

Arson Law and Prosecution

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Arson Law and Prosecution

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To:
Lawrence and Loretta Decker
and
Younghee Jin Ottley

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Introduction

Arson is one of the most serious and complex crimes facing investigators and prosecutors in the United States. It is a serious offense because of the number of persons who are injured and killed, the property that is destroyed, and the money that is lost through insurance fraud in arson fires each year. Arson is a complex offense because of the problems of investigation and proof. The magnitude of the offense is illustrated by statistics published annually by the Federal Bureau of Investigation (FBI) and the United States Fire Administration.

The Uniform Crime Reporting Program of the FBI defines arson as “any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another etc.”¹ According to this definition, law enforcement agencies throughout the United States reported 69,055 arson offenses for the year 2006, the last year for which complete crime statistics were available at the time of the preparation of this book.² According to the FBI, the most frequent targets of arson are structures (residential, storage, etc.), which accounted for 42.3% of the reported offenses in 2006. Residential arson accounted for 60.2% of the structural arson offenses. Twenty-eight percent of the arson was directed at mobile property, overwhelmingly motor vehicles. Others types of property, such as crops and timber, accounted for 29.6% of arson offenses.³

Although the number of arsons decreased during the 1990s and the first half of this decade, arson remains a major crime. Despite a 1.6% decrease in the number of reported structural arsons between 2005 and 2006, structural arson fires killed 305 persons and cause property damage totaling more than \$775 million in 2006. The value of the property lost to structural fires was a 13.7% increase over 2005.⁴ More troubling, however, than the loss of life and property is the fact that only 18% of arsons lead to an arrest.⁵ Of those persons arrested for arson, 84.5% were males,⁶ 49% were under 18 years of age.⁷ Sev-

1. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: 2006. The report is available on the Internet at http://www.fbi.gov/ucr/cius06/offenses/property_crime/arson.html.

2. *Id.*

3. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: 2006. http://www.fbi.gov/ucr/cius06/offenses/expanded_information/data/arsontable_02.html.

4. MICHAEL KARTER, JR., FIRE LOSS IN THE UNITED STATES DURING 2006, 14–15. This report, published by the National Fire Protection Association, is available on the Internet at <http://www.nfpa.org/assets/files/PDF/OS.fireloss.pdf>.

5. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: 2006. http://www.fbi.gov/ucr/cius06/data/table_26.html.

6. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: 2006. http://www.fbi.gov/ucr/cius06/data/table_66.html.

7. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: 2006. http://www.fbi.gov/ucr/cius06/data/table_38.html.

enty-six percent of persons arrested for arson were white while African-Americans comprised 21.6%.⁸

Large cities confront the problems of arson with specialized investigators in bomb and arson units within their fire and police departments. Some counties also have prosecution units devoted exclusively to arson crimes. However, for the vast majority of cities and counties in the United States, arson investigation is one of the many duties performed by fire and police officials and arson is just another crime handled by prosecutors. For these officials, there are numerous books dealing with the specific technical and scientific aspects of fire investigations and with criminal procedure in general. However, fire and police investigators, prosecutors, and defense attorneys have had no book that combines a discussion of the legal issues of fire investigation, the state and federal laws governing arson, and the criminal procedure issues of that arise in an arson investigation in one volume. This book is designed to do that in order to give everyone involved in, and interested in, the investigation, prosecution, and defense of arson a source-book of the practical and legal issues association with the prosecution of an arson case.

Chapter One examines what fire investigators, prosecutors, and defense attorneys must know about the investigation of fires: who should be involved in an investigation, the substantive knowledge they require about fire science, the procedures they must follow in conducting an investigation and their role as expert witnesses in arson prosecutions. Since the collection of evidence from the fire scene is a critical part of fire investigation, *Chapter Two* examines the law of search and seizure. *Chapter Three* takes the investigation forward to the police interrogation of witnesses and suspects. *Chapter Four* examines the use of grand juries in arson cases and the privilege against self-incrimination. *Chapter Five* focuses on state sharing statutes as a means of obtaining information about suspected arson. *Chapter Six* summarizes the statutes in the fifty states and the District of Columbia dealing with arson as well as the principal federal statutes governing arson. *Chapter Seven* deals with the law governing accessories and inchoate liability in the context of arson as well as the defense that are frequently raised in arson prosecutions. Finally, *Chapter Eight* is an edited transcript of the prosecution's evidence in an arson trial to show how the investigation and law come together.

8. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: 2006. http://www.fbi.gov/ucr/cius06/data/table_43.html.