
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1185 **Hearing Date:** July 2, 2019
Author: McCarty
Version: February 21, 2019
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Officer Oversight: Sheriff Oversight Board*

HISTORY

Source: Author

Prior Legislation: AB 3131 (Gloria), 2018, vetoed

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Civil Liberties Advocacy; California Immigrant Policy Center; California Public Defenders Association; National Association of Social Workers-California; Oakland Privacy; Together We Will-Contra Costa

Opposition: California State Sheriffs' Association; Riverside County Sheriff's Department

Assembly Floor Vote: 43 - 23

PURPOSE

The purpose of this bill is to authorize a county to establish a sheriff oversight board, either by action of the board of supervisors or through a vote of county residents. The bill would authorize a sheriff oversight board to issue a subpoena when deemed necessary to investigate a matter within the jurisdiction of the board. The bill would authorize a county to establish an office of the inspector general to assist the board with its supervisory duties.

Existing law grants the Attorney General direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. (Cal. Const. Art. V, § 13.)

Existing law states that the Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. (Cal. Const., Art. XI, § 1, subd. (b).)

Existing law states that for its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The provisions of a charter are the law of the State and have the force and effect of legislative enactments. (Cal. Const., Art. XI, § 3, subd. (a).)

Existing law states that county charters shall provide for a governing body of five or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. (Cal. Const., Art. XI, § 4, subd. (a).)

Existing law states that county charters shall provide for an elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal. (Cal. Const., Art. XI, § 4, subd. (c).)

Existing law states that county charters shall provide for the powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein. (Cal. Const., Art. XI, § 4, subd. (e).)

Existing law provides that the board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, but that in doing so, the board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county. (Gov. Code, § 25303.)

Existing law provides that whenever a county board of supervisors deems it necessary or important to examine any person as a witness upon any subject or matter within the jurisdiction of the board, or a document in the possession or under the control of the person or officer relating to the affairs or interests of the county, the chairman of the board shall issue a subpoena, commanding the person or officer to appear before it, at a time and place therein specified, to be examined as a witness. (Gov. Code, § 25170.)

Existing law defines a subpoena as a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, electronically stored information, or other things under the witness's control which the witness is bound by law to produce in evidence. (Code Civ. Proc., § 1985, subd. (a).)

Existing law establishes procedures for the issuance of subpoenas and subpoenas duces tecum. Code Civ. Proc., §§ 1985 – 1985.8.)

Existing law grants the power to issue subpoenas to civil service commissions. (Gov. Code § 31110.2.)

Existing law grants the power to issue subpoenas to the coroner. (Gov. Code § 27498.)

Existing law grants the power to issue subpoenas to retirement boards. (Gov. Code § 31535.)

This bill states that a county may create a sheriff oversight board, either by action of the board of supervisors or through a vote of county residents, comprised of civilians to assist in the board's supervisory duties over the sheriff.

This bill provides that the members of the sheriff oversight board shall be appointed by the board of supervisors. The board of supervisors shall designate one member to serve as the chairperson of the board.

This bill states that the chair of the sheriff oversight board shall issue a subpoena or subpoena whenever the board deems it necessary or important to examine the following:

- 1) Any person as a witness upon any subject matter within the jurisdiction of the board.
- 2) Any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department.
- 3) Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.

This bill provides that if a witness fails to attend, or in the case of a subpoena, if an item is not produced as set forth therein, the chair or the chair authorized deputy issuing the subpoena upon proof of service thereof may certify the facts to the superior court in the county of the board.

This bill provides that the court shall thereupon issue an order directing the person to appear before the court and show cause why they should not be ordered to comply with the subpoena. The order and a copy of the certified statement shall be served on the person and the court shall have jurisdiction of the matter.

This bill specifies the same proceedings shall be had, the same penalties imposed, and the person charged may purge themselves of the contempt in the same way as in a case of a person who has committed a contempt in the trial of a civil action before a superior court.

This bill states that a county, through action of the board of supervisors or vote by county residents, may establish an office of the inspector general, appointed by the board of supervisors, to assist the board of supervisors with its supervisory duties over the sheriff.

This bill specifies the inspector general shall have the independent authority to issue subpoenas.

This bill provides that the exercise of powers under this section or other investigative functions performed by a board of supervisors, sheriff oversight board, or inspector general vested with oversight responsibility for the sheriff shall not be considered to obstruct the investigative functions of the sheriff.

This bill makes the following findings and declarations:

- 1) County sheriffs lead agencies of law enforcement officers that are vested with extraordinary authority, and the powers to detain, search, arrest, and use deadly force. These officers are also responsible for the safety and welfare of the more than 75,000 incarcerated individuals in California's jail system. Misuse of these authorities can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, and significant public unrest.
- 2) While sheriffs are independently elected officials, boards of supervisors have the authority to supervise these officials and investigate the performance of their duties and have an obligation to ensure sheriffs and their departments uphold and respect people's constitutional rights.
- 3) Meaningful independent oversight and monitoring of sheriffs' departments increases government accountability and transparency, enhances public safety, and builds community trust in law enforcement. Such oversight must have the authority and independence necessary to conduct credible and thorough investigations.

- 4) It is the intent of the Legislature in adding this section to the Government Code to ensure that every county in the state may adopt effective independent oversight of the sheriff of that county, and this section is not intended to limit the powers of any independent oversight entity.

COMMENTS

1. Need for This Bill

According to the author:

Honest oversight of law enforcement is absolutely necessary if we want to rebuild trust between officers and the communities they serve. AB 1185 will make it clear that Sheriff Oversight Boards have the authority to properly review the actions of Sheriffs, provide transparency to citizens and create opportunities for real change.

The relationship between a Board of Supervisors and a Sheriff is unique. Unlike the employer–employee relationship between a City Council and Police Chief, a Sheriff and a Supervisor are both independently elected. This unique structure has caused confusion as to some of the governmental functions and oversight of each position.

A Board of Supervisors has the authority to set policy, vote on ordinances, provide oversight of any county function and create billion dollar budgets. However, when it comes to oversight of public safety, arguably its most important public service, there needs to be clarity.

A Sheriff's Department is the principal law enforcement agency serving Californians who live in unincorporated areas of a county. This includes huge population centers. For instance, for 1 million Los Angeles and 600,000 Sacramento residents the Sheriff's Department is their local police. On a state-wide basis, 39% of sworn officers work with a county sheriff.

Distrust between law enforcement and the communities they serve is at an all-time high. In a March 2017 PPIC Survey, 61 % of African-Americans and 37% of Latinos rated local police as doing a poor/fair job in policing their community. Transparency is a necessity to build back that trust. Providing real oversight with clear roles and robust authority will go a long way toward rebuilding that trust.

2. General Law Counties vs. Charter Counties

There are two types of counties in California. There are "charter counties," which have adopted a charter for the governance of their county pursuant to a procedure laid out in the California Constitution. On the other hand, there are "general law counties" which have not adopted a charter and instead rely on the general law of the state for governance.

General law counties adhere to state law as to the number and duties of county elected officials. Charter counties have a limited degree of "home rule" authority that may provide for the election, compensation, terms, removal and salary of the governing board; for the election or appointment (except the sheriff, district attorney, and assessor who

must be elected), compensation, terms and removal of all county officers; for the powers and duties of all officers; and for consolidation and segregation of county offices. A charter does not give county officials extra authority over local regulations, revenue-raising abilities, budgetary decisions or intergovernmental relations.

A county may adopt, amend or repeal a charter with majority voter approval. Once a charter has been properly enacted, the provisions of a charter are the law of the state and have the force and effect of legislative enactments. There are currently 14 charter counties in California: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. The other 44 counties are general law counties.

3. County Authority to Create Oversight Boards and Subpoena Power

A subpoena is a writ used to summon witnesses before a court or other deliberative body. A subpoena “duces tecum” is a specific type of subpoena that is used to require a witness to present documents and records to the deliberative body. In 1994, the Supreme Court of California weighed in on the authority of a county to establish civilian, law-enforcement oversight boards and bestow such boards with subpoena power. (*Dibb v. County of San Diego*, (1994) 8 Cal. 4th 1200.) The *Dibb* case dealt specifically with the County of San Diego, a charter county, and looked to the California Constitution, statutory law, as well as the county charter itself before determining that San Diego County could lawfully establish such an oversight board and also grant that board the power of subpoena. (*Id.*)

In *Dibb*, the Court quickly determined that the California Constitution grants to the counties the authority to create a civilian law-enforcement review board, irrespective of whether it is a charter county or a general law county. (*Id.*, at 1207-08.) The Court then looked at whether the County could also grant the law-enforcement oversight board the ability to issue a subpoena. In making that determination, the Court first looked to see whether the Legislature had granted counties the authority to vest oversight boards with subpoena power statutorily. (*Id.* at 1210.) The Court found that, at the time, that there was no such statutory authority. Regardless, the court ruled in favor of San Diego County, finding that the county charter could establish such subpoena power, even in the absence of statutory authority.

The clear implication of the Court’s decision is that the Legislature can in fact grant such subpoena power to oversight boards through the county. In fact, the Court cited to a variety of instances in which Legislature has granted subpoena power to county entities. (*Id.*) This bill would codify *Dibb* to the extent that it applies to charter counties, providing statutory authority for that which a county is already able to do under its own charter. In addition, this bill would clarify that general law counties have the statutory authority to create sheriff-specific oversight boards and inspector general offices that both have statutory subpoena power.

4. Sacramento County

In 2017, Sacramento Sheriff Deputies shot and killed Mikel McIntyre, following a 911 call. According to local reporting, there were discrepancies in the accounts given by the sheriffs. Deputies who responded to the call and McIntyre’s mother, who was with her son at the time of the shooting.¹

¹ (Chavez, *Mother disputes sheriff’s account of rock assault that led deputies to shoot her son*, May 9, 2017, available at: <https://www.sacbee.com/news/local/crime/article149441869.html>, [as of March 27, 2019].)

As a result of those incidents, the county authorized an inspector general to perform an independent report and investigation of the shooting. Local reporting describes a disagreement between the Sacramento County Sheriff, Scott Jones, and the, now former, County Inspector General, Rick Braziel.² As a result of Inspector General Braziel's report, Sheriff Jones prohibited the inspector general from access to sheriff facilities and records and called for his ouster. The disagreement between Jones and Braziel has continued into 2019, and appears to be ongoing.³

5. Checks and Balances

It is a fundamental principle of good government in the United States of America that checks and balances are important in order to provide effectiveness and transparency. This bill seeks to add additional checks and balances to counties in California. This bill would permit the legislative body of a county, a board of supervisors, to investigate the activities of an executive body of the county, the county sheriff. Additionally, the board of supervisors could appoint an inspector general for that purpose.

This bill would provide statutory authority to general law counties that wish to establish sheriff oversight boards and inspector general offices, and give general law counties the ability to equip those entities with subpoena power.

6. Argument in Support

According to the *American Civil Liberties Union of California*: “County sheriffs lead agencies of law enforcement officers that are vested with extraordinary authority, and the powers to detain, search, arrest, and use deadly force. These officers are also responsible for the safety and welfare of the more than 75,000 incarcerated individuals in California’s jail system. Misuse of these authorities can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, and significant public unrest.

Meaningful independent oversight and monitoring of sheriffs’ departments increases government accountability and transparency, enhances public safety, and builds community trust in law enforcement. Such oversight must have the authority and independence necessary to conduct credible and thorough investigations.

California law clearly states that boards of supervisors “shall supervise the official conduct of all county officers” and “shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.” (Gov. Code § 25303). Case law further establishes that this supervisory authority is not limited to fiscal matters; rather, the “operations... and the conduct of employees of those departments... are a legitimate concern of the

² (Shaddox, *Sacramento County Sheriff Wants Inspector General Removed Over Officer-Involved Shooting Report*, Fox 40, Aug. 19, 2018, available at: <https://fox40.com/2018/08/29/sacramento-county-sheriff-wants-inspector-general-removed-over-officer-involved-shooting-report/>, [as of Mar. 27, 2019].)

³ (Stanton, *Sheriff Scott Jones levels new claim against ousted inspector general Rick Braziel*, Jan. 10, 2019, available at: <https://www.sacbee.com/news/local/crime/article224230780.html>, [as of Mar. 28, 2019].)

board of supervisors,” as is “the performance of the sheriff’s department, including the conduct of its officers when investigating crime.” Furthermore, it is clear that charter counties can grant subpoena powers to civilian review boards, even recognizing that supervisors “shall not obstruct the investigative function of the sheriff” (Gov. Code § 25303).

Nevertheless, in some counties, there is a lack of clarity over whether Boards of Supervisors and the entities they appoint to oversee sheriff’s departments, including inspectors general and civilian review boards, are empowered to actually hold them accountable. Some counties have wrongfully interpreted parallel investigations into sheriff’s departments as “obstruction” or made the assumption that they do not have the authority to subpoena the sheriff.

7. Argument in Opposition

According to the *California State Sheriffs’ Association*:

This bill is unnecessary. Despite the fact that this bill appears based on the faulty premise that sheriffs are subject to the direct supervision of the board of supervisors, the opportunity to establish civilian oversight over the Office of the Sheriff has been exercised by several jurisdictions. Counties across the state have created civilian oversight boards and at least one inspector general office without this measure or specific authorization.

Further, county counsels and grand juries already hold subpoena powers. Compelling the production of information, testimony, or documents from a wide array of sources can already occur through existing avenues.

Specifying this authority in statute will create undue pressure within county governments to create an adversarial relationship with another county office. AB 1185 also potentially codifies language that creates constitutional separation of powers issues.

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