

Bill Number: SB951
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY
IN OPPOSITION OF SENATE BILL 951
FELONY FIRST DEGREE MURDER
LIMITATION AND RESENTENCING PROCEDURE

I write in opposition of Senate Bill 951 which creates a onetime look back for those convicted of felony murder and effectively eliminates the much accepted concept of felony murder as First Degree Murder. This bill will now make those who commit felony murder guilty of 2nd degree murder and subject to a maximum sentence of 40 years. This is a bill that ignores the effect it will have on victims' families and ignores the reality of how many murders are committed in this day and age.

Felony murder existed at common law. The felony murder rule was conceived at common law so that the State could hold felons responsible when they embarked on a dangerous course of conduct which resulted in a death. Maryland decided decades ago to make felony murder, murder in the first degree if the death occurred when certain enumerated felonies were committed. The state must prove that there is causation between the murder and the felony.

Two people agree to rob a liquor store. "A" has a gun but both "A" and "B" enter the liquor store and announce a robbery. During the course of the robbery, "B" tells "A" to shoot and kill the clerk so they cannot be identified. "A" does and the clerk dies. Under the traditional felony murder doctrine, both can be convicted of First Degree Felony Murder. Senate Bill 951 would now make it so "B" could not be convicted of murder. So, "B" jointly robs a store with "A", tells "A" to shoot the clerk, but because he did not pull the trigger, he could only be found guilty of 2nd degree murder which under Senate Bill 951 is capped at 40 years. The way the bill is written, if four defendants rape a woman and she is killed and we can't prove which defendant did the killing that will be a second degree murder with a maximum of 40 years in jail. If two defendants home invade a house, blind-fold all the occupants and one of them kills one by shooting them in the head, we would be able to prove who the two defendants are, but not which one pulled the trigger because of the blind-fold. The maximum is 40 years for this heinous act. Under the facts of these hypotheticals, that is just wrong.

Finally, the murder of Officer Amy Caprio. All four were convicted of felony murder including the driver. With your look back, Amy's husband, Tim, and her parents will have to come to court four times for hearings. Harris, since he was found guilty of felony murder, will have his sentence reduced from life to 40 years. Is this what we really want in our state for the families of murder victims? This does not even address the THOUSANDS of victims' families who will have to come to court for the look back hearings you are setting up.

As I previously testified, Maryland already has 13 actions inmates can take to challenge their convictions. In all 13 instances, Victims' families are notified and can and often do come to court to observe the proceedings. If Senate Bill 951 is passed, it will be one more time that a murder victim's family will have to relive the horrors of the crime.

What is more is this bill says that if you could have been convicted "then" of felony murder as the statute is "now" defining it the court may vacate the sentence. That means if there were no other guilty counts, the inmate may be able to walk out the door. How can we live in a State where something has been a crime for years and now suddenly it is not going forward and backward.

I urge an unfavorable report on Senate Bill 951.