



**HB 66 CONTROLLED SUBSTANCES; HOMICIDE;—
SECTIONAL ANALYSIS
VERSION N**

May 3, 2024

Section 1. This section is the legislative findings and intent section. The section states that with Alaska's rates of sexual assault and sexual abuse being some of the highest in the nation presenting evidence to a grand jury in state court should be similar to presenting evidence in a federal court. Additionally, the Alaska Constitution states that crime victims have the right to be treated with dignity, respect, and fairness. Art. I, Sec. 24, Alaska Constitution. That provision supports allowing hearsay evidence to be presented at grand jury. The intent section states that sec. 51 of the bill is, in part, in response to *State v. Powell*, 487 P. 3d 609 (Alaska App. 2001). Finally, the intent section states that the legislature intends for employment barriers to be removed for those who have been convicted of low-level possession crimes that are legal on Jan. 1, 2025.

Section 2. This section reclassifies a homicide resulting from misconduct involving controlled substances from manslaughter to murder in the second degree. A person is guilty of murder in the second degree under this theory where the person violates misconduct involving a controlled substance in the first or second degrees and a person dies as a result of ingesting the drugs.

Misconduct involving a controlled substance in the first degree covers conduct such as delivering a schedule IA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance and, under sec. 13 of the bill delivering a controlled substance to a person who is mentally incapable, incapacitated, or unaware that the controlled substance is being delivered.

Section 3. This section adds an affirmative defense to murder in the second degree where a person dies as a result of ingesting a controlled substance if the person:

- 1.) sought medical or law enforcement assistance for the other person;
- 2.) remained at the scene;
- 3.) cooperated with medical or law enforcement personnel; and
- 4.) the offense involved small quantities and was not delivered for a profit.

An affirmative defense must be proven by the defendant by a preponderance of the evidence. If the defendant were to successfully prove the affirmative defense the person

would be subject to the A felony sentencing provisions (7-11 years) rather than the unclassified felony sentencing provisions (15-99 years).

Section 4. This section specifies that if the person violates misconduct involving a controlled substance in the third or fourth degrees and a person dies, it will remain as manslaughter.

Section 5. This section is a conforming amendment to the changes made in sections 2-4 by moving the definition of “ingestion” to the homicide definitions.

Section 6. This section enacts a new crime of assault in the presence of a child. A person commits the crime of assault in the presence of a child if they commit an assault with reckless disregard that a child under the age of 16 is present. Assault in the presence of a child is a class A misdemeanor.

Section 7. This section makes it stalking in the first degree (class C felony) to include situations where an individual continues to stalk someone in violation of a stalking or a sexual assault protective order.

Sections 8-12. These sections change the name of “child pornography” to “child sexual abuse material.”

Section 13. This section makes it misconduct involving a controlled substance in the first degree (unclassified felony, 5-99 years) to deliver a controlled substance to a person who is mentally incapable, incapacitated, or unaware that a controlled substance is being delivered.

Section 14. This section defines “mentally incapable” and “incapacitated” as those terms are defined in AS 11.41.470.

Section 15. This section makes it misconduct involving a controlled substance in the second degree (class A felony) to deliver methamphetamine. This treats methamphetamine similarly to synthetic opioids such as fentanyl.

Section 16. This section changes the name of “child pornography” to “child sexual abuse material.”

Section 17. This section allows a qualified psychologist or a psychologist to examine and report on the mental condition of the defendant when the defendant has filed notice of the defense of insanity or the defendant’s mental condition otherwise becomes an issue in a criminal case.

Section 18. This section specifies that the court shall make findings of fact and conclusions of law before ordering the defendant to be evaluated for competency.

Section 19. This section allows a defendant who is undergoing restoration to competency to be released on bail and participate in an outpatient program. It also allows a qualified psychologist or psychiatrist to evaluate a defendant to determine whether the defendant meets the standards for involuntary commitment while the defendant is being evaluated for competency.

Section 20. This section allows a defendant who is undergoing additional evaluation and treatment for competency to be released on bail and participate in an outpatient program. In addition, if the court finds that the defendant continues to be incompetent to stand trial and intends to dismiss a case against a person charge with a felony crime against a person or arson, the prosecution must file a petition seeking to involuntarily commit the person and notify the Civil Division that the court has dismissed the case.

Section 21. This section clarifies that when ordering restitution, the court may order compensation for lost income, childcare, transportation, and other expenses incurred while the victim was participating in the investigation or prosecution of the offense or attendance at court hearings. This language has been added in direct response to *Smith v. State*, 2022 WL 3226305 (Alaska App. 2022) and *Seely v. State*, 2023 WL 2783265 (Alaska App. 2023). In both cases the court indicated that it was unclear on whether such expenses were to be considered when ordering restitution. This language has been added to clarify that those expenses can be included in a restitution order when the victim is able to sufficiently prove that those losses were incurred. Restitution for participating in the investigation or prosecution of the offense or attendance at court hearings is in addition to any other forms of restitution that the victim may otherwise be entitled to.

Section 22. This section creates an enhanced sentencing range for persons convicted of the manufacture or delivery of fentanyl or methamphetamine. That enhanced range will be 4-11 years.

Sections 23 – 25. These sections change the name of “child pornography” to “child sexual abuse material.”

Section 26-27. These sections prohibit the Department of Public Safety from releasing criminal justice information under certain criminal history background checks regarding a person who was convicted of small quantity possession of marijuana, was 21 years of age or older at the time of the offense, was not convicted of any other criminal charges in that case, and requests that the department not release the records.

Section 28. This section amends AS 12.63.010(b) to require a person who must register as a sex offender to report additional information, such as professional licensing information and passport information, to the Department of Public Safety.

Section 29. This section makes a conforming amendment in AS 12.63.010(d) to account for the changes made in section 28.

Section 30. This section adds two new subsections to AS 12.63.010 that require a person who must register as a sex offender to notify the Department of Public Safety if the person plans to leave the state or is away from any address provided to the department for seven days or more.

Section 31. This section amends AS 12.63.020(a) to clarify the duration of the tolling period for sex offenders who are in noncompliance with the chapter. The tolling will be day for day.

Section 32. This section amends the statute listing the registerable sex offenses. This section corrects a cross reference AS 11.61.123 and makes sexual penetration with a corpse and sex trafficking in the first and second degrees registerable. It also changes “child pornography” to “child sexual abuse material.”

Section 33. This section changes “child pornography” to “child sexual abuse material.”

Section 34. This section amends the definition of “crime involving domestic violence” to include the crimes of unlawful contact and interfering with a report of a crime of domestic violence.

Section 35 – 37. These sections change “child pornography” to “child sexual abuse material.”

Section 38. This section amends AS 47.14.300(a) to allow multidisciplinary child protection teams to assist in the evaluation and investigation of cases involving reports of sexual contact and sexual penetration where both the perpetrator and the victim are children under the age of 13. The purpose of this section is to be able to provide both children the resources necessary to address this type of behavior.

Section 39. This section requires the court to issue an order stating that there is probable cause to believe that a person is mentally ill and presents a likelihood of serious harm to self or others if a person has been charged with a felony crime against a person or arson that those charges have been dismissed because the person was found incompetent to proceed at trial. The person may be taken into custody and delivered to the nearest evaluation facility.

Section 40. This section is a conforming change to the change made in sec. 39.

Section 41. This section states that when a person is detained for evaluation and is awaiting transportation to an evaluation facility they may request a hearing. If the person requests a hearing the hearing shall be held no later than 72 hours after the request. A person may not be detained for more than seven days while awaiting transportation. However, the department of facility may request to extend the detention based on the person continuing to meet the criteria for commitment. When ruling on a request to extend the detention the court may consider the totality of the circumstances including how long the person has been detained and the person's medical and psychiatric condition. If at any time during the detention a mental health professional believes that the person does not meet the criteria for commitment the person shall be released.

Section 42. This section requires the Department of Law to notify the victim of a felony crime against a person or arson of any detention or commitment hearings regarding the former defendant, the length of time that the person has been committed, and when the person is discharged.

Section 43. This section states that, every 30 days, the Civil Division must send the Criminal Division all information and records regarding a person who has been found incompetent to proceed. The prosecutor also has a right to be notified of all hearings in the commitment case.

Section 44. This section says that the prosecutor or victim may attend commitment hearings but may not disclose confidential information from the hearing.

Section 45. This section adds a new section creating an additional involuntary commitment of up to two years. Two-year commitment petitions are filed at the expiration of 180-day commitments for individuals who meet the following criteria: the respondent is mentally ill and as a result is likely to cause harm to self or others; the respondent has a history of a felony offense against a person under AS 11.41 or felony arson; the respondent has been found incompetent to stand trial under AS 12.47.100 and 12.47.110 for a felony offense against a person under AS 11.41 or arson; commitment of the respondent for greater than 180 days but not greater than two years is necessary to protect the public; and the period of commitment is necessary to protect the public.

This section also clarifies that findings of fact relating to the respondent's behavior made at 30-day, 90-day, and 180-day commitment hearings shall be admitted as evidence in subsequent hearings. States that successive commitments are permissible on the same ground and under the same procedures as the original commitment. Instructs the department to submit an annual report to the attorney general, public defender, public advocate, Alaska Court System, and the attorney of record of the respondent detailing how

many respondents are committed under this section and how much time remains on each order of commitment.

Section 46. This section is a conforming change to the change made in section 47.

Section 47. This section states that the professional person in charge may not discharge respondents, who meet the standard of dangerousness set forth in the legislation, from 180-day or up to two-year involuntary commitment orders unless: the court enters an order officially terminating the involuntary commitment and the court gives the prosecuting authority 10 days' notice of the discharge. Subsections (d) and (e) state that a respondent who is committed under an up to two-year commitment order may petition the court for early discharge at any time, with a 180-day limit on frequency, during the commitment if they present some evidence demonstrating that the respondent is no longer likely to cause serious harm to self or others. The court is required to grant early discharge unless the state proves by clear and convincing evidence that there is a factual and medical basis to believe the respondent remains likely to cause serious harm to self or others.

Section 48. This section states that a two-year commitment period expires at the end of two years after the 180-day period of treatment.

Section 49. This section amends AS 47.30.845 confidential records to include the criminal division of the Department of Law.

Section 50. This section makes the applicability section in ch. 4, FSSLA 2019 (HB 49), retroactive as it pertains to the requirement for sex offenders who have to register in another state to also register in Alaska when they are present in Alaska regardless of when they were convicted.

Section 51. This section is a direct court rule amendment amending Criminal Rule 6 to allow witnesses to summarize the testimony of other witnesses before the grand jury if the prosecutor believes that that evidence would be admissible at trial.

Section 52. Repeals AS 12.40.110 which allows certain hearsay evidence to be presented to a grand jury if the child is under 10.

Section 53. This section repeals the section added in sec. 27 that requires a person to request that the Department of Public Safety not release certain records relating to marijuana possession convictions in criminal background checks. This section would be repealed on January 1, 2028.

Section 54. This section is the applicability section.

Section 55. This section is the conditional effect section for the court rule changes.

Section 56. This section makes the provisions in sec. 50 relating to the retroactive application of out-of-state sex offender registry effective immediately.

Section 57. This section makes the bill effective January 1, 2025.