

UNDERSTANDING YOUR RIGHTS AS A SUSPECT IN NEBRASKA

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Petersen Criminal Defense Law



Despite following all the rules, obeying all laws, and living life as an upright citizen, you could one day find yourself to be a suspect in a criminal investigation.

Regardless of how many cop (criminal) dramas you may have watched on television or on the big

screen, you may suddenly realize that you have no idea how to proceed, or even what your rights are as a suspect or an accused. Fortunately, in the United States, you have a number of very important rights afforded to you by the United States Constitution. Those rights only protect you, however, if you know what they are and you can assert them when necessary.

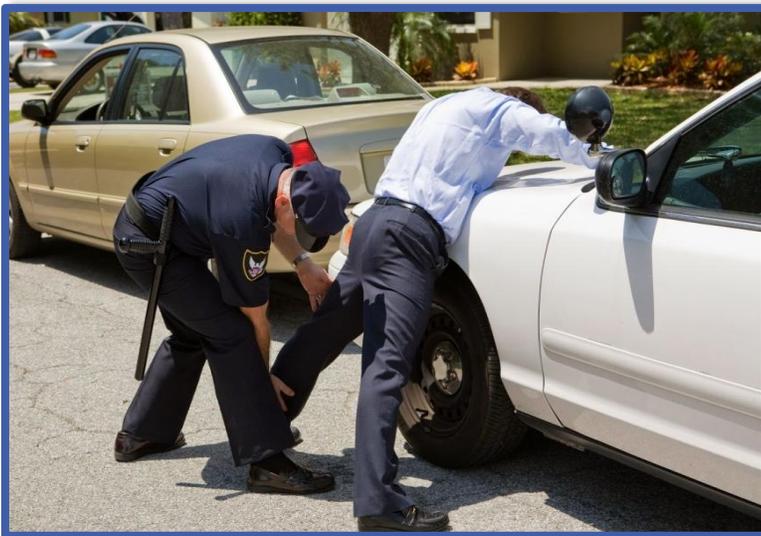
CONSTITUTIONAL RIGHTS

The United States operates under a federalist form of government. In essence, this means that we have a strong central government (the federal government) as well as numerous smaller governments (the individual state governments). The U.S. Constitution provides the framework for our federal government. Although each state has adopted its own state constitution, no law may be enacted that violates the U.S. Constitution. Most state constitutions are very similar with regard to the rights, liberties, and freedoms found in the U.S. Constitution. Most of those rights, liberties, and freedoms are found in the first ten Amendments to the U.S. Constitution, collectively known as the “Bill of Rights.” For a suspect or an accused, some of the most important rights found in the Bill of Rights include:

1. **Fourth Amendment** – Right against unreasonable searches and seizures; warrant requirement
2. **Fifth Amendment** – Right against self-incrimination; double jeopardy; due process
3. **Sixth Amendment** – Right to an attorney; right to trial by jury; right to confront witnesses; right to know accusers; speedy trial right
4. **Eighth Amendment** – Right against cruel and unusual punishment; right to bail

Knowing what these rights mean as well as when and how to assert them could someday mean the difference between a conviction and an acquittal.

SEARCHES AND SEIZURES



If the police stop you in your vehicle and want to search the vehicle, can they do that? What if they show up at the door to your home and want to search your home – do they need a warrant? The Fourth Amendment to the U.S. Constitution protects against

“unreasonable” searches and seizures. Both mention the need for a warrant based on probable cause. Ostensibly, this means that a search cannot be conducted without an officer first obtaining a warrant based on probable cause;

however, the warrant requirement has been watered down over the years. Your home, however, remains the most heavily protected from a search and seizure. Unless one of the few exceptions to the warrant requirement applies, your home cannot be searched without a warrant. “Consent” is the most often used exception. Never consent to the search of your home without first consulting an experienced criminal defense attorney. Your vehicle may be searched without a warrant, though probable cause is still required. Furthermore, a “pat down” search of your outer garments may also be conducted without a warrant under the auspices of “officer safety.”

QUESTIONING AND INTERROGATION

If the police stop you and start asking you questions, do you have to answer them? What if you start to cooperate and then realize you need a lawyer—can you stop cooperating? Do you have a right to an attorney if the police want to question you? The Fifth Amendment to the U.S. Constitution



affords you the **right against self-incrimination**, also known as the “right to remain silent.” This right is very broad and applies in all encounters with the police. With the exception of some state requirements that you provide identification when asked, and the requirement that you provide identification and insurance information if you are driving, your right to remain silent really means that you do not ever have to answer questions asked by a law enforcement

officer. Furthermore, you may stop answering anytime you wish even if you start answering questions.

Along with your right to remain silent, your Sixth Amendment **right to counsel** may also apply if you are being questioned by the police. The line between questioning and interrogation is thin and can be crossed without the suspect even realizing it.

TRIAL RIGHTS

If you move from a suspect to an accused, a number of other important rights kick in, starting with your **right to bail** in all but the most serious crimes (murder and treason). Once you are charged with a crime, your Sixth Amendment **right to counsel** also applies, as does your **right to a trial by jury** and **right to a speedy trial**. Both of these rights may be waived by you, should you ultimately decide to enter into a guilty plea agreement. If you proceed to trial, you have the **right to confront and cross-examine witnesses** against you, meaning that your attorney can ask questions of the witnesses presented against you. Your right to remain silent continues through trial and *cannot be used against you*. One of the instructions the judge will give the jury is that guilt cannot be inferred if you choose not to testify on your own behalf.

BUT THE OFFICER NEVER READ ME MY RIGHTS!

One of the biggest misconceptions in criminal law is that a case will be dismissed if the officer did not read the defendant his/her rights. That is simply not how it works. First, an officer is not ever required to read you your rights unless and until you have been taken into custody. Sometimes it is not clear whether you

have been taken into custody or not. The best way to determine your custodial status is simply to ask if you are free to go.

Furthermore, the officer still does not have to read you your rights even if you are in custody unless the officer plans to ask you questions. Your *Miranda* rights are intended to protect you from making incriminating statements. Therefore, *Miranda* rights are only required to be given if the officer plans to ask you questions. Finally, the remedy for not reading a suspect his/her rights is to exclude any statements made by the suspect, not to dismiss the entire case against the suspect.

REFERENCES

ACLU, [Know Your Rights When Encountering Law Enforcement](#)

Cornell University School of Law, [Bill of Rights](#)

Constitution Society, [Summary of Constitutional Rights, Powers, and Duties](#)

South Carolina Judicial Department, [Rights of the Defendant](#)

Ken LaMance, <http://www.legalmatch.com/law-library/article/rights-of-criminal-defendants.html>

About Petersen Criminal Defense Law



Omaha, Nebraska Law Firm: Committed To Making Your Voice Heard By The System

Established in 1995, Petersen Criminal Law follows a simple firm philosophy: Our clients are presumed innocent until proven guilty. Our firm's attorney, Thomas M. Petersen, has devoted his career to this philosophy, helping clients throughout the Omaha, Nebraska, area make sure their voices are heard in the criminal defense system.

In that time, he has handled over 6,000 criminal defense cases and represented clients in numerous trials. This experience means he is a battle-tested veteran of the criminal defense system who has committed himself to putting to work for you the insights he has gained.

Your Decision Today Affects The Rest Of Your Life

Facing criminal charges means your future is at stake. You do not have to let a Nebraska criminal case ruin your life, though your choices today do affect your future.

For that reason, you want an adviser in your corner who has traveled this road before and understands the terrain. You do not want to test your ability to learn the law on your own when your own liberty is at stake.

No Lectures No Judging. We Just Defend You.

Call Petersen Criminal Law at 402-909-0367. You can also schedule your initial consult by contacting the firm online. All consultations with our firm remain completely confidential.

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