

- I. TAMPERING WITH RECORD, DOCUMENT, OR OTHER OBJECT FOR USE IN AN OFFICIAL PROCEEDING
- II. ATTEMPT TO TAMPER WITH RECORD, DOCUMENT, OR OTHER OBJECT FOR USE IN AN OFFICIAL PROCEEDING

G.L. c. 268, § 13E

- I. TAMPERING WITH RECORD, DOCUMENT, OR OTHER OBJECT FOR USE IN AN OFFICIAL PROCEEDING

The defendant is charged with tampering with a record, document, or other object for use in an official proceeding.

To prove the defendant guilty of this offense, the Commonwealth must prove two elements beyond a reasonable doubt:

First: That the defendant altered, destroyed, mutilated, or concealed a record, document or other object; and

Second: That the defendant did so with the intent to impair the integrity or use of that record, document or other object in an official proceeding.

The second element requires you to determine the defendant's intent. A person's intent refers to their objective or purpose. You may examine the defendant's actions and words, and all of the

surrounding circumstances, to help you determine whether the defendant had the intent to impair the integrity or use of the record, document, or other object in an official proceeding.

An “official proceeding” includes a proceeding before a:

- **(court),**
- **(grand jury),**
- **(state agency or commission, which relates to an alleged violation of a criminal statute or the laws and regulations enforced by the:**
 - **(state ethics commission),**
 - **(state secretary),**
 - **(office of the inspector general),**
 - **(office of campaign and political finance),**
- **(state agency or commission, which relates to an alleged violation for which the attorney general may issue a civil investigative demand.)**

The Commonwealth does not have to prove that an official proceeding was pending at the time. Likewise, the Commonwealth

does not have to prove that the record, document, or other object would have been admitted into evidence at an official proceeding.

If the Commonwealth has proven both of the elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of the elements beyond a reasonable doubt, you must find the defendant not guilty.

II. ATTEMPT TO TAMPER WITH RECORD, DOCUMENT OR OTHER OBJECT FOR USE IN AN OFFICIAL PROCEEDING

The defendant is charged with attempting to tamper with a record, document, or other object for use in an official proceeding.

To prove that the defendant attempted to commit this offense, the Commonwealth must prove two elements beyond a reasonable doubt:

First: That the defendant took an overt act toward altering, destroying, mutilating, or concealing a record, document, or other object; and

Second: That the defendant did so with the intent to impair the integrity or use of that record, document, or other object in an official proceeding, whether or not the proceeding was pending at that time.

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant took an overt act toward altering, destroying, mutilating, or concealing a record, document, or other object.

An overt act is some actual, outward, physical action, as opposed to mere talk or planning. It is not enough that someone just intends to commit a crime or talks about doing so. The overt act must also be a step toward carrying out that crime. Preliminary preparations to commit a crime are not enough.

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant did that overt act with the intent to impair the integrity or use of the record, document, or other object in an official proceeding, whether or not the proceeding was pending at that time. A person's intent refers to their objective or purpose. You may examine the defendant's actions and words, and all of the surrounding circumstances, to help you determine whether the defendant had the intent to impair the integrity or use of the record, document, or other object in an official proceeding.

An "official proceeding" includes a proceeding before a:

- **(court)**

- (grand jury),
- (state agency or commission, which relates to an alleged violation of a criminal statute or the laws and regulations enforced by the:
 - (state ethics commission),
 - (state secretary),
 - (office of the inspector general),
 - (office of campaign and political finance),
- (state agency or commission, which relates to an alleged violation for which the attorney general may issue a civil investigative demand.)

The Commonwealth does not have to prove that an official proceeding was pending at the time. Likewise, the Commonwealth does not have to prove that the record, document, or other object would have been admitted into evidence at an official proceeding.

If the Commonwealth has proven both elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of the elements beyond a reasonable doubt, you must find the defendant not guilty.

NOTES:

1. **Attempt to destroy evidence.** “[T]he crime of attempted destruction of evidence under G. L. c. 268, § 13E (b), is an independent statutory offense, and is distinct from the crime of general attempt, G. L. c. 274, § 6.” *Commonwealth v. Martinez*, 98 Mass. App. Ct. 545, 550 (2020) (internal quotation and citation omitted). “[W]ith respect to complaints or indictments alleging attempt under G. L. c. 268, § 13E (b), the complaint or indictment need not allege an overt act if the indictment otherwise places the defendant on fair notice of the offense.” *Martinez, supra*, citing *Commonwealth v. Canty*, 466 Mass. 535, 548 (2013).

2. **Sufficiency of evidence of attempt.** Evidence of attempt was found sufficient where after the defendant, a court officer, learned of a sexual assault complaint and was arraigned on charges, he lied to investigators about the existence of a cell phone and asked a colleague to “take,” “smash,” and “throw ... in the river” a cell phone that contained pornographic images of the defendant's penis and the breasts and vaginas of unknown women. See *Commonwealth v. Martinez*, 98 Mass. App. Ct. 545, 546, 551 (2020).