

Ala. Code 1975, § 13A-7-43

Arson in the Third Degree

The defendant is charged with arson in the third degree.

A person commits arson in the third degree if he/she recklessly damages a building by a fire or an explosion.

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

- (1) The defendant damaged a building by:
 - a. A fire; **(OR)**
 - b. An explosion; **(AND)**
- (2) The defendant did so recklessly.

A person acts *recklessly* with respect to a result or to a circumstance when he 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 *building* is any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, railway car, aircraft or watercraft used for the lodging of persons or for carrying on business therein. [13A-7-40(1)]

[Read if appropriate]: Where a *building* consists of two or more units separately secured or occupied, each unit shall not be deemed a separate building. [13A-7-40(1)]

[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)]

[Read if appropriate - Justification]: A person does not commit arson in the third degree if no person other than himself/herself has a possessory or proprietary interest in the damaged building. [13A-7-43(b)]

The defendant does not have the burden of proving that he/she acted in justification. To the contrary, once justification becomes an issue, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in justification. [13A-7-43(c)]

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

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

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

[Approved 04-07-15.]