

# LEGAL ISSUES



**The following are just some basic reminders. You should check for the latest potential updates to General Statutes.**

**Fourth Amendment** - 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 nor warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

*(Protects people not places)*

*(What person makes public is not covered by 4th)*

*(Individual's privacy must be reasonable and recognized by society)*

***All searches without a warrant per se are unreasonable with certain exceptions:***

- Aerial Surveillance
- Open Field
- Hot Pursuit
- Plain View
- Incident Lawful Arrest
- Stop & Frisk
- Consent (custodial)
- Consent (non-custodial)
- Border Search
- School Searched
- Probationer's Residence
- Emergency Car Search
- Inventory Search
- Container In Car/Truck
- Delayed Warrantless Search Of Vehicle
- Motor Home
- Burning Building

## *Plain View Test?*

- A. Prior justification for the intrusion. (The right to be there)
- B. Inadvertent discovery of incriminating evidence.
- C. Immediate knowledge that the Firefighter or Investigator had evidence of an unlawful act that was immediately apparent.

## **Investigator's role regarding the 4th Amendment**

1. The F.D. does not need a warrant or consent to occupy the property in question if an ***exigent circumstance exists***, ie. Fire suppression or acts that are intended towards public safety and to limit or stop the destruction of property.
2. The F.D. or the investigator may remain on scene for a ***reasonable enough time to determine Cause & Origin and preserve any evidence*** in plain view from intentional and accidental destruction. To assist in determining this time factor of remaining on scene you may consider two elements: the conditions of the scene; smoke, heat, steam or hazards that need to be stabilized for the safety of the investigator and the 2nd is the reasonable expectations of privacy of those involved.
3. Once Cause & Origin has been determined, other areas may not be searched until an ***Administrative Search Warrant*** is obtained.
4. After the F.D. or the investigator has ***left the scene*** and has been ***returned to the Owner*** or Occupant, and further investigation or revisits are necessary, then those returning to the property must ***obtain consent*** from all who would be in question of the 4th Amendment. and who have a reasonable expectation of privacy. Consent may be revoked at any time and an ***Administrative Search Warrant*** must be obtained. If you have any expectations of revocation or suspicions, obtain an ***Administrative Search Warrant first***.
5. At anytime, ***during*** the initial determination of Cause & Origin or ***after returning*** to the property under consent or an Administrative Search Warrant, that you discover that ***probable cause exists that a crime has been committed*** you must stop, secure the scene and obtain a ***Criminal Search Warrant***.
6. When does a fire investigation end and an arson investigation start? When there is suspicious probable cause.

***Consent:*** to freely and voluntarily give permission (without show of force or extortion).

Consent must be given by all individuals involved with the property who have a reasonable expectation of privacy. Any of these individuals may give consent of common areas, living rooms, kitchens etc. Bedrooms or areas that are specific to an individual must have that individual's consent.

***Administrative Search Warrant:*** For the purpose of determining Cause & Origin. No evidence of crime or suspicions must be present.

***Criminal Search Warrant:*** For the purpose of searching a premises when there are suspicious circumstances or evidence that a crime has been committed.

## *Remember the following when determining Cause and Origin*

1. Wherever you are searching should be within the bounds of what is necessary to find the Cause & Origin.
2. You are permitted to investigate the areas that are normally subject to the spread of flame, heat and smoke damage. For example, a fire in a room with the typical fire behavior is going to spread upwards and outwards. This may permit the Fire Department to search attic areas or any area that such damage could possibly occur. Remember conduction, convection and radiation.
3. Adjacent rooms, on the other side of a wall where a fire occurred, may be prone to the effects of conduction and if it may be within the reasonable expectations of fire behavior then these areas may be searched either for the purpose of determining cause & origin or salvage & overhaul.
4. Containers, boxes, dressers or other objects that are within the area may not be searched through unless there exists the possibility of smoldering material or for other purposes of salvage & overhaul.
5. If there is ever any question as to your actions violating their 4th Amendment rights, then put yourself in their shoes and imagine what reasonable expectations of privacy you would have.
6. Firefighter's have the right during an exigent circumstance, especially during and directly after fire suppression, to do a secondary search for victims or ventilate an area which greatly expands the reason for being in areas other than the area directly involved in fire, which provides a larger area to obtain "plain view" evidence.
7. It is a routine procedure to check the electrical panel during an investigation which opens up another area that the investigator has a reason to be in.
8. If consent is gained, it must be specific as to the areas and the extent of the search.
9. An Administrative Search Warrant still only gives you the right to determine the Cause & Origin and the Warrant must be specific as to the areas and the extent.
10. Once evidence is found that suggests or shows that a crime has been committed then you must obtain a Criminal Search Warrant. Once this level has been attained then do not collect any evidence until the Warrant is in hand. Any evidence seized after the reasonable suspicion of crime has been discovered and before the warrant is obtained may be suppressed.
11. Remember, Plain View is the rule unless a warrant is specific to a more in depth search. Reading the serial numbers on an object without moving it is Plain View, moving it constitutes a search beyond Plain View.

## ***Statutes regarding fire law***

### **69-39. Authority of firemen; penalty for willful interference with firemen**

Members and employees of county, municipal corporation, fire protection district, sanitary district or privately incorporated fire departments shall have authority to do all acts reasonably necessary to extinguish fires and protect life and property from fire. Any person, including the owner of the property which is burning, who shall willfully interfere in any manner with firemen engaged in the performance of their duties shall be guilty of a misdemeanor and punishable in the discretion of the court.

### **14-58. Punishment for arson**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class C felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a Class D felony.

#### ***Elements of first degree arson***

A person is guilty of this offense if

- (1.) He willfully and maliciously
- (2.) burns
- (3.) the dwelling house
- (4.) of another
- (5.) while someone is present inside the dwelling.

\*5. Is the only thing that is not applicable to second degree arson

### **14-58.2. Burning of mobile home, manufactured type house or recreational trailer home.**

If any person shall willfully or maliciously burn any mobile home or manufactured type house or recreational trailer home which is the dwelling house of another and which is occupied at the time of the burning, the same shall constitute the crime of arson in the first degree.

### **14-59. Burning of certain public buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, the State Capital, the Legislative Building, the Justice Building or any building owned or occupied by the State or any of its agencies, institutions or subdivisions or by county, incorporated city or town or other governmental or quasi-governmental entity, he shall be punished as a Class E felon.

#### ***Elements***

A person is guilty of this offense if:

- (1.) He wantonly and willfully
- (2.) Sets fire to, or burns, or causes to be burned, or aids, or counsels, or procures the burning of
- (3.) The State Capital, the Legislative Branch, the Justice Building, or any other building owned or occupied by any agency of state or local government.

### **14-60. Burning of schoolhouse or buildings of educational institutions.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, any schoolhouse or building owned or leased or used by any public or private school, college or educational institution, he shall be punished as a Class E felon.

#### ***Elements***

A person is guilty of this offense if:

- (1.) He wantonly and willfully
- (2.) Sets fire to, or burns, or causes to be burned, or aids, or counsels, or procures the burning of
- (3.) Any schoolhouse or building used or leased by an educational institution

### **14-61. Burning of certain bridges and buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, any public bridge, or private toll bridge, or the bridge any incorporated company, or any fire engine house or rescue squad building, or any house belonging to an incorporated company or unincorporated association and used in the business of such company or association, he shall be punished as a Class E felon.

### **14-62. Burning of churches and certain other buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any uninhabited house, any church, chapel or meeting house, or any stable, coach house, outhouse, warehouse, office, shop, mill, barn or grainery, or any building, structure or erection used or intended to be used in carrying on any trade or manufacture, or any branch thereof, wether the same or any of them respectively shall be in the possession of the offender, or in the possession of any other person, he shall be punished as a Class A felon.

#### ***Elements***

A person is guilty of this offense if:

- (1.) He wantonly and willfully
- (2.) Sets fire to, or burns, or causes to be burned, or aids, or counsels, or procures the burning of
- (3.) an uninhabited house, any church, chapel or meeting house, or any stable, coach house, outhouse, warehouse, office, shop, mill, barn or grainery, or any building, structure or erection used or intended to be used in carrying on any trade or manufacture.

### **14-62.1. Burning of building or structure in process of construction**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any building or structure in th process of construction for use or intended to be used as a dwelling house or in carrying out trade or manufacture, or otherwise, whether the same or any them respectively shall be in the possession of any other person, he shall be punished as a class E felon.

### **14-63. Burning of boats and barges**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any boat, barge, ferry or float, without consent of the owner thereof, he shall be punished as a class H felon. In the event the consent of the owner is given for an unlawful or fraudulent purpose, however, the penalty provisions of this section shall remain in full force and effect.

#### ***Elements***

A person is guilty of this offense if:

- (1.) He wantonly and willfully
- (2.) Sets fire to, or burns, or causes to be burned, or aids, or counsels, or procures the burning of any
- (3.) Boat, barge, ferry or float
- (4.) Without the owner's consent, or with the owner's consent, if done for a fraudulent purpose.

### **14-65. Fraudulently setting fire to a dwelling house**

If any person, being the occupant of a dwelling house, whether such person be the owner thereof or not, or, being the owner of any building designed or intended as a dwelling house, shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of such building, he shall be punished as a class H felon.

### **14-67.1. Burning or attempting to burn other buildings**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any building or other structure of any type not otherwise covered by the provisions of this article, he shall be punished as a Class H felon.

### **14-67. Attempting to burn dwelling houses and certain other buildings**

If any person shall wantonly and willfully attempt to set fire to or burn or cause to be burned any dwelling house, uninhabited house, the State Capital, the Legislative Building, the Justice Building or any building owned or occupied by the State or any of its agencies, institutions or subdivisions or by any county, incorporated city or town or other governmental or quasi-governmental entity, any schoolhouse or building owned, leased or used by any public or private school, college or educational institution, or any public bridge, private toll bridge or the bridge of any incorporated company, or any fire engine house or rescue squad building, or any house belonging to an incorporated company or unincorporated association and used in the business of such company or association, any church, chapel or meetinghouse, or any stable, coach house, outhouse, warehouse, office, shop, mill, barn or granary, or any building, structure or erection used or intended to be used in carrying on any trade or manufacture, or otherwise, any boat, barge, ferry or float, any ginhouse or tobacco house, or any part thereof, whether such buildings or structures or any of them shall then be in the possession of the offender or in the possession of any other person, he shall be punished as a Class H felon.

### **14-66. Burning of personal property**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any goods, wares, merchandise or other chattels or personal property of any kind, whether or not the same shall at the time be insured by any person or corporation against loss or damage by fire, with intent to injure or prejudice the insurer, the creditor or the person owning the property, or any other person, whether the property is that of such person or another, he shall be punished as a Class H felon.

Gs14-214 Insurance fraud