
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: February 15, 2022

Subject: House Bill 817:
Criminal Law – Violation of a Protective Order – Merger Prohibition and Separate Sentence Authorization

Position: SUPPORT

The Maryland State Bar Association (MSBA) FJLSC **SUPPORTS House Bill 817 – Criminal Law – Violation of a Protective Order – merger Prohibition and Separate Sentence Authorization.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

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.

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 reasons, the FJLSC supports HB 817 and urges a favorable report.

Should you have any questions, please contact Michelle Smith at msmith@lawannapolis.com or by telephone at (410) 280-1700.