

DESTRUCTION OF PROPERTY

Submitted 6/05
Approved 6/05

DRAFT
~~RSA 634:1, 1 Arson (Misdemeanor)~~

The defendant is charged with the crime of arson. The definition of the crime of arson has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [started a fire] [caused an explosion] and ;
2. The [fire] [explosion] unlawfully¹ damaged the property of another and;
3. The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Knowingly” see definition of knowingly.

¹ See State v. Janvrin 122 N.H. 75 (explains unlawfully)

² See State v. Martin 122 N.H. 20 (1982) (a mortgagee’s interest is sufficient to constitute property of another)

DRAFT

RSA 634:1, II (a) Arson in Occupied Structure

The defendant is charged with the crime of arson. The definition of the crime of arson has 4 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [started a fire][caused an explosion]and ;
2. The [fire] [explosion] caused unlawful¹ damage to property of another which was an occupied structure;
3. The defendant knew that the property was an occupied structure
4. The defendant acted knowingly

These are the elements of the crime of arson. Certain words in the definition need to be defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Occupied structure” shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

“Knowingly” see definition of knowingly.

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

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RSA 634:1, III Arson on historic structure

The defendant is charged with the crime of arson. The definition of the crime of arson has 4 parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [started a fire] [caused an explosion]
2. The [fire][explosion] caused unlawful¹ damage to property of another; and
3. The property was an historic structure and;
4. The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Historic structure” means any structure listed, or determined by the department of cultural resources to be eligible for listing, in the National Register of Historic Places, or designated as historic under state law.

“Knowingly” see definition of knowingly.

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

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RSA 634:III (a) Arson for Insurance
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The defendant is charged with the crime of arson. The definition of the crime of arson has 5 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove:

1. The defendant [started a fire] [caused an explosion]; and
2. The [fire] [explosion] caused unlawful¹ damage to property; and
3. The property belonged to the defendant or another person; and
4. The [fire] [explosion] was caused for the purpose of collecting insurance on the damaged property
5. The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Knowingly” see definition of knowingly.

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

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RSA 634:1, III (b) Arson - Danger of death or serious bodily injury

The defendant is charged with the crime of arson. The definition of the crime of arson has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove:

- 1) The defendant [started a fire][caused an explosion]; and
- 2) The defendant acted purposely in [starting a fire][causing an explosion]; and
- 3) The defendant recklessly [placed another in danger of death or serious bodily injury][placed an occupied structure in danger of damage].

These are the elements of the crime of arson. Certain words in the definition need to be defined

“Occupied structure” shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

“Serious bodily injury” means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body.

“Purposely” see definition of purposely

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RSA 634:1, III (d) Arson – Damage over \$1,000

The defendant is charged with the crime of arson. The definition of the crime of arson has 5 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

- 1) The defendant [started a fire] [caused an explosion] and ;
- 2) The [fire][explosion] caused unlawful¹ damage;
- 3) The unlawful damage was to property of another;
- 4) The unlawful damage caused a pecuniary loss² in excess of one thousand dollars;
- 5) The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.³

“Knowingly” see definition of knowingly

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Paris* 137 N.H. 322 (1993) (discussing pecuniary loss in the context of criminal mischief)

³ See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

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RSA 634:2 Criminal Mischief Class B Felony

The defendant is charged with the crime of criminal mischief. This offense has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant damaged the property of another; and
 2. The defendant had no right to do so nor any reasonable basis to believe he/she had such a right; and
 3. The defendant caused or attempted to cause: [pecuniary loss in excess of \$1,000][a substantial interruption or impairment of public communication, transportation, supply of water, gas or power or other public service][the discharge of a firearm at an occupied structure][damage to property when he/she knows the property has historical, cultural, sentimental value that cannot be restored by repair or replacement];and
- [4.] The aggregate pecuniary loss involved acts committed in one scheme or course of conduct; and
- [4][5]. The defendant acted purposely¹.

These are the elements of the crime of criminal mischief. Certain words need to be further defined:

“Occupied structure” means any structure, vehicle, boat or place adapted for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services or otherwise containing any thing of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedures, formula or invention which the owner thereof intends to be available only to persons selected by him.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in

¹ See *State v Paris* 137 NH 322 1993 The defendant need not act purposely with respect to the amount of pecuniary loss caused.

the property and regardless of the fact that the person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

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“Purposely” means [see definition of purposely.]

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RSA 634:2 Criminal Mischief Misdemeanor

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The defendant is charged with the crime of criminal mischief. This offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant damaged the property of another; and
2. The defendant had no right to do so nor any reasonable basis to believe he/she had such a right; and
3. The defendant acted [purposely][recklessly].

These are the elements of the crime of criminal mischief. Certain words need to be further defined:

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services or otherwise containing any thing of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedures, formula or invention which the owner thereof intends to be available only to persons selected by him.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

“Purposely” means [see definition of purposely.]

“Recklessly” means [see definition of recklessly.]