


*“Smart on Crime” Agenda to Promote
Public Safety While Addressing Occupational
Barriers for People with Criminal Records*



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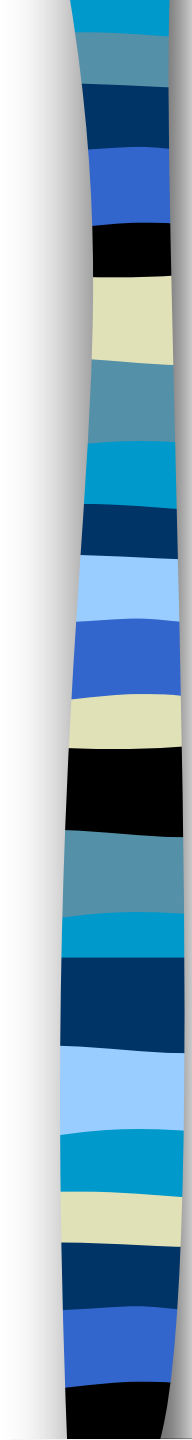
The Hard Facts

- Violent crime is down (16% from 1994-2003), but incarceration is up (24% from 1995-2003) to over two million.
- More than 630,000 people are released from U.S. prisons every year (four times more than 25 years ago).
- 3 out of 4 have served time for non-violent offenses, including drug offenses (33%) and property offenses (34%). 2 out of 3 non-violent offenders released are people of color.
- About 20% of adults (50-65 million) have a criminal record on file with the states (i.e., mostly serious misdemeanors and felony arrests or convictions).



The Challenge of “Reentry” Especially in Communities of Color

- In Illinois, 51% of those released from prison returned to Chicago (6 out of 77 Chicago communities accounted for 34% of returnees).
- In California, 34% of those released from prison returned to Los Angeles County.
- In Texas, 58% of those released from prison returned to 5 of 254 counties.
- In Maryland, 59% of those released from prison returned to Baltimore City.



The “Smart on Crime” Agenda: Increase Public Safety by Reducing Recidivism & Legal Barriers to Employment

“The American Bar Association urges states, territories and the federal government, in order to remove unwarranted legal barriers to reentry, to : . . . (3) limit situations in which a convicted person may be disqualified from otherwise available benefits, including employment, to the greatest extent consistent with public safety.”

Justice Kennedy Commission
Approved by ABA House of Delegates
August 9, 2004



Good (Union) Jobs: Key Element of the Strategy

- “[F]or the majority of men, job stability is central in explaining adult desistance from crime.”
- “For all crime types, job stability has a significant negative effect on the hazard rate [of re-arrest].”
- The “length of juvenile incarceration has the largest overall effect on later job security.”

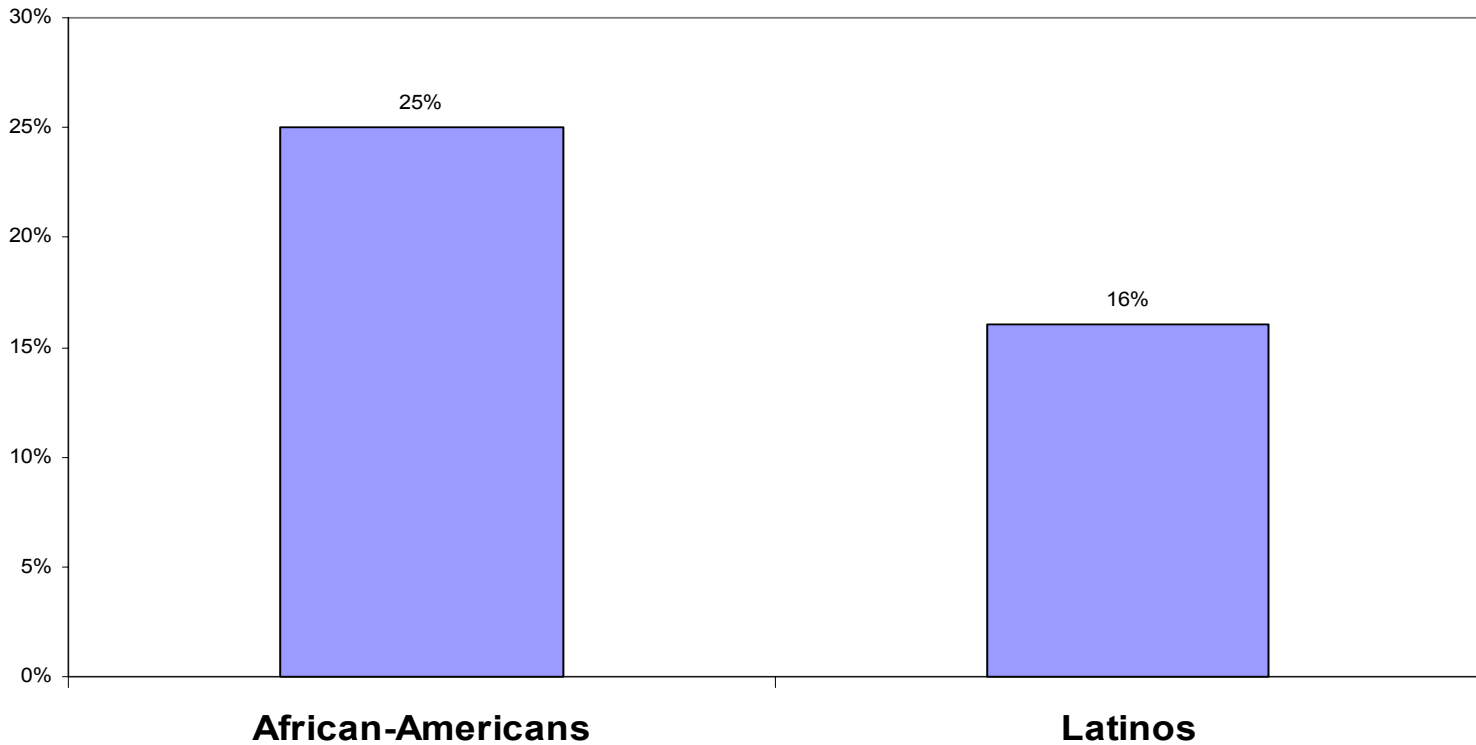
Sampson, Laub,
“Crime in the Making” (1993)
(longitudinal study, youth to age 45)



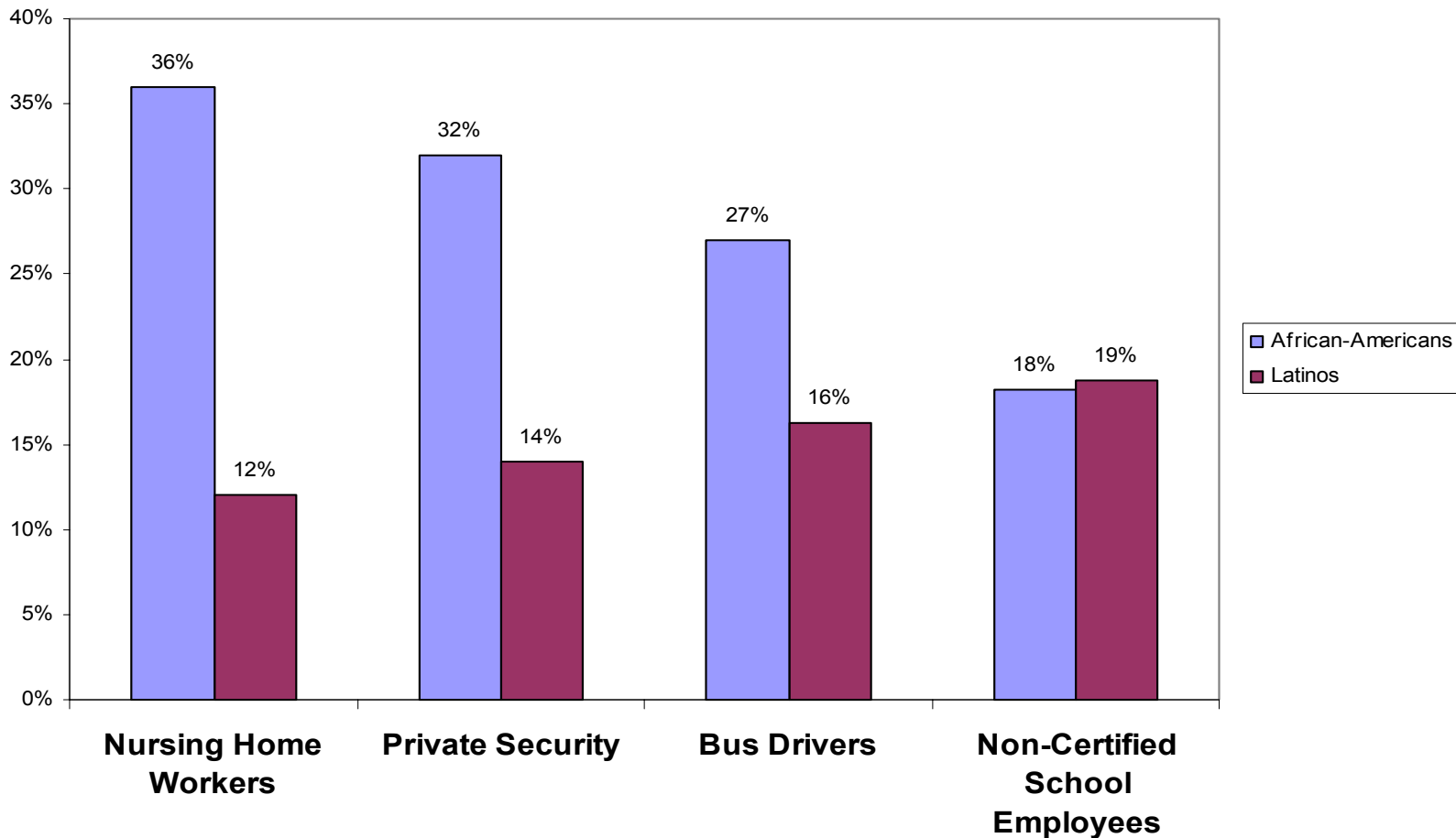
Trends in Laws Denying Employment to People with Criminal Records

- Since the late 1990's and September 11th, major expansion of state and federal laws denying employment in key entry-level jobs.
- Increasingly, the laws apply to current workers, not only new hires.
- Laws routinely impose lifetime felony disqualifications, even for non-violent drug offenses.
- Limited worker protections (e.g., individual waivers and limits on the use of incomplete arrest records).

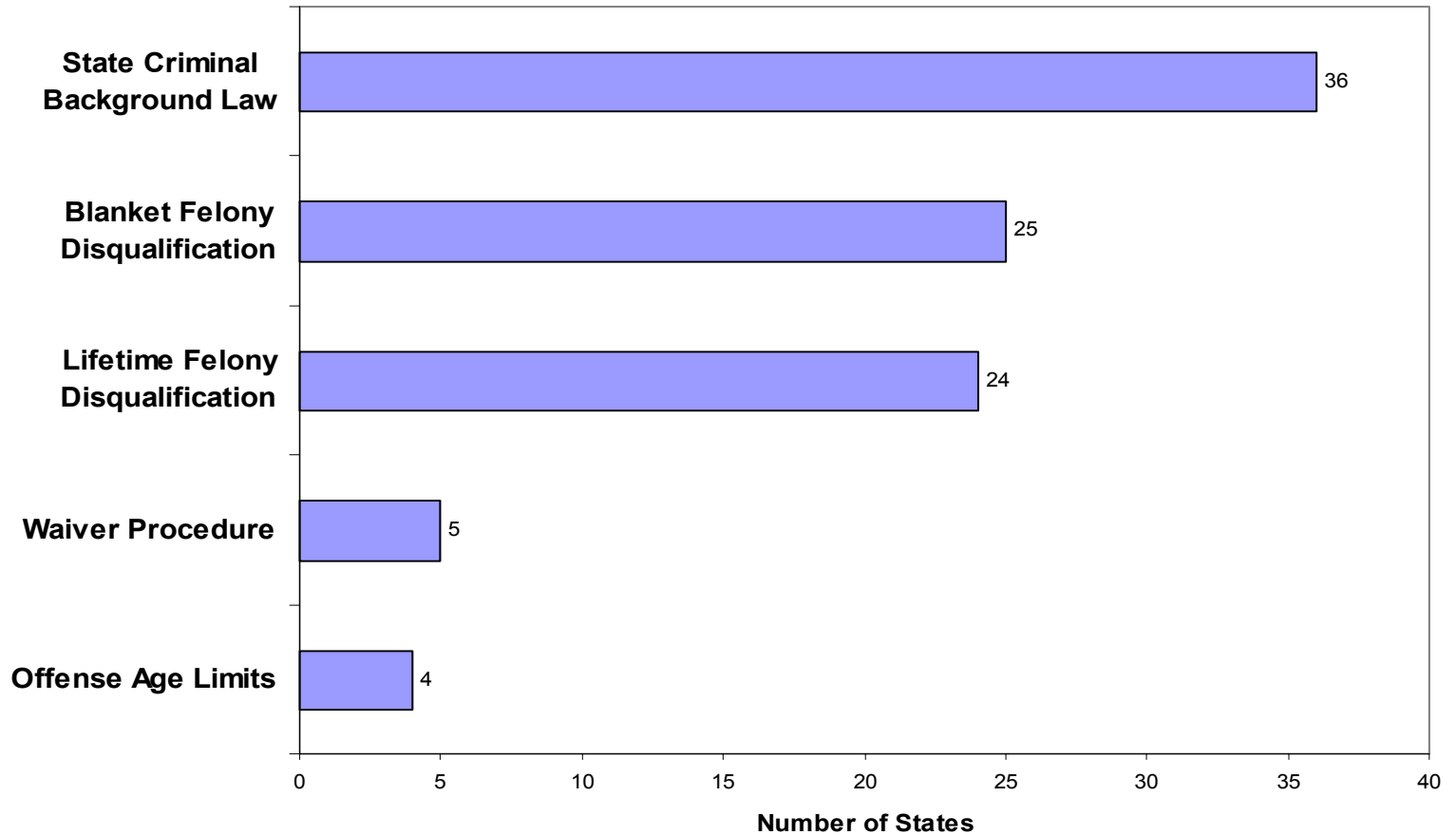
**Racial & Ethnic Profile of "At Risk" Industries Subject to
Laws Denying Employment for Criminal Records**
(Nursing Homes, Home Health Care, Home Care, Non-Certified School Employees,
Child Care, Trucking, Bus Drivers, Airport Services, Private Security),



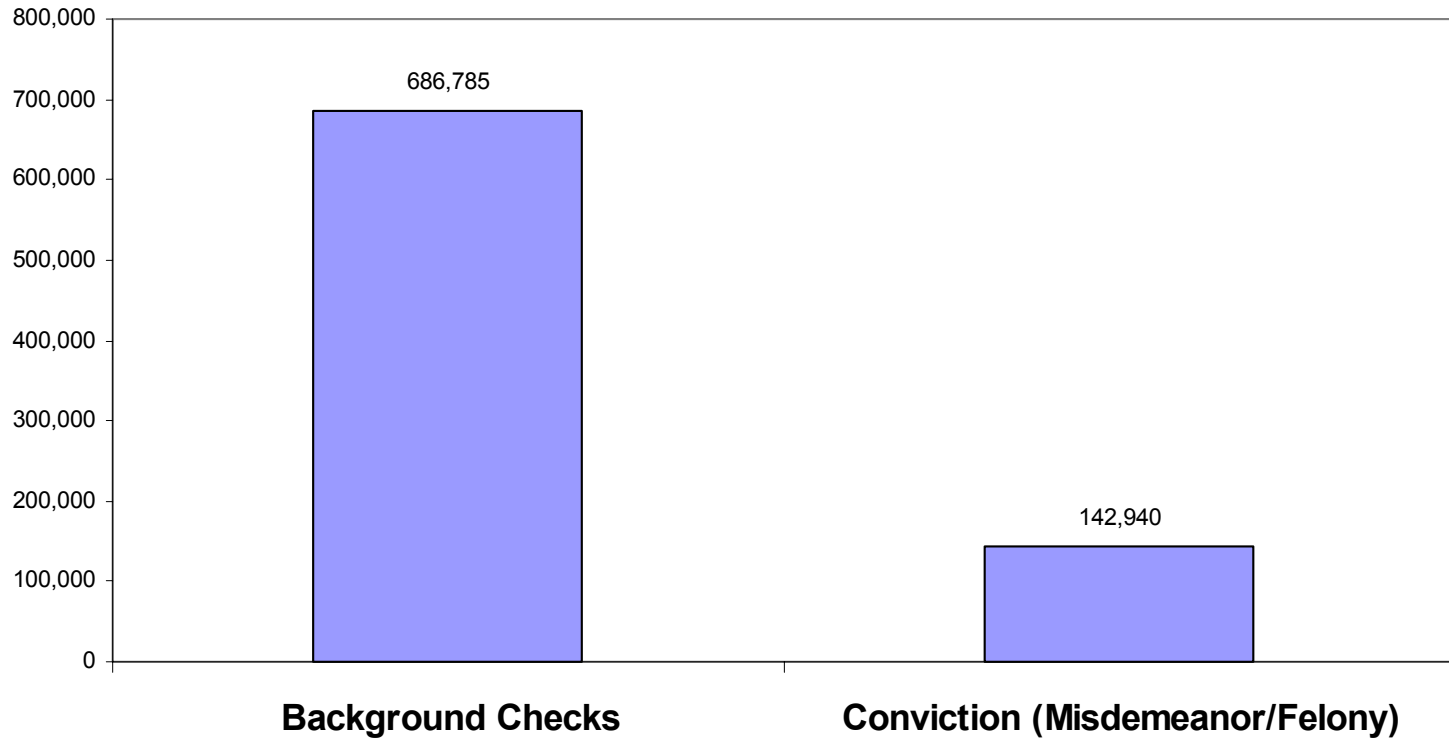
Racial & Ethnic Profile of Selected "At-Risk" Industries Subject to Laws Denying Employment for Criminal Records



Private Security Officers (Unarmed) Features of State Criminal Background Check Laws



**California "Community Care" Programs
Number of Background Checks (2001-2003)
*21% of Applicants with Any Criminal Record***





Critical Moment to Reform Federal Screening Laws

- Trend in Congress to impose national background checks on key industries regulated by the states, and circumvent states by providing FBI records directly to employers.
- Few worker protections in new federal laws, except the transportation security laws adopted since September 11th.
- Attorney General mandated by Congress (P.L. 108-458, Section 6403) to provide report and recommendations (by June 2005) on major issues regulating criminal background checks and employment, including “employee protections” and the “handling of criminal history information by an employer.”

Post-September 11th Transportation Security Laws

	Disqualifying Offenses	Age Limits on Offenses	Individual Waivers	Other
Airports Aviation & Transportation Security Act (2001)	-Felonies and some misdemeanors (including weapons possession). -Non-violent crimes (simple drug possession).	-10 years since last conviction	-No waiver process.	-Airport may not disqualify in cases of “no disposition.”
Port Workers Maritime Transportation Security Act (2002)	-Felonies only (regulations to list specific offenses)	-7 years since last conviction; or 5 years since release from prison	-Waiver authorized taking into account individual factors.	-Law prohibits access on the part of employers to the FBI records.
Truckers (Hazmat) USA Patriot Act (2001)	-Felonies only -Some non-violent felonies, including drug sales.	-“Interim” disqualifications = (5 to 7 year age limit) -Most serious offenses = “permanent” disqualifications	-Waiver authorized by TSA regulations	-Worker disqualified in cases of “no disposition” unless records produced in 45 days.

Federal Laws Regulating States & Specific Industries

	Scope of Coverage	National Criminal Background Check	Offenses Reported	Worker Protections
Private Security P.L. 108-458, Section 6402 (2004)	-Current employees and new hires with private security firms.	-States can request national background check. -Absent state law (or state “opt out”), employers can request FBI records search, with results reported to the <u>employer</u> for “fitness determination.”	-Absent state law, FBI produces all felony convictions and misdemeanors involving “dishonesty” or use of force.	-Only age limit is 10 years on misdemeanors. -No limit on age of outstanding arrests. -No waivers.
Nursing Homes, Home Health Workers P.L. 105-277, Title I, Section 124 (1998); P.L. 108-173, Section 307 (2004).	-New hires providing “direct patient care” in nursing homes and home health care agencies. -2004 10-state pilot program covers “direct patient <u>access</u> employees.”	-States can request national background check. -Employers can request an FBI records search, with results reported to the <u>employer</u> for “fitness determination.”	-No federal limit on offenses. *State pilot program adopts “mandatory” and “permissive” disqualifying offenses.	-No federal worker protections regulating disqualifying offenses, age of the offense, or waivers.
Child, Elder and Disabled Care Workers 42 U.S.C. Section 5119a (1998)	-All workers providing “direct” or “indirect” care for children, the elderly or the disabled (e.g., schools).	-States can request national background check. -Employers can request an FBI search, with the results reported to the <u>state</u> for a “fitness determination.”	-No federal limit on offenses.	-No federal worker protections.



Federal Reform Agenda:

Key Protections in Screening Laws

- Limit FBI criminal background checks to occupations that genuinely involve public safety and national security.
- Limit disqualifying offenses (especially non-violent drug offenses) that are not job related.
- Impose age limits on disqualifying offenses, eliminating unwarranted lifetime disqualifications.
- Waive in current workers. Allow for individual waivers from disqualifying offenses for new hires, providing opportunity to document record of rehabilitation.
- Impose age limits on use of incomplete arrest records (half the states report that 40% of the arrests in the past five years have no disposition).
- Require “fitness determinations” based on criminal records to be made by federal or state agencies, not individual employers.