§ 200.20 Indictment; what offenses may be charged; joinder of offenses and consolidation of indictments.

1. An indictment must charge at least one crime and may, in addition, charge in separate counts one or more other offenses, including petty offenses, provided that all such offenses are joinable pursuant to the principles prescribed in subdivision two.

2. Two offenses are "joinable" when:

(a) They are based upon the same act or upon the same criminal transaction, as that term is defined in subdivision two of section 40.10; or

(b) Even though based upon different criminal transactions, such offenses, or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first; or

(c) Even though based upon different criminal transactions, and even though not joinable pursuant to paragraph (b), such offenses are defined by the same or similar statutory provisions and consequently are the same or similar in law; or

(d) Though not directly joinable with each other pursuant to paragraph (a), (b) or (c), each is so joinable with a third offense contained in the indictment. In such case, each of the three offenses may properly be joined not only with each of the other two but also with any further offense joinable with either of the other two, and the chain of joinder may be further extended accordingly.

3. In any case where two or more offenses or groups of offenses charged in an indictment are based upon different criminal transactions, and where their joinability rests solely upon the fact that such offenses, or as the case may be at least one offense of each group, are the same or similar in law, as prescribed in paragraph (c) of subdivision two, the court, in the interest of justice and for good cause shown, may, upon application of either a defendant or the people, in its discretion, order that any such offenses be tried separately from

the other or others thereof. Good cause shall include but not be limited to situations where there is:

(a) Substantially more proof on one or more such joinable offenses than on others and there is a substantial likelihood that the jury would be unable to consider separately the proof as it relates to each offense.

(b) A convincing showing that a defendant has both important testimony to give concerning one count and a genuine need to refrain from testifying on the other, which satisfies the court that the risk of prejudice is substantial.

(i) Good cause, under this paragraph (b), may be established in writing or upon oral representation of counsel on the record. Any written or oral representation may be based upon information and belief, provided the sources of such information and the grounds of such belief are set forth.

(ii) Upon the request of counsel, any written or recorded showing concerning the defendant's genuine need to refrain from testifying shall be ex parte and in camera. The in camera showing shall be sealed but a court for good cause may order unsealing. Any statements made by counsel in the course of an application under this paragraph (b) may not be offered against the defendant in any criminal action for impeachment purposes or otherwise.

4. When two or more indictments against the same defendant or defendants charge different offenses of a kind that are joinable in a single indictment pursuant to subdivision two, the court may, upon application of either the people or a defendant, order that such indictments be consolidated and treated as a single indictment for trial purposes. If such indictments, in addition to charging offenses which are so joinable charge other offenses which are not so joinable, they may nevertheless be consolidated for the limited purpose of jointly trying the joinable offenses. In such case, such indictments remain in existence with respect to any nonjoinable offenses and may be prosecuted accordingly. Nothing herein precludes the consolidation of an indictment with a superior court information.

5. A court's determination of an application for consolidation

pursuant to subdivision four is discretionary; except that where an application by the defendant seeks consolidation with respect to offenses which are, pursuant to paragraph (a) of subdivision two, of a kind that are joinable in a single indictment by reason of being based upon the same act or criminal transaction, the court must order such consolidation unless good cause to the contrary be shown.

6. Where an indictment charges at least one offense against a defendant who was under the age of seventeen, or commencing October first, two thousand nineteen, eighteen at the time of the commission of the crime and who did not lack criminal responsibility for such crime by reason of infancy, the indictment may, in addition, charge in separate counts one or more other offenses for which such person would not have been criminally responsible by reason of infancy, if:

(a) the offense for which the defendant is criminally responsible and the one or more other offenses for which he or she would not have been criminally responsible by reason of infancy are based upon the same act or upon the same criminal transaction, as that term is defined in subdivision two of section 40.10 of this chapter; or

(b) the offenses are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first.