



Aiding and Abetting Felony Murder Task Force Minutes

Wednesday, Oct. 11, 2023

10:00 am – 11:30 am

Department of Corrections (DOC), 1450 Energy Park Drive, West Entrance, Afton Room, 1st Floor, St. Paul, MN 55108**

Hybrid In-person and virtual via Webex

Members Present (7 of 8): Zachary Gahm, Nate Reitz, Bill Ward, Greg Egan, Pat McDermott, Jeremiah Carlson, Kathy Keena

DOC Staff Present: Amy Lauricella

Research Contractors: Chris Bray, Julie Atella, Stephanie Nelson-Dusek (Wilder Research)

Guests: Professor Richard Frase, Molly Evans, Bobbi Holtberg

Meeting Minutes

- I. Welcome
- II. Introductions of absent and new members
- III. Selection of Vice-Chair
 - a. Kathy Keena nominated and unanimously voted in as vice-chair
- IV. Discussion: Scope of task force work
 - a. Adopting a merger limitation to second degree felony murder
 - i. MN is in minority of states allowing assaults as predicate felonies (70% of states have adopted a merger limitation.)
 - ii. Absence of merger limitation likely facilitates disparities in charging and disposition of felony murder cases across the state
 1. Need to evaluate data and compile personal histories from both sides
 - iii. Members agreed this topic should be one of the focuses for the Task Force and if possible, collect data as to the prevalence of the practice of using assault as a predicate felony and review statutes from other states that have adopted the merger limitation.

- b. Incorporating a list of predicate felonies, not to include assaults, into the second-degree felony murder statute, making it akin to the structure of first-degree felony murder
 - i. Members agreed this topic should be considered further, aiming to collect data and compare laws from other states.
 - ii. In assessing which predicate felonies would be enumerated in the statute, the Task Force would discuss the codification of State v. Anderson, 666 N.W.2d 696 (Minn. 2003), which requires that the predicate felony be inherently dangerous in the abstract and dangerous as committed.
- c. Codifying a foreseeability requirement
 - i. Members agreed that this is a topic for exploration, pending review of statutes and case law.
 - ii. Look to statutes from other states
 - iii. Look to MN statutes implicating foreseeability or proximate cause in other areas of state criminal code.
- d. Amending 1st Degree FM Crim Sex provision to require some level of intent with respect to death (609.185(a)(2))
 - i. Currently no requirement of any culpable mental state
 - ii. All other provisions of first degree murder statute require some level of intent
 - iii. Consensus reached that this will not be a Task Force priority
- e. Accomplice liability issues
 - i. Most of the current specialized first degree felony murder provisions allow for conviction of accomplice based on principal's intent. General aiding and abetting felony murder liability modified in wake of prior Task Force's work
 - ii. Problem with accomplices being punished more harshly than principals.
 - iii. Members agreed that this is an area for exploration.
 - 1. Could draw on prior Task Force's work and data
 - 2. Could be applied more generally to proportionality in accomplice liability under 609.05, subd. 2.
- f. As to all areas of potential reform, Murder of an unborn child should be looked at to ensure that its provisions are parallel to the provisions to homicide statutes

V. Discussion next time will focus on:

- i. Potential for 3rd degree negligent homicide statute or broadening quasi 3rd degree felony murder statute
- ii. Abolish Felony-Murder
- iii. Other areas for consideration
- iv. Data needs and parameters

VI. Next Steps and Closing

- a. Set a special meeting October 25, 10-11:30am