

DOES THE SACRAMENTO COUNTY BOARD OF SUPERVISORS HAVE EFFECTIVE OVERSIGHT OF ELECTIVE OFFICERS?

SUMMARY

Due to multiple local media outlet stories and public debates, the 2018-2019 Sacramento County Grand Jury initiated an investigation regarding the nature of oversight provided by the Sacramento County Board of Supervisors (BOS) regarding all three County Elected Officers: Assessor, District Attorney (DA) and Sheriff. The Sacramento County Charter (Charter) defines these positions as Elective Officers. The investigation did not consider whether the BOS (also Elective Officers) warranted additional oversight. Subsequent to starting this investigation, the Grand Jury received a citizen's complaint alleging the Sheriff committed an illegal act when he denied the Inspector General (IG) access to building facilities. This complaint was incorporated within the investigation.

Additional Grand Jury queries, interviews, and data reviews determined that the BOS has budgetary oversight over the Sheriff, DA, and Assessor. The California Constitution and related oversight. The BOS did, however, have minimal functional (community based) oversight of the Sheriff through the IG contract position referenced earlier. With respect to the citizen's complaint, the Grand Jury determined that the Sheriff's IG action was not illegal. The DA and Sheriff are subjected to functional oversight through the California State Attorney General (AG) and under the California Constitution. The Sacramento County Assessment Appeals Board and the Board of Equalization (BOE) provide Assessor oversight. The Assessor currently has a sufficient degree of locally- controlled oversight and is not included in the recommendations. However, the Grand Jury concludes new BOS initiatives should be implemented to gain greater functional oversight of the DA and Sheriff as law enforcement elective officers in order to effect greater accountability and transparency.

BACKGROUND

The residents of Sacramento County elect officers for the positions of Sheriff, DA, and Assessor for terms of four years. These officers can only be removed from their position through voter-recall, and a legal process involving charges of misfeasance, malfeasance, or dereliction of duty. The Grand Jury can play a role in this process through the initiation of an accusation.^a The pursuit of a voter-recall is intentionally designed to be difficult precisely because these office holders were elected by the voters. For example, since 2010 Californians have attempted few recalls: one Sheriff recall attempt qualified for a ballot^b (resigned), three Sheriff recall attempts did not qualify for a ballot, one DA recall attempt did not qualify for a ballot, and no Assessor recall attempts were initiated.¹

^a In this context, the California Government Code defines an accusation as, "An accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district or any humane officer, 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."

^b According to Ballotpedia.org., a certain percentage of registered voters in a given county would have to sign a recall initiative to have it qualify as a ballot measure. The number of voter signatures varies and is based on the population of a given county. A ballot measure fails if it does not obtain the required number of signatures.

Historically, all three officers derive their authority through the California Constitution and the Charter, the latter having been established in 1933 and amended on rare occasion. The Charter specifically defines the duties of not only the three elective officers, but also the members of the BOS and other County personnel.

It is worth mentioning that the majority of the work Sheriff and DA personnel undertake on a daily basis is complex, dangerous, and life-transforming to themselves and the public. This work is generally completed without fanfare or complaint and does not always afford the appropriate recognition to staff or the elective officers.

METHODOLOGY

The Grand Jury conducted the following activities in furtherance of its investigation regarding oversight of the three elective officers:

- Interviewed all five members of the Board of Supervisors
- Interviewed the three elective officers
- Interviewed the Sacramento County Counsel
- Reviewed the Sacramento County Charter
- Reviewed the Sacramento County Code
- Reviewed relevant sections of the California Constitution
- Reviewed relevant sections of the California Government Code
- Reviewed Board of Supervisors archived online meetings
- Reviewed historical media accounts regarding all three elective officers

DISCUSSION

The investigation discovered a number of potential issues regarding oversight of the DA and Sheriff. The Grand Jury concluded that the Assessor currently has a sufficient degree of local and State oversight. From an operations perspective, the BOS does not have oversight of the Sheriff, DA, or Assessor. The Sheriff and DA rely on California Constitutional authorities and Government Code to maintain operational autonomy. The BOS does have overall budgetary oversight of the Sheriff, District Attorney (DA), and Assessor. Two of the three officers (Sheriff and DA) maintain discretionary budgetary spending. The BOS may opt to conduct audits of the three elective offices as a means to ensure the lawful expenditure of funds. However, the BOS cannot determine how each approved budget must be spent.

With respect to the Sheriff, the first report issued by the IG in 2008 stated, “Following an external audit of the Sacramento Sheriff’s Department (SSD), the Office of Inspector General was commissioned by the Board of Supervisors in October of 2007. The Inspector General has broad oversight of the SSD internal disciplinary process and discretionary powers including evaluation of the overall quality of law enforcement, custodial, and security services and the authority to encourage systemic change.”²

The audit mentioned above focused on the SSD’s disciplinary system and determined that the Department routinely exceeded established policy in the timeliness of complaint resolution. As

noted in the audit, “This is significant in that untimely or failed discipline erodes both public trust as well as the core values of the Department.”³ The current Sheriff at the time established a method to track and report the status of all misconduct investigations.

The IG functioned through a working agreement between the BOS and the Sheriff. The IG performed its stated function nearly continuously until 2018. In August, 2018, the Sheriff denied the IG access to Sheriff’s Department facilities. This precluded the IG from performing any other duties until expiration of the contract on November 30, 2018. The prior and current Sheriff have both publicly stated they were in agreement with the concept of an IG as it was instituted. As mentioned above, the IG had broad oversight over SSD’s disciplinary process and the ability to recommend change. Of note, the IG had no contractual oversight of the DA or Assessor.

The legality of the Sheriff denying building access to the IG has been widely discussed and debated at BOS public meetings and across local media outlets. One news report dated October 15, 2018, referenced comments made by county personnel: “In a letter to the Board of Supervisors on Monday, the Sacramento County counsel said Sheriff Scott Jones can continue to obstruct independent investigations of his department. The board must obtain a change to the county charter if it wants to stop Jones from blocking Inspector General Rick Braziel’s independent investigations of the department.”⁴ The Grand Jury concurs with this statement and its logical conclusion that the current system requires modification in order to obtain greater law enforcement oversight.

What is Oversight?

Oversight in the context of this investigation means the ability of an IG and or oversight commission to examine, inspect and analyze Sheriff and DA data, then make recommendations to the BOS. The primary goal is to foster greater accountability and transparency within each organization. As well, these efforts would be undertaken to assist the BOS, Sheriff, and DA in creating more effective and efficient agencies. Neither an IG nor commission is intended to replace existing oversight provided under the State Constitution and Attorney General. Moreover, neither entity can supplant existing authorities from a legal perspective. Additional oversight in this document and the tools suggested are recommended to complement existing statutory oversight. A commission and IG would serve as an independent third party to bridge the gap of public concern relative to the DA and Sheriff.

The role of the IG would be to ensure that all the employees under the jurisdiction of the Sheriff and District Attorney maintain the highest standards of integrity and accountability. The IG would also perform the functions listed on its existing Sacramento County website: “The function of the Office of Inspector General is to conduct fact finding, audits, and other inquiries pertaining to administrative or operational matters of the Sacramento County Sheriff’s Department. The Inspector General Office may also: conduct fact finding pertaining to select allegations of Sheriff employee behavior, audit investigations and conduct systemic reviews of the disciplinary system, provide complainants with timely updates on the status of investigations, [and] make recommendations for process changes to [the] Board of Supervisors and public.”⁵

The role of a commission would be to help improve public transparency and accountability with respect to the DA and Sheriff. The commission would work closely with the DA, sheriff, and IG,

to bring about such change. The commission should be made up of individuals who have some expertise in appropriate areas to strike a balance between law enforcement, civil liberties, and the public at-large. The most satisfying outcome for the commission should be its ability to engage the community with those who are sworn to protect and serve. In this regard, the commission should also be empowered to commend the work of the Sheriff and DA when appropriate.

Why is Oversight Needed?

The citizenry of Sacramento County expect and deserve to have the most transparent and accountable government possible. When any segment of the population is proven or perceived to be disenfranchised, the responsible government must create mechanisms for those voices to be heard. To this end, it is incumbent upon elected and appointed officials to adopt the necessary policies and practices to make government accountability and transparency a reality.

During the past several years, the Sheriff and DA Offices have generated strong reactions from the public and local officials. Small communities within the county have demonstrated a lack of confidence in the actions of the Sheriff and DA. Why should we be concerned about a minority in number versus the greater segment of our community of citizens? The answer is always the same; because it is the right thing to do.

The DA is the Chief County prosecutor and may be considered by citizens as the county's Chief Law Enforcement Officer. The DA's office is an instrument for criminal prosecution and is responsible for working directly with law enforcement entities throughout the county. As such, it is often involved in complex investigations initiated by the Sheriff's Department. The DA's office also investigates the Sheriff's Department and other law enforcement entities in matters relating to potential prosecution of law enforcement officers. The inherent processes and practices undertaken by the DA to fulfill its responsibilities include the potential to significantly impact the communities it serves.

Commission oversight should be included for the DA as a means to help reduce this impact. Further, a commission could provide the opportunity and the means to strengthen communication, collaboration and cooperation, between the DA's office, and the various communities it serves. A commission could assist all parties in determining what works and what might be changed to achieve greater understanding, tolerance and trust between the parties.

Operationally, a commission would serve as an independent third party to help address public concern relative to the DA. How a commission meets is as important as with whom it meets. Meetings would generally be open, involve the public, law enforcement, and hear testimony from experts and laypersons. For example, a commission could examine and make recommendations to help improve the DA's established Victim Witness Assistance Program, and other outreach efforts. One significant commission outcome should be the facilitation of better communication and cooperation between the DA's office and affected families during high-profile investigations. This would also help minimize negative interactions between the parties involved.

Current DA and Sheriff Outreach

The Sacramento County Sheriff's Outreach Community Advisory Board (SOCAB) is made up of individuals appointed by the Sheriff, the BOS, and the incorporated cities within the county. A review of their website lists three Sheriff representatives, one member from each of the five districts, five ex-officio members, and two city representatives. ⁶ The board's function is described as, "The purpose of the SOCAB is to collaboratively establish and implement programs that seek to resolve conflict, concerns and issues regarding the Sheriff's Department and the community it serves. The SOCAB duties include, but are not limited to: provide annual reviews to the Sheriff and Board of Supervisors concerning complaints and testimony from the community related to operations, policies and standard operating procedures of the Sheriff's Department, review and comment on programs to promote, aide and encourage community input, review and comment on the development and operation of the Department's law enforcement activities, [and] represent the Advisory Board at community events." ⁷ The SOCAB was not designed to perform in the same manner as the IG or an oversight commission. The Charter would not have to be amended to enhance or modify the role of the SOCAB.

The DA does not have an advisory group like the Sheriff's SOCAB but it does manage numerous community outreach initiatives. The DA's current website lists a variety of functions under Community Relations, including: Citizens Academy, Community and Government Relations Bureau, Diversity Reception, Outstanding Citizen Awards, Public Safety Annual Event, Speakers Bureau, and Youth Programs. These outreach efforts are a step in the right direction and could benefit from commission contributions.

Oversight Enhancement Opportunities

- California Constitutional amendment and amendment to the Government Code
- Charter amendment
- Sacramento County Code amendment
- Assembly Bill-1185 approval and enactment

Opportunities are currently available that will increase or maximize oversight of the two elective officer positions, without necessarily impeding their legitimate operational autonomy. The State of California could enact legislation that would impact all fifty-eight counties in the same manner. Few counties within the state have experimented with the issue of expanding non-constitutional oversight at the local level. However, counties can amend county charters (through voter approval), and amend county codes, as they deem appropriate. The recent introduction of legislation (AB-1185) seeks to address the issue of Sheriff oversight as well as the position of Inspector General. This bill is an overarching document specifically focused on the office of Sheriff.

Elsewhere

Seven other Counties, including Humboldt, King, Los Angeles, Orange, San Diego, Santa Clara, and Sonoma, have some form of oversight Commission or Committee. Some of these bodies are empowered to review the activities of non-law enforcement agencies.

A brief description of some of the oversight models in place include *Humboldt County's Citizen Law Enforcement Liaison Committee* which acts as a go-between with the Sheriff and general Public. San Diego's committee reviews citizen complaints and makes recommendations.⁸ Santa Clara has an *Office of Correction and Law Enforcement Monitoring Committee* which reviews complaints, reviews service delivery, provides review of serious incidents, makes recommendations to better policies and procedures, and generally promotes transparency and accountability.⁹ As well, Orange County has an *Office of Independent Review* which is responsible for monitoring protocols of various Departments and investigating critical incidents. These departments include the Sheriff's Office but also the District Attorney, Public Defender, Probations Department, and Social Services Department. They report directly to the Board of Supervisors.¹⁰

As with the other models mentioned previously, in 2016, the County of Los Angeles adopted an ordinance to enhance civilian oversight of their Sheriff's Department. According to their website, "On January, 12, 2016 the Los Angeles County Board of Supervisors voted to implement a Sheriff Civilian Oversight Commission with the mission to improve public transparency and accountability with respect to the Los Angeles County Sheriff's Department. The Commission is comprised of nine members representing the Board, with four members of the Commission recommended by community and other affiliated groups. The cornerstone of the Commission's work is community engagement and such engagement is encouraged and valued. The Office of the Inspector General and its staff will work closely with the Commission and shall be accountable for investigations."¹¹

The Los Angeles model may be a step in the right direction. However, the Los Angeles Commission experienced some challenges after its first year in operation which some residents attributed to a lack of subpoena power. The Commission during one of its investigations, was unable to obtain Sheriff Department records through its normal working relationship. The power to compel continues to be discussed today in media reports: "Last year, Los Angeles organizers collected more than 240,000 voter signatures to force the subpoena issue before voters in 2020. The Board of Supervisors voted to allow the measure on the ballot, rather than exercise its right to enact it into law based on the significant number of signatures."¹²

California Constitutional Amendment

The State Legislature could amend the Constitution through the initiative process which would define the Sheriff position as an appointed versus elected official. This change would manifest through the initiative process, where voters directly place the proposed constitutional amendment on the ballot. To be included on the ballot, a constitutional amendment initiative requires a petition to be submitted to the Secretary of State with the certified signatures of eight percent of the total vote for all candidates for Governor at the most recent gubernatorial election. If the signature requirements are met, the initiative shall then be placed on the next general election ballot held at least 131 days after its qualification, or at any special statewide election held prior to that general election. (Cal. Const., art. II, § 8, subd. (b).) The legislature can also propose a constitutional amendment. This method requires a roll call vote in the legislature with two-thirds of the members of each house concurring. An amendment can also be proposed by constitutional convention, which also requires a roll call vote in the legislature with two-thirds of each house's

membership concurring. (Cal. Const., art. XVIII, §§ 1, 2.) If the bill is approved, it would then go to the voters, in the form of the legislation, for the voters to either approve or reject.¹³ Either of these scenarios require a significant amount of effort on the part of politicians as well as the public, including amendments to various sections of the California Government Code.

Charter or County Code Amendment

An Amendment to the Charter can be achieved through voter approval. County Code amendments can be accomplished through BOS initiative. The Charter or County Code could also be amended to require an Office of Inspector General. This action would place the office of IG in a more permanent setting rather than the current annually renewed contract position. Nevertheless, some form of Sheriff and DA concurrence would be necessary as a practical matter. The BOS could consider the creation of a task-force or working group responsible for crafting the detailed work roles for a charter or citizens' commission as well as an IG. This BOS created advisory group might consist of the Sheriff, DA, a BOS member, private citizen, and civic leader.

The mechanics of an amendment to the Charter can be lengthy. Proceedings to enact or revise a charter may be initiated by an ordinance, adopted by a majority vote of the Board of Supervisors. The ordinance would declare that the public interest requires the election of a charter commission composed of fifteen qualified electors of the county to be elected by the qualified electors of the county, at a general or special election.

Proceedings to enact or revise a charter may also be initiated by a petition of qualified electors of the county (Gov. Code, § 23701.)¹⁴ Upon the adoption of an ordinance, or the presentation of a petition, the governing body shall order the holding of a special election to elect a charter commission, to be held on the next established election date not less than eighty-eight days after adoption of the ordinance or presentation of the petition. (Gov. Code, § 23705.)¹⁵ Candidates are nominated in the same manner as the nomination of candidates for county offices. (Gov. Code, § 23706.)¹⁶ The voters then vote on the whether a charter commission shall be elected, and if so, the fifteen candidates receiving the highest number of the votes become the charter commission. (Gov. Code, § 23707.)¹⁷ The charter commission then prepares the charter, and it is presented by the governing body to the voters at a special election. (Gov. Code, § 23710.)¹⁸

A second option available to the BOS begins with a creation of a motion submitted for a charter proposal adoption by the voters at either a special election or a general election. (Gov. Code, § 23711.)¹⁹ A charter may also be amended or repealed by proposals submitted by the governing body or by a petition signed by ten percent of the qualified electors of the county. (Gov. Code, § 23720.)²⁰ The governing body then submits the proposal to amend or repeal the charter to the voters at a special election. (Gov. Code, § 23722.)²¹ This procedure has been followed in the County of Sacramento at least for the most recent charter amendments (1998 and 2009).

Lastly, an amendment to the County Code could also be initiated by the BOS and is less arduous. An amendment is prepared by legal staff, submitted at a regular BOS meeting, and introduced and adopted over two meetings. A majority vote of the BOS is required, and Code amendments go into effect thirty days after adoption. Removal provisions or establishment of an IG could be

accomplished by a Code amendment rather than a charter amendment with the same limitations relative to DA or Sheriff.

Assembly Bill-1185

Assembly Bill-1185 was recently introduced in the California Assembly and is titled “An act to add Section 25303.7 to the existing Government Code, relating to counties.” This bill was introduced in February 2019 and passed by the California Assembly Public Safety Committee, on April 2, 2019. In part, the document states: “This bill would 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 or subpoena duces tecum 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, as provided.”²²

As noted earlier, local governments through their respective Board of Supervisors currently have the capability to create a Sheriff civilian review body and have infrequently done so. However, passage of AB-1185 might remove some of the perceived reluctance for local bodies to take similar unilateral action. It should be noted the bill only applies to the Sheriff and not the DA with respect to an oversight board or IG. The Grand Jury believes AB-1185 would be a stronger bill if the DA were included because both the Sheriff and DA are law enforcement entities with similar, and yet unique responsibilities.

Current Status of County Actions

As discussed earlier, following the Sheriff’s actions to deny IG access to Department facilities, the current IG contract expired in November 2018. Subsequently, discussion between the Sheriff and BOS have taken place with no IG resolution to date.

FINDINGS

- F1. Sacramento County based oversight of the DA and Sheriff is inadequate given the potential impact their policies and action could have on the communities they serve. Opportunities exist to improve understanding, tolerance and trust between all parties.
- F2. Prior BOS Inspector General contractual provisions have provided limited success in addressing the issue of oversight, resulting in a lack of accountability and transparency.

RECOMMENDATIONS

- R1. The BOS should initiate action to create a Sacramento County oversight commission with responsibilities pertaining to the DA and Sheriff. This recommendation should be accomplished by December 31, 2019.
- R2. The BOS should complete action to reinstitute the IG function and office with accompanying Memorandum of Understanding (contract with the DA and Sheriff) mandating all work with the commission. This recommendation should be accomplished by December 31, 2019.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following elected county officials within 60 days:

- The Sacramento County Board of Supervisors
700 H Street, Suite 1450, Sacramento, CA 95814

Please respond to all Findings and Recommendations, mail or deliver a hard copy to:

David De Alba, Presiding Judge Sacramento County Superior Court
720 9th Street, Dept. 47
Sacramento, CA 95814

In addition, please email response to:

Becky Castaneda, Grand Jury Coordinator at castanb@saccourt.com

INVITED RESPONSES

- Assessor Christina Wynn
3701 Power Inn Road, Suite 3000, Sacramento, CA 95826
- District Attorney Anne Marie Schubert
901 G Street, Sacramento, CA 95814
- Sacramento County Sheriff Scott Jones
711 G Street, Sacramento, CA 95814

Mail or deliver a hard copy response to:

David De Alba, Presiding Judge Sacramento County Superior Court
720 9th Street, Dept. 47
Sacramento, CA 95814

In addition, please email response to:

Becky Castaneda, Grand Jury Coordinator at castanb@saccourt.com

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
--

Endnotes:

-
- ¹ Ballotpedia (website). “Sheriff recalls.” http://www.ballotpedia.org/Sheriff_recalls.
- ² Sacramento County. Office of the Inspector General (website). “Audit and Reports.” <https://inspectorgeneral.saccounty.net/Pages/AuditsReports.aspx>.
- ³ Ibid.
- ⁴ Moffit, Bob. “Sheriff Scott Jones Can Keep Obstructing Investigations Into Shootings, County Counsel Says.” October 15, 2018. <http://www.capradio.org/articles/2018/10/15/sheriff-scott-jones-can-keep-obstructing-investigations-into-shootings-coun.ty-counsel-says/>.
- ⁵ Sacramento County. Office of the Inspector General (website). www.inspectorgeneral.saccounty.net/Pages/default.aspx.
- ⁶ Sacramento County. Sheriff’s Outreach Community Advisory Board (website). “Board Members.” www.socab.saccounty.net/Pages/boardmembers.aspx.
- ⁷ Ibid.
- ⁸ SanDiegoCounty.gov. (website). “Citizens Law Enforcement Review Board.” <https://www.sandiegocounty.gov/content/sdc/clerb/>.
- ⁹ County of Santa Clara: SCCGOV. (website). “County Issues RFP for Correction and Law Enforcement Monitoring Services,” June 11, 2018. <https://www.sccgov.org/sites/opa/newsroom/Pages/correctionandlawenforcementmonitoringrfp.aspx>.
- ¹⁰ Orange County Office of Independent Review (website). <http://ocoir.ocgov.com/>.
- ¹¹ Los Angeles County. Civilian Oversight Commission. (website). “County of Los Angeles Sheriff Civilian Oversight Commission.” <https://coc.lacounty.gov/Home>.
- ¹² Anita Chabria and Matt Stiles, “Who monitors sheriffs? Proposed law would place that power firmly with counties,” *Los Angeles Times*, April 10, 2019, <https://www.latimes.com/local/california/la-pol-ca-sheriff-oversight-bill-california-legislature-20190410-story.html>.
- ¹³ Ballotpedia (website). “Amending State Constitutions.” https://ballotpedia.org/Amending_state_constitutions.
- ¹⁴ CAL. GOV’T CODE § 23701.
- ¹⁵ CAL. GOV’T CODE § 23705.
- ¹⁶ CAL. GOV’T CODE § 23706.
- ¹⁷ CAL. GOV’T CODE § 23707.
- ¹⁸ CAL. GOV’T CODE § 23710.
- ¹⁹ CAL. GOV’T CODE § 23711.
- ²⁰ CAL. GOV’T CODE § 23720.
- ²¹ CAL. GOV’T CODE § 23722.
- ²² California Legislative Information. Bill Information. “AB-1185 Officer oversight: sheriff oversight board. (2019-2020).” http://www.leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1185.