

Mandated Reporter Commission

June 24, 2020

2:00pm-4:00pm

Categories of Mandated Reporters

Proposal agreed upon by Commission:

“‘Mandated reporter’, a person over the age of eighteen who is either a paid employee, or a volunteer, working 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...”

Proposal based on Commission Feedback:

‘Contractor’ includes any person who owns, operates, is employed by, or volunteers in association with, an entity that undertakes, or is contractually obligated to undertake, any responsibility for the functions of any profession or role listed in M.G.L. c. 119 § 21 regardless of licensing, certification, or contractually negotiated terms; “contractors” shall include, but not be limited to, public and private entities providing direct services to children in the Commonwealth on behalf of, or in connection with, any state agency.

Proposal taking into consideration remote services — M.G.L. c. 119 § 51A(a)

A mandated reporter, regardless of that person’s physical location or residence, who, in his professional capacity, has reasonable cause to believe that a child in the Commonwealth is suffering from the following, or did suffer from the following while in the Commonwealth: physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233. A mandated reporter may file such a report regarding a child who not in the Commonwealth, or was not in the Commonwealth at the time the reportable incident occurred, with the department in the same manner and for the same reasons described 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, **through technology including remote services,** or during any school sanctioned activity, including extracurricular activities and field trips, including personnel at public schools, charter schools, private schools, vocational schools, recovery high schools, online school or courses, home tutoring, ~~education to~~

~~youth held in a Department of Youth Services facility, or any personnel providing educational services funded by the Commonwealth~~ a public or private entity regardless of the service setting, school bus drivers and bus monitors...school attendance officer...[person] in charge of a... school or facility or that person's designated agent..."

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 students employed as research fellows or teaching assistants, all higher education administrators and officers, ~~administrators and employees~~ personnel of any organization or entity operating any program 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 Based on Commission Feedback: "court personnel, except for judges, interacting with children or youth including, but not limited to, a probation officer, assistant probation officer, family services officer, clerk-magistrate, assistant clerk-magistrate, assistant registrar, judicial case manager, parole officer...firefighter, police officers including campus and state police officers, sworn law enforcement officials, special state police officers, correctional officers, sheriff deputies, or animal control officer, ~~and private security personnel.~~"

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 caring for or working with a child in any public or private facility, or home or program funded by the Commonwealth or licensed under chapter 15D, person providing residential services to a child ~~children,~~ person providing in-home services to a child, ~~employee~~ personnel of the Department of Public Health, the Department of Early Education and Care, the Department of Elementary and Secondary Education, the Department of Youth Services, the Department of Children and Families, the Department of Mental Health, the Department of Developmental Services, the

Department of Transitional Assistance, the Department of Housing and Community Development, the Office of the Child Advocate, ~~and any licensors or contractors of those Departments who provide any child or family services, employees~~ **personnel** of any type of shelter funded or partially-funded by the Commonwealth, **personnel** of any community service program funded in whole or in part by the Commonwealth that provides assistance or programming to families, 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... social worker...foster parent...”

Proposal #2: “...**personnel** of any community service program funded in whole or in part by the Commonwealth that provides assistance or programming to families, person providing in-home **health-based services**, ...”

Proposal #3: “...**personnel** of any community service program funded in whole or in part by the Commonwealth that provides assistance or programming to families, person providing in-home **services related to any basic need of any person in the home, including but not limited to, health services, mental health services, nutrition services**, ...”

Proposal #4: “...**personnel** of any community service program funded in whole or in part by the Commonwealth that provides assistance or programming to families, **person paid by any person or entity to provide any service to a person within a home setting**...”

Reduced list of possible additions based on other state statutes:

- 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)

Mentors -

The OCA could not locate any examples of statutory language including the mentor-mentee relationship in other states’ mandatory reporter laws.

Proposal #1: “**person providing mentorship to any child through a paid or unpaid relationship with an organization or entity**”

Proposal #2: “**person providing mentorship to any person through a paid or unpaid relationship with an organization or entity**”

Proposal #3: “**person paid to provide mentorship to any person**”

Proposal #4: “person providing mentorship to any person through a paid or unpaid relationship with an organization or entity excluding entities providing direct confidential services to victims of domestic violence, sexual assault, or human trafficking” (exception based on Oregon statute which excludes community-based nonprofit organizations whose primary purpose is to provide such services)

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 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...”

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 ac-

credited Christian Science practitioner is acting in some other capacity that would otherwise make him a mandated reporter.”

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, personnel of any public or private entity, including any religious or nonprofit 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 personnel of 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)

Possible 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
- 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)

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 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:

(b) Higher Education:

(iv) **public safety officials:**

(v) **(social) service providers:**

(vi) **recreational services:**

(vii) **clergy:**

Definition of 'Contractor'

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**, **or that person’s designated agent**, who shall **then** 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. This notification must be provided 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 immediately 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 sub-section 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."