

Bill Number: SB 395
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 395
CRIMINAL LAW - FELONY MURDER
LIMITATION AND REVIEW OF CONVICTION FOR CHILDREN

I write in opposition of Senate Bill 395 which creates a one time look back for those convicted of felony murder. The bill effectively eliminates Juveniles from the much accepted concept of felony murder by requiring that 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 in conjunction with the death. The state must prove that there is causation between the murder and the felony.

For example, 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. Senate Bill 395 would now make it so "B" (a juvenile) 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 and is a juvenile, 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. "B" in fact could be the ring leader and in this scenario the worse person.

The other damaging part of Senate Bill 395 is the one-time look back for all those serving a sentence for felony murder if a juvenile when the felony was committed. 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 395 is passed, it will be one more time that a murder victim's family will have to relive the horrors of the crime. Even though the look back is one on the record the families will still be involved.

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 court converts it to Second Degree

Murder. 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. Vacating a conviction and then saying enter a guilty finding for Second Degree Murder may be unconstitutional since in the first case you did not put on evidence of intent and the Second Degree Murder was likely Not Prossed. If it is no longer there how can you be found guilty of a count of Second Degree Murder.

This means the family of Officer Amy Caprio will be in court four more times. Officer Caprio was run over by juvenile, Dawnta Harris, while three other juveniles were burglarizing houses in Perry Hall when Harris, the getaway driver, murdered Officer Caprio. If Senate Bill 395 passes, all four will get a look back. All four will have their convictions vacated. All four will get their sentence changed. And once again, this Legislature will bring a family to court four times.

I urge an unfavorable report on Senate Bill 395.