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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: Proposals Submitted to the Mandated Reporter Commission

Dear Commission Members:

These comments are submitted by the Committee for Public Counsel Services, the public defender agency for Massachusetts. As you may know, CPCS provides legal representation to people who are indigent in all cases in which there is a constitutional or statutory right to counsel. With respect to matters involving children, CPCS provides representation to children and indigent parents and guardians in care and protection, child requiring assistance, guardianship-of-a-minor, and private adoption matters in thousands of cases every year. In view of this experience, we are intimately familiar with the issues that the Commission is addressing and their consequences for children, parents, and guardians and for the communities in which they live. We also acknowledge the importance of the issues that the Commission is seeking to address. Like Commission members, CPCS is committed to promoting safety, permanence, and well-being for children, and we appreciate the time and thought that Commission members have invested in their work.

We support, with one caveat,<sup>1</sup> the proposal that would require reporters to identify the race and ethnicity of the child who is the subject of the report and the child's parent(s) or other caregivers. In addition, we commend the Commission for considering the idea of allowing victims of domestic violence, sexual assault, or human trafficking to obtain support without fear that the person supporting them must report their suspicions regarding the victim's children to the government. Indeed, this holistic approach to families should be considered in other contexts.

We also strongly support the proposal to clarify that the state's mandated reporter law does not apply to social workers, physical and mental health professionals, and other experts retained by attorneys or employed by legal service providers when those experts are assisting attorneys in their representation of clients. In courts throughout the state, social workers and other experts play a critical role in ensuring that clients are provided effective representation in

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<sup>1</sup> The language on page 42 of the report would require reporting "race or ethnicity," if known. It should actually require the reporting of race *and* ethnicity, if known.

cases in which there is a constitutional or statutory right to counsel. Treating experts retained by attorneys as mandated reporters would undermine the representation by the client's legal team and call into question the Commonwealth's commitment to the right to counsel. Therefore, we urge the Commission to endorse the proposal set out on p. 18 of its report.

Beyond those proposals, however, we have deep concerns about others that the Commission is considering. Some of the proposals will exacerbate racial and ethnic disparities in our child welfare system, which the Commission itself acknowledges to be a problem. Others will further downplay the need for community engagement, inquiry, assessment, and reflective judgment and further rely on unfounded suspicions. The proposals will also increase the number of unfounded 51A reports. Even if screened out or eventually found unsupported, those reports will damage children's education, bar parents from accessing needed employment, and prevent family members from caring for one another as foster parents or third party custodians. Meanwhile, there is no evidence that the proposals will make children in the Commonwealth any more safe.

Poor families and communities, and particularly families and communities of color, are especially vulnerable to reports of child neglect,<sup>2</sup> and poverty is often a lens that distorts evaluations of safety and well-being for children and unjustifiably magnifies the estimation of risk. While poor families can benefit from the provision of assistance and services, the MRC Report proposals would have the effect of undermining families and alienating them from the web of service providers. When this alienation occurs, it is less likely that families will reach out for the help they need to keep their children healthy, connected, and safe. The MRC Report proposals would exacerbate a cycle of decline without reasonable evidence to show this would further the safety of children.

Finally, the proposals must be considered in the concrete circumstances of the present condition of the Department of Children and Families, and not in terms of an idealized version. As the Office for Child Advocate makes clear in the recent Investigative Report regarding the tragic death of David Almond, the Department of Children and Families has either failed or faltered in fulfilling its duty and mandate to "protect children and preserve families." OCA Investigative Report, p. 47. As the OCA report wisely observed, "the decisions made by and recommended to courts by child protective workers carry life-long consequences for the children and their families." *Id.* Obviously, this includes decisions to investigate and open cases on families. Sadly, DCF's dysfunctions are long-standing, as illustrated by prior reports of the Child Advocate and others. It is undisputed that the Mandated Reporter Commission suggestions will increase the number of reports and families involved with the present DCF; in fact, that appears to be the goal. A proposal creating a system that would flood a struggling DCF with unfounded reports will make it harder for DCF to identify and respond adequately to those situations where a child is actually at risk of abuse or neglect. To recommend that more children and families be reported and exposed to DCF when it is persistently *and* presently unable to function

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<sup>2</sup> See <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222> (addressing concerns about well-being of children requires partnership with communities that know and understand the needs of their families and children and support rather than judging those who are poor, labeling that vulnerability as neglect, and pathologizing them).

appropriately is ill-advised and may actually result in fewer children being protected, either in the community or while in DCF's care.

While the Legislature sought a “review and report on existing mandated reporter laws and regulations and ... recommendations on how to improve the response to, and prevention of, child abuse and neglect,”<sup>3</sup> it did not demand that the Commission recommend “systematic changes” in the state’s mandated reporter system. MRC Report, p. 4. And it certainly did not ask for an overhaul that would overwhelm an already troubled state agency or one that would exacerbate racial injustice in the state’s child welfare system. Regardless of the motivation underlying them, we urge the Commission to reject proposals that would increase the number of mandated reports, other than those specifically called for by the Legislature.

CPCS submits the following comments regarding specific proposals.

**1. Mandated Reporter Definition, p. 11; Medical Providers, p. 12; Mental Health Providers, p. 13**

The proposed changes to the definition of “mandated reporter” will overwhelm the child welfare system. (Perhaps it is obvious, but it is still worth noting. Not expanding the definition of mandated reporter does not mean that a person cannot report if they observe abuse or neglect of a child.) An influx of unfounded reports by an enlarged group of mandated reporters would decrease the ability of DCF to respond promptly and effectively when really needed. The added mandated reporters include many categories of people who have no experience in child welfare and no ability to evaluate what might be a case of neglect and what is simply the result of poverty. As noted in our introductory comments, this proposal creates a circumstance that supports and increases racial bias and poverty resulting in unwarranted reports of abuse and neglect.

**2. Public Safety Officials, pp. 15-16**

The Public Safety Official proposal expands mandated reporter responsibilities to include all court personnel interacting with children or youth, with the exception of judges. While probation officers, clerk-magistrates, parole officers were already designated as mandated reporters, this list includes the overly broad descriptors of “all court personnel interacting with children,” “sworn law enforcement officials,” and “private security personnel,” which go far beyond those who would regularly work with children or recognize abuse or neglect. In fact, this change could require every clerk, probation officer and court officer in a Juvenile Court proceeding to file 51A’s based on the testimony they have heard in court or read in DCF documents being filed. This creates an unwieldy requirement that serves no legitimate purpose. Instead, it will flood the system and burden the court staff with unnecessary reporting obligations.

The additional language of “sworn law enforcement” is also a problematic addition, as its inclusion raises even more questions than it answers. Does “sworn law enforcement” just swallow the already included police and state police officers listed in the proposal? For example,

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<sup>3</sup> Ch. 124 of Acts of 2019, s. 12(a).

sworn law enforcement officers includes uniformed and undercover police and detectives. It also may be defined to include Department of Homeland Security officers, US Border Patrol agents, Immigration Inspectors, and Customs Inspectors. The need for inviting more reporters without clear links to the care of children defies logic or reasonable evidence to show this would further the safety of the community and children.

The additional language of “private security personnel” is another problematic addition, as it can include private bodyguards and privately contracted individuals responsible for the security of property. There is no correlation to their work or interaction with children or youth that would require such employees to have reporter responsibilities. In fact, many in these role do not even wear identifiable uniforms that would indicate they are resources of public safety. As the private contractual relationship denotes, they do not have a public safety function.

### **3. Social Services Providers, pp. 17-18**

The Social Service Providers category of mandated reporters currently refers to the child- and family-related social service providers who interact with children in their employed positions. The proposed changes to that category, however, are overbroad and unclear:

- Who is a “person providing residential services to a child”? Does it include the owner of a short-term home rental when a family with a child stays there?
- Who is a “person providing in-home services to a child”? Does it include a family friend who shows a 16-year-old how to change the oil in a car?
- Who are “personnel paid by any person or entity to provide any service to a person within a home setting”? Other than the payment requirement, how is this different from the previous category?

In addition, this proposal illustrates a lack of appreciation for ad hoc community supports. Many families needing support in caring for children look to their community and own families for informal assistance such as babysitting or collaborative child care through neighbors. In many instances this is the backbone of family and community support that families routinely engage in to help them in the care for their children. This practice puts more members of the community in contact with one another and in fact builds community, which enhances children’s well-being and keeps them safe. This proposal would essentially shackle any adult babysitter or informal caretaker within the community with a duty of surveillance and require them to file reports on the family. Not only would this erode the level of trust and community partnership inherent in these important relationships, it would also leave many families of limited financial means who use informal caretaking assistance without access to their normal support systems. With the continued fear and distrust for Department-related mandated reporters, people in the community of friends or family that would normally volunteer to render such support may become reluctant to do so if they themselves would have to perform the reporter duties of policing other families.

This social service worker definition is further stretched to now include the addition of personnel of DPH, DEEC, DESE, DYS, DCF, DMH, DDS, DTA, DHCD, OCA, personnel of any type of shelter funded or partially-funded by the Commonwealth, and personnel of any community service program funded in whole or in part by the Commonwealth that provides assistance or programming for families. The broad brush approach of listing all personnel in these

agencies would now include those doing administrative work, and without any relation to the care of children. Any employee of these agencies, regardless of whether they see or interact directly with a family, responsible for reporting anything they may hear through their intake processes, and can be based on remotely known information. To understand how problematic that is, consider a parent trying to overcome poverty-related issues who walks into the office of the Department of Transitional Assistance seeking support benefits. In their communication with the case worker, they may talk about their inability to provide food for their child. This case worker would then be mandated to file a report on this family. Further, other staff doing data entry at that DTA office is now obligated to file duplicate reports. In a parent's effort to help maintain their family, that parent may now be encumbered with the fear of child removal when they were initially attempting to find material support for the care of their child. This is an obvious barrier to people getting assistance and places the family at risk of an unwarranted investigation – and even, possibly, the removal of a child.

The expansion of mandated reporters in this section also lists information technologists, computer or electronics technicians, and film or photo image processors. These listings foist upon persons with little to no connections to child caretaking or child welfare the responsibility of reporting on their clients. Nothing in this provision tailors the power and responsibility of mandated reporting by people in these positions to those of child care related circumstances. Employees in these roles with a suspicion or gut feeling are turned into mandated reporters that relay what they see to the state while they are interacting with people in their private spaces. Again, suspicions and gut feelings are too often distorted by racial and class biases that will harm children.

#### **4. Mentors, p. 18**

If mentors are mandated reporters, it will remove an important support system for children in and out of DCF care. Sometimes, a mentor is the most stable person in their lives. This has huge supportive effect, and this trusting relationship helps to keep them safe. If a child is in foster care, this is even more important. As noted in the National Mentoring Resource Center Resource Review from 9/2017: “Available research suggests that both natural and program-based mentoring for children in foster care (across a range of ages and mentoring formats) can have positive impacts on mental health, educational functioning and attainment, peer relationships, placement outcomes, and life satisfaction.” Knowing that their mentor automatically has to break this trust, without the opportunity first to use their relationship to keep them safe, not only would the child be less supported, they would be more at risk and therefore, less safe.

#### **5. Reporting Responsibility, pp. 23-24**

As written, the continued inclusion of “physical dependence upon addictive drug at birth” as a basis to file an abuse or neglect report risks creates a risk that mothers who are prescribed medication would be subject to mandated reporting. It is imperative to separate this language from the basis of abuse/neglect reports and create a separate category of reporting for the purpose of federal requirements. Ideally, this would be managed by another state agency, such as the Department of Public Health.

## **6. Definition of Neglect, p. 24**

Of all the problematic proposals being considered, the proposed changes in the definition of “neglect” may be the most troubling. The report does not include any evidence to support the radical proposal to eliminate consideration of the financial situation of a parent or other caregiver – even though it could result in a catastrophic increase in the number of 51A reports. What’s more, given the disparities in wealth and income in the Commonwealth for Black, Hispanic, and Native American families, the proposal will result in disproportionate increase in the number of reports in their communities. The proposed language does not include exceptions to the definition and leaves too much discretion to the reporter to make a determination, with no consideration of the reliability of the reporter’s judgment or any evidence that this will help children.

More often than not, the economic status of a child’s family determines when they will come to the attention of the government. As caretakers struggle to maintain a standard of living for their children, their poverty alone should not amount to a determination that a child has been neglected and that a caretaker has been neglectful. While acknowledging the issue of poverty, the Commission’s report offers the rationale (p. 26) that mandated reporters should report situations based on what the child is experiencing. This is a fraught construct as there is no explanation or any discussion of how the reporter might have reliable access to what the child is in fact experiencing rather than the class- and race-based assumptions of the mandated reporter and no evidence whatsoever that this change will help keep children safe.

Eliminating the exception for “handicapping condition” (sic) would result in very similar problems. We know that DCF itself has a history of discrimination against parents with disabilities.<sup>4</sup> Are mandated reporters likely to be any better at recognizing what constitutes minimally adequate parenting by a person with a disability? Or will they report them to DCF based on their own biases about parents with a disability?

## **7. Reasonable Cause to Believe, p. 28**

The proposal to embed in the statutes a “suspicion” standard as being the threshold for a required report (in the face of severe penalties for failing to do so) is problematic in at least two ways. First, the report states that the definition of “reasonable cause to believe” is intended to make the phrase more accessible to lay people. But the proposed definition appears to replace the requirement that a child be:

suffering, or at substantial risk of suffering, an injury to their physical, mental, or emotional health or condition resulting from: (i) abuse inflicted upon the child; (ii) neglect; or if a child is (iii) physical dependence upon an addictive drug at birth; (iv) being a sexually exploited child; or (v) being a human trafficking victim ...

(with those terms defined elsewhere). In its place would be a requirement that a child merely be “maltreated.” That will make it *more likely* that lay people will be confused.

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<sup>4</sup> See, e.g., [https://www.ada.gov/mdcf\\_sa.html](https://www.ada.gov/mdcf_sa.html).

More importantly, the Legislature should not embed in the statutes the exceedingly low standard of “suspicion.” “Suspicion” is not a real standard. It is simply too ambiguous. It would require that *any thought of the possibility of neglect or abuse* be reported. It eliminates any aspect of judgment or assessment that is an essential element of rational consideration. It directs the reporter to not consider the possibility that he or she may have misunderstood, may have misjudged, or simply be wrong.

And again, bias will clearly affect people’s suspicions. Children whose parents are not White or who have a disability will be far more likely be subject to suspicion-driven reporting.

## **8. Institutional Reporting, p. 28**

In the past, the reporting structure in institutions such as schools, public/private institutions and medical institutions allowed for one more pair of eyes within the institution to decide if a concern about a child’s well-being rises to the level of a mandated report. As with many proposals in this report, the changes regarding institutional reporting eliminate the option of clinical judgment and thoughtful review. This inability for reflection through the requirement that any report that comes to a supervisor must be reported (either by the reporter or the supervisor) does not increase child safety. Instead, it will lead to more baseless reports being filed, taking up valuable DCF resources at the expense of more complete and more timely assessments of more significant reports. And, yet again, it eliminates an opportunity to account for implicit and explicit biases.

## **9. Penalties, pp. 31-34**

The MRC proposals will increase the pressure to report even when the reporter knows that other steps could be taken to reduce the risk of harm to a child. Acting under pressure to report without understanding, discernment or judgment, while compounding this pressure with a heightened concern for self-interest, creates an incentive to over-report. It does not promote the clear thinking necessary to avoid reporting based on racial and class bias.

Acknowledging that false claims and reports are harmful to particular persons and the child welfare system, Massachusetts has penalties against any person who files a report known to be false to prevent malicious or intentional reporting of cases that are not founded.<sup>5</sup> If it is already acknowledged that filing of an unfounded report is harmful enough to penalize a person who files one, how does that jibe with the proposal to now compel more reports with the increased threat of fines, prison, and loss of licenses?

## **10. Mandated Reporter Training and Volunteer Training, pp. 36-42**

We applaud the Commission for attempting to address training issues, as requested by the Legislature. We believe that training must be thoughtful, comprehensive and provided by qualified experts. Without further details or a training curriculum, it is difficult to know whether the proposed trainings will meet these standards in practice. These trainings must provide mandated reporters with the information and skills necessary to engage in critical thinking to

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<sup>5</sup> Ch. 119, § 51A.

identify when abuse and neglect may have occurred.<sup>6</sup> We are not suggesting that mandated reporters investigate whether neglect or abuse has occurred; however, it is imperative that mandated reporters give thought before filing a 51A if the concern does not truly meet the relevant standard. The Student Wellbeing Guidance published by DESE in 2020 gives a general outline to the sort of critical thinking questions that school staff should engage in prior to filing with DCF or the court.<sup>7</sup> This guidance asks school staff to examine whether they have explored other opportunities to support students in the context of school engagement, truancy and absenteeism. We encourage the Commission to consider an approach like as it envisions future training requirements.

On the other hand, as Prof. Roberts and Ms. Benzan noted in their testimony on April 17, even the best training cannot undo the structural racism that is built into the child welfare system and that would be exacerbated by many of these proposals. The questions posed by their testimony regarding the efficacy of training should give the Commission even more reason to be cautious when considering proposals that would radically expand the state's mandated reporter system.

## **Conclusion**

The issues that the Commission is seeking to address are of the highest importance, and we appreciate the time and thought that Commission members have invested in this work. But we ask the Commission to focus more intently on the impact that a greatly expanded family regulation system would have on the Commonwealth, especially in communities of color. Families experience serious emotional harm when subjected to an investigation where their family, parenting and other lifestyle circumstances are put under the microscope. They may have to endure multiple visits by a DCF caseworker, have their home and parenting critiqued, and lose privacy when the DCF caseworker talks to physicians, therapists, teachers, and others with whom family members are connected. Investigations change how a family's providers perceive them and introduce suspicion and distrust into previously collaborative and trusting relationships. These inquiries can create or enhance new biases for those working with the family. All of this is done under the shadow of the fact that DCF can remove the children from the parents. Although many parents may not know the intricacies of how DCF works, they certainly know that they can take their children away. Even unsupported 51As are entered into DCF's central registry and remain there for one year. This report can be accessed by DCF or DCF could allow other state agencies to access this report. As a result, the existence of an unsupported 51A could put a parent's employment, volunteer opportunity or adoption at risk to name a few. All these serve to further destabilize families and communities.

The approach that many of the proposals have of broadening the regulation of families is offered without reasonable evidence that the proposed changes promote safety and well-being for

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<sup>6</sup> We refer here to testimony submitted by the Massachusetts Child Welfare Coalition and the Children's Law Support Project, which discusses training developed by Benjamin Levi, MD, PhD, called iLookout. This training addresses critical thinking skills necessary to distinguish between abuse and neglect and poverty and disability.

<sup>7</sup>Department of Elementary and Secondary Education, "Promoting Student Engagement, Learning, Wellbeing and Safety During Remote and Hybrid Learning," Winter 2020, available at <https://www.doe.mass.edu/covid19/mental-health.html>



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children. For this reason we ask that they be rejected. The approach that many of the proposals have of relying on suspicions is too fraught with racial bias in a system already saturated with racial bias. For this reason we ask that they be rejected. The approach in many of the proposals results in conflating poverty and neglect and will further alienate families and service providers in struggling communities. For this reason we ask that they be rejected. The approach of many of the proposals will result in further flooding a struggling child welfare system. For this reason we ask that they be rejected. Lastly, the approach of many of the proposals assumes an idealized version of the Department of Children and Families rather than the reality of the present system that too frequently and persistently is unable to make good decisions about the welfare of children and families at the beginning, middle and conclusion of the cases. To funnel more children and families into this system is counterintuitive. For this reason, we ask that they be rejected.

Thank you for your consideration of our comments. Please feel free to contact us if you have any questions about them.

Sincerely,



Michael Dsida