



## **Mandatory Reporting Task Force**

### **June 26, 2024, Meeting Recap – Specialized Occupations Subcommittee**

#### **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.

#### **Initial Focus on Victim's Advocate Discussion**

After an introduction with all attendees present, the task force broke out into its two subcommittees - on Specialized Occupations and Data - for more specific discussion.

The Specialized Occupations subcommittee discussion began by wrapping up topics from the last meeting related to victim's advocates.

Two main directives being considered were highlighted:

1. Reporting time frames for cases involving domestic violence, sexual assault, or stalking.
2. Reports involving children and youth who were victims of dating violence or sexual assault.

#### **Survey Results**

A survey had been sent out to subcommittee members but there was a split in opinions. The meeting aimed to clarify points on the exemption of victim's advocates from mandatory reporting statutes.

The central question discussed was: "Would you support a recommendation to remove victim's advocates from Colorado's statute list of mandatory reporters?" Only eight other states specifically include victim's advocates as mandatory reporters.

Jennifer Eyl provided context about research indicating that mandatory reporting requirements for victim's advocates discourage adult survivors from seeking help. She emphasized that this creates a barrier for both the parent and the children to achieve safety.

Zane Grant raised concerns about exemptions potentially endangering child safety, advocating for protocols like delayed reporting rather than full exemptions based on job titles. He stressed the importance of child protection and acknowledged the complexity of balancing confidentiality with reporting obligations to ensure children's best interests. He emphasized the risk of misuse and loopholes if exemptions aren't carefully implemented, underscoring the need for a balanced approach that supports families while safeguarding children.

### **Additional Concerns and Perspectives**

Aletha Jenkins emphasized that victim's advocates are often engaged after a crime has been reported, which brings law enforcement involvement into the situation, and expressed concern about restricting their role only to adult victims. She stressed the necessity of reporting new crimes against children uncovered during advocacy, expressing unease with a universal exemption for victim's advocates, which could overlook identifying and safeguarding child victims.

Jennifer clarified the distinction between two types of victim's advocates and their roles:

1. *System-Based Advocates*: Associated with law enforcement or district attorney's offices, lacking confidentiality, working within the criminal justice system.
2. *Community-Based Advocates*: Work at domestic violence and sexual assault agencies outside the criminal legal system, possess strong legal privilege and confidentiality.

Jennifer underscored that the debate centered on community-based advocates who face the challenge of breaching confidentiality to report, unlike their system-based counterparts. She brought attention to the diverse forms of abuse within domestic violence cases, such as coercive control and psychological abuse, which may not always constitute a reportable crime. Jennifer raised concerns about the premature involvement of child protective services, highlighting potential risks to the safety of survivors and their children. Additionally, she briefly referenced research from Casey Family Programs on the subject and intends to share a more extensive article to provide deeper insights into the matter.

Soledad Diaz - serving as Roshan Kalantar's proxy - provided further insights based on her experience as a former domestic violence shelter director. She emphasized the necessity of building trust with community-based advocates to provide effective support. Many victims of abuse choose not to report to the police. Soledad shared instances where mandatory reporting obligations led victims to disengage, thereby increasing their vulnerability and safety risks, particularly right after leaving an abuser.

### **Statutory Definitions**

The current statute ([CRS 13-90-107](#)) specifically defines victim's advocates as those working in programs primarily serving victims of domestic violence or sexual assault who

have undergone specific extensive training. This definition is narrow, excluding many broader or multi-crime victim services and those partnering with law enforcement.

### **Community-Based vs. System-Based Advocates**

Community-based advocates who work in shelters, rape crisis programs, or similar organizations are generally the focus of this discussion. System-based advocates, such as those working with law enforcement, are not included under this specific statutory definition.

The statute also addresses who may not testify without consent, granting broad privilege to community-based advocates, except when mandatory reporting laws apply. Jordan Steffen emphasized the importance of understanding these definitions to draft a recommendation that accurately reflects the subcommittee's intentions. Zane expressed that his concerns about potential loopholes and self-proclaimed advocates were mitigated by the narrow statutory definition.

Jessica Dotter provided some historical context. In 1995, victim's advocates were specifically called out as mandatory reporters under Colorado statute. Legislative intent emphasized the unique challenges faced by sexual assault victims, highlighting the need for sensitive and unbiased approaches in dealing with them and ensuring their safety and welfare.

The challenge lies in balancing the need to protect children with the importance of maintaining trust and confidentiality between victim's advocates and survivors. The relationship between community-based advocates and survivors is distinct from other mandatory reporters due to the high level of legal privilege and confidentiality.

Concerns were raised about creating loopholes if exemptions are granted based solely on one's professional title. The potential risk to child safety if community-based advocates are exempted was highlighted, especially when they may be the only ones aware of the situation. However, the critical role of community-based advocates in building trust and providing support was also emphasized, with the need to protect this relationship.

Discussion then turned to various proposed solutions, including:

- Consideration of an adjusted time frame for reporting to allow for safety planning and establishing trust with survivors.
- Ensuring that recommendations are specific and clear in defining the roles and responsibilities of different types of victim's advocates.
- Balancing the need for confidentiality and trust with the imperative to protect children and ensure their safety.
- Allowing victim's advocates to use their professional judgment in deciding whether to report, especially in situations where reporting might endanger the survivor or compromise trust.

## Next Steps

Trace Faust proposed sending a survey or pulse check among subcommittee members to gauge their comfort levels with various options. Based on survey results and further discussion, the Office of Colorado's Child Protection Ombudsman (CPO) will draft recommendations that address the concerns raised while aligning with statutory obligations and best practices in victim advocacy. Whatever decision is made, the recommendations will ensure there is clear education and communication about the role of victim's advocates, their reporting obligations, and the protections available to survivors under the law. Jordan emphasized that the upcoming survey is not a final vote on recommendations but rather another step in gathering information to refine the language and understand the subcommittee's sentiments better.

## Further Historical Context

Jennifer shared additional historical context regarding mandatory reporting laws and the evolution of approaches to gender-based violence.

- *Shift Towards Survivor Autonomy*: Over the past 30 years, there has been a significant shift towards recognizing survivor autonomy. This shift acknowledges that survivors are best positioned to know how to protect themselves and their children, rather than relying solely on professional intervention.
- *Legislative Revisions*: Jennifer cited an example where legislative revisions were made to reduce mandatory reporting obligations for medical providers regarding domestic violence injuries. This revision aimed to limit law enforcement involvement to cases involving serious bodily harm or weapons, reflecting a more nuanced approach to when and how reporting should occur.
- *Broader Nationwide Movement*: These changes are part of a nationwide movement towards balancing the need for protection with the autonomy of survivors. It reflects a growing understanding that systemic responses alone may not always be the most effective or safest approach for survivors.

Soledad then shared a deeply personal and poignant perspective on the challenges faced by survivors, particularly in marginalized communities, when engaging with systems like child protective services. Here are the key points she highlighted:

- *Engaging with Child Protective Services*: Soledad emphasized that when victim advocates are mandated to report to child protective services, survivors often face additional risks and challenges. Reports to child protective services can escalate situations for survivors, potentially exposing them to further harm if their abuser becomes aware of the report.
- *Limited Support and Resources*: She noted that child protective services interventions sometimes lack adequate follow-up or tangible support for survivors. Instead, survivors are referred back to community-based organizations without immediate solutions or safety assurances.

- *Racial and Cultural Biases*: Soledad shared a personal experience where racial and cultural biases within systems led to a traumatic and unjustified intervention. She recounted a hospital experience where her questioning about her health led to unwarranted suspicion and a prolonged, distressing situation involving child protective services.
- *Impact on Marginalized Communities*: Soledad underscored that decisions made about mandatory reporting profoundly affect marginalized communities. For immigrant survivors and others facing systemic barriers, the fear of losing custody of their children or legal repercussions adds immense stress and complicates their efforts to seek help.

Stephanie Villafuerte underscored the need for a nuanced approach that considers the practical implications and impacts on survivors and families. She expressed several key points and concerns during the discussion:

- *A Balancing Act in Child Welfare*: She acknowledged the complexity of balancing child safety with the well-being of families, highlighting the challenging nature of their profession in child welfare.
- *Exploring Options Beyond Binary Choices*: Stephanie questioned whether the task force had thoroughly explored options beyond the binary choices presented. She expressed discomfort with voting without fully exploring potential alternatives that might better address the concerns raised.
- *Effectiveness of Time Extensions*: Stephanie raised doubts about the effectiveness of providing time extensions (e.g., 24-72 hours) for reporting, suggesting it could potentially add stress and uncertainty rather than resolving issues.
- *Preference for Clarity and Honesty*: She emphasized the importance of clarity and honesty in the process, suggesting that knowing the rules up-front allows survivors to make informed decisions about seeking help.

### **Discussion of the Directive on Attorneys and Related Professionals**

After a break, Trace introduced a panel of legal experts to discuss Directive X. The text of this directive is as follows: the task force shall analyze “whether a mandatory reporter who is employed by, an agent of, or a contractor for an attorney who is providing legal representation is exempt from the reporting requirements described in section 19-3-304”.

### **Panelist Introductions and Opening Statements**

- *Chris Henderson* is the Executive Director of the Office of the Child Representative, and joined the panel as a proxy for Ashley Chase. Chris oversees the state agency for contracting and employing attorneys representing children in Colorado. He argued that attorneys and their legal teams should be exempt from mandatory reporting to preserve attorney-client privilege. Chris noted the conflict between mandatory reporting and professional conduct rules, specifically Rules 1.6 and 5.3, which emphasize confidentiality. Recent legislative

changes under House Bill 1038 have extended attorney-client privilege to children aged 12 and older in dependency and neglect cases, reinforcing the importance of confidentiality. Chris emphasized that respecting family autonomy and allowing families to make their own safety decisions fosters trust and effective legal representation.

- *Kevin Bishop* is the Social Work Coordinator at the Office of Alternate Defense Counsel. Kevin coordinates social workers across Colorado who support indigent parents in dependency and neglect cases. He emphasized the importance of maintaining attorney-client privilege and confidentiality, advocating for legal teams to be exempt from mandatory reporting requirements. As conflict counsel for the public defender's office, his agency ensures representation in cases with conflicts of interest. Kevin highlighted that the right to an attorney, established by the US Constitution since 1963, is fundamental. He stressed that mandatory reporting could undermine client trust and legal protections, posing significant challenges to effective legal representation.
- *Jill Cohen* is the Director of Programs at the Office of Respondent Parents' Counsel. Jill works to ensure indigent parents in Colorado have access to high-quality legal representation through a team-based model involving attorneys, social workers, and advocates. She emphasized the effectiveness of this approach in addressing complex family issues within the child welfare system. Jill advocated for updating the statute to prioritize attorney-client privilege and confidentiality over mandatory reporting, citing support from national and federal organizations backing their model.

Stephanie clarified that the discussion isn't about altering attorneys' obligations but rather about their staff, employees, or agents, who are not mandated reporters under current statutes. This distinction ensures that attorneys themselves continue to uphold constitutional rights and legal ethics while considering the roles and obligations of their supporting teams within legal representation.

Chris acknowledged Stephanie's clarification and highlighted that Rule 5.3 of the Rules of Professional Conduct addresses responsibilities regarding non-lawyer assistants who are considered agents of attorneys when they are part of the legal team. This distinction underscores the ongoing relevance of legal ethics in defining the roles and obligations within legal representation teams.

Kevin highlighted an important point about legal privilege statutes, mentioning that they currently do not fully incorporate the role of social workers as part of legal teams in Colorado, despite their essential involvement. This observation underscores the need for a legal framework to adapt to include all team members who contribute to legal representation.

Zane raised a couple of key points regarding his experience in the guardian ad litem and respondent parent counsel roles. He noted that while some guardian ad litem attorneys

in his jurisdiction have support staff persons, they may not necessarily be social workers and might not fall under mandatory reporter statutes. Zane also highlighted that not all respondent parent counsel attorneys collaborate with teams, which means not all involved parties benefit from this approach. In cases where abuse or neglect is alleged, Zane seeks clarity on reporting processes, considering that the team is often already aware of these issues. He emphasized the need to understand precisely what problem the proposed statutory changes aim to address in the context of child protection efforts.

Kevin highlighted some differences between agencies regarding the employment of social workers. He noted that both his agency, the Public Defender's Office, and the Office of the Alternate Defense Counsel mandate the employment of social workers with master's degrees (LSWs or LCSWs). Kevin pointed out that while other agencies may have broader criteria for who can work with individuals, his agency's hiring practices are specifically outlined in their enabling statutes, which were amended in 2014 to include social workers. Kevin emphasized that the issue of mandatory reporting statutes singling out social workers by title is a concern, given the constitutional rights and confidentiality obligations that attorneys and their teams uphold in their representation of clients.

Stephanie provided additional context for the discussion:

- *Background and Legislative Context:* She referenced the origins of the directive, noting that it emerged during stakeholder discussions where concerns were raised about the clarity of statutes regarding the inclusion of all staff associated with attorneys as exempt from mandatory reporting.
- *Legal and Ethical Concerns:* Stephanie underscored the apprehensions among legal professionals and their teams regarding statutory ambiguity. She pointed out that while rules of professional responsibility encompass team members, the lack of explicit statutory coverage raises uncertainties about whether all team members are adequately exempted from mandatory reporting.
- *Core Question:* The fundamental issue, as Stephanie framed it, revolves around whether the mandated reporting law should explicitly include all staff associated with attorneys, ensuring clarity and consistency in legal teams' obligations regarding confidentiality and reporting requirements.

Stephanie highlighted the need for legislative language to explicitly exempt all staff associated with attorneys from mandatory reporting obligations. She emphasized the clarity this would provide, acknowledging the current gray areas some social workers navigate. Chris supported this clarification, noting its potential to relieve burdens and enhance confidence among social workers and legal teams. Jessica sought insights on any existing controversies and raised considerations regarding peace officers employed as investigators. Kevin affirmed the presence of former police officers as investigators and stressed the importance of ensuring all team members benefit from attorney-client privilege uniformly. Jill expressed gratitude for potential legislative support, highlighting the significance of this clarification for social workers' professional security. Chris and Kevin echoed the benefits of multidisciplinary teams in better serving families and ensuring safety.

The subcommittee concluded on the note of advancing recommendations and gathering feedback via survey.