

SENATE No. 295**The Commonwealth of Massachusetts**

PRESENTED BY:

Joan B. Lovely

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 relative to preventing the sexual abuse of children and youth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/25/2017</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>1/25/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2017</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>1/25/2017</i>
<i>Theodore C. Speliottis</i>	<i>13th Essex</i>	<i>1/26/2017</i>
<i>Peter J. Durant</i>	<i>6th Worcester</i>	<i>1/27/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/27/2017</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>1/27/2017</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/27/2017</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>1/30/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/30/2017</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>1/30/2017</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/30/2017</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	<i>2/1/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/2/2017</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>2/2/2017</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>	<i>2/2/2017</i>

<i>Donald H. Wong</i>	<i>9th Essex</i>	<i>2/2/2017</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>2/3/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/3/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/3/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>2/3/2017</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/3/2017</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>2/3/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>4/6/2017</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>4/6/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>5/24/2017</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>	<i>7/18/2017</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>10/20/2017</i>

SENATE No. 295

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 295) of Joan B. Lovely, Kenneth I. Gordon, F. Jay Barrows, Jason M. Lewis and other members of the General Court for legislation to prevent the sexual abuse of children and youth. Education.

The Commonwealth of Massachusetts

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

An Act relative to preventing the sexual abuse of children and youth.

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. This Act shall be known as the Comprehensive Child Sexual Abuse
2 Prevention Act of 2017.

3 SECTION 2. The General Laws, as appearing in the 2014 Official Edition, are hereby
4 amended by inserting after chapter X the following chapter:-

5 CHAPTER XX

6 CHILD SEXUAL ABUSE PREVENTION

7 Section 1. Definitions

8 For the purposes of this chapter, the following words and phrases shall have the
9 following meanings:-

10 "Abuse" means an act involving a child or student that constitutes a sexual offense under
11 the laws of the Commonwealth or any sexual contact between an adult and a child or student
12 under the care of that individual.

13 "Child" or "children" as used in this chapter is interchangeable with "student" or
14 "students."

15 "Direct contact with children" means the possibility of care, supervision, guidance or
16 control of children or routine interaction with children.

17 "Job performance" includes, but is not limited to abilities, attendance, attitude, awards,
18 demotions, disciplinary actions, duties, effort, knowledge, promotions, skills, and in the case of a
19 former school employee, the reasons for separation.

20 "School" means a Massachusetts public school or public school district, and includes a
21 collaborative school, charter school, virtual school or innovation school; or a Massachusetts
22 private day or residential school, including a special education school program approved under
23 M.G.L. c. 71B; or a Massachusetts independent or parochial school.

24 "Sexual misconduct" means any act, including, but not limited to, any verbal, nonverbal,
25 written or electronic communication or physical activity, directed toward or with a child
26 regardless of the age of the child that is designed to promote a romantic or sexual relationship
27 with the child. Such acts include, but are not limited to:

- 28 (a) Sexual or romantic invitation
- 29 (b) Dating or soliciting dates
- 30 (c) Engaging in sexualized or romantic dialogue

- 31 (d) Making sexually suggestive comments
- 32 (e) Self-disclosure or physical exposure of a sexual, romantic or erotic nature
- 33 (f) Any sexual, indecent, romantic or erotic contact with the child or student.
- 34 Section 2. Employee Sexual Abuse Prevention Education
- 35 (a) Every school which serves early childhood, pre-kindergarten, kindergarten,
- 36 elementary and secondary school students; any state-operated or state-licensed program that
- 37 provides educational services to early childhood, pre-kindergarten and kindergarten to grade 12
- 38 students; and every youth-serving organization maintained by non-profit or for-profit entities,
- 39 shall ensure that the following individuals receive instruction annually on prevention,
- 40 identification, and reporting of child sexual abuse: employees, contractors, and volunteers in the
- 41 schools or state-operated or state-licensed programs including, but not limited to: school district
- 42 superintendents, school or program administrators, teachers, professional tutors, counselors,
- 43 psychologists, social workers and other school mental health professionals, school nurses, Title
- 44 IX coordinators, professional support personnel, athletic coaches, extracurricular activity
- 45 advisors, food service workers, janitorial personnel, bus drivers, and school paraprofessionals;
- 46 and the following employees, contractors and volunteers in youth-serving organizations
- 47 including, but not limited to: administrators, youth counselors, mental health professionals,
- 48 athletic coaches, professional support personnel, food service workers, janitorial personnel, and
- 49 bus drivers. This instruction shall include comprehensive training and information to help
- 50 schools, programs, and youth-serving organizations and their personnel:
- 51 (1) Recognize sexually offending behaviors in adults, and signs in adults that might
- 52 indicate they pose a sexual risk to children;

53 (2) Recognize, appropriately respond to, and prevent sexually inappropriate, coercive, or
54 abusive behaviors among children and youth served by schools, programs, and youth-serving
55 organizations;

56 (3) Recognize behaviors and verbal cues that might indicate a child or youth has been a
57 victim of sexual abuse;

58 (4) Support the healthy development of students and children and youth and the building
59 of protective factors to mitigate against their sexual victimization by adults or by other children
60 or youth;

61 (5) Establish and implement school, program, and youth-serving organization policies
62 that support the prevention of sexual abuse through: ongoing training of staff about adult
63 perpetration and child-on-child sexual abuse; comprehensive screening of prospective employees
64 and volunteers; the development of codes of conduct to identify inappropriate or boundary-
65 violating behaviors that if left unchecked could escalate to reportable sexual offenses; the
66 assessment and modification of physical facilities and spaces to reduce opportunities for sexual
67 abuse;

68 (6) Respond to disclosures of sexual abuse or reports of boundary-violating behaviors of
69 adults or children in a supportive and appropriate manner and which meets mandated reporting
70 requirements under Section 51A of Chapter 119 of the General Laws;

71 (7) Seek out community resources available to assist schools, programs, and youth-
72 serving organizations in the prevention, identification, reporting and referral to treatment of cases
73 involving the sexual abuse or exploitation of children or youth.

74 (b) Employees identified in this section shall complete the required training every year.

75 Employees required to undergo continuing professional education shall receive credit toward the

76 continuing professional education requirements where the training program has been approved

77 by the Department of Elementary and Secondary Education.

78 (c) School Boards, state agencies operating or licensing programs that serve children and
79 youth, and the Boards of Directors of youth-serving organizations shall use tested, research-
80 based instructional materials which meet these requirements and which have been demonstrated
81 to increase the prevention knowledge and skills of those trained. The mode of delivery for the
82 trainings may include in-person or e-learning instruction.

83 (d) For each year or annual training required under this section, each school, state-
84 operated or state-licensed program, or youth-serving organization shall maintain, until at least the
85 third anniversary of the training, records that include the name of the individuals within their
86 school, program, or organization who participated in the training during that year.

87 (e) School Boards, state agencies operating or licensing programs that serve children and
88 youth, and the Boards of Directors of youth-serving organizations shall make information about
89 such education and training opportunities available to parents, legal guardians, and other
90 interested persons in the community.

91 Section 3. Youth Sexual Abuse Education

92 (a) Every school which serves elementary and secondary school students, every state-
93 operated or state-licensed program serving children and youth, and every youth-serving
94 organization maintained by non-profit or for-profit entities shall provide age-appropriate

95 instruction to help students and children and youth served by such schools, programs, or youth-
96 serving organizations:

97 (1) Recognize and report boundary-violating behaviors in adults that might indicate they
98 pose a sexual risk to children and youth;

99 (2) Recognize and report boundary-violating behaviors in other children that might
100 indicate they pose a sexual risk to children and youth;

101 (3) Learn how to develop healthy and respectful interpersonal relationships, including
102 appropriate body boundaries and privacy rules;

103 (4) Learn how to communicate effectively to trusted adults any concerns they have about
104 body boundaries or privacy violations; and

105 (5) Learn about available school and community resources to prevent and respond to
106 sexual abuse.

107 (b) School Boards, state agencies operating or licensing programs that serve children and
108 youth, and the Boards of Directors of youth-serving organizations shall use tested, research-
109 based instructional materials which meet these requirements and which have been demonstrated
110 to increase the prevention knowledge and skills of those trained. The mode of delivery for the
111 trainings may include in-person or e-learning instruction.

112 (c) For each year or annual training required under this section, each school, state-
113 operated or state-licensed program, or youth-serving organization shall maintain, until at least the
114 third anniversary of the training, records that include the name of the individuals within their
115 school, program, or organization who participated in the training during that year.

116 (d) School Boards, state agencies operating or licensing programs that serve children and
117 youth, and the Boards of Directors of youth-serving organizations shall make information about
118 such education and training opportunities available to parents, legal guardians, and other
119 interested persons in the community.

120 Section 4. Sexual Abuse Prevention Hiring Requirements

121 (a) In addition to fulfilling the requirements of General Laws Chapter 71, §38R (relating
122 to background checks for employment in schools), before a school or independent contractor
123 may offer employment to an applicant who would be employed by or work in a school in a
124 position involving direct contact with children, the school or independent contractor shall require
125 the applicant to provide:

126 (1) A list, including name, address, telephone number and other relevant contact
127 information of the applicant, including:

128 (i) Current employer

129 (ii) All former employers that were school entities

130 (iii) All former employers where the applicant was employed in positions that involved
131 contact with children.

132 (2) A written authorization that consents to and authorizes disclosure by the applicant's
133 current and former employers in subparagraph (1) of the information requested under
134 subparagraph (3) and the release of related records and that releases those employers from
135 liability that may arise from such disclosure or release of records pursuant to this section.

136 (3) A written statement of whether the applicant:

137 (i) has been the subject of an abuse or sexual misconduct investigation by any employer,
138 State licensing agency, law enforcement agency or child protective services agency, unless the
139 investigation resulted in a finding that the allegations were false;

140 (ii) has ever been disciplined, discharged, non-renewed, asked to resign from
141 employment, resigned from or otherwise separated from any employment while allegations of
142 abuse or sexual misconduct were pending or under investigation, or due to an adjudication or
143 findings of abuse or sexual misconduct.; or

144 (iii) has ever had a license, professional license or certificate suspended, surrendered or
145 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
146 due to an adjudication or findings of abuse or sexual misconduct.

147 Material required information shall include all of an applicant's conduct that is known by
148 the previous employer, regardless of whether the conduct occurred before, on or after the date of
149 the passage of this law.

150 (b) Before a school or independent contractor may offer employment to an applicant who
151 would be employed by or work in a school in a position involving contact with children, the
152 school or independent contractor shall conduct a review of the employment history of the
153 applicant by contacting those employers listed by the applicant and requesting the following
154 information:

- 155 (1) The dates of employment of the applicant.
156 (2) A statement as to whether the applicant:

160 (ii) was disciplined, discharged, non-renewed, asked to resign from employment,
161 resigned from or otherwise separated from any employment while allegations of abuse or sexual
162 misconduct were pending or under investigation, or due to an adjudication or findings of abuse
163 or sexual misconduct; or

167 (c) Before a school or independent contractor may offer employment to an applicant who
168 would be employed by or in a school entity in a position involving direct contact with children,
169 the school entity or independent contractor shall check the eligibility for employment or
170 certification status of the applicant to determine whether the applicant holds valid and active
171 certification appropriate for the position and is otherwise eligible for employment and whether
172 the applicant has been the subject of professional discipline.

173 (d) An applicant who provides false information or willfully fails to disclose material
174 required information shall be subject to discipline up to, and including, termination or denial of
175 employment and may be subject to professional discipline in accordance with the regulations of
176 the Department of Elementary and Secondary Education.

177 (e) No later than twenty (20) days after receiving a request for required information, an
178 employer that has or had an employment relationship with the applicant shall disclose the
179 information requested.

180 (1) The employer shall disclose the information on a standardized form developed by the
181 Department of Elementary and Secondary Education.

188 (3) Former employers shall provide the additional information requested no later than
189 sixty (60) days after the prospective employer's request under this paragraph.

190 (4) Information received under this section shall not be deemed a public record for the
191 purposes of General Laws Chapter 66, §10.

192 (5) A school that receives the information under this subsection may use the information
193 for the purpose of evaluating an applicant's fitness to be hired or for continued employment and
194 may report the information as appropriate to the Department of Elementary and Secondary
195 Education, a State licensing agency, law enforcement agency, child protective services agency,
196 another school, and/or prospective employer.

197 (f) A school or independent contractor may hire an applicant on a provisional basis for a
198 period not to exceed ninety (90) days pending the school entity's or independent contractor's
199 review of information and records received under this section, provided that all of the following
200 are satisfied:

201 (1) The applicant has provided all of the information and supporting documentation
202 required.

203 (2) The school administrator has no knowledge of information pertaining to the applicant
204 that would disqualify the applicant from employment.

205 (3) The applicant swears or affirms that the applicant is not disqualified from
206 employment.

207 (4) The applicant is not permitted to work alone with children and works in the
208 immediate vicinity of a permanent employee.

209 (g) A school or independent contractor may not enter into a collective bargaining
210 agreement, an employment contract, an agreement for resignation or termination, a severance
211 agreement or any other contract or agreement or take any action that:

212 (1) has the effect of suppressing information relating to an investigation of a report of
213 suspected abuse or sexual misconduct by a current or former employee;

214 (2) affects the ability of the school or independent contractor to report suspected abuse or
215 sexual misconduct to the appropriate authorities; or

216 (3) requires the school or independent contractor to expunge information about
217 allegations or findings of suspected abuse or sexual misconduct from any documents maintained

218 by the school or independent contractor, unless after investigation the allegations are found to be
219 false.

220 (4) Any provision of an employment contract or agreement for resignation or termination
221 or a severance agreement that is executed, amended or entered into after the effective date of this
222 section and that is contrary to this section shall be void and unenforceable. Any provision of such
223 contract or agreement executed, amended or entered into prior to the effective date of this section
224 and that is contrary to this section shall be void and unenforceable.

225 (h) For substitute employees, the employment history review required by this section
226 shall be required only prior to the initial hiring of a substitute or placement on the school entity's
227 approved substitute list and shall remain valid as long as the substitute continues to be employed
228 by the same school entity or remains on the school entity's approved substitute list.

229 (1) A substitute seeking to be added to another school entity's substitute list shall
230 undergo a new employment history review. The appearance of a substitute on one school entity's
231 substitute list does not relieve another school entity from compliance with this section.

232 (2) An employment history review conducted upon initial hiring of a substitute employee
233 by an independent contractor, intermediate unit or any other entity that furnishes substitute
234 staffing services to school entities shall satisfy the requirements of this section for all school
235 entities using the services of that independent contractor, intermediate unit or other entity.

236 (3) An independent contractor, intermediate unit or any other entity furnishing substitute
237 staffing services to school entities shall comply with the provisions of this Act.

238 (4) For purposes of this subsection, "substitute employee" shall not mean school bus
239 drivers employed by an independent contractor.

240 (i) For employees of independent contractors, the employment history review required
241 by this section shall be performed, either at the time of the initial hiring of the employee or prior
242 to the assignment of an existing employee to perform work for a school entity in a position
243 involving direct contact with children. The review shall remain valid as long as the employee
244 remains employed by that same independent contractor, even though assigned to perform work
245 for other school entities.

246 (1) An independent contractor shall maintain records documenting employment history
247 reviews for all employees as required by this section and, upon request, shall provide a school
248 entity for which an employee is assigned to perform work access to the records pertaining to that
249 employee.

250 (2) Prior to assigning an employee to perform work for a school in a position involving
251 direct contact with children, the independent contractor shall inform the school of any instance
252 known to the independent contractor in which the employee:

253 (i) was the subject of any abuse or sexual misconduct investigation by any employer,
254 State licensing agency, law enforcement authority or child protective services agency, unless
255 such investigation resulted in a finding that allegations are false;

256 (ii) has ever been disciplined, discharged, non-renewed, removed from a substitute list,
257 asked to resign from employment, resigned from or otherwise separated from any employment
258 while allegations of abuse or sexual misconduct as described in subparagraph (i) were pending or
259 under investigation, or due to an adjudication or findings of abuse or sexual misconduct;; or

260 (iii) has ever had a license, professional license or certificate suspended, surrendered or
261 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
262 due to an adjudication or findings of abuse or sexual misconduct.

263 (3) The independent contractor may not assign the employee to perform work for the
264 school in a position involving direct contact with children where the school objects to the
265 assignment after being informed of an instance of abuse or sexual misconduct.

266 (4) An applicant who has once undergone the employment history review required and
267 seeks to transfer to or provide services to another school in the same district, diocese or religious
268 judicatory or established and supervised by the same organization shall not be required to obtain
269 additional reports before making such transfer.

270 (j) An employer, school, school administrator or independent contractor who in good
271 faith provides information or records including personnel records about a current or former
272 employee's job performance and professional conduct to a prospective school employer or to the
273 Department of Elementary or Secondary Education shall be immune from criminal and civil
274 liability for the disclosure or any consequences of the disclosure, unless the information or
275 records were provided with the knowledge that they were false . Such immunity shall be in
276 addition to and not in limitation of any other immunity provided by law or any absolute or
277 conditional privileges applicable to such disclosures by virtue of the circumstances or the
278 applicant's consent thereto.

279 (1) Except where the laws of other states prevent the release of the information or
280 records requested, or disclosure is restricted by the terms of a contract entered into prior to the
281 effective date of this section, the willful failure of a former employer, school entity, school

282 administrator or independent contractor to respond or provide the information and records as
283 requested may result in civil penalties, and professional discipline where appropriate.

284 (2) Notwithstanding any provision of law to the contrary, an employer, school, school
285 administrator, independent contractor or applicant shall report and disclose in accordance with
286 this section all relevant information, records and documentation that may otherwise be
287 confidential under General Laws Chapter 66, §10.

288 (3) A school or independent contractor may not hire an applicant who does not provide
289 the information required under SECTION 4. (ii) (A), (B), or (C) for a position involving contact
290 with children.

291 (k) Nothing in this section shall be construed:

292 (1) To prevent a prospective employer from conducting further investigations of
293 prospective employees or from requiring applicants to provide additional background
294 information or authorizations beyond what is required under this section, nor to prevent a former
295 employer from disclosing more information than what is required under this section.

296 (2) To relieve a school, school administrator or independent contractor of its legal
297 responsibility to report suspected incidents of abuse in accordance with the provisions of Chapter
298 119, section 51A or misconduct by a licensed educator in accordance with the reporting
299 requirements of the Department of Elementary and Secondary Education.

300 (3) To relieve a school, school administrator or independent contractor of its legal
301 responsibility to report suspected incidents of professional misconduct in accordance with

302 Chapter 119, section 51A or misconduct by a licensed educator in accordance with the reporting
303 requirements of the Department of Elementary and Secondary Education.

304 (4) To prohibit the right of the exclusive representative under a collective bargaining
305 agreement to grieve and arbitrate the validity of an employee's termination or discipline for just
306 cause or for the causes set forth in this act.

307 (5) The Department of Elementary and Secondary Education shall have jurisdiction to
308 determine willful violations of this section and may, following a hearing, assess a civil penalty
309 not to exceed ten thousand dollars (\$10,000). School entities shall be barred from contracting
310 with an independent contractor who is found to have willfully violated the provisions of this
311 section.

312 (6) Notwithstanding any provision of law to the contrary, the Department of Elementary
313 and Secondary Education may initiate disciplinary action before a hearing officer pursuant its
314 regulations, against any applicant, employee, independent contractor or school administrator for
315 willful violations of this section.

316 (7) The Department of Elementary and Secondary Education may adopt rules and
317 regulations establishing procedures relating to disciplinary proceedings and the assessment of
318 penalties in connection with this section.

319 Section 5. Responsibilities of the MA Department of Elementary and Secondary
320 Education

321 (1) Access to Information

322 At any stage of an investigation or proceeding conducted within the scope of the
323 Department's authority, the Commissioner may request and shall receive from school districts
324 and any public or private school in the Commonwealth, including an approved private school for
325 special education, any and all relevant information and documents relating to the investigation or
326 proceeding. Such information and documents includes but is not limited to complete personnel
327 records, student records, and investigatory records.

328 (2) Subpoenas

329 At any stage of an investigation or proceeding conducted within the scope of the
330 Department's authority, the Commissioner or the Commissioner's designee may issue a
331 subpoena or a subpoena duces tecum to summon a witness or to compel the production of
332 documents not otherwise subject to this section. An individual who holds or is seeking a
333 Massachusetts educator license under G.L. c. 71, section 38G, is deemed to have sufficient
334 contacts with the Commonwealth to confer jurisdiction pursuant to G.L. c. 223A, section 3.

335 (3) Required Reporting

336 Notwithstanding any other provision of law to the contrary, the Commissioner or the
337 Commissioner's designee shall report to the National Association of State Directors of Teacher
338 Education and Certification Clearinghouse or any national databases serving the same purpose,
339 all information required for participation in such a clearinghouse.

340 (4) Protection from Liability

341 No person who files a complaint, reports alleged wrongdoing or provides information
342 about a licensed educator or an applicant for licensure to the Commissioner or who assists the

343 Commissioner at his request in discharging his duties and functions shall be liable in any cause
344 of action arising out of the provision of such information or assistance if the person acted in good
345 faith and without malice.

346 SECTION 3. Clause (i) of section 21 of Chapter 119 of the General Laws, as appearing
347 in the 2014 Official Edition, shall be amended by inserting after the word "counselor," in line 53,
348 the following words:- "domestic violence worker,"

349 SECTION 4. Clause (ii) of said section 21 of Chapter 119 shall be further amended by
350 inserting after the word "counselor," in line 55, the following words:- "volunteer athletic coach,
351 professional athletic coach, professional tutor," and;

352 SECTION 5. Clause (iii) of said section 21 of Chapter 119 shall be further amended by
353 inserting after the word "officer" in line 64, the following words:- ", animal control or humane
354 officer, commercial film or photo processor, information technology repair or service personnel"

355 SECTION 6. Subsection (a) of section 51A of Chapter 119 of the General Laws, as
356 appearing in the 2014 Official Edition, shall be amended by inserting after the word "neglect.",
357 in line 19, the following:-

358 A school or mandated reporter who has reasonable cause to believe that a person who is
359 alleged to have sexually abused a child in the past, presently represents a credible threat to a
360 child under the age of eighteen years, shall have the same reporting obligations under this
361 section.

362 SECTION 7. Section 51A of Chapter 119 of the General Laws, as most recently amended
363 by Section 10 of Chapter 178 of the Acts of 2011, shall be amended by inserting after the second
364 paragraph of subsection (a) the following paragraphs:

365 The supervisor or person in charge in an institution, who is designated to receive reports
366 of suspected child abuse from individual mandated reporters, is responsible for confirming with
367 that reporter that the institution filed a formal report with the department or appropriate law
368 enforcement agency and did so within the required time period.

369 If the institution fails to report the suspected abuse to the department, the supervisor or
370 person in charge in the institution shall notify the individual reporter of that decision so that the
371 individual reporter who discovered or suspects the abuse may meet their legal responsibility to
372 file a direct report with the department or appropriate law enforcement agency.

373 SECTION 8. Subsection (c) of said section 51A of Chapter 119 shall be amended by
374 inserting after the word "injury", in line 42, the following words:- ", a sexual assault, or"

375 SECTION 9. Said subsection (c) of section 51A of Chapter 119 shall be amended by
376 inserting after the word "paragraph.", in line 48, the following:-

377 Any corporation or other institution which employs a mandated reporter who fails to
378 make a report required by this section, shall be punished by a fine of not more than one hundred
379 thousand dollars. It shall be a defense to any prosecution under this section that the corporation
380 or other institution has complied with the requirements of subsection (k).

381 SECTION 10. Section 7 of said chapter 18B, is hereby amended by adding at the end
382 thereof the following subsection:-

383 (o) The commissioner, in consultation with the child advocate and other agencies the
384 commissioner deems relevant, including, but not limited to, the Massachusetts District Attorneys
385 Association, the Massachusetts chapter of the National Association of Social Workers, the
386 Massachusetts Medical Society, the Massachusetts Teachers' Association, the American
387 Federation of Teachers, and private child service providers shall, if available, adapt, implement
388 and maintain from another state agency or from any suitable program already in use in another
389 state a free standardized online training program to be completed by all mandated reporters as
390 defined in section 21 of chapter 119, and as referenced in section 51A(k) of chapter 119;
391 provided, however, that if the commissioner cannot find an existing program to adapt to this
392 purpose, then the commissioner shall create, implement, maintain and update such an online
393 training program.

394 SECTION 11. Said chapter 119 is hereby further amended by striking out subsection (k)
395 of section 51A, as so appearing, and inserting in place thereof the following paragraph:-

396 (k) A mandated reporter shall successfully complete the training referenced in section
397 2(e) of chapter 18C by July 1, 2018, and every year thereafter to recognize and report suspected
398 child abuse and neglect. Beginning on July 1, 2017, any mandated reporter who applies for or
399 renews a professional license shall provide evidence of successful completion of this training.
400 Successful completion of this training may be used towards continuing education unit
401 requirements. All corporations and other institutions, which employ mandated reporters not
402 professionally licensed by the commonwealth, shall institute a program to implement the
403 reporting requirements of this section.

404 SECTION 12. Section 85K of Chapter 231 appearing in the 2014 Official Edition, is
405 hereby amended by inserting after the word "care," in line 11, the following:-

406 or in a civil action for sexual abuse of a minor, as that term is defined in section 4C½ of
407 chapter 260,

408 SECTION 13. Section 85V of said Chapter 231 is hereby amended by inserting after
409 clause (iii) the following clause:-

410 (iv) a civil action for sexual abuse of a minor, as that term is defined in section 4C½ of
411 chapter 260.

412 SECTION 14. Section 85W of said Chapter 231 is hereby amended by inserting after
413 the word "automobile", in line 20, the following words:-

414 or in a civil action for sexual abuse of a minor, as that term is defined in section 4C½ of
415 chapter 260

416 SECTION 15. Subsection (j) of section 10 of Chapter 258 of the General Laws, as
417 appearing in the 2014 Official Edition, is hereby amended by inserting after paragraph (4), the
418 following paragraph:-

419 (5) any claim by or on behalf of a person who alleges that he was sexually abused as a
420 child, as that term is defined in section 4C of chapter 260.

421 SECTION 16. Section 2 of Chapter 258C of the General Laws, as appearing in the 2014
422 Official Edition, is hereby amended by inserting after subsection (b), the following subsection:-

423 (b1) In the case of a claimant who was sexually abused as a minor, such good cause shall
424 include the report of a duly licensed mental health professional stating an opinion that the
425 claimant did not make the connection between the sexual abuse and the harm suffered by the
426 claimant at the time the abuse occurred, and that claimant's failure to make the connection was
427 consistent with the typical responses by such victims of childhood sexual abuse.

428 SECTION 17. Subsection (a) of section 5 of said Chapter 258C is hereby amended by
429 inserting after section paragraph (1) the following paragraph:-

430 (1A) In the case of a claimant who was sexually abused as a minor, said three years shall
431 commence to run when the claimant first makes the connection between the sexual abuse and the
432 harm suffered by the claimant as a result. The report of a duly licensed mental health
433 professional stating an opinion as to the date when the claimant first made the connection
434 between the sexual abuse and the harm suffered by the claimant, and that the claimant's failure to
435 make the connection prior to that date was consistent with the typical responses by such victims
436 of childhood sexual abuse, shall be *prima facie* evidence in all proceedings under this chapter.

437 SECTION 18. Chapter 268 of the General Laws, as appearing in the 2014 Official
438 Edition, is hereby amended by inserting after section 21B the following section:-

439 Section 21C. Any person who is sexually abused by an employee or contractor with any
440 public or private school, or the department of youth services, the department of children and
441 families, the department of mental health, the department of developmental services, or any
442 private institution providing services to clients of such departments, and who, in the course of
443 such employment or contract or as a result thereof, engages in sexual abuse of a person under the
444 age of 19, or under the age of 22 under Chapter 71B, who has not received a high school

445 diploma, a general educational development certificate, or an equivalent document and who is
446 served by such school, department or institution, within or outside of such school, department or
447 institution, shall have a cause of action against such an employee or contractor, under chapter
448 260, section 4C. In a civil action commenced under said section, a person served by such
449 school, department or institution shall be deemed incapable of consent to sexual relations with
450 such an employee or contractor.

451 Any person who is employed or contracted by a college or university, and who, in the
452 course of such employment or as a result thereof, engages in sexual abuse of a person who is 19
453 years of age or under who has not received a high school diploma, a general educational
454 development certificate or an equivalent document and who is enrolled in or attending the
455 college or university at which the person is employed, shall have a cause of action against such
456 an employee or contractor, under chapter 260, section 4C.

457 SECTION 19. Said Chapter 268 is hereby amended by inserting after section 21A the
458 following section:-

459 Section 21B. Any person who is employed by or contracts with any public or private
460 school, or the department of youth services, the department of children and families, the
461 department of mental health, the department of developmental services, or any private institution
462 providing services to clients of such departments, and who, in the course of such employment or
463 contract or as a result thereof, engages in sexual abuse of a person under the age of 19, or under
464 the age of 22 under Chapter 71B, who has not received a high school diploma, a general
465 educational development certificate, or an equivalent document and who is served by such
466 school, department or institution, within or outside of such school, department or institution,

467 shall be punished by imprisonment for not more than five years in a state prison or by a fine of
468 \$10,000 or both. In a prosecution commenced under this section, an individual served by such
469 school, department or institution shall be deemed incapable of consent to sexual relations with
470 such person. For purposes of this section, sexual relations shall be defined as that term is used of
471 chapter 260, section 4C.

472 Any person who is employed or contracted by an institution of higher learning, and who,
473 in the course of such employment or as a result thereof, engages in sexual abuse of a person who
474 is 19 years of age or under who has not received a high school diploma, a general educational
475 development certificate, or an equivalent document and who is enrolled in or attending the
476 college or university at which the person is employed, shall be punished by imprisonment for not
477 more than five years in a state prison or by a fine of \$10,000 or both. . In a prosecution
478 commenced under this section, an individual served by such institution shall be deemed
479 incapable of consent to sexual relations with such person. For purposes of this section, sexual
480 relations shall be defined as that term is used of chapter 260, section 4C.

481 SECTION 20. Chapter 265 of the General Laws, as appearing in the 2012 Official
482 Edition, is hereby amended by striking out section 13B and inserting in place thereof the
483 following: -

484 Section 13B. Whoever commits an indecent assault and battery on a minor under the age
485 of 14 shall be punished by imprisonment in the state prison for not more than 10 years, or by
486 imprisonment in the house of correction for not more than 2½ years. A prosecution commenced
487 under this section shall neither be continued without a finding nor placed on file. In a prosecution
488 under this section, a minor under the age of 15 years shall be deemed incapable of consenting to

489 any conduct of the defendant for which such defendant is being prosecuted unless: (a) The
490 defendant is no more than 3 years older than the minor; or (b) The defendant is no more than 2
491 years older than the minor if the minor is under 12 years of age.

492 Notwithstanding the provisions of section 54 of Chapter 119 or any other general or
493 special law to the contrary, in a prosecution under this section in which the defendant is under 18
494 years of age at the time of the offense, the Commonwealth shall only proceed by complaint in
495 juvenile court or in a juvenile session of a district court.

496 SECTION 21. Said chapter 265, as so appearing, is hereby amended by striking out
497 section 23 and inserting in place thereof the following:-

498 Section 23. Whoever has sexual intercourse or unnatural sexual intercourse with a minor
499 under 16 years of age and: (a) The defendant is more than 4 years older than the minor, or (b)
500 The minor is under 15 years of age and the defendant is more than 3 years older than the minor;
501 or (c) The minor is under 12 years of age and the defendant is more than 2 years older than the
502 minor, shall be punished by imprisonment in the state prison for life or for any term of years, or,
503 except as otherwise provided, for any term in a jail or house of correction, provided, however,
504 that a prosecution commenced under this section shall not be placed on file or continued without
505 a finding.

506 Notwithstanding the provisions of section 54 of Chapter 119 or any other general or
507 special law to the contrary, in a prosecution under this section in which the defendant is under 18
508 years of age at the time of the offense, the commonwealth shall only proceed by complaint in
509 juvenile court or in a juvenile session of a district court.

510 SECTION 22. This Act shall take effect on December 31, 2017.