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Paying For Your Crime: The Pay-to-Stay Jail Program in California

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PAYING FOR YOUR CRIME: THE PAY-TO-STAY JAIL PROGRAM IN
CALIFORNIA

A Thesis

Presented to

The Faculty of the Department of Justice Studies

San José State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Science

by

Carla S. Schultz

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PAYING FOR YOUR CRIME: THE PAY-TO-STAY JAIL PROGRAM IN
CALIFORNIA

by

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ABSTRACT

PAYING FOR YOUR CRIME: THE PAY-TO-STAY JAIL PROGRAM IN CALIFORNIA

by Carla S. Schultz

Many California cities have recently implemented pay-to-stay jail programs at the local level. Pay-to-stay programs provide a safe and private incarceration experience for those who can afford the nightly fee. This study provides a theoretical analysis of the pay-to-stay jail program in relation to mass incarceration and the ever-expanding prison economy. It examines pay-to-stay programs as a new method of stratified punishment, reproducing race and class oppression within the U.S. penal regime. A case study of the Fremont pay-to-stay program offers insight into the implementation, operation, and application process for inmates seeking segregation from general county jail populations. This study concludes that pay-to-stay creates a two-tiered jail system—separating the deserving from the undeserving—and promotes disproportionate treatment within the criminal justice system.

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Introduction

“Pay-to-stay” jail programs, a growing phenomenon within the correctional system, charge inmates a nightly fee for a stay in a safe jail. Offered throughout California, pay-to-stay jails provide an alternative and exclusive incarceration experience, allowing eligible inmates to escape violent, overcrowded, and unsafe detention conditions in county jail facilities. In 2012, the Fremont Police Department opened California Bay Area’s first pay-to-stay jail program. In Fremont’s pay-to-stay jail, visitors pay \$155 per night to stay in a “clean and efficiently operated” (Fremont Police Department, “Pay to Stay”) facility with access to community areas, showers, phones, and a private cell. The city police departments of Fremont, Beverly Hills, Huntington Beach, Arcadia, Fullerton, and Redondo Beach, to name a few, are currently interviewing and accepting inmates into their exclusive pay to stay jail programs. Inmates who meet the eligibility requirements set forth by the city’s police department are financially responsible for their own incarceration, paying anywhere from \$100 (e.g., City of Arcadia, City of Fullerton Police) to \$198 per night (e.g., City of Redondo Beach). The emergence of pay-to-stay programs in California and other states ignites many questions and concerns about equality in the ever-expanding United States carceral system.

Over the last 40 years, the United States’ penal landscape and correctional economy has shifted drastically. Beginning in the 1970s, draconian policies, aggressive police tactics, and discriminatory “wars” fueled a massive incarceration binge. “Today,” writes Simon (2014), “the number of people imprisoned in America remains at or near historic highs (nearly four times the average incarceration rate for the first three quarters

of the twentieth century)” (p.1). Approximately 2.4 million people are confined in the United States at any given moment, with nearly 12 million people cycling through local jails per year (Wagner & Sakala, 2014). Chronic overcrowding and lack of adequate inmate healthcare have produced an incarceration system not based on rehabilitation, but incapacitation and human warehousing (Simon, 2014). California’s pay-to-stay programs offer an escape from the violent, overcrowded, and unsafe conditions of county jails—with a price.

Chapter I explores the road to mass incarceration in the United States—detailing the punitive shift and the emerging prison crisis. Mass incarceration is described as the most recent system of oppression stemming from a history of racist and despotic institutions in the United States. It is examined through the lenses of critical criminologists Wacquant (2001), Davis (2003), and Alexander (2010), to name a few. Chapter I also describes how minorities, the poor, and low-level offenders have been disproportionately affected by the policies of mass incarceration. A thorough understanding of mass incarceration allows for a deeper, more meaningful discussion about what it means to introduce pay-to-stay programs in today’s justice system. Chapter II develops a history of the United States prison economy. Pay-to-stay programs are evaluated as a successor in a long line of inmate exploitation—from slavery, to convict leasing, and private prisons. Charging inmates for the costs of incarceration is a neoliberal response to the economic recession and prison overcrowding crisis. Chapter II also identifies other ways in which the financial burden has been shifted away from the state and on to the inmate. In Chapter III, a detailed history of the pay-to-stay program is

provided along with a case study of the Fremont pay-to-stay jail program. The case study analyzes the Fremont pay-to-stay program's implementation, operation, and application process. The study concludes with an analysis and future recommendations in Chapter IV.

This study attempts to answer the following research questions: (1) Why are pay-to-stay programs being implemented? (2) What are the relationships between pay-to-stay programs and the changing prison economy? (3) How has pay-to-stay gained public acceptance? (4) Historically, how have inmates paid for their incarceration? (5) Who is eligible for pay-to-stay? (6) How is pay-to-stay implemented? The overall goal of this study is to evaluate California's pay-to-stay jail program and its implications for the justice system and society as a whole.

Chapter I. Mass Incarceration & Theoretical Framework

Pay-to-stay programs are only one part of the broad and wide-ranging punishment apparatus in the United States. Therefore, a solid understanding of the evolution of mass incarceration helps one situate pay-to-stay programs within the U.S. penal system. This chapter provides a history of mass incarceration and a road map for how the criminal justice system has developed—resulting in today's prison crisis.

For the past four decades, the U.S. has been systematically incarcerating its citizens at an alarming rate (see Figure 1).

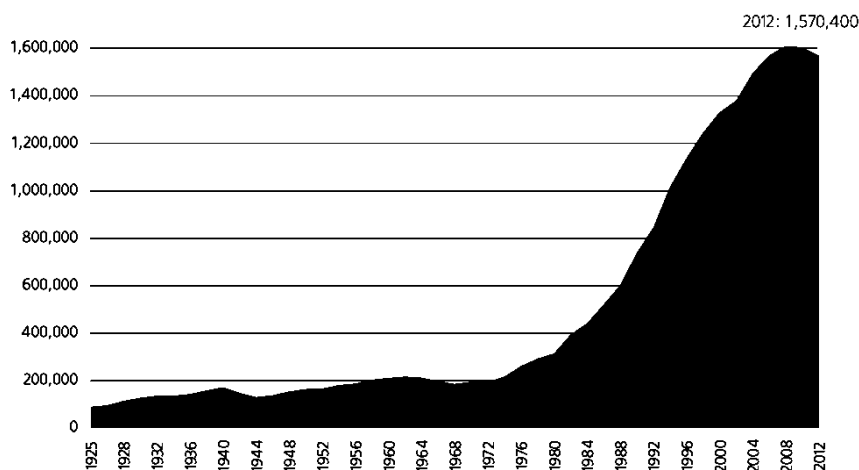


Figure 1. The U.S. state and federal prison population from 1925-2012.
Source: *The Sentencing Project* (2015)

Currently, 1 in 31 adults is under the control of the U.S. correctional system (Clear & Frost, 2014, p. 63), which has rapidly become the largest in the world. In the second half of the 20th century, the United States witnessed great strides toward the affirmation of civil and human rights, but these progressive developments have been paralleled—in ways that some of the literature has considered non-coincidental (see Flamm 2007; see also Murakawa, 2014) — by an unprecedented expansion of the carceral system, with regards to both prison building and the subsequent stockpiling of human bodies. Scholars in the field of punishment and society have referred to this unprecedented expansion of the penal system as ‘mass incarceration’ (Wacquant, 2001; Davis, 2003; Simon, 2014). First described by Garland in 2001, mass incarceration refers to “an abnormally high rate of imprisonment which is concentrated, and thus affects, a particular demographic population” (Martensen, 2012, p. 211). Mass incarceration describes a penal era, beginning in the 1970s, characterized by increasingly punitive penal policies, a massive process of prison expansion, and growing levels of social stratification (Wacquant, 2009).

This following chapter explores the path to mass incarceration in the United States, providing a broad overview of *how* it was implemented and against *whom*. This reconstruction is grounded in a theoretical framework based on conflict theory, critical criminology, and critical race theory.

Theoretical Framework: A Critical Lens

Critical criminologists argue that systems of incarceration are inherently oppressive. In his recent works, Wacquant (2001) famously identifies “four peculiar institutions” that have contributed to racialized hierarchies of social inequality over the past two centuries in the United States. These institutions include slavery, Jim Crow, the urban ghetto, and the hyperghetto/prison. The most recent among these “race-making” institutions—what Wacquant (2001) defines as a “deadly symbiosis” between the post-industrial ghetto and the contemporary warehousing prison—acts as a pipeline between strictly policed urban neighborhoods and a hypertrophic criminal justice system. This pipeline has fueled mass incarceration. Wacquant (2001) claims that previous systems of oppression failed when they no longer met the needs of the economy nor the prevailing cultural and legal sensibilities of the time, and were therefore replaced with new systems, better aligned with the requirements of contemporary socioeconomic paradigms.

Along similar lines, in her bestseller *The New Jim Crow* (2010), Michelle Alexander traces a history of institutional racial oppression from slavery, to post-Reconstruction Black Codes, and Jim Crow laws. Alexander (2010) identifies mass incarceration as the current mode of institutional racial subjugation stemming from the aforementioned line of predecessors. According to Alexander, systems of racial

oppression have evolved over time to adhere to evolving legislation, constitutional standards, and dominant societal norms (Alexander, 2010). She argues that mass incarceration reproduces a caste system based on racial hierarchy, white supremacy, and the marginalization of poor African Americans. Blanketed in race-neutral and class-neutral language, mass incarceration exists through a false cloak of “colorblindness” (see also Bonilla-Silva 2013; Omi & Winant, 2014). The penal system is a racialized institution of violence and oppression, continuing to thrive under the banner of ‘justice for all.’

Although the succession of racially oppressive institutions has been brought to the forefront of critical criminology, the reproduction of structures of class oppression in a late-capitalist society like the United States is not as prominently discussed in the literature. In this work, I argue that it is equally imperative to acknowledge that this historical lineage of oppressive institutions is designed to discipline individuals based on race *and* class. Therefore, this study draws from the epistemological framework of critical criminology—and more specifically, from the structural perspective known as the “political economy of punishment” (see De Giorgi 2012)—to analyze the foundation and consequences of pay-to-stay jail programs.

According to Hallett (2006), “critical criminology is rooted in the ‘conflict’ perspective of sociology, which views social relations in terms of groups vying for social power. Instead of working together in a consensual fashion for the common good, groups with unequal power and competing interests constantly battle for control over access to resources, prestige, and political entrée” (p. 22). Classical social theorists such as Karl

Marx, Friedrich Engels, and Georg Simmel were the pioneers of conflict theory in the mid-1800s. They insisted that social disorder was the product of a capitalist economy, and was caused by the economic exploitation of one social class by another. Later on, Marxist criminologist Willem Bonger applied conflict theory specifically to criminological theory to develop what he defined as a “socialist theory of crime.” Bonger claimed that crime resulted from the criminogenic contradictions of capitalism. Capitalism created a divide between the rulers and the ruled, and pitted people against one another in economic struggle. He, too, saw crime as a product of unequal distribution of wealth and power produced by the acquisitive logic of the capitalist economy.

Conflict theory argues that group interests regarding lawmaking and penal function are not equally represented. Rather, more powerful groups have the authority to define crime and determine both how to enforce the law, and against what populations. The conflict perspective posits that “inequalities in social power are ultimately a real source of what gets defined as ‘crime’” (Hallett, 2006, p. 23), thus creating an unequal penal system based on the values of the dominant social group.

Critical criminology is influenced by conflict theory, as it too recognizes discrepancies in the law as experienced by different social groups. Early critical criminologists examined these discrepancies in group power and in the application of the law from an economic perspective. Marxist theories focused on class struggle, economic barriers, and power imbalances between groups of different socio-economic statuses. A rich vs. poor dynamic was used to explain differences in crime and punishment,

essentially theorizing that laws were written and enforced by the upper class *against* the lower classes.

In the past few decades, critical criminology has expanded its focus to incorporate analyses of other group inequalities, such as race and gender. As Hallett (2006) explains, “critical criminology has thus evolved from its early focus on economics as the primary source of group inequality to now include examination of the class, racial, patriarchal, and colonialistic social relations that *enabled* the economic exploitation described by earlier critical criminologists” (p. 24). Under this perspective, the economic exploitation of certain groups is rooted in the preexisting oppressive institutions of racism and gender inequality; thus, the institutions of race, class, and gender are intertwined.

Critical race theory further enriches the theoretical toolkit of critical criminology, as it associates identity markers (such as race, class, and gender status) with oppression, social injustice, and political power. Thus, critical race theorists argue that specific identity markers such as “whiteness,” “masculinity,” “darkness,” and “femininity” are historically associated with varying degrees of access to wealth and power—including the power to punish. In the realm of punishment, “darkness” has become increasingly associated with poverty, crime, and incarceration. Rather than seeing social status as a byproduct of historically oppressive institutions, critical race theorists understand social identity markers as the actual “mechanisms of oppression” (Hallett, 2006, p. 28).

Socioeconomic markers related to race and class also correlate with the severity of punishment, and, more specifically, with chances (and duration) of imprisonment. Crimes of the upper class—such as “white collar crimes”—are typically not handled by

the justice system with the same strictness as crimes of the lower class. Social status and privilege *can* indirectly determine the extent of punishment. Normally, those who can afford fines, restitution, bail, the costs of house arrest, and other fees are able to escape incarceration. In this respect, the pay-to-stay program introduces yet another method in which the justice system can provide differential treatment for the social elite.

The development of pay-to-stay options as an alternative for privileged populations is especially concerning within the context of today's extensive prison regime. The pay-to-stay program takes an already marginalized population of offenders, and separates them further based on socioeconomic status and eligibility requirements. It labels some offenders as "less guilty" and affords them a safe, less humiliating incarceration experience—an experience free of many "collateral effects" of incarceration in chronically overcrowded penal institutions, such as prison violence, deprivation of basic needs and lack of health care. Pay-to-stay programs offer an escape from devastating prison conditions and from institutionalized disregard for human rights. Accepting only those who can afford it, pay-to-stay programs anchor the United States' oppressive carceral system in the consumerist logic of contemporary neoliberal society.

Part 1. Hidden Agendas: A Road Map to Mass Incarceration

Prior to the 1970s, incarceration rates in the United States remained surprisingly stable, rarely exceeding averages of 200,000 prisoners per year, with incarceration rates comparable to those observed in other Western democracies. Beginning in 1972 and continuing well in to the 21st century, the prison population increased relentlessly each year. It is nearly impossible to get an accurate count of incarcerated persons, as the

population fluctuates daily with new arrests and releases. However, it has been estimated that over two million people are incarcerated in U.S. prisons and jails at any given time (Clear & Frost, 2014).

The United States currently confines people in its “1,719 state prisons, 102 federal prisons, 2,259 juvenile correctional facilities, 3,283 local jails, and 79 Indian Country jails” (Wagner & Sakala, 2014). Individuals are also detained in military prisons, civil commitment centers, immigration detention facilities, and prisons in other U.S. territories (Wagner & Sakala, 2014). In 2014, a comprehensive analysis of the United States incarcerated population concluded that 2.3 million people were imprisoned in state prisons, federal prisons, and local jails. That is slightly more than the total number of active and reserve U.S. military personnel—about 2.26 million as of 2010 (Hurt, Ryan, & Straley, 2011). It is also slightly more than the number of people employed by Wal-Mart worldwide—2.2 million associates as of 2014. Currently, the United States has the highest rate of incarceration in world history—over 700 people per 100,000 (Steiker & Steiker, 2014).

What could have caused incarceration rates to grow so exponentially, that the United States would come to represent 5% of the world’s population and 25% of the world’s *incarcerated* population? “Tough on crime” politicians and other advocates of prison expansion have argued that a massive growth in crime, especially violent crime, caused the growth in the prison population (Mauer, 2006). Although this line of thinking may seem logical, it is unfounded.

If incarceration rates were truly a reflection of crime rates, the two would have mirroring trends. Beginning in the 1960s and continuing on into the 1970s, crime *was* rising in the United States (Alexander, 2010; Mauer, 2006). This increase, however, was not uniform across all categories, locations, or social groups. Although there is much controversy over the accuracy of crime data during this period, most sociologists and criminologists agree that violent crimes, including homicide, increased quite significantly during this time. This rise in violent crime, however, has been largely attributed to related changes in demographics, such as the males from the ‘baby boom’ population entering their peak crime years—ages 15 to 24 (Alexander, 2010; Mauer). This short-lived rise in crime can be described merely as a data point, rather than a trend.

According to most accounts, crime rates peaked in the United States in 1981 (Haney Lopez, 2010; Mauer, 2006). Shortly after, crime rates stabilized and eventually began to decrease over the next 20 years (see Figure 2).

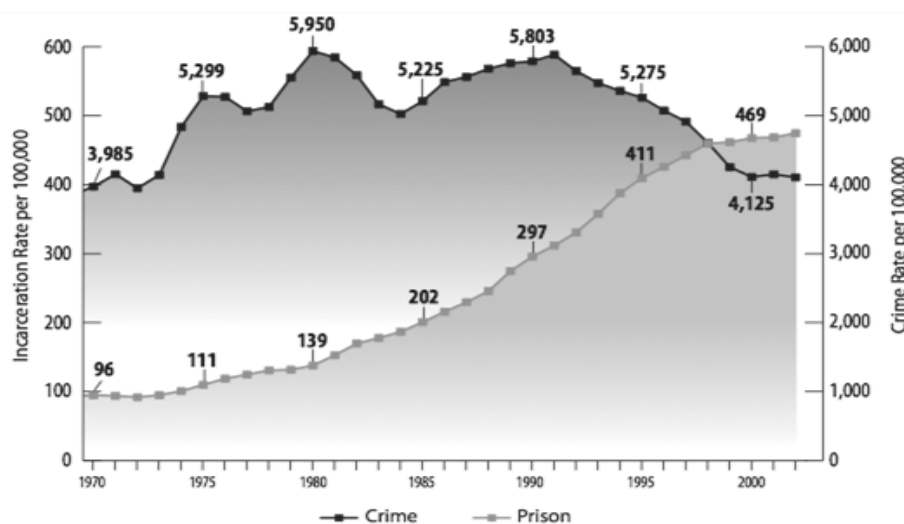


Figure 2. Incarceration rates per 100,000 compared to crime rates per 100,000 from 1970-2002
Source: *The Sentencing Project* (King, Mauer, & Young, 2005)

The specific categories of violent crime and street crime followed a similar trend. To illustrate, an average of 40 million Americans were victims of crime in the years 1973 and 1982, followed by 35 million in 1992, and 25 million in 2000 (Wacquant, 2009, p. 11). Although street crime did rise in the 1960s and 1970s, it eventually stabilized in the 1980s, and continued to decline for the next two decades. Despite the limited reliability of crime statistics, available data suggest a steady decrease in street crime since the early 1990s—at the same time as incarceration rates were skyrocketing. According to federal crime data, the homicide and non-negligent manslaughter rate remained steady from 1975 to 1995—oscillating from 8 to 10 persons per 100,000—and then decreased to 5 persons per 100,000 in 2000 (Wacquant, 2009). Still, in an era of decreasing crime rates, the 1994 *Uniform Crime Report* announced: “Every American now has a realistic chance of murder victimization in view of the random nature that crime has assumed” (as cited in Wacquant, 2009, p. 13). Put forth by the Federal Bureau of Investigation, this sentiment reaffirmed that every American should be afraid of crime. However, crime statistics simply do not justify this notion.

Incarceration rates have grown fivefold since the mid-1970s. Criminologists tend to agree that crime rates offer little to no explanation for this rate of growth (Tonry, 2004; Wacquant, 2009; Mauer, 2006; Beckett, 1997). Still, to quote Hammer (2001), “we [are] encouraged by media, politicians, and popular culture to believe that our society builds prisons as a response to crime” (p. 244). The current prison regime utilizes the crime “problem” to rally public consensus around penal punitiveness, allowing the state to

reproduce racial and class inequality under the apparently neutral ideology of ‘free choice’ and ‘retribution’ (Wacquant, 2009).

It is essential to understand *how* the incarcerated population reached such alarming, record-breaking highs. Mass incarceration cannot be explained as a result of rising crime rates. Many scholars have questioned the seemingly invisible forces that created such a punitive regime. In order to build a comprehensive understanding of how mass incarceration came to existence, a variety of historical, social, and political forces must be weaved into the analysis. As Elliot Currie concisely states, “short of major wars, mass incarceration has been the most thoroughly implemented government social program of our time” (as quoted by Davis, 2003, p. 11). Rather than seeing mass incarceration as the result of a crime problem, we must address it as a social problem deeply rooted within the history of the United States.

Shortly before the massive expansion of its penal apparatus, the United States was experiencing great social turmoil. Groups of women, minorities, migrant workers, and college students were fighting for social, civil, and political change. By the 1960s, the Civil Rights Movement had become the largest social movement of its time, uniting citizens across different racial and economic backgrounds. It also brought riots, protest, and defiance to the forefront of public concern. In 1964, the members of the Civil Rights Movement celebrated the passing of the Civil Rights Acts. Within months, Barry Goldwater publicly announced his opposition to the Civil Rights Acts and used his opposition as a platform for presidential candidacy (Clear & Frost, 2014). Goldwater associated the riots of the Civil Rights Movement with public fear of crime, more

specifically, the public fear of black crime. He warned the masses: “crime grows faster than population, while those who break the law are accorded more consideration than those who try to enforce the law [...] Our wives, all women, feel unsafe on our streets” (Haney Lopez, 2010, p. 1032-1033). Although Goldwater wasn’t voted in as President, his “get tough” outlook on crime resurfaced only a few years later.

Lyndon B. Johnson triumphed over Goldwater in the race to the White House. Immediately, Johnson began addressing the crime issue and developed an anticrime agenda. In 1967, President Johnson’s Commission on Law Enforcement and the Administration of Justice released its renowned report *The Challenge of Crime in a Free Society*. The Commission’s report began with a discussion of rising crime and public fear, stating that the United States was becoming increasingly unsafe. “Some,” the report claimed, “have become suspicious of those they conceive to be responsible for crime: adolescents or Negroes or drug addicts or college students or demonstrators; policemen who fail to solve crimes; judges who pass lenient sentences or write decisions restricting the activities of the police; parole boards that release prisoners who resume their criminal activities” (Commission, 1986, p. 55). Teens, minorities, drug offenders, peaceful protesters, and the poor were identified as dangerous and as the cause of the rising crime problem. The report later identified the underlying problems of crime as beyond the control of the criminal justice system, placing the blame on a disobedient society: “the unruliness of young people, widespread drug addiction, the existence of much poverty in a wealthy society, the pursuit of the dollar by any available means are the phenomena the police, the courts, and the correctional apparatus, which must deal with crimes and

criminals one by one, cannot confront directly” (Commission, 1986, p. 56). The Commission, then, meticulously described the crime problem as a “disease” plaguing the United States and developed a plan of action. According to Clear and Frost (2014), this plan was “a road map for [the] War on Crime” (p. 41).

In 1968, Nixon won the presidential election. His platform was profoundly aimed toward one issue: law and order. In a short span of time, Nixon delivered seventeen speeches on the “pressing” issue of law and order (Alexander, 2010), with advertisements linking civil disruption in the streets to street crime. He proposed a seemingly colorblind War on Crime, which allowed him to gain voter approval in the South while still addressing the national fear of crime (Clear & Frost, 2014). The War on Crime continued for the next 40 years, leaving behind a path of social destruction. The law and order rhetoric of the 1960s eventually translated to anticrime legislation that would influence federal and state crime control tactics for decades. By 1990, federal spending on corrections had increased fourfold (Haney Lopez, 2010). The direct expenditures on corrections increased from roughly \$9 billion to \$68 billion between the years of 1982 to 2006 (Clear & Frost, 2014, p. 20). The United States’ War on Crime has lasted longer than any of its overseas military campaigns (Clear & Frost, 2014), resulting in mass incarceration and the hyperinflation of the correctional budget. In the wake of the War on Crime, the corrections system began departing from its rehabilitative ideologies and focusing solely on retribution and incapacitation. At the start of the 21st Century, critical criminologists started to identify this dramatic shift in penal philosophy as the “punitive turn” or “the new punitiveness” (see Brown et al., 2005).

During his presidency, Nixon also identified illegal drugs as “public enemy number one” (Alexander, 2010, p. 48). This would plant the seed for a War on Drugs to be developed a decade later by the Reagan Administration. Reagan’s presidential campaign centered on two key issues: the alleged abuses of the welfare system by so-called “welfare queens” and rampant street crime (Alexander, 2010). Through his race-neutral language, Reagan crafted a platform that rested on racial animosity and class subordination. During the 1970s and 1980s, criminologist Michael Tonry argues, “crime issues acted both as a code word for racial animosity and as an appeal to voters who were anxious about many changes in their lives” (as cited in Useem, 2008, p. 17). The War on Drugs gained momentum quickly under Reagan and was further developed by the George Bush and Bill Clinton Administrations (Alexander, 2010), as is further discussed in the following sections. By the mid-1980s, the United States had successfully waged two wars on its own citizens—the War on Crime and the War on Drugs—both of which would reproduce legal and social inequalities in the age of mass incarceration.

Part II. The Face of Mass Incarceration

This section explores *who* is affected by mass incarceration, or in other words, who goes to prison. Politicians, the media, and policymakers tell us that the answer is simple—criminals go to prison. In theory, the word “criminal” is all-inclusive; it does not discriminate on grounds of race, socioeconomic status, educational background, gender, or age. It is also consistent with dominant notions of formal equality before the law, in the sense that individuals who commit the same crime should expect the same processing and punishment from the criminal justice system. However, incarceration statistics tell a

different story. During what Wacquant calls “hyper incarceration” (2001) racial minorities, low-level offenders, and the poor were overwhelmingly and disproportionately swept into federal and state correctional facilities. Wacquant (2009) describes the typical inmate during the height of mass incarceration:

In 1992, at the acme of America’s carceral boom, the typical inmate entering a state correctional facility was a man under 30 years of age (53% of admissions) of African-American origin (nearly 54%) who had not finished high school (for two-thirds of them), imprisoned for a *non-violent offence in over seven cases in ten*.
(p. 14)

“In other words,” Wacquant (2009) concludes, “American jails and prisons are overflowing with convicts who would not have been thrown behind bars 30 years ago” (p. 15). The following sections explore how non-violent offenders, racial minorities, and the lower class were targeted by penal legislation and the race to incarcerate.

Offense.

It is important to first look at the crimes individuals were typically convicted of during the time of the carceral boom, followed by *who* was convicted of those offenses. According to those in power, mass incarceration resulted from a surge in violent crime. If this were true, there would have been a parallel increase in the number of individuals sentenced to prison for committing violent offenses. Although the data confirms that the majority of state prisoners *are* incarcerated for violent crimes. There was a drastic increase in the number of persons incarcerated for drug offenses and property crimes—a trend that can be explained for the most part by the War on Drugs.

The War on Drugs was a massive deployment of government funds and police tactics aimed at low-level offenders involved in the drug economy. Wacquant (2009) succinctly explains the War on Drugs policy as a “cover for a veritable police and penal guerrilla on sellers of narcotics and other street operators and, by extension, for the punitive containment of the residents of the dispossessed black urban neighborhoods in which they congregate” (p. 20). The War on Drugs identified “drugs” as the common enemy. The policies that followed, however, targeted individual traits. The War on Drugs was artfully crafted, cloaked in race-neutral and class-neutral language. It appeared as a policy directed at a societal ill, a circumstance that helped it gain public approval quickly. In reality, the most draconian anti-drug measures were selectively applied to young, black men in poor, urban ghettos.

The effects of the War on Drugs can be directly observed in the rates of incarceration for drug-related offenses. Before the War on Drugs, the percentage of inmates convicted of drug offenses was relatively low: 5% in 1960 and 9% in 1980 (Wacquant, 2009, p. 19). These rates more than doubled after the launch of the War on Drugs. From 1980 to 2003, the percentage of state prisoners incarcerated for drug-related offenses increased from 6% to 21%. During that time, the percentage of state prisoners incarcerated for violent offenses decreased from 59% to 51%, the proportion of property offenders decreased from 30% to 21%, and public order offenders increased slightly from 4% to 7% (Useem & Piehl, 2008, p. 56-57). The data indicates a slight decline in the seriousness of offenses committed by the state prison population. However, a closer look at the total prison population shows that drug offenders are largely concentrated in

federal prisons as opposed to state prisons. Drug offenders made up 27% of the federal prison population in 1980 and 55% of the federal prison population in 2003. This is an increase from 4,900 federal drug offenders in 1980 to nearly 87,000 in 2003 (Useem & Piehl, 2008, p. 57-58).

Since the introduction of the War on Drugs, the U.S. penal system witnessed an extreme increase in convictions of low-level, non-violent, drug offenders. The public supported the War on Drugs as a way to combat violent crime associated with the open-air drug markets in the nation's most troubled inner cities. Instead, individuals convicted of property and drug offenses outnumbered violent convicts two to one. According to Wacquant (2009), this 2:1 trend of low-level convictions to violent convictions has been present every year since 1989 (p. 14).

Race, class, and intersectionality.

Demographics of the incarcerated population confirm an overrepresentation of minorities—namely blacks and Hispanics. Between the years of 1960 to 1995, the incarceration rates of African Americans virtually doubled. By 1995, blacks represented the majority of inmates entering incarceration—55%—and only a mere 7% of the U.S. adult population (Wacquant, 2009, p. 19). Over the last 20 years, the black-white gap has deepened further. Recent data shows that African Americans are incarcerated at 8x the rate of whites (Wacquant, 2009; Western, 2006), with African Americans and Hispanics accounting for roughly two-thirds of the state prison population (Western, 2006, p.16). Table 1 displays the racial composition of the incarcerated population as compared to the racial composition of the U.S. population.

| Race/Ethnicity | % of US population | % of U.S. incarcerated population | National incarceration rate (per 100,000) |
|----------------------|--------------------|-----------------------------------|---|
| White (non-Hispanic) | 64% | 39% | 450 per 100,000 |
| Hispanic | 16% | 19% | 831 per 100,000 |
| Black | 13% | 40% | 2,306 per 100,000 |

Table 1. Racial/Ethnic composition of incarcerated population by percentage as compared to composition of the U.S. adult population. Source: *Prison Policy Initiative* (Sakala, 2014)

The term “racial minority” lacks meaning with regard to the criminal justice system. The institutionalization of minority populations is significantly disproportionate to the U.S. adult population. The 8:1 incarceration ratio of blacks to whites surpasses many other social disparity indicators, such as “racial disparities in unemployment (2 to 1), nonmarital childbearing (3 to 1), infant mortality (2 to 1), and wealth (1 to 5)” (Western, 2006, p. 16). The social disparities between blacks and whites show that racial equality suffers in both the free and unfree populations. If the incarceration rates of whites matched the incarceration rates of blacks, more than six million people would be imprisoned in the United States (Western, 2006, p. 16). The data shows that young black men are most severely affected by the policies of mass incarceration—in 2000, 8% of black men of working age were incarcerated (Western, 2006, p. 16).

Crime statistics show that minorities *do not* commit more crime than whites. As previously discussed in Part I, discriminatory policies, procedures, and legislation have largely affected the disproportionate incarceration of minorities. Wacquant (2009) states that black offenders are more likely to receive a sentence of incarceration than whites—

when controlling for various factors such as seriousness of offense and prior record. However, he claims, “such discrimination [in sentencing] clearly has not increased since the mid-1970s and so it cannot account for the spectacular worsening of ‘racial disproportionality’ in prison admissions in the recent period” (Wacquant, 2009, p. 20). Rather, criminologists argue that such racial disproportionality is a direct result of a structurally racist penal institution (Davis, 2003; Alexander, 2010; Haney Lopez, 2010).

Minority populations experience first-hand the detrimental social, political, and civil effects of the structurally flawed justice system. Such populations are dually disadvantaged, as the intersectionality between race and class becomes clearer. Race and class inequalities can be traced from the bottom (i.e. the police level) to the top (i.e. prison populations) of the penal system. Recent data has shown that 1 in 11 adult African Americans is under some form of correctional control (Clear & Frost, 2014, p. 63). During the height of mass incarceration—the mid-1990s—approximately 1-in-3 African Americans lived below the U.S. official poverty line as compared to 1 in 10 Americans of European descent (Wacquant, 2009, p. 19). It is evident that class and racial disadvantage often intersect, resulting in many individuals being dually oppressed. To illustrate, in 1999, “a black man born in the late 1960s had a 1:5 chance of having gone to prison for at least a year, while for men in that cohort who dropped out of high school, the risk of imprisonment surged to a staggering 59%” (Lopez, 2010, p. 1030). By 2000, 32.4% of young black men who dropped out of high school were incarcerated (Haney Lopez, 2010, p. 1030).

The excessive incarceration of less educated, low-skilled, poor, minority populations is evident. Western (2006) states, “The 1997 survey of state and federal prisoners shows that state inmates average fewer than 11 years of schooling. A third were not working at the time of their incarceration, and the average wage of the remainder is much lower than that of other men with the same level of education” (p. 15-16). Of those incarcerated, roughly 60% of inmates earned less than \$1,000 per month prior to their arrest, and roughly 30% were unemployed (Levenson & Gordon, 2007, p. 67). Based on these statistics, it is not difficult to see how the pay-to-stay option is outside the purview of nearly 90% of the incarcerated population. In other words, there is no equal access to this *public* service. Pay-to-stay programs help further divide the incarcerated population along lines of racial and class privilege.

Part III. California’s Prison Crisis: Prison Realignment and the Fiscal Emergency

Part III explores California’s justice system and relevant developments—specifically prison realignment, the correctional budget, and economic crisis—that have legitimized the pay-to-stay jail program.

A large portion of the U.S. incarcerated population resides in California’s 33 prisons, 40 camps, and 12 community correctional facilities (Bailey & Hayes, 2006). As one can imagine, it is extremely expensive for California’s vast correctional system to operate (see Figure 4). Governor Brown recently proposed to increase the 2014-15 correctional budget to nearly \$10 billion, an increase of 13% over the previous year. It was projected that the state would spend \$62,396 annually per inmate (California Budget

Brief, 2014). Figure 3 displays how California's correctional budget has continued to grow since the late 1970s.

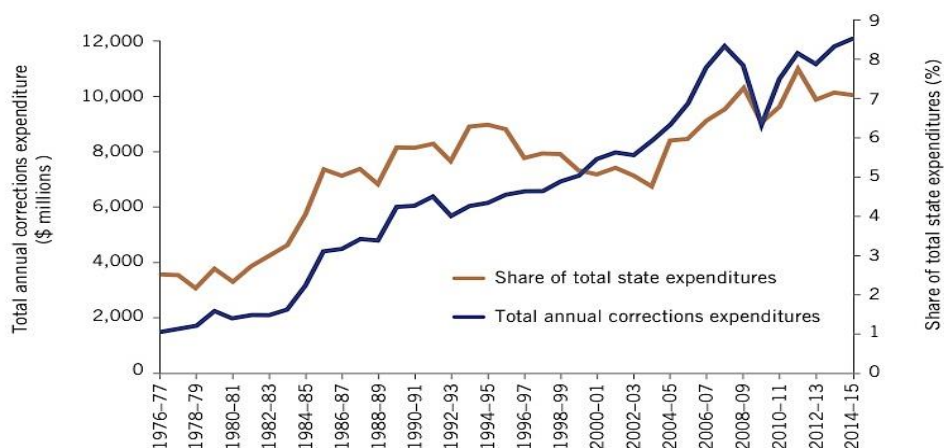


Figure 3. California's annual expenditures on corrections compared to the percentage of total state expenditures. Source: *Public Policy Institute of California* (2015)

According to the California Budget Project's 2014-15 budget brief, the budget for the correctional system is continuing to increase despite the implementation of California's Public Safety Realignment (AB 109). Introduced in 2011, the goal of prison realignment was to decrease prison overcrowding by shifting the management of low-level (i.e., non-violent, non-serious, and non-sex) offenders away from the state to the county. In its 2011 decision of the *Brown v Plata* case, the U.S. Supreme Court demanded that California reduce its inmate population to 137.5% of "design capacity", which would require the release of 33,000 inmates. Within the first full year of realignment, the California institutional population had decreased from 144,500 to 119,000. The decline has since stabilized, leaving state corrections facilities at roughly 148% capacity (PPIC, 2014). Initially, realignment also caused a decrease in the state

correctional budget from \$9.7 billion to \$8.8 billion. The decrease was, unfortunately, short-lived. With the California now facing a \$10 billion correctional budget, pay-to-stay programs seem to be gaining increasing support among local policymakers as a way of combatting the cost of incarceration. California's prison realignment is discussed in more detail later on in this chapter, but first there must be an understanding of incarceration trends in California.

California closely followed national trends throughout the era of hyper-incarceration and has been identified as having one of the largest prison and jail populations in the United States. Between the years 1990 and 2005, the state prison population multiplied at a rate three times faster than California's general adult population. By 2005, the state prison population had reached 167,698 (Bailey & Hayes, 2006, p. 1). Like nationwide penal trends, California's incarceration spree disproportionately affected minorities and the poor, and has been prompted by the infamous Wars on Drugs and Crime to target low-level offenders. According to Wacquant (2009), "California quadrupled its prison population between 1980 and 1993; 76% of that growth was due to the incarceration of nonviolent offenders. This disproportion was even more glaring in federal penitentiaries, where 94% of the 40,000 new inmates admitted in the course of a year during that period entered for nonviolent offenses" (p. 15). Punitive penal policies such as the 1994 Three Strikes law and the 1994 Truth in Sentencing Act (Bailey & Hayes, 2006) severely affected the size and structure of California's massive prison regime—and simultaneously worsened racial and class disparities in the correctional system.

Latinos make up the largest incarcerated population in California—38% in 2005 (Baily & Hayes, 2006, p. 1). However, incarceration rates show a rate of over 5,000 per 100,000 for African American men in California, compared to roughly 1,000 per 100,000 Latino men, and less than 1,000 per 100,000 white men (Bailey & Hayes, 2006, p. 5). African American men in California are incarcerated seven times more than whites and 4.5 times more than Latinos (Bailey & Hayes, 2006, p. 4). According to the ACLU report *Public Safety Realignment: California at a Crossroads*, “A higher proportion of African Americans are incarcerated in California today than were blacks in Apartheid South Africa” (Hopper, Dooley-Sammuli, & Evans, 2012). The disproportionate incarceration of disadvantaged populations—exacerbated by the implementation of strict penal policies—has led to the penal crisis in California.

California’s incarcerated population has outgrown the design capacity of the state’s penal institutions. In 2005, California’s penal facilities were 186% occupied, meaning the system was operating at nearly double its design capacity (Bailey & Hayes, 2006, p. 9). Although a large majority of states had overcrowded penal institutions, California’s was by far the most shocking. California’s prisons were so chronically overcrowded that it was considered a human rights issue and a “humanitarian crisis” (Simon, 2014, p. 121). Initially filed in 2001, a lawsuit claimed prisoner health care in California to be “grossly inadequate” (PPIC, 2014, p. 1) due to overcrowding. The torturous conditions of California’s hyper-overcrowding were eventually brought before the Supreme Court. In 2011, the U.S. Supreme Court ruled in the *Brown v. Plata* case that California’s prison overcrowding did indeed constitute cruel and unusual

punishment, and gave the California Department of Corrections and Rehabilitation (CDCR) two years to decrease its prison population. Justice Anthony Kennedy wrote: “Prisoners retain the essence of human dignity [...] A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society” (as quoted in Simon, 2014, p. 133).

In response to the U.S. Supreme Court’s ruling, Governor Brown signed the Public Safety Realignment Act (AB 109), signaling a significant change in California’s justice system. AB 109 called for devolution of criminal supervision to the local level, decentralization of corrections, and essentially limited the responsibility of the government for marginalized populations. Implemented on October 1, 2011, AB 109 was composed of the following two penal changes. First, “non-non-non” offenders—“non-serious, non-violent, non-sex-registerable felony offenders”—with no prior convictions would remain under county supervision, instead of that of the state prison. Second, a new “post-release community supervision” program was implemented for non-non-non offenders, while state parole was abolished for many other offenses (Hopper, Dooley-Sammuli, & Evans, 2012, p. 7). Both changes greatly shifted the correctional responsibility from the state level to the county level. The ACLU report supports this shift: “Realignment is based upon a fundamental acknowledgement that counties are better positioned to integrate public health and social services as part of rehabilitation and reentry in ways that the state cannot” (Hopper, Dooley-Sammuli, & Evans, 2012, p. 3). However, in order to measure the actual success of realignment and the increase in

rehabilitative efforts at the county level, there must be an evaluation of county allocations of AB 109 funds.

The goal of prison realignment was “to reserve expensive state prisons for individuals convicted of serious offenses and to encourage counties to develop and implement evidence-based practices and alternatives to incarceration to limit future crimes and victims” (Hopper, Dooley-Sammuli, & Evans, 2012, p. 3). Therefore, counties should direct their AB 109 funds toward alternative and rehabilitative programs. Instead, the ACLU reported in 2012, that “at least 32 of California’s 58 counties have plans to expand jail capacity using AB 109 funds or other tax dollars, even though realignment provides more effective and affordable options for addressing jail overcrowding” (Hopper, Dooley-Sammuli, & Evans, 2012, p. 6). There are several issues with the implementation of AB 109 and a lack of regulation of the funds distributed to California’s counties.

According to the AB 109 legislation, each county is required to assemble a Local Community Corrections Partnership (LCCP). The executive committee of each LCCP includes prominent members of the local criminal justice system— such as the county’s probation chief, district attorney, sheriff, and police chief, to name a few. Each county’s LCCP and Board of Supervisors is then expected to draft a realignment implementation plan detailing how the county would disburse AB 109 funds and how they would supervise their “non-non-non” offenders (Hopper, Dooley-Sammuli, & Evans, 2012). Unfortunately, California’s procedure for distributing AB 109 funds has been inconsistent so far. The state’s formula for fund allocation looked closely at each

county's average daily prison population (ADP) of low-level, non-violent offenders. It did take into consideration the county's population and successful probation programs, but ADP was 60% of the formula (Hopper, Dooley-Sammuli, & Evans, 2012).

Those counties with a higher incarceration rate of low-level, non-violent offenders received more realignment funding from the state—a development that essentially rewarded the most punitive, non-rehabilitative counties. On the other hand, counties that had historically lower ADP rates and were more committed to alternative sentencing methods were given less funding. Although AB 109 encouraged counties to allocate funds toward more cost-effective and evidence-based alternatives to incarceration, there was no formal oversight of the spending—leaving counties to spend realignment funds at their own liberty. This is concerning as the largest amounts of funding went to counties that were already relying too heavily on the penal system as a method for dealing with low-level, non-violent offenders. With virtually no oversight, it is not surprising that 24 of the 25 counties that received the most AB 109 funding—approximately \$45.1 million total—have plans for jail expansion (Hopper, Dooley-Sammuli, & Evans, 2012, p.12, 15). Expansion costs include “7,002 new jail beds and 722 new corrections-related staff” (Hopper, Dooley-Sammuli, & Evans, 2012, p. 15). In essence, California's prison realignment has become a state-funded expansion of county jails.

As previously discussed, realignment did have an impact on state incarceration rates. Within the first eight months there was a 17% drop in the state prison population from 164,200 to 135,800, a record low since 1995 (Males, 2012, p.4). However, from

2011 to 2013, the county jail population increased by roughly 9,000 inmates (Lofstrom & Raphael, 2013, p. 3), thus absorbing almost 1/3 of the reduction in the state prison population. With counties planning to expand jails and open thousands of new inmate beds, the state prison population is slowly being displaced to the local level. When evaluating only prison incarceration rates, it may appear that AB 109 is successfully reducing the prison population. Although realignment *is* having a deflationary effect on state prisons, it is simply relocating substantial fractions of the prison population to county jail facilities.

It is important to evaluate the effect of AB 109 on the county jail population within the discussion of pay-to-stay, as they both exist in the same realm of penal policy. The two policies have several similarities: they are affecting the county level of the California justice system, they are characterized as solutions to the ‘overcrowding problem’, and they are money-saving reactions to economic crisis. The relationship between realignment and the pay-to-stay program is further discussed in Chapter 4, along with a case study of the Fremont pay-to-stay program.

Chapter II. Rich Prison, Poor Prisoner: The Prison Economy and Emerging Two-Tiered Justice System

The United States has a long history of exploiting incarcerated populations for financial gain. Pay-to-stay programs are the newest development in the economy of the prison, stemming from recent financial crises (namely, the great recession of 2008 and its aftermath), and broader changes in economic conditions. Total state corrections expenditures have drastically increased over the last few decades. Between 1982 and 2010, annual state correctional spending increased from \$15 billion to \$48.4 billion, with

the most expensive year reaching \$53.5 billion (U.S. Department of Justice, 2014, p. 1). In this respect, it is important to understand pay-to-stay as a successor in the historical lineage of prison industry and for-profit punishment in the United States.

Part I of this chapter explores the history of the prison economy in the United States, beginning in the mid-1600s and continuing on in to the 21st Century. It presents a clear timeline demarcating the evolution of the prison industry from slavery, to convict leasing, and prison privatization. The pay-to-stay program is to be understood as one instance in a long historical sequence of profit-making systems within the prison. Part II discusses how inmates are being held financially responsible for their crimes and, subsequently, how the wealthy and the poor are divided into two *separate and unequal* justice systems. The pay-to-stay program is merely one of many methods used by the justice system to separate the rich from the poor—such as the bail system, alternative sentencing programs, fines, and restitution. Situating the pay-to-stay program in the context of the prison economy speaks to the acceptability of the program and generally high public tolerance for inmate exploitation.

This chapter aims to address the following three questions: (1) Why is pay-to-stay accepted as a viable solution to the prison crisis? (2) How does the criminal justice system separate the rich and the poor? (3) What other penal procedures place the financial burden on the offender? The U.S. penal system has undeniably reached a breaking point. Prisons and jails are operating at well over capacity both spatially and financially. Offenders are herded into vastly overcrowded facilities where rehabilitation is no longer a viable goal of incarceration. State policies, such as AB 109 in California,

have attempted to address the overcrowding issue with little to no success. Governments have also tried to cut correctional spending, a development which typically results in fewer educational, rehabilitative, and treatment programs for inmates. With the penal system essentially busting at the seams and deepening federal and state debts, officials have been forced to address the financial effects of mass incarceration. Rather than questioning the fundamentally flawed system, they have crafted ways to shift the burden onto the offender. This neoliberal response to the prison crisis—making the offender bear a larger fraction of the correctional costs to save taxpayer dollars—has been widely accepted by the public. There is a historical trend of publicly accepted mistreatment of racial minorities, the underclass, and offenders. This broader trend, discussed in the following chapter, sheds further light on the newfound acceptance of the pay-to-stay jail program.

Part 1. The Economy of Prison: Making Money from Incarcerated Populations

Historically, there has been a structural relationship between systems of incarceration and the economy. Influenced by Marxism, Rusche and Kirchheimer (1939) theorized about this political economy of punishment prior to the carceral boom. They argued that punishment is to be understood as an integral element to each historically determined mode of production:

Every system of production tends to discover punishments which correspond to its productive relationships. It is thus necessary to investigate the origin and fate of penal systems, the use or avoidance of specific punishments, and the intensity

of penal practices as they are determined by social forces, above all by economic and then fiscal forces. (as quoted in De Giorgi, 2012, p. 41-42)

Rusche and Kirchheimer (1939) went on to argue two important points: (1) the penal apparatus has a specific economic function within society, and (2) punishment reinforces the class struggle between the rich and the poor, both of which are relevant arguments to the current dialogue of prison industry and mass incarceration.

The economy of punishment can be seen in its simplest form through the industrialization of the prison. Hallett (2004) explains that the relationship between commerce and criminals in the United States dates back to the colonial period: “commerce [in the American colonies] involved the prospective use of captives’ labor to expand the colonial power of Great Britain at virtually no cost to the state, while also providing a mechanism for the exile of the ‘dangerous classes’” (p. 49). The captive population was exploited for political power and economic gain.

The United States has a prominent history of for-profit imprisonment and production that can be traced back to the roots of slavery. Slavery in the United States dated from 1619 to 1865, and represented a system of violence, bondage, and complete domination over the African American population. The United States enslaved population peaked around 4 million, and represented an “unfree” labor force responsible for the production of tobacco, rice, cotton, and sugar in pre-industrial America (Wacquant, 2001). Southern manufacturers and plantation owners relied heavily on slavery for production, as it was cheaper than a free workforce and escape was punishable by death. Plantation owners were monetarily invested in their slaves, as they

bought, fed, clothed, and sheltered them. Nonetheless, slaves were severely mistreated, abused, and violated. Slavery as a system of direct economic exploitation was eventually abolished in 1865 with President Lincoln's Thirteenth Amendment.

The Thirteenth Amendment simultaneously dismantled slavery and legalized prison labor. It stated, "neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States" [emphasis added] (as quoted in Hallett, 2006, p. 1). After emancipation, a new racial order was produced. Alexander (2010) claimed, "[c]onvicts had no meaningful legal rights at this time and no effective redress [...] they were understood, quite, literally, to be slaves of the state" (p. 31). Blacks were soon targeted by post-slavery legislation as dangerous individuals in need of penal discipline. Thus, the Black Codes and Jim Crow laws were implemented, with the goal of criminalizing and controlling once again, the African American population. "As African Americans obtained political power and began the long march toward greater social and economic equality, whites reacted with panic and outrage," Alexander (2010) explained, "[...] [o]nce again, vagrancy laws and other laws defining activities such as 'mischief' and 'insulting gestures' as crimes were enforced vigorously against blacks" (p. 30-31). Prisons quickly filled with "free" African Americans and the poor where they swiftly reentered a system of forced labor. Thus, the convict lease system was born, fueling a racialized system of forced labor through the 1920s.

Under convict leasing, prison labor was auctioned off to the highest bidder. Convicts were forced to work off their arbitrary sentences and fines at lumber camps,

railroads, plantations, and with other private contractors in the South (Alexander, 2010). Private contractors preferred prisoners because they were cheap and expendable. As a result, concern for health care and safety decreased while abuse, negligence, and human rights violations increased. Convict leasing protected the system of production in the United States and also reestablished legalized slavery and racial dominance.

In the North, prisons were also exploiting prison labor under the Pennsylvania and Auburn prison systems. The Pennsylvania prison system relied strictly on penitence and isolation. Prisoners were kept in single occupancy cells and served the duration of their sentence in complete silence. Private companies contracted with these prisons to purchase prison labor. The contractors would provide all the materials and training (Selman & Leighton, 2010), and prisoners would manufacture their products in complete solitude. The goal was that the prison, in essence, would pay for itself. The Auburn prison system in New York required prisoners to conduct factory-work in complete silence during the day and were isolated in single occupancy cells at night. The Auburn system grew in popularity, as it was cheaper and more efficient to contract assembly-line work. It was also highly adaptable to industrialization. According to Robert Johnson, the Auburn system produced “a crude urban creature, a tame proletarian worker, oppressed and angry but hungry and compliant: a man for the times forged by a prison for the times” (as quoted by Selman & Leighton, 2010, p.7).

Initially, prison labor involved prisons contracting out prisoners to private companies. Soon, six different systems of prison labor emerged: contract, piece-price, leasing, state-account, state-use, and public works (Chang & Thompkins, 2002). Each

system was equally exploitative, relying on the work of the “unfree” to produce capital for private contractors, and in some cases generating revenue for the very institutions in which they were incarcerated. The Auburn prison implemented the contract system, whereby private contractors provided the equipment, materials, and supervised production within the prison. In the piece-pricing system, used by the Pennsylvania prison, contractors issued the materials to the prisoners and paid the prison for each unit produced. The lease system was used mostly in the South, and involved auctioning off prison labor to the highest bidder who would then be responsible for the complete control of the prison workforce. The state-account and state-use systems mirrored the leasing system but was managed and paid for by the state, rather than a private investor. The state-account system sold its products publicly and the state-use system sold its products only to state institutions. Lastly, public works and ways used inmate labor in the construction of state infrastructure, such as bridges, railroads, and state prisons (Chang & Thompkins, 2002).

At the end of the 19th Century, labor unions began challenging the convict lease and prison labor systems. Prisoners were cheap labor with fewer restrictions on their exploitability, no rights, and complete lack of freedom; for this reason, private contractors were leasing convicts rather than hiring through labor unions. As economic conditions worsened, workers saw prison laborers as a threat to their livelihood. In Tennessee, free miners destroyed prison camps and shipped prisoners out. This economic unrest eventually led to the demise of the convict lease system in the 1920s (Selman & Leighton, 2010). It was the economic downturn that ended the leasing system, rather than

concerns for basic human rights. Still, some forms of prison labor continued on well into the 20th Century, and then intensified again with the introduction of private prisons in the 1980s.

Incarceration rates remained fairly stable between the 1920s and the 1960s. However, during the last quarter of the 20th Century racially motivated wars on crime and drugs fueled a massive race to incarcerate, reconfiguring the landscape of the prison economy. As Selman and Leighton (2010) explain, “the loss of jobs in the United States due to processes of globalization added to the need for prisons to stimulate economic development while at the same time providing an increasing number of unemployed who could be swept into the system” (p. 9). Again, minority populations and the poor were disproportionately targeted. The punitive turn and the need for prison industry created such a high demand for prisons that the United States government was unable to keep up. At the end of the 20th Century, the U.S. prison system entered a fiscal crisis caused by the sharp increase in incarceration coupled with the cost of housing prisoners (Hallett, 2004). President Reagan’s neoliberal policies, free market ideology, and push toward privatization opened the door for private prisons. The first decade of the 21st Century saw an unprecedented growth in the number of prisoners being held in private prisons.

Private prisons existed in moderation between the years of 1850 and 1950. States such as California, Oklahoma, Texas, and Michigan had private prisons that utilized prison labor to balance the cost of the facility. These prisons were abolished in 1950, due to widespread abuse of prisoners (Price, 2006). However, the fiscal crisis of the correctional system caused a rebirth of prison privatization. In 1979, the Prison Industry

Enhancement Certification Program (PIECP) reestablished the right for private corporations to contract prison labor and market prisoner-made products across state lines. Government officials, including Chief Justice Warren Burger, and prison executives began to push for “private sector industry under the rhetoric of rehabilitation” (Chang & Thompkins, 2002, p. 55).

The Reagan administration welcomed the private sector throughout the 1980s. This included “sanitation, health care, security, fire protection, and education” (Welch & Turner, 2008, p. 58). The assumption was that privatization would encourage competition, improve quality, and reduce cost (Welch & Turner, 2008). After the passing of the PIECP, government officials, political party elites, and experts in the field of corrections began developing a plan to privatize prisons as a way to combat overcrowding while supposedly saving taxpayer dollars (Camp, 2005).

Private corporations began to have a financial interest in prisons; prisons meant construction contracts, a growing market for goods and services, and the increased use of prison labor (Davis, 2003). Today, private prisons are the fourth largest prison system in the United States (Hallett, 2006). Between the years of 1999 and 2010, the private prison inmate population grew by 80% while the overall inmate population grew “only” by 18% (Aviram, 2015). By 2010, roughly 128,000 prisoners were being held in private prisons in the United States (Aviram, 2015). The Corrections Corporation of America (CCA) and the GEO Group are the largest private correctional corporations in the United States. These corporations use their monetary influence to lobby for privatization legislation and

punitive policies to ensure their own success (Price, 2006). Despite the recent economic recession, the CCA's net income reached \$162.5 million in 2011 (Aviram, 2015).

Despite declining crime rates and the proven ineffectiveness of prisons to reduce crime, legislative figures continue to pump billions of dollars in to the prison system every year. Human rights violations, racial oppression, and class subordination continue to thrive under the current economy of mass incarceration and prison industry. As long as private corporations and other stakeholders continue to generate millions in profits from prison industry, the drive to dismantle mass incarceration will be stunted. The prison economy cements failed prison policies in place by making money from the incarcerated, and reinforces the notion that “the free market works best when people aren't free” (Welch & Turner, 2008, p. 64). This sentiment has persisted through the institutions of slavery, prison labor, and convict leasing, and is now seen in the expansion of private prisons and the introduction of pay-to-stay jails.

Part II. Placing the Financial Burden on the Offender

The pay-to-stay program is not the first system to blatantly discriminate against offenders based on socioeconomic status, nor is it the first to demand compensation from an offender. There are many avenues throughout the justice system that allow ‘undeserving’ offenders—namely, those who can afford it—to avoid the humiliating experience of incarceration. This section discusses ways in which the rich can escape the poor man's justice system due to their ability to post bail and pay for services such as ankle monitoring, community supervision, and pay-to-stay jail cells. This section also discusses how poor offenders are continually forced to pay incarceration and treatment

fees that they simply cannot afford, preventing them from escaping the revolving door of the justice system.

Offenders may be ‘innocent until proven guilty’ in the court of law, but they begin paying for their crimes even before a verdict is made. During arraignment, judges have sole discretion over preventive detention and the setting of bail. The goal of preventive detention is to keep defendants incapacitated before going to trial, thereby preventing the commission of further crimes, escape, or tampering with evidence (Walker, 2011). If not remanded to jail, the judge may set a price on the defendant’s freedom—also known as bail. If the defendant is able to pay the price, he or she can escape incapacitation until a verdict of innocent or guilty is determined in a court of law.

In the 1960s, the bail system began receiving considerable backlash for its unequal treatment of disadvantaged populations. The plight of the poor was suddenly at the forefront of the civil rights movement. During this time, nearly half of all persons in jail were awaiting trial (Walker, 2011, p. 147). Civil activists denounced the oppressive nature the bail system, and the criminal justice system as a whole, against minority and poor populations. The bail reform movement reached a partial success with the adoption of *release on recognizance* (ROR), which permitted offenders with ties to the community, family, and work to be released from supervision without bail. ROR, however, still discriminated against nonworking individuals and the lower class. After the bail reform movement, the number of persons in jail awaiting trial decreased from 52% in 1967 to 28.2% in 2002, before increasing again to 43% in 2004 (Walker, 2011, p. 148). According to Walker (2011) “the reversal is a result of both a more punitive public mood

and probably the impact of worsening economic conditions, as many defendants cannot meet even minimal money bail conditions” (p. 148). Today, bail is still being used to incapacitate offenders and is determined using criteria such as prior record, employment status, community ties, and family involvement—all of which discriminate against marginalized populations, ensuring they remain in jail until trial.

California has adopted a presumptive bail system. Rather than evaluating each individual for risk or likelihood to reoffend, judges often assign bail according to the county schedule. Scheduled bail amounts can vary widely from county to county; the presumptive bail amount for a drug possession charge can range anywhere from \$5,000 (e.g. Fresno) to \$25,000 (e.g. San Bernardino) (Hopper, Dooley-Sammuli, & Evans, 2012, p. 20). The fluctuating presumptive bail amounts across county lines may mean the difference between jail time and freedom for some individuals. For instance, a low-risk, first-time offender may be able to afford bail in Fresno, but would be held in San Bernardino jail until trial. As explained by Hopper, Dooley-Sammuli, and Evans (2012), “defendants with little money or collateral to post for bail, but with stable employment, strong community ties and no history of violence or other risk-predictive factors may nonetheless be forced to remain for weeks or even months in jail pending trial simply because the local bail schedule dictates a bail amount beyond their means” (p. 21). The presumptive bail method completely disregards any mitigating factors, leaving financial status as the sole determining factor between jail time and release. When the justice system relies on the financial terms of bail, race and class disproportionalities are reproduced and amplified.

Pay-to-stay programs can be seen as an extension of the bail system. Those with financial means are able to remove themselves from the poor man's criminal justice system. Whether by posting bail before trial or paying for an upgraded jail cell after trial, privileged social groups experience a less humiliating, less damaging extension of the justice system. Those who are unable to pay their way essentially convert to slaves of the state.

Those with economic means escape incarceration through the bail system or by being penalized with fines and restitution. Marginalized populations—such as minorities and the poor—often face disparate outcomes of the penal system: “Latinos and black defendants are more likely than white defendants to be held in jail because of inability to post bail” (Hopper, Dooley-Sammuli, & Evans, 2012, p. 22). Although the prisons and jails are often filled with inmates without the financial means to escape, a recent trend of levying fees against the incarcerated has emerged.

Going to jail or prison is expensive. According to The Institute for Southern Studies (2009), “[b]y 2004, about one-third of the county jails in the United States had policies charging inmates for their own incarceration” (para. 3). Inmates are increasingly invoiced for the ‘luxuries’ of prison—such as expensive telephone calls, medical services, and in some states “room and board” fees (Evans, 2009). Across the country, prison and jail facilities are charging inmates for detention. Unlike pay-to-stay, inmates are not paying for upgraded services, they are being billed for standard jail time. In some counties, inmates are charged a “cost of care per day” which can be \$45 to \$60 per day

depending on the area (Evans, 2009). This calculates to \$1,350 to \$1,800 per month for incarceration.

Other jails and prisons find alternative methods for charging inmates. Prisons in North Carolina, Florida, and Virginia charge inmates fees for breaking the rules. Under the infamous Sheriff Arpaio, the Maricopa County jail in Arizona charges inmates \$1.25 per day for food (Evans, 2009). In Connecticut, the state requires inmates to pay the following fees for the use of programs and services within the incarceration facility: \$3.00 per course of elective education, \$3.00 per course of vocational training, \$10 per extended family visit, \$3.00 per inmate initiated visit to the doctor, \$3.00 per dental procedure, \$3.00 per eyeglass and prescription, and the actual cost of drug test if results are positive (Reinhart, 2006). Although these fees may seem trivial, it is important to remember that the fees are placed on inmates and families of inmates who likely cannot afford them. Even if inmates are working while in prison, the average minimum wage for state prisoners for non-industry work is \$0.93 per day; the overall average maximum wage paid to state prisoners is \$4.73 per day (Wagner, 2013, Section III).

The costs of incarceration are often transposed on to the families of the incarcerated. Family members may put money on to their loved one's books to pay for food and services, send care packages, and pay for pre-paid phone cards—all of which can be costly. In 2011, the Montgomery Jail in Ohio reported an annual revenue of \$370,000 from the sales of pre-paid phone cards ("Annual Phone Revenue", 2011). In some states, inmates need money for toothpaste, winter clothes, electricity, and toilet paper—basic needs that the penal system, a public service funded by taxes, *should* be

providing (Wagner, 2014). Instead, the costly burden is placed on inmates, and often the families of inmates, who simply cannot afford it.

Once released from incarceration, individuals are frequently charged for post-release services. In Massachusetts, offenders must pay \$50 to \$65 a month to the probation department to cover supervision costs (Rosenburg, 2011). The court *requires* probation supervision; failing to meet with the probation officer can result in jail time, meaning the probation department is collecting fees on a mandatory service. Sex offenders incur even more out-of-pocket costs post-incarceration. Ricky May, Director of Treatment and Evaluation Services in Colorado claims sex offenders are required to have a “sex-offense-specific mental-health evaluation” for which they must pay \$1,000 to \$2,000 (Lechtenberg, 2015). Then, the sex offender must pay for treatment—the average person attends sessions five times per month—which costs roughly \$275 per month (Kepros in Lechtenberg, 2015). Although some offenders may receive financial assistance from the Department of Probation, they are solely responsible for making sure the treatment bill is paid in full. Some sex offenders are mandated to wear tracking devices and complete polygraphs, both of which they must also pay for. Polygraphs are generally conducted twice a year and cost about \$250 per session (May in Lechtenberg, 2015). Although this example is specific to Colorado, the excessively punitive treatment of sex offenders can be found nationwide. Charging sex offenders for post-release treatment and monitoring is a growing phenomenon across the United States.

Charging inmates for goods and services in jail or prison is becoming increasingly popular and widespread. By invoicing inmates for prison expenses and forcing them to

pay for post-release supervision and treatment, the criminal justice system is working to keep the poor impoverished. Placing the financial burden of incarceration on an already disadvantaged population of offenders preserves the presence of the criminal justice system in the lives of minorities and the poor.

Chapter III. Case Study of Pay-to-Stay Jail in Fremont, California

This chapter details the case study of Fremont's pay-to-stay jail program. First, the research methods and limitations of the study are discussed. Then, Part I briefly describes the history of the pay-to-stay program in California. Demographic, economic, and geographic information relevant to Fremont and Alameda County is discussed in Part II. Such information is essential to understanding why Fremont implemented a pay-to-stay program and also helps project how successful the program will be. Part III details the inception of the pay-to-stay program inside Fremont's jail facility. This includes economic and sustainability issues that led to the proposal, adoption, and subsequent implementation of the pay-to-stay program. Lastly, Part IV evaluates the eligibility requirements and catalogs the application process for the Fremont pay-to-stay program. The pay-to-stay acceptance process illustrates which economic, ethnic, and social groups actually have access to the program.

Method

Data Source.

The goal of this study was to document the implementation, eligibility requirements, and application process of California's pay-to-stay programs. To do so, a case study of the Fremont Detention Facility's pay-to-stay program was conducted. The

Fremont location was chosen because it is the only pay-to-stay program in California's Bay Area. I chose the nearest pay-to-stay program, Fremont, because I was familiar with the area's history and population, and because I believed my connections to local scholars and professionals in the criminal justice field would strengthen the study. The Fremont pay-to-stay program was also of particular interest because it was implemented in 2011, the same year in which California's AB 109 Public Safety Realignment was enacted.

The study used an archival approach coupled with theoretical analysis to evaluate the implementation, operation, and application process of Fremont's pay-to-stay program. The archive included: Fremont City Council records, the Pay-to-Stay Proposal, the Fremont Pay-to-Stay website, Fremont City Newsletter Publications, Fremont's Sustainability Plan, application and eligibility documents, the Fremont Pay-to-Stay Program Policy, and local media coverage. Some information was also obtained through a personal correspondence with the manager of the Fremont Detention Facility.

Procedure.

The research process began by talking to local professionals in the field of corrections and criminal justice. I reached out to the California Department of Corrections and Rehabilitation (CDCR), the City of Fremont, the Fremont Detention Facility, Fremont City Council, local media groups, and local criminal justice organizations. The search produced two important contacts, a deputy chief at the CDCR and the manager of the Fremont Detention Facility. Personal correspondence with these officials was beneficial to the study, as they revealed where to find essential primary

sources, gave important background details, and provided the official Pay-to-Stay Program Policy on record with the Fremont Police Department.

The next level of research began at the Fremont pay-to-stay program website. The website briefly described the pay-to-stay program and provided links to all the necessary paperwork to apply for the program, such as the application, eligibility requirements, required documents, and rules and regulations. Further research was conducted through the Fremont City Council and the City of Fremont's online resources. Fremont City Council minutes documented the Pay-to-Stay Proposal and its pathway to implementation. The City of Fremont archive provided the history of and original documentation from the Fremont Sustainability Study and subsequent Fremont Sustainability Study Action Plan, as well as Fremont City Newsletters that were published during the time the pay-to-stay program was being implemented. Lastly, local and national media coverage shed light on the broader history of pay-to-stay in California as well as any social support or backlash that followed.

This study utilized a case study analytical approach. The concepts and theories of chapters I and II were applied and used to describe the Fremont Pay-to-Stay Program, the case study. More specifically, this was an intrinsic case study, meaning the main goal of the study was to understand and investigate the details of the Fremont case only. The in-depth case study of Fremont was conducted through a content analysis of primary documents, a general program assessment, and a theoretical analysis of related historical trends.

Limitations

This study is limited most in its theoretical nature. Rather than utilizing a truly empirical framework, this study developed a theoretical analysis to explain the existence of pay-to-stay jail programs in the U.S. The theoretical analysis was constructed using historical data, social and penal theory, and the documentation of primary sources. Together, these pieces formed a theoretical framework that will hopefully be relevant and useful to future pay-to-stay research. Theoretical studies are equally important as empirical studies, and aim to explain complex social phenomena that may otherwise be difficult to measure.

Also limiting is the lack of access to data on pay-to-stay programs inside as well as outside California. Unfortunately, pay-to-stay inmate demographics and statistics are not publicly available. I attempted to access these data through personal correspondence with jail administrators, but was unsuccessful. Inmate data would add reliability to this and any future pay-to-stay study. However, Fremont pay-to-stay data would reflect dates between October 2011 and 2015. This short range of data may not have produced significant results or represented the affected population accurately. Although quantitative data was not available, a steady paper trail of the program's implementation, policy, and procedures provided a wealth of knowledge.

Once pay-to-stay data become publicly available, future research should focus on providing a comparative, empirical analysis of several pay-to-stay programs in California. I suggest developing a comparative study of long standing pay-to-stay programs in California using qualitative and quantitative data analysis. Programs such as

Pasadena, which has been in operation for over two decades, or Beverly Hills would have significant demographic and historical data to draw upon. Qualitative analysis can be collected through structured interviews with inmates and local correctional administrators, and can be combined with a quantitative analysis of inmate demographics.

Part I. History of the Pay-to-Stay Jail Program

The literature regarding pay-to-stay jail programs is extremely limited, with virtually no peer-reviewed journal articles. There are also no demographic data publicly available on pay-to-stay inmates. Considering the implications of pay-to-stay, it is especially concerning that such program data are not readily available. It would seem that a controversial policy such as pay-to-stay would generate attention among scholars and the public. The eerie silence surrounding pay-to-stay is as disturbing as the policy itself. Without access to vital data, the history of the pay-to-stay jail program is thus constructed from a narrow field of scholarly work, media coverage, and related California legislation.

Pay-to-stay jail programs have been present in California for over 20 years, but have largely managed to stay out of sight. Some states have implemented “room and board” fees—as discussed in Chapter II—but few have designed separate facilities for wealthier inmates. California’s *optional* pay-to-stay jails appear to be the first of their kind in creating a “two-tiered jail system” (Buchanan, 2007). There is not an accurate count of how many pay-to-stay programs exist in the state because they are independently run by city police departments as a separate “service”, however, it is estimated that more than a dozen were in operation by 2007 (Steinhauer, 2007).

When the state of California introduced the AB 109 “Public Safety Realignment” legislation in October of 2011, county jails began to prepare for an influx of inmates to their already overcrowded facilities. In October 2013, AB 986 was approved, allowing city jails to use flash incarceration tactics to deal with post-release community supervision violators (Assembly Bill No. 986 § 3000.08, 3453-3454, 2013). During the proposal of AB 986 to the Assembly Committee on Public Safety, the committee also discussed pay-to-stay programs as a viable option to deal with minor offenders. “The Glendale Police Department jail,” they examined, “has collected more than \$1.5 million in fees associated with inmates who opt to pay to stay at the facility” (California State Assembly, 2013, p. 5). Between 2011 and 2013, over 17,000 inmates paid the \$85 per day fee to stay in the Glendale facility—which is “a major step up from crowded Los Angeles County facilities” (California State Assembly, 2013, p. 6). Although the assembly made no ruling on the pay-to-stay program, they certainly spoke of pay-to-stay as a money-saving innovation.

The Pasadena pay-to-stay jail was opened in the early 1990s under the slogan “bad things happen to good people” (Buchanan, 2007), a slogan suggesting that certain populations undeservedly fall prey to the justice system while the overwhelming incarceration of disadvantaged populations goes unquestioned. As described by Buchanan (2007), “the pay-to-stay upgrade is said to serve the goals of incarceration by locking up first-time offenders ‘without unduly exposing otherwise law-abiding citizens to the criminal element’” (p. 62). In this sense, pay-to-stay is a privilege for those upper-

class criminals believed to have made a mistake or who were simply in the wrong place at the wrong time.

The pay-to-stay incarceration experience differs greatly from that of general population inmates. Paying inmates reside in their own cells, and in some instances are ““allowed to watch television or select movies from the video library. They can ride the exercise bike, sip coffee and use the bathroom in privacy. Most important, they are kept away from others in the facility who could be murderers and rapists”” (Buchanan, 2007, p. 61-62). Inmates who pay are able to preserve their self-esteem, dignity, and sense of integrity. But not all who can afford to pay-to-stay are eligible for the program. In some pay-to-stay jails, of the inmates who *can* afford the cost, only those who are able to pass a screening interview are accepted (Buchanan, 2007). This essentially gives the jail administrators the discretion to accept or reject any applicant for any undisclosed reason. Municipal Judge Gregory O’Brien suggested that “otherwise respectable citizens” who are eligible for pay-to-stay are easy to identify. “I think if you go down and look at the ... inmates down at County jail,” he said, “you’ll see very few who fit [the pay-to-stay] profile” (Buchanan, 2007, p. 63).

Proponents of pay-to-stay programs and jail administrators do not straightforwardly identify the target audience of pay-to-stay. Yet, it is evident from the eligibility requirements and program advertisements that the target audience is quite specific: upper-class, somehow less-guilty individuals from privileged social groups, who should be spared the destructive experience of incarceration. Pay-to-stay programs allow inmates to fulfill their punishment while maintaining employment, familial relationships,

and other positive ties to the community (Walters & Davis, 2007)—sparing these inmates the devastating effects of civil and social death that most U.S. inmates are subjected to. Pay-to-stay jail programs are yet another example how the criminal justice system—a constitutionally required government duty—profits from oppression and segregation.

Part II. The City of Fremont & Alameda County

The 92-square mile city of Fremont is located in Alameda County and is a part of California’s San Francisco Bay Area (City of Fremont, California, Office of Economic Development, 2015)—an area known for its progressive thinking, technological innovations, ingenuity, diversity, and wealth. It is also known as the Silicon Valley, home to Google, Facebook, Apple, and many other billion-dollar corporations. According to the Bay Area Census, over 7 million people resided in San Francisco and its surrounding cities in 2010 (Bay Area Census, 2010). Currently, over 1 million people reside in Alameda County (Hopper, Dooley-Sammuli & Evans, 2012, Appendix A, p. 7), which consists of the following 14 incorporated cities: Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City (County of Alameda, California, 2015).

In 2013, the U.S. Census Bureau reported that 13.8% of San Francisco County residents and 13.0% of Alameda County residents were living in poverty—slightly less than the 15% national poverty percentage (U.S. Census Bureau, U.S. Department of Commerce, 2013). Santa Clara County neighbors Alameda County, and is known to have the largest “unsheltered homeless” population among big cities in the United States (Lin II & Holland, 2014, para. 3). In 2014, the largest homeless encampment in the United

States, known as The Jungle, was destroyed in Santa Clara County, less than 20 miles outside of Fremont. The destruction of the 68-acre encampment left nearly 300 homeless individuals without a safe place to sleep (Blake, 2014). Blake (2014) stated, “more than 7,500 homeless people sleep on the streets in Santa Clara County on a given night, in one of the most socially polarized areas of the world” (para. 9). The Bay Area is infamous for having one of the world’s largest income gaps.

In 2013, the median household income in the United States was \$52,250; Alameda County’s median household income was \$72,128, San Francisco County’s was \$76,933, and Santa Clara’s was \$91,843 (U.S. Census Bureau, U.S. Department of Commerce, 2013). The city of Fremont’s 2015 community profile reported an average household income of \$114,684, with Tesla and Lam Research Corporation featuring as two of the top ten employers (City of Fremont, California, Office of Economic Development, 2015, p. 1). Fremont is the fourth largest city in the Bay and ranks 15th in California with a total population of 217,700 (City of Fremont, California, Office of Economic Development, 2015, p. 1). Fremont’s racial demographics differ significantly both from the demographics of the state of California and from the overall U.S. population: 50% of residents are Asian, 33% are white, 14% are Hispanic, and 3% are African American (City of Fremont, California, Office of Economic Development, 2015, p. 1). Fremont has been ranked number one in the U.S. for technology start-up businesses per capita, voted second most inventive city in America, and an impressive 49% of its adult residents hold Bachelors, Graduate, or Professional degrees (City of Fremont, California, Office of Economic Development, 2015, p. 2).

The crime rate in Alameda County is roughly 2,840 per 100,000, ranking as the fourth highest rate out of all 58 counties in California. Fremont's 2013-2014 year-end update reported an annual revenue of \$150.7 million—generated from property taxes, sales tax, business taxes, franchise fees, and hotel taxes, to name a few—of which \$89.5 million was spent on police and fire public protection departments (City of Fremont, California, 2014). The 2015-2016 proposed budget for Alameda County reported a total budget of \$2.7 billion, with 23.6% (more than \$638 million) being appropriated to public protection programs—listed as the District Attorney, probation department, Public Defender, Sheriff's office, trial court funding, and the fire department (Alameda County Budget, 2015). Based on these data, both Alameda County and the city of Fremont allocate a significant amount of their budgets toward public protection each year.

Alameda County is one of the counties that the ACLU refers to as “The Big 25” (ACLU, 2012, p.12). The Big 25 refers to the 25 counties in California that received the most realignment funding—roughly \$327 million, which amounted to 92% of total state allocations (Hopper, Dooley-Sammuli & Evans, 2012, p.16). In the 2013-2014 fiscal year, the Alameda County Sheriff's office spent over \$20 million on realignment (Levin, 2015, para. 20).

Fremont is located in a unique area of the United States, surrounded by wealth and inequality. It is positioned near the Silicon Valley, Berkeley, and San Francisco—places known for modernization, liberalism, and a progressive ethos. However, Fremont also neighbors the city of Oakland, which is known for having the highest rate of violent crime in California (Brock & Kiriakos, 2014) and has particular areas that are “plagued

by chronically high levels of poverty, unemployment, homelessness, drug addiction, and street crime” (De Giorgi, 2014, para. 1). Therefore, the unique demographics of Fremont, as well as its peculiar position in the socioeconomic landscape of the region, make its new pay-to-stay jail program an interesting case study in the field of punishment and the changing economy of the prison.

Part III. Fremont Facility & Development of Pay-to-Stay Initiative

The \$10.6 million (Watson, 2013) Fremont Detention Facility was built in 2002 as a Type I jail (City of Fremont, California, Fremont City Council, 2012). A Type I jail is described as:

A local detention facility used for the detention of persons for not more than 96 hours excluding holidays after booking [...] [and] may also detain persons on court order either for their own safekeeping or sentenced to a city jail as an inmate worker, and may house inmate workers sentenced to the county jail provided such placement in the facility is made on a voluntary basis on the part of the inmate.

(Sutter County Sheriff, 2015)

According to the Fremont Police website, the jail has a maximum capacity of 96 inmates, and is the temporary staging area for persons arrested by the Fremont Police Department, who are awaiting arraignment or transfer to Santa Rita—Alameda County’s jail (Fremont Police Department, “Detention Facility”). The Fremont Detention Facility currently books and houses prisoners for the BART Police Department, California Highway Patrol, Newark Police Department, Union City Police Department, Department of Corrections’ parolees, East Bay Regional Park District Police Department, and U.S. Immigration and

Customs Enforcement (Fremont Police Department, “Detention Facility”). With 54 beds and five pods, it is the largest Type-1 jail in Northern California. Yet, the facility has never operated at full capacity, and typically houses no more than 30 inmates at any given time (City of Fremont, California, Fremont City Council, 2012).

Due to the recent financial hardships experienced by many California cities, Fremont underwent a sustainability study in 2011 (Burton, 2013). Management Partners Incorporated (MPI) conducted a third-party analysis of Fremont’s financial sustainability. The report was delivered to the City Manager of Fremont, Fred Diaz, in July 2011. The sustainability study evaluated city services and explored new areas for revenue (Burton, 2013). In the report, MPI noted that Fremont had been affected by the 2008 economic recession, but that it was “in better shape than most other cities thanks to good financial management practices” (Management Partners Incorporated, 2011, para. 2). However, Fremont was still incurring more costs than its revenues could cover. MPI estimated a deficit of \$8 million for the fiscal year of 2011-2012. Therefore, MPI suggested that Fremont make changes to its service delivery model, reduce compensations, control expenditures, and increase revenue. A list of 33 money-saving and revenue-generating recommendations was presented to the City Manager. Recommendations included outsourcing landscaping maintenance, consolidating police dispatch with Newark and Union City, implementing a new rotating police patrol schedule, increasing taxes, increasing clean water fees, and developing a pay-to-stay program for the Fremont Detention Center (see Appendix A for complete list). The pay-to-stay recommendation explained the program as an “offering” for misdemeanants “to pay a fee to opt out of the

County jail facility (Santa Rita) and serve time in what could be considered a safer, less intimidating, facility” (Management Partners Incorporated, 2011, p. 90). MPI also noted the upcoming effects of California’s AB 109, Public Safety Realignment legislation: “[c]ourt orders requiring the State of California to reduce crowding in prisons will likely exacerbate crowding at the county level [...] making an alternative like the Fremont Detention Center more attractive” (Management Partners Incorporated, 2011, p. 90). The study estimated the pay-to-stay program to generate an annual revenue between \$250,000 and \$300,000 (Management Partners Incorporated, 2011, p. 90). The Fremont Sustainability Study Action Plan was adopted by the City Council on October 4, 2011—three days after AB 109 was implemented (Fremont City Council, City Manager’s Office, 2011). Fremont City Council chose to implement 15 of the proposed 33 recommendations, including creating a pay-to-stay program run by the city police department (Fremont City Council, City Manager’s Office, 2011).

Lt. Mark Devine of the Fremont Police Department proposed a resolution to Fremont City Council to implement a pay-to-stay jail program that would utilize the unused beds at the Fremont Detention Facility to produce revenue (City of Fremont, California, Fremont City Council, 2012). The resolution was titled “Alternative Confinement Program” and referred to inmates solely as “participants”. The resolution framed pay-to-stay inmates as less guilty, willing participants and otherwise respectable citizens that simply made a mistake, compared to the socially damaged, dangerous, and violent inmates detained at Santa Rita jail. The resolution amended the Master Fee Schedule for the Fremont Detention Facility, allowing the Fremont Police Department to

charge inmates \$155 a night with a one-time \$45 administrative fee. The mayor of Fremont, the city clerk, and the assistant city attorney signed the resolution on March 20th, 2012 (City of Fremont, California, Fremont City Council, 2012; Fremont City Council, City Manager's Office, 2011). The Alternative Confinement Program report identified the pay-to-stay program as a service to the "participant" and a solution to county jail "problems".

The Alternative Confinement Program report employs a narrative of the inexperienced minor offender who deserves a higher level of safety and security than the typical county jail inmate. The report names three components that are necessary for the success of the pay-to-stay program: the Courts, the "Participant", and the City of Fremont. The interests for each component are outlined as follows: (1) The Courts expect that all sentences will be fully served, participants will receive no special comforts, and participants will be treated equally regardless of community status or fame (City of Fremont, California, Fremont City Council, 2012). Ironically, being approved for pay-to-stay eligibility is in itself a special treatment and a reflection of inequality based on status. (2) The interests of the Participant are listed as: personal security, cost, and convenience. The report explains the convenience of incarceration at the Fremont facility: "the Fremont Detention Facility is near two major freeways and within walking distance of BART [and] there is adequate free parking across [the street]" (City of Fremont, California, Fremont City Council, 2012, "Convenience"). The inclusion of free parking instructions and ease of highway access downplays the fact that the pay-to-stay program is handling the incarceration and punishment of convicted offenders. (3) The interests of

the City are illustrated as follows: participant safety, management of participants, management of staff assets, and revenue objective. Management of participants describes eligibility requirements such as no felony convictions, no convictions for sex crimes, no drug convictions, no major health issues, no gang affiliation, and that the participant cannot serve more than four consecutive days at a time. The Revenue Objective section explains that other counties in Southern California have successfully implemented pay-to-stay programs charging inmates anywhere from \$85 to \$255 per night, and that the Fremont program would start with a mid-range rate of \$155 per night (City of Fremont, California, Fremont City Council, 2012).

The report also examines the fiscal impact of the pay-to-stay program. It calculates that if one pod with 16 beds were to be filled each weekend, there would be over 1600 stays per year. A conservative estimate using a 50% participation rate was generated and estimated a profit of nearly \$125,000 per year. The application fee would generate another estimated \$18,000 per year (City of Fremont, California, Fremont City Council, 2012). At full capacity, the pay-to-stay jail could turn an estimated net profit of \$244,000 per year ("Fremont Police", 2013).

To review, the city of Fremont was affected by the 2008 economic recession, opening the door for financial review. In 2011, a third-party auditor strategically analyzed the city budget and made several recommendations that would help Fremont decrease its deficit. The pay-to-stay recommendation was suggested as a way to generate revenue within the correctional system and coincided with the upcoming implementation of AB 109, California's prison realignment. The city of Fremont was quick to develop and pass

the pay-to-stay proposal and seamlessly implemented the program with little to no political resistance. The Fremont pay-to-stay jail program has been in effect since March 2012.

Part IV. Getting in: Eligibility & the Application Process

Unlike county jail, there is no general admittance to the Fremont pay-to-stay facility. Lt. Tom Mikkelsen, an operator of the Fremont pay-to-stay jail, states, “the program does not accept all applicants [...] inmates with gang affiliations or a history of violence or sex crimes will be sent to one of the county jails” (De Benedetti, 2013). Lt. Mark Devine, creator of the pay-to-stay proposal, claimed “this place is for a person who has committed a petty theft or a DUI [...] it’s for people who need to serve one or five, or maybe 10 days in jail” (De Benedetti, 2013). Local jail administrators seem to be on the same page regarding who pay-to-stay is designed for, which is significant considering that the eligibility requirements are not well-defined. In my personal correspondence with the manager of the Fremont Detention Facility, he also explained that the pay-to-stay program was meant for misdemeanor offenders who are currently working, “providing for their families”, would like to serve time on their days off, and who want the “safety and peace of mind” that can be provided with the upgrade (personal communication, May 12, 2015).

Section 915.2 of the Fremont Police Department’s Policy Manual lists the qualifications for inmates to participate in the pay-to-stay program (see Appendix B for the entire pay-to-stay policy). The qualifications for pay-to-stay admittance are as follows:

- (a) Participants must have submitted all documentation and required forms at least 10 days before the “desired incarceration start date” (Fremont Police Department, Policy Manual, 2013, para. 2)
- (b) “Participants will be prescreened for suitability and to confirm that all of the established conditions of the program are met.” (Fremont Police Department, Policy Manual, 2013, para. 3)
- (c) The participant will be required to pay the application fee of \$45 and the daily fee of \$155
- (d) Standard booking requirements must be met
- (e) Participants are expected to arrive on time for detention and stay for their full commitment time
- (f) Participants must bring an approved form of identification
- (g) Participants may only bring approved items in to the Detention Facility
- (h) Participants with specific medical conditions cannot be accepted as there is no on-site medical staff (Fremont Police Department, Policy Manual, 2013).

The listed qualifications are vague and allow for discretionary interpretation. Condition (b) is a primary example of how the policy is written in such a way as to allow for police discretion to determine acceptance, even if the rest of the requirements have been satisfied. The documentation and required forms listed in condition (a) also help screen out unwanted applicants.

The application forms clearly dictate who is and, more importantly, who is *not* eligible for admittance. The application process has various stages. First, the offender

must be referred to the pay-to-stay facility by a sentencing judge with what is called a Court Commitment Order (Fremont Police Department, “Pay to Stay”). It is unclear whether this decision is based on financial ability to pay the nightly fee or if it is left solely to the discretion of the judge. The offender must then fill out and submit a pay-to-stay program application (see Appendix C), which includes general personal information as well as a medical information questionnaire. The medical questionnaire asks applicants to list any medical problems, contact information for their physician, any prescribed medications, and medical insurance information.

The application is then reviewed and the applicant is either rejected or conditionally accepted to the program—pending the results of their prescreening. If accepted, the applicant must fill out the remaining documents, provide a copy of his or her negative Tuberculosis (TB) test, and pay the \$45 application fee (Fremont Police Department, “Pay to Stay”). The offender must then review and sign the conditions for participation (see Appendix D). These conditions include payment of \$155 per day (in cash, cashier’s check, or money order), a Court Commitment Order detailing how much time may be served at the facility, a State or US Federal government-issued passport or picture identification card, parking instructions, and a list of articles participants may bring with them (Fremont Police Department, “Pay to Stay”). Lastly, the offender must sign an agreement to follow the rules and conditions of confinement in the pay-to-stay facility (see Appendix E). The document contains 18 rules to abide by, mostly pertaining to cleanliness, good behavior, and prohibited paraphernalia. Visitation privileges and length of stay are also outlined (Fremont Police Department, “Pay to Stay”). Upon

submission and approval of all documents, the participant may check in to the pay-to-stay jail. The participant serves a portion, or all, of his or her sentence in the designated pay-to-stay pod, separated from the rest of the county jail population (Fremont Police Department, “Pay to Stay”).

The entire process is similar to that of a college application: recommendations are required, general personal information is recorded, past performance is evaluated, and applicants are conditionally accepted pending payment and submission of the remaining documents. The detailed, formal application process inherently selects applicants based on the sophistication, educational level, and social status of the person applying. Not only is the ‘application pool’ limited to those who can afford it, but also to those who receive Court Commitment Orders and can successfully navigate through the application process.

In a local ABC news clip, Lt. Mark Devine explained, “It isn't a hotel necessarily. You aren't going to find a warm cookie on your bed. But it gives you an alternative place to serve your time if you need serve time for being sentenced to a misdemeanor” (Kiryama, 2013, para. 7). He added, “as far as being an unequal treatment or jail only for the rich, I think it's important to remember that there is a cost to providing government services and that cost where appropriate should be born by the people utilizing the facility or the program” (Kiryama, 2013, para. 14). It is evident that the pay-to-stay option is only available to the wealthy and social elite. The Fremont pay-to-stay program is the first in the Bay Area, and almost certainly not the last.

Chapter IV. Analysis, Discussion, and Conclusion

According to Irwin (1985), the detrimental effects of incarceration are substantial:

When persons are arrested and jailed, they suffer more than the obvious forms of discomfort and deprivation: sudden interruption of their affairs; instant and total loss of mobility; abrupt initiation into the jail; a subsequent restriction of activities to a very small area; virtual absence of all opportunities for recreation and expression; unavoidable and constant close contact with strangers, many of whom are threatening or repulsive; and a reduced health regimen that can lead to physical deterioration and occasionally to serious illness. (p. 45-46)

For a price, the pay-to-stay program offers an escape from the unwanted experience of incarceration. Through vague eligibility requirements, screening processes, and application hurdles, the pay-to-stay program determines who is worthy of safety, humility, and justice. A proponent of mass incarceration, pay-to-stay is a race- and class-based system of confinement. It allows the upper, and predominantly white, class to sidestep any exposure to lower-class inmates in county jails by offering better protection at a higher cost. As Buchanan (2007) simply stated, pay-to-stay is not available to everyone. It is not even available to everyone who can afford it. “Admission is invariably subject to screening interviews, for which there are no acknowledged criteria,” he claims, “pay-to-stay eligibility is thus in some inchoate way contingent on who the inmate is, not on what he (or, less often, she) has done” (Buchanan, 2007, p. 63).

Pay-to-stay jails reproduce class and racial segregation under the guise of equality. Although pay-to-stay legislation may be written in race-neutral or class-neutral language, the bottom line is that only certain races and classes are realistically eligible for the pay-to-stay program. It dictates who is deserving and who is undeserving of

government protection and safety. Although people of many races, genders, and socioeconomic backgrounds may commit non-violent misdemeanors, such as driving under the influence (DUI), the undeserving can now be weeded out to county jails while the deserving are offered a safer space. Irwin explained, “when a given act is performed by a disreputable—a person who is deemed worthless or of low character—it is not considered the same as when it is performed by an ordinary citizen” (Irwin, 1985, p. 23). In other words, not everyone is equally guilty in the U.S. criminal justice system; some offenders are elevated to a higher status of innocence while others are carried to the prison gates. The oppressive nature of the prison system and its unequal treatment of offenders implies that “our society is not only maintaining its conventional class divisions but is also widening the gap between conventional society and a large underclass” (Irwin, 1985, p. 104)

Scholars have argued that the criminal justice system is an inherently oppressive institution from the bottom up (Davis, 2003; Alexander, 2010; Epp, Maynard-Moody, & Haider-Markel, 2014). In nearly 45 years, public sentiment toward crime has not wavered from the classic “us versus them” mentality. It does not question the flaws of the institution, but rather continues to blame individual choice. Pay-to-stay is justified through this rhetoric of personal responsibility and free choice. The United States has an extensive history of blaming the offender and then exploiting him or her for economic gain. Pay-to-stay emulates the neoliberal philosophy that economic power and social prestige can separate the dominant class from the experiences of the underclass. To quote Carl Takei of the ACLU National Prison Project (as quoted in De Benedetti, 2013),

“there should not be one form of punishment for those who can afford to pay and a different form of punishment for those who can’t [...] it’s a matter of equality” (para. 17). Pay-to-stay paves a slippery slope for race- and class-based discrimination in the justice system. The government is required to protect all offenders equally, regardless of race, socio-economic status, religion, or sexual preference. Ability to pay should not determine a citizen’s level of freedom to and freedom from government protection. “Capitalism and correctional systems don’t mix well,” claim Levenson and Gordon (2007), “[...] resistance to pay-to-stay essentially boils down to a wariness of allowing the government to shirk one of its primary obligations” (p. 70).

The pay-to-stay program is not the core problem; rather, it is the racially framed institution that supports its existence. The mere existence of pay-to-stay jails is an acknowledgement by the state that prisons and jails are overcrowded, abusive, and racialized systems. Yet, the most recent solution has been to create a two-tiered jail system in which incarceration depends on status. As long as pay-to-stay jails are seen as a solution to the problem, the penal system of oppression and segregation will continue.

The introduction of pay-to-stay programs has shed more light on racial and class inequalities in the U.S. penal system. Regardless of intention, whether to balance local budgets or decrease overcrowding, the pay-to-stay program reproduces an oppressive institution whereby offenders are separated into categories of deservedness and privilege. Pay-to-stay programs allow privileged populations to “pay” for their crime while avoiding the dehumanizing, demoralizing, and socially damaging experience of confinement in overcrowded county jails. In other words, pay-to-stay programs dictate

who is and, more importantly, who is *not* exempt from the consequences of mass incarceration and the growing prison economy.

Concluding Thoughts & Suggestions for Future Research

The significant lack of empirical data on pay-to-stay programs is undeniable. Such penal initiatives should be of growing concern to the public, as the U.S. criminal justice system shifts further in to the political spotlight. The U.S. penal system is nearing its financial breaking point, demanding attention and change from those in power. The prison crisis, driven by budgetary concern, is now commanding attention from presidential prospects and other U.S. leaders. It is important to study reform initiatives like pay-to-stay as penal debates are gaining momentum in the political arena. To the degree that cost-cutting measures and budgetary restraints have influenced current debates, there is a fear that the solution will be to shift even more of the costs on to inmates.

The recent “smart on crime” and “right on crime” penal reform movements acknowledge that mass incarceration must come to an end, and push for smarter and cheaper incarceration alternatives. “Smart” and “right” on crime movements are able to address issues within the justice system without appearing lenient toward prisoners (Aviram, 2015). In Aviram’s *Cheap on Crime* (2015), she argues “the advent of the financial crisis has given rise to a prominent new discourse of cost, frugality, and prudence, which has permeated our political and public conversations about corrections and has become a powerful rhetoric and motivator in political campaigns and administrative negotiations” (p. 5). However, cost-saving measures may not always

translate to decarceration. As California has witnessed with the implementation of AB 109, the legislation simply shifted the fiscal responsibility of prisoners to the county level. This inmate displacement may have slightly reduced state and federal prison populations, but it placed a burden on city and county level facilities. Counties that are still recovering from the 2008 economic crisis are left with the responsibility of housing more inmates while dealing with the associated increase in cost. Pay-to-stay programs, therefore, may become a viable option in the minds of jail administrators and community members. The program addresses prison overcrowding and the fiscal crisis without disrupting the race and class constructs of greater society. Pay-to-stay programs also align with the “smart on crime” and “right on crime” initiatives while still providing a punishment for criminals—however lax that punishment may be. There is a looming risk that inmate-financed programs such as pay-to-stay, will become acceptable solutions to the prison crisis.

Mass incarceration has been rarely discussed in the political arena, however, penal reform has recently become a major topic in the 2016 Presidential debates. The corrections system has been under fire recently due to its steep costs, immense overcrowding, and the increasing momentum of Black Lives Matter—an activist movement that protests against racial profiling by police and the overrepresentation of African Americans in the criminal justice system. The movement, which began in 2013 with the murder of Trayvon Martin, has helped bring justice and racial inequality in to the spotlight. Protests have taken place around the country, even interrupting presidential campaign speeches, and have placed great scrutiny on police officers and correctional

institutions. The U.S. justice system is closer than it has been in the past four decades to a pivotal moment of change. The direction of change, however, is still unknown.

Future research should focus on the fairness and equality of money-making correctional programs, such as the pay-to-stay initiative, prison room and board fees, and the broader prison industrial complex. Due to the lack of studies surrounding pay-to-stay programs, any future research would add important knowledge to the field of criminology. An in-depth, quantitative analysis of the pay-to-stay phenomenon would help provide necessary data, such as inmate demographics, costs of the program, and public opinion polls. Qualitative or ethnographic studies would help analyze important information that may be missing from the research, such as the pay-to-stay inmate experience, opinions of jail administrators and correctional staff, and the experience of inmates who were ineligible for the program. Studies should, even more importantly, focus on prison alternatives, reform, decarceration, and abolition, as these are the only ways to undo the damage and begin addressing the inequalities produced by mass incarceration in the United States.

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APPENDIX A: List of Fremont Sustainability Study Recommendations

Strategic Sustainability Study
Attachment A: List of Recommendations

Management Partners

Attachment A: List of Recommendations

- Recommendation 1. Adopt a comprehensive list of budget principles to provide a meaningful and easy to understand framework for maintaining financial discipline.
- Recommendation 2. Issue a request for proposals to outsource all landscaping maintenance functions.
- Recommendation 3. Conduct managed competition for residential street sweeping, allowing City staff to propose cost saving reductions and efficiencies.
- Recommendation 4. Consolidate police call taking and dispatch activities for Fremont, Newark and Union City.
- Recommendation 5. Consolidate call taking and dispatch activities between the Fremont police and fire departments.
- Recommendation 6. Transition out of human services functions that rely on general fund support and/or are redundant with those provided by
- Recommendation 7. Negotiate two-tier retirement plans for all labor groups. Return to the benefit levels in place prior to the existing benefits.
- Recommendation 8. Renegotiate labor contracts to provide only those specialty pays required for sound business purposes.
- Recommendation 9. Reduce or eliminate educational incentive pay.
- Recommendation 10. Negotiate the elimination of EMT specialty pay for fire personnel.
- Recommendation 11. Negotiate the phasing out of health benefits allowance excess cash (alternative benefits compensation) provisions.
- Recommendation 12. Utilize the FLSA-approved methodology for calculating overtime, which excludes leave time as time worked from the calculation.
- Recommendation 13. Eliminate the Health Benefits Allowance and alternative benefits compensation provisions for temporary employees.
- Recommendation 14. Implement a 10- to 15-step range to spread out merit (performance) increases over six to nine years rather than the current three years.
- Recommendation 15. Conduct an analysis of recruitments completed over the past five years to ascertain positions for which large numbers of qualified applicants apply and reduce entry-level compensation for these positions.
- Recommendation 16. Modify the fleet internal service fund to capture and allocate all fleet maintenance, operating and replacement costs.
- Recommendation 17. Implement the rotating 4/10 patrol schedule recommended by the Police Department's Shift Configuration Committee.
- Recommendation 18. Negotiate changes in MOUs to institute caps on leave usage and strengthen management's ability to control scheduled and unscheduled leave.

- Recommendation 19. Negotiate with the Fremont Firefighters Association to enable the City to make policy level decisions for matching staffing to workload and to eliminate constant staffing overtime.
- Recommendation 20. Develop and implement a flexible brown-out schedule for engine and truck companies that matches staffing to workload demand.
- Recommendation 21. Convert selected public safety positions from sworn officers to civilian employees.
- Recommendation 22. Develop an IT Strategic Plan to guide the City's technology investments.
- Recommendation 23. Consolidate responsibility and resources for information technology support from the Police Department and transfer to the City's central IT function.
- Recommendation 24. Allocate City cell phones on the basis of critical business necessity and offer a nominal cell phone allowance for City-related calls to employees for whom a City-provided cell phone is not essential.
- Recommendation 25. Fund eligible City projects or programs with CDBG grant dollars to the extent possible, before making funds available to outside organizations.
- Recommendation 26. Place a measure on the November 2012 ballot to remove the cap from the paramedic tax.
- Recommendation 27. Determine the Council's interest in asking the voters to approve new or increased taxes.
- Recommendation 28. Conduct a comprehensive fee study and recommend changes to the City Council.
- Recommendation 29. Conduct an in-depth review of Development Cost Center fees with a goal of achieving full cost recovery.
- Recommendation 30. Develop an implementation plan for a "pay to stay" program for the Fremont Detention Center.
- Recommendation 31. Develop a comprehensive asset management program, identify market rental rates and subsidies, and sell unneeded and under-performing properties.
- Recommendation 32. Initiate a Proposition 218 protest hearing process to increase the Clean Water Protection fee for FY 2012/13.
- Recommendation 33. Add at least one analytical position to the budget to provide immediate and ongoing analytical support.

APPENDIX B: Fremont Police Department Policy 915

Policy

915

Fremont Police Department
Policy Manual

Alternative Confinement ("Pay-to-Stay") Program

915.1 PURPOSE AND SCOPE

Fremont Police Department offers a Pay-to-Stay Program as an alternative to confinement in Alameda County Jail for qualified convicted misdemeanor defendants who wish to participate. This is a confinement program and participants are housed in the Fremont Detention Facility.

915.2 PARTICIPANT QUALIFICATIONS

- (a) Participants in the Pay-to-Stay program must complete and submit all required forms and documents by mail or in person at least 10 days prior to the desired incarceration start date. Any omissions or unanswered questions on the application will result in a delay of the process or a denial. Required forms and supporting documents include:
 1. Pay-to-Stay application (see Appendix 915)
 2. Signed and dated Agreement to Follow Rules and Conditions of Confinement (see Appendix 915)
 3. Proof of negative TB screening, dated no earlier than 90 days before application submission
 4. Commitment order issued by the court
 - (a) Conviction must be for a misdemeanor
 - (b) Order must specify number of days to be served, initial charge(s) and conviction information
 - (c) Order must specify that the sentence can be served at the Fremont Detention Facility
- (b) Participants will be prescreened for suitability and to confirm that all of the established conditions of the program are met. Once approved, the Detention Facility manager will notify the participant of their acceptance, notify the appropriate magistrate of the acceptance, and prepare all associated paperwork into a packet which will be forwarded to the Control Room to coincide with the arrival date of the participant.
- (c) A daily fee of \$155.00 and a one time processing fee of \$45.00 are charged. All fees are due on the first day of commitment. Payment must be made in cash, credit card or Cashier's Check payable to: "City of Fremont."
- (d) Participant must meet standard booking requirements as outlined in Jail Directives, Series N.
- (e) Participants are expected to report at the time agreed upon by the approving Detention Supervisor and be prepared to stay the full term of their requested commitment time.
- (f) Participants must present one of the following forms of identifications:
 1. United States or foreign government-issued passport
 2. Permanent Resident Card
 3. Driver License or state photo identification card issued by the Department of Motor Vehicles

Alternative Confinement ("Pay-to-Stay") Program - 803

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4. United States Armed Forces Identification with photo
- (g) Participants may bring the following items into the Detention Facility. All other property shall be inventoried for safekeeping.
1. Comfortable clothing - no hats, clothing with drawstrings/slogans
 2. One additional clean shirt or sweat shirt - no hood, no strings
 3. One set of undergarments (e.g., t-shirt, underwear, a pair of socks)
 4. One pair of sweat pants - no drawstring
 5. One book- paperback only, no hardcovers
 6. Prescription glasses/contact lenses, contact lens solution - sealed
 7. Deodorant - sealed and unused, no spray bottle
 8. Currency - no more than \$50, no loose change
 9. Sandals will be provided
- (h) Fremont Detention Facility is a Type 1 jail facility, which has no on-site medical staff and is subject to a number of legal and operational restrictions. Due to these restrictions, participants with any of the following conditions shall not be accepted into the Pay-to-Stay program.
1. Drug or alcohol addiction/withdrawal
 2. Epilepsy or seizures
 3. Mental illness requiring the attention of psychiatric professional
 4. History of suicide attempts or suicidal tendencies
 5. Requiring medications (subject to review)
 6. Contagious disease
 7. Diabetes, hypoglycemia or hyperglycemia
 8. History of violent behavior
 9. Prior convictions of certain sex or drug offenses that tend to show predation or criminal sophistication that would endanger other participants or staff
 10. Prior felony convictions are subject to review
 11. Prior history of gang affiliations is subject to review
 12. Prior history of non-compliance to any Pay-to-Stay program
 13. Any condition or specific circumstance that may endanger the health and safety of the participant, other prisoners or staff

915.3 CORRECTIONS MANAGEMENT SYSTEM (CMS) ENTRIES

- (a) The accepting Detention Officer will review the documents presented by the participant and confirm his/her identity.
- (b) The Detention Officer will enter the participant into CMS as a New Booking, type "Temporary."
- (c) Inmate Type will be "PPP" (for Pay-to-Stay).
- (d) Jail Status will be "FAST" (in and out booking).
- (e) Arrival time will be the time of first contact at the control room window.
- (f) Release time will be the time the participant is released from commitment.

Alternative Confinement ("Pay-to-Stay") Program - 804

Fremont Police Department

Policy Manual

Alternative Confinement ("Pay-to-Stay") Program

- (g) Arrest Information tab - Agency is Fremont, date and time same as arrival time, location of arrest is 1990 Stevenson Blvd., Fremont.
- (h) Charges Tab - Authority is "COMT."
- (i) Management Tab - Only gang affiliation is needed.
- (j) Classification - Complete as normal.
- (k) Upon release from commitment, the Detention Officer will print two copies of the Consolidated Arrest Report (CAR) from the CMS system. One copy will be given to the participant and the other attached to the participant's paperwork. All paperwork packets will be placed into the Detention Facility Manager's mailbox.

915.4 CONFINEMENT PROCEDURES

- (a) Property - All participants will be searched prior to being allowed entry into the jail facility. Any property will be stored per normal procedures.
- (b) Housing
 - 1. All participants will be segregated from the pre-arraignment prisoners in an area designated for sentenced prisoners.
 - 2. Housing requirements for male and female prisoners shall be observed (California Code of Regulations Title 15).
- (c) Visitation
 - 1. Visitations will be limited to two 30-minute visitations each day.
 - 2. Visitation hours are Monday-Friday, 7 p.m. to 10 p.m., and Saturday and Sunday, 1 p.m to 5 p.m.
 - 3. Visitation rules and restrictions will be followed, as outlined in Jail Directive D-01.
- (d) Meals and diet
 - 1. Meals and diet guidelines will be followed as outlined in Jail Directives H-01 and H-03.
- (e) Length of stay
 - 1. Commitment time served is limited to a maximum of four days at a time, for a maximum of 96 consecutive hours.
 - 2. A participant must be released for a minimum of 24 hours before being eligible to serve additional time in the Detention Facility.

915.5 MEDICAL CONDITIONS

- (a) Medical treatment
 - 1. Any illness or injury must be reported to the Detention Officers immediately.
 - 2. For emergency medical treatment, standard Fire Department and Paramedic response shall be used and the participant will be transported to an appropriate medical facility, as required. A Jail Incident Report will be written.
 - 3. For non-emergency medical treatment, the participant will be transported to an appropriate medical facility, as required. Guidelines will be followed as outlined in Jail Directive F-07.
- (b) Release due to medical reasons

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Alternative Confinement ("Pay-to-Stay") Program

1. In the event that a participant is released from the Pay-to-Stay program due to a documented emergency or non emergency medical reason, posted fees will be applied to subsequent Pay-to-Stay program, if the time served is completed within six months from the date of the release from custody.
2. In order to return to the Pay-to-Stay program, a participant shall submit the following:
 - (a) A medical clearance from his/her physician. The release must be without restrictions or follow-up treatments.
 - (b) A new court order authorizing participant to return to the program.
3. If the participant does not complete his/her jail sentence or does not formally request a refund of fees within six months from the date of his/her release from custody due to medical reasons, all fees will be forfeit and no refund will be made.
4. A refund of the unused portion of the fees may be obtained by written request from the participant to the Detention Facility Manager. Valid proof that the participant is unable to return within six months or is no longer required to complete his/her sentence must accompany the request for refund.

915.6 REMOVAL FROM PAY-TO-STAY PROGRAM

At the discretion of a Detention Supervisor, a participant may be removed from the Pay-to-Stay program if he/she:

- (a) Fails to follow the directions of the detention staff,
- (b) Violates the Agreement to Follow the Rules and Conditions of Confinement, or
- (c) Becomes disruptive to jail operations.

915.7 COMPLETION OF THE PROGRAM

- (a) Upon completion of the program, participants will be released and issued a completion document by the releasing Detention Officer.
- (b) All Pay-to-Stay forms and documents will be retained by the Detention Facility Manager. The Detention Facility Manager will forward copies of the completion documents to the appropriate magistrates in a timely manner.

APPENDIX C: Fremont Pay-to-Stay Program Application



FREMONT POLICE DEPARTMENT PAY-TO-STAY PROGRAM

APPLICATION

Last Name _____ First _____ Middle _____ Date of birth ____/____/____
 Sex: Male Female Height: _____ Weight: _____ Hair: _____ Eyes: _____ Race: _____
 Current address _____ Apt. no. _____ Driver License # _____
 City _____ State _____ Zip Code _____ Social Security # Last Four _____
 Home Phone (____) ____-____ Work Phone (____) ____-____ Cell Phone (____) ____-____
 Email address _____
 Emergency contact: _____ Phone: (____) ____-____

MEDICAL INFORMATION QUESTIONNAIRE

Do you have any of the following medical problems? If yes, check symptoms on list.

Diabetes Tuberculosis Seizures Epilepsy Hepatitis HIV Positive
 Allergies Heart disease Hypertension Fainting Spells Psych. problems
 Asthma – Type of inhaler: _____ Frequency: _____
 Are you currently under the care of a physician? Yes No
 If yes, name and phone number of physician _____
 Who is your regular physician? _____ Phone number: (____) ____-____
 Are you currently under doctor's care for medical or psychiatric reasons? Yes No
 Are you taking or do you need to take any prescribed medications? Yes No
 If yes, detail types(s) and dosage(s): _____
 Have you ever attempted suicide? Yes No When? _____
 Who is your medical insurance carrier? _____
 Policy number: _____ Phone number: (____) ____-____



COURT INFORMATION

Court case number: _____ Court: _____ Charge(s): _____
Sentencing: _____

I declare that I have read, been given the opportunity to review and ask questions about each question on this form. My signature indicates that I fully understand each of the above listed questions and conditions. I hereby certify that me responses are true and complete. I understand that any misstatement of facts will subject me to disqualification from the Fremont Police Detention Facility Pay-to-Stay program.

Applicant signature _____ **Date:** _____

FOR OFFICE USE ONLY:

Name of applicant: _____
Last Name First

PFN: _____ CII: _____ Rap Sheet Reviewed

Previous arrest information:

Charges: _____ Year: _____
Charges: _____ Year: _____
Charges: _____ Year: _____
Charges: _____ Year: _____

Approved: YES NO

Detention Facility Manager/Supervisor

APPENDIX D: Fremont Pay-to-Stay Conditions



FREMONT POLICE DETENTION FACILITY “Pay-to-Stay Program”

The Fremont City Jail offers a Pay-to-Stay Program for qualified men and women who have been sentenced to serve time in jail. The Pay-to-Stay Program offers an alternative to serving time in the Alameda County Jail. With the approval of the sentencing Magistrate, men and women can serve their jail sentence in our modern, clean, and efficiently operated jail facility.

Program participants will be housed in separate sleeping quarters from all other inmates and will have access to day room areas, showers and inmate phones. The housing pods are limited to sixteen participants. Males and Females will be housed separately in housing units. Participants in this program must serve their sentences consecutively and will be imposed a daily fee of \$155.00 and a one time processing fee of \$45.00 due on the first day of commitment. Individuals wishing to participate in the Pay-to-Stay Program must undergo a prescreening for suitability in order to determine that all of the established conditions of the program are met.

Conditions for Participation

Participants must meet the following mandatory conditions: It is the applicant’s responsibility to ensure that the following documents are received by the Fremont Police Department Detention Facility at least five (5) days prior to the check-in/surrender date.

1. Payment of \$155.00 per day and a onetime processing fee of \$45.00 must be paid in full on the check-in/surrender date and must be made in Cash, Cashiers Check or Money Order, payable to: “The City of Fremont”.
2. Participants that fail to keep their scheduled commitment/surrender/check-in date and do not serve their sentence will forfeit any paid fees. If they desire to reschedule, new fees will be required. If the sentence is not completed as ordered, the Court will be duly notified.
3. Must have a licensed Doctor’s verification of a recent (less than one year from the beginning date of commitment) Tuberculosis (TB) Screening test with negative results. Participant is responsible for all costs associated with the TB test.
4. Return of this form signed by the applicant.
5. Court Commitment Order – Specifying number of days to be served and articulation that the sentence can be served at the Fremont Detention Facility.
6. Participants are expected to report at the time agreed upon by the approving Detention Supervisor and be prepared to stay the full term of the commitment. A State or US Federal government issued picture identification or foreign government passport with picture will be required at the time of surrender. Examples of identification that are **not** accepted are: School ID, voter registration cards, temporary Drivers licenses, or any private company ID’s.



7. Participants must obey all laws and jail facility rules and regulations during their participation in the Fremont Detention Facility.

Conditions Continued

8. Participants will not leave the Detention Facility while serving their sentence unless accompanied by a Police Officer or Detention Officer. Leaving the premises unaccompanied and without authorization is a violation of Section 4532 of the California Penal Code, (Escape from Custody.)

9. All articles of personal hygiene: soap, toothbrush and towels will be furnished to you.

Participants may bring the following items:

- Comfortable clothing and shoes

(No baseball caps, clothing with drawstrings or belts nor gang-affiliated clothes)

- One additional clean shirt

- One additional clean pair of socks

- One change of underwear

- Government issued photo identification

- No jewelry is allowed, including piercings.

- One book

All other items will be considered contraband and may result in the immediate removal from the program

10. Any illness or injury will be reported to the Detention Officers immediately.

11. Limited public parking is available across the street from the Fremont Detention Facility at the Central Park basketball area. We encourage participants to arrange a drop off and pick up as there is no security for parked vehicles.

12. Verification for time served will be provided by our staff at the conclusion of your commitment. It is your responsibility to retain and show proof of completion to the Court.

13. Any visitations must have prior approval and are conducted daily between the hours of 1PM to 5PM Saturday and Sunday and 7PM to 10PM Monday through Friday. All visitors of Pay-to-Stay participants shall complete a Visitation Request form available on our web-site. Visitors must present State or US Federal picture ID when arriving for visitation. A criminal record check including a warrant check will be performed on all visitors.

14. The Fremont Detention Facility cannot accommodate persons with medical problems requiring the administration of medication because we have no on-site medical staff.

I certify that I have read, understand, and will comply with the above listed rules and terms.

Applicant's Printed Name

Applicant's Signature

Date

APPENDIX E: Fremont Pay-to-Stay Agreement

FREMONT POLICE DEPARTMENT PAY-TO-STAY PROGRAM

AGREEMENT TO FOLLOW RULES AND CONDITIONS OF CONFINEMENT

Name of participant: _____

All participants are required to follow and abide by all rules listed below:

1. Participants will keep their area cleaned and free of clutter at all times.
2. Participants will not violate laws, gamble, make excessive noise, or communicate with pre-arraignment prisoners.
3. Participants are not allowed to smoke or use other tobacco products.
4. Participants are authorized to mail one letter during their stay at no cost.
5. Participants who have grievances or complaints will contact the on-duty Detention Supervisor.
6. Any person who maliciously damages or destroys Fremont Detention Facility property may be subject to a fine of \$10,000, imprisonment in a State Prison, or both. (Penal Code Section 4600).
7. It is a felony to possess or bring into the Fremont Detention Facility any of the following: firearm, deadly weapons, tear gas, explosive, drugs or narcotics of any kind, alcoholic beverages, or any paraphernalia used to consume any narcotic or drugs. (Penal Code Sections 4573, 4574).
8. Food and trash will not be permitted to accumulate in any area.
9. Participants will be awakened at approximately 6 a.m. each day for breakfast.
10. Participants will not participate in any fight, will not threaten or challenge another person, will not enter any cell other than the one they are assigned, and will not loiter in any restricted area unless instructed to do so by the staff.
11. Participants shall not move or change assigned beds or cells.
12. Participants shall not tamper with any light fixture, vent, electrical wire or television.
13. Blankets, sheets and/or clothing shall not be hung up as curtains to cover any of the following: interior lights, windows, walls, bed frames or any other area.
14. Participants who use telephone privileges to make annoying or threatening calls to another, or who otherwise abuse the privilege, will have phone access suspended. Cell phones and all other electronic devices are prohibited.
15. Participants shall not sit, stand, climb, or lie on any tables, stair rails, or trash container.
16. Participants must wear their ID wristbands at all time.
17. Participants are subject to search of their person, property, and housing area.
18. Any illness or injury must be reported immediately to a Detention Officer.

All participants are expected to follow the following guidelines:

1. Participants should shower daily.
2. Lights and television may be turned off at 10 p.m. each night.

Participants are expected to report at the time agreed upon by the approving Detention Supervisor and be prepared to stay the full term of their requested commitment time.

Participants must present one of the following forms of identifications:

- United States or foreign government-issued passport
- Permanent Resident Card

- Driver License or state photo identification card issued by the Department of Motor Vehicles
- United States Armed Forces Identification with photo

Participants may bring the followings items into the Detention Facility:

- Comfortable clothing - no hats, clothing with drawstrings/slogans
- One additional clean shirt or sweat shirt - no hood, no strings
- One set of undergarments (e.g., t-shirt, underwear, a pair of socks)
- One pair of sweat pants - no drawstring
- One book- paperback only, no hardcovers
- Prescription glasses/contact lenses, contact lens solution - sealed
- Deodorant - sealed and unused, no spray bottle
- Currency - no more than \$50, no loose change
- Sandals will be provided

Length of Stay

- Commitment time served is limited to a maximum of four days at a time, for a maximum of 96 consecutive hours.
- A participant must be released for a minimum of 24 hours before being eligible to serve additional time in the Detention Facility.

Visitation for Pay-to-Stay participants

- Visitations will be limited to two 30-minute visitations each day.
- Visitation hours are Monday-Friday, 7 p.m. to 10 p.m., and Saturday and Sunday, 1 p.m to 5 p.m.
- Visitation rules and restrictions will be followed, as outlined in Jail Directive D-01.

Removal from the Pay-to-Stay program

At the discretion of a Detention Supervisor, a participant may be removed from the Pay-to-Stay program if he/she:

- Fails to follow the directions of the detention staff,
- Violates the Agreement to Follow the Rules and Conditions of Confinement, or
- Becomes disruptive to jail operations.

My signature indicates that I have read, understand, and agree to follow all rules and instructions listed above. I understand that any violation of these rules can result in removal from the program, forfeiture of paid fees or arrest on additional charges.

X
Participant Signature _____ Date _____

X
Witnessing Officer _____ Date _____

APPENDIX F: Fremont City Council Pay-to-Stay Draft Resolution

DRAFT

RESOLUTION NO. 2012-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
FREMONT UPDATING THE MASTER FEE SCHEDULE FOR
THE FREMONT DETENTION FACILITY ALTERNATIVE
CONFINEMENT (“PAY-TO-STAY”) PROGRAM**

WHEREAS, the City has established fees for specific services provided by the Police Department which are reflected in the City’s Master Fee Schedule; and

WHEREAS, the fees established for these services are intended to cover but not exceed the City’s costs of providing the services; and

WHEREAS, the Police Department has reviewed the administrative processing fee charged for application to the alternative confinement program, and has calculated the fee using the current wage-billing schedule for labor costs; and

WHEREAS, in addition to fees for specific services, the City’s Master Fee Schedule also reflects current rates for proprietary services offered by the City, such as facilities rental, etc.; and

WHEREAS, separate from the administrative processing fee, the Police Department Detention Facility staff have proposed a daily rate of \$155 be charged to each person who elects to participate in the alternative confinement program.

NOW, THEREFORE, based on the information set forth in the report to the City Council dated March 20, 2012, as well as any information submitted to the City Council during the public hearing, or considered by the City Council during its deliberations on this matter,

THE CITY COUNCIL OF THE CITY OF FREMONT HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Master Fee Schedule (Resolution No. No. 8672, as amended) is hereby further amended by revising Article VII, Section A, to add a new Subsection 18 to read as follows:

| | | |
|-----------|--|----------|
| 001. | 18. Alternative Confinement (“Pay-to-Stay”) Program | |
| 2162.3335 | a. Application Processing Fee | \$ 45.00 |
| 2162.3336 | b. Daily rental charge | \$155.00 |

SECTION 2. This resolution shall be effective _____, 2012

* * *

ADOPTED, _____, 2012, by the City Council of the City of Fremont by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Assistant City Attorney