

Summary of Campus Sexual Assault Legislation
Passed by the Massachusetts Legislature on January 6, 2021

Sexual Misconduct Climate Surveys: Amends MGL c. 6 by inserting a new section (§168D):

- Requires every college and university, both public and private, to conduct a sexual misconduct climate survey of all students not less than once every 4 years.
- Defines “sexual misconduct” as an incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault, sexual harassment or stalking.
- The sexual misconduct climate survey is required to gather information on several topics, including, but not limited to:
 - Number of reported and unreported incidents of sexual misconduct at the institution;
 - When and where incidents of sexual misconduct occurred
 - Student awareness of the institution’s policies and procedures related to campus sexual misconduct
 - Whether student reported the sexual misconduct and, if so, to which campus resource
 - Whether student was referred to local, state, campus or other resources or victim support services
 - Whether student was provided with information about resources for protection from retaliation, access to school-based supportive measures, and civil or criminal remedies
 - Contextual factors, including whether sexual misconduct involved force, incapacitation or coercion
 - Demographic information that could identify at-risk groups
 - Perception of campus safety
- Creates a 27-person task force charged with developing model questions for use by institutions in climate surveys.
 - AICUM is able to recommend 2 members of the task force to represent private colleges and universities
 - UMass and other public higher ed sectors are also able to recommend 3 task force members
 - Task force will also include 4 student representatives; 1 from a community college, 1 from a public university, and 2 who are attending a private institution.
 - Other members of the task force will include researchers with experience developing and designing climate surveys and researchers with experience in statistics and data analysis.
- The “model questions” shall include “a subset of questions **taken from or consistent with** questions in the *Administrator-Researcher Campus Climate Collaborative* survey or another sexual misconduct climate survey that is currently in use by institutions and that the task force deems high-quality”. The subset of model questions are required to generate responses related to topics including (i) the prevalence of sexual misconduct on campus, (ii) student knowledge of and familiarity with the institution’s policies for reporting and addressing sexual misconduct, and (iii) services available to victims of sexual misconduct.
- The model questions developed by the task forces will be reviewed and approved by the Commissioner of Higher Education, who will then provide them to all colleges and universities.
- **A college or university may develop and use its own campus-specific survey if the survey: (i) is designed to provide the institution with data to inform policies to prevent and respond to sexual misconduct, (ii) meets quality standards determined by the commissioner, and (iii) includes the subset of questions taken from or consistent with existing high-quality surveys.**
- Every college or university is required to post a summary of the results of the climate survey on its website within 120 days after completion and analysis of the sexual misconduct survey.

- The effective date for MGL c. 6, §168D is August 1, 2021, and the task force is required to complete its work to develop the model questions by January 1, 2022. An institution would have until July 31, 2025 to conduct its first climate survey under this statute.

General policies and procedures on sexual misconduct involving students and employees: Amends MGL c. 6 by inserting a new section (§168E):

- Requires every college and university, both public and private, to adopt policies on sexual misconduct involving students and employees. The policies must be “consistent with applicable state and federal law and regulation” and comport with best practices and current professional standards. The policies must be regularly reviewed and updated, and also made publicly available on the institution’s website.
- The policies must be developed in coordination with the institution’s Title IX coordinator and **may consider** input from various internal and external entities.
- The policies shall include, but not be limited to:
 - Procedures for students/employees to report incidents of sexual misconduct regardless of where it occurred
 - Information about where to receive immediate emergency assistance, including information about how to preserve evidence and contact information for seeking medical treatment on or off campus
 - Descriptions of the type of counseling and health, safety, academic and other support services available from the institution or through local rape crisis or domestic violence programs.
 - Information on the rights of students and employees to:
 - Notify or decline to notify any law enforcement agency of an incident of sexual misconduct
 - Receive assistance from campus authorities in notifying any law enforcement agency
 - Obtain court-issued protective order or an institution-issued no contact order against the alleged perpetrator of sexual misconduct
 - Concurrently utilize the institution’s investigatory process and any external civil or criminal processes available to the student or employee
 - School-based supportive measures reasonably available from the institution, including options for changing academic, living, campus transportation or working arrangements in response to an alleged incident of sexual misconduct, even if such sexual misconduct occurred outside an institution’s programs and activities
 - Procedures for students and employees to notify the institution of a protective order issued under state or federal law, and the institution’s responsibilities once it has received such notice
 - Summary of the institution’s procedures for resolving complaints of sexual misconduct promptly and equitably, including clear statements:
 - Notice shall be given to responding party, including date/time/location, if known, of the alleged incident of sexual misconduct, and specific statement as to which policies were allegedly violated
 - An impartial investigation shall be conducted by individuals who receive annual training on issues relating to sexual misconduct, investigatory/hearing procedures
 - That there is a presumption that the responding party is not responsible for the alleged conduct until a determination regarding responsibility is made by the institution at the conclusion of the process
 - That both parties are provided equal opportunities to inspect and review evidence obtained as part of the investigation that is directly related to the allegations
 - Both reporting party and responding party may be accompanied by and represented by an advisor or support person, and the institution is authorized to establish rules and guidelines that may include limitations on the participation by such advisor or support person.
 - The standard of evidence used to resolve complaints

- That the reporting party and responding party shall be provided with a copy of the institution's policies regarding the submission and consideration of evidence used during the disciplinary proceedings
 - That there may be restrictions on evidence considered by the fact finder, including the use of evidence of prior sexual activity or character witnesses
 - **That the reporting party and the responding party shall not be personally allowed to directly question each other during a hearing or disciplinary proceeding**
 - That each party shall be informed in writing of the results of a hearing or disciplinary proceeding no later than 7 business days after a final determination is made
 - If an institution offers an appeal as a result of procedural errors, previously unavailable relevant evidence or where sanction is disproportionate to the findings, then both parties shall have equal access to such opportunities to appeal
 - That institution shall not disclose the identity of the reporting party or responding party, except as necessary to conduct disciplinary process or as permitted under state/federal law
- Summary of the institution's employee disciplinary process as it pertains to sexual misconduct
 - The range of sanctions or penalties that may be imposed under institution's policies
 - Summary of the institution's policy prohibiting retaliation against anyone who reports sexual misconduct or assists in making a report or participates in the investigation
- **MOU with local law enforcement:** To the extent feasible, each college or university is required to adopt an MOU with local law enforcement agencies to establish the respective roles and responsibilities of each party related to the prevention of and response to sexual misconduct, both on-campus and off-campus. An institution that has a campus in more than one city or town can comply with this provision by entering into one MOU.
 - **Campus Safety Advisor:** Commissioner of Higher Ed is required to appoint a campus safety advisor, who will be charged with coordinating, aggregating and disseminating best practices, training opportunities and other resources to enhance campus safety.
 - Every institution is required to make the following items publicly available on its website:
 - Annual Security Report required under the Clery Act and annual report required under subparagraph (q) of this new statute
 - Telephone number and website for a local, state or national 24-hour hotline that provides information on sexual misconduct
 - Name and contact information for institution's Title IX coordinator
 - Name and contact information for institution's confidential resource provider (see below)
 - Name and location of nearest medical facility where a person can request a sexual assault evidence collection kit administered by a trained sexual violence forensic health care provider
 - The institution's policies on sexual misconduct
 - Sexual misconduct reporting options for students and employees
 - The process used by an institution to investigate and adjudicate allegations of sexual misconduct
 - The process for requesting interim supportive measures from the institution
 - Each institution is required, by August 20th each year, to email to each student and employee a copy of the institution's policies and procedures for reporting and investigation allegations of sexual misconduct.
 - When an institution receives a report of sexual misconduct, it is required to notify the reporting party of the student's or employee's rights and options under the institution's sexual misconduct policies.

- **MOU with community-based rape crisis center and domestic violence program:** If a college or university does NOT provide its own sexual assault crisis services, then it is required to enter into an MOU with a community-based rape crisis center funded by the MA DPH and a community-based domestic violence center funded by MA DPH. The MOU should:
 - Provide an off-campus alternative for students and employees to receive sexual assault crisis services or domestic violence crisis services
 - Ensure that a student or employee is able to access free and confidential counseling and advocacy service either on or off-campus
 - Encourage cooperation and training opportunities between the institution and the rape crisis center or domestic violence program
 - The MOU may include an agreement, including a fee structure, for the rape crisis center or domestic violence program to provide confidential victim services.
 - The requirement for an MOU may be waived by MA DHE if an institution can show that it acted in good faith but was unable to obtain a signed MOU.

- **Anonymous reporting:** Each college and university is required to provide a method for anonymously reporting an incident of sexual misconduct involving a student or employee.

- **Obligation to investigate alleged sexual misconduct:** Each college and university is required to notify its students and employees of its obligations under state and federal law: to investigate allegations of sexual misconduct, including when the alleged conduct was reported anonymously; to assess whether the report triggers the need for a timely warning or emergency notification which may, in limited circumstances, result in the release of the reporting party's identity, and; to disclose the identity of a reporting party to another student, an employee or a third party.

- An institution is prohibited from imposing a disciplinary sanction against a reporting party or witness who causes an investigation of sexual misconduct, unless the institution determines that the report was not made in good faith or that the violation of the institution's conduct policy was egregious.

- **Confidential Resource Provider:** Each college and university is required to designate at least one person to serve as a confidential resource provider (CRP). That person may have another role at the university, but it shall **NOT** be a student, Title IX coordinator, or an employee who is required by Title IX to report to the Title IX coordinator.
 - The institution shall designate new or existing categories of employee that may serve as a CRP, or it can partner with an external entity to provide the services.
 - Upon request of the reporting party or responding party, the CRP shall provide the party with: (i) reporting options and the effects of each option; (ii) counseling services available on campus and through local, community-based rape crisis or domestic violence centers; (iii) medical and health services available on and off-campus; (iv) available school-based supportive measures, and; (v) the institution's disciplinary process.
 - The CRP shall receive training in the awareness and prevention of sexual misconduct and in trauma-informed response.
 - If requested by the reporting party, the CRP, using only the reporting party's identifying information, shall coordinate with the appropriate institutional personnel to arrange possible interim supportive measures.
 - A CRP is prohibited from providing services to adverse parties in an incident of sexual misconduct and shall ensure that confidentiality is maintained.
 - A CRP shall notify the reporting party of their rights and the institution's responsibilities regarding a protective order, no contact order, and any other lawful orders issued by a civil or criminal court or by the institution.
 - The CRP shall not be required to report an incident of sexual misconduct to the institution or a law enforcement agency unless otherwise required to do so by state or federal law.

- **A request for interim supportive measures made by a CRP on behalf of a reporting party to change academic, living, campus transportation or working situation in response to allege sexual misconduct, shall not require the reporting party to file a formal complaint for Title IX purposes.**
 - Unless otherwise required by state or federal law, a CRP shall not disclose confidential information with the prior written consent of the reporting party who shared the information.
 - The privileges available under MGL c.233 shall apply to all information received by a CRP.
 - **Notice to a CRP of an allege act of sexual misconduct or a CPR's performance of a service shall not be considered actual or constructive notice of such alleged act to the institution at which the CRP is employed or provides contracted services.**
- **Training for newly-enrolled students and new employees:** Within 45 days of their matriculation or employment, an institution is required to provide newly-enrolled students and newly-hired employees:
 - Mandatory sexual misconduct prevention and awareness programming that includes: an explanation of civil rights laws relating to all forms of sex-based and gender-based harm; the role that drugs/alcohol play in changing behavior and affecting an individual's ability to consent; information on options relating to reporting incidents of sexual misconduct, and the effects of each option; information on the institution's policies and procedures for responding to complaints of sexual misconduct, including the range of possible sanctions; the name and contact information for the CRP, and; strategies for bystander intervention.
- **Training requirements:** Any person who participates in the implementation of an institution's disciplinary process for addressing complaints of sexual misconduct shall have training or experience in handling sexual misconduct complaints and the operation of the institution's applicable disciplinary process. Such training shall include:
 - Information on working with and interviewing persons subjected to sexual misconduct
 - Information on particular types of conduct that constitute sexual misconduct
 - Information on consent and the role that drugs/alcohol may play in an individual's ability to consent
 - The effects of trauma
 - Cultural competence training
 - Ways to communicate sensitively and compassionately with a reporting party
 - Training and information regarding how sexual misconduct may impact a person with developmental or intellectual disabilities
 - Training on the principles of due process necessary to ensure that proceedings are conducted impartially and fundamentally fair to all parties.
- Each college and university is required to ensure that its Title IX coordinator and members of its campus police force are educated and trained in the awareness and prevention of sexual misconduct.
 - Nothing in this new law shall prevent any other civil rights remedies that may be available through any other provision of state and federal law.
 - **Annual Report.** By December 1st each year, each college and university is required to submit to MA DHE a report that includes the following:
 - The total number of reports of sexual misconduct made to the institution's Title IX coordinator by a student or employee against another student or employee
 - The number of reports made by a student or employee of the institution against another student or employee of the institution investigated by a local or state law enforcement agency, if known
 - The number of students or employees found responsible for violating the institution's policies prohibiting sexual misconduct.

- The number of disciplinary actions imposed by the institution as a result of a finding of responsibility.
- MA DHE will use the data to publish an annual report containing aggregate statewide information on the frequency and nature of sexual misconduct.