§ 200.60 Indictment; allegations of previous convictions prohibited.

1. When the fact that the defendant has been previously convicted of an offense raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter, an indictment for such higher offense may not allege such previous conviction. If a reference to previous conviction is contained in the statutory name or title of such an offense, such name or title may not be used in the indictment, but an improvised name or title must be used which, by means of the phrase "as a felony" or in some other manner, labels and distinguishes the offense without reference to a previous conviction. This subdivision does not apply to an indictment or a count thereof that charges escape in the second degree pursuant to subdivision two of section 205.10 of the penal law, or escape in the first degree pursuant to section 205.15 thereof.

2. An indictment for such an offense must be accompanied by a special information, filed by the district attorney with the court, charging that the defendant was previously convicted of a specified offense. Except as provided in subdivision three, the people may not refer to such special information during the trial nor adduce any evidence concerning the previous conviction alleged therein.

3. After commencement of the trial and before the close of the people's case, the court, in the absence of the jury, must arraign the defendant upon such special information, and must advise him that he may admit the previous conviction alleged, deny it or remain mute. Depending upon the defendant's response, the trial of the indictment must then proceed as follows:

(a) If the defendant admits the previous conviction, that element of the offense charged in the indictment is deemed established, no evidence in support thereof may be adduced by the people, and the court must submit the case to the jury without reference thereto and as if the fact of such previous conviction were not an element of the offense. The court may not submit to the jury any lesser included offense which is distinguished from the offense charged solely by the fact that a previous conviction is not an element thereof.

(b) If the defendant denies the previous conviction or remains mute,

the people may prove that element of the offense charged before the jury as a part of their case. In any prosecution under subparagraph (ix) of paragraph (a) of subdivision one of section 125.27 of the penal law, if the defendant denies the previous murder conviction or remains mute, the people may prove that element of the offense only after the jury has first found the defendant guilty of intentionally causing the death of a person as charged in the indictment, in which case the court shall then permit the people and the defendant to offer evidence and argument consistent with the relevant provisions of section 260.30 of this chapter with respect to the previous murder conviction.

4. Nothing contained in this section precludes the people from proving a prior conviction before a grand jury or relieves them from the obligation or necessity of so doing in order to submit a legally sufficient case.