

---

# New Model State Policies Improve Employment Opportunities for People with a Criminal Record

---

Offender Reentry and Collateral Consequences  
National Conference of State Legislatures  
December 9, 2010

Maurice Emsellem  
Policy Co-Director  
National Employment Law Project  
Oakland, California  
(510) 663-5700  
[emsellem@nelp.org](mailto:emsellem@nelp.org)

---

# Overview

- New Realities of Criminal Background Checks for Employment
- Research Explores Limited Risks of Hiring People with a Criminal Record
- Model Standards Regulating Private Sector, Public Sector and Occupational Licensing
- Additional State Background Check Protections

---

# The New Realities of Criminal Background Checks for Employment

- Nearly one in three (72 million) U.S. adults has a criminal record that will show up on a routine criminal background check.
  - Proliferation of criminal background checks by private employers and new occupational screening laws adopted post-9/11.
  - Serious limits on reliability of private background checks and federal and state rap sheets.
  - Too few federal and state protections for workers subjected to criminal background checks for employment by private and public employers.
-



**Are you looking for a fun job in Hayward, CA?  
Manpower offer's a great seasonal opportunity @  
Bank of America LocBox Project!**

**Over 600 people are needed to fill:**  
◆ **Data Entry Operator positions**  
◆ **Proof Operators**  
◆ **General Clerical**

**All of our associates must be screened and hired  
immediately, so don't delay!**

**Qualified candidates must be able to pass:**

- ◆ **Background Check (no felonies or misdemeanors)**
- ◆ **Reference Check**
- ◆ **FBI Fingerprint Search**



**Manpower**  
500 12<sup>th</sup> street suite 123  
Oakland, CA 94607  
510-835-2424  
[oakland.ca-downtown@na.manpower.com](mailto:oakland.ca-downtown@na.manpower.com)



Home

Order

Order Lookup

Sample Record

Search ICC

Employee Check

FAQ

## InstantCriminalChecks.com Order Form

## Person You Are Investigating:

\*=Required Information

\*First Name:

Middle Initial:

\*Last Name:

Suffix (if any):

 (Jr, Sr, III)

Social Security Number:

 -  - 

\*Date of Birth:

[Month]  [Day]  [Year] Please Select Statewide, 3-State or National Criminal Check:**Statewide Criminal Check \$24.95** California multi-county (CA) [view state descriptions](#)

– Add 2 additional states for only \$20 –

**3-State Criminal Check \$44.95**2<sup>nd</sup>  –Select 2nd State \$20– 3<sup>rd</sup>  –Select 3rd State FREE– 

OR

**National Criminal Check \$59.95** National Criminal Check[view national description](#)

46 state national search plus Washington DC:

AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, VT, WA, WI, WV

All orders include a free [national sex offender search](#), [terrorist background report](#) & [most wanted check](#).

## Contact Information:

\*E-Mail Address:

Phone Number:

## Credit Card Information:

We Accept:



\*Name:

Enter name exactly as appears on your card

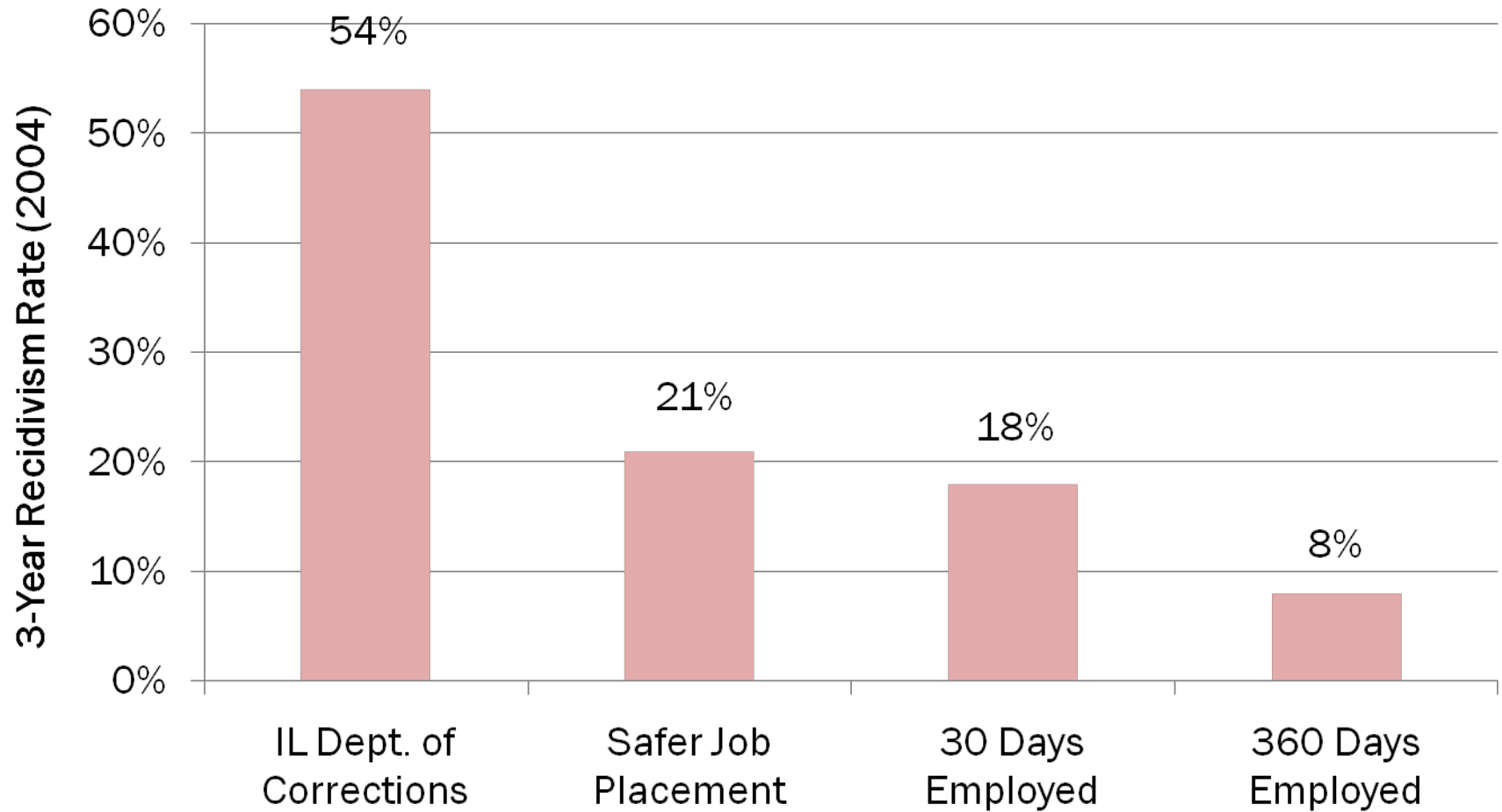
\*Type of Card:

[Select One] 

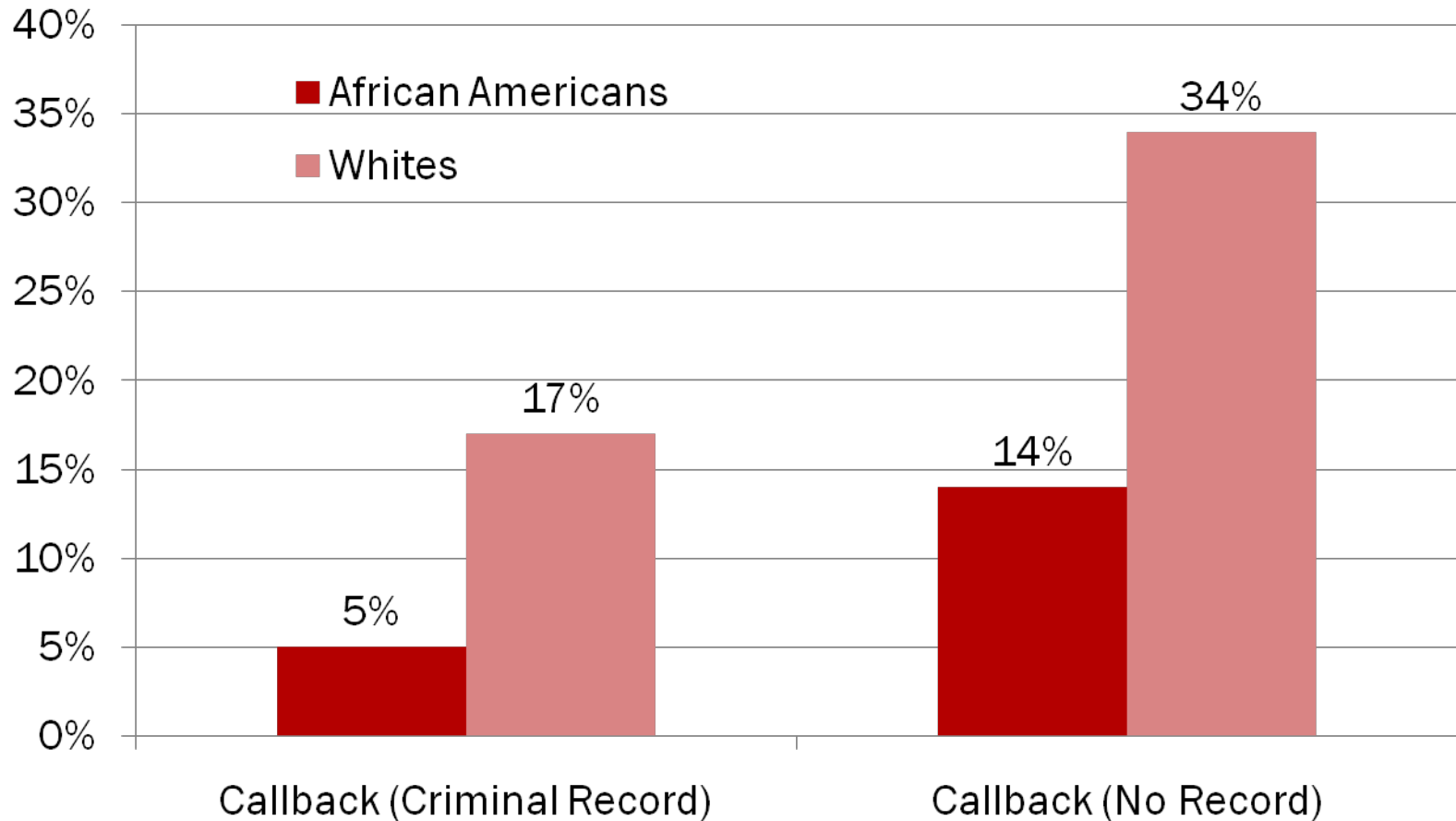
\*Card Number:

# Employment Significantly Reduces Recidivism

(Results of Chicago's Safer Foundation Job Placement for 1,600 People Recently Released from Prison)



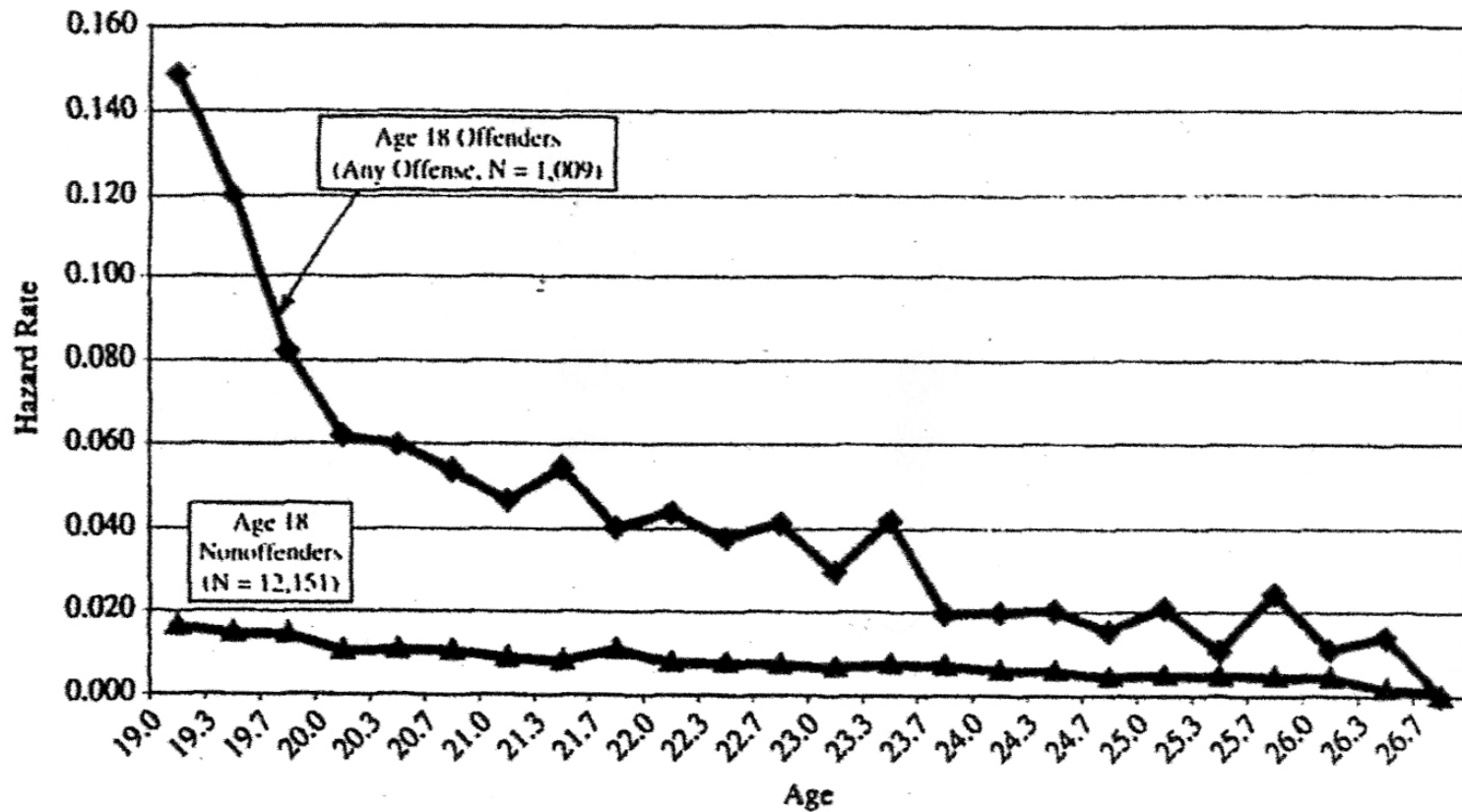
## Employment Testing Survey Documents Impact of a Criminal Record on Interview Callbacks, by Race (Devah Pager, "The Mark of a Criminal Record," American Journal of Sociology (March 2003))



# How Long Does Risk to Public Safety Last?

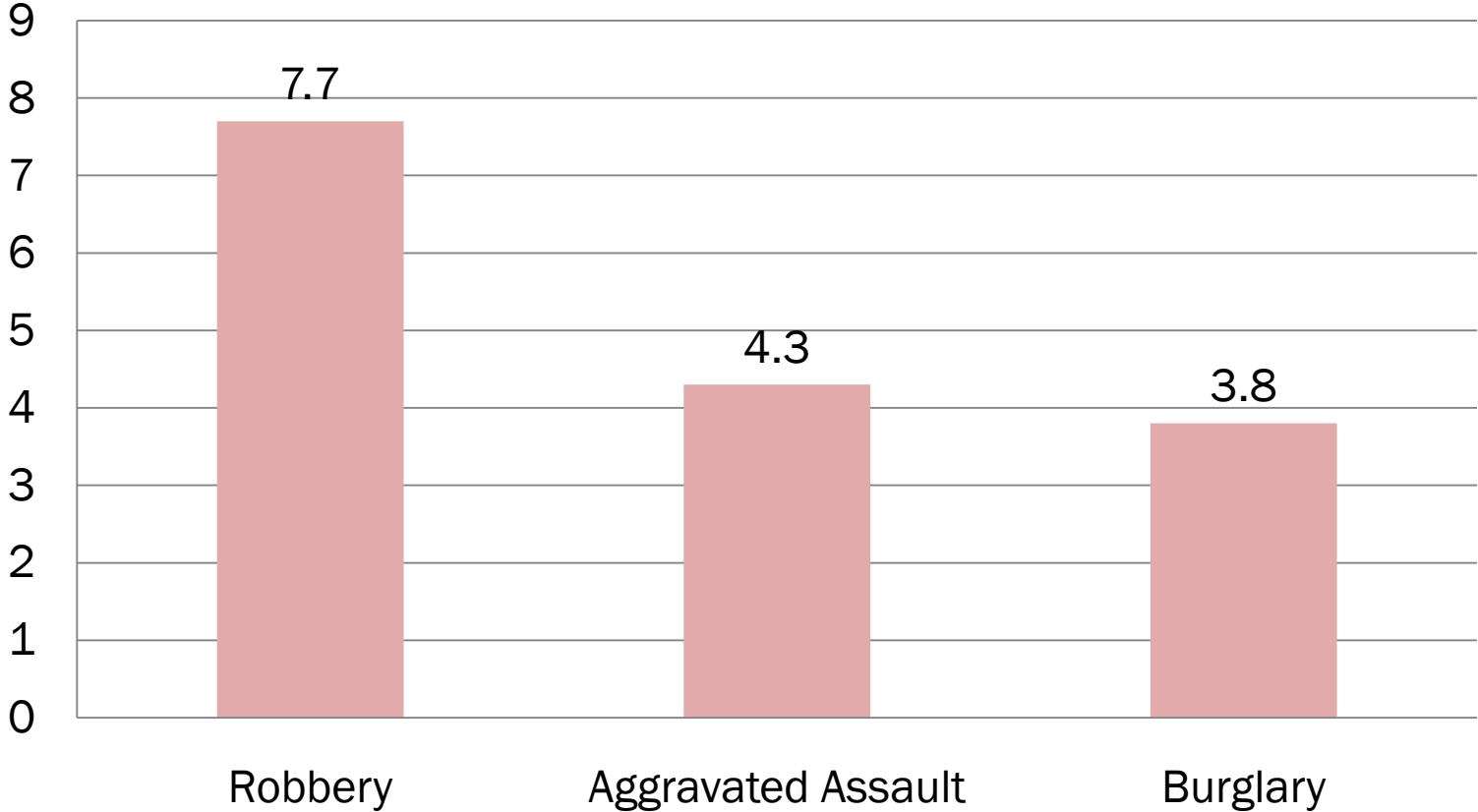
(Kurlychek, et al. "Scarlet Letters & Recidivism," 2006)

FIGURE 4. ARREST HAZARD RATE BY AGE





Number of Years it Takes for an Individual's  
Criminal Record to be "Redeemed"  
(Blumstein, *Criminology*, May 2009)



# Comparing U.S. and UK Worker Protections Regulating Criminal Background Checks

## ■ U.S. Protections

- Title VII of the Civil Rights Act of 1964 (Equal Employment Opportunity Commission guidance): Criminal background checks have a “disparate impact” on people of color, thus precluding blanket disqualifications and requiring the record to be “job related” taking into account the nature of the job, the age and seriousness of the offense.

## ■ UK Protections

- Rehabilitation Offender Act of 1974: Certain convictions (not including jobs involving vulnerable populations) deemed “spent” after a “rehabilitation period,” preventing employers from asking about the record for employment purposes (convictions involving prison term of more than 2.5 years cannot be considered “spent.”)

---

# “Smart on Crime”: Reduce Recidivism & Unwarranted 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 . . . 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

---

# Re-Entry Policy Council, Council of State Governments

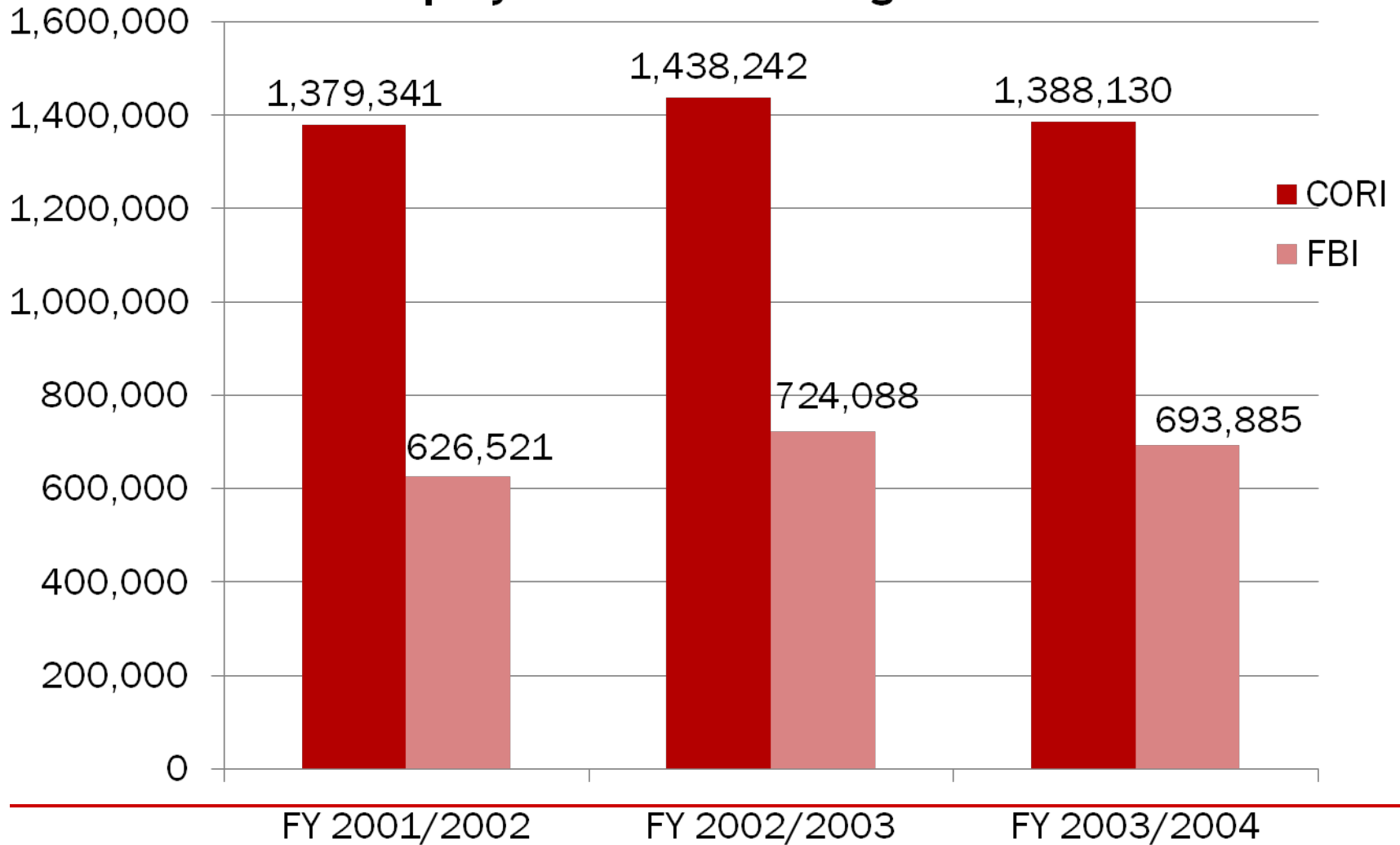
Recommends that federal and state officials conduct a “review of employment laws that affect employment of people based on criminal history, and eliminate those provisions that are not directly linked to improving public safety.”

Policy Statement 21

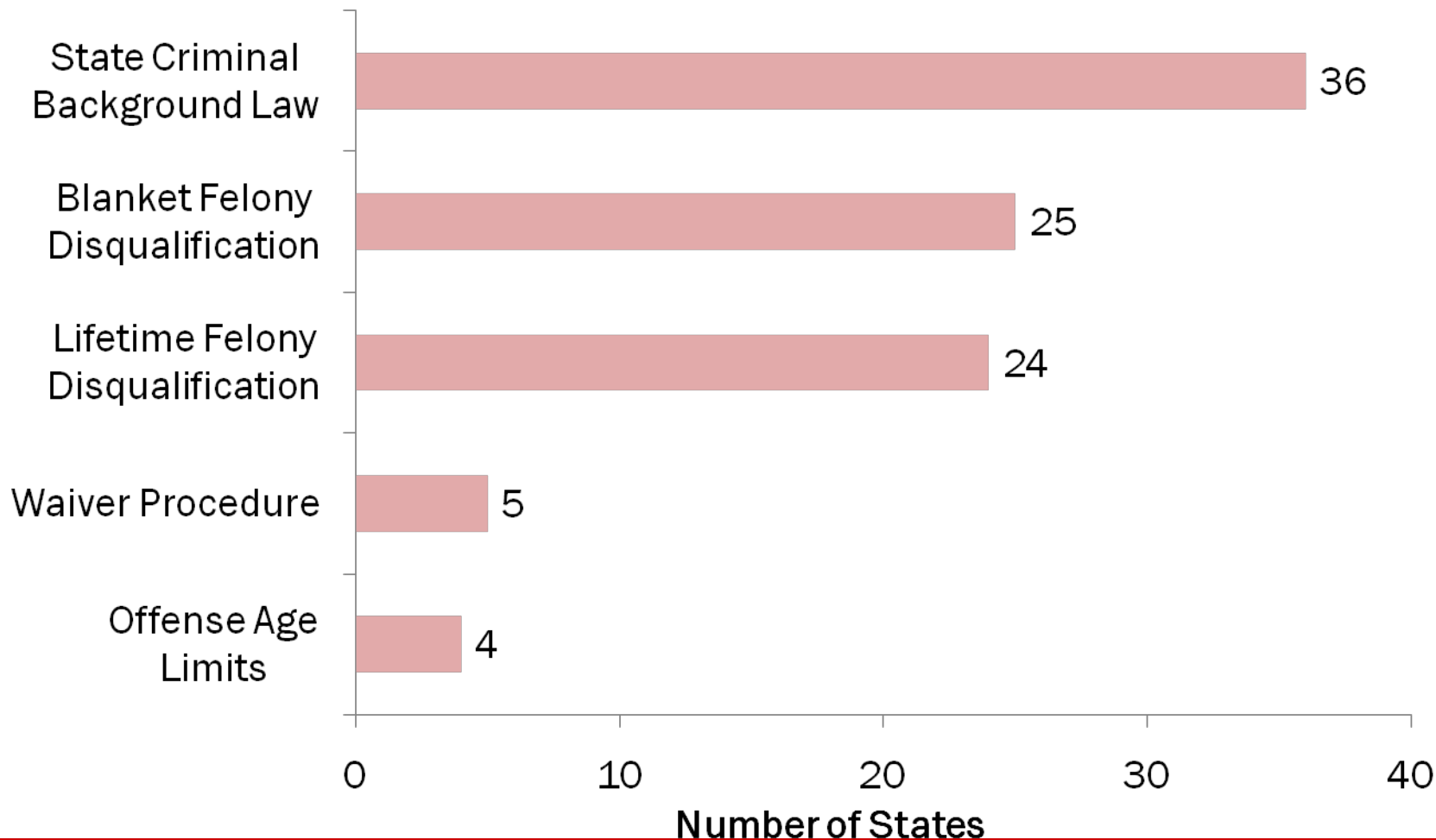
Creation of Employment Opportunities (Recommendation C)

Charting the Safe & Successful Return of Prisoners to the Community  
(2004)

## Nearly 1.4 Million Criminal Record Checks (Fingerprint-Based) Under California Employment & Licensing Laws



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



---

# Key Standards for Reform of State Occupational 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.
- Allow for individual waivers from disqualifying offenses, thus providing opportunity to document rehabilitation.
- Clean-up incomplete state and federal rap sheets, and provide a copy of the record to worker to verify and appeal its accuracy.

---

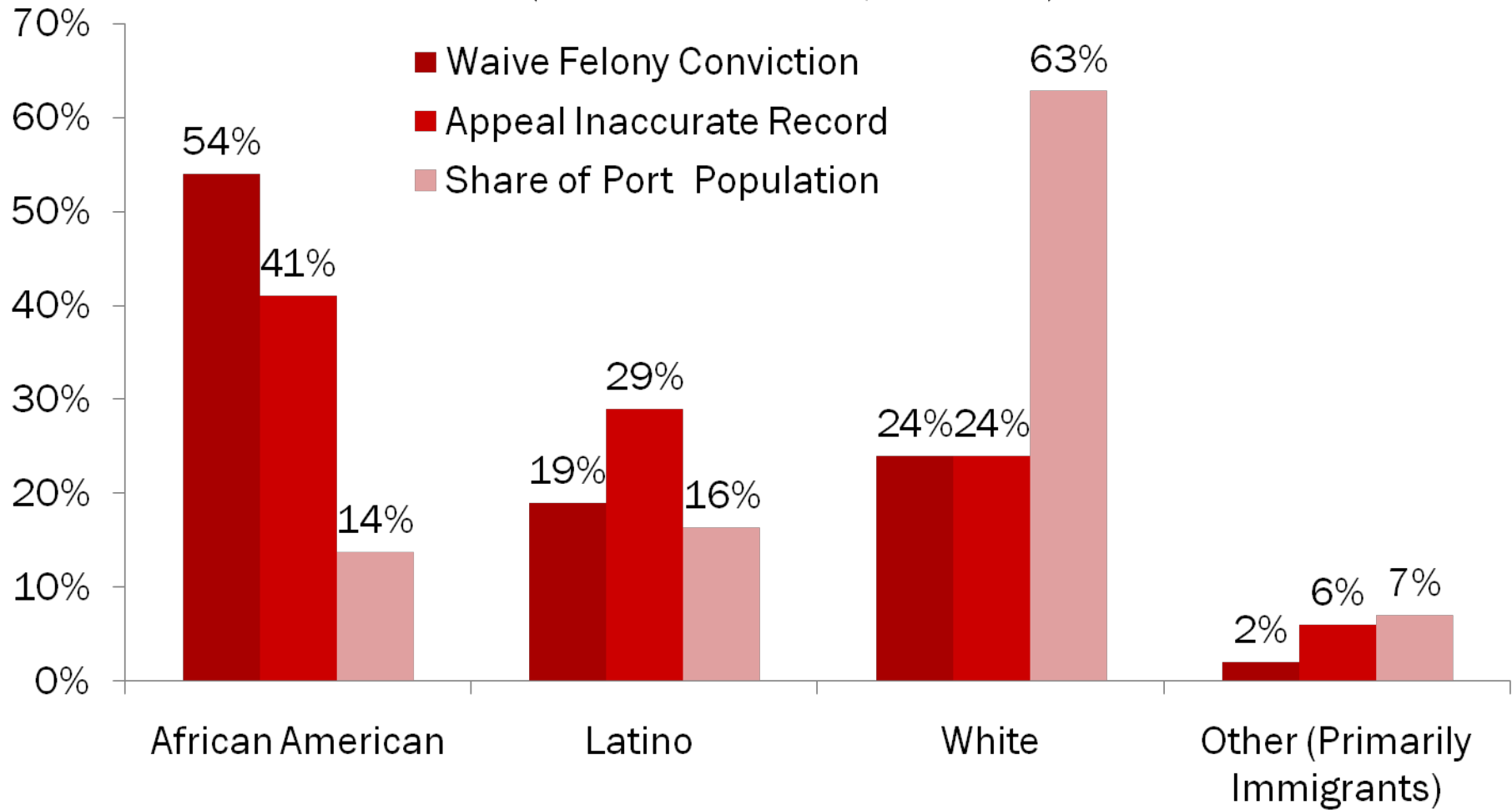
# Port Worker Security Program

## Model Worker Protections

- Program Goals: Post-9/11 maritime security law required two million port workers to be screened by TSA for “terrorism security” risks and credentialed to work at the ports
  - Age Limits & Narrowly Tailored Disqualifications: Federal law limits disqualification to specific felony convictions more than 7 years old (or released from incarceration in past 5 years), not including drug possession
  - Appeal of Faulty Records: In writing, TSA isolates the specific disqualifying offense, allowing the worker 60 days to produce documentation challenging its accuracy
  - Waiver to Prove Rehabilitation: TSA “waiver” procedure allows workers to establish rehabilitation (based on employment and education record, drug treatment and statements of support from the community)
-



## Favorable Impact of TSA's Port Worker Appeal and Waiver Protections on People of Color (NELP's Docket, N=287)



---

# Government Employers Pave the Way for the Private Sector

“Implementing this new policy won’t be easy, but it’s the right thing to do . . . . We cannot ask private employers to consider former prisoners unless the city practices what it preaches.”

Chicago Mayor Richard M. Daley  
January 24, 2006

# New State “Ban the Box” Protections

State	“Ban the Box” Coverage	Screening Criteria	Other Protections
<b>California</b> (2010), Executive Policy	Public Employment		
<b>Connecticut</b> (2010), HB 5207	Public Employment/Licensing Boards (checked at conditional offer of employment)	Must consider nature of offense and relationship to job, rehabilitation, age of offense	Written statement of reasons for rejection.
<b>Hawaii</b> (1998), HRS Sections 378-2, 378.2.5	<u>Private</u> and Public Employment (checked at conditional offer of employment)	Criminal record must bear a “rational relationship” to the job	Employers may not consider felonies over <u>10 years</u> (excluding periods of incarceration)
<b>Massachusetts</b> (2010) Chap 256 of Acts 2010	<u>Private</u> and Public Employment (checked when finalists selected)		Employers may not consider felonies over <u>10 years</u> and misdemeanors over <u>5 years</u>
<b>Minnesota</b> (2009) Minn.Stat., Section 364, et seq.	Public Employment (checked when selected for interview)	Requires convictions to be “job related” for public employment and licensing purposes, and must consider rehabilitation	Cannot consider arrest that did not lead to conviction, expunged offenses and misdemeanors not involving jail time
<b>New Mexico</b> (2010) N.M. Stat. Section 28-2-3	Public Employment (checked when finalists selected)	Conviction must be “substantially related” to the job	

---

# Ban the Box a “Win-Win” Proposition for Public Employers

- In Minneapolis, nearly 60% of applicants with a potential disqualifying record were hired in 2007, compared to 5.7% under prior policy.
- Considering the criminal record after a conditional offer of employment reduced resources devoted to employment screening by 28%.

---

# Other Selected State Protections

- “Uniform Collateral Consequences of Conviction Act” requiring states to document and harmonize state laws that impose collateral consequences (approved by Uniform Law Commission, July 2009)
  - Expand expungements to most first felony offenders (Hawaii, Michigan, New Jersey, Ohio, Rhode Island)
  - Seal felony drug possession convictions after 4 years without additional offenses (Illinois)
  - Adopt and expand “certificates of relief” to cover drug and other appropriate felony offenses (Illinois)
  - Clarify that workers can deny expunged records on job applications (New Jersey)
  - Provide hiring incentives for private employers, including tax credits, bonding (California)
-