

STATE OF NEW YORK

6764

2017-2018 Regular Sessions

IN ASSEMBLY

March 17, 2017

Introduced by M. of A. GJONAJ -- read once and referred 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 § 2. Paragraphs (a) and (b) of subdivision 5 of section 70.25 of the
14 penal law, as amended by chapter 3 of the laws of 1995, are amended to
15 read 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 § 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 § 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 § 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 § 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.