

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
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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.