

PROGRAM BILL # 44

GOVERNOR'S PROGRAM BILL

2012

MEMORANDUM

AN ACT to amend the penal law, in relation to amending the crime of possessing an obscene sexual performance by a child to include knowingly accessing such material with intent to view

Purpose:

This bill would amend the Penal Law to more effectively ban the possession of a sexual performance or an obscene sexual performance by a child.

Summary of Provisions:

Section one of the bill would amend Penal Law §263.11 to prohibit the knowing access with intent to view of an obscene sexual performance by a child.

Section two of the bill would amend Penal Law §263.15 to prohibit the knowing access with intent to view of a sexual performance by a child.

Section three of the bill would amend Penal Law § 263.00 to clarify that the various "possession," "control" and "promotion" crimes related to obscene sexual performances by a child do not apply to attorneys who may have access to such material solely in the course of the their representation of defendants charged with such offenses.

Section four provides for an immediate effective date.

Existing Law:

Penal Law §§263.11 and 263.16 do not specify that accessing and viewing sexual performances by a child are prohibited.

Statement in Support:

The State has a compelling interest in safeguarding the physical and psychological well-being of minors. To that end, Penal Law §§263.11 and 263.16 were enacted in 1996 prohibiting the possession of child pornography. Those provisions were designed to destroy the market for the exploitive use of children. However, in a case decided on May 8, 2012, the New York Court of Appeals held that existing law did not prohibit "accessing and viewing" child pornography on

the internet (People v Kent, 2012 NY Slip Op 03572 [May 8, 2012]). The Court specifically invited the State to amend the Penal Law to criminalize accessing child pornography with the intent to view it on the internet. This bill would address that glaring loophole.

Budget Implications:

This bill would have no budget implications for the state.

Effective Date:

This bill would take effect immediately.