S T A T E O F N E W Y O R K

5016

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. P. RIVERA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the possession by an inmate in a detention facility or the provision to such an inmate of a cellular telephone

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

Section 1. The opening paragraph of subdivision 1 of section 70.25 of the penal law, as amended by chapter 372 of the laws of 1981, is amended to read as follows:

Except as provided in subdivisions two, two-a [and], five AND SIX of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

S 2. Section 70.25 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. (A) WHEN A PERSON IS CONVICTED OF PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE, AS DEFINED IN SUBDIVISION THREE OF SECTION 205.25 OF THIS CHAPTER, ANY DEFINITE, INDETERMINATE OR DETERMINATE TERM OF IMPRISONMENT WHICH MAY BE IMPOSED AS A SENTENCE UPON SUCH CONVICTION SHALL RUN CONSECUTIVELY TO ANY UNDISCHARGED TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WAS SUBJECT AND FOR WHICH HE OR SHE WAS CONFINED AT THE TIME OF SUCH OFFENSE.

(B) WHEN A PERSON IS CONVICTED OF PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE, AS DEFINED IN SUBDIVISION THREE OF SECTION 205.25 OF THIS

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

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CHAPTER, ANY DEFINITE, INDETERMINATE OR DETERMINATE TERM OF IMPRISONMENT WHICH MAY BE IMPOSED AS A SENTENCE UPON SUCH CONVICTION SHALL RUN CONSECUTIVELY TO ANY TERM OF IMPRISONMENT WHICH WAS PREVIOUSLY IMPOSED OR WHICH MAY BE PROSPECTIVELY IMPOSED WHERE THE PERSON WAS CONFINED WITHIN A DETENTION FACILITY AT THE TIME OF THE OFFENSE.

S 3. Section 205.00 of the penal law is amended by adding a new subdivision 5 to read as follows:

5. "CELLULAR TELEPHONE" MEANS ANY WIRELESS COMMUNICATIONS DEVICE AS DEFINED IN SUBDIVISION NINE OF SECTION THREE HUNDRED ONE OF THE COUNTY LAW.

S 4. Section 205.25 of the penal law is amended to read as follows:

S 205.25 Promoting prison contraband in the first degree.

A person is guilty of promoting prison contraband in the first degree when:

1. He OR SHE knowingly and unlawfully introduces any dangerous contraband into a detention facility; or

2. Being a person confined in a detention facility, he OR SHE knowingly and unlawfully makes, obtains or possesses any dangerous contraband[.]; OR

3. BEING A PERSON CONFINED IN A DETENTION FACILITY, HE OR SHE KNOWINGLY AND UNLAWFULLY OBTAINS OR POSSESSES ANY CELLULAR TELEPHONE.

Promoting prison contraband in the first degree is a class D felony.

S 5. The penal law is amended by adding a new section 205.27 to read as follows:

S 205.27 PROVISION OF A CELLULAR TELEPHONE TO AN INMATE.

A PERSON IS GUILTY OF PROVISION OF A CELLULAR TELEPHONE TO AN INMATE WHEN HE OR SHE, BEING AN EMPLOYEE OF A DETENTION FACILITY, THE DIVISION OF PAROLE OR THE OFFICE OF MENTAL HEALTH, KNOWINGLY AND UNLAWFULLY SELLS, EXCHANGES OR GIVES A CELLULAR TELEPHONE TO ANY PERSON CONFINED IN A DETENTION FACILITY.

PROVISION OF A CELLULAR TELEPHONE TO AN INMATE IS A CLASS C FELONY.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.