

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

---

**Bill No:** AB 2309                      **Hearing Date:** June 11, 2024  
**Author:** Muratsuchi  
**Version:** May 9, 2024  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *City attorney: state law: misdemeanor*

## HISTORY

**Source:** City of Manhattan Beach

**Prior Legislation:** None

**Support:** Beverly Hills Chamber of Commerce; City of Avalon; League of California Cities; Los Angeles County Division, League of California Cities; City of Mission Viejo; City of Orange; City of Santa Clarita; City of Stanton

**Opposition:** ACLU California Action; California District Attorneys Association; Monterey County District Attorney's Office - ODA - Salinas, CA; San Francisco Public Defender

**Assembly Floor Vote:** 50 - 6

## PURPOSE

*This bill authorizes any city attorney of a general law city or charter law city to prosecute any misdemeanor committed within the city arising out of a violation of state law notwithstanding the requirement that a county district attorney consent to any city attorney prosecuting a misdemeanor, provided that the legislative body of a city passes an ordinance granting prosecutorial authority to the City Attorney.*

*Existing law* states the city attorney of any general law city or chartered city within the county, with the consent of the district attorney, may prosecute any misdemeanor committed within the city arising out of violation of law. (Government Code § 41803.5 (a).)

*Existing law* provides that in any case in which the district attorney is granted any powers or access to information with regard to the prosecution of misdemeanors, this grant of powers or access to information shall be deemed to apply to any other officer charged with the duty of prosecuting misdemeanor charges in the state, as authorized by law. (Government Code § 41803.5 (b).)

*Existing law* requires whenever a city charter creates a city prosecutor office, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when

authorized by law, of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor may exercise the following powers:

- a) The city prosecutor shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. The city prosecutor shall draw complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses. (Government Code § 72193 (a).)
- b) Whenever any person applying for a writ of habeas corpus is held in custody by any peace officer of such city, charged with having committed within the city any misdemeanor, a copy of the application for such writ shall be served upon such city prosecutor at the time and in the manner provided by law for the service of writs of habeas corpus upon district attorneys. (Government Code § 72193 (c).)
- c) On behalf of the people, the prosecutor shall conduct all proceedings relating to such application. If the constitutionality of any law is questioned in any such habeas corpus proceeding, the city prosecutor shall immediately notify the city attorney who may take charge of the proceedings on behalf of the people, or become associated with the city prosecutor in the proceedings. (Government Code § 72193b (c).)

*Existing law* states the district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses. (Government Code, § 26500.)

*This bill* provides that notwithstanding the existing requirement that the district attorney consent, any general law city or chartered city may prosecute any misdemeanor committed within the city arising out of a violation of state law provided that the legislative body of a city passes an ordinance granting that prosecutorial authority to the city attorney.

*This bill* provides that a city may rescind the ordinance establishing prosecutorial authority at which time the authority shall cease to exist.

*This bill* provides that it does not impact provisions governing charter cities' ability to appoint a city prosecutor in their charter.

## COMMENTS

### 1. Need for This Bill

According to the author:

Cities possess a unique understanding of the public safety challenges within their jurisdictions. However, in California, many cities do not have the ability to prosecute their own misdemeanors and must report to the county's District Attorney's Office if a city attorney does not have consent to prosecute misdemeanors.

AB 2309 empowers our cities and restores autonomy to local governments by allowing city attorneys to prosecute state misdemeanors to respond swiftly and appropriately to the public safety challenges they face. Granting prosecutorial authority to cities is an acknowledgment of their ability to tailor law enforcement responses to the specific needs and priorities of their communities.

## 2. Prosecutorial Authority

Government Code Section 41803.5 only allows a city attorney to prosecute statewide crimes when the district attorney of a county consents. However, Government Code section 72193 grants city attorneys the authority to prosecute misdemeanors. It states:

Whenever the charter of any city creates the office of city prosecutor, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor may exercise the following powers:

(a) The city prosecutor shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. The city prosecutor shall draw complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses. (Gov. Code, 732193, subd. (a).)

However, there has been a great deal of consternation in counties like Los Angeles and San Francisco where progressive district attorneys opted not to prosecute lower level crimes. In response, city attorneys began calling for the authority to prosecute misdemeanors themselves.

In 1996, the Attorney General issued an opinion explaining city attorney prosecutorial authority. Charter cities have governing documents adopted by City voters. General law cities mostly operate via municipal codes that are approved by the City Council. (See Cal. Const., art. XI, §§ 3, 5; Gov. Code, §§ 34450- 34462.)

While the prosecution of city ordinances is a local matter, the prosecution of all state laws, including state misdemeanor offenses, is a matter of statewide concern, wherever committed. ***Accordingly, it is only through legislative authorization that a city prosecutor, whether in a general law or charter city, may prosecute state misdemeanors.*** (See *Montgomery v. Superior Court* (1975) 46 Cal.App.3d 657; *City of Merced v. County of Merced* (1966) 240 Cal.App.2d 763; *Oppenheimer v. Tamblin* (1959) 167 Cal.App.2d 158; 65 Ops.Cal.Atty.Gen. 330, 332-333 (1982).) The prosecution of state misdemeanor offenses is assigned generally to the district attorney of each county. (Gov. Code, § 26500; 20 Ops.Cal.Atty.Gen. 234 (1952).) However, city attorneys may also be authorized to prosecute such offenses within their respective cities. Section

41803.5, subdivision (a), applicable to both general law and charter cities, provides:

"With the consent of the district attorney of the county, the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law. . . ."

Section 72193, applicable only to charter cities, states:

"Whenever the charter of any city situated within a district for which a municipal court has been established creates the office of city prosecutor, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state.

Consequently, when the provisions of section 72193 are implemented by a charter city, the city attorney has the primary duty of prosecuting state misdemeanors within the city, with the district attorney acting in a subsidiary or "backup" role. (See [Menveg v. Municipal Court \(1964\) 226 Cal.App.2d 569, 571-572](#), quoting with approval our 1952 opinion, but noting that the Legislature may give the district attorney exclusive jurisdiction to prosecute violations of particular state laws. (1996 Cal. AG LEXIS 8, \*1, 79 Ops. Cal. Atty. Gen. 46, 46.)

Existing law authorizes general law and charter cities may allow a city attorney to prosecute any statewide misdemeanor with permission from the District Attorney. However, charter cities may pass an amendment to the charter to specify whether a city attorney may prosecute any or all misdemeanors. This bill allows general law or charter cities, by passing an ordinance, to authorize a city attorney of a general law or a chartered city to prosecute any misdemeanor committed within that city.

### **3. Changes to how Charter Cities can appoint a city prosecutor**

Existing law allows a Charter City to appoint city prosecutor if the charter allows for one. This bill would go around the charter process to allow for the prosecution of misdemeanors by a city attorney by ordinance. Amendments to a charter are governed by election law and must be submitted to the voters. (See Elections Code § 9255). By allowing a city prosecutor to be created by an ordinance in a charter city, are we taking powers away from the voters to vote on such a matter?

### **4. City attorney prosecutor without ok from District Attorney**

This bill allows a city attorney, upon passing an ordinance, to prosecute misdemeanors within the city's boundaries.

If both the elected District Attorney and the city are prosecuting misdemeanors, with no agreement between the offices, does this end up being a race to the courtroom for who can file first? How do the courts react if two cases are filed simultaneously?

What happens if the crime is a wobbler that could have been filed as a felony if certain factors exist but the city attorney files the misdemeanor first?

Do District Attorneys have a perspective on how serious a misdemeanor is in the large scheme of criminal behavior so that they know when diversion, probation, or jail time is appropriate, whereas someone just prosecuting local misdemeanors may not and thus push for a trial or a longer life changing sentence for a defendant who could have been steered away from crime by a sentence less likely to impact their family, job etc. What is the impact on the courts if there are more misdemeanor trials or cases are not settled earlier in the process?

## 5. Argument in Support

The League of California Cities support this bill stating:

Current law allows city attorneys in general law cities or chartered cities to prosecute state law misdemeanors if they are provided consent by the county district attorney to do so. In December 2020, the Los Angeles District Attorney's Office issued a Special Directive 20-07 titled, "Misdemeanor Case Management" which listed certain misdemeanor offenses that will be declined or dismissed before arraignment, unless "exceptions or factors for consideration" exist to proceed. These offenses include:

- Trespassing
- Disturbing the peace
- Criminal threats
- Drinking in public
- Public intoxication
- Driving without a valid license
- Driving on a suspended license
- Drug and paraphernalia possession
- Minor in possession of alcohol
- Loitering
- Loitering to commit prostitution
- Resisting arrest

As a result of this directive, some cities in Los Angeles County that rely on the District Attorney's Office for the prosecution of their misdemeanors have explored avenues of handling their own prosecutions of misdemeanors by their city attorneys. Currently, around 10 cities in Los Angeles County, comprising around 50% of the population of the county, have the authority for their city attorneys to prosecute misdemeanor cases without the consent of the district attorney.

Repealing the consent requirement between the District Attorney and cities would allow cities to appropriately prioritize misdemeanor offenses that are a lower priority to a district attorney. This could include many of the misdemeanor retail theft and shoplifting offenses that are occurring in many cities around the state addressing the retail theft crisis.

## 6. Argument in Opposition

The California District Attorneys Association oppose this bill stating:

While we share your concern about the increase in crime and the lack of prosecution of some of these offenses by district attorneys – particularly lower level and non-violent offenses that impact the quality of life in our communities – removing the consent requirement statewide could have unintended consequences. For example, without the consent of and coordination with the local district attorney, there could be situations involving a “race to the courthouse” to establish jurisdictional authority over a prosecution, or post-filing litigation concerning the proper prosecuting agency.

In addition, the district attorney is a constitutionally elected county official. And for good reason. District attorneys represent the government in criminal cases and are responsible for ensuring that justice is served by prosecuting individuals accused of committing crimes. They represent the people of their jurisdiction and have a duty to seek justice in every case, carefully evaluating the evidence presented and protecting the rights of the accused. As elected officeholders, they are accountable to the public and make decisions everyday about what type of crimes to prosecute, whom to bring charges against, and what punishment to seek. Delegating this important responsibility to city attorneys, who are not constitutionally elected officials, and without the consent and concurrence of the elected district attorney, could have larger consequences for the criminal justice system.

-- END --