

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1090 (Jones-Sawyer) – As Amended April 13, 2023

SUBJECT: County officers: sheriffs.

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

- 1) Authorizes a board of supervisors to 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.
 - b) The sheriff is provided a reasonable opportunity to be heard regarding an explanation or defense at a removal proceeding.
- 2) Provides that “for cause” means all of the following:
 - a) Violation of a 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.
 - e) Obstruction of an investigation into the conduct of a sheriff or a sheriff’s department by a governmental agency, office, or commission with jurisdiction to conduct an investigation.
- 3) Allows a board of supervisors to establish procedures for a removal proceeding held pursuant to the provisions of this bill.
- 4) Provides that the provisions of this bill shall not be applied in a manner that interferes with the constitutional functions of a sheriff.

EXISTING LAW:

- 1) Requires the Attorney General to have 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.)

- 2) Requires the Legislature to 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).)
- 3) Allows, for its own government, a county or city to 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).)
- 4) Requires county charters to 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).)
- 5) Requires county charters to 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).)
- 6) Requires the Legislature to provide for the recall of local officers, except for counties and cities whose charters provide for recall. (Cal. Const., art II, § 19.)
- 7) States that the county officers to be elected by the people include the sheriff, among others. (Gov. Code, § 24009, subd. (a).)
- 8) Requires each county to have a board of supervisors consisting of five members. (Gov. Code, § 25000.)
- 9) 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.)
- 10) Requires the board of supervisors to 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.)
- 11) Provides that a sheriff is an officer of a county. (Gov. Code, § 24000.)
- 12) Sets forth the duties of sheriffs. (Gov. Code, §§ 26600 et seq; Pen. Code, §§ 4000 et seq.)
- 13) Provides that elected county officers shall hold their office until their successors are elected or appointed and qualified. (Gov. Code, § 24201.)
- 14) 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.)
- 15) 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.)

- 16) 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: None

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) **Background.** 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, compensation, terms and removal of all county officers (except the sheriff, district attorney, and assessor, who must be elected); for the powers and duties of all officers; and, for consolidation and segregation of county offices.

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.

As noted above, general law counties possess only those powers expressly conferred upon them by the California Constitution and the Legislature. Therefore, they cannot create their own recall or removal procedures without statutory authorization. However, a charter county has the authority to adopt its own procedure to recall its sheriff. (Cal. Const., art. XI, § 4.)

- 3) **Related Local Measures.** Relying on their powers as charter counties, Los Angeles and San Bernardino Counties adopted measures that authorized them to remove an elected sheriff for cause.

Los Angeles County - Measure A "Charter Amendment – Providing Authority to Remove an Elected Sheriff for Cause" 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.

San Bernardino County - Ordinance No. 3875 (2002) provided for the removal of county officers, including the sheriff. 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.” 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.”

In response to the San Bernardino County ordinance, the San Bernardino District Attorney sought an opinion from the California Attorney General, asking 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.”

The San Bernardino County Sheriff also filed a civil complaint, contending that the ordinance was 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 with the Government Code.

- 4) **Other Options for Removing Sheriffs.** There are a number of other avenues by which a sheriff may be removed from office:
- 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. 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.)
 - 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 office 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. 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 Elections Code. Article II, section 19 of the California Constitution requires the Legislature to “provide for recall of local officers.” Accordingly, the Legislature established a statutory recall procedure for recalling sheriffs and other general law county officers.
- 5) **Bill Summary.** This bill provides the statutory authority for the board of supervisors of all counties (whether general law or charter) to remove a sheriff from office for cause, by a four-fifths vote. The sheriff must first be served with a written statement of the alleged grounds for removal, and be provided with a reasonable opportunity to be heard regarding an explanation or defense at a removal proceeding.

The bill defines “for cause” to mean all of the following:

- 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.
- e) Obstruction of an investigation into the sheriff or a sheriff’s department, as specified.

The bill allows a board of supervisors to establish procedures for a removal proceeding held pursuant to the provisions of the bill, and specifies that the bill’s provisions shall not be applied in a manner that interferes with the constitutional functions of a sheriff.

This bill is sponsored by the author.

- 6) **Related Legislation.** AB 797 (Weber), requires cities and counties to establish independent community-based commissions to investigate complaints alleging physical injury resulting from conduct by law enforcement officers. AB 797 is pending in the Public Safety Committee.
- 7) **Previous Legislation.** AB 1185 (McCarty), Chapter 342, Statutes of 2020, authorized counties to establish sheriff oversight boards, either by action of the board of supervisors or

through a vote of county residents; authorized a sheriff oversight board to issue a subpoena when deemed necessary to investigate a matter within the jurisdiction of the board; and, authorized a county to establish an office of the inspector general to assist the board with its supervisorial duties.

- 8) **Arguments in Support.** The Re-imagine L.A. County Coalition writes, “Despite efforts by the Legislature, local leaders and voters themselves, the current system continues to allow abuse of power by county sheriffs without serious consequences. County sheriffs, unlike other law enforcement agencies, enjoy much discretion and do not normally report to a higher official. In theory, the voters that elect these officials serve as the main mechanism for accountability. However, in between elections, there is little besides the sheriff’s own integrity to provide necessary guardrails to keep the entire department on course. Under current law, voters must wait for a grand jury to convene or a recall election to be held.

“In November 2022, Los Angeles County voters, who have witnessed elected sheriffs ignore and break the law, approved Measure A, granting the County Board of Supervisors the authority to remove an elected Sheriff from office for cause, including violation of law related to a Sheriff’s duties, flagrant or repeated neglect of duties, misappropriation of funds, willful falsification of documents, or obstructing an investigation, by a fourth-fifths vote of the Board of Supervisors.

“AB 1090 authorizes all counties to remove their sheriff for cause by a fourth-fifths vote of the board of supervisors after a sheriff has been provided a written statement of grounds for removal and an opportunity to be heard. This bill authorizes the board to establish procedures for a removal proceeding.

“Re-Imagine L.A. County is a coalition of advocates, community organizations, and neighbors supporting Care First Community Investment, (formerly known as Measure J) to reimagine what community care looks like when the county prioritizes the health, housing stability, and economic opportunity of marginalized communities. For decades, the Los Angeles County Sheriff’s Department (LASD) has been rife with corruption, abuse of power, and impunity. For example, when Sheriff Alex Villanueva took office in December 2018, many hoped he would work to repair the wreckage that his predecessors, including now-imprisoned former Sheriff Lee Baca, left behind. Instead, Sheriff Villanueva obstructed civilian oversight, and violated transparency laws, including defying lawful subpoenas and court orders.

“These issues go deeper than just one sheriff – it’s a deeply rooted problem, and it’s time for change. No matter who voters elect as sheriff, in any county, there needs to be a process to ensure that no sheriff is above the law.”

- 9) **Arguments in Opposition.** The California State Sheriffs’ Association states, “Existing law permits voters to choose or vote out their sheriff via regular elections. In fact, legislation adopted last session moves future sheriff elections to presidential election years based on the assertions of proponents of that bill that doing so will increase voter engagement. Additionally, elected county officials, including the sheriff, can be removed from office by a voter recall, irrespective of the reason for the voters’ dissatisfaction. AB 1090 severely disenfranchises voters who have properly elected their sheriff by allowing the board of supervisors to subvert their will.

“In addition to the opportunities for oversight provided to voters in determining who will serve as sheriff, significant oversight of the sheriff’s office already exists. The state and federal Departments of Justice, the Board of State and Community Corrections, state and federal courts, county grand juries, district attorneys, and civilian review entities all exercise oversight authority related to the office of the sheriff. The need for this additional route to oust a dually elected public official is unclear.

“Though the bill has been amended to define what constitutes ‘cause’ as it relates to the basis for a board action to remove a sheriff, nearly every act contemplated by that definition would itself be a violation of existing criminal law. Further, the sheriff must only be served with a written statement of the alleged grounds for removal and provided a reasonable opportunity to be heard regarding an explanation or defense at a removal proceeding. There are no further requirements around the process whereby the elected sheriff can be removed as long as the bill is not applied in a manner that interferes with the constitutional functions of a sheriff, which a board of supervisors is already precluded from doing.

“AB 1090 will unnecessarily inject further political considerations into the work done by sheriffs and county supervisors. Sheriffs may alter how they undertake the obligations of their job out of fear that board members may decide they do not like the sheriff and board members would be pressured to exercise this authority every time a vocal group of constituents decides they are dissatisfied with the sheriff. Further lending to the concern about the political motivation for this bill is the fact that it only applies to the sheriff, but no other elected county officials. Should the sheriffs of contiguous counties be permitted to vote out a county supervisor if they determine there is cause?

“This bill is a massive change to county governance that ignores existing processes and oversight in favor of the perceived immediate gratification of one set of county elected officials being able to remove another county elected official. AB 1090 also likely raises a separation of powers question as the county’s legislative branch would hold this authority over the executive branch.”

10) **Double-Referral.** This bill was double-referred to the Public Safety Committee, where it passed on a 6-2 vote on April 11, 2023.

REGISTERED SUPPORT / OPPOSITION:

Support

Black Lives Matter - Los Angeles
Initiate Justice
Oakland Privacy
Secure Justice
The Re-imagine Los Angeles County Coalition

Opposition

Association for Los Angeles Deputy Sheriffs
Association of Orange County Deputy Sheriffs

California Fraternal Order of Police
California Peace Officers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
County of San Joaquin
Deputy Sheriffs' Association of Monterey County
Deputy Sheriffs Association of San Diego County (unless amended)
Long Beach Police Officers Association
Natomas USD for Freedom
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Protection of the Educational Rights for Kids
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriff's Employees' Benefit Association
Stand Up Sacramento County

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