

CRIMINAL MISCHIEF IN THE FOURTH DEGREE
(Recklessly Damaging Property;
Damage More Than \$250)
Penal Law § 145.00(3)
(Committed on or after Sept. 1, 1983)
(Revised January 5, 2009)¹
(Revised December 17, 2009)²

The (*specify*) count is Criminal Mischief in the Fourth Degree.

Under our law, a person is guilty of Criminal Mischief in the Fourth Degree when that person, having no right to do so nor any reasonable ground to believe that he or she has such right, recklessly damages property of another in an amount exceeding two hundred fifty dollars (\$250.00).

The following term(s) used in that definition has/have a special meaning:

The term “recklessly” as used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

A person RECKLESSLY damages property of another in an amount exceeding two hundred fifty dollars:

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

¹ This charge was revised in January, 2009 to incorporate the legislative enactment of a statutory definition of “property of another” (Penal Law § 145.13).

² This charge was revised in December, 2009 to incorporate the legislative enactment of an amendment to the statutory definition of “property of another” (Penal Law § 145.13; L. 2009, c. 45, § 2).

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.³

[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.^{4]}

[PROPERTY OF ANOTHER includes all property in which another person has an ownership interest, whether or not a person who damages the property, or any other person, may also have an interest in the property.]⁵

The amount of damage to property is determined by the cost of repair or the replacement of the property, whichever is less.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, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), damaged property of

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

³ See Penal Law § 15.05(3).

⁴ Penal Law § 145.13.

⁵ Penal Law § 145.13. The modifying word “such” contained in the statute has been replaced here with “the” for clarity.

⁶ See *People v. Woodard*, 148 A.D.2d 997 (4th Dept. 1989); *People v. Gina*, 137 A.D.2d 555 (2nd Dept. 1988); *People v. Simpson*, 132 A.D.2d 894 (3rd Dept. 1987).

another person in an amount exceeding two hundred fifty dollars; and

2. That the defendant did so recklessly; and
3. That the defendant had no right to do so nor any reasonable ground to believe he/she had such right.

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.