

# STATE OF NEW YORK

4054

2023-2024 Regular Sessions

## IN SENATE

February 2, 2023

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

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 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 incarcerated individual or  
8 person in custody displays medical distress. The board shall require  
9 state and local correctional facilities and law enforcement agencies to  
10 conduct training on assisting a person displaying medical distress. The  
11 board shall investigate all alleged failures of any police officer,  
12 peace officer, correction officer or other employee of a correctional  
13 facility to provide medical care to an incarcerated individual or person  
14 in custody displaying medical distress or a need for immediate medical  
15 care. If the board discovers any police officer, peace officer,  
16 correction officer, or other employee of a correctional facility failed  
17 to make reasonable effort to provide medical care or denies access to  
18 care to an incarcerated individual or person in custody displaying  
19 medical distress or a need for immediate medical care, the board shall  
20 refer such case to prosecutors as a violation of section 125.09 of the  
21 penal law.

22 § 3. The penal law is amended by adding two new sections 125.08 and  
23 125.09 to read as follows:

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

LBD06181-02-3

1 § 125.08 Criminally negligent failure to obtain medical care resulting  
2 in injury.

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

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

14 § 125.09 Criminally negligent failure to obtain medical care resulting  
15 in death.

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

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

27 § 4. This act shall take effect immediately.