

**TAMPERING WITH PHYSICAL EVIDENCE**  
**(E Felony)**  
**(Destroying Evidence)**  
**PENAL LAW 215.40(2)**  
**(Committed on or after Sept. 1, 1967)**

The \_\_\_\_\_ count is Tampering with Physical Evidence.

Under our law, a person is guilty of Tampering with Physical Evidence when, believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he or she suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "official proceeding," "physical evidence," and "intent."

**OFFICIAL PROCEEDING** means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence may properly be received.<sup>1</sup>

**PHYSICAL EVIDENCE** means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.<sup>2</sup>

Intent means conscious objective or purpose. Thus, a person is **INTENDING** to prevent the production or use of physical evidence in an official proceeding or a prospective official proceeding when his or her conscious objective or purpose is to do

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<sup>1</sup> Penal Law § 215.35(2).

<sup>2</sup> Penal Law § 215.35(1).

so.<sup>3</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (specify), the defendant, (defendant's name), suppressed physical evidence by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person;
2. That the defendant did so believing that such physical evidence was about to be produced or used in an official proceeding [or a prospective official proceeding]; and
3. That the defendant did so intending to prevent such production or use.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Tampering with Physical Evidence as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Tampering with Physical Evidence as charged in the \_\_\_\_\_ count.

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<sup>3</sup>See Penal Law §15.05(1).