

SENATE No. 2191

Senate, Thursday, October 26, 2017 -- Substituted by amendment (Bills in the Third Reading)
for the Senate Bill relative to sexual violence on higher education campuses. (Senate, No. 2081)

The Commonwealth of Massachusetts

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

An Act relative to sexual violence on higher education campuses.

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 6 of the General Laws is hereby amended by inserting after section
2 168C the following section:-

3 Section 168D. As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Reporting party” a student or employee who reports an incident of dating violence,
6 domestic violence, sexual assault or stalking to the institution

7 “Responding party” a student or employee who has been accused of an alleged incident
8 of dating violence, domestic violence, sexual assault or stalking

9 Each public or private degree-granting post-secondary institution of higher education
10 shall adopt a policy on dating violence, domestic violence, sexual assault and stalking that shall
11 be made available, upon request, to an applicant, student or employee of the institution. The
12 policy shall include, but not limited to:

13 (i) procedures by which students and employees at the institution may report or disclose
14 incidents of dating violence, domestic violence, sexual assault or stalking regardless of where the
15 offense occurred;

16 (ii) information on where to receive immediate emergency assistance following an
17 incident of dating violence, domestic violence, sexual assault or stalking which shall include, but
18 not be limited to, contact information for seeking medical treatment on campus, if available, and
19 off campus and information related to preserving evidence;

20 (iii) descriptions of the types of counseling and health, safety, academic and other
21 support services available from the institution within the local community or region or through a
22 local community-based rape crisis center or domestic violence program, including contact
23 information;

24 (iv) the rights of students and employees to: (1) notify or decline to notify law
25 enforcement, including campus, local and state police, of an alleged incident of dating violence,
26 domestic violence, sexual assault or stalking; (2) receive assistance from campus authorities in
27 making any such notification; and (3) obtain a court- or institution-issued protective order
28 against a respondent of the assault, stalking or violence

29 (v) interim protective measures reasonably available from the institution which shall
30 include, but not be limited to, options for changing academic, living, campus transportation or
31 working arrangements in response to an alleged incident of dating violence, domestic violence,
32 sexual assault or stalking, how to request those changes and the process to have any such
33 measures reviewed

34 (vi) procedures for students to notify the institution that a protective order has been issued
35 under state or federal law and the institution's responsibilities upon receipt of such notice.

36 (vii) a summary of the institution's procedures for resolving dating violence, domestic
37 violence, sexual assault or stalking complaints, including clear statements advising students that:
38 (1) notice shall be given to the respondent describing the date, time and location, if known, and a
39 summary of the factual allegations concerning the violation; (2) an investigation, including any

40 hearings and resulting disciplinary proceedings, shall be conducted by an individual who
41 receives not less than annual training on issues relating to dating violence, domestic violence,
42 sexual assault or stalking, investigatory procedures and hearing procedures to protect the safety
43 and rights of students and promote accountability and a trauma-informed response; (3) the
44 reporting party of an alleged incident of dating violence, domestic violence, sexual assault or
45 stalking and the responding party may be accompanied by an advisor or support person of their
46 choice, which may include an advocate or counsel, to meet with the institution's investigator or
47 other fact finder and may consult with an advisor or support person, which may include an
48 advocate or counsel, during any meetings and disciplinary proceedings; provided, however, that
49 the institution may establish rules regarding how the proceedings will be conducted which may
50 include guidelines on the extent to which the advisor or support person for each party may
51 participate in a meeting or disciplinary proceeding and any limitations on participation which
52 shall apply equally to both parties; and provided further, that the institution shall adopt
53 reasonable measures to provide for the involvement of the advisor or support person for each
54 party but the availability of the advisor or support person shall not significantly delay a meeting
55 or disciplinary proceeding; (4) the use of a preponderance-of-the-evidence standard to resolve
56 complaints; (5) the reporting party and the responding party shall be provided with a copy of the
57 institution's policies regarding the submission and consideration of evidence that may be used
58 during a disciplinary proceeding and shall have equal opportunity to present evidence and
59 witnesses on their behalf during a disciplinary proceeding; provided, however, that each party
60 shall be provided with timely and equal access to relevant evidence that shall be used in the
61 determination of a discipline; (6) there may be restrictions on evidence considered by the fact
62 finder including, but not limited to, the use of evidence of prior sexual activity or character
63 witnesses; (7) the reporting party and the responding party shall not be allowed to directly
64 question each other during disciplinary proceedings; (8) the reporting party and the responding
65 party shall be informed in writing of the results of a disciplinary proceeding not later than 7
66 business days after a final determination of a complaint, not including any time for appeal, unless
67 good cause for additional time is shown, and they shall be informed of any process for appealing
68 the decision; (9) if an institution offers an appeal as a result of procedural errors, previously
69 unavailable relevant evidence that could significantly impact the outcome of a case or where the
70 sanction is disproportionate to the findings, the reporting party and the respondent shall be

71 provided with an equal opportunity to appeal decisions regarding responsibility or sanctions; and
72 (10) the institution shall not disclose the identity of the reporting party and the responding party,
73 except as necessary to carry out a disciplinary process or as permitted under state or federal law.

74 (viii) a summary of the institution's employee disciplinary process as it pertains to dating
75 violence, domestic violence, sexual assault and stalking; and

76 (x) the range of sanctions or penalties the institution may impose on students and
77 employees found responsible for a violation of the applicable institutional policy prohibiting acts
78 of dating violence, domestic violence, sexual assault and stalking.

79 For the purposes of this section, “dating violence”, “domestic violence”, “sexual assault”
80 and “stalking” shall be defined by each institution of higher education in its applicable policies,
81 including its policy on affirmative action or code of conduct and shall be consistent with
82 applicable federal definitions.

83 SECTION 2. Chapter 15A of the General Laws is hereby amended by adding the
84 following section:-

85 Section 45. (a) As used in this section, the following words shall have the following
86 meanings unless the context clearly requires otherwise:

87 "Awareness programming", institution wide or audience-specific programs, initiatives,
88 and strategies that increase audience knowledge, promote safety and share resources to prevent
89 and reduce the occurrence of dating violence, domestic violence, sexual assault and stalking.

90 "Bystander intervention", bystander intervention as defined in 34 CFR 668.46.

91 “Clery Act”, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime
92 Statistics Act or Clery Act, 20 U.S.C. § 1092(f).

93 "Institution for higher education", a profit or nonprofit degree-granting educational
94 institution, whether public or private, which is authorized by law to provide a program of
95 education beyond the secondary school level.

96 "Primary prevention programming", initiatives and strategies informed by research or
97 assessed for value, effectiveness or outcome that are intended to stop dating violence, domestic
98 violence, sexual assault and stalking through the promotion of positive and healthy behaviors.

99 "Reporting party" a student or employee who reports an incident of dating violence,
100 domestic violence, sexual assault or stalking to the institution

101 "Responding party" a student or employee who has been accused of an alleged incident
102 of dating violence, domestic violence, sexual assault or stalking.

103 "Responsible employee", an employee authorized to take action to redress sexual
104 violence who has the responsibility of reporting incidents of sexual violence or any other
105 misconduct by students to the Title IX coordinator or other appropriate school designee and who
106 is a person to whom a student could reasonably believe has such authority or responsibility.

107 "Trauma-informed response", a response involving an understanding of the complexities
108 of dating violence, domestic violence, sexual assault and stalking through training centered on
109 the neurobiological impact of trauma, the influence of societal myths and stereotypes
110 surrounding the causes and impacts of trauma, understanding the behavior of perpetrators and
111 conducting an effective investigation.

112 (b) Each institution of higher education shall: (i) adopt detailed and trauma-informed
113 policies regarding dating violence, domestic violence, sexual assault and stalking involving
114 students or employees of the institution that comport with the best practices and current
115 professional standards as determined by the campus safety advisor and shall establish procedures
116 for regularly reviewing and updating the policies; and (ii) apply the same policies, as applicable,
117 relating to claims of dating violence, domestic violence, sexual assault and stalking to all
118 students and employees.

119 The policies shall be developed in coordination with the institution's Title IX coordinator and
120 may consider input from various internal and external entities including, but not limited to
121 institutional administrators, personnel affiliated with on-campus and off-campus health care
122 centers, personnel affiliated with on-campus, when available, and local, community-based rape

123 crisis centers and domestic violence programs, confidential resources advisors, residence life
124 staff, students, the department of state police and the police department and the district attorney
125 having jurisdiction in the city or town wherein the institution's primary campus is located. Once
126 an institution has adopted the policies required by this section, the opportunity for review and
127 comment by internal and external entities shall only apply to substantive changes in those
128 policies. Institutions shall provide draft policies and substantive changes by electronic or regular
129 mail to internal and external entities, with instructions on how to comment and a reasonable
130 length of time in which comments will be accepted.

131 (c) Each institution of higher education shall adopt policies and procedures with local law
132 enforcement agencies to establish the respective roles and responsibilities of each party related to
133 the prevention of and response to on-campus and off-campus sexual assault. Institutions of
134 higher education and local law enforcement agencies shall develop policies and procedures that
135 comply with all applicable confidentiality and privacy laws and: (i) set out the jurisdiction of the
136 local law enforcement agencies based on criteria such as location and type of incident and
137 provide for cross-jurisdictional or multi-jurisdictional response and investigation, as appropriate;
138 (ii) establish the methods for sharing the Clery Act reporting requirements and for facilitating the
139 issuance of timely warnings and emergency notifications required by the Clery Act relative to
140 crimes that may pose a serious threat to the campus or near campus communities; and (iii)
141 establish protocols, as permitted by federal and state law, for cases where a student consents to
142 the release of relevant documentation and information generated or acquired during local law
143 enforcement or campus police investigations;; and (v) methods for notifying the appropriate
144 district attorney's office.

145 (d) The commissioner shall appoint within the department of higher education a campus
146 safety advisor who shall have experience in public safety policy to facilitate and advance
147 statewide campus safety at public and private institutions of higher education. The advisor shall
148 coordinate, aggregate and disseminate best practices, training opportunities and other resources
149 to enhance campus safety at institutions of higher education. The board of higher education shall
150 promulgate regulations to establish and implement the role and responsibilities of the advisor
151 including, but not limited to, establishing minimum standards for campus security and safety
152 issues.

153 (e) An institution of higher education shall make publicly available on its website: (i) all
154 annual Clery Act disclosures relating to dating violence, domestic violence, sexual assault and
155 stalking and all information contained in an institution's annual report as required in subsection
156 (s); (ii) the telephone number and website for a local, state or national 24-hour hotline that
157 provides information on dating violence, domestic violence, sexual assault and stalking; (iii) the
158 name and contact information for the institution's Title IX coordinator; (iv) the name and contact
159 information for a confidential resources advisor and a description of the role of and services
160 provided by the confidential resources advisor, which shall be updated on a timely basis; and (v)
161 the name and location of the nearest medical facility where an individual may request that a
162 sexual assault evidence collection kit be administered by a trained sexual violence forensic
163 health care provider, including information on transportation options and reimbursement for
164 travel costs, if any.

165 (f) Annually, not later than October 1, institutions of higher education shall transmit to
166 students by electronic mail its policies and procedures concerning the reporting and investigation
167 of an allegation of dating violence, domestic violence, sexual assault or stalking made by a
168 student or employee of the institution against another student or employee of the institution in
169 accordance with section 168D of chapter 6.

170 (g) Upon receiving a report of dating violence, domestic violence, sexual assault or
171 stalking, an institution of higher education shall provide an objectively clear and easily
172 understood notification of the student's or employee's rights and options under the institution's
173 dating violence, domestic violence, sexual assault or stalking policies to the reporting party and
174 the responding party, when feasible.

175 (h) An institution of higher education shall enter into and maintain a memorandum of
176 understanding with a community-based sexual assault crisis service center funded by the
177 department of public health and a community-based domestic violence agency funded by the
178 department of public health to: (i) provide an off-campus alternative for students to receive
179 sexual assault crisis services, including access to a sexual assault nurse examiner if available, or
180 domestic violence crisis services in response to dating violence, domestic violence, sexual
181 assault or stalking; (ii) ensure that a student or employee of the institution may access free and

182 confidential counseling and advocacy services either on campus or off campus; and (iii)
183 encourage cooperation and trainings between the institution and the service center or agency to
184 ensure an understanding the roles that the institution, service center and agency should play in
185 responding to reports and disclosures of dating violence, domestic violence, sexual assault or
186 stalking against students and employees of the institution and the institution's protocols for
187 providing support and services to such students and employees.

188 The memorandum of understanding may include an agreement, including a fee structure,
189 for the sexual assault crisis service center or domestic violence agency to provide confidential
190 victim services. Confidential victim services may include: case consultation and training fees for
191 confidential resource advisors; consultation fees for the development and implementation of
192 student education and prevention programs; the development of staff training and prevention
193 curriculum; and confidential on-site office space for an advocate from a sexual assault crisis
194 service center or domestic violence agency to meet with students.

195 The department of higher education may grant a waiver of the memorandum of
196 understanding requirement to an institution that demonstrates that the institution acted in good
197 faith but was unable to obtain a signed memorandum.

198 (i) An institution of higher education shall provide a method for anonymously reporting
199 an incident of dating violence, domestic violence, sexual assault or stalking that involves a
200 student or employee of the institution. An institution shall notify its students and employees of
201 the institution's obligations under state and federal law to: (i) investigate or address the alleged
202 dating violence, domestic violence, sexual assault or stalking, including when the alleged act was
203 reported anonymously; (ii) assess whether the report triggers the need for a timely warning or
204 emergency notification under 34 CFR 668.46(e), the obligations of which may, in limited
205 circumstances, result in the release of the reporting party's identity; and (iii) disclose the identity
206 of a reporting party to another student, an employee or a third party.

207 (j) A reporting party or a witness that causes an investigation of dating violence, domestic
208 violence, sexual assault or stalking shall not be subject to a disciplinary sanction for a violation
209 of the institution's student conduct policy related to the incident unless the institution determines

210 that the report was not made in good faith or that the violation was egregious. An egregious
211 violation shall include, but not be limited to, taking an action that places the health and safety of
212 another person at risk.

213 (k) Each institution of higher education shall establish a campus security policy that
214 includes the designation of at least 1 confidential resource advisor. The confidential resource
215 advisor may have another role at the institution; provided, however, that the confidential
216 resource advisor shall not be an employee designated as a responsible employee or a student or a
217 Title IX coordinator.

218 The institution shall designate existing categories of employees that may serve as
219 confidential resource advisors. The designation of an existing category of employees shall not
220 preclude the institution from designating a new or existing employee or partnering with a local,
221 state or national victim services organization to serve as a confidential resource advisor or to
222 serve in another confidential role. An institution may partner with an outside victim advocacy
223 organization to provide a confidential resource advisor under this section. An institution that
224 enrolls less than 1,000 students may partner with another institution in the region or within the
225 commonwealth to provide the services under this subsection.

226 If requested by the reporting party, the confidential resource advisor shall provide
227 information on: (i) reporting options and the effects of each option; (ii) counseling services
228 available on campus and through a local, community-based rape crisis center or domestic
229 violence program; (iii) medical and health services available on campus and off campus; (iv)
230 available academic and residence life accommodations; (v) the disciplinary process of the
231 institution; and (vi) the legal process carried out through local law enforcement agencies. The
232 confidential resource advisor shall receive training in the awareness and prevention of dating
233 violence, domestic violence, sexual assault and stalking and in trauma-informed response and
234 coordinate with on-campus and off-campus sexual assault crisis service centers and, if directed
235 by the reporting party, campus or local law enforcement agencies may, as appropriate, assist the
236 student in contacting or reporting to campus or local law enforcement agencies. If requested by
237 the reporting party, the confidential resource advisor, using only the reporting party's identifying
238 information, shall coordinate with the institutional designee to arrange possible interim

239 protective measures to allow the reporting party to change academic, living, campus
240 transportation or working arrangements in response to the alleged assault, stalking or violence.
241 Confidential resource advisors shall not provide services to more than 1 student in an incident
242 and shall ensure confidentiality is maintained.

243 The confidential resource advisor shall also notify the reporting party of their rights and
244 the institution's responsibilities regarding a protection order, no contact order and any other
245 lawful orders issued by the institution or by a criminal, civil or tribal court. The
246 confidential resource advisor shall not be required to report an incident to the institution or a law
247 enforcement agency unless otherwise required to do so by state or federal law and shall provide
248 confidential services to students and employees. A request for a possible interim protective
249 measure made by a confidential resource advisor on behalf of a reporting party to change an
250 academic, living, campus transportation or working situation in response to alleged dating
251 violence, domestic violence, sexual assault or stalking shall not constitute notice to a responsible
252 employee for Title IX purposes.

253 The website of an institution of higher education shall list: (i) reporting options for
254 students; (ii) the process of investigation and adjudication by the institution; and (iii) the process
255 for requesting a possible interim protective measure, when reasonable and available, to change
256 an academic, living, campus transportation or working situation in response to alleged dating
257 violence, domestic violence, sexual assault or stalking.

258 If a conflict of interest arises for an institution in which a confidential resource advisor is
259 advocating for the reporting party's need for sexual assault crisis services or campus or law
260 enforcement services, the institution shall not discipline, penalize or otherwise retaliate against
261 the confidential resource advisor for representing the interest of the student.

262 A confidential resource advisor may attend an administrative or institution-based
263 adjudication proceeding as the advisor or support person of the student's choice.

264 Unless otherwise required by state or federal law, a confidential resource advisor shall
265 not disclose confidential information without the prior written consent of the reporting party who
266 shared the information; provided, however, that nothing in this section shall be construed to limit

267 a defendant's right of cross examination of the advisor in a civil or criminal proceeding if the
268 advisor testifies after written consent has been given. A confidential communication shall not be
269 subject to discovery and shall be inadmissible in a criminal or civil proceeding without the prior
270 written consent of the reporting party who shared the information. Information provided to the
271 confidential resource advisor shall not be released to a campus official or law enforcement
272 officer or agency unless written consent has been given by the reporting party. A confidential
273 resource advisor shall not act as a counselor or therapist unless the confidential resource advisor
274 holds a valid license under chapter 112 and the reporting party engages the confidential resource
275 advisor in that capacity. The privileges available under chapter 233 shall apply to all information
276 received by a confidential resource advisor.

277 (l) An institution of higher education shall provide: (i) mandatory annual dating violence,
278 domestic violence, sexual assault and stalking primary prevention and awareness programming
279 for newly-enrolled students and newly-hired employees of the institution that includes: (1) an
280 explanation of consent in a sexual relationship; (2) the role drugs and alcohol play in an
281 individual's ability to consent; (3) information on options relating to the reporting of an incident
282 of dating violence, domestic violence, sexual assault or stalking, the effects of each option and
283 the methods to report an incident of dating violence, domestic violence, sexual assault or
284 stalking, including confidential and anonymous disclosure; (4) the name, contact information and
285 role of the confidential resource advisor; and (5) strategies for bystander intervention and risk
286 reduction; and (ii) opportunities for ongoing dating violence, domestic violence, sexual assault
287 and stalking prevention and awareness campaigns and programming.

288 (m) Notice to a confidential resource advisor of an alleged act of sexual assault, domestic
289 violence, dating violence or stalking or a confidential resource advisor's performance of a
290 service under this section shall not be considered actual or constructive notice of such an alleged
291 act to the institution of higher education at which the confidential resource advisor is employed
292 or provides contracted services.

293 (n) Each institution of higher education shall employ responsible employees as defined in
294 subsection (a) who shall be responsible for reporting cases of dating violence, domestic violence,
295 sexual assault and stalking to the Title IX coordinator of the institution. Responsible employees

296 shall report the name of the respondent, the name of reporting party, and the date, time and
297 location of the offense, if known, to the Title IX coordinator. Responsible employees shall
298 complete minimum training requirements as determined by the department of higher education in
299 coordination with the attorney general and shall include training by a local, state or national
300 victim services organization. Responsible employees shall provide a student or employee who
301 reports an incident of dating violence, domestic violence, sexual assault or stalking, whether the
302 offense occurred on campus or off campus, with a written explanation of the student's or
303 employee's rights and options pursuant to section 168D of chapter 6.

304 (o) An individual who participates in the implementation of an institution of higher
305 education's disciplinary process, including an individual responsible for resolving complaints of
306 reported incidents, shall have training or experience in handling dating violence, domestic
307 violence, sexual assault and stalking complaints and the operations of the institution's
308 disciplinary process. The training shall include, but not be limited to: (i) information on working
309 with and interviewing persons subjected to dating violence, domestic violence, sexual assault or
310 stalking; (ii) information on particular types of conduct that constitute dating violence, domestic
311 violence, sexual assault and stalking, including same-sex dating violence, domestic violence,
312 sexual assault and stalking; (iii) information on consent and the role drugs and alcohol may play
313 in an individual's ability to consent; (iv) the effects of trauma, including any neurobiological
314 impact on a person; (v) cultural awareness training regarding how dating violence, domestic
315 violence, sexual assault and stalking may impact students differently depending on a student's
316 cultural background; (vi) ways to communicate sensitively and compassionately with a reporting
317 party of dating violence, domestic violence, sexual assault or stalking including, but not limited
318 to, an awareness of responding to a reporting party with consideration of that party's cultural
319 background and providing services to or assisting in locating services for the reporting party; and
320 (vii) training and information regarding how dating violence, domestic violence, sexual assault
321 and stalking may impact students with developmental or intellectual disabilities.

322 (p) Each institution of higher education shall ensure that its Title IX coordinator and
323 members of its special or campus police force or the campus safety personnel employed by the
324 institution are educated in the awareness and prevention of dating violence, domestic violence,
325 sexual assault and stalking and in trauma-informed response.

326 (q) Notwithstanding any general or special law to the contrary, a member of the
327 department of state police or a local police department who acts as a first responder to a report of
328 dating violence, domestic violence, sexual assault or stalking at an institution of higher education
329 shall receive training in the awareness and prevention of dating violence, domestic violence,
330 sexual assault and stalking and in trauma-informed response, subject to appropriation.

331 (r) Annually, not later than October 1, an institution of higher education shall prepare and
332 submit to the department of higher education, the department of public health, the clerks of the
333 senate and house of representatives and the senate and house chairs of the joint committee on
334 higher education a report that includes: (i) the total number of allegations of dating violence,
335 domestic violence, sexual assault and stalking reported to the institution's Title IX coordinator
336 by a responsible employee, student or employee of the institution against another student or
337 employee of the institution; (ii) the number of cases made by a student or employee of the
338 institution against another student or employee of the institution investigated by local or state law
339 enforcement agency, if known; (iii) the number of students found responsible for violating an
340 institution's policies prohibiting dating violence, domestic violence, sexual assault and stalking;
341 (iv) the number of students found not responsible for violating an institution's policies
342 prohibiting sexual assault; and (v) the number of disciplinary actions imposed by the institution
343 as a result of a finding of responsibility for violating an institution's policies prohibiting sexual
344 assault. The report shall provide information in a de-identified manner that complies with state
345 and federal privacy laws.