

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1303 (Pan) – As Amended April 16, 2018

**SENATE VOTE:** 26-9

**SUBJECT:** Coroner: county office of the medical examiner.

**SUMMARY:** Replaces the county office of the coroner with an independent office of the medical examiner in counties that have not adopted a charter and have 500,000 or more residents. Specifically, **this bill:**

- 1) Requires counties with population of 500,000 or greater that have not adopted a charter to replace the office of the coroner or sheriff's coroner's office with an office of medical examiner to exercise the powers and perform the duties of the coroner without a public vote or election by January 1, 2020.
- 2) Requires the office of the medical examiner to be headed by a chief medical examiner appointed by the county board of supervisors or the county executive officer. The chief medical examiner must be:
  - a) A physician and surgeon or an osteopathic physician and surgeon;
  - b) Licensed to practice medicine in California and in good standing with the Medical Board of California or the Osteopathic Medical Board of California; and,
  - c) A board-certified forensic pathologist certified by the American Board of Pathology who has practiced forensic pathology for at least three years following board certification.
- 3) Requires the chief medical examiner to hire and supervise deputies and other staff as needed.
- 4) Provides that the medical examiner shall operate independently from any other county agency or official in the conduct of autopsies, including, but not limited to, exercising professional judgment to make determinations of cause and manner of death, but allows the board of supervisors to supervise the conduct of the medical examiner.
- 5) Applies its provisions notwithstanding any other law and makes related technical and conforming changes.
- 6) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to current law governing state mandated local costs.

**EXISTING LAW:**

- 1) Establishes the number, appointment, and election procedures for county officials, including the board of supervisors.

- 2) Requires, under the California Constitution, all counties to elect a sheriff, district attorney, assessor, and board of supervisors.
- 3) Establishes in statute additional offices, including the sheriff and coroner.
- 4) Tasks the coroner with determining the circumstances, cause, and manner of certain deaths, such as deaths that are violent, sudden, or unusual, or potentially stem from criminal activity.
- 5) Allows the board of supervisors to enact an ordinance to consolidate the sheriff and coroner into a single elected office or abolish the office of coroner and instead appoint a medical examiner to carry out the coroner's duties.
- 6) Requires a medical examiner to be a licensed physician and surgeon specializing in pathology, and requires any forensic autopsy to determine the cause of death to be done by a medical professional.
- 7) Prohibits, where an individual dies as a result of law enforcement activity, law enforcement involved in the death from entering the autopsy suite or having any involvement in the examination.
- 8) Allows counties to adopt charters to specify their own governance structure.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, unknown reimbursable mandate costs, potentially in excess of \$5 million annually (General Fund), for qualifying counties to establish and operate a separate office of medical examiner. Actual costs would be subject to a determination by the Commission on State Mandates regarding what local expenditures are deemed reimbursable, to the extent a successful reimbursement claim is filed.

**COMMENTS:**

- 1) **Bill Summary.** This bill requires non-charter counties with a population of 500,000 or more to replace the office of the coroner or with an office of medical examiner by January 1, 2020. This bill would apply to Contra Costa, Kern, Riverside, San Joaquin, Sonoma, and Stanislaus Counties.

The office of the medical examiner must be headed by a chief medical examiner appointed by the county board of supervisors or the county executive officer. The chief medical examiner must be:

- a) A physician and surgeon or an osteopathic physician and surgeon;
- b) Licensed to practice medicine in California and in good standing with the Medical Board of California or the Osteopathic Medical Board of California; and,
- c) A board-certified forensic pathologist certified by the American Board of Pathology who has practiced forensic pathology for at least three years following board certification.

The medical examiner must operate independently from any other county agency or official in the conduct of autopsies, including exercising professional judgment to make

determinations of cause and manner of death. The board of supervisors retains the authority to supervise the conduct of the medical examiner.

This bill is sponsored by the American Federation of State, County, and Municipal Employees, AFL-CIO, the California Medical Association, and the Union of American Physicians and Dentists.

- 2) **Author's Statement.** According to the author, "SB 1303 is a vital bill that safeguards our criminal justice system by insulating physicians from undue pressure and intrusion by individuals with no medical training. Ensuring that autopsies are done in an ethical and equitable manner is essential in ensuring confidence in our criminal justice system. These autopsies are often the basis for criminal charges and it is imperative that the public gains the necessary facts to determine fault and deliver justice. Additionally, clinical determinations made by physicians must be free from undue influences."
- 3) **Background.** Counties fall into two types: general law and charter. General law counties are organized according to the generally applicable laws for county governance established by the Legislature that set the number, appointment, and election procedures for county officials, including the board of supervisors.

All counties elect or appoint a variety of county officials. The California Constitution requires all counties to elect a sheriff, district attorney, assessor, and board of supervisors, and state law lists the officers that general law counties must have. Charter counties have greater leeway to determine their own governance structure, including the power to elect additional supervisors and appoint or elect additional officers. A new charter, or the amendment of an existing charter, may be proposed by the board of supervisors, a charter commission, or an initiative petition.

There are 14 charter counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. Most large counties are charter counties: eight of the 10 largest counties by population have adopted charters.

Among the officers of a county are the sheriff and coroner. The board of supervisors in a county can enact an ordinance to consolidate the sheriff and coroner into a single elected office. Whether they are combined or in separate offices, the sheriff and coroner must both be elected, unless voters in that county say otherwise. However, the board can, by ordinance, abolish the office of coroner and instead appoint a medical examiner to carry out the coroner's duties. A medical examiner must be a licensed physician and surgeon specializing in pathology.

The county coroner is tasked with determining the circumstances, cause, and manner of certain deaths, such as deaths that are violent, sudden, or unusual, or potentially stem from criminal activity. Regardless of whether a county has a medical examiner, separate coroner, or sheriff-coroner, a medical professional always performs the forensic autopsy to determine the cause of death. This requirement is a recent development. The Legislature enacted SB 1189 (Pan), Chapter 787, Statutes of 2016, to address concerns about interference in autopsies where the death involves law enforcement. This new law requires forensic autopsies to be performed by a licensed physician and surgeon and, when an individual dies

as a result of law enforcement activity, prohibits law enforcement personnel involved in the death from entering the autopsy suite or having any involvement in the examination. However, the coroner – who may not be a medical professional – still determines the manner of death. While the circumstances and causes of death can vary widely, there are only five manners of death: natural, accidental, homicide, suicide, or undetermined.

The Sheriff performs the duties of the coroner in 49 of the state's 58 counties. Many populous counties currently have independent medical examiners to perform the coroner's functions, including Los Angeles, Sacramento, San Bernardino, San Diego, and San Francisco.

- 4) **San Joaquin County Controversy.** In December 2017, two pathologists in San Joaquin County – Dr. Bennet Omalu and Dr. Susan Parson – resigned after documenting numerous incidents of alleged interference by the Sheriff in their death investigations, including changing the manner of death from "homicide" to "accident" in three cases of law enforcement-involved deaths. Since then, the county board of supervisors voted to create an independent medical examiner's office and voters in the county elected a new Sheriff.
- 5) **Alternative Approach.** This bill is limited to six counties, although the conflicts of interest it seeks to address could occur in any county. One possible alternative for counties without an independent medical examiner's office is to establish cooperative agreements with another county to perform the coroner's functions – including the manner of death determination – for death investigations that present an actual or apparent conflict of interest.
- 6) **Arguments in Support.** The California Medical Association, co-sponsor of this bill, writes, "Under our current systems coroners and medical examiners are often construed as the same profession when in fact they are quite different. The Sheriff-Coroner is an elected position that doesn't require any medical or police training. CMA is unaware of any currently elected sheriff-coroner who holds a medical license and is a practicing physician. A medical examiner is a licensed physician who performs medical autopsies after suspicious deaths. In Sheriff-Coroner models, a medical examiner conducts the autopsy and determines the cause of death (cardiac failure, drowning, blunt force trauma, etc.), but the Sheriff retains the final say over manner of death (homicide, accident, natural causes, etc.), even if the medical examiner disputes the Sheriff's finding.

"In states where the Sheriff-Coroner model has been abolished, the Medical Examiner retains the right to determine manner and cause of death and no elected official is involved in this determination. Both determinations – manner and cause of death – are closely intertwined and involve scientific and medical judgments that are based on the sort of training and experience that physicians have. Lay sheriff-coroners, by contrast, do not have the expertise to conduct autopsies and draw medical conclusions from them...CMA believes (the Sheriff-Coroner model) presents an inherent conflict of interest to officer-related deaths; the Sheriff's Office would be investigating and determining the manner of death involving one of its own law enforcement officers. The recent examples in San Joaquin show the downside of the Sheriff-Coroner model. The role of the Coroner or Medical Examiner in our criminal justice system requires that these individuals ethically carry out their job to ensure that we have the necessary facts to determine fault and deliver justice. It has become clear to us that the Sheriff-Coroner model frustrates this goal by placing the Sheriff in a conflicted position of investigating one of their own members. Switching to a Medical Examiner model in counties

with the resources to do so ensures that physicians' professional judgment is never compromised and Californians are presented with the truth, whatever that may be."

- 7) **Arguments in Opposition.** The California State Association of Counties and the Urban Counties of California, in opposition, state, "This bill would have a significant fiscal impact on at least five counties – including Riverside, Contra Costa, Kern, Stanislaus and Sonoma. On April 24, 2018, the San Joaquin County Board of Supervisors voted to create an independent Office of the Medical Examiner. The initial estimated cost to create this new office is an additional \$1.3 million in ongoing costs to their current budget. An expenditure of this size could prove to be detrimental to a county's budget and the county board of supervisors is in the best position to determine if their county has the fiscal ability to absorb such an expense.

"Finally, there is a nationwide shortage of forensic pathologists. A Department of Justice study estimated that there are only 500 Board Certified forensic pathologists in the United States that are currently practicing forensic pathology fulltime. Senate Bill 1303 requires that the office of the medical examiner be led by a forensic pathologist – this could not only lead to recruitment issues, but it also puts these professionals in an administrative function, instead of performing exams."

- 8) **Double-Referral.** This bill is double-referred to the Public Safety Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

American Federation of State, County, and Municipal Employees, AFL-CIO [CO-SPONSOR]  
 California Medical Association [CO-SPONSOR]  
 Union of American Physicians and Dentists [CO-SPONSOR]  
 American Civil Liberties Union of California  
 American Society for Clinical Pathology  
 California Society of Pathologists  
 College of American Pathologists  
 Consumer Attorneys of California  
 Oakland Privacy  
 Santa Clara County

##### **Opposition**

California State Association of Counties  
 California State Coroners' Association  
 California State Sheriffs' Association  
 Kern County Board of Supervisors  
 Riverside County Board of Supervisors  
 San Joaquin County Board of Supervisors  
 Urban Counties of California

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