

PREFACE TO 2025-2026 EDITION

The great state of Florida covers an area of 65,758 square miles, has a coastline of 1,350 statute miles, and as of July 1, 2024, its population is estimated to be 23,372,215.¹ It is a geographically large, socially complex, and culturally diverse state with an active and at times overworked court system that constantly deals with a tremendous range and volume of legal matters. This is particularly so when it comes to criminal sentencing activity.

According to the most recently available Summary Supporting Statistics collected by the Florida Supreme Court during fiscal year 2023-2024, from July 2023 through June 2024, the cases of 156,827 defendants involving 343,838 criminal counts were resolved in Florida's circuit courts, with the cases of 120,838 of those defendants resolved by plea and the cases of 1,507 defendants resolved by conviction after trial. In the same period, the cases of 231,827 defendants were resolved in Florida's county courts, with the cases of 125,813 cases resolved by plea and the cases of 1,182 defendants resolved by conviction after trial. During this period there were also 70,651 probation revocation hearings, of which 51,297 were in the circuit courts and 19,354 were in the county courts. In the traffic courts during this same period, 1,531,903 civil infractions and 299,541 criminal offenses were disposed of. Also during this time, in the family courts, 26,932 juvenile delinquency cases were filed. In addition, a substantial number of other cases in the criminal and county courts were disposed of by dismissal after successful completion of a diversion program. During this period, as well, Florida's appellate courts and state supreme court resolved scores of sentencing issues in scores of criminal cases. In addition, an untold number of civil and criminal contempt hearings were held throughout the court system during this timeframe.

Florida sentencing law is complex, highly specialized, and continually evolving. Legislative changes in the law, executive orders, and appellate court interpretations of the law, are a

¹ United States Census Bureau estimate, accessed on July 4, 2025 at <https://www.census.gov/quickfacts/fact/table/FL/PST045223>.

constant source of change. This, and sheer volume of criminal cases, make it extremely difficult for any practitioner or judge to be well-versed and current on the law of sentencing. It is for this reason that this book was written, and why it is updated annually.

This edition includes a large number of significant edits and updates, and hundreds of lesser changes.

The section on unusual punishments has been expanded to include a discussion of how a means of punishment, such as whipping for theft, can go from being a “usual” and acceptable form of punishment to being “unusual” and prohibited. A new section has been added that explains the common law doctrine of fugitive disentitlement, under which a court may decline to entertain the claims of a fugitive who has fled a criminal conviction in a court in the United States and is a fugitive from justice.

A new section has been added to Chapter 5 describing sentencing enhancements for aggravated animal cruelty, violent offenses committed against specified justice system personnel, and fleeing or attempting to elude law enforcement. The offense severity chart used with the Criminal Punishment Code has been significantly expanded and updated.

Chapter 6, pertaining to alternatives to Criminal Punishment Code sentencing, enhancements, reclassifications, and special sanctions, has been extensively rewritten, reorganized, and expanded. For example, the section on non-prosecution agreements and deferred prosecution agreements has been expanded to address the potential collateral consequences of improper agreements. One of the updates to the coverage of statutory mitigating circumstances includes a review of the relationship between section 921.0026(2)(e), which addresses situations where the need for payment of restitution to the victim outweighs the need for a prison sentence, and section 921.185, which authorizes mitigation of the sentence in nonviolent property crimes for any degree of restitution. This review discusses recent appellate court opinions have narrowed the scope of section 921.185 to the point where it is treated as subordinate to section 921.0026(2)(e) and is no longer a stand-alone reason for a downward departure sentence. The section on sentencing of sexual offenders and sexual predators has been updated to reflect the most recent changes in the law.

A new section on judicial factfinding has been added that addresses the United States Supreme Court opinions from *Ap-*

PREFACE

*prendi*² onward that have increasingly restricted a court's ability to find sentencing facts that increase a defendant's exposure to punishment without jury input. This section explains the near-elimination of judicial fact finding beyond the finding of prior convictions and the elements thereof in such circumstances as a result of the Court's 2024 opinion in *Erlinger v. U.S.*³ and the profound effects that opinion will have on future sentencing involving presumptive minimum prison sentences, mandatory minimums, reclassifications, habitualizations, and other enhancements.

The chapter on capital sentencing has been updated and expanded to address sentencing for the new offense of capital human trafficking. Changes include a detailed explanation of the findings a jury is required to make before a defendant can be sentenced to death for this crime and details the aggravating factors associated with capital human trafficking. Also added to this chapter is a description of the two new capital murder aggravators pertaining to murder of an attendee at a school or religious activity, or a public government meeting, and murder of a head of state or someone killed in the attempt to murder a head of state.

The causation section in the chapter on restitution has been rewritten and expanded to add clarity to the explanation of "but for" causation in cases where the only offense charged is leaving the scene of a crash involving property damage, injury, or death.

The chapter on contempt sentencing has been extensively rewritten and expanded to add more detail to the distinction between criminal contempt and civil contempt, and between direct contempt and indirect contempt within these categories. Revisions to the chapter also include a more detailed explanation of the sanctions and punishments available for each type of contempt, including coercive fines, coercive and punitive incarceration, and probation. A new section has been added that is devoted to civil contempt for the enforcement of support payments in domestic relations cases.

This is the twentieth edition of *Florida Sentencing*. It contains hundreds of edits reflecting the dynamic and ever-changing nature of Florida sentencing law over the past year, and it has for many years served as a unique and valuable tool for understanding Florida sentencing law. It has helped a great many

² *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

³ *Erlinger v. U.S.*, 602 U.S. 821, 835, 840, 144 S. Ct. 1840, 1852, 1855, 219 L. Ed. 2d 451 (2024).

lawyers, judges, paralegals, and others to find the applicable law and make correct sentencing decisions. It has made a significant contribution to making sentencing in Florida's courts more accurate, fair, error-free, and just, and this year's edition will continue that tradition.

I am grateful to all who those who have encouraged and supported this project, and for the many useful comments and suggestions for improvement they have provided over the past two decades. All of you have been a tremendous boost to my efforts and to the cause of proper sentencing in criminal cases in Florida state courts.

WILLIAM H. BURGESS, III
Seminole, Florida
July 4, 2025