



OREGON DEPARTMENT OF JUSTICE

TO: Senate Committee on Judiciary

FROM: Leslie Wu, Policy Advisor to Attorney General Rayfield, Oregon Department of Justice

DATE: May 7, 2025

SUBJECT: Testimony in Support of HB 2975A

The Oregon Department of Justice writes in support of HB 2975A to close the merger loophole for domestic violence crimes created by the ruling in *State v. Miles*, 330 Or App 1 (2024). The bill provides a targeted fix to ensure that offenses with separately recognized harms are not merged through a technical language loophole.

Oregon's merger statute, ORS 161.067¹, details when crimes are separately punishable. It states:

When the same conduct or criminal episode violates two or more statutory provisions and each provision requires proof of an element that the others do not, there are as many separately punishable offenses as there are separate statutory violations.

Before passage of the law, the courts “had to speculate” where “no clear legislative intent could be discerned” as to what crimes should merge.² The legislature passed the merger law in 1985 to replace the patchwork of judicially created rules.³ The proponents of the original legislation “clearly intended that criminal records accurately reflect all crimes actually committed and that a person who commits multiple crimes by the same conduct or during the same criminal episode should have a criminal record reflecting each crime committed rather than only a single conviction which would not accurately portray the nature and extent of that person’s conduct.”⁴

¹ Formerly ORS 161.062

² *State v. Crotsley*, 308 Or 272, 276 (1989).

³ *State v. Nevarez*, 168 Or App 325, 327-28 (2000), *State v. Crotsley*, 308 Or 272, 276 (1989).

⁴ *State v. Crotsley*, 308 Or 272, 277 (1989) (further noting that the history and text of the legislation “could not be more clear in rejecting earlier case law requiring consolidation of multiple convictions and sentences arising from the same criminal episode.”)

Unfortunately, that intent is no longer being realized in cases where convictions are for crimes “constituting domestic violence.” Even though assault and strangulation are each separate crimes with entirely different statutory titles, elements, and histories, when pled as offenses that “constitute domestic violence,” the charges have been interpreted to have no differing elements because the definition of “abuse” for domestic violence crimes includes language that effectively describes the crime of assault. Notably, this results in merger for assault and strangulation cases in the domestic violence context but not for other, non-domestic violence related assault and strangulation cases.

HB 2975A clarifies the legislature’s intent to treat different domestic violence crimes as distinct legislatively recognized harms by specifying in the merger statute that the domestic violence designation does not constitute an element for the purpose of merger of offenses. Until the *Miles* decision, merger law had operated in this manner since the passage of the domestic violence designation in 2003.

This fix is critical to ensure that domestic violence survivors are protected to the same extent as others under the law, and we urge passage.

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