

Mandated Reporter Commission

Review of Proposals after Public Comment Period Continued

June 9, 2021

DEFINITION OF MANDATED REPORTER

MRC statutory reference:

- Findings and recommendations on the scope of mandated reporter laws and regulations including, but not limited to, persons included in the mandated reporter definition;
- Proposals to expand mandated reporting requirements under sections 51A to 51F (inclusive);

There were many public submissions opposing expansion of the definition of mandated reporter, opposed some specific expansions of the definition of mandated reporter, and some that advocated, explicitly or implicitly, for a need to further curtail the definition of mandated reporter. The summary of these arguments are as follows:

- Anyone can make a report, expansion of the list is not required for people to report.
- Expansion of the list of mandated reporters will create an influx of unfounded reports which both hurt families, disproportionately hurt families of color and families in poverty, and will overburden DCF unnecessarily.
 - This is particularly true if the Commission were to increase the financial penalties for failure to report which will cause over-reporting out of fear by mandated reporters.
- Expanding the list of mandated reporters will have negative consequences mandated reporters act on their implicit biases- the joint/team decision-making process that some entities have when determining whether to make a report help to curtail such biases but such safeguards would not be in place when expanding the list of mandated reporters.
- The Commission has not indicated any reasoning to support expansion of mandated reporting responsibility.
- Mandated reporting is surveillance of families that has a far more detrimental effect on society and children than does the abuse or neglect that although real, is less common than is suggested by DCF over-involvement with families.
- Mandated reporters even now do not do a good job of reporting as is evidenced by the number cases that are screened-out.
- There will so many new filings, mostly unsupported and biased filings, based on this expansion that DCF will be so burdened current case practice will suffer. DCF would need significant additional resources to handle this burden.
- Mandated reporting has negative consequences for persons who are reported on including reputational and job-related consequences- expanding the list of mandated reporters who will act on their implicit biases and file unfounded reports will increase these negative consequences.

Commission work has operated on several premises. The first premise is that the initial drafting of the statute in 1973 which defined mandated reporters needed updating to reflect not only the current usage of terms as they relate to professions, but also to account for scenarios that are true today that may not have been true at the time the statute was drafted.¹ The second premise is that there are situations where child abuse or neglect may happen, or may be disclosed as happening, that are not currently captured in the statute. This is true for situations involving child athletics as well as in higher education. The third premise is that not all mandated reporters do report- though it is hard to quantify unknowable information. However, the OCA's work supports experiences of under-reporting in schools, childcare centers, congregate care settings, medical settings, shelter settings, and so on. The fourth premise is that there should be a common theme or themes underlying the reason why a certain profession or sub-group of people would be categorized as mandated reporters. Finally, the fifth premise is that the language used by the Commission to identify any changes to the definition of mandated reporter should strike a balance between using specific job titles so that persons know that they are included as mandated reporters, and keeping job titles wide enough that they will be applicable and flexible enough for future applications to unforeseen situations.

Common themes previously identified by the Commission:

- Persons who have access to children and who are often alone with children and/or responsible for their care;
- Persons in positions of authority or who children may identify as being in positions of authority;
- Persons who may be exposed to personal and detailed information about children and families;
- Persons who work in state agencies that provide services to children.

Discussed on May 7: Addition of a minimum age requirement of 18 year old

Discussed on May 7: Addition/Clarification of volunteers

Discussed on May 20: Jurisdictional and Remote Issues:

Discussed on May 20: Contractual Obligations

Discussed on May 20: Medical Providers

Discussed on May 20: Mental Health Providers

Discussed on May 20: Education Providers

¹ Of note, the statute has been updated several times: 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.

Discussed on May 27: Public Safety Officials

Discussed on May 27: Social Service Providers

Discussed on May 27: Persons Retained by an Attorney

Discussed on May 27: Mentors

Discussed on May 27: Clergy

Discussed on May 27: Other Youth Serving Individuals

Discussed on May 27: Contractor

Confidential Services

Proposal without draft language

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.”

Public feedback on this section:

- Some of the most vulnerable children are found in these types of situation. Similar to the police response, the key should be transparency and communication around filing, but the filing obligation should remain.
- Agreement with this proposal as a holistic approach to families.
- This narrow exemption is not sufficient to mitigate the larger harms of the proposed recommendations.
 - o “The exemption in fact highlights some lack of understanding regarding the realities of survivors of sexual and domestic violence underlying the Commission’s recommendations. Many survivors of SDV may never reach out to sexual and domestic violence advocates. Others may connect with resources available for survivors of sexual or domestic violence after accessing other supports such as healthcare or other social services. While the proposal contemplates a narrow exemption to mandatory reporting requirements for SDV advocates, survivors of SDV will likely encounter a mandated reporter in a range of additional contexts such as education, healthcare, or other settings. The implications for these additional sites of expanded reporting are significant for survivors.” *See submission by Jane Doe, Inc.*

- “We ask the Commission to understand that awareness of the unique needs of survivors of sexual and domestic violence, as well as awareness that abuse against an adult is NOT reportable in MA, is not considered universal knowledge. Victim blaming and shaming are unfortunately still commonplace across our communities. After decades of advocacy on behalf of survivors of SDV to ensure more access to services, the expanded possibility of mandatory reporting in these proposals risks posing significant barriers for survivors seeking support. It also increases risks to survivors and their children when mandated reporters have not been trained how to report safely to minimize the chances of retaliatory violence or other risks victims face when the abuser learns a report has been made” *See submission by Jane Doe, Inc.*
- Some submissions not DCF’s current “Promising Approaches” guidance which notes that mandated reporters are encouraged to carefully consider each family’s situation and consider whether or not to file.

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.

Reasoning behind this proposal:

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.

Public feedback on this section:

- When attorneys work specifically with children, and a child discloses, then the information must be reported to keep children safe. It is best to get the information first

hand from the individual who heard the disclosure and not through some work-around to get another person to report the disclosure.

CENTRAL REPORTING SYSTEM

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.

Reasoning behind the proposal:

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 licensor as well as DCF when an incident occurs. This may also lead to joint or multiple investigations by state agencies regarding the same incident. For purposes of the Commission's work, the Commission looked at this issue through the lens of a provider filing a 51A report of child abuse/neglect as well as needing to file a report with their licensor. The proposal below relates to that situation but is also broad enough that it could include situations when a provider has to file a report with other state entities even if DCF is not one of those entities.

Public feedback on this proposal:

- Full support and ask that the system be staffed and resourced in a way that it cannot be overwhelmed and children will not slip through the cracks.
- Recommendation that the different policies for each agency be reviewed and aligned prior to implementing the system.

REPORTING RESPONSIBILITY

Reasoning behind the proposals generally:

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 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 \(mass.gov\)](http://www.mass.gov/law-and-order/legislation/proposed-legislation/110-cmr-2)

REPORTING RESPONSIBILITY	
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 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</p>	<p>A mandated reporter shall immediately file an oral report with the Department and shall file a written report with the Department within 48 hours detailing any situation in which that reporter, in their professional capacity, has reasonable cause to believe that a child is suffering, or at substantial risk of suffering, an injury to their physical, mental, or emotional health or condition resulting from: (i) abuse inflicted upon the child; (ii) neglect; or if a child is (iii) 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.</p>

Reasoning behind this proposal:

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.

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.

Public feedback on this section (see section below for public feedback on text in blue):

- “I strongly support the expansion of the reporting mandate to include substantial risk, above and beyond actualized injury.” *See submission by Dr. Stephen Boos*
- Adding “at risk” will increase the numbers of reports from mandated reporters and all the negative consequences that go along with mandated reporting.

The following states all have language that requires reporting something akin to a “risk” of neglect. Many of these states use similar language to the following: “A person observes any child being subjected to conditions that would reasonably result in abuse or neglect.”

Arkansas, Colorado, Connecticut, Washington DC, Hawaii, Idaho, Maine, Missouri, Nebraska, Ohio, Puerto Rico, Utah, West Virginia, Wisconsin, Wyoming, and possibly South Carolina

Please see the Addendum on State Standards for Making A Report provided with your meeting materials.

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 prescribed 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.

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.

Public feedback on this section:

- Not changing the current system would effectively “criminalize” suboxone or other drug assisting addiction treatment and disincentivize utilizing the treatment. (*Note: this submission appeared to believe that the current statute language was a proposal so this comment has been rephrased to better fit with the structure of this discussion.*)

- Physical dependence on an addictive drug a birth should not be used as a proxy for child abuse or neglect.
- “Medications prescribed for treatment of opioid use disorder when taken during pregnancy may result in a transient syndrome of withdrawal in the newborn (Neonatal Opioid Withdrawal Syndrome, NOWS). This syndrome is temporary, easily treated and expected. Women who are stable on MOUD prior to pregnancy should not stop this lifesaving medication if they become pregnant, however the fear of mandated reporting based on the expected NOWS syndrome often motivates treatment cessation.” *See submission by Dr. Miriam Komaromy*
- Express support for a two track reporting system including noting the trauma of a 51B investigation.
- Submission recommending the Commission adopt HB221 “An Act Supporting Families” which creates a new subparagraph under 51A which creates deidentified reports to DCF for situation when an infant is born affected by in-utero substance exposure or Fetal Alcohol Spectrum disorder.
- *See submission from the Massachusetts Medical Society-* Cautions that reporting to any state agency, even not DCF, may deter people from seeking treatment. Urge the Commission to ensure that racial and ethnic data is collected via the proposed two-track system, permit DPH to gather data to allow for epidemiologic evaluation which will benefit public health and determine whether there are racial and ethnic disparities in the two-track system itself.
- Recommendation that the family of every child exposed to an illegal or intoxicating substance in utero be assessed for risk and remediation of risk.
- Writing in favor of a two-track reporting system, submission notes “Several classes of maternal medication including antidepressants and benzodiazepines may impact the fetus and cause transient neonatal withdrawal symptoms, but only medications to treat opioid use disorder are targeted in child welfare reporting guidelines, further highlighting discrimination against pregnant people with substance use disorder. Just as patients with other chronic diseases in pregnancy do, individuals with opioid use disorder should be able to make treatment decisions based on medical risks and benefits, not based on the fear of child welfare reporting.” *See submission Davida Schiff et. al.*

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, being a sexually exploited child, or being a human trafficking victim as defined by section 20M of chapter 233.

Reasoning behind the proposal:

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.

Public feedback on this section:

- “The draft proposals would not accomplish the Commission’s goals. The Commission has expressed that its proposals to change the definitions of abuse and neglect by statute are designed to discourage mandated reporters from undertaking their own investigations, reasoning that these ‘investigative’ functions are better left to DCF. But these statutes would apply to DCF as well, meaning that if the statute did not limit abuse and neglect to caretakers or to cases where the apparent neglect was not due solely to poverty or a parent’s disability, DCF would not have the authority to screen out reports on these grounds. This would have several unintended consequences, including the creation of a system in direct conflict with the protections of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and the Department’s own recent agreement with the Department of Justice and the Department of Health and Human Services, Office of Civil Rights.” *See submission by the Massachusetts Child Welfare Coalition and the Children’s Law Support Project*

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.

Reasoning behind the proposal:

Currently, the statute does not define child neglect other than to indicate that neglect includes malnutrition. This proposal would add a definition into the statute in an effort to clearly communicate to mandated reporters the scope of their requirements and to provide some level of guidance about what types of injury fall into the category of neglect.

This proposal notes that there 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.² 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 were 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.

- Arguments 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 notes that in order to file a report, the reporter must have an understanding of the facts that underly the report to ensure that the reporter has a reasonable cause to believe that a reportable situation is occurring. This understanding likely comes from some minimal inquiry into the facts of the situation prior to filing. However, the Commission notes that any internal investigation to support a 51A filing that goes beyond a minimal inquiry to determine whether facts support a concern that a child is subject to abuse or neglect is problematic, should be avoided, and is often detrimental to the child protective case once it reaches DCF. Arguments for including “another” include that any inquiry into whether an alleged perpetrator is a “caregiver” is an inquiry that is not necessary to support the filing of a report and may prompt a more expansive investigation into a situation prior than is wise or necessary.

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

² For more information about these referrals please see MGL c. 119 § 51B(a), § 51B(k) and DCF policy.

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(1)).

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).

Public feedback on this section relating primarily to disproportionate impact, poverty, and disability:

- Many submissions refer to "removing the poverty exemption" or "removing the disability exemption."
- Many submissions expressed serious and grave concerns about this definition confusing poverty with actual neglect and encouraging reporting on situations affecting children solely born out of the circumstances of poverty.
- "I also support the removal of the poverty exclusion, with the following comments. Whether neglect is the result of willful inaction, mental illness, substance use, ignorance, or poverty, the child's experience is the same. As such, all merit reporting and a response. Where poverty is the underlying etiology, however, the responsible parties extend beyond the parent. Often responsibility has a broad social basis. DCF has demonstrated to me that they understand this, and that this is dealt with in management. As such it need not be addressed in reporting." *See submission by Dr. Stephen Boos*
- It is important to have a definition of neglect because lack of a definition creates an optimal environment for racial profiling of families and guardians.
- Failure to have a definition of neglect that addresses poverty will have a disproportionate effect on Black and Brown families because of the systematic and cyclical nature of poverty and a history of racist social and economic policies.
- The proposed language (understood as eliminating the consideration of a financial situation) leaves too much to the discretion of the reporter in making a decision particularly without any consideration given to the reliability of the reporters' judgment or any evidence that this will help children.
- DCF has a history of discrimination against parents with disabilities, mandated reporters are likely not to be any better at recognizing the standard of abuse and neglect for parents with a disability.

- Even if cases involving poverty and disability are screened out by DCF, the screening process is highly traumatic for families involved and is invasive.
- Survivors of domestic violence will be penalized under this definition on account of their poverty and/or their disability. Studies have shown a correlation between domestic abuse, poverty, and homelessness so victims of domestic violence will be disproportionately impacted.
- The changing of the definition to no longer exclude exceptions for challenges due to poverty and/or disability would increase the racism, classism and ableism already embedded in the mandated reporting system.
- Such a definition will flood DCF with unnecessary reports which will create resource crises and will result in DCF being unable to adequately respond to serious situations of abuse.
- DCF would have to alter its regulations to match the definition of abuse and neglect applicable to the 51A statute and so DCF's own screening would change to not exempt situations of poverty or neglect.

Other public feedback on this section:

- Recommend change from "...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" to "...or other essential care to meet the child's needs." This is because it is not possible to "ensure" a child's safety and the standard is better expressed in terms of meeting a child's needs. *See submission by Dr. Stephen Boos*
- Argument against "another" as too broad (hypothetically involving perfect strangers to the child)- alternative could be language crafted as "a person who is known to be, or who might possibly be a caretaker." *See submission by Dr. Stephen Boos*

Drafting from other states:

<p>PLEASE NOTE: All information in this addendum is taken from the Child Welfare Information Gateway. The document providing this information is current as of 2019. The OCA has excerpted the information this document both in terms of topics that are covered, and in terms of relevant section of cited statutes. Please see https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/define/ a full overview of the source document that includes additional relevant information. The Child Welfare Information Gateway is a service provide by the Children's Bureau of the Administration for Children and Families within the US Department of Health and Human Services.</p>	
Arizona: Rev. Stat. § 8-201	A child is not considered neglected if a parent's inability to meet the needs of the child is due solely to the unavailability of reasonable services.
Arkansas: Ann. Code § 12-18-103	It is not considered neglect when the failure to provide appropriate care is caused primarily by the financial inability of the person legally responsible, and no services for relief have been offered.
California: Welf. & Inst. Code §§ 300; 300.5; 16509.1; Pen. Code §§ 11165.2; 11165.6	No child shall be found to be dependent solely due to the lack of an emergency shelter for the family.

	<p>A physical disability, such as blindness or deafness, is not considered a bar to raising happy and well-adjusted children unless a parent's disability prevents him or her from exercising care and control.</p> <p>'Child abuse or neglect' does not include a mutual affray between minors. 'Child abuse or neglect' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer</p>
Colorado: Rev. Stat. §§ 19-1-103; 19-3-103	Those investigating cases of child abuse shall take into account child-rearing practices of the culture in which the child participates, including the work-related practices of agricultural communities. (<i>emphasis added</i>)
Delaware: Ann. Code Tit. 16, § 902; Tit. 10, § 901	<p>'Neglect' or 'neglected child' means that a person who is responsible for the care, custody, and/or control of the child and has the ability and financial means to provide for the care of the child does any of the following:</p> <ul style="list-style-type: none"> • Fails to provide necessary care with regard to food, clothing, shelter, education, health, medical, or other care necessary for the child's emotional, physical, or mental health or safety and general well-being • Abuses alcohol or a controlled substance chronically and severely, is not active in treatment for such abuse, and the abuse threatens the child's ability to receive care necessary for that child's safety and general well-being • Fails to provide necessary supervision appropriate for a child when the child is unable to care for his or her own basic needs or safety, after considering such factors as the child's ag
Washington, DC: Ann. Code § 16-2301	It is not neglect when the child's deprivation of parental care and control is due to a lack of financial means.
Florida: Ann. Stat. § 39.01	It shall not be considered neglect if failure to provide for the child is caused primarily by financial inability, unless actual services for relief have been offered to and rejected by the parent.
Iowa: Ann. Stat. § 232.68	<p>The terms 'child abuse' or 'abuse' include the following:</p> <ul style="list-style-type: none"> • The failure on the part of a person responsible for the care of a child to provide adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so • Failure to provide for the adequate supervision of a child that a reasonable and prudent person would exercise under similar facts and circumstances and the failure resulted in direct harm or created a risk of harm to the child • The presence of an illegal drug in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child • That the person responsible for the care of a child, in the presence of a child unlawfully uses, possesses, manufactures, cultivates, or distributes a dangerous substance; knowingly allows such use, possession, manufacture, cultivation, or distribution by another person in the presence of a child; possesses a product with the intent to use the product as a precursor or an intermediary to a dangerous substance in the presence of a child; or unlawfully uses, possesses, manufactures, cultivates, or distributes a dangerous substance in a child's home, on the premises, or in a motor vehicle located on the premises • Knowingly allowing a person to have custody of, control of, or unsupervised access to a child after knowing the person is required to register or is on the sex offender registry

Louisiana: Ch. Code Art. 603	The inability of a parent or caregiver to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect.
Michigan: Comp. Laws § 722.622	<p>'Child neglect' means harm or threatened harm to a child's health or welfare, by a parent, legal guardian, or any other person responsible for the child's health or welfare, that occurs through either of the following:</p> <ul style="list-style-type: none"> • Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or by the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care • Placing a child at an unreasonable risk to the child's health or welfare by failure to intervene to eliminate that risk when the parent, legal guardian, or other person responsible for the child's health or welfare is able to do so and has, or should have, knowledge of the risk
Minnesota: Ann. Stat. § 626.556, Subd. 2	<p>'Neglect' means the commission or omission of any of the acts specified below by other than accidental means:</p> <ul style="list-style-type: none"> • Failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so • Failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay (which may be referred to as failure to thrive) that has been diagnosed by a physician and is due to parental neglect • Failure to provide necessary supervision or child care arrangements appropriate for a child after considering such factors as the child's age, mental ability, physical condition, length of absence, or environment when the child is unable to care for his or her own basic needs or safety or the basic needs or safety of another child in his or her care • Failure to ensure that the child is educated as required by State law, which does not include a parent's refusal to provide his or her child with sympathomimetic medications • Prenatal exposure to a controlled substance used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder • 'Medical neglect' that includes, but is not limited to, withholding medically indicated treatment from a disabled infant with a life-threatening condition • Chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety
Montana: Ann. Code § 41-3-102	<p>'Physical neglect' means any of the following:</p> <ul style="list-style-type: none"> • Failure to provide basic necessities, including, but not limited to, appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions • Failure to provide cleanliness and general supervision • Exposing or allowing the child to be exposed to an unreasonable physical or psychological risk

	<p>'Physical or psychological harm to a child' means the harm that occurs whenever the parent or other person responsible for the child's welfare does any of the following:</p> <ul style="list-style-type: none"> • Causes malnutrition, failure to thrive, or otherwise fails to supply the child with adequate food; fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or when offered financial or other reasonable means to do so • Exposes the child, or allows the child to be exposed, to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk
New Hampshire: Rev. Stat. § 169-C:3	<p>'Neglected child' means a child to whom the following applies:</p> <ul style="list-style-type: none"> • Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, when it is established that his or her health has suffered or is very likely to suffer serious impairment, and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian • Whose parents, guardian, or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity
New Jersey: Ann. Stat. § 9:6-8.21	<p>'Abused child' or 'abused or neglected child' means a child younger than age 18 whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent, guardian, or other person having custody and control, to exercise a minimum degree of care, including the failure to do the following:</p> <ul style="list-style-type: none"> • To supply the child with adequate food, clothing, shelter, education, medical, or surgical care, although financially able to do so or although offered financial or other reasonable means to do so • To provide the child with proper supervision or guardianship
New Mexico: Ann. Stat. § 32A-4-2	<p>'Neglected child' means a child to whom any of the following apply:</p> <ul style="list-style-type: none"> • Who has been abandoned by the child's parent, guardian, or custodian • Who is without proper parental care and control or subsistence, education, medical, or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian, or custodian or that person's failure or refusal, when able to do so, to provide them • Who has been physically or sexually abused when the child's parent, guardian, or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm • Whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental disorder or incapacity • Who has been placed for care or adoption in violation of the law
New York: Soc. Serv. Law § 371; Family Court Act § 1012	<p>'Neglected child' means a child younger than age 18 whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his or her parent or other person legally responsible for his or her care to exercise a minimum degree of care, as follows:</p> <ul style="list-style-type: none"> • In supplying the child with adequate food, clothing, shelter, education, or medical or surgical care, although financially able to do so or offered financial or other reasonable means to do so • In providing the child with proper supervision or guardianship • By unreasonably inflicting or allowing harm to be inflicted, or a substantial risk thereof, including the infliction of excessive corporal punishment

	<ul style="list-style-type: none"> • By misusing drugs or alcoholic beverages to the extent that he or she loses self-control of his or her actions • By any other acts of a similarly serious nature requiring the aid of the court
North Dakota: Cent. Code §§ 50-25.1-02; 27-20-02	<p>'Deprived child' means a child to whom the following apply:</p> <ul style="list-style-type: none"> • Is without proper parental care or control, subsistence, education, or other care or control necessary for the child's physical, mental, or emotional health or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian • Has been placed for care or adoption in violation of law • Is without proper parental care, control, education, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent • Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court • Was subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance in a manner not lawfully prescribed by a practitioner • Is present in an environment that subjects the child to exposure to a controlled substance or drug paraphernalia
Pennsylvania: Cons. Stat. Tit. 23, §§ 6303; 6304	No child shall be deemed to be abused based on injuries that result solely from environmental factors, such as inadequate housing, clothing, and medical care, which are beyond the control of the parent. (<i>emphasis added</i>)
Rhode Island: Gen. Laws § 40-11-2	<p>The term 'abused and/or neglected child' includes a child whose physical or mental health or welfare is harmed or threatened with harm when the child's parent or other person responsible for his or her welfare does any of the following:</p> <ul style="list-style-type: none"> • Fails to supply the child with adequate food, clothing, shelter, or medical care, although financially able to do so or offered financial or other reasonable means to do so • Fails to provide the child with a minimum degree of care or proper supervision or guardianship because of his or her unwillingness or inability to do so by situations or conditions such as, but not limited to, social problems, mental incompetency, or the use of a drug, drugs, or alcohol to the extent that the parent or other person responsible for the child's welfare loses his or her ability or is unwilling to properly care for the child
South Carolina: Ann. Code § 63-7-20	'Child abuse or neglect' or 'harm' occurs when the parent, guardian, or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, education as required by law; supervision appropriate to the child's age and development; or health care though financially able to do so or offered financial or other reasonable means to do so, and the failure to do so has caused or presents a substantial risk of causing physical or mental injury.
South Dakota: Ann. Laws § 26-8A-2	<p>The term 'abused or neglected child' includes a child to whom the following applies:</p> <ul style="list-style-type: none"> • Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian • Whose environment is injurious to the child's welfare • Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being • Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent,

	<p>guardian, or custodian (<i>emphasis added</i>)</p> <ul style="list-style-type: none"> • Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamine or any other unlawfully manufactured controlled drug or substance
Texas: Fam. Code § 261.001	<p>'Neglect' means the following acts or omissions by the person responsible for a child's care, custody, or welfare:</p> <ul style="list-style-type: none"> • Placing a child in, or failing to remove a child from, a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child • Failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child • Failing to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability, unless relief services had been offered and refused • Placing a child in, or failing to remove the child from, a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child • Placing a child in, or failing to remove the child from, a situation in which the child would be exposed to acts or omissions that constitute sexual abuse • Permitting the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away • A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program
Washington: Rev. Code §§ 26.44.015; 26.44.020; 9A.16.100	No parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap. (<i>emphasis added</i>)
West Virginia: Ann. Code § 49-1-201	<p>A child is not considered neglected under the following circumstances:</p> <ul style="list-style-type: none"> • The lack of necessary food, clothing, shelter, or medical care is due primarily to a lack of financial means on the part of the parent.
Wisconsin: Ann. Stat. § 48.02	'Neglect' means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child

DEFINITION OF SEXUAL ABUSE	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	Sexual abuse, as defined solely for purposes of its inclusion under the “abuse” definition (insert internal citation), includes 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 and can include communication through the use of technology.
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Reasoning behind the proposal:

Sexual abuse is currently referenced in 51A(a) under the subheading related to abuse, but the term is not described in the statute. This proposal would add a definition of sexual abuse solely as it relates to the proposal of a definition for abuse and as a subset of abuse. This proposal for a definition of sexual abuse is intended to clarify what sexual abuse is in the context of child abuse and neglect reporting 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.

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.

The proposal does not specifically address the reporting of underage consensual sexual relations/behavior. The proposal requires an evaluation of the totality of the circumstances, meaning that a mandated reporter must evaluate all available information and there is no bright-line rule about reporting in this regard. Whether a relationship is consensual is not an automatic determinative of whether the relationship may cause harm (for example- consensual sexual relationships between very young children or siblings would not automatically be viewed as non-harmful because of the purported consensual nature). The relevant inquiry for a mandated reporter is how the facts of a situation relate to the harm or risk of harm to the child. Public comments related to reporting of underage consensual sexual relationships/behavior, the

possibility of addressing such reporting through statutory changes, and the possibility of addressing such reporting through mandated reporting training are encouraged. Notably, DCF is required, under MGL c. 119 § 51B to notify the district attorney of reports regarding underage sexual relations/behavior.

Public feedback on this section:

- Suggestion that the term “non-accidental” be changed to “deliberate.” *See submission by Kris Latour Kennedy*
- "Where the issue of the word ‘another’ becomes more problematic is in the sections on abuse and sexual abuse. Removing reference to a caregiver immediately makes all cases of assault on a child into cases of abuse. Current law allows adults and children seeking care for sexual assault to consent or withhold consent to notification of the authorities and submission of a sexual assault evidence kit. Those reporting assault have the right to submit that kit anonymously and claim it at a later date. Those reporting child abuse, however, must have DCF notified if they consent to a kit. Expanding the definition of abuse to include all “others” substantially expands the impact of these vagaries in the law. All cases of assault or sexual assault on a minor that come to medical attention will require reporting under this modification of the law, regardless of the assailant or the child and non-abusive family’s preferences. Depending on the view of the provider regarding harm and risk, children coming to medical attention for care of sexually transmitted diseases, pregnancy or contraception might trigger an abuse report. Based on cross reporting law, this will make all these cases known to the District Attorney’s Office. This is all equally true for a six-year-old and for a sixteen-year-old. For these reasons, I favor an expansive definition of ‘caregiver’ and would advocate that this definition be put in law, but I oppose substitution of the excessively broad word ‘other.’” *See submission by Dr. Stephen Boos*
- Several public submissions indicated dismay that the definition did not specifically address underage consensual sexual relations noting that 51A reporting of such consensual sexual relations gets in the way of discussing safe and healthy relationships and behavior with teens. Submissions appeared to indicate that prevailing practice and prevailing understanding is that all underage sexual behavior, regardless of whether the mandated reporter believed that the behavior was abusive or neglectful, must be reported to DCF because the MA statutory rape law(s).
- Suggestion that the Commission should support a close-in-age exception to the statutory rape law.

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>

Reasoning behind this proposal:

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.

Public feedback on this section:

- A significant amount of feedback on this section understood this language to effectively “lower” the threshold for mandated reporting below “reasonable cause to believe” with an understanding that “suspicion” is the articulated standard in this proposal. Several submissions considered the term “suspicion” to be synonymous with “gut instinct.” This feedback indicated that such lowering of the threshold for reporting would result in an increase of reporting that would ultimately be screened-out with the detrimental effects of expanding disproportionate reporting, unnecessarily interfering with families, and overburdening DCF.
 - o Some submissions indicate that the Commission’s interest in deterring individual or institutional investigations prior to filing with DCF goes too far in that it suggests that the reporter not use any reasonable level of discernment.
- Suggestion that the term “maltreated” as used in this proposal effectively lowers the standard from abuse and neglect and/or from injury.
- The OCA could not locate any alternative drafting was proposed by the public in the written submissions. Possible proposal influenced by the apparent public interpretation of the current proposal: *“A ‘reasonable cause to believe’ is direct or indirect knowledge,*

based on facts, that would cause a reasonable person to draw a conclusion. This knowledge can be based on a child’s disclosure, an admission by a perpetrator, information from a third party, and/or a mandated reporter’s own observations or impressions which may be informed by their expertise, training or experience. A ‘reasonable cause to believe’ does not require proof or certainty.

INSTITUTIONAL REPORTING

INSTITUTIONAL REPORTING	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>If a mandated reporter is a member of the staff of a medical or other public or private institution, school, or facility, the mandated reporter may instead notify the person or designated agent in charge of such institution, school or facility who shall become responsible for notifying the department in the manner required by this section</p>	<p>If a mandated reporter is a member of the staff of a public or private institution, facility, or organization, such institution, facility, or organization may establish a written protocol by which the mandated reporter must notify the person or designated agent in charge of such institution, facility, or organization, of the information that that mandated reporter believes requires reporting under this section. The person or designated agent in charge shall then become responsible for notifying the department, immediately and in writing, in the manner required by subsection (a). However, this written protocol must provide the mandated reporter the ability to file a report individually as required under this section without notifying the person or designated agent in charge if the mandated reporter has a reasonable fear of employer retaliation for filing under this section or if the alleged perpetrator in the report is the person or designated agent in charge.</p> <p>The written protocol must specify that the person or designated agent in charge has no discretion to refuse the filing of a report or alter the information provided by the notifying mandated reporter. The notifying mandated reporter shall be provided confirmation in writing within 24 hours of the notification that the report was filed pursuant to subsection (a) and the institutional protocol. Under</p>

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.

Reasoning behind this proposal:

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

This proposal results in the following structure:

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

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

Public feedback on this section:

- Belief that institutional reporting systems go against the best practice of the person with the most direct knowledge of the situation making the report.
- Belief that institutional reporting systems, even with the safeguards suggested here, result in delayed filings or misunderstandings about whether a filing has been made.
- "I'm deeply concerned that MA is one of two states that still permits a "chain of command" mandated reporting statute. There are at least two problems with this statute. First, it decreases the chance a report will be made. Institutions wary of lawsuits or bad

press are apt to look the other way in the hope of protecting the institution and not the child. We have seen this fact repeated numerous times in sexual abuse scandals with institutions. Second, even if an institution makes a report, the information may leave out critical details that results in the report being screened out or not properly investigated. The person who directly witnessed, heard, or otherwise received information creating a reasonable suspicion of abuse is best positioned to give details to the authorities and to respond to follow-up questions from the person receiving the report." *See submission by Victor Vieth*

- These changes appear to make mandated reporting more complex when it should be simple.
- Argument that this structure eliminates the ability for a mandated reporter to obtain guidance from any superior about whether something rises to the level of abuse or neglect for reporting purposes.
- Review of civil court cases in MA shows that teachers, counselors, residential staff, and social workers have all been threatened and fired for filing 51As. *See submission by Nancy Guardia and others.* The institutional reporting process results in interference with mandated reporting responsibilities.

Institutional Responsibility to Report

The term “institutional reporting” refers to those situations in which the mandated reporter is working (or volunteering) as a staff member of an institution, such as a school or hospital, at the time he or she gains the knowledge that leads him or her to suspect that abuse or neglect has occurred. Many institutions have internal policies and procedures for handling reports of maltreatment, and these usually require the person who suspects maltreatment to notify the head of the institution that abuse or neglect has been discovered or is suspected and needs to be reported to child protective services or other appropriate authorities.

Statutes in 32 States, the District of Columbia, and the Virgin Islands provide procedures that must be followed in those cases.¹⁴ In 18 States, the District of Columbia, and the Virgin Islands, any staff member who suspects maltreatment must notify the head of the institution when the staff member feels that maltreatment or possible maltreatment should be reported to an appropriate authority.¹⁵ In nine States, the District of Columbia, and the Virgin Islands, the staff member who suspects maltreatment notifies the head of the institution first, and then the head or his or her designee is required to make the report.¹⁶ In nine States, the individual reporter must make the report to the appropriate child protection authority first and then notify the institution that a report has been made.¹⁷

Laws in 17 States, the District of Columbia, and the Virgin Islands make clear that, regardless of any policies within the organization, the mandatory reporter is not relieved

¹⁴ Alaska, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

¹⁵ California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana (applies staff of a licensed hospital), Maine, Maryland, Massachusetts, Michigan, New York, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia, and Wyoming.

¹⁶ Georgia, Idaho, Indiana (applies staff of a licensed hospital), Kentucky, Maine, Massachusetts, South Dakota, Virginia, and Wyoming.

¹⁷ California, Connecticut (the commissioner of Children and Families makes the notification to the institution upon receiving a report), Hawaii, Illinois, Indiana (applies to staff of a school or other institution), Michigan, New York, Pennsylvania, Tennessee, and West Virginia.

of his or her responsibility to report.¹⁸ In 12 States, an employer is expressly prohibited from taking any action to prevent or discourage an employee from making a report.¹⁹ In 17 States, an employer is expressly prohibited from retaliating against an employee who has made a report.²⁰ Retaliation is any adverse employment action, including, but not limited to, demotion, a reduction in pay or benefits, a negative performance evaluation, suspension, or termination of employment.

¹⁸ Alaska, California, Florida, Indiana, Iowa, Kentucky, Maine, Michigan, Missouri, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Texas, West Virginia, and Wyoming.

¹⁹ Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Iowa, Maine, Missouri, New York, Oklahoma, and Tennessee.

²⁰ Alabama, California, Connecticut, Iowa, Kansas, Massachusetts, Michigan, Missouri, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Wisconsin, and Wyoming.

Excerpted from:
Child Welfare Information Gateway: This publication is available online at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/mandat/>

PENALTIES

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.
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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

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

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 .

Reasoning behind proposals:

This proposal updates and increases the possible monetary fines for violation of the statute. The ranges are 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.

Although public feedback focused primarily on this section in terms of failure to file, increased penalties for filing frivolous reports were proposed here as well.

Public feedback on this section:

- Many public submissions suggested that the increase of potential monetary penalties would create a culture of fear among mandated reporters and would increase frivolous reporting. Many of these submissions suggested that this increase in potential monetary penalties coupled with the proposed definitions of abuse, neglect, and reasonable cause to believe would result in increased reporting based on “gut feelings” which can be and are largely motivated by implicit biases. These proposals would therefore have a disproportionately negative impact on certain racial and ethnic groups.
- Concern expressed about whether these penalties are actually enforced.
- Concern that an increased penalty for frivolous reporting would deter valid reporting.
- Fear should not be the motivation for filing a report, the only motivation should be concern about a child’s wellbeing. Fear clouds judgment.
- Some support expressed for having clear consequences for failing to report based on belief that there should be consequences for biased reporting.

LICENSING VIOLATIONS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	<p>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.</p> <p>Nothing in this section shall limit a licensing authority from enforcing any licensing provisions related to the reporting of child abuse and neglect.</p>

Reasoning behind the proposal:

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.

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 proposed 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.

Public feedback on this section:

- Licensing boards can be motivated by the interests of the professions they are required to regulate and may use procedural rules to disregard evidence of failing to report. Licensing boards are unlikely to enforce penalties for failing to report.
- This increases the pressure on mandated reporters to report and that pressure can result in over-reporting based on implicit or explicit biases.
- Fear-based reporting results in mandated reporters not considering what is best for families.
- Some support for suspension or revocation of professional licensure based on argument that there should be some mechanism to address bias-based reports.

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.

Reasoning behind this proposal:

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.

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 also include 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 welcomes public comment identifying a relevant state agency or entity that could be given the authority to evaluate and pursue these claims on behalf of report filers. The Commission also welcomes public comment on any statutory changes that would strengthen the position of the report filer to encourage the bringing of these retaliation complaints.

Public feedback on this section:

- Support expressed for a place within state government that evaluates, files, and investigates claims of employer retaliation indicating that this would be a good alternative to expensive civil litigation and would be a model for other states. *See submission by Nancy Guardia and Others*

MANDATED REPORTER TRAINING

MANDATED REPORTER TRAINING	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
A mandated reporter who is professionally licensed by the commonwealth shall complete training to recognize and report suspected child abuse or neglect	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.

The general trainings shall be in-person or internet-based and shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; understanding the response of the Department and the role of the reporter after a report has been made; penalties for failure to report; and prohibition against employer retaliation for reporting. A mandated reporter training that is not the initial general training, shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; penalties for failure to report; and prohibition against employer retaliation for reporting.

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 process for reporting suspected child abuse and neglect; understanding the response of the Department and the role of the reporter after a report has been made; penalties for failure to report; and prohibition against employer retaliation for reporting.

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

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

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

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.

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). Though not specifically included in the text of the proposal, this entity would also solicit and accept information from the public regarding requests for topic specific guidance or training.

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.

Public feedback on this section:

- Support for evidence-based training to define the middle ground between a mandated reporter knowing whether something rises to the level of abuse or neglect without conducting an inappropriate investigation. Notes that this could possibly reduce unfounded reports.
- Several submissions noted positively the Student Wellbeing Guidance issued by DESE in 2020 as a model to discuss the type of critical thinking that mandated reporters should engage in prior to filing.³
- Training should focus on what is not reportable as well as what is reportable.
- Some support for training that directly addresses implicit biases. Some submissions opposing implicit biases training as ineffective.
- Question the amount of time, money, and bureaucracy necessary to create an entity that would be in charge of training- not opposing such an entity.
- Some support for the creation of a training entity as communication around filing has been poor particularly in regards to publicizing changes to the law or reminding people of their obligation or the process that needs to be followed.
- There was a question as to whether there would be a cost to training and who, the mandated reporter or the employer, would bear the cost.
- Support for training that explains to the mandated reporter the path a case could take at DCF.
- Suggestion that training encompass self-care and tertiary trauma for reporters themselves.
- Suggestion that training encompass normal adolescent sexual development in order for mandated reporters to aptly identify sexual abuse, signs of coercion, human trafficking and so on.
- Argument that the proposed training recommendations provide the “veneer of competency” despite inadequacy. Current training has proved “inadequate” so the suggestion that increased training would confer competence is incorrect and has the potential for an even greater risk to vulnerable populations. *See submission by League of Women Voters of Massachusetts* (Training inadequacy argument appears to be based in the idea that mandated reporters report on bias or are unable to adequately identify abuse or neglect.)
- Support for training offering mandated reporters information about where families in need can get help in cases not arising to abuse and neglect.

³ The OCA was provided the opportunity to give DESE feedback on this guidance prior to the guidance’s release and did provide such feedback particularly in reference to the section regarding mandated reporting- the OCA notes this in order to be transparent as the OCA has drafted this document.

VOLUNTEER TRAINING	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	Any mandated reporter who is a volunteer/intern 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/intern 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. Any person working more than 35 hours per year, even if that person is identified as a volunteer/intern, in a role qualifying them as a mandated reporter, is subject to the training requirements of mandated reporters generally as described in (insert internal citation).

Reasoning behind this proposal:

This proposal seeks to draw a distinction between mandated reporters who are mandated reporters because of their profession, from volunteers or interns who may be mandated reporters for limited purposes and limited time frames. If a person is a volunteer or intern for less than 35 hours per year, then the training obligation would be less extensive. If a person is a volunteer or intern who is acting in a role that qualifies them as a mandated reporter for more than 35 hours per year, then their training obligation is the same as it is for mandated reporters whose profession is what qualifies them as a mandated reporter. Organizations utilizing the services of volunteers or interns may mandate additional training requirements.

Public feedback on this section:

- Training should not be differentiated for volunteers and professionals- basic information should be presented to all mandated reporters as it emphasizes the seriousness of the potential disclosure and the weight of the obligation. Professionals could be required to do additional training though.

DISPROPORTIONAL IMPACT

RACE AND ETHNICITY REPORTING	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>A report filed under this section [51A] shall contain: (i) the names and addresses of the child and the child's parents or other person responsible for the child's care, if known; (ii) the child's age; (iii) the child's sex; (iv) the nature and extent of the child's injuries, abuse, maltreatment or neglect, including any evidence of prior injuries, abuse, maltreatment or neglect; (v) the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; (vi) whatever action, if any, was taken to treat, shelter or otherwise assist the child; (vii) the name of the person or persons making the report; (viii) any other information that the person reporting believes might be helpful in establishing the cause of the injuries; (ix) the identity of the person or persons responsible for the neglect or injuries; and (x) other information required by the department.</p>	<p>A report filed under this section [51A] shall contain: (i) the names and addresses and race or ethnicity of the child and the child's parents or other person responsible for the child's care, if known; (ii) the child's age; (iii) the child's sex; (iv) the nature and extent of the child's injuries, abuse, maltreatment or neglect, including any evidence of prior injuries, abuse, maltreatment or neglect; (v) the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; (vi) whatever action, if any, was taken to treat, shelter or otherwise assist the child; (vii) the name of the person or persons making the report; (viii) any other information that the person reporting believes might be helpful in establishing the cause of the injuries; (ix) the identity and race or ethnicity of the person or persons responsible for the neglect or injuries; and (x) other information required by the department.</p>

Reasoning behind this proposal:

DCF currently keeps data on the race and ethnicity of children brought to the agency's attention via a 51A- this is accomplished by the DCF screener asking the reporter this information. This proposal would require that the mandated reporter provide this data for both the relevant children and the relevant alleged perpetrators. This would signal to the mandated reporter that this is part of their responsibility. This data set is important for DCF to be able to analyze the rates of disproportionality in the child welfare system at identified touchpoints. This data set would also be relevant to a mandated reporter training entity, if one is created, to determine whether mandated reporter training can influence disproportionality in the child welfare system. Some mandated reporters are uncomfortable reporting race and ethnicity for other people though data on perceived race and ethnicity versus actual race and ethnicity may be relevant for purposes of investigating bias.

An alternative proposal that has been presented would require that a mandated reporter include the race and ethnicity of the relevant child or alleged perpetrator only if the mandated reporter knows such information. Such information is not always available to mandated reporters and it is unfair to require information under law that a person may not have reasonable access to.

Mandated reporters may also feel uncomfortable reporting such information or guessing at such information if the information is unknown.

Although specific language is not proposed in this document, the Commission requests feedback on whether a proposal should be considered that explicitly requires that if race and ethnicity data is gathered via the DCF abuse and neglect intake report, that the screening decision on that intake report be designed so that the screening decision is made without any knowledge of the race or ethnicity of the relevant child or alleged perpetrator. Screening decisions, which determine whether a case will be investigated by DCF or will not be investigated, could be structured so that the person or group of people making that decision is not influenced by race or ethnicity data.

In addition to the proposal above, 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; and
- Whether there are missed opportunities in these proposals to address current inequities (in the context solely of the mandated reporter statute).

Public feedback on this section:

- Many of the public submission comments summarized at the beginning of this document are also relevant as feedback regarding unintended consequences of the proposals. These include that increased mandated reporters and mandated reporting obligations will erode the trust families have with those in the community and will result in making families less safe as they will be less likely to reach out for help, that the proposals will increase unfounded or screened-out reports at a rate that will overwhelm DCF and further harm communities, and that the proposals will increase disproportionality in the child welfare system by encouraging mandated reporters to rely on their gut-instincts/
 - Some submissions felt that racial and ethnic data gathering at the 51A stage was beneficial so long as good data practices were in place including adequate categories for data.
 - Suggestion that DCF screeners and investigators have cultural humility training.
 - Suggestion that a screen-out option that would allow next steps for education or assistance to families.
 - Some submissions expressed concern that this data gathering by screeners would play upon that screener's implicit biases and result in more biased screening decisions.
 - Suggestions that all mandated reporters undergo implicit bias training.
 - DCF should have a records expungement mechanism for children and families who are victims of biased-based and frivolous reporting. Indefinite record keeping on screened-out reports is surveillance and families with screened-out reports should have the same right to record expungement as those with screened-in reports.

- There should be a data system to collect information on suspected bias-based and frivolous 51A reports.
- Language should be “race and ethnicity if known.”

PROPOSALS CONCERNING SHARING MEDICAL INFORMATION

The Health Insurance Portability and Accountability Act (HIPAA) sets national standards to protect patient health information from being disclosed without the knowledge or consent of the patient. HIPAA permits covered health care providers to disclose reports of child abuse or neglect to public health authorities or other appropriate government authorities. However, medical providers have indicated that medical providers are only permitted to share such information when explicitly required to by statute, not when a statute makes such reporting permissive.

Though no specific proposal language is included in this document, the Commission requests public comment on whether medical personnel should be required to provide relevant medical information about child abuse and neglect with district attorneys and law enforcement. Currently, medical personnel provide such information to DCF, and as required by law, DCF provides such information to district attorneys and law enforcement when appropriate.

Though no specific proposal language is included in this document, the Commission requests public comment on whether the HIPAA exception to provide information to DCF on a child abuse and neglect case should extend past the time-limited DCF investigation phase. Most DCF investigations are completed within 15 days. Medical providers note that test results, particularly for complex cases, may take longer than 15 days and medical providers have limited ability to provide those results to DCF as the window for releasing HIPAA protected information has closed with the investigation window. Medical providers note that these test results sometimes indicate that there is an uncommon underlying condition in a child that may shed light on the child abuse and neglect allegations.

Public feedback on this section:

- *See submission from Dr. Stephen Boos:*

The recommendations allude to, but do not provide language to address, issue with medical information sharing. The problem is a three-way interaction between practical needs in addressing suspected abuse and neglect, state reporting law, and the implementation rules of the Health Insurance Portability and Accountability Act (HIPAA). The most relevant section of those implementation rules are:

45CFR164.512(b)(ii) A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect.

45CFR164.512(c)(i) A covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence to the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law.

45CFR164.512(c)(iii) A covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence when the disclosure is expressly authorized by statute or regulation and the covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims.

45CFR164.512(c)(iii) A covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence if the disclosure is expressly authorized by statute or regulation and the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

The main issue is with information sharing with law enforcement, including the district attorney's office. Current Massachusetts law uses permissive language, saying that mandated providers may report to law enforcement where appropriate. Permitted information sharing of protected health care information requires that a medical provider perceive that there is an ongoing threat of serious harm to the child or another person that can only be prevented by disclosure, or that a law enforcement activity requests the information and represents that failure to receive it would materially and adversely degrade an immediate enforcement activity. The later requirement also requires that the patient be unable to give consent, something that might rationally be assumed of a potentially abused minor. These issues are more problematic within the context of 51B than 51A, as 51B calls for greater information sharing. I do not advocate adding an additional mandate to report to law enforcement under 51A. A requirement to share information with law enforcement under 51B would solve the problem. Alternatively, encouraging greater DCF law enforcement collaboration and the formation of multi-disciplinary investigation processes would itself be beneficial. At that point, requiring mandated reporters to share information with the team and its individual members would overcome the HIPAA disclosure problems. Currently, law enforcement can overcome the HIPAA exception by making the representation referenced in the CFR, but they need to be trained to do this, and medical care providers need to be trained to recognize and respond appropriately to a proper request. A final problem is that 51B provisions end when a DCF investigation has been completed, eliminating provisions for communication of protected health care information after this time. This can currently only be overcome by the consent of a guardian (including DCF) or by a subpoena. Because it would both facilitate communication of important healthcare information and encourage the best practice of joint DCF law enforcement investigation teams, I would recommend a modification to 51B requiring DCF, perhaps with conditions, to involve law enforcement early in an investigation and to require joint action between DCF and law enforcement in the ensuing investigation. I would also recommend a 51B mandate for mandated reporters and medical persons to share all relevant health care information with the multi-disciplinary investigation team and its individual members. I am content leaving the requirement for a release or subpoena after the investigation period.

OTHER ISSUES BROUGHT FORWARD IN THE PUBLIC COMMENT PERIOD

- Suggestion that sexual acts between children under 12 be a mandated referral to the DA's office.
- The Commission should carefully review the consequences of DA referrals from 51A filings and the effect those referrals may have on children and families, particularly when the 51A filing is/was an inappropriate filing.
- Some mandated reporters are not adequately trained to understand domestic violence, and if they are trained that training is not related to the mandated reporter duties, situations and expansion of the mandated reporter system will exacerbate the harms that mandated reporting can cause for victims of domestic violence.
- Mandated reporters mistakenly or out of bias report on families with children with disabilities because they do not understand the complexities or challenges the families face.
- Several suggestions that the Commission is operating beyond its legislative mandate by considering proposals beyond sexual abuse from coaches and other narrow issues.

This review has not been an exhaustive listing or summarization of all the written or oral public comments submitted during the public comment period. Commission members are encouraged to read and listen to the public commentary in full.