STATE OF NEW YORK

11563

IN ASSEMBLY

June 2, 2026

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Burroughs) -- read once and referred to the Committee on Correction

AN ACT to amend the penal law and the correction law, in relation to enacting the "duty to intervene accountability act"

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 "duty to intervene accountability act" or "DIAA".

§ 2. Legislative findings and intent. The legislature hereby finds and declares that:

1. Corrections officers employed by local and state correctional facilities in the State of New York are entrusted with the care, custody, transport, and control of arrested and incarcerated individuals, creating a special duty of protection;

2. Incarcerated individuals, by virtue of their confinement, are uniquely vulnerable and dependent upon corrections personnel for their safety and well-being;

3. The failure of a corrections officer to intervene when witnessing an unjustified assault on an incarcerated individual constitutes a grave dereliction of duty that may result in death or serious physical injury;

4. Current law does not adequately address the criminal accountability of corrections officers who, while on duty and having a clear opportunity to act, fail to intervene to prevent or stop an unjustified assault on an individual in their custody; and

5. Establishing clear criminal liability for such failures to intervene will serve to deter misconduct, protect the rights of incarcerated individuals, promote accountability within correctional facilities, and uphold the public trust placed in corrections personnel.

§ 3. Section 125.15 of the penal law is amended by adding a new subdivision 2 to read as follows:

2. Such person is a corrections officer employed by a local or state correctional facility, as defined in subdivision twenty-five of section 2.10 of the criminal procedure law, and such person has as part of their duties the care, custody, transport, and/or control of an arrested or

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

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incarcerated individual, and such person, while on duty, witnesses an assault which such person knows or reasonably should know is unjustified on said arrested or incarcerated individual by those acting with intent to cause physical injury, that results in the death of said individual, and the public official takes no action to restrict, restrain, or prevent the continuation of said assault despite having a clear opportunity to do so. For purposes of this subdivision, "clear opportunity to do so" means that the corrections officer was physically present, aware of the assault, and capable of taking reasonable action to restrict, restrain, or prevent the continuation of said assault without an imminent and objectively reasonable threat of death or serious physical injury to the officer, and "unjustified assault" means the use of force against an arrested or incarcerated individual that is not authorized by law, regulation, or departmental policy as a reasonable and necessary response to an immediate threat; or

§ 4. Subdivision 14 of section 120.05 of the penal law, as added by chapter 268 of the laws of 2016, is amended and a new subdivision 15 is added to read as follows:

14. With intent to prevent or obstruct a process server, as defined in section eighty-nine-t of the general business law, from performing a lawful duty pursuant to article three of the civil practice law and rules, or intentionally, as retaliation against such a process server for the performance of the process server's duties pursuant to such article, including by means of releasing or failing to control an animal evincing the actor's intent that the animal prevent or obstruct the lawful duty of the process server or as retaliation against the process server, [~~he or she causes~~] they cause physical injury to such process server[~~.~~]; or

15. Such person is a corrections officer employed by a local or state correctional facility, as defined in subdivision twenty-five of section 2.10 of the criminal procedure law, and such person has as part of their duties the care, custody, transport, and/or control of an arrested or incarcerated individual, and such person, while on duty, witnesses an assault which such person knows or reasonably should know is unjustified on said arrested or incarcerated individual by those acting with intent to cause physical injury, that results in serious physical injury to said individual, and the public official takes no action to restrict, restrain, or prevent the continuation of said assault despite having a clear opportunity to do so. For purposes of this subdivision, "clear opportunity to do so" means that the corrections officer was physically present, aware of the assault, and capable of taking reasonable action to restrict, restrain, or prevent the continuation of said assault without an imminent and objectively reasonable threat of death or serious physical injury to the officer, and "unjustified assault" means the use of force against an arrested or incarcerated individual that is not authorized by law, regulation, or departmental policy as a reasonable and necessary response to an immediate threat.

§ 5. The correction law is amended by adding a new section 123 to read as follows:

§ 123. Reporting by corrections officers of assaults. 1. Any corrections officer who witnesses an assault as described in subdivision two of section 125.15 or subdivision fifteen of section 120.05 of the penal law shall, in addition to any duty to intervene, promptly report the incident to a supervisor and to the inspector general or other appropriate oversight authority.

2. Failure to report as required by subdivision one of this section shall constitute grounds for disciplinary action, including but not limited to termination, in addition to any criminal liability under section 125.15 or 120.05 of the penal law.

§ 6. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the Legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 7. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the department of corrections and community supervision is authorized to promulgate, amend and/or repeal any rule or regulation necessary for the implementation of this act on or before such effective date.