

# NEBRASKA CRIMINAL LAW

## THE 10 MOST IMPORTANT CONSTITUTIONAL RIGHTS FOR A SUSPECT OR DEFENDANT

*“[T]ake the time to familiarize yourself with the following 10 most important rights you have as a suspect or defendant. Here we will discuss the first five of those rights. See Part II in this series for the remaining five rights.”*



## PART I OF A TWO-PART SERIES



Few people foresee the likelihood of becoming a suspect in a criminal investigation, much less a defendant in a criminal prosecution. However, it could happen to you. The reality is that even if you consider yourself to be a law abiding citizen who would never intentionally break the law, you could one day find yourself the target of an investigation or even wind up under arrest and charged with a crime.

At that point, the events that led up to your predicament won't be nearly as important as knowing your constitutional rights, as well as how and when to assert them. Toward that end, take the time to familiarize yourself with the

following 10 most important rights you have as a suspect or defendant. Here we will discuss the first five of those rights. See Part II in this series for the remaining five rights.

## 1. Right against Unreasonable Searches and Seizures

Both the 4<sup>th</sup> Amendment to the U.S. Constitution and Article I-7 of the



Nebraska Constitution protect you against unreasonable searches and seizures. This is also where the requirement that a law enforcement officer obtain a warrant before conducting a search is found. The warrant requirement has been watered down considerably

over the years; however, your home, in particular, remains heavily protected by both Constitutions. The most common way law enforcement officers get around the need for a warrant is by convincing a suspect to provide consent to search. ***Never consent to a search of anything without first consulting your attorney.***

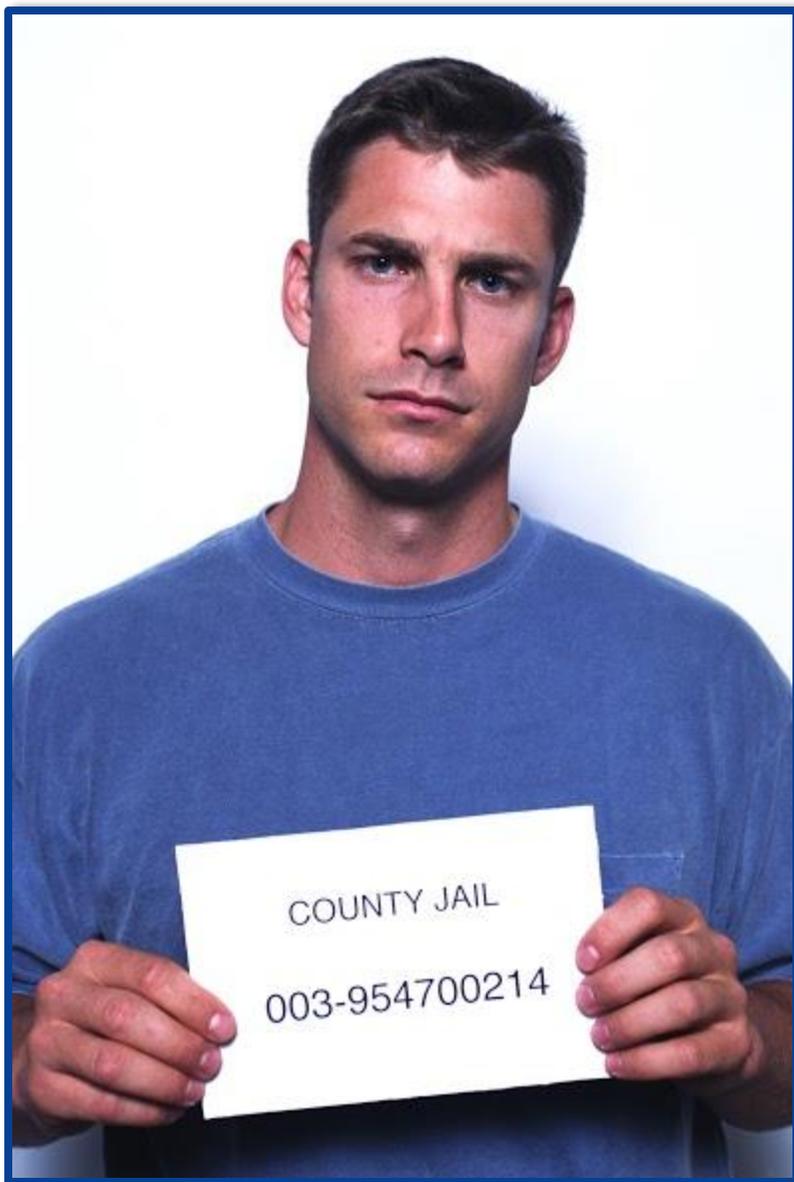
## **2. Right to Due Process of Law**

The 14<sup>th</sup> Amendment to the U.S. Constitution and Article I-3 of the Nebraska Constitution give you the right to “due process of law.” “Due process” is a broad concept that applies throughout the prosecution of a crime which, in effect, requires the State of Nebraska to assure that you are receiving “that fundamental fairness essential to the very concept of justice.”

## **3. Right to Counsel**

The right to counsel is found in the 6<sup>th</sup> Amendment to the U.S. Constitution and in Article I-11 of the Nebraska Constitution. Your right to counsel attaches when judicial proceedings begin and applies at all critical stages of a prosecution. Of course, you have the right to confer with an attorney long before you are actually charged with a criminal offense and you have the right to have an attorney present during questioning at the investigation stage of a crime. However, the state’s duty to provide you with an attorney if you cannot afford one does not begin until proceedings have been initiated against you. The right to counsel applies to all defendants charged with an offense for which imprisonment is imposed, regardless of the offense’s classification as a felony or misdemeanor. However, if the offense is a misdemeanor, the constitutional right to counsel applies only if imprisonment is actually imposed.

#### 4. Right against Self-Incrimination



The well-known “right to remain silent” stems from your overall right against self-incrimination found in the 5<sup>th</sup> Amendment to the U.S. Constitution and Article I-12 of the Nebraska Constitution. Your right against self-incrimination actually encompasses far more than simply remaining silent when questioned. The premise of the right is that you cannot be compelled to provide the State of Nebraska, through law enforcement, with *any* type of evidence that would serve to incriminate you. This is why, for example, you cannot be

forced to submit to a breath test during a DUI investigation – because the results could be used as evidence against you. Asserting your right against self-incrimination is often the single most important thing you can do as a suspect of a criminal investigation. *Never offer, consent, or otherwise hand over evidence against you to a law enforcement officer.*

## 5. Right to Bail

Found in the 8th Amendment to the U.S. Constitution and Article I-9 of the Nebraska Constitution, the right to bail essentially means you have the ability to post a bond in almost all criminal prosecutions to secure your release while the case is pending. Bail can only be denied in the most serious of crimes, such as treason or first degree murder. The amount of bail in any specific case is usually determined by first consulting the county bond (bail) schedule. Bail may be adjusted upward if there are aggravating factors present or downward for mitigating factors. In general, a judge is allowed to consider the following factors when setting bail:

- Seriousness of the charges against the defendant
- Risk of flight if released
- Potential risk to the community if released

If you have reason to believe you are a suspect in a criminal investigation and/or you have been contacted by law enforcement regarding in a case in which you are anything but a victim, it is always in your best interest to consult an experienced Nebraska criminal defense attorney immediately. In addition, please be sure to read Part II in this series, where we will discuss rights 6-10 at length.

## REFERENCES

Nebraska Legislature, [Nebraska Constitution](#)

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](#)

## 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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