

Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Tuesday, September 22, 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
Katherine Ginnis- Sr. Director of Child, Youth & Family Policy Program, EOHHS
Angela Brooks- Dir. Child and Youth Protection Unit, AGO
DA Marian Ryan- Middlesex District Attorney, MDAA
Spencer Lord- Special Counsel, EOPSS
John High- Chief of Staff, DPL

OCA Staff:

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

Members of the Public:

Cecely Reardon- General Counsel for DYS
Michael Ryan—CPCS
Lisa Beatty, Norfolk DA's Office
Dr. Leena Mittal -- Associate Medical Director, MCPAP for Moms
Katherine Dudich -- Associate Director, MA Pediatric Sexual Assault Nurse Examiner Program
Dr. Alice Newton -- Medical Director of the Child Protection Program, MGH
Dr. Peter Friedman -- President, Massachusetts Society of Addiction Medicine
Dr. Davida Schiff -- Medical Director, MGH HOPE Clinic
Dr. Elizabeth Quinn- Lynn Community Health
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 Folger- Middlesex DA, Child Protection Unit
John High – Chief of staff
Jennifer Seaberg -- Senior Director, Bay State Community Services
Ruth Jacobson-Hardy
Mark Eisenberg
Kate MacDougall
Sarah Wakeman

Susan Elsen
Courtney Ross Escobar
Nicole Bell
Susan Hernandez
Sophia Terry
Sarah Ducie- Moms Do Care Duffy Health Center
Madeline Tarbox
Maureen Whitman
Lgoullaud
Linda Jablonski
Julia Reddy
Drodrigues
Laura Sternberger
Juliana Hillis
Other members of the public not named

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 participate in the meeting only through using the chat function unless the Chair of the Commission approves verbal participation. Members of the Commission participate verbally and can participate via the chat function.

Approval of August and September Meeting Minutes:

Formal discussion was opened on the August 6 and September 15, 2020 meeting minutes. One member asked for clarifications on a previous discussion regarding underage consensual relations. Then, a roll call vote was held. Those voting in favor of approval of the August 6 meeting minutes: Lisa Hewitt, Maria Mossaides, Andrew Rome, John High, Marian Ryan, Spencer Lord. Those voting in favor of approval of the September 15 meeting minutes: Lisa Hewitt, Maria Mossaides, Andrew Rome, Anne Conners, Kate Ginnis, Marian Ryan. Angela Brooks abstained from voting.

Commission Discussion on Work Process

Members discussed the Commission's work timeline and the topics that remained to be addressed before the legislative deadline of December 31, 2020. The group discussed the possibility of exploring some of the issues not directly pertaining to the new mandated reporter law, but relevant to this Commission's work, in the report. Ms. Mossaides urged members to reach out to the OCA between meetings to discuss topics with the OCA, to discuss any concerns, or if they wish to raise important issues to be discussed by the Commission. She also explained that the OCA has reached out to some members of the legislature so that the OCA can provide information about the status of

the MRC and the expected content of the report given the many complicated topics the Commission is interested in and the limited time before a report is due.

After a brief malfunction of the Webex platform, members of the Commission discussed whether they should recommend that the statute address underage consensual sexual relations explicitly, or whether that should be addressed in mandated reporter training. Members were reminded that two meetings would be allocated to address a general training for mandated reporters as well as sector-specific trainings. They discussed recommending in the legislation that training include specific topics, such as underage consensual relationships.

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

The Commission then turned to the definitions of abuse and neglect in 51A and Section 21. The drafting of the definitions reframed abuse and neglect in terms of the effect on the child, rather than the action of the perpetrator. Members discussed how the definitions have been re-written to help mandated reporters identify concerning situations and report them to DCF, and to discourage investigation the alleged abuse or neglect by mandated reporters themselves.

In addition to the document provided in the materials for the meeting, Cristine Goldman screenshared alternative drafting proposed by a Commission member which was not provided to Commission members in advance of the meeting (“the outside document”). At points throughout the meeting the Commission members reviewed these two versions of drafted language. The outside document will be shared in next meetings’ materials on the MRC webpage.

Members examined the proposed definition of abuse, that is, when “a child’s physical condition, mental or emotional health, or welfare, is injured, or is at substantial risk of being injured, by the non-accidental action of another including, but not limited to, sexual offenses.” Members discussed the phrase “sexual offenses” in depth to determine what was meant by the phrase and whether that phrase needs to be further defined. The phrase was taken from DCF regulations, which specify that sexual offense includes any sexual offense as defined in the laws of the Commonwealth, but also specifically includes sexual contact between a child and a caretaker . The drafting of the proposed language in the meeting materials was intended to be broad enough to encompass situations that did not rise to the level of criminal activity. Commission members felt that the term “offenses” could have the non-desired result of a mandated reporter doing research regarding what a sexual “offense” is prior to filing. The Commission queried whether the term “sexual offenses” was needed at all in the definition of abuse.

Members discussed the Commercial Sexual Exploitation of Children (CSEC) and that, given evolving technology, the new statute would need to mention that sexual abuse can be physical, written (including online), or verbal. Members mentioned that case law already supports that sexual abuse can be through written communication. The Commission noted that child perpetrated sexual acts may not be considered “offenses” under the law depending on the age of the child. Further, if these cases were reported to DCF and screened-out if the child perpetrator could not be considered a caretaker, they would likely no longer qualify as a mandatory DA referral if the child perpetrator were under 12 years old given the recent changes to the age of criminal responsibility.

The alternative drafting shared with the Commission members via the outside document separated the definition of physical abuse and sexual abuse. The group agreed that there is no need to separate physical from mental/emotional abuse/injury. However, Commission members did think

the addition of a sexual abuse definition would be beneficial and requested more time to review the definition provided in the outside document. Commission members also noted that they could recommend language for sexual abuse and let the legislature know that this is an area where they are recommending that the legislature seek further guidance. Review of the definition of abuse and the possible inclusion of a definition of sexual abuse was tabled to give Commission members more time for review.

Members reviewed the proposed definition of neglect, which is defined in the draft document as a situation when a child's "physical condition, mental or emotional health, or welfare, is injured, or is at substantial risk of being injured, by the failure or refusal of another to provide minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care to ensure a child's safety." Members noted that the language draws on the language in the DCF regulations but is also consistent with many definitions from other states. The language is meant to be descriptive about essential care. This new drafting excluded notation that failure to provide minimally adequate care to a child, if due solely to inadequate financial resources or a disabling condition, is not neglect. It was noted that a mandated reporter is not expected to do an investigation prior to filing the report to uncover what may be motivating the failure to provide minimally adequate care, but that such investigation will be done by DCF when screening the report or investigating the report.

Members of the Commission also reviewed the proposed neglect definition in the outside document: "The failure or refusal by a caregiver to take those actions necessary to provide a child with minimally adequate essential care such as food, clothing, shelter, medical or mental health care, supervision, and emotional stability and growth. This includes situations of educational neglect and exposure to domestic violence. Neglect can be deliberate or negligent, but it cannot be due solely to inadequate economic resources or the existence of a disabling condition."

The proposed definitions of abuse and neglect in the meeting document do not use the term "caretaker" so as to not limit the reporting of concerns of child abuse or neglect to 51As based on the apparent relationship of the perpetrator to the child. It was noted that the concept of a caretaker can be very tricky to apply and whether or not a person is a caretaker in any particular situation is very fact-specific. Examples were discussed including that staff members in a facility may be considered by DCF to be a caretaker despite not having direct responsibilities for a specific child. The Commission members discussed the term "caretaker" and the possibility of replacing it with the more modern term, "caregiver." Arguments were made that the term "caregiver" more accurately captures the role that person plays in relationship to the child. The Commission agreed to use the word "caregiver" instead of "caretaker" if the word would be included in the recommended drafting, with the understanding that the application of the term would be the same.

The Commission agreed not to include the limitation of "caregiver" in the recommended definition of abuse as DCF often serves as a conduit to the DA through mandatory and discretionary DCF referrals. However, the Commission could not come to a determination on whether to include the term "caregiver" in the definition of neglect. The Commission does not want to discourage reporting of concerns of child abuse and neglect to DCF, nor does the Commission want mandated reporters to go too far into a pre-investigatory process of determining who is and who isn't a caregiver depending on the circumstances. However, the Commission was hard-pressed to come up with an example in which a person was responsible for the minimally adequate essential care of a child but would not be considered a caregiver. Further, the Commission values specificity in the

statute and does not want to shy away from being clear about which cases are required to be reported to DCF.

Members discussed whether the language should include “caregiver or institution.” It was discussed that institutions cannot be held accountable in the same way as individuals. DCF does not support allegations of abuse or neglect against institutions themselves.

Members then turned to page 3 of the document and the proposed definition of “reasonable cause to believe:” “A ‘reasonable cause to believe’ is a suspicion that a child has been maltreated, or is at substantial risk of being maltreated, based on a presentation of facts which can include a child’s disclosure, an admission by a perpetrator, information from a third party, or a mandated reporter’s own observations or impressions which may be informed by a particular expertise, training, or experience. Absolute proof or certainty is not required.”

Members also reviewed the proposed language in the outside document which reads: “A presentation of facts which creates a reasonable suspicion of child maltreatment. Absolute proof is not needed. Reasonable suspicion can be based on a disclosure of a child, an admission by a perpetrator, information from a third party, or your own observations, knowledge, and experience.”

Commission members agreed the phrasing in the meeting document was preferable as it referenced the substantial risk of maltreatment and it did not reuse the word “reasonable” in the definition as well as the phrase being defined. Commission members also agreed that the word “absolute” should be stricken from definition as it created too high a bar for consideration of proof or certainty and it appeared too similar to the concept of reasonable doubt which is a much higher bar than is being described here. That the proposed definition is premised on a “presentation of facts” was a sufficient description of the baseline of information needed for reporting such that the standalone phrase “proof or certainty is not required” was sufficient. Commission members reached consensus on the proposed definition of “reasonable cause to believe.”

It was brought to the Commission’s attention that many members of the public attended the open meeting in order to hear the discussion on substance exposed newborns. It was noted that the materials for today’s meeting did include the topic but that Commission discussion did not progress that far into the meeting materials due to the detailed manner in which the Commission approached the definition of abuse and neglect discussion. However, members of the public had been encouraged to provide information and viewpoints in the chatbox and that the OCA would review the chat after the meeting. Commission members are mindful of the public’s time and indicated that the discussion of substance exposed newborns within the definition of abuse and neglect, and the included discussion of Plans of Safe Care, was a priority for the Commission and will be the first topic of discussion at the October 5th meeting. Further, the Commission valued the input from the public on the topic today, and that the content of the chatbox will be included in the materials in some way for the October 5th meeting to ensure that the Commission can review the viewpoints expressed.

Closing Comments:

With the meeting nearing its end, the OCA reviewed the topics still to be discussed under the definition of abuse and neglect including: substance exposed newborns and Plans of Safe Care (October 5th meeting), a common definition of abuse and neglect across state agencies, and abuse and neglect by children. The OCA will update the working document based on Commission

discussion at this meeting. The next meeting will be held virtually on October 5, 2020 from 10am to 12noon.

Adjournment: 11.59am