



**Testimony for the Senate Judicial Proceedings Committee
February 21, 2024**

**SB 608 Public Safety - Police Accountability - Time Limit for Filing
Administrative Charges**

OPPOSE UNLESS AMENDED

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The ACLU of Maryland opposes SB 608 unless amended. SB 608 is one of several bills that seek to bring back portions of the misguided Law Enforcement Officers' Bill of Rights (LEOBR), which the legislature largely and properly repealed in 2021. Specifically, SB 608 seeks to reinstate a one year deadline, or statute of limitations, for bringing administrative charges against officers in cases that do not originate with a civilian complaint.

The bill is misguided for four reasons. First, we do not believe that a strict statute of limitations is necessary in administrative discipline cases. Indeed, when the LEOBR was first passed in 1974 it did not contain one. The one year deadline was added by legislation in 1988, and even then did not apply the deadline for cases involving excessive force or potential criminal conduct. The arbitrary deadline has 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 Dep't v. Brooks*, 247 Md. App. 193 (Ct. Spec. App. 2020) (dismissing charges against officers in 15 separate cases because in each the charging documents were not signed until more than 1 year after the incidents came to light, even though the charges were orally approved within the deadline). The one year deadline is a particularly acute problem in cases that result in civil litigation against the department. Such suits can often reveal significant misconduct by officers or supervisors through the discovery process (which is more far reaching than Maryland's public records laws). But such litigation virtually always takes more than one year, meaning that any misconduct revealed likely cannot result in administrative action. It is also a problem when investigations take more than one year, which happens when internal affairs units are not adequately staffed for the volume of cases.

Second, if a limitations period is going to be enacted, this bill improperly sets the trigger for the date the period begins to run as the date of the alleged misconduct, rather than the date the relevant official within the police agency becomes aware of the potential misconduct. In this respect the current bill is even *worse* than prior language in the LEOBR (previously codified in Md. Code, Pub. Safety § 3-

106(a)). Prior to repeal, the LEOBR said “[a] law enforcement agency may not bring administrative charges against a law enforcement officer unless the agency files the charges within 1 year after the act that gives rise to the charges *comes to the attention of the appropriate agency official.*” (emphasis added). This makes perfect sense, because the misconduct often does not come to light right away, and even more often isn’t brought to the attention of the appropriate investigating officials right away. The language in this bill would result in many cases being improperly disposed of without adjudication simply because agency officials did not become aware of them in time, rather than on their merits -- an intolerable result.

Third, this bill is flawed because it limits the tolling or suspension of the one year statute of limitations for cases that involve potentially criminal conduct only to cases that do not begin with a civilian complaint (though it is not clear if this is intentional). This is because the new subsection (d) of Pub. Safety § 3-113 says that the deadline imposed there applies “except as provided in subsection (e) of this subsection”, and subsection (e) is where the deadline is extended during criminal investigations. But there is no corresponding amendment to subsection Pub. Safety § 3-113(c), which contains the one year statute of limitations for cases that begin with a civilian complaint, and thus go through the Administrative Charging Committee (ACC) process. While the reference to ACCs in subsection (d) suggests that this may be an unintentional flaw, the flaw nevertheless needs to be corrected.

Fourth, the bill is flawed because in bringing back the one year statute of limitations, the bill establishes an exception only for cases that are also the subject of potential criminal investigation, but unlike the old LEOBR, does not also contain an exception for excessive force cases. While some, maybe even many, excessive force cases may be investigated as potentially criminal conduct, not all will, 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.).

We think the best policy would be to eliminate the arbitrary statute of limitations in Pub. Safety § 3-113(c) altogether, and not add an additional one, just as none existed when the LEOBR was first passed. Barring that, and at a bare minimum, this bill must be amended to:

- 1) Set the trigger for the limitations period to be the date on which the alleged misconduct came to the attention of the appropriate agency official, as was even the case in the prior LEOBR;
- 2) Apply the tolling provision to both subsection (c) cases (involving civilian complaints), as well as subsection (d) cases;
- 3) Amend the tolling provision to include excessive force cases in addition to potentially criminal cases, again, just as the prior LEOBR did.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 608 unless amended.

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