MINUTES

REGULAR MEETING
TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS
Thursday, November 8, 2012 at 1:45 p.m.
James R. Thompson Center, Room 2-025, 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
Rep. Mary Flowers
Mr. Jack Cutrone, Executive Director, ICJIA
Dr. Kisha Hart, IDES
Mr. Chimaobi Enyia, CMS
Ms. Michelle Jackson, DCFS
Ms. Ellen Andres, ICCB
Mr. Daryl Jones, IDOC
Mr. Hector Villagrana, IDHR
Ms. Elizabeth Sarmiento, DHS
Mr. Donald Evans, ISBE
Mr. John Garner, ISP

Approval of the minutes from the October 3, 2012 meeting

With a quorum in place, Chairman Jeffery Shuck announced that the first order of business was a vote to approve the October 3, 2012 meeting minutes, and asked for a motion to approve. Mr. Villagrana made a motion to approve the minutes, and Rep. Flowers seconded. Chairman Shuck called for a voice vote approving the minutes. Hearing no objections, the motion passed.

Chairman's Remarks

Chairman Shuck began by previewing the agenda. He noted that the first order of business would be a presentation from representatives from the Illinois Department of Financial and Professional Regulations (IDFPR) regarding the role of criminal background checks in the process of occupational licensing and certification in the

state. This presentation had been scheduled for the first meeting in July, but was postponed due to time constraints.

The group will also hear a presentation by Mark Myrent, Associate Director of Research at ICJIA, regarding a brief overview of the federal Equal Employment Opportunity Commission (EEOC) guidelines on employment restrictions. This will be an introduction to the topic ahead of the December meeting, when a representative from the federal EEOC is scheduled to present more in-depth information. Chairman Shuck encouraged task force members to submit questions they had for EEOC representative Tanisha Wilborn to ICJIA staff prior to the Thanksgiving break, so that she would have time to tailor her presentation to aspects relevant to Illinois and the work of the task force.

Chairman Shuck continued that each of the workgroups will be reporting out to the group on their progress, including any issues they have encountered and their findings to date. Task Force members should begin to consider how the various findings and recommendations should be most effectively structured for the final report. There are a number of different options to consider regarding the overall organization of material – by agency, by the type of restricted occupation, or by the nature of the restriction.

Chairman Shuck concluded his remarks by noting that public comment and questions would be welcome at the end of the meeting.

Presentation on criminal convictions and occupational licensing by Mr. John Lagattuta, Labor Relations Director, Illinois Department of Financial and Professional Regulation (IDFPR)

Mr. Lagattuta introduced himself as the Labor Relations Director for IDFPR, although he has held many positions in the agency over the years and worked with many of the task force members regarding state employment issues.

He began with an overview of his presentation, starting the current structure of IDFPR as an agency, followed by a description of the process followed by someone applying for a license, and concluding with a discussion of the mandatory restrictions set by Illinois statutes on various aspects of professional licensure and certification.

He continued that in 2004, the Department of Professional Regulation joined with the Office of Banks and Real Estate, and the Division of Financial Institutions to become the new IDFPR. In 2010, the Division of Insurance broke off to become its own agency. Currently, IDFPR has over 1 million licensees in 175 professions, and is subject to 62 different Practice Acts that typically sunset every 10 years, although the legislature has begun to impose yearly sunset periods on some acts, such as the Medical Practice Act.

The licensure process, whether a new application or a renewal, includes questions (Part IV) on the application that read: “1. Have you been convicted of any criminal offense in any state or federal court (except a minor traffic offense)? If yes, please attach a copy of the court record regarding your conviction. 2. Have you been convicted of a felony?”

Any affirmative answer to those questions starts the process on the part of IDFPR to determine if the applicant is eligible for the license.

Mr. Lagattuta continued that IDFPR must contend with a myriad of diverse eligibility factors for the occupational licenses under its jurisdiction. For example, a person with a conviction applying to become a locksmith, private detective, or private security will not be eligible for that license until ten years after the full discharge of the sentence served for that conviction [225 ILCS 447]. In contrast, the Massage Licensing Act [225 ILCS 57] establishes an absolute bar to a massage therapist license for anyone convicted of a sex offense, including violent sex offenses and prostitution.

For mortgage loan originators, state law [205 ILCS 635/7-32(2)] establishes a seven year bar for a felony, while federal law establishes a lifetime bar a felony involving such offenses as fraud, money laundering, dishonesty, and breach of trust. The state statute had to be amended to conform to severity of the federal law, which was not originally as punitive, since the process of loan origination is regulated federally, and IDFPR merely acts as the state agent instituting those federal regulations. If the Illinois statute had not been changed, then the federal government could have determined that no one in Illinois was eligible to originate real estate loans.

Rep. Flowers asked how many loan originators lost their license as a result of this change. Mr. Lagattuta replied that he does not have the exact figures, but that he was aware of several who have. Because the change to state law was applied retroactively, some who lost their license had already served a disciplinary action imposed by IDFPR in a period prior to the law change, and then lost their license anyway as result of the law change.

Mr. Lagattuta continued with a discussion of the Real Estate Act [225 ILCS 454/5-25] as an example of how most of Illinois' Practice Acts read. The license prohibitions are framed as evidence of moral turpitude through convictions for forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, and other similar offense. There may also be suggested measures for rehabilitation. He stated that it is a misconception that a felony conviction and incarceration sentence is bar to obtaining a license to become a nurse or a nail technician. IDFPR deals with only a handful of Acts that contain absolute bars to occupational licensure.

Ms. Flowers inquired whether persons with prior convictions can get a barber's license. Mr. Lagattuta replied that when he was Deputy Director of Enforcement at IDFPR, he put out an edict that the agency should take a lenient view of what would bar someone from obtaining a cosmetics-related license. As a result, 99% of applications for licenses for barbers, nail technicians and cosmetologists are approved. Since the governing Acts for these occupations contain discretionary (rather than mandatory) employment restrictions based on criminal background, changes in policy at IDFPR have had a positive effect on the number of licenses approved. These changes were instituted as far back as 2004-2008 (when Mr. Lagattuta was Deputy Director of Enforcement).

Mr. Lagattuta continued with a discussion of the license application and disciplinary process. When an application come in with a 'positive personal history', meaning that there is an affirmative answer for a criminal conviction, or a complaint is filed regarding a new criminal conviction after someone already is licensed, it is reviewed first by the investigative or licensing unit, then it is forwarded to the prosecutions unit, then it goes to a hearing, and then to the Director's Office for an order regarding that application or license. Nothing is final until the Director signs an order.

There are two ways in which cases deemed eligible for a denial (or a disciplinary complaint regarding an existing license) can be resolved. There can be a negotiated settlement via an informal conference with the applicant, a department attorney, and a Board member. All professions licensed by IDFPR have Disciplinary Boards, and members sit in on 90 percent of all such conferences. From there, a recommendation is and sent to the Director for approval. Conversely, if there is not an agreement on the case, the applicant can request a hearing in front of an Administrative Law judge. Once the judge makes a recommendation, it goes to the appropriate Board for adoption or rejection, and the final order goes to the Director for action on that license.

Rep. Flowers asked for clarification on the exact number of absolute lifetime bars to occupational licenses that currently exist. Mr. Lagattuta replied that up until recently, there had been only a handful. However, a new law was recently enacted (Health Care Workers Licensure Actions – Sex Crimes [20 ILCS 2105/2105-165], for which administrative rules were just promulgated in 2012. Health care workers (including doctors) covered by that Act who have been convicted of a forcible felony or other sex crimes, or convicted of a crime against a patient in their practice, or are registered sex offenders are now barred from obtaining or renewing their license.

Mr. Lagattuta continued with a discussion of the Medical Practice Act [225 ILCS 60/23], as an example of most Illinois Practice Acts. Under this Act, state's attorneys have a duty to report convictions of persons with medical licenses to the appropriate Disciplinary Board, within five days of the conviction. Even with outreach by IDFPR, and setting up a web portal, there is no real diligence across the state for such reporting. More often than not, IDFPR learns of these convictions thru the news media.

He continued to explain the various disciplines that can be ordered if a license is issued to a person with a prior criminal background. A new license can be issued with an imposed period of probation, or with a reprimand for the prior conviction. With the probationary period, other conditions can be imposed, depending on individual circumstances. The IDFPR recognizes the need to balance the ability of the ex-offender to obtain gainful employment in a licensed occupation with the safety and welfare of the general public. The reprimand or probationary status is one way the general public can be informed that the licensee has a prior criminal conviction.

Mr. Evans asked how consistently such probation conditions are applied, in the case of sex offenders as an example. Mr. Lagattuta replied that there may not be consistency,

since each case is individually decided by a group that includes the applicant, a prosecutor, a Disciplinary Board, and the Director's final decision.

Mr. Lagattuta continued to discuss the new law, Health Care Workers Licensure Actions – Sex Crimes [20 ILCS 2105/2105-165] and its impact on occupational licenses. This Act refers to licensed health care workers, as defined by the Health Care Worker Self Referral Act.This new law was enacted in reaction to negative publicity of professional misconduct in the newspaper, resulting in a very restrictive statute. This law applies to physicians, surgeons, nurses, respiratory therapists, pharmacists among other health professionals. Any medical worker that is required to register as a sex offender, or has been convicted of a criminal battery against a patient, including a sexual offense, or has been convicted of a forcible felony shall have their license permanently revoked without a hearing, by operation of law. This law has no statute of limitations on prior convictions, and prior disciplinary decisions by IDFPR have no bearing. Mr. Lagattuta pointed out that this new restrictive law sends a mixed message – on the one hand, IDFPR is working with groups to extend more means of rehabilitation to obtain licenses, while having to enact mandatory retroactive measures to permanently revoke licenses in other cases. The Medical Practice Act as a three and five year statute of limitations, but the new law overrides those.

Mr. Myrent asked how IDFPR becomes aware that the crime occurred against a patient during the normal course of business. Mr. Lagattuta replied that the information would be received from the complainant, from a police report, or information from a state's attorney upon conviction. He pointed to his handout for a definition of forcible felony.

Rep. Flowers inquired how IDFPR was disciplining doctors prior to the new law. She was aware of doctors accused of rape still practicing, and the insufficiency of discipline and monitoring in those cases, due to IDFPR staff shortages, was an impetus for the new law. She further inquired which specific article of the statute calls for retroactivity of license revocation. Mr. Lagattuta replied that he would provide her with that information. He stated that at least 15-20 doctors have been revoked already, and some have filed cases in the Appellate Court.

Mr. Lagattuta continued his presentation by discussing the form "Health Care Workers Charged With or Convicted of Criminal Acts". This form requests supporting documentation of any criminal involvement. If a health case worker is arrested for any qualifying offense in the new act, that worker must be ordered to interact with patients only in the presence of a chaperone [20 ILCS 2105/2105-165 (c)]. Rep. Flowers asked if IDFPR has hired new staff to act as chaperones. Mr. Lagattuta clarified that the chaperones are not IDFPR employees, but are third parties agreed upon between the judge in the case and the accused health care worker, and paid for by the health care worker for the duration of their criminal case.

Mr. Jones asked if enforcement of the new law is geared mainly toward sex offenders. Mr. Lagattuta replied that IDFPR started with sex offenders as they were easy to identify. The agency needed to promulgate administrative rules for other details of the

statute, such as the definition of forcible felony, which health care occupations would be affected, since not all workers have direct patient contact. They started the process with doctors, and will move on to dentists, nurses, and other direct care professions. He added that the rules have only been in place since summer 2012, and the scope of affected professions and criminal acts are broad.

He continued his presentation with a discussion of Certificates of Relief from Disabilities, which is the opposite approach from the previously discussed Health Care Worker Licensure Actions Act. He work with Rep. Woods and other advocacy groups on the development of these certificates, aimed primarily at Public Health workers. Certified Nurses Assistants (CNAs) are licensed by the Department of Public Health. If they convicted of a crime, they need to seek a waiver to return to work. The focus at IDFPR is to try to get people licensed, so as to contribute to reducing recidivism and its associated costs to the person and the state.

Rep. Flowers inquired how the certificates work. Mr. Lagattuta replied that they are issued by the court, and are to be presented by candidates in support of their rehabilitation efforts post-conviction. He presented statistics that IDFPR has received only 3 certificates as a supporting document in a licensing application, out of 139 where a prior conviction was disclosed. But that is not surprising, given that the certificates are aimed at CNAs, which are not licensed by IDFPR.

Mr. Lagattuta continued by pointing out the Certificate of Good Conduct, which are newer than the Certificates of Rehabilitation. The statue does not specify how these certificates are issued, and they have not been presented to IDFPR with any license applications. Rep. Flowers commented that there should be checks and balances in the issuance of certificates, so that they are not abused and become meaningless.

Mr. Jones inquired about the connection between these certificates and the licensing process. Mr. Lagattuta responded that the Certificate of Good Conduct did not apply to that process, and if there was not an absolute bar to a license, they are usually issued.

Mr. Lowery of Safer Foundation provided additional background on these certificate initiatives. Legislation regarding Certificates of Rehabilitation was first passed in 2004, sponsored by State Senators Emil Jones and Barack Obama. It initially covered 18 occupational licenses. There have since been four subsequent expansions. His Fact Sheet handout enumerates these. He commended IDFPR for expanding their consideration of other occupations not initially covered by the legislation. The Prisoner Review Board was involved in issuing certificates in the initial legislation, but that was changed in 2010 to the individual circuit courts where the person was sentenced.

Since 2004, there have been approximately 140 people who have received Certificates for Relief of Disability from the courts, and another 40 people who have received Certificates of Good Conduct. The biggest problem with these certificates is that people are unaware of how they can apply for them through the courts. Safer Foundation has sent Fact Sheets to all 102 counties in the state, so that the Circuit Court Clerks have all

the pertinent information. Rep. Flowers suggested that they be distributed to those exiting IDOC as well. Mr. Lowery replied that IDOC was an initial partner in the initiative, but staffing issues prevented maintaining a point person within the department to distribute the information and answer questions.

Mr. Lagattuta continued his presentation by discussing statistics related to license applications. A total of 37,676 new applications were received, of which 139 applicants had prior convictions. Thirty-nine of those applications were denied, while licenses were issued to 56 persons with a prior criminal conviction. Of the three people who presented Certificates of Rehabilitation, one person was issued a license. The vast majority of applicants for new occupational licenses issued through IDFPR do not have a prior criminal conviction.

Ms. Jackson asked about the two applicants who presented Certificates of Rehabilitation but were still denied a license. What is the review process for them? Mr. Lagattuta replied that, in his experience, the vast majority of applicants with criminal convictions are seeking a license to be a security guard. The statute governing that occupational license specifies a bar for ten years post-sentence discharge before that individual would be eligible for that license. The Certificate of Rehabilitation cannot remove that statutory bar, although it may be useful in obtaining a license in another occupation or in a non-licensed field.

Mr. Belcore of the Poverty Law Center asked if the Certificate of Relief from Disability does overcome the law. Mr. Lagatutta replied that he was unaware of such a certificate and did not know how it might be applied, as he has not been in the Enforcement Division since 2008. Mr. Belcore added that the language of the Certificate of Good Conduct specifically addresses employment restrictions based on an elapsed time frame. Ms. Flowers suggested taking a closer look at restrictions based on elapsed time, because the mere passage of time does not necessarily mean that the person is truly “better”.

Chairman Shuck made a request to the Licensing Workgroup to reach out to IDFPR to gain a better understanding of how these three different certificates relate to licensing restrictions and how they are to be applied in the licensure process.

Mr. Lagattuta continued with a discussion of a law that was passed in 2009 [20 ILCS 2105/2105 -15] that permit persons with criminal records to obtain non-binding advisory opinions from IDFPR as to their eligibility for a specific occupational license in light of that record. IDFPR is working on providing a link to the form to be used in this process on its website. Rep. Flowers asked if this information is available by speaking with a counselor at IDFPR. Mr. Lagattuta replied that IDFPR offices have staff to assist walk-in clients seeking information on the licensing process and required forms. The form under discussion was developed in response to the new law, as it required the promulgation of administrative rules for the request of a written non-binding advisory opinion. The form and the release to obtain the person’s criminal history transcript allow the department to

do the required research on the correct set of facts, not just the person's recollection of their circumstances.

Mr. Jones asked if that written opinion can be included with the person's eventual license application. Mr. Lagattuta replied that the opinion is good for 90 days and can be attached to an application.

Ms. Riley of DCFS asked at what point in the license process does IDFPR find out about a person's convictions and does it require fingerprint-based background checks? Mr. Lagattuta replied that not all occupations require a fingerprint-based check, but the requirement for one will be specified in 90 percent of the statutes governing the various occupations, as will the specification of whether the State Police is to return an FBI response along with the state response.

Ms. Jackson asked whether the statutes specify self-report of convictions as opposed to criminal history background checks. Mr. Lagattuta responded that all license applications require an initial self-report (Part IV), and further criminal history checks are done to corroborate the self-reporting. He stated that less than 50 percent of those with prior convictions report accurately, and those that do, it is usually at the time of license renewal. Ms. Jackson asked about the ramifications for inaccurate self-reporting. Mr. Lagattuta replied that lying on an application can lead to the filing of a complaint and the subsequent decision to impose the various sanctions available to the department (suspension/revocation of an existing license, denial or imposing various terms on any new license), depending on how long the person has been misreporting.

There are negative consequences to having an adverse action taken on your license. It can affect acceptance of that license in another state, the person's marketability may decrease with a resulting financial impact. All actions taken by IDFPR on an occupational license are reported on the licensee's record, so that the public can be informed of any criminal or professional misconduct on the part of licensed professionals from whom they are seeking services.

Mr. Belcore asked whether IDFPR reprimands remain on the licensee record for a lifetime. Mr. Lagattuta responded that there are no expungement provisions in any statutes related to licensee records. Further, the only statute that speaks to rehabilitation is in the Medical Practices Act, which lists out some factors to consider. These include: the severity of the crime; how long it has been since the action (not necessarily a crime) was committed; what has been done towards rehabilitation, such as drug/alcohol treatment and length of sobriety. Perhaps that would be a good starting point for the Licensing Workgroup, to consider standardizing rehabilitation factors.

Mr. Jones asked what the approval rate for licenses is for those without criminal convictions. Mr. Lagattuta replied that it is a very difficult question to answer, because there are so many factors that go into eligibility for each occupational license, over and beyond a prior criminal conviction. For example, there could be issues with proper educational credentials from state to state, other factors that are considered in the

'personal history' category, such as history of mental illness or substance abuse without criminal involvement, and many other factors that affect individual license eligibility. On the other hand, the overall issue rate of licenses is well over 90 percent for those who correct any deficiencies that are possible to correct. Mr. Jones added that it appeared that most deficiencies were possible to correct, except criminal conviction. Mr. Lagattuta clarified that the criminal conviction factor is determined by statute to be "non-correctible", either for a certain length of time or permanently.

Presentation on EEOC Guidelines by Mark Myrent, Associate Director of Research, ICJIA

Mr. Cutrone suggested that the Mr. Myrent's EEOC presentation not be given at this time, due to time constraints and the necessity to hear the workgroup reports. Instead, Mr. Myrent's power point presentation would be posted to the task force website for access by the group.

Hearing no objection, Chairman Shuck agreed to the proposed shift in the agenda. He reiterated his request that task force members and other interested parties submit their questions for the federal EEOC representative to Ms. Phillips, research staff at ICJIA, no later than the Thanksgiving break. Mr. Myrent added that he would also post the actual EEOC Guidelines, along with other federal acts and guidelines that apply to the work of the task force more generally, including the Federal Labor Guidelines and the Fair Credit Reporting Act.

Work group reports

Licensing Work Group Report

Chairman Shuck reported that the chair of this work group, Ms. Alikhan of the Department of Public Health, has accepted another position, leaving a vacancy. He asked task force members to consider volunteering to fill the role of licensing work group chair, given the prominent role of occupational licensing in the overall work of the task force.

Rep. Flowers nominated Mr. Lagattuta to fill that role. Chairman Shuck responded that non-task force members are not eligible to serve as chair, since by task force vote at an earlier meeting it was deemed necessary that the work groups remain responsible to the larger task force. He emphasized that Mr. Lagattuta's participation on the licensing work group would be highly valued nonetheless, as would the continued participation of all other non-task force members.

Human Rights Work Group Report

Chairman Shuck called on Mr. Villagrana, chair of the Human Rights work group, to present his work group report. Mr. Villagrana began by stating that the group met once,

on November 7th. The group spent most of this first meeting going over the EEOC enforcement guidance. The document is approximately 18 pages long, done mostly in scenario format as to questions that should not be asked. The key is not to violate Title VII of the Civil Rights Act of 1964 (that prohibits discrimination in the workforce based on race, color, religion, sex, or national origin). In considering applicants' criminal background the hiring process, the employer should consider the nature of the offense, how long ago the offense occurred, and the nature of the job duties and whether the offense really pertains to them or will otherwise impact job performance.

Mr. Villagrana continued that the EEOC guidelines discourage "blanket" policies, where the employer adopts one policy regarding criminal history that is applied universally to all, such as "no one having a criminal conviction in the last 7 years can be hired". Instead, EEOC encourages employers to look at each applicant's situation on an individual basis. This is the considered the best practice, and will go a long way to avoiding problems with regard to compliance with the Civil Rights Act.

Mr. Myrent pointed the group to one slide from his power point presentation that outlines the core principles of the revised EEOC Guidance. These are: employers should not take an overly broad view of an applicant's criminal history, but rather, should identify potential risks in the job and determine whether any prior offenses relate to those risks. Further, employers should give applicants opportunity to explain circumstances or errors in their record before excluding them from a job.

Mr. Villagrana continued with the Human Rights work group report by stating he had planned to summarize how other federal and state rules and statutes pertain to the work of the task force and human rights, including the U.S. Department of Labor Guidelines, the Illinois Human Rights Act [775 ILCS 5] and the federal Fair Credit reporting Act. The work group also discussed the various certificates of eligibility.

He continued that the next meeting of the Human Rights work group is set for December 7th (later changed to December 10th) at 10:30 am, 10th floor of the Thompson Center in Chicago.

Mr. Lowery added that he brought a handout of important documentation from the California Department of Labor that offers guidance on how public workforce agencies can bring their policies and practices into conformity with legal requirements of the Civil Rights Act. The document offers strategies that may be helpful in crafting recommendations in the final report.

Mr. Villagrana continued that he had distributed another document to the group via email, entitled "Where to File Employment Discrimination Claims". It compares four entities: the Illinois Department of Human Rights (IDHR), the U.S. Equal Employment Opportunity Commission, the Cook County Commission on Human Rights, and the

Chicago Commission on Human Relations. It shows that it is only IDHR includes arrest as an eligible factor in a possible civil rights violation, which goes beyond protections offered by the federal government. All of these issues will be covered in more detail at the next task force meeting, in tandem with the presentation from the federal EEOC representative.

Chairman Shuck asked about any findings so far from the Human Rights work group, and if the groups needs any other information. Mr. Villagrana responded that the group is initially focused on ensuring that task force members become familiar with the EEOC Guidance ahead of the presentation by the EEOC representative at the next meeting, and in order to be able to ask questions pertinent to the work of the task force. Further, the group wants to address the issue that average citizens are not aware of their rights, and perhaps have the misconception that a criminal background makes them automatically ineligible for most jobs. The inverse is also true, there are employers who believe that those with criminal backgrounds should not apply for a position in their organization, whether that background has any bearing on the particular job or not.

Rep. Flowers inquired what information was posted on the IDHR website that could inform people of those issues. Mr. Villagrana replied that the website lists all the protected classes under the State Human Rights Act, and informs people that they could open a case of discrimination based on criminal history. Further, a handbook is available through IDHR that walks people through the process of filing a charge, mediation, the investigation process, and all other aspects of a case. These have been distributed to legislators' offices as a means of more widely disseminating the information.

Mr. Jones asked where residents of Chicago could bring civil rights violation claims against private employers. Mr. Villagrana replied that they could go to the City of Chicago Department of Human Relations, unless the claim is based on a protected class covered only by one of the other entities charged with handling such claims (Cook County Department of Human Rights, IDHR, or the federal EEOC).

Education Workgroup Report

Chairman Shuck next called on Mr. Evans, chair of the Education work group, to present his work group report. Mr. Evans replied that met once, on October 26th. At that meeting, the work group members reviewed documentation on the acquisition and retention of teaching licenses for grades K-12, issued through the Illinois State Board of Education (ISBE).

Mr. Evans reviewed the four points in time when an individual's criminal history is relevant in the licensing process: 1) pre-licensure for student teachers, 2) application for licensure, 3) post-licensure at the point of employment by a school district, and 4) while

licensed. The prohibited offenses are enumerated in Section 21b-80 of the Illinois School Code. These include some misdemeanors, all Class X offenses, all capital offenses, and any attempt to commit to commit any drug or narcotic offenses (with very specific exceptions), sex offenses, and violent offenses that caused bodily harm. In recent years this list was reevaluated and several new offenses were added in an attempt to keep current with new statutes. The purpose of the list is to disqualify persons who might expose children to harm in school settings, based on their prior criminality.

He continued that, pursuant to Section 21b-80, the teacher is not afforded additional recourse beyond the criminal justice system before an action on their initial license, although a teacher with a subsequent criminal conviction will be given an opportunity to explain the circumstance of the criminal event before action is taken on their existing license. Mr. Evans continued that the work group is exploring what other limitation based on criminal history may exist for other school employees beyond teachers.

Mr. Myrent asked about the periodic review of the list of disqualifying offenses. Mr. Evans responded that it is the work of the State Board of Education, and that it is done with careful consideration of their charge to protect children. However, as new laws are added, or as circumstances change, they are always willing to reevaluate.

Mr. Myrent also asked for a clarification on how the various Boards that deal with education are distinguished from one another. Mr. Evans replied that they are all separate and distinct entities – ISBE deals with K-12 education (and pre-K in many instances), the State Board of Higher Education deals with 4-year colleges, and the Community College Board deals with 2-year colleges.

Mr. Lowery asked if any waiver provisions been incorporated into the ISBE licensure process. Mr. Evans replied that there are waiver opportunities that ISBE attorneys would be better suited to explain. There are also certain stipulations about considering applicants' "character", which again, will be better explained by other ISBE representatives at future work group meetings. Mr. Lowery added that Chicago Public Schools have incorporated certificates of rehabilitation in their hiring standards, to allow individual determinations of eligibility based on criminal history.

Chairman Shuck added that he would encourage the workgroup to look at positions beyond teaching, such as custodians, cafeteria workers, school bus drivers, and perhaps even construction crews working on a school facility during school hours, to see what employment restrictions apply to them. Mr. Grippando suggested expanding that inquiry to park districts as well, since they are also settings where children are present.

State Hiring Workgroup Report

Chairman Shuck then called upon Ms. Sarmiento, chair of the State Hiring workgroup to present her report. Ms. Sarmiento began stating that the workgroup reviewed the CMS

100, the application for state hiring in agencies covered by the Personnel Code. The group discussed Question 9 at length (the “Box” that asks about prior criminal convictions). The group will be pursuing such questions as the cost if the question were to be removed from the application, how a process such as a release sheet could work, which would give an applicant a place to provide additional information about their conviction.

Ms. Sarmiento continued that another concern was the feasibility of changing the language of Question 9 to remove any reference to juvenile records, since agencies have no interest in juvenile criminal history in the hiring process. As it currently reads, there is an implication that an applicant should report juvenile criminal convictions that have not been expunged or sealed. Chairman Shuck replied that he recalled the language in Question 9 being taken from exactly from the statute. Mr. Jones added that he had investigated that aspect, and the phrase did seem to paraphrase the statute. A recommendation might be to reword it as a question without directly referencing the statute.

Mr. Enyia added that it may also be recommended to eliminate question 9 altogether on the CMS 100. He had some preliminary conversations with other staff at CMS working on this issue. A task for the workgroup is to investigate best practices used by other governmental entities, including the City of Chicago, who “banned the box” years ago. It would be of interest to see how their application looks, and does the hiring process work operationally without asking about criminal history at the beginning. After additional research, the workgroup plans to make recommendations on any revisions to the CMS 100 and the state hiring process that seem feasible.

She continued that the group went through the Rutan selection process, which was originally designed to eliminate political patronage in hiring as a result of a court case, and how the CMS 100 is utilized during the interview process and making a candidate selection. At the Department of Human Services (DHS), the CMS 100 is not reviewed until the best candidate is selected through the interview process. A similar process is followed at the Illinois Department of Employment Security (IDES). Mr. Enyia added that the workgroup plans to pursue a determination of how many positions in the state are subject to the Rutan process, as well as how position titles within the state relate to the various prohibitions on hiring.

Ms. Sarmiento concluded that there is still quite a bit of work to do by the next committee meeting, which is scheduled for December 11th, 10:30-12:30 at the JRTC in Chicago.

Mr. Lowery added that some additional resources for the group would be the National Employment Law Project (NELP) and their tracking of “Ban the Box’ initiative in 42 municipalities around the country, as well as the EEOC Guidance as it applied to Question 9 perhaps having a disparate impact on minorities because of the rate of convictions disproportionally affecting minorities.

Mr. Jones added that the group discussed if a recommendation should be made that applicants that were the top candidate were not ultimately selected due to their criminal conviction should be informed. It is possible that the decision not to hire was due to an error on the criminal history documentation itself, and the candidate should have an opportunity to correct that information, as called for in the federal Fair Credit Reporting Act.

Dr. Hart added that the work group should also look into developing a letter from CMS that initially explains to candidates why they received less than an “A” grade on their initial application, and how to correct any deficiencies to reach that level of qualification. This would be especially important for persons that have been institutionalized and consequently missed opportunities for a better education and work history, and perhaps other difficulties in transitioning back into the community. Rep. Flowers also suggested that the overriding preference for veterans over non-veterans in the state hiring process be made clearer to applicants.

Rep. Flowers made the recommendation that each job opening state exactly what the job disqualifiers are in terms of prior criminal background, so the applicant can know if they are qualified on those grounds upfront. Mr. Evans concurred that a disclaimer on an application that “a criminal conviction of certain enumerated offenses may preclude you being qualified for the job” may be desirable.

Ms. Sarmiento added that any letter to candidates that were not hired does not mention anything about a criminal background being a factor in the decision. Mr. Evans suggested that such a written notification might be perceived by employers as grounds for a potential lawsuit, and therefore might create an unintended consequence of an informal “blanket policy” against considering any applicants with a criminal background.

Mr. Jones reiterated that one reason for a notification to a candidate that they were not hired in light of their criminal background is to give those persons an opportunity to produce corrected criminal history information if applicable, particular in situations where a name-based (less reliable) check is used. Otherwise, the employer will assume that the candidate merely falsified his record, which may also be grounds for not being hired.

Ms. Jackson asked how many state agencies actually send out letter to candidates interviewed but not hired, and of those that do, how many actually state the reasons why they were not the best candidate? Ms. Sarmiento further asked, in light of that question, would that mean that state agencies would also be required to notify non-successful candidates of any deficiency in their education, training or experience as well. Ms. Jackson stated that the workgroup should study that question very carefully so as not to create any unintended consequences in the hiring process, and keep the focus on criminal background as a hiring factor.

Mr. Cutrone suggested that candidates who have been interviewed all get a chance to respond to any criminal history information used in the hiring decision before the final

decision is made. A notice could be sent out that the agency is considering not hiring based on the following criminal background that is related to the appointment, or a notice could be sent out inviting the candidate to submit any mitigating or corrected information in a specified time frame. Mr. Lowery stated that the Fair Credit Reporting Act and the EEOC Guidance already has similar provisions about candidate notification in place.

Mr. Myrent added that the EEOC Guidance states that the individual should be given an opportunity to explain their criminal background and any mitigating circumstances for an "individualized" assessment" related to business need. These mitigating circumstances including any rehabilitation efforts toward additional education or training, employment or character references or other information regarding fitness, or any mitigating circumstances regarding the actual presenting offense.

Mr. Cutrone reiterated that the individualized assessment should occur before a hiring decision has been made, not after. Mr. Evans suggested that it should occur during the job interview itself, when all the interested parties are present. He added that the 'box" on the application should be the opportunity for the applicant to present their defense with the factors called for by EEOC, in person during the interview.

Ms. Sarmiento reiterated that criminal history is not currently a part of the Rutan (standardized hiring interview) process. In her agency (DHS), interviewers are not allowed to ask that question during the interview, in an attempt to be "blind' to that factor when considering the best candidate based on education, training, and experience.

Chairman Shuck responded that it is a widely held misconception about the Rutan process, which has been developed by administrative rules in response to the U.S. Supreme Court case. It is meant to provide a framework within which certain protections exist, but still allows the state agency a certain amount of freedom as long as they do not go outside the guidelines. It is permissible for interviewers to see application materials at the time of the interview (including the CMS 100 and any answer to Question 9). It is relevant to the work of the task force to consider the ramifications should interviewers have access to criminal history information at the time of the interview, in order to offer the applicant an opportunity to refute on any erroneous information, or offer mitigating factors. Chairman Shuck offered to present the series of administrative orders that created the Rutan process at the next State Hiring workgroup meeting.

Chairman Shuck reminded workgroup chairs that it was desirable to have brief written reports of work group discussions and decisions drawn up for posting on the task Force website, besides the verbal reports made at the regular task force meetings and recorded in the minutes. That would make their work accessible to each other and the public in monitoring task force progress.

Discussion of final report

Chairman Shuck addressed the topic of how the final report should be structured, task force members should begin to consider how to best organize all the disparate information that is being gathered into one cohesive document. A final agreed-upon organizational structure may assist the workgroups in staying focused on that end product. The actual Inventorying Employment Restrictions Task Force Act (section 15) states that the purpose of the task force "is to review the statutes, administrative rules, policies and practices that restrict employment for persons with a criminal history as set out in sub-section (c), and to report to the Governor and the General Assembly those employment restrictions and their impact on people with criminal records. The task Force shall also identify any restrictions that are not reasonably related to public safety."

He continued that the statute gives the task force broad leeway in determining how to fulfill its mandate. The group might choose to organize its findings by state agency, by occupation, or by the nature of the restrictions imposed, or some other factor. Whatever structure is adopted, it should allow the recipients to do further work on the issues raised.

Chairman Shuck added that it had been a very informative meeting, and that it appeared that the group was off to a very good start. He looked forward to the next set of workgroup and task force meetings and encouraged all to attend as many meetings as their schedules allowed.

Input from non-task force members

No further questions or comments were made.

Adjournment

With no other business, the Chairman asked for a motion to adjourn. Director Cutrone so moved and Rep. Flowers seconded. Hearing no objection, the motion was passed by voice vote. Chairman Shuck reminded the group that the next meeting was set for December 12, 2012.