Testimony for the House Judiciary Committee
March 25, 2025

SB 533 – Public Safety – Police Accountability – Time Limit for Filing Administrative Charges

OPPOSE UNLESS AMENDED

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The ACLU of Maryland opposes SB 533 unless it is amended to provide sufficient time for Administrative Charging Committees (ACCs) to meaningfully review complaints involving members of the public (as further explained below).

This bill is a reintroduction of amended legislation proposed last year that seeks to reinstate a one-year deadline, or statute of limitations, for bringing administrative charges against officers (as formerly provided under the largely repealed Law Enforcement Officers' Bill of Rights (LEOBR)). As an overarching concern, we continue to feel that the best policy would be to eliminate this arbitrary statute of limitations altogether, and not add an additional one, just as none existed when the LEOBR was first passed.

Barring that, however, we are aligned with the current bill's language reflecting prior amendments that address some of the critical concerns we previously raised, including setting the trigger for the new limitations period under subsection (d) as the date the alleged misconduct came to the attention of the appropriate agency official, and applying the new tolling provisions under subsection (e) to the investigation of all complaints.

Nevertheless, we believe further amendments are necessary, as outlined below. Most importantly, we think it is critical that the one-year deadline apply not, as in this bill, to the completion of the Administrative Charging Committee's (ACC's) consideration of the case, but to the presentment of the investigative file to the ACC for consideration.

At bare minimum, Administrative Charging Committees must be provided sufficient time to meaningfully consider police misconduct investigations.

The biggest problem with the current language is that it includes the ACC's decision on whether to permit a misconduct case to go forward within the one-year deadline, which we think is both misguided and unnecessary. Amending the relevant provision to instead reflect the deadline as running through the case's presentment to the ACC would help remedy this significant concern.

In the new system established by the Maryland Police Accountability Act of 2021 (MPAA), the ACC is the quasi-adjudicative body that is supposed to review every police misconduct investigation that involves a member of the public, and decide whether the officer should be administratively charged with violating departmental policy. Pub. Safety § 3- 104(e). In order to meaningfully and effectively perform that role, they must have sufficient time to review the investigatory record and deliberate on it.

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When the ACC thinks the investigation is inadequate in some way, including if it thinks the investigators have improperly not recommended sustaining a charge, the MPAA specifically empowers it to send the case back for further investigation, Pub. Safety § 3-104(f)(1). And the ACC is supposed to have 30 days to conduct its review, or send the case back for further investigation. Pub. Safety § 3-113(b). If the investigation is completed shortly before or at the one-year deadline, the ACC cannot meaningfully or adequately perform its statutorily mandated role, either of adjudicating, or of requiring further investigation. To make matters worse, the ACCs have no control of the pace of investigations, or when the investigations are received (or even if they are completed in time).

These problems are not hypothetical. In Baltimore, "Of the roughly 1,000 cases the [Baltimore administrative charging] committee has reviewed, nearly half of them were received within 15 days of their expiration, according to city data."[1] Legislation that includes the ACC's consideration of a case within the one-year deadline will simply result in thousands of cases being dismissed without any review on the merits of the complaint. The arbitrary **one-year** deadline has previously led to many cases being either administratively closed without any determination of whether misconduct occurred, or even dismissed even when misconduct was found to have occurred. See, e.g., *Balt. Police*

[1] B. Conarck, Frustrations With Civilian Oversight of Baltimore Police are Boiling Over, *The Baltimore Banner*, Dec. 2, 2024, https://www.thebaltimorebanner.com/community/criminal-justice/police-accountability-board-independence-O5ZFCTAPK5EA5DYHS3NNB2DHOM/.

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Dep't v. Brooks, 247 Md. App. 193 (Ct. Spec. App. 2020) (dismissing charges against officers in 15 cases because charging documents were not signed until more than one year after the incidents came to light, even though the charges were approved within the deadline). The current bill will make the existing problem even worse, by **making** cases that do not involve the public newly subject to the one-year deadline (they are not subject to any deadline under current law). Absent some legislative action to address this problem, even more cases will be administratively dismissed, rather than adjudicated on the merits, or not given meaningful review by the ACC. This would be a devastating betrayal of the legislature's goals in repealing the LEOBR and reforming police discipline in Maryland.

To address this critical problem, SB 533 should be amended on p. 2, line 8 to delete "disposition by" and substitute "PRESENTMENT TO". We believe that this amendment is still consistent with prior concerns raised by the Fraternal Order of Police about police chiefs holding investigations over the heads of officers by failing to act (though no actual examples of such conduct occurring were provided), and is the bare minimum that needs to be done to address the problems posed by the deadline.

The police chiefs are in charge of the internal investigative process, and would still have to adhere to the one-year deadline, subject to the exceptions required in the bill and suggested above. While the Fraternal Order of Police may be concerned about chiefs holding investigations as leverage over officers, they presumably cannot be concerned about ACCs doing the same thing, as doing so would offer no benefit due to their lack of supervisory authority over the officers (and, indeed, ACCs were established precisely to be a check on police chiefs' disciplinary powers).

This amendment would also still ensure that investigations are completed in a timely manner, and allow ACCs to always have the 30 days that the legislature thought necessary and sufficient to give meaningful consideration to any particular case under Pub. Safety § 3-113(b), regardless of how long the investigation takes.

Outcomes would be greatly improved by additional amendments to account for other conflicts with the time needed for investigation.

While we are primarily seeking the above amendment needed to provided sufficient time for meaningful ACC review, additional important changes should also be applied:

(1) The one-year deadline to investigate complaints involving members of the public under subsection (c) should be triggered by *either* the awareness of the official *or* the filing of the complaint, whichever happens later.

The bill should be modified on p. 2, lines 9 and 10 to remove the brackets, and to insert "OR THE" following "by a citizen", and add "WHICHEVER COMES LATER" at the end of the sentence on line 11.

This important clarification, also requested by the Montgomery County Executive last year, will ensure that a shorter deadline is not unintentionally created when either (1) a citizen makes a complaint after a police official becomes aware of potential misconduct, or (2) a police official becomes aware of a complaint after it is filed by a citizen (such when a complaint is filed with a Civilian Review Board and does not reach the relevant official until sometimes weeks later].

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We are aware of the floor amendment to the current House cross-file of this bill (HB238), which restores the current statutory language in subsection (c) providing the filing of a complaint as the start date for the related one-year deadline. Although we maintain that it would be much better to also account for circumstances where a complaint is filed before an official becomes aware of it (as addressed above), we are not opposed to this floor amendment change.

However, we stress the need to correct an error by this floor amendment that removes language in HB238 applying the new tolling provisions under subsection (e) to complaints involving members of the public. Unlike SB533, the current amended version of HB238 now lacks the language in subsection (c) stating "EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION," but maintains this exception in subsection (d).

While likely unintentional, this difference is easily read as meaning that, with respect to the most serious cases involving a member of the public (those that relate to potentially criminal conduct by the officer), there would be no tolling of the one-year deadline while the criminal investigation takes place. This is an unacceptable result, as it would make it impossible to complete timely administrative investigations of potentially criminal conduct, and thus impossible to impose any discipline. To avoid this untenable outcome, the excepting language in subsection (c) must be maintained.

(2) Tolling the deadline for excessive force cases and those subject to civil lawsuits would help ensure the proper and full consideration of all potential misconduct.

In bringing back the statute of limitations previously imposed under the former LEOBR, SB 533 only suspends the tolling of this deadline for cases that are also the subject of potential criminal investigation. This is unlike the old LEOBR, which did not contain a deadline for completing investigations until it was amended in 1988, and then contained in former Pub. Safety § 3-106(b) a complete exception for any investigation involving any use of force. We think a similar exception for excessive force cases should exist again under SB 533 because not all violations of a department's use of force policy will necessarily involve potentially criminal conduct (e.g. failure to intervene in another officer's improper use of force, displaying a firearm, etc.).

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We also believe SB 533 should contain a similar exception for cases that are also the subject of civil lawsuits – such suits can often reveal significant misconduct through the discovery process, but virtually always takes more than the one year currently available to consider the uncovered misconduct in the parallel administrative action. To allow full consideration of the facts needed to adequately investigate police misconduct allegations, SB 533 must be amended to reflect the timeline and exceptions necessary for proper review.

To accomplish these goals, SB 533 should be amended on p. 2, following line 30, to insert "(F) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (C) AND (D) OF THIS SECTION, IF THE ALLEGED MISCONDUCT IS RELATED TO ACTIVITY THAT WAS OR IS THE SUBJECT OF A CIVIL SUIT, AN ADMINISTRATIVE CHARGING COMMITTEE OR LAW ENFORCEMENT AGENCY SHALL FILE ANY ADMINISTRATIVE CHARGES WITHIN 1 YEAR AND 1 DAY FROM THE DATE OF JUDGMENT IN THE CIVIL SUIT." And the bill should be further amended to add a new subsection (G) that reads as follows "THE 1 YEAR AND 1 DAY LIMITATION IN SUBSECTIONS (C) AND (D) OF THIS SECTION DOES NOT APPLY TO CHARGES THAT RELATE TO THE USE OF FORCE." This is the same language that existed in the prior LEOBR in Pub. Safety § 3-106(b).

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 533 unless it is amended to exclude the ACC's consideration of a case from the one-year investigative deadline.