

SENATE No. 1374

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>	
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>1/25/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>1/26/2017</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/26/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/26/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/26/2017</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>	<i>1/27/2017</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/27/2017</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>1/27/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/27/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/30/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>1/30/2017</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/30/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2017</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/1/2017</i>

<i>Brian Murray</i>	<i>10th Worcester</i>	<i>2/1/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/1/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/2/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/2/2017</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>	<i>2/2/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/2/2017</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/2/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>2/2/2017</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>	<i>2/3/2017</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/3/2017</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>2/3/2017</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>2/3/2017</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>2/3/2017</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>2/3/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/8/2017</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>2/8/2017</i>

SENATE No. 1374

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 1374) of James E. Timilty, Josh S. Cutler, Barbara A. L'Italien, Danielle W. Gregoire and other members of the General Court for legislation to require health care employers to develop and implement programs to prevent workplace violence. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1313 OF 2015-2016.]

The Commonwealth of Massachusetts

**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 149 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by inserting after section 129D, the following new section:-

3 Section 129E. (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”, an individual, partnership, association, corporation or trust or any
10 person or group of persons that employs health care providers, including any hospital, clinic,
11 convalescent or nursing home, charitable home for the aged, community health agency or other
12 provider of health care services licensed, or subject to licensing by, or operated by the
13 department of public health; any state hospital operated by the department; any facility as
14 defined in section three of chapter one hundred and eleven B; any private, county or municipal
15 facility, department or unit which is licensed or subject to licensing by the department of mental
16 health pursuant to section nineteen of chapter nineteen, or by the department of developmental
17 services pursuant to section fifteen of chapter nineteen B; any facility as defined in section one of
18 chapter one hundred and twenty-three; the Soldiers' Home in Holyoke, the Soldiers' Home in
19 Chelsea; or any facility as set forth in section one of chapter nineteen or section one of chapter
20 nineteen B.

21 “Workplace Violence”, any act or threat of physical violence, harassment, intimidation,
22 or other threatening disruptive behavior that occurs at the work site ranging from threats and
23 verbal abuse to physical assaults and homicide.

24 (b) Each health care employer shall annually perform a risk assessment, in
25 cooperation with the employees of the health care employer and any labor organization or
26 organizations representing the employees, examining all factors, which may put any of the
27 employees at risk of workplace violence. The factors shall include, but not be limited to: working
28 in public settings; guarding or maintaining property or possessions; working in high-crime areas;
29 working late night or early morning hours; working alone or in small numbers; uncontrolled
30 public access to the workplace; working in public areas where people are in crisis; working in
31 areas where a patient or resident may exhibit violent behavior; working in areas with known

32 security problems and working with a staffing pattern insufficient to address foreseeable risk
33 factors.

34 (c) Based on the findings of the risk assessment, the health care employer shall develop
35 and implement a program to minimize the danger of workplace violence to employees, which
36 shall include appropriate employee training, and a system for the ongoing reporting and
37 monitoring of incidents and situations involving violence or the risk of violence. Employee
38 training shall include, in addition to all employer training program policies, methods of reporting
39 to 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 to each employee and provide the plan to any of its employees upon
43 their request. The health care employer shall provide the plan to any labor organization or
44 organizations representing any of its employees. The plan shall include: (i) a list of those factors
45 and circumstances that may pose a danger to employees; (ii) a description of the methods that the
46 health care employer will use to alleviate hazards associated with each factor; including, but not
47 limited to, employee training and any appropriate changes in job design, staffing, security,
48 equipment or facilities; (iii) a post-incident debriefing process with affected staff; and (iv) a
49 description of the reporting and monitoring system.

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

55 (e) The commissioner of labor shall adopt rules and regulations necessary to implement
56 the purposes of this act. The rules and regulations shall include such guidelines as the
57 commissioner deems appropriate regarding workplace violence prevention programs required
58 pursuant to this act, and related reporting and monitoring systems and employee training.

59 (g) Any health care employer who violates any rule, regulation or requirement made by
60 the department under authority hereof shall be punished by a fine of not more than two thousand
61 dollars for each offense. The department or its representative or any person aggrieved, any
62 interested party or any officer of any labor union or association, whether incorporated or
63 otherwise, may file a written complaint with the district court in the jurisdiction of which the
64 violation occurs and shall promptly notify the attorney general in writing of such complaint. The
65 attorney general, upon determination that there is a violation of any workplace standard relative
66 to the protection of the occupational health and safety of employees or of any standard of
67 requirement of licensure, may order any work site to be closed by way of the issuance of a cease
68 and desist order enforceable in the appropriate courts of the commonwealth.

69 (h) No employee shall be penalized by a health care employer in any way as a result of
70 such employee's filing of a complaint or otherwise providing notice to the department in regard
71 to the occupational health and safety of such employee or their fellow employees exposed to
72 workplace violence risk factors.

73 SECTION 2. Section 13I of Chapter 265 of the General Laws as appearing in the 2016
74 Official Edition, is hereby amended by inserting at the end the following section:-

75 Section XX: Any emergency medical technician, ambulance operator, ambulance
76 attendant or a health care provider as defined in section 1 of chapter 111, who is the victim of

77 assault or assault and battery in the line of duty shall be given the option of providing either the
78 individual's home address or the address of the health care facility where the assault or assault
79 and battery occurred. In instances where the address of the health care facility is used, the health
80 care facility shall ensure that the individual receives any documents pertaining to the assault or
81 assault and battery within 24 hours of receipt by the health care facility. The health care facility
82 shall demonstrate that it has provided any and all documentation by obtaining a signature from
83 the individual acknowledging receipt.

84 SECTION 3. Each health care employer shall report every six months all incidents of
85 assault and assault and battery under Section 13I of Chapter 265 of the General Laws, as
86 appearing in the 2016 Official Edition, to the department, the department of public health and the
87 office of the district attorney. These reports shall be made publicly available within 90 days of
88 receipt by these departments and the office of the district attorney

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

91 Section XX. (a) For purposes of this section, the following words shall have the
92 following meanings, unless the context clearly indicates otherwise:

93 "Employee", an individual employed by a health care employer as defined in this section.

94 "Health care employer", any individual, partnership, association, corporation or, trust or
95 any person or group of persons operating a health care facility as defined in this section and
96 employing five or more employees.

97 “Health care facility”, an individual, partnership, association, corporation or trust or any
98 person or group of persons that employs health care providers, including any hospital, clinic,
99 convalescent or nursing home, charitable home for the aged, community health agency or other
100 provider of health care services licensed, or subject to licensing by, or operated by the
101 department of public health; any state hospital operated by the department; any facility as
102 defined in section three of chapter one hundred and eleven B; any private, county or municipal
103 facility, department or unit which is licensed or subject to licensing by the department of mental
104 health pursuant to section nineteen of chapter nineteen, or by the department of developmental
105 services pursuant to section fifteen of chapter nineteen B; any facility as defined in section one of
106 chapter one hundred and twenty-three; the Soldiers' Home in Holyoke, the Soldiers' Home in
107 Chelsea; or any facility as set forth in section one of chapter nineteen or section one of chapter
108 nineteen B.

109 (b) A health care employer shall permit an employee to take up to 7 days of leave from
110 work in any 12 month period if:

111 (i) the employee is a victim of assault or assault and battery which occurred in the line of
112 duty;

113 (ii) the employee is using the leave from work to: seek or obtain victim services or legal
114 assistance; obtain a protective order from a court; appear in court or before a grand jury; meet
115 with a district attorney or other law enforcement official or to address other issues directly
116 related to the assault and battery.

117 (c) The leave taken under this section shall be paid.

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

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

123 (f.)If an unscheduled absence occurs, the health care employer shall not take any negative
124 action against the employee if the employee, within 30 days from the unauthorized absence or
125 within 30 days from the last unauthorized absence in the instance of consecutive days of
126 unauthorized absences, provides documentation that the unscheduled absence meets the criteria
127 of clauses (i) and (ii).

128 (g) An employee shall provide such documentation to the health care employer within a
129 reasonable period after the health care employer requests documentation relative to the
130 employee's absence.

131 (h) All information related to the employee's leave under this section shall be kept
132 confidential by the health care employer and shall not be disclosed, except to the extent that
133 disclosure is:

134 (i) requested or consented to, in writing, by the employee;

135 (ii) ordered to be released by a court of competent jurisdiction;

136 (iii) otherwise required by applicable federal or state law;

137 (iv) required in the course of an investigation authorized by law enforcement, including,
138 but not limited to, an investigation by the attorney general; or

139 (v) necessary to protect the safety of the employee or others employed at the workplace.

140 (i) An employee seeking leave under this section shall not have to exhaust all annual
141 leave, vacation leave, personal leave or sick leave available to the employee, prior to requesting
142 or taking leave under this section;

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

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

153 (l) The attorney general shall enforce this section and may seek injunctive relief or other
154 equitable relief to enforce this section.

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

157 (n) This section shall not be construed to exempt an employer from complying with
158 chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights

159 of any employee under said chapter 258B, said section 14B of chapter 268 or any other general
160 or special law.