

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.