

HOUSE No. 1439

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin J. Kuros

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act expanding the definition of mandated reporters and updating the fines and consequences for failing to report abuse.

PETITION OF:

NAME:

Kevin J. Kuros

DISTRICT/ADDRESS:

8th Worcester

HOUSE No. 1439

By Mr. Kuros of Uxbridge, a petition (accompanied by bill, House, No. 1439) of Kevin J. Kuros relative to expanding the definition of mandated reporters and updating the fines and consequences for failing to report abuse. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1454 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act expanding the definition of mandated reporters and updating the fines and consequences for failing to report abuse.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 21 of chapter 119 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking, in lines 50 and 51, the words “or (vi) the child
3 advocate” and inserting in place thereof the following: (vi) the child advocate; or (vii) any person
4 or persons who resides in Massachusetts, and is over 18 years or age, who witnesses or witnesses
5 signs of child abuse, including sexual abuse, shall immediately communicate such condition to
6 the local or state police.

7 SECTION 2. Section 51A of chapter of chapter 119 of the General Laws, as appearing in
8 the 2010 Official Edition, is hereby amended by striking the section in its entirety, and inserting
9 in place thereof the following:--

10 Section 51A. (a) A mandated reporter who, has reasonable cause to believe that a child is
11 suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes
12 harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii)
13 neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall
14 immediately communicate with the local or state police orally and, within 48 hours, shall file a
15 written report with the local or state police detailing the suspected abuse or neglect; or (iv) being
16 a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of
17 chapter 233.

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19 If a mandated reporter is a member of the staff of a medical or other public or private
20 institution, school or facility, the mandated reporter may instead notify the person or designated
21 agent in charge of such institution, school or facility who shall become responsible for notifying
22 the local or state police in the manner required by this section.

23 (b) For the purpose of reporting under this section, hospital personnel may have
24 photographs taken of the areas of trauma visible on the child without the consent of the child's
25 parents or guardians. These photographs or copies thereof shall be sent to the local or state police
26 with the report.

27 If hospital personnel collect physical evidence of abuse or neglect of the child, the local
28 district attorney, local law enforcement authorities, and the department shall be immediately
29 notified. The physical evidence shall be processed immediately so that the local or state police
30 may make an informed determination within the time limits in section 51B. If there is a delay in
31 processing, the local or state police shall seek a waiver under subsection (d) of section 51B.

32 (c) Notwithstanding subsection (g), whoever violates this section shall be punished by a
33 fine of not less than (i) \$1,000 and not more than \$5,000 for the first offense, (ii) a fine of not
34 less than \$5,000 and not more than \$10,000, and/or imprisonment in a house of correction for not
35 more than 6 months. Whoever knowingly and willfully files a frivolous report of child abuse or
36 neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the first
37 offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of not
38 more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for not
39 more than 2 1/2 years and a fine of not more than \$2,000 for the third and subsequent offenses.

40 Any mandated reporter who has knowledge of child abuse or neglect that resulted in
41 serious bodily injury to or death of a child and willfully fails to report such abuse or neglect shall
42 be punished by a fine of up to \$10,000 or imprisonment in the house of correction for not more
43 than 2 1/2 years or by both such fine and imprisonment; and, upon a guilty finding or a
44 continuance without a finding, the court shall notify any appropriate professional licensing
45 authority of the mandated reporter's violation of this paragraph.

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

54 the injuries; (ix) the identity of the person or persons responsible for the neglect or injuries; and
55 (x) other information required by the local or state police.

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

61 (f) Any person may file a report under this section if that person has reasonable cause to
62 believe that a child is suffering from or has died as a result of abuse or neglect.

63 (g) No mandated reporter shall be liable in any civil or criminal action for filing a report
64 under this section or for contacting local or state law enforcement authorities or the child
65 advocate, if the report or contact was made in good faith, was not frivolous, and the reporter did
66 not cause the abuse or neglect. No other person filing a report under this section shall be liable in
67 any civil or criminal action by reason of the report if it was made in good faith and if that person
68 did not perpetrate or inflict the reported abuse or cause the reported neglect. Any person filing a
69 report under this section may be liable in a civil or criminal action if the local or state police or a
70 district attorney determines that the person filing the report may have perpetrated or inflicted the
71 abuse or caused the neglect.

72 (h) No employer shall discharge, discriminate or retaliate against a mandated reporter
73 who, in good faith, files a report under this section, testifies or is about to testify in any
74 proceeding involving child abuse or neglect. Any employer who discharges, discriminates or

75 retaliates against that mandated reporter shall be liable to the mandated reporter for treble
76 damages, costs and attorney's fees.

77 (i) Within 30 days of receiving a report from a mandated reporter or from the local or
78 state police, the department shall notify the mandated reporter, in writing, the services that the
79 department intends to provide to the child or the child's family.

80 (j) Any privilege relating to confidential communications, established by sections 135 to
81 135B, inclusive, of chapter 112 or by sections 20A and 20B of chapter 233, shall not prohibit the
82 filing of a report under this section or a care and protection petition under section 24, except that
83 a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body
84 or accredited Christian Science practitioner need not report information solely gained in a
85 confession or similarly confidential communication in other religious faiths. Nothing in the
86 general laws shall modify or limit the duty of a priest, rabbi, clergy member, ordained or licensed
87 minister, leader of a church or religious body or accredited Christian Science practitioner to
88 report suspected child abuse or neglect under this section when the priest, rabbi, clergy member,
89 ordained or licensed minister, leader of a church or religious body or accredited Christian
90 Science practitioner is acting in some other capacity that would otherwise make him a mandated
91 reporter.

92 (k) Training shall be made available to all mandated reporters and members of the
93 community using either digital means, and or in a classroom setting. The department shall
94 provide links on its web site to training and education hosted on Protect Mass Children's web
95 site, which shall include and address recognizing and reporting of suspected child abuse or

- 96 neglect, child sexual assault, sex offender profile training, healthy sexual behavioral training,
- 97 requirements of mandated reporters, and how to report incidents of abuse.