

SENATE No. 2318

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 promoting health, safety and well-being in the legislature.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>1/23/2018</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/23/2018</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>1/23/2018</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/24/2018</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>	<i>1/24/2018</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>1/24/2018</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/24/2018</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>1/24/2018</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/25/2018</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/29/2018</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/29/2018</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/8/2018</i>

SENATE No. 2318

By Mr. Eldridge, a petition (accompanied by bill) (subject to Joint Rule 12) of James B. Eldridge, Barbara A. L'Italien, David M. Rogers, Diana DiZoglio and other members of the General Court for legislation to promote health, safety and well-being in the legislature. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

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

An Act promoting health, safety and well-being in the legislature.

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. The General Laws are hereby amended by inserting after chapter 23M the
2 following chapter:-

3 CHAPTER 23N.

4 COMMISSION ON WORKPLACE HARASSMENT AND SEXUAL ASSAULT IN
5 THE LEGISLATURE.

6 Section 1. As used in this chapter, the following words shall have the following meanings
7 unless the context clearly requires otherwise:

8 "Claim", a written statement submitted to the commission by a reporting individual
9 alleging workplace harassment.

10 “Commission”, the commission on workplace harassment and sexual assault in the
11 legislature.

12 “Complaint”, a written statement submitted to the commission by a complainant alleging
13 workplace harassment.

14 “Complainant”, a reporting individual employed on a full-time or part-time basis by the
15 general court, an unpaid intern of the general court or a person whose essential job functions are
16 substantially related to the operation of the general court who files a claim with the commission
17 stating that the person experienced, observed or has reason to know of workplace harassment by
18 a person employed on a full-time or part-time basis by the general court, an unpaid intern of the
19 general court, a person whose essential job functions are substantially related to the operation of
20 the general court or a person the complainant reasonably believes could affect the job security or
21 career opportunities of the complainant.

22 “Investigative report”, a report compiled by the general counsel at the end of an
23 investigation.

24 “Nonsexual Harassment”, verbal or physical conduct designed to threaten, intimidate or
25 coerce an individual on the basis of race, color, religious creed, national origin, sex, gender
26 identity, sexual orientation, genetic information, ancestry or status as a veteran, if the reporting
27 individual believes, and a reasonable person would believe, that the conduct is humiliating,
28 demeaning or offensive and has the purpose or effect of unreasonably interfering with an
29 individual’s work performance or creating an intimidating, hostile or offensive working
30 environment.

31 “Reporting individual”, a person who has experienced or witnessed incidents of
32 workplace harassment and has reported those incidents to the commission.

33 “Respondent”, an individual accused of workplace harassment by a reporting individual
34 or complainant.

35 “Retaliatory action”, the discharge, suspension, demotion or other adverse employment
36 action taken against an individual, reporting individual, or complainant that provides information
37 to the commission.

38 “Sexual harassment”, unwelcome sexual advances, requests for sexual favors or verbal or
39 physical conduct of a sexual nature when submission to or rejection of such advances, requests
40 or conduct is made either explicitly or implicitly a term or condition of employment or as a basis
41 for an employment decision, or such advances, requests or conduct have the purpose or effect of
42 unreasonably interfering with an individual’s work performance or creating an intimidating,
43 hostile, humiliating or sexually offensive work environment.

44 “Sexual assault”, intentional touching of another person that is fundamentally offensive
45 to contemporary standards of decency and without legal justification, excuse or consent.

46 “Workplace harassment”, an incident involving elements of nonsexual harassment,
47 sexual harassment or sexual assault as defined in this chapter.

48 Section 2. (a) There shall be within the executive office of administration and finance, but
49 not under its control, a commission on workplace harassment and sexual assault in the
50 legislature. The commission shall respond to claims and investigate and report on complaints of
51 workplace harassment as provided in this chapter. The commission shall be an independent

52 public entity not subject to the supervision and control of any other executive office, department,
53 commission, board, bureau, agency or political subdivision of the commonwealth.

54 (b) The commission shall consist of 9 members: 1 of whom shall be appointed by the
55 governor; 1 of whom shall be appointed by the senate president; 1 of whom shall be appointed
56 by the senate minority leader; 1 of whom shall be appointed by the speaker of the house of
57 representatives; 1 of whom shall be appointed by the house minority leader; 2 of whom shall be
58 appointed by the attorney general, 1 of whom shall be a sexual assault counsellor, as that term is
59 defined in section 20J of chapter 233, and 1 of whom shall be a licensed attorney with
60 demonstrated experience in the field of workplace harassment; and 2 of whom shall be appointed
61 by the auditor, 1 of whom shall be a licensed social worker with demonstrated expertise in sexual
62 harassment outreach and 1 of whom shall be a human resources professional with demonstrated
63 expertise in the field of workplace harassment training. The commission shall annually elect 1 of
64 its members to serve as chair and 1 of its members to serve as vice-chair. Each member shall be
65 appointed for a term of 3 years and shall be eligible for reappointment; provided, however, that a
66 person appointed to fill a vacancy shall serve only for the unexpired term. A member shall not
67 hold other employment in the government of the commonwealth or any of its political
68 subdivisions. Each member of the commission shall be a resident of the commonwealth.

69 (c) 5 members of the commission shall constitute a quorum and the affirmative vote of 5
70 members of the commission shall be necessary and sufficient for any action taken by the
71 commission. Members shall serve without pay but shall be reimbursed for actual expenses
72 necessarily incurred in the performance of their duties. Meetings of the commission shall be
73 subject to sections 18 to 25, inclusive, of chapter 30A and records pertaining to the
74 administration of the commission shall be subject to section 42 of chapter 30 and section 10 of

75 chapter 66. All moneys of the commission shall be considered to be public funds for purposes of
76 chapter 12A.

77 The commission shall not be required to obtain the approval of any other officer or
78 employee of any executive agency in connection with the collection or analysis of any
79 information. The commission shall not be required, prior to publication, to obtain the approval of
80 any other officer or employee of any executive agency with respect to the substance of reports,
81 investigative or annual, that the general counsel has prepared under this chapter.

82 (d) The commission shall have all the powers necessary or convenient to carry out and
83 effectuate its purposes. The powers shall include, but shall not be limited to:

84 (i) developing a plan of operation for the commission that shall include, but shall not
85 be limited to, the implementation of procedures for operations of the commission and procedures
86 for communications with the general counsel;

87 (ii) making, amending and repealing rules and regulations for the management of the
88 commission's affairs;

89 (iii) making contracts and executing all instruments that are necessary or convenient
90 for the carrying on of the commission's business;

91 (iv) acquiring, owning, holding, disposing of or encumbering personal property and
92 leasing real property in the exercise of the commission's powers and the performance of the
93 commission's duties;

94 (v) seeking and receiving grant funding from the federal government, departments or
95 agencies of the commonwealth and private foundations;

96 (vi) entering into and executing instruments in connection with agreements or
97 transactions with any federal, state or municipal agency or other public institution or with any
98 private individual, partnership, firm, corporation, association or other entity that may be
99 necessary in the commission's judgment, and to fix the compensation of such an individual or
100 entity;

101 (vii) enter into interdepartmental agreements with other state agencies that the
102 commission considers necessary to implement this chapter;

103 (viii) adopt and alter an official seal;

104 (ix) sue and be sued in its own name, plead and be impleaded; and

105 (x) establish lines of credit and establish at least 1 cash and investment account to
106 receive appropriations from the commonwealth and for all other business activity granted by this
107 chapter.

108 Section 3. The commission shall: (i) ensure the objective and thorough investigation of
109 all workplace harassment complaints within its jurisdiction; (ii) ensure the transparency of
110 processes and reports related to investigations of workplace harassment within its jurisdiction;
111 (iii) monitor and record claims of workplace harassment reported to the commission by
112 frequency and claim type; (iv) provide workplace harassment resources to individuals upon
113 request; (v) establish models for workplace harassment policy guidelines and training programs
114 for the general court; and (vi) conduct an annual workplace harassment survey for general court
115 employees.

116 Section 4. (a) The commission shall appoint a general counsel by a majority vote. The
117 general counsel shall be lawfully admitted to practice as an attorney in the commonwealth and
118 shall supervise the administrative affairs and general management and operations of the
119 commission. The general counsel shall receive a salary commensurate with the duties of the
120 office. The general counsel may appoint other officers and employees of the commission
121 necessary to the functioning of the commission. Sections 9A, 45, 46, and 46C of chapter 30,
122 chapter 31 and chapter 150E shall not apply to the general counsel of the commission. Sections
123 45, 46 and 46C of chapter 30 shall not apply to any employee of the commission. The general
124 counsel may establish personnel regulations for the officers and employees of the commission.
125 The general counsel shall file an annual personnel report with the senate and house committees
126 on ways and means containing the job classifications, duties and salary of each officer and
127 employee of the commission together with personnel regulations applicable to the officers and
128 employees.

129 (b) The general counsel shall, with the approval of the commission:

130 (i) plan, direct, coordinate and execute administrative functions in conformity with
131 the policies and directives of the commission;

132 (ii) establish an intake procedure for the submission of claims by reporting
133 individuals to the commission pursuant to section 5, including any necessary forms;

134 (iii) conduct investigations authorized by this chapter, including supervising summons
135 and the collection of information relevant to authorized investigations; and

136 (iv) at the conclusion of each investigation and pursuant to the requirements of section
137 7, submit an investigative report on the findings of the investigation to the appropriate parties.

138 Section 5. (a) The commission shall receive and review claims of workplace harassment
139 according to procedures established by the general counsel.

140 (b) A reporting individual shall submit a claim in the form of a written statement to the
141 commission including, but not limited to: (i) the name, position, and the department, if
142 applicable, of the reporting individual; (ii) the name, position and department, if applicable, of
143 the respondent; (iii) a description of the incident, including the date, location and presence of
144 witnesses; (iv) the effect of the incident on the ability of the reporting individual to perform the
145 reporting individual's job, or on other terms or conditions of the reporting individual's
146 employment; and (v) other information the reporting individual believes is relevant to the claim.
147 The general counsel or a member of the commission staff may assist the reporting individual in
148 completing the written statement. The general counsel may request additional information from
149 the reporting individual in the form of a written statement or an in-person interview.

150 (c) The commission shall notify a reporting individual orally and in writing of any
151 organization or government entity that has jurisdiction to address the specific incident of
152 workplace harassment reported by the individual including, but not limited to: (i) the attorney
153 general; (ii) a law enforcement official; (iii) the Massachusetts Commission Against
154 Discrimination; and (iv) the federal Equal Employment Opportunity Commission. A notification
155 under this subsection shall include an option for the claim to be sent to an organization or
156 government entity at the discretion and with the consent of the reporting individual. Claims
157 submitted to the commission shall be recorded and retained by the commission.

158 (d) The procedures and remedies available to a reporting individual under this chapter
159 shall not preempt or supersede any legal procedures or remedies otherwise available to an
160 individual under local, state or federal law.

161 Section 6. (a) The general counsel shall execute and supervise investigations under this
162 chapter.

163 (b) If the commission determines that a reporting individual is a complainant as defined
164 by this chapter, the general counsel shall open an investigation into the complaint reported by the
165 complainant and notify the complainant and respondent in writing that an investigation has been
166 opened.

167 (c) The commission shall issue rules and regulations to establish a process for a
168 respondent to appeal the determination that a reporting individual is a complainant under this
169 section. The process shall include notice and an opportunity for a hearing.

170 (d) The general counsel may request the production, on a voluntary basis, of testimony or
171 documents from an individual, government agency or non-governmental entity. The general
172 counsel may require by summons the production of all records, reports, audits, reviews, papers,
173 books, documents, recommendations, correspondence and any other data and material relevant to
174 a matter under investigation pursuant to this chapter. The summons shall be served in the same
175 manner as a summons for the production of documents in civil cases issued on behalf of the
176 commonwealth and the law relative to the summons shall apply to a summons issued pursuant to
177 this chapter. A justice of the superior court department of the trial court of the commonwealth
178 may, upon application by the general counsel, issue an order to compel the production of records,
179 reports, audits, reviews, papers, books, documents, recommendations, correspondence and any

180 other data and material relevant to any matter under investigation pursuant to this chapter. A
181 failure to obey such an order may be punished by the court as contempt.

182 (e) A summons issued pursuant to this section shall not be made public by the general
183 counsel or any officer or employee of the commission and any information provided pursuant to
184 this section shall not be made public until such time as it is necessary for the general counsel to
185 do so through the issuing of an investigative report. Disclosure of production, attendance or
186 testimony may be made to the members of the staff of the commission as is deemed necessary by
187 the general counsel.

188 (f) An investigation may be closed when the general counsel determines a sufficient
189 amount of information has been collected to find that it is more likely than not that workplace
190 harassment occurred or to determine that a finding could not be made. An investigation under
191 this section shall be completed in not more than 6 months; provided, however, that the
192 commission may, upon a request by the general counsel, approve an extension of not more than 6
193 months.

194 Section 7. (a) At the conclusion of an investigation, the general counsel shall compile and
195 submit a report on the findings of the investigation.

196 (b) The report shall include, but shall not be limited to: (i) the position and department, if
197 applicable, of the complainant; (ii) the name, position and department, if applicable, of the
198 respondent; (iii) the time and location of the incident being investigated; (iv) a detailed
199 description of the incident; (v) resources provided to the complainant by the commission or other
200 governmental or non-governmental entities; and (vi) a finding that it is more likely than not that
201 harassment occurred or a statement that a finding could not be made. If after an investigation a

202 majority of the commission determines that it is more likely than not that harassment occurred,
203 the commission shall include in the report a recommendation for disciplinary action, including
204 but not limited to: in the case of a legislator, reprimand, censure, temporary or permanent
205 removal from committee chairmanship or other position of authority, suspension with or without
206 pay, or expulsion; in the case of an officer or employee of the general court, reprimand,
207 suspension or removal. Said report shall not prevent the senate or house of representatives from
208 taking any other action as it shall deem advisable and appropriate.

209 (c) Prior to a report being released, the general counsel shall notify the complainant and
210 the respondent that the investigation has been closed and issue a copy of the investigative report
211 to the complainant and respondent for review. The commission shall issue rules and regulations
212 to establish a process for a complainant or respondent to appeal the release of an investigative
213 report before a report is released. The process shall include notice and an opportunity for a
214 hearing.

215 (d) The general counsel shall submit a copy of the investigative report to all interested
216 parties including, but not limited to: (i) the complainant; (ii) the respondent; (iii) each member of
217 the commission; and (iv) the respondent's employer, provided, however, that if the respondent is
218 a member of the legislature, the report will be sent to the committee on ethics in the chamber
219 where the respondent is a member. A copy of the report may be submitted to the attorney general
220 or the district attorney for the district in which the incident occurred with the complainant's
221 written consent.

222 Section 8. (a) Except as otherwise provided in this section, the proceedings and records of
223 the commission related to investigations shall be confidential and not subject to section 10 of

224 chapter 66. The commission shall establish procedures, applicable to members of the
225 commission, general counsel, and staff that ensure compliance with the confidentiality
226 requirements of this chapter.

227 (b) If the subject matter of an investigation becomes public through independent sources,
228 the general counsel may issue a statement to confirm the pendency of the investigation or to
229 clarify the procedural aspects of the investigation.

230 (c) Reports submitted to interested parties by the general counsel shall be confidential
231 and not subject to section 10 of chapter 66, including reports sent to individuals, members of the
232 commission and governmental and non-governmental entities. A party that receives a report
233 from the general counsel shall notify staff, if any, that the report is confidential and take steps to
234 ensure non-disclosure of the report.

235 (d) Nothing in this chapter shall preclude or limit the right of a complainant, respondent
236 or witness to share personal information under federal, state or local law.

237 Section 9. A person shall not discharge or cause to be discharged or otherwise discipline
238 or in any manner discriminate against or take any other retaliatory action against any employee,
239 client or other person for providing information to the commission, the general counsel or
240 commission staff, including filing a report or complaint with the commission or testifying in a
241 commission proceeding. A person who willfully violates this section shall be punished by a fine
242 of not more than \$1,000 or by imprisonment for not more than 1 year, or both. A person who
243 takes such a prohibited action against an employee, client or other person may be liable to that
244 employee, client or other person for treble damages, costs and attorney's fees.

245 Section 10. The commission shall annually conduct a workplace harassment survey of all
246 employees and interns of the general court. The survey shall be administered electronically and
247 the identity of the survey takers shall be anonymous. The survey shall include a definitions
248 section that shall include but shall not be limited to the definitions of nonsexual harassment,
249 sexual harassment and sexual assault under this chapter. The survey shall include a demographic
250 section that shall include the age, sex, gender identity, race, ethnicity, sexual orientation,
251 religious affiliation, level of education and relationship status of the survey taker. The survey
252 shall include a questions section that shall include, but shall not be limited to the following
253 questions: (i) “Have you experienced or witnessed some form of workplace harassment or
254 assault-related behaviors in the past 12 months?”; (ii) “If you have experienced or witnessed
255 some form of workplace harassment or assault-related behaviors, what was the primary basis for
256 the specific behavior or set of experiences?”; (iii) “If you have experienced or witnessed some
257 form of workplace harassment or assault-related behaviors, when and where did the specific
258 behavior or set of experiences occur?”; (iv) “If you have experienced or witnessed some form of
259 workplace harassment or assault-related behaviors, how often and for how long did the specific
260 behavior or set of experiences persist?”; (v) “If you have experienced or witnessed some form of
261 workplace harassment or assault-related behaviors, who was involved in the specific behavior or
262 set of experiences?”; (vi) “If you have experienced or witnessed some form of workplace
263 harassment or assault-related behaviors, what was the job title of the person or persons involved
264 in the specific behavior or set of experiences?”; (vii) “If you have experienced or witnessed some
265 form of workplace harassment or assault-related behaviors, did your work role require you to
266 continue to interact with the person or persons involved?”; (viii) “If you have experienced or
267 witnessed some form of workplace harassment or assault-related behaviors, did you discuss the

268 specific behavior or set of experiences with anyone at work?"; (ix) "If you have experienced or
269 witnessed some form of workplace harassment or assault-related behaviors, did you make a
270 complaint or report in response to the specific behavior or set of experiences?"; (x) "If you have
271 made a complaint or report, what happened as a result of it?"; (xi) "If you have experienced or
272 witnessed some form of workplace harassment or assault-related behaviors and did not make a
273 complaint or report, what were the reasons for not doing so?"; (xii) "If you have experienced or
274 witnessed some form of workplace harassment or assault-related behaviors, what effect did the
275 specific behavior or set of experiences have on your interpersonal relationships, physical or
276 emotional well-being, job performance or willingness to remain a part of the legislature?"; (xiii)
277 "If you have experienced or witnessed some form of workplace harassment or assault-related
278 behaviors, what resources did you use to make a complaint or report or receive additional
279 information about workplace harassment, if any?"; (xiv) "If you experience or witness workplace
280 harassment or assault-related behaviors, will you make a complaint or report?"; and (xv) "If you
281 would not make a complaint or report after experiencing or witnessing workplace harassment or
282 assault behaviors, is it due to a fear of retaliatory action?".

283 Section 11. The commission shall annually compile a report that shall include, but shall
284 not be limited to: (i) the number of incidents of workplace harassment and assault reported to the
285 commission, classified and analyzed by the type of incident, the demographics of reporting
286 individuals and the percentage of reports that led to investigations; (ii) the number of
287 investigations opened by the general counsel, classified by respondent job title; (iii) the number
288 of investigative reports issued by the commission, classified by the type of incident, the
289 demographics of complainants and the demographics of respondents; (iv) the results of the
290 workplace harassment survey conducted pursuant to section 10 as raw data and synthesized to

291 identify and describe correlations and overarching trends; (vi) recommended changes to the
292 model workplace harassment policies established by the commission, if any; and (vii) any other
293 information that may assist the legislature in preventing and effectively responding to incidents
294 of workplace harassment. The commission shall file the annual report with the senate president,
295 the speaker of the house of representatives, the clerks of the senate and house of representatives
296 and the chairs of the joint committee on rules not later than September 15.

297 Section 12. The commission shall promulgate the rules and regulations and perform the
298 functions that are necessary for the administration, implementation and enforcement of this
299 chapter.

300 SECTION 2. Notwithstanding subsection (b) of section 2 of chapter 23N of the General
301 Laws, the initial appointments to the commission on workplace harassment and sexual assault in
302 the legislature made by the governor, senate president and senate minority leader shall serve for a
303 term of 3 years, the initial appointments made by the speaker of the house of representatives and
304 the house minority leader and 1 of the initial appointments made by the attorney general shall
305 serve for a term of 2 years and the initial appointments made by the auditor and 1 of the initial
306 appointments made by the attorney general shall serve for a term of 1 year.

307 SECTION 3. (a) The commission on workplace harassment and sexual assault in the
308 legislature established by chapter 23N shall, in consultation with the Massachusetts Commission
309 Against Discrimination, research and develop model workplace harassment policies for
310 consideration and use by the senate and house of representatives. In developing the model
311 policies, the commission may request and receive information and testimony from experts in
312 relevant fields including, but not limited to, workplace harassment, sexual assault, personnel

313 policies and human resources management. The model workplace harassment policies shall
314 include, at a minimum: (i) a statement of the illegality of workplace harassment; (ii) a definition
315 of nonsexual harassment, sexual harassment and sexual assault; (iii) descriptions of conduct
316 constituting nonsexual harassment, sexual harassment and sexual assault, including examples;
317 (iv) resources available to reporting individuals including, but not limited to, contact information
318 for the commission, the Massachusetts Commission Against Discrimination and the federal
319 Equal Employment Opportunity Commission; and (v) protection against retaliatory action. The
320 commission shall submit the model workplace harassment policies, including specific policy
321 language, to the senate president, the speaker of the house of representatives, the clerks of the
322 senate and house of representatives, and the chairs of the joint committee on rules. The senate
323 and house of representatives may adopt the model policies submitted pursuant to this section in
324 whole or in part.

325 (b) The commission shall research and develop a model workplace harassment training
326 program for consideration and use by the senate and house of representatives. In developing the
327 model training program, the commission may contract with third party vendors and request and
328 receive information and testimony from experts in relevant fields such as nonsexual harassment,
329 sexual harassment, sexual assault, personnel policies and human resources management. The
330 model training program shall include, at a minimum: (i) a definition of “effective interactive
331 training”; (ii) a definition of “legislative employee”; (iii) a definition of “unlawful conduct”,
332 which shall include applicable federal and state statutory and case law references and principles;
333 (iv) minimum trainer qualifications; (v) minimum training frequency and duration requirements;
334 (vi) procedures for training completion documentation, including minimum record retention
335 requirements and procedures for individual tracking; and (vii) training content requirements,

336 including, but not limited to, types of conduct that constitute workplace harassment, remedies
337 available to reporting individuals, strategies to prevent workplace harassment, practical examples
338 of workplace harassment and hypothetical situations, confidentiality of the reporting process and
339 resources for reporting individuals.