

AGGRAVATED INSURANCE FRAUD
PENAL LAW § 176.35
No Charge Prepared

Note: The instant crime is defined as follows:

A person is guilty of aggravated insurance fraud in the fourth degree when he commits a fraudulent insurance act, and

has been previously convicted within the preceding five years of any offense, an essential element of which is the commission of a fraudulent insurance act.

With respect to the latter element (predicate conviction), the defendant must be arraigned upon a special information alleging same in accordance with the procedure set forth in CPL 200.60(3). See *People v. Cooper*, 78 NY2d 476 (1991).

If, upon such arraignment, the defendant admits the allegations of the special information, the court must not make any reference to that element in the definition of the instant crime or in listing its elements. Accordingly, the instruction for “insurance fraud in the fifth degree” [Penal Law § 176.35], with the name of the crime changed to “aggravated insurance fraud,” applies.

If the defendant denies the allegations of the special information or remains mute, the instruction for “insurance fraud in the fifth degree” [Penal Law § 176.35], with the name of the crime changed to “insurance fraud in the fifth degree,” continues to apply except that the court must add the element (predicate crime against same victim or family member) to the definition of the crime, and to the list of elements to be proved; e.g.:

and (specify element #). That the defendant was previously convicted within the preceding five years of (specify).