

MINUTES

REGULAR MEETING TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS Wednesday, October 3, 2012 at 1:45 p.m. Illinois Criminal Justice Information Authority, 2nd Floor Conference Room Chicago, Illinois

Call to Order and Roll Call

Jeffrey Shuck, Deputy General Counsel for Personnel at Central Management Services (CMS) and Chairman of the task force, welcomed task force members and guests to the regular meeting of the Task Force on Inventorying Employment Restrictions. Mark Myrent, Associate Director of Research for the Illinois Criminal Justice Information Authority, acting as staff to the task force, called the roll.

Task force members in attendance were:

Chairman Jeffrey Shuck
Mr. Jack Cutrone, Executive Director, ICJIA
Mr. Chimaobi Enyia, CMS
Mr. Daryl Jones, IDOC
Mr. Hector Villagrana, IDHR
Mr. Donald Evans, ISBE
Ms. Kim Donahue, designee for Director Grau, ISP
Ms. Karen Helland, IBHE
Dr. Kisha Hart, IDES
Ms. Rukhaya Alikhan, IDPH

Rep. Mary Flowers
Ms. Elizabeth Sarmiento, DHS
Ms. Sheila Riley, on behalf of DCFS

Approval of the minutes from the July 20, 2012 meeting

With a quorum in place, Chairman Jeffery Shuck announced that the first order of business was a vote to approve the September 5, 2012 meeting minutes, and asked for a motion to approve. Mr. Cutrone made a motion to approve the minutes, and Dr. Hart seconded. Chairman Shuck called for a voice vote approving the minutes. Hearing no objections, the motion passed.

Chairman's Remarks

Chairman Shuck thanked everyone for attending the meeting. He asked that other attendees in the room introduce themselves. Present were Carol Morris, Re-Entry

Statewide Manager, IDES; Antoinette Golden, Hire the Future Statewide Manager, IDES; Tiffany Kay, staff attorney, Labor Relations Department, IDPR; Peter Shetter, Recruitment and Selection Manager, IDES; Christine Devitt Westley, Research Manager, ICJIA; Todd Belcore, staff attorney, Shriver Center National Center on Poverty Law; Tom Grippando, attorney; Kathie Kane-Willis, Director, Illinois Consortium on Drug Policy, Roosevelt University; Stephanie Schmitz, Associate Director, Illinois Consortium on Drug Policy, Roosevelt University; Lisa Stephens, General Counsel, ICJIA; Junaid Afeef, staff attorney, ICJIA; Idetta Phillips, research analyst and project manager, ICJIA; Geraldine Smith, Life Builders United; Randolph Norris, Life Builders United; Anthony Lowery, Director of Policy and Advocacy, Safer Foundation.

Chairman Shuck reminded task force members to complete their Open Meetings Act training and submit a copy of their certificates of completion to Ms. Phillips. He also reminded the group of the deadline for submitting the final report to the Governor and the General Assembly, which was newly enacted to be no later than July 1, 2013. He stated that he fully intends for the task force to meet that deadline.

He continued that the group would be breaking out into work groups during the meeting. The focus of these work groups should be garnering information from the state agency submissions about the employment restrictions they have in hiring, licensing and certifications, meshing that with information gathered from outside sources, and structuring the information in a format that can be easily understood in each area, and easily compared across areas. All work group members should agree to meet at least once before the next regular meeting of the task force, scheduled for November 7th. Each group will be expected to report out at that meeting as to the direction they have set for themselves, their progress, and whether they need more information to do complete their charge.

Chairman Shuck continued that task force members should be aware that any work group meeting that involves six or more members will invoke the Open Meetings Act and its requirements regarding advance public posting of meeting agendas, recording the meeting, preparing minutes of the meeting, etc. For work groups with less than six task force members, those Open Meetings Act requirements do not apply. However, work groups are encouraged to take careful notes regarding discussions, decisions made, findings, and difficulties encountered, so that these can be shared with the other work groups and included in the final report.

Task Force member input on employment restrictions from their state agency perspectives.

Chairman Shuck recapped from the last meeting that state agency task force members had been asked to speak on how employment restrictions based on criminal history affect their agencies as employers. He noted that he had spoken about these issues from the perspective of CMS. He then asked other members present to continue the discussion of how the restrictions operate within their agency's environment, why they are in place, and what would happen if they were removed or modified. This information

would be a counterpoint to the testimony heard at the last meeting from individuals with criminal records who face these barriers when trying to obtain meaningful employment. The state agency employment restrictions were presumably enacted for some purpose, and those need to be understood in terms of what functions they serve and if they are working as intended. He continued that CMS employees that are housed at other agencies are held to the same restrictions as employees of those agencies, especially with regard to positions dealing with at-risk populations.

Rep. Flowers asked for a definition of at-risk populations, particularly as it pertains to sensitive job duties involving potential risk of identity theft or other financial crimes. Chairman Shuck replied that there are some universally agreed-upon occupations that work with at-risk populations. These include employees that have direct contact with children and families, such as workers at DCFS, or those who interact with developmentally disabled residents, such as workers at DHS facilities. These vulnerable populations are not able to look out for their own safety and are dependent on the agency to do that for them.

Chairman Shuck asked Ms. Alikhan from DPH to speak about her agency's restrictions that apply to nursing homes and other area under their jurisdiction. Ms. Alikhan explained that one of the most significant source of employment restrictions for the Department of Public Health is the Illinois Health Care Workers Background Check Act [225 ILCS 46]. The law mandates that workers in nursing homes, home health agencies, renal disease facilities, and facilities that provide resident care and patient services have a background check conducted. The Act lists out a set of disqualifying offenses. If the background check reveals that an individual has a disqualifying offense, they cannot work in a direct-care capacity, such as daily living with residents or patients, for either nursing or personal care duties. The statute enumerates a long list of prohibiting offenses, mostly focused on violent crimes, and misappropriation of property, since these employees are dealing with sensitive patient medical and financial information. The law was enacted to protect the vulnerable populations who must rely on the care of others.

Ms. Alikhan continued that the statute does provide for a waiver process, and allows the agency to promulgate administrative rules that sets the procedures for such a process. A potential employee with a disqualifying offense in their background can petition the department for a waiver, which goes before a waiver committee (comprised of attorneys and other staff in the DPH health care regulation program). They review the "waiver packet" in which the applicant states the mitigating circumstances of their disqualifying background, including length of time since the offense. The packet undergoes an intensive evaluation. If the waiver is granted, it is entered in the DPH Health Care Worker Registry, so that potential employers can know that the applicant is now eligible for the position. Thus, the law offers protections for those under the care of DPH workers, while at the same time offers a means for those with criminal backgrounds to obtain gainful employment.

Chairman Shuck added that the DPH Registry applies not just to DPH employees, but also to other agencies that employ health care workers. Ms. Alikhan indicated that DHS also uses the DPH Registry for workers in its Community Integrated Living Arrangement (CILA) facilities, as well as other agencies that oversee and enforce the Health Care Workers Background Check Act.

Rep. Flowers interjected that she had received a call from a reporter wanting to know why certain people were not found on the Registry, and she wanted to point out to the group that often the vulnerable populations, particularly seniors, are victimized by people without a prior criminal history. In such cases, the Registry offers no protection against first time offenders. Ms. Alikhan replied that the reporting requirement for the DPH registry was instituted in 2007, with entries made moving forward. Persons with offenses that occurred prior to 2007 may not be in the Registry for that reason.

Chairman Shuck asked Ms. Sarmiento from DHS to address the employment restrictions in her agency. She stated that DHS has an administrative review process on all direct-care positions, particularly the vulnerable populations of those with mental illness and developmental disabilities, including the schools for the deaf and blind. The review committee does a thorough case by case review, taking into consideration the date of the conviction, if there has been any improvements, and any pattern of similar offenses in previous employment history. DHS also uses the DPH registry for nurses, psychiatrists, for a total of 90 direct-care titles that are subject to background checks.

Rep. Flowers inquired whether DHS caseworkers are subject to this review. Ms. Sarmiento replied that they are not considered direct-care workers. The only time they will be subject to a background check is if a criminal conviction is noted on the CMS 100 employment application.

Chairman Shuck asked about the types of titles that are included in the list of 90 direct-care jobs subject to a background check. Ms. Sarmiento replied that they include high level skill titles such as nursing directors and psychiatrists, and low level skill titles that include switchboard operator, account clerk, janitors, maintenance, drivers, and anyone that has direct patient interaction.

Dr. Hart asked about the internal DHS discussions to include caseworkers in local offices in the background check process, and whether there is an intent to do so within a certain time frame. Ms. Sarmiento replied that DHS is still waiting to hear from the Director of that Division, and as well as from AFSME (employee union), which also needs to be included in that decision.

Chairman Shuck then asked Mr. Jones from IDOC to speak about how employment restrictions operate in his agency. Mr. Jones replied that most of IDOC employment restrictions are based on administrative rule directives, but there is one statute [430 ILCS 65/4] that applies to parole agents who are required to handle a firearm. If they do not meet the criteria to be issued a FOID card, they do not meet the job requirement and will not be hired. Besides that restriction, a background check is conducted on all

employees who work with inmates inside the facility and those who have access to any records. If they work outside the facilities, the background check requirements do not apply, since they are escorted at all times within the facilities. IDOC does two types of background checks: 1) a name check via LEADS; and 2) a complete background check of Driver's License, FOID card, check of military records, employment references, juvenile records, and facility visitor log tracking, among other sources of information.

Mr. Jones continued that no one is prohibited from working at IDOC based on criminal history background alone. If the applicant has a criminal history, they are referred to a review committee that considers such factors as the seriousness of the offense, the frequency and pattern of the criminal history, the nature of the prospective job, and the time that has elapsed since the offense.

Chairman Shuck remarked that the requirement for certain IDOC positions to be eligible for a FOID card adds disqualifying factors not faced by other agencies, such as orders of protection coming into play, since that is a disqualifying criterion for a FOID card. Mr. Jones added that this issue would be faced by most Public Safety agencies. What is uniquely relevant to IDOC applicants is what facilities they may have been incarcerated at, and if they have any family members incarcerated. These circumstances may not bar the applicant from employment, but such information would be a "red flag" if it is not disclosed on the employment application.

Dr. Hart asked at what point in the applicant process does the review of background history takes place, before or after the job interview. Mr. Jones replied that it occurs post-interview. Chairman Shuck asked whether applicants are screened based on their answers to Box 9 on the CMS 100 application (questions that refer to prior criminal history). Mr. Jones replied that they are not screened based on that question. That is because a background check is done on every employee and contractor. The only exception is for outside positions that do not require contact with facility residents or sensitive information. These applicants are not subject to a background check.

Rep. Flowers asked whether IDOC hires ex-offenders. Mr. Jones replied that he does not have the numbers, but that it is possible based on the administrative review process. He stated he could find out that information for the task force. He also stated that he was aware that some ex-offenders have come back as counselors.

Rep. Flowers then asked Mr. Myrent of ICJIA why the discussion thus far was focused on state agency hiring, when they are not currently hiring many people due to the state's financial crisis. Mr. Myrent replied that the perspectives of the state agencies cover a fairly wide range of concerns as to how employment restrictions affect their operations. For example, task force members could also discuss the circumstances surrounding termination of existing employees due to criminal activity on or off the job. In certain circumstances, the State Police provides agencies with continuing information about employees' criminal history records, referred to as "rap back".

Mr. Myrent continued that the extent to which agencies are involved in licensing and certifying occupations in the private sector, or are involved in restricting employment of contractors doing business with their agencies is also relevant to the task force. Further, information on the procedures that the various agencies go through to consider whether an applicant's prior criminal history should be a factor in the hiring decision needs to be shared by the group, including relief mechanisms.

Rep. Flowers wanted the record to reflect that her recommendation would be that all applicants' background be checked, which would have the effect of creating a level playing field. If this were done, the circumstances of any crime reflected on the criminal history record would have to be considered, avoiding misperceptions that the person is a 'criminal' before their other job qualifications have been considered.

Chairman Shuck asked if any task force member wanted to expound on the licensing aspects of their agencies and any restrictions that apply based on criminal background. Ms. Riley of DCFS volunteered to discuss licensing as it pertains to her agency. She stated that DCFS has an encyclopedic listing of background check requirements, authorized pursuant to the Illinois Children and Family Services Act [20 ILCS 505], the Child Care Act [225 ILCS 10], and the Abused Child Reporting Act [325 ILCS 5], to license for employment, contractual, and placement purposes. DCFS in essence does a background check on all applicants, including DCFS employees. In terms of contracting, DCFS, limits background checks by administrative rule to those who have direct access to children. Background checks include a check in the Child Abuse and Neglect System (CANS), the Illinois Sex Offender Registry, and fingerprint-based checks of Illinois CHRI and the FBI.

Ms. Riley stated that the statutes enumerate specific convictions which are mandatory bars to employment at DCFS, and mandatory bars to being contracted or licensed by the department for either professional or placement purposes. If an applicant has a conviction for an offense that is not on the mandatory bar list, then obtaining a waiver is a possibility. The waiver process at DCFS involves the Deputy Director of that responsible division, who would review the waiver requirements to determine if there is a nexus between the position and the conviction. If the waiver is granted, it is not transferrable to another position, since the waiver is based on the relationship between the conviction and the job. This waiver process is not enumerated in statute, but is a discretionary internal administrative decision-making process.

Ms. Riley continued that the DCFS waiver procedures are not as clearly defined department-wide as would be ideally desired, and the department is working on that issue. Nevertheless, the purpose of the background check is very specific in terms of serving to endure the safety, permanency, and well being of children and families during the provision of services, pursuant to Rule 385, the department rule that pertains to background checks. Because so many of the requirements are set by statute, there is only so much discretion that is available to instituting any changes to the current system. That being said, Ms. Riley stated that DCFS is open to reviewing all their

current rules and statutes, and refining the background check process for non-barrable offenses to be as narrowly tailored as possible.

Dr. Hart asked at what juncture in the hiring process is the waiver process made known to the applicant. Ms. Riley answered that the waiver process is introduced after an adverse hiring decision based on a criminal background has been made. For DCFS employees, licensing applicants, or personal services contractors, that notice will come directly from DCFS (which licenses direct worker services, such as child welfare workers). For employees of DCFS contractors, the notice of an adverse hiring decision and the possibility of a waiver process would come from that employer (not DCFS). Dr. Hart asked if there is written notification of an adverse hiring decision in cases where the candidate's application cannot move forward. Ms. Riley replied that candidates are not necessarily notified of their unsuccessful job candidacy, and if they are, the waiver process is likely not mentioned in any letter to them. The waiver process is way down the road from the internal DCFS staff screening of the candidate's CMS 100 application and their review of the accompanying explanation of any criminal conviction included on that application.

Status update on agency documentation submissions

Chairman Shuck asked Ms. Phillips of ICJIA to provide an update on state agency documentation submissions. Ms. Phillips reported that even after her outreach attempts the morning of the meeting, there were still five agencies that have not yet responded. These include: the Department of Natural Resources; Illinois Emergency Management Agency; Illinois Medical District Commission; Illinois State Fair; and Illinois Police Merit Board. The Illinois Supreme Court had been omitted from the original list of agencies to be contacted, and outreach needs to be done to make them aware of their reporting requirement.

Introduction of the Inventorying Employment Restrictions Task Force (IERTF) website and ABA Collateral Consequences web pages

Chairman Shuck asked Mr. Myrent to walk the group through the task force website hosted by ICJIA. Mr. Myrent accessed the IERTF website (<http://www.icjia.org/IERTF/>) via a projector and proceeded to narrate its various features. The website contains a section with all information pertaining to task force meetings agendas, minutes and handouts. A second section contains all the documentation received to date by the state agencies, including a summary document for quick reference by the work groups as they begin their information gathering and synthesis process. By reviewing these documents, task force members will begin to get a sense of the variance in depth and completeness of information submitted.

Mr. Myrent pointed out the report from the Department of Public Health as a particularly specific and detailed example of a state agency submission, one that corresponds very precisely to the language of the IERTF statute. Another good example is the submission

from the Department of Revenue. He also showed the group how to find the wealth of handouts already generated for the task force.

Mr. Myrent then navigated to the website of the American Bar Association and its National Inventory of Collateral Consequences of Conviction web pages (<http://www.abacollateralconsequences.org/>). He explained that the ABA project has a broader scope than the charge of the Illinois task force. It is intended to document the collateral consequences that currently exist in all 50 states, U.S. territories and at the federal level, in areas beyond state employment and occupational licensing, such as housing and civic participation. The ABA is releasing information for each state as it is completed. ICJIA staff has convinced the project coordinator, Ms. Margaret Love, to work on Illinois ahead of her original schedule, so that the task force could benefit from her legal team's work during its own information gather phase. It is hoped that the information on Illinois will be posted by December. In addition, the organization of information on the ABA website should be helpful to the work groups as they begin to grapple with the state agency submissions. In general, the website will eventually serve as a useful source of supplemental information on Illinois-specific employment restrictions.

Mr. Myrent continued with a discussion of a handout from the July 20, 2012 meeting, the compilation of professional licenses that can be denied for a felony record. This list was compiled by the Legislative Research Unit at the request of task force member Sen. Tom Johnson. Mr. Myrent reported that Sen. Johnson has volunteered to make a similar request to the LRU regarding the mandatory and discretionary bars to employment in state agencies. Chairman Shuck added that the documentation provided by the LRU will act as a validation of the state agency submissions, and should not be considered a substitute.

Ms. Riley asked whether the task force would consider requesting agencies with deficient submission to present additional information at a subsequent task force meeting. She stated that it might be helpful to ask questions of the staff that do the actual background checks and have the most knowledge about their agency's hiring policies and procedures. It is possible that incomplete submissions could be inadvertent, not an intentional disrespect of the IERTF Act and its requirements. She proposed that the state agency reports be reviewed for sufficiency, and those that do not meet the task force standard of completeness should be given 30-45 day notice that they will be called in to answer member questions, in order to be able to move forward with the work of compiling the final report by the deadline.

Mr. Myrent replied that it would be up to the individual work groups to decide what information they needed and from what sources to complete their charge, with the options ranging from relying on the state agency submissions, using the supplemental information from the LRU or ABA, or asking for additional information from the state agencies themselves.

Work group duties and assignments

Mr. Myrent introduced the descriptions of the four work groups that had been proposed in the last meeting. Elaborations on the charge for each group were noted on poster sheets placed around the conference room, as follows:

- State Hiring Workgroup
 - Are the state agency reports satisfactory?
 - Work group should make use of supplemental material from the LRU, ABA, and other credible sources
 - Work group task is to match up information to the IERTF Act language.
- State Licensing Workgroup
 - Are the state agency reports satisfactory?
 - Work group should make use of supplemental material from the LRU, ABA, and other credible sources
 - Work group task is to match up information to the IERTF Act language.
- Education for Licensing/Certification Workgroup
 - What professions require background checks for enrollment in a college major?
 - Obtain compliance documentation for college student background checks
 - Assess any impact of criminal background on college scholarships and grants
 - State certification process for teachers
- Human Rights Workgroup
 - Are state agency reports satisfactory with respect to waiver processes and relief provisions?
 - Work group should make use of supplemental material from the LRU, ABA, and other credible sources
 - Federal EEOC (Equal Employment Opportunity Commission) guidelines

Chairman Shuck then appointed the following task force members to serve as chair of each work group:

Donald Evans, chair of the Education work group
Elizabeth Sarmiento, chair of the State Hiring work group
Hector Villagrana, chair of the Human Rights work group
Rukhaya Alikhan, chair of the Licensing work group

He then reminded the group of the Open Meetings Act requirements that any group comprised of six or more Task Force members is subject to provisions of the Act, including advance public posting of the meeting date, recording of the meeting proceedings, and minutes of the meeting. ICJIA staff would be available to assist with obtaining meeting space and posting meeting announcements as needed.

Work group break out session

At this point, task force members and visitors were invited to break into the four smaller work groups, to sign up to be members of work groups, set future meeting dates, and begin enumerating topics that should be addressed at the first meeting.

Old business/new business

After approximately 20 minutes of meeting in the smaller work groups, the full meeting was reconvened by Chairman Shuck. At this juncture, visitors were allowed to comment or ask questions of the task force members.

Ms. Kathie Kane-Willis of Roosevelt University asked if agencies that don't have absolute bars to employment and have waiver processes would be able to quantify the number of people they have hired with a prior criminal history. For example, could IDOC be prepared to share the number of people with backgrounds that have been hired as a result of their review process? She continued that it particularly an issue when the waiver process is not codified, or is applied on a case-by-case basis. It is important to see what the numbers look like, to get an idea if there is general willingness to hire people with criminal backgrounds.

Chairman Shuck responded that one of the items that the state agencies were directed by the IERTF Act to report on was the number of people who had applied, the number that had been found to have a background, gone thru a waiver process and eventually hired. Any interested party can go to the IERTF website and start to look at that data to answer their questions.

Mr. Lowery from Safer Foundations commented that there were a number of agencies that reported that they had no restrictions. He would like to see them report on how many persons with backgrounds they had hired, since they have no restrictions. This information may reveal "hidden" or informal policies or practices of not hiring people with backgrounds, or not notifying such candidates of a waiver process, or not allowing individuals to offer mitigating circumstances of their criminal history, since there is no statute preventing them from hiring persons with backgrounds.

In terms of old business, Dr. Hart inquired if any timelines have been, or should be set, as far as receiving delinquent state agency reports or receiving further information from state agencies deemed insufficient. Chairman Shuck responded that it would fall under the purview of the State Hiring and State Licensing work groups to make such determinations.

Mr. Belcore of the Poverty Law Center commented that it would extremely helpful to have those people that review hiring applications articulate which offenses they consider to specifically prohibit employment for each particular position, and further, to delineate in detail what each stage of the application entails, particularly the stages at

which criminal background are considered. Anecdotally, he has been told by clients that they did not check the 'box' on an application, and yet later were denied due to a prior criminal history. He would like to know if backgrounds are checked on all applicants as a matter of course. If that is the policy and practice of state agencies, that is fine, he would just like to be clear on what those practices and policies are.

Me. Belcore asked if agencies give applicants a chance to review and correct any inaccuracies on their criminal history records used during the hiring process, and if so, is that being done in any timely manner so that the person will still be eligible for the job? He also commented that the lack of notice to applicants of the opportunity to pursue a waiver is an extremely important point that should be pursued further. Since many individuals don't know their rights when seeking employment, the waiver opportunity should be apparent at the outset of the hiring process, including what information is considered during a waiver process, so that the candidate could present that information at the initial application process.

Dr. Hart remarked that she was interested to know if any agencies responded that they are not conducting background checks due to budgetary constraints. If such fiscal barriers exist that prevent state agencies from fully vetting applicants, perhaps intergovernmental agreements could be implemented to solve this problem. Ms. Phillips responded that task force members should make themselves familiar with all the state agency reports posted on the IERTF website, and begin to compile a list of questions for further clarification by the state agencies. ICJIA staff is not suggesting that any one agency report should be considered the ideal template, but that several could be considered examples of complete and thorough responses. Mr. Myrent suggested that Ms. Phillips email the group a list of state agency reports that successfully addressed all aspects of the IERTF Act. Ms. Phillips mentioned that besides the report from the Department of Public Health, some other thorough reports were those from the Department of Military Affairs and the State Fire Marshall.

Finally, Mr. Belcore asked about sealed records. One of the reasons to pursue the sealing of a record is to prevent an employer from seeing information that a judge has determined should not be considered a factor in a hiring decision. However, there are still agencies that are allowed to see these sealed records. Is there any movement toward educating those agencies that are allowed to see sealed records in how candidates can present the mitigating factors that were considered when those charges were sealed in the first place?

Chairman Shuck replied that it was his understanding that there is a statute already in place that bars employers from considering any records that have been sealed or expunged, and this law is referenced on the CMS 100 application. He did acknowledge that there have been instances where the applicant marks "no" to the question about a prior criminal conviction, but their criminal history comes back with some criminal justice event still on the transcript. In that case, the individual is asked to produce documentation of the expungement or sealing so that the criminal background can be

ignored in the hiring process. If such documentation is not produced by the candidate, then it is treated as a case where the individual was not truthful on their application.

Mr. Belcore replied that his primary concern was with those agencies that are statutorily allowed to see sealed records, such as law enforcement agencies, park districts and schools. Do those agencies treat those records as being mitigated by a judge's determination that the charges are worthy of being sealed, or do they not consider them at all in the hiring process because of the judge's determination that they should be sealed? It would important to have answers to this question from the agencies to which this situation applied. Chairman Shuck agreed that this was a good area for further investigation and consideration.

Adjournment

With no other business, the Chairman asked for a motion to adjourn. Mr. Villagrana so moved and Director Cutrone seconded. Hearing no objection, the motion was passed by voice vote. Chairman Shuck reminded the group that the next meeting was set for November 7, 2012.