STATE OF NEW YORK

1745

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. FERNANDEZ, SOLAGES, WILLIAMS, JEAN-PIERRE, HYNDMAN, 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 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

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

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

§ 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.