

SENATE No. 1011

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 passage 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>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>

SENATE No. 1011

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1011) of James B. Eldridge, Benjamin Swan, Gloria L. Fox, Patricia D. Jehlen and other members of the General Court 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 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 "Health care professional" means any person licensed, registered, certified, or exempt to
6 practice a health-related profession under the laws of the commonwealth of Massachusetts,
7 including but not limited to the following: chapter 111; chapter 111C; or sections 2, 3, 9C, 13,
8 23A, 23R, 24, 43, 51, 51 ½, 66, 73C, 74, 87WWW, 89, 108, 118, 130, 138, 149, 163, 196, 211,
9 or 252 of chapter 112;

10 "Torture" means any intentional act or intentional omission by which severe pain or
11 suffering, whether physical or mental, is inflicted on a person for any of the following purposes:
12 to obtain from the subject or from a third person information or a confession; to punish the
13 subject for an act that the subject or a third person has committed or is suspected of having
14 committed; to punish the subject or a third person for actual or suspected beliefs or membership
15 in any group; to intimidate or coerce the subject or a third person; or for any discriminatory
16 reason.

17 "Abusive treatment" means (i) cruel, inhuman or degrading, treatment or punishment as
18 defined by applicable international treaties and their corresponding interpreting bodies; (ii) cruel

19 and unusual punishment as defined in the United States Constitution or the laws of
20 Massachusetts; or (iii) any violation of subsection two of this section.

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

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

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

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

39 Section 1D. No health care professional shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 Section 1H. It shall be a violation of this section if the health care professional knew or
112 reasonably should have known his or her conduct is of the kind prohibited, and regardless of
113 whether he or she is acting in his or her professional capacity. If a health care professional is
114 denied access to the information necessary to ascertain whether torture or abusive treatment has
115 occurred, is occurring or will occur, the health care professional must presume that the prisoner
116 is at risk of torture or abusive treatment.

117 Section 1I. The following may be considered in full or partial mitigation of a violation of
118 this section by the health care professional:

119 (a) compliance with section 1F; or

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

121 Section 1J. Sections 1C to 1H shall apply without regard to whether the proscribed
122 conduct takes place within or outside of the commonwealth of Massachusetts; whether it is
123 committed by a governmental or non-governmental entity, official, or actor; or whether it is
124 committed under actual or asserted color of law.

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

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