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# New Mexico Bill of Rights Jurisprudence – How Does It Differ From Its Federal Counterpart?

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# **CONSTITUTION OF THE STATE OF NEW MEXICO**

## **ARTICLE II Bill of Rights**

### **Section 1. [Supreme law of the land.]**

The state of New Mexico is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land.

### **Sec. 2. [Popular sovereignty.]**

All political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good.

### **Sec. 3. [Right of self-government.]**

The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state.

### **Sec. 4. [Inherent rights.]**

All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.

**Sec. 5. [Rights under Treaty of Guadalupe Hidalgo preserved.]**

The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.

**Sec. 6. [Right to bear arms.]**

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. (As amended November 2, 1971 and November 2, 1986.)

**Sec. 7. [Habeas corpus.]**

The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion or invasion, the public safety requires it.

**Sec. 8. [Freedom of elections.]**

All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

**Sec. 9. [Military power subordinate; quartering of soldiers.]**

The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

**Sec. 10. [Searches and seizures.]**

The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.

**Sec. 11. [Freedom of religion.]**

Every man shall be free to worship God according to the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.

**Sec. 12. [Trial by jury; less than unanimous verdicts in civil cases.]**

The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate. In all cases triable in courts inferior to the district court the jury may consist of six. The legislature may provide that verdicts in civil cases may be rendered by less than a unanimous vote of the jury.

**Sec. 13. [Bail; excessive fines; cruel and unusual punishment.]**

All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great and in situations in which bail is specifically prohibited by this section. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. An appeal from an order denying bail shall be given preference over all other matters.

A person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond. A defendant who is neither a danger nor a flight risk and who has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond. The court shall rule on the motion in an expedited manner. (As amended November 4, 1980, November 8, 1988, and November 8, 2016.)

#### **Sec. 14. [Indictment and information; grand juries; rights of accused.]**

No person shall be held to answer for a capital, felonious or infamous crime unless on a presentment or indictment of a grand jury or information filed by a district attorney or attorney general or their deputies, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be so held on information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination.

A grand jury shall be composed of such number, not less than twelve, as may be prescribed by law. Citizens only, residing in the county for which a grand jury may be convened and qualified as prescribed by law, may serve on a grand jury. Concurrence necessary for the finding of an indictment by a grand jury shall be prescribed by law; provided, such concurrence shall never be by less than a majority of those who compose a grand jury, and, provided, at least eight must concur in finding an indictment when a grand jury is composed of twelve in number. Until otherwise prescribed by law a grand jury shall be composed of twelve in

number of which eight must concur in finding an indictment. A grand jury shall be convened upon order of a judge of a court empowered to try and determine cases of capital, felonious or infamous crimes at such times as to him shall be deemed necessary, or a grand jury shall be ordered to convene by such judge upon the filing of a petition therefor signed by not less than the greater of two hundred registered voters or two percent of the registered voters of the county, or a grand jury may be convened in any additional manner as may be prescribed by law.

In all criminal prosecutions, the accused shall have the right to appear and defend himself in person, and by counsel; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to have the charge and testimony interpreted to him in a language that he understands; to have compulsory process to compel the attendance of necessary witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. (As amended November 4, 1924, effective January 1, 1925, November 4, 1980, and November 8, 1994.)

#### **Sec. 15. [Self-incrimination; double jeopardy.]**

No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense; and when the indictment, information or affidavit upon which any person is convicted charges different offenses or different degrees of the same offense and a new trial is granted the accused, he may not again be tried for an offense or degree of the offense greater than the one of which he was convicted.

**Sec. 16. [Treason.]**

Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**Sec. 17. [Freedom of speech and press; libel.]**

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted.

**Sec. 18. [Due process; equal protection; sex discrimination.]**

No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person. The effective date of this amendment shall be July 1, 1973. (As amended November 7, 1972, effective July 1, 1973).

**Sec. 19. [Retroactive laws; bills of attainder; impairment of contracts.]**

No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature.

**Sec. 20. [Eminent domain.]**

Private property shall not be taken or damaged for public use without just compensation.

**Sec. 21. [Imprisonment for debt.]**

No person shall be imprisoned for debt in any civil action.

**Sec. 22. [Repealed.]****Sec. 23. [Reserved rights.]**

The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

**Sec. 24. [Victim's rights.]**

A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:

- (1) the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- (2) the right to timely disposition of the case;
- (3) the right to be reasonably protected from the accused throughout the criminal justice process;
- (4) the right to notification of court proceedings;
- (5) the right to attend all public court proceedings the accused has the right to attend;
- (6) the right to confer with the prosecution;



(7) the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;

(8) the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;

(9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;

(10) the right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and

(11) the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.

B. A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of Subsection A of Section 24 of Article 2 of the constitution of New Mexico.

C. The provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment. (As added November 3, 1992.)

# **The Constitution of the United States of America**

## **AMENDMENTS TO THE CONSTITUTION**

### **Amendment I**

#### **[Freedom of Religion, of Speech, and of the Press]**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

### **Amendment II**

#### **[Right to Keep and Bear Arms]**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### **Amendment III**

#### **[Quartering of Soldiers]**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

### **Amendment IV**

#### **[Security from Unwarrantable Search and Seizure]**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## **Amendment V**

### **[Rights of Accused in Criminal Proceedings]**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **Amendment VI**

### **[Right to Speedy Trial, Witnesses, etc.]**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## **Amendment VII**

### **[Trial by Jury in Civil Cases]**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## **Amendment VIII**

### **[Bails, Fines, Punishments]**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment IX****[Reservation of Rights of the People]**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Amendment X****[Powers Reserved to States or People]**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.