

# STATE OF NEW YORK

11378--A

## IN ASSEMBLY

October 19, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Fernandez, Mosley, Barron, McDonough) -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law and the penal law, in relation to imposing criminal liability for the failure to obtain medical care for a person in custody displaying medical distress

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Andrew Kearse act".

3 § 2. Paragraph (e) of subdivision 1 of section 47 of the correction  
4 law is amended by adding a new subparagraph (iii) to read as follows:

5 (iii) The board shall require any police officer, peace officer,  
6 correction officer or other employee of a correctional facility to  
7 provide immediate medical attention when an inmate or person in custody  
8 displays medical distress. The board shall require state and local  
9 correctional facilities and law enforcement agencies to conduct training  
10 on assisting a person displaying medical distress. The board shall  
11 investigate all alleged failures of any police officer, peace officer,  
12 correction officer or other employee of a correctional facility to  
13 provide medical care to an inmate or person in custody displaying  
14 medical distress or a need for immediate medical care. If the board  
15 discovers any police officer, peace officer, correction officer, or  
16 other employee of a correctional facility failed to make reasonable  
17 effort to provide medical care to an inmate or person in custody  
18 displaying medical distress or a need for immediate medical care, the  
19 board shall refer such case to prosecutors as a violation of section  
20 195.01 of the penal law.

21 § 3. The penal law is amended by adding a new section 195.01 to read  
22 as follows:

23 § 195.01 Criminally negligent failure to obtain medical care.

24 A person is guilty of criminally negligent failure to obtain medical  
25 care when such person, acting as a police officer, peace officer or

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

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1 correction officer: (a) with criminal negligence, fails to make a good  
2 faith effort to obtain medical care for any person in custody, including  
3 an inmate, displaying medical distress, including but not limited to  
4 breathing difficulties, migraines and muscle pains, or a need for imme-  
5 diate medical care in the presence of such officer; and (b) such person  
6 in custody suffers from an injury or death resulting from such failure  
7 to obtain medical care.

8 Criminally negligent failure to obtain medical care is a class A  
9 misdemeanor.

10 § 4. This act shall take effect immediately.