

**ARSON**  
**N.J.S.A. 2C:17-1b (third degree)**

Count \_\_\_ of the indictment charges the defendant with arson in violation of a statute which reads in pertinent part as follows:

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

**[READ ONLY THE APPLICABLE SECTIONS]**

- (1) Thereby recklessly placing another person in danger of death or bodily injury; or
- (2) Thereby recklessly placing a building or structure of another in danger of damage or destruction; or
- (3) With the purpose of collecting insurance for the destruction or damage to such property; 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; or
- (5) Thereby recklessly placing a forest in danger of damage or destruction.

In order for the defendant to be found guilty of 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) recklessly placed another person in danger of death or bodily injury;
- (b) recklessly placed a building or structure of another in danger of damage or destruction;
- (c) was done with the purpose of collecting insurance for the destruction of or

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damage to such property;

(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;

(e) recklessly placed a forest in danger of damage or destruction.

The first element the State must prove beyond a reasonable doubt is that the defendant purposely [started a fire] [caused an explosion]. It is not necessary that any significant damage be done.<sup>1</sup> It is only necessary that [a fire be started]<sup>2</sup> [an explosion be caused] for (one or more of) the purpose(s) or under (one or more of) the circumstances just described. The lack of success of the perpetrator is immaterial.<sup>3</sup>

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 to 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. In other words, in order for the State to prove this element of the offense, you must be satisfied beyond a reasonable doubt that it was the defendant’s purpose or conscious object to [start the fire] [cause the explosion].

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<sup>1</sup> See Commentary to New Jersey Penal Code, Vol. II, p.205; State v. Schenk, 100 N.J. Super. 122 (App. Div. 1968).

<sup>2</sup> 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).

<sup>3</sup> See Commentary to New Jersey Penal Code, Vol. II, p.205; State v. Schenk, 100 N.J. Super. 122 (App. Div. 1968).

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

**[SELECT APPROPRIATE SECTION OR SECTIONS]**

the defendant by purposely [starting the fire] [causing the explosion]<sup>4</sup> recklessly placed another person in danger of death or bodily injury. "Bodily injury" means physical pain, illness or any impairment of physical condition.<sup>5</sup> I have already defined the term "purposely" for you. 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 him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.<sup>6</sup>

**OR**

the defendant by purposely [starting the fire] [causing the explosion] recklessly placed a [building] [structure of another] in danger of damage or destruction. I have already defined the term "purposely" for you. 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 him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.<sup>7</sup>

**OR**

the defendant purposely [started the fire] [caused the explosion] in order to collect insurance for the destruction or damage to such property. I have already defined the term "purposely" for you. In order for the defendant to have set the fire with the purpose of collecting insurance, the defendant's conscious object would have to have been to collect insurance for the property's destruction or damage.

**OR**

the defendant purposely [started the fire] [caused the explosion] with the purpose of destroying

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<sup>4</sup> If cause is in issue, charge N.J.S.A. 2C:2-3.

<sup>5</sup> See N.J.S.A. 2C:11-1a.

<sup>6</sup> See N.J.S.A. 2C:2-2b(3).

<sup>7</sup> See N.J.S.A. 2C:2-2b(3).

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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. In this case, the State alleges that the [law] [regulation] [ordinance] [enactment] from which the defendant intended to exempt the structure was: [read the applicable provision]. I have already defined the term "purposely" for you. In order for the defendant to have [set the fire] [caused the explosion] with the purpose of destroying or damaging a structure for the purpose charged, the defendant's conscious object would have to have been to exempt that structure, completely or partially, from the provisions of [cite applicable provision], which I have just read.

**OR**

the defendant purposely started the fire, thereby recklessly placing [here describe the forest] in danger of damage or destruction. I have already defined the term "purposely" for you. 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 him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.<sup>8</sup>

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.<sup>9</sup>

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 arson.<sup>10</sup> If the State has proven every element beyond a reasonable doubt, you must find the defendant guilty of arson.

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<sup>8</sup> See N.J.S.A. 2C:2-2b(3).

<sup>9</sup> See N.J.S.A. 2C:17-1f.

<sup>10</sup> In many cases it may be necessary to charge the lesser included offenses of failure to report or control a dangerous fire, N.J.S.A. 2C:17-1c, or criminal mischief, N.J.S.A. 2C:17-3.