

# **MCPA - MSA SB 608 Time Limit for Filing Charges-Su**

Uploaded by: Andrea Mansfield

Position: FAV



# Maryland Chiefs of Police Association Maryland Sheriffs' Association



## MEMORANDUM

TO: The Honorable William Smith Jr., Chair and  
Members of the Senate Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee  
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 21, 2024

RE: **SB 608 Public Safety – Police Accountability – Time Limit for Filing  
Administrative Charges**

POSITION: SUPPORT

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT SB 608 with the amendment offered by the sponsor.

This bill provides clarification as to when a law enforcement agency is required to file administrative charges arising out of an investigation of alleged police misconduct. With the sponsor amendment, administrative charges not required to be reviewed by the Administrative Charging Committee (ACC) would need to be filed within one year and a day from the time the law enforcement became aware of the incident. With respect to criminal charges, the one year and a day timeframe for administrative charges would begin once the investigating law enforcement agency determines the matter is not related to criminal activity, the final disposition of the charges, or the ACC or agency decline to file criminal charges. Further clarification of these time frames will ensure proper action by the agency and the ACC, and discipline of officers.

Therefore, MCPA and MSA SUPPORT SB 608 and urge the Committee to move the bill favorable with the amendments offered by the sponsor.

**SB 608 - MoCo\_Elrich\_FAV (GA 24).pdf**

Uploaded by: Marc Elrich

Position: FAV



## OFFICE OF THE COUNTY EXECUTIVE

**Marc Elrich**  
*County Executive*

February 21, 2024

TO: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

FROM: Marc Elrich  
County Executive

RE: Senate Bill 608, *Public Safety - Police Accountability - Time Limit for Filing Administrative Charges*  
Support

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I am writing to express my support for Senate Bill 608, *Public Safety - Police Accountability - Time Limit for Filing Administrative Charges*, with the amendments discussed below. The bill appropriately amends the Maryland Police Accountability Act of 2021 (MPAA) to address: (1) an inconsistency between the timeline for resolving complaints of police misconduct involving a member of the public versus police misconduct subject to internal administrative charges (e.g., violating work rules or providing false information in administrative reports such as mileage and maintenance of a patrol vehicle); and (2) the interrelationship of disciplinary matters and criminal investigations. However, the bill needs an amendment regarding item (1).

For misconduct involving members of the public, the MPAA requires a law enforcement agency (LEA) to investigate a complaint and forward a report to an Administrative Charging Committee (ACC) for review and issuance of charges. The ACC must complete its review and issue charges within one year and one day from the date that the complaint was filed. The MPAA requires an LEA to investigate internal administrative matters and issue charges when appropriate but does not impose a statute of limitations. This bill addresses that missing piece by requiring an LEA to make a final decision about internal administrative charges within one year and one day from the incident that led to the investigation. I support the creation of a statute of limitations for internal administrative charges but respectfully request that the bill be amended to begin that timeline on the date that the LEA becomes aware of the incident rather than the date the incident occurs. It is more appropriate for the running of a statute of limitations for internal administrative charges to begin on the date that the LEA becomes aware of the alleged police misconduct.

The bill also modifies the one year and one day rule when misconduct relates to a criminal investigation to allow that investigation to conclude before administrative charges are issued.

The Honorable William C. Smith, Jr.  
Re: Senate Bill 608  
February 21, 2024

Specifically, the bill provides that charges must be filed by an ACC or LEA within one year and a day from the date that: (1) the LEA determines that the matter is not related to criminal activity; (2) the final disposition of criminal charges; or (3) the ACC or LEA receives notice that the appropriate prosecutorial authority declined to file criminal charges. This is an appropriate modification to the one year and a day rule as it ensures that both the criminal investigation and disciplinary investigation have the greatest chance of leading to an appropriate resolution. Significantly, it reflects the need to avoid a legal problem created when officers suspected of misconduct are required to answer questions posed by an LEA's internal affairs investigator in the face of potential disciplinary action. Under the Supreme Court's decision in *Garrity v. New Jersey*, courts treat those compelled statements as inadmissible in a criminal prosecution and may require a prosecutor to surmount the burden of demonstrating that physical evidence, witness testimony, and strategic decision making are untainted by the statement.

As a technical matter, I note that Section 3-113(a) of the Public Safety Article (included in the bill without amendment on page 1, line 22) currently refers to "a complaint by a member of the public" and Section 3-113(b) of the Public Safety Article (included in the bill without amendment on page 2, line 3) currently refers to "a complaint by a citizen". It is universally understood that both statutory provisions are intended to mean "a complaint by a member of the public" and Section 3-113(b) should be amended to use that phrase.

For the reasons discussed above, I respectfully request that you give Senate Bill 608 a favorable report with the requested amendments.

cc: Members of the Judicial Proceedings Committee

# **SB608WrittenSupportFinal.pdf**

Uploaded by: Sarah David

Position: FAV

CHARLTON T. HOWARD III  
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## STATE OF MARYLAND



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### **SUPPORT FOR SB 608**

Mr. Chairman and Members of the Judicial Proceedings Committee:

We are writing to express the support of the Office of the State Prosecutor for Senate Bill 608. The Office of the State Prosecutor is tasked with enforcement of political corruption and police misconduct cases throughout Maryland and believes that this legislation will help ensure that police misconduct throughout the State of Maryland can be properly investigated and, where appropriate, prosecuted.

#### **The Office of the State Prosecutor**

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of State government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our State and local government institutions, officials, employees, and elections.

#### **SB 608 - Staying Administrative Investigations During a Criminal Investigation**

SB 608 allows for police misconduct that is the subject of a criminal investigation to be investigated criminally before the administrative proceedings begin. This helps protect the criminal investigation from legal challenges derived from different investigative procedures that guide criminal and administrative investigations. While it is important that administrative proceedings against police take place quickly and efficiently, it is also important to preserve the ability to prosecute individuals who commit crimes, whoever they are.

Criminal investigations, especially those against police officers, take time. Though the Office of the State Prosecutor has in-house investigators, we must rely on already overburdened law enforcement agencies to extract and process electronic evidence. Even if the crime is reported quickly, it often requires at least one phone extraction as well as other electronic forensics. The extraction and review of electronics can take months. Quite often, the behavior in our cases has taken place over the course of years, and victims' phones, targets' phones, and witness's phones all need to be reviewed, in addition to other electronics.

In addition, cases with allegations of police misconduct also involve interviews with other members of the target's police department. If there is an administrative investigation, the department has the ability to compel a police officer's statement, including the target's, which means the statement does not have 5<sup>th</sup> Amendment protections. That statement, or anything

derived from it, cannot be used in a criminal investigation or prosecution, meaning that any police officer exposed to that statement cannot even be interviewed by criminal prosecutors and investigators.

The Office of the State Prosecutor recently created a unit to address Official Misconduct involving special victims. When so many of our cases started involving special victims, we sought a specialized prosecutor and investigator to handle the complexities of prosecuting cases involving people using their positions to exploit victims. Our office recently reported that in FY 23 we received 58 complaints involving special victims and the numbers continue to increase.

This is another area that is important to consider when allowing internal investigations to be stayed during the criminal investigation. Every subsequent interview with a victim creates an element of re-victimization. In addition, often those who conduct administrative investigations don't have specialized SVU training, which can introduce complexities in a criminal investigation and additional hardship for the victim, as well as difficulties in any potential prosecution or trial.

We believe this is important legislation to ensure justice for victims throughout the State and encourage this Committee to issue a favorable report on SB 608.

Sincerely,

CHARLTON T. HOWARD  
STATE PROSECUTOR



# **Amendment..pdf**

Uploaded by: William Folden

Position: FAV



**SB0608/833827/1**

AMENDMENTS  
PREPARED  
BY THE  
DEPT. OF LEGISLATIVE  
SERVICES

05 FEB 24  
10:56:31

BY: Senator Folden  
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 608  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, after the first “the” insert “law enforcement agency became aware of the”.

AMENDMENT NO.2

On page 2, in line 8, after “DATE” insert “THE LAW ENFORCEMENT AGENCY BECAME AWARE”.

**MML-SB 608 - FWA.pdf**

Uploaded by: Bill Jorch

Position: FWA



Maryland Municipal League  
*The Association of Maryland's Cities and Towns*

# TESTIMONY

February 21, 2024

**Committee:** Senate Judicial Proceedings

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

**Position:** Favorable with Amendment

**Reason for Position:**

The Maryland Municipal League supports Senate Bill 608, with an important amendment, which will assist municipal police agencies more effectively comply with the timelines to conduct an investigation established in the police accountability law. This language mirrors the amendment to be offered by the sponsor of the bill and supported by the chiefs and sheriffs association.

There are several circumstances when the initial timeline for a law enforcement agency to complete an investigation into officer misconduct and the administrative charging committee's disposition of the case are difficult to meet or would result in conflict with another investigation. The bill and amendment set out two specific scenarios that are subject to a different start date from when the investigation must conclude: Alleged officer misconduct that does not require review by an administrative charging committee and alleged officer misconduct that reasonably appears to be subject to criminal investigation.

Adding nuanced timelines for these specific scenarios, law enforcement agencies are more likely to meet the deadlines, provide better investigatory evidence, and keep from running afoul of other legal proceedings.

**Proposed amendment, mirrors sponsor amendment:**

On page 2, in line 8, after "DATE" insert "THE LAW ENFORCEMENT AGENCY BECAME AWARE"

The provisions of SB 608 should assist municipal police agencies better comply with the timelines established in law to conduct investigations into officer misconduct. For this reason, the League respectfully requests that the committee provide Senate Bill 608 with a favorable report, with the sponsor amendment, cited above.



Maryland Municipal League  
*The Association of Maryland's Cities and Towns*

**FOR MORE INFORMATION CONTACT:**

Theresa Kuhns

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Bill Jorch

Justin Fiore

Chief Executive Officer

Director, Advocacy & Public Affairs

Director, Public Policy & Research

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**SB 608\_UNFAV.pdf**

Uploaded by: David Rocah

Position: UNF



**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**

DAVID ROCAH  
SENIOR STAFF  
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EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

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.

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND