

HOUSE No. 4418

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 19, 2018.

The committee on Labor and Workforce Development to whom were referred the petition (accompanied by bill, House, No. 1007) of Denise C. Garlick and others for legislation to provide for annual perform at risk assessments by health care employers and labor organizations and the petition (accompanied by bill, House, No. 1023) of Jay D. Livingstone and others relative to requiring human service employers to develop and implement programs that prevent workplace violence, reports recommending that the accompanying bill (House, No. 4418) ought to pass.

For the committee,

PAUL BRODEUR.

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act requiring health care employers to develop and implement programs to prevent workplace violence.

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. Chapter 111 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by inserting after section 237, the following new section:-

3 Section 237. (a) As used in this section, the following words shall have the following
4 meanings:-

5 “Employee”, an individual employed by a health care employer as defined in this section.

6 “Health care employer”, any individual, partnership, association, corporation or, trust or
7 any person or group of persons operating a health care facility as defined in this section and
8 employing five or more employees.

9 “Health care facility”, A hospital as defined under Section 52 of Chapter 111 of the
10 Massachusetts General Laws

11 “Workplace Violence”, any attempted or actual harmful or unpermitted touching of
12 another person that results in injury and occurs on a work site/ .

13 (b) Notwithstanding any general or special law to the contrary, within 6 months of the
14 date of enactment, the department shall develop statewide standards for evaluating and
15 addressing known security risks within different healthcare settings, including but not limited to
16 hospitals. Such standards shall be based on existing state laws and regulations as well as national
17 accreditation and professional association standards for the respective healthcare setting, for the
18 purpose of ensuring consistency in the development of and annual review of internal operations
19 preventing known risks. These standards shall include, but not be limited to: working in public
20 settings; guarding or maintaining property or possessions; working in high-crime areas; working
21 late night or early morning hours; working alone or in small numbers; uncontrolled public access
22 to the workplace; working in public areas where people are in crisis; working in areas where
23 patients or residents may exhibit violent behavior; and working in areas with known security
24 problems. In developing such standards, the department shall convene and consult with an
25 advisory committee comprised of healthcare providers, including but not limited to, leadership,
26 staff nurses and facility directors. Following development of the statewide standards, each
27 healthcare setting shall be required to provide a summary of its operational policy that complies
28 with the standards and includes a description of: i) the development of security risk
29 identification; ii) engagement with employees on potential risks; iii) evaluation of incidents that
30 have occurred; and iv) periodic reassessments of programs and policies. Such summaries shall be
31 submitted to the department within six months after the advisory committee promulgates its
32 standards, and shall be updated when the facility makes a substantive change to its operational
33 policy for security risk assessment.

34 (c) The health care employer shall develop and implement a program to minimize the
35 danger of workplace violence to employees based on the statewide standards, which shall include

36 appropriate employee training and a system for the ongoing reporting and monitoring of
37 incidents and situations involving violence or the risk of violence. Employee training shall
38 include, in addition to all employer training program policies, methods of reporting to
39 appropriate public safety officials, bodies or agencies and processes necessary for the filing of
40 criminal charges. Each health care employer shall develop a written violence prevention plan
41 setting forth the employer's workplace violence prevention plan. The health care employer shall
42 make the plan available on site to each employee and allow any of its employees to review the
43 plan on site upon request. The health care employer shall provide the plan to any labor
44 organization or organizations representing any of its employees.

45 (d) Each health care employer shall designate a senior manager responsible for the
46 development and support of an in-house crisis response team for employee-victims of workplace
47 violence. Said team shall implement an assaulted staff action program that includes, but is not
48 limited to, group crisis interventions, individual crisis counseling, staff victims' support groups,
49 employee victims' family crisis intervention, peer-help and professional referrals.

50 (e) The commissioner of public health shall adopt rules and regulations necessary to
51 implement the purposes of this act. The rules and regulations shall include such guidelines as the
52 commissioner deems appropriate regarding workplace violence prevention programs required
53 pursuant to this act, and related reporting and monitoring systems and employee training.

54 SECTION 2. Section 13I of Chapter 265 of the General Laws as appearing in the 2016
55 Official Edition, is hereby amended by replacing the entire section with the following language:-

56 Whoever commits an assault or an assault and battery on an emergency medical
57 technician, an ambulance operator, an ambulance attendant or a health care provider as defined

58 in section 1 of chapter 111 of the general laws, while the technician, operator, attendant or
59 provider is in the course of employment at the time of such assault or assault and battery, shall be
60 punished by imprisonment in state prison for not more than five years or imprisonment in a jail
61 or house of correction for not less than 90 days nor more than 2 and one-half years or by a fine of
62 not less than \$500 nor more than \$5,000, or both.

63 Any emergency medical technician, ambulance operator, ambulance attendant or a health
64 care provider as defined in section 1 of chapter 111, who is the victim of assault or assault and
65 battery in the line of duty shall be given the option of providing either the individual's home
66 address or the address of a labor organization representing employees at the health care facility
67 where the assault or assault and battery occurred, or by requesting a judge to impound the
68 individual's home address. In instances where the address of the labor organization is used, the
69 labor organization shall ensure that the individual receives any documents pertaining to the
70 assault or assault and battery within 24 hours of receipt by the labor organization. The labor
71 organization shall demonstrate that it has provided any and all documentation by obtaining a
72 signature from the individual acknowledging receipt.

73 SECTION 3. Each health care employer shall report every six months all incidents of
74 assault and assault and battery under Section 237 of Chapter 111 and Section 13I of Chapter 265
75 of the General Laws, as appearing in the 2016 Official Edition, to the department and the office
76 of the district attorney. The department shall make an annual public report using aggregated
77 statewide data of reported incidents of assault and assault and battery under Section 237 of
78 Chapter 111 and Section 13I of Chapter 265.

79 SECTION 4. Chapter 265 of the General Laws as so appearing, is hereby amended after
80 Section 13I by inserting at the end the following sections:-

81 Section 13I 1/2. (a) For purposes of this section, the following words shall have the
82 following meanings, unless the context clearly indicates otherwise:

83 “Employee”, an individual employed by a health care employer as defined in this section.

84 “Health care employer”, any individual, partnership, association, corporation or, trust or
85 any person or group of persons operating a health care facility as defined in this section and
86 employing five or more employees.

87 “Health care facility”, a hospital as defined under Section 52 of Chapter 111 of the
88 Massachusetts General Laws

89 (b) A health care employer shall permit an employee to take unpaidleave from work if: (i)
90 the employee is a victim of assault or assault and battery which occurred in the line of duty; and
91 (ii) the employee is using the leave from work to: seek or obtain victim services or legal
92 assistance; obtain a protective order from a court; appear in court or before a grand jury; or meet
93 with a district attorney.

94 (c) An employee seeking leave from work under this section shall provide appropriate
95 advance notice of the leave to the employer as required by the employer's leave policy.

96 (d) A health care employer may require an employee to provide documentation
97 evidencing that the employee has been a victim of assault or assault and battery sustained in the
98 line of duty and that the leave taken is consistent with the conditions of clauses (i) and (ii).

99 (e) If an unscheduled absence occurs, the health care employer shall not take any
100 negative action against the employee if the employee, within 30 days from the unauthorized
101 absence or within 30 days from the last unauthorized absence in the instance of consecutive days
102 of unauthorized absences, provides documentation that the unscheduled absence meets the
103 criteria of clauses (i) and (ii).

104 (f) An employee shall provide such documentation to the health care employer within a
105 reasonable period after the health care employer requests documentation relative to the
106 employee's absence.

107 (g) All information related to the employee's leave under this section shall be kept
108 confidential by the health care employer and shall not be disclosed, except to the extent that
109 disclosure is: (i) requested or consented to, in writing, by the employee; (ii) ordered to be
110 released by a court of competent jurisdiction; (iii) otherwise required by applicable federal or
111 state law; (iv) required in the course of an investigation authorized by law enforcement,
112 including, but not limited to, an investigation by the attorney general; or (v) necessary to protect
113 the safety of the employee or others employed at the workplace.

114 (h) An employee seeking leave under this section shall not have to exhaust all annual
115 leave, vacation leave, personal leave or sick leave available to the employee, prior to requesting
116 or taking leave under this section.

117 (i) No health care employer shall coerce, interfere with, restrain or deny the exercise of,
118 or any attempt to exercise, any rights provided under this section or to make leave requested or
119 taken hereunder contingent upon whether or not the victim maintains contact with the alleged
120 abuser.

121 (j) No health care employer shall discharge or in any other manner discriminate against
122 an employee for exercising the employee's rights under this section. The taking of leave under
123 this section shall not result in the loss of any employment benefit accrued prior to the date on
124 which the leave taken under this section commenced. Upon the employee's return from such
125 leave, the employee shall be entitled to restoration to the employee's original job or to an
126 equivalent position.

127 (k) The attorney general shall enforce this section and may seek injunctive relief or other
128 equitable relief to enforce this section.

129 (l) Health care employers shall notify each employee of the rights and responsibilities
130 provided by this section including those related to notification requirements and confidentiality.

131 (m) This section shall not be construed to exempt an employer from complying with
132 chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights
133 of any employee under said chapter 258B, said section 14B of chapter 268 or any other general
134 or special law.

135 SECTION 5. Notwithstanding any general or special law or rule or regulation to the
136 contrary, within 6 months of the date of enactment, the executive office of health and human
137 services shall coordinate with the executive office of public safety and security to develop
138 regulations that would allow healthcare providers, as defined in section 1 of chapter 111 of the
139 general laws to be able to access reports on individuals maintained by agencies within each
140 executive office as well as public safety and law enforcement officials through a secure
141 electronic medical record, health information exchange, or other similar software or information
142 systems connected to healthcare provider for the purposes of (i) improving ease of access and

143 utilization of such data for healthcare operations; (ii) supporting integration of such data within
144 the electronic health records of a healthcare provider for purposes of security risk assessment and
145 planning; or, (iii) allowing healthcare providers and their vendors to maintain such data for the
146 purposes of compiling and visualizing such data within the electronic health records of a
147 healthcare provider as part of its healthcare operations. Such regulations shall further allow the
148 sharing of such information between healthcare providers through a common information
149 technology platform. Provided however, that such access to information must be done in a
150 manner that maintains the privacy and security of the information within the healthcare provider
151 similar to the requirements for protected health information under the federal privacy
152 regulations, 45 C.F.R. § 164.501.