



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter
In Favor of SB0395 - Criminal Law – Felony Murder –
Limitation and Review of Convictions for Children
Before the Judicial Proceedings Committee
on March 16, 2021**

Mr. Chairman, Vice Chair, and Members of the Committee:

Senate Bill 395 will end the practice of charging juveniles with felony murder in Maryland. Under our current law, a juvenile can be convicted of first-degree murder even if they did not actually kill the victim or intend to commit a murder due to the felony murder doctrine. Unlike pre-meditated first-degree murder, the State is not required to prove intent to commit a murder in order to obtain a conviction for felony murder. Instead, the State need only prove that the juvenile was participating in a felony when a loss of life occurs. The mandatory sentence for a first-degree murder is a life sentence. The intention of this bill is to prevent the State from being able to seek a felony murder conviction against a juvenile and to end the practice of sentencing juveniles to life in prison for murders they have not actually committed.

The Supreme Court has recognized that children should be treated differently than adults in our criminal justice system for the purpose of sentencing in a series of recent decisions. In *Roper v. Simmons*, the Supreme Court abolished the death penalty for juveniles based on the 8th & 14th

Amendments.The Court banned mandatory life without the possibility of parole sentences for juveniles convicted of non-homicide crimes in *Graham v. Florida*. In *Miller v. Alabama*, the Court extended its holding in *Graham* and held that mandatory life without the possibility of parole sentences in homicide cases against juveniles are cruel and unusual under the 8th Amendment.

In all 3 cases, the Court based its decisions on cognitive science research from physicians and neuroscientists that conclusively demonstrates that the brain continues to develop well into a person's mid-20s, and the frontal cortex, which controls for risk and impulse control, is among the last parts to develop. This makes juveniles more likely to succumb to peer pressure and take uncalculated risks. Because the brain is still developing for these juvenile offenders, the Court recognized that juveniles have a decreased culpability for such offenses because they are not able to completely grasp the severity of such crimes.

Charging juveniles with felony murder is inconsistent with the Supreme Court's rulings on juvenile sentencing. Proponents of the felony murder doctrine argue that it is an important deterrent. They claim that if individuals know that participation in an inherently dangerous felony could lead to culpability for a murder, even one that he or she does not commit, they are less likely to commit the underlying felony.

Assuming the doctrine really does hold some deterrent value, because juveniles are less able to anticipate risks and weigh their consequences, whatever deterrent effect the felony murder doctrine may have is lost on juveniles. Experts on brain development note that juveniles are still developing their brains, and that persons under the age of 18 haven't fully developed appreciation for consequences, long-term

planning, and cost-benefit analyses. These are all pivotal aspects of the brain and cognitive function that would impact an individual's thought process and planning considerations in potentially acting on a felony. For these reasons, juveniles cannot fully appreciate the potential long-term consequences of engaging in a felony, especially in predicting a loss of life they are not anticipating as a result of that felony.

Additionally, felony murder rules are largely obscure, unknown to many people, especially juveniles with little knowledge of more obscure criminal laws and the legal system. Between the still-developing brain and the lack of knowledge of felony murder laws, there is little deterrent benefit that the felony murder rule can even have for juveniles who are convicted of felonies.

Because felony murder is charged under the first degree murder statute, it is unclear how many juveniles are serving a life sentence for a felony murder conviction. There are over 300 juveniles serving life sentences in Maryland. It is likely that a sizable portion of those individuals are serving sentences for a felony murder conviction.

Additionally, a recent analysis of Maryland's correctional population found that our system is rife with racial disparities. 80 percent of individuals serving sentences of 10 years or more are young Black men, as are the vast majority of our state's juvenile lifers.

Abolishing the felony murder doctrine for juveniles outright is an important step towards addressing our state's system of mass incarceration. That said, we cannot ignore the racial disparities that already exist. For that reason, Senate Bill 395 also provides retroactive relief for those already serving life

sentences for a felony murder conviction when they were juveniles.

Defendants who can demonstrate that they are serving a life sentence for a felony murder conviction from an offense when they were still juveniles can petition the court for a resentencing that is not to exceed the penalty in place for second degree murder at the time of the offense- either 30 or 40 years. This approach will allow the State to maintain its conviction, avoiding costly and difficult litigation, while providing those sentenced to life as juveniles for felony murder the hope and real possibility of one day rejoining their communities.

Abolishing felony murder for juveniles is consistent with emerging trends in 8th Amendment jurisprudence, and will bring Maryland in line with other states who have recognized the injustice of the doctrine applying to juveniles, including Michigan, Ohio, California, and Illinois.

Senate Bill 395 is about accountability and proportionality. Juveniles will still be held accountable for the crimes that they commit, can still be charged as adults, and in appropriate cases where there is evidence that a juvenile played a direct role in the murder of another person, can be charged with first-degree pre-meditated murder, second degree murder, or conspiracy. In all other cases, juveniles will still be liable for the underlying felonies that they have committed.

Senate Bill 395 is about holding juveniles accountable for what they have done and will end the practice of sentencing them to life in prison for what they have not done. I urge you to support this important step towards a more just system for children in Maryland.

For these reasons, I urge a favorable report for Senate Bill 395.

Respectfully,

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

Jill P. Carter