

1417--B

2011-2012 Regular Sessions

I N   S E N A T E

January 7, 2011

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Introduced by Sens. SALAND, AVELLA, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the executive law and the vehicle and traffic law, in relation to offenses involving sexual performances by a child

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The penal law is amended by adding a new section 263.09 to  
2     read as follows:  
3     S 263.09 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST  
4     DEGREE.  
5     A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A  
6     CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-  
7     OF, HE PRODUCES, DIRECTS OR PROMOTES TWENTY-FIVE OR MORE OBSCENE  
8     PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT BY A CHILD LESS THAN SEVENTEEN  
9     YEARS OF AGE.  
10    PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE  
11    IS A CLASS C FELONY.  
12    S 2. Section 263.10 of the penal law, as amended by chapter 1 of the  
13    laws of 2000, is amended to read as follows:  
14    S 263.10 Promoting an obscene sexual performance by a child IN THE  
15    SECOND DEGREE.  
16    A person is guilty of promoting an obscene sexual performance by a  
17    child IN THE SECOND DEGREE when, knowing the character and content ther-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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eof, he produces, directs or promotes any obscene performance which includes sexual conduct by a child less than seventeen years of age.

Promoting an obscene sexual performance by a child IN THE SECOND DEGREE is a class D felony.

S 3. Section 263.11 of the penal law, as added by chapter 11 of the laws of 1996, is amended to read as follows:

S 263.11 Possessing an obscene sexual performance by a child IN THE THIRD DEGREE.

A person is guilty of possessing an obscene sexual performance by a child IN THE THIRD DEGREE when, knowing the character and content thereof, he knowingly has in his possession or control any obscene performance which includes sexual conduct by a child less than sixteen years of age.

Possessing an obscene sexual performance by a child IN THE THIRD DEGREE is a class E felony.

S 4. The penal law is amended by adding three new sections 263.12, 263.13 and 263.14 to read as follows:

S 263.12 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE KNOWINGLY HAS IN HIS POSSESSION OR CONTROL TWENTY-FIVE OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT BY A CHILD LESS THAN SIXTEEN YEARS OF AGE.

POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 263.13 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE KNOWINGLY HAS IN HIS POSSESSION OR CONTROL TWO HUNDRED FIFTY OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT BY A CHILD LESS THAN SIXTEEN YEARS OF AGE.

POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS C FELONY.

S 263.14 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE PRODUCES, DIRECTS OR PROMOTES TWENTY-FIVE OR MORE PERFORMANCES WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN SEVENTEEN YEARS OF AGE.

PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A CLASS C FELONY.

S 5. Section 263.15 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

S 263.15 Promoting a sexual performance by a child IN THE SECOND DEGREE.

A person is guilty of promoting a sexual performance by a child IN THE SECOND DEGREE when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a child less than seventeen years of age.

Promoting a sexual performance by a child IN THE SECOND DEGREE is a class D felony.

S 6. Section 263.16 of the penal law, as added by chapter 11 of the laws of 1996, is amended and two new sections 263.17 and 263.18 are added to read as follows:

S 263.16 Possessing a sexual performance by a child IN THE THIRD DEGREE.

1 A person is guilty of possessing a sexual performance by a child IN  
2 THE THIRD DEGREE when, knowing the character and content thereof, he  
3 knowingly has in his possession or control any performance which  
4 includes sexual conduct by a child less than sixteen years of age.

5 Possessing a sexual performance by a child IN THE THIRD DEGREE is a  
6 class E felony.

7 S 263.17 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND  
8 DEGREE.

9 A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN  
10 THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE  
11 KNOWINGLY HAS IN HIS POSSESSION OR CONTROL TWENTY-FIVE OR MORE PERFORM-  
12 ANCES WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN SIXTEEN YEARS  
13 OF AGE.

14 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A  
15 CLASS D FELONY.

16 S 263.18 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

17 A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN  
18 THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE  
19 KNOWINGLY HAS IN HIS POSSESSION OR CONTROL TWO HUNDRED FIFTY OR MORE  
20 PERFORMANCES WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN SIXTEEN  
21 YEARS OF AGE.

22 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A  
23 CLASS C FELONY.

24 S 7. Subdivision 1 of section 263.20 of the penal law, as amended by  
25 chapter 1 of the laws of 2000, is amended to read as follows:

26 1. Under this article, it shall be an affirmative defense that the  
27 defendant in good faith reasonably believed the person appearing in the  
28 performance was, for purposes of section 263.11 [or], 263.12, 263.13,  
29 263.16, 263.17 OR 263.18 of this article, sixteen years of age or over  
30 or, for purposes of section 263.05, 263.09, 263.10, 263.14 or 263.15 of  
31 this article, seventeen years of age or over.

32 S 8. Paragraph (d) of subdivision 7 of section 995 of the executive  
33 law, as amended by chapter 2 of the laws of 2006, is amended to read as  
34 follows:

35 (d) any of the following felonies, or an attempt thereof where such  
36 attempt is a felony offense:

37 aggravated assault upon a person less than eleven years old, as  
38 defined in section 120.12 of the penal law; menacing in the first  
39 degree, as defined in section 120.13 of the penal law; reckless endan-  
40 germent in the first degree, as defined in section 120.25 of the penal  
41 law; stalking in the second degree, as defined in section 120.55 of the  
42 penal law; criminally negligent homicide, as defined in section 125.10  
43 of the penal law; vehicular manslaughter in the second degree, as  
44 defined in section 125.12 of the penal law; vehicular manslaughter in  
45 the first degree, as defined in section 125.13 of the penal law;  
46 persistent sexual abuse, as defined in section 130.53 of the penal law;  
47 aggravated sexual abuse in the fourth degree, as defined in section  
48 130.65-a of the penal law; female genital mutilation, as defined in  
49 section 130.85 of the penal law; facilitating a sex offense with a  
50 controlled substance, as defined in section 130.90 of the penal law;  
51 unlawful imprisonment in the first degree, as defined in section 135.10  
52 of the penal law; custodial interference in the first degree, as defined  
53 in section 135.50 of the penal law; criminal trespass in the first  
54 degree, as defined in section 140.17 of the penal law; criminal tamper-  
55 ing in the first degree, as defined in section 145.20 of the penal law;  
56 tampering with a consumer product in the first degree, as defined in

1 section 145.45 of the penal law; robbery in the third degree as defined  
2 in section 160.05 of the penal law; identity theft in the second degree,  
3 as defined in section 190.79 of the penal law; identity theft in the  
4 first degree, as defined in section 190.80 of the penal law; promoting  
5 prison contraband in the first degree, as defined in section 205.25 of  
6 the penal law; tampering with a witness in the third degree, as defined  
7 in section 215.11 of the penal law; tampering with a witness in the  
8 second degree, as defined in section 215.12 of the penal law; tampering  
9 with a witness in the first degree, as defined in section 215.13 of the  
10 penal law; criminal contempt in the first degree, as defined in subdivi-  
11 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated  
12 criminal contempt, as defined in section 215.52 of the penal law; bail  
13 jumping in the second degree, as defined in section 215.56 of the penal  
14 law; bail jumping in the first degree, as defined in section 215.57 of  
15 the penal law; patronizing a prostitute in the second degree, as defined  
16 in section 230.05 of the penal law; patronizing a prostitute in the  
17 first degree, as defined in section 230.06 of the penal law; promoting  
18 prostitution in the second degree, as defined in section 230.30 of the  
19 penal law; promoting prostitution in the first degree, as defined in  
20 section 230.32 of the penal law; compelling prostitution, as defined in  
21 section 230.33 of the penal law; disseminating indecent materials to  
22 minors in the second degree, as defined in section 235.21 of the penal  
23 law; disseminating indecent materials to minors in the first degree, as  
24 defined in section 235.22 of the penal law; riot in the first degree, as  
25 defined in section 240.06 of the penal law; criminal anarchy, as defined  
26 in section 240.15 of the penal law; aggravated harassment of an employee  
27 by an inmate, as defined in section 240.32 of the penal law; unlawful  
28 surveillance in the second degree, as defined in section 250.45 of the  
29 penal law; unlawful surveillance in the first degree, as defined in  
30 section 250.50 of the penal law; endangering the welfare of a vulnerable  
31 elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the  
32 second degree, as defined in section 260.32 of the penal law; endanger-  
33 ing the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR  
34 PHYSICALLY DISABLED PERSON in the first degree, as defined in section  
35 260.34 of the penal law; use of a child in a sexual performance, as  
36 defined in section 263.05 of the penal law; PROMOTING AN OBSCENE SEXUAL  
37 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09  
38 OF THE PENAL LAW; promoting an obscene sexual performance by a child IN  
39 THE SECOND DEGREE, as defined in section 263.10 of the penal law;  
40 possessing an obscene sexual performance by a child IN THE THIRD DEGREE,  
41 as defined in section 263.11 of the penal law; POSSESSING AN OBSCENE  
42 SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION  
43 263.12 OF THE PENAL LAW; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A  
44 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.13 OF THE PENAL LAW;  
45 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED  
46 IN SECTION 263.14 OF THE PENAL LAW; promoting a sexual performance by a  
47 child IN THE SECOND DEGREE, as defined in section 263.15 of the penal  
48 law; possessing a sexual performance by a child IN THE THIRD DEGREE, as  
49 defined in section 263.16 of the penal law; POSSESSING A SEXUAL PERFORM-  
50 ANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.17 OF THE  
51 PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST  
52 DEGREE AS DEFINED IN SECTION 263.18 OF THE PENAL LAW; criminal  
53 possession of a weapon in the third degree, as defined in section 265.02  
54 of the penal law; criminal sale of a firearm in the third degree, as  
55 defined in section 265.11 of the penal law; criminal sale of a firearm  
56 to a minor, as defined in section 265.16 of the penal law; unlawful

wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or

S 9. Subdivisions 1 and 2 of section 263.00 of the penal law, as amended by chapter 1 of the laws of 2000, are amended to read as follows:

1. "Sexual performance" means any performance or part thereof which, for purposes of [section] SECTIONS 263.16, 263.17 AND 263.18 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of section 263.05, 263.14 or 263.15 of this article, includes sexual conduct by a child less than seventeen years of age.

2. "Obscene sexual performance" means any performance which, for purposes of [section] SECTIONS 263.11, 263.12 AND 263.13 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of [section] SECTIONS 263.09 AND 263.10 of this article, includes sexual conduct by a child less than seventeen years of age, in any material which is obscene, as such term is defined in section 235.00 of this chapter.

S 10. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.09, 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section

1 265.10 which constitute a felony relating to firearms and other danger-  
2 ous weapons; and sections 265.14 and 265.16 relating to criminal sale of  
3 a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to  
4 unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20  
5 relating to money laundering; or

6 S 11. Paragraph (b) of subdivision 4 of section 509-cc of the vehicle  
7 and traffic law, as amended by chapter 400 of the laws of 2011, is  
8 amended to read as follows:

9 (b) The offenses referred to in subparagraph (ii) of paragraph (a) of  
10 subdivision one and paragraph (b) of subdivision two of this section  
11 that result in permanent disqualification shall include a conviction  
12 under sections 100.13, 105.15, 105.17, 115.08, 120.12, 120.70, 125.10,  
13 125.11, 130.40, 130.53, 130.60, 130.65-a, 135.20, 160.15, 220.18,  
14 220.21, 220.39, 220.41, 220.43, 220.44, 230.25, 260.00, 263.09, 263.14,  
15 265.04 of the penal law or an attempt to commit any of the aforesaid  
16 offenses under section 110.00 of the penal law, or any offenses commit-  
17 ted under a former section of the penal law which would constitute  
18 violations of the aforesaid sections of the penal law, or any offenses  
19 committed outside this state which would constitute violations of the  
20 aforesaid sections of the penal law.

21 S 12. This act shall take effect on the first of November next  
22 succeeding the date on which it shall have become a law; provided,  
23 however, that the amendments to paragraph (b) of subdivision 4 of  
24 section 509-cc of the vehicle and traffic law made by section eleven of  
25 this act shall take effect on the same date and in the same manner as  
26 section 1 of chapter 400 of the laws of 2011, takes effect.