

PERSISTENT SEXUAL ABUSE
Penal Law § 130.53
(Committed on or after November 1, 2014)

No separate charge has been prepared for this crime which elevates the penalty for the commission of:

forcible touching [Penal Law § 130.52],
sexual abuse in the third degree [Penal Law § 130.55],
and
sexual abuse in the second degree [Penal Law §130.60]

for a person previously convicted of a crime specified in the definition of “persistent sexual abuse”¹

There is a CJI charge for each of the three above listed crimes. Thus, if, upon the defendant’s arraignment on a special information specifying the prior conviction,² the defendant admits the allegations of the special information, the court should utilize the charge for the applicable above listed crime and simply change the name of the crime to “persistent sexual abuse.”

If the defendant denies the allegations of the special information or remains mute, the court should still utilize the charge for the applicable above listed crime and change the name of the crime to “persistent sexual abuse” and include the following in that charge:

[1] add to the definition of the crime, the second part of the definition of “persistent sexual abuse” that requires a prior conviction of a crime;

[2] in the definition section of the charge, add the definition of the crime the defendant was allegedly convicted of; and

[3] in the elements to be proven section, add as a last element:

“That the defendant was within the previous ten-year period [excluding any time during which such person was incarcerated for any reason] convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of (specify).”

¹ The two parts to the statutory definition of “persistent sexual abuse” are:

[1] A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and

[2] within the previous ten year period, excluding any time during which such person was incarcerated for any reason, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

² CPL 200.60(3). See *People v. Cooper*, 78 NY2d 476 (1991). See Model Colloquy for arraignment on a Special Information.