

# THE ANNOTATED CODE OF THE PUBLIC GENERAL LAWS OF MARYLAND

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Comprising all the Public General Laws of the State in force to and inclusive of the Acts of the General Assembly of 1951, annotated with decisions of the Court of Appeals of Maryland, the Supreme Court of the United States, the Circuit Courts of Appeals of the United States and the District Courts of the United States, inclusive of 192 Maryland, 338 United States, 185 Federal Reports (2d series) and 92 Federal Supplement.

Containing also the Constitution of the United States and the Constitution of Maryland, annotated

IN THREE VOLUMES

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### Arson and Burning<sup>1</sup>

The act of burning a stack of hay is not a felony either at common law, under this section or under act of 1809, ch. 138; an indictment for a felony cannot be sustained as an indictment for a misdemeanor. Where indictment charged that traveler had "feloniously," etc., and the jury found him guilty of having "feloniously," etc., burned stack of hay, no judgment can be pronounced under this section. *Black v. State*, 2 Md. 379.

A party may be indicted for wilfully burning a school house not parcel of a dwelling house; the "wilful" burning being the offense provided against. *Jones v. Hungerford*, 4 G. & J. 402 (decided prior to act, 1904, ch. 267).

Act of 1809, ch. 138, punished the burning of a barn whether the articles of personal property mentioned in sec. 5 of that act, or other articles, were contained therein. Explanation of the word "empty" as used in said act. *House v. House*, 5 H. & J. 125.

Indictment which fails to describe building as "not parcel of any dwelling house" is defective. *Kellenbeck v. State*, 10 Md. 438 (decided prior to act of 1904, ch. 267). *Cf. Gibson v. State*, 54 Md. 452.

The description of property burned held too indefinite in one count but sufficient in another count. It is proper to charge statutory offenses in the language of the statute creating them. Where a statute contains an exception so incorporated with its enacting clause that the one cannot be read without the other, the indictment must negative the exception. The burning of a barn, parcel of a dwelling house, is covered by this section. *Gibson v. State*, 54 Md. 450 (decided prior to act 1904, ch. 267). *Gibson v. State* was overruled in part in *Avirett v. State*, 76 Md. 529, 25 A. 676, 987.

If an indictment does not charge that the burning was done "maliciously", it is defective. *Kellenbeck v. State*, 10 Md. 437 (decided prior to act of 1904, ch. 267). *Cf. Gibson v. State*, 54 Md. 452.

An indictment for arson must charge that the house was burned. Act of 1809, ch. 138, only provided for punishment of arson without defining it. *Cochrane v. State*, 6 Md. 405 (decided prior to act of 1904, ch. 267).

Cited but not construed in *Hammond v. State*, 14 Md. 148.

An. Code, 1939, sec. 6. 1924, sec. 6. 1912, sec. 6. 1904, sec. 6. 1888, sec. 6.  
1809, ch. 138, sec. 5. 1904, ch. 267, sec. 6. 1929, ch. 255, sec. 6.

6. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself, or of another, shall be guilty of arson, and upon conviction thereof, be sentenced to the penitentiary for not less than two nor more than twenty years.

One aiding or counseling another to set fire to dwellings is principal and not accessory; count charging defendant with setting fire to and burning dwelling and count charging same person with aiding and counseling the burning of dwelling can be joined in same indictment; not necessary that dwelling be occupied. *Wimpling v. State*, 171 Md. 362, 189 A. 248.

As to indictments for arson, see sec. 701.

An. Code, 1939, sec. 7. 1924, sec. 7. 1929, ch. 255, sec. 7.

7. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any barn, stable, garage or other building, whether the property of himself or of another, not a parcel of a dwelling house; or any shop, storehouse, warehouse, factory, mill or other building, whether the property of himself or of another; or any church, meeting house, court house, work house, school, jail or other public building or any public bridge; shall upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

<sup>1</sup>These decisions relate to the provisions of law prior to Act of 1929, ch. 255.

An. Code, 1939, sec. 8. 1924, sec. 8. 1929, ch. 255, sec. 8.

8. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain or vegetable product of any kind; or any field of standing hay or grain of any kind; or any pile of coal, wood or other fuel; or any pile of planks, boards, posts, rails or other lumber; or any street car, railway car, ship, boat or other water craft, automobile or other motor vehicle; or any other personal property not herein specifically named (such property being of the value of Twenty-five Dollars and the property of another person), shall upon conviction thereof, be sentenced to the penitentiary for not less than one or more than three years.

An. Code, 1939, sec. 9. 1924, sec. 9. 1929, ch. 255, sec. 9.

9. Any person who wilfully and with intent to injure or defraud the insurer sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any goods, wares, merchandise or other chattels or personal property of any kind, whether the property of himself or of another, which shall at the time be insured by any person or corporation against loss or damage by fire; shall upon conviction thereof, be sentenced to the penitentiary for not less than one or more than five years.

An. Code, 1939, sec. 10. 1924, sec. 10. 1929, ch. 255, sec. 10.

10. Any person who wilfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than two years or fined not to exceed One Thousand Dollars.

The placing or distributing of any flammable, explosive or combustible material or substance, or any device in any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually wilfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of same shall, for the purpose of this sub-title constitute an attempt to burn such building or property.<sup>1</sup>

1947 Supp., sec. 10A. 1943, ch. 42.

11. Any person, who, while perpetrating, or attempting to perpetrate, a crime, shall set fire to or burn any of the buildings enumerated in this sub-title, shall, upon conviction thereof, be sentenced to the penitentiary for not more than three years.

### Assault on Wife

An. Code, 1939, sec. 11. 1924, sec. 15. 1912, sec. 15. 1904, sec. 15.  
1888, sec. 14. 1882, ch. 120.

12. Any person who shall brutally assault and beat his wife shall be deemed guilty of a misdemeanor, and upon presentment and conviction

<sup>1</sup> Sec. 2 of ch. 255 of the acts of 1929 repealed all laws in conflict therewith.