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## A Burning Question: Sparking Federal Protection of Inmate Firefighters through California's Conservation Camp Program

Zachary T. Remijas

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# A Burning Question: Sparking Federal Protection of Inmate Firefighters through California’s Conservation Camp Program

**Zachary T. Remijas**

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## I. INTRODUCTION

The strong, dry Santa Ana winds that descend upon Southern California each year, peaking from October to December, are whispers of the dormant danger they pose.<sup>1</sup> As wildfires continue to demand the mounting attention of the state, California has begun outsourcing its deployment of firefighters to battle the “devil winds” that infamously stoke the flames.<sup>2</sup> However, a unique— and now, indispensable—source of labor that the California Department of Forestry and Fire Protection has increasingly tapped into is the state’s inmate population, comprised of volunteers trained and mobilized under the California Department of Corrections and Rehabilitation’s Conservation Camp Program.<sup>3</sup> According to the CDCR, “the primary mission of the Conservation Camp Program (CCP) is to support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters”<sup>4</sup>

While the opportunity to volunteer as a firefighter allows inmates a degree of liberty generally restricted within the interior of state’s prison system, the program is not without issue. Particularly, the service provided in these grave situations is undervalued, seemingly by default of these men and women’s status as prisoners, to the extent that they are precluded from eligibility for death benefits under the Public Safety Officers’ Benefits Act because they are not considered to be “public safety officers . . . serving a public agency *in an official capacity*.”<sup>5</sup> Moreover, despite accruing professional training and confronting the same dangers alongside state-sponsored firefighters, inmates are finding that, upon release, fire departments are not hiring inmates whose participation in these emergency service labor programs have equipped them with skills that would promote reintegration into the community.<sup>6</sup> A waste of human capital continues to accrue—what should be implemented as a feeder opportunity to reintegrate inmates into the work force following time served is stagnant as far as progressive programs go, bordering on abuse of “free labor” as costs to fight wildfires year after year are increasingly abated by a larger inmate firefighting force.<sup>7</sup> Those on the outside are not the only ones who have noticed the ceiling imposed on this

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<sup>1</sup> Sameer Ponskhe, *Municipal Wildfire Management in California: A Local Response to Global Climate Change*, 32 PACE ENVTL. L. REV. 600, 602–03.

<sup>2</sup> *What Makes the Santa Ana Winds Blow*, L.A. TIMES (November 9, 2019), <https://www.latimes.com/california/story/2019-10-09/what-makes-the-santa-ana-winds-blow>.

<sup>3</sup> *Conservation (Fire) Camps*, CA. DEP’T CORRS. & REHAB., <https://www.cdcr.ca.gov/conservation-camps/>.

<sup>4</sup> *Id.*

<sup>5</sup> The PSOPA provides a one-time cash payment to survivors of public safety officers who die in the line of duty: “In any case in which the Bureau of Justice Assistance . . . determines . . . that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit[.]” Public Safety Officers’ Benefits Act, 34 U.S.C. § 10281(a) [hereinafter the “PSOPA”].

<sup>6</sup> Nick Sibilla, *Inmates Who Volunteered to Fight California’s Largest Fires Denied Access to Jobs on Release*, USA TODAY (August 20, 2018), <https://www.usatoday.com/story/opinion/2018/08/20/californias-volunteer-inmate-firefighters-denied-jobs-after-release-column/987677002/>.

<sup>7</sup> *Prisoner Workers Like California’s Inmate Firefighters Are ‘Uniquely Vulnerable,’ ACLU Lawyer Says*, WBUR, <https://www.wbur.org/hereandnow/2018/08/14/california-inmate-firefighters-wildfire> (last updated August 15, 2018).

“opportunity”: according to state administrative memos, since 2015 in California there has been declining participation in the inmate Conservation Camp Programs, as the potential that the program purports to offer inmate participants wanes in light of statistics on its actual rehabilitative and integrative success.<sup>8</sup> The memos state the obvious about participation in the Conservation Camp Program: these inmates are an irreplaceable workforce for the benefit of the state. California must do more than lump into the Conservation Camp Program’s mission the “equal pay and quality healthcare for these laborers”;<sup>9</sup> the state must insure inmate firefighters with death benefits under the Public Safety Officer Benefits Act, and it should not abandon its assistance at an inmate’s release; the state needs to use labor programs such as CCP to reincorporate inmates into the working community after release, allowing for the “volunteer experience” to supersede boundaries of their imprisonment. Even if policy demands that certain immediate rewards are unavailable to inmates, they deserve to earn future security where they cannot be tangibly rewarded for the dangers they confront while imprisoned.

The state of California has taken some progressive steps that demonstrate its promise as a beacon for advancing inmate firefighters’ rights to federal death benefits. State law, particularly its Penal Code, already implicitly recognizes the unique value of its inmate firefighters. More recently, state assembly members have persistently introduced aimed at validating the professional training and experience of these firefighters in hopes of securing more respect for these servicemen and servicewomen both on the job and upon release.<sup>10</sup> However, when the issue of whether an inmate firefighter qualifies for PSOPA death benefits had come before federal courts, they halt at the idea of the inmate as a “public employee . . . serving in an official capacity,” convinced that these are mutually exclusive roles.<sup>11</sup>

It is important that the United States consider the totality of its holdings in *Chacon v. United States*, *Estate of Davenport* and *Hillensbeck v. United States* regarding the status of inmates as “volunteers” as the demand for inmate firefighters continues to mount.<sup>12</sup> The perilous circumstances involved in volunteer emergency service inmate labor is distinguishable from the voluntary context that the challengers in *Chacon* addressed.<sup>13</sup> California is currently confronted with an undeniable issue concerning the expendability of inmate resources in contrast with offering fair (and enticing) compensation and

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<sup>8</sup> CA Dep’t of Corrs. & Rehab. and Dep’t of Forestry & Fire Prot., *Conservation Camp Program* (Sept. 3, 2015), <https://www.documentcloud.org/documents/6354166-California-Informational-Sheet-9-3-15.html>.

<sup>9</sup> *Conservation (Fire) Camps*, *supra* note 3.

<sup>10</sup> See *Chacon v. United States*, 48 F.3d 508 (Fed. Cir. 1995); *Estate of Davenport v. Miss. Dep’t of Corr.*, U.S. Dist. LEXIS 23992 (N.D. Miss. 2009).

<sup>11</sup> The PSOPA, 34 U.S.C. § 10281(a).

<sup>12</sup> *Chacon*, 48 F.3d 508 (1995)

<sup>13</sup> Abigail Hess, *California Is Paying Inmates \$1 An Hour to Fight Wildfires*, CNBC (Nov. 12, 2018), <https://www.cnbc.com/2018/08/14/california-is-paying-inmates-1-an-hour-to-fight-wildfires.html>.

incentivization through creditable professional training to be redeemed following an inmate's reentry into the community.

Where *Chacon* and *Davenport* limited which inmates laborers came within the purview of the Public Safety Officers' Benefits Act, *Hillensbeck* cast light on a broader horizon concerning who was a "volunteer" that could appropriately qualify as a "public safety officer" for relief under the Act. The *Hillensbeck* court addresses what these courts and others responding to inmate firefighting have overwhelmingly undervalued: aside from their incarceration, commonalities are more definitive of the relationship between inmates firefighters and their "public safety officer"-qualified professional peers than their distinctions. They face virtually the same physical risks fighting wildfires together. And yet, while the family of a deceased service member suffers the same emotionally, justice has drawn a line separating those families whose emotional suffering will be alleviated. Most significantly, the *Hillensbeck* court appropriately focused on the extent of the decedent's involvement with the provision of the service in question rather than the triviality of their work title or their discretion over the sequence of events that ultimately brought the decedent to the agency supervising their work.

If our prison system is not valuing prisoners and their human capital in established rehabilitative roles such as inmate firefighting, what does that say about the value they expect such a "rehabilitative system" to ultimately instill in its constituents and generate goodwill and social capital. The declining participation in inmate fire conservation programs perhaps suggests that this reflection of the greater rehabilitative value of our prison system is closer to reality than the impressions of a jaded prison laborer. In light of the rulings in *Chacon*, *Davenport* and *Hillensbeck*, a court hereafter addressing the eligibility of inmate firefighters for benefits under the Public Safety Officers' Benefits Act should hang its hat on the extent of the inmate's involvement with the provision of the service in question as a compass for guiding the determination of PSOPA death benefit recipients, rather than the title of the role or the criminal status of the actor.

This Comment examines the mounting demand for inmate firefighters, to the extent that they have become an indispensable resource to the State of California, and how the state agencies in charge of administering their services need to expand efforts to protect their livelihood both before and after a participating inmate's release. Section II of this Comment provides an overview of California inmates undertaking prison labor as volunteer firefighters under the Conservation Camp Program. Section III critiques the nonreciprocal approach taken towards inmate firefighting resources, while advocating for a more intentional rehabilitationist approach that implores the California Department of Corrections and its partnering agencies to prevent inmate firefighter training from atrophying upon release. An argument is made with knowledge of federal court holdings in *Chacon*, *Davenport* and *Hillensbeck* regarding the status of certain fringe "public safety officers." Section IV concludes that the function of securing benefits for inmate firefighters not only has the immediate benefit of compensating their families for the unique service of a fallen inmate firefighter,

but it will also begin to establish normalcy and “professionalism” in their status despite their imprisonment and, with proper attention from the state and federal agencies administering the labor programs, parlay into more effective professional pipelines upon release. Attention is given to a training program in Ventura County that has been established as a pipeline for professional firefighting from the prison to the stationhouse, as well as recent attempts in the California legislature to validate the value of the training these inmates are receiving while sentenced. Indeed, the most far-reaching benefits our federal government can provide inmate firefighters do not come in the form of a marginal wage increase or other real-time incentives—instead, proper compensation is provided by the assurance that their families will be indemnified for the unforgiving service these inmates provide.

## II. CALIFORNIA’S CONSERVATION CAMP PROGRAM

### A. Inmate Firefighter Labor in California

Inmate firefighter labor in California has been in progressive demand recently. 2018 brought the largest fire in California history.<sup>14</sup> Over 2,000 incarcerated men and women helped extinguish it,<sup>15</sup> to the tune of \$267 million in damages for the state.<sup>16</sup> However, California was able to save an additional \$90 to \$100 million in expenditures by utilizing inmate labor to fight the wildfires.<sup>17</sup> Covering the fires, Smith suggests that “[i]t’s no wonder why the state turned to prison labor to reduce the financial impact it would incur—an exploitive solution that needs to be interrogated and severely reformed.”<sup>18</sup> Exploitation itself will always be difficult to ascertain, as different perspectives exist as to what should be expected of inmates in making contributions to society; at any rate, it is known that California’s inmate firefighters are making an hourly wage of \$1 with a daily base rate between \$2.90 and \$5.12 “depending on skill level,”<sup>19</sup> with a mere increase to \$2/hour to fight “California’s most threatening fires.”<sup>20</sup> Does this source of income, generated from an activity that subjects the inmates to bodily hazard, do much more than pad an inmate’s allowance for commissary goods?<sup>21</sup> With regard to the threat of exploitation, White astutely emphasizes that, oftentimes, “[h]uman life . . . is undervalued due to the ‘criminality’ with which it is associated . . . .”<sup>22</sup>

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<sup>14</sup> Delrisha White, *Article: Capitalism and California’s Urgent Need to Reform the Prison Volunteer Program*, 35 HARV. J. RACIAL & ETHNIC JUST. 73, 73 (2019).

<sup>15</sup> *Id.* at 73.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 74.

<sup>19</sup> Kristin Myers, *California inmates being paid \$1 an hour to battle wildfires*, YAHOO FINANCE (Nov. 1, 2019), <https://finance.yahoo.com/news/california-inmates-being-paid-1-an-hour-to-battle-wildfires-202515483.html>.

<sup>20</sup> *Supra* White, note 14, at 75.

<sup>21</sup> *Id.* at 74.

<sup>22</sup> *Id.*

The Department of Corrections also emphasizes that participation in inmate firefighting programs is not simply an option for inmates—it is a privilege and an opportunity. “The jobs are only open to prisoners whose good behavior behind bars qualifies them for the least restrictive incarceration.”<sup>23</sup> Certain convictions, such as sexual offenses, arson, gang violence, and any history of escape with force or violence, immediately preclude an inmate from participating on a prison fire crew, even if they have achieved minimum custody status.<sup>24</sup> However, the theme of election versus obligation often arises at the core of the argument over the extension of PSOPA benefits to inmate firefighters. Federal courts’ response in cases like *Chacon* and *Davenport* to the gravity of inmates committing to the hazards that accompany firefighting because of a standing gainful activity requirement likewise underestimates their functional role within their firefighting crew.

Incarcerated firefighters are also vulnerable relative to their veteran professional peers. In fact, inmate firefighters are “more than four times as likely, per capita, to incur object-induced injuries . . . compared with professional firefighters working on the same fires.”<sup>25</sup> Inmates work for 24-hour shifts followed by 24 hours of rest before they are escorted back to their assignments, undertaking task such as “constructing firebreaks by using tools like chainsaws and picks.”<sup>26</sup> Certainly the safety of the professional firefighter becomes linked to the safety of the inmate firefighter serving on his or her line, making it imperative that the inmate firefighter function as an asset to the prevention of fires rather than a liability where danger is most obvious. The state of the Conservation Camp Program suggests that the “daily operations”<sup>27</sup> of professional firefighters are those of the inmate firefighters, too—even CAL FIRE would hesitate to acquiesce that the training the inmate firefighters receive does not prepare them for the real danger that active wildfires will pose while on duty.

## **B. The California Department of Corrections and Rehabilitation’s Conservation Camp Program**

The Conservation Camp Program that mobilizes the state’s use of inmate firefighters is a principal example of an inmate labor program that has the potential to service both the state and the hands that it is utilizing. The CDCR road camps were established in 1915.<sup>28</sup> During World War II much of the work

<sup>23</sup> The Times Editorial Board, *Editorial: Inmates risking their lives to fight California’s wildfires deserve a chance at full-time jobs*, LA TIMES (Nov. 1, 2019), <https://www.latimes.com/opinion/story/2019-11-01/california-inmate-firefighters>.

<sup>24</sup> *Conservation (Fire) Camps*, *supra* note 3. CDCR commonly refers to qualified candidates for conservation camp assignment as “low-level” offenders, that is, “someone convicted of a non-sexual, non-violent, or non-serious offense.” *Id.*

<sup>25</sup> *Supra* White, note 14, at 74 (citing Abby Vesoulis, *Inmates Fighting California Wildfires Are More Likely to Get Hurt, Records Show*, TIME (Nov. 17, 2018), <http://time.com/5457637/inmate-firefighters-injuries-death/>).

<sup>26</sup> Nicole Goodkind, *Prisoners Are Fighting California’s Wildfires on the Front Lines, But Getting Little in Return*, FORTUNE MAGAZINE (Nov. 1, 2019), <https://fortune.com/2019/11/01/california-prisoners-fighting-wildfires/>

<sup>27</sup> *Hillensbeck v. United States*, 69 Fed. Cl. 369, 372 (2006).

<sup>28</sup> *Conservation (Fire) Camps*, *supra* note 3.

force that was used by the Division of Forestry (now known as CAL FIRE), was depleted.<sup>29</sup> The CDCR provided the needed work force by having inmates occupy “temporary camps” to augment the regular firefighting forces.<sup>30</sup> There were 41 “interim camps” during WWII, which were the foundation for the network of camps in operation today.<sup>31</sup> In 1946, the Rainbow Conservation Camp was opened as the first permanent male conservation camp. Rainbow made history again when it converted to a female camp in 1983.<sup>32</sup> The Los Angeles County Fire Department (LAC), in contract with the CDCR, opened five camps in Los Angeles County in the 1980’s.<sup>33</sup> Currently, 44 conservation camps, commonly known as “fire camps,” are located in 27 counties.<sup>34</sup> All camps are minimum-security facilities and all are staffed with correctional staff.<sup>35</sup> “Overall, there are approximately 3,700 inmates working at fire camps currently. Approximately 2,600 of those are fire line-qualified inmates.”<sup>36</sup>

A major concern regarding the program is the obstacle preventing “line-qualified” inmate firefighters, who are permitted to working alongside professional firefighters within the scope of their volunteer efforts, from becoming qualified, professional firefighters after release. This obstacle is more often than not an inmate firefighter’s criminal record.<sup>37</sup> Again, the primary mission of the Conservation Camp Programs is to support state, local and federal government agencies in their response to a variety of natural or manmade disasters.<sup>38</sup> In order to achieve their objective, the California Department of Corrections and Rehabilitation realizes the necessity that “all inmates receive the same entry-level training that CAL FIRE’s seasonal firefighters receive in addition to ongoing training from CAL FIRE throughout the time they are in the program.”<sup>39</sup> Furthermore, “[a]n inmate must volunteer for the fire camp program; no one is involuntarily assigned to work in a fire camp. Volunteers must have ‘minimum custody’ status . . . based on their sustained good behavior in prison, their conforming to rules within the prison and participation in rehabilitative programming.”<sup>40</sup>

The wages of inmate firefighters merits further attention and discussion. On an average day, inmate firefighters make \$2/hour, however “[i]f they are called to an emergency fire . . . then they make their daily pay plus \$1 per hour.”<sup>41</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Sibilla, *supra* note 6.

<sup>38</sup> *Conservation (Fire) Camps, supra* note 3.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* “Minimum custody” status tends to suggest that “[s]ome conviction offenses automatically make an inmate ineligible for conservation camp assignment, even if they have minimum custody status. Those convictions include: sexual offenses, arson and any history of escape with force or violence.” *Id.*

<sup>41</sup> Hess, *supra* note 9.



Proponents of the pay schedule—and perhaps those that believe inmates owe a contribution to society beyond the punishment that their sentence demands—note that inmates are receiving basic accommodations like shelter, food and transportation as part of their voluntary labor agreement. This is not sufficient to imply that just compensation is being offered by the Department of Corrections and Rehabilitation. Additionally, incarcerated firefighters earn two days off of their sentence per day of service fighting fire.<sup>42</sup>

Moreover, other skills, beyond active firefighting service, are developed in the labor camps, many of which could be parlayed into other public service opportunities following release from prison. “When not fighting fires, inmate firefighters perform conservation and community service projects performing a wide range of duties, such as clearing brush and fallen trees to reduce the chance of fire, maintaining parks, sand bagging, flood protection and reforestation.”<sup>43</sup>

The extent of work, both detailed and broad, that inmate firefighters are volunteering for—and are expected to fulfill upon admission to the Conservation Camps—requires the state’s full attention in lieu of standing federal legislation. One important source for consideration is the Public Safety Officers’ Benefits Act (Act), now codified as 34 U.S.C. § 10281, which states the following relating to payment of death benefits:

**(a) Amount; recipients:** In any case in which the Bureau of Justice Assistance (hereinafter in this subchapter referred to as the “Bureau”) determines, under regulations issued pursuant to this subchapter, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit of \$250,000, adjusted in accordance with subsection (h), as follows (if the payee indicated is living on the date on which the determination is made)<sup>44</sup>

**(b) Benefits for permanent and total disability:** In accordance with regulations issued pursuant to this subchapter, in any case in which the Bureau determines that a public safety officer has become permanently and totally disabled as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay the same benefit to the public safety officer (if living on the date on which the determination is made) that is payable under subsection (a) with respect to the date on which the catastrophic injury occurred, as adjusted in accordance with subsection (h): Provided, That for the purposes of making these benefit payments, there are authorized to be appropriated for each fiscal year such sums as may be necessary: Provided further, That

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<sup>42</sup> Luis Gomez, *For \$1 An Hour, Inmates Fight California Fires. ‘Slave Labor’ or Self-Improvement?*, SAN DIEGO TRIBUNE (Oct. 20, 2017), <https://www.sandiegouniontribune.com/opinion/the-conversation/sd-how-much-are-california-inmate-firefighters-paid-to-fight-wildfires-20171020-htmlstory.html>.

<sup>43</sup> *Conservation (Fire) Camps*, *supra* note 3.

<sup>44</sup> The PSOPA, 34 U.S.C. § 10281(a).

the amount payable under this subsection shall be the amount payable as of the date of catastrophic injury of such public safety officer.<sup>45</sup>

The California Department of Forestry and Fire Protection (CAL FIRE) is closely aligned with the Conservation Camp Program, providing comprehensive custody and oversight of the inmate firefighter population during active volunteering.<sup>46</sup> “The CDCR is responsible for the selection, supervision, care and discipline of the inmates. CAL FIRE maintains the camp, supervises the work of the inmate fire crews, and is responsible for inmate custody while on daily grade projects. CDCR staff often accompany inmate fire crews on out-of-county assignments, or on local assignments located near residential areas.”<sup>47</sup>

### C. Reintegration and Employment

Although the training and active experience inmate firefighters gain in the field during their volunteer service compares to that of their fellow professional firefighters, inmate firefighters’ career trajectory falls short of their model peers because of their criminal record.<sup>48</sup> An emergency medical technician license is likely a prerequisite to becoming a city or county firefighter. California law requires municipal emergency service agencies to prohibit the EMT certification of any applicant who has been convicted of two or more felonies, is on parole or probation, or has committed any kind of felony within the past 10 years.<sup>49</sup> The granting of EMT certification is up to the discretion of the National Registry of Emergency Medical Technicians, which retains the latitude to deny certification based on an applicant’s former felony convictions relating to assault, property crimes and sexual abuse.<sup>50</sup> Yet even those applicants who are certified by the National Registry of Emergency Medical Technicians are not cleared as firefighters and other emergency positions, as they must apply for a license to practice as an EMT with their local county office. Another bar to employment exists for those who have committed a sexually related offense, committed two or

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<sup>45</sup> *Id.* § 10281(b).

<sup>46</sup> *Conservation (Fire) Camps*, *supra* note 3.

<sup>47</sup> *Id.*

<sup>48</sup> *Editorial*, *supra* note 23. “But while these men and women may work alongside professional firefighters now, once they get out of prison, their criminal record will make it virtually impossible for them to get hired as city or county firefighters.” *Id.*

<sup>49</sup> California Code of Regulations, Title 22 Code 100214.3. *See also Editorial*, *supra* note 23. The article notices the irony of the role of an inmate firefighter’s conviction, remarking that “the conviction that got someone into prison and onto an inmate fire crew becomes the disqualification from getting a good, full-time job fighting fires outside of prison.” *Id.*

<sup>50</sup> Adesuwa Agbonile, *Inmates help battle California’s wildfires. But when freed, many can’t get firefighting jobs*, THE SACRAMENTO BEE (Sept. 7, 2018), [https://www.sacbee.com/news/california/fires/article217422815.html?\\_\\_twitter\\_impression=true](https://www.sacbee.com/news/california/fires/article217422815.html?__twitter_impression=true). According to National Registry of Emergency Medical Technicians policy, certification decisions are based on “the nature and seriousness of the crime, and the amount of time that has passed since the crime was committed. They exercise sole and complete discretion over the applicants they deny.”

more felonies, are on parole or probation, or have committed any felony in the past 10 years.<sup>51</sup>

Unfortunately, data concerning applicant denials on the basis of criminal history is not readily ascertainable for legislative review.<sup>52</sup> The National Registry of Emergency Medical Technicians does not keep such data, but rather only information that concerns the active EMTs in California who have been hired despite their criminal record: according to data from the Emergency Medical Services Authority Central Registry, “of the 62,039 active EMTs in California, a little over five percent have criminal histories.”<sup>53</sup> And while certain California counties maintain data regarding the percentage of applicants denied licenses to practice as EMTs,<sup>54</sup> advocates for certification reform point out that these statistics may well be “artificially low,” as many prisoners re-entering the community with flagrant criminal histories can be dissuaded from submitting an application due to the conclusory effect of their record.<sup>55</sup>

The Conservation Camp Program participants also respond to emergencies beyond wildfires, including floods, heavy snows, search and rescue operations, and earthquakes.<sup>56</sup> There also exists the understated reality that “[w]hen not responding to emergencies, the fire crews are engaged in conservation and community service work projects for state, federal, and local government agencies.”<sup>57</sup> Fire crews respond to 5 million non-emergency hours of incidents vs. 3 million emergency hours of incidents—it begs the question of why some consider these former inmates unqualified to interact with the public when they’ve spent countless hours doing so in the course of their Conservation Camp service? Still, attitudes like the following are common: “There’s a lot of trust involved in emergency services. You let us into the most important moments of your lives. Birth, death, and all things in between. Can you see a convicted felon not abusing this trust?” While these opponents—oftentimes firefighters associations or unions—have a duty to advocate for the professional welfare of the servicemen they represent, they step out of bounds when they disparage the

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<sup>51</sup> *Id.* The article also notes that “[w]ith lesser charges, medical directors have more space for discretion. Applicants with misdemeanors can be given a probationary license, meaning they’ll have full license to practice but if they receive another infraction, their license is revoked.” *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* “[I]n Sacramento County, since 2014 barely 1 percent of applicants were denied. Most were issued licenses without restriction. In Napa County, since 2015, 20 percent were denied, with an additional 30 percent on probationary licenses.” *Id.*

<sup>55</sup> *Id.* While proponents of certification restrictions—such as organizations like the California Professional Firefighters—argue that even those who face EMT certification obstacles while applying for municipal positions can still secure state and federal jobs, the limited seasonal nature of the work suggests it does not stand as a viable alternative to full-time professional firefighting. *Id.* These same proponents often cite public safety as a basis for certification regulations. According to one cautious, “EMTs often are entering the homes of vulnerable people—often older widows or older widowers who are at high risk for having things stolen from their home . . . We have a large number of children who are not protected when EMTs show up. There’s a risk that the child would be assaulted or molested. We really have to have someone who is not prone to anger, who is able to control their emotions.” *Id.*

<sup>56</sup> *Supra* note 8, *Conservation Camp Program*.

<sup>57</sup> *Id.*

inmate firefighters and the programs that train them both as public service officers and gainful community members. The LA Times Editorial Board picks at a flaw in this popular contention: “Opponents argue that firefighters enter homes and deal with Californians at their most vulnerable moments, so it’s too risky to hire anyone with a criminal record. The blanket ban on EMT certifications assumes that no felon can be rehabilitated, which is just not true.”<sup>58</sup>

It begs the question: if society respects these men and women as skilled, competent firefighters while rehabilitating in the program, why strip them of this sense of worth once they have served their time and are prepared to contribute to the community? While former prisoners can apply for entry-level opportunities with the California Department of Forestry and Fire Protection (CAL FIRE) upon release, it will be difficult for them to derive the same sense of value and support from these jobs in comparison to their involvement with the Conservation Camps—CAL FIRE jobs “tend to be temporary seasonal positions in rural areas, often far from their families and the support necessary for successful reentry.”<sup>59</sup> However, because these jobs are less likely to require the emergency medical technical certification demanded by most municipal fire departments, former inmates who wish to apply their program training to their reentry efforts at employment are left with limited options.<sup>60</sup>

The purpose of securing death benefits for inmate firefighters not only has the immediate benefit of compensating their families for the unique service of a fallen inmate firefighter, but it will also begin to establish normalcy and “professionalism” in their status despite their imprisonment and, with proper attention from the state and federal agencies administering the labor programs, parlay into more effective professional pipelines upon release. The acknowledgement that inmate firefighters are entitled to death benefits under the Public Safety Officers’ Benefits Act would provide value to the reputation of the program and goodwill for those inmates seeking to reintegrate as professional firefighters while navigating professional networks with a criminal record. The most far-reaching benefits our federal government can provide inmate firefighters do not come in the form of a marginal wage increase or other real-time incentives—instead, proper compensation is provided by the assurance that their families will be indemnified for the unforgiving service these inmates provide.

#### **D. Declining Volunteers**

Despite the clear perks—such as increased liberty and freedom of movement, access to the outdoors, and better facilities and nourishment—that accompany a limited reprieve from incarceration, volunteers in the Conservation Camp Programs are attuned to the great disparity between the dangers they face

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<sup>58</sup> *Editorial, supra* note 23.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* A seasonal firefighter, also referred to as a Firefighter I, generally only needs training in basic first aid and CPR, but further certifications—like an emergency medical technician certification—are commonly sought by those seasonal firefighters pursuing promotions to full-time firefighter or firetruck engineer. See Agbonile, *supra* note 50.

and the rewards they reap from their participation.<sup>61</sup> In a September 2015 memo, the California Department of Corrections and Rehabilitation attributed the gradual but consistent decline in inmate firefighter volunteers to various inmate “population reduction strategies,”<sup>62</sup> yet took no heed of the lack of improvement in funneling prison-trained firefighters into actual career opportunities at the completion of their sentences.<sup>63</sup> Nonetheless, the following month a memo sent from the Deputy Chief of the Conservation Camps Program admitted in plain terms that, in the face of the increasing supply of 2-1 credits in alternative custody programs, “the availability of offenders volunteering for the camps program is extremely low; there is no incentive.”<sup>64</sup> Later memos between CAL FIRE and the California Department of Corrections and Rehabilitation indicate that Conservation Camp volunteers “have declined by at least 1,000 people over the past 12 years and that camps are not operating near full capacity.”<sup>65</sup> Any suggestion that California hire additional professional firefighters to replace the inmate fire crews neglects the fact that “California saves some \$100 million a year by relying on prison labor.”<sup>66</sup> The memos collectively imply that, ideally, the objective is to increase participation in the Conservation Camps: these inmates are an irreplaceable workforce for the benefit of the state.

### III. MAKING A CASE FOR INMATE FIREFIGHTERS’ UNDER THE PUBLIC SAFETY OFFICERS’ BENEFITS ACT

The following cases outline the manner in which federal courts have considered the extension of death benefits to deceased inmate firefighters under the Public Safety Officers’ Benefits Act, and how federal courts might reconsider precedent in light of a divergent ruling in a case with a confirmed “public safety

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<sup>61</sup> Goodkind, *supra* note 26. “More than 1,000 inmate firefighters were sent to the hospital between 2013 and 2018, according to data obtained by TIME. Incarcerated firefighters were four times more likely to suffer from object-related injuries like cuts and broken bones than other firefighters and eight times more likely to suffer from smoke and particulate inhalation than other firefighters. There is no available data on whether prisoners suffer from smoke-inhalation related heart disease and cancers at elevated rates as other firefighters do in the years after their service, but unlike their unincarcerated coworkers, inmate firefighters do not receive extended health benefits or pensions upon retirement . . . ‘Prisoners are largely unprotected by the occupational health and safety laws that protect all other workers from dangerous working conditions,’ said Fathi. ‘They’re not covered by OSHA, they can’t unionize to bargain for safer working conditions. When you put all of those together it makes prisoners a uniquely vulnerable workforce compared to everyone else who fights fires or does any other work in this society.’” *Id.*

<sup>62</sup> *Supra* note 8, *Conservation Camp Program*. The memo cites Assembly Bill 109, Realignment, and Proposition 47 as population reduction strategies relevant to the corresponding reduction in the Conservation Camp Program.

<sup>63</sup> Goodkind, *supra* note 26.

<sup>64</sup> Dep’t of Forestry & Fire Prot., *Emergency Fire Pay—Inmate Firefighters* (Oct. 26, 2015), <https://www.documentcloud.org/documents/6354278-October-2015-Inmate-Emergency-Pay.html>.

<sup>65</sup> Goodkind, *supra* note 26. It should be noted that these numbers include inmates working at Conservation Camps and performing non-firefighting duties. Yessenia Funes, *California Is Blaming Prison Reform for Incarcerated Fire Fighting Labor Shortage*, GIZMODO (Sept. 3, 2019), <https://earther.gizmodo.com/california-is-blaming-prison-reform-for-incarcerated-fi-1837612038>.

<sup>66</sup> Funes, *supra* note 65.

officer” whose fringe status shares much in common with inmate firefighters seeking the same benefits she was awarded.

### A. *Chacon v. United States*

In *Chacon*, an action arose out of the deaths of Chacon and three other men, all of whom “served” as members of a firefighting corps composed of inmates from the Arizona State Prison system.<sup>67</sup> The men succumbed to the elements while fighting a wildfire in the Toronto National Forest in the summer of 1990.<sup>68</sup> Following their deaths, the governor of Arizona granted each of the descendants a full and unconditional posthumous pardon.<sup>69</sup> However, their families asked for further relief, as they sought benefits under the Public Safety Officers’ Benefits Act (Act), 42 U.S.C.S. §§ 3796-96(c).<sup>70</sup> The Public Safety Officers’ Benefits Program is part of the Bureau of Justice Assistance (BJA), a unit within the United States department of Justice.<sup>71</sup>

Initially, the BJA denied the family’s claim on the ground that the decedents were not “public safety officers” for the purposes of the act.<sup>72</sup> On June 25, 1992, the hearing officer affirmed the initial decision, denying the claim on the same ground.<sup>73</sup> Chacon next appealed the hearing officer’s decision, and on August 25, 1992, the Director of the BJA issued a final decision denying the death benefits claim.<sup>74</sup> The core of the Director’s decision was as follows:

We have previously determined that in order to be serving a public agency in an official capacity, one must be an officer, employee, volunteer, or [in a] similar relationship of performing services as a part of a public agency. To have such a relationship with a public agency, an individual must be officially recognized or designated as functionally within or a part of the public agency.

They were not employees of the State, nor of its Department of Corrections. Clearly, the decedents cannot be said to be public safety officers serving a public agency in an official capacity. By explicitly prohibiting the decedents from qualifying as state employees . . . the statute demonstrates conclusively that the State did not intend to recognize the decedents as “functionally within or a part of the public agency.” Based on this statute, they certainly cannot be said to be public safety officers.<sup>75</sup>

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<sup>67</sup> *Chacon v. United States*, 48 F.3d 508, 508 (Fed. Cir. 1995).

<sup>68</sup> *Id.* at 510.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 510–11.

Having exhausted his administrative remedies, Chacon filed a claim for \$100,000 in the Court of Federal Claims.<sup>76</sup> The trial court granted the government's motion for summary judgment and dismissed the complaint.<sup>77</sup> The trial court, like the three previous administrative decision-makers, concluded that the decedents were not public safety officers for purposes of the Act.<sup>78</sup>

The United States Court of Appeals for the Federal Circuit first focused on what qualified one for the status of "public safety officer" for the purpose of the Act.<sup>79</sup> The court held that Chacon must show that the decedents were individuals serving a public agency in an "official capacity" as "public safety officers" of some kind.<sup>80</sup>

The Court of Appeals focused its attention to the question of whether the decedents were "serving" public agencies such as the Arizona Department of Corrections and Land Department, among others, "in an official capacity."<sup>81</sup> Because the Act did not define what it means to "serve in an official capacity," the court had to address the validity of definitions offered to it during proceedings.<sup>82</sup> The court referenced precedent in acknowledging that "the court need not conclude that the agency construction was the only one it permissibly could have adopted" in order to be required to affirm it.<sup>83</sup> Rather, "[w]here, as here, 'the legislative delegation to an agency on a particular question is implicit rather than explicit,' the court found it must affirm any 'reasonable interpretation made by the administrator of [the] agency.'"<sup>84</sup> In reviewing the case's procedural history, the court analyzed the approach of the Director [of the BJA] in his final decision in this case, as he relied upon the interpretation of "serving in an official capacity" previously established by the BJA:

In order to be serving a public agency in an official capacity one must be an officer, employee, volunteer, or similar relationship of performing services as a part of a public agency. To have such a relationship with a public agency, an individual must be officially recognized or designated as functionally within or a part of the public agency.<sup>85</sup>

The court did not have the luxury of comparing interpretations, as Chacon presented no statutory or decisional authority to refute the definition of "serving in an official capacity" contained in the statute, arguing instead that he need not

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<sup>76</sup> *Id.* at 511.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* See The PSOPA, 34 U.S.C. § 10281 ("public safety officer' means an individual serving a public agency in an official capacity, with or without compensation, as . . . a firefighter").

<sup>81</sup> *Chacon* at 511.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 512.

<sup>84</sup> *Id.*

<sup>85</sup> U.S. Dep't of Justice, *Legal Interpretations of the Public Safety Officers' Benefits Act* 9 (1981).

be an "employee" to come within the definition, as it also covers "volunteers."<sup>86</sup> The Director also concluded, however, that the decedents were not "volunteers," reasoning that "while the decedents could and did volunteer to be assigned to the firefighting crew, this assignment was but one way in which inmates could satisfy their 'gainful activity' obligation."<sup>87</sup>

The court bluntly concluded that Chacon's bare assertion that "the decedents were on the Firefighting Crew strictly because they volunteered—period," failed to account for the trial court's reasoning, and thus fails to overcome it.<sup>88</sup> Fundamentally, Chacon failed to show that the decedents were "public safety officers."<sup>89</sup> Thus, "even if decedents' detail were otherwise a legally-organized volunteer fire department under state law, they could not be deemed 'members' of the same because they were not 'volunteers.'"<sup>90</sup> The court rejected Chacon's contention that the decedents were public safety officers because they were "volunteers."<sup>91</sup>

### **B. *Estate of Davenport v. Mississippi Department of Corrections***

The court in *Davenport* took a comprehensive look at classifications of firefighters, and what qualifies an inmate firefighter as a "volunteer" under the court's jurisdiction.<sup>92</sup> Davenport served as an inmate under the Parchman Volunteer Fire Department, a program involved with the Mississippi Department of Corrections and its activity of placing inmates as temporary firefighters.<sup>93</sup> On October 3, 2003, he was assigned to work as a firefighter for the PVFD. On March 9, 2006, Davenport died while fighting a fire.<sup>94</sup> That evening, Davenport was on the scene of the fire along with fellow inmate firefighters, as well as members, a captain, and the chief of the Parchman Volunteer Fire Department.<sup>95</sup> After arriving at the fire, Davenport and one or two other firefighters lead by the captain entered the structure.<sup>96</sup> The Chief arrived on the scene as those firefighters entered the building, before proceeding to enter the structure himself.<sup>97</sup> The captain exited the building once the Chief arrived.<sup>98</sup> At some

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<sup>86</sup> *Chacon* at 512.

<sup>87</sup> *Id.* The federal court followed a similar line of reasoning: "It would be inappropriate to find prison inmates, who are involuntarily committed to the custody and control of the Department of Corrections for punishment for their crimes, to be officers serving that agency or to be "volunteering" service to the agency. . . . As required by statute and the [interagency] agreement, they were paid for their services. . . . Moreover, decedents were required to perform gainful activity during their incarceration; while the choice to join the fire suppression detail was termed "voluntary," serving on *some* detail was mandatory." *Id.* at 512–13.

<sup>88</sup> *Id.* at 513.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Estate of Davenport v. Miss. Dep't of Corr.*, U.S. Dist. LEXIS 23992 (N.D. Miss. 2009) (granting defendants' motion for summary judgment).

<sup>93</sup> *Id.* at 1–2.

<sup>94</sup> *Id.* at 2.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*



point, Knight, Davenport and another firefighter made their way to the second floor of the burning home, and soon after they broke through a wall to determine the source of the fire.<sup>99</sup> The heat became too intense for the firefighters to remain in the building, so Knight ordered the firefighters to exit.<sup>100</sup> Despite all of the other firefighters safely exiting the building, Davenport succumbed to the heat, smoke, or fire and died.<sup>101</sup>

As a firefighter, the court noted that Davenport was exposed to more risk and danger than the typical inmate.<sup>102</sup> In fact, the court found, for all intents and purposes, that “[l]ogic, if not the written law, dictates that [inmate firefighters] be treated as full-time firefighters.”<sup>103</sup> The court reached this conclusion through its consideration of Mississippi legislature that declares “the specialized and hazardous nature of firefighting requires that fire fighters possess the requisite knowledge and demonstrate the ability to perform certain skills to carry out their responsibilities.”<sup>104</sup> The legislature by that point had created three classifications of firefighters: full-time, part-time and volunteers, which was productive in allowing rural communities to be served by firefighters without formal training.<sup>105</sup> The court recognized that the classification system “serves rural communities and protects full and part time firefighters from the hazards of their profession.”<sup>106</sup> Because inmate firefighters serve virtually the same role as full-time firefighters, inmate firefighters “should have a right to substantially the same training as full time firefighters.”<sup>107</sup>

Following its classification of inmate firefighters as full-time firefighters, the court took time to emphasize that, at the same time, inmate firefighters are not “truly volunteers.”<sup>108</sup> In Mississippi, because inmates are required by law to work,<sup>109</sup> the fact that they request their role as firefighters as opposed to receiving a different designated assignment does not mean that their decision to engage in some sort of labor is at all voluntary.<sup>110</sup> The court reasoned that, “there is a clear distinction between a free world volunteer and an inmate ‘volunteer.’ Free world volunteers fight fires for the benefit of their community. Inmates are required to work and by ‘volunteering’ are simply choosing their occupation.”<sup>111</sup> The understanding that a volunteer activity is generally secondary to the volunteer’s other interests and responsibilities was also critical to the court, stating that “[f]ree world volunteers spend the majority of their time engaged in other activities. For inmates, firefighting is their sole responsibility.”<sup>112</sup> Finally, the court noted that

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 2–3.

<sup>101</sup> *Id.* at 3.

<sup>102</sup> *Id.* at 9.

<sup>103</sup> *Id.* at 12.

<sup>104</sup> *Id.* at 11 (quoting Miss. Code Ann. § 45-11-201).

<sup>105</sup> *Id.* at 12.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 13 (referring to MISS. CODE ANN § 47-5-126).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

inmate firefighters “likely choose to become firefighters in order to gain some perceived privilege,” as if suggesting that “free world” volunteers have nothing but goodwill to gain from the donation of their time and abilities.<sup>113</sup>

### C. *Hillensbeck v. United States*

*Hillensbeck v. United States* broadened the scope of “volunteers” who could qualify as a “public safety officer” for relief under the Public Safety Officers’ Benefits Act, pushing back against the limitations that *Chacon* and *Davenport* instituted for certain public service participants.<sup>114</sup> Perhaps it is indicative of a shift in federal courts’ attitude towards fringe “public safety officers” that the opinion promptly cites the express intent of Congress in enacting PSOBA.<sup>115</sup>

*Hillensbeck* concerns the death of Debora Scott, a licensed Emergency Medical Technician-Basic (EMT-Basic), while she was participating in an internship with the East Baton Rouge Parish Fire Department Emergency Medical Services (EPRB EMS).<sup>116</sup> During a field clinical, the ambulance carrying Scott was involved in an accident with a drunk driver, resulting in Scott’s death.<sup>117</sup> She was survived by her two daughters, who later filed a claim for survivor benefits with the Bureau of Justice Assistance (BJA).<sup>118</sup> Scott’s daughters cited documents verifying her enrollment in the EPRB EMS program and a letter describing her responsibilities while in the field, claiming that her service under the internship program rendered her a “public safety officer” deserving of death benefits.<sup>119</sup>

The BJA’s initial Claim Determination rejected the contention that Ms. Scott was a “public safety officer” as defined by PSOBA, instead characterizing her as “a student . . . studying to be a paramedic.”<sup>120</sup> The BJA also emphasized that Scott was “required to participate in field clinicals in order to complete the program,” implying that it would also be improper to identify her as a “volunteer.”<sup>121</sup> It continued that the program was “only an avenue to provide students with the opportunity to gain some experience,” as if to create distance

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<sup>113</sup> *Id.*

<sup>114</sup> *Hillensbeck v. United States*, 69 Fed. Cl. 369 (2006).

<sup>115</sup> The opinion begins by stating “Congress could not have been more explicit as to the purpose of the Public Safety Officers’ Benefits Act . . . ‘The motivation for this legislation is obvious: The physical risks to public safety officers are great; the financial and fringe benefits are not usually generous; and the officers are generally young with growing families and heavy financial commitments. The economic and emotional burden placed on the survivors of a deceased public safety officer is often very heavy. The dedicated public safety officer is concerned about the security of . . . family, and to provide the assurance of a Federal death benefit to . . . survivors is a very minor recognition of the value our government places on the work of this dedicated group of public servants.’ (citing S. Rep. No. 94-816, at 3–4, *reprinted* in 1976 U.S.C.C.A.N. 2504, 2505).” *Id.* at 370.

<sup>116</sup> *Hillensbeck* at 370–71.

<sup>117</sup> *Id.* at 371.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

between the program and overall federal responsibility before concluding that program participation did not equate to “serving a public agency” in a manner that would make the daughters eligible to receive survivor benefits.<sup>122</sup> The daughters then sought reconsideration of the BJA’s initial Claim Determination.<sup>123</sup>

Upon review, a BJA Hearing Officer issued a Determination of Reconsideration affirming Scott’s daughters’ entitlement to survivor benefits under the PSOBA, finding among other things that:

1. EPRB EMS was a ‘public agency’ under the Act.
2. The internship program authorized participants to ‘assist in the daily operations’ of EPRB EMS.
3. Debora Scott, as a State licensed and certified EMT-Basic, enrolled in a U.S. Dept. of Transportation-approved paramedic study program, was authorized by the EMS to perform all advanced paramedic functions when in the presence of a certified paramedic employee. Thus . . . Ms. Scott was at all times, while on duty, acting under the control of the public agency.
4. The internship Agreement was not ‘only an avenue to provide students an opportunity to gain some experience’ as stated in the PSOB denial; but, rather the Agreement was also to provide the public agency, in exchange, the services and assistance of trained emergency medical technicians, at no cost.
5. Ms. Scott’s relationship with the public agency was not strictly that of a volunteer inasmuch as she received some benefit for her service, i.e. field experience.<sup>124</sup>

Based on these findings, the Hearing Officer then enumerated the conclusions of law that he reached.<sup>125</sup> First, while the internship was distinguishable from the private contract cases that typically arise under the PSOBA, the Hearing Officer held that a public agency like EPRB EMS is “fully aware that in cloaking a trained paramedic student/Intern with its authorization to act alongside its public employee paramedics, performing similar services as its employees, it is treating the Intern as a functional part of the agency.”<sup>126</sup> He continued to define her role within the scope of the PSOBA, finding that Scott “clearly meets the requirements of PSOB for serving a public agency, in an official capacity, as the evidence shows she was in *a relationship similar to that of an employee performing services as a part of a public agency*” and that “in authorizing Ms. Scott to perform medical services on its behalf, as part of its ambulance crew . . . the agency officially recognized and designated Ms. Scott as *functionally within or a part of the public agency.*”<sup>127</sup> The determinations led

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 371–72.

<sup>125</sup> *Id.* at 372.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 372–73.

to the logical conclusion that Scott “was an individual serving a public agency, in an official capacity, without compensation, as an ambulance crew member and thus meets the requirements of a Public Safety Officer, as defined by the Act.”<sup>128</sup> The opinion continued that, under the Act, Scott’s death happened in the “line of duty,” as she was injured while under the jurisdiction of the agency and its conditions of her service.<sup>129</sup>

Unlike the BJA’s initial Claim Determination, the Hearing Officer did not reduce Scott’s participation to that of a “ride-along” student, finding that she served a functionally similar role to any other certified Emergency Medical Technician involved with the ambulance crew.<sup>130</sup> Nonetheless, the BJA’s Acting Director reversed the conclusion that Scott qualified as a “public safety officer” under the Act on the same findings of fact used in the Determination of Reconsideration.<sup>131</sup> In brief, the Acting Director’s Final Decision relied on *Chacon*’s holding of the meaning of “serving a public agency in an official capacity” to define the role of a “public safety officer.”<sup>132</sup>

The Acting Director fixated on the fact that, at the time of her death, “she was engaged in actions necessary to fulfill curriculum obligations as a paramedic student . . . Nowhere in the legislative history of the PSOPA is there any indication that Congress wanted this Federal benefit to be made available to students[.]”<sup>133</sup> The Director concluded that “[a]s the decedent in this matter was not a public employee member of an ambulance crew at the time of her death, the factual record is legally insufficient to show that Ms. Scott was serving a public agency in an official capacity at the time of her death and, thus, her death is not covered by the PSOPA. In brief, Ms. Scott was not a “public safety officer” under the terms of this Act.”<sup>134</sup>

The United States Court of Federal Claims first reiterated the purpose of the Public Safety Officers’ Benefits Act, followed by the qualifications that must be met in order for payment to the public safety officer’s survivors.<sup>135</sup> For receipt of payment: “(1) a public safety officer; (2) must have suffered a ‘personal injury’

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<sup>128</sup> *Id.* at 373.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* In particular, the Acting Director made the following comments on Scott’s ability to “serv[e] a public agency in an official capacity” as an intern, holding that “[t]o the extent that the 28 C.F.R. 32.2(o) definition of “rescue squad or ambulance crew member” is construed by the hearing officer so as not to require that the ambulance crew public safety officer be a “public employee member” of such crew or squad at the time of death, I find such regulatory interpretation to be contrary with the requirements of 42 U.S.C. § 3796(b), subordinate to statutory interpretation and, thus, inapplicable in this matter. The meaning of the language “serving a public agency in an official capacity,” as that language is used to define a “public safety officer,” 42 U.S.C. § 3796b(8)(A), was explained by the Federal Circuit in *Chacon*, 48 F.3d 508, 511 (Fed. Cir. 1995), as follows: In order to be serving a public agency in an official capacity one must be an officer, employee, volunteer, or similar relationship of performing services as part of a public agency. To have such a relationship with a public agency, an individual must be officially recognized or designated as *functionally within or part of the public agency.*”

<sup>133</sup> *Hillensbeck* at 374.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 377.

within the meaning of the PSOPA; (3) the injury must have been suffered ‘in the line of duty;’ and (4) the death must have been ‘the direct and proximate result’ of the personal injury.<sup>136</sup>

The court made continued reference to the PSOPA as a source of definitions for reaching its ultimate conclusions on the official characterization of Scott’s role with the EMS.<sup>137</sup> The court found that Congress had clear intent in defining a “public safety officer” as “an individual serving a public agency in an official capacity, with or without compensation, . . . as a member of an . . . ambulance crew,”<sup>138</sup> a definition that the Bureau of Justice Assistance’s final decision neglected to follow.<sup>139</sup> Therefore, in order to qualify as a “public safety officer,” under the PSOPA in this case, Scott’s counsel needed to establish that Scott was serving: (1) in a public agency; (2) in an official capacity; and (3) as a member of an ambulance crew.<sup>140</sup>

Because the parties stipulated that EBRP EMS was a “public agency,” the court moved onto the issue of whether Scott was serving the public agency “in an official capacity.”<sup>141</sup> While the PSOPA did not explicitly define what it means to serve “in an official capacity,” it did delegate to the BJA the authority to establish its interpretation of the statutory phrase.<sup>142</sup> The BJA’s definition serving “in an official capacity” held that: “In order to be serving a public agency in an official capacity one must be an officer, employee, volunteer, or in a similar relationship of performing services as a part of a public agency. To have such a relationship with a public agency, *an individual must be officially recognized or designated as functionally within or a part of the public agency.*”<sup>143</sup>

The court took little time in reaching the conclusions that Scott was neither an “officer” nor “employee” of the EBRP EMS, finding that, as a student intern, her involvement lacked the formalities and characteristics representative of an “officer”;<sup>144</sup> there was likewise scant argument that Scott had an employment relationship with the public agency.<sup>145</sup> However, where the Government argued that Scott was not a “volunteer” on the basis of a distinction between her election and obligation to participate in the internship program in order to become a

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Hillensbeck* at 377–78 (citing 42 U.S.C. § 3796b(8)(A)).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 378. *See* 42 U.S.C. § 3796b(8)(A).

<sup>141</sup> *Hillensbeck* at 378.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* (citing U.S. Dep’t of Justice, *Legal Interpretations of the Public Safety Officers’ Benefits Act*, at 9 (1981)).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* Factors relevant to a determination of whether an employment relationship exists include: the alleged employer’s selection and hiring of the alleged employee; the parties intent, as expressed in a contract; the payment of wages; the provision of fringe benefits; and the duration of the alleged employee’s service. *See* Tracy Bateman Farrell, 27 Am. Jur. 2d Employment Relationship § 1.

licensed EMT-Paramedic,<sup>146</sup> the court resisted the notion.<sup>147</sup> In particular, the Government compared Scott's role to that of the state prison inmates in *Chacon*, arguing that the "gainful activity" requirement for their incarceration that precluded any legitimate discretion to "volunteer" as an inmate firefighter was similar to the mandatory terms of Scott's internship.<sup>148</sup>

The court saw Scott's participation as more willful and intentional than the government characterized it. Citing a definition of "volunteer," the court continued that "[u]nlike the inmates in *Chacon* who were involuntarily committed to serve hard labor, Ms. Debora Scott chose to attend Our Lady of the Lake College, elected to participate in the part-time field clinical program, and undertook to use her skills as a licensed EMT-Basic to serve EBRP EMS and its patients.<sup>149</sup> The fact that Ms. Debora Scott received college credit toward becoming an EMT-Paramedic in no way diminishes the voluntary character of the services contributed to the EBRP EMS or her utility to the community."<sup>150</sup> In the court's opinion, it was fair to characterize Scott's status as that of a "volunteer" at the time of her death.<sup>151</sup>

Regarding the issue of whether Scott was "designated functionally" as part of the EBRP EMS, the Government again attempted to cloak her role as simply that of a student who had no involvement in the negotiations and agreement that assigned her to EBRP EMS; because she had no contractual relationship with the agency, she could therefore not be "officially recognized" as part of it, according to the Government.<sup>152</sup> The court found this argument to be a superfluous, perhaps intentionally ambiguous distraction from the fact that Scott was "designated functionally" as part of the agency's ambulance crew.<sup>153</sup> The Agreement expressly required participants:

To abide by all the rules, regulations, or policies of the [EBRP EMS], to appear at all scheduled field internship sessions or notify the [EBRP EMS] . . . , to present himself/herself in attire consisting of the official uniform of the COLLEGE with a prominent name plate, to conduct himself/herself in a professional manner at all

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<sup>146</sup> *Hillensbeck* at 379. The Government also contended that she lacked the volition representative of a true "volunteer" because her college assigned her to the agency at which she served. Moreover, the court found that "The Government place[d] great weight on the fact that the Agreement between the College and EBRP EMS did not include: discretion to accept or reject an individual for membership and the power to terminate an individual's membership in the organization." *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 379. In *Chacon*, the United States Court of Appeals for the Federal Circuit held that "[the] decedents were required to perform gainful activity during their incarceration; while the choice to join the fire suppression detail was termed 'voluntary,' serving on *some* detail was mandatory." *Chacon*, 48 F.3d at 513 (emphasis in original).

<sup>149</sup> *Hillensbeck* at 379.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 380.

<sup>153</sup> *Id.*

times, and to assist in the regular duty operations of the [EBRP EMS] as appropriate.<sup>154</sup>

Moreover, the court found that this contract was not a hollow formality of the agency that placed parties to the agreement in an idle position; rather, “Scott was expected to perform EMT-Basic services, for which she was licensed, as an assigned member of the EBRP EMS ambulance crew.”<sup>155</sup> Nor would the court bite at the Government’s argument that the fixed limited duration of Scott’s internship suggested that she could not be “functionally part of the agency or in a similar relationship as an officer, employee, or volunteer of the agency,” citing the terms of PSOPA that contain no “temporal qualifications or limits on the individuals statutorily designated as PSOPA recipients.”<sup>156</sup>

In concluding that the statutory definition of “public safety officer” under the Public Safety Officers’ Benefits Act “does not require the individual be a ‘public employee,’” the court paved the way for a broader interpretation of those of public service participants who may insure themselves under the PSOPA against the oftentimes perilous service they perform.<sup>157</sup>

#### IV. *HILLENSBECK*: A COMPASS FOR APPLYING THE PSOPA TO INMATE FIREFIGHTING

*Hillensbeck* provides fertile ground for making an argument for the extension of PSOPA death benefits to inmate firefighters killed in the line of duty. In making a determination of who qualified as a “public safety officer” under PSOPA, the *Hillensbeck* court appropriately focused on the extent of the decedent’s involvement with the provision of the service in question rather than the triviality of their work title or their discretion over the sequence of events that ultimately brought the decedent to the agency supervising their work.<sup>158</sup> Both the reversed administrative decision and the controlling federal court opinion provide revealing details about the adversarial perspectives on offering PSOPA death benefits to fringe public safety officers, and how these positions apply to the conversation about inmate firefighters.

Beginning with the BJA’s initial Claim Determination characterizing Scott as a “student . . . studying to be a paramedic,”<sup>159</sup> opponents of granting PSOPA death benefits to marginally-defined public safety officers will tend to focus their argument on minimizing the effort exhausted and the fruits harvested from the safety officer’s service, analogous to those typifying inmate firefighters as mandatory laborers without taking into account the gravity of their specific service. The BJA intently focused on Scott’s student status and the fact that she arrived at EBRP EMS through an “internship.”<sup>160</sup> Similar to the standard that permits certain inmates to elect among duties to fulfill their labor obligation, the

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 381.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 380–81.

<sup>159</sup> *Id.* at 371.

<sup>160</sup> *Id.* at 379.

internship was viewed as an “option” because it was “only an avenue to provide . . . the opportunity to gain some experience,” as if the fact that other choices besides working at EBRP EMS had presented themselves thereby minimized her agency relationship after deciding on the organization.<sup>161</sup> Federal courts’ response in cases like *Chacon* and *Davenport* to the gravity of inmates committing to the hazards that accompany firefighting because of a standing gainful activity requirement likewise underestimates their functional role within their firefighting crew.

Moreover, similar to the BJA’s intention to disassociate EPRB EMS program participation from the suggestion that the federal government bore any supervisory responsibility over the agency, time and again inmate firefighters share most everything but title and security under PSOBA with their professional peers. The state of the Conservation Camp Program suggests that the “daily operations”<sup>162</sup> of professional firefighters are those of the inmate firefighters, too—even CAL FIRE would hesitate to acquiesce that the training the inmate firefighters receive does not prepare them for the real danger that active wildfires will pose while on duty. Certainly the safety of the professional firefighter becomes linked to the safety of the inmate firefighter serving on his or her line, making it imperative that the inmate firefighter function as an asset to the prevention of fires rather than a liability where danger is most obvious. California’s programming, regardless of the stance of its legislature or courts, suggests that the inmate firefighter is a “functional part” of CAL FIRE, thereby falling under the scope of its supervision and control and, consequently, meriting PSOBA death benefits.<sup>163</sup> In light of the holding in *Hillensbeck*, to define the inmate firefighter’s role as something other than “a relationship similar to that of an employee performing services as part of a public agency” is disingenuous;<sup>164</sup> while a participant in the conversation over this issue need not call the work that inmate firefighters do a “sacrifice” while it might otherwise considered to be just that when applied to their non-incarcerated peers, the least this same person must do if they prefer a more retributivist position is not take for granted the value of the reparations made by the inmate through their service.

So what really lies at the rift between those recognizing inmate firefighters as “public safety officers” and those who do not? The courts in *Chacon* and

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<sup>161</sup> *Id.* at 371.

<sup>162</sup> *Id.* at 372.

<sup>163</sup> 42. U.S.C. § 3796(a).

<sup>164</sup> “Whenever any such person so in custody shall suffer injuries or death while working in the prevention or suppression of forest, brush or grass fires he shall be considered to be an employee of the county or city, respectively, for the purposes of compensation, under the provisions of the Labor Code regarding workmen’s compensation and such work shall be performed under the direct supervision of a local, state or federal employee whose duties include fire prevention and suppression work. Both the wording of the statute and its legislative history indicate that only persons in custody who work at firefighting or are actively engaged in the prevention of fires are to be deemed ‘employees’ for the purpose of workers’ compensation. Such a distinction between various types of labor has a rational basis in light of the greater risk of injury or death in fighting or preventing fires than in working on the public ways or providing clerical or menial labor in a jail, industrial farm, or camp, and thus the distinction does not violate equal protection principles.” See Cal. Pen. Code § 4017 (emphasis added).



*Davenport* seemed to pause at the idea of the inmate as a “public employee,” convinced that these are mutually exclusive roles;<sup>165</sup> paired with the Public Safety Officers’ Benefits Act requirement that the individual be “serving [the] public agency *in an official capacity*,”<sup>166</sup> the plain language—without considering the logical intent of the legislature that enacted the Act—might imply the same conclusion that the courts reached. In *Hillensbeck*, where the BJA insisted that Scott’s involvement lacked the formalities and characteristics representative of an “officer” of the EBRP EMS,<sup>167</sup> the same argument might have trouble finding footing outside of a focus on the individual liberties enjoyed by professional firefighters that are clearly peripheral to the core functions of their work that they share with their inmate firefighters. The *Hillensbeck* court recognized that the relationship between Scott and EBRP EMS was not a one-way street on which the agency was supporting a community member for no consideration or return.<sup>168</sup> Rather, the court saw that Scott “undertook to use her skills” for the emergency service provider; that is, she was in fact serving and benefiting the agency, much like inmate firefighters are *expected* to do after undergoing the rigorous training that prepares them to serve as assets rather than liabilities next to their societally-revered and certified firefighters. Scott’s agreement with EBRP reflects the notion of engagement and affiliation that accompanies inmate firefighting, as both mandate the individual “abide by all the rules, regulations or policies” of the given agency and to “conduct himself/herself in a professional manner at all times” so as to “assist in the regular duty operations” of the agency rather than interfere with them.<sup>169</sup> Concerns about declining inmate firefighting participation are also relevant: to deny inmate firefighters and other fringe individuals agency under the PSOPA is to deny their utility to the organizations that benefit from their service; such a position suggests that these individuals are dispensable, and that they are so much *not* a “part of the public agency” that their absence would go unnoticed and imply no consequences. Approaching prison labor with a rehabilitationist approach, rather than advancing with retribution in mind, and building a community industry rather than a prison enterprise cannot progress without reinforcement of the value of the inmate population. Extending these individuals a guarantee of care under the Public Safety Officers’ Benefits Act would be demonstrative of the appreciation of their present and future potential despite the shortcomings of their past.

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<sup>165</sup> See *Chacon*, 48 F.3d 508, 510–511; *Estate of Davenport*, U.S. Dist. LEXIS 23992 (N.D. Miss. 2009). Remember: the PSOPA states that “[i]n order to be serving a public agency in an official capacity one must be an officer, employee, volunteer, or in a similar relationship of performing services as a part of a public agency. To have such a relationship with a public agency, an individual must be officially recognized or designated as functionally within or a part of the public agency.” The PSOPA, 34 U.S.C. § 10281(a) (emphasis added).

<sup>166</sup> *Id.* (emphasis added).

<sup>167</sup> *Hillensbeck*, 69 Fed. Cl. at 380.

<sup>168</sup> *Id.* at 379.

<sup>169</sup> *Id.* at 380.

## V. STRIKING A BALANCE BETWEEN *CHACON, DAVENPORT,* AND *HILLENSBECK*

Where *Chacon* and *Davenport* limited which inmates laborers fall within the scope of the Public Safety Officers' Benefits Act, *Hillensbeck* casts light on a broader horizon concerning who was a "volunteer" that could appropriately qualify as a "public safety officer" for relief under the Act. The *Hillensbeck* court addresses what these courts and others responding to inmate firefighting have overwhelmingly undervalued: aside from their incarceration, commonalities are more definitive of the relationship between inmates firefighters and their "public safety officer"-qualified professional peers than their distinctions.<sup>170</sup> They face virtually the same physical risks fighting wildfires together. And yet, while the family of a deceased service member suffers the same emotionally, justice has drawn a line separating those families whose emotional suffering will be alleviated. If our prison system is not valuing prisoners and their human capital in established rehabilitative roles such as inmate firefighting, what does that say about the value they expect such a "rehabilitative system" to ultimately instill in its constituents and generate goodwill and social capital. The declining participation in inmate fire conservation programs perhaps suggests that this reflection of the greater rehabilitative value of our prison system is closer to reality than the impressions of a jaded prison laborer. In light of the rulings in *Chacon, Davenport* and *Hillensbeck*, a court hereafter addressing the eligibility of inmate firefighters for benefits under the Public Safety Officers' Benefits Act should hang its hat on the extent of the inmate's involvement with the provision of the service in question as a compass for guiding the determination of PSOPA death benefit recipients, rather than the title of the role or the criminal status of the actor.

The function of securing death benefits for inmate firefighters not only has the immediate benefit of compensating their families for the unique service of a fallen inmate firefighter, but it will also begin to establish normalcy and "professionalism" in their status despite their imprisonment and, with proper attention from the state and federal agencies administering the labor programs, parlay into more effective professional pipelines upon release. The acknowledgement that inmate firefighters are entitled to death benefits under the Public Safety Officers' Benefits Act would provide value to the reputation of the program and goodwill for those inmates seeking to reintegrate as professional firefighters while navigating professional networks with a criminal record. The most far-reaching benefits our federal government can provide inmate firefighters do not come in the form of a marginal wage increase or other real-time incentives—instead, proper compensation is provided by the assurance that their families will be indemnified for the unforgiving service these inmates provide.

Assuming that rehabilitation is the system and reintegration is the goal of our prisons, streamlining released inmates into professional firefighting roles is a logical conclusion based on the material experience these men and women received while imprisoned. The inmate firefighter is not a resource that is depleted upon release, and their successful employment provides both a good to

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<sup>170</sup> *Hillensbeck*, 69 Fed. Cl. 369.

society and accountability in the form of institutional structure to the newly released individual.

### A. Ventura Training Center

In 2018, a Firefighter Training and Certification Program developed in Ventura County, California to directly support those inmates who had previously served on fire crews in their efforts to obtain firefighting certification and employment upon release.<sup>171</sup> Spearheaded by Governor Jerry Brown, Cal Fire, the California Department of Corrections and Rehabilitation, the 18-month “academy” will assist 80 recently released parolees achieve Firefighter I training.<sup>172</sup> As of 2019, three training sessions had been completed by the academy, with two participants obtaining full-time employment with Cal Fire, and another receiving full-time employment with a state environmental clean-up agency.<sup>173</sup>

### B. Statutes

In the spirit of validating the value of the training these inmates are receiving while sentenced, a number of bills have been pursued by the California legislature to raise awareness of the hazardous work performed by the state’s inmate population.

#### 1. AB 1211<sup>174</sup>

The state of California certainly acknowledges the value of the Conservation Camps, as evidenced by a legislative effort in 2014 to prevent the expansion 2-1 release credit perks to other rehabilitation work programs outside of the Conservation Camps.<sup>175</sup> The Attorney General’s office argued that if such time-served benefits were extended to other “low risk” prison labor opportunities, it would dilute incentive to engage in the uniquely freehanded, but undeniably perilous, inmate fire crews.<sup>176</sup> To be clear, the AG’s office was not contending that other rehabilitation programs are not worthy of the 2-2 release credits; rather, it acknowledged that offering such a benefit to more rehabilitation programs would likely cause a dramatic reduction in Conservation Camp Program. Its motion reinforced the significance of the 2-1 release credit as a distinctive feature that the Conservation Camp depended upon for recruiting purposes, stating:

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<sup>171</sup> Eric Escalante, *California’s inmate firefighters: 9 things to know*, ABC NEWS (Oct. 29, 2019), <https://www.abc10.com/article/news/local/wildfire/california-inmate-firefighters/103-0fdca69-2f30-4abe-99a1-838364d395e6>.

<sup>172</sup> *Id.* Specifically, the Ventura Training Center will provide “advanced firefighter training, certifications and job readiness support to create a pathway for former offenders to compete for entry-level firefighting jobs with state, federal and local agencies.” Agbonile, *supra* note 50.

<sup>173</sup> Escalante, *supra* note 196.

<sup>174</sup> Assembly Bill 1221, introduced by Assembly Member Reyes (Feb. 21, 2019), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200A](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200A) B1211.

<sup>175</sup> Goodkind, *supra* note 26.

<sup>176</sup> *Id.*

Extending 2-for-1 credits to all minimum custody inmates at this time would severely impact fire camp participation—a dangerous outcome while California is in the middle of a difficult fire season and severe drought . . . The extension of 2-for-1 credits to all [minimum security facility] inmates would likely make fire camp beds even more difficult to fill, as low-level, non-violent inmates would choose to participate in the MSF program rather than endure strenuous physical activities and risk injury in fire camps.<sup>177</sup>

In early 2019, Assemblywoman Eloise Reyes introduced Assembly Bill 1211 (AB 1211) to prohibit the cursory disqualification of inmate firefighters based on their criminal records.<sup>178</sup> AB 1211 would have permitted former convicts to join the California Firefighter Joint Apprenticeship program and complete the necessary training and certification to transition to professional firefighting.<sup>179</sup> The plain terms of the bill state that “[i]t is the intent of the Legislature to enact legislation that would provide a career pathway to individuals with previous criminal convictions who have demonstrated rehabilitation and desire to work as firefighters.”<sup>180</sup> Although the bill was defeated due to mounting opposition from firefighters associations, Reyes intends to pursue a similar end in 2020.<sup>181</sup>

AB 1211 respects the discretion that Conservation Camp volunteers must have “minimum custody” status to be eligible to work—the bill recognizes that not all inmates are suited for the work, and it is not an effort to push more inmates into the folds of professional firefighting. Instead, the bill puts the onus on the state to mitigate the waste of human capital resulting from competent candidates being denied work despite their “demonstrated rehabilitation.”<sup>182</sup>

## 2. AB 2138<sup>183</sup>

Assembly Bill 2138 would permit some qualified inmates to obtain emergency medical technician licenses seven years after their release.<sup>184</sup>

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<sup>177</sup> California AG Opposition to Prop 47 9/30/14, <https://www.documentcloud.org/documents/6354224-California-AG-Opposition-to-Prop-47-9-30-14.html>.

<sup>178</sup> *Editorial*, *supra* note 23.

<sup>179</sup> Goodkind, *supra* note 26. An official who worked for Reyes provided the following statement as a fundamental purpose driving support for enactment of AB 1211: “Reyes believes that a criminal conviction should not be a life sentence, but rather that folks that have made mistakes, and demonstrated commitment and effort to rehabilitation should have the same opportunity as everyone else.” *Id.*

<sup>180</sup> Assembly Bill 1211, Sec. 2, introduced by Assembly Member Reyes (Feb. 21, 2019).

<sup>181</sup> Goodkind, *supra* note 26.

<sup>182</sup> Assembly Bill 1211, Sec. 2, introduced by Assembly Member Reyes, February 21, 2019.

<sup>183</sup> Assembly Bill No. 2138, approved on Sept. 30, 2018, chaptered 2018 Cal. Stats. Ch. 995, repealed Jan. 1, 2021, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2138](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2138).

<sup>184</sup> Goodkind, *supra* note 26.

Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application.

**3. AB 2293**<sup>185</sup>

Assemblywoman Reyes also petitioned for AB 2293 in 2019, which would have prevented emergency medical services agencies from denying applicants due to their criminal background. Such a measure would provide former inmate fire crewman an opportunity to apply their training and service to a firefighting career.<sup>186</sup> However, this bill also met opposition from “multiple bodies in the EMT certifying process and was eventually whittled down only to require EMS agencies to keep better data on people they deny due to criminal convictions.”<sup>187</sup> Specifically, the end result is that municipal emergency medical service agencies must provide data concerning the approval or denial of EMT applicants with criminal records.<sup>188</sup> The research on barriers to licensing for applicants with criminal records “will also create greater transparency in the hiring practices of local EMS agencies, and will contribute to a better understanding of how to achieve more equitable hiring practices.”<sup>189</sup>

This bill would require each local EMS agency and other certifying entities to annually submit to the authority, by July 1 of each year, data on the approval or denial of EMT-I or EMT-II applicants, containing specified information with respect to the preceding calendar year, including, among other things, the number of

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<sup>185</sup> Assembly Bill 2293, effective Jan. 1, 2019, inoperative Jan. 1, 2024, repealed Jan. 1, 2025, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2293](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2293).

<sup>186</sup> Agbonile, *supra* note 50.

<sup>187</sup> *Id.*

<sup>188</sup> Galen Dobbins, *Governor Brown Signs Bill to Collect Data on EMT Hiring Practices* (Sept. 17, 2018), <https://a47.asmdc.org/press-releases/20180917-governor-brown-signs-bill-collect-data-emt-hiring-practices>.

<sup>189</sup> *Id.* “Approximately 30% of all jobs in the state of California require some type of license, up from the national average of around 25%. At the same time, approximately 1 in every 5 Californians have some sort of criminal background that leads to a growing segment of our citizenry that are procedurally locked out of a large portion of the job market.” *Id.*

applicants with a prior criminal conviction who were denied, approved, or approved with restrictions. By creating new duties for local EMS agencies, the bill would impose a state-mandated local program.

The bill would require the authority to annually report to the commission on the extent to which prior criminal history may be an obstacle to certification as an EMT-I or EMT-II, and would require the authority to annually submit the same report to the Legislature and make the report easily accessible on the authority's Internet Web site.<sup>190</sup>

**4. AB 579**<sup>191</sup>

In 2017, California Governor Gavin Newsome signed legislation that will facilitate emergency response career opportunities for former inmates, although the order “stops short of allowing them to become full-fledged firefighters.”<sup>192</sup> Assemblywoman Wendy Carrillo, who authored the bill, touted the role of the Conservation Camps Program: “Inmate fire crews consist of men and women who have trained through a special program and risk their lives to protect the public . . . [o]nce an individual has paid their debt to society and served their time, they should be able to reintegrate back to society and have an opportunity for a good job and to live a stable life with dignity.”<sup>193</sup>

This bill would require the Division of Apprenticeship Standards, in collaboration with the California Firefighter Joint Apprenticeship Committee (CAL-JAC), to develop a statewide firefighter pre-apprenticeship program designed to recruit candidates from underrepresented groups. This bill would require the pre-apprenticeship program to meet specified objectives. This bill would also require CAL-JAC to deliver the pilot classes established by the pre-apprenticeship program using existing facilities and training models. This bill would require CAL-JAC to provide the program model to fire protection agencies, and would authorize a fire protection agency to then use that model and related resources to establish a local pre-apprenticeship program for recruiting candidates from underrepresented groups. This bill would reference an appropriation made in the Budget Act of 2017–18 to the division to establish the pre-apprenticeship program and would require the division to use those funds for specified purposes.<sup>194</sup>

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<sup>190</sup> Assembly Bill No. 2293.

<sup>191</sup> Assembly Bill No. 579, enacted as Cal. Health & Saf. Code § 13159.15 (effective Sept. 28, 2017).

<sup>192</sup> Isabelle Chapman, *Prison inmates are fighting California's fires, but are often denied firefighting jobs after their release*, CNN (Oct. 31, 2019), <https://www.cnn.com/2019/10/31/us/prison-inmates-fight-california-fires-trnd/index.html>.

<sup>193</sup> *Id.*

<sup>194</sup> Assembly Bill. No. 579.

## VI. CONCLUSION

The function of securing benefits for inmate firefighters not only has the immediate benefit of compensating their families for the unique service of a fallen inmate firefighter, but it will also begin to establish normalcy and “professionalism” in their status despite their imprisonment and, with proper attention from the state and federal agencies administering the labor programs, parlay into more effective professional pipelines upon release. *Hillensbeck* provides a basis for pushing back against the federal rulings restricting the extension of PSOPA death benefits to inmate firefighters first put forth in *Chacon* and *Davenport*. The acknowledgement that inmate firefighters are entitled to death benefits under the Public Safety Officers’ Benefits Act would provide value to the reputation of the program and goodwill for those inmates seeking to reintegrate as professional firefighters while navigating professional networks with a criminal record. The most far-reaching benefits our federal government can provide inmate firefighters do not come in the form of a marginal wage increase or other real-time incentives—instead, proper compensation is provided by the assurance that their families will be indemnified for the unforgiving service these inmates provide.