

## SURVEY SAYS: POWERFUL SHERIFFS SUCCESSFULLY LIMIT THE RISE OF CIVILIAN OVERSIGHT

Sharon R. Fairley\*

*As communities across the nation grapple with the historically intractable problem of police misconduct, many activists and political leaders have looked to civilian oversight as a way to enhance police accountability systems and provide more formal mechanisms for community input to policing policies and operations. As previously reported in “Survey Says? U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy,” civilian oversight is now a mainstay among accountability systems for municipal police departments. But the same cannot be said regarding oversight systems for county-based law enforcement agencies. Civilian oversight has been slow to develop in this setting, despite the fact that many county law enforcement entities have an even broader mandate than municipal police departments because they operate jails and engage in civil process, which activities engender additional opportunities for abuse of power and brutality. This Article reports on a survey of civilian oversight entities responsible for county-based law enforcement agencies serving the 50 most populous counties in the U.S. The survey documents that, for several reasons, the prevalence of civilian oversight at the county level significantly lags that of municipal police departments.*

*This Article summarizes the scope and powers of government entities that have been established to oversee county-wide police departments and sheriff’s offices. The Article also explores where*

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\* Professor From Practice, University of Chicago Law School, former federal prosecutor, and former Chief Administrator, City of Chicago Independent Police Review Authority and Civilian Office of Police Accountability. Special thanks to Myra Bajwa and Angel Lockhart for their dedicated research assistance. Thanks also to Mark Iris and Samuel Walker for their insightful comments and suggestions. For access to detailed information from the survey discussed in this Article, please visit [policeoversight.uchicago.edu](http://policeoversight.uchicago.edu).

*and why civilian oversight mechanisms have struggled to achieve effective oversight. Lastly, the Article hypothesizes the most potent political and legal obstacles that have prevented civilian oversight from gaining traction at the county level. The Article is intended to serve as a resource for civilian oversight professionals as well as government leaders and community members who are advocating for new or revised oversight systems at the county level.*

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## INTRODUCTION

As police reform has emerged front and center as an issue in communities across the country, civilian oversight has been increasingly prominent among reforms that many jurisdictions have considered and adopted in the decades since the first civilian oversight entity was created in Washington, D.C. more than 60 years ago. Although, as previously documented in “Survey Says,”<sup>1</sup> civilian oversight entities continue to face significant impediments to effectiveness, they continue to perform an important role in the police accountability infrastructure for a majority of the largest U.S. cities. Yet, the concept has been slow to develop in the context of county-based law enforcement.

As calls for reform of municipal police departments have reached a fever pitch, calls for reform of county-based law enforcement entities have escalated as well for similar reasons, most frequently because of controversial use of force incidents in the field or in detention facilities. Moreover, the broad range of law enforcement

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<sup>1</sup> See generally Sharon R. Fairley, *Survey Says?: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy*, 2020 CARDOZO L. REV. DE-NOVO 1 (2020).

responsibilities delivered by county-wide law enforcement agencies, typically sheriff's offices, creates ample opportunity for malfeasance and abuse of power. In recent years, several county government leaders have marshaled sufficient political will to overcome the vehement opposition mounted by county sheriffs and police unions to create new civilian entities that provide oversight for sheriff's offices and county-wide police agencies. Other counties are increasingly engaged in serious debate about civilian oversight as community activists and civic leaders recognize the potential this important reform mechanism represents for county-wide policing. Yet, today, the penetration of civilian oversight at the county level significantly lags that at the municipal level, primarily because of the legal and political obstacles to creating oversight for county sheriffs. Interestingly, the prevalence of civilian oversight among county-based police departments, at approximately 64%, is comparable to that among municipal police departments. However, the number of civilian oversight entities with jurisdiction over sheriff's offices remains low at just under 20%.

The fact that civilian oversight of sheriff's offices has been slow to develop is likely due to a number of factors. Perhaps the primary reason is the substantial political power inherent in the office of the sheriff, based on a history going back a thousand years. County sheriffs have been more successful than their municipal counterparts, local police chiefs, at fending off legislative efforts behind civilian oversight. Additionally, there is substantial variation from county to county in terms of the scope and nature of the sheriff's office responsibilities, making the need for civilian oversight less uniform. For example, some sheriff's offices provide a full complement of policing services operating much like a municipal police department, while others play a much more limited law enforcement role.<sup>2</sup>

Where county communities and government leaders have considered introducing civilian oversight, such initiatives have met the same kind of pushback faced by local municipalities seeking to adopt oversight for local police departments. Law enforcement leaders and unions erect stiff opposition, creating a significant political hurdle that

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<sup>2</sup> For example, the New York City Sheriff's office primary mission is focused on civil enforcement while the office's criminal responsibilities are quite limited. Sheriff, N.Y.C. DEP'T OF FIN., <https://www1.nyc.gov/site/finance/sheriff-courts/sheriff.page> (last visited June 2, 2021) [<https://perma.cc/J39W-DZSR>] (describing the Sheriff as "an officer of the court whose main job is to serve and execute legal processes/mandates issued by the state courts/legal community and the general public.").

activists must overcome to garner sufficient support to get the required legislative action passed.

While there is a substantial body of research related to municipal policing, there has been much less inquiry into the workings of law enforcement at the county level, and sheriff's offices in particular.<sup>3</sup> The study of civilian oversight in the context of county law enforcement has been quite limited, despite the fact that the job of a county sheriff is tremendously complex and rife with accountability issues.<sup>4</sup> Perhaps the underdevelopment of civilian oversight in this context has contributed to a dearth of relevant scholarly exploration.<sup>5</sup> This article seeks to inform the understanding of the presence and impact of civilian oversight at the county level by summarizing research into the existence and scope of civilian-based entities with oversight responsibilities related to *county-based* law enforcement entities.

Because the primary provider of county-wide law enforcement is typically the sheriff, Part I of the Article provides historical context by briefly summarizing the evolution of the office of the county sheriff and the nature of sheriff's offices today. Part II summarizes findings from research into the civilian oversight entities that currently have jurisdiction over county-based law enforcement agencies. Part III provides a more detailed description of existing and planned civilian oversight entities. Part IV then describes the need for civilian oversight at the county level. Lastly, Part V hypothesizes the key factors contributing to the relatively slow adoption of civilian oversight at the county level.

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<sup>3</sup> See, e.g. Casey LaFrance & Jennifer M. Allen, *An Exploration of the Juxtaposition of Professional and Political Accountability in Local Law Enforcement Management*, 12 INT'L J. POLICE SCI. & MGMT. 90, 100 (2010) (noting that empirical research on sheriff's offices is limited); William P. McCarty & Stacey Dewald, *Sheriff's Deputies and Police Officers: Comparing Their Views*, 40 POLICING 99 (2017) (commenting that a vast majority of research of attitudes among law enforcement has focused on municipal police departments and their officers).

<sup>4</sup> MaCherie M. Placide & Casey LaFrance, *The County Sheriff in Films: A Portrait of Law Enforcement as a Symbol of Rural America*, 16 INT'L J. POLICE SCI. & MGMT. 101, 103 (2014).

<sup>5</sup> Charlie Ban, *Civilian Review of Law Enforcement Remains Rare for Counties*, NAT'L ASS'N CNTYS. (June 22, 2020), <https://www.naco.org/articles/civilian-review-law-enforcement-remains-rare-counties> [https://perma.cc/T9U5-A66B].

I.  
HISTORICAL CONTEXT

A. *Evolution of the Sheriff's Office*

County-level policing is delivered primarily through the office of the county sheriff which differs quite substantially from municipal policing in its historical evolution.<sup>6</sup> As a result, there is much greater variation in the function and organizational features among sheriff's offices when compared to local police departments.<sup>7</sup> The office of the sheriff, with its intrinsic political power, dates back to ninth century England where sheriffs, then called "shire-reeves," were responsible for enforcing the law in the "shire" (a geographic jurisdiction comparable to what would now be called a county).<sup>8</sup> By the seventeenth century, the sheriff was not only responsible for keeping the peace within the shire, or county, he also served as the King's bailiff, with responsibility for enforcing the King's rights.<sup>9</sup> Throughout this early history, the office of sheriff was one of great prestige as the sheriff was an important official within the courts and an essential liaison between the central government and the county.<sup>10</sup> When imported to the colonies, the office remained both prestigious and lucrative.<sup>11</sup>

As colonial governments evolved and spread to the western United States, the sheriff's office was typically established by legislation within the new territories and became an important component of the American justice system.<sup>12</sup> As the colonies developed, a fair degree of variation emerged across jurisdictional boundaries regarding the role and duties of the sheriff based largely on the relative influence of county government.<sup>13</sup> For example, in northern colonies, where the scope of county government was limited, sheriffs were primarily an officer of

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<sup>6</sup> David N. Falcone & L. Edward Wells, *The County Sheriff as a Distinctive Policing Modality*, 14 AM. J. POLICE 123, 124 (1995).

<sup>7</sup> *Id.*

<sup>8</sup> James Tomberlin, "Don't Elect Me": *Sheriffs and the Need for Reform in County Law Enforcement*, 104 VA. L. REV. 113, 119 (2018).

<sup>9</sup> *Id.* at 118.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 121

<sup>13</sup> *Id.* at 119 (noting that in northern colonies, county government was generally limited to judicial matters; in Mid-Atlantic colonies, counties typically shared political power with towns, and in southern colonies, county government was paramount); *see also* LARRY D. BALL, *DESERT LAWYERS: THE HIGH SHERIFFS OF NEW MEXICO AND ARIZONA TERRITORIES, 1846–1912* (1996).

the court and had limited law enforcement responsibilities.<sup>14</sup> Whereas in southern colonies, where county governments played a more prominent role in local governance, sheriffs had more responsibilities.<sup>15</sup>

After the colonies broke away from England, the role of the sheriff remained quite similar in America.<sup>16</sup> During the continued expansion of the United States into the “wild west,” the county sheriff as an iconic lawman began to emerge.<sup>17</sup> As western states emulated the southern approach to government, where county governments were prominent, the office of the sheriff took on an imprimatur of importance.<sup>18</sup>

Leading into the twentieth century as accountability became more of an issue, most state constitutions required that each county have an elected sheriff.<sup>19</sup> The position continued to be quite lucrative as many sheriffs were partially compensated from fee collections, which often totaled well in excess of their established salaries.<sup>20</sup> Most importantly, however, in the vast majority of states, the position of sheriff is a constitutional office, in that the form or function of the office is grounded in the state constitution and may only be changed by constitutional amendment.<sup>21</sup> This constitutional foundation limits the scope of legislative or executive interference to which the sheriff must submit.<sup>22</sup>

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<sup>14</sup> Tomberlin, *supra* note 8, at 120.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 121.

<sup>17</sup> *Id.*; see also Placide & LaFrance, *supra* note 4, at 102 (noting that the sheriff was one of the first official positions established in the rural west).

<sup>18</sup> Tomberlin, *supra* note 8, at 121.

<sup>19</sup> The American sheriff evolved as an elective office during the 17th and 18th centuries. Falcone & Wells, *supra* note 6, at 125. By the 20<sup>th</sup> century, most states required that the office be filled by county-wide elections. Tomberlin, *supra* note 8, at 121. However, there are a few states (e.g., Hawaii and Rhode Island) and a small number of counties in some states for which the sheriff is an appointed position. David B. Kopel, *The Posse Comitatus and the Office of Sheriff: Armed Citizens Summoned to the Aid of Law Enforcement*, 104 J. CRIM. L. & CRIMINOLOGY 761, 787 (2014). (“Today, American sheriffs are elected in all states except Alaska (which has no counties), Hawaii, Rhode Island, and Connecticut (where the office of sheriff was abolished in 2000”). As of 2019, at least 40 states have elected sheriffs. Jessica Pishko, *The Power of Sheriffs: Explained*, APPEAL (Jan. 4, 2019), <https://theappeal.org/the-power-of-sheriffs-an-explainer/> [https://perma.cc/ANG5-VLB7].

<sup>20</sup> Tomberlin, *supra* note 8, at 122.

<sup>21</sup> Although the sheriff is a constitutional office in most states, there are some “home rule” counties, typically larger, urban counties, that are permitted to establish their own policies by charter. Falcone & Wells, *supra* note 6, at 126.

<sup>22</sup> Falcone & Wells, *supra* note 6, at 126.

*B. The Nature and Scope of Current County-Based Law  
Enforcement Entities*

Today, most U.S. counties are served by sheriff's offices, county-wide police agencies, or both. For the vast majority of counties across the United States, sheriff's offices serve as the primary law enforcement entity at the county level.<sup>23</sup> However, there are a handful of states that do not employ sheriffs.<sup>24</sup> In addition, there are some counties that have eliminated the position of sheriff.<sup>25</sup>

Despite the fairly ubiquitous presence of the office of the sheriff within American county government,<sup>26</sup> the duties and powers of each office are far from uniform.<sup>27</sup> For example, in Colorado, in addition to law enforcement responsibilities, the sheriff also serves as the chief fire warden.<sup>28</sup> In most states, sheriff's offices typically perform any of the following: (1) providing law enforcement and general police services; (2) operating jails, and transporting prisoners; (3) supporting county courts by processing writs and orders; (4) providing courtroom security; (5) overseeing the seizure of property; (6) collecting county fees and taxes; and (7) administering sales of licenses and permits.<sup>29</sup> As a result, the structure and scope of county-based law enforcement entities is significantly more varied relative to those of municipal police departments, which tend to have similar structures overseeing similar operations.<sup>30</sup>

As supported by the survey presented herein, among the 50 most populous U.S. counties, the sheriff's office is the most common form of county-wide law enforcement, found in 46 of the 50 counties

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<sup>23</sup> *Id.* at 125.

<sup>24</sup> Alaska has no county government; Connecticut operates a State Marshal system in lieu of sheriff's offices; Hawaii has no position of sheriff, although law enforcement officers employed by the state's Department of Public Safety are called "Deputy Sheriffs." FAQ, NAT'L SHERIFFS' ASS'N, <https://www.sheriffs.org/about-nsa/faq> (last visited June 2, 2021) [<https://perma.cc/CE6D-P6EV>].

<sup>25</sup> For example, in 1955, St. Louis County, Missouri voted to eliminate the sheriff's office as an elected county official, choosing instead to operate a county-wide police department. Our History, ST. LOUIS CNTY POLICE DEP'T, <https://www.stlouiscountypolice.com/Who-We-Are/Our-History> (last visited June 2, 2021) [<https://perma.cc/7VHR-674U>].

<sup>26</sup> The National Sheriff's Association accounts for 3,081 sheriffs across the United States and has a membership of 14,000 active members. FAQ, *supra* note 27.

<sup>27</sup> Tomberlin, *supra* note 8, at 122.

<sup>28</sup> COLO. REV. STAT. § 30-10-512 (2017).

<sup>29</sup> Falcone & Wells, *supra* note 6, at 130.

<sup>30</sup> Tomberlin, *supra* note 8, at 123.



surveyed. Only four out of the 50 counties are served by a county-wide police department, instead of a sheriff's office.<sup>31</sup> An additional twelve are served by a county-wide police department in addition to a sheriff's office.<sup>32</sup> For example, in St. Louis County, Missouri, a county-wide police department provides the bulk of the county's policing services<sup>33</sup> while the St. Louis County Sheriff's Office's functions are limited to providing support services to the St. Louis County court system.<sup>34</sup> In other counties, the office of the sheriff exists as an elected position of government, but, rather than leading a sheriff's office, the sheriff serves as the head of a county-wide police department. For example, this arrangement is in place in Clark County, Nevada (where Las Vegas is the county seat).<sup>35</sup> In many counties, municipal police departments have overlapping jurisdiction with sheriff's departments.<sup>36</sup> While, in other counties, a county-based law enforcement entity has exclusive jurisdiction providing police services to small towns or unincorporated areas that do not have municipal law enforcement entities of their own.<sup>37</sup> The structure of law enforcement serving New York City is

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> ST. LOUIS COUNTY, MO., CHARTER § 701.010 (2020) (“The Department of Police is responsible for law enforcement throughout St. Louis County, for the coordination and cooperation between and among all law enforcement agencies having jurisdiction in the County or any part thereof, and for the performance of such other powers and duties with respect to police administration and law enforcement as may be provided by law.”).

<sup>34</sup> Sheriff's Office, ST. LOUIS CNTY. CTS., <https://wp.stlcountycourts.com/sheriffs-office/> (last visited June 2, 2021) (noting that the Sheriff's Office is “made up of two divisions comprised of Bailiffs & Civil Processing”) [<https://perma.cc/295A-6HSR>]

<sup>35</sup> *Bluestein v. Groover*, 940 F.2d 667 (9th Cir. 1991) (recognizing defendant Sheriff of Clark County as also the Chief Administrative Officer and Chief Law Enforcement officer of the Las Vegas Metropolitan Police Department); Blake Apgar, *Lombardo Wins Re-election in Race for Clark County Sheriff*, LAS VEGAS REV. J. (June 12, 2018, 8:21 PM), <https://www.reviewjournal.com/news/politics-and-government/clark-county/lombardo-wins-re-election-in-race-for-clark-county-sheriff/> [<https://perma.cc/3WFF-VAYZ>] (reporting on re-election of the Clark County sheriff).

<sup>36</sup> For example, Houston, Texas is served by both the Houston Police Department while the Harris County Sheriff's Office has jurisdiction throughout Harris County, which includes the city of Houston. HARRIS CNTY. SHERIFF'S OFF., [https://www.harriscountysoc.org/Departments/HCSO\\_History.aspx#](https://www.harriscountysoc.org/Departments/HCSO_History.aspx#) (last visited June 2, 2021) [<https://perma.cc/ZC5N-VUSW>]; Houston Police Department, CITY OF HOUS., <https://www.houstontx.gov/police/organization/index.htm> (last visited June 2, 2021) [<https://perma.cc/96DG-8UHQ>].

<sup>37</sup> The Los Angeles County Sheriff's office is the largest county-wide law enforcement entity and provides law enforcement services to 42 cities (contractually) and 141 unincorporated communities within the county that spans 4,084 square miles and a population in excess of 10 million persons. *About Us*, L.A. CNTY. SHERIFF'S DEP'T,

unique because the municipality of New York City subsumes its five counties, also referred to as boroughs, that do not have county governments. In 1994, the New York City charter was amended to reconfigure the sheriff’s office as a unit within the city’s Department of Finance, perhaps because the office’s primary mission involves the collection of water, property and city taxes.<sup>38</sup> Thus, the New York City boroughs, which include four of the 50 most populous counties addressed in this analysis, are served by two municipal agencies: the New York City Sheriff’s office and the New York City Police Department.<sup>39</sup>

In addition to variation in structure and geographical jurisdictional reach, the nature and scope of the police services provided by county sheriffs and police agencies vary as well.<sup>40</sup> For example, some entities provide only basic patrol services to some or all localities within the jurisdiction, while others provide a more comprehensive array of law enforcement services, including criminal investigations and specialized law enforcement capabilities such as SWAT teams and coroner’s offices.<sup>41</sup> As previously noted, in addition to police services, many, if not most, sheriff’s offices operate jails and are involved in the civil justice system by providing civil process.<sup>42</sup> In some counties, the sheriff’s office or the county police department provides specialized law enforcement services for local police departments. For example, the Alameda County (California) Sheriff’s office provides basic officer training, operates a full-service crime laboratory, and provides fish and

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[https://www.lasd.org/about\\_us.html](https://www.lasd.org/about_us.html) (last visited June 2, 2021) [<https://perma.cc/2EKG-T9CB>]. The office also serves 216 county facilities including hospitals, community colleges, and the Metropolitan Transit Authority. *Id.*

<sup>38</sup> David Cruz, *Pandemic Puts NYC’s Obscure Law Enforcement Agency in the Spotlight: The Sheriff’s Office Explained*, GOTHAMIST, (Dec. 9, 2020, 4:30 PM), <https://gothamist.com/news/pandemic-sheriff-office-explained-nyc-enforcement>.

<sup>39</sup> According to the 2018 U.S. Census Data used as the basis for the county population rankings referred to herein, Kings County, which encompasses the borough of Brooklyn; Queens County; and Bronx County are ranked 9<sup>th</sup>, 11<sup>th</sup> and 28<sup>th</sup> respectively based on population.

<sup>40</sup> Tomberlin, *supra* note 8, at 123 (noting that the long evolving history of the sheriff’s office has resulted in “variegation and regional quirks” in the workings of modern-day sheriff’s departments); Falcone & Wells, *supra* note 6, at 128 (noting that the sheriff’s role is “broader in the range of activities covered and the scope of legal authority”).

<sup>41</sup> For example, the Cuyahoga County (Ohio) Sheriff includes the following operational units, among others: Detective Bureau, Warrant, Task Forces, Marine Patrol, SWAT, and Sex Offender. CUYAHOGA CNTY. SHERIFF’S DEP’T, <https://sheriff.cuyahogacounty.us> (last visited May 29, 2021).

<sup>42</sup> *See, e.g.*, 70 AM. JUR. 2D *Sheriffs, Police, and Constables* § 31; 80 C.J.S. *Sheriffs and Constables* § 65.

game and marine patrol operations in support of the local police departments within its jurisdiction.<sup>43</sup> Also, many county-wide law enforcement entities provide public safety services for county-owned properties such as airports, hospitals, transit centers, and universities.<sup>44</sup>

The tremendous variation in the nature and scope of a county law enforcement entity's duties is likely one reason why the concept of civilian oversight has struggled to gain traction in the county-based law enforcement context. County law enforcement entities with narrower, less public-facing responsibilities may engender fewer calls for oversight. For example, the New York City Sheriff's Office staff of approximately 150 deputies is diminutive relative to 35,000 or more members of the New York City Police Department.<sup>45</sup> The office does not operate jails and its law enforcement responsibilities are limited to crimes involving cigarette tax enforcement, deed fraud, synthetic narcotics sales, and crimes against the city's Department of Finance.<sup>46</sup> Given its relatively limited size and mission, civilian oversight might not be appropriate or necessary.

## II.

### THE NEED FOR CIVILIAN OVERSIGHT AT THE COUNTY LEVEL

There are a number of reasons why communities have sought civilian oversight for county-wide law enforcement entities. The most prevalent include: poor jail conditions, mistreatment of detainees, lack of accountability for excessive force, and disparate enforcement of the law.

The potential for abuse of power and police brutality exists in police-citizen encounters involving officers employed at all levels of government, including sheriff's offices.<sup>47</sup> Misconduct among sheriff's

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<sup>43</sup> ALAMEDA CNTY. SHERIFF'S OFF., <https://www.alamedacountysheriff.org/about.php> (last visited May 29, 2021).

<sup>44</sup> For example, the Hawaii Sheriff's offices serve the Honolulu airport and provide security services for various hospitals. *Sheriff Division*, STATE OF HAWAII DEP'T OF PUB. SAFETY, <https://dps.hawaii.gov/about/divisions/law-enforcement-division/sheriff-division/> (last visited May 29, 2021).

<sup>45</sup> Corey Kilgannon, *Why This Force of 150 Sheriff's Deputies Is Enforcing Virus Rules*, N.Y. TIMES (Dec. 16, 2020), <https://www.nytimes.com/2020/12/14/nyregion/nyc-sheriffs-office.html>.

<sup>46</sup> *Sheriff*, N.Y.C. DEP'T OF FIN., <https://www1.nyc.gov/site/finance/sheriff-courts/sheriff.page> (last visited May 29, 2021).

<sup>47</sup> Recent controversial incidents include: a fatal shooting involving a long-time Franklin County, Ohio deputy. Brakkton Booker, *Police in Ohio Say Slain Black Man Brandished a Gun; Family Says He Held a Sandwich*, NPR (Dec. 7, 2020, 2:59 PM),

offices definitely exists.<sup>48</sup> Because the powers and duties bestowed on sheriffs are so diverse and encompass more than just policing, a sheriff's "attention, time and energies are more divided across multiple and distinct sets of administrative concerns,"<sup>49</sup> which may leave less time to focus on accountability issues. To be sure, corruption among the ranks of sheriffs has existed as long as the office.<sup>50</sup> Responsibility for managing detention facilities creates opportunity for misconduct and malfeasance.<sup>51</sup> Almost 11 millions individuals are admitted to county jails each year.<sup>52</sup> Examples of egregious abuse of power by sheriffs and their deputies are becoming ever more prevalent, particularly regarding the treatment of detainees.<sup>53</sup> In 2017, Los Angeles County Sheriff Leroy Baca was sentenced to a prison term for conspiring to undermine a federal investigation of prisoner abuse within an LA county jail.<sup>54</sup> Before he was pardoned by President Trump, for over twenty years, Maricopa County Sheriff Joe Arpaio operated a "concentration camp"-style prison in the heat of the Arizona desert where inmates were issued

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<https://www.npr.org/2020/12/07/943829901/police-in-ohio-say-slain-black-man-brandished-a-gun-family-says-he-held-a-sandwi>; Laurie Ure, Rebekah Riess, Eric Levenson & Nicquel Terry Ellis, *Feds to Investigate After a Sheriff's Deputy Killed a Black Man Entering His Own Home in Columbus, Ohio*, CNN (Dec. 9, 2020, 12:34 AM), <https://www.cnn.com/2020/12/08/us/ohio-police-shooting-casey-goodson/index.html>; Paulina Villegas, *Video Shows That Police Shooting of Dijon Kizzee Was an 'Execution,' Family Lawyer Says*, WASH. POST (Sept. 4, 2020, 5:36 PM), <https://www.washingtonpost.com/nation/2020/09/04/dijon-kizzee-shooting/>.

<sup>48</sup> Michael Zoorob, *There's (Rarely) a New Sheriff in Town: The Incumbency Advantage for County Sheriffs* (Nov. 12, 2019), available at <https://ssrn.com/abstract=3485700>.

<sup>49</sup> Falcone & Wells, *supra* note 6, at 132.

<sup>50</sup> In 1170, King Henry II of England authorized an "inquest of sheriffs" as a result of complaints about the conduct of sheriffs. ENGLISH HISTORICAL DOCUMENTS 1042-1189, David Douglas and George Greenaway eds. (Eyre & Spottiswoode, London 1968), at 438-40. All sheriffs and their bailiffs were commanded to appear to make an account of their takings as well as who they had held in custody and why. *Id.* See also Alan Greenblatt, *Why There Are So Many Bad Sheriffs*, GOVERNING (Mar. 22, 2018), <https://www.governing.com/archive/gov-bad-sherriffs.html>.

<sup>51</sup> In Alabama, where sheriffs by law are permitted to keep, as personal income, profits from foodservice in jails, a federal judge locked up the Morgan County Sheriff on a contempt charge for his failure to adequately feed inmates while banking profits for himself. *Sheriff Jailed as Inmates Claim Lack of Food*, NBC NEWS (Jan. 7, 2009), <https://www.nbcnews.com/id/wbna28546669>.

<sup>52</sup> CONFRONTING THE DEMOGRAPHICS OF POWER: AMERICA'S SHERIFFS, WOMEN DONORS NETWORK 6 (June 2020), <https://wholeads.us/research/americas-sheriffs/>.

<sup>53</sup> Most notably former Sheriff Joe Arpaio of Maricopa County, Arizona who "forced detainees to wear pink underwear, reinstated the chain gang, and created a 'tent city' with no air conditioning." Pishko, *supra* note 19.

<sup>54</sup> Brief for Government, *Baca v. United States*, No. 19-109, 2019 WL 6609431, \*2 (Dec. 4, 2019).

pink underwear.<sup>55</sup> In Alabama, sheriffs are permitted to keep any profits they gain from providing daily meals at the jails they operate.<sup>56</sup> A Bristol County, Massachusetts Sheriff was criticized for charging detainees \$5 per day and because the jails he operated had a significantly higher incidence of suicide relative to others in the state.<sup>57</sup> Accountability for misconduct committed in the operation of jails may be more elusive because it happens behind the closed doors of those facilities, unlike policing incidents that may be witnessed by, or even videotaped by, independent bystanders.

Although there is equal or perhaps even greater potential for abuse of power in the context of county-based law enforcement, the typical accountability mechanisms are not always available. In most cases, the sheriff is the head of an “office,” meaning an independent entity within county government.<sup>58</sup> This is in contrast to a local police chief who leads a “department” which is typically considered a subordinate division within the executive branch.<sup>59</sup> The accountability mechanisms employed to keep municipal law enforcement leaders in check – hiring and firing power and budgetary constraints – are typically unavailable to rein in county sheriffs.<sup>60</sup> Because sheriffs are constitutional officers seated by democratic elections, other county officials have limited authority, if any, to constrain their conduct or remove them.<sup>61</sup> For example, in Jackson County, Michigan, a coalition including the full county commission, the chamber of commerce and other local officials, called for their sheriff to resign following reports

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<sup>55</sup> Maya Salam, *Last Inmates Leave Tent City, a Remnant of Joe Arpaio*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/us/arpaio-tent-city-jail.html>; Josh Gerstein, *Court Won't Let Trump Pardon Void Guilty Verdict Against Arpaio*, POLITICO (Feb. 27, 2020), <https://www.politico.com/news/2020/02/27/trump-pardon-arpaio-117918>.

<sup>56</sup> Tomberlin, *supra* note 8, at 124–25 (noting that a former sheriff of Morgan County, Alabama was able to amass over \$200,000 in income for himself over a period of three years by serving meals that cost less than the state’s allotment).

<sup>57</sup> Pishko, *supra* note 19.

<sup>58</sup> Falcone & Wells, *supra* note 6, at 126.

<sup>59</sup> *Id.*

<sup>60</sup> Tomberlin, *supra* note 8, at 129.

<sup>61</sup> Tomberlin, *supra* note 8, at 129; Falcone & Wells, *supra*, note 6, at 126; *see also* Jessica Pishko, *How Sheriffs’ Power and Autonomy Make Them Central Players for Policing Reform*, APPEAL (Sept. 26, 2019), <https://theappeal.org/politicalreport/sheriffs-and-policing-practices-the-badge/> (the “sheriffs’ ability to hold on to their positions largely unsupervised, combined with the fact that their elections are quiet and overshadowed affairs, can compound the accountability gap the pervades other law enforcement agencies”).

of his use of racist, sexist, and homophobic language and other allegations, yet he has refused to do so, and the governor has chosen not to remove him.<sup>62</sup> Many sheriff's offices are also less susceptible to oversight through the power of the purse because they have significant sources of revenue to supplement the appropriations they receive from the county coffers. For example, for the fiscal year of 2019-2020, the Los Angeles County Sheriff's Office spent approximately \$4.2 Billion on salaries and employee benefits.<sup>63</sup> Yet, the total cost of sheriff's operations funded by the county was less than \$1.9 Billion because the office received \$1.6 Billion in outside revenue and was able to distribute approximately \$1.1 Billion in salary and benefit costs to other payors.<sup>64</sup>

Based on the historical significance and elected status of the post, many sheriffs consider themselves above and beyond the control of any other county government office or entity.<sup>65</sup> In fact, there is a movement among sheriffs, referred to as the "Constitutional Sheriffs," who take the view that their power supersedes all levels of government, including federal.<sup>66</sup> The denizens of this movement believe that sheriffs hold the ultimate authority to interpret the U.S. Constitution.<sup>67</sup> The Constitutional Sheriffs and Peace Officers Association, representing those who take this view, considers the "law enforcement powers held by the sheriff to supersede those of any agent, officer, elected official or employee from any level of government when in the jurisdiction of the county."<sup>68</sup> The movement encourages its members to only enforce laws that are compatible with their ideology.<sup>69</sup> In describing its position on immigration policy, the membership organization ascribes to views that most would consider racist.<sup>70</sup>

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<sup>62</sup> Greenblatt, *supra* note 50.

<sup>63</sup> County of Los Angeles, 2021-22 Recommended Budget, Volume One, Submitted to the Board of Supervisors, April 2021, at 56.1, <https://ceo.lacounty.gov/wp-content/uploads/2021/04/2021-22-Recommended-Budget-Book-Volume-One-Final-Online-Version.pdf>.

<sup>64</sup> County of Los Angeles, 2021-22 Recommended Budget, Volume One, Submitted to the Board of Supervisors, April 2021, at 56.1, <https://ceo.lacounty.gov/wp-content/uploads/2021/04/2021-22-Recommended-Budget-Book-Volume-One-Final-Online-Version.pdf>.

<sup>65</sup> See, e.g., Tomberlin, *supra* note 8.

<sup>66</sup> Tomberlin, *supra* note 8; see also Pishko, *supra* note 19.

<sup>67</sup> Pishko, *supra* note 61; see also CONST. SHERIFFS & PEACE OFFICERS ASS'N, <https://cspoa.org/> (last visited May 29, 2021).

<sup>68</sup> CONST. SHERIFFS & PEACE OFFICERS ASS'N, <https://cspoa.org/> (last visited May 29, 2021).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* (stating "immigrants are not assimilating into our culture as they once did").

Because sheriffs' deputies are likely to have been appointed or promoted directly by the sheriff, they are highly dependent on the sheriff's reelection to maintain their status. Moreover, in contrast to municipal police officers who are more likely to consider their allegiance as owed to the organization as a whole, sheriff's deputies are more likely to view themselves as beholden to the sheriff as an individual.<sup>71</sup> This could make sheriff's deputies less likely to report or take action to address their boss's misconduct or malfeasance.

A 2009 study confirmed the "conventional wisdom" that sheriffs are "less professionally accountable than their police chief counterparts."<sup>72</sup> While, in theory, county citizens can vote an underperforming or misbehaving sheriff out of office, in practice, this rarely happens as electoral politics have not been proven as an effective accountability mechanism.<sup>73</sup> In fact, some say that the electoral process as a method of selecting sheriffs is actually an impediment to accountability.<sup>74</sup> For example, Joe Arpaio, former sheriff of Maricopa County, was elected to a total of six terms before he was voted out of office in 2016 in the wake of federal charges of racial profiling.<sup>75</sup> Many sheriffs run for office unopposed.<sup>76</sup> The average tenure served by a sheriff far exceeds that of municipal police chiefs.<sup>77</sup>

There are a number of hypotheses as to why elections afford limited accountability in this context.<sup>78</sup> Some commentators posit that it is a result of low voter turnout and the advantage of incumbency.<sup>79</sup> Also, smaller cities that are reliant on sheriff's offices for policing services, often through a contractual arrangement, may not have sufficient political weight to unseat a sheriff. For example, when the small town of Guadalupe confronted Maricopa County Sheriff Joe Arpaio about controversial immigration sweeps his office was conducting in their town, the sheriff suggested they go get their own

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<sup>71</sup> McCarty & Dewald, *supra* note 3, at 102 (citing RALPH A. WEISHEIT, DAVID N. FALCONE & L. EDWARDS WELLS, *CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA* (Long Grove, Ill.: Waveland Press, 3rd ed. 2006)).

<sup>72</sup> LaFrance & Allen, *supra* note 3, at 90–91.

<sup>73</sup> Tomberlin, *supra* note 8, at 129.

<sup>74</sup> Placide & LaFrance, *supra* note 4, at 103.

<sup>75</sup> Greenblatt, *supra* note 50.

<sup>76</sup> WOMEN DONORS NETWORK, *supra* note 52, at 7–8.

<sup>77</sup> Zoorob, *supra* note 48, at 1.

<sup>78</sup> Tomberlin, *supra* note 8, at 142–45.

<sup>79</sup> *Id.* at 143.

police department, then threatened to cancel the town’s policing contract.<sup>80</sup>

There can also be situations in which the will of the voters is insufficient to overcome the constitutional standing of the office. For example, a voter approved ballot measure seeking to impose term limits on the Los Angeles County sheriff failed when a California Superior Court held that voters lacked the legal authority to impose this constraint on the office of the sheriff.<sup>81</sup>

The argument that civilian oversight is unnecessary or inappropriate for sheriffs as elected officials runs counter to the existence of oversight mechanisms in place to enhance accountability for elected officials at all levels of government. Oversight mechanisms for elected executive and legislative officials have proliferated since the inspector general movement of the 1970’s.<sup>82</sup>

### III.

#### SURVEY: THE PREVALENCE OF CIVILIAN OVERSIGHT AMONG LAW ENFORCEMENT ENTITIES SERVING THE TOP 50 U.S. COUNTIES

Despite the need for civilian oversight to support greater accountability, a recent survey of the 50 most populous U.S. counties indicates that civilian oversight of county-based law enforcement entities is still relatively rare. While the prevalence of civilian oversight among county-wide police departments appears somewhat comparable to that of municipal police departments at approximately six in ten, civilian oversight of sheriff’s offices remains low at just under 20%.<sup>83</sup>

#### A. *Information Sources*

As prior information has established that civilian oversight tends to be more prevalent among more populous jurisdictions, this survey focused on the fifty largest U.S. counties by population based on U.S.

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<sup>80</sup> Nicholas Riccardi, *Sheriff Riding Out of Town*, L.A. TIMES (Oct. 13, 2008), <https://www.latimes.com/archives/la-xpm-2008-oct-13-na-guadalupe13-story.html>.

<sup>81</sup> Jack Leonard, *Baca Wins His Battle Against Term Limits*, L.A. TIMES (Nov. 11, 2004), <https://www.latimes.com/archives/la-xpm-2004-nov-11-me-limits11-story.html>.

<sup>82</sup> See, e.g., Patricia Salkin & Zachary Kansler, *Ensuring Public Trust at the Municipal Level: Inspectors General Enter the Mix*, 75 ALB. L. REV. 95, 101 (2012).

<sup>83</sup> Based on a survey of civilian oversight within the most populous U.S. Cities conducted by the author in 2019, prevalence of civilian oversight among municipal police departments is similarly approximately six in ten. Fairley, *supra* note 1, at 3.



Census population data.<sup>84</sup> Once the list of the 50 counties was defined, information about existing civilian oversight entities was gathered from a variety of sources. The information obtained is based on one or more of the following information sources: state statutes, municipal ordinances or other applicable legislation, online information and documentation such as government websites, oversight entity rules and policy statements, and local news articles.

### *B. Structure of County-based Law Enforcement*

In counties across the United States, residents may be served by a municipal police department, a sheriff's office, a county-wide police department, or some combination of these entities. As outlined in Appendix A and depicted in Figure 1, among the 50 counties included in the survey, 34 (representing approximately 68%) are served by a Sheriff's office, while 12 (approximately 24%) are served by both a Sheriff's office and a county-wide police department,<sup>85</sup> and the remaining four (approximately 8%) are served by only a county-wide police department.<sup>86</sup>

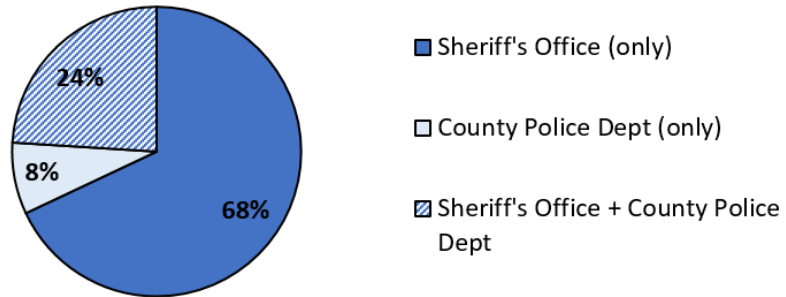
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<sup>84</sup> This study was based on the July 1, 2018 official estimate by the United States Census Bureau. The survey focused on these largest counties because a 2016 study by the Department of Justice revealed that the prevalence of civilian oversight is significantly higher among larger sheriff's offices. ELIZABETH DAVIS, U.S. DEP'T OF JUST. BUREAU OF JUST. STATS., NCJ 254830, *SHERIFFS' OFFICES: POLICIES AND PROCEDURES, 2016* at 7 (2016) (noting that prevalence of civilian oversight was approximately 22.2% among sheriff's officers with 500 or more full-time equivalent sworn officers, falling to only 4.7% among offices with 100-499 sworn officers).

<sup>85</sup> Among these twelve counties are the four counties within NYC, which are served by the New York Police Department in addition to the New York City Sheriff, both of which are municipal (city-wide) entities.

<sup>86</sup> See Appendix A for a listing of the law enforcement entities and their corresponding civilian oversight entities by county. Note that the counties that are found within New York City (New York (Manhattan), Kings (Brooklyn), Queens, and the Bronx) are counted as being served by a Sheriff's Department and a Police Department.

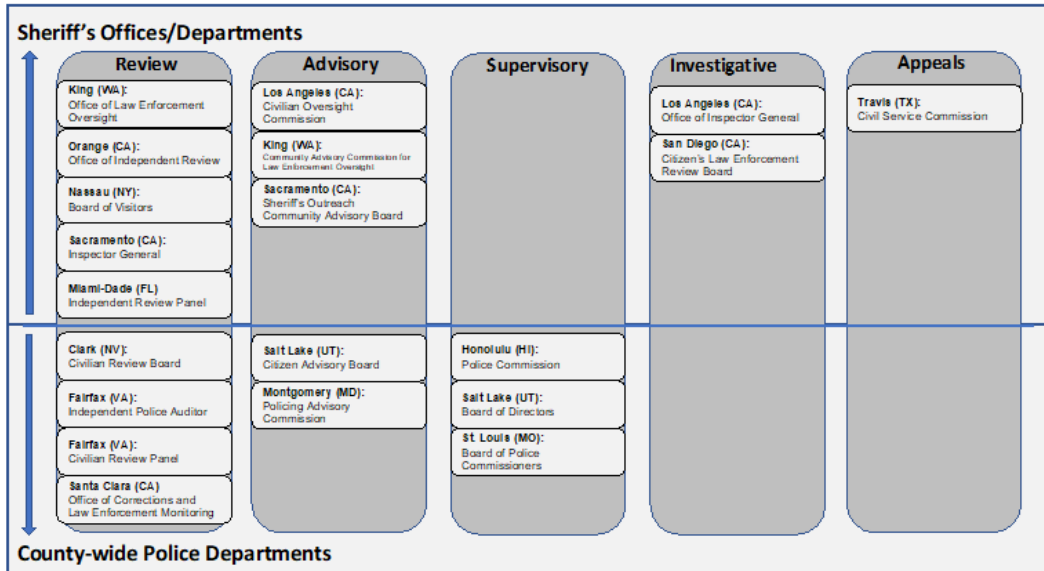
**Figure 1: County-based Law Enforcement Entities  
Within Top 50 U.S. Counties by type**



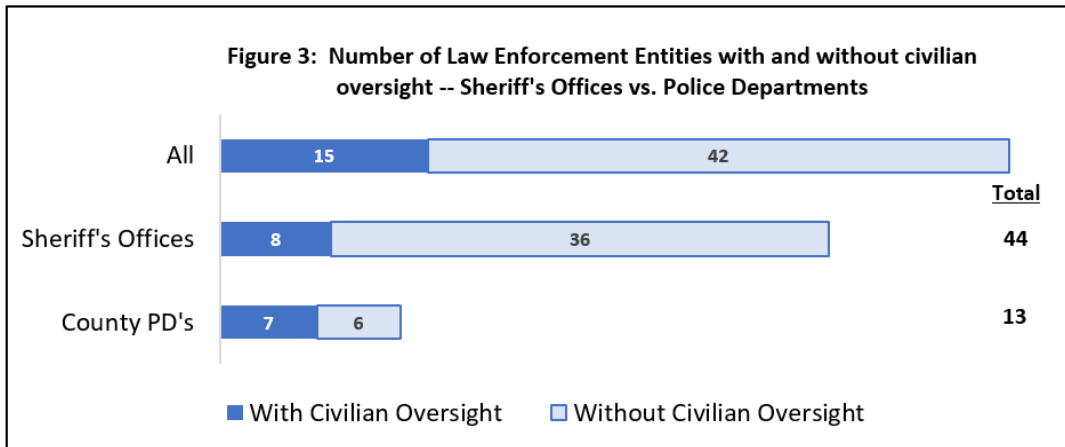
C. Prevalence of Civilian Oversight

Based on the information sources reviewed, among the fifty most populous U.S. counties, there are only 20 civilian entities responsible for oversight of law enforcement serving 15 counties. As depicted in Figure 2 below, there are 11 entities overseeing Sheriff’s offices and nine entities overseeing county-wide police departments within the 50 surveyed counties.

**Figure 2:**  
**Civilian Oversight for County-wide Law Enforcement: 50 Largest U.S. Counties**



The 20 civilian oversight entities have jurisdiction over 15, or just over one-quarter, of the 57 law enforcement entities providing policing services in the 50 counties.<sup>87</sup> As shown in Figure 3, eight out of 44, or only approximately 18%, of sheriff’s offices have civilian oversight, while seven of the 13, or just over half, of the county-wide police departments have civilian oversight.<sup>88</sup>



Consistent with the protocol used in this author’s recently concluded survey completed for municipal police departments, based on the information gathered, each county-based oversight entity was classified as providing one or more of the following primary oversight functions<sup>89</sup>:

- **Investigative:** an entity that investigates police incidents independently from the police department and that employs at least one professional investigator.

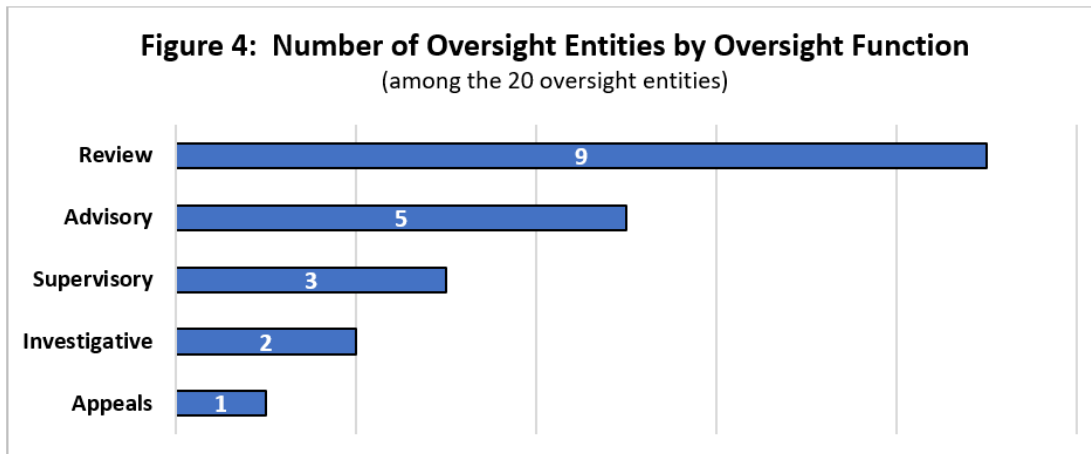
<sup>87</sup> There are 20 civilian oversight entities with jurisdiction over 15 law enforcement entities, because five law enforcement agencies (Los Angeles Sheriff’s Office, King County (WA) Sheriff’s Office, Sacramento Sheriff’s Office, Fairfax County Police Department, and the Unified Police Department of Greater Salt Lake) are each overseen by two civilian entities.

<sup>88</sup> The law enforcement entities serving the four counties or boroughs were not included in this analysis depicted in Figure 3.

<sup>89</sup> Recognizing that many oversight entities provide more than one oversight function, the author classified each entity as having one primary function based on a description of the entity’s mission as outlined in information provided by the entity or the entity’s establishing ordinance.

- **Review:** an entity that reviews or monitors investigations of police incidents being conducted by the police department.
- **Audit:** an entity that audits investigations of police incidents conducted by the police department. For purposes herein, an auditing entity reviews only a sample of investigations, rather than reviewing all investigations or all investigations of a certain type.
- **Adjudicative:** an entity that adjudicates specific disciplinary matters by making findings and recommendations at the conclusion of a disciplinary hearing or other proceeding.
- **Appeals:** an entity that reviews outcomes of disciplinary investigations upon the request of either the complainant or the accused officer.
- **Supervisory:** an entity that makes high level policy and strategic decisions regarding police department operations, typically characterized as a “police commission.”
- **Advisory:** an entity that makes recommendations to the police department regarding high level policy and operational strategies.

The above classifications were not considered mutually exclusive, as some agencies provide more than one of these oversight functions. As depicted in Figure 4, the most prevalent primary oversight functions among the 20 oversight entities are the Review and Advisory functions.



For comparison purposes, the 2019 survey identified the Review function as by far and away the most prevalent among civilian oversight entities with jurisdiction over municipal police departments. The Investigative and function was significantly more prevalent among municipal civilian oversight entities.<sup>90</sup>

There is a fair degree of correlation between the existence of civilian oversight for county-based law enforcement and the existence of civilian oversight for the municipal police agency in the county seat. As outlined in Appendix B, among the 15 counties in which civilian oversight exists for county-wide law enforcement, for nine of those counties there also exists civilian oversight over the municipal police department serving the county seat. In addition, among three of the 15 counties, there is a county law enforcement entity with civilian oversight that serves the county seat instead of a municipal agency.<sup>91</sup>

#### IV.

#### CIVILIAN OVERSIGHT ENTITIES IN THE LARGEST 50 U.S. COUNTIES

##### *A. Established Civilian Oversight Entities*

Because there is significant variation in the structure, powers, and duties of civilian oversight in this context, this section of the article is intended to provide a brief description of each of the 20 entities organized roughly in order of the year in which the entities were created.

1. *Honolulu County, Hawaii*
2. *St. Louis County, Missouri*

Among the 50 counties surveyed, the two oldest civilian oversight entities for county-based law enforcement entities are the police commissions established in St. Louis, Missouri<sup>92</sup> and Honolulu, Hawaii<sup>93</sup> in 1861 and 1932, respectively. As do most police

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<sup>90</sup> Fairley, *supra* note 1, at 3.

<sup>91</sup> A list of oversight entities by county and within the county seat is provided in Appendix B.

<sup>92</sup> By state statute, the municipal police departments serving Missouri cities with a population over three hundred thousand are administered by a police commission which members are appointed by the governor with the consent of the Senate. MO. REV. STAT. §§ 84.350, 84.360 (2021).

<sup>93</sup> Honolulu is governed as a consolidated city-county that includes both the city of Honolulu, the entire island of Oahu as well as several minor outlying islands. Robert

commissions, these two oversight entities have broad strategic and operational power over the county-wide police departments that serve these cities and surrounding counties.

### 3. *Travis County, Texas*

In Travis County, Texas, where the county seat is Austin, civilian oversight over the Sheriff’s office dates back to 1987 when the county formed the Civil Service Commission for Travis County Sheriff’s Employees (“CSC”) pursuant to Texas Local Government Code.<sup>94</sup> The goal of the CSC is to promote “quality” within the Travis County Sheriff’s Office (“TCSO”) by establishing and enforcing rules related to employment including hiring, promotion, benefits, employee rights and working conditions.<sup>95</sup> In addition to promulgating employment-related civil service rules<sup>96</sup>, the CSC also hears appeals of disciplinary matters.<sup>97</sup> When grievances are filed regarding disciplinary action, the CSC may conduct a hearing at which the commission can compel witnesses by subpoena.<sup>98</sup> If the CSC chooses not to uphold disciplinary action taken by the Sheriff, the commission may in its discretion modify the disciplinary action or grant the relief requested by the appeal.<sup>99</sup> However, the CSC is not permitted to increase the severity of the disciplinary action imposed by the Sheriff.<sup>100</sup>

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Heckel, *The Manoa Valley Special District Ordinance: Community-Based Planning in the Post-Lucas Era*, 19 U. HAW. L. REV. 449, 476 (1997). Honolulu is one of five counties that make up the Hawaiian islands and each county represents the lowest level of local government. James Pollack, *Atay v. County of Maui*, 42 HARV. ENV’T L. REV. 305, 319 n.102 (2018).

<sup>94</sup> TRAVIS CNTY. SHERIFF’S OFF., CIVIL SERVICE RULES AND REGULATIONS 2 (1987) <https://www.traviscountytx.gov/images/civil-service-commission/csc-original-policy.pdf>; TEX. LOC. GOV’T CODE § 158.035 (2021).

<sup>95</sup> TRAVIS CNTY. CIV. SERV. COMM’N FOR SHERIFF’S OFF. EMPS., REGULATIONS 1 (2019), <https://www.traviscountytx.gov/images/civil-service-commission/20191022csc.pdf>.

<sup>96</sup> See, e.g., TRAVIS CNTY. CIV. SERV. COMM’N FOR SHERIFF’S OFF. EMPS., MEETING MINUTES (Oct. 22, 2019), <https://www.traviscountytx.gov/images/civil-service-commission/minutes-191022.pdf> (including an amendment to the regulations allowing the CSC to lower requirements for promotion applicants under “Extraordinary Circumstances.”).

<sup>97</sup> TRAVIS CNTY. CIV. SERV. COMM’N FOR SHERIFF’S OFF. EMPS., REGULATIONS 38 (2019), <https://www.traviscountytx.gov/images/civil-service-commission/20191022csc.pdf>. (outlining the appeals resolution procedures).

<sup>98</sup> *Id.*; TEX. LOC. GOV’T CODE § 158.0355.

<sup>99</sup> TRAVIS CNTY. CIV. SERV. COMM’N FOR SHERIFF’S OFF. EMPS., *supra* note 95, at 41.

<sup>100</sup> *Id.*

*4. San Diego County, California*

In 1990, prompted by a voter initiative that was sparked by numerous allegations of abuse in county jails, the San Diego County Board of Supervisors passed an ordinance creating the Citizens Law Enforcement Review Board to enhance accountability for the Sheriff's Department and the Probation Department.<sup>101</sup> By ordinance, the eleven-member Board is empowered to receive and investigate citizen complaints of misconduct and to investigate deaths arising from activities of peace officers and custodial officers.<sup>102</sup> The ordinance makes clear that the Board is “advisory only” and has no operational or policy-making powers.<sup>103</sup>

In the decades since it became operational, members of the community have frequently questioned the board's effectiveness and police reform advocates have called for changes that give the board more power.<sup>104</sup> In late 2019, the San Diego County Sheriff's department was recognized as operating a jail system with more in-custody death incidents than any other California system.<sup>105</sup> In addition, the board has historically had difficulty in keeping up with its caseload due to insufficient resources.<sup>106</sup> In June 2020, the county supervisors voted to expand the Board's oversight and investigative powers.<sup>107</sup> Under the new regime, the Board is empowered to automatically review and investigate officer-involved shootings and use of force incidents resulting in great bodily injury without a formal complaint having been filed.<sup>108</sup> In addition, the process for selecting Board members was revised to allow for more community input.<sup>109</sup>

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<sup>101</sup> SAN DIEGO COUNTY, CAL., CODE OF ADMIN. ORDINANCES, art. XVII § 340 (1991); Charles T. Clark, *San Diego County Will Restructure, Expand Powers of Its Independent Law Enforcement Oversight Group*, DEL MAR TIMES (June 24, 2020), <https://www.delmartimes.net/news/story/2020-06-24/san-diego-county-to-restructure-and-expand-the-powers-of-it-independent-law-enforcement-oversight>.

<sup>102</sup> art. XVII § 340.

<sup>103</sup> *Id.*

<sup>104</sup> Clark, *supra* note 101.

<sup>105</sup> Lauren Schroeder, *A Decade of In-Custody Deaths*, SAN DIEGO UNION-TRIB. (Dec. 10, 2019), <https://www.sandiegouniontribune.com/news/watchdog/story/2019-12-10/dying-behind-bars-timeline-of-deaths-in-san-diego-county-jails-since-2009>.

<sup>106</sup> Clark, *supra* note 101 (noting that the Board's budget was just over one-tenth of one percent of the Sheriff's Department budget).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*



5. *Clark County, Nevada*

In 1997, in response to public outcry following a fatal officer involved shooting by an off-duty Los Vegas Metropolitan Police Department (“LVMPD”) officer, the state of Nevada passed a statute that would enable Clark County and the city of Las Vegas to create a civilian oversight agency for the LVMPD that provides police services to residents of the city and county.<sup>110</sup> The LVMPD Civilian Review Board was formally established in 1999 by ordinances enacted by Las Vegas and Clark County.<sup>111</sup> The 25-member board’s mission is to refer complaints against LVMPD officers to the department, review internal disciplinary investigations, and act as an advisory body to the Department.<sup>112</sup> The board wields independent subpoena power to further its investigative process.<sup>113</sup>

6. *King County, Washington*

In King County, the Department of Public Safety is administered by the county sheriff.<sup>114</sup> The framework for civilian oversight of the sheriff was initiated in 2006 with the creation of the County Office of Law Enforcement Oversight (“OLEO”). The OLEO was established by county ordinance “to ensure the integrity, transparency, and accountability of the Sheriff’s Office in misconduct investigations.”<sup>115</sup> But the agency did not become operational until 2011.<sup>116</sup>

In 2015, the King County Council amended the OLEO’s charter to make it a part of the legislative branch, expanding its scope and authority to directly investigate misconduct.<sup>117</sup> By ordinance, the OLEO’s powers include “investigation, review and analysis of conduct

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<sup>110</sup> NEV. REV. STAT. § 289.380 (2019); LVMPD CITIZEN REVIEW BOARD, <https://citizenreviewboard.com/Default.aspx> (last visited May 31, 2021).

<sup>111</sup> CLARK COUNTY, NEV., CODE § 2.62.010 (2021); LAS VEGAS, NEV., MUN. CODE § 2.64 (2020).

<sup>112</sup> LAS VEGAS, NEV., MUN. CODE § 2.64 (2020).

<sup>113</sup> CLARK COUNTY, NEV., CODE § 2.62.100(d).

<sup>114</sup> KING COUNTY, WASH., CHARTER §350.20.40 (2020).

<sup>115</sup> *King County Office of Law Enforcement*, KING CNTY., WASH., <https://www.kingcounty.gov/independent/law-enforcement-oversight/about/History.aspx> (last visited May 31, 2021).

<sup>116</sup> *Id.*

<sup>117</sup> KING COUNTY, WASH., CHARTER § 265, KING COUNTY, WASH., CODE §2.75.040 (ordinance passed in April 2017).

of county law enforcement officers” that has been the subject of a complaint or that involves the use of force.<sup>118</sup>

In addition, in November 2015, King County citizens voted to give OLEO the authority to conduct investigations of police uses of deadly force and misconduct complaints. At the time of this writing in 2021, the county was still engaged in collective bargaining with the King County Police Officer’s Guild over this investigatory jurisdiction.<sup>119</sup> Therefore, the OLEO had not yet undertaken those responsibilities.

Also, in 2015, a county ordinance was amended to require that the council form an advisory committee for law enforcement oversight. In September 2018, the King County council enacted legislation creating the new Community Advisory Committee for Law Enforcement Oversight, an 11-member body intended to “advise and work collaboratively” with the OLEO that had been created a decade before.<sup>120</sup> The Committee is also empowered to advise the sheriff and council on matters of equity and social justice related to law enforcement” and “systemic problems and opportunities for improvement in law enforcement practices.”<sup>121</sup>

#### 7. *Sacramento County, California*

The Office of the Inspector General (“IG”) for the Sacramento Sheriff’s Department was commissioned by the Board of Supervisors in 2007 following an external audit of the department.<sup>122</sup> The IG’s role is a contract position, not a formal government entity or agency, based on the “monitor” form of oversight.<sup>123</sup> The IG is empowered to influence the internal disciplinary process and to evaluate the overall quality of law enforcement, custodial, and security services provided by the department.<sup>124</sup> During the first year of operations, the Inspector General processed a total of 23 complaints, and conducted audits of

<sup>118</sup> KING COUNTY, WASH., CHARTER § 265.

<sup>119</sup> *King County Office of Law Enforcement*, KING CNTY., WASH., <https://www.kingcounty.gov/independent/law-enforcement-oversight.aspx> (noting that OLEO responds to the scene of such incidents and reviews the work of internal investigations, but has not yet implemented full responsibility for those investigations).

<sup>120</sup> KING COUNTY, WASH., CODE § 2.36.050.

<sup>121</sup> KING COUNTY, WASH., CHARTER § 265.

<sup>122</sup> SACRAMENTO SHERIFF’S DEPARTMENT INSPECTOR GENERAL ANNUAL REPORT, SACRAMENTO CNTY. at 2 (2008) [https://inspectorgeneral.saccounty.net/Documents/sac\\_017726.pdf](https://inspectorgeneral.saccounty.net/Documents/sac_017726.pdf).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

three department units including Internal Investigations, Homicide and Court Liaison.<sup>125</sup> However, the office was unoccupied from 2013 to 2015 and again in 2019.<sup>126</sup> The office has published reports on officer-involved shooting incidents dating back to October 2015.<sup>127</sup>

The Sacramento Sheriff and IG have been steeped in controversy in recent years. In August 2018, the Sacramento County Sheriff terminated the IG's access to Sheriff's Department's facilities.<sup>128</sup> The Sheriff literally deactivated the IG's key to the Sheriff's office.<sup>129</sup> The boldly obstructive move by the Sheriff came after the IG published a report critical of Sheriff's deputies who shot an unarmed Black man who was attempting to flee after allegedly hitting a deputy with a rock.<sup>130</sup> The IG report questioned whether deadly force was necessary under the circumstances.<sup>131</sup> The Sheriff made it clear to the Board of Supervisors, in no uncertain terms, that he would not allow the IG to continue in office.<sup>132</sup> At first, the Board acquiesced to the Sheriff's demands and dismissed the IG, an experienced law enforcement professional who had previously served as Sacramento's police chief and a respected consultant on critical policing issues.<sup>133</sup> At the time of his firing, the IG's office was in the process of reviewing several officer-involved shooting and in-custody death incidents.<sup>134</sup> In

<sup>125</sup> *Id.*

<sup>126</sup> *Sacramento County Office of Inspector General, Audits and Reports*, SACRAMENTO CNTY., <https://inspectorgeneral.saccounty.net/Pages/AuditsReports.aspx> (last visited May 31, 2021).

<sup>127</sup> *Id.*

<sup>128</sup> Patrick Kennedy, *Essay: Supervising the Sheriff*, SACRAMENTO NEWS & REV. (Dec. 16, 2019), <https://sacblog.newsreview.com/2019/12/16/essay-supervising-the-sheriff/>.

<sup>129</sup> Crescenzo Vellucci, *Sacramento County Sheriff Rebuked for Locking Out Inspector General*, DAVIS VANGUARD (Dec. 5, 2018), <https://www.davisvanguard.org/2018/12/sacramento-county-sheriff-rebuked-locking-inspector-general/>.

<sup>130</sup> *Id.* There has also been reporting that the conflict originated when the Sheriff learned that the IG might be considering a run for his office. Sam Stanton & Molly Sullivan, *Feud Between Sacramento Sheriff and Inspector General Started with a Phone Call*, SACRAMENTO BEE (Dec. 15, 2018, 4:09 PM), <https://www.sacbee.com/article222951625.html>.

<sup>131</sup> Vellucci, *supra* note 129.

<sup>132</sup> Raheem F. Hosseini, *Putting Down the Watchdog*, SACRAMENTO NEWS & REV. (Sep. 20, 2018), <https://www.newsreview.com/sacramento/content/putting-down-the-watchdog/27127310/> (reporting that, at a September 2018 meeting of the Board, the Sheriff stated, “[l]ook, let’s face facts. The current inspector general, Rick Braziel, is done.”).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

response, a Sacramento grand jury, a group of civic volunteers that reports on local government, issued a report which recommended that the Board of Supervisors create a new civilian entity to oversee both the Sheriff's office and the office of the district attorney.<sup>135</sup> The grand jury's inquiry included a review of citizen complaints against the Sheriff and an assessment of whether the Board of Supervisors was providing sufficient oversight of the office.<sup>136</sup> The grand jury concluded that the Sheriff's lockout of the IG was not a violation of law, but recommended that steps be taken to prevent the Sheriff from future such obstructive conduct.<sup>137</sup> In its formal response to the grand jury's recommendations, the Sacramento County Board of Supervisors noted that, because the sheriff is a constitutional office filled by election, the oversight methods the grand jury suggested would likely require a constitutional amendment.<sup>138</sup> Nonetheless, the grand jury's endorsement of civilian oversight put wind in the sails of a Sacramento Assemblyman who had backed a state-wide measure, California Assembly Bill 1185, that would make it easier for county boards to create oversight entities for Sheriff's departments with the necessary subpoena and investigative powers.<sup>139</sup> The California State Sheriff's Association opposed the proposed bill, calling it "unnecessary."<sup>140</sup> The bill passed nonetheless.<sup>141</sup>

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<sup>135</sup> The Sacramento County Grand Jury is comprised of 19 individuals selected by the county court to provide citizen oversight of local government operations. SUPER. CT. OF CAL., CNTY. OF SACRAMENTO GRAND JURY, SACRAMENTO COUNTY GRAND JURY FINAL REPORT FOR 2019-2020 7 (2020), <https://www.saccourt.ca.gov/grand-jury/docs/reports/19-20/2019-2020-final-report.pdf>. The grand jury issued a report on oversight of the sheriff in 2019. SUPERIOR CT. OF CAL., CNTY. OF SACRAMENTO, GRAND JURY, DOES THE SACRAMENTO COUNTY BOARD OF SUPERVISORS HAVE EFFECTIVE OVERSIGHT OF ELECTIVE OFFICERS? (2019), <https://www.saccourt.ca.gov/grand-jury/docs/reports/18-19/report-3-oversight-elective-officers.pdf>. See also Hannah Wiley & Adam Ashton, 'Literally, Our Sheriff Locked the Doors': Sacramento County Grand Jury Calls for New Oversight, SACRAMENTO BEE (Jul. 5, 2019), <https://www.sacbee.com/news/local/article232326467.html>.

<sup>136</sup> Wiley and Ashton, *supra* note 135.

<sup>137</sup> *Id.*

<sup>138</sup> CNTY. OF SACRAMENTO, RESPONSE TO THE 2018-19 GRAND JURY FINAL REPORT 15 (2019), <https://www.saccourt.ca.gov/grand-jury/docs/reports/18-19/response-sac-county.pdf>.

<sup>139</sup> Wiley & Ashton, *supra* note 135. The California statute, AB 1185 was enacted in September 2020.

<sup>140</sup> *Id.*

<sup>141</sup> Calif. Assembly Bill No. 1185, codified at CALIF. GOVT. CODE § 25303.7.

The Board of Supervisors has since taken steps to avoid such future standoffs by clarifying the IG’s investigative authority.<sup>142</sup> Specifically, the Board enhanced the scope of the IG’s investigatory power eliminating the Sheriff’s role in determining which complaints the IG can investigate and by requiring the Sheriff’s cooperation with IG investigations.<sup>143</sup> The Board also formally asserted its subpoena authority over the Sheriff’s office, in the event that the office refused to comply with information requests from the IG in the future.<sup>144</sup>

More stringent oversight of the Sacramento Sheriff’s Office seems warranted. In addition to the conflict with the IG, the office was also found to be out of compliance with a federal contract.<sup>145</sup> The County has since selected a new IG, a recently retired police chief from the Brentwood Police Department.<sup>146</sup>

When the IG office was created back in 2007, Sacramento also created the Sacramento Sheriff’s Outreach Community Advisory Board, a 19-member panel comprised of the IG and other individuals appointed by the Sheriff, the Board of Supervisors, the County Executive, and city mayors.<sup>147</sup> The Community Advisory Board focuses on programming intended to address relations between the Sheriff’s department and the community it serves.<sup>148</sup> The Sheriff provides periodic updates to the Board on department operations and conditions at the jail, and also reports on high-profile incidents, while board

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<sup>142</sup> Kennedy, *supra* note 128. See also Brandi Cummings, *Sacramento County Supervisors Select New Inspector General*, KCRA3 NEWS (Dec. 11, 2019, 9:47PM), <https://www.kcra.com/article/sacramento-county-supervisors-select-new-inspector-general/30202364> (noting that the Board of Supervisors created a memorandum of understanding with the sheriff to enhance the oversight provided by the IG.).

<sup>143</sup> Vellucci, *supra* note 129.

<sup>144</sup> *Id.*

<sup>145</sup> OFF. OF INSPECTOR GEN., U.S. DEP’T OF INTERIOR, THE SACRAMENTO COUNTY SHERIFF’S DEPARTMENT CLAIMED HIGHER LABOR RATES THAN ALLOWED ON CONTRACT NO. R17PC00051 AND IGNORED TRAINING REQUIREMENTS FOR CONTRACT NO. R12PC20015 WITH THE BUREAU OF RECLAMATION, AUDIT REPORT NO. 2017-FIN-066 (Mar. 2019), <https://finance.saccounty.net/AuditorController/Documents/AuditRpt/FolsomDamSecurity.pdf> (finding hundreds of thousands of dollars in “questioned costs” and that the office did not conduct training required under the contract).

<sup>146</sup> Alexandra Yoon-Hendricks & Sam Stanton, *Here’s Who Sacramento County Just Selected to Provide Oversight of the Sheriff’s Office*, SACRAMENTO BEE (Dec. 11, 2019 12:38 PM), <https://www.sacbee.com/news/local/article238253474.html>.

<sup>147</sup> SACRAMENTO COUNTY, CAL., CODE §2.25.040 (2020).

<sup>148</sup> SACRAMENTO COUNTY, CAL., CODE §2.25.030 (2020).

members report on issues that are troubling their communities.<sup>149</sup> However, by 2016, the existence of the Advisory Board was still not well known within the county and some leaders suggested that the Board could be doing more to support the community.<sup>150</sup>

#### 8. *Orange County, California*

The Orange County Office of Independent Review (OIR) was established in 2008 in response to an in-custody death at the Orange County jail.<sup>151</sup> Originally, the OIR’s oversight responsibility was limited to the Sheriff’s Department.<sup>152</sup> However, its jurisdiction was later expanded to cover other county-wide agencies, including the Probation Department, District Attorney, Public Defender, and Social Services Agency.<sup>153</sup> In addition to weighing in on policies, the oversight entity is empowered to monitor, review, and audit investigations arising from complaints or in-custody deaths or injuries.<sup>154</sup> The OIR is led by a licensed attorney appointed by the Board of Supervisors to serve as the Executive Director.<sup>155</sup> In May 2020, a former Department of Justice official with civil rights and police oversight experience was appointed to serve as the agency’s third Executive Director, a position which had remained vacant since sometime in 2018.<sup>156</sup> According to local news media, the OIR was “mired in controversy” from the outset.<sup>157</sup> Even as this new leader took over the helm, the OIR continued to draw criticism for its ability to enhance accountability among a set of agencies that had recently been embroiled in a number of scandals.<sup>158</sup>

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<sup>149</sup> Ellen Garrison, *Little-known Sacramento County Board Hears Public Complaints about Sheriff’s Department Conduct*, SACRAMENTO BEE (Oct. 9, 2016, 12:29 AM), <https://www.sacbee.com/news/local/article106989782.html>.

<sup>150</sup> *Id.*

<sup>151</sup> Ben Brazil, *The New OIR Director’s Job Is to Be a Watchdog over O.C.’s Law Enforcement Agencies. But It’s Complicated*, L.A. TIMES: DAILY PILOT (May 20, 2020, 4:45 PM), <https://www.latimes.com/socal/daily-pilot/entertainment/story/2020-05-20/office-of-independent-review-orange-county-watchdog-complicated>.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*; ORANGE COUNTY, CAL., CODE art. 18, § 1-2-225 (2021).

<sup>154</sup> ORANGE COUNTY, CAL., CODE art. 18, § 1-2-226(d)(10) (2021).

<sup>155</sup> ORANGE COUNTY, CAL., CODE art. 18, §§ 1-2-226(b) and (c) (2021).

<sup>156</sup> Brazil, *supra* note 151.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

9. *Salt Lake County, Utah*

In 2009, Salt Lake County and several towns within the county, jointly established the Unified Police Department of Greater Salt Lake (“UPD”) as an interlocal law enforcement entity established pursuant to Utah state code.<sup>159</sup> Prior to the formation of UPD, many of the participating localities had contracted with the Salt Lake County Sheriff’s Office for policing services and had pursued the joint effort to gain more governing control over law enforcement activities.<sup>160</sup> Pursuant to the interlocal agreement, the Salt Lake County Sheriff serves as the CEO and Administrative Officer of the UPD.<sup>161</sup> However, the participating localities appoint members to the UPD Board of Directors, which has some governing control over the agency.<sup>162</sup> Following the completion of an audit of UPD operations over the two-year period from 2015 to 2017, the State Auditor concluded that the municipalities served under this arrangement did not have as much governance power as they should.<sup>163</sup> In particular, the State Auditor pointed out that the Sheriff is elected by all voters throughout the entirety of Salt Lake County, not just the voters within UPD’s service area, who are far outnumbered by those outside the service area.<sup>164</sup> This makes accountability through the electoral process very difficult.<sup>165</sup> The State Auditor also noted that, under the interlocal agreement, the Board’s policy-making powers are diminished because the Sheriff wields veto power over policy and such veto can only be overridden by

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<sup>159</sup> STATE OF UTAH, OFF. OF THE STATE AUDITOR, UNIFIED POLICE DEPARTMENT, FINDINGS AND RECOMMENDATIONS FOR THE PERIOD AUGUST 2015 THROUGH AUGUST 2017, REPORT No. UNPD-18-SP, at 3 (2018), <https://le.utah.gov/interim/2018/pdf/00003168.pdf>. Utah Code 11-13, enacted as the “Interlocal Cooperation Act,” was enacted to permit local government units to band together to form governmental entities that could more efficiently provide necessary services by, for example, taking advantage of economies of scale. UTAH CODE ANN. § 11-13-102 (West 2021).

<sup>160</sup> STATE OF UTAH, *supra* note 159, at 3.

<sup>161</sup> Because UPD provides policing services to an unincorporated area of Salt Lake County, Utah Code Ann. § 11-13-202(4) (West 2021) requires that police agencies formed pursuant to § 11-13 operate, “by or under the direction of the county sheriff.” *Id.* at 3.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 4 (recommending changes to the interlocal agreement that would provide the Board with greater management controls over the Sheriff serving as CEO and head administrator).

<sup>164</sup> STATE OF UTAH, *supra* note 159, at 4.

<sup>165</sup> *Id.*

a two-thirds majority vote of the Board.<sup>166</sup> The auditor recommended that the Board pursue changes to the agreement that would allow for greater management accountability through means such as the appointment of, removal of, and setting compensation for the Sheriff.<sup>167</sup>

The State Auditor offered some criticism of the Board as well, suggesting that it could be more transparent about its own operations.<sup>168</sup> More specifically, the State Auditor recommended that the Board provide contact information for its members and start posting its minutes and audio recordings of its meetings online, which it now does.<sup>169</sup>

The UPD's Citizen Advisory Board ("CAB"), which predates the formation of the UPD, also provides citizen input to UPD operations.<sup>170</sup> The CAB was formed by the sheriff in the 1990s during the rise of community policing.<sup>171</sup> According to a representative of the Sheriff's office, the CAB serves "as an advisory group to the Sheriff, render[s] counsel upon the Sheriff's request, and provide[s] a communications bridge between the Sheriff and the diverse community within the County."<sup>172</sup> The CAB is involved in various aspects of UPD operations including the precincts, the Corrections Bureau, which operates the jail, and the Public Safety Bureau.<sup>173</sup> According to UPD's website, the CAB reviews applications and recommends applicants for appointment to the CAB by the Sheriff.<sup>174</sup> Members are assigned to each division of the Sheriff's office to "participate on internal boards and committees that develop policies and review operations."<sup>175</sup> As of September 2020, the CAB had approximately 44 members.<sup>176</sup>

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<sup>166</sup> *Id.* at 3.

<sup>167</sup> *Id.* at 4.

<sup>168</sup> *Id.* at 8.

<sup>169</sup> *Id.*

<sup>170</sup> UNIFIED POLICE DEP'T OF GREATER SALT LAKE, CITIZEN ADVISORY BOARD, [https://updsl.org/page\\_resources\\_citizenAdvisoryBoard.php](https://updsl.org/page_resources_citizenAdvisoryBoard.php) (last visited June 1, 2021).

<sup>171</sup> Email from Melody Cutler, UPD Sgt., to Professor Sharon Fairley (Sept. 10, 2020) (on file with author).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> UNIFIED POLICE DEP'T OF GREATER SALT LAKE, *supra* note 161.

<sup>175</sup> *Id.*

<sup>176</sup> Email from Melody Cutler, *supra* note 171.



10. *Nassau County, New York*

Nassau County, New York is served by both the Sheriff's Office and the Nassau County Police Department. The Nassau County Jail Board of Visitors was created when county lawmakers appointed its members in 2013.<sup>177</sup> The seven-member board is empowered to review jail records, investigate inmate complaints and issue recommendations to address issues identified in the administration of Nassau County's detention facilities.<sup>178</sup> The appointment of board members was long overdue as the county had created the Board back in 1990.<sup>179</sup> However, the county had chosen not to empanel its members until a New York state Supreme Court justice ordered the County executive to do so in response to litigation.<sup>180</sup> According to the county executive and the sheriff, they believed the board would be redundant because the jail was then under state scrutiny following a string of suicides and in previous years had also been under federal oversight.<sup>181</sup> In 2017, a group of activists concerned about jail conditions formed the Nassau County Jail Coalition claiming that inhumane conditions led to at least 13 deaths.<sup>182</sup> Concerns about conditions within the jail system resurfaced in July 2018 after a violent confrontation involving several inmates and officers at the Nassau County Correctional Center.<sup>183</sup> At that time, a county legislator complained that the Board of Visitors was not an effective change agent because even though the county charter

<sup>177</sup> Timothy Bolger, *Nassau Appoints Nassau Jail Oversight Board Members*, LONG ISLAND PRESS, (Dec. 21, 2013) <https://www.longislandpress.com/2013/12/21/nassau-appoints-nassau-jail-oversight-board-members/>.

<sup>178</sup> NASSAU COUNTY, N.Y. CHARTER § 2004(f) (2017).

<sup>179</sup> *Marone v. Nassau County*, 967 N.Y.S.2d 583, 590 (Sup. Ct. 2013) (Addressing Inmates and civil-rights group who brought sought order of mandamus to compel county executive to appoint members to county correctional center board of visitors.)

<sup>180</sup> Timothy Bolger, *supra* note 177. *See also* NASSAU COUNTY, N.Y. CHARTER § 2004(f) (2017) (noting the board was established in the charter August 28, 1990).

<sup>181</sup> Timothy Bolger, *supra* note 177. *See also* *Marone*, 967 N.Y.S.2d at 586 (noting a complaint filed in 2002 by the U.S. Attorney General alleging that the Nassau County jail engaged in a pattern or practice of using excessive force against inmates, among other claims).

<sup>182</sup> *Advocates Call for Nassau County Jail Oversight, Sheriff's Resignation*, NEWS12 LONG ISLAND, (Sep. 13, 2017) <http://longisland.news12.com/story/36359266/advocates-call-for-nassau-county-jail-oversight-sheriffs-resignation>.

<sup>183</sup> Brian Stieglitz, *Violence Breaks Out at the Nassau County Jail*, LONG ISLAND HERALD, (July 19, 2018) <https://www.liherald.com/stories/violence-breaks-out-at-the-nassau-county-jail,105292>.

empowered the Board to investigate conditions at the jail, the Board lacked sufficient funding and authority to do so effectively.<sup>184</sup>

### *11. Los Angeles County, California*

The Los Angeles Sheriff's Department ("LASD") is the largest sheriff's department in the United States, with approximately 18,000 employees.<sup>185</sup> The LASD runs an enormous county jail system, the largest in the country,<sup>186</sup> and provides law enforcement services to the unincorporated areas and, under contracts, to 42 cities within Los Angeles County.<sup>187</sup> The LASD presently works with two civilian oversight entities: the Office of Inspector General ("OIG"), established in 2014, and the Sheriff's Civilian Oversight Committee ("COC"), established in 2016.<sup>188</sup> The OIG was created to "promote constitutional policing and the fair and impartial administration of justice" by addressing "matters relevant to the policies, procedures, practices, and operations of the Sheriff's department."<sup>189</sup> The OIG serves as the investigative arm for the COC.<sup>190</sup>

In early 2014, the Los Angeles County Board of Supervisors took a step toward enhancing civilian oversight for the LASD by asking the new county inspector general and new interim sheriff to consider the possibility of an additional civilian oversight entity for the LASD.<sup>191</sup> The LASD had drawn criticism based on allegations of abuse in the jails that had resulted in federal criminal charges against multiple deputies and officials.<sup>192</sup> A working group appointed by the county supervisors was formed to explore the potential structure and powers of a new

<sup>184</sup> *Id.*

<sup>185</sup> *About Us*, L.A. CNTY. SHERIFF'S DEP'T, [https://www.lasd.org/about\\_us.html](https://www.lasd.org/about_us.html) (last visited June 2, 2021) [<https://perma.cc/2EKG-T9CB>].

<sup>186</sup> *Thomas v. Baca*, 514 F. Supp. 2d 1201, 1218 (C.D. Cal. 2007)

<sup>187</sup> Abby Sewell, *Board Takes up Sheriff Oversight; L.A. County Leaders Begin Deciding How to Structure a Civilian Panel and Whether It'll Have Subpoena Power.*, L.A. TIMES, July 29, 2015, at B5.

<sup>188</sup> L.A., CAL., CODE §§ 644.190, 3.79.020 (2016)

<sup>189</sup> L.A., CAL., CODE § 644.190(A).

<sup>190</sup> L.A., CAL., CODE § 644.190 (B). In addition, pursuant to the county code, the OIG also has oversight over the Los Angeles County Probation Department. §644.190(A).

<sup>191</sup> Celeste Fremon, *Contra Costa Does Realignment Right....Supes Take Small Step Toward Civilian Oversight For The LASD*, WITNESSLA (Feb. 26, 2014), <https://witnessla.com/contra-costa-does-realignment-right-supes-take-small-step-toward-civilian-oversight-for-the-lasd-la-countys-problematic-gps-monitoring-justice-reform-the-good-the-bad-news/>.

<sup>192</sup> Sewell, *supra* note 187.

civilian oversight entity.<sup>193</sup> An essential topic of debate was whether the new entity would wield subpoena power.<sup>194</sup> Supervisors and community members also sparred over how members of the new entity would be appointed and whether former members of the LASD would be barred from serving.<sup>195</sup>

Ultimately, the county board created the Sheriff Civilian Oversight Commission by ordinance in 2016.<sup>196</sup> The commission is empowered to make policy recommendations, investigate systemic issues or complaints, monitor litigation settlements, and obtain community input on incidents and issues involving the Sheriff's Department.<sup>197</sup>

In late 2020, the Los Angeles County Board of Supervisors took another step to enhance oversight by ratifying California Assembly Bill 1185, and in so doing, bestowing independent subpoena power on both the Oversight Commission and the Inspector General's Office.<sup>198</sup>

## 12. *Fairfax County, Virginia*

In 2015, in the wake of a fatal officer-involved shooting incident, the Fairfax, Virginia county council formed the Ad Hoc Police Practices Review Commission to explore how the county handles significant police-involved incidents and, more broadly, how to improve public trust in county law enforcement.<sup>199</sup> The Commission recommended that the county create two new civilian oversight entities to address concerns about the Fairfax County Police Department.<sup>200</sup> As recommended, in December 2016, the Board of Supervisors established the new Civilian Review Panel which members, after first being appointed in February

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> L.A., CAL., CODE § 3.79.010 (2016).

<sup>197</sup> L.A., CAL., CODE § 3.79.030 (2016).

<sup>198</sup> The historic California Bill, which codifies and confirms the power of California counties to create civilian oversight for sheriff's offices and allows for subpoena power among civilian oversight entities, was signed into law in September 2020 and became effective January 1, 2021. Assemb. B. 1185, 2019–2020 Sess. (Cal. 2020).

<sup>199</sup> *Board Matter: Establishment of the Ad Hoc Police Practices Review Commission*, FAIRFAX CNTY., VA. (Mar. 3, 2015), <https://www.fairfaxcounty.gov/policecommission/sites/policecommission/files/assets/documents/pdf/board-matter-march3.pdf>.

<sup>200</sup> FINAL REPORT ON FAIRFAX COUNTY POLICE REFORM: AD HOC POLICE PRACTICES REVIEW COMMISSION, IMPLEMENTATION GROUP, FAIRFAX CNTY., VA. (Oct. 10, 2018), <https://www.fairfaxcounty.gov/policecommission/sites/policecommission/files/assets/documents/pdf/fcpd-reform-implementation-final-report.pdf>.

2017, are empowered to review police investigations resulting from public complaints.<sup>201</sup> The Board of Supervisors amended the Panel’s bylaws in 2019 to provide for greater transparency regarding the Panel’s public reports.<sup>202</sup> The Board of Supervisors also created the Office of the Independent Police Auditor, to review investigations involving the use of force and serve as an intake venue for complaints.<sup>203</sup> The Independent Police Auditor also provides administrative support to the Civilian Review Panel.<sup>204</sup> Both new civilian oversight entities report directly to the Fairfax County Board of Supervisors and are intended to operate independently from the county police department.<sup>205</sup>

While the Fairfax County Police Department has its newly established watchdogs, the Fairfax County Sheriff’s office continues to operate without such oversight.<sup>206</sup> The lack of oversight has not gone unnoticed. In 2017, the NAACP gave “Criminal Justice Report Cards” to various Fairfax County officials, rating them on a variety of issues.<sup>207</sup> The long-standing civil rights organization gave the County Sheriff an overall grade of “C-plus” comprised of an “A” for the Sheriff’s incarceration alternatives and minority-community outreach, but a “C” for use of force and an “F” for civilian oversight/accountability.<sup>208</sup>

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<sup>201</sup> *Bylaws of the Fairfax County Police Civilian Review Panel*, FAIRFAX CNTY., VA. (Feb. 23, 2021), <https://www.fairfaxcounty.gov/policecivilianreviewpanel/about-us> (last visited May 31, 2021).

<sup>202</sup> Approval of Amendments and Revisions to Action Item 17, Establishment of a Police Civilian Review Panel, FAIRFAX CNTY., VA. (Sept. 24, 2019), <https://www.fairfaxcounty.gov/policecivilianreviewpanel/about-us>.

<sup>203</sup> Independent Police Auditor, FAIRFAX CNTY., VA., <https://www.fairfaxcounty.gov/policeauditor/> (last visited May 31, 2021).

<sup>204</sup> *Id.*

<sup>205</sup> *Civilian Oversight of Law Enforcement in Fairfax County*, CONNECTION NEWSPAPERS (Aug. 23, 2018), <http://www.connectionnewspapers.com/news/2018/aug/23/civilian-oversight-law-enforcement-fairfax-county/>.

<sup>206</sup> Angela Woolsey, *NAACP Grades Fairfax County Criminal Justice System*, FAIRFAX TIMES (Oct. 6, 2017) (noting that the newly established civilian oversight entities have jurisdiction over the Fairfax County Police Department).

<sup>207</sup> Brian Trompeter, *Fairfax Officials React to NAACP Report Card*, INSIDENOVA (Sep. 29, 2017), [https://www.insidenova.com/news/crime\\_police/fairfax-officials-react-to-naacp-report-card/article\\_9b18fece-a3ba-11e7-aaa6-ffacf97d4f98.html](https://www.insidenova.com/news/crime_police/fairfax-officials-react-to-naacp-report-card/article_9b18fece-a3ba-11e7-aaa6-ffacf97d4f98.html).

<sup>208</sup> *Id.*

13. *Montgomery County, Maryland*

In December 2019, the Montgomery County Council voted unanimously to create its first civilian oversight entity, the Policing Advisory Commission, to have oversight over the Montgomery County Police Department.<sup>209</sup> The move was sparked at least in part by a series of alleged racial bias and controversial use of force incidents.<sup>210</sup> The 13-member commission includes nine members appointed by the council and four appointed by the county executive.<sup>211</sup> The police chief and the president of the police union serve as non-voting members.<sup>212</sup> The commission will not have investigative jurisdiction, but will “advise the Council on policing matters” and “recommend policies, programs, legislation, or regulations” concerning policing.<sup>213</sup> The commission was empaneled rather quickly. In June 2020, the county invited applications for commission memberships to serve a 3-year term and the members were formally appointed in July 2020.<sup>214</sup> As in nearby Fairfax County, Virginia, the Montgomery County Sheriff’s office remains without such oversight, although the law enforcement responsibilities of the Montgomery County Sheriff’s office are much more limited relative to the Montgomery County Police Department.<sup>215</sup>

<sup>209</sup> MONTGOMERY COUNTY, MD. CODE § 35-6(A) (2021); *see also* Alessia Grunberger, *First Police Civilian Review Board Green-Lit in Montgomery County*, PATCH, (Dec. 6, 2019 2:39 PM), <https://patch.com/maryland/rockville/first-police-civilian-review-board-green-lit-montgomery-county>.

<sup>210</sup> Grunberger, *supra* note 209.

<sup>211</sup> MONTGOMERY COUNTY (MARYLAND) CODE, § 35-6(c); *see also* Grunberger, *supra* note 209.

<sup>212</sup> MONTGOMERY COUNTY, MD. CODE § 35-6(f) (2021); *see also* Grunberger, *supra* note 199.

<sup>213</sup> MONTGOMERY COUNTY, MD. CODE, *supra* note 212, at § 35-6(c); *see also* Grunberger, *supra* note 209.

<sup>214</sup> Press Release, Montgomery Cnty. Council, County Council Seeks Applicants for Policing Advisory Commission (June 5, 2020), [https://www2.montgomerycountymd.gov/mcgportalapps/Press\\_Detail.aspx?Item\\_ID=25399&Dept=1](https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=25399&Dept=1); Press Release, Montgomery Cnty. Council, Council Appoints Members of the Policing Advisory Commission to Improve Oversight of the Montgomery County Police Department (July 28, 2020), [https://www2.montgomerycountymd.gov/mcgportalapps/Press\\_Detail.aspx?Item\\_ID=25647&Dept=1](https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=25647&Dept=1).

<sup>215</sup> Unlike other Sheriff’s offices, the Montgomery County Sheriff does not operate any jail facilities, as Montgomery County detention centers are operated by the County Department of Correction and Rehabilitation. MONTGOMERY CNTY. DEPARTMENT OF CORRECTION AND REHABILITATION, <https://www.montgomerycountymd.gov/cor/> (last visited June 6, 2021). The Sheriff’s personnel, are fully certified law enforcement officials who serve as the enforcement arm for the Montgomery County court system. Mission Statement, MONTGOMERY CNTY. SHERIFF’S OFFICE,

*14. Santa Clara County, California*

In 2016, debate over reform of the Santa Clara County Sheriff's Office accelerated after a series of scandals at the county jails, including a fatal beating of a mentally ill inmate.<sup>216</sup> The county empaneled a special commission to investigate.<sup>217</sup> A non-profit prison rights group filed a class-action lawsuit against the county alleging brutality at the jails as well as overuse of solitary confinement and the failure to provide adequate medical and mental health care.<sup>218</sup> Investigators working on behalf of the special commission got an earful when they surveyed almost 1,000 inmates and more than 30 members of the jail staff.<sup>219</sup> The commission issued a series of policy recommendations after learning of widespread abuse, lax oversight and a broken disciplinary system at the jails.<sup>220</sup>

In response to the criticism, the Sheriff published a plan to address the violence and to improve conditions at the county's two facilities.<sup>221</sup> The Sheriff's plan included the creation of an independent civilian oversight board and an office of inspector general.<sup>222</sup> The county board rejected those two concepts and instead, in March 2018, created the Office of Correction and Law Enforcement Monitoring (the "Monitor").<sup>223</sup> In the interim, various departments across the County undertook actions to support improved jail conditions.<sup>224</sup> By ordinance, the Monitor will have broad jurisdiction covering: "jail and law enforcement operations, the conditions of confinement in the jails, the

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<https://www.montgomerycountymd.gov/sheriff/information/mission-statement.html>, (last visited June 12, 2021).

<sup>216</sup> Jennifer Wadsworth, *Sheriff Smith Releases Plan to Reform Santa Clara County Jails*, SAN JOSE INSIDE (Mar. 17, 2016), <https://www.sanjoseinside.com/2016/03/17/sheriff-smith-releases-plan-to-reform-county-jails/>.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> Julie Small, *Santa Clara Sheriff to Get Long-Awaited Civilian Oversight*, KQED NEWS, Oct. 10, 2019, <https://www.kqed.org/news/11779144/santa-clara-sheriff-to-get-long-awaited-civilian-oversight>.

<sup>220</sup> *Id.*

<sup>221</sup> Jail Reform Plan, SANTA CLARA CNTY., CAL. BD. OF SUPERVISORS PUBLIC SAFETY AND JUSTICE COMM. (Mar. 16, 2016), <https://www.sanjoseinside.com/wp-content/uploads/2016/03/Smith-Reform-Plan.pdf>.

<sup>222</sup> *Id.*

<sup>223</sup> Santa Clara Cnty., Press Release, *Civilian Oversight of Law Enforcement and Jails Comes to Santa Clara County* (Mar. 20, 2018), <https://www.sccgov.org/sites/d5/newsmedia/Pages/CivilianMonitorApproval.aspx>.

<sup>224</sup> *Id.*

provision of health services in jails, the use of force in the jails and in law enforcement operations, and compliance with civil rights laws.” The Monitor will also have jurisdiction over responses from the Sheriff’s Office and Department of Corrections 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.”<sup>225</sup> In addition to this broad mandate, the Monitor will be empowered to review investigations of fatal in-custody and on-duty use of force incidents.<sup>226</sup> In addition to creating the Monitor role, the establishing ordinance also calls for the creation of the Community Correction and Law Enforcement Monitoring Committee, a nine-member board to be established six to nine months after the Monitor is in place.

In October 2019, the Santa Clara County Board of Supervisors voted unanimously to hire the OIR Group to serve as the Monitor for the Santa Clara Sheriff’s Office.<sup>227</sup> The Board empowered the Los-Angeles-based consultant to audit the sheriff’s operations, inmate complaints and to conduct internal investigations.<sup>228</sup> The Sheriff vowed to cooperate with the Monitor’s work.<sup>229</sup> Although the OIR Group was to begin in January 2020, the COVID-19 pandemic prevented it from doing so for most of 2020.<sup>230</sup> In December 2020, the Board of Supervisors amended the municipal code to reflect that the monitor has subpoena power.<sup>231</sup> Yet, the monitor’s ability to provide oversight had been limited by a lack of information because, at the time of this writing, the sheriff had refused to sign an information sharing agreement with the monitor’s office.<sup>232</sup>

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<sup>225</sup> SANTA CLARA, CAL., MUN. CODE §A20-63(c)(1).

<sup>226</sup> *Id.* (“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.”)

<sup>227</sup> Small, *supra* note 219.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Office of Correction and Law Enforcement Monitoring*, CNTY. OF SANTA CLARA, CAL. BD. OF SUPERVISORS, <https://www.sccgov.org/sites/bos/Pages/office-correction-law-enforcement-monitoring-OCLEM.aspx>.

<sup>231</sup> Santa Clara Cnty., Cal., Ordinance NS 300.946 (Dec. 15, 2020).

<sup>232</sup> Stephen Stock, Michael Bott & Mark Villareal, *Sheriff Left Civilian Jail Watchdogs in Dark After Gang Beating of Police Informant*, NBC BAY AREA (Aug. 2, 2021), <https://www.nbcbayarea.com/investigations/sheriff-left-civilian-jail-watchdogs-in-dark-after-gang-beating-of-police-informant/2614249/>.

15. *Miami-Dade County, Florida*

In August 2020, the Miami-Dade county commission voted to reinstate civilian oversight for the Miami-Dade Police Department, the largest police force in the southeastern United States.<sup>233</sup> Although the commission had previously voted to do so twice in the preceding two years, the county mayor had vetoed the plans.<sup>234</sup> The new entity, renamed the Independent Review Panel (“IRP”), will be comprised of 13 members each appointed by a county commissioner and will investigate or review citizen complaints and serious use of force incidents.<sup>235</sup> The IRP will also be empowered to inspect all closed internal affairs files and make recommendations regarding department policies, procedures, training and recruitment.<sup>236</sup> The county had first initiated civilian oversight in 1980 after riots were ignited when four officers were acquitted in the beating death of a Black insurance agent and former marine.<sup>237</sup> That agency lost its funding in the wake of the recession of 2009.<sup>238</sup> Support of the new measure seems to have gained steam in the wake of the murder of George Floyd and the national debate about police reform that followed.

In 2020, the Miami-Dade Police Department was in the process of being transitioned to become the Miami-Dade Sheriff’s Office, with an elected sheriff taking the place of the mayor-appointed police director.<sup>239</sup> Before November 2018, Miami-Dade was the only Florida county without an elected sheriff.<sup>240</sup> Amendment 10, a state-wide ballot initiative passed in November 2018, giving the county until 2024 to

<sup>233</sup> Alexi C. Cardona, *After Long Hiatus, Miami-Dade Reinstates Police Oversight Panel*, MIAMI NEW TIMES (Aug. 31, 2020, 2:58 PM), <https://www.miaminewtimes.com/news/miami-dade-commissioners-revive-police-oversight-board-11688590>; Joey Flechas, *Miami-Dade Civilian Police Oversight Panel Clears Initial County Commission Vote*, MIAMI HERALD (June 16, 2020, 5:54 PM); Ban, *supra* note 5.

<sup>234</sup> Cardona, *supra* note 233.

<sup>235</sup> MIAMI-DADE CNTY., FLA. CODE § 2-11.45(b) (2020); Flechas, *supra* note 233.

<sup>236</sup> Cardona, *supra* note 233.

<sup>237</sup> Flechas, *supra* note 233.

<sup>238</sup> *Id.*

<sup>239</sup> Brian Entin & Daniel Cohen, *Miami-Dade Police Department Will Become a Sheriff’s Office*, WSVN 7NEWS (Jan. 29, 2019), <https://wsvn.com/news/investigations/miami-dade-police-department-will-become-a-sheriffs-office-but-big-questions-remain/>.

<sup>240</sup> Douglas Hanks, *Would a Democrat or Republican Make a Better Miami-Dade Sheriff? It Might Not Matter*, MIAMI HERALD (Mar. 5, 2019 07:46 PM, updated Mar. 06, 2019 12:37 PM), <https://www.miamiherald.com/news/local/community/miami-dade/article227138094.html>.



elect the sheriff, but other aspects of the changeover could happen before then.<sup>241</sup> Although local leaders had opposed the measure and sued unsuccessfully to stop it, it garnered the support of 58% of Miami-Dade voters.<sup>242</sup> The new Sheriff's office will be created by merging the 4,400 person police department with the 3,000 employee jail system.<sup>243</sup>

### *B. Counties Considering Civilian Oversight*

There are several counties among the 50 surveyed for which civilian oversight has been the subject of great debate, but no formal plans had been implemented at the time of this writing.

#### *1. Alameda County, California*

In September 2017, prison reform advocates called for more oversight of jails operated by the Alameda County Sheriff after four jail guards were charged with felonies based on allegations of abuse of several inmates.<sup>244</sup> In addition to the abuse charges, two of the guards faced obstruction charges for allegedly conspiring to silence a witness.<sup>245</sup> More recently, Alameda County was one of several northern California counties for which lawmakers are considering more financial oversight.<sup>246</sup>

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<sup>241</sup> Entin & Cohen, *supra* note 239; Douglas Hanks & Charles Rabin, *After a Storied History of Bad Sheriffs, Miami-Dade Voters Will Elect Them Again*, MIAMI HERALD (Nov. 8, 2018 6:00 AM, updated 7:00 AM), <https://www.miamiherald.com/news/politics-government/election/article221285885.html>.

<sup>242</sup> Hanks & Rabin, *supra* note 241.

<sup>243</sup> *Id.*

<sup>244</sup> Sara Hossaini, *Advocates Call for Oversight in Alameda After Alleged Inmate Abuse*, KQED NEWS (Sept. 8, 2017) <https://www.kqed.org/news/11615935/advocates-call-for-oversight-in-alameda-after-alleged-inmate-abuse>.

<sup>245</sup> *Id.*

<sup>246</sup> *Culver City Assemblywoman Gets OK to Audit Sheriff*, CULVER CITY OBSERVER (Feb. 27, 2020), <https://www.culvercityobserver.com/story/2020/02/27/news/culver-city-assemblywoman-gets-ok-to-audit-sheriff/8821.html> (noting that the Joint Legislative Audit Committee had approved Assemblymember Sydney Kalmager's request to audit the Alameda, Fresno, and Los Angeles County sheriff's departments due to concerns regarding how those law enforcement entities have been using state funds provided them to transition incarcerated individuals from prisons to jails). See also Press Release, Ella Baker Center for Human Rights (May 30, 2018) (on file with author) (noting that the Berkeley City Council passed a resolution calling for an audit of the Alameda county Sheriff because the office' budget had increased while the county's jail population had been declining).

## 2. *Allegheny County, Pennsylvania*

In Allegheny County, where Pittsburgh is the county seat, a county legislator first proposed the creation of a civilian board to oversee the Allegheny County Police Department after a controversial fatal police shooting in the borough of East Pittsburgh in June 2018.<sup>247</sup> The Executive Director of Pittsburgh’s Independent Citizen Police Review Board, the civilian oversight entity responsible for investigating misconduct committed by Pittsburgh municipal police officers, made a presentation to the County Council suggesting that that organization take on oversight of the county police department as well.<sup>248</sup> The council declined the offer.<sup>249</sup> Yet, the prospect of civilian oversight resurfaced in early 2020, when a measure was reintroduced that would empower a civilian board to investigate complaints and recommend disciplinary action regarding police officers working in police agencies that serve the county.<sup>250</sup> An Allegheny County Councilor had introduced a similar measure in 2019 in the wake of a controversial fatal officer-involved shooting incident which prompted community members to call for greater oversight of local police officers.<sup>251</sup> The Council rejected the measure in a 9-6 vote.<sup>252</sup> The Councilor reintroduced the plan in 2020 hoping it would garner more support among the new composition of the county council.<sup>253</sup> The proposed measure would give the civilian entity the power to research policies on police-community relations,<sup>254</sup> although, under state law, only the Allegheny County Police Department would be required to participate in such policy reviews.<sup>255</sup> As such, the Allegheny County Sheriff’s office and the municipal police departments within the county could opt

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<sup>247</sup> An-Li Herring, *Allegheny County Council to Get a Second Look at Measure to Form Police Review Board*, WITF (Jan. 22, 2020 10:26 AM) <https://www.witf.org/2020/01/22/allegheny-county-council-to-get-a-second-look-at-measure-to-form-police-review-board/>.

<sup>248</sup> Elizabeth C. Pittinger, PRESENTATION TO ALLEGHENY COUNTY COUNCIL MEMBERS, CONSIDERATIONS RELATED TO CREATION OF A COUNTYWIDE POLICE OVERSIGHT MECHANISM (Aug. 29, 2018) at 4.

<sup>249</sup> Herring, *supra* note 247.

<sup>250</sup> *Id.* (noting that police chiefs and other law enforcement authorities would ultimately decide the disciplinary matters).

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

in, but would not be required, to participate in such reviews.<sup>256</sup> Council members continue to debate whether the measure should provide the proposed nine-member civilian board with subpoena powers.<sup>257</sup>

### 3. *Contra Costa County, California*

In 2018, Contra Costa County was home to California's deadliest big jail system.<sup>258</sup> In early 2019, following a highly critical California Department of Justice report regarding the treatment of undocumented immigrants at one of Contra Costa County's detention facilities, activists called for more independent oversight of the Sheriff.<sup>259</sup> The report issued by the state contradicted the Sheriff's internal affairs investigation into conditions inside the facility which concluded that the complaints were unfounded or unsubstantiated.<sup>260</sup> The California Attorney General's investigation substantiated many allegations including that staffing issues left detainees without restroom access and adequate medical care.<sup>261</sup> Reform advocates embraced the California DOJ report as additional support for why California county sheriffs should have independent monitors.<sup>262</sup> In August, 2019, following a third death at the Contra Costa County jail that year, prison reform advocates again called on county officials to increase oversight of the Sheriff's office.<sup>263</sup> The jail fatalities sparked renewed criticism about jail conditions from several local community groups.<sup>264</sup> Reform advocates have been pushing for a civilian oversight body with subpoena power.<sup>265</sup> In 2018, the county's Racial Justice Task Force recommended that an independent monitor be created for the county jails. Unfortunately, the measure fell just shy of the necessary support, and,

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<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> Scott Morris, *State's Deadliest Big Jail System Last Year was Contra Costa County's*, EAST BAY EXPRESS (Aug. 21, 2019), [<https://perma.cc/GE9V-9RXP>].

<sup>259</sup> Josh Slowiczek, *Activists Say Report of Immigrants' Mistreatment in Richmond Detention Center Proves Sheriff Must Go*, MERCURY NEWS (Mar.18, 2019), [<https://perma.cc/XPB5-PD4G>].

<sup>260</sup> *Id.*

<sup>261</sup> Morris, *supra* note 258.

<sup>262</sup> Slowiczek, *supra* note 259.

<sup>263</sup> Annie Sciacca, *Advocates Turn Up the Heat on Contra Costa Sheriff After Latest Jail Death*, EAST BAY TIMES (Aug. 22, 2019), [<https://www.eastbaytimes.com/2019/08/22/latest-jail-death-heightens-advocates-call-for-oversight-of-contra-costa-sheriff/>].

<sup>264</sup> *Id.*

<sup>265</sup> Morris, *supra* note 258.

in a 3-2 vote, the county supervisors chose to remove that recommendation from the final version of the task force's report.<sup>266</sup>

#### 4. *Cuyahoga County, Ohio*

In late 2018 and leading into 2019, problems at the Cuyahoga County jail in Cleveland prompted civil lawsuits, an F.B.I. investigation and criminal charges against several corrections officers. The scandal sparked Ohio Governor Mike DeWine to consider plans to increase state oversight of local jails.<sup>267</sup> Plaintiffs to a class action lawsuit against the jail alleged that inmates are “regularly denied access to adequate medical and mental health care, hygienic conditions, movement sufficient and edible food, access to religion, and access to their attorneys.”<sup>268</sup> This controversy was one of several instances in which troubles at the Cleveland facility had surfaced publicly.<sup>269</sup> The prior October, a Cleveland Municipal Court judge stated that he preferred to release low-level offenders because of safety concerns at the jail.<sup>270</sup> The Governor called for the Cleveland facility to receive regular inspections every 30 days, rather than at the usual annual intervals.<sup>271</sup> The increased scrutiny was proposed following the release of surveillance video showing two Cuyahoga County corrections officers repeatedly punching an inmate who was strapped to a chair.<sup>272</sup> In addition to the more frequent inspections, the Governor's plans also called for more open sharing of inspection reports with local prosecutors and administrative judges.<sup>273</sup>

The problems in Ohio jails stretch beyond facilities in Cleveland, as half of the state's county jails failed to achieve passing scores in initial state inspections in 2018.<sup>274</sup> The state has only three inspectors to

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<sup>266</sup> Slowiczek, *supra* note 259.

<sup>267</sup> Mihir Zaveri & Sandra E. Garcia, *Amid Deaths and Violations at Cleveland Jail, Ohio Governor Plans to Increase Oversight*, N.Y. TIMES (Jun. 8, 2019), <https://www.nytimes.com/2019/06/08/us/ohio-governor-jail-inspections.html>.

<sup>268</sup> Complaint, Clay, et al. v Cuyahoga Cnty., No. 18-CV-02929 (N.D. Ohio. Dec 20, 2018).

<sup>269</sup> Zaveri & Garcia, *supra* note 267.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> Randy Ludlow, *Ohio to Step up Inspection, Oversight of County Jails*, COLUMBUS DISPATCH (Jun. 7, 2019), [<https://perma.cc/VTU5-KQ27>].

conduct the annual compliance reviews of Ohio's 313 local detention facilities.<sup>275</sup>

#### 5. *State of Hawaii*

In 2015, Hawaii lawmakers considered a group of bills intended to enhance oversight of the state's police agencies, which are organized by county.<sup>276</sup> The legislation was prompted by reports of domestic violence by off-duty officers which had begun to undermine public trust in law enforcement.<sup>277</sup> The measures that were considered included raising the standards of professional conduct, providing counties with the authority to remove their chiefs of police, and requiring county police departments to post policies on domestic violence.<sup>278</sup> The Honolulu Police Department opposed the measure that would create a new statewide standards board.<sup>279</sup>

#### 6. *Palm Beach County, Florida*

Palm Beach County briefly considered adopting civilian oversight in 2015, after a news investigation revealed that, in 123 shooting incidents involving sheriff's officers over a 15-year period, one-fourth of the people shot were unarmed, and one-fourth were armed only with a vehicle.<sup>280</sup>

#### 7. *Riverside County, California*

Calls for civilian oversight for the Riverside Sheriff intensified following reporting by news media regarding the investigation into the 2017 in-custody death of a man in mental and medical distress.<sup>281</sup> Not

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<sup>275</sup> *Id.*

<sup>276</sup> Cathy Bussewitz, *Hawaii Bills Seek Enhanced Police Oversight*, WASHINGTON TIMES (Feb. 10, 2015), <https://www.washingtontimes.com/news/2015/feb/10/hawaii-bills-seek-enhanced-police-oversight/>.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> Lawrence Mower, *Civilians Probing Police? See What's Been Done and If It Worked*, PALM BEACH POST (May 23, 2015), <https://www.palmbeachpost.com/article/20150523/NEWS/812012905>.

<sup>281</sup> Beau Yarbrough, *Man's 2017 In-Custody Death Renews Calls for Riverside County Sheriff's Oversight*, PRESS-ENTERPRISE (June 20, 2020), <https://www.pe.com/2020/06/20/mans-2017-in-custody-death-renews-calls-for-riverside-county-sheriffs-oversight/>.

only did the investigation reveal inappropriate use of force, it also produced evidence that the involved officers had falsified reports.<sup>282</sup>

8. *Wake County, North Carolina*

In Wake County, North Carolina, the concept of creating a civilian oversight board was a topic of debate among candidates for the office of sheriff in the 2018 election cycle.<sup>283</sup> The incumbent sheriff had to defend himself against criticism stemming from a 2016 incident during which a deputy unleashed a police dog at a Black man who told officers he was having a mental health crisis.<sup>284</sup> The man can be heard pleading for help as he was mauled by the animal on publicly released dashcam audio.<sup>285</sup> The four-term sheriff came under fire after the district attorney dropped charges against the involved officer.<sup>286</sup> During that sheriff's long tenure, Blacks represented 55% of use of force incidents while accounting for only a little over 20% of the county population.<sup>287</sup> While a challenger supported the idea of civilian oversight, the incumbent sheriff strongly rejected the concept as unnecessary.<sup>288</sup> The challenger prevailed.<sup>289</sup> Within a month of taking office, the newly elected sheriff was already starting to clean house.<sup>290</sup>

V.

WHY CIVILIAN OVERSIGHT HAS BEEN SLOW TO GAIN TRACTION AT  
THE COUNTY LEVEL

Despite the need, civilian oversight for county sheriffs is not as prevalent as it is among municipal police departments. Many past attempts at oversight over sheriff's offices have failed. For example, in

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<sup>282</sup> *Id.*

<sup>283</sup> George Joseph, *North Carolina Sheriff Criticized for Unleashing K-9 Dogs on Black People Faces Re-Election*, APPEAL (Nov. 2, 2018), <https://theappeal.org/north-carolina-sheriff-criticized-for-unleashing-k-9-dogs-on-black-people-faces-re-election/>.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> Cullen Browder, *Turnover Under New Wake Sheriff Making Waves*, WRAL NEWS (Jan. 2, 2019), <https://www.wral.com/turnover-under-new-wake-sheriff-making-waves/18100020/>.

<sup>290</sup> Sheriffs in North Carolina are empowered with legal authority to hire and fire employees. *Id.* After only one month on the job, the sheriff terminated or demoted approximately 40 of the more than 1,000 sworn deputies and civilian staff members employed by the office. *Id.*

2010, in the wake of a deadly shooting by deputies, the Orange County Florida Sheriff announced he was creating a citizens' advisory committee to advise the sheriff on a variety of issues.<sup>291</sup> However, the nine-member group never really got off the ground, and fell apart after meeting a handful of times per year between 2011 and 2013, and only once in 2014.<sup>292</sup> A previous oversight effort, the Orange County Citizens Review Board, which wielded subpoena power, was disbanded after the Sheriff filed suit claiming the Board lacked the legal authority to conduct independent complaint investigations and a Florida appellate court agreed.<sup>293</sup>

Based on the information gathered for this survey, there appear to be several reasons why oversight of sheriff-led law enforcement operations has been slow to develop and less than optimally effective. At the heart of the issue is politics. Unlike the leaders of municipal police departments who are appointed and who can generally be terminated, with or without cause, county sheriffs are elected officials whose tenure is not easily cut short by anything other than electoral politics. Moreover, because counties are larger political units relative to cities, it may be difficult to build a political consensus around civilian oversight that is sufficiently broad to achieve support from voters in a

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<sup>291</sup> Melanie Dostis, *Three Years After Launch, Sheriff's Citizen Committee Mostly Inactive*, ORLANDO SENTINEL (Jan. 7, 2015, 4:14PM), <https://www.orlandosentinel.com/news/crime/os-orange-sheriffs-citizens-advisory-committee-20150102-story.html>.

<sup>292</sup> *Id.*

<sup>293</sup> In 1986, Orange County voters approved a charter form of government which included the sheriff as an independent constitutional office. *Demings v. Orange Cty. Citizens Review Bd.*, 15 So. 3d 604, 606 (Fla. Dist. Ct. App. 2009). In 1992, the voters approved a charter amendment that abolished the constitutional office of sheriff and created a new sheriff's department pursuant to the county charter. *Id.* In addition, the voters also approved a charter provision that created a Citizen's Review Board ("CRB") to investigate complaints against the sheriff's deputies and to review the sheriff's internal investigations. *Id.* The CRB was to be comprised of 7 to 11 members, 2 of which would be appointed by the sheriff and the remaining members appointed by the board of county commissioners. *Id.* at 606–07. However, in 1996, the voters approved a charter amendment that re-established the Sheriff as an independent constitutional office but left the CRB structure intact. *Id.* at 607. In 2004, the Sheriff filed suit challenging the CRB's legal authority to independently investigate citizen complaints. *Id.* Although a Florida trial court upheld the CRB structure, the appellate court agreed with the sheriff that the CRB as then structured was unconstitutional. *Id.* at 609–11 (holding that the structure and composition of the board was in violation of the constitution and that there was no practical way to save any of the ordinance which created the board's charter, but that the county could create a commission with more limited powers).

referendum or from county-based political leaders with the political muscle to push through the requisite legislation.

In addition to these challenges, the following outlines some of the most pertinent impediments to civilian oversight at the county level based on this survey.

A. *Resistance to Civilian Oversight and to Oversight Writ Large*

With few exceptions, members of the law enforcement community tend to be slow to embrace, if not downright hostile, toward civilian oversight.<sup>294</sup> County sheriffs are no different. Most law enforcement officials are suspicious of civilian oversight practitioners and consider the civilian-led complaint investigation process is likely to harbor an anti-police bias.<sup>295</sup> For example, a 1989 focus group study involving New York City Police Department officers revealed that the officers tended to believe that the Citizen Complaint Review Board was not effective at screening out frivolous and trivial complaints, even though the likelihood of a sustained finding on a citizen complaint remained remarkably low.<sup>296</sup> In 1992, when former New York City Mayor David Dinkins expressed support for an independent civilian complaint review board, NYPD officers mounted a violent protest.<sup>297</sup> With union backing, and the participation of then Mayor Rudolph Giuliani, the officers

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<sup>294</sup> Joseph De Angelis & Aaron Kupchik, *Citizen Oversight, Procedural Justice, and Officer Perceptions of the Complaint Investigation Process*, 30 *POLICING: INT'L J. POLICE STRAT. & MGMT.* 651, 653–54 (2007); see also Justin Nix, Scott E. Wolfe, & Brandon Tregle, *Police Officers' Attitudes Toward Citizen Advisory Councils*, 41 *POLICING: AN INT'L J.* 418, 425–430.

<sup>295</sup> De Angelis & Kupchik, *supra* note 294, at 654.

<sup>296</sup> At the request of the New York City Police Department (NYPD), the Vera Institute initiated a research project with the objective of learning more about the Civilian Complaint Review Board (CCRB). MICHELE SVIRIDOFF & JEROME E. MCELROY, *THE PROCESSING OF COMPLAINTS AGAINST POLICE IN NEW YORK CITY: THE PERCEPTIONS AND ATTITUDES OF LINE OFFICERS*, VERA INSTITUTE OF JUSTICE 1 (Sept. 1989). As part of that research project, the researchers sought to learn about the perceptions among NYPD officers of CCRB and the complaint investigation process. *Id.* at 2. Although a quantitative survey among officers was planned, the researchers were forced to scuttle the plan when they were unable to secure a positive endorsement of the survey from the police union, making a sufficiently robust response rate to the survey unlikely. *Id.* As a result, they conducted a series of focus groups instead. *Id.* at 3. During the focus groups, several officers expressed the view that the CCRB accepted too many complaints that should have been screened out. *Id.* at 7.

<sup>297</sup> George James, *Police Dept. Report Assails Officers in New York Rally*, *N.Y. TIMES* (Sept. 29, 1992), <https://www.nytimes.com/1992/09/29/nyregion/police-dept-report-assails-officers-in-new-york-rally.html>.



demonstrated near City Hall, blocking traffic to the nearby Brooklyn Bridge, and shouting racial epithets.<sup>298</sup>

Moreover, sheriffs appear more resistant, relative to their municipal counterparts, to oversight in many forms, not just that provided by civilian entities. For example, several sheriffs have been hesitant to adopt bodycam and dashcam technology as an oversight mechanism. According to the Polk County, Florida Sheriff, who oversees 653 sworn deputies, it was his “personal preference” to reject the use of these technologies because he considers them “unnecessary,” stating, “[o]ne camera angle does not tell the truth any more than the opportunities for it to distort.”<sup>299</sup> The Pinellas County Florida Sheriff approves of dashcam technology, but has soundly rejected the use of bodycams, claiming they “only capture a certain image” and “don’t tell the whole story.”<sup>300</sup>

Thus far, many sheriffs have successfully wielded their collective political power to forestall legislative efforts related to accountability they view as a threat to their autonomy.<sup>301</sup>

#### *B. Recent or Ongoing Federal Oversight*

The introduction of civilian oversight may also be put off for sheriff’s offices that are currently or have recently been under federal oversight. Law enforcement entities serving at least four of the fifty counties surveyed have been under federal oversight in recent years.<sup>302</sup> In March 2017, a federal judge ended most of the federal monitoring of the Broward County jails, bringing closure to a 41-year old class-action lawsuit against the Broward County Sheriff’s Office.<sup>303</sup> The lawsuit led

<sup>298</sup> *Id.*

<sup>299</sup> Noah Pransky, *Forget Bodycams; Dashcams are Rare in Tampa Bay*, WTSP NEWS, Tampa, FL, (Aug. 10, 2016 11:29 PM), <https://www.wtsp.com/article/news/investigations/forget-bodycams-dashcams-rare-in-tampa-bay/293525827> (April 28, 2020).

<sup>300</sup> *Id.*

<sup>301</sup> Greenblatt, *supra* note 50.

<sup>302</sup> Settlement Agreement, *United States v. Maricopa County*, D. Ariz., No. 2:12-cv-00981-ROS (D. Ariz., settlement agreement entered July, 7/17 /2015); Settlement Agreement, *United States v. Cnty. of Los Angeles*, No. 15-cv-03174 (C.D. Calif., Apr. 28, 2015); *Carruthers v. Israel*, No. 76-cv-06086 (S.D. Fla. Sept. 6, 2016); *United States v. Cook Cnty.*, No. 10-cv-02946, 2012 U.S. Dist. LEXIS 86429 (N.D. Ill. June 20, 2012).

<sup>303</sup> Larry Barszewski, *Judge Ends Most Federal Oversight of Broward Jails*, SUN SENTINEL (Mar. 23, 2017, 12:35 PM), <https://www.sun-sentinel.com/local/broward/fl-sb-broward-jail-consent-decree-20170321-story.html>; *Carruthers v. Israel*, S.D. Fla., No. 0:76-cv-0686.

to a consent decree that brought significant reform to jail operations.<sup>304</sup> In June 2017, the Cook County Jail in Chicago, Illinois came out from under federal oversight when a federal judge ruled that the Cook County Sheriff's office had met the terms of a 2010 consent decree.<sup>305</sup> Fulton County Jail in Atlanta, Georgia was under federal court oversight for over 11 years through 2015, when the federal district court for the Northern District of Georgia found the jail was in substantial compliance with the consent decree.<sup>306</sup> However, four years later, concerns about the jail resurfaced after the jail population ballooned to capacity.<sup>307</sup> In 2012, the Department of Justice filed suit against the Maricopa County Sheriff seeking to end the office's pattern and practice of discriminating against Latino persons.<sup>308</sup> The parties entered into a settlement agreement in 2015 that was terminated in 2019.<sup>309</sup>

In January 2014, the Suffolk County New York Police Department entered into a settlement agreement with the Department of Justice in response to complaints from the Latino community about how the department handled the investigation of the fatal beating of an Ecuadorean immigrant at the hands of a group of local teenagers.<sup>310</sup> The consent decree represented the culmination of an investigation that the Department of Justice and the U.S. Attorney's Office for the Eastern District of New York had jointly initiated in 2009.<sup>311</sup> The required

<sup>304</sup> Barszewski, *supra* note 303, at 3.

<sup>305</sup> Steve Schmadeke, *Cook County Jail Exits Federal Oversight of More Than 40 Years*, CHI. TRIBUNE (June 12, 2017, 6:11 PM), <https://www.chicagotribune.com/news/breaking/ct-cook-county-jail-consent-decree-20170612-story.html>; United States v. Cook County, N.D. Ill., 1:10-cv-02946.

<sup>306</sup> Order, Harper v. Bennett, No. 04-cv-01416-TWT (N.D. Ga. May 12, 2015), at 41.

<sup>307</sup> Arielle Kass, *Population in Fulton County Jails Surges Again*, ATLANTA J. CONST. (Jun. 20, 2019) <https://www.ajc.com/news/local/population-fulton-county-jails-surges-again/P3KRqwDyqbvHX6DSYsCWLN/>.

<sup>308</sup> Settlement Agreement, United States v. Maricopa Cnty., No. 2:12-cv-00981-ROS (D. Ariz. July, 17 2015).

<sup>309</sup> Settlement Agreement, United States v. Maricopa County., D. Ariz., No. 2:12-cv-00981-ROS (D. Ariz. settlement agreement entered July, 7/17 /2015).

<sup>310</sup> Nicole Fuller, *DOJ Report: Suffolk Makes Policing Improvements, Work Must Continue*, NEWSDAY (Oct. 17, 2018, 10:41 PM) <https://www.newsday.com/long-island/suffolk/suffolk-police-settlement-1.22066788>; Settlement Agreement Between the United States Department of Justice and Suffolk Cnty. Police Department, [https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/suffolk\\_agreement\\_1-13-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/suffolk_agreement_1-13-14.pdf).

<sup>311</sup> Settlement Agreement Between the United States Department of Justice and Suffolk Cnty. Police Department, [https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/suffolk\\_agreement\\_1-13-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/suffolk_agreement_1-13-14.pdf).

monitoring of the Suffolk County Police Department was supposed to last only three years.<sup>312</sup> In April 2017, community members grew concerned that the Department of Justice, under the Trump Administration, would dial back its involvement in police reform.<sup>313</sup> Yet, monitoring did continue, and in an October 2018 report, the Department of Justice acknowledged that, although some progress had been made, there was still more work to be done to build trust within the community.<sup>314</sup> Recently renewed calls for civilian oversight are underway, as lawmakers consider a proposal to create an inspector general.<sup>315</sup> Under a new proposal, an inspector general would have jurisdiction over all police departments in the county.<sup>316</sup> The county executive has already expressed opposition to the concept as has police union leadership.<sup>317</sup> The law enforcement community and in particular the police union is quite active in Suffolk County, which is purportedly home to a cadre of current and former New York City police officers.<sup>318</sup> Suffolk County officers there are quite well-paid, with almost half earning over \$200,000 per year.<sup>319</sup> With such high stakes, the police union wields significant political clout spending hundreds of thousands of dollars on local elections through a PAC and a super PAC.<sup>320</sup>

### C. *The Existence of State Government Oversight of Jails*

A potential argument against the creation of civilian oversight is that it would be redundant to the accountability afforded by existing

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<sup>312</sup> Fuller, *supra* note 310.

<sup>313</sup> Rashed Mian, *What Does DOJ Review of Police Settlements Mean for SCPD Reforms?*, LONG ISLAND PRESS (Apr. 26, 2017).

<sup>314</sup> Fuller, *supra* note 310.

<sup>315</sup> Greg Blass, *Suffolk County Needs an Inspector General*, RIVERHEAD LOC. (Mar. 8, 2020, 5:00 AM), <https://riverheadlocal.com/2020/03/08/suffolk-county-needs-an-inspector-general/>

<sup>316</sup> *Id.*

<sup>317</sup> *Id.* The Sheriff has not capitulated to the request for civilian oversight. However, in early February 2021, in response to an edict from Governor Andrew Cuomo, the Sheriff released a reform plan that included creating an internal review board to evaluate use of force incidents and updated technology with which to track and assess potential racial bias in traffic stops and arrests. Michael O’Keeffe & Rachelle Blidner, *Suffolk County Sheriff’s Office Unveils Reform Plan*, NEWSDAY (Feb. 23, 2021, 10:48 PM). The plan, at least initially, received fairly positive reactions from some community activists. *Id.*

<sup>318</sup> Farah Stockman, *The County Where Cops Call the Shots*, N.Y. TIMES (Mar. 26, 2021), <https://www.nytimes.com/2021/03/26/opinion/police-suffolk-county-unions.html>.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

state entities that have oversight responsibilities over sheriffs' jail operations. A study concluded in 2006 confirmed that all 50 states had a legislative committee with at least some form of responsibility for corrections operations.<sup>321</sup> In addition, most states have an auditing function, such as an inspector general or ombudsman, that reviews the operations of government agencies.<sup>322</sup> Many states have standards and inspection programs focused on state correctional facilities that also apply to county jails.<sup>323</sup> A few already have civilian oversight entities at the state or county level responsible for monitoring and reporting on prisons and jails.<sup>324</sup> However, because the scope of responsibilities of many sheriff's offices includes much more than the administration of detention facilities, oversight limited to jail operations is likely to be insufficient for many if not most counties.

*D. The Sheer Political Power Wielded by Sheriff's*

Historically, sheriffs have enjoyed significant political power in their jurisdictions, particularly in the South, and many have achieved a larger-than-life persona, such as Sheriff Jim Clark of Dallas County, Alabama whose leadership gave rise to the Bloody Sunday confrontation of marchers on the Edmund Pettus Bridge.<sup>325</sup> Although the position of Sheriff is part of county government, the Sheriff may not be viewed as working *for* county government.<sup>326</sup> In many counties, the sheriff is among the most powerful political officials, having been duly elected in his own right, rather than appointed, as are most local police chiefs.<sup>327</sup> As the former Sheriff of Cowlitz County, Washington put it, "the sheriff represents the Sovereignty of the State and has no superior in his County."<sup>328</sup> The political power wielded by county sheriffs is

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<sup>321</sup> Michele Deitch, *Independent Correctional Oversight Mechanisms Across the United States: A 50-State Inventory*, 30 PACE L. REV. 1754, 1757 (2010).

<sup>322</sup> *Id.*

<sup>323</sup> MARK D. MARTIN, JAIL STANDARDS AND INSPECTION PROGRAMS: RESOURCE AND IMPLEMENTATION GUIDE (2007)

<sup>324</sup> For example, in Maine, the sheriff for each county must appoint a 5-person board of visitors for each facility under the sheriff's supervision. MAINE REVISED STATUTES, § 1651. *See also* Deitch, *supra* note 321, at 1757.

<sup>325</sup> David A. Graham, *The Sheriff Who's Defying ICE*, ATLANTIC (July 3, 2019), <https://www.theatlantic.com/ideas/archive/2019/07/new-sheriff-town/593116/>.

<sup>326</sup> MARK S. NELSON, POWERS & DUTIES OF THE OFFICE OF SHERIFF (2018).

<sup>327</sup> *See, e.g.*, Graham, *supra* note 325; *see also* Wiley & Ashton, *supra* note 135 (noting that sheriffs are "among the most powerful local elected officials in California's 58 counties").

<sup>328</sup> NELSON, *supra* note 326.

particularly prominent in many southern counties where there are fewer cities with large urban police departments led by police chiefs that syphon the power of stature away from the county sheriffs.<sup>329</sup> Relative to police chiefs who typically report to the mayor or other city officials, sheriffs must endure fewer checks on their power.<sup>330</sup> Sheriffs often serve multiple terms in office, and many hold the position over a span of decades enabling them to amass significant political clout.<sup>331</sup>

Even though county governments fund sheriff's department operations, in many counties, the county government's power to wield the purse strings as a manner of oversight is limited.<sup>332</sup> Moreover, many sheriff's offices fund a significant portion of their operations from the proceeds of asset forfeitures, making them less vulnerable to oversight through financial control.<sup>333</sup>

### *E. County Demographics*

One hypothesis as to why civilian oversight has developed more slowly at the county level may be related to demographics. Despite the fact that Black Americans are jailed at three times the rate of white Americans, the population of sheriffs remains predominantly white and male.<sup>334</sup> Proponents of civilian oversight may have more difficulty cultivating a critical mass of public support in counties with less diverse populations. This hypothesis is grounded in data showing the citizens

<sup>329</sup> See, e.g., Graham, *supra* note 325; see also Pishko, *supra* note 19 (noting that sheriffs historically played a pivotal role in Southern states where they served as chief law enforcement officers and continue to have wide jurisdiction and primary law enforcement responsibilities).

<sup>330</sup> Pishko, *supra* note 19.

<sup>331</sup> Pishko, *supra* note 19; Greenblatt, *supra* note 50.

<sup>332</sup> Also, county governments are required by law to provide the sheriff with a budget that is reasonably sufficient to support fulfillment of the legal duties of the office. See, e.g., Wolfe v. Huff, 210 S.E.2d 699, 700 (Ga. 1974) (holding that county commissioners "were under a duty to adopt a budget making reasonable and adequate provision for the personnel and equipment necessary to enable the sheriff to perform his duties of enforcing the law and preserving the peace"); Cahalan v. Wayne Cnty. Bd. of Comm'rs, 286 N.W.2d 62, 66 (Mich. Ct. App. 1979) ("Where the Legislature has statutorily imposed on the county executive officers various duties and obligations, the county boards of commissioners must budget sums sufficient to allow the executive officers to carry out their duties and obligations.").

<sup>333</sup> For example, in Georgia, sheriffs are permitted to receive up to 1/3 of their budget from forfeiture proceeds related to drug offenses. ACCG, CONSTITUTIONAL OFFICERS: BUDGETING, CONTRACTING, AND OTHER CRITICAL ISSUES, A GUIDE FOR COUNTY COMMISSIONERS (2016). Such funds may be used for any official law enforcement purpose other than payment of salaries or bonuses to law enforcement officers. *Id.*

<sup>334</sup> WOMEN DONORS NETWORK, *supra* note 52, at 4.

of color are more favorable to civilian oversight. According to Pew Research, Black and Hispanic Americans are more likely than white Americans to strongly favor civilian oversight.<sup>335</sup>

However, this hypothesis may not hold true. An analysis based on the demographics of the 50 counties studied in this article shows that the counties with civilian oversight currently in place are not necessarily more diverse than the counties without it. Based on July 2019 U.S. Census data, the mean percentage of the population of the county population made up by non-white individuals was 52.4% for the 15 counties with civilian oversight at the county level, vs. 47.1% for 31 counties without civilian oversight.<sup>336</sup> Although this is a directional difference, it is not statistically significant at the 95% confidence level. Analysis of the counties' Black populations ran counterfactual to the hypothesis. The mean percentage of the population made up by Black individuals was 8.0% for counties currently with civilian oversight compared to 16.8% for the counties without civilian oversight. Analysis of Hispanic population statistics led to a directional, but not statistically significant difference. The mean percentage of Hispanic individuals among counties currently with civilian oversight was 24.8%, compared to 21.8% among counties without civilian oversight. It is important to bear in mind that nine of the 15 counties with civilian oversight were from the western United States which may reflect that the study was limited to the largest counties by population. It is possible that an exploration of more rural counties might yield different results. Additional research is warranted to assess the impact of demographics on the prevalence and scope of civilian oversight.

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<sup>335</sup> *Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct*, PEW RSCH. CTR. (July 9, 2020), <https://www.pewresearch.org/politics/2020/07/09/majority-of-public-favors-giving-civilians-the-power-to-sue-police-officers-for-misconduct/> (noting that the percentage of people who say they strongly favor giving civilian oversight boards power to investigate and discipline officers accused of inappropriate use of force or other misconduct was 36% for white Americans, compared to 60% and 52% for Black and Hispanic Americans respectively).

<sup>336</sup> This analysis was based on county demographic data available at <http://www.energyjustice.net/justice/>. The four New York City counties were excluded from the analysis because, as they are components of the municipality of New York City, they are dissimilar to the other counties assessed. This demographic analysis was based on two-sample t-Tests assuming equal variances. Comparisons made with t-Tests assuming unequal variances generated similar results. *Justice Map: Visualize Race and Income for Your Community and Country*, ENERGY JUST., <http://www.energyjustice.net/justice/> (last visited June 8, 2021). The four New York City counties were excluded from the analysis because, as they are components of the municipality of New York City, they are dissimilar to the other counties assessed.

VI.  
CONCLUSION

As law enforcement accountability has become a front and center issue for many communities, the obstacles to civilian oversight in the context of county-based law enforcement represent a significant and ongoing challenge. In many, but perhaps not all counties, there is a need for additional formal oversight because electoral politics has proven to provide insufficient accountability. The findings of this survey indicate a firmly entrenched resistance to civilian oversight despite the significant need for it.

Yet, there are success stories proving that it is possible to create or enhance civilian oversight at the county level by recognizing and adopting strategies to address these structural and political impediments. Some communities, such as San Diego<sup>337</sup> and King County, Washington<sup>338</sup>, have been successful at translating activism into ballot initiatives. Some communities, for example Fairfax County, Virginia<sup>339</sup> and Santa Clara, California<sup>340</sup>, have achieved success by first establishing a task force or commission to study the possibilities and develop recommendations regarding civilian oversight before adopting a specific plan. Hopefully, this and future research can inform and inspire key stakeholders engaged in the police accountability debate by showing that activism and collaboration can lead to consensus on the nature and scope of oversight that is necessary and appropriate given each community's law enforcement challenges.

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<sup>337</sup> See *supra* note 101.

<sup>338</sup> See *supra* note 119.

<sup>339</sup> See *supra* note 199.

<sup>340</sup> See *supra* note 216.

APPENDIX A:  
LAW ENFORCEMENT AGENCIES IN 50 LARGEST U.S. COUNTIES

<b>Rank (by pop)</b>	<b>County (State)/ County Seat/ Population</b>	<b>Law Enforcement Entity</b>	<b>Civilian Oversight Entity</b>
1	Los Angeles (CA) Los Angeles (10,039,107)	Sheriff's Department	Civilian Oversight Commission; Inspector General
2	Cook (IL) Chicago (5,150,233)	Sheriff's Department	NONE
3	Harris (TX) Houston (4,713,325)	Sheriff's Department	NONE
4	Maricopa (AZ) Phoenix (4,485,514)	Sheriff's Department	NONE
5	San Diego (CA) San Diego (3,338,330)	Sheriff's Office	Citizen's Law Enforcement Review Board
6	Orange (CA) Santa Ana (3,175,692)	Sheriff's Department	Office of Independent Review
7	Miami-Dade (FL) Miami (2,716,940)	Police Department	Independent Review Panel
8	Dallas (TX) Dallas (2,635,516)	Sheriff's Department	NONE
9	Kings (NY)** New York City (Brooklyn) (2,559,903)	Sheriff's Office; NYPD <sup>#</sup>	NONE



10	Riverside (CA) Riverside (2,470,546)	Sheriff's Department	NONE
11	Clark (NV) Las Vegas (2,266,715)	Las Vegas Metropolitan Police Department	Civilian Review Board
12	Queens (NY)** New York City (Queens) (2,253,858)	Sheriff's Office; NYPD#	NONE
13	King (WA) Seattle (2,252,782)	Sheriff's Office	Office of Law Enforcement Oversight; Community Advisory Committee for Law Enforcement Oversight
14	San Bernardino (CA) San Bernardino (2,180,085)	Sheriff's Department	NONE
15	Tarrant (TX) Fort Worth (2,102,515)	Sheriff's Department	NONE
16	Bexar (TX) San Antonio (2,003,554)	Sheriff's Office	NONE
17	Broward (FL) Fort Lauderdale (1,952,778)	Sheriff's Office	NONE
18	Santa Clara (CA) San Jose (1,927,852)	Sheriff's Office	Office of Corrections and Law Enforcement Monitoring
19	Wayne (MI) Detroit (1,749,343)	Sheriff's Office	NONE
20	Alameda (CA) Oakland (1,671, 329)	Sheriff's Office	NONE

21	New York (NY) Manhattan (1,628,706)	Sheriff's Office	NONE
22	Middlesex (MA) Lowell and Cambridge (1,611,699)	Sheriff's Office	NONE
23	Philadelphia (PA) Philadelphia (1,584,064)	Sheriff's Office	NONE
24	Sacramento (CA) Sacramento (1,552,058)	Sheriff's Office	Inspector General; Outreach Community Advisory Board
25	Palm Beach (FL) West Palm Beach (1,496,770)	Sheriff's Office	NONE
26	Suffolk (NY) Riverhead (1,476,601)	Sheriff's Office; Police Department	NONE
27	Hillsborough (FL) Tampa (1,471,968)	Sheriff's Office	NONE
28	Bronx (NY)** New York City (Bronx) (1,418,207)	Sheriff's Office; NYPD#	NONE
29	Orange (FL) Orlando (1,393,452)	Sheriff's Office	NONE
30	Nassau (NY) Mineola (1,356,924)	Sheriff's Office; Police Department	Correctional Center Board of Visitors (Sheriff's Office)
31	Franklin (OH) Columbus (1,316,756)	Sheriff's Office	NONE

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32	Travis (TX) Austin (1,273,954)	Sheriff's Office	Civil Service Commission
33	Hennepin (MN) Minneapolis (1,265,843)	Sheriff's Office	NONE
34	Oakland (MI) Pontiac (1,257,584)	Sheriff's Office	NONE
35	Cuyahoga (OH) Cleveland (1,235,072)	Sheriff's Office	NONE
36	Allegheny (PA) Pittsburgh (1,216,045)	Sheriff's Office; Police Department	NONE
37	Salt Lake (UT) Salt Lake City (1,160,437)	Sheriff's Office; Unified Police Department	Citizen Advisory Board (PD only); Board of Directors (PD only)
38	Contra Costa (CA) Martinez (1,153,526)	Sheriff's Office	NONE
39	Fairfax (VA) Fairfax (1,147,532)	Sheriff's Office; Police Department	Civilian Review Panel (PD only); Independent Police Auditor (PD only)
40	Wake (NC) Raleigh (1,111,761)	Sheriff's Office	NONE
41	Mecklenburg (NC) Charlotte (1,110,356)	Sheriff's Office	NONE

42	Fulton (GA) Atlanta (1,063,937)	Sheriffs' Office; Police Department	NONE
43	Montgomery (MD) Rockville (1,050,688)	Sheriff's Office; Police Department	Policing Advisory Commission (PD only)
44	Pima (AZ) Tucson (1,047,279)	Sheriff's Office	NONE
45	Collin (TX) McKinney (1,034,730)	Sheriff's Office	NONE
46	Fresno (CA) Fresno (999,101)	Sheriff's Office	NONE
47	St. Louis (MO) Clayton (994,205)	Sheriff's Office; Police Department	Police Commission (PD only)
48	Pinellas (FL) Clearwater (974,996)	Sheriff's Office	NONE
49	Honolulu (HI) Honolulu (974,563)	Police Department	Police Commission
50	Westchester (NY) White Plains (967,506)	Police Department	NONE

\* Population data is based on July 2019 estimates by the U.S. Census Bureau.

\*\* Each of the five boroughs that comprise New York City is a separate county, four of which fall within this list of the 50 most populous U.S. counties. Each of these counties/boroughs is served by the New York City Sheriff's office and the New York City Police Department.

# Although the New York City counties are served by the New York City Police Department, that entity is not included as a "county-wide" police department in this analysis because, as a municipal law enforcement entity, each serves only one municipality, unlike county police departments that serve multiple municipalities within a county.

APPENDIX B:  
OVERLAP BETWEEN COUNTY AND CITY CIVILIAN OVERSIGHT

<b>County/ Law Enforcement Entity</b>	<b>County Civilian Oversight Entities</b>	<b>County Seat/ Law Enforcement Entity</b>	<b>City Civilian Oversight Entity(ies)</b>
Clark (NV) Las Vegas Metro Police Department	Civilian Review Board	Same as County	
Fairfax (VA) County Police Department	Independent Police Auditor; Police Civilian Review Panel	Fairfax Police Department	None
Honolulu (HI) Police Department	Police Commission	Same as County	
King (WA) Sheriff's Office	Office of Law Enforcement Oversight; Community Advisory Committee for Law Enforcement Oversight	Seattle Police Department	Office of Police Accountability; Inspector General; Community Police Commission
Los Angeles (CA) Sheriff's Department	Office of Inspector General; Civilian Oversight Commission	Los Angeles Police Department	Inspector General; Police Commission; Board of Rights
Miami-Dade (FL) Sheriff's Department	Independent Review Panel	Miami Police Department	Civilian Investigative Panel
Montgomery (MD) Police Department	Policing Advisory Commission	Rockville Police Department	None
Nassau (NY) Sheriff's Department	Correctional Center Board of Visitors	Same as County	
Orange (CA)	Office of Independent Review	Santa Ana Police Department	None

Sheriff's Department			
Sacramento (CA) Sheriff's Department	Outreach Community Advisory Board; Inspector General	Sacramento Police Department	Community Police Review Commission
Salt Lake (UT) Unified Police Department	Board of Directors; Citizen Advisory Board	Salt Lake City Police Department	Civilian Review Board
San Diego (CA) Sheriff's Department	Citizen's Law Enforcement Review Board	San Diego Police Department	Community Review Board on Police Practices
Santa Clara Sheriff's Office	Office of Corrections and Law Enforcement Monitoring	San Jose Police Department	Office of the Independent Police Auditor
St. Louis (MO) County Police Department	Board of Police Commissioners	St. Louis Metropolitan Police Department	Civilian Oversight Board
Travis (TX) Sheriff's Office	Civil Service Commission	Austin Police Department	Office of Police Oversight; Community Police Review Commission