

Aiding and Abetting Felony Murder Task Force

Wednesday, November 30, 2021

10:00 am – 12:00 pm

Via Webex

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

Staff: Tavia Osgood (DOC), Julie Atella (Wilder, Research Scientist, contractor supporting report writing), Lindsay Turner (Wilder)

Guest Presenter: Judge Kathryn Quaintance

- I. Approval of Nov. Minutes
 - a. Nov. – Motion to approve carried

- II. **Subcommittee reports**
 - a. Community Outreach
 - i. Working on listening session at Stillwater
 - ii. Senate Authors want to go to Shakopee before February to hear from the panel that spoke previously. Subcommittee will work with DOC for scheduling.
 - iii. Working to get directors of Victim organizations to speak on behalf of the victims rather than having victims directly speak and reliving traumatic experience.
 - iv. Task Force agrees to have Toni move forward with getting law makers to Shakopee.
 - b. Data
 - i. BCA data
 1. Data was not designed for this purpose of the Taskforce request. Does not have the capability for this project.
 - ii. Trying to make data more stream lined.
 - iii. Issues with Data privacy. Will need to be general data and not case specific.

- iv. Data request submitted for tracking Aiding and Abetting Felony Murder cases over the last decade.
- v. Waiting for progress from county attorneys.
- vi. Student team working on analyzing cases and possibility working on the Judicial Branch data.
- vii. Updated contact list for the Tribal Leaders

c. Statute/Caselaw Policy

- i. Subcommittee hoping to meet next Tuesday, December 7th from Noon 1:00pm
- ii. Looking to compile the data so it is user friendly
- iii. Looking at ways to classify the information with 5 categories: 1) No felony murder, 2) Have abolished felony murder for non-perpetrators (assuming this means aider and abettor. Will need to come up with own definition), 3) have limited liability, 4) limited liability for non-perpetrators, 5) Felony Murder.
- iv. One distinction between the previous study and the spreadsheet of the U of M students' spreadsheet is the central role of Aider and Abettors.
- v. Some states have aiding and abetting affirmative defenses if they did not participate in the actual murder.
- vi. Other states have aiding and abetting modifier within the statute. MN has an independent statute.
- vii. MN law does not just have aiding and abetting statute, the courts, through case law, have defined aiding and abetting with a very low threshold. Active participation is not required. This information needs to be pulled independently.
- viii. Reform timeline could be helpful to understand these recent changes.
- ix. Another section or column will be needed to allow a story to be told to the legislature.
- x. Confirming no other recent reforms have been missed.

III. Presentation from District Court Judge Quaintance

- a. Prosecutors sometimes don't charge felony murder when they could. Example of this with the Mohamed Noor case. Felony murder does not require intent.
- b. People with less culpability are usually given a deal to testify against the principle. This typically happens before charging someone for the crime and before figuring out who has more culpability, or they are charged with the crime and later received a plea deal. This limits the judge's ability to sentence fairly. This takes control away from the judge. Since judges do not make deals, they have little control over the sentencing once a deal is made.

- c. There are increasing numbers of robbery crimes and carjacking escalating to homicides.
 - d. Jury Instructions – the concept of felony murder is not that hard for jurors to grasp but the jury instruction guides (JIGS) are unhelpful regarding anything to do with Aiding and Abetting and confusing to jurors. Judges have the choice to give a liability for crimes of another separate from the elements of the crime.
 - e. Sentencing factor – Challenge trying to figure out relative culpability of the aider and abettor. Culpability includes intent vs. accidental. Person criminal history increase their culpability.
 - f. Judges can reject deals. However, without all the information and facts being available to them before the trials starts, this can be difficult
 - g. Community offices (defense, prosecutors) should have an ethical and moral compass rather than just wanting to win.
 - h. Prosecutors should be asked during elections prior to being elected. Having them be reminded of the totality of their responsibility to the community, new information about eyewitness reliability, and disproportionality in the system.
 - i. The spectrum of the crime can impact the sentencing of the felony murder.
 - j.
 - k. Should the Sentencing Commission consider not ranking Aiding and Abetting? Aiding and Abetting after the fact is not currently ranked. Could be interesting to pursue as there are similarities.
- IV. Presentation of data from Minn. Courts (Nate Reitz) [MJB-Sanke.pdf](#) [MJB-Race Ethnicity.pdf](#)**
- a. Request sentencing data from courts where the charge included aiding and abetting. Was not able to obtain. The data provided does not include cases where there is no criminal conviction.
 - b. GOC code does not need to be proven by the prosecutor.
 - c. This is a list of “What” and not “Who.”
 - d. Does include intentional murder
- V. Stillwater Prison listening session**
- a. Stillwater session is important for representation and clarity on who these laws impact and other experiences.
 - b. Continues to be difficult to get victim input.
 - c. Shorter panel in January 2022 (two or three people).
 - d. Looking to do skype or zooms.
- VI. Update by Task Force report contractors**

- a. Reached out to subcommittee chairs for get information for report.
- b. Have a bare bones report outline.
- c. Proposing a review of literature regarding public safety with aiding and abetting.
- d. Having literature review for impact of longer-term incarceration included in the report.
- e. Deciding what categories of impact should be framed/ captured in the report?
- f. Including other options for charges outside of felony murder.
- g. Incorporating public safety principles and task force discussion around these is critical. The task force will assist Wilder in this more substantive section.
- h. December 24th - draft to come out.
- i. January 4th - feedback from draft is due.
- j. Encompassing the public safety aspect of aiding and abetting in the report.

VII. Adjournment

- a. Task force added two more full group meeting January 5, 2022 from 10:00am – 12:00pm and January 19, 2022 from 10:00am – 12:00pm.
- b. Motion to adjourn carried.

Next meeting: Tuesday, December 15, 2021 10:00am – 12:00pm