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POSITION ON PROPOSED LEGISLATION

BILL: SB 0850 — Criminal Law — Youth Accountability and Safety Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 03/13/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 0850.

The felony murder rule is a now-codified common-law doctrine that creates a “guilt by association” rule, holding people strictly liable for all deaths during the commission of a qualifying felony.

The concept of felony murder originated in the late 1500s and early 1600s as a way to show implied malice.¹ To count as murder at that time, a homicide had to be committed with “malice,” or in other words, with an intent to kill. *Id.* Today, the way we analyze the *mens rea*—or intent to kill—in the felony murder context is that intending to commit the felony counts as “an independent murderous *mens rea*, should death result, and is just as blameworthy and just as worthy of punishment as murder as would be the specific intent to kill.” *Id.*

Felony murder as a predicate for **first-degree** murder was codified in Maryland in Chapter 138 of the Acts of 1809. *Id.* That law specified a number of felonies and attempted felonies that, if even an unintended death resulted from their commission, meant that the resulting murder charge would be raised to the first degree (as opposed to, *e.g.*, second-degree murder). These felonies are now listed in Md. Code, Crim. L. § 2-201(a)(4).

The felony murder doctrine is a uniquely American legal construct. Most other countries have abandoned it. Across American jurisdictions that still cling to this rule, American felony

¹ Charles E. Moylan, Jr., *Criminal Homicide Law* § 5.1 (2002).

murder laws use an underlying felony to do one of two things: (1) treat as murder a killing that would not have been considered murder otherwise; or (2) increase the classification of a murder, i.e. from second- to first-degree.

According to a 2022 report from the Sentencing Project, these laws have not significantly reduced felonies or limited the number of felonies that result in death.² They do, however, result in extreme prison sentences that “add upward pressure on the entire sentencing structure.” *Id.*

Several states and jurisdictions have been moving away from the harmful felony murder doctrine, and Maryland has an opportunity to join them. [Hawaii](#), [Kentucky](#), and [Michigan](#) have abolished the felony murder rule entirely. In **Ohio**, while the doctrine persists, as of 2004, many situations that would have sustained a [felony murder](#) conviction are now considered [involuntary manslaughter](#).

Other states have made moves to limit the unfairness and harm caused by the felony murder rule.

In 2018, **California** passed [SB 1437](#), which redefined felony murder for accomplices. Now, to be convicted as an accomplice to felony murder, a person must have either intended to kill or been both a “major participant” in the underlying felony and acted with “reckless indifference to human life” in the killing. The law also sets forth procedures for those convicted under the old definition of felony murder to apply for resentencing. If the prosecutor cannot prove that what they did meets the definition of murder under today’s law, a successful applicant is resentenced to the underlying felony.

California’s [SB 775](#), passed in October 2021, allows for relief for those who pled guilty to manslaughter to avoid a felony murder conviction under the old definition. California has also introduced [SB 300](#) to require that if someone did not kill, the prosecutor must prove that that person had the intent to kill in order to obtain a life without parole or death sentence.

In 2021, **Colorado** lawmakers [removed two of the conditions needed for an affirmative defense](#) claim for felony murder charges, which meant that more people could successfully raise that defense. Colorado also [reclassified felony murder from first- to second-degree murder](#), which

² The Sentencing Project, *Felony Murder: An On-Ramp for Extreme Sentencing* (Mar. & Apr. 2022), [Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf \(sentencingproject.org\)](#).

reduced the mandatory sentence from life without parole to a sentence of 16 to 48 years, within a judge's discretion. These reforms do not apply retroactively, unlike those in California.

The **District of Columbia's** Revised Criminal Code Act of 2021, approved unanimously in October 2022, [eliminated accomplice liability felony murder for those who did not intend to kill](#).

Maryland has an opportunity to reduce the harm caused by the felony murder rule as it exists today. Senate Bill 0850 seeks to prospectively limit the application of the felony murder doctrine by making it inapplicable to children and emerging adults under 25 years old. Such a reform is a laudable step toward eradicating the felony murder rule in its entirety.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 0850.

Further reading:

- The Sentencing Project, *Felony Murder: An On-Ramp for Extreme Sentencing* (Mar. & Apr. 2022), [Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf](#).
- Stuti S. Kokkalera, Beck M. Strah, & Anya Bornstein, *Too Young for the Crime, Yet Old Enough to do Life: A Critical Review of How State Felony Murder Laws Apply to Juvenile Defendants*, J. of Crim. Justice & L., Vol 4, Issue 2 (June 1, 2021), <https://jcjl.pubpub.org/pub/v4i290107/release/1>.
- Abbie Vansickle, *Can It Be Murder If You Didn't Kill Anyone?*, The Marshall Project (June 27, 2018), <https://www.themarshallproject.org/2018/06/27/can-it-be-murder-if-you-didn-t-kill-anyone>.
- Anup Malani, *Does the Felony-Murder Rule Deter? Evidence from FBI Crime Data*, (Dec. 3, 2007), <https://graphics8.nytimes.com/packages/pdf/national/malani.pdf>.

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