§ 200.62 Indictment; special information for child sexual assault offender.

1. Whenever a person is charged with the commission or attempted commission of an offense defined in article one hundred thirty of the penal law which constitutes a felony and it appears that the victim of such offense was less than fifteen years old, an indictment for such offense may be accompanied by a special information, filed by the district attorney with the court, alleging that the victim was less than fifteen years old at the time of the commission of the offense; provided, however, that such an information need not be filed when the age of the victim is an element of the offense.

2. Prior to trial, or after the commencement of the trial but before the close of the people's case, the court, in the absence of the jury, must arraign the defendant upon such information and advise him or her that he or she may admit such allegation, deny it or remain mute. Depending upon the defendant's response, the trial of the indictment must proceed as follows:

(a) If the defendant admits that the alleged victim was less than fifteen years old at the time of the commission or attempted commission of the offense, that allegation shall be deemed established for all subsequent purposes, including sentencing pursuant to section 70.07 of the penal law.

(b) If the defendant denies such allegation or remains mute, the people may, by proof beyond a reasonable doubt, prove before the jury or, where the defendant has waived a jury trial, the court, that the alleged victim was less than fifteen years old at the time of the commission or attempted commission of the offense.

(c) Nothing in this subdivision shall prevent the people, in a trial before the court or a jury, from making reference to and introducing evidence of the victim's age.

3. Where a jury, pursuant to paragraph (b) of subdivision two of this section, makes the determination of whether the alleged victim of the offense was less than fifteen years old, such jury shall consider and render its verdict on such issue only after rendering its verdict with

regard to the offense.

4. A determination pursuant to this section that the victim was less than fifteen years old at the time of the commission of the offense shall be binding in any future proceeding in which the issue may arise unless the underlying conviction or determination is vacated or reversed.