

ARSON IN THE FIRST DEGREE
(Intentionally Damaging a Building
by Incendiary Device 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 incendiary device propelled, thrown or placed inside or near such building [*or* motor vehicle] and, when another person who is not a participant in the crime is present in such building [*or* motor vehicle] at the time, and when 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 includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.^{1]}

[NOTE: Add, where appropriate:

MOTOR VEHICLE includes every vehicle operated or driven upon a public highway which is propelled by any power other than

¹ 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."

muscular power.^{2]}

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].³

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.⁴

An INCENDIARY DEVICE means a breakable container designed to explode or produce uncontained combustion upon impact, containing flammable liquid and having a wick or a similar device capable of being ignited.⁵

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 an incendiary device propelled, thrown or placed inside or near the building [or motor vehicle];
2. That at the time, a person who was not a participant

² 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.

³ See, *People v McDonald*, 68 NY2d 1 (1986).

⁴ See, Penal Law § 15.05(1).

⁵ See, Penal Law § 150.20(2).

in the crime was present in the building [*or* motor 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.