

DETAILED PROPOSAL OUTLINE FOR PUBLIC FEEDBACK AND INPUT

The Mandated Reporter Commission is responsible for presenting recommendations to the Massachusetts Legislature to update the mandatory reporter law – M.G.L. c. 119 § 51A-B. The following proposals have been presented for Commission review and the Commission is seeking public comment and feedback on these proposals prior to making any recommendations to the Legislature. The Commission is interested in the effects that the following proposals will have on the system of mandated reporting, mandated reporters themselves, and persons who may be subjects of child abuse and neglect reports.

The Commission will not be making any recommendations regarding the internal workings or processes of the Department of Children and Families and will not consider feedback or proposals that do not relate to the mandated reporting system in Massachusetts.

This document is a detailed proposal outline which includes drafted language of each proposal being presented for Commission consideration and a brief analysis of the proposal. Additional analysis and explanation of these proposals can be found in the MRC Status Report: [Mandated Reporter Commission Status Report | Mass.gov](#). There is also a document available for public comment called the list of proposals that lists the proposals below without the drafted proposal language and without the analysis- this document presents these proposals in a simple format. Both of these documents are available on the MRC webpage: [Mandated Reporter Commission | Mass.gov](#)

The full text of the statutes referenced here are available at:

[General Law - Part I, Title XVII, Chapter 119, Section 21 \(malegislature.gov\)](#)

[General Law - Part I, Title XVII, Chapter 119, Section 51A \(malegislature.gov\)](#)

[General Law - Part I, Title XVII, Chapter 119, Section 51B \(malegislature.gov\)](#)

ALLWRITTEN PUBLIC INPUT AND COMMENTS ON THE PROPOSALS BELOW MUST BE SUBMITTED VIA EMAIL TO [INSERT EMAIL ADDRESS] BY [INSERT DATE]. All written comments must specifically reference the highlighted title of the section to which the comments refer.

The Mandated Reporter Commission will be holding public hearing sessions on the proposals listed below on the following dates: [insert dates]. The Commission strongly encourages that groups and organizations with comprehensive feedback submit such feedback in written format and that individuals who wish to share personal experiences with the Commission do so either in written format or in oral format. Oral testimony at public hearing sessions will be time limited. Anyone can sign up for an opportunity to present oral testimony at a public hearing session on the MRC website: [insert link]. Sign-ups officially close on [insert date].

DEFINITION OF MANDATED REPORTER

INTRODUCTION	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>“Mandated Reporter”, a person who is: a physician, medical intern . . .</p>	<p>“Mandated Reporter,” a person eighteen years old or older who is either a paid employee, or a volunteer, working in a profession or role listed herein, or any other person contracted by any entity to perform the functions of a profession or role listed herein, if such person resides in the Commonwealth or performs the functions of the profession or role listed herein for any child whose residence is in the Commonwealth or who is physically in the Commonwealth.</p> <p>The following subsection titles are for organization purposes only, a profession or role listed herein may fall under one or several subsection titles and non-inclusion under a subsection title has no legal effect on the obligations of mandated reporters.</p>

This proposal adds a minimum age requirement for mandated reporters. The minimum age requirement is set at 18 years old as that is typically the age designated as when a person is considered an adult and when a number of other obligations and rights reserved solely to adults first attach.

The current statute is unclear about whether mandatory reporting obligations are limited to paid employees. This proposal explicitly includes volunteers in any role or position listed in the statute as mandated reporters. The inclusion of volunteers is based on a proposition that it is the role or profession that identifies whether a person is a mandated reporter, not whether they are being paid to perform that role or profession.

This proposal seeks to clarify that persons are mandated reporters for the purposes of Massachusetts law if they are providing services to children in the Commonwealth or who reside in the Commonwealth. This is meant to account for out-of-state persons who provide remote services in the Commonwealth or travel to the Commonwealth to provide services even if they are employed out-of-state.

This proposal explicitly states that any person who is contractually obligated to undertake the responsibilities of the role or profession of a mandated reporter will also be subject to mandated reporter obligations. The definition of “contractor(s)” is proposed further below.

MEDICAL PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(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...	(i): medical providers: 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 or non-emergency medical care including but not limited to: dentist, nurse, chiropractor, podiatrist, optometrist, osteopath

This proposal seeks to expand the scope of medical providers who qualify as mandated reporters beyond a hospital setting as the setting of medical care and treatment does not affect the information or insight a medical provider may learn during the course of such care or treatment.

The proposal is also meant to cover providers in unlicensed and licensed medical facilities as some urgent care facilities and other facilities are unlicensed.

The proposal adds pharmacists to the list of mandated reporters and expands the scope of medical personnel to any person who is licensed to provide emergency or non-emergency medical care.

MENTAL HEALTH PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(i) ... allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker	(ii) mental health providers: any person licensed or certified to provide mental health services including but not limited to: allied mental health and human services professional licensed under section 165 of chapter 112, psychoanalyst, substance abuse counselor, psychiatrist, psychiatric nurse, social worker, any intern, resident, student or trainee providing mental health services under supervision

This proposal includes psychoanalysts and psychiatric nurses in the list of mental health providers as these professionals are in the same type of provider-patient relationship and are privy to the same types of information pertinent to allegations of abuse and/or neglect as mental health providers that are currently covered by the reporting statute.

The proposal eliminates the word “clinical” from “clinical social worker” in an effort to capture all persons working as social workers as any social worker can provide mental health services (to varying degrees depending on their roles), not just those in a clinical or one-to-one relationship.

The proposal replaces the term “drug and alcoholism counselor” with “substance abuse counselor” to reflect the language used by the Department of Public Health who licenses these counselors but also to reflect the reality of substance use disorders which can be broader than drug misuse and alcoholism.

This proposal also includes the addition of any intern, resident, student, or trainee who is providing mental health services to patients, to the list of mandatory reporters.

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EDUCATION PROVIDERS

CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>(ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home program funded by the commonwealth or licensed under chapter 15D 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, licenser of the department of early education and care or school attendance officer</p>	<p>(a) pre-kindergarten through twelfth grade: school board members, any school personnel who interact with any student, pre-kindergarten through twelfth grade, during the school day, on school premises, through technology including remote services, or during any school sanctioned activity, including extracurricular activities and field trips, including personnel at public schools, charter schools, private schools, vocational schools, recovery high schools, online school or courses, home tutoring, or any personnel providing educational services funded by a public or private entity regardless of the service setting, school bus drivers and bus monitors, school attendance officer, person in charge of a school or facility or that person’s designated agent</p> <p>(b) higher education: any and all higher education staff and faculty interacting with students in a teaching, coaching, or advising role, any student employed as research fellows or teaching assistants, all higher education administrators and officers, personnel of any organization or entity operating any program on higher-education property under supervision</p>

The proposal expands mandated reporting requirements to additional education related personnel. The proposal distinguishes roles and professions relating to pre-kindergarten to twelfth grade, and roles and professions relating to higher education.

For pre-kindergarten to twelfth grade, the proposal does not list specific job titles but specifies that mandated reporters are school personnel interact with students in a school-related capacity, regardless of why, how, or where that interaction takes place. This formulation is meant to focus on persons who are responsible for the care of children, who are in a position of authority over children, and who are likely to be exposed to personal and detailed information about children and their families; the focus is not on the specific job titles in the field of education. For the same reasons, the proposal includes school bus drivers, bus monitors, and school board members as mandated reporters.

The proposal addresses remote learning by indicating that mandated reporting requirement apply regardless of setting in which educational services are provided.

The current definition of a mandated reporter does not include personnel working in higher education. The proposal includes higher education personnel as many sports programs and other programs use higher education facilities for their operations. The inclusion of higher education personnel and contractors using higher education facilities is designed to address situations where young adults who are under eighteen years old attend college courses while still enrolled in high school, children attend camps and services in higher education settings, and college students who are younger than eighteen when they matriculate to college.

The proposal moves childcare personnel to the section on “social services providers.”

PUBLIC SAFETY OFFICIALS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(iii) a probation officer, clerk-magistrate of a district court, parole officer...firefighter, police officer or animal control officer	(iv) public safety officials: court personnel, except for judges, interacting with children or youth including, but not limited to, a probation officer, assistant probation officer, family services officer, clerk-magistrate, assistant clerk-magistrate, assistant registrar, judicial case manager, parole officer, firefighter, police officers including campus and state police officers, sworn law enforcement officials, special state police officers, correctional officers, sheriff deputies or animal control officer, and private security personnel

The proposal expands mandated reporting responsibilities to all court personnel interacting with children or youth in their professional capacities. The proposal excludes judges from this list in light of the legal complications that mandated reporting requirements would present for judges as well as to avoid even the appearance that a judge is not impartial in a case before him/her.

The Commission specifically requests input from the public regarding the effect and scope the addition of “special police officers” and “sworn law enforcement officials.”

The proposal includes private security personnel which would include those who are privately contracted for functions like school or athletic events. Members of the public, and particularly children, are unlikely to be able to distinguish private security personnel from public safety officials in times of need or when/if disclosures are made.

SOCIAL SERVICES PROVIDERS

CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>(ii) ...child care worker, person paid to care for or work with a child in any public or private facility, or home program funded by the commonwealth or licensed under chapter 15D 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 and care or school attendance officer</p>	<p>(v) social services providers: licensed or unlicensed child care worker including a nanny or au pair, person 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 residential services to a child, person providing in-home services to a child, personnel of the Department of Public Health, the Department of Early Education and Care, the Department of Elementary and Secondary Education, the Department of Youth Services, the Department of Children and Families, the Department of Mental Health, the Department of Developmental Services, the Department of Transitional Assistance, the Department of Housing and Community Development, the Office of the Child Advocate, personnel of any type of shelter funded or partially-funded by the Commonwealth, personnel of any community service program funded in whole or in part by the Commonwealth that provides assistance or programing to families, personnel paid by any person or entity to provide any service to a person within a home setting including day placements and residential placements, information technologist, computer or electronics technician, or film or photo image processor, social worker, foster parent</p>
<p>(iii) ...social worker, foster parent...</p>	

While the current statutory language could be interpreted to apply to both licensed and unlicensed child care providers, this proposal makes that application explicit.

The proposal includes personnel of all major Commonwealth agencies that provide services to children with the understanding that they are responsible for providing services to children and families and have access to personal and often detailed information about children and the care of children.

The proposal includes information technologists, computer or electronics technicians, and film or photo image processors. The proposal is intended to include persons who have access to intimate details of families’ lives and are one of the primary sources of reports of possession and exchange of child pornography. As in-home technology with the ability to record private information has become ubiquitous, the proposal seeks to identify persons who do, or in the future would, have access to such information. The Commission is particularly interested in

input about the scope of this proposal in terms of the types of roles and professions that it would apply to and the possibility that those roles and professions would be privy to information relevant to mandated reporting responsibilities.

PERSONS RETAINED BY AN ATTORNEY	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	A person retained by an attorney to assist the attorney in his or her representation of an individual client or employed by a legal service provider to assist its attorneys in their representation of individual clients shall not be a mandated reporter for information learned about a reportable condition under M.G.L. c. 119 § 51A if that information is obtained in connection with his or her retention by the attorney or his or her employment by a legal service provider.

This proposal explicitly excludes persons who are working on legal defense teams from mandated reporting requirements for information they learn in their work on the legal defense team. This exclusion would apply to any person retained to work on a legal defense team, the most common example is that of social workers working on legal defense teams. The Commission has heard opposing testimony about whether social workers can abide by mandated reporter obligations without compromising their role on legal defense teams.

MENTORS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	(vi) mentors: person providing mentorship to any person through a paid or unpaid relationship with an organization or entity excluding entities providing direct confidential services to victims of domestic violence, sexual assault, or human trafficking

This proposal seeks to add persons providing paid or unpaid mentorship to the definition of mandated reporter due to the very intimate and trusting relationships between mentors and mentees which may result in the sharing of allegations of abuse and neglect, particularly when the mentee is a child.

The proposal excludes persons who provide direct confidential services to victims of domestic violence, sexual assault, or human trafficking. The reasoning behind the proposed exclusion is to reduce the barriers, or perceived barriers, in the way of persons who may be seeking immediate physical safety. Persons who seek physical safety are likely to be seeking to improve the safety situation for their children though the current situation they are in is unsafe. The

Commission is particularly seeking feedback on the scope and effect of this possible exclusion and whether this should be an exclusion limited to mentor relationships or should be more broadly applied to any type of assistance such as mental health assistance or housing.

CLERGY	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(iv) a priest, rabbi, clergy member, 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	(vii) clergy: 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

This proposal is based on recent legal cases across the country that have tested other states’ statutes as they relate to the application of mandatory reporter laws to the clergy or otherwise religious roles and professions.

This proposal adds persons who perform the duties of clergy members even if they are not clergy members themselves, to the list of mandated reporters. It also adds records custodians for religious bodies as mandated reporters. The proposal expands mandated reporter responsibilities to those who supervise, educate, coach, train or counsel adults in addition to those who counsel children.

OTHER YOUTH SERVING INDIVIDUALS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	(viii) other youth serving individuals: personnel of a public library, any personnel of a public, private or religious organization providing recreational activities or services for children, including but not limited to day camps, summer camps, youth programs, sports organizations, and scouting groups

This proposal would create a new category of mandated reporters that provide programming for children. These disparate service providers are all housed under this non-substantive title as they

are not organized via certifications or licensing or under a state regulatory umbrella. Examples include dance and karate studios, sports leagues, etc. These roles have been proposed because persons in these roles are often entrusted to care for children in remote or private spaces, they run programming specifically designed for children, and the persons involved are often in a trust relationship with a child or family.

CONTRACTOR	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	Contractor’ as used in this section includes any person who owns, operates, is employed by, or volunteers in association with, an entity that undertakes, or is contractually obligated to undertake, any responsibility for the functions of any profession or role listed in M.G.L. c. 119 § 21 regardless of licensing, certification, or contractually negotiated terms; “contractors” shall include, but not be limited to, public and private entities providing direct services to children in the Commonwealth on behalf of, or in connection with, any state agency.

This proposals explicitly adds “contractors” to the list of mandated reporters and defines the term. This proposal adds any person who is contractually obligated to undertake the responsibilities of the role or profession of a mandated reporter as a mandated reporter and defines the term “contractor” for these purposes. This is most relevant in situations where a state agency is contracting to have a service provided, such as a group foster home run by a non-state entity, to children or for children in the Commonwealth.

REPORTING RESPONSIBILITY AND DEFINITIONS

REPORTING RESPONSIBILITY	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233	A mandated reporter shall immediately file an oral report with the Department and shall file a written report with the Department within 48 hours detailing any situation in which that reporter, in their professional capacity, has reasonable cause to believe that a child is suffering, or at substantial risk of suffering, an injury to their physical, mental, or emotional health or condition resulting from: (i) abuse inflicted upon the child; (ii) neglect; or if a child is (iii) born affected by substance abuse, experiences withdrawal symptoms from prenatal drug exposure, or is affected by Fetal Alcohol Spectrum Disorder; (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

This proposal requires that mandated reporters file a report when they believe there is a substantial risk of a child suffering an injury, rather than the current statutory language which indicates that reports should be made once a child is suffering from an injury. This change reflects the reality of the reports that are already being reported to DCF.

This proposal changes the categories of injury and risk of injury that require reporting from “physical or emotional injury” to “injury to [a child’s] physical, mental, or emotional health or condition.” This proposal is meant to capture the breadth of possible injuries to a child that are considered abuse or neglect. An example of an injury to mental health or condition could be the refusal of a caregiver to provide a child with prescribed mental health medication or therapeutic services. The proposal also seeks to clarify that an emotional “injury” is damage to a child’s emotional health or emotional condition.

This proposal also changes the wording related to children who are born affected by drug abuse or experiences withdrawal symptoms from prenatal drug exposure or is affected by Fetal Alcohol Spectrum Disorder. Current federal requirements dictate that DCF is required to collect data about newborns who are born in the manner described above and whether those children have Plans of Safe Care. Although DCF is required to collect certain data, the federal requirements do not mandate that such data collection be through child abuse and neglect reports. No proposal language has yet been presented to the Commission for the Commission’s review. However, the proposal being contemplated by the Commission is to create a dual-track reporting system which permits reporting of infants born exposed to substances, such as prescribed medication for opioid use disorder, which do not reach the standard of a mandated reporter’s reasonable cause to believe a child is suffering or will suffer child abuse or neglect, to the Department of Public Health or some other state entity. The de-identified data from those reports can be transferred to DCF for the federal reporting requirements. When an infant is born exposed to substances and the mandated reporter does have a concern for child abuse and neglect, then that report would be reported to DCF and not to the Department of Public Health or some other state entity. Although there is no proposal language yet presented to the Commission for consideration, the Commission would like to hear public input regarding the possibility of a dual-track reporting system as described herein.

DEFINITION OF ABUSE	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	“Abuse” of a child is when a child’s physical condition, mental or emotional health, or welfare, is injured, or is at substantial risk of being injured, by the non-accidental action of another including, but not limited to sexual abuse.

Currently, the statute does not define child abuse other than to indicate that abuse is inflicted and that it includes sexual abuse. This proposal would add a definition into the statute in an effort to clearly communicate to mandated reporters the scope of their requirements and to provide some level of guidance about what types of injury fall into the category of abuse. This proposal mentions “sexual abuse” which is currently not defined in statute but is the subject of a proposal below.

DEFINITION OF NEGLECT

CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	“Neglect” of a child is when a child’s physical condition, mental or emotional health, or welfare, is injured or is at substantial risk of being injured, by the failure or refusal of another/caregiver to provide minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care to ensure a child’s safety.

Currently, the statute does not define child neglect other than to indicate that neglect includes malnutrition. This proposal would add a definition into the statute in an effort to clearly communicate to mandated reporters the scope of their requirements and to provide some level of guidance about what types of injury fall into the category of neglect. This proposal notes that there is disagreement as to whether the proposal should include the word “another” or the word “caregiver.” “Caregiver” should be understood as having the same meaning as the DCF definition and application of the term “caretaker.” The Commission is seeking comment on this definition generally and specifically as it relates to the effect the word choice between “another” and “caregiver” may have.

DEFINITION OF SEXUAL ABUSE

CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	Non-accidental sexual act(s) with a child, or in the presence of a child, that causes harm or substantial risk of harm to the child’s physical condition, mental or emotional health, or welfare, when considering the totality of the circumstances, including, but not limited to: age disparities; the child’s cognitive, emotional, psychological, and social maturity; any power imbalance; whether coercive factors are present; whether the act was committed without consent; and whether the child was incapable of consent due to factors such as intoxication, sleep, or disability. Sexual abuse can be physical, verbal, or written. Consensual communications between peers that do not involve coercion or exploitation are not sexual abuse.

This proposal would add a definition of sexual abuse that is not currently in the statute. This proposal is intended to clarify what sexual abuse is in the context of 51A as sexual abuse may be

differently understood or defined in other contexts (such as criminal statutes). This proposal is also intended to provide guidance to mandated reporters about the scope of their responsibilities and provide some guidance in evaluating the information they have in terms of whether such information amounts to a reasonable cause to believe a child is suffering from or will suffer from child abuse or neglect.

DEFINITION OF REASONABLE CAUSE TO BELIEVE	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury...shall immediately communicate with the department orally and, within 48 hours, shall file a written report...	A “reasonable cause to believe” is a suspicion that a child has been maltreated or is at substantial risk of being maltreated, based on a presentation of facts which can include a child’s disclosure, an admission by a perpetrator, information from a third party, or a mandated reporter’s own observations or impressions which may be informed by a particular expertise, training, or experience. Proof or certainty is not required.

The 51A reporting statute sets a standard that mandated reporters notify DCF when they have a “reasonable cause to believe” that abuse and/or neglect has occurred. This proposal would add a definition of the reasonable cause to believe standard to the statute. This proposal is intended to make the legal standard more accessible to non-lawyers who use the mandated reporter statute for guidance about reporting responsibilities. The proposal intends to clarify this reporting standard in an effort to reduce the number of reports that are screened-out by DCF for failure to rise to the level of abuse or neglect, or failure to state a sufficiently grounded allegation of abuse and neglect.

INSTITUTIONAL REPORTING

The term “institutional reporting” refers to the current statute’s provision that mandated reporters who are members of the staff of a medical or other public or private institution, school, or facility can notify the person in charge, or the designee of the person in charge, of that institution, school or facility, of allegations of abuse or neglect thereby transferring the responsibility to report those allegations to DCF, to that person in charge or the designee. For example, a school teacher who learns of allegations of abuse or neglect regarding the care of a student, may alert the principal of those allegations, and legally it becomes the principal’s obligation to file the 51A report rather than the teacher’s obligation.

INSTITUTIONAL REPORTING	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>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</p>	<p>If a mandated reporter is a member of the staff of a public or private institution, facility, or organization, such institution, facility, or organization may establish a written protocol by which the mandated reporter must notify the person or designated agent in charge of such institution, facility, or organization, of the information that that mandated reporter believes requires reporting under this section. The person or designated agent in charge shall then become responsible for notifying the department in the manner required by this section. However, this written protocol must provide the mandated reporter the ability to file a report individually as required under this section without notifying the person or designated agent in charge if the mandated reporter has a reasonable fear of employer retaliation for filing under this section or if the alleged perpetrator in the report is the person or designated agent in charge.</p> <p>The written protocol must specify that the person or designated agent in charge has no discretion to refuse the filing of a report or alter the information provided by the notifying mandated reporter. The notifying mandated reporter shall be provided confirmation in</p>

writing within 24 hours of the notification that the report was filed pursuant to the institutional protocol. Under no circumstances can any institution, facility, or organization delay the filing of a report under this section for purposes of conducting an internal investigation. Nothing in this subsection would prevent a person or designated agent in charge from adding supplemental information to the report filed under this section, so long as that information is clearly identified as supplemental. Nothing in this subsection prevents an institution from creating internal reporting requirements for employee misconduct. The written protocol under this subsection must specify where documentation of notification by mandated reporters to persons in charge or designated agents and documentation of reports filed under this section shall be maintained, and the protocol must specify the confidentiality procedures applicable to such documentation.

A mandated reporter who follows the protocol created by the institution, facility, or organization under this subsection and believes a report to have been dutifully made under this section as a result of their notification to the person in charge or designated agent, shall be held harmless against any claims of failure to file unless and until the mandated reporter is provided factual information to indicate that a report has not been made under this section.

Any report made by a person in charge or their designated agent based under this subsection must identify whether the report was made pursuant to a protocol under this subsection in the report. The written protocol under this subsection must not in any way discourage reporting by mandated reporters or persons in charge or their designated agents under this subsection.

This proposal is meant to address some of the concerns resulting from the current statutory language which include: lack of clarity regarding whether the institution can refuse to file a report or alter the information in the report, or whether the institution should notify the staff member that a report has been made. This proposal seeks to create a clearer system of obligations between the staff member and the institution and seeks to expressly limit internal institutional investigations delaying or preventing reports to DCF.

This proposal results in the following structure:

- Institutions that wish to utilize an institutional reporting structure must do so through a formalized written protocol they create;
- Institutional reporting structures, once in place through a written protocol, will require that mandated reporters utilize the institutional process for reporting unless that mandated reporter has a reasonable fear of employer retaliation for filing or if the person in charge, or that person's designee for institutional reporting purposes, is the alleged perpetrator of the abuse or neglect;
- The person in charge or their designee for institutional reporting purposes will not have discretion to refuse to file a 51A report and will not be permitted to alter the information relayed by the mandated reporter;
- The person in charge or their designee for institutional reporting purposes will be permitted to report supplemental information to DCF at the time of the making of the report but such supplemental information must be identified by the person in charge or the designee as supplemental information; and
- The person in charge or their designee must provide the mandated reporter with written confirmation stating that they, the person in charge or their designee, have made the 51A report to DCF within 24 hours of that mandated reporter having instituted the use of the institutional reporting procedure. If the confirmation is not received, the mandated reporter must immediately file a report.

Although specific language is not proposed here, this proposal would also include that licensing regulations require compliance with this proposed structure.

PENALTIES

The current statute has several monetary penalties that were set when the law was first drafted several decades ago. The following proposals seek to update those monetary penalty amounts through the institution of a range of possible penalties that could be sought by a district attorney or set by a judge based on an individual’s income and the severity of the violation of the statute.

PENALTY FOR VIOLATING THE STATUTE GENERALLY	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
Notwithstanding subsection (g), whoever violates this section shall be punished by a fine of not more than \$1,000.	Notwithstanding subsection (g) [no mandated reporter shall be liable in any civil or criminal action if the report was made in good faith, not frivolous, and the reporter did not cause the abuse or neglect], whoever violates this section shall be punished by a fine of not less than \$1,000 and not more than \$10,000.

This proposal updates the monetary range from up to \$1,000 to a minimum of \$1,000 and a maximum of \$10,000. The range is intended to provide flexibility to account for differences in individual’s income levels (a fine of \$1,000 is a heavier burden to some individuals than it is to others) and to recognize that some violations of the statute may be considered more serious than other violations and could incur a greater penalty. It is assumed that the relevant district attorney’s office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

PENALTY FOR FALSE OR FRIVOLOUS REPORTING	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
Whoever knowingly and willfully files a frivolous report of child abuse or neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the first offense; (ii) imprisonment in a house of correction of not more than 6 months and a fine of not more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for not more than 2 ½ years and a fine of not more than \$2,000 for the third and subsequent offenses	Whoever knowingly and willfully files a frivolous report of child abuse or neglect under this section shall be punished by: (i) a fine of not more than \$10,000 for the first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of not more than \$10,000 for the second offense; and (iii) imprisonment in a house of correction for not more than 2 ½ years and a fin of not more than \$10,000 for the third and subsequent offenses

This proposal updates the monetary range from a maximum of \$2,000 to a maximum of \$10,000. The range is intended to provide flexibility to account for differences in individual’s income levels (a fine of \$10,000 is a heavier burden to some individuals than it is to others) and to recognize that some violations of the statute may be considered more serious than other violations and could incur a greater penalty. It is assumed that the relevant district attorney’s

office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

PENALTY FOR WILLFUL AND SERIOUS VIOLATIONS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury to or death of a child and willfully fails to report such abuse or neglect shall be punished by a fine of up to \$5,000 or imprisonment in the house of correction for not more than 2 ½ years or by both such a fine and imprisonment; and upon a guilty finding or continuance without a finding, the court shall notify any appropriate professional licensing authority of the mandated reporter’s violation of this paragraph.	Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury or death of a child and willfully fails to report such abuse or neglect shall be punished by a fine of not less than \$5,000 and not more than \$50,000 or imprisonment in the house of correction for not more than 2 ½ years or by both such find and imprisonment; and, upon a guilty finding or a continuance without a finding, the court shall notify any appropriate professional licensing authority of the mandated reporter’s violation of this paragraph.

This proposal updates the monetary range from a maximum of \$5,000 to a maximum of \$50,000. The range is intended to provide flexibility to account for differences in individual’s income levels (a fine of \$5,000 is a heavier burden to some individuals than it is to others) and to recognize that some violations of the statute may be considered more serious than other violations and could incur a greater penalty. It is assumed that the relevant district attorney’s office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

PENALTY FOR FAILING TO REPORT A CHILD DEATH	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
A mandated reporter who has reasonable cause to believe that the child has died as a result of the conditions listed in subsection (a) shall report the death to the district attorney for the county in which the death occurred and the office of the chief medical examiner as required by clause (16) of section 3 of chapter 38. Any person who fails to file a report under this subsection shall be punished by a fine of not more than \$1,000.	A mandated reporter who has reasonable cause to believe that a child has died as a result of any of the conditions listed in subsection (a) shall report the death to the district attorney for the county in which the death occurred and the office of the chief medical examiner as required by clause (16) of section 3 of chapter 38. Any person who fails to file a report under this subsection shall be punished by a fine of not less than \$1,000 and not more than \$10,000.

This proposal updates the monetary range from up to \$1,000 to a minimum of \$1,000 and a maximum of \$10,000. The range is intended to provide flexibility to account for differences in individual’s income levels (a fine of \$1,000 is a heavier burden to some individuals than it is to others) and to recognize that some violations of the statute may be considered more serious than

other violations and could incur a greater penalty. It is assumed that the relevant district attorney's office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

LICENSING VIOLATIONS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	Upon the determination of any law enforcement entity, state investigatory agency, or licensing body, that a mandated reporter or licensed institution violated this section, that entity, agency, or body, shall notify the appropriate professional licensing authority with redacted records which protect the confidentiality of any person other than the mandated reporter to the extent that those records substantiate a violation of this section. Any and all hearings or other disciplinary procedures by a licensing authority regarding this section shall be closed to the general public and all Department records obtained for these purposes shall be confidential and exempt from disclosure under chapter 66A and chapter 66 and clause twenty-six of section 7 of chapter 4. Nothing in this subsection shall interfere with the obligations of the Department under section 51B(1) of chapter 119.

This proposal creates a notification to a licensing authority when a mandated reporter, who is licensed or certified in their role or profession, violates their mandated reporter responsibilities. This proposal does not mandate that a licensing authority take action on this notification, but does permit the transfer of relevant information if a licensing authority does pursue a licensing penalty.

EMPLOYER RETALIATION

EMPLOYER RETALIATION	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>No employer shall discharge, discriminate or retaliate against a mandated reporter who, in good faith, files a report under this section, testifies or is about to testify in any proceeding involving child abuse or neglect. Any employer who discharges, discriminates or retaliates against that mandated reporter shall be liable to the mandated reporter for treble damages, costs and attorney’s fees.</p>	<p>No employer shall discharge, discriminate or retaliate against any person who, in good faith, files a report under this section, testifies or is about to testify in any proceeding involving child abuse or neglect. Any employer who discharges, discriminates or retaliates against that mandated reporter shall be liable to the mandated reporter for treble damages, costs and attorney’s fees.</p>
<p>No employer shall discharge, discriminate or retaliate against a mandated reporter who, in good faith, provides such information, testifies or is about to testify in any proceeding involving child abuse or neglect unless such person perpetrated or inflicted such abuse or neglect. Any employer who discharges, discriminates or retaliates against such a person shall be liable to such a person for treble damages, costs and attorney’s fees.</p>	<p>No employer shall discharge, discriminate or retaliate against any person who, in good faith, provides such information, testifies or is about to testify in any proceeding involving child abuse or neglect unless such person perpetrated or inflicted such abuse or neglect. Any employer who discharges, discriminates or retaliates against such a person shall be liable to such a person for treble damages, costs and attorney’s fees.</p>

This proposal extends the protections against employer retaliation to any person who files a report of child abuse or neglect, or participates in an investigation or legal case, not just to mandated reporters.

The Commission is also considering a proposal of whether to designate a certain state entity to evaluate claims, file claims, and hear claims of employer retaliation. This proposal does not yet have specific language for Commission consideration but is intended to ensure that employer retaliation claims can be effectively pursued without the burden of costly attorney fees.

MANDATED REPORTER TRAINING

MANDATED REPORTER TRAINING	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>A mandated reporter who is professionally licensed by the commonwealth shall complete training to recognize and report suspected child abuse or neglect</p>	<p>PROPOSAL 1: A mandated reporter under this section shall complete an initial mandated reporter general training within three months of their date of engagement in a professional capacity or role as a mandated reporter, and must then complete a mandated reporter training at least every two years thereafter for so long as the mandated reporter is engaged as a mandated reporter. The initial requirement must only be completed once in the mandated reporter’s career as a mandated reporter.</p> <p>The general trainings shall be in-person or internet-based and shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; understanding the response of the Department and the role of the reporter after a report has been made; penalties for failure to report; and prohibition against employer retaliation for reporting. A mandated reporter training that is not the initial general training, shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; penalties for failure to report; and prohibition against employer retaliation for reporting.</p> <p>The mandated reporter training shall be provided through an entity authorized by the Secretary of the Executive Office of Health and Human Services. The authorized entity shall provide access to a free internet-based initial mandated reporter general training. The</p>

authorized entity shall have the authority to provide free mandated reporter trainings that are not the initial general training and shall have the authority to approve the curriculum of any mandated reporter training provided by any other entity for the purpose of this subsection. The authorized entity shall have the authority to provide trainings on issues related to the mandated reporter law, such as the institutional reporting procedure, and shall have the responsibility of compiling all relevant Commonwealth issued information on mandated reporting including Department guidance. The authorized entity shall be required to issue public service announcements about mandated reporting at least every three years on a topic within the authorized entity's discretion. The authorized entity shall issue public service announcements, in addition to the announcement every three years, at any time the mandated reporter statute is altered. The Secretary of the Executive Office of Health and Human Services may revoke the authority of the authorized entity at any time for any reason so long as the Secretary simultaneously authorizes another entity to perform the functions of this subsection.

Each mandated reporter shall report to his or her employer each time that reporter has completed a mandated reporter training and shall provide a copy of their certificate of completion. Each mandated reporter is responsible for keeping copies of all certificates of completion for any mandated reporter training completed.

Beginning on [date], each mandated reporter who is licensed or certified for a profession or role listed as a mandated reporter under MGL c. 119 §21, shall be required by the licensing or certification entity to comply with mandated reporter training as described herein and shall be required at the time of licensing or certification, or at the time of licensing or certification renewal, to demonstrate compliance with this subsection through copies

of certificates of completion as a condition of such licensing or certification.

Any person who is engaged in a profession or role listed as a mandated reporter under MGL c. 119 § 21 at the time this subsection takes effect, shall have one year from the date of the enactment of this subsection to comply with the initial general training requirement.

PROPOSAL 2:

A mandated reporter under this section shall complete a mandated reporter training within three months of their date of engagement in a professional capacity or role as a mandated reporter, and must then complete a mandated reporter training at least every two years thereafter for so long as the mandated reporter is engaged as a mandated reporter. The initial requirement must only be completed once in the mandated reporter's career as a mandated reporter.

The mandated reporter training may be in-person or internet-based and shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; understanding the response of the Department and the role of the reporter after a report has been made; penalties for failure to report; and prohibition against employer retaliation for reporting.

Each mandated reporter shall report to his or her employer each time that reporter has completed a mandated reporter training and shall provide a copy of their certificate of completion. Each mandated reporter is responsible for keeping copies of all certificates of completion for any mandated reporter training completed.

Beginning on [date], each mandated reporter who is licensed or certified for a profession or role listed as a mandated reporter under MGL c. 119 §21, shall be required by the licensing or

	<p>certification entity to comply with mandated reporter training as described herein and shall be required at the time of licensing or certification, or at the time of licensing or certification renewal, to demonstrate compliance with this subsection through copies of certificates of completion as a condition of such licensing or certification.</p> <p>Any person who is engaged in a profession or role listed as a mandated reporter under MGL c. 119 § 21 at the time this subsection takes effect, shall have one year from the date of the enactment of this subsection to comply with the initial general training requirement.</p>
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There are two proposals here for public input and feedback. Both of these proposals would change the statute to require that all mandated reporters complete training to recognize and report suspected child abuse and neglect within the first three months of their employment as a mandated reporter and every two years thereafter.

Proposal 1 would require that the trainee take a general mandated reporter training the first time the training requirement is due, but also would permit the trainee to take approved profession specific and specialty specific trainings whenever the training requirement is due during the course of their career. This proposal would require that a state sanctioned entity create and approve curriculums for trainings.

Proposal 2 would require that the trainee take the same general mandated reporter training every time the training requirement is due during the course of their career and would not require a state sanctioned entity to create and approve curriculums for training.

VOLUNTEER TRAINING

CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	Any mandated reporter who is a volunteer working less than 35 hours per year in the role or profession that qualifies them as a mandated reporter shall be required to take a general mandated reporter training no more than 30 minutes long that can either be written material or internet-based. The mandated reporter volunteer must sign an affirmation that they have read or reviewed the training prior to volunteering in the role or profession that qualifies them as a mandated reporter and must keep a copy of that affirmation for their own records.

This proposal seeks to draw a distinction between mandated reporters who are employed in the profession that makes them a mandated reporter and volunteers who may be mandated reporters for limited purposes and limited time frames.

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