

ARSON IN THE FOURTH DEGREE
(Recklessly Damaging Property
by Fire or Explosion)
Penal Law § 150.05
(Committed on or after Sept. 1, 1979)

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

Under our law, a person is guilty of Arson in the Fourth Degree when that person recklessly damages a building [*or motor vehicle*] by intentionally starting a fire [*or causing an explosion*].

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

A person RECKLESSLY damages a building [*or motor vehicle*]:

when that person does so by engaging in conduct which creates or contributes to a substantial and unjustifiable risk that such damage will occur, and

when he or she is aware of and consciously disregards that risk, and

when the risk is of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.¹

[NOTE: Add if appropriate:

A person who creates such a risk but is unaware of it solely by reason of his or her voluntary intoxication also acts recklessly.²]

¹ See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

² See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

[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.^{3]}

[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.^{4]}

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].^{5]}

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY starts a fire [*or* causes an explosion] when that person's conscious objective or purpose is to start such fire [*or* cause such explosion].^{6]}

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, both of the following two elements:

1. That on or about (date), in the county of (county), the

³ 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."

⁴ 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.

⁵ See *People v McDonald*, 68 NY2d 1 (1986).

⁶ See Penal Law § 15.05(1).

defendant, defendant's name), intentionally started a fire [or caused an explosion]; and

2. That in so doing, the defendant recklessly damaged a building [or motor vehicle].

[NOTE: If the affirmative defense does not apply:

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

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

[NOTE: If the affirmative defense applies:

If you find that the People have not proven beyond a reasonable doubt either one or both of those elements, then you must find the defendant not guilty of Arson in the Fourth Degree as charged in the ____ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt both of those elements, then you must consider the affirmative defense the defendant has raised.

Under our law, it is an affirmative defense to a charge of Arson in the Fourth Degree that no person other than the defendant had a possessory or proprietary interest in the building (or motor vehicle).

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of

the believable and reliable evidence, not in terms of the number of witnesses or the length of time to present the evidence, but in terms of its quality, weight and convincing effect. For the affirmative defense to be proven by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt both of the elements of Arson in the Fourth Degree, you must find the defendant guilty of that crime as charged in the _____ count.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Arson in the Fourth Degree as charged in the ____ count.]