

Interactions with inewsourc

“San Diego police arrest homeless people but no convictions”

Sept. 8, 2022

Question:

We've obtained police data on citations and arrests for encroachment, illegal lodging and vehicle habitation (awaiting data on overnight camping as well). Those cases would go to the City Attorney's Office, correct? We'd like to know the outcomes of these cases. What kind of information is available on citations issued and the money collected? What about the outcome of arrests? How can we find out what happens with these cases?

Response:

Here are the only two copies of memos from our Office that we are aware of concerning encroachment, illegal lodging, etc.:

<https://docs.sandiego.gov/memooflaw/MS-2019-14.pdf>

<https://docs.sandiego.gov/memooflaw/MS-2022-6.pdf>

We have submitted a CPRA request on your behalf for information about enforcement by our Office.

Question:

Just from looking at the data, it appears a lot of cases are being rejected. Can you give me a sense of why that's happening? Roughly half of the cases for encroachment this year were rejected.

Response:

Referrals are evaluated on a case-by-case basis and can be rejected for a number of reasons, including not filing charges if there is insufficient evidence to prove the commission of a crime beyond a reasonable doubt.

Question:

What kind of records does the city attorney's office keep that would explain why these cases are rejected?

Response:

There are no public records that explain the decision to reject a case.

Question:

We noticed that some cases this year aren't showing up. For example, police data shows 21 arrests for encroachment through 6/16, but city attorney data is only showing 14 cases. Can you give me a sense of why that is?

Response:

Regarding the disparity between the number of citations noted by SDPD through 6/16 and our city attorney data, there can be several reasons for that. The report could have been canceled by a SDPD detective or the Deputy City Attorney working in the division before it formally reaches our office. We keep records only for cases that are referred to us by law enforcement. Every arrest does not result in a referral. Some individuals are arrested for one crime but referred to our Office for another.

Question:

Can you explain why some CA#'s repeat in the data you sent? In some cases the same CA# shows different people arrested the same day.

Response:

As you know from working with data, there are quite often discrepancies when reports are generated from different agencies. The City Attorney's Office receives filings from more than 40 agencies. So, that may be why you are seeing some inconsistencies.

While we cannot speak for the accuracy of other agency's reports, some factors you may want to consider are that it is quite common for suspects to use different names when contacted by police and resulting in them having AKAs ("also known as") listed in the official records of the police, the CAO, and the courts. Often, names are given at the scene, but true legal names are discovered when they are booked into jail and their fingerprints are run.

Additionally, there may be multiple times that defendants fail to appear at their court appearances so warrants get issued. This causes a person to be arrested more than one time for a particular crime.

Question:

What does the "OFFENSE" column mean?

Response:

This is the date of the offense that was on the citation or police report. Complaints are not filed with the court on the date of the offense but typically weeks to months later, after the case is sent to the CAO and reviewed by a deputy city attorney. Cases must be filed within the statute of limitations, which for most misdemeanor cases is one year from the offense.

Question:

Under what circumstances does the City Attorney decide to pursue a case?

Response:

Our Office has an ethical duty to only file cases that we believe can be proven beyond a reasonable doubt. Many factors can play into this determination.

Question:

Why are some cases pursued following citations, others for arrests?

Response: A decision to arrest or cite is made by the law enforcement agency.

Question:

Why aren't we seeing more? If the City Attorney is issuing cases for citations, there should be more rejections than what we see in CA data.

Response:

It's not clear to us what you're asking.

Question:

What does Dismissed (IFJ/IOE) mean?

Response:

This means the case was dismissed by the court in the furtherance of justice or for insufficiency of evidence. For more information, see the answer to your final question.

Question:

What does Dismissed (PG other case) mean, and can you send us the case number?

Response:

The defendant pled guilty to other charges (generally more serious charges or multiple charges for the same offense) and so this case was dismissed. The other case numbers are generally not documented on City Attorney records. The court sentencing docket may have that information; we do not.

Question:

What does Dismissed (other-see note) mean, and can you send whatever notes these are referring to for cases in 2022?

Response:

This case was dismissed by our Office for reasons other than IFJ/IOE or "PG other." There are many possible reasons, such as the unavailability of witnesses. Our notes are privileged Attorney Work Product and are not disclosed.

Question:

Can you explain why some CA#'s repeat in the data you sent?

Response:

When one police report has multiple suspects, they are all assigned one City Attorney case number.

Question:

Our analysis of the data shows ever since the pandemic hit, the City Attorney's Office has rejected 72% of the cases involving homeless-related offenses, and of the cases that are taken to court, every single one has been dismissed. Can someone explain what's happening here?

Response:

The data at issue is impacted both by the Covid pandemic and changes in the Penal Code that occurred at the same time. For a full picture, you should talk to the Superior Court for its perspective and the Public Defender's Office, which is involved in nearly all of these cases. As the data you received shows, during the period of January 3, 2020, through March 12, 2020, immediately before the court shutdown, there were roughly 60 guilty pleas in cases involving illegal lodging. Our approach to preparing and filing cases did not change, but because the pandemic restricted court operations, cases were not being heard in a timely manner. Since the courthouse reopened, we've seen the court exercise its discretion under PC 1385 to dismiss these cases, many of which are now several years old, involve defendants with no new additional offenses, rely on evidence that is no longer available, or all of the above. PC 1385 dismissals due to changed circumstances do not reflect on the quality of the original case, and the City Attorney's Office either made the motion or agreed with the court's decision in many of them. These decisions are made by the court on a case-by-case basis. Every agency in the criminal justice process has a distinct role, and judges have a responsibility to assess the value of each case at the time it reaches court. Our records show we have a number of active cases that have not been heard, often because the defendants failed to appear, and we cannot predict how the court will handle them. The California Penal Code is determined by the state Legislature, law enforcement agencies have a duty to enforce it, and prosecuting agencies such as ours have a responsibility to review and file as appropriate the cases we receive from law enforcement.

Question:

Although you referred to "changes in the Penal Code" without explaining what those changes were. Can you please get back to me about those changes as soon as possible? What were the changes and how did they impact the data?

Response:

As far as the changes in the Penal Code: On January 1, 2021, Assembly Bill 1950 and Assembly Bill 3234 went into effect.

Assembly Bill 3234 added Penal Code section 1001.95, which allows the Court to divert most misdemeanor offenses pre-plea (the exceptions to this diversion are also not applicable here). This change provides an alternative to the traditional criminal justice model and gives the Court the discretion to divert misdemeanor offenses for a period of up to 24 months with terms set by the individual judge hearing the case. When diversion is completed successfully, the case is dismissed without the defendant ever having to enter a guilty plea. Thus, the term "dismissal" is applied to cases where the charges were not in dispute.

Assembly Bill 1950 modified Penal Code section 1203a and restricts the period of probation for misdemeanor cases to no longer than one year, except in certain circumstances not applicable here. Prior to this change, the period of probation for the charges included in your request could have been ordered for a period not to exceed 3 years. This impacts the case information you requested because, in looking at the resolution of cases, it is important to know that judges may also take the shorter allowable term of probation into consideration when determining how to adjudicate cases and in deciding whether dismissal is in the interests of justice pursuant to Penal Code section 1385.

Here is an explanation of some of the terms used in the spreadsheet:

Warrant status – This indicates whether a warrant was ever issued in this case.

Booking date – This indicates the suspect was arrested and taken to jail. All others that have no date listed were most likely issued a citation to appear in court.

Offense – This is the date listed by the police on either the citation given to the defendant or listed in the police report. This date is used on criminal complaints filed by my office.

Status – This indicates whether my office filed criminal charges (Issued) or rejected the case and did not file the charges.

Dismissed (PG other case) – The case was dismissed because the defendant pleaded guilty in another case

Dismissed (IFJ / IOE) – The case was dismissed in the interests of justice or due to an insufficiency of the evidence.

Question:

Here's a link to the story that just published: <https://inewssource.org/2022/09/08/san-diego-mayor-todd-gloria-homelessness-police-arrests/>

Please let us know if you have any questions, concerns or feedback.

Response:

Thank you for seeking my feedback on your article.

I was disappointed that inewsource chose to ignore information the City Attorney's Office provided to it. This information spoke directly to your question of why there have been no recent convictions in encroachment and illegal lodging cases.

Moreover, it was disingenuous to say that our Office was unresponsive to your questions in light of the substantive responses we provided. I note that the article linked to an actual response given inewsource by the Mayor's Office, but not to the many responses from our Office. Had it done so, readers would have been satisfied that we gave inewsource substantial information, and they would be curious, as am I, as to why it was ignored.

Here are some examples:

You asked: "Also, just from looking at the data, it appears a lot of cases are being rejected. Can you give me a sense of why that's happening? Roughly half of the cases for encroachment this year were rejected."

We responded: "Referrals are evaluated on a case-by-case basis and can be rejected for a number of reasons, including not filing charges if there is insufficient evidence to prove the commission of a crime beyond a reasonable doubt."

You followed up: "Under what circumstances does the City Attorney decide to pursue a case?"

We responded: "Our Office has an ethical duty to only file cases that we believe can be proven beyond a reasonable doubt. Many factors can play into this determination."

You followed up: "Our analysis of the data shows ever since the pandemic hit, the City Attorney's Office has rejected 72% of the cases involving homeless-related offenses, and of the cases that are taken to court, every single one has been dismissed. Can someone explain what's happening here?"

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to enforce it, and prosecuting agencies such as ours have a responsibility to review and file as appropriate the cases we receive from law enforcement."

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This is a fair amount of information directly addressing your question "what's happening here?" Yet the inewsource article ignored:

- a prosecutor's ethical obligation to not prosecute certain cases,
- our statement that our Office's approach to filing cases is the same as it was pre-pandemic
- Superior Court judges exercising their PC 1385 powers to dismiss cases in the interest of justice,
- the reasons why the City Attorney's Office would recommend or agree that cases should be dismissed in the interest of justice,
- the effect of Assembly Bill 3234, which allows courts to divert cases to diversion programs and then dismiss the cases upon completion of the diversion terms, or
- the effect of Assembly Bill 1950 in eliminating probation as a viable sentence and so encouraging dismissal.

Our attorneys and staff spent considerable time preparing answers in response to your questions, but their answers were not shared. Instead of relying on the core data we presented, inewsource included an unsubstantiated quote from a defense attorney speculating on our motives. Additionally, inewsource accused the City Attorney of failing to answer a question ("What's the point?") that inewsource never asked of our Office. And lastly, you seemed upset that we did not grant you an interview. We prefer to answer questions by email to ensure that our responses are full and accurate, do not violate Rules of

Professional Conduct on pending cases, and documented to prevent inaccuracies, mischaracterizations, or falsehoods.

We will post inewsource's questions and our complete answers on our website to ensure the public has accurate information about the complexity of encroachment and illegal lodging cases.

I ask that you share this feedback with your higher-ups and tell them our Office would appreciate their response.