

**Black text:** Agreed on consensus

**Blue text:** Language to be voted on

**Purple text:** Language agreed on consensus- purple is to draw reader's attention to specific changes to current text

Proposed text of definition of Mandated Reporter Definition

MGL c. 119 § 21

'Mandated reporter', a person over the age of eighteen who is either a paid employee, or a volunteer, working in a profession or role listed herein, or any person contracted by any entity to perform the functions of a profession or role listed herein, 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.

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

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

(ii) mental health providers: any person licensed or certified to provide mental health services including but not limited to: allied mental health and human services professional licensed under section 165 of chapter 112, psychoanalyst, substance abuse counselor, psychiatrist, psychiatric nurse, social worker, any intern, resident, student, or trainee providing mental health services under supervision;

(iii) education:

(a) pre-kindergarten through twelfth grade: school board members, any school personnel who interact with any student, pre-kindergarten through twelfth grade, during the school day, on school premises, through technology including remote services, or during any school sanctioned activity, including extracurricular activities and field trips, including personnel at public schools, charter schools, private schools, vocational schools, recovery high schools, online school or courses, home tutoring, 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;

(b) higher education: any and all higher education staff and faculty interacting with students in a teaching, coaching, or advising role, any students employed as research

fellows or teaching assistants, all higher education administrators and officers, personnel of any organization or entity operating any program on higher-education property;

(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;

(v) social service providers: licensed or unlicensed child care worker including a nanny or au pair, person caring for or working with a child in any public or private facility, or home or program funded by the Commonwealth or licensed under chapter 15D, person providing residential services to a child, 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, personnel of any community service program funded in whole or in part by the Commonwealth that provides assistance or programming to families, person paid by any person or entity to provide any service to a person within a home setting including day placements and residential placements, information technologist, computer or electronics technician, or film or photo image processor, social worker, foster parent;

(vi) mentors: person providing mentorship to any person through a paid or unpaid relationship with an organization or entity excluding entities providing direct confidential services to victims of domestic violence, sexual assault, or human trafficking;

(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 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..."

(viii) other youth serving individuals: personnel of a public library, 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;

‘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.

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.

Reason for Inclusion	Reason for Exclusion
<ul style="list-style-type: none"> <li>- This section would support the holistic defense model which integrates legal and non-legal services in an interdisciplinary model which seeks to address the circumstances that drive people into the criminal justice system as well as their defense in the criminal justice system</li> <li>- Juveniles are better able to access their right to counsel when they feel safe and comfortable doing so- this is best accomplished with the holistic model</li> <li>- Attorney-client privilege can be extended to communications with a third party who is employed to facilitate the communication between the attorney and client and thereby assist the attorney in rendering legal advice to the client.</li> <li>- Social workers on legal teams act as a type of translator between counsel and clients.</li> <li>- A social worker employed on a legal defense team who filed a 51A based on information learned in the course of his/her work on that legal defense team would likely have to then have to resign from that legal defense team as the relationship between the social worker and the client would be irrevocably damaged.</li> <li>- Many youth who benefit from the holistic legal defense model already have a distrust of state/judicial systems and the filing of a 51A on information learned in confidence during that holistic defense would further engrain that distrust.</li> <li>- Holistic defense works, in part, to counteract some of the implicit discrimination in the legal system and that filing 51As on information learned in the course of that defense may</li> </ul>	<ul style="list-style-type: none"> <li>- Though commonly applied to social workers, the exemption being recommended would extend to any person working on a legal defense team which could include doctors, therapists, etc.</li> <li>- Exempting certain professionals from mandated reporting responsibilities when employed in one role (legal defense team) versus another role (for example: providing counseling services) devalues the standards of those professions and damages the integrity of those professions.</li> <li>- The right to counsel should not be seeing as a higher or more important right than the right for a child to be free from/protected from abuse and neglect. The proposal here unfairly elevates attorney ethics above the ethics of other professions.</li> <li>- Mandated reporters are faced with the possibility of damaging client relationships in any setting in which they are required to report, this is a complication that mandated reporters must navigate and has never before been a reason not to report.</li> <li>- Social workers have worked on legal defense teams while maintaining their obligations as mandated reporters without compromising the legal defense.</li> <li>- Mandated reporting is a moral and ethical obligation that persons, such as social workers, have always considered to be part of their roles. Attorneys, when they become attorneys, do not have the same moral and ethical obligations in light of the rules of professional conduct and the adversarial</li> </ul>

<p>disproportionately affect children and families of color.</p> <ul style="list-style-type: none"> <li>- The holistic defense team can take steps to address any concerns about child abuse and neglect without bringing DCF into the case.</li> <li>- Most of the children and families that benefit from holistic legal defense model already have some other state agency involvement so that the legal defense team is not the only group of people who may have knowledge of abuse or neglect.</li> </ul>	<p>system in which they work. It is unfair and illogical to hold other persons to the standards of the legal profession if those other persons are not lawyers.</p> <ul style="list-style-type: none"> <li>- Attorney-client privilege does not extend to persons who can improve the relationship or communication between the attorney and the client, but only those who are reasonably necessary for the communication to happen.</li> <li>- There is a social worker-client privilege in Massachusetts law under MGL c. 112 § 135B. 51A(j) specifically states that the social worker privilege does not prohibit a filing under 51A meaning that the legislature has already considered the question of whether social workers should be exempted per their own relationships with clients and rejected that exemption.</li> </ul>
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Proposed Redrafting of Institutional Reporting Process  
MGL c. 119 §51A(a)

“If a mandated reporter is a member of the staff of a public or private institution, facility, or organization, such institution, facility, or organization may establish a written protocol by which the mandated reporter must notify the person or designated agent in charge of such institution, facility, or organization, of the information that that mandated reporter believes requires reporting under this section. The person or designated agent in charge shall then become responsible for notifying the department in the manner required by this section. However, this written protocol must provide the mandated reporter the ability to file a report individually as required under this section without notifying the person or designated agent in charge if the mandated reporter has a reasonable fear of employer retaliation for filing under this section or if the alleged perpetrator in the report is the person or designated agent in charge.

The written protocol adopted by the institution, facility, or organization must specify that the person or designated agent in charge has no discretion to refuse the filing of a report or alter the information provided by the notifying mandated reporter. The notifying mandated reporter shall be provided confirmation in writing within 24 hours of the notification that the report was filed pursuant to the institutional protocol. Under no circumstances can any institution, facility, or organization delay the filing of a report under this section for purposes of conducting an internal investigation. Nothing in this subsection would prevent a person or designated agent in charge from adding supplemental information to the report filed under this section, so long as that information is clearly identified as supplemental.

Nothing in this subsection prevents an institution from creating internal reporting requirements for employee misconduct.

The written protocol under this subsection must specify where documentation of notification by mandated reporters to persons in charge or designated agents and documentation of reports filed under this section shall be maintained, and the protocol must specify the confidentiality procedures applicable to such documentation.

A mandated reporter who follows the protocol created by the institution, facility, or organization under this subsection and believes a report of child abuse or neglect to have been dutifully made to the Department under this section as a result of their notification to the person in charge or designated agent, shall be held harmless against any claims of failure to file unless and until the mandated reporter is provided factual information to indicate that a report has not been made under this section.

Any report made by a person in charge or their designated agent based under this subsection must identify whether the report was made pursuant to a protocol under this subsection in the report. The written protocol under this subsection must not in any way discourage reporting by mandated reporters or persons in charge or their designated agents under this subsection.”

MGL 119 § 51B(1) *in part*: “If the department ~~substantiates~~ receives a report under section 51A alleging that abuse or neglect occurred at a facility approved, owned, operated or funded, in whole or in part, or was committed by an individual the department has reason to believe was licensed by the department of elementary and secondary education, the department of early education and care, the department of mental health, the department of developmental services, the department of public health or the department of youth services, the department shall notify the office of the child advocate and the affected department, in writing, by transmitting a copy of the report filed under section 51A and the department's written evaluation and written determination...”

Proposed Definition of Abuse  
MGL c. 119 §21

“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 offenses](#).

Reason for Inclusion	Reason for Exclusion	Possible Other Drafting
- The terms “sexual offenses” was taken from the DCF	- Using such a technical term could have the unintended	- “Abuse” of a child is when a child’s physical

<p>regulation and was meant to include any sexual offense against the law in the Commonwealth but the drafting here was meant to be broad enough to encompass situations that did not rise to the level of criminal activity.</p>	<p>consequence of a mandated reporter doing their own research to determine if a situation would rise to the level of an “offense.” This could delay and deter reporting.</p> <ul style="list-style-type: none"> <li>- It is not necessary to include this term, it is up to DCF whether they want to screen this in as abuse or some other category- the inclusion of “sexual offenses” does not add any clarity to what abuse is.</li> </ul>	<p>condition, mental or emotional health, or welfare, is injured, or is at substantial risk of being injured, by the non-accidental action of another.</p>
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If the Commission does decide to include the term “sexual offenses” in the definition of abuse, there was interest in also including a possible definition of “sexual offense” in the definitions portion. The following definition was submitted by DA Ryan as a possible drafting of a definition of “sexual abuse.”

**Proposal A:**

**Sexual abuse:** A non-accidental sexual act(s) with a child that causes harm or substantial risk of harm to the child’s health or welfare, considering the totality of the circumstances, including, but not limited to: (1) any age disparity between the child and the other individual; (2) the child’s cognitive, emotional, psychological, and social maturity; (3) any power imbalance between the child and the other individual; (4) whether coercive factors such as domestic violence, gang violence are present; (5) whether the act was committed without the child’s consent; and (6) whether the child was incapable of consenting due to factors such as intoxication, sleep or disability. Sexual abuse can be physical, verbal, or written. Sexually-oriented communications, including those that are handwritten, printed, or electronic and include words and/or images may qualify as verbal or written sexual abuse if they are not: (1) reasonably intended to provide information and direction for the child’s education and physical well-being, or (2) consensual communications between peers that do not involve coercion or exploitation.

**Proposal B:**

**Sexual abuse:** A Non-accidental sexual act(s) with a child, or in the presence of a child, that causes harm or substantial risk of harm to the child’s physical condition, mental or emotional health, or welfare, ~~health or welfare,~~ when considering the totality of the circumstances, including, but not limited to: ~~(1) any age disparityies between the child and the other individual;~~ ~~(2) the child’s cognitive, emotional, psychological, and social maturity;~~ ~~(3) any power imbalance between the child and the other individual;~~ (4) whether coercive factors such as domestic violence, gang violence are present; ~~(5) whether the act was committed without the child~~

consent; and ~~(6)~~ whether the child was incapable of consenting due to factors such as intoxication, sleep, or disability. Sexual abuse can be physical, verbal, or written. ~~Sexually-oriented communications, including those that are handwritten, printed, or electronic and include words and/or images may qualify as verbal or written sexual abuse if they are not: (1) reasonably intended to provide information and direction for the child’s education and physical well-being, or (2) consensual communications between peers that do not involve coercion or exploitation.~~

Sexual abuse: Non-accidental sexual act(s) with a child, or in the presence of a child, that causes harm or substantial risk of harm to the child’s physical condition, mental or emotional health, or welfare, when considering the totality of the circumstances, including, but not limited to: age disparities; the child’s cognitive, emotional, psychological, and social maturity; any power imbalance; whether coercive factors are present; whether the act was committed without consent; and whether the child was incapable of consent due to factors such as intoxication, sleep, or disability. Sexual abuse can be physical, verbal, or written.

Reason for Inclusion	Reason for Exclusion
<ul style="list-style-type: none"> <li>- Mandated reporters have expressed confusion about how to evaluate cases of underage consensual sexual relations and this definition would add much needed clarity.</li> <li>- It is not obvious that sexual acts fall under child abuse, a reasonable person could believe them to be criminal in nature only, this would accurately reflect the scope of child abuse.</li> <li>- This definition does not rely on the word “offenses” and therefore eliminates the correlation to criminal activity that Commission members feels is unnecessary.</li> </ul>	<ul style="list-style-type: none"> <li>- This definition may not be necessary and therefore risks adding complexity where it is not needed. There is no indication that DCF does not receive cases from that fall into this category. Adding a definition that is not necessary may create the unintended consequence of limiting the filing of cases that fall into this category.</li> </ul>

Proposed Definition of Neglect  
MGL c. 119 §21

Proposal A: “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.

Proposal for Inclusion of Another	Proposal for Inclusion of Caregiver
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<ul style="list-style-type: none"> <li>- Use of the term “another” does not limit the field of possible perpetrators of neglect for DCF’s screening and possible investigation.</li> <li>- The term “caretaker”/caregiver is currently defined by the DCF regulations and is a complex definition that includes an evaluation of whether a 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. Mandated reporters will not always know whether a person is a caregiver or not and they will be faced with having to evaluate that piece of the issue prior to filing in a way that may delay or discourage filing.</li> <li>- Currently, mandated reporters make reports of child neglect against unknown perpetrators as they are filing based on the neglect the child is experiencing and without the knowledge of who is responsible for the neglect. Inclusion of the term caregiver may discourage reporting of allegations with an unknown perpetrator.</li> <li>- 51A requires the reporting to DCF cases of a sexually exploited child or human trafficking victim. These cases often do not involve caregivers as perpetrators but DCF is required to accept these cases. Codifying the relationship of caregiver to the child in neglect cases may unnecessarily complicate DCF cases of sexually exploited children or trafficked children.</li> <li>- Currently §51B(1) requires that DCF alert DESE, EEC, DMH, DDS, DPH, and DYS if a child abuse and/or neglect investigation is supported in a facility approved, owned, operated, or funded by any of these entities, or if the allegation is supported against professionals that</li> </ul>	<ul style="list-style-type: none"> <li>- The Commission found it difficult to imagine a scenario where a person would be held responsible for neglect of a child without being a caregiver for that child. The Commission finds value in drafting these provisions with particularity and specificity.</li> <li>- Allegations of neglect must allege neglect by a caregiver (or, in some cases, an unknown perpetrator) to be screened-in by DCF. This definition of neglect in §21 is solely for purposes of DCF and reflects the reality of how DCF operates. To use the term “another” or “another person” widens the DCF mandate by indicating that DCF has a role in child neglect cases that are not perpetrated by caregivers.</li> </ul>
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<p>are licensed by any of these entities (DCF also notifies the OCA regardless of the OCA’s affiliation to the facility or professionals). The Commission has recommended that the these state entities be informed of any 51A allegation (prior to the screening decision) in these facilities or by these licensed professionals to facilitate the communication of possible licensing violations, to trigger investigation from other state agencies if necessary/appropriate regardless of the screening decision of DCF, and to facilitate joint investigations when appropriate. The inclusion of the term “caregiver” will likely result in some 51As not being filed for situations in institutions which may thwart the effectiveness and thoroughness of this communication between state entities.</p>	
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Proposed Definition of “Reasonable Cause to Believe”  
MGL c. 119 §21

A “reasonable cause to believe” is a suspicion that a child has been maltreated or is at substantial risk of being maltreated, based on a presentation of facts which can include a child’s disclosure, an admission by a perpetrator, information from a third party, or a mandated reporter’s own observations or impressions which may be informed by a particular expertise, training, or experience. Proof or certainty is not required.

Proposed Section  
MGL c. 119 §51A(a)

**Current Section:**  
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.

**Proposed Section if definition of abuse and neglect is accepted for §21:**  
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; (iii) physical dependence upon an addictive drug at birth, or if that child is (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

Proposed Section if definition of abuse and neglect is accepted for §21:

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) born affected by substance abuse, experiences withdrawal symptoms from prenatal drug exposure, or is affected by Fetal Alcohol Spectrum Disorder; (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

*The language in this section more closely tracks the language in CAPTA.*

#### Proposed Penalties Section

MGL c. 119 §51A

MGL c. 119 §51A(c) in relevant part:

Notwithstanding subsection (g) [no mandated reporter shall be liable in any civil or criminal action if the report was made in good faith, not frivolous, and the reporter did not cause the abuse or neglect], whoever violates this section shall be punished by a fine of not ~~more~~ less than \$1,000 and not more than \$10,000.

...

Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury to or death of a child and willfully fails to report such abuse or neglect shall be punished by a fine of ~~up to~~ not less than \$5,000 and not more than \$50,000 or imprisonment in the house of correction for not more than 2 ½ years or by both such fine and imprisonment; and, upon a guilty finding or a continuance without a finding, the court shall notify any appropriate professional licensing authority of the mandated reporter's violation of this paragraph.

Upon the determination of any law enforcement entity, state investigatory agency, or licensing body, that a mandated reporter or a licensed institution violated this section, that entity, agency, or body shall notify the appropriate professional licensing authority and the Office of the Child Advocate of the violation. Upon written request, the Department shall provide any professional licensing authority with redacted records which protect the confidentiality of any person other than the mandated reporter to the extent that those records substantiate a violation of this section. Any and all hearings or other disciplinary procedures by a licensing authority regarding this section shall be closed to the general public and all Department records obtained

for these purposes shall be confidential and exempt from disclosure under chapter 66A and chapter 66 and clause twenty-sixth of section 7 of chapter 4. **Nothing in this subsection shall interfere with the obligations of the Department under section 51B(l) of chapter 119.**

MGL c. 119 §51A(e) “A mandated reporter who has reasonable cause to believe that a child has died as a result of any of the conditions listed in subsection (a) shall report the death to the district attorney for the county in which the death occurred and the [OCME] as required by [Duty to report deaths; failure to report]...Any person who fails to file a report under this subsection shall be punished by a fine of not ~~more~~ **less than \$1,000 and not more than \$10,000.**”

Proposed Training Language  
MGL c. 119 §51A(k)

MGL c. 119 §51A(k): “A mandated reporter who is professionally licensed by the commonwealth shall complete training to recognize and report suspected child abuse or neglect.”

**Proposal 1:**

**A mandated reporter under this section shall complete an initial mandated reporter general training within three months of their date of engagement in a professional capacity or role as a mandated reporter, and must then complete a mandated reporter training at least every two years thereafter for so long as the mandated reporter is engaged as a mandated reporter. The initial requirement must only be completed once in the mandated reporter’s career as a mandated reporter.**

**The general trainings shall be in-person or internet-based and shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; understanding the response of the Department and the role of the reporter after a report has been made; penalties for failure to report; and prohibition against employer retaliation for reporting. A mandated reporter training that is not the initial general training, shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; penalties for failure to report; and prohibition against employer retaliation for reporting.**

**The mandated reporter training shall be provided through an entity authorized by the Secretary of the Executive Office of Health and Human Services. The authorized entity shall provide access to a free internet-based initial mandated reporter general training. The authorized entity shall have the authority to provide free mandated reporter trainings that are not the initial general training and shall have the authority to approve the curriculum of any mandated reporter training provided by any other entity for the purpose of this subsection. The authorized entity shall have the authority to provide trainings on issues related to the mandated reporter law, such as the institutional reporting procedure, and shall have the responsibility of compiling all relevant Commonwealth issued information on mandated reporting including Department guidance. The authorized entity shall be required to issue public service announcements about mandated reporting at least every three years on a topic within the**

authorized entity's discretion. The authorized entity shall issue public service announcements, in addition to the announcement every three years, at any time the mandated reporter statute is altered. The Secretary of the Executive Office of Health and Human Services may revoke the authority of the authorized entity at any time for any reason so long as the Secretary simultaneously authorizes another entity to perform the functions of this subsection.

Each mandated reporter shall report to his or her employer each time that reporter has completed a mandated reporter training and shall provide a copy of their certificate of completion. Each mandated reporter is responsible for keeping copies of all certificates of completion for any mandated reporter training completed.

Beginning on DATE, each mandated reporter who is licensed or certified for a profession or role listed as a mandated reporter under MGL c. 119 §21, shall be required by the licensing or certification entity to comply with mandated reporter training as described herein and shall be required at the time of licensing or certification, or at the time of licensing or certification renewal, to demonstrate compliance with this subsection through copies of certificates of completion as a condition of such licensing or certification.

Any person who is engaged in a profession or role listed as a mandated reporter under MGL c. 119 § 21 at the time this subsection takes effect, shall have one year from the date of the enactment of this subsection to comply with the initial general training requirement.

**Proposal 2:**

A mandated reporter under this section shall complete a mandated reporter training within three months of their date of engagement in a professional capacity or role as a mandated reporter, and must then complete a mandated reporter training at least every two years thereafter for so long as the mandated reporter is engaged as a mandated reporter. The initial requirement must only be completed once in the mandated reporter's career as a mandated reporter.

The mandated reporter training may be in-person or internet-based and shall include, at a minimum: indicators of child abuse and neglect as defined by MGL c. 119 §21; the process for reporting suspected child abuse and neglect; understanding the response of the Department and the role of the reporter after a report has been made; penalties for failure to report; and prohibition against employer retaliation for reporting.

Each mandated reporter shall report to his or her employer each time that reporter has completed a mandated reporter training and shall provide a copy of their certificate of completion. Each mandated reporter is responsible for keeping copies of all certificates of completion for any mandated reporter training completed.

Beginning on DATE, each mandated reporter who is licensed or certified for a profession or role listed as a mandated reporter under MGL c. 119 §21, shall be required by the licensing or certification entity to comply with mandated reporter training as described herein and shall be required at the time of licensing or certification, or at the time of licensing or certification

renewal, to demonstrate compliance with this subsection through copies of certificates of completion as a condition of such licensing or certification.

Any person who is engaged in a profession or role listed as a mandated reporter under MGL c. 119 § 21 at the time this subsection takes effect, shall have one year from the date of the enactment of this subsection to comply with the initial general training requirement.

Arguments for Proposal 1	Arguments for Proposal 2
<ul style="list-style-type: none"> <li>- Provides for an entity that will have the authority and responsibility to approve the curriculum of mandated reporter trainings including profession specific trainings. This will ensure that the curriculum is beneficial to mandated reporters and correct. The entity could also create its own curriculums that can provide specific guidance in response to the specific needs of mandated reporters (including trainings that address potential racial and ethnic bias, underage consensual sexual relationships, and other specific issues previously identified by the Commission).</li> <li>- Profession specific trainings are best practices in mandated reporter trainings and this system permits state and other entities to create trainings that specifically meet their needs and have those trainings count toward the licensure requirements.</li> <li>- This proposal also creates a type of one-stop-shop for mandated reporters who can find a list of approved trainings, can review any updated guidance, and any public service announcements. This proposal is meant to ensure a basic level of uniformity across the Commonwealth</li> </ul>	<ul style="list-style-type: none"> <li>- This proposal meets the goals of the Commission to have every mandated reporter trained without complicating the process by bringing in an additional, currently unknown, entity that would require additional funds and personnel.</li> <li>- This proposal does not prevent the creation of profession specific trainings that could be required by employers in addition to the baseline requirement of the general training contained in this proposal. This proposal also does not prevent the creation of technical trainings or situation specific training (remote services in light of Covid-19) from being offered by an entity at any time if any entity so chooses.</li> <li>- There are several excellent free trainings available online or in-person in the Commonwealth that could be utilized to meet the requirements under this subsection thereby making this subsection easy and cost effective to implement.</li> </ul>

<p>regarding mandated reporting and be responsive to any changing needs of mandated reporters. For example, an entity like this could issue or approve a mandated reporter training that particularly addresses remote services in Covid-19.</p>	
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Possible additional inclusion for either proposal:

Any mandated reporter who is a volunteer working less than 35 hours per year in the role or profession that qualifies them as a mandated reporter shall be required to take a general mandated reporter training no more than 30 minutes long that can either be written material or internet-based. The mandated reporter volunteer must sign an affirmation that they have read or reviewed the training prior to volunteering in the role or profession that qualifies them as a mandated reporter and must keep a copy of that affirmation for their own records.

Other Possible Recommendations

**Section 51A. Reporting of suspected abuse or neglect; mandated reporters, collection of physical evidence penalties; content of reports; liability; privileged communication**

~~(a) 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.~~

~~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.~~

A mandated reporter may, in addition to filing a report under this section, contact local law enforcement authorities or the child advocate about the suspected abuse or neglect.

(b) For the purpose of reporting under this section, ~~hospital~~ **medical** personnel may have photographs taken of the areas of trauma visible on the child without the consent of the child's parents or guardians. These photographs or copies thereof shall be sent to the department with the report.

**Notwithstanding any privilege created by statute or common law relating to confidential communications or any statute prohibiting the disclosure of information but subject to subsection**

(j), if ~~hospital~~ **medical** personnel collect physical evidence of abuse or neglect of the child, **medical personnel must immediately contact and provide relevant information to** the local district attorney, local law enforcement authorities, and the department ~~shall be immediately notified~~. The physical evidence shall be processed immediately so that the department may make an informed determination within the time limits in section 51B. If there is a delay in processing, the department shall seek a waiver under subsection (d) of section 51B.

~~(c) Notwithstanding subsection (g), whoever violates this section shall be punished by a fine of not more than \$1,000. Whoever knowingly and willfully files a frivolous report of child abuse or neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of not more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for not more than 2 1/2 years and a fine of not more than \$2,000 for the third and subsequent offenses.~~

~~Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury to or death of a child and willfully fails to report such abuse or neglect shall be punished by a fine of up to \$5,000 or imprisonment in the house of correction for not more than 2 1/2 years or by both such fine and imprisonment; and, upon a guilty finding or a continuance without a finding, the court shall notify any appropriate professional licensing authority of the mandated reporter's violation of this paragraph.~~

(d) A report filed under this section shall contain: (i) the names and addresses of the child and the child's parents or other person responsible for the child's care, if known; (ii) the child's age; (iii) the child's sex; (iv) the nature and extent of the child's injuries, abuse, maltreatment or neglect, including any evidence of prior injuries, abuse, maltreatment or neglect; (v) the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; (vi) whatever action, if any, was taken to treat, shelter or otherwise assist the child; (vii) the name of the person or persons making the report; (viii) any other information that the person reporting believes might be helpful in establishing the cause of the injuries; (ix) the identity of the person or persons responsible for the neglect or injuries; and (x) other information required by the department.

(e) A mandated reporter who has reasonable cause to believe that a child has died as a result of any of the conditions listed in subsection (a) shall report the death to the district attorney for the county in which the death occurred and the office of the chief medical examiner as required by clause (16) of section 3 of chapter 38. Any person who fails to file a report under this subsection shall be punished by a fine of not **less than \$1,000 and not more than \$10,000**.

(f) Any person may file a report under this section if that person has reasonable cause to believe that a child is suffering from, **or is at substantial risk of suffering from**, abuse or neglect **or any other condition listed in subsection (a)**.

~~(g) No mandated reporter shall be liable in any civil or criminal action for filing a report under this section or for contacting local law enforcement authorities or the child advocate, if the report or contact was made in good faith, was not frivolous, and the reporter did not cause the abuse or neglect. No other person filing a report under this section shall be liable in any civil or criminal action by reason of the report if it was made in good faith and if that person did not perpetrate or inflict the reported abuse or cause the reported neglect. Any person filing a report under this section may be liable in a civil or criminal action if the department or a district attorney~~

determines that the person filing the report may have perpetrated or inflicted the abuse or caused the neglect.

~~(h) No employer shall discharge, discriminate or retaliate against a mandated reporter who, in good faith, files a report under this section, testifies or is about to testify in any proceeding involving child abuse or neglect. Any employer who discharges, discriminates or retaliates against that mandated reporter shall be liable to the mandated reporter for treble damages, costs and attorney's fees.~~

(i) Within 30 days of receiving a report from a mandated reporter, the department shall notify the mandated reporter, in writing, of its determination of the nature, extent and cause or causes of the injuries to the child and the services that the department intends to provide to the child or the child's family.

(j) Any privilege relating to confidential communications, established by sections 135 to 135B, inclusive, of chapter 112 or by sections 20A and 20B of chapter 233, shall not prohibit the filing of a report under this section or a care and protection petition under section 24, except that 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 of a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner to report suspected child abuse or neglect 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.

~~(k) A mandated reporter who is professionally licensed by the commonwealth shall complete training to recognize and report suspected child abuse or neglect.~~

### **Section 51B. Investigation of report of abuse filed under Sec. 51A; removal of child; transmission and filing of written reports; notice to district attorney; disclosure of information by mandated reporter**

(a) Upon receipt of a report filed under section 51A, the department shall investigate the suspected child abuse or neglect, provide a written evaluation of the household of the child, including the parents and home environment and make a written determination relative to the safety of and risk posed to the child and whether the suspected child abuse or neglect is substantiated. The department shall immediately report to the district attorney and local law enforcement authorities, a sexually exploited child or a child who is otherwise a human trafficking victim, regardless of whether the child is living with a parent, guardian or other caretaker.

(b) The investigation shall include: (i) a home visit at which the child is viewed, if appropriate; (ii) a determination of the nature, extent and cause or causes of the injuries; (iii) the identity of the person or persons responsible therefore; (iv) the name, age and condition of other children in the same household; (v) an evaluation of the parents and the home environment; and (vi) all other pertinent facts or matters. The department shall coordinate with other agencies to make all



reasonable efforts to minimize the number of interviews of any potential victim of child abuse or neglect. Upon completion of the investigation and evaluation, the department shall make a written determination relative to: (i) the safety of the child and risk of physical or emotional injury to that child and the safety of and risk thereto of any other children in the household; and (ii) whether the suspected child abuse or neglect is substantiated.

(c) If the department has reasonable cause to believe a child's health or safety is in immediate danger from abuse or neglect, the department shall take a child into immediate temporary custody if it has reasonable cause to believe that the removal is necessary to protect the child from abuse or neglect. The investigation and evaluation shall commence within 2 hours of initial contact and an interim report with an initial determination regarding the child's safety and custody shall be completed as soon as possible but not more than 24 hours after initial contact. The final report required under this section shall be complete within 5 business days of initial contact. If a child is taken into immediate temporary custody, the department shall make a written report stating the reasons for such removal and shall file a care and protection petition under section 24 on the next court day.

(d) If the department does not have reasonable cause to believe that a child's health or safety is in immediate danger from abuse or neglect, the investigation and evaluation shall commence within 2 business days of initial contact and a determination shall be made within 15 business days, unless a waiver has been approved by the area director or requested by law enforcement.

(e) Notwithstanding subsection (c), whenever the department has reasonable cause to believe that removal is necessary to protect a child from abuse or neglect, it shall take the child into immediate temporary custody. If a child is taken into immediate temporary custody, the department shall make a written report stating the reasons for such removal and shall file a care and protection petition under section 24 on the next court day.

(f) If a child named in a report filed under section 51A is in an out-of-home placement and the suspected child abuse or neglect is substantiated, the department shall notify his parents that such report was filed and has been substantiated by the department. If the child died or suffered serious bodily injury, the department shall notify the parents, including the biological parents, if the department determines that such notification is in the best interest of the child or of another child in the same placement. The department shall consult with these parents in decisions about removal or further placement. These notifications and consultations shall not be required if the commissioner determines that such notifications or consultations are not appropriate or in the best interests of a child.

(g) The department shall offer appropriate services to the family of any child which it has reasonable cause to believe is suffering from any of the conditions described in the report to prevent further injury to the child, to safeguard his welfare, and to preserve and stabilize family life whenever possible. If the family declines or is unable to accept or to participate in the offered services, the department or any person may file a care and protection petition under section 24.

(h) The department shall file in the central registry, established under section 51F, a written report containing information sufficient to identify each child whose name is reported under this section or section 51A. A notation shall be sent to the central registry whenever further reports on each such child are filed with the department. If the department determines during the initial screening period of an investigation that a report filed under section 51A is frivolous, or other

absolute determination that abuse or neglect has not taken place, such report shall be declared as "allegation invalid". If a report is declared "allegation invalid", the name of the child, or identifying characteristics relating to the child, or the names of his parents or guardian or any other person relevant to the report, shall not be placed in the central registry or in any other computerized program utilized in the department.

(i) The department may purchase and utilize such protective services of private and voluntary agencies as it determines necessary.

(j) The department shall adopt regulations to implement the sections 51A to 51F, inclusive.

(k) The department shall notify and shall transmit copies of substantiated 51A reports and its written evaluations and written determinations under subsection (a) or (b) to the district attorney for the county in which the child resides and for the county in which the suspected abuse or neglect occurred, and to the local law enforcement authorities in the city or town in which the child resides and in the city or town in which the suspected abuse or neglect occurred when the department has reasonable cause to believe that 1 of the conditions listed below resulted from abuse or neglect.

The department shall immediately report to the district attorney and local law enforcement authorities listed above when early evidence indicates there is reasonable cause to believe that 1 of the conditions listed below resulted from abuse or neglect:

(1) a child has died or has suffered brain damage, loss or substantial impairment of a bodily function or organ, substantial disfigurement, or serious physical injury including, but not limited to, a fracture of any bone, a severe burn, an impairment of any organ or an injury requiring the child to be placed on life-support systems;

(2) a child has been sexually assaulted, which shall include a violation of section 13B, 13B1/2, 13B3/4, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter 265.

(3) a child has been sexually exploited, which shall include a violation of section 4A, 4B or 29A of said chapter 272 or is a sexually exploited child or a child who is otherwise a human trafficking victim; or

(4) any other disclosure of physical abuse involving physical evidence which may be destroyed, any current disclosure by a child of sexual assault, or the presence of physical evidence of sexual assault.

Within 45 days of the notification under the first paragraph, the department shall further notify the district attorney of a service plan, if any, developed for such child and his family.

No provision of chapter 66A, sections 135 to 135B, inclusive, of chapter 112, or sections 51E and 51F of this chapter relating to confidential data or confidential communications shall prohibit the department from making such notifications or from providing to the district attorney or local law enforcement authorities any information obtained under this section. No person providing notification or information to a district attorney or local law enforcement authorities under this section shall be liable in any civil or criminal action by reason of such action. Nothing herein shall be construed to prevent the department from notifying a district attorney relative to any incident reported to the department under section 51A or to limit the prosecutorial power of a district attorney.

~~(l) If the department substantiates a report alleging that abuse or neglect occurred at a facility approved, owned, operated or funded, in whole or in part, or was committed by an individual the department has reason to believe was licensed by the department of elementary and secondary education, the department of early education and care, the department of mental health, the department of developmental services, the department of public health or the department of youth services, the department shall notify the office of the child advocate and the affected department, in writing, by transmitting a copy of the report filed under section 51A and the department's written evaluation and written determination.~~

~~If the department substantiates a report alleging that abuse or neglect was committed by an individual who was employed at a facility approved or licensed by the department of early education and care, then the department shall notify the office of the child advocate and the department of early education and care, in writing, by transmitting a copy of the report filed under section 51A and the department's written evaluation and written determination.~~

If the department is aware of a licensing violation in any such facility, the department shall immediately notify the affected department.

No provision of chapter 66A, sections 135 to 135B, inclusive, of chapter 112, or sections 51E and 51F, or any other provision of law shall prohibit: (i) the department from transmitting copies of reports filed under section 51A or its written evaluations and written determinations to the office of the child advocate or the affected departments; (ii) the department, the office of the child advocate and the affected departments from coordinating activities and sharing information for the purposes of this section or for investigating a licensing violation; or (iii) the department's employees from testifying at administrative hearings held by the affected department in connection with a licensing violation.

(m) Notwithstanding any privilege created by statute or common law relating to confidential communications or any statute prohibiting the disclosure of information but subject to subsection (j) of section 51A, a mandated reporter shall answer questions and provide information posed by the department relating to an investigation conducted under this section, **even if the Department has made a determination on that investigation**, whether or not that person filed the 51A report being investigated. A statutory or common law privilege shall not preclude the admission of any such information in any civil proceeding concerning abuse or neglect of a child, placement or custody of a child.

(n) No person required to provide such information under this section or permitted to disclose information under section 5A of chapter 119A shall be liable in any civil or criminal action for providing such information.

(o) No employer shall discharge, discriminate or retaliate against **any person** ~~mandated reporter~~ who, in good faith, provides such information, testifies or is about to testify in any proceeding involving child abuse or neglect unless such person perpetrated or inflicted such abuse or neglect. Any employer who discharges, discriminates or retaliates against such a person shall be liable to such person for treble damages, costs and attorney's fees.

(p) If the department determines that a 51A report is not substantiated, the department shall notify in writing any and all sources or recipients of information in connection with the investigation that the report of abuse or neglect has not been substantiated, unless the target of the investigation requests that such notification not occur.

(q) The department and the private agencies under contract with it, shall conduct periodic and regular training and education to caseworkers, screeners of 51A reports, and administrators of the department and the agencies regarding their duties and obligations under section 51A and 51B.

(r) There shall be a review by a regional clinical review team when 3 or more 51A reports involving separate incidents have been filed on any child in a family within 3 months and a review by an area clinical review team when 3 or more 51A reports involving separate incidents have been filed on any child in a family within 1 year.