

**CRIMINAL TAMPERING IN THE SECOND DEGREE**  
**(Tampering or Making Connection with**  
**Utility Company Property)**  
**Penal Law § 145.15**  
**(Committed on or after Jan 1, 1979)**

The (specify) count is Criminal Tampering in the Second Degree.

Under our law, a person is guilty of Criminal Tampering in the Second Degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, that person tampers or makes connection with property of a gas [*or electric*] [*or sewer*] [*or steam*] [*or water-works*] [*or telephone*] [*or telegraph*] corporation [*or common carrier*] [*or public utility operated by a municipality or district*].

The following term used in that definition has a special meaning:

A person TAMPERS with property when he or she improperly alters or interferes with such property.<sup>1</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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), tampered [*or made connection*] with property of (name of corporation, common carrier or public utility); and
2. That the defendant had no right to do so nor any reasonable ground to believe he/she had such right.

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<sup>1</sup> See Black's Law Dictionary (7<sup>th</sup> ed., 1999). See *People v. Choo*, 152 Misc. 2d 324 (Crim. Ct. 1991).

*[NOTE: If the affirmative defense does not apply:*

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

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

*[NOTE: If the affirmative defense applies:*

If you find that the People have not proven beyond a reasonable doubt either one or both of those elements, then you must find the defendant not guilty of Criminal Tampering in the Second Degree.

On the other hand, if you find that the People have proven beyond a reasonable doubt both of the elements, then you must consider the affirmative defense the defendant has raised.

Under our law, it is an affirmative defense to a charge of Criminal Tampering in the Second Degree that the defendant did not engage in such conduct for a larcenous or otherwise unlawful or wrongful purpose.

Under the Law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time to present the evidence, but in terms of its quality, weight and convincing effect. For the affirmative defense to be proven by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt each of the elements of Criminal Tampering in the Second Degree, you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Criminal Tampering in the Second Degree.]