

SENATE BILL 395

E1, E2
HB 1338/20 – JUD

1lr0736
CF HB 385

By: **Senator Carter**

Introduced and read first time: January 15, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Felony Murder – Limitation and Review of Convictions for**
3 **Children**

4 FOR the purpose of altering provisions of law relating to murder in the first degree;
5 providing that a person who was a child at the time of the offense may not be found
6 to have committed murder in the first degree under certain provisions of law;
7 authorizing certain persons to file a motion for review of conviction under certain
8 circumstances; requiring a court to hold a certain hearing on the filing of a motion
9 for review of conviction under certain circumstances; requiring the court to take
10 certain actions under certain circumstances; requiring the court to notify the State's
11 Attorney of the filing of a certain motion for review of conviction; and generally
12 relating to children and felony first-degree murder.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Law
15 Section 2–201
16 Annotated Code of Maryland
17 (2012 Replacement Volume and 2020 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Criminal Law
20 Section 2–204
21 Annotated Code of Maryland
22 (2012 Replacement Volume and 2020 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Criminal Law**
26 2–201.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(a) IN THIS SECTION, “CHILD” HAS THE MEANING STATED IN § 3–8A–01 OF THE COURTS ARTICLE.

(B) 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) SUBJECT TO SUBSECTION (C) OF THIS SECTION, 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.

(C) A PERSON WHO WAS A CHILD AT THE TIME OF THE OFFENSE MAY NOT BE FOUND TO HAVE COMMITTED MURDER IN THE FIRST DEGREE UNDER SUBSECTION (B)(4) OF THIS SECTION.

[(b)] (D) (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.

[(c)] (E) 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.

(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON CONVICTED ON OR BEFORE SEPTEMBER 30, 2021, OF MURDER IN THE FIRST DEGREE UNDER SUBSECTION (B)(4) OF THIS SECTION WHO WAS A CHILD AT THE TIME OF THE OFFENSE MAY FILE A MOTION FOR REVIEW OF CONVICTION AT ANY TIME WHILE INCARCERATED OR UNDER SUPERVISION.

(2) (I) IF THE COURT DETERMINES THAT THE MOVING PARTY HAS PRESENTED PRIMA FACIE EVIDENCE TO MEET THE REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL HOLD A HEARING LIMITED TO THE RECORD AT TRIAL AT WHICH THE STATE MUST ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE MOVING PARTY COULD BE FOUND GUILTY OF MURDER IN THE FIRST DEGREE UNDER SUBSECTION (B)(4) OF THIS SECTION ON OR AFTER OCTOBER 1, 2021.

(II) IF THE STATE FAILS TO MEET THIS BURDEN OF PROOF, THE COURT SHALL:

1. VACATE THE CONVICTION UNDER SUBSECTION (B)(4) OF THIS SECTION;

2. ENTER A CONVICTION UNDER § 2–204 OF THIS SUBTITLE; AND

3. RESENTENCE THE MOVING PARTY TO A PERIOD OF INCARCERATION UNDER § 2–204 OF THIS SUBTITLE IN EFFECT AT THE TIME OF THE

1 OFFENSE.

2 (3) THE COURT SHALL NOTIFY THE STATE'S ATTORNEY OF THE
3 FILING OF A MOTION FOR REVIEW OF CONVICTION UNDER THIS SUBSECTION.

4 2-204.

5 (a) A murder that is not in the first degree under § 2-201 of this subtitle is in the
6 second degree.

7 (b) A person who commits a murder in the second degree is guilty of a felony and
8 on conviction is subject to imprisonment not exceeding 40 years.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2021.