Testimony for the House Judiciary Committee
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HB 188 Public Safety - Police Accountability - Time Limit for Filing Administrative Charges

OPPOSE UNLESS AMENDED

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The ACLU of Maryland opposes HB 188 unless significantly amended. HB 188 is a deeply flawed bill that seeks to bring back one of the worst provisions of the misguided Law Enforcement Officers' Bill of Rights (LEOBR), which the legislature largely and properly repealed in the Maryland Police Accountability Act of 2021 (MPAA), and to do so in a form that is even worse than the original provision in the LEOBR. Specifically, HB 188 seeks to put in place a strict 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 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. The better course of action would be to simply repeal the statute of limitations established in the MPAA, codified at Md. Code, Pub. Safety § 3-113(c).

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Second, if a limitations period is going to be exist, or 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, unlike the old LEOBR provision, it has no provision for tolling or suspending of new one year statute of limitations for cases that involve potentially criminal conduct. This means either that criminal investigations of misconduct must take place simultaneously with the administrative investigation, which makes them more complicated to avoid the risk of tainting the criminal investigation with statements or evidence compelled in the administrative investigation, or that the administrative investigation will end up being impossible, because of the length of time the criminal investigation takes. In the similar legislation introduced in the Senate, SB 608, the bill at least has a provision tolling the statute of limitations during the pendency of a criminal investigation or prosecution (though that bill is flawed due to poor drafting which limits the tolling provision only to cases that do not begin with a civilian complaint, which we are told was unintentional, and we have proposed an amendment to cure that flaw in the Senate bill). Without a tolling provision, the statute of limitations proposed in this bill is even worse than the language in the old LEOBR, which said in the prior Pub. Safety 3-106(b), "[t]he 1-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force."

Finally, the bill is flawed because in bringing back the one year statute of limitations, the bill 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 new 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 HB 188 unless amended.

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