

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE

February 23, 2005

1:33 p.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Gary Wilken, Vice Chair
Senator Lyda Green
Senator Kim Elton
Senator Donny Olson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 70

"An Act relating to controlled substances regarding the crimes of manslaughter, endangering the welfare of a child, and misconduct involving a controlled substance; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 78

"An Act establishing the senior care program and relating to that program; creating a fund for the provision of the senior care program; repealing ch. 3, SLA 2004; and providing for an effective date."

MOVED CSSB 78(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 70

SHORT TITLE: CRIMES INVOLVING CONTROLLED SUBSTANCES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05	(S)	READ THE FIRST TIME - REFERRALS
01/21/05	(S)	HES, JUD
02/23/05	(S)	HES AT 1:30 PM BUTROVICH 205

BILL: SB 78

SHORT TITLE: SENIOR CARE PROGRAM

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/24/05	(S)	READ THE FIRST TIME - REFERRALS
01/24/05	(S)	HES, FIN
02/16/05	(S)	HES AT 1:30 PM BUTROVICH 205
02/16/05	(S)	Heard & Held
02/16/05	(S)	MINUTE(HES)
02/23/05	(S)	HES AT 1:30 PM BUTROVICH 205
02/23/05	(S)	Moved CSSB 78(HES) Out of Committee
02/23/05	(S)	MINUTE(HES)
02/24/05	(S)	HES RPT CS 2AM 1DP 1NR SAME TITLE
02/24/05	(S)	AM: DYSON, GREEN
02/24/05	(S)	DP: ELTON
02/24/05	(S)	NR: WILKEN

WITNESS REGISTER

Frank Apple
Alaska Commission on Aging (ACA)
6424 Hampton Dr.
Anchorage, AK 99504
POSITION STATEMENT: Supports SB 78.

Pat Luby
Advocacy Director of AARP
Anchorage, Alaska
POSITION STATEMENT: Supports SB 78.

Bob Peters
Glennallen, Alaska
POSITION STATEMENT: Supports SB 78 and SB 70.

Timothy Birt
Department of Public Safety
6255 Alaway Ave.
Juneau, Alaska 99801
POSITION STATEMENT: Supports SB 70.

James Steele, Manager
Southcentral Office of Children's Services
POSITION STATEMENT: Supports SB 70.

Dr. Mandsager, Director
Division of Public Health
Juneau, Alaska 99801
POSITION STATEMENT: Supports SB 70.

Dean Guaneli, Chief Assistant Attorney General
Department of Law (DOL)
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 70.

Joel Gilbertson, Commissioner
Department of Health and Social Services
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 78.

John Sherwood, Deputy Commissioner
Department of Health and Social Services
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 78.

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:33:25 PM](#). Present were Senators Kim Elton, Gary Wilken and Chair Fred Dyson.

SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES

CHAIR DYSON announced that SB 70 would be considered.

[1:33:43 PM](#)

DEAN GUANELI, Department of Law (DOL), said methamphetamine labs and the latest methamphetamine production methods have reached Alaska. The new methods are cheaper and less complex than earlier methods and consequently anyone with access to a hardware store and a pharmacy can easily manufacture methamphetamine. Methods generate poisonous and explosive gases that pose a great risk to anyone in their vicinity.

[1:36:25 PM](#)

MR. GUANELI stated one of the purposes of SB 70 is to make the manufacture of methamphetamine with reckless disregard for the possibility of exposing children to harmful substances a higher-level crime than the law currently provides. The bill would make it illegal to possess an organic methamphetamine precursor compound with the intent to extract methamphetamine from it.

SENATOR ELTON noted page, 3 line 27 refers to the phrase "methamphetamine salts", but elsewhere the bill refers to "methamphetamine or its salts". He asked whether the discrepancy was due to a drafting error or if it refers to methamphetamine precursors.

MR. GUANELI deferred the question to law enforcement representatives.

[1:39:54 PM](#)

MR. GUANELI said the bill also clarifies that if one knowingly manufactures or delivers a controlled substance in violation of state drug laws and if another person dies as a direct result of ingesting that substance, then the manufacturer or distributor has committed the crime of manslaughter.

SENATOR GREEN arrived at 1:41.

CHAIR DYSON asked whether someone who made his own methamphetamine and had it stolen would be guilty of manslaughter under the provision even he took precautions to safeguard it.

MR. GUANELI responded such a person would be guilty of manslaughter.

CHAIR DYSON asked whether any other equipment or substance is treated this way.

MR. GUANELI responded the provision applies to any drug that is manufactured in violation of state drug laws. He added that there are no other substances with such deadly potential that are routinely manufactured for ingestion.

CHAIR DYSON asked whether other jurisdictions have similar legislation.

MR. GAUNELI answered many jurisdictions have similar legislation, but penalties range from first-degree murder to manslaughter.

CHAIR DYSON restated his former question regarding stolen drugs manufactured for personal use.

MR. GUANELI answered he never heard of such a case. Pertinent cases usually involve people who inject each other or sell drugs to inexperienced users who overdose.

CHAIR DYSON remarked there seems to be a difference between someone who sells drugs for money and someone who is only doing it for themselves and taking reasonable precautions.

SENATOR ELTON said the logic of the provision could assign an equal degree of culpability to someone who illegally sold liquor to a minor that later caused him to die in a car accident.

MR. GUANELI said there are penalties for providing liquor to underage persons but supplying illicit drugs like methamphetamine is much more dangerous than supplying alcohol.

SENATOR ELTON said state law defines the role of alcohol in the aforementioned examples as an aggravating factor. He asked Mr. Guaneli if he had considered defining the analogous role of drugs as an aggravating factor.

MR. GUANELI noted applying aggravating factors to enhance a penalty is one way to deal with such a situation, but it assumes that a person has already been convicted of a felony. The administration believes that drugs such as methamphetamine are inherently dangerous and lead to death in a sufficient number of cases that the manslaughter charge is appropriate.

SENATOR ELTON said he understands the state could charge several people with manslaughter for their association with a single incident. He asked whether this was the case or if it was only the last party that was subject to a manslaughter charge.

MR. GUANELI responded the provision applies to everyone in the manufacture-distribution chain and added that it was the belief of the administration that all the members of the chain have the same culpability since they all know what they are dealing with and what it can cause.

[1:50:14 PM](#)

SENATOR GREEN asked whether there were any legitimate reasons to manufacture methamphetamine.

MR. GUANELI responded he could not directly answer the question and would like to defer it to chemistry or law enforcement experts.

SENATOR GREEN asked whether it is currently legal to manufacture methamphetamine.

MR. GUANELI responded that it is not legal at all.

SENATOR GREEN asked whether the term "illegal substance" was interchangeable with the term "controlled substance" or if the term "controlled substance" was used to apply to a greater variety of harmful substances.

MR. GUANELI responded the phrase chosen on page 1 is 'the manufacture and delivery of a controlled substance in violation of AS.11.71". He noted AS.11.71 represents Alaska drug laws that lists prohibited substances and divides them into schedules.

SENATOR GREEN asked the reason legislation uses the term "controlled substance" instead of "illegal substance".

[1:52:10 PM](#)

CHAIR DYSON voiced concern about a bill that makes manufacturing and distributing codeine and morphine, both controlled substances, such a serious violation, even if one takes great pains to prevent its inappropriate use by some one else.

MR. GUANELI asserted the manufacture of legitimate prescription medication would not constitute a violation of AS.11.71, which concerns illegal manufacturing. If manufacturing is done according to the appropriate standards and with the appropriate licenses, then federal law takes precedence. If however, legitimate drugs are stolen from a pharmacy and then cause a death, anyone involved in the illegal sale or procurement of the stolen drugs would be in violation of the provision.

JAMES STEELE, children's services manager for the southcentral region of the Office of Children's Services (OCS), said two years ago his team seized 30 labs in the Mat-Su area. Last year it increased to over 50 seizures. He said the manufacture sites are extremely dangerous since lab operators use extremely volatile and poisonous chemicals. He described two cooking processes; one is the red-phosphorus method, which can cause the release of hydrogen-chloride gas, an extremely caustic substance. The other method is called the nazi-dope method, which involves anhydrous-ammonia, also extremely caustic, and lithium, which can violently ignite in water. A major concern of the OCS is the extent of the contamination of home-labs by fumes generated in the manufacturing process. A typical round of manufacture produces five to seven pounds of hazardous waste that can be found anywhere in the house.

[2:02:25 PM](#)

MR. STEELE asserted the primary concern of OCS is the extreme effects methamphetamine has upon the behavior of children who are exposed to contaminated sites. He noted that some long-term effects of methamphetamine must be monitored for several years.

CHAIR DYSON asked the number of children in need of aide (CINA) kids have come from homes where methamphetamine had been manufactured.

MR. STEELE responded the Mat-Su OCS office gets about 40 reports a month that involve some aspect of methamphetamine. Last year about ten cases were taken into custody. He noted OCS often tries to ensure the safety of such children without taking legal custody.

CHAIR DYSON asked him to give the committee some idea of the physical and mental problems typical of children that have been exposed to a meth lab environment.

MR. STEELE said some of the problems are shortness of breath, dizziness, and fatigue. He has encountered literature that mentioned liver and kidney damage, and long-term developmental effects.

SENATOR ELTON asserted the definition of a building in the provision was very broad and asked Mr. Steele if such a broad definition was appropriate to address child endangerment.

JAMES STEELE responded based on his experience, he thought it was appropriate because fumes can permeate from one end of a complex to the other and thus contaminate the entire building.

[2:07:45 PM](#)

BOB PETERS expressed support for SB 70.

[2:10:11 PM](#)

TIMOTHY BIRT, Department of Public Safety, testified in support of SB 70. Clandestine laboratories throughout the state are operated by people with little knowledge of chemistry who employ unsafe laboratory practices and have little regard for either the safety of themselves or others including children.

[2:12:05 PM](#)

SENATOR ELTON asked his former question regarding the bill's use of terms "methamphetamine and its salts" and "methamphetamine salts".

MR. BIRT responded he could not explain why the terms were used in the aforementioned manner, but noted he could explain the difference between methamphetamine in organic solution and methamphetamine in solution. It could be washed with a solvent such as acetone and trace amounts of that methamphetamine could still exist in the acetone wash forming methamphetamine-in-solution. This is distinct from methamphetamine in organic solution, commonly referred to as methamphetamine oil, which is a late-stage compound in the methamphetamine manufacturing processes commonly found in Alaska.

CHAIR DYSON asked whether people who manufacture and distribute methamphetamine are also commonly involved in other illegal activities such as firearms violations and income tax evasion.

MR. BIRT responded such people are commonly involved in those crimes as well as assault, theft, burglary, criminal mischief and property damage.

CHAIR DYSON asked whether the manufacturers and distributors of methamphetamine were usually the victims or the perpetrators of theft and violence.

MR. BIRT responded they were more commonly the victims.

CHAIR DYSON asked whether methamphetamine manufacturers in Southeast Alaska have difficulty getting their supplies.

MR. BIRT responded they do not have difficulty getting their supplies since they typically use the anhydrous ammonia method, the reagents of which are usually stolen from local fish processing plants. He noted Southeastern manufactures do not usually have access to the reagents required for the red phosphorus method that is typically used in Interior and South-central Alaska.

CHAIR DYSON asked Mr. Birt and Mr. Guaneli to consider whether or not people who store and distribute such reagents should be asked to exercise greater internal security. He asked Mr. Birt if he had any suggestions.

MR. BIRT responded he did not have any suggestions at the moment, but would consider the matter.

[2:18:05 PM](#)

DR. MANDSAGER, director, Division of Public Health (DPH) supported Sections 3 and 4 of the bill and noted exposure to

both the byproducts and reagent chemicals associated with methamphetamine labs and the aggressive, erratic behavior typical of the adults who operate them, has tremendous negative physical and psychological impacts on children.

CHAIR DYSON asked him to describe some of the clinical symptoms of methamphetamine use among adults.

DR. MANDSAGER responded methamphetamine is incredibly addicting, so much so that people have been known to get addicted to it after using only one dose and that the psychoactive effects of the drug can last for up to two to three days during which people often do not eat or sleep and become very paranoid and violent. He noted long-term affects include paranoia, severe skin irritation, and dangerous levels of weight loss.

SENATOR WILKEN asked whether there were any legitimate reasons to manufacture methamphetamine.

DR. MANDSAGER responded he was not aware of any legitimate reason to use or make methamphetamine.

SENATOR OLSON asked whether methamphetamine is a Schedule 2 drug.

DR. MANDSAGER did not know.

SENATOR OLSON said methamphetamine is used in certain clinical situations but it is obvious that manufacturing methamphetamine outside a controlled lab is not good.

[2:22:28 PM](#)

CHAIR DYSON asked whether there was a provision in Alaska law to proceed against someone who caused brain damage to a child by exposing him to methamphetamine fumes.

MR. GUANELI responded although there are statutes that make it a very serious crime to intentionally cause someone physical injury and make it a less serious crime to recklessly cause physical injury with a dangerous instrument, it would be a bit of a stretch to consider an illegal drug a dangerous instrument for the purposes of the assault statutes.

CHAIR DYSON said it seemed logical to him that someone who inadvertently caused someone else injury as a result of producing methamphetamine should be charged with assault. He asked the sponsor to provide a clearer cause for proceeding

against someone who caused injury to another person as a result of manufacturing or distributing methamphetamine and said the bill would be held until Friday.

[2:25:55 PM](#)

SENATOR ELTON asked whether a paranoia-induced murder would trigger manslaughter up the chain.

MR. GUANELI said no, the bill only concerns the person who dies as a direct result of ingestion. The reason being that an overdose is more foreseeable and, therefore, there is more culpability.

[2:27:49 PM](#)

CHAIR DYSON noted Senator French had a bill to add anabolic steroids to Alaska's list of controlled substances and other bills, HB 149, SB 106, HB 141 require greater precautions on the part of industries that use methamphetamine precursors. He asked Mr. Guaneli and Dr. Mandsager to determine the position of the administration and the bill sponsor towards rolling the content and intent of those bills into SB 70.

SENATOR GREEN asked whether there were many cases of recidivism among methamphetamine user-manufacturers given the relatively low cost and ease of manufacturing methamphetamine. She asked if bail was ever denied to prevent such recidivism.

MR. GUANELI said the Alaska Supreme Court has ruled that one has a constitutional right to bail, but there are no provisions requiring that the bail amount be reasonable. There are statutes that specify the considerations that the court should consider when setting bail.

SENATOR GREEN asked whether the current bill addressed the possibility of recidivism by citing suggestions for bail amounts.

MR. GUANELI said the bill did not address that possibility.

SENATOR GREEN said she would support inserting language that addressed her concern about recidivism.

[2:31:22 PM](#)

CHAIR DYSON asked whether a judge could order a defendant not to relocate until his case was adjudicated in order to prevent him from setting up a new lab in a new area.

MR. GUANELI explained judges often impose geographical limitations as a condition of bail.

CHAIR DYSON held SB 70 in committee.

SB 78-SENIOR CARE PROGRAM

[2:34:38 PM](#)

CHAIR DYSON announced SB 78 to be up for consideration.

[2:35:09 PM](#)

COMMISSIONER JOEL GILBERTSON, Department of Health and Social Services (DHSS), said SB 78 was submitted by the Governor as one part of his senior care initiative concerning prescription drug assistance and continuing cash assistance for some seniors. The bill provides drug assistance for seniors with incomes below 300 percent of the poverty level and cash assistance for seniors below 135 percent of the poverty level after the new Medicare drug bill comes into effect.

COMMISSIONER GILBERTSON noted DHSS has provided a written response to questions that the committee asked in last week's meeting and he was present to answer additional questions from the committee.

COMMISSIONER GILBERTSON said he could not find any information on how other states propose to respond to the new Medicare prescription drug benefit under Part B, but he found information on current programs. He said most of the prescription drug programs are in eastern states, but there are six programs west of the Mississippi that provide direct drug assistance: Nevada, Wyoming, Kansas, Minnesota, and Missouri. Of these states the most generous is Nevada, which covers about 235 percent of the federal poverty level with a benefit limit of about \$5,000, with \$10 to \$25 co-payments.

The next most generous is Missouri, which covers seniors to about 185 percent of the poverty level with a 40 percent copayment and a deductible based on income with a limit of \$5,000. Kansas covers up to about 135 percent and requires 30 percent in co-payments with a much smaller maximum benefit of \$1,200. Wyoming has the most austere program, which covers 100 percent of the poverty level and only provides three prescriptions per month without age limit.

It is challenging to compare the current program with other states because many have not yet responded to the new Medicare

prescription drug benefit that comes into effect next year and will replace to some extent the various existing state programs. He said Alaska's program was, on a dollar basis, fairly frugal at \$670 per beneficiary compared to \$5,000 allowed under Nevada's program.

CHAIR DYSON noted the cost of living varies throughout the state and asked how the price of prescription drugs in Alaska compares to that of other states.

COMMISSIONER GILBERTSON responded the retail cost of medication is higher in rural Alaska, but the price of drugs in urban chain stores is comparable to that of prices in the Lower 48.

CHAIR DYSON noted SB 78 does not allow for regional differences in drug prices.

COMMISSIONER GILBERTSON responded the legislation would only cover the premium and subsidy for the new Medicare drug benefit, the price of which is consistent throughout the country.

[2:42:05 PM](#)

COMMISSIONER GILBERTSON stated the administration proposes an entry threshold level of 300 percent of the poverty level. Attachment 1 shows the number of individuals that would be affected by different threshold levels. There was a question concerning language that allows an absence from the state while continuing to receive the benefits. Allowable absence language from the Permanent Fund and the old Longevity Bonus Program was provided in the report. The administration was not greatly concerned about the language being broadened, but was greatly concerned about excessively limiting the allowable exceptions.

[2:44:46 PM](#)

SENATOR ELTON asked how much the cost of the program would be increased if the exceptions in the bill were like those allowed in the Permanent Fund Program.

COMMISSIONER GILBERTSON responded he did not think it would raise the cost of the program at all. The exception language used in the bill was a good faith effort to show a commitment to the state. Currently the state does not have any capacity to enforce the exception rules.

SENATOR ELTON moved Amendment 1 to insert "and is for one of the reasons listed in AS.43.23.008 which is the list of exceptions for the Permanent Fund Dividend." He proposed the amendment in

light of the Commissioner's remark that adopting the Permanent Fund exception language would not create a big cost impact. He said this would make it easier for someone receiving both Medicare benefits and a Permanent Fund check to follow one recipe instead of two. Changes could be made to reflect the interests of seniors such as eliminating the military exception language. Seniors are often dealing with family issues and these are reasonable absences.

[2:47:08 PM](#)

SENATOR GREEN objected saying she thought the language was adequate as is.

CHAIR DYSON supported Senator Elton and noted many seniors provide great support to their families during times of crisis and should not have to face a penalty for such efforts.

CHAIR DYSON asked whether seniors would have to apply for a waiver to receive an exception under the bill.

COMMISSIONER GILBERTSON responded if the absence is longer than 30 days and is not made for a medical reason, the individual would have to get a waiver from the department. He reasserted the department had no intention of establishing an enforcement program.

[2:50:39 PM](#)

COMMISSIONER GILBERTSON noted it did not mean the department expected everyone to be in compliance.

Roll call proved Amendment 1 passed. Senators Dyson, Elton, Olson, and Wilken voted yea; Senator Green voted nay.

COMMISSIONER GILBERTSON said the report provided information that answered Senator Olson's question about where senior services were being provided. Figures in the report largely concerned seniors living below the poverty line and do not allow an accurate extrapolation to those living under 300 percent of poverty level, which are probably increasingly concentrated among urban populations. He noted DHSS was not able to determine the number of seniors who would be eligible for both Indian Health Services and premium benefits.

[2:53:21 PM](#)

JOHN SHERWOOD, Deputy Commissioner, DHSS, said in the event of lacking appropriations, coverage for the Medicare part-B

deductible is first eliminated, followed by Medicare-B premiums, and finally benefits for cash recipients.

CHAIR DYSON asked how much income the 300 percent threshold allows a senior to have and still qualify.

COMMISSIONER GILBERTSON answered \$36,400 for an individual and \$46,800 for a couple.

CHAIR DYSON asked how the 300 percent threshold was decided.

COMMISSIONER GILBERTSON responded the administration felt it was the right level.

[2:57:26 PM](#)

CHAIR DYSON said he understands the Governor's letter to say 40 percent of Alaska seniors can't afford to live in the state and need some sort of public welfare in order to maintain their existence.

COMMISSIONER GILBERTSON said the administration would strongly disagree with that statement. By an extension of that logic, Medicare is a welfare program since the taxpayers subsidize it. Medicare has provided a host of health care benefits to seniors over the past 40 years and seniors have come to rely on it. Prescription drugs are a new benefit available under Medicare and the state is facing a legitimate risk that seniors below 300 percent of the poverty level may not be able to receive the benefits of part-B. This does not mean that they are welfare recipients and they cannot care of themselves.

CHAIR DYSON asked whether 40 percent of Alaska seniors would qualify for the program.

COMMISSIONER GILBERTSON responded 40 percent would be covered under current rates.

[3:00:56 PM](#)

BOB PETERS, Glennallen resident, said simplicity is a desirable and important part of the Medicare system, which is already pretty confusing for some seniors.

PAT LUBY, Advocacy Director, AARP, testified in support of SB 78. He said it addresses the AARP's concerns about seniors not signing up for Medicare-B. He asserted prescription drugs play an important preventative role in the health care of seniors.

[3:03:23 PM](#)

FRANK APPLE, member, Commission for the Aging, testified in support for SB 78.

[3:05:45 PM](#)

SENATOR ELTON noted he accidentally eliminated exclusion for a 30-day excused absence for a business trip in his proposed amendment. He proposed to amend Amendment 1 by inserting "for a vacation or a business trip of 30 days or less and for one of the following reasons listed in the AS.43.23.008", after the word "temporary," on page 5, line 30.

[3:07:28 PM](#)

CHAIR DYSON moved to adopt the revised version of Amendment 2. Hearing no objections, the motion carried.

[3:12:52 PM](#)

SENATOR ELTON moved CSSB 78(HES) Version G, out of committee with individual recommendations and attached fiscal notes.

SENATOR WILKEN objected to express concerns about the \$20 million fiscal note. He removed his objection.

Having no further objections, CSSB 78(HES) moved out of committee.

There being no further business to come before the committee, Chair Dyson adjourned the meeting at [3:13:28 PM](#).