

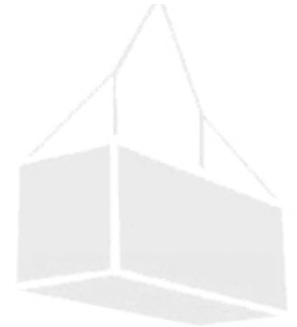


County of Alameda

Public Protection Committee

AB 1185 Overview

Thursday, March 11, 2021



Overview

In this presentation we will discuss:

- The authority of the Board of Supervisors over the Sheriff
- A summary of Assembly Bill (“AB”) 1185
- What AB 1185 authorizes
- What other California counties have done prior to AB 1185 or subsequently



BOS AUTHORITY OVER THE SHERIFF – Government Code Section 25303

CA Government Code § 25303 sets forth the authority of the Board of Supervisors (BOS) over county officials, and the Sheriff specifically as it provides:

- The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.
- ***This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. 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. [Emphasis added.]***
- Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.



AB 1185

- Assembly Bill 1185 was authored by Assemblymember Kevin McCarthy and first introduced in 2017.
- The bill made its way through the Assembly and the Senate in 2020 and Governor Newsom signed it on September 30, 2020. AB 1185 became effective January 1, 2021.
- AB 1185 adds section 25303.7 to the Government Code.
- The bill authorizes the creation, either by board of supervisor action or vote of county residents, a sheriff oversight board and/or an inspector general.
- AB 1185 codifies and thus confirms every county's ability to establish a sheriff oversight board and inspector general's office, and the grant of subpoena powers.



What Is the Role of an Oversight Board?

- Government Code § 25303.7 defines the Oversight Board:
 - To assist the board of supervisors with its duties required pursuant to [Section 25303](#) that relate to the sheriff.
 - The members of the sheriff oversight board shall be appointed by the board of supervisors.
 - The board of supervisors shall designate one member to serve as the chairperson of the board.
 - The chair of the sheriff oversight board shall issue a subpoena or subpoena duces tecum whenever the board deems it necessary or important to examine the following:
 - Any person as a witness upon any subject matter within the jurisdiction of the board.
 - Any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department.
 - Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.
 - Compliance with oversight board subpoenas is enforced by Superior Court action



What Is the Role of an Inspector General?

Government Code § 25303.7 defines the role of the Inspector General:

- To assist the board of supervisors with its duties required pursuant to [Section 25303](#) that relate to the sheriff.
- The inspector general shall have the independent authority to issue a subpoena or subpoena duces tecum whenever the board deems it necessary or important to examine the following:
 - Any person as a witness upon any subject matter within the jurisdiction of the board.
 - Any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department.
 - Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.
- Compliance with subpoenas is enforced by Superior Court action.



Pathway to AB 1185

- In 1994, the California Supreme Court evaluated the implementation of an oversight board by San Diego County which is a charter county. The Court relied on the following two sections of the Government Code regarding the creation of the board:
 - Government Code § 25303, establishing that the Board of Supervisors “has a statutory duty to supervise the conduct of all county officers,” including county sheriffs. *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1210.
 - Government Code section 31000.1, providing general authority for the Board of Supervisors to appoint commissions or committees of citizens to study problems of general or special interest to the board and to make reports and recommendations to the board.
- Relying upon the authorizations of these two provisions, the Court recognized the ability to create a sheriff oversight board.
- AB 1185 codifies this right and codifies the subpoena power and creation of the Inspector General.



Sheriff Oversight Boards Existing Prior to AB 1185

San Diego County

- In 1990, San Diego County created the Citizens' Law Enforcement Review Board ("CLERB"). This board was created to review public complaints about the Sheriff's Office and Probation Department and was vested with the authority to subpoena witnesses and documents. *CLERB was established by an amendment to the county charter enacted by the voters of the County directing the Board of Supervisors to establish the board.*
- The *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, case, above, concerned the CLERB's authority to issue subpoenas and subpoenas duces tecum. The Supreme Court upheld the CLERB's creation and powers.

Sacramento County

- The Office of Inspector General was commissioned by the Board of Supervisors in October 2007. The Inspector General has broad oversight of the Sacramento County Sheriff's Department's 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.



Sheriff Oversight Boards Existing Prior to AB 1185

Orange County

- Established in 2008, the Office of Independent Review (“OIR”) exists to review systemic issues involving the Orange County Sheriff-Coroner Department, Probation Department, Office of the District Attorney, Office of the Public Defender, and the Social Services Agency, and serve as an independent resource and counsel for the Board in order to ensure accountability on the performance and operations of the relevant County Departments.
- The OIR does not have subpoena power.
- The OIR has authority to investigate and review: (1) uses of deadly force; (2) uses of force resulting in, or reasonably likely to result in, death or serious bodily injury; (3) deaths and serious bodily injuries occurring in custody; (4) deaths and serious bodily injuries in which the person harmed has had official contact with relevant County Departments; (5) any misconduct not otherwise identified within this section that the Board of Supervisors, Executive Director and the relevant County Department head(s) agree, by written protocol, should be reviewed; and (6) those allegations set forth in citizen or internally generated complaints.



Sheriff Oversight Boards Existing Prior to AB 1185

Los Angeles County

- Following the release of a report by the Citizens Commission on Jail Violence in 2012, the Board of Supervisors established the Office of Inspector General in 2014. In 2016, the Board voted to create a Sheriff Civilian Oversight Commission, with a mission to “improve public transparency and accountability with respect to the Los Angeles County Sheriff’s Department.”
- In early 2020, after complaints from the Inspector General that the Sheriff was unresponsive to requests for information, the Board granted the Sheriff Civilian Oversight Commission the power to subpoena the sheriff’s office.
- The Board of Supervisors placed Measure R on the March 2020 primary ballot to develop a plan designed to reduce jail population and incarceration and granting the Commission subpoena power to investigate complaints. The voters approved the measure.



Sheriff Oversight Boards Existing Prior to AB 1185

Sonoma County

- The Board of Supervisors established an oversight board entitled the Independent Office of Law Enforcement Review and Outreach (“IOLERO”) by Resolution in August 2015. According to its website, IOLERO exists to provide an objective, independent and appropriate review and audit of law enforcement administrative investigations, which include allegations of misconduct, by the Sonoma County Office of the Sheriff-Coroner; to provide an alternate site for members of the public to file complaints against employees of law enforcement agencies, including the Sheriff’s Office; (2) to propose thoughtful policy recommendations to the Sheriff-Coroner; (3) to help increase transparency of law enforcement operations, policies and procedures; and (4) to conduct outreach to and engage the communities of Sonoma County so as to strengthen the relationship between law enforcement in Sonoma County and the communities it serves. The IOLERO did not have subpoena power.

Santa Clara County

- In 2018, the Board of Supervisors adopted through ordinance the Office of Correction and Law Enforcement Monitoring (“OCLEM”), designed to provide independent monitoring of the County’s correction and law enforcement functions. The OCLEM did not have subpoena power. In 2019, the Board of Supervisors hired the OIR Group to begin monitoring services through the OCLEM.



Sheriff Oversight Boards Post Adoption of AB 1185?

San Francisco County

- On November 3, 2020, voters approved Proposition D (added to Ballot by the Board of Supervisors). Proposition D amends the charter to create two new oversight bodies for the San Francisco County Sheriff's Department: the Office of Inspector General (OIG), which would investigate misconduct within the department, and a seven-member Sheriff's Department Oversight Board.

Sonoma County

- On November 3, 2020, voters approved Measure P (added to Ballot by the Board of Supervisors) which expanded the Independent Office of Law Enforcement Review and Outreach's oversight (which includes subpoena power).
- The measure also guarantees funding for the office, requiring that its budget be equal to 1% of the overall sheriff's budget and prohibits its directors from being removed unless approved by a four-fifths vote of the Board of Supervisors.



What have California counties done post AB 1185?

Los Angeles County:

- On November 10, 2020, through a Resolution, the Board of Supervisors adopted AB 1185 and declared that the Office of Inspector General and the Civilian Oversight Commission is vested with the subpoena authority delineated in Government Code section 25303.7

Santa Clara County:

- On December 15, 2020, through a Resolution, the Board of Supervisors amended the municipal code to reflect that the existing Office of Correction and Law Enforcement Monitoring may now issue a subpoena or subpoena duces tecum to the sheriff, or to any officer or employee appointed by the Sheriff, when necessary to obtain information for the performance of tasks set forth by the Board.



Observations about implementation of AB 1185

- AB 1185 does not specify the number of oversight board members the Board of Supervisors may appoint.
- Support staff: it should be noted in some counties which have established an oversight board and/or inspector general, an office with support staff has also been created.
- The oversight boards and/or inspector generals have produced reports, sometimes annually, others more frequently, regarding law enforcement. Often, those reports also contain recommendations.



- AB 1185 is sparse and leaves issues unanswered. However, it provides that:
 - The exercise of powers under [section 25303.7] or other investigative functions performed by a board of supervisors, sheriff oversight board, or inspector general vested with oversight responsibility for the sheriff shall not be considered to obstruct the investigative functions of the sheriff.
- It remains to be seen how courts may harmonize the above language with the following in § 25303:
 - This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. 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.



