MINUTES

REGULAR MEETING
TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS
Wednesday, December 12, 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
Dr. Kisha Hart, IDES
Mr. Chimaobi Enyia, CMS
Ms. Michelle Jackson, DCFS
Ms. Karen Helland, SBHE
Mr. Daryl Jones, IDOC
Mr. Hector Villagrana, IDHR
Ms. Elizabeth Sarmiento, DHS
Mr. John Garner, ISP
Mr. Jason Boltz, IDPH

Approval of the minutes from the November 8, 2012 meeting

With a quorum in place, Chairman Jeffery Shuck announced that the first order of business was a vote to approve the November 8, 2012 meeting minutes, and asked for a motion to approve. Ms. Jackson made a motion to approve the minutes, and Mr. Villagrana seconded. Chairman Shuck called for a voice vote approving the minutes. Hearing no objections, the motion passed.

Chairman's Remarks

Chairman Shuck began by introducing the newest member of the task force, Mr. Jason Boltz, the designee for Director Hasbrook of the Department of Public Health. He replaces Ms. Alikhan, the previous designee, who has accepted a position in another agency. Mr. Boltz is General Counsel for IDPH. Chairman Shuck then previewed the agenda. He noted that the first order of business would be a presentation from a representative from the U.S. Department of Equal Employment Opportunity

Commission (EEOC) on its guidance on considering arrest and conviction records in employment decisions. The information presented will be used extensively in the task force final report to the General Assembly and the Governor.

Chairman Shuck continued that the workgroup chairs will be reporting out to the group on their progress since the last regular task force meeting in November. In addition, there will be continued discussion on the structure of the final report, as guidance for the workgroups in generating products that will fit into that overall structure. Finally, regular task force meeting dates for 2013 need to be set, in view of the July 1, 2013 final report deadline. The workgroups also need to make sure that they set a rapid work pace to have products ready to incorporate into the final report well ahead of that deadline.

Presentation on EEOC Guidance by Ms. Tanisha Wilburn, Senior Attorney Advisor, U.S. Equal Employment Opportunity Commission (EEOC)

Chairman Shuck asked Mr. Myrent to introduce guest speaker Tanisha Wilburn of the U.S. Equal Employment Opportunity Commission (EEOC), who came from Washington D.C. specifically for this task force meeting. Mr. Myrent began by informing task force members that several documents generated by federal agencies related to criminal background checks in employment decisions have been posted on the IERTF website (http://www.icjia.org/IERTF/) for their reference, including the "EEOC Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as Amended, 42 U.S.C. 2000e et seq", which is the subject of the presentation. Ms. Wilburn's Power Point presentation is also posted on the website.

Ms. Wilburn began by introducing the purpose of the Commission. It is a federal agency created in 1964 to end discrimination in employment based on race, color, religion, sex, or national origin. The Commission has updated its Enforcement Guidance on the consideration of arrest and conviction records in employment decisions under Title VII or the Civil Rights Act of 1964, and her presentation would focus on these updates.

She continued that one recurring question is why the use of criminal history information is a civil rights issue. While having a criminal background is not a protected factor under Title VII of the Civil Rights Act, there are two ways in which use of that information by employers can violate the statute. The first is disparate treatment discrimination, and the second is disparate impact discrimination.

She stated that employers should only use certain kinds of criminal history records to make employment decisions. In most cases, employers are discouraged from using arrest records. These records are unreliable for several reasons. They are not a proof of criminal conduct, merely an allegation that may be incomplete in terms of final outcome of that arrest; and, they may contain inaccurate information, or may pertain to a different individual with the same or similar name. Further, the records may have been sealed or expunged and should not have been available to the employer at all.

Ms. Wilburn continued that if an employer is going to use an arrest record in making an adverse employment decision, they should focus on the underlying conduct of the criminal event determine and whether it relates directly to the job or makes that person unsuitable for the job. That would hold for all adverse employment decisions – not hiring, suspending someone who already holds a job, or firing them.

She continued that the second type of criminal history record used by employers is conviction information. This is generally more reliable information as proof of the underlying criminal conduct, because of the due process afforded during the criminal justice process. She stated that employers are still encouraged to be cautious. These records can also be inaccurate, as when they pertain to a different individual or they can be outdated, such as those that have been sealed or expunged.

She stated that the EEOC Enforcement Guidance recommends that the best practice regarding use of conviction information in the selection process is to wait until later in the hiring practice to consider such information in determining the eligibility of a candidate, and to limit their inquiry to convictions that are relevant to the particular job. This recommendation is based on research that shows that once an employer has deemed the candidate qualified for the position, they are more likely to objectively assess any criminal history. The employer is more likely to give the candidate a chance to explain the incident, and consider that information in the context of the whole person.

Ms. Wilburn continued that employers can get into trouble using criminal history information in the selection process in two ways. The first is *disparate treatment discrimination*. This is where employers are treating applicants differently because of any of the protected characteristics under Title VII of the Civil Rights Act – race, color, religion, sex or national origin. Such discrimination would be evident in a scenario where a minority applicant with a criminal background was denied employment, and a white candidate with a similar criminal background and job qualifications was hired instead. Disparate treatment based on race would also be evident if an employer allowed a white applicant to explain their criminal background, but did not afford a minority candidate the same opportunity. A third scenario is where an employer automatically assumes the minority applicant has a criminal background (based on stereotypes, not actual facts), and rejects them on that basis.

She continued that the second way employers can violate Title VII is through *disparate impact discrimination*. If the employer has a ‘neutral’ policy on using criminal history record information (screening everyone that applies), and the screening is not linked actual job duties, then this blanket policy can have the impact of disproportionately screening out persons protected under Title VII. Such blanket policies may include such statements that all applicants need to be “conviction free”, or that a felony conviction, no matter the charge, is an automatically disqualification. These blanket policies can disproportionately affect minority candidates (protected under Title VII), since they are more likely to have a criminal history, due to documented disproportionate minority contact (DMC) with the criminal justice system.

However, just because the employer's policy on the use of criminal history information has a disparate impact, it does not automatically mean it is in violation of Title VII. If the employer can show that the policy is related to the job duties (business necessity standard), it may not be in violation. There are two ways that employers can meet the business necessity standard, as documented in the EEOC Guidance: 1) validation under the Uniform Guidelines on Employee Selection Procedures, if relevant data are available and validation of the effectiveness of the policy is possible. But currently, there is no research available that empirically ties criminal conduct to poor conduct on the job (tardiness, discipline problems, or pose 'x' risk at work); and 2) develop a targeted screen that is supplemented by an individualized assessment.

Ms. Wilburn continued that a targeted screen concept was established in 1977 by an 8th Circuit court decision in the case *Green vs. Missouri Pacific Railroad* (549 F.2d 1158). Screening policies or practices should consider at least three factors: 1) the nature and gravity of the offense, 2) the time elapsed since the offense occurred or sentence was completed; and 3) the position being sought.

The EEOC Guidance offers more information on each factor of the targeted screen. Information to be considered under the first factor (nature of the offense) is what harm was caused by the underlying criminal conduct, what were the legal elements and behaviors of the crime, such as threat, intimidation or deception, and what was the seriousness of the offense (misdemeanor vs. felony), as indicated by the sentence received.

Information to be considered under the second factor (time elapsed) cannot be standardized, as it will depend on business necessity. Some employers may want persons newly released from prison and still under community supervision, as an independent mechanism for employee scrutiny and surveillance. Other employers will want to see evidence of rehabilitation before deeming the applicant eligible for a position. In general, permanent lifetime bans ('forever rules") based on any or all offenses do not meet Title VII business necessity standard. Further, social science research is beginning to document that the longer time has elapsed without further criminal involvement; the probability of a new offense becomes no greater than any other citizen that was never involved in the criminal justice system. However, EEOC does not endorse a certain time limit that is appropriate for all employers to use.

Information that can be considered regarding third factor (position sought or held) includes the job title, the duties and responsibilities, the job's essential functions, and the circumstances and environment in which those job duties will be performed. Aspects of the job duties, such as performance under minimal supervision or with vulnerable populations, will be important in determining if the prior criminal conduct in question is relevant. All of the three factors of the targeted screen should be balanced in making a determination of candidate eligibility based on criminal background, in order to meet the EEOC business necessity standard.

Ms. Wilburn continued that if employers want to ensure that they are acting on the most complete and accurate information, they are encouraged to go a step further and do an individualized assessment process. There are two phases to this process: 1) notifying the candidate that they may be excluded from the position because of their past criminal conduct, as identified by the targeted screen; and 2) providing the candidate with an opportunity to explain and offer any mitigating information.

She continued that the information about mitigating circumstances should address *risk* that the employer faces. This might include that the criminal history information is inaccurate, meaning that the criminal conduct did not even occur, or that the criminal history information did not provide a complete picture of what actually happened. Another example would be if the candidate could show that they had performed similar job duties for another employer without incident, or other proofs of rehabilitation, such as employer or character references. In the private sector, evidence of good job performance despite a criminal record is sometime available in instances where a new owner performs background checks on long-standing employees under the prior management, and discovers old criminal events that have no bearing on current job performance or responsibilities. Firing such individuals without showing how their background is related to their job duties could be a violation.

The EEOC Guidance provides some best practices. These include the elimination of across-the-board exclusions based on the mere existence of a criminal background; develop narrowly tailored policies and procedures for applicant screening and determining business necessity; train hiring managers in Title VII requirements and hiring policies that are consistent with those requirements; and limit inquiries to criminal history records that are related to job duties, legal mandates and established business necessity. Another best practice is to inform employees and potential candidates about the hiring policies, so that they can make effective use of its provisions.

Ms. Wilburn then addressed the questions that had been submitted to her by task force members and other interested parties prior to the meeting. The first question was whether she could name any Illinois statutes, rules or policies that are not in compliance with the EEOC Guidance. Her answer was that it is not possible for her to do that, because the U.S. Equal Employment Opportunity Commission (EEOC) works on an individual case basis of complaints of employment discrimination. An investigation into those particular circumstances determines whether the policy or rule is in violation of Title VII in that context.

Another question was about how discriminatory criminal history record practices affect recidivism and consequently, the health of the community. Ms. Wilburn replied that there are no statistics on that aspect of discrimination based on criminal history records, in that most research focuses on the effect of such discrimination on employment. The further link between the unemployment stemming from discrimination and recidivism can only be drawn by inference at the moment, without research to confirm such a relationship.

The third question asked was what were the largest settlements based on lawsuits arising from EEOC non-compliance, in the private sector or governmental agencies? Ms. Wilburn replied that EEOC is in the discovery phase of litigation against a private employer currently, and earlier in 2012 entered into a conciliation agreement with Pepsi regarding discriminatory criminal background check policies. The settlement was for $3.1 million, and affected about 300 African-American applicants, who will split the settlement and be offered job opportunities. There have not been any lawsuits against governmental agencies. In the case of Pepsi, the company agreed to report to EEOC on a regular basis concerning how its new hiring policies are being implemented. They do not provide any information about how the lawsuit or new policies have affected their budget or work force. The actual terms of the agreement are confidential.

Another question asked was regarding the Fair Credit Reporting Act (FCRA) and the issue of the release of inaccurate criminal history information by private vendors. Ms. Wilburn replied that EEOC does not enforce that Act. That is under the jurisdiction of the Federal Trade Commission (FTC). The one provision that may be relevant is related to the requirement of employers to give notice to applicants that they are denying them based on criminal history information obtained from a private vendor, and provide them with a copy of the transcript used to make the decision and inform them of their rights. The individualized assessment and appeals and waiver process, as outlined in the EEOC Guidance, would be a comparable process for governmental entities, along with an appeal or waiver process. This should protect applicants against the use of inaccurate criminal history information in the selection process. FCRA applies exclusively to third party vendors of criminal record information, not governmental entities, such as the Illinois State Police, that provide official state records.

The last question submitted was whether EEOC provides model hiring policies for governmental agencies to follow to be in compliance with Title VII. Ms. Wilburn answered that EEOC Guidance does not provide such a model, although the Guidance document tries to provide as much research-based information as possible for agencies to use in developing their own EEOC compliant hiring policies.

Mr. Jones asked how employers would obtain information on the nature of the offense and the underlying criminal behavior as recommended by EEOC. Ms. Wilburn replied that the first means would be by talking to the candidate during the interview process, or talking to criminal justice entities with that knowledge, such as the person's probation or parole officer or law enforcement official. He commented further that it seems that it might be fairly difficult to obtain that information, in that the employer would have to take the word of the candidate about the criminal event, or ask their permission to speak to their probation officer in order to verify that information.

Mr. Jones added that the State Hiring workgroup had discussed this issue, and the possibility that the applicant doesn't understand their own criminal history and might reveal more than they should, as in the case of non-conviction events or items that have been sealed or expunged. Is that a concern for EEOC? Ms. Wilburn replied that the Guidance does not specifically address that issue, but it could come up when third-party

vendor transcripts are used in the hiring process, since they may still contain items that have been sealed or expunged. The employer should inquire only on those criminal events that resulted in a conviction and are related to the job duties.

Ms. Sarmiento asked Ms. Wilburn to explain the EEOC recommendation that criminal history information should be used later in the hiring process. The EEOC does not specify the exact stage of the hiring process when that information should be considered. Instead, it encourages employers to focus first on whether the person is qualified to do the job. If something subsequently comes in a background check, then the employer should give the candidate a chance to explain the circumstances and any mitigating factors. Some states and the federal government do not check the candidate's background until after the conditional job offer is made. For each hiring entity, it may be more practical to do the background check at an earlier or later stage than others.

Ms. Sarmiento commented that the State Hiring work group discussed this information in the context of interview questions that could be asked. Mr. Enyia added that the recommendation from that workgroup might even be that only the top candidate is subject to a background check after the selection process is concluded. If there was some job-related item that came back on the criminal history, then there would be an appeal process for that individual. If the criminal background disqualifier could not be mitigated, and then the next most qualified candidate would be offered the position.

Mr. Myrent asked whether the EEOC recommends that the employer document what criminal history is related to the job duties before they even see the transcript, and make those disqualifiers known to job seekers at an early stage. Ms. Wilburn replied that the EEOC Guidance does not specifically address this issue, as it is so case specific. Ms. Sarmiento added that the State Hiring workgroup addressed this issue and is recommending that the job posting itself would include some type of language notifying job seekers of mandatory disqualifying offenses, as well as any discretionary job-related disqualifiers.

Ms. Wilburn added that EEOC talks about it in terms of a "chilling effect" , where the employer simply states that a background check is part of the hiring process, leaving it to the individual to assume that merely having a record will be a disqualification, whether it is job-related or not. EEOC recommends adding language to a job posting that states that a criminal background may not automatically disqualify a candidate, unless it is found to be related to the actual job duties or otherwise mandated by law.

Ms. Shelia Riley of DCFS commented that DCFS will rely on publically available information about a criminal event obtained from the original arresting agency during litigation proceedings. That information was agreed to be an objective source of criminal behavior information during the litigation process. DCFS does not rely solely on the candidate's account of events during an appeal process, although the need for arresting agency corroboration does not come up often.

Ms. Riley further asked whether EEOC provides any technical assistance other than publishing the Guidance. Ms. Wilburn replied that EEOC does public education and training on the Guidance, but does not have a model of best practices which they can assist employers in implementing on an individual basis. In terms of reviewing an agency's drafted policies, EEOC is not in the position of stating that they do not violate Title VII, as that violation is determined in each particular case brought before the Commission.

Ms. Riley also asked how many years would EEOC go back in dealing with a disparate impact claim. Ms. Wilburn replied that the claim investigation would include a determination of how long the practice had been in effect, and how many people were affected. In that regard, EEOC could go back to look at historic trends, although there is no set time limit.

Mr. Anthony Lowery of Safer Foundation asked if there has been any discussion about an ad campaign to educate employers about the new Guidance. Ms. Wilburn stated that EEOC is a fairly small agency, and that their current budget is limited in terms of the type of outreach they can afford to do. They do reach out to employers and trade organizations, but it is a challenge to reach smaller employers.

He asked another question about hiring applications that ask if the candidate has been convicted in the past seven years, and yet the employer considers the totality of criminal history information, which may go back much longer than seven years. If the candidate is denied employment based on a conviction outside the stated time period, would that be a violation under disparate impact? Ms. Wilburn replied that this would probably fall under the second factor, the length of time since the offense, in establishing the event to be related to the job duties.

Dr. Hart asked if there is any mandate for employers to understand the implications of Title VII in terms of their employment practices. Ms. Wilburn replied that there is no such mandate, although employers remain at risk for liability from any Title VII violations, whether they were aware of the law or not. Further, there is nothing mandating employers to be in compliance with the specific EEOC standards. Dr. Hart further asked who does the actual fact finding in disparate treatment or impact cases. MS. Wilburn replied that EEOC does all the investigation once a charge is filed, both about the individual case and broader statistics about the EEOC protected classes (race, gender, etc.). There is some overlap with NAACP, because of an Executive Order that they enforce.

Mr. Jones asked whether a person can bring a private case against an employer based on EEOC Guidance. Ms. Wilburn replied that private attorneys can bring litigation against both private and governmental employers based on EEOC Guidance. That was actually an impetus for updating the Guidance in reference to arrest and conviction information, because they were being asked how to bring such private litigation.

Rep. Flowers asked whether there is a blanket prohibition against employers hiring persons with a criminal background. Ms. Wilburn replied that there are no blanket restrictions, just criminal background restrictions on some jobs based on state and federal statutes, or based on the business necessity of the job if there are no applicable statutes or rules. Permanent lifetime exclusions are probably going to violate the disparate impact standard, but EEOC does not make any recommendations as to time limits of exclusions.

Rep. Flowers asked whether every hiring case should be considered on a case by case basis. Ms. Wilburn replied that the answer to that question is not simple, that employers should start with the three factors of a targeted screening process – the nature and gravity of the offense, the time elapsed since the offense or end of sentence, and the characteristics of the position sought. This is a good starting point. The EEOC would also highly recommend conducting an individualized assessment of the candidate's specific criminal background as a best practice.

Chairman Shuck asked a question regarding the concept of limiting inquiry into convictions. He assumed that it would mean that employers would ignore any that did not directly relate to the job, and consider the most recent ones that were job related. Ms. Wilburn concurred.

Mr. Boltz asked how the EEOC views the idea that all jobs have rules and procedures that must be followed and that criminal convictions may be indicative that the individual has shortcomings in the underlying behavior "following the rules", not just a more literal transgression of certain on-the-job duties (such as not hiring someone with a DUI conviction for a bus driver position). Ms. Wilburn replied that the EEOC does not take the position that a criminal conviction is indicative of future poor compliance with job rules and procedures, or is indicative that the person is not qualified to do any job. Mr. Boltz commented that EEOC would be looking for a more direct, overt connection between the conviction and the job duty, not any less direct factors related employment in general. Ms. Wilburn agreed with that assessment.

Chairman Shuck asked what about a case of an individual applying for a highly responsible job (working with sensitive information, or a vulnerable population), and does not have a conviction specifically related to any one job duty, but has a lengthy history of frequent convictions for some unrelated offenses. Ms. Wilburn replied that a pattern of behavior could be a consideration in the targeted screen or individualized assessment, but the seriousness of the offenses should also be considered, not just the frequency. Frequent convictions may indicate an underlying mental health or substance abuse issue that would relate to being considered the best qualified candidate for the job itself. EEOC considers compliance with Title VII to be a balancing act between the business needs of the employer and the right of the individual to fair treatment in terms of obtaining or retaining employment.

Mr. Todd Belcore of the Poverty Law Center asked if lifetime bans based on a criminal conviction would be considered a violation under Title VII, particularly if they are in state

statutes. Ms. Wilburn replied that the EEOC Guidance does address blanket rules and they may be a basis for EEOC charges. However, most state laws with mandatory restrictions deal with vulnerable populations which are protected under more than Title VII. In general "forever rules" go too far, since a conviction should not permanently bar employment.

Mr. Belcore asked when employers should consider that sufficient time has elapsed since the conviction, even if the conviction is directly job related. Ms. Wilburn replied that it would be hard for EEOC to issue a general opinion. It would be up to the employee to prove that they would not pose a future risk to the employer, as in the case where the paratransit driver was convicted of attempted murder as a juvenile 40 years previously, and was still fired when that conviction came to light.

Mr. Belcore asked about the "seven year' rule of thumb. Mr. Myrent replied that it was derived from the research of Dr. Blumstein on the time it took for the probability for someone with a prior offense committing a new offense to equal the probability of someone with no prior offense committing their first offense. He research showed that those probabilities were about equal after seven years. For those with a prior incarceration, new research by Dr. Blumstein and colleagues indicated that it would take about 16 years for those probabilities to be about equal with someone with no prior incarceration.

Workgroup reports

Chairman Shuck thanked Ms. Wilburn for her presentation and answers to the task force questions. He then called on each of the work group chairs to report on progress since the November 8th regular task force meeting.

Human Rights Workgroup

Mr. Villagrana, chair of the Human Right Workgroup, introduced Mr. Michael Lieberman, supervising attorney at the Illinois Department of Human Rights (IDHR), who presented to the group about the Illinois Human Rights Act [775 ILCS 5/2] and how it relates to the federal Equal Employment Opportunity Commission.

Mr. Lieberman began by stating that the Illinois Human Rights Act prohibits discrimination on certain bases for certain issues, as enumerated in his handout and on the IDHR website (http://www2.illinois.gov/dhr). Article 2 of the statute deals with employment issues. Discrimination in employment can be considered on the basis of 18 factors, compared to the five considered under EEOC. The factors common to both the state statute (HRA) and EEOC are: race, color, religion, national origin, and sex (although the HRA includes pregnancy related issues in this category).

He continued that the other bases under HRA include: ancestry (including English only in the workplace); age; marital status; disability; military status; sexual orientation; unfavorable discharge from military service; sexual harassment; citizenship; arrest

record; immigration related practice; order of protection status; and pregnant peace officers and fire fighters.

Mr. Lieberman continued to describe the general procedures for filing a complaint of discrimination based on the enumerated factors. The complainant has 180 days to file in the case of an employment related issue. The filing time limit for EEOC is 300 days. The respondent can be any government entity or public contractor, regardless of the number of employees, or a private employer with 15 or more employees in 20 consecutive weeks in the year of, or before, the violation. The respondent must file a verified response within 60 days from receipt of the charge.

He continued that the investigation must conclude within 365 days, plus any agreed to extensions, or the case expires. The standard of proof in this investigation is that of Substantial Evidence – "which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance."

Mr. Lieberman continued that there are five possible findings and outcomes of an investigation: 1) Substantial Evidence; 2) Lack of Substantial Evidence; 3) Lack of Jurisdiction; 4) Default (ruling against the respondent); and 5) Failure to Proceed (ruling against the complainant).

He continued that there are certain circumstances where charges will be cross-filed with EEOC. If charges are filed first with IDHR, and the basis includes one of the five covered by EEOC, that charge is automatically cross-filed with EEOC. IDHR conducts the investigation and the findings are sent to EEOC at the conclusion. Conversely, if charges are first filed with EEOC within 180 days of the alleged violation, and it is against an Illinois employer, then EEOC will automatically cross-file with DHR. In that situation, DHR will notify the complainant that they must contact DHR at the conclusion of the EEOC investigation (within 35 days) that they want a subsequent DHR investigation. The DHR will not act until the EEOC investigation is completed.

Mr. Lieberman continued that under the Illinois Human Rights Act (HRA), there is a subsection that deals specifically with arrest records. It was added to the HRA in 1998. It is a civil rights violation for an employer to inquire into or use the fact of an arrest (non-conviction information), or an arrest that has been sealed or expunged as a basis for employment decisions. This does not include employers who entitled to arrest information pursuant to state or federal statute in evaluating the qualifications of a candidate. Paragraph B further states that an employer is not prohibited from obtaining or using other information which indicates that the person actually engaged in the conduct for which they were arrested, in order to evaluate the character of the person.

He continued that patterns of practices are reported to the Attorney General for further action, as in the case of the large international company that was inquiring into the arrests of candidates, in violation of IHRA.

Mr. Lieberman provided statistics on the number of HRA charges filed on the basis of employment, and further on the basis of the use of arrest records. In FY 2010, there were over 4,000 charges filed on the basis of discrimination by an employer, of which 46 (1 percent) were on the basis of the misuse of arrest records. The number of discrimination charges filed based on employment issues has historically remained between 3,000-4,000 per year, while the proportion of those involving the misuse of arrest records has historically accounted for about one percent. Further, of those arrest-based discrimination charges filed, the majority have been related to discriminatory discharge from a job, rather than at the hiring stage.

Dr. Hart asked for possible reasons for the apparent low numbers of arrest-based discrimination charges filed, and whether there needs to be more education of the public. Mr. Lowery of Safer Foundation replied that there is a general acceptance of discrimination in the population with criminal records, and a lack of knowledge about their rights and remedies.

Mr. Jones asked what options complainants have if the time for filing has expired. Mr. Lieberman replied that there are two options – a charge can be filed with the Human Rights Commission, or a case can be filed in circuit court. It is best to go through the agency first, as an investigation will have been conducted prior to filing litigation. Mr. Villagrana added that there are times where the complainant goes first to the EEOC, but in the case of an arrest-based charge, that is not a protected factor under Title VII. In such circumstances, EEOC and IDHR have built relationships and mechanisms among each other to direct cases to the proper jurisdiction.

Mr. Belcore asked if there is also a private right of action. Mr. Lieberman replied that there is, but not before the IDHR has completed its investigation. At its conclusion, the file is made available to the complainant, who is free to proceed in a private lawsuit.

Education Workgroup

Chairman Shuck reported that there had been no contact with that workgroup since the last meeting. He would follow up with the chair, Mr. Evans of ISBE, to encourage that the workgroup convene again before the next meeting in January 2013.

State Hiring Workgroup

Chairman Shuck called on workgroup chair, Ms. Sarmiento, to report on progress. Ms. Sarmiento reported that the workgroup met on December 11, 2012, and is working on making recommendations for revising the state hiring process in light of best practices suggested by the EEOC Enforcement Guidance. The group is considering revisions to the state employment applications, job postings, interview procedures, administrative review procedures and the appeal process. They expect to meet several more times before their work will be completed.

Chairman Shuck suggested that several other aspects of the hiring process they should consider include the role of the Rutan interview and selection process, the role of employee unions (AFSME, SIEU), and the veteran's preference rules.

Discussion of the Final Report

Chairman Shuck reminded the task force members that the deadline for the final report is June 30, 2013. The various workgroups should keep in mind what the critical components of the final report should be as they progress on their topics. Dr. Hart suggested that a draft should be completed by May, to give all the task force members adequate time for their internal review processes.

Ms. Phillips of ICJIA reported on the status of the state agency reports. She reported that there are still six agencies that have not submitted something to the task force. She made 5 contacts with each agency, including two letters and three calls.

Mr. Villagrana commented that this had been a topic in the Human Rights work group, the need to ascertain what is still missing, and how to put pressure on agencies. In addition, the work group would like to see better attendance and participation by the legislative members of the task force, as their perspective is needed, and they could be invaluable in getting compliance with the state agencies.

Setting meeting dates for 2013

In light of the work that still needs to be done, Chairman Shuck suggested that the task force should continue to meet on a monthly basis. Holding the meetings with videoconferencing capability between the JRTC in Chicago and the Stratton Building in Springfield was agreed to be an efficient and convenient way to meet on such a frequent basis. All meetings will be held at the usual time of 1:30 – 3:30 pm. After consulting the calendar for the Spring legislative session, the following meeting dates were set (subject to meeting room availability):

Thursday, January 17
Thursday, February 22
Monday, March 11
Monday, April 22
Monday, May 13
Wednesday, June 5

Adjournment

With no other business, the Chairman asked for a motion to adjourn. Mr. Villagrana so moved and Mr. Garner seconded. Hearing no objection, the motion was passed by voice vote. Chairman Shuck reminded the group that the next meeting was set for Thursday, January 17, 2013, at the JRTC in Chicago and Stratton Building in Springfield.