

This document is a draft version of a possible MRC document seeking public comment on language proposals currently before the MRC. It combines the work done on statutory drafting thus far, with descriptions drawn from the MRC Status Report available on the MRC website.

INTRODUCTION	
CURRENT STATUTORY LANGUAGE	PROPOSED STATUTORY LANGUAGE
<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 child 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>

Minimum Age Requirement

The Commission is currently considering recommending language that would indicate that mandated reporters are persons who are eighteen years old or older, this would set a minimum age requirement for mandated reporters thereby adding clarity to the definition of a mandated reporter. As mandated reporters are expected to make individual determinations about whether they have a “reasonable cause to believe” that a child is being abused or neglected, Commission members felt that this level of reasoning is appropriate only for adults. The Commission noted that eighteen years old is a largely arbitrary designation between childhood and adulthood but decided upon the minimum age of eighteen as that is the age at which a number of other obligations and rights reserved solely to adults first attach. In addition, persons are likely to understand that certain obligations arise for them when they reach age eighteen.

The Commission noted that people ages sixteen to seventeen may be in paid or volunteer positions in which they are solely responsible for groups of children. The Commission is considering a recommendation that any employer, volunteer organization, or entity specifically address how concerns of child abuse or neglect should be identified by staff or volunteers under eighteen years old and identify a person to whom those reports should be made. The Commission is also considering a recommendation that the Commonwealth require that state contractors and entities subject to state licensing that employ persons ages sixteen to seventeen have written policies regarding how these employees should respond to concerns of abuse

and neglect. The Commission will determine whether to recommend that these employees or volunteers be trained on reporting child abuse and neglect.

Volunteers

The current statute is unclear about whether mandatory reporting obligations are limited to paid employees, so the Commission is reviewing drafted language for consideration that explicitly includes volunteers in any role or position listed in the statute. Clarity is required in this area to ensure that all persons are on notice about their obligations to report and are on notice of other obligations (such as possible training obligations, requirement to cooperate with DCF, etc.).

Underlying this consideration of explicitly including volunteers is the reasoning 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.

Remote Services and Inter-Jurisdictional Issues

DCF's Protective Intake Policy¹ addresses jurisdictional practice for DCF, but the possibility of complex jurisdictional issues at the reporting stage has risen to the forefront of consideration due to the Covid-19 pandemic. With technological advances, the increasing intimacy of technology, and the current reliance on remote services such as telemedicine and remote learning, draft statutory language currently being considered by the Commission clarifies that a mandated reporter is either a person living in the Commonwealth who fits into the categories or roles listed in the statutory language, or a person living outside of the Commonwealth who is providing services (most likely remotely) to a child who either resides in the Commonwealth or who is physically in the Commonwealth. DCF's internal policies will continue to dictate the jurisdictional issues once cases from mandated reporters come to them.

Contractors

The Commission is reviewing draft recommendations that would include language in the statute 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. 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. In line with the Commission's reasoning provided herein, it is the intention that the definition of

¹ <https://www.mass.gov/doc/dcf-protective-intake-policy-june-2020/download> updated on June 22, 2020

mandated reporter hinge on the connection to the children and to the families, not the organizational structure of the role or profession. Additionally, the Commission may 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.

MEDICAL PROVIDERS	
CURRENT STATUTORY LANGUAGE	PROPOSED STATUTORY LANGUAGE
(i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker	(i): medical providers: a physician, medical intern, personnel at any licensed or unlicensed facility providing medical care, who are engaged in the admission, examination, care or treatment of persons, medical examiner, pharmacist, psychologist, any person licensed or certified to provide emergency or non-emergency medical care including but not limited to: dentist, nurse, chiropractor, podiatrist, optometrist, osteopath

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. For example, while the current statutory language would cover hospital personnel like nurses, the current language suggests that a nurse working in an urgent care facility or in a doctor’s office would not be a mandated reporter.

The Commission is considering a recommendation to include medical personnel beyond a hospital setting, noting that 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; all medical providers are exposed to the same set of facts with the same power dynamics and personal information of the patient or family involved. The Commission notes the lack of medical representatives on the Commission and feels strongly that the feedback sought from experts in the medical community during a period of public comment will be very important to this section of the proposed statutory language.

ALL PUBLIC COMMENTS MUST REFERENCE LINE NUMBERS
FROM SECTION BELOW

DRAFT

1 'Mandated reporter', a person over the age of eighteen who is either a paid employee, or a
2 volunteer, working in a profession or role listed herein, or any person contracted by any entity to
3 perform the functions of a profession or role listed herein, if such person resides in the
4 Commonwealth or performs the functions of the profession or role listed herein for any child
5 whose residence is in the Commonwealth or who is physically in the Commonwealth.
6

7 The following subsection titles are for organization purposes only, a profession or role listed
8 herein may fall under one or several subsection titles and non-inclusion under a subsection title
9 has no legal effect on the obligations of mandated reporters.
10

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

DRAFT