

WHY THE COUNTY JAIL IS OFTEN A BETTER CHOICE

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I have been a criminal defense lawyer in Los Angeles for almost twenty years. I began my career in the Los Angeles County Public Defender's Office, representing defendants who were poor and often homeless. For the past twelve years, I have been in private practice, representing defendants who are wealthy and often famous. Having represented criminal defendants coming from such varied economic circumstances, I have witnessed firsthand the criminal justice system's disparate treatment of those with money and those without. Pay-to-stay jails are yet another example of that disparity. Yet I believe that those without the money to pay for jail often find themselves in a better position than those who pay to stay.

In Los Angeles, pay-to-stay jails have been around for as long as I can remember, but I am not aware of any pay-to-stay prisons. Jails, of course, are different than prisons. County jails in Los Angeles are run and supervised by the Sheriff's Department and are designed to house inmates with sentences of less than one year, most of whom have been convicted of misdemeanors. Private jails are either small city jails or jails owned and operated by private entities that meet certain criteria and get approval from the state. State prisons, on the other hand, are run and supervised by the California Department of Corrections and Rehabilitation and are designed to house felons who have been sentenced to one or more years in the penitentiary. Inmates sentenced to state prison are generally considered dangerous and, as such, are not eligible for the relative "freedoms" of pay-to-stay confinement. Inmates sentenced to jail, however, are often there because they have been convicted of first-time or nonviolent offenses—or both.

In my experience, most inmates who opt for pay-to-stay jails—or, as they are more commonly known, private jails—have been convicted of a first- or second-time DUI offense and have been sentenced to less than five days in jail. People of all socioeconomic classes, races, and genders seem to commit this offense, and, accordingly, a number of DUI defendants can afford private jail.

Those defendants who can afford to pay for private jail often do, primarily because they are afraid of who and what they might encounter in the county jail. In Los Angeles, county jails are often the subject of local news

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stories involving violence and overcrowding. These stories tend to strike fear in defendants unaccustomed to the criminal justice system, and such defendants are willing to pay almost any amount to avoid the county jail.

However, many of these defendants are making an unwise choice. Because of overcrowding, nonviolent inmates with short sentences are routinely booked, processed, and released from the county jail within a number of hours. For instance, my client Nicole Richie was given a sentence of ninety-six hours in custody for a second-time DUI conviction but served only eighty-two minutes of her sentence. The judge in Miss Richie's case gave her the option of serving her time in the county jail or in a private jail. Miss Richie opted for the county jail and was prepared to serve the full ninety-six hour sentence if the Sheriff's Department so prescribed. Though people accused the Sheriff's Department of giving "special treatment" to a celebrity, the fact is that Miss Richie was treated like any other inmate serving a similar sentence for a similar offense in the county jail. That is all she expected and hoped for.

Miss Richie obviously had the means to afford a private jail, but, in my opinion, she was wise to choose the county jail. Had she chosen private jail, she would have served the entire ninety-six hour sentence. Because private jails are not overcrowded, the jailers who run them do not need to release inmates early. Inmates in private jails thus typically serve their entire sentences. Additionally, private jailers have a financial incentive to maintain their facilities at maximum occupancy.

Electronic monitoring is another option available only to those who opt to serve their time in the county jail. The Los Angeles County Sheriff's Department considers electronic monitoring tantamount to a jail sentence. Electronic monitoring allows the defendant to move about freely so long as he or she wears an ankle bracelet that must remain within a certain distance of his or her home phone. The electronic monitoring company is made aware of the defendant's work schedule and allows the defendant to go beyond the monitored distance only during approved working hours. The defendant must simply return to the monitored area immediately following the approved working hours.

Nonviolent offenders with sentences greater than a few days but fewer than ninety days often opt for electronic monitoring. Though there is a cost associated, it is based on a defendant's ability to pay and can be as little as \$10 per day. This is often significantly less than private jail stays, which can cost as much as \$127 per day. Moreover, because electronic monitoring allows defendants to go to work, those who choose this option will not risk their jobs. Private jails generally do not allow inmates to leave for work or for any other reason. As a result, private jail inmates with sentences greater than a few days are often in danger of losing their jobs.

Like the early-release program in which county jail defendants with short sentences are booked and released, electronic monitoring is a tool used by the Sheriff's Department to ease overcrowding. The federal government has mandated that the county jail population remain below a certain number. To comply with this mandate, the Sheriff's Department has no choice but to

release the inmates least likely to re-offend. Those inmates are often the very inmates in a financial position to opt for private jail.

While one unfamiliar with the criminal justice system understandably may fear the county jail and consequently may, if given a choice, opt for the relative comforts and safety of a private jail, there are obviously good reasons to choose otherwise. As a friend of mine once said, “the worst day off is still better than the best day at work.” Similarly, serving a few hours in the county jail is often better than serving a few days in the best private jail that money can buy. Ironically, in this limited but important way, it seems that those without the financial freedom to choose where to serve their time may end up faring better than those with that freedom. This may be the only area in the criminal justice system where the disparity between rich and poor inures to the benefit of the poor.