

## CHAPTER 69A-61 RULES OF THE BUREAU OF FIRE AND ARSON INVESTIGATIONS

### 69A-61.001 Initial Investigation of Fires.

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(1)(a) **PURPOSE.** The purpose of this rule is to assist local fire officials and law enforcement officers in determining the established responsibilities with respect to the initial or preliminary assessment of fire scenes, and the determination of whether probable cause exists to refer such scenes to the Division for an investigation pursuant to Section 633.03, F.S. Experience shows that the most effective deterrent to arson lies in the effective investigation of suspicious and incendiary fires. This requires a commitment of fire officials, law enforcement, and the Division to direct investigative resources to those fires that are of a suspicious nature, or are believed to be incendiary, to more effectively prosecute offenders that commit the crime of arson. This rule imposes no additional or new obligations on local fire officials or law enforcement, but serves solely to clarify the conditions that necessitate the engagement and assistance of State Fire Marshal, Bureau of Fire and Arson Investigations' resources upon the occurrence of a fire or explosion.

(b) **SCOPE.** Pursuant to Section 633.03, F.S., the State Fire Marshal is required to investigate any fire in which property has been damaged or destroyed and where there is probable cause to believe that the fire was the result of carelessness or design. The Bureau of Fire and Arson Investigations of the Division of State Fire Marshal is a law enforcement agency whose personnel are sworn law enforcement officers pursuant to Chapter 943, F.S. The State Fire Marshal is charged with enforcing all laws and rules adopted pursuant thereto for purposes of the prevention of fire and explosion through the regulation of conditions which could cause fire or explosion, pursuant to Section 633.01(2)(a), F.S. The purpose of the Bureau of Fire and Arson Investigations is to investigate crimes or criminal activity related to fires. This section sets forth the requirements and procedures for such investigations.

(2) **DEFINITIONS.** For purposes of this section, the following words or terms have the following definitions:

(a) "The bureau" means the Bureau of Fire and Arson Investigations of the Division of State Fire Marshal, Department of Financial Services.

(b) "Carelessness" means culpable negligence within the contemplation of Section 784.05, F.S., manslaughter as defined in Section 782.07(1), F.S., gross negligence, or a reckless disregard for property or life, so extreme that it is punishable as a crime. "Carelessness" does not mean or include ordinary carelessness, ordinary negligence, simple negligence, or any similar concept.

(c) "Design" means the specific intent to commit a crime or the general intent to commit any act that constitutes, or may result in, the commission of a crime.

(d) "Division" means the Division of State Fire Marshal of the Department of Financial Services.

(e) "Initial investigation" means a preliminary investigation of the cause and origin of a fire for the purpose of determining whether there is probable cause to believe that the fire was the result of carelessness or design. "Initial investigation" includes the following components:

1. Initially evaluating available information at a fire scene including the notation of observations, conducting on-scene interviews of first arriving members and others involved in the fire or fire suppression, to determine a preliminary cause of the fire;

2. Relaying documents, audio recordings, video recordings, photographs, undeveloped film, electronic images in a digital camera or on storage media, sketches, drawings, evidence, and information to a requested or responding follow-up investigator, if applicable;

3. Securing the fire scene and, if deemed appropriate by the initial investigator or requested by a follow-up investigator, obtaining or attempting to obtain written consent to search the property.

(f) "Local fire official" means the chief of the local fire department or his or her designee; chiefs of county, municipal, and special-district fire departments; other fire department personnel designated by their respective fire department chiefs; and personnel designated as its local fire official by written notice to the bureau by a municipality, county, or special district having no organized fire departments.

(g) "Law enforcement officer" means any sworn law enforcement officer pursuant to Chapter 943, F.S., employed by any unit of government, or any officer referenced in Sections 354.01 and 901.1505, F.S.

(h) "Organized fire department" means any entity which employs or uses firefighters or firesafety inspectors whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified as a firefighter pursuant to Section 633.35, F.S., or as a firesafety inspector pursuant to Section 633.081, F.S., or who is a volunteer firefighter, as referenced in Sections 633.801-.821, F.S.

(i) "Probable cause" means reasonable cause or reasonable grounds to believe that an unlawful act has been committed or that an unlawful event has occurred.

(j) "Property damage" means that any property, real, personal, or mixed, tangible or intangible, having some value to any person has been damaged to such extent that its value has been diminished, or has been destroyed, and includes injury or death to any person.

(3) **CONDUCT OF INITIAL INVESTIGATION.**

(a) Any time a fire or explosion has occurred which results in property damage in any municipality, county, or special district having an organized fire department, any local fire official whose intent is to request the State Fire Marshal to perform an investigation under Section 633.03, F.S., shall make or shall cause to be made an initial investigation of the circumstances surrounding the cause and origin of such fire. Law enforcement officers are permitted to, if any chooses, conduct such initial investigations.

(b) If the fire occurs in a municipality, county, or special district which has no organized fire department or designated arson investigations unit within its law enforcement providers, the municipality, county, or special district is permitted to request the bureau to conduct such initial investigation.

**(4) FINDING OF PROBABLE CAUSE.**

(a) If the local fire official or any law enforcement officer determines that there is probable cause to believe that the fire was the result of carelessness or design as provided for in Section 633.03, F.S., and as defined herein, the local fire official or any law enforcement officer seeking Bureau of Fire and Arson Investigations investigative resources shall report to the bureau the facts and circumstances constituting such probable cause, for the bureau to determine whether an investigation under Section 633.03, F.S., will be made and resources committed.

(b) Such report need not be in any particular form, but shall contain at a minimum the following information:

1. The date and time of the fire;
2. The address of the property damaged;
3. A description of property damaged (i.e., single family home, restaurant, etc.), and the extent of the damage;
4. The name or names of the owner or owners of property damaged, if known;
5. The name or names and number of persons injured or killed, if known, and the extent of any injuries; and
6. The facts and circumstances considered by the local fire official or law enforcement officer to constitute probable cause to believe that the fire was the result of carelessness or design.

(c) The report must be given verbally and the reporting person is permitted to follow it up in writing if he or she chooses. When given verbally, the report shall be given to the bureau at (800) NET FIRE ((800) 638-3473) to initiate the dispatch, notification, and tracking process. Such notification shall be made prior to the release of scene custody by the local fire official or law enforcement officer, if practicable or reasonable. If followed up in writing, the written report shall be mailed to the Department of Financial Services, Division of State Fire Marshal, Bureau of Fire and Arson Investigations, 200 East Gaines Street, Tallahassee, Florida 32340, or it is permitted to be faxed to the bureau at fax number (850) 487-0151, or it is permitted to be hand delivered or delivered by use of a private delivery company, or it is permitted to be e-mailed to the bureau. If hand delivered or delivered by a private delivery company, it shall be delivered to the Division of State Fire Marshal, Bureau of Fire and Arson Investigations, Third Floor, The Atrium, 325 John Knox Road, Tallahassee, Florida 32303.

**(5) FINDING OF NO PROBABLE CAUSE.** If the local fire official or law enforcement officer determines that there is no probable cause to believe that the fire was the result of carelessness or design, and the fire does not meet the criteria in subsection (9) or (10), the local fire official or law enforcement officer shall have no obligation to refer the matter to the bureau.

**(6) CONSULTATIONS WITH THE BUREAU.** The local fire official or law enforcement officer is permitted to at any time verbally confer or consult with a law enforcement investigator or other law enforcement officer employed by the bureau to assist in a determination of whether probable cause exists to believe that the fire was the result of carelessness or design; however, such conference or consultation shall not relieve the local fire official or law enforcement officer of his or her responsibility to conduct the initial investigation required by subsection (3), or to make the determinations referred to in subsection (4) or (5).

**(7) RESPONSIBILITIES OF THE BUREAU.**

(a) If after the immediate review of the report information provided in paragraph (b) of subsection (4) the bureau determines that there is probable cause to believe that such fire was the result of carelessness or design, or the fire meets the criteria in subsection (9) or (10), the bureau shall immediately initiate a complete investigation of the subject fire, pursuant to the requirements of Section 633.03, F.S., or, in the event that an immediate response is not necessary based on the facts and circumstances, the bureau shall take all appropriate action to insure that the integrity of the evidence or the potential evidence is preserved until an investigation can be made.

(b) If, after the immediate review of the information provided in paragraph (b) of subsection (4), the bureau determines that there is no probable cause to believe that such fire was the result of carelessness or design, and the fire does not meet the criteria in subsection (9) or (10), the bureau is not required to initiate an investigation of the fire. Verbal notification of this determination shall be provided to the requesting fire official or law enforcement officer by the bureau. The bureau shall provide notice to the requesting local fire official or law enforcement officer of such determination containing an explanation of the reason or reasons the bureau does not find probable cause, in writing, and shall close the case with no further investigation.

(c) In the absence of an investigation by the bureau, nothing in these rules prohibits a local fire official or any law enforcement officer from conducting any investigation resulting from a fire that such fire official or law enforcement officer deems appropriate or necessary.

**(8) STANDARD PROCEDURES FOR INITIAL INVESTIGATIONS.**

(a) The bureau will not normally perform the initial investigation to determine whether probable cause exists to believe that the fire was the result of carelessness or design in any municipality, county, or special district having an organized fire department, or in any jurisdiction in which any law enforcement officer assumes the responsibility for such investigations.

(b) The bureau will normally perform the initial investigation to determine whether probable cause exists to believe that the fire was the result of carelessness or design in a municipality, county, or special district which has no organized fire department, but only after a request has been made verbally or in writing by the municipality, county, or special district having no organized fire department requesting such initial investigation.

(9) DEATH OR INJURY OF A FIREFIGHTER. Notwithstanding anything else contained in this section, any time a firefighter is:

(a) Injured, requiring hospitalization or treatment by a physician at a medical facility; or

(b) Killed as the result of, during, while combating, or otherwise engaged in any act or action related to a fire;

the local fire official or law enforcement officer shall immediately notify the division of the information contained in paragraph (b) of subsection (4) to permit the division to conduct an investigation pursuant to Section 633.808, F.S., and, if applicable, an investigation pursuant to Section 633.03, F.S.

(10) PRESUMPTIONS FOR PURPOSES OF BUREAU INVESTIGATIONS.

(a) Fires meeting the following criteria shall be presumed by the bureau to be by carelessness or design for the sole purpose of activation of bureau's resources in accordance with this rule:

1. Any fire with a projected direct dollar loss exceeding \$1,000,000 (one million dollars); or

2. Any fire involving a civilian death, or an injury that is likely to result in death; or

3. Any fire in which the cause is not readily determined by an initial investigation; or

4. Any fire involving the suspected failure of a fire suppression or fire detection system.

(b) The bureau shall cause an investigation to be made of all fires meeting the criteria in subparagraph 1., 2., 3., or 4.

*Specific Authority: 633.01, 633.806, 633.808 FS. Law Implemented 633.01, 633.03, 633.806, 633.808 FS. History—New 8-13-03, Formerly 4A-61.001.*