

DRAFT REPORT

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.

This document is a draft report that details the current proposals before the Commission for the Commission’s review and final determination. This document provides analysis and explanation of these proposals. The document also solicits feedback on additional topics. The Commission will review the public feedback given on this document prior to taking any vote on the proposals in the document and prior to issuing a final report to the legislature. Additional information about the Mandated Reporter Commission can be found on our website: [Mandated Reporter Commission | Mass.gov](https://www.mass.gov/info-details/mandated-reporter-commission)

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

The full text of the statutes referenced here are available at:
[General Law - Part I, Title XVII, Chapter 119, Section 21 \(malegislature.gov\)](https://malegislature.gov/Laws/General-Laws/Part-I/Title-XVII/Chapter-119/Section-21)
[General Law - Part I, Title XVII, Chapter 119, Section 51A \(malegislature.gov\)](https://malegislature.gov/Laws/General-Laws/Part-I/Title-XVII/Chapter-119/Section-51A)
[General Law - Part I, Title XVII, Chapter 119, Section 51B \(malegislature.gov\)](https://malegislature.gov/Laws/General-Laws/Part-I/Title-XVII/Chapter-119/Section-51B)

How to Submit Feedback on this Report to the

Mandated Reporter Commission

- Length and dates of the public comment period
- Requirement that comments be in Word or in PDF
- Request that comments refer to specific report page numbers and/or headings
- Recognition that the OCA, as the Chair of the Commission, has discretion to filter any comments that do not relate to the topics addressed herein
- The OCA will filter, sort, and summarize (as need be) public comments for presentation at Commission meetings- however, public comments will all be available in their original form to Commission members and will be made available publicly
- Notification of meetings held pursuant to Open Meeting Law- where the Commission will review and address comments
- Other ways to contact the Commission (?)

About the Mandated Reporter Commission:

The Child Health and Wellness Bill signed by Governor Baker on November 26, 2019 established the [Mandated Reporter Commission](https://www.mass.gov/mandated-reporter-commission)¹ (Commission). The Child Advocate is the Chair of the Commission which is charged with reviewing the current mandated reporter law and regulations for child abuse and neglect, and to make recommendations on how to improve the response to, and prevention of, child abuse and neglect. The Commission is comprised of statutory members who represent a wide range of viewpoints from public entities and groups who have extensive experience with mandated reporting in the Commonwealth.

The need for a comprehensive review of the Commonwealth's child maltreatment reporting structure was identified by a working group assembled by the Joint Committee on Children, Families and Persons with Disabilities in early 2018. In 2018 the House Committee on Post Audit and Oversight issued its report "Raising the Bar: A vision for Improving Mandated Reporting Practices in the Commonwealth" which recommended that the Massachusetts Legislature enact legislation to require coaches, administrators, and other staff employed by or volunteering with a private athletic organization to act as mandated reporters. It further recommended that the Commonwealth institute a standardized online mandated reporter training with an Executive Office of Health and Human Services approved curriculum developed in conjunction with other stakeholders. Additionally, reports by the Massachusetts Legislative Task Force on Child Sexual Abuse Prevention,² the Residential Schools Interagency Task Force,³ as well as the State Auditor's 2017 report "Review of Mandated Reports of Children Born with a Physical Dependence on an Addictive Drug at the UMass Memorial Medical Center, Inc.",⁴ identified the need for clarifications to mandated reporting responsibilities, especially in institutional settings.

Since its original passage in 1973, the mandatory reporting statute has been updated several times⁵ but a comprehensive review has never been undertaken. The Mandated Reporter Commission was created by the Massachusetts Legislature, under

¹ <https://www.mass.gov/mandated-reporter-commission>

² Available at: [Report SD.2251 \(malegislature.gov\)](https://malegislature.gov/Reports/2017-4601-3C-Substance-Exposed-Newborns-at-UMass-Memorial-Medical-Center-UMMC);
[Child Sexual Abuse Prevention Task Force Report.pdf \(childrenstrustma.org\)](https://www.childrenstrustma.org/Child-Sexual-Abuse-Prevention-Task-Force-Report.pdf)

³ Available at: [MA OCA Residential Schools Report April 2017 \(mass.gov\)](https://www.mass.gov/MA-OCA-Residential-Schools-Report-April-2017)

⁴ Available at: [2017-4601-3C Substance-Exposed Newborns at UMass Memorial Medical Center \(UMMC\)](https://www.mass.gov/2017-4601-3C-Substance-Exposed-Newborns-at-UMass-Memorial-Medical-Center-UMMC)

⁵ Since 1989 the statute has been updated six times: in 1990 changes were made to MGL c. 119 §51A(a), in 1997 podiatrists were added to the list of mandated reporters, in 2002 some categories of religious personnel/clergy were added to the list of mandated reporters, in 2008 the definition of "mandated reporter" was moved from §51A to MGL c. 119 §21, in 2008 the definition of mandated reporter language changed from "family day care systems" to "family child care systems," and in 2018 animal control officers were added to the list of mandated reporters.

the chairmanship of the Office of the Child Advocate, to comprehensively review the statute to recommend systematic changes. A revision to the mandated reporter law is critical to ensure an effective process of reporting child abuse and neglect.

Enabling Legislation: An Act Relative to Children's Health and Wellness

SECTION 12. (a) There shall be a special commission to review and report on existing mandated reporter laws and regulations and make recommendations on how to improve the response to, and prevention of, child abuse and neglect. The report shall include, but not be limited to, findings and recommendations on: (i) the scope of mandated reporter laws and regulations including, but not limited to, persons included in the mandated reporter definition; (ii) mandated reporter training requirements for employees, including employees of licensees or contracted organizations; and (iii) accountability and oversight of the mandated reporter system including, but not limited to, procedures for a mandated reporter to notify the person or designated agent in charge and responses to reports of intimidation and retaliation against mandated reporters.

(b) The commission shall consist of the following 13 members: the child advocate, who shall serve as chair; the secretary of health and human services or a designee; the secretary of education or a designee; the secretary of public safety and security or a designee; the attorney general or a designee; the commissioner of elementary and secondary education or a designee; the commissioner of early education and care or a designee; the commissioner of children and families or a designee; the commissioner of the division of professional licensure or a designee; the chief counsel of the committee for public counsel services or a designee; a representative of the Massachusetts District Attorneys Association or a designee; and 2 members to be appointed by the governor, 1 of whom shall be a representative of a labor union representing healthcare employees subject to mandated reporter laws and 1 of whom shall be a representative of a labor union representing non-healthcare employees subject to mandated reporter laws. The commission may consider input from any relevant organization.

(c) The commission shall review: (i) the agencies and employers responsible for training mandated reporters; (ii) the frequency, scope and effectiveness of mandated reporter training and continuing education including, but not limited to, whether such training and continuing education covers retaliation protections for filing a report as a mandated reporter and the fines and penalties for failure to report under section 51A of chapter 119 of the General Laws; (iii) whether agencies and employers follow best practices for mandated reporter training, including profession-specific training for recognizing the signs of child sexual abuse and physical and emotional abuse and neglect; (iv) the process for notifying mandated reporters of changes to mandated reporter laws and regulations; (v) the department of children and families' responses to written reports filed under said section 51A of said chapter 119, including offenses that require a referral to the district attorney; (vi) the feasibility of developing an automated,

unified and confidential tracking system for all reports filed under said section 51A of said chapter 119; (vii) protocols related to filing a report under said section 51A of said chapter 119, including the notification of the person or designated agent in charge and the submission of required documentation; (viii) the availability of information at schools regarding the protocols for filing a report under said section 51A of said chapter 119; (ix) options for the development of public service announcements to ensure the safety and well-being of children; (x) proposals to revise the definition of child abuse and neglect to ensure a standard definition among state agencies; (xi) proposals to expand mandated reporting requirements under sections 51A to 51F, inclusive, of said chapter 119; and (xii) options for designating an agency responsible for overseeing the mandated reporter system or aspects thereof, including developing and monitoring training requirements for employees on mandated reporter laws and regulations and responding to reports of intimidation and retaliation.

(d) The commission shall file a report of its findings and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, with the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities not later than July 31, 2020.

In July 2020, the Legislature passed “An Act making appropriations for the fiscal year 2020 to authorize certain Covid-19 spending in anticipation of federal reimbursement.” This extended the Commission’s report deadline from July 31, 2020 to December 31, 2020. The Commission submitted a Status Report to the Legislature in December 2020 and will produce a final report to submit to the Legislature by June 30, 2021. The Status Report is available here: [Mandated Reporter Commission Status Report | Mass.gov](#)

Introduction

The Mandated Reporter Commission (Commission) is tasked with a comprehensive review of the mandated reporter law and will make detailed recommendations regarding changes to that law and to the mandated reporter system in order to achieve better protection for children in the Commonwealth and to make recommendations that design an efficient reporting system that addresses the complexities of the system's operation. The Commission's work has included the review of all the mandated reporter statutes of all 50 states as well as the statutes in Washington, D.C and Puerto Rico. The Commission has used this national perspective to identify where the Commonwealth aligns and departs from commonalities among states, to focus in on states that are geographically close to the Commonwealth and so may share some of the Commonwealth's experiences and perspectives, and to compare and contrast other models to illustrate possible alternative approaches.

The Commission recognizes that the mandated reporter law serves as a guide to mandated reporters and that mandated reporters often turn to the text of the law to inform their understanding of their reporting obligations. The proposals before the Commission are designed, in part, to capitalize on the opportunity to clarify the statute and make the statute more accessible to non-lawyers.

The Commission members have extensive expertise in child services, child welfare, and state government. However, the Commission recognizes that this expertise does not cover all aspects of the mandated reporter law or the populations, professional and otherwise, that the law affects. The Commission therefore is seeking public commentary on the proposals and analysis outlined in this document prior to making any final determinations for inclusion in a report to the Legislature. All public comments are welcome and the OCA, as the office of Commission Chair Maria Mossaides, will filter, summarize, and analyze public comments as needed to facilitate productive Commission review and suggestion. Additionally, all public comments will be available to the Commission members in their original form. The Commission seeks public comments, with as much background or data-driven information as possible to provide, on all the topics discussed in this report. The Commission additionally seeks public comment and input on the following topics:

- Relevant barriers or considerations concerning implementation of any of the proposals described in this report;
- Laws, policies, or procedures that present significant conflicts with the proposals described in this report;
- Disparate effect of any of the proposals in this report on any identifiable group of persons such as persons of a certain race or ethnicity, gender, gender identity, common history, nationality, cultural identity, economic status, and so on;

- Consequences of these proposals that are not addressed in this report, including unintended consequences or possible unintended consequences.

DEFINITION OF MANDATED REPORTER

Universal vs. Profession-specific List of Mandated Reporters

The Commission has extensively discussed the definition of a “mandated reporter” in MGL c. 119 § 21 and proposals to expand mandated reporting requirements as required by the Commission’s enabling legislation. The mandated reporter law in Massachusetts has always singled out certain categories of persons as mandated reporters. The Commission considered the possibility of changing the current specialized list of mandated reporters in favor of a universal reporting scheme. Universal mandated reporter schemes typically indicate that any adult who has reasonable cause to believe a child is abused or neglected must report it to DCF. One benefit of a universal system is the clarity it provides about who is obligated to report, as it includes everyone as a mandated reporter. For this same reason, it may also be easier to ensure training if training were universally required. The Commission chose not to pursue further consideration of a universal reporting scheme in large part because although there is evidence that universal reporting schemes increase the number of child abuse and neglect reports that are made, there is no evidence that universal reporting schemes result in an increase in substantiated reports.⁶ There is no evidence that the Commission is aware of that indicates that a universal reporting scheme increases child safety or improves child protection.

Research demonstrates that children of color are over-represented at all stages of involvement with Child Protective Services, including the initial reporting stage.⁷ The Commission was concerned that a universal reporting scheme had the danger of exacerbating the problem of over-reporting or disproportional reporting, in in certain racial, ethnic, cultural, and low-income communities. Additionally, a history of multiple 51A reports, whether they are screened-in or screened-out, may elevate the concern of the DCF screener taking the reports so as to tip the scales to screen-in a report that may, in other circumstances, be screened-out. In this way, a history of 51A filings can exacerbate the effects of biased reporting for those who fall victim to multiple bias-based reports. While this problem is present in any reporting system, it is likely

⁶ Palusci, V.J., et. al., *Does changing mandated reporting laws improve child maltreatment reporting in large US counties?*, 66 CHILD AND YOUTH SERVICES REVIEW 170, 170-179 (2016)

⁷ ROBERT B. HILL, CASEY – CSSP ALLIANCE FOR RACIAL EQUITY IN THE CHILD WELFARE SYSTEM, SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE (2006), http://www.citizenreviewpanelsny.org/documents/disproportionality_paper_bob_hill.pdf

exacerbated in a universal reporting scheme as non-specialized reporters may rely more heavily on, or react more strongly to, their own biases than a mandated reporter whose specific inclusion in a statute is in part due to their expertise and experience with children.

It is in the Commonwealth's interest to ensure that mandated reporters know what to report, how to report, and report reasonable concerns of child abuse and neglect to DCF. An influx of reports from a universal scheme, which does not result in a demonstrated increase in such substantiated reports, would likely tax the current system and require increased resources to manage additional reports without substantial benefit to the children of the Commonwealth. The current proposal before the Commission is a continuation of the current statutory scheme which identifies mandated reporters by their professions and roles. The Commission also noted that most states, even those who have recently updated their mandated reporter laws, list individual categories of mandated reporters.⁸

- *Are there any considerations regarding a universal reporting system that the Commission may not have explored?*

How to Determine which Professions/Roles Should be Included

The Commission's task, according to the enabling statute, included making findings and recommendations regarding the persons included in the mandated reporter definition. To accomplish this, the Commission reviewed not only the Commonwealth's current definition (MGL c. 119 §21 most recently updated 11/07/2018), but also the definitions from all other states in the United States as well as the laws of the Washington, D.C. and Puerto Rico. The Commission also took direction from the work of the House Committee on Post Audit and Oversight's report "Raising the Bar: A Vision for Improving Mandated Reporting Practices in the Commonwealth" (2018). The overview of all of these state statutes, the similarities and differences, as well as the recommendations from the "Raising the Bar" report framed the Commission's thinking on how to recommend statutory changes that reflect the key characteristics that mandated reporters should have in common.

The Commission identified that changes to the list of mandated reporters in the definition should have common themes that reflect the reality of how children in the Commonwealth interact with adults. The Commission agreed that the primary

⁸ Thirty-five states (including Massachusetts) and Washington D.C. list categories of mandated reporters in their statutes. The fifteen states that have some type of universal reporting scheme are: Delaware, Florida, Idaho, Kentucky, Maryland, Nebraska, New Jersey, North Carolina, New Mexico, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming. Puerto Rico also has a universal reporting scheme.

characteristics of mandated reporters should include: persons who have access to children and who are often alone with children and/or are responsible for their care; persons in positions of authority or who children may identify as being in positions of authority, as children may seek to disclose abuse or neglect to persons they perceive to have some authority over them or over others; persons who may be exposed to personal and detailed information about children and families; and persons who work in state agencies that provide services to children.

The Commission also sought to strike a delicate balance between identifying specific job titles and categories of persons such that individuals could easily identify whether they were included in the definition, while striving to keep the job titles and categories somewhat open/fluid so that persons in new job titles and professions, not currently existing today, will understand themselves to be included in the statute. The proposals in this document are intended to identify certain groups of professions and roles, not individual job titles.

- *Has the Commission achieved the necessary balance between identifying professions in a manner that is limited enough for persons to recognize their inclusion in the category, but also broad enough that related job titles will not be excluded? See the detailed proposals below in order to respond to this prompt.*

Format of Recommended Statutory Changes

The current statutory definition of mandated reporter in MGL c. 119 §21 is separated into un-titled subsections that do not appear to organize categories of roles and professions in an intuitive manner. The proposal included in this report reorganizes the definition into titled subsections for purposes of clarity and readability. The recommendations regarding the format and structure of the mandated reporter definition are intended to provide clarity to the categories of mandated reporters and intended to be user-friendly to non-lawyers who commonly use the mandated reporter statute for guidance.

The proposal in this document separates professions and roles into the following categorizations: medical providers, mental health providers, education – including pre-kindergarten through twelfth grade and higher education, public safety officials, social services providers, mentors, clergy, and other youth serving individuals. These categorizations are for organizational purposes only, the operative part of the statutory language recommendations will be the roles and professions listed in these categories.

Most recently, the Commission has discussed that the definition of mandated reporter was previously located in MGL c. 119 §51A but then was moved to the definitions section of the statute (§21) in 2008. The Commission will discuss whether to recommend relocating the definition back into §51A. The reason for a possible

relocation would be for the purposes of educating mandated reporters who do, because of the parlance of the term “51A” and because of the trainings for mandated reporters which identify the statute, use the law as a guide to inform them of their responsibilities.

- *Do the categorizations proposed in this document meet their intended goal? See the detailed proposals below in order to respond to this prompt.*
- *What should the Commission consider when determining whether the definition of mandated reporter should be located in MGL c. 119 § 21 or MGL c. 119 § 51A?*

Draft Language of Proposals related to the Definition of Mandated Reporter with Analysis

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 person 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>

A. 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 proposal assumes that a person younger than 18, a legal child themselves, would not identify themselves as responsible under the law for the protection of other children. Additionally, the proposal intends to

avoid placing legal punishments for failure to report on children who may not have the capability to adequately interpret the legal standard for reporting.

B. 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.

C. This proposal seeks to clarify that persons are mandated reporters for the purposes of Massachusetts law if they are providing services to persons 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. Even though this proposal includes any person (who falls into the roles and professions listed in the statute) providing services to any other person in the Commonwealth, the obligation to report as a mandated reporter will still only arise if the person providing services believes, in their professional capacity, that there are concerns of child abuse or neglect that meet the standard of what is required to be reported to DCF. This proposal seeks to address the advances that technology has made in the past few decades including the current reliance on remote services, telehealth, and remote learning.

D. 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. 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. This proposal is based on an intention to tie the definition of mandated reporter to the actual connection between the reporter and the children and/or family, not the organizational structure of the role or profession. This proposal would also recommend that contract terms, specifically when services are contracted by state agencies, clarify the mandatory reporting obligations of contractors who may be unfamiliar with the law or may not be based in Massachusetts.

E. Proposal without draft language: Some volunteers and paid personnel working in the roles or titles under the definition of mandated reporter may be as young as 16 or 17 years old. This proposal requires that any employer, volunteer organization, or entity employing (in a paid or unpaid position) any individuals under 18 years old in roles that would otherwise qualify that individual as a mandated reporter, have written policies directing these employees to report any concerns of child abuse or neglect to a specific person who is a mandated reporter (such as the person in charge or their designee).

MEDICAL PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(i) a physician, medical intern, hospital personnel engaged in the examination,	(i): medical providers: a physician, medical student or trainee, personnel at any

care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath...

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

A. The statute currently identifies physicians, medical interns, and hospital personnel as mandated reporters. The Commission notes that many people in the Commonwealth do not receive medical care solely in a hospital setting. Many professionals in the medical field who would be mandatory reporters if they worked in a hospital, are not mandatory reporters when performing the same role in another location. 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.

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

C. 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

A. 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.

B. 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.

C. 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.

D. 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. Persons in these roles typically provide services one-on-one to clients without a supervisor being physically present during those sessions.

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, licensior of the department of early education and care or school attendance officer</p>	<p>(a) early education: licensed child care worker, 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</p> <p>(b) pre-kindergarten through twelfth grade: school board members, any school personnel who interact with any student, pre-kindergarten through twelfth grade in their professional capacity, 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</p>

bus drivers and bus monitors, school attendance officer, person in charge of a school or facility or that person's designated agent

(c) higher education: any and all higher education staff and faculty interacting with students in a teaching, coaching, or advising role, any student employed as a research fellow or teaching assistants, all higher education administrators and officers, personnel of any organization or entity operating any program on higher-education property under supervision

A. 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.

B. 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.

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

D. 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 18 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.

E. The proposal moves unlicensed childcare workers and residential services workers (who may also work in programs funded by the Commonwealth or licensed under chapter 15D) to the section "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

A. The proposal expands mandated reporting responsibilities to all court personnel interacting with children or youth in their professional capacities.

B. The proposal excludes judges from the list of mandated reporters. The Commission is specifically seeking input from the public on this proposed exclusion.

1. Arguments in favor of exclusion note that if judges are mandated reporters they could be called in as witnesses on care and protection cases which can present complications in terms of impartiality considerations and statutory timeliness requirements. Arguments also include that judges must avoid even the appearance of not being impartial and a requirement of mandated reporting may prompt motions for recusal.

2. Arguments against this exclusion would require that judges be required to report concerns of abuse or neglect because judges are as likely as other court personnel to observe or learn of abuse or neglect allegations. Arguments also include that judges are required to uphold the law and to do so in a capacity of a mandated reporter is well within their expertise and the expectation of their role. Arguments note that excluding judges from the list of mandated reporters sends the wrong message in terms of judges' roles and that institutional reporting schemes can mitigate many concerns regarding the practicality of judges reporting.

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

D. 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, licenser of the department of early education and care or school attendance officer</p> <p>(iii) ...social worker, foster parent...</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 programming 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>

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

B. 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.

C. 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.

A. 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

A. 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.

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.

A. 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, personnel of a public library

A. 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.

A. This proposal explicitly adds "contractors" to the list of mandated reporters and defines the term for purposes of the mandated reporter definition. 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.

Confidential Services
<u>Proposal without draft language</u>
There is a proposal without any draft language that proposes that persons who provide direct confidential services to victims of domestic violence, sexual assault, or human trafficking should be excluded from mandated reporting responsibility. 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.

The Commission is particularly seeking feedback on the scope and effect of this possible exclusion and the scope of term “direct confidential services.”

Explicit Attorney Exclusion	
Current Statutory Language	Proposal to the Commission
None	Nothing in this section shall be construed to require that an attorney, working solely in their capacity as an attorney and not in any other capacity listed in this section, shall be a mandated reporter for information obtained in the course of their work as an attorney.

A. This proposal explicitly excludes attorneys who are working as attorneys from mandated reporter responsibilities. Attorneys disclosure of information learned in the course of their representation of clients is governed by the Rules of Professional Conduct. Although attorneys are not listed as mandated reporters in these proposals, attorneys may be working in state agencies, such as DCF or EEC, or other entities whose personnel are listed in these proposals. If an attorney working at a state agency (for example) would be considered a mandated reporter because of their connection to the state agency, that attorney would be unable to adequately execute their obligations to clients. This proposal is meant to clarify that attorneys do not have mandated reporting responsibilities either directly, as they are not listed in the proposed changes to the statute, but also not indirectly through their employment within a state agency or other organization.

A Central Reporting System

In the course of the Commission reviewing definitions of abuse and neglect as well as reviewing the feasibility of an automated, unified, and confidential tracking system for all reports (as required by the Commission’s statute), the Commission reviewed the complexity that some institutional service providers face when they are required to file multiple reports regarding one incident. For example, a service provider may have to file a report with their licenser as well as DCF when an incident occurs. This may also lead to joint or multiple investigations by state agencies regarding the same incident.

A. Proposal without draft language: Relevant state agencies should dedicate resources to create a central reporting system which would require that providers fill out one online form regarding an incident within an out-of-home/institutional setting that would satisfy

required reporting to DCF, the setting's licensor, and any other oversight body relevant to that provider or setting. Relevant state agencies should also address how such a central reporting system would affect the resulting joint or multiple investigations from state agencies regarding the same incident.

DRAFT

REPORTING RESPONSIBILITY AND DEFINITIONS

Currently, the statute does not define child abuse or neglect other than to indicate that abuse is inflicted and that includes sexual abuse, and that neglect includes malnutrition. The Commission has reviewed and discussed the possible benefits and detriments of adding definitions of abuse and neglect into the statute. The Commission reviewed specific statutory examples from multiple other states that took various approaches to the definition of abuse and neglect and reviewed model definitions. The Commission noted that the mandatory reporter statute is a statute that many non-lawyers seek out and review to fully understand the responsibilities of reporting child abuse and neglect. Therefore, the lack of any definition or indication of what may constitute abuse or neglect in the statute is a detriment to mandatory reporters who should be informed of their obligations with as much specificity as a wide ranging statute can provide. Providing definitions of the terms used in the statute is intended to clarify the reporting obligations which should result in a reduction of 51A reports that are screened-out by DCF for failure to rise to the level of abuse and neglect, and will give direction and content to any required mandated reporter trainings.

DCF has current regulations that define the terms used in 51A(a), though these regulations pertain to DCF’s interpretation of the principles that govern their responsibilities and actions, and do not set the standard for what a mandated reporter is required to report. The DCF regulations served as a guide to the Commission in drafting some proposed statutory definitions of abuse and neglect, but the current drafts of possible definitions are not identical to the DCF regulations which are available via this link: [110 CMR 2 \(mass.gov\)](https://www.mass.gov/info-details/110-cmr-2)

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	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

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

inflicted upon the child; (ii) neglect; or if a child is (iii) physical dependence upon an addictive drug at birth; (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

A. 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 on a regular basis by mandated reporters and increases the protection for children.

B. 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.

C. This proposal currently does not recommend a change to the language “physical dependence upon an addictive drug at birth” but the topic of this subsection is currently being discussed by the Commission and by a Working Group established by the Commission.

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.

Although there is currently no draft proposal language, the Commission is considering a proposal to create a dual-track reporting system which permits reporting of infants born exposed to substances, such as prescribed medication for opioid use disorder or perscribed chronic pain medication, 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.

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.

A. 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.

A. 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.

B. This proposal notes that there are two wording options in this proposal : “another” and “caregiver.” “Caregiver” should be understood as having the same meaning as the DCF definition and application of the term “caretaker.” DCF makes screening decisions based on whether an alleged perpetrator is a caregiver or not. DCF also has mandatory obligations, and discretionary ability, to refer cases to the district attorney and those obligations do not hinge on whether the alleged perpetrator is a caregiver. For example, DCF must report children who are sexually exploited or victims of human

trafficking to the district attorneys and the police regardless of whether or not the child is living with a caregiver.⁹ A 51A report is how DCF obtains the information that must be transmitted to the district attorney.

- Arguments for including the term “caregiver”: It may be difficult to imagine a scenario where a person would be held responsible for the neglect of child if that person was not a caregiver for that child. Additionally, it adds specificity to the definition such that it would significantly limit reports to persons only in caregiving roles. Cases at DCF are currently screened-out if it is determined that the alleged perpetrator was not in a caregiving role so this clarification in the definition would prevent unnecessary reports being brought to DCF’s attention thereby possibly reducing some of the racial and ethnic disparities in child welfare that are attributable to over-reporting and would reduce the number of allegations that DCF has to spend resources on screening-out.

- Augments for including the term “another”: the term caregiver (or caretaker) is currently defined by the DCF regulations and is a complex definition that includes an evaluation of whether the person is entrusted with the responsibility of caring for a child. The complexity of how this term may be applied to certain fact-patterns is too difficult for mandated reporters to untangle at the reporting stage without engaging in some type of investigation prior to filing- the Commission seeks to limit investigations prior to filing as such investigations are often detrimental to the child protective case once it reaches DCF. Currently, mandated reporters make reports against unknown perpetrators as reporters are filing on the neglect the child is experiencing, not who is allegedly causing the neglect. DCF, as an agency with investigative powers, has the skills and resources to pursue cases against unknown perpetrators. The statute requires that mandated reports file cases regarding sexually exploited children and human trafficking victims but the caregiver requirement does not apply to the filing of these cases (DCF will not screen these cases out if the alleged perpetrator is not a caregiver). Including a caregiver requirement in the definition may limit the number of cases that DCF receives and communicates to state agencies who license out of home settings and who license professionals (see MGL c. 119 § 51B(l)).

C. This proposal specifically does not carry over the following language from the DCF regulation defining neglect: “...however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition.” As this language remains in the DCF regulation, it provides guidance to the agency on what cases should be screened-out. This proposal does not include this language as part of the purposeful effort to reframe the definition to reflect a requirement that mandated reporters report situations based on what the child is experiencing, not the reasons that an alleged perpetrator may have for the behavior that is causing a child to experience neglect. This language was also not included to avoid any encouragement of any investigation by a mandated reporter that may jeopardize the effectiveness of the DCF investigation which requires specific skills (including reducing the number of times a child is interviewed in order to reduce trauma and improve accuracy of reporting).

⁹ For more information about these referrals please see MGL c. 119 § 51B(a), § 51B(k) and DCF policy.

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.

A. Sexual abuse is currently referenced in 51A(a) but the term is not described in the statute. This proposal would add a definition of sexual abuse that 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). Without a statutory definition of the term, mandated reporters do not have guidance about the scope of the term “sexual abuse” and how it can be applied to situations that are not the typical forceful penetration that may historically come to mind. Further, without a definition of how mandated reporters should interpret the term “sexual abuse” in connection to their obligations under 51A, there is a possible over-reliance on definitions of sexual crimes which, in many- if not all- cases, would set a higher bar than intended for reporting purposes.

B. 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.

C. The proposal also seeks to address the confusion regarding reporting of underage consensual sexual relationships while further guidance could be provided via DCF

issued guidance or possibly through mandated reporter training. Underage consensual sexual relationships are not currently considered by DCF to be child abuse or neglect if no other facts are present that would complicate the fact-pattern. However, DCF is mandated to refer these cases to the District Attorneys who largely decline to prosecute such cases. Thus, underage consensual sexual relationships involve families with multiple state agencies without any measurable benefit to that involvement.

DEFINITION OF REASONABLE CAUSE TO BELIEVE	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>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...</p>	<p>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.</p>

A. 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.

The Commission identified several concerns with the statute as it is currently written. The current statute allows for a permissive transfer of responsibility; once the transfer of responsibility occurs, there is no requirement that the mandated reporter ensure that a 51A report was filed by the person in charge or their designee. The statute does not address whether the person in charge or their designee is required to file a 51A report on behalf of the mandated reporter, or whether they have discretion in doing so once the responsibility to report has been transferred. There is also no indication in the statute whether the person in charge or their designee can add to, subtract from, or clarify the information provided from the mandated reporter when the report is made to DCF.

It is not uncommon that mandated reporters will use this institutional reporting mechanism, believe that a report has been made by a person in charge or that person's designee, only to discover months later that a report was never made. Further, this process has been used as a method of instigating or facilitating inappropriate internal investigations conducted by institutions prior to the filing of a 51A. Such internal investigations are inappropriate when they delay or prevent the filing of a 51A, when they taint the information to be investigated by DCF by exposing witnesses, and particularly children, to multiple interviews typically done by unskilled interviewers, and when they are used as a subversive mechanism to alter or color a certain narrative.

Institutions have an interest in knowing the concerning situations that may occur at that institution or regarding the institution's employed staff. Continuing to include an institutional reporting procedure in the statute would provide such institutions with a mechanism of ensuring that institutional management is aware of any concerns of child abuse and neglect under their purview. Institutions can then be empowered to take appropriate action when necessary, regardless of the type of action that DCF may take.

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</p>

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.

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 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.

A. 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.

B. 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.

C. 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.

A. 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 district attorney’s office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

B. Some Commission members oppose any proposal that includes monetary penalties due to the inherent inequity of such penalties and due to skepticism that district

attorneys' offices and courts would be adept at exercising the necessary discretion in a non-biased manner.

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

A. 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 district attorney's office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

B. Some Commission members oppose any proposal that includes monetary penalties due to the inherent inequity of such penalties and due to skepticism that district attorneys' offices and courts would be adept at exercising the necessary discretion in a non-biased manner.

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	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

of the mandated reporter's violation of this paragraph.	appropriate professional licensing authority of the mandated reporter's violation of this paragraph.
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A. 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 district attorney's office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

B. Some Commission members oppose any proposal that includes monetary penalties due to the inherent inequity of such penalties and due to skepticism that district attorneys' offices and courts would be adept at exercising the necessary discretion in a non-biased manner.

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.

A. 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 district attorney's office and court would be the relevant parties exercising discretion in seeking and determining penalty amounts.

B. Some Commission members oppose any proposal that includes monetary penalties due to the inherent inequity of such penalties and due to skepticism that district

attorneys' offices and courts would be adept at exercising the necessary discretion in a non-biased manner.

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.

A. 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.

B. There are possible complications that may arise in ensuring that a licensing violation complaint process is effective, that it is enforceable, that it does not incur any concerns about double jeopardy or unequal treatment under the law, and that the specific wording of the recommended statutory language does not unintentionally create specific burdens of proof. A threat to a person's professional licensure for failing to report child abuse and neglect would likely have a greater deterrent effect than financial penalties that are often not pursued by district attorneys. Further, a potential threat to a person's licensure is more closely tied to the harm caused by the mandated reporter as the mandated reporter is required to report under the statute specifically because of their

profession or role, their mandated reporting responsibility is part and parcel of their profession. The Commission respectfully requests comments from professional licensure bodies, or persons with experience with professional licensure bodies, to determine whether the proposal is efficiently designed and that it will have its intended result.

EMPLOYER RETALIATION

EMPLOYER RETALIATION	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
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.	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.
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.	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.

A. The current statute prohibits employers from retaliating against mandated reporters who file 51As for filing those 51As or for testifying about abuse or neglect in any proceeding. The Commission reviewed statutes in other states and determined that Massachusetts is an outlier in extending this protection only to mandated reporters and not to all persons who file a child abuse or neglect report in good faith. 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.

B. Many persons who may want to pursue a case against their employer may find such a case difficult to finance particularly when the expected outcome is not a large monetary payout, but rather the possible equitable remedies of reinstatement of job position and back-pay. The Commission discussed that the model for these types of claims is the Massachusetts Commission Against Discrimination (MCAD), where charges of retaliation are evaluated, filed, investigated, and heard. Commission members expressed the possibility that the Attorney General's Fair Labor Division, or some similar existing state body, could be given the authority to deal with employer retaliation cases if appropriate.

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</p>

process for reporting suspected child abuse and neglect; penalties for failure to report; and prohibition against employer retaliation for reporting.

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 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

	<p>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.</p> <p>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.</p> <p>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.</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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A. 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. The proposal is based on a belief that mandated reporters will benefit from knowing clearly, through training, the scope of their obligations.

B. Commission members also believe that training will help address and reduce over-reporting or reporting that does not rise to the level of child abuse and neglect and may therefore reduce some of the disparate impact of reporting that is a result of mandated reporter bias and biases in society.

C. There are some fundamental reasons that mandated reporters fail to report: fear of retaliation for reporting, misunderstanding the standard of what type of conduct rises to the level of abuse or neglect, distrust of, or concerns about, DCF involvement with families or DCF's effectiveness in protecting children, and concerns that reporting will destroy the relationship between the family/child and the reporter. The fundamental reasons that mandated reporters fail to report can be substantively addressed through a training curriculum which could also include technical instruction on how to file a 51A and details of the DCF process regarding 51As.

D. 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. This proposal would also permit a state sanctioned entity to alter training requirements and curriculum best practices based on actual data from DCF regarding 51A screening and based on changing circumstances in the Commonwealth (such as the Covid-19 pandemic).

E. 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. This proposal would likely not require any monetary or resources expenditure from the state and would leverage the free online trainings currently available.

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.

A. 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.

Disproportional Impact

There is a clear disproportionate involvement of children and families of color in child protective services in Massachusetts and across the country. The conscious and unconscious biases that govern societal interactions, communication, and conclusions are undoubtedly a source of this disproportionate involvement. Such biases aren't solely based on racial identities, or perceptions of racial identities, but also on complex coexisting inequities including economic and legal disadvantages. Because mandated reporters are largely members of the public, it is difficult to untangle the complexities of how structural racism, in addition to biases, effect the legal obligations required by the statute. The Commission also notes that there are issues of the possible disproportional impact of these proposals on other communities that also experience structural inequities and biases including persons with disabilities, persons who do not speak English as a first language, persons who may have immigration status concerns, and persons whose appearance or personal preferences may be viewed by some as unorthodox. Relevant singular experiences and the patterns and trends of experiences are outside of the expertise of the Commission and the Commission seeks information from the public that can provide context and content to the Commission's concerns that any proposals discussed herein will have unintended consequences or will miss an opportunity to improve any disproportionate impacts.

The Commission specifically requests feedback from the public about:

- Possible unintended consequences of the proposals outlined in this report including whether such proposals will result in the exacerbation of inequities;
- Whether there are missed opportunities in these proposals to address current inequities (in the context solely of the mandated reporter statute); and
- Whether the Commission should consider proposals specifically concerning data gathering at the mandated reporter stage that would provide information regarding inequities.