

MARYLAND

# THE DAILY RECORD

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## Editorial Advisory Board: It's time to abolish felony murder in Md.

By: Editorial Advisory Board  
June 30, 2022

A 20-year-old who is partying with friends learns that they want to rob a local drug dealer. He lends them his car and then goes to sleep after giving them the keys. A person is accidentally killed during that robbery and the 20-year-old is charged, not as an accessory to a robbery, but with the murder of the person who died during the robbery. The 20-year-old gets convicted of felony murder and is now sentenced to life imprisonment.

Do we really want someone who played a relatively minor role in a crime, who was not present at the scene, and where the death was unplanned, to spend the rest of his life in prison?

Under current law in Maryland, if a person dies during the course of a felony, the actor may be punished for first-degree murder regardless of whether the actor intended to kill the victim. As such, this doctrine does not comport with the modern criminal law principle that a crime requires both an actus reus and a mens rea.

The prosecution does not have to prove the intent element; rather it is simply "transferred" by way of a legal fiction "to

elevate an unintentional killing to first degree murder.”

Put another way, felony murder is a strict liability offense for all practical purposes. The doctrine permits prosecutors to charge first-degree murder and obtain a conviction without showing *any* intent to kill on the part of the defendant. No other serious offense operates this way.

Moreover, the doctrine is out of step with modern notions that criminal liability should be in proportion to moral culpability. At common law, this was not really an issue because virtually all felonies were punishable by death. It made no difference whether a person was convicted of the felony itself, felony murder, or premeditated murder because the penalty would be the same in any event.

Now, however, it makes an enormous difference given that a conviction for an underlying felony may carry a maximum sentence of 30 years, but a conviction for felony murder brings a life sentence.

Even more troubling are some of the applications of the felony murder rule. In Maryland, an accomplice to a murder is subject to the same penalties as is the first-degree principal, i.e., the actual killer. The lookout or the getaway driver who may not have known of the plans of the killer can still be convicted of felony murder.

And let us not forget that the statutory maximum penalties for most serious felonies are in the range of 30 years to life in any event. One who participates in a felony is deserving of punishment, but one who is an accomplice to a robbery will have the mens rea for robbery and may be convicted and punished for that

crime. There is no need to go beyond that conviction and punishment.

The felony murder doctrine has outlived its usefulness and it is well past time to repeal it. A recent paper published by The Sentencing Project and Fair and Just Prosecution recommended that all U.S. jurisdictions repeal felony murder statutes. (“Felony Murder: An On-Ramp for Extreme Sentencing,” March 31, 2022). Maryland can and should be a leader in this effort.

This vestige of the 16th century is unnecessary to the prosecution of crime today and is inconsistent with modern standards of due process and penal philosophy. The doctrine came to Maryland in 1776 from the common law of England that originated in the late 1500s. England abolished the felony-murder rule in 1957, and it is completely unknown in other parts of Europe as well.

Sentences for criminals in Maryland are generally harsh enough as it is. We do not need draconian felony murder laws on the books to spread these sentences beyond the most heinous of actors. The Maryland General Assembly should bring our law into the 21st century and leave the vestiges of 16th century justice (i.e., death to all felons) behind us for good.

*Editorial Advisory Board member Arthur F. Fergenson did not participate in this opinion.*

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