

Testimony in SUPPORT OF HB 385 – No Felony Murder for Children

Submitted by

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The **Re-Entry Clinic at the American University Washington College of Law** represents child offenders serving life sentences in Maryland prisons. We have represented and know of child offenders sentenced to life in prison as a result of felony murder convictions. Felony murder has been described by legal scholars as “an unsightly wart on the skin of criminal law”¹ that has “no logical or practical basis for existence” in modern jurisprudence.² However weak its underlying principles, felony murder is all the more tenuous as applied to child offenders. While HB 385 does not go as far as it should, it is a step in the right direction. For this reason, the Clinic SUPPORTS passage of HB 385.

Felony murder is a legal fiction—a deception that allows, for instance, one who commits or attempts to commit arson or burglary to nonetheless stand charged with first-degree homicide for a killing that they did not perpetrate.

First-degree homicide, as conventionally understood, is the deliberate, premeditated, and willful killing of an individual, which carries a mandatory life sentence in Maryland.³ Barn-burning, carjacking, and prison escape are not first-degree murder, and neither are the nine other enumerated felonies in Maryland’s first-degree murder statute. Perpetration, or attempted perpetration, of these felonies does not involve the deliberate, premeditated, and willful killing of an individual, even if death results—so, why do we insist on punishing them as such?

Though the felony murder doctrine in and of itself is at a constitutional crossroads, its application as to children is even more indefensible. The doctrine allows the state to charge, convict, and sentence children to life imprisonment for murders they did not actually commit. For example, a

¹ Packer, *Criminal Code Revision*, 23 U. TORONTO LJ. 1, 4 (1973).

² Moreland, *Kentucky Homicide Law With Recommendations*, 51 KY. LJ. 59, 82 (1962).

³ *Id.* (requiring a sentence of imprisonment for life without parole or imprisonment for life).

child can be charged with first degree murder even if his co-defendant committed the murder in commission of a felony, and the child was not aware of the co-defendant's intention to kill. In Maryland, the imputation of culpability goes even further—one can be charged with first-degree murder when an unrelated third-party, such as a police officer or bystander, commits a homicide.⁴

Maryland's first-degree murder statute is in opposition to the U.S. Supreme Court's own precedent regarding child offenders. Relying on the Eighth Amendment's prohibition on cruel and unusual punishment, in *Roper v. Simmons*,⁵ *Graham v. Florida*,⁶ and *Miller v. Alabama*,⁷ the Court unequivocally declared that youth must be considered when sentencing child offenders to harsh terms of imprisonment like the ones associated with felony murder.⁸

The United States remains virtually the only western country that still recognizes a legal principle that makes it possible “that the most serious sanctions known to law might be imposed for *accidental* homicide.”⁹ (emphasis added). England abolished felony murder in 1957, and the doctrine never existed in France or Germany.¹⁰ In Maryland, the doctrine pushes further on the outer limits of justice since it is wholly applicable to child offenders.

⁴ *Jackson v. State*, 286 Md. 430 (1979) (convicting defendants of first-degree murder even though a responding police officer, rather than either of the perpetrators of the felony, fired the fatal shot that killed a bystander).

⁵ 543 U.S. 551 (2005).

⁶ 560 U.S. 48 (2010).

⁷ 567 U.S. 460 (2012).

⁸ Linda M. B. Uttal & David H. Uttal, *Children Are Not Little Adults: Developmental Differences and the Juvenile Justice System*, LOYOLA PUB. INT. L. REP. NO. 3, Summer 2010 (urging that children are not, and cannot be treated as, “little adults”).

⁹ Jeffries & Stephan, *Defenses, Presumptions, and Burden of Proof in the Criminal Law*, 88 YALE LJ. 1325, 1383 (1979).

¹⁰ Fletcher, *Reflections on Felony-Murder*, 12 SW. U.L. REV. 413, 415 (1981).

As we reflect this week on the life of Dr. Martin Luther King Jr., we would be remiss not to call upon the Civil Rights leader's own words—"the arc of the moral universe is long, but it bends toward justice." Removing first-degree murder for children under a felony murder theory bends the arc towards justice; allowing for resentencing of those children convicted is also essential. To further bend the arc, it is also important to continue to work to fully eradicate the manifest injustices that result from the felony murder doctrine.

For these reasons, please vote to pass HB 385.