

4.15: DOES THE NEW YORK CONSTITUTION OFFER MORE RIGHTS THAN THE UNITED STATES CONSTITUTION?

Generally, the answer is yes. The New York Constitution has been interpreted to grant stronger protections regarding self-incrimination, double jeopardy, due process, religious liberty, freedom of speech, freedom of the press, and the rights of immigrants. Below are some of the more specific examples.

JURY TRIALS:

The N.Y. Constitution requires twelve jurors for a felony criminal trial.

The U.S. Constitution allows for as few as six for felony criminal trials.

The N.Y. Constitution requires a unanimous verdict.

The U.S. Constitution does not specify, although federal cases require such.

The N.Y. Constitution requires the defendant to sign a jury waiver in open court.

The U.S. Constitution does not.

GRAND JURYS:

The N.Y. Constitution requires the defendant to sign a grand jury waiver in open court in the presence of his/her attorney.

The U.S. Constitution does not require the presence of an attorney to waive the grand jury.

RIGHT TO COUNSEL:

The N.Y. Constitution treats the right to an attorney indelible once it attaches. It then cannot be waived without the presence of counsel.

The U.S. Constitution allows a defendant who is represented to waive that representation without counsel being present.

The N.Y. Constitution asserts the right to counsel upon the commencement of a criminal proceeding. In N.Y., commencement starts upon the filing of the felony complaint, regardless if the suspect requests an attorney, and the police cannot question the suspect without the presence of an attorney.

Under the U.S. Constitution, the commencement does not necessarily occur upon the filing of a felony complaint or the issuance of a warrant.

The New York Court of Appeals has interpreted the N.Y. Constitution to extend a suspect's right to counsel well beyond the U.S. Constitution to:

- A defendant in custody who is not yet represented by counsel but who has requested counsel. *People v. Cunningham*, 49 N.Y.2d 203 (1980)
- A defendant not in custody and who is questioned about a matter under investigation, where officials know counsel has been retained. *People v. Skinner*, 52 N.Y.2d 24 (1980)
- A defendant whose attorney in other matters appeared at the police station and identified himself, even though he had not been retained by the defendant before his arrival at the police station and took no steps to protect the defendant's rights upon his arrival. *People v. Arthur*, 22 N.Y.2d 325 (1968)
- Once a defendant who is in custody is either represented by or requests counsel, custodial interrogation about any subject, whether related or unrelated to the charge upon which representation is sought must cease. *People v. Rogers*, 48 N.Y.2d 167 (1979)

COMPETENT COUNSEL

The N.Y. Court of Appeals does not require a defendant challenging his conviction on the basis of ineffective counsel to prove the probability that the outcome would have been different. *People v. Benevento*, 91 N.Y.2d 708 (1998)

The U.S. Supreme Court does. *Strickland v. Washington*, 466 U.S. 668 (1984)

SEARCH AND SEIZURE:

The N.Y. Court of Appeals does not recognize the “good faith” exception to the exclusionary rule. *People v. Bigelow*, 66 N.Y.2d 417 (1985), *People v. Stith*, 69 N.Y.2d 313 (1987)

The U.S. Supreme Court does.

The N.Y. Court of Appeals does not allow for full searches of a person for a traffic violation arrest. *People v. Adams*, 32 N.Y.2d 451 (1973)

The U.S. Supreme Court does.

The N.Y. Court of Appeals requires a showing of “exigent circumstances” for the warrantless search of a closed container found during the incident to an arrest. *People v. Jimenez*, 22 N.Y.3d 717 (2014)

Federal law allows for such searches.

The N.Y. Court of Appeals does not allow for warrantless searches of open fields. *People v. Scott*, 79 N.Y.2d 474 (1992)

The U.S. Supreme Court does.

The New York Court of Appeals requires the evaluation of both basis of an informant’s knowledge and the reliability or veracity of the informant himself. *People v. Johnson*, 66 N.Y.2d 398 (1985)

The U.S. Supreme Court requires a lower standard of the “totality-of-circumstances” test.

The New York Court of Appeals rejects warrantless administrative searches of businesses to uncover evidence of criminality. *People v. Scott*, 79 N.Y.2d 474 (1992)

The U.S. Supreme Court does not find such protection in the Fourth Amendment.

The New York Court of Appeals rejects the “plain touch doctrine.” which allows officers to make warrantless seizures based on recognizing evidence by touch during a pat down.

The U.S. Supreme Court does. *People v. Diaz*, 81 N.Y.2d 106 (1993)

The New York Court of Appeals considers canine sniffs as searches. *People v. Dunn*, 77 N.Y.2d 19 (1990)

The U.S. Supreme Court does not.

The New York Court of Appeals requires the police to have probable cause before they can search a vehicle after a protective frisk. *People v. Torres*, 74 N.Y.2d 224 (1989)

The U.S. Supreme Court does not.

The New York Court of Appeals requires the police to have a reason to stop and request identifying information. The police need suspicion of criminal activity to question a citizen of such. Refusal to answer police questions or citizen flight is not enough to trigger search and seizure. *People v. De Bour*, 40 N.Y.2d 210 (1976) and *People v. Howard*, 50 N.Y.2d 583 (1980)

The U.S. Supreme Court does not.

The New York Court of Appeals does not allow statements obtained after a warrantless arrest of a suspect’s home at trial. *People v. Harris*, 77 N.Y.2d 434 (1991)

The U.S. Supreme Court does.

The New York Constitution also provides protections that have no United States Constitution parallels.

PUBLIC EDUCATION:

The New York Constitution requires free public school education. It also prohibits the use of public funds to support religious school education except for examination, inspection, and transportation.

SOCIAL WELFARE:

The New York Constitution mandates that the state provide aid, care and support for the needy.

PUBLIC HOUSING:

The New York Constitution gives the legislature the authority to provide terms and conditions for the development of low income housing and nursing home accommodations. However, it is not a mandate.

CONSERVATION:

The New York Constitution “forever wild” clause facilitates and protects over three million acres of Forest Preserve in both the Catskills and Adirondacks.

(Source: *Protections in the New York State Constitution Beyond the Federal Bill of Rights*,

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