

3091

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. PRETLOW -- Multi-Sponsored by -- M. of A. SWEENEY
-- 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 ASSEMBLY, 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.
26 S 3. Section 263.05 of the penal law, as amended by chapter 1 of the
27 laws of 2000, 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 263.05 Use of a child in a sexual performance IN THE SECOND DEGREE.

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

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

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

12 S 263.08 PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD IN THE FIRST
13 DEGREE.

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

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

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

22 S 263.10 Promoting an obscene sexual performance by a child IN THE
23 SECOND DEGREE.

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

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

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

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

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

38 Possessing an obscene sexual performance by a child is a class E felo-
39 ny.

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

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

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

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

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

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

52 A person is guilty of promoting a sexual performance by a child IN THE
53 SECOND DEGREE when, knowing the character and content thereof, he
54 produces, directs or promotes any performance which includes sexual
55 conduct by a child less than [seventeen] EIGHTEEN years of age.

1 Promoting a sexual performance by a child IN THE SECOND DEGREE is a
2 class D felony.

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

5 S 263.16 Possessing a sexual performance by a child.

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

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

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

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

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

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

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

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

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