

MINUTES

REGULAR MEETING TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS

Monday, May 23, 2013 at 9:30 a.m.

**James R. Thompson Center, Room 2-025, Chicago, Illinois
Capitol Building, Room 214, Springfield, IL**

Call to Order and Roll Call

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:

Representative Mary E. Flowers
Chairman Jeffrey Shuck, Central Management Services
Mark Myrent, designee for Director Jack Cutrone, Illinois Criminal Justice
Information Authority
Chimaobi Enyia, Central Management Services
Daryl Jones, Illinois Department of Corrections
Hector Villagrana, Department of Human Rights
Donald Evans, Illinois State Board of Education
Michelle Jackson, Department of Children and Family Services
Karen Helland, Illinois Board of Higher Education
Ellen Andres, Illinois Community College Board

Mr. Myrent advised that the Task Force was one Task Force member short of a quorum. Chairman Shuck stated that they should begin with discussions and hold off on any voting matters until a quorum was in place.

Corrections of the minutes from the May 13, 2013 meeting

Chairman Shuck expressed that corrections had already been identified and articulated to ICJIA staff regarding the minutes from the previous meeting. However, without a quorum in place, voting on that matter had to be postponed. Chairman Shuck asked if there were any additional corrections that needed to be made. No additional corrections were voiced.

Chairman's Comments

Chairman Shuck began his comments by reiterating that the Task Force is drawing very short on time with it being near the end of May and meeting times being scarce. Chairman Shuck continued by thanking everyone for their continued commitment and

dedication to the project and hoped that everyone continues in their efforts to move forward diligently. He remarked that there was still a great deal of work to complete in order to issue the report on time.

For the current meeting, the Chairman explained that the Task Force would be discussing and finalizing recommendations regarding the human rights workgroup and the licensing subcommittee. The Chairman expressed that he'd like to finish discussions on the employment workgroup at the next meeting when the Chairman of the Department of Human Services, Ms. Sarmiento, is present.

Agency Report Submissions to the Task Force

Chairman Shuck asked the Task Force for if there were any questions or comments regarding the current progress. Rep. Flowers asked if all agencies were on target with submitting their reports and if anyone needed to have their deadline extended. Chairman Shuck asked Ms. Devitt Westley of ICJIA to update the Task Force on the submissions by the various agencies. She and Ms. Phillips of ICJIA responded that the only agency not submitting a report to date is the Department of Natural Resources (DNR). Ms. Phillips explained that she has been in contact with various Natural Resources staff who stated they are working on the report. All other agencies have submitted their reports. Chairman Shuck stated that he would also reach out to DNR staff to see if that report can be completed.

Status of Agency Fact Sheets

Ms. Jackson asked about the current status of the State Agency Fact Sheets. Ms. Devitt Westley responded that all the templates of all the fact sheets were done and that Ms. Phillips and she were checking the completeness and standardization of information on each of the 70 agency sheets. She continued that the group should discuss how the information from the agencies should best be presented to the Task Force. She stated that by Tuesday (5/28) all the fact sheets would be in place, but because of the volume of material, some sort of upload to the Task Force members might be more useful than printing all the information.

Mr. Myrent stated that he would appreciate some input from the Task Force members regarding what they would consider to be the most important employment restrictions information, to be able to compile a summary across agencies besides the individual agency fact sheets. He stated that restrictions pertaining to state hiring have been separated from the restrictions that pertain to licensing. Ms. Phillips added that two new pieces of information were now included on the fact sheets: the restriction type (mandatory or discretionary) and the duration (if the statute reported the duration). Ms. Devitt Westley stated that the definitions used were: "mandatory" meaning that the restriction "shall" be applied, and "discretionary" meaning that the restriction "may" be applied. In addition, the triggering offenses were enumerated, so that it could be determined how many restrictions were for specific offenses rather than broad categories, such as "felony conviction".

Ms. Jackson stated that all of the factors mentioned seemed appropriate and important. Ms. Devitt Westley explained that one objective of the agency fact sheets was to provide the context of the job setting, since it's not the title of the position that creates restrictions but the duties of that job. However, she mentioned that they did not get much information about the nature of specific job duties underlying any job titles enumerated in agency reports, since the legislation only required agencies to list applicable job titles or occupations.

Mr. Myrent stated that this conversation is important because the primary charge given to the task force is to make the determination of which of the restrictions are reasonably related to public safety. He continued by stating that they have been looking at the EEOC guidance to help make this determination. The guidance advises that public safety relates to whether there is a discernible connection between the requirements of the position and what the criminal history of the individual is. He expressed that the area that will be unknown to them has to do with what the functional requirements are of each of the state positions.

Ms. Jackson expressed that she did not believe the Task Force could answer the question that is their primary charge. Ms. Jackson stated that she believes the Task Force can discuss the question, that it can make recommendations, but that it cannot necessarily answer the question in regards to each particular agency. Ms. Jackson explained that in the licensing committee recommendations, the Task Force gave all agencies ninety days to conduct an internal review of its licensure requirements and report back to the General Assembly. She recommended that the same review be required for hiring as well. By doing this, the Task Force is not ignoring what it has been charged to accomplish. Ms. Jackson expressed that she would be uncomfortable telling an agency that their restrictions are too restrictive.

Ms. Devitt Westley advised that one way staff could organize the agency information was to create a continuum - with agencies that have mandatory restrictions at one end of the spectrum, and those agencies that stated they have no restrictions by statute or administrative rule and consequently do not do background checks at the other end of the spectrum. This could provide a bigger picture of the state as a whole. Ms. Jackson stated that she approved of this idea.

Ms. Devitt Westley stated that another idea would be to identify how many restrictions have language describing broad, general moral character (for example, moral turpitude) but are not a specific statute. She stated that such general summary's are possible but a more standardized framework is needed. She stated that the Fact Sheets have a large amount of information and guidance is needed.

Ms. Jackson emphasized that she believed the Task Force can only comment on what it is finding, and that staff recommendations were the correct way to proceed. Ms. Devitt Westley also mentioned that information had been collected from each agency on its process of obtaining criminal history information and how that information was reviewed

in making a hiring decision. Ms. Jackson stated that such information would be useful as well.

Mr. Myrent summarized the discussion by stating that he heard some broad recommendations for organizing the restrictions which will be followed: the idea of having the continuum of agency restrictions, the language used to describe the characteristics of each restriction, and the process of criminal history information procurement and assessment. He also heard that the issue of being able to precisely address the public safety implications for every position, whether it is a state job or a license position, is outside the Task Force's ability.

Ms. Phillips stated that the statute requested agencies to report job titles and restrictions of those job titles but a lot of agencies did not include restrictions associated with the specific job duties.

Ms. Jackson stated that it's not just the identification of the job title and its restrictions, but that the Task Force should recommend and require the agencies to do a nexus review. The review would have the agencies identify their job positions, descriptions, duties, classifications and detail what the restrictions are and why such restrictions exist in being reasonably related to whatever the operational need of that position is. That information would then be reported back to some existing legislative committee, since the Task Force is scheduled to end at the end of June, 2013. She emphasized that they have to have a means for the agencies to then report back the results of their review.

Chairman Shuck agreed with Ms. Jackson and had a two-part recommendation in this regard. First, for restrictions that are specific in statute, the Task Force should advise the General Assembly to revisit each statute over a course of time and consider whether each of them presents a rational basis for concluding that public safety requires such a restriction. He provided the example of barbering, in which there are restrictions for individuals who want to obtain a license to be a barber. He believed that it would be appropriate for the General Assembly to revisit each of those restrictions and determine if such should be permanent or should it be for a narrowed or broadened list of offenses.

Second, a framework is needed for agencies that don't have or aren't subject to specific statutory restrictions. Such agencies make a judgment on each individual position as it's being filled and if an individual does have a criminal background then the appropriate framework could be applied. Such agencies should ask if there is something about the position that is reasonably related to a criminal conviction that makes it a concern.

Mr. Myrent added that such a framework should include the setting of the job for agencies that don't have mandatory statutory restrictions, since that is an important factor in the consideration of what constitutes "public safety". Chairman Shuck agreed that different agencies can use the same title, such as criminal justice specialist, and that the setting of each particular position may create criminal history related concerns in one agency and not another, or even within the same agency. The Task Force should

provide agencies with a set of guidelines of what to consider regarding public safety for each position that goes beyond title, and not be satisfied with policies that are set by title alone. These guiding principles could include the specific setting of the position (in a location with access to sensitive information, for example), in proximity to vulnerable populations, the degree of contact with the public, and so on.

Ms. Devitt Westley asked if the Task force was willing to put forth a definition of the term “public safety”, so that all state agencies would be using the same reference point in making determinations about their own restrictions. Ms. Philips asked if that would extend to sensitive information about individuals, not just those that might come into physical contact with the employee.

Mr. Jones replied that it would be difficult to make an accurate assessment of all possible scenarios ahead of time for all positions. The most appropriate time for determining the nexus between public safety concerns and the job duties is at the time of employment, at the point of the individualized assessment, particularly if the agency is going to use a criminal conviction against an applicant.

Ms. Riley commented that an individualized assessment at the time of hiring for a position is indeed in line with the EEOC Guidance. However, if there is no objective baseline against which the criminal background is being measured, then the agency gets into an area of more subjectivity, with the candidates not knowing what the expected standard is regarding the position. Mr. Jones reiterated that this is feasible and beneficial if there is a statutory restriction, but for agencies that have none, there may be situations where the agency did not think of a particular conviction as being related to the job until such a candidate presents themselves, so there should be latitude to make ad hoc decisions.

Chairman Shuck agreed that it would be impossible for any agency to create a comprehensive list of what all the relevant factors might be for any given position. However, the Task Force could lay out a set of illustrative examples of factors that may be relevant, such as access to sensitive populations, access to money, drugs, and so on. A representative list would not tie the hands of the employer, but serve as a useful guideline for documenting the exact justification that was used in the hiring decision.

Rep Flowers added that the Task Force should keep in mind its purpose, that of assisting ex-offenders in gaining meaningful employment. In hiring any person, with a criminal background or not, the employer cannot know with certainty how successful that candidate will be in refraining from misconduct in the future. The best solution would be to fund her proposed Office of Ex-offender Employment Resource Center, to give people a place to go if they experience problems in the state hiring process.

Mr. Myrent replied that one of the primary charges of the Task Force was to go beyond the mere inventorying of restrictions to identifying which ones are reasonably related to public safety. It seems that the Task Force is recommending that this be left up to individual agencies to make that determination, based a framework of factors developed

by the Task Force. The individual agencies are in the best position to articulate their own public safety considerations for their positions. To what extent that be in a pre-existing document vs. documented at the time of the individualized assessment seems to be the only point of disagreement. Ms. Riley stated that the first step in the agency documentation would be to give agencies the time to conduct a review of their positions and responsibilities before such written policy could be drawn up.

[Ms. Andres from ICCB arrived to constitute a quorum for the meeting.]

Mr. Myrent stated that he had not heard anything in the discussion thus far that would speak to how the restrictions enumerated in the Fact Sheet inventory could be organized to speak to the public safety issue. Instead, it seems that the recommendation is that this determination would best be done by the individual agencies once the Task Force report is released.

Hearing no objections to that approach from Task Force members, Mr. Myrent addressed a few other issues regarding content for the final report, where ICJIA staff could use some assistance. The first was the need for some expertise in the federal statutes that create restrictions at the state level, such as the Adam Walsh Act and the Brady Act. Ms. Devitt Westley added that this is the first layer of restrictions that is available on the American Bar Association Collateral Consequences Project website, since the federal restrictions apply to all states. It seemed to be important to note in the final report that some of Illinois' statutory restrictions are in place due to federal requirements, and not necessarily just the action of the state legislature. Chairman Shuck replied that he was hoping that such expertise could be found at the State Police, since that is part of their charge to keep track of such federal restrictions, and that he would reach to them for assistance on this topic.

Mr. Myrent continued that other area of assistance was within the original charge to the Education work group, which ended up being absorbed into State Hiring and Licensing work groups. That is the issue of eligibility for certain types of advanced degrees, where criminal history-based restrictions are imposed on students applying to be admitted to various majors associated with licensed professions, such as the medical field, teachers, and so on. In this sense, the role of criminal history can come into place at the earliest possible stage of the licensing process, at the point where the candidate is trying to obtain the prerequisite education and experience for that occupational license. He thought there should be some coverage of that process in the final report as well.

Ms. Helland replied that there are many types of accreditations that may consider a student's criminal history, including the health care field, and eligibility to take the Bar exam, for example, and she was unaware of a centralized compilation of all applicable accreditations, at either the national or state level. Her recommendation would be to make it a broad discussion in the final report, that the Task Force recognizes that, in some fields, due to the vulnerable populations involved with that occupation, or other similar factors, that there are some restrictions, but that a complete consideration of the topic is beyond the scope of the Task Force. It could rightly be a subject of study for

another Task Force, since the restrictions imposed in the realm of educational opportunities are quite removed from the process of hiring employees for state positions. If it is the intent of the current Task Force to add that to its charge of inventorying employment restrictions, then it will take much more time for a thorough investigation.

Mr. Evans added that the final report could also address how the knowledge gained by students in majors where their criminal backgrounds may preclude them from licensure could still be valuable in getting related administrative positions in the same field, removed from direct contact with the risk factors that restrict the occupational license.

Human Rights work group recommendations

With a quorum in place, Chairman Shuck called for adoption of the Human Right Workgroup recommendations, which are more overarching in nature. He called upon Mr. Villagrana, chair of the work group to present its amended recommendations (posted on the IERTF website (<http://www.icjia.org/IERTF/>)).

Mr. Villagrana began by stating that the workgroup focused on the Illinois Human Rights Act role in employment restrictions and how it compares to the EEOC Guidance. At the Department of Human Rights, the agency needs to be “substantially equivalent” to federal law in order for it to be able to retain its contracts with U.S. Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC). The work group felt that adopting the EEOC Guidance would be wholly consistent with federal requirements. Most significantly, was banning the “box” (regarding self-disclosure of an applicant’s prior criminal conviction) on the state hiring application, question 9B), and bringing the consideration of that information to the individual agency looking to fill a position.

The amended change from the previous version of the recommendations is the removal of support for legislation that did not make it out of legislative committee. The other bill referenced in the recommendations, HB 3061 that expanded the offenses that can be considered for sealing, was passed and was sent to the Governor for signature. If the bill has already passed, language supporting it could also be removed from the final recommendations.

Mr. Enyia commented that the first recommendation regarding banning the box on the CMS 100 is identical to one put forth by the State Hiring work group. Chairman Shuck added that there is already an Executive Order being drafted to that effect, to accomplish the removal of the question.

Chairman Shuck requested that one sentence of the recommendation be clarified, in the fourth paragraph beginning: ‘Because African Americans and Hispanics...’. The word “this” should be clarified by the change to “...we agree with the EEOC in determining *that blanket restrictions based on criminal history* can create a disparate impact on employment.”

He continued with his comments regarding paragraph 6 of the recommendations. The first sentence should change the word “that” to “than” and the words “*Illinois Human Rights*” Act should be added. The last sentence should reference the removal of question 9 *B* on the CMS 100.

Finally, Chairman Shuck commented on the seventh paragraph which states that “Any conviction inquiries should be made immediately prior to an offer of employment by a state agency...” Prior discussion with the State Hiring work group about the timing of those inquiries were still on-going, and there was a question of whether waiting to do inquiries on the selected candidate would leave sufficient time for all agencies to complete the hiring transaction. He suggested perhaps eliminating that recommendation, since it was being addressed by the State Hiring work group as well.

Ms. Jackson asked whether the separate recommendations of each work group would be consolidated into one set of Task force recommendations to remove redundancies. Mr. Myrent asked whether the voting on work group recommendations was locking the group into specific wording, or just the spirit of the recommendation. Mr. Villagrana added that from his viewpoint as chair of the work group, he submitted the document as a draft to be discussed and modified by the larger Task Force.

Ms. Riley commented on the seventh paragraph wording “any conviction inquiries”. She wanted to point out that the Task Force discussed at length the difference between conviction “inquiries” and conviction “considerations”, and she feels it is important for members to be clear and in agreement on the timing of both processes. Mr. Villagrana replied that, although he will be dropping that paragraph from the work group final draft recommendations, he felt it would be important to change the wording to “conviction information consideration”, because that would be the only way to guarantee that the information would not be considered prior to an interview.

Ms. Phillips asked why it would be necessary to remove any of the recommendations. Ms. Devitt Westley commented that all work group recommendations be included in the final report, and that the fact that different work groups made the same recommendations would add strength and justification for the final overarching Task Force recommendations. Mr. Evans agreed with the approach of presenting all work group recommendations as supporting documentation for overall recommendations.

Mr. Villagrana stated that he was taking the recommended changes back to the work group for their final say on which changes to make, and present his final recommendations at the next meeting.

Ms. Riley commented that in looking at the EEOC Guidance, she noted the very startling arrest and conviction statistics presented in that document with regard to disproportionate minority contact (DMC) with the criminal justice system . Besides just making the statement that concurs with the finding of the EEOC in paragraph 4 of the work group recommendations, she would like Illinois-specific statistics to bolster the

recommendation. Mr. Myrent replied that those statistics could be added to the body of the report as context, and that some had already been incorporated in the introduction of the draft final report, as the foundation of the disparate impact rationale.

Mr. Myrent reiterated the formal work group adoption process. At the last meeting, there was a precedent to actually vote on the work group recommendations as they were presented to the larger Task Force. Mr. Villagrana asked to defer the vote so that he could make the recommended changes and have a final version to vote on. Chairman Shuck stated he was not opposed to that suggestion, since it would be easier for the Task Force to know what it was adopting if there was a clean copy to work from.

Licensing work group recommendations

Chairman Shuck called on Ms. Jackson, chair of the licensing work group to present the group's final recommendations (posted on the IERTF website: <http://www.icjia.org/IERTF/>).

Ms. Jackson began by reminding the group that the Licensing work group recommendations had been extensively discussed at a prior meeting. The only changes made by the work group pertain to recommendation #2, where the proposed Resource Center was re-named "Illinois Re-entry Employment Resource Center", and recommendation #4, where the recommended entity to receive proposed "nexus" review reports was changed to the "General Assembly" from the "Task Force", which would not require an extension of the existence of the current Task Force.

Chairman Shuck asked for any remaining comments on the recommendations. Mr. Evans had a comment on recommendation #2, the proposed Illinois Re-entry Employment Resource Center. Since that entity is not yet in place, where can applicants get assistance currently? And if it is created, will it have oversight responsibility, and what authority would it have to mandate state agency reports and take action based on any reports.

Rep. Flowers replied it is correct to say that it is the intent of the Task Force to make recommendations to the Governor, who will create the official process. In the meantime, there should be some oversight body to respond to people who feel their rights have been violated, other than the Department of Human Rights.

Ms. Riley added that the work group did not assign the Resource Center any oversight authority or duties. The goal was to create a resource center through statute that would provide assistance to the public in obtaining information on employment restrictions, the hiring procedure and their rights as an applicant. Ms. Jackson commented that the work group had originally explored the idea of making it an ombudsman program, but that was changed to emphasize the intent of providing information to those who believe they have been negatively impacted due to their criminal history, as efficiently as possible with a very small resource allocation, perhaps only one or two staff.

Mr. Evans replied that he could see the absolute value of the proposed center, although he wasn't sure what the volume of clients would be. That would certainly determine the level of staffing that would be required. He asked how this process would be managed prior to such a center being instituted.

Rep. Flowers offered an example of a similar resource center that was established in the early inception of the HMO option for health insurance. Within the Department of Insurance, she helped pass legislation to create the Office of Consumer Health Care, so that consumers would have a place to specifically call if they had a problem with an HMO. It continues to be a one staff, one desk operation. The center is required to report annually to the Legislature to keep them informed.

Ms. Jackson asked if there were any other questions or comments about the recommendations. Chairman Shuck asked about recommendation #5, regarding the recommendation for annual training of hiring staff regarding legal requirements for considering criminal history in the employment and licensure processes. He pointed out that Rutan training is required only every three years, which at even that pace, is a challenge to have the resources to provide the coverage needed. The annual required Ethic Training is very resource intensive to administer and ensure compliance at every agency. He wanted to know how strongly the work group felt about the proposed frequency of the training,

Ms. Jackson replied that the work group did discuss the type of training it would be, in that it was not envisioned to be in-person training, but an internet-based webinar format. This would enable all Human Resources staff statewide to view refresher courses and get updates on new rules. The initial training may be more intensive as the State seeks to instill a paradigm shift in the mindset of hiring managers. She continued that the group might not be opposed to a bi-annual training schedule, but that three years would be too long, given the rate of turnover in the state. Rep. Flowers agreed, since the whole process is new, and it is not clear what kinds of changes the legislature may have to institute in response to the Task Force. Mr. Evans concurred, that the proposed training would be similar in nature to the annual Ethics training, to remind state workers of the proper mode of conduct.

Chairman Shuck asked if there were any other comments or questions on the Licensing work group recommendations. Ms. Jackson replied that she hoped that when the Task Force crafted its final recommendations, that they be looked at as a whole, applying to both hiring and licensing to the extent possible. The chairman agreed with that approach.

Chairman Shuck then asked if there were any other changes that the Licensing workgroup wished to make to their draft document. Mr. Myrent asked if recommendation #5 was being changed to reflect a new time period for proposed staff training. Ms. Jackson replied that the work group consensus was still to leave it as annual training. She pointed out that the footnote should also reflect the name change for the proposed

resource center, to “Illinois Re-Entry Employment Resource Center”, and make the corresponding change to the acronym, making it “IRERC”.

Mr. Evans asked what was meant by the phrase in recommendation #3: “The state shall create a website or web page”. Ms. Jackson replied that the work group envisioned a page with links to CMS and all the other agencies that could be accessed by someone looking for a job to become aware of all the identifiable licensure requirements and identifiable licensure restrictions. The intent of the recommendation is to ensure transparency for the general public regarding the realm of occupational licensure. The recommendation also addressed each agency’s website, which should be mandated to post any license requirements and restrictions that exist under their jurisdiction.

Mr. Evans asked if the work group was considering CMS to be the “State” in the first sentence of the recommendation. Ms. Devitt Westley commented that the State of Illinois has its own web page that is distinct from the individual state agency websites. Ms. Jackson replied that the intent was to have the information posted in as many places as licensure candidates would likely seek that information.

Mr. Evans suggested changing the word “should” to “would” in recommendation #3, in the second sentence: “Each agency *would* be required to post...” Ms. Jackson agreed with that suggestion.

Ms. Jackson recapped the changes that were agreed upon during the meeting. The first was to change “should” to “would” in recommendation #3, the second was to change “Task Force” to “General Assembly” in recommendation #4, and the last was to change “Illinois Employment Re-entry Resource Center” to “Illinois Re-Entry Employment Resource Center (IRERC)”.

Chairman Shuck asked if the Task Force was prepared to vote on the Licensing work group recommendation, with the modifications just explained, as one unified vote for all recommendations. Mr. Villagrana made a motion to adopt all the recommendation, and Rep. Flowers seconded. Hearing no objections, the recommendations were adopted, with the three modifications, by voice vote.

Discussion of future scheduling

Mr. Myrent stated that the Task Force has one remaining regular meeting scheduled, for Wednesday, June 5th. The group still needs to revisit the State Hiring recommendations, and consider the employment restriction information on the State Agency Fact Sheets and summary. He suggested making the June 5th meeting extend from 1:30-5:00, and add a meeting on Wednesday June 12, starting at 1:30, to finish any remaining business. Rep. Flowers requested to meet in the Capitol Building again on June 5th, if the legislature was still in session. Chairman Shuck agreed to assist with all necessary room reservations.

Adjournment

With no other business, Chairman Shuck called for a motion to adjourn. Ms. Andres so moved, and Rep. Flowers seconded. Hearing no objection, the motion passed by voice vote.