

2079

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 13, 2011

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Introduced by M. of A. REILICH, KOLB, FINCH -- Multi-Sponsored by -- M.  
of A. BARCLAY, BURLING, CROUCH, McDONOUGH, OAKS, SAYWARD, TEDISCO --  
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  
22 CUSTODIAN OF SUCH CHILD, HE CONSENTS TO THE PARTICIPATION BY SUCH CHILD  
23 IN A SEXUAL PERFORMANCE.  
24     USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE FIRST DEGREE IS A CLASS  
25 B 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 263.05 of the penal law, as amended by chapter 1 of the  
2 laws of 2000, is amended to read as follows:

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

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

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

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

14 S 263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST  
15 DEGREE.

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

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

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

24 S 263.10 Promoting an obscene sexual performance by a child IN THE  
25 SECOND DEGREE.

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

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

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

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

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

40 Possessing an obscene sexual performance by a child is a class E felo-  
41 ny.

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

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

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

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

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

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

54 A person is guilty of promoting a sexual performance by a child IN THE  
55 SECOND DEGREE when, knowing the character and content thereof, he

1 produces, directs or promotes any performance which includes sexual  
2 conduct by a child less than [seventeen] EIGHTEEN years of age.

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

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

7 S 263.16 Possessing a sexual performance by a child.

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

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

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

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

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

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

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

43 6. WHEN A PERSON IS CONVICTED OF USE OF A CHILD IN A SEXUAL PERFORM-  
44 ANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 263.03 OF THIS CHAPTER OR  
45 USE OF A CHILD IN A SEXUAL PERFORMANCE IN THE SECOND DEGREE AS DEFINED  
46 IN SECTION 263.05 OF THIS CHAPTER OR PROMOTING AN OBSCENE SEXUAL  
47 PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 263.08  
48 OF THIS CHAPTER OR PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN  
49 THE SECOND DEGREE AS DEFINED IN SECTION 263.10 OF THIS CHAPTER OR  
50 PROMOTING A SEXUAL PERFORMANCE BY A CHILD IN THE FIRST DEGREE AS DEFINED  
51 IN SECTION 263.13 OF THIS CHAPTER OR PROMOTING A SEXUAL PERFORMANCE BY A  
52 CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 263.15 OF THIS CHAPTER,  
53 AND ANY OTHER CRIME, THE SENTENCES FOR SUCH CRIMES SHALL RUN CONSEC-  
54 UTIVELY.

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