

Ala. Code 1975, § 13A-7-42(a)

Arson in the Second Degree
(Building)

The defendant is charged with arson in the second degree.

A person commits arson in the second degree if he/she intentionally damages a building by starting or maintaining a fire or causing 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. Starting or maintaining a fire; **(OR)**
 - b. Causing an explosion; **(AND)**
- (2) The defendant did so intentionally.

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 *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 second degree if:

- (1) a.No person other than himself/herself has a possessory or proprietary interest in the building damaged; **(OR)**

b. All persons with a possessory or proprietary interest in the building damaged consented to the defendant's conduct; **(AND)**

- (2) The defendant's sole intent was to destroy or damage the building for a lawful and proper purpose. [13A-7-42(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-7-42(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 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.]