

Bill Number: HB1338
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY
IN OPPOSITION OF HOUSE BILL 1338
FELONY FIRST DEGREE MURDER
LIMITATION AND REVIEW OF CONVICTION

I write in opposition of House Bill 1338 which creates a onetime look back for those convicted of felony murder and effectively eliminates Juveniles from the much accepted concept of felony murder by requiring the Juvenile be a principal in the first degree. This is a bill that ignores the effect it will have on victims' families and ignores the reality of how many murders are committed. A principal in the first degree is basically the killer or shooter, not an accomplice.

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 murder. House Bill 1338 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 robbery. That crime carries a maximum sentence of 20 years. Under the facts of this hypothetical that is just wrong.

The other damaging part of House Bill 1338 is the one-time look back. 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 House Bill 1338 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 conviction. That means if there were no other guilty counts, the inmate walks 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 House Bill 1338.