

Task Force on Removing Barriers to Jury Service

Constitutional Provisions Regarding Juries

United States Constitution

[Full text of US Constitution \(opens link to new window on external website\)](#)

Article III, Section 2, clause 3

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The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury.

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Fifth Amendment

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 offence to be twice put in jeopardy of life or limb; nor shall 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.

Sixth Amendment

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 [sic].

Seventh Amendment

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.

NOTE: Some aspects of these federal jury trial rights apply to the states, some do not, and states retain significant flexibility regarding their laws related to jury trials.

Oregon Constitution

[Full text of Oregon Constitution \(opens link to new page on external website\):](#)

Article I (Bill of Rights)

Section 6. No religious test for witnesses or jurors.

No person shall be rendered incompetent as a witness, or juror in consequence of his opinions on matters of religion [sic]; nor be questioned in any Court of Justice touching his religious [sic] belief to affect the weight of his testimony.—

Section 11. Rights of Accused in Criminal Prosecution.

In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, **and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone**, such election to be in writing; provided, however, that **in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict**, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment.

NOTE: Right to waive jury trial adopted in 1931

NOTE: The non-unanimous verdict provision in this section was adopted in 1934. However, in *Ramos. V. Louisiana* (2020), the US Supreme Court held that non-unanimous guilty verdicts are unconstitutional under the Sixth Amendment of the US Constitution. That ruling effectively invalidated Oregon's constitutional provision that allowed 10-2 guilty verdicts in most felony cases. Now, all criminal jury guilty verdicts must be unanimous, regardless of what the Oregon Constitution says.

Section 16. Excessive bail and fines; cruel and unusual punishments; power of jury in criminal case.

Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense.—**In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.**

NOTE: Despite the text of Article I, section 16, “it is the plain duty of the jury to accept and apply the law as given them by the court.” *State v. Johnson*, 238 Or App 672, 675, 243 P3d 805 (2010), rev den, 351 Or 649 (2012) (quoting *State v. Wong Si Sam*, 63 Or 266, 272, 127 P 683 (1912)).

Section 17. Jury trial in civil cases.

In all civil cases the right of Trial by Jury shall remain inviolate. —

Section 40. Penalty for aggravated murder.

Notwithstanding sections 15 and 16 of this Article, **the penalty for aggravated murder as defined by law shall be death upon unanimous affirmative jury findings** as provided by law and otherwise shall be life imprisonment with minimum sentence as provided by law.

NOTE: All criminal cases must have unanimous juries for a finding of guilt now (see note above regarding section 11)

Section 45. Person convicted of certain crimes not eligible to serve as juror on grand jury or trial jury in criminal case.

(1) In all grand juries and in all prosecutions for crimes tried to a jury, the jury shall be composed of persons who have not been convicted:

(a) Of a felony or served a felony sentence within the 15 years immediately preceding the date the persons are required to report for jury duty; or

(b) Of a misdemeanor involving violence or dishonesty or served a sentence for a misdemeanor involving violence or dishonesty within the five years immediately preceding the date the persons are required to report for jury duty.

(2) This section applies to all criminal proceedings pending or commenced on or after the effective date of this section, except a criminal proceeding in which a jury has been impaneled and sworn on the effective date of this section. Nothing in this section reduces a criminal defendant's rights under the Constitution of the United States. Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution. Nothing in this section is intended to create any cause of action for compensation or damages nor may this section be used to disqualify a jury, invalidate an accusatory instrument, ruling of a court, conviction or adjudication or otherwise suspend or terminate any criminal proceeding at any point after a jury is impaneled and sworn or on appeal.

Article IV (Legislative Branch)

Section 23. Certain local and special laws prohibited.

The Legislative Assembly, shall not pass special or local laws, in any of the following enumerated cases, that is to say:—

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Summoning and empanneling [sic] grand, and petit jurors;

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Article VII (Amended) (Judicial Branch)

Section 3. Jury trial; re-examination of issues by appellate court; record on appeal to Supreme Court; affirmance notwithstanding error; determination of case by Supreme Court.

In actions at law, where the value in controversy shall exceed \$750, 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 this state, unless the court can affirmatively say there is no evidence to support the verdict. Until otherwise provided by law, **upon appeal of any case to the supreme court**, either party **may have attached** to the bill of exceptions the whole testimony, **the instructions of the court to the jury**, and any other matter material to the decision of the appeal. If the supreme court shall be of opinion, after consideration of all the matters thus submitted, that the judgment of the court appealed from was such as should have been rendered in the case, such judgment shall be affirmed, notwithstanding any error committed during the trial; or if, in any respect, the judgment appealed from should be changed, and the supreme court shall be of opinion that it can determine what judgment should have been entered in the court below, it shall direct such judgment to be entered in the same manner and with like effect as decrees are now entered in equity cases on appeal to the supreme court. Provided, that nothing in this section shall be construed to authorize the supreme court to find the defendant in a criminal case guilty of an offense for which a greater penalty is provided than that of which the accused was convicted in the lower court.

NOTE: As enacted in 1910, a case only needed \$20 at issue for civil jury right; section amended in 1974 to increase the amount to \$200; section amended in 1996 to increase the amount to \$750.

Section 5. Juries; indictment; information; verdict in civil cases.

(1) **The Legislative Assembly shall provide by law for:**

(a) **Selecting juries and qualifications of jurors;**

(b) **Drawing and summoning grand jurors from the regular jury list at any time, separate from the panel of petit jurors;**

- (c) **Empaneling more than one grand jury in a county; and**
- (d) **The sitting of a grand jury during vacation as well as session of the court.**

(2) **A grand jury shall consist of seven jurors** chosen by lot from the whole number of jurors in attendance at the court, **five of whom must concur to find an indictment.**

(3) Except as provided in subsections (4) and (5) of this section, **a person shall be charged in a circuit court with the commission of any crime punishable as a felony only on indictment by a grand jury.**

(4) The district attorney may charge a person on an information filed in circuit court of a crime punishable as a felony if the person appears before the judge of the circuit court and knowingly waives indictment.

(5) The district attorney may charge a person on an information filed in circuit court if, after a preliminary hearing before a magistrate, the person has been held to answer upon a showing of probable cause that a crime punishable as a felony has been committed and that the person has committed it, or if the person knowingly waives preliminary hearing.

(6) An information shall be substantially in the form provided by law for an indictment. The district attorney may file an amended indictment or information whenever, by ruling of the court, an indictment or information is held to be defective in form.

(7) **In civil cases three-fourths of the jury may render a verdict.**

Section 9. Juries of less than 12 jurors.

Provision may be made by law for juries consisting of less than 12 but not less than six jurors.

NOTE: This provision was adopted in 1972 through a referral. It applies in certain civil and misdemeanor cases, as permitted by statute.