

**JUSTIFICATION:
USE OF DEADLY PHYSICAL FORCE
TO PREVENT ARSON
PENAL LAW 35.20 (1) and (2)**

NOTE: This charge should precede the instructions for the crime(s) to which the defense applies, and then, the final element of any such crime should read as follows:

“and, #. That the defendant was not justified.”¹

With respect to count(s) (specify count(s) and name(s) of crime(s)), one of the elements that the People must prove beyond a reasonable doubt is that the defendant was not justified. The defendant is not required to prove that he/she was justified; the People must prove that he/she was not.

I will now explain when, under our law, a person is justified in using deadly physical force to prevent or terminate arson or an attempted arson.

Under our law, any person may use deadly physical force upon another individual when he or she reasonably believes it to be necessary to prevent or terminate what he or she reasonably

¹ See *People v McManus*, 67 NY2d 541, 549 (1986); *People v Higgins*, 188 AD2d 839, 840 (3d Dept 1992); *People v. Feuer*, 11 AD3d 633 (2d Dept. 2004).

believes to be the commission or attempted commission of arson by such individual.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “arson,” “deadly physical force” and “reasonably believes.”

A person commits ARSON when that person damages a building [or any other real property] by intentionally starting a fire or causing an explosion.²

DEADLY PHYSICAL FORCE means physical force which, under the circumstances it is used, is readily capable of causing death or other serious physical injury.³

A defendant REASONABLY BELIEVES deadly physical force to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission of arson by another individual when the following two circumstances exist: ⁴

First, the defendant actually believes that another

² See Penal Law §§150.05 and 150.10. By the justification statute, the arson must be directed at “premises” which is defined to include a building and any real property. Penal Law §§ 35.20(4)(a) and 140.00(1). That definition is incorporated here in the definition of arson. The definition of building is set forth in Penal Law §§35.20(4)(a) and 140.00(2) and may be added as necessary.

³ Penal Law §10.00(11). The definition of "serious physical injury" is set forth in Penal Law § 10.00(10) and may be added as necessary.

⁴ *People v Goetz*, 68 NY2d 96 (1986).

individual is committing or attempting to commit arson, and also actually believes that his or her use of deadly physical force is necessary to prevent or terminate the commission or attempted commission of that arson. It does not matter whether those beliefs are mistaken, provided the defendant actually holds them.

Second, a “reasonable person” in the defendant’s position, knowing what the defendant knows and being in the same circumstances, would also hold those same beliefs.

The People are required to prove beyond a reasonable doubt that the defendant was not justified. It is thus an element of [each] count (specify) that the defendant was not justified. As a result, if you find that the People have failed to prove beyond a reasonable doubt that the defendant was not justified, then you must find the defendant not guilty of [all] count(s) (specify).⁵

⁵ *People v Roberts*, 208 AD2d 415 (1st Dept 2001); *People v Higgins*, 188 AD2d 839, 840-841 (3d Dept 1992); *People v Castro*, 131 AD2d 771, 773 (2d Dept 1987).