



## **TESTIMONY IN SUPPORT OF HOUSE BILL 1190**

### **YOUTH ACCOUNTABILITY AND SAFETY ACT**

**TO:** Members of the House Judiciary Committee

**FROM:** Center for Criminal Justice Reform, University of Baltimore School of Law

**DATE:** February 24, 2025

The University of Baltimore School of Law’s Center for Criminal Justice Reform (the “Center”) is dedicated to supporting community driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system. Aligned with this mission, the Center submits this testimony in strong support of House Bill 1190 as amended by Del. Charlotte Crutchfield.

House Bill 1190, as amended, prohibits children from being convicted of first-degree murder under the felony murder provision. Under current Maryland law’s felony murder provision, individuals of all ages may be punished as if they had committed an intentional homicide when they commit—or attempt to commit—certain felonies that unintentionally result in someone’s death.<sup>1</sup> Under the same rule, individuals may also be convicted of first-degree murder when they participate in a felony in which their partner intentionally or accidentally kills someone without their prior knowledge or consent.<sup>2</sup> Under current Maryland law, a person convicted of first-degree murder is guilty of a felony, punishable by imprisonment for life either with the possibility of parole or without the possibility of parole.<sup>3</sup> Therefore, a child convicted as an adult of first-degree murder via felony murder must receive a life sentence.<sup>4</sup>

Felony murder is a legal fiction that defies our system’s bedrock principle of proportionality by imposing the most serious penalties available in the criminal justice system on people, including children, who did not intend to kill, did not anticipate a death, and did not participate in killing another person. The anomalous and arbitrary nature of the felony murder rule makes it unsurprising that most other common law jurisdictions that once applied it have abandoned the doctrine.<sup>5</sup> Our continued felony murder practice—especially as it relates to

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<sup>1</sup> See Md. Code, Crim. Law § 2-201.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Nazgol Ghandnoosh et al., *Felony Murder: An On-Ramp for Extreme Sentencing*, The Sentencing Project, (March 31, 2022), <https://www.sentencingproject.org/app/uploads/2024/05/Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf> at 8.

children—helps the United States earn our ignominious distinction as one of the most carceral countries in the world.

**I. Convicting children of first-degree murder under the felony murder provision runs counter to scientific evidence, U.S. Supreme Court jurisprudence, and the Maryland General Assembly’s recognition that children are more impulsive, less culpable, and highly capable of rehabilitation.**

The felony murder doctrine has been described as “an unsightly wart on the skin of the criminal law,”<sup>6</sup> and as an “anachronistic remnant, a historic survivor for which there is no logical or practical basis for existence in modern law.”<sup>7</sup> One of the chief complaints against felony murder is that it “erodes the relation between criminal liability and moral culpability”<sup>8</sup> by equating felonious activity with the deliberate taking of human life. While the idea that an adult consciously choosing to commit a felony is as culpable as one who deliberately kills another human being is dubious at best, it is particularly hard to justify when it comes to children.

The application of felony murder liability against children ignores the overwhelming scientific and jurisprudential evidence that children are less culpable for criminal activity. The United States Supreme Court has repeatedly recognized that “kids are different.”<sup>9</sup> In *Graham v. Florida*, Justice Anthony Kennedy wrote for the Court:

[B]ecause juveniles have lessened culpability they are less deserving of the most severe punishments. As compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed. These salient characteristics mean that it is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. Accordingly, juvenile offenders cannot with reliability be classified among the worst offenders. A juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult

. . . [D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. It remains true that from a

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<sup>6</sup> See Nelson E. Roth & Scott E. Sundby, *The Felony-Murder Rule: A Doctrine at Constitutional Crossroads*, 70 Cornell L. Rev. 446 (1985) (citing Packer, *Criminal Code Revision*, 23 U. Toronto L.J. 1, 4 (1973))

<sup>7</sup> See *People v. Aaron*, 409 Mich. 672, 689, 299 N.W.2d 304, 307 (1980) (internal quotations omitted)

<sup>8</sup> *Id.* at 317.

<sup>9</sup> See *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *Graham v. Florida*, 560 U.S. 48, 57 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.<sup>10</sup>

The Maryland General Assembly has also frequently recognized that children are different for purposes of culpability and criminal sentencing, including by passing the Juvenile Restoration Act (JRA) in 2021. The JRA (1) prohibits courts from sentencing people to life in prison without the possibility of parole for crimes that occurred when they were under 18 years old, (2) provides that courts are not bound by mandatory minimum sentences when sentencing children, and (3) allows people who have been incarcerated for at least 20 years for crimes committed when they were children to file a motion to reduce their sentence.<sup>11</sup> When successfully urging his colleagues to override the Governor's veto, the lead sponsor of the JRA, Republican Senator Chris West of Baltimore County, observed:

A person's brain doesn't fully mature until he's 25 years old, and with maturity comes different thinking, different attitudes, and a different approach to life. Impulsive behavior diminishes. There's a far greater appreciation of the consequences of one's actions.

We all know this to be true because each of us has had this happen to us. If we were to reflect on our own lives, we would have to acknowledge that at the age of 37, we could look back at our actions when we were only 17 and conclude that a lot of changes had occurred in the meantime.<sup>12</sup>

The application of the felony murder doctrine against Maryland children offends scientific literature, constitutional principles, and the values of the Maryland General Assembly.

## **II. The application of felony murder, especially to children, does not deter violence or promote public safety.**

Common justifications for the felony murder rule—that those engaged in certain felonies should know that death is a possibility and further that extreme penalties will deter engagement in such felonies—are particularly unsuitable and misplaced when applied to children. Harsh sentences are unlikely to deter youth because “the characteristics that make juveniles more likely to make bad decisions also make them less likely to consider the possibility of punishment, which is a prerequisite to a deterrent effect.”<sup>13</sup> Furthermore, as a general matter, the research is clear that longer sentences do not deter people of all ages from engaging in criminal behavior.<sup>14</sup>

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<sup>10</sup> Graham, 560 U.S. at 68.

<sup>11</sup> Md. Code, Crim. Law § 8-110.

<sup>12</sup> Statement of Sen. Chris West in Floor Debate on Override of Veto of S.B. 494, at time market 0:14:06 to 0:15:08 (Apr. 10, 2021), available at <https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-45-?year=2021RS>

<sup>13</sup> Carter v. State, 461 Md. 295, 311 (2018) (citation omitted).

<sup>14</sup> See U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, *Five Things About Deterrence*, <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

Instead, certainty of apprehension—not severity of sentence—discourages people from engaging in crime.<sup>15</sup>

Instead, wasteful and unnecessary policies and practices— such as excessively long sentences for children with diminished culpability—harm public safety by siphoning massive sums of money that could otherwise support programs that actually prevent crime. Maryland is greatly in need of cost savings currently. Savings that are likely to result from the passage of HB 1190 would allow the reallocation of critical funds to assist with drug treatment, reentry and other rehabilitation programs for people at higher risk of engaging in criminal behavior.

### **III. Convicting children of first-degree murder under the felony murder provision produces extreme and unjust results, eroding the legitimacy of the system.**

Felony murder, especially when applied to children, offends well-established principles of justice and fairness in our criminal legal system. It abandons proportionality and individualized accountability in favor of strict liability and guilt by association. Maryland’s felony murder provision fundamentally misunderstands and overestimates the risk of death associated with felonies. For example, empirical studies found that robbery, a predicate felony in Maryland’s felony murder doctrine, is not particularly “inherently dangerous.”<sup>16</sup> One study in “Chicago in the early 1980s found that approximately 0.6% of *reported* robberies resulted in homicide. The California Supreme Court has held that a ‘garden-variety armed robbery’—one involving the use of a gun—does not involve a grave risk of death.”<sup>17</sup> Similarly, Guyora Binder, a legal expert of the felony murder doctrine, observed that the “mortality rate for reported burglaries is less than 0.02%.”<sup>18</sup>

A number of felony murder cases in Maryland illustrate the extreme and absurd results of the application of this doctrine to people of all ages. For example, in *Jeter v. State*, 9 Md. App. 575 (1970), the defendant agreed to break into a men’s clothing warehouse with an accomplice. Police arrived on the scene and quickly arrested the defendant. After the defendant’s arrest, his accomplice allegedly shot and killed a security officer. Jeter was convicted of first-degree murder under the felony murder doctrine and sentenced to life in prison even though the killing occurred after he was already in custody. Jeter’s accomplice was later found not guilty. In another case, *Stewart v. State*, 65 Md. App. 372 (1985), Stewart robbed a motel clerk with a written note. No gun was reported nor found. The clerk had had surgery for cancer that removed one lung prior to the robbery. A few hours after the robbery, the clerk experienced trouble breathing and died of a heart attack. Stewart was convicted of felony murder and eligible for a life sentence.

In addition to producing unjust results in individual cases, the felony murder doctrine causes intolerable and extreme outcomes across the criminal justice system as a whole. The felony murder doctrine undermines the legitimacy of the system and contributes directly to mass

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<sup>15</sup> *Id.*

<sup>16</sup> Ghandnoosh et al., *Felony Murder: An On-Ramp for Extreme Sentencing*, at 17.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

incarceration. For example, “[i]n some states, anywhere from one-fourth to one-half of [incarcerated people] sentenced to [life without parole] were convicted of felony murder.”<sup>19</sup>

**IV. Because several criminal laws and penalties exist in Maryland that prosecutors may use to address youth committing felony offenses, felony murder liability for children is not necessary to hold people accountable.**

Even with the passage of HB 1190, Maryland prosecutors will retain a broad range of serious felony charges and penalties to hold people, including children, accountable for wrongdoing.

Without felony murder, prosecutors will still be able to charge a child with a variety of homicide offenses based on the underlying facts of a case. For example, a prosecutor may be able to charge a child as an accomplice to premeditated first-degree murder, which also carries a life sentence. The Maryland Pattern Jury instructions describe accomplice liability, in part, as follows:

The defendant may be guilty of (crime) as an accomplice, even though the defendant did not personally commit the acts that constitute that crime. In order to convict the defendant of (crime) as an accomplice, the State must prove that the (crime) occurred and that the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to [the] [a] primary actor in the crime that [he] [she] was ready, willing, and able to lend support, if needed.<sup>20</sup>

Alternatively, if the facts support it, a child may be charged with second-degree murder, which carries a sentence of up to 40 years in prison.<sup>21</sup> As part of second-degree murder, Maryland’s common law recognizes “depraved heart” murder, which requires ‘the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.’<sup>22</sup>

Furthermore, upon the passage of HB 1190, prosecutors may still charge children with the enumerated felonies which currently serve as predicate acts for felony murder liability. These are serious offenses that carry significant penalties, including decades in prison. For example, someone convicted of first-degree arson, kidnapping, or carjacking may be imprisoned for up to thirty years.<sup>23</sup> Burglary carries penalties of up to 25 years (first-degree), 20 years (second-degree), and 10 years (third-degree) imprisonment.<sup>24</sup> Furthermore, if a child uses a handgun in commission of a felony, the court may sentence him up to 20 years in prison, the first five of

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<sup>19</sup> Thalia Rodriguez, *Felony Murder and Mass Incarceration*, The ACLU of Oklahoma, <https://www.acluok.org/en/news/felony-murder-and-mass-incarceration>.

<sup>20</sup> *West v. State*, 2016 Md. App. LEXIS 469 (Spec. App. Aug. 25, 2016).

<sup>21</sup> Md. Code, Crim. Law § 2-204.

<sup>22</sup> *Robinson v. State*, 307 Md. 738, 744 (1986).

<sup>23</sup> See Md. Code, Crim. Law §§ 6-102; 3-502; 3-405.

<sup>24</sup> See Md. Code, Crim. Law §§ 6-202; 6-203; 6-204.

which to be served without parole.<sup>25</sup> Eliminating the application of felony murder to children will certainly not eliminate accountability, including significant prison time, for children. It will, however, help to mitigate the risk of disproportionate sentences and coercive pleas.

For the foregoing reasons, the Center strongly supports House Bill 1190 as amended.

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<sup>25</sup> See Md. Code, Crim. Law § 4-204.