

Oversight

Board of Supervisors Meeting October 2023

Presentation Framework

1. Existing oversight and accountability measures
2. New legislation relevant to oversight, transparency, accountability and engagement

Existing Law/Entities Related To Oversight

Electors

Controller

Media

BOS

Grand Jury

Coroner

Sheriff

POST

US DOJ

District Attorney

BSCC

Dept. of Health

CA Attorney General

Judges and Lawyers (civil/criminal) (fed./state)

Sheriff

- Penal Code 832.5 requires Sheriffs to investigate complaints from members of the public and follow a publicly available policy. See https://www.smcsheriff.com/sites/default/files/content_files/comme%20ndation%20complaint.pdf
- The Sheriff tracks all uses of force and looks for patterns of abuse
- The Sheriff is currently implementing a customer service survey for every person who has contact with deputies in the field

Electors

- Article XI Section 1 of the California Constitution requires that the County Sheriff be elected

California Attorney General

- Has direct supervisory responsibility and powers under the Constitution and State Law. Cal. Const., art. V, § 13.
- “The Attorney General has direct supervision over the sheriffs of the several counties of the state, and may require of them written reports concerning the investigation, detection, and punishment of crime in their respective jurisdictions. Whenever the Attorney General deems it necessary in the public interest the Attorney General shall direct the activities of any sheriff relative to the investigation or detection of crime within the jurisdiction of the sheriff, and may direct the service of subpoenas, warrants of arrest, or other processes of court in connection therewith.” Cal. Government Code Section 12560.
- Also investigates misconduct, both specific and systemic. See Cal. Civ. Code §52.3; See, e.g., <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-stipulated-judgment-bakersfield-police>

District Attorney

- Right to review personnel files under Penal Code 832.7
- Is obligated to track and inform the defense whenever an officer has engaged in conduct that might be material to the defense. *Brady v. Maryland* 373 U.S. 83 (1963)
- Investigates potential criminal conduct by officers and prosecutes when the evidence supports it
- Investigates all deaths in the in the field not investigated by the Attorney General and all deaths in jail

Coroner

- Independently elected
- Investigates all causes of death for deaths involving law enforcement. Government Code 27491

Controller

- Independently Elected
- The Internal Audit Division conducts independent audits, evaluations, and analyses to assist County management to improve efficiency and effectiveness of programs and functions, and safeguard County assets and meet reporting requirements.

Board of Supervisors

- Supervises Conduct of County Officers. Government Code 25303
- Maintains a whistleblower program. See <https://www.smcgov.org/hr/whistleblower-program>
- Investigates allegations of serious misconduct of elected officials. Ordinance Code Chapter 2.04

US Department of Justice

- Brings enforcement actions against law enforcement agencies with a pattern and practice of civil rights violations under federal law. See, e.g.,
- <https://www.justice.gov/crt/us-v-city-los-angeles-consent-decree-introduction>
- Also investigates complaints against law enforcement. See, e.g., www.ojp.gov/sites/g/files/xyckuh241/files/media/document/ca-10-ocr-0669.pdf

Commission on Peace Officer Standards and Training (POST)

- Sets selection and training standards for peace officers (Penal code 13500, et seq.)
- Adopts Regulations (Title 11, Division 2 of the California Code of Regulations)

Board of State and Community Corrections

- Penal Code 6204, et seq.
- Regulates jails (Title 15, Division 1 Chapter, Subchapter 4)
- Conducts regular inspections
- Develops standards for selection and training of correctional officers

Judges & Lawyers

- The County is periodically sued for civil rights violations, which are handled by both the state and federal courts and are decided by unbiased judges
- Private defenders can and do also regularly raise allegations of unlawful arrest and force in criminal court. If found to be meritorious, those allegations are further investigated for discipline
- Inmates can and do bring court petitions for “habeas corpus” to challenge jail conditions, which are decided by the courts

Grand Jury

- Recommended removal of Sheriff in Santa Clara (Government Code 3060)
- Reports regularly on law enforcement oversight issues (see, e.g.):
- <https://www.sanmateo.courts.ca.gov/system/files/ripa.pdf>
- https://www.sanmateo.courts.ca.gov/system/files/multilingual_access.pdf
- https://www.sanmateo.courts.ca.gov/system/files/body_camera.pdf
- <https://www.sanmateo.courts.ca.gov/system/files/inmatewelfaretrustfund.pdf>

Media

- Public Records Act requests
- Investigate reporting

Significant New Oversight-Related Legislation

SB 2 (Decertification)

SB 16 (Personnel Records)

AB 748 (Video)

AB 953 (Anti-discrimination)

AB 1196 (Use of Force; tactics)

SB 98 (Press Access)

SB 519 (In-Custody Death Inspector)

AB 48 (Use of Force; equipment)

AB 481 (Equipment)

AB 490 (Use of Force; tactics)

AB 26 (Use of Force; policy)

AB 1506 (Use of Force; AG review)

AB 750 (Police Reports)

AB 268 (Corrections Policies)

Senate Bill 2: Peace Officer Decertification

- Took Effect in 2022
- Provides for **independent review** of disciplinary investigations/decisions by the Sheriff's Office as well as **independent investigations** of complaints of misconduct
- Lots of components and this presentation will not cover all of them
- <https://post.ca.gov/sb-2>

Racial Identity and Profiling Act (RIPA)

- Racial and Identity Profiling Act
- Sheriff began collecting data as required in 2022
- Sheriff began reporting data as required this year
- See <https://post.ca.gov/Racial-and-Identity-Profiling-Act>

Transparency

- **Senate Bill 16** (makes disciplinary records involving serious misconduct public and much more)
- **Senate Bill 748** (requires release of video re uses of force resulting in GBI or death)
- **Assembly Bill 98** (provides access to the press to enter closed areas during 1st Amendment activity)
- **Assembly Bill 481** (requires “Military Equipment” policies and Board Approval of purchase of “Military Equipment”)

SB 519: Death Reviews

- Takes effect in July 2024
- Creates the position of Director of In-Custody Death Review
- Reviews all deaths occurring in the jail
- Requires Director to make recommendations to Sheriffs
- Requires Sheriff to respond to the recommendations publicly

Use of Force

- **Assembly Bill 26** (eff. 2022) (requirements of UOF policy)
- **Assembly Bill 48** (eff. 2022) (limits use of certain weapons to disperse a protest)
- **Assembly Bill 490** (eff. 2022) (prohibits techniques or transport methods with substantial risk of positional asphyxia)
- **Assembly Bill 1196** (eff. 2021) (prohibits carotid restraint)

AB 1506

- Requires Attorney General review of certain Use of Force
- Took effect in July 2021
- See <https://oag.ca.gov/ois-incidents>

Community Involvement

- The Sheriff is engaging directly with the public through her CARE program as well as by encouraging direct feedback from the public through her new officer survey initiative
- POST, RIPA and BSCC all have independent Boards that include members of the public (sometimes a majority)
- Laws like the Truth Act, Assembly Bill 481 and Senate Bill 519 require public forums and/or engagement
- The Board of Supervisors is a regular forum for community feedback