

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 817
Judiciary

(Delegate Shetty)

Judicial Proceedings

Criminal Law – Violation of a Protective Order – Merger Prohibition and
Separate Sentence Authorization

This bill prohibits a conviction under § 4-509 of the Family Law Article for the violation of specified provisions of an interim, temporary, or final domestic violence protective order from merging with a conviction for any other crime based on the act establishing the violation. A sentence imposed under § 4-509 of the Family Law Article may be imposed separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation under § 4-509.

Fiscal Summary

State Effect: Any *potential* programming costs are assumed to be minimal and absorbable within the existing budgeted resources of the Judiciary. The bill does not otherwise materially affect State finances or operations.

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: An individual who meets specified relationship requirements under the domestic violence protective order statutes is a “person eligible for relief” and may file a petition for a protective order that seeks relief from “abuse.” A person eligible for relief initiates the process for a protective order during court operating hours by filing a petition for a temporary protective order in the District Court or a circuit court. If the courts are not open, a person eligible for relief initiates the process by filing a petition for an interim

protective order with a District Court Commissioner. Among other specified acts, “abuse” includes an act that causes serious bodily harm; an act that places a person eligible for relief in fear of imminent serious bodily harm; and assault in any degree.

Generally, if an interim protective order is granted by a District Court Commissioner, a temporary protective order hearing is heard on the first or second day on which a District Court judge is sitting after issuance of the interim protective order. Generally, if a temporary protective order is granted, a final protective order hearing occurs one week later. If a judge finds by a preponderance of the evidence that abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse.

Among other relief, an interim, temporary, or final protective order may order the respondent to (1) refrain from abusing or threatening to abuse any person eligible for relief; (2) refrain from contacting, attempting to contact, or harassing any person eligible for relief; (3) refrain from entering the residence of any person eligible for relief; (4) vacate the home immediately, if the person eligible for relief and the respondent are residing together; and (5) remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members. A temporary protective order *may* also order the respondent to surrender to law enforcement authorities any firearm in the respondent’s possession and to refrain from possession of any firearm for the duration of the protective order; a final protective order *must* require the surrender of firearms.

A person who violates the above provisions of an interim, temporary, or final protective order is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or 90 days imprisonment for a first offense and a \$2,500 fine and/or one year imprisonment for a second or subsequent offense.

In *Morgan v. State*, No. 2288, September Term 2019, the Court of Special Appeals examined the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution (applicable to the states through the Fourteenth Amendment) and the general protection it affords against multiple punishments for the same offense. After an incident that occurred during the time in which a protective order was in effect, the appellant (defendant in the underlying case) was found guilty of second-degree assault and violation of a protective order, and sentenced to concurrent terms of 10 years’ imprisonment (with most time suspended) for the assault and 90 days’ imprisonment for violation of the protective order. On appeal, he argued that when applying the required evidence test to the circumstances of his case, the second-degree assault merges into violation of the protective order. The Court of Special Appeals held that the imposition of separate sentences did not violate Double Jeopardy and noted that in order for two offenses to merge, they must share the same elements. Among other things, the Court stated that (1) the appellant was convicted

of a crime and a violation of a civil order; (2) the domestic violence protective order statute exists in “the realm of domestic law” and is not codified in the Criminal Law Article; (3) a protective order violation, unlike a criminal offense, is not an offense that has elements; and (4) second-degree assault is not enumerated in the statute as an element of a violation of a protective order. The opinion included an analysis of the legislative history of the domestic violence protective order statute and concluded that the General Assembly did not intend to allow individuals who violate protective orders to be able to do so without facing separate sanctions for the underlying criminal conduct. The Court of Special Appeals further noted that: “[h]ere, the General Assembly could resolve the issues presented in this appeal by passing an anti-merger statute. [Appellant’s] proposed resolution in this case seems perverse – he is ‘entitled’ to a ‘free’ assault so long as that assault constitutes a violation of a protective order. We seriously doubt that the General Assembly intended such a result.”

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, and Montgomery counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Legislative Services

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