

MINUTES

REGULAR MEETING TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS Wednesday June 5, 2013, 1:30 – 5:00pm James R. Thompson Center, Conference Room 2-025, Chicago, IL Stratton Building Room 500 ½, Springfield, IL

Call to Order and Roll Call

Jeff Shuck, 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:

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
Elizabeth Sarmiento, Department of Human Services

Approval of the Minutes from the May 13th, 2013 Meeting

With a quorum in place, Chairman Shuck stated that the first order of business was a vote to approve the May 13, 2013 meeting minutes. Ms. Devitt Westley stated that she made all the previously requested corrections to the meeting minutes. No additional corrections were voiced. Chairman Shuck asked for a motion to approve. Ms. Jackson made a motion to approve the minutes, and Mr. Myrent seconded. Chairman Shuck called for a voice vote approving the minutes. Hearing no objections, the motion passed.

Approval of the Minutes from the May 23rd, 2013 Meeting

Chairman Shuck asked for a motion to approve the May 23, 2013 meeting minutes. Mr. Villagrana made a motion to approve the minutes, and Mr. Evans seconded. Chairman Shuck called for a voice vote approving the minutes. Hearing no objections, the motion passed.

Chairman's Comments

Chairman Shuck stated that the Task Force is progressing through its available timeframe, yet still a considerable amount of work still needs to be accomplished. During this meeting, the Task Force will be working on recommendations and compilation of final report materials. Mr. Myrent advised the Chairman to start with the Human Rights work group recommendation. The Chairman asked Mr. Villagrana to present the revised Human Rights Work Group recommendations.

Human Rights Work Group Recommendations

Mr. Villagrana began by noting the changes that were made to the wording of the recommendation, based on discussions in the previous meeting. This included amending a phrase in the fourth paragraph to now state, "...we agree with the EEOC in determining that blanket restrictions based on criminal history create a disparate impact on employment." He continued that a paragraph was removed from the document that discussed supporting specific legislation. The Best Candidate for the Job bill, HB2846, did not make it out of the House at its second reading. The other bill, HB3061, which expands eligibility for sealing of criminal records, passed both houses and should be transmitted to Governor's office for signature within the next few days. Since the final Task Force report will be issued after the legislative session has ended, and the group was already indicating support of the EEOC guidelines, it would be unnecessary to keep the paragraph mentioned specific legislation.

Mr. Todd Belcore, of the Shriver Poverty Law Center, stated that instead of endorsing the Best Candidate for the Job bill by name, the Task Force could support the essence of the bill by endorsing EEOC guidelines in general. The Best Candidate for the Job Bill enumerated best practices for employers when they are considering hiring people with criminal records. He added that the bill number itself is irrelevant, since that is likely to change if it is reintroduced in a future session. Ms. Sarmiento added that the most important thing is support for the concept, and that the Governor needs to know that there is support for the bill.

Mr. Villagrana commented that the spirit of support for best practices when considering criminal history in the hiring process remains in the content of the Human Rights Work Group recommendations, although the entire paragraph had been removed. This was not entirely satisfactory to his committee.

Mr. Jones explained that the bill originally required that a candidate who was not hired be provided a written statement as to the reasons why. Mr. Belcore noted that this had been taken out of the bill, as a result of the conversations with IDOC.

Mr. Belcore stated that the biggest challenge is trying to get legislators to understand the importance of providing opportunity and a fair chance for people with past criminal convictions. The Illinois General Assembly often acts as if it does not believe that people rehabilitate themselves and try to move forward in life. He feels that the Human

Rights work group needs to reinforce this and provide information regarding protecting human rights for people with prior criminal records.

Mr. Myrent questioned whether the Task Force was going beyond the scope of its statutory mandate. The group is tasked with inventorying employment restrictions and making recommendations as to any that are not reasonably related to public safety. He felt that the additional types of revisions that were addressed in the legislation did not seem to be an appropriate topic for this Task Force. Mr. Belcore replied that the specifics contained in HB2846 provide an example of what best practices look like so agencies can formulate some sort of guidelines from it. He added that they were all simply recommendations.

Chairman Shuck commented that HB2846 also had language that controlled how agencies conduct their nexus reviews. He expressed concern because the Task Force discussed previously that it should be left to the discretion of the employing agency. Rep. Flowers asked if standards would be set for all agencies because the agencies had been asked to submit their employment barriers to the Task Force. Chairman Shuck explained that the statute called for agencies to report what restrictions existed but did not call for standards that applied universally, but rather for recommendations regarding those restrictions that were not reasonably related to public safety.

Mr. Belcore added that from discussions at previous meetings, he hoped the Task Force would provide a lens to make that determination regarding restrictions related to public safety, based on EEOC concerns regarding disparate impact. He stated that if we are blending concerns about disparate impact with those about public safety, the Task Force should consider other means of providing clear direction and providing minimum criteria for people to consider. Chairman Shuck stated that he was advocating for agency discretion in the matter.

Rep. Flowers commented about the line in the bill citing job discrimination unless there is a direct relationship between the job requirements and the person's criminal record. Chairman Shuck further explained that the EEOC guidelines are not law. They are intended to establish a framework for employers so that they are less likely to engage in disparate impact discrimination. Further, an agency may not discriminate based on the protected categories of persons, of which persons with prior criminal history is not a protected class.

Mr. Evans asked the Chairman if he felt that Bill 2846 could be a useful framework for the Task Force to support. as it deals with the notion of considering age, time elapsed, seriousness of offense, and circumstances surrounding the offense. Mr. Villagrana about how the actual task force recommendation should be phrased.

Mr. Belcore asked if a general recommendation could encompass the intent of the nine item list within HB2846 without detailing all nine items. He stated that the purpose was to establish minimum criteria that the agencies should use to consider applicants and to provide a recommended best practice example approved by EEOC. In his opinion, this

is needed because some agencies may believe they are already holding a minimum standard to make hiring decisions. Chairman Shuck stated his concern that the minimum standard would have to be very detailed. Mr. Belcore said he believed this will help employers be consistent with the EEOC.

Ms. Jackson suggested the Task Force recommend that agencies set a minimum standard, but then asterisk and include an example in the appendix. Mr. Villagrana was in agreement with this, and Mr. Belcore added that the language in HB2846 does not prescribe, but recommends a minimum standard for hiring criteria. Mr. Evans did not agree with the use of the term "standard." He feared that every agency will do something different if the term "standard" is given without prescribing an actual, uniform standard among all agencies. He suggested that people should be protected under EEOC and Human Rights Act. The Chairman advised that the Task Force need not go into detail about specific legislation. He reiterated that the EEOC guidelines are the framework. Agencies would be tasked with their own ways of determining that criteria.

Rep. Flowers expressed concern that the EEOC standards have not been working since they were established approximately 30 years ago. She stated that the purpose of the Task Force was to reduce the previously rampant discrimination. The Chairman commented that he did not recall that any agency had employed a blanket restriction such that no one with criminal history could be considered. She suggested that the Task Force needs to set forth legislation that is not subject to interpretation. It was previously implied that those with a criminal record could not be employed, and this implication deterred people from seeking employment at certain agencies. The purpose of this Task Force is to eliminate the subliminal discrimination that has existed. Mr. Belcore noted that they are not mandating agencies to use the nine criteria in HB 2846, but only that they should contemplate them for establishing their individual standard. He suggested that references to the bills be removed, with just the example included.

Mr. Myrent expressed cited redundancy between the Human Rights and Internal Hiring work groups. The Task Force was trying to initialize a mechanism where agencies are asked to document the nexus between requirements of their positions and the disqualifying nature of certain criminal history records. Because this speaks more directly to the spirit of EEOC guidelines, it seems redundant to have specific hiring criteria. Mr. Villagrana stated that he believed it would not hurt to further reinforce this notion.

Mr. Myrent further stated that the guidelines recommended by the Task Force should allow each agency to determine specific needs associated with their specific positions, because the Task Force does not have an intimate understanding of the requirements of every state job. He felt the group should place confidence in agencies to create their own nexus. If there is reference to other guidelines, it may limit agencies to fully exercise their discretion.

The group requested that the nine criteria be distributed for closer review by Task Force members since a handout was not made available at the meeting. Mr. Belcore read the

nine item list aloud to the group: When making a consideration concerning a previous conviction, the public agency should consider the following factors: 1) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person; 2) The bearing, if any, the criminal offense for which the person was previously convicted will have on their fitness or ability to perform one or more of the duties necessarily related to the license, job, or opportunity in question; 3) Any evidence demonstrating the ability of the applicant or employee to perform the responsibilities of the license, job or opportunity in question; 4) The time elapsed since the occurrence of the criminal offense; 5) The age of the person at the time of the occurrence of the criminal offense; 6) The seriousness of the offense; 7) The circumstances surrounding the offense; 8) Any information produced by the person, or on the person's behalf, in regard to the person's rehabilitation and good conduct; 9) The legitimate interest of the public agency in protecting property, and safety and welfare of specific individuals or the general public.

Mr. Belcore then clarified that the majority of the items came from the EEOC guidelines and its best practices, but some items added were unique to the State of Illinois, such as certificates that formally declare that someone has been rehabilitated. Mr. Evans asked if there is an issue with listing the items out, or could a sentence be created that states that the EEOC guidelines should be contemplated when determining a minimum standard.

Mr. Villagrana reviewed the third paragraph of the work group recommendations (notifying applicants they don't have to report sealed or expunged records) and explained that the Human Rights Act now protects that type of information, and also guards against using only an arrest record – with exception for law enforcement positions. Chairman Shuck reminded the members that under EEOC an employer may consider factual matters freely admitted by the individual, versus disqualifying an applicant based on an arrest event that did not result in a conviction for that behavior.

Mr. Myrent stated he would be reluctant to formally approve inclusion of the best practices criteria without having the written language in hand. Mr. Belcore agreed to pass on the draft to everyone for discussion.

Mr. Myrent asked if the Chairman wanted to consider a vote for the just those recommendations of the Human Rights work group that received support of the task force. The Chairman stated he thought it would be better to defer voting until all the work group recommendations were finalized.

State Agency Internal Hiring Restrictions

Mr. Myrent suggested that Ms. Devitt Westley review the summary of state agency hiring restrictions to help frame the State Agency Hiring work group discussion, and the Chairman agreed. Ms. Devitt Westley explained that staff completed the compilation of the state hiring restrictions, and nearing completion of licensing restrictions. The continuum shown on the handout document was prepared to help the Task Force

members understand the range of agency screening and hiring procedures and how they consider hiring restrictions. She summarized the State Hiring Continuum of Agencies document. There are eleven different agencies with statutory restrictions for employees but only one agency has a written policy. Most agencies use background checks and follow CMS procedures without specific restrictions (CMS 284 self-report plus verification by State Police Division of Criminal Investigation).

She went on to say that fifteen agencies did not report having rules, policies, restrictions, or background checks. Ms. Devitt Westley stated that staff is also producing a compilation of current hiring and licensing procedures, and asked the group to review these. They will be summarized in final report. She added that they have been posted on the website for the Task Force, and the link to that can be re-sent to the group.

State Hiring Work Group

Mr. Myrent started the discussion by reporting that ICJIA and CMS staff had received a clarification from the State Police about their approved methods for state agencies to do pre-employment criminal history background checks. A number of state agencies had been relying on the check box from the CMS 100, along with the CMS 284 to seek additional information and/or check for falsification on self-reports. The CMS 284, however, was intended as a mechanism for the State Police's Division of Criminal Investigation (DCI) to conduct investigations of current employees. The state police are now clarifying that the 284 process is no longer going to be supported for pre-employment checks. The process will now be the Uniform Conviction Information Act (UCIA), which is the most common method of obtaining criminal history background information for non-criminal justice purposes. It can accommodate name checks or fingerprint-based checks. They each require the applicant's signature, and the information maintained by the requesting agency for a period of 2 years.

Mr. Myrent noted that the UCIA process is much more amenable to the Task Force recommendation for individualized assessments. Under the CMS 284, agencies did not receive a copy of the criminal history transcript. The DCI investigation had the sole purpose of determining falsification between self-disclosure and the LEADS check, so it generally did not provide the necessary criminal history detail critical to an individualized assessment. Under the UCIA process, agencies will receive a criminal record transcript from the State Police. However, the process is fee-based. Also, it is mandatory that a copy of the transcript be provided to applicants, who then have seven days to inform the agency if information on the report is inaccurate or incomplete.

He went on to explain that the check-box from the CMS 100, 9B regarding the question of whether or not an applicant has a prior criminal conviction will soon be removed, as well as the self-reporting aspect of the CMS 284. Therefore, there is not one specific and standardized mechanism for applicants to self-report their criminal history. Mr. Myrent stated that the Task Force must determine whether to recommend that agencies create an alternative mechanism for self-report, or if it should just be left for the agencies' discretion. He advised that procedures for determining who will pay the fee for

a finger print or non-finger print check must be considered. Lastly, it was noted that the UCIA inquiry form cannot be photocopied for re-use, as it has a unique transaction control number necessary for proper processing by the State Police Criminal History Record Information (CHRI) System.

Mr. Jones expressed concern about the issue of civil liability. He commented that without a self-report portion, a background check alone would not provide enough complete information. When a person signs their application, they affirm the truthfulness of their disclosure. And without the CMS 284, agencies might be opening themselves up to the potential for civil liability. Mr. Myrent stated that the recommendation is for agencies to determine their need for an independent self-reporting mechanism that would replace the 284. He suggested they might use a reasonable facsimile of the back portion of the 284 (referred to in previous meetings as a new form "CMS 285").

Mr. Belcore suggested that many persons with criminal records have only high school education and may be unable to interpret their own record. He suggested that the self-report could have value, such as being a source of out of state convictions, but that it may be difficult for some applicants to recall specifics of their records. He suggested making it more narrowly tailored; otherwise it seems like a trick to invite falsification rather than a measure to ensure that hiring agencies are not missing critical information.

Chairman Shuck stated that current language of the CMS 284 was used to allow applicants to disclose information to the best of their recollection. Mr. Belcore replied that people do not always expertly interpret their records. People can disclose their backgrounds to the best of their ability. The value and reliability of individuals' self-reports was discussed, including the costs and benefits of having people disclose what they know. Mr. Enyia stated that if there is something on the form for disclosure that will result in them not getting the job, state agencies still have to justify it through the administrative review process and then draw a nexus between what was listed and why the person did not get the job. The question of determining how an agency knows if an applicant honestly forgets to disclose something was brought up.

Ms. Jackson asked about the consequences for someone who did not disclose something or forgot something if there is no nexus to the position sought. At what point does it become falsification? Mr. Jones responded that if there is no nexus, candidates should not be penalized for forgetting. Mr. Myrent added that the Task Force cannot impose on an agency a requirement to penalize someone who forgot to report something. Ms. Jackson clarified that if there is a nexus with the position, it is easy an easy decision to not hire that applicant. The question comes when there is no nexus. Mr. Evans added that it should not be held against them for forgetting an event or the outcome of an event. Ms. Devitt Westley commented that the UCIA will eliminate sealed and expunged information so there is now less opportunity for an apparent falsification stemming from those types of records.

Mr. Belcore clarified that if an agency chooses to make self-disclosure optional, and something comes back from the background check that does not disqualify the

applicant, the agency should not take any further action regarding the discrepancy. He then reminded the group that the Task Force's main purpose is to protect both public safety and the rights of the applicants. There was discussion about whether self-disclosure should be optional or required. It was mentioned that there are some agencies which do not require background checks or self reports at all, so they should not be forced to now require them. Ms. Jackson concluded that she is in favor of full disclosure, with language that includes "*to the best of your knowledge.*"

Mr. Belcore was concerned about instances where the seven day period has passed, and then a discrepancy is discovered; is the discrepancy itself weighted into the hiring process? Chairman Shuck added that the employer may find it relevant that an applicant is unable to keep track of such major events and their corresponding documentation, and is unable to report it accurately. Mr. Belcore cited the example of people who can potentially be convicted over ten times and therefore likely not recall what exactly happened in every instance to demonstrate that there may be honest discrepancies that should not be considered falsification.

Mr. Belcore asked what the form concerning the challenge mechanism comparing the discrepancies between their self-disclosure and the transcript will actually look like and under what circumstances someone will be held liable for falsifying his or her disclosure. He again pointed to the need for applicants to have access to legal advice to help interpret their criminal records when they review it for inaccuracies. Chairman Shuck added that every criminal defendant has the right to an attorney who can explain to them what they have been found guilty of, and it is then the responsibility of the individual to keep track of those things.

Rep. Flowers noted again the limitations of self-disclosures. She stated that people may be arrested or convicted as juveniles and they may not have understood the results and they may also have forgotten the details. Mr. Myrent expressed concern for the examples of falsification and asked if the group meant to impose a blanket rejection that falsification is ever a legitimate reason for job disqualification.

Mr. Myrent suggested a free legal aid clinic that would help candidates with their questions regarding their criminal records. It was determined that a free clinic could no longer be funded. Mr. Villagrana commented that unless the information on an applicant's self-disclosure matches perfectly with his or her background checks, it will be a judgment call as to what consequences should be given. Mr. Evans commented that candidates must know that they will be held accountable for the accuracy of every word of their self-disclosure if it is required, otherwise it would not be fair to hold mistakes against them. Mr. Belcore informed the group that the average education level of people with criminal convictions is sixth grade. Rep. Flowers suggested that the average laymen's language be utilized in the form for the sake of the applicants' understanding.

Mr. Myrent stated that there is not a certified mechanism for that self-report to be submitted to State Police. The certified process now is UCIA without any self disclosure.

Ms. Sarmiento noted that if the CMS 284 form is no longer used for comparison with a background check, it would become an internal form that the hiring agency could use if they so choose. Ms. Devitt Westley asked if applicants would be asked about out of state criminal convictions because the UCIA only covers Illinois conviction records. Mr. Enyia commented that if an agency is comfortable not using a self-report form, would be fine.

Chairman Shuck stated that forgetting criminal history is no different than forgetting work history or educational background. If people do not fill out applications accurately, that is a reflection on how they might serve as an employee. However, he stated that employers should not make unreasonable demands as far as applicants' ability to describe their history.

Mr. Myrent stated that it is legitimate to hold people accountable for these things but also to recognize that sometimes criminal history issues are confusing and subject to reasonable memory limitations. He asked if the group can incorporate this into guidelines to agencies for assessing falsification issues. He also asked if the group can work from the EEOC guidelines and come up with an Illinois-specific application of those, it can be word crafted to provide guidance. The group concluded that that may be too ambitious for the time left.

Mr. Villagrana asked if they recommend that they require every agency to use the self-disclosure form, or allow some agencies to opt out. Mr. Myrent expressed that he was in favor of granting discretion to agencies to make that determination themselves. Ms. Sarmiento was in agreement. Chairman Shuck commented that some agencies will find it appropriate, but not all.

Mr. Myrent then asked the group if an agency elects to use a self-disclosure form, will they be able to decide whether it is mandatory or optional? He felt that either way, it must be consistently applied. Mr. Evans asked for those that do choose to use the form, will they have to include out of state convictions within the question regarding criminal convictions? This question was discussed, and it was determined that the forms should have to include out of state convictions. Ms. Devitt Westley noted that if a conviction has been sealed or expunged it would not be necessary to include it. She also reminded the group that not all agencies have the authority to perform a nationwide, fingerprint background check.

Mr. Myrent asked if the group was endorsing a particular format for self-disclosure. It was suggested they provide a format template or sample. This matter was discussed, and it was determined that the format should be relatively uniform. Mr. Enyia suggested that the form be optional, that applicants be required to answer the yes or no question concerning previous criminal convictions, and that they be required to explain any convictions. Mr. Belcore believed that it would be redundant to include the yes or no question and then go on to ask them to explain any convictions if they checked 'Yes.' Mr. Jones felt that it was best to keep the question, and to ask applicants to then please explain any convictions, to the best of their knowledge. There should also be a

statement on the form regarding applicant accountability for complete and accurate information.

Mr. Evans asked if applicants should be held accountable if they do not disclose something that is not relevant to the job he or she is seeking. Mr. Myrent suggested that the Task Force try to eliminate all unreasonable determinations through the guidelines. Chairman Shuck felt it was best to leave this matter to the hiring manager at each agency.

Mr. Belcore asked what exactly constitutes a falsification. Mr. Myrent asked if it is sufficient to state that the Task Force recognizes that certain instances of discrepancy between information on a criminal history transcript not also self reported may be attributable to reasonable lapses of memory. It was concluded that this can be a justification for making the hiring decision. Mr. Belcore explained that if it is a blatant attempt at falsification, the applicant should be penalized, and held accountable. However, if it is a more trivial matter, the agency should review the nexus and the nine recommended administrative review items as a safeguard to manage the situation. He added that there are professionals in hiring positions that can make these decisions. Ms. Phillips added that the group must also address public safety.

Mr. Belcore commented that there must be a balance of the needs of the agencies and the needs of the advocates. There should be a comprehensive review of each individual's case file while considering the nine items. Mr. Myrent asked how issues can be framed for consideration in reviewing criminal history information during the hiring decision. Mr. Evans explained that the State Hiring work group is trying to encapsulate everything in the EEOC guidelines in the recommended administrative review process in a manner that would not hamstring the agencies.

Mr. Belcore expressed concern about what assistance would be made available to individuals who receive their transcript and do not understand how to interpret it, as well instructions on what steps they need to take to challenge the dispute or explain any discrepancies. He also asked about the consequences of going beyond the seven day appeal period, and who would help applicants to explain discrepancies and interpret records? Chairman Shuck commented that some responsibility should be placed on the individual. Mr. Belcore expressed concern for how candidates will receive assistance in interpreting their records. He suggested that the person reviewing applicants' records should be the one whom applicants may contact if they need help figuring out what is on their record. Chairman Shuck noted that agencies should not provide legal advice to applicants. Mr. Belcore explained that it would not be advice, but rather a clear interpretation of information that is already objective.

Ms. Sarmiento noted that there is an 800 number at DHS that applicants may call. Mr. Enyia stated that the agency should set up the necessary resources, whether it is an 800 phone number or someone who can field those calls, or a resource center. Mr. Myrent concluded that inquiry calls be sent to the State Police hotline and stated that it may not prove to be a significant additional workload for the State Police, since they

have that role already established. It was concluded that it would be feasible to have the State Police Helpdesk field the calls. Mr. Belcore then asked how long the process of inquiring with the State Police would take, as the form only allows for seven days to voice any discrepancies. It was decided that the matter need not be resolved in seven days, but the discrepancy must be reported within seven days.

Discussion of Future Scheduling

Mr. Myrent suggested the work group recommendations be put into a more formalized format so that it may be voted on. He reminded the group that the report is due in less than four weeks, and one meeting remains. He also noted that the Task Force did not consider the compilation of the licensing restrictions yet, which are needed by the next meeting on Wednesday, June 12th, 2013. He stated that they are getting closer to a consensus on internal hiring issues, but they need precise wording on paper from the hiring group. Mr. Myrent advised that the Task Force come away from next week's meeting with final recommendations. Restrictions are in summary form and in form of the fact sheets that have more detail. He reminded the group that the link to the fact sheets will be re-sent to everyone.

Adjournment

With no further business, Chairman Shuck called for a motion to adjourn. Mr. Myrent made a motion, and Mr. Jones seconded. Hearing no objection, the motion passed by voice vote.