

## 215.31 BURNING OF JAILS OR PRISONS. FELONY.

The defendant has been charged with wantonly and willfully [setting fire to] [burning] [causing to be burned] [aiding, counseling, or procuring the burning of] a penal institution or its contents.

For you to find the defendant guilty of this offense, the State must prove two things beyond a reasonable doubt:

First, that the defendant [set fire to<sup>1</sup>] [burned] [caused to be burned] [aided, counseled, or procured the burning of] a [penal institution]<sup>2</sup> [the contents of a penal institution].

And Second, that the defendant did so wantonly and willfully, that is, intentionally and without justification or excuse, with the knowledge or reasonable grounds to believe the defendant's act would endanger the rights or safety of others.<sup>3</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant wantonly and willfully [set fire to] [burned] [caused to be burned] [aided, counseled, or procured the burning of] a [penal institution] [the contents of a penal institution], it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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1. It is possible for a person to "set fire to" property without burning it. *S. v. Hall*, 93 N.C. 573 (1885). If there is some question as to whether the defendant "set fire to" the property, the jury may be told that "a person sets fire to property whenever he causes fire to come into contact with the property, even though the property may not in fact be burned, or is merely scorched or discolored by heat." If there is some question as to whether the defendant "burned" the property, the jury may be told that "a partial burning or the slightest charring is sufficient, but a mere scorching or discoloration by heat does not constitute a burning."

2. The term "penal institution" is defined in N.C. Gen. Stat. § 14-208.6(2). Please note that the definition of penal institution under this section changed on January 1, 2023.

3. See *S. v. Brackett*, 306 N.C. 138 (1982) for a discussion of the terms willful and wanton as used in this statute. The words have substantially the same meaning. The terms willful and wanton also mean the same thing as intentional.

