

**TAMPERING WITH A WITNESS
THIRD DEGREE
(E Felony)
(Compelling Witness to Avoid Testifying)
PENAL LAW § 215.11(1)
(Committed on or after Sept. 1, 1982)**

The _____ count is Tampering with a Witness in the Third Degree.

Under our law, a person is guilty of Tampering with a Witness in the Third Degree when, knowing that a person is about to be called as a witness in a criminal proceeding, he or she wrongfully compels or attempts to compel such person to absent himself or herself from, or otherwise to avoid or seek to avoid appearing or testifying at such proceeding by means of instilling in him or her a fear that the actor will cause physical injury to such person or another 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: "criminal proceeding" and "physical injury."

CRIMINAL PROCEEDING means any proceeding which (a) constitutes a part of a criminal action or (b) occurs in a criminal court and is related to a prospective, pending or completed criminal action, either of this state or of any other jurisdiction, or involves a criminal investigation.¹

PHYSICAL INJURY means impairment of physical condition or substantial pain.²

¹See CPL 1.20(18). The term "criminal action," used in the definition of "criminal proceeding," is defined in CPL 1.20(16), and that definition in turn employs terms that also are defined in CPL 1.20. When in issue, these definitions should be provided.

²See Penal Law § 10.00(9).

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

1. That on or about (date), (specify) was about to be called as a witness in a criminal proceeding;
2. That on that date, in the county of (county), the defendant, (defendant's name), wrongfully compelled or attempted to compel (specify) to absent himself/herself from, or otherwise to avoid or seek to avoid appearing or testifying at such proceeding by means of instilling in (specify) a fear that the defendant would cause physical injury to (specify) or another person; and
3. That the defendant did so knowing that (specify) was about to be called as a witness in such proceeding.

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 Witness in the Third Degree 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 a Witness in the Third Degree as charged in the _____ count.