

# Massachusetts Department of Higher Education

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MAIN OFFICE One Ashburton Place, Room 1401  
Boston, MA 02108  
TEL (617) 994-6950  
FAX (617) 727-0955  
WEB [www.mass.edu](http://www.mass.edu)

OFFICE of STUDENT FINANCIAL ASSISTANCE 75 Pleasant Street, Third Floor  
Malden, MA 02148  
TEL (617) 391-6070  
FAX (617) 391-6085  
WEB [www.mass.edu/osfa](http://www.mass.edu/osfa)

Noe Ortega  
Commissioner  
Chris Gabrieli  
Board Chairman

## Guidance for Developing a Sexual Misconduct Survey

### Introduction & Background

This implementation guidance was authored by the Department of Higher Education (DHE or Department) and developed in furtherance of [Chapter 337 of the Acts of 2020: An Act Relative to Sexual Violence on Higher Education Campuses](#), also known as the 2021 Campus Sexual Assault Law. It is designed to provide guidance to an institution of higher education (IHE) that has chosen to develop its own sexual misconduct climate survey, rather than utilize the [sexual misconduct climate survey and model questions](#) (Appendix B in the linked report) developed by the Task Force on Sexual Misconduct Surveys and approved by the Commissioner of Higher Education.

Under the law, M.G.L. c. 6, § 168D (d)(4) states: *The commissioner of higher education shall review and approve the sexual misconduct climate survey model questions provided by the task force and shall periodically review and make recommendations for changes to the model questions and to the content and timing of the sexual misconduct climate surveys. In addition, the task force may be revived at any time by the commissioner. The commissioner shall provide a copy of the model questions to all institutions; provided, **however, that an institution 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 model questions described in paragraph (2).***

The Task Force and DHE interpreted this clause in the law to allow for IHE's to develop and implement their own surveys. This option is included in the Task Force's [Report](#):

**Recommendation #2:** [The Commissioner shall] [i]ssue policy guidance and allow for a process, in furtherance of the intended purpose of M.G.L. c. 6, § 168D(d)(4) of the law, which enables institutions to develop their own surveys for use on their campuses, as long as the institutions include a subset of questions that generate responses related to topics including, but not limited to:

- a. the prevalence of sexual misconduct on campus;
- b. student knowledge of and familiarity with campus practices for reporting and addressing sexual misconduct; and
- c. services available to victims of sexual misconduct.

Institutions developing their own surveys are encouraged to review and utilize the model questions in Appendix B of the [Report](#) for use in their surveys and/or to serve as a guide to successful question development. To the extent that an institution chooses not to use the model questions, the institution must indicate to the Department

the modules and/or specific questions in its survey that generate responses related to the mandatory topics required by statute and covered by the model questions.

## Compliance with the Law / Reporting to DHE

In order to be in compliance with the law, an institution that wishes to exercise the option to develop, in whole or in part, its own sexual misconduct climate survey, **MUST**:

- (1) certify that its survey:
  - a. is designed to provide the institution with data to inform policies to prevent and respond to sexual misconduct;
  - b. meets quality standards determined by the commissioner; and
  - c. includes the subset of questions set forth in **M.G.L. c. 6, § 168D(b)(2)\***

### **AND**

- (2) provide a chart/matrix setting out the basis for the IHE's certification of compliance with Section 1(a-c) of this guidance.

IHEs shall fulfil the certification requirement by providing this information in *chart/matrix* form, an example of which is included below. An IHE may choose to provide a *narrative description* in addition to the chart/matrix of how its survey is designed to provide the institution with data to inform policies to prevent and respond to sexual misconduct (Section 1(a) above), and meets quality standards determined by the commissioner (Section 1(b) above). "Quality standards" for this purpose are the recommendations and best practices set forth in the Task Force of Sexual Misconduct Survey's Report and Recommendations document<sup>1</sup> approved by the Commissioner on May 3, 2022, and in particular those set forth in Sections I., III., and IV. of the report. Additional guidance on quality standards and guiding principles can be found below.

All IHEs will be expected to provide this certification as an attachment to its Campus Safety and Violence Prevention (CSVP) Annual Report, hosted on the Department's EDvera platform, which collects other compliance information required by M.G.L. c. 6, § 168E(q) and 610 CMR 14.04(1). As with the collection of compliance information and sexual misconduct incident data, certification as it relates to developing a sexual misconduct climate survey shall be submitted through the portal not later than December 1<sup>st</sup> of each year.<sup>23</sup> DHE will notify all designated CSVP contacts when the reporting portal is open for submissions.

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<sup>1</sup> The Task Force on Sexual Misconduct Climate Surveys' final report and recommendations are available at: <https://www.mass.edu/strategic/documents/Task%20Force%20on%20Sexual%20Misconduct%20Surveys%20Final%20Report%20and%20Recommendations-Update.pdf>. For additional information, please visit <https://www.mass.edu/strategic/csvp.asp>.

<sup>2</sup> DHE reserves the right to adjust data collection periods and due dates.

<sup>3</sup> Per DHE's interpretation of the statute, IHEs had until August 1, 2025 to conduct their first survey; and are required to conduct subsequent surveys *no less than every four years*, as required by the statute. IHEs will be asked via the annual reporting portal to indicate their status as it relates to conducting a sexual misconduct survey using the Task Force's model questions, or developing their own survey that aligns with the Task Force's model questions.

## Additional Guidance

### **Quality Standards & Guiding Principles**

In terms of fulfilling the requirement to include a subset of questions described in paragraph (2) [of the statute]\* (Section 1c above), IHEs shall also provide a matrix/chart (e.g., in a spreadsheet program, or a table embedded within a word processing program, or otherwise) that clearly identifies which modules or questions within the institution's survey align with or satisfy the requirements set forth in the statute and described above.

In addition to the quality standards set forth in the recommendations and best practices of Task Force's Report, and in particular those set forth in Sections I, III, and IV of the report, the following Guiding Principles should be considered when designing and administering an alternate survey:

- Terminology should be consistent throughout the survey. For example, if an institution uses the wording "the most recent incident" at the outset of its questions on sexual misconduct, it should be sure to continue to use "most recent" when asking about incidents. Consistency on this point will be essential to ensure valid data capture.
- Use of the word "incident" instead of "experience" should appear consistently throughout the survey. This was debated at length by the Task Force members, and it was determined that "incident" is a more effective and accurate term. Additionally, "incident" is a more trauma-informed term whereas "experience" can sound positive.
- Use of the statutory term "sexual misconduct" -- as defined in the MA statute<sup>4</sup> -- is required. Institutions should eliminate any other synonyms.
- Identity questions<sup>5</sup> should be included in each section regarding incidents of sexual misconduct (whatever type), and should include an "other" option, not just "none of the above."

### **Evaluation of Compliance**

The Department will review each alternative survey that is submitted based on the following criteria:

1. Potential failure to comply with the MA Statute.
2. Survey differs not only from the Model Questions but also from ARC3 (from which the Model Questions were drawn), in ways that DHE deems significant.
3. Differences viewed as reasonable variations that would not prevent an IHE from eliciting the data required by the MA Statute.

All module/question deviations will be reviewed by the Department. Those that fall into the "1" or "3" categories are generally straightforward and will be evaluated as such. Those that fall into the "2" category above will require a more in-depth review. In most cases, deviations that fall into category "3", or "2" and found to be non-complaint, will receive notification of such through the DHE comments provided in the annual report portal. In

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<sup>4</sup> M.G.L. c. 6, § 168D(a) 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.*

<sup>5</sup> This is in reference to the question that asks whether you (the student) believe any aspect of your identity was implicated in the act of sexual assault, stalking, etc. That question has a drop down list that includes identities (race, sexual orientation, gender identity, etc.) and it should include "other."

most cases, IHEs that receive this notification will be expected to make the necessary adjustments prior to their next survey administration to remain in compliance.

### Sample Matrix/Chart

Statute & Task Force Recommended Topics	Task Force Module	IHE Deviation	Justification
the prevalence of sexual misconduct on campus;	<ul style="list-style-type: none"> <li>➤ Sexual Violence Victimization (ARC3 Module 11)</li> <li>➤ Dating Violence Victimization (ARC3 Module 9)</li> <li>➤ Stalking Victimization (ARC3 Module 7)</li> <li>➤ Sexual Harassment By Faculty/Staff (ARC3 Module 5)</li> <li>➤ Sexual Harassment By Students (ARC3 Module 6)</li> </ul>		
student knowledge of and familiarity with campus practices for reporting and addressing sexual misconduct	<ul style="list-style-type: none"> <li>➤ Perceptions of Campus Climate Regarding Sexual Misconduct (ARC3 Module 4)</li> </ul>		
services available to victims of sexual misconduct	<ul style="list-style-type: none"> <li>➤ Institutional Responses (ARC3 Module 13)</li> </ul>		
Bystander Questions (optional module)	<ul style="list-style-type: none"> <li>➤ Bystander Intervention (ARC3 MODULE 16)</li> </ul>		