

2609

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. REILICH, BARRA, KOLB, ALFANO, FINCH, ERRIGO --
Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, BURLING, CROUCH,
McDONOUGH, OAKS, SAYWARD, TEDISCO, TOWNSEND -- read once and referred
to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing the criminal
penalties for sexual performances by a child and in relation to
providing for consecutive sentencing upon certain multiple convictions

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

1 Section 1. 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 263.16 of this article,] includes sexual conduct
6 by a child less than [sixteen] EIGHTEEN years of age [or, for purposes
7 of section 263.05 or 263.15 of this article, includes sexual conduct by
8 a child less than seventeen years of age].
9 2. "Obscene sexual performance" means any performance which[, for
10 purposes of section 263.11 of this article,] includes sexual conduct by
11 a child less than [sixteen] EIGHTEEN years of age [or, for purposes of
12 section 263.10 of this article, includes sexual conduct by a child less
13 than seventeen years of age,] in any material which is obscene, as such
14 term is defined in section 235.00 of this chapter.
15 S 2. The penal law is amended by adding a new section 263.03 to read
16 as follows:
17 S 263.03 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE.
18 A PERSON IS GUILTY OF THE USE OF A CHILD IN A SEXUAL PERFORMANCE IN
19 THE FIRST DEGREE IF KNOWING THE CHARACTER AND CONTENT THEREOF HE
20 EMPLOYS, AUTHORIZES OR INDUCES A CHILD LESS THAN TWELVE YEARS OF AGE TO
21 ENGAGE IN A SEXUAL PERFORMANCE OR BEING A PARENT, LEGAL GUARDIAN OR

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

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1 CUSTODIAN OF SUCH CHILD, HE CONSENTS TO THE PARTICIPATION BY SUCH CHILD
2 IN A SEXUAL PERFORMANCE.

3 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE IS A CLASS
4 B FELONY.

5 S 3. Section 263.05 of the penal law, as amended by chapter 1 of the
6 laws of 2000, is amended to read as follows:

7 S 263.05 Use of a child in a sexual performance IN THE SECOND DEGREE.

8 A person is guilty of the use of a child in a sexual performance IN
9 THE SECOND DEGREE if knowing the character and content thereof he
10 employs, authorizes or induces a child less than [seventeen] EIGHTEEN
11 years of age to engage in a sexual performance or being a parent, legal
12 guardian or custodian of such child, he consents to the participation by
13 such child in a sexual performance.

14 Use of a child in a sexual performance IN THE SECOND DEGREE is a class
15 C felony.

16 S 4. The penal law is amended by adding a new section 263.08 to read
17 as follows:

18 S 263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
19 DEGREE.

20 A PERSON IS GUILTY OF PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A
21 CHILD IN THE FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THERE-
22 OF, HE PRODUCES, DIRECTS OR PROMOTES ANY OBSCENE PERFORMANCE WHICH
23 INCLUDES SEXUAL CONDUCT BY A CHILD LESS THAN TWELVE YEARS OF AGE.

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

26 S 5. Section 263.10 of the penal law, as amended by chapter 1 of the
27 laws of 2000, is amended to read as follows:

28 S 263.10 Promoting an obscene sexual performance by a child IN THE
29 SECOND DEGREE.

30 A person is guilty of promoting an obscene sexual performance by a
31 child IN THE SECOND DEGREE when, knowing the character and content ther-
32 eof, he produces, directs or promotes any obscene performance which
33 includes sexual conduct by a child less than [seventeen] EIGHTEEN years
34 of age.

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

37 S 6. Section 263.11 of the penal law, as added by chapter 11 of the
38 laws of 1996, is amended to read as follows:

39 S 263.11 Possessing an obscene sexual performance by a child.

40 A person is guilty of possessing an obscene sexual performance by a
41 child when, knowing the character and content thereof, he knowingly has
42 in his possession or control any obscene performance which includes
43 sexual conduct by a child less than [sixteen] EIGHTEEN years of age.

44 Possessing an obscene sexual performance by a child is a class E felo-
45 ny.

46 S 7. The penal law is amended by adding a new section 263.13 to read
47 as follows:

48 S 263.13 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE.

49 A PERSON IS GUILTY OF PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE
50 FIRST DEGREE WHEN, KNOWING THE CHARACTER AND CONTENT THEREOF, HE PRODUC-
51 ES, DIRECTS OR PROMOTES ANY PERFORMANCE WHICH INCLUDES SEXUAL CONDUCT BY
52 A CHILD LESS THAN TWELVE YEARS OF AGE.

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

55 S 8. Section 263.15 of the penal law, as amended by chapter 1 of the
56 laws of 2000, is amended to read as follows:

1 S 263.15 Promoting a sexual performance by a child IN THE SECOND DEGREE.
2 A person is guilty of promoting a sexual performance by a child IN THE
3 SECOND DEGREE when, knowing the character and content thereof, he
4 produces, directs or promotes any performance which includes sexual
5 conduct by a child less than [seventeen] EIGHTEEN years of age.

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

8 S 9. Section 263.16 of the penal law, as added by chapter 11 of the
9 laws of 1996, is amended to read as follows:

10 S 263.16 Possessing a sexual performance by a child.

11 A person is guilty of possessing a sexual performance by a child when,
12 knowing the character and content thereof, he knowingly has in his
13 possession or control any performance which includes sexual conduct by a
14 child less than [sixteen] EIGHTEEN years of age.

15 Possessing a sexual performance by a child is a class E felony.

16 S 10. Subdivision 1 of section 263.20 of the penal law, as amended by
17 chapter 1 of the laws of 2000, is amended to read as follows:

18 1. Under this article, it shall be an affirmative defense that the
19 defendant in good faith reasonably believed the person appearing in the
20 performance was, for purposes of section 263.11 or 263.16 of this arti-
21 cle, sixteen years of age or over or, for purposes of section 263.05,
22 263.10 or 263.15 of this article, [seventeen] EIGHTEEN years of age or
23 over.

24 S 11. The opening paragraph of subdivision 1 and subdivision 2 of
25 section 70.25 of the penal law, the opening paragraph of subdivision 1
26 as amended by chapter 372 of the laws of 1981 and subdivision 2 as
27 amended by chapter 56 of the laws of 1984, are amended and a new subdi-
28 vision 6 is added to read as follows:

29 Except as provided in subdivisions two, two-a [and], five AND SIX of
30 this section, when multiple sentences of imprisonment are imposed on a
31 person at the same time, or when a person who is subject to any undisc-
32 charged term of imprisonment imposed at a previous time by a court of
33 this state is sentenced to an additional term of imprisonment, the
34 sentence or sentences imposed by the court shall run either concurrently
35 or consecutively with respect to each other and the undischarged term or
36 terms in such manner as the court directs at the time of sentence. If
37 the court does not specify the manner in which a sentence imposed by it
38 is to run, the sentence shall run as follows:

39 2. When more than one sentence of imprisonment is imposed on a person
40 for two or more offenses committed through a single act or omission, or
41 through an act or omission which in itself constituted one of the
42 offenses and also was a material element of the other, the sentences,
43 except if one or more of such sentences is for a violation of section
44 263.03, 263.05, 263.08, 263.10, 263.13, 263.15, OR 270.20 of this chap-
45 ter, must run concurrently.

46 6. WHEN A PERSON IS CONVICTED OF USE OF A CHILD IN A SEXUAL PERFORM-
47 ANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.03 OF THIS CHAPTER OR
48 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE AS DEFINED
49 IN SECTION 263.05 OF THIS CHAPTER OR PROMOTING AN OBSCENE SEXUAL
50 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.08
51 OF THIS CHAPTER OR PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN
52 THE SECOND DEGREE AS DEFINED IN SECTION 263.10 OF THIS CHAPTER OR
53 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED
54 IN SECTION 263.13 OF THIS CHAPTER OR PROMOTING A SEXUAL PERFORMANCE BY A
55 CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.15 OF THIS CHAPTER,

1 AND ANY OTHER CRIME, THE SENTENCES FOR SUCH CRIMES SHALL RUN CONSEC-
2 UTIVELY.
3 S 12. This act shall take effect on the first of November next
4 succeeding the date on which it shall have become a law.