

9557

I N A S S E M B L Y

January 15, 2010

Introduced by M. of A. SCARBOROUGH -- read once and referred to the  
Committee on Codes

AN ACT to amend the penal law, the public health law, the criminal  
procedure law and the civil rights law, in relation to certain crimes  
against children

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

1 Section 1. The penal law is amended by adding a new section 260.08 to  
2 read as follows:

3 S 260.08 PROHIBITION OF THE SALE OF CHILDREN THROUGH ADOPTION, SURROGATE  
4 PARENTING OR OTHER MEANS.

5 1. A PERSON, CORPORATION, OR ASSOCIATION SHALL NOT ADVERTISE IN ANY  
6 MANNER THAT IT WILL RECEIVE CHILDREN FOR THE PURPOSE OF ADOPTION OR  
7 PURCHASE. A NEWSPAPER PUBLISHED IN THE STATE OF NEW YORK OR ANY OTHER  
8 PUBLICATION WHICH IS PREPARED, SOLD, OR DISTRIBUTED IN THE STATE OF NEW  
9 YORK SHALL NOT CONTAIN AN ADVERTISEMENT FROM A PERSON, CORPORATION,  
10 ASSOCIATION OR OTHER ENTITY WHICH SOLICITS CHILDREN FOR ADOPTION OR  
11 SOLICITS THE CUSTODY OF CHILDREN WITH INTENT TO MAKE A PROFIT FROM SUCH  
12 SOLICITATION.

13 2. A PERSON, AGENCY, INSTITUTION OR INTERMEDIARY SHALL NOT SELL OR  
14 PURCHASE OR PROCURE FOR SALE ANY CHILD FOR THE PURPOSE OF ADOPTION OR  
15 SEXUAL PERFORMANCE, SEX TRAFFICKING AS DEFINED IN SECTION 230.34 OF THIS  
16 CHAPTER OR CHILD LABOR TRAFFICKING AS DEFINED UNDER SECTION 135.34 OF  
17 THIS CHAPTER OR ANY OTHER PURPOSE, INCLUDING TERMINATION OF PARENTAL  
18 RIGHTS. THIS SECTION SHALL NOT PROHIBIT AN AUTHORIZED VOLUNTARY AGENCY  
19 FROM CHARGING A FEE FOR ADOPTION SERVICES.

20 3. A PERSON, AGENCY, INSTITUTION OR INTERMEDIARY SHALL NOT BE A PARTY  
21 TO A CONTRACT OR AGREEMENT WHICH WOULD COMPENSATE A WOMAN FOR HER ARTI-  
22 FICIAL INSEMINATION AND SUBSEQUENT TERMINATION OF PARENTAL RIGHTS TO A  
23 CHILD BORN AS A RESULT OF THAT ARTIFICIAL INSEMINATION. A PERSON, AGEN-  
24 CY, INSTITUTION OR INTERMEDIARY SHALL NOT RECEIVE COMPENSATION FOR THE  
25 FACILITATION OF CONTRACTS OR AGREEMENTS AS PROSCRIBED BY THIS SUBDIVI-  
26 SION. CONTRACTS OR AGREEMENTS ENTERED INTO IN VIOLATION OF THIS SUBDIVI-  
27 SION SHALL BE VOID.

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

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1 S 2. 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 of  
7 section 263.05 or 263.15 of this article, includes sexual conduct by a  
8 child less than [seventeen] EIGHTEEN 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 a  
11 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] EIGHTEEN years of age, in any material which is  
14 obscene, as such term is defined in section 235.00 of this chapter.

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

17 S 263.05 Use of a child in a sexual performance.

18 A person is guilty of the use of a child in a sexual performance if  
19 knowing the character and content thereof he OR SHE employs, authorizes  
20 or induces a child less than [seventeen] EIGHTEEN years of age to engage  
21 in a sexual performance or being a parent, legal guardian or custodian  
22 of such child, he OR SHE consents to the participation by such child in  
23 a sexual performance.

24 Use of a child in a sexual performance is a class C felony.

25 S 4. Section 263.10 of the penal law, as amended by chapter 1 of the  
26 laws of 2000, is amended to read as follows:

27 S 263.10 Promoting an obscene sexual performance by a child.

28 A person is guilty of promoting an obscene sexual performance by a  
29 child when, knowing the character and content thereof, he OR SHE produc-  
30 es, directs or promotes any obscene performance which includes sexual  
31 conduct by a child less than [seventeen] EIGHTEEN years of age.

32 Promoting an obscene sexual performance by a child is a class D felo-  
33 ny.

34 S 5. Section 263.11 of the penal law, as added by chapter 11 of the  
35 laws of 1996, is amended to read as follows:

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

37 A person is guilty of possessing an obscene sexual performance by a  
38 child when, knowing the character and content thereof, he OR SHE know-  
39 ingly has in his OR HER possession or control any obscene performance  
40 which includes sexual conduct by a child less than [sixteen] EIGHTEEN  
41 years of age.

42 Possessing an obscene sexual performance by a child is a class E felo-  
43 ny.

44 S 6. Section 263.15 of the penal law, as amended by chapter 1 of the  
45 laws of 2000, is amended to read as follows:

46 S 263.15 Promoting a sexual performance by a child.

47 A person is guilty of promoting a sexual performance by a child when,  
48 knowing the character and content thereof, he OR SHE produces, directs  
49 or promotes any performance which includes sexual conduct by a child  
50 less than [seventeen] EIGHTEEN years of age.

51 Promoting a sexual performance by a child is a class D felony.

52 S 7. Section 263.16 of the penal law, as added by chapter 11 of the  
53 laws of 1996, is amended to read as follows:

54 S 263.16 Possessing a sexual performance by a child.

55 A person is guilty of possessing a sexual performance by a child when,  
56 knowing the character and content thereof, he OR SHE knowingly has in

1 his OR HER possession or control any performance which includes sexual  
2 conduct by a child less than [sixteen] EIGHTEEN years of age.

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

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

6 1. Under this article, it shall be an affirmative defense that the  
7 defendant in good faith reasonably believed the person appearing in the  
8 performance was, for purposes of section 263.11 or 263.16 of this arti-  
9 cle, [sixteen] EIGHTEEN years of age or over or, for purposes of section  
10 263.05, 263.10 or 263.15 of this article, [seventeen] EIGHTEEN years of  
11 age or over.

12 S 9. Subdivision 1 of section 263.30 of the penal law, as added by  
13 chapter 431 of the laws of 2008, is amended to read as follows:

14 1. A person is guilty of facilitating a sexual performance by a child  
15 with a controlled substance or alcohol when he or she:

16 (a) (i) knowingly and unlawfully possesses a controlled substance as  
17 defined in section thirty-three hundred six of the public health law or  
18 any controlled substance that requires a prescription to obtain, (ii)  
19 administers that substance to a person under the age of [seventeen]  
20 EIGHTEEN without such person's consent, (iii) intends to commit against  
21 such person conduct constituting a felony as defined in section 263.05,  
22 263.10, or 263.15 of this article, and (iv) does so commit or attempt to  
23 commit such conduct against such person; or

24 (b) (i) administers alcohol to a person under the age of [seventeen]  
25 EIGHTEEN without such person's consent, (ii) intends to commit against  
26 such person conduct constituting a felony defined in section 263.05,  
27 263.10, or 263.15 of this article, and (iii) does so commit or attempt  
28 to commit such conduct against such person.

29 S 10. The penal law is amended by adding a new section 135.34 to read  
30 as follows:

31 S 135.34 CHILD LABOR TRAFFICKING.

32 A PERSON IS GUILTY OF CHILD LABOR TRAFFICKING IF HE OR SHE COMPELS OR  
33 INDUCES ANOTHER PERSON LESS THAN EIGHTEEN YEARS OF AGE TO ENGAGE IN  
34 LABOR OR RECRUITS, ENTICES, HARBORS, OR TRANSPORTS SUCH OTHER PERSON BY  
35 MEANS OF INTENTIONALLY:

36 1. UNLAWFULLY PROVIDING A CONTROLLED SUBSTANCE TO SUCH PERSON WITH  
37 INTENT TO IMPAIR SAID PERSON'S JUDGMENT;

38 2. REQUIRING THAT THE LABOR BE PERFORMED TO RETIRE, REPAY, OR SERVICE  
39 A REAL OR PURPORTED DEBT THAT THE ACTOR HAS CAUSED BY A SYSTEMATIC ONGO-  
40 ING COURSE OF CONDUCT WITH INTENT TO DEFRAUD SUCH PERSON;

41 3. WITHHOLDING, DESTROYING, OR CONFISCATING ANY ACTUAL OR PURPORTED  
42 PASSPORT, IMMIGRATION DOCUMENT, OR ANY OTHER ACTUAL OR PURPORTED GOVERN-  
43 MENT IDENTIFICATION DOCUMENT, OF ANOTHER PERSON WITH INTENT TO IMPAIR  
44 SAID PERSON'S FREEDOM OF MOVEMENT; PROVIDED, HOWEVER, THAT THIS SUBDIVI-  
45 SION SHALL NOT APPLY TO AN ATTEMPT TO CORRECT A SOCIAL SECURITY ADMINIS-  
46 TRATION RECORD OR IMMIGRATION AGENCY RECORD IN ACCORDANCE WITH ANY  
47 LOCAL, STATE, OR FEDERAL AGENCY REQUIREMENT, WHERE SUCH ATTEMPT IS NOT  
48 MADE FOR THE PURPOSE OF ANY EXPRESS OR IMPLIED THREAT;

49 4. USING FORCE OR ENGAGING IN ANY SCHEME, PLAN OR PATTERN TO COMPEL OR  
50 INDUCE SUCH PERSON TO ENGAGE IN OR CONTINUE TO ENGAGE IN LABOR ACTIVITY  
51 BY MEANS OF INSTILLING A FEAR IN SUCH PERSON THAT, IF THE DEMAND IS NOT  
52 COMPLIED WITH, THE ACTOR OR ANOTHER WILL DO ONE OR MORE OF THE FOLLOW-  
53 ING:

54 (A) CAUSE PHYSICAL INJURY, SERIOUS PHYSICAL INJURY, OR DEATH TO A  
55 PERSON; OR

56 (B) CAUSE DAMAGE TO PROPERTY, OTHER THAN THE PROPERTY OF THE ACTOR; OR

1 (C) ENGAGE IN OTHER CONDUCT CONSTITUTING A FELONY OR UNLAWFUL IMPRI-  
2 SONMENT IN THE SECOND DEGREE IN VIOLATION OF SECTION 135.05 OF THIS  
3 ARTICLE; OR

4 (D) ACCUSE SOME PERSON OF A CRIME OR CAUSE CRIMINAL CHARGES OR DEPOR-  
5 TATION PROCEEDINGS TO BE INSTITUTED AGAINST SUCH PERSON; PROVIDED,  
6 HOWEVER, THAT IT SHALL BE AN AFFIRMATIVE DEFENSE TO THIS SUBDIVISION  
7 THAT THE DEFENDANT REASONABLY BELIEVED THE THREATENED CHARGE TO BE TRUE  
8 AND THAT HIS OR HER SOLE PURPOSE WAS TO COMPEL OR INDUCE THE VICTIM TO  
9 TAKE REASONABLE ACTION TO MAKE GOOD THE WRONG WHICH WAS THE SUBJECT OF  
10 SUCH THREATENED CHARGE; OR

11 (E) EXPOSE A SECRET OR PUBLICIZE AN ASSERTED FACT, WHETHER TRUE OR  
12 FALSE, TENDING TO SUBJECT SOME PERSON TO HATRED, CONTEMPT OR RIDICULE;  
13 OR

14 (F) TESTIFY OR PROVIDE INFORMATION OR WITHHOLD TESTIMONY OR INFORMA-  
15 TION WITH RESPECT TO ANOTHER'S LEGAL CLAIM OR DEFENSE; OR

16 (G) USE OR ABUSE HIS OR HER POSITION AS A PUBLIC SERVANT BY PERFORMING  
17 SOME ACT WITHIN OR RELATED TO HIS OR HER OFFICIAL DUTIES, OR BY FAILING  
18 OR REFUSING TO PERFORM AN OFFICIAL DUTY, IN SUCH MANNER AS TO AFFECT  
19 SOME PERSON ADVERSELY.

20 CHILD LABOR TRAFFICKING IS A CLASS C FELONY.

21 S 11. The closing paragraph of section 230.34 of the penal law, as  
22 added by chapter 74 of the laws of 2007, is amended to read as follows:

23 Sex trafficking is a class B felony; PROVIDED HOWEVER THAT IF THE  
24 VICTIM IS UNDER THE AGE OF EIGHTEEN YEARS OF AGE SUCH OFFENSE SHALL BE A  
25 CLASS A-I FELONY.

26 S 12. Subdivision 1 of section 4307 of the public health law, as  
27 amended by chapter 362 of the laws of 2009, is amended to read as  
28 follows:

29 1. It shall be unlawful for any person to knowingly acquire, receive,  
30 or otherwise transfer for valuable consideration any human organ for use  
31 in human transplantation. The term human organ means the human kidney,  
32 liver, heart, lung, bone marrow, and any other human organ or tissue as  
33 may be designated by the commissioner but shall exclude blood. The term  
34 "valuable consideration" does not include the reasonable payments asso-  
35 ciated with the removal, transportation, implantation, processing, pres-  
36 ervation, quality control, and storage of a human organ or the expenses  
37 of travel, housing, and lost wages incurred by the donor of a human  
38 organ in connection with the donation of the organ. Any person who  
39 violates this section shall be guilty of a class E felony; PROVIDED,  
40 HOWEVER, THAT IF THE HUMAN ORGAN IS FROM A PERSON UNDER EIGHTEEN YEARS  
41 OF AGE SUCH OFFENSE SHALL BE A CLASS D FELONY.

42 S 13. Subdivision 1 of section 2320 of the public health law is  
43 amended to read as follows:

44 1. Whoever shall erect, establish, continue, maintain, use, own, or  
45 lease any building, erection, or place used for the purpose of lewdness,  
46 assignation, [or], prostitution, PROMOTING, PRODUCING OR DISTRIBUTING A  
47 SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN ARTICLE TWO HUNDRED  
48 SIXTY-THREE OF THE PENAL LAW OR SALE OF A CHILD THROUGH ADOPTION, SURRO-  
49 GATE PARENTING OR OTHER MEANS AS DEFINED IN SECTION 260.08 OF SUCH LAW  
50 is guilty of maintaining a nuisance.

51 S 14. Subdivision 1 of section 65.00 of the criminal procedure law, as  
52 amended by chapter 320 of the laws of 2006, is amended to read as  
53 follows:

54 1. "Child witness" means a person [fourteen] EIGHTEEN years old or  
55 less who is or will be called to testify in a criminal proceeding, other  
56 than a grand jury proceeding, concerning an offense defined in article

1 one hundred thirty of the penal law or section 255.25, 255.26 or 255.27  
2 of such law which is the subject of such criminal proceeding.

3 S 15. The section heading and subdivision 1 of section 50-b of the  
4 civil rights law, the section heading as amended by chapter 643 of the  
5 laws of 1999 and subdivision 1 as amended by chapter 320 of the laws of  
6 2006, are amended to read as follows:

7 Right of privacy; victims of sex offenses [or], offenses involving the  
8 transmission of the human immunodeficiency virus AND CHILD VICTIMS OF  
9 SALE, PROMOTION OF PROSTITUTION AND SEXUAL PERFORMANCE BY A CHILD. 1.  
10 The identity of any victim of a sex offense, as defined in article one  
11 hundred thirty or section 255.25, 255.26 or 255.27 OR ARTICLE TWO  
12 HUNDRED SIXTY-THREE of the penal law, or of an offense involving the  
13 alleged transmission of the human immunodeficiency virus, OR OF AN  
14 OFFENSE INVOLVING THE PROHIBITED SALE OF A CHILD THROUGH ADOPTION,  
15 SURROGATE PARENTING OR OTHER MEANS, AS DEFINED IN SECTION 260.08 OF THE  
16 PENAL LAW, OR A CHILD VICTIM OF AN OFFENSE INVOLVING PROMOTING PROSTITU-  
17 TION AS DEFINED IN ARTICLE TWO HUNDRED THIRTY OF THE PENAL LAW shall be  
18 confidential. No report, paper, picture, photograph, court file or other  
19 documents, in the custody or possession of any public officer or employ-  
20 ee, which identifies such a victim shall be made available for public  
21 inspection. No such public officer or employee shall disclose any  
22 portion of any police report, court file, or other document, which tends  
23 to identify such a victim except as provided in subdivision two of this  
24 section.

25 S 16. This act shall take effect immediately; provided that the amend-  
26 ments to subdivision 1 of section 65.00 of the criminal procedure law  
27 made by section fourteen of this act shall not affect the repeal of such  
28 section and shall be deemed repealed therewith.