

ARSON IN THE THIRD DEGREE
(Intentionally Damaging a Building by Fire or Explosion)
Penal Law § 150.10
(Committed on or after Sept. 1, 1979)

The (*specify*) count is Arson in the Third Degree.

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

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.^{1]}

[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.^{2]}

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*].^{3]}

¹ 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."

² 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.

³ See *People v McDonald*, 68 NY2d 1 (1986).

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY damages a building [or motor vehicle] by starting a fire [or causing an explosion] when that person's conscious objective or purpose is to cause such damage by that means. ⁴

In order for you to find the defendant guilty of this crime, the People are required to prove, from all 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 defendant, (defendant's name), damaged a building [or motor vehicle] by starting a fire [or causing an explosion]; and
2. That the defendant did so intentionally.

[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 Third 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.

⁴ See Penal Law § 15.05(1).

Under our law, it is an affirmative defense to a charge of Arson in the Third Degree:

1. That no person other than the defendant had a possessory or proprietary interest in the building (*or* motor vehicle) (*or* if other persons had such interests, all of them consented to the defendant's conduct); and
2. That the defendant's sole intent was to destroy or damage the building (*or* motor vehicle) for a lawful and proper purpose; and
3. That the defendant had no reasonable ground to believe that his or her conduct might endanger the life or safety of another person or damage another building (*or* motor vehicle).

Under the 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

Third 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 Third Degree as charged in the ___ count.]