

## IN SUPPORT OF SENATE BILL 951

**To: Senate Judicial Proceedings Committee**

**From: Lila Meadows, Gender Violence Clinic, University of Maryland School of Law Clinical Law Program**

**Date: March 10, 2020**

**Re: Written Testimony in support of Senate Bill 951**

The University of Maryland School of Law has several legal clinics that represent individuals sentenced to life in prison, including the Gender Violence Clinic, which represents criminalized survivors of violence who have been sentenced to excessive prison terms. The Gender Violence Clinic enthusiastically supports Senate Bill 951 and the effort to reform felony murder.

Under current Maryland law, felony murder is treated identically to premeditated first degree murder for the purposes of sentencing and carries a life sentence. Under the felony murder doctrine, the state needed only to prove that each of the three was engaged in a felony, in many cases a robbery, when an individual is killed by a co-defendant. Unlike traditional first degree murder cases, the state did not have to prove that the codefendants who did not commit the murder had any intent to do so. The state also does not need to demonstrate that the individuals had any knowledge that a murder would occur. Because the felony murder rule rests on the doctrine of foreseeability, the state is able to bypass intent altogether. The thinking is that if you are going to engage in a dangerous felony, you should be able to foresee that someone may die as a result. Despite this rationale, there is no evidence to suggest that the felony murder rule actually deters individuals from committing felonies. In fact, most of my clients convicted of felony murder had no idea the law existed when they were charged.

The felony murder rule is not necessary to ensure accountability for serious crimes. Senate Bill 951 does not allow individuals who participate in serious felonies where a death occurs to escape accountability. Instead, it recognizes the incongruity and inequity in our current system that . Senate Bill 951 does nothing to prevent the state from charge the principle in a felony murder with first degree murder. It also does not prevent the state from charging co-defendants with conspiracy, which also carries a possible life sentence, if the state can prove that co-defendants participated in a planned concerted effort to commit a murder in the course of committing a felony.

The rule is particularly unworkable as applied to juveniles. The Supreme Court recognized in a series of recent cases that juvenile brain development lags behind that of an adult. As a result, children are less able to measure risk and foresee the consequences of their actions. Recognizing those limitations, it's difficult to justify applying a rule that is based on foreseeability to minors where the penalty is a life sentence and may in fact be unconstitutional under the Eighth Amendment. While the exact number is unknown, Maryland continues to incarcerate juveniles for life for felony murder.

Other states around the country have recognized the injustice of sentencing individuals to life in prison for murders they did not actually commit and have taken steps to reform the felony murder rule. The latest state to do so was California, a move that was supported in part by data showing that the rule disproportionately affects women and young men of color. To be clear, the push to abolish felony murder is not underway only in states that have progressive criminal justice reform agendas. In fact, Kentucky, Ohio and Michigan — states not known for their leniency — have already abolished or reformed the law.

The exact number of prisoners serving life sentences for felony murder in Maryland is not easily determined because it is not always tracked separately from other first degree murder convictions. But it's safe to say there are hundreds of men and women sitting in our prisons today serving life sentences that do not reflect their actual culpability. This is an affront to the bedrock principal of proportionality in our justice system and on a practical level, a waste of tax payer money and human capital.

The Gender Violence Clinic urges the committee to report favorably on Senate Bill 951.