

# STATE OF NEW YORK

4699

2025-2026 Regular Sessions

## IN ASSEMBLY

February 4, 2025

Introduced by M. of A. PHEFFER AMATO -- 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 incarcerated individual

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 when such felony is committed  
6 against an employee of a correctional facility or local correctional  
7 facility, hospital, as such term is defined in subdivision two of  
8 section four hundred of the correction law, or a secure facility oper-  
9 ated and maintained by the office of children and family services by an  
10 incarcerated individual, as defined in section 240.32 of this chapter,  
11 and the court, having regard to the nature and circumstances of the  
12 crime and to the history and character of the defendant, is of the opin-  
13 ion that a sentence of imprisonment is necessary but that it would be  
14 unduly harsh to impose an indeterminate or determinate sentence, the  
15 court may impose a definite sentence of imprisonment and fix a term of  
16 one year or less.

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

20 (a) Except as provided in paragraph (c) of this subdivision, when a  
21 person is convicted of assault in the second degree, as defined in  
22 subdivision seven of section 120.05 of this chapter, or when such  
23 conviction is for a crime committed against an employee of a correction-  
24 al facility or local correctional facility, hospital, as such term is  
25 defined in subdivision two of section four hundred of the correction

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

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1 law, or a secure facility operated and maintained by the office of chil-  
2 dren and family services by an incarcerated individual, as defined in  
3 section 240.32 of this chapter, any definite, indeterminate or determi-  
4 nate term of imprisonment which may be imposed as a sentence upon such  
5 conviction shall run consecutively to any undischarged term of imprison-  
6 ment to which the defendant was subject and for which [~~he~~] such defend-  
7 ant was confined at the time of the assault.

8 (b) Except as provided in paragraph (c) of this subdivision, when a  
9 person is convicted of assault in the second degree, as defined in  
10 subdivision seven of section 120.05 of this chapter, or when such  
11 conviction is for a crime committed against an employee of a correction-  
12 al facility or local correctional facility, hospital, as such term is  
13 defined in subdivision two of section four hundred of the correction  
14 law, or a secure facility operated and maintained by the office of chil-  
15 dren and family services by an incarcerated individual, as defined in  
16 section 240.32 of this chapter any definite, indeterminate or determi-  
17 nate term of imprisonment which may be imposed as a sentence upon such  
18 conviction shall run consecutively to any term of imprisonment which was  
19 previously imposed or which may be prospectively imposed where the  
20 person was confined within a detention facility at the time of the  
21 assault upon a charge which culminated in such sentence of imprisonment.

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

25 (a) 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 when such  
28 conviction is for a crime committed against an employee of a correction-  
29 al facility or local correctional facility, hospital, as such term is  
30 defined in subdivision two of section four hundred of the correction  
31 law, or a secure facility operated and maintained by the office of chil-  
32 dren and family services by an incarcerated individual, as defined in  
33 section 240.32 of this chapter, any definite or indeterminate term of  
34 imprisonment which may be imposed as a sentence upon such conviction  
35 shall run consecutively to any undischarged term of imprisonment to  
36 which the defendant was subject and for which [~~he~~] such defendant was  
37 confined at the time of the assault.

38 (b) Except as provided in paragraph (c) of this subdivision, when a  
39 person is convicted of assault in the second degree, as defined in  
40 subdivision seven of section 120.05 of this chapter, or when such  
41 conviction is for a crime committed against an employee of a correction-  
42 al facility or local correctional facility, hospital, as such term is  
43 defined in subdivision two of section four hundred of the correction  
44 law, or a secure facility operated and maintained by the office of chil-  
45 dren and family services by an incarcerated individual, as defined in  
46 section 240.32 of this chapter, any definite or indeterminate term of  
47 imprisonment which may be imposed as a sentence upon such conviction  
48 shall run consecutively to any term of imprisonment which was previously  
49 imposed or which may be prospectively imposed where the person was  
50 confined within a detention facility at the time of the assault upon a  
51 charge which culminated in such sentence of imprisonment.

52 § 4. Paragraph (c) of subdivision 5 of section 70.25 of the penal law,  
53 as added by chapter 372 of the laws of 1981, is amended and a new subdi-  
54 vision 6 is added to read as follows:

55 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this  
56 subdivision, a term of imprisonment imposed upon a conviction to assault

1 in the second degree as defined in subdivision seven of section 120.05  
2 of this chapter or when such conviction is for a crime committed against  
3 an employee of a correctional facility or local correctional facility,  
4 hospital, as such term is defined in subdivision two of section four  
5 hundred of the correction law, or a secure facility operated and main-  
6 tained by the office of children and family services by an incarcerated  
7 individual, as defined in section 240.32 of this chapter, may run  
8 concurrently to any other term of imprisonment, in the interest of  
9 justice, provided the court sets forth in the record its reasons for  
10 imposing a concurrent sentence. Nothing in this section shall require  
11 the imposition of a sentence of imprisonment where it is not otherwise  
12 required by law.

13 6. When a person is convicted of any charge subject to this section,  
14 the person confined shall be re-housed for no shorter than the full  
15 duration of any definitive or indeterminate term of imprisonment which  
16 may be imposed as a sentence upon such conviction and any definitive or  
17 indeterminate term of imprisonment which may be imposed as a sentence  
18 upon such conviction shall run consecutively to any undischarged term of  
19 imprisonment to which the defendant was subject and for which such  
20 defendant was confined at the time of the conduct that gave rise to the  
21 conviction.

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