

Senate Joint Resolution No. 19

RESOLUTION CHAPTER 114

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

[Filed with Secretary of State August 18, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SJR 19, 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 coercive or enhanced interrogation, torture, or other forms of cruel, inhuman, or degrading treatment or punishment may be subject to prosecution. The measure would request that those health professionals report abusive interrogation practices to the appropriate authorities, as specified. 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, as specified.

WHEREAS, The citizens of the United States and the residents of the State of California acknowledge January 15th as the birthday of Dr. Martin Luther King, Jr., and mark the third Monday in January as a federal and state holiday to commemorate his lifework as a civil rights leader, an activist, and an internationally acclaimed proponent of human rights who warned, "He who passively accepts evil is as much involved in it as he who helps to perpetrate it"; and

WHEREAS, Dr. King challenged Americans to remain true to their most basic values, stating, "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy"; and

WHEREAS, In 2002, for the first time in American history, the Bush administration initiated a radical new policy allowing the torture of prisoners of war and other captives with reports from the International Red Cross, The New England Journal of Medicine, The Lancet (a British medical journal), military records, and first-person accounts stating that California-licensed health professionals have participated in torture or its coverup against detainees in United States custody; and

WHEREAS, In honor of the birthday of Dr. Martin Luther King, Jr., a broad coalition of medical, human rights, and legal organizations are petitioning the State of California to warn its medical licensees of the legal prohibitions against torture and the risks of prosecution, and are demanding

that the United States government remove California-licensed health professionals from coercive interrogation and torture of detainees; and

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

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

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

WHEREAS, CAT defines the term “torture” as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”; and

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

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

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

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

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

WHEREAS, AMA policy also states that “[t]orture refers to the deliberate, systematic or wanton administration of cruel, inhumane and degrading treatments or punishments during imprisonment or detainment. Physicians

must oppose and must not participate in torture for any reason Physicians should help provide support for victims of torture and, whenever possible, strive to change the situation in which torture is practiced or the potential for torture is great”; and

WHEREAS, Section 2340 of Title 18 of the United States Code defines the term “torture” as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control. That section further defines the term “severe mental pain or suffering” as the prolonged mental harm caused by or resulting from: (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

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

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

WHEREAS, In June 2005, the House of Delegates of the American Nurses Association issued a resolution stating all of the following: “prisoners and detainees have the right to health care and humane treatment”; “registered nurses shall not voluntarily participate in any deliberate infliction of physical or mental suffering”; “registered nurses who have knowledge of ill-treatment of any individuals including detainees and prisoners must take appropriate action to safeguard the rights of that individual”; “the American Nurses Association shall condemn interrogation procedures that are harmful to mental and physical health”; “the American Nurses Association shall advocate for nondiscriminatory access to health care for wounded military and paramilitary personnel and prisoners of war”; and “the American Nurses

Association shall counsel and support nurses who speak out about acts of torture and abuse”; and

WHEREAS, The California Nurses Association clearly states that “the social contract between registered nurses and society is based upon a code of ethics that is grounded in the basic ethical principles of respect for human rights and dignity, the non-infliction of harm, and because these principles command that registered nurses protect or preserve life, avoid doing harm, advocate in the exclusive interest of their patients, and create a fiduciary relationship of trust and loyalty with recipients of their care”; and

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

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

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

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

WHEREAS, Evidence in the public record indicates that military psychologists participated in the design and implementation of psychologically abusive interrogation methods used at Guantanamo Bay, in Iraq, and elsewhere, including sleep deprivation, long-term isolation, sexual and cultural humiliation, forced nudity, induced hypothermia and other temperature extremes, stress positions, sensory bombardment, manipulation of phobias, force-feeding hunger strikers, and more; and

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

WHEREAS, Medical and psychological studies and clinical experience show that these abuses can cause severe or serious mental pain and suffering

in their victims, and therefore may violate the “torture” and “cruel and inhuman treatment” provisions of CAT and the United States War Crimes Act, as amended by the Military Commissions Act of 2006; and

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

WHEREAS, Waterboarding is a crime under the United States War Crimes Act and Chapter 113C (commencing with Section 2340) of Title 18 of the United States Code, is a crime against humanity under international human rights law, is a war crime under humanitarian laws, and is prohibited by the United States Army Field Manual. United States district courts, state courts, including, but not limited to, the Mississippi Supreme Court, and United States military tribunals have convicted defendants of criminal acts in waterboarding cases; and

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

Resolved by the Senate and the Assembly of the State of California, jointly, That California-licensed health professionals are absolutely prohibited from knowingly planning, designing, participating in, or assisting in the use of condemned techniques at any time and may not enlist others to employ these techniques to circumvent that prohibition; and be it further

Resolved, That the Legislature hereby requests all relevant California agencies, including, but not limited to, the Board of Behavioral Sciences, the Dental Board of California, the Medical Board of California, the Osteopathic Medical Board of California, the Bureau of Naturopathic Medicine, the California State Board of Pharmacy, the Physician Assistant Committee of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Vocational Nursing and Psychiatric Technicians, the Board of Psychology, and the Board of Registered Nursing, to notify California-licensed health professionals via newsletter, e-mail, Web site, or existing notification processes about their professional obligations under international law, specifically Common Article III of the Geneva Conventions, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), and the amended War Crimes Act, which prohibit the torture of, and the cruel, inhuman, and degrading treatment or punishment of, detainees in United States custody; and be it further

Resolved, That the Legislature hereby requests all relevant California agencies to notify health professionals licensed in California that those who participate in coercive or “enhanced” interrogation, torture, as defined by CAT, or other forms of cruel, inhuman, or degrading treatment or punishment may one day be subject to prosecution; and be it further

RESOLVED, That the Legislature hereby requests that when California licensed health professionals have reason to believe that interrogations are coercive or “enhanced” or involve torture or cruel, inhuman, or degrading

treatment or punishment, they shall report their observations to the appropriate authorities, and if the authorities are aware of those abusive interrogation practices, but have not intervened, then those health professionals are ethically obligated to report those practices to independent authorities that have the power to investigate and adjudicate those allegations; and be it further

Resolved, That in view of the ethical obligations of health professionals, the record of abusive interrogation practices, and the Legislature's interest in protecting California-licensed health professionals, the Legislature hereby requests the United States Department of Defense and the Central Intelligence Agency to remove all California-licensed health professionals from participating in any way in prisoner and detainee interrogations that are coercive or "enhanced" or that involve torture or cruel, inhuman, or degrading treatment or punishment, as defined by the Geneva Conventions, CAT, relevant jurisprudence regarding CAT, and related human rights documents and treaties; and be it further

Resolved, That no law, regulation, order, or exceptional circumstance, whether induced by state of war or threat of war, internal political instability, or any other public emergency, may be invoked as justification for torture or cruel, inhuman, or degrading treatment or punishment; and be it further

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

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