

**ARSON IN THE SECOND DEGREE**  
**(Intentionally Damaging a Building by Fire**  
**When Another Person is Present)**  
**Penal Law § 150.15**  
**(Committed on or after Sept. 1, 1979)**

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

Under our law, a person is guilty of Arson in the Second Degree when that person intentionally damages a building [or motor vehicle] by starting a fire, 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 a 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.<sup>1]</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>2]</sup>

A person DAMAGES A BUILDING [or MOTOR VEHICLE]

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<sup>1</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>2</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.

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>3</sup>

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY damages a building [*or* motor vehicle] by starting a fire when that person's conscious objective or purpose is to cause such damage by that means.<sup>4</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 starting a fire;
2. That, at the time the defendant did so, 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 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.

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<sup>3</sup> See, *People v McDonald*, 68 NY2d 1 (1986).

<sup>4</sup> See, Penal Law § 15.05(1).