

Office of the Child Advocate  
Mandated Reporter Commission Meeting Minutes  
Thursday August 6, 2020  
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

Lisa Hewitt - Chief Counsel, CPCS

Andrew Rome - General Counsel, DCF

Michael Ginnetti on behalf of Anne Conners - EEC

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

John High- Chief of Staff, DPL

DA Marian Ryan- DA representative MDAA

**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. Robert Sege —Hospital for Children at Tufts Medical Center in Boston Cecely

Reardon – General Counsel, DYS

**Meeting Commenced: 2:04pm**

**Welcome and Introductions:**

Maria Mossaides, Chair of the Mandated Reporter Commission, called the meeting to order. She explained that Catherine Mick, who is absent during this meeting, reported no objections to the minutes of the previous meeting. She reviewed the agenda, beginning with the group's discussion on institutional reporting, the definition of child abuse and neglect, and ending with a discussion of topics the Commission will address in the near future.

**Approval of Meeting Minutes:**

Formal discussion was opened on the July 28, 2020 meeting minutes, no members had any comments on the meeting minutes. A vote was held and the minutes were unanimously approved by all present members of the Commission.

## **Meeting Document: Institutional Reporting and the Definition of Child Abuse and Neglect**

Commission members were made aware that the Governor signed the bill that extended the deadline for the Commission's report to December 31, 2020.

Members then examined the changes made to the institutional reporting procedure proposed language since the last meeting. The Commission discussed that the recommended language for review indicated that the person in charge or their designated agent had no discretion to refuse to file a report in the institutional reporting procedure. Commission members discussed whether they should recommend an option for the institution to exercise discretion in reporting if the issue the mandated reporter wants reported does not factually rise to the level of a 51A. The Commission agreed that discretion should not be recommended as the system created by this proposed language requires mandated reporters must use the institutional reporting system (unless the mandated reporter has a fear of retaliation or is attempting to report on the person in charge or designed agent) and this requirement should be balanced by the institution not second-guessing the mandated reporter's judgement about what rises to the level of a 51A. Additionally, the institution can provide supplemental information at the time of the filing expressing to DCF why they do not agree that the filing rises to the level of abuse and/or neglect. Further, it was noted that sometimes valuable information is learned from filings of 51As that are screened out- it could be information about an ongoing case that may help a caseworker further understand a situation, or it may be an opportunity for DCF to connect the caller with a more appropriate service provider.

Next, the Commission discussed the definition of child abuse and neglect. The Commission laid out its goals for discussion at this meeting and the next meeting: the value of standardizing the child abuse and neglect definition among state agencies and methods of standardizing the definition; situations that align with standards of child abuse and/or neglect but do not qualify for DCF involvement; situations that do not rise to the level of child abuse and/or neglect but require preventative or family stabilization-type services; situations that result in a referral to a District Attorney's office.

The Commission examined the current definition of child abuse and neglect in MGL c. 119 § 51A(a). Members discussed that DCF is the central resource for calls about child abuse and neglect, but is also sometimes a resource for additional information gathering and for people who are seeking assistance for situations that don't rise to the level of abuse or neglect. For example, DCF gathers data on children born substance-exposed for recording numbers of plans of safe care even when those cases do not rise to the level of abuse or neglect. Another example is that some members of the public call DCF when they are looking for someone to be connected to state services but don't know how else to make that connection- this is the result of DCF being the most visible/widely known state services. Commission members wondered if, taking a fresh look at the filing process, there should be a separation between calls that come into DCF for the purposes of reporting child abuse and/or neglect and calls that come into DCF for other reasons- which could have some other name attached rather than "51A."

Commission members were asked to consider what level of specificity is needed in 51A(a) to communicate to mandated reporters the type of situations they should report to DCF. It was noted that further information about the definitions of abuse and neglect are in DCF regulations, but those regulations are broad and not many mandated reporters will know to look to the regulations for further guidance. The Commission reviewed the situation of underage consensual sexual activity as an example of a situation that mandated reporters are conflicted about reporting to DCF. Underage

consensual sexual activity could be considered criminal in some instances, but may not amount to abuse and/or neglect. Commission members discussed that mandated reporters need a reasonable cause to believe that abuse or neglect has happened to report a 51A and underage consensual sexual activity, regardless of the legality, does not rise to the level if the mandated reporter has no concerns about the consensual nature. Commission members did discuss that this can be difficult to evaluate as it concerns the capacity of the individual to consent and the power-dynamics that may affect the consensual nature. Members discussed whether specific provisions, such as clarifying questions about whether consensual sexual activity should be reported, should be included in the statutory language, DCF regulations, in mandated reporters' training or, potentially, in public service announcements. The Commission reviewed models of statutory language from Pennsylvania and New York which both have more detail than 51A.

Next, members focused on DCF regulations and discussed how often these regulations are changed, what goes into creating them, and whether regulations most often change in response to case law. The Commission wondered if the current regulations are sufficient to cover a wide-range of situations that could lead to reporting child abuse and neglect, or if there is a need to add some clarification in the regulations, knowing that too many clarifications could also be restrictive. Members next discussed the possibility of screen-out reports by DCF to include a coding structure and suggested the topic be discussed in the Data Work Group.

Members of the Commission discussed what the benefits and detriments are of being more specific in the statutory definition of child abuse and neglect. There will likely be little effect on how the courts determine whether DCF can obtain custody of a child. It is unclear if adding more detailed language in the new mandated reporter legislation would impact the number of abuse and/or neglect reports, or the quality or type of reports made. The group discussed that common concern is that a statute that is not detailed enough could lead to underreporting. Members identified four instances that could lead to a failure to report: attempts to cover up abuse or neglect; failure to recognize abuse or neglect; difficulty determining when a concerning issue, such as refusal to give a child a certain medication, rises to the level of abuse and/or neglect; and when reporting would endanger a professional relationship (e.g. with a therapist). Commission members considered when these instances could be aptly dealt with in statute, regulation, and/or training. The Commission then discussed connecting failure to file a 51A with consequences for licensure when the Commission discusses the penalties section of the statute at a later date. Members agreed that mandated reporter training should include best practices of how to approach families after filing a report for child abuse or neglect.

The Commission discussed whether some of the specific questions mandated reporters have about what situations may rise to the level of requiring a 51A report could be clarified via a statutory definition of the "reasonable cause to believe" standard. The meeting document included two example definitions from other states. The Commission felt that often attorneys are comfortable with language about levels of belief, but that non-attorneys may not find such language helpful or descriptive. The OCA agreed to draft possible recommended wording for defining the standard so that the Commission could review it at the next meeting.

Next, the Commission examined the possibility of standardizing definitions of child abuse and neglect across state agencies. Members noted that having different definitions allow for agencies to investigate and respond to situations that DCF might screen-out. Members discussed issues that could arise from a common definition. It was noted that it might be difficult for a provider to understand the structure and consequences of different definitions applied for purposes of DCF involvement.

versus licensing and contracting requirements. The Commission agreed that there may be a need to clarify the structure and consequences of different definitions. The Commission agreed to review any specific definitions of abuse and neglect by other MA state agencies at the next meeting.

**Closing Comments:**

The OCA will update the working document based on Commission discussion at this meeting. Ms. Mossaides explained they are currently scheduling meetings up to December to meet the statutory deadline. The OCA may be seeking some outside help to draft the legislation closer to December. Ms. Mossaides added that the Commission should also include recommendations on the Commonwealth's response to racial and ethnic inequities in mandated reporting. She thanked members for their continued participation. The next meeting will be held virtually on September 15, 2020 from 10am-12noon.

**Adjournment:** 4.03pm