

1417--A

Cal. No. 61

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sen. SALAND -- 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

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-
18 eof, he produces, directs or promotes any obscene performance which
19 includes sexual conduct by a child less than seventeen years of age.
20 Promoting an obscene sexual performance by a child IN THE SECOND
21 DEGREE is a class D felony.

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

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

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

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

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

12 S 4. The penal law is amended by adding three new sections 263.12,
13 263.13 and 263.14 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

48 S 6. 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
54 knowingly has in his possession or control any performance which
55 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
7 KNOWINGLY HAS IN HIS POSSESSION OR CONTROL TWENTY-FIVE OR MORE PERFORM-
8 ANCES WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN SIXTEEN YEARS
9 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
15 KNOWINGLY HAS IN HIS POSSESSION OR CONTROL TWO HUNDRED FIFTY OR MORE
16 PERFORMANCES WHICH INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN SIXTEEN
17 YEARS OF AGE.

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

20 S 7. 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 8. 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, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the
28 second degree, as defined in section 260.32 of the penal law; endanger-
29 ing the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR
30 PHYSICALLY DISABLED PERSON in the first degree, as defined in section
31 260.34 of the penal law; use of a child in a sexual performance, as
32 defined in section 263.05 of the penal law; PROMOTING AN OBSCENE SEXUAL
33 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.09
34 OF THE PENAL LAW; promoting an obscene sexual performance by a child IN
35 THE SECOND DEGREE, as defined in section 263.10 of the penal law;
36 possessing an obscene sexual performance by a child IN THE THIRD DEGREE,
37 as defined in section 263.11 of the penal law; POSSESSING AN OBSCENE
38 SEXUAL PERFORMANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION
39 263.12 OF THE PENAL LAW; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A
40 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.13 OF THE PENAL LAW;
41 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED
42 IN SECTION 263.14 OF THE PENAL LAW; promoting a sexual performance by a
43 child IN THE SECOND DEGREE, as defined in section 263.15 of the penal
44 law; possessing a sexual performance by a child IN THE THIRD DEGREE, as
45 defined in section 263.16 of the penal law; POSSESSING A SEXUAL PERFORM-
46 ANCE BY A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.17 OF THE
47 PENAL LAW; POSSESSING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
48 DEGREE AS DEFINED IN SECTION 263.18 OF THE PENAL LAW; criminal
49 possession of a weapon in the third degree, as defined in section 265.02
50 of the penal law; criminal sale of a firearm in the third degree, as
51 defined in section 265.11 of the penal law; criminal sale of a firearm
52 to a minor, as defined in section 265.16 of the penal law; unlawful
53 wearing of a body vest, as defined in section 270.20 of the penal law;
54 hate crimes as defined in section 485.05 of the penal law; and crime of
55 terrorism, as defined in section 490.25 of the penal law; or

1 S 9. 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 10. 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 263.09, 263.10 and 263.15 relat-
52 ing 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 11. 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, 263.14, 263.15, 265.04 of the penal law
12 or an attempt to commit any of the aforesaid offenses under section
13 110.00 of the penal law, or any offenses committed under a former
14 section of the penal law which would constitute violations of the afore-
15 said sections of the penal law, or any offenses committed outside this
16 state which would constitute violations of the aforesaid sections of the
17 penal law.

18 S 12. This act shall take effect on the first of November next
19 succeeding the date on which it shall have become a law.