

12.1 ARSON — FIRST DEGREE

§ 806.01(1), Fla. Stat.

To prove the crime of Arson, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[willfully and unlawfully] [while engaged in the commission of [a felony] [(felony alleged)]] caused a[n] [fire] [explosion].**

Give 2a if § 806.01(1)(a), Fla. Stat. is charged.

2. a. **dwelling, whether occupied or not, [or the contents of the dwelling,] was damaged by the [fire] [explosion].**

Give 2b if § 806.01(1)(b), Fla. Stat. is charged.

- b. **A structure, where persons would normally be present at the time of the [fire] [explosion], [or the contents of a structure where persons would normally be present at the time of the [fire] [explosion]], was damaged by the [fire] [explosion].**

Give 2c if § 806.01(1)(c), Fla. Stat. is charged.

- c. **A structure, that (defendant) knew or had reasonable grounds to believe would be occupied by a human being at the time of the [fire] [explosion], was damaged by the [fire] [explosion].**

Knighten v. State, 568 So. 2d 1001 (Fla. 2d DCA 1990) and N.K.D. v. State, 799 So. 2d 428 (Fla. 1st DCA 2001).

In order to convict the defendant of Arson, it is not necessary for the State to prove [he] [she] intended to damage the [dwelling] [structure].

Give if applicable.

The Court instructs you that (name of felony) is a felony.

Definitions. Give as applicable.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means intentionally, knowingly, and purposely.

Berry v. State, 566 So. 2d 22 (Fla. 1st DCA 1990).

“Unlawfully” means without a legitimate, lawful purpose.

§ 810.011(2), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

“Dwelling” means a building [or conveyance] of any kind, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.] For purposes of arson, a “dwelling” includes an attached porch or attached garage.

§ 806.01(3), Fla. Stat.

“Structure” means any building of any kind, any enclosed area with a roof over it, any real property and appurtenances, any tent or other portable building, and any vehicle, vessel, watercraft, or aircraft.

If the defendant is charged with causing a fire or explosion while committing a felony, define the felony that the defendant was allegedly committing.

Lesser Included Offenses

ARSON — 806.01(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Arson – second degree	806.01(2)	12.2
	Attempt	777.04(1)	5.1
	Criminal mischief	806.13	12.4

Comments

A special instruction is necessary in cases where the dwelling is vacant and the homeowner does not intend to return. *See Mitchell v. State*, 734 So. 2d 1067 (Fla. 1st DCA 1999).

This instruction was adopted in 1981 and was amended in 1992 [603 So. 2d 1175], 2014 [146 So. 3d 1110], and 2018.