



POSITION ON PROPOSED LEGISLATION

Bill No: 385

Title: Criminal Law-Felony Murder-Limitation and Review of Convictions for Children

Committee: Judiciary/Judicial Proceedings

Hearing Date: January 21, 2021

Position: SUPPORT

Submitted By: Rachel M. Kamins, 6 Saint Paul Street, Suite 1302, Baltimore, MD 21202

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 385.

In Maryland, children may be convicted of first degree murder, which carries a *mandatory* life sentence, for murders they did not commit, intend, or foresee that their co-defendant would commit. This “felony murder” doctrine rests on the premise that a killing that occurs during commission of a felony is foreseeable to all those participating in the felony. The doctrine as applied to children, whom the Supreme Court has recognized are developmentally and neurologically less able than adults to foresee risks and anticipate the consequences of their actions, is flagrantly unconstitutional.

A life sentence for a child convicted of felony murder runs afoul of the 8th Amendment, which proscribes excessive and disproportionate sentences. Sending a child to prison for the rest of his life for participating in a felony, during the course of which someone is killed, is *excessive* where the child neither intended nor reasonably could have foreseen the death. Mandatory life sentences are likewise *disproportionate* for youthful offenders convicted of unintended homicides because they have intrinsically lower moral culpability, less amenability to deterrence, and a greater capacity for rehabilitation.

Abolishing felony murder for children and allowing for the re-sentencing of children already convicted of felony murder, as this Bill proposes, aligns with the national trend to treat juvenile offenders differently because the penological considerations *are* different. Many states require the government to prove intent rather than simply inferring malice from underlying felony; other states have downgraded felony murder to a less serious offense; and yet others have abolished felony murder outright.

Maryland’s felony murder law as applied to children exacts a grave injustice that demands reform. For these reasons, the Maryland Office of the Public Defender urges a favorable report on House Bill 385.

For further information please contact Krystal Williams, Director, Government Relations Division, by email at krystal.williams@maryland.gov or by phone at 443-908-0241.