



Aiding and Abetting Felony Murder Task Force Meeting Minutes

Friday, Sept. 22, 2023

9:00 am – 10:30 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

Public access to PowerPoint presentation shown during the meeting available [here](#)

Members Present (7 of 12): Zachary Gahm, Nate Reitz, Bill Ward, Ken Sass, Greg Egan, Pat McDermott, Jeremiah Carlson

DOC Staff Present: Amy Lauricella, Chelsey Dively

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

Guest Presenters: Professor Richard Frase, Tristan Voegeli

- I. Welcome
- II. Introductions
 - a. Members (direct appointments)
 - i. 4 open appointment members cannot be appointed until after next Thursday
 - b. Consultants
 - c. Guest presenters
- III. Summary of prior Task Force work and final report (*Greg Egan*)
 - a. Initial established June 2021
 - i. Completed work January 2022
 - b. Intersection of aiding and abetting accomplice liability and felony murder doctrine
 - c. Balanced data and personal component
 - i. Listening sessions to capture anecdotal information
 - d. Make suggestions to change the law and review
 - i. Data committee
 - ii. Statutory committee
 - iii. Outreach Committee

- e. Findings
 - i. Inequities in age of offenders
 - ii. Statistics showed gender and racial inequities
 - iii. National Trends
 - 1. Limiting the scope of the felony murder doctrine
 - iv. Revision of relevant statute to aiding and abetting felony murder liability
 - v. Modeled work after statutory reform in California
- f. Result
 - i. Resentencing efforts currently underway
 - ii. Expand scope of current task force

IV. Overview of legislation

- a. Legislative authority
 - i. Expanding focus of duties to more generally look at felony murder and/or accomplice liability
 - ii. Taskforce has some autonomy and discretion what to focus on with the taskforce
 - iii. Report due Jan 15th, 2024
- b. Membership
 - i. Directly appointed members
 - ii. Public members
 - 1. Still need an applicant for the statewide civil rights organization
- c. Regular meeting practices
 - i. Afton conference room at DOC Central office
 - ii. Virtual option for members and public
 - iii. Meet at least monthly

V. Chair selection

- a. Vice-chair next meeting
- b. Chair
 - i. Greg Egan nominated
 - ii. Unanimously elected chair by present members

VI. Discussion: Legal framework, national trends, and scope of task force work

- a. Open Meeting Law applies
- b. Expires once the report is submitted
- c. Criminal Law overview
 - i. Felony murder

1. 9 states do not have a traditional felony murder rule, along with international abolition across the world
- ii. Discussion of other state limitations on felony murder
 1. Felony assault merger rule – limited in other states depending on the type of predicate felony (even if the statute says causing death while committing a felony is murder, courts in some states restrict it by saying it has to be a dangerous felony – MN case law requires significant danger to human life but also that felony drunk driving qualifies)
 2. This significantly expands the scope of the felony murder rule where the prosecution doesn't have to prove intent to kill, just intent to cause bodily harm
 3. Some states limit felony murder to not apply if the person who died was one of the felons or a police officer
 4. Some states require the death to be reasonably foreseeable in furtherance of the felony
- d. Possible considerations for task force scope and review
 - i. Abolish felony murder (at least 9 other states have)
 - ii. Felony assault and murder merger limitation
 1. MN has the peculiarity of being in the minority -70% of states do not permit felony assault to qualify – and if they do allow it – it depends on the intent of the actor not the harm that occurs
 - iii. Incorporating into the 2nd Degree FM statute a list of predicate felonies, akin to the schematics of 1st Degree FM statute
 - iv. Codifying a foreseeability requirement / Require proof of extreme recklessness
 1. Noor case was limited by MN Supreme Court in depraved mind/heart murder (3/4 of states say you can't be guilty of depraved heart if the person you focused on was in danger)
 2. Statute could clarify that this doctrine could apply differently if there was time to think and react
 - v. Drafting 3rd degree negligent homicide statute or broadening quasi 3rd degree felony murder statute / General purpose negligent homicide statute
 1. Should MN have one of these instead?
 - vi. Amending 1st Degree FM Crim Sex provision to require some level of intent with respect to death (609.185(a)(2))
 - vii. Accomplice liability

1. With respect to first degree felony murder subdivision 3 – looks at list of felonies with intent to kill plus one of the listed felonies – new legislation also requires intent to kill
 - a. Subdivision 4 was not addressed in the 2023 legislative change requiring intent from an accomplice
2. Two subdivisions – must intend to aid the crime
 - a. But also liable for any other crime that was reasonably foreseeable – not that you actually foresaw it
 - b. This can be problematic when the underlying crime requires the actual intent, but the accomplice doesn't have to have it

VII. Discussion: Logistics and Deliverables

- a. Wilder contracted to provide report writing support to the task force and some analysis, depending on what data can be obtained

VIII. Next Steps and Closing

- a. Identifying the scope of work
- b. Logistics
 - i. Standing meeting on the books will be second Wednesday on the month from 10-11:30am
 1. Oct. 11th
 2. Nov. 15th
 - a. Room is not available Nov 8th
 3. December 13th
 4. January 10th (final meeting)
- c. Sub committees proposed – chairs to be determined next meeting
 - i. Data
 - ii. Statute and case law (Legal Research)
 - iii. Outreach
- d. Workplan
 - i. Jan. final approval
 - ii. Dec. recommendations able to build unanimous consensus
 - iii. Informed conversation with full group throughout after hearing report backs from committees

IX. Invitation for public comment