

**POSSESSING AN OBSCENE SEXUAL
PERFORMANCE BY A CHILD
Penal Law § 263.11
(Committed on or after Nov. 1, 1996)**

“Possessing an obscene sexual performance” by a child and “possessing a sexual performance by a child” differ only in that the former prohibits an “obscene sexual performance” [Penal Law § 263.11] while the later prohibits a “sexual performance” [Penal Law § 263.16].

Because every “obscene sexual performance” encompasses a “sexual performance,” and because the penalties for the commission of the crimes relating to those terms are the same, it appears unnecessary to have included the crimes relating to an “obscene sexual performance.”

In any event, if a charge for this crime is necessary, the charge for “possessing a sexual performance by child” [Penal Law § 263.16] may be used, with the definition of “obscene sexual performance” being substituted for the definition of “sexual performance.”