



## **Mandated Reporter Commission**

**March 30, 2020**

**2:00pm-4:00pm**

### **Responsibility to Report**

Current Language: “A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury...”

Despite this language, there appears to be confusion from mandated reporters regarding whether they are required to report information they learn about as private citizens and/or when not at work. The plain language of this section suggests that the reporting obligation only attaches when a mandated reporter learns information in connection with their employment or when information is conveyed to the reporter because of their known status as a professional. The current language comports with the vast majority of states’ language. The OCA supports the current language. The current language could be changed to a gender neutral format throughout the statute.

### Alternate Language:

- “when acting in a professional capacity” (Maine)
- “in his or her professional or occupational capacity” (Nevada)
- “The following persons and officials are require to report...when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child...” (New York)
- “(1) A mandated reporter...shall make a report...if the mandated reporter has reasonable cause to suspect that a child is the victim of child abuse under any of the following circumstances:
  - i. The mandated reporter comes into contact with the child in the course of employment, occupation and practice of a profession or through a regularly scheduled program, activity or service.
  - ii. The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization other entity that is directly responsible for the care, supervision, guidance or training of the child.



- iii. A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.
- iv. An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.
- (2) Nothing in this section shall require a child to come before a mandated reporter in order for the mandated reporter to make a report of suspected child abuse.
- (3) Nothing in this section shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.”
- Washington state does not distinguish that mandated reporters only report in their professional capacity excepting department of corrections personnel who report observations or information related to “the course of their employment.”

### **Minimum Age of Reporters and Volunteers**

The current statute does not set a minimum age parameter for mandated reporters. Several states include language identifying only persons eighteen years old or older as mandated reporters. This issue overlaps with whether volunteers/interns/unpaid employees should be mandated reporters as persons under the age of eighteen are often in these roles.

The majority of states refer to mandated reporters as “employees.” The term “employee” most often indicates that the individual is a paid, but it is possible that some employers may formally refer to positions as unpaid employees. The Massachusetts definition of a mandated reporter refers at one point to employment and at one point to a person who is paid (see attached statute):

- “person employed by a church or religious body...”
- “person paid to care for or work with a child in any public or private facility”

These categories appear to be carved out for jobs whose titles may be numerous, nonspecific, unregulated, or susceptible to change. It can be inferred from these categories that the other job titles which are more specific and regulated are intended to encompass paid employees only. Similarly, the 51A statute language refers to mandated reporters in their “professional capacity” which suggests that occasional volunteers in the categories described are not mandated reporters.

However, volunteers may have intimate access to children and specialized information regarding children through their volunteer activities. Often volunteers are occasional, but it is also possible that volunteers are indistinguishable from full or part-time employees excepting for their unpaid status. The Commission should consider also that sports coaches in non-school positions are often unpaid and report to volunteer organizations.

The OCA proposes that the Commission clarify these issues.



Proposal:

“‘Mandated reporter’, a person over the age of eighteen who is either a paid employee, or a volunteer working five or more hours per week, in a profession or role listed herein...”

Alternate Language:

- Volunteers in schools working for more than 4 hours per week (Alaska)
- “volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training...and are further encouraged to report...” (California)
- Volunteers of day camps, summer camps, youth centers, youth recreation programs or any organization providing organized activities for children (Louisiana)
- Volunteer or personnel of a community service program that supports families in crisis (Missouri)
- Employee or volunteer in a licensed residential facility for children (New York)
- Any religious staff except for volunteers (Ohio)
- Compensated coach, assistant coach, trainer (Oregon)
- “an individual paid or unpaid, who, on the basis of the individual’s role as an integral part of a regularly schedule program, activity or service, is a person responsible for the child’s welfare or has direct contact with children” (Pennsylvania)

**Categories of Mandated Reporters**

**Medical Providers – M.G.L. c. 119 § 21**

Current Language: “(i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath...”

Proposal #1: “(i) a physician, medical intern, **personnel at a hospital, clinic, urgent care facility, doctor’s office or practice, or at any unlicensed facility providing medical care, who are engaged in the admission,** examination, care or treatment of persons, medical examiner, **pharmacist,** psychologist, emergency medical technician, **any person licensed or certified to provide emergency medical care,** dentist, nurse, chiropractor, podiatrist, optometrist, osteopath...”

Proposal #2: “(i) a physician, medical intern, **personnel at any licensed or unlicensed facility providing medical care, who are engaged in the admission,** examination, care or treatment of persons, medical examiner, **pharmacist,** psychologist, **any person licensed or certified to provide emergency medical care,** dentist, nurse, chiropractor, podiatrist, optometrist, osteopath...”



*Drafting changes meant to capture a wide range of staff in medical settings and unlicensed urgent care facilities or any unlicensed facilities that may arise in the future.*

*The inclusion of pharmacists is due to pharmacists having insight into personal health situations and family health situations, including the possible knowledge of opioid addiction, that may provide a specialized context for identifying concerns of child abuse or neglect.*

*The Office of Emergency Medical Services (OEMS) certifies EMS personnel (EMT, advanced EMT, paramedics), licenses ambulance services, and regulates emergency medical services in Massachusetts. The language added here is intended to cover the persons certified by the OEMS.*

Possible Additions based on other state statutes:

- Any employee of the Department of Public Health (Connecticut)
- Dental hygienist (Illinois, others)
- Acupuncturist (Illinois)
- Medical technician (Illinois)
- Persons engaged in postgraduate training programs approved by the state board of healing arts (Kansas)
- Chief administrative officers of medical care facilities (Kansas)
- Nursing aide (Louisiana)
- “or any other health or mental health professional” catch-all type provision (Missouri, others)
- Home healthcare employees who are expected to have substantial contact with children (New York)
- “a person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State” (Pennsylvania)
- “practitioner solely relying on spiritual healing” (Tennessee, others)
- “any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment” (Virginia)
- “religious healer” (West Virginia)



- “a medical or mental health professional not otherwise specified in this paragraph” (Wisconsin)

## 2.) Mental Health Providers - MGL. c. 119 § 21

Current language: “...allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker...”

*Chapter 112 s. 165 authorizes the Massachusetts Board of Registration of Allied Mental Health and Human Services Professions to license marriage and family therapists, rehabilitation counselors, mental health counselors, educational psychologists, and applied behavior analysts.*

Proposal: “...allied mental health and human services professional licensed under section 165 of chapter 112, **psychoanalyst, substance abuse counselor**, psychiatrist, **psychiatric nurse**, ~~or clinical social worker...~~”

*The proposal includes psychoanalysts which appears to be missing from the statute.*

*Psychoanalysts have a professional degree in psychology or psychiatry and two years of training at a psychoanalytic institute.*

*The proposal includes a psychiatric nurse which is a registered nurse with additional special education in mental health care and are monitored for professional conduct by the Board of Registration in Nursing.*

*The proposal replaces “drug and alcoholism counselor” with “substance abuse counselor.” Substance abuse counselors are licensed by DPH.*

*The proposal suggests removing the term “clinical social worker” as “social worker” is included generally (see below) and the general term is all encompassing.*

### Possible Additions based on other state statutes:

- employees of DV and sexual assault programs (Alaska)
- public/private school counselor (Arkansas) - *suggest we cover this in school employees section*
- not to include a social worker working with an attorney appointed to represent a minor (California)

- “such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation” (Washington D.C.)
- California lists assistants and trainees in this category, as does Illinois
- human trafficking counselor (has a statutory definition) (Washington D.C.)
- Domestic violence counselor (Washington D.C.)
- genetic counselor (Illinois)
- “a counselor or mental health professional” (Iowa) (similar language in Missouri, New York, North Dakota, Ohio)
- when a mental health professional has to report the person they are in the course of treating, the department shall try to reach an agreement with the reporter about how the report should be pursued (Maine)
- licensed masters or bachelors social work (Michigan)
- chemical dependency counselor (South Dakota)
- child counseling personnel (Georgia)

### 3) School Employees – M.G.L. c. 119 § 21

Current language: “...(ii) a public or private school teacher, educational administrator, guidance or family counselor... school attendance officer...[person] in charge of a...school or facility or that person’s designated agent...”

Proposal #1: “any person with teaching responsibilities in any school setting, including public school, private school, charter school, vocational school, online school or courses, or home tutoring, for pre-kindergarten through twelfth grade, any school setting administrator, any school setting employee engaged in any extracurricular activity, guidance or family counselor, school bus drivers and bus monitors,...school attendance officer..[person] in charge of a...school or facility or that person’s designated agent...”

Proposal #2: “any school personnel who interact with any student, enrolled in pre-kindergarten through twelfth grade, during the school day or during any school sanctioned activity, including extracurricular activities and field trips, including personnel at public schools, charter schools, private schools, vocational schools, and in any other school-like setting, school bus drivers and



bus monitors...school attendance officer...[person] in charge of...a school or facility or that person's designated agent..."

Proposal #3: "any person employed by any public school, charter school, private school, vocational school, online school or coursework program, and any home tutor for any child, school bus drivers and bus monitors...school attendance officer...[person] in charge of...a school or facility or that person's designated agent..."

Possible Additions based on other state statutes:

- volunteers in schools working for more than four hours per week (Alaska)
- "an athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction..." for grades k-12 (California)
- "school" includes technical school, vocational school, college, university, or institution of postsecondary education (Georgia)
- visiting teachers (Georgia)
- school personnel including administrators and both certified and non-certified school employees (Illinois)
- member of a school board or governing body of a private school (Illinois)
- a licensed school employee, certified para-educator, holder of a coaching authorization (references statute), or instructor employed by a community college (Iowa)
- teachers, school administrators, or other employees of an educational institution which the child is attending (Kansas)
- school officials (Maine); school employee (Pennsylvania)
- school teachers, officials, and "employees who work during regular school hours" (Montana)
- school nurse (New Hampshire)
- "school official, which includes but is not limited to, school teacher, guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate" (New York)



- school employee including employee of a higher education institution (definition included) (Oregon)
- employees of public or private educational systems (Oregon)
- “a school employee not otherwise specified in this paragraph” (Wisconsin)

### **Higher education:**

Proposal #1: “Any employee or administrator of a public or private post-secondary institution.”

Proposal #2: “Any and all higher education staff and faculty, including senior, junior, and visiting faculty, salaried and non-salaried academic appointees including post-doctoral fellows, research fellows, and teaching assistants, salaried and hourly workers, administrators and employees of any organization operating any program on higher-education property, any contractors operating on higher education property.”

Possible approaches based on other state statutes:

- “any paid administrator, faculty, staff, athletic director, athletic coach or athletic trainer employed by a public or private institution of higher education who is eighteen years old or older, excluding student employees” (Connecticut)
- personnel of institutions of higher education (Illinois)
- school employee including employee of a higher education institution (Oregon)
  - o higher education institution means a community college (internal citation), a public university (citation), the Oregon Health and Science University, and a private institution of higher education located in Oregon.
- any person employed by a public or private institution of higher education other than an attorney (Virginia)
- administrative and academic or athletic department employees, including student employees, of institutions of higher education Washington
  - o “institutions of higher education” or “postsecondary institutions” means the state universities, the regional universities, the Evergreen State College, the community colleges, and the technical colleges.





#### 4) **Public Safety Officials-** M.G.L. c. 119 § 21

Current language: “(iii) a probation officer, clerk-magistrate of a district court, parole officer... firefighter, police officer or animal control officer”

Proposal: “(iii) a probation officer, clerk-magistrate of a district court, parole officer... firefighter, police officer **or law enforcement official**, or animal control officer”

Possible additions based on other state statutes:

- juvenile court personnel (New York)
- a judge presiding during a proceeding/judge (New Mexico, South Carolina, West Virginia, Florida, Tennessee)
- peace officer (New York, Ohio)
- division of juvenile services employee (North Dakota, West Virginia)
- “law enforcement” (multiple states)
- juvenile detention or correctional officers (Texas, Wisconsin)
- department of corrections personnel (Washington)

#### 5) **Social Service Providers** – M.G.L. c. 119 § 21

Current language: “...child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D [Department of Early Education and Care] that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licensior of the department of early education...social worker....foster parent..”

Proposal #1: “...**licensed or unlicensed child** care worker **including a nanny or au pair**, person ~~paid to~~ **caring** for or **working** with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D, **person providing** ~~that provides~~ **child care or residential services to children or that provides the services of child care resource and referral agencies**, **person providing in-home services to a child**, employee of the **Department of Public Health, the Department of Early Education and Care, the Department of Youth Services, Department of Children and Families, the Department of Mental Health, the**



Department of Developmental Services, the Office of the Child Advocate, and any licensors or contractors of those Departments who provide any child or family services, employees of any type of shelter funded or partially-funded by the Commonwealth, person employed as an advocate for a victim of any type, information technologist, computer technician, or film or photo image processor who observes child pornography...social worker...foster parent...”

Possible additions based on other state statutes:

- paid employees of DV and sexual assault programs (Alaska)
- DV victim advocates, sexual assault advocates (Arizona)
- attorney ad litem in the course of their duties as an attorney ad litem (Arkansas)
- rape crisis advocate or volunteer (Arkansas)
- volunteer at a reproductive health facility (Arkansas)
- not a social worker working with an attorney appointed to represent a minor (California)
- “such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation” (Washington D.C.)
- reproductive health care facility or pregnancy resource center personnel (Georgia)
- crisis or hotline personnel (Illinois)
- home health aide (Illinois)/ home healthcare employees who are expected to have substantial contact with children (New York)
- exemption for- a mental health / social services practitioner when engaged by an attorney to assist in the rendition of professional legal services to that child if the info arises in the process of facilitating legal services to the child and so long as the info is documented and documentation is kept until 1 year after the child reaches majority (Louisiana)
- social service technician (Michigan)



- volunteer or personnel of a community service program that supports families in crisis (Missouri)
- social or public assistance worker (South Carolina)
- any person providing full-time or part-time child care for pay on a regularly planned basis (Virginia)

## 6) Clergy – M.G.L. c. 119 § 21

Current language: “...(iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis...”

M.G.L. c. 119 § 51A(j)

“...a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner need not report information solely gained in a confession or similarly confidential communication in other religious faiths. Nothing in the general laws shall modify or limit the duty...under this section when the priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner is acting in some other capacity that would otherwise make him a mandated reporter.”

Proposal: “...(iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, **records custodian for any church or religious body, person providing administrative services for any church or religious body**, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child **or adult** on a regular basis...”

M.G.L. c. 119 § 51A(j)



“...a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner need not report information solely gained in a confession or similarly **well established** confidential communication in other religious faiths. Nothing in the general laws shall modify or limit the duty...under this section when the priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner is acting in some other capacity that would otherwise make him a mandated reporter.”

Possible additions based on other state statutes:

- custodian of records for a clergy member (California)
- any person affiliated with a church or religious institution who services in an administrative capacity or is in a position of trust, whether paid or not (Maine)
- clerical or nonclerical religious counselor who charges for services (South Carolina)
- any religious staff except for volunteers (Ohio)

## **7.) Recreational Activities Staff & Coaches -**

Massachusetts does not include employees of day camps, overnight camps, private sports organizations, and other recreational activity centers as mandated reporters. Approximately thirteen states include these employees to varying degrees.

Proposal #1: “a coach, assistant coach, facilities manager, or director of a private or public youth sports organization, league or team, person affiliated with any public or private entity, including any religious or nonprofit entity, person or entity providing recreational activities or sports activities including day and overnight camps” (based on multiple states)

Proposal #2: “person providing organizational or youth activities including day camps, summer camps, youth centers, youth recreation programs, or any organization providing organized activities for children” (based on Louisiana)

Possible language based on other state statutes:

- administrator or employees of a residential camp, child day camp, or other public or private nonprofit therapeutic wilderness camp (Ohio)

- employees of youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps operated under the guidance, supervision or auspices of religious, public or private educational systems or community services organizations (Oregon)
- camp owner, camp administrator, camp counselor (Vermont)
- any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team (Virginia)
- youth camp administrator or counselor (West Virginia)

## **8.) Recommended Additions**

- attorney except for any information that is protected by attorney-client privilege
- staff at a public library
- guardian ad litem in his/her role as guardian ad litem

### Possible additional categories (may be duplicative):

- an employee of an entity that contracts with the department [DCF] to provide direct services to children (Montana)
- member of the legislative assembly
- employee of a private agency or organization facilitating the provision of respite services pursuant to a properly executed power of attorney
- any professional staff person, not previously enumerated, employed by any public or private organization responsible for the care, custody or control of children (Virginia)
- any person 18 years of age or older who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect (Virginia)
- locksmith



## Protocols of Notification/Institutional Reporting

The Massachusetts statute permits some mandated reporters to transfer their responsibility to report in an agency or institutional setting:

*“If a mandated reporter is a member of the staff of a medical or other public or private institution, school or facility, the mandated reporter may instead notify the person or designated agent in charge of such institution, school or facility who shall become responsible for notifying the department in the manner required by this section.”* MGL. c. 119 § 51A(a).

Currently, this permissive transfer of responsibility does not require that the mandated reporter employee verify that the person in charge, or their designee, made the necessary report. The section also does not address whether the person in charge or their designated agent can alter the information that is reported (adding/ subtracting/ clarifying). Potential issues arise in what information is reported, how the information is reported, the detail with which the information is reported, and the possibility that the person in charge or their designee does not agree that a report is warranted.

There is no uniform practice of institutional reporting across states. Even states with similar structures, such as permissive or mandatory institutional reporting, have unique requirements. States appear to be seeking to balance the needs of the institution to be on notice of the concerns, the protection of the mandated reporter from retaliation, and the concern that the responsibility must clearly lie with someone so as to ensure that reports are actually made and made within a reasonable time.

### Proposal

“If a mandated reporter is a member of the staff of a ~~medical or other~~ public or private institution, ~~school or facility~~, **or organization**, the mandated reporter may, **but cannot be required to, transfer their responsibility to report to** ~~instead notify~~ the person or designated agent in charge of such institution, ~~school or facility~~, **or organization**, who shall become responsible for notifying the department in the manner required by this section. **Such person in charge or their designated agent cannot refuse to report but may conduct a minimal facts inquiry only to determine the basis for filing such a report. No public or private institution, facility, or organization may delay the filing of a report under this section for purposes of conducting an internal investigation.**



The person in charge or their designated agent must notify the mandated reporter who transferred their responsibility that a report has been made by providing that mandatory reporter with a copy of the mandated reporter form or any similar documentation provided by the department to show a report has been filed, within 24 [36/48] hours of the responsibility transfer. If the mandatory reporter receives a copy of the mandated reporter form or any similar documentation provided by the department to show a report has been filed, then the mandated reporter will be held harmless against any claims of failure to file. If a mandatory reporter does not receive the mandated reporter form or any similar documentation provided by the department which shows that a report was filed by the person in charge or their designee, the mandatory reporter must file a report as required by this section and will not be held liable for the delay in reporting. Any report made by a person in charge or their designee based on a transfer in responsibility to report under this sub-section must include the name and contact information for the mandated reporter who transferred the responsibility.

Inclusion of the mandated reporter form or any similar documentation provided by the department to show a report has been filed in a person's medical file within 24 [36/48] hours of the responsibility transfer will be considered sufficient notification to hospital staff under this section.”