

# **Draft of IERTF Final Recommendation – 06/24/13**

## ***Introduction***

Because African Americans and Hispanics are incarcerated at rates disproportionate to their numbers in the general population, we endorse the Equal Employment Opportunity Commission (EEOC) position that “blanket” restrictions based on criminal history – whereby any previous conviction serves as a disqualification regardless of other factors – can create a **disparate impact** on employment. This occurs when an employer’s neutral policy or practice has the effect of disproportionately screening out a group protected under Title VII of the Civil Rights Act of 1964, based on an individual’s race, color, religion, sex, or national origin. We additionally endorse EEOC guidance on how to consider an individual’s criminal history in a way that does not risk disparate impact. The EEOC guidance promotes the following employment principles:

- a) Applicants should be given individualized consideration for opportunities;
- b) Applicants’ records should also be considered through the lens of “business necessity” which weighs the applicants’ record, the amount of time that has passed since the offenses took place, and the relatedness of the offenses to their fitness or ability to perform the job’s duties against the need for employers to have a safe work environment for all; and
- c) Entities should really reconsider whether lifetime bans to opportunities comport with the business necessity test noted above.

The following set of recommendations contains several proposals that may be voluntarily adopted, and others that require policy actions by the Illinois Legislature or the Office of the Illinois Governor.

## ***Criminal history self-disclosure***

1. The State of Illinois should go further than what is currently in the Illinois Human Rights Act, and adopt the EEOC recommendation that for state hiring purposes, “employers not ask about convictions on job applications and that if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.” Therefore, we endorse legislation to remove any inquiry into the applicant’s criminal history from the current CMS100 application. Similarly, non-personnel code state agencies, boards, and commissions that do not use the “CMS 100” should remove any inquiry into the applicant’s criminal history on employment applications.
2. Each agency, board, and commission may elect to use a criminal records self-disclosure form as a part of its hiring process. Each agency, board, and commission that elects to use such a self-disclosure form shall adhere to a statewide policy that permits the disclosure form to be requested and considered only after the point at which a candidate’s other qualifications for a specific position are being considered.

### ***Criminal history background checks***

3. Each agency, board and commission ~~should~~ adopt an “Authorization for Release” form that requests an applicant’s permission to obtain information relating to their criminal history. “Authorization for Release” forms shall exclude any reference to criminal records self- disclosure.
  4. If criminal history background checks are conducted, unless otherwise specified under statute or administrative rule, the Illinois State Police statutory and administrative procedures for conducting Uniform Conviction Information Act (UCIA) checks ~~should~~ be followed by state agencies, boards, and commissions to ensure that an applicant’s permission is received for that background check, that criminal history transcripts can be included as part of a nexus review, that the applicant has an opportunity to review the transcript, and that he or she has an opportunity to challenge or correct his or her record.
  5. Each state agency, board and commission ~~should~~ adhere to a statewide policy that will permit criminal background checks to be requested and considered only after the point at which a candidate’s other qualifications for a specific position are being considered. Once a criminal background check is received, the respective agency, board or commission ~~should~~ determine whether there is a nexus between the position to be filled and the candidate’s criminal history. State agencies, boards, and commissions ~~should~~~~may~~ not inquire into nor use the fact of an arrest or a criminal record that has been ordered expunged, sealed or impounded in the nexus review.
- 5a. Each agency, board, and commission should adhere to a statewide policy that discourages the consideration of an individual’s criminal record as criteria for their removal from employment or licensing eligibility lists.

### ***Consideration of applicant’s criminal history***

6. Each agency, board, and commission ~~should~~ establish a documented nexus review process for the evaluation of candidate criminal record information. The review process shall only exclude a candidate relative to his/her criminal history where it is determined that exclusion is job related and consistent with business necessity, including but not limited to:
  - Nature and gravity of the offense
  - Time that has elapsed since the conviction and/or completion of sentence
  - Nature of the job sought

In addition, state agencies, boards, and commissions may consider the following additional criteria in determining how the applicant’s criminal history affects his/her fitness for the position.

- The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, job, or opportunity in question.
- Any evidence demonstrating the ability of the applicant or employee to perform the responsibilities of the license, job, or opportunity in question.
- The time which has elapsed since the occurrence of the criminal offense or offenses.
- The age of the person at the time of occurrence of the criminal offense or offenses.
- The seriousness of the offense or offenses.
- The circumstances surrounding the offense or offenses.
- Any information produced by the person, or produced on their behalf, in regard to his or her rehabilitation and good conduct.
- The legitimate interest of the public agency or employer in protecting property, and the safety and welfare of specific individuals or the general public.

7. All state agencies, boards, and commissions ~~should~~must develop a process by which the applicant is informed that she/he may be excluded due to their past criminal convictions, including a copy of their ~~Illinois State Police~~ criminal background check. The CMS Bureau of Personnel shall modify the Application for State Employment to include an email contact section on the Application to facilitate contact with applicants. Similarly, non-personnel code agencies, boards, and commissions that do not use CMS Application should include an email contact section in their employment application.

### ***Publication of agency restrictions and review procedures***

8. Within 90 days after the Task Force Final Report is issued, all state agencies, boards, and commissions ~~are required to~~should initiate an internal review of all licensure requirements and determine whether existing licensure restrictions are based on job-related criteria consonant with business necessity. Each agency, board, and commission ~~should~~all report back to the General Assembly all existing restrictions and corrective measures within 90 days after completing its internal review.

9. All state agencies, boards, and commissions ~~should~~must create, implement, and make publicly available their internal administrative review process and make it available to applicants who have received adverse licensure or employment decisions on the basis of criminal history to the extent feasible. The applicant ~~should~~must be provided an opportunity to demonstrate that the exclusion should not apply to him or her, and to respond by providing relevant information that may impact the agency, board, or commission's determination regarding exclusion. The administrative review decisions should be made by committees comprised of no less than three staff members. It is the understanding and intent of the Task Force that such review process may or may not be completed before a hiring decision is made for the position being filled.

10. All state agencies, boards, and commissions ~~should~~ make physically and electronically available to the public information which clearly identifies requirements and any restrictions related to criminal history specified in statute, administrative rule, or agency policy, the positions to which they pertain, as well as any administrative review rights available to applicants. That information ~~should~~ also be posted on the State of Illinois website.

#### ***Resources for individual applicants***

11. An Illinois Reentry Employment Resource Center shall be created within state government to serve as a resource to all state agencies for matters pertaining to licensure and employment, to assist with re-entry issues, and assist applicants with questions pertaining to their criminal history. Each state agency shall designate liaisons to work with the Center to resolve agency-specific hiring and licensure inquiries. The Center should be comprised of legal and human resources staff who can provide guidance to ex-offenders, request pertinent information from agencies, boards, and commissions, and answer procedural questions. The Office shall also maintain a database enumerating the statutory bars to employment and licensing, and assist state agencies in creating webpages concerning their hiring and licensing employment restrictions.
12. The Illinois State Police ~~should~~ establish a help desk phone line for individuals who seek resource assistance for the purpose of deciphering Illinois State Police issued criminal record documents.

#### ***Resources for hiring and licensing agencies***

13. Each agency, board, and commission ~~should~~ conduct annual training of all human resources department staff and hiring managers on ~~the~~any new state hiring policies for individuals with criminal records resulting from these recommendations.
14. The feasibility of instituting fidelity insurance bonds that shield employers from losses involving employee dishonesty should be studied as an option for applicants whose criminal background history is comprised of convictions involving any type of theft.

**DATE:** June 18, 2013

**TO:** Inventorying Employment Restrictions Task Force

**FROM:** State Hiring Assessment Workgroup

**SUBJECT:** State Hiring Assessment Recommendations

After thorough review of the state's employment application, guidelines, and policies regarding criminal backgrounds, we recommend the following actions be taken.

1. CMS Bureau of Personnel shall modify the Application for State Employment in positions under the Personnel Code, also known as the "CMS 100", to remove any inquiry into the applicant's criminal history.

Agencies that do not use the "CMS 100" shall remove any inquiry into the applicant's criminal history on employment applications.

2. CMS Bureau of Personnel shall modify the Application for State Employment to include an email contact section on the Application.
3. Each agency, board, and commission shall adhere to a statewide policy that will permit criminal background checks to be requested and considered only after the point at which a candidate's other qualifications for a specific position are being considered. Once a criminal background check is received, the respective agency, board or commission shall determine whether there is a nexus between the position to be filled and the candidate's criminal history.
4. Each agency, board, and commission shall establish a documented nexus review process for the evaluation of criminal record information. Each hiring agency, board, and commission shall only exclude a candidate relative to his/her criminal history background check where it is determined that exclusion is job related and consistent with business necessity including but not limited to:
  - Nature and gravity of the offense
  - Time that has elapsed since the conviction
  - Nature of the job sought
5. Each agency, board and commission shall adopt an Authorization for Release form that requests an applicant's permission to obtain information relating to the applicant's criminal history. Authorization for Release forms shall exclude any reference to criminal records self- disclosure.
6. Each agency, board, and commission may elect to use a criminal records self-disclosure form as a part of its hiring process. Each agency, board, and commission shall adhere to

a statewide policy that permits the disclosure form to be requested and considered only after the point at which a candidate's other qualifications for a specific position are being considered. Once the criminal records self disclosure is received, the respective agency, board or commission shall determine whether there is a nexus between the position to be filled and the candidate's criminal history.

7. Each agency, board, and commission shall conduct annual training of all human resources department staff and hiring managers on the new state hiring policy for individuals with criminal records.
8. All applicants shall be provided a copy of their Illinois State Police criminal background check.
9. Illinois State Police shall establish a help desk phone line for individuals who seek resource assistance for the purpose of deciphering ISP issued criminal record documents.
10. Task the Re-Entry resource center with the responsibility of maintaining a statutory bars database.
11. The nexus review process must allow applicants to request review of the determination and respond by providing relevant information that may impact the agency, board, or commission's determination going forward. Any additional information shall be subject to nexus review.