



Testimony of Kevin Ring
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Public Hearing on HB 2296 – Felony Murder
Pennsylvania House Judiciary Committee
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Chairman Briggs, Chairman Kauffman, members of the committee, thank you for the opportunity to share our views with you today on this important subject.

Arnold Ventures is a philanthropy dedicated to improving the lives of all Americans through evidence-based policy solutions that maximize opportunity and minimize injustice. We focus on broken systems where outcomes are falling short, incentives are misaligned, and the time is right for change. We fund research to better understand the root causes of problems and build the evidence about what works and what doesn't to inform policy solutions. We advocate for policy reforms at all levels of government and build durable, bipartisan coalitions to drive lasting change and impact.

Most relevant to today's hearing, our criminal justice team is dedicated to increasing public safety while improving the wellbeing of everyone who encounters the criminal justice system. More safety, more justice. An important way to advance these goals is to use incarceration more sparingly, that is, only when there are not more cost-effective, evidence-based alternatives to holding people accountable and protecting society.

The chairman's bill, HB 2296, raises questions not about the use of prisons per se – such as whether an offender can be safely diverted from any prison stay through drug treatment or some other intervention – but whether lengthy mandatory prison terms are cost-effective. The best evidence suggests they are not. Even studies that have found a modest positive effect on violent crime rates from some mandatory sentences, such as three-strikes laws, concluded that their crime reduction benefits were much lower than other approaches, including more police or violence prevention initiatives.

The evidence is consistent with what most of us intuit – that the swiftness and certainty of punishment, and not its severity, are more effective at deterring crime. If you want to prevent someone from doing something wrong, make it more likely that they will get caught.

Lengthy sentences are ineffective or inappropriate for other reasons. We see in the well-documented age-crime curve that violent crime tends to be a young man's game. Most people grow up, mature, and grow out of crime. There are always outliers. There are some people who remain too dangerous to release. But if a state wanted to get the biggest public safety bang for its buck, it would not waste millions locking up 60-, 70-, and 80-year-olds.

Instead of turning their prisons into nursing homes, states should reduce their investment in lengthy sentences and divert the savings to law enforcement personnel and programs, more technology, and better funded crime labs, all of which are more likely to reduce crime.

HB 2296, which would eliminate mandatory life without the possibility of parole for nearly all people convicted of what is commonly known as “felony-murder,” represents one thoughtful approach to help Pennsylvania reduce its use of inefficient, lengthy, mandatory sentences. Other ideas worth pursuing include expanding clemency and medical and geriatric parole.

Under Pennsylvania law, a person can be convicted of felony murder if the Commonwealth proves that a homicide occurs while that person was engaged as a principal or an accomplice in the perpetration of a felony, defined as robbery, rape, deviate sexual intercourse, arson, burglary, or kidnapping. The Commonwealth need only prove that a person or an accomplice committed another specified felony and that a death occurred. Pennsylvania’s felony murder law makes no distinctions based on conduct, intent, or degree of culpability, and requires the imposition of life without parole sentences.

According to the brief filed by Governor Shapiro in Derek Lee’s case before the Pennsylvania Supreme Court, the Department of Corrections houses 1,042 individuals serving life sentences for felony murder. Fifty-five percent of them are 50 or older. Thirty-seven percent have served 30 or more years of incarceration. Sixty-four percent have served 20 or more years of incarceration.

To the extent that lengthy sentences like these are not efficient, and to the extent that these long terms are not fair because many serving them were less culpable than the principals in these crimes, it is worth noting that the costs of this inefficiency and unfairness are not evenly shared. Eighty percent of imprisoned individuals in Pennsylvania with a felony murder conviction are people of color and 70 percent are African American. I suspect the committee will hear from people whose family stories vividly illustrate this unfairness and its consequences.

Mr. Chairman, you have performed an important service in introducing HB 2296 and calling this hearing. While reasonable people may disagree about whether your bill is the best way to reform Pennsylvania’s felony murder law, one thing all people of good faith should be able to agree on is that the law needs reform.

The statute has two fundamental problems. First, it is overly broad in that it makes no distinctions based on conduct or degree of culpability. Second, it requires a mandatory life without the possibility of parole sentence. There are no exceptions.

There are a number of different ways to address the law’s overbreadth. A better statute would account for the varying degrees of an individual’s conduct and responsibility. This could be accomplished by establishing a range of possible sentences that reflects the defendant’s involvement and culpability. Subjecting shooters, for example, to greater terms of incarceration than lookouts or getaway drivers, could advance the values of proportionality and fairness.

Another approach would be to limit scope of felony murder by amending the statute to cover limited circumstances. These circumstances could include, among other things, cases where the individual intended the homicide to occur, was reasonably aware that another participant intended to engage in conduct resulting in death, provided a weapon to the perpetrator knowing that the weapon could be used during the felony, planned the crime, or caused significant injury to a person during the commission of the felony. If the statute were not limited in this way, these factors still might be useful to establish sentence ranges, as just discussed.

Other states already provide a framework for making distinctions based on the degree and level of culpability. For example, some states, including Arkansas, Colorado, Connecticut, and New Jersey, provide an affirmative defense for those who did not kill another person and did not solicit, cause, or aid the commission of the crime; were not armed with a deadly weapon or dangerous instrument; had no reasonable grounds to believe that any other participant was armed with such a weapon or instrument; and had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury. Lawmakers should consider the weakness of an affirmative defense, which is that the charges can still be brought, and the burden falls on the individual charged with the offense to prove this defense.

Minnesota requires the accused to have been a major participant in the underlying felony or having acted with reckless indifference to human life. This includes using a weapon during the commission of the offense, causing substantial bodily injury to another person during the offense, hiring a person to commit the offense when it was foreseeable that death could result, or impeding another from preventing the death.

Many states have reformed their felony murder laws over the past several years. Some examples:

- Michigan's Supreme Court eliminated mandatory life without parole for 18-year-olds convicted of felony murder (2022). This change was later found to be retroactive, as well (2024).
- Colorado eliminated mandatory life without parole for felony murder (2021), replacing it with a non-mandatory term of incarceration, and also removed two of the conditions required for an affirmative defense to felony murder (eliminating requirements that the perpetrator prove there were no grounds for him to believe that the co-felon had a weapon and that the perpetrator had to remove himself from commission of crime upon learning that the co-felon had weapon or was likely to engage in deadly conduct).
- The Supreme Judicial Court of Massachusetts prospectively narrowed the state's felony murder law in 2017 by requiring evidence of malice regarding the killing itself.
- Illinois limited the possibility of first-degree murder under the felony murder rule to only those deaths directly caused by one of the actors in the underlying felon (2021). The law removed the possibility that prosecutors charge defendants with murder in cases when a third party who was not involved in the felony, such as a homeowner or a police officer, is responsible for the killing.
- In 2018, California legislators changed the state's murder statute to focus on a defendant's intent to kill. That provision eliminated felony murder liability for co-

defendants in the underlying felony who did not actively participate in the killing or did not act with “reckless indifference to human life.”

- Minnesota last year narrowed the life sentence portion of its felony murder law by requiring that the individual participating in the deadly felony had the intent to kill or aided and abetted the crime with the intent to kill. This change was retroactive. Minnesota also narrowed the other portion of its felony murder law which does not carry a life sentence by requiring that the individual was a major participant and acted with extreme indifference to human life. This part of the change was not retroactive.

These are just some of the ways in which states have sought to tackle the problems of overbroad felony murder laws and the severe mandatory sentences that are often attached to violations. No doubt there are other thoughtful ideas that could be explored.

What these changes show is that reform is possible. These reforms are not all the same; some are extraordinarily significant, while others are quite narrowly tailored. Some will have significant impacts, others far more modest. While most are prospective only, there are some that apply retroactively. Pennsylvania should address the problems in its felony murder law or risk become even more of an outlier.

The second problem with Pennsylvania’s felony murder law is that it requires harsh mandatory life without parole sentences. There is no other option other than life without the possibility of parole. There are no exceptions, no waivers, no penalty adjustments based on where you fall on the culpability spectrum.

What this means is that there is little appreciable difference in sentencing between Pennsylvania’s intentional homicide statute (first degree murder) and felony murder statute (second degree murder). Other than death sentences for first degree murder (which is rare), mandatory life sentences without parole are the default sentences for both crimes. This unwarranted parity can be remedied by eliminating the mandatory life without parole sentences and replacing them with a more thoughtful range that considers the actual conduct that occurred.

Lawmakers also must grapple with the issue of retroactivity. As these mandatory life-without-parole sentences are inefficient, applying any reform retroactively would be both smart and fair. Part of the reason we know they are counterproductive is because of the experiences of people who have served or are serving them. It would be a mistake for the legislature to dismiss those experiences when reforming the law.

At the same time, we recognize that retroactive application can pose significant challenges. Families of victims who died as a result of a felony murder were told and have come to expect that those convicted of felony murder will spend the rest of their natural lives in prison (absent a pardon or commutation). Lawmakers should lean into principles of procedural justice as they craft reform here. Procedural justice ensures that all affected voices are heard and ensures fairness in the process and helps account for the fact that not all victims think alike or have the same views on these issues or on individual cases.

A statute should mandate the identification of all victims, a robust process for all victims to submit or offer testimony on their views of a sentence reduction, a requirement that the decision-maker seriously consider the testimony of all victims, and that the Office of Victim Advocate help coordinate the process. Because the process of considering retroactive changes to the sentences of some of those convicted of felony murder will take up time and resources of Pennsylvania prosecutors and public defenders, the Commonwealth should provide reimbursements to the respective prosecutor and defender offices for the costs of work involved.

Retroactive application also poses operational challenges. In some older cases, especially if there was a guilty plea, there may not be a robust record containing all the relevant facts that would be useful in a resentencing or parole hearing. As a result, the Commonwealth and defense counsel will have to spend some time putting together facts about the case. This work can be done, but lawmakers should consider providing resources to assist in this endeavor.

In conclusion, we commend Chairman Briggs for introducing HB 2296 and initiating an important discussion about how best to reform Pennsylvania's felony murder law. Lawmakers who want to increase public safety should move to rein in the Commonwealth's overbroad law and reconsider its one-size-fits-all sentencing structure. Smart reform will free up money to invest in personnel and programs that are proven to reduce crime.

We recognize that the Pennsylvania Supreme Court will be examining the constitutionality of the felony murder statute as it applies to an individual convicted of second-degree murder who did not kill or intend to kill. This ruling likely will come next year. Lawmakers cannot control how the court will rule, but they can be prepared to react and respond, if necessary.

We at Arnold Ventures stand ready to assist the committee and other members of the General Assembly as you seek to advance smart, evidence-based reforms to the felony-murder statute and other laws that misuse limited public safety budgets on lengthy mandatory prison sentences. Thank you again for the opportunity to share our views.