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Thinking Outside the Box: A Point-Based System of Reintegration for California's Inmate Firefighters

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THINKING OUTSIDE THE BOX: A POINT-BASED SYSTEM OF REINTEGRATION FOR CALIFORNIA’S INMATE FIREFIGHTERS

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INTRODUCTION

“I think I’ve paid my penance for whatever I’ve done . . . we’ve saved a lot of homes. I mean, whatever I did, I hope to God that I’m even.”¹

On the frontlines of a major fire, hundreds of firefighters cut defensive lines to protect lives and property from the advancing blaze.² Among the flames, a select group of firefighters stand out. They use shovels, axes, and chainsaws to create a firebreak.³ Unlike the other firefighters who wear yellow, these men and women wear orange.⁴ “Prisoner CDCR” is printed in bold letters on their backs.⁵

They are California’s inmate firefighters.

Recruited from California’s prisons, inmate firefighters are trained to perform the hazardous work of battling wildfires.⁶ Inmate firefighters are deployed through a program called the California Conservation Camps (“Fire Camps”).⁷ Since 1946, inmates have

1. Phillip Goodman, *Hero and Inmate: Work, Prisons, and Punishment in California’s Fire Camps*, 15 J. LAB. & SOC’Y 353, 364 (2012) [hereinafter Goodman, *Hero and Inmate*].

2. “Cutting line” is a term used frequently in this paper. It refers to the practice of firefighters cutting away vegetation all the way down to bare mineral soil. The purpose of cutting line is to remove possible fuel for an approaching fire with the goal of stopping or slowing the fire’s progress. Cutting line is done primarily with chainsaws and hand tools. *See id.*

3. A “firebreak” is the end result of “cutting line.” Firebreaks are wide paths cut into vegetation to create a barrier between the fire and unburned fuel. A fire is fully contained once it is completely encapsulated by firebreaks. *See Integrated Fire Management: Firebreaks*, WORKING ON FIRE, <http://workingonfire.com/integrated-fire-management/reduction/fire-breaks/> (last visited Mar. 27, 2020).

4. Anna Doty, *Fireline Divided: Labor Representation of Unionized and Incarcerated Firefighters in California’s Wildlands* 5 (June 2017) (unpublished M.S. thesis, Massachusetts Institute of Technology) (on file with MIT Libraries).

5. *Id.*

6. CAL. DEP’T OF CORRECTIONS & REHAB., FACT SHEET: INMATE FIREFIGHTERS AND CONSERVATION CAMPS 1 (June 2016), <https://www.scribd.com/document/362286451/Inmate-Fire-Fighters-and-Conservation-Camps> [hereinafter CDCR, *Fire Camps*].

7. *Id.*

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formed what some call the backbone of California's firefighting force.⁸ "At any given time, approximately 30 to 40% of California's wildland firefighters are prison inmates."⁹

Fire Camps are controversial. In 2016, the program received extensive media attention after two California inmates died fighting fires.¹⁰ Critics accuse Fire Camps of modern slavery because of the low wages paid to inmates.¹¹ Some have questioned whether participation in Fire Camp is truly voluntary.¹² Meanwhile, others defend the Fire Camp program. Supporters insist that inmate firefighters are volunteers; no person is ever forced to fight fire against their will.¹³ Although they are paid a fraction of the federal minimum wage, inmate firefighters are still the highest-paid prison laborers in the country.¹⁴ Finally, and perhaps most salient to the debate, inmates as a whole express tremendous pride in their work at Fire Camp.¹⁵ While

8. Doty, *supra* note 4, at 5 ("In a state exceptionally prone to wildfire, these roughly 4,000 incarcerated firefighters make up what one federal firefighter described as the 'back bone' [sic] of California's wildfire defense.").

9. Karyn M. Melligan, *On the Fire Line: The Lived Experiences of California Female Inmate Firefighters* 38 (Sept. 2017) (unpublished Ph.D. dissertation, Capella University) (on file with author).

10. David Fathi, *Prisoners Are Getting Paid \$1.45 a Day to Fight the California Wildfires*, AM. CIVIL LIBERTIES UNION (Nov. 15, 2018), <https://www.aclu.org/blog/prisoners-rights/prisoners-are-getting-paid-145-day-fight-california-wildfires>.

11. *See, e.g.*, Alex Dalbey, *The Internet Sees "Volunteer" Inmate Firefighters as Nothing Short of Slave Labor*, DAILY DOT (Nov. 14, 2018), <https://www.dailydot.com/irl/slave-labor-inmate-firefighters/> ("[The] discussion of modern slavery has been reinvigorated by the inmate firefighters who are risking their lives for a fraction of minimum wage.").

12. *See, e.g.*, Fathi, *supra* note 10 ("[P]rison is an inherently coercive environment; there's very little that is truly voluntary.").

13. *Id.* ("It's true that no California prisoners are forced to fight fires; prisoners volunteer for the assignment.").

14. Nicole Goodkind, *Prisoners Are Fighting California's Wildfires on the Front Lines, But Getting Little in Return*, FORTUNE (Nov. 1, 2019), <https://fortune.com/2019/11/01/california-prisoners-fighting-wildfires/> ("During active fires they earn about \$27 each day, much better than other prison jobs that would earn them \$0.08 to \$0.37 per hour.").

15. One inmate firefighter, whose firsthand accounts will be explored in depth later, wrote and published a memoir of his experiences at fire camp. The work focuses heavily on the positive impact fire camp had on the author's rehabilitation. *See* OZROE PENN, CALIFORNIA INMATE FIREFIGHTER (John W. Eddings ed., 2018).

California has struggled to implement an effective rehabilitation system, Fire Camps are a bright spot because they tend to reduce recidivism.¹⁶ But despite being well-trained and well-seasoned firefighters, inmates struggle to find gainful employment upon release.¹⁷ Fire departments and county Emergency Medical Service (“EMS”) authorities actively discriminate against formerly incarcerated jobseekers.¹⁸

There is a policy conflict. On one hand, first responders hold a unique position of public trust. A citizen who dials 911 entrusts whomever answers their call with their life, property, and safety.¹⁹ To

16. MAC TAYLOR, CAL. LEGISLATIVE ANALYST’S OFFICE, THE 2018–19 BUDGET: GOVERNOR’S CRIMINAL JUSTICE PROPOSALS 18 (Feb. 27, 2018), https://lao.ca.gov/Publications/Report/3762#California_Department_of_Corrections

and Rehabilitation [hereinafter TAYLOR]; *Editorial: Inmates Risking Their Lives to Fight California’s Wildfires Deserve a Chance at Full-time Jobs*, L.A. TIMES (Nov. 1, 2019), <https://www.latimes.com/opinion/story/2019-11-01/california-inmate-firefighters> (“California’s prison system doesn’t have an abundance of successful job training and rehabilitation programs for inmates. The prisoner fire crews are a rare exception.”); CDCR, *Fire Camps*, *supra* note 6, at 1 (“The rehabilitative value of the camp program is measured by recidivism rates. Among inmates who have paroled from the fire-fighting [sic] program, that rate is nearly 10 percent lower than the general inmate population.”).

17. Dallan F. Flake, *When Any Sentence Is a Life Sentence: Employment Discrimination Against Ex-offenders*, 93 WASH. U. L. REV. 45, 56 (2015) [hereinafter Flake, *Life Sentence*] (“The unlikelihood that ex-offenders will be hired . . . is compounded by employer biases toward people with criminal records. In Holzer and colleagues’ study of over 3,000 employers in four metropolitan areas, nearly 20% of employers reported they would “definitely not” hire an applicant with a criminal record . . .”).

18. See, e.g., Abby Vesoulis, *Inmates Fighting California Wildfires Are More Likely to Get Hurt, Records Show*, TIME (Nov. 16, 2018), <https://time.com/5457637/inmate-firefighters-injuries-death/>; see also Nick Sibilla, *Inmates Who Volunteer to Fight California’s Largest Fires Denied Access to Jobs on Release*, USA TODAY (Aug. 20, 2018), <https://www.usatoday.com/story/opinion/2018/08/20/californias-volunteer-inmate-firefighters-denied-jobs-after-release-column/987677002/> (“In California, nearly all counties require firefighters to become licensed emergency medical technician (EMTs) — [sic] a credential that can be denied to almost anyone with a criminal record.”).

19. Goodkind, *supra* note 14 (“Anybody who works as a line-of-duty firefighter is required to be an EMT, and paramedic training standards and requirements are

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that end, EMS authorities and fire departments are reluctant to risk giving a second chance to jobseekers with felony convictions.²⁰ On the other hand, the public loses the opportunity to employ a large pool of veteran first responders. Equally disappointing is the fact that denying ex-prisoners the chance to practice their trade deprives them of the benefits of successful rehabilitation.²¹

Denying jobs to released inmate firefighters effectively bars them from reintegrating into society. Without a good job to support themselves, even the most successfully rehabilitated ex-prisoners have the odds stacked heavily against them.²² With every door to a new life slammed shut, ex-inmates are forced to take desperate measures to make ends meet.²³ Often, ex-inmates faced with this problem revert back to the same habits that got them incarcerated in the first place—they reoffend.²⁴ These factors perpetuate the infamous “revolving door” of recidivism such that once an inmate is released, it is more likely than not they will return to prison within a few years.²⁵

There is no reason this should be the norm. Post-release employment is the number one factor that determines a prisoner’s risk of recidivism.²⁶ “Ban the Box” initiatives have tried to provide some

appropriately high because they’re providing medical assistance and directly interacting with people in their homes. Lives are at risk . . .”).

20. *See id.*

21. *See* Jemima Galan, *Banning the Box, Building a Future; How Expansion of California’s Legislation Would Mend the Threaded Strands Between Recidivism and Employment in Criminally Convicted Offenders*, 37 U. LA VERNE L. REV. 343, 346 (2016).

22. *See id.*

23. *See id.*

24. *Id.* (“Criminally convicted persons seeking employment are often left with minimal options for employment, creating an environment where they are in many ways compelled or pressured to reoffend.”).

25. *Id.* (“Persons with criminal backgrounds, who are unable to obtain gainful employment, are more likely to re-offend [sic] and engage in further crimes, as well as incur further criminal convictions.”).

26. *See, e.g.,* Caitlin Curley, *Denying Employment to Ex-Offenders Increases Recidivism Rates*, GENFKD (Mar. 17, 2017), <http://www.genfkd.org/denying-employment-ex-offenders-increases-recidivism-rates> (“Employment . . . has a huge impact on recidivism rates, so caring about recidivism means caring about ex-offender employment.”); Peter Cove & Lee Bowes, *Immediate Access to Employment Reduces Recidivism*, REALCLEAR POLITICS (June 11, 2015), https://www.realclearpolitics.com/articles/2015/06/11/immediate_access_to_employ

relief but fail to alleviate the problem. This is because such initiatives do not apply to Emergency Medical Technician (“EMT”) licensing, which is the key barrier between former inmates and fire department jobs.²⁷

This Note examines the unique legal problems faced by California’s inmate firefighters. Crucial to this Note’s thesis is the need to balance the policy goals of reducing recidivism and ensuring public confidence in hiring ex-prisoners. To strike that balance, this paper suggests a point-based system of reintegration called the “Firefighter-Inmate Rehab Evaluation Score” (“FIRE Score”). The purpose of the FIRE Score is to protect the public safety interests of EMS authorities and fire departments while advancing the criminal justice goals of the “Ban the Box” movement.

Part I covers essential background information about the Fire Camp program. Part II examines the benefits and burdens of the inmate firefighter program from the perspective of those most affected by it—the prisoners themselves. Part III describes the factors currently contributing to the “revolving door” of recidivism, namely, the barriers between released inmate firefighters and entry-level fire department jobs. Part IV evaluates the policies adopted by most California EMS authorities, with San Diego County EMS serving as a specimen for analysis.²⁸ Within Part IV, California’s “Ban the Box” law provides essential context for assessing San Diego County’s policy of denying EMT certification to most ex-prisoners. Part V proposes a point-based system of reintegration—the FIRE Score—and describes in detail how such a system would work.

ment_reduces_recidivism_126939.html (“We found than [sic] there was zero recidivism for ex-offenders who reached six months of employment.”).

27. See Goodkind, *supra* note 14; see also Sibilla, *supra* note 18.

28. Although many counties in California routinely deny EMT certification to ex-prisoners, San Diego County has been singled out for analysis because it is the birthplace of the modern Conservation Camp Program. Rainbow Camp opened in San Diego County in 1946. It is California’s first and oldest active Fire Camp. *Rainbow Conservation Camp #2*, CAL. DEP’T OF CORRECTIONS & REHAB., <https://www.cdcr.ca.gov/facility-locator/conservation-camps/rainbow/> (last visited Mar. 22, 2020) [hereinafter CDCR, *Rainbow*].

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I. BACKGROUND

The general public knows little about inmate firefighters. Most civilian contact with inmate firefighters occurs through news media. However, journalists sometimes fail to provide an accurate picture of what inmate firefighters experience.²⁹ One official from the California Department of Forestry and Fire Protection (“CAL FIRE,” formerly known as “CDF”) expressed the agency’s frustration with the lack of unbiased information: “I think people look at these inmates and think back to the early 1900s where you had chain gangs . . . I think that’s a misconception. I think people don’t understand what these inmates are actually doing.”³⁰

An information gap clearly exists. Before a fruitful analysis of the challenges faced by released inmate firefighters can occur, there must be a clear understanding of what inmate firefighters actually experience at Fire Camp.

A. California’s Conservation Camps

Fire Camps can trace their roots to the United States’ entry into World War II. The mobilization of millions of Americans for the war effort created a critical manpower shortage.³¹ This resulted in inadequate reserves of firefighters during California’s notoriously severe fire seasons.³² California was forced to look beyond its civilian

29. *Compare California Inmates Are Fighting Fires with Meager Pay and Preparation. This Is Modern-Day Slavery*, DAILY CALIFORNIAN (Nov. 30, 2018), <https://www.dailycal.org/2018/11/30/california-inmates-are-fighting-fires-with-meager-pay-and-preparation-this-is-modern-day-slavery/> (“[Inmates] are minimally trained and end their shifts in chains.”), with *Conservation (Fire) Camps, Additional Facts*, CAL. DEP’T OF CORRECTIONS & REHAB., <https://www.cdcr.ca.gov/conservation-camps/> (last visited Mar. 22, 2020) (“All inmates receive the same entry-level training that CAL FIRE’s seasonal firefighters receive . . .”) [hereinafter CDCR, *Additional Facts*].

30. Angelo Verzoni, *Cellblock to Fireline*, NFPA JOURNAL (Sept. 4, 2018), <https://www.nfpa.org/News-and-Research/Publications-and-Media/NFPA-Journal/2018/September-October-2018/News-and-Analysis/Dispatches>.

31. Doty, *supra* note 4, at 7 (“[T]he camps found new purpose during World War II, with the depletion of California’s Division of Forestry firefighters as they were diverted to the war effort . . .”).

32. *Id.*

population to replenish its depleted firefighting force.³³ During the war, California established forty-one “interim” camps and equipped inmates with firefighting tools.³⁴ In 1946, the first permanent Fire Camp, named “Rainbow Camp,” opened in San Diego County.³⁵ Since then, the inmate firefighter program became a crucial component of California’s fire plan.³⁶

Today, forty-three permanent Fire Camps are strategically placed in rural locations throughout California.³⁷ The Fire Camps are jointly operated by the California Department of Corrections and Rehabilitation (“CDCR”) and CAL FIRE.³⁸ Each camp houses between 80 to 125 inmate firefighters.³⁹ These inmates are mainly nonviolent offenders who have volunteered to be trained and deployed as wildland firefighters.⁴⁰ Every inmate receives the same training as an entry-level CAL FIRE firefighter.⁴¹ In exchange for their work, inmates receive two dollars per day, plus one dollar per hour while on a fire assignment.⁴² Additionally, inmates earn a two-day sentence reduction for each day spent working in Fire Camp.⁴³

33. *Id.*

34. *Id.*

35. CDCR, *Rainbow*, *supra* note 28.

36. CDCR, *Fire Camps*, *supra* note 6, at 1.

37. CDCR, *Rainbow*, *supra* note 28.

38. CDCR, *Fire Camps*, *supra* note 6, at 1 (“CAL FIRE and the Los Angeles County Fire Department (LACFIRE), jointly operates 42 adult conservation camps located in 27 counties. The camps house over 200 fire crews and up to 4,300 inmates who are permanently assigned to a camp.”).

39. Goodman, *Hero and Inmate*, *supra* note 1, at 356 (“Prison fire camps in California typically house between 80 and 125 inmates . . .”).

40. Sexual offenses, arson (obviously), and any history of escape with force or violence automatically disqualify prisoners from participation in Fire Camp. However, some inmates convicted of crimes against persons may be allowed to participate, provided they have demonstrated good character during the rigorous screening process. *See* CDCR, *Fire Camps*, *supra* note 6, at 2.

41. CDCR, *Additional Facts*, *supra* note 29.

42. CDCR, *Fire Camps*, *supra* note 6, at 3.

43. CHARLES M. SEVILLA & BARRY TARLOW, 5 CAL. CRIM. DEF. PRAC. § 91.142 (Matthew Bender ed., 2019) (“Any inmate who has completed training . . . as an inmate firefighter, and who is eligible to earn one day of credit for every day of incarceration . . . will instead earn two days of credit for every one day served in that assignment or after completing that training.”).

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When not fighting fires, inmates are assigned to regularly scheduled “grade assignments.”⁴⁴ Grade assignments include a diverse range of projects from trail maintenance, light construction, highway cleanup, forestry work, and in one instance, installing netting for a trout hatchery.⁴⁵ Grade assignments make up the majority of work performed by inmate firefighters.⁴⁶ While the dangers of firefighting are absent, grade assignments are labor-intensive. One scholar noted the grueling nature of grade assignments: “As a general rule, grade work is unskilled or, occasionally, semi-skilled, manual labor. Inmates have no say in what grade projects they perform each day, and exert only modest influence over how the work is done.”⁴⁷

Inmates assigned to a camp receive a number of incentives for their hard work. When not working, prisoners are free to move about the camp facility as they please.⁴⁸ They also receive better quality meals prepared onsite by fellow inmate firefighters.⁴⁹ At Fire Camp, concrete walls and barbed wire are replaced by open fields and greenery.⁵⁰ The grounds themselves, which the inmates maintain, are outfitted with weight rooms, vegetable gardens, shaded picnic areas, horseshoe pits, and other niceties otherwise unavailable to inmates.⁵¹ One inmate described the stark contrast between Fire Camp and prison:

When I arrived at camp, I was immediately struck by the smell: I smelled the grass and the trees; I smelled water as the sprinklers fed the camp’s beautiful lawns . . . I had not seen a tree in over a year; I had not touched grass nor even seen real dirt since before my arrival at San Quentin . . .⁵²

44. Goodman, *Hero and Inmate*, *supra* note 1, at 358.

45. *Id.*

46. *See id.*

47. *Id.*

48. *Id.* at 357 (“Those familiar with many of California’s walled prisons may also be taken back by the fact that camp inmates have almost complete freedom of movement, provided they stay within camp boundaries and provided they report to work on time and prepared to work.”).

49. *Id.* at 356–57.

50. *Id.*

51. *See CDCR, Rainbow*, *supra* note 28.

52. PENN, *supra* note 15, at 8.

Except for the occasional perimeter sign, there is little indication that Fire Camps are *prison facilities*. Yet, inmates are not free to leave once assigned to a camp.⁵³ Inmate firefighters still experience all the deprivations of liberty associated with incarceration, even if the barbed wire and concrete walls have been removed.⁵⁴

B. Part Inmate, Part Firefighter

One of the most surprising things about inmate firefighters is the similarities they share with their “free” counterparts. Inmates receive training commensurate with CAL FIRE entry-level firefighters.⁵⁵ Basic training consists of one week of classroom education and one week of field exercises.⁵⁶ But successful completion of the basic wildland fire academy is not the end of an inmate’s training. Inmate firefighters are required to complete four hours of advanced training per week.⁵⁷ Additionally, “[a]ll CAL FIRE [inmate] . . . crews are tested each spring during rigorous Fire Crew Preparedness Exercises.”⁵⁸

After training, inmates become part of a hand crew.⁵⁹ Hand crews consist of a team of twelve to fourteen inmates led by a CAL FIRE captain.⁶⁰ Within a hand crew, inmates have opportunities to serve in a number of leadership roles.⁶¹ These positions include the highly

53. Phillip Goodman, *Race in California’s Prison Fire Camps for Men: Prison Politics, Space, and the Racialization of Everyday Life*, 120 AM. J. SOC. 352, 361 (Sept. 2014) [hereinafter Goodman, *Race*].

54. *Id.*

55. See CDCR, *Additional Facts*, *supra* note 29.

56. CAL FIRE Conservation Camp Program, CAL. DEP’T FORESTRY & FIRE PROT. (last visited Mar. 22, 2020) <https://www.fire.ca.gov/media/10172/campprogram.pdf> [hereinafter CAL FIRE, *Conservation Camp Program*].

57. *Id.*

58. *Id.*

59. CAL FIRE, *Conservation Camp Program*, *supra* note 56.

60. CDCR, *Fire Camps*, *supra* note 6, at 2.

61. CAL. DEP’T FORESTRY & FIRE PROT., FIRE CREW FIREFIGHTING TRAINING: PROCEDURES HANDBOOK 4200 1 (2004) [hereinafter CAL FIRE, *PROCEDURES HANDBOOK*].

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sought-after “Lead Saw,”⁶² “Swamper,”⁶³ and “Drag Spoon”⁶⁴ positions. Working alongside inmate hand crews are “strike teams” of professional firefighters who use hand tools and firehose to extinguish the flames.⁶⁵ Bulldozers often support hand crews as they work through thick brush. Meanwhile, helicopters and fixed-wing aircraft attack the fire from above.⁶⁶ It is within this dynamic environment that inmates face every hazard associated with firefighting. One inmate firefighter described his first experience on the fire line: “The fire was right there! I was digging a line, [the fire] was burning my face, burning my feet, and I’m like, ‘I don’t know if I want to do this right now.’”⁶⁷

Despite the risk, thousands of California inmates volunteer to fight fire every year.⁶⁸ This large, cheap pool of labor is essential to the state’s fire protection plan. In a public statement, one CAL FIRE official said, “CAL FIRE [inmate] crews are available year-round; consequently, they have become California’s storm troopers.”⁶⁹

C. California’s Dependence on Inmate Firefighters

California’s dependence on inmate firefighters is a result of the ferocity of its wildfires. The demands on California firefighters are extreme. CAL FIRE responds to an average of 5,750 wildfire incidents each year.⁷⁰ CAL FIRE does a commendable job of handling the state’s fire seasons, but the pressure on the department is mounting. For

62. *Id.* at 3 (“Lead person on crew . . . identifies and marks the control line[.]”).

63. *Id.* at 5 (“Handles logistic needs of the crew . . . Handles special projects assigned by the Fire Captain . . . Maintains crew vehicle and tools[.]”).

64. *Id.* at 4–5 (“Inspects line . . . performs as safety lookout . . . Communicates with Fire Captain by portable radio . . .”).

65. See CAL FIRE, *Conservation Camp Program*, *supra* note 56.

66. CAL FIRE Programs: Air Program, CAL. DEP’T OF FORESTRY & FIRE PROT., <https://www.fire.ca.gov/programs/fire-protection/air-program/> (last visited Mar. 27, 2020) [hereinafter CAL FIRE, *Air Program*].

67. Brooke Jarvis, *Inmate Firefighters: Taking the Heat, Away from the Cooler*, AL JAZEERA AM. (Nov. 25, 2013), america.aljazeera.com/articles/2013/11/25/fire-and-punishmentinmatefirefightersonthefrontlines.html.

68. L.A. TIMES, *supra* note 16.

69. CAL FIRE, *Conservation Camp Program*, *supra* note 56.

70. CAL. DEP’T OF FORESTRY & FIRE PROT., CAL FIRE AT A GLANCE (2017–2018) (Sept. 2018), <https://www.fire.ca.gov/media/4922/glance.pdf> [hereinafter CAL FIRE, AT A GLANCE].

perspective, both the *largest* and *deadliest* wildfires in California history occurred in 2018.⁷¹

Adding to California's risk factor is its enormous population. As population centers expand, so too does the number of households in what CAL FIRE calls the "Wildland Urban Interface" or "WUI."⁷² The WUI is the area where housing developments intermingle with wildland vegetation.⁷³ WUI zones present multiple tactical problems for firefighters, and they are the most difficult places to fight fire.⁷⁴ Of the 4.5 million American homes located in hazardous WUI zones, over 2 million are located in California.⁷⁵

The reality is that Californians face a constant, severe threat from wildfires. As fire seasons grow longer and the number of Californians living in dangerous WUI zones increases, so too does the burden on an already stressed firefighting force. One California fire chief described the toll this takes on firefighters: "Because of a longer fire season and chronic understaffing, firefighters are left exhausted, overworked and emotionally taxed"⁷⁶

71. CAL. DEP'T OF FORESTRY & FIRE PROT., TOP 20 LARGEST CALIFORNIA WILDFIRES (Aug. 8, 2019), https://fire.ca.gov/media/5510/top20_acres.pdf [hereinafter CAL FIRE, TOP 20]. In 2018, the Camp Fire claimed eighty-five lives before being contained by fire crews, making it the deadliest fire in California history. Kristin Lam, *Death Toll Drops to 85 at Camp Fire; 11 People Remain Missing*, USA TODAY (Dec. 3, 2018), <https://www.usatoday.com/amp/2199035002>. When the flames were finally extinguished, the Camp Fire had destroyed nearly 14,000 homes and scorched over 150,000 acres. *Id.* Despite its ferocity, the Camp Fire ranks only as California's sixteenth largest fire. CAL FIRE, TOP 20, *supra* note 71. Topping the list of California's largest fires is the Mendocino Complex Fire, which burned 459,123 acres and claimed a firefighter's life in 2018. *See id.*

72. *See* Janet Franklin, *Rapid Growth of the US Wildland-Urban Interface Raises Wildfire Risk*, 115 PROC. NAT'L ACAD. SCI. 3314, 3314 (2018).

73. *Id.*

74. *Id.* ("When houses are built close to forests or other types of natural vegetation, they pose two problems related to wildfires. First, there will be more wildfires due to human ignitions. Second, wildfires that occur will pose a greater risk to lives and homes, they will be hard to fight, and letting natural fires burn becomes impossible.").

75. *Id.*; *see also* *Facts + Statistics: Wildfires*, INSURANCE INFO. INST., <https://www.iii.org/fact-statistic/facts-statistics-wildfires> (last visited Mar. 23, 2020).

76. Amanda Morris, *Understaffed and Overworked: Firefighters Exhausted by Severe California Fires*, NPR (Nov. 25, 2018),

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Millions of Californians depend on the State's standing force of firefighters, but that protective line is stretched dangerously thin. Thousands of additional firefighters would need to be hired, trained, equipped, and deployed to adequately meet California's annual fire burden; experts estimate that such an expansion would cost California taxpayers between \$80 million and \$124 million annually.⁷⁷ Therefore, California has developed an inextricable dependence on its inmate firefighters. With such a strong demand for firefighters, it is bad policy to bar thousands of experienced inmate firefighters from continuing their service after release. This means that the State must find a sustainable means of reintegrating the huge numbers of inmate firefighters when they are released—or risk losing out on a huge pool of experienced first responders.

II. THE PRISONER'S EXPERIENCE: HOW FIRE CAMP AFFECTS INMATE FIREFIGHTERS

A. *The Inmate Perspective*

Fire Camp is appealing to inmates in part because of its relatively successful rehabilitation record.⁷⁸ Prisoners who are paroled from Fire Camp experience ten percent lower recidivism rates than the general inmate population.⁷⁹ For a person who wants to get out of prison and stay out, Fire Camp provides an attractive opportunity to stack the odds in their favor.

As part of a sociological survey of how Fire Camp affects inmates, Dr. Phillip Goodman interviewed forty-seven inmate firefighters.⁸⁰

<https://www.npr.org/2018/11/25/668716885/understaffed-and-overworked-firefighters-exhausted-by-severe-california-fires>.

77. Compare Goodman, *Hero and Inmate*, *supra* note 1, at 354 (“[F]ire camps . . . save the State of California an estimated \$80 million annually . . .”), with CDCR, *Fire Camps*, *supra* note 6, at 1 (estimating that Fire Camps save taxpayers up to \$124 million each year.).

78. See CDCR, *Fire Camps*, *supra* note 6, at 1 (“Among inmates who have paroled from the fire-fighting program, that rate is nearly 10 percent lower than the general inmate population.”).

79. *Id.*

80. See generally Goodman, *Hero and Inmate*, *supra* note 1, at 357, n.9 (“In total, I interviewed seventy-one people across five main fire camps This

During the interviews, Dr. Goodman kept a record of how inmates reported their experiences at Fire Camp.⁸¹ The results of Dr. Goodman's research provide a rare opportunity to view Fire Camp through an inmate's eyes. Unsurprisingly, about half of inmates surveyed described firefighting as "hard" and "dangerous."⁸² When asked to further describe the nature of their work, the next most common descriptions were that firefighting provided a "way of giving back" and that it made them "feel[] appreciated."⁸³

Ozroe Penn, author of the book, *California Inmate Firefighter*, served several seasons as an inmate firefighter.⁸⁴ Penn memorialized his experiences in a firsthand account of what life is like for those who volunteer.⁸⁵ "Being a firefighter was a wonderful experience for me," Penn says in his introductory pages.⁸⁶ A prominent idea in his book is that inmate firefighters have an opportunity to fundamentally transform their lives at Fire Camp.⁸⁷ While many inmates want to live happy, fulfilling lives upon release, prison tends to work against this goal in pervasive ways.⁸⁸ Fire Camp provides a unique opportunity to escape prison culture's most toxic elements.⁸⁹ Specifically for Penn, the goal of getting to Fire Camp helped him rise above the daily pressures of prison: "[T]he prison culture continued to go on around me . . . People would smoke dope all around me . . . but I had to stay focused on the task at hand: *getting to camp*."⁹⁰

Once they enter Fire Camp, inmates become part of something that is much larger than themselves—the collective firefighting force of California. The opportunity to be welcomed into California's

consisted of forty-five inmates, twelve officers, six forestry crew leaders, six correctional supervisors . . . , and two administrators.").

81. *Id.*

82. *Id.* at 375–76.

83. *Id.* at 376.

84. *See generally* PENN, *supra* note 15.

85. *See generally id.*

86. *Id.*

87. *See generally id.*

88. *See id.* at 8.

89. *See id.*

90. *Id.* at 7.

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firefighting family is a life-changing experience for many inmates.⁹¹ An inmate currently serving as a firefighter said, “You feel like you’re a normal person . . . You don’t have this huge barrier that’s put between you — ‘I broke the law, so I’m no longer part of society.’”⁹²

Inmate firefighters tend to value their work because they gain a sense of belonging to society.⁹³ For many inmates, incarceration is a scarlet letter—permanently marking them as unworthy of participation in free society.⁹⁴ It is notable that the majority of inmates in California prisons come from already marginalized communities.⁹⁵ Fire Camp is viewed by some inmates as an opportunity to restore their social status.⁹⁶ For one inmate, Fire Camp was the first time he felt his personhood was fully recognized:

There’s an assembly where we have a formation in the mornings . . . the lieutenant comes out and he goes, ‘Look, we’ll treat you like men first, firefighters second and prisoners if we have to,’ . . . That right there, that stuck in my head . . . because now I have a chance to be treated like a man.⁹⁷

Fire Camps present a moral anomaly. Inmates are not happy about their low wages, nor are they particularly keen on the labor-intensive “grade assignments” which make up the majority of their work.⁹⁸ At

91. See, e.g., Lindsey Raisa Feldman, *Forging Selfhood: Masculinity, Identity, and Work in Arizona’s Inmate Wildfire Program* 191 (2018) (unpublished Ph.D. dissertation, University of Arizona) (on file with University Libraries, University of Arizona) (“For me, I look forward to coming out here and being with my brothers . . . this is like my other family. I think this job has shown me that there’s more to life and that’s loving each other.”).

92. Jarvis, *supra* note 67 (interview with inmate firefighter “Sondergaard”).

93. See, e.g., *supra* text accompanying note 91.

94. Feldman, *supra* note 91, at 170 (“[O]ne of the most common impacts on identity that [Fire Camp] participants identified, which is being regarded—and slowly learning to accept being regarded—as a human again, after having survived years of incarceration in a subhuman status.”).

95. Goodman, *Race*, *supra* note 53, at 353.

96. See Feldman, *supra* note 91, at 170.

97. Alex Helmick, *California Leans Heavily on Thousands of Inmate Firefighters*, KQED (July 25, 2014), <https://www.kqed.org/science/19607/california-leans-heavily-on-thousands-of-inmate-firefighters>.

98. Luis Gomez, *For \$1 an Hour, Inmates Fight California Fires. ‘Slave Labor’ or Self-Improvement?* SAN DIEGO UNION TRIB. (Oct. 20, 2017),

the same time, inmates report feelings of pride and optimism because of Fire Camp.⁹⁹ Many feel that Fire Camp is the best rehabilitative program available to them.¹⁰⁰

B. Are High Risk and Low Wages a Recipe for Exploitation?

It is hard to overstate the dangers confronting firefighters. Any firefighter who has hiked through California's dry brush on a hot, gusty day will attest to the unnerving sensation of being at nature's mercy. One firefighter described the incredible forces generated by fires: "The biggest wildfires create their own weather—50-mile-an-hour tornado-type winds send twisting billows of gray and tan smoke hundreds of feet into the sky. Two inmate firefighters were killed in 2017."¹⁰¹

Former inmate firefighter Ozroe Penn described in chilling detail what happened when his fire crew first saw action:

I was almost run over by most of my crew. There were sixteen men on the crew, and maybe ten of them fled . . . my fire Captain was yelling at the guys to return to their position . . . I saw firefighters standing up against walls of flames ten times taller than they were . . . I watched a sixty-foot pine tree go up in flames . . . this tree exploded maybe twenty feet in front of me and I knew then why everyone ran.¹⁰²

<https://www.sandiegouniontribune.com/opinion/the-conversation/sd-how-much-are-california-inmate-firefighters-paid-to-fight-wildfires-20171020-htmstory.html>

("The pay is ridiculous . . . There are some days we are worn down to the core. And this isn't that different from slave conditions. We need to get paid more for what we do."); *see also* Goodman, *Hero and Inmate*, *supra* note 1, at 357 ("In reality, it is the manual labor projects performed for various public agencies that occupy most of staff and prisoners' time. Tellingly, inmates receive the least compensation for this work, both pecuniary and in terms of social capital and recognition.").

99. *See, e.g.*, Helmick, *supra* note 97.

100. *See id.*

101. Chuck McFadden, *Inmate Firefighters Risk Death at \$1 an Hour*, CAPITOL WKLY. (Aug. 9, 2018), <https://capitolweekly.net/inmate-firefighters-risk-death-1-hour/>.

102. PENN, *supra* note 15, at 9.

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Civilian firefighters are paid an average of \$73,860 per year to risk life and limb battling California's wildfires.¹⁰³ In the event of death or disability, firefighters can expect to receive a variety of benefits for themselves and their loved ones.¹⁰⁴ In contrast, inmates receive only two dollars per day, plus one dollar per hour while on fire assignment.¹⁰⁵ If injured or killed in the line of duty, they are not covered by worker's compensation.¹⁰⁶ California law severely restricts access to disability benefits for prisoners; injured inmates must rely on the limited protections offered by California Labor Code section 3370.1.¹⁰⁷ The result is that inmates are working side-by-side with professional firefighters, facing the same life-threatening fire conditions, in exchange for only a nominal wage. Meanwhile, questions about how inmates will support themselves after release remain largely unanswered. A scholar familiar with prison labor issues pointed out the apparent tension between the work performed and human rights: "Questions of exploitation abound, centered not only on wages, but on work conditions as well . . . [I]nmates [perform] among the most dangerous, most arduous, and least desirable work of wildland firefighting."¹⁰⁸

Despite the risk and the uncertainty, most inmate firefighters embrace the grueling, dangerous work.¹⁰⁹ Part of the reason for this is

103. Vesoulis, *supra* note 18 ("California's civilian firefighters make an average of \$73,860 per year plus benefits while working the same shifts . . .").

104. CAL. DEP'T OF HUMAN RES., AGREEMENT BETWEEN THE STATE OF CALIFORNIA AND CAL FIRE LOCAL 2881, art. 11 §11.15 (Jan. 1, 2017), <https://www.calhr.ca.gov/labor-relations/Documents/mou-20170101-20210701-bu8.pdf>.

105. CDCR, *Fire Camps*, *supra* note 6, at 3.

106. Fathi, *supra* note 10 ("If they're injured or killed on the job, they're not covered by workers' compensation, and their ability to recover damages in court is severely limited.").

107. See CAL. LAB. CODE §3370.1(a)(2) (Deering 2020) ("The patient shall not be entitled to any temporary disability indemnity benefits while committed . . . or incarcerated in a city or county jail or state penal or correctional institution.").

108. Goodman, *Hero and Inmate*, *supra* note 1, at 355.

109. Joanna M. Weill, *Prisoners on the Fireline: The Application of Ethical Principles and Guidelines to Prison Fire Camps*, 29 ETHICS & BEHAVIOR 1, 9 (2019) ("196 interviews with prisoners . . . 86% prefer work to doing nothing, and 52% of prisoners would work more hours each day even if their daily pay remained the same.").

that prisoners who serve in the Camps can look forward to an early release date.¹¹⁰ Inmates in good standing earn a two-day sentence reduction for every day of service in Fire Camp, starting at the end of their training.¹¹¹

III. RENEWING THE PUSH FOR REINTEGRATION

A. *The Recidivism Problem*

Unfortunately for inmates, the most difficult challenges to rehabilitation occur not while fighting fire, but after they are released. The recidivism rate for American inmates is bleak; eighty-three percent of state inmates return to prison at least once within nine years of release.¹¹²

Of all the U.S. states, California appears to struggle the most with its recidivism problem. Particularly concerning is how much California spends to achieve its ten-year recidivism rate of fifty percent.¹¹³ In Fiscal Year 2018–2019, California dedicated a staggering \$298 million for in-prison rehabilitation programs.¹¹⁴ But the money seems to fall into a bottomless pit without effect: California still has the highest recidivism rate in the nation.¹¹⁵ California’s overall rehabilitation efforts are equally anemic: the State failed to meet the rehabilitative needs of sixty-two percent of its “at-risk” inmates in 2017–2018.¹¹⁶ In

110. SEVILLA & TARLOW, *supra* note 43, at § 91.142(1)(a).

111. *Id.* § 91.142(3)(d).

112. MARIEL ALPER, MATTHEW R. DUROSE, & JOSHUA MARKMAN, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005–2014) 1 (May 2018), <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

113. See CAL. STATE AUDITOR, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION: SEVERAL POOR ADMINISTRATIVE PRACTICES HAVE HINDERED REDUCTIONS IN RECIDIVISM AND DENIED INMATE ACCESS TO IN-PRISON REHABILITATION PROGRAMS: REPORT 2018-113 5, fig.1 (Jan. 2019) [hereinafter AUDITOR, CDCR REPORT].

114. *Id.* at 7, fig.2.

115. Goodkind, *supra* note 14.

116. AUDITOR, CDCR REPORT, *supra* note 113, at 23 (“62 percent of the inmates released in fiscal year 2017–18 who had been assessed as having rehabilitative needs and having a risk of recidivating were released without any of these needs having been met.”).

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2019, the State Auditor found that despite substantial investments in cognitive behavioral therapy for inmates, the Golden State has seen no significant impact on recidivism rates.¹¹⁷ The Auditor reported, “[I]nmates who completed their recommended [therapy] recidivated at about the same rate as inmates who were not assigned to those rehabilitation programs.”¹¹⁸

The immaterial effect of in-prison therapy is frustrating. How can California reintegrate former inmates when therapeutic programs fail to reduce recidivism? The answer seems to lie in vocational training programs.¹¹⁹ Gainful employment has been shown to benefit released inmates by improving their mental health and self-esteem.¹²⁰ By learning useful skills while in prison, inmates are better equipped to provide for themselves upon release.¹²¹ For these reasons, lawmakers should pay special attention to the one rehabilitative program that seems to be working: Fire Camps. “California’s prison system doesn’t have an abundance of successful job training and rehabilitation programs for inmates. The prisoner fire crews are a rare exception.”¹²²

B. Good Enough While Incarcerated, but Rejected upon Release

Each inmate firefighter represents a substantial investment by the State of California. The State operates forty-three conservation camps at an annual cost of about \$2.4 million per facility.¹²³ On average, each inmate firefighter hand crew costs about \$500,000 per year to operate.¹²⁴

117. *Id.* at 13 (“[O]ur analysis of data for inmates who received rehabilitation programs suggests that there was no overall significant connection between an inmate completing these programs and the inmate’s likelihood to recidivate.”).

118. Matthew Clarke, *Long-Term Recidivism Studies Show High Arrest Rates*, PRISON LEGAL NEWS (May 3, 2019), <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/>.

119. Flake, *Life Sentence*, *supra* note 17, at 62 (“Scholars have long contended that employment serves as an important mechanism to prevent ex-offenders from reverting to criminal activity.”).

120. *Id.* at 62–63.

121. *See id.* at 61–63.

122. L.A. TIMES, *supra* note 16.

123. *See* TAYLOR, *supra* note 16, at 8, 18.

124. *See id.*

Yet, despite extensive training and years of frontline experience, former inmate firefighters struggle to find jobs as career firefighters.¹²⁵ As a result, the State's investment in these veteran first responders is wasted. If the purpose of rehabilitation is to improve public safety and reduce incarceration costs, then that purpose is defeated when successfully rehabilitated inmates are denied opportunities to reintegrate.¹²⁶

A released inmate must overcome two distinct and substantial barriers before getting a job as a career firefighter. The first is competition: firefighter jobs are among the most competitive in California. The second is obtaining the required Emergency Medical Technician ("EMT") license. For ex-prisoners, this is almost impossible.

*1. Entry-Level Firefighter Jobs Are Hard to Get—Even
for Non-Felons*

Recruitment for entry-level firefighter jobs is exceptionally competitive. The sheer volume of applicants for firefighter positions is overwhelming. For example, "[T]he Los Angeles Fire Department had upwards of 13,000 applicants for fewer than 100 jobs in 2013."¹²⁷ Two years later, thousands of prospective recruits applied for just twenty-one openings with the San Jose Fire Department.¹²⁸

The scarce job openings tend to attract large numbers of highly qualified candidates. Even for entry-level jobs, fire departments seek out candidates who already have firefighting experience and the requisite EMT certification.¹²⁹ These factors place inmates at a

125. Sibilla, *supra* note 18 ("[I]n a bitterly ironic twist, once inmates leave prison, they often can't work as firefighters, despite their frontline experience.").

126. See Meagan K. Nettles, *The Sobering Failure of America's "War on Drugs": Free the P.O.W.'s*, 55 CAL. W. L. REV. 275, 307 (2018) ("A vital step towards increasing public safety and decreasing incarcerations costs is rehabilitating offenders while they are incarcerated . . .").

127. See TAYLOR, *supra* note 16, at 20.

128. *San Jose Welcomes in New Group of Firefighters*, ABC7 (Jan. 20, 2015), <https://abc7news.com/news/san-jose-welcomes-in-new-group-of-firefighters/483080/> ("We had a very strong applicant pool. We had a couple of thousand people apply for us.").

129. Sibilla, *supra* note 18; see also Steve Prziborowski, *Becoming a Firefighter: 10 Must-Do Things*, FIRE RESCUE 1 (Mar. 13, 2020),

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substantial competitive disadvantage. The California Legislative Analyst's Office concluded that inmates are disadvantaged against candidates who already possess EMT certificates, saying, "Parolees would likely have difficulty competing with such applicants."¹³⁰

However, there are compelling reasons to rethink whether an incarceration record should negatively affect those who serve their sentence in Fire Camp. As a preliminary matter, inmate firefighters as a whole are seasoned veterans when it comes to battling wildfires. Logically, any applicant with actual firefighting experience should merit sincere consideration for an entry-level firefighter job. The competition for any firefighter role is already high—why not give experienced firefighters a chance to compete at an equal level? Prisoner rights advocates have called for change, writing, "If you're good enough to fight fires while you're inside, you should be good enough to fight fires when you're outside . . . They're doing the life-saving work . . . and when they get out, they can't do those jobs."¹³¹

It is true that there are strong policy considerations in favor of screening firefighter applicants for evidence of defective moral character.¹³² However, there ought to be substantial consideration for former inmates who have proved their ability to serve on the fire line. That being said, Fire Camp experience *by itself* should not be determinative in whether an ex-prisoner is hired. The California Professional Firefighter's association noted that there is still a training gap to be crossed after inmate firefighters are released: "These inmate

<https://www.firerescue1.com/career-1/articles/becoming-a-firefighter-10-must-do-things-wmOqMRqBfrm8Jflg/> ("The great majority of departments are requiring an EMT certification to apply and more than 90% will require this certification after hire."); Jennifer Alyson, *Do Firefighters Also Have to be EMTs?*, CHRON, <https://work.chron.com/firefighters-also-emts-14874.html> (last visited, April 5, 2020) ("Many fire departments look for hires already trained as EMTs so they can focus more on firefighting and less on medical training while attending the fire academy.").

130. TAYLOR, *supra* note 16, at 20.

131. Vesoulis, *supra* note 18 (quoting Katherine Katcher, Executive Director of Root & Rebound).

132. Christopher Stafford, *Finding Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism*, 13 GEO. J. ON POVERTY L. & POL'Y 261, 275 (2006) ("The traditional justification for employment restrictions is their preventive effect: prohibiting those who are likely to re-offend from employment situations that may prove dangerous to public safety.").

crews work as hand crews, they aren't involved in direct response, medical care or frontline responsibilities"¹³³

Upon release from Fire Camp, ex-inmates must learn essential emergency medical service skills before they can be considered for firefighter jobs.¹³⁴ There is nothing to stop an ex-inmate from obtaining EMT training—many may even gain national accreditation.¹³⁵ But ex-inmates' hopes of starting new careers as firefighters come to an abrupt halt at the county level.

2. Counties Routinely Delay or Deny EMT Certifications to Former Inmates

Giving rehabilitated inmate firefighters a fair shot against the large numbers of applicants is not the only problem to overcome. Due to their inability to satisfy the EMT certification requirement, many ex-prisoners' hopes of employment are cut down before the application process even begins.

Virtually all fire departments require applicants to obtain EMT certification.¹³⁶ In California, EMT certification occurs at the county level.¹³⁷ It is there that released inmates face the steepest barrier to seeking employment with a fire department. San Diego County, for example, has strict criminal history requirements for EMTs.¹³⁸ The County's criteria eliminates large numbers of applicants with criminal

133. Goodkind, *supra* note 14.

134. Alyson, *supra* note 129.

135. See NAT'L REGISTRY OF EMERGENCY MED. TECHNICIANS, POLICY NO.: 51.05, CRIMINAL CONVICTIONS POLICY 1 (Nov. 14, 2018), https://content.nremt.org/static/documents/Criminal%20Convictions%20Policy_Nov_2018.pdf ("National Registry may deny an applicant . . . based on a criminal conviction.") [hereinafter NREMT, CRIMINAL CONVICTIONS POLICY].

136. Sibilla, *supra* note 18 ("In California, nearly all counties require firefighters to become licensed emergency medical technician (EMTs) — [sic] a credential that can be denied to almost anyone with a criminal record.").

137. See Vesoulis, *supra* note 18.

138. See *Certification FAQs: EMT Initial Certification*, SAN DIEGO CTY. HEALTH & HUMAN SERVS., https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/emergency_medical_services/certification_and_accreditation/certification-faq-s.html (last visited Mar. 24, 2020) [hereinafter SAN DIEGO CTY., *EMT Certification*].

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convictions.¹³⁹ Ex-prisoners are completely barred from obtaining EMT certification while on parole.¹⁴⁰ Any released prisoner who has been convicted of two or more felonies is also barred for life.¹⁴¹ Some offenses, such as murder, attempted murder, and specified sexual offenses will also result in a lifetime ban.¹⁴² For the majority of other felonies (and some misdemeanors), released inmates are eventually allowed to get certified—but only *after* a ten-year ban on their eligibility has expired.¹⁴³

There are compelling public safety policies for banning the most egregious offenders from acquiring EMT certification. EMTs and firefighters have almost unlimited access to people's private lives while responding to an emergency.¹⁴⁴ EMTs in particular may be left alone with vulnerable patients for extended periods of time. The public has a right to demand that first responders be held to the highest standard of good moral character. To that end, there is little sympathy for sexual offenders or exceptionally violent felons who are excluded from public service.

But these are not the kind of offenders who earn a place at Fire Camp.¹⁴⁵ Inmates who serve as firefighters in the Conservation Camp Program have been the subject of high praise.¹⁴⁶ Specifically, inmate firefighters have earned a reputation for trustworthiness, courage, and hard work.¹⁴⁷ This is due in part to the rigorous selection criteria for inmates who wish to join the program.¹⁴⁸ Thus the rationale for

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *See id.*

144. NREMT, CRIMINAL CONVICTIONS POLICY, *supra* note 136, at 2.

145. CDCR, *Fire Camps*, *supra* note 6, at 2 (“Many inmates are not eligible to volunteer . . . [this includes] [i]nmates with a classification level higher than “minimum custody”, [sic] which includes the majority of inmates, especially those in prisons with a Level III or Level IV security status . . .”).

146. *See* TAYLOR, *supra* note 16, at 20.

147. Goodman, *Hero and Inmate*, *supra* note 1, at 364 (quoting CDCR officer “Rick”: “They are firefighters, and I’ll be honest with you, anybody, whether they like inmates or not, as an officer who has been out on the fires, I think the inmate crews are the hardest working crews you’ll see on a fire.”).

148. CDCR, *Fire Camps*, *supra* note 6, at 2 (“Each inmate is evaluated individually to ensure that all those selected for the camp program are willing to be

delaying inmate firefighters' access to EMT certification seems weak when Fire Camp's recruitment criteria and training standards are taken into account.

Of course, every potential EMT should be independently evaluated for good moral character—this Note does not disagree with that sentiment whatsoever. Where this Note diverges from current policy is in its opposition to imposing a ten-year delay on eligibility for EMT certification for paroled inmate firefighters. Such a delay serves merely to deny EMT certification to ex-prisoners without regard for their rehabilitated status.

C. EMT Certification Delayed Is EMT Certification Denied

Delaying opportunities to earn the required EMT certification appears equally as harmful as denying certification outright. Counties typically delay certification for up to ten years for some convictions.¹⁴⁹ The ten-year ban is counterproductive at best and draconian at worst.

The nationwide recidivism rate is *highest* when measured over a ten-year period.¹⁵⁰ Therefore, the ten-year ban seems to *undo* any rehabilitative progress ex-prisoners make while incarcerated by denying them opportunities to reintegrate. The ten-year ban also fails to account for the positive effects that Fire Camp has on an inmate's character. Moreover, the ban fails to factor in changes in maturity, positive character development, and work experience. "The blanket ban on EMT certifications assumes that no felon can be rehabilitated, which is just not true."¹⁵¹ One former inmate firefighter—who was only seventeen years old when he was first convicted—expressed his desire for a new life after leaving Fire Camp: "At 17, you don't really know where you want to go in life, but after given some time of

team members with non-violent behavior, even if their original conviction was for a violent crime.").

149. See, e.g., SAN DIEGO CTY., *EMT Certification*, *supra* note 139; CAL. EMERGENCY MED. SERVS. AUTH., RECOMMENDED GUIDELINES FOR DISCIPLINARY ORDERS AND PROBATION FOR EMT (BASIC) AND ADVANCED EMT 3 (Apr. 1, 2010), <https://ems.ca.gov/wp-content/uploads/sites/71/2017/07/EMSA134.pdf>.

150. See ALPER, DUROSE, & MARKMAN, *supra* note 112, at 1.

151. L.A. TIMES, *supra* note 16.

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isolation and reflection, when I transitioned out of the fire camp, my whole goal was to give back to my community”¹⁵²

But this is not to say that all ex-prisoners should be welcome to gain EMT certification. Just as a ten-year ban does not account for successful rehabilitation, a blanket endorsement for all inmate firefighters does not account for *failed* rehabilitation. Any new policy of reintegration must allow rehabilitated inmate firefighters to obtain certification while simultaneously excluding those who are not rehabilitated.

As discussed in detail below, a point-based system is the best alternative to current policy. By acquiring “points” for good service, inmates can *earn* endorsements from county EMS authorities. The path to rehabilitation should lead somewhere meaningful. For inmate firefighters who earn enough points, that path should culminate with an EMT certificate, thus opening the doors to a fulfilling fire department career.

IV. THINKING OUTSIDE THE BOX: INTRODUCING A POINT-BASED SYSTEM OF REINTEGRATION

For various reasons, excluding ex-prisoners from career firefighter positions does more harm than good. As a preliminary matter, the exclusion does not serve the policy goal of improving public safety because it fails to recognize the positive rehabilitative results achieved by inmate firefighters. California’s “Ban the Box” law seems to recognize this, but simply banning initial criminal conviction screenings does nothing to address the barriers between inmates and vocational licensing. The result is that many rehabilitated inmates are unable to get vocational licenses and jobs, and therefore, cannot successfully reintegrate upon release.¹⁵³ This should be particularly concerning to lawmakers who wish to reduce recidivism in paroled inmate firefighters.

152. Vesoulis, *supra* note 18 (interviewing former inmate firefighter Ramon Leija).

153. The raw numbers are especially salient to this point when one considers that the State of California has an exceptionally high need for skilled firefighters. *See, e.g., Galan, supra* note 21, at 345 (“Approximately 25% of the adult population in California has a criminal record on file with the state, and over seven million people in California have criminal backgrounds.”).

A. *Excluding Inmate Firefighters Does Not Serve the Policy Goals of Public Safety*

The obvious policy reason for denying firefighter jobs to former inmates has to do with public safety. With such large numbers of jobseekers to choose from, fire departments have little incentive to “take a chance” on former inmates: “When asked about their reluctance or unwillingness to hire ex-offenders, employers often express concern that ex-offenders will revert to criminal behaviors . . . Many employers also believe ex-offenders possess character flaws, such as *unreliability* and *untrustworthiness*”¹⁵⁴

Fire departments are especially sensitive to the dangers of hiring applicants with dubious moral character.¹⁵⁵ Thus, most county EMS authorities have determined that the dangers of certifying a candidate with ostensibly defective moral character are simply too great:

EMS professionals . . . have unsupervised, intimate, physical and emotional contact with patients at a time of maximum physical and emotional vulnerability, as well as unsupervised access to a patient’s personal property. These patients may be unable to defend or protect themselves, voice objections to particular actions, or provide accurate accounts of events at a later time.¹⁵⁶

Carrol Wills, a spokesperson for the California Professional Firefighters association, explained the reasons behind fire departments’ bias against former felons.¹⁵⁷ Her statement was as compelling as it was blunt. “Lives are at risk”¹⁵⁸ Of course such concerns are valid and merit serious consideration. However, the evidence suggests that such dangers are minimal when hiring released inmate firefighters. Scholars familiar with rehabilitative outcomes have noted the existence of a “Redemption Point”—a point in time where a released inmate presents no greater risk than a non-felon. An author familiar with the phenomenon summarized the “Redemption Point” theory, stating,

154. Flake, *Life Sentence*, *supra* note 17, at 58 (emphasis added, internal citations omitted).

155. Goodkind, *supra* note 14.

156. NREMT, *Criminal Convictions Policy*, *supra* note 136, at 2.

157. Goodkind, *supra* note 14.

158. *Id.*

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“[T]here comes a point in time when the recidivism risk converges to the risk of non-offenders, such that the ex-offender is about as unlikely as a non-offender to commit a crime.”¹⁵⁹

This Note aims to show that such risks are sufficiently mitigated when two essential elements are met. The first element is rehabilitation. The “Redemption Point” factors discussed in depth by Professor Dallan F. Flake strongly indicate that upon successful rehabilitation, ex-felons present no greater risk to employers than non-offenders.¹⁶⁰ The second element is a holistic review of ex-inmates’ rehabilitative status. A point-based system of reintegration will allow employers to evaluate whether an inmate firefighter has met the “Redemption Point.”

In regards to rehabilitative outcomes of former inmate firefighters, the California Legislative Analyst’s Office noted, “These parolees [inmate firefighters] tend to be of low risk to the community and have demonstrated a willingness and ability to work hard.”¹⁶¹ In an interview, one CDCR officer expressed his disappointment about the stigma against released inmate firefighters: “They are firefighters . . . I think the inmate crews are the hardest working crews you’ll see on a fire . . . I think they’re not appreciated as much as they should be.”¹⁶²

B. “Ban the Box” Initiatives Fail to Reduce Barriers to Vocational Licensing

Many states have recognized the harmful effects of denying employment to successfully rehabilitated ex-prisoners.¹⁶³ Part of the

159. Flake, *Life Sentence*, *supra* note 17, at 61.

160. Research shows that after a certain amount of time has passed since being released, ex-offenders and non-offenders are *equally* unlikely to commit a crime or dishonest act on the job. *See* Flake, *Life Sentence*, *supra* note 17, at 61.

161. *See* TAYLOR, *supra* note 16, at 20.

162. Goodman, *Hero and Inmate*, *supra* note 1, at 364 (interviewing CDCR Officer “Rick”).

163. Beth Avery, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, NAT’L EMP. LAW PROJECT (July 1, 2019), <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/> (“Nationwide, 35 states and over 150 cities and counties have adopted what is widely known as ‘ban the box’ so that employers consider a job candidate’s qualifications first—without the stigma of a conviction or arrest record.”).

movement to correct the problem has been a growing popularity of “Ban the Box” laws.¹⁶⁴

“Ban the Box” is a national civil rights movement dedicated to improving employment prospects for formerly convicted persons.¹⁶⁵ The aim of the movement is to strike components of job applications which inquire into applicants’ criminal conviction history.¹⁶⁶ Typically, such applications have a box which says something to the effect of “Check here if you have ever had a criminal conviction.”¹⁶⁷ Note, however, that such laws do not preclude employers from ever finding out about a prior conviction.¹⁶⁸ Instead, the law *delays* the timing of an employer learning of a conviction until *after* the applicant has had an opportunity to demonstrate their positive traits.¹⁶⁹ An author familiar with the “Ban the Box” movement identified the policy goals of such laws: “The hope is that an employer will be more likely to hire an ex-offender if it evaluates a candidate’s qualifications for the position before discovering the applicant’s criminal record.”¹⁷⁰

California has recognized the urgent need to place ex-prisoners in positions of gainful employment.¹⁷¹ On January 1, 2019, the Pardon

164. *See id.*

165. See Roy Maurer, ‘Ban the Box’ Turns 20: What Employers Need to Know, SOC’Y FOR HUM. RES. MGMT. (Nov. 12, 2018), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/ban-the-box-turns-20-what-employers-need-to-know.aspx> (“Primarily covering the public sector, many ban-the-box laws also apply to private-sector employers, seeking to protect applicants and candidates convicted of a crime from automatic disqualification during the selection process.”).

166. *Id.*

167. Analysts most familiar with the “Ban the Box” movement point out that checking such a box almost always results in immediate and automatic disqualification from consideration. *See, e.g.*, Galan, *supra* note 21, at 346 (“The vast majority of applicants who check off the infamous ‘box’ are immediately declined employment regardless of qualifications, experience, mitigating circumstances, or rehabilitation.”).

168. Avery, *supra* note 164.

169. *Id.*

170. Dallan F. Flake, *Do Ban-the-Box Laws Really Work?*, 104 IOWA L. REV. 1079, 1084 (2019) [hereinafter Flake, *Ban-the-Box Laws*].

171. *See generally* Felicia Gustin, *California Moves to Extinguish Barriers for Formerly-Incarcerated People*, MEDIUM (May 8, 2018), <https://medium.com/surjbayarea/california-moves-to-extinguish-barriers-for->

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and Commutation Reform Act of 2018 (California Government Code section 12952) officially came into effect.¹⁷² The law aims to prevent employers from automatically disqualifying candidates from consideration due to prior criminal convictions, stating in relevant part: “[I]t is an unlawful employment practice for an employer with five or more employees to . . . include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant’s conviction history.”¹⁷³

The intended effect of California’s version of “Ban the Box” is that more ex-prisoners will make it beyond the initial application phase of a job. While this is excellent in theory, it fails to fully address the problem of post-release employment for two reasons. First, employers eventually do find out about prior convictions—whether it be through the interview or during a background check.¹⁷⁴ Second, California’s “Ban the Box” law applies only to the *hiring process* of county EMS authorities, not to the *accreditation procedures* they use to certify (but not hire) new EMTs.¹⁷⁵ Unfortunately for released inmate firefighters, this means that their prior criminal conviction renders them ineligible for fire department jobs before they even apply:

While he [a former inmate] says he was finally able to receive the national EMT certification and passed an exam on his first try, local counties still won’t honor it. In California, individuals convicted of felonies cannot obtain EMT licenses until they have been out of prison for 10 years, according to the California EMS Authority.¹⁷⁶

Thus, former inmate firefighters are precluded from even applying to firefighter jobs, not because of a prior conviction *per se*, but because

formerly-incarcerated-people-e668b84cb7f6 (discussing various California assembly bills aimed at assisting ex-prisoners with vocational licensing and employment).

172. PARDON AND COMMUTATION REFORM ACT OF 2018, CAL. GOV’T CODE § 12952 (Deering 2020).

173. *Id.* § 12952(a)–(a)(1).

174. *See id.* § 12952(b) (“This section shall not be construed to prevent an employer from conducting a conviction history background check.”).

175. *See id.* § 12952.

176. Vesoulis, *supra* note 18 (interviewing former inmate firefighter Ramon Leija).

they are unable to get certified as EMTs—which is required for almost all firefighter roles.

It is true that California has made concerted efforts to improve the employment outlook for inmate firefighters.¹⁷⁷ The State has gone as far as implementing a firefighter training program for paroled inmate firefighters.¹⁷⁸ Unfortunately, the program is unlikely to yield any lasting benefit for parolees. Despite eighteen months of training, program graduates will not receive the EMT certification they will need to start careers as firefighters: “The \$26.6 million program will train 80 parolees, but does not grant them an EMT license.”¹⁷⁹ The training program—though well-intended—is the wrong prescription for the wrong disease. Inmates are not being denied fire department jobs due to a lack of training or experience.¹⁸⁰ The reason inmate firefighters cannot get jobs is because they cannot meet an essential prerequisite. Without EMT certification, the proposed eighteen-month training will not assist inmates with job placement.¹⁸¹ Enacting “Ban the Box” laws and spending millions on additional training—without addressing the barriers to EMT certification—are completely ineffective in solving the reintegration problem. Before California can deliver meaningful results to released inmate firefighters, lawmakers need to think *outside the box*.

177. See, e.g., DEP’T OF FORESTRY & FIRE PROT., BUDGET CHANGE PROPOSAL: VENTURA TRAINING CENTER 4 (2018), http://web1a.esd.dof.ca.gov/Documents/bcp/1819/FY1819_ORG3540_BCP2204.pdf (“Ex-offenders in the Program would be provided enhanced rehabilitation and job training skills to help them be more successful after completion of the Program . . .”).

178. Goodkind, *supra* note 14.

179. *Id.*

180. Quite the opposite: inmate firefighters are some of the few entry-level candidates who actually have frontline experience in fighting fires. See Sibilla, *supra* note 18.

181. In addition to identifying EMT certification as a prerequisite, job postings specifically exclude any candidates with a felony conviction. See, e.g., L.A. FIRE DEP’T, <http://www.joinlafd.org/index.cfm?section=qualifications> (last visited Mar. 24, 2020) (“A valid EMT certificate is required prior to hire.”); see also *Entry Level (H-2) Firefighter*, CITY & CTY. OF S.F. DEP’T OF HUMAN RES., <https://jobapscloud.com/SF/sup/bulpreview.asp?R1=CCT&R2=H002&R3=900310> (last visited Mar. 24, 2020) (“[C]andidates must possess a current, valid Emergency Medical Technician - 1 Certification (EMT-1) issued by the State of California . . .”).

C. A Point-Based System of Reintegration

While California's "Ban the Box" law represents a step in the right direction, it is deficient in two major areas. As it currently stands, the law does little to help former inmate firefighters to use their frontline experience as a "positive" during the application process. Former inmate-firefighters are confronted with a no-win situation during job applications because their previous firefighting experience and prior conviction records are intertwined. Therefore, former inmates are denied the opportunity to showcase one of their most valuable qualifications—*experience*.

A second problem is that the law does not account for the fact that former inmates need to get EMT certified at the county level to compete for jobs.¹⁸² For these reasons, California must regulate not only *whether* employers ask about conviction history, but also *how* such information is used in the hiring process. A system that regulates how an applicant's conviction history is used promises to cure the defects left unaddressed by banning a box on an application form.¹⁸³ Unfortunately, such regulations—if not properly tailored—will inevitably serve merely to *delay* a fire department's decision to reject an applicant due to their conviction record.¹⁸⁴

Fortunately, the deficiencies in California's "Ban the Box" law leave open at least two opportunities to improve reintegration policies. First, released inmates should receive credit for successful service in Fire Camp. Second, years of honorable service in Fire Camp should stand as *prima facie* evidence of good moral character for EMT certification purposes. By restructuring how employers and certifying agencies actually *use* an ex-prisoner's incarceration history,

182. Note that California Government Code section 12952 is narrowly drafted to apply only to conditional employment offers extended by *employers*. There is no mention of vocational licensing. Such language may be impermissibly broad for the limited purpose of ensuring ex-prisoners have a fair chance to demonstrate their qualifications before disclosing their conviction status. However, the intended effect of the statute is defeated if *licensing authorities* are able to practice the kind of discrimination which employers are forbidden from doing. *See generally* PARDON AND COMMUTATION REFORM ACT OF 2018, CAL. GOV'T CODE § 12952 (Deering 2020).

183. Flake, *Ban-the-Box Laws*, *supra* note 171, at 1090.

184. *Id.*

rehabilitated inmates can enjoy the benefit of reduced barriers to reintegration.

Non-inmate candidates with previous firefighting experience are rightfully awarded more consideration for firefighter jobs.¹⁸⁵ The rationale is sound: a jobseeker with actual firefighting experience is more likely to be a successful career firefighter. However, inmate firefighters routinely work shoulder-to-shoulder with CAL FIRE firefighters, yet they are unable to use their experience as a “positive” on their applications.¹⁸⁶ The contradiction is based not on what career firefighters versus inmate firefighters actually do at a fire, but on *how* those people got to the fire in the first place. In the grand scheme of things, fire departments appear to tacitly concede that former inmate firefighters are equally qualified to do the job:

[D]espite local fire departments refusing to hire him, [former inmate Ramon Leija] says they do let him contribute as a volunteer firefighter . . . ‘It’s interesting that I’m able to do everything alongside the paid firefighters right now, from treating patients on the scene and also putting out fires and extricating patients from vehicles,’ he says. ‘But when it comes to applying, I’m not offered the positions.’¹⁸⁷

The challenge is to create a path toward EMT certification which accounts for the public safety goal of excluding dangerous ex-felons with the criminal justice goal of reintegrating successfully rehabilitated inmate firefighters. Some fire departments, such as CAL FIRE, are willing to hire former inmate firefighters with satisfactory service records.¹⁸⁸ All that stands in their way is the EMT certification.

185. A prime example is the job posting for the CAL FIRE role of Fire Fighter II, which states that candidates with hand crew experience are specifically encouraged to apply. *See Fire Fighter II (1082)*, CAL. DEP’T OF HUMAN RES. (last visited Nov. 26, 2019), <https://www.calhr.ca.gov/state-hr-professionals/Pages/1082.aspx>.

186. *See* Sibilla, *supra* note 18.

187. Vesoulis, *supra* note 18.

188. L.A. TIMES, *supra* note 16 (“Once released from prison, the men and women can apply for entry-level jobs with the California Department of Forestry and Fire Protection.”).

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D. The Firefighter-Inmate Rehab Evaluation ("FIRE") Score

The Firefighter-Inmate Rehab Evaluation Score ("FIRE Score") would balance the policy interests of public safety with the need to reintegrate rehabilitated inmate firefighters. The FIRE Score is designed to provide county EMS authorities with an objective basis for waiving the ten-year ban for released inmate firefighters. A waiver of the ban would be awarded to inmates who achieve a minimum FIRE Score. That score would serve as evidence of successful rehabilitation and good moral character.

Inmates would be able to earn a maximum of nine points. Nine points represents a possible FIRE Score of three points per year over the course of three years. Some quick math is needed to understand why the FIRE Score is measured on a three-year scale. First, the average remaining sentence for inmate firefighters is five to seven years.¹⁸⁹ Second, after receiving the "two for one" sentence reduction, inmate firefighters serve an average of two to three fire seasons (which evenly converts to two or three years).¹⁹⁰ Thus, three years represents a typical length of service for many inmate firefighters.

Nine points represents a perfect rehabilitation score across three unique scoring criteria over the course of three years. By design, a perfect FIRE Score is incredibly difficult to achieve. The goal is not to be perfect. Instead, the goal is to evaluate an inmates' rehabilitative progress by using an objective standard. The State must establish a minimum FIRE Score. That score would signal the point at which an inmate firefighter has demonstrated successful rehabilitation and good moral character. Counties may have some discretion to decide what score would qualify an inmate to receive EMT certification. No county may set the bar at the near impossible maximum score of nine.

This Note does not seek to cure the shortcomings of California's "Ban the Box" law in one fell swoop. Instead, the hope is to initiate a serious discussion about policy change by offering a specific point-based model.

189. CDCR, *Fire Camps*, *supra* note 6, at 3.

190. *Id.* ("Inmates in fire camps earn two days of credit for each day they are in camp. To maintain some stability and reduce turnover on the crews, many inmates chosen for the camp program have as much as five to seven years remaining on their sentence, ensuring that some of them are on a crew for two or three fire seasons.").

Points are awarded on a binary scale to ensure objectivity. For example, service in Fire Camp is either satisfactory or unsatisfactory, with one point available for each year of satisfactory service. There would be no points awarded for unsatisfactory service.¹⁹¹ Points will also be awarded to inmates who take on leadership positions within the hand crew. For example, inmates who serve as “Swamper,” “Lead Saw,” or “Drag Spoon” would be entitled to additional points.¹⁹² For each season spent in a leadership role, inmate firefighters would be awarded one point.

Finally, CAL FIRE and CDCR may award one additional point per season for exceptional merit. This point should be given only on rare occasions because it is reserved for inmates who demonstrate courage *beyond* the call of duty. This point exists in recognition of the extreme dangers associated with firefighting. An inmate who risks life and limb to rescue a civilian or protect their crew must be awarded additional consideration for future jobs. The “exceptional merit” point would serve that purpose.

So what does the FIRE Score system look like in practice? A county EMS authority may still perform a background check on ex-prisoners seeking EMT certification. The FIRE Score would restructure how EMT candidates are screened. If the minimum FIRE Score is met, then the ten-year ban on EMT certification would be waived. Former inmate firefighters could then obtain their EMT credentials immediately. CDCR and CAL FIRE would maintain records of an inmate firefighter’s rehabilitative scorecard. County EMS would then check the scorecard to ensure the minimum FIRE Score has been met. Consider Figure 1 as a demonstrative:

Figure 1: Sample FIRE Score for a Hypothetical Inmate Firefighter

FIRE Score for Inmate Firefighter “Jane Doe”				
	Service	Leadership	Exceptional Merit	Total
Year 1	1 – <i>Satisfactory</i>	0 - <i>None</i>	0	1
Year 2	1 – <i>Satisfactory</i>	1 - <i>Swamper</i>	0	2
Year 3	1 – <i>Satisfactory</i>	1 - <i>Lead Saw</i>	1*	3

191. Fire Camp personnel, including CAL FIRE and CDCR officials, should have substantial discretion in determining what constitutes “satisfactory” or “unsatisfactory” service.

192. See CAL FIRE, PROCEDURES HANDBOOK, *supra* note 61.

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Total FIRE Score: 6

Notes: *On Year 3, Jane Doe risked life and limb to rescue a fellow inmate from an advancing fire. CAL FIRE and CDCR commend Jane Doe for her courage and award 1 point for exceptional merit.

The FIRE Score example shows that inmate firefighter “Jane Doe” served satisfactorily for three years. Note that an inmate who provides satisfactory service for three years, but holds no leadership roles, would earn only three points. An inmate who serves three years and holds leadership roles each year would earn six points. The “exceptional merit” point is exactly how the name suggests—*exceptional*. That extra point should be difficult to earn. In this example, Jane Doe earned that point because she went beyond the call of duty to rescue a fellow inmate.¹⁹³ In this sample scorecard, Jane Doe earned a FIRE Score of six points out of nine. Looking at the chart, we can see that six is a very high score. Six points strongly indicates that Jane Doe has achieved successful rehabilitation due to her leadership and exceptional merit.

Looking at Figure 1, it is also clear that three out of nine points is still a commendable number. Three points can be achieved in a number of ways. For example, either three years of satisfactory service *or* one year with leadership experience and exceptional merit would earn three points.¹⁹⁴ Therefore, a FIRE Score of three out of nine should be the recommended minimum to establish successful rehabilitation.¹⁹⁵ Each

193. Taking into account the fact that a score of three will typically represent—at a minimum—three years of satisfactory service, we can see a range of desirable scores take shape. As with any job, it is unlikely that inmates will assume leadership roles during their first year of work. The FIRE Score aims to reward inmates who take on leadership positions. Thus, most inmate firefighters who serve in leadership positions may earn FIRE Scores between three and five (assuming two years in leadership positions). Applying this logic, a FIRE Score of three indicates little more than good service. A FIRE Score of four or higher indicates that the inmate has taken on extraordinary effort. Therefore, most county EMT authorities may set the minimum FIRE Score requirement at four or five points.

194. Like most jobs, the likelihood of an inmate firefighter taking on a leadership role in the first year is low. Most inmates will probably earn a FIRE Score of one after one year of service. Thus, if an inmate wants to earn three points in two years, he or she will need to take on a leadership role in Year Two.

¹⁹⁵ 195. Of course, this will likely eliminate many inmates who served for only one year. The FIRE Score is not designed to simply allow *any* inmate firefighter to bypass the ten-year ban on EMT certification. Inmates must have multiple years of good service *and* leadership experience to earn a qualifying FIRE Score. In this way,

additional point beyond three should serve as additional evidence of good moral character.

The FIRE Score gives inmate firefighters an opportunity to bypass the ten-year ban on EMT certification. The system is designed to be challenging. Achieving the minimum FIRE Score to qualify a released inmate for EMT certification (despite their criminal conviction) is a high bar to meet. Despite the difficulty, a qualifying FIRE Score is *within reach* for motivated inmates. Because of this, the point-based system strikes a fair balance between the policy interests of reintegrating released inmate firefighters and ensuring new EMTs are of sound moral character.

CONCLUSION

California's inmate firefighters are a unique kind of prisoner. The State calls on them to perform the exceptional task of protecting lives and property from wildfire. Inmates take on this task at enormous personal risk for very little in return. Such a commitment deserves due consideration when inmate firefighters are released. "Ban the Box" laws do not address the reintegration goals of released inmates because such laws merely *delay* the employer's discovery of a candidate's conviction record. "Ban the Box" laws also do little to help ex-prisoners who require vocational licensing to practice their learned trades. Finally, "Ban the Box" laws fail to alleviate employers' concerns that former inmates are of good moral character because they offer no insight into the inmate's rehabilitative progress.

Instead of obscuring or delaying discovery of an inmate firefighter's incarceration record, it would be better public policy to restructure how that record is used. The key barrier preventing inmate firefighters from getting firefighter jobs post-release is the customary ten-year ban on granting EMT licenses to candidates with felony records. This obstacle frustrates the goals of rehabilitation by denying inmates the opportunity to continue working as front-line firefighters.

By implementing a point-based system of reintegration, county EMS authorities and future employers can objectively evaluate an inmate firefighter's rehabilitative progress. Not every inmate will

the point-based system of reintegration strikes a fair balance between setting the bar high enough to alleviate the employer's concerns about the candidate's character while also putting a fire department career within a rehabilitated ex-prisoner's reach.

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receive a score that qualifies them to bypass the ten-year ban. Additionally, not every inmate who acquires an EMT license will get a job as a firefighter. But the FIRE Score system would grant inmate firefighters an opportunity that has been thus far denied to them: a chance to compete fairly for entry-level firefighter jobs.

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