

SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Beach, Jacqueline

Position: FAV

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with Out for Justice. I am a resident of MD District 41, a Baltimore teacher, and parent of 3 young children. I am testifying in support of **Senate Bill 395**.



Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

In *State v. Allen*, the Court of Appeals of Maryland held that the felony-murder rule is a legal fiction in which the intent and malice to commit the underlying felony is transferred to elevate an unintentional killing to first degree murder. This holding, as reflected in our current state statutes, does not exclude children from being convicted of first-degree murder under this legal fiction, regardless of actual culpability. The reasoning behind this holding is held in proximate cause theory, which holds defendants accountable for any deaths that should have been “foreseeable” during the crime. The Supreme Court and statistical data on adolescent behavior have reaffirmed that severe convictions against juvenile offenders is not only unconstitutional but strengthens the racially charged “school to prison” pipeline cycle.

The Supreme Court has recognized repeatedly that children and adolescents are the most susceptible to be swept into the current of criminal behavior and taking away the opportunity for reform by enacting the most severe convictions, regardless of intent, violates the 8th Amendment which prohibits cruel and unusual punishments. In *Roper v Simmons*, the Court reasoned in their ruling that “immaturity diminishes [child offenders’] culpability, as does their susceptibility to outside pressures and influences”. The majority backed their rationale of this holding with the use of scientific evidence that the underdevelopment of neurological synapses within an adolescent’s mind affects decision making and consequential rationalization that does not allow an adolescent to be culpable to the same degree that an adult would in the same crime. The Supreme Court supported their underlying rationale of *Roper v Simmons* with *Graham v Florida* and *Miller v Alabama*. In both cases, the Court affirmed their view that children have the indistinguishable characteristic of future reform and therefore juvenile offenders should be barred from the most severe convictions. In the specific instance of transferred intent against minors, which Senate Bill 395 looks to address, Justice Breyer directly answers that question in his concurring opinion in *Miller v Alabama*, where he states, “transferred intent is not sufficient to satisfy the intent to murder [and] the 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”. If the Supreme Court of the United States has held in multiple cases that children are to be completely absolved from the most severe convictions because it violates the constitutional fundamentals of justice, why has Maryland continued to hold juveniles guilty in cases where direct culpability is deficient or completely absent?

As mentioned above, the Supreme Court relied on scientific evidence to support their holdings. Without enacting SB 395, juveniles involved in criminal pursuits can be convicted of first-degree murder, even if they were not the direct actor of the murder. This allows adolescents to be exceptionally vulnerable to the most severe punishments as juveniles tend to commit crimes in groups due to peer pressure. The National Crime Victimization Survey states that close to 40 percent of crimes committed by people ages 12 to 20 have multiple perpetrators, compared with only 5 percent for adults 30 and older. And, according to the American Psychological Association, it has been shown that due to underdeveloped prefrontal cortexes, the presence of peers increases adolescent risk taking because of heightened sensitivity to the potential reward value of risk taking in comparison to adults making similar decisions. To continue to allow children to be convicted of first-degree murder under section a(4) of § 2-201, or cases involving “transferred intent”, is to wrongfully exploit the biological callowness of adolescents to fuel the prison industrial complex.

Finally, without adopting SB395, the criminal justice system will continue to be a predatory vehicle for racial prejudice and injustice. Allowing the conviction of first-degree murder under “transferred intent” for children will disproportionately affect POC communities. According to childrensdefense.org, 67% of children in the juvenile justice system were children of color and black youth represented 54% of youth prosecuted in adult criminal court.

The most notable example of the injustice that is caused by murder felony statutes is the story of Curtis Brooks, a Maryland resident, who was charged with murder at the age of 15. Throughout his adolescence, Brooks struggled to maintain a consistent home and was in search of stability when he left Maryland to reunite with his mother in Colorado. Brooks' mother was battling drug addiction at the time and Brooks soon found himself displaced and finding refuge on garage floors to avoid sleeping on the streets. In an attempt to escape a blizzard, Brooks wandered an arcade and was approached by a group of teenagers who had previously allowed him to sleep on their couch. Feeling a kindred obligation to the group, Brooks agreed to help steal a car in which he would be directed to fire a distraction shot in the air. During the attempted carjacking, it was not Brooks who fired the shot that resulted in murder, but his accomplice who killed the victim. Due to a felony murder statute, the court found that, Brooks, at the age of 15, was convicted of first-degree murder and life in prison, despite having no previous criminal record and not firing the bullet that directly resulted in the murder.



Brooks remained in prison until Joanne C Benson, Brooks' previous elementary school principal, and Abdul Raheem Abdullah, President of Prince George's County Education Coalition, used their personal finances to travel to Colorado and advocate for legislative change. At age 40, Brooks returned to his home of Maryland for the first time in 25 years and is able to enjoy the first steps of freedom. Unfortunately, many children are not as fortunate as Brooks and remain in the prison system under a wrongful conviction. According to Human Rights Watch and Amnesty International, 45 out of 172 of youth offenders surveyed were serving life sentences without parole after being convicted of felony murder.

These children deserve to know freedom, they deserve the chance to reform.

The adoption of Senate Bill 395 will bar wrongful severe sanctions against our youth and allow for the progression we all wish to see in our justice system. I ask the General Assembly to **please adopt Senate Bill 395** which addresses felony murder and enacts limitation provisions and review of convictions for children.

Best,
Jacqueline Beach
2366 Sundew Terrace
Baltimore, MD 21209
Showing Up for Racial Justice Baltimore

Citations:

- <https://www.marylandmatters.org/2019/07/09/lawmakers-welcome-home-man-sentenced-to-life-as-a-teen/>
- <https://www.distractify.com/p/curtis-brooks-kids-behind-bars>
- https://theappeal.org/curtis-brooks-felony-murder-life-sentence/?fbclid=IwAR3-zHHXCmQPn066v4nsvsi56rSIC4CbZS4Hn8jL_BtENfqZRY92S1tZBUMU#.XRmAjrZ5oFG.twitter

Testimony_JPC_SB0395 (1).pdf

Uploaded by: Carter, Jill

Position: FAV



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

HB395Support.pdf

Uploaded by: Dalrymple, Ann

Position: FAV

SB 395 Favorable
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Owings Mills MD 21117

SB 395 SUPPORT Criminal Law - Felony Murder - Limitation and Review of Convictions for Children

Senate Judicial Proceedings Committee

Tuesday, March 16, 2021 at 12:30pm

Dear Chair Smith, Vice Chair Waldstreicher and members of the Senate Judicial Proceedings Committee:

My name is Ann Dalrymple, and I live in Owings Mills in Baltimore County, Maryland. I am active in the Social Justice Ministry of Sacred Heart Catholic Church Glyndon, and my testimony is in support of SB 395.

The charge of first degree murder should be limited to “principals in the first degree” for individuals under the age of 18. We now know a great deal more about brain development and an adolescent should not be held liable for murder when he or she does not understand the same “foreseeable risk” as an adult and especially when they were not the one to commit the murder. It is time that Maryland corrects this and recognizes that juveniles deserve different consideration than adults when it comes to sentencing for crimes. Further, children previously convicted of felony murder should have the right to have a motion heard for review of that conviction.

I urge a favorable report on SB 395

Sincerely,

/s/

Ann Dalrymple, MD, MS

SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Esposito, Lindsay

Position: FAV

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with Out for Justice. I am a resident of MD 45. I am a proud homeowner in the Greenmount West neighborhood and have been a Baltimore City voter for the last 12 years. I am testifying in **support of Senate Bill 395**.



Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

In *State v. Allen*, the Court of Appeals of Maryland held that the felony-murder rule is a legal fiction in which the intent and malice to commit the underlying felony is transferred to elevate an unintentional killing to first degree murder. This holding, as reflected in our current state statutes, does not exclude children from being convicted of first-degree murder under this legal fiction, regardless of actual culpability. The reasoning behind this holding is held in proximate cause theory, which holds defendants accountable for any deaths that should have been “foreseeable” during the crime. The Supreme Court and statistical data on adolescent behavior have reaffirmed that severe convictions against juvenile offenders is not only unconstitutional but strengthens the racially charged “school to prison” pipeline cycle.

The Supreme Court has recognized repeatedly that children and adolescents are the most susceptible to be swept into the current of criminal behavior and taking away the opportunity for reform by enacting the most severe convictions, regardless of intent, violates the 8th Amendment which prohibits cruel and unusual punishments. In *Roper v Simmons*, the Court reasoned in their ruling that “immaturity diminishes [child offenders’] culpability, as does their susceptibility to outside pressures and influences”. The majority backed their rationale of this holding with the use of scientific evidence that the underdevelopment of neurological synapses within an adolescent’s mind affects decision making and consequential rationalization that does not allow an adolescent to be culpable to the same degree that an adult would in the same crime. The Supreme Court supported their underlying rationale of *Roper v Simmons* with *Graham v Florida* and *Miller v Alabama*. In both cases, the Court affirmed their view that children have the indistinguishable characteristic of future reform and therefore juvenile offenders should be barred from the most severe convictions. In the specific instance of transferred intent against minors, which Senate Bill 395 looks to address, Justice Breyer directly answers that question in his concurring opinion in *Miller v Alabama*, where he states, “transferred intent is not sufficient to satisfy the intent to murder [and] the 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”. If the Supreme Court of the United States has held in multiple cases that children are to be completely absolved from the most severe convictions because it violates the constitutional fundamentals of justice, why has Maryland continued to hold juveniles guilty in cases where direct culpability is deficient or completely absent?

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Finally, without adopting SB395, the criminal justice system will continue to be a predatory vehicle for racial prejudice and injustice. Allowing the conviction of first-degree murder under “transferred intent” for children will disproportionately affect

POC communities. According to childrensdefense.org, 67% of children in the juvenile justice system were children of color and black youth represented 54% of youth prosecuted in adult criminal court.



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434 E. Oliver Street
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Citations:

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- <https://www.distractify.com/p/curtis-brooks-kids-behind-bars>
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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Hauck, Barbara

Position: FAV

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Uploaded by: Kleinman, Jan

Position: FAV

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Brooks remained in prison until Joanne C Benson, Brooks' previous elementary school principal, and Abdul Raheem Abdullah, President of Prince George's County Education Coalition, used their personal finances to travel to Colorado and advocate for legislative change. At age 40, Brooks returned to his home of Maryland for the first time in 25 years and is able to enjoy the first steps of freedom. Unfortunately, many children are not as fortunate as Brooks and remain in the prison system under a wrongful conviction. According to Human Rights Watch and Amnesty International, 45 out of 172 of youth offenders surveyed were serving life sentences without parole after being convicted of felony murder.

These children deserve to know freedom, and they deserve the chance to reform. Wouldn't you want the same for your own children, at the moment when they made their least wise choices? The adoption of Senate Bill 395 will bar wrongful severe sanctions against our youth and allow for the progression we all wish to see in our justice system. I ask the General Assembly to **please adopt Senate Bill 395** which addresses felony murder and enacts limitation provisions and review of convictions for children.

Best,
Jan Kleinman
2700 Remington Avenue Apt 504
Baltimore, MD 21211
Showing Up for Racial Justice Baltimore

Citations:

- <https://www.marylandmatters.org/2019/07/09/lawmakers-welcome-home-man-sentenced-to-life-as-a-teen/>
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SURJ
BALTIMORE
showing up for racial justice

Commented [JK1]:

SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: McDonald, Ericka

Position: FAV

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with Out for Justice. I am a resident of MD District 12 and a board member of the League of Women Voters, Baltimore County. I am testifying in **support of Senate Bill 395**.



Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

In *State v. Allen*, the Court of Appeals of Maryland held that the felony-murder rule is a legal fiction in which the intent and malice to commit the underlying felony is transferred to elevate an unintentional killing to first degree murder. This holding, as reflected in our current state statutes, does not exclude children from being convicted of first-degree murder under this legal fiction, regardless of actual culpability. The reasoning behind this holding is held in proximate cause theory, which holds defendants accountable for any deaths that should have been “foreseeable” during the crime. The Supreme Court and statistical data on adolescent behavior have reaffirmed that severe convictions against juvenile offenders is not only unconstitutional but strengthens the racially charged “school to prison” pipeline cycle.

The Supreme Court has recognized repeatedly that children and adolescents are the most susceptible to be swept into the current of criminal behavior and taking away the opportunity for reform by enacting the most severe convictions, regardless of intent, violates the 8th Amendment which prohibits cruel and unusual punishments. In *Roper v Simmons*, the Court reasoned in their ruling that “immaturity diminishes [child offenders’] culpability, as does their susceptibility to outside pressures and influences”. The majority backed their rationale of this holding with the use of scientific evidence that the underdevelopment of neurological synapses within an adolescent’s mind affects decision making and consequential rationalization that does not allow an adolescent to be culpable to the same degree that an adult would in the same crime. The Supreme Court supported their underlying rationale of *Roper v Simmons* with *Graham v Florida* and *Miller v Alabama*. In both cases, the Court affirmed their view that children have the indistinguishable characteristic of future reform and therefore juvenile offenders should be barred from the most severe convictions. In the specific instance of transferred intent against minors, which Senate Bill 395 looks to address, Justice Breyer directly answers that question in his concurring opinion in *Miller v Alabama*, where he states, “transferred intent is not sufficient to satisfy the intent to murder [and] the 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”. If the Supreme Court of the United States has held in multiple cases that children are to be completely absolved from the most severe convictions because it violates the constitutional fundamentals of justice, why has Maryland continued to hold juveniles guilty in cases where direct culpability is deficient or completely absent?

As mentioned above, the Supreme Court relied on scientific evidence to support their holdings. Without enacting SB 395, juveniles involved in criminal pursuits can be convicted of first-degree murder, even if they were not the direct actor of the murder. This allows adolescents to be exceptionally vulnerable to the most severe punishments as juveniles tend to commit crimes in groups due to peer pressure. The National Crime Victimization Survey states that close to 40 percent of crimes committed by people ages 12 to 20 have multiple perpetrators, compared with only 5 percent for adults 30 and older. And, according to the American Psychological Association, it has been shown that due to underdeveloped prefrontal cortexes, the presence of peers increases adolescent risk taking because of heightened sensitivity to the potential reward value of risk taking in comparison to adults making similar decisions. To continue to allow children to be convicted of first-degree murder under section a(4) of § 2-201, or cases involving “transferred intent”, is to wrongfully exploit the biological callowness of adolescents to fuel the prison industrial complex.

Finally, without adopting SB395, the criminal justice system will continue to be a predatory vehicle for racial prejudice and injustice. Allowing the conviction of first-degree murder under “transferred intent” for children will disproportionately affect POC communities. According to childrensdefense.org, 67% of children in the juvenile justice system were children of color and black youth represented 54% of youth prosecuted in adult criminal court.

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Ericka McDonald
418 Harwood Rd. Catonsville, MD 21228
Showing Up for Racial Justice Baltimore

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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Palmisano, Erica

Position: FAV

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Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

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The Supreme Court has recognized repeatedly that children and adolescents are the most susceptible to be swept into the current of criminal behavior and taking away the opportunity for reform by enacting the most severe convictions, regardless of intent, violates the 8th Amendment which prohibits cruel and unusual punishments. In *Roper v Simmons*, the Court reasoned in their ruling that “immaturity diminishes [child offenders’] culpability, as does their susceptibility to outside pressures and influences”. The majority backed their rationale of this holding with the use of scientific evidence that the underdevelopment of neurological synapses within an adolescent’s mind affects decision making and consequential rationalization that does not allow an adolescent to be culpable to the same degree that an adult would in the same crime. The Supreme Court supported their underlying rationale of *Roper v Simmons* with *Graham v Florida* and *Miller v Alabama*. In both cases, the Court affirmed their view that children have the indistinguishable characteristic of future reform and therefore juvenile offenders should be barred from the most severe convictions. In the specific instance of transferred intent against minors, which Senate Bill 395 looks to address, Justice Breyer directly answers that question in his concurring opinion in *Miller v Alabama*, where he states, “transferred intent is not sufficient to satisfy the intent to murder [and] the 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”. If the Supreme Court of the United States has held in multiple cases that children are to be completely absolved from the most severe convictions because it violates the constitutional fundamentals of justice, why has Maryland continued to hold juveniles guilty in cases where direct culpability is deficient or completely absent?

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Thank you for your time, service, and consideration.

Sincerely,
Erica Palmisano
5580 Vantage Point Rd, Apt 5, Columbia, MD 21044
Showing Up for Racial Justice Baltimore

Citations:

- <https://www.marylandmatters.org/2019/07/09/lawmakers-welcome-home-man-sentenced-to-life-as-a-teen/>
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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Pereschuk, Alicia

Position: FAV

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Best,
Alicia Pereschuk
404 W 29th St
Baltimore MD 21211
Showing Up for Racial Justice Baltimore

Citations:

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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Rehr, Nathan

Position: FAV

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Showing Up for Racial Justice Baltimore

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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Seel, Brian

Position: FAV

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As mentioned above, the Supreme Court relied on scientific evidence to support their holdings. Without enacting SB 395, juveniles involved in criminal pursuits can be convicted of first-degree murder, even if they were not the direct actor of the murder. This allows adolescents to be exceptionally vulnerable to the most severe punishments as juveniles tend to commit crimes in groups due to peer pressure. The National Crime Victimization Survey states that close to 40 percent of crimes committed by people ages 12 to 20 have multiple perpetrators, compared with only 5 percent for adults 30 and older. And, according to the American Psychological Association, it has been shown that due to underdeveloped prefrontal cortexes, the presence of peers increases adolescent risk taking because of heightened sensitivity to the potential reward value of risk taking in comparison to adults making similar decisions. To continue to allow children to be convicted of first-degree murder under section a(4) of § 2-201, or cases involving “transferred intent”, is to wrongfully exploit the biological callowness of adolescents to fuel the prison industrial complex.

Finally, without adopting SB395, the criminal justice system will continue to be a predatory vehicle for racial prejudice and injustice. Allowing the conviction of first-degree murder under “transferred intent” for children will disproportionately affect POC communities. According to childrensdefense.org, 67% of children in the juvenile justice system were children of color and black youth represented 54% of youth prosecuted in adult criminal court.

The most notable example of the injustice that is caused by murder felony statutes is the story of Curtis Brooks, a Maryland resident, who was charged with murder at the age of 15. Throughout his adolescence, Brooks struggled to maintain a consistent home and was in search of stability when he left Maryland to reunite with his mother in Colorado. Brooks' mother was battling drug addiction at the time and Brooks soon found himself displaced and finding refuge on garage floors to avoid sleeping on the streets. In an attempt to escape a blizzard, Brooks wandered an arcade and was approached by a group of teenagers who had previously allowed him to sleep on their couch. Feeling a kindred obligation to the group, Brooks agreed to help steal a car in which he would be directed to fire a distraction shot in the air. During the attempted carjacking, it was not Brooks who fired the shot that resulted in murder, but his accomplice who killed the victim. Due to a felony murder statute, the court found that, Brooks, at the age of 15, was convicted of first-degree murder and life in prison, despite having no previous criminal record and not firing the bullet that directly resulted in the murder.



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These children deserve to know freedom, they deserve the chance to reform.

The adoption of Senate Bill 395 will bar wrongful severe sanctions against our youth and allow for the progression we all wish to see in our justice system. I ask the General Assembly to **please adopt Senate Bill 395** which addresses felony murder and enacts limitation provisions and review of convictions for children.

Best,

Brian Seel 223 S Wolfe ST

Showing Up for Racial Justice Baltimore

Citations:

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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Shillenn, Rebecca

Position: FAV

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with Out for Justice. I am a resident of MD District 45. I am testifying in **support of Senate Bill 395**.



Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

In *State v. Allen*, the Court of Appeals of Maryland held that the felony-murder rule is a legal fiction in which the intent and malice to commit the underlying felony is transferred to elevate an unintentional killing to first degree murder. This holding, as reflected in our current state statutes, does not exclude children from being convicted of first-degree murder under this legal fiction, regardless of actual culpability. The reasoning behind this holding is held in proximate cause theory, which holds defendants accountable for any deaths that should have been “foreseeable” during the crime. The Supreme Court and statistical data on adolescent behavior have reaffirmed that severe convictions against juvenile offenders is not only unconstitutional but strengthens the racially charged “school to prison” pipeline cycle.

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Finally, without adopting SB395, the criminal justice system will continue to be a predatory vehicle for racial prejudice and injustice. Allowing the conviction of first-degree murder under “transferred intent” for children will disproportionately affect POC communities. According to childrensdefense.org, 67% of children in the juvenile justice system were children of color and black youth represented 54% of youth prosecuted in adult criminal court.

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Best,
Rebecca Shillenn
5401 Elsrode Ave. Baltimore 21214
Showing Up for Racial Justice Baltimore

Citations:

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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Simmons, Christina

Position: FAV

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with Out for Justice. I am a resident of MD District 42A. I am a recent college grad from TU where I studied Family and Human Services with a track in Services to Children and Youth. I studied human development and have spent years working directly with children of all ages. My education and experience stand by the arguments listed below, so I am testifying in **support of Senate Bill 395**.



Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

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304 Stevenson Lane,
Towson, MD 21204
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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Smeton, Jonathan

Position: FAV

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SB 395 - Prohibit Charging Juveniles for First Deg

Uploaded by: Todd, Tamara

Position: FAV

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221 Northway Rd, Reisterstown, MD, 21136
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Uploaded by: Yoder, Daryl

Position: FAV

Dear Members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with Out for Justice. I am a resident of MD District 12. I am testifying in **support of Senate Bill 395**.



Senate Bill 395, which prohibits children from being charged with first degree murder in cases where someone incidentally dies in the commission of another felony crime and allows those previously charged with first-degree murder as juveniles in cases like these to have their sentence reduced.

In *State v. Allen*, the Court of Appeals of Maryland held that the felony-murder rule is a legal fiction in which the intent and malice to commit the underlying felony is transferred to elevate an unintentional killing to first degree murder. This holding, as reflected in our current state statutes, does not exclude children from being convicted of first-degree murder under this legal fiction, regardless of actual culpability. The reasoning behind this holding is held in proximate cause theory, which holds defendants accountable for any deaths that should have been “foreseeable” during the crime. The Supreme Court and statistical data on adolescent behavior have reaffirmed that severe convictions against juvenile offenders is not only unconstitutional but strengthens the racially charged “school to prison” pipeline cycle.

The Supreme Court has recognized repeatedly that children and adolescents are the most susceptible to be swept into the current of criminal behavior and taking away the opportunity for reform by enacting the most severe convictions, regardless of intent, violates the 8th Amendment which prohibits cruel and unusual punishments. In *Roper v Simmons*, the Court reasoned in their ruling that “immaturity diminishes [child offenders’] culpability, as does their susceptibility to outside pressures and influences”. The majority backed their rationale of this holding with the use of scientific evidence that the underdevelopment of neurological synapses within an adolescent’s mind affects decision making and consequential rationalization that does not allow an adolescent to be culpable to the same degree that an adult would in the same crime. The Supreme Court supported their underlying rationale of *Roper v Simmons* with *Graham v Florida* and *Miller v Alabama*. In both cases, the Court affirmed their view that children have the indistinguishable characteristic of future reform and therefore juvenile offenders should be barred from the most severe convictions. In the specific instance of transferred intent against minors, which Senate Bill 395 looks to address, Justice Breyer directly answers that question in his concurring opinion in *Miller v Alabama*, where he states, “transferred intent is not sufficient to satisfy the intent to murder [and] the 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”. If the Supreme Court of the United States has held in multiple cases that children are to be completely absolved from the most severe convictions because it violates the constitutional fundamentals of justice, why has Maryland continued to hold juveniles guilty in cases where direct culpability is deficient or completely absent?

As mentioned above, the Supreme Court relied on scientific evidence to support their holdings. Without enacting SB 395, juveniles involved in criminal pursuits can be convicted of first-degree murder, even if they were not the direct actor of the murder. This allows adolescents to be exceptionally vulnerable to the most severe punishments as juveniles tend to commit crimes in groups due to peer pressure. The National Crime Victimization Survey states that close to 40 percent of crimes committed by people ages 12 to 20 have multiple perpetrators, compared with only 5 percent for adults 30 and older. And, according to the American Psychological Association, it has been shown that due to underdeveloped prefrontal cortexes, the presence of peers increases adolescent risk taking because of heightened sensitivity to the potential reward value of risk taking in comparison to adults making similar decisions. To continue to allow children to be convicted of first-degree murder under section a(4) of § 2-201, or cases involving “transferred intent”, is to wrongfully exploit the biological callowness of adolescents to fuel the prison industrial complex.

Finally, without adopting SB395, the criminal justice system will continue to be a predatory vehicle for racial prejudice and injustice. Allowing the conviction of first-degree murder under “transferred intent” for children will disproportionately affect POC communities. According to childrensdefense.org, 67% of children in the juvenile justice system were children of color and black youth represented 54% of youth prosecuted in adult criminal court.

The most notable example of the injustice that is caused by murder felony statutes is the story of Curtis Brooks, a Maryland resident, who was charged with murder at the age of 15. Throughout his adolescence, Brooks struggled to maintain a consistent home and was in search of stability when he left Maryland to reunite with his mother in Colorado. Brooks' mother was battling drug addiction at the time and Brooks soon found himself displaced and finding refuge on garage floors to avoid sleeping on the streets. In an attempt to escape a blizzard, Brooks wandered an arcade and was approached by a group of teenagers who had previously allowed him to sleep on their couch. Feeling a kindred obligation to the group, Brooks agreed to help steal a car in which he would be directed to fire a distraction shot in the air. During the attempted carjacking, it was not Brooks who fired the shot that resulted in murder, but his accomplice who killed the victim. Due to a felony murder statute, the court found that, Brooks, at the age of 15, was convicted of first-degree murder and life in prison, despite having no previous criminal record and not firing the bullet that directly resulted in the murder.



Brooks remained in prison until Joanne C Benson, Brooks' previous elementary school principal, and Abdul Raheem Abdullah, President of Prince George's County Education Coalition, used their personal finances to travel to Colorado and advocate for legislative change. At age 40, Brooks returned to his home of Maryland for the first time in 25 years and is able to enjoy the first steps of freedom. Unfortunately, many children are not as fortunate as Brooks and remain in the prison system under a wrongful conviction. According to Human Rights Watch and Amnesty International, 45 out of 172 of youth offenders surveyed were serving life sentences without parole after being convicted of felony murder.

These children deserve to know freedom, they deserve the chance to reform.

The adoption of Senate Bill 395 will bar wrongful severe sanctions against our youth and allow for the progression we all wish to see in our justice system. I ask the General Assembly to **please adopt Senate Bill 395** which addresses felony murder and enacts limitation provisions and review of convictions for children.

Best,
Daryl Yoder
309 Glenmore Ave.
Catonsville, MD 21228
Showing Up for Racial Justice Baltimore

Citations:

- <https://www.marylandmatters.org/2019/07/09/lawmakers-welcome-home-man-sentenced-to-life-as-a-teen/>
- <https://www.distractify.com/p/curtis-brooks-kids-behind-bars>
- <https://theappeal.org/curtis-brooks-felony-murder-life-sentence/?fbclid=IwAR3-zHHXCmQPn066v4nsvsi56rSIC4CbZS4Hn8jLBtENfqZRY92S1tZBUMU#.XRmAjr5oFG.twitter>

SB 395 new support.pdf

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Position: FWA

Maryland Criminal Defense Attorneys' Association



MD Senate Judicial Proceedings Committee

March 16, 2021

Hearing on SB 395

Felony Murder – Limitation on Children

MCDAA POSITION: SUPPORT W/AMENDMENT

Brief bill explanation: This bill prohibits an individual younger than age 18 from being convicted of first-degree murder under the felony murder provision of State law. The bill authorizes a person convicted of first-degree murder under the felony murder provision who was a child at the time of the offense to apply for a review of the conviction and be resentenced under specified circumstances. Current felony murder convictions require a finding that the resulting death was “foreseeable” by the defendant, we believe that, with a life sentence without parole as a punishment, a juvenile’s conviction for first degree murder should not be based on whether the death of another was “foreseeable” due to modern medical research that illustrates and explains a juvenile’s general lack of foresight in criminal matters.

MCDAA position: We support this measure with the accompanying Sponsor’s amendment. The Maryland Criminal Defense Attorneys’ Association is supportive of efforts to modify and eliminate the Maryland’s outdated felony murder statute, and we wholeheartedly endorse the efforts to eliminate juvenile first degree felony murder. MCDAA believes that SB 395 takes an important step toward this goal by making first degree felony murder not applicable to those with immature minds, and allows for a court review of sentences for defendants, currently incarcerated, that were convicted under the felony murder statute for crimes they committed when they were under 18. MCDAA believes this will be an effective step toward an eventual full elimination of the first-degree felony murder statute.

For additional information or questions regarding this legislation, please contact MCDAA Government Relations Contact John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com or MCDAA legislative policy leader Erica Suter, 202.468.6640 erica@ericasuterlaw.com

MD Judiciary - Testimony SB 395.pdf

Uploaded by: Elalamy, Sara

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 395
Criminal Law – Felony First-Degree Murder – Limitation and
Review of Conviction
DATE: January 13, 2021
(3/16)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 395, which would establish that a child perpetrator, defined as a person who was under the age of eighteen at the time of the offense, may not be found to have committed murder in the first degree if the murder was based solely on the circumstance that the murder was committed in the perpetration of or an attempt to perpetrate an enumerated felony. House Bill 385 would authorize a person under the age of eighteen previously convicted of murder in the first degree under Criminal Law §2-201(a)(4) to file a motion for review of conviction at any time while incarcerated or under supervision.

This bill effectively requires a second trial, following a conviction, to determine whether a defendant convicted of first-degree felony murder on or before September 30, 2021 could be found guilty of murder in the first degree after September 30, 2021. This process is violative of fundamental principles of fairness, constitutional safeguards, and jurisprudential norms. It is unclear whether it applies to pleas; puts courts in the position of potentially upsetting jury verdicts; and establishes a lower standard of proof at this second trial than is constitutionally required.

The bill also requires the court to notify the State's Attorneys' offices when applications for review of convictions are filed by persons convicted of felony-murder, a notice more appropriately left to the applicant.

cc. Hon. Jill Carter
Judicial Council
Legislative Committee
Kelley O'Connor

SB 395 - Felony Murder.pdf

Uploaded by: Shellenberger, Scott

Position: UNF

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.