§ 200.95 Indictment; bill of particulars.

1. Definitions. (a) "Bill of particulars" is a written statement by the prosecutor specifying, as required by this section, items of factual information which are not recited in the indictment and which pertain to the offense charged and including the substance of each defendant's conduct encompassed by the charge which the people intend to prove at trial on their direct case, and whether the people intend to prove that the defendant acted as principal or accomplice or both, and items of factual information which are not recited in a special forfeiture information or prosecutor's forfeiture information containing one or more forfeiture counts and which pertain to the substance of each defendant's conduct giving rise to the forfeiture claim, the approximate value of property for which forfeiture is sought, the nature and extent of the defendant's interest in such property, and the extent of the defendant's gain, if any, from the offense charged. However, the prosecutor shall not be required to include in the bill of particulars matters of evidence relating to how the people intend to prove the elements of the offense charged or how the people intend to prove any item of factual information included in the bill of particulars.

(b) "Request for a bill of particulars" is a written request served by defendant upon the people, without leave of the court, requesting a bill of particulars, specifying the items of factual information desired, and alleging that defendant cannot adequately prepare or conduct his defense without the information requested.

2. Bill of particulars upon request. Upon a timely request for a bill of particulars by a defendant against whom an indictment is pending, the prosecutor shall within fifteen days of the service of the request or as soon thereafter as is practicable, serve upon the defendant or his attorney, and file with the court, the bill of particulars, except to the extent the prosecutor shall have refused to comply with the request pursuant to subdivision four of this section.

3. Timeliness of request. A request for a bill of particulars shall be timely if made within thirty days after arraignment and before the commencement of trial. If the defendant is not represented by counsel,

and has requested an adjournment to obtain counsel or to have counsel assigned, the thirty day period shall commence, for the purposes of a request for a bill of particulars by the defendant, on the date counsel initially appears on his behalf. However, the court may direct compliance with a request for a bill of particulars that, for good cause shown, could not have been made within the time specified.

4. Request refused. The prosecutor may refuse to comply with the request for a bill of particulars or any portion of the request for a bill of particulars to the extent he reasonably believes that the item of factual information requested is not authorized to be included in a bill of particulars, or that such information is not necessary to enable the defendant adequately to prepare or conduct his defense, or that a protective order would be warranted or that the demand is untimely. Such refusal shall be made in a writing, which shall set forth the grounds of such belief as fully as possible, consistent with the reason for the refusal. Within fifteen days of the request or as soon thereafter as practicable, the refusal shall be served upon the defendant and a copy shall be filed with the court.

5. Court ordered bill of particulars. Where a prosecutor has timely served a written refusal pursuant to subdivision four of this section and upon motion, made in writing, of a defendant, who has made a request for a bill of particulars and whose request has not been complied with in whole or in part, the court must, to the extent a protective order is not warranted, order the prosecutor to comply with the request if it is satisfied that the items of factual information requested are authorized to be included in a bill of particulars, and that such information is necessary to enable the defendant adequately to prepare or conduct his defense and, if the request was untimely, a finding of good cause for the delay. Where a prosecutor has not timely served a written refusal pursuant to subdivision four of this section the court must, unless it is satisfied that the people have shown good cause why such an order should not be issued, issue an order requiring the prosecutor to comply or providing for any other order authorized by section 245.80 of this part.

6. Motion procedure. A motion for a bill of particulars shall be made as prescribed in section 255.20. Upon an order granting a motion pursuant to this section, the prosecutor must file with the court a bill of particulars, reciting every item of information designated in the order, and serve a copy thereof upon the defendant. Pending such filing and service, the proceedings are stayed.

7. Protective order. (a) The court in which the criminal action is pending may, upon motion of the prosecutor, or of any affected person, or upon determination of a motion of defendant for a court ordered bill of particulars, or upon its own initiative, issue a protective order denying, limiting, conditioning, delaying or regulating the bill of particulars for good cause, including constitutional limitations, danger to the integrity of physical evidence or a substantial risk of physical harm, intimidation, economic reprisal, bribery or unjustified annoyance or embarrassment to any person or an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants, or any other factor or set of factors which outweighs the need for the bill of particulars.

(b) An order limiting, conditioning, delaying or regulating the bill of particulars may, among other things, require that any material copied or derived therefrom be maintained in the exclusive possession of the attorney for the defendant and be used for the exclusive purpose of preparing for the defense of the criminal action.

8. Amendment. At any time before commencement of trial, the prosecutor may, without leave of the court, serve upon defendant and file with the court an amended bill of particulars. At any time during trial, upon application of the prosecutor and with notice to the defendant and an opportunity for him to be heard, the court must, upon finding that no undue prejudice will accrue to defendant and that the prosecutor has acted in good faith, permit the prosecutor to amend the bill of particulars. Upon any amendment of the bill of particulars, the court must, upon application of defendant, order an adjournment of the proceedings or any other action it deems appropriate which may, by reason of the amendment, be necessary to accord the defendant an adequate opportunity to defend.