



MEMO

To: Mayor Hughson and Council
FROM: Chase Stapp, Director of Public Safety
DATE: February 10, 2020
RE: Draft Cite and Release Agenda Item for March 3

The Criminal Justice Reform (CJR) Council Committee met on January 28, 2020 to revisit draft legislation language surrounding the use of Cite and Release processes by members of the San Marcos Police Department. Previously on October 15, 2019, Council discussed a prior draft version of ordinance language but directed that it be discussed and developed further by CJR committee. After discussion by the committee on January 28, the members of the committee provided direction that a discussion item be brought before Council on March 3, 2020. The purpose of this memo is to summarize three main decision points that the CJR committee respectfully requests Council direction on.

Resolution or Ordinance?

The first of these decision points is whether Council as a whole intends to move this legislation forward as a resolution or as an ordinance. Staff believes that there are certain advantages to advancing this item forward as a resolution. Members of Mano Amiga, a local civil rights advocacy group that has been active in these discussions, feel strongly that an ordinance is the most appropriate method for Council to act on this topic. The members of the CJR committee were not in complete agreement in their thinking about this decision point. The optics of the message sent by Council to the members of the Police Department and the community is the key difference between the two options. A resolution is generally viewed as a message sent by Council in support of a particular program or process. A resolution in this instance could serve to communicate to staff the Council's support of an expanded Cite and Release program to include increased data analysis and community involvement. On the other hand, an ordinance will be interpreted by staff, as it should be, as a Council mandate directing staff to take certain action relative to Cite and Release. One risk associated with this approach is that the crafting of an ordinance could unintentionally send the message that Council does not acknowledge or appreciate the extensive work already done by leadership and line level staff at the Police Department to improve the department's use of Cite and Release and the level of data transparency related to the program. The draft language being reviewed and discussed by Council at this meeting could ultimately be written in the form of either a resolution or an ordinance.

Violations to Include in Statement of Support:

The second decision point that the CJR committee asks for direction on relates to the wording contained within Section 1 of the draft legislation. The purpose of this section is for Council to make a statement in support of the use of Cite and Release for certain types of offenses. State law limits the use of Cite and Release to eight enumerated class A and B misdemeanors in addition to almost all Class C misdemeanors. The CJR committee agreed that two of those offenses should not be listed in Section 1 as offenses about which Council expressed support for the use of Cite and Release. Those

two offenses are Possession of a Controlled Substance in Penalty Group 2A (commonly referred to as synthetic marihuana compounds) and Possession of Contraband in a Correctional Facility. The remaining list of offenses that appear in Section 1 were not unanimously supported by members of the CJR committee, but the members were unanimous in that this area should be discussed by the full Council. These offense types are highlighted in yellow in section 1 of the attached draft language. The question at hand involves whether or not Council desires to express support for the use of Cite and Release for the crimes that involve the deprivation of a victim's personal property by either theft or destruction. It was discussed that victims of property crime often have a guttural reaction to being victimized in this way, and Council may or may not want to include these offenses in the list of offenses for which they support the use of Cite and Release. The other point of view is that all of these offenses should be listed so that the wording in the legislation most closely mirrors what is allowed by state law. Regardless of the direction the Council chooses to take, members of the Police Department will be allowed by policy and state law to exercise their discretion and consider using Cite and Release for all of the eligible offenses.

Wording to Limit Discretion:

The third and final decision point is found in Section 2 of the draft language and surrounds whether or not to include the word "only" in a sentence that introduces a list of possible exceptions to the use of Cite and Release. The CJR committee again were not unanimously in agreement about the inclusion of this word. Staff believes that the wording severely restricts an officer's use of discretion about when it is or is not appropriate to use Cite and Release. Specifically, staff feels that the list of possible exceptions, though fairly exhaustive, should not be viewed as the only things that may preclude the use of Cite and Release. Our police officers deal with an extremely wide array of circumstances in their daily work, and staff believes that limiting their discretion with this wording does not allow for the flexibility needed to make sound arrest decision that best serve our goal of enhancing public safety in San Marcos. On the other hand, proponents of the language highlighted in yellow argue that it serves to provide needed direction on the limited use of discretion by officers. As with the other two decision points, the members of the CJR committee respectfully request that Council discuss and provide direction.

After Council discussion and direction, staff is prepared to bring back an action item in line with Council recommendations at the next meeting.