

IN SUPPORT OF HOUSE BILL 385

To: House of Delegates Judiciary Committee

**From: Lila Meadows, University of Maryland School of Law, 500 W. Baltimore Street
Baltimore, Maryland 21201**

Date: January 21, 2021

Re: House Bill 385

Position: SUPPORT

House Bill 385 will substantially reform felony murder as it is applied to juveniles and prevent children from dying in prison for crimes they have not committed. In Maryland, felony murder is treated identically to premeditated first degree murder for the purposes of sentencing and carries a mandatory life sentence. Because Maryland's parole system is fundamentally broken with respect to those serving life, a life sentence carries a very high probability that a juvenile convicted of felony murder will die in prison.

Under the felony murder doctrine, the state needed only to prove that a juvenile was engaged in a felony, in many cases a robbery, when a murder occurs. Unlike traditional first degree murder cases, the state does not have to prove that the juvenile had any intent to commit a murder. It is sufficient for the State to show only that a felony was underway when someone else committed the murder. The thinking is that if you are going to engage in a dangerous felony, you should be able to foresee that someone may die as a result. In other words, if you're in for a dime, you're in for a dollar.

I've sat in our prisons with many clients convicted of felony murder who accept responsibility for the role they have played in a crime and express deep remorse for the loss of life that occurred but also struggle to understand how they have been sentenced to life for a murder they did not plan or actually commit. In my experience, when individuals commit felonies, they typically aren't engaging in the type of rational thought that lends itself to foreseeability. The rule is particularly unworkable as applied to juveniles. The Supreme Court recognized in a series of recent cases that juvenile brain development lags behind that of an adult. As a result, children are less able to measure risk and foresee the consequences of their actions. Recognizing those limitations, it's difficult to justify applying a rule that is based on foreseeability to minors where the penalty is a life sentence and may in fact be unconstitutional under the Eighth Amendment.

In the case of one of my clients, the State admitted that my 16 year old client had no knowledge that a murder would occur. His crime was standing behind his co-defendant, a man 5 years his senior, as his co-defendant pulled a gun and announced a hold up of a gas station. The State initially offered my client 10 years in exchange for a guilty plea. The case was my client's first involvement with the criminal justice system. Without a sophisticated understanding of the system or of the felony murder doctrine, my client could not understand the risks of going to trial. At 16 years old, ten years seemed like a lifetime. He was found guilty of felony murder and sentenced to life plus 20 years consecutive. In over 37 years of incarceration, he was recommended for parole twice and twice denied by the Governor. The client was one of the first to have his case reviewed under the new Sentencing Review Unit in the Baltimore City State's Attorney's Office. After State's Attorney Marilyn Mosby agreed to relief, he was resentenced in

December 2020 to time served. He was 16 years old the day he entered prison, 53 years old the day he walked out, and had served almost four times the amount of time prosecutors offered in their plea deal.

In many ways the client I described above is lucky. Other clients I have represented were convicted in counties that do not have a Sentencing Review Unit and have little if any opportunity to get back into court. The retroactive provision of House Bill 385 is essential to ensure that men and women who were convicted of felony murder as juveniles have a mechanism to be resentenced.

The exact number of prisoners serving life sentences for felony murder in Maryland is not easily determined because it is not always tracked separately from other first degree murder convictions. But it's safe to say there are hundreds of men and women sitting in our prisons today serving life sentences that do not reflect their actual culpability. This is an affront to the bedrock principal of proportionality in our justice system and on a practical level, a waste of tax payer money and human capital. It's time for Maryland to end charging juveniles with felony murder.