

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1175
Judiciary

(Delegate Valentine, *et al.*)

Judicial Proceedings

Criminal Procedure - Hunting 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 specified misdemeanor hunting offenses.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase through FY 2026, as discussed below. The Department of Natural Resources (DNR) can implement the bill with existing budgeted resources. 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: None.

Analysis

Bill Summary: The bill expands eligibility for an expungement under § 10-110 of the Criminal Procedure Article to include a conviction for any of the following misdemeanor hunting-related offenses under the Natural Resources Article:

- § 10-301 (hunting game birds or mammals without a hunting license);
- § 10-306 (duty to be in physical possession of a license while hunting and duty to present a license to law enforcement on demand while hunting);
- § 10-308.1 (hunting migratory game birds without a Maryland migratory game bird stamp, etc.);

- § 10-413(e)(1) (training a retriever dog using artificially reared game birds without a permit);
- § 10-418 (failure to wear fluorescent clothing while hunting);
- § 10-502 (trapping furbearers without a nonresident trapper’s license);
- § 10-611 (hunting wild waterfowl from a blind site without a license); and
- § 10-907(a) (engaging in specified activities without a falconry permit).

Current Law:

Petition-based Expungement of a Court or Police Record

Other than specified exceptions, 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 or possession of cannabis under § 5-601 of the Criminal Law Article, arise from the same incident, transaction, or set of facts, they are considered to be a unit. A charge for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the 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 or conviction 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. A person who is convicted of possession with the intent to distribute cannabis under § 5-602(b)(1) of the Criminal Law Article may file a petition for expungement of the conviction 3 years after satisfaction of the sentence(s) 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.

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.

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 for the Judiciary to process additional expungements in the initial years (through fiscal 2026) under the bill, when individuals with immediately eligible older hunting violations can file petitions for expungement.

The Judiciary previously advised that statistics are not available on violations of the applicable statutes, since Natural Resources violations are not charged with Criminal Justice Information System codes that allow for individual tracking. DNR did not provide offense-related statistics but has previously advised that there are as many as 4,000 *hunting and fishing* violations each year.

Exhibit 1 contains information on the number of petitions for expungement filed in the trial courts in fiscal 2020 through 2022.

Exhibit 1
Petitions for Expungement
Fiscal 2020-2022

	<u>District Court</u>	<u>Circuit Court</u>
Fiscal 2020	55,105	8,642
Fiscal 2021	39,061	5,940
Fiscal 2022	32,874	5,574

Source: Maryland Judiciary

The Judiciary advises that the impact on workloads is difficult to project because the Judiciary is uncertain of the number of additional petitions that will be received. Should the bill result in a significant number of additional expungement petitions, it would have a significant fiscal and operational impact on the District Court. As an illustration, the Judiciary advises it would need 23 additional clerks, at a cost of \$1.4 million in fiscal 2024 and increasing to \$1.9 million by fiscal 2028, if 70% of defendants in *all of the cases filed under the Natural Resources Article* during fiscal 2019 through 2022 filed petitions for expungement.

The Department of Legislative Services advises that the bill likely necessitates additional resources, especially during the initial years of implementation (through fiscal 2026) when defendants file petitions to expunge older convictions immediately eligible for expungement (which can date back as far as 50 years according to the Judiciary). However, the exact need for additional resources cannot be reliably determined at this time given (1) the bill's application to particular Natural Resources violations that cannot be individually tracked and (2) the unknown likelihood of defendants petitioning to expunge these convictions. Due to the nature of the applicable offenses, some of these defendants may not be inclined to file a petition unless they have experienced difficulties from their convictions in other areas of their lives. *For illustrative purposes only*, the approximate cost associated with one additional contractual clerk is \$46,200 in fiscal 2024 and increases to \$52,300 by fiscal 2026.

Given the frequency with which expungement laws are amended, other expenditures noted by the Judiciary, including revising and restocking forms and brochures, can be handled with existing budgeted resources.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 960 and HB 1298 of 2022.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Natural Resources; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2023
rh/jkb Third Reader - March 20, 2023

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510