

Date of Hearing: July 15, 2025  
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 485 (Reyes) – As Amended April 7, 2025

**SUMMARY:** Authorizes the board of supervisors to remove an appointed public defender from office by a 3/5 vote for neglect of duty, malfeasance or misconduct in office, or other good cause.

**EXISTING FEDERAL LAW:**

- 1) States that no person shall be deprived of life, liberty, or property, without due process of law. (U.S. Const. amend. V.)
- 2) Establishes that in all criminal prosecutions, the accused shall enjoy the right to have assistance of counsel for his defense. (U.S. Const. amend VI.)
- 3) Provides that no state shall deprive any person of life, liberty, or property, without due process of law. (U.S. Const. amend. XIV.)

**EXISTING LAW:**

- 1) States that a person may not be deprived of life, liberty, or property without due process of law. (Cal. Const. art. I, § 7.)
- 2) Establishes that the defendant in a criminal cause has the right to have the assistance of counsel for the defendant's defense. (Cal. Const. art. I, § 15.)
- 3) States the board of supervisors of any county may establish the office of public defender for the county. Any county may join with one or more counties to establish and maintain the office of public defender to serve such counties. (Gov. Code, § 27700.)
- 4) Provides that at the time of establishing the office the board of supervisors shall determine whether the public defender is to be appointed or elected. (Gov. Code, § 27702.)
- 5) Establishes that if the public defender of any county is to be appointed, they shall be appointed by the board of supervisors to serve at its will, and the public defender of any two or more counties shall be appointed by the boards of supervisors of such counties. (Gov. Code § 27703.)
- 6) Requires that the public defender shall perform the following duties:
  - a) Upon request of the defendant or upon order of the court, the public defender shall defend, without expense to the defendant, any person who is not financially able to

employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

- b) Upon request, the public defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars (\$100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.
  - c) Upon request, the public defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.
  - d) Upon request, or upon order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings, as specified.
  - e) Upon order of the court, the public defender shall represent any person who is entitled to be represented but is not financially able to employ counsel in proceedings, as specified.
  - f) Upon order of the court the public defender shall represent any person who is required to have counsel, as defined.
  - g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings. (Gov. Code, § 27706.)
- 7) Provides that in any county a county counsel may be appointed by the board of supervisors. (Gov. Code, § 27640.)
- 8) Provides that an appointed county counsel may be removed at any time by the board of supervisors for neglect of duty, malfeasance or misconduct in office, or other good cause shown, upon written accusation to be filed with the board of supervisors, by a person not a member of the board, and heard by the board and sustained by a three-fifths vote of the board. (Gov. Code, § 27641.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Chief Public Defenders play a crucial role in ensuring a fair and equitable justice system. They uphold the Constitution by guaranteeing access to competent legal counsel for all, regardless of financial status. When a public

defender fulfills this duty to their clients, it may mean taking unpopular stances which can include positions that, although legal, come into conflict with their appointing board.

“This creates a challenging environment as public defenders can be fired without cause by a county board of supervisors, creating a disincentive to fulfill their duties out of fear of retaliation, and in turn not offering their clients their constitutionally guaranteed rights.

“To ensure a fair legal system, public defenders must be free from political pressure and retaliation. SB 485 seeks to eliminate the "at-will" status of Chief Public Defenders, allowing them to be removed only by a 3/5 vote of the board for neglect, misconduct, or other justifiable reasons. This reform would protect their independence and allow them to serve with integrity.”

- 2) **Effect of the Bill:** This bill would require public defenders be removable only for cause, as defined. One goal of this bill is to protect public defenders from fear that performing their duties could lead to retaliatory termination. The author suggests that if a public defender’s incentive to fulfill their duties and uphold their clients’ constitutionally guaranteed rights is compromised by fear of retaliation, there is a possibility that public defenders will be unable to provide the effective, conflict-free counsel demanded by the federal and state constitutions.

According to information provided by the author’s office, there are no documented cases in California where a board of supervisors has removed a public defender for taking up a controversial case or issue. Yet, this has occurred in Pennsylvania. The Chief Public Defender and Deputy Chief Public Defender of Montgomery County, Pennsylvania were both fired by their board of supervisors after their office submitted an amicus brief supporting a lawsuit challenging bail setting practices.<sup>1</sup> They filed lawsuits raising retaliation, whistleblower, and First Amendment claims, which the county settled for \$310,000.<sup>2</sup> Though the case settled, there is risk of a chilling effect from having been fired for performing duties inherent to their jobs because local elected officials disagreed with a legal position asserted as part of that job responsibility. This bill limits board of supervisors’ removal power of public defenders, unless the public defender has demonstrated neglect of duty, misconduct or malfeasance in office, or other good cause for removal. To clarify the scope of these removable offenses in different cases, our courts have given us guidance.

This bill would allow for removal of public defenders for neglect of duty, malfeasance or misconduct in office, or for other good cause. Noting that the term “neglect of duty” has an “accepted legal meaning”, the California Supreme Court defined neglect of duty as “an intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty.” (*People v. McCaughan* (1957) 49 Cal. 2d 409, 414.) Another court found, in a case involving public officials’ duty to make an arrest that the officials were

---

<sup>1</sup> Vaughn, *Pennsylvania Public Defenders not Reinstated Despite Public Outcry over Firing* (Mar. 6, 2020) The Appeal <<https://theappeal.org/pennsylvania-public-defenders-not-reinstated-despite-public-outcry-over-firing/>> [as of July 2, 2025].

<sup>2</sup> Mitchell, *Montgomery County to Pay \$310K to Settle Claims from Former Public Defenders in Row over Bail Policies* (Mar. 19, 2021) <<https://www.law.com/thelegalintelligencer/2021/03/19/montgomery-county-to-pay-310k-to-settle-claims-from-former-public-defenders-in-row-over-bail-policies/?slreturn=2025041005802>> [as of July 2, 2025].

“punishable for neglect of duty if they neglected to act in a case where there was sufficient or probable cause for acting.” (*Michel v. Smith* (1922) 188 Cal. 199, 209.)

The California Supreme Court also found that a crime committed in an official capacity is necessarily sufficient to establish “misconduct in office.” (*Stark v. Superior Court* (2011) 52 Cal. 4th 368, 410.) Misconduct in office is “broad enough to include any willful malfeasance, misfeasance, or nonfeasance in office, even without any criminal intention.” (*Id.* at p. 411.) Misconduct in office is not limitlessly broad, however, as one court held that an “act or omission for which [a] public officer may be removed from office does not necessarily imply corruption, criminal intent, or commission of crime . . . .” (*People v. Hale* (Cal. App. 5th Dist. 1965) 232 Cal. App 2d 112, 118.)

Another court defined malfeasance as “a wrongful, unlawful, or dishonest act; especially wrongdoing or misconduct by a public official.” (*People v. Smith* (Cal. App. 6th Dist. 2024) 100 Cal. App. 5th 741, 754, quoting Black’s Law Dict. (11th ed. 2019) at p. 1145.) The court found that “the term ‘malfeasance in office’ . . . means misconduct or wrongdoing by a public official while in office, at least where the conduct ‘evidences moral corruption and dishonesty.’” (*Ibid.*, see also *Otsuka v. Hite* (1966) 64 Cal. 2d 596, 608.) The court held a public official charged and convicted of perjury had committed malfeasance in office and thus, barred from jury duty. (See *ibid.*) Another court, however, found that a conviction for obstruction of justice did not necessarily “imply moral corruption or dishonesty” and thus, the person constitutionally was able to hold the office to which he was elected. (See *People ex rel. City of Commerce v. Argumendo* (Cal. App 2nd Dist. 2018) 28 Cal. App. 274, 280-82.)

While the term “other good cause” leaves apparent room for ambiguity, good cause standards exist in the law. The California Supreme Court cited to the Book of Approved Jury Instructions (BAJI) for the standard that must be met when an employee is contractually unable to be terminated except for good cause. (See *Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal. 4th 93, 99.) That standard reads,

Where there is an employment agreement not to terminate an employee except for good cause, an employer may not terminate the employment of an employee unless such termination is based on a fair and honest cause or reason. In determining whether there was good cause, you must balance the employer's interest in operating the business efficiently and profitably with the interest of the employee in maintaining employment.” (*Id.* at fn. 2.)

The California Supreme Court noted the inquiry for demotion for good cause is identical to discharge with good cause. (*Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal. 4th 454, 467.) The good cause inquiry involves determining whether the adverse employment action was done for “a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power . . . as opposed to one that is ‘trivial, capricious, unrelated to business needs or goals, or pretextual.’” (*Ibid.*)

Additionally, while this bill would change public defenders from at-will employees to removable only for cause, the law does not permit blanket authority for termination of at-will employees by their employers. Beyond the protections afforded at-will employees in state and federal law, a person who maliciously induces an employer to discharge an employee through the use of false statements, fear, or “malevolent advice and persuasion” is liable to

the employee for damages “and it makes no difference whether the employment was for a fixed term not yet expired or is terminable at the will of the employer.” (See *Haddle v. Garrison* (1998) 525 U.S. 121, 126.)

By making county public defenders removable for cause, this bill would more closely align those public defenders with county counsels, who have similar statutory protections. (See Gov. Code, § 27641.)

- 3) **The Right to Counsel:** This bill would modify board of supervisors’ authority to remove an appointed public defender. Public defenders help ensure an accused’s constitutional right to representation are actualized. Indigent criminal defendants are entitled to the assistance of counsel at trial. (See U.S. Const., amend. VI, Cal. Const., art. I, § 15.) The right to counsel is guaranteed by California’s Constitution, but is also guaranteed by the US Constitution and is binding on the states through the Fourteenth Amendment’s Due Process clause. (*Gideon v. Wainwright* (1963) 372 U.S. 335, 342-343.) In initially establishing this right, the Supreme Court wrote, “The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel . . . .” (*Gideon*, supra, at p. 344, quoting *Powell v. Alabama* (1932) 287 U.S. 45, 68.) The Court went on to state, “In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth . . . .” (*Ibid.*)

The bounds of this right have been further formed since these initial decisions. The Court found that the right to counsel is violated unless counsel provides effective assistance to their client. (*Strickland v. Washington* (1984) 466 U.S. 668, 686.) Assistance is ineffective when “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” (*Id.* at pp. 692-93.) At the trial level, being effective requires counsel to “subject the prosecution’s case to meaningful adversarial testing.” (*United States v. Cronin* (1984) 466 U.S. 648, 659.)

To ensure a criminal defendant’s right to counsel, the majority of California’s 58 counties have established an Office of the Public Defender. (Gov. Code, § 27700.) When counties create a public defender office, the board of supervisors can choose to have an elected or appointed public defender. (Gov. Code, § 27702.) An appointed public defender serves at the will of the board of supervisors, which means the board can remove them for any reason. (Gov. Code, § 27703.) By contrast, county counsels who are also appointed by the board of supervisors only can be removed by the board of supervisors for neglect of duty, malfeasance or misconduct in office, or other good cause. (Gov. Code, § 27641, subd. (b).)

This bill limits the board of supervisors’ ability to remove a public defender from office except for neglect of duty, malfeasance or misconduct in office, or other good cause. By requiring some cause for removal of a public defender, this bill arguably helps achieve fuller fidelity to the constitutional right to counsel.

- 4) **Public Employment and Property Interests:** This bill would change the ability of boards of supervisors to remove a county public defender from at-will to only for removable for specified causes. This could create a property interest in the job for the public defender. Creating a property interest in the job could require counties to provide due process protections to public defenders, even with documented evidence of good cause.

The Due Process Clause provides that certain substantive rights – life, liberty, and property – cannot be deprived except pursuant to constitutionally adequate procedures. (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 541.) Courts have found that “‘the root requirement’ of the Due Process Clause is ‘that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.’” (*Id.* at p. 542.) In determining whether a government job creates a property interest, the proper inquiry involves analyzing the expectations created by the law and the customs surrounding the position. (See *Bishop v. Wood* (1976) 426 U.S. 341, 353-54.) One court found the Constitution’s procedural due process requirement satisfied where the employee had access to the material upon which the charge was based and the employee could then respond orally and in writing and present rebuttal affidavits. (See *Arnett v. Kennedy* (1974) 416 U.S. 134.)

This bill could create a property interest in the position of county public defender because the language of the bill would create a statutory expectation of continued employment, absent a showing of good cause for removal. (See *Arnett*, supra, at pp. 151-52 [“appellee did have a statutory expectancy that he not be removed other than for [stated] cause.”].) The Court noted that by passing the law at issue in the case, “Congress was obviously intent on according a measure of statutory job security to governmental employees which they had not previously enjoyed.” (*Id.* at p. 152.) This bill largely would do the same thing for similar reasons by requiring additional job security for county public defenders that the current law does not provide. Whether there is evidence of custom is less clear as current California law makes public defenders at-will employees, while some other municipal public attorneys have a history of removal only for cause. (See Gov. Code, § 27703, *cf.* Gov. Code, § 27641.)

There are also potential concerns with holding the position of public defender that create potential risks for being able to provide to their clients independent, zealous, and unconflicted counsel. These concerns add potential support for the bill creating a property interest in the position of county public defender. The Court has said, “Where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.” (*Roth*, supra, at p. 573.) It went on to note that where discharge from a job “imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities” there is a heightened need for due process protections to refute allegations of impropriety. (See *ibid.*)

The Court’s decisions generally proscribe summary dismissal from public employment without hearing or inquiry required by due process. (*Id.* at p. 576.) California’s Supreme Court held that a permanent public employee may not be dismissed or even disciplined by the appointing authority or authorized representative by simply notifying the employee that the adverse action was being taken, if that notice does not then include an opportunity to respond to the grounds forming the adverse action. (See *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194, 202.) By modifying how public defenders can be removed, this bill may create a constitutional property interest in the county public defender position. It is unclear whether this change would address concerns regarding the level of independence that is currently inherent in these roles.

- 5) **Argument in Support:** According to the *California Public Defenders Association (CDPA)*, The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, defense social workers, and investigators, is pleased to sponsor Senate Bill 485 (Reyes). This bill protects the independence of chief public

defenders who are appointed by county Boards of Supervisors by ensuring that they can only be removed from office by a 3/5 vote of the Board for neglect of duty, malfeasance or misconduct in office, or other good cause. This affords chief public defenders the same protections that are currently in place for county counsels.

In order to be effective, chief public defenders must have independence. Public defenders have a duty to their clients, guaranteed by the Constitution, that is unique among county agencies; it is this duty that must guide every decision that public defenders make. They need the freedom to take unpopular stances, to advocate for those who may not be politically popular, and to occasionally draw the ire of other county departments, or even the members of the Board of Supervisors who appointed them. A public defender who fears losing their job if they take up controversial causes cannot adequately fight for their office or for their clients.

Currently, Government Code Section 27703 states that a public defender who is appointed by a county's Board of Supervisors shall "serve at its will." This stands in stark contrast to the protections afforded by Government Code Section 27641 to another, similarly situated, county department head: county counsel. SB 485 seeks to correct this anomalous discrepancy; it mirrors the language of Government Code Section 27641, and gives public defenders the same protection that county counsels currently enjoy.

In this time of arbitrary terminations and political retribution, it is more important than ever to protect the independence and integrity of civil servants, particularly those entrusted with protecting Constitutional rights.

- 6) **Argument in Opposition:** According to the *California State Association of Counties (CSAC)*, "On behalf of the California State Association of Counties (CSAC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC), we write to respectfully express our joint opposition to SB 485, unless amended to include provisions that offer essential checks and balances regarding the appointment and removal of board of supervisors-appointed county public defenders.

"SB 485 proposes to change the public defender's employment status from at-will to one in which removal may only occur by a majority vote of the local board of supervisors and only for neglect of duty, malfeasance, misconduct in office, or other good cause. While we understand and respect the underlying objective to ensure independence in this important role, we believe the bill, as currently written, lacks key structural safeguards. Our request for amendments is rooted in principles of good governance, organizational consistency, and process clarity – standards that we would be seeking to accompany statutory changes in the employment status for any appointed county department head.

"Specifically, CSAC, UCC, and RCRC are respectfully requesting amendments that would:

- Establish a defined term of office such as the four-year term outlined in Government Code section 27640 for county counsel; and
- Set forth a clear process for judicial review should a public defender contest their removal from office.

"CSAC, UCC, and RCRC are concerned about the long-term implications of a perpetual

appointment if it is not paired with routine performance oversight or a structured review process. These additional elements are needed to ensure that all department heads are held to the same standards to meet their various responsibilities adequately. Public accountability is an essential element of county governance, and it is both reasonable and prudent to provide clear procedures in the event of a contested termination.”

- 7) **Related Legislation:** AB 690 (Schultz), would revise the process and require a county or court, when contracting for the provision or administration of indigent defense services, to include certain elements in the contract or other agreement for indigent services, including requirements for compliance with the California Standards for Contract and Panel Defense Systems. This bill is pending hearing in the Senate Appropriations Committee.
- 8) **Prior Legislation:**
  - a) AB 1209 (Jones-Sawyer), of the 2023-24 Legislative Session, would have created representation to commence as soon as feasible after being notified of a person’s arrest, but in any case within 24 hours after booking or sufficiently before the arraignment to allow the provision of meaningful representation, as specified. This bill was held in the Assembly Appropriations Committee.
  - b) SB 1117 (Becker), Chapter 615, Statutes of 2022, authorizes the State Public Defender to administer and award grants to improve indigent defense services.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

ACLU California Action  
 California Public Defenders Association  
 California Public Defenders Association (CPDA)  
 Ella Baker Center for Human Rights  
 Initiate Justice  
 Local 148 LA County Public Defenders Union  
 Oakland Privacy  
 Smart Justice California, a Project of Tides Advocacy

### **Opposition**

California State Association of Counties (CSAC)  
 Rural County Representatives of California (RCRC)  
 Urban Counties of California (UCC)

**Analysis Prepared by:** Dustin Weber / PUB. S. / (916) 319-3744