

# WHEN CAN THE POLICE CONDUCT A NEBRASKA SEARCH AND SEIZURE OF YOUR HOME?

*“A man's house shall be his own castle, privileged against all civil and military intrusion.”*



Petersen Criminal Defense Law



Regardless of where you live, when you walk through the front door you likely expect to leave the outside world behind. Home, after all, is your sanctuary -- the one place where the outside world cannot intrude. Or can it? What happens if the police knock on your door and advise you that they want to conduct a search of your home? You may think this is an unlikely scenario given the fact that you are an upstanding, law-abiding citizen; however, there are a number of reasons why you could find yourself in just that situation nonetheless.

Would you know what to do? Do you know what your rights are? Can the police search your home without your permission? Should you give them permission? Like most people, you probably do not know the answer to these questions, but



you should because you just never know when you will find yourself facing down a police officer on your front door step.

## WHY WOULD THE POLICE WANT TO SEARCH MY HOME?



If you are not involved in any criminal undertakings your first question will likely be “Why would the police want to search *my* home?” The reality is that there are several common reasons why the police could want to conduct a search of your

home even if you are a law abiding citizen, including:

- **Roommates** – if you currently have, or have ever had, a roommate the police could be focused on the roommate and not you with regard to the reason for a search.
- **Visitors** – the same applies to visitors. You never really know what visitors have been involved in but if they stayed in your home that could provide a reason to conduct a search, at least in the eyes of the police.
- **Children** – no parent wants to believe this his/her child has been doing anything illegal; however, the reality is that your child could be involved in something that brought the police to your house.

- **White collar crimes** – people frequently define crimes in terms of violence. White collar crimes, however, are non-violent, usually financially motivated offenses. If you, or a spouse/partner, work in a professional position it is possible that the police suspect one of you in one of several “white collar crimes” such as embezzlement, money laundering, or insider trading that could be the basis for a search of your home office and/or records.
- **Hot tip** –occasionally, the reason boils down to someone pointing a finger your direction in the form of a “hot tip” to the police. Anger, jealousy, envy or just plain fear could cause an ex, a neighbor, a co-worker, or even a relative stranger to send the police your way.

## THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The foundation for the idea that you should be secure in your home is found in the Fourth Amendment to the United States Constitution which reads as follows:

“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.”

## NEBRASKA STATE CONSTITUTION ARTICLE 1-7

In the U.S. we live under a federalist form of government, meaning we have a strong centralized government but also numerous smaller units of government, the states. Each state also has its own constitution. The Nebraska State Constitution, Article 7, also protects your right to be secure in your home, reading as follows:

“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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.”

## WHAT DO THE 4<sup>TH</sup> AMENDMENT AND ARTICLE 7 MEAN?



Collectively, the 4<sup>th</sup> Amendment and Article 7 can be viewed as the starting point for a discussion on any search and seizure. Both require a law enforcement officer to first obtain a warrant based on probable cause before conducting a

search. Although the warrant requirement has been eroded considerably over the

years by the U.S. Supreme Court with regard to searching your person, vehicle, or office, it remains fairly strong when the place to be searched is your home.

## WHAT IS PROBABLE CAUSE?

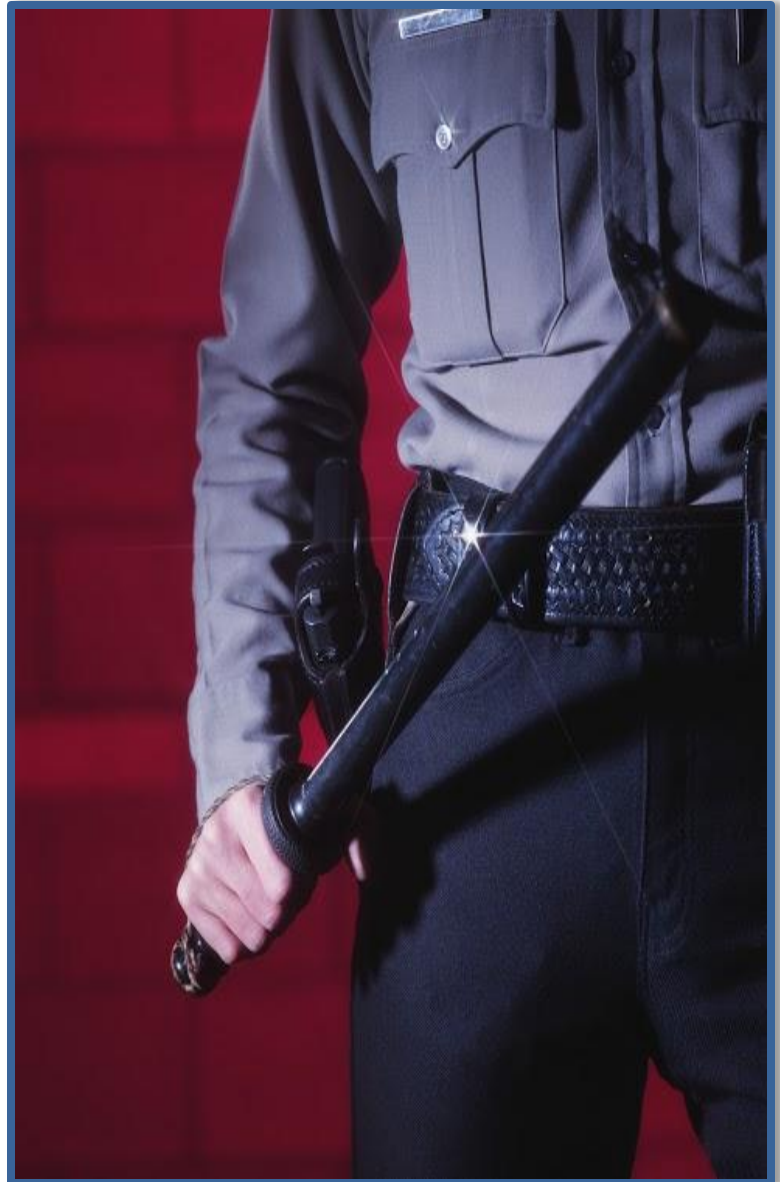
To obtain a warrant a law enforcement officer must convince a judge or magistrate that “probable cause” exists. The precise legal definition of “probable cause” has been debated by lawyers, judges, and scholars for over 200 years. For purposes of a basic understanding of search and seizure law, consider the definition to be “information sufficient to warrant a prudent person's belief that evidence of a crime or contraband would be found in a search”.





## OBTAINING A WARRANT

The actual process for obtaining a warrant begins with an officer preparing a probable cause affidavit. The PCA must include sufficient information for a judge or magistrate to believe that probable cause exists for the warrant. In addition, the PCA must specifically describe the property to be searched and the items to be seized. Contrary to what police officers would like you to believe, even a valid search warrant does not typically give them the right to search your entire house. The “items to be seized” often limit the scope of a warrant. For example, if the warrant allows the officers to search for assault rifles they cannot open small drawers where an assault rifle would not fit. Finally, the officer must sign the PCA under oath and then present it to a judge/magistrate. If the judge/magistrate feels the PCA is complete he/she will issue a warrant to search the property in question.



## EXCEPTIONS TO THE WARRANT REQUIREMENT

Like most rules, the warrant requirement rule does have exceptions. There are four commonly accepted situations in which a warrant is not needed to conduct a search and seizure of your home, including:

- **Consent** –if you consent to a search of your home, no warrant is needed. This is by far the most commonly used exception. **Never** consent to a search without first consulting an experienced criminal defense attorney.
- **Incident to arrest** –sometimes the police have the right to enter your home to execute a valid arrest warrant. In that case they may search the *immediate area near the arrestee* for contraband or weapons.
- **Plain view** – if you open the door to the police and they can see contraband through the open door they may use that as the basis for a warrantless search of your home. Always be careful when you open the door!

**Exigent circumstances** –if a valid emergency exists, such as someone screaming for help from inside the home, the police may enter without a warrant to conduct a search.



## THE EXCLUSIONARY RULE

The Exclusionary Rule and the “Fruit of the Poisonous Tree” doctrine apply when



a search was conducted and it turns out to be an illegal search. This may occur because the police searched without first obtaining a warrant or because the warrant they did obtain was defective. Either way, if a court ultimately rules that the search was an illegal search the evidence seized during that search will usually be excluded, or inadmissible, at trial. In addition, if *that* evidence then led to an additional search and seizure, any evidence obtained during the *subsequent search and seizure* may also be excluded

because it is considered “Fruit of the poisonous tree.”

Search and seizure law is a very complex, and ever-changing area of criminal law. If you are confronted with a request to search your home, contact an

experienced Nebraska criminal defense attorney *immediately*. Exerting your right to counsel does make you look guilty, just smart.

## REFERENCES

Cornell University Law School, [Fourth Amendment: An Overview](#)

Cornell University Law School, [Exclusionary Rule](#)

Cornell University, [Bill of Rights](#)

Nebraska Legislature, [Nebraska State Constitution Article 1-7](#)

## 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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