HOUSE DOCKET, NO. 2809 FILED ON: 2/18/2011

HOUSE . . . . . No. 3361

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to prohibit the participation of healthcare professionals in the torture and abusive treatment of prisoners.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cory Atkins	*14th Middlesex*
Frank I. Smizik	*15th Norfolk*
William N. Brownsberger	☐ *[District]* ☐
Ruth B. Balser	*12th Middlesex*
Patricia D. Jehlen	☐ *[District]* ☐
Timothy J. Toomey, Jr.	*26th Middlesex*
Ellen Story	*3rd Hampshire*
Benjamin Swan	*11th Hampden*

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HOUSE . . . . . No. 3361

By Mr. Lewis of Winchester, a petition (accompanied by bill, House, No. 3361) of Cory Atkins and others relative to the crime of health care professionals participating in the torture and abusive treatment of prisoners. The Judiciary.

The Commonwealth of Massachusetts

An Act to prohibit the participation of healthcare professionals in the torture and abusive treatment of prisoners.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to regulate the conduct of health care professionals, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety."

SECTION 1. Section 5O of chapter 111 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the first sentence the following sentence:- The department shall issue notices of violations and orders as are necessary to enforce section 1B of chapter 112.

SECTION 2. Section 14 of chapter 111C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the first sentence the following sentence:- The department shall estabilsh and implement regulations addressing the provisions of section 1B.

SECTION 3. Chapter 112 of the General Laws is hereby amended by inserting after section 1A the following section:-

Section 1B. (a) As used in this section, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

"Abusive treatment", (1) cruel and unusual; or cruel, inhuman or degrading, treatment or punishment as defined by applicable international treaties and their corresponding interpreting bodies; or cruel and unusual punishment as defined in the United States Constitution or the general laws; or (2) any violation of subsection (c) or (d).

20 “Interrogation”, the questioning related to law enforcement, the enforcement of rules or
21 regulations of a closed institution such as a jail or other detention facility, police facility, prison,
22 immigration facility, or psychiatric or military facility or to military and national security
23 intelligence gathering, designed to prevent harm or danger to individuals, the public, or national
24 security, whether by a government or non-government actor, entity or official. Interrogation
25 shall also include questioning to aid or accomplish any illegal activity or purpose, whether by a
26 government or non-government actor, entity or official. Interrogations are distinct from
27 questioning used by health care professionals to assess the physical or mental condition of an
28 individual.

29 "Health care professional", (1) any person licensed, registered, certified, or exempt to
30 practice a health-related profession under the following: chapter 111; chapter 111C; sections 2,
31 3, 9C, 13, 23R, 24, 43, 51, 51½, 66, 73C, 74, 87, 89, 118, 123A, 130, 138, 149, 163, 196, 198,
32 211, and 252 of chapter 112; and this chapter or (2) any other person licensed, registered,
33 certified, or exempt to practice a health-related profession.

34 "Prisoner", any person who is subject to detention, incarceration, interrogation, or who is
35 being held involuntarily regardless of whether such action is performed or committed by a
36 government or non-government actor, entity, or official; under color of law; or not under color of
37 law.

38 "Torture", any intentional act or intentional omission by which severe pain or suffering,
39 whether physical or mental, is inflicted on a person for such purposes as obtaining from the
40 person or from a third person information or a confession, punishing the person for an act the
41 person or a third person has committed, including the holding of a belief or membership in any
42 group, or is suspected of having committed, or intimidating or coercing the person or a third
43 person, or for any reason based on discrimination of any kind.

44 For the purposes of this section, the terms "torture" and "abusive treatment" including
45 "cruel, inhuman and degrading treatment" shall be interpreted in accordance with applicable
46 international treaties, principles and standards as well as the decisions, observations and
47 recommendations of the corresponding interpreting bodies; provided however, that it shall not be
48 an element of either "torture" or "abusive treatment" that such acts be committed by a
49 government or non-government actor, entity, or official; under color of law; or not under color of
50 law; with specific intent; or without specific intent.

51 For the purposes of this section "adversely affect" a person's physical or mental health or
52 condition shall not include causing adverse effects that may arise from treatment or care when
53 that treatment or care is performed in accordance with generally applicable legal, health and
54 professional standards and for the purposes of evaluating, treating, protecting or improving the
55 person's health.

56 (b) It shall be an element of any violation of this section that the actor knew or reasonably
57 should have known his or her conduct is of the kind prohibited under this section. If a health care
58 professional is denied access to the information necessary to ascertain whether torture or abusive
59 treatment has occurred, is occurring or will occur, in order to assess the nature of his or her
60 conduct as covered by this section, the health care professional shall presume that the prisoner is
61 at risk of torture or abusive treatment.

62 (c) It shall not be an element of any violation of this section that the health care
63 professional be acting in his or her capacity as a health care professional.

64 (d) Every health care professional who uses his or her knowledge or skills in relation to a
65 prisoner shall do so in a way consistent with generally applicable legal, health and professional
66 standards as the health care professional is reasonably able to provide under the circumstances,
67 including protection of the confidentiality of patient information.

68 In all clinical assessments relating to a prisoner, whether for therapeutic or evaluative
69 purposes, health care professionals shall exercise their professional judgment independent of the
70 interests of a government or other third party.

71 (e) (1) No health care professional shall apply his or her knowledge or skills in relation
72 to, engage in any relationship with, or perform services using his or his knowledge and skills in
73 relation to any prisoner where the purpose is not solely to evaluate, treat, protect, or improve the
74 physical or mental health or condition of the prisoner; except as permitted by paragraph (2) or
75 (3).

76 (2) No health care professional shall engage, directly or indirectly, in any act which
77 constitutes participation in, complicity in, incitement to, assistance in, planning or design of, or
78 attempt or conspiracy to commit torture or abusive treatment of a prisoner. Prohibited forms of
79 engagement shall include, but not be limited to:

80 (i) providing means or knowledge with the intent to facilitate the practice of torture or
81 abusive treatment;

82 (ii) permitting his or her knowledge or the clinical findings, treatment or health records of
83 a prisoner to be used in the process of torture or abusive treatment;

84 (iii) examining, evaluating, or treating a prisoner to certify whether torture or abusive
85 treatment can begin or be resumed;

86 (iv) being present while torture or abusive treatment is being administered;

87 (v) omitting indications of torture or abusive treatment from records or reports; and

88 (vi) altering health care records or reports to hide, misrepresent or destroy evidence of
89 torture or abusive treatment.

90 (3) No health care professional shall apply his or her knowledge or skills or perform any
91 service using his or her knowledge or skills in order to assist in the creation of conditions of
92 confinement, incarceration or detention designed to harm, weaken, break-down, exhaust or
93 otherwise impair a prisoner.

94 (4) No health care professional shall apply his or her knowledge or skills or perform any
95 service using his or her knowledge or skills in order to assist in the punishment, detention,
96 incarceration, intimidation, or coercion of a prisoner when such assistance is provided in a
97 manner that may adversely affect the physical or mental health or condition of the prisoner;
98 except as permitted by clause (1) or (2) of subsection (f).

99 (5) No health care professional shall participate in the interrogation of a prisoner,
100 including being present in the interrogation room, asking or suggesting questions, advising on
101 the use of specific interrogation techniques, monitoring the interrogation, or medically or
102 psychologically evaluating a person for the purpose of identifying potential interrogation
103 methods or strategies. This paragraph shall not bar a health care professional from engaging in
104 conduct under clause (3) of subsection (f).

105 (f) A health care professional may engage in the following conduct so long as it does not
106 violate clause (3) or (4), it shall not adversely affect the physical or mental health or condition of
107 a prisoner or potential subject, and is not otherwise unlawful:

108 (1) appropriately participating or aiding in the investigation, prosecution, or defense of a
109 criminal, administrative or civil matter;

110 (2) participating in an act that restrains a prisoner or temporarily alters the physical or
111 mental activity of a prisoner, where the act complies with generally applicable legal, health and
112 professional standards, is necessary for the protection of the physical or mental health, condition
113 or safety of the prisoner, other prisoners, or persons directly caring for, guarding or confining the
114 prisoner;

115 (3) training related to the following purposes, so long as it is not provided in support of
116 specific ongoing or anticipated interrogations:

117 (i) recognizing and responding to persons with physical or mental illness or conditions;

118 (ii) the possible physical and mental effects of particular techniques and conditions of
119 interrogation; or

120 (iii) the development of effective interrogation strategies.

121 (4) conducting human subject research in accordance with generally accepted legal,
122 health and professional standards. Research shall include safeguards for human subjects

123 equivalent to those required by federal law, including informed consent and institutional review
124 board approval where applicable.

125 (g) A health care professional who has reasonable grounds; provided, that such grounds
126 are not based solely on publicly available information, to believe that torture, abusive treatment
127 or other conduct in violation of this section has occurred, is occurring, or will occur shall, as
128 soon as is possible without jeopardizing the physical safety of himself or herself, the prisoner, or
129 third parties, report such conduct to: (1) a government agency that the health care professional
130 reasonably believes has legal authority to punish or prevent the continuation of torture or the
131 abusive treatment of a prisoner or conduct in violation of this section and is reasonably likely to
132 attempt to do so; and (2) in the case of an alleged violation by a health care professional licensed
133 under the laws of the commonwealth, a report shall be filed with appropriate licensing authority.

134 (h) The following may be considered in full or partial mitigation of a violation of this
135 section by the health care professional: (1) compliance with subsection (f); or (2) cooperation in
136 good faith with an investigation of a violation of this section.

137 (i) This section shall apply to conduct taking place within or outside the commonwealth,
138 and without regard to whether the conduct is committed by a governmental or non-governmental
139 entity, official, or actor or under actual or asserted color of law, or with specific intent or without
140 specific intent.

141 (j) This section shall not be construed to expand the lawful scope of practice of any health
142 care professional.

143 SECTION 4. The tenth paragraph of section 5 of chapter 112 of the General Laws, as
144 appearing in the 2008 Official Edition, is hereby amended by adding the following clause:-

145 (i) is guilty of violating section 1B.

146 SECTION 5. The second paragraph of section 9H of said chapter 112, as so appearing, is
147 hereby amended by adding the following clause:--

148 (i) is guilty of violationg section 1B.

149 SECTION 6. Section 18 of said chapter 112, as so appearing, is hereby amended by
150 inserting after the word “terpitude”, in line 6, the following words:- or has violated section 1B.

151 SECTION 7. Section 23K of said chapter 112, as so appearing, is hereby amended by
152 adding the following clause:-

153 (g) has violated section 1B.

154 SECTION 8. Section 23X of said chapter 112, as so appearing, is hereby amended by
155 adding the following clause:-

156 (g) has violated section 1B.

157 SECTION 9. Section 32 of said chapter 112, as so appearing, is hereby amended by
158 inserting after the word “sections”, in line 2, the following words:- section 1B.

159 SECTION 10. Section 42A of said chapter 112, as so appearing, is hereby amended by
160 inserting after the word “jurisdiction”, in line 4, the following words:- including such rules and
161 regulations as are necessary to enable it to properly enforce the provisions of section 1B.

162 SECTION 11. The last paragraph of section 51 of said chapter 112, as so appearing, is
163 hereby amended by adding the following sentence:- The board shall adopt rules and regulations
164 necessary to enforce the provisions of section 1B.

165 SECTION 12. The last paragraph of section 51½ of said chapter 112, as so appearing, is
166 hereby amended by adding the following sentence:-

167 The board shall adopt rules and regulations consistent with section 1B.

168 SECTION 13. Section 71 of said chapter 112, as so appearing, is hereby amended by
169 inserting after the word “incompetence”, in line 7, the following words:- for violation of any
170 provision of section 1B.

171 SECTION 14. Section 73H of chapter 112, as so appearing, is hereby amended by
172 inserting after the word “turpitude”, in line 8, the following words:- or for the violation of any
173 provision of section 1B.

174 SECTION 15. Section 77 of chapter 112, as so appearing, is hereby amended by
175 inserting after the word “of”, in line 1, the following words:- section 1B.

176 SECTION 16. Section 93 of chapter 112, as so appearing, is hereby amended by inserting
177 after the word “turpitude”, in line 2, the following words:- who has violated section 1B.

178 SECTION 17. The second paragraph of section 128 of said chapter 112, as so appearing,
179 is hereby amended by adding the following clause:--

180 (i) is guilty of violating section 1B.

181 SECTION 18. Section 137 of said chapter 112, as so appearing, is hereby amended by
182 inserting after the word “unethically”, in line 7, the following words:- or has been found guilty
183 by the board of violating section 1B.

184 SECTION 19. Subdivision (4) of section 139 of said chapter 112, as so appearing, is
185 hereby amended by adding the following clause:- (e) has violated any of the provisions of
186 section 1B.

187 SECTION 20. Section 158 of said chapter 112, as so appearing, is hereby amended by
188 adding the following clause:-

189 (k) violated any of the provisions of section 1B.

190 SECTION 21. Section 215 of said chapter 112, as so appearing, is hereby amended by
191 adding the following clause:-

192 (h) has violated any of the provisions of section 1B.

193 SECTION 22. Section 258 of chapter 112, as so appearing, is hereby amended by adding
194 the following clause:--

195 (h) has violated any of the provisions of section 1B.

196 SECTION 23. Subsection (b) of section 185 of chapter 149 of the General Laws, as
197 appearing in the 2008 Official Edition, is hereby amended by adding the following clause:-

198 (4) Reports or threatens to report any violation or suspected violation of section 1B of
199 chapter 112.

200 SECTION 24. Clause (2) of subsection (c) of said section 185 of said chapter 149, as so
201 appearing, is hereby amended by inserting after the word "crime", in line 65, the following
202 words:- or (D) is reporting any violation or suspected violation of section 1B of chapter 112.

203 SECTION 25. This act shall not be construed to mean that: (1) conduct described by this
204 act does not already violate state law or constitute professional misconduct; or (2) conduct other
205 than that described by this act does not violate other state law or otherwise constitute
206 professional misconduct.