

AUTO STRIPPING IN THE SECOND DEGREE
(Auto Stripping; Prior Conviction)
Penal Law § 165.10(1)
(Committed on or after Nov. 1, 1996)¹

This crime elevates the crime of Auto Stripping in the Third Degree to a felony when the defendant has been convicted of Auto Stripping in the Second or Third Degree within the previous five years.

The aggravating element of a prior conviction must be charged in a special information. The defendant must be arraigned upon the special information in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the previous conviction, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. *See, People v. Cooper*, 78 NY2d 476 (1991). Thus, if the defendant admits the aggravating element, the charge for this crime will be essentially identical to that for Auto Stripping in the Third Degree. If the defendant denies the aggravating element or remains mute, the court should add as an element of this crime:

"and 3. [or 4.] That the defendant had been convicted of Auto Stripping in the (*specify*) Degree within the previous five [5] years."

¹ This crime was initially named Auto Stripping in the First Degree and applied to crimes committed on or after November 1, 1984. Effective November 1, 1996, the crime was renamed Auto Stripping in the Second Degree.