

**Criminal Laws**  
**Unlawfully Dealing with a Child in the First & Second Degree**  
**Penal Law Sections 260.20 and 260.21**

Criminal penalties – Delivering or permitting the delivery of alcohol to a person under the legal age in violation of Law Section 65.1 is an unclassified misdemeanor.

A person can be charged with unlawfully dealing with a child in the first degree when:

- The person knowingly allows a child under 18 years old to enter or remain in a space where there is:
  - Sexual activity as defined by the Alcoholic Beverage Control Law
  - Activity involving controlled substances or marijuana
- The person gives or sells alcoholic beverages to a person under 21 years old. This does not apply if:
  - A parent or guardian provides the alcohol to the underage person
  - The underage person is tasting alcohol as a requirement of a curriculum licensed by the state education department, where the tasting or imbibing of alcoholic beverages is required in courses that are part of the required curriculum, provided that such alcoholic beverages are given only for instructional purposes during classes conducted pursuant to such curriculum.
  - It is no defense to a prosecution that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Licensees and servers may be able to present an “affirmative defense” against the charge of unlawfully dealing with a child in the first degree. See the section in this document titled: “Affirmative Defenses.”

Unlawfully dealing with a child in the first degree is a class A misdemeanor.

A person can be charged with unlawfully dealing with a child in the second degree when:

- The person (owner, lessee, manager or employee) allows a child under the age of 16 years old to enter or remain in a place where alcoholic beverages are sold or given away unless:

- The child is accompanied by a parent, guardian or adult authorized by a parent or guardian
  - An entertainment or activity is being conducted on a premise for or by a non-profit school, church or other educational or religious institution
  - The establishment is closed to the public for a specific time to conduct an activity or entertainment, the child is on the premises and no alcohol is sold, served or given away. The state liquor authority shall be notified in writing by the licensee of such establishment, of the intended closing of such establishment, to conduct any such activity or entertainment, not less than 10 days prior to any such closing.
  - It is permitted by law
- The person tattoos the body of a child under the age of 18 years old with ink that cannot be removed
  - The person sells tobacco in any form to a child under the age of 18 years old
  - It is no defense to a prosecution that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the second degree is a class B misdemeanor.