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April 21, 2021

Mandated Reporter Commission
C/O Office of the Child Advocate
One Ashburton Place, 5th Floor
Boston, MA 02108

Re: Public Comment on Proposals Presented to the Commission

Submitted via email

Dear Commissioners:

We are aware of many concerns with the Report Seeking Public Comment: Proposals Presented to the Commission (“the Report”), including the proposed expanded definition of abuse and neglect, the proposed expanded list of mandated reporters, and the proposed lower standard triggering a 51A report. We echo concerns raised by the Massachusetts Law Reform Institute and others that these changes will exacerbate racial and wealth disparities in family separation. We write separately to urge you to strengthen the recommendations on Reporting Responsibility (p. 23 of the Report) and raise concerns about the negative ways that pregnant individuals will be impacted by the statutory changes proposed in the Report.

We appreciate the Commission’s preliminary examination of “a proposal to create a dual-track reporting system.” Such a system would require the submission of abuse and neglect reports regarding substance-exposed newborns only when providers have an actual concern of abuse and neglect. In all other instances involving substance-exposed newborns, providers would transmit de-identified information to DCF for inclusion in federal reports. (Reporting Responsibility, subsection C, p. 23).

We strongly support such a dual-track reporting system for the reasons described below, and we recommend that the Commission adopt H.221, *An Act Supporting Families*, as proposed language.¹ The bill would create a dual track system by eliminating “physical dependence upon an addictive drug at birth” from the definition of per se abuse and neglect. It would clarify the state’s obligation to collect de-identified data about substance-exposed infants without requiring reporters to file a 51A report based on substance exposure when there are no concerns about abuse or neglect.

Adopting a dual-track reporting system will bring Massachusetts in line with our New England neighbors. Connecticut, Maine, New Hampshire, and Vermont do not include prenatal

¹ H.221 is attached at the end of this testimony.

substance exposure in their definitions of child abuse or neglect. And while Rhode Island requires reporting when an infant has withdrawal symptoms resulting from prenatal exposure, Rhode Island does not require reporting simply on the basis that an infant was prenatally exposed to medication for opioid use disorder (MOUD). Massachusetts is the *only* state in New England that requires healthcare providers to report a person to DCF for suspected abuse or neglect when they give birth to an infant who was prenatally exposed to an “addictive drug,” including medications prescribed for addiction treatment.

There are strong public safety reasons to amend this practice. By requiring 51A reports for the mere fact of prenatal substance exposure, the existing Massachusetts law stigmatizes pregnant people with substance use disorders. It puts families through stress -- which can hurt the pregnancy -- at the very moment that families should be focused on nurturing a healthy pregnancy and bonding with their infant. Even when a 51A report does not result in allegations of child abuse or neglect by DCF, the screening process itself is intrusive and harmful. DCF often speaks to family members, who in some instances may not have previously known that the pregnant person was in recovery, and requires people to release their addiction treatment information. At the same time that the American College of Obstetricians and Gynecologists *recommends* treatment with MOUD for pregnant people with opioid use disorder, the existing Massachusetts law tells pregnant people that they will be reported to DCF if they receive such treatment. These conflicting messages can create insurmountable hurdles to entering into and continuing treatment, putting both the pregnant person and the fetus in danger. Indeed, leading medical groups like the American Medical Association and the American Academy of Pediatrics have long opposed laws that punish women who seek treatment precisely because such laws discourage women from seeking necessary care in the first place. The Commission should propose language to end this harmful practice here in Massachusetts.

We are further concerned that the proposed expanded list of mandated reporters combined with the proposed requirement that reporters file a 51A report if they suspect mere *risk* of future harm resulting from “physical dependence upon an addictive drug at birth” may result in reports filed *during pregnancy*. The practical effect of this policy would be to drive pregnant individuals further away from treatment and prenatal care.

Finally, we cannot ignore the reality that whatever harms flow to families from increased state intrusion will be borne disproportionately by children and parents of color. As the Report notes, “children of color are over-represented at all stages of involvement with Child Protective Services, including the initial reporting stage.” (p. 9) In addition, because of structural inequities and racism in healthcare, Black women in Massachusetts experience twice the rate of maternal mortality than white women. Significantly expanding the list of mandated reporters while lowering the threshold to trigger 51A reports and continuing to require reports for all substance-exposed infants will only exacerbate these disparities.

We urge the Commission to recommend a dual-track system for substance-exposed infants and adopt H.221 as proposed language to accomplish this goal in the final report.

HOUSE No. 221

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

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 to support families.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/18/2021</i>

HOUSE No. 221

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 221) of Sean Garballey relative to infants with physical dependence upon an addictive drug at birth. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to support families.

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

SECTION 1. Section 51A of chapter 119 of the general laws is hereby amended in subsection (a) in the first paragraph by striking out the words:-

(iii) physical dependence upon an addictive drug at birth,

SECTION 2. Said section 51A is hereby further amended by inserting in subsection (a) after the second paragraph a new subsection:

(a ½) Separate from the reporting requirements under subsection (a), health care providers involved in the delivery or care of infants affected by in-utero substance exposure or a Fetal Alcohol Spectrum disorder, shall notify the Department of such condition in such infants as required under 42 U.S.C. § 1506a(b)(2)(B)(ii). Such notification shall not include the names or identifying information of the parents or the infant, shall not constitute a report that any parent has abused or neglected a child, and shall not trigger or require prosecution for any illegal action.