
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1303 **Hearing Date:** April 24, 2018
Author: Pan
Version: April 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: EC

Subject: *Coroner: county office of the medical examiner*

HISTORY

Source: California Medical Association
Union of American Physicians and Dentists

Prior Legislation: SB 1189 (Pan), Chapter 787, Statutes of 2016

Support: American Federation of State, County and Municipal Employees, AFL-CIO;
California Public Defenders Association; California Society of Pathologists;
College of American Pathologists; Consumer Attorneys of California; County
of Santa Clara

Opposition: California State Association of Counties; California State Sheriffs' Association;
Riverside County Board of Supervisors; San Joaquin County Board of
Supervisors

PURPOSE

The purpose of this bill is to require that the coroner or sheriff-coroner's office in counties with a population of 500,000 or greater, be replaced with an independent medical examiner's office.

Existing law states that a coroner is an officer of a county. (Gov. Code § 24000 subd. (m).)

Existing law states that, except as provided in subdivision (b), as a county officers, coroners that must be elected by the people. (Gov. Code § 24009 subd. (a).)

This bill makes a coroner or medical examiner an officer of a county.

This bill requires that in counties that have a medical examiner in lieu of a coroner that the medical examiner shall be appointed.

Existing law states that, notwithstanding any other provision of law, the board of supervisors may by ordinance abolish the office of coroner and provide instead for the office of medical examiner, to be appointed by the said board and to exercise the powers and perform the duties of the coroner. The medical examiner shall be a licensed physician and surgeon duly qualified as a specialist in pathology. (Gov. Code § 24010)

This bill specifies that the requirement of the appointed medical examiner shall only apply in counties with a population of less than 500,000 or in a county of any population that has adopted a charter.

This bill states that, notwithstanding any law, in counties with a population of 500,000 or greater, but excluding counties with a charter, the office of the coroner or the sheriff-coroner's office shall be replaced with an office of medical examiner to perform the duties of the coroner without a public vote or election. This provision shall become operable on January 1, 2020.

This bill states that the office of medical examiner shall be headed by a chief medical examiner appointed by the board of supervisors of the county or by the county executive officer. The chief medical examiner shall meet all of the following requirements:

- They shall be a physician and surgeon licensed to practice medicine in this state, or an osteopathic physician and surgeon licensed to practice osteopathic medicine in this state.
- They shall be in good standing with the Medical Board of California or the Osteopathic Medical Board of California.
- They shall be a board-certified forensic pathologist certified by the American Board of Pathology.
- They shall have practiced forensic pathology for at least three years following board certification.
- The chief medical examiner shall hire and supervise deputy medical examiners and other support staff as necessary to administer the office.
- Notwithstanding any law, whenever the term "coroner" is used it shall be deemed to include the medical examiner for counties that have a medical examiner pursuant to this section.
- Notwithstanding any law, the office of medical examiner shall operate independently from any other county agency or official in the conduct of autopsies, including, but not limited to, exercising professional judgment to make determinations of cause and manner of death. This subdivision shall not be construed to limit the authority of the board to supervise the conduct of the chief medical examiner pursuant to Section 25303.

COMMENTS

1. Need for this Bill

SB 1303 is in response to allegations of improper influence into the medical determinations of physicians conducting autopsies for San Joaquin County. Two qualified forensic pathologists resigned in late 2017 alleging the Sheriff pressured them into changing their findings in reports outlining the cause and manner of death of individuals involved in officer related deaths. The physicians also allege that critical information was withheld for the purpose of frustrating their ability to accurately determine the type and manner of an individual's death.

Ensuring that autopsies are done in an ethical and equitable manner is essential in ensuring confidence in our criminal justice system. These autopsies are often the basis for criminal charges and it is imperative that the public gains the necessary facts to determine fault and deliver justice. Additionally, clinical determinations made by physicians must be free from undue influences from political officials.

Only three states with Sheriff-Coroners are California, Nevada and Montana.

- 1) Among all states with a population of 4 million or more, California is the only state with a Sheriff-Coroner's system, and majority of the counties in California have Sheriff-Coroner.
- 2) Amongst the ten largest states in the United States in population, California which has the largest population, has the most primitive death investigation system. It is the only state amongst these ten most populated states with the Sheriff-Coroner system.
- 3) The only two states with Sheriff-Coroner are Nevada [3 million population] and Montana [1 million population], and in these two states, their largest population centers, cities and counties do not have Sheriff-Coroner systems. Sheriff-Coroner systems in these two states are predominantly in rural counties with small populations of people. In fact the State of Montana has a state medical examiner system that was under the State Attorney General's office.
- 4) In Nevada, the two largest counties, Washoe and Clark counties with about 83% of the population of Nevada both have a coroner-medical examiner system and not a Sheriff-Coroner system. The Sheriff-Coroner is found only in rural and small counties, just like the bill proposes.
- 5) As a city or county becomes bigger, there becomes a greater need for police to do police work and doctors to do what doctors do best, study diseases and make disease diagnosis and treatments. If a doctor cannot become a district attorney or a sheriff, why then would a district attorney or sheriff be allowed to do what doctors do? It is not in the best interest of the public; it is not a best practice and is primitive dating back thousands of years ago.

2. County Governance

All counties elect or appoint a variety of county officials. The California Constitution requires all counties to elect a sheriff, district attorney, assessor, and board of supervisors, and state law lists the officers that general law counties must have. Counties are categorized as "general law" or "charter." General law counties adhere to state law as to the number and duties of county elected officials. Charter counties have greater leeway to determine their own governance structure to elect additional supervisors and appoint or elect additional officers.

There are 14 charter counties that are exempt from this bill: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. Most large counties are charter counties: eight of the ten largest counties by population have adopted charters.

This bill exempts counties over 500,000 people, charter counties, and counties which already have a medical examiner or coroner officer separate from the sheriff's system. Thus, SB 1303 impact six counties specifically: Contra Costa, Kern, Riverside, San Joaquin, Sonoma, and Stanislaus.

3. Sheriff-Coroner

California has 41 Sheriff-Coroner offices meaning the two offices are consolidated and the sheriff also serves as the coroner. The consolidation occurs for two reasons: (1) the maintenance and function of two separate officers is more expensive, especially for smaller counties, and (2) many of the deaths that a coroner investigates have criminal or other law enforcement components.

This dual position inquiries into and determines the circumstance, manner, and cause of all violent, sudden, or unusual deaths. While the circumstances and cause of death can vary widely, there are only five manners of death: natural, accidental, homicide, suicide, or undetermined. Sheriff-Coroners' responsibilities involve conducting autopsies to determine cause of death in cases which fall within its jurisdiction, transport and remove bodies, verify cause of death and sign death certifications, appear at all unattended deaths unless the deceased has been by a physician within a specified period of time.¹ With the exception of a few states, coroners may not have medical training. One-third of the U.S. still has coroners or medical examiners that are housed within public safety or law enforcement agencies.²

The duality of Sheriff-Coroner's may present a conflict of interest. Medical examiners determine a subject's cause of death however, the sheriff, as an elected official, possesses final say in determining a subject's manner of death.

4. Medical Examiner

Unlike coroners, medical examiners must possess medical backgrounds. A medical examiner is a medical doctor responsible for examining bodies post mortem to determine cause of death. Coroners have the authority to convene a county to determine a cause of death, and often consult medical examiners to complete examinations. Medical examiners responsibilities may include investigating sudden or unnatural deaths, performing forensic medicine and pathology consultations, counseling families regarding manners and cause of death, testifying in courts, conducting physical examinations and laboratory tests, conducting inquests and serving subpoenas for witnesses.

Currently, the Board of Supervisors can create an independent medical examiner of its own volition. This bill provides that the medical examiner must be allowed to operate independently from any other county agency or official in the conduct of autopsies however, the board may still supervise the conduct of the medical examiner. SB 1303 requires six counties to change their sheriff-coroner investigations including San Joaquin, Riverside, Contra Costa, Kern, Stanislaus, and Sonoma.

5. Shortage of Forensic Pathologists

According to the National Commission on Forensic Science, there are less than 600 forensic pathologists currently in the U.S., with a need of as many as 1,200.³ In August of 2015, the commission voted to adopt a recommendation to increase the number, retention, and quality of

¹ "Sheriff-Coroner," California State Association of Counties, accessed April 6, 2018, <http://www.counties.org/county-office/sheriff-coroner>.

² National Research Council (U.S.), National Research Council (U.S.), and National Research Council (U.S.), eds., *Strengthening Forensic Science in the United States: A Path Forward* (Washington, D.C: National Academies Press, 2009).

³ "National Commission on Forensic Science," 2017, 180.

board-certified forensic pathologists. In response, the National Institute of Justice released a new grant solicitation entitled “Strengthening the Medical Examiner Coroner System” which supports forensic pathology fellowships and provides resources necessary to achieve accreditation.⁴ It is unclear if the number of forensic pathologists has increased since efforts in 2015.

6. Argument in Support

According to California Medical Association:

Under our current systems coroners and medical examiners are often construed as the same profession when in fact they are quite different. The Sheriff-Coroner is an elected position that doesn't require any medical or police training. CMA is unaware of any currently elected sheriff-coroner who holds a medical license and is a practicing physician. A medical examiner is a licensed physician who performs medical autopsies after suspicious deaths. In Sheriff-Coroner models, a medical examiner conducts the autopsy and determines the cause of death (cardiac failure, drowning, blunt force trauma, etc.), but the Sheriff retains the final say over manner of death (homicide, accident, natural causes, etc.), even if the medical examiner disputes the Sheriff's finding. In states where the Sheriff-Coroner model has been abolished, the Medical Examiner retains the right to determine manner and cause of death and no elected official is involved in this determination. Both determinations – manner and cause of death – are closely intertwined and involve scientific and medical judgments that are based on the sort of training and experience that physicians have. Lay sheriff-coroners, by contrast, do not have the expertise to conduct autopsies and draw medical conclusions from them.

7. Argument in Opposition

According to the California State Sheriffs' Association:

The current sheriff-coroner approach utilized by a vast majority of California's counties enjoys the benefit of a bifurcated system that allows for crucial checks and balances not necessarily present in other systems...The physician and the coroner work together to determine the facts behind a death, but recognize the utility of having clearly defined roles. This arrangement allows different types of professionals to do their distinct jobs and then come together in a unified manner to make appropriate findings reflecting the work of both physicians and forensic investigators. From a governance perspective, this bill is heavy-handed, unnecessary, and costly. Existing law already permits counties to abolish the office of the coroner and replace it with a medical examiner. This is a decision best left to the sound discretion of local officials who have budget authority and relevant local experience.

-- END --

⁴ National Research Council (U.S.), National Research Council (U.S.), and National Research Council (U.S.), *Strengthening Forensic Science in the United States*.