

New Mexico Tort Claims Act vs. 42 U.S.C. §1983

Statute	New Mexico Tort Claims Act NMSA (1978) § 41-4-1 et. seq.	Federal Civil Rights Act, 42 U.S.C. § 1983
Allows Lawsuits Against Public Employees for:	<p>Allows lawsuits for bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties for:</p> <ul style="list-style-type: none"> • Operation or maintenance of any motor vehicle, aircraft, or watercraft • Operation or maintenance of any building, public park, machinery, equipment or furnishings • Operation of airports • Operation of public utilities • Operation of any hospital, infirmary, mental institution, clinic, dispensary, medical care home or like facilities • Provision of health care services (for licensed health care workers) • Construction, and in the subsequent maintenance, of any bridge, culvert, highways, roadway, street, alley, sidewalk, or parking area • Law enforcement officers- lawsuits can be brought against law enforcement officers for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights, failure to comply with duties established pursuant to statute or law or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties 	<p>Allows lawsuits against any person acting under color of law who “subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws...”</p> <p>42 U.S.C.A. § 1983</p>

<p>Limitations</p>	<p>Limited to only the enumerated exceptions and persons (No education, CYFD, elected bodies, etc)</p> <p>For all <i>except</i> law enforcement officers:</p> <ul style="list-style-type: none"> • Violations of constitutional rights are not actionable. <p>For law enforcement officers:</p> <ul style="list-style-type: none"> • Limited to personal injury, bodily injury, wrongful death and property damage (e.g. would not cover a constitutional violation for which there is no personal injury or property damage such as a free speech violation) <p>For all- cap on damages (\$200,000 for property damage, \$300,000 for past and future medical expenses, \$400,000 for all claims for a single occurrence other than medical or property) NMSA (1978) § 41-4-19</p>	<p>Limited to violations of the United States Constitution and laws (does not cover violations of the New Mexico Constitution and laws)</p>
<p>Provides Attorney's Fees?</p>	<p>No</p>	<p>Yes- 42 U.S.C. § 1988</p>
<p>Qualified Immunity?</p>	<p>No</p>	<p>Yes</p>
<p>Individuals Indemnified?</p>	<p>Yes- NMSA (1978) § 41-4-4</p>	<p>Yes, in New Mexico. State statute indemnifies public employees for constitutional violations in cases brought under 42 U.S.C. § 1983- NMSA (1978) §41-4-4</p>