

SENATE No. 679

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 adoption of the accompanying bill:

An Act concerning sexual violence on higher education campuses.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>

SENATE No. 679

By Mr. Moore, a petition (accompanied by bill, Senate, No. 679) of Michael O. Moore, Linda Dorcena Forry, Tom Sannicandro, Daniel M. Donahue and other members of the General Court for legislation relative to sexual violence on higher education campuses. Higher Education.

The Commonwealth of Massachusetts

—
In the One Hundred and Eighty-Ninth General Court
(2015-2016)
—

An Act concerning sexual violence on higher education campuses.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 168C of Chapter 6, as appearing in the 2012 Official Edition, is
2 hereby amended by inserting after subsection (e) the following subsection:-

3 (f) Any such policy shall further provide information on sexual assault, stalking and
4 intimate partner violence, including: (1) the procedures that students and employees of the
5 institution who report or disclose being the victim of sexual assault, stalking or intimate partner
6 violence may follow after the commission of such assault, stalking or violence, whether the
7 offense occurred on or off campus, including persons or agencies to contact and information
8 regarding the importance of preserving physical evidence of such assault, stalking or violence;
9 (2) providing students and employees of the institution who report or disclose being the victim
10 of sexual assault, stalking or intimate partner violence both concise, written contact information
11 for and, if requested, professional assistance in accessing and utilizing campus, local advocacy,
12 counseling, health and mental health services, and written concise information, written in plain

language, concerning the rights of such students and employees to (i) notify law enforcement of such assault, stalking or violence and receive assistance from campus authorities in making any such notification, and (ii) obtain a protective order, apply for a temporary restraining order or seek enforcement of an existing protective or restraining order, including, but not limited to, orders issued pursuant to section 18, 34B or 34C of chapter 208, or under section 32 of chapter 209, or under section 3, 4 or 5 of 209A chapter, or under section 15 or 20 of chapter 209C, or under section 3 to 7, inclusive, of chapter 258E or a temporary restraining order or preliminary or permanent injunction relative to a domestic relations, child custody, domestic abuse or abuse prevention proceeding against the perpetrator of such assault, stalking or violence; (3) notifying such students and employees of any reasonably available options for and available assistance from such institution in changing academic, living, campus transportation or working situations in response to such assault, stalking or violence; (4) honoring any lawful protective or temporary restraining orders, including, but not limited to, orders issued pursuant to section 18, 34B or 34C of chapter 208, or under section 32 of chapter 209, or under section 3, 4 or 5 of 209A chapter, or under section 15 or 20 of chapter 209C, or under section 3 to 7, inclusive, of chapter 258E or a temporary restraining order or preliminary or permanent injunction relative to a domestic relations, child custody, domestic abuse or abuse prevention proceeding;(5) disclosing a summary of such institution's student disciplinary procedures, including clear statements advising such students that (i) victims of such assault, stalking or violence shall have the opportunity to request that disciplinary proceedings begin promptly, (ii) disciplinary proceedings shall be conducted by an official trained annually in issues relating to evidence standard in making a determination concerning the alleged assault, stalking or violence, (iii) both the victim of such assault, stalking or violence and the accused (a) are entitled to be accompanied to any

meeting or proceeding relating to the allegation of such assault, stalking or violence by an advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled, and (b) shall have the opportunity to present evidence and witnesses on their behalf during any disciplinary proceeding, (c) both such victim and accused are entitled to be informed in writing of the results of any disciplinary proceeding not later than 2 business days after the conclusion of such proceeding, and (d) the institution of higher education shall not disclose the identity of the victim or the accused, except as necessary to carry out a disciplinary proceeding or as permitted under state or federal law; (6) disclosing a summary of such institution's employee disciplinary procedures; and (7) disclosing the range of sanctions that may be imposed following the implementation of such institution's student and employee disciplinary procedures in response to such assault, stalking or violence.

SECTION 2. Section 10 of chapter 15A, as appearing in the 2012 Official Edition, is hereby amended by inserting the following 2 definitions:-

"Awareness programming", an institutional action designed to communicate the prevalence of sexual assaults, stalking and intimate partner violence, including the nature and number of cases of sexual assault, stalking and intimate partner violence reported at each institution of higher education in the preceding three calendar years, including, but not limited to, poster and flyer campaigns, electronic communications, films, guest speakers, symposia, conferences, seminars or panel discussions;

"Bystander intervention", the act of challenging the social norms that support, condone or permit sexual assault, stalking and intimate partner violence;

SECTION 3. Said section 10 of said chapter 15A, as so appearing, is hereby further amended by inserting after the definition of "HEFA" the following 3 definitions:-

"Intimate partner violence", any physical or sexual harm against an individual who (i) are or were married to one another, (ii) have a child in common regardless of whether they have ever married or lived together or (iii) are or have been in a substantive dating or engagement relationship; provided, that the trier of fact shall determine whether a relationship is substantive by considering the following factors: the length of time of the relationship; the type of relationship; the frequency of interaction between the parties; whether the relationship was terminated by either person; and the length of time elapsed since the termination of the relationship that results from any action by such spouse or such person that may be classified as a sexual assault under section sections 13B, 13B1/2, 13B3/4, 13F, 13H or 13K of chapter 265 or section 35A of chapter 272, stalking under sections section 43 of chapter 265 or criminal harassment as set forth in sections 43 or 43A of chapter 265 or domestic violence as designated under section 1 of chapter 209A.

"Responsible employee", an employee of an institution of higher education who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.

"Primary prevention programming", an institutional action and strategy intended to prevent sexual assault, stalking and intimate partner violence before it occurs by means of changing social norms and other approaches, including, but not limited to, poster and flyer

campaigns, electronic communications, films, guest speakers, symposia, conferences, seminars
or panel discussions;

SECTION 4. Said section 10 of said chapter 15A, as so appearing, is hereby further
amended by inserting after the definition of "Project" the following 3 definitions:-

"Sexual assault", a sexual assault as set forth in sections 13B, 13B1/2, 13B3/4, 13F, 13H
or 13K of chapter 265 or section 35A of chapter 272.

"Stalking", stalking as set forth in section 43 of chapter 265 or criminal harassment as set
forth in sections 43 or 43A of chapter 265.

"Trauma-informed response", a response involving an understanding of the complexities
of sexual assault, stalking and intimate partner violence through training centered on the
neurobiological impact of trauma, the influence of societal myths and stereotypes surrounding
the causes and impact of trauma, understanding the behavior of perpetrators and conducting an
effective investigation on behalf of victims who have suffered trauma.

SECTION 5. Chapter 15A of the General Laws is hereby amended by inserting after
section 42 the following 9 sections:-

Section 43. Sexual Violence Policies and Reporting

(a) In order to receive state funds for student financial assistance, the president of each
community college, state college and university, and the president of each individual University
of Massachusetts institution, and the governing boards of the independent post-secondary
institutions shall adopt policies concerning sexual assault, domestic violence, dating violence,
and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1092 (f))

involving a student, both on and off campus. Said policies shall be developed in coordination with the Title IX coordinator and at least one member from the following: the administration, the counseling services office or health services office, a confidential advisor, the campus police force or campus safety personnel, the faculty, the student body, the residential life office, a community-based sexual assault crisis service center, the state police or local police department and a prosecutor from the district attorney's office.

(b) Institutions shall also adopt detailed and trauma-informed policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student and employee that comport with the best practices and current professional standards.

(c) Each institution of higher education shall establish and carry out a standard process for disciplinary proceedings relating to any claims of sexual violence; and shall not carry out a different disciplinary process on the same campus for a matter of sexual violence, or alter the standard process based on the status or characteristics of a student who will be involved in that disciplinary proceeding, including characteristics such as a student's membership on an athletic team, academic major, or any other characteristic or status of a student.

Section 44. Higher Education Campus Safety Advisor

(a) The Commissioner shall appoint within the Department of Higher Education a campus safety advisor with experience in public safety policy, who shall facilitate and advance state-wide campus safety at public and private degree granting institutions. Said officer shall provide guidance on all such rules, policies and regulations and coordinate, aggregate and disseminate best practices, training opportunities, and other resources to further the goal of enhanced campus safety. The Board of Higher Education shall promulgate regulations which

establish and implement the role and responsibilities of the campus safety advisor, including but not limited to establishing minimum standards for campus security and safety issues.

(b) The Department of Higher Education shall establish an assessment to each higher education institution, as defined in section 3 of chapter 15C, and for-profit institutions of higher education licensed to operate in this state; to fund said position.

Section 45. Information on Institution Websites

(a) The telephone number and URL for a local, State, or national hotline providing information to sexual violence victims shall be clearly communicated on the website of the institution and updated on a timely basis.

(b) The name and location of the nearest medical facility where an individual may have a rape kit shall be included on the website of the institution, including information on transportation options and reimbursement for a visit to such facility.

(c) An institution of higher education shall prepare by not later than 1 year after the date of enactment of this Act, and annually thereafter, the following information on the cases that were investigated by the institution including: (1) the number of cases that were referred for a disciplinary proceeding at the institution; (2) the number of cases that were referred to local or State law enforcement and the final disposition of these cases; (3) the number of alleged perpetrators that were found responsible by the disciplinary proceeding at the institution; (4) the number of alleged perpetrators that were found not responsible by the disciplinary proceeding at the institution; (5) description of the final sanctions imposed by the institution for each offense perpetrated and (6) the number of disciplinary proceedings at the institution that have closed without resolution. The statistics described in clauses (1) and (6) shall not identify victims of

crimes or persons accused of crimes. This information shall be available on the website of the institution and submitted to the Department of Higher Education and the Joint Committee on Higher Education each year.

Section 46. Notification of Sexual Assault Policies

(a) Each institution of higher education shall within 15 days into each semester transmit to each student via electronic mail its policies and procedures concerning the reporting and investigation of an allegation of sexual assault made by a student enrolled in the institution or made by an employee of the institution against another such student or employee.

(b) Each institution of higher education shall provide concise notification, written in plain language, to each student and employee of such institution who has been the victim of sexual assault, stalking or intimate partner violence, immediately upon receiving a report of such assault, stalking or violence, of such victim's rights and options under such institution's policy or policies regarding sexual assault, stalking and intimate partner violence.

Section 47. Memorandum of Understanding with Sexual Assault Crisis Services

(a) Not later than January 1, 2016, subject to appropriation, each institution of higher education shall enter into and maintain a memorandum of understanding with at least one community-based sexual assault crisis service center and at least one community-based domestic violence agency for purposes of:

(1) ensuring that any student or employee of such institution who reports or discloses being the victim of sexual assault, stalking or intimate partner violence can access free and confidential counseling and advocacy services, either on or off campus, and

(2) establishing a partnership with such service center and agency, including, but not limited to, (i) involvement in the campus resource team, and (ii) trainings between the institution and such service center and agency to ensure the understanding of each other's role in responding to reports and disclosures of sexual assault, stalking and intimate partner violence against students and employees of the institution and the institution's protocols for providing support and services to such students and employees.

Section 48. Memorandum of Understanding with Law Enforcement

(a) Each institution of higher education shall enter into, and update every 2 years, a memorandum of understanding with all applicable local law enforcement agencies to clearly delineate responsibilities and share information, in accordance with applicable Federal and state confidentiality laws, about certain serious crimes that shall include, but not be limited to, sexual violence, occurring against students of the institution or against other individuals on the campus of the institution. The memorandum of understanding shall include, but is not limited to the:

- (1) delineation and sharing protocols of investigative responsibilities;
- (2) protocols for investigations, including standards for notification and communication and measures to promote evidence preservation;
- (3) agreed upon training and requirements for the institution on issues related to sexual violence; and
- (4) a method of sharing information about specific crimes, when directed by the victim, and a method of sharing crime details anonymously in order to better protect overall campus safety; and

(5) a method of notifying the district attorney for the jurisdiction in situation when a victim files charges with local enforcement.

Section 49. Sexual Violence Anonymous Reporting and Confidential Advisor

(a) Each institution of higher education shall provide the option for any student or employee of such institution who is the victim of a sexual assault, stalking or intimate partner violence to report or disclose such assault, stalking or violence to such institution anonymously. Each such institution shall notify any such student or employee of the institution's obligations under state or federal law, if any, to (1) investigate or address such assault, stalking or violence and (2) assess whether the report triggers the need for a timely warning or emergency notification, as described in 34 CFR 668.46(e), which obligations, in limited circumstances, may result in the learning of such victim's identity.

(b) An individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including but not limited to, an action that places the health and safety of any other person at risk.

(c) Each institution of higher education shall establish a campus security policy that includes the following:

(1) The designation of 1 or more confidential advisor roles at the institution to whom victims of crime can report anonymously or directly, that complies with the following:

(i) The confidential advisor shall not be a student, an employee designated as a responsible employee under title IX of the Education Amendments of 1972, or the title IX coordinator, but may have other roles at the institution.

(ii) The Department shall designate existing categories of employees that may serve as confidential advisors. Such designation shall not preclude the institution from designating new or existing employees or partnering with local, state, or national victim services organizations to serve as confidential advisors or to serve in other confidential roles.

(iii) The confidential advisor shall inform the victim of the victim's control over possible next steps regarding the victim's reporting options and the consequences of those options, including, but not limited to, the option to conduct a forensic interview with the option to have the forensic interview be recorded, the option to receive a copy of the recorded forensic interview with the option to notify a responsible employee and initiate a campus disciplinary proceeding, the option to notify local law enforcement and initiate a criminal investigation, the option to grant campus disciplinary officials access to the forensic interview, and the option to grant law enforcement officials access to the forensic interview. The confidential advisor shall assist in conducting a forensic interview, making notifications, and granting access to a forensic interview as directed by the victim.

(iv) The confidential advisor shall be trained to perform a trauma-informed interview, which shall focus on the experience of the victim. The confidential advisor may perform the interview for which the goal is to elicit information about the traumatic event in question so that the interview can be used in either a campus or criminal investigation or disciplinary proceeding.

(v) The confidential advisor shall liaise with campus or local law enforcement when directed by the victim, and, as appropriate, may assist the victim in contacting and reporting to campus or local law enforcement.

(vi) The confidential advisor shall be authorized by the institution to arrange reasonable accommodations through the institution to allow the victim to change living arrangements or class schedules, or obtain accessibility services, and make other changes.

(vii) The confidential advisor shall also advise the victim of both the victim's rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by the institution or a criminal, civil, or tribal court.

(viii) The confidential advisor shall not be obligated to report crimes to the institution or law enforcement, unless otherwise required to do so by state law, and shall provide confidential services to students and employees. Requests for arrangement made by a confidential advisor do not constitute notice to a responsible employee for title IX purposes, even when such advisors work only in the area of sexual assault.

(ix) The name and contact information for the confidential advisor, as well as a victims' reporting options, the process of investigation and adjudication both by the institution and by law enforcement, and potential reasonable accommodations, which shall be listed on the website of the institution.

(x) The institution may partner with an outside victim advocacy organization to provide the service described in this subparagraph.

(xi) Each institution that enrolls fewer than 1,000 students may partner with another institution in their region or State to provide the services described in this subparagraph.

(xii) Each employee of an institution who receives a report of sexual assault shall notify the victim of the existence of, contact information for, and services provided by the confidential advisor.

(xiii) In carrying out the responsibilities described in this section, the confidential advisor shall represent the interests of the student victim even when in conflict with the interests of the institution.

(xiv) The confidential advisory shall attend, at the request of the victim of sexual assault, any administrative or institution-based adjudication proceeding related to such assault as an advocate for the victim.

(xv) The confidential advisor shall not disclose such confidential communication, without the prior written consent of the victim; provided, however, that nothing in this chapter shall be construed to limit the defendant's right of cross-examination of such advisor in a civil or criminal proceeding if such advisor testifies with such written consent. Such confidential communications shall not be subject to discovery and shall be inadmissible in any criminal or civil proceeding without the prior written consent of the victim to whom the report, record, working paper or memorandum relates.

Section 50. Sexual Violence Programming and Training

(a) Each institution of higher education shall provide (1) mandatory annual sexual assault, stalking and intimate partner violence primary prevention and awareness programming

for all students and employees that includes an explanation of the definition of consent in sexual relationships, and information concerning the reporting of incidences of such assaults, stalking and violence and strategies for bystander intervention and risk reduction; and (2) ongoing sexual assault, stalking and intimate partner violence prevention and awareness campaigns.

(b) Each institution of higher education shall employ responsible employees who shall complete minimum training requirements, as determined by the Department of Higher Education in coordination with the Attorney General, and to include training by local, State, or national victim services organizations and shall be responsible for reporting cases of sexual harassment to the title IX coordinator of the institution; and providing a student or employee who reports that the student or employee has been a victim of sexual harassment, including, but not limited to, sexual violence, whether the offense occurred on or off campus, with a written explanation of the student or employee's rights and options, as described in clauses through (vii) of section 485(f)(8)(B) of the Higher Education Act of 1965.

(c) Each individual who is involved in implementing an institution of higher education's grievance procedures, including each individual who is responsible for resolving complaints of reported crimes, shall have training or experience in handling sexual violence complaints, and the operations of the institution's grievance procedures, not later than 1 year after the date of enactment this Act. The training shall include, but is not limited to (a) information on working with and interviewing persons subjected to sexual violence;(b) information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; (c) information on consent and the role drugs, facilitate sexual assault, drugs, or alcohol can play in the ability to consent; (d) the effects of trauma, including neurobiological change; and (e) cultural awareness training regarding how sexual violence may impact students differently

depending on their cultural background and (f) communicating sensitively and compassionately with the victims of such assault, stalking or violence, including, but not limited to, an awareness of responding to victims with diverse cultural backgrounds, and providing services to or assisting in locating services for such victims.

(d) Each institution of higher education shall ensure that its Title IX coordinator and members of its special police force, campus police force or campus safety personnel employed by such institution of higher education are educated in the awareness and prevention of sexual assault, stalking and intimate partner violence, and in trauma-informed response.

(e) Members of state and local police departments who act as first responders to any reports of sexual assault, stalking or intimate partner violence at an institution of higher education shall receive training in the awareness and prevention of sexual assault, stalking and intimate partner violence and in trauma-informed response.

Section 51. Campus Safety Application

(a) Each institution of higher education, as defined by section 3 of chapter 15C, shall integrate a Threat Response Program to be used for emergency communications both on campus and off.

(b) The program shall:

(1) collect a variety of formatted data relevant to Campus Public Safety, and state and local 9-1-1 and first responder agencies, such as photographs of individuals, physical descriptions, medical conditions, allergies, household data, primary language indicator, and emergency contacts;

313 (2) allow for information to be entered by individuals via a secure website and mobile
314 handset application where they can elect to provide as little or as much information as they
315 choose;

316 (3) be compliant with all accessibility elements of Section 508 of the Rehabilitation Act
317 of 1973;

318 (4) manage the currency of the data through an aging and reminder process, at least twice
319 per year, requesting application users to keep their data up-to-date;

320 (5) automatically display data provided by individuals to Campus Safety and/or 911 call
321 takers when an emergency call is placed from a registered and confirmed phone number;

322 (6) support the delivery of application user information via a secure internet connection
323 to any campus public safety office and all Public Safety Answering Points within the
324 Commonwealth;

325 (7) work across all campus public safety campus and be compatible with 9-1-1 call taking
326 equipment in the Commonwealth;

327 (8) make data available to first responders;

328 (9) allow for the submission of anonymous or confidential crime tips via a handset
329 application or by texting into a designated shortcode; and

330 (10) support the ability for a user to initiate a timer via the handset application that allows
331 for one or more individuals to view their location information for a specified period of time in
332 order to assist in the event of an emergency.

SECTION 6. The first sentence of section 97D of chapter 41 of the General laws, as most recently amended by section 7 of chapter 260 of the acts of 2014, is hereby amended by inserting after the words “chapter 233” the following words:- Title IX coordinators designated by schools and institutions of higher education as required by Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. and 34 CFR106.8.

SECTION 7. Chapter 41 is hereby amended by striking out section 98F, as , and inserting in place thereof the following section:-

Section 98F. Each police department and each college or university to which officers have been appointed pursuant to section 63 of chapter 22C shall make, keep and maintain a daily log, written in a form that can be easily understood, recording, in chronological order, all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested. All entries in said daily logs shall, unless otherwise provided in law, be public records available without charge to the public during regular business hours and at all other reasonable times; provided, however, that the following entries shall not include the names and addresses of persons arrested and the charges against such persons arrested: (i) any entry in a log which pertains to a handicapped individual who is physically or mentally incapacitated to the degree that said person is confined to a wheelchair or is bedridden or requires the use of a device designed to provide said person with mobility, (ii) any entry concerning responses to reports of domestic violence, rape or sexual assault or (iii) any entry concerning the arrest of a person for assault, assault and battery or violation of a protective order where the victim is a family or household member, as defined in section 1 of chapter 209A.

354 The first sentence of section 97D of chapter 41 of the General laws, as most recently
355 amended by section 7 of chapter 260 of the acts of 2014, is hereby amended by inserting after the
356 words “chapter 233” the following words:- Title IX coordinators designated by schools and
357 institutions of higher education as required by Title IX of the Education Amendments of 1972,
358 20 U.S.C. 1681 et seq. and 34 CFR106.8.

359 SECTION 8. The third paragraph of section 24C of chapter 265 of the General Laws, as
360 appearing in the 2012 Official Edition, is hereby amended by inserting after the word “section”,
361 in line 14, the following words:- and chapter 41 of section 97D.