



**Testimony for the House Judiciary Committee
March 28, 2024**

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

SUPPORT WITH AMENDMENTS

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SB 608, as amended by the Senate, has addressed some, but not all, of the concerns that we raised regarding the 1st reader of the bill, and is an improvement over the 1st reader of the House cross-file (which was not actually identical to the SB 608 1st reader). We believe further amendments are necessary, as outlined below. Most importantly, we think it critical that the one year deadline apply not, as in the 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. We explain further below.

As amended, SB 608 ensures that all investigations are treated the same, regardless of whether they involve members of the public or not, which we think is critical. And as amended, SB 608 ensures that the one year deadline for completing police misconduct investigations contains an exception or tolling provision suspending the deadline for cases that are also investigated as potentially criminal conduct, which we also think is critical. Finally, as amended SB 608 ensures that the deadline for completing investigations does not start to run on the date the misconduct occurred, but on the date that the appropriate official within the department became aware of the potential misconduct, which is also critical.

However, even as amended, SB 608 does not deal with all of the problems created by establishing a strict one year timeline for completing all investigations into potential police misconduct. As we previously noted, when the former Law Enforcement Officers' Bill of Rights (LEOBR) was first enacted in 1974, it did not contain a deadline for completing investigations, and one was not added until 1988. Further, when the LEOBR was amended to add the deadline, it contained in former Pub. Safety § 3-106(b) an complete exception for any investigation involving any use of force. We think a similar exception should exist again 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.). As previously noted, we also think SB 608 should contain a similar exception for cases that are also the subject

of civil lawsuits. 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 cannot result in administrative action.

Beyond specific exceptions, however, the more fundamental problem with the strict one year deadline for completing investigations is that it cannot always be adhered to, and the result is that police misconduct cases end up being decided based on procedural deadlines, rather than the merits of the case, which does not help the public, nor the agency. *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 one year after the incidents came to light, even though the charges were orally approved within the deadline).

The biggest problem with the current version of SB 608 is that it sets the deadline as including the ACC's consideration of the misconduct case, which we think is both misguided and unnecessary. 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. And when they think the investigation is inadequate in some way, the MPAA specifically empowers the ACC to send the case back for further investigation, Pub. Safety § 3-104(f)(1). If the investigation is completed right before, or shortly before the one year deadline, the end result is that the ACC cannot meaningfully or adequately perform its role, either of adjudicating, or of requiring further investigation. To make matters work, the ACCs have no control of the pace of investigations, or when they are presented to them.

And we believe that these problems are not hypothetical. Subsequent to our prior testimony on this bill we have been in touch with members of the Baltimore City ACC and Police Accountability Board (PAB), and are aware that just within the current calendar year there have been multiple instances where cases have come to the ACC beyond the 1 year deadline, and multiple instances where cases have come to the ACC just before the deadline is to expire, allowing no time for meaningful review or further investigation, if necessary.

In order to remedy this critical problem, SB 608 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 the concerns raised by the FOP about police chiefs failing to act on investigations so as to hold them over the head of officers (though no actual examples of such conduct occurring were provided).

The police chiefs are in charge of the internal investigative process, and would still have to adhere to the one year deadline, with the exceptions required in the bill and suggested above. And while the FOP may be concerned about chiefs holding investigations as leverage over officers, they presumably cannot be concerned about ACCs doing the same thing, for they would have no reason to do so, nor would doing so give them any leverage since they have no supervisory authority over the officers (and, indeed, were established precisely to be a check on police chiefs' disciplinary powers). And this amendment would also still ensure that investigations are completed in a timely way, something that the community also wants and expects (and that the legislature sought to encourage by establishing the one year deadline). Finally, this amendment would ensure that ACCs will always have the 30 days that the legislature thought necessary and sufficient to give meaningful consideration to any particular case, regardless of how long the investigation takes. Pub. Safety § 3-113(b) ("An administrative charging committee shall review and make a determination or ask for further review within 30 days after completion of the investigating unit's review.").

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 608, but only with the amendments discussed above, and most importantly the amendment regarding the inclusion of the ACC's consideration of a case within the one year deadline.