MINUTES

REGULAR MEETING
TASK FORCE ON INVENTORYING EMPLOYMENT RESTRICTIONS
Monday, April 22, 2013 at 1:45 p.m.
James R. Thompson Center, Room 9-035, Chicago, Illinois
Stratton Building, Room 5001/2, Springfield, IL

Call to Order and Roll Call

Jeff Shuck, Chairman of the Task Force, welcomed Task Force members and guests to the regular meeting of the Task Force on Inventorying Employment Restrictions. Mark Myrent, Associate Director of Research for the Illinois Criminal Justice Information Authority, acting as staff to the Task Force, called the roll.

Task Force members in attendance were:

Rep. Mary Flowers
Chairman Jeffery Shuck
Mr. Daryl Jones, IDOC
Mr. Donald Evans, ISBE
Ms. Elizabeth Sarmiento, DHS
MSgt. John Garner, ISP
Ms. Michelle Jackson, DCFS
Ms. Karen Helland, SBHE
Mr. Boltz, IDPH
Ms. Betty Torres, IDES

Mr. Chimaobi Enyia, CMS (via phone)

Approval of the minutes from the March 18, 2013 meeting

With a quorum in place, Chairman Jeffery Shuck stated that the first order of business was a vote to approve the March 18, 2013 meeting minutes, and asked for a motion to approve. Ms. Jackson made a motion to approve the minutes, and Mr. Boltz seconded. Chairman Shuck called for a voice vote approving the minutes. Hearing no objections, the motion passed.

Chairman's Remarks

Chairman Shuck thanked everyone for continuing on in his absence since the last meeting in March, and accomplishing so much since then. In order to meet the July 1 deadline for the final report, the meeting will focus on the various work group recommendations. He stressed the importance of Task Force members attending all remaining meetings, so that a quorum can be reached and the necessary voting on

recommendations can take place. There will be a review of the Final Report timeline, to make sure everyone is aware of when tasks are due.

Workgroup reports

Hearing no suggestions for addressing other business, Chairman Shuck called on the chairs of the work groups to present their recommendations.

State Hiring Work Group Recommendations

Ms. Sarmiento, chair of the State Hiring work group, began with the presentation of the recommendations proceeding out of that workgroup, as posted on the IERTF website (http://www.icjia.org/IERTF/).

1. All state agencies that use the CMS 100 will see Section 9 be removed from the employment application; agencies that don't use it, will have to remove questions regarding applicants' criminal history from their initial application.
2. All state agencies must adhere to a statewide policy that would prohibit criminal background checks until after the applicant is interviewed and conditionally offered the job (where they are deemed eligible and a conditional offer of employment has been made). This would also apply to "bulk hiring" (where many candidates are hired at a time).
3. All state agencies (Personnel Code and non-code) will use the standard criminal background check release form to ensure each release is only requesting information that the agency may legally consider (for example, most agencies should not be viewing non-conviction information). Agencies should consider only those items that are job-related, although conduct underlying the conviction that indicates unsuitability is a justifiable basis for exclusion, if it is reasonably recent in time. All state agencies must adopt a uniform addendum to the Request for Release of Information form, the wording of which is recommended to read " It is the policy of the State of Illinois not to consider the criminal history of an applicant for State employment unless Federal or State law prohibits hiring individuals for certain criminal convictions for the position the applicant is seeking, or for certain convictions that are related to the position being sought, where denial of employment based on that criminal record is consistent with a business necessity. "

4. Administrative review process—all state agencies will be responsible for establishing uniform guidelines for evaluating criminal record information. They must identify essential job requirements, and the actual circumstances under which the job duties are to be performed, and determine the specific offenses that may determine the unfitness for performing such duties. In order to determine whether a specific offense may determine unfitness for performing a position, the agency must consider the nature and gravity of the offense or conduct, the time that has passed since the offense or conduct and/or completion of the sentence, and the nature of the job being sought.
5. Appeal process—every individual with a criminal record should be given the opportunity to appeal or explain their conviction. All state agencies will need to develop a process that clearly informs the applicant that they may be excluded due to their past criminal conduct and provides an opportunity for the applicant to demonstrate that the exclusion should not apply to them. The hiring agency should consider whether the applicant's background, and additional or mitigating information provided by the applicant indicates that the denial of the applicant was not due to the conviction being directly related to the job being sought and not consistent with business necessity. To ensure the efficient consideration of appeals, applicants, after receiving notice of their right to appeal will have 5 days to respond by providing records or documents that will impact the hiring decision.
6. Train all agency human resources department staff and hiring managers on new state policy on hiring people with criminal records. The workgroup felt is important that all agencies implement the policies in a consistent manner.
7. Develop a unit within the state to oversee and maintain statutory bars database. The workgroup did not have specific recommendations as to where such a unit should be housed. Every agency will be responsible for identifying bars that apply to their specific operations. The proposed unit would make that information available to agencies and applicants.
8. Establish workgroup to develop recommended guidelines and procedures recommended in items 5 through 8.

Rep. Flowers asked who will make the determination of approving or denying the applicant's appeal in the new appeal process. Ms. Sarmiento replied that the hiring unit within each agency would still be responsible for that process, based on all the information presented. Ms. Flowers further asked where the checks and balances would be if the decision remains in-house. Ms. Sarmiento added that at her agency (DHS) the interviewers are separate from those making the hiring determination, and that all hiring decisions must be justified in writing.

Mr. Boltz asked if hiring decisions made at state agencies are subject to audit by the Auditor General, pursuant to the agencies policies and procedures. Ms. Sarmiento replied that they are subject to that oversight. Mr. Evans added that the purpose of the appeal process is to bring out new information on how that candidate may not have been initially properly considered. The management hiring decision should be in writing, and the candidate has the option to take the matter to court.

Mr. Myrent asked whether there is some protection offered to a candidate through the Department of Human Rights, over and above the recommended appeal process at the hiring agency level. Ms. Riley of DCFS replied that having a criminal history does not make the person a protected class under Title VII or the Illinois Human Rights Act, as the human rights established are based on race, gender, age, and so on. Nothing the Task Force would recommend would obviate the Administrative Procedure Act, giving a person the right to challenge any decision by an Executive Director in circuit court.

Mr. Jones expressed concern that there is redundancy between the administrative review and appeals process recommendations, and there are no articulated standards that are supposed to be considered. He was also concerned that the 5-day appeal process would not be sufficient time for the applicant to gather all the necessary paperwork relevant to their appeal. He was recommending that there be one recommendation – the administrative review – that would include an opportunity for the applicant to respond to an adverse hiring decision.

Mr. Enyia and Mr. Evans noted that the discussion regarding the State Hiring Work Group recommendations appeared to be on the original draft, and that comments of the workgroup to combine the administrative review and appeals process had not yet been incorporated. Mr. Evans also commented that the language of the Final Report should be positive in nature, emphasizing efforts of the Task Force to attract individuals to state employment.

Ms. Riley stated that in the Licensing Work group recommendations, after the initial hiring decision is made, an independent Office of Re-entry would review any decisions that candidates want to appeal. This independent entity would review the decision, provide clarifying information to both the employer and applicant, but would not have the power to overrule an adverse hiring decision. The applicant will always have the right to take their appeal to the circuit court. From that standpoint, any action within the hiring agency should be considered administrative review, with the agency not required to

hold the job open while a candidate is asking for additional review of their application and credentials.

Mr. Boltz asked about the verbiage in the recommended language for the Request for Release of Information form regarding “Policy of the State”, if that implies that an Administrative Rule to that effect is contemplated, and if so, which agency would make that rule. Chairman Shuck replied that he envisioned legislation being drafted in response to Task Force recommendations, which would include language addressing the broad “policy statements or legislative intent. Mr. Boltz added that one advantage of the Administrative Rule making process is the opportunity for public comment and notification, and vetting by the legislature, which would give Task Force recommendations a broader audience.

Mr. Myrent asked about recommendation #3, referring to the agency considering only the criminal history information to which it is legally entitled. He was not aware that the State Police could generate narrowly tailored rap sheets specific to the legal requirements of each agency. Ms. Jackson replied that the requesting agency will indeed receive all conviction information posted for that individual, and that it will have to be up to the agency to consider how those convictions interfere with the ability to hold a particular position, based on the job duties. Each agency will have to provide written justification of which conviction is precluding the hiring of the individual. If the decision is based on ‘too many convictions”, that would not be an acceptable justification.

Mr. Myrent asked whether the Recommendation #7, a proposed database of statutory “bars”, would include only those that have no relief provisions. Ms. Sarmiento replied that the database should include all bars with any mitigating mechanisms, as a responsibility of the unit charged with maintaining the database. Ms. Jackson recommended that the word ‘bar” be changed to “restriction” to eliminate potential confusion.

Mr. Jones asked to revisit recommendation #2, regarding the issue of “bulk hiring”. The Department of Corrections is still unsure how the elimination of the question regarding prior criminal history on the CMS100 application form could work in the situation where multiple potential hires are being vetted for participation in an initial training class. He asked when the criminal history check should be done in that circumstance, since the trainees have not been officially hired yet, pending the successful completion of the training. Ms. Jackson asked if the class participants were deemed eligible for the position at the point of acceptance into the class. The background check would be done at the point that the candidate is deemed eligible.

Ms. Phillips of ICJIA added that the State Hiring workgroup discussed the idea of a conditional offer. Is acceptance into a training class considered an offer of employment, conditional on successful completion of the class? Mr. Jones replied that he did not know if IDOC concurred with that statement. Chairman Shuck added that he would recommend placing the criminal history records check to a point after the interview, but prior to making the actual conditional offer, as in the situation where an agency had

several equally qualified candidates, and wanted to review any criminal conviction history and other conditions of employment prior to making a conditional offer. Mr. Boltz concurred that fully vetting a candidate sooner than later in the process was desirable from the standpoint that the State hiring process is already so lengthy, that waiting until the very end of the process to check on disqualifying factors only prolongs the time it takes to fill a position.

Ms. Jackson agreed that the criminal history records check should be done after the candidate is deemed eligible. That exact point may need to be defined at each agency, whether that is at the point of successful completion of the interview, or after other qualifications have been met or vetted. Mr. Jones recommended that, since the interview is the first step in the hiring process, and the concern of the Task Force is that applicants get a fair chance to present their qualifications for the job prior to any criminal history being known to the potential employer, that the criminal history check should be placed after the interview in the interests of a timely hiring process.

Ms. Helland asked about the situation where an agency has job duties with absolute bars for certain positions based on the setting of the job, as in the example of a convicted sex offender working as an adjunct instructor in proximity to a day care center housed in the same college building. In that situation, it would seem that waiting until after an interview to uncover that ineligibility factor would be a waste of everyone's time. Ms. Sarmiento asked at what point in the process would such candidates be determined ineligible. Ms. Helland replied that the question of criminal conviction should not appear on the initial application, but only in the second phase, once the pool of eligible candidates are determined, based on the meeting the minimums established for the job, but prior to the interview.

Mr. Enyia asked how that would be any different from the current process, where candidates are "weeded out" based on prior criminal convictions, without being given an opportunity to go through an administrative review process to determine if the conviction is related to the job duties. He recommended that any review of criminal history prior to an interview be solely for those positions where a statutory mandatory restriction exists. Mr. Jones added that according to statements from Shared Services, the self-disclosed information on the CMS100 is not used by interviewers currently, so the exact "time wasting" procedures the Task Force is voicing should be avoided is already taking place.

Chairman Shuck recommended that agencies that have mandatory statutory restrictions, such as many in the health care and education fields, advertise that such mandatory restrictions exist when they seek candidates for open positions. Mr. Jones replied that the State Hiring Work group had discussed that option, but concluded that it could be seen as a deterrent. Chairman Shuck added that the phrase "all others are encouraged to apply' could be added to avoid that issue. Mr. Jones agreed that could be done for mandatory statutory restrictions, but would be impossible for convictions that were disqualifying due to being a nexus between the criminal behavior and the job

duties. Chairman Shuck agreed that disqualifying offenses for those types of positions would have to occur much later in the hiring process.

Chairman Shuck continued that the next area of concern was asking agencies to identify relevant convictions in advance related to a specific position, rather than reviewing a particular criminal history to see if there is something that does related to the open position. That would seem to be a daunting task just from the standpoint of keeping such a list of offenses current, including equivalent statutes in other states. He would like to recommend that employers not ask about criminal history at the application stage, and wait until after the interview stage. After that time, the timing of the review of criminal history should be left up to each agency, as to what works best for their circumstances. The overarching goal is to hold back the consideration of criminal history from being at the front end of the process until the point at which the candidate can show eligibility on the educational, training and experience requirements set for the job.

He continued that there are already processes in place to monitor the hiring decisions that are made, and these would remain in place – internal and external audits, investigations by the relevant Office of the Inspector General. Beyond that, if there are allegations of criminal activity, then the Illinois State Police can investigate, or the individual can file a case with the circuit court.

Mr. Jones asked if the Chairman was suggesting that items A. and B. in Recommendation #4 be removed. Chairman Shuck clarified that they should remain as questions the hiring entity should ask when reviewing an actual criminal history transcript, along the A. B and C that follow in that Recommendation. He would recommend using the word “related’ to the job duties, not the more narrow phrase “direct relationship between the conviction and the job”, in order to give small employers (including those in the private sector) more leeway in utilizing a small workforce in multiple jobs to cover absences and other business contingencies. Consideration of the setting of the job is just as relevant as the duties of the specific position.

Mr. Evans asked whether Recommendation #3, that all state agencies use the particular Request for Release of Information form mean that all state agencies must use the State Police as the source of their criminal history information? The Illinois State Board of Education currently does not do so. Mr. Enyia commented that the wording of the recommendation could be changed to say that all state agencies must adopt the language of similar intent on their release form, if they do not use that particular form CMS-284.

Mr. Jones pointed out that the wording of recommendation #3 seems to put the burden of providing relevant criminal history information on the third party providers, which is not possible. The recommendation should focus on what the agencies should do with the information once they receive it. It would seem to open employers to liability issues if the wording remains that they should not receive certain information.

Chairman Shuck replied that the Task Force can only control so much, that it is now incumbent upon agencies to make determinations solely on information they are permitted to view, and that they should document the basis for their hiring decision to avoid “shifting justifications” if they are challenged.

Ms. Jackson added that she thought the value of the State Hiring Work Group’s attention to the Request for Release of Information form was that it would promote uniformity in the state, and give the applicant information about the process, particularly the focus on conviction (as opposed to arrest) information. Mr. Enyia agreed.

Ms. Jackson continued that, as for Recommendation #2, the phrase “conditional offer of employment”, the issue can be resolved by taking out the phrase from the recommendation, or adding “and/or”, since not all agencies make conditional offers of employment. Mr. jones reiterated that the recommendation would apply in all situations if it read “until after an applicant is interviewed”, including bulk hiring.

Licensing Workgroup Recommendations

Hearing no other questions or comments about the State Hiring work group recommendations, Chairman Shuck asked Ms. Jackson, Chair of the Licensing Work group, to present their recommendations, as posted on the IERTF website.

Ms. Jackson began by thanking the workgroup for continuing in her extended absence and drafting recommendations that could be presented upon her return. Although the workgroup was to focus on licensure, the group quickly realized that the process goes hand-in-hand with the hiring process.

1. Notice of Administrative Review

   State agencies should create, implement, and publish their internal administrative review process available to applicants who have received adverse licensure and employment decisions on the basis of criminal history to the extent feasible. The administrative review decisions should be made by committees comprised of no fewer than three staff members.

2. Illinois Employment Re-Entry Resource Center

   A permanent Office should be created within state government, which would serves as a resource for all state agencies for matters pertaining to licensure and employment re-entry issues and assist applicants with a criminal history. Each state agency would designate liaisons to work with the Office to resolve agency-specific hiring and licensure inquiries. The Office should be comprised of legal

and Human Resources staff who could provide guidance to ex-offenders, to request pertinent information from agencies, and answer procedural questions. ALTERNATE OPTION: The Illinois Employment Re-Entry Resource Center would serve as the central office responsible for the receipt, processing and tracking of requests for hiring and licensure administrative reviews. In this option, the IERRC makes the state agency accountable for following up to the applicant or central office. The applicant still has to fill out the paperwork in either scenario. This Resource Center is envisioned to handle hiring decisions as well as licensing decisions.

3. General Public Awareness

   The State should create a website tor webpage accessible to the public which clearly identifies all positions requiring licensures, requirements and restrictions. Each state agency should also be required to post the same information relative to their individual agency, including administrative review rights, in their Human Resources offices and on the agency's website and the Department of Central Management Services website.

4. Agency Nexus Review

   Within 90 days after the task Force Final report is issued, all state agencies should be required to initiate an internal review of all licensure requirements and determines whether existing restrictions are reasonably related to business necessity. Each agency shall report back to the Task Force all existing restrictions and corrective measures within 90 days after completing its internal review.

5. Employee training

   Agency staff members who are responsible for hiring and licensure decisions should receive annual training on the legal requirements for considering criminal history in the employment and licensure processes.

6. Fidelity insurance bonds

   Fidelity insurance bonds which shield employer's from losses involving employee dishonesty may be an option for applicants whose criminal background history is comprised of convictions involving any type of theft. At one point, the U.S. Department of Labor funded such bonds at no cost to the employer or worker, but the status of this funding is unclear and should be further investigated.

Rep. Flowers commended the Licensing work group for their recommendations and suggested that the Resource Center should be named "Illinois Re-entry Employment Resource Center", to emphasize the issue of re-entry into the employment sector.

Mr. Jones asked what the difference was between Recommendation #4 (Agency "Nexus" Review) and the State Hiring Work Group Recommendation #4 (Administrative Review Process). Ms. Jackson replied that the workgroup envisioned a more thorough agency-wide review of applicable statutes as it pertains to all jobs within the agency and its business necessity, not just a specific open position. If the agency uncovers restrictions that are not related to business necessity, then they would be required to articulate the corrective measures they will seek to rectify the restriction.

Ms. Riley of DCFS added that the proposed Agency Nexus Review would go beyond the generalized review of agency restrictions and hiring procedures that the Task Force is called to complete. The sheer number of restrictions is just too numerous for a detailed individualized assessment of each one. However, it should be assumed that each agency is in a better position to evaluate its own business necessity and current employment restrictions. The recommendation requires all agencies, not just those under the Personnel Code, to review, correct and report back on progress.

Mr. Boltz asked if this was not already being done in Personnel Code agencies when they determine the requirements of their positions. Ms. Riley replied that it was different, since that was at the initial point of establishing a position, and without a view toward criminal history-based restrictions.

Mr. Myrent asked if the recommendation was aimed at those positions that did not have a statute-based restriction, where the agency would have to draw the justification for a regulatory or policy-based restriction. Ms. Riley answered that it was the intention of the Licensing Work Group to include all positions with a criminal-history based restriction in the Agency "Nexus" Review, to provide the business necessity justification. The State Agency reports already submitted to the Task Force already enumerated any statutory bars, so the agencies would not be starting from scratch in this review.

Chairman Shuck questioned why the recommendation had the agencies report back to the Task Force, when the work of the Task Force ends June 30. Perhaps the language of the recommendation should be that agencies conduct this review on an on-going

basis, and work with the Legislature, their Administrative Rule-making process or Management policy team, whatever authorizes the restriction at the agency, to take any necessary corrective action. Ms. Riley asked how the Task Force could build in some accountability and timely follow-up into that recommendation? Chairman Shuck replied that the recommendation could suggest that the legislature enact a statute mandating such review. Mr. Enyia added that he was been working with IDES and their re-entry work on Illinois Work Net, and that might also be a promising agency to host the proposed Illinois Re-Entry Employment Center.

Human Rights Work Group Recommendations

Hearing no other questions or discussion about the Licensing Work group recommendations, Chairman Shuck called for a discussion of the Human Rights Work Group recommendations. The Chair of that work group, Mr. Villagrana, could not attend the meeting, so Chairman Shuck read through the recommendations, as posted on the IERTF website.

1. The workgroup met to review what, if any, impact conviction-related questions on the State employment application have on human rights in Illinois.

2. The workgroup reviewed the Illinois Human Rights Act, which specifically addresses arrest records, and examined the Equal Employment Opportunity Commission (EEOC) Guidance on Consideration of Arrest and Conviction Records in Employment Decisions.

3. Among the many protections of the Human Rights Act is the protection against discrimination based on race, as well as protection against employers inquiring or using arrest or criminal history information ordered expunged, sealed or impounded.

4. Because African Americans and Hispanics are incarcerated at rates disproportionate to their numbers in the general population, the Human Rights Work Group agrees with the EEOC in determining that this creates a disparate impact on employment.

5. It is recommended that the State of Illinois should go further than what is in the Human Rights Act and adopt the EEOC recommendation that “employers not ask about convictions on job applications, and that if and when they make such inquiries, they should be limited to convictions for which exclusion would be job-related for the position in question and consistent with business necessity”.

6. It is recommended that question 9 (b) be removed from the current CMS100 application, Any conviction inquiries should be made immediately prior to an offer of employment by a state agency.

7. The Human Rights Workgroup also urges the support of legislation that removes barriers to employment and protects civil rights for people with criminal records, such as those that extend the offenses for which criminal sealing is available, and those that more stringently define conditions under which convictions could be deemed a disqualifying factor in employment decisions.

Ms. Riley announced that she brought copies of the EEOC Guidance and Illinois State Police brochure on how to obtain criminal history record information.

Mr. Jones asked for clarification on the EEOC Guidance regarding inquiry into applicants' convictions. Mr. Enyia replied that the EEOC is referring to having a question on the application where the applicant must self-disclose conviction information, as opposed to the employer making an inquiry into the person's criminal history and considering whatever information comes back. Chairman Shuck added that this goes back to the earlier discussion, of what an employer does with the information received, and the fact that they should ignore erroneous or irrelevant information.

Mr. Jones asked if the question is removed from the CMS100, then does that EEOC recommendation fall next to the Request for Release of Information form? There is space for the applicant to provide self-disclosed conviction information on that form as well. Would that be considered an "inquiry"? Ms. Sarmiento replied that voluntary self-disclosure is different than an employer inquiry.

Ms. Jackson added that it is true that the applicant will likely fill out that form at the time of the interview, although it should not be included in the material accessible to the interviewer. It could also be filled out at the time the candidate is put into the EPAR system, as the one selected candidate. In either case, it is filled out post-application.

Mr. Myrent added that asking a broad self-disclosure question about prior convictions will likely bring to light convictions that are not relevant to the job, which the employer is being asked to disregard. Mr. Evans agreed, that the applicant is telling you something in advance of the employer checking, at a time when no job offer has been made.

Ms. Riley asked if the applicant would be penalized for not making a full disclosure, since they will not know which convictions are not related to the job they are seeking. Ms. Jackson added that some employers would consider that falsification. Mr. Evans asked what is the value of having the Yes or No question to begin with? Mr. Jones replied that in his opinion, the question was very valuable, and that if it was not considered part of the job application, then it would be consistent with the EEOC Guidance.

Ms. Sarmiento commented that DHS asks applicants to come to the interview with the CMS 284 already completed, even though it is not reviewed until after the interview scoring. To do otherwise would add considerable delay to the already lengthy hiring process. On the other hand, it may not be believable to an outsider that the form was

not used to weed out candidates prior to that, if it is already in-house, except that the management hiring decision needs to be justified in writing in case of a later challenge.

Ms. Sarmiento asked if the recommendation is to remove the question from form CMS 284? Mr. Jones replied that the recommendation should say that the form is not part of the application, and that the self-disclosure question should remain on the form.

Mr. Evans reiterated that there are two sides to consider in assessing the value of the question. On the one hand, it is sometimes difficult to ask someone to repeat all the difficult circumstances they went through after they have paid their debt to society. On the other hand, it is valuable to ascertain if the person is attempting to not own up to their past behavior.

Ms. Jackson added that there is also the problem of applicants being confused about their prior criminal justice involvement, making it difficult to ascertain if the person stated something in error or is attempting to falsify. Rep. Flowers asked whether there is a need for the person to explain their criminal history if the police report can do that instead, so as not to further intimidate ex-offender applicants into applying lest they should not correctly report their prior criminal history.

Mr. Evans asked if there could be an opportunity to have a discussion with the applicant about the circumstance of their criminal history once the information comes back from the official inquiry? Ms. Riley agreed that just keeping the Yes and No boxes, without the requirement for further explanation on the form, eliminates some of the opportunity for confusion about potential falsification. This is especially true of the course of many years, where crimes have been re-labeled, and applicants are not always aware of the legal definitions of “conviction” (as opposed to conditional discharge, for example). The charge of falsification then takes the applicant out of the pool of eligible candidates, so that the nexus of the particular history with the job opening is not even a factor. The nexus consideration comes later.

Mr. Jones asked if there would not be an administrative review process for an allegation of falsification that eliminated an applicant from the eligibility pool. Ms. Riley replied no one was saying that. Mr. Belcore of the Shriver Poverty Law Center added that the process of requiring applicants to recite their criminal history is asking too much, that it is asking for them to have a level of legal understanding that is unrealistic, given the complexity of the criminal justice system.

Mr. Jones was in favor of keeping the detailed self-report information on the CMS 284 in order to get information on out-of-state convictions. Ms. Riley commented that agencies that have statutory authority can already receive out-of- state criminal history information from the FBI response, based on fingerprints to assure the accuracy of the information. Chairman Shuck added that most agencies do not have such statutory power to obtain finger-print based national criminal history records, and choose not to do so because of the added time and expense. Ms. Riley further commented that if

obtaining criminal history information is so necessary to the business necessity of the hiring agency, then why would they rely on self-report rather than official records?

Rep Flowers pointed out that the EEOC guidance, in the discussion of disparate treatment and impact, states that a Title VII violation may occur if an employer treats criminal history differently for different applicants, and that an employer's neutral policy may have disparate impact as well. Ms. Riley replied that the EEOC is referring to the use of criminal history information throughout the hiring process, and its use as justification for an adverse hiring decision. Mr. Evans asked if employers have an obligation to ask about prior criminal history on the release form. Mr. Jones reiterated that it helps the employer in researching that the official criminal history information is matched to the correct person, where a fingerprint-based check is not conducted.

Ms. Jackson asked if there was a way to get at Mr. Jones' concerns by asking other identifying information on the CMS 284 form, such as last known address. Mr. Evans agreed that there should be another way to identify the person besides their criminal history. Mr. Jones reiterated that any means to get accurate criminal history information should be used, as long as it is after the initial application stage.

Ms. Riley went back to the issue of falsification. By asking the applicant to supply that information, the employer can claim falsification and eliminate the applicant from the pool of eligible candidates on that basis, not just use it as a means to correctly identify the individual.

Mr. Boltz commented that the way the applicant answers the self-disclosure questions would be indicative to him about their attention to detail, about how their work products may look, and other work-related issues. Ms. Riley countered that there is no assurance that the applicant filled out the form themselves, especially in circumstances where they are to bring the completed form with them. Mr. Boltz added that there is a strong public policy issue in having the applicant provide information that is publically available, and value in having the applicant provide the information first-hand. Mr. Evans reiterated that the purpose of the Task Force is to assure that no stigma is attached to applicants for state employment, and that fair opportunity is afforded to all.

Timeline for the final report

Chairman Shuck moved on to a reminder about the Final Report timeline, given that the meeting was already running over schedule. Voting on the final workgroup recommendation will be tabled until the next meeting on May 13, so that Task force members could have time to consider all the different points of view brought out in the discussions. Mr. Myrent added that it is imperative that all Task Force members attend the next scheduled meetings, as a quorum will need to be established to allow voting on the many issues still before the Task Force.

Given all the business yet to be covered in the next meeting, Chairman Shuck suggested that the meeting time be extended from 1:30-4:30 on May 13.

Mr. Evans asked if the work group recommendations will be revised in light of the meeting discussions. Mr. Myrent agreed that the actual recommendations need to be distilled down to language that can be voted upon, as concrete recommendations. He suggested that the work group chairs work with ICJIA staff to create those final recommendations.

Mr. Evans asked how the last issue discussed, about asking self-disclosure information on the CMS 284, will get resolved. Chairman Shuck replied that it will probably require more discussion at the next meeting, and that he would like to do more research on it as well. Mr. Jones added that perhaps the veracity issue of the self-disclosed information needs to be defined. Ms. Riley added that the issue of falsification should be narrowly defined to be focused on the purpose for self-disclosure of criminal history information on the Request for Release of Information form. Mr. Jones would like some options besides just keeping the question as is or removing it altogether.

Ms. Jackson stated that the work group chairs would be happy to do a final review of the revised recommendations made by Ms. Phillips and intern Nadia Shamsi, based on their notes from the meeting. Ms. Sarmiento stated that the State Hiring Work Group could meet again to discuss the self-disclosure issue.

Chairman Shuck stated that the last order of business was to constitute the Final report Work Group, which would be responsible for structuring the content of the final report. The first meeting of the group will be Thursday April 25th, at 10am, via videoconference between the JRTC in Chicago and the Stratton Building in Springfield. Ms. Jackson, Rep. Flowers, Mr. Evans, Mr. Jones and MSgt. Garner all volunteered for that work group.

Adjournment

With no other business, Chairman Shuck called for a motion to adjourn. Mr. Boltz so moved, and MSgt. Garner seconded. Hearing no objection, the motion passed by voice vote.