

3869--A

2015-2016 Regular Sessions

I N   S E N A T E

February 20, 2015

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Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Paragraph (b) of subdivision 1 of section 70.02 of the penal law,  
4     as amended by chapter 1 of the laws of 2013, is amended to read as  
5     follows:  
6     (b) Class C violent felony offenses: an attempt to commit any of the  
7     class B felonies set forth in paragraph (a) of this subdivision; aggra-  
8     vated criminally negligent homicide as defined in section 125.11, aggra-  
9     vated manslaughter in the second degree as defined in section 125.21,  
10    aggravated sexual abuse in the second degree as defined in section  
11    130.67, assault on a peace officer, police officer, [fireman or] FIRE-  
12    FIGHTER, emergency medical services professional, OR MEMBER OF AN AUXIL-  
13    IARY POLICE PROGRAM, WHILE ON DUTY, as defined in section 120.08,  
14    assault on a judge as defined in section 120.09, gang assault in the  
15    second degree as defined in section 120.06, strangulation in the first  
16    degree as defined in section 121.13, burglary in the second degree as  
17    defined in section 140.25, robbery in the second degree as defined in  
18    section 160.10, criminal possession of a weapon in the second degree as  
19    defined in section 265.03, criminal use of a firearm in the second  
20    degree as defined in section 265.08, criminal sale of a firearm in the

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

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1 second degree as defined in section 265.12, criminal sale of a firearm  
2 with the aid of a minor as defined in section 265.14, aggravated crimi-  
3 nal possession of a weapon as defined in section 265.19, soliciting or  
4 providing support for an act of terrorism in the first degree as defined  
5 in section 490.15, hindering prosecution of terrorism in the second  
6 degree as defined in section 490.30, and criminal possession of a chemi-  
7 cal weapon or biological weapon in the third degree as defined in  
8 section 490.37.

9 S 3. Subdivision 3 of section 120.05 of the penal law, as amended by  
10 chapter 196 of the laws of 2014, is amended to read as follows:

11 3. With intent to prevent a peace officer, a police officer, prosecu-  
12 tor as defined in subdivision thirty-one of section 1.20 of the criminal  
13 procedure law, registered nurse, licensed practical nurse, sanitation  
14 enforcement agent, New York city sanitation worker, a firefighter,  
15 including a firefighter acting as a paramedic or emergency medical tech-  
16 nician administering first aid in the course of performance of duty as  
17 such firefighter, an emergency medical service paramedic or emergency  
18 medical service technician, or medical or related personnel in a hospi-  
19 tal emergency department, a city marshal, a school crossing guard  
20 appointed pursuant to section two hundred eight-a of the general municipi-  
21 pal law, a traffic enforcement officer [or], A traffic enforcement agent  
22 OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED AND MAINTAINED BY A  
23 STATE OR LOCAL POLICE DEPARTMENT WHILE PERFORMING HIS OR HER DUTIES AS  
24 SUCH AUXILIARY POLICE OFFICER, from performing a lawful duty, by means  
25 including releasing or failing to control an animal under circumstances  
26 evincing the actor's intent that the animal obstruct the lawful activity  
27 of such peace officer, police officer, prosecutor as defined in subdivi-  
28 sion thirty-one of section 1.20 of the criminal procedure law, regis-  
29 tered nurse, licensed practical nurse, sanitation enforcement agent, New  
30 York city sanitation worker, firefighter, paramedic, technician, city  
31 marshal, school crossing guard appointed pursuant to section two hundred  
32 eight-a of the general municipal law, traffic enforcement officer [or],  
33 traffic enforcement agent OR MEMBER OF AN AUXILIARY POLICE PROGRAM, he  
34 or she causes physical injury to such peace officer, police officer,  
35 prosecutor as defined in subdivision thirty-one of section 1.20 of the  
36 criminal procedure law, registered nurse, licensed practical nurse,  
37 sanitation enforcement agent, New York city sanitation worker, fire-  
38 fighter, paramedic, technician or medical or related personnel in a  
39 hospital emergency department, city marshal, school crossing guard,  
40 traffic enforcement officer [or], traffic enforcement agent OR ON-DUTY  
41 MEMBER OF AN AUXILIARY POLICE PROGRAM; or

42 S 4. Subdivision 3 of section 120.05 of the penal law, as amended by  
43 chapter 472 of the laws of 2015, is amended to read as follows:

44 3. With intent to prevent a peace officer, a police officer, prosecu-  
45 tor as defined in subdivision thirty-one of section 1.20 of the criminal  
46 procedure law, registered nurse, licensed practical nurse, public health  
47 sanitarian, New York city public health sanitarian, sanitation enforce-  
48 ment agent, New York city sanitation worker, a firefighter, including a  
49 firefighter acting as a paramedic or emergency medical technician admin-  
50 istering first aid in the course of performance of duty as such fire-  
51 fighter, an emergency medical service paramedic or emergency medical  
52 service technician, or medical or related personnel in a hospital emer-  
53 gency department, a city marshal, a school crossing guard appointed  
54 pursuant to section two hundred eight-a of the general municipal law, a  
55 traffic enforcement officer [or] A traffic enforcement agent OR A MEMBER  
56 OF AN AUXILIARY POLICE PROGRAM ORGANIZED AND MAINTAINED BY A STATE OR

1 LOCAL POLICE DEPARTMENT WHILE PERFORMING HIS OR HER DUTIES AS SUCH  
2 AUXILIARY POLICE OFFICER, from performing a lawful duty, by means  
3 including releasing or failing to control an animal under circumstances  
4 evincing the actor's intent that the animal obstruct the lawful activity  
5 of such peace officer, police officer, prosecutor as defined in subdivi-  
6 sion thirty-one of section 1.20 of the criminal procedure law, regis-  
7 tered nurse, licensed practical nurse, public health sanitarian, New  
8 York city public health sanitarian, sanitation enforcement agent, New  
9 York city sanitation worker, firefighter, paramedic, technician, city  
10 marshal, school crossing guard appointed pursuant to section two hundred  
11 eight-a of the general municipal law, traffic enforcement officer [or],  
12 traffic enforcement agent OR A MEMBER OF AN AUXILIARY POLICE PROGRAM, he  
13 or she causes physical injury to such peace officer, police officer,  
14 prosecutor as defined in subdivision thirty-one of section 1.20 of the  
15 criminal procedure law, registered nurse, licensed practical nurse,  
16 public health sanitarian, New York city public health sanitarian, sani-  
17 tation enforcement agent, New York city sanitation worker, firefighter,  
18 paramedic, technician or medical or related personnel in a hospital  
19 emergency department, city marshal, school crossing guard, traffic  
20 enforcement officer [or], traffic enforcement agent OR ON-DUTY MEMBER OF  
21 AN AUXILIARY POLICE PROGRAM; or

22 S 5. Section 120.08 of the penal law, as added by chapter 632 of the  
23 laws of 1996, is amended to read as follows:

24 S 120.08 Assault on a peace officer, police officer, [fireman or] FIRE-  
25 FIGHTER, emergency medical services professional, OR ON-DUTY  
26 MEMBER OF AN AUXILIARY POLICE PROGRAM.

27 A person is guilty of assault on a peace officer, police officer,  
28 [fireman or] FIREFIGHTER, emergency medical services professional, OR  
29 ON-DUTY MEMBER OF AN AUXILIARY POLICE PROGRAM when, with intent to  
30 prevent a peace officer, A police officer, a [fireman] FIREFIGHTER,  
31 including a [fireman] FIREFIGHTER acting as a paramedic or emergency  
32 medical technician administering first aid in the course of performance  
33 of duty as such [fireman] FIREFIGHTER, [or] an emergency medical service  
34 paramedic [or], AND emergency medical service technician, OR A MEMBER OF  
35 AN AUXILIARY POLICE PROGRAM ORGANIZED AND MAINTAINED BY A STATE OR LOCAL  
36 POLICE DEPARTMENT WHILE PERFORMING HIS OR HER DUTIES AS SUCH AUXILIARY  
37 POLICE OFFICER, from performing a lawful duty, he OR SHE causes serious  
38 physical injury to such peace officer, police officer, [fireman] FIRE-  
39 FIGHTER, paramedic [or], technician, OR ON-DUTY MEMBER OF AN AUXILIARY  
40 POLICE PROGRAM.

41 Assault on a peace officer, police officer, [fireman or] FIREFIGHTER,  
42 emergency medical services professional, OR ON-DUTY MEMBER OF AN AUXIL-  
43 IARY POLICE PROGRAM is a class C felony.

44 S 6. Section 125.11 of the penal law, as added by chapter 765 of the  
45 laws of 2005, is amended to read as follows:

46 S 125.11 Aggravated criminally negligent homicide.

47 A person is guilty of aggravated criminally negligent homicide when,  
48 with criminal negligence, he or she causes the death of a police officer  
49 [or], peace officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED  
50 AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT where such officer  
51 OR MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing  
52 his or her official duties and the defendant knew or reasonably should  
53 have known that such victim was a police officer or peace officer OR  
54 MEMBER OF AN AUXILIARY POLICE PROGRAM.

55 Aggravated criminally negligent homicide is a class C felony.

1 S 7. Section 125.21 of the penal law, as added by chapter 765 of the  
2 laws of 2005, is amended to read as follows:

3 S 125.21 Aggravated manslaughter in the second degree.

4 A person is guilty of aggravated manslaughter in the second degree  
5 when he or she recklessly causes the death of a police officer [or],  
6 peace officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED AND  
7 MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT where such officer OR  
8 MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing  
9 his or her official duties and the defendant knew or reasonably should  
10 have known that such victim was a police officer or peace officer OR  
11 MEMBER OF AN AUXILIARY POLICE PROGRAM.

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

13 S 8. Section 125.22 of the penal law, as added by chapter 765 of the  
14 laws of 2005, is amended to read as follows:

15 S 125.22 Aggravated manslaughter in the first degree.

16 A person is guilty of aggravated manslaughter in the first degree  
17 when:

18 1. with intent to cause serious physical injury to a police officer  
19 [or], peace officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED  
20 AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT, where such officer  
21 OR MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing  
22 his or her official duties and the defendant knew or reasonably should  
23 have known that such victim was a police officer [or], a peace officer  
24 OR A MEMBER OF AN AUXILIARY POLICE PROGRAM, he or she causes the death  
25 of such officer OR MEMBER OF AN AUXILIARY POLICE PROGRAM or another  
26 police officer or peace officer OR A MEMBER OF AN AUXILIARY POLICE  
27 PROGRAM; or

28 2. with intent to cause the death of a police officer [or], peace  
29 officer OR A MEMBER OF AN AUXILIARY POLICE PROGRAM ORGANIZED AND MAIN-  
30 TAINED BY A STATE OR LOCAL POLICE DEPARTMENT, where such officer OR  
31 MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing  
32 his or her official duties and the defendant knew or reasonably should  
33 have known that such victim was a police officer [or], A peace officer  
34 OR A MEMBER OF AN AUXILIARY POLICE PROGRAM, he or she causes the death  
35 of such officer, MEMBER OF AN AUXILIARY POLICE PROGRAM or another police  
36 officer or peace officer OR MEMBER OF AN AUXILIARY POLICE PROGRAM under  
37 circumstances which do not constitute murder because he or she acts  
38 under the influence of extreme emotional disturbance, as defined in  
39 paragraph (a) of subdivision one of section 125.25 OF THIS ARTICLE. The  
40 fact that homicide was committed under the influence of extreme  
41 emotional disturbance constitutes a mitigating circumstance reducing  
42 murder to aggravated manslaughter in the first degree or manslaughter in  
43 the first degree and need not be proved in any prosecution initiated  
44 under this subdivision.

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

46 S 9. Paragraph (a) of subdivision 1 of section 125.26 of the penal law  
47 is amended by adding a new subparagraph (ii-b) to read as follows:

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

54 S 10. Paragraph (a) of subdivision 1 of section 125.27 of the penal  
55 law is amended by adding a new subparagraph (ii-b) to read as follows:

1 (II-B) THE INTENDED VICTIM WAS A MEMBER OF AN AUXILIARY POLICE PROGRAM  
2 ORGANIZED AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT WHO WAS  
3 AT THE TIME OF THE KILLING ENGAGED IN THE COURSE OF PERFORMING HIS OR  
4 HER OFFICIAL DUTIES, AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE  
5 KNOWN THAT THE INTENDED VICTIM WAS SUCH A MEMBER OF AN AUXILIARY POLICE  
6 PROGRAM; OR  
7 S 11. This act shall take effect on the first of November next  
8 succeeding the date upon which it shall have become a law; provided that  
9 section four of this act shall take effect on the same date and in the  
10 same manner as section one of chapter 472 of the laws of 2015, takes  
11 effect.