

Mandated Reporter Commission Meeting Minutes

One Ashburton Place, Floor 10

Charles River Conference Room

February 12th, 2020

2:00pm – 4:00pm

Council Members or Designees Present:

1. Maria Mossaides - Child Advocate- CHAIR
2. Catherine Mick - Undersecretary of EOHHS
3. Catherine McCourt – Senior Policy Manager, DOE
4. Spencer Lord – Special Counsel EOPSS
5. Nina Marchese – Director of the Office of Approved Special Education Schools – DESE
6. Anne Conners – Associate Commissioner for Field Investigations- EEC
7. Andrew Rome – General Counsel, DCF
8. Diane Symonds - Commissioner of DPL
9. Attorney Lisa Hewitt - Chief Counsel of CPCS
10. D.A. Marian Ryan – D.A. Representative of MDAA
11. Officer Elizabeth Fleming - Member Appointed by the Governor

Other Attendees:

1. Alexis Yohros (OCA)
2. Cristine Goldman (OCA)
3. Mike Ryan – CPCS Attorney
4. Lisa Rosenthal – Counsel, Office of Representative Kay Khan
5. Member(s) of the Public

Meeting Commenced: 2:03 pm

Mandated Reporter Commission = MRC

Welcome and Introduction from the Child Advocate:

Maria Mossaides called the meeting to order and welcomed the Commission members and guests. The group went around the table to introduce themselves.

Meeting Law Requirements

Cristine Goldman opened the meeting by discussing the Open Meeting Law Guides provided to Commission members in advance of the meeting which included copies of the Open Meeting Law text and the text of the regulations. Commission members signed the certificate of receipt for Open Meeting Law materials. General discussion of OML requirements. The meeting minutes will be posted on the newly launched webpage dedicated to the MRC on the OCA website where meeting notices and materials will also be posted.

Brief History

The Chair Maria Mossaides described the history of how the MRC came to be what it is now. Ms. Mossaides discussed the initial push to amend this legislation two and a half years ago spurred by the USA Olympics gymnastics scandal and two instances involving MA schools that happened in FY2016. Initial recommended legislative changes included adding coaches and institutions of higher education to the list of mandated reporters and clarify the responsibilities of mandatory reporter in institutional settings. The proposed legislation was not passed due to time constraints.

The Committee on Children, Families, and Persons with Disabilities asked the OCA to continue the discussions and reconstituted the group as a Working Group. The Working Group has been replaced by this MRC as a result of the language in the Child Wellness Bill. This MRC is required to provide recommendations to the legislature by July 31, 2020.

Review of Statutory Requirements: Overview

Cristine Goldman introduced an overview of the statutory requirements, organizing them into the following:

- Content questions, training and information questions, and operations questions

Discussion about other issues to be added to the agenda:

- Penalties section of the law (failure to report, false reporting)
- Consequences for failure to take a training- tying training to licensure
- How to educate the public and let them know about their roles
- Possible preamble to the law
- Possibility of including training requirements in state contracts
- Reporting in professional vs. personal capacity

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- Training as it relates to protection from retaliation for reporting
- Safe-haven clause for social workers working with CPCS or with an attorney

Research and Discussion of Statutory Mandates

Cristine Goldman presented a document exploring the topics the MRC is statutorily required to consider.

Proposals to Expand Mandated Reporting

Brief discussion of universal mandated reporting, no evidence to suggest that universal reporting results in improved reporting. Concerns regarding universal reporting include over-reporting as well as the difficulty of universal training.

Common categories of mandated reporters include: 1. Medical providers; 2. Mental health providers; 3. Educational providers; 4. Public safety officials; 5. Social services staff; 6. Clergy; 7. Recreational activities staff.

The following issues were raised through discussion:

- statute does not include many school staff (librarians etc.), does not define “school,” does not include higher education, and does not clarify the obligations of religious schools;
- whether/how volunteers should be included in the statute;
- whether emergency personnel are adequately defined/covered as mandated reporters;
- whether all state employees should be mandated reporters or whether there should be a restriction to personnel whose jobs require exposure to children or child-serving programs/facilities;
- whether/how to include peer support jobs, noting that these jobs can be for persons under 18 years old, noting also that these jobs rely on a trusting relationship between client and peer support;
- the clergy-penitent privilege and recent cases from other states regarding how the privilege interacts with mandatory reporting obligations;
- recreational staff and coaches, employees at day camps, overnight camps, private sports organizations;
- municipalities and municipal employees running recreational programs;
- how to address child pornography- noting that librarians and IT professionals often call the police when they encounter child pornography;
- whether there is a reluctance to report from pediatricians and how missed pediatric appointments factor into risk analysis;
- possibility of a safe-haven for school nurses regarding birth control and knowledge of sexual relationships in consenting under-age students;
- common trafficking locations such as casinos and hotels are not currently required to report.

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MRC discussed that there are often multiple 51As filed for one instance/event due to multiple mandated reporters being involved with the instance/event (police, hospital staff, emergency personnel etc.). Multiple reports for one instance/event results in an inflated number of filings and a burden on DCF screeners. However, multiple reporters also offer different perspectives on one incident. There was discussion of how helpful the multiple reports may be to the District Attorneys if the case involves criminal behavior. The group decided to discuss this further and explore some possible middle ground.

The MRC briefly discussed penalties within 51A for failure to report. Some members suggested that the severity of the penalty can be attached to the severity of the event that was not reported, while others said that the penalty could be distinguished based on whether the failure to report is a failure to report one instance or failure to report a known pattern of instances. There was a brief discussion regarding whether the statute should define the level of severity of penalty or whether that should be left to the discretion of the implementing authorities.

The MRC briefly discussed the difficulty that mandated reporters face in determining whether there is “reasonable cause to believe” that there is child abuse and neglect. Specifically noting that in instances of under-age sexual relationships, determining whether those relationships are consensual is a very difficult task.

Protocols of Notification/Institutional Reporting

The Massachusetts statute permits mandated reporters in “institutional settings” to transfer their responsibility to report to the person in charge (PIC) of the institution or that person’s designee. Topics to be discussed regarding this system include: lack of clarity as to whether the PIC/designee can exercise their own judgement regarding whether to file, there is no feedback loop required to inform the employee that a report was filed based on that employee’s concerns, no clarity on how to deal with situations where PIC/designee is the person the employee wishes to file on (subject of the report) or are closely aligned with the subject of the report, the difficulty of maintaining a staff to client ratio when there a need to make a report.

A discussion arose about institutions conducting extensive internal investigations prior to reporting. This discussion identified extensive internal investigations prior to reporting as a possible contributor to 1.) failure to report, 2.) delayed reporting, 3.) hindered DCF or police investigations. This happens often in the school settings which can delay filing, create an inaccurate internal narrative, expose children to multiple interviews resulting in possible recantation, etc. The group also noted that there are benefits to doing initial fact-finding prior to filling out a report. They emphasized the need to find a balance between fact-finding and a full-blown investigation.

Proposals to Revise the Definition of Abuse and Neglect

Current definition of abuse and neglect is in the 51A statute. Discussed that there are pros and cons to statutory definition vagueness. For example, vagueness is helpful as it captures situations that a reporter may think are “on the fence.” On the other hand, this can lead to over-filing in an abundance of caution, as well as confusion on what to file on.

MRC will explore possibility of changing statutory definition, requiring further information about definition in DCF regulations, whether there are other ways to provide mandatory reporters and the public more guidance about what constitutes abuse or neglect. Discussion included having consistency across agencies and agreed upon/shared definitions by the group.

MRC also agreed to include the topic of expungement to the ongoing discussions.

Training and Information

MRC discussed mandated reporter training noting that the topic areas to be addressed include frequency, scope, and effectiveness of training, training content, information regarding retaliation protections, and fines and penalties for failure to report.

The group discussed that it may be beneficial to have profession-specific trainings that would be tailored towards what is most typically seen in one’s professional setting.

There currently is not one universal, agreed-upon training for mandated reporters. The state employee Conflict of Interest Training could serve as a model in this area. The group discussed whether training completion should be tied to licensure/licensure renewal through certificates or proof of training. If one agency were responsible for creating a training, that agency could also approve other trainings already in existence.

Operations

MRC agreed that more discussion is needed to fully explore DCF responses to written 51A reports and DA referrals and the need to narrow down what is being referred to the DA, what the DA would like to be referred, and how much should be determined through statute versus left to MOUs.

The group noted that there are some children who need services who are not captured by the DCF system or DAs- examples: child on child sexual abuse, failure to engage with EI services. The MRC noted the need to strike a balance between protection and not interfering with a parent’s right to raise a child.

Feasibility of an Automated Tracking System for Reports

OCA briefly presented the suggestion of an e-filing format for 51As that would require only one form be filled out that could be used for multiple purposes such as DA referral, 51A, licensing violation etc., and that unified form could be sent to numerous reporting systems simultaneously. The benefits mentioned include reduced workload for mandated reporters who currently are

bogged down by needing to file many forms for one incident, and the possibility of being able to track perpetrators across all systems, possibility of gathering data in order to identify trends.

Options for Agency Responsibility

MRC will explore the possibility that one agency could be made responsible for overseeing the mandated reporter system, developing training, and responding to reports of intimidation or retaliation. It is also possible that a coalition of agencies could divide the work based on agency specialties.

Adoption of Operating Rules and Work Plan

The MRC agreed to meet again in March 2020 and to set up the schedule for the rest of the meetings through July 2020. The MRC agreed that, given the limited timeframe for the production of the report and draft legislation, the report would need to include the MRC recommendations and any dissenting opinions regarding those recommendations. Dissenting opinions will not be tied to any individual MRC member.

The MRC discussed that it would be ideal to receive public stakeholder feedback on the report that will ultimately be drafted by this group. The group discussed the possibility of providing the required report by the statutory July 31, 2020 deadline, then seeking an extension of the MRC from the legislature so that the MRC could gather public comment regarding the report through the autumn of 2020.

The meeting was then called to an end.

Meeting Ended: 3:54 pm