HOUSE DOCKET, NO. 655 FILED ON: 1/14/2013

HOUSE . . . . . No. 2017

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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jason M. Lewis	*Fifth Middlesex*
Timothy J. Toomey, Jr.	*26th Middlesex*
Ruth B. Balser	*12th Middlesex*
Cory Atkins	*14th Middlesex*
Stephen Kulik	*1st Franklin*
Ellen Story	*3rd Hampshire*
Patricia D. Jehlen	*Second Middlesex*
Elizabeth A. Malia	*11th Suffolk*
Carl M. Sciortino, Jr.	*34th Middlesex*
Byron Rushing	*9th Suffolk*
Benjamin Swan	*11th Hampden*
Paul W. Mark	*2nd Berkshire*

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HOUSE . . . . . No. 2017

By Mr. Lewis of Winchester, a petition (accompanied by bill, House, No. 2017) of Jason M. Lewis and others for legislation to prohibit the participation of health care professionals in the torture and abuse of prisoners. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act prohibiting the participation of healthcare professionals in the torture and abuse 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:

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

Section 1C: Participation in torture or abusive treatment of prisoners by health care professionals.

1. Definitions.

As used in this section, unless the context requires otherwise, the following terms shall have the following meanings:

(a) "Health care professional" means any person licensed, registered, certified, or exempt to practice a health-related profession under the laws of the commonwealth of Massachusetts, including but not limited to the following: chapter 111; chapter 111C; or sections two, three, nine C, thirteen, twenty-three A, twenty-three R, twenty-four, forty-three, fifty-one, fifty-one and one half, sixty-six, seventy-three C, seventy-four, eighty-seven WWW, eighty-nine, one hundred and eight, one hundred and eighteen, one hundred and thirty, one hundred thirty-eight, one hundred forty-nine, one hundred and sixty-three, one hundred and ninety-six, two hundred and eleven, or two hundred and fifty-two of chapter 112;

(b) "Torture" means any intentional act or intentional omission by which severe pain or suffering, whether physical or mental, is inflicted on a person for any of the following purposes: to obtain from the subject or from a third person information or a confession; to punish the

19 subject for an act that the subject or a third person has committed or is suspected of having
20 committed; to punish the subject or a third person for actual or suspected beliefs or membership
21 in any group; to intimidate or coerce the subject or a third person; or for any discriminatory
22 reason.

23 (c) "Abusive treatment" means (i) cruel, inhuman or degrading, treatment or punishment
24 as defined by applicable international treaties and their corresponding interpreting bodies; (ii)
25 cruel and unusual punishment as defined in the United States Constitution or the laws of
26 Massachusetts; or (iii) any violation of subsection two of this section.

27 (d) "Prisoner" means any person who is being detained, incarcerated, or held
28 involuntarily, whether by a government or non-government actor, entity, or official; and whether
29 or not under color of law.

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

34 (f) “Interrogation” means the questioning of a prisoner, whether by a government or non-
35 government actor, entity or official, for purposes of: (1) law enforcement; (2) the enforcement of
36 rules or regulations of a closed institution such as a jail or other detention facility, police facility,
37 prison, immigration facility, or psychiatric or military facility; (3) obtaining military and national
38 security intelligence; or (4) aiding or accomplishing any illegal activity or purpose. Questioning
39 by licensed health care professionals to assess the physical or mental condition of an individual
40 for the exclusive purpose of providing care and treatment of that individual within the patient-
41 provider relationship does not constitute interrogation.

42 The terms "torture" and "abusive treatment" shall be interpreted in accordance with
43 applicable international treaties, principles and standards, as well as the decisions, observations
44 and recommendations of the corresponding interpreting bodies.

45 2. Certain conduct of health care professionals prohibited.

46 No health care professional shall:

47 (a) apply his or her knowledge or skills in relation to, engage in any professional
48 relationship with, or perform services using his or her knowledge and skills in relation to any
49 prisoner except for:

50 (i) the purpose of evaluating, treating, protecting, or improving the physical or mental
51 health of the prisoner within a patient-provider relationship; or

52 (ii) situations permitted by paragraphs (a), (b) or (c) of subdivision four of this section.

53 (b) engage, directly or indirectly, in the torture or abusive treatment of a prisoner, nor
54 participate in, incite, assist in, plan or design, or conspire to commit torture or abusive treatment.
55 This general prohibition includes, but is not limited to:

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

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

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

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

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

64 (vi) altering health care records or reports to hide, misrepresent or destroy evidence of
65 torture or abusive treatment;

66 (c) use his or her knowledge or skills in any way to help create conditions of
67 confinement, incarceration or detention designed to harm, weaken, break down, exhaust or
68 otherwise impair a prisoner;

69 (d) use his or her knowledge or skills to further or facilitate the punishment, intimidation,
70 or coercion of a prisoner (except as permitted by paragraph (a) or (b) of subdivision four of this
71 section);

72 (e) use his or her knowledge or skills in any way to assist in the detention or incarceration
73 of a prisoner when such assistance may adversely affect the prisoner's physical or mental health
74 (except as permitted by paragraph (a) or (b) of subdivision four of this section); or

75 (f) participate in the interrogation of a prisoner, including, but not limited to, being
76 physically present in the interrogation room, having the ability to see or hear what is taking place
77 in the interrogation room by any technical means or methods, asking or suggesting questions,
78 advising on the use of specific interrogation techniques, monitoring the interrogation, or
79 medically or psychologically evaluating a person for the purpose of identifying potential
80 interrogation methods or strategies. However, this paragraph shall not bar a health care
81 professional from assessing the competency or sanity of a prisoner in connection with her/his
82 participation in a matter authorized by paragraph (a) of subdivision four of this section or from
83 engaging in conduct permitted under paragraph (d) of subdivision four.

84 3. General obligations of health care professionals.

85 (a) Every health care professional who uses his or her knowledge or skills in relation to a
86 prisoner shall do so in a way consistent with generally applicable legal, health and professional
87 standards, including but not limited to those pertaining to the confidentiality of patient
88 information.

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

92 4. Certain conduct of health care professionals permitted.

93 A health care professional may engage in the following conduct, so long as it is
94 consistent with legal and professional standards; it does not adversely affect the physical or
95 mental health or condition of an individual; it does not violate subdivision two or three of this
96 section; and it is not otherwise unlawful:

97 (a) participate in or aid the investigation, prosecution, or defense of a criminal,
98 administrative or civil matter;

99 (b) participate in acts to restrain or temporarily alter the physical or mental activity of a
100 prisoner, where necessary for the physical or mental health or safety of the prisoner or for the
101 safety of other prisoners, or persons directly caring for, guarding or confining the prisoner;

102 (c) conduct human subject research in accordance with all safeguards for human subjects
103 required by Massachusetts, federal and international law, including but not limited to the
104 informed consent of the subject and institutional review board approval;

105 (d) conduct training related to the non-abusive interrogation of prisoners solely for one or
106 more of the following purposes, provided that such training is not specific to ongoing or
107 anticipated interrogations:

108 (i) assessing a physical or mental illness or condition of a person subject to interrogation;

109 (ii) assessing the possible physical and mental effects of particular techniques and
110 conditions of interrogation; and

111 (iii) developing effective, non-abusive interrogation strategies.

112 5. Duty to report.

113 A health care professional who has reasonable grounds, based on more information than
114 is publicly available, to believe that torture, abusive treatment or conduct in violation of this
115 section has occurred, is ongoing, or will take place in the future shall immediately report such
116 conduct to:

117 (a) a government agency that the health care professional reasonably believes has legal
118 authority to investigate, prevent or punish the continuation of torture or abusive treatment of a
119 prisoner or conduct in violation of this section and is reasonably likely to attempt to do so; and

120 (b) in the case of an alleged violation by a health care professional licensed under the
121 laws of Massachusetts, the appropriate licensing authority.

122 6. Knowledge.

123 It shall be a violation of this section if the health care professional knew or reasonably
124 should have known his or her conduct is of the kind prohibited, and regardless of whether he or
125 she is acting in his or her professional capacity. If a health care professional is denied access to
126 the information necessary to ascertain whether torture or abusive treatment has occurred, is
127 occurring or will occur, the health care professional must presume that the prisoner is at risk of
128 torture or abusive treatment.

129 7. Mitigation.

130 The following may be considered in full or partial mitigation of a violation of this section
131 by the health care professional:

132 (a) compliance with subsection four of this section; or

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

134 8. Applicability.

135 This section shall apply without regard to whether the proscribed conduct takes place
136 within or outside of the commonwealth of Massachusetts; whether it is committed by a
137 governmental or non-governmental entity, official, or actor; or whether it is committed under
138 actual or asserted color of law.

139 9. Scope of practice not expanded.

140 This section shall not be construed to expand the lawful scope of practice of any health
141 care professional.

142 SECTION 2. Section 185 of chapter 149 of the General Laws is hereby amended by
143 striking the word “or” in line [__] and inserting after the word “environment” in line [__] the
144 following language :--

145 ; or (4) Reports or threatens to report any violation or suspected violation of Section 1C
146 of Chapter 112.

147 and by striking the word “or” in line [__] and inserting after the word “crime” in line [__]
148 the following language:--

149 ; or (D) is reporting a violation or suspected violation of Section 1C of Chapter 112.

150 SECTION 3. The introduction or enactment of this act shall not be construed to mean that
151 the conduct proscribed herein does not already violate state law or constitute professional
152 misconduct.