

SENATE No. 1090

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 adoption of the accompanying bill:

An Act prohibiting the participation of health care professionals in the torture and abuse of prisoners.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

James B. Eldridge

1st Hampshire

Peter V. Kocot

SENATE No. 1090

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 1090) of Eldridge and Kocot for legislation to prohibit the participation of health care professionals in the torture and abuse of prisoners [Joint Committee on Public Health].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act prohibiting the participation of health care professionals in the torture and abuse of prisoners.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to prohibit the participation of health care professionals in the torture and abuse of prisoners, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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

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

3 Section 1B: Participation in torture or abusive treatment of prisoners by health
4 care professionals. 1. Definitions. As used in this section, the terms "torture" and "abusive
5 treatment" including "cruel, inhuman and degrading treatment" shall be interpreted in accordance
6 with applicable international treaties, principles and standards as well as the decisions,
7 observations and recommendations of the corresponding interpreting bodies. However, for the
8 purposes of this section, it shall not be an element of either "torture" or "abusive treatment" that
9 such acts be committed by a government or non-government actor, entity, or official; under color

10 of law; or not under color of law; with specific intent; or without specific intent. As used in this
11 section, unless the context clearly requires otherwise, the following terms have the following
12 meanings:

13 (a) "Health care professional" means any person licensed, registered, certified, or
14 exempt to practice a health-related profession under (i) the following sections of the
15 Massachusetts General Laws, chapter 112: one hundred forty-nine (Acupuncturist); one hundred
16 thirty-eight (Audiologist and Speech Pathologist); eighty-nine (Chiropractor); forty-three
17 (Dentist); fifty-one (Dental Hygienist); fifty-one and one half (Dental Assistant); two hundred
18 and fifty-two (Genetic Counselor); eighty-seven W (Health Officer); one hundred and
19 ninety-six (Hearing Aid Dispenser); three (Radiological Technologist); seventy-four (Nurse);
20 one hundred and eight (Nursing Home Administrator); seventy-three C (Optician); sixty-six
21 (Optometrist); two hundred and eleven (Perfusionist); twenty-four (Pharmacist); two (Physician);
22 nine C (Physician's Assistant); thirteen (Podiatrist); one hundred and eighteen (Psychologist);
23 twenty-three R (Respiratory Care Provider); one hundred and thirty (Social Worker); twenty-
24 three A (Occupational Therapist and Physical Therapist); one hundred and sixty-three (Mental
25 Health Therapist); (ii) the Massachusetts General Laws, chapter 111 (Radiological
26 Technologist); (iii) the Massachusetts General Laws, chapter 111C (Emergency Medical
27 Technician); or (iv) any other person licensed, registered, certified, or exempt to practice a
28 health-related profession under the laws of the Commonwealth of Massachusetts.

29 (b) "Torture" means any intentional act or intentional omission by which severe
30 pain or suffering, whether physical or mental, is inflicted on a person for such purposes as
31 obtaining from the person or from a third person information or a confession, punishing the
32 person for an act the person or a third person has committed (including the holding of a belief or

33 membership in any group) or is suspected of having committed, or intimidating or coercing the
34 person or a third person, or for any reason based on discrimination of any kind.

35 (c) "Abusive treatment" means (i) cruel and unusual; or cruel, inhuman or
36 degrading, treatment or punishment as defined by applicable international treaties and their
37 corresponding interpreting bodies; or cruel and unusual punishment as defined in the United
38 States Constitution or the laws of Massachusetts; or (ii) any violation of subdivision three or four
39 of this section.

40 (d) "Prisoner" means any person who is subject to detention, incarceration,
41 interrogation, or who is being held involuntarily regardless of whether such action is performed
42 or committed by a government or non-government actor, entity, or official; under color of law;
43 or not under color of law.

44 (e) To "adversely affect" a person's physical or mental health or condition does
45 not include causing adverse effects that may arise from treatment or care when that treatment or
46 care is performed in accordance with generally applicable legal, health and professional
47 standards and for the purposes of evaluating, treating, protecting or improving the person's
48 health.

49 (f) "Interrogation" means the questioning related to law enforcement, the
50 enforcement of rules or regulations of a closed institution (such as a jail or other detention
51 facility, police facility, prison, immigration facility, or psychiatric or military facility) or to
52 military and national security intelligence gathering, designed to prevent harm or danger to
53 individuals, the public, or national security, whether by a government or non-government actor,
54 entity or official. "Interrogation" shall also include questioning to aid or accomplish any illegal

55 activity or purpose, whether by a government or non-government actor, entity or official.
56 Interrogations are distinct from questioning used by health care professionals to assess the
57 physical or mental condition of an individual.

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

64 3. Professional Relationship not Required. It shall not be an element of
65 any violation of this section that the health care professional be acting in his or her capacity as a
66 health care professional.

67 4. General obligations of health care professionals.

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

72 (b) In all clinical assessments relating to a prisoner, whether for
73 therapeutic or evaluative purposes, health care professionals shall exercise their
74 professional judgment independent of the interests of a government or other third party.

75 5. Certain conduct of health care professionals prohibited.

76 (a) No health care professional shall apply his or her knowledge or skills in
77 relation to, engage in any relationship with, or perform services using his or his knowledge and
78 skills in relation to any prisoner where the purpose is not solely to evaluate, treat, protect, or
79 improve the physical or mental health or condition of the prisoner (except as permitted by
80 paragraph (b) or (c) of subdivision five of this section).

81 (b) No health care professional shall engage, directly or indirectly, in any act
82 which constitutes participation in, complicity in, incitement to, assistance in, planning or design
83 of, or attempt or conspiracy to commit torture or abusive treatment of a prisoner. Prohibited
84 forms of engagement include but are not limited to:

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

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

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

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

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

93 and

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

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

100 (d) No health care professional shall apply his or her knowledge or skills or
101 perform any service using his or her knowledge or skills in order to assist in the punishment,
102 detention, incarceration, intimidation, or coercion of a prisoner when such assistance is provided
103 in a manner that may adversely affect the physical or mental health or condition of the prisoner
104 (except as permitted by paragraph (a) or (b) of subdivision six of this section).

105 (e) No health care professional shall participate in the interrogation of a prisoner,
106 including being present in the interrogation room, asking or suggesting questions, advising on
107 the use of specific interrogation techniques, monitoring the interrogation, or medically or
108 psychologically evaluating a person for the purpose of identifying potential interrogation
109 methods or strategies. However, this paragraph shall not bar a health care professional from
110 engaging in conduct under paragraph (c) of subdivision six of this section.

111 6. Certain conduct of health care professionals permitted. A health care
112 professional may engage in the following conduct so long as it does not violate subdivision three
113 or four of this section, it does not adversely affect the physical or mental health or condition of a
114 prisoner or potential subject, and is not otherwise unlawful:

115 (a) appropriately participating or aiding in the investigation, prosecution, or
116 defense of a criminal, administrative or civil matter;

117 (b) participating in an act that restrains a prisoner or temporarily alters the
118 physical or mental activity of a prisoner, where the act complies with generally applicable legal,
119 health and professional standards, is necessary for the protection of the physical or mental health,
120 condition or safety of the prisoner, other prisoners, or persons directly caring for, guarding or
121 confining the prisoner;

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

124 (i) recognizing and responding to persons with physical or mental illness or
125 conditions,

126 (ii) the possible physical and mental effects of particular techniques and
127 conditions of interrogation, or

128 (iii) the development of effective interrogation strategies.

129 (d) Conducting human subject research in accordance with generally accepted
130 legal, health and professional standards. Research must include safeguards for human subjects
131 equivalent to those required by federal law, including informed consent and institutional review
132 board approval where applicable.

133 7. Duty to report. A health care professional who has reasonable
134 grounds (not based solely on publicly available information) to believe that torture, abusive
135 treatment or other conduct in violation of this section has occurred, is occurring, or will occur
136 shall, as soon as is possible without jeopardizing the physical safety of himself or herself, the
137 prisoner, or third parties, report such conduct to:

138 (a) a government agency that the health care professional reasonably believes
139 has legal authority to punish or prevent the continuation of torture or the abusive treatment of a
140 prisoner or conduct in violation

141 of this section and is reasonably likely to attempt to do so; and

142 (b) in the case of an alleged violation by a health care professional licensed
143 under the laws of Massachusetts, a report shall be filed with appropriate licensing authority.

144 8. Mitigation. The following may be considered in full or partial
145 mitigation of a violation of this section by the health care professional:

146 (a) compliance with subdivision six of this section; or

147 (b) cooperation in good faith with an investigation of a violation of this section.

148 9. Applicability. This section shall apply to conduct taking place within
149 or outside the commonwealth of Massachusetts, and without regard to whether the conduct is
150 committed by a governmental or non-governmental entity, official, or actor or under actual or
151 asserted color of law, or with specific intent or without specific intent.

152 10. Scope of practice not expanded. This section shall not be construed
153 to expand the lawful scope of practice of any health care professional.

154 SECTION 2. Chapter 149 of the General Laws is hereby amended by adding the
155 following after Section 185(b)(3):--

156 (4) Reports or threatens to report any violation or suspected violation of Section
157 1B of Chapter 112 (relating to the participation in torture and abusive treatment of prisoners by
158 health care professionals)

159 SECTION 3. Chapter 149 of the General Laws is hereby amended by adding the
160 following after Section 185(c)(2)(C):--

161 (D) is reporting any violation or suspected violation of Section 1B of Chapter
162 112 (relating to the participation in torture and abusive treatment of prisoners by health care
163 professionals).

164 SECTION 4. The introduction or enactment of this act shall not be construed to
165 mean that:

166 (a) conduct described by this act does not already violate state law or constitute
167 professional misconduct; or

168 (b) conduct other than that described by this act does not violate other state
169 law or otherwise constitute professional misconduct.