

**IDENTITY THEFT SECOND DEGREE
(Previous Conviction)
Penal Law § 190.79(4)
(Committed on or after Nov. 1, 2002)**

This crime elevates the crime of Identity Theft in the Third Degree to a felony when the defendant has been convicted of certain enumerated crimes 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 procedures 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 N.Y.2d 476 (1991). Thus, if the defendant admits the aggravating element, the charge for this crime will be essentially identical to the charge for Identity Theft in the Third Degree.

If the defendant denies the aggravating element or remains mute, the court should read the definition of the crime with the reference to the predicate conviction and add it as an element of this crime, e.g.,

“and, 4. That the defendant has been convicted of (specify crime) within the previous five [5] years.”