

# SENATE . . . . . No. 2081

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
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SENATE, Thursday, June 8, 2017

The committee on Higher Education to whom was referred the petitions (accompanied by bill, Senate, No. 697) of Barbara A. L'Italien and Jason M. Lewis for legislation to create a right to representation for college students in some school disciplinary matters; (accompanied by bill, Senate, No. 706) of Michael O. Moore, Timothy R. Whelan, Jack Lewis, James B. Eldridge and other members of the General Court for legislation relative to sexual violence on higher education campuses; (accompanied by bill, House, No. 630) of Geoff Diehl relative to the right to counsel by certain higher education students in disciplinary hearings; (accompanied by bill, House, No. 632) of Tricia Farley-Bouvier and others for legislation to institute programs to respond to sexual violence on higher education campuses; and (accompanied by bill, House, No. 648) of Timothy R. Whelan and others for legislation to require post secondary institutions to inform students of their right to call their parents and their right to an attorney in the event of a disciplinary hearing that may result in expulsion,- reports the accompanying bill (Senate, No. 2081).

For the committee,  
Michael O. Moore

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An Act relative to 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. Chapter 6 of the General Laws, as appearing in the 2014 Official Edition,  
2 is hereby amended by adding the following section:-

3           Section 168D. Each public or private degree-granting post-secondary institution of  
4 higher education shall adopt a policy on dating violence, domestic violence, sexual assault and  
5 stalking that shall be made available, upon request, to an applicant, student or employee of the  
6 institution. The policy shall include, but not limited to:

7           (i) the procedures by which students and employees at the institution may report or  
8 disclose incidents of dating violence, domestic violence, sexual assault or stalking regardless of  
9 where the offense occurred;

10           (ii) information on where to receive immediate emergency assistance following an  
11 incident of dating violence, domestic violence, sexual assault or stalking, which shall include,

12 but not be limited to, contact information for seeking medical treatment on-campus, if available,  
13 and off-campus and information related to preserving evidence based on the type of offense;

14 (iii) descriptions of the types of counseling, health, safety, academic and other support  
15 services available from the institution, within the local community or region or through a local  
16 community-based rape crisis center or domestic violence program, including contact  
17 information;

18 (iv) the rights of students and employees to: (A) notify law enforcement, including on-  
19 campus, local and state police, of an alleged incident of dating violence, domestic violence,  
20 sexual assault or stalking; (B) receive assistance from campus authorities in making any  
21 notification or to decline to notify these authorities; and (C) obtain a protective order or seek  
22 enforcement of an existing protective order against a perpetrator of the assault, stalking or  
23 violence;

24 (v) interim protective measures reasonably available from the institution including, but  
25 not limited to, options for changing academic, living, campus transportation or working  
26 arrangements in response to an alleged incident of dating violence, domestic violence, sexual  
27 assault or stalking and how to request such changes;

28 (vi) the responsibilities of the institution upon receipt of notification that a protective  
29 order has been issued under state law;

30 (vii) a summary of the institution's procedures for resolving complaints against students  
31 alleged to have engaged in dating violence, domestic violence, sexual assault or stalking,  
32 including clear statements advising students that: (A) an investigation, including any hearing and  
33 resulting disciplinary proceeding, shall be conducted by an official who receives not less than

34 annual training on issues relating to dating violence, domestic violence, sexual assault or  
35 stalking, investigatory procedures and hearing procedures to protect the safety and rights of  
36 students and promote accountability; (B) the reporting party of an alleged incident of dating  
37 violence, domestic violence, sexual assault or stalking and the accused party may be  
38 accompanied by an advisor or support person of their choice to meet with the institution's  
39 investigator or other fact-finder and may consult with an advisor or support person during a  
40 meeting, including any disciplinary proceeding; provided, however, that the institution may  
41 establish rules regarding how the proceeding will be conducted which may include guidelines on  
42 the extent to which the advisor or support person for each party may participate in the meeting or  
43 disciplinary proceeding and any limitations on participation which shall apply equally to both  
44 parties; provided further, that the institution shall adopt reasonable measures to provide for the  
45 involvement of the advisor or support person for each party; and provided further, that the  
46 availability of the advisor or support person shall not significantly delay a meeting or  
47 disciplinary proceeding; (C) the use of preponderance of the evidence standard to resolve  
48 complaints; (D) the reporting party and the accused party shall be provided the institution's  
49 policies regarding the submission and consideration of categories of evidence that may be used  
50 during a disciplinary proceeding and shall have equal opportunity to present evidence and  
51 witnesses on their behalf during a disciplinary proceedings and shall be provided with timely and  
52 equal access to information or relevant evidence that shall be used in the determination of a  
53 discipline; (E) there may be restrictions on evidence considered by the fact finder including, but  
54 not limited to, the use of evidence of prior sexual activity of character witnesses; (F) the  
55 reporting party and the accused party shall not directly question each other during disciplinary  
56 proceedings; (F) the reporting party and the accused party shall be informed in writing of the

57 results of a disciplinary proceeding not later than 7 business days after a final determination of a  
58 complaint, not including any time for appeal, unless good cause for additional time is shown, and  
59 any process for appealing the decision; and (G) the institution shall not disclose the identity of  
60 the reporting party or the accused party, except as necessary to carry out a disciplinary process or  
61 as permitted under state or federal law;

62 (viii) a summary of the institution's employee disciplinary process; and

63 (ix) the range of sanctions or penalties the institution may impose on students and  
64 employees found responsible for a violation of the applicable institutional policy prohibiting acts  
65 of dating violence, domestic violence, sexual assault and stalking.

66 The terms “dating violence”, “domestic violence”, “sexual assault” and “stalking” shall  
67 be defined by each institution of higher education in its applicable policies, including its policy  
68 on affirmative action or code of conduct, consistent with applicable federal definitions.

69 SECTION 2. Chapter 15A of the General Laws is hereby amended by adding the  
70 following section:-

71 Section 45. (a) As used in this section, the following words shall have the following  
72 meanings unless the context clearly requires otherwise:

73 "Awareness programming", institution wide or audience specific programs, initiatives,  
74 and strategies that increase audience knowledge, share resources to prevent and reduce the  
75 occurrence of dating violence, domestic violence, sexual assault and stalking and promote safety.

76 "Bystander intervention", bystander intervention as defined in 34 CFR 668.46.

77 "Primary prevention programming", initiatives and strategies informed by research or  
78 assessed for value, effectiveness or outcome that are intended to stop dating violence, domestic  
79 violence, sexual assault and stalking through the promotion of positive healthy behavior.

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

84 "Trauma-informed response", a response involving an understanding of the complexities  
85 of dating violence, domestic violence, sexual assault and stalking through training centered on  
86 the neurobiological impact of trauma, the influence of societal myths and stereotypes  
87 surrounding the causes and impacts of trauma, understanding the behavior of perpetrators and  
88 conducting an effective investigation on behalf of the reporting party who suffered the trauma.

89 (b) All policies adopted by an institution of higher education under this section shall  
90 comply with Title IX of the federal Higher Education Amendments of 1972, Title IV of the Civil  
91 Rights Act of 1964, the Family Educational Rights and Privacy Act of 1974 and the Jeanne Clery  
92 Disclosure of Campus Security Policy and Campus Crime Statistics Act, and related regulations  
93 and guidance, concerning dating violence, domestic violence, sexual assault, and stalking  
94 involving a student of the institution, both on-campus and off-campus.

95 The policies shall be developed in coordination with the institution's Title IX coordinator  
96 and reflect input from various internal and external entities including, but not limited to:  
97 institutional administrators; personnel affiliated with on-campus and off-campus health care  
98 centers; personnel affiliated with on-campus, when available, and local, community-based rape

99 crisis centers and domestic violence programs; confidential resources; residence life; students;  
100 the state and local police department where the institution's primary campus is located and the  
101 district attorney having jurisdiction. A reasonable period of time for review and comment on the  
102 policies shall be provided to the internal and external entities. Following an institution's adoption  
103 of the policies required by this section, the opportunity for review and comment by internal and  
104 external entities shall only apply to substantive changes in such policies.

105 (c) Each institution of higher education shall: (i) adopt detailed and trauma-informed  
106 policies and protocols regarding dating violence, domestic violence, sexual assault and stalking  
107 involving students and employees of the institution that comport with the best practices and  
108 current professional standards and establish procedures for regularly reviewing and updating the  
109 policies; and (ii) apply the same policies relating to claims of dating violence, domestic violence,  
110 sexual assault and stalking to all students.

111 Each institution of higher education shall adopt policies and procedures with local law  
112 enforcement agencies to establish the respective roles and responsibilities of each party related to  
113 the prevention of and response to campus and near-campus sexual assault. The higher education  
114 institutions and local law enforcement shall develop policies and procedures that comply with all  
115 applicable confidentiality and privacy laws and: (i) set out the jurisdiction of the local law  
116 enforcement agencies based on criteria such as location and type of incident and provide for  
117 cross or multi-jurisdictional response and/or investigation, as appropriate; (ii) establish the  
118 methods for facilitating the issuance of Clery Act required timely warnings and emergency  
119 notifications about crimes that may pose a serious threat to the campus or near campus  
120 communities; (iii) establish protocols, as permitted by federal and state law, for cases where a  
121 student consents to the release of relevant documentation and information created during local

122 law enforcement investigations, or campus police investigations; (iv) the sharing of data as  
123 required by the Clery Act, trends, patterns, and research-informed strategies to prevent sexual  
124 assault; and (v) methods for notifying the district attorney's office having jurisdiction where the  
125 alleged offense occurred.

126 (e) The commissioner shall appoint within the department of higher education a campus  
127 safety advisor with experience in public safety policy, who shall facilitate and advance statewide  
128 campus safety at public and private institutions of higher education. The officer shall coordinate,  
129 aggregate and disseminate best practices, training opportunities and other resources to further the  
130 goal of enhanced campus safety at an institution of higher education. The board of higher  
131 education shall promulgate regulations to establish and implement the role and responsibilities of  
132 the campus safety advisor including, but not limited to, establishing minimum standards for  
133 campus security and safety issues.

134 (f) An institution of higher education shall make publicly available on its website the  
135 following information: (i) the total number of allegations of dating violence, domestic violence,  
136 sexual assault and stalking made by a student or employee of the institution against another  
137 student or employee of the institution in an aggregate format and the institution shall update the  
138 information not less than every 12 months; (ii) the telephone number and website for a local,  
139 state or national 24-hour hotline providing information on dating violence, domestic violence,  
140 sexual assault or stalking; (iii) the name and contact information for the institution's Title IX  
141 coordinator; (iv) the name and contact information for a confidential resource advisor and a  
142 description of the role of and services provided by the confidential resource advisor, which shall  
143 be updated on a timely basis; and (v) the name and location of the nearest medical facility where  
144 an individual may request a sexual assault evidence collection kit be administered by a trained

145 sexual violence forensic health care provider, including information on transportation options  
146 and reimbursement for travel costs, if any.

147 (g) Each institution of higher education shall annually, by October 1, transmit to students  
148 via electronic mail its policies and procedures concerning the reporting and investigation of an  
149 allegation of dating violence, domestic violence, sexual assault and stalking made by a student or  
150 employee of the institution against another student or employee of the institution in accordance  
151 with section 168D of chapter 6.

152 (h) Upon receiving a report of dating violence, domestic violence, sexual assault or  
153 stalking, each institution of higher education shall provide an objectively clear and easily  
154 understood notification of the student's rights and options under the institution's dating violence,  
155 domestic violence, sexual assault or stalking policies to the reporting party and the accused party,  
156 when feasible.

157 (i) An institution of higher education shall enter into and maintain a memorandum of  
158 understanding with at least 1 community-based department of public health funded sexual assault  
159 crisis service center and at least 1 community-based department of public health funded domestic  
160 violence agency to: (i) provide an off-campus alternative for students to receive sexual assault  
161 crisis services in response to dating violence, domestic violence, sexual assault or stalking; (ii)  
162 ensure that a student or employee of the institution may access free and confidential counseling  
163 and advocacy services, either on-campus or off-campus; and (iii) encourage cooperation and  
164 trainings between the institution and the service center or agency to ensure an understanding the  
165 roles that the institution, service center and agency should play in responding to reports and  
166 disclosures of dating violence, domestic violence, sexual assault or stalking against students and

167 employees of the institution and the institution's protocols for providing support and services to  
168 such students and employees.

169         The memorandum of understanding may include an agreement, including a fee structure,  
170 for the sexual assault crisis service center or domestic violence agency to provide confidential  
171 victim services. Confidential victim services may include: case consultation and training fees for  
172 confidential resource advisors; consultation fees for the development and implementation of  
173 student education and prevention programs; the development of staff training and prevention  
174 curriculum; and confidential on-site office space for an advocate from a sexual assault crisis  
175 service center or domestic violence agency to meet with students.

176         The department of higher education may grant a waiver of this requirement to an  
177 institution that demonstrates that the institution acted in good faith but was unable to obtain a  
178 signed memorandum.

179         (j) Each institution of higher education shall provide a method for anonymously reporting  
180 an incident of dating violence, domestic violence, sexual assault or stalking that involves a  
181 student or employee of the institution. An institution shall ensure that students and employees are  
182 aware of the institution's obligations under state or federal law to: (i) investigate or address, to  
183 the extent possible, the alleged dating violence, domestic violence, sexual assault or stalking,  
184 including when the alleged act was reported anonymously; (ii) assess whether the report triggers  
185 the need for a timely warning or emergency notification under 34 CFR 668.46(e), the obligations  
186 of which may, in limited circumstances, result in the release of the reporting party's identity; and  
187 (iii) disclose the identity of a reporting party to another student, an employee or a third party.

188 (k) A reporting party or witness to an investigation of dating violence, domestic violence,  
189 sexual assault or stalking shall not be subject to a disciplinary sanction for a violation of the  
190 institution's student conduct policy related to the incident unless the institution determines that  
191 the report was not made in good faith or that the violation was egregious. An egregious violation  
192 shall include, but shall not be limited to, an action that places the health and safety of another  
193 person at risk.

194 (l) Each institution of higher education shall establish a campus security policy that  
195 includes the designation of at least 1 confidential resource advisor. The confidential resource  
196 advisor may have another role at the institution; provided, however, that the confidential  
197 resource advisor shall not be an employee designated as a responsible employee, as defined in  
198 subsection (a), a student or a Title IX coordinator.

199 The institution shall designate existing categories of employees that may serve as  
200 confidential resource advisors. The designation of an existing category of employees shall not  
201 preclude the institution from designating a new or existing employee or partnering with a local,  
202 state or national victim services organization to serve as a confidential resource advisor or to  
203 serve in another confidential role. An institution may partner with an outside victim advocacy  
204 organization to provide a confidential resource advisor under this section. An institution that  
205 enrolls fewer than 1,000 students may partner with another institution in the region or within the  
206 state to provide the services under this section.

207 If requested by the student, the confidential resource advisor shall provide information  
208 on: (i) reporting options and the effects of each option; (ii) counseling services available through  
209 a local, community-based rape crisis center or domestic violence program; (iii) administrative,

210 medical and health services available on-campus and off-campus; (iv) available academic  
211 accommodations; (v) the disciplinary process of the institution; and (vi) the legal process carried  
212 out through local law enforcement. The confidential resource advisor shall receive training in the  
213 awareness and prevention of dating violence, domestic violence, sexual assault and stalking and  
214 in trauma-informed response and coordinate with on-campus and off-campus sexual assault  
215 crisis services and, if directed by the student, campus or local law enforcement and may, as  
216 appropriate, assist the student in contacting or reporting to campus or local law enforcement. The  
217 confidential resource advisor shall coordinate with the institution to arrange interim protective  
218 measures to allow students to change academic, living, campus transportation or working  
219 arrangements in response to the alleged assault, stalking or violence.

220           The confidential resource advisor shall also advise the student of their rights and the  
221 institution's responsibilities regarding a protection order, no contact order, and other lawful  
222 orders issued by the institution or a criminal, civil or tribal court.

223           The confidential resource advisor shall not be required to report an incident to the  
224 institution or law enforcement unless otherwise required to do so by state and federal law and  
225 shall provide confidential services to students and employees. A request for a possible interim  
226 protective measure to change an academic, living, campus transportation or working situation in  
227 response to alleged dating violence, domestic violence, sexual assault or stalking made by a  
228 confidential resource advisor shall not constitute notice to a responsible employee for Title IX  
229 purposes.

230           The website of the institution shall list: reporting options for students; the process of  
231 investigation and adjudication by the institution; and the process for requesting a possible interim  
232 protective measure, when reasonable and available, to change an academic, living, campus

233 transportation or working situation in response to alleged dating violence, domestic violence,  
234 sexual assault or stalking.

235           If a conflict of interest arises for an institution in which a confidential resource advisor is  
236 advocating for the student's need for sexual assault crisis services or campus or law enforcement  
237 services, the institution shall not discipline, penalize or otherwise retaliate against the  
238 confidential resource advisor for representing the interest of the student.

239           A confidential resource advisor may attend an administrative or institution-based  
240 adjudication proceeding as the advisor or support person of the student's choice.

241           Unless otherwise required by federal or state law, a confidential resource advisor shall  
242 not disclose a confidential communication without the prior written consent of the student who  
243 shared the information; provided, however, that nothing in this section shall be construed to limit  
244 a defendant's right of cross examination of the advisor in a civil or criminal proceeding if the  
245 advisor testifies after written consent has been given. A confidential communication shall not be  
246 subject to discovery and shall be inadmissible in a criminal or civil proceeding without the prior  
247 written consent of the student who shared the information. Information provided to the  
248 confidential resource advisor shall not be released to a campus official or law enforcement unless  
249 written consent is given by the student who shared the information. A confidential resource  
250 advisor shall not act as a counselor or therapist unless the confidential resource advisor holds a  
251 valid license under chapter 112 and a student engages the confidential resource advisor in that  
252 capacity. The privileges available under chapter 233 shall apply.

253           (m) Each institution of higher education shall provide: (i) mandatory annual dating  
254 violence, domestic violence, sexual assault and stalking primary prevention and awareness

255 programming for newly enrolled students and newly hired employees of the institution that  
256 includes: (A) an explanation of consent in a sexual relationship; (B) the role drugs and alcohol  
257 play in an individual's ability to consent; (C) information on options relating to the reporting of  
258 an instance of dating violence, domestic violence, sexual assault or stalking, the effects of each  
259 option and methods to report an incident of dating violence, domestic violence, sexual assaults or  
260 stalking, including confidential and anonymous disclosure; (D) the name, contact information  
261 and role of the confidential resource advisor; and (E) strategies for bystander intervention and  
262 risk reduction; and (ii) opportunities for ongoing dating violence, domestic violence, sexual  
263 assault and stalking prevention and awareness campaigns and programming.

264 (n) Notice to a confidential resource advisor of an alleged act of sexual assault, domestic  
265 violence, dating violence or stalking or a confidential resource advisor's performance of a  
266 service under this section shall not be considered actual or constructive notice of such an alleged  
267 act to the institution of higher education at which the confidential resource advisory is employed  
268 or provides contracted services.

269 (o) Each institution of higher education in the state shall employ responsible employees,  
270 as defined in subsection (a), who shall be responsible for reporting cases of dating violence,  
271 domestic violence, sexual assault and stalking to the Title IX coordinator of the institution.  
272 Responsible employees shall complete minimum training requirements as determined by the  
273 department of higher education in coordination with the attorney general and that include  
274 training by a local, state or national victim services organization and shall be responsible for  
275 providing a student or employee of the institution who reports an incident of dating violence,  
276 domestic violence, sexual assault, or stalking whether the offense occurred on or off campus,

277 with a written explanation of the student or employee's rights and options, as described in section  
278 168D of chapter 6.

279 (p) An individual who participates in the implementation of an institution of higher  
280 education's disciplinary process, including an individual responsible for resolving complaints of  
281 reported incidents, shall have training or experience in handling dating violence, domestic  
282 violence, sexual assault and stalking complaints and the operations of the institution's  
283 disciplinary process. The training shall include, but not be limited to: (i) information on working  
284 with and interviewing persons subjected to dating violence, domestic violence, sexual assault and  
285 stalking; (ii) information on particular types of conduct that constitute dating violence, domestic  
286 violence, sexual assault and stalking including same-sex dating violence, domestic violence,  
287 sexual assault and stalking; (iii) information on consent and the role drugs and alcohol can play  
288 in the ability to consent; (iv) the effects of trauma including neurobiological impact on a person;  
289 (v) cultural awareness training regarding how dating violence, domestic violence, sexual assault  
290 and stalking may impact students differently depending on a student's cultural background; and  
291 (vi) ways to communicate sensitively and compassionately with a reporting party of dating  
292 violence, domestic violence, sexual assault or stalking including, but not limited to, an awareness  
293 of responding to a reporting party with consideration of that party's cultural background and  
294 providing services to or assisting in locating services for students.

295 (q) Each institution of higher education shall ensure that its Title IX coordinator and  
296 members of its special or campus police force or the campus safety personnel employed by the  
297 institution are educated in the awareness and prevention of dating violence, domestic violence,  
298 sexual assault and stalking and in trauma-informed response.

299 (r) Notwithstanding any general or special law to the contrary, a member of the state  
300 police or a local police department who acts as a first responder to a report of dating violence,  
301 domestic violence, sexual assault or stalking at an institution of higher education shall receive  
302 training in the awareness and prevention of dating violence, domestic violence, sexual assault  
303 and stalking and in trauma-informed response, subject to appropriation.

304 (s) Each public institution of higher education shall integrate a threat response program to  
305 be used for emergency communications both on-campus and off-campus. The program shall: (i)  
306 collect a variety of formatted data that is relevant to campus public safety and state and local  
307 emergency and first responder agencies including photographs of individuals, physical  
308 descriptions, medical conditions, allergies, household data, primary language indicator and  
309 emergency contacts; (ii) allow for information to be entered by an individual via a secure website  
310 and mobile handset application in which the individual may provide information; (iii) be  
311 compliant with the accessibility requirements under section 508 of the federal Rehabilitation Act  
312 of 1973, 29 U.S.C. 794d; (iv) manage the accuracy and timeliness of the data through a reminder  
313 process, at least twice per year, requesting application users to keep their data up-to-date; (v)  
314 automatically display data provided by an individual to campus safety and 911 call takers when  
315 an emergency call is placed from a registered and confirmed phone number; (vi) support the  
316 delivery of application user information via a secure internet connection to a campus public  
317 safety office and the public safety answering points within the commonwealth; (vii) work across  
318 every campus and be compatible with emergency call taking equipment in the commonwealth;  
319 (viii) make data available to first responders; (ix) allow for the submission of anonymous or  
320 confidential crime tips via a handset application or by texting into a designated short code; and  
321 (x) support a user's ability to initiate a timer via the handset application that allows for at least 1

322 individual to view the user's location information for a specified period of time in order to assist  
323 in the event of an emergency.

324 (t) Annually, by October 1, an institution of higher education shall prepare and submit to  
325 the department of higher education, the department of public health, the clerks of the senate and  
326 house of representatives, and the senate and house chairs of the joint committee on higher  
327 education a report that includes the following information on dating violence, domestic violence,  
328 sexual assault and stalking: (i) the total number of allegations of dating violence, domestic  
329 violence, sexual assault and stalking reported to the institution's Title IX coordinator by a  
330 responsible employee, student or employee of the institution against another student or employee  
331 of the institution; (ii) the number of cases made by a student or employee of the institution  
332 against another student or employee of the institution investigated by local or state law  
333 enforcement, if known; (iii) the number of students found responsible for violating an  
334 institution's policies prohibiting sexual assault; (iv) the number of students found not responsible  
335 for violating an institution's policies prohibiting sexual assault; and (v) the number of students  
336 separated from the institution as a result of a finding of responsibility for violating an  
337 institution's policies prohibiting sexual assault. The report shall provide information in a de-  
338 identified manner that complies with state and federal privacy laws.