

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 First Reader

Senate Bill 395 (Senator Carter)  
 Judicial Proceedings

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; the bill establishes related procedures.

Fiscal Summary

**State Effect:** Based on an analysis of similar legislation, general fund expenditures for the Office of the Public Defender (OPD) increase by \$77,100 in FY 2022; future year expenditures reflect annualization and ongoing costs. Potential minimal increase in general fund expenditures for the Judiciary and potential decrease in State incarceration expenditures (not reflected in chart below). Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	77,100	91,500	94,300	97,600	101,100
Net Effect	(\$77,100)	(\$91,500)	(\$94,300)	(\$97,600)	(\$101,100)

*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, 2021, 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.

If the court finds that the movant has presented *prima facie* evidence that the movant's conviction is eligible for review under the bill, then the court must hold a hearing on the matter. The hearing is limited to the record at trial, and at the hearing, the State must establish by clear and convincing evidence that the movant could be found guilty of murder in the first degree as altered by the bill.

If the State fails to meet its burden, the court must vacate the previous conviction, enter a new conviction for second-degree murder, and resentence the movant to a period of imprisonment consistent with the penalty for second-degree murder in effect at the time of the offense.

**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; and rape. A violator is guilty of a felony, punishable by 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.

Chapter 515 of 2016 increased the maximum incarceration penalty for second-degree murder from 30 years to 40 years.

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

**State Expenditures:** General fund expenditures for OPD increase by \$77,091 in fiscal 2022; future year expenditures are annualized and reflect ongoing costs. General fund expenditures for the Judiciary may also increase minimally. General fund incarceration expenditures for the Department of Public Safety and Correctional Services (DPSCS) may decrease, as discussed below.

*Office of the Public Defender*

Based on an analysis of similar legislation, general fund expenditures for OPD increase by \$77,091 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one 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.

Position	1.0
Salary and Fringe Benefits	\$71,510
Operating Expenses	<u>5,581</u>
<b>Total FY 2022 OPD Expenditures</b>	<b>\$77,091</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

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 2020*, PCD is already operating above caseload standards. PCD, which has 22 attorneys and supervisors, had an actual caseload of 86 cases per attorney in calendar 2019. The caseload standard for the division is 70 cases per attorney. DPSCS advises that as of December 2020, there were 233 inmates in Division of Correction (DOC) facilities serving sentences for first-degree murder who were younger than age 18 at the time of the offense. During fiscal 2020, DOC received 13 inmates charged with first-degree murder who were younger than age 18 at the time of the offense. The number of motions for review filed under the bill is likely to be high during the initial years of implementation, when individuals currently incarcerated request judicial review. Motions for review will eventually terminate once defendants younger than age 18 are no longer sentenced for first-degree murder under the State’s felony-murder law. However, it is unclear how long it will take for judicial review and hearings to be conducted under the bill, and this estimate assumes that additional OPD personnel hired to address the bill can assist with existing OPD caseloads once judicial review of felony murder convictions is complete.

## *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, as of December 2020, there were 233 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.

## *Department of Public Safety and Correctional Services*

General fund incarceration expenditures for DPSCS may decrease, but any such decrease has not been estimated in this analysis. 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 decrease 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. The Maryland State's Attorneys' Association advises that the bill's effect on prosecutors is unknown at this time.

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## **Additional Information**

**Prior Introductions:** HB 1338 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

**Designated Cross File:** HB 385 (Delegate Crutchfield, *et al.*) - Judiciary.

**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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