

HOUSE FINANCE COMMITTEE  
April 13, 2023  
1:33 p.m.

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CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:33 p.m.

MEMBERS PRESENT

Representative Bryce Edgmon, Co-Chair  
Representative Neal Foster, Co-Chair  
Representative Julie Coulombe  
Representative Mike Cronk  
Representative Alyse Galvin  
Representative Sara Hannan  
Representative Andy Josephson  
Representative Dan Ortiz  
Representative Will Stapp  
Representative Frank Tomaszewski

MEMBERS ABSENT

Representative DeLena Johnson, Co-Chair

ALSO PRESENT

John Skidmore, Deputy Attorney General, Criminal Division, Department of Law; Kathe Tallmadge, Legal Intern, Criminal Division, Department of Law; April Wilkerson, Deputy Commissioner, Department of Corrections.

PRESENT VIA TELECONFERENCE

Sandy Snodgrass, CEO, Alaska Fentanyl Response Project; Sidney Wood, Deputy Director of Institutions, Department of Corrections.

SUMMARY

HB 66 CONTROLLED SUB.;HOMICIDE;GOOD TIME DEDUC.

HB 66 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the meeting.

#hb66

HOUSE BILL NO. 66

"An Act relating to homicide resulting from conduct involving controlled substances; relating to the computation of good time; and providing for an effective date."

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JOHN SKIDMORE, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, introduced himself.

KATHE TALLMADGE, LEGAL INTERN, CRIMINAL DIVISION, DEPARTMENT OF LAW, introduced herself.

Mr. Skidmore explained that he would be presenting on the way in which Alaska should be responding to the substantial increase in drug overdose deaths in the state. He reported that prior to the increase, between 100 and 140 people died per year due to drug overdoses, but the number had increased to over 250 deaths per year. The number seemed to be increasing every year. Overdose deaths were growing across the country, but the deaths in Alaska had increased by the highest percent in the nation. The deaths were being driven by two substances: fentanyl and methamphetamine. He referred to a report titled "2021 Drug Overdose Mortality Update," which was released by the Alaska's Department of Health on July 25, 2022 (copy on file) and detailed the increase in overdoses deaths and the substances that were causing the deaths.

Mr. Skidmore relayed that in 2006, the state legislature passed a law which created a new subsection for manslaughter. The subsection related to the knowing manufacture and delivery of controlled substances where a death occurred as the direct result of the ingestion of the substance. He clarified that if a person provided a substance to another person who then died as a result of the substance, the person who provided the substance would be held accountable and could receive a Class A felony. The Department of Law (DOL) had used the law to prosecute

individuals, but it was used infrequently because the crime was difficult to prove. Since January 1, 2018, the state had charged the offense seven times. He would share some examples of situations in which the law had been used and the crime could be proven.

Mr. Skidmore continued that in 2019, there was one case in which four individuals were charged. He would refer to the involved persons as individuals A, B, C, and D. Individual A sold drugs to individual B, who then sold drugs to C and D. Individuals C and D used the drugs with a fifth person who then died as a direct result of the ingestion of the drugs. All four individuals were charged with manslaughter. He relayed that individuals C and D entered into plea negotiations with the state and agreed to testify against individual B. Individuals C and D were ultimately convicted of misconduct involving controlled substances in the second degree. Individuals C and D received a sentence of four years with one and a half years in prison and two and a half years suspended and on probation. The cooperation of individuals C and D allowed DOL to prosecute individual B; however, individual B would not cooperate and identify individual A; therefore individual B was ultimately convicted of manslaughter. The department had to dismiss the charge against individual A because it could not convict individual A without testimony from the others. He concluded that there was not sufficient evidence in order to make a conviction.

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Mr. Skidmore explained that HB 66 proposed to move the classification of manslaughter to murder in the second degree. The change would allow the department to impose harsher penalties on the person who was ultimately convicted of the crime.

Mr. Skidmore offered another example of an incident that also occurred in 2019 and was unrelated to the previous case. He relayed that an individual had provided drugs to another individual who ultimately died as a result of ingesting the drugs. The defendant who had provided the drugs remained with the person who died until the paramedics arrived; however, the defendant had several opportunities to call for help earlier and failed to do so. Instead of calling the authorities, the defendant opted to make risky and distasteful choices in response to the

individual who was overdosing. He provided examples of the choices the defendant made, such as to place the overdosing individual in an ice bath in an attempt to reverse the overdose. In addition, the defendant also gave the victim's car and wallet to the individuals that originally provided the drugs in order to prevent the authorities from finding the individuals who had distributed the drugs. The defendant refused to provide any information about other individuals involved in distributing the drugs and the defendant was therefore convicted. The defendant received a sentence of nine years: six years served in prison and three years of probation.

Mr. Skidmore reiterated that the example was illustrative of the types of cases in which the manslaughter charge was used. He thought that the convicted individuals in both examples were deserving of a more severe punishment and the bill would allow for courts to have greater discretion.

Mr. Skidmore reported that methamphetamine and fentanyl were the main culprits of overdose deaths. Between 2017 and 2021, there was a 417 percent increase in overdose deaths related to fentanyl. The vast majority of the deaths were not occurring due to the ingestion of a single drug, but due to a combination of drugs. It was important to be able to address all of the drugs involved when a drug overdose occurred.

Mr. Skidmore indicated that an additional provision of the bill was to examine the use of "good time." He explained that good time referred to a situation in which a person had been convicted and was eligible for parole. There were two types of parole: discretionary parole and mandatory parole. He explained that discretionary parole involved an inmate repeatedly going before the parole board and requesting permission to be released from jail. Discretionary parole was unrelated to good time. Mandatory parole was when an inmate was automatically released from jail when a portion of the sentence still needed to be served. It was an effort to integrate an inmate back into the community to begin rehabilitation efforts while supervised by a probation officer or parole officer.

Mr. Skidmore elaborated that eligibility for mandatory parole and good time was based upon an inmate's behavior while incarcerated. If an inmate exhibited poor behavior while incarcerated, good time would be reduced and the

likelihood for an individual to receive mandatory parole would also be reduced.

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Mr. Skidmore continued that if an individual violated particular statutes, the individual would be ineligible for mandatory parole. The bill proposed to add the distribution or the dealing of drugs to the list of crimes that made an individual ineligible for mandatory parole.

Mr. Skidmore explained that in drug distributions, there was typically a supply side and a demand side. An additional provision of the bill addressed the circumstances in which a person was not seeking drugs, but someone else administered or delivered the drug to them without consent. For example, the provision would apply if an individual covertly put a controlled substance into another person's drink at a bar. He questioned whether an individual supplying drugs to a person seeking the drugs should be treated the same as an individual supplying drugs to a person who was not seeking drugs. The provision considered whether a person was incapable, incapacitated, or unaware that the drugs were being delivered to them. Similar concepts and definitions were found in Alaska's sexual assault statutes. If an individual was incapable, incapacitated, or unaware that they were taking drugs, the crime would be considered a more severe offense than if the individual was seeking the drugs. It would elevate the crime to a classified felony and the offender could receive a 5-year to 99-year sentence.

Mr. Skidmore continued that the next provision in the bill referred to "special circumstances." There were a variety of felony types in the state; for example, Class A felonies were usually assigned to first-time offenders and involved a presumptive sentence of four to seven years and a maximum of 20 years. He explained that special circumstances referred to a situation in which there was an additional element to a felony that elevated the first-time presumptive sentence. When special circumstances were established, the penalty increased from four to seven years to seven to eleven years. The bill proposed to add the distribution of Schedule I drugs as a special circumstance in order to elevate the penalty.

Mr. Skidmore highlighted the controlled substance statutes reference chart (copy on file). He explained that page 1 the chart showed the statutes that regulated controlled substances, the class and range of the substance, and the types of conduct that would be considered criminal under the statutes. The chart was not intended to be an exhaustive explanation of the statutes but was simply meant to offer some quick guidance on relevant subsections. He noted that page 2 of the chart provided the schedules, which included a list of the drugs that the state had determined were illegal to provide to individuals unless prescribed by a licensed medical practitioner. The document listed samples of the types of drugs that were found within the schedules. He emphasized that it was not a complete listing, but it was intended to offer some context that could be useful to legislators when making policy calls.

Co-Chair Foster suggested that the presentation conclude with a sectional analysis.

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Ms. Tallmade read through the sectional analysis of the bill (copy on file):

Section 1. This section reclassifies a homicide resulting from conduct 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, second, third, or fourth degree for a schedule IVA controlled substance, and a person dies as a result of ingesting the drugs.

Section 2. This section amends misconduct involving a controlled substance in the first degree (unclassified felony) if a person delivers a schedule IA, IIA, IIIA, or IVA controlled substance to a person who is mentally incapable, incapacitated, or unaware that a controlled substance is being delivered.

Section 3. This section adds definitions for "incapacitated" and "mentally incapable" to misconduct involving a controlled substance in the first degree. This change is related to the change made in section 2.

Section 4. This section creates an enhanced sentencing range of seven - 11 years for persons who are convicted of class A felony level manufacturing or delivering a schedule IA controlled substance.

Section 5. This section amends computation of good time to preclude individuals convicted of misconduct involving a controlled substance in the first, second, third, and fourth degree from receiving a good time deduction from their sentence where the conduct involves manufacturing or delivering or possessing with the intent to manufacture or deliver a controlled substance.

Section 6. This section is the repealer section.

Section 7. This section is the applicability section. This bill will apply to offenses occurring on or after the effective date.

Section 8. This section establishes the effective date as July 1, 2023

Co-Chair Foster recommended that that the committee hear invited testimony before taking questions.

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SANDY SNODGRASS, CEO, ALASKA FENTANYL RESPONSE PROJECT (via teleconference), thanked the committee for hearing her testimony in support of the bill. She shared that her son, Robert Snodgrass, was poisoned to death by fentanyl on October 26, 2021, at the age of 22. She had been advocating for fentanyl awareness, education, and prevention as well as for investigation and conviction since her son's death.

Ms. Snodgrass thought that her son's death was a poisoning rather than an accidental overdose and should be considered a drug-induced homicide. The distributors and manufacturers of fentanyl should be punished to the fullest extent of the law, which would be the effect of the bill. The legislation would also allow prosecutors to negotiate with lower profile drug dealers and incentivize the lower profile dealers to provide information about the higher profile dealers to the authorities. She thought that in the first example given by Mr. Skidmore, individual B would have been

more likely to provide information on individual A if the bill was enacted at the time.

Ms. Snodgrass recounted some recent overdose cases that had occurred in Alaska. In the last two weeks, five people had died in the Mat-Su Valley due to fentanyl poisoning and 20 others had presented to emergency rooms. Fortunately, the latter 20 overdoses had been successfully reversed with Naloxone. In March of 2022, nine people in Mat-Su died of an overdose and 25 people survived after overdosing due to the administration of Naloxone. In Anchorage in the last two weeks, eight high school students had overdosed on fentanyl and the overdoses were successfully reversed. In Juneau, 3,000 pills had recently been confiscated. In addition, 2,000 pills were found on a flight going to Togiak, a rural community near Dillingham. Drug distributors were targeting Alaska due to the high price for which the drugs could be sold in the state. Additionally, the distributors were aware of the state laws and were willing to take the risk because the penalties were less strict than penalties in other states.

Ms. Snodgrass urged the committee to pass the bill prior to July of 2023. The bill was a tool that the government could use to prevent further deaths because implementing the highest penalties available would deter drug traffickers from targeting the state.

Co-Chair Foster thought that the simplest way to summarize the bill was that it would increase criminal consequences for drug dealers. He wanted to clarify the meaning of the bill for the public. He asked if his understanding was correct.

Mr. Skidmore responded in the affirmative.

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Representative Josephson understood that if an individual were to shoot a firearm at another individual but miss the target, the shooter would be eligible for good time because the other person was not injured or killed. Comparatively, an individual who delivered a drug to another individual would not be eligible for good time if the bill were to pass, even if no one died. In his example, the drug dealer would receive a harsher punishment than the shooter. He asked if his understanding was correct.

Mr. Skidmore responded that section 5 of the bill listed the statutes that specified the good time restrictions. He referred to page 5 of the bill, lines 1 through 7, which detailed the crimes that triggered good time restrictions, such as murder and sex offenses. He agreed that in Representative Josephson's example, the shooter would not be restricted from receiving good time, although the situation would be different if it were to be determined an attempted murder. The vast majority of crimes in the state were currently subject to good time. The bill would add all levels of drug distribution in AS 11.71.040 through AS 11.71.110 to the restrictions.

Representative Josephson highlighted the fact that the shooter could receive good time but the drug distributor could not. He asked if it could be interpreted that the state was less concerned with an individual shooting and missing than the distribution of drugs that did not cause a death.

Mr. Skidmore responded that it was a policy call. He thought Representative Josephson's characterization was fair but that it was the legislature's responsibility to determine the severity of the punishment.

Representative Josephson understood that the decision to increase the penalty for distributors of a wider range of drugs was that of the House Judiciary Committee and was not driven by the administration. He understood that the original intent of the bill was not to increase the presumptive penalty for the bad behavior of a legal prescription holder, such as in his example with the opiate prescription.

Mr. Skidmore responded that the way that the bill was originally introduced simply included the provision to change manslaughter and the provision restricting good time. He noted that Representative Josephson was correct in that the provision for the special circumstance for the distribution of Schedule I drugs was added in the judiciary committee.

Representative Josephson understood that in the example he offered regarding the opiate prescription, the crime would currently result in a sentence of likely no more than four years if the defendant had no prior history. If the bill

were to pass in its current state, the same behavior would result in a sentence of seven years. He asked if he was correct.

Mr. Skidmore responded that Representative Josephson was correct regarding the penalties that could be imposed. He took issue with the presumption that the person who provided the pill to the friend would be sentenced. He emphasized the importance of prosecutorial discretion. He thought there was good reason to prohibit a citizen from providing drugs to another citizen, even if the drug benefitted an ailment. The bill would make the behavior subject to a sentence of seven years, but it was unlikely that prosecutorial discretion would be exercised in a way that would result in a strict sentence in the scenario provided by Representative Josephson.

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Representative Josephson thought it would be appropriate to offer assurance to Alaskans that there would be clear laws surrounding prosecution. He suggested that not all prosecutors exercised the same quality of prosecutorial discretion as Mr. Skidmore. He asked for Mr. Skidmore's opinion on the matter.

Mr. Skidmore responded that the provision addressing the special circumstances was an attempt to examine the cause of the significant increase in overdose deaths in the state, particularly regarding fentanyl. One of the policy calls that could be made to target fentanyl in particular was to associate greater penalties with any situation involving fentanyl. The question before the committee was whether the effort to target fentanyl was appropriate. He understood that Representative Josephson was presenting a counterpoint as to why it might not be appropriate to target fentanyl. He emphasized that the decision was under the purview of the legislature.

Representative Hannan understood that Alaska led the nation in overdose deaths and wondered which state had the smallest increase in overdose deaths. She asked what the drug penalties were in the states with smaller increases in overdose deaths. She wondered how the penalties for crimes related to fentanyl compared to Alaska's penalties.

Mr. Skidmore responded that the Center for Disease Control (CDC) provided information about overdose deaths by state and the CDC used the State Unintentional Drug Overdose Reporting System (SUDORS) to collect the statistics. He noted there was a report published on December 8, 2022, that provided the death overdose rate by state and the overdose class. The state with the lowest rate was Nebraska at 9.4 percent. The average was 34.3 percent and Alaska was over the national average at 37.9 percent. The most significant increases were in Washington D.C. and West Virginia. He shared that Nebraska was one of the states that had a drug and homicide provision similar to the provision proposed in HB 66 [Mr. Skidmore corrected his statement later in the meeting noting that Nebraska did not have a drug homicide provision]. He could not conclude that the provision was expressly linked to the smaller increase.

Representative Hannan commented that no one on the committee was pro-fentanyl and that everyone was opposed to overdosing on recreational drugs. She was concerned that the strategy to deal with overdose deaths was to prosecute responsible parties after the deaths had occurred. The strategy would not prevent deaths unless it prevented fentanyl distribution from occurring. She recalled Mr. Skidmore's earlier examples of cases in which fentanyl overdoses had occurred and the individuals involved made risky and distasteful choices. She thought the choices implied that the individuals were thinking irrationally and it was difficult for her to grasp that that the person's behavior would have been different if there was a more severe punishment. She did not think the bill would have solved the problem in the examples provided by Mr. Skidmore. She asked if Mr. Skidmore thought that overdoses would be reduced if punishments were more severe.

Mr. Skidmore responded in the affirmative and added that he saw the connection to decreased deaths in a few different ways. By increasing the penalties, it would deter individuals importing drugs into the state and result in fewer drugs being introduced into the state. Secondly, the individuals in his earlier examples did not feel that a manslaughter conviction was severe enough to incentivize them to provide information on the other drug distributors involved. He argued that individuals would be more likely to offer information on the people who provided the drugs if the sentence was increased. It would also allow the department to target the larger drug distributors, which

would decrease the amount of drugs in circulation and therefore decrease overdose deaths.

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Representative Coulombe asked for a description of the purpose of good time.

Mr. Skidmore responded that the purpose of good time was to empower the Department of Corrections (DOC) to incentivize good behavior.

Representative Coulombe asked how revoking eligibility for good time for certain individuals would be beneficial, other than by making other individuals feel better because the offenders would be in jail for a longer period of time. She noted that Alaska had the highest recidivism rate in the nation. She was not certain how good time helped the overdose situation. Although it might keep the offenders away from the public for a couple more years, the individuals would eventually be released back into the community. She emphasized that she wanted to address the fentanyl crisis and wanted to ensure that the bill actually addressed the issue.

Mr. Skidmore responded that he agreed with the premise that the offenders would eventually be released into the community again. He thought that restricting good time and keeping the convicted individuals off the streets for a longer period of time would be beneficial. He added that mandatory parole would not restrict discretionary parole or probation. It was a difficult policy determination that needed to be made by the legislature and the administration was open to a collaborative conversation on the matter. For example, an option would be to limit the restriction of good time to repeat offenders or to Schedule I drugs if the goal was to target fentanyl. He was confident that the legislature could determine the best policy call.

Representative Coulombe commented that she thought the bill was targeting fentanyl but she did not see the word fentanyl in the bill. She was not certain which drug class fentanyl fell under or why the bill included a broad variety of drugs.

Mr. Skidmore responded that the bill's main focus was fentanyl, but it was not exclusively focused on fentanyl.

The drug was a Schedule I controlled substance in the state and the special circumstances provision in the bill would therefore be targeting fentanyl. Each of the provisions within the bill targeted fentanyl. He explained that the bill was inclusive of other drugs because although fentanyl created problems currently, it was possible that derivatives of fentanyl could be created in the future. If the bill targeted a specific type of drug and a slightly different drug was created, the bill would not apply to the new drug. The state experienced a similar challenge when it was dealing with bath salts. By the time the drug was criminalized, the individuals creating the bath salts changed the formula just enough to no longer be addressed by the new statutes.

Mr. Skidmore drew attention to a graph on page 5 of the 2021 Drug Overdose Mortality Update report (copy on file) showing the increase in drug overdose deaths. The top line of the graph showed the deaths from synthetic opioids, which included fentanyl, and the second line showed the overdoses from methamphetamine. He noted that the second line was closely trailing the first. The report stated that methamphetamine was also responsible for a significant spike in deaths and needed to be addressed by legislation. The bill looked at the entire picture and therefore was not restricted to fentanyl.

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Representative Coulombe was concerned that the scope was too broad because there were many drugs listed under the Schedule I category. She would like the bill to target specific overdose situations and did not think that every situation would be covered. She was concerned that there would be unintended consequences if the scope was too broad.

Representative Ortiz asked if good time was an objective determination or a subjective determination.

Mr. Skidmore responded that managing good time was generally done by time accountants at DOC. He deferred the question to a representative from DOC.

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SIDNEY WOOD, DEPUTY DIRECTOR OF INSTITUTIONS, DEPARTMENT OF CORRECTIONS (via teleconference), responded that good time was not subjective and was based on statutes. Throughout incarceration, a person could lose good time if they committed an infraction but would have an opportunity to earn good time again.

Representative Ortiz asked how many convictions were achieved by the state over the last ten years under the original statute classifying the crime as manslaughter.

Mr. Skidmore responded that the statute was enacted in 2006. He did not have the statistics for the past ten years, but the particular offense had been charged seven times in the past five years with two convictions, one dismissal, two whose charges were pled down, and two others whose charges were still pending. The simple answer was two individuals were convicted in the last five years.

Representative Ortiz asked if there was any evidence that the number of convictions would increase if the bill were to be passed.

Mr. Skidmore responded that the administration had never taken the position that the bill would increase the number of convictions. The bill would increase the penalties, isolate the individuals engaged in the behavior, and give the department better tools to charge individuals "higher on the food chain." He thought that the more severe the conviction, the more likely it would be for an individual to provide information on other distributors. If the larger distributors were taken out, the supply would be disrupted and the impact would be significant. He could not provide precise evidence but relayed that it was a logical analysis.

Representative Ortiz directed attention to page 2, line 24 of the bill. He thought Mr. Skidmore had referred to fentanyl as a schedule IA drug, however the bill referred to it as schedule IVA. He asked what the difference was between the two classifications.

Mr. Skidmore responded that including both classifications intended to cover the knowing distribution of a controlled substance under AS 11.71.110 through AS 11.71.030 or under AS 11.71.04(a) for schedule IVA substances. Fentanyl was found under Schedule I, which was criminalized under AS

11.71.020. The reason IVA was called out explicitly because was because there were multiple subsections within the statutes which included the criminalization of both IVA and VA drugs; however, the penalty for homicide would only apply to IVA drugs and not VA drugs. The reason for that was because the IVA drugs were more lethal than VA. He explained that it was currently written the same in manslaughter laws and the bill did not make any changes to the current laws.

Representative Ortiz understood that the reference to Schedule I was found in "(a)(1)".

Mr. Skidmore responded in the negative and noted that it was a "string site." He explained that AS 11.71.010 referred to misconduct involving controlled substances in the first degree. He added that AS 11.71.021, which fell between AS 11.71.010 and AS 11.71.030, dealt with the distribution of fentanyl.

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Representative Galvin understood that fentanyl was much more lethal than other drugs and when fentanyl was mixed with other substances, it could become even more lethal. She thought the most concerning overdose deaths were related to fentanyl. She asked if the intention of the bill was to address deaths related to fentanyl.

Mr. Skidmore responded that the aforementioned drug mortality report stated that deaths from opioids and heroin had also increased significantly. The blue line on the graph on page 5 of the report represented total overdose deaths.

Representative Galvin understood that deaths from other drugs were also a concern. She found the report informative and she was disturbed by the problem. She referred to page 8, which described evidence-based strategies to reduce drug overdose deaths. There were five strategic categories: prevention, harm reduction, treatment, recovery, and data collection. She understood that the actions of the bill would not fall into any of the five evidence-based categories but that the bill would create general deterrence and would help incentivize behavioral changes. She had found information on deterrence online and read

from a report she found from the U.S. Department of Justice (DOJ):

Increasing the severity of punishment does little to deter crime. Laws and policies designated to deter crime by focusing mainly on the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes.

Police deter crime by increasing the perception that criminals would be caught and punished.

Representative Galvin asked Mr. Skidmore to address the information. She thought the strategies were conflicting.

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Mr. Skidmore responded that there were two different components: the content of the report and the conclusions made by DOJ. He emphasized that the evidence-based strategies to reduce drug overdose deaths on pages 8 and 9 of the drug mortality report he provided to the committee were all focused on the victims. He relayed that DOL thought that focusing on victims and reducing demand was appropriate. There were other efforts that the administration was undertaking to reduce deaths; however, it was not the goal of HB 66. He relayed that a reduction in demand was already occurring and the intent was to focus on the victims rather than the distributors of the drugs. The goal was to prevent the drugs from entering the state and stopping the people who were supplying the drugs. He noted that stopping the supply was also a method to reduce overdose deaths.

Representative Galvin noted that the drug mortality report did not discuss how to deal with victims, but only how to reduce deaths. She understood that reducing deaths was the overall goal.

Mr. Skidmore agreed that it was the overall goal. However, there were other strategies involved in prevention, such as educational campaigns, prescription drug monitoring programs, opioid prescribing guidelines, regulating promotion and marketing of opioids, and better mental health care. The aforementioned strategies were not designed to target the supply side but were designed to address the demand side.

Representative Galvin understood that the supply had already been slightly disrupted. She recalled that Mr. Skidmore reported that around 3,000 pills had been recently seized in the state. She asked why Mr. Skidmore decided to move in the direction of targeting the demand side rather than making investments in disrupting the supply chain, such as employing more investigators to find large quantities of drugs.

Mr. Skidmore responded that the department had also invested in the strategies Representative Galvin mentioned. The state was a recipient of federal dollars under a program called the High Intensity Drug Trafficking Areas (HIDTA) which increased the number of available officers and actions that could be taken to attack interdiction. There were many things that the administration was doing to address the issue and HB 66 was simply one strategy. The article from the U.S. DOJ that Representative Galvin read was about how to deter crime in a general sense. He did not think the article addressed strategies to target individuals who were engaged in drug distribution for monetary gain. The distributors were thinking rationally and logically and there were ways to deter these individuals. He did not think DOJ would disagree with him.

Representative Galvin asked if Mr. Skidmore could supply some data about the effectiveness of deterrence. She clarified that she did not want to make life easier for individuals who committed atrocious crimes. She wanted to make a policy call that would help the state achieve its goal of fewer overdose deaths. She referred to the fiscal notes and highlighted there was little information about the monetary impacts of the bill. Although she had heard there were open beds in the state's prisons, an open bed would not necessarily mean that other expenses associated with longer sentences would be covered. She wanted to ensure that the costs were accurate and the state was financially prepared.

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Co-Chair Foster noted that there were individuals available online to answer questions.

Mr. Skidmore deferred Representative Galvin's question about the fiscal notes to a representative from DOC.

Representative Galvin asked for more information about the term "prosecutorial discretion." She presumed that laws should be written in explicit terms rather than allowing for discretion.

Mr. Skidmore responded that discretion was integral to the criminal justice system and it was exercised at many levels. For example, prosecutors exercised discretion as far as the charges they decide to bring forth, the strategies they employ to resolve a case, and sentences they choose to seek at the end of a case. He added that the courts, investigators, parole officers, and other officers all exercised discretion as part of their essential job duties. Discretion was a fundamental building block in the operation of the criminal justice system.

Mr. Skidmore agreed that it was important for the legislature to avoid passing laws that were too broad; however, the legislature could not write laws that would cover every possible case. He relayed that civil law was notoriously complicated due to the number of laws involved in the system. Criminal law was much more straightforward and the laws were fewer. The most impactful complications within criminal law related to the "fact patterns." He explained that fact patterns were infinite and it was not possible to legislate every fact pattern in existence. If there was a bill introduced for every possible fact pattern, nothing else would be completed because there were too many circumstances to cover. He reiterated that discretion was baked into the criminal justice system at all levels.

Co-Chair Foster noted that more detailed information on the fiscal notes would be provided in a later meeting.

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APRIL WILKERSON, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, explained that the fiscal note by DOC [with OMB component 1381 and control code hvsgo] was a zero fiscal note. The department was built based on operating the 13 institutions in the state at 100 percent capacity, but the current inmate population was at 85 percent capacity. She indicated that the legislation would not cause inmate numbers to exceed the capacity of the institutions. If the bill were to pass, the department

would exceed its capacity sooner than its current projections for the outyears indicated; however, that was not expected to occur for another five years. The department thought it could absorb the cost of the additional population based on its current capacity.

Representative Stapp relayed that he was struggling to understand how it was possible for there to be a zero fiscal note. The bill would cause inmates to be incarcerated for a longer period of time and would therefore cost the state more money.

Ms. Wilkerson responded that Representative Stapp was correct; however, the legislation would increase the prison population by less than 100 per day and she was confident that the increase could be absorbed.

Representative Stapp asked for the difference between delivered and distributed.

Mr. Skidmore responded that the definitions were found in AS 11.71.900. He read from the statute [AS 11.73.900(7) and AS 11.73.900(9)]:

(7) "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of an imitation controlled substance, whether or not there is an agency relationship;

(9) "distribute" means to deliver other than by administering or dispensing a controlled substance, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange; "distributor" means a person who distributes;

Mr. Skidmore added that distribution referred to drug administration on a larger scale. The activities of pharmaceutical companies were considered distribution due to the scale.

Representative Stapp understood that there were various levels to an organization. The intent of the bill was to target the people who were distributing the fentanyl throughout the state. He was concerned about the changes made in the House Judiciary Committee which would broaden the scope of the bill to include Schedule I drugs through Schedule IV drugs. He asked whether good time would be

revoked for individuals charged with misconduct relating to Schedule IV drugs as well. He wondered how the process would work if an individual had both fentanyl and Xanax in their system.

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Mr. Skidmore responded that the provision about good time was not added by the judiciary committee. He asked Representative Stapp to rephrase the question.

Representative Stapp understood that the broadening of the drug types was added by judiciary committee. He referred to page 3, line 7 of the bill which was amended to be more inclusive of other drugs. He asked whether an individual who distributed Xanax to another individual without knowing it was a controlled substance would be eligible for good time if charged.

Mr. Skidmore responded that the language that discussed good time was found on page 5, Section 5 of the bill and used a "string site" to refer to the various crimes that would be impacted. The judiciary committee changed page 3, Section 2 of the bill involving the delivery of drugs to a person who was mentally incapable, incapacitated, or unaware. He asked to which section Representative Stapp was referring.

Representative Stapp relayed that the good time provision in the bill amended AS 11.71.010. He understood that the amendment in judiciary revised the same statute. The change would add Schedule I through Schedule IV controlled substances to the provision of the bill prohibiting good time for individuals charged with the delivery of drugs to an individual who was mentally incapable, incapacitated, or unaware.

Mr. Skidmore responded that the amendment [made by the House Judiciary Committee] appeared on page 3, lines 7 through 11 and would add Schedule II controlled substances through Schedule IV to the provision relating to situations in which a person provided drugs to another person who was not requesting the drugs. He emphasized that it was completely unrelated to good time. He explained that the limitation on good time was found in page 5, Section 5 of the bill, lines 8 through 10. He thought the policy discussions for the two topics were vastly different.

Representative Stapp asked about deterrence. He noted that Mr. Skidmore shared that Nebraska had a drug homicide provision which resulted in the lowest number of fentanyl deaths in the nation. He asked if his understanding was correct.

Mr. Skidmore replied that he had mentioned Nebraska in response to a question from Representative Hannan about the state with the lowest rate of overdose deaths. He corrected himself and noted that Nebraska did not have a drug homicide provision.

Representative Stapp thought that deterrence was a good strategy and that high penalties deterred drug trafficking activity. He understood that the countries with the harshest drug trafficking laws did not have a fentanyl problem.

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Representative Josephson asked Mr. Wood if receiving treatment for drug addiction while in custody was ever a condition of good time.

Mr. Wood responded that a person would be eligible for good time regardless of their adherence to a requirement from the court to participate in drug treatment. However, if a person failed to participate in treatment, the individual could be subject to an anticipatory parole or probation revocation, which would have the same impact as losing good time. Refusal to participate in treatment could impact good time in an indirect way, but it would not trigger ineligibility for good time.

Representative Josephson commented that a divisive issue in the judiciary committee was whether to increase the sentence under a special circumstance for an individual who gave an oxycodone pill or something similar to a friend, family member, or acquaintance. He asked if the impact of the bill would be a "double whammy" in that prison time would be increased and good time eligibility would be revoked.

Mr. Skidmore responded in the affirmative. The penalty for distribution of Schedule I drugs would be increased and good time would be revoked.

Representative Josephson shared that years ago, he had a colleague on the committee whose son distributed drugs to an individual who died as a result of ingesting the drugs. He added that it was a federal case and the son went to prison on a federal homicide related to drugs. He asked where the federal jurisdiction began and ended.

Mr. Skidmore responded that he was not intimately familiar with the federal law but generally, the federal law applied to conduct that involved interstate activity. When an individual was killed in relation to interstate activity, the federal government would have jurisdiction. If the individual was killed in Alaska, there could be a scenario where the federal government had federal jurisdiction and the state government had state jurisdiction and both entities could prosecute the same individual for the same crime. He noted that the scenario was an example where discretion would be exercised. The state government and federal government typically collaborated to ensure that resources and effort were not being duplicated. There were sometimes extenuating circumstances and nuances that caused both entities to prosecute for the same crime.

Representative Josephson recalled a bill sponsored by former Alaska Representative Lance Pruitt that said that if an individual delivered a drug to a friend who began to overdose and the deliverer of the drug called the paramedics, the act of pursuing help was a "get out of jail free" card.

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Mr. Skidmore recalled that the bill included a safe harbor provision which prevented the individual from being charged. He would have to read the statute to be sure.

Representative Josephson explained the reason he was asking was to provide more context. He remembered that the body was receptive to the bill.

Mr. Skidmore shared that the relevant statute was AS 11.71.311 which was a restriction on prosecution. He noted that the statute did not involve misconduct involving controlled substances in the first degree, second degree, or third degree. The statute would provide a barrier to

prosecution for substances in the fourth degree, fifth degree, or sixth degree.

Representative Hannan understood that the judiciary committee amended the bill by adding Schedule II through Schedule IV controlled substances. An example of a relevant situation would be the conviction of a person giving a Valium pill to another person who was incapacitated. She understood that the convicted individual would no longer be eligible for good time under the bill.

Mr. Skidmore responded that Section 2 of the bill was amended, which addressed AS 11.71.010 relating to misconduct involving a controlled substance in the first degree. If the question was whether a person convicted of misconduct involving a controlled substance in the first degree would also become ineligible for good time under section 5, the answer was "yes."

Representative Hannan commented that the original intent of the bill was to address overdose deaths but it had been expanded to include other categories of drug-related crimes. She understood that a person could be ineligible for good time for providing Xanax to a friend.

Mr. Skidmore responded that Section 5 involved distribution of controlled substances in the first degree through fourth degree. He emphasized that the delivery of controlled substances was already illegal and the bill did not change it. The change in Section 2 on page 3 would simply elevate already illegal misconduct to a higher offense in combination with another factor, such as delivering drugs to a person who was not requesting them. The scenario would still fall under the provision that revoked good time. He reiterated that the good time provision would not be expanded, but certain conduct would be elevated to a more serious offense.

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Representative Coulombe understood that the division between manslaughter and murder in the second degree was intention. It was unlikely that an individual distributing drugs intended to kill another person by causing a drug overdose. She asked how the jump could be made from manslaughter to murder when there was no intent.

Mr. Skidmore responded that not all murder statutes required intention. He explained that murder in the first degree involved intentional conduct, which was the most serious conviction. Murder in the second degree was found in AS 11.41.110 and included within it several other subsections. An individual could commit homicide in the second degree by knowingly engaging in conduct that resulted in the death of another person under circumstances manifesting extreme indifference to the value of human life. An example would be a person with a firearm shooting into an occupied tent. The shooter may not have a conscious objective to kill the people inside the tent, but the act involved extreme indifference to the value of human life. Another subsection of the statute addressed felony murder, which occurred when a person committed a felony and in the course of the act, another person was killed. He explained that there were many other subsections of murder in the second degree that did not necessitate intent. He thought murder in the second degree was an appropriate designation for overdose deaths because it did not require intent.

Representative Coulombe referred to the drug classifications on line 22 of page 2 of the bill, which stated that fentanyl was a Schedule IVA controlled substance. She understood that fentanyl was a Schedule VA controlled substance.

Mr. Skidmore directed attention to page 2 of the controlled substance statutes reference chart handout. He responded that fentanyl was a Schedule IA drug. Examples of Schedule 2A controlled substances included psychedelics and hallucinogens, stimulants, barbiturates, and cocaine. He relayed that Schedule IIIA included stimulants, depressants, and certain anesthetics. Schedule IVA included benzodiazepines and ketamine. He reiterated that fentanyl was a Schedule IA controlled substance.

Representative Coulombe asked about line 23 of page 2, which referred to fentanyl as a Schedule IVA controlled substance.

Mr. Skidmore responded that the particular statute beginning with AS 11.71.010, which was the crime of misconduct involving controlled substance in the first degree, through AS 11.71.030, which was the crime of misconduct involving controlled substance in the third degree covered three different crimes: the crime of

misconduct involving controlled substance in the first degree, second degree, and third degree. Conversely, it could also include AS 11.71.040(a)(1), which was the crime of misconduct involving controlled substance in the fourth degree. He explained that the statute had multiple subsections but the distribution of Schedule IVA and VA controlled substances were criminalized in the same subsection. The intent of the language was to say that if an individual ingested a Schedule IVA drug and died, the person who provided the substance to them could be held accountable for the death. Due to the exclusion of Schedule VA drugs in the language, if an individual ingested a VA drug and died, the person who provided the drug to them could not be held accountable. The reason behind the exclusion was because VA drugs were not typically associated with overdose deaths. He explained that the policy call to exclude Schedule VA drugs was made in 2006 when the statute was first enacted.

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Representative Coulombe wanted there to be awareness that if the bill passed, an individual could be charged with murder if they provided Valium to another individual. She thought it was a severe sentence but she understood the intent of the administration. She wanted to ensure that there was clarity on the impact of the bill.

Mr. Skidmore commented that the key element of the bill was not the distribution of the drug, but whether the individual died as a result of ingesting the drug.

Representative Cronk commented that drugs were rampant in his district. He reported that all of the constituents he had spoken to relayed that they wanted the drug dealers to be stopped. He did not think that the bill was not doing enough.

Co-Chair Foster indicated that the committee would return to the bill at a later date.

Mr. Skidmore concluded that the bill was designed to address the supply of drugs being transported into the state that were most responsible for overdose deaths. He noted that overdose deaths were disproportionately impacting Alaska Natives in rural communities. He

appreciated the comments from Representative Cronk and the overdose death report corroborated the comments.

Co-Chair Foster reviewed the agenda for the following day's meeting.

HB 66 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

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The meeting was adjourned at 3:22 p.m.