

**TAMPERING WITH A  
CONSUMER PRODUCT  
SECOND DEGREE  
(A Misdemeanor)  
PENAL LAW 145.40  
(Committed on or after Oct. 1, 1986)**

The \_\_\_ count is Tampering with a Consumer Product in the Second Degree.

Under our law, a person is guilty of Tampering with a Consumer Product in the Second Degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, and with intent to cause physical injury to another person [*or with intent to instill in another a fear that he or she will cause physical injury to another person*], that person alters, adulterates or otherwise contaminates a consumer product.

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: “tamper,” “intent,” “physical injury,” and “consumer product.”<sup>1</sup>

A person TAMPERS with property of another when he or she improperly alters or interferes with such property.<sup>2</sup>

INTENT means a conscious objective or purpose.<sup>3</sup> Thus, a person intends to cause physical injury to another person [*or intends to instill in another person a fear that he or she will cause physical injury to another*] when his or her conscious objective or

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<sup>1</sup>There is no statutory definition for the terms: “alter,” “adulterates,” and “contaminates.” If the Court wishes to further define such terms, definitions from “Black's Law Dictionary” are provided at the end of this article.

<sup>2</sup>See Black's Law Dictionary (7th ed, 1999).

<sup>3</sup>See Penal Law § 15.05(1).

purpose is to cause such physical injury to another person [or to instill in a person a fear that he or she will cause such physical injury to another person].

PHYSICAL INJURY means the impairment of a physical condition or substantial pain.<sup>4</sup>

CONSUMER PRODUCT means any drug, food, beverage or thing which is displayed or offered for sale to the public, for administration or ingestion by a human being or for application to any external surface of a human being.<sup>5</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 (county), the defendant, (defendant's name), altered, adulterated or otherwise contaminated a consumer product;
2. That the defendant had no right to do so nor any reasonable ground to believe he/she had such right; and
3. That the defendant did so with the intent to cause physical injury to another person [or to instill in another person a fear that he/she will cause physical injury to another person].

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 a Consumer Product in the Second Degree as charged in the \_\_\_ count.

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<sup>4</sup>See Penal Law § 10.00(9).

<sup>5</sup>See Penal Law § 145.35.

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 a Consumer Product in the Second Degree as charged in the \_\_\_ count.