

6822

I N S E N A T E

March 13, 2014

Introduced by Sen. HOYLMAN -- 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 categorizing members of an auxiliary police program organized and maintained by a state or local police department with police officers and peace officers for purposes of certain felony classifications

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

1 Section 1. This act shall be known and may be cited as the "Auxiliary
2 Police Officers Yevgeniy Marshalik and Nicholas Pekearo Memorial Act."

3 S 2. Section 125.11 of the penal law, as added by chapter 765 of the
4 laws of 2005, is amended to read as follows:

5 S 125.11 Aggravated criminally negligent homicide.

6 A person is guilty of aggravated criminally negligent homicide when,
7 with criminal negligence, he or she causes the death of a police officer
8 [or] , peace officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGAN-
9 IZED AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT where such
10 officer OR MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of
11 performing his or her official duties and the defendant knew or reason-
12 ably should have known that such victim was a police officer or peace
13 officer OR MEMBER OF AN AUXILIARY POLICE PROGRAM.

14 Aggravated criminally negligent homicide is a class C felony.

15 S 3. Section 125.21 of the penal law, as added by chapter 765 of the
16 laws of 2005, is amended to read as follows:

17 S 125.21 Aggravated manslaughter in the second degree.

18 A person is guilty of aggravated manslaughter in the second degree
19 when he or she recklessly causes the death of a police officer [or],
20 peace officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED AND
21 MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT where such officer OR
22 MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing
23 his or her official duties and the defendant knew or reasonably should
24 have known that such victim was a police officer or peace officer OR
25 MEMBER OF AN AUXILIARY POLICE PROGRAM.

26 Aggravated manslaughter in the second degree is a class C felony.

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

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1 S 4. Section 125.22 of the penal law, as added by chapter 765 of the
2 laws of 2005, is amended to read as follows:

3 S 125.22 Aggravated manslaughter in the first degree.

4 A person is guilty of aggravated manslaughter in the first degree
5 when:

6 1. with intent to cause serious physical injury to a police officer
7 [or], peace officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED
8 AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT, where such officer
9 OR MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing
10 his or her official duties and the defendant knew or reasonably should
11 have known that such victim was a police officer [or], a peace officer
12 OR A MEMBER OF AN AUXILIARY POLICE PROGRAM, he or she causes the death
13 of such officer OR MEMBER OF AN AUXILIARY POLICE PROGRAM or another
14 police officer or peace officer OR A MEMBER OF AN AUXILIARY POLICE
15 PROGRAM; or

16 2. with intent to cause the death of a police officer [or], peace
17 officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED AND MAIN-
18 TAINED BY A STATE OR LOCAL POLICE DEPARTMENT, where such officer OR
19 MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing
20 his or her official duties and the defendant knew or reasonably should
21 have known that such victim was a police officer [or], A peace officer
22 OR A MEMBER OF AN AUXILIARY POLICE PROGRAM, he or she causes the death
23 of such officer, MEMBER OF AN AUXILIARY POLICE PROGRAM or another police
24 officer or peace officer OR MEMBER OF AN AUXILIARY POLICE PROGRAM under
25 circumstances which do not constitute murder because he or she acts
26 under the influence of extreme emotional disturbance, as defined in
27 paragraph (a) of subdivision one of section 125.25. The fact that homi-
28 cide was committed under the influence of extreme emotional disturbance
29 constitutes a mitigating circumstance reducing murder to aggravated
30 manslaughter in the first degree or manslaughter in the first degree and
31 need not be proved in any prosecution initiated under this subdivision.

32 Aggravated manslaughter in the first degree is a class B felony.

33 S 5. Paragraph a of subdivision 1 of section 125.26 of the penal law
34 is amended by adding a new subparagraph (ii-b) to read as follows:

35 (II-B) THE INTENDED VICTIM WAS A MEMBER OF AN AUXILIARY POLICE PROGRAM
36 ORGANIZED AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT WHO WAS
37 AT THE TIME OF THE KILLING ENGAGED IN THE COURSE OF PERFORMING HIS OR
38 HER OFFICIAL DUTIES, AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE
39 KNOWN THAT THE INTENDED VICTIM WAS SUCH A MEMBER OF AN AUXILIARY POLICE
40 PROGRAM; OR

41 S 6. Paragraph a of subdivision 1 of section 125.27 of the penal law
42 is amended by adding a new subparagraph (ii-b) to read as follows:

43 (II-B) THE INTENDED VICTIM WAS A MEMBER OF AN AUXILIARY POLICE PROGRAM
44 ORGANIZED AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT WHO WAS
45 AT THE TIME OF THE KILLING ENGAGED IN THE COURSE OF PERFORMING HIS OR
46 HER OFFICIAL DUTIES, AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE
47 KNOWN THAT THE INTENDED VICTIM WAS SUCH A MEMBER OF AN AUXILIARY POLICE
48 PROGRAM; OR

49 S 7. This act shall take effect on the first of November next succeed-
50 ing the date upon which it shall have become a law.