

1 **14-1706. Aggravated arson; essential elements.**

2 For you to find the defendant guilty of aggravated arson [as charged in Count
3 _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the
4 following elements of the crime:

5 1. The defendant [set fire to]² [damaged by any explosive substance] a
6 _____³ which belonged to another;

7 2. [~~His~~] The defendant's act caused⁴ _____ (*name of victim*) to sustain
8 [an injury creating a high probability of death]⁵
9 [serious disfigurement]
10 [an injury resulting in permanent or long-lasting loss or impairment of the function
11 of any member organ of the body];

12 3. This happened in New Mexico on or about the _____ day of
13 _____, _____.

14 USE NOTES

- 15 1. Insert the count number if more than one count is charged.
16 2. Use applicable bracketed phrase.
17 3. Insert name or description of property from NMSA 1978, Section 30-17-6 [~~NMSA~~
18 ~~1978~~].
19 4. *See* UJI 14-1705 NMRA if causation is in issue.
20 5. Use applicable bracketed phrase depending on the great bodily harm caused.

21 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending
22 or filed on or after December 31, 2025.]

1 **Committee commentary.** — *See* [~~30-17-6 NMSA 1978~~] NMSA 1978, § 30-17-6 (1963). This
2 statute requires a [~~"willful or malicious"~~] "willful or malicious" damaging but not an [~~"intent to~~
3 ~~destroy or damage."~~] "intent to destroy or damage." *See* [~~the commentary to~~] UJI 14-1701 NMRA
4 comm. cmt. *See also* Practice Commentary, N.Y. Penal Code § 150. The instruction uses the
5 statutory elements of [~~"great bodily harm."~~] "great bodily harm." *See* [~~§ 30-1-12A NMSA 1978~~]
6 NMSA 1978, § 30-1-12(A) (1963). The property or structure, the [~~"burning"~~] "burning" of which
7 may create culpability under this crime, is limited under the terms of the statute. The value of the
8 property is not relevant under this statute as the gravamen of the offense is the physical harm to
9 others.

10 The willful or malicious, i.e., intentional, element is not listed in the elements in this instruction
11 because the mandatory criminal intent instruction includes that element and this instruction is
12 limited to the burning of [~~another's~~] another's property. *See* UJI 14-141 NMRA and [~~commentary~~]
13 UJI 14-141 comm. cmt. To include the element in this instruction would duplicate the element.
14 *See also* [~~commentary to~~] UJI 14-1701 comm. cmt.

15 The statute does not require that the burning be of the property of another or that the burning be
16 with an intent to cause great bodily harm. Apparently any willful and malicious burning resulting
17 in great bodily harm to another gives rise to culpability under the statute. The committee, therefore,
18 believed that the better view was to limit this instruction to a burning, etc., of the property of
19 another. *See State v. Dennis*, 1969-NMCA-036, 80 N.M. 262, 454 P.2d 276[~~(Ct. App. 1969)~~]. *See*
20 *generally* Perkins, *Criminal Law* at 226 (2d ed. 1969). If the defendant is charged under this section
21 with burning [~~his~~] the defendant's own property, a special instruction will have to be drafted.
22 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]