

1410 ARSON (OF PROPERTY OTHER THAN A BUILDING) WITH INTENT TO DEFRAUD — § 943.04**Statutory Definition of the Crime**

Arson, as defined in § 943.04 of the Criminal Code of Wisconsin, is committed by one who, by means of fire, damages any property other than a building with intent to defraud an insurer of that property.¹

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant damaged (describe property)² by means of fire.

"Damaged" means injured, charred, defaced, and includes smoke damage.³

2. The defendant damaged (describe property), by means of fire, with intent to defraud an insurer of the (describe property).

The intent to defraud is the mental purpose to deceive an insurer of the property, and thereby induce an insurer to make payment under a fire insurance policy.⁴ This intent must have been formed at any time before the fire started and must have continued to exist at the time the fire started.⁵

GIVE THE FOLLOWING PARAGRAPH WHEN THE VALIDITY OR EXISTENCE OF AN INSURANCE POLICY IS QUESTIONED:

[Whether in fact there was insurance coverage on the property is immaterial. It is sufficient that the defendant believed there was insurance coverage on the property.]⁶

Deciding About Intent

You cannot look into a person's mind to find intent. Intent 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.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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 1410 was originally published in 1966 and revised in 1992. This revision was approved by the Committee in and involved adoption of a new format, nonsubstantive changes to the text, and updating of the comment.

1. Note that, unlike the other arson statutes, § 943.04 does not use the word "intentionally." Thus, the instruction also does not include it.
2. 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.
3. See note 3, Wis JI-Criminal 1404.
4. Volume V 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 101 (February 1953).

5. If the fire was not directly set by the defendant, it should be made clear that the intent to defraud an insurer must have existed when the accomplice was hired to set it. The instruction would need to be modified, and the jury would also have to be instructed on the appropriate basis of party-to-crime liability under § 939.05.

6. Parb v. State, 143 Wis. 561, 128 N.W. 65 (1910); Smith v. State, 149 Wis. 63, 134 N.W. 1123 (1912).