

# STATE OF NEW YORK

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1999

2019-2020 Regular Sessions

## IN SENATE

January 18, 2019

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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 476 of the laws of 2018, 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, firefighter or emer-  
12 gency medical services professional as defined in section 120.08, or  
13 member of an auxiliary police program, while on duty, assault on a judge  
14 as defined in section 120.09, gang assault in the second degree as  
15 defined in section 120.06, strangulation in the first degree as defined  
16 in section 121.13, burglary in the second degree as defined in section  
17 140.25, robbery in the second degree as defined in section 160.10, crim-  
18 inal possession of a weapon in the second degree as defined in section  
19 265.03, criminal use of a firearm in the second degree as defined in  
20 section 265.08, criminal sale of a firearm in the second degree as  
21 defined in section 265.12, criminal sale of a firearm with the aid of a  
22 minor as defined in section 265.14, aggravated criminal possession of a  
23 weapon as defined in section 265.19, soliciting or providing support for

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

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1 an act of terrorism in the first degree as defined in section 490.15,  
2 hindering prosecution of terrorism in the second degree as defined in  
3 section 490.30, and criminal possession of a chemical weapon or biolog-  
4 ical weapon in the third degree as defined in section 490.37.

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

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

44 § 4. Section 120.08 of the penal law, as amended by chapter 476 of the  
45 laws of 2018, is amended to read as follows:

46 § 120.08 Assault on a peace officer, police officer, firefighter [~~or~~],  
47 emergency medical services professional, or on-duty member of  
48 an auxiliary police program.

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

1 state or local police department while performing his or her duties as  
2 such auxiliary police officer, from performing a lawful duty, he or she  
3 causes serious physical injury to such peace officer, police officer,  
4 firefighter, paramedic ~~[or]~~, technician, or on-duty member of an auxil-  
5 iary police program.

6 Assault on a peace officer, police officer, firefighter ~~[or]~~, emergen-  
7 cy medical services professional, or on-duty member of an auxiliary  
8 police program is a class C felony.

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

11 § 125.11 Aggravated criminally negligent homicide.

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

20 Aggravated criminally negligent homicide is a class C felony.

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

23 § 125.21 Aggravated manslaughter in the second degree.

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

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

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

35 § 125.22 Aggravated manslaughter in the first degree.

36 A person is guilty of aggravated manslaughter in the first degree  
37 when:

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

48 2. with intent to cause the death of a police officer ~~[or]~~, peace  
49 officer or a member of an auxiliary police program organized and main-  
50 tained by a state or local police department, where such officer or  
51 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]~~, a peace officer  
54 or a member of an auxiliary police program, he or she causes the death  
55 of such officer, member of an auxiliary police program or another police  
56 officer or peace officer or member of an auxiliary police program under

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

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

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

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

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

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

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