

**AGGRAVATED ARSON, N.J.S.A. 2C:17-1a (SECOND DEGREE),
AND,
IF APPROPRIATE, N.J.S.A. 2C:17-1e**

Count _____ of the indictment charges the defendant with aggravated arson in violation of a statute which provides as follows:

A person is guilty of aggravated arson . . . if he starts a fire or causes an explosion, whether on his own property or another's:

[READ ONLY THE APPLICABLE SECTION(S)]

- (1) Thereby purposely or knowingly placing another person in danger of death or bodily injury; or
- (2) With the purpose of destroying a building or structure of another; or
- (3) With the purpose of collecting insurance for the destruction or damage to such property under circumstances which recklessly place any other person in danger of death or bodily injury; or
- (4) With the purpose of destroying or damaging a structure in order to exempt the structure, completely or partially, from the provisions of any State, county or local zoning, planning or building law, regulation, ordinance or enactment under circumstances which recklessly place any other person in danger of death or bodily injury; or
- (5) With the purpose of destroying or damaging any forest.

In order for the defendant to be found guilty of aggravated arson, the State must prove the following elements beyond a reasonable doubt:

- (1) that the defendant purposely [started a fire] [caused an explosion] on his/her own property or another's;
- (2) that the act of starting the fire (causing the explosion)

[SELECT APPROPRIATE ELEMENT OR ELEMENTS]

- (a) purposely or knowingly placed another person in danger of death or bodily

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injury;

- (b) was done with the purpose of destroying a building or structure of another;
- (c) was done with the purpose of collecting insurance for the destruction or damage to such property under circumstances which recklessly placed any other person in danger of death or bodily injury;
- (d) was done with the purpose of destroying or damaging a structure in order to exempt that structure, completely or partially, from the effect of certain legal regulation, under circumstances which recklessly placed any other person in danger of death or bodily injury;
- (e) was done with the purpose of destroying or damaging any forest.

The first element that the State must prove beyond a reasonable doubt is:

- (1) That the defendant purposely [started a fire] [caused an explosion] at or near premises known as [describe the property].¹

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or believes or hopes that they exist. “With purpose,” “designed,” “with design,” or equivalent terms have the same meaning. Purpose is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant’s conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had a particular purpose. It is within the power of the jury to find that the proof of purpose has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and the circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

¹ If causation is in issue, charge N.J.S.A. 2C:2-3.

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It is not necessary that any significant damage be done.² It is only necessary that [a fire be started]³ [an explosion be caused] for one or more of the purposes to be described. The lack of success of the perpetrator is immaterial.⁴

- (2) The second element the State must prove beyond a reasonable doubt is that at the time the defendant [started the fire] [caused the explosion],

[SELECT APPROPRIATE SECTION(S)]

he/she purposely or knowingly⁵ placed another person in danger of death or bodily injury. "Bodily injury" means physical pain, illness or any impairment of physical condition.⁶ I have already defined the term "purposely" for you. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. Knowledge is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he had particular knowledge. It is within the power of the jury to find that the proof of knowledge has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and the circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case;

² See Commentary to New Jersey Penal Code, Vol. II, p. 205; State v. Schenck, 100 N.J. Super. 162 (App. Div. 1968).

³ The act of lighting a match, by itself, is insufficient evidence that defendant purposely started a fire. State in the Interest of M.N., 267 N.J. Super. 482 (App. Div. 1993).

⁴ See Commentary to New Jersey Penal Code, Vol. II, p. 205; State v. Schenck, 100 N.J. Super. 162 (App. Div. 1968).

⁵ To convict of this crime, the jurors need not be unanimous in their finding that the described conduct was committed "purposely" or "knowingly." Some jurors could find the conduct to have been purposeful, while others find it to be knowing. See State v. Bey, 129 N.J. 557, 581-82 (1992).

⁶ See N.J.S.A. 2C:11-1a.

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OR

his/her purpose was to destroy [describe the building or structure of another]. Destroy means: to demolish and/or to render useless and/or to render completely ineffective for its intended use. [If in issue, define "structure" and/or "of another."]⁷ I have already defined the term "purposely" for you;

OR

his/her purpose was to collect insurance for the destruction or damage to such property. I have already defined the term "purposely" for you; and

- (3) That the defendant acted under circumstances which recklessly placed any other person in danger of death or bodily injury. "Bodily injury" means physical pain, illness or any impairment of physical condition.⁸ A person acts recklessly when he/she consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the person, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.⁹

OR

his/her purpose was to destroy or damage a structure in order to exempt the structure, completely or partially, from the provisions of any [State] [county] [local] [zoning] [planning] [building] [law] [regulation] [ordinance] [enactment]. In this case, the State alleges that the [law] [regulation] [ordinance] [enactment] from which the defendant intended to exempt the structure was the following: [read the specific provision]. I have already defined the term "purposely" for

⁷ "[U]nless a different meaning plainly is required, 'structure' means any building, room, ship, vessel, car, vehicle or airplane, and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." N.J.S.A. 2C:18-1; N.J.S.A. 2C:17-1f. "Property is that of another. . .if any one other than the actor has a possessory, or legal or equitable proprietary interest therein. Property is that of another. . .if anyone other than the actor has a legal or equitable interest in the property including, but not limited to, a mortgage, pledge, lien or security interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another." N.J.S.A. 2C:17-1f.

⁸ See N.J.S.A. 2C:11-1a.

⁹ See N.J.S.A. 2C:2-2b(3).

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you; and

- (3) That the defendant acted under circumstances which recklessly placed any other person in danger of death or bodily injury. "Bodily injury" means physical pain, illness or any impairment of physical condition.¹⁰ A person acts recklessly when he/she consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the person, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.¹¹

OR

his/her purpose was to destroy or damage any forest. I have already defined the term "purposely" for you.

A "forest" means and includes any forest, brush land, grass land, salt marsh, wooded area and any combination thereof, including but not limited to, an open space area, public lands, wetlands, park lands, natural habitats, a State conservation area, a wildlife refuge area or any other designated undeveloped open space whether or not it is subject to specific protection under law.¹² In this case, the State alleges that it was defendant's conscious object to destroy or damage [describe the forest].

If the State has failed to prove any of the elements as I have described them to you beyond a reasonable doubt, you must find the defendant not guilty of aggravated arson.¹³ If the State has proven every element beyond a reasonable doubt, you must find the defendant guilty of the crime of aggravated arson.

[CHARGE IF APPROPRIATE]

This count of the indictment also alleges that the structure which was the target of the

¹⁰ See N.J.S.A. 2C:11-1a.

¹¹ See N.J.S.A. 2C:2-2b(3).

¹² See N.J.S.A. 2C:17-1f.

¹³ In many cases, it may be necessary to charge arson as a lesser included offense.

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offense was [a health care facility]¹⁴ [a physician's office], specifically: [describe the charged premises]¹⁵ If you find that the State has proven each of the elements I have previously described, then you must determine whether it has also proven, beyond a reasonable doubt, that the target of the offense was [a health care facility][a physician's office].

In order for you to determine that the [health care facility][physician's office] was the "target"¹⁶ of the aggravated arson, the State must prove beyond a reasonable doubt that it was the defendant's purpose to [destroy]¹⁷ [destroy or damage]¹⁸ a [health care facility] [physician's office]. I have already defined "purposely" for you.

If you find that the State has failed to prove this additional element beyond a reasonable doubt, but has proven beyond a reasonable doubt that the defendant has committed aggravated arson, then you must find the defendant not guilty of aggravated arson of a [physician's office] [health care facility], but guilty of aggravated arson. On the other hand, if you find that the State has proven beyond a reasonable doubt all of the elements of aggravated arson and this additional element, then you must find the defendant guilty of aggravated arson of a [physician's office] [health care facility]. Finally, if you find that the State has failed to prove any of the elements of aggravated arson beyond a reasonable doubt, then you must find the defendant not guilty.

¹⁴ As used here, "health care facility" means health care facility as defined in section 2 of P.L. 1971, c. 136 (C.26:2H-2). N.J.S.A. 2C:17-1f.

¹⁵ If the defendant is convicted of aggravated arson, and the target of his crime was a health care facility or a physician's office, the sentence imposed shall include a term of imprisonment, not subject to suspension or other noncustodial disposition. N.J.S.A. 2C:17-1e.

¹⁶ "Target" is not defined in the statute. "Target" is defined in the American Heritage Dictionary of the English Language (3rd ed.) as, inter alia, "[s]omething aimed or fired at."

¹⁷ Use "destroy" if the aggravated arson is charged under N.J.S.A. 2C:17-1a(2).

¹⁸ Use "destroy or damage" if the aggravated arson is charged under N.J.S.A. 2C:17-1a(3) or N.J.S.A. 2C:17-1a(4).