

AMENDED IN SENATE JANUARY 24, 2008

Senate Joint Resolution

No. 19

Introduced by Senator Ridley-Thomas

January 7, 2008

Senate Joint Resolution No. 19—Relative to health professionals.

LEGISLATIVE COUNSEL'S DIGEST

SJR 19, as amended, Ridley-Thomas. Health professionals: torture.

This measure would request all relevant California agencies to notify California-licensed health professionals about their professional obligations under international law relating to torture and the treatment of detainees, as specified, and to also notify those professionals that those who participate in torture, among other forms of treatment, may be subject to prosecution. In addition, the measure would request the United States Department of Defense and the Central Intelligence Agency to remove all California-licensed health professionals from participating in prisoner and detainee interrogations.

Fiscal committee: yes.

- 1 WHEREAS, The citizens of the United States and the residents
- 2 of the State of California acknowledge January 15th as the birthday
- 3 of Dr. Martin Luther King, Jr., and mark the third Monday in
- 4 January as a federal and state holiday to commemorate his lifework
- 5 as a civil rights leader, an activist, and an internationally acclaimed
- 6 proponent of human rights who warned, "He who passively accepts
- 7 evil is as much involved in it as he who helps to perpetrate it"; and
- 8 WHEREAS, Dr. King challenged Americans to remain true to
- 9 their most basic values, stating, "The ultimate measure of a man

1 is not where he stands in moments of comfort and convenience,
2 but where he stands at times of challenge and controversy”; and

3 WHEREAS, In 2002, for the first time in American history, the
4 Bush administration initiated a radical new policy allowing the
5 torture of prisoners of war and other captives with confirmed
6 reports from the International Red Cross, The New England Journal
7 of Medicine, The Lancet (a British medical journal), military
8 records, and first-person accounts stating that California-licensed
9 physicians, psychologists, and nurses have participated in torture
10 or its cover up against detainees in United States custody; and

11 WHEREAS, In honor of the birthday of Dr. Martin Luther King,
12 Jr., a broad coalition of medical, human rights, and legal
13 organizations are petitioning the State of California to warn its
14 medical licensees of the legal prohibitions against torture and the
15 risks of prosecution, and are demanding that the United States
16 government remove California doctors and psychologists from
17 interrogation and torture of detainees; and

18 WHEREAS, Representatives of Californians to Stop Medical
19 Torture are carrying petition signatures to the California State
20 Senate, asking that the Senate warn California-licensed physicians,
21 psychologists, nurses, and other health care workers of possible
22 future prosecution for participation in torture — cruel and
23 degrading practices that have become a national shame; and

24 WHEREAS, Health professionals licensed in California,
25 including, but not limited to, physicians, osteopaths, naturopaths,
26 psychologists, psychiatric workers, and nurses, have and continue
27 to serve nobly and honorably in the armed services of the United
28 States; and

29 WHEREAS, United States Army regulations and the War Crimes
30 Act and, relative to the treatment of prisoners of war, Common
31 Article III of the Geneva Conventions and the Convention against
32 Torture and Other Cruel, Inhuman, or Degrading Treatment or
33 Punishment (CAT) require that all military personnel report and
34 not engage in acts of abuse or torture; and

35 WHEREAS, CAT defines the term “torture” as “any act by
36 which severe pain or suffering, whether physical or mental, is
37 intentionally inflicted on a person for such purposes as obtaining
38 from him or a third person information or a confession, punishing
39 him for an act he or a third person has committed or is suspected
40 of having committed, or intimidating or coercing him or a third

1 person, or for any reason based on discrimination of any kind,
2 when such pain or suffering is inflicted by or at the instigation of
3 or with the consent or acquiescence of a public official or other
4 person acting in an official capacity”; and

5 WHEREAS, In 2002, the United States Department of Justice
6 reinterpreted national and international law related to the treatment
7 of prisoners of war in a manner that purported to justify
8 long-prohibited interrogation methods and treatment of detainees;
9 and

10 WHEREAS, Physicians and other medical personnel and
11 psychologists serving in noncombat roles are bound by
12 international law and professional ethics to care for enemy
13 prisoners and to report any evidence of coercion or abuse of
14 detainees; and

15 WHEREAS, The World Medical Association (WMA) issued
16 guidelines stating that physicians shall not use nor allow to be used
17 their medical knowledge or skills, or health information specific
18 to individuals, to facilitate or otherwise aid any interrogation, legal
19 or illegal; and

20 WHEREAS, The guidelines issued by the WMA also state that
21 physicians shall not participate in or facilitate torture or other forms
22 of cruel, inhuman, or degrading procedures of prisoners or
23 detainees in any situations; and

24 WHEREAS, The American Medical Association’s (AMA)
25 ethical policy prohibits physicians from conducting or directly
26 participating in an interrogation and from monitoring interrogations
27 with the intention of intervening; and

28 WHEREAS, AMA policy also states that “[t]orture refers to the
29 deliberate, systematic or wanton administration of cruel, inhumane
30 and degrading treatments or punishments during imprisonment or
31 detainment. Physicians must oppose and must not participate in
32 torture for any reason Physicians should help provide support
33 for victims of torture and, whenever possible, strive to change the
34 situation in which torture is practiced or the potential for torture
35 is great”; and

36 WHEREAS, Section 2340 of Title 18 of the United States Code
37 defines the term “torture” as an act committed by a person acting
38 under the color of law specifically intended to inflict severe
39 physical or mental pain or suffering (other than pain or suffering
40 incidental to lawful sanctions) upon another person within his

1 custody or physical control. That section further defines the term
2 “severe mental pain or suffering” as the prolonged mental harm
3 caused by or resulting from: (A) the intentional infliction or
4 threatened infliction of severe physical pain or suffering; (B) the
5 administration or application, or threatened administration or
6 application, of mind-altering substances or other procedures
7 calculated to disrupt profoundly the senses or the personality; (C)
8 the threat of imminent death; or (D) the threat that another person
9 will imminently be subjected to death, severe physical pain or
10 suffering, or the administration or application of mind-altering
11 substances or other procedures calculated to disrupt profoundly
12 the senses or personality; and

13 WHEREAS, In May 2006, the American Psychiatric Association
14 stated that psychiatrists should not “participate directly in the
15 interrogation of persons held in custody by military or civilian
16 investigative or law enforcement authorities, whether in the United
17 States or elsewhere,” and that “psychiatrists should not participate
18 in, or otherwise assist or facilitate, the commission of torture of
19 any person. Psychiatrists who become aware that torture has
20 occurred, is occurring, or has been planned must report it promptly
21 to a person or persons in a position to take corrective action”; and

22 WHEREAS, In August 2006, the American Psychological
23 Association stated that “psychologists shall not knowingly
24 participate in any procedure in which torture or other forms of
25 cruel, inhuman, or degrading treatment or cruel, inhuman, or
26 degrading punishment is used or threatened” and that “should
27 torture or other cruel, inhuman, or degrading treatment or cruel,
28 inhuman, or degrading punishment evolve during a procedure
29 where a psychologist is present, the psychologist shall attempt to
30 intervene to stop such behavior, and failing that exit the procedure”;
31 and

32 WHEREAS, In June 2005, the House of Delegates of the
33 American Nurses Association issued a resolution stating all of the
34 following: “prisoners and detainees have the right to health care
35 and humane treatment”; “registered nurses shall not voluntarily
36 participate in any deliberate infliction of physical or mental
37 suffering”; “registered nurses who have knowledge of ill-treatment
38 of any individuals including detainees and prisoners must take
39 appropriate action to safeguard the rights of that individual”; “the
40 American Nurses Association shall condemn interrogation

1 procedures that are harmful to mental and physical health”; “the
2 American Nurses Association shall advocate for nondiscriminatory
3 access to health care for wounded military and paramilitary
4 personnel and prisoners of war”; and “the American Nurses
5 Association shall counsel and support nurses who speak out about
6 acts of torture and abuse”; and

7 WHEREAS, In March 2005, the California Medical Association
8 stated that it “condemns any participation in, cooperation with, or
9 failure to report by physicians and other health professionals the
10 mental or physical abuse, sexual degradation, or torture of prisoners
11 or detainees”; and

12 WHEREAS, In November 2004, the American Public Health
13 Association stated that it “condemns any participation in,
14 cooperation with, or failure to report by health professionals the
15 mental or physical abuse, sexual degradation, or torture of prisoners
16 or detainees,” that it “urges health professionals to report abuse or
17 torture of prisoners and detainees,” and that it “supports the rights
18 of health workers to be protected from retribution for refusing to
19 participate or cooperate in abuse or torture in military settings”;
20 and

21 WHEREAS, The United States military medical system in
22 Guantanamo Bay, Afghanistan, Iraq, and other foreign military
23 prisons operated by the United States failed to protect detainees’
24 rights to medical treatment, failed to prevent disclosure of
25 confidential medical information to interrogators and others, failed
26 to promptly report injuries or deaths caused by beatings, failed to
27 report acts of psychological and sexual degradation, and sometimes
28 collaborated with abusive interrogators and guards; and

29 WHEREAS, Current United States Department of Defense
30 guidelines authorize the participation of certain military health
31 personnel, especially psychologists, in the interrogation of
32 detainees as members of “Behavioral Science Consulting Teams”
33 in violation of professional ethics. These guidelines also permit
34 the use of confidential clinical information from medical records
35 to aid in interrogations; and

36 WHEREAS, Evidence in the public record indicates that military
37 psychologists participated in the design and implementation of
38 psychologically abusive interrogation methods used at Guantanamo
39 Bay, in Iraq, and elsewhere, including sleep deprivation, long-term
40 isolation, sexual and cultural humiliation, forced nudity, induced

1 hypothermia and other temperature extremes, stress positions,
2 sensory bombardment, manipulation of phobias, force-feeding
3 hunger strikers, and more; and

4 WHEREAS, Published reports indicate that the so-called
5 “enhanced interrogation methods” of the Central Intelligence
6 Agency reportedly include similar abusive methods and that agency
7 psychologists may have assisted in their development; and

8 WHEREAS, Medical and psychological studies and clinical
9 experience show that these abuses can cause severe or serious
10 mental pain and suffering in their victims, and therefore may
11 violate the “torture” and “cruel and inhuman treatment” provisions
12 of CAT and the United States War Crimes Act, as amended by the
13 Military Commissions Act of 2006; and

14 WHEREAS, The United States Department of Defense has
15 failed to oversee the ethical conduct of California-licensed health
16 professionals related to torture; and

17 WHEREAS, Nobel Peace Prize Laureate Dr. Martin Luther
18 King, Jr., said, “Commit yourself to the noble struggle for human
19 rights. You will make a greater person of yourself, a greater nation
20 of your country and a finer world to live in”; now, therefore, be it

21 *Resolved by the Senate and the Assembly of the State of*
22 *California, jointly,* That the Legislature hereby requests all relevant
23 California agencies, including, but not limited to, the Board of
24 Behavioral Sciences, the Dental Board of California, the Medical
25 Board of California, the Osteopathic Medical Board of California,
26 the Bureau of Naturopathic Medicine, the California State Board
27 of Pharmacy, the Physician Assistant Committee of the Medical
28 Board of California, the California Board of Podiatric Medicine,
29 the Board of Vocational Nursing and Psychiatric Technicians, the
30 Board of Psychology, and the Board of Registered Nursing, to
31 notify California-licensed health professionals via newsletter,
32 email, ~~and Web site~~ *Web site, or existing notification processes*
33 about their professional obligations under international law,
34 specifically Common Article III of the Geneva Conventions, the
35 Convention against Torture and Other Cruel, Inhuman, or
36 Degrading Treatment or Punishment, and the amended War Crimes
37 Act, which prohibit the torture of, and the cruel, inhuman, and
38 degrading treatment or punishment of, detainees in United States
39 custody; and be it further

1 *Resolved*, That the Legislature hereby requests all relevant
2 California agencies to notify health professionals licensed in
3 California that those who participate in torture and other forms of
4 cruel, inhuman, or degrading treatment or punishment may one
5 day be subject to prosecution; and be it further

6 *Resolved*, That the Legislature hereby requests the United States
7 Department of Defense and the Central Intelligence Agency to
8 remove all California-licensed health professionals, including, but
9 not limited to, physicians and psychologists, *professionals* from
10 participating in any way in prisoner and detainee interrogations,
11 in view of their respective ethical obligations, the record of abusive
12 interrogation practices, and the Legislature’s interest in protecting
13 California health professionals from the risk of criminal liability;
14 and be it further

15 *RESOLVED, However, that California-licensed health*
16 *professionals continue to provide appropriate health care if called*
17 *upon to deal with a victim of the conduct and torture described in*
18 *this resolution; and be it further*

19 *Resolved*, That the Secretary of the Senate transmit copies of
20 this resolution to the United States Department of Defense, the
21 Central Intelligence Agency, and all relevant California agencies,
22 including, but not limited to, the Board of Behavioral Sciences,
23 the Dental Board of California, the Medical Board of California,
24 the Osteopathic Medical Board of California, the Bureau of
25 Naturopathic Medicine, the California State Board of Pharmacy,
26 the Physician Assistant Committee of the Medical Board of
27 California, the California Board of Podiatric Medicine, the Board
28 of Vocational Nursing and Psychiatric Technicians, the Board of
29 Psychology, and the Board of Registered Nursing.

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