

THE MANDATED REPORTER COMMISSION

December 2020

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

STATUS REPORT
TO THE
MASSACHUSETTS
LEGISLATURE

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DRAFT

Commission Members

Member Name	Appointing Organization
Maria Mossaides, Chair	Office of the Child Advocate
Andrew Rome, General Counsel	Department of Children and Families
Angela Brooks, Director	State Attorney General's Office
Ann Reale, Undersecretary	Executive Office of Education
Anne Conners, Associate Commissioner	Department of Early Education and Care
Officer Elizabeth Fleming, School Resource Officer	Waltham Public School District
John High, Chief of Staff	Division of Professional Licensure
Katherine Ginnis, Senior Director	Executive Office of Health and Human Services
Lisa Hewitt, General Counsel	Committee for Public Counsel Services
Marian Ryan- District Attorney, Middlesex District Attorney	Massachusetts District Attorney Association
Nina Marchese, Director	Department of Elementary and Secondary Education
Spencer Lord, Special Counsel	Executive Office of Public Safety and Security

Acknowledgements

The Child Advocate recognizes the seriousness of the responsibility of chairing this Commission and is grateful for the outstanding effort of Commission members who consistently delve deeply into difficult and complex topics in order to produce thoughtful and refined recommendations to the Legislature.

The OCA is grateful for the support of our legal intern Lily Powell from Boston College Law School and Alix Rivière who diligently takes our meeting minutes.

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 (“the Commission”). The Child Advocate is the Chair of the MR 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 MR 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 legal 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 the chairmanship of the Office of the Child Advocate, to take a comprehensive review of the statute to recommend systematic changes to the statute. A revision to the mandated reporter law is critical to ensure an effective process of reporting child abuse and neglect.

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

² Available at: [Report SD.2251 \(malegislature.gov\); Child Sexual Abuse Prevention Task Force Report.pdf \(childrenstrustma.org\)](https://malegislature.gov/Reports/Child-Sexual-Abuse-Prevention-Task-Force-Report)

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

Guide to Acronyms and Terms

Acronym/Term	Definition
The Commission	Mandated Reporter Commission
OCA	Office of the Child Advocate
DCF	Department of Children and Families
DESE	Department of Elementary and Secondary Education
EEC	Department of Early Education and Care
DMH	Department of Mental Health
DDS	Department of Developmental Services
DPH	The Department of Public Health
DYS	Department of Youth Services
51A/51A report	Report filed with DCF under MGL c. 119 §51A alleging child abuse or neglect
Screen in/screen out	Screening process determines whether there is sufficient information to determine whether the allegation made via a 51A report meets DCF's criteria for suspected child abuse or neglect and whether DCF involvement, particularly an investigation, is warranted
SENs	Substance exposed newborns
CAPTA	The Child Abuse Prevention and Treatment Act
POSC	Plan of Safe Care
MOUDs	Medications for Opioid Use Disorder

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,

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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.

Statement on the Status of the Commission

The Mandated Reporter Commission (the Commission) is the first statutorily sanctioned entity to take a comprehensive look at the mandated reporter law since the law's inception in 1973. The mandated reporter law, commonly referred to as "51A" though the applicable statute is broader than MGL c. 119 §51A, is the mechanism by which children and families come to the attention of the Department of Children and Families (DCF), the Commonwealth's designated child protection agency. Since the passage of CAPTA in 1974, the child welfare system in the United States relies on certain individuals who are designated under state law as mandated reporters to bring to the attention of the child protective service agency suspicion of child maltreatment. The professions and individuals designated as mandatory reporters represent a wide range of medical professionals who by training would recognize the signs and symptoms of maltreatment. Educators and other individuals who routinely are in contact with children, or first responders are also included among the ranks of those required to report. Although the mandated reporter law has been updated several times since its inception, those updates have been limited approaches to address specific concerns. The Commission, with its members' expertise and experience working in child welfare and state government, is a unique body especially equipped to review the statute in its entirety, both how it is written and how it currently operates, to make recommendations that will ensure that the statute meets its goal of protecting children in the Commonwealth.

The Commission began its work in February 2020 and has weathered the ongoing complications of the disruption of Covid-19. I am particularly grateful for the dedication of Commission members who have continued their active participation in the Commission despite the demands that the Covid-19 pandemic has placed on state entities. There was only one month, April 2020, that the Commission did not meet due to the complications of the pandemic. This pandemic and the resulting steep drop in mandated reports to DCF due to the closure of schools and social isolation underscores the critical need for state attention to the mandated reporter system and the need for mandated reporter training that meets the complexities of changing circumstances.

The Commission's goal was to submit a full report to the Legislature today detailing the recommended changes to the statute and providing draft legislative changes to affect those recommendations. The Commission is unable to submit such a report. Although I regret that such a report cannot be submitted at this time, I believe that it is in the best interest of the Commonwealth to wait for a full report to be submitted when the work can be aptly completed by the Commission. The Commission respectfully submits this Status Report detailing the Commission's extraordinary efforts to take a comprehensive systems-based approach to recommending a full package of legislative reforms to the mandated reporter system.

Respectfully, the Commission cannot recommend such a package of legislative reforms without an extension of the report deadline to accommodate the detailed and highly specialized work of the Commission members who have expertise, systems knowledge, the appetite for change, and the desire for consensus that will make reform of the mandated reporter law a success.

Commission members are committed to extending the Commission's work through June 30, 2021, to fully address the structural changes necessary to implement the Commission's recommendations required to present actionable recommendations to the Legislature. The Commission needs additional time not only to fully design such complex recommendations, but also because several topics addressed by the Commission were found to be significantly more complicated than initially anticipated. The Commission has gone into depth discussing the definition of abuse and neglect, the consequences of 51A reporting on expectant mothers taking prescribed medication for substance use disorder, the feasibility of the prohibition of employer retaliation for making a 51A report, and an actionable and fully realized recommendation for mandated reporter training. All these topics require additional work by the Commission and should not be left to future piecemeal approaches to statutory reform.

The Commission has, since its inception, recognized that though the Commission members are experts in their respective fields, the Commission would benefit from hearing members of the public weigh-in on Commission recommendations. The Commission is particularly interested in hearing from persons on the front lines of mandated reporting and persons who have had life experiences with DCF involvement. Further, the Commission seeks specific guidance regarding professional licensing boards, public safety officials, the roles and responsibilities of mentors, and other specific targeted topics that would help the Commission determine whether there may be unintended consequences to proposed recommendations. The Office of the Child Advocate has met with members of the public who have made themselves known and sought to weigh-in on the Commission's work, but a greater effort must be made by the Commission to gather relevant perspectives that will improve the work of the Commission. The Commission is acutely aware that there may be unintended consequences to racial, ethnic, and income-groups that are best explained to the Commission through public voices.

I have sought to be transparent with the Legislature by describing the status of the work of the Commission and requesting an extension of the reporting deadline to June 30, 2021. When faced with the possibility of submitting incomplete recommendations to the Legislature if held to the December 31, 2020 date for a final report, the Commission was in full agreement that this Status Report would be a more honest and valuable submission to the Legislature and would reflect the work done to meet the challenge set before the Commission.

The Commission's work to June 30, 2021 will include continued discussions on the following topics:

- Children born with a physical dependence upon an addictive drug at birth;
- Prohibition of employer retaliation for reporting under §51A;

- Determination of a training scheme for mandated reporters and details about operation of that scheme;
- Finalization of draft statutory proposals;
- Gathering and reviewing public comments on the work of the Commission and draft statutory proposals.

You will find the Status Report herein to be as forthcoming as possible regarding the work of the Commission and the recommendations that will ultimately be provided to the Legislature with suggested draft statutory language. It is our hope that this submission meets expectations of the Legislature and signals the continued commitment of the Commission to achieve better protection of children in the Commonwealth.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria Mossaides", with a long horizontal flourish extending to the right.

Maria Mossaides
Chair of the Mandated Reporter Commission

Introduction

The Mandated Reporter Commission (the 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. 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 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 Commission has worked to incorporate clarity and accessibility into the Commission's proposed changes to the statute and will suggest statutory language that capitalizes on the opportunity to direct mandated reporters in their responsibilities under the law.

The Commission is comprised of a statutorily set list of members that have extensive expertise in the field of child welfare and in state government systems. The Commission is charged with addressing the text of the law, not the operations, policies, or actions of DCF outside of the mandated reporter statute. The Commission has closely tied its discussions to its mandate and is aptly designed to recommend proposals to alter the statute to improve the mandated reporting system. The Commission has recognized when it does not have the expertise or experience to determine the possible consequences of recommended changes to the law and, in future months, will actively seek public comment on proposed recommendations in order for the Commission to make fully informed decisions and recommendations to the Legislature.

This Status Report details the substantive work of the Commission thus far. The Commission has not voted on any of the proposed recommendations or issues upon which this report records there is general agreement.

Substantive Issues Discussed by the Commission

The Mandated Reporter Commission discussed a wide range of substantive issues since its inception. Below is a discussion of each of the major substantive issues the Commission has considered thus far.

The Definition of Mandated Reporter

Current Statutory Language: MGL c. 119 § 21

“Mandated reporter”, a person who is: (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker; (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 or 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; (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer or animal control officer; (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis; (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or (vi) the child advocate.

The Commission addressed the following issues related to the 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 has reached agreement that the definition needs substantial updating, clarification, and expansion. 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 ultimately decided against 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

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 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 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 Commission therefore recommends 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

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 MA'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. The Commission also took direction from the

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

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.

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 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 new job titles and professions, not currently existing today, will understand themselves to be included in the statute. Therefore, the language that the Commission will ultimately recommend is meant to identify certain groups of professions and roles but is also not intended to track too specifically to individual titles.

Format of Recommended Statutory Changes

The current statutory definition of mandated reporter in MGL c. 119 § 21 is separated into untitled subsections that do not appear to organize categories of roles and professions in an intuitive manner. The Commission agreed that the recommendations that will be presented to the Legislature will reorganize 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 Commission has reached general agreement on the recommended 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. There has been recent discussion regard the category title "youth serving individuals" but it is likely that the consensus of the Commission will be that the term is appropriate for the purpose in which the Commission is recommending. 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 §51(A) 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 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 likely more so than lay-persons otherwise consult the text of laws.

Anticipated Recommendations

The Commission has not voted on specific statutory language to present to the Legislature at this time regarding the definition of “mandated reporter.” However, the Commission has largely reached general agreement on the topics below and the Legislature can expect that the following recommendations will likely be finalized and expounded on in the final Commission report.

Minimum Age Requirement

The Commission will likely recommend the addition of a minimum age requirement for mandated reporters, adding clarity to who is a mandated reporter. As mandated reporters are expected to make individual determinations about whether they have a “reasonable cause to believe” that a child is being abused or neglected, the Commission felt that this level of reasoning is appropriate only for adults. The Commission noted that eighteen years old is a largely arbitrary designation between childhood and adulthood but decided upon the minimum age of eighteen as that is the age at which a number of other obligations and rights reserved solely to adults first attach. In addition, persons are likely to understand that certain obligations arise for them when they reach eighteen.

The Commission noted that people ages sixteen to seventeen may be in paid or volunteer positions in which they are solely responsible for groups of children. The Commission recommends that any employer, volunteer organization, or entity specifically address how concerns of child abuse or neglect should be identified by staff or volunteers under eighteen years old and identify a person to whom those reports should be made. The Commission, as noted on page 16, also recommends that the Commonwealth should require that state contractors and entities subject to licensing that employ such persons have written policies regarding how these employees should respond to concerns of abuse and neglect. The Commission recommends that these employees or volunteers be trained on reporting child abuse and neglect.

Volunteers

The current statute is unclear about whether mandatory reporting obligations are limited to paid employees, so the Commission recommends the explicit inclusion of volunteers in any role or position listed in the statute. Clarity is required in this area to ensure that all persons are on notice about their obligations to report and are on notice of other obligations (such as possible training obligations, requirement to cooperate with DCF, etc.).

Underlying this decision to explicitly include volunteers is the determination by the Commission 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. The roles and professions are identified as important due to their exposure to children or information about children and/or the authority an individual may have over children. Nothing about these fundamental qualities

change based on whether a person is paid or unpaid. Further, children do not choose who they may disclose concerning information to based on whether that person is known to be a paid employee. The Commission discussed the possibility of applying a sliding scale of reporting responsibility based on the frequency with which a person volunteers in recognition of the fact that there are different levels of volunteers, some occasional and some who regularly fulfil the responsibilities and roles of the professions listed in the statute. This possibility was ultimately rejected as a sliding scale would be unfair to the individual child who needs protection.

Remote Services and Inter-Jurisdictional Issues

The recommendations in this report, and the final recommendations with draft statutory language, are meant to address the current needs of the Commonwealth as well as create a flexible statutory scheme that will anticipate and account for possible future advancements (technological, professional, new state services, etc.) to the extent we can anticipate and account for such advancements. The current statutory language does not address or adequately account for remote services or inter-jurisdictional issues. The Commission felt that both issues would be best addressed clearly through our recommended statutory language.

DCF's Protective Intake Policy⁹ addresses jurisdictional practice for DCF, but the possibility of complex jurisdictional issues at the reporting stage has risen to the forefront of consideration due to the Covid-19 pandemic. With technological advances, the increasing intimacy of technology, and the current reliance on remote services such as telemedicine and remote learning, the recommended language clarifies that a mandated reporter is either a person living in the Commonwealth who fits into the categories or roles listed in the statutory language, or a person living outside of the Commonwealth who is providing services (most likely remotely) to a child who either resides in the Commonwealth or who is physically in the Commonwealth. DCF's internal policies will continue to dictate the jurisdictional issues once cases from mandated reporters come to them.

Contractors

The Commission will recommend language in the statute 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. 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. In line with the Commission's reasoning provided herein, it is the intention that the definition of mandated reporter hinge on the connection to the children and to the families, not the organizational structure of the role or profession. Additionally, the Commission will 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.

⁹ <https://www.mass.gov/doc/dcf-protective-intake-policy-june-2020/download> updated on June 22, 2020

Specific Changes to the Definition of Who is a “Mandated Reporter”

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. For example, while the current statutory language would cover hospital personnel like nurses, the current language suggests that a nurse working in an urgent care facility or in a doctor’s office would not be a mandated reporter.

The Commission will likely recommend the inclusion of medical personnel beyond a hospital setting, noting that 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; all medical providers are exposed to the same set of facts with the same power dynamics and personal information of the patient or family involved. The Commission notes the lack of medical representatives on the Commission and feels strongly that the feedback sought from experts in the medical community during a period of public-comment will be very important to this section of the proposed statutory language.

Mental Health Providers

Currently the definition of mandated reporter includes mental health providers such as marriage and family therapists, rehabilitation counselors, mental health counselors, psychiatrists, and clinical social workers. The Commission is considering the inclusion of psychoanalysts and psychiatric nurses in the list of mental health providers as these professionals are in the same type of provider-patient relationship and are privy to the same types of information pertinent to allegations of abuse and/or neglect as mental health providers that are currently covered by the reporting statute.

The Commission is also considering the addition of any intern, resident, student, or trainee who is providing mental health services to patients, to the list of mandatory reporters. The Commission felt that this was particularly important as these persons typically provide services one-on-one to clients without a supervisor being physically present during those sessions.

Education

The Commission is considering expanding mandated reporting requirements to additional education related personnel. The Commission will distinguish roles and professions relating to pre-kindergarten to twelfth grade, and roles and professions relating to higher education. For pre-kindergarten to twelfth grade, the Commission will recommend language that is based upon whether 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

Commission is considering recommending the inclusion of school bus drivers and bus monitors, and school board members.

Additionally, the Commission is particularly cognizant of the current Covid-19 crisis and the non-traditional format that education has taken during the pandemic. Therefore, the Commission will be recommending language that will make clear that the mandated reporter requirement is based on the role or profession of the mandated reporter, not the setting in which educational services are provided.

The current definition of a mandated reporter does not include personnel working in higher education. In the wake of the Nassar¹⁰ and Sandusky¹¹ abuse cases, the Commission recognizes the need for higher education employees to be added to the statute. The Commission will recommend language to include higher education personnel as many sports programs and other programs use higher education facilities for their operations. Further, many young adults who are under eighteen years old attend college courses while still enrolled in high school, and some students are younger than 18 years old when they matriculate to college.

Public Safety Officials

The Commission is considering language that updates the current job descriptions listed in the category of public safety officials and expands the mandated reporter responsibilities to professions and roles that have direct contact with children and their families on a regular basis, such as family services officers and judicial case managers. The Commission is still reviewing the proposed terms in this section to fully understand the scope of those terms. The Commission recognizes that children often disclose allegations of abuse and neglect to persons whom they feel are required to keep them safe, and so is reviewing language in this category with a particular focus on the authority of public safety officials.

The Commission is particularly interested in any unintended consequences of the proposed additions to the statute within this category and is eager to gain comment from relevant voices not on the Commission about the proposed recommendations.

Social Service Providers

The Commission is currently reviewing proposed language in the category of social service providers which includes persons who perform duties within other people's households, addresses unlicensed child-care providers, persons employed by state agencies that provide services to children, shelter employees, and persons who have access to private technology who

¹⁰ A report by the House Committee on Post-Audit and Oversight about recommended changes to the Massachusetts mandatory reporter laws mentioned that Larry Nassar was also a faculty member at Michigan State University, in addition to being a sports doctor for USA Gymnastics. H. COMM. ON POST AUDIT AND OVERSIGHT, RAISING THE BAR: A VISION FOR IMPROVING MANDATED REPORTING PRACTICES IN THE COMMONWEALTH, (Mass. 2018).

¹¹ Sandusky's abuse was reported to Head Coach Joe Paterno as early as 2002, but no notification was made to the police or any child protection agency. Bill Chappell, *Penn State Abuse Scandal: A Guide and Timeline*, N.P.R., June 21, 2012, <https://www.npr.org/2011/11/08/142111804/penn-state-abuse-scandal-a-guide-and-timeline>.

have historically been privy to the possession and exchange of child pornography. The Commission is taking a detailed look at each of these categories of persons to carefully weigh the expected exposure each of these categories of persons may have to signs and allegations of abuse and/or neglect and the trust relationship that exists between these service providers and their clients, against the need to be specific as to who is included in the definition of mandated reporter and the reality of enforcing training expectations (or requirements) and penalties for failure to report, on these categories of persons.

Mentors

The Commission is considering adding 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. There are concerns regarding how the drafting may impact victims of domestic violence, sexual assault, and human trafficking that the Commission has yet to fully discuss. The Commission is also interested in hearing from mentorship programs who may be impacted by these recommendations on the proposals the Commission is considering.

Clergy

The Commission has noted some of the 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. The OCA has also done some legal research into the scope of the clergy-penitent privilege in Massachusetts. The Commission is considering recommending some limited additions to this section to include persons who keep records for churches or religious bodies and persons who are employed by churches or religious bodies to supervise, coach, train or counsel adults or children.

Other Youth-Serving Individuals¹²

This category of persons, not currently in the statute, has recommended language that will identify particular roles and professions of persons who provide services to children such as persons at public libraries, summer camp personnel, sports organization personnel, and scouting group personnel. 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. These recommended roles for inclusion have been identified as they are often entrusted to care for children in remote or private spaces, they run programming specifically designed for

¹² The term "youth serving individuals" is drawn from the [Child Sexual Abuse Prevention Task Force Report.pdf \(childrenstrustma.org\)](https://www.childrenstrustma.org/Child-Sexual-Abuse-Prevention-Task-Force-Report.pdf).

children, and the persons involved are often in a trust relationship with a child or family.

Members of a Legal Defense Team

The Commission has given a great deal of attention to the proposal by the Committee for Public Counsel Services (CPCS) that the definition of mandated reporter explicitly exclude persons who are working on legal defense teams through a holistic defense model. The Commission has hosted comments from CPCS in support of the proposal and comments from the National Association of Social Workers -Massachusetts Chapter (NASW) in opposition to the proposal. Commission members have not reached consensus on a recommendation regarding this proposal and are open to hearing more information.

The holistic defense model integrates legal and non-legal services in an interdisciplinary model which seeks to address the circumstances that drive people into the criminal justice system; juveniles are better able to access their right to counsel when they feel safe and comfortable doing so and this is best accomplished by the holistic model of defense. CPCS argues that this proposed exclusion in the mandated reporter definition would recognize the already existing standard that the entire holistic defense team is covered by attorney-client privilege. The NASW does not agree that attorney-client privilege is extended to all members of the legal defense team. Further, NASW believes that members of the legal defense team, particularly social workers, can provide meaningful benefit to the legal defense without sacrificing the moral and professional duty to report allegations of abuse and neglect. CPCS has submitted to the Commission that social workers would need to be excluded from CPCS legal defense teams if their mandated reporter responsibilities apply when working as part of a legal defense team.

The Definitions of Abuse and Neglect

A Central Reporting System

The Commission was specifically asked by the Legislature to consider whether statutory changes were necessary to standardize the definition of child abuse and neglect across state agencies. The Commission looked at the statutes and regulations of state agencies as well as relevant other statutes that referenced child abuse and neglect and found no substantial differences in the terms or definitions among state agencies. The Commission is therefore not aware of any explicit definitions of child abuse and neglect that differ from the DCF definition or formulation that would affect the mandated reporting system.

The Commission's review of the definition of child abuse and neglect across state agencies lead to discussion regarding the complications that arise when state agencies run joint investigations

of child abuse and neglect with DCF or have independent but parallel investigations of child abuse or neglect to comply with licensing or contract monitoring authority. Joint investigations with DCF are currently organized via Memorandums of Understanding between DCF and the state agency participating in the joint investigation (primarily with the Department of Early Education and Care and the Department of Youth Services). Joint or parallel investigations are necessary to determine whether there are licensing violations or concerns that are identified through the reporting of a 51A and in situations when other state agencies may have responsibility (particularly in light of their different roles and regulations) to investigate situations of child abuse and neglect that may be screened out by DCF for reasons not relating to the circumstances that led to the report.¹³

The Commission notes that the joint investigation process is an important and effective tool for interagency collaboration. However, the complexity of these joint and parallel investigations, can lead to confusing, contradictory, and unintended results for providers who are being investigated or cooperating with an investigation. The Commission found that although the definition of abuse and neglect across state agencies is not in itself problematic, the complexity of joint investigations sometimes may cause administrative and technical complications for service providers.

There are state agency representatives that have extensive experience with the complexities involved in these joint and parallel investigation on the Commission. The detailed discussions regarding this topic have led the Commission to consider a recommendation that certain state agencies dedicate resources to streamline the processes of joint and parallel investigation, to refine information sharing, and 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. This would reduce the currently extensive amount of paperwork required by providers when incidents occur, it would ensure that all relevant state agencies would receive the same information at the same time, it would prompt joint investigations when appropriate, and it could provide the institution or service provider with a detailed description of the purpose of investigations of the incident, relevant timelines, and possible consequences of investigations.

The Commission feels that the recommendation for a central reporting system is not a statutory change, but a process improvement that should be sufficiently detailed in the Commission's final report so as to make that process improvement plan actionable and to hold state agencies accountable to that plan. Therefore, the Commission requires additional discussions on which

¹³ For example, DCF may screen out a report that a member of the public entered a childcare facility and hurt a child if they determine that the member of the public was not a caretaker, however, EEC may investigate that situation to determine whether childcare facility staff were not following the licensing protocols in regards to security or were otherwise responsible in some way for the incident that occurred.

agencies should be involved in this recommended process design, the expected timeline for such a project design, and the expected cost of such a process design and ultimate central reporting system. The Commission feels strongly that this would be such a benefit to the investigation and cross-agency collaboration system that only a truly actionable recommendation would be suitable.

Definitions of Abuse and Neglect

Current Statutory Language: MGL c. 119 §51A(a):

A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

The Commission has also held detailed discussions about recommending the addition of definitions of abuse and neglect into the statute. 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. Based on this, the Commission determined that it would recommend the addition of a definition of abuse and a definition of neglect in the statute. The status of the discussion is currently at the level of evaluating draft statutory language recommendations.

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 statute.

The Commission is carefully reviewing the wording of the proposed definitions in order to ensure that the proposals reach the appropriate balance of freedom of parents to raise their children without needless state involvement or judgement, even in situations where childrearing approaches or cultural practices may be considered strange, unorthodox, or counter-intuitive, with the need to ensure that children are provided with minimally adequate care to ensure their safety. The Commission has not fully completed the drafting of these proposed definitions of abuse and neglect and there are key issues to further resolve.

Recently the Commission has heard from the public that there is concern that the addition of any definition of abuse and neglect, and the particular drafted definitions the Commission is continuing to discuss, may result in exacerbating the already disproportionate impact child maltreatment reporting has with families of certain races and ethnicities. The Commission has not had the opportunity to address these concerns or other concerns, such as other unintended consequences of the addition of definitions and the particular drafting of definitions, with any interest groups outside of the Commission due solely to time constraints on the Commission's workplan. The Commission feels it is particularly important to hear from members of the public on this matter to be fully informed of the possible consequences of any proposed language so that the Commission has an opportunity to address these considerations and fairly place these considerations before the Legislature in the Commission's final report and recommendations.

Other Recommended Definitions

Sexual Abuse Definition

The Commission, in detailed discussion about the possible language recommendations for abuse and neglect also considered the addition of, and is currently reviewing drafting of, a definition of sexual abuse. Sexual abuse is currently referenced in 51A(a) but the term is not described in the statute.

The Commission is concerned that 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, the Commission is concerned that 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.

The Commission also has reached general agreement that some guidance is needed regarding the reporting of underage consensual sexual relations and a definition of sexual abuse could help to guide mandated reporters, while further guidance could be provided via DCF issued guidance or possibly through mandated reporter training. The Commission has a draft definition of sexual

abuse that has not been thoroughly discussed or reviewed by Commission members. The Commission also feels strongly that voices of members of the public, such as doctors, nurses, lawyers, and persons working in child welfare, should be consulted on any proposed definition as well as any possible consequences of including such a definition in the statute.

Definition of “Reasonable Cause to Believe”

The 51A reporting statute sets a reporting standard that mandated reporters notify DCF when they have a “reasonable cause to believe” that abuse and/or neglect has occurred. The Commission is considering recommending the addition of a definition of that “reasonable cause to believe” standard. The Commission feels that although the language of the standard may be understood by lawyers, the mandated reporter statute is often used by non-lawyers as a guide to inform them about their reporting responsibilities and that a definition of the reasonable cause to believe standard would assist mandated reporters in determining what circumstances rise to the level of requiring a report to DCF. Clarification on this standard could help 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.

The definition, if ultimately proposed by the Commission, must be narrowly tailored to achieve its goal of describing the reporting standard to mandated reporters without encouraging an internal investigation prior to filing with DCF. DCF has the expertise to conduct child abuse and neglect investigations and delays in reporting or prior internal investigations may hamper DCF’s ability to conduct its investigation. The Commission is currently reviewing a draft proposal of statutory language and is again seeking to obtain input from relevant members of the public as to the possible consequences of the addition of the definition and the wording being considered.

Reporting of Substance Exposed Newborns¹⁴

In reviewing the topic of the definition of abuse and neglect, and the specific requirements of MGL c. 119 §51A(a), and at the specific request of several doctors, including a group of pediatricians with expertise in child abuse, the Commission began an in-depth look at the issues raised by the statutory requirement that mandated reporters make a 51A

Current Statutory Language: MGL c. 119 §51A(a):

A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from...(iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department...

¹⁴ The terms “substance” and “substance exposed newborns” is used within this section to refer to children born with any positive toxicology regardless of whether the “substance” is a medication or a non-prescribed drug. The terminology is meant to relate to the federal requirements described in this section and is not intended as an explicit or implicit judgement on mothers or their children.

report any time a child suffers a physical or emotional injury from “physical dependence upon an addictive drug at birth.” The existence of this language in the statute is in part tied to the Child Abuse Prevention and Treatment Act (CAPTA) which is discussed further below. Medical professionals and other members of the public, including professionals from the Department of Public Health (DPH), have spoken with the Child Advocate, as the Chair of the Commission, and the Commission itself, about their concerns that the language in the reporting statute does not differentiate between addictive drugs that are illegal, and addictive drugs that are prescribed to mothers such as medications for opioid use disorder (MOUDs).

Under the current reporting requirements, 51A reports must be filed with DCF upon the birth of a child born with medications in their system even if the medications for which the children test positive are solely the prescribed medications their mothers are taking to treat their substance use disorder. This circumstance, reportedly, leads to many pregnant women choosing to forego their prescribed medications for substance use disorder or MOUDs for fear of DCF involvement when their babies are born. Therefore, the wording of 51A requiring the filing of these cases with DCF can have the counter-productive result of putting families and children in a more vulnerable position, threatening the sobriety of mothers and their wellbeing, than if a report were not required.

The wording in the 51A statute regarding newborns born exposed, is tied to the complex system of the federal requirements of CAPTA and so is not easily resolved. CAPTA is a federal funding program with requirements for child protective service systems in multiple areas including intake, assessment, and training. Starting in 2003, CAPTA required states to have policies or procedures to address the needs of substance newborns (SENs), including appropriate referrals to child protective services and/or other services, and the development of a Plan of Safe Care (POSC) for affected infants.¹⁵ Reporting is required for any situation in which a child is born “affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder.”¹⁶ The word “illegal” originally preceded the term “substance abuse” in the statute but was specifically removed in 2016. This change suggests that CAPTA is attempting to capture the effects of substance *use* (rather than substance “abuse”), or at least it will capture substance *use* regardless of the reasons or medical appropriateness of that use.

Although CAPTA requires that DCF be the vehicle to report the number of infants in the Commonwealth who are born affected by substances (illegal or prescribed) and whether or not a Plan of Safe Care was developed for those infants, CAPTA does not require that these infants be reported to DCF through an allegation of abuse and/or neglect filing. In other words, CAPTA does not require that DCF treat notification of these births as 51As. However, DCF, as the child protective agency in the Commonwealth, has the obligation to consider the possible risks to all children who are brought to DCF’s attention and relies on its screening process to determine whether substance exposed newborns are at risk in the care of their parents. All the 51A reports

¹⁵ 42 USC § 5106a(b)(2)(B)(ii)

¹⁶ *Id.*

under this umbrella go through the same screening process as any other allegation of abuse and neglect. Though mothers-to-be may be counseled that 51As regarding their newborns' toxicology screenings may be screened out by DCF, the fear of even the initial screening phase is leading women to forego medication to treat their substance use disorder which puts themselves and their newborns at significant risk.

The Commission has spoken extensively about the complexities discussed herein and has looked at the models from several other New England states who approach this matter differently. Some other states comply with CAPTA reporting through the child welfare channel but not necessarily, or always, through the filing of an allegation of abuse and neglect. The Commission is interested in learning more about how a potential partnership between DCF and DPH regarding substance exposed newborns and Plans of Safe Care, similar to partnerships developed in other states, could address this issue to the benefit of children and families and without compromising the responsibilities of DCF to fully review all allegations that are filed with the department. For these reasons, the Commission established a working group of a minority of Commission members and experts from the field to dive deeply into these issues and to discuss the realities of how possible recommendations may play out on the ground. The Child Advocate, in her leadership of the Commission, is seeking to discuss with DPH the possibility of taking a larger role within this framework. This will require more detailed discussions to determine the wisdom, efficacy, and possible costs associated with such a recommendation in order to bring that recommendation to the working group and to the Commission for full discussion and review. There is momentum and ongoing work on this important topic and the Commission does not feel that it would be appropriate to recommend any statutory changes to MGL c. 119 §51A(a) without making a purposeful recommendation on whether to change the language, and thereby change the reporting structure, relating to substance exposed newborns.

Institutional Reporting

The term "institutional reporting," as used in this report and in parlance in the Commission's work, refers to the current provision in MGL c. 119 §51A(a) 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

Current Statutory Language: MGL c. 119 § 51A(a)

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.

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. The Commission is concerned, therefore, that there are multiple potential complications in this process regarding: whether a report is made to DCF, what information is reported, and how the information is reported.

The Commission members also relied on their own collective experiences of having extensive knowledge of the child welfare landscape and specific experiences with child welfare investigations, to note that 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, collective experiences showed that 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.

The Commission agreed that the challenges posed by the current institutional reporting procedure could be remedied and that an institutional reporting procedure is a valuable part of the statute. The filing of a 51A, though critical to the goal of child protection, is a time intensive activity. Many institutions, such as emergency room hospitals and institutions with specific client to staff ratio requirements, are unable to allocate the time and resources of a mandated reporter to make the report as immediately as the statute requires and no institution wants to inadvertently delay the filing of the report due to such resource constraints. The Department of Elementary and Secondary Education, the Department of Early Education and Care, the Department of Mental Health, the Department of Developmental Services, the Department of Public Health, and the Department of Youth Services are all notified by DCF of supported investigations of all reports of alleging abuse or neglect at facilities approved, owned, or operated by these agencies or if DCF finds through their investigations that abuse or neglect was

committed by an individual licensed by one of these state agencies (see MGL c. 119 §51B(l)).¹⁷ No other institutions, such as individual schools, individual hospitals, or other facilities are routinely notified of supported allegations of abuse and neglect unless they are contacted by DCF in the course of the investigation of those allegations.

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. Additionally, the state agencies notified by DCF under MGL c. 119 §51B(l) are only guaranteed notification once a DCF investigation has supported allegations of abuse and neglect, it does not provide state agencies with notification of 51A reports that are screened out by DCF,¹⁸ which may be screened out for reasons unrelated to the concerns underlying the report. Continuing to provide an institutional reporting procedure within the statute would ensure that institutions could act in light of concerns that are raised to DCF even if DCF determines that those concerns do not fit within its mandate.

The Commission spent several meetings creating a proposal for a detailed procedure for institutional reporting. The Commission has yet to vote on the language recommendations for that procedure, but the Commission has reached general agreement on the structure. The proposed structure, which has not been formally approved, contains the following elements:

- 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

¹⁷ The OCA also is notified under this provision but that is not relevant for the purposes of this institutional reporting discussion.

¹⁸ Although not required by MGL c. 119 §51B, agencies may be notified of 51A filings by DCF pursuant to a Memorandum of Understanding with DCF or pursuant to the agency's own statute.

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.

The Commission's recommendation will include that licensing regulations require compliance with this proposed structure if it is enacted into law. Although Commission members have largely reached general agreement on these recommendations, the Commission has not yet had the opportunity to hear from the public regarding any concerns with these recommendations and believes that some unions or other organized groups may have significant feedback to add to this discussion that may result in alterations or changed Commission positions on this proposal.

Penalties

An informal working group of a minority of Commission members met with the OCA to assist the OCA in brainstorming possible changes to the penalties section of the 51A statute. The full Commission ultimately considered potential recommendations to alter the penalty section of the statute, but Commission members are not fully in agreement about potential recommendations. It is possible, even likely, that the Commission members will not reach consensus on recommendations regarding the penalty section of the statute and such recommendations will need to be put to a formal vote which will not be unanimous. The fundamental reasons for the lack of unanimity, as it currently stands, is the disagreement about the appropriateness of a financial penalty for failing to follow statutory requirements particularly as that financial penalty disproportionately effects persons with lower incomes and can disproportionately effect persons of color. The Commission is currently considering several recommendations that would alter the penalties portion of the statute.

Monetary Penalties

The current penalty for failure to report is a monetary penalty which the Commission is currently considering altering. The current monetary penalty is \$1,000 which was considered a lot "more" money in 1973, than it is now. The Commission, in recognizing the disproportionate harm that financial penalties can cause persons of lower incomes, is considering changing that static amount to "not less than \$1,000" fine but "not more than a \$10,000" fine. The Commission is considering a proportionate range increase for the separate penalty of failing to report child abuse or neglect that results in the serious bodily injury or death of a child which is currently set at \$5,000 to a range of \$5,000-\$50,000. A similar statutory increase in the penalty amount through the creation of a penalty range is also being considered for persons who fail to report deaths to the district attorney or Office of the Chief Medical Examiner as is required by MGL c. 119 §51A(e), and for the penalty attached to falsely reporting or frivolously reporting. Some Commission members feel comfortable that district attorneys and courts will appropriately exercise discretion in determining the fine amounts dependent on the severity of the conduct and the harm that such fines would inflict on specific income levels; other Commission members do

not feel that such possible discretion remedies the ills of financial penalties.

Creation of a Licensure Penalty

Commission members have reached general agreement that any violation of the 51A statute should carry a possible licensure penalty for persons who are mandated reporters and who are licensed or certified in their roles or professions. This proposed “penalty” is a notification to the appropriate professional licensing authority of a claim that a mandated reporter violated 51A in some manner (most often by failing to report or falsely reporting). The recommendation by the Commission includes that relevant information supporting the allegation against the mandated reporter will be provided to the appropriate licensing authority upon request, so a licensing complaint could become actionable if a licensing authority chooses to pursue such a complaint either under their current administrative licensing violation procedures or if they create new administration licensing violation procedures.

The Commission continues active discussions about the 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. However, the Commission has reached general agreement that 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 submits that it is critical that the Commission reach out to professional licensure bodies once the proposed language is agreed upon to determine whether the proposal is efficiently designed and that it will have its intended result. This intention relates to the core belief of the Commission that it is the responsibility of the Commission to provide the Legislature with a system-wide change to mandatory reporting and not a piecemeal approach to issues.

Prohibition on Employer Retaliation

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. The Commission discussed the issue substantively and reached general agreement that it will recommend that prohibition of employer retaliation be extended to all persons who make a good faith report of child abuse and/or neglect to DCF.

The Commission also discussed the reality of how such employer retaliation claims may be pursued by individuals. 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. The Commission 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. It was agreed upon that the Child Advocate, as Chair of the Commission, would reach out to necessary parties to explore a suitable home for these claims that would make the prohibition of employer retaliation more cognizable and therefore a stronger protection and encouragement of mandated reporting. The Commission respectfully feels that for this recommendation to be actionable, additional work must be done to determine the details of such a proposal, the appropriateness of such a proposal within other entities' mandates, and the potential cost of such a proposal to the Commonwealth.

Current Statutory Language: MGL c. 119 §51A(h)

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.

MGL c. 119 §51B(o)

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.

Civil and Criminal Immunity for Actions Taken in Accordance with 51A

The Commission discussed the portion of the statute that provides civil and criminal immunity to persons who report. Massachusetts, along with the majority of states, provides criminal and civil

immunity for reports by mandated reporters of child abuse and neglect made in good faith, that were not “frivolous,” so long as the reporter themselves did not cause the abuse and/or neglect. The statute also protects non-mandated reporters so long as the report was made in “good faith” and the reporter did not perpetrate or inflict the abuse or neglect. The current statute accounts for situations where a non-mandated reporter, perhaps with limited knowledge of details, makes a “frivolous” report in good faith. The Commission concluded that the existing provision within 51A was sufficient and that the Commission would not recommend any statutory changes.

Training

The Commission is required by the enabling statute to explore current training requirements, the agencies and employers responsible for training, the frequency, scope, and effectiveness of training, best practices for training, and options for designating an agency responsible for overseeing the mandated reporter system including developing and monitoring training requirements.

Current Statute: MGL c. 119 §51A(k):

A mandated reporter who is professionally licensed by the commonwealth shall complete training to recognize and report suspected child abuse or neglect.

The Commission agrees it will recommend that all mandated reporters, not just those licensed by the Commonwealth, be required to complete training to recognize and report suspected child abuse and neglect. The Commission believes that mandated reporters will benefit from knowing clearly, through training, the scope of their obligations. The Commission also believes that training will help address and reduce over-reporting or reporting that does not rise to the level of child abuse and neglect. The Commission, based on experience and expertise in the field of child welfare, agrees that 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 Commission agrees that these fundamental reasons that mandated reporters fail to report can only be substantively addressed through training. Further, the Commission agrees that training should include technical instruction on how to file a 51A and details of the DCF process regarding 51As.

Though the Commission agrees that the recommendation to the Legislature will include a requirement that all mandated reporters be trained, the Commission has not come to consensus regarding the other details of the training proposal. However, conversations regarding training, and drafting of possible statutory text, are ongoing and the discussion has momentum suggesting that consensus is possible.

In discussing the possible recommendation on training, the Commission reviewed literature regarding best practices in mandatory reporter training, reviewed the status of trainings in Massachusetts, and reviewed models from other states including California, Pennsylvania, and Illinois. The Commission is currently debating whether there should be a state-sanctioned

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training entity which has the power to create its own trainings and to approve the curriculum of other trainings, or whether there should be one general training approved by the state and no sanctioned entity with the power to approve curriculums. If the Commission ultimately recommends a state-sanctioned training entity, the Commission feels that the recommendation will only be actionable if the Commission recommends (even if the recommendation is not in proposed statutory language but rather in the final report) a fully designed system that incorporates detailed processes about how such a training entity would be approved, whether there will be consultation from state agencies including possible consultation from the OCA and from DCF, whether there will be requirements regarding data gathering, and the estimated cost of such a process. The Commission has repeatedly discussed the possible training recommendation as flexible guidance to mandated reporters, providing clarity where there is confusion, and responding to trends and events such as mandated reporting in the time of Covid-19. The Commission requires additional time to determine if the training recommendation can be designed to live up to this possible potential.

Conclusion

The Mandated Reporter Commission respectfully submits this Status Report as a full briefing on the work the Commission has completed on its mission to take a comprehensive approach to recommending changes to the mandatory reporter law in Massachusetts. The Commission also respectfully submits that its work is not done. The Commission, due to the complexities of the discussions on each topic outlined herein as well as the impact of Covid-19 on state entities, has been unable to adequately hear from interest groups and experts in the public who can provide relevant perspectives on the Commission's work. The Commission also requires additional time to create detailed recommendations that take a systems-approach to the complex and critically important doorway into the child welfare system. Finally, the Commission has discovered additional areas of discussion, such as reporting on substance exposed newborns at birth, that have consequences for children and families in the Commonwealth and that deserve the attention of the Commission.

The Legislature has entrusted the Commission with the responsibility to make recommendations including draft statutory changes. The Commission is dedicated to that responsibility and hereby requests a formal deadline of June 30, 2021 for a full report to the Legislature. If the Legislature does not formally extend the deadline of the Commission, Commission members are in agreement that the Commission's work will continue and that the Commission will submit a final report to the Legislature even if such a report is no longer statutorily required. The Commission thanks the Legislature for the opportunity to engage in this historic discussion in Massachusetts and is hopeful that the work described herein meets the expectations of the Legislature.

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