

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with Out for Justice. I am a resident of MD District 11. I am testifying in **support of Senate Bill 395**.



Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

In *State v. Allen*, the Court of Appeals of Maryland held that the felony-murder rule is a legal fiction in which the intent and malice to commit the underlying felony is transferred to elevate an unintentional killing to first degree murder. This holding, as reflected in our current state statutes, does not exclude children from being convicted of first-degree murder under this legal fiction, regardless of actual culpability. The reasoning behind this holding is held in proximate cause theory, which holds defendants accountable for any deaths that should have been “foreseeable” during the crime. The Supreme Court and statistical data on adolescent behavior have reaffirmed that severe convictions against juvenile offenders is not only unconstitutional but strengthens the racially charged “school to prison” pipeline cycle.

The Supreme Court has recognized repeatedly that children and adolescents are the most susceptible to be swept into the current of criminal behavior and taking away the opportunity for reform by enacting the most severe convictions, regardless of intent, violates the 8th Amendment which prohibits cruel and unusual punishments. In *Roper v Simmons*, the Court reasoned in their ruling that “immaturity diminishes [child offenders’] culpability, as does their susceptibility to outside pressures and influences”. The majority backed their rationale of this holding with the use of scientific evidence that the underdevelopment of neurological synapses within an adolescent’s mind affects decision making and consequential rationalization that does not allow an adolescent to be culpable to the same degree that an adult would in the same crime. The Supreme Court supported their underlying rationale of *Roper v Simmons* with *Graham v Florida* and *Miller v Alabama*. In both cases, the Court affirmed their view that children have the indistinguishable characteristic of future reform and therefore juvenile offenders should be barred from the most severe convictions. In the specific instance of transferred intent against minors, which Senate Bill 395 looks to address, Justice Breyer directly answers that question in his concurring opinion in *Miller v Alabama*, where he states, “transferred intent is not sufficient to satisfy the intent to murder [and] the ability to consider the full consequences of a course of action and to adjust one’s conduct accordingly is precisely what we know juveniles lack capacity to do effectively”. If the Supreme Court of the United States has held in multiple cases that children are to be completely absolved from the most severe convictions because it violates the constitutional fundamentals of justice, why has Maryland continued to hold juveniles guilty in cases where direct culpability is deficient or completely absent?

As mentioned above, the Supreme Court relied on scientific evidence to support their holdings. Without enacting SB 395, juveniles involved in criminal pursuits can be convicted of first-degree murder, even if they were not the direct actor of the murder. This allows adolescents to be exceptionally vulnerable to the most severe punishments as juveniles tend to commit crimes in groups due to peer pressure. The National Crime Victimization Survey states that close to 40 percent of crimes committed by people ages 12 to 20 have multiple perpetrators, compared with only 5 percent for adults 30 and older. And, according to the American Psychological Association, it has been shown that due to underdeveloped prefrontal cortexes, the presence of peers increases adolescent risk taking because of heightened sensitivity to the potential reward value of risk taking in comparison to adults making similar decisions. To continue to allow children to be convicted of first-degree murder under section a(4) of § 2-201, or cases involving “transferred intent”, is to wrongfully exploit the biological callowness of adolescents to fuel the prison industrial complex.

Finally, without adopting SB395, the criminal justice system will continue to be a predatory vehicle for racial prejudice and injustice. Allowing the conviction of first-degree murder under “transferred intent” for children will disproportionately affect POC communities. According to childrensdefense.org, 67% of children in the juvenile justice system were children of color and black youth represented 54% of youth prosecuted in adult criminal court.

The most notable example of the injustice that is caused by murder felony statutes is the story of Curtis Brooks, a Maryland resident, who was charged with murder at the age of 15. Throughout his adolescence, Brooks struggled to maintain a consistent home and was in search of stability when he left Maryland to reunite with his mother in Colorado. Brooks' mother was battling drug addiction at the time and Brooks soon found himself displaced and finding refuge on garage floors to avoid sleeping on the streets. In an attempt to escape a blizzard, Brooks wandered an arcade and was approached by a group of teenagers who had previously allowed him to sleep on their couch. Feeling a kindred obligation to the group, Brooks agreed to help steal a car in which he would be directed to fire a distraction shot in the air. During the attempted carjacking, it was not Brooks who fired the shot that resulted in murder, but his accomplice who killed the victim. Due to a felony murder statute, the court found that, Brooks, at the age of 15, was convicted of first-degree murder and life in prison, despite having no previous criminal record and not firing the bullet that directly resulted in the murder.



Brooks remained in prison until Joanne C Benson, Brooks' previous elementary school principal, and Abdul Raheem Abdullah, President of Prince George's County Education Coalition, used their personal finances to travel to Colorado and advocate for legislative change. At age 40, Brooks returned to his home of Maryland for the first time in 25 years and is able to enjoy the first steps of freedom. Unfortunately, many children are not as fortunate as Brooks and remain in the prison system under a wrongful conviction. According to Human Rights Watch and Amnesty International, 45 out of 172 of youth offenders surveyed were serving life sentences without parole after being convicted of felony murder.

These children deserve to know freedom, they deserve the chance to reform.

The adoption of Senate Bill 395 will bar wrongful severe sanctions against our youth and allow for the progression we all wish to see in our justice system. I ask the General Assembly to **please adopt Senate Bill 395** which addresses felony murder and enacts limitation provisions and review of convictions for children.

Best,

Benjamin Fertig

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Showing Up for Racial Justice Baltimore

Citations:

- <https://www.marylandmatters.org/2019/07/09/lawmakers-welcome-home-man-sentenced-to-life-as-a-teen/>
- <https://www.distractify.com/p/curtis-brooks-kids-behind-bars>
- <https://theappeal.org/curtis-brooks-felony-murder-life-sentence/?fbclid=IwAR3-zHHXCmQPn066v4nsvsi56rSIC4CbZS4Hn8jLBtENfqZRY92S1tZBUMU#.XRmAjr5oFG.twitter>