

IN SUPPORT OF SENATE BILL 850

Senate Judicial Proceedings Committee

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Senate Bill 850 will substantially reform felony murder as it is applied to juveniles and emerging adults and prevent children from dying in prison for crimes they have not committed. In Maryland, felony murder is treated identically to premeditated first degree murder for the purposes of sentencing and carries a mandatory life sentence. Because Maryland's parole system is fundamentally broken with respect to those serving life, a life sentence carries a very high probability that a juvenile convicted of felony murder will die in prison.

Under the felony murder doctrine, the state needed only to prove that a juvenile was engaged in a felony, in many cases a robbery, when a murder occurs. Unlike traditional first degree murder cases, the state does not have to prove that the juvenile had any intent to commit a murder. It is sufficient for the State to show only that a felony was underway when someone else committed the murder. The thinking 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. In other words, if you're in for a dime, you're in for a dollar.

I've sat in our prisons with many clients convicted of felony murder who accept responsibility for the role they have played in a crime and express deep remorse for the loss of life that occurred but also struggle to understand how they have been sentenced to life for a murder they did not plan or actually commit. In my experience, when individuals commit felonies, they typically aren't engaging in the type of rational thought that lends itself to foreseeability. The rule is particularly unworkable as applied to juveniles. The Supreme Court recognized in a series of recent cases that juvenile brain development lags behind that of an adult. As a result, children are less able to measure risk and foresee the consequences of their actions. Recognizing those limitations, it's difficult to justify applying a rule that is based on foreseeability to minors where the penalty is a life sentence. While the shift in case law does not encompass emerging adults, the science tells us that 18 year olds are much more similar to juveniles than older adults in terms of their neurocognitive development. Treating individuals who are 18, 19, and in their early 20s like full adults is simply legal fiction, and one we should not tolerate when the penalty is among the most severe in our criminal law.

In the case of one of my clients, the State admitted that my 16 year old client had no knowledge that a murder would occur. His crime was standing behind his co-defendant, a man 5 years his senior, as his co-defendant pulled a gun and announced a hold up of a gas station. The State initially offered my client 10 years in exchange for a guilty plea. The case was my client's first involvement with the criminal legal system. Without a sophisticated understanding of the system or of the felony murder doctrine, my client could not understand the risks of going to trial. At 16 years old, ten years seemed like a lifetime. He was found guilty of felony murder and sentenced to life plus 20 years consecutive. In over 37 years of incarceration, he was recommended for

parole twice and twice denied by the Governor. The client was one of the first to have his case reviewed under the new Sentencing Review Unit in the Baltimore City State's Attorney's Office. After State's Attorney Marilyn Mosby agreed to relief, he was resentenced in December 2020 to time served. He was 16 years old the day he entered prison, 53 years old the day he walked out, and had served almost four times the amount of time prosecutors offered in their plea deal.

Eraina Pretty, who was 18 years old at the time her boyfriend pressured her to join him and his friend in robbing a convenience store, served 42 years in prison for a conviction for felony murder. Though there was a history of serious domestic violence in the relationship, Ms. Pretty's trial attorney did not ask her about it and did not present any mitigating arguments at her sentencing hearing after she plead guilty, afraid at the time she would receive life without the possibility of parole. Ms. Pretty was released in 2021 after contracting COVID on a successful motion to re-open post-conviction with the support of the Baltimore City State's Attorney's Office's Sentencing Review Unit.

In many ways the clients I describe above were lucky. Juveniles who were convicted before October 1, 2021 will have an opportunity to have their sentences reviewed after serving 20 years thanks to the Juvenile Restoration Act that was passed in 2021. But that law was made retroactive only, and children convicted of felony murder today will not have the benefit of future sentence review. While Ms. Pretty had a viable post-conviction issue that had never been litigated, relief in her case was largely the result of a Sentencing Review Unit that was willing to take a look at her case on the merits. Other clients I have represented were convicted in counties that do not have a Sentencing Review Unit and have little if any opportunity to get back into court.

While this bill does not have a retroactive component, a prospective repeal of felony murder for juveniles and emerging adults will prevent the injustice of individuals serving many decades in prison for murders they did not actually commit. This will not sacrifice public safety, nor will it prevent the state from holding these individuals accountable for the felonies they participated in. Senate Bill 850 moves Maryland closer to proportionality in sentencing and for those reasons, I urge a favorable report.