



90541

DATE: April 3, 2018

TO: Board of Supervisors

FROM: James R. Williams, County Counsel

SUBJECT: Ordinance relating to Correction and Law Enforcement Monitoring

RECOMMENDED ACTION

Under advisement from January 23, 2018 (Item No. 22): Adoption of Ordinance No. NS-300.923 adding Chapter V of Division A20 and Chapter XXV of Division A6 of the Santa Clara County Ordinance Code relating to correction and law enforcement monitoring. (County Counsel)

- Action to Introduce and Preliminarily adopt on March 20, 2018; Roll Call Vote to waive reading, Roll Call Vote to adopt.
- Action for Final Adoption on April 3, 2018; Roll Call Vote to adopt.

FISCAL IMPLICATIONS

There are no direct fiscal implications associated with the recommended action. However, the proposed ordinance contemplates that the Board of Supervisors (“Board”) will contract with an entity to perform the functions of the Office of Correction and Law Enforcement Monitoring. If the Board adopts the proposed ordinance, further analysis will be required to determine the costs of contracting for monitoring services.

REASONS FOR RECOMMENDATION

On January 23, 2018, the Board considered a proposal to establish an Office of Law Enforcement Monitoring (“Office”) to provide independent monitoring of jail and law enforcement operations, and a Community Correction and Law Enforcement Monitoring Committee to improve public transparency and accountability regarding jail and law enforcement operations. The proposal presented to the Board included a possible Charter amendment to provide for a Board-appointed Director of the Office and a proposed ordinance reflecting that appointment structure. The proposal also noted, however, that the Board could engage an independent contractor to perform the Office’s functions, in which case a Charter amendment would not be required.

Following discussion at the January 23, 2018 meeting, the Board voted not to pursue a Charter amendment and instead to engage an independent contractor to perform the functions

of the Office. With that modification, the Board approved the proposal to establish an Office of Correction and Law Enforcement Monitoring. The Board also approved the proposal to establish a Community Correction and Law Enforcement Monitoring Committee, with the direction that its members should be appointed approximately 6-12 months after the independent contractor is engaged. The proposed ordinance amendments considered by the Board on January 23, 2018, are now before the Board for adoption, with conforming changes made by County Counsel to reflect the Board's direction to engage an independent contractor to perform the functions of the Office and to appoint Committee members on the requested timeline.

On January 23, 2018, the Board also voted to move forward with a Board Policy to provide additional policy direction relating to the Office. The proposed Board Policy requires more substantial modifications to accommodate the Board's decision to engage an independent contractor to provide monitoring services. County Counsel intends to return to the Board with a revised proposed Board Policy on April 17, 2018.

CHILD IMPACT

The recommended action will have a positive impact on children and youth who interact with County jail and law enforcement operations or whose families or caretakers have such interactions.

SENIOR IMPACT

The recommended action will have a positive impact on seniors who interact with County jail and law enforcement operations or whose families or caretakers have such interactions.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

Since the spring of 2016, the Finance and Government Operations Committee ("FGOC") has held special meetings to consider the recommendations of the Blue Ribbon Commission on Improving Custody Operations. On September 7, 2016, and March 29, 2017, FGOC also held panel discussions among local and national experts on the subject of jail and law enforcement oversight.

At the Board's September 12, 2017 meeting, Supervisor Simitian brought forward a draft proposal to establish what was then called an Office of Correction and Law Enforcement Oversight. After discussing the proposal, the Board voted unanimously to refer it to FGOC for further consideration.

FGOC considered the proposal at public meetings held on October 5, October 24, and December 14, 2017. In addition, the proposal was agendaized for FGOC's November 20, 2017 meeting, and although Supervisor Chavez was unable to attend and no action was taken, she offered her thoughts and recommendations in a public letter. Throughout this process, County Counsel incorporated FGOC's recommendations into revised versions of the proposal. On December 14, 2017, FGOC considered the revised proposal, provided further feedback for incorporation by County Counsel, and voted to forward the proposal to the

Board with a favorable recommendation.

On January 23, 2018, the Board considered a 4-part correction and law enforcement monitoring proposal: (1) a possible Charter amendment providing for a Board-appointed Director of the Office of Correction and Law Enforcement Monitoring; (2) an Ordinance Code amendment establishing an Office of Correction and Law Enforcement Monitoring; (3) a possible Ordinance Code amendment establishing a Community Correction and Law Enforcement Monitoring Committee; and (4) a Board Policy providing additional direction regarding the Office of Correction and Law Enforcement Monitoring. This item effectuates the Board's direction with respect to the Ordinance Code amendments.

CONSEQUENCES OF NEGATIVE ACTION

The proposed ordinance would not be adopted, and the Board would not establish an Office of Correction and Law Enforcement Monitoring or a Community Correction and Law Enforcement Monitoring Committee.

STEPS FOLLOWING APPROVAL

The Clerk of the Board shall process the update to the Ordinance Code.

ATTACHMENTS:

- Ordinance NS-300.923 relating to Correction and Law Enforcement Monitoring (PDF)
- Item 16 public comment (PDF)

HISTORY:

03/20/18 Board of Supervisors ADOPTED (PRELIM.)

Next: 04/03/18

ORDINANCE NO. NS-300.923

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING CHAPTER V OF DIVISION A20 AND CHAPTER XXV OF DIVISION
A6 OF THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO
CORRECTION AND LAW ENFORCEMENT MONITORING**

Summary

This Ordinance establishes an Office of Correction and Law Enforcement Monitoring to provide independent monitoring of jail and law enforcement operations, and a Community Correction and Law Enforcement Monitoring Committee to improve public transparency and accountability regarding jail and law enforcement operations.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

SECTION 1. Division A20 of the Ordinance Code of the County of Santa Clara relating to Law Enforcement and Sheriff's Department is hereby amended by adding a new Chapter to be numbered and titled and to read as follows:

**CHAPTER V. OFFICE OF CORRECTION AND LAW ENFORCEMENT
MONITORING**

Sec. A20-61. Establishment; Purpose.

There is in the County an Office of Correction and Law Enforcement Monitoring, hereinafter referred to in this Chapter as the Office.

This Office is established, in part, in response to the findings of the 2015 Blue Ribbon Commission on Improving Custody Operations, which identified a lack of accountability in the County jails and recommended independent monitoring as a means of increasing fairness and transparency. The establishment of the Office also reflects extensive efforts by the Board of Supervisors and County departments to reform the County's law enforcement and jail operations, reduce recidivism, and enhance public safety. It is the intent of the Board that the Office will assist in the County's efforts to reimagine the culture and operations of the jails, as well as the Sheriff's law enforcement

operations, to better align those services with the County's ongoing public safety reform efforts.

The ultimate outcomes the County seeks to achieve are increased public safety and reduced recidivism rates, and respect for the dignity of all people, including staff and inmates. These outcomes require a jail and law enforcement system that is transparent and accountable; that is committed to continuous improvement of custody conditions, reentry and diversion programs, and policing practices; that promotes the health and safety of inmates, community members, and law enforcement/corrections personnel; and that protects the rights of inmates and others in a manner that exceeds the requirements of state and federal law.

Through its monitoring and reporting functions, the Office will help foster transparency and accountability; identify unmet needs and service gaps; encourage timely and serious consideration of complaints; and provide independent review of serious incidents involving County personnel. Through its research and policy recommendation functions, the Office will continuously and proactively recommend improvements in custody and law enforcement practices, policies, and services; update the Sheriff's Office, Department of Correction, and other relevant departments on developments in best practices; and identify trends that require changes in policy or practice. It is the intent of the Board that these functions will assist the Sheriff's Office, Department of Correction, and all other relevant County departments in achieving and maintaining a culture and level of services that align with County values and will further the County's commitment to increasing public safety, facilitating diversion and reentry, and reducing recidivism.

The establishment of the Office does not change any reporting structures, and the Office shall not exercise administrative oversight or authority, or otherwise manage or direct operations of any department or entity subject to its monitoring.

Sec. A20-62. Monitor; Independent Contractor.

- (a) The Board shall contract with an independent entity, referred to herein as the Monitor, who shall perform the functions of the Office as an independent contractor. The relationship between the Monitor and the County shall be solely contractual; under no circumstances shall the Monitor be treated as an employee of the County.
- (b) The Board shall set the terms and conditions of the Monitor's engagement, including duration and termination, by contract.

- (c) The contract shall set terms and conditions for the sharing of confidential County information with the Monitor and its staff and for the preservation of confidentiality.

Sec. A20-63. Duties.

- (a) Consistent with the Board of Supervisors' authority to supervise the official conduct of the Sheriff and Chief of Correction under Government Code section 25303, the Office is created to promote the common interest of the Board of Supervisors and the Sheriff in efficient, lawful, and effective policing, and to facilitate the Board of Supervisors' responsibility without interfering with the Sheriff's investigative functions. The Office shall focus on matters relevant to Sheriff's Office policies and procedures and shall not interfere with criminal, personnel, and other investigations by the Sheriff.
- (b) The Office shall provide independent monitoring of, and reporting about, the Sheriff's Office, the Department of Correction, and other agencies/departments related to law enforcement, jail operations, jail facilities, and the employees and contractors involved with law enforcement and jail operations, including the provision of health services in the jails, as set forth in this Chapter.
- (c) To the maximum extent allowed by law, the Office shall be responsible for:
 - (1) Monitoring the Sheriff's Office and Department of Correction's jail and law enforcement operations, the conditions of confinement in the jails, the provision of health services in the jails, the use of force in the jails and in law enforcement operations, compliance with civil rights laws, and the Sheriff's Office and Department of Correction's response to inmate and public complaints related to law enforcement, jail operations, or conditions of confinement, including the provision of services to inmates and the conduct of employees, contractors, volunteers, and others who provide such services.
 - (2) Monitoring that includes matters relevant to Custody Health Services policies and procedures, as well as policies of the Santa Clara Valley Medical Center and Behavioral Health Services Department, that directly affect the medical and behavioral assessment and treatment of inmates. Such monitoring may also include examination of the timeliness of all business operations that have a direct impact on the operations of the jails provided by other County departments.

- (3) Consistent with Government Code section 25303, reviewing and making recommendations regarding policies and best practices of the Office of the District Attorney and the Office of the Public Defender that have an impact on jail or law enforcement operations. Such monitoring may include, but is not limited to, the effect of District Attorney and Public Defender policies and practices on the timeliness of criminal proceedings and the population of the jails. At no time shall the Office interfere with the independent investigatory or prosecutorial authority of the District Attorney or the duties of the Public Defender imposed by the rules of professional conduct.
- (4) Regularly conducting research and making policy recommendations to the Board of Supervisors, the Sheriff, and the County Executive as determined by a Board-approved work plan.
- (5) Periodically reviewing the Sheriff's Office and Department of Correction's use of force patterns, trends, and statistics, the Sheriff's investigations of use of force incidents and allegations of misconduct, and the Sheriff's Office and Department of Correction's disciplinary decisions. As it pertains to uniformed personnel, the Office shall monitor and review investigations of incidents involving, but not limited to: any shooting involving uniformed personnel, whether duty-related or not; any in-custody death; any duty-related incident during which, or as a result of which, a person dies or suffers serious bodily injury; any incident, whether or not duty-related, in which uniformed personnel are under investigation for, or charged with, homicide, assault, kidnapping, or unlawful sexual behavior; or any incident, whether duty-related or not, in which uniformed personnel are under investigation for, or are charged by any jurisdiction with, a crime or violation in which a use of force or threatened use of force is an element of the offense.
- (6) As it pertains to Custody Health Services, the Office shall monitor and review investigations of incidents involving: any in-custody death; any duty-related incident during which, or as a result of which, anyone dies or suffers serious bodily injury; or any serious neglect of inmates as it pertains to their mental and physical health.
- (7) Reviewing the quality of audits and inspections conducted by the Sheriff's Office and the Department of Correction, and conducting its own periodic audits and inspections of the Sheriff's Office and the Department of Correction consistent with professional guidelines for the conduct of such audits. It is the intent of the Board that the Office should supplement, not

supplant, internal auditing and monitoring conducted by the Sheriff's Office and Department of Correction.

- (8) Regularly communicating with the public, the Board of Supervisors, the Sheriff's Office, the Department of Correction, the District Attorney, the Public Defender, and the County Executive regarding the operations of the Sheriff's Office and the Department of Correction. The Office shall make regular, public reports to each of these entities.
- (9) Investigating specific incidents involving Sheriff's Office and Department of Correction personnel when requested by, or with the authorization of, the Sheriff or the Chief of Correction.
- (10) Investigating specific incidents involving Custody Health Services consistent with the Board-approved work plan when requested by the Board or the County Executive.

Sec. A20-64. Cooperation; Access to Information.

- (a) The Sheriff's Office, the Department of Correction, Custody Health Services, and all other County agencies/departments shall cooperate with the Office and promptly supply information or records requested by the Office, including, to the extent permitted by law, confidential peace officer personnel records, inmate medical and mental health records, and related records as necessary for the Office to carry out its duties.
- (b) The Office shall establish written protocols with the Sheriff's Office, the Department of Correction, and the County Executive to maintain, access, and disclose confidential information under this Chapter. The written protocols shall be reviewed and approved by County Counsel.
- (c) It is the intent of the Board of Supervisors that the Office shall have access to information and cooperation from County departments under this section to the greatest extent permitted by law. The Office may request assistance in the performance of its duties from other County agencies/departments or functions, including but not limited to the Board's contract management auditor, the County's Internal Audit Division, the Whistleblower Program, and the Jail Observer Program.

Sec. A20-65. Confidentiality of Information.

- (a) The confidentiality of peace officer personnel records, inmate medical and mental health records, other protected health information of inmates, and all other privileged or confidential information received by the Office in connection with the discharge of its duties shall be safeguarded and maintained by the Office as required by law, including the Public Safety Officers Procedural Bill of Rights Act (Government Code § 3300 *et seq.*), and as necessary to maintain any applicable privileges or the confidentiality of the information.
- (b) The County Counsel shall work with the Office to establish a process that enables the sharing of confidential information with appropriate County officials and entities in accordance with applicable law, when it is determined by the Office that there is a need to share such information. Except as otherwise required by law or provided in the contract with the Monitor, the Office shall not disclose to any non-County entity any confidential information.

Sec. A20-66. Conformity with Applicable Law; Severability.

- (a) The Office shall not have any supervisory, administrative, managerial, operational, or other authority over the functions or personnel in any of the departments or entities that are the subject of its monitoring. In addition, at no time shall the Office interfere with the independent constitutional and statutory authority of the Sheriff, including the Sheriff's investigative functions. Notwithstanding any provision of this Chapter to the contrary, all provisions of this Chapter shall be interpreted to be consistent with this subsection and all applicable federal, state, and local laws, including the Charter, governing such conduct, including provisions regarding the confidentiality of peace officer and health records.
- (b) Complaints received by the Office relating to specific conduct of peace officers shall be referred, with the permission of the complainant (unless such complaint is anonymous), to the Sheriff's Office and/or Department of Correction for action pursuant to Penal Code section 832.5. Complaints received by the Office relating to specific conduct of Custody Health Services staff shall be referred, with permission of the complainant (unless such complaint is anonymous), to Custody Health Services for action.
- (c) The Office shall accept anonymous complaints and shall consider all such complaints in evaluating policies and practices, developing recommendations, and making reports under this Chapter. The Office shall clearly inform the public of its policies and procedures regarding anonymous complaints.

- (d) This Chapter and all of its provisions are severable. Should any section, subsection, sentence, clause, phrase, or word of this Chapter be declared by a court to be unconstitutional or invalid, such decision shall not affect the validity of the Chapter as a whole, or any portion thereof, other than the portion declared to be unconstitutional or invalid.

SECTION 2. Division A6 of the Ordinance Code of the County of Santa Clara relating to Boards and Commissions is hereby amended by adding a new Chapter to be numbered and titled and to read as follows:

CHAPTER XXV. COMMUNITY CORRECTION AND LAW ENFORCEMENT MONITORING COMMITTEE

Sec. A6-281. Establishment.

The Community Correction and Law Enforcement Monitoring Committee (“Committee”) is hereby established to improve public transparency and accountability with respect to the Sheriff’s Office and Department of Correction. The Committee shall provide opportunities for community engagement and advice to the Board of Supervisors, the Sheriff’s Office, the Department of Correction, and the Office of Correction and Law Enforcement Monitoring.

Sec. A6-282. Membership; Term.

- (a) The Committee shall consist of nine voting members, each of whom shall be appointed by the Board of Supervisors, as follows:
- (1) One member nominated by each Supervisor, for a total of five members nominated by members of the Board of Supervisors.
 - (2) Four members nominated by the Monitor performing the functions of the Office of Correction and Law Enforcement Monitoring.
 - (3) In accordance with Section 506 of the Charter, all members shall be residents of the County.
- (b) The first appointment of Committee members shall occur approximately six to twelve months after the effective date of the Board’s initial contract with the Monitor.

- (c) The term of each member shall be three years, except three of the initial members shall serve two-year terms, and three of the initial members shall serve one-year terms to provide staggering of terms. Such initial terms shall be determined by lot. Each member shall continue to serve on the Committee until the appointment of his or her successor. No member shall be eligible to serve for more than three consecutive terms in addition to any portion of any unexpired term which may have been served. A member's failure to attend three consecutive regular meetings without good cause as determined by the Chairperson will result in notification to the nominating authority, which may result in removal of the member from the Committee. All new Committee members shall receive a comprehensive orientation and training.
- (d) No member shall be a current employee of the County. Only the appointed member shall serve on the Committee, and alternates shall not be permitted.
- (e) The Sheriff, Chief of Correction, County Executive, County Counsel, and Monitor, or any one of their designees, shall be entitled to attend and participate in all meetings of the Committee, but shall have no vote and shall not be deemed members of the Committee.

Sec. A6-283. Responsibilities; Authorized Activities.

- (a) The Committee shall serve as an advisory body to the Office of Correction and Law Enforcement Monitoring and the Board of Supervisors, and through the Board of Supervisors to the public, and shall have the following responsibilities:
 - (1) Review policy recommendations made by County or non-County entities at the request of the Board of Supervisors, the Sheriff, the Chief of Correction, the County Executive, or the Monitor, and report to any such entity whether or not the recommendation(s) should be implemented or, if the recommendation(s) is being implemented, the status of implementation. The Committee's reports shall contain an analysis supporting its recommendations, and the Committee shall seek the input of all affected departments or agencies before publishing its reports.
 - (2) Obtain community input and feedback regarding the use of force, detention conditions, or other civil rights concerns in the Sheriff's Office or the Department of Correction; convey to the Board of Supervisors, the Sheriff, the Chief of Correction and any other affected entities the community

complaints, concerns, or positive feedback received by the Committee; and, where appropriate, make recommendations.

- (3) Work with and provide advice to the Office of Correction and Law Enforcement Monitoring in soliciting community input and feedback on issues being examined by the Office.
- (4) Function as a bridge between the Sheriff's Office, the Department of Correction, and the community by: providing the community an additional means of giving input to the Sheriff and the Chief of Correction; obtaining answers from the Sheriff and the Chief of Correction to community concerns about operations, practices, and activities; bringing an additional perspective to the Sheriff's Office and the Department of Correction's decision making relating to the balance between the sometimes competing factors of public safety and constitutional, civil, and human rights; and communicating ongoing community concerns that otherwise might go unnoticed.
- (5) Seek the input of the Sheriff, Chief of Correction, County Executive, County Counsel, and Monitor prior to making any recommendations pursuant to the duties defined in this section.
- (6) Perform its duties in an advisory capacity, and without the authority to manage or operate any department or agency, or direct the activities of County employees or contractors, including the imposition of discipline.
- (7) Conduct its activities in a manner that does not interfere with the investigative or constitutional functions of the Sheriff.

Sec. A6-284. Meetings and Records.

- (a) The Committee shall approve the calendar year's schedule of regular meetings prior to the first meeting in January of that year.
- (b) The Clerk of the Board shall be the ex-officio secretary of the Committee and provide clerk assistance to the Committee in furtherance of its purpose. The Office of Correction and Law Enforcement Monitoring shall provide staff assistance to the Committee.
- (c) All Committee meetings shall be subject to the Brown Act, and all Committee records shall be subject to the California Public Records Act. Minutes of the

Sec. A6-285. Bylaws.

The Committee shall organize itself in accordance with Section 506 of the Charter. Procedures for the conduct of business not otherwise specified herein shall be contained in the bylaws of the Committee. The initial bylaws, and any amendments to the bylaws, following approval as to form and legality by County Counsel, shall be approved by the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

S. JOSEPH SIMITIAN, President
Board of Supervisors

ATTEST:

MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



JAMES R. WILLIAMS
County Counsel

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