

HB1175_FWA_JOTF.docx.pdf

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Position: FWA

JOTF JOB OPPORTUNITIES TASK FORCE

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FWA TESTIMONY IN SUPPORT OF HOUSE BILL 1175

Criminal Procedure - Hunting Offenses - Expungement

TO: Members of the Senate Judicial Proceedings Committee

FROM: Christopher Dews, Policy Consultant

DATE: March 30th, 2023

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-skill, low-wage workers and job seekers in Maryland. JOTF supports House Bill 1175 with amendments as a means of reducing the impact of incarceration and enhancing employment opportunities for lower-income workers and job seekers throughout the state.

Though we appreciate the intent of the bill- as well as the struggles faced by its target audience- we would like to see this bill expanded to include charges that are ineligible for expungement but include a far larger pool of Maryland Residents:

- a. **Driving Under the Influence** ([Transportation § 21-902](#)) to the expungement list with a **10-year waiting period**.
- b. **Driving Without a License** ([Transportation § 16-101](#))
- c. **Malicious Destruction of Property** ([Criminal Law §6-301](#))
- d. **CDS Distribution** ([Criminal Law §5-602](#))
 - i. **Intent is currently eligible, but distribution is not.**
- e. **Good Cause Expungement Provisions, as amended, from Senate Bill 17/House Bill 664.**

We would love to have *as many* of these provisions added to the language of the bill as possible and are open to discuss with the committee members. What follows is how these provisions would look in the statute:

Article – Criminal Procedure

§10–110.

(a) A person may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if the person is convicted of:

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- (1) a misdemeanor that is a violation of:
 - (i) § 6–320 of the Alcoholic Beverages Article;
 - (ii) an offense listed in § 17–613(a) of the Business Occupations and Professions Article;
 - (iii) § 5–712, § 19–304, § 19–308, or Title 5, Subtitle 6 or Subtitle 9 of the Business Regulation Article;
 - (iv) § 3–1508 or § 10–402 of the Courts Article;
 - (v) § 14–1915, § 14–2902, or § 14–2903 of the Commercial Law Article;
 - (vi) § 5–211 of this article;
 - (vii) § 3–203 or § 3–808 of the Criminal Law Article;
 - (viii) § 5–601 not involving the use or possession of marijuana, § 5–618, § 5–619, § 5–620, § 5–703, § 5–708, or § 5–902 of the Criminal Law Article;
 - (ix) § 6–105, § 6–108, § 6–205 (fourth-degree burglary), § 6–206, [§ 6–301](#), § 6–303, § 6–306, § 6–307, § 6–402, or § 6–503 of the Criminal Law Article;
 - (x) § 7–104, § 7–203, § 7–205, § 7–304, § 7–308, or § 7–309 of the Criminal Law Article;
 - (xi) § 8–103, § 8–206, § 8–401, § 8–402, § 8–404, § 8–406, § 8–408, § 8–503, § 8–521, § 8–523, or § 8–904 of the Criminal Law Article;
 - (xii) § 9–204, § 9–205, § 9–503, or § 9–506 of the Criminal Law Article;
 - (xiii) § 10–110, § 10–201, § 10–402, § 10–404, or § 10–502 of the Criminal Law Article;
 - (xiv) § 11–303, § 11–306, or § 11–307 of the Criminal Law Article;
 - (xv) § 12–102, § 12–103, § 12–104, § 12–105, § 12–109, § 12–203, § 12–204, § 12–205, or § 12–302 of the Criminal Law Article;
 - (xvi) § 13–401, § 13–602, or § 16–201 of the Election Law Article;

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- (xvii) § 4–509 of the Family Law Article;
 - (xviii) § 18–215 of the Health – General Article;
 - (xix) § 4–411 or § 4–2005 of the Housing and Community Development Article;
 - (xx) § 27–403, § 27–404, § 27–405, § 27–406, § 27–406.1, § 27–407, § 27–407.1, or § 27–407.2 of the Insurance Article;
 - (xxi) § 8–725.4, § 8–725.5, § 8–725.6, § 8–725.7, § 8–726, § 8–726.1, § 8–727.1, or § 8–738.2 of the Natural Resources Article or any prohibited act related to speed limits for personal watercraft;
 - (XXII) § 10–301, § 10–306, § 10–308.1, § 10–413(E)(1), § 10–418, § 10–502, § 10–611, OR § 10–907(A) OF THE NATURAL RESOURCES ARTICLE;**
 - [(xxii)] **(XXIII)** § 5–307, § 5–308, § 6–602, § 7–402, or § 14–114 of the Public Safety Article;
 - [(xxiii)] **(XXIV)** § 7–318.1, § 7–509, or § 10–507 of the Real Property Article;
 - [(xxiv)] **(XXV)** § 9–124 of the State Government Article;
 - [(xxv)] **(XXVI)** § 13–1001, § 13–1004, § 13–1007, or § 13–1024 of the Tax – General Article;
 - [(xxvi)] **(XXVII)** § 16-101, § 16–303, **OR § 21–902** of the Transportation Article; or
 - [(xxvii)] **(XXVIII)** the common law offenses of affray, rioting, criminal contempt, battery, or hindering;
- (2) a felony that is a violation of:
 - (i) § 7–104 of the Criminal Law Article;
 - (ii) the prohibition against possession with intent to distribute OR Distribution of a controlled dangerous substance under § 5–602(2) of the Criminal Law Article; or
 - (iii) § 6–202(a), § 6–203, or § 6–204 of the Criminal Law Article; or
 - (3) an attempt, a conspiracy, or a solicitation of any offense listed in item (1) or (2) of this subsection.

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(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person shall file a petition for expungement in the court in which the proceeding began.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, if the proceeding began in one court and was transferred to another court, the person shall file the petition in the court to which the proceeding was transferred.

(ii) If the proceeding began in one court and was transferred to the juvenile court under § 4–202 or § 4–202.2 of this article, the person shall file the petition in the court of original jurisdiction from which the order of transfer was entered.

(3) (i) If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the person shall file the petition in the appellate court.

(ii) The appellate court may remand the matter to the court of original jurisdiction.

(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a petition for expungement under this section may not be filed earlier than 10 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(2) A petition for expungement for a violation of § 3–203 of the Criminal Law Article, common law battery, or for an offense classified as a domestically related crime under § 6–233 of this article may not be filed earlier than 15 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(3) A petition for expungement of a felony may not be filed earlier than 15 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(4) A petition for expungement of a conviction of possession with intent to distribute cannabis under § 5–602 of the Criminal Law Article may not be filed earlier than 3 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(5) A petition for expungement of a conviction under § 21–902 of the Transportation Article may not be filed earlier than 10 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

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(6) A COURT MAY GRANT A PETITION FOR EXPUNGEMENT AT ANY TIME ON A SHOWING OF GOOD CAUSE ACCORDING TO THE PROVISIONS LISTED IN SUBSECTION F(3) OF THIS SUBSECTION.

(d) (1) If the person is convicted of a new crime during the applicable time period set forth in subsection (c) of this section, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement.

(2) A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding.

(3) If a person is not eligible for expungement of one conviction in a unit, the person is not eligible for expungement of any other conviction in the unit.

(e) (1) The court shall have a copy of a petition for expungement served on the State's Attorney.

(2) The court shall send written notice of the expungement request to each listed victim in the case in which the petitioner is seeking expungement at the address listed in the court file, advising the victim of the right to offer additional information relevant to the expungement petition to the court.

(3) Unless the State's Attorney or a victim files an objection to the petition for expungement within 30 days after the petition is served, the court shall pass an order requiring the expungement of all police records and court records about the charge.

(f) (1) If the State's Attorney or a victim files a timely objection to the petition, the court shall hold a hearing.

(2) The court shall order the expungement of all police records and court records about the charge after a hearing, if the court finds and states on the record:

(i) that the conviction is eligible for expungement under subsection (a) of this section;

(ii) that the person is eligible for expungement under subsection (d) of this section;

(iii) that giving due regard to the nature of the crime, the history and character of the person, and the person's success at rehabilitation, the person is not a risk to public safety; and

(iv) that an expungement would be in the interest of justice.

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(3) A COURT MAY GRANT A PETITION FOR EXPUNGEMENT AT ANY TIME ON A SHOWING OF GOOD CAUSE AFTER THE COMPLETION OF THE SENTENCE, PAROLE, PROBATION, AND ANY OTHER FORM OF MANDATORY TREATMENT ASSOCIATED WITH THE CHARGE. AN INDIVIDUAL MAY PETITION FOR AN EXPUNGEMENT ON THE BASIS OF GOOD CAUSE:

(I) FOR A SPECIFIC CHARGE, ONCE EVERY FIVE YEARS.

(II) A PETITION FOR EXPUNGEMENT OF GOOD CAUSE, IF DENIED BY THE COURT OR JUDICIAL OFFICIAL, MAY NOT BE APPEALED.

(g) If at a hearing the court finds that a person is not entitled to expungement, the court shall deny the petition.

(h) Unless an order is stayed pending appeal, within 60 days after entry of the order, every custodian of the police records and court records that are subject to the order of expungement shall advise in writing the court and the person who is seeking expungement of compliance with the order.

(i) (1) The State's Attorney is a party to the proceeding.

(2) A party aggrieved by the decision of the court is entitled to the appellate review as provided in the Courts Article.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

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Position: INFO



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Secretary
David Goshorn, Deputy Secretary

March 30, 2023

BILL NUMBER: House Bill 1175 – Third Reader

SHORT TITLE: Criminal Procedure - Hunting Offenses - Expungement

DEPARTMENT’S POSITION: LETTER OF INFORMATION WITH AMENDMENTS

EXPLANATION OF DEPARTMENT’S POSITION:

The Department provides the following information on House Bill 1175.

The Department is uncertain how the expungement of violations of the Natural Resources Article will impact administrative actions and the application of enhanced penalties for repeat offenders. In this instance, the Department has specific concerns over permitting the expungements of violations of NR 10-301 and NR 10-502. These statutes involve requirements to purchase general licenses that are a well known and basic requirement to participate in highly regulated activities. The prerequisite to obtain these licenses is the successful completion of an educational program focused on safety and ethics associated with hunting and trapping.

The Department is concerned that the legislation effectively creates an easing of the penalties associated with the licensing provisions referenced above and the associated safety training requirements necessary to obtain those licenses. The Department requests that the General Assembly consider amendments offered by the Department to remove NR 10-301 and NR 10-502 from those violations eligible for expungement.

BACKGROUND INFORMATION:

With exceptions associated with certain boating violations, violations of the Natural Resources Article are currently not eligible for expungement.

BILL EXPLANATION:

The bill would allow for the expungement of certain violations of the Natural Resources Article associated with hunting.

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

AMENDMENTS TO HOUSE BILL 1175
(Third Reading File Bill)

AMENDMENT NO. 1

On page 3, in line 10, strike “§ 10-301,”; and in line 11, strike “§ 10-502,”.