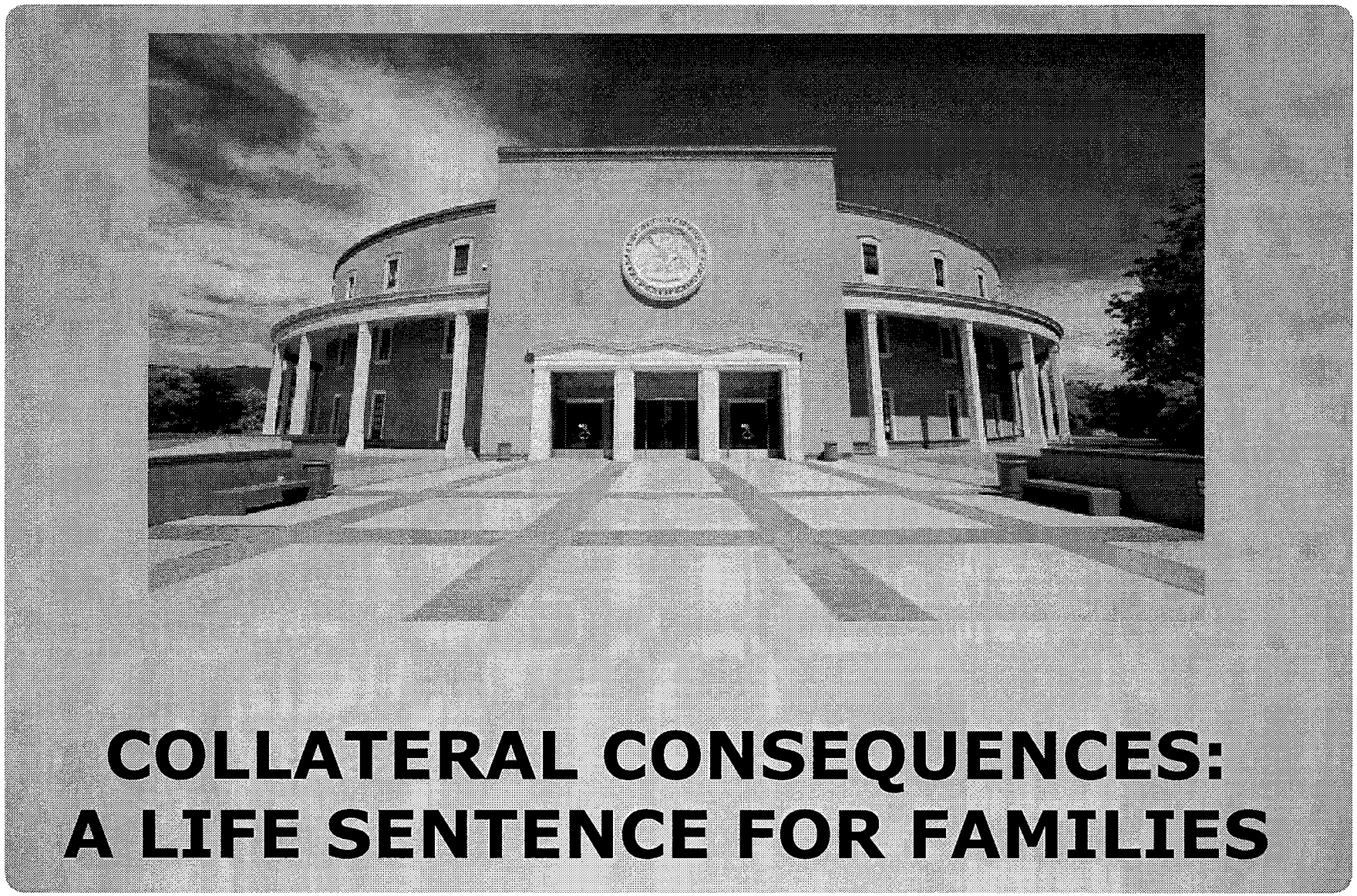
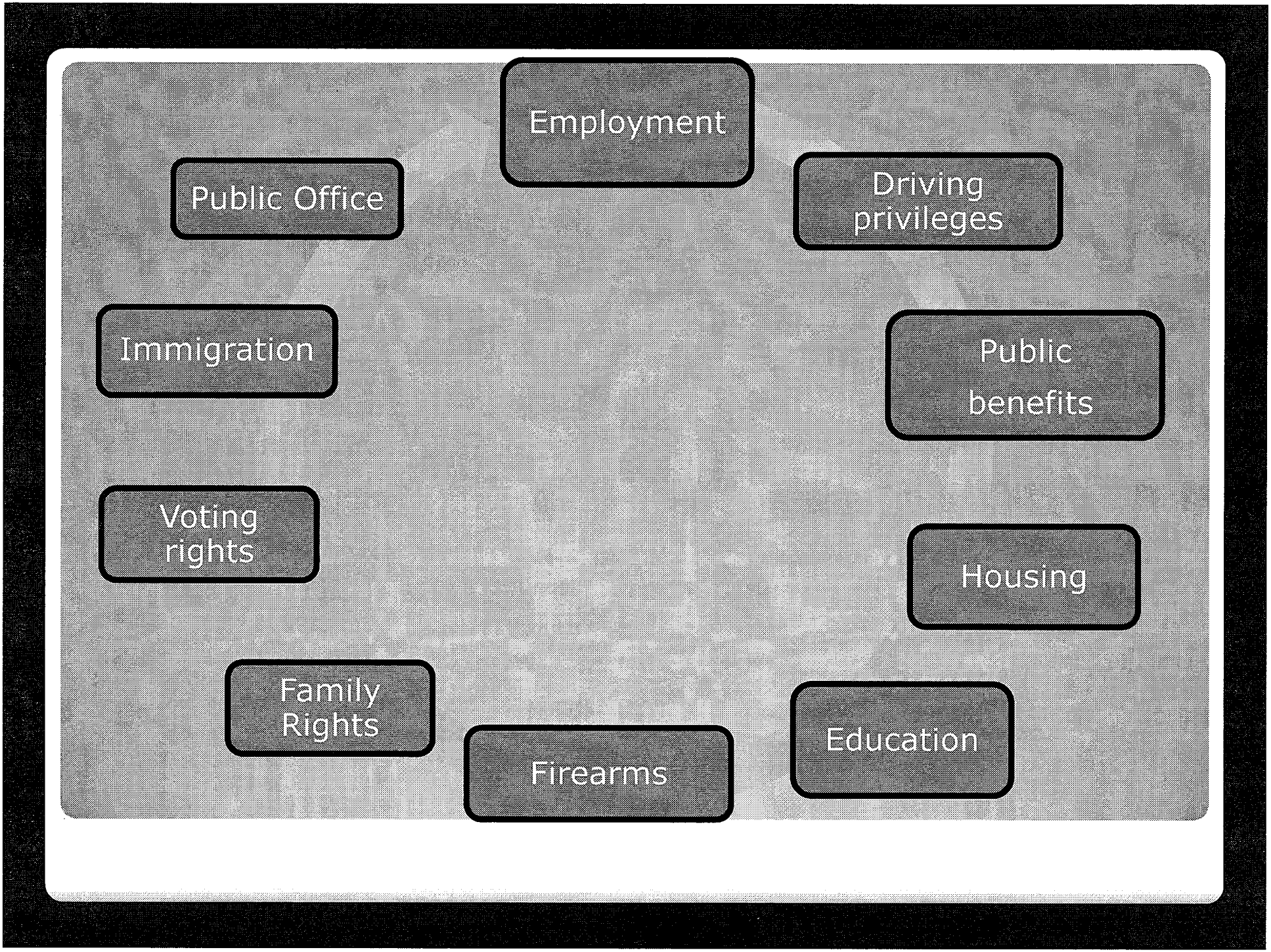


COLLATERAL CONSEQUENCES: A LIFE SENTENCE FOR FAMILIES

WHAT ARE COLLATERAL CONSEQUENCE

- Collateral consequences are the negative effects of a felony conviction that persist after an individual has completed his incarceration as well as his period of parole or probation.

- Fines, imprisonment, probation, parole, or supervised release, classification and assignment of prisoners, conditions of probation or parole are **NOT** collateral consequences

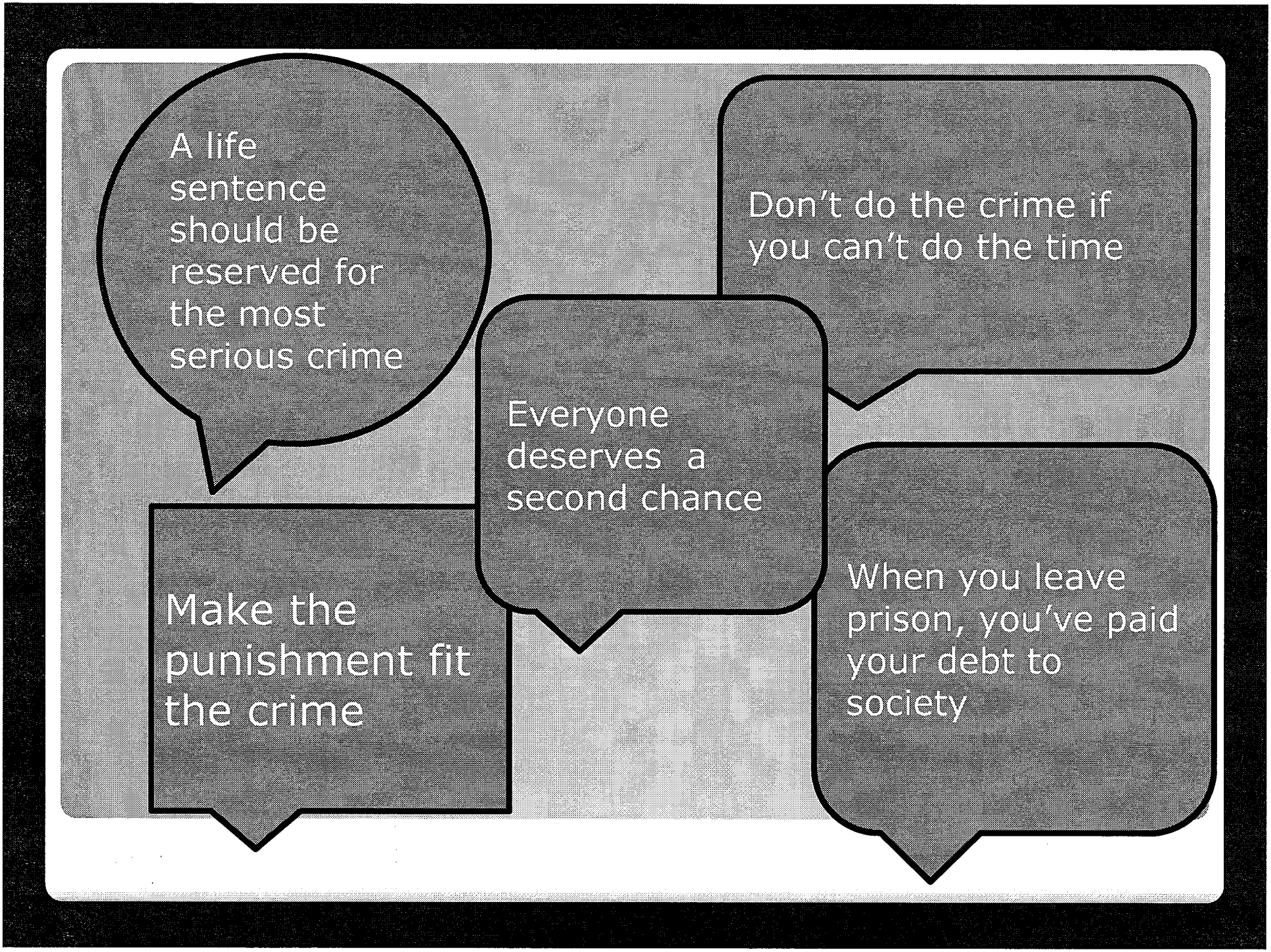

Employment
Public Office
Driving privileges
Immigration
Public benefits
Voting rights
Housing
Family Rights
Education
Firearms

How big is the problem ?

- 90 percent of all companies use criminal background checks in making hiring decisions
- a felony conviction reduces the likelihood of a job callback or offer by nearly 50 percent
- 1 in 4 adults in the United States has an arrest or conviction record

A felony conviction carries:

- 19 New Mexico collateral consequences
- 36 New Mexico employment disabilities
- 5 state sentencing enhancements
- 71 federal consequences


A life sentence should be reserved for the most serious crime
Don't do the crime if you can't do the time
Everyone deserves a second chance
Make the punishment fit the crime
When you leave prison, you've paid your debt to society

But . . . .
Collateral consequences last
a life time

NM Stat. 28-2-2 Purpose of the Criminal Offender Employment Act

"The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible."

BAN THE BOX § 28-2-3.

- A conviction cannot operate as an automatic bar to obtaining public employment
- Public employers may not make ask about conviction on an application and may only take into consideration a conviction after the applicant has been selected as a finalist for the position.
- Public employers may not use records of arrest not followed by a valid conviction or misdemeanor convictions not involving moral turpitude

CRIMINAL OFFENDER EMPLOYMENT ACT §28-2-2

- An agency may refuse to grant or renew or may suspend or revoke any public employment only when the criminal conviction directly relates to the particular employment, trade, business or profession; or if the applicant has not been sufficiently rehabilitated to warrant the public trust

CRIMINAL OFFENDER EMPLOYMENT ACT §28-2-2

- A conviction for controlled substances, criminal sexual penetration or related sexual offenses or child abuse is a bar to employment involving children.

EX OFFENDER VOTING RIGHTS.

§ 31-13-1.

All ex-felons (including those with out-of-state and federal convictions) can register to vote in New Mexico after they have completed their entire sentence including probation and parole.

Our courts recognize the impact of collateral consequences

- New Mexico's courts have held that defense counsels' failure to inform clients prior to a guilty plea about the collateral consequences on immigration rights and sex offender registration requirements, constitutes per se ineffective assistance of counsel. *See, State v. Paredez,* 2004-NMSC-036; *State v. Edwards*, 2007-NMCA-43

What would help reintegrate ex-offenders as productive workers, good family members and engaged citizens?

Provide Id's

- Have MVD issue identification cards to inmates prior to release so that they can immediately begin applying for jobs
- Waive the fee for an identification card and for a birth certificate for a period of six months following release

Help build a good record

- Implement a policy at DOC that allows case managers, security staff, probation officers, teachers and other staff members to serve as references for released offenders
- Create certificates of employability that a recently released offender can show to a potential employer

Control information

- Limit access to and use of criminal records for non-law enforcement purposes and ensure that records are complete and accurate

Allow expungement

- Allow unfettered expungement of public arrest records for acts that were never charged
- Create procedures that allow for other kinds of expungement
- Permit a person with an expunged record to indicate that he has never be arrested or convicted of a crime on an application

Enact the Uniform Collateral Consequences Act

- Ensures that defendants are told about consequences, both before and at sentencing
- Legislates procedures for obtaining relief from certain collateral consequences
- Resolves any conflict between the states regarding the effect of relief from a conviction in a sister state.

Provide notice

- Educate judges, prosecutors, defense attorneys and the public about specific collateral consequences
- Make relief from certain consequences part of plea negotiations
- Make full use of the ABA website on collateral consequences
- http://www.abacollateralconsequences.org/

Apply "Ban the Box" to private employers

- Make the law apply to both private and public employers, as was done in Hawaii, Ill. Mass, Minn. Rhode Island

- Ensure that a denied applicant receives a copy of his or her record the way that the Fair Credit Reporting Act applies to commercially-prepared background checks.

Apply "Ban the Box" to housing

Virtually all low cost housing projects require at least five years without a criminal conviction to qualify

A person without stable housing is seven times more likely to re-offend after returning from prison.

Encourage civil engagement

- Restore voting rights to individuals upon release from incarceration.
- Teach inmates about their voting rights.
- Register new voters in the jails and prisons

Redefine a deferred sentence

- **31-20-9. COMPLETION OF TOTAL TERM OF DEFERMENT** Whenever the period of deferment expires, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, the court shall enter a dismissal of the criminal charges.

But a deferred sentence . . .

- Can be used for habitual offender purposes under case law
- Can be used for DWI enhancement because it is included in the motor vehicle code
- Can be found by an employer, landlord, educational institution
- Can be the basis of a fraud charge on an application if applicant checks "no felony convictions"

Redefine a conditional discharge

31-20-13 CONDITIONAL DISCHARGE

- . . . a court may, without entering an adjudication of guilt enter a conditional discharge order and place the person on probation.

- If the person violates any of the conditions of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

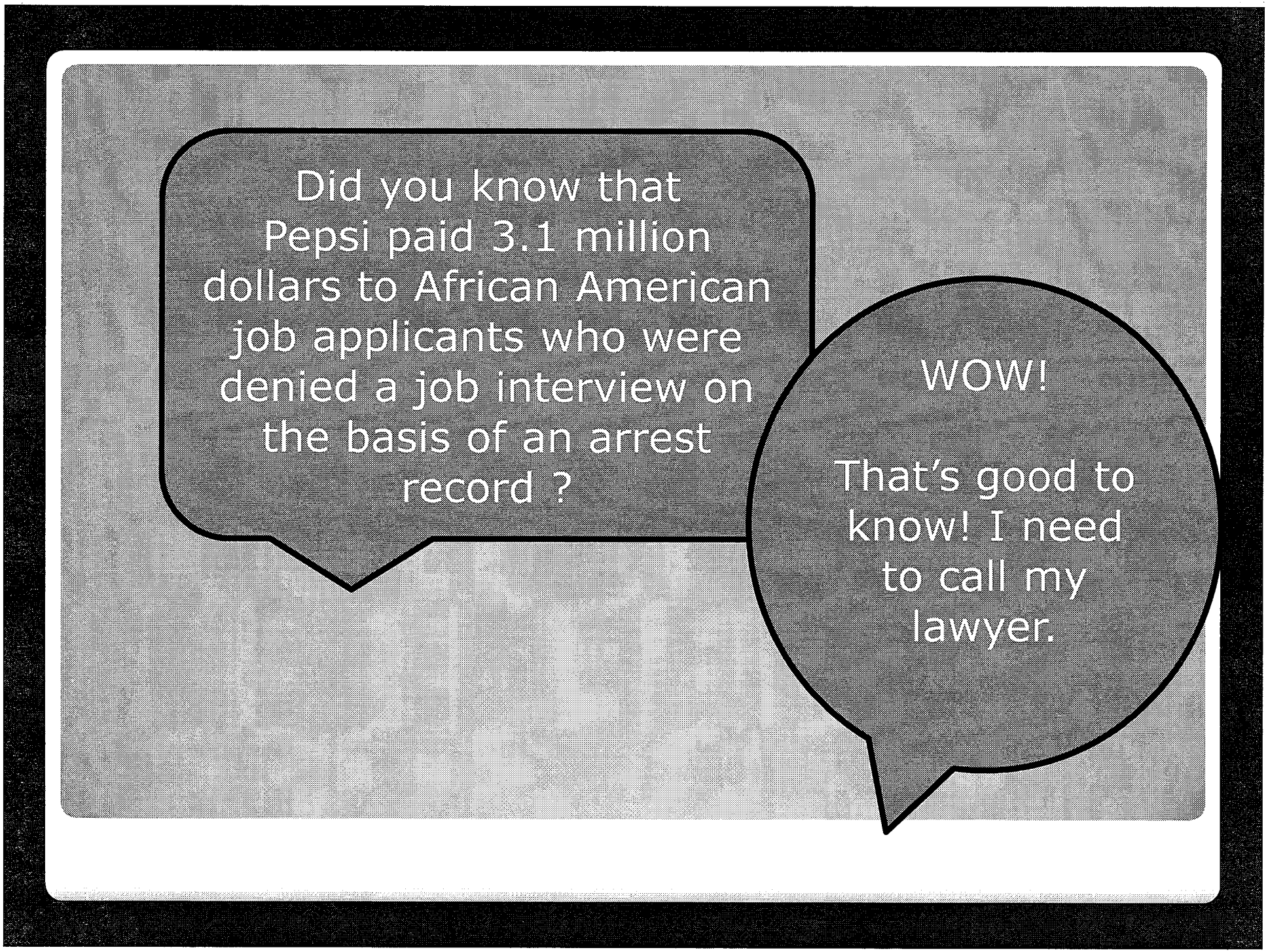
But a conditional discharge -

- Can be used for habitual offender purposes
- Can be found by an employer, landlord, educational institution

Redefine low level felonies

- Begin to reduce the number of people with felony convictions by reclassifying low level felonies as misdemeanors

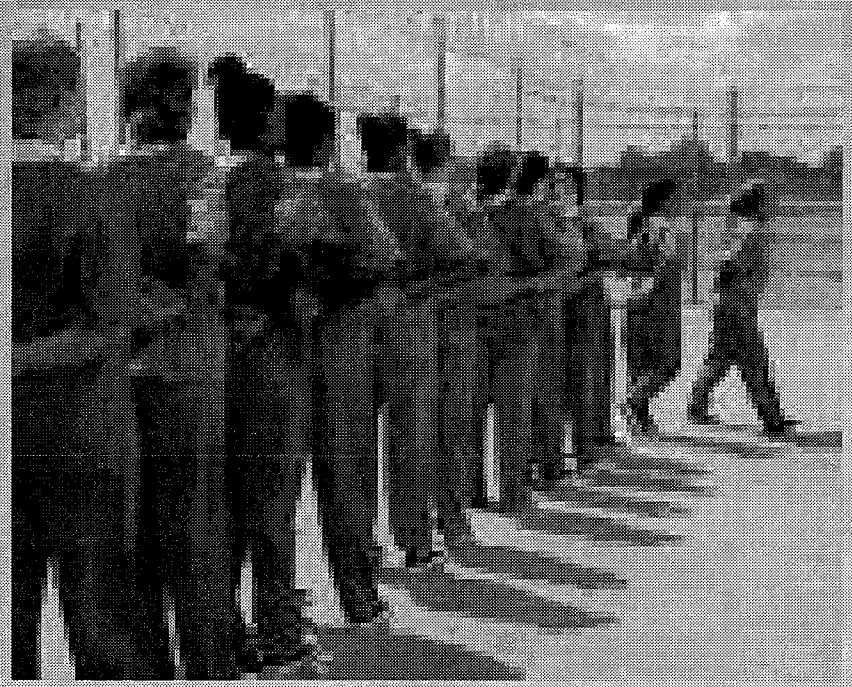
Read the headlines

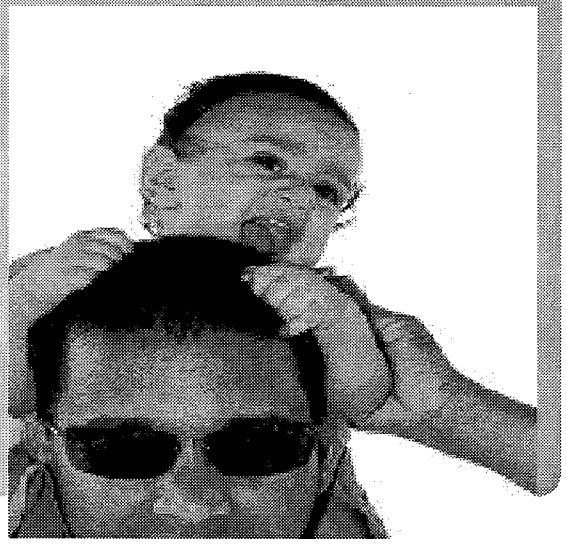

Did you know that Pepsi paid 3.1 million dollars to African American job applicants who were denied a job interview on the basis of an arrest record ?
WOW!
That's good to know! I need to call my lawyer.

Recap of action steps

- Change some policies at DOC and MVD
- Redraft Conditional Discharge and Deferred Sentence" statutes
- Amend the "ban the box" laws to apply to all employers and to affordable housing programs

- Include information about the ABA collateral consequences website on the court web site
- Enact the Uniform Collateral Consequences Act
- Enact an expungement law





Change the picture