

## CHAPTER 4-1

### ARSON

[FORMERLY COLJI-Crim., Chapter 13 (1983)]

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These instructions cover the offenses in §§ 18-4-101 through -105, C.R.S.

#### 4-1:01 ARSON - FIRST DEGREE - BURNING

The elements of the crime of first degree arson are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [set fire to] [burned] [caused to be burned],
5. any building or occupied structure of another,
6. without that person's consent,
7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of first-degree arson.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of first-degree arson.

#### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the definition of "building or occupied structure" must be given.

*People v. Espinoza*, 989 P.2d 178 (Colo. App. 1989) (building constitutes property of "another" if anyone other than defendant has a property or possessory interest therein - here prior owner still had a security interest in building).

*People v. Lefebre*, 190 Colo. 307, 546 P.2d 952 (1976) (burn or set fire to requires more than a mere scorching or discoloration).

#### SOURCE & AUTHORITY

§18-4-102, C.R.S.

#### CLASSIFICATION OF OFFENSE

F3

#### **4-1:02 ARSON - FIRST DEGREE - EXPLOSIVES**

The elements of the crime of first degree arson are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
  - a. [damaged or destroyed] [caused to be damaged or destroyed],

- b. by the use of an explosive device
4. any building or occupied structure of another,
5. without that person's consent,
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of first-degree arson.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of first-degree arson.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the definition of "building", "occupied structure" and "explosive device" must be given.

*People v. Espinoza*, 989 P.2d 178 (Colo. App. 1989) (property is that of "another" if anyone other than defendant has a property or possessory interest therein).

*People v. Lefebre*, 190 Colo. 307, 546 P.2d 952 (1976) (burn or set fire to requires more than a mere scorching or discoloration).

#### **SOURCE & AUTHORITY**

§18-4-102, C.R.S.

COLJI-Crim. No. 13:02 (1983).

#### **CLASSIFICATION OF OFFENSE**

F3

#### 4-1:03 ARSON - SECOND DEGREE - BURNING

The elements of the crime of second degree arson are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [set fire to] [burned] [caused to be burned],
5. any property of another, other than a building or occupied structure,
6. without that person's consent, and
7. the damage was [less than one hundred dollars] [more than one hundred dollars].
8. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of second-degree arson.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of second-degree arson.

#### NOTES ON USE

Delete inapplicable bracketed materials. When this instruction is used, the definition of "property of another" must be given. The definition of "building or occupied structure" may need to be given.

Pursuant to §18-4-103, C.R.S. the question of whether the crime of arson is a felony or a misdemeanor depends on whether the damage was under or over one hundred dollars. Therefore the special interrogatory and special verdict form on the amount of damages must be give. If there is

evidence to support a value or over and under one hundred dollars a lesser included offense can be given, upon request.

*People v. Sullivan*, 53 P.3d 1181 (Colo. App. 2002) (fact that property was marital and co-owned does not exclude it from being property of another).

*People v. Lefebre*, 190 Colo. 307, 546 P.2d 952 (1976) (burn or set fire to requires more than a mere scorching or discoloration).

#### **SOURCE & AUTHORITY**

§18-4-103, C.R.S.

COLJI-Crim. No. 13:03 (1983).

#### **CLASSIFICATION OF OFFENSE**

F4, if value one hundred dollars or more

M2, if value less than one hundred dollars

#### **4-1:04 ARSON - SECOND DEGREE - EXPLOSIVES**

The elements of the crime of second degree arson are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [damaged or destroyed] [caused to be damaged or destroyed],
5. by the use of an explosive device,
6. any property of another, other than a building or occupied structure,
7. without that person's consent

8. the damage was [less than one hundred dollars]  
[more than one hundred dollars].

9. [without the affirmative defense in instruction  
number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of second-degree arson.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of second-degree arson.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the definition of "property of another" and "explosive device" must be given. The definition of "building" or "occupied structure" may need to be given.

Pursuant to §18-4-103, C.R.S., the question of whether the crime of arson is a felony or a misdemeanor depends on whether the damage was under or over one hundred dollars. If there is evidence to support value both above and below one hundred dollars, a lesser included offense instruction can be given, upon request.

*People v. Sullivan*, 53 P.3d 1181 (Colo. App. 2002) (fact that property was marital and co-owned does not exclude it from being property of another).

#### **SOURCE & AUTHORITY**

§18-4-103, C.R.S.

COLJI-Crim. No. 13:04 (1983).

#### **CLASSIFICATION OF OFFENSE**

F4, if value one hundred dollars or more

M2, if value less than one hundred dollars

**4-1:05 ARSON - THIRD DEGREE - INTENT TO DEFRAUD**

The elements of the crime of third degree arson are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to defraud,
4. intentionally damaged any property,
5. by means of [fire] [explosives],
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of third degree arson.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of third degree arson.

**NOTES ON USE**

Delete inapplicable bracketed material.

**SOURCE & AUTHORITY**

§18-4-104, C.R.S.

COLJI-Crim. No. 13:05 (1983).

*People v. Calvaresi*, 198 Colo. 321, 600 P.2d 571 (1979) (distinction between first and third degree arson).

#### 4-1:06 ARSON - FOURTH DEGREE - ENDANGERED PERSON

The elements of the crime of fourth degree arson are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or recklessly [started or maintained a fire] [caused an explosion],
4. on his own property or that of another, and
5. by doing so placed another person in danger of death or serious bodily injury,
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fourth degree arson.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fourth degree arson.

#### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "serious bodily injury" must be given.

*People v. Johnson*, 757 P.2d 1098 (Colo. App. 1988) (firefighter responding to extinguish a fire falls within the meaning of endangered person).

*Copeland v. People*, 2 P.3d 1283 (Colo. 2000) (mens rea requirement of the fourth degree arson statute, knowingly or recklessly, does not apply to the statute's endangerment provision).

**SOURCE & AUTHORITY**

§18-4-105(1), (2), C.R.S.

**CLASSIFICATION OF OFFENSE**

F4

**4-1:07 ARSON - FOURTH DEGREE - ENDANGERED PROPERTY**

The elements of the crime of fourth degree arson are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or recklessly,
4. [started or maintained a fire] [caused an explosion],
5. on his own property or that of another, and,
6. by doing so placed any building or occupied structure of another in danger of damage.
7. the value of the property endangered was [less than one hundred dollars] [more than one hundred dollars].
8. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fourth degree arson.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fourth degree arson.

## NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the definition of "building" and "occupied structure" must be given. Pursuant to §18-4-105(3) and (4), C.R.S., the question of whether the crime of fourth degree arson is a class 2 or class 3 misdemeanor depends on whether the value of the property endangered was over or under one hundred dollars. If there is evidence to support the value being over and under one hundred dollars, a lesser included offense instruction should be given, on request.

*Copeland v. People*, 2 P.3d 1283 (Colo. 2000) (mens rea requirement of the fourth degree arson statute, knowingly or recklessly, does not apply to the statute's endangerment provision).

## SOURCE & AUTHORITY

§§18-4-105(1), (3) and (4), C.R.S.

## CLASSIFICATION OF OFFENSE

M2, if value is one hundred dollars or more

M3, if value is less than one hundred dollars

## DEFINITIONS

### 4-1(1) BUILDING

"BUILDING" means a structure which has the capacity to contain, and is designed for the shelter of man, animal, or property, and includes a shop, trailer, sleeping car, airplane, or other vehicle or place adapted for overnight accommodations of persons or animals, or for carrying on of business therein, whether or not a person or animal is actually present.

## NOTES ON USE

Use with reference to § 18-4-101(1), C.R.S.

### 4-1(2)EXPLOSIVE OR INCENDIARY DEVICE

"EXPLOSIVE OR INCENDIARY DEVICE" means:

(a) Dynamite and all other forms of high explosives, including, but not limited to water gel, slurry, military C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, and ammonium nitrate and fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord or det-cord or primacord, picric acid explosives, T.N.T. and T. N.T. mixtures, and nitroglycerin and nitroglycerin mixtures,

(b) Any explosive bomb, grenade, missile, or other device, and

(c) Any incendiary bomb or grenade, fire bomb, or similar device, including any device, except kerosene lamps, which consists of or include a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound and can be carried or throw by one individual acting alone,

(d) "Explosive or incendiary device" shall not include rifle, pistol or shotgun ammunition, or the components for handloading rifle, pistol or shotgun ammunition.

## NOTES ON USE

Use with reference to § 18-12-109(1)(a), C.R.S.

#### **4-1(3) OCCUPIED STRUCTURE**

"OCCUPIED STRUCTURE" means any area, place, facility, or enclosure which for particular purposes, may be used by persons or animals upon occasion, whether or not it is a "building", and which is in fact occupied by a person or animal, and known by the defendant to be thus occupied at the time of the alleged offense.

#### **NOTES ON USE**

Use with reference to § 18-4-101(2), C.R.S.

#### **4-1(4) PROPERTY OF ANOTHER**

"PROPERTY OF ANOTHER" means property is that "of another" if anyone other than the defendant has a possessory or proprietary interest therein. § 18-4-101(3), C.R.S.

#### **NOTES ON USE**

Use with reference to §§ 18-4-101 through -513, C.R.S.

#### **4-1(5) SERIOUS BODILY INJURY**

"SERIOUS BODILY INJURY" means bodily injury which, either at the time of the actual injury or at a later time, involves: (a) a substantial risk or death, or (b) a substantial risk of serious permanent disfigurement, or (c) a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or (d) breaks or fractures, or burns of the second or third degree.

#### **NOTES ON USE**

Use with reference to § 18-1-901(3)(p), C.R.S.