

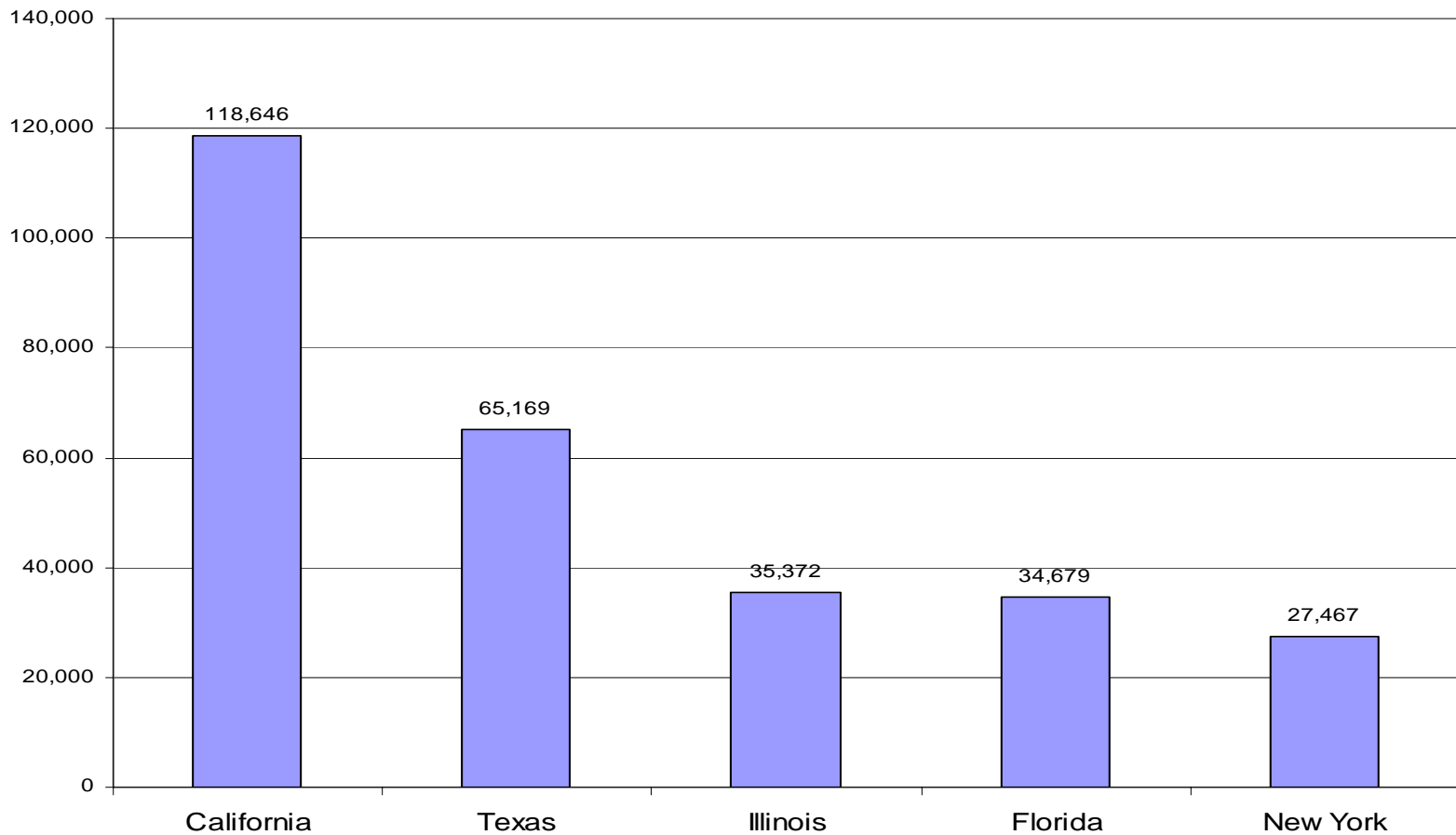
*“Smart on Crime” Agenda:
Reduce Recidivism in California
By Addressing Occupational Barriers
for People with Criminal Records*



Hearing Before the California Legislature
Assembly Business & Professions Committee
November 1, 2005

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**California's "Reentry" Challenge:
Nearly Double the Prisoners Released Compared to
Any Other State (19.4% of Nation's Total)**
(Bureau of Justice Statistics, 2003)





Bi-Partisan “Smart on Crime” Movement: 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

- Recommending 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.*” (Emphasis added).

Policy Statement 21

Creation of Employment Opportunities (Recommendation C)

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



Second Chance Act of 2005 (S.1934/H.R.1704)

- Broad bi-partisan reentry legislation requiring states to make “recommendations with respect to laws, regulations, rules and practices that: disqualify former prisoners from obtaining professional licenses or other requirements necessary for certain types of employment, and that hinder full civic participation” (Section 3(f)(4)(A)).

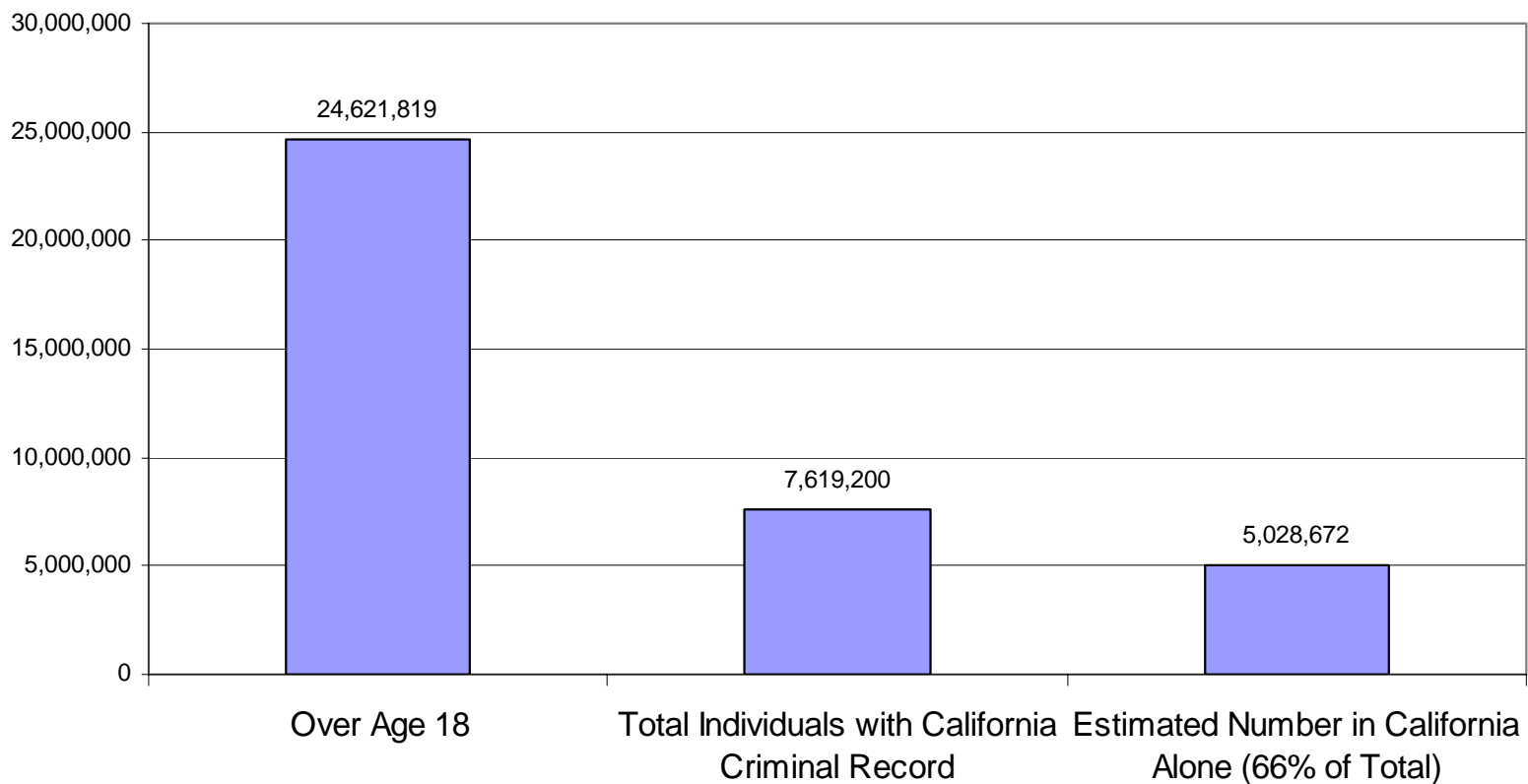


Access to Good Jobs Critical to Successful Reentry Strategy

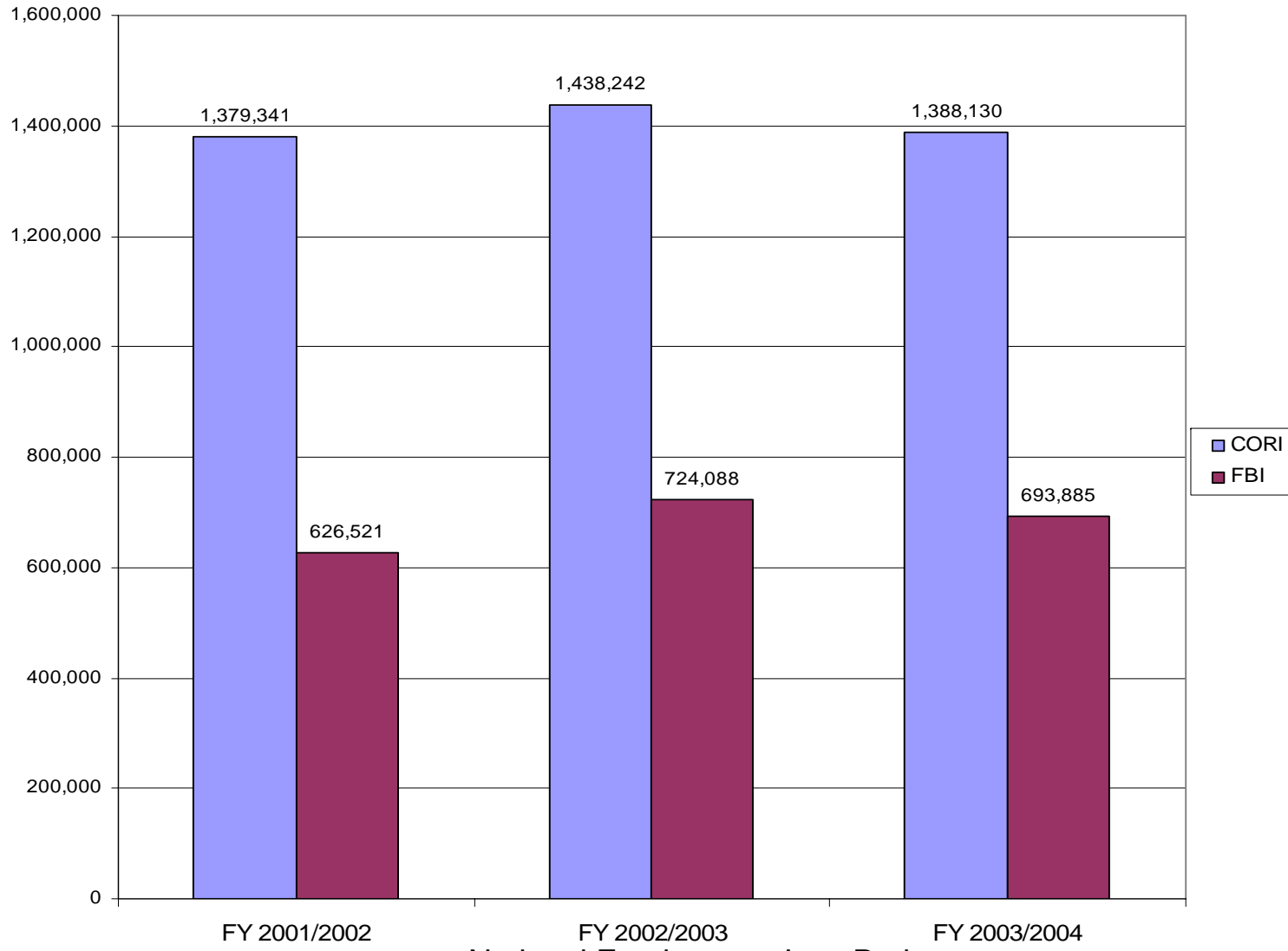
- “[F]or the majority of men, job stability is central in explaining adult desistance from crime.”
- “For all crime types, job stability has a significant negative effect on the hazard rate [of re-arrest].”
- The “length of juvenile incarceration has the largest overall effect on later job security.”

Sampson, Laub,
“Crime in the Making” (1993)
(Longitudinal Study, Youth to Age 45)

About One in Five Adult Californians Possess a Criminal Record on File with the State
(Bureau of Justice Statistics, 2001; U.S. Census 2000)

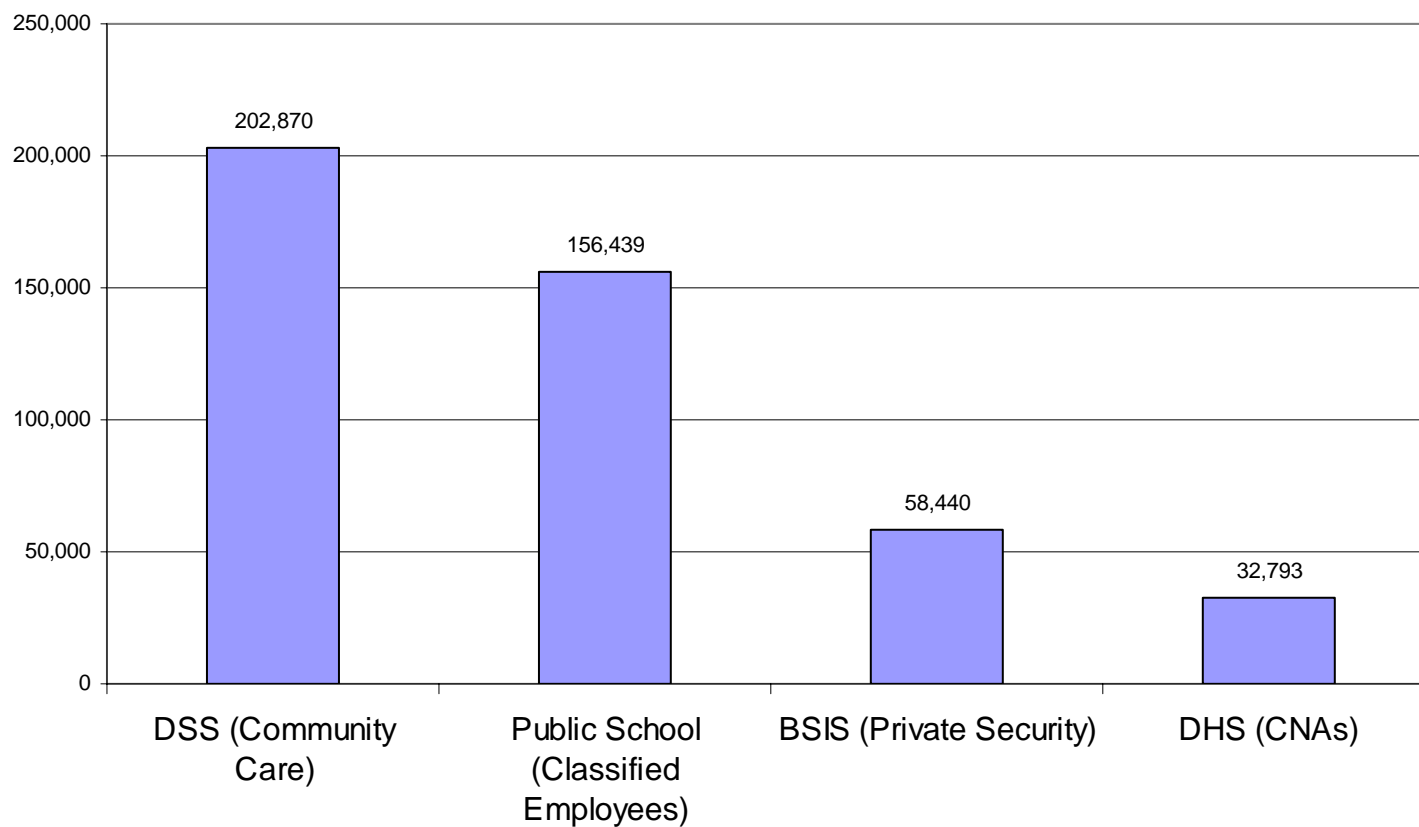


Nearly 1.4 Million Criminal Record Checks (Fingerprint-Based) Under California Employment & Licensing Laws



National Employment Law Project
www.nelp.org

**Volume of Criminal Record Checks for Major Areas
of Entry-Level Licensing & Employment
(Fiscal Year 2003/2004)**





Key Strengths of the Law Regulating Licensing & Employment by the Department of Consumer Affairs (DCA)

- “Substantially Related” Standard: Disqualifying “crimes or acts” must be “substantially related to the qualifications, functions or duties” of the job (defined more specifically by each board).
- Rehabilitation Evaluated: Each board must develop criteria to evaluate rehabilitation, taking into account all evidence furnished by the individual.
- Procedural Protections: Those denied receive a statement of reasons, a right to a hearing, and notice indicating when the individual can reapply (including the board’s criteria for rehabilitation).

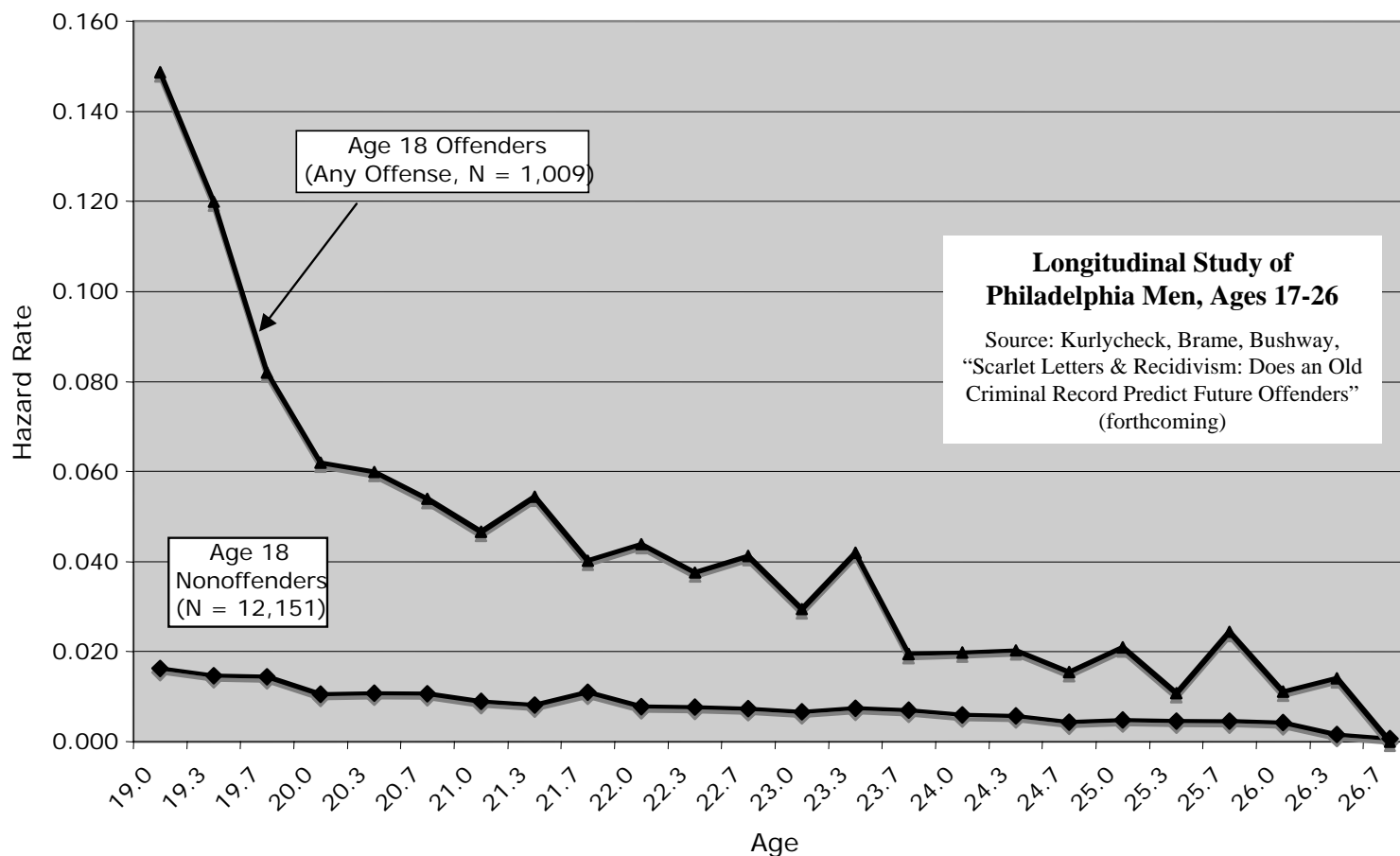


Key Gaps in the DCA Law that May Overly Limit Access to Employment

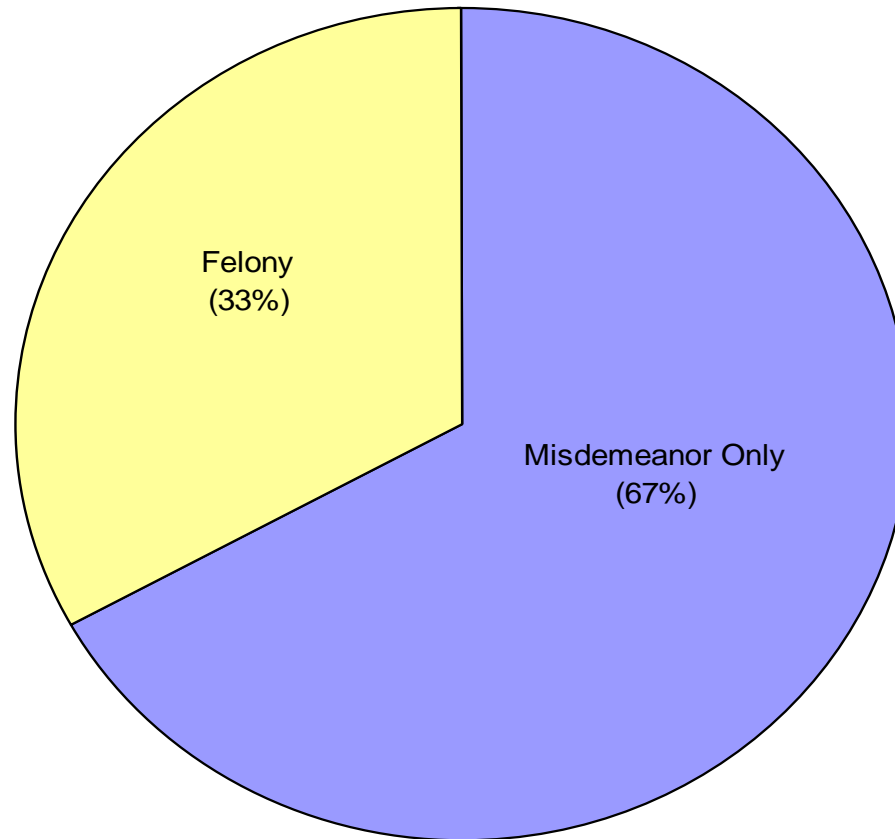
- No maximum age limit on disqualifying acts and offenses.
- No outside limits on disqualifying offenses, thus including all felonies and all misdemeanors.
- Disqualifying offenses not limited to convictions, thus including “any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.” (Section 480(a)(3)).
- Expunged records expressly included as potentially disqualifying offenses. (Section 480(a)(2)).
- No special waiver procedure to review evidence of rehabilitation (generally requires administrative appeal after denial of license).
- Individual’s criminal record not made automatically available after denial to expedite appeal and correction of records.

Chances of Re-Arrest (“Hazard Rate”) Declines Dramatically After 3-4 Years of No Arrests

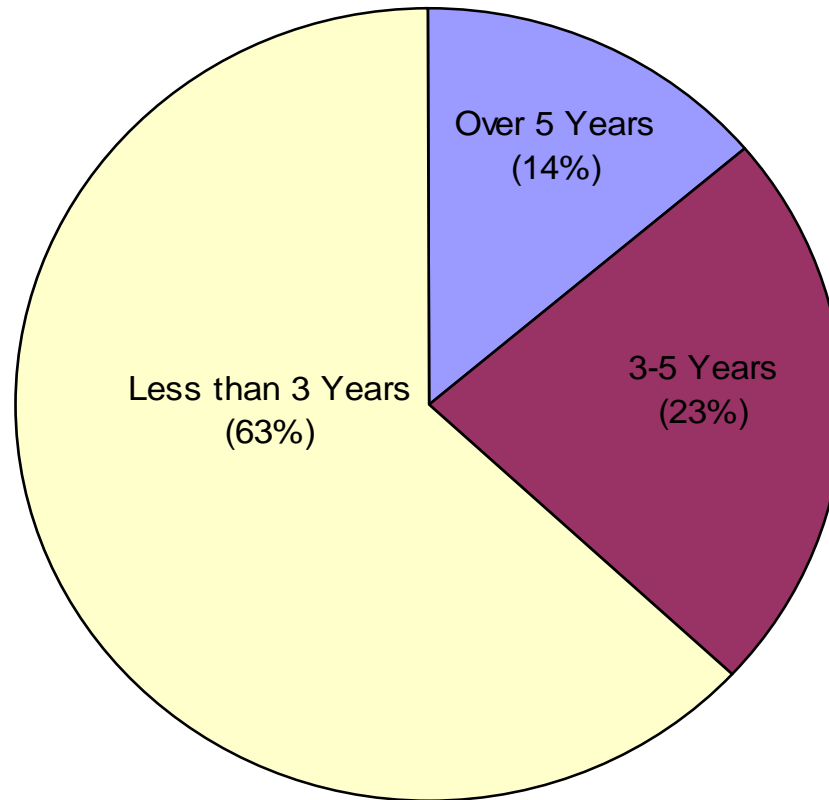
(After 7-8 Years, No Difference in Rate Compared to Those Never Arrested)



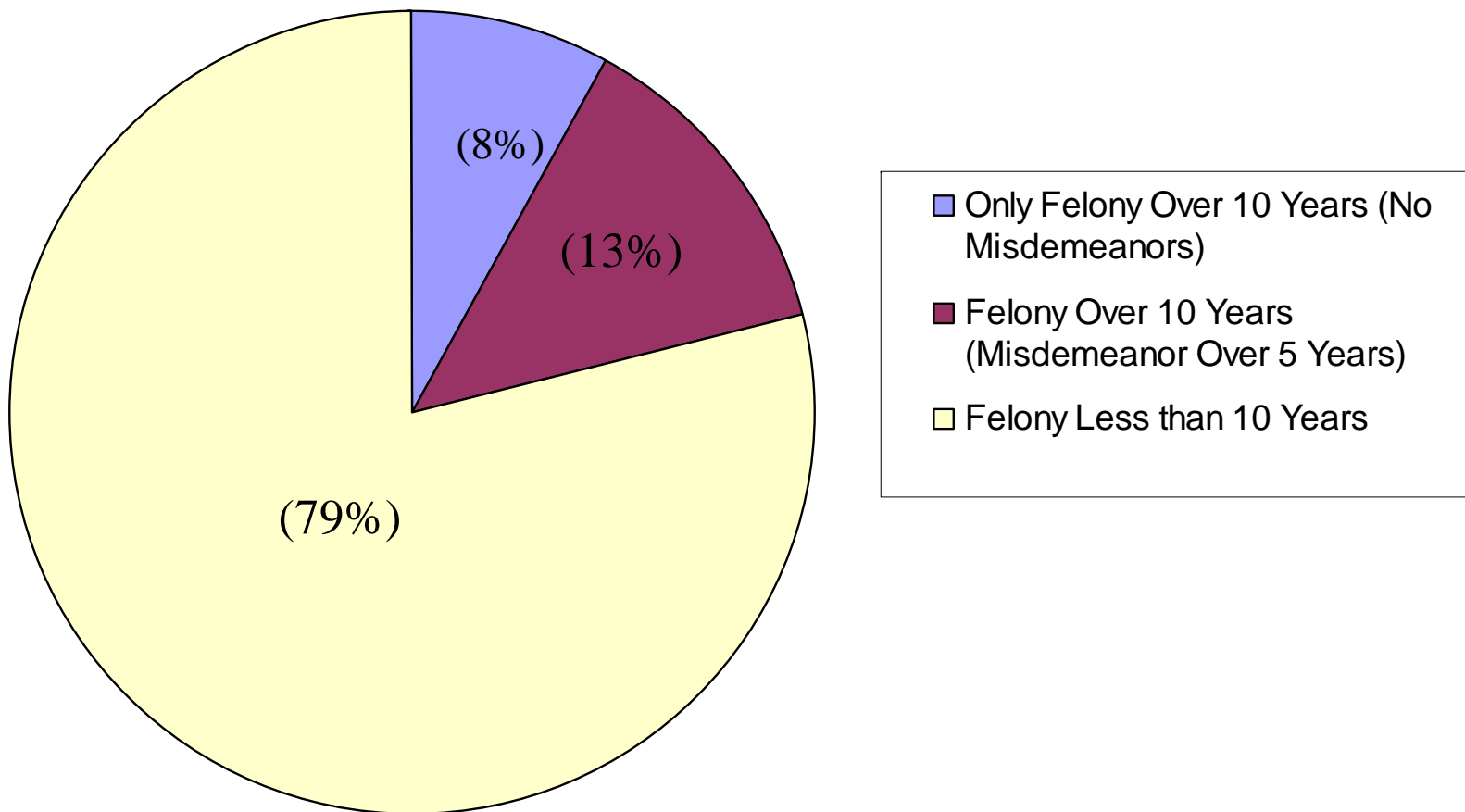
Applicants Denied Private Security Guard Certification, by Offense (August 2001, N=290)



**Applicants with No Felony Record Denied
Private Security Guard Certification,
by Age of Misdemeanor Offense (August 2001, N=185)**



**Private Security Guard Applicants Denied Certification,
By Age of Felony Offense (August 2001, N=101)**





Compare Protections Adopted by Post 9-11 Transportation Security Laws (Port Workers, “Hazmat” Drivers)

- Disqualifying Offenses: Expressly limited to felony convictions, while exempting drug possession and other lesser felonies.
- Age Limits on Offenses: No felony offense considered if more than 7 years have passed since conviction or 5 years since release (most recent event applies).
- Waiver Procedure: *Prior* to an appeal, special procedure created to evaluate evidence of rehabilitation and waive disqualifying offenses.



Selected State Model Occupational Laws: Rehabilitation “Presumed” After Set Period

- Individual’s rehabilitation is “presumed” if the sentence is served or a specified period has passed without subsequent record.
 - New Mexico: Completion of parole or probation or 3-year period following release from incarceration without offense.
 - North Dakota: 5 years after completion of final discharge, parole or probation without subsequent conviction.
 - Arkansas: Completion of parole or probation or 5 years after release from prison create “prima facie” evidence of rehabilitation.
 - Illinois: As applied to private security officers, evidence of rehabilitation presumed after term of probation or parole is completed.



Other State Re-Entry Reforms (Not Limited to Occupational Licensing)

- Anti-discrimination laws limit employer inquiry into criminal record until after an offer of employment (Hawaii, Boston).
- Expunged records not considered as part of occupational licensing determinations (New Jersey).
- Expungement available to most first felony offenders, including those sentenced to prison (Hawaii, Michigan, New Jersey, Ohio, Rhode Island).
- Felony drug possession convictions sealed after 4 years without additional offenses (Illinois).