

21.10 TAMPERING WITH A [WITNESS] [VICTIM] [INFORMANT]

§ 914.22(1), Fla. Stat.

To prove the crime of Tampering with a [Witness] [Victim] [Informant], the State must prove the following three elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) knowingly

- a. used or attempted to use intimidation or physical force against (name of person).**
- b. threatened or attempted to threaten (name of person).**
- c. engaged in misleading conduct toward (name of person).**
- d. offered pecuniary benefit or gain to (name of person).**

2. (Defendant) did so, with intent to cause or induce [any person] [(name of person)] to

- a. withhold testimony or withhold a record, document, or other object, from an official investigation or official proceeding.**
- b. alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official investigation or official proceeding.**
- c. evade legal process summoning [him] [her] to appear as a witness, or to produce a record, document, or other object, in an official investigation or official proceeding.**
- d. be absent from an official proceeding to which [he] [she] has been summoned by legal process.**
- e. hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of [an offense] [a violation of a condition of [probation] [parole] [release pending a judicial proceeding]].**
- f. testify untruthfully in an official investigation or an official proceeding.**

3. The [official investigation] [official proceeding] [offense] [violation of a condition of [probation] [parole] [release]] [affected] [attempted to be affected], involved the investigation or prosecution of a[n]
[non-criminal offense]
[misdemeanor]
[third degree felony]
[second degree felony]
[first degree felony [punishable by a term of years not exceeding life]]
[life felony]
[capital felony]
[offense of indeterminable degree].

The Court instructs you that a[n] (name of offense) is a[n] (insert appropriate severity level of offense).

Give if requested and if applicable.

§ 914.22(5)(a), Fla. Stat.

The State does not have to prove that an official proceeding was pending or about to be instituted at the time of this alleged offense.

§ 914.22(5)(b), Fla. Stat.

The State does not have to prove that the testimony or the record, document, or other thing was admissible in evidence [or free from a claim of privilege].

§ 914.22(6)(a), Fla. Stat.

The State does not have to prove that the defendant knew or should have known that the official proceeding before a judge, court, grand jury, or government agency, was before a judge or court of the state, a state or local grand jury, or a state agency.

§ 914.22(6)(b), Fla. Stat.

The State does not have to prove that the defendant knew or should have known that the judge is a judge of the state or that the law enforcement officer is an officer or employee of the state or a person authorized to act for or on behalf of the state or serving the state as an adviser or consultant.

Definitions. § 914.21, Fla. Stat. Give as applicable.

“Misleading conduct” means:

- a. **Knowingly making a false statement;**

- b. **Intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact and thereby creating a false impression by such statement;**
- c. **With intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;**
- d. **With intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or**
- e. **Knowingly using a trick, scheme, or device with intent to mislead.**

“Official investigation” means any investigation instituted by a law enforcement agency or prosecuting officer of the state or a political subdivision of the state or the Commission on Ethics.

“Official proceeding” means:

- a. **A proceeding before a judge or court or a grand jury;**
- b. **A proceeding before the Legislature;**
- c. **A proceeding before a federal agency that is authorized by law; or**
- d. **A proceeding before the Commission on Ethics.**

“Physical force” means physical action against another and includes confinement.

Lesser Included Offense

The degree of this crime depends on the severity of the underlying offense that is the subject of the tampering. See § 914.22(2), Fla. Stat.

Comment

This instruction was adopted in 2013 [131 So. 2d 720] and amended in 2018 [238 So. 3d 192], and on April 25, 2023.