

2007-2008 Regular Sessions

IN SENATE

(Prefiled)

January 3, 2007

Introduced by Sens. LARKIN, DeFRANCISCO, GOLDEN, LEIBELL, MALTESE, MORAHAN, RATH, ROBACH, SALAND, TRUNZO -- 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 obscene sexual performance by a child; and to amend the labor law and the arts and cultural affairs law, in relation to prohibited employment of minors

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1- 1 Section 1. Subdivisions 1 and 2 of section 263.00 of the penal law, as
1- 2 amended by chapter 1 of the laws of 2000, are amended to read as
1- 3 follows:

1- 4 1. "Sexual performance" means any performance or part thereof which,
1- 5 for purposes of section 263.16 of this article, includes sexual conduct
1- 6 by a child less than [sixteen] *eighteen* years of age or, for purposes of
1- 7 section 263.05 or 263.15 of this article, includes sexual conduct by a
1- 8 child less than [seventeen] *eighteen* years of age.

1- 9 2. "Obscene sexual performance" means any performance which, for
1-10 purposes of section 263.11 of this article, includes sexual conduct by a
1-11 child less than [sixteen] *eighteen* years of age or, for purposes of
1-12 section 263.10 of this article, includes sexual conduct by a child less
1-13 than [seventeen] *eighteen* years of age, in any material which is
1-14 obscene, as such term is defined in section 235.00 of this chapter.

1-15 § 2. Section 263.05 of the penal law, as amended by chapter 1 of the
1-16 laws of 2000, is amended to read as follows:

1-17 § 263.05 Use of a child in a sexual performance.

1-18 A person is guilty of the use of a child in a sexual performance if
1-19 knowing the character and content thereof he employs, authorizes or
1-20 induces a child less than [seventeen] *eighteen* years of age to engage in
1-21 a sexual performance or being a parent, legal guardian or custodian of

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

LBD00333-01-7

S. 224

2

2- 1 such child, he consents to the participation by such child in a sexual
2- 2 performance.

2- 3 Use of a child in a sexual performance is a class C felony.

2- 4 § 3. Section 263.10 of the penal law, as amended by chapter 1 of the
2- 5 laws of 2000, is amended to read as follows:

2- 6 § 263.10 Promoting an obscene sexual performance by a child.

2- 7 A person is guilty of promoting an obscene sexual performance by a
2- 8 child when, knowing the character and content thereof, he produces,
2- 9 directs or promotes any obscene performance which includes sexual
2-10 conduct by a child less than [seventeen] *eighteen* years of age.

2-11 Promoting an obscene sexual performance by a child is a class D felo-
2-12 ny.

2-13 § 4. Section 263.11 of the penal law, as added by chapter 11 of the
2-14 laws of 1996, is amended to read as follows:

2-15 § 263.11 Possessing an obscene sexual performance by a child.

2-16 A person is guilty of possessing an obscene sexual performance by a
2-17 child when, knowing the character and content thereof, he or *she* know-
2-18 ingly has in his or *her* possession or control any obscene performance
2-19 which includes sexual conduct by a child less than [sixteen] *eighteen*
2-20 years of age.

2-21 Possessing an obscene sexual performance by a child is a class E felo-
2-22 ny.

2-23 § 5. Section 263.15 of the penal law, as amended by chapter 1 of the
2-24 laws of 2000, is amended to read as follows:

2-25 § 263.15 Promoting a sexual performance by a child.

2-26 A person is guilty of promoting a sexual performance by a child when,
2-27 knowing the character and content thereof, he produces, directs or
2-28 promotes any performance which includes sexual conduct by a child less
2-29 than [seventeen] *eighteen* years of age.

2-30 Promoting a sexual performance by a child is a class D felony.

2-31 § 6. Section 263.16 of the penal law, as added by chapter 11 of the
2-32 laws of 1996, is amended to read as follows:

2-33 § 263.16 Possessing a sexual performance by a child.

2-34 A person is guilty of possessing a sexual performance by a child when,
2-35 knowing the character and content thereof, he or *she* knowingly has in
2-36 his or *her* possession or control any performance which includes sexual
2-37 conduct by a child less than [sixteen] *eighteen* years of age.

2-38 Possessing a sexual performance by a child is a class E felony.

2-39 § 7. Subdivision 1 of section 263.20 of the penal law, as amended by
2-40 chapter 1 of the laws of 2000, is amended to read as follows:

2-41 1. Under this article, it shall be an affirmative defense that the
2-42 defendant in good faith reasonably believed the person appearing in the
2-43 performance was, for purposes of section 263.11 or 263.16 of this arti-
2-44 cle, [sixteen] *eighteen* years of age or over or, for purposes of section
2-45 263.05, 263.10 or 263.15 of this article, [seventeen] *eighteen* years of
2-46 age or over.

2-47 § 8. Paragraph r of subdivision 2 of section 133 of the labor law, as
2-48 amended by chapter 975 of the laws of 1966 and such subdivision as
2-49 renumbered by chapter 377 of the laws of 1973, is amended and a new
2-50 paragraph s is added to read as follows:

2-51 r. as a helper on a motor vehicle[.];

2-52 s. as a dancer or performer in any facility open to the public wherein
2-53 persons dance or otherwise perform, and appear unclothed.

2-54 § 9. Subdivision 2 of section 35.07 of the arts and cultural affairs
2-55 law is renumbered subdivision 3 and a new subdivision 2 is added to read
2-56 as follows:

S. 224

3- 1 2. It shall be unlawful for any person to employ, use or exhibit any
3- 2 child under eighteen years of age as a dancer or performer in any facil-
3- 3 ity open to the public wherein persons dance or otherwise perform, and
3- 4 appear unclothed.

3- 5 § 10. This act shall take effect on the first of November next
3- 6 succeeding the date on which it shall have become a law.