

Resisting Mandatory Reporting Expansion: The MA Experience



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Introduction

We offer this document as a resource to Domestic Violence (DV) and Sexual Assault (SA) Coalitions and programs across the country who are engaging in internal and external discussions about the role of child welfare systems in sexual and domestic violence (SDV) interventions, support, and services. For decades, our field has been grappling with the impact of child welfare system interventions on survivors of domestic violence and/or sexual assault. From considerations of when such interventions are truly necessary to concerns of racial inequities in reporting practices and the chilling effect of overreporting on survivors, we collectively hold many questions, concerns, and hopes for system change.

Like the spectrum of opinions and approaches that exist when talking about criminal legal system interventions in our communities (especially in the context of DV/SA), our field is similarly varied in the range of perspectives on the role of child welfare systems in the lives of SDV survivors, children, and our collective communities. In Massachusetts, the advocacy community represents viewpoints that are critical of system failures, supportive of effective child welfare system interventions when necessary, growing in awareness of the impact of racial disproportionality within systems, a commitment to overall harm reduction to survivors and their children, an exploration of notions of abolition of child welfare systems, and those who hope to deepen investment in effective child welfare system intervention.

Against this backdrop, in 2021, we were confronted with a state policy proposal that would have dramatically increased the scope and reach of mandatory reporting in Massachusetts. JDI found that this proposal provided an opportunity to gather as a Coalition to clarify points of unity as a field in addressing the potential impacts of such a proposal on our programs and the community of survivors who receive support and services.

As a Coalition representing a diversity of opinion on the nuances of child welfare practices and policies, we were able to find unity in identifying this arbitrary expansion of mandatory reporting practices as deeply harmful to survivors, to their families, and to the ability of programs to deliver services that are truly supportive of survivor-centered and led healing. While there are many more conversations that must be had as a Coalition with respect to the unique impact of child welfare systems on our field, we offer this experience as one that has served to create increased understanding both within the SDV provider community as well as with external youth advocacy allies. The following is a series of questions and commentary that we hope will offer some insight and guidance to DV/SA Coalitions grappling with similar issues in their states.

1. Why does Jane Doe Inc. (JDI) care about mandatory reporting practices? By extension, why should your DV/SA Coalition care about mandatory reporting in your state?

At JDI, our policy framework centers the experiences of survivors at the intersections of structural violence. We see our efforts to end sexual and domestic violence as intrinsically intertwined with efforts to dismantle all systems of oppression.

During the past year, JDI has supported our member programs in deepening an analysis of the impact of over reliance on criminal legal system responses to sexual assault and domestic violence. A critical component of these inquiries has related to the question of the impact of state intervention on survivor agency and safety. Advocates for survivors of sexual assault and domestic violence have long understood that criminal legal system responses are simply not aligned with the trauma-informed, survivor-led values of advocacy agencies. Because of this understanding, advocates have often situated themselves as key players in system navigation and support for survivors. In the current climate of reassessing the impact of criminal legal system responses on survivors -

especially survivors with marginalized identities (BIPOC, LGBTQQI+, immigrant, people with disabilities), many of us in this movement have begun to question the impact of our close involvements with these systems – even in the role of navigators.

While our conversations have largely focused on policing in the traditional law enforcement sense, we are deeply aware that inequities and structural violence are also deeply embedded into our civil legal systems. From our initial inquiries into our over reliance on criminal legal system responses, we, along with member programs, have been interested in engaging in a similar critique and analysis of child welfare system interventions and the disproportionate harm these systems inflict on BIPOC (Black, Indigenous, and other People of Color) communities.

Through conversations with JDI's member programs, we know that programs and the survivors they work with have significant concerns over interventions or interactions with the Massachusetts Department of Children and Families. Programs struggle with the realities of an overtasked child welfare system that is under-equipped to provide meaningful support to survivors of sexual assault and domestic violence and their families during times of extreme stress. These concerns include a range of issues including the disproportionate involvement of Black and Latino families in the child welfare system to unclear DCF plans for survivors that include required "domestic violence classes." Overall, advocates reflect concerns over a system in need of significant changes and deep consideration of the role of implicit bias in the disparate outcomes for families impacted by these interventions.

Another contributing factor to JDI's interest in mandatory reporting is the nature of our current statutes as they pertain to the mandatory reporting obligations of individuals typically employed by sexual assault and domestic violence programs. In Massachusetts, the current state of mandatory reporting obligations can be summarized as follows.

This guidance is not intended to provide definitive guidance on the obligations of providers in Massachusetts. However, it has been of interest to JDI for a number of years that our current state law does not explicitly name DV/SA advocates as mandatory reporters in many contexts. While the law does specify the reporting obligations for certain professionals (i.e., social workers), there are many circumstances where DV/SA advocates may in fact not be required (and therefore largely prohibited under

VAWA/OVC obligations) from engaging in mandatory reporting. Yet, due to the supervisory structure of most SDV programs (who may hire a licensed social worker, for example, as a director or supervisor), the majority of SDV advocates among programs have interpreted our statutes as requiring mandatory reporting in many circumstances.

These interpretations point us to areas for growth, deeper dialogue and the possibility of modeling progressive policy changes for programs navigating their mandatory reporting obligations. Given the current climate of increased openness to unpacking reliance on systems of control, we believe this could be an excellent time to begin to reexamine these structures, question their impact on services and on survivors, and imagine new approaches.

Background and Context: a 30,000-foot View on Funding Structures, Child Welfare Systems, and the Intersections of DV/SA Programs and Child Welfare Interventions in MA

In Massachusetts, there is a lengthy history of both tensions and fruitful collaborations between the child welfare system and advocates for survivors of domestic violence and sexual assault. This history is important to note in the context of the present mandatory reporting conversation because our state has history where child welfare system leaders have acknowledged the unique needs of survivor of SDV and engaged in strong collaborations with SDV advocates to develop best practices when working with victims at the intersections of domestic violence and child welfare system interventions. The models initiated in MA on this subject in fact have been used as national best practices. That said, as with any efforts towards large-scale system change, limitations of resources, challenges with institution-wide integration of the recommendations of SDV advocates, and the impact of public scrutiny over high-profile cases create system realities that often fall significantly short of the goals set out by leaders in MA and beyond.

Coming to the focus on the narrower issue of mandatory reporting practices among SDV providers, there is a historic intersection of child welfare system expectations of SDV programs with respect to mandatory reporting as a result of state funding for SDV programs. As of 2015, Massachusetts state funding for local community-based sexual and domestic violence programs currently sits within the Department of Public Health. Prior to this change, the funding for domestic violence programs was housed at the Department of Public Welfare, which later split into the Department of Revenue and the Department of Social Services. Funding for DV programs went to the Department of

Social Services (today called Department of Children and Families or DCF). With DV funding housed under a child welfare framework, generalized system culture, policies, and practices naturally influenced DV programs and advocates and influenced many practices. This is particularly true for practices of reporting of child abuse or neglect.

Like child welfare systems across the country, the MA child welfare system has struggled to integrate an understanding of the unique needs of survivors of domestic violence and their children. As a result, the pressure to report suspicions of child abuse or neglect often came at the expense of the safety of survivors and their children. This created a system that was not survivor centered or trauma informed. Over time, DCF created the Domestic Violence Unit with the purpose to enhance DCF's ability to protect children experiencing family violence. The Massachusetts experience illustrates the impact and power of funding on non profit practices.

2. What is the MA Mandated Reporter Commission and why was it created? Who were the main stakeholders responsible for reviewing and proposing changes to Massachusetts mandatory reporting laws?

The Massachusetts Mandated Reporter Commission, established through the [2019 Child Health and Witness Law](#), consists of 12 members representing various state agencies. It is common practice in Massachusetts to establish a Commission or Task Force to study an issue before moving forward with legislative change. These bodies are typically established through statute and given a set time frame to convene and submit a report to the Legislature with their findings and recommendations. These Commissions and Task Forces are subjected to open meeting law, meaning that the public is able to attend and listen to these meetings.

In recent years, there has been growing interest to review Massachusetts's mandatory reporting law. In 2018, a working group assembled by the Joint Committee on Children, Families and Persons with Disabilities identified a need for a comprehensive review of the Commonwealth's child maltreatment reporting structure. That same year, the House Committee on Post Audit and Oversight issued a report recommending that Massachusetts enact legislation to require coaches, administrators and other staff employed

by or volunteering with a private athletic organization to respond as mandated reporters. Other reports by various Task Forces also identified a need to clarify mandated reporter responsibilities in institutional settings. Notably at this time, sexual abuse allegations against Larry Nassar, USA Gymnastics team doctor, was making national headlines. Nassar's sexual abuse of over 150 female athletes while employed as a medical doctor for USA Gymnastics and Michigan State University raised concerns in Massachusetts because it exposed a potential gap in our state's mandatory reporting law. As written, officials at private athletic organizations or a higher education institution are not considered mandatory reporters in Massachusetts. This increased pressure in Massachusetts to take up a review of our mandatory reporting laws.

As such, this Commission was convened. Appointed organizations include: Office of the Child Advocate, Office of the Attorney General, Department of Early Education and Care, Executive Office of Education, Waltham Public School District, Executive Office of Health and Human Services, Committee for Public Counsel Services, Division of Professional Licensure, Department of Elementary and Secondary Education, Massachusetts District Attorney Association, Department of Children and Families, and Executive Office of Public Safety and Security.

Notably, the Commission did not include representation of persons impacted by mandatory reporting or any advocacy organizations.

The Commission began meeting in February 2020 and concluded in June 2021 with a final report submitted to the Legislature.

3. Why was JDI not invited into the discussion about mandatory reporting? What can your coalition do to make sure you are included in the conversation?

Why JDI was not invited into these discussions:

One contributing factor to why JDI was not pulled into discussions about mandatory reporting is simply the limited capacity of a small policy team at a SDV Coalition. As JDI was not prioritizing or closely following the 2019 Child Health and Witness Law, we were not initially aware of the creation of the Mandated Reporter Commission. Another contributing factor may likely be a result of Commission meetings beginning during the

COVID-19 pandemic. With other priorities at the forefront as a result of the pandemic and JDI unaware of the Commission's creation and existence, the Commission was not on our radar. Furthermore, the lack of inclusion of others in the advocacy community, advocates, mandated reporters and persons impacted by mandatory reporting on the Commission meant that our usual partner organizations and Coalitions were not involved, thus resulting in our lack of awareness of the Commission. Also, while JDI maintains close relationships with a variety of system partners, including DCF, our primary contacts within DCF are those involved with the Domestic Violence Unit. We recognize that ongoing relationship building with system partners throughout DCF will be critical in our advocacy efforts in the future and are working towards cultivating those relationships.

How JDI got involved:

JDI was connected to the work of this Commission in January 2021 as a result of conversations with a legislative ally with interest in child welfare. This ally made JDI aware of the Commission's existence and connected JDI to the Children's Law Support Project (CLSP). CLSP is a statewide advocacy legal services group working with children from low-income families. These advocates were actively engaged with the Mandated Reporter Commission, attending the public meetings and submitting comments on their Commission's work which helped delay the Commission's final report and recommendations.

Recommendations to ensure your state coalition is included:

To ensure you are incorporated into these conversations, JDI recommends developing a strong relationship with your state's child welfare agency and advocates for children, e.g., children's trust funds and other influencer groups like pediatricians, children's hospitals, etc.

We encourage you to share with your supporters and allies your interests in the child welfare system. We found through our conversations that JDI supporters and allies were pleased and curious about our interest in child welfare system approaches and specifically mandatory reporting. The siloed nature of SDV advocacy work and child welfare advocacy work in MA became clear through our involvement in these efforts. As SDV advocates we recognize a distinct relationship and intersection of SDV, child welfare and mandatory reporting. We also found that it was believed JDIs only vested interest in the Commission's proposal would be limited to the provision regarding SDV advocates.

4. What advocacy was done in Massachusetts to ensure that mandatory reporting practices were not expanded in a harmful way? Who were our allies in this?

In December 2020 CLSP submitted a letter to the Commission citing their concerns with the Commission's analysis and recommendations and requesting the Commission spend additional time reviewing available research and data and to seek external input via a public comment period. The Commission was meant to submit their recommendations to the Legislature in December 2020, but this letter led the Commission to withhold their recommendation and instead submit a progress report.

JDI joined CLSP in February 2021 in their advocacy efforts for the Commission to hold a public comment period before submitting their recommendations to the Legislature. CLSP and JDI believed it was necessary to hold a public comment period to provide an opportunity for members of the public to provide either written comments or oral testimony on the Commission's recommendations. This was particularly necessary because the Commission members did not include advocates or persons impacted by mandatory reporting. During this time, the CLSP working group and JDI developed a list of organizations to reach out to on this issue.

JDI convened our 59 member programs on multiple occasions to discuss the status of the Commission and share updates via electronic communications. Bringing local community-based and healthcare-based providers into this conversation was critical for shaping our written and oral testimony. It is helpful to note here that while the consensus of our member programs was clear in its opposition to mandatory reporting expansion as proposed, this consensus was narrow and does not reflect the divergent practices and opinions across coalition membership on the role of the child welfare system in keeping children safe. This also helped ensure providers were aware of the proposed recommendations and opportunities to provide feedback directly to the Commission.

The public comment period lasted one month, during which over 60 individuals and organizations submitted oral and written testimony. JDI learned through conversations at the Commission meetings that these public comments were largely in opposition to the Commission's recommendations. The Commission also stated that the testimony received during the public comment period was in contrast to feedback the Commission received early in their review process. When the Commission began meeting, they

sought input from child advocacy organizations who were largely supportive of expanding mandatory reporting requirements with the belief that an expansion would offer increased protections to children in Massachusetts. This experience proved the importance of seeking public comment. During this time the Commission received feedback from a number of different advocacy organizations and impacted families. Previously, the Commission sought feedback from groups they selected, likely influenced by confirmation bias which led the Commission to only hear feedback from organizations supporting their recommendations.

5. What was included in JDI's testimony about mandatory reporting?

Collectively, JDI and CLSP identified the following recommendations as particularly harmful:

- Expanding the definition of abuse and neglect by removing the current limitation that a failure to provide the basic necessities is not neglect if it is due solely to poverty or the existence of a disability.
- Substantially expanding the list of mandated reporters to make many more people mandated reporters.
- Lower the level of certainty needed to require a report of abuse or neglect.

As JDI, while our concerns with the Commission's recommendations are manifold, we focused on the chilling effect of mandatory reporting expansion on survivors and their children – particularly those impacted by structural violence. One theme we carried throughout our testimony is the disproportionate impact and targeting of low-income BIPOC and their children by the child welfare system through traumatic interventions motivated by bias. We believed that centering our comments on the needs of survivors and their children was a contribution that we could uniquely speak to.

JDI's three primary points:

- The proposals encourage overreporting and will increase rather than decrease risks to survivors of sexual and domestic violence and their children.
 - Expanding the duties of a mandated reporter to file upon a "suspicion" of abuse or neglect puts survivors of sexual and domestic violence and their children at increased risk of harm and contradicts established best practices.

- Excluding “poverty” and “disability” as limitations in the proposed definition of “neglect” harms survivors and directly targets low-income children of color and perpetuates bias.
- The mandatory reporter exemption contemplated for SDV providers does not address the concern that other proposed recommendations will drive survivors and their children into the shadows and have a chilling effect on reaching out for services and support.
- The Commission’s original goals of addressing sexual abuse by coaches can be accomplished by narrowly adding categories of mandated reporters.
- The Commission should engage in critical study of best practices models and be mindful of national examples of models that failed when mandatory reporting was arbitrarily expanded broadly.

JDI’s testimony can be found here: <https://www.mass.gov/doc/jane-doe-inc42121/download>

6. What was included in the testimony of our ally, the Children’s Law Support Project (CLSP)?

Primary points:

- The proposals would make children less safe.
- The proposals would increase racial disproportionality in the Massachusetts child welfare system.
- The proposals would cause significant, irreparable harm to low-income families, disproportionately families of color.
- Many of the draft proposals are not tied to clearly articulated problems grounded in evidence.
- The draft proposals would not accomplish the Commission’s goals.
- Child safety and well-being would be better improved by a high-quality, evidence-based mandated reporter training program.
- There are simple steps that mandated reporters can take to improve child safety and welfare and increase support to stressed families that do not involve DCF.

CLSP’s full testimony can be found here: <https://www.mass.gov/doc/child-welfare-coalition-and-the-childrens-law-support-project42021/download>

7. How did the MA Mandated Reporter Commission minimize the role of the SDV field?

One proposal put forward by the Commission called for “persons who provide direct confidential services to victims of domestic violence, sexual assault, or human trafficking” to be excluded from mandatory reporting responsibilities. As discussed above, the question of mandatory reporting obligations for SDV advocates in MA is a somewhat murky one. This proposal would clarify a non-obligation on the part of SDV advocates. In addition to leading to confusion for advocates and programs, this move seemed to be an attempt to placate SDV advocates who have been known to raise concerns over mandatory reporting expansions. JDI made it clear that we believed this to be an insufficient and irrelevant recommendation given that all other recommendations would increase mandatory reporting and cause additional harm. Importantly, survivors and their children are in contact with other various mandatory reporters as part of their daily life be they teachers, healthcare providers, etc.

When we brought this perspective to the public hearings held on this matter, it became clear that the commission was viewing integration of DV/SA survivors very narrowly. We believe we were effective in broadening understanding of why the limited exclusion of SDV advocates from mandatory reporting obligations would not in fact address the chilling effect these proposals would have on survivors of sexual assault and domestic violence.

8. What was the result in MA? Were policy changes made based on these conversations?

After reviewing all of the public feedback and incorporating it into their analysis, the Commission chose not to take a formal vote on any of their proposals. As a result, the Commission did not publish any formal recommendation. Instead, the Commission’s final report submitted to the Legislature includes a description of the work they completed, an identification of the work that remains, and incorporates feedback collected during the public comment period. This report was submitted to the Joint Committee on Children, Families and Persons with Disabilities who have authority over issues relating to mandatory reporting, child abuse and neglect.

In partnership with CLSP, JDI is proactively meeting with legislators on the Joint Committee of Children, Families and Persons with Disabilities to discuss our concerns with the Commission's reports and propose steps for Massachusetts to take that would better and more effectively help keep children safe. These meetings are focused on six of the most serious problems related to mandated reporting in Massachusetts: racial disparities, unreliable filings, undermining of local community support, deep emotional harm inflicted on families, filings do not result in services, and overtaxing an already overwhelmed system.

9. What are other resources that may be helpful in resisting mandatory reporting expansion?

[The Mandated Reporter Commission Final Report \(June 2021\)](#)

[Mandated Reporter Commission meeting minutes](#)

[CLSP's testimony](#)

[JDI's testimony](#)

10. What is future work on this topic for the Coalition?

JDI will engage in continued work to highlight the unique impacts of child welfare system interventions on survivors of SDV. On a local level, we hope to continue to build our relationships with community-based child welfare advocates who approach their work through a racial equity and social justice lens. On a systems level, we hope to continue to engage in dialogue with system stakeholders to ensure that our unique perspective on the impact on survivors of SDV is considered in any proposal to expand the scope of child welfare system interventions in MA. On a national level, we are hopeful to continue our work with the Futures Without Violence Promising Futures team to collaborate with other coalitions across the country to address the intersecting issues of child welfare and SDV.

In 2022, we are turning our efforts inward and surveying coalition membership to better understand the realities of program response to and engagement with child welfare interventions with survivors. Our hope is to assess results from this survey to build capacity within JDI coalition member programs to have more nuanced conversations regarding reliance on child welfare system interventions against a racial equity lens.



Promising Futures



Promising Futures is a project of Futures Without Violence. For more information on how to transform your program to effectively meet the needs of parent and child survivors of domestic violence, visit www.promising.futureswithoutviolence.org or email childrensteam@futureswithoutviolence.org.



The development of this document was supported by Grant Number 90EV0434 from the Administration on Children, Youth and Families, Family and Youth Services Bureau, U.S. Department of Health and Human Services. Points of view in this document are those of the authors and do not necessarily reflect the official positions or policies of the U.S. Department of Health and Human Services.