

**SENATE . . . . . No. 1256**

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**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:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/1/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1256) of James B. Eldridge, Denise Provost, Lindsay N. Sabadosa and Sal N. DiDomenico for legislation to prohibit the participation of health care professionals in the torture and abuse of prisoners. Public Health.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1194 OF 2017-2018.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

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 chapter 111, chapter 111C, or sections 2, 3, 9C, 13, 23A, 23R, 24,  
12 43, 51, 51 ½ , 66, 73C, 74, 87WWW, 89, 108, 118, 130, 138, 149, 163, 196, 211, or 252 of  
13 chapter 112.

14 "Interrogation", the questioning of a prisoner, whether by a government or non-  
15 government actor, entity or official, for purposes of: (i) law enforcement; (ii) 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; (iii) obtaining military and  
18 national security intelligence; or (iv) aiding or accomplishing any illegal activity or purpose.  
19 Questioning by licensed health care professionals to assess the physical or mental condition of an  
20 individual for the exclusive purpose of providing care and treatment of that individual within the  
21 patient-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 to obtain from the subject or from a third  
27 person information or a confession, to punish the subject for an act that the subject or a third  
28 person has committed or is suspected of having committed, to punish the subject or a third  
29 person for actual or suspected beliefs or membership in a group, to intimidate or coerce the  
30 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 the purpose of evaluating, treating, protecting, or improving the physical or  
42 mental health of the prisoner within a patient-provider relationship, or under circumstances  
43 permitted by subsection (a), (b) or (c) of section 1F;

44 (b) engage, directly or indirectly, in the torture or abusive treatment of a prisoner, nor  
45 participate in, incite, assist in, plan or design, or conspire to commit torture or abusive treatment;  
46 provided, further, that this prohibition includes, but is not limited to: (i) providing means or  
47 knowledge with the intent to facilitate the practice of torture or abusive treatment; (ii) permitting  
48 his or her knowledge, or the clinical findings, treatment or health records regarding a prisoner, to  
49 be used in the process of torture or abusive treatment; (iii) examining, evaluating, or treating a  
50 prisoner to certify whether torture or abusive treatment can begin or be resumed; (iv) being  
51 present while torture or abusive treatment is being administered; (v) omitting indications of

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

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

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

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

62 (f) participate in the interrogation of a prisoner, including, but not limited to, being  
63 physically present in the interrogation room, having the ability to see or hear what is taking place  
64 in the interrogation room by any technical means or methods, asking or suggesting questions,  
65 advising on the use of specific interrogation techniques, monitoring the interrogation, or  
66 medically or psychologically evaluating a person for the purpose of identifying potential  
67 interrogation methods or strategies; provided, however, that this paragraph shall not bar a health  
68 care professional from assessing the competency or sanity of a prisoner in connection with his or  
69 her participation in a matter authorized by paragraph (a) section 1F or from engaging in conduct  
70 permitted under paragraph (d) of section 1F.

71 Section 1E. Every health care professional who uses his or her knowledge or skills in  
72 relation to a prisoner shall do so in a way consistent with generally applicable legal, health and  
73 professional standards, including but not limited to those pertaining to the confidentiality of

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

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

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

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

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

89 (d) conduct training related to the non-abusive interrogation of prisoners solely for one or  
90 more of the following purposes; provided, however, that such training is not specific to ongoing  
91 or anticipated interrogations assessing a physical or mental illness or condition of a person  
92 subject to interrogation, assessing the possible physical and mental effects of particular  
93 techniques and conditions of interrogation, or developing effective, non-abusive interrogation  
94 strategies.

95           Section 1G. A health care professional who has reasonable grounds, based on more  
96 information than is publicly available, to believe that torture, abusive treatment or conduct in  
97 violation of this section has occurred, is ongoing, or will take place in the future shall  
98 immediately report such conduct to a government agency that the health care professional  
99 reasonably believes has legal authority to investigate, prevent or punish the continuation of  
100 torture or abusive treatment of a prisoner or conduct in violation of this section and is reasonably  
101 likely to attempt to do so and, in the case of an alleged violation by a health care professional  
102 licensed under the laws of Massachusetts, the appropriate licensing authority.

103           Section 1H. It shall be a violation of this chapter if the health care professional knew or  
104 reasonably should have known his or her conduct is of the kind prohibited, regardless of whether  
105 the health care professional is acting in a professional capacity. If a health care professional is  
106 denied access to the information necessary to ascertain whether torture or abusive treatment has  
107 occurred, is occurring or will occur, the health care professional must presume that the prisoner  
108 is at risk of torture or abusive treatment.

109           Section 1I. A court may consider compliance with section 1F and cooperation in good  
110 faith with an investigation of a possible violation of sections 1D, 1E, or 1F in determining full or  
111 partial mitigation of a violation of this chapter.

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

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

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