



OFFICE OF THE PUBLIC DEFENDER SECOND JUDICIAL DISTRICT

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James D. Fleming, Chief Public Defender

March 17, 2022

House Judiciary Finance & Civil Law Committee

Representative Jamie Becker-Finn, Chair
559 State Office Building
St. Paul, MN 55155

Representative Peggy Scott, Republican Lead
335 Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: H4174DE2: Aiding & Abetting Felony-Murder

Dear Rep. Becker-Finn and Rep. Scott:

I am the former Chair of the Task Force on Aiding & Abetting Felony-Murder, appointed directly by the Minnesota Association of Criminal Defense Attorneys. I am a long-time Ramsey County Public Defender.

It was my pleasure and honor to lead the Task Force and the robust, collegial discussions amongst twelve highly qualified people of diverse backgrounds. I circulated our report to you and several of your colleagues, last month. I am proud of the unanimous recommendations contained in that report. The bill that will come before you for Committee hearing March 22 reflects those recommendations and represents the culmination of the Task Force efforts.

While thankfully, I do not personally know anyone affected by the inequities of the current aiding and abetting felony-murder doctrine, as a criminal defense attorney, I have seen these inequities professionally—time and time again—over the course of my sixteen-year career. This has also been an academic passion of mine, particularly as it pertains to racial disparities, which are rampant under the current rule.

Criminal loss of life involving a group of people is nuanced; there are gradations of culpability. This bill does not purport to rewrite felony-murder in general, nor does it purport to rewrite accomplice liability in general. We are dealing only with the very narrow intersection of the two doctrines, which now disproportionately punishes actors who are two steps removed from the homicide: they did not intend a death, and they did not actually kill. Moreover, the changes we are proposing would not remove all liability. Aiders and abettors would remain liable for the underlying predicate felonies, which usually carry severe consequences, even for offenders with no prior violent criminal history. This is the case with most of the aiders and

abettors of felony-murder. Aiders and abettors would also remain liable for all other crimes charged or indicted for which they are independently convicted. And by inserting the following language, we ensure that full homicidal liability still attaches when that is warranted. The bill maintains felony-murder liability when “the person is a major participant in the underling felony and acted with extreme indifference to human life...” Inclusion of that language was very important to me.

This bill would not take away prosecutorial discretion. Rather, it would ensure that prosecutors can do their jobs equitably and with a clear conscience: across geography, race, gender, age, and other difference. The bill has the support of victim advocacy groups, corrections workers, peace officers, statisticians, academics, and prosecutors. In fact, the bill is being carried by two of your colleagues who are prosecutors. The current aiding and abetting felony-murder statutory framework is resulting in punishment wildly disproportionate to individuals’ underlying culpability. Reform is urgent. Voting in favor of this bill would catalyze a major step forward in the realm of fundamental fairness and public safety.

Thank you for your time and thoughtful consideration of this bill. I am happy to field questions via email at greg.egan@pubdef.state.mn.us, or at the hearing March 22; I will be on the Zoom meeting as a presenter.

Very truly yours,

/s/ Greg Egan
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