

1408 ARSON OF PROPERTY OTHER THAN A BUILDING — § 943.03**Statutory Definition of the Crime**

Arson, as defined in § 943.03 of the Criminal Code of Wisconsin, is committed by one who, by means of fire, intentionally damages any property of another without the person's consent if the property is not a building and has a value of \$100 or more.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following five elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally damaged (describe property)¹ by means of fire.

"Damaged" means injured, charred, defaced, and includes smoke damage.²

"Intentionally" means that the defendant must have had the mental purpose to damage the property of another by means of fire or was aware that (his) (her) conduct was practically certain to cause damage to the property.³

2. The (describe property) was the property of another.

["Property of another" means property in which a person other than the defendant has a legal interest which the defendant has no right to defeat or impair, even though the defendant may also have a legal interest in the property.⁴

A _____ is a legal interest in property.]⁵

3. The defendant damaged the property by fire without the owner's consent⁶ (or the consent of the owner's authorized agent).
4. The value of the (describe property) was \$100 or more.
5. The defendant knew that:
 - that the (describe property) belonged to another person; and
 - that the other person did not consent to the damage of the property; and
 - that the value of the property was \$100 or more.⁷

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all five elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1408 was originally published in 1969 and revised in 1977, 1983, 1992, and 2002. This revision was approved by the Committee in February 2011 and involved correcting an inadvertent error in element 5 and nonsubstantive changes in footnotes.

Section 943.03 was amended by 1999 Wisconsin Act 85 [effective date: May 6, 2000] to read as follows:

943.03 Arson of property other than building. Whoever, by means of fire, intentionally damages any property of another without the person's consent, if the property is not a building and has a value of \$100 or more, is guilty of a Class E felony.

1. The property, which must be property "other than a building" for this offense, should be identified in this blank by referring, for example, to "the boat" or "the automobile," etc.
2. "The word 'damage' includes, in addition to what is thought of as damage in the narrow sense, anything from mere defacement and mutilation to total destruction." 1953 Judiciary Committee Report on the Criminal Code, p. 97 (Wis. Legislative Council, 1953). The quoted material referred to "damage" as used in the criminal damage to property statute; the meaning of "damage" was considered to be the same for arson, which was called "Criminal Damage By Fire or Explosives" in the original 1953 draft of the Criminal Code. Ibid, p. 99. The name of the offense was changed to "arson" before the draft was enacted. The recodification of the arson statutes was not intended to change the substantive law, although "by means of fire, intentionally damages," was substituted for "sets fire to or burns or causes to be burned" under the pre-1956 law. Bill Platz commented on this change in his law review article on the Criminal Code revision.

This change is not intended to produce any different result, although conceivably the new language could be construed to include smoke damage without actual charring. However, such cases should be prosecuted under Code § 943.01 [criminal damage to property], or as attempted arson under Code § 939.32 depending on the facts.

Platz, "The Criminal Code: Thumbnail History of the Code" 1956 Wis. Law Rev. 350, 374

The Committee concluded that any damage, including smoke damage, is sufficient under the arson statutes as long as the damage is caused "by means of fire."

3. This is the definition of "intentionally" provided in § 939.23(3). See also Wis JI-Criminal 923A and 923B for further discussion of "intentionally."
4. This paragraph should be included only if the defendant had an interest in the property. The definition of "property of another" is based on the one provided in § 939.22(28). Also see State v. Sevelin, 204 Wis.2d 127, 554 N.W.2d 521 (Ct. App. 1996), affirming a conviction for criminal damage to property where the charge was based on the defendant damaging his own marital home – the defendant's wife also had an ownership interest in the home, qualifying it as "property of another."
5. The Committee concluded that a trial judge may inform the jury that a particular interest is a legal interest in property as long as there is legal authority to support that statement. For example, § 401.201(37) defines and provides examples of "security interest."
6. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

In State v. Shoffner, 31 Wis.2d 412, 143 N.W.2d 354 (1958), the defendant contended that proof was lacking on the "without consent" element because the state produced the testimony of the owner but not that of his wife, who owned the property jointly with her husband. The court rejected the claim, finding that it was sufficient to show that one co-owner did not consent, since "the only reasonable inference which can be drawn from the undisputed facts in this case is that Shoffner acted without the consent of any owner." 31 Wis.2d 412, 430.

7. When "intentionally" is used in a criminal statute, it requires, in addition to a mental purpose to cause the result specified, that "the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word 'intentionally.'" § 939.23(3).