

MINUTES – NOT YET APPROVED BY THE MANDATED REPORTER COMMISSION
Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Thursday December 3, 2020
2:00pm-4:00pm

Meeting held virtually via WebEx pursuant to the Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, s. 20 signed by Governor Baker on March 12, 2020.

Mandated Reporter Commission Members Present:

Maria Mossaides – Child Advocate - Chair
Officer Elizabeth Fleming – Waltham School Resource Officer
Andrew Rome – General Counsel, DCF
Anne Conners – Associate Commissioner for Field Investigations, EEC
Katherine Ginnis – Sr. Director of Child, Youth & Family Policy Program, EOHHS
Angela Brooks – Dir. Child and Youth Protection Unit, AGO
DA Marian Ryan – Middlesex District Attorney, MDAA
Nina Marchese – Director of Approved Special Education Schools, DESE
Spencer Lord – Special Counsel, EOPSS
Lisa Hewitt – Chief Counsel, CPCS
Ann Reale – Undersecretary of Education, EOE
John High – Chief of Staff, DPL

OCA Staff:

Cristine Goldman
Alix Rivière

Members of the Public

Stephanie Rodriguez-Ruiz – Staff Attorney, Children's Law Center of MA
Elizabeth McIntyre – Greater Boston Legal Services
Samantha Staelens, LCSW – Case Manager for the Children's Advocacy Center of Franklin County and North Quabbin, Inc.
Kate Nemens, Esq. – Mental Health Legal Advisors Committee
Tyler Marovitz – Mental Health Legal Advisors Committee
Lisa Rosenfeld – Counsel Jt. Comm. on Children, Families and Persons with Disabilities, Office of Rep. Kay Khan
Susan Elsen – Mass Law Reform Inst.
Emily Paradise – Children's Law Center of MA
Michael Ryan – Committee for Public Counsel Services
Jodi Guinn – Staff Attorney, Justice Center of Southeast Massachusetts
Lauren Koster – Skadden Fellow, Children's Law Center of MA
Katharine Folger – Middlesex DA/CAC

MRC= Mandated Reporter Commission

OCA= Office of the Child Advocate

DCF= Department of Children and Families

CPCS= Committee for Public Counsel Services

Meeting Commenced: 2:04pm

Welcome and Introductions:

Maria Mossaides, Chair of the Mandated Reporter Commission, called the meeting to order and reviewed the agenda. She thanked members of the public for coming to the meeting and invited them to introduce themselves via the chat function. Cristine Goldman, the OCA's Director of Policy and Legal Counsel, explained that members of the public can participate in the meeting only through using the chat function unless the Chair of the Commission approves verbal participation. Members of the Commission participate verbally and can participate via the chat function.

Review and Vote of the Minutes

Formal discussion was opened on the November 10 and November 17, 2020 meeting minutes. No Commission member had any topics for discussion. A roll-call vote was held and the following members approved the minutes: Maria Mossaides, Ann Reale, Ann Conners, Lisa Hewitt, Elizabeth Fleming, Angela Brooks, Andrew Rome, Katherine Ginnis, Nina Marchese, Spencer Lord, John High. The November 10 & November 17, 2020 meeting minutes were approved.

Extension of the Mandated Reporter Commission

Chair of the Commission Maria Mossaides began the meeting by noting that this is the next to last meeting before the December 31, 2020 deadline to submit a report to the legislature. She noted the unprecedented task that this Commission faced in reviewing a law that had not been systematically revised in decades. Chair Mossaides noted that several issues that had not initially been identified as requiring review had arisen during the Commission's detailed discussion of the statute. Those issues require continued work to determine whether the Commission will be making recommendations to the Legislature regarding those issues. Further, some issues the Commission was tasked to review proved to be more complex than initially thought.

Chair Mossaides also noted, as has been noted at previous meetings, that the Commission feels it would benefit from input from experts and public voices and due to the complications of Covid-19 and the tight timeline that the Commission has been following, the Commission has been unable to gather public input on recommendations that the Commission is considering. Chair Mossaides notes that the Commission received a letter from the Children's Law Support Project that the Commission has not had time to discuss.

Given the scope of the issues the Commission has to address in order to craft new legislation on mandated reporting, Chair Mossaides has come to the conclusion that it would be premature for the Commission to submit recommendations to the Legislature on December 31, 2020. Chair Mossaides noted that the Commission's task is of such great consequence to the children and families in the Commonwealth, that the Commission must make recommendations that are not rushed and that take a comprehensive approach to changing the statute. Chair Mossaides proposed to Commission members that the Commission decide whether to submit a Status Report to the Legislature by the December 31, 2020 deadline. The intention of this Status Report would be to inform the Legislature of the work the Commission has done to achieve its mandate, highlight the areas where the Commission has reached consensus, and inform the Legislature of the work that

the Commission still feels is needed in order to make full detailed recommendations to the Legislature. Further, Chair Mossaides noted that the Commission had been hoping that the Legislature would provide the Commission with a statutory extension of the Commission's deadline but this has not happened yet. Chair Mossaides asked all Commission members to weigh in as to whether they would be willing to continue the work of the Commission to June 30, 2021 and make full recommendations, including draft statutory language, to the Legislature at that time even if there is no statutory extension of the Commission's work.

Chair Mossaides then opened the two questions up to Commission member response: 1.) the proposal of a submission of a Status Report to the Legislature by December 31, 2020 and 2.) continuing the work of the Commission to June 31, 2021. Several Commission Members spoke in response to the questions and voiced strong approval for Chair Mossaides' proposals. Several members made it clear that they felt it was their duty to thoroughly examine every issue and its possible consequences for children and families of the Commonwealth, as well as hear more testimony from experts and families who have been in contact with the child welfare system. No Commission member spoke in opposition to these proposals.

Ms. Lisa Rosenfeld, Counsel Jt. Comm. on Children, Families and Persons with Disabilities, Office of Rep. Kay Khan, was recognized by Chair Mossaides for verbal participation in the meeting. She expressed that Representative Khan, Co-Chair of the Joint Committee, appreciates the approach of the Mandated Reporter Commission and also appreciates the complexity of the task before the Commission. She indicated that Representative Khan would support the Commission's decision to do what is necessary to achieve the goal of detailed recommendations to the Legislature. Further, Ms. Rosenfeld indicated that Senator Chang-Diaz, Co-chair of the Joint Committee, would also support the Commission in its decision to take the steps necessary to provide the Legislature with the detailed recommendations needed to consider statutory changes to the mandated reporter law.

Ms. Mossaides then explained that Ms. Goldman will prepare a draft Status Report for Commission review and develop a Commission work plan for 2021.

Presentation of Document Titled "Voting Document"

Although the document sent to members is titled "Voting Document," the Commission did not vote on any proposed recommendations at this meeting. This document was used by the Commission to discuss the proposed recommendations, determine where there is consensus, and discuss proposals for revised drafting of recommended language for future Commission review.

Proposed text of Mandated Reporter Definition

Members reviewed the statutory language proposal regarding the definition of "mandated reporter." Members discussed that the proposal includes recommended language to address interjurisdictional issues expected to come up in the context of remote provision of services, updated job titles, and expansion of mandated reporters to individuals that are in positions of authority or trust with children. Members also reviewed the recommended minimum statutory age for mandated reporters and the inclusion of volunteers. The Commission was reminded that that institutions and programs, such as summer camps or peer-to-peer programs, should develop a process for underage employees or volunteers to report internally—and that this provision should be clearly noted in the report's description of this section.

Additionally, members discussed the use of the term “other youth-serving individuals” as a category within the mandated reporter definition section. While some argued that perhaps a better term could include the phrase “direct service,” it was explained that “youth-serving” was broad enough to include adults who might not be providing direct services, but are nonetheless in contact with children, such as administrators. Additionally, “youth-serving” is a term used by many organizations, was a term set forth by the Massachusetts Legislative Task Force on the Prevention of Child Sexual Abuse in its critical work, and is also used in relation to programs and funds from the federal government. It was also noted that the category titles in the mandated reporter definition are not operative, only the professions and roles listed under the categories are operative for purposes of the definition.

Members also noted that the current document states, on the first line (page 1), that a mandated reporter is a person “over the age of eighteen,” and should be amended to include persons eighteen years old and older. Additionally, they discussed the use of the phrase “sworn law enforcement officer” on page 2 and wondered if this included staff from the Attorney General’s office. Commission members agreed that there needs to be more discussion on who is included in the statute under the term “sworn law enforcement officer” and whether there are any unintended groups included under that description.

Commission members then reviewed the possible exemption of persons working on legal defense teams from the definition of mandated reporter. Ms. Hewitt from CPCS indicated that CPCS would like the opportunity to address the Commission again regarding this topic and the Commission noted that with agreement to continue work until June 2021 additional time could be devoted to this discussion.

Finally, it was mentioned that the current document might not be easy to read for lay people looking for clarification on their responsibilities to report child abuse and neglect. The Commission noted that this document concerns draft legislative language, but the Status Report and Final Report to the Legislature will include narrative sections that explain what these sections mean as well as the thoughts and intentions behind them. Additionally, the Commission agreed that there may be a need to change some of the statutory language to be more reader-friendly and this lens could be applied to drafting after technical changes are agreed upon. Commission members discussed that the definition of mandated reporter used to be in §51A but was moved to §21- the Commission could consider moving the definition back to §51A.

Proposed Redrafting of Institutional Reporting Process

Next, the Commission examined the proposed redrafting of institutional reporting process. Commission members noted that this is another area where the law needs to make a link to licensing. For example, DPH’s hospital licensing requirements should require a policy that meets the statutory requirements for institutional reporting. The Commission also noted that the discussion concerning DESE and licensing will be different than for licensing by other agencies. One member suggested that it would be helpful to have a clear understanding of what the oversight could be, with a focus on technical assistance and communication.

Proposed Training Language

Next, the Commission examined the language regarding training. The document examined by the Commission lays out two proposals, which the Commission discussed. The OCA clarified that the

training proposal with a training “entity” was not intended to be read as a body within EOHHS, but rather an entity approved by EOHHS (it could be within EOHHS or could be something like a public-private partnership approved by EOHHS).

Members inquired whether it is legal to have different training standards for people who are licensed and unlicensed. It was noted that the standards are the same, but that the ability to exercise enforcement through a licensing violation that is different.

The Commission noted that the current law does not highlight standards for mandated reporter training and the Legislature has tasked the Commission with examining this specific issue. Chair Mossaides mentioned that, in Georgia, the OCA is responsible for setting the standards for training and asked members if they can identify state entities in Massachusetts that could be tasked with setting training standards.

The Commission returned to the topic of the possibility of profession-specific trainings addressed at previous meetings. One of the training proposals in the document provides for the approval of curriculums for profession-specific trainings. Commission members mentioned the Board of Community Health Workers which has a standard for training that organizations can build upon to meet their individual needs.

Commission members were in favor of redrafting the training proposal to be less specific regarding what topics should be covered in training, and more specific about how a training entity would be identified and who would be responsible for setting training standards. The Commission members would like to see the recommended statutory language simplified. The Commission feels that the statutory language would have to be discussed in close connection to a draft recommendation in the report about how such an entity would operate and that the ultimate report and proposal will require a cost estimate to the Commonwealth to determine feasibility.

Next, members discussed the concern that mandated reporting contributes to the disproportionate presence of children of color and children of low socioeconomic status in the child welfare system—as noted in a letter from the Children’s Law Support Project to the Commission. Chair Mossaides asked members to think about the ways in which the law and the training could impact this particular aspect of mandated reporting. The Commission will consider whether training could also serve to inform mandated reporters about where they can seek help or services for families when their concerns do not rise to the level of child maltreatment.

Penalties

The Commission then discussed penalties for mandated reporters who have knowledge of child abuse or neglect and willfully fail to report. The group discussed the addition of language making it mandatory for the OCA to be notified of such failures to report in addition to the filing of a license violation. The OCA explained that the OCA is the body in Massachusetts that can see trends across agencies, across geographical areas, and across subject areas so it is important that the OCA be able to gather data on possible violations of mandated reporting requirements. Members agreed with this addition to the proposed language. Members also agreed on the addition of the phrase “or licensed institution” on page 10 of the document being discussed.

Next, members discussed the changes to the financial penalties in the current draft of the law. Commission members disagreed about whether financial penalties were appropriate given the

inherent inequity issues. Some Commission members expressed an interest in comparing these penalties with financial penalties in other laws. The Commission agreed to do so.

Closing Comments

Chair Mossaides noted that based on the agreement of Commission members at this meeting, the OCA will produce an updated work plan that will extend the Commission's work through June 2021. The OCA will provide a draft Status Report to Commission members for their review prior to the next meeting based on today's discussion that the Commission is in agreement that it is not prepared to make statutory language recommendations to the Legislature without further work by the Commission.

Adjournment: 3.59pm

DRAFT