

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 960

(Senator Bailey)

Judicial Proceedings

Natural Resources - Hunting and Fishing Offenses - Expungement

This bill expands eligibility for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State under § 10-110 of the Criminal Procedure Article to include misdemeanor violations of Title 4 (Fish and Fisheries) and Title 10 (Wildlife) of the Natural Resources Article or any regulations adopted under the authority of those titles. The bill establishes waiting periods and related requirements for filing petitions for expungements of records related to these offenses and makes corresponding changes to Title 10 of the Natural Resources Article regarding the expungement of records maintained by the Department of Natural Resources (DNR).

Fiscal Summary

State Effect: Minimal increase in general fund expenditures through FY 2025 for the Judiciary. Minimal increase in special fund and general fund expenditures for DNR. General fund revenues from filing fees increase minimally.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill establishes separate waiting periods for filing a petition to expunge violations of Title 4 and Title 10 of the Natural Resources Article or corresponding regulations. The following waiting periods begin after the petitioner satisfies the sentence(s) imposed for all convictions for which expungement is requested, including parole, probation, and mandatory supervision:

- 3 years – no convictions for violations under the corresponding title or any regulations adopted under the title for the preceding 3 years and the petitioner has never had a license issued under the corresponding title suspended or revoked;
- 5 years – no convictions for violations under the corresponding title or any regulations adopted under the title for the preceding 5 years and the petitioner has had no more than one suspension and no revocations of a license issued under the corresponding title; and
- 10 years – no convictions for violations under the corresponding title or any regulations adopted under the title for the preceding 10 years, regardless of the number of license suspensions or revocations.

With respect to records maintained by DNR, the bill requires the department to expunge a record concerning any violation of a provision in Title 10 of the Natural Resources Article or any regulation concerning wildlife and hunting adopted by DNR, if at the time of application for expungement, the applicant:

- has not been convicted of a violation for the preceding 3 years, and any license issued to the applicant under Title 10 has never been suspended or revoked;
- has not been convicted of a violation for the preceding 5 years, and the applicant has no more than one suspension and no revocations for a license issued to the applicant under Title 10; or
- has not been convicted of a violation for the preceding 10 years, regardless of the number of suspensions or revocations.

Title 4 of the Natural Resources Article contains similar provisions under existing statute, as discussed below.

Current Law:

Petition-based Expungement of a Court or Police Record

Other than specified dispositions eligible for automatic expungement under Chapter 680 of 2021, to begin the process of expungement, a petitioner must file a petition for expungement with the court under § 10-105 or § 10-110 of the Criminal Procedure Article, which establishes eligibility for the expungement of records pertaining to a criminal charge or conviction.

Expungement of a court or police record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge in the unit. This “unit rule” applies to expungements under §§ 10-105 and 10-110.

Section 10-110 of the Criminal Procedure Article

Section 10-110 of the Criminal Procedure Article authorizes an individual convicted of any of a list of approximately 100 specified offenses or an attempt, a conspiracy, or a solicitation of any of these offenses, to file a petition for expungement of the conviction, subject to specified procedures and requirements.

In general, a petition to expunge a misdemeanor conviction under § 10-110 cannot 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. A petition to expunge a conviction for second-degree assault, common law battery, a “domestically related crime,” or 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. If the person is convicted of a new crime during the applicable waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement.

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

Timeline for Expungement

Maryland’s expungement process for removing an eligible record takes a minimum of 90 days. If a State’s Attorney or victim, as applicable, objects, the court must hold a hearing on the petition. If an objection is not filed within 30 days, as specified, the court must pass an order requiring the expungement of all police and court records concerning the charges.

After the court orders are sent to each required agency, each agency has 60 days from receipt to comply with the order.

Expungements Under Title 4 of the Natural Resources Article

If a person applies for the expungement of the person's record concerning any violation of Title 4 of the Natural Resources Article or any rule or regulation concerning fish and fisheries adopted by DNR, the department must expunge the record if, at the time of application:

- the person has not been convicted of a violation for the preceding 3 years, and any license issued to the person under Title 4 has never been suspended or revoked;
- the person has not been convicted of a violation for the preceding 5 years, and any license issued to the person under Title 4 shows not more than one suspension and no revocations; or
- the person has not been convicted of a violation for the preceding 10 years, regardless of the number of suspensions or revocations.

State Revenues: General fund revenues increase minimally from filing fees for petitions for expungement. The courts charge a \$30 filing fee for a petition to expunge a guilty disposition (conviction), though fee waivers for financial hardship are available.

State Expenditures: General fund expenditures increase minimally for the Judiciary to process additional expungements in the initial years under the bill, when individuals with immediately eligible older fishing and hunting violations can file petitions for expungement.

According to DNR, there are as many as 4,000 hunting and fishing violations each year. During fiscal 2019 (the most recent fiscal year not affected by the COVID-19 pandemic), 74,508 petitions for expungement were filed in the District Court.

The need for additional court resources depends on the volume of petitions received, which can only be determined with actual experience under the bill, as well as the resources available in affected jurisdictions. Also, petitions are more likely to be filed in geographic areas where hunting and fishing activities (and violations) are more prevalent. *For illustrative purposes only*, the cost associated with employing one contractual clerk from October 1, 2022, through June 30, 2025, is approximately \$43,100 in fiscal 2023, \$45,300 in fiscal 2024, and \$46,800 in fiscal 2025.

General fund and special fund expenditures for DNR increase minimally for additional administrative hearings. DNR may need to engage in additional administrative hearings to address agency actions on licenses that were taken as a result of convictions that are

expunged under the bill. DNR advises that each hearing costs \$3,500, which does not account for time spent by agency personnel and the Office of the Attorney General to prepare for and participate in the hearings. DNR cannot estimate the number of administrative hearings that may be generated by the bill. Hearings are conducted by the Office of Administrative Hearings (OAH). This analysis assumes that the bill does not materially affect OAH workloads.

Small Business Effect: The bill may have a meaningful impact on small businesses that are able to acquire DNR-issued licenses due to the expungement of convictions under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1298 (Delegate Ghrist, *et al.*) - Judiciary.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Archives; Department of Legislative Services

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