

MINUTES – APPROVED BY THE MANDATED REPORTER COMMISSION
Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Tuesday February 23, 2021
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
Andrew Rome – General Counsel, DCF
Katherine Ginnis – Sr. Director of Child, Youth & Family Policy Program, EOHHS
Angela Brooks – Dir. Child and Youth Protection Unit, AGO
Nina Marchese – Director of Approved Special Education Schools, DESE
Lisa Hewitt – General Counsel, CPCS
Anne Connors - Associate Commissioner for Field Investigations, EEC
DA Marian Ryan - Middlesex District Attorney, MDAA
Matthew Connolly - General Counsel, EOE
Officer Elizabeth Fleming - Waltham School Resource Officer

OCA Staff:

Cristine Goldman
Alix Rivière

Members of the Public who identified themselves via the chatbox

Michael Ryan - CPCS
Lisa Rosenfeld - Counsel - Jt. Comm. on Children, Families and Persons with Disabilities, Office of Rep. Finn

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 explained that today's meeting is dedicated to continued discussion of the draft document designed to solicit public comment on proposals before the Commission. She informed members that the Children's Law Support Project group of advocates who have been attending our open meetings have made a request to provide the Commission with their input about the proposals before the Commission prior to the finalization of the draft document designed

to solicit public comment and prior to the public comment period. Chair Mossaides reported to the Commission that the OCA believes that it is best to gather all public feedback through the public comment period that the Commission is designing, and suggested that it would be best if this advocacy group utilized the public comment period. She asked members if they have any comments to make or any recommendations on another way forward. Commission members did not have any comments.

Vote on Draft Meeting Minutes for February 11, 2021 Meeting

Formal discussion was opened on the February 11, 2021 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, Katherine Ginnis, Lisa Hewitt, Andrew Rome, Nina Marchese, Elizabeth Fleming, Matt Connolly, and Angela Brooks. The February 11, 2021 meeting minutes were approved.

Review of the draft document designed to solicit public comment on proposals before the Commission

Before resuming its review of the document, members went over changes made based on the previous meeting's conversation- these changes were highlighted in purple in the meeting document considered at this meeting. Members requested that the discussion on the possible exclusion of judges from mandated reporting responsibilities address the possibility that judges may be put in a position, if testifying regarding the filing of a 51A, of having to discuss on the record the reasoning behind some of their judicial decision-making. Additionally, members noted that the section "A Central Reporting System" should highlight that the recommendation before the Commission is drafted through the lens of 51A filing in addition to filing notifications to licensing bodies.

Reporting Responsibility and Definitions

Next, the Commission resumed its in-depth review of the document from where the Commission left-off at the previous meeting- page 24. They examined the definitions of abuse and neglect. Members discussed the different scenarios and drafting regarding a "substantial risk" of neglect or abuse. Some members expressed the preference abuse and neglect should continue to be defined in regulations rather than in statute.

- Definition of Abuse: Commission members discussed the addition of trafficking in this section. One member noted that federal reporting requirements identify trafficking under the abuse umbrella.
- Definition of Neglect: Members discussed the description of internal investigations under the arguments concerning the caregiver/another option under the definition of neglect. The Commission discussed whether a minimal facts inquiry to justify the filing of a 51A could be adequately distinguished from an internal investigation prior to filing a 51A. They noted the Commission is trying to strike a balance between mandated reporters gathering enough information to make an informed decision to file a report and mandated reporters choosing to investigate a case before filing. The Commission discussed that training of mandated reporters could have an important role to play in explaining what level of information is

necessary to reach a threshold of “reasonable cause to believe” for the purpose of filing. The Commission agreed that the document should more directly address this issue.

- Definition of Sexual Abuse:
 - Members suggested that the sexual abuse definition incorporate references to abuse through the use of technology.
 - The Commission also debated the language “consensual communications between peers that do not involve coercion or exploitation are not sexual abuse.” Members agreed that this was a very complex topic as there are legitimate questions regarding what is considered consensual and peers is a relative term (peer to peer communication between 9 year olds is different than between 16 year olds). Members also noted that this language would not account adequately for sibling on sibling sexual behavior. Members agreed that the quoted language should not be included in the draft proposal to be considered by the Commission and is an issue that should be particularly identified for training.
 - Commission members discussed the complexity of problematic sexual behaviors of children and the referral processes from DCF to District Attorneys and sometimes to Child Advocacy Centers. Commission members agreed that the public document should outline this issue.
 - Members also discussed that DCF currently serves as a clearinghouse for many types of cases and how this serves a beneficial purpose of ensuring that children and families are connected to the correct agencies and that institutions and entities, particularly the DAs, are informed of relevant events. Members also discussed that DCF’s clearinghouse role may contribute to overinclusion of certain discrete communities and perpetuate racial and ethnic disproportionalities in the child welfare system. Members agreed that the public draft could identify this issue for public feedback and perspective.
- Reasonable Cause to Believe: Members expressed the need to hear from non-lawyers to see if the language proposal detailed in the document is helpful to mandated reporters.

Institutional Reporting

Commission members discussed whether this section should be shortened and simplified. Members agreed that the section could be simplified but that the full complexity of the language proposal before the Commissions should be included as members of the public who have experience and knowledge of current institutional reporting practices may want to review the nuances of the proposal. The draft will also be updated to clarify the requirement to report immediately. The OCA noted that the OCA will be reaching out to EEC to discuss technical issues related to licensing violation language.

Penalties

Next, the Commission discussed monetary penalties. Members clarified that there is a difference of opinion as to whether a tenfold increase in potential monetary penalties is appropriate, not whether any monetary penalty is appropriate. The OCA will redraft to reflect this.

- Licensing Violations:

- Members noted their appreciation of the proposal's inclusion of an exemption to the public records law to protect the privacy of the child and others. The Commission noted that there are technical questions in terms of the confidentiality of these records that will need to be discussed more in-depth- the OCA will be reaching out to EEC to work through some of these issues and provide information to the Commission.
- The Commission discussed whether an institution could be held liable under this section for failing to file, as institutions themselves are not mandated reporters. The OCA will include additional language to note that nothing in this section would prevent a licensing body from taking action against an institution for any reason related to their licensing requirements.

Employer Retaliation

Members discussed that it would be beneficial for mandated reporters to be able to bring claims of employer retaliation to a state entity that would be able to evaluate, investigate, and pursue such claims. The OCA met with the Fair Labor Division at the AGO's office to discuss whether they would be a suitable home for these claims. The Fair Labor Division indicated that they do not have the expertise, authority, or resources to take on this task- this task is outside of the wage and hour complaints that they have the authority to address. Some members noted that this would be an expansion of their current work but that resources could be provided to the agency if necessary. Commission members wondered if any other state agency would be better suited to be the home for these claims. Commission members discussed that the employer retaliation provision could be strengthened via some statutory additions such as including a legal presumption.

Mandated Report Training

Members discussed the different options described in the document regarding training. Some members expressed their preference for a training model that has strong quality control given the importance of mandated reporter training. While this model would require important funding, they noted the need for a strong review and approval process to ensure uniformity in training throughout the state. Some suggested the new legislation should clarify which topics must be included in mandated reporter training and include a mechanism for the public to be able to provide suggestions to the training entity.

Closing Comments

Before the close of the meeting, member of the Commission Andrew Rome announced that he would likely not be at the next meeting as he has accepted a new position at the Department of Early Education and Care (EEC). He thanked fellow Commission members for examining this topic in all its complexities as thoughtfully as they have done.

Chair Mossaides thanked the members of the Commission for their input and work. She explained that at the next meeting members would review a near final product of the document for public feedback and input. She noted that at the next meeting Commission members would also review the process for public comment and a proposed schedule. The next meeting will take place on Friday March 12, 2021 from 10am to 12pm.

Adjournment: 3.58pm