

MINUTES APPROVED BY THE MANDATED REPORTER COMMISSION

Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Thursday October 15, 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
Officer Elizabeth Fleming- Waltham School Resource Officer
Ann Reale-Undersecretary of Education, EOE
Andrew Rome - General Counsel, DCF
Anne Connors - 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
Nina Marchese- Director of Approved Special Education Schools, DESE

OCA Staff:

Cristine Goldman
Christine Palladino-Downs
Alix Rivière
Lily Powell (OCA Legal Intern)

Members of the Public who introduced themselves via the Chat Function:

Cecely Reardon- DYS General Counsel
Michael Ryan- CPCS
Lisa Beatty- Norfolk DA's Office
Tracy DeFusco- Director of the Worcester County Child Advocacy Center/District Attorney's Office
Katharine Folger- Middlesex DA's Child Protection Unit/ Children's Advocacy Center
Tom King – Executive Director Massachusetts Children's Alliance
Susan Elsen – Mass. Law Reform Inst.
Philip Lynch -- Office of Representative Denise Garlick

Other members of the public attended the meeting, they are not named here as they chose not to identify themselves via the chat function.

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. She laid out the three topics to be discussed during the meeting: a standard definition of abuse and neglect across state agencies; children who are non-caretakers; and mandatory 51A referrals to D.A.'s offices. 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.

Review of the Minutes

Formal discussion was opened on the October 5, 2020 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, Ann Reale, Ann Conners, Lisa Hewitt, Elizabeth Fleming, Angela Brooks, Andrew Rome, Katherine Ginnis, Nina Marchese, Marian Ryan. The October 5, 2020 meeting minutes were approved.

Presentation of Document Titled "MRC Document 10_15_2020 Child Abuse and Neglect Definition Continued"

Commission members addressed the section of the MRC enabling statute that requires the Commission review "proposals to revise the definition of child abuse and neglect to ensure a standard definition among state agencies." The OCA noted that the OCA could not locate any opposing definitions of abuse and neglect among state agencies. However, some agencies' regulations indicate that abuse and neglect investigations from a licensing perspective and human rights perspective may be broader, or may happen in different circumstances, than a DCF investigation of a 51A. State agencies other than DCF do not limit their investigations of abuse and neglect to scenarios that only involve "caretakers" and may support allegations of abuse and neglect against institutions themselves (DCF supports allegations only against individuals).

Commission members noted that some agencies conduct joint investigations of allegations of abuse and/or neglect with DCF pursuant to Memorandums of Understanding (MOUs) between the agencies. Commission members discussed some of the complex scenarios that may arise in joint investigations when state agencies come to different conclusions about allegations of abuse and neglect depending on whether the scenario is seen through a licensing perspective or a DCF case perspective. Commission members discussed scenarios in which two agencies conducting a joint investigation would come to different conclusions about the investigation. Members explained that this has happened in the past, but these decisions are discussed between the agencies. The Commission examined examples of collaborations between agencies through MOUs, such as a recent one entered into by DCF and DESE. The Commission concluded that agencies are in fact using the same definition of abuse and neglect but the complexity of the application of that definition to the purposes of the investigation for each agency (child welfare via DCF, licensing, or human rights processes) may result in non-congruent results of the investigations.

Commission members discussed providers' concerns regarding the lack of clarity in the above-mentioned process. The process of multiple and/or joint investigations for one incident can be confusing and frustrating for providers, particularly when those investigations reach non-congruent results. Providers have voiced their need to understand how agencies will respond to

allegations and understand the role of individual agencies. Commission members also noted that many providers are unable to fully address the incident that occurred leading to the 51A because they are required to fill out multiple sets of paperwork for multiple agencies (DCF and licensing agencies). The Commission also discussed the potential problem posed by overlapping shifts by staff working in residential schools (a 51A may be filed regarding the daytime education regarding one staff member, but that staff member may also be working a night shift at that residential school or another licensed facility).

The Commission Members discussed the possibility of creating a central reporting system for institutions which would require that providers fill out one online form regarding an incident and tick off boxes that would indicate who that form should be sent to (DCF, licensor etc.). This would reduce the amount of paperwork required of the providers, ensure that all relevant state agencies received the same information, and would assist state agencies in coordinating joint investigations. Further, such an automated system could respond to the provider's filing with notification of what each state agency investigates, why, and the expected next steps and timeframe. It was suggested that all licensing agencies should have a standard form that would be sent to agencies and providers involved in a 51A. The form would include a section on which agencies need to be notified and in what circumstances. The Commission members agreed that this recommendation would not need to be included in any recommended statutory changes. Commission members discussed the possibility of recommending a further working-group to determine the details of this central reporting system but ultimately determined that the MRC report could indicate that the Commission members recommend that this system be designed and implemented and that state agencies can get together to do so without the need for another working group. Commission members agreed that such a recommendation should come with an expected timeline in which the agencies should be able to accomplish this task.

In light of the recommendation that there be a central reporting system for institutions licensed by MA state agencies, members returned to the topic of adding "caregiver" to the draft recommended definition of neglect in section of 21. Adding the term "caregiver" to the definition of neglect may complicate the central reporting system being proposed as providers would be in the position of determining whether someone was a caregiver for DCF purposes versus whether the situation required reporting for licensing purposes at the time of the filing. Additionally, one member expressed concerns about the inclusion of "caregiver," as some 51As do not include caregivers (e.g. in CSEC cases). Notably, DCF is still a conduit for referring cases to the DA's office even when the reported abuse or neglect has not been perpetrated by a caregiver. Members agreed that DCF serves an important role in screening those reports and sending them to the DA's office.

Issue of children who are Non-caretakers

Members then turned to the topic of situations when a child under the age of 12, who is not considered by DCF to be a caretaker, displays problematic sexual behaviors with another child. In this situation, DCF would likely screen the 51A report out (not a caretaker) and refer the case to the DA's office even though the child with the problematic sexual behaviors is under 12yo. Members asked what would happen for both children involved and what services would be provided for the child who has displayed the problematic sexual behaviors. Members heard information about Child Advocacy Centers who accept cases of child sexual abuse by an alleged child "perpetrator" and investigate those cases through a SANE interview or other means.

DA Ryan invited Tom King, Executive Director of the Massachusetts Children's Alliance, present as a member of the public during this meeting, to speak about his professional experience in these situations. Mr. King explained that he is currently working with six CACs in partnership with a training team from the University of Oklahoma on a pilot program that provides cognitive behavioral therapy to children in these situations. He described the pilot program as focusing on out-patient interventions with children who have exhibited problematic sexual behavior. Through this program intervention is almost always effective with only a 2% recidivism rate. He added that most studies show that interventions that are not punitive result in the elimination of the problematic sexual behavior. Additionally, this pilot program works with the child's family which helps with families' feelings about being ostracized/stigmatized because of the behavior of the child. He also discussed the need to help children who are over the age of 12 and, under the law, considered legally responsible for their actions. As a next step, the CAC pilot program would work with providers across the state to create a system of consultation. He noted the importance of the process of filing a 51A in these situations as that is the mechanism in which these cases are then referred to the DA who refers the child/family to the CAC for treatment through this pilot program. Members of the Commission asked how many children are involved in these types of situations every year. Mr. King approximated that the number is close to 2,500 children. Mr. King also indicated, in response to questions from Commission members, that the program is gathering and analyzing data to examine questions of racial equity.

Commission members expressed concern that the only way for these children to access this CBT-pilot program at the CAC was through a 51A and DA referral, particularly in light of the fact that children under 12 do not have criminal responsibility for these actions and referring them to the DA seems to suggest otherwise. Commission members wondered if there could be a different pathway to refer these children to CACs for intervention (both the children who displayed the problematic sexual behaviors and the children who may have been victims of those behaviors). Commission members noted that the DA referral is usually linked to the child victim of the behaviors, not the child "perpetrator" of the behaviors. Members discussed whether these children and families should be provided with state services for support regardless of whether the child who displayed the problematic sexual behaviors is the subject of a 51A. Members also discussed why DCF does not provide such services and to what extent DCF should get involved in matters not pertaining to a caregiver committing abuse or neglect. Members invited Aine Blanchard, Child Protection Manager at MGH, to add information on this topic. Ms. Blanchard described the process MGH uses to seek to ensure that the alleged child "perpetrator" also receives the services they need. In child-on-child abuse cases, if the alleged "perpetrator" is thought to be a victim of abuse themselves, the hospital files two 51A reports- one on behalf of each child involved in the incident. As a result, when they refer the alleged child "perpetrator" to a CAC, they also recommend a 51A be filed on behalf of that child and note a possible sexual abuse "by unknown perpetrator." She added that programs like MGH are not making determinations regarding the sexual abuse that might have taken place, they file with DCF.

At this point, DA Ryan invited Lisa Beatty, Norfolk DA's Office, present as a member of the public during this meeting, to speak with the Commission as she has experienced working on the ground in these cases. Ms. Beatty explained that these situations bring about very difficult conversations for families who feel shame and are overwhelmed. She explained a lot of training is required to lead these conversations with families. She stressed how effective CACs have been in these cases. Indeed, CACs ensure that children who are alleged to have expressed problematic sexual behaviors

feel safe in their communities. She added that CACs have access to national data system (NCAttrak: The Premier Case Management Tool), much preferred to DAMION, the system used by DA offices. She also highlighted the absolute need for non-punitive interventions that only CACs are providing as of now.

A Commission member mentioned that some child-serving programs are having significant challenges with children exhibiting problematic sexual behavior and they know child-on-child cases are screened out by DCF so they do not file a 51A, as they are finding that the alleged child “perpetrators” are not being helped or referred anywhere. Additionally, because of the stigma attached to these situations, families are not following through with services.

Next, Commission members were asked to think about several questions. What is the role of the DA in referring children displaying problematic sexual behaviors to the services they need? Should the state play a role in referring children to services in this manner, even if there is no indication of wrong-doing by parents/caregivers? Parents can also access services for their children through the regular channels without state involvement. Members wondered if it would be preferential to recommend a requirement that referrals for services for children under 12 years old should not require going through the DA’s office.

Commission members discussed whether the Commission was willing or able to make a recommendation on the topic or if they would prefer the MRC report to state that they would reconvene at the end of the above-mentioned CAC pilot program to explore possible pathways for these cases. Some members suggested that they would want to hear from parents of children involved in these cases. Members discussed a possible section of the report that would outline the topics discussed (including what to do when these cases are not coming through DCF or there is no DA referral) and flag to the legislature that CACs are the ones who have this particular expertise at the moment. One member added that the recommendation should make clear who to contact and what services are available.

Chair Mossaides noted there has been no determination on how the Commission will vote on recommendations for purposes of the MRC report. She expressed the possibility of the report including a minority opinion along with recommendations voted by a majority of the members. She added that, as others had pointed out, without the ability to reach out to individuals who are impacted by these situations such as the one discussed here, it is difficult for the Commission to make a recommendation.

Closing Comments:

With the meeting nearing its end, Ms. Mossaides thanked members of the public and of the Commission for their testimony and input. The next meeting will discuss possible exclusion of people who work on legal defense teams from the mandated reporter list. The next meeting will be held virtually on October 27, 2020 from 2pm to 4pm.

Adjournment: 12.00pm