

 Lexington Police Department	Subject: Vehicle Fires					Policy Number:	
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By Order of: Mark J. Corr, Chief of Police							

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GENERAL CONSIDERATIONS AND GUIDELINES

The Lexington Fire Department and the Massachusetts State Fire Marshal's Office are the primary investigators when dealing with a fire or explosion within the Town of Lexington. Although the Fire Department is the public agency responsible for the handling of fires the police also have an important part to play. After the flames of a burning motor vehicle are extinguished, the cause of such fire has to be determined. When a fire or explosion destroys or damages property, the Fire Department may initiate an investigation to determine if "carelessness or design" caused the fire or explosion. Often times the Police Department will assist fire personnel in the accomplishment of these goals. When an investigation seeks to determine the cause of a fire, investigators 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?

It is the policy of the Lexington Police Department to:

- Cooperate fully and impartially with statutory authorities whose responsibility is to determine the cause and nature of motor vehicle fires.
- M.G.L.A. c. 148 s. 2 states that: "heads of fire departments in cities, towns or fire districts shall investigate the cause and circumstances of every fire or explosion in their respective jurisdictions by which property has been destroyed or damaged, especially to ascertain whether it was by carelessness or design."

- Maintain an investigative partnership between the Fire Department and the Police Department, taking advantage of the technical skills of fire investigators and the criminal investigative skills of police officers.

PROCEDURES

A. Definitions

Fire Investigator: A member of the Lexington Police Department who generally has investigatory skills that can be used to compliment the technical knowledge of Fire Department investigators. The Chief of Police will appoint one or more police officers to act as fire investigators for the purpose of investigating fires.

B. Duties of Preliminary Officer at the Scene

1. The first arriving officers at a vehicle fire must insure the safety of its occupants and safety of the public in the immediate area.
2. If a police officer arrives before the Fire Department he/she should consider the use of the fire extinguisher, if it is safe to do so.
3. Officers should be aware of safety concerns that arise from car fires, (although not a complete list), these are a few of the areas officers should be aware of:
 - a. The ability of vehicles to become quickly engulfed with flames and/or explode
 - b. The concerns of visibility impairment to other vehicles due to excessive smoke,
 - c. Inhalation issues caused by smoke
 - d. The need to shut down the roadway to enhance safety,
 - e. Crowd control, and
 - f. The possibility that the vehicle could roll.
4. If the Fire Department is on scene, the officer's primary duties will be the controlling of traffic and assisting fire personnel at the scene.
5. After a vehicle fire has been extinguished, the officer on the scene should speak with fire personnel as soon as practicable and obtain a better understanding of the cause.
6. If the fire appears suspicious in any manner, the Commanding Officer should be notified and a trained fire investigator should be dispatched to the scene.
7. Officers should follow guidelines consistent with their training regarding scene preservation.

C. Impounding the Motor Vehicle

1. In order to prevent unauthorized access to the vehicle after a suspicious fire, fire investigators have authority to impound the vehicle prior to obtaining the appropriate search warrant despite the owner's request that the vehicle be towed to a location of his/her choice.ⁱ The Department may post an officer to act as a guard at the location of the vehicle in order to prevent unauthorized access while a warrant is being obtained.
2. If a vehicle is impounded, the fire investigators 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.
3. 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.ⁱⁱ 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.

D. 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.ⁱⁱⁱ 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 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. If while conducting an administrative search, 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.
 - i. 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.).
 - ii. 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.

- iii. 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 to determine the cause or for evidence of arson and for evidence of any other crimes.

E. Checklist After Suspicious Vehicle Fires

1. After the fire is extinguished, immediately make a brief examination of the vehicle and remove any evidence in plain view that may be lost or destroyed during the impound, pending further investigation.
2. Impound 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, the applications for an administrative search warrant may be sought 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 Middlesex District Attorney's Office.

ⁱM.G.L. c. 148, s. 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)

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

ⁱⁱⁱM.G.L. c. 148, s. 2