



Model Legislation for Local Governments

Ordinance seeking executive accountability for torture and other potential war crimes or human rights abuses by federal officials

This model legislation offers local legislative bodies an opportunity to promote the rule of law by seeking executive accountability for torture and other potential war crimes or human rights abuses committed by former federal officials. The legislation's sections include the following:

- Support for federal measures to ensure accountability, including a robust investigation of all officials complicit in torture (including policymakers responsible for approving interrogation and detention policies), as well as an independent commission;
- Authorization for local law enforcement authorities to arrest and detain former federal officials accused of complicity in torture and corresponding violations of international human rights treaties;
- Authorization for local law enforcement and prosecutorial authorities to initiate an investigation into potential war crimes or other human rights abuses committed by former federal officials.
- Authorization for local prosecutorial authorities to establish the jurisdiction of local state courts to adjudicate potential allegations under international principles of universal jurisdiction.

Each of these sections can be removed, supplemented, or modified to suit the needs of any particular jurisdiction. If you develop a modified version of this legislation, please [share it with BORDC](#).

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Whereas the international Convention Against Torture (CAT) was ratified by the United States, of which this jurisdiction is a part, on October 21, 1994;

Whereas Article 2 of the CAT unambiguously prohibits torture, expressly holding that “[n]o exceptional circumstances whatsoever, whether a state of war ...or any other public emergency, may be invoked as a justification of torture”;

Whereas Articles 4-7 of the CAT require competent officials to investigate instances of alleged torture and prosecute wherever the evidence leads;

Whereas torture policies pursued in secret by government officials are even more odious than specific instances of torture;

Whereas federal authorities have undertaken no investigation of potential crimes committed by former senior officials who authorized policies that enabled torture, whether in the guise of enhanced interrogation, prisoner management, or training foreign militaries;

Whereas our nation’s greatest strength has historically resided in its commitment to principles including limits on executive power, respect for individual rights, due process and equality before the law;

Whereas this jurisdiction’s criminal justice system loses legitimacy when laws are enforced only against the most vulnerable individuals, or when former officials are granted immunity to violate statutory, constitutional and international laws with impunity;

Whereas an underinclusive investigation limited to junior level scapegoats undermines national security by sapping the morale of intelligence agents;

Whereas our nation’s historical legacy includes the establishment of international institutions to protect universal human rights against abuses by state actors who disregard them;

Whereas torturers in other countries could cite underinclusive investigation of potential war crimes committed by U.S. authorities as a precedent in the future to justify their own attempts to evade justice for potential human rights abuses; and

Whereas the people of this jurisdiction share an interest in protecting and defending human rights, from whatever actors or institutions that threaten them,

BE IT RESOLVED:

[The City of ____] urges the United States Federal Government, its various branches, representatives and employees, to seek transparency into potential war crimes and human rights abuses by former federal officials and contractors, both through the prosecution of all individuals allegedly complicit in torture, as well as an independent commission.

Local law enforcement and prosecutorial authorities shall initiate an investigation into potential war crimes or other human rights abuses committed by former federal officials and contractors, including policymakers responsible for approving interrogation and detention policies.

Investigators shall seek access to all relevant evidence, whether public or classified, wherever it may be found.

[The City] holds jurisdiction to enforce international human norms under principles of universal jurisdiction and authorizes [the District Attorney] to assert jurisdiction in [name of lowest state court]. Upon request, local law enforcement agencies shall extradite officials detained under this authority to a foreign state pursuing an investigation or prosecution.

[Additional optional provision:] If discovered in this jurisdiction, any former government officials or contractors accused of complicity in torture (related either to conducting coercive interrogations, or by authorizing such interrogations by third parties) shall be arrested by local law enforcement agencies and detained pending potential prosecution by [the District Attorney] to the fullest extent allowed by local, state, federal, constitutional or international law.]

The [City executive official] shall send copies of this ordinance to our U.S. Congressional and Senate representatives, the U.S. Senate Committee on the Judiciary, the U.S. Senate Select Committee on Intelligence, the U.S. House of Representatives Committee on the Judiciary, the U.S. House of Representatives Permanent Select Committee on Intelligence, the U.S. Attorney General, and the President of the United States.