

**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>.