

MINUTES

REGULAR MEETING TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS

Monday, March 18, 2013 at 1:45 p.m.

**James R. Thompson Center, Room 2-025, Chicago, Illinois
Stratton Building, Room 5001/2, Springfield, IL**

Call to Order and Roll Call

Jack Cutrone, Executive Director of the Illinois Criminal Justice Information Authority and Vice-Chair 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. (At the time of the roll call, a quorum was not yet achieved.)

Task Force members in attendance were:

Vice-chair Jack Cutrone
Mr. Donald Evans, ISBE
Mr. Daryl Jones, IDOC
Mr. Hector Villagrana, IDHR
Ms. Elizabeth Sarmiento, DHS
Mr. John Garner, ISP
Ms. Shelia Riley, DCFS
Mr. Boltz, IDES
Ms. Ellen Andres, ICCB
Ms. Karen Helland, SBHE

Vice-Chair's Remarks

Vice-chair Cutrone welcomed task force members and guests to the meeting. He stated that, as vice-chair of the task force, he was officiating the meeting due to the illness of Chairman Shuck. He began his remarks by previewing the agenda items. The approval of the January 17 meeting minutes would have to wait until such time as a quorum was reached. The meeting would proceed without a quorum, as no other agenda items required a vote by the task force.

He continued that a critical item is the timeline for the final report, which is due to the General Assembly and Governor's Office by June 30, 2013. As in prior meetings, the various work group chairs will report on their progress to date. ICJIA staff will give a status update on their efforts to collate the large amount of information that has been gathered regarding employment restrictions set in state statute, administrative code, and the state agency reports. And finally, the group will discuss any new and old

business, including a discussion of other collateral consequences of a criminal conviction besides employment barriers, at the request of Rep. Flowers.

Vice-chair Cutrone continued that the task force currently has four workgroups – State Hiring, Licensing and Certification, Human Rights and Education. In light of the fact that the final report is due in three months, he will be calling for the formation of a Final Report workgroup. Discussion of the chair assignment for that work group will be postponed until Rep. Flowers arrives for the meeting.

Timeline for the final report, presented by Mark Myrent, ICJIA Research Director

Vice-chair Cutrone asked Mr. Myrent to present the timeline for the final report. Mr. Myrent drew attention to the handout that lays out the interim deadlines over the next three months. He reiterated that there are only three more regular task force meetings scheduled - Monday April 22, Monday May 13 and Wednesday June 5 - and so a very aggressive work schedule is necessary to meet the June 30 deadline. It will be imperative for task force members to attend every meeting, as a quorum will be necessary in order for task force voting to take place.

Mr. Myrent continued to discuss actions that will be required by the April 22nd meeting. The final recommendations from the workgroups will be presented and voted on at that next meeting. In preparation for that vote, work group chairs are being asked to submit the final recommendations in writing (via email) to the task force as a whole by April 15, to allow time for in-house discussions with the various agency directors ahead of the April 22nd meeting.

He continued that discussions were held with Mr. Evans, chair of the Education work group, regarding whether that group could be absorbed by the Hiring and Licensing/Certification workgroups. It was agreed that Mr. Evans should participate on both those workgroups, and add the perspective of ISBE as a non-personnel code agency to the State Hiring workgroup, and the process of teacher certification to the Licensing workgroup.

Mr. Myrent addressed the Human Rights workgroup, in terms of closure on its work. The recommendations from that workgroup will likely follow much of the EEOC Guidance.

He continued that at the April 22nd meeting, staff will be presenting completed versions of the newly created format for the state agency restrictions, derived from the statutory, administrative rule and state agency report materials being collated by ICJIA staff. The new format is a fact sheet to be created for each state agency, which enumerates any internal hiring restrictions, along with any occupational licensing or regulating restrictions imposed.

Mr. Myrent stated that it is hoped that the Final Report workgroup will have met at least once before the next meeting, in order to be able to give task force members a sense of what will be included and assign out tasks to be accomplished on that final report.

According to the timeline established, a draft final report should be presented and discussed by the group at the May 13th meeting. A draft will be sent out the week of May 6th, in order to give task force members time to read the materials and discuss within their own agencies ahead of the voting that will take place at the May 13 meeting. This will also require a discussion of the issue of “public safety”, since the Task Force legislation calls for the group to make recommendations on any employment restrictions “not reasonably related to public safety”.

Vice-chair Cutrone suggested that a discussion of the public safety issue be taken up at the April 22nd meeting, after task force members have had time to think about the issue. He suggested that members email their thoughts to Idetta Phillips ahead of the next meeting.

Ms. Phillips also requested that task force members email her with their definitions of “mandatory vs. discretionary” employment restrictions. For example, does “mandatory” equate with “absolute bar”. Mr. Myrent added that the IERFT legislation used the term “mandatory” in the sense of employers being bound to consider offenses that are specifically enumerated in an applicable statute, as opposed to having discretion to consider or discount whatever conviction offenses the job applicant has on their criminal history record. However, task force members may conclude that ‘mandatory’ refers more widely to statutes where there is no mechanism for the employer to waive strict adherence to the statutory restriction for all job applicants.

Mr. Myrent continued that the final regular task force meeting is scheduled for June 5th. At that meeting, Task Force members will be voting to adopt the final report. As most members serve as designees of their agency directors, it will be imperative to get sign-off on the final report ahead of the final meeting. The final report will be sent out via email the week of May 20th for that purpose. This will allow three weeks in June to prepare the final report for submission to the General Assembly and Governor’s Office.

Ms. Riley asked about the difference in the draft report being sent out on May 6th compared to the draft report on May 20th. Mr. Myrent replied that the May 6th draft will have final work group recommendations, but that the final May 20th draft will have any additional recommendations related to public safety as adopted at the May 13th regular task force meeting.

Workgroup reports

Vice-chair Cutrone called on each of the other work group chairs to report on progress since the February 22nd regular Task Force meeting.

State Hiring Work Group

Ms. Sarmiento, chair of the State Hiring work group, reported that the group is in the process of finalizing its recommendations which have been under formulation over the last two months. The final draft will be submitted for task force member review within the next two weeks. The next work group meeting is scheduled for Monday March 25th in Chicago. Mr. Evans, chair of the Education work group, indicated that he would be able to attend that meeting and incorporate information on his agency's (ISBE) hiring processes, which was initially prepared for his work group.

Licensing and Certification Work Group

While not an official work group member due to not being named to the Task Force, Ms. Tiffany Kay of the Department of Financial and Professional Regulation (IDFPR) reported that she and Mr. Lagattuta of IDFPR have continued to work on several issues pertaining to licensing since the last meeting. Ms. Kay reported that the work group has met three times and has continued to work on a hybrid model of waiver and relief that could be instituted within the occupational licensing process across state agencies. This would incorporate elements of existing Certificates of Relief, Good Conduct and Rehabilitation along with waiver processes in use by the Department of Public Health, the Health Care Worker Background Check Act, and the Child Care Act. She also stated that IDFPR has several advisory opinions regarding relief provisions in the licensing processes conducted by the department, and she brought a handout (posted on the IERTF website) indicating how to access those advisory opinions. The next meeting of the Licensing and Certification work group has not been set, but Mr. Evans, chair of the Education work group, will be notified so that he can participate.

Human Rights Work Group

Mr. Villagrana, chair of the workgroup, reported that the group had not met since the last meeting in January, due to lack of pending business. The group is on stand-by if there are any issues that they need to consider stemming from any of the other work groups. He will set a meeting, if necessary, within the next two weeks.

Education Workgroup

Mr. Evans, chair of the Education workgroup, reiterated that he agreed with the decision to subsume his work group into those of State Hiring and Licensing. He also reported that he has not received requested materials from the Board of Higher Education and the Community College Board, in order to finalize the work from the perspective of the several education agencies on the task force.

Final Report work group

Vice-chair Cutrone reiterated the remaining time to complete the final report will require substantial work on the part of ICJIA staff and the various work groups. He has asked

Elizabeth Sarmiento to chair the Final Report work group, in addition to her role as chair of the State Hiring work group. She has shown herself to be efficient and effective in dispatching work group responsibilities, and her talents will be required to get the final report completed on time. She has graciously accepted, along with the other volunteers for that work group. She will call the first meeting of the group in the near future.

Status update on collation of employment restrictions materials by ICJIA staff

Vice-chair Cutrone called on Ms. Devitt Westley and Ms. Phillips of ICJIA to provide a status update on the work being done to collate all the various material on employment restrictions. Ms. Devitt Westley began by pointing out two state agency templates prepared for the meeting, one for the Auditor General and the other for the Secretary of State, and stated that she would explain the thought process behind the new employment restrictions format. It was her hope that the Final Report work group would agree that it was a useful format, even if a further summarization across agencies might be warranted once all 72 agency fact sheets were completed.

Ms. Devitt Westley continued that the Inventorying Employment Restrictions Task Force Act (IERTF Act) requires consideration of statutory, administrative code and internal policy restrictions related to: internal state hiring, occupational licensing, certification and regulation by state agencies, and the contracting of employees for state business. Further, all state agencies named in the legislation were required to prepare a report to the Task Force enumerating any such restriction. To date, all but a handful have complied with that reporting requirement.

She stated that in working with the statutory information contained in the American Bar Association (ABA) spreadsheet, as described in her status update report at the last meeting, it became clear that context about the agency to which the statute pertained was missing. That lack of context made it difficult to properly interpret the restriction being imposed. For example, many statutes in the spreadsheet started with the phrase “the Department shall...”. Without knowing the agency being referred to, and the possible occupations within that agency, all sense of the restriction was lost.

Ms. Devitt Westley continued to describe the first fact sheet, for the Auditor General. The template has several sections, which will be completed for all agencies. At the top is a description of the agency’s function and headcount, as described in the Illinois Budget Book. This information is meant to provide context for the types of occupations that might be found in the agency, along with its size and state employment impact. For example, the Auditor General has a headcount of 144 staff, compared to over 3,000 for the Secretary of State. That size and diversity of official functions is reflected in the length of the Secretary of State’s fact sheet (over 20 pages), compared to the 2 pages for the Auditor General fact sheet.

She continued that the next section of each agency fact sheet is their hiring authority, as a place to enumerate any internal hiring restrictions pertaining to the criminal history of potential employees. The language of any identified statutes or administrative codes are

provided on the fact sheet. Another feature of the fact sheet is a summary of the report submitted by that state agency. In the case of the Auditor General, the hiring statute states that background checks may be conducted on job applicants at the discretion of the Director. However, the report to the Task Force stated that background checks are not being conducted at this time. This is an indication that the current Director is not exercising an option afforded by the statute. In this way, each piece of information on the fact sheet can provide context for the other.

Ms. Devitt Westley went on to describe the occupational licensing, certification or regulation section of the fact sheet. Where an agency does not have that function, it will be clearly stated as such. For example, the Auditor General does not do any occupational licensing certification or regulation. It does, however, have the authority to enter into employment contracts with additional personnel to carry out its auditing function, in this case, certified public accountants. The contracting section of the fact sheet will list the statute that authorizes such contractual hiring, along with any criminal history-related restrictions on those contractual hires. That same information will be added to any other agency that does contractual hiring, to make it easier to collate that information across agencies once all the fact sheets are completed.

She continued that the final section of the fact sheet is the summary of the agency's report to the task force, including any information provided on the number of job candidates that were subject to employment restrictions in the past two years. In the case of the Auditor General, 28 people had been hired, and none had disclosed any criminal conviction on their application, nor was a background check conducted by the agency.

Ms. Devitt Westley concluded that an initial rough count of agencies claiming they had no employment restrictions related to criminal history was about half of the 72 agencies included in the IERTF legislation. Therefore, ICJIA staff is hoping that the fact sheets for those agencies will be quick to produce, leaving sufficient time for the larger agencies with many employment-related functions and restrictions.

Ms. Phillips added that much of her time over the past month was going through the ABA spreadsheets and vetting that information with the information on restrictions received from the Legislative Research Unit (LRU). Further, she has identified some statutes listed on the state agency reports that were not included in the ABA spreadsheets. She described her process for completing the Secretary of State fact sheet. That agency regulates several occupations, and provided documentation for each of those occupations.

Ms. Devitt Westley pointed out that the Secretary of State is a non-personnel code agency, and has its own hiring statute. Much of it mirrors the language of the Personnel Code, but it goes into detail about the actual hiring process, including the stage at which an applicant's criminal history is to be considered. That level of detail can inform the various work groups, and the other task force members, as to other recommendations

for the final report, including that final issue of which restrictions may not be reasonably related to public safety.

Ms. Riley asked if there has been any thought to adding a section on waiver and appeal processes. Ms. Phillips replied that if such a process is articulated in a statute or administrative code, it will definitely be included. But if it is just department policy, it can only be known if it was discussed in the state agency report. Ms. Devitt Westley added that waivers could be a separate section of each fact sheet, to pull out that information that may reside elsewhere on the fact sheet. Ms. Riley replied that it would be helpful for those seeing all the employment restrictions to also become aware of the appeal or waiver possibilities as well, although it would probably not be practicable to offer much detail about the actual appeal procedures.

Mr. Todd Belcore, of the Shriver Poverty Law Center, asked how his comments on possible recommendations regarding public safety could be best made for task force consideration. Ms. Devitt Westley replied that if his recommendations are based on the agency fact sheets, they will not be completed before mid-April. At that time, he can send his comments via email to Ms. Phillips. Mr. Myrent added that an email soliciting comments about that issue from absent task force members and other interested participants will be sent out ahead of the April meeting.

Vice-chair Cutrone asked if the discussion about the possible removal of CMS100 "Box 9" questions related to disclosure of an applicant's criminal background will be included in the CMS agency fact sheet. Ms. Devitt Westley replied that recommendations regarding new hiring procedures will be forthcoming from the State Hiring work group instead of the state agency fact sheets. Mr. Evans added that these work group recommendations would include non-personnel code agencies, as well.

Old business - approval of the minutes from the January 17, 2013 meeting

With the arrival of Ms. Andres and Ms. Helland, a quorum for the meeting was reached. Approval of the minutes from the January 17, 2013 meeting remained as old business from the meeting held on February 22, 2013. Mr. Cutrone asked for a motion to approve the minutes. Mr. Villagrana made the motion, and Ms. Sarmiento seconded. Hearing no objection, the motion was passed by voice vote.

New business – discussion of a proposed Office of Collateral Consequences

Vice-chair Cutrone pointed out that Rep. Flowers had emailed Task Force members indicating that she wished to discuss the question of other collateral consequences of criminal convictions. However, Rep. Flowers has been detained on other state business, so a discussion of that issue will be tabled until a future task force meeting.

Adjournment

With no other business, Vice-chair Cutrone called for a motion to adjourn. Mr. Villagrana so moved, and Ms. Riley seconded. Hearing no objection, the motion passed by voice vote.