



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB817

**Criminal Law - Violation of a Protective Order - Merger Prohibition and Separate Sentence
Authorization
Testimony in SUPPORT**

Chair Clippinger, Vice Chair Moon and members of the esteemed House Judiciary Committee, thank you for the opportunity to provide testimony in support of HB817, a bill that will prohibit a conviction for the violation of a protective order from merging with a conviction for certain other crimes when the underlying facts of the case are the same.

The idea for this bill was brought to us by several advocates as a result of the recent Court of Special Appeals decision in *Morgan v. State*.¹ In *Morgan v. State*, a defendant was found to have violated a protective order by committing a second degree assault. Due to the rules of lenity and merger, the court ultimately dismissed the violation of protection order so that the defendant could be sentenced pursuant to the finding of guilt for the second degree assault.

The rule of lenity requires that a court examine whether two charged offenses arose out of the same criminal conduct, and whether the Legislature intended to impose multiple punishments for the separate crimes. Absent specific guidance from the legislature, if a court deems that two offenses have arisen out of the same criminal conduct, then the crimes merge for the purposes of sentencing. In these instances, the lower sentence of the two crimes is applied, so as not to unfairly punish the defendant for legislative ambiguity.

The General Assembly has identified several areas of criminal law that do not necessarily require sentences to merge, including child abuse and rape.² In these instances, where two crimes are being charged and convicted for, the sentences imposed are not always merged and can be served consecutively or concurrently. The court is granted the discretion to determine what the appropriate sentence should be and is not constrained by the merger doctrine

Currently in Maryland, if a defendant has violated a protective order by physically assaulting an individual, the law is ambiguous and sentences are merged. A violation of a protective order carries a sentence of up to 90 days incarceration for a first offense or up to one year for a second or subsequent offense,³ while a second degree assault carries a penalty of up to ten years incarceration, a fine of up to

¹ 252 Md.App. 439 (2021)

² Md. Code Ann., Crim. Law § 3-601 and Md. Code Ann., Crim. Law § 3-303.

³ Md. Code Ann., Crim. Law § 4-509.

\$2,500 (potentially higher depending on the victim), or both.⁴ When the two are merged, a defendant convicted of both is only required to serve the lower sentence of 90 days to one year.

HB817 would correct this to allow for courts to sentence an individual convicted of both to an appropriate sentence based on the unique facts of the case and defendant's criminal history. This bill will effectively ensure that those who are under a protective order sentenced appropriately for committing an act of violence that is also a violation of a protective order

I respectfully request a favorable report on HB817.

⁴ Md. Code Ann., Crim. Law § 3-203.