

SENATE No. 2081

The Commonwealth of Massachusetts

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

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,

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

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

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

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

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

(vii) a summary of the institution's procedures for resolving complaints against students alleged to have engaged in dating violence, domestic violence, sexual assault or stalking, including clear statements advising students that: (A) an investigation, including any hearing and 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.

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

"Responsible employee", an employee 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, and who a student could reasonably believe has this authority or duty.

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

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

The policies shall be developed in coordination with the institution's Title IX coordinator and reflect input from various internal and external entities including, but not limited to: institutional administrators; personnel affiliated with on-campus and off-campus health care 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

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

(e) 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 statewide campus safety at public and private institutions of higher education. The officer shall coordinate, aggregate and disseminate best practices, training opportunities and other resources to further the goal of enhanced campus safety at an institution of higher education. The board of higher education shall promulgate regulations to 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.

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

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

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

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

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

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

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

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

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

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

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

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

If requested by the student, the confidential resource advisor shall provide information on: (i) reporting options and the effects of each option; (ii) counseling services available through 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

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

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

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

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

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

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

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

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

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

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