



BILL NO: House Bill 817
TITLE: Criminal Law – Violation of a Protective Order – Merger Prohibition and Separate Sentence Authorization
COMMITTEE: Judiciary
HEARING DATE: February 15, 2022
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the House Judiciary Committee to issue a favorable report on HB 817.**

The Doctrine of Merger

The Double Jeopardy Clause of the Fifth Amendment that applies to states through the Fourteenth Amendment prevents a defendant from receiving multiple punishments for the same offense. The merger doctrine is the common law principle derived from the Fifth Amendment as well as federal and Maryland common law principles similarly stating that a criminal defendant should not receive “multiple punishment stemming from the same offense.”¹ The Court of Special Appeals of Maryland referred to this form of double jeopardy as “simultaneous jeopardy, involving largely issues of merger and multiple punishment and lying on the at-times blurred boundary between constitutional law and statutory construction.”² When there is merger of offenses then only one sentence can be imposed.

The Required Evidence Test

Maryland utilizes the required evidence test to determine if the merger doctrine applies. If offenses merge, then there is only one sentence imposed. Under the required evidence test, the court will look to the elements needed to prove each offense and whether the offenses stem from the same act or acts. If two offenses require proof of the same elements and are part of the same act, then they merge and there is one sentence. If two offenses require proof of different elements, they will not merge even though they stem from the same offense. In the case of lesser included offenses, where there are two offenses, and one has one additional element the lesser offense will merge into the offense that requires an additional element and one sentence can be

¹ *Moore v. State*, 198 Md.App. 655, 684 (2011) (internal quotations and citations omitted).

² *Id.* (internal quotations and citations omitted).

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • mshapiro@mnadv.org



imposed. “The required evidence test focuses upon the elements of each offense; if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter.”³

The Rule of Lenity

The required evidence is applied and followed by courts at sentencing unless the Legislature clearly indicates intent that offenses do not merge, and multiple sentences may be imposed.⁴ “[I]f the legislature precludes the merger of offenses it must explicitly say so in writing...”⁵ If legislative intent is unclear then the offenses merge pursuant to the “Rule of Lenity.” When legislative intent is clear courts will defer to the stated intent in determining whether two offenses arising from the same act merge or not for sentencing. However, if legislative intent is ambiguous, then a ruling will be made in favor of a defendant and offenses will merge. “The rule of lenity is a common law doctrine that directs courts to construe ambiguous criminal statutes in favor of criminal defendants.”⁶

Morgan v. State

In *Morgan v. State*, the Court of Special Appeals was faced with the question of whether a sentence for an assault in the second-degree merges with a violation of a protective order that was the result of the same second-degree assault. The Court found that the offenses did not merge pursuant to the required evidence test because the *mens rea* for the violation of the protective order and the assault are different, the violation of the protective order is not a lesser included offense of the protective order, and the court opined that it was not the legislative intent to allow those that violate a civil protective order to avoid a sentence for underlying criminal conduct. However, the Court did find 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. Ultimately, the violation of the protective order was dismissed and the sentence for the assault was upheld.

³ *Id.* at 685 (internal quotations and citations omitted).

⁴ *Morgan v. State*, 252 Md.App. 439 (2021)

⁵ *Id.*

⁶ *Alexis v. State*, 437 Md. 457, 484 (2014).



House Bill 817

House Bill 817 will clarify the law to state unambiguously that it is the intent of the Legislature that a sentence for underlying criminal acts that also result in the violation of a protective order should not merge with a violation of a protective order. Courts will have the discretion to impose an appropriate sentence based on the facts of a case and defendant's history and not be limited to an up to 90-day sentence pursuant to a first violation of a protective order penalty or an up to one-year sentence for a second violation of a protective order penalty.

For the above stated reasons, the **Maryland Network Against Domestic Violence** urges a **favorable report on HB 817**.