

2007-2008 Regular Sessions

IN ASSEMBLY

(*Prefiled*)

January 3, 2007

Introduced by M. of A. GUNTHER -- read once and referred 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  
1-22 such child, he consents to the participation by such child in a sexual  
1-23 performance.

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

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2- 1 Use of a child in a sexual performance is a class C felony.

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

2- 4 § 263.10 Promoting an obscene sexual performance by a child.

2- 5 A person is guilty of promoting an obscene sexual performance by a  
2- 6 child when, knowing the character and content thereof, he produces,  
2- 7 directs or promotes any obscene performance which includes sexual  
2- 8 conduct by a child less than [seventeen] *eighteen* years of age.

2- 9 Promoting an obscene sexual performance by a child is a class D felo-  
2-10 ny.

2-11 § 4. Section 263.11 of the penal law, as added by chapter 11 of the  
2-12 laws of 1996, is amended to read as follows:

2-13 § 263.11 Possessing an obscene sexual performance by a child.

2-14 A person is guilty of possessing an obscene sexual performance by a  
2-15 child when, knowing the character and content thereof, he or *she* know-  
2-16 ingly has in his or *her* possession or control any obscene performance  
2-17 which includes sexual conduct by a child less than [sixteen] *eighteen*  
2-18 years of age.

2-19 Possessing an obscene sexual performance by a child is a class E felo-  
2-20 ny.

2-21 § 5. Section 263.15 of the penal law, as amended by chapter 1 of the  
2-22 laws of 2000, is amended to read as follows:

2-23 § 263.15 Promoting a sexual performance by a child.

2-24 A person is guilty of promoting a sexual performance by a child when,  
2-25 knowing the character and content thereof, he produces, directs or  
2-26 promotes any performance which includes sexual conduct by a child less  
2-27 than [seventeen] *eighteen* years of age.

2-28 Promoting a sexual performance by a child is a class D felony.

2-29 § 6. Section 263.16 of the penal law, as added by chapter 11 of the  
2-30 laws of 1996, is amended to read as follows:

2-31 § 263.16 Possessing a sexual performance by a child.

2-32 A person is guilty of possessing a sexual performance by a child when,  
2-33 knowing the character and content thereof, he or *she* knowingly has in  
2-34 his or *her* possession or control any performance which includes sexual  
2-35 conduct by a child less than [sixteen] *eighteen* years of age.

2-36 Possessing a sexual performance by a child is a class E felony.

2-37 § 7. Subdivision 1 of section 263.20 of the penal law, as amended by  
2-38 chapter 1 of the laws of 2000, is amended to read as follows:

2-39 1. Under this article, it shall be an affirmative defense that the  
2-40 defendant in good faith reasonably believed the person appearing in the  
2-41 performance was, for purposes of section 263.11 or 263.16 of this arti-  
2-42 cle, [sixteen] *eighteen* years of age or over or, for purposes of section  
2-43 263.05, 263.10 or 263.15 of this article, [seventeen] *eighteen* years of  
2-44 age or over.

2-45 § 8. Paragraph r of subdivision 2 of section 133 of the labor law, as  
2-46 amended by chapter 975 of the laws of 1966 and such subdivision as  
2-47 renumbered by chapter 377 of the laws of 1973, is amended and a new  
2-48 paragraph s is added to read as follows:

2-49 r. as a helper on a motor vehicle[.];

2-50 s. as a dancer or performer in any facility open to the public wherein  
2-51 persons dance or otherwise perform, and appear unclothed.

2-52 § 9. Subdivision 2 of section 35.07 of the arts and cultural affairs  
2-53 law is renumbered subdivision 3 and a new subdivision 2 is added to read  
2-54 as follows:

2-55 2. *It shall be unlawful for any person to employ, use or exhibit any*  
2-56 *child under eighteen years of age as a dancer or performer in any facil-*

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3- 1 *ity open to the public wherein persons dance or otherwise perform, and*  
3- 2 *appear unclothed.*

3- 3 § 10. This act shall take effect on the first of November next

3- 4      succeeding the date on which it shall have become a law.