

MINUTES – NOT YET APPROVED BY THE MANDATED REPORTER COMMISSION
Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Tuesday, July 21, 2020
10:00am-12:00pm

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
Lisa Hewitt - Chief Counsel, CPCS
Catherine Mick - Undersecretary of EOHHS
Andrew Rome - General Counsel, DCF
Angela Brooks - Director of the Child and Youth Protection Unit, OAG
Anne Conners - Associate Commissioner for Field Investigations EEC Officer
Ann Reale – Undersecretary and Chief Operating Officer, EOE
Nina Marchese – Director of the Office of Approved Special Education Schools, DESE

OCA Staff:

Cristine Goldman (OCA)
Alix Rivière (OCA)

Members of the Public:

Court Diercks -- legal intern with the AGO
Michael Ryan—CPCS
Dr. Alice Newton – Child Protection Program, Massachusetts General Hospital
Dr. Kimberly Schwartz – Child Abuse Pediatrician, Boston Medical Center
Rebehak Gewirtz -- NASW-MA
Sarah Coughlin—NASW-MA

Meeting Commenced: 10:02am

Welcome and Introductions:

Maria Mossaides, Chair of the Mandated Reporter Commission, called the meeting to order and each member introduced themselves virtually. Ms. Mossaides discussed the procedure of asking that members of the public introduce themselves via the chat function in Webex and noted that members of the public could use the chat function to submit comments to the Commission. Next, Cristine Goldman, the Office of the Child Advocate's Director of Policy and Legal Counsel, reviewed the agenda.

Approval of Meeting Minutes:

Ms. Goldman explained that the March 30, 2020 minutes were still awaiting Commission approval and that the complication is that only an exact quorum was present at that meeting and Ms.

Catherine McCourt, previously the Executive Office of Education's designee on the Commission prior to Ms. Reale, was present at that meeting and is now no longer a Commission member and cannot vote on those minutes. The minutes for the March 30, 2020 and May 21, 2020 meeting were edited to reflect concerns voiced at the previous meeting that the minutes were not reflective of the Commission's role to propose recommended language and that the wording of the minutes previously suggested that the Commission was actually determining the language. The minutes for both of these meetings are noted as version two (v.2). Formal discussion was opened on all meeting minutes considered- no Commission member had comments for the pending minutes. Voting on the March 30, 2020 minutes was tabled. A roll-call vote was held on the May 21, 2020 minutes which were unanimously approved by all present members of the Commission. A roll-call vote was held on the June 24, 2020 minutes which were unanimously approved by all present members of the Commission.

Meeting Document: Presentation of Research and Proposals Regarding Institutional Reporting and Categories of Mandated Reporters, Including Consideration of Categories of Persons that Could be Identified as Not Being Mandated Reporters

The Commission discussed the proposed definition of mandated reporters and focused on the final part of the sentence which was aimed at resolving jurisdictional questions as well as dealing with the reality of remote services. The Commission members agreed that the proposed wording captured their recommendations for consideration.

The Commission discussed the language regarding social service providers. In particular, the Commission reviewed the section concerning in-home services that was drafted based on the conversation held by Commission members at the last meeting. The Commission members agreed that the proposed wording captured their recommendations for consideration.

The Commission reviewed the language proposal under "recreational services" which was drafted based on the conversation held by Commission members at the last meeting. The Commission felt that the wording within the proposal captured their recommendations for consideration but that the term "recreational services" was a broad term for a group of services rather than a specific term regarding individuals and was not in keeping with the style of the rest of the section. Commission members held discussion and determined that "other youth-serving individuals" or a similar formulation would be more appropriate to title that subsection.

The Commission then considered a new addition to the proposed statutory wording aimed at notifying the reader that any person can make a report of child abuse or neglect even if they do not come into the ambit of the mandated reporter definition: "This section does not prohibit any person from reporting under M.G.L. c. 119 § 51A within their personal or professional capacity." The Commission noted that there was some previous discussion of encouraging all people to report, regardless of their professional responsibilities. Commission members questioned whether this was the appropriate location for this notation or whether it should be moved- the Commission decided to address this question at a later date when drafting of the 51A portion of the recommendations (rather than the definition portion under MGL c. 119 § 21) would be discussed.

The Commission then moved to the topic of "institutional reporting" which concerns 51A reports in "institutional" or out-of-home settings. The Commission reviewed drafting and structural models from other states, including Arkansas, Georgia, Maine, South Dakota, Tennessee, and Wyoming. The examples discussed reflect that there is no consensus among states about institutional reporting

but that states are seeking to balance the need for mandated reporters to feel unhindered in their reporting with the need of the administration in an institution to be notified of concerning situations within their programs. Commission members queried why the document included examples from states outside of New England or the north east as the most helpful models tend to be states that are geographically close to Massachusetts. The Commission discussed that the models were chosen to show the variation among models and that geographical peers, such as Connecticut and New York, did not have models that added substantively to the variety of models. Commission members also discussed that some institutional settings, such as hospitals, require special circumstances for institutional reporting as a multitude of mandated reporters are engaged in one situation, such as hospital staff, that would make individual reporting duplicative, and concerns that some institutions have client-to-staff ratios that cannot/should not be disturbed to facilitate the filing of a report.

The Commission discussed the proposal in the document which centered around a written policy that would notify mandated reporters in an institution how to delegate their responsibility to report to the institution and create a system whereby the institution could either 1.) automatically make a report based on the mandated reporter's delegation of responsibility, or 2.) have discretion to make a report based on the mandated reporter's delegation of responsibility.

The Commission discussed at length whether an institution should be permitted to require staff members to use an institutional process of reporting incidents that arise in the institutional setting or whether a mandated reporter should retain the ability to report individually to DCF if that process was preferred by the mandated reporter over the institutional reporting scheme. The Commission members noted that if institutional staff reported in their individual capacity as mandated reporters and not through the institutional reporting scheme offered by their institution's written policy, then the institution may never be made aware of concerning situations that arise at the institution but are screened out by DCF due to not rising to the level of child abuse or neglect (or for some other reason). Commission members discussed the value of ensuring that institutions are made aware of concerning information that happens within their programs even if the information is ultimately not screened-in or supported by DCF. Commission members also discussed that mandated reporters are often concerned about the repercussions of their reporting for their employment and reputation (despite the prohibition on employer retaliation for reporting) and that requiring reporting through an institutional scheme may inadvertently result in some mandated reporters failing to report because of the inability to remain anonymous.

Commission members discussed notification to licensing agencies via MGL 119 § 51B(l). The Commission also discussed that some state agencies have MOUs with DCF that provides for greater information sharing than what is required by the statute, including the notification of screened-in and screened-out 51As. The Commission will consider drafting of proposals that include models whereby the mandated reporters are not required to notify the institution prior to making a 51A report but they are required to notify the institution that one was made, that an institutional procedure would require all mandated reporters to use the procedure but that there would be multiple people serving as the designated agent for filing so that mandated reporters had a choice of persons they trusted within the agency to do the filing, and language within the statute noting that nothing prevents institutions from requiring their staff to report misconduct or other behavior internally in addition to the filing of a 51A. The institutional procedures proposal will be redrafted for consideration at the next meeting.

Commission members discussed requiring written confirmation to the mandated reporter who followed the institutional reporting procedure that a 51A report was made, Commission members felt that the proposal to include the written confirmation captured their recommendations as it ensures that mandated reporters will not feel that they have to individually report if they do not hear from the institution and would protect them against claims of failing to report. Commission members noted that there can be complications in the institutional procedures due to some institutions requiring information to flow up a designated chain of command resulting in possible distortion of information (game of “telephone”) and possible delays in reporting. Commission members noted that the goal is a prompt and accurate 51A report, so institutions have to develop policies that would make reporting easier and it should be incumbent on licensing organizations to review these institutional policies and ensure their compliance. It was noted that an institutional procedure can look uncomplicated on its face to a licensing agency but be complicated in practice. The Commission will consider including language that more clearly prohibits delay of reporting and that prohibits any provision that would result in a culture that discourages reporting.

The Commission agreed that the proposal for institutional reporting will be redrafted for consideration at the next meeting.

The Commission then began discussion of the section of the document regarding possible groups identified as “not Mandated Reporters” and specifically the proposal by CPCS to exclude persons working on civil and criminal defense teams from the requirement of mandated reporting. The statutory language for HB1511 had been provided to Commission members with the materials for the meeting and the Commission members began an introduction to the issue from the CPCS perspective. CPCS’s position includes that CPCS employs a holistic approach to defense representation, that involvement of CPCS in a person’s life means that person is in a precarious position and that CPCS’s work with their clients necessitates the maintenance of their clients’ confidentiality and trust. Without an exception within the mandated reporter statute for persons working with CPCS on defense, CPCS will be reluctant to hire social workers. Currently, social workers at CPCS are concerned that any failure to report will result in their prosecution or licensing jeopardy. Discussion was limited by available time, but the issue of the broadness of the proposed statutory language to include all civil and criminal defense representation and all persons who work on defense teams, not solely social workers, began and is expected to be continued at the next meeting.

Commission members agreed to contact the OCA in between meetings to identify possible additional people to be invited to the meeting to discuss this issue further to get a wider perspective.

Closing Comments:

The OCA will update the working document based on Commission discussion at this meeting and the conversation regarding the possibility of exempting some persons from mandated reporting responsibilities will be continued at the next meeting. Commission members were encouraged to read through the meeting documents in anticipation of the discussion at the next meeting.

The next meeting will be held virtually on July 28, 2020 from 10am to 12noon.

Adjournment: 12.02 pm