

VEHICLE FIRES

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I. GENERAL CONSIDERATIONS AND GUIDELINES

After a local fire department extinguishes the flames of a burning motor vehicle, the cause of such fire has to be determined by the proper authorities. When a fire or explosion destroys or damages property, the local fire department must initiate an investigation to determine if "carelessness or design" caused the fire or explosion. An investigation to determine the cause of a fire must adhere to Fourth Amendment standards. The process of determining the cause of such fire lends itself to certain search and seizure issues, such as:

- Whether a vehicle may be impounded pending the issuance of a search warrant to determine the cause of said fire;
- Should a criminal or administrative search warrant be sought; and
- Does the warrant type affect the scope of a search?

II. POLICY

It is the policy of this department to cooperate fully and impartially with statutory authorities whose responsibility it is to determine the cause and nature of motor vehicle fires.

III. PROCEDURE

A. Impounding the Motor Vehicle

1. Fire investigators have authority to impound a vehicle prior to obtaining a search warrant despite the owner's request that the vehicle be towed to a location of his/her choice.¹

2. The department may post an officer to secure the vehicle in order to preserve the chain of custody while a warrant is being obtained.
3. If a vehicle is impounded, the fire investigator should immediately begin the process of applying for either an administrative search warrant or a criminal search warrant. This process should be completed as soon as possible.
4. If exigent circumstances are present, such as if it appears that the impounded vehicle could contain evidence easily lost or destroyed despite its impoundment, investigators shall conduct a brief, immediate search in order to recover such evidence.²
5. Fire investigators shall then obtain an appropriate warrant to conduct a detailed examination of the automobile where an extended period of time will lapse before commencement of the examination.

B. Obtaining the Appropriate Search Warrant

1. ADMINISTRATIVE SEARCH WARRANTS

- a. If the fire investigator does not have probable cause to believe that the fire was intentionally set, or that the vehicle contains evidence of a crime, [s]he may nonetheless apply for an administrative search warrant in order to determine the cause and origin of the fire.³ For example, if there is no information that the vehicle is stolen, and there is no probable cause to believe that the vehicle contains evidence of a crime or was intentionally set on fire, then an investigator should seek an administrative search warrant.
- b. The scope of an administrative search warrant is narrower than that of the criminal search warrant, being limited to seeking evidence of whether carelessness or design caused the fire or explosion.
- c. An administrative search warrant does not authorize a fire investigator to conduct a general search for evidence of a crime. For example, a fire investigator may not examine the ignition to determine if it has been defeated or search for identification evidence.
- d. Evidence of a crime which is in plain view may be seized. This may include evidence of a crime other than arson (e.g., weapons, contraband, drugs, etc.). However, any additional search for evidence of such crimes (even identification evidence such as fingerprints) must be done pursuant to a criminal search warrant.
- e. While conducting an administrative search, if an investigator makes plain view observations and accumulates enough evidence to establish probable cause to believe that the fire was intentionally set or the vehicle was stolen (e.g., evidence of forced

entry or tampered ignition), [s]he should immediately suspend the administrative search and apply for a criminal search warrant.

2. CRIMINAL SEARCH WARRANTS

- a. If a fire investigator has probable cause to believe that a fire was intentionally set and/or there would be evidence of a crime within a vehicle, [s]he should apply for a criminal search warrant before searching for evidence of a crime.
- b. Probable cause to believe that the fire was intentionally set may arise from observations of the fire fighters or the investigator and from the facts surrounding the fire itself. For example, if the fire was inside the vehicle's passenger compartment (as opposed to under the hood); if the firefighters detected the presence of accelerants inside the compartment; and/or if the seat cushions were burned more extensively than the rest of the automobile, a criminal search warrant to search for evidence of arson should be sought.
- c. A criminal search warrant should be sought when the investigator has probable cause to believe that a vehicle is evidence of another crime. For example, the owner may have reported the vehicle stolen prior to the fire, or a witness may have identified the vehicle as being used during the commission of a crime.
 - 1) In such circumstances, the fire investigator should obtain a criminal search warrant to examine the vehicle for evidence of both the underlying crime and arson. For example, if the owner has reported a vehicle stolen, the criminal search warrant should allow the fire investigator to search for and seize identification evidence (fingerprints, etc.), evidence that the vehicle was stolen (examine the ignition to see if it was defeated, etc.), and evidence of arson (presence of accelerant, igniter, etc.).
 - 2) The fire investigator's affidavit should specify that, based on his/her training and experience, [s]he has probable cause to believe that whoever stole the vehicle or used it to commit another crime probably set fire to the vehicle intentionally in order to destroy evidence.
 - 3) When considering whether to apply for a criminal search warrant, a fire investigator should consider whether the vehicle's owner might have reported it stolen and then intentionally set it on fire in order to obtain insurance money. A criminal search warrant authorizing a fire investigator to seize evidence that a vehicle was stolen and purposely set ablaze could reveal that the vehicle was intentionally set ablaze but not that it was stolen. For example, the search may reveal that the

ignition was not defeated or tampered with. These facts might lead to the conclusion that the owner was the arsonist.

- d. A search warrant need not be obtained if the owner consents to the search of the vehicle for evidence of arson and for evidence of any other crimes.

C. Checklist after Suspicious Vehicle Fires

1. After the fire is extinguished, immediately make a brief examination of the vehicle and remove any evidence that may be lost or destroyed during impound, pending further investigation.
2. Impound the vehicle.
3. Determine if probable cause exists to indicate that a crime has been committed or the vehicle contains evidence of a crime.
4. If no probable cause exists, apply for an administrative search warrant to determine carelessness or design.
5. If during the execution of an administrative search warrant, probable cause of a crime becomes evident, stop the search immediately and apply for a criminal search warrant.
6. Execute the criminal search warrant and seize all evidence.
7. Refer any questions you may have to the local district attorney's office.

¹M.G.L. c. 148, §2; *Com. v. Mamacos*, 409 Mass. 635, 568 N.E.2d 1139 (1991); *Com. v. Hall*, 366 Mass. 790, 323 N.E.2d 319 (1975).

²*Michigan v. Tyler*, 436 U.S. 499 (1978); *Com. v. Markou*, 391 Mass. 27, 459 N.E.2d 1225 (1984).

³M.G.L. c. 148, §2.