

SB960_FAV_JOTF.pdf

Uploaded by: Christopher Dews

Position: FAV

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

TESTIMONY IN SUPPORT OF SENATE BILL 960:

Criminal Procedure – Expungement of Records – Modifications

TO: Hon. Will Smith, Chair, and Members of the Senate Judicial Proceedings Committee

FROM: Christopher Dews, Senior Policy Advocate

DATE: March 17th, 2022

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. We support Senate Bill 960 as a means of reducing the impact of incarceration and enhancing employment opportunities for lower-income workers and job seekers throughout the state.

A criminal record can be both the cause and consequence of poverty and has detrimental effects on the employment prospects for the 25% of working-age Marylanders with a record. Maryland has an expansive list of misdemeanor offenses and waiting periods that needlessly penalize individuals long after they have served their time. Maryland has drastically longer waiting periods for expungement than most other states in the nation. According to a [recently released report](#) from Collateral Consequences Resource Center (CCRC), 42 other states have shorter waiting periods for misdemeanor expungement, including Texas, Alabama, Mississippi, and Utah.

[Maryland Code Ann., Criminal Procedure §10–110](#) states that an individual must wait **10 years** before they are eligible to expunge most *nonviolent* misdemeanor convictions from their record. The waiting period kicks in *after* they have completed their entire sentence, parole or probation, drug treatment, *and* any mandatory supervision. In most instances, the waiting periods are *far* longer than the actual sentence, leaving individuals released from incarceration with barriers to education, employment, housing, public assistance, occupational licensing, and much more.

Senate Bill 960 seeks to reduce the expungement waiting periods for offenses related to the Natural Resources Statutes, reducing them from 10 years to 3-5 years depending on the nature and number of violations of the offense. Passing this will allow a large number of fishermen to continue their businesses and reduce barriers to employment, education, licensing, and even family gatherings for others who made very minor or negligible mistakes in their past. We urge a **favorable** report.

SenatorBailey_FAV_SB960.pdf

Uploaded by: Jack Bailey

Position: FAV

JACK BAILEY
Legislative District 29
Calvert and St. Mary's Counties

Judicial Proceedings Committee



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March 17, 2022

Senate Bill 960 – Natural Resources - Hunting and Fishing Offenses - Expungement

Dear Chairman Smith and Members of the Committee:

I am writing to introduce Senate Bill 960 – Natural Resources - Hunting and Fishing Offenses - Expungement. This bill expands eligibility for expungement to include misdemeanor violations of provisions of the Natural Resources Article dealing with fish and wildlife or any regulations adopted under the authority of those titles.

As I know you are aware, prior criminal convictions pose significant challenges to the ability of individuals to become employed following the completion of their sentences. This is particularly true of natural resources offenses. These convictions can result in DNR not renewing licenses, such as those issued to commercial watermen, causing them to lose their livelihood. Senate Bill 960 is intended to provide for expungement for these individuals. The bill also adds provisions to Title 10 of the Natural Resources Article to ensure that those who are convicted of violating Maryland's wildlife laws has the same ability to expunge their records that are maintained by the Department of Natural Resources that is currently available to those who violate Maryland's laws relating to fish and fisheries.

I respectfully request a favorable report on Senate Bill 960. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bailey".

Senator Jack Bailey
District 29
Calvert and St. Mary's Counties

SB0960_DNR_SWA_JPR_3-17-22.pdf

Uploaded by: Bunky Luffman

Position: FWA



Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary
Allan Fisher, Deputy Secretary

Bill Number: Senate Bill 960

Short Title: Natural Resources – Hunting and Fishing Offenses - Expungement

Department’s Position: Support with Amendments

Explanation of Department’s Position

The Maryland Department of Natural Resources (DNR) provides the following information on SB 960, which authorizes expungement of convictions related to certain natural resources violations.

Operationally, this bill may undermine certain administrative penalties imposed by the department, including license suspensions and revocations, if certain individuals avail themselves of the expungement process as described in the proposed bill.

Some administrative sanctions are imposed based on a criminal conviction. In those cases, if the underlying criminal conviction were expunged, the administrative sanction may also be extinguished.

For example: recreational fishing licenses can be suspended for up to 5 years per violation (COMAR 08.02.13.05). If multiple fishing violations occur, the corresponding license suspensions run consecutively, not concurrently. A number of recreational anglers have had their licenses suspended for 10 years. Commercial fishing licenses may be revoked for certain offenses (COMAR 08.02.13.02, .03, and .09 and Natural Resources Article, §§4-1210 and 4-1211, Annotated Code of Maryland). Revocation means “the act of the Department permanently rescinding a fishing license, authorization, or entitlement and thereby permanently prohibiting a person from engaging in a fishing activity or activities under any circumstances” (COMAR 08.02.13.01).

These penalties have been created in conjunction with the Sport Fisheries Advisory Commission/Tidal Fisheries Advisory Commission Joint Penalty Workgroup and reflect the position of the recreational and commercial fishing communities that certain violations require significant penalties to deter the worst of offenders.

If the bill were to pass, as drafted, DNR would no longer be able to ensure those violators would face an appropriate punishment. This would result in potential impacts to law-abiding recreational anglers, commercial harvesters, and hunters. Allowing the bad actors back into the

fishery or hunting community would potentially take harvest away from the law-abiding participants, either through direct legal competition or through illegal poaching.

The department has met with the sponsor to amend the bill to clarify that convictions may only be expunged so long as (1) the person has never had a fishing or hunting license revoked, and (2) if the person has ever had a fishing or hunting license suspended, it was only one suspension that was completed more than 5 years prior to the expungement application. These amendments would rectify the issues with administrative penalties as noted above. As long as these amendments are accepted and included in the legislation we are in support.

For any additional information, please feel free to contact our Legislative and Constituent Services Director, Bunky Luffman.

SB 960_CBF OPPOSE ATTACHMENT.pdf

Uploaded by: Allison Colden

Position: UNF

Oyster Poaching: Facts and Figures

How extensive is oyster poaching in Maryland waters?

The Chesapeake Bay Foundation researched Maryland poaching violations going back five oyster harvest seasons. We also analyzed the records of individual watermen cited and/or prosecuted. The findings show:

FACT: Natural Resources Police issued more than 80 citations since 2014 just for poaching on oyster sanctuaries, representing a small subset of poaching violations.

These are poachers caught. At least 11 violations occurred in Choptank River sanctuaries where there have been extensive public investments to restore oysters. No one knows how many poachers weren't caught.

FACT: Even though state laws and regulations have been strengthened, enforcement of those laws is uneven at best.

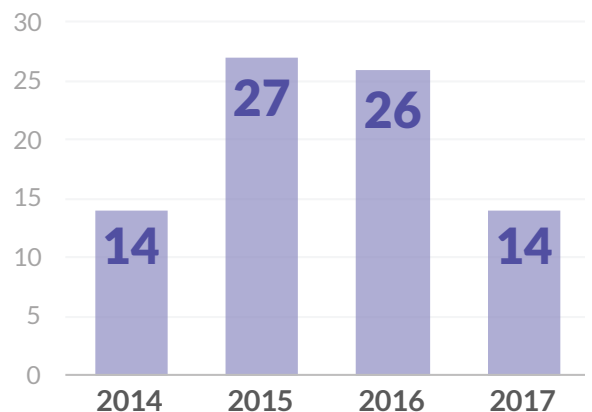
Prosecution varies from county to county. For instance, Talbot County dropped poaching charges only in five percent of cases, while Somerset County dropped charges about one-third of the time. District Courts also frequently assess fines on guilty offenders at a fraction of what state laws permit.

FACT: Poachers whose licenses have been revoked have lengthy histories of violations.

According to Maryland's Department of Natural Resources (DNR), very few individuals—about five per year—have their licenses revoked. An examination of the public record shows these are not individuals who made a single mistake. On average the individuals whose licenses were revoked had 18 DNR citations and half of them had more than 20 violations. These often include repeated offenses in the crab, striped bass, and clam fisheries as well as the oyster fishery. Some had hunting violations as well.

Citations for Poaching in Oyster Sanctuaries by Year

Regulation COMAR 08.02.04.15



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KENNY FLETCHER/CBF STAFF



Citations by Sanctuary, January 2014– May 2018

Regulation COMAR 08.02.04.15

Oyster Restoration Tributaries

Manokin	13
Harris Creek	8
Tred Avon	2
St. Mary's	2
Little Choptank	1

Other Oyster Sanctuaries

Howell Point	24
Somerset (Tangier Sound)	13
Nanticoke	7
Choptank	4
Kitts Creek	2
Marumsc	2
Patuxent	1

TOTAL **83**



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Tall Tales from the Water

A Dames Quarter man was cited by DNR 20 times during his career. Somerset District Court continued to levy fines below state allowances, as low as \$132, for repeated oyster poaching convictions over the years. Finally, after he was convicted for poaching more than 250 feet inside the Manokin River sanctuary on Nov. 11, 2017, the state took him to administrative court to revoke his license.

A Tilghman waterman was cited 34 times since 1997 by DNR marine police. In one oyster season alone, the man was caught and convicted twice for harvesting on the Howell Point Beacon sanctuary, and charged \$977 each time by Talbot District Court. The court declined to prosecute him for four other citations that season. The next season he was caught and convicted again for harvesting on the Howell Point sanctuary. Talbot fined him \$427. The state stepped in and revoked his oystering privileges in September 2016.

A Nanticoke man argued he inadvertently harvested in the Nanticoke River sanctuary because of swift currents and a sanctuary marker out of position. The administrative law judge noted the water was calm that day, the man had GPS onboard, and that the preponderance of the evidence showed he was more than 200 feet inside the sanctuary. The Nanticoke resident had 27 total DNR citations as a waterman, including multiple prior convictions for oyster poaching for which he was given probation, or given small or no fines.

The Wicomico County State's Attorney dropped charges after **a Parsonsburg man** was cited for harvesting oysters from the Nanticoke River sanctuary in June 2017, oystering out of season, and also stealing oysters from an oyster farm. The man has 15 total DNR citations since 2011, including other oystering violations. The state has neither suspended nor revoked his oystering privileges.

A Talbot County man was cited 33 times by DNR during his oystering career. Nevertheless, the District Court for Dorchester County fined him significantly below state law allowances when he pleaded guilty to poaching on the Choptank River sanctuary in March 2016. The state finally revoked his oystering privileges in August 2017, but the next oyster season he was caught oystering in the Potomac River, and exceeding the daily catch limit.

A Stevensville waterman received only one month suspension of his commercial fishing privileges despite 11 DNR citations since 2007, including a conviction for poaching oysters more than 250 feet inside the Tred Avon River sanctuary where millions of public dollars have been spent on restoration.

**For more information, contact Allison Colden
at AColden@cbf.org.**

SB 960_CBF OPPOSE.pdf

Uploaded by: Allison Colden

Position: UNF



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

Senate Bill 960

Natural Resources – Hunting and Fishing Offenses - Expungement

Date: March 17, 2022

Position: **OPPOSE**

To: Senate Judicial Proceedings Committee

From: Allison Colden, Sr. Fisheries Scientist

Chesapeake Bay Foundation (CBF) **OPPOSES** Senate Bill 960 which would weaken penalties for poaching by allowing the expungement of any fishing violation, including violations that currently result in a lifetime revocation of fishing privileges due to their egregious nature.

For incidents that do not require the Maryland Department of Natural Resources (DNR) to automatically suspend or revoke an individual's fishing license, penalties are applied as points to an individual's license. Accumulation of a certain number of points can lead to a suspension or revocation when an individual is found guilty of multiple violations.

The points schedule for fishing offenses is set by DNR in consultation with the Penalty Workgroup which consists of representatives from the commercial and recreational fishing industries. SB 960 would skirt this industry-inclusive process and “reset the clock” on license points, allowing bad actors to re-enter fisheries or clear their license point accumulations in as few as three years, undermining the system currently in place.

SB 960 is particularly concerning considering Maryland's oyster population is languishing at a small fraction of its historical size and for which poaching was deemed the greatest challenge to recovery by the Maryland Oyster Advisory Commission.

Under current law, there are two sections of the code that address illegal oyster harvest, NR §4-1201 and NR §4-1210, which are differentiated by the violations they include, and the legal standards required for prosecution. NR §4-1201 prohibits the taking of oysters if the individual “should have known” that such taking was unlawful. The maximum penalty for a violation under NR §4-1201 is a \$3,000 fine. Even when poachers are caught, many of these cases are not prosecuted (see *Attachment*).

Alternatively, NR §4-1210 calls for the revocation of an individual's license when they are found to have “knowingly” poached oysters. The legal standard for having “knowingly” violated the statute requires prosecutors to demonstrate not only that the accused had knowledge that their action was wrong, but also that they had intent to commit the act. Thus, under this legal standard, a person's license can only be revoked if it can be proven they knew their actions were wrong and intended to carry them out regardless. Such action is not a mistake, but a willful disregard for the law and for the natural resources of the State of Maryland.

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Of the individuals with revoked licenses, the average number of Department of Natural Resources citations is 18, and half of those with revoked licenses have more than 20 violations each. These often include repeated offenses in the oyster fishery, violations in the crab, striped bass, and clam fisheries as well as hunting violations. At least ten individuals have been cited for multiple violations that, individually, would be subject to revocation or have been caught oystering under suspension or revocation. These incidents show a pattern of repeated behavior that can only be deterred with strong penalties.

Weakening penalties for fishing violations fails to recognize the extremely high legal standard already required to revoke an individual's license. Individuals that choose to violate natural resources laws are stealing from honest watermen and the citizens of Maryland who should be afforded the benefits that the Chesapeake Bay ecosystem provides.

CBF urges the Committee's UNFAVORABLE report on Senate Bill 960. For more information, please contact Dr. Allison Colden, Maryland Senior Fisheries Scientist at acolden@cbf.org and 443.482.2160.