

## **Chapter 1: The Nature, Purpose, and Function of Criminal Law**

### **Chapter Overview:**

Chapter One of Matthew Lippman's criminal law text provides a background and foundation for understanding the criminal law. Lippman thoroughly examines the nature and sources of criminal law as well as the purpose that it serves in society. This guide is intended to serve as a supplement to the entirety of the Lippman text, specifically addressing the issues therein as they relate to Florida statutes and case law. This chapter of the supplement addresses the Florida Constitution as the fundamental basis of Florida law. It also presents a brief overview of Florida statutory law with respect to both common law influences and modern criminal statutes. Finally, this chapter provides a brief examination of the Florida court system that serves as the forum in which the laws examined throughout this supplement are addressed.

### **I. The Florida Constitution**

Florida's constitutional history can be traced to 1838 when county delegates throughout the Territory of Florida assembled in a convention for the purpose of organizing a state government. Following the adoption of three intermediate constitutions, the state adopted its longest lasting constitution, the Constitution of 1885. During the 1960s, however, it became apparent that the constitutional doctrine reflected the issues of the past, and as such, the Florida Constitution was in need of amendment. With the Constitution of 1885, the legislature was empowered to propose by joint resolution an amendment to the document. In 1965, the Legislature created the Florida Constitutional Revision Commission to carefully review the constitution with the purpose of eliminating obsolete provisions framing changes that correspond to current economic and social considerations. The Constitution of 1968 was submitted by the Commission and, after adjustments, it was adopted by the legislature and ratified by the voters.

The 1968 Florida Constitution replaced significant elements of the 1885 version. Whereas, the 1885 Florida Constitution permitted only legislative revision and amendments, the 1968 Florida Constitution expressly superseded Article XVII of the previous version, providing that whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment, or other public measure, shall be printed on the ballot. In effect, the voters of the state now had a voice beyond the representational democracy of the state.

As a frame of reference for rights asserted by the constitution of 1838, the 1968 constitution was a distinctly populist document that included five different methods of amendment and an explicit statement that all political power originates with the people. It also provided an explicit separation of powers, pointed limits on the creation of laws by the legislative branch, addressing both procedural and substantive grounds, certain unique local government provisions, and a strong system of checks and balances. Finally, the 1968 constitution contained the written embodiment of certain rights considered inalienable to the citizenry of the state.

With respect to article I, the 1968 constitutional revision substantially reasserted the personal rights that were contained in the Declaration of Rights of the Constitution of 1885. The revision cited in article I improved the word usage and contextual meaning by minor drafting changes and relocating the personal rights from the Declaration to a numbered article. In making this revision, the convention delegates preserved the primacy of importance of personal rights while simultaneously assuring that such personal rights would be regarded with equal dignity as compared to other powers created elsewhere in the constitution. The Bill of Rights contained in article I of the Florida Constitution is distinctly pronounced for its barrier between the liberties of the people and the powers of the state.

The decisions of the Supreme Court of Florida have construed the Bill of Rights during the decade of the 1980s and beyond. The Bill of Rights in article I of the Florida Constitution reaffirms the enduring principles that were first made part of the constitutional fabric when Florida declared its statehood. Among those rights are the right of access to a judicial forum and the right to a jury trial. Other rights are newly created and substantiate the premises of the state charter, with continued adjustments in accordance with changing values of Florida citizens. The most recent changes are the right to be free from discrimination because of physical handicap, the right of employees to bargain collectively, the right of victims of crimes to participate in all crucial stages of criminal proceedings, and the express right of privacy. The review of the decisions of the Supreme Court of Florida documents the ongoing vitality of the Bill of Rights.

In 1989, the Florida Supreme Court recognized that the state constitution should be the primary source of analysis when addressing issues concerning violations of basic individual rights. The Florida Court, in a sense, prioritized the Florida Constitution over the United States Constitution. It has been propounded that first, attorneys and Florida courts should observe the Florida Constitution as the underlining protection for individual rights; and, where the state constitution fails to provide such protection of individual rights, attorneys and Florida courts should then apply the Federal Constitution to the issues involved in any case. Presumably, the tenets of the Florida Constitution are a mirror image, and more, of the Federal Constitution.

### **Protecting Against Tyranny, The Separation of Powers**

Fundamentally, a constitution divides power in various fashions and by numerous means, which best serve the constitutional function of protecting against a tyranny. In the Florida Constitution, as in the United States Constitution, the power of government is divided among three branches: the legislative, the executive, and the judiciary. As is sometimes discovered in the developing stages of a state constitutional government, the division of power on paper means nothing if the principles are not applied and maintained in practice.

The Florida Constitution contains an explicit separation of powers, which is clearly asserted in the relevant articles. [See Fla. Const., art II, sec. 3] The purpose of this

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provision is to limit the extent to which any branch of the state government may perform functions assigned to another branch by the constitution. [See, e.g., *Pepper v. Pepper*, 66 So.2d 289, 284 (Fla. 1953)] Examples of this constitutional doctrine are the following: (a) that the legislature cannot reserve to itself the right to execute the laws that it creates, (b) that an officer of the executive branch cannot engage in the lawmaking function as that function is exclusively assigned to the legislative branch, and (c) the legislature cannot adjudicate the rights or claims of an individual, a function assigned to the judicial branch.

### **The Declaration of Rights**

**Section 1. Political power.** *All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.*

**Section 2. Basic rights.** *All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.*

[History. Am. S.J.R. 917, 1974; adopted 1974; Am. proposed by Constitution Revision Commission, Revision No. 9, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.]

**Section 3. Religious freedom.** *There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.*

**Section 4. Freedom of speech and press.** *Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.*

[History. Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.]

**Section 5. Right to assemble.** *The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.*

Section 6. **Right to work.** *The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.*

Section 7. **Military power.** *The military power shall be subordinate to the civil.*

Section 8. **Right to bear arms.**

(a) *The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.*

(b) *There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.*

(c) *The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.*

(d) *This restriction shall not apply to a trade in of another handgun.*

[History. Am. C.S. for S.J.R. 43, 1989; adopted 1990.]

Section 9. **Due process.**--*No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.*

[History. Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.]

Section 10. **Prohibited laws.** *No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.*

Section 11. **Imprisonment for debt.** *No person shall be imprisoned for debt, except in cases of fraud.*

Section 12. **Searches and seizures.** *The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing*

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*or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.*

[History. Am. H.J.R. 31-H, 1982; adopted 1982.]

**Section 13. Habeas corpus.** *The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.*

**Section 14. Pretrial release and detention.** *Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.*

[History. Am. H.J.R. 43-H, 1982; adopted 1982.]

**Section 15. Prosecution for crime; offenses committed by children.**

*(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.*

*(b) When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.*

**Section 16. Rights of accused and of victims.**

*(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties*

*conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.*

*(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.*

[History. Am. S.J.R. 135, 1987; adopted 1988; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.]

**Section 17. Excessive punishments.** *Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. The death penalty is an authorized punishment for capital crimes designated by the legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.*

[History. Am. H.J.R. 3505, 1998; adopted 1998; Am. H.J.R. 951, 2001; adopted 2002.]

**Section 18. Administrative penalties.** *No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action as provided by law, shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.*

[History. Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.]

**Section 19. Costs.** *No person charged with crime shall be compelled to pay costs before a judgment of conviction has become final.*

**Section 20. Treason.** *Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort, and no person shall be*

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*convicted of treason except on the testimony of two witnesses to the same overt act or on confession in open court.*

**Section 21. Access to courts.** *The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.*

**Section 22. Trial by jury.** *The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.*

**Section 23. Right of privacy.** *Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.*

[History. Added, C.S. for H.J.R. 387, 1980; adopted 1980; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.]

**Section 24. Access to public records and meetings.**

*(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.*

*(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.*

*(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt*

*rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.*

*(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.*

[History. Added, C.S. for C.S. for H.J.R.'s 1727, 863, 2035, 1992; adopted 1992; Am. S.J.R. 1284, 2002; adopted 2002.]

**Section 25. Taxpayers' Bill of Rights.** *By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. This section shall be effective July 1, 1993.*

**Section 26. Claimant's Right to Fair Compensation.**

*(a) In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.*

*(b) This Amendment shall take effect on the day following approval by the voters. This section was added, general election, Nov. 2, 2004.*

**II. State Statutes for Criminal Offenses**

**Common Law**

The common law of England, in relation to crimes within the Florida jurisdiction except with respect to modes and degrees of punishment, still exists in Florida. The application of common law, however, is limited to circumstances where there exists no statutory provision to address the issue. In all other cases, Florida statutes supersede the common law. For instance, with respect to the definition of a "felony" in Florida, the common law definition is inapplicable. [See *State v. Bailey*, 360 So.2d 772 (1978)]

English common law that is of a general and not local nature, and that is not inconsistent with Florida statutes, the Florida Constitution, the laws of the United States or the United States Constitution, is referred to not only as the "common laws of England" but also as declared by courts of American states. [See *DeGeorge v. State*, App. 4 Dist., 358 So.2d



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217 (1978)] A statute that expressly or by implication supersedes common law, and does not undermine fundamental principles of the state, naturally becomes controlling law. [DeGeorge]

### **Statutory Criminal Law**

In the state of Florida, there are clear definitions of the criminal law provided to the public. The legislature has provided a comprehensive and detailed enumeration of criminal laws and criminal procedure in the state of Florida. To this end, although the same act may constitute both a crime and tort, a crime is an offense against the public and prosecuted by the state, while tort is a private injury for which an individual seeks redress against the offending party. Similar to the common law, in Florida, crimes *mala in se* encompass acts immoral or wrong in and of themselves, such as acts of burglary, larceny, rape, murder, arson, and breaches of peace. Naturally, crimes *mala prohibita* constitute actions or omissions prohibited by statute that infringe on the rights of others or are deemed necessary for social order.

Like most statutory jurisdictions, Florida requires that enumerated crimes have a clear legislative basis. [See *Bradley v.State*, 79 Fla. 651, 84 So. 677 (1920)] In other words, it is necessary that a statute exist to declare an act or omission a criminal offense. The statutes that delineate and define crimes cannot be extended by an intendment, and no act, however wrongful, can be punished pursuant to a statute unless it is clearly defined within the statutory language. In effect, there can be no constructive offenses in Florida; publication of the statutes has provided the appropriate notice. A complete set of Florida statutes can be found in the 2005 Florida Statutes Annotated (FSA).

### **III. Courts in Florida**

The judicial power of the Florida jurisdiction is vested in a supreme court, district courts of appeal, circuit courts and county courts. Florida basically has a three-tiered system of courts with trial courts (county and circuit), middle appellate courts (District Courts of Appeal), and a state supreme court (Florida Supreme Court). For federal issues, the litigant has recourse in the federal courts, as a court of initial impression on diversity issues, and otherwise as appellate recourse once state remedies are exhausted. Contingent upon the granting of a writ of certiorari on a relevant federal issue or constitutional question, a petitioning party may have its issue addressed by the United States Supreme Court.

The legislature is responsible for dividing the state into appellate court districts and judicial circuits that follow county lines and jurisdictional boundaries. In Florida, commissions as established by law, or administrative officers or bodies, may be granted 'quasi-judicial power' in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions. The legislature may also authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of any decision to the District Court of Appeal, First District.