

Aiding and Abetting Felony Murder Task Force

Wednesday, December 15, 2021

10:00 am – 12:00 pm

Via Webex

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

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

Public (13 members of public): Antonio E., Avik G., Barbara W., Bobbi H., Avra A., Gina E., Jessica E., Linda M., Mary H., Michele L., Naciima M., Rebecca F., Zaynab L.,

- I. **Approval of Nov. 30 minutes**
 - a. Kathy Keena moved to approve – seconded by Bill Ward – motion carries

- II. **Subcommittee Reports**
 - a. Data
 - i. BCA data on arrests will not arrive in time for report – due to resource constraints (80-100 hours of work to pull up what the committee needs)
 - ii. Reviewing descriptive information regarding cases
 - b. Statute/Case Law
 - i. Abolished felony murder (“FM”)
 1. Hawaii (Supreme Court); Kentucky (Legislature); Massachusetts (Legislature)
 - ii. Abolished or do not have FM for non-principals
 1. California
 - iii. Eliminated strict liability or otherwise limited liability for FM
 1. Vermont
 - iv. Established affirmative defenses for non-principals
 1. Alaska, Colorado, Connecticut, Maine, New Jersey, North Dakota, Oregon, Washington (group is looking into why similarities exist between statutes and changes occurring around the same time)
 - v. Limited liability / affirmative defenses
 1. Arkansas, New York
 - vi. “Full” felony murder

1. Alabama, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Michigan, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming
 - vii. “Full” felony murder but limiting criteria for non-principals
 1. Delaware, Illinois, Maryland, Minnesota, Missouri, New Hampshire, Pennsylvania
 - viii. May need a 6th category for case law in states with full felony murder
 1. Minnesota – active role not required and knowing role is not required – the group is still looking into whether this distinction is important for the report
 - ix. Group discussed the need to articulate that the intent to kill is not required in Minnesota (other states deal with this differently) – this may be more of a charging practice in that accomplices may not need an intent to kill depending on the county – perhaps this subcommittee may recommend that the accomplice must share in the intent to kill in order to charge
- c. Community Outreach
- i. Hosting listening sessions via zoom with various Minnesota prison facilities between Jan. 6-20
 - ii. Legislative visit to Shakopee – planning ongoing for end of January
 - iii. Summary of responses to date:
 1. Greatest struggle with the system is that we want people to be accountable for the crimes they commit, understand the role they played, and take responsibility for what they did – but felony murder requires you to be responsible for the crimes of someone else (particularly difficult when murder occurs)
 2. These individuals know that they made a mistake – and in many instances, trauma leads to addiction and abuse – and then we make them responsible for the death of another human being even though they did not participate in the killing, cause it, and had no intent to do – understanding your role in the predicate felony is different

III. Contractor Report

- a. Working through practical and theoretical concerns related to the felony murder doctrine:
 - i. general and specific deterrence factors
 - ii. successful punishment structures at suppressing/changing behavior (prevention) and interventions for behavior (response)
- b. Reviewing data and information about relative culpability

IV. Steering Committee Discussion: findings, recommendations & final work product

- a. Consequence of the laws as written right now is that, in certain counties, the principals are getting plea deals and aiders and abettors are being held accountable for crimes they did not commit
 - i. Undermines public safety
- b. Discretion, particularly between first- and second-degree murder, is an area the group would like to explore (e.g., why are so many of Hennepin County felony murders going to first degree?)
 - i. Could be leading to geographic disparities
- c. Sentencing disparities are undermining public safety
 - i. Principals may be more inclined to take plea deals due to their direct involvement and potential evidence against them
 - ii. Prosecutors use this discretion but without guidance from the legislature – Kathy Keena uses principles that are helpful but are not consistently used
 - iii. Mitigating factors, currently, are the only mechanism for aiders and abettors to receive a lesser sentence when they were not responsible for the murder – since this is approved on the back end, perhaps we should push the legislature to be more for these to be considered on the front end
 - iv. This group should address retroactivity recommendations
- d. Would be helpful to note the impact of a murder conviction:
 - i. Unintended consequences outside of prison (housing, employment)
 - ii. Unintended consequences inside prison (risk assessment practices, programming and employment restrictions, interventions become unavailable) – there are so many opportunities for reformation and accountability that are not available to people with murder convictions
- e. County attorneys would likely be very interested in the data this group is reviewing – proportionality is a huge component for this work
 - i. When framed with the question of, “how much punishment is enough?” when thinking through something someone has done
 - ii. Public safety is not put at risk by treating aiding and abettors differently than principals – but this varies depending on which office prosecutors work in
- f. People lose faith in the system when they are not heard, treating appropriately and with proportionality – changing the law to be fair on the front end can allow people to be more focused on rehabilitation while serving time in prison for the crimes they do commit
 - i. If we think about public safety when people are released, revision to this statutory framework is crucial
- g. Legislative language
 - i. Likely that this group will propose some legislative changes

V. Public questions/comments

- a. Juvenile Sentencing Reform Minnesota – calling in to support retroactivity on any amended felony murder laws
 - i. Juvenile in car during a drive-by homicide given life sentence at 16

- ii. So many juveniles are impacted by felony murder laws – brain development plays a huge factor in their involvement in these crimes
- iii. Juveniles and former juveniles have one of the lowest recidivism rates of any group upon release – given the overlap with felony murder, this is why retroactivity is so important to give these kids a chance to be productive members of society
- iv. These reforms can connect with prevention work, too, to create opportunities for people serving time to share their experience that will help us to reach current kids facing these situations
- b. MN Alliance on Crime (MAC) – most of their members programs (75% are victim witness programs, 25% are community victim support programs) support a comprehensive overhaul of the current law – most support an outright appeal of the current law
 - i. Family members of homicide victims are broadly concerned with the inequities with the framework – and they support changes in sentences that more accurately reflect culpability in death of their loved ones
 - ii. One family shared that a person who had no knowledge that a crime was about to be committed was convicted of aiding and abetting felony murder and received a longer sentence than the principal actor
 - iii. Support changing the statute and retroactive application process
- c. Founder of Life on the Inside – former correctional officer
 - i. Seen how these laws impact work that can happen in prison
 - ii. Supports changing this framework

VI. Adjournment

- a. Motion carried

Next meeting: Wednesday, January 5, 2022 10:00am – 12:00pm