

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

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 ORGANIZED
9 AND MAINTAINED BY A STATE OR LOCAL POLICE DEPARTMENT where such officer
10 OR MEMBER OF AN AUXILIARY POLICE PROGRAM was in the course of performing
11 his or her official duties and the defendant knew or reasonably should
12 have known that such victim was a police officer or peace officer OR
13 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

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

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1 his or her official duties and the defendant knew or reasonably should
2 have known that such victim was a police officer or peace officer OR
3 MEMBER OF AN AUXILIARY POLICE PROGRAM.

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

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

7 S 125.22 Aggravated manslaughter in the first degree.

8 A person is guilty of aggravated manslaughter in the first degree
9 when:

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

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

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

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

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

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

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

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