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## **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**

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