

# MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



## Felony Murder Rule Removing Guilt by Association

### What's the problem?

Under the legal doctrine of felony murder, if someone dies as a result of a felony, anyone who participated in that felony is ruled as guilty as a killer—even if they themselves didn't kill, didn't foresee the killing, and never meant to kill anyone. In Maryland, felony murder is treated the same as a premeditated first degree murder in sentencing.<sup>1</sup>

Thus, the felony murder rule undermines a central concept of criminal justice — that we punish people for the crimes they commit or intend to commit. This doctrine also can lead to unjust results, including cases where the person who actually committed the murder receives lesser punishment than another person who did not. One study suggests that women and youth are convicted disproportionately under the felony-murder rule.<sup>2</sup> The cost to the taxpayers of such disproportionate and unjustified punishment is enormous.

Recently, Maryland State Senator Joanne Benson welcomed back to society a man unjustly convicted of felony murder. As stated in the [Slate.com](#) article, when he is released, Curtis Brooks has a job waiting with Joanne Benson, his elementary school principal who is now a Maryland state senator: “Whatever Curtis Brooks wants to do, we have the resources right here in the state of Maryland that’s going to help him move where he wants to go,” she said. “We are convinced that he is going to be a productive and wonderful citizen. There is no question in my mind.”

### What's one solution?

In recent years, many U.S. states—including Kentucky, Massachusetts and Michigan—have abolished their felony murder laws, while other states have narrowed them. These states have found that life sentences are unreasonable for someone who didn't kill or mean to kill. Maryland's murder statute irrationally continues to treat people who did not commit murder the same as those who did. Our state's courts have upheld a felony murder conviction even when the victim died from heart failure two hours after a robbery.<sup>3</sup> New legislation could make clear that there is a distinction, reserving the harshest punishment to those who deliberately perpetrate a murder.

### Will this work?

Although the law originated as common law in England, the felony murder rule has been abolished in England, Wales and Northern Ireland. In Canada, it was ruled unconstitutional because it violated principles of fundamental justice.

Why does this unjust law exist? “The felony-murder rule makes it easier for prosecutors to gain convictions because it relieves them of the often onerous burden of proving that the defendant intended to kill the victim,”

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

<sup>3</sup> Stewart v. State, 65 Md.App. 374 (1985).

wrote Steven Drizin, a professor at the Northwestern University School of Law, in a 2004 law-review article arguing for a ban against felony murder for teenagers.

Because they know that the risk of a first-degree murder conviction is too high for most defendants to take, prosecutors can set the most abusive plea bargain possible. Defendants, too scared to risk a first-degree murder conviction, often enter “Alford pleas” of guilty to lesser charges even if they actually dispute their involvement in these crimes.<sup>4</sup> Clearly, Maryland prosecutors reap the benefit of this law and will be active in resisting change.

The exact number of prisoners serving life sentences for felony murder in Maryland is not easily determined because it is not always tracked separately from other first degree murder convictions. But with 4,782 Maryland inmates listed in 2019 as serving sentences for murder, it’s safe to say estimate many hundreds of men and women today are serving life sentences that do not reflect their actual culpability.<sup>5</sup>

Were the law changed in Maryland, the cost of retrials or resentencing will be brought up as a substantial expense. But, clearly such costs should be offset by savings of reduced incarceration at \$40,000 per year per person.

### **Status of the Legislation**

Many models are available for a Maryland bill to revise our unfair felony murder rule. For example, [Hawaii](#), [Kentucky](#), Massachusetts and Michigan have legislatively abolished the rule. Both [Pennsylvania](#) and [Illinois](#) have bills under consideration. In February 2019, [California](#) substantially narrowed that state’s felony murder law to eliminate all but “major” felony participants with “reckless disregard” for human life.

In the 2020 legislature two bills have been filed: HB1308/SB0919: Criminal Law – Felony First–Degree Murder – Limitation and Review of Conviction. Among this bill’s objectives is to alter the definition of first degree murder so as to include the principal while excluding "any participant in the crime." In addition it allows those previously convicted under the felony murder rule to apply for a review of their conviction.

### **Learn More!**

- *Felony Murder (Critical Perspectives on Crime and Law)* by Guyora Binder <https://www.amazon.com/gp/product/B007X57VPM/>
- The Marshall Project asks: *Can It Be Murder If You Didn’t Kill Anyone?* <https://www.themarshallproject.org/2018/06/27/can-it-be-murder-if-you-didn-t-kill-anyone>
- Restore Justice: *Know More: Felony Murder* <https://restorejustice.org/know-more-felony-murder/>
- *Abolish felony murder in Maryland*, Lila Meadows, University of Maryland Clinical Law Program <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0610-felony-murder-20190607-story.html>
- Why Did I Serve 16 Years for Murder When I Didn't Kill Anyone? <https://youtu.be/jKGy8TIGMDI>

**Note: To use the hyperlinks access the online version at: <http://www.ma4jr.org/felony-murder-rule/>**

*The Maryland Alliance for Justice Reform (MAJR) is a nonpartisan association of over forty community organizations and churches with members in every part of the state, formed to support justice reinvestment. Individual supporters include judges, attorneys, corrections professionals, as well as returning citizens, victims, and service providers.*

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<sup>4</sup> See, e.g., [Simms v. Maryland Department of Health](#), 240 Md.App 294, note 2 (2019).

<sup>5</sup> <https://www.baltimoresun.com/news/crime/bs-md-prison-population-vera-20190423-story.html>