

SB0850 SUPPORT (1).pdf

Uploaded by: Anne Kirsch

Position: FAV

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SBo850- Criminal Law - Youth Accountability and Safety Act

Felony murder was first charged hundreds of years ago in England, which has since abolished the practice along with many other jurisdictions in the US and abroad. Felony murder is when someone who participates in a crime, no matter how remotely, can be charged with first degree murder even if they had no knowledge or participation in the loss of life, no way to predict or stop it, and even if they were not physically present at the time. Women, youth and people of color are disproportionately charged with and convicted of felony murder, and most people still have no idea that you can get convicted of first degree murder without actually killing someone.

There has been debate of the felony murder statute in Maryland for years, however progress always gets halted at the overwhelming number of historical cases that would require review if the law was changed in a sudden and sweeping way. But every year that goes by without changing the felony murder rules prospectively, more cases are adjudicated, more people are excessively sentenced, and it becomes more difficult to make the necessary changes. We need to take immediate action to stop the harm being caused today, then continue to work toward repairing historical damage.

Through my work as a parole advocate, I've gotten to know many of the people serving extensive sentences because of the felony murder statute. These include some who were acquitted of the predicate felony but still convicted of felony murder through another unusual but allowable concept called an inconsistent verdict and others who are serving sentences for an even stranger thing - felony attempted murder, where they have a life sentence because a co-defendant attacked, but did not kill, someone. I've seen cases where, through plea deals, the person who committed the murder was released with a numeric sentence or had a parolable sentence and the person who was merely present in some periphery way was convicted of felony murder and sentenced to life without the possibility of parole. Once you start looking case by case, the inequities are both frequent and shocking.

Unfortunately, understanding a problem and solving it are two different things. Although studies in other states have shown that about 25% of first degree murder convictions are due to felony murder, Maryland does not even track which of its cases are felony murder, and therefore cannot produce statistics of its own. With over 2,000 lifers, identifying which cases are felony murder has become a massive undertaking in and of itself. While this is an important problem to address, it is also one that will take careful planning and implementation of solutions. A problem as long-lived and large as felony murder cannot be rectified in a single legislative action or a single year. SBo850 is the first step on the road, and we will never get to our destination if we don't take it.

This bill protects one important and vulnerable group of people who are most frequently charged with felony murder - youth. While we are not yet addressing the problems of the past,

we are preventing future harm and starting an important conversation that will hopefully spark ideas and workgroups to consider broader solutions. We are also able to observe the impact of this moderately paced change and discover any unintended consequences before making future plans. I urge a favorable report on SB0850.

Tesimony Against Felony Murder.pdf

Uploaded by: Braden Stinar

Position: FAV



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**

DATE: February 6, 2023

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/>

SB 850 Support Youth Accountability and Safety.pdf

Uploaded by: Christine DuFour

Position: FAV

Maryland Criminal Defense Attorneys' Association



MD Senate – Judicial Proceedings Committee

March 14, 2023 1pm

Hearing on SB 850

Youth Accountability and Safety Act

MCDAA POSITION: SUPPORT

Brief bill explanation: The bill would prohibit an individual under the age of 25 from being convicted of first-degree murder committed in the perpetration of or an attempt to perpetrate various felonies including carjacking, arson, burglary, rape, and various sex offenses. The current penalty for first-degree murder, including felony murder as described in the bill, is imprisonment for life or life without the possibility of parole.

MCDAA's Position: MCDAA supports this legislation and generally believes the "felony murder" concept is not in step with current trends in criminal justice. The general issue is that young defendants who are merely involved with a crime, and not the principal, are incarcerated for long periods of time, often without the chance of parole. The felony murder concept is a holdover from the common law in England, and allows prosecution for 1st degree murder of a non-principal criminal defendant that was merely involved with a crime, or its attempt. The concept is based on the belief that criminal responsibility should attach upon the occurrence of foreseeable results of serious crimes. Numerous respected studies have concluded that the youthful brain has not yet developed the necessary faculties to "foresee" the possible outcomes of a criminal activity, and, therefore, a youthful non-principal offender should NOT be held responsible for the death that occurred. Assuming the youthful non-principal was truly involved with the commission of a crime, the State's Attorney can charge the youthful defendant with numerous OTHER crimes (besides 1st degree murder) with potentially long jail sentences, and the youthful non-principal will still be held responsible for their own criminal actions by the trier of fact, either the judge or the jury.

For additional information or questions regarding this legislation, please contact MCDAA lobbyist John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com Copyright 2023 MCDAA. All rights reserved.

Shawn sentence review email.pdf

Uploaded by: Craig Gross

Position: FAV



Craig Gross <craig.gross@apexconsultingus.com>

Shawn Clark sentence review

8 messages

Craig Gross <craig.gross@apexconsultingus.com>
To: "bmford@co.pg.md.us" <bmford@co.pg.md.us>

Wed, Apr 27, 2022 at 7:40 PM

Hello Briana,

My is Craig. Shawn is my best friend, that's me in the blue and that's Shawn.

Case no. CT-93-2302X

CT-94-0747X

He has never had his sentence reviewed.

He's been in prison for 29 years. He grew up as a country boy until his mom moved to South East D.C.. She became addicted to crack cocaine and Shawn was left to the mercy of the streets. His dad who was on drugs and alcohol lived in the country, but couldn't take him. Shawn quickly turned to selling drugs and using drugs and alcohol. He had to take care of his mom while navigating the dangerous streets of his neighborhood. I remember visiting him at his home in the city. I didn't feel like he could trust anyone of his friends except possibly two. When we were younger I was his protector. I couldn't help him up there. They were dangerous and they didn't settle their problems with fist like we did in the country. I wanted him to come back to the country, but he refused to leave his mom and she refused to leave the city, despite my parents efforts in trying to convince her to do so. Shawn is an incredible artist and was offered a scholarship to the Art Institute of Washington, but declined because he was so entrenched in the street life. A year later he was shot and arrested at the age of 19. He was sentenced to 2 life sentences plus 40 years.

Now I'm going to tell you about myself so that you can see the contrast in our future due to the environment differences.

My dad was extremely violent when he was on drugs and alcohol. He abused me and my mom for the first 6 years of my life. He brought out an anger in me that caused me to have extremely violent episodes when pushed or challenged. I remember adults telling me at a very young age that I would be the one either dead or in prison. Most people didn't know the horrors my mom and I experienced so they couldn't understand my rage. When my mom left my dad and remarried Shawn's uncle. Things changed for me. My mom was never on drugs and rarely used alcohol. My step dad was a high functional drug addict and was never violent or physically abusive to me. And I had the water life with my grandfather that really brought me peace. So while Shawn was in the city trying to survive. I was learning how to live. I went to college and played football. I joined the Airforce. I got married at 21 to the love of my life. We have 5 children. Clearly if the tables had been turned. Shawn would be writing this email.

Since Shawn has been in prison. He's completed an anger management course. He hasn't had a discipline ticket in over 10 years. He's currently enrolled in AA. He's joined every art club possible. When possible he's done face paintings during family day visits. Most importantly he hasn't lost his sense of self and humanity during those years. The mental toughness he has exhibited has really inspired me. Especially during the times I was feeling down about trivial things we take for granted. Talking to him and knowing what he is going through really puts things in perspective for me. He's always been a positive voice in my children's lives. He is still emotionally invested in our lives. Our calls are rarely about him. He always wants to know how everyone is doing.

The life that's waiting for him when he gets home will allow him to make a major contribution to society. I'm an consultant in the health and wellness space. I am also in the entertainment industry. My partners have over 40 years of experience in the entertainment industry. They've made or was a part of major movie and television productions. We have a position

waiting for Shawn that will utilize his brilliant art mind. The world to him will be like it is for a child. Full of wonder and infinite possibilities. Please give me a call so that I can explain exactly what we have waiting for Shawn after his release. He'll be an inspiration to many people. His life will make a positive change to this world.

Thanks in advance for your time and consideration. It is greatly appreciated.

V/r,

Craig Gross

Chief Executive Officer

Apex Consulting US, LLC

(808) 300-7247

Sent from [Mail](#) for Windows 10



Shawn and me.jpg

1411K

Ford, Brianna M. <BMFord@co.pg.md.us>
To: Craig Gross <craig.gross@apexconsultingus.com>

Mon, May 2, 2022 at 10:53 AM

Thank you very much for this. I will be in touch when I'm ready to discuss the case.

Best,

Brianna

Brianna M. Ford

Assistant State's Attorney

Conviction & Sentence Integrity Unit

Office of the State's Attorney for Prince George's County

14735 Main Street, Suite M3403

Upper Marlboro, MD 20772

(301) 952-5393 (direct)

(301) 952-3775 (fax)

BMFord@co.pg.md.us

<https://www.pgsao.org/>

From: Craig Gross <craig.gross@apexconsultingus.com>
Sent: Wednesday, April 27, 2022 7:40 PM
To: Ford, Brianna M. <BMFord@co.pg.md.us>
Subject: Shawn Clark sentence review

CAUTION: This email originated from an external email domain which carries the additional risk that it may be a phishing email and/or contain malware.

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Craig Gross <craig.gross@apexconsultingus.com>
To: "Ford, Brianna M." <BMFord@co.pg.md.us>

Mon, May 2, 2022 at 10:58 AM

You're very welcome. I'm looking forward to hearing from you. Thanks in advance for your time.

[Quoted text hidden]

Craig Gross <craig.gross@apexconsultingus.com>
To: "Ford, Brianna M." <BMFord@co.pg.md.us>

Wed, May 18, 2022 at 7:37 PM

Good evening Brianna,

Can we schedule a call so that I can let Shawn know what his options are please? Thanks in advance for your time.

V/r,
Craig
(800) 300-7247

[Quoted text hidden]

Ford, Brianna M. <BMFord@co.pg.md.us>
To: Craig Gross <craig.gross@apexconsultingus.com>

Tue, Jun 7, 2022 at 10:45 AM

July 13 at 12pm. What is the best number to reach you?

[Quoted text hidden]

[Quoted text hidden]

Craig Gross <craig.gross@apexconsultingus.com>
To: "Ford, Brianna M." <BMFord@co.pg.md.us>

Tue, Jun 7, 2022 at 11:38 AM

Thank you so much. (808) 300-7247. I'm really looking forward to this conversation.

[Quoted text hidden]

Ford, Brianna M. <BMFord@co.pg.md.us>
To: Craig Gross <craig.gross@apexconsultingus.com>

Wed, Jul 13, 2022 at 12:03 PM

Good afternoon,

I just tried to call you for our 12pm scheduled call. Are you still available?

Thanks,

[Quoted text hidden]

[Quoted text hidden]

Craig Gross <craig.gross@apexconsultingus.com>
To: "Ford, Brianna M." <BMFord@co.pg.md.us>

Wed, Jul 13, 2022 at 12:43 PM

Yes i am. I'm so sorry. My phone died unexpectedly.

[Quoted text hidden]

2023 SB 0850 (YAS Act) Written Testimony - Elise D

Uploaded by: Elise Desiderio

Position: FAV



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 0850 — Criminal Law — Youth Accountability and Safety Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 03/13/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 0850.

The felony murder rule is a now-codified common-law doctrine that creates a “guilt by association” rule, holding people strictly liable for all deaths during the commission of a qualifying felony.

The concept of felony murder originated in the late 1500s and early 1600s as a way to show implied malice.¹ To count as murder at that time, a homicide had to be committed with “malice,” or in other words, with an intent to kill. *Id.* Today, the way we analyze the *mens rea*—or intent to kill—in the felony murder context is that intending to commit the felony counts as “an independent murderous *mens rea*, should death result, and is just as blameworthy and just as worthy of punishment as murder as would be the specific intent to kill.” *Id.*

Felony murder as a predicate for **first-degree** murder was codified in Maryland in Chapter 138 of the Acts of 1809. *Id.* That law specified a number of felonies and attempted felonies that, if even an unintended death resulted from their commission, meant that the resulting murder charge would be raised to the first degree (as opposed to, *e.g.*, second-degree murder). These felonies are now listed in Md. Code, Crim. L. § 2-201(a)(4).

The felony murder doctrine is a uniquely American legal construct. Most other countries have abandoned it. Across American jurisdictions that still cling to this rule, American felony

¹ Charles E. Moylan, Jr., *Criminal Homicide Law* § 5.1 (2002).

murder laws use an underlying felony to do one of two things: (1) treat as murder a killing that would not have been considered murder otherwise; or (2) increase the classification of a murder, i.e. from second- to first-degree.

According to a 2022 report from the Sentencing Project, these laws have not significantly reduced felonies or limited the number of felonies that result in death.² They do, however, result in extreme prison sentences that “add upward pressure on the entire sentencing structure.” *Id.*

Several states and jurisdictions have been moving away from the harmful felony murder doctrine, and Maryland has an opportunity to join them. [Hawaii](#), [Kentucky](#), and [Michigan](#) have abolished the felony murder rule entirely. In **Ohio**, while the doctrine persists, as of 2004, many situations that would have sustained a [felony murder](#) conviction are now considered [involuntary manslaughter](#).

Other states have made moves to limit the unfairness and harm caused by the felony murder rule.

In 2018, **California** passed [SB 1437](#), which redefined felony murder for accomplices. Now, to be convicted as an accomplice to felony murder, a person must have either intended to kill or been both a “major participant” in the underlying felony and acted with “reckless indifference to human life” in the killing. The law also sets forth procedures for those convicted under the old definition of felony murder to apply for resentencing. If the prosecutor cannot prove that what they did meets the definition of murder under today’s law, a successful applicant is resentenced to the underlying felony.

California’s [SB 775](#), passed in October 2021, allows for relief for those who pled guilty to manslaughter to avoid a felony murder conviction under the old definition. California has also introduced [SB 300](#) to require that if someone did not kill, the prosecutor must prove that that person had the intent to kill in order to obtain a life without parole or death sentence.

In 2021, **Colorado** lawmakers [removed two of the conditions needed for an affirmative defense](#) claim for felony murder charges, which meant that more people could successfully raise that defense. Colorado also [reclassified felony murder from first- to second-degree murder](#), which

² The Sentencing Project, *Felony Murder: An On-Ramp for Extreme Sentencing* (Mar. & Apr. 2022), [Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf \(sentencingproject.org\)](#).

reduced the mandatory sentence from life without parole to a sentence of 16 to 48 years, within a judge's discretion. These reforms do not apply retroactively, unlike those in California.

The **District of Columbia's** Revised Criminal Code Act of 2021, approved unanimously in October 2022, [eliminated accomplice liability felony murder for those who did not intend to kill](#).

Maryland has an opportunity to reduce the harm caused by the felony murder rule as it exists today. Senate Bill 0850 seeks to prospectively limit the application of the felony murder doctrine by making it inapplicable to children and emerging adults under 25 years old. Such a reform is a laudable step toward eradicating the felony murder rule in its entirety.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 0850.

Further reading:

- The Sentencing Project, *Felony Murder: An On-Ramp for Extreme Sentencing* (Mar. & Apr. 2022), [Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf](#).
- Stuti S. Kokkalera, Beck M. Strah, & Anya Bornstein, *Too Young for the Crime, Yet Old Enough to do Life: A Critical Review of How State Felony Murder Laws Apply to Juvenile Defendants*, J. of Crim. Justice & L., Vol 4, Issue 2 (June 1, 2021), <https://jcjl.pubpub.org/pub/v4i290107/release/1>.
- Abbie Vansickle, *Can It Be Murder If You Didn't Kill Anyone?*, The Marshall Project (June 27, 2018), <https://www.themarshallproject.org/2018/06/27/can-it-be-murder-if-you-didn-t-kill-anyone>.
- Anup Malani, *Does the Felony-Murder Rule Deter? Evidence from FBI Crime Data*, (Dec. 3, 2007), <https://graphics8.nytimes.com/packages/pdf/national/malani.pdf>.

Submitted by: Maryland Office of the Public Defender, Government Relations Division

Authored by: Elise Desiderio, Assistant Public Defender II, elise.desiderio@maryland.gov

YEJ Clinic_SB850_Fav.pdf

Uploaded by: Elizabeth Loh

Position: FAV

**Testimony in *Support* of Senate Bill 850 (Favorable)
Youth Accountability and Safety Act**

To: William C. Smith, Jr., Chair, and Members of the Senate Judiciary Committee

From: Elizabeth Loh, Student Attorney, Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law, 500 W. Baltimore Street, Baltimore, MD 21201 (admitted to practice pursuant to Rule 19-220 of the Maryland Rules Governing Admission to the Bar)

Date: March 13, 2023

I am a student attorney in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents individuals serving life sentences in the Maryland correctional system for crimes they committed as children or emerging adults. The Clinic writes in support of Senate Bill 850, which seeks to repeal the felony murder law as applied to youthful offenders.

Under current Maryland law, if a death occurs during the commission of a particular felony offense, all participants in the underlying offense can be charged and prosecuted for first degree murder. This is true even if some participants did not have a role in the victim’s death or had no intention of the victim (or anyone) dying. This law makes no exception for a child or emerging adult (who are individuals between eighteen and twenty-five years of age). SB 850 seeks to repeal the felony murder law for individuals under twenty-five years old.

The Clinic represents clients who have lived in Maryland’s prisons for the decades after they were sentenced for the crimes they committed as children and emerging adults. All our clients were sentenced prior to the advance of brain development science, which has proven that the prefrontal cortex—the portion of the brain that guides our ability to contemplate the short and long-term consequences of our actions—does not fully develop until an individual reaches twenty-five years of age.¹ Accordingly, as compared to older adults, emerging adults are less able to control impulses and more likely to engage in risky behavior.² Maryland’s felony murder law ignores the brain science research, in part because it rests on foreseeability, holding defendants accountable for any foreseeable death that occurs during a commission of a felony. However, children and emerging adults are less able than older adults to foresee consequences.

Maryland’s felony murder law also runs counter to the United States Supreme Court which, over the past seventeen years, has relied on the brain science to outlaw or limit the imposition of the harshest sentences for children, reasoning in part that children are less culpable and more likely

¹ *E.g.*, THE SENTENCING PROJECT, WHY YOUTH INCARCERATION FAILS: AN UPDATED REVIEW OF THE EVIDENCE 5 (Dec. 8, 2022) (“Scientists have confirmed that the brain does not fully mature until age 25.”), <https://www.sentencingproject.org/app/uploads/2023/02/Why-Youth-Incarceration-Fails.pdf>.

² See Seth J. Schwartz & Mariya Petrova, *Prevention Science in Emerging Adulthood: A Field Coming of Age*, 20 PREVENTION SCIENCE 305–309 (2019) (“emerging adulthood is characterized by peak levels of risk-taking”); Tirza A. Mullin, *Eighteen Is Not A Magic Number: Why the Eighth Amendment Requires Protection for Youth Aged Eighteen to Twenty-Five*, 53 U. MICH. J.L. REFORM 807 (2020) (“[t]he fact remains that young people between the ages of eighteen and twenty-five do not have fully developed capacity to control impulses and make rational choices”).

to rehabilitate than adults. This brain science applies equally to young adults. Given the brain science as well as the Supreme Court decisions that have relied upon the science to pronounce greater protections for children, it is unjust to charge, prosecute, and incarcerate children and emerging adults with felony murder.

Moreover, SB 850 is necessary to help redress Maryland's racially disproportionate incarcerated population. Maryland incarcerates the highest percentage of Black individuals in the United States.³ Nearly eight in ten people who were sentenced as emerging adults and have served ten or more years in a Maryland prison are Black.⁴ In addition, data from several other states reveal that Black individuals are disproportionately represented among those with felony murder convictions.⁵ Thus, SB 850 is a step in the right direction to help reduce racial disparities in Maryland's prisons.

SB 850 is a significant step towards aligning law with brain science and alleviating the racial disparities that plague Maryland's incarcerated population. For these reasons, we ask for a favorable report on this bill.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

³JUSTICE POLICY INSTITUTE, RETHINKING APPROACHES OF BLACK YOUNG ADULTS IN MARYLAND 4 (Nov. 6, 2019), https://justicepolicy.org/wpcontent/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf.

⁴ *Id.*

⁵ FAIR AND JUST PROSECUTION, FELONY MURDER: AN ON-RAMP FOR EXTREME SENTENCING 2 (Mar. 2022), <https://fairandjustprosecution.org/wp-content/uploads/2022/03/Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf>.

HRFK SB 850 2023 SUPPORT.pdf

Uploaded by: Emily Virgin

Position: FAV



HUMAN RIGHTS *for* KIDS

TESTIMONY IN SUPPORT OF SB 850 BEFORE THE MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE

March 14, 2023

Dear Chairman Smith and Members of the Maryland Senate Judicial Proceedings Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our support for SB 850. We are grateful to Senator Carter for her leadership in introducing this bill and appreciate the Maryland Legislature's willingness to address these important human rights issues concerning Maryland's children.

Over the years too little attention has been paid to the most vulnerable casualties of mass incarceration in America — children. From the point of entry and arrest to sentencing and incarceration our treatment of children in the justice system is long overdue for re-examination and reform.

Human Rights for Kids is a Washington, D.C.-based non-profit organization dedicated to the promotion and protection of the human rights of children. We work to inform the way the nation understands Adverse Childhood Experiences (ACEs) from a human rights perspective, to better educate the public and policymaker's understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & strategic litigation to advance critical human rights on behalf of children in the United States.

Human Rights Standards

Human Rights for Kids supports SB 850 because the application of the felony-murder rule to children runs counter to the Inter-American Commission on Human Rights' recommendations to avoid sentencing children by the same guidelines that apply to adults, and to consider child brain and behavioral development science when charging and sentencing child offenders. It is a well-

documented fact that children are more impetuous, prone to irrational decision-making, and often lack the ability to foresee the unintended consequences of their actions. Therefore, states should move to eliminate the application of the felony-murder rule to children to create more age-appropriate charges and sentences.

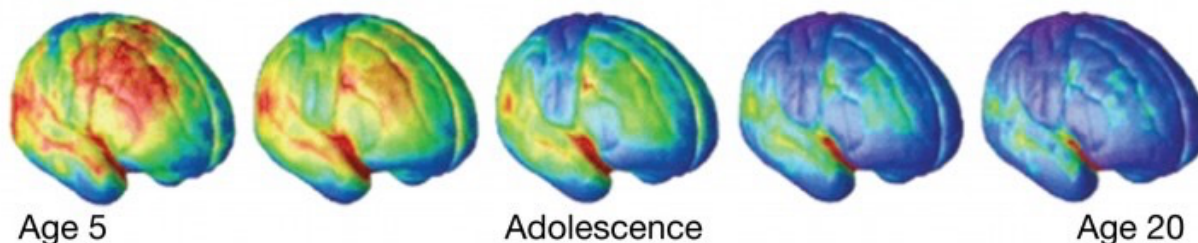
Maryland's policy of allowing children to be convicted of first-degree murder, and be subject to a mandatory life sentence, for murders they did not commit, intend, or foresee that their co-defendant would commit, flies in the face of these widely accepted international human rights standards.

Juvenile Brain & Behavioral Development Science

Studies have shown that children's brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment.

Children's underdeveloped brains and proclivity for irrational decision-making is why society does not allow children to vote, enter contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities.

Dynamic mapping of human cortical development



Source: "Dynamic mapping of human cortical development during childhood through early adulthood," Nitin Gogtay et al., Proceedings of the National Academy of Sciences, May 25, 2004; California Institute of Technology.

In this picture the blue areas can be thought of as representing 'more mature' sections of brain. The frontal areas are among the last to mature.

Human Rights Violations

Because of the way children are treated in the criminal justice system, we designated Maryland one of the "Worst Human Rights Offenders" in the nation in our 2020 National State Ratings Report. Maryland was penalized in our assessment, in part, for its application of the felony murder doctrine to children. It should be noted that more than 80% of youth charged as adults in

Maryland are Black. Such practices are contrary to human rights law and have made Maryland a national outlier.

While it is important to note that the vital reforms to the juvenile justice system passed since the aforementioned 2020 report resulted in Maryland's recognition as the "most improved state" in the 2022 edition of our National State Ratings Report, Maryland is still penalized for its felony murder policy.

In late 2022, Human Rights for Kids requested and received data from the State of Maryland on people who are currently incarcerated for crimes they were convicted of as children. According to our analysis of the data provided by the State, there are 1,132 currently incarcerated people who fit this description. This number represents 6.09% of Maryland's overall prison population, which is more than double the national average of 3%. Maryland ranks 5th highest in the nation for the percentage of its overall prison population that has been incarcerated since they were children. Only Michigan, Louisiana, Wisconsin, and South Carolina have higher percentages.

Conclusion

Nelson Mandela once said, "*There is no keener revelation of a society's soul than the way in which it treats its children.*"

With the passage of SB 850, Maryland has the opportunity to become a national leader by recognizing that kids are different and therefore should be treated differently in the criminal legal system.

It is for the foregoing reasons that Human Rights for Kids respectfully requests that the Committee issue a favorable report on SB 850 by Senator Carter.

Thank you for your time and consideration.

Submitted by: Emily Virgin, Director of Advocacy & Government Relations, Human Rights for Kids, evirgin@humanrightsforkids.org

People Incarcerated as Children in Maryland.pdf

Uploaded by: Emily Virgin

Position: FAV



HUMAN RIGHTS *for* KIDS

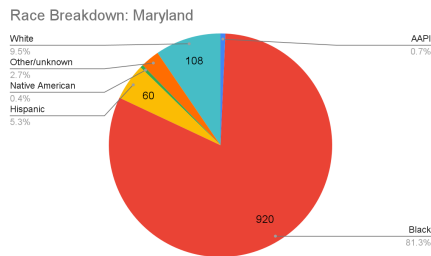
People Incarcerated as Children in Maryland

Total Population: 1,132

6.09% of prison population -- national average is 3%

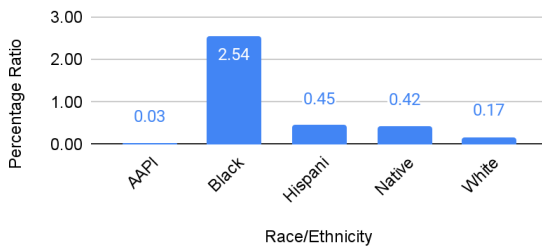
Race/Ethnicity Breakdown

90.46% People of Color



Maryland: Prison to State Population Ratio

Value of 1 means no disparity

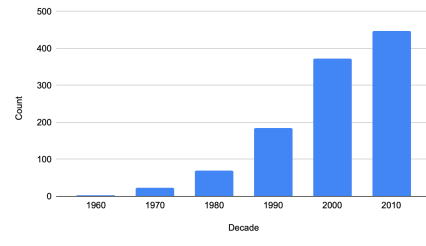


Age

Age at Offense	Count
13	2
14	22
15	96
16	369
17	643

Decade

Maryland: Decade of Offense



Sentencing

Life Sentences: 224 (19.79%)

De Facto Life Sentences: 214 (18.9%)

Average sentence length: 25.69 years
(17.01 years without de facto life)

Race/Ethnicity	Avg Sentence	Shortest Sentence	Longest Sentence
All	25.69	2.36	236.00
AAPI	22.63	7.00	40.00
Black	25.44	2.36	124.54
Hispanic	24.81	3.00	55.00
Native American	75.99	10.00	236.00
Other/Unknown	28.91	13.00	50.00
White	25.20	3.00	90.01

The Consequences of Maryland Violating Basic Human Rights Protections for Children in the Justice System

5th Highest Percentage of Overall Prison Population in the Nation

State	Population	Percentage of Prison Population	Entire state Prison Population (as of 2019)
Michigan	3,775	9.92%	38,053.00
Louisiana	2,277	7.20%	31,609.00
Wisconsin	1,709	7.13%	23,956.00
South Carolina	1,139	6.12%	18,608.00
Maryland	1,132	6.09%	18,595.00
Missouri	1,091	4.19%	26,044.00
Mississippi	770	3.97%	19,417.00
Iowa	353	3.81%	9,260.00
North Carolina	1,179	3.46%	34,079.00
Texas	5,272	3.33%	158,429.00

The number of people who have been incarcerated since childhood make up more than 6% of Maryland's entire prison population – one of the highest in the nation – and more than double the national average of 3%.

4th Highest Percentage of People of Color in the Nation

State	Percentage of People of Color
California	93.94%
Rhode Island	93.75%
Illinois	91.13%
Maryland	90.46%
New York	89.19%
Alabama	87.87%
New Jersey	86.49%
Mississippi	86.36%
Pennsylvania	84.55%
Georgia	84.55%

More than 90% of the children who were prosecuted as adults and who remain incarcerated in Maryland's prisons today are children of color.

6th Highest Percentage of People Incarcerated Since Childhood Per State Population in the Nation

State	Prison Population	State Population	Percentage
Louisiana	2,277	4,624,047	0.0492%
Michigan	3775	10,050,811	0.0376%
Wisconsin	1709	5,895,908	0.0290%
Mississippi	770	2,949,965	0.0261%
South Carolina	1,139	5,190,705	0.0219%
Maryland	1,132	6,165,129	0.0184%
Texas	5,272	29,527,941	0.0179%
Missouri	1,091	6,168,187	0.0177%
Arkansas	532	3,025,891	0.0176%
Arizona	933	7,276,316	0.0128%

5th Highest Number of De Facto Life Sentences

State	Total Number of De Facto Life Sentences
Texas	785
Pennsylvania	245
Louisiana	230
Georgia	218
Maryland	214
Michigan	198
Colorado	98
Indiana	93
Florida	89
South Carolina	85

13th Highest Average Sentence Length

State	Average Sentence Length
West Virginia	22.5
Ohio	21.66
Illinois	21.6
Maine	21
Alabama	20.9
Georgia	20.07
Hawaii	20.00
Pennsylvania	19.83
Rhode Island	18.69
Indiana	17.94
California	17.8
Arkansas	17.23
Maryland	17.01

Suter, Erica J. Testimony SB 850.pdf

Uploaded by: Erica Suter

Position: FAV

TO: Members of the Senate Judicial Proceedings Committee

FROM: Erica J. Suter, Assistant Public Defender and Director of the UB Innocence Project Clinic

RE: SB850: Youth Accountability and Safety Act

DATE: March 13, 2023

I am an assistant public defender, law professor and Director of the UB Innocence Project Clinic, and President of the Maryland Criminal Defense Attorney's Association. I write in support of SB850.

As a career criminal defense attorney, I have encountered many men and women who participated in risky behavior as youths, but had no clear understanding of the inherent risks involved. For example, a kid broke into a home that he and his friend thought was empty. They were looking for food and a place to crash. They did not expect the homeowner to be home or to be armed. The homeowner shot one of the kids. The friend shot the homeowner. Both kids were convicted of first degree murder and given life sentences, despite only one of them actually committing the homicide.

A young woman told her boyfriend that she thought this man she sometimes worked for might have some money. The young woman did not consider that the victim could be hurt or killed in the process. Her friend was not armed. She may have knocked on the door and the victim opened it because he knew her. She did not go inside, did not see what happened, and did not anticipate that the victim would be killed in the course of the robbery. She was convicted of first degree murder and given a life sentence.

Another teen thought that he and his friend would steal a victim's timberland boots. He did not foresee that his friend was armed and would shoot the victim. They were both given life sentences for first degree murder.

The doctrine of felony murder is premised on the idea that certain conduct is so inherently dangerous and potentially violent, that by participating in the activity, one assumes the risk of the potential deadly consequences. In recent years, we have come to better understand the brain science of young people. We now know that young people have less ability to foresee and appreciate risk and the future consequences of their conduct, that they have less impulse control, and are more impressionable and subject to the influence of their peers and their environment. These deficits in risk appreciation and long-term thinking and vulnerability to the influence of others are a normal part of development and not the marks of an irretrievably depraved character. We also know that the process of brain maturation continues into a person's mid-20's, and that young people have less culpability than their adult counterparts because of their brains' inability to fully envision the risks and consequences of their actions.

We also know that genuine change is possible as the brain matures. This is precisely why the felony murder rule is utterly ineffective in its deterrent value on young people and overly harsh in its application. Typically, young minds often do not grasp the potential consequences of their conduct because their brains are still developing. Imposing life sentences on children and emerging adults in these circumstances fails to deter others and fails to punish a defendant appropriately.

For these reasons, I urge a favorable report.

In Support of SB 850 CCJR.pdf

Uploaded by: Heather Warnken

Position: FAV



TESTIMONY IN SUPPORT OF SENATE BILL 850

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

FROM: **Heather Warnken, Executive Director, Center for Criminal Justice Reform, University of Baltimore School of Law**

DATE: March 13, 2023

My name is Heather Warnken, and I am the Executive Director of the Center for Criminal Justice Reform at the University of Baltimore School of Law. 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, we are in strong support of SB 850.

Under current law, a person charged with felony murder does not need to intend to hurt anyone, let alone cause a death. However, that person can receive a first degree murder conviction based on the actions of another. This has caused disproportionately long sentences for people who did not commit murder, and who in some cases had, at best, a very peripheral involvement in the crime that resulted in a death.

Fundamental to our efforts to advance public safety, our center does extensive work studying evidence-based responses to crime and violence, and in translating this information for the advancement of policy and practice. The felony murder rule is not effective in reducing violence, achieving deterrence, or advancing accountability for perpetrators of harm when violence does occur.

To prove first degree, premeditated murder, the prosecutor must demonstrate that the defendant possessed the intent to kill and was conscious of 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 to 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 causing the death or even knew that anyone had died after the commission of the felony.

The prosecution of felony murder has not been shown to be a deterrent to violent crime. Though the literature on deterrence is clear that lengthy prison sentences are not effective for this purpose, perhaps even more relevant for this bill is the research specifically demonstrating that individuals are not deterred by punishment they were not aware of. Knowledge of the existence of this antiquated rule is extremely limited, and even for individuals who may be aware, it does not serve to deter behavior that the defendant had no plan or intent of engaging in, or could not expect to occur.



The use of the felony murder doctrine disproportionately impacts youth and women. Research in California (a state which significantly repealed its felony murder statute in 2018), demonstrates that the average age of an individual charged and sentenced under the felony murder rule as an accomplice is 20 years old. An extensive literature demonstrates that the adolescent brain is still developing: the mature ability to make sound decisions and understand the consequences of actions is not achieved until the age of 25.

Further, according to a 2018 survey by the Anti-Recidivism Coalition and Restore Justice, 72% of women incarcerated in California with a life sentence did not commit the homicide they are serving time for.¹ The felony murder statute disregards the dynamics surrounding intimate partner violence which only further underscores the inappropriate use of outsized punishments not aligned with actual actions and intent. The same California survey found that the majority of women convicted of murder under the felony murder statute were domestic violence victims. In these cases, lack of intent to commit murder amounts to extreme criminalization of survival acts.²

The existing felony murder law is a draconian practice which serves to de-legitimize the criminal justice system. This is a system already suffering from a crisis of legitimacy in the eyes of many Marylanders. It is a system purporting to be about fairness where the punishment should fit the crime, yet where well-documented race and socioeconomic disparities already play an outsized role in determining outcomes at nearly every step.

Another problematic aspect of the felony murder statute is the way its existence can impact plea negotiations. The felony murder statute can impact the deal offered to a defendant by the prosecutors; the threat of significantly more time in prison weighing heavily on the decision to accept a plea or bring the charges to trial. Given that upwards of 95 percent 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 consider factors that can impact the balance of power and just outcomes in plea negotiations.³

These are the reasons that the felony murder doctrine has been left in the dustbin of history of every other developed nation on earth besides the United States. This doctrine has been abolished in all other common law countries including Ireland, Scotland, England, India, and Canada. A growing number of states have also effectively ended their felony murder rule, including Ohio, Hawaii, Kentucky, Michigan, and Massachusetts. Other states including Arkansas, New York, New Jersey, Connecticut, Delaware, Maine, North Dakota, Oregon, Washington and California have limited its broad application. States that have enacted meaningful reform include a politically diverse mix of jurisdictions.

Maryland can take an important step forward in enacting this modest but much-needed reform. We urge a favorable report.

¹ <https://jjje.org/2018/08/08/accomplices-to-a-felony-shouldnt-be-sentenced-like-the-murderer-in-california/>.

² *Id.*

³ <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>

JPC SB 850 Testimony.pdf

Uploaded by: Jill Carter

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony of Senator Jill P. Carter

**In Favor of SB850 Criminal Law – Youth
(Youth Accountability and Safety Act)**

Before the Judicial Proceedings Committee

on March 14, 2023

**Chair Smith, Vice-Chair Waldstreicher, and Members of the
Committee:**

- **Senate Bill 850 will prohibit a person younger than the age of twenty-five (25) at the time of the offense from being convicted of murder in the first degree under the State’s felony murder provisions.**
- **Under Maryland law, a murder is considered to be in the first degree if it is committed during the perpetration or attempted perpetration of specified crimes, even if the person did not actually commit the killing.**
- **The doctrine of felony murder is premised on the idea that certain conduct is so inherently dangerous and violent, that by participating in the activity, the person assumes the risk of the potential deadly consequences.**

- **Many of us (men and women) participated in risky behavior as youths, but had no clear understanding of the inherent risks involved at the time. Just think about some of the conduct we engaged in and/or witnessed in college and elsewhere.**
- **That is because, as was recently scientifically discovered, young people have a lesser ability to foresee and appreciate risk and the future consequences of their conduct, they have less impulse control, and they are more impressionable and subject to peer influence and pressure, than older adults.**
- **Deficits in risk appreciation and long-term thinking and vulnerability to the influence of others, are a normal part of development and not evidence of irreversible depraved character. The process of brain maturation continues into a person's mid-20's. Therefore, young people have less culpability than their adult counterparts because of their brains' inability to fully appreciate, and envision the risks and consequences of their actions.**
- **In addition, genuine change is possible as the brain matures. This is precisely why the felony murder rule is not effective as a deterrent to young people and is too harsh in its application.**
- **As mentioned earlier, young minds often cannot (and do not) grasp the potential consequences of their conduct because their brains are still developing. Accordingly, imposing life sentences on children and emerging young adults fails to deter them and their peers from engaging in risky behavior and fails to adequately punish a young defendant because a life sentence under the circumstances is too harsh.**

- **While this bill does not have a retroactive component, a prospective repeal of felony murder for juveniles and emerging adults will prevent the injustice of individuals serving many decades in prison for murders they did not actually commit. This will not sacrifice public safety, nor will it prevent the state from holding these individuals accountable for the felonies they participated in.**
- **In sum, SB 850 will move Maryland closer to proportionality in sentencing.**

For these reasons, I urge a favorable report of SB850.

Sincerely,

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

Jill P. Carter, Esq.

WDC Testimony_ SB850_Final.pdf

Uploaded by: JoAnne Koravos

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**Senate Bill 850 – Criminal Law -- Youth (Youth Accountability and Safety Act)
Judicial Proceedings Committee – March 14, 2023
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club** (WDC) for the 2023 legislative session. WDC is one of Maryland's largest and most active Democratic clubs with hundreds of politically active members, including many elected officials.

WDC urges the passage of SB0850. First-degree murder, as conventionally understood, is the deliberate, premeditated, and willful killing of an individual. Because it is the worst type of homicide, it carries a mandatory life sentence in Maryland. Barn-burning, carjacking, and prison escape are not deliberate, premeditated, willful killing, and neither are the nine other enumerated felonies in Maryland's felony murder statute. Each of these felonies carry their own weighty consequences. Perpetration, or attempted perpetration, of these felonies is not murder—so, why do we insist on punishing them as such if a homicide happens?

Though the felony murder doctrine inherently raises constitutional questions, its application to youthful offenders is even more tenuous. The doctrine allows the state to charge, convict, and sentence children and young adults to life imprisonment for murders they did not actually commit, just as it does with adults, – on the theory that they should have foreseen that a death could occur. It does not matter whether the act was an accident (a lesser intent crime) or they had nothing to do with the killing. Relying on the Eighth Amendment's prohibition of cruel and unusual punishment, in *Graham v. Florida*, the Supreme Court pointed out that, "...compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability."¹ Twice-diminished because the culpability that the law imputes to an adult is even more

¹ *Graham v. Florida*, 560 U.S. 48, 69 (2010)(holding that children could not be sentenced to life without parole for non-homicides). See also Linda M. B. Uttal & David H. Uttal, *Children Are Not Little Adults: Developmental Differences and the Juvenile Justice System*, LOYOLA PUBLIC INTEREST LAW REPORTER NO. 3, Summer 2010 (urging that children are not, and cannot be treated as, "little adults").

attenuated when we consider the lesser ability of a youthful offender to anticipate what could potentially happen in the course of their lesser crime.²

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.”³ England abolished felony murder in 1957, and the doctrine never existed in France or Germany.⁴

Sentences for the underlying felonies relied upon for attributing felony murder are harsh enough. All of those involved in that underlying felony should not be swept into the extreme level of culpability that our first-degree murder statute imposes. The current law absolves prosecutors of the need to prove causation or any level of intent for murder – you helped set the barn on fire, so you are guilty of premeditated murder, even if neither you or any of your co-felons considered that someone might be inside, or if your associate chose to shoot and kill someone as they exited the barn.

Removing felony murder for offenders under the age of 25 is an important step towards rationalizing the felony murder provisions of our first-degree murder statute. This group of young people includes *emerging adults*, the 18-24 year olds who are still in the developmental stages of cognition and thus, similar to children under 18, do not have the capacity to contemplate the possible dangers of felonious activities that those who are older might.⁵

Research on adolescent brain development has found that the brain continues to mature until at least the mid-20s. The characteristics attributed to those under the age of 18 are seen in emerging adults as well: heightened impulsivity, greater sensitivity to peer and social influences, greater risk-taking, and immature decision-making characterized by

² The Supreme Court has considered the cognition and culpability of youthful offenders in a number of fairly recent cases. See e.g. *Roper v. Simmons*, 543 U.S. 551 (2005)(children cannot be executed for crimes); *Miller v. Alabama*, 567 U.S. 460 (2012)(the circumstances must be considered before imposing a sentence of life without parole on children); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011)(concluding that children cannot be viewed as miniature adults for purposes of determining the effect of a *Miranda* warning).

³ Jeffries & Stephan, *Defenses, Presumptions, and Burden of Proof in the Criminal Law*, 88 YALE LJ. 1325, 1383 (1979).

⁴ Fletcher, *Reflections on Felony-Murder*, 12 SW. U.L. REV. 413, 415 (1981).

⁵ See, Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland, Justice Policy Institute (November 2019) (referring to the evolving thread of research that has drawn focus to similarities among youth who are under 18 and those between the ages of 18 and 24 years old, commonly referred to as emerging adults), <https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/>

short-term thinking. Trauma experienced in these early stages of development can be particularly damaging.⁶

Allowing for resentencing of those who were children or emerging adults at the time of their felony murder convictions would be a logical extension of this important legislation, a provision that we would wholeheartedly support.

In sum, while we wish that we could join much of the rest of the world in completely eliminating felony murder and applying the repeal retroactively, we are grateful for the critical step that this legislation takes in excluding children and emerging adults from the reach of this flawed provision in our law.

We ask for your support for SB0850 and strongly urge a favorable Committee report.

Diana E. Conway
WDC President

Margaret Martin Barry
WDC Advocacy Committee

⁶ *Id* at 5.

SB 850 Support Youth Accountability and Safety.pdf

Uploaded by: John Giannetti

Position: FAV

Maryland Criminal Defense Attorneys' Association



MD Senate – Judicial Proceedings Committee

March 14, 2023 1pm

Hearing on SB 850

Youth Accountability and Safety Act

MCDAA POSITION: SUPPORT

Brief bill explanation: The bill would prohibit an individual under the age of 25 from being convicted of first-degree murder committed in the perpetration of or an attempt to perpetrate various felonies including carjacking, arson, burglary, rape, and various sex offenses. The current penalty for first-degree murder, including felony murder as described in the bill, is imprisonment for life or life without the possibility of parole.

MCDAA's Position: MCDAA supports this legislation and generally believes the "felony murder" concept is not in step with current trends in criminal justice. The general issue is that young defendants who are merely involved with a crime, and not the principal, are incarcerated for long periods of time, often without the chance of parole. The felony murder concept is a holdover from the common law in England, and allows prosecution for 1st degree murder of a non-principal criminal defendant that was merely involved with a crime, or its attempt. The concept is based on the belief that criminal responsibility should attach upon the occurrence of foreseeable results of serious crimes. Numerous respected studies have concluded that the youthful brain has not yet developed the necessary faculties to "foresee" the possible outcomes of a criminal activity, and, therefore, a youthful non-principal offender should NOT be held responsible for the death that occurred. Assuming the youthful non-principal was truly involved with the commission of a crime, the State's Attorney can charge the youthful defendant with numerous OTHER crimes (besides 1st degree murder) with potentially long jail sentences, and the youthful non-principal will still be held responsible for their own criminal actions by the trier of fact, either the judge or the jury.

For additional information or questions regarding this legislation, please contact MCDAA lobbyist John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com Copyright 2023 MCDAA. All rights reserved.

felony murder testimony.senate JPR.pdf

Uploaded by: Judith Lichtenberg

Position: FAV

SB850: Youth Accountability and Safety Act
Testimony to the Maryland Senate Judicial Proceedings Committee
Favorable

My name is Judith Lichtenberg. I'm professor emerita of philosophy at Georgetown, and I'm on the executive committee of the [Maryland Alliance for Justice Reform](#) (MAJR), where I co-chair the Behind the Walls Workgroup. I have been teaching college courses, tutoring, and mentoring incarcerated people at Jessup Correctional Institution (JCI) since 2016, and at the DC Jail starting a year or two later. Through this work I've gotten to know a significant number of people who are serving life sentences (or more) for felony murder.

Felony murder rules were adopted in England in medieval times but have since been outlawed there and elsewhere, including in several U.S. states. We think of murder as intentional killing, but felony murder obliterates the distinction between intentional and unintentional killing, and between killing and *not* killing. It applies disproportionately to juveniles and emerging adults (those under 25), who may participate in crimes without being causal agents in deaths that ensue. They neither *intended* to kill anyone nor *did* kill anyone. Sentencing them as if they intentionally killed someone violates the fundamental principle of our criminal justice system that punishments must be proportional to crimes and that intentional killing is a more serious crime than unintentional killing—let alone not killing at all but only participating in a crime that resulted in a death.

Maryland courts don't keep track of how often this rule is used. But two other states have ascertained that about 50 percent to 75 percent of emerging adults with life sentences received their convictions as a result of this rule. The felony murder rule also disproportionately affects women and people of color.

Scientists, as well as the U.S. Supreme Court, have recognized that adolescents and emerging adults frequently exercise poor judgment, especially when under the influence of peer pressure or substance abuse. But they often mature over the years and become responsible citizens—as my experience teaching at JCI and the DC Jail attests. And our modern understanding suggests these young people are less culpable and likely to be rehabilitated with much less than a life sentence.

Some will argue that the felony murder rule is a deterrent and should be retained for that reason. However, one survey found that less than 1 percent of those charged with felony murder knew of the rule before their arrest. Another study has found no difference in the crime rates of states with and without the felony murder rule.

SB850 is called “the Youth Accountability and Safety Act” because it would still hold young adults responsible for the crimes they actually commit themselves—but *not* for a killing that they didn't commit, plan, or expect.

For more information, I highly recommend [“Felony Murder: An On-Ramp for Extreme Sentencing,”](#) a report from the Sentencing Project, and [“Task Force on Aiding and Abetting Felony Murder: A Report to the Minnesota Legislature,”](#) both published in 2022.

I urge you to give a favorable report to SB850.

Judith Lichtenberg
7109 Eversfield Drive
Hyattsville, MD 20782
District 22
301.814.7120
jalichtenberg@gmail.com

CJJ Testimony in support of SB 850.pdf

Uploaded by: Leslie Frey

Position: FAV



Montgomery County Commission on Juvenile Justice

Marc Elrich
County Executive

Raymond L. Crowel, Psy. D.
Director

Written Testimony in Support of SB0850

March 14, 2023

Senator Will Smith
Chair, Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Dear Senator Smith:

Thank you for the opportunity to submit written testimony on behalf of the Montgomery County Commission on Juvenile Justice (MC CJJ) in support of Senate Bill 850.

MC CJJ was established to advise the Montgomery County Executive, County Council and the Juvenile Court, on matters concerning juvenile justice. Our work includes gathering and disseminating information from public and private agencies serving youth, monitoring juvenile justice programs and services, visiting facilities, closely following relevant State and local legislation, and making recommendations regarding juvenile needs. MC CJJ is composed of appointed, volunteer citizen members, and agency members that include the Child Welfare Services Program, the Montgomery County State's Attorney's Office, the Office of the

Behavioral Health and Crisis Services • Child and Adolescent Behavioral Health Services

8818 Georgia Avenue, 1st Floor, Suite 501 • Silver Spring, Maryland 20910 • 240-777-1450 • 240-777-1367 FAX
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www.montgomerycountymd.gov

Public Defender, the Montgomery County Police Department, Montgomery County Public Schools, and the Maryland Department of Juvenile Services.

Senate Bill 850 takes a vital step forward in limiting the scope of what is known as the “Felony Murder Doctrine” in our state. Under this doctrine, individuals can be charged with first-degree murder if, during the commission of a separate felony, an individual is killed. For example, three nineteen-year-olds rob a convenience store for lottery tickets. A gun accidentally goes off during the robbery, killing the shop owner. Each of the nineteen-year-olds can be charged with first-degree murder and sentenced to life in prison despite the fact that only one of them may be responsible for the death. SB 850 would no longer allow individuals under the age of 25 to be charged with a crime that they did not commit under the felony murder doctrine.

Felony murder is a failure on multiple levels and is universally decried by academics as ineffective and unjust.¹ The doctrine is archaic and rooted in English common law dating back to the 1600s.² Little has changed since its inception. The practical effects of felony murder are palpable as it over-criminalizes conduct by attributing the actions of one person to a group of people at large. Sadly, and unsurprisingly, communities of color are disproportionately affected by its invocation.³

¹ See James J. Tomkovicz, *The Endurance of the Felony-Murder Rule: A Study of the Forces that Shape Our Criminal Law*, 51 WASH. & LEE L. REV. 1429, 1431 n.9 (1994).
<https://scholarlycommons.law.wlu.edu/wlulr/vol51/iss4/8>

² Nelson E. Roth and Scott E. Sundby, *Felony-Murder Rule a Doctrine at Constitutional Crossroads*, 70 CORNELL L. REV. 1984 (1984), [HTTPS://SCHOLARSHIP.LAW.CORNELL.EDU/CLR/VOL70/ISS3/3/](https://scholarship.law.cornell.edu/CLR/vol70/iss3/3/)

³See, for example, the data on Cook County in Kat Albrecht, *Data Transparency & the Disparate Impact of the Felony Murder Rule*, DUKE CENTER FOR FIREARMS LAW, <https://firearmslaw.duke.edu/2020/08/data-transparency-the-disparate-impact-of-the-felony-murder-rule/> (Aug. 11, 2020). See also the discussion in *Felony Murder, An On-Ramp for Extreme Sentencing*, The Sentencing Project, p. 5 (March 31, 2022), <https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/>



A doctrine that artificially imputes intent to kill and foreseeability to all the participants in a felony is particularly inappropriate as applied to youth and emerging adults because of what we know from science about their brain development. The Supreme Court has also taken note that young people act impulsively and cannot easily foresee the consequences of their actions.

As the Daily Record's Editorial Board stated in 2022, it is time to reign in felony murder in Maryland.⁴ The doctrine violates modern standards of due process and specific intent, which underpin the American criminal justice system. Our criminal justice system is founded on the idea that people should only be convicted of crimes that they *actually* commit. For generations, we have allowed felony murder to create a caveat to that principle. We must not allow that caveat to continue harming our citizens. We urge this committee to support SB 850, and to strengthen our state's commitment to equal justice in doing so.

Sincerely,



Kevin Redden, Chair
Montgomery County Commission on Juvenile Justice

⁴ Editorial Advisory Board, *Its Time to Abolish Felony Murder in Maryland*, THE DAILY RECORD, <https://thedailyrecord.com/2022/06/30/editorial-advisory-board-its-time-to-abolish-felony-murder-in-md/> (June 30, 2022).



SB850 Felony Murder testimony - LMeadows.pdf

Uploaded by: Lila Meadows

Position: FAV

IN SUPPORT OF SENATE BILL 850

Senate Judicial Proceedings Committee

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

Date: March 14, 2023

Senate Bill 850 will substantially reform felony murder as it is applied to juveniles and emerging adults 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. While the shift in case law does not encompass emerging adults, the science tells us that 18 year olds are much more similar to juveniles than older adults in terms of their neurocognitive development. Treating individuals who are 18, 19, and in their early 20s like full adults is simply legal fiction, and one we should not tolerate when the penalty is among the most severe in our criminal law.

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 legal 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.

Eraina Pretty, who was 18 years old at the time her boyfriend pressured her to join him and his friend in robbing a convenience store, served 42 years in prison for a conviction for felony murder. Though there was a history of serious domestic violence in the relationship, Ms. Pretty's trial attorney did not ask her about it and did not present any mitigating arguments at her sentencing hearing after she plead guilty, afraid at the time she would receive life without the possibility of parole. Ms. Pretty was released in 2021 after contracting COVID on a successful motion to re-open post-conviction with the support of the Baltimore City State's Attorney's Office's Sentencing Review Unit.

In many ways the clients I describe above were lucky. Juveniles who were convicted before October 1, 2021 will have an opportunity to have their sentences reviewed after serving 20 years thanks to the Juvenile Restoration Act that was passed in 2021. But that law was made retroactive only, and children convicted of felony murder today will not have the benefit of future sentence review. While Ms. Pretty had a viable post-conviction issue that had never been litigated, relief in her case was largely the result of a Sentencing Review Unit that was willing to take a look at her case on the merits. 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.

While this bill does not have a retroactive component, a prospective repeal of felony murder for juveniles and emerging adults will prevent the injustice of individuals serving many decades in prison for murders they did not actually commit. This will not sacrifice public safety, nor will it prevent the state from holding these individuals accountable for the felonies they participated in. Senate Bill 850 moves Maryland closer to proportionality in sentencing and for those reasons, I urge a favorable report.

HB 1180 SB 850 Written Testimony.pdf

Uploaded by: Lindsay Hemminger

Position: FAV

IN SUPPORT OF HOUSE BILL 1180

To: House of Delegates Judiciary Committee

From: Lindsay Hemminger, University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, Maryland 21201

Date: February 28, 2023

Re: House Bill 1180 (SB 652)

Position: SUPPORT

House Bill 1180 (SB 652) will prevent prosecutors from using a theory of felony murder to circumvent their burden of proving the elements of murder and ensure that those under the age of 25 are held criminally responsible for crimes they *actually* committed. This bill is NOT intended to remove criminal culpability for juveniles and young adults who actively assist in a murder, attempt to commit a murder, or intend or plan a murder. This bill simply limits the State to charging individuals with crimes for which it has sufficient evidence to support a conviction in a court of law.

Under the felony murder doctrine, the State need only prove that an individual was engaged in a felony, in many cases a robbery, when a murder occurs. Unlike traditional first and second degree murder cases, the State does not have to prove that the individual had any intent to commit a murder. The State doesn't even have to prove that the individual caused the victim's death. It is sufficient for the State to show only that a felony was underway when someone else committed the murder.

In Maryland, felony murder is treated identically to premeditated first degree murder for purposes of sentencing, and a felony murder conviction carries a mandatory life sentence. Meanwhile, second-degree murder, which is an intentional murder with premeditation, carries a maximum sentence of 40 years. Therefore, someone who actually commits a murder could be sentenced to less time in prison than someone who was only present for a murder while committing some other felony.

The theory behind this doctrine 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. That theory is irrational and unsupported by science when it comes to juveniles and those under the age of 25. Young people who commit felonies typically aren't engaging in the type of rational thought that lends itself to foreseeability. The United States Supreme Court has recognized that juvenile brain development lags behind that of an adult. Young people are less able to measure risk and foresee the consequences of their actions. As a result, the Court struck down extreme sentencing practices for youth. Recognizing those limitations, it's difficult to justify applying a rule that is based on foreseeability to young people, especially where the penalty is a life sentence that may in fact be unconstitutional under the Eighth Amendment. It is important to note that juveniles who are convicted of felony murder will not be eligible to have their sentences reviewed under the Juvenile Restoration Act because that act applied retroactively only.

The University of Maryland's Gender Violence Clinic has assisted numerous clients serving life sentences for felony murder convictions they received before the age of 25. One of those clients, Eraina Pretty, was 18 years old when her abusive and controlling boyfriend, Robert Brown,

ordered her to participate in a store robbery. Ms. Pretty had recently worked at the store, so Brown believed the owner would unlock the door for Ms. Pretty, allowing him to rob it. During that robbery, Brown fatally shot the owner. Ms. Pretty was arrested and charged with first degree murder using the felony murder doctrine. Even though there was no evidence that Ms. Pretty killed the victim, had any intention to kill the victim, or even knew that Brown would kill someone during the robbery, Ms. Pretty could be treated exactly the same as Robert Brown under the law. Facing the death penalty, Ms. Pretty's attorney advised her to plead guilty to first-degree murder, and she was sentenced to life with the possibility of parole. She spent 42 years in prison for a murder she did not foresee, did not intend, and did not commit.

In another one of our cases, the State admitted at trial that our 19 year-old client had no knowledge that a murder would occur. Her crime was sitting in a car when her co-defendant, a gang member whom she barely knew, suddenly stabbed the driver of the vehicle who was giving them a ride home. As long as the jury could find our client guilty of an underlying felony, she could be convicted of felony murder. That is exactly what happened. At 19 years old, my client was sentenced to life in prison for a murder she did not foresee, did not intend, and did not commit.

The Clinic spends a lot of time in Maryland prisons with many clients convicted of felony murder. Our clients accept responsibility for the role that they played in the crime, and they express deep remorse for the loss of life that occurred. They also struggle to understand how they have been sentenced to decades or to life in prison for a murder they did not plan, did not intend, and did not actually commit. It is difficult to know the exact number of people serving life sentences for felony murder in Maryland because it is not always tracked separately from first or second degree murder. However, it is safe to say that there are hundreds of men and women sitting in our prisons today serving life sentences that do not reflect their actual culpability. The felony murder doctrine is an affront to the foundational 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 and young adults with felony murder.

SUPPORT SB 850- %22Youth Accountability and Safety

Uploaded by: Philip Caroom

Position: FAV

SUPPORT SB 850 - Youth Accountability and Safety Act

MARYLAND ALLIANCE FOR JUSTICE REFORM
Working to end unnecessary incarceration and build strong, safe communities



To: Chair Luke Clippinger & House Judiciary Committee
From: Phil Caroom, MAJR Executive Committee
Date: March 14, 2023

Can a teenager, who foolishly goes along with a crowd when a crime is committed, be found guilty of 1st degree murder when another person commits a killing accidentally or without planning? Under Maryland's current "felony murder" rule, the answer is "yes"--and the presumed penalty would be a life sentence.

1. Impact of felony murder of Maryland's mass incarceration: Maryland courts don't keep track of how often this rule is used; two other states have estimated it may involve 25% of their murder convictions. But, those [studies](#) suggest a disproportionate impact on "emerging adults"--teenagers and those under age 25--of approximately 50% to 75% may receive life sentences under the rule for killings they did not commit.

2. Inconsistency of felony murder with modern scientific studies of neurological development: Scientists, as well as the U.S. Supreme Court, have recognized that adolescents and emerging adults (under age 25) often exercise poor judgment, especially with peer pressure or substance abuse. But, in a matter of years, they can mature and become responsible citizens. [Modern scientific studies](#) document that these young people are less culpable and could be rehabilitated with much less than a life sentence.

3. The Maryland Judiciary's Legislative Committee has submitted a very short but erroneous memorandum opposing SB 850 because it is "inconsistent" with the allegedly uniform use of age 18 for adulthood elsewhere in Maryland law. This assertion contains no legal analysis and is incorrect. In fact, both the U.S. Constitution and the Maryland Constitution require adults to be over age 18 for various purposes-- for example, a U.S. Senator must be at least 30 years old and a State Senator must be at least 25 years old. Both federal and state statutes permit children to remain as their parents' dependents for health insurance and other purposes until age 25. Children in Md. foster care can continue to receive benefits until age 25. Statutory rape offenses vary according to the age of the defendant at ages 18, 19, and 20 for the identical acts. And the Maryland Sentencing Guidelines change the "offender score" based on juvenile record or lack of it for defendants until age 23. It clearly is incorrect to say state law consistently treats everyone the same at age 18 -- and there are both rational bases and good public policy reasons. If SB 850 were adopted and challenged, Maryland courts then would perform a substantive legal analysis (unlike the Legislative Committee) and clearly would uphold the statute.

3. Abandonment of felony murder in other nations and states: The felony murder rule was adopted in England during medieval times, but has been abandoned there, as well as in the rest of the United Kingdom, Canada, Ireland -- and a number of other U.S. states (including Kentucky, Ohio, Michigan, California and others).

4. Does the felony-murder rule provide a deterrent? In short, the answer is "no." One survey found that less than 1% charged with felony-murder knew of the rule before their arrest. Another study has found no difference in the crime rates of states with and without the felony murder rule.

5. What SB 850 does NOT do: Importantly, the Youth Accountability and Safety act would
-NOT cause the release of anyone previously convicted under felony murder's "guilt by association" system;
-NOT prevent the charging and convictions of juveniles or emerging adults with 1st degree murder if prosecutors can prove they participated in a "deliberate, premeditated and willful" killing-- or conspired or solicited such a killing.
-NOT prevent the charging and convictions of juveniles or emerging adults with 2nd degree murder or manslaughter in appropriate cases.

6. Prosecutors continued availability of harsh sentencing for extreme cases: Moreover, the State still would have no shortage of options to seek harsh sentences, even with passage of HB 1180. Here are some examples: a) If the State proves an emerging adult participated in a robbery that included premeditated (as opposed to an unplanned) killing, a 1st degree conviction and life sentence still could result.

b) Even if premeditation could not be proved, if the State proved knowing participation in a robbery with a handgun, a sentence of 20 years (robbery), plus 20 years consecutive (handgun), plus an additional 20 years (conspiracy) could result in a 60 year sentence for each victim. Compare Bishop v. State, 218 Md.App. 472 (2014). If there are two victims, the cumulative sentence again could be consecutive for 120 years; if there were three, 180 years is possible. All that is required is that the State must prove its case – rather than relying on the automatic guilt-by-association of the unjust and medieval felony murder rule.

Please give a favorable report to HB 1180 to make the most harsh provisions of Maryland law more just as applied to our emerging adults. -Phil Caroom

Please note: Phil Caroom provides this testimony for MAJR and not for the Md. Judiciary.

SB850.RMK.Favorable.pdf

Uploaded by: Rachel Kamins

Position: FAV



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 850 — Criminal Law — Youth Accountability and Safety Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 03/08/2023

The Maryland Office of the Public Defender asks this Committee to issue a favorable report on Senate Bill 850, which would abolish felony murder, prospectively, for individuals under 25.

Felony murder is guilt by association. Felony murder is strict liability. Felony murder is you going to prison for first degree murder for the rest of your life when you thought you were just there to buy some marijuana but your friend decides to rob the person instead and winds up killing him.

Felony murder is when you and your friends decide to do something illegal like burglarize a home you thought was empty or rob a convenience store, but the homeowner or proprietor winds up killing one of your friends. In addition to robbery or burglary, you are guilty of murder.

Felony murder is when you are deemed responsible for a killing you did not commit, did not plan, assist or encourage, that you never in your wildest dreams contemplated might happen. You are guilty of murder and given the mandatory life sentence simply because you were there committing or attempting to commit a felony. Forget about premeditation and deliberation or even an intent to kill; in felony murder, the prosecution need only prove your involvement in the felony. In this type of first-degree murder, the felony itself substitutes for malice, the mental state that must be proved for the premeditated variety of first-degree murder.

In Maryland, children and young adults – the population most vulnerable to peer pressure and least likely to contemplate the risks and consequences of their action, are routinely charged with and convicted of first-degree murder for killings they did not commit, intend, or foresee. As Senate Bill 850 recognizes, the felony murder doctrine, which rests on the premise that a killing that

occurs during the commission of a felony is foreseeable to all those participating in the felony, is unfair and illogical as applied to individuals who the Supreme Court has recognized are neurologically less capable of foreseeing the risks and consequences of their actions than their adult counterparts.

Under Senate Bill 450, moving forward, persons under the age of 25 may no longer be found to have committed the crime of felony murder and sentenced to life imprisonment.

Contrary to what opponents claim, eliminating felony murder as a charging option for persons under 25 does not divest prosecutors of their ability to secure convictions for murders perpetrated in the commission of a felony. Prosecutors still can charge, as applicable:

- premeditated first degree murder as an accomplice (carries a mandatory life sentence)
- second degree murder (carries up to 40 years)
- conspiracy to commit murder (carries up to a life sentence)
- the underlying felony, e.g., robbery (carries up to 20 years)
- weapons offenses (e.g., using a handgun in the commission of a felony carries up to 20 years, the first five to be served without parole)

Prospectively abolishing felony murder for juveniles and the “emerging adult” cohort aligns with the national trend to treat young people differently because the penological considerations are different. Many states require the government to prove intent rather than simply inferring malice from the underlying felony; other states have downgraded felony murder to a less serious offense; and other states have abolished felony murder retroactively and prospectively.

Maryland’s felony murder law, as applied to individuals under 25, exacts a grave injustice that demands reform. Senate Bill 850 is that reform: As its title suggests, the bill holds youth accountable for the crimes they commit without compromising the safety of our communities.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 850.

Submitted by: Maryland Office of the Public Defender, Government Relations Division

**Authored by: Rachel Marblestone Kamins, Assistant Public Defender, Appellate Division,
rachel.kamins@maryland.gov**

shalita felony.pdf

Uploaded by: Shalita Taylor

Position: FAV

Hi my name is Shalita Taylor I'm submitting this testimony on the behalf of my loved one and other parties affected by this particular bill. The nature of this charge that you 'll call felony murder, is disrupting to the justice system, let alone to any individual under 25 . I was 25 once and there were things that I wasn't full aware of at this age. I did not understand the consequences behind noticing something was wrong until it was revealed, with boyfriends or other manipulative situations .I say this because felony murder gives a young person life even if they're not the actual killer. I say this because the felony murder is identically treated as premeditated and has the same sentencing guidelines as first degree murder. unfair. In which first degree is premeditated murder from the actual shooter, which causes the suspect (charged with felony murder) who could be unaware, to be punish identical to the same mental state of another person that is guilty of first degree murder, which is held by premeditation, totally unfair. Now the actions of the young person who is given a life sentence, identical to first degree, is premediating something right, which felony murder can stem from influence by the conflictions of this world or the action of that same young person being in a bad place with others and not being aware, totally unfair. No one should be punish or labeled as killer if they're not a killer and anyone under 25 having their whole life taking away for unawareness, incognizant ,influenced, or just clearly being in the wrong place and not knowing the other individual mindset, totally unfair . Let alone given the same sentence as one who, aware, unsensible, and completely wrong and a flat-out killer. totally unfair. I support this bill thank you for your time

Steven Gravatt - SB0850 Testimony in Favor 3.13.23

Uploaded by: Steven Gravatt

Position: FAV

RE: Testimony in Favor of SB0850: Criminal Law - Youth Accountability and Safety Act

DATE: March 13, 2023

AUTHOR: Steven T. Gravatt, 1430 Mill Race Rd, Baltimore, MD 21211, steven.gravatt@gmail.com, (201) 850-7188

I witnessed firsthand the injustice of the felony murder rule when I served as an alternate juror on a criminal trial in the Baltimore City Circuit Court in early 2020. I am submitting this testimony to share a juror's perspective on the felony murder rule. Jurors in felony murder trials are asked by the State of Maryland to render a first-degree murder verdict against people who have not killed anyone. From underneath this heavy burden the injustice of the felony murder rule is glaringly apparent.

The defendant in my case was charged with Armed Robbery and (felony) Murder in the First Degree, along with many lesser charges. He had participated in a premeditated robbery during which the victim was stabbed to death, most likely by one of the defendant's accomplices. I sat for the entire three-day trial but, as an alternate juror, did not participate in rendering a verdict. I was very glad to be relieved of this troubling responsibility. I was deeply torn between competing duties. On the one hand I wanted to do the right thing, and convicting a non-murderer of murder just didn't seem right. On the other hand I wanted to do my civic duty and apply the laws of the state as best I understood them. Since I had no reasonable doubt that the defendant had participated in a premeditated robbery or that the robbery had resulted in a death, that meant finding him guilty of First-Degree Murder.

It turns out my fellow jurors shared my unease with the felony murder rule. After the trial I visited the Maryland Judiciary Case Search website and learned that the jury had found the defendant guilty of Armed Robbery but innocent of Murder in the First Degree. There are two ways to explain this verdict. The first is that the jury simply did not understand the felony murder rule. It is not hard to understand why jurors would have trouble grasping that the state expects them to convict a person who has not killed anyone of murder. The other possible explanation is that the jurors willfully chose to disregard the felony murder rule. In Maryland juries are permitted to find a defendant innocent

whom they believe guilty because the jury disagrees with the law or the penalty imposed for breaking it.

To summarize, the jurors found the defendant not guilty either because the felony murder rule is illogical and counterintuitive or because it is draconian and unjust. The State of Maryland should not be asking its citizen jurors to levy verdicts that are so counterintuitive they are difficult to grasp, or so contrary to jurors' values that the jurors must exercise their right to disregard the law.

More importantly, the State of Maryland should not punish non-murderers with murder-length sentences. The twelve jurors who rendered the verdict in my case saw this, as did at least one of the alternates. As long as the felony murder rule remains on the books, justice demands that we reduce the charges associated with it. By removing the First Degree Murder charge for Marylanders under twenty-five years of age accused of felony murder, we will reduce the burden on jurors to condemn young people who have not murdered anyone to a lifetime in prison.

Felony Murder Testimony.pdf

Uploaded by: Cierra Powell

Position: FWA

To the members of the House and Senate in Maryland:

I want to start off by thanking you for your time for reading my statement regarding the abolishment of Felony Murder. According to justia.com the definition of felony murder is “[It] is a rule that allows a defendant to be charged with first-degree murder for a killing that occurs during a dangerous felony, even if the defendant is not the killer. The felony murder rule applies only to those crimes that are considered “inherently dangerous,” as the rationale underlying the felony murder rule is that certain crimes are so dangerous that society wants to deter individuals from engaging in them altogether. Thus, when a person participates in an inherently dangerous crime, he or she may be held responsible for the fatal consequences of that crime, even if someone else caused the actual death.”

Please take a second and think to yourself: Would you want to be blamed and held accountable for the consequences of someone else’s wrongdoings? Any person would say no or either say that they would take accountability for their own actions, but either way no one wants to be held responsible for something that they did not do. The way I see it, it’s an escape mechanism so no through investigation can be conducted. I thought we were all innocent until proven guilty. Felony murder is a contradiction to everyone’s free will. Abolishing felony murder will not take away the “inherently dangerous” crime of murder, but it will give the opportunity for those that engage in dangerous crimes to be responsible for their wrongdoings, for what they committed that can be proven with the right evidence. Felony murder sentences do not give individuals the opportunity to change and make atonement for their wrongdoings. Isn’t that what the criminal justice system is for? To help those who commit these crimes to change and reform so it doesn’t happen again? Especially those younger generations who are not fully developed. Don’t they deserve a chance to have a fair life? Its like you mess up real bad one time and your entire life is gone. I can see repeat offenders getting the sentence, but for first time offenders they deserve a chance to make it right.

My brother was charged with Felony Murder back in 2019 at the age 24. He was at home when individuals tried to rob him. During the robbing, my brothers’ best friend was killed right in front of him, yet he didn’t pull the trigger and kill him, someone else did. The end result: my brother is now serving a 30-year prison sentence for felony murder. Now the world thinks he is the crazy killer, but all he was trying to do was protect himself, his best friend, and his home. My brother isn’t a violent person. He was just trying to find his way in life like everyone else. Did he make the best decisions all the time? No he didn’t, but to have to carry the murder and serve time for someone that he loved an cared for deeply isn’t fair.

Every action has a reaction and people do need to be held accountable for their wrongdoings. The abolishment of Felony Murder would allow people to be held accountable for what they did if proven by evidence. It would allow individuals to be treated as innocent until proven guilty. The abolishment shouldn’t only be applied to future cases but also cases in the past where the felony murder rule was misused. You never know what someone is capable of after realizing their wrongdoings and wanting to make a change in this world but society would never know because felony murder takes away that chance. If you believe in second chances, then abolishing felony murder would be the first step in making that change.

sb850.pdf

Uploaded by: Matthew Pipkin

Position: UNF

**MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 850
Criminal Law – Youth (Youth Accountability and Safety Act)
DATE: February 15, 2023
(3/14)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 850. This bill would amend Criminal Law Article, § 2-201, concerning first degree murder, to provide that a person who was under the age of 25 years at the time of the offense may not be found to have committed first degree murder if the murder was committed in the perpetration of, or an attempt to perpetrate certain crimes.

The Judiciary opposes this bill because it conflicts with other Maryland statutes which set adulthood at 18 years of age and, in doing so, treats some adults differently than other adults who commit the same offense.

cc. Hon. Jill Carter
Judicial Council
Legislative Committee
Kelley O'Connor

SB 850 Criminal Law - Youth Accountyability and Sa

Uploaded by: Scott Shellenberger

Position: UNF

Bill Number: SB 850
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION TO SENATE BILL 850
CRIMINAL LAW – YOUTH ACCOUNTABILITY AND SAFETY ACT

I write in opposition to Senate Bill 850 that would eliminate felony murder as a theory under which someone under the age of 25 could be convicted.

Let me tell you about just one of the cases this bill would have affected.

On May 21, 2018 Officer Amy Caprio was murdered. All four of the defendants charged in the death of Officer Amy Caprio were juveniles. The four juveniles stole a car and were in the Perry Hall area of Baltimore County breaking into houses. Their method was for three to break into homes and one to man the getaway car. The one who was in the driver's seat was Dawnta Harris when he was confronted by Officer Amy Caprio. Harris purposefully drove over Officer Caprio killing her. Do those Defendant's not deserve to be prosecuted for murder under a felony murder theory? The Circuit Court denied the juveniles who requested a waiver back to Juvenile Court. The driver, Dawnta Harris, who killed Officer Caprio was 16 years old when he committed his crime. He ran over Officer Caprio in cold blood. Officer Caprio confronted Harris when he was behind the wheel. He pretended to open the car door but then gunned the car running over her. He was convicted of Felony Murder and received a Life Sentence. Harris had a juvenile record of stealing cars. While awaiting trial in jail, he was cited for graffiti, pornography, and cussing at guards. His co-defendants were breaking into houses and each were convicted of Felony Murder and received 30 years in prison.

If Senate Bill 850 becomes law it would be more difficult to convict Dawnta Harris of murder. It would be impossible to convict the other 3 of murder as felony murder would not be an option.

Felony murder operates under the theory that when a defendant is committing a felony and someone dies as a result of your felonious conduct you are guilty of 1st Degree Felony Murder. Why should someone who is 21, 22, 23 or 24 years old age not be held responsible for causing a death during the commission of a felony.

I urge an unfavorable report.

OPPOSE SB0850, VOTE UNFAVORABLY.pdf

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Position: UNF

OPPOSE SB0850, VOTE UNFAVORABLY

Senator Carter

Criminal Law - Youth (Youth Accountability and Safety Act), this bill is neither safe or to hold one accountable.

The powers that be want minor children to make their own health decisions.

Some want and support the sexualization of minor children, even law makers.

One can vote at age 18 to decide the direction of our cities, counties, states and country.

One can go to war or be drafted at 18.

One can't drink till they are 21.

BUT you want to protect adults up to the age of 25 from being held accountable when committing one of the most heinous crimes against humanity (killing a fellow human being). If someone commits 1st degree MURDER it is a murder and anyone who commits a 1st degree MURDER should be held equally accountable regardless of age. If you are 18 and can go to WAR or VOTE, you must and should be held accountable for a 1st degree murder.

Is there no common sense left? Has it somehow run out?

PLEASE OPPOSE SB 0850

Anne Arundel Co.

Annapolis City

21401