

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1338  
 Judiciary

(Delegate Crutchfield, *et al.*)

**Criminal Law - Felony Murder - Limitation and Review of Convictions for Children**

This bill prohibits an individual younger than age 18 from being convicted of first-degree murder under the felony murder provision under State law. The bill authorizes a person convicted of first-degree murder under the felony murder provision who was a child at the time of the offense to apply for a review of the person’s conviction under specified circumstances.

**Fiscal Summary**

**State Effect:** General fund expenditures for the Office of the Public Defender (OPD) increase by \$55,000 in FY 2021; future year expenditures reflect annualization and ongoing costs through FY 2023. Potential minimal increase in general fund expenditures for the Judiciary, as discussed below. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	55,000	61,300	63,000	0	0
Net Effect	(\$55,000)	(\$61,300)	(\$63,000)	\$0	\$0

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Potential minimal increase in workloads for State’s Attorneys. Revenues are not affected.

**Small Business Effect:** None.

## Analysis

### Bill Summary:

#### *Reviews of Convictions*

Notwithstanding any other provision of law, a person who was convicted on or before September 30, 2020, of first-degree murder under the felony murder provision currently contained in § 2-201(a)(4) of the Criminal Law Article (§ 2-201(b)(4) under the bill) who was a child at the time of the offense may apply for review of the person's conviction at any time while incarcerated or under supervision. The court must notify the State's Attorney that it has received a motion for review.

After a hearing and consideration of all the evidence, if the court does not find that there is a *substantial or significant* possibility that the movant could be found guilty of first-degree murder on or after October 1, 2020 (the effective date of the bill), the court may vacate the conviction and grant a new trial or resentence as to any merged conviction, as the court considers appropriate. The court is prohibited from increasing the sentence of a moving party.

**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 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, with or without the possibility of parole. A sentence of imprisonment for life without the possibility of parole may not be imposed unless specified statutory and procedural requirements are met.

Under the common law theory of felony murder, a homicide arising in the perpetration of, or in the attempt to perpetrate, a felony is murder whether death was intended or not. Under this theory, the commission of or attempt to commit the underlying felony is sufficient to supply the element of malice required for a charge of murder.

A "child" is an individual younger than age 18.

**Background:** The Department of Public Safety and Correctional Services (DPSCS) reports that the Division of Correction (DOC) currently has 247 inmates sentenced for first-degree murder who were juveniles at the time of the murder.

**State Expenditures:** General fund expenditures for OPD increase by \$54,994 in fiscal 2021, by \$61,312 in fiscal 2022, and by \$63,012 in fiscal 2023. General fund expenditures for the Judiciary may also increase minimally.

*Office of the Public Defender*

General fund expenditures for OPD increase by \$54,994 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one contractual attorney to assist existing personnel in case file review, review of motions, and litigation of motions under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$49,628
Operating Expenses	<u>5,366</u>
<b>Total FY 2021 OPD Expenditures</b>	<b>\$54,994</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses through fiscal 2023. It is assumed that the need for additional personnel terminates on June 30, 2023, reflecting the likelihood that most cases will have been reviewed by then or can be handled with existing personnel after that date.

This estimate assumes that motions filed under the bill are handled by OPD's Post Conviction Defenders Division (PCD). According to OPD's *Annual Report 2019*, PCD is already operating above caseload standards. PCD, which has 22 attorneys and supervisors, had an actual caseload of 100 cases per attorney in calendar 2018. The caseload standard for the division is 67 cases per attorney.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

*Judiciary*

The bill may result in a minimal, temporary increase in general fund expenditures for the Judiciary, particularly in jurisdictions with a high volume of affected cases. The Judiciary advises that the bill (1) may have a significant impact on resources, especially if several applications are filed in a short amount of time and (2) may result in the need to utilize senior judges to address the temporary increase in judicial workload (*e.g.*, conducting hearings and evaluating evidence). However, as previously noted, there are 247 inmates in DOC facilities sentenced for first-degree murder who were juveniles at the time of the offense; a portion of these inmates may have been sentenced under the felony murder provision, and as a result, would be eligible to file a motion for review of conviction. According to information from the Judiciary, during fiscal 2011 through 2019, there were an average of 120 convictions for first-degree murder in the State's circuit courts each year.

*Department of Public Safety and Correctional Services*

This estimate does not address any potential reduction in incarceration expenditures for DPSCS resulting from the bill. The bill results in decreased incarceration expenditures to the extent that (1) the bill decreases the number of individuals serving sentences for first-degree murder in the future and (2) individuals experience a reduction in incarceration time in response to an application for review of conviction filed under the bill. Any reduction in incarceration expenditures depends on the number of individuals to whom the bill applies, judicial actions on applications filed under the bill, and sentences for other offenses being served by individuals affected by the bill, all of which can only be determined with actual experience under the bill.

**Local Expenditures:** Workloads for State's Attorneys' offices increase, especially in jurisdictions with a high volume of first-degree murder cases.

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**Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Donovan A. Ham

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510