

HOUSE No. 03361

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

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 to prohibit the participation of healthcare professionals in the torture and abusive treatment of prisoners.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Ruth B. Balseer</i>	<i>12th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

HOUSE No. 03361

By Mr. Lewis of Winchester, a petition (accompanied by bill, House, No. [BILL NUMBER]) of Cory Atkins and others relative to the crime of health care professionals participating in the torture and abusive treatment of prisoners. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to prohibit the participation of healthcare professionals in the torture and abusive treatment 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 “Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith
2 to regulate the conduct of health care professionals, therefore, it is hereby declared to be an
3 emergency law, necessary for the immediate preservation of the public safety.”

4 SECTION 1. Section 50 of chapter 111 of the General Laws, as appearing in the 2008 Official
5 Edition, is hereby amended by inserting after the first sentence the following sentence:- The
6 department shall issue notices of violations and orders as are necessary to enforce section 1B of
7 chapter 112.

8 SECTION 2. Section 14 of chapter 111C of the General Laws, as appearing in the 2008 Official
9 Edition, is hereby amended by inserting after the first sentence the following sentence:- The
10 department shall establish and implement regulations addressing the provisions of section 1B.

11 SECTION 3. Chapter 112 of the General Laws is hereby amended by inserting after section 1A
12 the following section:-

13 Section 1B. (a) As used in this section, the following terms shall, unless the context clearly
14 requires otherwise, have the following meanings:

15 "Abusive treatment", (1) cruel and unusual; or cruel, inhuman or degrading, treatment or
16 punishment as defined by applicable international treaties and their corresponding interpreting
17 bodies; or cruel and unusual punishment as defined in the United States Constitution or the
18 general laws; or (2) any violation of subsection (c) or (d).

19 "Interrogation", the questioning related to law enforcement, the enforcement of rules or
20 regulations of a closed institution such as a jail or other detention facility, police facility, prison,
21 immigration facility, or psychiatric or military facility or to military and national security
22 intelligence gathering, designed to prevent harm or danger to individuals, the public, or national
23 security, whether by a government or non-government actor, entity or official. Interrogation
24 shall also include questioning to aid or accomplish any illegal activity or purpose, whether by a
25 government or non-government actor, entity or official. Interrogations are distinct from
26 questioning used by health care professionals to assess the physical or mental condition of an
27 individual.

28 "Health care professional", (1) any person licensed, registered, certified, or exempt to practice a
29 health-related profession under the following: chapter 111; chapter 111C; sections 2, 3, 9C, 13,
30 23R, 24, 43, 51, 51½, 66, 73C, 74, 87, 89, 118, 123A, 130, 138, 149, 163, 196, 198, 211, and 252
31 of chapter 112; and this chapter or (2) any other person licensed, registered, certified, or exempt
32 to practice a health-related profession.

33 "Prisoner", any person who is subject to detention, incarceration, interrogation, or who is being
34 held involuntarily regardless of whether such action is performed or committed by a government
35 or non-government actor, entity, or official; under color of law; or not under color of law.

36 "Torture", any intentional act or intentional omission by which severe pain or suffering, whether
37 physical or mental, is inflicted on a person for such purposes as obtaining from the person or
38 from a third person information or a confession, punishing the person for an act the person or a
39 third person has committed, including the holding of a belief or membership in any group, or is
40 suspected of having committed, or intimidating or coercing the person or a third person, or for
41 any reason based on discrimination of any kind.

42 For the purposes of this section, the terms "torture" and "abusive treatment" including "cruel,
43 inhuman and degrading treatment" shall be interpreted in accordance with applicable
44 international treaties, principles and standards as well as the decisions, observations and
45 recommendations of the corresponding interpreting bodies; provided however, that it shall not be
46 an element of either "torture" or "abusive treatment" that such acts be committed by a
47 government or non-government actor, entity, or official; under color of law; or not under color of
48 law; with specific intent; or without specific intent.

49 For the purposes of this section "adversely affect" a person's physical or mental health or
50 condition shall not include causing adverse effects that may arise from treatment or care when
51 that treatment or care is performed in accordance with generally applicable legal, health and
52 professional standards and for the purposes of evaluating, treating, protecting or improving the
53 person's health.

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

60 (c) It shall not be an element of any violation of this section that the health care professional be
61 acting in his or her capacity as a health care professional.

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

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

69 (e) (1) No health care professional shall apply his or her knowledge or skills in relation to,
70 engage in any relationship with, or perform services using his or his knowledge and skills in
71 relation to any prisoner where the purpose is not solely to evaluate, treat, protect, or improve the
72 physical or mental health or condition of the prisoner; except as permitted by paragraph (2) or
73 (3).

74 (2) No health care professional shall engage, directly or indirectly, in any act which constitutes
75 participation in, complicity in, incitement to, assistance in, planning or design of, or attempt or

76 conspiracy to commit torture or abusive treatment of a prisoner. Prohibited forms of engagement
77 shall include, but not be limited to:

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

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

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

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

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

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

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

92 (4) No health care professional shall apply his or her knowledge or skills or perform any service
93 using his or her knowledge or skills in order to assist in the punishment, detention, incarceration,
94 intimidation, or coercion of a prisoner when such assistance is provided in a manner that may
95 adversely affect the physical or mental health or condition of the prisoner; except as permitted by
96 clause (1) or (2) of subsection (f).

97 (5) No health care professional shall participate in the interrogation of a prisoner, including being
98 present in the interrogation room, asking or suggesting questions, advising on the use of specific
99 interrogation techniques, monitoring the interrogation, or medically or psychologically
100 evaluating a person for the purpose of identifying potential interrogation methods or strategies.
101 This paragraph shall not bar a health care professional from engaging in conduct under clause (3)
102 of subsection (f).

103 (f) A health care professional may engage in the following conduct so long as it does not violate
104 clause (3) or (4), it shall not adversely affect the physical or mental health or condition of a
105 prisoner or potential subject, and is not otherwise unlawful:

106 (1) appropriately participating or aiding in the investigation, prosecution, or defense of a
107 criminal, administrative or civil matter;

108 (2) participating in an act that restrains a prisoner or temporarily alters the physical or mental
109 activity of a prisoner, where the act complies with generally applicable legal, health and
110 professional standards, is necessary for the protection of the physical or mental health, condition
111 or safety of the prisoner, other prisoners, or persons directly caring for, guarding or confining the
112 prisoner;

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

115 (i) recognizing and responding to persons with physical or mental illness or conditions;

116 (ii) the possible physical and mental effects of particular techniques and conditions of
117 interrogation; or

118 (iii) the development of effective interrogation strategies.

119 (4) conducting human subject research in accordance with generally accepted legal, health and
120 professional standards. Research shall include safeguards for human subjects equivalent to those
121 required by federal law, including informed consent and institutional review board approval
122 where applicable.

123 (g) A health care professional who has reasonable grounds; provided, that such grounds are not
124 based solely on publicly available information, to believe that torture, abusive treatment or other
125 conduct in violation of this section has occurred, is occurring, or will occur shall, as soon as is
126 possible without jeopardizing the physical safety of himself or herself, the prisoner, or third
127 parties, report such conduct to: (1) a government agency that the health care professional
128 reasonably believes has legal authority to punish or prevent the continuation of torture or the
129 abusive treatment of a prisoner or conduct in violation of this section and is reasonably likely to
130 attempt to do so; and (2) in the case of an alleged violation by a health care professional licensed
131 under the laws of the commonwealth, a report shall be filed with appropriate licensing authority.

132 (h) The following may be considered in full or partial mitigation of a violation of this section by
133 the health care professional: (1) compliance with subsection (f); or (2) cooperation in good faith
134 with an investigation of a violation of this section.

135 (i) This section shall apply to conduct taking place within or outside the commonwealth, and
136 without regard to whether the conduct is committed by a governmental or non-governmental
137 entity, official, or actor or under actual or asserted color of law, or with specific intent or without
138 specific intent.

139 (j) This section shall not be construed to expand the lawful scope of practice of any health care
140 professional.

141 SECTION 4. The tenth paragraph of section 5 of chapter 112 of the General Laws, as appearing
142 in the 2008 Official Edition, is hereby amended by adding the following clause:-

143 (i) is guilty of violating section 1B.

144 SECTION 5. The second paragraph of section 9H of said chapter 112, as so appearing, is hereby
145 amended by adding the following clause:--

146 (i) is guilty of violationg section 1B.

147 SECTION 6. Section 18 of said chapter 112, as so appearing, is hereby amended by inserting
148 after the word “terpitude”, in line 6, the following words:- or has violated section 1B.

149 SECTION 7. Section 23K of said chapter 112, as so appearing, is hereby amended by adding the
150 following clause:-

151 (g) has violated section 1B.

152 SECTION 8. Section 23X of said chapter 112, as so appearing, is hereby amended by adding the
153 following clause:-

154 (g) has violated section 1B.

155 SECTION 9. Section 32 of said chapter 112, as so appearing, is hereby amended by inserting
156 after the word “sections”, in line 2, the following words:- section 1B.

157 SECTION 10. Section 42A of said chapter 112, as so appearing, is hereby amended by inserting
158 after the word “jurisdiction”, in line 4, the following words:- including such rules and regulations
159 as are necessary to enable it to properly enforce the provisions of section 1B.

160 SECTION 11. The last paragraph of section 51 of said chapter 112, as so appearing, is hereby
161 amended by adding the following sentence:- The board shall adopt rules and regulations
162 necessary to enforce the provisions of section 1B.

163 SECTION 12. The last paragraph of section 51½ of said chapter 112, as so appearing, is hereby
164 amended by adding the following sentence:-

165 The board shall adopt rules and regulations consistent with section 1B.

166 SECTION 13. Section 71 of said chapter 112, as so appearing, is hereby amended by inserting
167 after the word “incompetence”, in line 7, the following words:- for violation of any provision of
168 section 1B.

169 SECTION 14. Section 73H of chapter 112, as so appearing, is hereby amended by inserting after
170 the word “turpitude”, in line 8, the following words:- or for the violation of any provision of
171 section 1B.

172 SECTION 15. Section 77 of chapter 112, as so appearing, is hereby amended by inserting after
173 the word “of”, in line 1, the following words:- section 1B.

174 SECTION 16. Section 93 of chapter 112, as so appearing, is hereby amended by inserting after
175 the word “turpitude”, in line 2, the following words:- who has violated section 1B.

176 SECTION 17. The second paragraph of section 128 of said chapter 112, as so appearing, is
177 hereby amended by adding the following clause:--

178 (i) is guilty of violating section 1B.

179 SECTION 18. Section 137 of said chapter 112, as so appearing, is hereby amended by inserting
180 after the word “unethically”, in line 7, the following words:- or has been found guilty by the
181 board of violating section 1B.

182 SECTION 19. Subdivision (4) of section 139 of said chapter 112, as so appearing, is hereby
183 amended by adding the following clause:- (e) has violated any of the provisions of section 1B.

184 SECTION 20. Section 158 of said chapter 112, as so appearing, is hereby amended by adding
185 the following clause:-

186 (k) violated any of the provisions of section 1B.

187 SECTION 21. Section 215 of said chapter 112, as so appearing, is hereby amended by adding
188 the following clause:-

189 (h) has violated any of the provisions of section 1B.

190 SECTION 22. Section 258 of chapter 112, as so appearing, is hereby amended by adding the
191 following clause:--

192 (h) has violated any of the provisions of section 1B.

193 SECTION 23. Subsection (b) of section 185 of chapter 149 of the General Laws, as appearing in
194 the 2008 Official Edition, is hereby amended by adding the following clause:-

195 (4) Reports or threatens to report any violation or suspected violation of section 1B of chapter
196 112.

197 SECTION 24. Clause (2) of subsection (c) of said section 185 of said chapter 149, as so
198 appearing, is hereby amended by inserting after the word “crime”, in line 65, the following
199 words:- or (D) is reporting any violation or suspected violation of section 1B of chapter 112.

200 SECTION 25. This act shall not be construed to mean that: (1) conduct described by this act
201 does not already violate state law or constitute professional misconduct; or (2) conduct other
202 than that described by this act does not violate other state law or otherwise constitute
203 professional misconduct.