STATE OF NEW YORK

716

2017-2018 Regular Sessions

IN SENATE

January 4, 2017

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed 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:

Section 1. Subdivisions 1 and 2 of section 263.00 of the penal law, as amended by chapter 1 of the laws of 2000, are amended to read as follows:

1. "Sexual performance" means any performance or part thereof which[~~, for purposes of section 263.16 of this article,~~] includes sexual conduct by a child less than [~~sixteen~~] **eighteen** years of age [~~or, for purposes of section 263.05 or 263.15 of this article, includes sexual conduct by a child less than seventeen years of age~~].

2. "Obscene sexual performance" means any performance which[~~, for purposes of section 263.11 of this article,~~] includes sexual conduct by a child less than [~~sixteen~~] **eighteen** years of age [~~or, for purposes of section 263.10 of this article, includes sexual conduct by a child less than seventeen years of age,~~] in any material which is obscene, as such term is defined in section 235.00 of this chapter.

§ 2. The penal law is amended by adding a new section 263.03 to read as follows:

§ 263.03 Use of a child in a sexual performance in the first degree.

A person is guilty of the use of a child in a sexual performance in the first degree if knowing the character and content thereof he or she employs, authorizes or induces a child less than twelve years of age to engage in a sexual performance or being a parent, legal guardian or custodian of such child, he or she consents to the participation by such child in a sexual performance.

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

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Use of a child in a sexual performance in the first degree is a class B felony.

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

§ 263.05 Use of a child in a sexual performance **in the second degree**.

A person is guilty of the use of a child in a sexual performance **in the second degree** if knowing the character and content thereof he **or she** employs, authorizes or induces a child less than [~~seventeen~~] **eighteen** years of age to engage in a sexual performance or being a parent, legal guardian or custodian of such child, he **or she** consents to the participation by such child in a sexual performance.

Use of a child in a sexual performance **in the second degree** is a class C felony.

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

§ 263.08 Promoting an obscene sexual performance by a child in the first degree.

A person is guilty of promoting an obscene sexual performance by a child in the first degree when, knowing the character and content thereof, he or she produces, directs or promotes any obscene performance which includes sexual conduct by a child less than twelve years of age.

Promoting an obscene sexual performance by a child in the first degree is a class C felony.

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

§ 263.10 Promoting an obscene sexual performance by a child **in the second degree**.

A person is guilty of promoting an obscene sexual performance by a child **in the second degree** when, knowing the character and content thereof, he **or she** produces, directs or promotes any obscene performance which includes sexual conduct by a child less than [~~seventeen~~] **eighteen** years of age.

Promoting an obscene sexual performance by a child **in the second degree** is a class D felony.

§ 6. Section 263.11 of the penal law, as amended by chapter 456 of the laws of 2012, is amended to read as follows:

§ 263.11 Possessing an obscene sexual performance by a child.

A person is guilty of possessing an obscene sexual performance by a child when, knowing the character and content thereof, he **or she** knowingly has in his **or her** possession or control, or knowingly accesses with intent to view, any obscene performance which includes sexual conduct by a child less than [~~sixteen~~] **eighteen** years of age.

Possessing an obscene sexual performance by a child is a class E felony.

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

§ 263.13 Promoting a sexual performance by a child in the first degree.

A person is guilty of promoting a sexual performance by a child in the first degree when, knowing the character and content thereof, he or she produces, directs or promotes any performance which includes sexual conduct by a child less than twelve years of age.

Promoting a sexual performance by a child in the first degree is a class C felony.

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

§ 263.15 Promoting a sexual performance by a child **in the second degree**.

A person is guilty of promoting a sexual performance by a child **in the second degree** when, knowing the character and content thereof, he **or she** produces, directs or promotes any performance which includes sexual conduct by a child less than [~~seventeen~~] **eighteen** years of age.

Promoting a sexual performance by a child **in the second degree** is a class D felony.

§ 9. Section 263.16 of the penal law, as amended by chapter 456 of the laws of 2012, is amended to read as follows:

§ 263.16 Possessing a sexual performance by a child.

A person is guilty of possessing a sexual performance by a child when, knowing the character and content thereof, he **or she** knowingly has in his **or her** possession or control, or knowingly accesses with intent to view, any performance which includes sexual conduct by a child less than [~~sixteen~~] **eighteen** years of age.

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

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

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

§ 11. The opening paragraph of subdivision 1 and subdivision 2 of section 70.25 of the penal law, the opening paragraph of subdivision 1 as amended by chapter 372 of the laws of 1981 and subdivision 2 as amended by chapter 56 of the laws of 1984, are amended and a new subdivision 6 is added to read as follows:

Except as provided in subdivisions two, two-a [~~and~~]**,** five **and six** of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

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

6. When a person is convicted of use of a child in a sexual performance in the first degree as defined in section 263.03 of this chapter or use of a child in a sexual performance in the second degree as defined in section 263.05 of this chapter or promoting an obscene sexual performance by a child in the first degree as defined in section 263.08 of this chapter or promoting an obscene sexual performance by a child in the second degree as defined in section 263.10 of this chapter or promoting a sexual performance by a child in the first degree as defined in section 263.13 of this chapter or promoting a sexual performance by a child in the second degree as defined in section 263.15 of this chapter,

and any other crime, the sentences for such crimes shall run consecutively.

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