



Working to end sexual violence

in Maryland

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Testimony Supporting House Bill 817
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The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on House Bill 817.

House Bill 817 – Violations of Protective Orders and Merger Doctrine

HB 817 as it would make clear that courts can exercise discretion to sentence a defendant consecutively or concurrently when a defendant has violated a protection order by committing another crime. Under HB 817, a conviction for a serious crime, such as assault or rape, that carries a higher possible sentence does not get merged into the relatively low sentence for a violation of a protective order.

This bill arose as a result of a case in the Court of Special Appeals, *Morgan v. State*, an unreported decision. In this case, the court reviewed whether the defendant's sentence for assault in the second degree, up to ten years and \$2500 fine, would merge into his sentence for violation of a protection order, 90 days. While the Court found that the violation of the protective order is not a lesser included offense of the protective order, it also found that the rule of lenity applied since *legislative intent was unclear* and both the violation of the protective order and the assault arose from the same acts. The Court also noted that it is entirely in the province of the legislature to make it clear that a sentence does not merge with any other sentence.¹ Ultimately, the violation of the protective order was vacated and the sentence for the assault was upheld. Had the court not vacated the violation of protection order status, this defendant, who assaulted his victim while a court order was already in place, would have received a mere 90 day sentence.

¹ See for example, MD Code Ann. Criminal Law, §3-602.

While this case involved a second degree assault, the reasoning would apply equally to a rape or other sex crime. Where a defendant commits a violent act that would be a crime whether the order is in place or not, a conviction for violation of a protective order should not shield the defendant from the potential of the higher sentence. In addition, a second conviction for a violation of a protective order carries a higher sentence. In *Morgan v. State*, because the court had to vacate the lesser crime to ensure the higher sentence, Mr. Morgan no longer has a conviction for his first violation of protective order. This nullifies the intent of the violation of a protective order statute.

This bill makes it explicit that convictions for violation of a protective order do not merge with other sentences. The discretion would then be in the hands of the sentencing judge.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on House Bill 817**