

September 4, 2020

The Honorable Gavin Newsom  
Governor of the State of California  
State Capitol, 1st Floor  
Sacramento, CA 95814

Dear Governor Newsom and Office of the Governor:

As directly impacted experts and advocates, we write today to ask for your immediate support to ensure opportunities for currently and formerly incarcerated firefighters. In this letter, we have provided four actions your office can take today, and we stand ready to advise and support you.

Every year, the state of California battles wildfires across the state that require skilled and trained workers to mitigate their harm. These blazes have become increasingly intense and damaging with climate change.<sup>1</sup>

But this summer, because of COVID-19 outbreaks inside California's state prisons, the state has been short on firefighters due to its longstanding reliance on incarcerated firefighters—a reality that has only further highlighted how California's current emergency responder system is “predicated on mass incarceration”<sup>2</sup> and the long history of racism in policing and the criminal legal system. Yet for many incarcerated people, the CDCR Firehouse and CalFire Conservation Camp programs are the only rehabilitative programs made available to them by the state and offer an opportunity for serving the community and building skills and purpose.

So as California's firefighters, both incarcerated and free, take on the vital responsibility of saving lives, property and land during one of the most challenging years in human history, **it is indefensible that formerly incarcerated people continue to be banned from EMT licensure needed to provide this life-saving care to the community.**

The State of California relies heavily on the labor of firefighters in CDCR custody, individuals who serve both through the Conservation (Fire) Camps with CalFire as well as through CDCR's prison firehouses, several of which have mutual aid agreements with local cities and counties to provide emergency responder services locally. Currently incarcerated people whom CDCR has deemed eligible to work as firefighters already provide public safety protection by serving as frontline emergency responders battling wildfires, providing CPR and firefighting services to the residents and staff of California state prisons, and responding to local calls such as traffic accidents, structural fires, and medical emergencies in local jurisdictions that partner with CDCR.

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<sup>1</sup> California Air Resources Board, “Wildfires and Climate Change,” [ww2.arb.ca.gov/wildfires-climate-change](http://ww2.arb.ca.gov/wildfires-climate-change)

<sup>2</sup> The San Francisco Chronicle, “Inmate firefighters - let them keep doing this vital job,” [www.sfchronicle.com/bayarea/otisrtaylorjr/article/Inmate-firefighters-let-them-keep-doing-this-15538874.php](http://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Inmate-firefighters-let-them-keep-doing-this-15538874.php)

Through its own programs, the State of California has already shown that there is no reasonable public safety policy concern that could justify the blanket bans to EMT licensure or the continued imprisonment of people in the CDCR firefighting program amidst a deadly pandemic.

Currently, despite the reliance on incarcerated firefighters as frontline emergency responders across the state, California law and regulations ban people from EMT licensure to work for municipal firefighting departments—e.g., banning people with two felony convictions for life, one felony conviction for 10 years, or one misdemeanor theft-related conviction for 5 years.<sup>3</sup> These “blanket bans” reproduce racialized inequalities in that the best firefighting jobs in the most desirable parts of California require an EMT license. For example:

- The 10 most populous counties in California require EMT licenses for introductory level firefighting positions.
- The top 10 highest paying counties require EMT licenses for introductory level firefighting positions.
- Of the 20 most populous counties in California, 18 either require, or give strong preference to firefighter applicants with EMT licenses.
- Of the counties that pay firefighters, over 70% require entry level firefighters to have an EMT license, or give hiring preference to those with EMT licenses.<sup>4</sup>

By relegating currently and formerly incarcerated people to frontline hand crews and seasonal positions that cannot provide stable, long-term careers or opportunity for advancement, the State of California is saying that currently and formerly incarcerated people are less worthy to give back to society than others, and reproduces racial and economic inequalities that drive mass incarceration.

Assemblymember Reyes’ bill, AB 2147,<sup>5</sup> which passed the California Legislature and awaits your signature, is a small and important step towards acknowledging the tremendous service by incarcerated firefighters. However, this expungement bill does not promise to open pathways to EMT licensure to people with past conviction histories as intended.<sup>6</sup>

**The Governor’s Office is needed to meet the moment we are in—immediate action that can create longer term structural change and enact the will of the people. We respectfully ask that, as Governor of the State of California, you utilize your executive power to do the following:**

1. Release all incarcerated people who have been found suitable for the Conservation (Fire) Camps and CDCR firehouses (“CDCR firefighting programs”), and offer those individuals paid opportunities to work with CalFire commensurate with county pay structures.<sup>7</sup>

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<sup>3</sup> 22 CCR § 100214.3.

<sup>4</sup> Smith, Charlotte and Melissa Burch. Forthcoming report. University of Michigan, Documenting Criminalization and Confinement initiative, 2020.

<sup>5</sup> AB 2147, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB2147](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2147)

<sup>6</sup> See PC § 11105.

<sup>7</sup> This recommendation is in line with Governor Newsom’s executive actions granting early releases since the onset of the COVID-19 pandemic, and likely has significant overlap with current eligibility for early releases. See

2. Leverage the emergency federal and state funding set aside for hiring additional firefighters in California to prioritize the hiring of people who served in the CDCR firefighting programs.<sup>8</sup>
3. Eliminate the California EMSA’s unconstitutional barriers to EMT licensure for people with past convictions. Given the Legislature and public’s understanding of AB 2147, Governor Newsom should direct the EMSA to remove all blanket bans to EMT licensure in California regulations, and require the EMSA to give applicants a fair chance to prove that they have rehabilitated and can use their skills in service of their communities as EMTs and firefighters.<sup>9</sup> *Please refer to Attachment A as recommended language.*
4. Implement a long-term plan for the state of California to divest from state prisons, and reinvest such funding into community-based services and economic opportunities for all Californians, including reinvestments in firefighting and paramedic services that are not reliant on unpaid prison labor or discriminatory bans.<sup>10</sup>

Never has a call for executive action been so supported by the public. Media coverage in *The Verge*,<sup>11</sup> *The San Francisco Chronicle*,<sup>12</sup> *The New York Times*,<sup>13</sup> *KQED*,<sup>14</sup> and *The Real News Network*<sup>15</sup> have repeatedly highlighted the injustices of the state’s lack of pay for incarcerated firefighters and the barriers to EMT licensure and firefighting jobs after release.

Governor Newsom, your leadership and immediate action is needed at this moment—to meet the public’s calls for criminal justice reform, economic opportunity, racial justice, and community reinvestments.

We stand ready to support you in this effort and would be grateful to discuss further with your office. Please feel free to reach out to Sonja Tonnesen-Casalegno, Deputy Director of Programs at Root & Rebound, by email at [stonnesen@rootandrebound.org](mailto:stonnesen@rootandrebound.org) or by phone at (510) 279-4662.

Respectfully signed,

Root & Rebound  
 Young Women’s Freedom Center  
 Legal Aid at Work  
 Legal Services for Prisoners with Children

East Bay Community Law Center  
 Sister Warriors Freedom Coalition  
 Planting Justice  
 All of Us or None

<https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-systemwide-to-address-covid-19/>

<sup>8</sup> This recommendation is in line with the resources Governor Newsom has already set aside for increasing California’s firefighting force. *See*

[www.gov.ca.gov/2020/07/09/ahead-of-peak-fire-season-governor-newsom-announces-more-firefighting-support-amid-covid-19-pandemic/](http://www.gov.ca.gov/2020/07/09/ahead-of-peak-fire-season-governor-newsom-announces-more-firefighting-support-amid-covid-19-pandemic/).

<sup>9</sup> Please see Attachments A and B for recommended language.

<sup>10</sup> Humboldt County Civil Grand Jury, “Angels in Orange,” [northcoastjournal.com/media/pdf/angels\\_in\\_orange\\_cc\\_report.pdf](http://northcoastjournal.com/media/pdf/angels_in_orange_cc_report.pdf)

<sup>11</sup> *See* [www.theverge.com/21404720/incarcerated-firefighters-california-wildfires-pandemic-covid-19](http://www.theverge.com/21404720/incarcerated-firefighters-california-wildfires-pandemic-covid-19)

<sup>12</sup> *See* [www.sfchronicle.com/bayarea/heatherknight/article/As-wildfires-rage-California-needs-more-15523376.php](http://www.sfchronicle.com/bayarea/heatherknight/article/As-wildfires-rage-California-needs-more-15523376.php)

<sup>13</sup> *See* <https://www.nytimes.com/2020/08/22/us/california-wildfires-prisoners.html?smid=em-share>

<sup>14</sup> *See* <https://www.kqed.org/science/1968728/shortage-of-inmate-firefighters-hampers-response-in-bay-area>

<sup>15</sup> *See* <https://therealnews.com/columns/reformers-aim-to-end-prison-firefighters-indentured-servitude-in-california>

Community Legal Services in East Palo Alto  
Resilience for a Just Transition Decarceration Working Group

**CHAPTER 7. Penalties [1798.200 - 1798.211]** ( *Chapter 7 added by Stats. 1980, Ch. 1260.*)

**1798.200.**

(a) (1) (A) Except as provided in paragraph (2), an employer of an EMT-I or EMT-II may conduct investigations, as necessary, and take disciplinary action against an EMT-I or EMT-II who is employed by that employer for conduct in violation of subdivision (c). The employer shall notify the medical director of the local EMS agency that has jurisdiction in the county in which the alleged violation occurred within three days when an allegation has been validated as a potential violation of subdivision (c).

(B) Each employer of an EMT-I or EMT-II employee shall notify the medical director of the local EMS agency that has jurisdiction in the county in which a violation related to subdivision (c) occurred within three days after the EMT-I or EMT-II is terminated or suspended for a disciplinary cause, the EMT-I or EMT-II resigns following notification of an impending investigation based upon evidence that would indicate the existence of a disciplinary cause, or the EMT-I or EMT-II is removed from EMT-related duties for a disciplinary cause after the completion of the employer's investigation.

(C) At the conclusion of an investigation, the employer of an EMT-I or EMT-II may develop and implement, in accordance with the guidelines for disciplinary orders, temporary suspensions, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. Upon adoption of the disciplinary plan, the employer shall submit that plan to the local EMS agency within three working days. The employer's disciplinary plan may include a recommendation that the medical director of the local EMS agency consider taking action against the holder's certificate pursuant to paragraph (3).

(2) If an EMT-I or EMT-II is not employed by an ambulance service licensed by the Department of the California Highway Patrol or a public safety agency or if that ambulance service or public safety agency chooses not to conduct an investigation pursuant to paragraph (1) for conduct in violation of subdivision (c), the medical director of a local EMS agency shall conduct the investigations, and, upon a determination of disciplinary cause, take disciplinary action as necessary against the EMT-I or EMT-II. At the conclusion of these investigations, the medical director shall develop and implement, in accordance with the recommended guidelines for disciplinary orders, temporary orders, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. The medical director's disciplinary plan may include action against the holder's certificate pursuant to paragraph (3).

(3) The medical director of the local EMS agency may, upon a determination of disciplinary cause and in accordance with regulations for disciplinary processes adopted pursuant to Section 1797.184, deny, suspend, or revoke any EMT-I or EMT-II certificate issued under this division, or may place any EMT-I or EMT-II certificate holder on probation, upon the finding by that medical director of the occurrence of any of the actions listed in subdivision (c) and the occurrence of one of the following:

(A) The EMT-I or EMT-II employer, after conducting an investigation, failed to impose discipline for the conduct under investigation, or the medical director makes

a determination that the discipline imposed was not according to the guidelines for disciplinary orders and conditions of probation and the conduct of the EMT-I or EMT-II certificate holder constitutes grounds for disciplinary action against the certificate.

(B) Either the employer of an EMT-I or EMT-II further determines, after an investigation conducted under paragraph (1), or the medical director determines after an investigation conducted under paragraph (2), that the conduct requires disciplinary action against the certificate.

(4) The medical director of the local EMS agency, after consultation with the employer of an EMT-I or EMT-II, may temporarily suspend, prior to a hearing, any EMT-I or EMT-II certificate or both EMT-I and EMT-II certificates upon a determination that both of the following conditions have been met:

(A) The certificate holder has engaged in acts or omissions that constitute grounds for revocation of the EMT-I or EMT-II certificate.

(B) Permitting the certificate holder to continue to engage in the certified activity without restriction would pose an imminent threat to the public health or safety.

(5) If the medical director of the local EMS agency temporarily suspends a certificate, the local EMS agency shall notify the certificate holder that his or her EMT-I or EMT-II certificate is suspended and shall identify the reasons therefor.

Within three working days of the initiation of the suspension by the local EMS agency, the agency and employer shall jointly investigate the allegation in order for the agency to make a determination of the continuation of the temporary suspension. All investigatory information not otherwise protected by law held by the agency and employer shall be shared between the parties via facsimile transmission or overnight mail relative to the decision to temporarily suspend. The local EMS agency shall decide, within 15 calendar days, whether to serve the certificate holder with an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If the certificate holder files a notice of defense, the hearing shall be held within 30 days of the local EMS agency's receipt of the notice of defense. The temporary suspension order shall be deemed vacated if the local EMS agency fails to make a final determination on the merits within 15 days after the administrative law judge renders the proposed decision.

(6) The medical director of the local EMS agency shall refer, for investigation and discipline, any complaint received on an EMT-I or EMT-II to the relevant employer within three days of receipt of the complaint, pursuant to subparagraph (A) of paragraph (1) of subdivision (a).

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate holder or licenseholder under this division:

- (1) Fraud in the procurement of any certificate or license under this division.
- (2) Gross negligence.
- (3) Repeated negligent acts.
- (4) Incompetence.
- (5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.
- (6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.
- (7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.
- (8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.
- (9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.
- (10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.
- (11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.
- (12) Unprofessional conduct exhibited by any of the following:
  - (A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed to prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to effect a lawful arrest or detention.
  - (B) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.
  - (C) The commission of any sexually related offense specified under Section 290 of the Penal Code.

*(d) Satisfactory participation in a CDCR Conservation Camp or Fire Station shall be evidence that the applicant is no longer a threat to the public health and safety; convictions, underlying conduct of the convictions, or arrests prior to participation in the programs shall not be a basis for denial of a license issued under this division.*

- 1. Satisfactory participation may be evidenced by a letter of recommendation from a CDCR or Cal Fire staff person, certification from CDCR, or evidence of release directly from the fire camp without removal back to a prison for disciplinary reasons.*

*(e) The Authority shall not set forth or maintain criteria that requires denial of licensure based on:*

- 1. Number of convictions,*
- 2. Elapsed time from conviction(s) or release from custody or supervision,*
- 3. Classification as a felony or an offense punishable as a felony*

*(fd)* The information shared among EMT-I, EMT-II, and EMT-P employers, medical directors of local EMS agencies, the authority, and EMT-I and EMT-II certifying entities shall be deemed to be an investigative communication that is exempt from public disclosure as a public record pursuant to subdivision (f) of Section 6254 of the Government Code. A formal disciplinary action against an EMT-I, EMT-II, or EMT-P shall be considered a public record available to the public, unless otherwise protected from disclosure pursuant to state or federal law.

*(ge)* For purposes of this section, "disciplinary cause" means an act that is substantially related to the qualifications, functions, and duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat to the public health and safety described in subdivision (c).

*(Amended by Stats. 2010, Ch. 328, Sec. 127. (SB 1330) Effective January 1, 2011.)*

#### **1798.201.**

(a) When information comes to the attention of the medical director of the local EMS agency that an EMT-P licenseholder has committed any act or omission that appears to constitute grounds for disciplinary action under this division, the medical director of the local EMS agency may evaluate the information to determine if there is reason to believe that disciplinary action may be necessary.

(b) If the medical director sends a recommendation to the authority for further investigation or discipline of the licenseholder, the recommendation shall include all documentary evidence collected by the medical director in evaluating whether or not to make that recommendation. The recommendation and accompanying evidence shall be deemed in the nature of an investigative communication and be protected by Section 6254 of the Government Code. In deciding what level of disciplinary action is appropriate in the case, the authority shall consult with the medical director of the local EMS agency.

*(Added by Stats. 1994, Ch. 709, Sec. 6. Effective January 1, 1995.)*

#### **1798.202.**

(a) The director of the authority or the medical director of the local EMS agency, after consultation with the relevant employer, may temporarily suspend, prior to hearing, any EMT-P license upon a determination that: (1) the licensee has engaged in acts or omissions that constitute grounds for revocation of the EMT-P license; and (2) permitting the licensee to continue to engage in the licensed activity, or permitting the licensee to continue in the licensed activity without restriction, would present an imminent threat to the public health or safety. When the suspension is initiated by the local EMS agency, subdivision (b) shall apply. When the suspension is initiated by the director of the authority, subdivision (c) shall apply.

(b) The local EMS agency shall notify the licensee that his or her EMT-P license is suspended and shall identify the reasons therefor. Within three working days of the

initiation of the suspension by the local EMS agency, the agency shall transmit to the authority, via facsimile transmission or overnight mail, all documentary evidence collected by the local EMS agency relative to the decision to temporarily suspend. Within two working days of receipt of the local EMS agency's documentary evidence, the director of the authority shall determine the need for the licensure action. Part of that determination shall include an evaluation of the need for continuance of the suspension during the licensure action review process. If the director of the authority determines that the temporary suspension order should not continue, the authority shall immediately notify the licensee that the temporary suspension is lifted. If the director of the authority determines that the temporary suspension order should continue, the authority shall immediately notify the licensee of the decision to continue the temporary suspension and shall, within 15 calendar days of receipt of the EMS agency's documentary evidence, serve the licensee with a temporary suspension order and accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The director of the authority shall initiate a temporary suspension with the filing of a temporary suspension order and accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall notify the director of the local EMS agency, and the relevant employer.

(d) If the licensee files a notice of defense, the hearing shall be held within 30 days of the authority's receipt of the notice of defense. The temporary suspension order shall be deemed vacated if the authority fails to make a final determination on the merits within 15 days after the administrative law judge renders the proposed decision.

*(Repealed and added by Stats. 1994, Ch. 709, Sec. 8. Effective January 1, 1995.)*

#### **1798.204.**

Proceedings for probation, suspension, revocation, or denial of a certificate, or a denial of a renewal of a certificate, under this division shall be conducted in accordance with guidelines established by the Emergency Medical Services Authority.

*(Amended by Stats. 1986, Ch. 248, Sec. 135.)*

#### **1798.205.**

Any alleged violations of local EMS agency transfer protocols, guidelines, or agreements shall be evaluated by the local EMS agency. If the local EMS agency has concluded that a violation has occurred, it shall take whatever corrective action it deems appropriate within its jurisdiction, including referrals to the district attorney under Sections 1798.206 and 1798.208 and shall notify the State Department of Health Services if it concludes that any violation of Sections 1317 to 1317.9a, inclusive, has occurred.

*(Added by Stats. 1987, Ch. 1240, Sec. 18.)*

#### **1798.206.**

Any person who violates this part, the rules and regulations adopted pursuant thereto, or county ordinances adopted pursuant to this part governing patient transfers, is guilty of a misdemeanor. The Attorney General or the district attorney may prosecute any of these misdemeanors which falls within his or her jurisdiction. *(Amended by Stats. 1987, Ch. 1225, Sec. 17.)*

**1798.207.**

(a) It is a misdemeanor for any person to knowingly and willfully engage in conduct that subverts or attempts to subvert any licensing or certification examination, or the administration of any licensing or certification examination, conducted pursuant to this division, including, but not limited to, any of the following:

- (1) Conduct that violates the security of the examination material.
- (2) Removing from the examination room any examination materials without authorization.
- (3) The unauthorized reproduction by any means of any portion of the actual licensing or certification examination.
- (4) Aiding by any means the unauthorized reproduction of any portion of the actual licensing or certification examination.
- (5) Paying or using professional or paid examination-takers, for the purpose of reconstructing any portion of the licensing or certification examination.
- (6) Obtaining or attempting to obtain examination questions or other examination material from examinees or by any other method, except by specific authorization either before, during, or after an examination.
- (7) Using or purporting to use any examination questions or materials that were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination.
- (8) Selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing or certification examination.
- (9) Communicating with any other examinee during the administration of a licensing or certification examination.
- (10) Copying answers from another examinee or permitting one's answers to be copied by another examinee.
- (11) Having in one's possession during the administration of the licensing or certification examination any books, equipment, notes written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination.
- (12) Impersonating any examinee or having an impersonator take the licensing or certification examination on one's behalf.

(b) The penalties provided in this section are not exclusive remedies and shall not preclude remedies provided pursuant to any other provision of law.

(c) In addition to any other penalties, a person found guilty of violating this section shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

*(Added by Stats. 1992, Ch. 215, Sec. 1. Effective January 1, 1993.)*

**1798.208.**

Whenever any person who has engaged, or is about to engage, in any act or practice which constitutes, or will constitute, a violation of any provision of this division, the rules and regulations promulgated pursuant thereto, or local EMS agency mandated protocols, guidelines, or transfer agreements, the superior court in and for the county wherein the acts or practices take place or are about to take place may issue an injunction or other appropriate order restraining the conduct on application of the authority, the Attorney General, or the district attorney of the county. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required.

*(Amended by Stats. 1987, Ch. 1240, Sec. 19.)*

**1798.209.**

The local EMS agency may place on probation, suspend, or revoke the approval under this division of any training program for failure to comply with this division or any rules or regulations adopted pursuant thereto.

*(Added by Stats. 1994, Ch. 709, Sec. 9. Effective January 1, 1995.)*

**1798.210.**

(a) The authority may impose an administrative fine of up to two thousand five hundred dollars (\$2,500) per violation on any licensed paramedic found to have committed any of the actions described by subdivision (c) of Section 1798.200 that did not result in actual harm to a patient. Fines may not be imposed if a paramedic has previously been disciplined by the authority for any other act committed within the immediately preceding five-year period.

(b) The authority shall adopt regulations establishing an administrative fine structure, taking into account the nature and gravity of the violation. The administrative fine shall not be imposed in conjunction with a suspension for the same violation, but may be imposed in conjunction with probation for the same violation except when the conditions of the probation require a paramedic's personal time or expense for training, clinical observation, or related corrective instruction.

(c) In assessing the fine, the authority shall give due consideration to the appropriateness of the amount of the fine with respect to factors that include the gravity of the violation, the good faith of the paramedic, the history of previous violations, any discipline imposed by the paramedic's employer for the same occurrence of that conduct, as reported pursuant to Section 1799.112, and the totality of the discipline to be imposed. The imposition of the fine shall be subject to the administrative adjudication provisions set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) If a paramedic does not pay the administrative fine imposed by the authority and chooses not to renew his or her license, the authority may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the authority may have to require a paramedic to pay costs.

(e) In any action for collection of an administrative fine, proof of the authority's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(f) (1) Except as provided in paragraph (2), the authority shall not license or renew the license of any paramedic who has failed to pay an administrative fine ordered under this section.

(2) The authority may, in its discretion, conditionally license or renew for a maximum of one year the license of any paramedic who demonstrates financial hardship and who enters into a formal agreement with the authority to reimburse the authority within that one-year period for the unpaid fine.

(g) All funds recovered under this section shall be deposited into the state General Fund.

(h) Nothing in this section shall preclude the authority from imposing an administrative fine in any stipulated settlement.

(i) For purposes of this section, "licensed paramedic" includes a paramedic whose license has lapsed or has been surrendered.

*(Added by Stats. 2004, Ch. 513, Sec. 1. Effective January 1, 2005.)*

**1798.211.**

When making a decision regarding a disciplinary action pursuant to Section 1798.200 or Section 1798.210, the authority, and when applicable the administrative law judge, shall give credit for discipline imposed by the employer and for any immediate suspension imposed by the local EMS agency for the same conduct.

*(Added by Stats. 2004, Ch. 513, Sec. 2. Effective January 1, 2005.)*



**RE: Request for Amendment to California Code of Regulations, Title 22 § 100214.3**

We write to request that EMSA re-evaluate California Code of Regulations (C.C.R.) Title 22, § 100214.3 – which currently *requires* a medical director to deny or revoke an EMT certificate if an applicant has two or more felonies or is currently on parole or probation, among other stringent requirements – because these regulations are in direct conflict with the code sections on which they are based, and do not provide medical directors the ability to conduct an individualized assessment of applicants’ criminal history. This petition for a change to these regulations is permitted under Cal. Gov. Code § 11340.6-7.

As a result of these regulations, many qualified applicants are being denied an EMT license based on convictions that are very old, not substantially related to the duties of the job, or simply do not properly represent the applicant’s character, rehabilitation, or job capabilities. Among these qualified applicants are formerly incarcerated individuals who have fought fires with the California Department of Forestry and Fire Protection (Cal Fire) in CDCR Fire Camps while incarcerated, and who have risked their lives to protect California’s residents and natural resources. Under the current regulations, these individuals *must* be denied outright when applying for an EMT license for at least 10 years after their incarceration.

We specifically request that EMSA amend the regulations by adjusting the language in § 100214.3, in order to make certain denials based on criminal history discretionary rather than mandatory.

Per this request, 22 CCR § 100214.3 would be amended as follows:

**§ 100214.3. Denial or Revocation of a Certificate.**

- (a) A certifying entity, that is not a LEMSA, shall advise a certification or recertification applicant whose conduct indicates a potential for disciplinary cause, based on an investigation by the certifying entity prompted by a DOJ and/or FBI CORI, pursuant to Section 100210(a) of this Chapter, to apply to a LEMSA for certification or recertification.
- (b) The medical director may deny or revoke any EMT or Advanced EMT certificate for disciplinary cause that have been investigated and verified by application of this Chapter.
- (c) The medical director ~~shall~~ *may* deny or revoke an EMT or Advanced EMT certificate if any of the following apply to the applicant:
  - (1) Has committed any sexually related offense specified under Section 290 of the Penal Code.
  - (2) Has been convicted of murder, attempted murder, or murder for hire.



(3) Has been convicted of two (2) or more *substantially related* felonies *within the preceding five (5) years*.

(4) Is on parole or probation for any felony.

~~(5) Has been convicted and released from incarceration for said offense during the preceding fifteen (15) years for the crime of manslaughter or involuntary manslaughter.~~

~~(6) Has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony.~~

~~(7) (5) Has been convicted of two (2) or more misdemeanors within the preceding five (5) *two (2)* years for any offense relating to the use, sale, possession, or transportation of narcotics or addictive or dangerous drugs, *any offense relating to force, threat, violence, or intimidation, or any theft-related misdemeanor*.~~

~~(8) Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to force, threat, violence, or intimidation.~~

~~(9) Has been convicted within the preceding five (5) years of any theft related misdemeanor.~~

*(6) Has committed any act involving fraud or intentional dishonesty for personal gain within the preceding seven (7) years.*

*(7) Is required to register pursuant to Section 11590 of the Health and Safety Code.*

~~(d) The medical director may deny or revoke an EMT or Advanced EMT certificate if any of the following apply to the applicant:~~

~~(1) Has committed any act involving fraud or intentional dishonesty for personal gain within the preceding seven (7) years.~~

~~(2) Is required to register pursuant to Section 11590 of the Health and Safety Code.~~

(e) Subsection (a) and (b) shall not apply to convictions that have been pardoned by the Governor, *judicially dismissed under Penal Code 1203.4 et seq., granted a certificate of rehabilitation, or comparably dismissed or expunged*, and shall only apply to convictions where the applicant/certificate holder was prosecuted as an adult. Equivalent convictions from other states shall apply to the type of offenses listed in ~~(c) and (d)~~. As used in this Section, “felony” or “offense punishable as a felony” refers to an offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, regardless of the sentence the particular defendant received *the applicant’s conviction is currently classified as a felony, and for which the code section the applicant was convicted under is an offense currently punishable as a felony*.

(f) This Section shall not apply to those EMT's, or EMT-IIs who obtain their



California certificate prior to the effective date of this Section; unless:

- (1) The certificate holder is convicted of any misdemeanor or felony after the effective date of this Section.
- (2) The certificate holder committed any sexually related offense specified under Section 290 of the Penal Code.
- (3) The certificate holder failed to disclose to the certifying entity any prior convictions when completing his/her application for initial EMT or Advanced EMT certification or certification renewal.

(g) Nothing in this Section shall negate an individual's right to appeal a denial of an EMT or Advanced EMT certificate pursuant to this Chapter.

(h) Certification action by a medical director shall be valid statewide and honored by all certifying entities for a period of at least twelve (12) months from the effective date of the certification action. An EMT or Advanced EMT whose application was denied or an EMT or Advanced EMT whose certification was revoked by a medical director shall not be eligible for EMT or Advanced EMT application by any other certifying entity for a period of at least twelve (12) months from the effective date of the certification action. EMT's or Advanced EMT's whose certification is placed on probation must complete their probationary requirements with the LEMSA that imposed the probation.

**The reason for our request (per Gov. Code § 11340.6(b)):**

First, we request that EMSA amend these regulations to conform with the code sections on which they are based. H&S Code § 1798.200 plainly states that in order for a conviction to be considered evidence of a threat to the public health and safety that would result in a denial of an EMT license, the conviction must be “substantially related to the qualifications, functions, and duties of prehospital personnel.”<sup>1</sup> This means that a medical director must assess the relation between the conviction and the duties of the job, an assessment that the current regulations do not provide an opportunity for. By requiring a medical director to automatically deny an applicant for an EMT license based solely on a conviction and nothing else, the medical director is unable to determine whether there is a substantial relationship between the conviction and the qualifications of the job. The current regulations are thus not only unduly broad, but are in direct conflict with the code sections on which they are based.

EMSA should also change this regulation to conform with the requirements in Business and Professions Code § 480(a)(1), which states that a disqualifying conviction must be “substantially related to the qualifications, functions, or duties of the business or profession for which the application was made.” With the passage of Assembly Bill 2138 this past legislative cycle, the California Legislature has recognized the need to reduce the amount of barriers faced by formerly incarcerated people in pursuing occupational licensure, in order to provide more

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<sup>1</sup> Health & Safety Code § 1798.200(c)(6)



opportunities for successful reentry and to reduce the rate of recidivism. The law is rapidly moving towards requiring a more individualized and holistic assessment of occupational license applicants with convictions, an assessment that cannot be conducted under the current regulations.

Additionally, EMSA should amend this regulation to conform with the U.S. Equal Employment Opportunity Commission's (EEOC) Enforcement Guidelines.<sup>2</sup> These guidelines specify that employers should provide an opportunity to the individual to demonstrate that an exclusion does not apply to him or her, and consider whether the individual's additional information shows the policy as applied is not job related and consistent with business necessity. The individual's showing may include information involving the facts or circumstances surrounding the conviction, evidence of rehabilitation efforts, evidence that the individual has performed the same type of work post-conviction with no known incidents of criminal conduct, and more.

The regulation as it is currently written does not provide medical directors with the ability to perform individualized assessments of applicants' criminal history. It states that a medical director *must* deny an applicant who falls under these broad categories, without any opportunity to assess that individual's particular circumstances, rehabilitation efforts, or job capabilities. This regulation falls short of conforming to the enforcement guidance of the EEOC, by leaving no room for medical directors to consider applicants on an individualized basis. While EEOC's guidelines currently do not apply to occupational licensing applicants, these same principles should be applied in EMSA's application process, to ensure that each applicant is given a fair opportunity to present to medical directors the full range of their experiences and capabilities.

Several federal agencies, including the EEOC, the U.S. Department of Labor (DOL), and the U.S. Department of Housing and Urban Development (HUD) have issued guidance that, because communities of color are disproportionately impacted by the criminal justice system, the use of criminal history information to blanketly exclude applicants with criminal records has a disparate impact based on race and national origin, and may result in a violation of federal law including Title VII of the Civil Rights Act of 1964 and the Fair Housing Act.

In particular, DOL has stated that “[p]olicies that exclude people from employment or other services based on the mere existence of a criminal history record and that do not take into account the age and nature of an offense, for example, are likely to unjustifiably restrict the employment opportunities of individuals with conviction histories and, due to racial and ethnic disparities in the criminal justice system, are likely to violate federal antidiscrimination law.”<sup>3</sup> Similarly, in the housing context, HUD has stated that a “housing provider that imposes a

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<sup>2</sup> U.S. Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

<sup>3</sup> U.S. Department of Labor, Employment and Training Administration. “Advisory: Training and Employment Guidance Letter No. 31-11: Update on Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Disparate Impact Based on Race and National Origin.” May 25, 2012. [http://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_31\\_11.pdf](http://wdr.doleta.gov/directives/attach/TEGL/TEGL_31_11.pdf).



blanket prohibition on any person with any conviction record—no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then—will be unable to meet” its burden to show that such a policy is necessary to serve a substantial, legitimate, nondiscriminatory interest.<sup>4</sup> By applying what is effectively a blanket ban on formerly incarcerated applicants, EMSA’s regulation is disparately impacting communities of color and is likely running afoul of these federal antidiscrimination laws.

Furthermore, public opinion on this issue has shifted dramatically in favor of changing these regulations, especially after the devastating California wildfires this past fall. Local<sup>5</sup> and national<sup>6</sup> media have dedicated substantial attention to the subject of CDCR prisoners fighting fires in CDCR Fire Camps for \$2 a day,<sup>7</sup> saving the State of California \$100 million annually,<sup>8</sup> only to be blanket banned from EMT licensure upon release on the basis of their previous convictions. A bipartisan effort is underway nationwide to remove barriers to occupational licensing for formerly incarcerated people, as demonstrated by the legislative overhauls accomplished in states like Indiana,<sup>9</sup> Kansas,<sup>10</sup> New Hampshire,<sup>11</sup> Tennessee,<sup>12</sup> and Wisconsin.<sup>13</sup> The growing and prevailing public sentiment for the past several years, both within California and across the nation, is inclining towards removing these unnecessary and overly broad barriers for formerly incarcerated applicants.

For the above reasons, we request that EMSA strongly consider our proposal to amend the current regulations, and provide applicants with criminal records the full opportunity to present their qualifications and rehabilitation to the certifying board.

**EMSA has authority to amend 22 CCR § 100214.3, pursuant to Health & Safety Code § 1797.107.**

Thank you for your consideration. We look forward to hearing from you.

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<sup>4</sup> U.S. Department of Housing and Urban Development. “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.” April 4, 2016. [http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf).

<sup>5</sup> <https://www.sacbee.com/news/state/california/fires/article217422815.html>

<sup>6</sup> <https://www.nytimes.com/2018/11/15/us/california-paying-inmates-fight-fires.html>

<sup>7</sup> <https://www.sfchronicle.com/bayarea/article/Fewer-prison-inmates-signing-up-to-fight-12165598.php>

<sup>8</sup> <https://www.cnbc.com/2018/08/14/california-is-paying-inmates-1-an-hour-to-fight-wildfires.html>

<sup>9</sup> <https://ccresourcecenter.org/2018/04/03/indiana-enacts-progressive-new-licensing-law/>

<sup>10</sup> <http://ccresourcecenter.org/2018/05/11/kansas-the-most-recent-state-to-revise-its-occupational-licensing-law/>

<sup>11</sup> <http://ccresourcecenter.org/2018/07/10/16794/>

<sup>12</sup> <http://ccresourcecenter.org/2018/04/25/two-more-states-regulate-conviction-in-occupational-licensing/>

<sup>13</sup> <http://ccresourcecenter.org/2018/04/30/wisconsin-joins-crowd-of-states-regulating-occupational-licensure/>