

Ala. Code 1975, § 13A-7-42(d)

Arson in the Second Degree
(Detention or Penal Facility)

The defendant is charged with arson in the second degree.

A person commits arson in the second degree if he/she intentionally starts or maintains a fire or causes an explosion which damages property in a detention facility or a penal facility with reckless disregard (because of the nature or extent of the damage caused or which would have been caused but for the intervention of others) for the safety of others.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant damaged property in a detention facility or a penal facility by:
 - a. Starting or maintaining a fire; **(OR)**
 - b. Causing an explosion;
- (2) The defendant did so intentionally; **(AND)**
- (3) The defendant did so with reckless disregard (because of the nature or extent of the damage caused or which would have been caused but for the intervention of others) for the safety of others.

A person acts *intentionally* with respect to a result or to conduct when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *recklessly* with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]

[Read if appropriate - Voluntary Intoxication]: A person who creates a risk but is unaware of it solely by reason of voluntary intoxication, acts recklessly with respect to that risk. [13A-2-2(3)]

Voluntary intoxication means intoxication caused by substances that the person knowingly introduced into his/her body, the tendency of which to cause intoxication he/she knows or ought to know. [13A-3-2(e)(2)]

Intoxication includes a disturbance of mental or physical capacities resulting from the introduction of any substance into the body. [13A-3-2(e)(1)]

A *detention facility* is any place used for the confinement, pursuant to law, of a person either:

- a. Charged with or convicted of a criminal offense;
- b. Charged with being or adjudicated a youthful offender, or a neglected minor or juvenile delinquent;
- c. Held for extradition; **(OR)**
- d. Otherwise confined pursuant to an order of court. [13A-10-30(b)(2)]

A *penal facility* is any security correctional institution for the confinement of persons arrested for, charged with or convicted of a criminal offense, including but not limited to the following security facilities: the state penitentiary and any branch thereof or any county or city jail. [13A-10-30(b)(3)]

[Read if appropriate]: An *explosion* is a rapid, sudden and violent expansion of air or release of energy with resultant pressures that are capable of producing destructive effects on contiguous objects or of destroying life or limb. Explosion includes, but is not limited to, a sudden and rapid combustion, causing violent expansion of the air, or the sudden bursting or breaking up or in pieces from an internal or other force. It is not limited to cases caused by combustion of fire, but it may result from decomposition or chemical action. [13A-7-40(3)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of arson in the second degree, then you shall find the defendant guilty of arson in the second degree.

If you find that the State has failed to prove any one or more of the elements of arson in the second degree beyond a reasonable doubt, then you cannot find the defendant guilty of arson in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

[Approved 04-07-15.]