

SENATE No. 984

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>1/23/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>1/24/2019</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>1/24/2019</i>
<i>Bradford Hill</i>	<i>4th Essex</i>	<i>1/28/2019</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>1/29/2019</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>	<i>1/29/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/29/2019</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>1/29/2019</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>1/30/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/31/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>1/31/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>1/31/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/31/2019</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>

<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>2/1/2019</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>2/1/2019</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/4/2019</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/4/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/4/2019</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/7/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>3/6/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>4/30/2019</i>

SENATE No. 984

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 984) of Joan B. Lovely, Paul F. Tucker, Michael O. Moore, Timothy R. Whelan and other members of the General Court 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:

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

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

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

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

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

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

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

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

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

41 “Plan”, a bullying prevention and intervention plan established pursuant to subsection
42 (d).

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

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

50 “Victim”, a person against whom bullying, group or social bullying, mobbing, or
51 retaliation has been perpetrated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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