HOUSE DOCKET, NO. 3905 FILED ON: 1/18/2019

HOUSE . . . . . No. 1443

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin G. Honan

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 to prevent and respond to bullying of elderly and disabled residents.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Kevin G. Honan	*17th Suffolk*	*1/18/2019*
Bruce J. Ayers	*1st Norfolk*	*2/1/2019*
Christine P. Barber	*34th Middlesex*	*1/31/2019*
David Biele	*4th Suffolk*	*2/1/2019*
Joseph A. Boncore	*First Suffolk and Middlesex*	*1/30/2019*
Michael D. Brady	*Second Plymouth and Bristol*	*2/1/2019*
Tackey Chan	*2nd Norfolk*	*1/31/2019*
Harriette L. Chandler	*First Worcester*	*2/1/2019*
Daniel R. Cullinane	*12th Suffolk*	*2/1/2019*
Marjorie C. Decker	*25th Middlesex*	*2/1/2019*
David F. DeCoste	*5th Plymouth*	*1/31/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/1/2019*
William J. Driscoll, Jr.	*7th Norfolk*	*2/1/2019*
Michelle M. DuBois	*10th Plymouth*	*1/20/2019*
James B. Eldridge	*Middlesex and Worcester*	*1/30/2019*
Nika C. Elugardo	*15th Suffolk*	*2/2/2019*
Ryan C. Fattman	*Worcester and Norfolk*	*1/31/2019*
Susan Williams Gifford	*2nd Plymouth*	*1/29/2019*

Carlos González	*10th Hampden*	*1/31/2019*
Kenneth I. Gordon	*21st Middlesex*	*1/29/2019*
Danielle W. Gregoire	*4th Middlesex*	*1/30/2019*
James K. Hawkins	*2nd Bristol*	*2/1/2019*
Kate Hogan	*3rd Middlesex*	*1/31/2019*
Steven S. Howitt	*4th Bristol*	*1/29/2019*
Patricia D. Jehlen	*Second Middlesex*	*1/31/2019*
Patrick Joseph Kearney	*4th Plymouth*	*1/31/2019*
Kay Khan	*11th Middlesex*	*1/29/2019*
David Henry Argosky LeBoeuf	*17th Worcester*	*1/23/2019*
Jay D. Livingstone	*8th Suffolk*	*1/30/2019*
Joseph W. McGonagle, Jr.	*28th Middlesex*	*1/31/2019*
Liz Miranda	*5th Suffolk*	*1/31/2019*
Michael J. Moran	*18th Suffolk*	*2/1/2019*
James M. Murphy	*4th Norfolk*	*1/30/2019*
David M. Nangle	*17th Middlesex*	*1/31/2019*
Denise Provost	*27th Middlesex*	*1/31/2019*
David Allen Robertson	*19th Middlesex*	*2/1/2019*
Daniel J. Ryan	*2nd Suffolk*	*2/1/2019*
Angelo M. Scaccia	*14th Suffolk*	*1/30/2019*
Alan Silvia	*7th Bristol*	*1/22/2019*
Bruce E. Tarr	*First Essex and Middlesex*	*1/30/2019*
Walter F. Timilty	*Norfolk, Bristol and Plymouth*	*2/1/2019*
José F. Tosado	*9th Hampden*	*1/23/2019*
Steven Ultrino	*33rd Middlesex*	*1/31/2019*
Thomas P. Walsh	*12th Essex*	*1/31/2019*
Timothy R. Whelan	*1st Barnstable*	*1/28/2019*

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HOUSE . . . . . No. 1443

By Mr. Honan of Boston, a petition (accompanied by bill, House, No. 1443) of Kevin G. Honan and others for legislation to prevent and respond to bullying of elderly and disabled residents. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to prevent and respond to bullying of elderly and disabled residents.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 121B is hereby amended by adding the following section:-

Section 61. (a) For purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:

"Bullying", the repeated use by one or more residents of employees of, or visitors to, a covered residential community of a written, verbal or electronic expression physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment for the victim; (iv) infringes on the rights of the victim at a covered residential community; or (v) materially and substantially disrupts the orderly operation of a covered residential community. For the purposes of this section, bullying shall include but not be limited to cyber-bullying, group or social bullying, and mobbing.

"Covered residential community", a public or privately-owned, multifamily residential housing development subsidized in whole or in part by the U.S. Department of Housing and Urban Development or the Commonwealth of Massachusetts and intended for occupancy primarily or solely persons aged 55 or older and/or persons with disabilities.

"Cyber-bullying", bullying through the use of technology or any electronic communication, which shall include, but shall not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages, instant messages or facsimile communications. Cyber-bullying shall also include (i) the creation of a web page or blog in which the creator assumes the identity of another person or (ii) the knowing impersonation of another person as the author or posted content or messages, if the creation of impersonation creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying. Cyber-bullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in clauses (i) to (v), inclusive or the definition of bullying.

"Group or social bullying" is the attempt by several persons acting together to engage in bullying conduct toward one or more victims by intentional, repeated, aggressive speech or action capable of causing harm.

"Hostile environment", a situation in which bullying causes the residential environment to be permeated with intimidation, ridicule, or insult that is sufficiently severe or pervasive to interfere with a resident's peaceful enjoyment of her tenancy or rights as a tenant.

"Mobbing", is bullying that owner/management employees condone or take part in, with the purpose of demeaning the victim and excluding them from the social life, quiet enjoyment of occupancy, or occupancy status in a covered residential community.

"Owner/managers", the owner of a covered residential community and/or the property manager or management agent responsible for managing a covered residential community.

"Plan", a bullying prevention and intervention plan established pursuant to subsection (d).

"Perpetrator", a person who engages in bullying or retaliation, or an owner/management company whose employees engage in, support or condone bullying, group or social bullying or mobbing.

"Residential property and grounds", property on which a covered residential community is located or property that is owned, leased, or used by an owner/manager or group of residents for an activity, function, program, instruction or training related to the operation of the residential community.

"Victim", a person against whom bullying, group or social bullying, mobbing, or retaliation has been perpetrated.

(b) Bullying shall be prohibited: (i) on residential property and ground, at an owner/manager or resident sponsored activity, function or program whether on or off residential

grounds or through the use of technology or an electronic device owned, leased, or used by an owner/manager; and (ii) at an owner/manager sponsored location, activity, or function or program that is not located within the covered residential community, or through the use of technology or an electronic device that is not owned, leased, or used by an owner/manager, if the bullying creates a hostile environment in a covered residential community for the victim, infringes on the rights of the victim at a covered residential community or materially and substantially disrupts the orderly operation of a covered residential community. Nothing contained herein shall require an owner/manager to staff any non-residence related activities, functions, or programs.

Retaliation against a person who reports bullying, provides information during an investigation or bullying, or witnesses or has reliable information about bullying shall be prohibited.

(c) The public safety division of the Commonwealth's attorney general's office, after consultation with the department of public health, the department of mental health, the executive office of elder affairs, the office on disability, the department of housing and community development, MassHousing, the Massachusetts district attorneys association, representatives or areawide tenant organizations representing residents of covered residential communities, representatives or areawide associations or resident service coordinators and owner/managers, and experts on bullying, group or social bullying, and mobbing shall, within one year of enactment of this legislation: (i) publish a model plan and training curricula for owner/managers to consider when creating their plans and curricula; and (ii) create and compile list of bullying prevention and intervention resources, evidence-based curricula, best practices and academic-based research that shall be made available to covered residential communities. The resources

may include, but shall not be limited to, print, audio, video or digital media; subscription based online services; and on-site or technology-enabled professional development and training sessions. The Division shall biennially update the model plan and the list of the resources, curricula, best practices and research and shall post them on its website. The division shall conduct a biennial confidential survey of residents and management staff to assess the prevalence and extent of bullying and the effectiveness of remedial efforts, and publish the findings while protecting the confidentiality of respondents.

(d) Each owner/manager of a covered residential community shall provide appropriate training on bullying prevention to all employees and residents of a covered residential community. The curriculum shall be evidence-based.

(e) (1) Each covered residential community shall develop, adhere to and update a plan to address bullying prevention and intervention in consultation with residents, any legitimate residents' association as defined by 24 CFR Part 245, resident support organizations, owner/manager service employees, on-site management staff, professional support personnel, community representatives, local law enforcement agencies, and division staff. The consultation shall include, but not be limited to, notice and a public comment period. The plan shall be adopted and implemented within six months of preparation of a model plan by the division and updated at least biennially.

(2) Each plan shall include, but not be limited to: (i) descriptions of and statements prohibiting bullying, group or social bullying, mobbing, cyber-bullying and retaliation; (ii) clear procedures for residents, owner/manager employees, visitors, relatives, partners, guardians and others to report bullying or retaliation; (iii) a provision that reports of bullying or retaliation may

be made anonymously; provided, however, that no disciplinary action shall be taken against a resident or owner/manager employee solely on the basis of an anonymous report; (iv) clear procedures for promptly responding to and investigating reports of bullying or retaliation; (v) the range of remedial actions that may be taken against a perpetrator for bullying or retaliation, including but not limited to employment sanctions or lease enforcement; provided, however, that the remedial actions shall balance the need for accountability with the need to teach appropriate behavior; (vi) clear procedures for restoring a sense of safety for a victim and assessing that victim's needs for protection; (vii) strategies for protecting from bullying or retaliation a person who reports bullying, provides information during an investigation of bullying or witnesses or has reliable information about an act of bullying; (viii) procedures consistent with state and federal law for promptly notifying the relatives, partners, or guardians of a victim and a perpetrator, if appropriate and authorized by the victim; provided, further, that the relatives, partners and guardians of a victim shall also be notified of the action taken to prevent any further acts of bullying or retaliation, if appropriate and authorized by the victim; and provided, further, that the procedures shall provide for immediate notification pursuant to regulations promulgated under this subsection by the division or person who holds a comparable role to the local law enforcement agency when civil and/or criminal charges may be pursued against the perpetrator; (ix) a provision that a person who knowingly makes a false accusation of bullying or retaliation shall be subject to remedial action or sanction; and (x) a strategy for providing, counseling or referring to appropriate services for perpetrators and victims and for appropriate family members of said residents. The plan shall also reference existing regulatory and lease protections applicable to the covered residential community, including but not limited to grievance procedures and protections for public housing tenants; lease and 24 CFR Part 245,

protections for HUD multifamily tenants; and comparable protections for MassHousing tenants in elderly/handicapped housing. Each plan shall also include procedures for victims to appeal confidentially to the division in cases where the alleged perpetrator is the owner/manager or employee of the covered residential community and the resident is concerned about retaliation.

(3) Nothing in this section shall prevent an owner/manager from remediating any discrimination or harassment based on a person's membership in a legally protected category under local, state or federal law.

(4) The plan for a covered residential community shall include a provision for ongoing professional development and training to build the skills of all employees, including, but not limited to, on-site managers, social service or resident service coordinators, maintenance and office clerical staff, to prevent, identify and respond to bullying. The content of such professional development shall include, but not be limited to: (i) appropriate strategies to prevent bullying incidents; (ii) appropriate strategies for immediate, effective interventions to stop bullying incidents; (iii) information regarding the complex interaction and power differential that can take place between and among one or more perpetrators, victims and witnesses to the bullying; (iv) research findings on bullying, including information about specific categories of residents who have been shown to be particularly at risk for bullying in the environment or covered residential communities, and the role of mental illness, dementia, behavioral disorders, domestic violence and substance abuse as they may affect both victims and perpetrators; (v) information on the incidence and nature of cyber-bullying; and (vi) internet safety issues as they relate to cyber-bullying. The division shall identify and offer information on alternative methods for fulfilling the professional development requirements of this section, at least one of which shall be available at no cost to owners/managers of covered residential communities.

(5) The plan may include provisions for informing relatives, partners, and guardians about the bullying prevention curriculum of the covered residential community and shall include, but not be limited to: (i) how relatives, partners and guardians can reinforce the curriculum and support the owner/manager or division plan; (ii) the dynamics of bullying; and (iii) online safety and cyber-bullying.

(6) The division shall promulgate rules and regulations on the requirements related to an owner/agent's duties under clause (viii) of the second paragraph of subsection (e).

(f)(1) Each owner/manager shall provide to residents and/or their designees, in appropriate languages or means of communication, annual written notice of the relevant resident-related sections of the plan.

(2) Each owner/manager shall provide to all employees of a covered residential community annual written notice of the plan. The employees at each covered residential community shall be trained biennially on the plan. The relevant section of the plan relating to the duties of employees shall be included in an owner/agent employee handbook or policies.

(3) The plan shall be posted on the website of each owner/manager or a covered residential community, or otherwise made available to residents, staff and interested members of the public.

(g) Each owner/manager shall be responsible for the implementation and oversight of the plan at her covered residential community.

(h) Any employee of a covered residential community, including on-site management staff, social service or resident service coordinator, maintenance or clerical staff, shall

immediately report any instance of bullying or retaliation the staff member has witnessed or become aware of to the owner/manager official identified in the plan as responsible for receiving such reports. Upon receipt of such a report, the owner/manager or a designee shall promptly conduct an investigation. If the owner/manager or a designee determines that bullying or retaliation has occurred, the owner/manager or designee shall (i) take appropriate remedial action, in consultation with the victim; and (ii) assist the victim in notifying the local law enforcement agency if the owner/manager or designee believes that civil, criminal or both civil and criminal charges may be pursued against a perpetrator.

(i) If an incident of bullying or retaliation occurs on the grounds of a covered residential community and involves a former resident or employee who is no longer involved in a covered residential community, the owner/manager informed of the bullying or retaliation shall contact law enforcement consistent with the provisions of clause (viii) of the second paragraph of subsection (e).

(j) Nothing in this section shall supersede or replace existing rights or remedies under any other general or special law.