

9139

I N   A S S E M B L Y

March 20, 2014

---

Introduced by M. of A. SEPULVEDA -- read once and referred 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 ASSEM-  
BLY, 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.

LBD14404-01-4

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.