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I N   S E N A T E

March 9, 2016

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Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the crime of aggravated harassment of an employee by an inmate

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 4 of section 70.00 of the penal law, as amended  
2     by chapter 738 of the laws of 2004, is amended to read as follows:  
3     4. Alternative definite sentence for class D and E felonies. When a  
4     person, other than a second or persistent felony offender, is sentenced  
5     for a class D or class E felony, EXCEPT FOR THE CLASS E FELONY OF AGGRA-  
6     VATED HARASSMENT OF AN EMPLOYEE BY AN INMATE, AS DEFINED IN SECTION  
7     240.32 OF THIS CHAPTER, and the court, having regard to the nature and  
8     circumstances of the crime and to the history and character of the  
9     defendant, is of the opinion that a sentence of imprisonment is neces-  
10    sary but that it would be unduly harsh to impose an indeterminate or  
11    determinate sentence, the court may impose a definite sentence of impri-  
12    sonment and fix a term of one year or less.  
13    S 2. Paragraphs (a) and (b) of subdivision 5 of section 70.25 of the  
14    penal law, as amended by chapter 3 of laws of 1995, are amended to read  
15    as follows:  
16    (a) Except as provided in paragraph (c) of this subdivision, when a  
17    person is convicted of assault in the second degree, as defined in  
18    subdivision seven of section 120.05 of this chapter, OR AGGRAVATED  
19    HARASSMENT OF AN EMPLOYEE BY AN INMATE AS DEFINED IN SECTION 240.32 OF  
20    THIS CHAPTER, any definite, indeterminate or determinate term of impri-  
21    sonment which may be imposed as a sentence upon such conviction shall  
22    run consecutively to any undischarged term of imprisonment to which the  
23    defendant was subject and for which he was confined at the time of the  
24    assault.  
25    (b) Except as provided in paragraph (c) of this subdivision, when a  
26    person is convicted of assault in the second degree, as defined in  
27    subdivision seven of section 120.05 of this chapter, OR AGGRAVATED  
28    HARASSMENT OF AN EMPLOYEE BY AN INMATE AS DEFINED IN SECTION 240.32 OF

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

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1 THIS CHAPTER, any definite, indeterminate or determinate term of impri-  
2 sonment which may be imposed as a sentence upon such conviction shall  
3 run consecutively to any term of imprisonment which was previously  
4 imposed or which may be prospectively imposed where the person was  
5 confined within a detention facility at the time of the assault upon a  
6 charge which culminated in such sentence of imprisonment.

7 S 3. Paragraphs (a) and (b) of subdivision 5 of section 70.25 of the  
8 penal law, as added by chapter 372 of the laws of 1981, are amended to  
9 read as follows:

10 (a) Except as provided in paragraph (c) of this subdivision, when a  
11 person is convicted of assault in the second degree, as defined in  
12 subdivision seven of section 120.05 of this chapter, OR AGGRAVATED  
13 HARASSMENT OF AN EMPLOYEE BY AN INMATE AS DEFINED IN SECTION 240.32 OF  
14 THIS CHAPTER, any definite or indeterminate term of imprisonment which  
15 may be imposed as a sentence upon such conviction shall run consecutive-  
16 ly to any undischarged term of imprisonment to which the defendant was  
17 subject and for which he was confined at the time of the assault.

18 (b) Except as provided in paragraph (c) of this subdivision, when a  
19 person is convicted of assault in the second degree, as defined in  
20 subdivision seven of section 120.05 of this chapter, OR AGGRAVATED  
21 HARASSMENT OF AN EMPLOYEE BY AN INMATE AS DEFINED IN SECTION 240.32 OF  
22 THIS CHAPTER, any definite or indeterminate term of imprisonment which  
23 may be imposed as a sentence upon such conviction shall run consecutive-  
24 ly to any term of imprisonment which was previously imposed or which may  
25 be prospectively imposed where the person was confined within a  
26 detention facility at the time of the assault upon a charge which culmi-  
27 nated in such sentence of imprisonment.

28 S 4. Paragraph (c) of subdivision 5 of section 70.25 of the penal law,  
29 as added by chapter 372 of the laws of 1981, is amended to read as  
30 follows:

31 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this  
32 subdivision, a term of imprisonment imposed upon a conviction to assault  
33 in the second degree as defined in subdivision seven of section 120.05  
34 of this chapter OR AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE AS  
35 DEFINED IN SECTION 240.32 OF THIS CHAPTER may run concurrently to any  
36 other term of imprisonment, in the interest of justice, provided the  
37 court sets forth in the record its reasons for imposing a concurrent  
38 sentence. Nothing in this section shall require the imposition of a  
39 sentence of imprisonment where it is not otherwise required by law.

40 S 5. Section 70.25 of the penal law is amended by adding a new subdi-  
41 vision 6 to read as follows:

42 6. WHEN A PERSON IS CONVICTED OF A CRIME COMMITTED WHILE IN THE CUSTO-  
43 DY OF A CORRECTIONAL FACILITY OR LOCAL CORRECTIONAL FACILITY, ANY  
44 SENTENCE OF IMPRISONMENT IMPOSED FOR SUCH CONVICTION SHALL RUN CONSEC-  
45 UTIVELY TO ANY UNDISCHARGED TERM OF IMPRISONMENT TO WHICH THE DEFENDANT  
46 WAS SUBJECT TO AND FOR WHICH HE OR SHE WAS CONFINED AT THE TIME OF THE  
47 CONVICTION.

48 S 6. This act shall take effect on the first of November next succeed-  
49 ing the date on which it shall have become a law, provided that the  
50 amendments to paragraphs (a) and (b) of subdivision 5 of section 70.25  
51 of the penal law made by section two of this act shall be subject to the  
52 expiration and reversion of such paragraphs pursuant to subdivision d of  
53 section 74 of chapter 3 of the laws of 1995, as amended, when upon such  
54 date the provisions of section three of this act shall take effect.