

Mandated Reporter Commission
May 21, 2020
10:00am-12:00pm

Categories of Mandated Reporters

Proposal based on Commission feedback:

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

or

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

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

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

Proposal agreed upon by Commission:

“(i) a physician, medical intern, **personnel at any licensed or unlicensed facility providing medical care, who are engaged in the admission**, examination, care or treatment of persons, medical examiner, **pharmacist**, psychologist, **any person licensed or certified to provide emergency or non-emergency medical care including but not limited to:** dentist, nurse, chiropractor, podiatrist, optometrist, osteopath...”

Mental Health Providers - MGL. c. 119 § 21

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

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

Proposal agreed upon by Commission: "...any person licensed or certified to provide mental health services including but not limited to: allied mental health and human services professional licensed under section 165 of chapter 112, psychoanalyst, substance abuse counselor, psychiatrist, psychiatric nurse, or ~~clinical~~ social worker, any intern, resident, student, or trainee providing mental health services under supervision..."

School Employees – M.G.L. c. 119 § 21

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

Proposal based on Commission Feedback:

"school board members, any school personnel who interact with any student, enrolled in pre-kindergarten through twelfth grade, during the school day, on school premises, or during any school sanctioned activity, including extracurricular activities and field trips, including personnel at public schools, charter schools, private schools, vocational schools, recovery high schools, on-line school or courses, home tutoring, education to youth held in a Department of Youth Services facility, or any educational service provided by the Commonwealth or private entity regardless of the service setting, school bus drivers and bus monitors...school attendance officer...[person] in charge of a...school or facility or that person's designated agent..."

Higher education:

Proposal Based on Commission Feedback:

"Any and all higher education staff and faculty interacting with students in a teaching, coaching, or advising role, any ~~graduate level~~ students employed as research fellows or teaching assistants, all higher education administrators and officers, administrators and employees of any organization operating any program on higher-education property, any contractors operating on higher education property."

Public Safety Officials- M.G.L. c. 119 § 21

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

Proposal #1: “(iii) court personnel interacting with children or youth including, but not limited to, a probation officer, assistant probation officer, family services officer, clerk-magistrate of a district court, assistant clerk-magistrate, assistant registrar, judicial case manager, parole officer... firefighter, police officers including campus and state police officers, sworn law enforcement officials, special state police officers, correctional officers, sheriff deputies, or animal control officer”

Proposal #2: “(iii) court personnel, **except for judges**, interacting with children or youth including, but not limited to, a probation officer, assistant probation officer, family services officer, clerk-magistrate of a district court, assistant clerk-magistrate, assistant registrars judicial case manager, parole officer... firefighter, police officers including campus and state police officers, sworn law enforcement officials, special state police officers, correctional officers, sheriff deputies, or animal control officer”

Social Service Providers - M.G.L. c. 119 § 21

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

Proposal #1: “...**licensed or unlicensed child** care worker **including a nanny or au pair**, person ~~paid to~~ **caring** for or **working** with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D, **person providing** ~~that provides child care or residential services to children or that provides the services of child care resource and referral agencies,~~ **person providing in-home services to a child**, employee of the Department of Public Health, the Department of Early Education and Care, the Department of Elementary and Secondary Education, the Department of Youth Services, Department of Children and Families, the Department of Mental Health, the Department of Developmental Services, the Department of Transitional Assistance, the Department of Housing and Community Development, the Office of the Child Advocate, and any licensers or contractors of those Departments who provide any child or family services, employees of any type of shelter funded or partially-funded by the Commonwealth, ~~person employed as an advocate for a victim of any type,~~ any community ser-

vice program funded in whole or in part by the Commonwealth that provides assistance or programming to families, person providing in-home services via a licensed home health agency or homemaker service agency, information technologist, computer or electronics technician, or film or photo image processor ~~who observes child pornography~~...social worker...foster parent...”

Home Health Aide discussion:

- typical definition in line with Medicare standards “a trained health-care worker who provides non-medical assistance, such as personal care work and help with activities of daily living”
- home health care certificate in Massachusetts is same as the federal minimum standards for Medicaid-certified home health agencies
 - 75 hours of training (with 16 hours being practical/hands-on training)
- Certified nurse assistants same 75 hours of training required, listed on State Nurse Aid Registry overseen by the Nurse Aide Registry Program under the Division of Health Care Facility Licensure and Certification and Bureau of Health Care Safety and Quality
- MGL c. 19A s. 15 lists mandated reporters of elder abuse which includes “executive director of a licensed home health agency or executive director of a homemaker service agency or manager of an assisted living residence...”
 - “The executive director of a home care corporation, licensed home health agency or homemaker service agency shall establish procedures within such agency to ensure that homemakers, home health aides, case managers or other staff of said agency who have reasonable cause to believe that an elderly person has been abused shall report such case to the executive director of the corporation or agency. The executive director shall immediately make a verbal report of such information or cause a report to be made to the department or its designated agency and shall within forty-eight hours make a written report to the department or its designated agency” (MGLc . 19A s. 15(b)).

Possible other additions: Massachusetts Commission for the Blind, Massachusetts Commission for the Deaf and Hard of Hearing, Family Resource Centers, Meals on Wheels, Peer Mentors

Reduced list of possible additions based on other state statutes:

- attorney ad litem in the course of their duties as an attorney ad litem (Arkansas)
- volunteer at a reproductive health facility (Arkansas)
- not a social worker working with an attorney appointed to represent a minor (California)

- “such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation” (Washington D.C.)
- reproductive health care facility or pregnancy resource center personnel (Georgia)
- crisis or hotline personnel (Illinois)
- home health aide (Illinois)/ home healthcare employees who are expected to have substantial contact with children (New York)
- exemption for- a mental health / social services practitioner when engaged by an attorney to assist in the rendition of professional legal services to that child if the info arises in the process of facilitating legal services to the child and so long as the info is documented and documentation is kept until 1 year after the child reaches majority (Louisiana)

Clergy – M.G.L. c. 119 § 21

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

M.G.L. c. 119 § 51A(j)

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

Proposal: “...(iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, **records custodian for any church or religious body, person providing admin-**

istrative services for any church or religious body, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child or adult on a regular basis...”

M.G.L. c. 119 § 51A(j)

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

Possible additions based on other state statutes:

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

Recreational Activities Staff & Coaches -

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

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

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

Possible language based on other state statutes:

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

Recommended Additions

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

Possible additional categories (may be duplicative):

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

Current Categories Structure:

This is in the definitions sections of the statute.

"Mandated reporter", a person who is: (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker; (ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licenser of the department of early education and care or school attendance officer; (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer or animal control officer; (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis; (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or (vi) the child advocate.

Possible Categories Structure:

‘Mandated reporter’, a person **over the age of eighteen who is either a paid employee, or a volunteer working five or more hours per week, in a profession or role listed herein, or any person contracted by any entity to perform the functions of a profession or role listed herein.** The following subsection titles are for organization purposes only, a profession or role listed herein may fall under one or several subsection titles and non-inclusion under a subsection title has no legal effect on the obligations of mandated reporters.

(i) **medical providers:** a physician, medical intern, **personnel at any licensed or unlicensed facility providing medical care, who are engaged in the admission,** examination, care or treatment of persons, medical examiner, **pharmacist,** psychologist, **any person licensed or certified to provide emergency or non-emergency medical care including but not limited to:** dentist, nurse, chiropractor, podiatrist, optometrist, osteopath;

(ii) **mental health providers:** **any person licensed or certified to provide mental health services including but not limited to:** allied mental health and human services professional licensed under

section 165 of chapter 112, ~~psychoanalyst, substance abuse counselor, psychiatrist, psychiatric nurse, or clinical social worker,~~ any intern, resident, student, or trainee providing mental health services under supervision;

(iii) education:

(a) Pre-Kindergarten through Twelfth Grade: school board members, any school personnel who interact with any student, enrolled in pre-kindergarten through twelfth grade, during the school day, on school premises, or during any school sanctioned activity, including extracurricular activities and field trips, including personnel at public schools, charter schools, private schools, vocational schools, recovery high schools, online school or courses, home tutoring, education to youth held in a Department of Youth Services facility, or any other school-like setting, school bus drivers and bus monitors...school attendance officer, person in charge of a school or facility or that person's designated agent;

(b) Higher Education: Any and all higher education staff and faculty interacting with students in a teaching, coaching, or advising role, any ~~graduate-level~~ students employed as research fellows or teaching assistants, all higher education administrators and officers, administrators and employees of any organization operating any program on higher-education property, any contractors operating on higher education property;

(iv) public safety officials: court personnel interacting with children or youth including, but not limited to, probation officer, assistant probation officer, family services officer, clerk-magistrate of a district court, assistant clerk-magistrate, parole officer...firefighter, police officers including campus and state police officers, sworn law enforcement officials, special state police officers, correctional officers, sheriff deputies, or animal control officer;

(v) social service providers: licensed or unlicensed child care worker including a nanny or au pair, person paid to caring for or working with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D, ~~person providing that provides child care or residential services to children or that provides the services of child care resource and referral agencies,~~ person providing in-home services to a child, employee of the Department of Public Health, the Department of Early Education and Care, the Department of Elementary and Secondary Education, the Department of Youth Services, Department of Children and Families, the Department of Mental Health, the Department of Developmental Services, the Department of Transitional Assistance, the Office of the Child Advocate, and any licensors or contractors of those Departments who provide any child or family services, employees of any type of shelter funded or partially-funded by the Commonwealth, ~~person employed as an advocate for a victim of any type,~~ any community service program funded in whole or in part by the Commonwealth that provides assistance or programming to families, information technologist, computer technician, or film or photo image processor ~~who observes child pornography,~~ social worker, foster parent;

(vi) **recreational services**: a coach, assistant coach, facilities manager, or director of a private or public youth sports organization, league or team, person affiliated with any public or private entity, including any religious or nonprofit entity, person or entity providing recreational activities or sports activities including day and overnight camps;

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

Protocols of Notification/Institutional Reporting

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

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

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

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

Proposal

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

The person in charge or their designated agent must notify the mandated reporter who transferred their responsibility that a report has been made by providing that mandatory reporter with a copy

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

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