



Mandatory Reporting Task Force | Meeting Eight

October 4, 2023, Meeting Recap

Overview

The Mandatory Reporting Task Force is legislatively charged with analyzing the effectiveness of Colorado’s mandatory reporting laws in keeping children safe, connecting families with the resources they need, and providing clarity to mandatory reporters. Integral to this analysis, the task force will continue to examine the relationship of these laws to systemic issues and disproportionate impacts on under-resourced communities, communities of color, and people with disabilities.

Reviewing the Progress and the Process

Rep. Meg Froelich, who sponsored House Bill 22-1240 and the creation of the task force, briefly addressed the task force. She stated she was eager to hear more about the progress of the task force and that she is eager for the final recommendations and findings of the task force. Rep Froelich emphasized the need to balance child safety with the well-being of families and stressed the importance of revamping outdated practices. Chair Stephanie Villafuerte will meet with Rep. Froelich to discuss next steps for 2024, including the legislative agenda, which will include a redefinition of neglect.

Vice Chair Kathryn Wells stated that Colorado is at the forefront of addressing these issues, with other states also facing similar challenges. She acknowledged the tension between child safety and supporting families and praised the task force for providing the time and space to delve into these complex issues. Crystal Ward Allen from Casey Family Programs expressed gratitude for the task force's work and highlighted their efforts to transform and improve the system to reduce unnecessary trauma for families, including separating neglect from poverty.

Jordan Steffen with the Office of the Colorado Child Protection Ombudsman gave an update and a look ahead. Plans for November include presenting a syllabus for the next calendar year, which has been influenced by discussions and feedback received, with a focus on defining child abuse and neglect and establishing an alternative or “warm” line. Subcommittees will be formed around these priorities, and technical directives related to the statute will be addressed. The December meeting is likely to be canceled to allow time for the preparation of a status report due on January 1, 2024, summarizing the work done in 2023 and outlining plans for the future.

The Legal Perspective

Task force members Jessica Dotter and Adriana Hartley provided overviews of legal perspectives in handling failure to report cases.

Jessica who serves as the Sexual Assault Resource Prosecutor for the Colorado District Attorneys Council (CDAC), representing all 22 elected district attorneys in Colorado. She is a former prosecutor with experience in sexual assault and child abuse units in Colorado Springs and Boulder counties. Jessica provides support, training, and resources to sexual assault, child abuse, and domestic violence prosecutors across the state, as well as serving as a liaison between counties and districts.

Jessica's presentation highlighted the following:

- The importance of understanding the discretion that prosecutors have when it comes to pursuing criminal charges against mandatory reporters who fail to report suspected child abuse or neglect.
- Mandatory reporters often fear criminal liability for failure to report and struggle with making such decisions. Prosecutors also consider mitigating circumstances, anticipated defenses, and other factors in their discretion.
- How prosecutors typically review the failure to report crime in Colorado:
 - Colorado law requires any person who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect, or has observed circumstances that would reasonably result in abuse or neglect, to immediately report this information to the appropriate authorities.
 - Jessica highlighted some challenging aspects of the law, such as the term "reasonable cause to know or suspect," which is equated with "reasonable suspicion," and the requirement for immediate reporting. Jessica explained that most people understand the need for leeway when it comes to immediate reporting.
- Failure to report is classified as a class two misdemeanor in Colorado. The child abuse failure to report statute is located in Title 19, which is the children's code, while most crimes are found in Title 18, which is the criminal code. This distinction matters because the definitions of abuse and neglect for failure to report are different from those used in the criminal code.
 - Possible penalties for failure to report include diversion programs or deferred prosecution, with a focus on addressing training issues in most cases. Jessica stressed that mandatory reporters are usually well-intentioned individuals trying to help families and children, and their failure to report is often due to negligence rather than ill intent.
 - Jail time and fines are rare outcomes for this offense. Jessica noted that there's a unique provision in this statute allowing for civil liability for damages caused by failure to report, which is not common in criminal statutes.
 - Licensure boards, such as the Department of Regulatory Agencies (DORA), may get involved in cases where mandatory reporters have licenses, but there's no automatic removal of licenses, and due process is followed. It's not common practice for prosecutors to report failure to report cases to DORA, but it's a possibility when relevant issues arise.

In the data analysis, Jessica used the action case management program provided to all 22 district attorney's offices in Colorado. She focused on charges for failure to report from 2010 to 2020 and looked at the outcomes. The key points from her analysis were:

- There was a total of 70 cases of failure to report from 2010 to 2020.

- Approximately 60 percent of the cases were resulted in deferred sentences, all of which were successfully completed, resulting in case dismissals.
- None of the remaining cases carried jail sentences, and fines were rare.

Jessica then discussed the interplays of licensure, multiple roles of mandatory reporters and whether duty of mandatory reporters extends beyond someone's professional role. She discussed:

- Many professionals may not realize the connection between their obligation to report and the potential impact on their licensure or certification board.
- Different requirements for domestic violence advocates: some individuals may hold a therapy license but function as advocates without being paid or hired as counselors. This situation leads to uncertainty about reporting obligations in different roles.
- The concept of "capacity" could be used to differentiate reporting obligations based on one's role. Many states have such provisions to clarify when reporting obligations apply.
- From the perspective of Department of Regulatory Affairs, individuals are under the jurisdiction of the relevant board regardless of their activity. There is a need for better guidelines and clarity in the statute regarding when individuals are on or off the clock in terms of reporting.
- Confusion among mandatory reporters regarding their reporting obligations not only in their professional lives but also in their personal lives, because the statute does not provide a clear distinction between being on duty and off duty.
- The importance of clarifying the reporting obligations for mandatory reporters, especially the aspect of being on duty 24/7. The need for clarity in the statute regarding situations where individuals hold multiple credentials and operate in different roles.
- Nicci Surad asked Jessica if she has data on whether convictions occurred while individuals were operating within their professional capacity or outside of it. Jessica did not have that level of information, but can look into the issue further.
- Public perception of the frequency of prosecutions for failure to report child abuse may differ from the actual data.

The concept of "reasonable cause to know or suspect" in reporting child abuse cases: Jessica noted that most criminal statutes typically include different levels of mental states such as intentionally, knowingly, negligently, recklessly, and carelessly, while failure to report involves a failure or omission rather than an intentional act. She shared her personal interpretation that the standard implies the very minimum level of suspicion because of the urgent need to alert authorities for investigation. She suggested that the intent behind this terminology is to ensure that even the slightest suspicion should prompt reporting, allowing experts to determine whether there is more to the case than initial suspicion.

Jessica mentioned that her team has looked into statutes in other states related to failure to report child abuse, and suggested that this could be an area of focus for a working group to make the reporting and prosecution process more clear for reporters and prosecutors.

Jade Woodard also asked whether it would be possible to have different standards within the same statute for different forms of child abuse. Jessica replied affirmatively, but it would require careful legislative drafting. She suggested that this could be a task for a working group to analyze and break down how different standards would work in practice, including how they would be trained and applied.

Adriana Hartley introduced herself as an Assistant County Attorney for Delta County and described her role in providing legal advice and representation to various county departments, including case workers at the Delta County Department of Human Services. She explained that her role primarily involves addressing situations where case workers discover that a mandatory reporter has failed to report child abuse.

Adriana does not work as a district attorney and is not involved in prosecuting such cases. Instead, her daily work involves addressing issues related to mandatory reporting when they arise within the county. Her office has a close working relationship with human services and has frequent interactions with case workers.

Adriana began by clarifying: (1) Her insights are based solely on her experience in Delta County and may not necessarily apply to all counties in Colorado; (2) Her information is derived from a general review and not a comprehensive analysis of all investigations conducted by DHS in her county - her numbers are not intended to be precise scientific data; and (3) She expressed her respect for district attorneys and the criminal justice system and emphasized that her statements should not be interpreted as encouraging mandatory reporters to avoid reporting or disobeying the law.

- A common myth surrounding the failure to make a mandatory report is the belief that county attorney's offices are eager to rush cases to the district attorney's office when they discover that a mandatory reporter has not fulfilled their duty.
 - This perception has led to concerns about legal liability among mandatory reporters. Adriana, however, questions the validity of this fear, suggesting that it may not align with the data and reality they have observed.
- She initially estimated that instances of failure to make a mandatory report occurred in about 25 to 30 percent of all child welfare cases. However, when she surveyed caseworkers, they unanimously believed that it occurred in about 40 percent of their investigations. Adriana highlighted that it is common for the intake team to encounter mandatory reporters during investigations, but these individuals may not always connect the dots or have the full picture of the situation.

In essence, Adriana's presentation challenged the perception that county attorney's offices are eager to penalize mandatory reporters and suggests that the fear of legal liability may not be entirely warranted based on the data and their experiences in Delta County.

- Mandatory reporters often want to be certain before reporting, and they may conduct their own investigations or gather more information before making a report. She pointed out that the definition of suspicion is not always clear in the law, and mandatory reporters may feel compelled to make their own determinations, even if they lack training or knowledge in identifying abuse or neglect.
- Abuse and neglect have broad and sometimes vague definitions, particularly in dependency and neglect cases. She suggested that the law may need to remain somewhat vague to ensure that it captures various instances of abuse or neglect. However, she recognizes that this vagueness places mandatory reporters in a challenging position, as they are expected to determine what constitutes abuse or neglect without formal training or knowledge.

- Some mandatory reporters may report everything, while others may report nothing, leading to skewed results.
- Adriana advocates for moving away from fear as a motivator for reporting. She emphasized the importance of making mandatory reporters feel that reporting is a safe and positive resource to protect children, even if it hasn't been viewed or used that way in the past.
- She argues that mandatory reporters should not be burdened with making determinations about abuse or neglect. Instead, the focus should be on making reports, with other professionals like case workers following up to assess the situation.
- The importance of education and training for mandatory reporters: when mandatory reporters have a transparent understanding of the department's role and the investigation process, they will be more motivated to utilize the hotline as intended. She advocates for offering support, training, and education rather than threatening consequences to encourage reporting.

Anonymity of Mandatory Reporters

- Zane Grant raised a question about whether mandatory reporters are considered anonymous when making reports. Adriana: the law does not require mandatory reporters to disclose their identities when making a report. She emphasized the importance of maintaining the option for mandatory reporters to remain anonymous to create a safe space for reporting.
- Jessica added that in the context of a *criminal* prosecution, there is no anonymity for mandatory reporters because they may be called as a witness. She has never seen a case where a mandatory reporter called in anonymously when it became a criminal investigation because they are usually invested in helping and ensuring that evidence is available to law enforcement.
- In dependency and neglect actions, which are civil in nature, there is more leeway in protecting the identity of the mandatory reporter compared to criminal prosecutions.

Who Monitors the Calls Member Panel

Stephanie Villafuerte joined Jessica and Adriana and Doris Tolliver facilitated the conversation.

Stephanie discussed her background including her roles at the Denver District Attorney's office, the U.S. Attorney's Office, the governor's office, and the Rocky Mountain Children's Law Center. She also mentioned her current position as the head of the CPO, where she has encountered various issues related to mandatory reporting. She highlighted the issue brief published in 2021, which analyzed legal challenges related to mandatory reporting laws. She also mentioned another document in the chat that provides an overview of how other states handle similar issues.

Media narratives tend to focus on deliberate and intentional failures to report, shaping public perceptions and fears. Stephanie mentioned that institutional policies and concerns about jeopardizing relationships with families can impact the reporting process, making it challenging for line staff to report directly to child abuse hotlines.

Doris highlighted the following points for the discussion:

1. Administrative burden placed on institutional reporters. Doris highlighted a recommendation from one of the participants about having another mechanism for making reports, which could help alleviate some of the challenges.

2. Individual consequences: Doris brought up the challenge of imposing individual consequences on mandatory reporters, especially when their job roles may not allow them the luxury of spending extended time on a hotline call, potentially affecting their work responsibilities.

3. Trust: She mentioned the importance of the trust that mandated reporters have with children and families and the potential consequences of that trust being broken when making a report.

Adriana and Jessica shared their perspectives on the challenges of reporting child abuse and neglect and the potential consequences for individuals who may hesitate or take more time to make a report:

1. Adriana emphasized the importance of timely reporting to ensure early intervention and support for children and families. She acknowledged the tension that can arise when mandatory reporters have developed trust with a family but highlights the potential risks of delays in reporting.
2. Jessica discussed the role of discretion in evaluating failure to report cases. She distinguished between cases where there may be legitimate reasons for delayed reporting, such as setting up counseling for a child, and cases where emotions or lack of training may come into play.

Jessica added that, in her experience, it typically takes about 10 minutes to make a report to the hotline.

Doris suggested that providing more time for consideration and eliminating the fear-based approach could change the culture of mandated reporting.

Stephanie emphasized the importance of creating a culture within the law itself and that giving people more time to report could reduce fear and allow for a more thoughtful approach. She mentioned the need for definitions and clear parameters in the law to align with the desired culture.

Adriana suggested the creation of a system where individuals can seek guidance and connect families to services without immediately involving the child welfare department, providing a more nuanced approach to addressing concerns.

Jessica highlighted the importance of training and acknowledges that while recommending training for mandatory reporters seems ideal, the practicality and effectiveness of such training can be challenging, given the diversity of professionals who serve as mandatory reporters.

Regarding distinguishing between crimes and child welfare concerns in mandatory reporting, Jessica suggests that the current approach treats all reports similarly because it addresses safety concerns rather than delving into the complexities of criminal statutes. She is cautious about introducing a requirement for mandatory reporters to determine if an incident constitutes a crime due to the potential burden and challenges it may pose in practice.

Stephanie mentioned that some experts have raised the idea of abolishing mandatory reporting, and while she is not advocating for or against this idea, she believes it's essential for the group to be open to different viewpoints and engage in discussions on the topic. Stephanie also mentioned that as subgroups within the larger group begin their research, they should aim to gather information from various sources and perspectives to ensure a comprehensive understanding of the topic. This approach will help the group make informed recommendations.

Gina Lopez expressed her concern about the impact of ambiguity and fear surrounding mandatory reporting on the recruitment and behavior of professionals, particularly in marginalized communities. She raised the issue of whether the current system attracts individuals who may use their positions to police certain communities more heavily, leading to distrust and penalties. She emphasized the importance of considering the impact on marginalized communities and children.

Doris stated that Gina's comments highlight the importance of having a well-equipped and well-intentioned workforce in mandatory reporting fields, especially considering the challenges faced in these professions. She underscored the need to keep marginalized populations at the center of the conversation and ensure their safety and well-being within the reporting system.

Jessica stated up her concern that in mandatory reporting situations, the biases and rape culture prevalent in society can impact the decisions made by mandatory reporters. Many of these crimes are not reported to authorities or law enforcement as frequently as they should be. She emphasized how these issues can intersect with various factors, such as age, race, and marginalized communities, which can lead to reporting challenges and potentially harmful consequences. Jessica also mentioned the efforts to address missing and murdered indigenous relatives, underscoring the need for a comprehensive approach to support and protect these communities.

Doris emphasized the importance of addressing systemic racism and the need for intentional action to dismantle it. She references a quote from the book "So You Want to Talk About Race" by Ijeoma Oluo, which highlights that systemic racism perpetuates itself and must be actively dismantled. Doris stresses that the task force's recommendations should be crafted with an equity lens, ensuring they intentionally disrupt the impact of bias, racism, and oppression.

Kelsey Wirtz highlighted the importance of increased training on mandatory reporting for professionals, especially in healthcare settings. She has observed situations where reports were made based on cultural biases or assumptions about low-income families. Providing more training on mandatory reporting to a wide range of professionals, including social workers and school teachers, would be beneficial.

Jessica mentioned the possibility of sealing records related to failure to report cases. DORA reports stipulations or findings against professionals on its website which may effectively "unseal" any previously sealed information.

Stephanie discussed the need for collaboration between child welfare agencies and community-based providers to address concerns and provide resources to families. She expressed concerns about resource scarcity, especially in the behavioral health system. Stephanie emphasized the need for careful planning and community involvement in crafting solutions, mentioning ongoing discussions about "warm" lines as potential solutions.

Adriana emphasized the importance of providing real and accessible resources to families and communities, especially in regions with limited resources.

Jessica's primary concern is whether enough support is provided to mandatory reporters to help them fulfill their duties effectively. She suggests looking at other professions like attorneys and law enforcement to see how they receive support and whether similar strategies could be applied to mandatory reporters. Jessica emphasized the need to provide resources and avenues for mandatory

reporters to ask questions and access support, reducing the need for immediate involvement of child welfare services.

Roshan Kalantar raised a concern about the idea that better trust or connections with the current system would address the issues. The response should focus on providing advocates who are professionals, like teachers and doctors, with more options to recognize when the system is harmful and allow them to go to alternative places for help. She emphasized the need to prioritize changing the system over time and making it safer rather than relying on rebranding or changing perceptions. Roshan advocates for honesty about the system's problems and a focus on real solutions.

Jennifer Eyl highlighted the importance of not disregarding severe cases like child sexual abuse and sexual assault but also emphasizes the need to consider the percentage of reports that fall into these categories compared to everyday reports on the hotline. Jennifer suggested that there may be room for different reporting options based on the type of allegation, even though she is unsure if she fully agrees with this idea. She emphasized that it's essential to avoid making an "All or Nothing" conversation and not overly focus on the most severe cases when the majority of reports may not involve such situations.

Doris shared that the data presented by Casey indicates that the vast majority of children and families reported to child welfare agencies are for neglect, which is often associated with poverty. The data also shows that a small percentage of reports involve severe neglect, abuse, or sexual abuse. This information serves as an important reminder for the task force to consider when discussing the system, populations, needs, and issues related to mandatory reporting.

Public Comment: Trace read a statement from Krista Christensen who shared her personal experience when a school social worker had limited information from her child's fictional statement but made a report based on their own interpretation. This report led to potential litigation for the school district and the social worker being reported to DORA. The comment highlights the need for clearer training and understanding of mandated reporting for professionals. It also raises questions about bridging the gap between how police and DCFS (possibly referring to CDHS) perceive their roles and emphasized the importance of agencies knowing whom they can trust with their reports to prevent escalating issues.

Trace provided a few announcements and reminders:

1. The December meeting has been canceled, and instead, there will be opportunities to provide feedback on how the interim report has been captured.
2. Opportunities for working groups in 2024 will be available, and individuals may have the chance to self-select or be assigned to these groups.
3. Monthly meetings will continue in 2024, similar to what has been done in 2023, so participants should expect more emails and notifications in their inbox regarding these meetings and activities.