

March 26, 1992

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

CLEARING OUTSTANDING ARREST WARRANTS
FOR HOMELESS-RELATED CHARGES

On February 20, 1992, a special workshop of the City Council met to discuss the issue of homelessness in the City of San Diego. At that time, the City Council asked my office to report on what options exist for resolving outstanding arrest warrants for misdemeanors committed by homeless persons.

Most misdemeanor cases are routinely dismissed by the court once an arrest warrant has been outstanding for five years. The five-year period was set by agreement of the San Diego County courts for convenience; the law does not require dismissal.

In the case of homeless-related offenses, defendants are usually cited resulting in a signed promise to appear in court. In the rare instance where a homeless person is booked into jail on a misdemeanor, that person will often be released prior to trial upon signing a promise to appear in court. In either instance, if the defendant fails to appear in court as promised, the judge issues a "bench warrant" of arrest. Even if years elapse between issuing the bench warrant and arresting the defendant on the warrant, a court will not ordinarily dismiss the case for failure to serve the warrant in a timely fashion. This is because the defendant knows of the charges and is responsible for the delay by willfully failing to appear. The vast majority of homeless-related misdemeanor warrants arises from citations filed directly with the court which are not reviewed by my office until the defendant appears in court. Each case is then evaluated on its merits and a decision is made at that time to either prosecute the case or dismiss it.

Some stale cases with outstanding warrants may be difficult to prove in court beyond a reasonable doubt, because officers' memories dim with the passage of time. This is particularly true with the comparatively minor misdemeanors, such as illegal lodging (Penal Code section 647(i)). In many of these cases, the officers' reports are so brief they do not refresh the officers' recollections sufficiently to obtain a conviction. In some instances, defendants are picked up on old warrants on cases for which records have been destroyed. The San Diego Police Department keeps records of misdemeanor citations and notify

letters for two years. Arrest reports are kept for seven years.

It is well within the bounds of professional prosecutorial discretion to move to dismiss certain minor stale charges when it becomes apparent that they cannot be proven beyond a reasonable doubt given the age of the cases and the lack of written reports. It would therefore be reasonable for the prosecutors to consider moving to dismiss the following Municipal Code violations after a warrant has been outstanding for more than eighteen months:

- 56.54 Drinking in a controlled area
- 56.55 Urinating/defecating in public
- 63.02.12 Overnight camping in park/beach
- 63.20.13 Overnight sleeping on beach

The time and burden associated with identifying, reviewing and processing the cases for dismissal would strain the resources of the justice system. As noted above, many homeless-related citations are filed directly with the court after being issued by the San Diego Police Department. Presumably the Marshal's office could identify such warrants based on the charges. Then, it would take some work for the court clerks to locate the complaints and pull them for review by my office. The Municipal Court administrator has indicated that she would be willing to work with us on such a project. Once identified, each case can be evaluated on its own merits.

Although there may be a perception that these outstanding arrest warrants represent fines which could be collected by the County with a portion eventually passed on to the City, it is our experience that many of the citations are written against homeless or destitute persons from whom the City will not receive money in any case. In many instances, any fine levied against a homeless individual is converted to time in custody or public work service, neither of which results in any direct financial benefit to either the City or the County.

Dismissing older cases of minor violations where there is no reasonable probability of conviction at trial would help the court system, and the prosecutor, by reducing the number of cases in the system. There would be some costs associated with purging the system of these old cases, but it would not result in loss of monies to the City since it is unlikely that convictions could be obtained, or that fines would be paid.

The City Attorney is charged under the laws of the State of California with prosecuting crimes, and must make informed decisions, independent of the legislative branch, whether any particular case should be prosecuted or be recommended for dismissal. Of course, the ultimate authority to dismiss a case which has been filed rests with the court. This is not to say, however, that the City Attorney, local law enforcement agencies and the San Diego Municipal Court cannot work together to make the criminal justice system more productive and efficient.

Respectfully submitted,

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RC-92-27