



PROFESSIONAL
CERTIFICATION
COALITION



White Paper on Consideration of Criminal Conviction History by Private Professional Certification Organizations

PROFESSIONAL CERTIFICATION COALITION

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WHITE PAPER ON CONSIDERATION OF CRIMINAL CONVICTION HISTORY BY PRIVATE PROFESSIONAL CERTIFICATION ORGANIZATIONS

I. Legislative Restrictions on Consideration of Conviction History Pose Threats to Professional Certification Organizations

Professional certification, by its nature, recognizes some and excludes others. Some individuals qualify to be considered candidates; some do not. Some candidates meet the required education, experience, performance scores, conduct expectations, or other criteria; some do not. Certification credentials are sought out – both by those who aspire to hold them, and by those seeking the services of certified professionals – because the credentials distinguish those who hold them from those who do not. Because certification programs routinely create a group of excluded individuals, they can attract legal challenges from those excluded.

Formerly incarcerated individuals are frequently excluded from certification and, more generally, from parts of the workforce. As a result, in 2019, states passed a record number of laws to help formerly incarcerated individuals reintegrate into the economy.¹ Many of these new laws directly address or affect occupational licensing and private certification. In 2019 alone, the Professional Certification Coalition (PCC) tracked over 50 bills in 28 states aimed at restricting consideration of criminal conviction history by occupational licensing boards and, in some legislation, also by private certification organizations.

At the federal level, Senator Cory Booker and Rep. Bonnie Watson Coleman introduced the Next Step Act of 2019, a comprehensive criminal justice reform bill that includes a title named the “Fair Chance Licensing Act.” Among other provisions, that legislation would prohibit state and local occupational licensing boards *and* any “occupational certification authority” from considering felony convictions that are directly related to the regulated or certified occupation, if more than five years have passed since the conviction and completion of any period of incarceration or custody; consideration of misdemeanor convictions more than a year old would also be prohibited.² In addition, the Fair Chance Licensing Act would prohibit automatic disqualification from licensure or certification even for recent convictions that are directly related to the licensed or credentialed profession, requiring the licensing board or certification organization to engage in individualized consideration of each applicant’s circumstances and mandating specific procedural protections and appeal rights for individuals denied licensure or certification. As currently drafted, the bill is not limited to governmental authorities, and Sen. Booker’s staff has confirmed, in

¹ During the first six months of 2019, 94 state laws passed in 36 states, according to the Collateral Consequences Resource Center (CCRC). See <https://thecrimereport.org/2019/07/10/states-passed-record-94-restoration-laws-so-far-this-year/>.

² S. 697 — 116th Congress: Next Step Act of 2019.” www.GovTrack.us. 2019. November 26, 2019 <https://www.govtrack.us/congress/bills/116/s697>; <https://www.congress.gov/bill/116th-congress/senate-bill/697/text#toc-idF57EBD6D2BFD447B9EECCC22BF677D13>. A companion bill, H. R. 1893, was introduced in the House by Rep. Bonnie Watson Coleman.



discussions with the PCC, that the legislation is intended to apply to private professional certification organizations.

As the name of the federal bill suggests, restrictions on consideration of criminal records in professional licensure and credentialing decisions are the “next step” in well-meaning efforts to continue to reform the criminal justice system. Many jurisdictions have already enacted laws designed to restrict use of an applicant’s criminal history in employment decisions. Proponents of legislation like the Fair Chance Licensing Act view certification and licensure decisions as another obstacle to opportunities for ex-offenders.

The push for restricting consideration of criminal conviction history is not a passing trend. Such reform enjoys bipartisan support from elected officials, criminal justice reform organizations, think tanks, commissions, and courts. Organizations across the political spectrum have drafted model legislation, and their model language has been incorporated into bills on the state and federal level.³

For the professional certification community, however, these bills present direct and indirect threats. These threats affect both organizations that issue wholly voluntary credentials and organizations that issue certifications that are a condition of obtaining professional licenses, as well as professional societies for whose members hold certifications:

- *Legislation that seeks to regulate private professional certification organizations would interfere with the right of certification organizations to define and enforce their own eligibility, conduct, and ethics standards.* By prohibiting or restricting consideration of criminal records or mandating individualized consideration of such records and specific procedures for denial or revocation decisions, such legislation would open the door to lawsuits against certification organizations that deny or revoke the certification of any individual with a criminal conviction record.⁴ These concerns also apply to professional societies that exclude or revoke membership based on information from criminal convictions. Certification organizations issuing credentials that are required by licensure laws – as is common in the healthcare, financial, engineering, and other safety-related fields – face weakening of those practice acts through legislation that prohibits licensure boards from denying licensure or imposing discipline “in whole or in part because of” a

³ On the libertarian side, organizations such as the American Legislative Exchange Council (ALEC) and the Institute for Justice have published model legislation. See <https://www.alec.org/app/uploads/2017/06/Collateral-Consequences.pdf> and <https://ij.org/activism/legislation/state-occupational-licensing-reforms-for-people-with-criminal-records/>. The progressive National Employment Law Project has also published model legislation: <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

⁴ In *Setarehshenas v. Nat’l Commission on Certification of Physician Assistants*, 16-cv-284 (E.D.N.Y. Dec. 3, 2018), for example, an aspiring physician assistant with a felony conviction history for healthcare licensure fraud sued the private certification organization that certifies physician assistants, alleging violations of New York State and City statutes restricting consideration of criminal conviction history in licensure decisions. Although the certification organization ultimately won judgment in its favor, the cost and disruption of litigation can be substantial. More detail on the case is at: <https://www.pillsburylaw.com/en/news-and-insights/update-on-setarehshenas-v-nccpa.html>.



criminal conviction record, or that imposes restrictions “notwithstanding any other law.” To the extent that an applicant for licensure lacks the certification needed for licensure due to a criminal conviction history, legislative language of this nature could create loopholes in licensure regulations and require special, more favorable treatment of ex-offenders than of other licensure applicants.

- *Many certification organizations and professional societies, whether wholly voluntary or regulated, rely on licensure boards to act as the front-line protection for the public against unethical or dangerous practitioners, as the private organizations lack the resources or legal authority to conduct full trial-like investigations and disciplinary procedures.* Licensure boards also have the authority to issue and enforce summary suspension orders when necessary to protect the public during the pendency of a fact-finding procedure. Licensure boards can also issue orders that impose conditions on an individual’s practice – such as participation in a substance abuse rehabilitation program, or reduced scope practice – and can enforce those conditions. If the oversight and enforcement role of licensure boards is restricted, the public may seek to hold private certification organizations and professional societies responsible if harmed by a credentialed professional. Certification organizations have the authority only to deny or take away the right to use their credentials and may file a civil lawsuit if the credential is misused. Those remedies, however, are insufficient to protect the public if a licensure board’s authority is curtailed.

II. PCC’s Stance on Consideration of Criminal Conviction History

The PCC supports expanded opportunities for ex-offenders to earn a living, which advances the important goal of reducing recidivism. This is a worthy objective and an important component of national efforts to reform the criminal justice system. However, this objective must be balanced against the need to protect the public and the ability of both state licensing boards and private certification organizations to consider relevant conduct for which individuals have been provided full due process in the criminal justice system.

Therefore, the PCC opposes legislative language that:

- *Restricts the right of private certification organizations to adopt or enforce codes of conduct or eligibility requirements in which criminal conviction history is a factor, either by prohibiting consideration of a criminal conviction or by mandating the procedures used for disqualification of an individual with a criminal conviction, or*
- *Prevents licensing boards from requiring current professional certification as a condition of licensure or consistently enforcing such requirements, if the reason an individual does not hold current certification relates to a criminal conviction.*

Instead, as discussed in this White Paper, the PCC supports self-regulation by private certification organizations and professional societies and encourages the adoption of best practices both as to the substance of eligibility standards and codes of conduct and as to the



procedural protections available to individuals seeking or holding certification or membership in a professional society.

III. Rationale for PCC’s Stance on Consideration of Criminal Conviction History

The PCC’s position is grounded on core legal principles, practical considerations, and policy views.

A. Private certification organizations and professional societies have a Constitutional right to establish and enforce ethics codes and conduct codes for their credential-holders and members.

The Supreme Court has held that it violates the First Amendment rights of private organizations for the government to “intru[de] into the internal structure or affairs of an association [through] a regulation that forces the group to accept members it does not desire,” unless the requirements of the law are supported by “compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”⁵

In *Roberts v. United States Jaycees*, the Court held that Minnesota had a compelling interest in preventing the Jaycees from discriminating against women by denying them membership – but it also articulated the background right of associations to deny membership (or, by extension, certification) based on their own eligibility criteria, in the absence of a compelling state interest to the contrary:

There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. **Freedom of association therefore plainly presupposes a freedom not to associate....** Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.

As another court has held in the antitrust context, a private professional certification organization “has the right to control who it is certifying and what standards and requirements are necessary.”⁶

⁵ *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

⁶ *Kenney v. Am. Bd. of Internal Medicine*, 2019 U.S. Dist. LEXIS 164725, 2019 WL 4697575 (E.D. Pa., Sept. 26, 2019).



B. Private certifications convey to the public that the credential-holder meets all of the eligibility, qualification, competence, and conduct requirements of that organization’s standards and policies.

Consumers, patients, employers, and other members of the public legitimately rely on certification standards in selecting which professionals to entrust with their business or their care. Unless the state government has decided that no individual without the private credential may have a license to practice an occupation or may hold themselves out as a specialist, private certifications are voluntary enhancements to an individual’s credentials. Individuals are free to practice those unlicensed professions without the private certification and are not entitled to the endorsement of the certification organization unless they meet that organization’s standards and comply with that organization’s rules. As one court recently observed in rejecting an antitrust challenge to a private certification organization’s standards:

what [a certification organization] sells to its certified [professionals] — and, indirectly, to the other industry participants who rely on [the organization’s] credentialing of [professionals] — is essentially an endorsement based on a ‘formula, including all that it entails’ ... for assessing [those professionals’] knowledge, skill and understanding.⁷

Stated differently by another court, it is important to allow certification organizations “to control the quality of the[ir] product” and to “ensur[e] that all [their certified professionals] can meet and maintain the same standards and requirements. Otherwise, [the public] would lose faith in the ... certification process.”⁸

Even where a state legislature or regulatory board makes a private certification a condition of licensure, the government does not and should not have the authority to create exceptions to a private certification organization’s legitimate standards and rules. Otherwise, the significance of the credential would be destroyed.

C. To protect the public from unacceptable risks, some criminal convictions permanently and automatically disqualify offenders from holding certain professional certifications, even if the conviction was for a non-violent charge or a number of years have elapsed since the conviction.

Some kinds of criminal conduct may be unrelated to the practice of a profession and thus may be considered irrelevant to whether the individual may hold professional certification or join a professional society. It is common, for example, for many professional certification organizations and professional societies to disregard traffic violations, minor or old drug offenses, or many other convictions for which no jail sentence was imposed, especially after the passage of a sufficient amount of time. Other convictions, however, reflect serious criminal conduct that relates directly to core competencies and values of a professional certification or

⁷ *Siva v. Am. Bd. of Radiology*, 2019 U.S. Dist. LEXIS 200645 (N.D. Ill. Nov. 19, 2019)

⁸ *Kenney*, 2019 U.S. Dist. LEXIS 164725, at *11, n. 2.



that indicates that the individual poses an unacceptable risk to those the individual would encounter in practicing the occupation. For example, an organization that certifies individuals who are provided access to their clients' or employers' financial accounts may appropriately withhold its endorsement from an individual with a record of fraud or embezzlement. Likewise, an organization that certifies individuals who work alone with children may appropriately withhold its professional "seal of approval" from an individual convicted of a crime of child exploitation (sexual abuse, child pornography, etc.).

In such situations, the desire of ex-offenders to obtain a credential that would advance them in their preferred career does not outweigh the risk of significant and lasting harm to members of the public if the ex-offender engages in similar misconduct again. A contrary rule, prohibiting consideration of that individual's conviction record, would make certification organizations complicit in persuading individuals to place their trust in individuals who have previously violated that trust.

D. Conduct requirements for conforming with the high standards established for private professional certifications often overlap with legal requirements that carry criminal penalties.

Most codes of conduct and standards of professional certification organizations – as well as ethics codes for professional society membership – require that credentialed professionals conform to established conduct expectations and permit the organization to deny or revoke certification or membership for violations of its code, regardless of whether the individual was prosecuted for that conduct. For example, most certification organizations regard it as a serious and disqualifying violation for certificants to cheat on a certification examination or to assist another in cheating, because that behavior undermines the integrity of the credential. Defrauding a client and other conduct undermining public trust in the certified profession are also common violations leading to revocation of certification or professional society membership. Where no licensure board or court has already made a factual finding about alleged offenses, certification organizations and professional societies often engage in their own fact-finding proceedings, affording the alleged violator at least some level of due process, including notice and an opportunity to be heard. It is well-settled, however, that private certification organizations and membership societies need only provide a minimum of due process in their disciplinary proceedings and are not required, for example, to permit the certificants or member to appear in person or to call witnesses.⁹

⁹ See, e.g., *Duby v. Am. Coll. of Surgeons*, 468 F. 2d 364 (7th Cir. 1972) (due process afforded by private organization for its disciplinary or expulsion actions does not require a "trial-type hearing": "adequate protection can be given without the employment of full-blown adversary proceedings"); *Chin v. Am. Bd. of Preventive Med., Inc.*, 2015 IL App (1st) 141625-U (Ill. App. June 12, 2015) (holding that the absence of an in-person hearing is not a "violation of rudimentary due process" where certification board allowed the exchange of written documentation in connection with the revocation of a doctor's board certification).



Against this legal backdrop, prohibiting a certification organization from basing eligibility or disciplinary decisions on criminal convictions sets an unjustified and inconsistent standard for code of conduct actions. A convicted offender will have already been provided full due process by the courts and either will have been found guilty beyond a reasonable doubt or will have admitted to the conduct in a guilty plea. If the conduct underlying the criminal conviction violates an organization's code of conduct, there is no valid reason to restrict a private certification organization from basing eligibility or disciplinary decisions on highly reliable factual determinations about an individual's conduct, given that the organization would be legally entitled to make those decisions under a lesser due process standard if it conducted its own fact-finding.

E. Private certification organizations lack both the legal authority and the resources to engage in a full-fledged independent investigation and fact-finding hearings about violations of ethics and conduct rules.

As noted above, criminal proceedings represent the gold standard for fact-finding and due process, given the subpoena power of both prosecutors and defendants and the very high burden of proof for a conviction. Unlike licensing boards or criminal and civil courts, however, private certification organizations and professional societies cannot compel witnesses to testify or subpoena documents for their internal disciplinary or eligibility reviews. Moreover, most private certification organizations and professional societies are nonprofit organizations; many operate with few employees and rely heavily on volunteers, including for disciplinary reviews. Some ex-offender reentry legislation would mandate individualized review of the context and circumstances of every applicant's criminal conviction history, rather than automatic disqualification for certain convictions, as well as extensive and detailed appeal procedures. For many certification organizations and professional societies, this would be an impossible requirement for those organizations to meet.

F. Restrictions based on whether criminal convictions were felonies or misdemeanors is unwarranted, because the underlying conduct may be the same.

Some ex-offender reentry bills would prohibit consideration of many misdemeanor offenses. This distinction obscures the relevance of the underlying conduct. Facts that support a felony charge may be pled down to a misdemeanor conviction, despite the gravity of the underlying conduct. Indeed, the vast majority of convictions are the result of plea bargains.¹⁰ Moreover, the definitions of felonies and misdemeanors vary across jurisdictions; an offense that carries a nine-month sentence may be classed as a felony in one state and as a misdemeanor in another state.

G. Where private certification is a condition of licensure, that requirement reflects the considered judgment of the legislature or the licensure agency

¹⁰ See *Missouri v. Frye*, 566 U.S. 134 (2012) (noting that 94% of state convictions are the result of guilty pleas).



that the standards established by the recognized credentialing organization for the profession are necessary to protect the public.

Some bills appear to prohibit licensure organizations from making an adverse decision that is tied in any way to certain categories of criminal convictions, notwithstanding any other law. If holding a current professional certification is a general condition of licensure for a profession, there is no basis to treat to ex-offenders more favorably than any other applicant who fails to hold the required certification, even if the applicant’s criminal conduct was the basis for the denial or revocation of that certification. Practice acts do not contain exceptions and loopholes for applicants who fail to meet the educational or credentialing qualifications due to considerations unrelated to criminal conviction history – such as not having the money to pay tuition or examination fees, missing the examination administration due to bad weather or illness, or any other reason. Those who fail to meet generally applicable qualifications as a result of a criminal conviction do not merit an exception from those requirements.

IV. The PCC Supports Voluntary Action by Certification Organizations and Professional Societies to Expand Opportunities for Ex-Offenders

Although the PCC opposes legislative interference with private certification organizations and professional societies, the PCC supports having the certification community voluntarily identify ways that professional certifications can appropriately serve as gateways to opportunity for ex-offenders. The evidence of obstacles to reentry faced by ex-offenders is overwhelming and explains the increasing support for bills restricting consideration of criminal history. With 2.2 million people incarcerated in prisons and jails, the United States has the highest prison population in the world.¹¹ When probation and parole are factored in, the number of adults under correctional supervision in the U.S. rises to over 6.6 million.¹² These figures reflect only those currently enmeshed in the criminal justice system: an estimated 70 to 100 million – as many as one in three – Americans have some type of criminal record.¹³

High rates of incarceration mean a large population of formerly incarcerated individuals return to American communities. Over 95% of the current prison population will eventually be released.¹⁴

¹¹ The Sentencing Project, Fact Sheet: Trends in U.S. Corrections, at <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf> at 2.

¹² Danielle Kaeble & Mary Cowhig, Correctional Populations in the United States, 2016, U.S. Department of Justice, Bureau of Justice Statistics, 2018, at 2, <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.

¹³ The Sentencing Project, Americans with Criminal Records, at 1 at <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

¹⁴ Congressional Research Service, Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism at <https://fas.org/sgp/crs/misc/RL34287.pdf>.



The U.S. Department of Justice reports that federal and state prisons release upwards of 620,000 people each year.¹⁵

Upon reentry, these individuals face barriers to new employment or practice in certain occupations due to their criminal history. Some of these barriers automatically apply to ex-offenders by law. For example, it is common for certain convictions to disqualify an ex-offender from a license as a teacher.¹⁶ These legal restrictions are called “collateral consequences.”

Other restrictions on employment opportunities are not mandated by law but arise due to the stigma of a criminal record, leading to decisions by employers or licensure boards to exercise their discretion to deny employment or a license to an ex-offender based on consideration of criminal conviction history. Similarly, private professional certification organizations and professional societies may have eligibility standards or code of conduct provisions that either automatically exclude individuals with certain criminal convictions from holding the organization’s credential (or membership) or permit an individualized decision by the certification organization or professional society to deny or revoke eligibility for certification or membership from an individual convicted of a crime.

Whether due to collateral consequences, stigma, or eligibility standards, a criminal conviction locks an estimated 1 in 4 Americans out of the labor market.¹⁷ Over 60 percent of formerly incarcerated individuals are unemployed one year after their release.¹⁸

This trend will likely increase in the future. In today’s workforce, some of the fastest growing industries—healthcare support and personal care—require a license or certification.¹⁹ In general, 25% of U.S. workers require a license or certification before they can work in their occupation, in contrast to only 5% in the 1950s.²⁰

Further, barriers to employment upon reentry are not evenly distributed. For example, due to their overrepresentation in the criminal justice system, individuals of color face disproportionate

¹⁵ Jennifer Bronson, Ph.D., and E. Ann Carson, Ph.D., U.S. Department of Justice, *Prisoners in 2017*, at <https://www.bjs.gov/content/pub/pdf/p17.pdf> at 12.

¹⁶ *See, e.g.*, Ark. Code § 6-17-410.

¹⁷ Bronson & Carson, *supra* n. 15, at 12.

¹⁸ Joan Petersilia, Nat’l Inst. of Justice, *When Prisoners Return to the Community: Political, Economic, and Social Consequences* 3 (2000), <https://www.ncjrs.gov/pdffiles1/nij/184253.pdf>.

¹⁹ United States Department of Labor, Bureau of Labor Statistics, *Fastest Growing Occupations*, (April 14, 2017), <https://www.bls.gov/ooh/fastest-growing.htm>.

²⁰ Morris M. Kleiner, The Hamilton Project and Brookings Institution, *Reforming Occupational Licensing Policies* 5 (March 2015), <http://brook.gs/2x5Y1NM>; Michelle Natividad Rodriguez & Beth Avery, Nat’l Emp’t Law Project, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* 5, n. 3 (April 2016), <http://bit.ly/2ka69wZ>.



barriers to reentering the workforce with a criminal conviction.²¹ African American individuals are more than twice as likely to be arrested as white individuals,²² and more than 60 percent of the prison population today is comprised of people of color.²³

While public safety and financial security legitimizes some barriers to employment, many are prohibitions to employment or credentials are punitive in nature and unrelated to an individual's underlying crime. In addition, some data shows that the risk of recidivism²⁴ generally decreases over time.²⁵ **The certification community can be part of the solution in reducing the magnitude of this problem.** If ex-offenders are able to earn a professional certification, gain membership in a professional society, or reestablish eligibility for certification or membership after completing their sentences, that will increase the opportunities for gainful employment available to them. In addition, employers may regard a post-conviction certification as evidence of rehabilitation on the part of the ex-offender, especially in those jurisdictions that have already enacted laws requiring employers to engage in an individualized assessment of whether an applicant's criminal record should disqualify the applicant from employment.

²¹ *Id.* at 3. "People of color are more likely to be arrested, convicted, and sentenced more harshly than are white people, which amplifies the impact of collateral consequences on this population." *Id.* at 19. "People with mental health disorders are also disproportionately incarcerated in the United States; the Department of Justice estimates that at least half of incarcerated persons have a mental health diagnosis" *Id.* at 20. "The Department of Justice has also found that many incarcerated individuals who report at least one disability are people of color." *Id.* at 21. "Researchers at the University of California Los Angeles School of Law have also reported that the incarceration rate of lesbian, gay, and bisexual men and women is more than three times that of the U.S. adult population." *Id.* at 22.

²² U.S. Department of Justice, Bureau of Justice Statistics, Arrest Data Analysis Tool, <https://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm> (2014 Data: Arrest rate for whites = 3,101 per 100,000; African Americans = 7,031 per 100,000).

²³ The Sentencing Project, Trends in U.S. Corrections, (June 2018), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

²⁴ "There is no single definition of recidivism. However, all definitions share three common traits. Each has a starting event, such as release from custody, program completion, or placed on probation. Next, each has a measure of failure following the starting event, such as a subsequent arrest, a subsequent arrest for a violent crime, a conviction resulting from a subsequent arrest, or a new commitment resulting from a subsequent arrest. Finally, each has a recidivism window (e.g., 6 months, one year, two years, three years, etc.) beginning with the date of the starting event. Put together, an individual is said to have recidivated if the individual has a failure event within the recidivism window. In contrast to an individual, a group of persons can have a recidivism rate, normally defined as the percentage of persons who recidivated (i.e., the percentage of all persons in the group who failed within the recidivism window)." Bureau of Justice Statistics at <https://www.bjs.gov/recidivism/templates/definition.cfm>.

²⁵ "Most studies find that offenders are much more likely to recidivate during the first few months after release but then become less likely to reoffend over time... [Other studies] find the pattern of declining recidivism risk continues steadily for years after an arrest, and that if no new arrests occur, it eventually declines to the point that an offender's risk of committing an offense is roughly the same as that of a non-offender." West Virginia Division of Justice and Community Services' Criminal Justice Statistical Analysis Center, *Recidivism by Direct Sentence Clients Released from Day Report Centers in 2011: Predictors and Patterns over Time* (January 2016), at p. 6, http://djcs.wv.gov/ORSP/SAC/Documents/WV_DRC%20Recidivism%20Jan%202016%20Final.pdf.