STATE OF NEW YORK

3871

2019-2020 Regular Sessions

IN SENATE

February 20, 2019

Introduced by Sen. GOUNARDES -- 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:

Section 1. Subdivision 4 of section 70.00 of the penal law, as amended by chapter 738 of the laws of 2004, is amended to read as follows:

4. Alternative definite sentence for class D and E felonies. When a person, other than a second or persistent felony offender, is sentenced for a class D or class E felony, **except for the class E felony of aggravated harassment of an employee by an inmate, as defined in section 240.32 of this chapter,** and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate or determinate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

§ 2. Paragraphs (a) and (b) of subdivision 5 of section 70.25 of the penal law, as amended by chapter 3 of the laws of 1995, are amended to read as follows:

(a) Except as provided in paragraph (c) of this subdivision, when a person is convicted of assault in the second degree, as defined in subdivision seven of section 120.05 of this chapter, **or aggravated harassment of an employee by an inmate as defined in section 240.32 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 was confined at the time of the assault.

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

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(b) Except as provided in paragraph (c) of this subdivision, when a person is convicted of assault in the second degree, as defined in subdivision seven of section 120.05 of this chapter, **or aggravated harassment of an employee by an inmate as defined in section 240.32 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 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 assault upon a charge which culminated in such sentence of imprisonment.

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

(a) Except as provided in paragraph (c) of this subdivision, when a person is convicted of assault in the second degree, as defined in subdivision seven of section 120.05 of this chapter, **or aggravated harassment of an employee by an inmate as defined in section 240.32 of this chapter,** any definite or indeterminate 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 was confined at the time of the assault.

(b) Except as provided in paragraph (c) of this subdivision, when a person is convicted of assault in the second degree, as defined in subdivision seven of section 120.05 of this chapter, **or aggravated harassment of an employee by an inmate as defined in section 240.32 of this chapter,** any definite or indeterminate 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 assault upon a charge which culminated in such sentence of imprisonment.

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

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, a term of imprisonment imposed upon a conviction to assault in the second degree as defined in subdivision seven of section 120.05 of this chapter **or aggravated harassment of an employee by an inmate as defined in section 240.32 of this chapter** may run concurrently to any other term of imprisonment, in the interest of justice, provided the court sets forth in the record its reasons for imposing a concurrent sentence. Nothing in this section shall require the imposition of a sentence of imprisonment where it is not otherwise required by law.

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