



Aiding and Abetting Felony Murder Task Force

Wednesday, November 17, 2021

10:00 am – 12:00 pm

Via Webex

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

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

- I. Approval of Sept. and Oct. Minutes
 - a. Sept. – Motion to approve carried
 - b. Oct. – Motion to approve carried

- II. Two week extension for report
 - a. Motion to request official two week extension for legislative committee chairs for task force report
 - i. Motion carried unanimously

- III. **Subcommittee reports**
 - a. Community Outreach
 - i. Listening session at Shakopee occurred
 - ii. Working on listening session at St. Cloud
 - iii. Working to connect with individuals who have been victimized by individuals committing these crimes to ensure their perspective is included in the task force work
 - b. Data
 - i. Digging into case information beyond sentencing in order to tease out the case stories is beginning and will be quite a bit of work – put together a memorandum to describe this work
 1. Students are working on only those who have been *convicted* of aiding and abetting felony murder
 - ii. Enabling legislation requires data from a number of different agencies which is also being pursued (including Bureau of Criminal Apprehension, Minnesota County Attorney Association, and working through way to use court data)

1. Discussion around ways to obtain county of origin
 2. Judicial branch data set includes both convictions and charges
 3. County attorney data set includes plea negotiations involving aiding and abetting felony murder
- c. Statute/Caselaw Policy
- i. Student researchers have a first draft of the memo summarizing the controlling statutes and case law across the country
 1. Few states that have new or pending legislation that isn't captured
 2. Biggest question for the subcommittee is how to present the information (for example, just list the states or attempt to categorize it in a way that is objective)

IV. Reflections from Shakopee listening session

- a. Overall, takeaways from the session identified concerns around excessive sentences being misaligned with safety, accountability, and goal of restoration to community – there is likely better use of tax-payers dollars
- b. Preliminary findings
 - i. Punishment feels disproportionate to underlying culpability and no one actor bears the full responsibility for it
 1. 70 year old woman was never offered a plea deal at the age of 57, who was in the car when two younger men shot up a pawn shop, and she isn't eligible for parole until 103 years old – and the two men will get out before she does
 - ii. The stories shared during the listening session are why the task force was created and brought to light the problems with how the laws are written and used
 1. Minnesota is not safer with these folks in prison
 2. For every year we incarcerate someone and expose them to trauma, shame, violence, etc., the shorter life expectancy by two years

V. Preliminary discussion of Task Force Recommendations

- a. In terms of recommendations, leaving the laws as they are would be circumventing the job this task force was asked to do
- b. Individual criminal justice system actors can have an outsized impact in this framework which can lead to unfair/absurd results when looking at culpability (e.g., incomplete police questioning, lack of robust defense, oversized impact on public opinion)
- c. How did we get where we are at in any particular case? When looking at the entirety of the circumstances, results seem very disproportionate – but this still might need to include the people who plan crimes but don't actual take life
- d. Criminal justice actors have obligations for transparency and ethical representation to their clients – but with the abuses of this antiquated legal framework across this country, justice actors can only do so much as individual actors (the answer to fixing this

unjust situation is how the law is being used, not that any one office requires more resources to do its work better)

- e. The will of the legislature has communicated, via the current law, that someone who aids and abets a crime and someone who commits felony murder is AS GUILTY as someone who intends to kill a person – the law communicates this – and the law should reflect what the legislature intends for it to reflect
 - i. Seems to be consensus from this task force that a person who aids and abets felony murder is not as culpable as someone who intentionally kills someone
 - ii. This group may want to tackle: a) what would the change be to better support this intent; and b) would this change apply retroactively to those already serving time for disproportionate sentences?
 - 1. There is a beginning framework to these changes that was introduced last year at the legislature in 2021 – [SF 1061](#)
- f. Desire expressed by committee to ensure appropriate flexibility in any suggested changes to ensure there won't be unintended consequences – want to make sure individuals who “mastermind” crimes that result in death can be held accountable, particularly if they knew death was possible
 - i. There are already unintended consequences of how the law is currently written, too – and most laypeople agree and can support the need for change
- g. Recommendations will likely focus on the idea of culpability and also could take into consideration the current environment

VI. Introduction of Task Force report contractors

- a. Wilder Foundation proposal accepted and attending call today and moving forward
- b. High priority for contractors – pulling together report outline for review next week

VII. Presentation by Greg Egan on racial disparities of felony-murder doctrine

- a. Materials – law review articles containing information on racial disparities
- b. Second degree felony murder doctrine has the farthest purview due to it being situated between more serious charges and less serious felonies – wide discretion means it is ripe for inequitable application (geographic, racial, age, etc.)
 - i. Metro counties (Hennepin/Ramsey) – 20% of people convicted of 2nd degree felony murder during 7 year time period were white; 80% were people of color – when normalized for population in metro area, it is a reversal of those percentages – meaning a twelve-fold increase in being more likely to be convicted of felony murder in the 2nd degree
 - ii. Looking at departures (aggravated and mitigated) – roughly equivalent ratio for people of color; white defendants were 2.5 times more likely to receive downward departures
 - iii. In 2/3rds of cases where white defendants were convicted of felony murder, there were higher counts of charges; but that happened only in 38.5% of cases for defendants of color

- c. This wide range of discretion is unfair to prosecutors who are put in position to navigate this large area of legal culpability, particularly with public pressures – with the statute putting so many actions under the same umbrella, prosecutors and judges are left in difficult positions when looking at probation with zero years in prison that also could go up to life in prison

VIII. Adjournment

- a. Task force added one more full group meeting November 30 from 10-12 in addition to December 15 meeting
- b. Motion to adjourn carried

Next meeting: Tuesday, November 30, 2021 10:00am – 12:00pm