§ 200.63 Indictment; special information for aggravated family offense.

1. Whenever a person is charged with the commission or attempted commission of an aggravated family offense as defined in section 240.75 of the penal law, an indictment or information for such offense shall be accompanied by a special information, filed by the district attorney with the court, alleging that the defendant was previously convicted of a specified offense as defined in subdivision two of section 240.75 of the penal law, that at the time of the previous offense the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of this chapter, and that such previous conviction took place within the time period specified in subdivision one of section 240.75 of the penal law. Except as provided herein, the people may not refer to such special information during trial nor adduce any evidence concerning the allegations therein.

2. Prior to the commencement of the trial, 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 each such allegation, deny any such allegation or remain mute with respect to any such allegation. Depending upon the defendant's response, the trial of the indictment or information must then proceed as follows:

(a)(i) If the previous conviction is for an aggravated family offense as defined in section 240.75 of the penal law, and the defendant admits the previous conviction or that it took place within the time period specified in subdivision one of section 240.75 of the penal law, such admitted allegation or allegations shall be deemed established for the purposes of the present prosecution, including sentencing pursuant to section 70.00 of the penal law. The court must submit the case to the jury as if such admitted allegation or allegations were not elements of the offense.

(ii) If the defendant denies the previous conviction or remains mute with respect to it, the people may prove, beyond a reasonable doubt, that element of the offense before the jury as a part of their case.

(iii) If the defendant denies that the previous conviction took place within the time period specified in subdivision one of section 240.75 of

the penal law, or remains mute with respect to that matter, the people may prove, beyond a reasonable doubt, before the jury as part of their case, that the previous conviction took place within the time period specified.

(b)(i) If the previous conviction is for a specified offense as defined in subdivision two of section 240.75 of the penal law, other than an aggravated family offense, and the defendant admits such previous conviction, that it took place within the time period specified in subdivision one of section 240.75 of the penal law, or that the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of this chapter, such admitted allegation or allegations shall be deemed established for the purposes of the present prosecution, including sentencing pursuant to section 70.00 of the penal law. The court must submit the case to the jury as if the admitted allegation or allegations were not elements of the offense.

(ii) If the defendant denies the previous conviction or remains mute with respect to it, the people may prove, beyond a reasonable doubt, that element of the offense before the jury as a part of their case.

(iii) If the defendant denies that the previous conviction took place within the time period specified in subdivision one of section 240.75 of the penal law, or remains mute with respect to that matter, the people may prove, beyond a reasonable doubt, before the jury as part of their case, that the previous conviction took place within the time period specified.

(iv) If the defendant denies that the defendant and the person against whom the previous offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of this chapter, or remains mute with respect to that matter, the people may prove, beyond a reasonable doubt, that element of the offense before the jury as a part of their case.