STATE OF NEW YORK

4076--B

2019-2020 Regular Sessions

IN SENATE

February 27, 2019

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

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

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

(iii) The board shall require any police officer, peace officer, correction officer or other employee of a correctional facility to provide immediate medical attention when an inmate or person in custody displays medical distress. The board shall require state and local correctional facilities and law enforcement agencies to conduct training on assisting a person displaying medical distress. The board shall investigate all alleged failures of any police officer, peace officer, correction officer or other employee of a correctional facility to provide medical care to an inmate or person in custody displaying medical distress or a need for immediate medical care. If the board discovers any police officer, peace officer, correction officer, or other employee of a correctional facility failed to make reasonable effort to provide medical care or denies access to care to an inmate or person in custody displaying medical distress or a need for immediate medical care, the board shall refer such case to prosecutors as a violation of section 125.09 of the penal law.

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

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§ 3. The penal law is amended by adding two new sections 125.08 and 125.09 to read as follows:

§ 125.08 Criminally negligent failure to obtain medical care resulting in injury.

A person is guilty of criminally negligent failure to obtain medical care resulting in injury when such person, acting as a police officer, peace officer or correction officer: (a) with criminal negligence, fails to make a good faith effort to obtain medical care for any person in custody, including an inmate, displaying medical distress, including but not limited to breathing difficulties, migraines and muscle pains, or a need for immediate medical care in the presence of such officer; and (b) such person in custody suffers from an injury resulting from such failure to obtain medical care.

Criminally negligent failure to obtain medical care resulting in injury is a class E felony.

§ 125.09 Criminally negligent failure to obtain medical care resulting in death.

A person is guilty of criminally negligent failure to obtain medical care resulting in death when such person, acting as a police officer, peace officer or correction officer: (a) with criminal negligence, fails to make a good faith effort to obtain medical care for any person in custody, including an inmate, displaying medical distress, including but not limited to breathing difficulties, migraines and muscle pains, or a need for immediate medical care in the presence of such officer; and (b) such person in custody dies as a result of such failure to obtain medical care.

Criminally negligent failure to obtain medical care resulting in death is a class E felony.

§ 4. This act shall take effect immediately.