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Position: FAV

Maryland Criminal Defense Attorneys' Association



MD Senate -Judicial Proceedings Committee

March 10, 2020 12 pm

Hearing on SB 951

Felony Murder – Limitation and Resentencing

MCDAA POSITION: SUPPORT

Brief bill explanation: This bill alters the classification of felony murder by (1) repealing the felony murder provision currently contained in the prohibition on murder in the first degree and (2) reclassifying those same acts as second-degree murder. The bill authorizes a person who was convicted of first-degree murder under the first-degree felony murder provision prior to September 30, 2020, to apply for resentencing under specified circumstances.

Current Law: A murder is in the first degree if it is (1) a deliberate, premeditated, and willful killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of or an attempt to perpetrate specified offenses, including among others, first-degree arson; first-, second-, and third-degree burglary; kidnapping; carjacking; rape; or mayhem. A violator is guilty of a felony and on conviction must be sentenced to imprisonment for life.

MCDAA Note: This legislation represents a top legislative priority of MCDAA. Members of the Maryland Criminal Defense Attorneys' Association, gathered a work group of experienced litigators and appellate attorneys to craft this legislation for submission to the 2020 General Assembly. In general, MCDAA supports all legislation that works to fix the out-dated Maryland felony murder statute. We believe the approach contained in SB 951 to be the best approach.

For additional information or questions regarding this legislation, please contact MCDAA legislative chair: Andrew Jezic, 301.742.7470 avjezic@aol.com or our Government Relations Contacts: Alan Drew 240.856.2607 da4617@gmail.com and John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com

MEADOWS GVC_FAV_SB951

Uploaded by: Meadows, Lila

Position: FAV

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.

scott shellenberger_unf_sb951

Uploaded by: Gibson, Richard

Position: UNF

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.

MDJudiciary_UNF_SB951

Uploaded by: Jones, Tyler

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 951
Criminal Law – Felony First-Degree Murder – Limitation and
Resentencing Procedure
DATE: February 26, 2020
(3/10)
POSITION: Oppose as drafted

The Maryland Judiciary opposes Senate Bill 951 as drafted. Senate Bill 951 alters the elements of murder in the first degree. Senate Bill 951 would authorize a person previously convicted of murder in the first degree under Criminal Law §2-201(a)(4) to petition the court for resentencing. When a person files a petition for resentencing, the court may vacate the conviction and sentence for murder in the first degree, enter a conviction for murder in the second degree, and resentence the petition. The court may not increase the sentence of the petitioner.

Although the Judiciary has no position on the reclassification of felony murder, as drafted, this bill does not provide sufficient guidance to courts on what criteria should be considered to determine whether to resentence a defendant who files a petition under Criminal Law Article, § 2-201(d)(1).

cc. Hon. Joanne Benson
Judicial Council
Legislative Committee
Kelley O'Connor

scott shellenberger_unf_sb951

Uploaded by: Shellenberger, Scott

Position: UNF

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
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