

# STATE OF NEW YORK

1745

2021-2022 Regular Sessions

## IN ASSEMBLY

January 11, 2021

Introduced by M. of A. FERNANDEZ, SOLAGES, WILLIAMS, JEAN-PIERRE, HYND-  
MAN, COOK, THIELE, PICHARDO, J. RIVERA, EPSTEIN, REYES, RA, SIMON,  
GRIFFIN, O'DONNELL, PRETLOW, HEVESI, PERRY, DE LA ROSA, BARRON, CRUZ,  
ROZIC, SEAWRIGHT, GOTTFRIED, AUBRY, L. ROSENTHAL, RICHARDSON, NIOU,  
HUNTER, BICHOTTE HERMELYN, CARROLL, JOYNER, RODRIGUEZ, VANEL, DARLING,  
DICKENS, WALKER, QUART, FRONTUS -- Multi-Sponsored by -- M. of A.  
ENGLEBRIGHT -- read once and referred to the Committee on Codes

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 Assem-  
bly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Andrew Kearsse 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 or denies access to care to an inmate or  
18 person in custody displaying medical distress or a need for immediate

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

LBD02888-01-1

1 medical care, the board shall refer such case to prosecutors as a  
2 violation of section 125.09 of the penal law.

3 § 3. The penal law is amended by adding two new sections 125.08 and  
4 125.09 to read as follows:

5 § 125.08 Criminally negligent failure to obtain medical care resulting  
6 in injury.

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

16 Criminally negligent failure to obtain medical care resulting in inju-  
17 ry is a class E felony.

18 § 125.09 Criminally negligent failure to obtain medical care resulting  
19 in death.

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

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

31 § 4. This act shall take effect immediately.