



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.