



Aiding and Abetting Felony Murder Task Force

Wednesday, Dec. 13, 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 (9 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. Minutes from Nov. 29th

- Motion to approve meeting minutes by Kathy Keena, second by Richard Frase. Unanimous minute approval.

III. Wilder Report (Julie Atella) - PPT available on task force website

- Review of contractor tasks and timelines
- Report due February 15, 2024 to legislature
- Review report structure
 - i. Research questions discussion: 1) confirmed that it will include both types of intentional murder (1st degree premeditated and 2nd degree intentional); 2) predicate felonies for 2nd degree felony murder
 - ii. Discussion: section of report will include further study/recommendations for additional areas that are worth review but could not be included this time around due to time limitations – will likely incorporate a policy dialogue to support those recommendations

- Discussion: task force recommendations formulation and timeline
 - i. Task force will discuss and vote likely during Jan. 10 meeting on substance of recommendations
 - ii. Task force will also work with Wilder to hone the language of the recommendations in the report after that point

IV. Subcommittee Reports

- Data Subcommittee (Nate Reitz chair)
 - i. First data set: intentional murder
 - Data set
 - Used MSGC data and recognized some cases might not be represented
 - Expanded to include those with life sentences for 1st degree murder and now does include cases they expected to see
 - Excluded people no longer in prison given how old the cases were
 - Research team – Augsburg students looking at appellate descriptions to confirm:
 - Death resulted
 - Defendant did not cause death
 - Defendant did not intend to kill (difficult and subjective question for researchers)
 - General narrative of circumstances (understand defendant’s role)
 - ii. 2nd data set: predicate felonies used in 2nd degree felony murder
 - Data set reviewed by K. Keena to remove cases that didn’t belong and identified/tracked underlying felonies
 - Looking at race, age, county demographics
 - Reviewed that list and created 3 categories that task force supports:
 - >25%: Offenses listed in 609.185(a)(3) – so also includes a felony 1st degree murder, meaning

includes an intent to kill and is part of the list of offenses (e.g., burglaries, kidnapping)

- ~66%: Offenses that qualify as assault offenses (e.g., domestic strangulation, assault in the 1st, 2nd, 3rd degree)
 - Almost 70% of these cases were assault in the 2nd degree
- >10%: Other
 - Malicious punishment of a child
 - Child neglect or endangerment
 - Crimes for benefit of a gang
 - Criminal vehicular operation (might be an aggravated robbery, should likely call this unknown as appellate court acknowledged that)
- Statutes & Caselaw (legal research) Subcommittee (Prof. Frase chair)
 - i. Grouped possible reform recommendations into three groups:
 - Highest research priority: Research questions 1 and 2
 - How many other states have expansive liability provisions? Many have subdivision 1 in statute and then in caselaw recognize subdivision 2
 - Rejected by model penal code and a handful of states
 - Removal felony assault, but brings along gray areas and variations with vulnerable populations
 - Definitive statutory list of predicate felonies
 - Next priority:
 - Depraved mind murder
 - Lowest priority:
 - Lack of foreseeability / proximate cause standard in MN – tough to research because it is almost all

case law

- Clarify culpability standard for 2nd degree manslaughter (culpable negligence and also consciously takes risks)
- Broader negligent homicide crime
- Imperfect self-defense – intent to kill but unreasonable response
- Felony murder abolition

ii. Discussion: death versions of crimes

- If 2nd degree assault removed from felony murder, what then?
 - Other jurisdictions have merger rule, but use to carve them out for some assaults that are more aggravated, such as child endangerment – might involve distinctions in maximum sentences or statement that they won't permit merger

• Outreach Subcommittee (Bobbi Holtberg chair)

i. Virtual listening session January 5, 2024

- Outreach to 4 cases, likely to result in at least 2 speakers
- Outreach to attorneys of record when possible
- Final consent form approved to be provided from testifiers
- Outreach to victim families for written testimony with support from victim witness to be read at listening session and included in report with consent

ii. Looking for 3-4 more people to interview

- Reviewing 1st research question data set to identify additional speakers
- Additional predicate felony outreach where top count was 2nd degree felony murder

iii. Task force sub-committee will summarize listening sessions for Wilder use

V. Next Steps and Closing

- Plan to dig into data and put together recommendations at next task force meeting on Jan. 10th

Impacted person listening session Jan. 5, 2024 9:00am – 12pm

Next task force meeting Jan. 10, 2024 9:30am - 12:00pm

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