

Testimony Concerning House Bill 1190
Criminal Law – Youth Accountability and Safety Act
Position: Favorable with Amendments

To: Delegate Luke Clippinger, Chair
Delegate J. Sandy Bartlett, Vice Chair
Members of the Judiciary Committee

From: Brandon Miller, Ereka L. Barron Fellow, Monique L. Dixon, Executive Director,
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On behalf of the Gibson-Banks Center for Race and the Law (“Gibson-Banks Center” or “Center”) at the University of Maryland Francis King Carey School of Law,¹ we appreciate the opportunity to submit testimony in support of House Bill 1190 (“HB 1190”), which would prohibit youth under the age of 18 from being charged with and convicted of felony murder in the first degree unless the individual was a principal in the first degree. We urge the committee to issue a favorable with amendments report on HB 1190 because the bill is a step in the right direction toward: (1) limiting the application of felony murder, a law that unfairly permits the intent to commit a felony to substitute for the *mens rea* required for a first-degree murder conviction; (2) responding to U.S. Supreme Court law and youth brain development science which has found that young people are impulsive, lack foresight, and therefore do not foresee the long term consequences of their actions; and (3) advancing racial justice by reducing the reach of felony murder, a charge and conviction which disproportionately burdens Black and Brown criminal defendants. We respectfully request an amendment that the limitation on felony murder be extended to individuals from the ages 18 to 24, in line with brain development science, which finds that people remain neurologically and psychologically immature into their mid 20s.

The Gibson-Banks Center works collaboratively to re-imagine and transform institutions and systems of racial inequality, marginalization, and oppression. Through education and

¹ This written testimony is submitted on behalf of the Gibson-Banks Center and not on behalf of the University of Maryland Francis King Carey School of Law or the University of Maryland, Baltimore.

engagement, advocacy, and research, the Center examines and addresses racial inequality and advances racial justice in a variety of focus areas, including the criminal legal system. In December 2024, the Gibson-Banks Center signed on to an amicus brief filed in a New York State appellate court raising concerns about that state’s felony murder rule and its application in the case of a Black teenager.² It is with this background that we support HB 1190, which is a step toward what we believe should be the repeal of felony murder statutes in Maryland.

Due to the Felony Murder Law, Individuals Who Lacked the Mens Rea Required for Murder as Well as Individuals Who Did Not Commit a Fatal Act are Convicted of and Punished for First-Degree Murder. This is Unjust.

In Maryland, individuals who did not intend, foresee, or even cause a death may be punished for first-degree murder under the felony murder law. This results in unfair outcomes. For example, under the felony murder law, the individual who accidentally kills another in the course of committing a felony may receive the same punishment and associated moral blame as the individual who intentionally commits murder. Moreover, under this rule, the individual who participates in a felony in which another participant unexpectedly kills someone may be guilty of murder and receive a mandatory life sentence with or without parole. The reasoning purporting to justify these outcomes is the notion that an individual’s intent to commit a non-homicide felony, such as a robbery, is “transferred” to the unanticipated killing that results.³ Thus, felony murder functions as a sort of loophole, enabling the state to obtain murder convictions without proving the *mens rea* otherwise required for murder.

The most intuitive and longstanding critique of the felony murder doctrine charges it with violating the principle of proportionality by punishing and stigmatizing as a murderer the individual who commits an unintentional killing or who did not kill at all.⁴ Despite over a century of critique by scholars and legal professionals building on this insight, felony murder has persisted in state criminal codes in part because of its utility as a facilitator of racialized mass incarceration, an ongoing project sparked by War on Crime policies.⁵ However, recent reforms in states such as California,⁶ Colorado,⁷ and Illinois⁸ aimed at narrowing the applicability of felony murder reflect a growing need to reconsider the unsound logic, broad sweep, and

² Brief of Antiracism and Community Lawyering Practicum et al. as Amici Curiae in Support of Defendant-Appellant, *People v. Dalen Joseph*, Case No. 2018-4813 (N.Y. App. Div. 2024).

³ *State v. Allen*, 387 Md. 389, 401 (2005) (citation omitted).

⁴ See Guyora Binder & Ekow N. Yankah, *Police Killings as Felony Murder*, 17 HARV. L. & POL’Y REV. 157, 173-74 (2022), https://digitalcommons.law.buffalo.edu/journal_articles/1044/.

⁵ *Id.* at 225.

⁶ S.B. 1437, 2017–2018 Leg., Reg. Sess. (Cal. 2018), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1437 (imposing new limitations on felony murder, such as requiring proof that a person who was not “the actual killer” aided, abetted, or otherwise induced the killer in the commission of the murder while possessing the intent to kill and requiring proof that a major participant in the underlying felony was recklessly indifferent to human life).

⁷ S.B. 21-124, 73rd Gen. Assemb., 2021 Reg. Sess. (Colo. 2021), https://leg.colorado.gov/sites/default/files/2021a_124_signed.pdf (limiting felony murder to deaths caused by participants in the underlying felony and effectively reducing felony murder to a Class 2 felony with a term of years punishment, among other changes).

⁸ H.B. 3653, 101st Gen. Assemb. (Ill. 2021), <https://www.ilga.gov/legislation/101/HB/PDF/10100HB3653lv.pdf> (limiting felony murder liability to deaths caused by participants in the underlying felony).

disproportionate harshness of felony murder laws. Certain states such as North Carolina⁹ and Florida¹⁰ have enacted reforms focusing on the application of felony murder to young people.

HB 1190 follows the lead of other states and represents progress toward reducing Maryland's inflated and racially disparate prison population by extending protection to young people, a population uniquely vulnerable to and harmed by felony murder prosecution.

Aside from the General Unfairness of the Felony Murder Law, the Characteristics of Youth, as Defined by the United States Supreme Court and Brain Development Science, Necessitate the Removal of Young People from the Scope of the Felony Murder Law.

HB 1190 aims to address the particular unfairness and incoherence that results from applying the felony murder law to people under 18. The logic of permitting the intent to commit the underlying felony to stand in for the intent required for murder presumes that a person who commits a felony foresees and appreciates that death may result from her conduct.¹¹ This presumption, which provides the justification for the retributive aspect of the felony murder rule, is undermined by the acknowledgement by brain scientists and the United States Supreme Court that youth struggle with foresight into the remote consequences of their actions.¹² Similarly, the deterrence rationale falls flat because “the propensity of children towards immediate rewards coupled with deficiencies in cost-benefit planning before the commission of a felony frustrates effective deterrence. It is thus both unsurprising and especially disturbing that the felony-murder doctrine has an outsized impact on young people.”¹³ Data from other states illustrate the outsized harm felony murder prosecutions inflict on young people. For example, in Pennsylvania, 73 percent of individuals convicted of felony murder serving life without parole sentences in 2019 were under 26 at the time of their offense.¹⁴

To better align with the brain development science, HB 1190 should expand its protections to individuals from the ages of 18 to 24. In providing sentencing protections to people under 18, the United States Supreme Court, drawing from brain science, relied on three culpability-diminishing characteristics of youth: impetuous decision-making, susceptibility to

⁹ N.C. Gen. Stat. §§ 14–17(a), 15A-1340.19A-B (2013) (eliminating life without parole sentences for individuals convicted of felony murder who were under 18 at the time of the offense).

¹⁰ Fla. Stat. §§ 775.082(b)(2) (2014) (entitling a person convicted of felony murder who committed the offense before turning 18 and “who did not actually kill, intend to kill, or attempt to kill the victim” to a sentence review after 15 years).

¹¹ See Guyora Binder, *Making the Best of Felony Murder*, 91 B.U. L. REV. 403, 437-38 (2011), https://digitalcommons.law.buffalo.edu/journal_articles/287/.

¹² *Miller v. Alabama*, 567 U.S. 460, 477 (2012) (identifying the “failure to appreciate risks and consequences” as a defining feature of youth). Justice Breyer, in his *Miller* concurrence, spoke forcefully to the incongruence between youth and felony murder culpability, explaining that “the theory of transferring a defendant’s intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate . . . Yet the ability to consider the full consequences of a course of action and to adjust one’s conduct accordingly is precisely what we know juveniles lack capacity to do effectively.” *Id.* at 492 (Breyer, J., concurring (citation omitted)).

¹³ Antiracism and Community Lawyering Practicum et al., *supra* note 2, at 21.

¹⁴ ANDREA LINDSAY, PHILADELPHIA LAWYERS FOR SOCIAL EQUITY: LIFE WITHOUT PAROLE FOR SECOND-DEGREE MURDER IN PENNSYLVANIA: AN OBJECTIVE ASSESSMENT OF RACE 1 (2021), https://www.plsephilly.org/wp-content/uploads/2021/04/PLSE_SecondDegreeMurder_and_Race_Apr2021.pdf.

peer influence, and a unique capacity for change.¹⁵ Scientists now know that the physiological and psychological qualities of youth persist into a person’s mid 20s. For example, a 2019 report from the National Academies of Sciences observed that “the unique period of brain development and heightened brain plasticity . . . continues into the mid-20s.”¹⁶ Additionally, it found that “most 18–25-year-olds experience a prolonged period of transition to independent adulthood, a worldwide trend that blurs the boundary between adolescence and ‘young adulthood,’ developmentally speaking.”¹⁷ Therefore, “it would be developmentally arbitrary in developmental terms” for HB 1190 “to draw a cut-off line at age 18” and leave unprotected an equally vulnerable age group.¹⁸

Applying felony murder to young people under the age of 25 is particularly disproportionate, given the transient structural disadvantages connected to youth and emerging adults that increase the risk of poor decision-making. On top of the disproportionality intrinsic to a law that authorizes first-degree murder convictions for people who either did not kill or did not intend to kill, felony murder liability is out of step with the diminished culpability of youth. Instead of the more humane response that such diminished culpability warrants, felony murder punishes harshly.

HB 1190 promotes a regime that is more sensible and just and more responsive to the “twice diminished moral culpability” of people under 18 who partake in felonies out of physiological immaturity but who “[do] not kill, or intend to kill.”¹⁹ However, it should follow its own logic to conclusion and encompass all people under 25.

The Felony Murder Law Promotes Racial Disparities in the Criminal Legal System.

The Gibson-Banks Center sees the felony murder law as an obstacle to racial justice and an equitable criminal legal system in Maryland. Unraveling the relationship between felony murder and racial inequality is particularly urgent in Maryland, a state where Black people constitute approximately 71 percent of the prison population while only comprising 31 percent of the state population.²⁰ Maryland’s status as a nationwide leader in the sentencing of Black young adults to long prison terms further underscores the imperative.²¹ All indications point to felony murder as a driver of these racial disparities in Maryland prisons.

While Maryland-specific data is unavailable (we also urge improved data collection specific to felony murder, including through charging documents that spell out instances when

¹⁵ *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005); see also *Montgomery v. Louisiana*, 577 U.S. 190, 206-07 (2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 471).

¹⁶ NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, THE PROMISE OF ADOLESCENCE: REALIZING OPPORTUNITY FOR ALL YOUTH 15 (2019), <https://nap.nationalacademies.org/catalog/25388/the-promise-of-adolescence-realizing-opportunity-for-all-youth>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Graham v. Florida*, 560 U.S. 48, 69 (2010).

²⁰ JUSTICE POLICY INSTITUTE, THE RIGHT INVESTMENT 2.0: HOW MARYLAND CAN CREATE SAFE AND HEALTHY COMMUNITIES 4 (2024), <https://justicepolicy.org/wp-content/uploads/2023/12/The-Right-Investment-2.0.pdf>.

²¹ JUSTICE POLICY INSTITUTE, RETHINKING APPROACHES TO OVER INCARCERATION OF BLACK YOUNG ADULTS IN MARYLAND 4 (2019) (“Nearly eight in 10 people who were sentenced as emerging adults and have served 10 or more years in a Maryland prison are black. This is the highest rate of any state in the country.”).

individuals are specifically charged with this crime) statistics from other jurisdictions overwhelmingly show that felony murder prosecutions disproportionately and disparately harm Black people and other people of color. Racial disparities in felony murder charges and convictions prevail in states including California,²² Connecticut,²³ Colorado,²⁴ Florida,²⁵ Illinois,²⁶ Massachusetts,²⁷ Minnesota,²⁸ Maine,²⁹ Michigan,³⁰ Missouri,³¹ New Jersey,³² New York,³³ Pennsylvania,³⁴ and Wisconsin.³⁵

As amicus curae in *People v. Joseph* in December 2024, the Gibson-Banks Center highlighted the racial disproportionality of the application of the felony murder doctrine in New York. Citing to a forthcoming study by Professors Alexandra Harrington and Guyora Binder in the Iowa Law Review, amici curae discussed how Black New Yorkers were about 20 times more likely than White New Yorkers to be arrested for, and to be convicted of, felony murder.³⁶ Additionally, Hispanic New Yorkers were about 5 to 6 times more likely to be arrested and convicted of felony murder than White people.³⁷ Of 246 identified second-degree felony murder convictions—without an additional conviction for another theory of murder—from 2008-2019, 63% were Black defendants despite people identifying as “Black alone” comprising 18 percent of the overall state population.³⁸ White defendants made up 13% of second-degree felony murder convictions despite 69% of the state identifying as “White alone”.³⁹ Black youth are particularly burdened: between the ages of 15 and 19, they were 23.7 times as likely to be arrested for felony murder as White youth in this age range.⁴⁰

²² CAL. COMM. ON REVISION OF THE PENAL CODE, ANNUAL REPORT AND RECOMMENDATIONS 51 (2021).

²³ *Connecticut Data*, Felony Murder Reporting Project (Mar. 2023), <https://felonymurderreporting.org/states/ct/>.

²⁴ David C. Pyrooz, Demographics, Trends, and Disparities in Colorado Felony Murder Cases: A Statistical Portrait, 2 (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4527501.

²⁵ See Brief of Antiracism and Community Lawyering Practicum et al. as Amici Curiae in Support of Petitioner at 5-6, *Baxter v. Fl. Dep’t of Corrections*, Case No. 23-12275 (11th Cir. 2024).

²⁶ Kat Albrecht, *The Stickiness of Felony Murder: The Morality of a Murder Charge*, 92 MISS. L.J. 481, 501-505 (2023).

²⁷ See Brief of Boston University Center for Antiracist Research et al. as Amici Curiae in Support of Petitioner at 8-9, *Commonwealth v. Shepherd*, SJ-12405 (Mass. 2024).

²⁸ Greg Egan, *Deadly Force: How George Floyd’s Killing Exposes Racial Inequities in Minnesota’s Felony-Murder Doctrine Among the Disenfranchised, the Powerful, and the Police*, 4 MINN. J. INEQUALITY INQUIRY 1, 3-14 (2021), <https://lawandinequality.org/wp-content/uploads/2021/03/Deadly-Force-Egan-1.pdf>.

²⁹ *Maine Data*, Felony Murder Reporting Project (Feb. 2023), <https://felonymurderreporting.org/states/me/>.

³⁰ *Michigan Data*, Felony Murder Reporting Project (Mar. 2023), <https://felonymurderreporting.org/states/mi/>.

³¹ See THE SENTENCING PROJECT, FELONY MURDER: AN ON-RAMP FOR EXTREME SENTENCING 5 (2022), <https://www.sentencingproject.org/app/uploads/2024/05/Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf>.

³² *New Jersey Data*, Felony Murder Reporting Project (Apr. 2023), <https://felonymurderreporting.org/states/nj/>.

³³ Alexandra Harrington & Guyora Binder, *Racially Disparate and Disproportionate Punishment of Felony Murder: Evidence from New York*, 110 IOWA L. REV. 1, 22-54 (forthcoming 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4924732.

³⁴ LINDSAY, *supra* note 14 at 1.

³⁵ *Wisconsin Data*, Felony Murder Reporting Project (Mar. 2023), <https://felonymurderreporting.org/states/wi/>.

³⁶ Antiracism and Community Lawyering Practicum et al., *supra* note 2, at 4 (citing Harrington & Binder, *supra* note 33, at 6).

³⁷ *Id.* at 4-5 (citing Harrington & Binder, *supra* note 33, at 6).

³⁸ *Id.* at 5-6 (citing Harrington & Binder, *supra* note 33, at 45).

³⁹ *Id.* (citing Harrington & Binder, *supra* note 33, at 45).

⁴⁰ *Id.* at 9 (citing Harrington & Binder, *supra* note 33, at 28).

Scholars have found that racial bias infiltrates felony murder prosecutions, leading to racially disparate outcomes. The opportunity for racial bias to shape outcomes begins at the charging stage. Since a felony murder charge carries a lower burden of proof, in part because it does not require a showing of an intent to kill, evidentiary considerations and legal analysis play a diminished role in the decision-making process of a prosecutor contemplating felony murder charges.⁴¹ The structure of felony murder law therefore opens the door for charging decisions to be based on racially charged “subjective indicia” of an individual’s “blameworthiness” and “dangerousness” which may operate at an unconscious level.⁴² “Indeed, substantial evidence reflects that ‘racial disparities in prosecutors’ use of discretion’ including ‘in decisions about which homicides to prosecute as felony-murder . . . directly disadvantages people of color.’”⁴³

Racial stereotypes such as those regarding Black criminality similarly drive the decisions of juries and judges, further contributing to the punitive treatment of Black people and other groups under felony murder laws. A 2023 study on implicit bias in felony murder cases concluded that “police, prosecutors, defense counsel, judges, and jurors may possess a psychological baseline whereby they automatically perceive Black and Latino defendants as group members, not as individuals, inviting decisionmakers to indifferently impute guilt on Black and Latino defendants based upon mere association.”⁴⁴ Amici curae in *People v. Joseph* emphasized the risk of racially inequitable jury determinations, stating: “[S]ince the felony-murder law does not require proof that the defendant intended to cause a death, jurors may operate with little information about the defendant’s objectives, a situation which may invite racial bias to influence jury determinations.”⁴⁵

In the end, the impact of racial bias in felony murder prosecutions is self-perpetuating.⁴⁶ The more that racial tropes and prejudices precipitate felony murder convictions of Black people and other people of color, the greater the risk that decision-makers buy into stereotypes linking felony murder and the underlying concepts of dispersed moral failure and group criminality to these racialized groups, locking in a vicious cycle.

Maryland should join the list of states that have taken steps to limit or repeal felony murder. The basic principles underpinning the criminal legal system demand such an outcome. Human rights and racial justice amplify the urgency of the proposed change. For these reasons, we ask for a favorable with amendments report on HB 1190.

⁴¹ Perry Moriearty et. al., *Race, Racial Bias, and Imputed Liability Murder*, 51 FORDHAM URBAN L. J. 675, 733-34 (2024).

⁴² *Id.* at 736, 738.

⁴³ Antiracism and Community Lawyering Practicum et al., *supra* note 2, at 11-12 (quoting THE SENTENCING PROJECT, *supra* note 31, at 6).

⁴⁴ G. Ben Cohen et al., *Racial Bias, Accomplice Liability, and the Felony Murder Rule: A National Empirical Study*, 101 DENVER L. REV. 65, 113 (2023).

⁴⁵ Antiracism and Community Lawyering Practicum et al., *supra* note 2, at 12.

⁴⁶ *See* Moriearty et al., *supra* note 41, at 740.