

# HOUSE . . . . . No. 4574

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, March 9, 2022.

The committee on Public Safety and Homeland Security to whom was referred the petition (accompanied by bill, House, No. 2465) of Denise C. Garlick and others relative to providing protections for health care employees who are victims of violence or assault and battery, reports recommending that the accompanying bill (House, No. 4574) ought to pass.

For the committee,

CARLOS GONZÁLEZ.

**HOUSE . . . . . No. 4574**

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

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 238. (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”, conduct at the work site that is: (i) an unpermitted or harmful  
21 touching of another person; (ii) an attempt or act to use some degree of physical force on another  
22 person; or (iii) engaging in conduct that could be reasonably perceived as an intent to touch  
23 without permission, use immediate physical force or injure a particular person now or in the  
24 future, that if carried out would constitute a crime, and causes another person to reasonably  
25 believe that the person has the intent and ability to carry out such conduct.

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

36 (x) working with insufficient qualified staff in 1 or more position titles to address foreseeable  
37 risk factors.

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

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

55 (e) Each health care employer shall designate a senior manager responsible for the  
56 development and support of an in-house crisis response team for employee-victims of workplace  
57 violence. Said team shall implement an assaulted staff action program that includes, but is not

58 limited to, group crisis interventions, individual crisis counseling, staff victims' support groups,  
59 employee victims' family crisis intervention, peer-help and professional referrals.

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

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

74 (h) Not less than every 180 days, each health care employer shall submit a report, on a  
75 form prescribed by the commissioner of the department, of all incidents of workplace violence  
76 reported to the health care employer that occurred at the health care facility on an employee, an  
77 emergency medical technician, an ambulance operator or an ambulance attendant. The report  
78 shall be submitted to the department and the office of the district attorney for the county where  
79 the health care facility is located. Not more than 90 days after receiving the reports, the

80 department shall make the aggregate data statewide and by county publicly available; provided  
81 that the department categorize the aggregate data by occupation and incident type.

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

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

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

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

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

101 (b) A health care employer shall permit an employee to take up to 7 days of leave from  
102 work in any 12 month period if: (i) the employee is a victim of an assault or assault and battery  
103 which occurred in the line of duty and (ii) the employee uses the leave to seek or obtain victim  
104 services or legal assistance; obtain a protective order from a court; appear in court or before a  
105 grand jury; meet with a district attorney or other law enforcement official; or to address other  
106 legal issues directly related to the assault or assault and battery.

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

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

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

120 (f) All information related to the employee's leave taken pursuant to this section shall be  
121 kept confidential by the health care employer and shall not be disclosed, except to the extent that  
122 disclosure is: (i) requested or consented to, in writing, by the employee; (ii) ordered to be

123 released by a court of competent jurisdiction; (iii) required by federal or state law; (iv) required  
124 in the course of an investigation authorized by law enforcement, including, but not limited to, an  
125 investigation by the attorney general; or (v) necessary to protect the safety of the employee or  
126 others employed at the workplace.

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

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

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

140 (j) Each health care employer shall post in a conspicuous place within the health care  
141 facility a notice prepared or approved by the department indicating the rights and responsibilities  
142 provided by this section. The notice shall be issued in English, Spanish, Chinese, Haitian Creole,  
143 Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is the  
144 primary language of at least 10,000 or ½ of one per cent of all residents of the commonwealth.



145 The required workplace notice shall be in English and each language other than English which is  
146 the primary language of 5 or more employees or self-employed individuals of that workplace, if  
147 such notice is available from the department. Each health care employer shall notify each  
148 employee not more than 30 days from the beginning date of the employee's employment, the  
149 rights and responsibilities provided by this section, including those related to notification  
150 requirements and confidentiality.

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

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

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

166 care facility or labor organization shall demonstrate that it has provided any and all  
167 documentation by obtaining a signature from the individual acknowledging receipt.

168 SECTION 4. The commissioner of public health shall adopt rules and regulations within  
169 180 days of enactment of this act necessary to implement and enforce the purposes of section  
170 240 of chapter 111 of the General Laws.