



## CITIZENS COMMISSION ON HUMAN RIGHTS INTERNATIONAL

Massachusetts Executive Office of  
Health and Human Services  
Attn: Mary Beckman, Acting Secretary  
One Ashburton Place, 11th Floor  
Boston, MA 02108

January 27, 2023

### **Re: MA can Prohibit Torturous Behavioral Practices (at Judge Rotenberg Center)**

Dear Ms. Beckman,

On behalf of the mental health industry watchdog, Citizens Commission on Human Rights, I am providing information that may further help legislators ban the *practice* of using electroshock for behavior modification, as a violation of the Convention Against Torture (CAT). This was in response to the brutal use of electrical shock to modify the behavior of intellectually and mentally disabled individuals at the Judge Rotenberg Center (JRC) in Canton. In June 2022, it was reported that bill H.225 in Massachusetts banning electric shock in order to change someone's behavior had been sent to *study*.<sup>1</sup> Medical and disability leaders and human rights groups such as CCHR have worked for years to ban the use of the electric shock device for behavior modification and feel the study does not go far enough.

While the Food and Drug Administration (FDA) has failed to successfully ban the electrical stimulation devices (ESDs) used for self-injurious or aggressive behavior at JRC, the *practice* could be banned at state level. The FDA "determined that those devices present unreasonable and substantial risks of both physical and psychological injury."<sup>2</sup>

On January 16, 2023, it was reported that Congress is stepping into the battle to ban aversion therapy. "You're not allowed to use electric shock on prisoners or prisoners of war or convicted terrorists," said Nancy Weiss, a retired professor who has helped organize opposition to the practice. Language in the 2023 omnibus appropriations bill passed in December gives the FDA the authority to ban the devices after it failed in an appeal in 2021 to ban the ESD device.<sup>3</sup>

However, Massachusetts should not wait until this goes into effect as residents at JRC are right now still being subjected to this torture.

The U.S. has ratified the UN Convention Against Torture (CAT) which applies to all state and local governments.<sup>4</sup>

### Harvard Law School on Torture

In July 2022, members of the Harvard Law School Project on Disability published a report, "Torture in Law: Arguments in the U.S.," which discussed the UN Convention Against Torture in relation to immigration but which has bearing on what is happening still at JRC, where children and adults are arguably tortured under the guise of "treatment."

Per the Harvard law school article, the U.S. understanding of the CAT's *intent* requires:

"for an act to constitute torture, there must be a showing that the actor [in this case JRC] had the intent to commit the act as well as the intent to achieve the consequences of the act." It is required to show "individual mental health workers' specific intent to inflict severe harm" and that the "government *writ large* [clearly and obviously] *condones* their conduct."<sup>5</sup>

JRC staff may argue that they *intend* "to treat, not torture" but that is simply semantics to justify abuse in the name of therapy. If staff have been led to "believe this," thus preventing the proof of *intent*, then those training them must be seen as instructors of torture that the entire facility is condoning and which continued government funding of the center is tantamount to condoning.

Harvard Law counters the intent argument:

"The scientific literature on the efficacy of coercive mental health treatment undermines mental health workers' claims that their intent is not to harm.... Far from an 'unintended consequence,' the effects of prolonged mechanical or chemical restraints or electroconvulsive therapies without safeguards are both intuitive and well-known among the global mental health community. It seems perverse to expect that would-be torturers first be sufficiently trained on mental health care standards before they form the requisite intent in applying coercing methods."<sup>6</sup>

Further: "More recently, the [United Nations] Special Rapporteur has signaled that coercive practices, including 'psychiatric intervention on the grounds of 'medical necessity' or the 'best interests' of the patient...may well amount to torture" because they "generally involve highly discriminatory and coercive attempts at controlling or 'correcting' the victim's personality, behavior or choices and almost always inflict severe pain or suffering."<sup>7</sup>

In January 2019, the American Bar Association's (ABA) Criminal Justice Section adopted a resolution that urged legislatures to clearly define child torture and make child

torture a felony offense regardless of whether a serious physical injury occurs. Child torture includes a combination of two or more cruel inhuman degrading treatments occurring for protracted periods of time.<sup>8</sup>

### **Mental Health Torture Defined**

In light of all this, we are also bringing to your attention the recent findings of a New Zealand inquiry into the use of electroshock on children for behavior modification, which it determined constituted torture. While this is not U.S. law, the incidents of abuse have a parallel to what occurs today in JRC and warrant reviewing this. Please do not disregard this because it is from a foreign country.

More than 300 children between the ages of 5 and 18 in New Zealand were administered electroshock without anesthetic to the skin as behavior modification and punishment in the country's Lake Alice Psychiatric Hospital between 1972 and 1980. The now-closed unit at the hospital was run by psychiatrist Selwyn Leeks and everyone from fellow psychiatrists, psychiatric and medical associations, and government departments allowed it to occur. Dr. Leeks applied electric shocks to children's, legs, arms, limbs, torso, breasts, and genitals. CCHR, assisting survivors, brought this to the attention of the United Nations Committee Against Torture which investigated the issue several times between 2012 and 2019 and compelled the New Zealand government to convene an independent Royal Commission inquiry. This was held in 2021 and its findings were released on 15 December 2022. The Royal Commission report details that "Dr. Leeks primarily used electric shocks as negative stimuli to discourage unwanted behavior. He maintained patients experienced these shocks only as 'discomfort.' He said this form of therapy was intended to make patients 'think twice' about repeating the undesirable behavior."<sup>9</sup>

The inquiry found that "from the earliest days there was evidence to justify criminal charges against Lake Alice staff.... It is wrong that no one has ever been held accountable...."<sup>10</sup> (Dr. Leeks escaped prosecution because of his ill health and dementia, although there was sufficient evidence to have charged him, police said. He died in January 2022.<sup>11</sup>)

The Commission determined that "young people would lose control of their bladders and bowels because they were so afraid to get shocks," and other children in the ward could hear the screams of their fellow patients being electroshocked. "There was a culture of impunity that enabled and normalized acts of abuse and torture." As one advocacy group responded, "People tend to trust doctors and so Dr. Leeks and the medical staff at Lake Alice could get away with torture in the guise of medical treatment and psychiatric treatment for eight long years for those children."

The NZ Minister of Internal Affairs Jan Tinetti said, "The abuse was completely unjustified, both *by today's standards* and the standards of the time."<sup>12</sup>

Note that even by today's standards, it was abuse, not treatment. And that is what is happening at JRC. Jennifer Msumba, an autistic woman who received shocks "almost every day" at JRC told CBS News, "I would get five or ten shocks for just doing one thing," meaning a minor behavioral infraction. "That was like being underground in hell. I would ask God to make my heart stop." Patients can hear the screams of others being electroshocked: A mother told of her son, Andre, screaming in pain and pleading with the workers to stop shocking him. He was shocked 31 times.<sup>13</sup>

Most important is that the New Zealand Inquiry upheld the country's Solicitor-General finding that the "treatment" given to children at Lake Alice met the *legal definition* of torture. Torture has three elements—(1) the infliction of severe pain and suffering, (2) by a person acting on behalf of the State, (3) for the purpose of punishment.<sup>14</sup>

In the case of JRC, patients are inflicted with severe pain and suffering; the shock is used as a form of punishment for "bad behavior" and while JRC is a privately-operated, residential, and day school, it is state-funded. In recent years it has admitted increasing numbers of misbehaving transfers from juvenile court and foster care—i.e., state care. Annual "tuition" as the center calls it is paid by public school districts and, thus, taxpayers—\$277,915.<sup>15</sup> It has non-profit status. Its total revenue for its June 2020 return was \$87,610,558. One psychiatrist was compensated \$268,325 and its executive director paid over \$354,000.<sup>16</sup> Its total revenue in 2013 was \$62,650,157, so despite the constant exposure of the alleged torture at JRC, its income increased by nearly 40%.

Under Massachusetts General Laws, Part IV, Title I, Chapter 265, Section 13K, "Assault and battery upon an elderly or *disabled* person; definitions; penalties," it defines a "Person with disability" as "a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual's ability to provide for his or her own care or protection." "Abuse: as "physical contact which either harms or creates a substantial likelihood of harm," and "Bodily injury" to be "substantial impairment of the physical condition, including, but not limited to, any *burn*...or any injury which occurs as the result of repeated harm to any bodily function or organ, including *human skin*." "Mistreatment" includes "the use of medications or treatments, isolation, or physical or chemical restraints which harms or creates a substantial likelihood of harm."

### **State Precedents to Ban Procedures**

There are precedents to ban *practices*, as opposed to medical devices—the latter the responsibility of the FDA.

CCHR helped obtain the first ban on the practice of electroshocking minors in California in 1976. Three more U.S. states followed—Colorado, Tennessee, and Texas. Then, West Australia also banned it for those 14 and younger, with criminal penalties, including two years' imprisonment, if administered. The Texas ban exists for up to the age of 16.<sup>17</sup>

On February 16, 2013, the UN Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment report defined procedures such as electroshock treatment (generally) without the consent of the patient as a form of torture. The Rapporteur called upon states to “Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics....”

As U.S. biomedical engineer Mr. Ken Castleman describes it: “To say that your brain needs a 460-volt electric shock is like saying your computer needs a lightning strike.”<sup>18</sup> Renowned Constitutional attorney Mr. Jonathon Emord says it makes “my blood boil” that children are subjected to it. It is “akin to the experiments that were done by the Nazis in the concentration camps on Jewish children. This is unacceptable in a civilized world.”<sup>19</sup>

Medicaid statistics for Massachusetts show children aged 5 or younger and up to age 17 have been given electroshock treatment.<sup>20</sup>

In May 2010, Manfred Nowak, the UN’s Special Rapporteur on Torture, sent an urgent appeal to the US government, describing what was being done to students using the ESD device as “torture.”<sup>21</sup> At that time, another Special Rapporteur on Torture, Juan Mendez, told Fox Undercover, “The passage of electricity through anybody’s body is clearly associated with pain and suffering.”<sup>22</sup> *The UN Committee against Torture condemned the shocks at JRC as “torture” and said that “the prohibition of torture is absolute.”* “I feel very strongly that electricity applied to a person’s body creates a very extreme form of pain,” Mr. Mendez stated.<sup>23</sup>

Please do whatever is necessary to enact policy and law that prohibits all forms of aversive therapy and electroshock treatment.

### **Amend Massachusetts General Laws, Part IV**

This could mean amending the Massachusetts General Laws, Part IV, Title I, Chapter 265, Section 13K, “Assault and battery upon an elderly or *disabled* person; definitions; penalties,” to specifically delineate that “therapy” that involves an electrical shock to a patient’s body constitutes assault and battery. Currently, under (a1/2) it states: Whoever commits an assault and battery upon [a] *person with a disability* shall be punished by imprisonment in the state prison for not more than 3 years or by imprisonment in a house of correction for not more than 2 1/2 years, or by a fine of not more than \$1,000, or both such fine and imprisonment.

Or (e) Whoever, being a caretaker of [a] person with a disability, wantonly or recklessly permits serious bodily injury...shall be punished by imprisonment in the state prison for not more than ten years or by imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than ten thousand dollars or by both such fine and imprisonment.

Because of the serious damage that can occur, we recommend the penalties above be implemented so administering such practices in violation of the law cannot be condoned as “therapy.”

Should you wish any further information, please do not hesitate to contact me at [amber@cchr.org](mailto:amber@cchr.org) or at 213-798-3761.

Sincerely,

Amber Rauscher  
Citizens Commission on Human Rights  
International

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<sup>1</sup> Heather Morrison, “‘It is not too late’: Advocates encourage lawmakers to act on bill banning electric shock, used at Judge Rotenberg Center in Canton,” *Masslive.com*, 9 Jun. 2022, <https://www.masslive.com/politics/2022/06/it-is-not-too-late-advocates-encourage-lawmakers-to-act-on-bill-banning-electric-shock-used-at-judge-rotenberg-center-in-canton.html>

<sup>2</sup> *Ibid.*

<sup>3</sup> Mike Beadut, “Congress acts to help ban shock devices used for treatment at Massachusetts school,” *WCVB*, 16 Jan. 2023, <https://www.wcvb.com/article/5-investigates-judge-rotenberg-center-shock-therapy/42526127>; Autistic Self Advocacy Network, “What’s happening at the Judge Rotenberg Center?” <https://autisticadvocacy.org/stoptheshock/>

<sup>4</sup> <https://www.aclu.org/other/faq-convention-against-torture>

<sup>5</sup> Matthew S. Smith\* & Michael Ashley Stein, “WHEN DOES MENTAL HEALTH COERCION CONSTITUTE TORTURE?: IMPLICATIONS OF UNPUBLISHED U.S. IMMIGRATION JUDGE DECISIONS DENYING NON-REFOULEMENT PROTECTION,” *FORDHAM INTERNATIONAL LAW JOURNAL*, Vol 45:5, 2022; pp. 797, 814, <https://ir.lawnet.fordham.edu/ilj/vol45/iss5/2/>

<sup>6</sup> *Ibid.*, p. 824.

<sup>7</sup> *Ibid.*, pp. 792, 793.

<sup>8</sup> AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE SECTION REPORT TO THE HOUSE OF DELEGATES RESOLUTION, 109D, Jan. 2019

<sup>9</sup> “Royal Commission accepts torture was used at notorious Lake Alice Psychiatric Hospital,” *RNZ*, 16 Dec. 2022, <https://www.rnz.co.nz/news/national/480893/royal-commission-accepts-torture-was-used-at-notorious-lake-alice-psychiatric-hospital>; Aaron Smale, “Lake Alice report finally documents the truth,” *Newsroom (NZ)*, 16 Dec, 2022, <https://www.newsroom.co.nz/lake-alice-report-finally-documents-the-truth>; “Beautiful Children: Lake Alice Inquiry into the Lake Alice Child and Adolescent Unit” Royal Commission Inquiry findings report, 15 Dec. 2022; Kethaki Masilamani, State abuse inquiry: Royal Commission hears maltreatment patients at Lake Alice endured, June 14, 2021, *News Hub*, <https://www.newshub.co.nz/home/new-zealand/2021/06/state-abuse-inquiry-royal-commission-hears-maltreatment-patients-at-lake-alice-endured.html>

<sup>10</sup> *Ibid.*, Aaron Smale, *Newsroom (NZ)*, 16 Dec. 2022

<sup>11</sup> <https://truthaboutect.org/ranzcp-trite-apology-lake-alice-survivors/>

<sup>12</sup> Andrew McRea, Jimmy Ellingham, “Royal Commission into Abuse in Care inquiry details suffering of adolescent Lake Alice Psychiatric Hospital patients,” *RNZ*, 15 Dec. 2022, <https://www.rnz.co.nz/news/national/480825/royal-commission-into-abuse-in-care-inquiry-details-suffering-of-adolescent-lake-alice-psychiatric-hospital-patients>; “Beautiful Children: Lake Alice Inquiry into the Lake Alice Child and Adolescent Unit” Royal Commission Inquiry findings report, 15 Dec. 2022; “Royal Commission accepts torture was used at notorious Lake Alice Psychiatric Hospital,” *RNZ*, 16 Dec. 2022, <https://www.rnz.co.nz/news/national/480893/royal-commission-accepts-torture-was-used-at-notorious-lake-alice-psychiatric-hospital>

<sup>13</sup> “Disability Advocates Fight Ruling Allowing Electric Shock Treatment Back In Mass. Residential School,” *WBUR.com*, 12 Aug. 2021, <https://www.wbur.org/hereandnow/2021/08/12/shock-treatment-school-disability>; <https://www.paramountpressexpress.com/cbs-news-and-stations/shows/cbs-evening-news-with-norah-odonnell/releases/?view=40429-in-her-first-television-interview-a-former-student-of-a-special-needs-school-near-boston-treated-with-electric-shock-devices-says-she-felt-like-she-wa>; <https://leftbrainrightbrain.co.uk/2014/08/06/cbs-news-on-judge-rotenberg-center-controversy-over-shocking-people-with-autism-behavioral-disorders/>

<sup>14</sup> Ric Stevens, “Royal Commission of Inquiry into state care finds Lake Alice children were tortured,” *NZ Herald*, 14 Dec. 2022, <https://www.nzherald.co.nz/nz/royal-commission-of-inquiry-into-state-care-finds-lake-alice-children-were-tortured/ZB3EVQL765ATLMDKXSX6XHSTXEA/>

<sup>15</sup> Review of Jan Nisbet, with contributions by Nancy R. Weiss, *Pain and Shock in America: Politics, Advocacy, and the Controversial Treatment of People with Disabilities*, Brandeis University Press, 22 Dec. 2021

<https://www.bostonreview.net/articles/the-shocking-school/>

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<sup>16</sup> <https://projects.propublica.org/nonprofits/organizations/42489805>

<sup>17</sup> <https://www.cchrnt.org/2022/01/24/u-s-states-still-electroshocking-0-5-year-olds/>

<sup>18</sup> <https://www.cchrnt.org/electroshock/>; “How Electroshock Treatment (ECT) ‘Works,’” Kenneth Castleman, PhD., <https://www.cchrnt.org/ect-basics/>.

<sup>19</sup> <https://www.cchrnt.org/2018/08/17/constitutional-attorney-supports-mental-health-watchdogs-call-for-electroshock-ban/>

<sup>20</sup> On file with CCHR International (11 or fewer recipients of ECT in these age groups)

<sup>21</sup> <https://www.prweb.com/releases/2014/08/prweb12082017.htm> citing Laurie Ahern, “Disabled children at Mass. school are tortured, not treated,” *The Washington Post*, 2 Oct 2010, [washingtonpost.com/wp-dyn/content/article/2010/09/17/AR2010091705376.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/09/17/AR2010091705376.html); <http://thautcast.com/drupal5/content/mother-says-judge-rotenberg-center-torture-permanently-damaged-son>

<sup>22</sup> <https://www.cchrnt.org/2012/06/21/electroshocktorturekid/> citing, <http://www.myfoxboston.com/story/18840703/2012/06/20/un-investigating-judge-rotenberg-centers-use-of-shocks>

<sup>23</sup> <https://www.theguardian.com/society/2012/jun/02/un-investigation-shock-treatments-autism?newsfeed=true>