



Aiding and Abetting Felony Murder Task Force

Wednesday, January 10, 2024

9:30 am – 12:00 pm

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 (11 of 11): Jeremiah Carlson, Greg Egan, Molly Evans, Richard Frase, Zachary Gahm, Bobbi Holtberg, Kathy Keena, Pat McDermott, Nate Reitz, Ken Sass, Bill Ward

DOC Staff Present: Amy Lauricella

Research Contractors: Julie Atella, Chris Bray (Wilder Research)

Minutes

- I. Welcome
- II. Approval of 12/13/23 Minutes
 - Motion to approve Kathy Keena, seconded by Ken Sass – unanimous approval of 12/13/23 minutes
- III. Subcommittee chair presentations
 - a. Legal Research (Richard Frase)
 - i. Focusing on murder liability
 1. Expansive provision: 609.05, subd. 2 – many states have rejected this
 2. Predicate felonies that should be a basis for second degree felony murder
 - a. Review research documents comparing different legal frameworks identifying 38 states that have some form of predicate offense list or list and standard

- i. In MN, the first-degree murder statute includes 9 offenses that have to be felonies (CSC 1 and 2, burglary, agg robbery, kidnapping, drive by shooting, tampering, escape, drugs, terrorism)
 - b. 29 of 42 true felony murder jurisdictions have general assault merger limitation
 - i. Assault as a predicate felony in MN is particularly problematic based on how we define assault – in most states, you have to show the defendant intended great bodily harm in proving up assault – but in MN, so long as you intended any degree of assault, if great bodily harm occurs, you can meet the standard – no degree of higher culpability so long as it actually happened
 - ii. Only 4 other jurisdictions have a framework like MN

ii. Discussion:

1. Ohio has 16 predicate felonies
2. Average is around 8 predicate felonies in other states; minimum is 5
3. Kansas statute review

b. Outreach

- i. Listening session on Jan. 5 – 5 individuals shared with the group
 1. 4 individuals focusing on question 1 with accomplice liability – all deny planning for the crime or knowing it would occur
 - a. 4 of 4 were at least 10 years older or younger than co-defendants
 - b. 3 out of 4 went to trial
 - i. 3 sentenced to life w/o possibility of parole
 - ii. Fourth person accepted plea for life with possibility of parole

2. 5th individual focused on felony murder merger situation

ii. Discussion

1. Task force noted that there was not an objective review of the facts of the cases, which could be useful: add a case study in the future?
2. Appreciation for the attempts to connect with victims – would be really valuable to include something from them, but the age of the cases renders this challenging
3. If recommendations this coming session result in law changes that could lead to a release of an individual, there should be consideration around the contact with victims and mandate prosecutor office victim-witness outreach – this requires resources to execute

c. Data

- i. Are accomplices who lack an intent to kill commonly imprisoned for intentional murder? If so, how can the culpability of such accomplices be characterized?

1. Limitations in the results noted in the report – looking for true accomplices in premeditated 1st-degree murder cases or 2nd-degree
2. 108 cases; only 1/3 were true accomplices (38 cases); 66% of cases (25) it did appear that the accomplice intended to kill; narrowed down to 11 cases that might have lacked an intent to kill, though, another review could disagree

- ii. Predicate felonies for second-degree felony murder

1. 296 second-degree felony murder categorized as: Listed less than 23%; Assault 68% of cases; Other less than 10%
2. Black population is overrepresented in people sentenced to second-degree felony murder in every category of offense
3. 42% were aged 21 or younger in the predicate felony group
4. Hennepin and Ramsey accounted for 61% of felony murder sentences

- iii. Discussion

1. States that make sparing use of imprisonment have higher rates of disproportionality
2. Recommendation: inclusion a demographic impact statement in future taskforce work – if adopted as a bill, there will be a bed impact analysis done by Minnesota Sentencing Guidelines Commission

IV. Discussion and vote on Task Force recommendations for principal two focus questions:

- a. What is a just state of mind for accomplice liability for Second-Degree Intentional Murder and First-Degree Premeditated Murder?
 - i. **Motion to adopt a recommendation that requires a comparable state of mind for accomplices as principals to first-degree premeditated murder and second-degree unpremeditated, intentional murder** by Greg Egan; seconded by Richard Frase.
 - ii. Unanimous ayes (10 of 11), 1 member absent
 1. Jeremiah Carlson: aye
 2. Greg Egan: aye
 3. Molly Evans: aye
 4. Richard Frase: aye
 5. Zachary Gahm: aye
 6. Bobbi Holtberg: aye
 7. Kathy Keena: aye
 8. Pat McDermott: absent
 9. Nate Reitz: aye
 10. Ken Sass: aye
 11. Bill Ward: aye
- b. What, in practice are the predicate felonies for Second-Degree Felony-Murder, and do these trends represent sound public policy?
 - i. Exclusive list of predicate felonies (more limiting alternative)
 1. **Motion to adopt a recommendation that the legislature incorporate an exclusive list construction of felony murder in the second-degree statute** by Greg Egan, seconded by Bill Ward.

a. Unanimous ayes (10 of 11), 1 member absent

- i. Jeremiah Carlson: aye
- ii. Greg Egan: aye
- iii. Molly Evans: aye
- iv. Richard Frase: aye
- v. Zachary Gahm: aye
- vi. Bobbi Holtberg: aye
- vii. Kathy Keena: aye
- viii. Pat McDermott: absent
- ix. Nate Reitz: aye
- x. Ken Sass: aye
- xi. Bill Ward: aye

2. **Motion to adopt a recommendation that such a list would exclude general assaults, consisting of assault in the 5th, 4th, 3rd, 2nd, 1st degree** by Greg Egan, seconded by Bill Ward.

a. 7 ayes, 3 no, 1 member absent

- i. Jeremiah Carlson: No
- ii. Greg Egan: Yes
- iii. Molly Evans: Yes
- iv. Richard Frase: Yes
- v. Zachary Gahm: Yes
- vi. Bobbi Holtberg: Yes
- vii. Kathy Keena: No
- viii. Pat McDermott: absent
- ix. Nate Reitz: Yes
- x. Ken Sass: No
- xi. Bill Ward: Yes

ii. Merger (less limiting alternative)

1. No motion entertained

V. Next Steps and Closing

a. DOC staff to circulate meeting date options for week of January 22

VI. Adjournment

- Motion to adjourn Kathy Keena, Seconded by Ken

***Some members may participate by interactive technology pursuant to Minn. Stat. 13D.015, subd. 5*