

The Massachusetts Mandated Reporting Bill

Overview of the Law

Massachusetts has required for many years that persons in certain enumerated occupations ("mandated reporters") file reports of child abuse or neglect with the Massachusetts Department of Social Services ("DSS"). Mass. Gen. L. c. 119, § 51A. A report is required when the mandated reporter has "reasonable cause to believe" that a child under 18 years of age is "suffering physical or emotional injury resulting from abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare including sexual abuse, or from neglect, including malnutrition," Reports of abuse or neglect must be filed immediately. A failure to file a report may be punished by a fine of not more than one thousand dollars. In addition, any person who knowingly files a report of child abuse that is frivolous may be punished by a fine of not more than one thousand dollars.

Under section 51A, a mandated reporter is protected from liability in any civil or criminal action. However, if a person who is not a mandated reporter makes a report under the statute, s/he may also be protected from liability, but only if the report was made in good faith. The burden of establishing good faith is on the reporter.

In addition, a mandated reporter is protected from discharge, discrimination or retaliation for a report filed in good faith or testimony in a proceeding involving child abuse or neglect.

The Clergy Amendments

Effective May 3, 2002, the statute was amended to add the following to the list of mandated reporters: "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 duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, or 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."

The only exception from reporting is information "solely gained in a confession or similarly confidential communication in other religious faiths."

Although all current incidents must be reported immediately, the amendment added a provision requiring that reports be made for past incidents of abuse or neglect within thirty (30) days of the amendment's initial passage. In other words, in the event that a minister or other individual who is required to report due to the amendment has "reasonable cause to believe that a child under the age of 18 years is or was being injured," a report must be filed with DSS if the child remains under 18 years of age, or with the District Attorney and the alleged victim if the child is now over 18.

Mandated Reporters:

- **Clergy:** "clergy member, ordained or licensed minister, leader of any church or religious body". *We understand this to mean a member of clergy or person acting in that role. In Unitarian Universalist practice we believe that this category includes all clergy and the primary leader(s) in a lay led society.*
- **Persons Performing a Pastoral Role:** "person performing official duties on behalf of a church or religious body that are recognized as duties of...clergy, ordained or licensed minister, or leader of any church or religious body." *How this criteria applies in our tradition is not entirely clear. It may include persons taking on pastoral roles, such as, but not limited to, persons who are part of a lay ministry program making hospital calls.*
- **Employees Working with Children:** "person employed by a church or religious body to supervised, educate, coach, train or counsel a child on a regular basis." *We understand this would involve paid religious educators, paid children or youth group advisors, or any other paid staff working with youth on a regular basis.*

Child Abuse: The standard for reporting is "a reasonable cause to believe" that a child under age 18 is suffering or has suffered from abuse or neglect. *See the Department of Social Services website listed below for more explanations of these definitions. A recent Massachusetts Appeals Court decision held that a report of abuse must be based on "a presentment of facts that create a suspicion of abuse" and that when the initial precipitating fact giving rise to a suspicion of abuse is only a claim of abuse by the alleged victim that "something more ... [but] not very much more" must be present to support this claim under the "reasonable basis to believe" standard. "[A]ssertions that are impossible, utterly fantastic, plainly fabricated, or made only in jest" do not need to be reported.*

Exemptions: Clergy are exempted from reporting only when the information about abuse or neglect is received solely in the confessional or a similarly confidential communication. *Communications with Unitarian Universalist clergy are not confidential for purposes of this bill simply because someone wishes or agrees that the communication will be confidential or because of where the communication occurs. However, communications that are confessional in nature that seek confidential spiritual guidance may be exempt from reporting.*

Retroactive Provisions: The law requires the reporting of both current and past incidents that meet the "reasonable suspicion" standard. Past incidents of abuse must be reported within 30 days of when the law was signed (May 3). *The requirement to report must be met even if, for example the suspected or known perpetrator is deceased. By our count, reports should be filed by June 3, 2002, the first business day 30 days after passage. If this deadline cannot be satisfied, then reports should be made as soon thereafter as humanly possible.*

Reports: If the suspected victim is currently under 18 years of age, the report must be made to the Massachusetts Department of Social Service (DSS) immediately upon discovery. For past incidents, if the victim is still under 18 years, then the report should be filed with DSS. If, however, the person who you believe was abused as a child is now over 18, the report must be made to the District Attorney of the county in which the suspected violation occurred. Notice of filing must be given to the alleged victim. *Although not required by law, you may wish to provide notice of the report to the person against whom the charge is being filed.*

The following official resources and materials should help you to understand and respond to the law appropriately:

1. The abuse and neglect reporting statute before the amendment may be found at <http://www.state.ma.us/legis/laws/mgl/119%2D51a.htm>
2. The new act itself may be found at <http://www.state.ma.us/legis/laws/seslaw02/sl020107.htm>
3. A 1997 explanation of the Mass General Law Chapter 119, Section 51A, which was amended by the new law to include those indicated above, is available at <http://www.doe.mass.edu/mailings/1997/cm050797.pdf> (in [PDF format](#)).
4. The August 2001 Appeals Court case that explains the scope of "reasonable cause" abuse reporting may be found at <http://www.masslaw.com/macoa/1117701.htm>

A compendium of the provisions of mandated reporting bills in the 30 or so U.S. states that have them is available at <http://www.calib.com/nccanch/pubs/stats01/mandrep.pdf> (requires [Adobe Acrobat](#))

We hope that the information provided above will be helpful to you as you take the steps necessary to review your situation and to comply with the provisions of the law. We once again urge you to seek legal counsel to assist you.

The new mandated reporting law is complex, but we deeply hope that it will result in more protection for all children and help all of us develop a deeper understanding to the commitments we have made to each other in building and sustaining our religious communities.