

Mandated Reporter Commission

Review of Proposals after Public Comment Period

Foundational questions raised by the Commission:

Why mandated reporting?

The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires that every state have provisions or procedures requiring the reporting of suspected child abuse and neglect:

“...provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances...” (42 U.S.C. § 5106a(b)(2)(B)(i)).

There are ethics arguments that children because of their age and abilities are particularly vulnerable to abuse or neglect (as can be seen with other vulnerable populations) and are at a disadvantage in exercising self-protection and self-care.

As discussed by the Commission members in the past, the two models are universal reporting and profession-specific reporting. Past discussion at the Commission has led the Commission to continue to want to focus on profession-specific reporting requirements in Massachusetts.

Does mandated reporting “work?”

This is a complex question which depends on the framing of the question. The majority of cases reported to DCF come from mandated reporters. Reports from mandated reporters are screened-in at a higher rate than reports that come from non-mandated reporters. Data shows us that there is disproportionality in the rates of Hispanic/Latinx and Black children coming to DCF’s attention relative to their proportion in the Massachusetts population. The data available however is not broken down by mandated reporters versus non-mandated reporters nor is it broken down by reporter type.

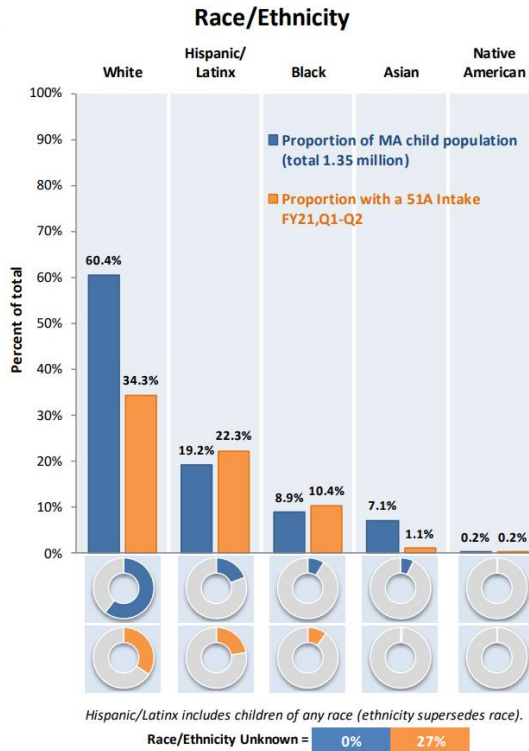
Recent DCF Data Concerning Intakes and Responses: Race and Ethnicity

PLEASE NOTE: Data was presented solely for use by the Data Work Group and is only excerpted here. The full Powerpoint of data presented at the Data Work Group is available here: [Data Work Group Meetings | Mass.gov](#) Because this data has been excerpted from a larger document, there is a potential for mischaracterization or loss of context. Inclusion of this data here is solely for purposes of Commission discussion and should not be utilized for any other manner.

Children (0-17) with a 51A Intake within FY21, Q1-Q2

TRADITIONAL METHODOLOGY

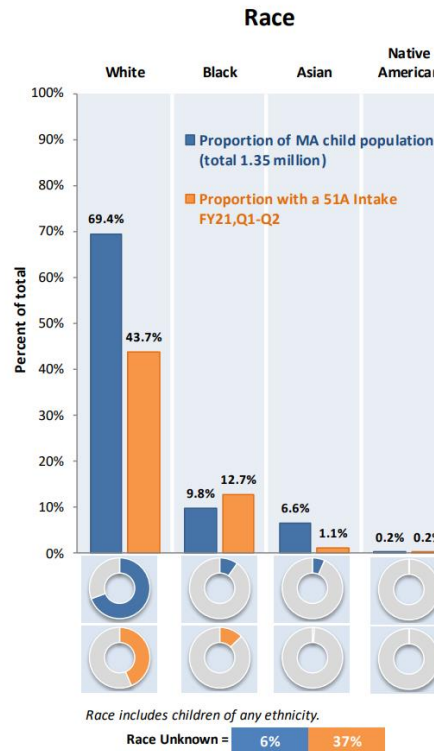
- Ethnicity is treated as a Race
- ethnicity supersedes race



	RoD	RRI
White	0.6	n/a
Hispanic/Latinx	1.2	2.0
Black	1.2	2.1
Asian	0.1	0.3
Native American	0.9	1.5

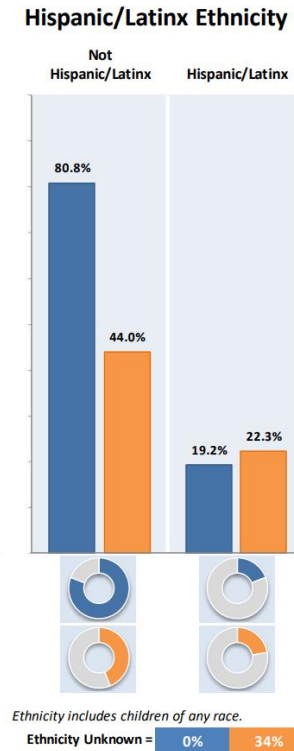
NOTE:
Greater than (27%) of 51A Intakes have an UNKNOWN race/ethnicity (i.e., undetermined, declined or missing).

Race



	RoD	RRI
White	0.6	n/a
Black	1.3	2.1
Asian	0.2	0.3
Native American	0.8	1.2

Hispanic/Latinx Ethnicity



	RoD	RRI
Not Hispanic/Latinx	0.5	n/a
Hispanic/Latinx	1.2	2.1

ALTERNATIVE METHODOLOGY

- Race & Ethnicity are treated as discrete demographics:
- race of any ethnicity
- ethnicity of any race

Black children were the subject of a 51A report at 2.1x the relative rate (RRI) of White children.

Hispanic/Latinx children were the subject of a 51A report at 2.1x the relative rate (RRI) of Not-Hispanic/Latinx children.

Asian children were subject of a 51A report at 0.3x the relative rate (RRI) of White children.

NOTE:
Asian and Native American counts are a small share of the overall counts. As such their respective RoDs/RRI should be considered conservatively.

- The Rate-of-Disproportionality (RoD) is an indicator of inequality. RoDs for the above metric are calculated by dividing the observed DCF rate for a given race/ethnicity by the MA population rate of that specific race/ethnicity. - RoDs > 1.0 indicate overrepresentation - RoDs < 1.0 indicate underrepresentation

- Relative Rate Index (RRI) compares the RoD for White children with the RoD for children of color, or the RoD of Not Hispanic/Latinx children to the RoD for Hispanic/Latinx children.

Several public submissions state that mandated reporting requirements prevent families from seeking access to available services thereby suggesting that mandated reporting contributes to the destabilization of families. Even if families do engage with DCF, there may be consequences or perceived consequences for exposing vulnerabilities to DCF or other providers. Domestic violence perpetrators may use the threat of DCF involvement as a control mechanism for their victims. The topic of the unintended consequence of mandated reporting is echoed in some of the information that the Commission has discussed regarding the reporting of substance exposed newborns at birth, particularly that some mothers may affirmatively choose to forgo prescribed medication during pregnancy for fear of receiving a 51A report upon the birth of their child. *(Some public comments that discuss this topic include, but are not limited to, submission by: Kelley Fong, Child Welfare Coalition and the Children's Law Support Project, CPCS.)*

The Commission has also discussed at several meetings the success of the Family Resource Centers in Massachusetts which provide services to families throughout the Commonwealth and who served 10,869 unduplicated families in 2019 providing such services as help with food instability, parenting groups and classes, assistance with housing instability, accessing resources for children including child care and after school care as well as physical products such as diapers, and so on.

DCF tracks recurrence of maltreatment as an outcome measurement. DCF's 2020 annual report indicates that for FY2020, 89.76% of children who experienced an occurrence of maltreatment within the first 6 months of 2020, did not experience a recurrence of maltreatment within the next six months. DCF tracks other outcome measurements also available in the FY2020 Annual report.

No statistic, personal example, or even topic mapping can fully describe the complexity of the child welfare system. This information is meant to describe the scope of the conversations that the Commission has had and is having. The complexity of child welfare, of mandated reporting, of family support services, and of complex stress factors affecting real families means that several facts can be true at once. It can be true both that some families will retreat from available services feeling they cannot trust mandated reporters and there is no safe place where they can express their needs or be fallible individuals (as we all are), and it can also be true that DCF provides relevant and critical services to communities and families who identify themselves as needing help and are able and willing to access that help through the avenues that are available to them. It can be true that mandated reporters operate on implicit bias and that structural racism affects both experiences and perceptions of experiences, it can also be true that mandated reporters serve as critical lifelines to children who urgently need help. It can be true that many cases are screened-out by DCF at the screening stage, and it can also be true that a screen-out does not mean that the reporter was incorrect in their analysis of the situation.

The public comment period has provided the Commission with critical voices and perspectives. Those voices and perspectives are fully available on the Commission's website for in-depth study. Summarizing information comes with inevitable complications including lack of context which can result in inadvertent misunderstandings. For this reason, the summary of the topics below are in aggregate form and we have indicated in parenthesis some examples of submissions

which go into more detail though those examples are not the full extent of the submissions that mention that topic.

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 actually 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.

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.

INTRODUCTION	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>“Mandated Reporter”, a person who is: a physician, medical intern . . .</p>	<p>“Mandated Reporter,” a person eighteen years old or older who is either a paid employee, or a volunteer, working in a profession or role listed herein, or any other person contracted by any entity to perform the functions of a profession or role listed herein, if such person resides in the Commonwealth or performs the functions of the profession or role listed herein for any person whose residence is in the Commonwealth or who is physically in the Commonwealth.</p> <p>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.</p>

Addition of a minimum age requirement of 18yo:

Reasoning behind the proposal:

The minimum age requirement is set at 18 years old as that is typically the age designated as when a person is considered an adult and when a number of other obligations and rights reserved solely to adults first attach. The proposal assumes that a person younger than 18, a legal child themselves, would not identify themselves as responsible under the law for the protection of other children. Additionally, the proposal intends to avoid placing legal punishments for failure to report on children who may not have the capability to adequately interpret the legal standard for reporting.

Proposal without draft language: Some volunteers and paid personnel working in the roles or titles under the definition of mandated reporter may be as young as 16 or 17 years old. This proposal requires that any employer, volunteer organization, or entity employing (in a paid or unpaid position) any individuals under 18 years old in roles that would otherwise qualify that individual as a mandated reporter, have written policies directing these employees to report any concerns of child abuse or neglect to a specific person who is a mandated reporter (such as the person in charge or their designee).

Public feedback specific to this section:

- Older teens who are employed in camps, after school settings and so on, are caretakers and should not be excluded from filing. The best filing comes from persons who have first-hand knowledge. The Commission could consider an internal process to assist these teens in reporting but the reports should still come from them. (*See for example submission by Kris Latour Kennedy*)

Addition/Clarification of volunteers:

Reasoning behind the proposal:

The current statute is unclear about whether mandatory reporting obligations are limited to paid employees. Clarity is required in this area to ensure that all persons are on notice about their obligations to report.

This proposal explicitly includes volunteers in any role or position listed in the statute as mandated reporters. The inclusion of volunteers is based on a proposition that it is the role or profession that identifies whether a person is a mandated reporter, not whether they are being paid to perform that role or profession. The roles and professions are identified as important due to their exposure to children or information about children and/or the authority an individual may have over children. Nothing about these fundamental qualities change based on whether a person is paid or unpaid. Further, children do not choose who they may disclose concerning information to based on whether that person is known to be a paid employee. The Commission discussed the possibility of applying a sliding scale of reporting responsibility based on the frequency with which a person volunteers in recognition of the fact that there are different levels of volunteers, some occasional and some who regularly fulfil the responsibilities and roles of the professions listed in the statute. This possibility was not advanced further in Commission discussion as a sliding scale would be unfair to the individual child who needs protection.

Public feedback specific to this section:

- Support for the inclusion of some volunteers, but suggestion that “volunteers” be defined. It is unclear if all volunteers, including some that never interact with children, would be included in the definition.
- Possible suggestion that a sliding scale of responsibility be applied (volunteer sports coach is a mandated reporter, parent n the camp field trip for the day not a mandated reporter).
- The inclusion of volunteers may hinder the ad hoc community support that is beneficial to many families.

Jurisdictional and Remote Issues:

Reasoning behind the proposal:

This proposal seeks to clarify that persons are mandated reporters for the purposes of Massachusetts law if they are providing services to persons in the Commonwealth or who reside in the Commonwealth. This is meant to account for out-of-state persons who provide remote services in the Commonwealth or travel to the Commonwealth to provide services even if they are employed out-of-state. Even though this proposal includes any person (who falls into the roles and professions listed in the statute) providing services to any other person in the Commonwealth, the obligation to report as a mandated reporter will still only arise if the person providing services believes, in their professional capacity, that there are concerns of child abuse or neglect that meet the standard of what is required to be reported to DCF. This proposal seeks to address the advances that technology has made in the past few decades including the current reliance on remote services, telehealth, and remote learning.

Public feedback specific to this section:

- No feedback appeared to be directly on point for this specific issue.
- Concerns already noted regarding the detriments to the expansion of the mandated reporter list would apply here. Also, there could be relevant concerns about persons out of state knowing that they are mandated reporters and whether they could or should be held to any expansion of training standards.

Contractual Obligations:

Reasoning behind the proposal:

This proposal explicitly states that any person who is contractually obligated to undertake the responsibilities of the role or profession of a mandated reporter will also be subject to mandated reporter obligations. A proposed definition of “contractor(s)” is elsewhere in the proposed statutory language. 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. This proposal is based on an intention to tie the definition of mandated reporter to the actual connection between the reporter and the children and/or family, not the organizational structure of the role or profession. This proposal would also recommend that contract terms, specifically when services are contracted by state agencies, clarify the mandatory reporting obligations of contractors who may be unfamiliar with the law or may not be based in Massachusetts.

Public feedback specific to this section:

- No feedback appeared to be directly on point for this specific issue.
- Concerns already noted regarding the detriments to the expansion of the mandated reporter list would apply here. Also, there could be relevant concerns about persons out

of state knowing that they are mandated reporters and whether they could or should be held to any expansion of training standards.

MEDICAL PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(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...	(i): medical providers: a physician, medical student or trainee, 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

Settings and professionals providing medical care:

Reasoning behind the proposal:

The statute currently identifies physicians, medical interns, and hospital personnel as mandated reporters. The Commission notes that many people in the Commonwealth do not receive medical care solely in a hospital setting. Many professionals in the medical field who would be mandatory reporters if they worked in a hospital, are not mandatory reporters when performing the same role in another location. This proposal seeks to expand the scope of medical providers who qualify as mandated reporters beyond a hospital setting as the setting of medical care and treatment does not affect the information or insight a medical provider may learn during the course of such care or treatment.

The proposal is also meant to cover providers in unlicensed and licensed medical facilities as some urgent care facilities and other facilities are unlicensed.

The proposal adds pharmacists to the list of mandated reporters and expands the scope of medical personnel to any person who is licensed to provide emergency or non-emergency medical care.

Public feedback specific to this section —*see specifically the submission by the Massachusetts Medical Society:*

- “Appreciate” that there is a need to expand the scope of medical providers who qualify as mandated reporters beyond a hospital setting, support for a robust approach to defining medical provider for purposes of the statute.

- Persons engaged in the admission to care or treatment expands the scope too far. Such persons are untrained in the recognition of abuse or neglect and the addition of such persons is not helpful as once past the admissions phase the child or family would encounter mandated reporters with more specialty in determining whether there is cause for concern.
- Osteopath is a physician and there is no need to separate them in the list in the definition.

MENTAL HEALTH PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
(i) ... allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker	(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, social worker, any student or trainee providing mental health services under supervision

Reasoning behind the proposal:

This proposal includes psychoanalysts and psychiatric nurses in the list of mental health providers as these professionals are in the same type of provider-patient relationship and are privy to the same types of information pertinent to allegations of abuse and/or neglect as mental health providers that are currently covered by the reporting statute.

The proposal eliminates the word “clinical” from “clinical social worker” in an effort to capture all persons working as social workers as any social worker can provide mental health services (to varying degrees depending on their roles), not just those in a clinical or one-to-one relationship.

This proposal also includes the addition of any student or trainee who is providing mental health services to patients, to the list of mandatory reporters. Persons in these roles typically provide services one-on-one to clients without a supervisor being physically present during those sessions.

Public feedback specific to this section:

- “substance abuse counselor” should be “substance use disorder counselor”
- Adults should have therapeutic spaces where they can address their struggles openly and safely- this is especially true for persons of color

EDUCATION PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSAL TO THE COMMISSION
<p>(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 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</p>	<p>(a) early education: licensed child care worker, 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</p> <p>(b) pre-kindergarten through twelfth grade: school board members, any school personnel who interact with any student, pre-kindergarten through twelfth grade in their professional capacity, including personnel at public schools, charter schools, private schools, vocational schools, recovery high schools, online school or courses, home tutoring, or any personnel providing educational services funded by 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</p> <p>(c) higher education: any and all higher education staff and faculty interacting with students in a teaching, coaching, or advising role, any student employed as a research fellow or teaching assistant, all higher education administrators and officers, personnel of any organization or entity operating any program on higher-education property under supervision</p>

Reasoning behind the proposals:

The current proposal before the Commission distinguishes roles and professions relating to pre-kindergarten to twelfth grade, and roles and professions relating to higher education. For pre-kindergarten to twelfth grade, the proposed language is based upon whether school personnel interact with students in a school-related capacity, regardless of why, how, or where that interaction takes place. This formulation is meant to focus on persons who are responsible for the care of children, who are in a position of authority over children, and who are likely to be exposed to personal and detailed information about children and their families; the focus is not

on the specific job titles in the field of education. For the same reasons, the proposal includes school bus drivers, bus monitors, and school board members.

Additionally, particularly in light of the current Covid-19 crisis and the non-traditional format that education has taken during the pandemic, the proposal includes language that will make clear that the mandated reporter requirement is based on the role or profession of the mandated reporter, not the setting in which educational services are provided.

The current definition of a mandated reporter does not include personnel working in higher education and this proposal would expand mandated reporting in that regard (noting particularly the recent Larry Nassar and Jerry Sandusky abuse cases). Many sports programs and other programs use higher education facilities for their operations and many young adults who are under eighteen years old attend college courses while still enrolled in high school, and some students are younger than eighteen when they matriculate to college.

Public feedback specific to this section:

- Children of color are deemed more “dangerous” in school than other children. Children of color are subject to inequitable application of school discipline, inequitable adult perceptions of children’s behavior, and there is differential treatment based on race and gender. These biases and structural racism in school is an example of how institutions affect families.
- False or unfounded reporting in schools can lead to law enforcement involvement with families which exacerbates the inequities of the system and can lead to long term negative results including a possible law enforcement record.
- Mandated reporting in school can break the relationship with the school and the parent thereby possibly damaging the child’s education.

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 Commission specifically requests input from the public regarding the effect and scope the addition of "special police officers" and "sworn law enforcement officials."

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.