

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



February 9, 2021

Chairman William C. Smith, Jr.
Judicial Proceedings Committee
2 East Miller Senate Office Bldg.
11 Bladen Street
Annapolis, MD 21401

**RE: Senate Bill SB 0395 – Favorable
Written Testimony by Olinda Moyd, Esq.**

Dear Chairman Smith and Committee Members:

The Maryland Alliance for Justice Reform, a non-partisan state-wide group of volunteers seeking to address inequities through legislative reform, **supports the passage of this bill**. I have practiced as a Public Defender for 30 years and I know first-hand that most children do not possess the mental consciousness necessary to meet the statutory elements required for murder in the first degree. Under the Maryland Criminal Code, first degree murder requires that the person act deliberately, willfully and with premeditation.

Despite repeated warnings from our parents, each of us is probably guilty of engaging in forbidden conduct as children because we were influenced by our peers. Many of the children sentenced as adults pursuant to Maryland's felony murder rule didn't have a clue as to the seriousness of the situation, did not actually commit the act that resulted in the felonious offense and were unable to fully comprehend the consequences of their actions.

The current doctrine allows the state to charge children as adults and sentence them to life for murders even when they were not the principle. They can be sentenced to murder, even if they didn't know the other person involved intended to commit a murder. Very often, children and women are coaxed into going along for the ride to serve as a distraction or decoy for more experienced offenders. In most cases, they are not the primary perpetrators or the mastermind behind the felony offense. The Maryland doctrine requires foreseeability, yet many children are sentenced to life even if they could never anticipate the risk or consequences of their actions. A child could be charged under the felony murder doctrine even in situations where the murder is not foreseeable - such as when a trigger-happy officer shoots the victim upon arriving on the scene or when a third person suffers a heart attack and dies.

The harsh reality is that many of these children were sentenced during the late 1980's and early 1990's when Black children were described as "super-predators" and the nation's "tough on crime" stance resulted in the passage of the 1994 Crime Bill.¹ Even its staunchest supporters confess that the passage of this bill was an outright assault against people of color, which accelerated mass incarceration and resulted in building more prisons. This was a dark period in American history which was deeply rooted in racism. Maryland incarcerates more Black men than any other state in the nation.² The impact of these punitive sentencing and racial inequities lingers today. The children sentenced under these harsh laws are now the men and women who we seek a leveling of the playing field for today, through the passage of this legislation. Maryland lags behind other jurisdictions and national trends and scientific evidence, which supports ending life sentences for children. Excessive sentencing does not serve as a deterrent nor does it serve any rehabilitative purpose.

This bill would stop the state from imposing a sentence of life without the possibility of parole or release for children. In Maryland, approximately 200 people who are serving life sentences were sentenced when they were children and most of them are over 50 years old and have been locked behind bars for over 20 years. Combined with the fact that the Governor has closed the door for lifers to be paroled, many of these men and women will serve many more decades in prison. Some will die in prison, especially as the COVID-19 virus spreads throughout our prison population. I have also volunteered in Maryland's institutions for decades as an instructor and advisor to various self-help groups in prisons. I have witnessed these men and women age behind bars and observed their physical conditions deteriorate as the decades pass. This legislation would also allow persons who are already convicted as a child to apply to the court for re-sentencing. These men and women sentenced as children are not necessarily the same people today that they were decades ago. Many have served 30 or 40 years or more, and have demonstrated growth and rehabilitation. They should be afforded the opportunity to demonstrate such to the court.

The Maryland Alliance for Justice Reform asks that you correct the wrongs that plague Maryland's criminal legal system. Now is the time to revisit long-standing practices in sentencing and corrections. Passing this bill will be a step in the right direction.

¹ Formerly known as the Violent Crime Control and Law Enforcement Act of 1994, enacted by 103 U.S. Congress, Pub.L. 103-322, Signed by President William Clinton.

² Rethinking Approaches to Over-Incarceration of Black Young Adults in Maryland, Justice Policy Institute Report, November 2019.