

Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Tuesday, July 28, 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
Spencer Lord – Special Counsel, EOPSS

OCA Staff:

Cristine Goldman (OCA)
Christine Paladino-Downs (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
Lisa Rosenfield – Jt. Comm. on Children, Families & Persons with Disabilities, Office of Rep Kay Khan
Cecely Reardon – General Counsel, DYS

****This meeting was recorded in part, and with the full approval of all Commission members present, for purposes of drafting these minutes. All Commission members were made aware that the recording would be deleted after the completion of drafting these minutes.****

Meeting Commenced: 10:02am

Welcome and Introductions:

Maria Mossaides, Chair of the Mandated Reporter Commission, called the meeting to order. She explained that the Commission may have time to readdress the topic of a possible exemption from mandated reporting for persons working on criminal defense teams as proposed by CPCS which introduced at the previous meeting. However, the Commission should consider scheduling an additional meeting solely dedicated to that discussion and invite some additional stakeholders to

present to the Commission. Next, Cristine Goldman, the Office of the Child Advocate's Director of Policy and Legal Counsel, reviewed the agenda and began the discussion.

Approval of Meeting Minutes:

Formal discussion was opened on the July 21, 2020 meeting minutes. A roll-call vote was held and the minutes were unanimously approved by all present members of the Commission except by Mr. Lord who abstained from voting due to his not being present at the meeting to which the minutes related.

Meeting Document: Institutional Reporting and Consideration of Persons Excluded from Mandated Reporting

The Commission discussed the meeting document and the addition of examples of institutional reporting laws from Pennsylvania and New York which both have systems in which mandated reports retain their individual requirement to report and notify the institution. Members also reviewed the text of MGL 119 § 51B(l) regarding communication to certain state agencies of supported 51B investigations in institutions.

Next, the Commission discussed whether mandated reporters should be required to follow institutional reporting protocols in institutional settings or whether use of institutional reporting protocols should be encouraged but optional. Arguments were made in favor and in opposition to such a requirement. Members discussed that employees may be hesitant to report on one another if not for the express requirement that they do so through the institutional reporting protocol- nonoptional use of the protocol may increase the number of valid reports. Members discussed that preference could be given to following the institution's internal protocol, but that the protocol should not prevent the mandated reporter from filing individually and should not mean the person who failed to report individually would not face legal consequences. Commission members discussed that without a strong preference for use of the institutional reporting procedure, institutions may not be made aware of concerning situations within their institutions that gave rise to a report. Other members worried that there may be situations when people do not report for fear of professional retaliation. Commission members agreed there should be an individual reporting avenue to address the need to report directly with DCF in cases when there is fear of professional retaliation or internal pressure not to report.

Members of the Commission noted that institutions do not know about 51A reports involving accusations against staff members when the 51A report is filed by a parent or member of the public. The Commission noted that changes to 51B(l), as recommended within the document, would alter that situation for the agencies/institutions listed in that subsection.

Next, the Commission examined three drafting proposals for institutional procedures with substantive differences. Members of the group considered examples for each proposal and how the choice of language might alleviate potential fears mandated reporters may have of professional retaliation. Members voiced their preference for the third proposal and discussed the possibility of adding language requiring mandated reporters to use the institutional reporting protocol unless they have a credible fear of retaliation in the workplace. The members debated what "credible" would mean legally and whether it was necessary to include and determined that "reasonable fear" was sufficient with the understanding that there is a reasonable-man standard underlying that phrase. The group was asked to share examples of institutions where there is a pattern of fear of

retaliation. Members then discussed who would assess fears of retaliation and determined that in an employment discipline action for failure to follow the institutional procedure, the employment disciplinary procedure would evaluate whether there was a reasonable fear and, if contested, the issue would usually go to an arbiter/mediator. The members also discussed that in a legal case of failure to file (pursuant to the penalties section) the issue would not be whether the procedure was followed or not, but rather whether there was a filing at all (individually or through the procedure). Members of the Commission also discussed the example of Eagleton school in Greater Barrington, Massachusetts, and agreed that the licensing authorities would have the ability to enforce adherence to the institutional procedures, have authority to review the written institutional procedures, and could pass regulations regarding institutional procedures.

Members discussed the idea that the state could provide technical training on best practices for institutional reporting procedures. Members then discussed the possibility of having a state agency responsible for technical assistance and training to assist institutions in complying with the law. Commission members noted that the Commission has discussed an electronic 51A filing mechanism that would automatically notify all necessary parties/institutions which would simplify the process of alerting institutions that a report has been filed. It was noted that such a recommendation had been made by the Residential School Working Group. It was agreed this topic would be addressed at a future meeting.

The Commission discussed that the proposal permitted a “minimal facts inquiry” but prohibited an internal investigation. The Commission discussed whether the minimal facts inquiry language would be used by some as an internal investigation mechanism- as these two concepts are really a matter of degree. Members noted that the preference is to avoid interviewing children multiple times about a situation as children are well known to recant their story even if that story is true. It is particularly important not to expose a child to multiple interviews in cases where abuse or neglect might lead to criminal prosecution. Additionally, there is a possibility that a child’s recollection of an event can be affected by trauma so a minimal facts inquiry may result in a mistaken impression by an untrained interviewer regarding the truth or likelihood of the allegation. Commission members agreed that the concept of a minimal facts inquiry, or a discussion a mandated reporter may have with colleagues regarding a situation they are evaluating for concerns of abuse or neglect, is part of the “reasonable cause to believe” abuse or neglect has happened or is at risk of happening baseline for 51A reporting. Because a mandated reporter needs a reasonable cause to believe a situation rises to the level of reporting, the Commission believes that a minimal facts inquiry is covered by the need to establish that reasonable cause basis and does not need to be explicitly stated in the text of the institutional reporting procedure section. Rather, the Commission prefers to propose that the language clearly state only that internal investigations cannot delay reporting as that is the concern that the Commission feels needs addressing. Further, the Commission feels that the Commission’s upcoming proposals for the training of mandated reporters can make clear what type of inquiries are acceptable prior to reporting and what would constitute an internal investigation for purposes of this subsection.

The Commission discussed that the Commission’s preference when drafting these proposals for review is to prompt mandated reporters to err on the side of reporting. The Commission members noted that there may be pushback from some unions regarding the language prohibiting an internal investigation prior to the filing of the report. Some unions or associations may feel that an internal investigation would weed out false or frivolous reporting and that there is damage to a person’s reputation and/or possible employment opportunities in the future if a report is filed, even if that

reporting is ultimately unsupported. The Commission would like to know more about when unsupported 51Bs or screen-outs of 51As are made known to persons outside of DCF – particularly in cases of employment and judicial proceedings. The Commission discussed that there is a stigma associated with DCF history even if that history is unsupported and that there is also likely a racial/ethnic disproportionality in those experiencing this stigma. The Commission agreed that the language prohibiting internal investigations prior to filing shall remain the recommended proposal for review by the Commission, but felt that the Commission should take up a discussion of whether and in what circumstances there could be an opportunity for expungement of a DCF record of unsupported investigations. Further, the Commission discussed the possibility of requiring employers to have a review process that provides employment applicants an opportunity to explain their DCF record to prevent the record from being the sole reason for barring employment. Additionally, the Commission would also like to discuss in the future in what scenarios there are supported findings for persons under 18yo and whether those would be ripe for an expungement process.

The OCA agreed to re-draft the proposal for an institutional reporting protocol based on the discussion but in the interest of time determined that the next two meetings would be dedicated to discussion and review of the definition of abuse and neglect and the related issues of treatment of certain child-on-child sexual abuse or violence, under-age consensual sex, and infants born addicted to prescribed medication. The OCA noted that the specific language in the MRC statute asks that the Commission review the possibility of standardizing the definition of abuse and neglect across state agencies. Briefly, the Commission noted that an easy way to do this is to have agencies adopt the DCF definition. However, the Commission noted that there is an inherent value in different definitions between licensing agencies and DCF as a wider definition for purposes of licensing will allow investigation and action taken on situations which do not fit the DCF definition- specifically, for example, if DCF screens-out allegations in a daycare because the alleged perpetrator is not considered a caretaker, EEC may still investigate those allegations under a licensing investigation and make findings.

Closing Comments:

The OCA will update the working document based on Commission discussion at this meeting. Ms. Mossaides envisioned the Commission's upcoming discussion on the definition of child abuse and neglect to take two meetings, which will leave time for the OCA to plan for a future discussion regarding the CPCS proposal of excluding persons working on civil and criminal defense teams from mandated reporting requirements. She notified the group that the bill including the MRC report deadline extension is currently awaiting the Governor's signature. She thanked members for their continued participation.

The next meeting will be held virtually on Thursday August 6, 2020 from 2pm to 4pm.

Adjournment: 12.03pm