

MINUTES –APPROVED BY THE MANDATED REPORTER COMMISSION

Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Tuesday November 10, 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
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
John High – Chief of Staff, DPL
Michaela Martini- appeared for Spencer Lord, EOPSS

OCA Staff:

Cristine Goldman
Christine Palladino-Downs
Alix Rivière

Members of the Public

Michael Ryan – CPCS
Katharine Folger -- Middlesex CAC/DA Child Protection Unit
Cecely Reardon -- DYS General Counsel

MRC= Mandated Reporter Commission
OCA= Office of the Child Advocate
DCF= Department of Children and Families
CPCS= Committee for Public Counsel Services
NASW= National Association of Social Workers

Meeting Commenced: 2:03pm

Welcome and Introductions:

Maria Mossaides, Chair of the Mandated Reporter Commission, called the meeting to order and reviewed the agenda. She explained that during this meeting the Commission would focus on discussing penalties for failing to report child abuse and neglect. 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 27, 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 Connors, Lisa Hewitt, Elizabeth Fleming, Angela Brooks, Andrew Rome, Katherine Ginnis, Nina Marchese, Marian Ryan. The October 27, 2020 meeting minutes were approved.

Presentation of Document Titled “MRC Document 11_10_2020 Penalties and Protections.”

The OCA noted that the meeting document was drafted based on the work of the penalties working group. This working group consisted of a minority of Commission members who were tasked with talking through some of the topics regarding the penalties section to help inform the OCA's presentation of the issue to the Commission. The penalties working group did not make any decisions outside of the Commission process nor were they empowered to do so.

The Commission discussed MGL c. 119 §51A subsection (c) regarding penalties for a mandated reporter failing to report. The Commission noted that the fine and possible imprisonment were penalties that are not often charged or pursued. If penalties are not often enforced, it is unlikely that those penalties result in deterrence. Members agreed that failure to report is an important issue that the current penalties do not seem to remedy. The Commission agreed that a more enforceable penalty with a greater deterrence effect would be tying penalties to professional licensure as the majority of mandated reporters are professionally licensed. The Commission agreed that the monetary fines would remain in the statute along with the new addition of a penalty tied to licensure. This decision is made because not all mandated reporters are licensed. However, it is the Commission's preference that the licensing violation be the primary vehicle for a penalty over a monetary fine in light of some of the inherent unfairness of a monetary fines based on income levels and other consequences which could include violation of probation charges or immigration consequences. The fine should be pursued when the licensing violation is not available or not appropriate. The OCA agreed to look into whether there would be concerns about double jeopardy in situations where there may be a licensing action as well as a monetary penalty.

Commission members discussed that the fines within the penalties section of § 51A had not been updated since the law was first written and that there was an overall need to update the amount of any fines to signify the importance of the violation. The Commission noted that the current fine of \$1,000 is of such minimal value to some businesses/organizations/institutions that such a fine would not represent a financial loss important enough to motivate that business/organization/institution to report or encourage reporting among its employees; this is particularly true when such a business/organization/institution is balancing their reputational concerns against the penalty for failing to report. The Commission agreed to replacing a single fine amount with a monetary range for fines with the hope that the district attorney's office prosecuting and courts would use their discretion in choosing the appropriate amount.

The Commission discussed the proposed language directed at companies, corporations, businesses and partnerships and agreed that the language was not recommended. The mandated reporter obligation remains an individual obligation. However, the existence of the institutional reporting scheme suggests that this can be more complex. Although the duty to report always attaches to an individual, it would be beneficial to have an avenue for filing failure to report complaints against institutions who either do not follow the institutional reporting scheme appropriately or who discourage reporting. The Commission felt that this was best accomplished by filing a licensing violation complaint against the institution, not through a monetary fine as drafted in the meeting document.

Commission members discussed instances when providers fail to file a 51A out of fear of harming the relationship they have with the family. This is the case when providers believe they are adequately addressing the families' issues without DCF involvement. Members highlighted the need for training to address underlying reasons people do not report.

The Commission noted that there are some scenarios where law enforcement might be conducting an investigation during which they delay reporting of a 51A in order to be able to effectively conclude their investigation. Although the working group and Commission did not recommend statutory change that would address delayed reporting by law enforcement, the Commission decided to include a discussion of this complex matter in its report.

Commission members were in favor of recommending the drafted language in the meeting document regarding the licensing notification for the failure to file section of the statute. The language is drafted to ensure that a licensing administrative hearing can be held regarding failure to file without compromising the confidentiality of the other persons (children and families) in the DCF record. The Commission felt that the drafted language achieved this goal but some Commission members suggested a notation that the confidentiality of these records pursuant to this subsection would not have any effect on the sharing of information between state agencies as outlined in §5B(l) and as outlined in the Commission's recommended addition to that section.

Next, the Commission discussed the current penalties for "frivolous" or false reporting. The only recommended change to that section in the draft document was to update the financial amount of the penalty, which again is a penalty range which would rely on district attorney and court discretion. Commission members noted that false reporting is typically a result of domestic disputes and custody disputes in families and is not often seen from mandated reporters. Commission members also noted that false and frivolous reporting can be difficult to prove and DCF is adept at screening such cases out. It was noted that individuals currently can, and do, file with professional licensing boards if they feel that a mandated reporter has falsely reported against them or reported in bad faith. The Commission felt that there was no need to change the current statutory scheme other than that the monetary fines should be increased to reflect inflation since the last drafting of the law, but that the maximum jail time should not be increased.

Next, the Commission discussed the section of the statute that prohibits employer retaliation for failing to report or testifying in any proceeding involving child abuse or neglect. Currently, the law only prohibits employer retaliation against mandated reporters who report or cooperate, not any person filing a report. Massachusetts is unique in this regard, as the majority of states do not limit the protection from employer retaliation solely to mandated reporters. The Commission agreed to make a recommendation that the statute prohibit employer retaliation against any person who

reports to encourage reporting of all persons of child abuse and neglect. The Commission noted that reporting is only protected when it is done so in good faith

Members discussed that the current statute is unclear about how claims of employer retaliation should be pursued and that many individuals do not have the money to hire an attorney to pursue such claims, particularly when the resolution of such claims is equitable in nature (back pay, reinstatement of a job position, etc.). The Commission discussed that the model for these types of claims is the Massachusetts Commission Against Discrimination (MCAD), where charges of retaliation are evaluated, filed, investigated, and heard. The Commission expressed the possibility that the Attorney General's Fair Labor Board could be given the authority to deal with employer retaliation cases and that if that is appropriate, such information could be clearly stated in the recommended statutory changes, in any training materials for mandated reporters, and in public service announcements. The OCA will follow-up with the Fair Labor Board.

Next, the Commission discussed the portion of the statute that provides civil and criminal immunity to persons who report. Massachusetts, along with the majority of states, provides criminal and civil immunity for reports by mandated reporters of child abuse and neglect made in good faith, that were not "frivolous," so long as the reporter themselves did not cause the abuse and/or neglect. The statute also protects non-mandated reporters so long as the report was made in "good faith" and the reporter did not perpetrate or inflict the abuse or neglect. The current statute accounts for situations where a non-mandated reporter, perhaps with limited knowledge of details, makes a "frivolous" report in good faith. The Commission concluded that the existing provision within 51A was sufficient and that the Commission would not recommend any statutory changes.

Finally, the Commission reviewed provisions in other state statutes that Massachusetts does not currently have in its statute. Some states have penalties for violations of the confidentiality of reports and investigations. While Massachusetts does not specifically identify any penalties for a violation of confidentiality, Massachusetts' statute does indicate that any violation of 51A can result in a monetary fine. The Commission considered whether there should be an exception in the penalties section for volunteers or if this should be left to prosecutorial discretion. Members discussed different examples of volunteer roles and clarified that the volunteers currently discussed were those that perform the profession or role listed in the recommended mandated reporter definition. The Commission agreed to discuss this more at a later date.

Closing Comments:

Ms. Mossaides thanked the Commission for their testimony and input. She encouraged Commission members as well as members of the public to reach out to the OCA if there is something they would like to discuss. The next meeting will be held virtually on November 17, 2020 from 2:00pm to 4:00pm.

Adjournment: 4.00pm