

Mandated Reporter Commission

Review of Proposals after Public Comment Period Continued

May 27, 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.

PUBLIC SAFETY OFFICIALS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(iii) a probation officer, clerk-magistrate of a district court, parole officer...firefighter, police officer or animal control officer	(iv) public safety officials: court personnel, except for judges, interacting with children or youth including, but not limited to, a probation officer, assistant probation officer, family services officer, clerk-magistrate, assistant clerk-magistrate, assistant registrar, judicial case manager, parole officer, firefighter, police officers including campus and state police officers, sworn law enforcement officials, special state police officers, correctional officers, sheriff deputies or animal control officer, and private security personnel

Reasoning behind the proposal:

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

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

- Arguments in favor of exclusion note that if judges are mandated reporters they could be called in as witnesses on care and protection cases which can present complications in terms of impartiality considerations and statutory timeliness requirements. If a situation arises in which a judge reports concerns of child abuse/neglect to DCF on an issue that is currently before that judge, then questioning that judge about the concerns may open the judge up to questions about their judicial decision-making on a case which would be inappropriate. Arguments also include that judges must avoid even the appearance of not being impartial and a requirement of mandated reporting may prompt motions for recusal.
- Arguments against this exclusion would require that judges be required to report concerns of abuse or neglect because judges are as likely as other court personnel to observe or learn of abuse or neglect allegations. Arguments also include that judges are required to uphold the law and to do so in a capacity of a mandated reporter is well within their expertise and the expectation of their role. Arguments note that excluding judges from the list of mandated reporters sends the wrong message in terms of judges’ roles and that institutional reporting schemes can mitigate many concerns regarding the practicality of judges reporting.

The proposal includes private security personnel which would include those who are privately contracted for functions like school or athletic events. Members of the public, and particularly

children, are unlikely to be able to distinguish private security personnel from public safety officials in times of need or when/if disclosures are made.

Public feedback specific to this section- *see specifically the submission by CPCS:*

- This proposal is too broad and goes beyond the scope of persons who regularly interact or work with children.
- This would require those working in the courts to file on all the testimony they may hear in court which would be unnecessary.
- Sworn law enforcement officers includes undercover police and detectives as well as Department of Homeland Security officers, US Border Patrol agents, Immigration Inspectors and Customs Inspectors- there is no information as to whether these additions would further the safety of children- these are too broad.
- Private security personnel is also too broad as it will encompass bodyguards and persons who are responsible for security of private property- there is no reason to suggest that these persons would necessarily encounter children or youth in their work.
- There can be detrimental consequences for children and their futures when they are involved with law enforcement even if they are under the age of possible criminal responsibility.

SOCIAL SERVICES PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>(ii) ...child care worker, person paid to care for or work with a child in any public or private facility, or home program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licensor of the department of early education and care or school attendance officer</p> <p>(iii) ...social worker, foster parent...</p>	<p>(v) social services providers: unlicensed child care worker including a nanny or au pair, person caring for or working with a child in any public or private facility, or home or program funded by the Commonwealth or licensed under chapter 15D, person providing residential services to a child, person providing in-home services to a child, personnel of the Department of Public Health, the Department of Early Education and Care, the Department of Elementary and Secondary Education, the Department of Youth Services, the Department of Children and Families, the Department of Mental Health, the Department of Developmental Services, the Department of Transitional Assistance, the Department of Housing and Community Development, the Office of the Child Advocate, personnel of any type of shelter funded or partially-funded by the Commonwealth,</p>

	personnel of any community service program funded in whole or in part by the Commonwealth that provides assistance or programming to families, personnel paid by any person or entity to provide any service to a person within a home setting including day placements and residential placements, information technologist, computer or electronics technician, or film or photo image processor, social worker, foster parent
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Reasoning behind the proposals:

While the current statutory language could be interpreted to apply to both licensed and unlicensed childcare providers, this proposal makes that application explicit. The childcare provider is in a caregiving role, has the same responsibilities, and has the same access to information when they are unlicensed as when they are licensed.

The proposal includes personnel of all major Commonwealth agencies that provide services to children with the understanding that they are responsible for providing services to children and families and have access to personal and often detailed information about children and the care of children. However, not all persons at these agencies have access to personal information in this manner as these agencies are large employers. One of the reasons that the attorney exclusion language was developed was due to the expansiveness of this proposal.

The proposal includes information technologists, computer or electronics technicians, and film or photo image processors. The proposal is intended to include persons who have access to intimate details of families' lives and are one of the primary sources of reports of possession and exchange of child pornography. As in-home technology with the ability to record private information has become ubiquitous, the proposal seeks to identify persons who do, or in the future would, have access to such information. The Commission asked for specific input about the scope of this proposal in terms of the types of roles and professions that it would apply to and the possibility that those roles and professions would be privy to information relevant to mandated reporting responsibilities.

Public feedback specific to this section:

- The proposed additions are overbroad and unclear- examples given is “who is ‘a person providing residential services to a child?’ Does it include the owner of a short-term home rental when a family with a child stays there?” or “Who is a ‘person providing residential services to a child’? Does it include a family friend who shows a 16-year-old how to change the oil in a car?” (*CPCS submission*)

<p>...person paid to care for or work with a child in any public or private facility, or home program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies...</p>	<p>...person caring for or working with a child in any public or private facility, or home or program funded by the Commonwealth or licensed under chapter 15D, person providing residential services to a child, person providing in-home services to a child...</p>
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- o The aim of the proposal was to capture the broad range of services provided to children and families in their home by paid or unpaid persons. The type of services that were intended to be captured included: therapeutic services, medical services, family support services (for example through DMH referrals), behavioral services, and crisis intervention. Is there a common thread that ties these types of services together? Would it be more accurate to describe the category as any residential or in-home services provided by any entity that holds a contract with the Commonwealth?
- Suggestion that the proposal encompasses family babysitting or other ad hoc community babysitting arrangements. This would “...shackle any adult babysitter or informal caretaker within the community with a duty of surveillance and require them to file reports on the family. Not only would this erode the level of trust and community partnership inherent in these important relationships, it would also leave many families of limited financial means who use informal caretaking assistance without access to their normal support systems.” (*CPCS submission*)
 - o Appears to reference the term “unlicensed childcare worker including nanny or au pair.” Would people who provide occasional babysitting would be considered a childcare worker? Would childcare collaboratives be considered childcare workers? Part of the consideration is that a person is being entrusted to be the sole caretaker for a child- when would mandated reporting responsibilities reasonably come into play in those scenarios?
- Nine states have some type of film or photo processor and at least two of those clarify that the obligation to report is when child pornography is observed. Many submissions indicated that “information technologist, computer or electronics technician, or film or photo image processor” should not be added as mandated reporters. How does this grouping of professionals match the principals the Commission has identified as who should be a mandated reporter? What knowledge or access to information do they have and what expertise do they bring?

PERSONS RETAINED BY AN ATTORNEY	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	A person retained by an attorney to assist the attorney in his or her representation of an individual client or employed by a legal service provider to assist its attorneys in their representation of individual clients shall not be a mandated reporter for information learned about a reportable condition under M.G.L. c. 119 § 51A if that information is obtained in connection with his or her retention by the attorney or his or her employment by a legal service provider.

Reasoning behind the proposal:

This proposal explicitly excludes persons who are working on legal defense teams from mandated reporting requirements for information they learn in their work on the legal defense team. This exclusion would apply to any person retained to work on a legal defense team, the most common example is that of social workers working on legal defense teams. The Commission has heard opposing testimony about whether social workers can abide by mandated reporter obligations without compromising their role on legal defense teams.

The holistic defense model integrates legal and non-legal services in an interdisciplinary model which seeks to address the circumstances that drive people into the criminal justice system; juveniles are better able to access their right to counsel when they feel safe and comfortable doing so and this is best accomplished by the holistic model of defense. One argument is that this proposed exclusion in the mandated reporter definition would recognize the already existing standard that the entire holistic defense team is covered by attorney-client privilege. An alternative view disagrees that attorney-client privilege is extended to all members of the legal defense team and that members of the legal defense team, particularly social workers, can provide meaningful benefit to the legal defense without sacrificing the moral and professional duty to report allegations of abuse and neglect.

Public feedback specific to this section:

- The “duty to warn” is a core principal of National Association of Social Workers Code of Ethics which states “‘Social workers’ primary responsibility is to promote the well-being of clients...However, social workers’ responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed to clients, and clients should be so advised.’” *See submission by the National Association of Social Workers, MA Chapter*
- This language is very broad and could provide exceptions for all types of providers such as physicians and psychologists.

- It is confusing when a person identifies as a social worker but changes legal obligations depending on who employs them.
- Psychologists hired in the capacity of experts still have a filing obligation, why wouldn't a social worker?
- Your obligation should come from your role and your licensure and not who hires you.
- People in this section are working in the capacity of trusted adults- we let children down when they disclose information and we do not file to keep them safe.
- Social workers and other experts play a critical role in ensuring that all clients are provided with effective legal representation. Requiring mandated reporting of persons who are hired as experts by attorneys would undermine legal representation.

MENTORS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	(vi) mentors: person providing mentorship to any person through a paid or unpaid relationship with an organization or entity

Reasoning behind the proposal:

This proposal seeks to add persons providing paid or unpaid mentorship to the definition of mandated reporter due to the very intimate and trusting relationships between mentors and mentees which may result in the sharing of allegations of abuse and neglect, particularly when the mentee is a child. Currently mentors who are contracted by the Commonwealth can be held to mandated reporter obligations via those state contracts.

Public feedback specific to this section:

- This category is too broad for people to know whether they are being included as mandated reporters.
- This would damage the support system for children in and out of DCF care.

CLERGY	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis	(vii) clergy: a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church

	<p>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</p>
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Reasoning behind the proposal:

This proposal is based on recent legal cases across the country that have tested other states’ statutes as they relate to the application of mandatory reporter laws to the clergy or otherwise religious roles and professions.

This proposal adds persons who perform the duties of clergy members even if they are not clergy members themselves, to the list of mandated reporters. It also adds records custodians for religious bodies as mandated reporters. The proposal expands mandated reporter responsibilities to those who supervise, educate, coach, train or counsel adults in addition to those who counsel children.

Of note, there appears to have been some confusion about this proposal. There is no proposal currently before the commission that would recommend changes to MGL c. 119 § 51A(j) which states in part “...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.” Commission discussion in the past has discussed the connection between religious confession and the First Amendment and that this provision appears to be narrowly tailored.

Public feedback specific to this section:

- Suggestion that the Commission revisit this language to be more inclusive of faiths beyond the church or religious body.
- Opposition to the “expansion” of mandated reporting responsibility to clergy as clergy function as a confidante for many people. This expansion will erode trust and compromise relationships that can be supportive.
- “Subsection j of section 51A indicates that religious leaders are exempt from reporting information they would otherwise be compelled to report if that information was gathered in a confidential religious context, such as confession. The privileging of religion as a confidential space is especially troubling given the relative lack of training in support and exploration when compared to mental health professionals. Certainly it is important to keep children safe and protected. It is also important for space to exist for adults to work through their experience honestly. Mandated reporting in therapeutic spaces ensures that parents, especially Parents of Color, have to weigh the potential consequences of opening up to their therapist or counselor. Without this exemption for mental health providers, parents who are struggling may be unable to fully participate in treatment or may choose

to forego treatment altogether. In essence, this is not solving a problem or concern, it is simply ensuring that those who may need help do not feel safe accessing it.” (*Multiple form submissions*)

OTHER YOUTH SERVING INDIVIDUALS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	(viii) other youth serving individuals: any personnel of a public, private, or religious organization providing recreational activities or services for children, including but not limited to day camps, summer camps, youth programs, sports organizations, and scouting groups, personnel of a public library

Reasoning behind the proposal:

This proposal would create a new category of mandated reporters that provide programming for children. The term “youth serving individuals” was drawn from the report of the Child Sexual Abuse Prevention Task Force and is a non-substantive title that houses disparate service providers as these service providers are not organized via certifications or licensing or under a state regulatory umbrella. Examples include dance and karate studios, sports leagues, etc. These roles have been proposed because persons in these roles are often entrusted to care for children in remote or private spaces, they run programming specifically designed for children, and the persons involved are often in a trust relationship with a child or family.

Public feedback to this section:

- The category is too broad and needs clarity.

Possible clarification could be: “...providing recreational activities designed specifically for children and which require personnel to supervise children, including but not limited to...”

CONTRACTOR	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
None	Contractor’ as used in this section includes any person who owns, operates, is employed by, or volunteers in association with, an entity that undertakes, or is contractually obligated to undertake, any responsibility for the functions of any profession or role listed in M.G.L. c. 119 § 21 regardless of licensing, certification, or

	contractually negotiated terms; “contractors” shall include, but not be limited to, public and private entities providing direct services to children in the Commonwealth on behalf of, or in connection with, any state agency.
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Reasoning behind this proposal:

This proposal explicitly adds “contractors” to the list of mandated reporters and defines the term for purposes of the mandated reporter definition. This proposal adds any person who is contractually obligated to undertake the responsibilities of the role or profession of a mandated reporter as a mandated reporter and defines the term “contractor” for these purposes. This is most relevant in situations where a state agency is contracting to have a service provided, such as a group foster home run by a non-state entity, to children or for children in the Commonwealth.

There were no substantive public submissions on the definition of contractor. However, this definition may confuse the understanding of mandated reporting as an individual obligation with the role of an entity or organization. This definition may not be necessary for this section.

Confidential Services
<u>Proposal without draft language</u>
<p>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.</p> <p>The Commission is particularly seeking feedback on the scope and effect of this possible exclusion and the scope of term “direct confidential services.”</p>

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/nr/110CMR2)

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.

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

- 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 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

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	<p>No child shall be found to be dependent solely due to the lack of an emergency shelter for the family.</p> <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,

	<p>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</p> <ul style="list-style-type: none"> • 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

	<p>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</p> <ul style="list-style-type: none"> • '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

	<ul style="list-style-type: none"> • 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 • 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	<p>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>)</p>
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	The term 'abused or neglected child' includes a child to whom the following applies: <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, guardian, or custodian (<i>emphasis added</i>) • 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	'Neglect' means the following acts or omissions by the person responsible for a child's care, custody, or welfare: <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	A child is not considered neglected under the following circumstances: <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