

**UNLAWFUL MANUFACTURE OF METHAMPHETAMINE  
IN THE SECOND DEGREE  
(Previous Conviction)  
Penal Law § 220.74(2)  
(Committed on or after Oct. 1, 2005)**

No charge has been prepared for this offense, which elevates the crime of Unlawful Manufacture of Methamphetamine in the Third Degree (under Penal Law § 220.73) to Unlawful Manufacture of Methamphetamine in the Second Degree when the defendant commits the crime of Unlawful Manufacture of Methamphetamine in the Third Degree “and has previously been convicted within the preceding five years” of any of the offenses set forth in Penal Law §§ 220.71; 220.72; 220.73; 220.74; 220.75 or 220.76.

The aggravating element must be charged in a special information, and after the commencement of trial the defendant must be arraigned on the special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add the element to the definition of the offense and the list of elements. CPL § 200.60. See *People v. Cooper*, 78 NY2d 476 (1991).

For the basic charge, see the charge for Unlawful Manufacture of Methamphetamine in the Third Degree under Penal Law § 220.73.