


# The “Smart on Crime” Agenda: Increase Public Safety by Reducing Legal Barriers to Employment for People with Criminal Records



Congressional Black Caucus Foundation  
35<sup>th</sup> Annual Legislative Conference  
*After Prison, What?*  
*Reentry Strategies for Formerly Incarcerated Individuals*  
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Maurice Emsellem  
National Employment Law Project  
Oakland, California  
(510) 663-5700  
emsellem@nelp.org



# The Hard Facts

- More than 650,000 people are released from U.S. prisons every year (four times more than 25 years ago).
- 3 out of 4 served time for non-violent offenses, including drug offenses (33%), drug possession (18%) and property offenses (34%).
- 2 out of 3 non-violent offenders released from prison each year are people of color (48% African-American, 25% Latino).



## More People with Criminal Records, Combined with Increased Records Checks

- About 20% of adults (between 45-60 million) have fingerprints on crime files with the states (mostly felonies and serious misdemeanors, including arrests).
- In 2004, 80% of large employers conducted criminal background checks (up 29% since 1996).
- In 2002, for the first time, the FBI conducted more fingerprint-based background checks for civil purposes than for criminal investigations (5 million for employment purposes).



# The “Smart on Crime” Challenge: Increase Public Safety by Reducing 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.”

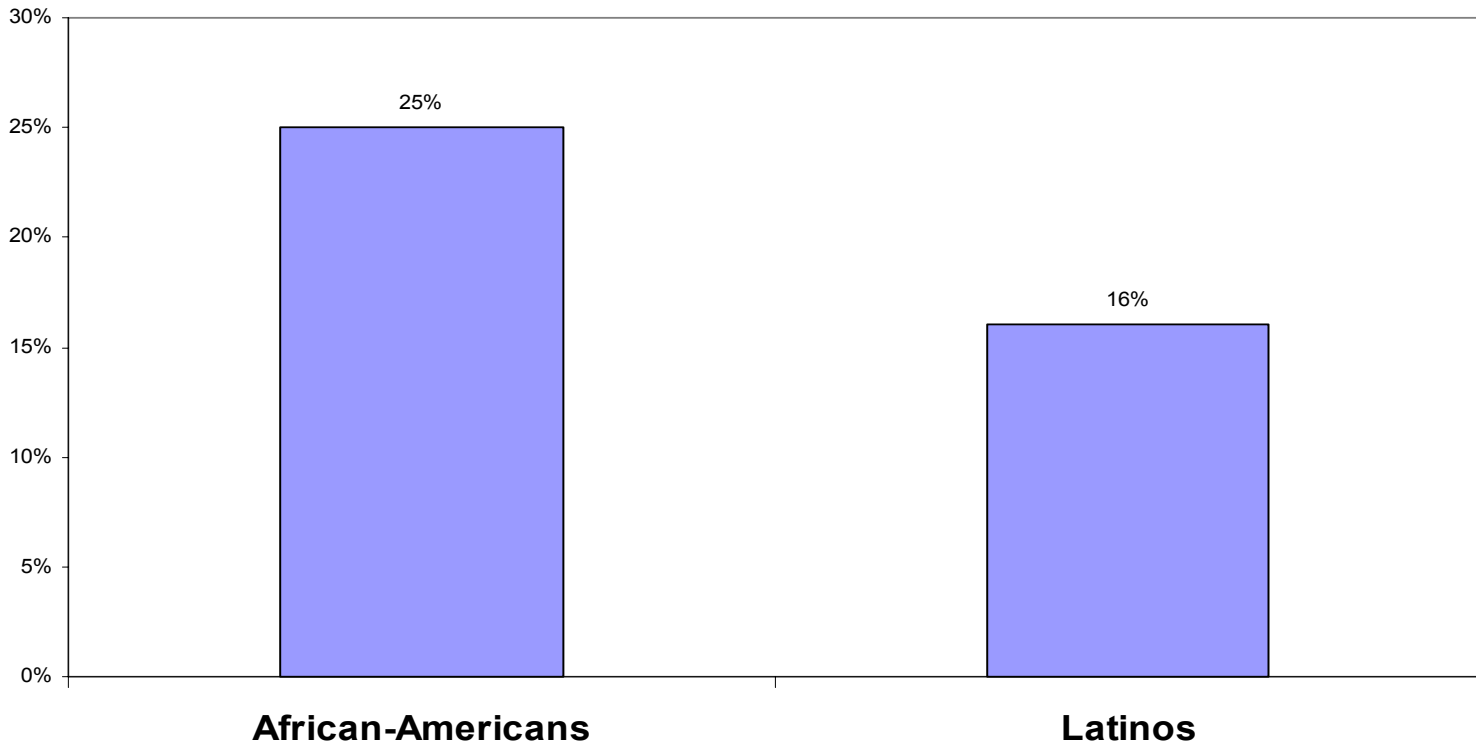
*Justice Kennedy Commission,  
Approved by ABA House of Delegates  
(August 9, 2004)*



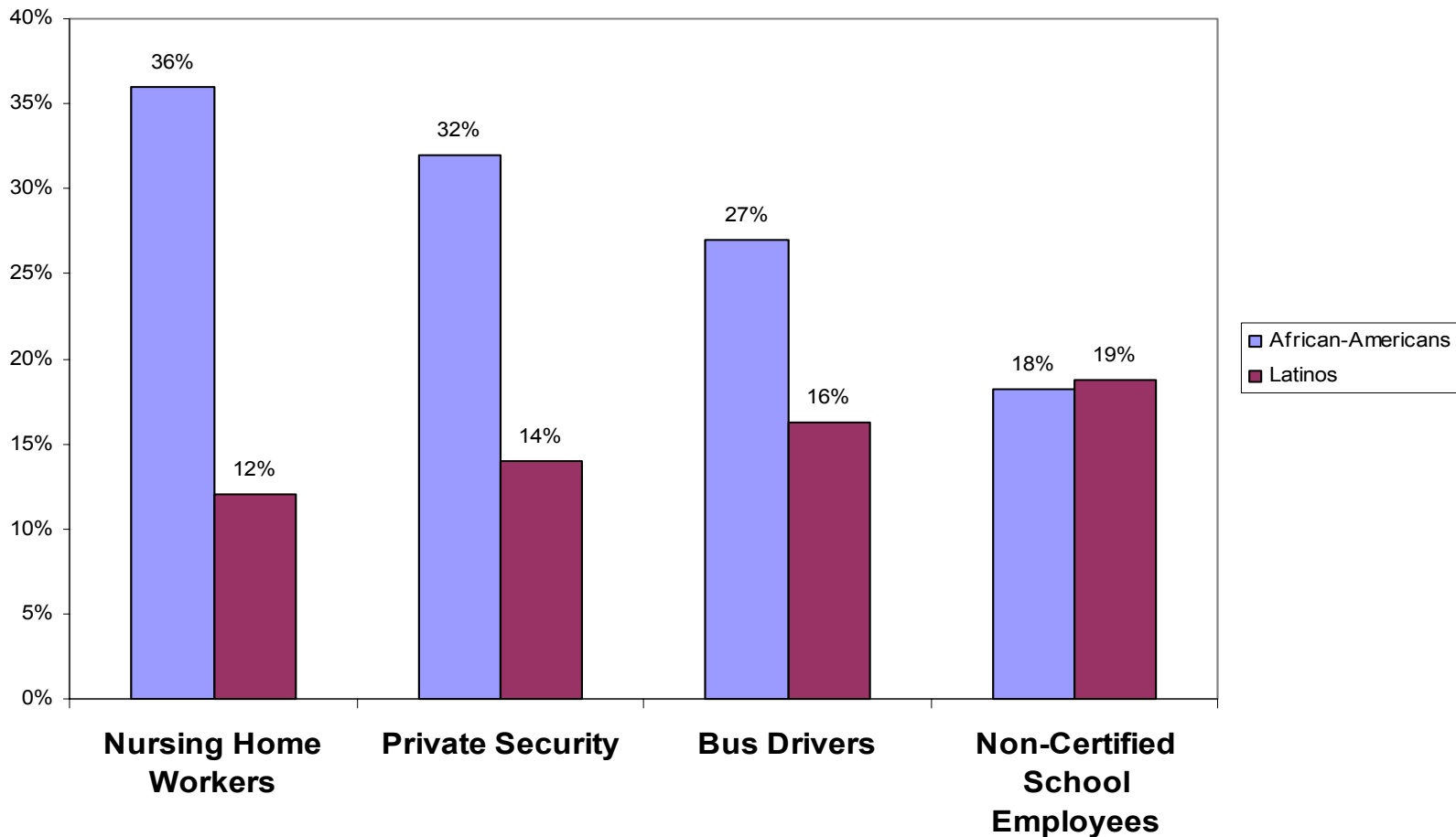
# Major Expansion of Laws Prohibiting Employment Based on Criminal Records

- Especially since September 11<sup>th</sup>, federal and state laws increasingly deny key entry-level jobs based on a criminal record with few protections related to age or seriousness of disqualifying offenses.
- Truck Drivers: USA Patriot Act requires background checks of nearly 3 million commercial drivers requiring hazardous material endorsements, disqualifying those with a felony record dating back 7 years, including drug offenses and crimes involving “dishonesty.”
- Private Security: 2004 Intelligence reform law authorizes private employers of security officers obtain FBI records and disqualify any current employee or new hire based on the entire felony and misdemeanor record (10-year limit on misdemeanors only).
- Nursing Homes: Federal pilot program extends criminal record screening laws beyond patient “care” employees to patient “access” employees, including cleaning and food service workers.

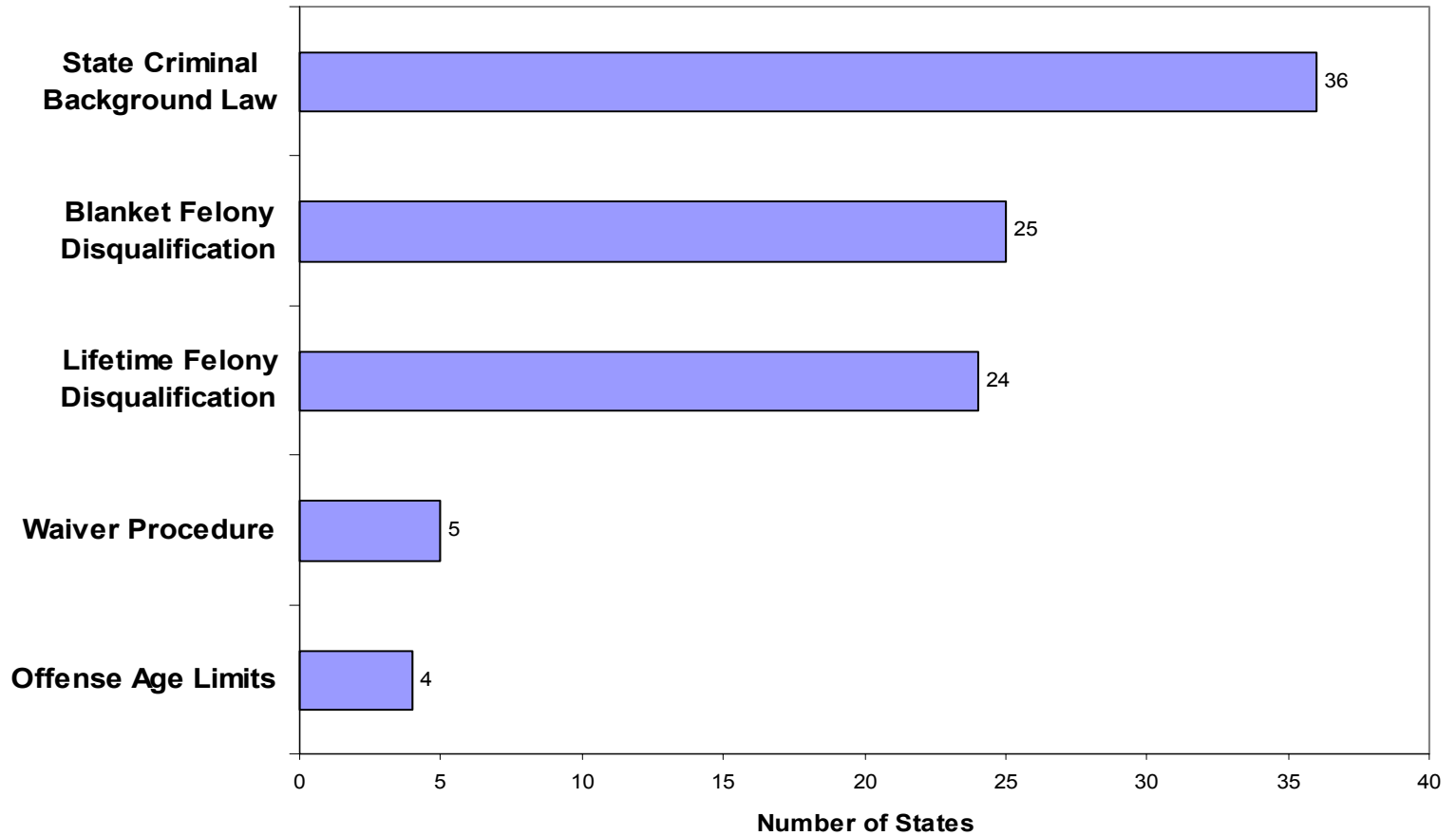
**Racial & Ethnic Profile of "At Risk" Industries Subject to  
Laws Denying Employment for Criminal Records**  
(Nursing Homes, Home Health Care, Home Care, Non-Certified School Employees,  
Child Care, Trucking, Bus Drivers, Airport Services, Private Security),



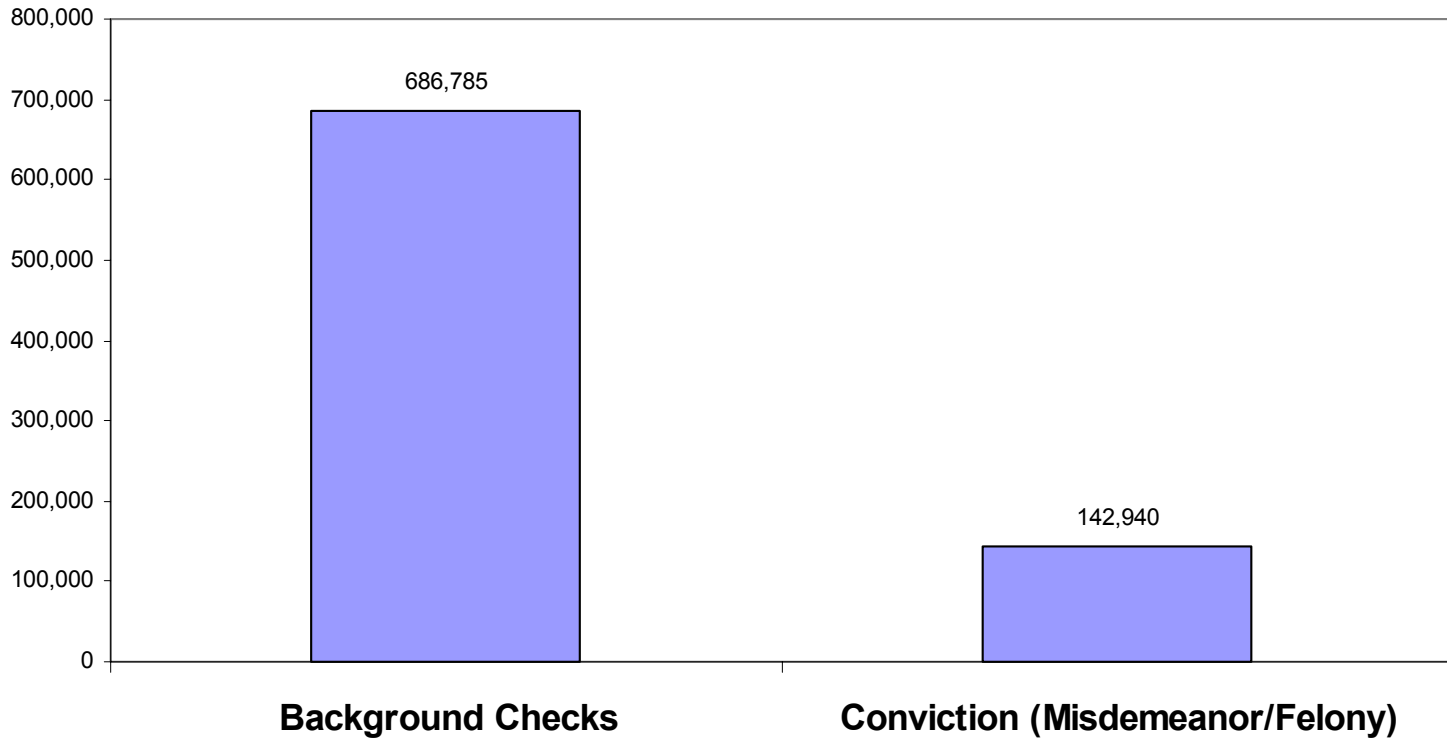
## Racial & Ethnic Profile of Selected "At-Risk" Industries Subject to Laws Denying Employment for Criminal Records



## 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 for Reform of Federal & State Screening Laws

- Significant absence of national standards regulating when and under what circumstances to require criminal background checks.
- Few worker protections in new federal laws, except the transportation security laws adopted since September 11<sup>th</sup>.
- Attorney General mandated by Congress (P.L. 108-458, Section 6403) to provide report and recommendations on major issues regulating criminal background checks and employment, including “employee protections.”



# Core Standards for Reform of Federal & State Screening Laws

- Limit criminal background checks required by law 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.

# Post-September 11<sup>th</sup> Transportation Security Laws

|  | <b>Disqualifying Offenses</b>  | <b>Age Limits on Offenses</b>  | <b>Individual Waivers</b>                                  | <b>Other</b>  |
|--|--|--|--|---|
| <b>Airports</b><br>Aviation & Transportation Security Act (2001)   | -Felonies and some misdemeanors (including weapons possession).<br>-Non-violent crimes (simple drug possession). | -10 years since last conviction  | -No waiver process.  | -Airport may not disqualify in cases of “no disposition.”                             |
| <b>Port Workers</b><br>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.                    |
| <b>Truckers (Hazmat)</b><br>USA Patriot Act (2001)                 | -Felonies only<br>-Some non-violent felonies, including drug sales.  | -“Interim” disqualifications = (5 to 7 year age limit)<br>-Most serious offenses = “permanent” disqualifications | -Waiver authorized by TSA regulations                      | -Worker disqualified in cases of “no disposition” unless records produced in 45 days. |