

**FACILITATING A SEXUAL PERFORMANCE  
BY A CHILD WITH ALCOHOL  
Penal Law § 263.30 (1)(b)  
(Committed on or after Nov. 1, 2008)**

The (*specify*) count is Facilitating a Sexual Performance by a Child with Alcohol.

Under our law, a person is guilty of Facilitating a Sexual Performance by a Child with Alcohol when he or she knowingly<sup>1</sup> administers alcohol to a person under the age of seventeen (17) without such person's consent,

intends to commit against such person conduct constituting <sup>2</sup> (specify whether use of a child in a sexual performance [Penal Law § 260.05], promoting an obscene sexual performance by a child [Penal Law § 263.10], [and/or] promoting a sexual performance by a child [Penal Law § 263.15]),

and does so commit or attempt to commit such conduct against such person.

The following terms used in that definition have a special meaning:

Intent means conscious objective or purpose. Thus a person INTENDS to commit conduct constituting (specify whether use of a child in a sexual performance [Penal Law § 260.05], promoting an obscene sexual performance by a child [Penal Law § 263.10], [and/or] promoting a sexual performance by a child [Penal Law § 263.15]) against another when that person's conscious objective or purpose is to commit that conduct.<sup>3</sup>

(NAME OF APPLICABLE PENAL LAW ARTICLE 263  
FELONY and its definition.)

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<sup>1</sup> See Penal Law § 15.15(3).

<sup>2</sup> At this point the statute continues: "a felony as defined in section 263.05, 263.10, or 263.15 of this article."

<sup>3</sup> See Penal Law § 15.05 (1).

It is not an element of this offense that the actor must know the age of the child. And it is not a defense to this charge that the actor did not know that the person who was administered the substance was less than seventeen (17) years old, or that the actor believed that such person was seventeen (17) years old or more.<sup>4</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case beyond a reasonable doubt each of the following four elements:

1. That on or about (date) in the county of (county), the defendant (defendant's name) administered alcohol to (complainant's name) without his/her consent;
2. That (complainant's name) was less than 17 years old.
3. That the defendant intended to commit conduct constituting (specify whether use of a child in a sexual performance [Penal Law § 260.05], promoting an obscene sexual performance by a child [Penal Law § 263.10], [and/]or promoting a sexual performance by a child [Penal Law § 263.15]) against (complainant's name); and
4. That the defendant committed [or attempted to commit] that conduct against (complainant's name)

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

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<sup>4</sup> See Penal Law § 15.20(3).