

**ARSON FIRST DEGREE
(A-I Felony)
(Intentionally Damaging a Building
by Explosive When Another
Person is Present)
PENAL LAW 150.20
(Committed on or after Nov. 1, 1984)**

The _____ 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, 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.

Some of the terms used in this definition have their own special meaning in our law. I will now give the meaning of the following terms: ["building"], ["motor vehicle"], "damages a building [*or* motor vehicle]," and "intentionally."¹

[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.²]

[NOTE: Add, where appropriate:

¹ Where appropriate, the Court may choose to give a separate definition for the term "explosive." Such a charge is provided in the "Additional Charges" section at the end of this article.

² 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."

MOTOR VEHICLE includes every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power.^{3]}

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].⁴

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.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 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 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

³ 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.

⁴ See *People v McDonald*, 68 NY2d 1 (1986).

⁵ See Penal Law § 15.05(1).

of such a person in the building [or motor vehicle] a reasonable possibility.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Arson in the First Degree as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Arson in the First Degree as charged in the ___ count.