STATE OF NEW YORK

6237

2023-2024 Regular Sessions

IN ASSEMBLY

April 3, 2023

Introduced by M. of A. WEPRIN -- 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 Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "Auxiliary Police Officers Yevgeniy Marshalik and Nicholas Pekearo Memorial Act".

§ 2. Paragraph (b) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 94 of the laws of 2020, is amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, firefighter or emergency medical services professional as defined in section 120.08, **or member of an auxiliary police program, while on duty,** assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, aggravated strangulation as defined in section 121.13-a, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a

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

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weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

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

3. With intent to prevent a peace officer, a police officer, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, public health sanitarian, New York city public health sanitarian, sanitation enforcement agent, New York city sanitation worker, a firefighter, including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter, an emergency medical service paramedic or emergency medical service technician, or medical or related personnel in a hospital emergency department, a city marshal, a school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law, a traffic enforcement officer, traffic enforcement agent**, a member of an auxiliary police program organized and maintained by a state or local police department while performing his or her duties as such auxiliary police officer** or employee of any entity governed by the public service law in the course of performing an essential service, from performing a lawful duty, by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such peace officer, police officer, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, public health sanitarian, New York city public health sanitarian, sanitation enforcement agent, New York city sanitation worker, firefighter, paramedic, technician, city marshal, school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law, traffic enforcement officer, traffic enforcement agent**, member of an auxiliary police program** or employee of an entity governed by the public service law, he or she causes physical injury to such peace officer, police officer, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, public health sanitarian, New York city public health sanitarian, sanitation enforcement agent, New York city sanitation worker, firefighter, paramedic, technician or medical or related personnel in a hospital emergency department, city marshal, school crossing guard, traffic enforcement officer, traffic enforcement agent**, on-duty member of an auxiliary police program** or employee of an entity governed by the public service law; or

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

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

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

member of an auxiliary police program organized and maintained by a state or local police department while performing his or her duties as such auxiliary police officer, from performing a lawful duty, he or she causes serious physical injury to such peace officer, police officer, firefighter, paramedic [~~or~~], technician, or on-duty member of an auxiliary police program.

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

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

§ 125.11 Aggravated criminally negligent homicide.

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

Aggravated criminally negligent homicide is a class C felony.

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

§ 125.21 Aggravated manslaughter in the second degree.

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

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

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

§ 125.22 Aggravated manslaughter in the first degree.

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

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

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

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

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

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

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

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

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

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