



TESTIMONY IN SUPPORT OF HB 1180:

TO: Members of the Senate Judicial Proceedings and House Judiciary Committees

FROM: **Heather Warnken, Executive Director, Center for Criminal Justice Reform, University of Baltimore School of Law**

DATE: February 28, 2023

My name is Heather Warnken, and I am the Executive Director of the Center for Criminal Justice Reform at the University of Baltimore School of Law. The Center is dedicated to supporting community driven efforts to improve public safety and address harm and inequity caused by the criminal legal system.

In direct alignment with the Center's mission, we are in strong support of HB 1180.

Under current law, a person charged with felony murder does not need to intend to hurt anyone, let alone cause a death. However, that person can receive a first degree murder conviction, based on the actions of another. This has caused disproportionately long sentences for people who did not commit murder, and who in some cases had, at best, a very peripheral involvement in the crime that resulted in a death.

Fundamental to our efforts to advance public safety, our center does extensive work studying evidence-based responses to crime and violence, and in translating this information for the advancement of policy and practice. The felony murder rule is not effective in reducing violence, achieving deterrence, or advancing accountability for perpetrators of harm when violence does occur.

To prove first degree, premeditated murder, the prosecutor must demonstrate that the defendant possessed the intent to kill and was conscious of the intent before committing the act. However, the felony murder statute allows for an individual to be convicted of first degree murder without requiring the prosecutor to show the defendant had any intent to harm someone. Maryland law holds that if a defendant can be shown to have committed one of a certain set of felonies, and during their commission of the felony someone dies, a first degree murder charge is available to the prosecutor. It does not matter whether the defendant was actively involved in causing **the death** or even knew that anyone had died after the commission of the **felony**.

The prosecution of felony murder has not **been** shown to be a deterrent to violent crime. Though the literature on deterrence is clear that lengthy prison sentences are not effective for this purpose, perhaps even more relevant for this bill is the research specifically demonstrating that individuals are not deterred by punishment they were not aware of.¹ Knowledge of the existence of this antiquated rule is extremely

¹ <https://www.nytimes.com/packages/pdf/national/malani.pdf>.

limited, and even for individuals who may be aware, it does not serve to deter behavior that the defendant had no plan or intent of engaging in, or could not expect to occur.

The use of the felony murder doctrine disproportionately impacts youth and women. Research in California (a state which significantly repealed its felony murder statute in 2018), demonstrated that the average age of an individual charged and sentenced under the felony murder rule as an accomplice is 20 years old. An extensive literature demonstrates that the adolescent brain is still developing: the mature ability to make sound decisions and understand the consequences of actions is not achieved until the age of 25.

Further, according to a 2018 survey by the Anti-Recidivism Coalition and Restore Justice, 72% of women incarcerated in California with a life sentence did not commit the homicide they are serving time for.² The felony murder statute disregards the dynamics surrounding intimate partner violence which only further underscores the inappropriate use of outsized punishments not aligned with actual actions and intent. The same California survey found that the majority of women convicted of murder under the felony murder statute were domestic violence victims; their lack of intent to commit murder amounts to extreme criminalization of survival acts.³

The existing felony murder law is a draconian practice which serves to de-legitimize the criminal justice system. This is a system already suffering from a crisis of legitimacy in the eyes of many Marylanders; a system purporting to be about fairness and where the punishment should fit the crime; yet where well-documented race and socioeconomic disparities already play an outsized role in determining outcomes at nearly every step.

Another problematic aspect of the felony murder statute is the way its existence can impact plea negotiations. The felony murder statute can impact the deal offered to a defendant by the prosecutors; the threat of significantly more time in prison weighing heavily on the decision to accept a plea or bring the charges to trial. Given that upwards of 95 % of all criminal cases result in a plea agreement (rather than the constitutionally guaranteed trial by a jury of peers) it is imperative for our legislators to consider factors that can impact the balance of power and just outcomes in plea negotiations.⁴

These are the reasons the felony murder doctrine has been left in the dustbin of history of every single developed nation on earth. This rule been abolished in all other common law countries including Ireland, Scotland, England, India, and Canada. The United States is the only country in the world where felony murder statutes are used to prosecute individuals. However, a growing number of states have also effectively ended their felony murder rule, including Ohio, Hawaii, Kentucky, Michigan, and Massachusetts. Other states including Arkansas, New York, New Jersey, Connecticut, Delaware, Maine,

² <https://jjie.org/2018/08/08/accomplices-to-a-felony-shouldnt-be-sentenced-like-the-murderer-in-california/>.

³ Id.

⁴ <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>



North Dakota, Oregon, Washington and California have limited its broad application to the actual perpetrators of the homicide.

These states that have enacted meaningful reform include a diverse mix of Republican and Democratic-leaning jurisdictions.

Maryland can take an important step forward in enacting this modest but much-needed reform. We urge a favorable report.