§ 200.70 Indictment; amendment of.

1. At any time before or during trial, the court may, upon application of the people and with notice to the defendant and opportunity to be heard, order the amendment of an indictment with respect to defects, errors or variances from the proof relating to matters of form, time, place, names of persons and the like, when such an amendment does not change the theory or theories of the prosecution as reflected in the evidence before the grand jury which filed such indictment, or otherwise tend to prejudice the defendant on the merits. Where the accusatory instrument is a superior court information, such an amendment may be made when it does not tend to prejudice the defendant on the merits. Upon permitting such an amendment, the court must, upon application of the defendant, order any adjournment of the proceedings which may, by reason of such amendment, be necessary to accord the defendant adequate opportunity to prepare his defense.

2. An indictment may not be amended in any respect which changes the theory or theories of the prosecution as reflected in the evidence before the grand jury which filed it; nor may an indictment or superior court information be amended for the purpose of curing:

(a) A failure thereof to charge or state an offense; or

(b) Legal insufficiency of the factual allegations; or

(c) A misjoinder of offenses; or

(d) A misjoinder of defendants.