

STATE OF NEW YORK

5098

2017-2018 Regular Sessions

IN SENATE

March 8, 2017

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 § 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
21 second degree as defined in section 265.12, criminal sale of a firearm
22 with the aid of a minor as defined in section 265.14, aggravated crimi-
23 nal possession of a weapon as defined in section 265.19, soliciting or

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

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1 providing support for an act of terrorism in the first degree as defined
2 in section 490.15, hindering prosecution of terrorism in the second
3 degree as defined in section 490.30, and criminal possession of a chemi-
4 cal weapon or biological weapon in the third degree as defined in
5 section 490.37.

6 § 3. Subdivision 3 of section 120.05 of the penal law, as amended by
7 chapter 267 of the laws of 2016, is amended to read as follows:

8 3. With intent to prevent a peace officer, a police officer, prosecu-
9 tor as defined in subdivision thirty-one of section 1.20 of the criminal
10 procedure law, registered nurse, licensed practical nurse, public health
11 sanitarian, New York city public health sanitarian, sanitation enforce-
12 ment agent, New York city sanitation worker, a firefighter, including a
13 firefighter acting as a paramedic or emergency medical technician admin-
14 istering first aid in the course of performance of duty as such fire-
15 fighter, an emergency medical service paramedic or emergency medical
16 service technician, or medical or related personnel in a hospital emer-
17 gency department, a city marshal, a school crossing guard appointed
18 pursuant to section two hundred eight-a of the general municipal law, a
19 traffic enforcement officer, traffic enforcement agent, a member of an
20 auxiliary police program organized and maintained by a state or local
21 police department while performing his or her duties as such auxiliary
22 police officer or employee of any entity governed by the public service
23 law in the course of performing an essential service, from performing a
24 lawful duty, by means including releasing or failing to control an
25 animal under circumstances evincing the actor's intent that the animal
26 obstruct the lawful activity of such peace officer, police officer,
27 prosecutor as defined in subdivision thirty-one of section 1.20 of the
28 criminal procedure law, registered nurse, licensed practical nurse,
29 public health sanitarian, New York city public health sanitarian, sani-
30 tation enforcement agent, New York city sanitation worker, firefighter,
31 paramedic, technician, city marshal, school crossing guard appointed
32 pursuant to section two hundred eight-a of the general municipal law,
33 traffic enforcement officer, traffic enforcement agent, member of an
34 auxiliary police program or employee of an entity governed by the public
35 service law, he or she causes physical injury to such peace officer,
36 police officer, prosecutor as defined in subdivision thirty-one of
37 section 1.20 of the criminal procedure law, registered nurse, licensed
38 practical nurse, public health sanitarian, New York city public health
39 sanitarian, sanitation enforcement agent, New York city sanitation work-
40 er, firefighter, paramedic, technician or medical or related personnel
41 in a hospital emergency department, city marshal, school crossing guard,
42 traffic enforcement officer, traffic enforcement agent, on-duty member
43 of an auxiliary police program or employee of an entity governed by the
44 public service law; or

45 § 4. Section 120.08 of the penal law, as added by chapter 632 of the
46 laws of 1996, is amended to read as follows:

47 § 120.08 Assault on a peace officer, police officer, [~~fireman-or~~] fire-
48 fighter, emergency medical services professional, or on-duty
49 member of an auxiliary police program.

50 A person is guilty of assault on a peace officer, police officer,
51 [~~fireman-or~~] firefighter, emergency medical services professional, or
52 on-duty member of an auxiliary police program when, with intent to
53 prevent a peace officer, a police officer, a [~~fireman~~] firefighter,
54 including a [~~fireman~~] firefighter acting as a paramedic or emergency
55 medical technician administering first aid in the course of performance
56 of duty as such [~~fireman~~] firefighter, [~~or~~] an emergency medical service

1 paramedic ~~[or]~~, and emergency medical service technician, or a member of
2 an auxiliary police program organized and maintained by a state or local
3 police department while performing his or her duties as such auxiliary
4 police officer, from performing a lawful duty, he or she causes serious
5 physical injury to such peace officer, police officer, ~~[fireman]~~ fire-
6 fighter, paramedic ~~[or]~~, technician, or on-duty member of an auxiliary
7 police program.

8 Assault on a peace officer, police officer, ~~[fireman-or]~~ firefighter,
9 emergency medical services professional, or on-duty member of an auxil-
10 iary police program is a class C felony.

11 § 5. Section 125.11 of the penal law, as added by chapter 765 of the
12 laws of 2005, is amended to read as follows:

13 § 125.11 Aggravated criminally negligent homicide.

14 A person is guilty of aggravated criminally negligent homicide when,
15 with criminal negligence, he or she causes the death of a police officer
16 ~~[or]~~, peace officer or a member of an auxiliary police program organized
17 and maintained by a state or local police department where such officer
18 or member of an auxiliary police program was in the course of performing
19 his or her official duties and the defendant knew or reasonably should
20 have known that such victim was a police officer or peace officer or
21 member of an auxiliary police program.

22 Aggravated criminally negligent homicide is a class C felony.

23 § 6. Section 125.21 of the penal law, as added by chapter 765 of the
24 laws of 2005, is amended to read as follows:

25 § 125.21 Aggravated manslaughter in the second degree.

26 A person is guilty of aggravated manslaughter in the second degree
27 when he or she recklessly causes the death of a police officer ~~[or]~~,
28 peace officer or a member of an auxiliary police program organized and
29 maintained by a state or local police department where such officer or
30 member of an auxiliary police program was in the course of performing
31 his or her official duties and the defendant knew or reasonably should
32 have known that such victim was a police officer or peace officer or
33 member of an auxiliary police program.

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

35 § 7. Section 125.22 of the penal law, as added by chapter 765 of the
36 laws of 2005, is amended to read as follows:

37 § 125.22 Aggravated manslaughter in the first degree.

38 A person is guilty of aggravated manslaughter in the first degree
39 when:

40 1. with intent to cause serious physical injury to a police officer
41 ~~[or]~~, peace officer or a member of an auxiliary police program organized
42 and maintained by a state or local police department, where such officer
43 or member of an auxiliary police program was in the course of performing
44 his or her official duties and the defendant knew or reasonably should
45 have known that such victim was a police officer ~~[or]~~, a peace officer
46 or a member of an auxiliary police program, he or she causes the death
47 of such officer or member of an auxiliary police program or another
48 police officer or peace officer or a member of an auxiliary police
49 program; or

50 2. with intent to cause the death of a police officer ~~[or]~~, peace
51 officer or a member of an auxiliary police program organized and main-
52 tained by a state or local police department, where such officer or
53 member of an auxiliary police program was in the course of performing
54 his or her official duties and the defendant knew or reasonably should
55 have known that such victim was a police officer ~~[or]~~, a peace officer
56 or a member of an auxiliary police program, he or she causes the death

1 of such officer, member of an auxiliary police program or another police
2 officer or peace officer or member of an auxiliary police program under
3 circumstances which do not constitute murder because he or she acts
4 under the influence of extreme emotional disturbance, as defined in
5 paragraph (a) of subdivision one of section 125.25 of this article. The
6 fact that homicide was committed under the influence of extreme
7 emotional disturbance constitutes a mitigating circumstance reducing
8 murder to aggravated manslaughter in the first degree or manslaughter in
9 the first degree and need not be proved in any prosecution initiated
10 under this subdivision.

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

12 § 8. Paragraph (a) of subdivision 1 of section 125.26 of the penal law
13 is amended by adding a new subparagraph (ii-b) to read as follows:

14 (ii-b) the intended victim was a member of an auxiliary police program
15 organized and maintained by a state or local police department who was
16 at the time of the killing engaged in the course of performing his or
17 her official duties, and the defendant knew or reasonably should have
18 known that the intended victim was such a member of an auxiliary police
19 program; or

20 § 9. Paragraph (a) of subdivision 1 of section 125.27 of the penal law
21 is amended by adding a new subparagraph (ii-b) to read as follows:

22 (ii-b) the intended victim was a member of an auxiliary police program
23 organized and maintained by a state or local police department who was
24 at the time of the killing engaged in the course of performing his or
25 her official duties, and the defendant knew or reasonably should have
26 known that the intended victim was such a member of an auxiliary police
27 program; or

28 § 10. This act shall take effect on the first of November next
29 succeeding the date upon which it shall have become a law.