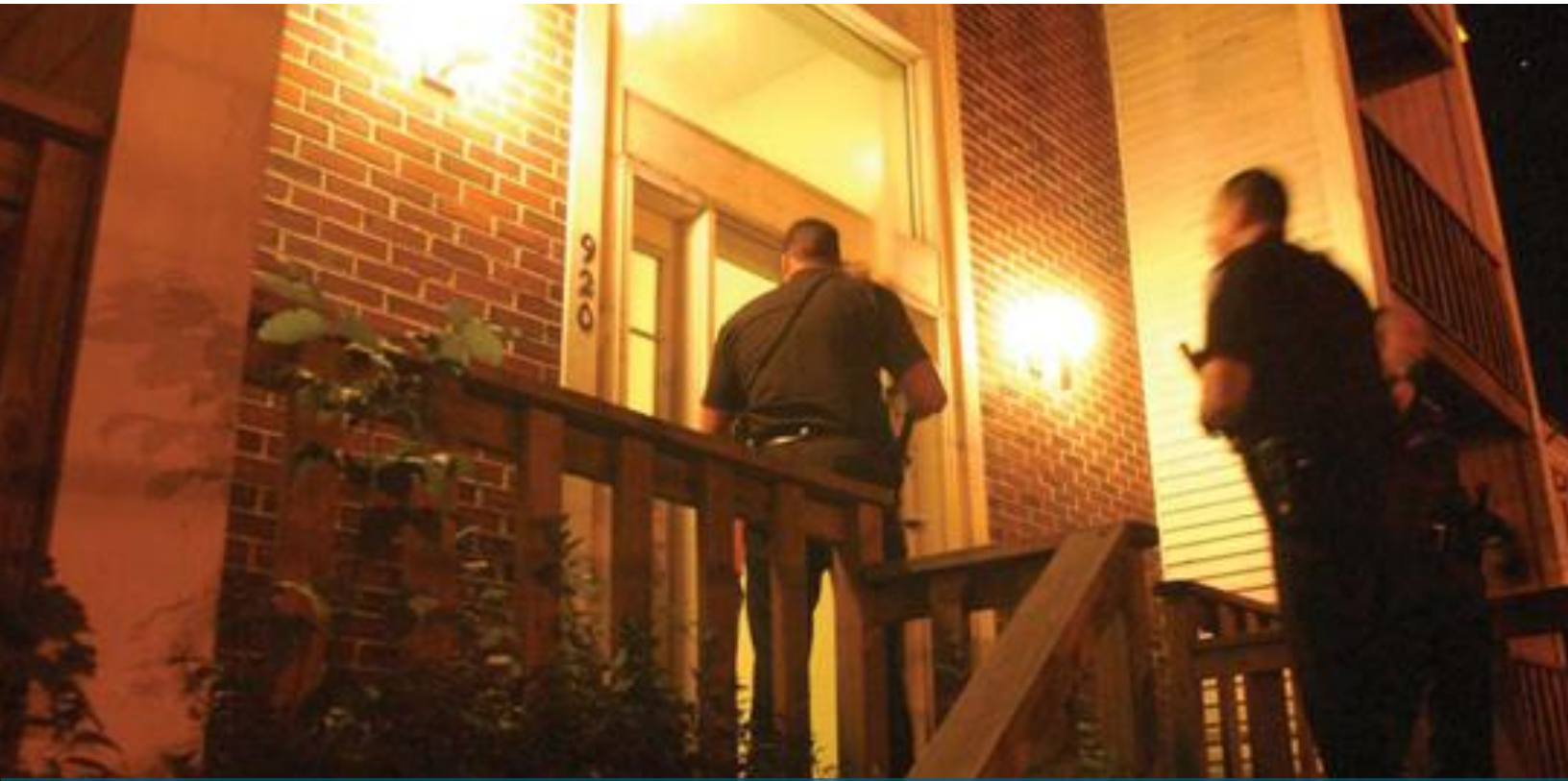


# KENTUCKY SEARCH AND SEIZURE LAW

*When Can the Police Search Your Home?*

*You Should Know What Your Rights Are and What  
Your Response Should Be Should You Find Yourself  
with the Police at Your Door One Day*



**Musselwhite Meinhart & Staples, PSC**

For some people, their home is a place to entertain and socialize. For others, home is a place to retreat from the outside world. Whether you live with an “open door” or “bar the doors” policy the commonality between the



two is that *you* control the door. You undoubtedly consider your home to be just that – *your* home. What happens if the police show up at your door and want to search *your*

home? Before you assume this would never happen to you it **can**, and it **does**, happen all the time to people who aren't expecting it. You don't have to be a criminal to suddenly be the subject of a police investigation. It can happen to anyone and you should know what your rights are and what your response should be should you find yourself with the police at your door one day.

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

Your first question is likely “Why would the police want to search *my* home?” If you aren't personally involved in criminal activity this is a very valid question. Even persons who may be involved in criminal activity and expect the police to show up often do not know how to react. For those who have no reason to expect the police it makes sense to wonder why

they would suddenly have an interest in your home. There are a variety of possible explanations, including the following:

- **Roommates/visitors** –if you currently have, or have recently had, a roommate living with you the police could consider this person a suspect in a crime. Likewise, if you have recently had a visitor staying at your house the police could be interested in the visitor.
- **Children** – no one wants to admit that their teenage/young adult child could be doing anything illegal; however, it is a possibility. Whether you choose to protect your child or not is up to you but you should at least know how to and you should certainly protect yourself.
- **White collar crimes** – 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. It is far easier than you may realize to suddenly become a suspect in one of these crimes without even knowing it until the police show up to question you and/or search your home.
- **Finger pointing** – someone may have pointed the finger at you, or someone living in your home, for a crime. This could be a jealous ex, an envious co-worker, or just a scared acquaintance. Regardless of who pointed the finger and why, you now have to deal with the consequences.

## YOUR RIGHT TO BE SECURE IN YOUR HOME

Protection against unreasonable and unwarranted searches and seizures was so important to the founding fathers that it is included in the Bill of Rights. Specifically, the Fourth Amendment to the United States Constitution reads:

“The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.”

Section 10 of the Kentucky Constitution mirrors the Fourth Amendment by stating:

“The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.”

Collectively, the Fourth Amendment and Section 10 mean that *in most cases* a law enforcement officer is required to obtain a search warrant based on probable cause before a search of your home can be conducted.

## PROBABLE CAUSE AND OBTAINING A WARRANT

The definition of “probable cause” has been, and continues to be, the subject of much debate in legal circles. 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". Once a law enforcement officer has the probable cause necessary to obtain a warrant the officer prepares a request for the warrant which includes the

required probable cause information. The request must be sworn to by “oath or affirmation” and submitted to a judge or magistrate for review. If the judge is convinced that probable cause exists, the warrant is signed and can be executed by the police. The warrant must be specific in both the description of the location to be searched and the items to be seized.

## EXCEPTIONS TO THE WARRANT REQUIREMENT

If the police show up at your door with a valid warrant to search your home you have little option but to comply. You should still contact an experienced Kentucky criminal defense attorney immediately; however, a valid warrant can be executed without your consent. Consent, however, brings us to exceptions to the warrant requirement. The police don't always have a valid warrant when they arrive at your door wanting to

search your home. In that case, they **cannot** legally conduct a search unless one of the exceptions to the warrant requirement applies. Those exceptions include:

- **Consent** – by far the most commonly used exception to the warrant requirement is consent. Put simply, if you consent a warrant is not needed. **Do not consent.** The police will use various tactics to try and convince you to consent. They may try and convince you that they can get a warrant easily so why go through “all that trouble”. **Make them** go through all that trouble. They may try and guilt you into consenting by implying that you must have something to hide if you won’t consent. You have an absolute Constitutional right to refuse to consent to a search of your home; however, that right only protects you if you assert it and stand firm. The truth is that you have no way of knowing with 100 percent certainty what is in your home. In the event evidence is found during a search an attorney may be able to exclude the evidence if you forced the police to obtain a warrant and the warrant was defective in some way; however, if you consented to the search there is no way to exclude any evidence found as a result of the search.
- **Incident to arrest** – this typically applies when the police are executing a felony arrest warrant or a probation violation warrant. In that case, they may search the *immediate area under the arrestee’s control*. The justification for this is to ensure the police that the arrestee does not have access to weapons or contraband during and/or after the arrest.

- **Plain view** – if the police see contraband in plain view they can use that as a way around the warrant requirement. How does that happen? Like this – the police knock on your door and you answer the door. Although you don't let them in, there is a small baggie of marijuana, or a joint/blunt/pipe sitting on the coffee table just inside the front door which the police officer can clearly see. The officer has now seen contraband in plain view and may use that as a reason to search your home.
- **Exigent circumstances** –this exception applies when an officer has “a compelling need to take action but does not have the time required to obtain a warrant.” The most common example is if an officer arrives at a home and hears screams for help from inside the home.

## THE EXCLUSIONARY RULE AND FRUIT OF THE POISONOUS TREE – WHAT HAPPENS WHEN THE POLICE CONDUCT AN ILLEGAL SEARCH AND SEIZURE?

Police officers are trained to understand the warrant requirement as well as the narrow exceptions to the requirement. Despite this, they still conduct illegal searches and seizures on a regular basis. Sometimes this is because the warrant itself turns out to be defective. Other times it's because they thought an exception applied only to have a court determine otherwise. What happens to the evidence obtained during a search when the search turns out to be an illegal search and seizure? This is where the Exclusionary Rule and the “Fruit of the Poisonous Tree” doctrine come in to play.

The exclusionary rule, as the name implies, acts to exclude the use of evidence at trial if the evidence was illegally obtained. Your attorney will file a motion to exclude the evidence and a hearing will typically be scheduled. If, at the hearing, the judge is convinced that either the warrant was defective in the case of a search with a warrant, or that none of the exceptions applied in the case of a warrantless search, the judge will order the evidence excluded from

trial. Furthermore, the “Fruit of the Poisonous Tree” doctrine may allow additional evidence to be excluded if that evidence was obtained as a result of illegally obtained evidence. For example, imagine that the



police search your home based on a warrant that is later determined to be defective. During the search of your home they find information indicating that you own a storage unit – something they were previously unaware of – and that you may be storing contraband in the storage unit. They then search the storage unit and do find contraband. If a judge can be convinced that the contraband found in the storage unit would not have been found “but for” the evidence obtained in the original *illegal* search, that contraband may be excluded on the basis that it is “fruit of the poisonous tree”.

As you can see, search and seizure law can become complicated rather quickly. The important points to remember are to never consent to a



search and to contact an experienced Kentucky criminal defense attorney immediately if the police show up at your door – with or without a warrant – and want to conduct a search of your home.

## REFERENCES

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

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

Kentucky Legislature, [Section 10](#)

## **About the Author**

Paul Musselwhite, Carol Blakeley Meinhart, Kimberly Musselwhite Staples, and Robert D. McIntosh are the experienced and knowledgeable attorneys that make up Musselwhite, Meinhart & Staples. With over 50 years of combined experience, they have been serving the legal needs of individuals, individuals in the military and families in Hardin county and all of central Kentucky with pride and dignity. Practicing in criminal cases in Hardin county, central Kentucky and beyond, they are experienced in all types of law.

Musselwhite Meinhart & Staples, PSC  
[www.mmslawonline.com](http://www.mmslawonline.com)

385 W. Lincoln Trail Blvd.  
Radcliff, KY 40160

3103 Fern Valley Road,  
Suite 203, Louisville, KY 40213

Toll-Free: 1-800-754-HELP  
Fax: (270) 351-6069

[mmslaw4u@bbtel.com](mailto:mmslaw4u@bbtel.com)