
BILL NO.: House Bill 817 – Cross over hearing
TITLE: Criminal Law – Violation of a Protective Order – Merger Prohibition and Separate Sentence Authorization
COMMITTEE: Judicial Proceedings
DATE: March 23, 2022
POSITION: **SUPPORT**

House Bill 817 would provide that a sentence after conviction for violation of a protection order does not merge with any other sentence. The Women’s Law Center of Maryland (WLC) supports 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 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. Under complicated doctrines that apply in criminal sentencing, the doctrines of merger, the required evidence test and the rule of lenity, the defendant’s sentence for assault, up to ten years and \$2500 fine, would merge into his sentence for violation of a protection order, 90 days, and the defendant would get only the lower sentence. 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, and the violation of the protective order is not a lesser included offense of the protective order. 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. 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 sentence¹. 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 conviction, this defendant, who assaulted his victim while a court order was already in place, would have received a mere 90 day sentence.

Some acts that are prosecuted as violations of a protective order are not criminal in nature, such as contacting the victim, or not staying away from where they are ordered to stay away. But in a serious case such as *Morgan v. State*, where a defendant commits a crime even in the face of a court order, we want to make sure that a conviction for violation of a protective order does 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.

Therefore, the Women’s Law Center of Maryland urges the Committee to make 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.

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

We ask for a favorable report for HB 817.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.