

Mandatory Reporting Task Force

August 7, 2024 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.

Reporting Timeframes for those Creating Safety Plans

The main objectives of the meeting were to finish reviewing the remaining directives and ensure that the specialized occupation subcommittee had the opportunity to present their discussions fully. The discussion began with a focus on the legislative directive related to reporting timeframes for mandatory reporters involved in creating safety plans for victims of domestic violence, sexual assault, or stalking. Trace Faust emphasized the need to stay aligned with this specific directive, even though other related issues, like the removal of victim advocates from the list of mandatory reporters, were also on participants' minds.

Jennifer Eyl expressed confusion and concern about the directive, noting that the discussion seemed to be treating the issue as an either/or scenario—either implement a delay or remove victim advocates from the mandatory reporters list. She questioned whether all individuals working with survivors possess the necessary skills to create safety plans and whether they should be allowed to delay reporting.

Definition of Safety Plans

Jennifer also raised the issue that there is no clear definition of what constitutes a "safety plan," which could lead to confusion and inconsistency in how the delay is applied. Jordan Steffen acknowledged the complexity of the discussion but stressed the need to separate the two issues—delay vs. removal—to avoid conflating them and to ensure that the task force responds accurately to the specific legislative directive. The group was encouraged to first focus on the reporting time frame directive before moving on to other related but separate recommendations.

Skill Set Concerns

Roshan Kalantar emphasized that creating a safety plan requires specialized skills, typically held by domestic violence (DV) and sexual assault (SA) advocates. There was

concern that the directive might be assuming that individuals without this specific expertise could adequately create safety plans, which may not be the case.

Initial Intent of the Directive

Roshan recalled that the original discussion around the directive was focused on DV and SA advocates, who are still mandatory reporters. The idea of a 72-hour reporting delay was initially seen as a stop-gap measure if the task force couldn't achieve broader changes, such as removing victim advocates from the mandatory reporter list.

Language Concerns

Roshan also raised a concern about the phrase "ensure the safety of the victim" in the directive and whether this language might create unrealistic expectations or legal risks if the safety plan does not work as intended. Jordan clarified that this phrase comes from the directive itself, and while it may be challenging, the group should note this issue when crafting their recommendations.

Distinction Between Advocates

Gina Lopez highlighted the key differences between community-based advocates and system-based advocates. Community-based advocates in Colorado operate under a specific statute that grants them privilege, particularly when working with adult victims. This privilege allows them more flexibility in protecting the privacy of victims, which is crucial when engaging in safety planning. In contrast, system-based advocates, including those within defense teams, are mandatory reporters and must disclose any reportable information shared by victims.

Impact of Privilege on Safety Planning

Gina explained that community-based advocates' ability to hold privilege is essential for effectively helping victims, especially young adults and teenagers. The current statute complicates this by requiring mandatory reporting in certain situations, which can undermine the trust between the advocate and the victim. She argued that extending the time frame before mandatory reporting could help community-based advocates perform safety planning more comprehensively, similar to how they would with adult victims.

Educational Systems and Title IX

Gina also touched on the challenges within educational systems, particularly around implementing Title IX measures related to safety planning and sexual assault education. This discussion highlighted the complexities and nuances in the roles of various advocates and the legal frameworks they operate within. It also underscored the importance of clear definitions and guidelines to ensure that safety planning and reporting obligations are appropriately balanced.

Jessica Dotter clarified the directive the task force is addressing, emphasizing that the legislative language specifically asks whether an exception should be made to allow mandatory reporters—particularly victim advocates—a 72-hour window to create a safety plan before they are required to report. This exception does not create a new responsibility to make safety plans but provides an allowance for those who choose to do so.

72-Hour Exception

Jessica suggested that the task force could recommend that this 72-hour exception apply specifically to victim advocates who are mandatory reporters, as they are the ones envisioned in the original discussion. However, she also posed the question of whether the exception should be extended to other mandatory reporters who might be involved in safety planning, such as teachers, police officers, or district attorneys. Limiting the exception solely to victim advocates might exclude others who could also benefit from it.

Connection to "Immediately" Directive

Jessica pointed out that this directive is closely related to another directive that discusses whether the term "immediately" in mandatory reporting should be more clearly defined. The idea is that both directives address the timing of reporting and could be considered together when making recommendations.

Complexity in Advocacy Roles

Lori Jenkins highlighted that the distinction between community-based and system-based advocacy is not always clear-cut. She also mentioned that Child Advocacy Centers, although nonprofit and engaged in safety planning, do not have confidentiality privileges and are required to report immediately. She emphasized that any decision to define exceptions for certain types of advocates must consider these nuances, as applying a broad categorization could lead to confusion and legal risks for those in mixed roles like hers.

Jordan clarified that the directive was intentionally written broadly to encompass a wider range of situations and roles, rather than being narrowly defined to only apply to certain types of victim advocates. This broader language was designed to allow flexibility in analyzing the directive and determining what works best. Jordan also pointed out that the task force is not necessarily required to make recommendations based on the directive. The group's primary responsibility is to analyze the issues and decide whether a recommendation is appropriate based on their findings. This gives the task force the option to present their analysis without committing to a specific course of action if they determine that a recommendation might not be the best approach.

Stephanie Villafuerte stressed the need to step back and carefully consider the broader implications of any recommendation. She recognized that the current draft

recommendation does not adequately address the more complicated issues discussed during the meeting.

Even if the task force decides not to make a specific recommendation, they can still include the substance of this conversation in their report. This would provide valuable context and suggest possible next steps for the community or future discussions.

Concern About Broad Definitions

Jennifer expressed concern that if the definition of advocates is too broad (e.g., anyone helping to create a safety plan), it could be misused, given the variability in training and understanding of domestic violence and sexual assault issues. She fears that a broad application could lead to unintended consequences.

Jennifer suggested that if the option on the table is narrowly focused on victim advocates with statutory privilege, she might support it. However, she's hesitant to endorse it without considering the broader implications.

Zane Grant raised a concern about the impact of the 72-hour delay on collecting physical evidence, particularly in cases of sexual assault. He is concerned that delaying the report could affect the preservation of crucial evidence, which might hinder a criminal investigation.

Jordan explained that the 72-hour extension is not mandatory but optional. It allows advocates to delay reporting when it's necessary to ensure the safety of the victim. The extension is meant to give professionals the flexibility to assess each situation and act in the best interest of the victim. The 72-hour extension provides flexibility but does not prevent immediate reporting when necessary.

Revised Recommendation

Jordan attempted to incorporate narrower language to focus specifically on victim's advocates, as defined in Title 1. She modified the language of the recommendation and presented it back to the group.

Roshan expressed concern about the potential confusion of issuing two conflicting recommendations: one suggesting that victim advocates should not be mandatory reporters and another proposing a 72-hour safety planning period for mandatory reporters. Roshan feels this could be confusing for those interpreting the directives and prefers to have a clear stance.

It was clarified that the task force must respond specifically to the legislative directives as written. The broader conversation about removing victim advocates from mandatory reporting will be included as supplementary narrative in the report but is not the primary focus of the directive response.

Jade Woodard suggested that the task force could include both recommendations under the directive in the following manner:(1) Recommend that victim advocates be exempt from mandatory reporting, and (2) If exemption is not feasible, recommend a 72-hour safety planning period for those under the reporting requirement.

Clarification on "Victim" Definition

Dr. Kathi Wells inquired whether the term "victim" in the directive refers to adults only or if it includes children and youth. This distinction affects the application of safety planning and mandatory reporting rules. Stephanie believes the directive is intended for adult victims seeking services, who might disclose harm to their children, necessitating a report. However, there is uncertainty about how this applies to minors directly seeking help. The discussion highlighted the potential need to distinguish between cases involving adult victims and those involving minors, especially in terms of reporting requirements and safety planning.

Mechanism of Reporting

The responsibility of mandatory reporters is based on their knowledge of the situation, regardless of how the information was obtained. This suggests that the mechanism for reporting should not necessarily change based on the age of the victim or the source of the information. Under current statutes, mandatory reporters such as educators must report suspected abuse within 24 hours. If a youth discloses abuse to a guidance counselor, the report is made the same day. However, if the disclosure is made to a victim advocate, the report could be delayed up to 72 hours. The concern among some task force members is whether this difference in reporting timeframes could impact the safety of the child or youth, particularly if the victim advocate is aware of potential child abuse but is not required to report immediately.

Straw Polls

Following this discussion, members were asked to digitally raise their hand to show support for allowing up to 72 hours for reporting, which is a clarification of the intent behind the recommendation.

Results:

- Yes: 15 members supported the recommendation.
- No: 2 members did not support the recommendation.
- Abstentions: 2 members abstained from voting.

The task force then considered creating a separate section in their report for additional legislative considerations. This would include discussing the potential removal of victim advocates as defined in Title 13, Section 1391. This is not a final recommendation but a consideration for legislators.

Results:

- Yes: 11 members supported including this consideration.
- No: 10 members opposed it.
- Abstentions: 1 member abstained from the vote.

Members not present will be able to vote through an online survey that will be sent out after the meeting.

Medical Child Abuse

Directive 8 involves analyzing the process for reporting medical child abuse, which has been discussed extensively by the subcommittee. Medical child abuse refers to situations where a caregiver either fabricates, exaggerates, or induces medical conditions in a child for various reasons. It is complex and involves both medical and psychological elements.

The subcommittee concluded that detailed analysis of medical child abuse should not be the primary focus. Instead, the emphasis should be on ensuring the current systems support proper reporting and handling of such cases.

Recommendations

- Duty to Report: Mandated reporters should continue to report when they have reasonable suspicion of abuse, including medical child abuse.
- Institutional Policies: Institutions should have policies to support and guide mandated reporters in these cases.

Cultural Context

Gina shared a personal concern that certain red flags, such as being unusually articulate about medical issues, might unfairly impact marginalized individuals who often need to be more precise and diligent about their medical care. Kathi recognized that these cases are challenging for health practitioners, who must rely on the accuracy of the information provided by parents seeking care for their children.

Challenges in Detection

Kathi noted that medical child abuse cases can be difficult to detect, especially when the abuser is from an advantaged background, as they may have the resources and knowledge to advocate effectively for their child, making the abuse harder to identify. She also acknowledged that inequities in the healthcare system can allow cases of medical child abuse to go unnoticed for longer periods, especially when assumptions are made about individuals seeking care.

Exemption for Legal Staff

The task force received 21 responses to a survey about the language regarding mandatory reporting requirements for staff working with legal teams. The majority favored specifying that mandatory reporters employed by legal services (rather than just legal representation) are exempt from reporting requirements. This will be the direction for the draft recommendation.