

**Mandated Reporter Commission**  
**February 12, 2020**  
**2:00pm-4:00pm**

## **Content Areas**

### **Proposals to Expand Mandated Reporting**

#### **Categories of Mandated Reporters**

Review of the mandated reporter categories should be an in-depth look at:

- What are the commonalities between the listed categories?
- What categories of people share those commonalities but are not included in the list of mandated reporters (coaches, higher education, unlicensed summer camps)?
- How do we account for categories of people that may exist in the future (genetic counselors, technology investigators)?
- What are the benefits and perils to being overinclusive/underinclusive?
- How should jobs that require licensing be tied to reporting?
- Examples of categories and drafting from other states

#### **Universal Mandated Reporting**

Eighteen states, as well as Puerto Rico, require anyone who suspects child abuse and/or neglect to report to child welfare agencies; this is also known as universal mandated reporting.<sup>1</sup> Universal mandated reporting tends to increase the number of reports filed. However, the research on this approach has not conclusively determined whether increased reporting results in an increase in supported cases.<sup>2</sup>

#### **Listed Mandated Reporters**

Most states specifically list categories and job titles of mandated reporters. Some states with universal reporting requirements also single out specific professions as reporters in their statutes.<sup>3</sup> In reviewing mandated reporting laws of various states, the vast majority of states reference most, if not all, of the following seven categories of mandated reporters:

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<sup>1</sup> Child Welfare Information Gateway (2015). Mandatory reporters of child abuse and neglect. Retrieved from <https://www.childwelfare.gov/pubPDFs/manda.pdf>

<sup>2</sup> Palusci, V.J., Vandervort, F.E., and Lewis, J.M. (2016). "Does changing mandated reporting laws improve child maltreatment reporting in large US counties?" *Child and Youth Services Review*, vol. 66, pg. 170-179.

<sup>3</sup> Child Welfare Information Gateway (2015).

1. Medical providers
2. Mental health providers
3. Educational providers
4. Public safety officials
5. Social services staff
6. Clergy
7. Recreational activities staff

### **1.) Medical Providers – M.G.L. c. 119 § 21**

“(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...”

Possible Concerns:

- This is a limited list, does not include any broader catch-all provision
- Does not encompass staff who may work at hospitals or other medical providers who do not hold these job titles (example: receptionists, intake coordinators, dental hygienists)
- “Personnel” is limited to hospital personnel possibly excluding doctor’s offices and other locations.
- Possibility that these job titles will eventually become outdated

### **2.) Mental Health Providers - MGL. c. 119 § 21**

“...allied mental health and human services professional licensed under section 165 of chapter 112 [marriage and family therapist, rehabilitation counselor, mental health counselor], drug and alcoholism counselor, psychiatrist or clinical social worker...”

Possible Concerns:

- This is a limited list, does not include any broader catch-all provision
- Possibility that these job titles will eventually become outdated
- How broadly should “counselor” be defined, should additional “counselors” be included?

### **3.) School Employees – M.G.L. c. 119 § 21**

“...(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...”

Possible Concerns:

- Does not include other school staff members (librarians, administrative staff, etc.)
- Does not define “school” according to grade level (K-12, postsecondary, vocational, etc.)
- Unclear if this could be applied to post-secondary institutions
- Unclear if this applies to religious schools
- Unclear whether “teachers” must be certified

### **4.) Public Safety Officials- M.G.L. c. 119 § 21**

“(iii) a probation officer, clerk-magistrate of a district court, parole officer...firefighter, police officer”

Possible Concerns:

- Are there other court personnel who should be included?
- Is the term “police officer” too broad or too narrow?
- Does “firefighter” include volunteers (who may be younger than 18yo)?

### **5.) Social Service Providers – M.G.L. c. 119 § 21**

“...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..”

Possible Concerns:

- Question the structure of the statute: social workers and foster parents are grouped with law enforcement, not providers
- No other licensors on list

## **6.) Clergy – M.G.L. c. 119 § 21**

“...(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.”

## **7.) 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.

### **Overarching Issues to be Considered**

Ultimately, review and changes to the penalties for failing to report and the training requirements for mandated reporters will inform to what extent, if at all, there is a recommendation to include volunteers, employees of private companies or agencies, and the benefit of catch-all provisions.

### **Mandated Reporters- Other**

Below is a sample list of mandated reporters in other states that do not fit into the groups outlined herein.

- guardian ad litem in his/her role as guardian ad litem
- staff at higher education institutions
- funeral home staff and directors
- private and commercial film/photo and IT personnel who observe child pornography

- a humane officer enforcing animal cruelty laws
- supervisor and administrator of the general assistance under the Public Aid Code

## **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).

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.

## **Proposals to Revise the Definition of Abuse and Neglect**

The statutory definition of abuse and neglect is contained in M.G.L. c. 119 § 51A(a):  
*“...physical or emotional injury resulting from: (i) abuse inflicted upon him which causes substantial 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...(iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.”*<sup>4</sup>

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<sup>4</sup> Sexually exploited child has a specific definition M.G.L. c. 119 § 21.

The OCA has heard concerns that this statutory definition is too broad and vague resulting in confusion and over-reporting. The OCA has also heard concerns that DCF routinely screens-out allegations against non-caretakers and mandated reporters may be self-screening reports and only passing information along to DCF that they believe DCF will screen-in. Discussion of the definition of abuse and neglect should consider, at the minimum, the value and detriments to more specific language, how a definition can provide mandated reporters (or all reporters) with enough information that they feel confident in their obligations, what role training has to play in deciphering the definition of abuse and neglect, and the value of requiring definitions in DCF regulations.

The OCA believes that this discussion must include an exploration of how to differentiate certain incidents that may not rise to the level of abuse or neglect, but that may need to be communicated to DCF in their role as legal and/or physical custodian of a child or as a contractor for services.

## **Training and Information**

M.G.L. c. 119 § 51A states:

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

### **Agencies and Employers Responsible for Training**

Massachusetts has several sources of training materials and available free trainings but there is no central or individual entity that is responsible for designing training, maintaining records of who has been trained, or proscribing the content or frequency of training. The statute refers solely to professionally licensed employees receiving training, but the Commission should consider whether the training requirement should be expanded to some additional, or all, mandated reporters.

### **Frequency, Scope, Effectiveness of Training**

The law does not specify the frequency or scope of the training requirement, suggesting then that one training during the time the licensee holds the license is sufficient training for a mandated reporter. The Commission should determine what the goals of the



training should be, the means to achieving those goals, and what plausible quality assurance mechanism could speak to the effectiveness of the training.

#### Training Content: information regarding retaliation protections, fines and penalties for failure to report

The OCA does believe that the protections for mandated reporters and the penalties for failing to report or making false/frivolous reports is not well known by many mandated reporters. The OCA has heard concerns from mandated reporters about how their obligations intersect with the possibility that allegations of abuse or neglect may expose certain persons to immigration authorities or other authorities.

#### Best Practices for Training: Profession-Specific

The Commission may want to explore how other states are implementing their training obligations (which vary from state to state) and how Massachusetts currently implements training on other matters (professional responsibility, ethics). The quality of profession-specific training may hinge on how often trainings are updated to include current concerns and patterns of behavior. The Commission should consider who is best suited to determine the content of profession-specific training if that is the preferred training style and whether the audience will inform the manner in which the training is done.

#### Notification of updates or changes to the law/regulations and Options for developing PSAs

There is currently no standard mechanism that the OCA is aware of for notifying mandated reporters of updates or changes to the law or changes to regulations. The OCA can investigate for the commission what methods of notification are currently being used in other sectors or other states. The Commission should consider the value of requiring a public service announcement (PSA) or multiple PSAs, how such information is best communicated, the ramifications and costs of possible PSAs, and the proposed responsible authority to issue PSAs if the Commission believes them to be valuable and appropriate.

## Operations

### DCF Responses to written 51A reports & DA Referrals

DCF is responsible for receiving and evaluating allegations of child abuse and neglect called 51A reports. DCF does this work at the Area Offices and through their use of the Hotline (MA Child Abuse Emergency Line). Depending on the evaluation of the allegations, the report may trigger an emergency or non-emergency investigation. The process for screening and investigating allegations of private individuals and “institutions” are different and should be reviewed as two distinct processes.

The DCF District Attorney Referrals Policy (Revised in 2017) requires that DCF notify the appropriate District Attorney and law enforcement authority if certain specific conditions have resulted from abuse or neglect (mandatory referrals). Additionally, the department may notify those authorities and provide information about other possible criminal contact. A comprehensive review of this process would include the content of what is communicated, the manner of communication, and the ultimate likely consequences of that communication. One area that the OCA would like to investigate is the usefulness of reporting child-on-child sexual abuse or assault and whether an alternative referral process would result in a desired outcome.

### Feasibility of an Automated Tracking System for Reports

The OCA suggests that a feasibility study should include a review of automated tracking systems that already exist at the state level in Massachusetts, the efficacy, complications, and cost. The OCA also suggests that there should be an investigation into how an automated tracking system could collect and house data capable of providing reports and what types of data and reports would be beneficial.

### Options for Agency Responsibility

The legislation poses the question of whether one agency could be responsible for overseeing the mandated reporter system, develop training, and responding to reports of intimidation or retaliation. The Commission could also explore whether a coalition of agencies could build connections with one another such that the variety of issues that need to be addressed can be approached through joint efforts. If that is a possibility, the Commission could determine whether one agency would have the authority to issue regulations regarding these issues.



## **Other Identified Issues**

- Reviewing the way failing to report, false reporting, or frivolous reporting is identified and whether the penalty mechanism is effective
- Possible safe-harbor provisions or exclusions from abuse and neglect: consensual sexual relations between minors
- Possible identified exclusions from mandated reporting responsibilities: social workers working in conjunction with attorneys
- Resolving confusion regarding how HIPPA concerns impact responsibilities
- How joint investigations are conducted and whether they should be required
- How penalties for failing to report or failing to be trained could be linked to licensure requirements
- Concerns about the interplay of privilege with reporting duties
- Possible inclusion of a preamble
- Possible ways to increase quality reporting from non-mandated reporters