



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**Senate Bill 395-Criminal Law-Felony Murder-Limitation and Review of
Convictions for Juveniles
Judicial Proceedings Committee – February 11, 2021
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2021 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

WDC thanks you for your attention to our support of this bill to end felony murder as applied to children, and we commend Senator Carter for her leadership in sponsoring SB395.

Culpability is stretched thin under the felony murder rule. The rule allows judges and juries to attribute intent to kill to an individual harboring no such intention. Based on what we know from current brain science, culpability is stretched even further when extended to child offenders. In this testimony, we will briefly describe felony murder and why it exists. We will then reference guidance from the Supreme Court as to why this troublesome doctrine is even more troubling as applied to the actions of children.

Murder is a serious crime carrying our most extreme punishments. When we think of murder, criminal law teaches us to think of intent. Intent, which explores the offender's mindset, accounts for how egregious we consider the killing. The most egregious form of murder is murder in the first degree - a deliberate, pre-meditated and willful killing. But there is an exception. An individual can be charged with first-degree murder without the requisite intent to kill. We call this exception "felony murder."

Felony murder criminalizes deaths that occur during the commission of a felony, regardless of whether the person intended the death, did the killing, or had any idea that the person who did the killing might do so. Felony murder only requires involvement in the underlying felony.

There are already stringent penalties for the underlying felonies. In Maryland, felony murder adds a form of strict liability—which does not require intent—to any death that occurs during the commission of certain felonies. Most states require "agency" to charge an individual with felony murder. Agency is applied to all participants in a crime when one of the partners-in-crime is responsible for a death. For example, if an individual joins in robbing a store, the individual can be found guilty of first-degree murder if their partner kills someone in during the robbery. Liability is imposed even if the first partner stood guard outside and did not know their partner had a weapon. Maryland takes this imputation of intent even further. In Maryland, an individual can be charged with first-degree murder even when an unrelated third-party who is not a perpetrator of the underlying felony does the killing. Maryland's highest court has gone so far as to hold that



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even if a police officer, rather than any of the perpetrators of the felony, fired the fatal shot, the perpetrators can be held criminally liable for the death.¹

What justifies such an extension of intent to an otherwise unintentional killing or to a killing not inflicted by the perpetrators at all? When we punish for crimes, we think of two principles: deterrence and retribution. For deterrence under felony murder, we must assume that the person committing the crime is aware that he will face severe punishment for any death that occurs during its commission and thus will be more careful to forestall such danger or not commit the crime at all. For purposes of retribution, we must view the person committing the crime as responsible for harm caused, even if he did not intend it. We are told that the punishment for the underlying felony is simply not enough and are asked to accept that an unintended or unforeseen act can be deterred. With regard to retribution, we punish for culpability beyond the felony committed by resorting to this flawed legal construction.

The Supreme Court has given us guidance about applying felony murder to child offenders. In *Roper v. Simmons*, the Court acknowledged that youth lack the ability to fully evaluate the consequences of their actions and that they are more susceptible to peer pressure.² In *Graham v. Florida*, the Court emphasized that, “when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.”³ Concurring in *Miller v. Alabama*, Justice Breyer, joined by Justice Sotomayor, expanded on juveniles’ lack of adult moral culpability writing that “[T]he ability to consider the full consequences of a course of action and to adjust one’s conduct accordingly is precisely what we know juveniles lack capacity to do effectively (emphasis added).”⁴

We are troubled by the existence of a felony murder rule in our state. We are even more deeply troubled that this doctrine extends to children. When children commit crimes, we want to deter them and others, and we want retribution—for the crime committed. We lose all legitimacy when we rely on fallacious reasoning to impose our most extreme punishments on those whose culpability is so removed from the criminal act we punish.

In addition to removing felony murder as applied to children, the bill provides for resentencing child offenders who were convicted under the felony murder statute. This is an important provision that looks back to those child offenders convicted under this flawed law and provides a chance to

¹ *Jackson v. State*, 286 Md. 430, 408 A.2d 711 (1979). The Alabama conviction and sentencing of Lakeith Smith has received considerable attention, and, though not unique, is indicative of the Maryland rule as applied to a juvenile offender. See Niara Savage, Petition to Free Lakeith Smith, Man Serving 55 Years for Murder After Officer Shot and Killed His Friend, Nears 1 Million Signatures (July 7, 2020)

<https://atlantablackstar.com/2020/07/07/petition-to-free-lakeith-smith-man-serving-55-years-for-murder-after-officer-shot-and-killed-his-friend-nears-1-million-signatures/>

² *Roper v. Simmons*, 543 U.S. 551, 578-79 (2005).

³ *Graham v. Florida*, 560 U.S. 48, 69 (2010).

⁴ *Miller v. Alabama*, 567 U.S. 460, 490 (2012).



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reconsider the penalty they received. Accordingly, we urge you to vote in favor of this important legislation. It is the right thing to do.

We ask for your support for SB395 and strongly urge a favorable Committee report.

Respectfully,

Diana Conway
President