Margaret Martin Barry

House Bill 1190 – Criminal Law -- Youth Accountability and Safety Act
Judiciary Committee – February 26, 2025

Testimony in SUPPORT

Thank you for this opportunity to submit written testimony in support of HB 1190, the Youth Accountability and Safety Act. As a resident of Montgomery County, I urge the Committee to **favorably and expeditiously report HB 1190** and ask each of you to support its passage in the House. I am grateful to Delegate Crutchfield for her ongoing leadership in this matter, as well as Delegates Bartlett, Davis, Ruff, Spiegel, and Williams for their co-sponsorship.

I watched the Committee briefing on felony murder in January of this year. It clearly laid out why felony murder is unjust. We have a system of criminal law based on culpability that is defined by intent and action consistent with that intent. The urge to damn anyone remotely connected with a death without proving that culpability, flies in the face of what is not only expected but what is right.

First-degree murder, as conventionally understood, is the deliberate, premeditated, and willful killing of an individual. Because it is the worst type of homicide, it carries a mandatory life sentence in Maryland. Barn-burning, carjacking, and prison escape are not deliberate, premeditated, willful killing, and neither are the nine other enumerated felonies in Maryland's felony murder statute. Each of these felonies carry their own weighty consequences. Perpetration, or attempted perpetration, of these felonies is not murder—so, why do we insist on punishing them as such if a homicide happens?

The United States remains virtually the only western country that still recognizes a legal principle that makes it possible "that the most serious sanctions known to law might be imposed for *accidental* homicide."[1] England abolished felony murder in 1957, and the doctrine never existed in France or Germany.[2]

[1] Jeffries & Stephan, *Defenses, Presumptions, and Burden of Proof in the Criminal Law*, 88

Sentences for the underlying felonies relied upon for attributing felony murder are harsh enough. All of those involved in that underlying felony should not be swept into the extreme level of culpability that our first-degree murder statute imposes. The current law absolves prosecutors of the need to prove causation or any level of intent for murder – you broke into the building to steal goods, so you are guilty of premeditated murder, even if you had nothing to do with the death that occurred at the scene. For burglary, the penalty can go up to 20 years. If a death occurred in the course of the felony, one of the murder charges are also appropriate – for the one doing the killing and anyone aiding in that action.

It should be simply unacceptable for prosecutors to argue that proof of murder is too hard. Given the weight of the State brought to bear on one who commits a crime and the stakes for one facing that force, there should be no shortcuts to determining culpability, no strict liability imputed for one who has not committed or aided the killing.

Though the felony murder doctrine should be deemed unconstitutional, its application to youthful offenders is even more tenuous. The doctrine allows the state to charge, convict, and sentence children to life imprisonment for murders they did not actually commit, just as it does with adults, on the theory that they should have foreseen that a death could occur. It does not matter whether the act was an accident (a lesser intent crime) or that the danger to the victim was recklessly disregarded (also a lesser intent crime) or whether they had nothing to do with act of killing.

The science has shown that young people are still in the developmental stages of cognition and thus do not have the capacity to contemplate the possible dangers of felonious activities that those who are older *might*. The characteristics attributed to those under the age of 18 include heightened impulsivity, greater sensitivity to peer and social influences, greater risk-taking, and immature decision making characterized by short-

---

YALE LJ. 1325, 1383 (1979).
[2] Fletcher, *Reflections on Felony-Murder*, 12 SW. U.L. REV. 413, 415 (1981).

term thinking; trauma experienced in these early stages of development can be particularly damaging.[3] Relying on the Eighth Amendment's prohibition of cruel and unusual punishment, in *Graham v. Florida*, the Supreme Court pointed out that, "…compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability."[4] Twice-diminished because the culpability that the law imputes to an adult is even more attenuated when we consider the ability of a youthful offender to anticipate what could potentially happen in the course of their lesser crime.[5]

And note that high school classes on felony murder should not be relied upon to build the cognitive capacity to create culpability. We simply have no basis for such a conclusion, particularly one with such dire consequences.

Allowing for resentencing of those who were children at the time of their felony murder convictions and who were not guilty of the killing is an important aspect of this legislation. Children in particular should not sit in prison for acts that they did not intend and did not do.

In sum, while I wish that we could join much of the rest of the world in completely eliminating felony murder, I am grateful for the critical step that this legislation takes in excluding children from the reach of this unjust provision in our law.

---

[3] *See*, Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland, Justice Policy Institute (November 2019) https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/

[4] *Graham v. Florida*, 560 U.S. 48, 69 (2010)(holding that children could not be sentenced to life without parole for non-homicides). *See also* Linda M. B. Uttal & David H. Uttal, *Children Are Not Little Adults: Developmental Differences and the Juvenile Justice System*, LOYOLA PUBLIC INTEREST LAW REPORTER NO. 3, Summer 2010 (urging that children are not, and cannot be treated as, "little adults").

[5] The Supreme Court has considered the cognition and culpability of youthful offenders in a number of fairly recent cases. See e.g. *Roper v. Simmons*, 543 U.S. 551 (2005)(children cannot be executed for crimes); *Miller v. Alabama*, 567 U.S. 460 (2012)(the circumstances must be considered before imposing a sentence of life without parole on children); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011)(concluding that children cannot be viewed as miniature adults for purposes of determining the effect of a *Miranda* warning).