

MINUTES – NOT YET APPROVED BY THE MANDATED REPORTER COMMISSION
Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Tuesday, September 15, 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
Andrew Rome - General Counsel, DCF
Anne Conners - Associate Commissioner for Field Investigations, EEC
Ann Reale – Undersecretary and Chief Operating Officer, EOE
Nina Marchese – Director of the Office of Approved Special Education Schools, DESE
Katherine Ginnis- Sr. Director of Child, Youth & Family Policy Program, EOHHS
Angela Brooks- Dir. Child and Youth Protection Unit, AGO
Officer Elizabeth Fleming- Waltham School Resource Officer
DA Marian Ryan- Middlesex District Attorney, MDAA

OCA Staff:

Cristine Goldman (OCA)
Alix Rivière (OCA)
Lily Powell (OCA Legal Intern)

Members of the Public:

Michael Ryan—CPCS
Lisa Beatty, Norfolk DA's Office
Dr. Alice Newton -- Medical Director of the Child Protection Program, MGH
Erin Work- MGH HOPE Clinic
Lisa Rosenfeld- Counsel, Jt. Comm. on Children, Families, and Persons with Disabilities, Office of Rep. Khan
Tom King- Executive Director of the Massachusetts Children's Alliance
Katherine Folder- Middlesex DA, Child Protection Unit
Other members of the public who did not identify themselves

MRC= Mandated Reporter Commission
OCA= Office of the Child Advocate
DCF= Department of Children and Families

Meeting Commenced: 10:03am

Welcome and Introductions:

Maria Mossaides, Chair of the Mandated Reporter Commission, called the meeting to order and reviewed the agenda. Cristine Goldman, OCA's Director of Policy and Legal Counsel, explained that members of the public can use the chat function to comment on items being discussed. She then welcomed Kate Ginnis to the Commission and noted she will be replacing Katie Mick as the designee from EOHHS. She also introduced Alix Rivière, who will be taking minutes, and Lily Powell, the OCA's legal intern, who will be helping the Commission write the final report for submission to the legislature. Ms. Mossaides explained that the Commission will strive to answer the specific topics the legislature tasked the Commission with reviewing. She explained that the Commission should explore the possibility of recommending further discussions in work-groups after the Commission meets its deadline to allow for deeper dives into some of the issues the Commission has identified as needing further discussion but which may be outside of the Commission's current mandate. One example of such topic is the structural challenges of ensuring the highest level of collaboration between agencies investigations from a licensing perspective and contract management perspective.

Approval of August Meeting Minutes:

Formal discussion was opened on the August 6, 2020 meeting minutes. Members did not have any comments on the meeting minutes. A roll call vote was held. Those voting in favor of approval of the minutes: Maria Mossaides, Andrew Rome, Lisa Hewitt, Nina Marchese, and Ann Reale. All other present members of the Commission abstained from voting due to not being present at the previous meeting. Without a majority of votes approving the minutes, the minutes were tabled until the next meeting.

Review of Draft Work Plan

Members reviewed the draft Work Plan for the next seven meetings before December 15, 2020. Members were made aware that sections highlighted in blue are quoted tasks from the statutory language establishing the Commission. The sections in black text are additional topics the Commission and/or the OCA have proposed for discussion. Discussion was opened on the Work Plan and no changes were recommended. The OCA agreed to post the Work Plan prominently on the MRC website, currently it is posted only in the meeting materials for this meeting.

Presentation of Child Abuse and Neglect Definition as it Relates to 51A- Document

At the previous meeting the Commission asked to see some drafting of an expanded 51A(a) section with the intent of adding some content and context to the statute to give mandated reporters a baseline understanding of what is meant by "abuse" and "neglect." The Commission discussed the proposed language changes to 51A(a) in the document titled: "MRC Document 09_15_2020 Child Abuse and Neglect Definition." The proposed wording for Commission review and recommendation was changed to be gender neutral, content changes were made based on the language in DCF regulations, and a definition of the phrase "reasonable cause to believe" was added in alignment with examples from other states' statutes.

The term "mental" was added to the listing of possible injuries (in addition to physical and emotional) and Commission members discussed what specific content that may add. Members mentioned possible examples of mental abuse/neglect that would not necessarily also implicate emotional abuse/neglect, such as Munchausen Syndrome by Proxy or failure/refusal to bring a

child to a therapist despite suicidal ideations. It was agreed that mental and emotional abuse/neglect can be differentiated and should be listed separately in the MRC recommended changes to 51A(a) but that redrafting was needed as the term “mental injury” is not in common usage and/or is not clear.

Members then discussed the addition of the phrase “at imminent risk of suffering” abuse or neglect to the category of concerns that should be reported via 51A. The Commission discussed whether requiring mandated reporters to report concerns that may imminently lead to abuse/neglect rather than waiting for the abuse/neglect to occur, could have unintended consequences of capturing situations which would not have led to child abuse/neglect if those situations had been permitted to play out without DCF involvement. This was discussed through one example of a situation in which a child is exposed to domestic violence but is not the physical victim of such violence and the parent-victim of the child is in the process of making a safety plan to protect the child. It was discussed that it is the responsibility of the DCF screening team to determine whether a complex situation such as the example provided would rise to the level of requiring DCF involvement. The Commission agreed that it would be appropriate to report some situations to DCF, such as when a child is left with a caregiver who may have a history of battery or sexual abuse, when the child is not yet physically, mentally, or emotionally harmed, so the category of “risk of suffering” should be included in the Commission recommendations for statutory language. However, the Commission determined that the word “imminent” did not adequately capture these situations and it may place children in more precarious situations as “imminent” risk has never been the standard for reporting or DCF involvement. Rather, the Commission agreed to substitute the word “substantial” for “imminent”- “substantial” is in the DCF regulations and more adequately reflects the level of concern required for a reasonable cause to believe a child will be subject to abuse or neglect if there is not some type of intervention.

The Commission then examined whether the proposed language could unduly target certain groups of people, especially those impacted by poverty or systematic racism. While the Commission is trying to identify children at risk and define risk categories, it is also conscious of potential bias at the reporting level. The group was reminded that the filing of a 51A does not necessarily lead to removal of a child from a person’s custody.

Next, members discussed the suggested language to further define the term “neglect,” which is currently followed by the phrase “including malnutrition.” The proposed language strikes “including malnutrition” as it is not a necessarily helpful/clarifying or particularly relevant example of neglect. The suggested proposal draws language from the DCF regulation defining neglect: “the inability to provide, or the deliberate or negligent failure or refusal to provide, a child with minimally adequate essential care, provided that any inability to provide such care is not solely due to inadequate economic resources or the existence of a disabling condition.” It was noted that the term “minimally adequate essential care” is meant to communicate a baseline standard of wellbeing for a child taking into account that parents/guardians are afforded wide latitude in the decisions they personally make for their children’s upbringing and that differences of opinion about what is best for a child does not necessarily equate to abuse/neglect. This language is meant to buttress also against the perceived over-reporting in low socio-economic areas.

Members questioned whether there were relevant situations where a parent/caregiver is not able to provide minimally adequate essential care for a child which is NOT due to inadequate economic resources or a disabling condition. One example provided was a parent who could not access

housing assistance due to negative family history in state sponsored housing. Another example is if a parent behaves in a way that prevents a child from getting care even if that result is not the parent's intention: failure to follow-up with medical care due to other day-to-day commitments. Members discussed their concern that the language, as presently proposed in the draft document, would fail to adequately inform a mandated reporter's understanding of neglect.

The Commission noted that, historically, the Commonwealth of Massachusetts has broadly defined filing for neglect to ensure the protection of children, and that the state has historically preferred to leave it to DCF to screen in or screen out reports of child abuse/neglect and refer children and their families to the proper services. As such, the state has made a fundamental choice to err on the side of inclusion in terms of bringing cases to DCF's attention. Members agreed that receiving a call from DCF, whether the report is substantiated or not, remained a substantial intrusion into family life and may result in disproportionate inclusion of persons from certain racial, ethnic, or socio-economic groups.

It was noted that the Data Work Group has also been examining the issue of disproportionality at the investigation level. It was noted that there is little race/ethnicity data at the reporting level, but that future analysis of the data will be helpful for informing what types of training should be offered.

Taking some direction from the conversation from members of the public in the comments section of the webex meeting, members discussed whether the definition of abuse and neglect should be relocated to MGL c. 119 §21 which includes all the definitions for the sections that follow thereafter. Members debated whether mandated reporters would find the elaboration on the meaning of abuse/neglect more helpful and accessible in section 51A(a), where the terms are currently mentioned, or in § 21. Members reiterated the need for effective training, so that the 51A law is better contextualized and the definitions should be discussed in training but also their location in the statute should be discussed in training.

At one point, members of the group asked if the Commission could hear the perspective of Dr. Alice Newton, the Medical Director of the Child Protection Program at Massachusetts General Hospital. Dr. Newton expressed her concerns about the lack of Commission members representing direct care providers. She explained that pediatricians may go to the 51A statute for clarification on the definition of neglect. She added that neglect is more difficult to conceptualize than abuse as it is often passive, in the sense that can be an inaction or indirect consequence, and it would be very helpful if the Commission did make a recommendation of language to clarify neglect in the statute. Providers can fail to recognize neglect if they are focused on the experience of the perpetrator and not on the child's experience.

Based on the feedback of the Commission on the first paragraph of 51A(a) the OCA will redraft the paragraph with proposed changes, draft recommended language for possible additions to MGL c. 119 § 21, and with a reframing of the language to focus on the child's experience rather than a perpetrator's actions.

Members did not review section: "(iii) physical dependence upon an addictive drug at birth...." as this is a detailed discussion scheduled to be had at the next Commission meeting.

The discussion then moved to the draft proposal of language for a definition of the term "reasonable cause to believe." Commission members agreed that this section should also be moved to MGL c.

119 § 21. The addition of this section was based on agreement at the previous MRC meeting that persons who are not lawyers may not be comfortable with the standard of “reasonable cause to believe” and that a definition of the term would be helpful. The definition drafted in the document was based on examples from other states’ statutes. Commission members were concerned that the drafted language could have the unintended result of encouraging a mandated reporter to conduct an investigation into event/concern prior to filing which would both delay filing and risk compromising state agency investigations. It was suggested that the law should clearly state that absolute proof is not needed.

Members discussed the proposed language noting that violations of the law without any concern that a child had been subject to abuse/neglect or was at substantial risk of exposure to abuse/neglect do not rise to the level of “reasonable cause to believe.” The proposed language was drafted broadly but was meant in part to indicate the Commission’s agreement that situations such as consensual underage sexual activity, without concern from the mandated reporter about the child’s wellbeing, is not abuse or neglect. Commission members noted that situations such as consensual underage sexual activity still should be evaluated by mandated reporters for concerns as these situations are complex and involve power dynamics and pressure that may be difficult for children themselves to identify. Commission members discussed other examples of violations of the law that may not be abuse/neglect but determined ultimately that the proposed drafting and concept were too complex to achieve the goal of making the idea accessible. The Commission also discussed that adding specific examples of what is or is not abuse/neglect in the statute is not beneficial and relayed this in part in reference to the comments provided by the public in the comment thread. The Commission determined that the issue of underage consensual sexual relations should be addressed clearly in the training and should not be included in the statutory language.

Closing Comments:

The OCA will update the working document based on Commission discussion at this meeting. Members were reminded that they would begin discussing child perpetrated sexual and/or physical abuse as well as substance exposed newborns at the next meeting.

Ms. Mossaides then noted that the Commission is working diligently to address the issues it is tasked with from the legislature and that the conversations at these Commission meetings are very detailed and productive. She explained that part of the original plan for review of the statute included roundtable discussions with stakeholders, such as the members of the public who attended the meeting virtually today, to provide their input on the issues to be addressed but that with the Covid-19 pandemic such plans are not achievable. However, the OCA is always open to meeting with stakeholder groups to gather their input into the topics the Commission will discuss at future meetings. Further, we expect that there may be a public comment period on the Commission’s recommendations and final report which will be issued in December.

The next meeting will be held virtually on September 22, 2020 from 10am to 12 noon.

Adjournment: 12.02 pm