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PAY-TO-STAY PROGRAMS IN CALIFORNIA JAILS

*Sheriff Michael S. Carona** †

INTRODUCTION

When a person has committed a criminal offense, he or she must be punished to vindicate the law, to acknowledge the suffering of the victim, and to deter future crimes. Imprisonment—the method commonly used to carry out this punishment—becomes increasingly problematic when our jails and prisons, especially in California, are bursting at the seams. As the Sheriff of the eighth largest jail system in the nation, I am responsible for the confinement and care of thousands of inmates in the Orange County Jail system. With a growing inmate population and a shortage of beds, I continue to look for new and innovative ways to house local inmates while they serve their debt to society. Pay-to-stay jails is one method that has received recent attention in the media. California regulations circumscribe pay-to-stay programs, ensuring that the programs provide a useful supplement to standard correctional strategies—and that the purported disparities that inform the popular conceptions of the programs are never realized.

I. BACKGROUND ON PAY-TO-STAY PROGRAMS

For some people, pay-to-stay jails conjure up a perception of “country club correctional living” for affluent, influential, and privileged Californians. This belief may have been somewhat fostered by the hyperbole of a newspaper editorial stating that pay-to-stay jails in California “operate like secret velvet-roped nightclubs of the correctional world.”

But what is ignored is that pay-to-stay jails, just like county jails, are subject to Title 15 of the California Code of Regulations, which governs how a jail operates. These regulations cover food services, access to telephones, work furlough, rules and disciplinary penalties, inmate discipline,

* Sheriff of Orange County, California; Member, Emergency Response Senior Advisory Committee for the Homeland Security Council. I have been Sheriff of Orange County for nine years and an active member of the law enforcement community for more than thirty years. Readers may be aware that I recently was indicted by a federal grand jury on several charges relating to actions allegedly taken before and during my time in office. I am taking a sixty day leave of absence, but I will return to my position as soon as I have cleared my name. This Commentary has nothing to do with these indictments; instead it reflects lessons I’ve learned from my long service as Sheriff of Orange County.

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and administrative segregation. Title 15 ensures, by way of mandated inspections, that jails operate in a standardized manner.

Several city jails in Orange County have pay-to-stay programs where inmates sentenced to time in county jail may instead serve their sentence in a city jail, if allowed by the sentencing judge. Two Orange County cities, *Huntington Beach* and *Santa Ana*, provide websites regarding their programs.

The legal authority for a California inmate to serve time in a city jail instead of a county jail is Section 4022 of the California Penal Code. The section reads:

Whenever by the terms of this code, or of any other law of the state, it is provided that a prisoner shall be confined in any county jail, such provision shall be construed to authorize any prisoner convicted of a misdemeanor to be confined, with the consent of the city, in any city jail in the judicial district in which the offense was committed

Some commentators argue that the wealthy and privileged are given the opportunity to serve their time in a pay-to-stay jail while the less privileged and destitute are left to fend for themselves with limited privileges in a county jail. This notion is not only erroneous, but it also ignores the many services and programs provided to inmates in county jails that are not available in most pay-to-stay jails. For instance, free medical, dental, and mental health services are available to all Orange County Jail inmates. Church services for various denominations are provided throughout the week. Inmates who wish to can take advantage of our educational programs obtain a GED, develop labor skills, or even learn parenting skills to help them reintegrate back with their families upon release.

Another misconception is that the physical living quarters in pay-to-stay jails are upscale or at least superior to county jails. In Orange County, we are continuously building new and improved inmate housing units that are constructed to meet the state of the art. Clearly, the inmates who serve their sentences in county jails are not left to fend for themselves without privileges or housed in dungeons as some people believe or purport.

II. MERITS OF THE PAY-TO-STAY JAIL PROGRAMS

Pay-to-stay jails are just another prisoner housing option that serves the dual purposes of ensuring that offenders serve their time and minimizing the cost of incarceration for taxpayers. In addition to reducing costs, the city jail pay-to-stay programs in Orange County offer two valuable services that assist the courts and the county jail operation.

First, they provide a means for a work furlough program in which an inmate, if allowed by the court, may leave the jail daily to go to work. Because the Orange County Jail does not offer a work furlough program, the sentencing alternative of pay-to-stay jails helps address the County's need for jail beds for felony, violent, and high security inmates in our jail system. I believe that, when work furlough is appropriate for a convicted inmate

(i.e., because the inmate does not pose a threat to the community), allowing him or her to maintain employment while serving a jail sentence is a vital consideration in the punishment process, as well as crucial for the inmate's family's welfare during that time. In my opinion, the inability of released prisoners to obtain jobs is one of the major contributors to criminal recidivism.

The Orange County Sheriff's Department offers *The Great Escape Program*, through which inmates are provided education, orientation, and training to assist them in obtaining jobs when they are released from custody. We also provide a referral service through which released inmates are paid to learn construction or computer skills, leading to job placement. The pay-to-stay jails' work furlough programs promote similar goals by facilitating alternative sentencing.

Second, city jails—including pay-to-stay jails—provide alternative housing for an inmate who is best placed outside the County Jail for jail operation or security reasons, such as protective custody status. The alternative housing in a city jail can sometimes make the housing of the inmate easier for all parties involved, including both the county jail staff and the inmate. This is especially true if the inmate is a former employee or someone with a vendetta against the county or Sheriff's Department, whereby the chances of false allegations of mistreatment increase dramatically.

III. PAY-TO-STAY PROGRAMS IN COUNTY JAILS

California law also authorizes pay-to-stay programs in county jails. According to Section 1203.1c(a) of the California Penal Code, inmates may be ordered by the court—if they have the financial wherewithal—to pay for the cost of their incarceration in the county jail. This section reads, in relevant part, as follows:

In any case in which a defendant is convicted of an offense and is ordered to serve a period of confinement in a county jail, city jail, or other local detention facility as a term of probation or a conditional sentence, the court may, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable costs of such incarceration, including incarceration pending disposition of the case. . . . If the court determines that the defendant has the ability to pay all or a part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county, or to the city with respect to incarceration in the city jail, in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

I acknowledge that in a majority of cases, inmates being sentenced do not have the ability to pay for their county jail incarceration. But there are many inmates who do have the means and who would qualify for an involuntary county "pay-for-stay" program. If an inmate were to serve six months in the Orange County Jail, \$18,000 could be collected to offset the cost of incarceration. I believe, and so do most citizens, that those who

commit crimes—not law-abiding taxpayers—should pay for the cost of their own incarceration.

If an inmate is ordered to pay for his or her confinement in the Orange County Jail, you can be assured that the inmate will not receive any special privileges. What the inmate will receive—in common with all inmates—is fair and humane treatment, excellent health services, and special programs that may lead to positive life-changing opportunities upon release.