

**SENATE . . . . . No. 01090**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*James B. Eldridge*

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*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.

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PETITION OF:

NAME:

*James B. Eldridge*

*Peter V. Kocot*

DISTRICT/ADDRESS:

*Middlesex and Worcester*

*1st Hampshire*

# SENATE . . . . . No. 01090

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 1090) of Eldridge and Kocot for legislation to prohibit the participation of health care professionals in the torture and abuse of prisoners [Joint Committee on Public Health].

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

*Whereas*, the deferred operation of this act would tend to defeat its purpose, which is forthwith to prohibit the participation of health care professionals in the torture and abuse of prisoners, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

□

*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 adding the  
2 following after section 1A:--

3           Section 1B: Participation in torture or abusive treatment of prisoners by health care  
4 professionals. 1. Definitions. As used in this section, the terms "torture" and "abusive treatment"  
5 including "cruel, inhuman and degrading treatment" shall be interpreted in accordance with

6 applicable international treaties, principles and standards as well as the decisions, observations  
7 and recommendations of the corresponding interpreting bodies. However, for the purposes of this  
8 section, it shall not be an element of either "torture" or "abusive treatment" that such acts be  
9 committed by a government or non-government actor, entity, or official; under color of law; or  
10 not under color of law; with specific intent; or without specific intent. As used in this section,  
11 unless the context clearly requires otherwise, the following terms have the following meanings:

12 (a) "Health care professional" means any person licensed, registered, certified, or  
13 exempt to practice a health-related profession under (i) the following sections of the  
14 Massachusetts General Laws, chapter 112: one hundred forty-nine (Acupuncturist); one hundred  
15 thirty-eight (Audiologist and Speech Pathologist); eighty-nine (Chiropractor); forty-three  
16 (Dentist); fifty-one (Dental Hygienist); fifty-one and one half (Dental Assistant); two hundred  
17 and fifty-two (Genetic Counselor); eighty-seven WWW (Health Officer); one hundred and  
18 ninety-six (Hearing Aid Dispenser); three (Radiological Technologist); seventy-four (Nurse);  
19 one hundred and eight (Nursing Home Administrator); seventy-three C (Optician); sixty-six  
20 (Optometrist); two hundred and eleven (Perfusionist); twenty-four (Pharmacist); two (Physician);  
21 nine C (Physician's Assistant); thirteen (Podiatrist); one hundred and eighteen (Psychologist);  
22 twenty-three R (Respiratory Care Provider); one hundred and thirty (Social Worker); twenty-  
23 three A (Occupational Therapist and Physical Therapist); one hundred and sixty-three (Mental  
24 Health Therapist); (ii) the Massachusetts General Laws, chapter 111 (Radiological  
25 Technologist); (iii) the Massachusetts General Laws, chapter 111C (Emergency Medical  
26 Technician); or (iv) any other person licensed, registered, certified, or exempt to practice a  
27 health-related profession under the laws of the Commonwealth of Massachusetts.

28 (b) "Torture" means any intentional act or intentional omission by which severe pain or  
29 suffering, whether physical or mental, is inflicted on a person for such purposes as obtaining  
30 from the person or from a third person information or a confession, punishing the person for an  
31 act the person or a third person has committed (including the holding of a belief or membership  
32 in any group) or is suspected of having committed, or intimidating or coercing the person or a  
33 third person, or for any reason based on discrimination of any kind.

34 (c) "Abusive treatment" means (i) cruel and unusual; or cruel, inhuman or degrading,  
35 treatment or punishment as defined by applicable international treaties and their corresponding  
36 interpreting bodies; or cruel and unusual punishment as defined in the United States Constitution  
37 or the laws of Massachusetts; or (ii) any violation of subdivision three or four of this section.

38 (d) "Prisoner" means any person who is subject to detention, incarceration,  
39 interrogation, or who is being held involuntarily regardless of whether such action is performed  
40 or committed by a government or non-government actor, entity, or official; under color of law;  
41 or not under color of law.

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

46 (f) "Interrogation" means the questioning related to law enforcement, the enforcement  
47 of rules or regulations of a closed institution (such as a jail or other detention facility, police  
48 facility, prison, immigration facility, or psychiatric or military facility) or to military and national  
49 security intelligence gathering, designed to prevent harm or danger to individuals, the public, or

50 national security, whether by a government or non-government actor, entity or official.  
51 “Interrogation” shall also include questioning to aid or accomplish any illegal activity or  
52 purpose, whether by a government or non-government actor, entity or official. Interrogations are  
53 distinct from questioning used by health care professionals to assess the physical or mental  
54 condition of an individual.

55                   2. Knowledge. It shall be an element of any violation of this section that the  
56 actor knew or reasonably should have known his or her conduct is of the kind prohibited under  
57 this section. If a health care professional is denied access to the information necessary to  
58 ascertain whether torture or abusive treatment has occurred, is occurring or will occur, in order to  
59 assess the nature of his or her conduct as covered by this section, the health care professional  
60 must presume that the prisoner is at risk of torture or abusive treatment.

61                   3. Professional Relationship not Required. It shall not be an element of any  
62 violation of this section that the health care professional be acting in his or her capacity as a  
63 health care professional.

64                   4. General obligations of health care professionals.

65                   (a) Every health care professional who uses his or her knowledge or skills in relation to  
66 a prisoner shall do so in a way consistent with generally applicable legal, health and professional  
67 standards as the health care professional is reasonably able to provide under the circumstances,  
68 including protection of the confidentiality of patient information.

69                   (b) In all clinical assessments relating to a prisoner, whether for

70 therapeutic or evaluative purposes, health care professionals shall exercise their professional  
71 judgment independent of the interests of a government or other third party.

72                   5. Certain conduct of health care professionals prohibited.

73           (a) No health care professional shall apply his or her knowledge or skills in relation to,  
74 engage in any relationship with, or perform services using his or his knowledge and skills in  
75 relation to any prisoner where the purpose is not solely to evaluate, treat, protect, or improve the  
76 physical or mental health or condition of the prisoner (except as permitted by paragraph (b) or (c)  
77 of subdivision five of this section).

78           (b) No health care professional shall engage, directly or indirectly, in any act which  
79 constitutes participation in, complicity in, incitement to, assistance in, planning or design of, or  
80 attempt or conspiracy to commit torture or abusive treatment of a prisoner. Prohibited forms of  
81 engagement include but are not limited to:

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

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

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

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

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

90 (vi) altering health care records or reports to hide, misrepresent or destroy evidence of  
91 torture or abusive treatment.

92 (c) No health care professional shall apply his or her knowledge or skills or perform any  
93 service using his or her knowledge or skills in order to assist in the creation of conditions of  
94 confinement, incarceration or detention designed to harm, weaken, break-down, exhaust or  
95 otherwise impair a prisoner.

96 (d) No health care professional shall apply his or her knowledge or skills or perform any  
97 service using his or her knowledge or skills in order to assist in the punishment, detention,  
98 incarceration, intimidation, or coercion of a prisoner when such assistance is provided in a  
99 manner that may adversely affect the physical or mental health or condition of the prisoner  
100 (except as permitted by paragraph (a) or (b) of subdivision six of this section).

101 (e) No health care professional shall participate in the interrogation of a prisoner,  
102 including being present in the interrogation room, asking or suggesting questions, advising on  
103 the use of specific interrogation techniques, monitoring the interrogation, or medically or  
104 psychologically evaluating a person for the purpose of identifying potential interrogation  
105 methods or strategies. However, this paragraph shall not bar a health care professional from  
106 engaging in conduct under paragraph (c) of subdivision six of this section.

107 6. Certain conduct of health care professionals permitted. A health care  
108 professional may engage in the following conduct so long as it does not violate subdivision three  
109 or four of this section, it does not adversely affect the physical or mental health or condition of a  
110 prisoner or potential subject, and is not otherwise unlawful:

111 (a) appropriately participating or aiding in the investigation, prosecution, or defense of a  
112 criminal, administrative or civil matter;

113 (b) participating in an act that restrains a prisoner or temporarily alters the physical or  
114 mental activity of a prisoner, where the act complies with generally applicable legal, health and  
115 professional standards, is necessary for the protection of the physical or mental health, condition  
116 or safety of the prisoner, other prisoners, or persons directly caring for, guarding or confining the  
117 prisoner;

118 (c) training related to the following purposes, so long as it is not provided in support of  
119 specific ongoing or anticipated interrogations:

120 (i) recognizing and responding to persons with physical or mental illness or conditions,

121 (ii) the possible physical and mental effects of particular techniques and conditions of  
122 interrogation, or

123 (iii) the development of effective interrogation strategies.

124 (d) Conducting human subject research in accordance with generally accepted legal,  
125 health and professional standards. Research must include safeguards for human subjects  
126 equivalent to those required by federal law, including informed consent and institutional review  
127 board approval where applicable.

128 7. Duty to report. A health care professional who has reasonable grounds (not  
129 based solely on publicly available information) to believe that torture, abusive treatment or other  
130 conduct in violation of this section has occurred, is occurring, or will occur shall, as soon as is



131 possible without jeopardizing the physical safety of himself or herself, the prisoner, or third  
132 parties, report such conduct to:

133 (a) a government agency that the health care professional reasonably believes has legal  
134 authority to punish or prevent the continuation of torture or the abusive treatment of a prisoner or  
135 conduct in violation

136 of this section and is reasonably likely to attempt to do so; and

137 (b) in the case of an alleged violation by a health care professional licensed under the  
138 laws of Massachusetts, a report shall be filed with appropriate licensing authority.

139 8. Mitigation. The following may be considered in full or partial mitigation of a  
140 violation of this section by the health care professional:

141 (a) compliance with subdivision six of this section; or

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

143 9. Applicability. This section shall apply to conduct taking place within or  
144 outside the commonwealth of Massachusetts, and without regard to whether the conduct is  
145 committed by a governmental or non-governmental entity, official, or actor or under actual or  
146 asserted color of law, or with specific intent or without specific intent.

147 10. Scope of practice not expanded. This section shall not be construed to  
148 expand the lawful scope of practice of any health care professional.

149 SECTION 2. Chapter 149 of the General Laws is hereby amended by adding the  
150 following after Section 185(b)(3):--

151 (4) Reports or threatens to report any violation or suspected violation of Section 1B of  
152 Chapter 112 (relating to the participation in torture and abusive treatment of prisoners by health  
153 care professionals)

154 SECTION 3. Chapter 149 of the General Laws is hereby amended by adding the  
155 following after Section 185(c)(2)(C):--

156 (D) is reporting any violation or suspected violation of Section 1B of Chapter 112  
157 (relating to the participation in torture and abusive treatment of prisoners by health care  
158 professionals).

159 SECTION 4. The introduction or enactment of this act shall not be construed to mean  
160 that:

161 (a) conduct described by this act does not already violate state law or constitute  
162 professional misconduct; or

163 (b) conduct other than that described by this act does not violate other state law or  
164 otherwise constitute professional misconduct.