

# THE MANDATED REPORTER COMMISSION

June 2021

<https://www.mass.gov/mandated-reporter-commission>

FINAL REPORT TO  
THE  
MASSACHUSETTS  
LEGISLATURE  
WRITTEN AND  
PRESENTED BY  
THE OFFICE OF  
THE CHILD  
ADVOCATE

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## Commission Members

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Member Name	Appointing Organization
Maria Mossaides, Director ( <i>Chair</i> )	Office of the Child Advocate
Angela Brooks, Director of the Children’s Justice Unit	Office of the Attorney General
Anne Conners, Associate Commissioner for Field Investigations	Department of Early Education and Care
Matthew Connolly, General Counsel	Executive Office of Education
Officer Elizabeth Fleming, School Resource Officer	Waltham Public School District
Katherine Ginnis, Senior Director of Child, Youth, and Family Policy and Programs	Executive Office of Health and Human Services
Lisa Hewitt, General Counsel	Committee for Public Counsel Services
John High, Chief of Staff	Division of Professional Licensure
Nina Marchese, Director of Approved Special Education Schools	Department of Elementary and Secondary Education
District Attorney Marian Ryan, Middlesex	Massachusetts District Attorney Association
Cristina Tedstone, Acting General Counsel	Department of Children and Families
Susan Terrey, Chief General Counsel	Executive Office of Public Safety and Security

### Acknowledgements

The Child Advocate recognizes the seriousness of the responsibility of chairing the Mandated Reporter Commission and is thankful for the outstanding effort of Commission members who have consistently delved deeply into difficult and complex topics in order to produce this thoughtful summary to the Legislature. The Commission was facilitated by the OCA’s Director of Policy and Legal Counsel, Cristine Goldman and the meeting minutes were taken by the OCA’s Research and Policy Analyst, Alix Rivière. The OCA notes that the Commission’s work has been faced with criticism but that Commission members have continued to come to the table to collaborate, communicate, and deliberate in a steadfast effort to improve and inform the Commonwealth’s understanding of the mandated reporter system and the potential for its improvement. For this, the OCA is truly grateful.

## About the Mandated Reporter Commission

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The Child Health and Wellness Bill signed by Governor Baker on November 26, 2019 established the [Mandated Reporter Commission](https://www.mass.gov/mandated-reporter-commission)<sup>1</sup> (Commission). The Child Advocate is the designated Chair of the Commission which is charged with reviewing the current mandated reporter law and regulations for child abuse and neglect, and to make recommendations on how to improve the response to, and prevention of, child abuse and neglect. The Commission is comprised of statutory members who represent a wide range of viewpoints from public entities and groups who have extensive experience with mandated reporting in the Commonwealth.

The need for a comprehensive review of the Commonwealth's child maltreatment reporting structure was identified by a working group assembled by the Joint Committee on Children, Families and Persons with Disabilities in early 2018. In the same year the House Committee on Post Audit and Oversight issued its report "Raising the Bar: A vision for Improving Mandated Reporting Practices in the Commonwealth" which recommended that the Massachusetts Legislature enact legislation to require coaches, administrators, and other staff employed by or volunteering with a private athletic organization to respond as mandated reporters. It further recommended that the Commonwealth institute a standardized online mandated reporter training with an Executive Office of Health and Human Services approved curriculum developed in conjunction with other stakeholders. Additionally, reports by the Massachusetts Legislative Task Force on Child Sexual Abuse Prevention,<sup>2</sup> the Residential Schools Interagency Task Force,<sup>3</sup> as well as the State Auditor's 2017 report "Review of Mandated Reports of Children Born with a Physical Dependence on an Addictive Drug at the UMass Memorial Medical Center, Inc.,"<sup>4</sup> identified the need for clarifications to mandated reporting responsibilities, especially in institutional settings.

Since its original passage in 1973, the mandatory reporting statute has been updated several times<sup>5</sup> but a comprehensive review has never been undertaken. The Mandated Reporter Commission was created by the Massachusetts Legislature to answer critical questions about how to improve the mandated reporting system to better protect children- the topics to be addressed by the Commission were outlined in detail by the Legislature in the statute which created the Commission.

The Commission began meeting in February 2020 and met regularly until the submission of this final report. The Commission's meetings moved to a virtual format at the outset of the COVID-

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<sup>1</sup> <https://www.mass.gov/mandated-reporter-commission>

<sup>2</sup> Available at: [Report SD.2251 \(malegislature.gov\); Child Sexual Abuse Prevention Task Force Report.pdf \(childrenstrustma.org\)](#)

<sup>3</sup> Available at: [MA OCA Residential Schools Report April 2017 \(mass.gov\)](#)

<sup>4</sup> Available at: [2017-4601-3C Substance-Exposed Newborns at UMass Memorial Medical Center \(UMMC\)](#)

<sup>5</sup> 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.

19 pandemic state of emergency and have continued in that format. The Commission members worked diligently to review the topics identified in the statute for the Commission's review and discussed in-depth the current challenges, benefits, and implications of the mandated reporter system. The Commission's work led to the drafting of numerous proposals, mostly conceived in the form of draft statutory language, to serve as a basis for Commission discussion. The Commission's drafting of these proposals did not imply that Commission members were in total agreement about the proposals or that they had committed to the proposals.

The Commission determined that it was critical to hear voices from the public to better inform the Commission's understanding of the issues at hand as well as the Commission's understanding of the potential effect of the draft proposals, in part because the Commission itself was short on representation from individuals, families, and communities directly impacted by the current mandated reporter system. The Commission therefore hosted a public comment period requesting written testimony and oral testimony from mandated reporters, advocacy groups, and individuals and families. The public comment period brought vital and varied perspectives to the Commission's attention.

The Commission reviewed the proposals before it in light of the public comments it solicited. The OCA, in its role as Chair of this Commission, drafted and submits this final report as a description of the work of the Commission and the identification of work that remains to be done in the field of mandated reporting. This final report, upon its submission to the Legislature, completes the work of this Commission. The Commission hopes that the Legislature finds this report valuable.

## Guide to Acronyms and Terms

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Acronym/Term	Definition
51A/51A report	Report filed with DCF under MGL c. 119 §51A alleging child abuse or neglect
CAPTA	The Child Abuse Prevention and Treatment Act
DCF	Department of Children and Families
DDS	Department of Developmental Services
DESE	Department of Elementary and Secondary Education
DMH	Department of Mental Health
DPH	Department of Public Health
DYS	Department of Youth Services
EEC	Department of Early Education and Care
MOUDs	Medications for Opioid Use Disorder
OCA	Office of the Child Advocate
POSC	Plan of Safe Care
Screen in/screen out	The screening process determines whether there is sufficient information to determine whether the allegation made via a 51A report meets DCF’s criteria for suspected child abuse or neglect and whether DCF involvement, particularly an investigative response, is warranted.
SENs	Substance exposed newborns
The Commission	Mandated Reporter Commission

## Enabling Legislation: *An Act Relative to Children's Health and Wellness*

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SECTION 12. (a) There shall be a special commission to review and report on existing mandated reporter laws and regulations and make recommendations on how to improve the response to, and prevention of, child abuse and neglect. The report shall include, but not be limited to, findings and recommendations on: (i) the scope of mandated reporter laws and regulations including, but not limited to, persons included in the mandated reporter definition; (ii) mandated reporter training requirements for employees, including employees of licensees or contracted organizations; and (iii) accountability and oversight of the mandated reporter system including, but not limited to, procedures for a mandated reporter to notify the person or designated agent in charge and responses to reports of intimidation and retaliation against mandated reporters.

(b) The commission shall consist of the following 13 members: the child advocate, who shall serve as chair; the secretary of health and human services or a designee; the secretary of education or a designee; the secretary of public safety and security or a designee; the attorney general or a designee; the commissioner of elementary and secondary education or a designee; the commissioner of early education and care or a designee; the commissioner of children and families or a designee; the commissioner of the division of professional licensure or a designee; the chief counsel of the committee for public counsel services or a designee; a representative of the Massachusetts District Attorneys Association or a designee; and 2 members to be appointed by the governor, 1 of whom shall be a representative of a labor union representing healthcare employees subject to mandated reporter laws and 1 of whom shall be a representative of a labor union representing non-healthcare employees subject to mandated reporter laws. The commission may consider input from any relevant organization.

(c) The commission shall review: (i) the agencies and employers responsible for training mandated reporters; (ii) the frequency, scope and effectiveness of mandated reporter training and continuing education including, but not limited to, whether such training and continuing education covers retaliation protections for filing a report as a mandated reporter and the fines and penalties for failure to report under section 51A of chapter 119 of the General Laws; (iii) whether agencies and employers follow best practices for mandated reporter training, including profession-specific training for recognizing the signs of child sexual abuse and physical and emotional abuse and neglect; (iv) the process for notifying mandated reporters of changes to mandated reporter laws and regulations; (v) the department of children and families' responses to written reports filed under said section 51A of said chapter 119, including offenses that require a referral to the district attorney; (vi) the feasibility of developing an automated, unified and confidential tracking system for all reports filed under said section 51A of said chapter 119; (vii) protocols related to filing a report under said section 51A of said chapter 119, including the notification of the person or designated agent in charge and the submission of required documentation; (viii) the availability of information at schools regarding the protocols for filing a report under said section 51A of said



chapter 119; (ix) options for the development of public service announcements to ensure the safety and well-being of children; (x) proposals to revise the definition of child abuse and neglect to ensure a standard definition among state agencies; (xi) proposals to expand mandated reporting requirements under sections 51A to 51F, inclusive, of said chapter 119; and (xii) options for designating an agency responsible for overseeing the mandated reporter system or aspects thereof, including developing and monitoring training requirements for employees on mandated reporter laws and regulations and responding to reports of intimidation and retaliation.

(d) The commission shall file a report of its findings and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, with the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities not later than July 31, 2020.

*In July 2020, the Legislature passed “An Act making appropriations for the fiscal year 2020 to authorize certain Covid-19 spending in anticipation of federal reimbursement.” This extended the Commission’s report deadline from July 31, 2020 to December 31, 2020. The Commission submitted a Status Report to the Legislature in December 2020 and continued its work until the submission of this final report in June 2021.*

## Summary offered by The Office of the Child Advocate

The Office of the Child Advocate was privileged to Chair and facilitate this Commission. We view this Commission as being a historic and critical opportunity to bring expert voices to the table to discuss mandated reporting. We also recognize that there were important voices missing from our continued discussions as the discussions necessarily included questions about the reality of mandated reporting “on the ground” and the effect of reports to DCF on children, families, and communities. No Commission or group of representatives can encompass the full scope of experiences with the complex issue of mandated reporting and the OCA is wary of oversimplifying these topics by suggesting that some voices can speak for many voices. The OCA is also determined to reflect that the hard work of this Commission has added significant value to this topic and that this Commission has been a service to the Commonwealth.

Mandated reporting may seem, on its face, to be an uncomplicated idea. The idea that individuals would call upon their knowledge as adults and as professionals to identify when children are being abused and/or neglected and report that information to child protective services is deceptive in its simplicity. The reality, as understood and grappled with by this Commission, is that mandatory reporting is an extraordinarily complex issue. Commission members have understood that the topic requires careful weighing of many factors: the imperative to protect children from abuse and neglect whenever possible, the value of the integrity of the family unit, the trauma that can accompany child protective services involvement, the trauma that can come when child protective services does not become involved, the sometimes illusive line between a circumstance when a child is in need of resources and a circumstance when a child is in need of protection, the possibility that fear of state involvement will prevent families from accessing resources, and the reality that even mandated reporters will not always recognize the signs of distress when they see them. In addition to these factors is a deep concern that a system that relies on individual judgment determinations is inextricably tied to individual biases and structural racism, ableism, and classism. We know better than to rely on the seeming neutrality of statutory language and we also know that unanticipated consequences will inevitably come with any change to law or policy. **In light of the complexity of the issues involved in this discussion, no consensus could be reached by this Commission and therefore no votes were taken on any issue. This report is a summary of the deliberations of the Commission and the public comments made during the public comment period.**

In my role as the Chair of this Commission, and in my role as the Director of the Office of the Child Advocate, which has taken upon itself to be a neutral convener to facilitate discussions of issues affecting the provision of state services to children in the Commonwealth, I offer this report as the OCA’s description of the work of the Mandated Reporter Commission. This report is not the result of perceived or actual consensus between Commission members and the substance within it cannot be attributed to any agency, entity, or individual, including that it cannot and should not be attributed to the OCA itself. I urge readers of this report to consider

this report in full, with its nuances and its limitations, and recognize that this report is one example of the continued commitment of the Commonwealth to its children.<sup>6</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Maria", followed by a long horizontal line that ends in a small arrowhead pointing to the right.

Maria Mossaides  
Chair of the Mandated Reporter Commission

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<sup>6</sup> [aef-2021kidscountdatabook-2021.pdf](#)

## Introduction

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Mandated reporting is a legal requirement that certain identified people and/or professionals have an obligation to report child maltreatment (abuse or neglect) to the child protective services system. The Federal Child Abuse Prevention Treatment Act (CAPTA) requires that states have mandatory reporting laws, specifically: "...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)). Federal funding of child protective services is conditioned on each state's compliance with CAPTA.

A system of mandated reporting exists in every state in the United States. Some states identify mandated reporters as a listing of certain groups of people, as Massachusetts does, and other states have a system of "universal" reporting whereby all adults are required to report child abuse and neglect to child protective services. Much like mandated reporting of elder neglect and abuse, mandated reporting of child neglect and abuse is a system that is built on the consideration that children are uniquely at the mercy of their caregivers, be they parents, guardians, or other adults who exercise supervisory duties over children. Children may not fully understand their circumstances in relation to safety, particularly children with disabilities. Children are also at a physical, emotional, and intellectual disadvantage in exercising self-protection and self-care. A mandated reporting system is meant to be a network of specifically identified adults who are required by law to report concerns that a child is neglected or abused to the state's child protective services. Child protective services then determines whether state intervention is necessary and if it is necessary, what type of intervention is needed.

The Commission has focused its work diligently on the task set before it by the Legislative mandate creating the Commission. However, it is impossible to discuss and debate the mandated reporting system without considering the child protective system itself. Serious questions have been raised by Commission members and in public comments the Commission has received about the efficacy of the child protective system and the complexity of state involvement in children's lives. The Commission has discussed concerns that children who are removed from the care of their parents may be harmed more by their placement in the foster care system, particularly with the challenges and delays in achieving permanency, than they would be if they had been left in their parents' care. Commission members have discussed that the trauma of abuse and neglect is difficult to disentangle from the trauma of the experience with child protective services when evaluating the effect of child protective services, particularly when considering families that have child protective services involvement for multiple generations.

The Commission has also extensively discussed that there is disproportionate involvement of child protective services in the lives of children and families of color in Massachusetts and

across the country.<sup>7</sup> The conscious and unconscious biases that govern societal interactions, communication, and conclusions are undoubtedly a source of this disproportionate involvement. Such biases are not solely based on racial identities, or perceptions of racial identities, but also on complex coexisting inequities including economic and legal disadvantages. Families that are living in poverty are exposed to more scrutiny than are families who can more easily access resources ranging from food and clothing to medication and mental health services. Similarly, those who have cultures or traditions that deviate from the perceived norm are exposed to more scrutiny than are families who meet societal expectations of “normal.” Because mandated reporters are largely members of the public, it is difficult to understand how structural racism, in addition to biases, affect the legal obligations required by the mandated reporter statute. The Commission’s work cannot be separated from these concerns, challenges, and considerations. All considerations of the mandated reporter scheme and potential changes to it should be evaluated in light of the effects to, and interplay with, disproportionality and bias.

The challenges of the child protective services system can affect the behavior of mandated reporters. Many mandated reporters recognize that they can damage their relationship with families by reporting concerns to child protective services which has the potential to leave their clients without access to trusted sources of support. Mandated reporters may be particularly reticent to damage their relationships and potentially cut off an avenue for support if they perceive that child protective services will not adequately address dangerous situations. This reticence can leave children without the protection they need to ensure their safety. Mandated reporters may also report families who are struggling or a child in need of support to child protective services as a way of connecting the family and children with services, or out of fear that if nothing is done that abuse or neglect will occur. Child protective specialists are trained to know the supports available to children and families and to connect families to resources like early intervention services, supplemental nutrition assistance (SNAP) benefits, housing assistance and so on. However, it is undeniable that a report of child maltreatment by a mandated reporter prompts an investigation into whether there is reasonable cause to believe child abuse or neglect occurred or is at substantial risk of occurring. As described by Gary Melton in an article from 2005: “By law, social workers’ time is focused first and foremost on the question of ‘What happened?’, not ‘What can we do to help?’”<sup>8</sup>

Those who raise concerns with the mandated reporting system often argue that the system was designed to deal with the most egregious cases of child abuse and that it is ill-equipped in its current form and with its current resources to deal with the number and nuances of the cases now referred to child protective services, especially concerns of neglect which are often intimately tied to socioeconomic circumstances. Some voices in the public comment period argued that child protective services is more damaging to children and families than no state involvement;

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<sup>7</sup> See “Disproportionality Data” available here for more information: [Disproportionality Data - Child Welfare Information Gateway](#). See also [Data Work Group 20210225 \(mass.gov\)](#) but please note that the information in that document is a draft meant only for discussion by the Data Work Group.

<sup>8</sup> “Mandated reporting: a policy without reason” Gary B. Melton, *Child Abuse & Neglect* 20 (2005) 9-18, 14.

other voices argued that societal and institutional racism plague the mandated reporter system, which disproportionately refers Hispanic/Latinx and Black children to DCF, and that the mandated reporter system should be heavily curtailed or abolished. Some other voices made arguments that can be summarized as: “Help—and, if necessary, monitoring and control—ought to be built into primary community settings in a manner that minimizes intrusions on privacy and that improves the everyday quality of life for children and families, whatever their vulnerability and needs.”<sup>9</sup>

Some Commission members have expressed that expanding the mandated reporter system too far could unnecessarily exacerbate its disproportionate impact on families of color and low-income families. Some members sought more clarity about balancing concerns regarding the impact that under-reporting could have on children who are abused or neglected against concerns about over-reporting that can result in unnecessary DCF involvement, which can also harm children. Many members of the Commission pointed out that a robust training system designed to address disparities in reporting would be a key component to any change in, or expansion of, the mandated reporter system.

Some members of the Commission have stressed the stark reality of child abuse and neglect which has a profound effect on children and families. Some Commission members have responsibilities that include reviewing 51A reports or DCF responses to 51A reports (commonly referred to as a “51B response” in reference to MGL c. 119 § 51B) and have a basis of personal knowledge that focuses and informs their positions and viewpoints. Some discussion has focused on recognizing that mandated reporting is an imperfect system as it relies on a wide range of people who all inevitably carry their own implicit biases, complexities, and faults. However, some Commission members have expressed that such imperfections do not outweigh the critical need to protect the safety of children. The Commission generally agreed that mandated reporter requirements are an important component of our child protective system. Some Commission member’s views can be summarized as:

A just society must include measures to address the vulnerability of children to abuse and neglect... An approach informed by psychological jurisprudence would surely conclude it is more realistic to expect abused and neglected children’s experience to come to light with mandated reporting than without it. Engaging with children’s subjective experience might suggest that, if given a say, those who are abused would prefer to be assisted than not. Mandated reporting better protects children’s interests of dignity and egalitarian treatment, and enhances parents’ interests if effective responses occur.<sup>10</sup>

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<sup>9</sup> “Mandated reporting: a policy without reason” Gary B. Melton, *Child Abuse & Neglect* 20 (2005) 9-18, 16.

<sup>10</sup> “Mandated reporting is still a policy with reason: Empirical evidence and philosophical grounds” Ben Matthews, Donald Bross, *Child Abuse & Neglect* 31 (2008) 511-516, 514.

Commission discussion has therefore focused primarily on the improvement of the imperfect system of mandated reporting in an effort to make it more accurate, fair, and efficient. The Commission recognizes that its work is not directed at the efficacy of DCF involvement but is an opportunity to set the stage for future discussions about such efficacy. Some Commission members hope that the Legislature will take up those issues in future discussion and debate, including whether the state should find and fund ways to serve more families outside of the child protective services system when child safety is not at risk.

**Selected excerpts of national data from “Child Welfare Outcomes 2018 Report to Congress: Safety, Permanency, Well-being” by the US Department of Health and Human Services Administration for Children and Families**

**Specific excerpts from Appendix E p.81-82**

**Available at: [Child Welfare Outcomes 2018 Report to Congress \(hhs.gov\)](https://www.hhs.gov/child-welfare/outcomes-2018-report-to-congress)**

**Who reported child maltreatment?**

For FY 2018, professionals submitted 67.3 percent of reports alleging child abuse and neglect. The term professional means that the person has contact with the alleged child maltreatment victim as part of his or her job. This term includes teachers, police officers, lawyers, and social services staff. The highest percentages of reports are from education personnel (20.5%), legal and law enforcement personnel (18.7%), and social services personnel (10.7%).

Nonprofessionals—including friends, neighbors, and relatives—submitted fewer than one-fifth of reports (16.6%). unclassified sources submitted the remaining reports (16.1%). unclassified includes anonymous, “other,” and unknown report sources. States use the code “other” for any report source that does not have an NCANDS designated code. See Appendix D, State Commentary, for additional information provided by the states as to what is included in “other.”

**Who were the child victims?**

For FFY 2018, there are nationally 678,000 (rounded) victims of child abuse and neglect. The victim rate is 9.2 victims per 1,000 children in the population. (See chapter 3.) victim demographics include: Children in their first year of life have the highest rate of victimization at 25.3 per 1,000 children of the same age in the national population.

- Children in their first year of life have the highest rate of victimization at 26.7 per 1,000 children of the same age in the national population.
- The victimization rate for girls is 9.6 per 1,000 girls in the population, which is higher than boys at 8.7 per 1,000 boys in the population.
- American Indian or Alaska Native children have the highest rate of victimization at 15.2 per 1,000 children in the population of the same race or ethnicity; and African

American children have the second highest rate at 14.0 per 1,000 children of the same race or ethnicity.

### **What were the most common types of maltreatment?**

The victim maltreatment types are analyzed differently for this report than in prior editions to count victims and maltreatment types uniquely (in prior editions, a duplicate count was used). If a victim has two or more maltreatment types, the victim is counted once in the multiple maltreatment category. The FFY 2018 data show 84.5 percent of victims suffered from a single maltreatment type and the remaining 15.5 percent have two or more maltreatment types. Three-fifths (60.8%) of victims are neglected only.

### **How many children died from abuse or neglect?**

Child fatalities are the most tragic consequence of maltreatment. For FFY 2018, a national estimate of 1,770 children died from abuse and neglect at a rate of 2.39 per 100,000 children in the population. (See chapter 4.) The child fatality demographics show:

- The youngest children are the most vulnerable to maltreatment, with 46.6 percent of child fatalities younger than 1 year old and died at a rate of 22.77 per 100,000 children in the population of the same age. Nearly three-fourths (71.8 percent) of all child fatalities were younger than 3 years old.
- Boys have a higher child fatality rate than girls; 2.87 per 100,000 boys in the population, compared with 2.19 per 100,000 girls in the population.
- The rate of African-American child fatalities (5.48 per 100,000 African-American children) is 2.8 times greater than the rate of White children (1.94 per 100,000 White children) and 3.4 times greater than the rate of Hispanic children (1.63 per 100,000 Hispanic children).

### **Who abused or neglected children?**

A perpetrator is the person who is responsible for the abuse or neglect of a child. Fifty-two states reported 546,365 perpetrators. (See chapter 5.) The analyses of case level data show:

- More than four-fifths (83.3%) of perpetrators are between the ages of 18 and 44 years old.
- More than one-half (53.8%) of perpetrators are female and 45.3 percent of perpetrators are male.
- The three largest percentages of perpetrators are White (49.6%), African-American (20.6%), and Hispanic (19.3%).
- The majority (77.5%) of perpetrators are a parent to their victim.

### **Who received services?**

CPS agencies provide services to children and their families, both in their homes and in foster care. Reasons for providing services may include (1) preventing future instances of child



maltreatment and (2) remedying conditions that brought the children and their family to the attention of the agency. (See chapter 6.) During 2018:

- Forty-seven states reported approximately 2.0 million children received prevention services.
- Approximately 1.3 million children (duplicate count) received post-response services from a CPS agency.
- Two-thirds (60.7%) of victims (duplicate count) and one third (29.0%) of nonvictims (duplicate count) received post-response services

### Mandated Reporting in Massachusetts

The mandated reporting statute in Massachusetts is largely contained in MGL c. 119 §§ 21, 51A, and 51B. Mandated reports of child abuse or neglect in Massachusetts are commonly referred to as “51A reports” which is a direct reference to the statute requiring the report. The statute lists specific roles and professions of persons who qualify as mandated reporters (§ 21).

Mandated reporters are required to report only in their professional capacities. This means that a physician, a mandated reporter, is not required to report child abuse or neglect they learn about outside of their professional capacity as a physician. For example, if a physician attended a party and a stranger shares information about child abuse or neglect, that physician would not be required to report that information pursuant to § 51A. However, if that same physician is at that same party and a person indicates that they would like a physician’s opinion on a situation and then alleges child abuse or neglect, that situation may very well come into the sphere of that physician’s professional capacity. In this way, the professional role of the mandated reporter is the link to the responsibility to report. This link means that any recommendation to alter the current statute must take into consideration how the mandated reporter’s professional capacity is tied to that recommendation. For example, recommendations to add new professions or roles to the listing of mandated reporters must consider the qualities of that profession or role that speak to the reason they should be included in the statute.

Mandated reporters are required to report when they have reasonable cause to believe that a child is suffering a physical or emotional injury resulting from abuse, neglect, or physical dependence on an addictive drug at birth. They are also required to report when they have reasonable cause to believe a child is being sexually exploited or trafficked. Although the statute states that mandated reporters should report when a child is suffering a physical or emotional injury, many mandated reporters report when they believe children are at risk of injury. For example, a physician may call in a report to DCF prior to releasing a newborn baby to parents that the physician feels are actively under the influence of illegal drugs, even though the child has not suffered a physical or emotional injury due to abuse or neglect. The DCF regulations that govern DCF’s actions on abuse and neglect cases (including screening) defines abuse to cover situations

of “substantial risk of physical or emotional injury” ([110 CMR 2.00](#)). The DCF regulatory definition of neglect similarly refers to caretakers’ responsibility to take certain actions to provide children with a minimum standard of care and does not focus on whether the child has suffered an injury related to that failure to take an action ([110 CMR 2.00](#)).

Mandated reporters must immediately report allegations of child maltreatment<sup>11</sup> to DCF orally via a phone call to the local area office during business hours or call the Statewide Child-At-Risk-Hotline which operates after business hours and on weekends and holidays.<sup>12</sup> Mandated reporters are also required by statute to file a written report within 48 hours which details the suspected maltreatment. DCF must inform mandated reporters of the Department’s determination of the nature, extent and cause or causes of the injuries to the child and the services that the Department intends to provide the child or family within 30 days of receiving a 51A report (MGL c. 119 § 51A(i)). Mandated reporters must also cooperate with DCF in providing information related to the investigation of 51A reports (MGL c. 119 § 51B(m)).

### Screening the 51A report

Once a report is made, DCF “screens” that report to determine if there is sufficient information for DCF to determine whether the allegations in the report meets the threshold of abuse or neglect, or that a child is or may be at risk of sexual exploitation or human trafficking. The screening process is dependent on the type of allegation that is being made and the information available to DCF. For example, screening of allegations of potential physical abuse resulting in bone fractures would likely necessitate speaking to medical personnel and gathering information about a child’s medical history, and screening of a potential neglect case where a young child is left alone overnight may necessitate speaking to the police officer who responded to the situation and the neighbor who called the police. DCF screening may include reviewing any history the child or family may have with DCF, conducting Criminal Offender Record Information (CORI) checks, requesting information from law enforcement, contacting persons who may have information about the family or event (these people are referred to as “collateral contacts”), and seeking a clinical consultation. Sometimes the screening process can be in-depth and result in DCF reaching out to multiple people in the family’s life which can cause familial disruption, reputational damage, embarrassment, and misunderstandings. Sometimes the screening process is done in such a way that the child or family are unaware of the report or the screening while it is occurring. It is the circumstances that are reported to DCF, and the information needed to fully understand those circumstances, that dictate the family and/or alleged perpetrator’s experience of the screening process. The screening process will also determine whether the

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<sup>11</sup> “Maltreatment” as used in this report is meant to encompass child abuse and child neglect, sexual exploitation, and human trafficking and is not meant to signify any standard that would be considered a less stringent standard.

<sup>12</sup> Although mandated reporters have a legal requirement to report, any person may file a report of allegations of child abuse and/or neglect with DCF.

situation reported to DCF is screened-in for an emergency response or a non-emergency response.<sup>13</sup>

There are many reasons why DCF may screen-out a report made by a reporter. Those reasons include, but are not limited to:

- **The report does not meet DCF’s own definitions of abuse and neglect for purposes of DCF involvement.** This could mean that the situation reported does not allege sufficient harm to a child to warrant investigation and intervention. An example may be a mother who trips and falls with a baby in her arms and they both are injured- this is an accident, not an allegation of abuse or neglect. Not meeting the definition of abuse or neglect for DCF involvement could also mean that a child is neglected by a non-caretaker- examples include children witnessing overdoses of visitors to their home or problematic sexual behaviors between children resulting in harm to those children.
- **The alleged “child” is eighteen years old or older.** Reports involving persons alleged to have been abused or neglected who are eighteen years old or older may be suitable for reports to the Disabled Persons Protection Commission or another state entity, but are often outside of DCF’s mandate. A screen-out decision made for this purpose does not speak to whether the allegations would meet the definition of abuse or neglect for the purposes of DCF involvement if the alleged “child” were younger than eighteen. Reporters may also report instances of abuse or neglect that happened in the past to a child but now the child has turned eighteen years old. DCF will evaluate for screening purposes any report of abuse or neglect of a person who is at the time of filing eighteen years old or older to determine if the alleged perpetrator may be able to, if the allegations are true, reoffend and harm other children.
- **There is a crime or possible criminal activity but not abuse or neglect for purposes of DCF’s involvement.** An example would be the reporting of an incident where a teenager commits an assault against another teenager. Such activity may constitute a crime and DCF reports that information to the relevant law enforcement agencies, but these circumstances may not meet DCF’s standards of abuse or neglect.
- **The incident is a violation of licensing standards but not abuse or neglect.** Out-of-home settings for children are commonly referred to as “institutional settings.” These settings could be schools, early education settings, group homes, DYS facilities, hospitals, etc. It is not uncommon for an institutional setting to report violations of licensing standards to both their licensor and to DCF through a 51A report. For example, if an overnight staff member at a group home falls asleep on shift but no harm comes to any of the children in the group home, such a report may be made both to EEC (the institution’s licensor) and to DCF despite there being no cognizable concerns that the

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<sup>13</sup> See the DCF Protective Intake Policy for more information: <https://www.mass.gov/doc/DCF-protective-intake-policy/download>

child has been abused or neglected. DCF has the obligation to notify any relevant state agency if they are made aware of a licensing violation through a maltreatment report.

Screening decisions by DCF determine whether the reported circumstance and allegations will be screened-in for a DCF response, or whether the circumstance will be screened-out and a response will not be conducted by DCF. As noted above, other state entities may be made aware of screened-in or screened-out allegations if such allegations may constitute a crime or a licensing violation.

### Responding to a 51A Report

Screened-in allegations are assigned for a response by DCF on either an emergency or non-emergency track. There are three possible outcomes from a protective response. One is that the allegations are “supported” meaning that DCF found enough information (reasonable cause to believe) to support a finding that a child was abused or neglected based on the actions or inactions of a caregiver which posed a danger of harm or actually harmed a child. The second possible outcome is that the allegations are “substantiated for concern” meaning that there is reasonable cause to believe that a child was neglected, but there is no *immediate* danger for the child’s safety or well-being. The third possible outcome is that the allegations are “unsupported” meaning that there was no reasonable cause to believe that a child was abused or neglected, or that the person responsible for physically or emotionally harming a child was not a caregiver.

There are many complexities to this system and child welfare involvement does not stop upon a response by DCF. The Commission encourages any interested persons to review the information on the Massachusetts child protective system made available by DCF.

At the end of Fiscal Year 2020 approximately 24,473 families across the state were being served by DCF, which included 41,236 children and 2,107 young adults (18 years old or older).<sup>14</sup> Approximately 80% of these families were being served by DCF with the children remaining in their home. In these situations, DCF engaged the family on either “supported” cases of abuse and/or neglect or cases which were “substantiated for concern.” Both outcomes mean that DCF worked with the family to address the situation and ensure the safety of the children with their families. In approximately 20% of the cases children needed to be removed from their families to ensure their safety. In those situations, care and protection cases were brought in Juvenile Court and families, children, and DCF had legal representation to affect the custody status and outcome of the DCF involvement with the family. In the case of institutional abuse and neglect where a caregiver who is not a parent or guardian to a child has a supported case, DCF takes no further action after the support decision other than reporting to any other necessary state or federal entity. All of the families and children who are served by DCF were reported by either a mandated reporter or a non-mandated reporter.

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<sup>14</sup> Information obtained from the DCF Annual Report FY2020 is available at: [Massachusetts Department of Children and Families](#)

Mandated reporters are not the only people who bring children and families to the attention of DCF. Any person can make a report of allegations of child maltreatment to DCF. Mandated reporters are the persons who the law specifies have a legal duty to report. Having a safety net of individuals who are obligated to report suspected child maltreatment to DCF is necessary because children, by the very nature of being children, have a diminished ability to care for themselves, protect themselves, recognize when they are being maltreated, and advocate for their own safety. The difficult reality is that children are at the mercy of adults whether they are the child's parents, relatives, babysitters, camp counselors, or coaches. Some children experience abuse and neglect, which can be the result of unintended actions or inactions, of inadequate resources to mitigate harms, of negligent behavior, or worst of all, intentional behavior. The mandated reporter system is intended to be a system of adults who can identify harm and risk of harm and take measured and appropriate action. The Commission heard arguments during the public comment period that Massachusetts should eliminate the mandated reporter system or heavily curtail its scope. The Commission's work before, during, and after the public comment period has focused on discussions designed to improve the mandated reporter system by clarifying why someone is a mandated reporter and linking that reasoning to the duties of the mandated reporter to act.

The mandated reporter statute has been divided in this report into discrete topic areas for purposes of fully exploring the content of and possible alternative formulations of the statute. This was a helpful format for the Commission meetings and for the Status Report submitted to the Legislature in December 2020. However, there are limitations to this approach. This approach does not always reflect how each section of the statute works in tandem with the other sections of the statute. For example, the section on mandated reporter training is critical to understanding other sections of this report and any changes to the definition of mandated reporter (meaning any changes to the categories of the roles/professions listed as mandated reporters) would be unwise without implementation of changes to the statutory training requirements. This report strives to put these discrete topic areas into the context of the discussion of the Commission as a whole.

### [The Impact of Mandated Reporting](#)

As discussed at length earlier in this report the Commission's work has included a focus on the disproportional involvement of child protective services in the lives of Hispanic/Latinx and Black children. This disproportionality is measured by comparing the proportion of Hispanic/Latinx and Black children reported to DCF or with DCF involvement to the proportion of Hispanic/Latinx and Black children in the population of children in Massachusetts.<sup>15</sup> The Commission also discussed the types of resources available to assist families that need help when there are no concerns of child abuse or neglect. The Commission discussed the differential response approach of a "substantiated for concern" determination by DCF versus a supported

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<sup>15</sup> See: [Data Work Group 20210225 \(mass.gov\)](#) but please note that the information in that document is a draft meant only for discussion by the Data Work Group

abuse or neglect allegation as well as potential ways to communicate to mandated reporters how to support families when reports to DCF are not warranted. For more discussion, see “Differential Response and Support for Family Resource Centers” on page 68.

As noted previously, the Commission established a public comment period to gather input on the proposals that were before the Commission for its consideration. The public comment period brought forward a multitude of voices that spoke (both in writing and verbally) in an impassioned way about the damage child protective services involvement has on children and their families and the alleged over-reporting done by mandated reporters.<sup>16</sup> The public comments are all available for review here: [Public Comment Period & Public Hearings | Mass.gov](#).<sup>17</sup> The public comment period brought forward such nuanced and detailed viewpoints that there is a danger of oversimplification and mischaracterization in any summary of those viewpoints. However, in order for the Commission to be able to discuss the public commentary the commentary was summarized in a series of meeting documents available on the Mandated Reporter Commission website: [Mandated Reporter Commission 2021 | Mass.gov](#). Please see materials for the meetings on May 7, 2021, May 20, 2021, May 27, 2021, and June 9, 2021.

Many of the public comments indicated a belief that mandated reporters operate on implicit or explicit biases when reporting to DCF which results in disproportionality at the “front door” of child protective services. Some public comments indicated that these biases suggest that mandated reporters are not well equipped to determine what circumstances warrant a report to DCF. Public comments further indicated that because of the expansiveness of the current mandated reporter system and the biases of mandated reporters, families in the Commonwealth are reluctant to seek help or to access community services for fear of being inappropriately reported to DCF and risk losing custody of their children, reputational damage, and possible damage to their employment status.<sup>18</sup>

The Commission has reviewed the public comments and considered carefully some of the possible unintended consequences of the proposals before the Commission in meetings available to the public. This report summarizes the Commission’s work after having applied the lens of the public feedback and reflects an attempt to balance the need to update and clarify the mandated reporter system with the dangers of expanding a system that relies on fallible individuals for their judgment.

The Commission feels that questions of implicit bias, equity and inequity in mandated reporting, and the accuracy of mandated reporters’ efforts to identify abuse and neglect are fundamental to the efficacy of any improvements to the mandatory reporting system. The Commission has

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<sup>16</sup> The term “over-reporting” appears to be used most commonly, though not exclusively, to mean reports made to DCF that do not reach the threshold of allegations of abuse or neglect (for example- an allegation that a child wore inappropriate shoes for the weather).

<sup>17</sup> <https://www.mass.gov/lists/public-comment-period-public-hearings>

<sup>18</sup> Investigations of child abuse and neglect that are supported by DCF may result in ineligibility for perpetrators of that abuse and neglect to hold certain jobs. For example, EEC licensed facilities will investigate whether job candidates have supported allegations of abuse and neglect with DCF which may make those job candidates ineligible for certain employment positions.

heard from its members, as well as members of the public, varying viewpoints that paint starkly different pictures of mandated reporting as well as child protective services. Such complex topics are particularly difficult to untangle because there is little, if any, publicly available qualitative data that can speak to the realities of abuse and neglect in the Commonwealth. Similarly, some Commission members expressed concern that there is not enough publicly available qualitative data that can speak to the realities of the harms to families and children who are involved with child protective services. Some Commission members felt that the work of the Commission was made harder because it lacked the consistent input and voices of impacted communities and some Commission members felt that it is difficult for any individual to represent the complexity and experience of any community. The Commission therefore uses the opportunity of this report to propose further data gathering that can help to inform these critical discussions so that changes to the mandated reporter system can become more evidence-based and data-informed in the future.

Some information in this report reflects a need for further work and discussions to be had on topics that the Commission could not reasonably determine. The Commission, having served its purpose in making this final report to the Legislature, hopes that the critical conversations continue in appropriate forums with partners who are representative of not only the state agencies serving children and families in the Commonwealth, but also communities of mandated reporters and persons and communities that are DCF involved.

**As noted in the Summary Offered by the Office of the Child Advocate on pages 9-10 of this report, the Commission has not taken a vote on any issue or topic described in this report. This report is a summary of the discussions of the Mandated Reporter Commission and the substance of the report cannot and should not be attributed to any individual Commission member.**

## Substantive Issues Discussed by the Commission

The substantive issues described below are a description of the topics addressed by the Commission. The report seeks to incorporate not only the discussions of the Commission members but also some opinions and viewpoints expressed via public comments submitted to the Commission. In this way, this report is meant to reflect the context of the issues discussed, not just the content. This context is critical as the Commission recognizes that an issue as complex as mandated reporting, a complexity which is exacerbated by the even more complex system of child protective services in Massachusetts, cannot be wholly summarized in one document. The Commission also recognizes that the effect of mandated reporting on the people of the Commonwealth is difficult to quantify in that the numbers and data available do not lead to clear conclusions about the impact of mandated reporting, in part because of the unknown path a family or a child may travel if not brought to the attention of state officials through a mandated report. The Commission submits the information below in part to set the stage for what the Commission hopes will be valuable conversations in the future about these topics.

The statute creating the Mandated Reporter Commission requires that the Commission submit this final report "...together with drafts of legislation necessary to carry those recommendations into effect." Please see **Appendix A: Reviewed Proposals** for information about the Commission's approach to this requirement and for the substance of this requirement.

As noted in the Summary Offered by the Office of the Child Advocate on pages [9-10](#) of this report, the Commission has not taken a vote on any issue or topic described in this report. This report is a summary of the discussions of the Mandated Reporter Commission and the substance of the report cannot and should not be attributed to any individual Commission member.



## The Definition of Mandated Reporter

### **Current Statutory Language: MGL c. 119 § 21**

“Mandated reporter”, a person who is: (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; (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 or 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; (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer or animal control officer; (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis; (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or (vi) the child advocate.

### Universal vs. Profession-specific List of Mandated Reporters

The Commission has extensively discussed the definition of a “mandated reporter” in MGL c. 119 § 21 and proposals to expand mandated reporting requirements as required by the Commission’s enabling legislation. The mandated reporter law in Massachusetts has always singled out certain categories of persons as mandated reporters. The Commission evaluated the benefit of changing the current specialized list of mandated reporters in favor of a universal reporting scheme. Universal mandated reporter schemes typically indicate that any adult who has reasonable cause to believe a child is abused or neglected must report it to DCF. One benefit of a universal system is the clarity it provides about who is obligated to report, as it includes everyone as a mandated reporter. The Commission chose not to pursue further consideration of a universal reporting scheme in large part because although there is evidence that universal

reporting schemes increase the number of child abuse and neglect reports that are made, there is no evidence that universal reporting schemes result in an increase in substantiated reports.<sup>19</sup>

Research demonstrates that children of color are over-represented at all stages of involvement with Child Protective Services, including the initial reporting stage.<sup>20</sup> The Commission was concerned that a universal reporting scheme has the risk of exacerbating the problem of over-reporting and disproportional reporting in certain racial, ethnic, cultural, and low-income communities.

Additionally, a history of multiple 51A reports, whether they are screened-in or screened-out, may elevate the concern of the DCF screener taking the reports, tipping the scales to screen-in a report that may otherwise be screened-out. This is because multiple reports that allege the same or similar concerns can cause a DCF screener to question whether a prior decision to screen-out a report was well-reasoned. Additionally, a DCF screener may find that multiple reports from different reporters may add context that was not available in prior screen-out decisions. This approach can exacerbate the effects of biased reporting for those who fall victim to multiple bias-based reports. While this problem is present in any reporting system, it is likely exacerbated in a universal reporting scheme as non-specialized reporters may rely more heavily on, or react more strongly to, their own biases than a mandated reporter whose specific inclusion in a statute is in part due to their expertise and experience with children.

It is in the Commonwealth's interest to ensure that mandated reporters know what to report and how to report reasonable concerns of child abuse and neglect to DCF. An influx of reports from a universal scheme, which does not result in a demonstrated increase in such substantiated reports, would likely tax the current system and require increased resources to manage additional reports without substantial benefit to the children of the Commonwealth. The Commission also noted that most states, even those who have recently updated their mandated reporter laws, have not adopted a universal reporting scheme but rather list individual categories of mandated reporters.<sup>21</sup>

**The Commission's work focused exclusively on continuing the current statutory scheme of identifying mandated reporters by their professions and roles as this best serves the interests of the Commission to define mandated reporters as a subset of people with specialized knowledge or exposure to children and to leverage that knowledge and exposure to improve the accuracy of reporting.**

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<sup>19</sup> Palusci, V.J., et. al., *Does changing mandated reporting laws improve child maltreatment reporting in large US counties?*, 66 CHILD AND YOUTH SERVICES REVIEW 170, 170-179 (2016)

<sup>20</sup> ROBERT B. HILL, CASEY – CSSP ALLIANCE FOR RACIAL EQUITY IN THE CHILD WELFARE SYSTEM, SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE (2006),

[http://www.citizenreviewpanelsny.org/documents/disproportionality\\_paper\\_bob\\_hill.pdf](http://www.citizenreviewpanelsny.org/documents/disproportionality_paper_bob_hill.pdf)

<sup>21</sup> Thirty-five states (including Massachusetts) and Washington D.C. list categories of mandated reporters in their statutes. The fifteen states that have some type of universal reporting scheme are: Delaware, Florida, Idaho, Kentucky, Maryland, Nebraska, New Jersey, North Carolina, New Mexico, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming.

The current statutory definition of mandated reporter in MGL c. 119 §21 is separated into untitled subsections that do not appear to organize categories of roles and professions in a logical manner. **The Commission’s discussion organized the list of professions and roles into the following categorizations: medical providers, mental health providers, education – including early education, pre-kindergarten through twelfth grade and higher education, public safety officials, social services providers, mentors, clergy, and recreational service providers.**<sup>22</sup> These categorizations are a possible framework for a more readable statute but their titles are meant to be for organizational purposes only. The goal of this organization scheme would be to make the statute more accessible to anyone who consults the statute for guidance on their responsibilities.

#### Determination of which Professions/Roles Should be Included

The Commission’s task, according to the enabling statute, included making findings and recommendations regarding the persons included in the mandated reporter definition. To accomplish this, the Commission reviewed not only the Commonwealth’s current definition (MGL c. 119 §21 most recently updated on November 7, 2018), but also the definitions from all US states as well as the laws of Washington, D.C. and Puerto Rico. The Commission also took direction from the work of the House Committee on Post Audit and Oversight’s report “Raising the Bar: A Vision for Improving Mandated Reporting Practices in the Commonwealth” (2018). The overview of these state statutes, the similarities and differences, as well as the recommendations from the “Raising the Bar” report framed the Commission’s discussions about the key characteristics that mandated reporters should have in common.

Although the recommendations in the “Raising the Bar” report were limited to the inclusion of coaches, administrators, and other staff employed by or volunteering with private athletic organizations as mandated reporters and an online mandated reporter training with an EOHHS-approved curriculum, Commission discussion was not limited to these topics. Rather, the Commission used the “Raising the Bar” report as a starting point to begin the discussions of identifying who in our current society should be a mandated reporter to ensure that those most likely to observe and recognize children who have been abused or neglected are mandated to report.

The Commission’s discussions regarding the definition of mandated reporters has been directed by several premises.

- The first premise is that the initial drafting of the statute in 1973 which defined mandated reporters needed updating to reflect current language identifying professions and roles and to address scenarios that are true today that may not have been true at the time the

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<sup>22</sup> The term “youth serving individuals” was considered and determined to be too broad of a categorization and the term “recreational service providers” better captured the content of the categorization.

statute was drafted. This premise has been referred by the Commission as a need to “update” the statute.

- The second premise is that there are situations where child abuse or neglect may happen, or may be disclosed, that are not currently captured in the statute. This is true for situations involving child athletics as well as in higher education. The Commission’s work has focused on identifying these situations and identifying any commonalities among these situations.
- The third premise is that not all mandated reporters do report- though it is hard to quantify unknowable information. For example, allegations of abuse and neglect in school environments can go unreported for years.<sup>23</sup> The Commission sought to address situations of “under-reporting.”
- The fourth premise is that there should be a common theme or themes underlying the reasons why a certain profession or sub-group of people are categorized as mandated reporters.
- Finally, the fifth premise is that the language used to identify potential 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 general enough that they will be applicable and flexible for future applications to unforeseen situations.

### A Framework for Primary Characteristics of Mandated Reporters

The Commission’s work used the framework of the following primary characteristics of mandated reporters to guide all discussions of who should be a mandated reporter. These primary characteristics are likely imperfectly formulated but it is critical that a logical paradigm govern the listing of mandated reporters and guide thinking around reformulating the list of mandated reporters. It is important to remember that these characteristics refer to a person’s profession or role and not to an individual in their individual capacity.

- persons who have consistent access to children and who are often alone with children and/or are responsible for their care;
- persons often in positions of authority over children or who children may identify as being in positions of authority over them, as children may seek to disclose abuse or neglect to persons they perceive to have some authority over them or over others; and
- persons who are especially skilled at, or trained to, identify child abuse or neglect;

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<sup>23</sup> For example: [State revokes Eagleton School licenses; school to shut down - The Berkshire Edge](#); and [Duxbury gym teacher accused of rape previously investigated for 'questionable behavior' \(msn.com\)](#)

- persons who may be exposed on a regular basis to personal, private, and detailed information about children and families not available to the general public.

The Commission did initially consider whether it was necessary to add persons who work in state agencies that provide services to children to the list of potential mandated reporters. However, such a categorization was so broad it would capture persons who do not have detailed and private information about children and families and do not have direct responsibilities to care for children. The over-broadness of this category risked the danger of exponential expansion of mandated reporter responsibilities not narrowly tailored to the means by which mandated reporters learn of allegations of abuse or neglect. The Commission sought to limit any unnecessary broadness to avoid the unintended consequences of expansion of involvement with child protective services, particularly the disproportional racial and ethnic involvement.

Commission discussion was also guided by considerations of how mandated reporters learn of information about child abuse and neglect from many sources. One such source is a reporters' own **experience**, oftentimes institutions report on their own behavior or their failure to adequately care for children who are entrusted to them. Another source is a mandated reporter's own **observations** of situations including the existence of unexplained injuries, a child's decline physically or mentally, or witnessing child maltreatment. A third common source is **disclosures** made by children to persons who they believe to be trusted adults who will either do something to keep them safe or will empathize with the child's situation or feelings. This is a simplification of the possible scenarios, but it is critical to understand mandated reporters in terms of how they typically receive information in order to contextualize the work recorded in this report.

### *Volunteers*

The current statute is unclear about whether mandatory reporting obligations are limited to paid employees. Clarity in the statute would be beneficial to put all persons on notice about their obligations to report and on notice of other obligations (such as possible training obligations, requirements to cooperate with DCF, etc.).

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 consistent access and responsibility to care for children, position of authority over children, skills or training to identify abuse or neglect, or exposure to personal, private, and detailed information about children and families. 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.<sup>24</sup> This possibility was not advanced further in Commission discussion as some Commission members expressed that a sliding scale would be unfair to the individual child who needs protection. However, Commission members struggled with how to effectively deal with occasional volunteers who may volunteer once or twice a year and for whom training in mandated reporting, because of their minimal volunteer engagement, may be burdensome and who may not perceive themselves as have enough information to adequately identify child abuse and neglect. However, defining the scope of “occasional” volunteering is difficult.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**Explicitly including volunteers who perform the same duties or functions of the professions or roles listed in the statute would bring valuable clarity to the statute. The Commission’s discussion suggests that there should be further exploration of whether a definition of the term “volunteer” for purposes of the statute is needed for clarity. When defining the term “volunteer,” it will be important to consider the impact of the potential statutory change on the availability and willingness of individual to volunteer in certain settings (such as schools).**

### *Minimum Age Requirement*

There is currently no minimum age requirement for mandated reporters in the statute. The Commission discussed other state models that did include language identifying persons who are eighteen years old or older as mandated reporters.

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, this level of reasoning seems appropriate only for adults. Eighteen years old is a largely arbitrary designation between childhood and adulthood but eighteen is the age at which several 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.

People ages sixteen to seventeen may be in paid or volunteer positions in which they may have responsibility, and temporarily sole responsibility, for groups of children. A person’s age does

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<sup>24</sup> For example, if a volunteer only volunteered a few hours a year they could report any concerns to any individual employed at the entity or organization and they would not be held criminally or civilly responsible for failing to report. However, if that person volunteered on a monthly basis they may be required to report in the same manner as mandated reporters but would still not be held criminally or civilly responsible for failing to report, and so on.

not alter what they may experience or observe. A child who makes a disclosure of abuse or neglect will not consider age of the person required to supervise them and care for them. However, age can very well alter a person's perception of what they experience, observe, or understand from a child's disclosure. In exploring this topic, the Commission discussed the negative consequences of unnecessary reports to child protective services which can include unnecessary invasions of privacy, the potential for action based on misunderstandings, potential involvement of other state entities such as law enforcement, reputational damage, familial stress, distrust in state systems, and the use of unnecessary state resources.

Some Commission members noted that persons who fulfill roles or professions listed in the mandated reporter statute who are under eighteen years old could be adequately addressed by requiring that any employer or entity who employs such persons to have written protocols requiring the report of concerns of child abuse and neglect to an identified mandated reporter. The Commonwealth could take additional steps to ensure compliance by requiring 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.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**The addition of a minimum age requirement of eighteen years old to the definition of mandated reporter adds necessary clarity to the mandated reporter law and accounts for the type of mature decision-making necessary to determine whether a 51A report is warranted. It is reasonable and prudent to require that all employers or entities who hire paid or unpaid persons under the age of eighteen in one of the roles or professions listed in the statute to have a policy requiring those under eighteen years old to report concerns of child abuse and neglect to a designated individual who is a mandated reporter.**

#### *Remote Services and Inter-Jurisdictional Issues*

The considerations in this report are meant to address the current needs of the Commonwealth as well as create a flexible statutory scheme that will anticipate and account for possible future advancements to the extent possible (technological, professional, new state services, etc.). The current statutory language does not address or adequately account for remote services or inter-jurisdictional issues. The mandated reporting statute's application to the following scenarios is currently unclear:

- Whether a teacher living in Rhode Island providing remote instruction to a child living in Massachusetts is a mandated reporter under Massachusetts law;

- Whether a teacher living in Massachusetts providing remote instruction to a child living in New Hampshire is a mandated reporter for concerns relating to that child;
- Whether a teacher living in Rhode Island providing remote instruction to a child whose residence is in Massachusetts but who is currently staying at a friend's home in New Hampshire is a mandated reporter for concerns relating to that child;
- Whether a teacher living in Rhode Island providing remote instruction to a child who lives in New Hampshire but is currently staying at a friend's home in Massachusetts is a mandated reporter under Massachusetts law.

These scenarios depend largely on fact-specific considerations and involve complex questions of the application of state law. DCF's Protective Intake Policy<sup>25</sup> addresses jurisdictional practice for DCF, but the possibility of complex jurisdictional issues at the reporting stage has risen to the forefront of the Commission's work 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, the Commission's work has identified a need to clarify, as much as may be feasible, the mandated reporter requirements and expectations for mandated reporters. Further, mandated reporter training could assist mandated reporters to identify which critical questions to ask to determine if they are mandated reporters in situations of such complexity.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**The mandated reporter statute, and the mandated reporter scheme, would benefit from explicit language which addresses when the mandated reporter statute applies to a person fulfilling the duties of the profession or role listed in the statute via remote service provision or over technology that implicates inter-jurisdictional issues. The implications for training requirements of persons who are providing remote services from outside Massachusetts should be considered and addressed. The Commission's work assumed that DCF's internal policies will continue to dictate the jurisdictional issues once cases from mandated reporters are reported to the department.**

### *Contractors*

The current statute is unclear about whether mandatory reporting obligations extend to persons who are contracted to provide the services typically expected of the roles or professions listed in the statute. Many if not all, contractors who have direct contracts with the Commonwealth are covered by current licensing requirements which address mandated reporting responsibilities.

<sup>25</sup> <https://www.mass.gov/doc/DCF-protective-intake-policy-june-2020/download> updated on June 22, 2020



This is often also true for subcontractors who operate under a contract with the Commonwealth. However, there are contractors who may be performing the duties or professions that fit into the definition of mandated reporter that do not have contracts with the Commonwealth. For example: a hospital may contract with a quality assurance specialist to review the treatment of persons in a hospital. That person would not be “hospital personnel” as currently listed by the statute but would be performing the duties expected of “hospital personnel.” Clarity may be helpful to provide all persons notice about their obligations to report and notice of other obligations (such as possible training obligations, requirements to cooperate with DCF, etc.). In line with the reasoning provided herein, the definition of mandated reporter should hinge on the connection to the children and to the families, not the organizational structure of the role or profession.

The Commission considered whether there should be a definition of “contractor” for the purposes of the mandated reporting statute and some Commission members expressed that such a definition would be helpful while others thought such a definition may be unnecessary.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**The mandated reporter statute, and the mandated reporter scheme, would benefit from explicit language which addresses the role of contractors who fulfil the same duties of the professions or roles listed in the statute. It is reasonable that such contractors be mandated reporters as the mandated reporting responsibility should be tied to the primary characteristics of mandated reporters (page 27) and not any organizational or employment structure. It is reasonable that contract terms, particularly when services are contracted by Commonwealth agencies, clarify mandated reporting obligations.**

### Specific Considerations of Categories of “Mandated Reporters”

Many of the public comments received during the public comment period expressed concern with the Commission’s considerations of any proposals that could be seen as additions to the professions or roles listed as mandated reporters. Such concerns centered around fundamental questions of whether or not mandated reporting accurately reports child abuse or neglect, whether child protective services are required to address cases of neglect, whether there is any reason or evidence to consider the expansion of mandated reporting at all, and the harm child protective services does to children and families. Many public comments also warned against expanding of the mandated reporter system given that Hispanic/Latinx and Black families/children are disproportionately reported to the attention of DCF, the affect mandated reporting has on victims of domestic violence, and given the proportion of cases screened-out by DCF. Commission discussion also raised such questions and concerns prior to the public

comment period. However, some submissions to the public comment period did not echo these concerns and expressed appreciation for an expanded network of mandated reporters to address child abuse and neglect.

The information below reflects the Commission’s discussions before, during, and after the public comment period. The Commission continued to focus on consideration of proposals through the paradigm of the agreed upon primary characteristics of mandated reporters (see 27) and with an eye to ensuring that any possible expansion of the statute be narrowly tailored to minimize unintended consequences.

### *Medical Providers*

The statute currently identifies physicians, medical interns, and hospital personnel engaged in examination, care, or treatment 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 topic was largely seen primarily as an update to the statute to account for the multitude of places in our current society where people seek and/or receive medical care.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**The inclusion of medical providers beyond a hospital setting is a reasonable extension of the mandated reporting scheme because it accounts for the fact 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 in all settings are exposed to the same set of facts with the same power dynamics and personal information of the patient or family involved. Medical providers have specific expertise in understanding the source of harm to persons and have regular access to personal, private, and detailed information about children and families.**

The current statute includes “medical intern” in the listing of mandated reporters. Commission members discussed this term and the proposal of updating this language to more accurately reflect current job titles and the scope of this role.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**The term “medical student or trainee” more accurately reflects the roles that are or should be included as mandated reporters in the statute. This is because medical students and trainees are often alone with patients, are often charged with drawing conclusions about patients’ health, and are skilled in treating and advising patients all without direct in-person supervision of a mandated reporter.**

Commission members discussed whether the addition of pharmacists to the listing of mandated reporters would be prudent based on the agreed-upon primary characteristics of mandated reporters. This discussion was about a potential addition to the statute as pharmacists was a profession that existed at the time the statute was written but was not included in the statute. The Commission discussed the role that pharmacists have played in the opioid epidemic<sup>26</sup> as context for understanding that pharmacists may have the opportunity for interactions with patients on a more frequent basis than primary care physicians and are privy to the risks and complications that medical care, health, addiction, mental health and other issues can have on a family and on children. However, some Commission members also noted that most pharmacists do not meet the criteria for mandated reporters; for example, they do not have consistent access to a full range of personal and detailed information in the same manner as other medical providers. Additionally, some system safeguards in medical record keeping have been put in place to better protect from concerns of potential over-medicating of children.

The current statute includes “emergency medical technician” in the listing of mandated reporters. Commission members discussed whether this term is an accurate term to sufficiently identify what types of professions or roles are meant to be included in the statute. Further, the

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<sup>26</sup> See for example: “The Role of Pharmacists in Safe Opioid Dispensing” Thomas Gregory and Leah Gregory, *Journal of Pharmacy Practice* 2020, Vol. 33(6) 856-842.

Commission's discussion evaluated whether there was a reason to include emergency medical technicians but not non-emergency medical technicians.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**The primary characteristics of a mandated reporter are best understood in terms of whether people are licensed or certified to provide medical care. That licensure or certification indicates that the profession or role has specific expertise in the physical care of others and confers a more skilled understanding of harm than a non-licensed professional would be expected to have. Further, professionals who are licensed to provide medical care are expected to take active steps to promote safety. Therefore, any person licensed or certified to provide emergency or non-emergency medical care would fit into the paradigm of who is a mandated reporter. Careful consideration should be given to the public comments about the unintended consequences of expanding the definition of mandated reporter.**

The Commission considered including persons who are engaged in the admission of persons to medical services- meaning those who operate the front desks at hospitals, private medical facilities, dental offices and so on but determined, based on feedback from the public comment period, that such inclusion was too broad in that such persons do not have any specialized knowledge or expertise that will inform their decision-making about allegations of abuse and neglect.

### *Mental Health Providers*

Currently the definition of mandated reporter includes mental health providers such as marriage and family therapists, rehabilitation counselors, mental health counselors, psychiatrists, and clinical social workers. The Commission discussed whether the addition of psychoanalysts and psychiatric nurses would be prudent based on the agreed-upon primary characteristics of mandated reporters. This discussion was about a potential addition to the statute and therefore was evaluated in terms of the potential harms, actual harms, or unintended consequences of expansion of the mandated reporting scheme.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**Psychoanalysts and psychiatric nurses are licensed to provide mental health services and therefore have expertise in understanding mental and emotional wellbeing including the potential for and effects of child abuse and neglect, or the possible risks of the mental and emotional wellbeing of caregivers to children. Additionally, these professionals have regular access to private and detailed information about children and families. These professionals are in the same type of provider-patient relationship as other professionals listed in the statute. Psychoanalysts and psychiatrics nurses are professionals who meet the agreed-upon characteristics of mandated reporters.**

**Serious concerns were raised about the potential societal harms of expanding the list of mandated reporters.**

The current statute does not include any students or trainees who provide mental health services to any person as a mandated reporter. Inclusion of such persons would be an expansion of the current mandatory reporter scheme and must be evaluated in terms of the potential harms, actual harms, or unintended consequences.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**Students or trainees who provide mental health services under supervision are in the same patient-provider relationship as fully licensed and certified providers. It is often the case that students and trainees provide these services in sessions in which no supervisor is physically present. The Commission analogized such students and trainees to the medical students and trainees discussed earlier in this report. As students and trainees who provide mental health services are often alone with patients, are often charged with drawing conclusions about patients’ mental health, and are skilled in treating and advising patients all without direct in-person supervision of a mandated reporter, it may be prudent and reasonable to include them in the statute.**

**Serious concerns were raised about the potential societal harms of expanding the list of mandated reporters.**

### *Education*

Guided by the feedback of the public comment period which detailed the potential harms of greatly expanding the definition of mandated reporters, Commission member discussion focused on narrowly tailor this section to the identified characteristics of mandated reporters. Expanding

the types mandated reporters in school settings is in part a response to the Larry Nassar<sup>27</sup> and Jerry Sandusky<sup>28</sup> abuse cases. Educators and those working in school systems are entrusted to care for children for the majority of those children’s waking hours and during weekdays in the school year, school personnel are seen as trusted adults by students, and school personnel are increasingly trained to meet students’ social and emotional needs as well as their academic needs. Inappropriate or biased reporting from school personnel can cause unnecessary damage to the school-family relationship that can threaten a child’s academic and social-emotional success.

Summarization of the Commission’s discussions in this section and in other sections in this document continue to be drafted with the three primary ways that mandated reporters learn of allegations of abuse or neglect in-mind: through experience, observation, or disclosure (see page [28](#)). Many of the public comments submitted during the public comment period focus on mandated reporting as a type of surveillance of families. Intrusion into familial life and possible separation of children from their families because of allegations of abuse or neglect can result in serious harm to children and their families and that serious harm must be weighed by the need to adequately protect children from abuse and neglect - a calculation that is extraordinarily complex. However, many allegations of abuse and neglect are against caretakers who are not parents or guardians of children but who are themselves teachers, guidance counselors, nurses, coaches, and so on. These “institutional reports” as they are commonly called, also typically are reported by mandated reporters who experience or observe abuse and neglect in the institutions in which they work. The reputational and employment damage that comes from investigations into those allegations also cause serious harm which again must be weighed against the need to adequately protect children from abuse and neglect.

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<sup>27</sup> A report by the House Committee on Post-Audit and Oversight about recommended changes to the Massachusetts mandatory reporter laws mentioned that Larry Nassar was also a faculty member at Michigan State University, in addition to being a sports doctor for USA Gymnastics. H. COMM. ON POST AUDIT AND OVERSIGHT, RAISING THE BAR: A VISION FOR IMPROVING MANDATED REPORTING PRACTICES IN THE COMMONWEALTH, (Mass. 2018).

<sup>28</sup> Sandusky’s abuse was reported to Head Coach Joe Paterno as early as 2002, but no notification was made to the police or any child protection agency. Bill Chappell, *Penn State Abuse Scandal: A Guide and Timeline*, N.P.R., June 21, 2012, <https://www.npr.org/2011/11/08/142111804/penn-state-abuse-scandal-a-guide-and-timeline>.

Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:

It would be beneficial for the purposes of clarifying the statute that the statute separate education providers into categories. The Commission's discussion was structured around the categories of "early education," "pre-kindergarten through twelfth grade," and "higher education." The Commission noted that childcare workers licensed by EEC are educators and refer to themselves as educators, so they fit under the category of education and not under social service providers, and that the discussion needs to span birth through 12<sup>th</sup> grade. The Commission's discussion noted that any definition of "higher education" should mirror any definition by the Massachusetts Department of Higher Education Board.

In the category of pre-kindergarten to twelfth grade education, school personnel who have direct supervisory responsibility for students (such as teachers, paraprofessionals, and supervisors of extracurricular activities) all would have the agreed-upon characteristics of mandated reporters in that they have consistent access to children, are often left alone with children, and are responsible for the care of children, that they are in positions of authority over children or who children may deem to be in positions of authority over them, that they are exposed on a regular basis to private, and detailed information about children and families, and that they have specialized knowledge about child development and impediments to child wellbeing. There was significant disagreement among Commission members about whether school board members have the agreed-upon characteristics of mandated reporters.

School bus drivers and monitors who supervise children on school buses have the agreed-upon characteristics of mandated reporters in that children are entrusted to their care and supervision, and bus drivers and bus monitors are regularly and specifically entrusted with the safety of children during the period in which the children are in their care.

The Commission recognized that many sports programs and other youth programs use higher education facilities for their operations. Additionally, young adults who are under eighteen years old attend college courses while still enrolled in high school or start college before they turn 18. In the category of higher education staff and faculty who interact, teach, or coach children in any program that is specifically designed for children or is tailored to accommodate children under the age of eighteen, and personnel of organizations or entities using higher education property to conduct programs designed for children under the age of eighteen all have the agreed-upon characteristics of mandated reporters.

Serious concerns were raised about the potential societal harms of expanding the list of mandated reporters.

The Commission seriously reviewed the feedback from the public comment period that cautioned against the danger of creating over-broad categories of mandated reporters and the discussion here reflects a narrower scope of persons than had been initially proposed to the Commission.

*Public Safety Officials*

Members of the Commission discussed professions and roles that have direct contact with children and their families on a regular basis, such as family services officers, assistant probation officers, and judicial case managers. The Commission recognizes that children often disclose allegations of abuse and neglect to persons whom they feel are required to keep them safe, and so specifically considered the authority or perceived authority of public safety officials. The Commission reviewed the feedback from the public comment period that cautioned against the danger of creating over-broad categories of mandated reporters and the discussion here reflects a narrower scope of persons than had been initially proposed to the Commission.

**The Commission’s discussions can be accurately summarized as:**

Commission members expressed various viewpoints about the scope and consequences of the inclusion of professions identified as “court personnel interacting with youth or children including a probation officer [already in the statute], assistant probation officer, family services officer, clerk magistrate [already in the statute], assistant clerk-magistrate, assistant registrar, and judicial case manager...” as mandated reporters. Discussion included whether these court personnel have the agreed-upon characteristics of mandated reporters. A description of the considerations of Commission members is below:

Considerations supporting inclusion	Considerations opposing inclusion
<p>Court personnel who interact with children or youth on a regular basis are persons who have significant authority over those children and youth, but also who are perceived by the children and youth to have significant authority over them. These persons may therefore be understood as trusted adults with access to very private and personal information about children and families that is often not accessible to the general public.</p>	<p>Court personnel who interact with children or youth on a regular basis are likely to be consistently exposed to allegations of abuse and neglect that are currently being litigated in court. It does not make sense to require these persons to report every allegation they hear as such allegations have already come to the attention of the state.</p> <p>The categories of persons that the Commission might consider “court personnel” including assistant clerk magistrates, judicial case managers, and assistant registrars do not have consistent interaction with children or youth.</p>



The Commission also expressed various viewpoints about whether it would be prudent or necessary to include judges as court personnel who interact with children or youth on a regular basis or whether judges should be explicitly exempted from mandated reporting responsibilities. A description of the considerations of some Commission members is below:

Considerations supporting inclusion	Considerations opposing inclusion
<p>Judges are as likely as other court personnel to observe or learn of abuse or neglect allegations. 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. 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.</p>	<p>If judges are mandated reporters, they could be called 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. Judges must avoid even the appearance of not being impartial and a requirement of mandated reporting may prompt motions for recusal.</p>

The current statute includes “police officer” in the listing of professions who are mandated reporters. The Commission explored the scope of this term and whether clarity was needed and, if clarity was needed, what the appropriate clarification would be. The Commission considered the following terms: campus and state police officers, sworn law enforcement officials, special state officers, correctional officers, and sheriff deputies. Notably, the term “law enforcement officer” according to the Police Reform Bill<sup>29</sup> includes:

...any officer of an agency, including the head of the agency; a special state police officer appointed to section 58 or section 63 of chapter 22C; a special sheriff appointed pursuant to section 4 of chapter 37 performing police duties and functions; a deputy sheriff appointed pursuant to section 3 of said chapter 37 performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve or intermittent police officer.

<sup>29</sup> Text available at: [Session Law - Acts of 2020 Chapter 253 \(malegislature.gov\)](http://malegislature.gov/SessionLaw/Acts/2020/Chapter253)

**The Commission did not definitively conclude discussion of whether these professions met the agreed-upon characteristics of mandated reporters.**

The Commission reviewed the feedback from the public comment period that cautioned against the danger of creating over-broad categories of mandated reporters and the characterization of the Commission's discussions here reflects a narrower scope of persons than had been initially proposed to the Commission. Specifically, the Commission's discussions reflected that private security personnel did not meet the Commission-identified criteria of who should be a mandated reporter because although such persons are in a position of authority over children, they are not in positions of authority on such a regular or consistent basis that they would meet the agreed-upon standard. However, schools in Massachusetts that serve students under the age of eighteen should consider how to address concerns of possible experience, observation, or disclosure of child abuse and neglect to private security personnel hired in conjunction with school sponsored activities.

*Social Service Providers*

The Commission received significant feedback from the public that the proposals before the Commission in this category were so over-broad that they would result in the unintended consequence of a type of intensive surveillance system of families by persons with no expertise in determining whether there was harm to a child and by persons who are not in caregiving roles. Commission member discussion was guided by a concern that undue over-broadness risks families retreating from community-based services that are needed for family support and stabilization. Many service providers, particularly those funded by the Commonwealth or who are actually in family homes providing direct support to children, are a reality of our current service provision models and should be adequately addressed by the mandated reporter statute when they meet the agreed-upon characteristics of mandated reporters.

The current statute refers to “child care worker[s]” as mandated reporters. As noted previously, licensed childcare workers are early educators and it would bring the statute clarity to include them in the education provider category. However, childcare workers who are not subject to licensure (such as religious organizations providing childcare) are more accurately described as social service providers.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**The Commission discussed the idea that some social service providers who are funded in whole or in part by the Commonwealth should be mandated reporters, even if they are not subject to certification or licensure. The Commonwealth can condition funding on compliance with certain standards of behavior through contract language or through statute. The Commonwealth has an interest in providing timely, safe, and effective services to children which safeguard children’s health, safety, and wellbeing. (See Appendix A for more information.)**

**Serious concerns were raised about the potential societal harms of expanding the list of mandated reporters.**

The Commission discussed whether nannies and au pairs would meet the agreed-upon characteristics of mandated reporters. Multiple viewpoints were expressed, and discussion noted that nannies and au pairs are not licensed nor are they subject to licensure. Nannies and au pairs are governed by contractual agreements with families which specifically outline the caretaking expectations of the arrangement. The Commission discussion included an effort to narrowly tailor the expanse of the proposals to avoid inclusion of ad hoc childcare arrangements such as babysitters which would be too broad an application of mandated reporter expectations and would place too high a burden on community supports for families.

The proposal discussed by the Commission to include all personnel from the state agencies that serve children was too broad in that it captured personnel that often had little if any relationship to the agreed-upon characteristics of mandated reporters. State agencies that serve children can take active steps to determine which roles and professions within their agency have the agreed-upon characteristics of mandated reporters and require compliance with the mandated reporting law as a condition of employment for those roles and professions.

The proposal discussed by the Commission to include information technologists, computer or electronics technicians, and film or photo image processors included categories that were too broad in that they captured people who do not regularly have access to private and detailed information about children and families such that they are commonly in the position of possible

exposure to allegations of child abuse and neglect. The persons working in information technology do report concerns of child pornography and that with the ever-expanding influence of technology in our lives, including home devices that can listen to and record conversations, persons who are electronics technicians have the potential to be exposed to more situations where allegations of abuse or neglect arise than they have been in the past. However, this amorphous group of people could not be narrowly tailored and the dangers of being overbroad outweighed the assumed benefit of inclusion of these terms.

*Members of a Legal Defense Team*

The Commission has considered, in-depth, the proposal by the Committee for Public Counsel Services (CPCS) that the definition of mandated reporter explicitly exclude persons who are working on legal defense teams in a holistic defense model. The Commission hosted comments from CPCS in support of the proposal and comments from the National Association of Social Workers -Massachusetts Chapter (NASW) in opposition to the proposal. **Some Commission members expressed strong opposing views of the proposed explicit exclusion. Commission members’ discussion on this topic ended in disagreement on the proposal.** A description of the considerations of some Commission members is below:

Considerations to support an explicit exclusion	Considerations to oppose an explicit exclusion
<p>The holistic defense model integrates legal and non-legal services in an interdisciplinary model which seeks to address the circumstances that drive people into the criminal justice system; juveniles are better able to access their right to counsel when they feel safe and comfortable doing so and this is best accomplished by the holistic model of defense.</p> <p>An explicit exclusion in the mandated reporter law would simply recognize the current legal reality that the entire holistic defense team is covered under the umbrella of attorney-client privilege.</p> <p>Social workers and other experts play a critical role in ensuring that all clients are provided with effective legal representation.</p> <p>Requiring mandated reporting of persons who are hired as experts by attorneys would undermine legal representation.</p>	<p>The umbrella of attorney-client privilege does not legally extend to all members of a legal defense team.</p> <p>Social workers can provide meaningful benefit to the legal defense without sacrificing the moral and professional duty to report allegations of abuse and neglect.</p> <p>This language is very broad and could provide exceptions for all types of providers such as physicians and psychologists.</p> <p>Your obligation to report allegations of child abuse and neglect should come from your role and your licensure and not who hires you.</p> <p>The “duty to warn” is a core principal of National Association of Social Workers Code of Ethics.</p>

### *Mentors*

There is no mention of mentors in the current statute even though paid mentors existed at the time the statute was originally enacted. Mentors may have very intimate and trusting relationships with their mentees which may result in the disclosure of allegations of abuse and neglect, particularly when the mentee is a child. The Commission initially discussed a proposal which included both paid and unpaid mentors, but concerns were raised that unpaid mentors are too broad and amorphous a category of persons to be cognizable under the mandated reporter statute. Further, some members of the Commission were concerned that requiring unpaid mentors to be mandated reporters may result in unintended consequences including mentors choosing not to volunteer because of training and other burdens such as potential liability, as well as families potentially choosing not to engage with these critical community supports. However, some members of the Commission simultaneously felt that persons who choose mentorship as a job are in a different position than persons who seek to volunteer for their community and that the formalization of the mentorship role should reflect the serious potential for exposure to information about child abuse and neglect. It would be reasonable and prudent for volunteer mentor organizations to have internal processes for reporting concerns about child abuse and neglect to mandated reporters within those mentor organizations.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**Persons who are paid by an organization or entity to provide mentorship have the agreed-upon characteristics of mandated reporters as these persons are specifically identified as trusted and safe adults who provide guidance. If they are mentors for children, they are often entrusted with direct supervision of children and children perceive mentors to have authority over them. Paid mentors have, by their very nature, regular exposure to private and detailed information about children and families.**

**Serious concerns were raised about the potential societal harms of expanding the list of mandated reporters.**

### *Clergy*

The current statute identifies members of the clergy or persons employed by a church or religious body to supervise, educate, coach, train, or counsel a child on a regular basis in the statute. However, the statute does not require reporting for information covered by the clergy-penitent privilege. This exception is understood to be grounded in the constitutional right of freedom of religion. Commission members discussed recent court cases from across the country which tested the mandated reporting responsibilities of clergy members in light of the clergy-penitent privilege.

**Current Statutory Language: MGL c. 119 § 51A(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

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**Persons who perform official duties on behalf of a religious body have the same characteristics as persons who are officials in that religious body in that they are in trusted relationships, may be charged with the care of children and the obligation to morally inform and morally educate children, and such persons have a faith-based authority resulting in repeated exposure to private and detailed information about children and families. Persons who perform official duties on behalf of a religious body have the agreed-upon characteristics of mandated reporters.**

**Currently the statute includes persons who are employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis. Commission members discussed that persons who are employed or sanctioned by a church to supervise, educate, coach, train or counsel an adult would also have the trusted relationship and regular access to private and detailed information about children and families. For example, a member of a faith organization that provides couples counseling for adults may learn that one source of conflict for the couple is how severely the children should be physically disciplined. Such a scenario is akin to the type of counseling someone may otherwise seek from a licensed therapist. Therefore, such persons who supervise, educate, coach, train or counsel adults have the agreed-upon characteristics of mandated reporters.**

The Commission further considered a proposal regarding records custodians and persons providing administrative services to a religious body. However, such persons are not consistently in a position of authority or a caretaking role or instruction role for children and although such persons played a critical role in the Catholic Church sexual abuse scandal, those persons were also either considered clergy or person performing official duties recognized as the duties of clergy.

### *Recreational Service Providers*

Commission members discussed recreational services specifically designed for children. Often families depend on such services to provide non-family-based supervision of children on an extended or regular basis. Currently sports organization personnel, as noted specifically by the “Raising the Bar” report, as well as camp personnel are not mandated reporters. Mandated reporters in these circumstances have the potential for exposure to abuse and neglect perpetrated by caregivers who are not parents or guardians as well as the potential for disclosure of allegations of abuse and neglect in a child’s home environment.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**Recreational service providers that specifically offer programming for children which requires that personnel of the programming directly supervise children separate from those children’s parents or guardians, meet the agreed-upon characteristics of mandated reporters. Such service providers are in a trusting relationship with children and families and they affirmatively place themselves in supervisory, authoritative, and caregiving roles by the nature of the programming they provide.**

**Serious concerns were raised about the potential societal harms of expanding the list of mandated reporters.**

Previously this category was referred to as “other youth serving individuals”<sup>30</sup> but after reflection from the public comment period some Commission members agreed that the title was too broad to adequately capture the scope of persons covered by the Commission’s discussions.

### *Confidential Services*

The Commission considered a proposal that persons who provide direct confidential services to victims of domestic violence, sexual assault, or human trafficking should be excluded from mandated reporting responsibility. The reasoning behind the proposed exclusion was to reduce the barriers, or perceived barriers, in the way of persons who may be seeking immediate physical safety. Persons who seek physical safety are likely to be seeking to improve the safety situation for their children as well.

**The Commission members expressed some opposing viewpoints on this proposal and Commission discussion ended by discussing that it is unlikely that such an exclusion would have the desired effect as victims of intimate partner violence, sexual assault, or human trafficking come into contact with many other mandated reporters besides those providing**

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<sup>30</sup> The term “youth serving individuals” is drawn from the [Child Sexual Abuse Prevention Task Force Report.pdf \(childrenstrustma.org\)](https://www.childsexualabuseprevention.org/Child-Sexual-Abuse-Prevention-Task-Force-Report.pdf).

**direct confidential services.** Further, children who are involved in these situations in some manner can be victims of child abuse or neglect and it is too dangerous to exclude the reporting of those children. Finally, the Commission discussed the need for modern and comprehensive mandated reporter training that addresses the complexity of these situations, the safety implications of state intervention, and biased considerations of “fault.”

### Explicit Attorney Exclusion

Currently attorneys are not listed in the mandated reporter statute. In the consideration of whether all employees of state agencies providing services to children met the characteristics of mandated reporters, the Commission discussed a proposal that would clarify that attorneys are explicitly excluded from the statute. The Commission’s discussion did not consider adding attorneys to the statute and the Commission’s discussion indicated that attorneys would only need an explicit exclusion if there was a chance that they would be indirectly included in the statute through their role or profession in some other manner.



## Reporting Responsibility

### A Central Reporting System

The Commission was specifically asked by the Legislature to consider whether statutory changes were necessary to standardize the definition of child abuse and neglect across state agencies. The Commission looked at the statutes and regulations of state agencies as well as relevant other statutes that referenced child abuse and neglect and found no substantial differences in the terms or definitions among state agencies. The Commission is therefore not aware of any explicit definitions of child abuse and neglect that would affect the mandated reporting system.

The Commission's review of the definition of child abuse and neglect across state agencies led to discussion regarding the complications that arise when state agencies run joint investigations of child abuse and neglect with DCF or have independent, but parallel, investigations of child abuse or neglect to comply with licensing or contract monitoring authority. Joint investigations with DCF are currently organized via Memorandums of Understanding between DCF and the state agency participating in the joint investigation (primarily with the Department of Early Education and Care and the Department of Youth Services). Joint or parallel investigations are necessary to determine whether there are licensing violations or concerns that are identified through the reporting of a 51A and in situations when other state agencies may have responsibility (particularly in light of their different roles and regulations) to investigate situations of child abuse and neglect that may be screened out by DCF for reasons not relating to the circumstances that led to the report.<sup>31</sup>

Joint investigation processes can be an important and effective tool for interagency collaboration. However, the complexity of these joint and parallel investigations, can lead to confusing, contradictory, and unintended results for providers who are being investigated or cooperating with an investigation. Though there are not in consistent definitions of abuse and neglect across state agencies, the complexity of joint investigations sometimes may cause administrative and technical complications for service providers.

There are state agency representatives that have extensive experience with the complexities involved in these joint and parallel investigations on the Commission.

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<sup>31</sup> For example, DCF may screen out a report that a member of the public entered a childcare facility and hurt a child if they determine that the member of the public was not a caretaker. However, EEC may investigate that situation to determine whether childcare facility staff were not following the licensing protocols in regards to security or were otherwise responsible in some way for the incident that occurred.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**Relevant state agencies should dedicate resources to create a central reporting system to accommodate the reporting in institutional settings (out-of-home settings) of circumstances of child abuse and neglect that also need to be reported to entities other than DCF for purposes of licensing, contract monitoring, or other required monitoring.<sup>1</sup> Such a reporting system is meant to be a standardized electronic document that would be completed by providers and which would be immediately sent to multiple relevant state agencies. Such a system would streamline the processes of joint and parallel investigations and ensure that licensing information is adequately communicated to relevant state agencies. The Commission noted that there is currently a working group of state agency representatives, led by the OCA in continuation of the work the OCA previously completed on residential schools ([MA OCA Residential Schools Report April 2017 \(mass.gov\)](#)), that has taken up this task.**

This would reduce the currently extensive amount of paperwork required of providers when incidents occur, it would ensure that all relevant state agencies would receive the same information at the same time, it would prompt joint investigations when appropriate, and it could provide the institution or service provider with a detailed description of the purpose of investigations of the incident, relevant timelines, and possible consequences of investigations.

This effort would not require statutory change as it is a process improvement effort. The current working group has taken up the task of defining the expected timeline for such a project and the expected cost of such a project. Various state agencies are already actively taking part in the working group.

Relatedly, the Commission discussed that MGL c. 119 § 51B(l) requires that DCF provide the relevant state agencies with copies of substantiated cases of abuse or neglect in facilities approved, owned, operated, or funded, in whole or in part by DESE, EEC, DMH, DDS, DPH, and DYS or if abuse or neglect was committed by an individual believed to be licensed by any of those agencies. The Office of the Child Advocate also receives such reports. However, for purposes of licensing, learning of abuse or neglect in a facility after the DCF response to the allegations of abuse or neglect have been supported means that during the time between the 51A report and the response decision the licensing authority does not have knowledge, unless otherwise determined through an MOU between DCF and the relevant state agency, that there are concerns in that facility.

**Commission discussion suggested that it would be beneficial that the relevant state agencies are notified at the stage of the 51A filing in addition to being notified of the decision on the 51B investigation.**

## Definitions to clarify reporting responsibility

Currently, the statute states that mandated reporters are required to file reports when they have a reasonable cause to believe that a child is suffering from a physical or emotional injury resulting from abuse or neglect (among other reporting requirements). Although the statute states that mandated reporters should focus on whether there is an injury, many mandated reporters report when they believe children are at risk of injury. For example, a physician may call in a report prior to releasing a newborn

baby to parents that the physician feels are actively under the influence of illegal drugs even though the child has not suffered, or not yet suffered, a physical or emotional injury due to abuse or neglect. DCF screens-in cases where there is risk of an injury even if an injury has not occurred and current caselaw supports that cases of substantial risk of abuse or neglect are within the purview of DCF.<sup>32</sup>

The public comments submitted during the public comment period (both oral and written) expressed concern with the proposals the Commission was considering related to the addition of definitions to the statute. Many public submissions appeared to understand efforts at clarification of terms in statute as attempts to re-define terms and as apparent attempts to indirectly alter DCF regulations with the understanding that DCF regulations would be required to match statutory definitions. Many public submissions were concerned that the proposed definitions before the Commission did not adequately take into consideration contextual factors for allegations of neglect such as situations stemming from poverty or a person's disability. The intention of the proposals for the Commission's review was to provide more guidance to mandated reporters in the hopes that more guidance would reduce the number of unnecessary reports to DCF (meaning reports that do not rise to the baseline level of abuse or neglect).

### **Statutory Language: MGL c. 119 §51A(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.

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<sup>32</sup> See for example *Adele Lindsay v. Department of Social Services*, 439 Mass. 789, 795-6 (2003): "If children are to be protected from 'neglect,' it makes no sense for the department to wait until neglect has already run its course to the point of producing a physical or emotional injury. The particular form of neglect at issue in this case—lack of adequate supervision—may, in some circumstances, result in no injury at all, but when it does cause injury, it can do so suddenly and irreparably. For example, a toddler left unsupervised to cross a heavily traveled street may emerge totally unscathed, but also be run over and killed. If the department is advised of a caretaker's failure to supervise such a child, it is nonsensical to suggest that the department can make no finding of neglect unless and until a vehicle strikes the child."

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**Explicitly recognizing in the mandated reporting statute the legal and factual reality that DCF is not required to wait for an injury to occur to a child prior to intervening, would clarify that mandated reporters can and should report allegations that a child is at risk of abuse or neglect. The Commission's discussions did not determine what an appropriate level of risk should be in order to trigger mandated reporting. Some Commission members discussed "substantial risk," "imminent risk," or "immediate risk." Some Commission members questioned what the effect would be of requiring mandated reporters to report a scenario of immediate risk of abuse or neglect on DCF's regulations and in light of the relevant Massachusetts caselaw.**

**Some Commission members expressed concern that if the statute reflected this reality it would result in the increase in DCF filings which could burden the DCF system. There was also a concern that mandated reporters would not be skilled at measuring risk. Some Commission members expressed concern that consideration of this language moved too far away from actualized harm to a child and would have detrimental effects on families who will be involved with child protective services unnecessarily.**

**Various viewpoints were expressed by Commission members on this topic.**

The current statute references the requirement to report when a child suffers a physical or emotional injury resulting from abuse and neglect (among other reporting requirements). The Commission discussed the possibility that the terms "physical or emotional" were too limiting to adequately capture the scope of the reporting that mandated reporters should do in order to keep children safe. Some of the discussion focused on a child's mental condition as an area not clearly captured by the current statutory language. An example of an injury to mental health or condition could be the refusal of a caregiver to provide a child with prescribed mental health medication or therapeutic services. This particular example was discussed in light of concerns of a rise in child suicide at the state and national level. Additionally, some members of the Commission also wondered whether the term "emotional injury" was sufficiently clear for mandated reporters to understand and discussed that an emotional "injury" is damage to a child's emotional health or emotional condition.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**The statute would benefit from clarifying the scope of injuries or risk of injuries that mandated reporters are expected to consider when determining whether to make a report of allegations of maltreatment. The Commission’s discussion explicitly recognized that mental health and injury to a child’s mental condition can be abuse and neglect such that child protective services should be involved.**

**Commission discussion concluded on this topic without significant opposing viewpoints being expressed other than a serious concern about the potential societal harms of expanding scope of mandated reporting and expanding the involvement of DCF in families’ lives.**

**See Appendix B: Standards for Reporting for more information.**

### *Reporting of Substance Exposed Newborns<sup>33</sup>*

In reviewing the topic of the definition of abuse and neglect, and the specific requirements of MGL c. 119 §51A(a), and at the specific request of several doctors, including a group of pediatricians with expertise in child abuse, the Commission began an in-depth look at the issues raised by the statutory requirement

that mandated reporters make a 51A report any time a child suffers a physical or emotional injury from “physical dependence upon an addictive drug at birth.” The existence of this language in the statute is in part tied to the Child Abuse Prevention and Treatment Act (CAPTA) which is discussed further below. Medical professionals and other members of the public, including professionals from the Department of Public Health (DPH), have spoken with the Child Advocate, as the Chair of the Commission, and the Commission itself, about their concerns that the language in the reporting statute does not differentiate between addictive drugs that are illegal, and addictive drugs that are prescribed to mothers such as medications for opioid

**Current Statutory Language: MGL c. 119  
§51A(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...(iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department...

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<sup>33</sup> The terms “substance” and “substance exposed newborns” is used within this section to refer to children born with any positive toxicology regardless of whether the “substance” is a medication or a non-prescribed drug. The terminology is meant to relate to the federal requirements described in this section and is not intended as an explicit or implicit judgement on mothers or their children.

use disorder (MOUDs). The Commission formed a working group, open to all interested members of the public, to explore this issue.

Under the current reporting requirements, 51A reports must be filed with DCF upon the birth of a child born with addictive drug in their system even if the drugs for which the children test positive are solely the physician prescribed medications their mothers are taking to treat their substance use disorder, or their chronic pain medication, or some other prescribed or non-illegal medication. This circumstance, reportedly, leads to many pregnant women choosing to forego their prescribed MOUDs for fear of DCF involvement when their babies are born. Therefore, the wording of 51A requiring the filing of these cases with DCF can have the counter-productive result of putting families and children in a more vulnerable position, threatening the sobriety of mothers and their wellbeing, than if a report were not required.

The wording in the 51A statute regarding newborns born exposed, is tied to the complex system of the federal requirements of CAPTA and so is not easily resolved. CAPTA is a federal funding program with requirements for child protective service systems in multiple areas including intake, assessment, and training. Starting in 2003, CAPTA required states to have policies or procedures to address the needs of substance exposed newborns (SENs), including appropriate referrals to child protective services and/or other services, and the development of a Plan of Safe Care (POSC) for affected infants.<sup>34</sup> Reporting is required for any situation in which a child is born “affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder.”<sup>35</sup> The word “illegal” originally preceded the term “substance abuse” in the statute but was specifically removed in 2016. This change suggests that CAPTA is attempting to capture the effects of substance *use* (rather than substance “abuse”), or at least it will capture substance *use* regardless of the reasons or medical appropriateness of that use.

Although CAPTA requires that DCF be the vehicle to report the number of infants in the Commonwealth who are born affected by substances (illegal or prescribed) and whether or not a Plan of Safe Care was developed for those infants, CAPTA does not require that these infants be reported to DCF through an allegation of abuse and/or neglect filing. In other words, CAPTA does not require that DCF treat notification of these births as 51As. However, DCF, as the child protective agency in the Commonwealth, has the obligation to consider the possible risks to all children who are brought to DCF’s attention and relies on its screening process to determine whether substance exposed newborns are at risk in the care of their parents. All the 51A reports under this umbrella go through the same screening process as any other allegation of abuse and neglect. Though mothers-to-be may be counseled that 51As regarding their newborns’ toxicology screenings may be screened-out by DCF, the fear of even the initial screening phase

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<sup>34</sup> 42 USC § 5106a(b)(2)(B)(ii)

<sup>35</sup> *Id.*

is leading women to forego medication to treat their substance use disorder which puts themselves and their newborns at significant risk.

Some members of the Commission have spoken extensively about the complexities discussed herein and the Commission has reviewed models from several other New England states which approach this matter differently. Some other states comply with CAPTA reporting through the child welfare channel but not necessarily, or always, through the filing of an allegation of abuse and neglect. The Commission's working group on this matter, and members of the Commission itself, have discussed the potential partnership between DCF and DPH, similar to partnerships developed in other states.

Medical professionals in particular expressed strong support for a proposal that decouples prescribed medication and non-illegal substances from an automatic presumption of child abuse and neglect.

Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:

It is reasonable and beneficial to children and families in the Commonwealth to decouple the use of prescribed medication and non-illegal substances from an automatic presumption of child abuse and neglect through the creation of a two-track reporting system. The owner of one track of reporting should be DPH and the owner of the other reporting track should be DCF. Medical providers who learn that children are born affected by a "substance" which is prescribed to the child's mother by a treating physician, or affected by a non-illegal drug when there is no concern for detrimental use of that non-illegal drug, should report such instances solely to DPH for the purposes of data gathering to satisfy federal requirements *only so long* as there are not concerns that a child has been or is at risk of being abused or neglected. If a child is born affected by substance that is not prescribed to the mother by a treating physician or affected by an illegal drug, or in any instance when a mandated reporter has reasonable cause to believe that the child will be injured by abuse or neglect, the mandated reporter must report to DCF. DPH will be required to de-identify the data that has been reported to the DPH track and send that de-identified data to DCF for purposes of DCF's federal reporting requirements. To be effective, DCF and DPH should issue joint guidance that speaks to critical questions and issues that mandated reporters will face when determining which track to follow. Such critical questions include considerations of length of substance use disorder treatment, evaluation of risk of relapse, how to consider the weight of social or familial supports, and so on.

Some Commission members have expressed that this two-track system will only be beneficial to children and families if the system is carefully monitored for safety considerations and outcome measurements. The OCA has expressly identified itself as an appropriate partner to assist in the design of the data gathering and monitoring necessary to monitor the effectiveness of the two-track reporting system, noting also that DPH's Data Warehouse could also be a valuable partner. Some Commission members note that any data gathering must include the identification of safety concerns with a two-track reporting system (including subsequent DCF involvement of families after a report solely to the DPH track), as well as the potential to monitor race and ethnicity and other relevant demographic data, and use the relevant data to inform guidance and training of mandated reporters. Other Commission members remain interested in discussing a different kind of two-track system for other caregivers, such as those whose reports may be more related to poverty or disability than neglect of a child. For more discussion, see "Differential Response and Support for Family Resource Centers" on page [68](#).



## Definitions of Abuse and Neglect

The statute does not define child abuse or neglect other than to indicate that abuse is inflicted and that it includes sexual abuse, and that neglect includes malnutrition. The mandatory reporter statute is a statute that many people seek out and review to fully understand the responsibilities of reporting child abuse and neglect. Therefore, the lack of any definition or indication of what may constitute abuse or neglect in the statute may be a detriment to mandatory reporters. The Commission considered specific language detailing definitions of the terms used in the statute which were intended to clarify the reporting obligations which could result in a reduction of 51A reports that are screened-out by DCF for failure to rise to the level of abuse and neglect, and would give direction and content to any required mandated reporter trainings.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**Various viewpoints were expressed by the Commission about whether the inclusion of definitions of abuse, sexual abuse, and neglect in the statute would be prudent and effective at clarifying the obligations of mandated reporters. There was no discernable agreement on these topics. Further, there was disagreement between Commission members about how statutory language defining the obligations of mandated reporters would affect DCF regulations which did not match the proposed definitions before the Commission. Some Commission members expressed that DCF should continue to define the relevant terms in its regulations instead of including them in the statute. Explanation of the various viewpoints, the proposals that were presented for Commission review, and the public responses to the Commission on those proposals are all available on the MRC website at: [Mandated Reporter Commission | Mass.gov](#) The public commentary the commentary was summarized in a series of meeting documents available on the Mandated Reporter Commission website: [Mandated Reporter Commission 2021 | Mass.gov](#) please see materials for the meetings on May 7, 2021, May 20, 2021, May 27, 2021, June 9, 2021.**

DCF has current regulations that define the terms used in 51A(a), though these regulations pertain to the principles that govern DCF's responsibilities and actions, and do not set the standard for what a mandated reporter is required to report. Rather, such regulations speak to what DCF will screen-in as allegations that require DCF action. DCF's regulations are available via this link: [110 CMR 2 \(mass.gov\)](#).

**Similarly, the current statute requires that mandated reporters make reports when they have a “reasonable cause to believe” that a child is suffering a physical or emotional injury as a result of abuse and neglect. The Commission considered a proposal to recommend a definition of the reasonable cause to believe standard. The reasoning behind the proposal was that clarification of the standard for reporting would assist mandated reporters in understanding their obligations and that clarification could reduce the number of reports that are screened-out by DCF for failure to rise to the level of abuse or neglect, or failure to state a sufficiently grounded allegation of abuse and neglect.**

**Some Commission members expressed similar concerns that a definition in the statute that differed from DCF regulations could have unintended consequences on DCF’s responsibilities and the effect of those regulations. There was continued concern about the effectiveness of the inclusion of such a definition. Further, multiple concerns were expressed by Commission members as well as in the public comment period about the content of the proposed definition of “reasonable cause to believe” including an overriding concern that the inclusion of the word “suspicion” in the proposed definition lowered the reporting standard to the equivalent of a “gut feeling.”**

**Commission members’ discussions on this topic ended in significant disagreements about the proposals.**

## **Institutional Reporting**

The term “institutional reporting,” as used in this report and in parlance in the Commission’s work, refers to the current provision in MGL c. 119 §51A(a) that mandated reporters who are members of the staff of a medical or other public or private institution, school, or facility can notify the person in charge, or the designee of the person in charge, of that institution, school or facility, of allegations of abuse or neglect thereby transferring the responsibility to report those allegations to DCF, to that person in charge or the designee. For example, a school teacher who learns of allegations of abuse or neglect regarding the care of a student, may alert the principal of those allegations, and legally it becomes the principal’s obligation to file the 51A report rather than the teacher’s obligation.

Several concerns with the statute as it is currently written were discussed. The current statute allows for a permissive transfer of responsibility; once the transfer of responsibility occurs, there is no requirement that the mandated reporter ensure that a 51A report was filed by the person in charge or their designee. The statute does not address whether the person in charge or their designee is required to file a 51A report on behalf of the mandated reporter, or whether they have discretion in doing so once the responsibility to report has been transferred. There is also no indication in the statute whether the person in charge or their designee can add to, subtract from, or clarify the information provided from the mandated reporter when the report is made to DCF. There are multiple potential complications in this process regarding: whether a report is made to DCF, what information is reported, and how the information is reported.

**Current Statutory Language: MGL c. 119 § 51A(a)**

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.

Some Commission members relied on their own experiences and extensive knowledge of the child welfare landscape to note that it is not uncommon that mandated reporters will use this institutional reporting mechanism, believe that a report has been made by a person in charge or that person's designee, only to discover months later that a report was never made. Further, collective experiences showed that this process has been used at times as a method of instigating or facilitating inappropriate internal investigations conducted by institutions prior to the filing of a 51A. Such internal investigations<sup>36</sup> are inappropriate when they delay or prevent the filing of a 51A, when they taint the information to be investigated by DCF by exposing witnesses, and particularly children, to multiple interviews typically done by unskilled interviewers, and when they are used as a subversive mechanism to alter or color a certain narrative.

The filing of a 51A, though critical to the goal of child protection, is a time intensive activity. Many institutions, such as hospitals with emergency rooms and institutions with specific client to staff ratio requirements, are unable to allocate the time and resources of a mandated reporter to make the report as immediately as the statute requires and no institution wants to inadvertently delay the filing of the report due to such resource constraints. 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, and the Department of Youth Services are all supposed to be notified by DCF of supported investigations of reports of alleging abuse or neglect at facilities approved, owned, or operated by these agencies, or if DCF finds through their investigations that abuse or neglect was

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<sup>36</sup> Multidisciplinary teams that discuss whether a set of circumstances rises to the level of requiring a 51A report are not inappropriate investigations prior to filing and are excellent practice to ensure that the standard of a "reasonable cause to believe" is adequately met.

committed by an individual licensed by one of these state agencies (see MGL c. 119 §51B(1)).<sup>37</sup> No other institutions, such as individual schools, individual hospitals, or other facilities are routinely notified of supported allegations of abuse and neglect unless they are contacted by DCF in the course of the investigation of those allegations.

Institutions have an interest in knowing the concerning situations that may occur at that institution or regarding the institution's employed staff. Continuing to include an institutional reporting procedure in the statute would provide such institutions with a mechanism of ensuring that institutional management is aware of any concerns of child abuse and neglect under their purview. Institutions can then be empowered to take appropriate action when necessary, regardless of the type of action that DCF may take. Additionally, the state agencies notified by DCF under MGL c. 119 §51B(1) are only guaranteed notification once a DCF investigation has supported allegations of abuse and neglect, it does not provide state agencies with notification of 51A reports that are screened out by DCF,<sup>38</sup> which may be screened-out for reasons unrelated to the concerns underlying the report. Continuing to provide an institutional reporting procedure within the statute would ensure that institutions could act on concerns that are raised to DCF even if DCF determines that those concerns do not fit within its mandate.

The proposal before the Commission for a detailed procedure for institutional reporting contained the following elements:

- Institutions that wish to utilize an institutional reporting structure must do so through a formalized written protocol they create;
- Institutional reporting structures, once in place through a written protocol, will require that mandated reporters utilize the institutional process for reporting unless that mandated reporter has a reasonable fear of employer retaliation for filing or if the person in charge, or that person's designee for institutional reporting purposes, is the alleged perpetrator of the abuse or neglect;
- The person in charge or their designee for institutional reporting purposes will not have discretion to refuse to file a 51A report and will not be permitted to alter the information relayed by the mandated reporter;
- The person in charge or their designee for institutional reporting purposes will be permitted to report supplemental information to DCF at the time of the making of the report but such supplemental information must be identified by the person in charge or the designee as supplemental information; and
- The person in charge or their designee must provide the mandated reporter with written confirmation stating that they, the person in charge or their designee, have made the 51A report to DCF within 24 hours of that mandated reporter having instituted the use of the

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<sup>37</sup> The OCA also is notified under this provision but that is not relevant for the purposes of this institutional reporting discussion.

<sup>38</sup> Although not required by MGL c. 119 §51B, agencies may be notified of 51A filings by DCF pursuant to a Memorandum of Understanding with DCF or pursuant to the agency's own statute.

institutional reporting procedure. If the confirmation is not received, the mandated reporter must immediately file a report.

Public feedback on the continued inclusion of an institutional reporting scheme included concerns that institutional reporting interferes with the best practices for reporting which includes that the person with the most direct knowledge of the circumstances make the report. Further, public feedback noted that institutional reporting can stymie reporting because employees have been threatened or fired for seeking to report and the fear of such retaliation will prevent mandated reporters from reporting.

**Due to time constraints on the Commission’s work and the Commission’s commitment to produce this report in as much specificity as possible by June 30, 2021, the Commission did not have further discussions about institutional reporting after reviewing the responses from the public hearings.**

### Penalties

An informal working group of a minority of Commission members met with the OCA to assist the OCA in brainstorming possible changes to the penalties section of the 51A statute. The full Commission ultimately considered potential recommendations to alter the penalty section of the statute, but Commission members are not fully in agreement about whether changes to the penalties section of the statute would be beneficial.

### Monetary Penalties

The current penalty for failure allegations of child abuse and neglect pursuant to the mandated reporter law is to report is a monetary penalty of up to \$1,000. The monetary penalty of up to \$1,000 was considered a lot “more” money in 1973, than it is now. Some Commission members, in recognizing the disproportionate harm that financial penalties can cause persons of lower incomes, discussed updating the amount of money to better reflect a monetary penalty that could carry the seriousness of the violation to a monetary fine “not less than \$1,000” fine but “not more than a \$10,000.” Some Commission members discussed proportionate range increases for the separate penalty of failing to report child abuse or neglect that results in the serious bodily injury or death of a child which is currently set at \$5,000 to a range of \$5,000-\$50,000. A proportionate range increase was also discussed for failure to report deaths to the district attorney or Office of the Chief Medical Examiner as is required by MGL c. 119 §51A(e), and for the penalty attached to falsely reporting or frivolously reporting. Some Commission members feel comfortable that district attorneys and courts would appropriately exercise discretion in determining the fine amounts dependent on the severity of the conduct and the harm that such fines would inflict on specific income levels; other Commission members do not feel that such possible discretion remedies the ills of financial penalties.

Many public submissions to the public comment period suggested that the increase of potential monetary penalties would create a “culture of fear” among mandated reporters and would

increase frivolous reporting. Many of these submissions suggested that this increase in potential monetary penalties coupled with the proposals concerning definitions of abuse, neglect, and reasonable cause to believe would result in increased reporting based on “gut feelings” which are largely motivated by implicit biases. These proposals would therefore have a disproportionately negative impact on certain racial and ethnic groups. However, some support was expressed for having clear consequences for failing to report based on belief that there should be consequences for biased reporting.

**Due to time constraints on the Commission’s work and the Commission’s commitment to produce this report in as much specificity as possible by June 30, 2021, the Commission did not have further discussions about penalties after reviewing the responses from the public hearings.**

### Creation of a Licensure Penalty

Commission members discussed whether any violation of the 51A statute should carry a possible licensure penalty for persons who are mandated reporters and who are licensed or certified in their roles or professions. This proposed “penalty” would be a notification to the appropriate professional licensing authority of a claim that a mandated reporter violated 51A in some manner (most often by failing to report or falsely reporting). To be effective, relevant information supporting the allegation against the mandated reporter would need to be provided to the appropriate licensing authority upon request. A licensing complaint could become actionable if a licensing authority chooses to pursue such a complaint either under their current administrative licensing violation procedures or if they create new administration licensing violation procedures.

The Commission discussion considered but did not resolve the complications that may arise in ensuring that a licensing violation complaint process is effective, that it is enforceable, that it does not incur any concerns about double jeopardy or unequal treatment under the law, and the danger that proposed statutory language may unintentionally create specific burdens of proof. A threat to a person’s professional licensure for failing to report child abuse and neglect would likely have a greater deterrent effect than financial penalties that are often not pursued by district attorneys. Further, a potential threat to a person’s licensure is more closely tied to the offense in that the mandated reporter is required to report specifically because of their profession or role, their mandated reporting responsibility is part and parcel of their profession.

Again, submissions during the public comment period suggested that the statutory inclusion of a possible licensing penalty for violation of the statute would create a “culture of fear” among mandated reporters and would increase frivolous reporting. Reporting out of fear can be more susceptible to the effect of implicit biases. Public comments indicated that these proposals would therefore have a disproportionately negative impact on certain racial and ethnic groups.

However, some support was expressed for having clear consequences for failing to report based on belief that there should be consequences for biased reporting.

**Due to time constraints on the Commission’s work and the Commission’s commitment to produce this report in as much specificity as possible by June 30, 2021, the Commission did not have further discussions about the creation of a licensure penalty after reviewing the responses from the public hearings.**

### Prohibition on Employer Retaliation

The current statute prohibits employers from retaliating against mandated reporters who file 51As for filing those 51As or for testifying about abuse or neglect in any proceeding. The Commission discussion included reviews of statutes in other states and determined that Massachusetts is an outlier in extending this protection only to mandated reporters and not to all persons who file a child abuse or neglect report in good faith.

Commission members also discussed the reality of how such employer retaliation claims may be pursued by individuals. Many persons who may want to pursue a case against their employer may find such a case difficult to finance particularly when the expected outcome

is not a large monetary payout, but rather the possible equitable remedies of reinstatement of job position and back-pay. Some members of the Commission discussed that the model for these types of claims may be the Massachusetts Commission Against Discrimination (MCAD), where charges of retaliation are evaluated, filed, investigated, and heard. However, it does not appear that there is any state entity that is the obvious choice for such a system. If such a system were to be adopted, the capacity would have to be built and adequately funded.

**Current Statutory Language: MGL c. 119 §51A(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.

**MGL c. 119 §51B(o)**

No employer shall discharge, discriminate or retaliate against a 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 a person for treble damages, costs and attorney’s fees.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission’s discussions can be accurately summarized as:**

**It is reasonable to extend the prohibition on employer retaliation to any person who files a 51A report. Non-mandated reporters should be safe to report child maltreatment without risking their employment. The penalties already in the statute address frivolous or false reporting.**

### Civil and Criminal Immunity for Actions Taken in Accordance with 51A

Commission members discussed the portion of the statute that provides civil and criminal immunity to persons who report. Massachusetts, along with the majority of states, provides criminal and civil immunity for reports by mandated reporters of child abuse and neglect made in good faith, that were not “frivolous,” so long as the reporter themselves did not cause the abuse and/or neglect. The statute also protects non-mandated reporters so long as the report was made in “good faith” and the reporter did not perpetrate or inflict the abuse or neglect. The current statute accounts for situations where a non-mandated reporter, perhaps with limited knowledge of details, makes a “frivolous” report in good faith. There appeared to be no pressing need to discuss this section of the statute and Commission members did not discuss any potential recommendations.

### Training

The Commission is required by the enabling statute to explore current training requirements, the agencies and employers responsible for training, the frequency, scope, and effectiveness of training, best practices for training, and options for designating an agency responsible for overseeing the mandated reporter system including developing and monitoring training requirements.

**Current Statute: 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.

**Commission discussion focused on the need for a requirement that all mandated reporters be trained in their responsibilities. The Commission felt strongly that trainings should be evidence-based. Trainings should address the scope of mandated reporter responsibilities, the underlying reasons why mandated reporters fail to report, how to accurately identify abuse and neglect including through profession specific training, and best practices in reporting.**



**Some Commission members also expressed strong support for training that provided detailed information to mandated reporters about how to address concerns with families and children when those concerns do not rise to the level of requiring a maltreatment report. Such training could provide specific resources that mandated reporters can access to connect families with necessary support and services, such as the community-based Family Resource Centers. Commission members also discussed that training could help address concerns related to racial bias and disparities and cultural norms and differences, as well as help mandated reporters understand the difference between poverty and neglect and underlying assumptions about one versus the other.**

**Some Commission members also talked about a potential requirement of ongoing training requirements. Mandated reporters could be required to be trained approximately every two years for the duration of the time that they are a mandated reporter. Commission members discussed that licensure approval and licensure renewal for the professions listed in the statute as mandated reporters could require evidence of compliance with mandated reporter training. Some Commission members further considered that mandated training requirements could be less stringent for persons in volunteer positions.**

**In addition to the topics above some Commission members identified the following areas for further exploration for training or guidance topics:**

- Underage consensual sexual relationships and their relationship to abuse and neglect**
- Optional multidisciplinary team approaches to determining whether to file**
- A two-track reporting system for children who are born affected to substances**
- Assessing child abuse and neglect in emergency situations such as the Covid-19 pandemic**
- The particular considerations in cases of intimate partner violence**

The Commission believes that mandated reporters will benefit from knowing clearly, through training, the scope of their obligations. Commission members also believe that training may help address and reduce reporting that does not rise to the level of child abuse and neglect. Some members of the Commission, based on experience and expertise in the field of child welfare, believe that there are some fundamental reasons that mandated reporters fail to report: fear of retaliation for reporting, misunderstanding the standard of what type of conduct rises to the level of abuse or neglect, distrust of, or concerns about, DCF involvement with families or DCF's effectiveness in protecting children, and concerns that reporting will destroy the relationship between the family/child and the reporter. The fundamental reasons that mandated reporters fail to report could be substantively addressed through a training curriculum which could also include technical instruction on how to file a 51A and details of the DCF process regarding 51As.

The OCA has repeatedly identified itself as intending to pursue efforts to facilitate the creation of a training mechanism funded by the Commonwealth for all mandated reporters. The OCA has reached out to a member of the team that designed Pennsylvania's evidence-based training system in an effort to determine if a public-private partnership could provide mandated reporters with appropriate, varied, profession-specific, and data-driven training. The OCA has also stressed that for any training to be successful it must draw on DCF data about the content and quality of mandated reporting as seen through DCF's screening mechanism. Resources would have to be provided for DCF to be able to routinely produce this data in a manner that would support evidence-based training.

**Some members of the Commission have noted that it is critical that universal mandated reporter training be available and operational prior to any effective date of statutory changes to the list of mandated reporters which expands the list of mandated reporters.**

The Commission is very cognizant of the possible negative effect that changes to the statute might bring, particularly in the immediate aftermath of those changes, and that such negative effects may be mitigated if there is a thoughtful sequencing of available training and guidance prior to the operationalizing of mandated reporter responsibilities.

#### Disproportional Impact

DCF currently keeps data on the race and ethnicity of children brought to the agency's attention via a 51A- this is accomplished by the DCF screener asking the reporter this information. If a report is screened-in for investigation, DCF will confirm the race and ethnicity of the child and alleged perpetrator through their self-identification.

Current data shows that White children make up 60.4% of the population of children in Massachusetts and 34.3% of the number of children who are referred to DCF via a 51A. Hispanic/Latinx children make up 19.2% of the population of children in Massachusetts and account for 22.3% of the children referred to DCF via a 51A. Black children make up 8.9% of the population of children in Massachusetts and account for 10.4% of the children referred to DCF via a 51A. Asian children make up 7.1% of the population of children in Massachusetts and account for approximately 1.1% of the referrals to DCF via a 51A. Native American children make up approximately 0.2% of the population of children in Massachusetts and account for approximately 0.2% of the referrals to DCF via a 51A. Significantly, 27% of referrals to DCF via 51As do not list any race/ethnicity as that information is unknown, undetermined, not provided, or not recorded. This data was produced solely for the work of the Data Work Group and is presented in greater detail and with further context here:

<https://www.mass.gov/lists/data-work-group-meetings>

Although this data is not perfect in that 27% of referrals having no data on race/ethnicity is certainly statistically significant, and because this data records the perceived race/ethnicity of children by mandated reporters and does not necessarily match the actual race/ethnicity of children, it undoubtedly supports that children are brought to the attention of DCF in a manner

that is disproportionate to their numbers in Massachusetts society. Hispanic/Latinx and Black children are brought to DCF's attention more often than their proportion of the general population suggests, and White and Asian children are brought to DCF's attention less often than their proportion of the general population suggests. The Commission members discussed disproportionality at length throughout the life of the Commission including before and after the public comment period. Commission members also heard and read compelling public feedback during the public comment period about the disproportionate impact that mandated reporting has on Hispanic/Latinx and Black families.

Commission members have struggled with the limited amount of data that is available to help dive into the disproportionality discussion further. For example, several Commission members have expressed dismay that data is not yet available to map disproportionate reporting geographically or by mandated reporter type. The DCF Data Work Group chaired by Commissioner of DCF and the Child Advocate is addressing this issue.

The Commission received feedback during the public comment period that mandated reporters often confuse poverty with neglect. Commission members struggled to untangle the complex interplay of neglect and poverty. The Commission, recognizing the extraordinary complexity of these issues, strongly recommends that data and research be done into the interplay of poverty, neglect, neglect reporting, and disproportionality in Massachusetts.

**Noting that no Commission members voted on this issue, and this position cannot be attributed to any individual members of the Commission, the Commission's discussions can be accurately summarized as:**

**The Commission's discussions strongly support efforts to gather both qualitative and quantitative data that will improve the Commonwealth's understanding of the disproportionate impact of mandated reporting and child protection services involvement in the Commonwealth. Some members of the Commission support detailed data gathering that speaks not only to race and ethnicity, but to socioeconomic status, gender or perceived gender, sexual orientation, gender identity or expression, mental and physical disabilities, and other areas of disproportionate impact. Any such efforts should be resourced and supported appropriately to ensure that such efforts receive the prioritization and comprehensive approach necessary to deal with the complexity of the issues presented.**

The Commission considered a proposal that would require that mandated reporters identify the race and ethnicity of the child and alleged perpetrator at the time of the 51A report. This proposal may support DCF's efforts to analyze the rates of disproportionality in the child protection system at identified touchpoints. This data set may also be relevant to an evidence-based reporter training, to determine whether mandated reporter training can influence

disproportionality in the child protective system. Some mandated reporters are uncomfortable reporting race and ethnicity for other people though data on perceived race and ethnicity versus actual race and ethnicity may be relevant for purposes of investigating possible bias.

An alternative proposal was presented that would require that a mandated reporter include the race and ethnicity of the relevant child or alleged perpetrator *only if* the mandated reporter knows such information. Such information is not always available to mandated reporters and it was perceived by some to be unfair to require information under law that a person may not have reasonable access to. Mandated reporters may also feel uncomfortable reporting such information or guessing at such information if the information is unknown.

Some members of the Commission also discussed the possibility that DCF explore promising practices and create a pilot project to explore the effectiveness of a race-blind and gender-blind 51A screening process. In such a screening process the DCF employee who took the information in the report would not be part of the screening process. Other personnel from that area office would be presented with de-identified information in order to consider a screening decision, for example, screeners may be presented with the following scenario: mandated reporter observed significant bruising on four-year-old's ears and neck, bruising was yellowish in color indicating that the bruises may be several days old, four-year-old has not appeared to have any recent changes in mood, when casually questioned four-year-old indicated that four-year-old did not know the origin of the bruising. The screening committee would therefore not be privy to the name or gender of the child at the time of screening though in this scenario if there were pictures the screening committee would have to determine how best to evaluate such pictures in a race-blind and gender-blind manner.

**Due to time constraints on the Commission's work and the Commission's commitment to produce this report in as much specificity as possible by June 30, 2021, the Commission was unable to have further discussions about these proposals after reviewing the responses from the public hearings.**

### [Sharing of Medical Information](#)

The Commission understands that there is interest in the medical community to address the intersection between suspected abuse and neglect, state reporting law, and the implementation of the rules of the Health Insurance Portability and Accountability Act (HIPAA). Commission member discussion prior to the public comment period indicated that some Commission members failed to see a pressing need to address this issue and indicated that the importance of maintaining privacy of medical information and the required information sharing with DCF is currently well balanced. The public comment submission by Dr. Stephen Boos (available here: [Public Comment Period & Public Hearings | Mass.gov](#)) explained in detail the scope of the topic to be discussed. However, **due to time constraints on the Commission's work and the Commission's commitment to produce this report in as much specificity as possible by**

**June 30, 2021, the Commission was unable to have further discussions about this topic after reviewing the responses from the public hearings.**

### Other Topics Discussed by the Commission

The Commission had many in-depth and productive discussions about topics related to mandated reporting that do not fit squarely or entirely under the report sections herein. The Commission's discussions were more complex, thoughtful, and wide-ranging than could have been anticipated prior to the start of this Commission. The topic of the mandated reporting statute though seemingly relatively concrete, is so multifaceted that Commission members stress that this Commission could not realistically review and discuss the totality of the issues presented. However, the following conversations were substantial enough for inclusion in this final report.

Sequencing: As noted previously, if any statutory changes are made to the mandated reporter statute as a result of this report or for any other reason, the Legislature should consider the process challenges of implementation of those changes. Commission members have discussed that a process of education, including but not limited to mandated reporter training, should be available prior to any expansion of the list of mandated reporters. Members of the Commission are acutely aware that there may be unintended consequences of changing the mandated reporting statute both for the children and families who may be affected, but also for DCF which has the responsibility to screen such cases and could be overwhelmed by an influx of reports. Thoughtful sequencing of implementation will be complex due to the nature of the challenges of mandated reporting, but process challenges should not be a barrier to updating, improving, and streamlining the mandated reporting scheme in the Commonwealth.

One-Stop-Shop for Mandated Reporting: The Commission has discussed on numerous occasions that if the Commonwealth is going to pursue an evidence-based training model, that training model could be part of a larger effort to provide mandated reporters with more comprehensive on-demand information about mandated reporting. One potential approach is a website that hosts the evidence-based general training and profession specific trainings that can be taken upon completion of the general training; compiles all relevant state guidance on mandated reporting; provides resources for families who may be in need when situations do not rise to the level of abuse and neglect, answers FAQs about mandated reporting; provides links to current research about mandated reporting; and can provide data about reporting in the Commonwealth. Such a one-stop-shop would require a financial investment by the Commonwealth but may go an incredibly long way in standardizing reporting across the Commonwealth and publicizing best practices in the field.

Differential Response and Support for Family Resource Centers: Some members of the Commission discussed the complexities and possibilities of differential response systems. Some members of the Commission believe that further discussion about differential response approaches that provide a family with support and stabilization without the consequences of a

maltreatment report or investigation would be beneficial and should include more varied voices and representation at the table.

DCF's "substantiated for concern" cases meet the federal requirements of a differential response system and provides important oversight when there are concerns of abuse or neglect. However, the Commonwealth can take steps to prevent child abuse and neglect, as much as may be possible, by connecting families to resources prior to any concerns being raised about abuse or neglect or prior to a 51A. The Commission has expressed concern that needed services are not always immediately available and that services may not be available statewide, including therapy services and in-patient mental health services.

The Commission explored the work of the Family Resource Centers which are community-based, culturally competent programs that provide services to children and families and which are overseen by DCF. The Family Resource Centers 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 childcare and after school care, as well as physical products such a diapers, and so on. The extraordinary work of the Family Resources Centers are well documented in their reporting available here: : <https://www.mass.gov/doc/2019-family-resource-center-annual-report/download> and <https://www.mass.gov/doc/families-and-children-requiring-assistance-2020-annual-report/download>. Some members of the Commission feel strongly that such critical efforts at community service provision should be supported and expanded. Mandated reporters should not use 51A referrals as a means to try to assist families they believe to be in need when those mandated reporters do not have concerns for abuse or neglect.

Problematic Sexual Behaviors in Children: The Commission explored the issue of problematic sexual behavior in children under eighteen and children under twelve (the age of criminal responsibility). Allegations of sexual abuse when one child is considered a victim and one child is considered an alleged perpetrator are often screened-out of DCF involvement at the intake phase.<sup>39</sup> These cases trigger mandatory referrals by DCF staff to district attorneys' offices under DCF policy (including cases of serious physical and sexual abuse). The 2018 criminal justice reform law raised the age of criminal responsibility proceedings from age seven to age twelve. The district attorney's office will often decline to take any prosecutorial action on these cases due to the age of the child who is the alleged perpetrator and other possible complications of bringing such cases. However, referrals to the district attorney in these cases do result in some type of law enforcement involvement, even if it is just review of the case, and the creation of some type of record.

DCF may screen-in some of these cases as problematic sexual behaviors in children have been shown to often be a result of children's exposure to age-inappropriate information or age-

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<sup>39</sup> DCF regulations that identify that the definition of abuse or neglect for DCF purposes hinges on the alleged perpetrator being considered a "caretaker" and a child of such a young age would typically not be considered a "caretaker."

inappropriate experiences. However, if DCF did screen-in the case it would only be a case where DCF felt there was sufficient information to initiate a protective response, where the alleged perpetrator could be considered a caretaker.

Some of these cases may be referred to a Child Advocacy Center (CAC) which is currently piloting programs to address problematic sexual behaviors in children.<sup>40</sup> CACs provide a multidisciplinary team approach to child disclosures of allegations of sexual abuse, physical abuse, and witness to violence. The multidisciplinary team can include medical professionals, mental health professionals, law enforcement, DCF, and attorneys. CACs can be 501(c)(3) organizations (example: Bristol County), they can operate under the umbrella of a prosecutorial office or medical center, and though they can receive state funding, they are not subject to any uniform standards or procedures across the state. There is a National Network of Children's Advocacy Centers. Due to the variability of CAC models across the state, some CACs will accept cases of child sexual or physical abuse by an alleged child perpetrator and investigate those cases through a Sexual Assault Nurse Examiner (SANE) interview or other means, and some CACs in the state will not accept such cases. This results in variability of response to these situations depending on geography.

The Commission did not consider any proposals or next steps in regard to this complex situation but does recommend that this issue could be adequately explored in other contexts with varied and diverse voices at the table.

Data gathering at the institutional level: Out-of-home settings are referred to as “institutions” in this report and in common usage in the field of child protective services. Some Commission members have referenced DCF's data gathering about mandated reporting to be a valuable area of growth in this field along with the need to adequately support such data gathering. However, some members of the Commission have also discussed that individual institutions can and should do their own evaluations of mandated reporting within their institutions to better understand their reporting trends. For example, a hospital may find that one doctor instigates 70% more reports annually than any other doctor in the hospital and the hospital could do an evaluation to determine the cause of such reporting and the implications of that situation. This micro-level work may improve mandated reporting practices across the Commonwealth and can be more closely tied to the qualitative aspects of the data than may be possible at the statewide level.

The scope of neglect: Some members of the Commission struggled with understanding the broadness of the scope of possible neglect allegations, particularly in light of concerns expressed during the public comment period that poverty may be easily misinterpreted by mandated reporters as neglect. Commission members found it difficult to engage in factual conversations about this topic as there is no publicly available data that separates out types of neglect

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<sup>40</sup> The OCA in collaboration with the Children's Trust secured funding in the FY20 budget for an 18-month long pilot training program for Massachusetts CACs to address problematic sexual behaviors in children and youth. The pilot program is based on a University of Oklahoma training in Cognitive Behavioral Therapy for problematic sexual behaviors in children.

allegations made in Massachusetts. For example, neglect may be alleged when a single parent leaves their mature-for-their-age seven year old child home alone while they go to the pharmacy out of concern that bringing the child with them may expose them to COVID-19, and neglect may also be alleged when a parent dies of an opioid overdose in the same bed where their three year old child is sleeping and the child is not discovered until 24 hours later. In both of these examples, children are left alone to fend for themselves, but the circumstances are substantively worlds apart. Some members of the Commission believe it would be beneficial for there to be some effort to qualitatively investigate and study the types of cases that come to DCF's attention in hopes of better informing public discussions about child neglect.

## Conclusion

The Commission greatly appreciates the opportunity to study the Massachusetts mandated reporter system and hold the substantive conversations outlined in this report. The extent of the issues, considerations, and complexities addressed by the Commission are available in full on the Mandated Reporter website ([Mandated Reporter Commission | Mass.gov](https://www.mass.gov/info-details/mandated-reporter-commission)). The Commission believes there is much work to be done in this field of study- including the need to gather relevant data in Massachusetts about the issues and concerns raised in this report.

The work of the Commission members has been extraordinary. The time, attention, and measured approach of the Commission members in their review of the topics and in their conversations in meetings has set the stage for progress on these issues in the Commonwealth. Commission members have shown themselves to be adept at having conversations about reasonable disagreements- which is the foundation of good policy making.

The Commission's decision to seek public comment on the proposals before it greatly enhanced the work of the Commission and influenced this final report in a multitude of ways. The Commission approached all feedback with intellectual honesty and rigor.

The Office of the Child Advocate submits this report as a description of the work of the Mandated Reporter Commission and of possible next steps for the Commonwealth in this critical public discussion. Any changes to the mandated reporter system must focus on the needs of children but that the needs of children are inextricably tied to the needs of the family. The Commission hopes that the work described herein meets the charge set by the Legislature.



# Appendix A

## REVIEWED PROPOSALS

The language below was never voted on by the Commission and is not a reflection of any individual Commission member’s position on any issue or topic addressed by this report. The language reflects the topics discussed in this report and are not recommendations. As required by the Mandatory Reporter Commission statute, the OCA seeks to give content to the discussions of the Commission by detailing the language of the proposals considered by the Commission. The OCA submits this appendix in its capacity as Chair and facilitator of the Mandated Reporter Commission.

<b>INTRODUCTION</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
“Mandated Reporter”, a person who is: a physician, medical intern . . .	“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.  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.

<b>MEDICAL PROVIDERS</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
(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 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,

<b>MENTAL HEALTH PROVIDERS</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
(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, drug and alcoholism counselor or addiction counselor, <sup>41</sup> psychiatrist, psychiatric nurse, social worker, any student or trainee providing mental health services under supervision

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<sup>41</sup> “drug and alcoholism counselor” continues to be the title of the licensure but DPH notes that such roles are also encompassed in the term “addiction counselor” see [LADC and Substance Use Disorder Treatment Program Licensing | Mass.gov](https://www.mass.gov/info-details/ladc-and-substance-use-disorder-treatment-program-licensing)

**EDUCATION PROVIDERS**

<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
<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, licensior of the department of early education and care or school attendance officer</p>	<p>(a) early education: licensed childcare worker or childcare worker subject to licensure, 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: any school personnel who have direct supervisory responsibilities for students, 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</p> <p>(c) higher education<sup>42</sup>: any and all higher education staff and faculty that interact with, teach, or coach children in any program designed for children or designed to accommodate children younger than 18 years old including any academic classes or extracurricular programming, personnel of any organization or entity operating any program on higher-education property that interact with, teach, or coach children in any program designed for children or designed to accommodate children younger than 18 years old</p>

<sup>42</sup> “higher education” as defined by the MA Department of Higher Education Board

<b>PUBLIC SAFETY OFFICIALS</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
(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 a probation officer, assistant probation officer, family services officer, clerk-magistrate, assistant clerk-magistrate, assistant registrar, and judicial case manager, a parole officer, firefighter, police officers including campus and state police officers, law enforcement officer, correctional officer, or animal control officer

<b>SOCIAL SERVICES PROVIDERS</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
(ii) ...child care worker, person paid to care for or work with a child in any public or private facility, or home program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licenser of the department of early education and care or school attendance officer	(v) social services providers: childcare worker who exempt from licensure under Chapter 15D, unlicensed childcare worker who receives funded in whole or in part by the Commonwealth, 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 who is licensed to provide or is contracted by the Commonwealth to provide residential or in-home services to a child, 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 programing to families, licenser of the department of early education and care, social worker, foster parent
(iii) ...social worker, foster parent...	

<b>MENTORS</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
None	(vi) mentors: person paid by an organization or entity to provide mentorship to any person

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

<b>RECREATIONAL SERVICE PROVIDERS</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
None	(viii) recreational service providers: any personnel of a public, private, or religious organization providing recreational activities or services on a regular basis that are specifically designed for children and require direct supervision of children, including day camps, summer camps, youth programs, sports organizations, and scouting groups, personnel of a public library

**51B Investigation: Agency Notification**

**CURRENT STATUTORY LANGUAGE**

**PROPOSAL TO THE COMMISSION**

(1) 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

(1) If the department [receives a report under 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...

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.

**INSTITUTIONAL REPORTING**

**CURRENT STATUTORY LANGUAGE**

**PROPOSAL TO THE COMMISSION**

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

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, immediately and in writing, in the manner required by subsection (a). 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 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 subsection (a) and 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 to have been dutifully made 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.

### LICENSING VIOLATIONS

#### CURRENT STATUTORY LANGUAGE

#### PROPOSAL TO THE COMMISSION

None

Upon the determination of any law enforcement entity, state investigatory agency, or licensing body, that a mandated reporter ~~or licensed institution~~ violated this section, that entity, agency, or body, shall notify the appropriate 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-six of section 7 of chapter 4. Nothing in this subsection shall interfere with the obligations of the Department under section 51B(1) of chapter 119.

Nothing in this section shall limit a licensing authority from enforcing any licensing

	provisions related to the reporting of child abuse and neglect.
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<b>EMPLOYER RETALIATION</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
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.	No employer shall discharge, discriminate or retaliate against any person 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.
No employer shall discharge, discriminate or retaliate against a 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 a person for treble damages, costs and attorney’s fees.	No employer shall discharge, discriminate or retaliate against any person 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 a person for treble damages, costs and attorney’s fees.

<b>RACE AND ETHNICITY REPORTING</b>	
<b>CURRENT STATUTORY LANGUAGE</b>	<b>PROPOSAL TO THE COMMISSION</b>
A report filed under this section [51A] 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	A report filed under this section [51A] shall contain: (i) the names and addresses <b>and race and ethnicity</b> 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)

<p>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.</p>	<p>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 and <b>race and ethnicity</b> of the person or persons responsible for the neglect or injuries; and (x) other information required by the department.</p>
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# Appendix B

## Standards of Reporting Overview

PLEASE NOTE: All information in this addendum is taken from the Child Welfare Information Gateway. The document providing this information is current as of 2019. The OCA has excerpted the information this document both in terms of topics that are covered, and in terms of relevant section of cited statutes. Please see <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda/> for a full overview of the source document that includes additional relevant information.

The Child Welfare Information Gateway is a service provide by the Children’s Bureau of the Administration for Children and Families within the US Department of Health and Human Services.

Below you will find the state-by-state (plus Washington, DC and Puerto Rico) statutory standards for making a mandated report of child abuse and neglect. The OCA has bolded sections of the statutes that are particularly relevant to the discussion of the proposal discussed by the Commission which includes an obligation for mandated reporters to report when they have “...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...”

<b>State and Citation</b>	<b>Text- standards for making a report</b>
Alabama: Ala. Code § 26-14-3	A report must be made when the child is known or suspected of being a victim of abuse or neglect.
Alaska: Alaska Stat. §§ 47.17.020	A report must be made when, in the performance of his or her occupational or appointed duties, a reporter has reasonable cause to suspect that a child has suffered harm as a result of abuse or neglect.
Arizona: Rev. Stat. § 13-3620	A report is required when a person reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense, or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature.
Arkansas: Ann. Code § 12-18-402	An individual listed as a mandatory reporter shall immediately notify the child abuse hotline in the following circumstances: • He or she has reasonable cause to suspect that a child has been subjected to maltreatment, has died as a result of maltreatment, or died suddenly and unexpectedly. • <b>He or she observes a child being subjected to conditions or circumstances that would reasonably result in maltreatment</b> (emphasis added)
California: Penal Code §§ 11166; 11165.7	A mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the reporter knows or reasonably suspects is the victim of abuse or neglect.
Colorado: Rev. Stat. § 19-3-304	• A mandated reporter has reasonable cause to know or suspect child abuse or neglect. • <b>A reporter has observed a child being subjected to circumstances or conditions</b>

	<b>that would reasonably result in abuse or neglect.</b> (emphasis added)
Connecticut: Gen. Stat. § 17a-101a	A report is required when, in the ordinary course of his or her employment or profession, a reporter has reasonable cause to suspect or believe the following of any child under age 18: • Has been abused or neglected • Has had a nonaccidental physical injury or an injury that is at variance with the history given of the injury • <b>Is placed at imminent risk of serious harm</b> (emphasis added)
Delaware: Ann. Code Tit. 16, § 903	A report is required when the reporter knows or in good faith suspects child abuse or neglect.
District of Columbia: Ann. Code § 4-1321.02	A report is required when any of the following apply: • A mandated reporter knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been or is <b>in immediate danger of being</b> a mentally or physically abused or neglected child. • A health professional, law enforcement officer, or humane officer, except an undercover officer whose identity or investigation might be jeopardized, has reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to exposure to drug-related activity. • A mandated reporter knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been, <b>or is in immediate danger of being</b> , the victim of sexual abuse or attempted sexual abuse; the child was assisted, supported, caused, encouraged, commanded, enabled, induced, facilitated, or permitted to become a prostitute; the child has an injury caused by a bullet; or the child has an injury caused by a knife or other sharp object that was caused by

	<p>other than accidental means. • A licensed health professional who in his or her own professional or official capacity knows that a child under 12 months of age is diagnosed as having a fetal alcohol spectrum disorder. (emphasis added)</p>
Florida: Ann. Stat. § 39.201	<p>A report is required when either of the following apply: • A person knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected. • A person knows that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.</p>
Georgia: Ann. Code §§ 19-7-5; 16-12-100	<p>A report is required when either of the following apply: • A reporter has reasonable cause to believe that child abuse has occurred.</p>
Hawaii: Rev. Stat. § 350-1.1	<p>A report is required when, in his or her professional or official capacity, a reporter has reason to believe that child abuse or neglect has occurred <b>or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future.</b> (emphasis added)</p>
Idaho: Ann. Code § 16-1605	<p>A report is required when either of the following apply: • A person has reason to believe that a child has been abused, abandoned, or neglected. • <b>A person observes a child being subjected to conditions or circumstances that would reasonably result in abuse, abandonment, or neglect.</b> (emphasis added)</p>
Illinois: Comp. Stat. Ch. 325, § 5/4; Ch. 720, § 5/11-20.2	<p>A report is required when any of the following apply: • A reporter has reasonable cause to believe that a child known to him or her in his or her professional capacity may be abused or neglected.</p>
Indiana: Ann. Code § 31-33-5-1	<p>In addition to any other duty to report arising under this article, an individual who has reason to believe that a child is a victim of</p>

	child abuse or neglect shall make a report as required by this article.
Iowa: Ann. Stat. §§ 232.69; 728.14	A report is required when either of the following apply: • A reporter, in the scope of his or her professional practice or employment responsibilities, reasonably believes that a child has been abused.
Kansas: Ann. Stat. § 38-2223	A report is required when a reporter has reason to suspect that a child has been harmed as a result of physical, mental, or emotional abuse or neglect or sexual abuse.
Kentucky: Rev. Stat. § 620.030	A report is required when a person knows or has reasonable cause to believe that a child is dependent, neglected, or abused.
Louisiana: Children’s Code Art. 609; 610	A report is required when any of the following apply: • A reporter has cause to believe that a child’s physical or mental health or welfare is endangered as a result of abuse or neglect.
Maine: Rev. Stat. Tit. 22, §§ 4011-A; 4011-B	A report is required when any of the following apply: • The person knows or has reasonable cause to suspect that a child is <b>or is likely to be</b> abused or neglected or that a suspicious death has occurred. (emphasis added)
Maryland: Fam. Law §§ 5-704; 5-705	A mandatory reporter is required to report when, acting in a professional capacity, the person has reason to believe that a child has been subjected to abuse or neglect. Other persons shall report when they have reason to believe that a child has been subjected to abuse or neglect.
Michigan: Comp. Laws § 722.623	A report is required when a reporter has reasonable cause to suspect child abuse or neglect.
Minnesota: Ann. Stat. § 626.556, Subd. 3	A report is required when a reporter knows or has reason to believe that a child is being neglected or sexually or physically abused or has been neglected or physically or sexually abused within the preceding 3 years.



Mississippi: Ann. Code § 43-21-353	A report is required when a person has reasonable cause to suspect that a child is abused or neglected.
Missouri: Rev. Stat. §§ 210.115; 573.215	A report is required under the following circumstances: • A reporter has reasonable cause to suspect that a child has been subjected to abuse or neglect. • <b>A reporter observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.</b> (emphasis added)
Montana: Ann. Code § 41-3-201	A report is required when either of the following apply: • A reporter knows or has reasonable cause to suspect, as a result of information received in his or her professional or official capacity, that a child is abused or neglected.
Nebraska: Rev. Stat. § 28-711	A report is required when either of the following apply: • A reporter has reasonable cause to believe that a child has been subjected to abuse or neglect. • <b>A reporter observes a child being subjected to conditions or circumstances that reasonably would result in abuse or neglect.</b> (emphasis added)
Nevada: Rev. Stat. § 432B.220	A report is required when any of the following apply: • A reporter, in his or her professional capacity, knows or has reason to believe that a child is abused or neglected. • A reporter has reasonable cause to believe that a child has died as a result of abuse or neglect.
New Hampshire: Rev. Stat. § 169-C:29	A report is required when a person has reason to suspect that a child has been abused or neglected.
New Jersey: Ann. Stat. § 9:6-8.10	A report is required when a person has reasonable cause to believe that a child has been subjected to abuse or neglect.
New Mexico: Ann. Stat. § 32A-4-3	A report is required when a person knows or has a reasonable suspicion that a child is abused or neglected.

New York: Soc. Serv. Law § 413	A report is required when the reporter has reasonable cause to suspect that either of the following is true: • A child coming before him or her in his or her professional or official capacity is an abused or maltreated child. • The parent, guardian, custodian, or other person legally responsible for the child comes before the reporter and states from personal knowledge facts, conditions, or circumstances that, if correct, would render the child an abused or maltreated child.
North Carolina: Gen. Stat. § 7B-301	A report is required when a reporter has cause to suspect that any juvenile is abused, neglected, or dependent or has died as the result of maltreatment.
North Dakota: Cent. Code § 50-25.1-03	A report is required when a reporter has knowledge of or reasonable cause to suspect that a child is abused or neglected, if the knowledge or suspicion is derived from information received by that person in that person’s official or professional capacity.
Ohio: Rev. Code § 2151.421	A report is required when a mandated person is acting in an official or professional capacity and knows or suspects that a child under age 18 or a person under age 21 with a developmental disability or physical impairment has suffered or <b>faces a threat of suffering</b> any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child. (emphasis added)
Oklahoma: Ann. Stat. Tit. 10A, § 1-2-101; Tit. 21, § 1021.4	A report is required when any of the following apply: • Any person has reason to believe that a child under age 18 is a victim of abuse or neglect
Oregon: Rev. Stat. § 419B.010	A report is required when any public or private official has reasonable cause to believe that any child with whom the official comes in contact has suffered abuse.

<p>Pennsylvania: Cons. Stat. Tit. 23, § 6311</p>	<p>A mandated reporter shall make a report of suspected child abuse if he or she has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances: • The mandated reporter comes into contact with the child in the course of employment, occupation, and practice of a profession or through a regularly scheduled program, activity, or service. • The mandated reporter is directly responsible for the care, supervision, guidance, or training of the child or is affiliated with an agency, institution, organization, school, regularly established church or religious organization, or other entity that is directly responsible for the care, supervision, guidance, or training of the child. • A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse. • An individual age 14 or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.</p> <p>Nothing in this section shall require a child to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse. Nothing in this section shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.</p>
<p><b>Puerto Rico: Ann. Laws Tit. 8, § 446</b></p>	<p>A report is required when either of the following apply: • A person, in his or her professional capacity and in the performance of his or her functions, learns or comes to suspect that a minor is, has been, <b>or is at risk of becoming</b> a victim of abuse. (emphasis added)</p>
<p>Rhode Island: Gen. Laws §§ 40-11-3(a); 40-11-6</p>	<p>A report is required when the following apply: • A person has reasonable cause to</p>

	know or suspect that a child has been abused or neglected.
South Carolina: Ann. Code § 63-7-310	A report is required when a reporter, in his or her professional capacity, receives information that gives him or her reason to believe that a child <b>has been or may be</b> abused or neglected. (emphasis added)
South Dakota: Ann. Laws § 26-8A-3	A report is required when a reporter has reasonable cause to suspect that a child has been abused or neglected.
Tennessee: Ann. Code §§ 37-1-403; 37-1-605	A report is required when any of the following apply: • A person has knowledge that a child has been harmed by abuse or neglect.
Texas: Fam. Code § 261.101	A report is required when a person has cause to believe that a child has been adversely affected by abuse or neglect.
Utah: Ann. Code § 62A-4a-403	A report is required when a person has reason to believe that a child has been subjected to abuse or neglect <b>or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.</b> (emphasis added)
Vermont: Ann. Stat. Tit. 33, § 4913	A report is required when a mandated reporter reasonably suspects the abuse or neglect of a child.
Virginia: Ann. Code § 63.2-1509	A report is required when, in his or her professional or official capacity, a reporter has reason to suspect that a child is abused or neglected.
Washington: Rev. Code § 26.44.030	A report is required when any of the following apply: • A reporter has reasonable cause to believe that a child has suffered abuse or neglect.
West Virginia: Ann. Code § 49-2-803	Any mandatory reporter who has reasonable cause to suspect that a child is neglected or abused <b>or observes the child being subjected to conditions that are likely to result in abuse or neglect,</b> including sexual abuse or sexual assault, shall report the

	<p>circumstances to the Department of Health and Human Resources. (emphasis added)</p>
<p>Wisconsin: Ann. Stat. § 48.981</p>	<p>A mandatory reporter is required to report when he or she has reasonable cause to suspect that a child seen by him or her in the course of professional duties has been abused or neglected or when he or she has reason to believe that a child seen by him or her in the course of professional duties <b>has been threatened with abuse or neglect and that abuse or neglect of the child will occur.</b> (emphasis added)</p>
<p>Wyoming: Ann. Stat. §§ 14-3-205; 14-3-206</p>	<p>A report is required when any of the following apply: • A person knows or has reasonable cause to believe or suspect that a child has been abused or neglected. • <b>A person observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.</b> (emphasis added)</p>