup>th</sup>): community control condition that defendant not return to a particular County after jail is not permitted.

403. State vs. Toran, 2022-Ohio-2796 (8-12-22, 1<sup>st</sup>): warrantless search finding weapons after traffic stop was unconstitutional, given facts of the case.

404. State vs. O'Malley, 2022-Ohio-3207 (9-15-22, Supreme Court): in the forfeiture of a motor vehicle for a third OVI conviction within 10 years is constitutional.

405. State vs. Hill, 2022-Ohio-4544 (12-20-22, Supreme Court): judge's refusal to permit no contest plea to permit filing appeal on denial of suppression was error, based on Judge's opinion that there were no reasonable appellate issues on defendant's case.

406. State vs. Keeton, 2023-Ohio-1230 (4-14-23, 2<sup>nd</sup>): on conviction of domestic violence imposing condition that defendant undergo drug and alcohol assessment was not permitted – there was nothing in the record to link drug or alcohol use to the offense committed.

407. State vs. Arnold, 2023-Ohio-1223 (4-14-23, 1<sup>st</sup>): defendant's conviction for making a false alarm was not supported by sufficient evidence for the trial court found that the state did not establish that defendant made the false report.

## TRAFFIC LAW FOR NEW JUDGES

The following is my printed lecture of what you may not hear today. You may read all of this at your leisure, if you wish. I may make occasional references to some of these items during the live presentation, but I would suggest that this is worth reading on the things that we will not see or hear during my presentation:

### **SECTION I.-THE BMV-IT CAN BE YOUR FRIEND**

First and foremost, knowing how to deal with the BMV and how to get information, your first step is to go to the BMV website, which is [bmv.ohio.gov](http://bmv.ohio.gov). If in your prior lawyer life, you already understand the website, including how to read a LEADS, you may skip this section; if not, it is a good review of the things you will find useful.

As you look at the website you'll find various headings to the left side if you navigate to the driver's license/ID; it will give you the item known as Acceptable Documents. This may be in your materials. This is an important key to have in your courtroom, because anyone who wishes to get a license or ID must have these acceptable documents to identify 5 things about themselves and the various documents they can use. I give them out all the time to defendants so they know the documents they need before they go to the Bureau, lest they show up at the Bureau and find out they are missing documents.

Next, if you go to the menu described as Suspensions and Reinstatements, you can click on any particular suspension and it will explain

what one must do to clear that suspension. You may also find this information in an easier to find format at the Judicial Conference website, which is ohiojudges.org. If you navigate there, you should be able to find the suspension resource from Judge Nicastro and Attorney Robert Walton. You may find that to be easier, but at either source, it will guide you on how a defendant must act to clear a particular suspension.

If you click on the Online Resources, you will see at center top the words Reinstatement Requirements. This is one item you should use a lot, because if you provide defendant's license/ID number, date of birth, and last 4 digits of their SS number, with a click you can find out exactly what their license status is. This is very important to the extent you want to navigate people to be legal and licensed, whether they have the ability to do what the requirements are or not. We will be discussing this to a greater extent in the live presentation.

Another form you should have in your courtroom, which is printable off the website, is a change of address form. Addresses are updated to the BMV in many ways, but if the address you have differs from the BMV, give them a form with instructions to send it to the BMV, so that the BMV has their current address for anything the BMV must notify them on.

While we are on the issue of addresses, perhaps one of the most important actions when you are in court and cases that are continued is to ***CONFIRM YOU HAVE DEFENDANT'S CURRENT ADDRESS!!!!*** Defendants are constantly on the move, and by asking this before they leave your courtroom for the next court date, you can make sure you have the right address. In my world I put a small Post-it note over defendant's address on the case file, and my staff then notes to correct the address. This eliminates a lot of failures to appear due to notices going to bad addresses. *Also as to warrants and resets, I have evolved on most traffic offenses that if someone does not appear I will automatically kick it two weeks with a notation on the reset that the defendant did not show. If they do not show that second time, then I'll issue a warrant. There are a lot of people who for whatever reason forget and then call the next day hoping that a warrant is not issue*

Probably as important is learning how to read a LEADS-if you already know you are ahead of the curve. If not, you should be able to find a learners guide somewhere on the website. But in looking at a LEADS, and I would suggest having a highlighter, the most important things to look for are the following as it relates to people with traffic and OVI issues:

1. Defendant's date of birth and Social Security number
2. The expiration date of a license – even if they have not had a license in years, the license information section will tell you when it was issued, and when it expires, even if it expired years ago. If the license section shows no dates, then that person has never had a license.
3. To the extent of points being issued, highlight the convictions that show points within the last 2 years when they are in your court. That

will tell you whether or not they may face a 12-point suspension or be in danger of the same.

4. For OVI issues and priors, you can highlight the OVI prior convictions which would include the arrest data and conviction date. The conviction date is the important date. Also, you will find case numbers on all conviction entries. A physical or reckless which was released to the state's which's request especially when it comes to working with insurance most of the real property fees and is a the a prior OVI arrest, if the case designation includes the letter "C", which is the case designated for OVI type charges.

5. If you use the online resource and reinstatement fees, you need not highlight whatever their suspension issues are, with the possible exception that you may discover that the defendant in your Court on an OVI charge may have another pending case, which you can discern by checking the suspensions section to see if there is an administrative license suspension entry in addition to your Court's ALS suspension. The Bureau will for the most part accept any Entry you send them as to one's license. Some general things to consider and remember:

1. On any Entry to the BMV, always include defendants license/ID number and date of birth – including the last 4 digits of the Social Security is not that significant anymore.

2. If you have the ability to enter the BMV case number or numbers, include those. When I talk about license intervention programs, and if you use the BMV website, you would have those numbers.

3. When you send entries to the Bureau, send certified copies, but in many situations also send certified copies to defendant and/or the attorney, if defendant has one. This enables defendant to deliver the entry to a regional center faster than they might get processed at the Bureau.

4. When you sentence with license suspensions, always check the expiration date of the license. If license will expire during your suspension, then defendant will need a renewal entry to take to the Bureau to unlock your suspension to renew their license. This also may arise when you have a pending case, when you can use a similar entry for the defendant to either obtain or renew a license while your case is pending.

5. Should you order an earlier termination of interlock, and entry must be sent to the Bureau because they will not lift off the interlock notation until a suspension is ended, or they are told by the judge to terminate the interlock early. The same is true should you terminate a license suspension early. For example, you might give a 2<sup>nd</sup> offender OVI a multiple year suspension, but decided at some later point you wish to terminate the suspension, as long as they have served their minimum mandatory suspension.

### **Getting information on a Defendant's license status and/or suspensions:**

As mentioned earlier, you go to the online services at the website, and click on reinstatement fees. Using the information I noted above, you will get a picture and can print exactly what Defendant's impediments are. I give them out at each DUS pretrial and give them to defendant or counsel. This gives them the roadmap they must do to in theory clear a current license, or clear to obtain a license. We will discuss this more when we speak to section D in the outline.

### **Section I. F.-Child Support Suspensions**

You will find in the materials a page that explains how a child support suspension is created. We have no authority to grant limited privileges with a child support suspension, although the Judicial Conference is working on potential legislative change, but we have not now. Each County has a CSEA agency, and has its own requirements to clear a child support suspension – typically a payment on an arrearage, and providing a new payment source for direct payments. I would suggest that you open up communication with those persons at your CSEA agency as to what their requirements are to clear a suspension, so that if you have a defendant with one of these, you can at least tell them what to expect when they contact your CSEA agency.

### **Section I.G.-12 Point Suspensions**

When a defendant living in your jurisdiction receives a 12-point suspension; they may file a petition in your Court to receive limited driving privileges during the suspension. This is filed as a civil "H" case. If the request is filed before the suspension began, it is stayed until you hold a hearing, and you then impose the 6 months. However, if the suspension has already started, there is nothing to preclude you from granting privileges on what is an ongoing suspension. In my court in those situations the clerk routes them directly to a judge who then can grant the privileges for an ongoing suspension. In this way they are not waiting another month or 2 to get privileges.

You will also find many times when there is what is called a "Compliance" 12-point suspension. This is issued when they must get a 12-point suspension, but they receive credit for suspensions related to the 12 points, such as an OVI suspension. Law Enforcement has 2 schools of thought on these – first, it is a suspension, therefore they may charge a DUS. Second, my approach is that they receive this with ongoing credit for suspension, but they must still clear the suspension as soon as possible. You would issue in the appropriate OVI case a retest entry, which is in your materials, but permitting them to clear the 12-point suspension if they are otherwise valid except for the underlying OVI case. This also assumes they have no other impediments. A certified copy of your entry would be given to defendant, who would then take that and all the other things required to clear the 12-point suspension to the Bureau to clear it.

### III. TRAFFIC COURT ARRAIGNMENTS

In your Court, it may be likely that most if not all of your traffic arraignments will be done by your Magistrate. However, you can always improve your process even if “we’ve always done it this way”. However, following my outline, here are some suggestions for the process of arraignment, whether you are doing it or your Magistrate, and whether traffic, criminal or felony: Always explain the potential penalties Defendant faces. In the big traffic arraignment room, that may be as simple as explaining fines, costs, and points. Where possible, use Judge Weiler’s sentencing charts for OVI and DUS cases. If you have multiple jurisdictions with ordinances, I suggest you make a cross chart as I have for the state code DUS charges, and what your corresponding local ordinance sections and penalties are. Some of my cities have sentencing different from state code, and it is important to remember that.

1. As part of the process explain the 4 pleas available and where applicable rights of Counsel. If the offense is jail-able they have a right to an attorney. If you advise that up front they can ask – when I arraign, I always asked them if they think they can afford an attorney, or wish to be considered for a Public Defender. Sometimes, if they say they can hire an attorney, I will inquire as to how much they make a month before taxes, because that is the threshold number for a Public Defender. Many times, somebody will say they’ll hire a lawyer, but they have no ability to do so, and should get a Public Defender.

2. Learn what the predicate priors are, which is in a page in my materials. Simple rule of thumb is that speeding offenses within a year are the only thing that can escalate speeding offenses; any moving violation, including speeding, can escalate any violation other than the speed to the higher penalty.

3. On a related note to the state code/local ordinance issue, you may want to check certain other common violations to see what your local penalties are. By way of example, in one of my cities a first moving violation is an M4; in Parma, there is no minor misdemeanor Disorderly Conduct, as all of them are M4 under local ordinance. These are background things you can do to make sure how things work as the case progresses

4. In your main traffic and criminal arraignment, to eliminate time for your Magistrate, I might suggest a video of the explanation of rights (which I guess would now be a flash drive instead of a VHS tape or a DVD). We used to do this, so that when traffic arraignment starts at 1:30 we played the video. Anyone who checks in after that is checked in, but after the first group is processed there is a recess and the video is shown again for those who appeared late.

5. Traffic Rules state that a not guilty plea may be sent by fax or letter, within 4 days of the ticket. However, I suggest you make a local rule that you can accept up until the court date, and may even look the other way if they come in after that before you issue a warrant. Many lawyers will send in a not guilty letter either same day or a day later, so

don't be in that much of a hurry to trigger a warrant on a moving violation.

6. If you have a problem Defendant in front of you at arraignment (as in a person who is rear rectal- figure it out), regardless of the charge, you have the ability to enter a not guilty plea on behalf of that Defendant, and move on.

7. Time waivers – always ask for a time waiver. In my world, 98% sign time waivers. But you can explain to defendants what it is. The way I do it is very simple:

“I am asking you if you will sign a time waiver. You are not required to sign it, and if you sign it, you may revoke the time waiver later. Please read the form before you sign it. What a time waiver means is I am required to resolve all cases within certain time frames, and in your case 30 (or 45 or 90) days. By signing the form, you are in essence saying “Judge, I understand you have to get my case done in a certain time frame, but if it takes longer than that it's okay with me.” You will probably not need to say this often, but for you have and once it's good to get a waiver list you accidentally screw up on time. In my Court, if a Defendant refuses to sign a time waiver, they are automatically given a pretrial date on the next scheduled date for that jurisdiction. Then, they may sign waiver, or given a Public Defender have their own lawyer they will then sign the waiver.

#### **D. PRETRIAL PROCESS, MOTIONS AND OTHER STUFF**

As you probably already know, Discovery in traffic cases follows the Criminal Rules. In theory, a demand is made, which may or may not be filed in your Court. If Discovery is not provided, then a Motion to Compel may be filed. However, Traffic Rules state that all motions must be filed within 35 days after arraignment. And I know of some judges who summarily deny motions because they were not filed in the time frame; however, you if you think about it, a lawyer may not even get a first Pretrial until past the time frame. How can a lawyer file a Motion to Suppress if he does not know the evidence against his client? I've always felt that notwithstanding that Rule that Motions filed after 35 days I will address. Sometimes I get a Motion to Extend the time to file a suppression, which I will grant for the record, even though I will do that anyway. Sometimes you'll get a Motion to Preserve Audio or Video Evidence. Always do an Entry to respond to that Motion so the prosecution is on notice to preserve the evidence. If they don't, then you have an order you've made for possible sanctions. The Criminal Rules provide for specific requirements on Motions to Continue, which actually include that Defendant sign the motion. I have not denied Motions to Continue if it was not signed by Defendant. Also, realize that Motions to Continue do not always come before the date of the hearing. Many lawyers may not file a motion until a day or 2 after a court date. My office gets telephone calls from pro se Defendants

asking for a continuance; they are advised to fax to us a document indicating the request, the reason for the request, and their current address and phone number, so that they may be contacted if necessary. Whether in normal times, pandemic times, or whatever the “new normal” may be, the flexible and patient before you just start signing warrants.

### **E. The Plea Process-Criminal Rule 11 and Traffic Rule 10**

When you are taking pleas, remember that volume makes our work tough, but in the words of an old Bob Evans commercial, we do it right or we don't do it". In a perfect world, whether traffic or criminal, best practices always prevail over speedy “get it done” approach.

When you have a defendant before you, always explain the original charge(s), and whatever the plea agreement is. Advise defendant what he/she faces in fines, jail, points, license suspension, or any other issues. This may include an explanation of predicate priors, so if defendant wonders why he/she could face 30 days and \$250 on a speeding ticket, instead of \$150 and no jail, you can explain that to Defendant.

When there is a plea agreement changing the charge, always ask the pro se defendant or lawyer if they are willing to waive the issuing of an amended citation, for which you should get a yes. By saying that, you are explaining that Defendant is waiving the requirement that law enforcement would have to come to Court to write a new citation (Remember, we do not the authority to amend a charge-Prosecution does). Basically a “yes” eliminates time and paperwork. Although we do it hundreds of times, the waiver is technically good practice lest there be an argument later that they didn't know the new charge. You then grant the Motion to Amend, so to speak, and then take the change of plea to old or amended charges. (Note-if you have time and there is counsel, explain that which has been dismissed and the penalties eliminated, so Defendant knows how good the deal and the lawyer are, and it makes lawyers look good in front of you to their clients).

You then ask them how they would wish to plead to the amended charge, and if applicable how they would wish to change their plea on charges that were not changed. Whether guilty or no contest, you need to make sure that you do whatever your version is of “the Spiel”. This is the explanation of rights you must give to all defendants on all charges. Everyone may say it differently, but your Spiel should include the following:

1. An explanation of the effect of a guilty or no contest plea, and that a no contest does not admit guilt or innocence, but admits the facts upon which they could be found guilty or not guilty.
2. Of the right to a trial and advising which charges could have a jury, if any, and which could not, or that they do not have a right to a jury at all.

3. Advise them that they are waiving their rights of trial, which include right to cross-examine or confront evidence against him, the right to testify or to be silent with no negative connotation, and the right to subpoena witnesses. Ask each defendant if they understand that they are waiving those rights with the plea, and get a verbal response for your audio record. I then discuss the issue of counsel, and ask if they have had enough time with their attorney, so the attorney has been able to give them good advice. If they are not represented by an attorney, advise them if they do not have a right to public defender that they have the right to consult a lawyer, and in theory I would continue the case if they wished to talk to a lawyer and come back. If they could have a right to counsel and are pro se, best practice would be to sign a Waiver of Counsel form. This is not specifically required unless it is a serious offense, which is jail of more than 6 months, in which case a written waiver is required. The only situation we usually see this would be on a third offense in ten OVI charge. But an oral dialogue on other Counsel waivers is good practice. I always get a signed Waiver of Counsel on OVI and DV cases, where future escalation is possible. I then asked them if anyone has made any promises to them on what my sentencing will be to induce them to either make the plea they have made, or waive Counsel, and if so, who said what. Although not required, I usually ask defendants on jail-able offenses if they are currently on probation, parole, community control, or post-release control for any charges. If they acknowledge in the affirmative, I advise them that the plea could potentially result in violation of that other control, so they are aware of it.

4. Although on most offenses we have do not deal with immigration, I have a copy of the required language of 2943.031 at my bench to read on any case that could have immigration consequences. I do not ask every defendant if they are a US citizen, but will sometimes ask that question if I have reason to believe they may not be a citizen on those offenses where the requirement must be given, and it is mandatory. I also asked them if they are under the influence of any alcohol, drugs, or medications, whether prescription or non-prescription, to ensure that their plea is knowing and intelligent. If they acknowledge they are taking medication I will usually inquire, and primarily look for mental health and/or pain medications. Where applicable I will then ask them "are you mentally clear and do you understand what's going on"? At that point I will then acknowledge for the record that defendant has made a knowing, intelligent, and voluntary plea, with waiver of/or effective assistance of Counsel and then accept the plea. On a guilty

plea you may directly find them guilty; however, on a no contest plea this now leads to the explanation of circumstances.

5. I suggest you read Section 2937.07 and review the case law on No Contest pleas, including a number of cases in my case law presentation. The No Contest plea can be a bear trap waiting to ensnare your foot in its clutches. Although I will probably be speaking on this, there are a few things I want to make sure you know:

6. NEVER, EVER, ACCEPT A STIPULATION OR CONSENT TO A GUILTY FINDING FROM ANY LAWYER!!!!!! I would sometimes joke at this point to good lawyer friends in my Court to ask them if their malpractice insurance is still in force; just as a joke. As you read case law, a waiver of the explanation of circumstances required under the statute, which I call the presentation of facts, can be done at the right time. However, a consent or stipulation should never be accepted. Having said that, there is sufficient case law, and in my Eighth District I refer to a 1997 case known as "Serrano", as well as more recent cases which stand for the proposition that a defendant can waive the explanation of circumstances, but not until after all of his/her other rights have been explained. In my Court, after the Rule 11/10 Spiel and my finding in accepting the plea as knowing, intelligent, and voluntary, I will then ask Counsel or the pro se Defendant if they are willing to waive the explanation of circumstances. If defendant is pro se, I explain that this waiver means they are waiving the requirement that I must read the facts of the case into the record upon which the case is based before making a finding of guilty or not guilty. When I then receive an affirmative response from either, I then note on the record that I find *Serrano* compliance, and make the finding of guilty of whatever charge or charges defendant has pled to. If they do not waive, then you must have the explanation of circumstances presented. I refer you to all the. The conversation Tithe case law as to the various things that may satisfy the obligation of the explanation of circumstances. Also remember that you are not required to find a defendant guilty just because they have pled no contest with a plea deal. Occasionally, when I look at a ticket before I make a finding, I ask the defendant to tell me their side of the story. With no offense to law enforcement, there are some tickets that are "manure", and in some cases I have made a finding of not guilty on a no contest plea, notwithstanding a plea agreement, and make a finding on the record why I did so. It's called doing justice.

Although we deal in volume, I for many years have done group pleas in front of me, instead of one at a time. This is a personal skill that you can learn by having two or more, instead of 1 defendant in front of you, and then expanding the number. I have had as many as 7 or 8 defendants lined up in front of me with

Counsels, and am able to go through the plea process once with multiple defendants. The keys are having the files laid out in front of you in the appropriate order so as I referred to defendants or Attorneys I referred to them by name for each of the responses needed from a defendant or counsel. Sometimes with OVI cases I may have a defendant facing a first-time OVI, and I can explain the penalties. I then go to the next defendant, who may be facing second OVI penalties, but before I do that I say to the first timer should he/she get another offense in 10 years, he/she would face this next level of sanctions. Although this has worked in the past, given the pandemic and whatever the new normal may be, I will have to decide how to socially distance if I still do group pleas.

We have for many years taken absentia pleas, and in this pandemic many, many more. My in-absentia form is in your materials. We have used this on a regular basis for out-of-state people, and now some lawyers will come to court at a pretrial to get a no point violation, and we will then send the absentia form to them, for their client to fill out and return with check, to the attorney, who then mails it to us by whatever the next pretrial date is, which is usually 4 to 5 weeks later. The form in your materials is for traffic cases only. I have, however, at times taken an affidavit plea on criminal misdemeanors; however, if you're interested in that, contact me directly for discussion, and I will send you the documents I use. If you are in a jurisdiction that has many out-of-state freeway speed cases, this can be a valuable tool if you do not already have it. We have a local rule we adapted decades ago to cover this process.

## **II. H. Fines, Costs, CDL Issues and Points**

Judge Carroll has already presented to you as to fines and costs. I would suggest you review the bench card and keep it on your bench for reference. You should always know depending upon the traffic charge what the fine is. Although points are assessed by the computer, should always be aware of the no point speeding ticket, and the escalation to 4 points on certain speeds in certain limits. In your plea process you should advise the defendant of the appropriate points.

Also, be aware of the statute that states that if you yourself change points, **you can lose your employment!!!**. This is the statute that I call the commandment of "Thou Shalt Not Play with Points."

As to mandatory fines, be aware that on criminal cases, you may have the authority to suspend the mandatory fines, but only with an indigent hearing or determination at time of sentencing. OVI mandatory fines are Title 45 fines, and as such, there is old case law that says these fines cannot be suspended by a Judge based upon the indigent suspension language in section 29. You certainly could suspend the costs in those cases, but the mandatory fine should still be collected.

Although I may also discuss this in the live presentation, you should

understand the difference between warrant blocks and forfeitures. Forfeiture, whether for failure to appear or to pay fines and costs, once issued will have the effect of suspending defendant's license until you lift the forfeiture. A warrant block merely blocks a defendant's ability to renew license or plates until the block is cleared. If you issue a warrant, and the warrant is cleared, whether balances are paid or not, or whatever reason, your Clerk should immediately send the Court Release of that warrant to the BMV. There are courts that do not send the warrant block releases, as a tool to collect the money, which is not really good practice.

Although Pat may have discussed work service in lieu of fines and costs, if your Court already has such a program do not be afraid to use it. I will always ask defendant if they are willing to do that option, but it is their choice; in some cases, I automatically put that on the sentencing whether they can always choose not to do the work service. If you do not have a work service program, contact me separately and I can give you some suggestions on how to set up a program in your Court.

### **A FEW CLOSING OBSERVATIONS NOT IN THE OUTLINE**

Although not specifically traffic related, I would like to share a few observations and suggestions depending upon how you run your world. These are things that I have found viable in my 36 years on the bench.

Remember always that a Court speaks through its Journal. For all the things we do or say or write down, they only have the force of law if they are journalized. Many Courts do many different processes for their Journal. Learn how your Court does it! It will help you as you are making decisions or writing written decisions to make the process easier, as well as making sure that the things you wish to be your orders are journalized.

Depending upon your tech level (which at my age is probably inferior to yours), you may inquire with your Clerk as to your ability to directly plug Journal Entries into your computer Journal. Many years ago, my Clerk gave me access to my cases to plug Journals directly in to the computer. I have copied and pasted more Entries directly into the Journal that I can remember. Whether quick slip entries or longer orders, such as suppression rulings, it has made the process so much easier. For whatever I have dictated or typed, I primarily copy and paste that into a free-form journal in the computer. I then print and sign it but it is already in the computer with a Journal number. The Clerk then does time stamping and imaging to complete the process. Get to know your operating system, and I suspect that may expedite the work of your staff.

On a similar level, I do not know whether you are a person who writes something to be typed by someone else, or you type it yourself into word, or like me you are an oral dictator, meaning I dictate word to text. For me in the past, that involved a tape recorder and a court staff person to reduce it to print. In this

day and age if you are such a person, I suggest that you have your Court immediately buy basic Dragon or other voice to Word software – you do not need the Dragon Legal, because you're not a practicing lawyer anymore. I joke that with my Dragon Lady I can dictate as fast as I can talk, review, and correct it and then copy and paste it into my Journal. My Clerk and Court staff loves me for this. The materials you have been reading were produced by me talking to my Dragon Lady. If you are such a person, you may already have that software from your law office; if not, get basic Dragon; you will find that the world will be as good as, if not better, than your law office.

So, this is the printed portion of the things I will not be speaking of in the live presentation. You have my contact information, and as I have suggested, whether you contact your Mentor or contact me directly as I am always glad to answer questions.

## ***WELCOME TO THE WONDERFUL WORLD OF JUDGING!!!!***

- ***A special note of thanks to Retired Judge Kenneth Spanagel! He taught this course for many years and allowed us to use his materials for this training.***

**And as always, if you need help or have a question, feel free to call OR email us at:**

**JUDGE CARLA J. BALDWIN – YOUNGSTOWN MUNICIPAL COURT  
330-742-8855 – [cbaldwin@youngstownohio.gov](mailto:cbaldwin@youngstownohio.gov)**

**JUDGE TERRI L. STUPICA – CHARDON MUNICIPAL COURT  
440-286-2670 - [TStupica@CO.GEAUGA.OH.US](mailto:TStupica@CO.GEAUGA.OH.US)**



# ENACTMENT SUMMARY

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## House Bill 29 License suspensions Effective April 9, 2025

On January 8, 2025, Governor DeWine signed into law House Bill 29 (Rep. Humphrey and Rep. Brewer), which makes changes to driver's license suspension law.

### **License suspensions for drug offenses**

Under prior law, judges had the option to suspend a person's driver's license as a possible penalty for most drug-related offenses. The bill removes this option generally, allowing a court to suspend a license for a drug offense in limited circumstances:

1. If the drug offense occurs under the same circumstances as an OVI offense, the bill retains current law's mandatory driver's license suspension of up to five years
2. If a vehicle was used to further the commission of the drug offense, the bill retains existing law's discretionary license suspension of up to five years

If an offender's license is suspended under these circumstances, after two years from the date on which the sentence was imposed or on which the offender was release from a jail or prison term under the sentence (whichever is later), the offender may file a motion with the sentencing court requesting the suspension be terminated. The court may terminate the suspension if it finds good cause for the termination.

### **Child Support license suspensions**

Under current law, a child support obligor may request limited driving privileges during a contempt hearing. The bill eliminates the requirement that the request occur during a contempt action to allow an obligor to motion the court with jurisdiction over the order to grant limited privileges at any time, unless the obligor's license is suspended for an offense that would prevent the granting of limited privileges.

### **License suspensions for failing to pay court costs/fines**

The bill eliminates a license suspension as a potential penalty for failing to pay court costs or fines. The bill requires the registrar of the BMV to, within 30 days of the bill's effective date, remove all Class F suspensions imposed, prior to the bill's effective date, by the registrar under R.C. 4510.22 for failing to pay a court cost or fine. The registrar must also compile a list of all individuals whose licenses were suspended, prior to the bill's effective date, by a court under R.C. 2935.27 for failing to pay a court cost or fine, and forward that list to the respective courts, who must then order the registrar to remove the suspensions.

### **Failing to appear for minor misdemeanor**

The bill retains the license suspension in current law as a possible penalty for failing to appear. However, when issued a citation for a minor misdemeanor, the bill requires the court to issue a supplemental citation if the offender fails to both appear in court or at the clerk of court to pay the fine and enter a guilty plea. If the offender fails to appear within 30 days of the issuance of the supplemental citation, the court may issue a summons or warrant for arrest.

### **Failure to provide proof of financial responsibility – lookback period and penalty**

With regard to failing to provide proof of financial responsibility, the bill does the following:

- Reduces the lookback period from five years to one year
- Eliminates the suspension of a person's registration rights and impoundment of the certificate of registration and plates
- Eliminates the \$50 noncompliance fee when the person fails to voluntarily surrender their license, registration, or plates
- Increases from 15 days to 45 days the grace period during which a person may present proof of financial responsibility in order to avoid a license suspension
- Reduces the length of time a person must file an SR-22 from three years to one year
- Eliminates the criminal penalties for operating a motor vehicle without proof of financial responsibility during the period a person is required to file an SR-22 form with the registrar. Civil penalties would still apply.

### **Habitual truant license suspensions**

The bill eliminates the authority of a school district to request a license suspension because of habitual truancy. Any student who has received a truancy-related suspension may file a motion with the juvenile court to have their suspension terminated.

The bill passed the Ohio House by a vote of 84-0 on December 6, 2023 and the Ohio Senate by a vote of 31-0 on December 18, 2024. The House voted the same day to concur on Senate amendments by a vote of 84-6. It was signed into law on January 8, 2025 and becomes effective on April 9, 2025.

## **House Bill 29 changes on warrant blocks and driver's license suspensions.**

Pat Carroll, retired judge  
April 16, 2025

The general intent of House Bill 29, effective April 9, 2025, was to remove a court's ability to impose driver's license suspensions and/or warrant blocks for nonpayment of fines and court costs.<sup>1</sup>

### **Warrant block on driver's license of vehicle registration.**

R.C. 1901.44(B) limited warrant blocks to nonappearance for initial appearances and eliminated the ability for a municipal court to impose registration blocks for nonpayment of fines and court costs.<sup>2</sup>

#### Minor misdemeanor traffic offenses.

Similarly, the authority to impose registration blocks for failure to pay fines or court costs was removed from R.C. 2935.26 for minor misdemeanors. The warrant block authority still remains for those offenses, but only for failure to appear in court on the charge.

H.B. 29 made two other significant changes in R.C. 2935.26 for minor misdemeanors.

1) Waiver of appearance by whole or partial payment. Prior law permitted a defendant to plead guilty and pay the scheduled fine through the court's traffic violations waiver bureau. (Traffic Rule 13).<sup>3</sup> R.C. 2935.26(C)(1) now permits the defendant to avoid a court appearance, plead guilty, and enter into a payment agreement with the clerk of court rather than paying the amount in full.

2) Noncompliance with installment payment plan. If the defendant defaults on the installment payment agreement, the court shall issue a separate summons for the defendant to appear in court. R.C. 2935.26(F). If the defendant does not appear in court or reinstate the installment payment plan within thirty days, the court may issue a warrant for the defendant's arrest. If the defendant pays the balance of the amount owed or re-enters into an installment payment plan, the court is required to cancel the warrant. R.C. 2935.26(G). The statute does not indicate whether the summons for nonappearance or noncompliance with installment payment plan requires a separate court case number or be part of the underlying traffic case number.

#### Notes on installment payment plan.

- Courts are required to offer installment payment plans if requested by defendants.

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<sup>1</sup> H.B. 29 also dealt with driver's license suspensions for lack of financial responsibility and in drug cases in violation of R.C. Chap. 2925.

<sup>2</sup> The same limitation was imposed on county courts (R.C. 1907.25), mayor's courts, (R.C. 1905.22), and common pleas courts (R.C. 2947.09).

<sup>3</sup> Evid. Rule 410(A)(3) provides an exception that a guilty plea through a court's traffic violations waiver bureau is not admissible in a civil or criminal action.

- R.C. 2935.26 and R.C. 2935.27 do not set out any requirements on length of payment plan, minimum payments, etc., and therefore can be set by the court.
- R. C. 2929.28(G) permits 1) payments may be made by credit or debit card and 2) the court may impose reasonable fees for payment plan, including credit card fees.

Other misdemeanor traffic offenses.

The authority to impose registration blocks or suspend driver’s licenses for failure to pay fines or court costs was removed from R.C. 4510.22 for first through fourth degree misdemeanor offenses. Similar to minor misdemeanors, the warrant block authority still remains for those offenses, but only for failure to appear in court on the charge. Installment payment plans in lieu of court appearance are limited to minor misdemeanors offenses and do not apply to other misdemeanor offenses unless permitted by through the traffic violation bureau under Traffic Rule 13(B).

**Driver’s license forfeiture and traffic offenses.**

Minor misdemeanor traffic offenses.

R.C. 2935.27(D) continues the court’s authority to order a driver’s license forfeiture if a defendant does not comply with the installment payment plan in R.C. 2935.26(C), but the license forfeiture option is limited to noncompliance with the installment payment plan and does not apply to post judgment, court ordered fines and court costs.<sup>4</sup> Prior to ordering the license forfeiture, the court must issue a declaration of forfeiture<sup>5</sup>. If there is no corrective action by the defendant within thirty days, the court “shall enter information relative to the forfeiture on a form approved and furnished by the registrar of motor vehicles and forward the form to the registrar.” R.C. 2935.27(D). Upon the defendant’s appearance in court in response to the summons, the court is required to terminate the license forfeiture. R.C. 2935.27(D).

Other misdemeanor traffic offenses.

R.C. 4510.22 removed the court’s authority to issue a declaration of license forfeiture for nonpayment of fines and court costs. A declaration of license forfeiture is limited to nonappearance in court for traffic offense charges. R.C. 4510.22 specifically applies to R.C. 4503.11, 4503.12, 4503.182, 4503.21, 4507.02, 4507.05, 4507.35, 4510.11, 4510.111, 4510.12, 4510.16, 4510.21, 4511.01 to 4511.76, 4511.81, 4511.82, 4511.84, 4513.01 to 4513.65, or 4549.01 to 4549.65 or with a violation of any substantially equivalent municipal ordinance, which effectively includes all traffic offenses, including minor misdemeanor offenses.

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<sup>4</sup> The removal of a court’s authority to issue a license forfeiture is not limited to fines and court costs and may not be invoked to “satisfy any judgment of the court.” R.C. 2935.37(D).

<sup>5</sup> A declaration of forfeiture is a judicial, not a ministerial act, and must be signed by judge, not clerk of court. *State v. Wilson*, 102 Ohio App.3d 467 (2<sup>nd</sup>. Dist. 1995). See also, *State v. Dewitt*, 2014-Ohio-162 (3<sup>rd</sup>. Dist.), holding a declaration of forfeiture of driver’s license may not be delegated to the clerk of court and requires a court order signed by the judge.

### **Other changes.**

H.B. 29 removed the court's authority to hold a driver's license as bond. R.C. 2937.221 permitting a driver's license as bond was repealed.

R.C. 4503.39 sets out the procedure for vehicle registration blocks for lease vehicles, which is also limited to failure to appear in court and does not apply to failure to pay fines or court costs.

### **Implementation.**<sup>6</sup>

Section 5 of H.B. 29 requires the Motor Vehicles Registrar, within thirty days after April 9, 2025, to remove any driver's license or vehicle registration suspensions that were imposed for failure to pay a court fine or fee. The Registrar is also required to create a list, within thirty days after April 9, 2025, of names whose driver's license or motor vehicle registration were under R.C. 2935.27 for failure to pay a court fine or fee. This section specifically provides:

The Registrar shall notify the courts that suspended those individuals' driver's licenses or motor vehicle registrations of the individuals' names and suspension. The courts shall order the Registrar to remove the suspensions associated with R.C. 2935.27 for those individuals.

From this language it appears the responsibility to remove any nonpayment imposed license or vehicle registration suspensions is on the BMV and the courts, not the individual whose license or registration was suspended for nonpayment of fines.

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<sup>6</sup> Page 111 of H.B. 29.



# *ENACTMENT SUMMARY*

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## **House Bill 37**

### **OVI & aggravated vehicular homicide penalties**

Effective April 9, 2025

On January 8, 2025, Governor DeWine signed into law House Bill 37 (Rep. K. Miller and Rep. Johnson), which modifies the penalties for OVI and aggravated vehicular homicide.

The bill passed the Ohio House by a vote of 93-0 on May 22, 2024 and the Ohio Senate by a vote of 30-0 on December 18, 2024. The House voted the same day to concur on Senate amendments, by a vote of 90-0. It was signed into law on January 8, 2025 and becomes effective on April 9, 2025.

#### **Oral fluid testing**

The bill authorizes the use of oral fluid testing to be used as evidence to establish that a person operated a vehicle while intoxicated, to be treated similarly as other types of chemical testing under existing law.

#### **OVI penalties**

##### *Financial penalties*

The bill increases the minimum fines for all OVI offenses by \$190, and provides that of that increased amount, \$75 is to be deposited into the sentencing court's special projects fund, specifically to cover the cost of immobilizing or disabling devices, including ignition interlock devices and remote alcohol monitoring devices. The remaining \$115 from the increase is to be deposited into the Statewide Treatment and Prevention Fund.

Additionally, the bill lowers the reinstatement fee for an OVI suspension from \$475 to \$315.

##### *Limited driving privileges and use of an ignition interlock device (IID)*

For a first-time OVI offender (no prior offenses within the past ten years), the bill allows a court to waive the 15-day "hard" suspension for an offender who has no prior convictions of a physical-control offense and who agreed to chemical testing at the time of the OVI arrest. If the first-time OVI offender has a physical-control offense within the past ten years, the bill increases the 15-day hard suspension to 45 days, and requires the offender use an IID in order to obtain limited driving privileges.

For a second-time OVI offender, the bill requires the court to condition the granting of limited driving privileges on the use of an IID, if the OVI was alcohol-related. If the OVI was drug related, the ordering of an IID is at the judge's discretion.

For an OVI offender who refuses a chemical test at the time of the arrest, the bill modifies the terms of hard suspension and conditioning the granting of limited driving privileges on the use of an IID as follows (source: Legislative Service Commission bill analysis):

Offense # (within 10 years)	Period of hard suspension	Permissive for court to require use of ignition interlock device	Mandatory for court to require use of ignition interlock device
First-time	30 days	Yes	No
First-time offender with a prior physical control offense	90 days	No	Yes
Second-time	90 days	If underlying offense is drug-related	If underlying offense is alcohol-related
Third-time	One year	If underlying offense is drug-related	If underlying offense is alcohol-related
Fourth-time or subsequent	Three years	If underlying offense is drug-related	If underlying offense is alcohol-related

### Aggravated vehicular homicide (OVI) penalties

The bill amends the penalties for aggravated vehicular homicide that is a result of an OVI offense. Specifically, the bill increases the maximum financial penalty from \$15,000 to \$25,000. The bill also establishes a new sentencing structure for these offenses, breaking the offense down into four tiers (based on number of prior offenses or other circumstances surrounding the offense) with different penalties, as follows (source: Legislative Service Commission bill analysis):

Aggravated vehicular homicide (proximate result: OVI)		
Tier	Prior offense(s)	Prison term
First Tier R.C. 2903.06(B)(2)(a)	None – offender commits aggravated vehicular homicide as the proximate result of an OVI offense.	Default minimum mandatory term for second degree felony under R.C. 2929.14: 2, 3, 4, 5, 6, 7, or 8 years
Second Tier R.C. 2903.06(B)(2)(b)	None – offender commits aggravated vehicular homicide as the proximate result of an OVI offense while the offender’s driver’s license is suspended or while offender was driving without a license; or Offender commits aggravated vehicular homicide as the proximate result of an OVI offense and has one prior OVI offense within the previous 20 years; or Offender commits the aggravated vehicular homicide as the proximate result of an OVI offense and has one prior traffic-related homicide, manslaughter, or assault offense within the previous 20 years.	Default minimum mandatory term for first degree felony under R.C. 2929.14: 3, 4, 5, 6, 7, 8, 9, 10, or 11 years

Aggravated vehicular homicide (proximate result: OVI)		
Tier	Prior offense(s)	Prison term
<p>Third Tier R.C. 2903.06(B)(2)(c)</p>	<p>Offender commits aggravated vehicular homicide as the proximate result of an OVI offense and has either:</p> <p>Two prior OVI offenses within the previous 20 years;</p> <p>or</p> <p>Two prior traffic-related homicide, manslaughter, or assault offenses within the previous 20 years;</p> <p>or</p> <p>Two prior offenses of any combination of the prior two parameters listed above within the previous 20 years.</p>	<p>First degree felony with an increased minimum mandatory term under R.C. 2929.142(A):</p> <p>5, 6, 7, 8, 9, 10, 11, 12, 13, 14, or 15 years</p>
<p>Fourth Tier R.C. 2903.06(B)(2)(d)</p>	<p>Offender commits aggravated vehicular homicide as the proximate result of an OVI offense and has either:</p> <p>Three or more prior OVI offenses within the previous 20 years;</p> <p>or</p> <p>Three or more prior traffic-related homicide, manslaughter, or assault offenses within the previous 20 years;</p> <p>or</p> <p>Three or more prior offenses of any combination of the prior two parameters listed above within the previous 20 years.</p>	<p>First degree felony with an increased minimum mandatory term under R.C. 2929.142(B):</p> <p>12, 13, 14, 15, 16, 17, 18, 19, or 20 years</p>

# **Trial Skills Workshop**

**Hon. Todd L. Grace**

*Athens Municipal Court*

**Hon. Thomas M. Hanna, Retired**

*Kettering Municipal Court*



# Ohio Judicial College Trial Skills Workshop

Trial Skills Problems:

Problem One .....	Pre-trial Conferences (Ground Rules)
Problem Two.....	Jury Issues
Problem Three.....	Motions in Limine
Problem Four .....	Witness Sequestration
Problem Five .....	Scope of Direct and Cross Examinations
Problem Six.....	Common Objections
Problem Seven .....	Witness Problems
Problem Eight .....	Motions Frequently Made at Trial
Problem Nine .....	Miscellaneous Issues Relating To Demonstrative Evidence, Jury Views, Note Taking, and Juror Questions
Problem Ten.....	Maintaining Professionalism
Problem Eleven.....	Closing Arguments
Problem Twelve .....	Jury Instructions
Problem Thirteen .....	Jury Deliberation
Problem Fourteen.....	Concluding Trials



## PROBLEM #1 – PRE-TRIAL CONFERENCES (GROUND RULES)

**TOPIC SUMMARY:** Participants will learn to use the pre-trial conference as a forum for communicating to the lawyers the judge's ground rules for conducting a trial.

**POINTS TO COVER:**

1. Procedure rules regarding pretrial conferences
2. Orders setting pretrial conferences
3. The utility of pretrial conferences and case management
4. Conducting the pretrial conference
5. The ground rules
6. Communicating the ground rules to counsel.

**MATERIALS:**

**PROBLEM 1            HYPOTHETICAL 1A**

**Judicial Assistant:** Judge, I need some guidance from you regarding a couple of cases that are on our next jury trial docket.

**Judge:** OK, which cases do you want to discuss?

**Judicial Assistant:** Well, the first one is Morris vs. Case Transportation, Inc. It's a rear end collision, with a claim of soft tissue injury. The plaintiff's lawyer is that real nice lady lawyer, Sally Schaeffer, and the defendant is represented by Thompson E. Lewis, VI, the managing partner over at Bigg, Biggar & Biggast, PA. The attorneys don't want to have a pretrial, which you ordered without any input from the lawyers. The pretrial is scheduled for this Friday, and both the lawyers say they are really busy, and would just as soon skip it. They tell me they've tried to settle, but to no avail. They don't believe anything will be resolved at the pretrial, and they could sure put their valuable time to better use. I told them I'd run it by you.

**Judge:** Anything else?

**Judicial Assistant:** Yes, they would also like to know, if you are having a pretrial, whether they need to show up personally. They each would like to send an associate from their respective firms. As an alternative, could they appear by telephone?

**Judge:** Is that all?

**Judicial Assistant:** Well, the other case is Mickle vs. Menendez Grocery. It's a slip and fall. The plaintiff is claiming a herniated disc. This case was on your predecessor's trial docket, about 20 months ago, but no action was taken, so it was continued. The lawyers tell me nothing has changed since the last pretrial, and they'd like to forgo the conference next week and just show up the morning of trial.

**Judge:** Anything else?

**Judicial Assistant:** Yes, the case will be over the Supreme Court time guidelines on the current trial date.

**LEADER:**            **(PASS THE GAVEL)**

**Review:**

- Purpose and utility of pretrial conferences.
- Judicial preferences regarding pretrial conferences (necessity, attendance by trial counsel telephone hearings).
- Judicial philosophy regarding mandatory mediation.

- See Civil Rule 16
- Rules of Superintendence—Time Guidelines
- Pre-trial orders
- Local Court Rules

### **PROBLEM 1      HYPOTHETICAL 1B**

**Prosecutor:** Your honor, the next case on your pretrial docket is State v. Manson. It's a petit theft, and the defendant has a rather lengthy prior record. The victim is requesting restitution, as soon as possible. The prosecution is asking for 60 days jail time, followed by 3 years probation, with restitution and all costs to be paid within 90 days.

**Defense Counsel:** Judge, my client couldn't possibly accept any plea agreement which involves jail time. We don't quarrel with probation and full restitution and costs, but no jail.

**Prosecutor:** Judge, we have an open and shut case. There are three eyewitnesses, and we have a confession!

**Defense Counsel:** Your honor, my client cannot afford to go to jail at this time. If disposition requires incarceration, we demand a jury trial. I'll be filing a motion to suppress this alleged confession, and various motions in limine. It will take quite some time to get all these matters heard. Judge, I assure you we will have a very active and lengthy defense. Since we assumed the prosecution would be reasonable, we haven't done too much. Speedy trial runs next week, but there is no way we can be ready for trial as scheduled. Judge, we were sandbagged by the prosecution. The defendant requests a continuance, and asks that it be charged to the prosecution for speedy trial purposes.

**Judge:** Is the defendant present?

**Defense Counsel:** I believe he may have just started a new job today. For the record, I will waive his presence.

### **LEADER      (PASS THE GAVEL)**

#### **Review:**

- Where is the pre-trial held?
- What matters should be covered during a pretrial conference in a criminal case?
- To what extent does the judge wish to get involved in trying to resolve the case by pleas?
- Should the role of the judge be passive and merely accept or reject a tendered plea agreement, or should the judge get actively involved in plea negotiations, and make his or her own plea offer to the defendant?

- Any problems with undercutting the prosecutor's offer?
- Presence of the defendant required, unless waived in writing.
- Should the judge discuss possible sentences?
- Potential number of witnesses.
- Speedy trial issues.

**PROBLEM 1          HYPOTHETICAL 1C**

**Defense Attorney:** Your honor, I have never had the privilege of appearing in your court. Is there anything I should be aware of regarding your procedural personal preferences?

**LEADER                    (PASS THE GAVEL)**

**Review:**

- Need to seek permission to approach witnesses for review of exhibits?
- Permissible to travel from behind podium during voir dire?
- Speaking objections?
- Use of first names?
- Stand or sit when jury enters or leaves courtroom?
- Requests of offers re stipulations before the jury?
- Other . . . ?
- Means of communicating personal procedural preferences:
  - Standard orders
  - Review orally during pretrial conference
  - Handouts
  - Bulletin board postings
  - Bar magazines, newsletters, and other such publications
  - Internet home page
  - Other

## PROBLEM #2—OPENING REMARKS

**TOPIC SUMMARY:** Participants will be able to qualify, select and manage a jury.

It is essential to the proper performance of their duties that jurors be informed of their responsibilities before the trial begins. Most counties have a film, video or slide presentation which provides a general orientation for persons summoned for jury service. However, each judge has the responsibility of explaining to the prospective jurors summoned to the courtroom what will be required of them during the jury selection and what will be required if selected as jurors.

- POINTS TO COVER:**
1. How prospective jurors are seated in the courtroom.
  2. Practical concerns of jurors
    - a. breaks
    - b. smokers
    - c. physical problems (example – hard of hearing, diabetes)
    - d. small children
    - e. length of trial
    - f. hours normally worked (example – 8:00 am. –5:00p.m., 10:00 a.m. – 6:00 p.m.)
  3. Introductions of courtroom personnel
  4. Introduction of lawyers, defendant, parties
  5. Identification of case set for trial
  6. Explanation of voir dire process
  7. Explanations of jury selection
  8. Americans With Disabilities Act
  9. What to do when attorneys:
    - a. Ask jurors questions previously asked by judge or another counsel
    - b. Ask questions which require jurors to commit to a verdict
    - c. Argue the case or ask questions which are in substance arguments of the case.
  10. Limitation of time allowed attorneys for voir dire.

11. Collective questions vs. individual questions.
12. Jurors who wish to be excused.
13. Discussion of method or methods of jury selection.
14. Number of peremptory challenges.
15. Basis for a challenge for cause.
16. Presence of a criminal defendant during jury selection.
17. Discriminatory use of peremptory challenges.
18. One Day/One Trial.

**MATERIALS:**

**PROBLEM 2            HYPOTHETICAL 2A**

**Bailiff Smith**

**To Judge:**            “Judge, how many jurors do you want brought to court for your OVI trial?”

**Leader:**            [Hands gavel to student judge.]

**(Criminal Rule 24)**

**Lawyer Smith:**    “Judge, may we approach the bench? Judge, I’ve never tried a case before you. How do you select a jury? Do you allow back striking?”

**Leader:**            [Hands gavel to student judge for a ruling.]

**Lawyer Jones:**    *(If jury selection is done at bench)*

“Judge, my client, Sam Sleuth, has a right to be present during jury selection. Can he come up here to the bench with us?”

*Or*                    “Judge, my client, Sam Sleuth, trusts me to select this jury. Can he go outside and have a cigarette while we select this jury?”

*(If jury selection is done while jury is out of courtroom)*

“Judge, I object to selecting this jury without being able to look at the prospective jurors. I can’t remember them with them out of the courtroom and us in the courtroom. Besides, it violates my client’s constitutional right to confrontation.”

**Leader:**            [Hands gavel to student judge for a ruling.]

**PROBLEM 2            HYPOTHETICAL 2B**

**Lawyer Smith:**    “Your honor, you limited my time on voir dire to 30 minutes. I didn’t have time to ask all my questions. You’re prohibiting me from effectively representing my client. I need at least thirty more minutes, and I’m asking for that much additional time.”

**Leader:**            [Hands gavel to student judge for a ruling.]

**PROBLEM 2            HYPOTHETICAL 2C**

**Leader:**            Assume jury selection has begun. Challenges for cause have been dealt with and no jurors have been struck for cause. Continue with the selection allowing attorney Smith and Jones to exercise peremptory challenges.”  
(Hands gavel to student judge).

*The following dialogue should occur some time during the jury selection.*

**Defense Lawyer**

**Smith:** “Your Honor, I object. The last juror struck by Lawyer Jones was black. My client’s black. That violated Batson.”

**Leader:** **[Hands gavel to student judge for a ruling.]** (Make sure judge makes the proper inquiry).

**Prosecution Jones:** “Your Honor, I’ve already accepted two blacks. Besides, I didn’t strike that juror because he’s black. That juror was sleeping during voir dire; he wasn’t paying attention, and I don’t think he’ll listen to the evidence.”

**Leader:** Makes sure judge evaluates the reasons given by Prosecutor Jones to determine if they are race neutral; also, whether they are supported in the record.

If the judge sustains the objections, talk about what judge should do. Simply disallow the strike? Dismiss the entire jury and start again? If judge overrules objection, talk about what would have happened had it been sustained.

*Continue with jury selection.*

**Defense Lawyer**

**Smith:** “Your Honor, I object, the prosecutor has jury struck a woman (or another woman) juror. My client’s a woman. That violates Batson.”

**Prosecutor Jones:** “Your Honor, Batson applied only to bias of race, not gender.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

Discussion should center around whether cases apply only to blacks and whether they are applicable to other groups such as Hispanics and women.

*Conclude jury selection*

### PROBLEM #3 – MOTIONS IN LIMINE

**TOPIC SUMMARY:** A Motion in Limine (at threshold) provides a helpful advance in ruling on admissibility; it can prohibit (preclude the calling of a witness, reference to prejudicial matters), or it can be conditional (meeting criteria prior to admission, laying foundation).

Grounds and purposes of the Motion include:  
Identification of matter or documents.  
Prejudicial (unfair) effect if allowed.

- POINTS TO COVER:**
1. Purpose of Motion in Limine is to prevent the introduction of improper evidence, the mere mention of which would be prejudicial.
  2. Trial courts should not allow Motions in Limine to be used as unwritten and unnoticed Motions for Partial Summary Judgment or Motions to Dismiss. *Id.*
  3. Must a Motion in Limine be in writing or can it be oral?
  4. Does a judge have to rule on a Motion in Limine prior to trial?
  5. When should a Motion in Limine be heard by the judge and where should the jury be, if selected?
  6. Is the granting of a Motion in Limine irrevocable or can the judge change his/her ruling during the course of the trial depending on the evidence?
  7. What responsibility does the judge have in informing the witnesses about the Motion?
  8. What do you do when the Motion is granted and then violated by the opposing counsel?

**MATERIALS:**

**PROBLEM 3****HYPOTHETICAL 3A**

**Lawyer Smith:** “Judge, I have five Motions in Limine which I would like to make before we begin opening argument. I haven’t had time to put the motions in writing, but they’re short.”

**Lawyer Jones:** “Objection, your Honor, the motions need to be in writing. I can’t be expected to keep track of six oral motions. Besides, he hasn’t given me any notice of these motions.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

**Lawyer Jones:** “Judge, I object for another reason. This isn’t the proper time to hear a Motion in Limine.”

**PROBLEM 3****HYPOTHETICAL 3B****Defense**

**Lawyer Smith:** “Your Honor, now that the jury is selected, but before we start this trial, I would like to make an oral Motion in Limine. I believe the defendant’s confession was made after many hours of questioning and coercion by the police and after he had repeatedly asked for a lawyer; therefore, I believe it should be excluded.”

**Prosecutor Jones:** “I object, your Honor, this is not timely. Mr. Smith should have filed a Motion to Suppress and had this matter resolved in a hearing prior to trial.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

*(After the ruling, inform student judge that a written motion to suppress was timely filed, but contained only boiler plate language without specific facts. Ask for a new ruling.)*

**Review:**

- Is a hearing required?
- Who goes first?
- Who has BOP/burden of going forward?
- Is a motion to suppress proper for a non-constitutional issue?

**PROBLEM 3                      HYPOTHETICAL 3C**

**Defense**

**Lawyer Smith:**            “Your Honor, I make a Motion in Limine to prohibit evidence regarding our my client’s prior OVI conviction. It’s not relevant to this case, and I have reason to believe the Prosecutor will try to elicit this testimony from one of his witnesses.”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

*(Assume student judge grants the oral Motion in Limine. The trial is in progress, and the defendant has testified. Discuss what convictions are admissible. Also, what of remoteness in time?)*

**Prosecutor Jones:**       “Judge, the defendant has just lied on the stand. He told this jury he has never been in trouble with the law before in his life. Judge, he has a prior conviction for OVI. The jury has a right to know he’s lying. I should be able to introduce evidence of that prior OVI. conviction.”

**Defense**

**Lawyer Smith:**            “I object, your Honor, you granted my Motion in Limine about this very issue. All evidence of my client’s prior OVI. conviction was excluded from this trial.”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

**Review:**

- Should you make evidentiary rulings before trial generally?



#### PROBLEM #4—WITNESS SEQUESTRATION

**TOPIC SUMMARY:** This problem considers and explains whether and when witnesses must or should be excused from the courtroom during trial proceedings.

- POINTS TO COVER:**
1. Is it discretionary with the court?
  2. When in the course of the trial is it proper (before voir dire? Before opening statements? Before testimony?)
  3. Are there certain witnesses who do not have to be excluded? (Victims? Mothers of small children who are also witnesses? Case detectives? Experts?)
  4. What does the judge say to the witnesses when rule is invoked?
  5. What to do when rule is violated.

**PROBLEM 4            HYPOTHETICAL 4A**

**Defense**

**Lawyer Smith:** “Before we start the trial, your Honor, I would like to request that separation of witnesses be invoked and that all witnesses on both sides be excluded from the courtroom until they are called to testify. Since I have never practiced before you would your Honor indicate what you will tell potential witnesses and what, if anything, you will require of counsel regarding sequestration of witnesses?”

**Prosecutor Jones:** “I object, your Honor, we haven’t started the testimony. We’re just starting voir dire. The victim’s family, who are also witnesses, want to be in the courtroom during voir dire and opening statements. They shouldn’t have to leave the courtroom until the evidentiary part of the trial. And even then, the victim or her representative can be present for the trial. Doesn’t the constitution say so?”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

**Prosecutor Jones:** “I have no objection to witnesses being excluded, your Honor, but I would like to have the investigating officer remain in the courtroom and sit with me at counsel table so that we can confer during the trial.”

**Lawyer Smith:** “I object, your Honor, the prosecution has no right to that. All witnesses should leave the courtroom until they’re called.

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

**PROBLEM 4            HYPOTHETICAL 4B**

**Lawyer Smith:** “Your Honor, I have just discovered that one of the prosecutor’s witnesses who was supposed to have been excluded, walked into the courtroom and has been sitting here during the testimony of the other prosecution witness. Of course, I asked the bailiff to exclude her as soon as I knew she was in the courtroom. However, under the circumstances, I must move for a mistrial.”

**Prosecutor Jones:** “Your Honor, I oppose the mistrial. It is true one of my witnesses was in the courtroom for part of the testimony this morning. I did not realize it until I turned around and saw her in the back of the courtroom. She was not here yesterday at the beginning of the trial when you excluded the witnesses. There was not willful disobedience on my part or the witness’ part. I don’t think a mistrial is either appropriate or necessary.”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

PROBLEM #5—SCOPE OF DIRECT AND CROSS EXAMINATIONS

**TOPIC SUMMARY:** Participants will be able to control, when necessary, the scope of direct and cross-examination.

**POINTS TO COVER:**

1. When to limit direct or cross examination.
2. When to limit redirect or recross.
3. How to handle lawyers who are disrespectful to witnesses.
4. How to handle gender bias or racial bias as it relates to witnesses.

**MATERIALS:**

**PROBLEM 5**

**HYPOTHETICAL 5A**

*(Assume direct and cross have taken place)*

**Prosecutor Jones:** “Mr. Witness, in what county did the assault occur?”

**Lawyer Smith:** “Objection, that question is outside the scope of cross examination. He had Mr. Witness on the stand on direct for two hours; he certainly could have asked the question.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

*(Assume judge sustains objection)*

**Prosecutor Jones:** “Judge, this is just a technical point. It may be outside the scope of cross, but I have to prove the crime occurred in New Rome. This is an essential element of my case. If you don’t let me ask the question you will in essence be directing a verdict.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

*(Assume direct, cross, redirect, attorneys are seated, witness has left the stand)*

**Prosecutor Jones:** *(Jumps up excitedly)* “Judge, I’ve got to ask two more questions. I forgot to prove venue. I would like to recall Mr. Witness for that purpose.”

**Lawyer Smith:** “Objection, your Honor, he has already called this witness and the witness has left the courtroom.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

**PROBLEM 5**

**HYPOTHETICAL 5B**

**Prosecutor:** “Mr. Witness, I know I asked this question earlier, but after that lengthy cross examination by Lawyer Smith, the jury has probably forgotten what you said in response to my direct examination, so let me ask you once more. . . .”

**Lawyer Smith:** “Objection.”

**Leader:** Discuss need to limit repetitive questions/attorney trying to get the “last word”.

**PROBLEM 5            HYPOTHETICAL 5C**

*(Assume direct, cross and redirect have occurred)*

**Lawyer Smith:**        “Your Honor, I know at the beginning of the trial, you said you were only going to allow direct, cross and redirect of witnesses, but I have some more questions for this witness. I would like to recross.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

OR

**Lawyer Smith:**        “Judge, I know you said you were only going to allow direct, cross and redirect of witnesses; however, the prosecution went into new matters in redirect. I should now be allow to recross.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

**Review:**

- The judge has the authority to set limitations on direct, cross, redirect, etc., but the judge’s rule or order must be set forth in advance.



## **PROBLEM #6—COMMON OBJECTIONS**

**TOPIC SUMMARY:** Participants will be able to respond appropriately to common objections made by counsel.

Assume trial is in progress. The trial is based on information charging Driving Under the Influence of Alcoholic Beverages. The purpose of this exercise is NOT to review the evidence code, but to help the judge respond effectively and appropriately to objections.

- POINTS TO COVER:**
1. How to handle objections when attorney states no grounds for the objection.
  2. How to handle objections when attorney states wrong grounds for the objection.
  3. How to handle objections when attorney states no grounds, but grounds are obvious.
  4. Should the judge require attorneys to stand when making objections.
  5. How to handle attorneys who argue objections before the jury.
  6. How to handle a proffer of evidence.
  7. When does the judge ask questions?
  8. How to handle attorneys who object only to delay the trial.

**MATERIALS:**

**PROBLEM 6                      HYPOTHETICAL 6A**

**Prosecutor Jones:**     “Dr. Do Little, what were the results of the Breathalyzer test you conducted on Mr. Bud Wieser?”

**Lawyer Smith:**        “Objection, your Honor!”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

*(Discussion should center on the fact that no grounds were given for the objection. Is the judge’s response any different if the grounds are obvious?)*

**Judge:**                 “Lawyer Smith, state the ground for your objection.”

**Lawyer Smith:**        “Judge, I object because it’s prejudicial and improper.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

*Discussion should center on fact that wrong grounds were given. Should the judge overrule the objection because the grounds were incorrect? Should the judge sustain the objection if he/she believes objection should be sustained on other grounds? Should judge sustain the objection and state grounds for his/her sustaining the objection?)*

**Lawyer Smith:**        “I object, your Honor, the proper predicate has not been laid by the prosecutor.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

*Assume judge sustains this objection.*

**Prosecutor Jones:**    “Ask to approach the bench.”

“Judge, I think I’ve laid the proper predicate. What’s wrong? Lawyer Smith ought to have to state what’s wrong with the predicate.”

**Lawyer Smith:**        “Judge, I shouldn’t have to help him try his case.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

*(Discussion should include the following: Should the judge make Lawyer Smith be more specific or simply sustain the objection if proper predicate has not been laid?)*

*Assume the judge has sustained the improper predicate objection three times. Each time Prosecutor Jones has gone back and tried again to lay the proper predicate with his witness Dr. Do Little.*

**Prosecutor Jones:** Ask to approach the bench.

“I just don’t know what else to do to get this in, Judge. I’ve tried. If you don’t let it in, I’ll lose my case. What’s wrong with the predicate?”

**Leader:** **[Hands gavel to student judge for a ruling.]**

*(Discussion should included the following: Does it make a difference if the case is a OVI manslaughter rather than a common OVI?)*

### **PROBLEM 6                      HYPOTHETICAL 6B**

*Police Officer is on the stand. Direct examination has taken place. Lawyer Smith is cross examining the witness.*

**Lawyer Smith:** “Mr. Police Officer, I show you a photograph, marked Defense Exhibit I. Do you recognize it?”

**Police Officer:** “Yes, it’s a photograph of the Defendant’s car as it looked when I arrived at the scene on the night of the accident.”

**Lawyer Smith:** “Judge, I offer into evidence Defense Exhibit I.”

**Prosecutor Jones:** In front of jury.

“Objection! Lawyer Smith knows better than that. He’s trying to introduce evidence in my case. He can’t do that and he knows it. He’s trying to put one over on you.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

*(Discussion should include the fact that the attorney argued the objection in front of the jury as well as the attempt to offer evidence at the wrong time.)*

*Assume judge sustains the objection.*

**Lawyer Smith:** Ask to approach the bench.

“Judge, I’m just going to have to recall this witness in my case if you don’t let the photograph in. There’s no question that it will be admissible.

Mr. Police Officer is a busy man; there's no need to make him come back."

**Leader:** [Hands gavel to student judge for a ruling.]

**PROBLEM 6            HYPOTHETICAL 6D**

**Defense Attorney:** "Mr. Witness, isn't it true that you have been arrested in the past?"

**Plaintiff's Attorney:** "Objection, Your Honor, improper impeachment."

**Leader:** [Hands gavel to student judge for a ruling.]

**Defense Attorney:** "Mr. Witness, have you ever been convicted of a felony?"

**Witness:** "No."

**Defense Attorney:** "Isn't it true you have a prior conviction for grand theft?"

**Plaintiff's Attorney:** "Objection, counsel must have certified copies of any purported prior convictions in court before he can even ask the question, improper impeachment, move to strike, move to reprimand counsel before the jury, move for a mistrial."

**Leader:** [Hands gavel to student judge for a ruling.]

## PROBLEM #7—WITNESS PROBLEMS

**TOPIC SUMMARY:** Participants will be able to identify and deal with selected witness problems.

- POINTS TO COVER:**
1. Should the judge control the questioning of witnesses, and if so, how?
  2. How and when should a judge protect a witness from harassment?
  3. What role does a judge play in determining the competency of witnesses?
  4. Does the judge have the duty to aid the discovery of the truth by controlling the questioning of witnesses?
  5. When should a guardian ad litem be appointed for a victim? For a witness? What about interpreters?

**MATERIALS:**

**PROBLEM 7                      HYPOTHETICAL 7A**

**Prosecutor Jones:** “The State calls Jimmy Juvenile. I’m asking that Jimmy take the stand but that the clerk not swear him in at this time.”

*(Jimmy Juvenile takes the stand.)*

“Jimmy, how old are you?”

**Jimmy:** “I’m six years old.”

**Prosecutor Jones:** “Where do you go to school?”

**Jimmy:** “I go to Seneca School. I’m in the first grade.”

**Prosecutor Jones:** “Do you know the difference between right and wrong?”

**Jimmy:** Silence.

**Prosecutor Jones:** “I’ll ask you another question. Is it wrong to tell a lie or O.K. to tell a lie?”

**Jimmy:** “Wrong.”

**Prosecutor Jones:** “What happens if you tell a lie?”

**Jimmy:** “My Mother hits me.”

**Prosecutor Jones:** “You Honor, I ask that the clerk swear the witness.”

**Clerk:** (Administers the oath.)  
“Do you swear or affirm that the evidence you will give will be the truth, the whole truth and nothing but the truth?”

**Jimmy:** Silence.

**Leader:** **[Hands gavel to student judge for a ruling.]**

*(Discussion should include when the determination of a child witness’ competency to testify should be made. [Prior to trial? Outside presence of jury?] Discussion should also include whether the traditional oath has to be given and whether judge has to state on the record that he/she finds the witness competent to testify—if he/she allows him to testify.)*

*Assume Judge determines Jimmy is competent to testify.*

**Lawyer Smith:** “I object to Jimmy testifying, your Honor. We don’t know what he might say. After all, he’s only six years old. I think we should hear his testimony first, outside the presence of the jury, and then determine whether this six year old child is competent to testify.”

**Prosecutor Jones:** “Your Honor, the scope of the examination has nothing to do with competency; the witness is either competent or not. I shouldn’t have to reveal his testimony in advance.”

**Leader:** [Hands gavel to student judge for a ruling.]

*Assume Jimmy has been found competent to testify and is about to be called to the stand.*

**Prosecutor Jones:** “Judge, we have a small child size chair which we have brought to the courtroom. We would like Jimmy to sit in that chair, NOT the normal witness chair.”

**Lawyer Smith:** “Objection, if he is competent to testify, he ought to have to sit in the witness chair.”

**Leader:** [Hands gavel to student judge for a ruling.]

*(Discussion should include similar such requests which could be made. Can the guardian hold the child in her lap while he testifies? Can he take a teddy bear to the stand with him?)*

*Assume Jimmy is testifying.*

**Prosecutor Jones:** “Your Honor, I object to the length of the questioning on cross by Lawyer Smith. Jimmy has been on the stand for forty-five minutes. He has asked the same question in ten different ways. Enough is enough. Direct only lasted fifteen minutes.”

**Lawyer Smith:** “Judge, I’m asking the same question ten different ways because I keep getting different answers. This witness is the most important witness. I’ve got a right to cross examine him properly. If you limit my cross examination, you will keep me from effectively representing my client and I will be forced to ask for a mistrial.”

**Leader:** [Hands gavel to student judge for a ruling.]

*(Discussion should include whether the student judge’s ruling would change if the case being tried was capital sexual battery rather than a misdemeanor child abuse.)*

**PROBLEM 7                      HYPOTHETICAL 7B**

*(Assume the prosecution witness, after testifying favorably for the state on direct examination, testifies as follows on cross.)*

**Lawyer Smith:**            “Mr. Witness, was the person you say you saw driving the car wearing a hat as you testified on direct or no hat as you testified to on deposition? Which statement is correct?”

**Witness:**                    “I have answered all the questions I’m going to answer. All I want to do is get out of this court. Judge, I’m not answering any more questions. That lawyer is trying to make me look stupid. I’m leaving.”

Witness rises from witness chair and starts to leave the courtroom.

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

*(Discussion should include what to do with the jury during this exchange.)*

*Change the facts, same players.*

**Lawyer Smith:**            “Mr. Witness, did you see my client behind the wheel of the car?”

**Witness:**                    “Well, I was a ways away, it was dark, it’s been a long time; I’ve been thinking about this. . . .”

**Lawyer Smith:**            *(Angrily interrupts witness)* “Judge, will you instruct the witness to answer the question? I requires a simple ‘yes’ or ‘no’.”

**Prosecutor Jones:**        “I object, your Honor, the witness is trying to answer the question.”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

*(Questioning by Lawyer Smith continues.)*

**Lawyer Smith:**            *(Raised voice, obviously angry.)*  
“Mr. Witness, did you see the defendant behind the wheel of the car? Just answer the question and be quick about it this time.”

**Prosecutor Jones:**        “Judge, I object, he’s badgering the witness.”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

**PROBLEM 7                      HYPOTHETICAL 7C**

*(Female witness is on the stand. Lawyer Smith is cross examining her.)*

**Lawyer Smith:**            “Susan, we’ve previously heard from Mr. Carney and Mr. Pearce as witnesses in this case. I know this is difficult for you because the scene was bloody, and I’m not going to make you identify any of the photographs of the domestic violence victim, the men already did that; but, please tell us what you saw. –Oh, the Judge has Kleenex on the bench if you need some.”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

**Review:**

*Is there anything wrong here? Should the judge step in? How protective should the judge be, if at all?*

**PROBLEM 7                      HYPOTHETICAL 7D**

*Assume case being tried is a gross sexual imposition.*

**Lawyer Smith:**            “Come on Ms. Easy, isn’t it true you slept with my client at least ten times before you decided to claim he molested you?”

**Prosecutor Jones:**        “Objection, your Honor, he’s harassing the witness.”

**Lawyer Smith:**            “Come on Judge, are you going to limit my cross just because Ms. Easy keeps crying?”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

**Lawyer Smith:**            In fact, Ms. Easy, haven’t you slept with my client’s best friend and his  
*(continues)*                    best friend and his best friend? In fact, don’t you sleep around with whoever you can find that’s willing?”

**Prosecutor Jones:**        Does not object.

**Leader:**                    **[Hands gavel to student judge. ] Judge, do you step in?**

**PROBLEM 7                      HYPOTHETICAL 7E**

**Lawyer Smith:**            “The Defense calls Mr. Harry Hispanic. State your name please.”

**Witness:**                    “Harry Hispanic.”

**Lawyer Smith:** “Mr. Hispanic, will you please tell this jury what you observed on the night of the accident when you arrived at the scene.”

**Witness:** “Huh—I don’t understand, my English is not real good. Would you repeat the question?”

**Leader:** **[Hands gavel to student judge.] Judge, what do you do if anything?**

*(Discussion should center around whether the judge should step in and order an interpreter or leave it to the discretion of Lawyer Smith who called the witness. Discussion should include when determination should be made about the need for an interpreter for witnesses—pre-trial if possible. Also include need to swear the interpreter and have interpreter state his/her name for the record.)*

**PROBLEM 7                      HYPOTHETICAL 7F**

*Assume witness on the stand has been involved in serious accident and has suffered some brain damage making him mentally deficient but still competent to testify.*

Lawyer Smith calls Mr. Witness to stand.

**Lawyer Smith:** “Mr. Witness, I know it’s hard for you to remember the accident, but I’m going to ask you some questions and just answer the best you can. You remember when the red car came across the center line and struck your car, don’t you.”

**Witness:** “Yes.”

**Prosecutor Jones:** “Objection, your Honor, Lawyer Smith is leading the witness. Lawyer Smith might as well be testifying.”

**Leader:** **[Hands gavel to student judge for a ruling.]**

**PROBLEM 7                      HYPOTHETICAL 7G**

*Assume the case being tried is a spouse battery. State calls the Victim to the stand to testify.*

**Prosecutor Jones:** “The State calls Vicky Victim. Ms. Victim, state your name and tell the jury how you are related to the defendant.”

**Witness:** “Vicky Victim; the defendant is my fiancé. We’re going to get married.”

**Prosecutor Jones:** “Ms. Victim, please tell this jury what happened on the night in question.”

**Witness:** “I really don’t remember exactly, a lot was going on; there was a party, you know. I just don’t remember exactly.”

**Prosecutor Jones:** “Ms. Victim, were you struck on the mouth?”

**Witness:** “Well, yes, somehow my two front teeth got knocked out.”

**Prosecutor Jones:** “Who knocked out your two front teeth, Ms. Victim?”

**Witness:** “Well, I really didn’t see, you know, lots was going on—I don’t know.”

**Prosecutor Jones:** Asks to approach the bench.  
“Judge, it’s obvious this witness is not testifying truthfully; she’s probably scared. I’d like you to order her to answer my question.”

**Lawyer Smith:** “I object, judge.”

**Leader:** **[Hands gavel to student judge for a ruling.]**



PROBLEM #8—MOTIONS FREQUENTLY MADE AT TRIAL

**TOPIC SUMMARY:** Participants will explore the criteria and factors in determining whether to grant or deny motions made during trial.

**POINTS TO COVER:**

CRIMINAL

1. Motion to exclude Evidence based on failure to provide complete witness list.
2. Motion for Judgment of Acquittal.
3. Motion for Mistrial.
4. Motion to Disqualify Judge.
5. Motion to Amend the Information.

CIVIL

1. Motion for Voluntary or Involuntary Dismissal.
2. Motion for Directed Verdict.
3. Motion to Conform Pleadings to the Evidence.
4. Motion to Disqualify Judge.

**MATERIALS:**

**PROBLEM 8            HYPOTHETICAL 8A**

- Prosecutor Jones:**    “The State calls Wanda Witness.”
- Lawyer Smith:**        “Objection, your Honor, this witness was never furnished to the defense in discovery.”
- Prosecutor Jones:**    “I know, Judge, I didn’t find out about this witness until yesterday when another witness gave me her name. As soon as I found out, I told Lawyer Smith. I gave him the name this morning. I don’t know what else I can do.”
- Lawyer Smith:**        “Judge, if this witness testifies, I’m going to be greatly prejudiced.”
- Leader:**                **[Hands gavel to student judge for a ruling.]**

**PROBLEM 8            HYPOTHETICAL 8B**

*(Assume State has presented its evidence but not yet rested.)*

- Prosecutor Jones:**    “Your Honor, I move to amend the complaint as follows: the date in the complaint states December 30<sup>th</sup> but the evidence has shown the crime actually occurred in the early morning hours of December 31<sup>st</sup>. The information should read December 31<sup>st</sup>.”
- Lawyer Smith:**        “Objection! He can’t amend the complaint now. The jury’s been sworn.”
- Prosecutor Jones:**    “The Defendant isn’t prejudiced. He’s known what the witnesses were going to testify to all along. I just noticed the complaint had the wrong date.”
- Leader:**                **[Hands gavel to student judge for a ruling.]**

*(Discussion should also include motions to amend the information immediately prior to trial; amendments which might prejudice the Defendant such as changing the name of the victim. What options does a judge have? Deny the motion? Grant a continuance? Bill of Particulars? Alibi Defense? Indictment vs. Information? Civil Complaint?)*

**PROBLEM 8                      HYPOTHETICAL 8C**

*(Assume criminal case, Defendant is charged with OVI)*

**Prosecutor Jones:**    “Mr. Police Officer, do you see the defendant in the courtroom and if so, would you point him out.”

**Police Officer:**        “He’s over there, dressed in that plaid shirt and jeans. That’s the same shirt he had on the night I arrested him for this OVI and the same shirt he had on the last time I arrested him for OVI.”

**Lawyer Smith:**        “Objection, your Honor. I move for a mistrial.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

*(Discussion should include what factors a judge should weigh in deciding whether to grant a mistrial.)*

***Change Facts***

**Lawyer Smith:**        “Mr. Bud Wiser, did you perform poorly on the road side sobriety test?”

**Witness:**                “Heck no, that police officer lied. He’s lied before. You know, he beat me up and he’s being sued for beating up two other guys. I saw it in the newspaper.”

**Prosecutor Jones:**    “Objection, your Honor, I move for a mistrial.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

*(Discussion should include possible double jeopardy problems.)*

**PROBLEM 8                      HYPOTHETICAL 8D**

*(Assume you are in the second day of a two-day jury trial in which the Defendant is charged with Theft.)*

**Lawyer Smith:**        “Your Honor, before the jury is brought in I would like to make Motion to Disqualify you. This is an oral motion because I just found out about this and haven’t had time to prepare a written motion. I’ve been told that you and Prosecutor Jones are friends and go to the Ohio State football games together every week-end. In fact, you went to Ann Arbor together last Saturday for the OSU-Michigan game. My client does not believe he can receive a fair trial in front of you.”

**Leader:**                **[Hands gavel to student judge for a ruling.]**

*(Discussion should center on fact the motion is not in writing, there is no certificate of counsel it is made in good faith, no accompanying affidavits, and not timely.)*

*Assume judge denies motion. The next day, Lawyer Smith files a written motion with certificate of good faith and two accompanying affidavits. Also, assume Judge does not go to OSU football games with Prosecutor Jones and did not go to Ann Arbor last Saturday with him.*

**Leader:** What do you do now, Judge?

PROBLEM #9—MISCELLANEOUS ISSUES RELATING TO DEMONSTRATIVE  
EVIDENCE, JURY VIEWS, NOTE TAKING,  
AND JUROR QUESTIONS

**TOPIC SUMMARY:** Participants will discuss the proper procedures for handling physical and demonstrative evidence at trial, ruling on requests for jury views, and for responding to juror requests to ask questions and take notes.

- POINTS TO COVER:**
1. Use of demonstrative evidence in opening and closing arguments by lawyers.
  2. Showing to jury or allowing jury to see evidence before admission.
  3. Marking evidence for identification.
  4. Jury views.
  5. Jury questioning/note taking.

**MATERIALS:**

**PROBLEM 9            HYPOTHETICAL 9A**

*(Assume opening statements are in progress.)*

**Prosecutor Jones:**            “As you can see, members of the Jury, from this photograph of the scene the ground was very grassy.”

**Defense**

**Lawyer Smith:**            “I object. That photo is not in evidence. This is improper.”

**Leader:**                        **[Hands gavel to student judge for a ruling.]**

**Prosecutor Jones:**            “As you can see, members of the jury, from this sketch of the scene. . .”

**Defense**

**Lawyer Smith:**            “Same objection.”

**Prosecutor Jones:**            “But I could just as easily have drawn it while I spoke, it’s admissible.”

**Leader:**                        **[Hands gavel to student judge for a ruling.]**

**PROBLEM 9**

**HYPOTHETICAL 9B**

**Prosecutor Jones:**            “I ask that the clerk mark these photographs for identification.”

**Defense**

**Lawyer Smith:**            “Your honor, while counsel was having those marked he held them so that they were clearly visible to the jury. I move for a mistrial.”

**Leader:**                        **[Hands gavel to student judge for a ruling.]**

**PROBLEM 9**

**HYPOTHETICAL 9C**

*The Defense counsel is cross examining the arresting officer in OVI case.*

**Defense Attorney:**            “Isn’t it true there are a lot of pot holes where you asked the defendant to perform the field sobriety exercise?”

**Witness:**                        “No. It was nice and level.”

**Defense Attorney:**            “Your Honor, I move for a jury view so the jury can see all the pot holes for themselves.”

**Leader:**                        **[Hands gavel to student judge for a ruling.]**  
*(Discuss jury views, how and when they should be considered.)*

**PROBLEM 9            HYPOTHETICAL 9D**

*Assume Defendant did not testify and the defense counsel is giving closing argument and identity is the disputed issue.*

**Defense Attorney:** “Jim (the defendant), stand up, come up here with me and let’s demonstrate something for this jury.”

**Prosecutor:** “Your Honor, I object. The defendant didn’t testify.”

**Leader:** [Hands gavel to student judge for a ruling.]

*(Discuss what you would allow, e.g., height, weight, defendant speaking to show accent or lack of accent, tattoos, gloves.)*

If this happens during the defense’s case and the defense counsel asks the defendant to demonstrate, does the defense lose final closing argument?

**PROBLEM 9                      HYPOTHETICAL 9E**

*Assume the plaintiff has finished her testimony.*

**Juror #1:** *Raises hand.* “Judge, can I ask this witness a question?”

**Leader:** [Hands gavel to student judge for a ruling.]

*Now assume defendant in criminal case has finished testifying.*

**Juror #1:** “Judge, I want to ask the defendant if he/she has a criminal record.”

**Leader:** [Hands gavel to student judge for a ruling.]

*Assume the defense counsel has finished redirect of his client and turns and says to the judge. “I now offer my client to the jury for any questions they may have.” What do you do?*

**Juror #2:** Judge, can I take notes?

**Leader:** [Hands gavel to student judge for a ruling.]

**PROBLEM #10—MAINTAINING PROFESSIONALISM**

**TOPIC SUMMARY:** Participants will be able to recognize attorney's improper behavior during trial and consider alternatives available to the judge.

- POINTS TO COVER:**
1. Options for discipline of attorneys and clients; fines, probation, jail, donations to charity, threats.
  2. Use of contempt, serious ramifications of use of contempt—establish standard early.
  3. Consider discipline without jeopardizing a client's rights.

**MATERIALS:**

**PROBLEM 10            HYPOTHETICAL 10A**

*(A Civil Case)*

*(Assume Plaintiff's Lawyer is experienced.)*

**Plaintiff's**

**Lawyer Jones:**            "Mr. Police Officer, did you charge the defendant?"

**Defense**

**Lawyer Smith:**            I object, irrelevant and so prejudicial as to require a mistrial. I request counsel be held in contempt.

**Leader:**                    **[Hands gavel to student judge for a ruling.]** Then, "Any different ruling if liability is not a close question?"

**PROBLEM 10            HYPOTHETICAL 10B**

**Leader:**                    "You have requested all jury instructions to be on your desk by 9:00 a.m. the following morning to review. Tomorrow arrives.

**(Hands gavel to student).** "Ask for the jury instruction."

**Plaintiff's**

**Lawyer Jones:**            "Here are the Plaintiff's, your Honor."

**Defense**

**Lawyer Smith:**            "I don't have mine, judge. My secretary messed up and forgot to do them."

**Plaintiff's**

**Lawyer Jones:**            "That's not fair. I move for sanction."

**Leader:**                    **[Hands gavel to student judge for a ruling.]**

**PROBLEM 10            HYPOTHETICAL 10C**

*(Assume last day of long, heated jury trial and in front of the jury the following exchange takes place.)*

**Defense**

**Lawyer Smith:**            "I object."

**Leader:**                    "Sustained."

**Plaintiff's**

**Lawyer Jones:**            (In front of the jury) "Judge, you are wrong and you are denying my client the right to a fair trial." (emphatic)

**Leader:**                    "How do you handle this?"

**PROBLEM 10                      HYPOTHETICAL 10D**

**Leader:** Hands gavel to student and directs student to ask counsel for any last motions before trial begins.

**Defense**

**Lawyer Smith:** “I need a continuance. I know you already denied my first motion for continuance this morning, but I am not ready. If you make me go to trial I’ll be ineffective.”

**Leader:** “What will you do?”

**PROBLEM 10                      HYPOTHETICAL 10E**

**Leader:** This occurs at pretrial.

**Defense**

**Lawyer Smith:** Judge, I need to continue this trial because I have a case specially set in federal court on the same day.

**Leader:** You check with federal court which indicates case was continued a month ago. **[Pass gavel.]**

**PROBLEM 10                      HYPOTHETICAL 10F**

**Judge:** State v. Larry Later  
“This case is set for Jury Trial this morning!—Where is Mr. Later? Where is his attorney, Lawyer Smith?”

**Prosecuting Attorney:** “I don’t know, judge. I haven’t seen either one.”

**Leader:** **[Pass gavel.]**

*Ten minutes passes*

**Prosecuting Attorney:** “Judge, Mr. Later is in the courtroom now.”

**Leader:** **[Pass gavel.]**

**Defense**

**Lawyer Smith:** “Judge, wait. I told Mr. Later to meet me out in the lobby. It’s my fault he wasn’t in the courtroom when you called the case earlier this morning. If you take someone into custody, it ought to be me. It’s my fault he’s late.”

**Leader:** Pass gavel.

*(Discuss if **capias** is issued.)*

## PROBLEM #11—CLOSING ARGUMENTS

**TOPIC SUMMARY:** Participants will be able to recognize and rule correctly on improper closing arguments.

**POINTS TO COVER:**

1. Improper comments by attorneys in closing arguments.
2. Repetitive argument.
3. Limits on time of argument.
4. Comments outside scope of evidence.

**MATERIALS:**

**PROBLEM 11                      HYPOTHETICAL 11A**

*(Assume you are in the middle of closing arguments in a criminal case.)*

**Prosecutor Jones:**            “As a prosecuting attorney, I can tell you I have no interest in prosecuting an innocent person. If I did not truly believe the defendant to be guilty, I would not have filed these charges.”

**Defense**

**Lawyer Smith:**                “I object and move for a mistrial.”

**Leader:**                        **[Hands gavel to student for a ruling.]**

**PROBLEM 11                      HYPOTHETICAL 11B**

*(Assume the lawyer arguing has one minute to go.)*

**Plaintiff’s**

**Lawyer Jones:**                “I know that the minute I sit down I will remember something I forgot to tell you. . . so to be on the safe side, I’d better go over the whole argument again.”

**Leader:**                        **“What do you do?”**

**PROBLEM 11                      HYPOTHETICAL 11C**

**Prosecutor:**                    “Members of the jury, I submit the defendant’s testimony is unworthy of belief. He’s a chronic, pathological liar.”

**Defense:**                        “I object and move for a mistrial.”

**Leader:**                        **[Hands gavel to student judge for a ruling.]**

**PROBLEM 11                      HYPOTHETICAL 11D**

**Defense Attorney:**            “This is a clear case of self defense. Imagine you were faced with a 240 pound maniac rushing at you. Wouldn’t you have pulled a gun to protect yourself?”

**Prosecutor:**                    Objection and move for a mistrial.

**Leader:**                        **[Hands gavel to student judge for a ruling.]**

**PROBLEM 11                      HYPOTHETICAL 11E**

*Leader assume prosecutor states during closing argument:*

- Prosecutor:**                      “We have an obligation to make you feel just a bit of what Mary, the victim, felt, because otherwise it’s easy to forget that.”
- Defense Attorney:**            “Your Honor, now that the State has concluded its closing argument, I object to the improper comment regarding jury feeling what the victim felt and move for mistrial.”
- Leader:**                            **[Hands gavel to student judge for a ruling.]**

**PROBLEM 11                      HYPOTHETICAL 11f**

- Leader:**                            “You heard that the victim was high on cocaine. How can he possibly identify his attacker?”
- Prosecutor:**                      “Objection—there is no evidence that the victim was high on cocaine or anything else.”
- Leader:**                            **[Hands gavel to student judge for a ruling.]**

**PROBLEM 11                      HYPOTHETICAL 11G**

- Prosecutor Jones:**            “Your Honor, I hate to interrupt opposing counsel during his closing argument, but we each agreed to a 20 minutes time limit. I stuck to the 20 minutes, but now Defense Lawyer has gone on and on for nearly 35 minutes.”
- Defense Lawyer Smith:**      “I have a lot to say, Your Honor. This is an important case. Besides, you cannot limit my client’s right to be heard.”
- Leader:**                            --Discuss time limits.  
--When can they be imposed?  
--What is a “fair” amount of time?  
--How does a judge control time limits?

**PROBLEM 11                      HYPOTHETICAL 11H**

- Prosecutor Jones:**            “This obscenity case is very important to our community and its citizens. Law abiding citizens do not want this smut in their neighborhoods. I urge you, by your verdict, to send a strong message to smut dealers—no more in our community.”
- Defense**

**Lawyer Smith:** “Objection!”

**Leader:** Discuss emotionally improper arguments.  
If there is no objection, when/should trial court intervene so as to preserve the fairness of the proceeding?

**PROBLEM 11                      HYPOTHETICAL 11I**

*(Criminal Case—Marijuana possession—during closing argument Prosecutor states: )*

**Prosecutor:** “I don’t know why the Defense counsel objected to the I.D. technician telling you about the fingerprint results. Maybe he will tell you, unless he has something up his sleeve along with the perjured testimony and planted evidence.”

**Defense Attorney:** “Objection, move for mistrial.”

**Leader:** [Hands gavel to student judge for a ruling.]

**Prosecutor cont.:** “If you believe the detective is a perjurer, likes to point the finger at innocent people and would look you straight in the eye and lie, raise your hand now, and I will sit down. God forbid you should believe a police officer whose testimony went “uncontradicted” by these Defendants.

**Defense Attorney:** “Object, move for mistrial.”

**PROBLEM 11                      HYOPTHETICAL 11J**

**Defense Lawyer Smith:** “Your Honor, my client waives his initial closing argument. I shall save my closing remarks for rebuttal after the prosecutor gets finished.”

**Prosecutor Jones:** “Your Honor, the State of Ohio waives its closing argument, as well.”

**Defense Lawyer Smith:** “In that event, Judge, I shall make my rebuttal argument now.”

**Prosecutor Jones:** “Wait a minute Judge, there was no defense argument and there was no prosecution argument, so what’ to rebut?”

**Leader:** *Both sides have waived argument.*

Suppose the Prosecutor had said more such as, “Since the jury carefully heard the evidence that proves Defendant guilty, I shall waive argument also.” Has argument to jury, albeit short, been made?

Suppose attorney tells jury he will only take five (5) minutes now and reserve remainder for rebuttal and Defense attorney objects. Permissible?

**PROBLEM 11                      HYPOTHETICAL 11K**  
*Criminal Case (Judges Improper comments)*

**Leader:**                      Pass gavel to student before reading this Hypothetical). (Student is to assume he/she is Judge in scenario).

*Assume Defense Counsel referring to specific testimony, argues that witnesses lied. “They are liars.”*

**Judge:**                      “That’s just improper for you to call him a liar. There’s no evidence that anybody is a liar. I had to talk to you a couple of times. It’s not up to you to call anyone a liar in this court, do you understand?”

**Defense Counsel:**                      “Your Honor, may counsel approach the bench? Your Honor, you have unreasonably criticized me in presence of jury at least 3 times—during opening and now during closing argument and your castigation of counsel has impaired the fairness of the trial for defendant, I move for a mistrial.”

Does student judge grant or deny? What, if possible, is appropriate?



## PROBLEM #12—JURY INSTRUCTIONS

**TOPIC SUMMARY:** Participants will be able to decide what jury instructions should be given to the jury.

**POINTS TO COVER:**

1. “Ohio Jury Instructions” are suggested.
2. Don’t stop thinking just because there are standard instructions.
3. Sometimes law changes and standard instructions do not.
4. Methods by which instructions can go to the jury: written, recorded, verbal.

**MATERIALS:**

**PROBLEM 12                    HYPOTHETICAL 12A**

**Defense**

**Lawyer Smith:**

“Your Honor, the defense requests that you give a special instruction on identity since that is the issue in this case.” (hands instruction to student).

**Prosecutor Jones:**

“I object. Not in the standard instructions.”

**Leader:**

**[Hands gavel to student judge for a ruling.]**

**PROBLEM 12                    HYPOTHETICAL 12B**

**Prosecutor Jones:**

“Your Honor, the defendant is charged with Public Indecency. As I’m sure you are aware, the jury instructions do not define ‘private parts’. Accordingly, we are requesting that you included in your instruction to the jury the following language defining ‘private parts’: ‘private parts are defined as genitalia.’”

**Defense**

**Attorney Smith:**

“I object. The Supreme Court saw fit not to define the term ‘private parts’. That instruction the Supreme Court wrote is the one they want given. It should not be modified at all.”

*(What if the prosecutor asks for “breasts” to be included in “private parts”?)*

**PROBLEM 12                    HYPOTHETICAL 12C**

**Defense**

**Attorney Smith:**

“This is a Disorderly Conduct Charge. The State claims the Defendant was disorderly because she refused to leave when the rest of the crowd left and refused to stop yelling at officers. My client has a Constitutional right to yell at officers, unless the words are fighting words. I propose this special jury instruction.”(Hands instruction to student.)

**Prosecutor Jones:**

“I object to Defendant’s proposed instruction, it improperly places the Court in the position of commenting on the evidence. Further, the cases cited by Defense Counsel are distinguishable.”

**Leader:**

“What will you consider in ruling on this requested instruction?”  
*(Chaplinsky v. New Hampshire and State v. Hoffman)*

**PROBLEM 12**

**HYPOTHETICAL 12D**

**Plaintiff's**

**Lawyer Jones:**

“Judge, I hand you a charge that has been submitted to the Supreme Court for approval by the Civil Jury Instruction Committee. It’s just better than the standard instruction in the book.”

**Defense**

**Lawyer Smith:**

“It is not in the book. It is not the law.”

**Leader:**

“What should be taken into consideration in making a ruling?”

**PROBLEM 12**

**HYPOTHETICAL 12E**

**Defense**

**Lawyer Smith:**

“I request the jury instructions be tape recorded as the court reads them, and sent to the jury room with a tape player for use during deliberations.”

**Prosecutor Jones:**

“I object. If the jury has a question about the instructions and plays the tape, they may only play a portion of the instruction and receive an incomplete statement of the law.”

**Leader:**

**[Hands gavel to student for ruling.]**



### PROBLEM #13—JURY DELIBERATION

**TOPIC SUMMARY:** The participants will be able to respond to problems that arise during jury deliberations.

- POINTS TO COVER:**
1. Questions and notes from the jury.
  2. Questions to the bailiff from jurors.
  3. Presence of defendant during these events.
  4. Sending evidence back to jury room; guns, drugs, etc.
  5. Deadlocked jury, now what?
  6. Warning lawyers to check evidence before it goes back with jury.
  7. When to order mistrial; how much time should pass when jury is deliberating.
  9. Excusing the alternate juror.
  10. Care and feeding of jury.

**MATERIALS:**

**PROBLEM 13            HYPOTHETICAL 13A**

*(Assume jury is in deliberation)*

- Bailiff:**                    “Your Honor, the jury gave me this note.” Your Honor, we would like:
1. To hear all the testimony about the accident again.
  2. For you to send back the two depositions given by the doctors.
  3. To smoke.
  4. A calculator.
  5. A dictionary.
  6. For you to explain what the “greater weight of the evidence means.”
  7. The video tape that is in evidence.

**Leader:**                    **What do you do? In what order and why?** *(Assume the bailiff has told the jury the judge never allows this.)*

**PROBLEM 13            HYPOTHETICAL 13B**

**Bailiff:**                    “Judge, they’ve asked to have the guns, ammo and drugs back with them. Any problem?”

**Prosecutor Jones:**        “I object. Too dangerous.”

**Defense**

**Lawyer Smith:**            “It’s all evidence, they have a right to see it all.”

**Leader:**                    **[Hands gavel to student judge for a ruling.]**  
*(What if the Bailiff offers to stay in the deliberation room with the material?)*

**PROBLEM 13            HYPOTHETICAL 13C**

**Leader:**                    Assume a note is sent from a deliberating jury. The note reads. . .” . . .I need to speak with you in private, your Honor. Signed Mr. Lamberth.”

**(Hands gavel to student judge for ruling)**

**PROBLEM 13            HYPOTHETICAL 13D**

*(Assume the jury has been discharged and sent home. )*

**Bailiff:**                    “Judge, some of the marijuana that was admitted into evidence and sent to the jury room for deliberation is missing. What do you want me to do?”

**PROBLEM 13                      HYPOTHETICAL 13E**

**Leader:**                      “You notice that the jury has come back from deliberation and you see that a photo marked for identification but never admitted, has been sent back with them. No one has notice or objected. What do you do?”  
**[Hands gavel to student judge for ruling.]**

**Leader:**                      *(Same situation except counsel notices and makes the following motion.)*

**Defense**

**Lawyer Smith:**                      “I move for a mistrial. Evidence improperly before the jury.”

**Leader:**                      **[Hands gavel to student judge for a ruling.]** *(How can these situations be avoided?)*

**PROBLEMS 13                      HYPOTHETICAL 13F**

**Prosecutor Jones:**                      “Your Honor, the jury has been deliberating for over 3 hours. The case only took 2 hours to try. Could you please ask them if there’s some additional information they need?”

**Defense**

**Attorney Smith:**                      “I object.”

**Leader:**                      **[Hands gavel to student judge for a ruling.]**  
*(Do you interrupt the jury?*  
*Do you order dinner if it’s after 7:00 p.m.?)*

**PROBLEM 13                      HYPOTHETICAL 13G**

*(Two hours later)*

**Bailiff:**                      “The jury is in the Courtroom. Sir, they have a question.”

**Foreperson:**                      “Your Honor, it is 8:00 p.m., we have been at it for over five hours now. We are exhausted, and can’t decide tonight. Can we go home for the night, and start again in the morning?”

**Prosecutor Jones:**                      “No problem for the State.”

**Defense Attorney Smith:** “I object, I want them tired and angry. That helps the defense.”

**Leader:**                      **[Hands gavel to student judge for a ruling.]**  
*(What if it is 5:00 p.m. and a single parent juror has to pick up a child from day care? How can this be avoided?)*

**PROBLEM 13**

**HYPOTHETICAL 13H**

**Leader:**

The jury has sent a note wanting to know what happens when they can't reach a unanimous decision—they're split 6-2.

**[Hands gavel to student judge for a ruling.]**

What happens when the judge forgets to excuse an alternate juror? Is there a situation when a judge would allow less than a unanimous verdict? Would you allow a case to go to the jury with 5 jurors and no alternates—in what situations?

--Discuss propriety of Judge inquiring how jury is split.

--What if it was a civil case, split 6-2?

## PROBLEM #14—RECEIVING VERDICTS AND CONCLUDING TRIALS

**TOPIC SUMMARY:** The participants will be able to receive a jury verdict and close the trial proceedings.

- POINTS TO COVER:**
1. Verdict form proper—what to look for.
  2. What to say when jury re-enters courtroom.
  3. Who takes verdict from whom?
  4. Polling the jury.
  5. Verdict on one count but not on others.
  6. How and when to discharge the jury.
  7. Continued bond after criminal verdict.
  8. What to say to defendant's lawyer—criminal.
  9. Safety of jurors—verdict late at night.
  10. Adjudicate right there—criminal.
  11. Who does judgment—civil.

**MATERIALS:**

**PROBLEM 14            HYPOTHETICAL 14A**

- Bailiff:**                    “Your Honor, they have a verdict.”
- Leader:**                    “What do you do first?” (cover how to bring them in, where they stand, etc.)
- Lawyer:**                    “We would like the jury polled, please.”
- Leader:**                    “Must you? How is it done? Who does it?”
- Juror:**                      (While being polled). “No, that’s not what I wanted to do.”
- Leader:**                    “Now what do you do?”

**PROBLEM 14            HYPOTHETICAL 14B**

- Bailiff:**                    “The jury is in the courtroom, your Honor.”
- Leader:**                    “Have you reached a verdict?”
- Foreperson:**                “Your Honor, we are deadlocked on one count but have verdict on the other.”
- Leader:**                    **[Hands gavel to student judge for a ruling.]**

**PROBLEM 14            HYPOTHETICAL 14C**

- The Clerk:**                “We find the defendant guilty.”
- Leader:**                    “What do you say to the jury?” (*appreciation and rules of privacy*)
- “To the criminal defendant?” (*bond*)
- “To the lawyers?” (*who prepares judgment in civil case*)

*(Assume the jury has been discharged but several jurors have chosen to remain in the courtroom)*

“Do you continue with sentencing?”

**PROBLEM 14                      HYPOTHETICAL 14D**

**Plaintiff's  
Lawyer Jones:**                      "Permission to speak to the panel after discharge."  
  
**Leader:**                                      **[Hands gavel to student judge for a ruling.]**

**PROBLEM 14                      HYPOTHETICAL 14E**

**Defense Attorney:**                      "Judge, the verdict and your instructions asked the jury to reduce all future economic damages to their present money value. The verdict awards \$3,000.00 for future medical and lost wages and then "reduces" that amount to \$9,000.00. This is a fatal inconsistency in the verdict, and I suggest a mistrial is in order."  
  
**Plaintiff's Counsel:**                      "Judge, can't we fix this?"

**Leader:**                                      **[Hands gavel to student judge for a ruling.]**

What if it is a criminal verdict and it is incomplete? (Not signed, all boxes not checked—such as firearms, value, etc.)

Discuss use of interrogatories and verdict forms.

**PROBLEM 14                      HYPOTHETICAL 14F**  
*(Assume the jury has just returned a \$15,000.00 verdict.)*

**Plaintiff's  
Lawyer Jones:**                      "Your Honor, we anticipated that we might win, so we have a judgment prepared for you to sign for the full amount plus interest at 10%."  
  
**Leader:**                                      "Do you sign?"

**PROBLEM 14                      HYPOTHETICAL 14G**

**Judicial Assistant:**                      "Judge, a juror from last week's trial is here and wishes to speak with you about the verdict."  
  
**Leader:**                                      **[Hands gavel to student judge for a ruling.]**



# Course Catalog





THE SUPREME COURT *of* OHIO  
JUDICIAL COLLEGE

2025

# Course Catalog

Judges and Magistrates  
(Live and Online Offerings)

DRAFT 13  
1/14/24





Cover: *The Progress of Industry Series* by John F. Holmer.  
Mural on display in the Thomas J. Moyer Ohio Judicial Center.

Published by  
The Supreme Court of Ohio  
Judicial College  
January 2025



# Introduction

The Supreme Court of Ohio Judicial College is proud to present its 2025 course catalog. This catalog includes a tailored list of educational opportunities for judges and magistrates.

Use this catalog to individualize your education plan and year. For updates, regularly go to [supremecourt.ohio.gov/judicial-college](https://supremecourt.ohio.gov/judicial-college).

Nearly 400 judicial branch education programs are being offered in 2025 for you, your staff, guardians, and others. These include courses held at all judicial association events. There are three ways to obtain continuing education through the Judicial College: (1) live and in-person, (2) live via webinars, and (3) online self-study courses.

Approximately 170 online self-study courses can be accessed from your computer 24/7. These courses strive to meet your “just-in-time” needs for substantive, procedural, and judicial conduct education.

All courses are made possible by hundreds of volunteer faculty and planners who work with our staff to develop and deliver excellent judicial branch education. As a result, we are able to consistently provide quality education that advances the Supreme Court’s mission and serves the public by enhancing the fair and effective administration of justice.

## THE SUPREME COURT *of* OHIO

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Regularly visit Judicial College web page at [supremecourt.ohio.gov/judicial-college](https://supremecourt.ohio.gov/judicial-college) for updates and to register for Judicial College courses.





# Education for Judicial Officers

## Judges, Magistrates, & Retired Judges

Every two years, full and part-time judges, magistrates, and retired judges eligible for assignment shall complete a minimum of 40 hours of continuing legal education, pursuant to Gov.Jud.R. IV. As part of the 40 hours, 10 hours must be obtained through the Supreme Court of Ohio Judicial College. Of these 10, three hours must be judicial conduct.

Newly elected and appointed judges must complete a four-part New Judges Orientation Program including pre- and post-bench education, mentoring, and a capital cases seminar for specified judges. Judges changing jurisdictions are required to complete portions designed for the new jurisdiction(s).

New magistrates must complete a mandatory Magistrates Orientation Program. “Part I” of this program is a course offered twice per year (Spring or Fall). “Part II” is the Mentor Program whereby a new magistrate is matched with an experienced magistrate mentor for a period of one year.

In addition, Sup.R. 49 requires commercial docket judges to complete specialized education. Sup.R. 17 requires certain sitting and retired judges—specifically those who temporarily serve as an assigned judge—to complete an educational program established by the Supreme Court of Ohio Judicial College.

## Self-Study Courses & Webinars

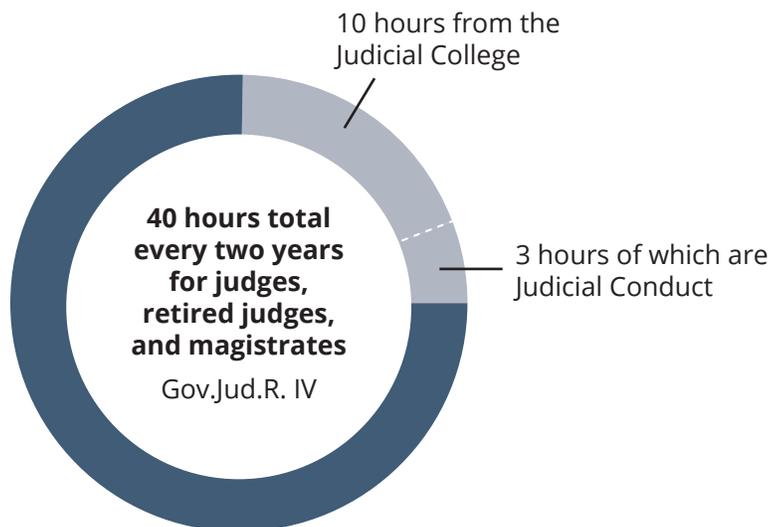
Up to 20 hours of “self-study” credits are allowed during a biennial compliance period, pursuant to Gov.Jud.R. IV(7)(E). These hours can be obtained through Judicial College online self-study courses and webinars. Both general and judicial conduct hours are available, at no cost. Individuals may take online self-study courses at any time from their own computer. Webinars allow individuals to participate in live courses at a scheduled time from their own computer.

### Judicial Candidates

Rule 4.2(A)(4) of the Code of Judicial Conduct requires all judicial candidates, including incumbent judges, to attend a campaign practices seminar.

### Acting Judges

Acting judges, as attorneys, are required to complete 24 hours of continuing legal education biennially under Gov.Bar R.X(3). Gov.Jud.R.IV(5) requires acting judges to complete 10 hours of continuing education from the Judicial College as part of the 24 hour total.



## APPELLATE COURT JUDGES AND MAGISTRATES

### LIVE COURSES TARGETED FOR APPELLATE COURT JUDGES AND MAGISTRATES

Date(s)	Course Title	Audience	Location
Apr 23-25 (W-F)	Ohio Association of Magistrates (OAM) Spring Conference (with Appellate Practice Area)*	Magistrates	Cincinnati
May 8-9 (Th-F)	Ohio Courts of Appeals Judges Association (OCAJA) Spring Conference*	Judges	Perrysville
Sep 3-5 (W-F)	Ohio Association of Magistrates (OAM) Fall Conference (with Appellate Practice Area)*	Magistrates	Columbus
Sep 10 (W)	Ohio Courts of Appeals Judges Association (OCAJA) Fall Conference*	Judges	Columbus
Parts I & II	New Judges Orientation (Dec. 8-11, 2025 and May 12-15, 2025)*	Invited	Columbus
Repeats	New Magistrates Orientation (March 26-28, 2025 OR Sep. 17-19, 2025)*	Invited	Columbus

## GENERAL DIVISION JUDGES AND MAGISTRATES

### LIVE COURSES TARGETED FOR GENERAL DIVISION JUDGES AND MAGISTRATES

Date(s)	Course Title	Audience	Location
March 20 (Th)	Exploring Scenarios in Calculating Ohio Sentences	Judges	Webinar
Apr 3-4 (Th-F)	Judge Lee Sinclair Capital Cases	Judges	Columbus
Apr 4 (F)	Jury Management Seminar	Judges	Columbus
Apr 10 (Th)	Case Law Updates and Best Practices in Calculating Ohio Sentences	Judges	Webinar
Apr 23-25 (W-Th)	Ohio Association of Magistrates (OAM) Spring Conference (Common Pleas Practice Area)*	Magistrates	Cincinnati
June 25-27 (W-F)	Ohio Common Pleas Judges Association (OCPJA) Summer Conference*	Judges	Lewis Center
July 25 (F)	Civil Procedure by the Numbers	Judges & Magistrates	Columbus
Sep 3-5 (W-F)	Ohio Association of Magistrates (OAM) Fall Conference (Common Pleas Practice Area)*	Magistrates	Columbus
Oct 3 (F)	Evidence and Jury Trials Skills	Judges & Magistrates	Columbus
Nov 7 (F)	Forcible Entry and Detainer	Judges & Magistrates	Webinar
Dec 3-5 (W-F)	Ohio Common Pleas Judges Association (OCPJA) Winter Conference*	Judges	Dublin
Series	Commercial Dockets 5-Part Series: March 7 (Artificial Intelligence), April 11 (Foreclosure), May 2 (Contempt of Court Findings/Sanctions in TROs), Aug 8 (Hot Topics), Nov 21 (Final Appealable Orders)	Judges	Webinar
Series	Project ECHO - Adult Courts: Jan 15 (Introduction), Jan 29 (Opioid Use Disorder and Medications), Feb 12 (Evidence-Based Screening & Assessment), Feb 26 (Dual Diagnosis), March 12 (Americans with Disabilities Act & MOUD), March 26 (Polysubstance Abuse), April 9 (Improving Long-Term Recovery in Special Populations)	Invited	Webinar
Parts I & II	New Judges Orientation (Dec 8-11, 2025 and May 12-15, 2025)*	Invited	Columbus

\*Judicial/Professional Conduct Hours to Be Requested

Date(s)	Course Title	Audience	Location
Repeats	New Magistrates Orientation (March 26-28, 2025 OR Sep 17-19, 2025)*	Invited	Columbus

### ONLINE COURSES TARGETED FOR GENERAL DIVISION JUDGES AND MAGISTRATES

Course Title	Length	Location
Criminal Caseflow Best Practices	2.00 hours	Online
Mediating Civil Stalking Protection Order Cases: Important Changes You Need to Know	1.25 hours	Online
New and Revised Protection Order Forms: Important Changes You Need to Know	1.50 hours	Online
Reentry Essentials: Resources, Challenges, and Community Impact	1.00 hour	Online

## DOMESTIC RELATIONS DIVISION JUDGES AND MAGISTRATES

### LIVE COURSES TARGETED FOR DOMESTIC RELATIONS DIVISION JUDGES AND MAGISTRATES

Date(s)	Course Title	Audience	Location
Jan 24 (F)	How to Interact with the Legislature and Why It Matters to Us	Judges	Webinar
March 6-7 (Th-F)	Domestic Relations and Juvenile Judges Spring Seminar*	Judges & Magistrates	Columbus
April 23-25 (W-F)	Ohio Association of Magistrates (OAM) Spring Conference (Domestic Relations Practice Area)*	Magistrates	Cincinnati
June 3-5 (T-Th)	Ohio Association of Probate, Juvenile, and Domestic Relations Judges Summer Conference*	Judges & Magistrates	Cincinnati
Sep 3-5 (W-F)	Ohio Association of Magistrates (OAM) Fall Conference (Domestic Relations Practice Area)*	Magistrates	Columbus
Nov 14 (Th)	Ohio Association of Domestic Relations Judges Fall Conference*	Judges & Magistrates	Columbus
Parts I & II	New Judges Orientation (Dec 8-11, 2025 and May 12-15, 2025)*	Invited	Columbus
Repeats	New Magistrates Orientation (March 26-28, 2025 OR Sep 17-19, 2025)*	Invited	Columbus

### ONLINE COURSES TARGETED FOR DOMESTIC RELATIONS DIVISION JUDGES AND MAGISTRATES

Course Title	Length	Location
Characteristics of High Conflict Parents	1.50 hours	Online
Child Development	1.50 hours	Online
Children with Special Needs and Relocation Issues	2.25 hours	Online
Equitable Distribution of Pensions	1.25 hours	Online
Indian Child Welfare Act	1.50 hours	Online
Interviewing Children	1.75 hours	Online
Intimate Partner Violence	2.25 hours	Online
New and Revised Protection Order Forms: Important Changes You Need to Know	1.50 hours	Online
Parental Mental Health and Substance Misuse	1.00 hour	Online

# JUVENILE DIVISION JUDGES AND MAGISTRATES

## LIVE COURSES TARGETED FOR JUVENILE DIVISION JUDGES AND MAGISTRATES

Date(s)	Course Title	Audience	Location
March 6-7 (Th-F)	Domestic Relations and Juvenile Judges Spring Seminar*	Judges & Magistrates	Columbus
April 23-25 (W-F)	Ohio Association of Magistrates Spring Conference (with Juvenile Practice Area)*	Magistrates	Cincinnati
June 3-5 (T-Th)	Ohio Association of Probate/Juvenile/Domestic Relations Judges Summer Conference*	Judges	Cincinnati
Aug 1 (F)	Juvenile Traffic Webinar: DUI Suppression Issues	Judges & Magistrates	Webinar
Sep 3-5 (W-F)	Ohio Association of Magistrates Fall Conference (with Juvenile Practice Area)*	Magistrates	Columbus
Oct 10 (F)	Juvenile Webinar: Hot Topics	Judges & Magistrates	Webinar
Dec 4-5 (Th-F)	Ohio Association of Juvenile Court Judges Winter Conference*	Judges	Columbus
Series	Project ECHO-Juvenile Courts: Introductory Session (Aug 22); The Developing Adolescent Brain (Aug 29); Opioid Use & Medication for Opioid Use Disorders (Sep 19); Screening and Assessment (Sep 26); Americans with Disabilities Act and MOUD (Oct 3); Polysubstance Abuse & Other Drug Use (Oct 24); Trauma & Adverse Childhood Events (Nov 7)*	Invited	Webinar
Parts I & II	New Judges Orientation (Dec 8-11, 2025 and May 12-15, 2025)*	Invited	Columbus
Repeats	New Magistrates Orientation (March 26-28, 2025 OR Sep 17-19, 2025)*	Invited	Columbus

## ONLINE COURSES TARGETED FOR JUVENILE DIVISION JUDGES AND MAGISTRATES

Course Title	Length	Location
Adolescent Development and Juvenile Delinquency	1.50 hours	Online
Child Development	1.50 hours	Online
Child Maltreatment	2.00 hours	Online
Children with Special Needs and Relocation Issues	2.25 hours	Online
Crisis Prevention – Juvenile Suicide	1.00 hour	Online
Enhancing Judicial Response to Domestic Child Sex Trafficking and Runaway Youth	3.00 hours	Online
Impact of Trauma on Development and Delinquency	1.75 hours	Online
Indian Child Welfare Act	1.50 hours	Online
Interviewing Children	1.75 hours	Online
Judicial Entries and ODYS	1.00 hour	Online
Marsy’s Law Implementation for Juvenile Courts	1.00 hour	Online
New and Revised Protection Order Forms: Important Changes You Need to Know	1.50 hours	Online
Parental Mental Health and Substance Misuse	1.00 hour	Online
Psychiatric Disorders in Children: Attachment & Trauma Related Disorders	1.00 hour	Online

\*Judicial/Professional Conduct Hours to Be Requested

Course Title	Length	Location
Psychiatric Disorders in Children: Mood and Anxiety Disorders	1.00 hour	Online
Working with Youth Who Self Harm	0.50 hours	Online
Working with Youth Who Suffer from Eating Disorders	0.75 hours	Online
Youth Gangs: Who They Are, How They Operate, and What You Can Do to Be Effective	1.00 hour	Online

## PROBATE DIVISION JUDGES AND MAGISTRATES

### LIVE COURSES TARGETED FOR PROBATE DIVISION JUDGES AND MAGISTRATES

Date(s)	Course Title	Audience	Location
Feb. 7 (F)	Ohio Association of Probate Judges Winter Seminar*	Judges	Columbus
Apr 23-25 (W-F)	Ohio Association of Magistrates Spring Conference (with Probate Practice Area)*	Magistrates	Cincinnati
June 2 (M)	Probate Pre-Conference <sup>†</sup>	Judges	Cincinnati
June 3-5 (T-Th)	Ohio Association of Probate/Juvenile/Domestic Relations Judges Summer Conference*	Judges & Magistrates	Cincinnati
July 10 (Th)	Real Estate in Guardianship	Judges & Magistrates	Webinar
Sep 3-5 (W-F)	Ohio Association of Magistrates Fall Conference (with Probate Practice Area)*	Magistrates	Columbus
Oct 17 (F)	Probate Webinar: Bonds	Judges & Magistrates	Webinar
Parts I & II	New Judges Orientation (Dec 8-11, 2025 and May 12-16, 2025)*	Invited	Columbus
Repeats	New Magistrates Orientation (March 26-28, 2025 OR Sep 17-19, 2025)*	Invited	Columbus

## MUNICIPAL/COUNTY COURT JUDGES AND MAGISTRATES

### LIVE COURSES TARGETED FOR MUNICIPAL/COUNTY COURT JUDGES AND MAGISTRATES

Date(s)	Course Title	Audience	Location
Jan 29-31 (W-F)	Association of Municipal/County Judges of Ohio (AMCJO) Winter Conference*	Judges	Dublin
Apr 23-25 (W-F)	Ohio Association of Magistrates (OAM) Spring Conference (Municipal Practice Area)*	Magistrates	Cincinnati
July 14-16 (M-W)	Association of Municipal/County Judges of Ohio (AMCJO) Summer Conference*	Judges	Lewis Center
Aug 4 (M)	Municipal/County Judge Essentials Series: Part 1 – Landlord/Tenant & Section 8 Issues	Judges & Magistrates	Webinar
Sep 3-5 (W-F)	Ohio Association of Magistrates (OAM) Fall Conference (Municipal Practice Area)*	Magistrates	Columbus
Sep 29 (Th)	Municipal/County Judge Essentials Series: Part 2 – OVI/BMV Updates	Judges & Magistrates	Webinar

<sup>†</sup>Non-Judicial College Event

Date(s)	Course Title	Audience	Location
Oct 3 (F)	Evidence and Jury Trial Skills	Judges & Magistrates	Webinar
Oct 15 (W)	Municipal/County Judge Essentials Series: Part 3 - Domestic Violence	Judges & Magistrates	Webinar
Nov 12 (W)	Municipal/County Judge Essentials Series: Part 4 – Misdemeanor Sentencing	Judges & Magistrates	Webinar
Series	Project ECHO - Adult Courts: Jan 15 (Introduction), Jan 29 (Opioid Use Disorder and Medications), Feb 12 (Evidence-Based Screening & Assessment), Feb 26 (Dual Diagnosis), March 12 (Americans with Disabilities Act & MOUD), March 26 (Polysubstance Abuse), April 9 (Improving Long-Term Recovery in Special Populations)	Invited	Webinar
Parts I & II	New Judges Orientation (Dec 8-11, 2025 and May 12-15, 2025)*	Invited	Columbus
Repeats	New Magistrates Orientation (March 26-28, 2025 OR Sep 17-19, 2025)*	Invited	Columbus

### ONLINE COURSES TARGETED FOR MUNICIPAL/COUNTY COURT JUDGES AND MAGISTRATES

Course Title	Length	Location
Municipal/County Judge Essentials: Motion to Suppress in OVI Cases	1.50 hours	Online
Municipal/County Judge Essentials: Sovereign Citizens in Court	1.50 hours	Online
Municipal/County Judge Essentials: Traffic Updates	1.50 hours	Online
Municipal/County Judge Essentials: Landlord Tenant Law	2.00 hours	Online
New and Revised Protection Order Forms: Important Changes You Need to Know	1.50 hours	Online
Reentry Essentials: Resources, Challenges, and Community Impact	1.00 hour	Online

## ALL JUDGES AND MAGISTRATES

### LIVE COURSES OF INTEREST TO ALL JUDGES AND MAGISTRATES

Date(s)	Course Title	Audience	Location
Jan 10 (F)	Ohio's Indigent Defense Structure and Appointed Counsel Systems	Judges & Magistrates	Webinar
Feb 11 (T)	Guidelines for Assignment of Judges	Judges & Magistrates	Webinar
Feb 14 (F)	Artificial Intelligence (AI) and the Courts: Ensuring Ethical Access to Justice	Judges & Magistrates	Webinar
Feb 21 (F)	Administrative Judge Fundamentals	Judges	Columbus
March 20 (Th)	Exploring Scenarios in Calculating Ohio Sentences	Judges	Webinar
Apr 3-4 (Th-F)	Judge Lee Sinclair Capital Cases	Judges	Columbus
April 4 (F)	Jury Management Seminar	Judges & Magistrates	Columbus
April 10 (Th)	Case Law Updates and Best Practices in Calculating Ohio Sentences	Judges	Webinar
April 22 (T)	Ohio Judicial Conference 2025 Court Technology Conference <sup>†</sup>	Judges	Lewis Center

\*Judicial/Professional Conduct Hours to Be Requested

<b>Date(s)</b>	<b>Course Title</b>	<b>Audience</b>	<b>Location</b>
Apr 23-25 (W-Th)	Ohio Association of Magistrates (OAM) Spring Conference*	Magistrates	Cincinnati
April 24 (Th)	Civility Symposium <sup>†</sup>	Judges	TBD
April 29 (T)	BCI Compliance Reports Through OHLEG	Judges & Magistrates	Webinar
May 2 (F)	Communicating with Pro Se Individuals	Judges & Magistrates	Webinar
May 28 (W)	Artificial Intelligence (AI) and the Courts: Ensuring Ethical Access to Justice	Judges & Magistrates	Webinar
June 24 (T)	Online Security and Redaction	Judges & Magistrates	Webinar
July 25 (F)	Civil Procedure by the Numbers	Judges & Magistrates	Columbus
Aug 5 (T)	Crime and Punishment	Judges	Mansfield
Sep 3-5 (W-F)	Ohio Association of Magistrates (OAM) Fall Conference*	Magistrates	Columbus
Sep 11-12 (Th-F)	Ohio Judicial Conference Annual Meeting Education Program*	Judges	Columbus
Oct 3 (F)	Evidence and Jury Trial Skills	Judges & Magistrates	Columbus
Oct 9 (Th)	Impaired Driving Symposium*	Judges & Magistrates	Columbus
Oct 23-24 (Th-F)	Fundamentals of Faculty Development	Invited	Columbus
Oct 28 (T)	Specialized Dockets Conference <sup>†</sup>	Judges & Magistrates	Columbus
Oct 31 (F)	Judicial Conduct: Professionalism*	Judges & Magistrates	Webinar
Nov 14 (F)	Judicial Conduct: Ethics*	Judges & Magistrates	Webinar
Nov 20 (Th)	Veteran's Summit <sup>†</sup>	Judges & Magistrates	TBD
Parts I & II	New Judges Orientation (Dec 8-11, 2025 and May 12-15, 2025)*	Invited	Columbus
Series	Court Executive Team: Effective Annual Reports (Mar. 28); Continuity of Operations Planning (Sep. 26)	Judges & Magistrates	Webinar
Repeats	Civil Treatment Workplace for Leaders: Mar. 19, Apr. 30, Jul. 24, Oct. 29*	Judges & Magistrates	Columbus
Repeats	Judicial Candidates Seminar: Jan. 29 [Dublin], Feb. 12 [Fairborn], Mar. 12 [Strongsville], June 11 [Webinar], Aug. 21 [Webinar]	Judicial Candidates	Varied
Repeats	New Magistrates Orientation (March 26-28, 2025 OR Sep 17-19, 2025)*	Invited	Columbus

### **ONLINE COURSES OF INTEREST TO ALL JUDGES AND MAGISTRATES**

Refer to pages 13–21. Regularly go to [supremecourt.ohio.gov/judicial-college](https://supremecourt.ohio.gov/judicial-college) for new online courses.

<sup>†</sup>Non-Judicial College Event

# ACTING JUDGES

## LIVE COURSES TARGETED FOR ACTING JUDGES

Date(s)	Course Title	Audience	Location
July 25 (F)	Civil Procedure By the Numbers	Acting Judges	Columbus
Aug 4 (M)	Municipal/County Judge Essentials Series: Part 1 - Landlord/Tenant & Section 8 Issues	Acting Judges	Webinar
Sep 29 (M)	Municipal/County Judge Essentials Series: Part 2 - OVI/BMV Updates	Acting Judges	Webinar
Oct 15 (W)	Municipal/County Judge Essentials Series: Part 3 - Domestic Violence	Acting Judges	Webinar
Nov 12 (W)	Municipal/County Judge Essentials Series: Part 4 - Misdemeanor Sentencing	Acting Judges	Webinar

## ONLINE COURSES TARGETED FOR MUNICIPAL/COUNTY COURT JUDGES AND MAGISTRATES

Course Title	Length	Location
Municipal/County Judge Essentials: Motion to Suppress in OVI Cases	1.50 hours	Online
Municipal/County Judge Essentials: Sovereign Citizens in Court	1.50 hours	Online
Municipal/County Judge Essentials: Traffic Updates	1.50 hours	Online
Municipal/County Judge Essentials: Landlord Tenant Law	2.00 hours	Online
New and Revised Protection Order Forms: Important Changes You Need to Know	1.50 hours	Online



# Online Course Descriptions

Of over 170 online courses offered by the Judicial College in 2025, this section provides a curated list of those specifically designed for or of interest to judges and magistrates. Courses are organized by subject matter. Accessible 24/7 from your computer, these self-study courses are designed to address your immediate needs for education on substantive law, procedural guidance, and judicial conduct.

In addition, the Judicial College offers a wide array of online courses tailored for court personnel and affiliated professionals, to support their roles and educational needs. As a judge or magistrate, you are welcome to access any of these resources through the Judicial College.

Online courses are on-demand and available to you at no cost.

## Administration

### **BCI Reporting: Common Court Error Messages and Corrections**

The Ohio Attorney General's Bureau of Criminal Investigation (BCI) maintains a criminal history repository that facilitates firearms checks, employment background checks, and other functions that safeguard the public and peace officers. Courts, clerks of courts, and law enforcement agencies have reporting requirements that ensure this vital public safety tool is populated with complete and accurate information.

### **BCI Reporting: Pathways to Public Safety**

The Ohio Attorney General's Bureau of Criminal Investigation (BCI) maintains a criminal history repository, that facilitates firearms checks, employment background checks, and other functions that safeguard the public and peace officers. But inconsistent reporting across Ohio prompts this course, aiming to help courts and clerks accurately fulfill their reporting duties to the BCI.

### **Civil Caseflow Best Practices**

The Ohio judiciary continues to prioritize timely disposition of civil cases. Based on the findings of experienced judicial officers, this course will review best practices and approaches to achieve impactful civil caseflow strategies. These include use of technology and other innovations to eliminate or prevent civil case overage rates.

### **Criminal Caseflow Best Practices**

Learners will review some of the best practices and key principles that have helped judges across the state lower their criminal case overage rate.

### **Developing an Effective E-Filing System in Your Court**

Although the courts are not currently required to have e-filing, participants in this webinar will learn about the benefits and challenges of implementing an e-filing system from courts of different jurisdictions. They will discuss what issues to consider when designing a court e-filing system.

### **Employment Issues Involving Recreational Cannabis**

With the recent legalization of recreational cannabis in Ohio, court leaders have questions about how the new law may impact their current and prospective employees. This webinar will provide an overview of the rights and obligations of employers related to recreational cannabis. Workplace safety, drug-free workplace policies and employment drug testing will be discussed.

### **Fundamentals of Caseflow Management and Statistical Reporting**

This course is designed to provide judges, magistrates, clerks, court administrators, and other court staff with an introduction to best practices in caseflow management, as well as the requirements for reporting to the Supreme Court of Ohio.

### **Human Resources Basics for Judges**

Regardless of the size of their court or their staff, judges have an important role in utilizing effective human resources practices. In this course, judges learn key concepts to foster a productive workplace and limit the risk of litigation.

## Judicial Entries and ODYS

Judges and Ohio Department of Youth Services (ODYS) staff are committed to ensuring that judicial orders are followed in accordance with the judge's intentions. Participants will see examples of judicial entry language that may leave room for interpretation and will learn strategies for writing entries that are interpreted accurately.

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## Public Access and Records Retention

Responding to public record requests can be difficult. This course provides guidance on responding to these requests in accordance with the Rules of Superintendence, state law, federal law, and local rules.

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## Reporting Requirements for Firearm Prohibitions

Fingerprinting and disposition reporting are required by Ohio Revised Code for many criminal and noncriminal justice purposes. This course examines the role this reporting plays in background checks for firearms purchases.

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# At-Risk Population, Domestic Violence, and Human Trafficking

## Domestic Violence Series: The Many Faces of Intimate Partner Violence and Strangulation: A Case Review

Strangulation often leaves few visible injuries, making it challenging to identify and prove in domestic violence cases. In this course, presenters will discuss a New Hampshire case where a victim reported multiple instances of strangulation but showed no visible signs of injury. Using real footage, they will explore the effects of strangulation on the body and memory, the dynamics of domestic violence, and best practices for handling such cases from start to finish.

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## Domestic Violence Series: Understanding Protection Orders

Protection Orders offer important protections for victims of domestic and dating violence, sexually-oriented offenses, and stalking. They can also be complicated even for those working within the justice system. Join this discussion to explore the various types of protection orders, who can obtain them, where to request them, how they differ from no contact orders, and the importance of addressing alleged violations.

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## Human Trafficking for Judicial Officers

Human trafficking often seems like a problem restricted to foreign countries, but it is surprisingly prevalent in the United States and Ohio is no exception. This course examines the types of human trafficking commonly found in Ohio, how judicial officers can recognize it when it presents in court, and how to respond using a trauma-informed approach.

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## Incorporating Risk Into Your Domestic Violence Response

Explore the intricacies of domestic violence dynamics, emphasizing high-risk cases, foundational concepts, risk assessment, and practical application to real cases, including insights into Ohio's recent strangulation statute.

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## Intimate Partner Violence

Faculty in this module will summarize the data regarding IPV in custody cases and the impact it can have on the family and the child. They will also describe the use of screening instruments and common recommendations made in cases where IPV is suspected.

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## Introduction to Risk Assessment

The Risk-Need-Responsivity (RNR) Model is an evidence-based approach to interventions that targets the highest risk individuals with approaches that are likely to get the best results. This course introduces judicial officers and court staff to the basic principles of the RNR model.

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## Mediating Civil Stalking Protection Order Cases: Important Changes You Need to Know

The Supreme Court recently approved changes to the Rules of Superintendence (Sup.R. 16.14, 16.21, 16.30 - 16.32) to permit mediation of certain limited civil stalking protection order cases. In this recorded webinar, faculty will highlight the new rule and forms, the process for referral, why certain stalking cases should not be mediated, and enforcement of agreements.

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## New and Revised Protection Order Forms: Important Changes You Need to Know

The Supreme Court recently approved significant changes to the Rules of Superintendence pertaining to protection orders and related forms that impact practice in common pleas general division, domestic relations, juvenile, and municipal and county courts. The changes are effective April 15, 2021. Faculty highlight several of the changes to existing forms and explain the process for using the new forms.

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## **Reentry Essentials: Resources, Challenges, and Community Impact**

This online course provides an in-depth exploration of reentry programs designed to help individuals transition from incarceration to productive community life. Drawing insights from experts, including a judge, an advocate, and behavioral health professionals, the course covers key strategies to reduce recidivism, address critical needs like housing and employment, and overcome stigma. Participants will learn practical approaches to support reentry, understand the unique challenges faced by jail and prison populations, and discover how community collaboration can create meaningful second chances.

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## **Behavioral and Mental Health**

### **Behavioral Health Fundamentals for Courts**

This course provides foundational information about behavioral health so all court employees can have a common understanding about how it affects justice-involved individuals.

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### **Considerations for Behavioral Health in Courts**

This course focuses on timely and effective resolution of cases involving persons with behavioral health issues, based on initiatives implemented in Fairfield County courts.

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### **Psychiatric Disorders in Children: Attachment & Trauma Related Disorders**

What do judicial officers need to know when a pediatric psychiatric disorder is a factor in a case? This one hour course will explore common psychiatric disorders in children, including causes, symptoms, and common treatments.

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### **Psychiatric Disorders in Children: Mood and Anxiety Disorders**

What do judicial officers need to know when a pediatric psychiatric disorder is a factor in a case? This one hour course will explore common psychiatric disorders in children, including causes, symptoms, and common treatments.

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### **Working with Youth who Self Harm**

Self harm and suicidal ideation are common mental health challenges, and many court involved youth may be especially at-risk. In this course, judicial officers, court personnel, and guardians ad litem will learn strategies to work effectively with youth who are struggling with self harm.

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### **Working with Youth who Suffer from Eating Disorders**

This one-hour course will provide an overview of eating disorders in adolescents. Faculty will discuss evidence-based responses and focus on what guardians ad litem need to know, do, or think about in order to identify the “best interest of the child” when an eating disorder is present.

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# Children and Families

## Adolescent Development and Juvenile Delinquency

This recorded webinar will focus on adolescent development and how courts can develop effective programs, incentives, and sanctions for youth.

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## Characteristics of High Conflict Parents

Faculty will describe the characteristics of high conflict parents and identify the three main types of conflict they engage in. They will also discuss the impact this conflict has on children and how parenting capacities are more critical to the court's question than a parental diagnosis.

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## Child Development

Understanding children in a court setting is essential. This course addresses how to recognize their needs, abilities, milestones, and communication styles as they grow and mature. The course provides an overview of child development from infancy to adolescence, and guidance on assessing whether a child's needs are being met.

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## Child Maltreatment

Faculty will examine the three most commonly reported types of child abuse: physical, emotional and sexual abuse - and the conditions in the home that can lead to child maltreatment. Faculty will talk about cultural differences in what constitutes abuse and what to expect if an allegation is made during the evaluation process as well as a discussion of memory and suggestibility.

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## Children With Special Needs and Relocation Issues

Faculty in this module will review the major domains to consider for children with special needs including safety issues, medical needs, parenting skills, therapeutic services, and parent schedule considerations to name a few. Faculty will also discuss relocation issues and review a relocation risk model to organize and summarize data.

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## Crisis Prevention - Juvenile Suicide

This course is designed to help juvenile justice professionals recognize signs that youth may be considering hurting themselves or thinking about ending their lives. Participants explore ways to intervene when youth are at the highest risk for self-harm.

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## Enhancing Judicial Response to Domestic Child Sex Trafficking and Runaway Youth

This course provides tools to identify and respond to youth at risk, as well as victims of child-sex trafficking. Particular focus will be paid to the intersection between sex trafficking, runaway youth, child welfare, and juvenile justice.

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## Equitable Distribution of Pensions

Equitable distribution of pensions can be challenging for both new and experienced judicial officers. Join us to get in-depth information from an expert about navigating the intricacies of dividing up pensions.

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## Impact of Trauma on Development and Delinquency

Traumatic stress can often negatively impact adolescent development, including forming attachments, emotional and behavioral regulation, self-concept, and future orientation. This course provides juvenile court and detention personnel with an introduction to the topic of traumatic stress and the necessary skills to intervene with youth that have experienced trauma.

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## Indian Child Welfare Act

Removal rates of Native American children in the United States remain disproportionately high. This course, created by the National Indian Child Welfare Association, is designed to enhance the understanding of Indian Child Welfare Act of 1978 for those involved in the out-of-home placement of Native American children.

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## Interviewing Children

This course will provide a guide for obtaining the most accurate and meaningful information from children. This will include setting ground rules, the interview flow, relationship building and the best types of questions to use.

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## Marsy's Law Implementation for Juvenile Courts

This course prepares judges and clerks for implementation of Substitute House Bill 343, the codification of Marsy's Law, by providing an overview of changes.

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## Recognizing Child Abuse, Neglect, and Mandatory Reporting

The impact of child abuse and neglect can resonate throughout a child's life. This online course will discuss the important role all adults have in recognizing and reporting suspected child abuse and neglect, and carefully outline your legal obligation as mandated reporters.

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## Youth Gangs: Who they Are, How they Operate and What You Can Do to Be Effective

Provides an overview of the gangs who are dominant in Ohio as well as the signs, symbols and tactics they use. Includes strategies for managing the influence of gangs in secure juvenile facilities related to properly classifying incidents, mediating interpersonal conflict and supporting youth who choose to set their affiliation aside.

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# Conduct

## Access to Justice and Fairness for Deaf Individuals in the Courts

Hearing impaired and deaf individuals are part of our court community. Learn the language challenges they face and how to protect the rights of these individuals involved with the courts.

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## Accessibility and Accommodation for Individuals with Disabilities

The Americans with Disabilities Act (ADA) was intended to provide people with disabilities equal access to facilities and resources. This course will look at some of the more important considerations needed to comply with the ADA and make the courts accessible to all.

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## Biases and the Courts for Judges & Magistrates

Biases are prevalent in the real world. What are they and what can we do to mitigate their impact to ensure the court system runs efficiently and fairly?

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## Judicial Ethics

Using hypothetical scenarios to introduce the Ohio Code of Judicial Conduct, this course provides real-world examples that judicial officers could possibly face including: social media use, extrajudicial activities, judicial demeanor, and ex parte communications.

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## Procedural Fairness for Judicial Officers and Court Personnel

When employed in a court setting, procedural fairness provides a framework for prioritizing and enhancing court users' trust in the fairness of our courts. This course will provide judicial officers and court personnel at all levels with an introduction to the core concepts, research, and tools necessary to build public trust and practice procedural fairness through their interactions with court users and members of the public.

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## The Language of Justice: Ensuring Access to Ohio Courts

Courts rely on interpreters for hearing-impaired and non-English speaking individuals. This course explains laws and statutes pertaining to appointing court interpreters and how to recognize when an interpreter is needed.

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# Evidence

## Advanced Hearsay - Admissions

Evidence Rule 801(D) covers admissions by a party-opponent, vicarious admissions, adoptive admissions, and prior inconsistent statements by a witness. Learn the nuances of this rule and practice evaluating hypothetical statements for their admissibility.

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## Advanced Hearsay - Exceptions

Evidence Rule 803(3, 4 and 8) covers exceptions to the hearsay rule. This course explains the rule's relevant hearsay exceptions and includes practice exercises to determine if hearsay exceptions are applicable.

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## Hearsay Basics

This course addresses the definition of hearsay, determination of hearsay, and statements that cannot be hearsay.

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## What Did You Say? Defining Hearsay

Learners go through the rules of hearsay piece by piece to determine what exceptions, or other considerations apply to them.

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# Leadership

## Change and Your Change Mindset

In this recorded webinar, participants will learn warning signs in responding to change; how all of the positive things in life are the result of change - if they are properly prepared; strategies for managing changes in the workplace; and how to manage the mental aspects of change.

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## Conflict Series Part I: Conquering Conflict

Rather than something to avoid at all costs, this overview session helps to reframe conflict as a positive, problem-solving and creative opportunity. Personal conflict management styles and approaching conflict with cooperation skills will be explored.

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## Conflict Series Part II: Taming the Troublemakers

Supervisors sometimes have to deal with challenging behaviors, which can create difficult situations and strained relationships. Participants will develop techniques for recognizing the patterns of troublesome behaviors such as constant complaining, passive-aggressive actions, or refusing to engage and how to tailor effective interventions for each type.

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## Conflict Series Part III: Having Difficult Conversations

Whether it is delivering bad news or approaching a sensitive topic, supervisors frequently have conversations that can cause anxiety or frustration. Confidence-building, realistic strategies to help prepare for crucial conversations while productively managing your emotions will be discussed.

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## Interpersonal Communication

Skilled communicators take time to decide what information to give, when to give it, and the best way to convey it both verbally and nonverbally. This session will uncover these essentials for successful communication with both the staff you supervise and your peers so you can increase understanding, respect and positive results.

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## Keeping Teams Focused and Engaged in Remote Work

Many public and private sector organizations nationwide are transitioning to remote work environments during the COVID-19 pandemic crisis. This has brought with it the challenge of having teams continue to feel connected with each other and engaged with the larger organization, and the courts are no different. In this recording of a webinar, you will hear best practices in use across the country and have an opportunity to determine which strategies may work best for your court.

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## Leadership 101: Personal Leadership Strategic Planning Challenge

It is said that “people don’t plan to fail, they fail to plan.” In uncertain times, it is more important than ever to have a plan with goals and timelines for your personal and professional development. During this recorded video, faculty will help participants explore their personal values and priorities, and develop a personal strategic plan to move you closer to your best life at work and at home. Be ready to self-reflect, apply lessons, and build on your leadership strengths.

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## Sexual Harassment Prevention for Judges and Supervisors

Sexual harassment can impact employees at any level and in any setting. This course addresses how to recognize and report inappropriate conduct, as well as the role of court staff in creating a professional and respectful work environment for everyone.

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## Stress Management Refresher

Even the healthiest of individuals can feel stress from changes in work status or location, illness, uncertainty, and being cut off from typical routines or support systems. Psychologist Dr. Roger Hall shares insights about individual responses to stress and change, the impacts of stress on your health, strategies for mitigating stress and the potential consequences of ignoring self-care.

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## The Chameleon Approach

One style does not fit all in communications. In this fast paced, highly interactive workshop, you’ll gain powerful insights on what makes people react as they do, and specific strategies for “adapting” to 4 of the most common behavioral styles. No matter whom you’re dealing with, the lesson of the Chameleon is clear they don’t adapt to make a fashion statement, they adapt to survive!

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## Why People Aren’t Doing What You Want

Ever wondered why there are just some people that you can’t get to do what you want or need them to do? This program is full of some surprising and thought provoking insights as to why this could be the case and offers you practical strategies for getting the behaviors you’re looking for. Whether you’re dealing with employees, coworkers, or family members, in this presentation, you’ll find some of the answers for what can be a very frustrating situation.

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# Nuts and Bolts

## Faculty Development Part 1: Sensitive Topics - Curriculum Development and Delivery

The faculty development webinar is a two-part program. This first session provides techniques on how to effectively address, develop, and deliver curriculum that is considered difficult, including the importance of laying ground rules and creating a safe space for all participants.

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## Faculty Development Part 2: Three-Tiered Approach for Optimal Education

The faculty development webinar was a two-part program. This second session outlines top strategies for creating an optimal training experience for both instructors and students.

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## Legal Writing for the Judicial Writer

Effective writing maximizes reader comprehension. Professor Mary Beth Beazley provides insights into the reader's mind and best practices for creating clear and concise documents. Professor Beazley guides participants through material that challenges critical-thinking and improves writing skills.

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## Municipal/County Judge Essentials: Landlord Tenant Law

This online course provides an analysis of rent deposit proceedings, execution of writ and disposition of property left at the premises, proof of claims of damages, return and application of security deposits, intervening federal statutes, and building/housing code violations.

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## Municipal/County Judge Essentials: Motion to Suppress in OVI Cases

This recorded webinar examines all aspects of the complex and consequential decisions involved in ruling on a motion to suppress in an OVI case.

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## Municipal/County Judge Essentials: Sovereign Citizens in Court

It is imperative that judicial officers and court staff are informed and prepared to effectively serve all citizens. Judge Rothenberg will provide insight into the history of sovereign citizens and what they believe. He will also explain the relation to the First Amendment rights, as well as ways to process these cases in an effective and legally compliant manner.

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## Municipal/County Judge Essentials: Traffic Updates

Judges likely to face traffic cases will review administrative license suspensions, bond conditions, limited driving privileges and sentencing issues in Operating a Vehicle Under the Influence (OVI) cases. The course also covers common issues related to driver's license suspensions and reinstatement as well as ruling on suppression motions in OVI cases.

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## New Judge Orientation Administrative Presentations

Identify the process and requirements for taking the oath of office as a judge in Ohio including the content of the oath, the timing of the oath-taking, who can administer the oath, and the necessary steps for filing the Certificate of Oath; Describe the Judicial Liability Self-Insurance Program, including its coverage, limits, exclusions, and the available resources such as the Judicial Hotline; Describe affidavits of disqualification in the context of the judicial role and grasp the relevant legal authorities, filing requirements, and the process that follows the filing of such affidavits; Analyze the steps an out-of-state attorney must take Pro Hac Vice in an Ohio matter; and Discuss the constitutional authority, role of an assigned judge, the types of requests, and the system to request a judge to sit by assignment.

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## Self-Represented Litigants

This course examines how judicial officers can motivate and challenge themselves and court staff to view each engagement with a self-represented litigant as a touchpoint that can help make court systems better by finding ways to make court processes and services more easily accessible.

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## Understanding and Using Contempt

An act of contempt is a challenge to the authority of the court. If the court fails to respond adequately, the dignity of the court will suffer, and if the court overreacts, its prestige and effectiveness will suffer. This course will enable judicial officers to learn to use their contempt power calmly, rationally, and judiciously.

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## Safety and Security

### Court Security for All Court Employees

Security in the court is everyone's responsibility. This course addresses skills and strategies to protect the safety of court staff, guests, and all others in the courthouse. Designed for all court staff, this education is not meant to replace specific training for bailiffs, court security officers, or other security personnel.

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### Personal Security for Judicial Officers

Protecting the safety and well-being of judicial officers and their families is paramount, whether they are in the courthouse, commuting, or at home. Learn to implement prevention strategies, respond to threats, and manage cyber-security risks to effectively combat security risks.

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## Specialized Dockets

### Introducing New Guidelines for Domestic Violence Drug Courts in Ohio

Drug Courts have long embraced the treatment model of specialized dockets; Domestic Violence courts traditionally have not. How do specialized DV Drug courts best meet the substance use disorder treatment needs of domestic abusers and prioritize the safety needs of the victims and the communities they serve? This session will introduce the new guidelines for courts interested or currently running a specialized Domestic Violence Drug Court docket in Ohio.

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### Specialized Dockets (Coming Soon)

New judges or judges inheriting a docket will be introduced to the specialized docket certification process and the Supreme Court of Ohio's expectations. This education series will review each standard promulgated in Appendix I of the Rules of Superintendence for a judge to pursue certification of a specialized docket.

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## Substance Use

### Parental Mental Health and Substance Misuse

Our faculty will explain the neurobiology of addiction, dispel myths about substance misuse, and discuss some supervised parenting time considerations. Will also discuss some buffers and protective factors for parents that have mental health disorders.

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### What Courts Need to Know About Cannabis Use

With the recent legalization of recreational cannabis in Ohio, court leaders may want to learn more, beyond common perceptions about cannabis and its effect on the brain and body.

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### Substance Use and the Courts

Responding to the opioid epidemic presents challenges for courts. This course provides an overview of the neurobiology of addiction and of the diagnostic criteria for substance-use disorder. It highlights the components of evidence-based treatment and describes best practices in using multiple treatment modalities.

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