

SENATE DOCKET, NO.

FILED ON:

SENATE No.

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:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

SENATE No.

[Pin Slip]

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

2 SECTION 1. The General Laws are hereby amended by inserting after chapter 23M the
3 following chapter:-

4 CHAPTER 23N.

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

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

9 “Claim”, a written statement submitted to the commission by a reporting individual
10 alleging workplace harassment.

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

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

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

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

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

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

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

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

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

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

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

49 Section 2. (a) There shall be within the executive office of administration and finance, but
50 not under its control, a commission on workplace harassment and sexual assault in the
51 legislature. The commission shall respond to claims and investigate and report on complaints of
52 workplace harassment as provided in this chapter. The commission shall be an independent
53 public entity not subject to the supervision and control of any other executive office, department,
54 commission, board, bureau, agency or political subdivision of the commonwealth.

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

70 (c) 5 members of the commission shall constitute a quorum and the affirmative vote of 5
71 members of the commission shall be necessary and sufficient for any action taken by the
72 commission. Members shall serve without pay but shall be reimbursed for actual expenses
73 necessarily incurred in the performance of their duties. Meetings of the commission shall be
74 subject to sections 18 to 25, inclusive, of chapter 30A and records pertaining to the
75 administration of the commission shall be subject to section 42 of chapter 30 and section 10 of
76 chapter 66. All moneys of the commission shall be considered to be public funds for purposes of
77 chapter 12A.

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

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

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

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

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

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

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

97 (vi) entering into and executing instruments in connection with agreements or
98 transactions with any federal, state or municipal agency or other public institution or with any

99 private individual, partnership, firm, corporation, association or other entity that may be
100 necessary in the commission's judgment, and to fix the compensation of such an individual or
101 entity;

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

104 (viii) adopt and alter an official seal;

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

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

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

117 Section 4. (a) The commission shall appoint a general counsel by a majority vote. The
118 general counsel shall be lawfully admitted to practice as an attorney in the commonwealth and
119 shall supervise the administrative affairs and general management and operations of the

120 commission. The general counsel shall receive a salary commensurate with the duties of the
121 office. The general counsel may appoint other officers and employees of the commission
122 necessary to the functioning of the commission. Sections 9A, 45, 46, and 46C of chapter 30,
123 chapter 31 and chapter 150E shall not apply to the general counsel of the commission. Sections
124 45, 46 and 46C of chapter 30 shall not apply to any employee of the commission. The general
125 counsel may establish personnel regulations for the officers and employees of the commission.
126 The general counsel shall file an annual personnel report with the senate and house committees
127 on ways and means containing the job classifications, duties and salary of each officer and
128 employee of the commission together with personnel regulations applicable to the officers and
129 employees.

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

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

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

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

137 (iv) at the conclusion of each investigation and pursuant to the requirements of section
138 7, submit an investigative report on the findings of the investigation to the appropriate parties.

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

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

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

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

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

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

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

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

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

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

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

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

205 but not limited to: in the case of a legislator, reprimand, censure, temporary or permanent
206 removal from committee chairmanship or other position of authority, suspension with or without
207 pay, or expulsion; in the case of an officer or employee of the general court, reprimand,
208 suspension or removal. Said report shall not prevent the senate or house of representatives from
209 taking any other action as it shall deem advisable and appropriate.

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

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

223 Section 8. (a) Except as otherwise provided in this section, the proceedings and records of
224 the commission related to investigations shall be confidential and not subject to section 10 of
225 chapter 66. The commission shall establish procedures, applicable to members of the

226 commission, general counsel, and staff that ensure compliance with the confidentiality
227 requirements of this chapter.

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

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

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

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

246 Section 10. The commission shall annually conduct a workplace harassment survey of all
247 employees and interns of the general court. The survey shall be administered electronically and

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

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

284 Section 11. The commission shall annually compile a report that shall include, but shall
285 not be limited to: (i) the number of incidents of workplace harassment and assault reported to the
286 commission, classified and analyzed by the type of incident, the demographics of reporting
287 individuals and the percentage of reports that led to investigations; (ii) the number of
288 investigations opened by the general counsel, classified by respondent job title; (iii) the number
289 of investigative reports issued by the commission, classified by the type of incident, the
290 demographics of complainants and the demographics of respondents; (iv) the results of the
291 workplace harassment survey conducted pursuant to section 10 as raw data and synthesized to
292 identify and describe correlations and overarching trends; (vi) recommended changes to the
293 model workplace harassment policies established by the commission, if any; and (vii) any other

294 information that may assist the legislature in preventing and effectively responding to incidents
295 of workplace harassment. The commission shall file the annual report with the senate president,
296 the speaker of the house of representatives, the clerks of the senate and house of representatives
297 and the chairs of the joint committee on rules not later than September 15.

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

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

308 SECTION 3. (a) The commission on workplace harassment and sexual assault in the
309 legislature established by chapter 23N shall, in consultation with the Massachusetts Commission
310 Against Discrimination, research and develop model workplace harassment policies for
311 consideration and use by the senate and house of representatives. In developing the model
312 policies, the commission may request and receive information and testimony from experts in
313 relevant fields including, but not limited to, workplace harassment, sexual assault, personnel
314 policies and human resources management. The model workplace harassment policies shall
315 include, at a minimum: (i) a statement of the illegality of workplace harassment; (ii) a definition

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

326 (b) The commission shall research and develop a model workplace harassment training
327 program for consideration and use by the senate and house of representatives. In developing the
328 model training program, the commission may contract with third party vendors and request and
329 receive information and testimony from experts in relevant fields such as nonsexual harassment,
330 sexual harassment, sexual assault, personnel policies and human resources management. The
331 model training program shall include, at a minimum: (i) a definition of “effective interactive
332 training”; (ii) a definition of “legislative employee”; (iii) a definition of “unlawful conduct”,
333 which shall include applicable federal and state statutory and case law references and principles;
334 (iv) minimum trainer qualifications; (v) minimum training frequency and duration requirements;
335 (vi) procedures for training completion documentation, including minimum record retention
336 requirements and procedures for individual tracking; and (vii) training content requirements,
337 including, but not limited to, types of conduct that constitute workplace harassment, remedies
338 available to reporting individuals, strategies to prevent workplace harassment, practical examples

339 of workplace harassment and hypothetical situations, confidentiality of the reporting process and
340 resources for reporting individuals.