

SENATE No. 1256

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>

SENATE No. 1256

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.

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

The Commonwealth of Massachusetts

**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.