

Federal Criminal Sentencing and Overview for Ohio New Lawyer Training

- I. The Confrontation Clause (right of cross-examination)** - Statement is “testimonial,” not admitted unless the government establishes both that the declarant is unavailable and defendant had an adequate opportunity to cross-examine the declarant - *Crawford v. Washington, 541 U.S. 36 (2004)*

- II. Sentence Enhancements** - Any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi vs. New Jersey, 530 U.S. 466 (2000)*

- III. Judicial Discretion in Sentencing** - 18 U.S.C. §3553 (b)(1), the guidelines became “effectively advisory for a trial judge to “tailor the sentence in light of other statutory concerns” that include factors listed in 18 U.S.C. §3553 (a). *United States vs. Booker, 543 U.S. 125 (2005)*.

- IV. Departures for Sentences** - there exists an aggravating or mitigating circumstance of a kind, to a degree, not adequately taken into consideration" by § 3553(b). The Guideline applies "heartland" of typical cases. *Koon vs. United States, 518 U.S. 81 (1996)*

- V.**
 - A) Proffers of client;

 - B) Proffers of Attorney with or without client’s presence; and

 - C.) Reverse Proffers

 - D) *Giglio v. United States*, 405 U.S. 150 (1972), and the statutory requirements of the *Jencks Act* disclosure of a prospective government witnesses.

 - E) *Kastigar v. United States*, 406 U.S. 441 (1972), requires a hearing to establish evidence is untainted by the compelled testimony or statement and from a source independent of the testimony or statement.

I. Guns

18 U.S.C. § 924(c) – Operations ‘*Safe Streets*’ (Detroit & Oakland) (mandatory minimum)

18 U.S.C. § 922(g) – Felon in possession (no mandatory minimum)