

CRIMINAL MISCHIEF IN THE FIRST DEGREE
(Intentionally Damaging Another's Property By Explosive)
Penal Law § 145.12
(Committed on or after Sept. 1, 1971)
(Revised January 5 and December 17, 2009)¹

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

Under our law, a person is guilty of Criminal Mischief in the First Degree when with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, that person damages property of another person by means of an explosive².

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

INTENT means conscious objective or purpose.³ Thus, a

¹ The January, 2009 revision incorporated the legislative enactment of a statutory definition of "property of another" (Penal Law § 145.13). The December, 2009 revision incorporated an amendment to that statutory definition. L. 2009, c.45, § 2.

² In 1974, the Court of Appeals stated that "the statutory terms—'incendiary', 'bomb' and 'explosive substance' -- are susceptible of reasonable application in accordance with the common understanding of men." *People v. Cruz*, 34 NY2d 362 (1974).

In 1975, the Appellate Division, First Department, opined that a 1970 definition of "explosive" in Labor Law § 451 applied to the Penal Law in the adjudication of that term in an arson statute. *People v McCrawford*, 47 AD2d 318 (1st Dept. 1975). (That Labor Law definition was amended after the *McCrawford* decision. L. 2009, c. 57.)) *But see Matter of Perry*, 232 A.D.2d 225 (1st Dept., 1996) (in sustaining a Family Court petition for possession of an explosive, the Court cited *Cruz* for the proposition that the language of the petition "apprise[d] respondent of the conduct of which he stood accused, giving the term 'explosive' or 'incendiary' device, which is not specifically defined in the Penal Law, its everyday meaning.")

In 2001, the Appellate Division, Third Department, citing *Cruz*, stated that "the term 'explosive substance' retains its everyday common sense meaning since it is undefined in the Penal Law." *People v. Ward*, 282 A.D.2d 819 (3rd Dept., 2001). *See also People v. Getman*, 188 Misc.2d 809 (County Court, 2001) ("this court finds that the essence of the term 'explosive substance' is something which is capable of exploding and causing death or injury to person or property").

³ See Penal Law § 15.05(1).

person intends to damage property of another person when his or her conscious objective or purpose is to damage property of another person.

[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.]⁴

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 another person by means of an explosive;
2. That the defendant did so with the intent to damage property of another person; and
3. That the defendant had no right to cause such damage 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.

⁴ Penal Law § 145.13. The modifying word “such” contained in the statute has been replaced here with “the” for clarity.