



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

January 21, 2021

**WRITTEN TESTIMONY IN SUPPORT OF HOUSE BILL 385
CRIMINAL LAW-FELONY MURDER-LIMITATION AND REVIEW OF CONVICTION FOR CHILDREN**

House Bill 385 will end the practice of charging juveniles with felony murder. Under current Maryland 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. Unlike pre-meditated first-degree murder, the State is not required to prove intent in order to obtain a conviction. For a felony murder conviction, 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. Prospectively, this bill would prevent the State from seeking a felony murder conviction against a juvenile and 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. 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 are cruel and unusual under the Eighth Amendment. The Court based its decisions in both cases on a plethora of research from physicians and neuroscientists that 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.

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.

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 stands to reason that a sizable portion of those individuals are serving sentences for a felony murder conviction. A recent analysis of Maryland's correctional population found that our system is rife with racial disparities. Eighty 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 prospectively is an important step towards addressing our state's system of mass incarceration

but because we cannot ignore the racial disparities that already exist, House Bill 385 will also provide retroactive relief for those already serving life sentences for a felony murder conviction. Defendants who can demonstrate that they are serving a life sentence for a felony murder conviction 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 crime, either 30 or 40 years. This approach will allow the State to maintain its conviction, avoiding costly and difficult litigation, while providing those sentence 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 Eighth Amendment jurisprudence, and will bring Maryland in line with other states who have recognized the injustice of the doctrine including Michigan, Ohio, California, and most recently, Illinois. House Bill 385 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. House Bill 385 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.

I respectfully request a favorable report for House Bill 385.

Sincerely,

Delegate Charlotte Crutchfield