



TESTIMONY IN SUPPORT OF SB 850 :

TO: Members of the Senate Judicial Proceedings and House Judiciary Committees

FROM: **Braden Stinar, Research Fellow, Center for Criminal Justice Reform, University of Baltimore School of Law**

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My name is Braden Stinar and I am a research fellow part of the University of Baltimore School of Law's Center for Criminal Justice Reform. The Center is dedicated to supporting community driven efforts to improve public safety and address harm and inequity caused by the criminal legal system.

In direct alignment with the Center's mission to promote public safety initiatives that correspond with data driven research, it is also the Center's mission to stand in opposition to practices directly adverse to those goals. I am writing in support of abolishing the felony murder rule, and reviewing the sentences of all those previously incarcerated pursuant to this carnal practice. The practice of using this statute to convict and sentence for murder, individuals who never possessed the intent to cause physical harm to another is difficult to fathom. The CCJR stands firm in its desire for evidence-based responses to harm, and condemns the felony murder rule which has not shown effective for reducing violence or improving safety in Maryland communities.

Historically, to prove an individual had committed premeditated first degree murder, the prosecutor must show that the defendant possessed the intent to kill, was conscious of the intent, and had time to think about the intent before committing the act. However, the felony murder statute allows for an individual to be convicted of first degree murder without requiring the prosecutor to show the defendant had any intent at all to fatally harm someone. Maryland law holds that if a defendant can be shown to have committed one of a certain set of felonies, and during their commission of the felony someone dies, a first degree murder charge is available to the prosecutor. It does not matter whether the defendant was actively involved in the killing or even knew that anyone had died after the commission of the initial offense. Based upon this rule, a mere involvement in the felonious act is evidence that an individual possessed the intent to commit first degree murder.

The prosecution of felony murder has not shown to be a deterrent to violent crime. The theory that harsh punishments deter criminal behavior is one that has conflicting data. It's claim is that an individual who is aware they may receive severe consequences for a certain act would be deterred from performing the criminal behavior. Debate around deterrence theory aside, research has shown unequivocally that individuals are not deterred by punishment they were not aware of.¹ For deterrence theory to support the usage of the felony murder rule, perpetrators of violence must be aware the rule exists, and act

¹ <https://www.nytimes.com/packages/pdf/national/malani.pdf>



accordingly. However, community members have very little knowledge that this rule exists. And further even if the public was aware of the rule, how could it deter behavior that the defendant had no plan or intent of performing.

When reviewing who prosecutors use this statute to prosecute, it becomes aware that this practice negatively effects children and women the most. The average age of an individual charged and sentenced under the felony murder rule as an accomplice is 20 years old. Further, according to a 2018 survey by the Anti-Recidivism Coalition and Restore Justice found that 72% of women incarcerated in California with a life sentence, did not commit the homicide they're serving time for.² These two statistics clearly raise the issue of agency in the commission of a crime that meets the standard for applying the felony murder rule. Research surrounding the adolescent brain is clear that a complete ability to make sound decisions and understand the consequences of them is not achieved until the age of 25. Similar to the diminished capacity of children, the felony murder statute also ignores intimate partner violence's effect on women. The same survey conducted by the Anti-Recidivism Coalition and Restore Justice found that the majority of women sentenced under the felony murder statute were criminalized for survival acts.³ The use of this statute to criminalize those with diminished capacity is incredibly harmful to the exact populations that need the most protection.

The felony murder statute is harmful to the public perception of our criminal legal system. Given the critical nature of the current public perception towards our criminal legal system, it is important to make changes that can restore its perception of legitimacy. Incarcerating individuals for first degree murder who did not commit the fatal act, or did not have any intent to commit the fatal act further contributes to this negative public perception. Members of the public look towards the criminal legal system as a means to make victims whole, and hold perpetrators accountable. By incarcerating members of the public for a significant period of years, although they did not possess the intent to take another individuals life, is a method surely to continue the degradation of our public's perception that the criminal legal system provides 'justice.'

Another issue with the use of the felony murder statute emerges when prosecutors are taking part in plea negotiations. The felony murder statute is an additional bargaining chip that allows prosecutors to threaten defendants with an extended period of jail time if they were to take their case to trial. The threat of additional jail time is an incredibly convincing argument for individuals who are faced with the decision to accept a plea or fight the charges at a trial proceeding. Given that 90-95% of all criminal cases result in a plea agreement (rather than the constitutionally guaranteed trial by a jury of peers) it is imperative for our legislators to not be ignorant to the inevitable imbalance of power in plea negotiations.

² <https://jjie.org/2018/08/08/accomplices-to-a-felony-shouldnt-be-sentenced-like-the-murderer-in-california/>

³ Id.



⁴Removing the ability of prosecutors to threaten charges for a crime that the defendant never had the intent to commit is an important step to take in furthering the legitimacy of our judicial system's response to crime.

In closing, it is imperative that this body be aware the United States is the ONLY country in the world where felony murder statutes are used to prosecute individuals. The rule of felony murder itself originated in England but was abolished by their legislature in 1957⁵. I repeat, the United States is the ONLY country on planet earth that uses this practice to incarcerate individuals. Every single other country has left this practice behind for the reasons aforementioned. It is time for our criminal legal system to do the same, and end the use of this statute which has no factual support for making the public any safer.

For these reasons, we urge the passage of SB 850.

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<https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>

⁵ <https://www.restorejustice.org/about-us/resources/know-more/know-more-felony-murder/>