

SENATE No. 1194

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:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

SENATE No. 1194

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1194) of James B. Eldridge 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 One Hundred and Ninetieth General Court
(2017-2018)**

An Act prohibiting the participation of health care 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:

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

3 Section 1C. As used in sections 1C to 1K, inclusive, the following terms shall, unless the
4 context clearly requires otherwise, have the following meanings:-

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

9 "Health care professional", any person licensed, registered, certified, or exempt to
10 practice a health-related profession under the laws of the commonwealth of Massachusetts,
11 including but not limited to the following: chapter 111; chapter 111C; or sections 2, 3, 9C, 13,

12 23A, 23R, 24, 43, 51, 51 ½ , 66, 73C, 74, 87WWW, 89, 108, 118, 130, 138, 149, 163, 196, 211,
13 or 252 of chapter 112;

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

22 "Prisoner", any person who is being detained, incarcerated, or held involuntarily, whether
23 by a government or non-government actor, entity, or official; and whether or not under color of
24 law.

25 "Torture", any intentional act or intentional omission by which severe pain or suffering,
26 whether physical or mental, is inflicted on a person for any of the following purposes: to obtain
27 from the subject or from a third person information or a confession; to punish the subject for an
28 act that the subject or a third person has committed or is suspected of having committed; to
29 punish the subject or a third person for actual or suspected beliefs or membership in any group;
30 to intimidate or coerce the subject or a third person; or for any discriminatory reason.

31 Adversely affecting a person's physical or mental health or condition does not include
32 causing adverse effects that may arise from treatment or care when that treatment or care is

33 performed in accordance with generally applicable legal, health and professional standards and
34 for the purposes of evaluating, treating, protecting or improving the person's health.

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

38 Section 1D. No health care professional shall:

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

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

44 (ii) situations permitted by paragraphs (a), (b) or (c) of section 1F.

45 (b) engage, directly or indirectly, in the torture or abusive treatment of a prisoner, nor
46 participate in, incite, assist in, plan or design, or conspire to commit torture or abusive treatment;
47 provided, further, that this prohibition includes, but is not limited to:

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

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

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

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

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

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

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

61 (d) use his or her knowledge or skills to further or facilitate the punishment, intimidation,
62 or coercion of a prisoner, except as permitted by paragraph (a) or (b) of section 1F;

63 (e) use his or her knowledge or skills in any way to assist in the detention or incarceration
64 of a prisoner when such assistance may adversely affect the prisoner's physical or mental health,
65 except as permitted by paragraph (a) or (b) of section 1F; or

66 (f) participate in the interrogation of a prisoner, including, but not limited to, being
67 physically present in the interrogation room, having the ability to see or hear what is taking place
68 in the interrogation room by any technical means or methods, asking or suggesting questions,
69 advising on the use of specific interrogation techniques, monitoring the interrogation, or
70 medically or psychologically evaluating a person for the purpose of identifying potential
71 interrogation methods or strategies; provided, however, that this paragraph shall not bar a health
72 care professional from assessing the competency or sanity of a prisoner in connection with his or

73 her participation in a matter authorized by paragraph (a) section 1F or from engaging in conduct
74 permitted under paragraph (d) of section 1F.

75 Section 1E. Every health care professional who uses his or her knowledge or skills in
76 relation to a prisoner shall do so in a way consistent with generally applicable legal, health and
77 professional standards, including but not limited to those pertaining to the confidentiality of
78 patient information. In all clinical assessments relating to a prisoner, whether for therapeutic or
79 evaluative purposes, health care professionals shall exercise their professional judgment
80 independent of the interests of a government or other third party.

81 Section 1F. A health care professional may engage in the following conduct, if it is
82 consistent with legal and professional standards, it does not adversely affect the physical or
83 mental health or condition of an individual, it does not violate sections 1D or 1E, and it is not
84 otherwise unlawful:

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

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

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

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

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

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

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

100 Section 1G. A health care professional who has reasonable grounds, based on more
101 information than is publicly available, to believe that torture, abusive treatment or conduct in
102 violation of this section has occurred, is ongoing, or will take place in the future shall
103 immediately report such conduct to:

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

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

109 Section 1H. It shall be a violation of this chapter if the health care professional knew or
110 reasonably should have known his or her conduct is of the kind prohibited, regardless of whether
111 he or she is acting in his or her professional capacity. If a health care professional is denied
112 access to the information necessary to ascertain whether torture or abusive treatment has

113 occurred, is occurring or will occur, the health care professional must presume that the prisoner
114 is at risk of torture or abusive treatment.

115 Section 1I. The following may be considered in determining full or partial mitigation of a
116 violation of this chapter:

117 (a) compliance with section 1F; and

118 (b) cooperation in good faith with an investigation of a violation of sections 1D, 1E, 1F.

119 Section 1J. Sections 1C to 1H shall apply to conduct that occurs inside or outside of the
120 commonwealth of Massachusetts, that is committed by a governmental or non-governmental
121 entity, official, or actor and that is committed under actual or asserted color of law.

122 Section 1K. Sections 1C to 1J shall not be construed to expand the lawful scope of
123 practice for any health care professional.

124 SECTION 2. This act shall not be construed to mean that the conduct proscribed herein
125 does not already violate state law or constitute professional misconduct.