

HOUSE No. 4689

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 6, 2020.

The committee on Public Safety and Homeland Security to whom were referred the petition (accompanied by bill, House, No. 1416) of Denise C. Garlick, Kimberly N. Ferguson and others relative to providing protections for health care employees who are victims of violence or assault and battery and the petition (accompanied by bill, House, No. 1976) of Michael J. Moran and others relative to security risks at health care facilities, reports recommending that the accompanying bill (House, No. 4689) ought to pass.

For the committee,

HAROLD P. NAUGHTON, JR..

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

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

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

1 SECTION 1. Chapter 111 of the General Laws, as appearing in the 2018 Official Edition,
2 is hereby amended by adding the following section:-

3 Section 240. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Employee”, an individual employed by a health care employer.

6 “Health care employer”, any individual, partnership, association, corporation, trust or any
7 person or group of persons operating a health care facility.

8 “Health care facility”, a hospital, licensed under section 51, the teaching hospital of the
9 University of Massachusetts medical school, a medium-security state correctional facility for
10 male inmates located in Plymouth county that is operated and maintained by a private company
11 under contract with the department of correction, or any state acute care facility, non-acute care
12 facility, continuing care facility and group homes operated, funded or subject to oversight by the

13 department of public health, the department of mental health or the department of developmental
14 services except a: (i) nursing home; (ii) rest home; (iii) clinic; (iv) mobile or portable clinic; (v)
15 mobile or portable clinic satellite; (vi) certified home health agency; (vii) adult day health; (viii)
16 hospice; (ix) hospice inpatient satellite; (x) ambulatory surgical center; (xi) renal dialysis; (xii)
17 outpatient physical therapy and speech pathology; and (xiii) temporary nursing agency; provided
18 that, a facility with more than 1 license or that is licensed to provide multiple services, shall be
19 considered a health care facility if the facility is licensed in at least 1 of the included categories.

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

23 (b) Annually, each health care employer shall perform a facility specific risk assessment
24 that includes, but is not limited to, the standards determined by the department. The facility
25 specific risk assessment shall be done in cooperation with the employees of the health care
26 employer and any labor organization or organizations representing the employees, examining all
27 factors, which may put any of the employees at risk of workplace violence. The factors shall
28 include, but not be limited to: (i) working in public settings; (ii) guarding or maintaining property
29 or possessions; (iii) working in high-crime areas; (iv) working late night or early morning hours;
30 (v) working alone or in small numbers; (vi) uncontrolled public access to the workplace; (vii)
31 working in public areas where people are in crisis; (viii) working in areas where a patient or
32 resident may exhibit violent behavior; (ix) working in areas with known security problems; and
33 (x) working with insufficient qualified staff in 1 or more position titles to address foreseeable
34 risk factors.

35 (c) Based on the findings of the risk assessment in subsection (b), the health care
36 employer shall develop and implement a program to minimize the danger of workplace violence
37 to employees, which shall include appropriate employee training, and a system for the ongoing
38 reporting and monitoring of incidents and situations involving violence or the risk of violence.
39 Employee training shall include, in addition to all employer training program policies, methods
40 of reporting to appropriate public safety officials, bodies or agencies and processes necessary for
41 the filing of criminal charges.

42 (d) Each health care employer shall develop a written violence prevention plan setting
43 forth the employer's workplace violence prevention plan. The health care employer shall make
44 the plan available to each employee and provide the plan to any of its employees upon request.
45 The health care employer shall provide the plan to any labor organization or organizations
46 representing any of its employees. The plan shall include: (i) a list of those factors and
47 circumstances that may pose a danger to employees; (ii) a description of the methods that the
48 health care employer will use to alleviate hazards associated with each factor; including, but not
49 limited to, employee training and any appropriate changes in job design, staffing, security,
50 equipment or facilities; (iii) a post-incident debriefing process with affected staff; and (iv) a
51 description of the reporting and monitoring system.

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

57 (f) Any health care employer who violates any rule, regulation or requirement made by
58 the department under authority hereof shall be punished by a fine of not more than \$2,000 for
59 each offense. The department or its representative or any aggrieved employee, any interested
60 party or any officer of any labor union or association, whether incorporated or otherwise, may
61 file a written complaint with the district court in the jurisdiction of which the violation occurs
62 and shall promptly notify the attorney general in writing of such complaint. The attorney general,
63 upon determination that there is a violation of any workplace standard relative to the protection
64 of the occupational health and safety of employees or of any standard of requirement of
65 licensure, may order any work site to be closed by way of the issuance of a cease and desist order
66 enforceable in the appropriate courts of the commonwealth.

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

71 (h) Each health care employer shall report not less than every 180 days all incidents
72 reported to the health care employer of assault or assault and battery that occurred at the health
73 care facility on an employee, an emergency medical technician, an ambulance operator or an
74 ambulance attendant, to the department and the office of the district attorney for the county
75 wherein the alleged assault or assault and battery occurred. Aggregate data, by county, from
76 these reports shall be made publicly available within 90 days of receipt by both the department
77 and the office of the district attorney.

78 SECTION 2. Chapter 149 of the General Laws is hereby amended by inserting after
79 section 52E the following section:-

80 Section 52F. (a) For purposes of this section, the following words shall, unless the
81 context clearly indicates otherwise, have the following meanings:-

82 “Employee”, an individual employed by a health care employer.

83 “Health care employer”, any individual, partnership, association, corporation or, trust or
84 any person or group of persons operating a health care facility.

85 “Health care facility”, a hospital, licensed under section 51, the teaching hospital of the
86 University of Massachusetts medical school, a medium-security state correctional facility for
87 male inmates located in Plymouth county that is operated and maintained by a private company
88 under contract with the department of correction, or any state acute care facility, non-acute care
89 facility, continuing care facility and group homes operated, funded or subject to oversight by the
90 department of public health, the department of mental health or the department of developmental
91 services except a: (i) nursing home; (ii) rest home; (iii) clinic; (iv) mobile or portable clinic; (v)
92 mobile or portable clinic satellite; (vi) certified home health agency; (vii) adult day health; (viii)
93 hospice; (ix) hospice inpatient satellite; (x) ambulatory surgical center; (xi) renal dialysis; (xii)
94 outpatient physical therapy and speech pathology; and (xiii) temporary nursing agency; provided
95 that, a facility with more than 1 license or that is licensed to provide multiple services, shall be
96 considered a health care facility if the facility is licensed in at least 1 of the included categories.

97 (b) A health care employer shall permit an employee to take up to 7 days of leave from
98 work in any 12 month period if: (i) the employee is a victim of an assault or assault and battery
99 which occurred in the line of duty and (ii) the employee uses the leave to seek or obtain victim

100 services or legal assistance; obtain a protective order from a court; appear in court or before a
101 grand jury; meet with a district attorney or other law enforcement official; or to address other
102 legal issues directly related to the assault or assault and battery.

103 (c) The leave taken pursuant to subsection (b) shall be paid.

104 (d) A health care employer may require an employee to provide documentation
105 evidencing that the employee is a victim of assault or assault and battery sustained in the line of
106 duty and that the leave taken is consistent with the conditions of subsection (b). An employee
107 shall provide such documentation to the health care employer within 5 business days after the
108 health care employer requests documentation relative to the employee's absence.

109 (e) An employee seeking leave from work pursuant to subsection (b) shall provide
110 advance notice of the leave to the employer in accordance with the employer's leave policy;
111 provided, however, that if an employee is absent on an unauthorized basis, the health care
112 employer shall not take any negative action against the employee if the employee, within 30 days
113 from the unauthorized absence or within 30 days from the last unauthorized absence in the
114 instance of consecutive days of unauthorized absences, provides documentation that the
115 unauthorized absence meets the criteria of subsection (b).

116 (f) All information related to the employee's leave taken pursuant to this section shall be
117 kept confidential by the health care employer and shall not be disclosed, except to the extent that
118 disclosure is: (i) requested or consented to, in writing, by the employee; (ii) ordered to be
119 released by a court of competent jurisdiction; (iii) required by federal or state law; (iv) required
120 in the course of an investigation authorized by law enforcement, including, but not limited to, an

121 investigation by the attorney general; or (v) necessary to protect the safety of the employee or
122 others employed at the workplace.

123 (g) No health care employer shall require an employee to exhaust all annual leave,
124 vacation leave, personal leave or sick leave available to the employee prior to requesting or
125 taking leave under this section.

126 (h) No health care employer shall coerce, interfere with, restrain or deny the exercise of,
127 or any attempt to exercise, any rights provided by this section or to make leave requested or
128 taken hereunder contingent upon whether or not the victim maintains contact with the alleged
129 abuser.

130 (i) No health care employer shall discharge or in any other manner discriminate against
131 an employee for exercising the employee's rights under this section. An employee who takes
132 leave under this section shall not lose any employment benefit accrued prior to the date on which
133 the leave taken under this section commenced as a result of taking said leave. Upon the
134 employee's return from said leave, the employee shall be entitled to restoration to the
135 employee's original job or to an equivalent position.

136 (j) Each health care employer shall post in a conspicuous place within the health care
137 facility a notice prepared or approved by the department indicating the rights and responsibilities
138 provided by this section. The notice shall be issued in English, Spanish, Chinese, Haitian Creole,
139 Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is the
140 primary language of at least 10,000 or ½ of one per cent of all residents of the commonwealth.
141 The required workplace notice shall be in English and each language other than English which is
142 the primary language of 5 or more employees or self-employed individuals of that workplace, if

143 such notice is available from the department. Each health care employer shall notify each
144 employee not more than 30 days from the beginning date of the employee's employment, the
145 rights and responsibilities provided by this section, including those related to notification
146 requirements and confidentiality.

147 (k) This section shall not be construed to exempt an employer from complying with
148 chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights
149 of any employee under said chapter 258B, said section 14B of chapter 268 or any other general
150 or special law.

151 SECTION 3. Section 13I of chapter 265 of the General Laws, as appearing in the 2018
152 Official Edition, is hereby amended by adding the following paragraph:-

153 Any emergency medical technician, ambulance operator, ambulance attendant or a health
154 care provider as defined in section 240 of chapter 111, who is the victim of assault or assault and
155 battery at a health care facility, as such term is defined in said section 240, in the line of duty
156 shall be given the option of providing the address of the health care facility where the assault or
157 assault and battery occurred or of the labor organization in which they are a member in good
158 standing. In instances where the address of the health care facility is used or labor organization to
159 which the employee is a member in good standing, the health care facility or labor organization
160 shall ensure that the individual receives any documents pertaining to the assault or assault and
161 battery within 24 hours of receipt by the health care facility or labor organization. The health
162 care facility or labor organization shall demonstrate that it has provided any and all
163 documentation by obtaining a signature from the individual acknowledging receipt.

164 SECTION 4. The commissioner of public health shall adopt rules and regulations within
165 180 days of enactment of this act necessary to implement and enforce the purposes of section
166 240 of chapter 111 of the General Laws.