

TAMPERING WITH PHYSICAL EVIDENCE
(Making False Evidence)
Penal Law § 215.40(1)(a)
(Committed on or after Sept. 1, 1967)

The (*specify*) count is Tampering with Physical Evidence.

Under our law, a person is guilty of Tampering with Physical Evidence when, with intent that it be used or introduced in an official proceeding or a prospective official proceeding, he or she knowingly makes, devises or prepares false physical evidence.

The following terms used in that definition have a special meaning:

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.¹

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.²

INTENT means conscious objective or purpose. Thus, a person acts with intent that evidence be used or introduced in an official proceeding or a prospective official proceeding when his or her conscious objective or purpose is to do so.³

A person **KNOWINGLY** makes, devises or prepares false physical evidence when he or she is aware that he or she is doing

¹ Penal Law § 215.35(2).

² Penal Law § 215.35(1).

³See Penal Law §15.05(1).

so.⁴

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), made, devised or prepared false physical evidence; and
2. That the defendant did so knowingly; and
3. That the defendant did so with the intent that such physical evidence be used or introduced in an official proceeding or a prospective official proceeding.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

⁴See Penal Law §15.05(2).