



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

February 27, 2024

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Marc Elrich
County Executive

RE: House Bill 188, *Public Safety - Police Accountability - Time Limit for Filing Administrative Charges*
Support

I am writing to express my support for House Bill 188, *Public Safety - Police Accountability - Time Limit for Filing Administrative Charges*, with the amendments discussed below. The bill appropriately amends the Marland Police Accountability Act of 2021 (MPAA) to address 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). However, the bill fails to address issues relating to the one year and one day rule when criminal investigations are involved, for both complaints of police misconduct involving a member of the public and internal administrative charges.

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 Honorable Luke Clippinger
Re: House Bill 188
February 27, 2024
Page 2

I believe that the bill should also be amended to include the language in Senate Bill 608, *Public Safety - Police Accountability - Time Limit for Filing Administrative Charges*, regarding the one year and one day rule when misconduct relates to a criminal investigation to allow the criminal investigation to conclude before charges relating to complaints involving members of the public or internal administrative violations are issued.

The language in Senate Bill 608 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 House Bill 188 a favorable report with the requested amendments.

cc: Members of the Judiciary Committee