

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** October 18, 2021

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Mara W. Elliott, City Attorney

**SUBJECT:** Amended: Role of the Criminal Division of the San Diego City Attorney's Office

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Several Councilmembers have asked for more information concerning the prosecution of crimes by my Office. As explained in the San Diego City Charter, “[t]he City Attorney shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of the violation of the state laws occurring within the city limits of The City of San Diego for offenses constituting misdemeanor.” San Diego Charter § 40.1. In addition, by agreement between my Office and the District Attorney, the City Attorney may prosecute misdemeanor crimes<sup>1</sup> within the City of Poway and 4S Ranch.

**Referral Process**

On average, my Office reviews for possible prosecution more than 1,600 referrals a month from 45 different law enforcement agencies each year, including the San Diego Police Department (SDPD), the San Diego Harbor Police Department, the San Diego Sheriff's Office, the San Diego Airport Authority, San Diego Metropolitan Transit System, the University of California San Diego and San Diego State University police departments, and the San Diego Humane Society.

From those referrals, my Office files more than 1,000 criminal complaints each month in San Diego Superior Court. These cases include driving under the influence of alcohol and/or drugs, being under the influence or in possession of drugs, battery, vandalism, graffiti, theft, weapons offenses, hate crimes, illegal street racing, reckless driving, hit-and-run, road rage, furnishing alcohol to minors, minors in possession of alcohol, resisting arrest, utility theft, harassing telephone calls, vehicular manslaughter, embezzlement, credit card fraud, and identity theft. Our Victim Services Coordinators guide victims of crime through the criminal case process.

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<sup>1</sup> Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both. Cal. Penal Code § 19.

Regarding citations, a first violation of the San Diego Municipal Code (Municipal Code) is handled as an infraction and sent to Kearny Mesa court.<sup>2</sup> Violations of State law, such as the California Penal Code, are misdemeanors and are handled in San Diego Superior Court. Municipal Code violations can be enforced criminally as misdemeanors or infractions or enforced administratively. Cal. Gov't Code § 36900; Cal. Gov't Code § 53069.4; Municipal Code § 12.0201.

My Office's involvement begins when law enforcement issues a citation for an offense or arrests an individual for the commission of a crime. Once we receive the case from law enforcement, we review it to determine whether the elements of a crime have been met and the case can be proved beyond a reasonable doubt. If these criteria are met, we will prosecute or divert the case.

Historically, pre-plea and post-plea diversion programs reduced jail populations by directing cases away from the trial court process and into programs geared toward addressing the underlying behavior. To this end, California Penal Code section 1000 allows courts to divert individuals arrested for possessing controlled substances or being under the influence in lieu of pleading guilty, thereby avoiding custody.

In January 2021, the California legislature expanded the court's discretion to divert nearly all misdemeanors. Specifically, California Penal Code section 1001.95 provides as follows:

- (a) A judge in the superior court in which a misdemeanor is being prosecuted may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant pursuant to these provisions.
- (b) A judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.
- (c) If the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant.
- (d) If it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings.

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<sup>2</sup> Discharge into a storm drain, discharge of a firearm, and violation of the safe storage of firearms ordinances are handled as misdemeanors and not infractions.

(e) A defendant may not be offered diversion pursuant to this section for any of the following current charged offenses:

(1) Any offense for which a person, if convicted, would be required to register pursuant to Section 290.

(2) A violation of Section 273.5.

(3) A violation of subdivision (e) of Section 243.

(4) A violation of Section 646.9.

In collaboration with the SDPD, the County of San Diego, and the San Diego Public Defender, my Office created the Prosecution and Law Enforcement Assisted Diversion Services (PLEADS) program in 2019 to offer drug treatment in lieu of prosecution. Instead of booking an individual into jail and potentially prosecuting that person for being under the influence, SDPD law enforcement officers offer the option of treatment. Those who accept treatment are sent to the Sobering Services Center run by McAlister Institute, where they are assessed by trained staff and linked to local programs ranging from inpatient and outpatient services, detoxification, and other appropriate services.

Infractions are minor offenses punishable only by a fine and are handled in Kearny Mesa court. The City Attorney's Office is not required by law to personally appear to prosecute infractions. See *People v. Carlucci*, 23 Cal. 3d 249 (1979); *People ex rel. Kottmeier v. Municipal Court*, 220 Cal. App. 3d 602 (1990); *People v. Cotsirilos*, 50 Cal. App. 5th 1023 (2020). More than 100,000 infractions are issued each year, which far exceeds City Attorney resources. Our Office trains stakeholders like Park and Recreation staff, Lifeguards, and Code Enforcement officers, to handle infractions in court without the aid of an attorney. This practice has been successful and has enabled us to preserve our limited resources.

### **Prosecutorial Ethics**

As with any attorney licensed in the State of California, the prosecutors in my Office must comply with the California Rules of Professional Conduct. "Prosecutors in criminal cases are subject to discipline if they institute or continue to prosecute a charge that the prosecutor knows is not supported by probable cause." Tuft, Peck and Mohr, et al., Cal. Prac. Guide Prof. Resp. Ch. 8-A, § 8:31 (The Rutter Group, Dec. 2020); Cal. Prof. Rules of Conduct, Rule 3.8(a). If the prosecutor discovers a lack of probable cause after filing charges, the prosecutor must notify the court in which the charges are pending and seek dismissal of the action. Cal. Prof. Rules of Conduct Rule 3.8(f).

Cases referred to my Office for prosecution must be accompanied by evidence supporting all elements of a crime. When my Office declines to prosecute a case, we provide the law enforcement agency with an explanation of our action and make ourselves available to provide training as needed. The Civil and Criminal Divisions of my Office provide training upon request and when we believe additional training would be beneficial.



**SAN DIEGO COUNTY SHERIFF'S DEPARTMENT  
EMERGENCY BOOKING ACCEPTANCE CRITERIA - Page 1 COVID-19 PRECAUTION**

**Effective April 14, 2021 at 1801 hours through June 18, 2021 at 1800 hours**

AUTHORIZATION: ASSISTANT SHERIFF ERIKA FRIERSON

FIELD ARREST		WARRANT																															
<b>FELONY</b>																																	
<ol style="list-style-type: none"> <li>Felony Field Charges (New Arrests) * WITH THE EXCEPTION OF THOSE LISTED ON PAGE 2</li> <li>459 PC: Burglary 2<sup>nd</sup> Degree (Book and Release)</li> <li>10851 VC: Vehicle Theft (Book and Release)</li> </ol>		<ol style="list-style-type: none"> <li>All Felony Warrants - Even though charge may be misdemeanor</li> <li>All Domestic Violence Warrants</li> <li>ALL elder, neglect or dependent adult abuse related charges</li> <li>192(c)(2) PC Warrants (Vehicular Manslaughter)</li> <li>Commitment Warrants</li> <li>Juvenile Court Warrants                             <ul style="list-style-type: none"> <li>We accept adults on juvenile court warrants if 25 years or over</li> <li>If under 25, we will accept for booking only if there is a court order to house in an adult facility</li> <li>If under 25, we will accept for booking if additional arrests do not originate from juvenile court</li> </ul> </li> <li>Misdemeanor warrants from the Fugitive Task Force (FTF)</li> <li>1209 CCP Warrants: Civil Contempt of Court, including Out-of-County</li> <li>290 PC Warrants: Sex/Narcotic Registrant</li> <li>HS 120280 Warrants - Public Health</li> <li>Drug Enforcement Administration (DEA) and United States Marshal (USM) Federal warrants will ONLY be accepted DURING the close of Metropolitan Correctional Center (MCC) business hours. MCC Hours of operation: Monday through Friday, 0800-1700 Saturday through Sunday, 0800-1130 Must be Picked up by Agent the following business day</li> <li>State Parole 3056 PC</li> <li>3151 warrants</li> <li>5054.1 PC warrants</li> <li>California Youth Authority (CYA) warrants</li> <li>All 1551.1 PC Fugitive Warrants</li> <li>United States Military Deserter/AWOL felony warrants</li> <li>"Out-of-County" warrants:                             <ul style="list-style-type: none"> <li>Felony: Acceptable</li> <li>1209 CCP Warrants: Acceptable</li> <li>Misdemeanor (including DV): NOT Acceptable</li> </ul> </li> </ol>																															
<b>MISDEMEANOR</b>																																	
<ol style="list-style-type: none"> <li>23152(a) - (g) VC: Driving under the influence alcohol/drugs</li> <li>21200.5 VC: Ride Bike under the influence alcohol/drugs</li> <li>11550(a) HS: Under the influence</li> <li>647(f) PC: Disorderly Conduct/Drunk in Public</li> <li>655(b) HN: Operate Boat/Vessel under the influence</li> <li>Violent Misdemeanors                             <table border="0" style="width: 100%;"> <tr> <td>17500 PC</td> <td>26100 PC</td> <td>25850(a) PC</td> </tr> <tr> <td>25400(a)(1) PC</td> <td>25400(a)(2) or (a)(3) PC</td> <td></td> </tr> </table> </li> <li>Watch Commander's Discretionary booking</li> <li>Any misdemeanor arrest related to domestic violence</li> <li>Additional Misdemeanors:                             <table border="0" style="width: 100%;"> <tr> <td>192(c)(2) PC</td> <td>1203.2 PC</td> <td>368(c) PC</td> </tr> <tr> <td>243(e)(1) PC</td> <td>243.4 PC</td> <td>290 PC</td> </tr> <tr> <td>647.6 (A) PC</td> <td>646.9 PC</td> <td></td> </tr> </table> </li> <li>All Subsections of the following misdemeanors will be accepted.                             <table border="0" style="width: 100%;"> <tr> <td>136.1 PC</td> <td>288.4 PC</td> <td>530.5 PC</td> </tr> <tr> <td>166 PC</td> <td>311.2 PC</td> <td>25400 PC</td> </tr> <tr> <td>272 PC</td> <td>311.3 PC</td> <td>25850 PC</td> </tr> <tr> <td>273.5 PC</td> <td>314 PC</td> <td>23153 PC</td> </tr> <tr> <td>273.6 PC</td> <td>417 PC</td> <td>2800.1 VC</td> </tr> </table> </li> </ol>		17500 PC	26100 PC	25850(a) PC	25400(a)(1) PC	25400(a)(2) or (a)(3) PC		192(c)(2) PC	1203.2 PC	368(c) PC	243(e)(1) PC	243.4 PC	290 PC	647.6 (A) PC	646.9 PC		136.1 PC	288.4 PC	530.5 PC	166 PC	311.2 PC	25400 PC	272 PC	311.3 PC	25850 PC	273.5 PC	314 PC	23153 PC	273.6 PC	417 PC	2800.1 VC		
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<b>OTHER</b>																																	
<ol style="list-style-type: none"> <li>Bail Bond Surrenders: 24 hours a day</li> <li>Grand Jury Indictments</li> <li>California Military and Veterans Code Section 450: AWOL Sentencing</li> </ol>																																	

**NOTE: Only misdemeanor warrants that meet the booking acceptance criteria will be accepted, booked and assigned the specified bail.**

**EFF 4/14/21**

**SAN DIEGO COUNTY SHERIFF'S DEPARTMENT  
EMERGENCY BOOKING ACCEPTANCE CRITERIA - Page 2 COVID-19 PRECAUTION**

**AUTHORIZATION: ASSISTANT SHERIFF ERIKA FRIERSON**

**The following charges are to be processed as "Cite and Release" in the field and ONLY accepted with 1) Watch Commander approval, OR 2) Comes in with additional bookable field arrest charges, OR 3) An approved Request for Bail Increase**

1 BP 4324	Forge/Etc. Prescription	32 PC 459.5	SHOPLIFTING
2 HS 11173	OBTAIN CNTL SUB BY FRAUD	33 PC 476a(a)	NONSUF FUNDS:CHECK
		and (b)	
3 HS 11350(a)	POSSESS NARCOTIC CNTL SUB	34 PC 484	THEFT
4 HS 11355	SELL/ETC IN LIEU:CNTL SUB	35 PC 484e	ACQUIRE/USE/TRANSFER ACCESS CARD FRAUD
5 HS 11357	POSS CONCENTRATE CANNABIS	36 PC 484g	THFT:USE ACCESS CARD DATA
6 HS 11358	PLANT/ETC MARIJUANA	37 PC 484h	ACCESS CARD OFFENSE BY RETAILER
7 HS 11359	POSS CANNABIS FOR SALE	38 PC 484j	PUBLICATION OF ACCESS CARD NBR
8 HS 11360	SELL/TRANS MARIJUANA	39 PC 484.1	FALSE IDENTITY PAWN BROKER
9 HS 11364	CNTL SUB PARAPHENALIA	40 PC 485	APPROPRIATES LOST PORPERTY
10 HS 11368	FORGE NARCOTIC PRESCRIP	41 PC 487	GRAND THEFT
11 HS 11377(a)	POSS NON-NARC DRUG/CONT SUB	42 PC 487a	GRAND THEFT - ANIMAL
12 PC 72	PRESENT FALSE CLAIM	43 PC 487e	GRAND THEFT: DOG
13 PC 85	GIVE BRIBE TO LEGISLATOR	44 PC 487f	PETTY THEFT:DOG
14 PC 86	LEGISLATOR RECEIVE BRIBE	45 PC 487g	GRAND THEFT:DOG FOR SALE
15 PC 127	SUBORNATION OF PERJURY	46 PC 487h	GRAND THEFT: CARGO
16 PC 129	FALSE STATEMNT UNDER OATH	47 PC 487i	PETTY THEFT:PUBLIC HOUS
17 PC 132	OFFER FALSE EVIDENCE	48 PC 487j	GRAND THFT COPPER MATERIAL
18 PC 134	PREPARE FALSE EVIDENCE	49 PC 488	PETTY THEFT
19 PC 137	INFLUENCE TESTIMONY	50 PC 496(a)	REC STOLN PROP
20 PC 138(a)	BRIBE WITNESS	51 PC 496d	POSS STOLEN VEH/VES/ETC
21 PC 154(b)	DEBTOR SELL/CONCEAL PROP	52 PC 602	TRESPASSING
22 PC 156	MISREP CHILD TO INHERIT	53 PC 647	DISORDERLY CONDUCT
23 PC 165	BRIBE PUBLIC OFFICIAL	54 VC 4463 (a)	FORGE/ALTER VEH REG/ETC
		(1) and (2)	
24 PC 281(a)	BIGAMY	55 VC 12500	DRIVE W/O LICENSE
25 PC 284	MARRY SPOUSE OF ANOTHER	56 VC 20002(A)	HIT AND RUN:PROP DAMAGE
26 PC 327	ENDLESS CHAIN SCHEME	57 WI 10980	FRAUD TO OBTAIN AID
27 PC 334	HIDDEN DEVICE TO DEFRAUD	58 FG	Violations of Fish & Game Code (ALL VIOLATIONS)
28 PC 337	GAMING VIOLATIONS (ALL VIOLATIONS)	59 HN	Violations of Harbors & Navigation Code (ALL VIOLATIONS)EXCEPT HN 655(F)
29 PC 337a-f	GAMING VIOLATIONS	60 VC 12500	DRIVE W/O LICENSE
30 PC 350(a)- (b)	MFG/SELL COUNTERFEIT MARK	61 VC 20002(A)	HIT AND RUN:PROP DAMAGE
31 PC 415	DISTURB THE PEACE		