



## Testimony for the House Judiciary Committee

February 25, 2025

### HB 238 – Public Safety – Police Accountability – Time Limit for Filing Administrative Charges

#### FAVORABLE WITH AMENDMENTS

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The ACLU of Maryland supports HB 238 if amended as addressed below. This bill is a reintroduction of amended legislation proposed last year that seeks to reinstate a one-year deadline, or statute of limitations, for bringing administrative charges against officers (as formerly provided under the largely repealed Law Enforcement Officers' Bill of Rights (LEOBR)). As an overarching concern, we continue to feel that the best policy would be to eliminate this arbitrary statute of limitations altogether, and not add an additional one, just as none existed when the LEOBR was first passed.

Barring that, however, we are aligned with the current bill's language reflecting prior amendments that address some of the critical concerns we previously raised, including treating all investigations the same, regardless of whether they involve members of the public; setting the trigger for the limitations period as the date the alleged misconduct came to the attention of the appropriate agency official; and applying the subsection (e) tolling provision to both subsection (c) cases (involving civilian complaints) and subsection (d) cases.

Nevertheless, we believe further amendments are necessary, as outlined below. Most importantly, we think it is critical that the one-year deadline apply not, as in this 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.

**At bare minimum, Administrative Charging Committees must be provided sufficient time to meaningfully consider police misconduct investigations.**

The biggest problem with the current language is that it includes the ACC's decision on whether to permit a misconduct case to go forward

within the one-year deadline, which we think is both misguided and unnecessary. Amending the relevant provision to instead reflect the deadline as running through the case's presentment to the ACC would help remedy this significant concern.

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.

When the ACC thinks the investigation is inadequate in some way, the MPAA specifically empowers it to send the case back for further investigation, Pub. Safety § 3-104(f)(1). And the ACC is supposed to have 30 days to conduct its review, or send the case back for further investigation. Pub. Safety § 3-113(b). If the investigation is completed shortly before or at the one-year deadline, the ACC cannot meaningfully or adequately perform its statutorily mandated role, either of adjudicating, or of requiring further investigation. To make matters worse, the ACCs have no control of the pace of investigations, or when they are presented to them.

These problems are not hypothetical. In Baltimore, “Of the roughly 1,000 cases the [Baltimore administrative charging] committee has reviewed, nearly half of them were received within 15 days of their expiration, according to city data.”<sup>1</sup> Legislation that includes the ACC's consideration of a case within the one-year deadline will simply result in thousands of cases being dismissed without any review on the merits of the complaint. 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 cases because charging documents were not signed until more than one year after the incidents came to light, even though the charges were approved within the deadline). This would be a devastating betrayal of

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<sup>1</sup> B. Conarck, Frustrations With Civilian Oversight of Baltimore Police are Boiling Over, *The Baltimore Banner*, Dec. 2, 2024, <https://www.thebaltimorebanner.com/community/criminal-justice/police-accountability-board-independence-O5ZFCTAPK5EA5DYHS3NNB2DHOM/>.

the legislature's goals in repealing the LEOBR and reforming police discipline in Maryland.

To address this critical problem, HB 238 should be amended on p. 2, line 5 to delete "disposition by" and substitute "PRESENTMENT TO". We believe that this amendment is still consistent with prior concerns raised by the Fraternal Order of Police about police chiefs holding investigations over the heads of officers by failing to act (though no actual examples of such conduct occurring were provided).

In addition, the bill should be modified on p. 2, lines 6 and 7 to removing the brackets, and to inserting "OR THE" following "by a citizen", and adding "WHICHEVER COMES LATER" at the end of the sentence on line 8. This important clarification, also requested by the Montgomery County Executive last year, will ensure that the new bill does not unintentionally create a shorter deadline than currently exists in cases where a citizen makes a complaint after a police official becomes aware of potential misconduct.

The police chiefs are in charge of the internal investigative process, and would still have to adhere to the one-year deadline, subject to the exceptions required in the bill and suggested above. While the Fraternal Order of Police may be concerned about chiefs holding investigations as leverage over officers, they presumably cannot be concerned about ACCs doing the same thing, as doing so would offer no benefit due to their lack of supervisory authority over the officers (and, indeed, ACCs were established precisely to be a check on police chiefs' disciplinary powers).

This amendment would also still ensure that investigations are completed in a timely manner, and allow ACCs to always have the 30 days that the legislature thought necessary and sufficient to give meaningful consideration to any particular case under Pub. Safety § 3-113(b), regardless of how long the investigation takes.

**Tolling the deadline for excessive force cases and those subject to civil lawsuits would help ensure the proper and full consideration of all potential misconduct.**

In bringing back the statute of limitations previously imposed under the former LEOBR, HB 238 only suspends the tolling of this deadline for cases that are also the subject of potential criminal investigation. This is unlike the old LEOBR, which did not contain a deadline for completing investigations until it was amended in 1988, and then contained in former Pub. Safety § 3-106(b) a complete exception for any investigation involving any use of force. We think a similar exception for

excessive force cases should exist again under HB 238 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 also believe HB 238 should contain a similar exception for cases that are also the subject of civil lawsuits – such suits can often reveal significant misconduct through the discovery process, but virtually always takes more than the one year currently available to consider the uncovered misconduct in the parallel administrative action. To allow full consideration of the facts needed to adequately investigate police misconduct allegations, HB 238 must be amended to reflect the timeline and exceptions necessary for proper review.

To accomplish these goals, HB 238 should be amended on p. 2, following line 27, to insert “(F) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (C) AND (D) OF THIS SECTION, IF THE ALLEGED MISCONDUCT IS RELATED TO ACTIVITY THAT WAS OR IS THE SUBJECT OF A CIVIL SUIT, AN ADMINISTRATIVE CHARGING COMMITTEE OR LAW ENFORCEMENT AGENCY SHALL FILE ANY ADMINISTRATIVE CHARGES WITHIN 1 YEAR AND 1 DAY FROM THE DATE OF JUDGMENT IN THE CIVIL SUIT.”

And the bill should be further amended to add a new subsection (G) that reads as follows “THE 1 YEAR AND 1 DAY LIMITATION IN SUBSECTIONS (C) AND (D) OF THIS SECTION DOES NOT APPLY TO CHARGES THAT RELATE TO THE USE OF FORCE.” This is the same language that existed in the prior LEOBR in Pub. Safety § 3-106(b).

For the foregoing reasons, the ACLU of Maryland urges a favorable report on HB 238, but only with the amendments discussed above, and most importantly the amendment excluding the ACC's consideration of a case within the one-year deadline.