



April 21, 2021

Dear Members of the Mandated Reporter Commission:

Jane Doe Inc. is the Massachusetts Coalition Against Sexual and Domestic Violence. Our 59 member programs provide services and support to thousands of survivors of sexual and domestic violence and their families each day.

As a statewide sexual and domestic violence (SDV) coalition, we believe that the voices and experiences of survivors, their children, and their advocates are necessary in the development of policies that will inevitably impact those who experience sexual or domestic violence. We understand the unique impact of trauma on survivors of SDV and their children and are grounded in the awareness that this trauma is both interpersonal and systemic. We are committed to trauma-informed, community-based, holistic models of safety and support for all survivors in the Commonwealth. As such, it is imperative that efforts to protect adults and children should first do no harm.

We share with this Commission a collective goal of ensuring the health and safety of children across the Commonwealth and have deep concerns over several of the draft statutory proposals put forward by the Commission. We believe that these proposals, while well intended, will have the unintended consequence of making survivors of sexual and domestic violence and their children less safe. History has taught us that these proposals will disproportionately increase the targeting of low-income Black and brown survivors and their children by the child welfare system through traumatic interventions motivated by bias. At a time when we are called upon to question our complicity in responses that increase harm to communities of color, these recommendations are a leap in the wrong direction.

Our concerns over the proposed changes are manifold. **To that end, we have joined the comprehensive critiques outlined by the Children's Law Support Project attorneys and affirm that the impacts outlined in their comments affect the safety and wellbeing of survivors of sexual and domestic violence and children who witness violence.** In this testimony, we focus on the chilling effect of mandatory reporting expansion on survivors and their children--particularly those who are most impacted by structural violence.

- 1. The proposals encourage overreporting and will increase rather than decrease risks to survivors of sexual and domestic violence and their children.**
  - a. Expanding the duties of a mandated reporter to file upon a “suspicion” of abuse or neglect puts survivors of sexual and domestic violence and their children at increased risk of harm and contradicts established best practices.**

Currently, a mandatory reporter is required to report to DCF upon a “reasonable cause to believe that a child is suffering physical or emotional injury.” The commission’s proposal to

define “reasonable cause to believe” as “a suspicion that a child has been maltreated or is at substantial risk of being maltreated” is concerning.

While the Commission is clearly concerned that current mandatory reporting statutory language deters reporting by placing undue investigatory burdens on reporters, statutory changes that eliminate the need for any reasonable level of discernment on the part of a reporter are not the answer. We urge the Commission to weigh these concerns against the harm created by the initiation of a report itself. While all reports can cause some level of trauma and harm to children and families who are forced to confront the child welfare system, unwarranted reports fundamentally diminish access to supportive services for so many families and children who DO need services and support.

This overly broad reporting standard promises to create confusion for reporters and poses concerns for survivors of sexual and domestic violence and their families. Further, the dual effect of this broadening of the standard for reporting alongside the removal of any encouragement of inquiry on the part of the reporter--especially with respect to underlying factors of poverty or disability -- paves the way for an exponential increase in reports at the expense of communities most impacted by structural racism. This effort to broaden the standard for reporting puts survivors and their families at increased risk of trauma and harm and contradicts basic guidance put forth by the Department of Children and Families regarding mandatory reporting when domestic violence is suspected.

It is reasonable to expect a shelter provider, teacher, medical/mental health care provider or other professionals working with families to learn enough basic facts about the situation to determine whether a report is indeed warranted and/or safe. This is in fact reflected in guidance from the Department of Children and Families on best practices when working with children or families where domestic violence is occurring. In their Promising Approaches<sup>1</sup> guidance, DCF states:

“ Currently when some mandated reporters learn of domestic violence in families, they file a child abuse and neglect report without an assessment of the risk posed to the child(ren). Assessments of risk frequently cite a single factor, such as whether the child was in the room when the incident occurred, rather than examining the entire pattern of abuse. ***Mandated reporters are encouraged to carefully review each family's situation and to consider thoughtfully whether or not to file a report with the Department of Children and Families.***”

This guidance was created with an understanding that over reporting can unduly penalize survivors, increase risk of retaliation by the person who is causing harm and can cause trauma to families.

Advocates share that those who cause harm are remarkably effective in harnessing the support and allegiance of helping professionals including mandatory reporters. Without some basic context on the existence of SDV within a family, a “suspicion” on the part of a reporter

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<sup>1</sup> Promising Approaches Guidance - Department of Children and Families - <https://www.mass.gov/files/documents/2016/07/pm/promising-approaches-publication.pdf>

could be the product of a very specific tactic used by an abuser to further harm the survivor through DCF intervention.

Such basic inquiry into the circumstances surrounding a situation that may be reportable is consistent with best practices when working with survivors. It may involve briefly reaching out to other support professionals to determine what is known about the family, what might explain the observed behavior, and what additional resources can be provided that would provide safety.

Mandatory reporters are given a great deal of power because of their role in the lives of so many young people in the Commonwealth. These adults are entrusted to identify situations where children are experiencing harm and involve state intervention. In 2021, we must collectively acknowledge that this power is a form of policing power. It is more than reasonable and in fact necessary to demand that this power be wielded with great care. And yet, this Commission seeks to implement recommendations that are quite the opposite.

**b. Excluding “poverty” and “disability” as limitations in the proposed definition of “neglect” directly targets low-income children of color and perpetuates bias.**

The collision of these relaxed expectations of inquiry coupled with removal of consideration of poverty and disability are a recipe for bias and targeting of survivors most impacted by structural violence. Survivors and their children will be penalized by unnecessary child welfare interventions on account of their poverty and/or their disability. Survivors and their children at the intersections of oppressed identities will be disproportionately targeted.

Consider the following case summary regarding an anonymous JDI member program participant:

AB is a 21-year-old person with multiple disabilities and a wheelchair user. They are queer identified and have a 2-year-old child. AB’s abuser is more than 20 years their senior and is the father of AB’s child. The abuser controlled, stalked, and terrorized AB, who works with a DV advocate around ongoing safety planning and support. AB also has the support of their mother and friends. AB secured an accessible and confidential apartment, but just as they were moving in, they saw their abuser in his car in the parking lot. AB was terrified and abandoned the apartment and secured a hotel stay for themselves and their child, with the DV advocate’s help. Within a week AB entered DV shelter in a different part of the state, while maintaining contact with the original advocate to try and plan for a safe return. A child neglect report was made at that point, stating that AB could not care for their child due to their disability and mental stress. Without *any* investigation into the history of excellent care that AB provided for their child, or any contact with our advocate, the child was removed from the shelter and placed into foster care. AB was left alone in the shelter without their child and not close to their regular advocate or sources of support. They became depressed and withdrawn. They are now forced to remain in the area they are not familiar with in order to visit their child and attempt to be reunited. Once their shelter stay is up, they will need to locate accessible housing or be forced to return home without their child.

This case example is not shared to highlight a generalized dismay with the response offered to this family by DCF personnel. Rather, we offer this example to highlight our concerns that the Commission's proposals will vastly increase the likelihood of such poor responses due to the influx of reports that may be made because of concerns over the poverty or disability of a child's caretaker.

Abuse takes an economic toll and survivors should not be penalized for their survivorship. We must also recognize that disability can be both a cause and consequence of poverty. People with disabilities are disproportionately targeted for intimate partner violence and sexual violence. Survivors of sexual and domestic violence experience poverty at significantly higher rates than the general population.

Current guidance acknowledges that poverty or disability alone is not an appropriate basis for a report to the child welfare system. The Commission's proposals seek to eliminate the discernment required to recognize poverty as a limitation to providing basic necessities. This directly impacts and targets survivors.

In the case study above, we see AB's multiple disabilities used against them as a reason to remove their child. But what we also see is the support provided by AB's advocate who is able to safety-plan and provide support and resources to AB and their child. SDV advocates are in unique positions to understand the full complexity of a survivor's reality and offer comprehensive support and connection to resources. The safety net that survivors like AB are able to receive are jeopardized when mandatory reports are made without assessing the context of a situation and the proactive efforts a survivor may be taking to find stability. Removing AB's child from their care not only disrupted the parent-child relationship but other social supports and connections the child was able to access.

The flooding of an already overtaxed system with reports that do not merit a complete investigation profoundly increases the risk of harm caused by the initial reporting to children from low income families, communities of color, LGBTQQI+ communities, people with disabilities, and/or survivors of sexual and domestic violence.

**c. The mandatory reporter exemption contemplated for SDV providers does not address the concern that other proposed recommendations will drive survivors and their children into the shadows and have a chilling effect on reaching out for services and support.**

While the Commission contemplates an exemption to mandatory reporting for sexual and domestic violence advocates, we want to note that **this narrow exemption is not sufficient to mitigate the larger harms in these proposed recommendations**. The exemption in fact highlights some lack of understanding regarding the realities of survivors of sexual and domestic violence underlying the Commission's recommendations.

Many survivors of SDV may never reach out to sexual and domestic violence advocates. Others may connect with resources available for survivors of sexual or domestic violence after accessing other supports such as healthcare or other social services. While the proposal contemplates a narrow exemption to mandatory reporting requirements for SDV advocates, survivors of SDV will likely encounter a mandated reporter in a range of additional contexts

such as education, healthcare, or other settings. The implications for these additional sites of expanded reporting are significant for survivors.

We ask the Commission to understand that awareness of the unique needs of survivors of sexual and domestic violence, as well as awareness that abuse against an adult is NOT reportable in MA, is not considered universal knowledge. Victim blaming and shaming are unfortunately still commonplace across our communities. After decades of advocacy on behalf of survivors of SDV to ensure more access to services, the expanded possibility of mandatory reporting in these proposals risks posing significant barriers for survivors seeking support. It also increases risks to survivors and their children when mandated reporters have not been trained how to report safely to minimize the chances of retaliatory violence or other risks victims face when the abuser learns a report has been made

The vast majority of survivors come into contact with a range of other healthcare, educational or other providers far more frequently than with SDV providers. These proposals will sanction and in fact encourage reporting from an expansive list of providers- all of whom already MAY and often do report concerns of abuse, even if it is not mandatory. Research confirms what advocates already know -- expansion of mandatory reporting policies drive those most in need into the shadows and even more unable to access supportive services. We urge the Commission to recognize the extent to which this chilling effect impacts communities and harms protective parents while at the same time failing to sufficiently hold those who cause the harm to children accountable. We appreciate the consideration of excluding sexual and domestic violence advocates from mandatory reporting requirements and recognize that this exclusion was considered to address the need to maintain relationships between these providers and survivors in their communities. However, these exemptions will not suffice.

**Expanded mandatory reporting policies damage community trust.** The reach of this distrust is profound and illustrated by the following data. In a 2020 study of survivors of domestic violence, almost 29% of respondents reported that they did not disclose to a *family member or friend* for fear that person would be legally required to report them. Survivors also reported not turning to medical and mental health care providers (27.5%), police (8.6%), or community-based organizations (2.2%). Of the 718 survivors who responded to the qualitative questions, 19.4% stated they did not turn to anyone at all for fear of being reported.<sup>2</sup> Interestingly, this study elaborated upon a previously unstudied phenomenon- survivors were deterred even from seeking help from their informal networks.

The reasons for these fears are not unfounded. Survivors of sexual and domestic violence and their children fare worse in child welfare system interventions. These negative outcomes are even more pronounced for families of color. Child welfare interventions related to domestic violence are more likely to result in child removal and out-of-home placement compared to cases related to other issues.<sup>3</sup> Black survivors are disproportionately impacted based on

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<sup>2</sup> Lippy, C., Jumarali, S.N., Nnawulezi, N.A. *et al.* The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change. *J Fam Viol* 35, 255–267 (2020). <https://doi.org/10.1007/s10896-019-00103-w>

<sup>3</sup>Ogbonnaya, I. N., & Pohle, C. (2013). Case outcomes of child welfare-involved families affected by domestic violence: A review of the literature. *Children and Youth Services Review*, 35(9), 1400–1407. <https://doi.org/10.1016/j.childyouth.2013.05.014>.

overrepresentation of Black children in the child welfare system.<sup>4</sup> Mothers of color are also more likely to be referred to CPS for domestic violence related concerns relative to White mothers who are more likely to be referred for mental health and other issues.<sup>5</sup> A recent study confirmed that many domestic violence advocates share concerns over the child welfare system’s systematic and negative biases against parents of color surviving violence.<sup>6</sup>

The impact of expanding categories of mandatory reports proposed by this Commission begs the question of the impact of these proposals on survivors considering seeking help even from their informal networks. The chilling effect goes far beyond outreach to any particular provider. Over a third of survivors in the sample —regardless of gender, race/ethnicity, and sexual orientation — did not turn to a potential support for fear related to mandatory reporting. Participants described how they primarily feared people in their informal networks.

During the public hearing, JDI was asked about the categories of mandatory reporters we would find non-objectionable from the perspective of its impact on survivors. We highlighted this study which begins to quantify the extent to which mandatory reporting expansion affects survivors’ help-seeking from their informal networks. This study suggests a direct correlation between expansions to mandatory reporting and the perceived availability of informal and formal networks for support.<sup>7</sup>

The Commission proposes expansions of mandatory reporter categories to the following: For social service agencies, it would add anyone working for any of nine state agencies whose mandate touches on children whether or not that person has any contact with children. For other categories it would also add home computer repair and IT specialists as well as anyone developing film as mandated reporters on the theory that these people may detect child pornography with no explanation as to why these people should be mandated reporters of child neglect. For mentors, it would add a range of individuals coming into contact with children. It would also add personnel of public libraries, religious organizations, recreational activities, including volunteers listed in any of the above roles. For educational providers it would add school board members, and any school personnel who interact for any school sanctioned activity on or off school premises or remotely. For childcare providers it would include any person providing services to a child in the child’s home including au pairs and nannies.

We ask the Commission to consider your own communities and identify who amongst you would now be considered mandatory reporters. Who is aware of when their duty of mandatory reporting applies? What warnings would you expect these reporters might give to community

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<sup>4</sup> Girardet, R., Lahoti, S., Bolton, K., & Kellogg, N. (2016). Characteristics of cases submitted to a statewide system of child abuse experts. *Children and Youth Services Review, 67*, 198–202. <https://doi.org/10.1016/j.childyouth.2016.06.007>.

<sup>5</sup> Dosanjh, S., Lewis, G., Mathews, D., & Bhandari, M. (2008). Child protection involvement and victims of intimate partner violence: Is there a bias? *Violence Against Women, 14*(7), 833–843. <https://doi.org/10.1177/1077801208320247>.

<sup>6</sup> Goodman, L. A., Fauci, J. E., Hailes, H. P., & Gonzalez, L. (2019). Power with and power over: Domestic violence advocates manage their roles as mandated reporters. *Journal of Family Violence., 1*–15. <https://doi.org/10.1007/s10896-019-00040-8>.

<sup>7</sup> Lippy, C., Jumarali, S.N., Nnawulezi, N.A. *et al.* The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change. *J Fam Viol* 35, 255–267 (2020). <https://doi.org/10.1007/s10896-019-00103-w>

members who disclose harm? What is the expectation of the Commission regarding training for all such mandatory reporters? Who would have oversight over reporters who overstep their reporting obligations? Can you begin to quantify the extent of the chilling effect these proposals will have on nearly all communities in the Commonwealth? What are the perspectives of DCF’s own domestic violence specialists regarding these proposed changes? With data that clearly shows the silencing effect on survivors and their children, it is unconscionable to expand the list of mandatory reporters to touch upon virtually every facet of public and private life in the Commonwealth.

**2. The Commission’s original goals of addressing sexual abuse by coaches can be accomplished by narrowly adding categories of mandated reporters**

As a coalition with a mission to end sexual and domestic violence, we understand why the Commission may recommend additional categories of mandated reporters. We understand that the origin of this Commission was as a result of the House Committee on Post Audit and Oversight (May 17, 2018) (“*Raising the Bar*”) report which responded to a concern—in the wake of sexual abuse against Olympic youth athletes—that coaches and other personnel employed by private athletic organizations were not required to act as mandated reporters under current Massachusetts law. We would support the narrow addition of coaches, athletic personnel, and any other needed categories without broadening the categories in such a way that they become vague. **The “mentor,” and “other youth serving individuals” categories are unclear.** Additional clarity in these definitions is essential to ensure individuals working with children know their duties and the protections they receive as mandated reporters.

As April is sexual assault awareness month, we want to uplift specifically the chilling effect on younger survivors of sexual assault. Younger survivors often benefit from knowing they are able to speak with a trusted adult without triggering mandatory reporting requirements. Teenage survivors of peer-to-peer sexual assault, for example, may choose to access confidential legal services specifically because mandatory reporting requirements will not be triggered in the attorney-client relationship. The chilling effect of expanding categories of trusted adults as mandatory reporters is concerning from the perspective of reaching vulnerable student survivors of sexual assault. This is in direct contradiction of the original stated goal of the Commission in addressing issues of child sexual abuse. We ask the Commission to once again note the overall chilling effect on survivors of harm --including accessing support from **informal** support systems--when mandatory reporting duties are expanded.

**3. The Commission should engage in critical study of best practice models and be mindful of national examples of models that failed when mandatory reporting was arbitrarily expanded broadly.**

JDI has recently joined the Promising Futures collaborative of Futures Without Violence, a group of practitioners from various states dedicated to improving child welfare system responses especially as they intersect with the needs and realities of survivors of domestic violence and other forms of intimate harm.

During a recent discussion with this group where we were analyzing the Commission’s proposals, practitioners noted that the direction the Commission was taking had striking

parallels to the experience of the Minnesota child welfare system in 1999.<sup>8</sup> By way of background, in 1999, the Minnesota legislature, in a bipartisan effort, expanded the definition of child neglect to include a child's exposure to family violence. We urge the Commission to understand our reasons for highlighting this example as due to the more overarching parallels to the Commission's proposals to expand reporting. **Even if the Commission's proposals do not speak to expansion of neglect to include children witnessing domestic violence, the impact of the Commission's proposals have many significant parallels to the Minnesota experience that must be considered.**

What were initially viewed as simple changes to bring more attention to children exposed to domestic violence resulted in essentially upending the state's child protection system. With a dramatic influx of referrals, an overtaxed system was largely thoroughly overwhelmed. Children in need of services did not receive the services they needed, trust between survivors of domestic violence and providers was further eroded, and children most in need of prompt intervention were left at increased risk due to the influx of reports. As the authors of an evaluation of this model noted, "This relatively simple change resulted in dramatically increasing workloads in most Minnesota county child protection agencies. Although the legislators **thought that the language change would merely clarify existing practices**, many county agencies suddenly faced huge numbers of newly defined neglected children being reported to them." The resulting chaos of this expansion led to the repeal of the expanded definitions of neglect one year later by the Minnesota legislature.

After hearing the breadth of testimony offered to this commission over the past week, the concerns raised by the many advocates and families have an uncanny similarity to the Minnesota experience. To avoid replicating this mistake, we urge the Commission to consider the lessons learned articulated by experts who have evaluated this failed model:

- 1) Lesson 1: Even simple changes in definitions or terms may have dramatic, unintended negative consequences. Simple definitional changes have consequences for use of services, and these should be considered carefully. These well-intended changes brought about a crisis in the very services they were meant to positively influence.
- 2) Lesson 2: Changes in legal definitions need to be carefully evaluated to determine what goals they will achieve. While some changes to legal definitions can raise the awareness of judges, child protection workers, and mandated referrers, the Commission must ask what awareness it seeks to increase through these changes.
- 3) Lesson 3: This leads to a third lesson, that it is important to put services into place before the population using those services is vastly expanded. Towards this lesson learned, we ask the Commission to consider what services currently exist in the Commonwealth to support families and build community trust in the system's interest in mitigating the deep racial disproportionality of current systemic responses. What other services might be supportive to families? Adequate support for housing and other basic needs for residents of the commonwealth? Comprehensive access to information about

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<sup>8</sup> Jeffrey L. Edleson, PhD, Jenny Gassman-Pines, BA, Marissa B. Hill, BA, Defining Child Exposure to Domestic Violence as Neglect: Minnesota's Difficult Experience, *Social Work*, Volume 51, Issue 2, April 2006, Pages 167–174, <https://doi.org/10.1093/sw/51.2.167>.



healthy relationships, consent, and other education that would help younger survivors in need of support recognize and seek help for harm they may be experiencing? The narrow expansion This may be the hardest one to achieve. It may be that the demand must be in place before the resources will be forthcoming

By way of recommendation, we ask the Commission to consider exploring the following resource. Joyce James <https://www.joycejamesconsulting.com/> is a consultant who may be able to offer valuable insight to the Commission. Ms. James comes highly recommended by participants in the Promising Futures working group. Ms. James served as the Deputy Commissioner for Texas Department of Family & Protective Services (DFPS.) The department worked on the day-to-day operations of the agency's Child and Adult Protective Services Programs and the Residential and Child Care Licensing Programs. It was Ms. James' creative leadership which led the way for the introduction and implementation of training that moved the organization from its sole focus on cultural competency to a multifaceted focus on anti-racist principles and practice for achieving racial equity.

If the Commission truly hopes to shift the culture of the Massachusetts child welfare response systems, perhaps seeking counsel from experts such as Joyce James would be beneficial. JDI is open to further dialogue on any aspect of these proposals and hopes you will reach out to us first as a resource on the unique needs of survivors of sexual and domestic violence and their advocates.

Thank you for your kind attention to this testimony. Please reach out to us at 617-695-1808.

Sincerely,

A handwritten signature in black ink that reads "Hema Sarang-Sieminski". The signature is written in a cursive style with a vertical line through the first letter 'H'.

Hema Sarang-Sieminski  
Policy Director, Jane Doe Inc.