

**ARSON IN THE FIRST DEGREE**  
**(Intentionally Damaging a Building**  
**by Explosive When Another**  
**Person is Present)**  
**Penal Law § 150.20**  
**(Committed on or after Nov. 1, 1984)**

The (specify) count is Arson in the First Degree.

Under our law, a person is guilty of Arson in the First Degree when that person intentionally damages a building [*or motor vehicle*] by causing an explosion or a fire, and when such explosion or fire is caused by an explosive<sup>1</sup>, and when another person who is not a participant in the crime is present in such building [*or motor vehicle*] at the time and the defendant knows that fact or the circumstances are such as to render the presence of such person therein a reasonable possibility.

The following terms used in that definition have a special meaning:

*[NOTE: Add, where appropriate:*

In addition to its ordinary meaning, the term BUILDING

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<sup>1</sup> In 1974, the Court of Appeals stated that “the statutory terms—‘incendiary’, ‘bomb’ and ‘explosive substance’ -- are susceptible of reasonable application in accordance with the common understanding of men.” *People v. Cruz*, 34 NY2d 362 (1974).

In 1975, the Appellate Division, First Department, opined that a 1970 definition of “explosive” in Labor Law § 451 applied to the Penal Law in the adjudication of that term in an arson statute. *People v McCrawford*, 47 AD2d 318 (1st Dept. 1975). (That Labor Law definition was amended after the *McCrawford* decision. L. 2009, c. 57.) *But see Matter of Perry*, 232 A.D.2d 225 (1st Dept., 1996) (in sustaining a Family Court petition for possession of an explosive, the Court cited *Cruz* for the proposition that the language of the petition “apprise[d] respondent of the conduct of which he stood accused, giving the term ‘explosive’ or ‘incendiary’ device, which is not specifically defined in the Penal Law, its everyday meaning.”)

In 2001, the Appellate Division, Third Department, citing *Cruz*, stated that “the term ‘explosive substance’ retains its everyday common sense meaning since it is undefined in the Penal Law.” *People v. Ward*, 282 A.D.2d 819 (3rd Dept., 2001). *See also People v. Getman*, 188 Misc.2d 809 (County Court, 2001) (“this court finds that the essence of the term ‘explosive substance’ is something which is capable of exploding and causing death or injury to person or property”).

includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.<sup>2]</sup>

*[NOTE: Add, where appropriate:*

MOTOR VEHICLE includes every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power.<sup>3]</sup>

A person DAMAGES A BUILDING [*or* MOTOR VEHICLE] when that person causes the slightest damage to the building [*or* motor vehicle]. Even proof of damage short of burning, such as charring, is sufficient to establish damage to a building [*or* motor vehicle].<sup>4</sup>

Intent means a conscious objective or purpose. Thus, a person INTENTIONALLY damages a building [*or* motor vehicle] by causing an explosion or a fire when that person's conscious objective or purpose is to cause such damage by that means.<sup>5</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), intentionally damaged a building [*or* motor vehicle] by causing an explosion or a fire by means of an explosive;
2. That, at the time, a person who was not a participant in the crime was present in the building [*or* motor

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<sup>2</sup> See Penal Law §150.00(1). That provision further states: "Where a building consists of two or more units separately secured or occupied, each unit shall not be deemed a separate building."

<sup>3</sup> See Penal Law § 150.00(2). Electrically driven invalid chairs being operated or driven by an invalid, vehicles which run only upon rails or tracks, and snowmobiles are not motor vehicles within this definition.

<sup>4</sup> See *People v McDonald*, 68 NY2d 1 (1986).

<sup>5</sup> See Penal Law § 15.05(1).

vehicle]; and

3. That the defendant knew that such a person was present in the building [*or* motor vehicle], or the circumstances were such as to render the presence of such a person in the building [*or* motor vehicle] a reasonable possibility.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.