

Date of Hearing: April 11, 2023

Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1090 (Jones-Sawyer) – As Amended April 4, 2023

As Proposed to Be Amended In Committee

SUMMARY: Authorizes the board of supervisors of a county to remove a sheriff from office for cause. Specifically, **this bill**:

- 1) Provides that the board of supervisors may remove a sheriff from office for cause, by a four-fifths vote, after both of the following have occurred:
 - a) The sheriff is served with a written statement of the alleged grounds for removal; and,
 - b) The sheriff is provided a reasonable opportunity to be heard regarding an explanation or defense at a removal proceeding.
- 2) Defines “cause” as:
 - a) Violation of any law related to the performance of a sheriff’s duties;
 - b) Flagrant or repeated neglect of a sheriff’s duties;
 - c) Misappropriation of public funds or properties committed by a sheriff or their direct reports in the course and scope of their duties;
 - d) Willful falsification of a relevant official statement or document committed by a sheriff in the course and scope of their duties; or,
 - e) Obstruction of an investigation into the sheriff or a sheriff’s department.
- 3) States that the board of supervisors may establish procedures for a removal proceeding held pursuant to these provisions.
- 4) Provides that these provisions shall not be applied in a manner that interferes with the constitutional functions of a sheriff.

EXISTING LAW:

- 1) Requires the Legislature to provide for county powers, elected sheriffs, district attorneys, assessors, and the governing bodies in each county. (Cal. Const., art. XI, § 1, subd. (b).)
- 2) Provides that the Legislature may provide for the recall of local officers, including sheriffs. (Cal. Const., art II, § 19.)

- 3) Requires charters of charter counties to provide for the appointment, compensation, terms and removal of elected sheriffs. (Cal. Const., art. IX, § 4.)
- 4) Provides that a sheriff is an officer of a county. (Gov. Code, § 24000.)
- 5) States that the county officers to be elected by the people include the sheriff, among others. (Gov. Code, § 24009, subd. (a).)
- 6) Provides that elected county officers shall hold their office until their successors are elected or appointed and qualified. (Gov. Code, § 24201.)
- 7) Sets forth the duties of sheriffs. (Gov. Code, §§ 26600 et seq; Pen. Code, §§ 4000 et seq.)
- 8) Requires each county to have a board of supervisors consisting of five members. (Gov. Code, § 25000.)
- 9) Requires each county board of supervisors to publish notices of proceedings to the public and requires that all meetings of a legislative body, including county board of supervisors, be open and public, pursuant to the Ralph M. Brown Act, as specified. (Gov. Code, §§ 25150, 25151, & 54950 et seq.)
- 10) Authorizes county boards of supervisors to do and perform all acts and things required by law to the full discharge of the duties of the legislative authority of the county government. (Gov. Code, § 25207.)
- 11) Provides that the board of supervisors shall supervise the official conduct of all county officers, particularly insofar as the functions and duties of such county officers relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties. (Gov. Code, § 25303.)
- 12) States that the board of supervisors shall not obstruct the investigative function of the sheriff. (Gov. Code, § 25303.)
- 13) Allows counties to create a sheriff oversight board, comprised of civilians to assist the board of supervisors with its duties that relate to the sheriff. (Gov. Code, § 25303.7.)
- 14) Allows counties to establish an office of the inspector general, appointed by the boards of supervisors, to assist the board of supervisors with its duties that relate to the sheriff. (Gov. Code, § 25303.7.)
- 15) Allows an accusation to be brought by a grand jury for the removal of any officer of a county, including a sheriff, for willful or corrupt misconduct in office. The trial shall be by a jury, and conducted in all respects in the same manner as the trial of an indictment. Upon a conviction the officer shall be defendant be removed from office. (Gov. Code, §§ 3060, et seq.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “No government official should have unchecked power. Regardless of the office or role, public officials take an oath to support and respect the rights of their constituents and represent the common good. But when a Sheriff abuses their power, our tools for meaningful accountability are tragically far and few. As such, AB 1090 ensures government accountability by authorizing a county board of supervisors to remove a sheriff from office for cause.”
- 2) **Removal Must Be For Cause:** This bill would provide that a board of supervisors may remove a sheriff from office *for cause*, by a four-fifths vote. Consequently, this bill would not allow a county board of supervisors to vote to remove a sheriff at their will, for any reason whatsoever.

This bill would define “for cause” as a violation of any law related to the performance of a sheriff’s duties, flagrant or repeated neglect of duties, misappropriation of public funds, willful falsification of a official statement or document, or, obstruction of a investigation into the conduct of a sheriff. This bill would further provide that authority to remove cannot be applied to interfere with the constitutionally designated function of a sheriff. Therefore, a sheriff could not be removed for performing law enforcement functions. In addition, Government Code section 25303 expressly bars the local governing body from obstructing the sheriff’s investigative functions.

- 3) **Due Process Afforded to Sheriffs:** The due process right, established by the Fourteenth Amendment, guarantees that the government cannot take a person’s basic rights to “life, liberty, or property, without due process of law.” The right is designed to protect citizens from actions taken by state government, counties, towns, and cities. At a minimum, due process means that a citizen who will be affected by a government decision must be given advance notice and an opportunity to be heard. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.)

The provisions of this bill affords sheriff’s such procedures prior to their removal. Specifically, a sheriff cannot be removed unless (1) the removal is for cause only; (2) there is a supermajority (four-fifths) vote by the county board of supervisors to remove the sheriff; (3) the sheriff is served with a written statement of the alleged grounds for removal; (4) the sheriff is provided a reasonable opportunity to be heard and present an explanation or defense at a removal proceeding; and, (5) the county supervisors may establish additional procedures for a the removal proceedings. In addition, under existing law, the public must be given notice, all meetings and meetings of the board of supervisors must generally be held in public and pursuant to the Ralph M. Brown Act. (Gov. Code, §§ 25150, 25151, & 54950 et seq.)

Thus, it is likely that this bill comports with the requirements of due process in that sheriffs may only be removed from office after the board has provided reasonable notice, to both the officer and the general public, and only after the sheriff has had an opportunity to be heard.

- 4) **Similar Local Measures:** Relying on their powers as charter counties¹, Los Angeles and San Bernardino Counties have adopted local measures that would authorize them to remove an elected sheriff for cause. This bill would provide the statutory authority for all counties to remove their sheriff for cause. This bill would further set minimum guidelines across all county boards of supervisors for the sheriff's removal.

- a) **Los Angeles County - Measure A “Charter Amendment – Providing Authority to Remove an Elected Sheriff for Cause” (November 8, 2022):** In the November 2022 Elections, Los Angeles County Measure A was on the ballot and was approved by 71.84% of the vote. (Los Angeles County Registrar-Recorder/County Clerk, *LA County Election Results* <<https://results.lavote.gov/#year=2022&election=4300>> [as of April 3, 2023].) Measure A amended the Los Angeles County Charter to authorize the Los Angeles County Board of Supervisors to remove the sheriff from office for cause, by a four-fifths vote. (*Ibid.*)

This bill is substantially similar to Measure A.

- b) **San Bernardino County - Ordinance No. 3875 (2002):** In 2002, the San Bernardino County Board of Supervisors adopted Ordinance No. 3875, (involving the removal of county officers, including the sheriff. (San Bernardino County Code § 13.0404.) The ordinance provides, in part, that removal for cause may be accomplished by a four-fifths vote of the board: “Any County officer other than supervisor may be removed from office in the manner provided by law; also any such officer may be removed by a four-fifths vote of the Board of Supervisors, for cause, after first serving upon such officer a written statement of alleged grounds for such removal, and giving him a reasonable opportunity to be heard in the way of explanation or defense.” (*Ibid.*) The ordinance also clarified that it could “not be applied to interfere with the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and the district attorney.” (*Ibid.*)

In response to the ordinance, the San Bernardino District Attorney sought an opinion from the California Attorney General, of whether a county may “grant the board of supervisors the authority to remove for cause by a four-fifths vote the sheriff [...] upon due notice and opportunity to be heard.” (84 Ops.Cal.Atty.Gen. 88 (2001).) In response, the Attorney General found “that the removal of county officers is a subject that may be contained in a county charter” and “the Constitution has not expressly provided otherwise. (*Ibid.*)

The San Bernardino County Sheriff also filed a civil complaint, contending that the ordinance is unconstitutional. The California Court of Appeal rejected the Sheriff's challenges and held that the ordinance is facially constitutional and valid. (*Penrod v. County of San Bernardino* (2005) 126 Cal.App.4th 185, 188.) The court determined that the ordinance is specifically authorized by the California Constitution, and is consistent

¹ The Legislature provides for the recall of local officer in general law counties. (Cal. Const. art II, § 19.) The charter of charter counties provide for the “compensation, terms and removal” of the sheriff.” (Cal. Const., art. XI, § 4.)

with the Government Code. (*Ibid.*)

5) Other Existing Options for Removing Sheriffs:

- a) **Grand Jury Accusation and Trial:** An accusation against any officer of a district, county, or city, including a sheriff, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for, or in, which the officer accused is elected or appointed. (Gov. Code, §§ 3060 et seq.) These grand jury accusations are usually initiated by the district attorney who is statutorily authorized to present evidence of crime or official misconduct to the grand jury. The district attorney will have had the offense investigated and will have marshalled the evidence relevant thereto prior to its presentation to the grand jury. The grand jury then evaluates the evidence in secret deliberations and decides by vote whether to issue an accusation. An accusation can be found only with the concurrence of 12 grand jurors (8 for 11 member grand juries and 14 for 23 member grand juries.) (*Ibid.*)
- b) **Quo Warranto Removal:** Quo warranto (Latin for “by what authority”) is a legal action most typically brought to resolve disputes concerning the right to hold public office. (Code Civ. Proc., §§ 803 et seq.) In California, a Quo warranto proceeding may be brought by the Attorney General to determine whether holders of a public officer are legally entitled to hold that office or exercise those powers. The court may not hear the action unless it is brought or authorized by the Attorney General. (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 633.) Quo warranto tries *title* to public office, i.e. the right to hold public office; it may not be used to remove an incumbent for misconduct in office. (*Wheeler v. Donnell* (1896) 110 Cal. 655.)
- c) **Vacancies for Reasons other than Misconduct:** Death, resignation, mental or physical incapacity, relocating, and other such situations that may create vacancies in the office of an elected sheriff law. Courts have ruled that vacancies for reasons other than removal may be filled without any sort of hearing or proceeding. (*Klose v. Superior Court in & for San Mateo County* (1950) 96 Cal.App.2d 913, 917; *People ex rel. Tracy v. Brite* (1880) 55 Cal. 79.)
- d) **Recall by Voters:** A county sheriff can be recalled by the voters under the terms set forth in the Election Code. Article II, section 19 of the California Constitution requires the Legislature to “provide for recall of local officers.”² Accordingly, the Legislature established a statutory recall procedure for recalling sheriffs and other general law county officers. (Elec. Code, § 11000, et seq.)

Nothing in this bill limits any of these existing options for the removal of a sheriff. However, this bill would extend to circumstances in which a board of supervisors may

² General law counties possess only those powers expressly conferred upon them by the California Constitution and the Legislature, and therefore they cannot create their own recall or removal procedures absent statutory authorization. (*Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 870.) A charter county, on the other hand, has authority to adopt its own procedure to recall its sheriff. (Cal. Const., art. XI, § 4.) When presented with a county charter contains no recall procedure, the California Supreme Court held that “in such a situation the recall proceedings must conform to the general law” as set forth in statute. (*Muehleisen v. Forward* (1935) 4 Cal.2d 17, 19.)

need to act expeditiously to remove a county sheriff, rather than wait for a grand jury to convene or a recall election to be held.

- 6) **Argument in Support:** According to *Oakland Privacy*, “In recent years, many county sheriffs have taken actions and run their departments in ways that have caused friction in the community and distress on elected county boards of supervisors. Prominent examples include Alameda County, where for a number of years the former Sheriff Gregory Ahern continued to voluntarily detain inmates on behalf of ICE despite Board of Supervisor resolutions and strong community sentiments to end the practice, and Los Angeles where former sheriff Alex Villanueva obstructed an investigation into an in-custody death and threatened criminal charges against a reporter, before walking that back. In addition, some sheriffs throughout the state declined to enforce public health mandates put into place by county health officers and supervisors.

“According to current law, the remedy for such situations is an electoral one, with voters having the power to administer a rebuke to a current sheriff by voting for another candidate for the position in the next election, which can be as long as four years into the future. In the cases cited above, voters did exactly that by replacing Sheriff Gregory Ahern with Sheriff Yesenia Sanchez and replacing Sheriff Alex Villanueva with Sheriff Robert Luna.

“However, such remedies are not always available to the voters, especially in the smaller counties of California. The majority of sheriff elections are uncontested, meaning there is only one candidate, and voters can only vote yes or abstain. California’s rural and small counties deserve an equal level of accountability to that of California’s larger counties, and it is far from guaranteed that in all cases, even large and urban counties will have a regular voter referendum on their sheriff. In Alameda County, prior to 2022, the then-incumbent sheriff Ahern faced no opposition for four consecutive election cycles, a period of sixteen years beginning in 2006.

“The current accountability measures in place, apart from elections, derive from the Board of Supervisor’s power of the purse in setting a sheriff’s department budget. This is not an insignificant source of leverage, but it risks distorting the budget process to address issues of policy and accountability that are not primarily financial in nature. We would argue that good governance dictates not shoving misconduct issues into the budgetary process.

“There is no doubt that is a sobering thing to allow one elected body to potentially remove an elected officer. Nonetheless, our State and Federal governments permit such through the process of impeachment - with a 2/3rds vote. AB 1090 is simply a recognition that an elected sheriff, unlike an elected body of more than one person, has no collegial process to address issues of misconduct that are addressed by a removal process on a board, council or commission, or by impeachment at the State and Federal levels, and that the electoral remedy is often not practicably available to the voters.

“In essence, AB 1090 asks what is misconduct by a sheriff, and if and when it occurs, where is the remedy that is available in a timely and consistent manner? Under current law, there really isn’t one. Here in Alameda County, the former sheriff’s declaration that policy mandates from the Board of Supervisors and overwhelming public sentiment would not impact the conduct of the sheriff’s office with regard to ICE became a long-term public wound. It did enormous damage to the faith of the county’s voters in the sheriff’s department

and in the efficacy of the Board of Supervisors. After a decade of no available remedy, the damage had already been done and the new sheriff has a big job to restore trust and relationships.

“We would argue that the democratic process i.e. what the voters wanted, was delayed for an unforgivably long time due to the limitations of current law and held hostage to the “personal beliefs” of the former sheriff and the difficulty of finding candidates willing to run against a powerful incumbent.

“Unlike sheriffs, it is a rare occasion, although not unheard of, that a county supervisor position is elected in an uncontested election. The voter “check and balance” is more consistent and AB 1090 allows for a county board of supervisors to develop a due process procedure that can include additional steps to protect against an ideologically-based removal process. We encourage making that process as robust as possible, but given the limitations in current law, *a* process beyond waiting for the next election should be implemented.”

- 7) **Argument in Opposition:** According to the *California Statewide Law Enforcement Association* (CSLEA), “Sheriffs, like county boards of supervisors are elected and held accountable by the voters.

“Shifting power and accountability from the voters to the Board risks injecting politics and petty disagreements into the removal of a Sheriff, overriding the will of the voters.

“By nullifying the will of the voters, the Board of Supervisors will become the judge, jury, and executioner for the Office of the Sheriff. We believe these decisions are best left to the voters.”

- 8) **Related Legislation:** AB 797 (Weber), would require the governing body of each city and county to, by January 15, 2025, create an independent community-based commission on law enforcement officer practices.
- 9) **Prior Legislation:** AB 1185 (McCarty), Chapter 342, Statutes of 2020, authorized counties to create a sheriff’s oversight board and an office of inspector general.

REGISTERED SUPPORT / OPPOSITION:

Support

Black Lives Matter – Los Angeles
Initiate Justice
Oakland Privacy
Secure Justice

Opposition

Association of Orange County Deputy Sheriffs
California Fraternal Order of Police
California State Sheriffs' Association
California Statewide Law Enforcement Association

Deputy Sheriffs Association of San Diego County
Long Beach Police Officers Association
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriff's Employees' Benefit Association

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