

1417

2011-2012 Regular Sessions

I N   S E N A T E

January 7, 2011

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Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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 OR SHE 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-  
18    eof, he OR SHE produces, directs or promotes any obscene performance  
19    which includes sexual conduct by a child less than seventeen years of  
20    age.  
21    Promoting an obscene sexual performance by a child IN THE SECOND  
22    DEGREE is a class D felony.  
23    S 3. Section 263.11 of the penal law, as added by chapter 11 of the  
24    laws of 1996, is amended to read as follows:

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

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

3 A person is guilty of possessing an obscene sexual performance by a  
4 child IN THE THIRD DEGREE when, knowing the character and content there-  
5 of, he OR SHE knowingly has in his OR HER possession or control any  
6 obscene performance which includes sexual conduct by a child less than  
7 sixteen years of age.

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

10 S 4. The penal law is amended by adding two new sections 263.12 and  
11 263.13 to read as follows:

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

14 A PERSON IS GUILTY OF POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A  
15 CHILD IN THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THER-  
16 EOF, HE OR SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL TWEN-  
17 TY-FIVE OR MORE OBSCENE PERFORMANCES WHICH INCLUDE SEXUAL CONDUCT BY A  
18 CHILD LESS THAN SIXTEEN YEARS OF AGE.

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

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

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

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

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

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

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

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

39 S 6. The penal law is amended by adding a new section 263.14 to read  
40 as follows:

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

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

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

48 S 7. Section 263.16 of the penal law, as added by chapter 11 of the  
49 laws of 1996, is amended and two new sections 263.17 and 263.18 are  
50 added to read as follows:

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

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

1 Possessing a sexual performance by a child IN THE THIRD DEGREE is a  
2 class E felony.

3 S 263.17 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND  
4 DEGREE.

5 A PERSON IS GUILTY OF POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN  
6 THE SECOND DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE OR  
7 SHE KNOWINGLY HAS IN HIS OR HER POSSESSION OR CONTROL TWENTY-FIVE OR  
8 MORE PERFORMANCES WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN  
9 SIXTEEN YEARS OF AGE.

10 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE IS A  
11 CLASS D FELONY.

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

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

18 POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE IS A  
19 CLASS C FELONY.

20 S 8. Subdivision 1 of section 263.20 of the penal law, as amended by  
21 chapter 1 of the laws of 2000, is amended to read as follows:

22 1. Under this article, it shall be an affirmative defense that the  
23 defendant in good faith reasonably believed the person appearing in the  
24 performance was, for purposes of section 263.11 [or], 263.12, 263.13,  
25 263.16, 263.17 OR 263.18 of this article, sixteen years of age or over  
26 or, for purposes of section 263.05, 263.09, 263.10, 263.14 or 263.15 of  
27 this article, seventeen years of age or over.

28 S 9. Paragraph (d) of subdivision 7 of section 995 of the executive  
29 law, as amended by chapter 2 of the laws of 2006, is amended to read as  
30 follows:

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

33 aggravated assault upon a person less than eleven years old, as  
34 defined in section 120.12 of the penal law; menacing in the first  
35 degree, as defined in section 120.13 of the penal law; reckless endan-  
36 germent in the first degree, as defined in section 120.25 of the penal  
37 law; stalking in the second degree, as defined in section 120.55 of the  
38 penal law; criminally negligent homicide, as defined in section 125.10  
39 of the penal law; vehicular manslaughter in the second degree, as  
40 defined in section 125.12 of the penal law; vehicular manslaughter in  
41 the first degree, as defined in section 125.13 of the penal law;  
42 persistent sexual abuse, as defined in section 130.53 of the penal law;  
43 aggravated sexual abuse in the fourth degree, as defined in section  
44 130.65-a of the penal law; female genital mutilation, as defined in  
45 section 130.85 of the penal law; facilitating a sex offense with a  
46 controlled substance, as defined in section 130.90 of the penal law;  
47 unlawful imprisonment in the first degree, as defined in section 135.10  
48 of the penal law; custodial interference in the first degree, as defined  
49 in section 135.50 of the penal law; criminal trespass in the first  
50 degree, as defined in section 140.17 of the penal law; criminal tamper-  
51 ing in the first degree, as defined in section 145.20 of the penal law;  
52 tampering with a consumer product in the first degree, as defined in  
53 section 145.45 of the penal law; robbery in the third degree as defined  
54 in section 160.05 of the penal law; identity theft in the second degree,  
55 as defined in section 190.79 of the penal law; identity theft in the  
56 first degree, as defined in section 190.80 of the penal law; promoting

1 prison contraband in the first degree, as defined in section 205.25 of  
2 the penal law; tampering with a witness in the third degree, as defined  
3 in section 215.11 of the penal law; tampering with a witness in the  
4 second degree, as defined in section 215.12 of the penal law; tampering  
5 with a witness in the first degree, as defined in section 215.13 of the  
6 penal law; criminal contempt in the first degree, as defined in subdivi-  
7 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated  
8 criminal contempt, as defined in section 215.52 of the penal law; bail  
9 jumping in the second degree, as defined in section 215.56 of the penal  
10 law; bail jumping in the first degree, as defined in section 215.57 of  
11 the penal law; patronizing a prostitute in the second degree, as defined  
12 in section 230.05 of the penal law; patronizing a prostitute in the  
13 first degree, as defined in section 230.06 of the penal law; promoting  
14 prostitution in the second degree, as defined in section 230.30 of the  
15 penal law; promoting prostitution in the first degree, as defined in  
16 section 230.32 of the penal law; compelling prostitution, as defined in  
17 section 230.33 of the penal law; disseminating indecent materials to  
18 minors in the second degree, as defined in section 235.21 of the penal  
19 law; disseminating indecent materials to minors in the first degree, as  
20 defined in section 235.22 of the penal law; riot in the first degree, as  
21 defined in section 240.06 of the penal law; criminal anarchy, as defined  
22 in section 240.15 of the penal law; aggravated harassment of an employee  
23 by an inmate, as defined in section 240.32 of the penal law; unlawful  
24 surveillance in the second degree, as defined in section 250.45 of the  
25 penal law; unlawful surveillance in the first degree, as defined in  
26 section 250.50 of the penal law; endangering the welfare of a vulnerable  
27 elderly person in the second degree, as defined in section 260.32 of the  
28 penal law; endangering the welfare of a vulnerable elderly person in the  
29 first degree, as defined in section 260.34 of the penal law; use of a  
30 child in a sexual performance, as defined in section 263.05 of the penal  
31 law; PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST  
32 DEGREE AS DEFINED IN SECTION 263.09 OF THE PENAL LAW; promoting an  
33 obscene sexual performance by a child IN THE SECOND DEGREE, as defined  
34 in section 263.10 of the penal law; possessing an obscene sexual  
35 performance by a child IN THE THIRD DEGREE, as defined in section 263.11  
36 of the penal law; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN  
37 THE SECOND DEGREE AS DEFINED IN SECTION 263.12 OF THE PENAL LAW;  
38 POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE  
39 AS DEFINED IN SECTION 263.13 OF THE PENAL LAW; PROMOTING A SEXUAL  
40 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.14  
41 OF THE PENAL LAW; promoting a sexual performance by a child IN THE  
42 SECOND DEGREE, as defined in section 263.15 of the penal law; possessing  
43 a sexual performance by a child IN THE THIRD DEGREE, as defined in  
44 section 263.16 of the penal law; POSSESSING A SEXUAL PERFORMANCE BY A  
45 CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.17 OF THE PENAL  
46 LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS  
47 DEFINED IN SECTION 263.18 OF THE PENAL LAW; criminal possession of a  
48 weapon in the third degree, as defined in section 265.02 of the penal  
49 law; criminal sale of a firearm in the third degree, as defined in  
50 section 265.11 of the penal law; criminal sale of a firearm to a minor,  
51 as defined in section 265.16 of the penal law; unlawful wearing of a  
52 body vest, as defined in section 270.20 of the penal law; hate crimes as  
53 defined in section 485.05 of the penal law; and crime of terrorism, as  
54 defined in section 490.25 of the penal law; or

1 S 10. Subdivisions 1 and 2 of section 263.00 of the penal law, as  
2 amended by chapter 1 of the laws of 2000, are amended to read as  
3 follows:

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

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

17 S 11. Paragraph (a) of subdivision 1 of section 460.10 of the penal  
18 law, as amended by chapter 405 of the laws of 2010, is amended to read  
19 as follows:

20 (a) Any of the felonies set forth in this chapter: sections 120.05,  
21 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-  
22 ing to strangulation; sections 125.10 to 125.27 relating to homicide;  
23 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and  
24 135.25 relating to kidnapping; section 135.35 relating to labor traf-  
25 ficking; section 135.65 relating to coercion; sections 140.20, 140.25  
26 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12  
27 relating to criminal mischief; article one hundred fifty relating to  
28 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand  
29 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health  
30 care fraud; article one hundred sixty relating to robbery; sections  
31 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of  
32 stolen property; sections 165.72 and 165.73 relating to trademark coun-  
33 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and  
34 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and  
35 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and  
36 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating  
37 to criminal diversion of prescription medications and prescriptions;  
38 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,  
39 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00,  
40 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20  
41 and 187.25 relating to residential mortgage fraud, sections 190.40 and  
42 190.42 relating to criminal usury; section 190.65 relating to schemes to  
43 defraud; sections 205.60 and 205.65 relating to hindering prosecution;  
44 sections 210.10, 210.15, and 215.51 relating to perjury and contempt;  
45 section 215.40 relating to tampering with physical evidence; sections  
46 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,  
47 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled  
48 substances; sections 225.10 and 225.20 relating to gambling; sections  
49 230.25, 230.30, and 230.32 relating to promoting prostitution; section  
50 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and  
51 235.22 relating to obscenity; sections 236.09, 263.10, 263.14 and 263.15  
52 relating to promoting a sexual performance by a child; sections 265.02,  
53 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section  
54 265.10 which constitute a felony relating to firearms and other danger-  
55 ous weapons; and sections 265.14 and 265.16 relating to criminal sale of  
56 a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to

1 unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20  
2 relating to money laundering; or

3 S 12. Paragraph (b) of subdivision 4 of section 509-cc of the vehicle  
4 and traffic law, as amended by chapter 360 of the laws of 1986, is  
5 amended to read as follows:

6 (b) The offenses referred to in subparagraph (ii) of paragraph (a) of  
7 subdivision one and paragraph (b) of subdivision two of this section  
8 that result in permanent disqualification shall include a conviction  
9 under sections 100.13, 105.15, 105.17, 115.08, 125.10, 125.15, 130.40,  
10 130.60, 130.65, 135.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43,  
11 260.00, 263.05, 263.09, 263.10, 263.11, 263.12, 263.13, 263.14, 263.15,  
12 263.16, 263.17, 263.18, 265.04 of the penal law or an attempt to commit  
13 any of the aforesaid offenses under section 110.00 of the penal law, or  
14 any offenses committed under a former section of the penal law which  
15 would constitute violations of the aforesaid sections of the penal law,  
16 or any offenses committed outside this state which would constitute  
17 violations of the aforesaid sections of the penal law.

18 S 13. This act shall take effect on the one hundred eightieth day  
19 after it shall have become a law.