

Aiding and Abetting Felony Murder Task Force

Wednesday, October 20, 2021

10:00 am – 12:00 pm

Via Webex

Members Present (10 of 12): Gregory Egan (chair), KiloMarie Granda (vice-chair), Nick Kimball, Pat Mc Dermott, William Ward, Brian Mueller, Nate Reitz, Perry Moriearty, Toni Cater, Clare Diegel, Kathleen Keena, Kenneth Sass

DOC Staff: Amy Lauricella, Emily Lefholz, Tavia Osgood

I. Discussion of timeline

Is more time needed to do this work? Should the task force go back to the legislature and request this or introduce a bill to modify enabling legislation?

Decision: move forward with what they can do now for a report with a short extension to Feb. 1. And then in the report, include a request for more time and resources for a 50-state survey as well as a survey of incarcerated persons in Minnesota to see the clearest picture of this issue.

II. Subcommittee Updates

- Engagement and Outreach subcommittee – Toni Cater
 - Listening session tonight – hoping to record
 - Working on Nov and Dec listening sessions (virtual makes most sense)
 - Working on victim families and impacted persons and their families – getting connections now
 - Discussed doing a survey to obtain more narrative information from individuals about their experiences
- Case Law and Statutes subcommittee – Perry Moriearty
 - Law student support has begun and is aiming for November to complete the review
 - Subcommittee will reconvene once work product is completed to review and discuss how best to present
- Data subcommittee – Nate Reitz
 - Divided up the work for:

- Reviewing county data and identifying statewide trends for county attorneys
- Reviewing law enforcement data and identifying statewide trends
- Request data from judicial branch (everyone charged with aiding and abetting felony murder and outcomes of those cases for a twenty year look back period) and tribal entities
 - a. Big question is who will process this data

Update on consultant to assist with report for this project:

- Have been searching and reviewing based on current funding allotted by legislature and required modification of proposal in order to find adequate options given scope of work
 1. Expanding pool of perspective consultants now to ensure broad group of applicants
 2. Will attend meetings, review subcommittee work, and focus on concisely presenting the work that comes out of this task force
 3. Hoping to have hired shortly

III. Presentation from Pat McDermott and Kathy Keena

Presentation by Kathy Keena:

- These cases are very fact specific, and many prosecutors try to take level of culpability into consideration to identify the main bad actor
- Authority to charge derives from Minn. Stat. § 609.05 subd. 1 and 2
 1. Aiding, abetting; liability. A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.
 2. Expansive liability. A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.
- If individuals did not participate in the killing but were present and may have received something from the crime, could look to Minn. Stat. 609.495 subd 3
 1. Aiding an offender after the fact. Whoever intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact and may be sentenced to not more than one-half of the statutory maximum sentence of imprisonment or to payment of a fine of not more than one-half of the maximum fine that could be imposed on the principal offender for the crime of violence.

- Prosecutors may have their own philosophies and considerations for what to charge and when – prosecutors likely have their own factors to help assess culpability and public safety

Presentation by Pat McDermott:

- Victims’ families are an important piece of this issue – they cannot be made whole by this process – but, when it is appropriate based on the facts of the case, honoring their requests for outcomes can be useful for them so long as expectations are managed and aligned with what is possible within the sentencing guidelines
- There are public pressures that come into play with these cases
- Prosecutors must make decisions without fear, passion, or prejudice – focusing on motive of the crime and how individuals are involved and culpable can assist families in understanding the outcomes of the justice system
- Sentencing guidelines aggravating factors may be helpful to review with the group

Discussion:

- There is broad appreciation for having this discussion publicly as it’s important to recognize the realities that public and victim pressures have on our legal cases
- At the end of the day, prosecutors want to hold people accountable and have people accept responsibilities for their actions – the idea of “accepting responsibility” has multiple perspectives
 - This can sometimes result in situations that seem unfair (e.g., a principal actor may “accept” responsibility and plea out whereas the person who did not kill someone may go to trial and get a worse outcome)
 - It can be difficult to expect people who did not kill someone to accept responsibility for that death
- It sounds like prosecutorial action is based on satisfying family needs for vindication (when they’re in the midst of their grief) – where is culpability, public safety, and family desires in the considerations?
 - Prosecutors are, by law, required to discuss plea negotiations with families and can then set expectations based on the guidelines
 - Prosecutors have to make decisions that, oftentimes, do not make victims happy – based upon what prosecutors believe is factually correct for the situation
- Some counties may be less likely to charge after the fact and may seek equivalent penalties for aiding and abetting irrespective of various considerations and facts around culpability – the legislature may be interested in seeing whether justice by geography is happening
- Could principals assessing culpability be codified and clarified and put into law? Could help to ensure things are not left up to political pressures and potentially reduce outlier cases that result in inequitable outcomes for principals versus secondary actors



Next meeting: Wednesday, November 17, 2021 10:00am – 12:00pm