

**CRIMINALLY USING DRUG PARAPHERNALIA
IN THE FIRST DEGREE
Penal Law § 220.55
(Committed on or after Sept. 1, 1971)**

The statutory definition has two parts:

A person is guilty of criminally using drug paraphernalia in the first degree when

(1) he or she commits the crime of criminally using drug paraphernalia in the second degree and

(2) he or she has previously been convicted of criminally using drug paraphernalia in the second degree.

Procedure and Jury Instruction

With respect to part (2), 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). See Model Colloquy for arraignment on a Special Information.

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 this crime will be “criminally using drug paraphernalia in the second degree,” with the name of the crime changed to “criminally using drug paraphernalia in the first degree.”

If the defendant denies the allegations of the special information or remains mute, the court may use the instruction for “criminally using drug paraphernalia in the second degree,” but must include the part (2) elements in reciting the definition of the crime and after defining the applicable crime(s), list part (2) in the elements to be proved beyond a reasonable doubt.