IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2021

NO. 45

DAWNTA HARRIS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Respondent, the State of Maryland, accepts the Statement of the Case in Petitioner Dawnta Harris's brief.

QUESTIONS PRESENTED

1. Did the Court of Special Appeals correctly hold that the manslaughter-by-vehicle statute does not preempt the common-law felony-murder doctrine?

2. Did the Court of Special Appeals correctly hold that Harris was not entitled to a constitutionally-heightened sentencing procedure in accordance with *Miller v. Alabama*, 567 U.S. 460 (2012), but he effectively received one anyway?

STATEMENT OF FACTS

The State of Maryland accepts the Statement of Facts in Harris's brief with the exception of his conclusory statement that his conviction was "for an unintended homicide." (Petitioner's Br. at 9). In addition, several clarifications about the homicide are in order.

First, Harris asserts that when he turned his stolen Jeep around in the cul-de-sac and began driving toward Officer Amy Caprio, she directed him to stop, and he "stopped." (Petitioner's Br. at 3-4). Officer Caprio's body worn camera footage (and Detective Alvin Barton's analysis of that footage at trial) shows that Harris drove the Jeep *into* Officer Caprio—causing her to step backward and place her hand on the front grille of the Jeep—before he stopped. (E. 29, 39, 238-39, 299-304; State's Ex. 27a).

Second, Harris asserts that the body worn camera footage "shows the driver's door open slightly, whereupon Officer Caprio stepped in front of the Jeep and placed her hand on the Jeep." (Petitioner's Br. at 4). A careful examination of the body worn camera footage shows that after Harris initially drove the Jeep into Officer Caprio (stopping just short of running her over), she twice directed Harris to "get out of the car." (State's Ex. 27a). Officer Caprio then stepped to her right (toward her police cruiser and away from the center of the Jeep) and told Harris to "get out of the car right now." (*Id.*). Almost simultaneously, Harris opened the driver's door several inches. (*Id.*). Harris then seemed to hesitate for a moment, not fully opening the door. (*Id.*). Officer

Caprio then slapped the Jeep's fender with her left hand, moved back toward the center of the front of the Jeep, and again shouted at Harris to get out of the vehicle. (*Id.*). As defense counsel put it at trial, Officer Caprio moved "right dead in front of the [Jeep]." (E. 258). After Officer Caprio moved back in front of the Jeep, Harris continued to open the Jeep door. (State's Ex. 27a). The body worn camera footage shows that Officer Caprio was standing in front of the Jeep for a considerable period of time (approximately six seconds) before Harris closed the Jeep door and accelerated. (State's Ex. 27a).

Third, Harris implies that Officer Caprio fired her pistol through the windshield of the Jeep before he accelerated and ran over her. (Petitioner's Br. at 4). Detective Barton's testimony, the body worn camera footage itself, and the still images captured from that footage, establish that Harris accelerated first. (E. 240-41, 244, 311-14; State's Exs. 27a, 27t-27w).

Fourth, Harris cites his police interview and asserts that he "knew that the officer had been standing alongside of the Jeep, but he did not know that she stepped in front of it." (Petitioner's Br. at 8). His statements to the police do not support that assertion.

Harris told Detective Barton that he saw Officer Caprio pointing a gun "directly at [him]" and "knew she was standing there" when he accelerated the Jeep. (E. 228-29). Harris also told Detective Barton: "Once I seen [sic] the gun, I had put my head down and closed my eyes." (E. 230). Officer Caprio's body worn camera footage shows that she began pointing her pistol at Harris just before he drove the Jeep into her the first time and stopped. (State's Ex. 27a). She then continued pointing her pistol at him and directed him to get out of the Jeep. (*Id.*). At that point, she was standing directly in front of the Jeep. (*Id.*). If Harris closed his eyes when he saw Officer Caprio point her gun at him, then the last place he saw her standing was directly in front of the Jeep.

Lastly, Harris asserts that the "only theory of murder pursued at trial was felony murder." (Petitioner's Br. at 8). To be clear, Harris was charged with premeditated first-degree murder. (E. 72). In opening argument, the prosecution argued that

> Officer Caprio gave [Harris] eight different chances to get out of the car and comply, but he refused every one.
>
> What he did instead, his choice was to get out of there however he could. The evidence will show that he chose to escape punishment by any means necessary, whatever happens, happens. His choice,

> ladies and gentlemen, was to run Officer Caprio over breaking 19 of her ribs, puncturing her lung and hemorrhaging her spinal cord.

(T. 04/23/2019 at 27). Even defense counsel believed throughout trial that the State was going to argue that Harris committed premeditated murder. (E. 267-68). However, as there was no request for an instruction on premeditated murder, Harris is correct that the State never submitted the case on the theory of intent to kill murder; the only homicide offense submitted to the jury was first-degree felony murder. (E. 293).

ARGUMENT

I.

THE COURT OF SPECIAL APPEALS CORRECTLY HELD THAT THE MANSLAUGHTER-BY-VEHICLE STATUTE DOES NOT PREEMPT THE COMMON-LAW FELONY-MURDER DOCTRINE.

Harris argues that his conviction for first-degree felony murder is unlawful because that crime, when committed with a vehicle, effectively no longer exists in Maryland law. (Petitioner's Br. at 10-11). He claims that in enacting the manslaughter-by-vehicle statute, 1941 Md. Laws, Ch. 414—codified today in § 2-209 of the Criminal Law Article—the General Assembly preempted all

unintended homicides committed with a motor vehicle. He reasons that the vehicular homicide he committed was "unintentional," and so he was unlawfully convicted of common-law felony murder because that offense has been preempted. In support of his argument, Harris relies on the Court of Special Appeals' interpretation of the scope of the manslaughter-by-vehicle statute in *State v. Gibson*, 4 Md. App. 236 (1968) *aff'd*, 254 Md. 399 (1969), which held that the manslaughter-by-vehicle statute preempted common-law manslaughters committed with a vehicle, and *Blackwell v. State*, 34 Md. App. 547, *cert. denied*, 280 Md. 728 (1977), which held that the statute preempted depraved-heart murders committed with a vehicle. The Court of Special Appeals correctly rejected the claim that felony murder, where the killing is unintended and committed with a vehicle, is preempted by the manslaughter-by-vehicle statute.

First, there is no indication that the General Assembly intended the manslaughter-by-vehicle statute to supplant common-law felony murder. Applying to felony murder the same conflict preemption analysis that the Court of Special Appeals employed in *Gibson*, which this Court expressly adopted as its own,

this Court should conclude that felony murder is not in conflict with the manslaughter-by-vehicle statute. Moreover, even if this Court concludes that the legislature intended the manslaughter-by-vehicle statute to occupy an entire field, there is no evidence that the legislature intended that the field be so broad as to encompass common-law felony murder.

Second, felony murder is not an "unintended homicide" as contemplated by *Gibson*. The offender's intent as to the homicide victim is not an element of felony murder. Moreover, unlike gross negligence, felony murder has an element of malicious intent. Much like the doctrine of transferred intent, with felony murder, the offender's intent to commit a felony dangerous to human life is transferred to the homicide offense and satisfies the malice required for a murder conviction.

Lastly, even if vehicular felony murder is preempted by the manslaughter-by-vehicle statute when the homicide is unintended, vehicular felony murders that are committed with an intent to kill (or an intent to run over the victim) are not. And, if Harris is correct that intent to kill becomes an element of felony murder in vehicular homicide cases like this, it was incumbent

upon him to raise the issue at trial, but he did not. He should not be heard to complain for the first time on appeal that his murder conviction is invalid because the jury was not properly instructed on the elements of vehicular felony murder.

A. In the absence of clear legislative intent, the Court must presume that the General Assembly did not intend to preempt the common-law felony-murder doctrine.

At issue here is the preemptive effect of the General Assembly's enactment of the manslaughter-by-vehicle statute. As originally adopted, the statute criminalized homicide by operation of a vehicle "in a grossly negligent manner." 1941 Md. Laws, Ch. 414. The statute currently provides, in pertinent part: "A person may not cause the death of another as a result of the person's driving, operating, or controlling a vehicle or vessel in a grossly negligent manner." Md. Code Ann., Crim. Law ("CR") § 2-209(b)[1]

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[1] The original manslaughter-by-vehicle statute was codified as Article 27, Section 436A, and made it a misdemeanor, punishable by up to three years' imprisonment, to drive a vehicle "in a grossly negligent manner" that causes the death of another. 1941 Md. Laws, Ch. 414. The legislature later recodified the statute as Article 27, Section 455, and again as Article 27, Section 388, before moving it to the Criminal Law Article. *Sacchet v. Blan*, 353 Md. 87, 90 nn.2-3 (1999); *State v. Loscomb*, 291 Md. 424, 428

(Westlaw).[2] Harris argues that common-law felony murder, when committed with a vehicle, has been preempted by the manslaughter-by-vehicle statute. (Petitioner's Br. at 16). He is wrong.

As will be explained in more detail below, employing the same analysis used in *Gibson* reveals that the General Assembly did not intend to displace the felony-murder doctrine because the offenses are not in conflict. Nor is there any evidence of an intent to occupy an entire field that includes felony murder. The preemption intended by the legislature was limited to vehicular homicides committed with gross negligence and closely related offenses.

"The interpretation of a statute is a question of law that this Court reviews *de novo*." *Berry v. Queen*, 469 Md. 674, 686 (2020). "The goal of statutory interpretation is to effectuate the General

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n.1 (1981). It was reclassified as a felony in 1997. *Sacchet*, 353 Md. at 90 (citing 1997 Md. Laws, Chs. 372, 373). A violation of the current manslaughter-by-vehicle statute is a felony punishable by up to ten years' incarceration (or up to 15 years where the defendant previously has been convicted of certain homicide or DUI offenses). CR § 2-209.

[2] All code citations, Maryland and out-of-state, are to Westlaw current through 2021 legislation.

Assembly's intent." *Montgomery County v. Cochran*, 471 Md. 186, 208 (2020) (citation omitted). "Throughout this process, [courts should] avoid constructions that are illogical or nonsensical, or that render a statute meaningless." *Bell v. Chance*, 460 Md. 28, 53 (2018).

Under "Article 5 of the Declaration of Rights, the common law is Constitutionally guaranteed to the inhabitants of the State. Although that common law may be altered or repealed through statutes duly enacted by the General Assembly, given the Constitutional underpinning, its erosion is not lightly to be implied." *State v. North*, 356 Md. 308, 312 (1999). The "enactment of a statute ordinarily will not displace the common law," *Goldstein v. State*, 339 Md. 563, 571 (1995), and "statutes are not to be construed to alter the common-law by implication," *Hardy v. State*, 301 Md. 124, 131 (1984). "Thus, there is a presumption against statutory preemption of the common-law." *Id.*

"[S]tatutes in derogation of the common law are strictly construed, and it is not to be presumed that the Legislature by creating a statute intended to make any alteration in the common law other than what has been specified and plainly pronounced."

Trapasso v. Lewis, 247 Md. App. 577, 586-87 (2020) (cleaned up). That is, courts are "bound to interpret statutes that displace common law as narrowly as possible." *Anne Arundel County v. Reeves*, 474 Md. 46, 78 (2021).

Although abrogation by implication is "highly disfavored," it is "possible." *WSC/2005 LLC v. Trio Ventures Associates*, 460 Md. 244, 258 (2018). And when abrogation by implication occurs, it can take two possible forms: field preemption or conflict preemption. *Id.*

"Field preemption is implicated when an entire body of law is occupied on a comprehensive basis by a statute." *Genies v. State*, 426 Md. 148, 155 (2012). In *Robinson v. State*, 353 Md. 683 (1999), for example, this Court concluded that the 1996 enactment of Maryland's assault statutes was intended to occupy the field and subsume all statutory and common-law assault and battery offenses. *Genies*, 426 Md. at 155. In reaching that conclusion, the Court looked to legislative history—including "bill analyses and a floor report, which stated that the statutes would consolidate and replace the common law offenses"—as well as "the statute's

expressed repeal of the entire existing statutory scheme" as evidence of the legislature's intent. *Id.*

"Conflict preemption is implicated when a statute repeals the common law 'to the extent of inconsistency.'" *Id.* (quoting *Lutz v. State*, 167 Md. 12, 15 (1934)). In *North*, for example, the Court considered "whether the crime of attempted possession of a controlled dangerous substance" was "narrowed" by the enactment of a statute that "criminalized the possession or purchase of 'look alike drugs,' or non-controlled substance that the person reasonably believed to be a controlled substance." *Genies*, 426 Md. at 155. In that case, "there was no express preemption in the language of the statute or enacting session law," and so the Court "proceeded to review the statute's legislative history, which revealed an intent on the part of the Legislature to create a wholly separate offense, rather than supplanting the crime of attempt at common law." *Id.*

Here, it is undisputed that the felony-murder doctrine has always been a common-law offense. (Petitioner's Br. at 16); *see State v. Goldsberry*, 419 Md. 100, 136-37 (2011) (recognizing felony murder as a common-law offense). As explained below, however,

there is no evidence of a conflict that reflects a legislative intent to preempt, nor is there evidence of an intent to preempt a field that includes felony murder. In the absence of such clear legislative intent, the presumption stands that the common law remains unaltered.

1. *A "conflict preemption" analysis reveals that the felony-murder doctrine is not preempted because it is not in conflict with the manslaughter-by-vehicle statute.*

In *Gibson*, the Court of Special Appeals employed, and this Court expressly adopted, a "conflict preemption" analysis of the manslaughter-by-vehicle statute. Using *Gibson*'s conflict-preemption method of analysis, the manslaughter-by-vehicle statute does not conflict with the felony-murder doctrine, and therefore does not preempt it.

Gibson arose from a prosecution of Michael Gibson for causing a woman's death by his "illegal and improper operation of a motor vehicle." 4 Md. App. at 238. He was charged with four counts of common-law misdemeanor-manslaughter because the death occurred while he was committing various misdemeanor violations of the motor vehicle laws (as well as underage drinking).

Id. at 239. He also was charged with one count of violating the manslaughter-by-vehicle statute. *Id.* The trial court dismissed the misdemeanor-manslaughter counts, and the State appealed. *Id.* at 240.

The Court of Special Appeals affirmed, holding that the enactment of the manslaughter-by-vehicle statute preempted the common-law manslaughter offenses at issue. *Id.* at 247-48. In reaching that conclusion, the court explained that there was "no legislative history to which [it could] turn to ascertain the exact reach" or "the effect of that statute upon the common law felony of involuntary manslaughter." *Id.* at 245. In the absence of express legislative clues, the court was left to determine legislative intent by identifying incongruities in the law and reasoning that the legislature must have intended to preempt common-law offenses that "conflict with the statute." *Id.* at 246-47.

The *Gibson* court's rationale for interpreting the manslaughter-by-vehicle statute as preempting common-law manslaughters was to prevent a nonsensical incongruity among

the statute and common-law manslaughter offenses. It reasoned that the legislature would not intend

> to permit the prosecution of offenders either for the felony of common law manslaughter, with its ten-year penalty, or for the statutory misdemeanor of manslaughter by automobile, with its three-year penalty, even though, where the prosecution is based upon gross negligence, the proof necessary to justify a conviction in either case would be precisely the same (a wanton or reckless disregard to human life).

Id. at 246.

The court also noted a similar conflict between the statute and misdemeanor-manslaughter:

> A similarly incongruous result would follow from attributing an intention to the Legislature to permit a felony conviction and ten-year sentence upon simple proof that the accidental homicide occurred in the commission of an unlawful act (a misdemeanor), while requiring a greater degree of proof under the statute to support a conviction for a lesser grade of homicide, a misdemeanor punishable by a maximum of three years imprisonment.

Id. at 246-47 (footnote omitted). As this Court later reiterated, "a contrary conclusion [in *Gibson*] would have rendered [the statute] essentially nugatory" because "prosecutors would likely never use the statute," which required the same or greater degree of proof for a lesser penalty. *North*, 356 Md. at 317.

With that rationale in mind, the *Gibson* court concluded that, in enacting the manslaughter-by-vehicle statute, the General Assembly

> intended to deal with an entire subject matter—unintended homicides resulting from the operation of a motor vehicle—and that the common law crime of involuntary manslaughter, when based on homicides so occurring, *is in conflict with the statute and must yield to it to the extent of the inconsistency*. *See Lutz v. State*, 167 Md. 12. We observe in this connection that in enacting [the statute], the Legislature expressly provided (Section 2 of Chapter 414 of the Acts of 1941) that "*all acts inconsistent with the provisions of this Act are repealed to the extent of such inconsistency*." . . . The rule is well settled that 'where a statute prohibits a particular act, and imposes a penalty for doing it, and a subsequent statute imposes a different penalty for the same, *or practically the same*, offense, the later statute repeals the earlier one, and this is true whether the penalty is increased or diminished.

Id. at 247 (emphasis added) (citation and quotation marks omitted).

The *Gibson* court's quotation of the language from Section 2 of the 1941 Act (repealing other law "to the extent of [any] inconsistency") strongly implies that, notwithstanding the court's "entire subject matter" language, it was finding conflict preemption (not field preemption). *See Genies*, 426 Md. at 155 ("Conflict preemption is implicated when a statute repeals the

common law 'to the extent of inconsistency.'" (quoting *Lutz*, 167 Md. at 15)). That is, a conflict analysis can be replicated for each "unintended homicide[] resulting from the operation of a motor vehicle," and each offense must "yield" to the manslaughter-by-vehicle statute only "*to the extent of the inconsistency*." *Gibson*, 4 Md. App. at 247 (emphasis added).

This Court granted certiorari in *Gibson* and affirmed in a short opinion in which this Court adopted the Court of Special Appeals' analysis as its own, stating that "the result reached by the Court of Special Appeals was correct for the reasons given." *State v. Gibson*, 254 Md. 399, 401 (1969).

Employing that analysis here, the conflict between penalty and conduct that supported a conclusion of preemption in *Gibson* does not exist in the case of felony murder. The felony-murder doctrine serves a broader purpose than the manslaughter-by-vehicle statute. *See State v. Allen*, 387 Md. 389, 398 (2005) ("The purpose underlying the modern felony-murder rule is one of deterrence; the rule is intended to deter dangerous conduct by punishing as a first degree murder a homicide resulting from dangerous conduct in the perpetration of a felony, even if the

defendant did not intend to kill."). It requires proof of the commission of a felony dangerous to human life, the defendant's intent to commit the felony, and a resultant death. *Id.* at 397-98; *see also Fisher v. State*, 367 Md. 218, 263 (2001) (holding that a felony-murder conviction can be predicated on any felony that is dangerous to life, either due to the nature of the crime or the manner in which it was perpetrated in the circumstances of a given case). The prescribed penalty of life imprisonment when the murder occurs in the commission of certain enumerated serious felonies reflects the legislature's assessment of the gravity of the offense. CR § 2-201(b).

The manslaughter-by-vehicle statute, by contrast, requires proof of a death caused by the operation of a vehicle in a grossly negligent manner. CR § 2-209(b). The offense does not require proof of other felonious conduct. *Id.* And the three-year maximum penalty prescribed when the statute was first enacted (which has since been increased to a ten-year maximum) reflects the legislature's assessment that it is a comparatively less serious offense. 1941 Md. Laws, Ch. 414; CR § 2-209. Indeed, "[w]hen an accidental death resulted from even the grossly negligent

operation of an automobile, etc., the image of the perpetrator conjured up in the public mind was not that of the classic criminal." Judge Charles E. Moylan, Jr., *Criminal Homicide Law* § 12.11 at 240 (2002). The General Assembly's purpose for enacting the manslaughter-by-vehicle statute "was to lessen the severity of the crime and to ameliorate its punishment" in such cases. *Id.*

Thus, the two offenses do not prescribe different penalties for the same or similar conduct. The higher penalties for felony murder (life if in the first degree; up to 40 years if in the second degree) contemplate the greater degree of culpability and the legislature's intent to deter dangerous felonious conduct. Recognizing the viability of both felony murder (when committed with a vehicle) and the manslaughter-by-vehicle statute would not lead to an incongruity whereby the State could obtain a greater penalty with a lesser degree of proof by choosing to prosecute one offense over the other. *See North*, 356 Md. at 319 (distinguishing *Gibson* because of, *inter alia*, the "disparity in possible penalties" among the offenses at issue, noting that, "although there [was] some overlap between the two offenses, . . . [they were] by no means identical, or the same for merger purposes"). Nor would

recognizing the continued viability of the felony-murder doctrine in cases such as this render the manslaughter-by-vehicle statute "nugatory." *Id.* at 317.

On the other hand, concluding that the enactment of the manslaughter-by-vehicle statute preempts the felony-murder doctrine would lead to illogical and incongruous results. *State v. Bey*, 452 Md. 255, 266 (2017) (noting that, in reviewing a statute, courts will consider "how it relates to other laws, its general purpose and relative rationality and legal effect of various competing constructions" (citation omitted)). Consider that Harris's three co-defendants all pleaded guilty to identical felony murder charges, despite that they were nowhere near the Jeep when Harris ran over Officer Caprio.[3] All four convictions stem from the same circumstances. Under the felony-murder doctrine, all four confederates are equally liable for Officer Caprio's death, which is consistent with the deterrent purpose of the doctrine. Yet, it would make little sense that Harris should escape a murder

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[3] *See State v. Ward,* Circuit Court for Baltimore County case no. 03-K-18-002251; *State v. Matthews,* Circuit Court for Baltimore County case no. 03-K-18-002252; *State v. Genius*, Circuit Court for Baltimore County case no. 03-K-18-002253.

conviction for the death that he directly caused while his co-defendants each incur first-degree murder convictions for a death that they did not directly cause. In enacting the manslaughter-by-vehicle statute, the General Assembly did not intend such absurd results.

2. *To the extent that the legislature intended to preempt an entire subject matter, that field does not encompass felony murder.*

i. The legislature intended to limit any preemption to the field of vehicular manslaughters committed with gross negligence and related offenses.

As discussed above, the *Gibson* court's language, read in context, implies that it found conflict preemption. However, to the extent that this Court might read *Gibson* as finding field preemption, the Court should again look to legislative intent to reach the conclusion that the field that was preempted does not include felony murder. In doing so, this Court should look to "the normal, plain meaning of the statute." *Bey*, 452 Md. at 265 (citation omitted). Although the Court will not "read statutory language in a vacuum," it also should "not construe a statute with 'forced or

subtle interpretations' that limit or extend its application." *Id.* (citation omitted).

The manslaughter-by-vehicle statute, as it was written in 1941 and in its current form, criminalizes homicide by operation of a vehicle "in a grossly negligent manner." 1941 Md. Laws, Ch. 414; CR § 2-209(b). Its plain language therefore indicates that if the statute was intended to preempt a field, that field consists of vehicular homicides committed with gross negligence. *See* Moylan, *supra* § 12.12 at 242 ("[The manslaughter-by-vehicle statute] preempts the field with respect to the unintended death *caused by the gross[ly] negligent operation* of an automobile[.]" (emphasis added)); *see also North*, 356 Md. at 320-21 (Eldridge, J. dissenting) (stating that the manslaughter-by-vehicle statute "did not cover the entire field of common law involuntary manslaughter" but the *Gibson* court nevertheless found preemption in "the limited area of involuntary manslaughter by motor vehicle").

Gross negligence is not an element of felony murder. *Allen*, 387 Md. at 397-98. Nor is felony murder "the same, or practically the same, offense" as gross negligence homicide or misdemeanor-manslaughter. *Gibson*, 4 Md. App. at 247 (citation and quotation

marks omitted). The inclusion of a specific *mens rea* in the statute is a legislative limitation that leaves the culpability that arises from a killing in the course of a felony unaffected.

Indeed, the Court of Special Appeals has already said as much in *Anderson v. State*, 61 Md. App. 436, *cert. denied*, 303 Md. 295 (1985). There, Judge Moylan stated (albeit in dicta) that the manslaughter-by-vehicle statute "did not cover all unlawful killings where the instrumentality of death had been a vehicle, but only those where the vehicle had been operated 'in a grossly negligent manner,'" and so "*any vehicular homicide that would have qualified as common law murder was untouched by the statute. . . . The only area impacted by the statute was common law involuntary manslaughter* where the instrumentality of death had been a motor vehicle." *Id.* at 454 (emphasis added). Therefore, common-law felony murder remains "untouched by the statute." *Id.*

The Court of Special Appeals' *Blackwell* decision does not compel a different conclusion. There, Blackwell was convicted of second-degree depraved-heart murder and violating the manslaughter-by-vehicle statute on evidence that he was driving

his vehicle while intoxicated when he fatally struck a bicyclist. 34 Md. App. at 549, 553. The court first held that evidence of Blackwell's past "drinking habits" was insufficient to establish the "extreme indifference to the value of human life" form of malice, malice being the necessary *mens rea* element of murder. *Id.* at 553-54. Thus, the State simply failed to meet its evidentiary burden to prove murder.[4]

The court offered an alternative conclusion, however. It stated that "[i]n the absence of evidence of intentional homicide, . . . the statutory preemption applies as well to second degree murder [of the depraved-heart variety] as it did in *Gibson* to manslaughter." *Id.* at 555.

The Court of Special Appeals' extension of *Gibson* to depraved-heart murder does not compel a similar extension here to felony murder. There is "an extremely close relationship

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[4] This primary holding of *Blackwell* is reinforced by this Court's recent decision in *Beckwitt v. State*, ___ Md. ___, No. 16, Sept. Term 2021 (filed Jan. 28, 2022), which held that the extreme indifference to human life that is necessary to establish the malice element of depraved-heart murder is shown only where the defendant's conduct was reasonably likely, if not certain, to cause death. *Id.*, slip op. at 3-4.

between depraved-heart murder and gross negligence manslaughter." Moylan, *supra* § 12.5 at 228. The difference between the two offenses is "simply one of degree," and the variance in their "respective *mentes reae*," is "subtle to the point of being indiscernible." *Id.* §§ 6.4, 12.5 at 137, 228; *see also Ashe v. State*, 125 Md. App. 537, 546 (1999) ("[S]econd degree depraved heart murder is virtually identical to gross negligence involuntary manslaughter."). Given the degree of overlap between depraved-heart murder and gross-negligence manslaughter, the *Blackwell* court's conclusion that the manslaughter-by-vehicle statute also preempts depraved-heart murders when committed with a vehicle is arguably consistent with *Gibson's* rationale. *See Gibson*, 4 Md. App. at 247 ("[W]here a statute prohibits a particular act . . . , and a subsequent statute imposes a different penalty for the same, *or practically the same, offense*, the later statute repeals the earlier one[.]" (emphasis added) (citation and quotation marks omitted)).

Unlike depraved-heart murder, felony murder does not involve gross negligence and is not closely related to the conduct prohibited by the manslaughter-by-vehicle statute. As discussed, the felony-murder doctrine is intended to deter and punish conduct

that is significantly more blameworthy than the vehicular homicides at issue in *Gibson* and *Blackwell*. There is no overlap with the manslaughter-by-vehicle statute that would justify preemption of the felony-murder doctrine.

ii. Felony murder is not an "unintended homicide" as contemplated by *Gibson* because the offender intends to commit a felony that is inherently dangerous.

The Court of Special Appeals rejected Harris's statutory preemption claim on the ground that "[f]elony murder is not . . . within the scope of unintended homicides" as contemplated by *Gibson* because the defendant's intent to do the underlying felony supplies the malice required for a murder conviction. (E. 48). The court's assessment of homicide law is correct.

A defendant's intent to commit an underlying felony is transferred to, and stands in the place of, the intent to kill:

> The application of the felony-murder rule relies on the imputation of malice from the underlying predicate felony. In *State v. Allen*, 387 Md. 389 (2005), we limited the felony-murder rule to situations where the intent to commit the underlying felony existed prior to or concurrent with the act causing the death of the victim, and not afterwards. *Id.* at 402. In so doing, we explained: "the felony-murder rule is a legal fiction in which the intent and the malice to commit

> the underlying felony is 'transferred' to elevate an unintentional killing to first degree murder . . . ." *Id.* at 401 (citation omitted).

Christian v. State, 405 Md. 306, 331-32 (2008).

Harris cites this Court's *Christian* opinion for the proposition that this Court has "classified" felony murder as "an unintentional killing." (Petitioner's Br. at 11). His reliance on the phrase "unintentional killing" is misguided.

First, that an unintentional killing *can be* elevated to murder if committed in the course of a felony does not mean that *all* homicides prosecuted via the felony-murder doctrine are necessarily unintentional. Rather, the defendant's intent with respect to the decedent is legally irrelevant to felony murder. Under Maryland common law, "a homicide arising in the commission of . . . a felony is murder *whether death was intended or not*, the fact that the person was engaged in such perpetration or attempt being sufficient to supply the element of malice." *Watkins v. State*, 357 Md. 258, 267 (2000) (emphasis added) (cleaned up); *see also Malik v. State*, 152 Md. App. 305, 330 (2003) ("A murder committed in the course of the set of enumerated felonies is murder in the first degree, regardless of whether the

murder was reckless, accidental, or premeditated."). Classifying all felony murders as "unintentional" is a fundamental mischaracterization of the offense.

Second, Harris ignores the full context of the Court's statement in *Christian* that "the *intent and the malice* to commit the underlying felony is *'transferred'* to *elevate* an unintentional killing to first degree murder[.]" *Christian*, 405 Md. at 331-32 (emphasis added) (citation and quotation marks omitted); *see also Watkins*, 357 Md. at 267 ("That substituted form of malice represents, in a way, a vertical extension of the normal requirement that, for a homicide to constitute murder, the defendant must intend to kill the victim.").

In *Gladden v. State*, 273 Md. 383, 404 (1974), this Court equated the felony-murder rule to the doctrine of transferred intent. That is, the offender's malice (whether that be from an intent to murder a different person or an intent to commit a separate felony) is transferred to satisfy the *mens rea* for murder. Like the legal theory of transferred intent, the "felony-murder rule has been justified because the defendant is acting maliciously at

the time he kills, even if the object of his malice is unrelated to the victim's death." *Allen*, 387 Md. at 403.

In other words, a death (intentional or not) that occurs during the course of certain felonies can become a murder because the "general intent to do the death-producing act in the course of the commission, or attempted commission, of a felony" is transferred to the homicide offense. *Selby v. State*, 76 Md. App. 201, 210 (1988), *aff'd*, 319 Md. 174 (1990). Felony murder is not an "unintentional" homicide that would be preempted under *Gibson* because the defendant intends to commit a serious felony that is dangerous to human life, and "the malice involved in the underlying felony is permitted to stand in the place of the malice that would otherwise be required with respect to the killing." *Allen*, 387 Md. at 402.

For this reason as well, *Blackwell* is distinguishable. Unlike depraved-heart murder as addressed in *Blackwell*, which contains a *mens rea* element that falls below the level of criminal intent, felony murder can only arise from the defendant's intentional commission of a life-endangering felony.

In sum, there is no evidence (express or inferred) that the General Assembly intended to displace the common-law felony-murder doctrine. In the absence of that intent, this Court should hold that the manslaughter-by-vehicle statute does not preempt the common-law felony-murder doctrine.

B. Even if the manslaughter-by-vehicle statute preempts felony murder in some cases, it does not necessarily reach cases, like this, where there is evidence of intentional homicide.

Even if Harris is correct that felony murder would be preempted by the manslaughter-by-vehicle statute if the killing were unintended, the *Gibson* court clarified that the statute does not preempt homicides "where the killing was accomplished by intentionally running over the victim in an automobile." 4 Md. App. at 248 n.5. The *Blackwell* court similarly clarified that "[i]n the absence of *evidence* of intentional homicide, . . . statutory preemption applies," but "in a proper case where there is *evidence* of intentional homicide by use of an automobile, it is not improper to charge both crimes, and, if the evidence is sufficient, to submit

both to the jury for its determination of which, if either, is applicable." 34 Md. App. at 555 (emphasis added).

Here, there was *evidence* of intentional homicide. (E. 48) ("The State argued, and the facts would have permitted a finding, that [Harris] intended to run over Officer Caprio when he hit the gas while she was standing in front of the car."). Indeed, Harris does not dispute that the State could have properly submitted to the jury only first-degree felony murder—as he sees it, the State could have done so if the jury had also been required make a finding as to Harris's intent. (Petitioner's Br. at 21-22).

Harris, however, argues that because the jury was not asked to decide whether he intended to run over Officer Caprio, the Court of Special Appeals' alternative conclusion that felony murder was not preempted in this case because there was evidence of intentional homicide constitutes a violation of due process. (Petitioner's Br. at 18-22). His complaint is misguided because the critical question is not whether the jury found intent to kill—which is *not* an element of felony murder, *Whittlesey v. State*, 326 Md. 502, 520-21 (1992)—but, rather, whether felony murder was *preempted* in this case because there was no evidence of intentional

homicide. *Gibson*, 4 Md. App. at 248 n.5; *Blackwell*, 34 Md. App. at 555. The Court of Special Appeals was not invading the province of the jury. Rather, it was commenting on the propriety of submitting a murder offense to the jury in accord with *Blackwell*'s instruction that, in the case of where a vehicular homicide may be intentional, it is appropriate to submit to the jury both murder and statutory manslaughter-by-vehicle.

Harris's reliance on *Forbes v. State*, 324 Md. 335 (1991), is misplaced because the jury's verdict in that case *excluded* intentional murder. (Petitioner's Br. at 20-21). There, after an argument with the victim, Forbes got into his vehicle, "'revved' his engine, 'spun his tires' and then drove his car toward" the victim, striking and killing him. *Forbes*, 324 Md. at 337. Eyewitnesses provided conflicting testimony about whether Forbes drove his vehicle "straight at the victim," or whether the victim stepped into the path of Forbes's vehicle, and Forbes tried to swerve, but the victim "leaped up on the hood of Forbes's car." *Id.* "[T]he State's evidence at the trial supported the State's position that Forbes intended to strike the victim with his car, whereas the testimony of a defense witness tended to support the defendant's contention

that he did not intentionally hit the victim." *Id.* at 338. The State submitted to the jury murder and manslaughter, and the jury acquitted Forbes of murder and voluntary manslaughter, finding him guilty of only involuntary manslaughter. *Id.* at 338, 343. Thus, the jury found that Forbes *did not* intentionally run over his victim; it found that he was guilty only of being grossly negligent, which was squarely preempted per *Gibson*. *Id.*

Forbes stands for the proposition that the defendant's *mens rea* cannot be recharacterized on appeal in a manner that is directly contrary to the jury's verdicts. Unlike in *Forbes*, the jury here did not decide whether the homicide was intentional; the only homicide offense submitted to the jury was felony murder. (E. 293).

In any event, Harris's complaint, reduced to its essence, is that the circuit court failed to properly instruct the jury as to a supposed element of felony murder. He states that although "intent to kill would ordinarily not be an essential element for felony murder, it becomes an essential element in order to sustain a common law homicide offense that is perpetrated [with] a motor vehicle." (Petitioner's Br. at 19). Assuming *arguendo* that Harris is correct, then the defense should have requested a jury

instruction to properly reflect that "essential element." Or he could have done what the defense attempted but was precluded from doing in *Forbes*: argue to the jury that if Harris was guilty of anything, he was guilty of an offense that was not charged. 324 Md. at 338. Or, similarly, he could have moved for a judgment of acquittal on the ground that the State failed to prove this supposed element of its case. Harris, however, did not do any of these things—he never asked for a jury instruction, nor did he raise the preemption issue at trial. (E. 42; T. 04/30/2019 at 12-16, 31-32). His complaint should be deemed waived. *See Watts v. State*, 457 Md. 419, 426 (2018) ("This Court has consistently repeated that the failure to object to an instructional error prevents a party on appeal from raising the issue under Rule 4-325(e)."); *Ford v. State*, 330 Md. 682, 698 (1993) ("[Ford] acquiesced in the instructions and verdict sheet. By not objecting when the circuit court construed the indictment to cover both degrees of the misdemeanor and by failing to object after the court instructed the jury, Ford waived the issue and did not preserve it for appellate review."); *Graham v. State*, 325 Md. 398, 417 (1992) ("A claim of insufficiency of the evidence

is ordinarily not preserved if the claim is not made as a part of the motion for judgment of acquittal.").[5]

II.

HARRIS WAS NOT ENTITLED TO A CONSTITUTIONALLY-HEIGHTENED SENTENCING PROCEDURE IN ACCORDANCE WITH *MILLER V. ALABAMA*, 567 U.S. 460 (2012), BUT HE EFFECTIVELY RECEIVED ONE ANYWAY.

Harris argues that "a juvenile offender who is convicted of felony murder, and who is facing a mandatory sentence of life imprisonment with the possibility of parole, is entitled to a constitutionally-heightened sentencing procedure to include consideration of the juvenile's youth, the attendant circumstances, and penological justifications for a life sentence." (Petitioner's Br. at 23). He asserts that "'youth matters in sentencing'" (Petitioner's

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[5] Considering that Harris never raised the preemption argument below and there was ample evidence that could have supported a finding that Harris had an intent to kill, then at the very least, if the Court agrees with Harris that intent to kill is effectively an element of vehicular felony murder, the Court should remand for a new trial on the first-degree murder count. *See State v. Frye*, 283 Md. 709, 724 (1978) (granting the State the option to retry the defendant on murder and other charges because "[i]t was not in any manner the State's fault that . . . instructions were not given," which would have prevented an ambiguity in the jury's basis for its verdict).

Br. at 25-26) (quoting *Jones v. Mississippi*, 141 S. Ct. 1307, 1316 (2021)), and dedicates the bulk of his argument to establishing that juvenile homicide offenders generally have diminished culpability. Harris, however, fails to establish that *his* sentence—which is one of life *with* parole eligibility—was imposed in violation of the Eighth Amendment to the United States Constitution or Article 25 of the Maryland Declaration of Rights.

The Supreme Court's recent decision in *Jones* is clear that the Eighth Amendment never entitled Harris to a proceeding in which the sentencing court was required to methodically consider a list of factors and/or issue factual findings on incorrigibility. All that the Eighth Amendment requires with respect to juvenile homicide offenders is that sentencing courts have discretion to impose a sentence that is less than life without the possibility of parole. Harris received a life sentence *with* the possibility of parole (and other meaningful opportunities for release, discussed in more detail below), which *ipso facto* forecloses his Eighth Amendment claim.

Harris's Article 25 arguments are equally unpersuasive. This Court has consistently and repeatedly read Article 25 to be

in pari materia with the Eighth Amendment. There is no compelling reason to depart from that tradition now.

Even if Harris were correct that he was entitled to a sentencing procedure during which the court was required to expressly consider factors related his youth and attendant characteristics, the sentencing court did so.

Finally, Harris has not established that his life-with-parole sentence is unconstitutional as applied to him. His sentence is not grossly disproportionate to his crimes.

A. Harris's sentence of life *with* the possibility of parole does not violate the Eighth Amendment.

1. *Pertinent Eighth Amendment Jurisprudence*

The Eighth Amendment bars the infliction of "cruel and unusual punishments," including "sentences that are disproportionate to the crime committed." *Solem v. Helm*, 463 U.S. 277, 284 (1983). The Eighth Amendment does not require strict proportionality, however; it "forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and

concurring in the judgment); *see generally Thomas v. State*, 333 Md. 84, 94-96 (1993) (distilling as-applied disproportionality standard under Eighth Amendment and Article 25).

In addition to barring grossly disproportionate sentences in individual cases, the Eighth Amendment bars some punishments as categorically disproportionate. Pertinent here, in a series of four cases, the Supreme Court has addressed whether and under what circumstances the Eighth Amendment bars imposing a sentence of life without parole on a juvenile offender.

iii. Graham

First, in *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that the Eighth Amendment categorically bars sentencing a juvenile offender to life without parole for a non-homicide crime. *Id.* at 74. The Court thus held that a juvenile non-homicide offender's sentence must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75. The Court did not detail the nature of a "meaningful opportunity," leaving it to the states "in the first

instance, to explore the means and mechanisms for compliance." *Id.*

iv. Miller

In the second case, *Miller*, the Supreme Court held that the Eighth Amendment prohibits sentencing juvenile homicide offenders to *mandatory* sentences of life *without* parole. 567 U.S. at 465. Unlike in *Graham*, the Court did not categorically bar life-without-parole sentences for juveniles convicted of homicide crimes. Rather, it "mandate[d] only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" that penalty. *Id.* at 483. Life-without-parole sentences under mandatory sentencing regimes are barred for juveniles because the sentencer cannot "consider[] a juvenile's 'lessened culpability' and greater 'capacity for change[.]'" *Id.* at 465 (citation omitted).

v. Montgomery

In the third case, *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Supreme Court held that *Miller* applies retroactively to convictions already final, explaining that *Miller* "announced a

substantive rule of law," *id.* at 208, albeit one with "a procedural component," *id.* at 209.

"*Miller*'s substantive holding," the Court said, is that "life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Id.* at 210. Or, put differently: that life without parole may be imposed only on "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* at 209.

The "procedural component" of *Miller*'s holding, which was "necessary to implement [its] substantive guarantee," is that a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors" is "necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Id.* at 209-10. Yet, the *Montgomery* Court also agreed that "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility," declaring that "*Miller* did not impose a formal factfinding requirement." *Id.* at 211.

In order to give *Miller* retroactive effect, the Court said that juvenile homicide offenders who had been sentenced to mandatory life-without-parole "must be given the opportunity to show their

crime did not reflect irreparable corruption[.]" *Id.* at 213. But the Court did not require that opportunity necessarily to take the form of resentencing. *Id.* at 212. Rather, states could rely on their parole systems: "A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole[.]" *Id.*

vi. Jones

Last year, in *Jones*, the Supreme Court resolved disagreement over what is necessary for a life-without-parole sentence to be validly imposed under *Miller* and *Montgomery*. 141 S. Ct. at 1311. It rejected the claim that a sentencer must either make an express "factual finding of permanent incorrigibility" or "provide an on-the-record sentencing explanation with an 'implicit finding' of permanent incorrigibility." *Jones*, 141 S. Ct. at 1318-19. Rather, the Court insisted, the only requirement is that life-without-parole is "not mandatory," such that the sentencer has "discretion to impose a lesser punishment in light of [the defendant's] youth." *Id.* at 1322. According to the Court, the sentencer's discretion not to impose life-without-parole "suffices to ensure individualized consideration of a defendant's youth" as a

mitigating factor. *Id.* at 1321. Thus, a state's ordinary "discretionary sentencing system"—*i.e.*, one "where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole," *id.* at 1318—is "both constitutionally necessary and constitutionally sufficient." *Id.* at 1313.

vii. Carter

This Court decided *Carter v. State*, 461 Md. 295 (2018), after *Montgomery* but before *Jones*. *Carter* did not involve mandatory life-without-parole, which Maryland has never required for homicide offenses, nor did it involve formal sentences of life without parole at all. Rather, *Carter* involved three defendants serving parole-eligible sentences of different kinds. *Carter*, 461 Md. at 326-33. All three claimed that their sentences were illegal because, despite their formal eligibility for parole, they allegedly lacked a meaningful opportunity for release.

At the outset, the Court distilled key principles from the Supreme Court's then-existing caselaw, including the right of the "vast majority" of juvenile homicide offenders to have a meaningful

opportunity for release. *Id.* at 317. The Court also recognized that it is a meaningful opportunity for release, not parole *per se*, that matters. *Id.* at 318, 340. A "parole system that takes into account the offender's youth at the time of the offense and demonstrated rehabilitation" satisfies the meaningful opportunity requirement but is not the exclusive means to do so. *Id.* at 318.

Relevant here is the *Carter* Court's analysis of the claims of the two defendants (Carter and Bowie) who were serving life sentences (unlike the third petitioner, McCullough, who was serving several term-of-years sentences). The Court concluded that regulations of the Parole Commission that effectively required the Commission "to apply the factors identified by the Supreme Court in *Graham* and *Miller*" left "no doubt" that the Commission was required to "take into account an inmate's youth and demonstrated rehabilitation in making parole decisions." *Id.* at 343. It held that the "Maryland law governing parole, including the statutes, regulations, and executive order, provides a juvenile offender serving a life sentence with a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Id.*

at 365. Thus, it held that Carter's and Bowie's sentences were legal. *Id.*

2. *The Eighth Amendment does not require a sentencing court to expressly consider a list of youth-related factors or make any findings when imposing a life-with-parole sentence.*

Harris argues that juveniles who are convicted of felony murder for an "unintentional killing" are "entitled to a constitutionally-heightened sentencing procedure to include consideration of the juvenile's youth, the attendant circumstances, and penological justifications for a life sentence upon a juvenile for an unintentional killing." (Petitioner's Br. at 23). That constitutionally-heightened sentencing procedure, as Harris envisions it, would require the sentencing court to methodically consider a list of factors for evaluating the juvenile's youth and its attendant characteristics before a life-with-parole sentence may be imposed. (Petitioner's Br. at 47-50).

There are three fatal flaws in Harris's argument. The first is that the Supreme Court in *Jones* stated unequivocally that "an on-the-record sentencing explanation with an implicit finding of

permanent incorrigibility is not required by or consistent with *Miller*." *Jones*, 141 S. Ct. at 1320.

Harris counters that "*Jones* did not change the principle that 'the sentencer' still must 'consider the murderer's diminished culpability and heightened capacity for change' along with the juvenile's 'chronological age and its hallmark features.'" (Petitioner's Br. at 41) (quoting *Jones*, 141 S. Ct. at 1320 (internal quotation marks omitted)). Although that may be true when a court sentences a juvenile to life *without* parole, regardless, *Jones* makes clear that the record need not reflect that the court considered the offender's youth; a sentencing court's discretion to impose a sentence less than life without parole satisfies the Eighth Amendment. *Jones*, 141 S. Ct. at 1313, 1317-18.

Indeed, the Supreme Court expressly rejected Jones's argument (similar to the one that Harris makes here) that the record must reflect that the sentencing court considered the offender's youth. It stated that Jones's argument "rest[ed] on the assumption that meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth," a proposition that the Court

rejected because "if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth." *Id.* at 1319.

Furthermore, the Supreme Court's acknowledgement that States may "impose[] additional sentencing limits in cases involving defendants under 18 convicted of murder," including "requir[ing] sentencers to make extra factual findings before sentencing an offender under 18 to life without parole" or "direct[ing] sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth," *id.* at 1323, makes it abundantly clear that the Eighth Amendment does not require the extra factual findings or explanations that Harris demands here.

The second fatal flaw in Harris's argument is that *Graham*, *Miller*, *Montgomery*, and *Jones* each addressed the constitutional implications of imposing mandatory life-*without*-parole sentences on juveniles. That line of cases does not entitle a juvenile to a constitutionally-heightened sentencing proceeding when he or she is sentenced to life with parole eligibility.

In *Carter*, Daniel Carter challenged his sentence of life plus 20 consecutive years, entailing parole eligibility after 25 years (reduced by diminution credits). 461 Md. at 327. The Court concluded that Maryland's parole system provided him a meaningful opportunity for release and thus held that his sentence was lawful. *Id.* at 365. Notably, the Court stated that if Maryland's parole system had not offered Carter a meaningful opportunity for release, then Carter would have been "entitled to a new sentencing proceeding at which the court would consider whether he was one of the few juvenile homicide offenders who is incorrigible and may therefore be sentenced constitutionally to life without parole." *Id.* at 341. The Court, however, did *not* remand Carter's case for a resentencing because his life-with-parole sentence (which encompassed a meaningful opportunity for release via Maryland's constitutionally-sufficient parole system) was lawful.

Like Carter, Harris was sentenced to life *with* the possibility of parole. He will be eligible for parole after serving 15 years (ten less than Carter), reduced by diminution credits. Md. Code Ann., Corr. Servs. § 7-301(d)(1). His sentence is therefore not unconstitutional.

Harris attempts to characterize life-with-parole sentences as "one of the State's 'most severe punishments'" in a transparent attempt to establish a legal equivalency between life-with-parole and life-without-parole sentences. (Petitioner's Br. at 26) (quoting *Miller*, 567 U.S. at 472). He does so by taking the Supreme Court's language out of context and ignoring its holding: "We therefore hold that the Eighth Amendment forbids a sentencing scheme that *mandates* life in prison *without* possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479 (emphasis added). There is no doubt that life imprisonment is a "severe" sentence, but *Miller* and its progeny offer no relief when the court has imposed a sentence of life *with* parole eligibility. *See Montgomery*, 577 U.S. at 210 ("A hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not.") (quoting *Miller*, 567 U.S. at 465)). The *Miller* line of cases offers Harris no relief.

The third fatal flaw in Harris's argument is that his claimed entitlement to a constitutionally-heightened *sentencing proceeding* is contrary to Eighth Amendment jurisprudence, which, at most,

requires states to afford non-incorrigible juvenile offenders a "meaningful opportunity for release based on demonstrated maturity and rehabilitation," not a particular sentencing procedure. *See Graham*, 560 U.S. at 75 ("What [a] State must do . . . is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance."); *Carter*, 461 Md. at 318 (echoing the same). Indeed, the Supreme Court explained that a "State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery*, 577 U.S. at 212.

Providing a meaningful opportunity for release through parole is one way of satisfying the Eighth Amendment, *id.*, but that is not the only way, *Graham*, 560 U.S. at 75. In addition to Maryland's parole system, the General Assembly has recently created another mechanism that provides a meaningful opportunity for release to Harris and other juvenile offenders serving lengthy sentences: the Juvenile Restoration Act ("JUVRA"). 2021 Md. Laws, Ch. 61 (SB 494). JUVRA codified two

new provisions of the Maryland Code, Criminal Procedure Article ("CP"). Relevant here, CP § 8-110 establishes a robust mechanism for reduction of juveniles' sentences that independently satisfies the Eighth Amendment regardless of whether the sentencing court failed to take into consideration Harris's youth and its attendant characteristics.

JUVRA allows Harris (and eligible juvenile offenders like him) who have been imprisoned for at least 20 years for an offense to file up to three motions "to reduce the duration of the sentence." CP § 8-110(b)(1), (f). The statute requires the court to hold a hearing on each motion, where the offender and the State may present evidence, CP § 8-110(b)(2), (b)(4), and dictates that a court "shall" consider an enumerated list of factors in determining whether to reduce the sentence. CP § 8-110(d). The factors encompass substantially the same criteria that the Parole Commission and the Governor consider (by regulations and executive order, respectively) when deciding whether to grant an inmate parole. *See* COMAR 01.01.2018.06C; COMAR 12.08.01. 18A(3)-(4); *see also Carter*, 461 Md. at 320-23 (listing criteria). Consideration of those criteria "provides a juvenile offender

serving a life sentence with [the] 'meaningful opportunity to obtain release'" that the Eighth Amendment contemplates. *Carter*, 461 Md. at 365.

Most fundamentally, JUVRA requires the court to assess whether the offender "has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction." CP § 8-110(d)(5). That is, of course, the paramount concern of a meaningful opportunity for release. *See Graham*, 560 U.S. at 75 ("What the State must do . . . is give . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.").

Upon consideration of those factors, the court "may reduce the duration of a sentence imposed on an individual for an offense committed when the individual was a minor" if it determines that the individual is not a danger to the public and that a reduced sentence will "better serve[ ]" the "interests of justice." CP § 8-110(c). The court must issue its decision in writing and must address the mandatory factors in its decision. CP § 8-110(e).

In sum, Harris's insistence that he is entitled to a sentencing hearing in which the court is required to methodically and

expressly consider a list of factors and/or comment on whether he is incorrigible is foreclosed by prevailing Eighth Amendment case law. He has been sentenced to life with parole eligibility, and he has been afforded meaningful opportunities for release through two statutory mechanisms, both of which require the reviewer to consider youth and its attendant characteristics. Harris's sentence does not violate the Eighth Amendment.

3. *Harris's felony-murder conviction does not entitle him to a constitutionally-heightened sentencing procedure.*

Harris describes the felony-murder doctrine as "controversial," and he appears to argue that juveniles convicted of felony murder, at least where the homicide was unintended, deserve greater sentencing protections than those convicted of intentional homicides. (Petitioner's Br. at 27-35) (citation omitted). In support, Harris cites *Graham*, *Miller*, and similar cases, (Petitioner's Br. at 28-31), but those cases prohibit the imposition of life-*without*-parole sentences on "juvenile offenders whose crimes reflect the transient immaturity of youth," *Montgomery*, 136 S. Ct. at 734 (citations and quotation marks omitted).

Harris received a life-with-parole sentence. Maryland's parole system includes special consideration of factors related to juvenile offenders' youth and backgrounds. *Carter*, 461 Md. at 321. Therefore, sentences of life with parole in Maryland do not "mak[e] youth (and all that accompanies it) irrelevant," *Miller*, 567 U.S. at 479, but, rather, Maryland law accommodates the possible transience of Harris's youthful immaturity and includes "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," *Graham*, 560 U.S. at 75. Harris is not subject to "life incapacitation" because he has a meaningful opportunity to show that he has the "'capacity for change'" and to be released. (Petitioner's Br. at 31) (quoting *Miller*, 567 U.S. at 473).

Simply put, neither this Court nor the Supreme Court has ever held that the Eighth Amendment categorically bars life-with-parole sentences for unintentional homicides committed by juveniles. To the contrary, Kuntrell Jackson, one of the juvenile petitioners in *Miller*, was convicted of felony murder because he participated in a robbery during which an accomplice shot and killed a store clerk. *Miller*, 567 U.S. at 465-66. Jackson's less

culpable role in the homicide was not overlooked by the Supreme Court—it noted that "Jackson did not fire the bullet that killed [the clerk]; nor did the State argue that he intended her death. Jackson's conviction was instead based on an aiding-and-abetting theory . . . . All these circumstances go to Jackson's culpability for the offense." *Id.* at 478. The Supreme Court could have held that a sentencing proceeding in which the court must expressly consider the offender's youth and attendant characteristics is always mandatory before sentencing a juvenile to life-*with*-parole for an unintentional felony murder, but it did not. *Id.* at 478.

Granted, Justice Breyer wrote a concurring opinion in *Miller* in which he argued that, "[g]iven *Graham*'s reasoning, the kinds of homicide that can subject a juvenile offender to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim." *Id.* at 490 (Breyer, J., concurring). Harris's reliance on Justice Breyer's concurrence is misplaced. (Petitioner's Br. at 28).

To begin, Justice Breyer's concurrence, joined by only one other Justice, is not the controlling opinion. Second, the sentence to which Justice Breyer was referring was "life *without* parole."

Miller, 567 U.S. at 491 (emphasis added). Lastly, even Justice Breyer recognized that juveniles could be sentenced to life without parole if, as Harris did, they personally killed someone. *Id.* at 492.

Harris also misses the mark with his related argument that a "juvenile convicted of felony murder has twice diminished culpability than an adult." (Petitioner's Br. at 29). The *Graham* Court said that "defendants who *do not kill*, intend to kill, *or foresee that life will be taken* are categorically less deserving of the most serious forms of punishment" and, "when compared to an adult murderer, a juvenile offender who did not *kill or* intend to kill has a twice diminished moral culpability." 560 U.S. at 69 (emphasis added). Thus, even if the Eighth Amendment might bar the imposition of a life-without-parole sentence on a juvenile who did not kill, intend to kill, or foresee that a life will be taken, that is not a concern here because Harris has been afforded meaningful opportunities for release, he personally killed Officer Caprio, and the consequences of his actions leading to her death were direct, clear, and foreseeable, even for a 16-year-old.

Harris also fails to establish that there is a "national consensus" against sentencing juveniles to life with parole for

felony murder. Among the states that he cites, only four (Hawaii,[6] Minnesota,[7] Wisconsin,[8] and Florida[9]) would offer a juvenile in Harris's position an advantage over Maryland's system. (Petitioner's Br. at 32).

A juvenile convicted of felony murder could receive the same sentence of life with parole eligibility after 15 years that Maryland prescribes if convicted in Colorado,[10] New York,[11] North Carolina,[12] Oregon,[13] Pennsylvania,[14] (and even Florida if the "*Miller*-type factors" were satisfied). A juvenile would fare no

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[6] Haw. Rev. Stat. § 707-701 (abrogated felony murder).

[7] Minn. Stat. Ann. § 609.19 (imposing 40-year maximum for most unintentional felony murders).

[8] Wis. Stat. Ann. § 940.03 (limiting punishment for felony murder).

[9] Fla. Stat. Ann. § 921.1401 (requiring consideration of the "*Miller*-type factors" before a juvenile may be sentenced to life imprisonment for felony murder).

[10] Colo. Rev. Stat. Ann. § 18-3-103.

[11] N.Y. Penal Law § 70.05.

[12] N.C. Gen. Stat. Ann. § 15A-1340.19B.

[13] Or. Rev. Stat. Ann. § 144.397.

[14] 18 Pa. Stat. and Cons. Stat. Ann. § 1102.1.

better in Alaska, which permits a "definite term" of up to 99 years for most felony murders. Alaska Stat. Ann. § 12.55.125(b); *see Carter*, 461 Md. at 352 (indicating that a sentence of 50-years or more is *de facto* life without parole).

To be sure, many of the states cited by Harris grant sentencing courts discretion to impose non-life sentences in cases where juveniles (and adults in some cases) are convicted of felony murder. But that does not constitute a national consensus *against* such sentences when they are warranted.[15]

With respect to the several states that Harris lists that have amended their laws to "require independent mental states to be proven other than the implied malice from the commission of the underlying offense," (Petitioner's Br. at 33-34), the evidence in this case would support a finding that Harris acted knowingly, recklessly, and/or with extreme indifference to the value of human

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[15] In Harris's case, the sentencing court had discretion to suspend *any portion* of Harris's life sentence, *Bratt v. State*, 468 Md. 481, 503 n.17 (2020), but it chose not to. Therefore, it stands to reason that the court would not have imposed a sentence less than life even if it had been authorized to do so.

life. Therefore, even if Maryland joined the minority "consensus" of those states, it would not warrant relief in Harris's case.

Curiously, Harris also points out that ten states have "limited the felony murder rule to the actual perpetrators of the homicide." (Petitioner's Br. at 35). Here, it is undisputed that Harris was the actual perpetrator of the homicide.

In 2018, the Supreme Court of Iowa considered essentially identical sentencing claims to those that Harris raises here. *State v. Harrison*, 914 N.W.2d 178 (Iowa 2018). It concluded that the "national consensus remains in favor of subjecting juvenile offenders convicted of first-degree murder under the felony-murder rule—regardless of whether an offender was aiding and abetting or the principal actor—to the same sentencing options as juvenile offenders convicted of premeditated first-degree murder." *Id.* at 197-98.

Maryland has, thus far, decided to remain part of that national consensus. The General Assembly has decided that a murder committed in the course of a first-degree burglary should be treated the same as premeditated homicide, CR 2-201(a)(4)(iii), and that 16-year-old juveniles charged with first-degree murder

should be prosecuted the same as adults, CP § 4-202(c)(2); Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(d)(1), except that JUVRA now grants sentencing courts unfettered discretion to impose juvenile sentences below the minimum, CP § 6-235. These statutes reflect the General Assembly's considered view of the appropriate treatment of juvenile felony murder offenders, which this Court should not override. Harris's criticism is more appropriately directed to the legislature than this Court.

B. Harris's life with parole sentence does not violate Article 25 of the Maryland Declaration of Rights.

Harris argues that the Court should expand sentencing protections for juveniles convicted of felony murder under State law. He claims that the "protections of Article 25 of the Maryland Declaration of Rights are broader than their federal counterpart." (Petitioner's Br. at 41).[16]

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[16] Unlike Article 25, which is "directed at action by the courts," Article 16 of the Maryland Declaration of Rights, which prohibits the making of "Law[s] to inflict cruel and unusual pains and penalties," is "directed toward legislative action." *Thomas*, 333 Md. at 92.

Although the Court stated in *Carter* that there may be "some textual *support for finding* greater protection in the Maryland provisions," 461 Md. at 308 n.6 (emphasis added), it has not held that Article 25 *in fact* provides broader protections than the Eighth Amendment. *Id.* ("These provisions of the Maryland Declaration of Rights have usually been construed to provide the same protection as the Eighth Amendment."). It should not do so now.

Article 25 of the Maryland Declaration of Rights is considered an analog of the Eighth Amendment's protection from cruel and unusual punishment, and this Court has, even in the face of requests for departure, "consistently construed" Article 25 "as being *in pari materia* with [its] Federal counterpart[]." *Evans v. State*, 396 Md. 256, 327 (2006).

Harris relies on the "disjunctive phrasing" of Article 25, which bars "cruel *or* unusual punishment," to argue that it provides more protection than the Eighth Amendment. (Petitioner's Br. at 42). This Court, however, has dismissed that argument. *Thomas*, 333 Md. at 103 n.5. While first noting that support exists for a potential difference between "cruel *and* unusual" and "cruel *or* unusual" punishment, this Court went on

to say that its "cases interpreting Article 25 of the Maryland Declaration of Rights have generally used the terms 'cruel and unusual' and 'cruel or unusual' interchangeably." *Id*. Moreover, this Court noted the Court of Special Appeals' conclusion that "the adjective 'unusual' adds nothing of constitutional significance to the adjective 'cruel' which says it all, standing alone." *Id*. (internal quotation marks omitted) (quoting *Walker v. State*, 53 Md. App. 171, 193 n.9 (1982)). This Court stated that it perceived "no difference between the protection afforded by that amendment and by the 25th Article of our Declaration of Rights." *Thomas*, 333 Md. at 103 n.5; *see also Aravanis v. Somerset County*, 339 Md. 644, 656 (1995) ("Article 25 is, textually and historically, substantially identical to the Eighth Amendment. Indeed, both of them were taken virtually verbatim from the English Bill of Rights of 1689.").

Harris's reliance on *Leidig v. State*, 475 Md. 181, 235-36 (2021), in which the Court expanded the protections of Article 21 of the Maryland Declaration of Rights beyond the Sixth Amendment, is unpersuasive. As the Court explained in *Leidig*, the Supreme Court failed, over several years and multiple cases, to garner a majority holding articulating a coherent standard in

that doctrinal area. *Id.* at 902-04. This Court in *Leidig* chose to break the "gridlock as a matter of state constitutional law." *Id.* at 905. On the issue of whether the Eighth Amendment demands express consideration of a list of factors before a juvenile may be sentenced to life with parole, there is no such gridlock. *Jones* squarely held that express considerations and findings are not required, even if the court is imposing life *without* parole.

Moreover, the General Assembly has spoken with regard to juvenile life sentences and determined that the appropriate response was to enact JUVRA, which bans juvenile life without parole prospectively and allows individuals serving long prison terms for crimes committed as juveniles to seek modification of the sentence. CP §§ 6-235, 8-110.

This Court should decline to find that Article 25 provides Harris more protections than the Eighth Amendment.

C. Harris's youth and its attendant characteristics were considered by the sentencing court.

Even if the circuit court was required to consider Harris's youth and its attendant characteristics at sentencing before

imposing a life-with-parole sentence, the Court of Special Appeals correctly concluded in the alternative that Harris effectively received such a sentencing proceeding. Specifically, as the Court of Special Appeals noted, Harris's "youth was presented to the court for consideration in the presentence investigation report ('PSI') and by defense counsel" at sentencing, and the "circuit court said it had considered all the evidence and all factors." (E. 66). This was beyond what is required by the Eighth Amendment as interpreted by *Jones*.

Harris retorts that his "'age,' not his 'youth,' was presented to the sentencing court," and the sentencing court "was not presented the information on youth and its hallmark features in a meaningful way." (Petitioner's Br. at 24, 46). He also suggests that the absence of a statute compelling the sentencing court to consider "the *Miller*-type factors" implies that the court did not consider such factors. (Petitioner's Br. at 46-47). Harris is wrong on both points.

Before imposing Harris's sentences, the court explained that it "considered the presentence investigation, the victim impact, the Defendant's prior record, the arguments of counsel, the allocution,

. . . [and] all factors[.]" (E. 399). The presentence investigation (PSI) cited by the court provided a nearly 50-page review of Harris's age, home life, family, upbringing, physical health, mental health, education, finances, criminal history, school disciplinary history, employment, and exposure to criminal activity. (E. 403-51). The evaluator considered Harris's youth—which included his involvement in the crimes, his reaction to the homicide, influence from peers, and comments from his mother—and the report opined whether Harris was incorrigible. (E. 424-26).

Additionally, at the sentencing hearing, defense counsel insisted that Harris was not "a young man, he's a boy," that it is difficult to know "what's going on in the mind of a 16-year-old in the way they see things," *i.e.*, juveniles are often irrational and immature, "but to determine that [Harris was] beyond redemption is absolutely absurd and ridiculous." (E. 368, 373). Counsel highlighted Harris's troubled family life, noted the negative influences on him (*i.e.*, "he was the follower" of "more streetwise guys"), and argued the harshness of applying the felony-murder doctrine to an incident that both Harris and counsel described as an "accident." (E. 368-77, 391). Counsel asked the court to impose

a partially suspended sentence to match the sentences of his co-defendants. (E. 479-80).

Harris, however, claims that the sentencing court did not "adequately consider" the information presented because, although Harris's background was detailed in the PSI "and discussed at the hearing, [those facts] were not identified in relation to how they impact a juvenile's behavior." (Petitioner's Br. at 49). Harris once again stretches the Eighth Amendment beyond what the Supreme Court has interpreted it to provide. "*Miller* required that sentencing courts *consider* a child's diminished culpability and heightened capacity for change before condemning him or her to die in prison." *Montgomery*, 577 U.S. at 195 (emphasis added) (citation and quotation marks omitted). Neither this Court nor the Supreme Court has ever said that a sentencing court must explain how each fact considered relates to juvenile sentencing theory. And we now know that no factfinding or explanation is required at all. *Jones*, 141 S. Ct. at 1318.

Additionally, "trial judges are presumed to know the law and to apply it properly," and they are "presumed to intend the necessary and legitimate consequences of their actions in its light."

State v. Chaney, 375 Md. 168, 180-81 (2003) (cleaned up). Harris was sentenced in 2019, years after *Miller* was decided. The sentencing court is presumed to know of *Miller* and how to consider the factors discussed therein.

In sum, the sentencing court did consider Harris's youth and its attendant characteristics, it was aware that it could impose a suspended sentence, and it decided that the "appropriate sentence" was life. (E. 399). Even if the sentencing court was required to consider youth-related factors before sentencing Harris to life with parole, it did so.

D. Reviewed for as-applied proportionality under the Eighth Amendment and Article 25, Harris's sentences are not grossly disproportionate.

Harris also argues that "[a]s applied, [his] automatic life sentence for felony murder is unconstitutional." (Petitioner's Br. at 45). Harris cites *Graham* and *Miller* and once again argues that his sentence is unlawful because the sentencing court failed to consider "the *Miller*-type factors." (Petitioner's Br. at 46). He then describes in detail what he thinks the court "should have . . . considered." (Petitioner's Br. at 47-50).

There is a distinct body of law, apart from the *Graham/Miller* line of cases that governs as-applied disproportionality claims under the Eighth Amendment and Article 25. That body of law recognizes that the Eighth Amendment "does not require strict proportionality between crime and sentence"; rather, review for as-applied disproportionality reaches "only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin*, 501 U.S. at 1001 (Kennedy, J., concurring in part and concurring in the judgment) (citing, *inter alia*, *Solem*, 463 U.S. at 2888).

In *Thomas*, this Court summarized the standard, derived from *Harmelin* and *Solem*. It stated that "most cases can be resolved by a threshold comparison of the crime committed to the sentence imposed," which involves considering "the seriousness of the conduct involved, . . . any articulated purpose supporting the sentence, and the importance of deferring to the legislature and to the sentencing court." *Thomas*, 333 Md. 94-96 (emphasis added); *see also id.* at 103 n.5 (same standard applies under Article 25).[17]

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[17] A more extensive "*Solem*-type analysis," necessary only when the threshold comparison suggests gross disproportionality,

There is some support for applying juvenile-specific standards in as-applied Eighth Amendment disproportionality review. In *Graham*, for example, Chief Justice Roberts concurred in the judgment, reasoning that an "offender's juvenile status" and the principle that "juveniles are typically less culpable than adults" can "rightly inform[] the case-specific inquiry" under as-applied disproportionality review; conducting such review, he found Graham's life-without-parole sentence grossly disproportionate. 560 U.S. at 86-96 (Roberts, C.J., concurring in the judgment).[18]

Although Harris details some of the youth-related factors that he believes that sentencing court failed to consider, (Petitioner's Br. at 47-49), he has not sought to establish as-applied

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considers "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions," *Solem*, 463 U.S. at 292, as well as "other relevant factors." *Thomas*, 333 Md. at 96.

[18] In addition, the dissent in *Jones* suggested that a non-incorrigible juvenile offender could challenge a life-without-parole sentence through a claim of as-applied Eighth Amendment disproportionality. *Jones*, 141 S. Ct. at 1337 n.6 (Sotomayor, J., dissenting). The majority neither rejected nor endorsed that proposition. *Jones*, 141 S. Ct. at 1322.

disproportionality of his sentences under governing Eighth Amendment standards. Yet even if he did, the claim would fail at the outset based on "threshold comparison of the crime committed to the sentence imposed." *Thomas*, 333 Md. at 94. A life sentence with eligibility for parole after 15 years (and eligibility for JUVRA consideration after 20) simply is not grossly disproportionate for first-degree felony murder—a horrific homicide that Harris personally committed—first-degree burglary, and theft over $1,000, even considering the "offender's juvenile status" and the principle that "juveniles are typically less culpable than adults," *Graham*, 560 U.S. at 90 (Roberts, C.J., concurring). *Cf. State v. Seam*, 823 S.E.2d 605, 364-65 (N.C. App. 2018) (holding parole-eligible life sentence not grossly disproportionate for felony murder notwithstanding that juvenile defendant was not shooter: "While Defendant did not fire the gun that killed Harold King, he was nonetheless an active participant in the events that resulted in King's murder."), *aff'd*, 837 S.E.2d 870 (N.C. 2020).

CONCLUSION

The State respectfully asks the Court to affirm the judgment of the Court of Special Appeals.

Dated: February 1, 2022

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH THE MARYLAND RULES

This filing was printed in 13-point Century Schoolbook font; complies with the font, line spacing, and margin requirements of Maryland Rule 8-112; and contains 12,998 words, excluding the parts exempted from the word count by Maryland Rule 8-503.

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PERTINENT PROVISIONS

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Maryland
Constitution of Maryland Adopted by Convention of 1867
Declaration of Rights

MD Constitution, Declaration of Rights, Art. 5

Article 5. Application of common law and statutes of England; trial by jury

Effective: December 1, 2010
Currentness

<Article effective until approval of amendments proposed by Acts 2021, c. 809, § 1. See, also, Art. 5 effective after approval of amendments proposed by Acts 2021, c. 809, § 1.>

(a)(1) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.

(2) Legislation may be enacted that limits the right to trial by jury in civil proceedings to those proceedings in which the amount in controversy exceeds $15,000.

(b) The parties to any civil proceeding in which the right to a jury trial is preserved are entitled to a trial by jury of at least 6 jurors.

(c) That notwithstanding the Common Law of England, nothing in this Constitution prohibits trial by jury of less than 12 jurors in any civil proceeding in which the right to a jury trial is preserved.

Credits
Acts 1992, c. 203, ratified Nov. 3, 1992; Acts 1992, c. 204, ratified Nov. 3, 1992. Amended by Acts 2006, c. 422, § 1, ratified Nov. 7, 2006; Acts 2010, c. 480, § 1, ratified Nov. 2, 2010.

Notes of Decisions (416)

MD Constitution, Declaration of Rights, Art. 5, MD CONST DECL OF RIGHTS, Art. 5
Current with all legislation from the 2021 Regular Session and 2021 First Special Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

that said gray fox was taken and killed within the limits of Worcester County within thirty (30) days before the production of the head, skin or scalp before said Justice of the Peace. The Justice of the Peace shall thereupon give the person producing the same a certificate wherein he shall set forth the above-mentioned oath, and it shall also be the duty of the said Justice to mark said head, skin or scalp by cutting holes through the ears to prevent any second allowance for the same. Upon the presentation of the above-mentioned certificate, the Treasurer of said County shall pay the allowance or bounty of $1.10 as provided herein.

SEC. 2. *And be it further enacted,* That this Act shall take effect June 1, 1941.

Approved April 28, 1941.

CHAPTER 414.

(House Bill 349)

AN ACT to add a new section to Article 27 of the Annotated Code of Maryland (1939 Edition), title "Crimes and Punishments", sub-title "Manslaughter", said new section to be known as Section 436A and to follow immediately after Section 436 of said Article providing for the offense of manslaughter by automobile, motor vehicle, locomotive, engine, car, street car, train or other vehicle and the form of indictment or warrant, and relating to bail for persons accused of said offense.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That a new section be and it is hereby added to Article 27 of the Annotated Code of Maryland (1939 Edition), title "Crimes and Punishments", sub-title "Manslaughter", said new section to be known as Section 436A, to follow immediately after Section 436 of said Article, and to read as follows:

436A. Every person causing the death of another as the result of the driving, operation or control of an automobile, motor vehicle, locomotive, engine, car, street car, train or other vehicle, in a grossly negligent manner, shall be guilty of a misdemeanor to be known as "manslaughter by automobile, motor vehicle, locomotive, engine, car, street car, train or other vehicle", and the person so convicted shall be sentenced to jail or the House of Correction for not more than

three years, or be fined not more than $1,000.00, or be both fined and imprisoned. The Police Magistrates of the City of Baltimore shall have the power to accept bail for persons charged with the offense created by this section.

In any indictment or warrant for manslaughter by automobile, motor vehicle, locomotive, engine, car, street car, train or other vehicle, it shall not be necessary to set forth the manner and means of death. It shall be sufficient to use a formula substantially to the following effect: "That A B on the day of nineteen hundred and at the County (City), aforesaid, unlawfully, in a grossly negligent manner did kill and slay C D".

SEC. 2. *And be it further enacted,* That all Acts or parts of Acts, whether Public General or Public Local, inconsistent with the provisions of this Act, be and they are hereby repealed to the extent of such inconsistency.

SEC. 3. *And be it further enacted,* That this Act shall take effect June 1, 1941.

Approved April 23, 1941.

CHAPTER 415.

(House Bill 366)

AN ACT to repeal and re-enact, with amendments, Section 155 of Article 48 of the Annotated Code of Maryland (1939 Edition), title "Inspections", sub-title "Boiler Rules", exempting certain stationary boilers used on dairy farms in Montgomery and Carroll Counties from the provisions of said sub-title.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 155 of Article 48 of the Annotated Code of Maryland (1939 Edition), title "'Inspections", sub-title "Boiler Rules", be and it is hereby repealed and re-enacted, with amendments, to read as follows:

155. This sub-title shall not apply to boilers under Federal Control, or to boilers of steam fire engines brought into the State for temporary use in times of emergency, or to portable boilers used for agricultural purposes only, or to steam heating boilers carrying not more than fifteen pounds pressure, or to hot water boilers carrying a pressure not exceeding 160 pounds or a temperature not exceeding 250 degrees Fehrenheit,

MD Code, Courts and Judicial Proceedings, § 3-8A-03

§ 3-8A-03. Jurisdiction of court

Effective: May 8, 2020
Currentness

Exclusive original jurisdiction over delinquent children or children in need of supervision

(a) In addition to the jurisdiction specified in Subtitle 8 of this title, the court has exclusive original jurisdiction over:

(1) A child who is alleged to be delinquent or in need of supervision or who has received a citation for a violation;

(2) Except as provided in subsection (d)(6) of this section, a peace order proceeding in which the respondent is a child; and

(3) Proceedings arising under the Interstate Compact on Juveniles.

Concurrent jurisdiction over proceedings against an adult

(b) The court has concurrent jurisdiction over proceedings against an adult for the violation of § 3-8A-30 of this subtitle. However, the court may waive its jurisdiction under this subsection upon its own motion or upon the motion of any party to the proceeding, if charges against the adult arising from the same incident are pending in the criminal court. Upon motion by either the State's Attorney or the adult charged under § 3-8A-30 of this subtitle, the court shall waive its jurisdiction, and the adult shall be tried in the criminal court according to the usual criminal procedure.

Concurrent jurisdiction relating to compulsory public school attendance laws

(c) The jurisdiction of the court is concurrent with that of the District Court in any criminal case arising under the compulsory public school attendance laws of this State.

Lack of jurisdiction

(d) The court does not have jurisdiction over:

(1) A child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;

(2) A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;

(3) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration;

(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article:

(i) Abduction;

(ii) Kidnapping;

(iii) Second degree murder;

(iv) Manslaughter, except involuntary manslaughter;

(v) Second degree rape;

(vi) Robbery under § 3-403 of the Criminal Law Article;

(vii) Third degree sexual offense under § 3-307(a)(1) of the Criminal Law Article;

(viii) A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203 of the Public Safety Article;

(ix) Using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;

(x) Use of a firearm under § 5-622 of the Criminal Law Article;

(xi) Carjacking or armed carjacking under § 3-405 of the Criminal Law Article;

(xii) Assault in the first degree under § 3-202 of the Criminal Law Article;

(xiii) Attempted murder in the second degree under § 2-206 of the Criminal Law Article;

(xiv) Attempted rape in the second degree under § 3-310 of the Criminal Law Article;

(xv) Attempted robbery under § 3-403 of the Criminal Law Article; or

(xvi) A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the Criminal Law Article;

(5) A child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article; or

(6) A peace order proceeding in which the victim, as defined in § 3-8A-01(cc)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4-501 of the Family Law Article.

Exclusive jurisdiction relating to violations of Maryland Vehicle Law by children

(e) If the child is charged with two or more violations of the Maryland Vehicle Law,[1] another traffic law or ordinance, or the State Boat Act, allegedly arising out of the same incident and which would result in the child being brought before both the court and a court exercising criminal jurisdiction, the court has exclusive jurisdiction over all of the charges.

Credits

Added as Courts and Judicial Proceedings § 3-804 by Acts 1973, 1st Sp. Sess., c. 2, § 1, eff. Jan. 1, 1974. Amended by Acts 1974, c. 691, § 8; Acts 1975, c. 554, §§ 1, 3; Acts 1977, c. 489; Acts 1977, c. 765, § 23; Acts 1979, c. 348; Acts 1979, c. 558; Acts 1980, c. 377; Acts 1982, c. 844; Acts 1984, c. 664; Acts 1985, c. 10, § 3; Acts 1986, c. 790; Acts 1986, c. 855; Acts 1994, c. 641, § 1, eff. Oct. 1, 1994; Acts 1995, c. 3, § 12, eff. March 7, 1995; Acts 1996, c. 595, § 1, eff. Oct. 1, 1996; Acts 1996, c. 596, § 1, eff. Oct. 1, 1996; Acts 1996, c. 632, § 1, eff. Oct. 1, 1996; Acts 1997, c. 14, § 1, eff. April 8, 1997; Acts 1997, c. 496, § 1, eff. Oct. 1, 1997; Acts 1998, c. 464, § 1, eff. Oct. 1, 1998; Acts 1998, c. 465, § 1, eff. Oct. 1, 1998; Acts 2000, c. 288, § 1, eff. Oct. 1, 2000; Acts 2000, c. 404, § 1, eff. Oct. 1, 2000; Acts 2001, c. 35, § 1, eff. Oct. 1, 2001. Renumbered as Courts and Judicial Proceedings § 3-8A-03 and amended by Acts 2001, c. 415, § 6, eff. Oct. 1, 2001. Amended by Acts 2002, c. 213, § 6, eff. Oct. 1, 2002; Acts 2003, c. 17, § 1, eff. Oct. 1, 2003; Acts 2005, c. 25, § 12, eff. April 12, 2005; Acts 2009, c. 525, § 1, eff. Oct. 1, 2009; Acts 2013, c. 156, § 3, eff. Oct. 1, 2013; Acts 2017, c. 62, § 6; Acts 2018, c. 12, § 1, eff. April 5, 2018; Acts 2020, c. 628, § 1, eff. May 8, 2020.

Formerly Art. 26, §§ 70-2, 94.

Editors' Notes

VALIDITY

<For validity of section, see Graham v. Florida, 130 S.Ct. 2011.>

Notes of Decisions (69)

Footnotes

1 Transportation, § 11-101 et seq.

MD Code, Courts and Judicial Proceedings, § 3-8A-03, MD CTS & JUD PRO § 3-8A-03

Current with all legislation from the 2021 Regular Session and 2021 First Special Session of the General Assembly. Some statute sections may be more current, see credits for details.

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Maryland
Correctional Services (Refs & Annos)
Title 7. Parole, Release on Mandatory Supervision, and Executive Clemency (Refs & Annos)
Subtitle 3. Eligibility for Parole; Parole Hearings

MD Code, Correctional Services, § 7-301

§ 7-301. Eligibility for parole

Effective: January 6, 2022
Currentness

(a)(1) Except as otherwise provided in this section, the Commission shall request that the Division of Parole and Probation make an investigation for inmates in a local correctional facility and the Division of Correction make an investigation for inmates in a State correctional facility that will enable the Commission to determine the advisability of granting parole to an inmate who:

(i) has been sentenced under the laws of the State to serve a term of 6 months or more in a correctional facility; and

(ii) has served in confinement one-fourth of the inmate's aggregate sentence.

(2) Except as provided in paragraph (3) of this subsection, or as otherwise provided by law or in a predetermined parole release agreement, an inmate is not eligible for parole until the inmate has served in confinement one-fourth of the inmate's aggregate sentence.

(3) An inmate may be released on parole at any time in order to undergo drug or alcohol treatment, mental health treatment, or to participate in a residential program of treatment in the best interest of an inmate's expected or newborn child if the inmate:

(i) is not serving a sentence for a crime of violence, as defined in § 14-101 of the Criminal Law Article;

(ii) is not serving a sentence for a violation of Title 3, Subtitle 6, § 5-608(d), § 5-609(d), § 5-612, § 5-613, § 5-614, § 5-621, § 5-622, or § 5-628 of the Criminal Law Article; and

(iii) has been determined to be amenable to treatment.

(4) The Division of Parole and Probation shall complete and submit to the Commission each investigation of an inmate in a local correctional facility required under paragraph (1) of this subsection within 60 days of commitment.

(b) Except as provided in subsection (c) of this section, if an inmate has been sentenced to a term of imprisonment during which the inmate is eligible for parole and a term of imprisonment during which the inmate is not eligible for parole, the inmate is not eligible for parole consideration under subsection (a) of this section until the inmate has served the greater of:

(1) one-fourth of the inmate's aggregate sentence; or

(2) a period equal to the term during which the inmate is not eligible for parole.

(c)(1)(i) Except as provided in subparagraph (ii) of this paragraph, an inmate who has been sentenced to the Division of Correction after being convicted of a violent crime committed on or after October 1, 1994, is not eligible for parole until the inmate has served the greater of:

1. one-half of the inmate's aggregate sentence for violent crimes; or

2. one-fourth of the inmate's total aggregate sentence.

(ii) An inmate who has been sentenced to the Division of Correction after being convicted of a violent crime committed on or after October 1, 1994, and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of:

1. one-half of the inmate's aggregate sentence for violent crimes;

2. one-fourth of the inmate's total aggregate sentence; or

3. a period equal to the term during which the inmate is not eligible for parole.

(2) An inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994, shall receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of:

(i) one-fourth of the inmate's aggregate sentence; or

(ii) if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

(d)(1) Except as provided in paragraphs (2) and (3) of this subsection:

(i) an inmate who has been sentenced to life imprisonment after being convicted of a crime committed before October 1, 2021, is not eligible for parole consideration until the inmate has served 15 years or the equivalent of 15 years considering the allowances for diminution of the inmate's term of confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article; and

(ii) an inmate who has been sentenced to life imprisonment after being convicted of a crime committed on or after October 1, 2021, is not eligible for parole consideration until the inmate has served 20 years or the equivalent of 20 years considering the allowances for diminution of the inmate's term of confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

(2) An inmate who has been sentenced to life imprisonment as a result of a proceeding under former § 2-303 or § 2-304 of the Criminal Law Article is not eligible for parole consideration until the inmate has served 25 years or the equivalent of 25 years considering the allowances for diminution of the inmate's term of confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

(3)(i) If an inmate has been sentenced to imprisonment for life without the possibility of parole under § 2-203 or § 2-304 of the Criminal Law Article, the inmate is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence.

(ii) This paragraph does not restrict the authority of the Governor to pardon or remit any part of a sentence under § 7-601 of this title.

(e) An inmate who is serving a term of imprisonment for a third or subsequent conviction of a felony violation of Title 5, Subtitle 6 of the Criminal Law Article committed on or after October 1, 2017, is not eligible for parole until the inmate has served in confinement one-half of the inmate's aggregate sentence.

Credits

Added by Acts 1999, c. 54, § 2, eff. Oct. 1, 1999. Amended by Acts 1999, c. 64, § 1, eff. Oct. 1, 1999; Acts 2001, c. 35, § 1, eff. Oct. 1, 2001; Acts 2002, c. 213, § 6, eff. Oct. 1, 2002; Acts 2004, c. 237, § 1, eff. Oct. 1, 2004; Acts 2004, c. 238, § 1, eff. Oct. 1, 2004; Acts 2007, c. 91, § 1, eff. Oct. 1, 2007; Acts 2009, c. 583, § 1, eff. Oct. 1, 2009; Acts 2009, c. 584, § 1, eff. Oct. 1, 2009; Acts 2011, c. 361, § 1, eff. Oct. 1, 2011; Acts 2011, c. 623, § 1, eff. Oct. 1, 2011; Acts 2013, c. 156, § 3, eff. Oct. 1, 2013; Acts 2016, c. 515, § 2, eff. Oct. 1, 2017; Acts 2021, 1st Sp. Sess., c. 30, § 1, eff. Jan. 6, 2022.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 1999, c. 54):

This section is new language derived without substantive change from former Art. 41, § 4-516.

In the introductory language of subsection (a) of this section, the phrase "[e]xcept as otherwise provided in this section" is added to state expressly that which only was implied in the former law.

Also in the introductory language of subsection (a) of this section, the former reference to the Commission's duty to request an investigation "of its own initiative" is deleted as implicit in the requirement that the Commission request an investigation.

Also in the introductory language of subsection (a) of this section, the reference to the Division "of Parole and Probation" is added to state expressly that which was only implied in the former reference to the "Division", i.e., the Division of Parole and Probation is the entity that shall be requested to make the investigation.

The Correctional Services Article Review Committee notes, for consideration by the General Assembly, that the reference in the introductory language of subsection (a) of this section to "the Division of Parole and Probation mak[ing] an investigation" does not reflect current practice. The Division of Parole and Probation currently conducts pre-parole investigations for inmates in local correctional facilities and submits the results of these investigations to the Commission. However, the Division of Correction currently prepares pre-parole reports on the progress of inmates in correctional facilities in the Division of Correction and submits these reports to the Commission. The General Assembly may wish to amend subsection (a) to reflect current practice.

In subsection (a)(2) of this section, the reference to the inmate's "aggregate sentence" is substituted for the former reference to the inmate's "term or consecutive terms" for consistency with subsections (b)(1) and (c)(1)(i)1 and 2 and (ii)1 and 2 and (2)(i) of this section. The reference to "aggregate sentence" is intended to include situations in which inmates are serving either a single sentence or multiple sentences. No substantive change is intended.

In the introductory language of subsections (b) and (c)(2) and in subsection (c)(1)(ii) and (2)(ii) of this section, the references to a term "of imprisonment" are substituted for the former references to a term "of confinement" for consistency throughout this article. See General Revisor's Note to this article.

In the introductory language of subsection (b) of this section, the former reference to an inmate who has been sentenced to "more than one term of confinement" is deleted as implicit in the reference to an inmate who has been sentenced to "a term of imprisonment during which the inmate is eligible for parole and a term of imprisonment during which the inmate is not eligible for parole".

In subsection (b) of this section, the phrase "[e]xcept as provided in subsection (c) of this section" is added to state expressly that which was only implied in the former law.

In subsections (b)(2) and (c)(1)(ii)3 of this section, the references to a period "of time" are deleted as implicit in the reference to a "period". Correspondingly, in subsection (c)(2)(ii) of this section, the reference to a period "of confinement" is deleted.

In subsection (c) of this section, the former phrase "[n]otwithstanding the provisions of subsections (a) and (b) of this section" is deleted as unnecessary in light of the introductory language of subsections (a) and (b) of this section.

In subsection (c)(1) of this section, the phrase "[e]xcept as provided in subparagraph (ii) of this paragraph" is added to state expressly that which was only implied in the former law.

In subsection (c)(1)(i) of this section, the reference to an inmate who has served "the greater of ... one-half of the inmate's aggregate sentence for violent crimes ... or ... one-fourth of the inmate's total aggregate sentence" is substituted for the former reference to an inmate who has served "one-half of the term or consecutive terms" for clarity. The Correctional Services Article Review Committee notes, for consideration by the General Assembly, that the meaning of the reference to "one-half of the term or consecutive terms" is ambiguous in situations involving inmates who are serving at least one sentence for a violent crime and at least one sentence for a nonviolent crime.

The Committee has applied the rule of lenity to former Art. 41, § 4-516(c)(1)(i) to determine its meaning in such situations and has revised subsection (c)(1)(i) of this section to reflect the application of that rule. See generally Maryland House of Corrections v. Fields, 348 Md. 245, 267 (1997). Correspondingly, in subsection (c)(1)(ii) of this section, the reference to "one-half of the inmate's aggregate sentence for violent crimes ... [or] one-fourth of the inmate's total aggregate sentence" has been substituted for the former reference to "one-half of the aggregate terms sentenced". No substantive change is intended.

In subsection (c)(1)(i) and (ii) and the introductory language of (c)(2) of this section, the references to a violent crime "committed on or after October 1, 1994" are added for accuracy. See § 3 of Chs. 716 and 717 of 1994.

In the introductory language of subsection (c)(2) of this section, the reference to the defined term "correctional facility" is substituted for the former reference to "institution" for consistency throughout this article. See § 1-101 of this article for the definition of "correctional facility".

The Correctional Services Article Review Committee notes, for consideration by the General Assembly, that subsection (c) of this section applies only to an inmate who has been sentenced to the Division of Correction after being convicted of a violent crime. It does not apply to an inmate who is sentenced to a local correctional facility after being convicted of a violent crime. The General Assembly may wish to amend subsection (c) to make it applicable to these types of inmates.

In subsection (d)(1) and (2) of this section, the references to a "term" of confinement are substituted for the former references to a "period" of confinement for consistency throughout this article. See General Revisor's Note to this article.

In subsection (d)(3)(i) of this section, the former reference to the inmate's "term of" sentence is deleted as included in the reference to the inmate's "sentence".

In subsection (d)(4) of this section, the former reference to an individual "serving a term of life imprisonment who is confined at Patuxent Institution as an eligible person" is deleted as redundant of former Art. 41, § 11(b)(5), which is revised in § 4-305(b)(3) of this article.

Defined terms: "Commission" § 7-101

"Correctional facility" § 1-101

"Division of Correction" § 1-101

"Division of Parole and Probation" § 1-101

"Inmate" § 1-101

"Pardon" § 7-101

"Parole" § 7-101

"Violent crime" § 7-101

Notes of Decisions (45)

MD Code, Correctional Services, § 7-301, MD CORR SERV § 7-301
Current with all legislation from the 2021 Regular Session and 2021 First Special Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Maryland
Criminal Law (Refs & Annos)
Title 2. Homicide
Subtitle 2. Murder and Manslaughter

MD Code, Criminal Law, § 2-201
Formerly cited as MD CODE Art. 27, § 407; MD CODE Art. 27, § 408; MD CODE Art. 27, § 409; MD CODE Art. 27, § 410; MD CODE Art. 27, § 412

§ 2-201. Murder in the first degree

Effective: October 1, 2020
Currentness

In general

(a) A murder is in the first degree if it is:

(1) a deliberate, premeditated, and willful killing;

(2) committed by lying in wait;

(3) committed by poison; or

(4) committed in the perpetration of or an attempt to perpetrate:

(i) arson in the first degree;

(ii) burning a barn, stable, tobacco house, warehouse, or other outbuilding that:

1. is not parcel to a dwelling; and

2. contains cattle, goods, wares, merchandise, horses, grain, hay, or tobacco;

(iii) burglary in the first, second, or third degree;

(iv) carjacking or armed carjacking;

(v) escape in the first degree from a State correctional facility or a local correctional facility;

(vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article;

(vii) mayhem;

(viii) rape;

(ix) robbery under § 3-402 or § 3-403 of this article;

(x) sexual offense in the first or second degree;

(xi) sodomy as that crime existed before October 1, 2020; or

(xii) a violation of § 4-503 of this article concerning destructive devices.

Penalty

(b)(1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:

(i) imprisonment for life without the possibility of parole; or

(ii) imprisonment for life.

(2) Unless a sentence of imprisonment for life without the possibility of parole is imposed in compliance with § 2-203 of this subtitle and § 2-304 of this title, the sentence shall be imprisonment for life.

Solicitation or conspiracy to commit murder

(c) A person who solicits another or conspires with another to commit murder in the first degree is guilty of murder in the first degree if the death of another occurs as a result of the solicitation or conspiracy.

Credits

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2009, c. 186, § 1, eff. Oct. 1, 2009; Acts 2013, c. 156, § 3, eff. Oct. 1, 2013; Acts 2019, c. 246, § 1, eff. Oct. 1, 2019; Acts 2019, c. 247, § 1, eff. Oct. 1, 2019; Acts 2020, c. 45, § 1, eff. Oct. 1, 2020.

Formerly Art. 27, §§ 407, 408, 409, 410, 412.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2002, c. 26):

This section is new language derived without substantive change from former Art. 27, §§ 407 through 410, the first sentence of § 412(b), and, as it related to imprisonment for life, the second sentence of § 412(b).

In subsection (a)(4)(ii) of this section, the reference to an "outbuilding" is substituted for the former archaic reference to an "outhouse" for clarity.

As to the use of the phrase "parcel to" in subsection (a)(4)(ii)1 of this section, see Revisor's Note to § 6-101(b) of this article.

In subsection (a)(4)(viii) of this section, the former reference to rape "in any degree" is deleted as surplusage.

In subsection (b)(1) of this section, the phrase "guilty of a felony" is added for clarity and consistency within this article. Murder is one of the original felonies at common law. The statutory distinction between the degrees of murder is only for purposes of imposition of penalties, not for altering the elements of the crime of murder at common law. *See Gladden v. State*, 273 Md. 383 (1974).

In subsection (b)(2) of this section, the references to "§ 2-202 of this subtitle and Subtitle 3 of this title" and "§ 2-203 of this subtitle and § 2-304 of this title" are substituted for the former reference to "subsection (g) of [former Art. 27, § 412]" to reflect the reorganization of material relating to the imposition of sentences of death and of imprisonment for life without the possibility of parole.

For specific provisions on sentencing procedures in capital cases, see Md. Rule 4-343.

Defined terms: "Imprisonment for life without the possibility of parole" § 2-101

"Local correctional facility" § 1-101

"Person" § 1-101

"State correctional facility" § 1-101

Notes of Decisions (979)

MD Code, Criminal Law, § 2-201, MD CRIM LAW § 2-201
Current with all legislation from the 2021 Regular Session and 2021 First Special Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Maryland
Criminal Procedure (Refs & Annos)
Title 4. Pretrial Procedures (Refs & Annos)
Subtitle 2. Venue and Other Procedural Matters (Refs & Annos)

MD Code, Criminal Procedure, § 4-202

§ 4-202. Transfer of criminal cases to juvenile court

Effective: March 13, 2021
Currentness

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) "Victim" has the meaning stated in § 11-104 of this article.

(3) "Victim's representative" has the meaning stated in § 11-104 of this article.

Cases eligible for transfer to juvenile court

(b) Except as provided in subsection (c) of this section, a court exercising criminal jurisdiction in a case involving a child may transfer the case to the juvenile court before trial or before a plea is entered under Maryland Rule 4-242 if:

(1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;

(2) the alleged crime is excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article; and

(3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

Transfer to juvenile court prohibited

(c) The court may not transfer a case to the juvenile court under subsection (b) of this section if:

(1) the child was convicted in an unrelated case excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1) or (4) of the Courts Article; or

(2) the alleged crime is murder in the first degree and the accused child was 16 or 17 years of age when the alleged crime was committed.

Factors in transfer determination

(d) In determining whether to transfer jurisdiction under subsection (b) of this section, the court shall consider:

(1) the age of the child;

(2) the mental and physical condition of the child;

(3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;

(4) the nature of the alleged crime; and

(5) the public safety.

Studies concerning child, family, and environment of child

(e) In making a determination under this section, the court may order that a study be made concerning the child, the family of the child, the environment of the child, and other matters concerning the disposition of the case.

Time for transfer determination

(f) The court shall make a transfer determination within 10 days after the date of a transfer hearing.

Child held for adjudicatory hearing

(g) If the court transfers its jurisdiction under this section, the court may order the child held for an adjudicatory hearing under the regular procedure of the juvenile court.

Child held in secure juvenile facility pending determination

(h)(1) Pending a determination under this section to transfer its jurisdiction, the court shall order the child to be held in a secure juvenile facility unless:

(i) the child is released on bail, recognizance, or other conditions of pretrial release;

(ii) there is not available capacity in a secure juvenile facility, as determined by the Department of Juvenile Services; or

(iii) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others.

(2) If the court makes a finding under paragraph (1)(iii) of this subsection that detention in a secure juvenile facility would pose a risk of harm to the child or others, the court shall state the reasons for the finding on the record.

Application of provisions relating to confidentiality of records

(i)(1) The provisions of § 3-8A-27 of the Courts Article relating to confidentiality of records apply to all police records and court records concerning the child excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article from the time of the child's arrest until:

(i) the time for filing of a motion to transfer to juvenile court under the Maryland Rules has expired and no such motion has been filed; or

(ii) a motion to transfer to juvenile court has been denied.

(2) If a case is transferred to the juvenile court under this section:

(i) the provisions of § 3-8A-27 of the Courts Article relating to confidentiality of records continue to apply to all police and court records concerning the child; and

(ii) the criminal charge is subject to expungement under § 10-106 of this article.

Notice to victim or victim's representative

(j)(1) A victim or victim's representative shall be given notice of the transfer hearing as provided under § 11-104 of this article.

(2)(i) A victim or a victim's representative may submit a victim impact statement to the court as provided in § 11-402 of this article.

(ii) This paragraph does not preclude a victim or victim's representative who has not filed a notification request form under § 11-104 of this article from submitting a victim impact statement to the court.

(iii) The court shall consider a victim impact statement in determining whether to transfer jurisdiction under this section.

Bail review or preliminary hearing involving child

(k)(1) Regardless of whether the District Court has jurisdiction over the case, at a bail review or preliminary hearing before the District Court involving a child whose case is eligible for transfer under subsection (b) of this section, the District Court:

(i) may order that a study be made under the provisions of subsection (e) of this section; and

(ii) shall order that the child be held in a secure juvenile facility pending a transfer determination under this section unless:

1. the child is released on bail, recognizance, or other conditions of pretrial release;

2. there is not available capacity at a secure juvenile facility as determined by the Department of Juvenile Services; or

3. the District Court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others.

(2) If the District Court makes a finding under paragraph (1)(ii)3 of this subsection that detention in a secure juvenile facility would pose a risk of harm to the child or others, the District Court shall state the reasons for the finding on the record.

Credits

Added by Acts 2001, c. 10, § 2, eff. Oct. 1, 2001. Amended by Acts 2001, c. 415, § 6, eff. Oct. 1, 2001; Acts 2001, c. 463, § 1, eff. Oct. 1, 2001; Acts 2002, c. 159, § 1, eff. Oct. 1, 2002; Acts 2012, c. 563, § 1, eff. Oct. 1, 2012; Acts 2014, c. 178, § 1, eff. Oct. 1, 2014; Acts 2015, c. 442, § 1, eff. Oct. 1, 2015; Acts 2018, c. 783, § 1, eff. Oct. 1, 2018; Acts 2021, c. 12, § 1, eff. March 13, 2021.

Formerly Art. 27, § 594A.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2001, c. 10):

This section is new language derived without substantive change from former Art. 27, § 594A.

Throughout this section, the references to “transfer”, “transferred”, and “transfers” are substituted for the former references to “waive”, “waived”, and “waiver” for consistency.

In this section, the reference to a “crime” is substituted for the former reference to an “offense” to conform to the terminology used throughout this article.

In subsection (a) of this section, the defined term “victim's representative” is added to state explicitly what was only implied in the former law, which definition of “victim” included a “victim's representative”.

In subsection (b)(3) of this section, the reference to “the court” is added to identify who decides on the appropriateness of a waiver under this subsection.

In subsections (f) and (g) of this section, the references to “child” are substituted for the former references to “person” and “minor” for consistency with subsections (b) through (e) of this section.

In subsection (f) of this section, the reference to an "adjudicatory hearing" is substituted for the former reference to a "trial" to conform to the terminology used in Title 3, Subtitle 8 of the Courts Article.

In subsection (g) of this section, the former reference to a determination to waive jurisdiction "over the case involving the minor to the juvenile court" is deleted as unnecessary in light of the reference to a determination "under this section" to waive jurisdiction.

Notes of Decisions (54)

MD Code, Criminal Procedure, § 4-202, MD CRIM PROC § 4-202
Current with all legislation from the 2021 Regular Session and 2021 First Special Session of the General Assembly. Some statute sections may be more current, see credits for details.

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AS § 12.55.125

§ 12.55.125. Sentences of imprisonment for felonies

Effective: July 9, 2019
Currentness

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 30 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, firefighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder

in the second degree or murder of an unborn child under AS 11.41.150(a)(2)--(4) shall be sentenced to a definite term of imprisonment of at least 15 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adoptive parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200--11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, four to seven years;

(2) if the offense is a first felony conviction

(A) and the defendant

possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or

knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS 11.71.021(a)(2)(A) or (B), seven to 11 years if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (*l*) of this section, 15 to 20 years.

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

(2) if the offense is a first felony conviction,

(A) the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

(B) two to four years if the conviction is for attempt, solicitation, or conspiracy to manufacture related to methamphetamine under AS 11.31 and AS 11.71.021(a)(2)(A) or (B), and

(i) the attempted manufacturing occurred, or the solicited or conspired offense was to have occurred, in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of an attempt to manufacture, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, three to seven years;

(4) if the offense is a third felony conviction, six to 10 years.

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085, and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;

(2) if the offense is a second felony conviction, two to four years;

(3) if the offense is a third felony conviction, three to five years;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d), (e), or (i) of this section, except to the extent permitted under AS 12.55.155--12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080 below the low end of the presumptive range;

(2) and except as provided in (d)(1) or (e)(1) of this section, imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree, unlawful exploitation of a minor under AS 11.41.455(c)(2), or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (*l*) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (*l*) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) unlawful exploitation of a minor under AS 11.41.455(c)(1), enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (*l*) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (*l*) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, enticement of a minor under AS 11.41.452(d), indecent exposure in the first degree under AS 11.41.458(b)(2), or distribution of child pornography under AS 11.61.125(e)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 20 to 35 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years;

(4) sexual assault in the third degree, sexual abuse of a minor in the third degree under AS 11.41.438(c), incest, indecent exposure in the first degree under AS 11.41.458(b)(1), indecent viewing or production of a picture under AS 11.61.123(f)(1) or (2)[1], possession of child pornography, distribution of child pornography under AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:

(A) if the offense is a first felony conviction and does not involve the circumstances described in (B) or (C) of this paragraph, two to 12 years;

(B) if the offense is a first felony conviction under AS 11.61.125(e)(1) and does not involve circumstances described in (C) of this paragraph, four to 12 years;

(C) if the offense is a first felony conviction under AS 11.61.125(e)(1), and the defendant hosted, created, or helped host or create a mechanism for multi-party sharing or distribution of child pornography, or received a financial benefit or had a financial interest in a child pornography sharing or distribution mechanism, six to 14 years;

(D) if the offense is a second felony conviction and does not involve circumstances described in (E) of this paragraph, eight to 15 years;

(E) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;

(F) if the offense is a third felony conviction and does not involve circumstances described in (G) of this paragraph, 15 to 25 years;

(G) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (*l*) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the definite term. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) Repealed by SLA 2005, ch. 2, § 32, eff. Mar. 23, 2005.

(*l*) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

(n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i) of this section, the total term, made up of the active term of imprisonment plus any suspended term of imprisonment, must fall within the presumptive range, and the active term of imprisonment may not fall below the lower end of the presumptive range.

(o) Repealed by SLA 2016, ch. 36, § 179, eff. July 12, 2016.

(p) If the state seeks either (1) the imposition of a sentence under (a) of this section that would preclude the defendant from being awarded a good time deduction under AS 33.20.010(a) based on a fact other than a prior conviction; or (2) to establish

a fact that would increase the presumptive sentencing range under (c)(2), (d)(2), (e)(4), (i)(1)(A) or (B), or (i)(2)(A) or (B) of this section, the factual question required to be decided shall be presented to a trial jury and proven beyond a reasonable doubt under procedures set by the court, unless the defendant waives trial by jury and either stipulates to the existence of the fact or consents to have the fact proven to the court sitting without a jury. Written notice of the intent to establish a fact under this subsection must be served on the defendant and filed with the court as provided for notice under AS 12.55.155(f)(2).

(q) Other than for convictions subject to a mandatory 99-year sentence, the court shall impose, in addition to an active term of imprisonment imposed under (i) of this section, a minimum period of (1) suspended imprisonment of five years and a minimum period of probation supervision of 15 years for conviction of an unclassified felony, (2) suspended imprisonment of three years and a minimum period of probation supervision of 10 years for conviction of a class A or class B felony, or (3) suspended imprisonment of two years and a minimum period of probation supervision of five years for conviction of a class C felony. The period of probation is in addition to any sentence received under (i) of this section and may not be suspended or reduced. Upon a defendant's release from confinement in a correctional facility, the defendant is subject to the probation requirement under this subsection and shall submit and comply with the terms and requirements of the probation.

Credits

SLA 1978, ch. 166, § 12; SLA 1982, ch. 45, § 18; SLA 1982, ch. 143, §§ 28--30; SLA 1983, ch. 78, § 8; SLA 1983, ch. 92, §§ 1--3; SLA 1988, ch. 59, § 5; SLA 1989, ch. 37, § 4; SLA 1992, ch. 79, §§ 23--25; SLA 1994, ch. 3, § 5; SLA 1996, ch. 6, §§ 1, 2, 6; SLA 1996, ch. 7, §§ 3--7; SLA 1996, ch. 30, § 8; SLA 1996, ch. 33, § 4; SLA 1999, ch. 54, §§ 9--11; SLA 1999, ch. 65, § 1; SLA 2000, ch. 49, §§ 1, 2; SLA 2002, ch. 60, § 4; SLA 2003, ch. 90, §§ 1--5; SLA 2004, ch. 99, § 5; SLA 2005, ch. 2, §§ 8--13, 32; SLA 2006, ch. 14, §§ 4 to 7, eff. April 28, 2006; SLA 2006, ch. 53, §§ 14, 15, eff. June 3, 2006; SLA 2006, ch. 73, §§ 8, 9, eff. Sept. 14, 2006. Amended by SLA 2007, ch. 8, § 2, eff. July 26, 2007; SLA 2007, ch. 24, § 23, eff. July 1, 2007; SLA 2009, ch. 41, § 9, eff. June 21, 2009; SLA 2011, ch. 20, § 18, eff. July 1, 2011; SLA 2012, ch. 70, §§ 11, 12, eff. July 1, 2012; 3rd Sp. Sess. 2012, ch. 1, § 20, eff. July 1, 2012; SLA 2016, ch. 36, §§ 86 to 90, 179, eff. July 12, 2016; 4th Sp. Sess. 2017, ch. 1, §§ 32 to 34, eff. Nov. 27, 2017; 1st Sp. Sess. 2019, ch. 4, §§ 70 to 74, eff. July 9, 2019.

Notes of Decisions (721)

Footnotes

1 In 2019, the revisor redesignated AS 11.61.123(f) as AS 11.61.123(g).

AS § 12.55.125, AK ST § 12.55.125

Current with legislation through Chapter 34 of the 2021 First Regular Session of the 32nd Legislature.

End of Document

West's Colorado Revised Statutes Annotated
Title 18. Criminal Code (Refs & Annos)
Article 3. Offenses Against the Person (Refs & Annos)
Part 1. Homicide and Related Offenses (Refs & Annos)

C.R.S.A. § 18-3-103

§ 18-3-103. Murder in the second degree--definitions

Effective: September 15, 2021
Currentness

(1) A person commits the crime of murder in the second degree if:

(a) The person knowingly causes the death of a person; or

(b) Acting either alone or with one or more persons, he or she commits or attempts to commit felony arson, robbery, burglary, kidnapping, sexual assault as prohibited by section 18-3-402, sexual assault in the first or second degree as prohibited by section 18-3-402 or 18-3-403, as those sections existed prior to July 1, 2000, or a class 3 felony for sexual assault on a child as provided in section 18-3-405(2), or the felony crime of escape as provided in section 18-8-208, and, in the course of or in furtherance of the crime that he or she is committing or attempting to commit, or of immediate flight therefrom, the death of a person, other than one of the participants, is caused by any participant.

(1.5) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:

(a) Was not the only participant in the underlying crime; and

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(c) Was not armed with a deadly weapon; and

(d) Did not engage himself or herself in or intend to engage in and had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury.

(2) Diminished responsibility due to self-induced intoxication is not a defense to murder in the second degree.

(2.5) Deleted by Laws 1996, H.B.96-1087, § 12, eff. July 1, 1996.

(3)(a) Except as otherwise provided in paragraph (b) of this subsection (3), murder in the second degree is a class 2 felony.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), murder in the second degree is a class 3 felony where the act causing the death was performed upon a sudden heat of passion, caused by a serious and highly provoking act of the intended victim, affecting the defendant sufficiently to excite an irresistible passion in a reasonable person; but, if between the provocation and the killing there is an interval sufficient for the voice of reason and humanity to be heard, the killing is a class 2 felony.

(c) For purposes of determining sudden heat of passion pursuant to subsection (3)(b) of this section, a defendant's act does not constitute an act performed upon a sudden heat of passion if it results solely from the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including but not limited to under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the defendant.

(4) A defendant convicted pursuant to subsection (1) of this section shall be sentenced by the court in accordance with the provisions of section 18-1.3-406.

(5) As used in this section, unless the context otherwise requires:

(a) “Gender identity” and “gender expression” have the same meaning as in section 18-1-901(3)(h.5).

(b) “Intimate relationship” has the same meaning as in section 18-6-800.3.

(c) “Sexual orientation” has the same meaning as in section 18-9-121(5)(b).

Credits

Amended by Laws 1975, H.B.1122, § 1; Laws 1977, H.B.1654, §§ 6, 67; Laws 1986, H.B.1008, § 1; Laws 1995, H.B.95-1109, § 5, eff. July 1, 1995; Laws 1996, H.B.96-1087, § 12, eff. July 1, 1996; Laws 2002, Ch. 318, § 184, eff. Oct. 1, 2002; Laws 2020, Ch. 279 (S.B. 20-221), § 6, eff. July 13, 2020; Laws 2021, Ch. 58 (S.B. 21-124), § 2, eff. Sept. 15, 2021.

Notes of Decisions (282)

C. R. S. A. § 18-3-103, CO ST § 18-3-103
Current through the end of the First Regular Session of the 73rd General Assembly (2021).

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Florida Statutes Annotated
Title XLVII. Criminal Procedure and Corrections (Chapters 900-999) (Refs & Annos)
Chapter 921. Sentence (Refs & Annos)

West's F.S.A. § 921.1401

921.1401. Sentence of life imprisonment for persons who are under the age of 18 years at the time of the offense; sentencing proceedings

Effective: July 1, 2014
Currentness

(1) Upon conviction or adjudication of guilt of an offense described in s. 775.082(1)(b), s. 775.082(3)(a) 5., s. 775.082(3)(b) 2., or s. 775.082(3)(c) which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

(2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

(a) The nature and circumstances of the offense committed by the defendant.

(b) The effect of the crime on the victim's family and on the community.

(c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

(d) The defendant's background, including his or her family, home, and community environment.

(e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

(f) The extent of the defendant's participation in the offense.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

(h) The nature and extent of the defendant's prior criminal history.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

(j) The possibility of rehabilitating the defendant.

Credits

Added by Laws 2014, c. 2014-220, § 2, eff. July 1, 2014.

Notes of Decisions (106)

West's F. S. A. § 921.1401, FL ST § 921.1401

Current with laws and joint resolutions in effect from the 2021 First Regular Session and Special “A” and “B” Sessions of the Twenty-Seventh Legislature. Some statute sections may be more current, see credits for details.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

HRS § 707-701

§ 707-701. Murder in the first degree

Currentness

(1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

(a) More than one person in the same or separate incident;

(b) A law enforcement officer, judge, or prosecutor arising out of the performance of official duties;

(c) A person known by the defendant to be a witness in a criminal prosecution and the killing is related to the person's status as a witness;

(d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section;

(e) A person while the defendant was imprisoned;

(f) A person from whom the defendant has been restrained, by order of any court, including an ex parte order, from contacting, threatening, or physically abusing pursuant to chapter 586;

(g) A person who is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order;

(h) A person known by the defendant to be a witness in a family court proceeding and the killing is related to the person's status as a witness; or

(i) A person whom the defendant restrained with intent to:

(i) Hold the person for ransom or reward; or

(ii) Use the person as a shield or hostage.

(2) Murder in the first degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656.

Credits

Laws 1972, ch. 9, § 1; Laws 1986, ch. 314, § 49; Laws 2001, ch. 91, § 4; Laws 2006, ch. 230, § 27; Laws 2011, ch. 63, § 2, eff. July 1, 2011; Laws 2016, ch. 214, § 1, eff. July 6, 2016.

Editors' Notes

COMMENTARY ON § 707-701

General analysis. The aggravated nature and severe sanctions traditionally associated with the crime of murder are hardly subjects of debate today. The actor in such a crime has disregarded the most highly held social values, and has proved oneself an extreme danger to society. The Code recognizes the highly aggravated nature of this crime in imposing its most severe sanction.

Several states, and some recent efforts at penal law revision, recognize two degrees of murder.[1] One of the primary reasons for this distinction is to limit the scope of first degree murder in jurisdictions which make it a capital offense.[2] In states, like Hawaii, where the death penalty has been abolished, the above reason for the distinction is no longer applicable and the continuation of the distinction would be a carryover from the older death penalty legislation.

Under previous Hawaii law, first degree murder required proof of "deliberate premeditated malice aforethought."[3] For a conviction of murder in the second degree, the Hawaii law required only "malice aforethought."[4] The Code is in accord with the Model Penal Code in making murder a unified offense which requires that the actor act intentionally or knowingly with respect to the homicidal result.[5] If a person has the conscious object of causing the death of another, or if the person is "practically certain" that the person will cause the death, the person has the requisite culpability for conviction.

Murder has usually been defined to provide that it can be committed by extreme recklessness. In recent codes which do recognize two degrees of murder, a homicide caused with this lesser degree of mental culpability has been made murder in the second degree.[6] The net effect is to change manslaughter to murder when aggravated circumstances are present. Typically, these formulations hold an individual guilty of murder in the second degree if

[h]e recklessly causes the death of another person under circumstances which manifest a cruel, wicked, and depraved indifference to human life.[7]

Analytically, however, it is both simpler and more appropriate to leave provisions for more severe sentences in aggravated circumstances to those sections which are specifically designed to deal with such cases. An actor whose indifference to human life amounts to "practical certainty" of causing death will be held to have caused death knowingly under the Code's formulation of murder; but where the actor's conduct is characterized by a "cruel, wicked, and depraved indifference," without more, these character traits ought to be taken into account at the time of disposition. Sections 706-661 and 706-662 provide for extended sentences in such aggravated circumstances. An individual who would, under a statute such as that quoted above, be convicted

of second degree murder would, under the Code's system, be convicted of manslaughter and given an extended sentence. The resultant sentence may be the same in both cases;[8] however, where the other formulation requires the determination of the actor's character to be made by the finder of fact, the Code assigns this task to a psychiatrist, who is eminently better suited to make such determinations. More specifically, the psychiatrist must report that the actor's conduct is characterized by "compulsive, aggressive behavior with heedless indifference to consequences, and that such condition makes him a serious danger to others."[9] It is easily seen that the psychiatrist is looking for precisely those traits which the trier of fact is asked to find in the other form of the statute. And, beyond the psychiatrist's greater expertise in making such determinations, the abnormality presented by such character traits falls more appropriately under special circumstances requiring prolonged treatment, via an extended sentence, than under greater moral culpability requiring conviction for a more serious offense.

Felony-murder rule. The felony-murder rule[10] "has an extensive history of thoughtful condemnation."[11] The genesis of the rule may have been due to an erroneous interpretation by Coke of a passage from Bracton and, at least since 1834, when His Majesty's Commissioners on Criminal Law found the rule to be "totally incongruous with the general principles of our jurisprudence,"[12] the rule has been condemned by writers and scholars.

The felony-murder rule has been used to support murder convictions of defendants where one victim of a robbery accidentally shoots another victim,[13] where one of the defendant's co-robbers kills another co-robber during a robbery for the latter's refusal to obey orders and not as part of the robbery transaction,[14] and where the defendant (a dope addict) commits robbery of the defendant's homicide victim as an afterthought following the killing.[15] The application of the felony-murder rule dispenses with the need to prove that culpability with respect to the homicidal result that is otherwise required to support a conviction for murder and therefore leads to anomalous results. The rule has been called a "legal Hydra."[16] "Like the multiheaded beast of Greek mythology, the felony-murder rule has several 'heads' of its own, each willing to consume one of the accused's defenses by presuming a needed element in the proof of felony murder."[17]

Because "principled argument in its [the felony-murder rule's] defense is hard to find,"[18] the Model Penal Code,[19] certain recent penal revisions,[20] and some recent cases[21] have limited the scope of the rule. The attempts to preserve the rule by limiting its application have taken a number of forms. Some recent revisions require that the death be recklessly caused in furtherance of a felony or attempted felony,[22] others require that the death be caused simply in furtherance of the felony and allow the defendant an affirmative defense if the defendant can show, in effect, that the defendant reasonably did not foresee the possibility of the killing.[23] That the killing may result from acts done negligently or recklessly (states of mind otherwise insufficient to establish murder) is not changed. California has limited the application of the rule by a re-interpretation of existing statutory language.[24] The court limited the rule in terms of persons: it held that a killing by a victim of the attempted felony of defendant's co-felon was not "to perpetrate" the felony and that the felony-murder rule was not applicable to the surviving defendant. In view of the statutory language making the rule applicable to killings in the perpetration of an enumerated felony, the language and logic of the court are somewhat strained.[25] However, the court's attempt to limit the rule and thereby avoid the questionable results brought about by the rule's broad application has been characterized as a "heightened awareness of the doctrine's underlying illogic."[26] The Model Penal Code has taken a different approach: it has abandoned the felony-murder rule as a rule of substantive law and has reformulated it as a rule of evidence. Extreme recklessness, which under the M.P.C. is sufficient to establish murder, may be presumed from the commission of certain enumerated felonies.[27]

The wiser course, it seems, would be to follow the lead of England[28] and India[29] and abolish the felony-murder rule in its entirety. The rule certainly is not an indispensable ingredient in a system of criminal injustice; "[t]he rule is unknown as such in continental Europe."[30]

Even in its limited formulation the felony-murder rule is still objectionable. It is not sound principle to convert an accidental, negligent, or reckless homicide into a murder simply because, without more, the killing was in furtherance of a criminal objective of some defined class. Engaging in certain penally-prohibited behavior may, of course, evidence a recklessness sufficient to establish manslaughter, or a practical certainty or intent, with respect to causing death, sufficient to establish murder, but such a finding is an independent determination which must rest on the facts of each case. Limited empirical data discloses that the ratio of homicides in the course of specific felonies[31] to the total number of those felonies does not justify a presumption of culpability with respect to the homicide result sufficient to establish murder.[32] There appears to be no logical base for the felony-murder rule which presumes, either conclusively or subject to rebuttal, culpability sufficient to establish murder.[33]

Nor does the felony-murder rule serve a legitimate deterrent function. The actor has already disregarded the presumably sufficient penalties imposed for the underlying felony. If the murder penalty is to be used to reinforce the deterrent effect of penalties imposed for certain felonies (by converting an accidental, negligent, or reckless killing into a murder), it would be more effective, and hardly more fortuitous, to select a certain ratio of convicted felons for the murder penalty by lot.[34]

In recognition of the trend toward, and the substantial body of criticism supporting, the abolition of the felony-murder rule, and because of the extremely questionable results which the rule has worked in other jurisdictions, the Code has eliminated from our law the felony-murder rule.

General effect of Code. The homicide sections of the Code substantially simplify and clarify the law of Hawaii, although the results reached by the court or jury in most cases will probably be similar. As explained above, the felony-murder rule has been eliminated.

Previous Hawaii law provided that a person convicted of murder in the first degree shall be imprisoned at hard labor for life not subject to parole.[35] A person convicted of murder in the second degree, under previous law, would be sentenced to "imprisonment at hard labor for any number of years but for a term not less than twenty years."[36] Under the Code, a convicted defendant will be sentenced to imprisonment for an indeterminate term, the maximum length of which will be life imprisonment without parole in four instances set forth in § 706-606(a) or life or twenty years as determined by the court.[37] The possibility of eventual parole is made available by the general revision of sentencing in chapter 706.

The need for clarification of the law has been implied rather strongly by the Supreme Court of Hawaii. For instance, the court has stated plainly, on a number of occasions, that it is reversible error, in some murder trials, to instruct the jury in the language of the previous statutory presumption on "malice aforethought."[38] Moreover, although the court said that "malice aforethought" was the same as "malice,"[39] it was not the same "malice" as that which was defined in the prior penal code,[40] and it was apparently reversible error in any homicide prosecution to instruct the jury in the language of the statutory definition.[41] Furthermore, the antiquity and ambiguity of, and the difficulty in dealing with, the requirement of "malice aforethought" is evident from a cursory glance at court opinions.[42] This Code eliminates such problems of interpretation, while achieving greater simplicity and consistency.

1 E.g., H.R.S. § 748-1; Prop. Del. Cr. Code §§ 412, 413; Prop. Mich. Rev. Cr. Code §§ 2005, 2006.

2 See Comment, 65 Colum. L. Rev. 1496 (1965).

3 H.R.S. § 748-1; see also note 12, infra.

4 H.R.S. § 748-2.

5 M.P.C. § 210.2; see also Prop. Pa. Cr. Code § 903. These codes, however, also provide that murder can be committed by extreme recklessness.

6 Prop. Del. Cr. Code § 412; Prop. Mich. Rev. Cr. Code § 2006.

7 Prop. Del. Cr. Code § 412(1).

8 See Prop. Mich. Rev. Cr. Code § 2006.

9 § 706-662(3).

10 This rule holds that a person who, either by the person's own conduct or the conduct of another for whom the person is responsible, commits or attempts to commit a felony (or, in some codifications, one of a certain class of felonies) is liable for murder (sometimes in the first degree) if a killing occurs during or in the perpetration of the felony or the attempt--notwithstanding the fact that the killing was not intentional or the fact that the defendant did not have the mental culpability, i.e., the state of mind, otherwise required for a conviction of murder (or of murder in the first degree). See H.R.S. § 748-1: "Murder in the first degree is the killing of any human being without authority, justification or extenuation by law done ... (3) In the commission of or attempt to commit or the flight from the commission of or attempt to commit arson, rape, robbery, burglary or kidnapping."

11 Note, Criminal Law: Felony-Murder Rule - Felon's Responsibility For Death of Accomplice, 65 Colum. L. Rev. 1496 (1955).

12 See id. at 1496, citing, with respect to the genesis of the rule, 65 L.T. (London) 292 (1878), and, with respect to His Majesty's Commissioners, First Report of His Majesty's Commissioners on Criminal Law 29 (1834). The note also points out Sir James Stephens found the rule "a monstrous doctrine" [3 Stephens, History of the Criminal Law of England 75 (1883)].

13 People v. Harrison, 203 Cal. 587, 265 P. 230 (1928).

14 People v. Cabaltero, 31 Cal. App. 2d 52, 87 P.2d 364 (1939).

15 People v. Arnold, 108 Cal. App. 2d 719, 239 P.2d 449 (1952).

16 Note, California Rewrites Felony Murder Rule, 18 Stan. L. Rev. 690 (1966).

17 Id. at 690 note 1.

18 M.P.C., Tentative Draft No. 9, comments at 37 (1959).

19 M.P.C. § 210.2(1)(b).

20 E.g., Prop. Del. Cr. Code § 412(2) (murder in the second degree); Wisconsin Statutes Annotated § 940.03 (West 1958); Prop. Mich. Rev. Cr. Code § 2005(1)(b); N.Y.R.P.L. § 125.25(3).

21 E.g., People v. Washington, 62 Cal. 2d 777, 44 Cal. Rptr. 442, 402 P.2d 130 (1965).

22 See, e.g., Prop. Del. Cr. Code § 412(2).

23 See, e.g., Prop. Mich. Rev. Cr. Code § 2005(1)(b); N.Y.R.P.L. § 125.25(3).

24 People v. Washington, supra.

25 "California Penal Code Section 189 on felony-murder requires that the felon or his accomplice commit the killing, for if he does not, the killing is not committed to perpetrate the felony." People v. Washington, supra at 780, 44 Cal. Rptr. at 445, 402 P.2d at 133. (Emphasis added.) As the dissenting opinion was quick to note: "Section 189 carries not the least suggestion of a requirement that the killing must take place to perpetrate the felony. If that requirement now be read into the section by the majority, then what becomes of the rule--which they purport to recognize that an accidental and unintentional killing falls within the section? How can it be said that such a killing takes place to perpetrate a robbery." Id. at 787, 44 Cal. Rptr. at 449, 402 P.2d at 137 (dissenting opinion). (Emphasis by Burke, J.)

26 65 Colum. L. Rev. at 1500, see note 13, supra.

27 See note 19, supra.

28 English Homicide Act. 1 (1957), 5 and 6 Eliz. 2, c.11.

29 Indian Penal Code §§ 299, 300 and comments (Ranchhoddas 1951).

30 M.P.C., Tentative Draft No. 9, comments at 36 (1959); which also discusses the Codes cited in the previous two footnotes.

31 It should be remembered that homicides in furtherance of the specified felonies would be even fewer in number.

32 For the statistics of one study, see M.P.C., Tentative Draft No. 9, comments at 38-39 (1959).

33 Compare M.P.C. § 210.2 with Prop. Del. Code § 412(2).

34 Holmes, The Common Law 58 (1881) ("the law would do better to hang one thief out of every thousand by lot").

35 H.R.S. § 748-4.

36 Id.

37 §§ 706-606 and 707-701(2).

38 See H.R.S. § 748-3, Territory v. Cutad, 37 Haw. 182, 188 (1945), and State v. Foster, 44 Haw. 403, 429, 354 P.2d 960, 974, and concurring opinion at 434-440, 354 P.2d at 974-980 (1960).

39 State v. Moeller, 50 Haw. 110, 118, 433 P.2d 136, 142 (1967).

40 See id. at 119, 433 P.2d at 142.

41 Id.

42 Id.

SUPPLEMENTAL COMMENTARY ON § 707-701

The legislature, in adopting the Code in 1972, added the provision for mandatory life imprisonment without parole (but subject to commutation) as contained in § 706-606(a). The legislature stated that these instances "are so threatening to the security of our society that the severest deterrent penalty should be required." Conference Committee Report No. 2 (1972). The reader is referred to the discussion in the Supplemental Commentary on § 706-606.

Act 230, Session Laws 2006, amended subsection (1) to clarify that the killing of a person known by the defendant to be a witness in a criminal prosecution is murder in the first degree [if the killing is related to the person's status as a witness]. House Standing Committee Report No. 665-06.

Act 63, Session Laws 2011, amended this section by establishing first degree murder for a person who causes death to a person: (1) from whom the defendant has been restrained, by order of any court, from contacting, threatening, or physically abusing pursuant to domestic abuse protective orders; (2) who is being protected by a police officer ordering the defendant to leave the premises of the protected person, during the effective period of the order; or (3) who is known by the defendant to be a witness in a family court proceeding and the killing is related to the person's status as a witness. The legislature found that domestic violence victims need added protection under Hawaii law. Restraining orders or orders from police officers to abusers to leave the premises are intended to remove abusers from the vicinity of domestic violence victims and provide safety. The legislature believed that domestic violence victims are particularly vulnerable when they attempt to disengage from their abusers and at that time, violence and the threat of violence are at the most extreme levels. Increasing the penalties against abusers in those

situations may deter violent retaliation and may help break victims from the cycle of violence. House Standing Committee Report No. 930, Conference Committee Report No. 74, Senate Standing Committee Report No. 1255.

Act 214, Session Laws 2016, amended this section to broaden the offense of murder in the first degree to include cases in which the victim was restrained as a shield, hostage, or for ransom or reward. The legislature found that the offense of murder in the first degree was a narrowly defined offense that was limited to cases in which there were multiple victims, the victim was killed by a hired killer, or the victim was under the specific protection of or had a particular role with the courts or law enforcement system. Defendants convicted of murder in the first degree are automatically sentenced to life imprisonment without the possibility of parole. All other forms of murder are covered under the offense of murder in the second degree, and defendants convicted of murder in the second degree are generally sentenced to life imprisonment with the possibility of parole. However, it is possible for a defendant convicted of murder in the second degree to be sentenced to life imprisonment without the possibility of parole if enhanced sentencing under § 706-657 or an extended term of imprisonment under § 706-661 is applied. The legislature found that the different sentencing requirements between these two offenses can have a tremendous impact on the surviving members of the victims' families. Senate Standing Committee Report No. 3451, Conference Committee Report No. 65-16.

Notes of Decisions (89)

H R S § 707-701, HI ST § 707-701
Current through the end of the 2021 Special Session, pending text revision by the revisor of statutes. Some statute sections may be more current; see credits for details.

End of Document

Minnesota Statutes Annotated
Crimes; Expungement; Victims (Ch. 609-624)
Chapter 609. Criminal Code (Refs & Annos)
Homicide; Bodily Harm; Suicide (Refs & Annos)

M.S.A. § 609.19

609.19. Murder in the second degree

Effective: August 1, 2015
Currentness

Subdivision 1. Intentional murder; drive-by shootings. Whoever does either of the following is guilty of murder in the second degree and may be sentenced to imprisonment for not more than 40 years:

(1) causes the death of a human being with intent to effect the death of that person or another, but without premeditation; or

(2) causes the death of a human being while committing or attempting to commit a drive-by shooting in violation of section 609.66, subdivision 1e, under circumstances other than those described in section 609.185, paragraph (a), clause (3).

Subd. 2. Unintentional murders. Whoever does either of the following is guilty of unintentional murder in the second degree and may be sentenced to imprisonment for not more than 40 years:

(1) causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting; or

(2) causes the death of a human being without intent to effect the death of any person, while intentionally inflicting or attempting to inflict bodily harm upon the victim, when the perpetrator is restrained under an order for protection and the victim is a person designated to receive protection under the order. As used in this clause, "order for protection" includes an order for protection issued under chapter 518B; a harassment restraining order issued under section 609.748; a court order setting conditions of pretrial release or conditions of a criminal sentence or juvenile court disposition; a restraining order issued in a marriage dissolution action; and any order issued by a court of another state or of the United States that is similar to any of these orders.

Credits
Laws 1963, c. 753. Amended by Laws 1981, c. 227, § 10, eff. May 20, 1981; Laws 1992, c. 571, art. 4, § 6; Laws 1995, c. 226, art. 2, § 16; Laws 1996, c. 408, art. 4, § 8; Laws 1998, c. 367, art. 2, § 8; Laws 2015, c. 21, art. 1, § 99, eff. Aug. 1, 2015.

Editors' Notes

RULES OF CRIMINAL PROCEDURE

<Section 480.059, subd. 7, provides in part that statutes which relate to substantive criminal law found in chapter 609, except for sections 609.115 and 609.145, remain in full force and effect notwithstanding the Rules of Criminal Procedure.>

ADVISORY COMMITTEE COMMENT [1963]

This states the present provisions of Minn.St. § 619.08 as amended by Laws 1959, Chapter 683, Sec. 1, with the exceptions deleted. These exceptions now appear as affirmative statements in Clause (2) of recommended § 609.185.

Notes of Decisions (278)

M. S. A. § 609.19, MN ST § 609.19
Current with all legislation from the 2021 Regular Session and 1st Special Session. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter XIII. Disposition of Defendants (Refs & Annos)
Article 81b. Structured Sentencing of Persons Convicted of Crimes (Refs & Annos)
Part 2a. Sentencing for Minors Subject to Life Imprisonment Without Parole

N.C.G.S.A. § 15A-1340.19B

§ 15A-1340.19B. Penalty determination

Effective: July 12, 2012
Currentness

(a) In determining a sentence under this Part, the court shall do one of the following:

(1) If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.

(2) If the court does not sentence the defendant pursuant to subdivision (1) of this subsection, then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.

(b) The hearing under subdivision (2) of subsection (a) of this section shall be conducted by the trial judge as soon as practicable after the guilty verdict is returned. The State and the defendant shall not be required to resubmit evidence presented during the guilt determination phase of the case. Evidence, including evidence in rebuttal, may be presented as to any matter that the court deems relevant to sentencing, and any evidence which the court deems to have probative value may be received.

(c) The defendant or the defendant's counsel may submit mitigating circumstances to the court, including, but not limited to, the following factors:

(1) Age at the time of the offense.

(2) Immaturity.

(3) Ability to appreciate the risks and consequences of the conduct.

(4) Intellectual capacity.

(5) Prior record.

(6) Mental health.

(7) Familial or peer pressure exerted upon the defendant.

(8) Likelihood that the defendant would benefit from rehabilitation in confinement.

(9) Any other mitigating factor or circumstance.

(d) The State and the defendant or the defendant's counsel shall be permitted to present argument for or against the sentence of life imprisonment with parole. The defendant or the defendant's counsel shall have the right to the last argument.

(e) The provisions of Article 58 of Chapter 15A of the General Statutes apply to proceedings under this Part.

Credits
Added by S.L. 2012-148, § 1, eff. July 12, 2012.

Notes of Decisions (26)

N.C.G.S.A. § 15A-1340.19B, NC ST § 15A-1340.19B
The statutes and Constitution are current through S.L. 2021-161, of the 2021 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Two. Sentences
Title E. Sentences
Article 70. Sentences of Imprisonment (Refs & Annos)

McKinney's Penal Law § 70.05

§ 70.05 Sentence of imprisonment for juvenile offender

Effective: November 1, 2003
Currentness

1. Indeterminate sentence. A sentence of imprisonment for a felony committed by a juvenile offender shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section. The court shall further provide that where a juvenile offender is under placement pursuant to article three of the family court act, any sentence imposed pursuant to this section which is to be served consecutively with such placement shall be served in a facility designated pursuant to subdivision four of section 70.20 of this article prior to service of the placement in any previously designated facility.

2. Maximum term of sentence. The maximum term of an indeterminate sentence for a juvenile offender shall be at least three years and the term shall be fixed as follows:

(a) For the class A felony of murder in the second degree, the term shall be life imprisonment;

(b) For the class A felony of arson in the first degree, or for the class A felony of kidnapping in the first degree the term shall be fixed by the court, and shall be at least twelve years but shall not exceed fifteen years;

(c) For a class B felony, the term shall be fixed by the court, and shall not exceed ten years;

(d) For a class C felony, the term shall be fixed by the court, and shall not exceed seven years; and

(e) For a class D felony, the term shall be fixed by the court and shall not exceed four years.

3. Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate sentence for a juvenile offender shall be specified in the sentence as follows:

(a) For the class A felony of murder in the second degree, the minimum period of imprisonment shall be fixed by the court and shall be not less than five years but shall not exceed nine years provided, however, that where the sentence is for an offense specified in subdivision one or two of section 125.25 of this chapter and the defendant was fourteen or fifteen years old at the time of such offense, the minimum period of imprisonment shall be not less than seven and one-half years but shall not exceed fifteen years;

(b) For the class A felony of arson in the first degree, or for the class A felony of kidnapping in the first degree, the minimum period of imprisonment shall be fixed by the court and shall be not less than four years but shall not exceed six years; and

(c) For a class B, C or D felony, the minimum period of imprisonment shall be fixed by the court at one-third of the maximum term imposed.

Credits

(Added L.1978, c. 481, § 31. Amended L.1981, c. 303, § 1; L.1984, c. 615, § 1; L.1998, c. 435, §§ 5, 6, eff. Nov. 1, 1998; L.2003, c. 174, § 1, eff. Nov. 1, 2003.)

Editors' Notes

PRACTICE COMMENTARIES

by William C. Donnino

See Practice Commentary at Penal Law § 60.10.

Notes of Decisions (6)

McKinney's Penal Law § 70.05, NY PENAL § 70.05
Current through L.2021, chapters 1 to 833 and L.2022, chapters 1 to 12. Some statute sections may be more current, see credits for details.

End of Document

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Oregon Revised Statutes Annotated
Title 14. Procedure in Criminal Matters Generally
Chapter 144. Parole; Post-Prison Supervision; Work Release; Executive Clemency; Standards for Prison Terms and Parole; Presentence Reports (Refs & Annos)
Release Hearings for Juvenile Offenders

O.R.S. § 144.397

144.397. Release eligibility for juvenile offenders after 15 years of imprisonment; board hearing; rules

Effective: September 29, 2019
Currentness

(1)(a) A person convicted of an offense or offenses committed when the person was under 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible for release on parole or post-prison supervision as provided in this section after the person has served 15 years of imprisonment.

(b) Nothing in this section is intended to prevent a person from being released prior to serving 15 years of imprisonment under any other provision of law.

(c) As used in this subsection, "served 15 years of imprisonment" means that 15 years have passed since the person began serving the sentence, including pretrial incarceration but not including any reduction in sentence under ORS 421.121 or any other statute.

(2) This section applies notwithstanding ORS 144.110 or the fact that the person was:

(a) Sentenced to a minimum sentence under ORS 163.105, 163.107, 163.115 or 163.155.

(b) Sentenced to a mandatory minimum sentence under ORS 137.700, 137.707 or 137.717, a determinate sentence under ORS 137.635 or a sentence required by any other provision of law.

(c) Sentenced to two or more consecutive sentences under ORS 137.123.

(3) When a person eligible for release on parole or post-prison supervision as described in subsection (1) of this section has served 15 years of imprisonment, the State Board of Parole and Post-Prison Supervision shall hold a hearing. The hearing must provide the person a meaningful opportunity to be released on parole or post-prison supervision.

(4) The board may require the person, before holding a hearing described in this section, to be examined by a psychiatrist or psychologist with expertise in adolescent development. Within 60 days of the evaluation, the examining psychiatrist or psychologist shall file a written report of the findings and conclusions of the examination with the board. A certified copy of the report shall be provided to the person and the person's attorney.

(5) During a hearing under this section, the board shall consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults. The board shall also consider the following circumstances, if relevant to the specific person and offense:

(a) The age and immaturity of the person at the time of the offense.

(b) Whether and to what extent an adult was involved in the offense.

(c) The person's family and community circumstances at the time of the offense, including any history of abuse, trauma and involvement in the juvenile dependency system.

(d) The person's subsequent emotional growth and increased maturity during the person's imprisonment.

(e) The person's participation in rehabilitative and educational programs while in custody if such programs have been made available to the person and use of self-study for self-improvement.

(f) A mental health diagnosis.

(g) Any other mitigating factors or circumstances presented by the person.

(6) Under no circumstances may the board consider the age of the person as an aggravating factor.

(7) If the board finds that, based on the consideration of the age and immaturity of the person at the time of the offense and the person's behavior thereafter, the person has demonstrated maturity and rehabilitation, the board shall release the person as follows:

(a) For a person sentenced under ORS 163.105, 163.107, 163.115 or 163.155, the board shall set a release date that is not more than 60 days from the date of the hearing and, notwithstanding section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance with ORS 144.125, 144.260 and 144.270.

(b) A person sentenced to a term of imprisonment under a provision of law other than ORS 163.105, 163.107, 163.115 or 163.155 shall be released on post-prison supervision in accordance with ORS 144.096 and 144.098 within 60 days of the date of the hearing.

(8) Unless the context requires otherwise, the provisions of ORS 144.260 to 144.380 apply to a person released on parole under subsection (7)(a) of this section.

(9) If the board determines that the person has not demonstrated maturity and rehabilitation under subsection (7) of this section, the board may postpone a subsequent hearing to a date that is at least two years but no more than 10 years from the date of the hearing.

(10) The person may waive a hearing under this section. Notwithstanding waiver of the hearing, the board shall hold a hearing under this section upon the person's written request.

(11) The board shall provide notice of the hearing to:

(a) The district attorney of the county in which the person was convicted; and

(b) The victim of any offense for which the person is serving a sentence, if the victim requests to be notified and furnishes the board with a current address.

(12) A person has the right to counsel, including counsel appointed at board expense, at a hearing under this section.

(13) The board may adopt rules to carry out the provisions of this section.

Credits

Added by Laws 2019, c. 634, § 25, eff. Sept. 29, 2019, operative Jan. 1, 2020. Amended by Laws 2019, c. 635, § 3d, eff. Sept. 29, 2019, operative Jan. 1, 2020.

O. R. S. § 144.397, OR ST § 144.397

Current through laws of the 2021 Regular Session of the 81st Legislative Assembly, which convened January 19, 2021 and adjourned sine die June 26, 2021, laws of the 2021 First Special Session of the 81st Legislative Assembly, which convened on September 20, 2021 and adjourned sine die September 27, 2021, and laws of the 2021 Second Special Session of the 81st Legislative Assembly, which convened on December 13, 2021 and adjourned sine die December 13, 2021, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Some statute sections may be more current, see credits for details.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)
Part I. Preliminary Provisions
Chapter 11. Authorized Disposition of Offenders (Refs & Annos)

18 Pa.C.S.A. § 1102.1

§ 1102.1. Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer

Effective: October 25, 2012
Currentness

(a) First degree murder.--A person who has been convicted after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or murder of a law enforcement officer of the first degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.

(b) Notice.--Reasonable notice to the defendant of the Commonwealth's intention to seek a sentence of life imprisonment without parole under subsection (a) shall be provided after conviction and before sentencing.

(c) Second degree murder.--A person who has been convicted after June 24, 2012, of a murder of the second degree, second degree murder of an unborn child or murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least 20 years to life.

(d) Findings.--In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:

(1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.

(2) The impact of the offense on the community.

(3) The threat to the safety of the public or any individual posed by the defendant.

(4) The nature and circumstances of the offense committed by the defendant.

(5) The degree of the defendant's culpability.

(6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.

(7) Age-related characteristics of the defendant, including:

(i) Age.

(ii) Mental capacity.

(iii) Maturity.

(iv) The degree of criminal sophistication exhibited by the defendant.

(v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.

(vi) Probation or institutional reports.

(vii) Other relevant factors.

(e) Minimum sentence.--Nothing under this section shall prevent the sentencing court from imposing a minimum sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing may not supersede the mandatory minimum sentences provided under this section.

(f) Appeal by Commonwealth.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand

the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Credits

2012, Oct. 25, P.L. 1655, No. 204, § 2, imd. effective.

Notes of Decisions (38)

18 Pa.C.S.A. § 1102.1, PA ST 18 Pa.C.S.A. § 1102.1
Current through 2022 Regular Session Act 3. Some statute sections may be more current, see credits for details.

End of Document

West's Wisconsin Statutes Annotated
Crimes (Ch. 938 to 951)
Chapter 940. Crimes Against Life and Bodily Security (Refs & Annos)
Subchapter I. Life (Refs & Annos)

W.S.A. 940.03

940.03 Felony murder

Currentness

Whoever causes the death of another human being while committing or attempting to commit a crime specified in s. 940.19, 940.195, 940.20, 940.201, 940.203, 940.225(1) or (2)(a), 940.30, 940.31, 943.02, 943.10(2), 943.23(1g), or 943.32(2) may be imprisoned for not more than 15 years in excess of the maximum term of imprisonment provided by law for that crime or attempt.

Credits

<<For credits, see Historical Note field.>>

Editors' Notes

JUDICIAL COUNCIL COMMITTEE NOTE--1987 S.B. 191

The prior felony murder statute (s. 940.02(2), stats.) did not allow enhanced punishment for homicides caused in the commission of a Class B felony. State v. Gordon, 111 Wis.2d 133, 330 N.W.2d 564 (1983). The revised statute eliminates the "natural and probable consequence" limitation and limits the offense to homicides caused in the commission of or attempt to commit armed robbery, armed burglary, arson, first degree sexual assault or 2nd degree sexual assault by use or threat of force or violence. The revised penalty clause allows imposition of up to 20 years' imprisonment more than that prescribed for the underlying felony. Prosecution and punishment for both offenses remain barred by double jeopardy. State v. Carlson, 5 Wis.2d 595, 93 N.W.2d 355 (1958).

Notes of Decisions (65)

W. S. A. 940.03, WI ST 940.03
Current through 2021 Act 118, published December 8, 2021

End of Document

Code of Maryland Regulations
Title 01. Executive Department
Subtitle 01. Executive Orders

COMAR 01.01.2018.06

01.01.2018.06 Gubernatorial Considerations in Parole of Inmates Serving Terms of Life Imprisonment

Currentness

A. In deciding whether to approve or disapprove a decision of the Maryland Parole Commission to grant parole to an inmate serving a term of life imprisonment, the Governor shall assess and consider, among other lawful factors deemed relevant by the Governor, the same factors and information assessed by the Maryland Parole Commission as provided by the Maryland Parole Commission's governing statutes and regulations.

B. If the Governor disapproves parole for an inmate serving a term of life imprisonment, the Governor shall issue a written decision delivered to the Maryland Parole Commission confirming that the Governor has considered, among other relevant and lawful factors and information, the same factors and information assessed by the Maryland Parole Commission as provided by its governing statutes and regulations.

C. Additional factors and information for juvenile offenders. In deciding whether to approve or disapprove a decision of the Maryland Parole Commission to grant parole to an inmate serving a term of life imprisonment with the possibility of parole for a crime committed before he or she reached 18 years of age (a “juvenile offender”), the Governor shall consider, in addition to other lawful factors deemed relevant by the Governor and the factors and information assessed by the Maryland Parole Commission as provided by the Maryland Parole Commission's governing statutes and regulations:

(1) i. The juvenile offender's age at the time the crime was committed and the lesser culpability of juvenile offenders as compared to adult offenders;

ii. The degree to which the juvenile offender has demonstrated maturity since the commission of the crime; and

iii. The degree to which the juvenile offender has demonstrated rehabilitation since the commission of the crime.

(2) If the Governor disapproves parole for a juvenile offender, the Governor shall issue a written decision delivered to the Maryland Parole Commission that:

i. confirms that the Governor has considered the applicable statutory and regulatory factors and information and the factors and information set forth in this executive order; and

ii. states reasons supporting the decision to disapprove parole.

D. This executive order may not be construed to have any retroactive effect on any decision or recommendation of the Maryland Parole Commission or any decision of the Governor, made prior to the effective date of this order, to approve, disapprove, grant, deny, or modify the conditions of a parole.

Credits
Adopted Feb. 9, 2018.

Complete through Maryland Register Vol. 48, Issue 26 dated Dec. 17, 2021. Some sections may be more current, see credits for details.

COMAR 01.01.2018.06, MD ADC 01.01.2018.06

End of Document

DAWNTA HARRIS,	IN THE
Petitioner,	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term, 2021
Respondent.	No. 45

CERTIFICATE OF SERVICE

In accordance with Md. Rule 20-201(g), I certify that on this day, February 1, 2022, I electronically filed the foregoing "Brief of Respondent" using the MDEC System, which sent electronic notification of filing to all persons entitled to service, including Megan E. Coleman, MarcusBonsib, LLC, 6411 Ivy Lane, Suite 116, Greenbelt, Maryland 20770.

/s/ Andrew J. DiMiceli
ANDREW J. DIMICELI
Assistant Attorney General
Attorney. No. 1512150175

Counsel for Respondent