

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 27, 2023

1:31 p.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Jamie Allard, Vice Chair
Representative Ben Carpenter
Representative Craig Johnson
Representative David Eastman
Representative Andrew Gray
Representative Cliff Groh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 2

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit.

- MOVED CSHJR 2(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 38

"An Act relating to an appropriation limit; relating to the budget responsibilities of the governor; and providing for an effective date."

- MOVED CSHB 38(JUD) OUT OF COMMITTEE

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 2

SHORT TITLE: CONST. AM: APPROP LIMIT

SPONSOR(S): REPRESENTATIVE(S) STAPP

01/23/23 (H) READ THE FIRST TIME - REFERRALS
 01/23/23 (H) W&M, FIN
 01/30/23 (H) JUD REFERRAL ADDED BEFORE W&M
 01/30/23 (H) BILL REPRINTED
 02/15/23 (H) JUD AT 1:00 PM GRUENBERG 120
 02/15/23 (H) Heard & Held
 02/15/23 (H) MINUTE(JUD)
 02/27/23 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: HB 38

SHORT TITLE: APPROPRIATION LIMIT; GOV BUDGET
 SPONSOR(s): REPRESENTATIVE(s) STAPP

01/19/23 (H) READ THE FIRST TIME - REFERRALS
 01/19/23 (H) JUD, W&M, FIN
 01/27/23 (H) JUD AT 1:00 PM GRUENBERG 120
 01/27/23 (H) Heard & Held
 01/27/23 (H) MINUTE(JUD)
 02/15/23 (H) JUD AT 1:00 PM GRUENBERG 120
 02/15/23 (H) Heard & Held
 02/15/23 (H) MINUTE(JUD)
 02/27/23 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: HB 66

SHORT TITLE: CONTROLLED SUB.;HOMICIDE;GOOD TIME DEDUC.
 SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/08/23 (H) READ THE FIRST TIME - REFERRALS
 02/08/23 (H) JUD, FIN
 02/27/23 (H) JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

BERNARD AOTO, Staff
 Representative Will Stapp
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HJR 2, on behalf of Representative Stapp, prime sponsor; answered questions during the hearing on HB 38, on behalf of Representative Stapp, prime sponsor.

ROB CARPENTER, Deputy Director
 Legislative Finance Division
 Legislative Legal Services
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HJR 2.

JOHN SKIDMORE, Deputy Attorney General
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Introduced HB 66, on behalf of the House Rules Standing Committee, sponsor by request of the governor.

KACI SCHROEDER, Assistant Attorney General
Criminal Division, Department of Law
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for HB 66, on behalf of the House Rules Standing Committee, sponsor by request of the governor.

ACTION NARRATIVE

[1:31:11 PM](#)

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 1:31 p.m. Representatives Carpenter, C. Johnson, Gray, Groh, Eastman, and Vance were present at the call to order.

HJR 2-CONST. AM: APPROP LIMIT

[1:32:11 PM](#)

CHAIR VANCE announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 2, "Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit."

[1:32:47 PM](#)

BERNARD AOTO, Staff, Representative Will Stapp, Alaska State Legislature, responded to unanswered questions from the previous hearing on HJR 2, on behalf of Representative Stapp, prime sponsor. In response to a hypothetical scenario involving the federal bureau stopping economic analysis on gross domestic product (GDP), he indicated that the bill sponsor would welcome an amendment proposing a different way to gather GDP data other than the federal bureau, so as not to tie the Constitution of the State of Alaska to a specific entity. He continued by correcting a misstatement, clarifying that inflation was tied to

the current proposal. He explained that GDP was a holistic calculation from several economic drivers, including inflation; therefore, adjustments to inflation would impact GDP. In response to a question regarding the timeline of GDP transmittal, he relayed that the current timeframe, as proposed in HJR 2, would make it difficult for the Office of the Governor and the Legislative Finance Division (LFD), [Legislative Affairs Agency (LAA)], to make the appropriate calculations. For that reason, he suggested changing the current language from "fiscal years" to "calendar years," making it "the five previous fiscal years." Responding to a question about capital projects, he clarified that capital spending was included under the proposed spending cap. The only exceptions on capital spending, he said, was on items with a federal match or those paid with general obligation (GO) bonds. In response to questions regarding allowable spending via bonding, he cited a court case referenced in a document that had been distributed to committee members.

CHAIR VANCE passed the gavel to Vice Chair Allard.

[1:36:54 PM](#)

REPRESENTATIVE VANCE moved to adopt Amendment 1 to HJR 2, [labeled 33-LS0294\A.7, Marx, 2/25/23], which read:

Page 1, line 16, through page 2, line 1:

Delete "**federal bureau responsible for economic analysis according to federal**"

Insert "**state government as prescribed by**"

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

[1:37:10 PM](#)

REPRESENTATIVE VANCE explained that Amendment 1 would provide autonomy to the state by removing references to the federal government in the state constitution. Specifically, the proposed amendment would remove the language referencing "federal bureau" on page 1, line 16, through page 2, line 1, of HJR 2, and replace it with "state government as prescribed by".

VICE CHAIR ALLARD asked whether the bill sponsor considered this a friendly amendment.

MR. AOTO answered yes.

[1:37:50 PM](#)

REPRESENTATIVE EASTMAN removed his objection. There being no further objection, Amendment 1 to HJR 2 was adopted.

[1:38:16 PM](#)

The committee took a brief at-ease.

[1:38:58 PM](#)

REPRESENTATIVE VANCE moved to adopt Amendment 2 to HJR 2, [labeled 33-LS0294\A.8, Marx, 2/25/23], which read:

Page 2, line 2:

Delete the first occurrence of "fiscal"

Insert "calendar"

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

[1:39:05 PM](#)

REPRESENTATIVE VANCE stated that Amendment 2 would change "fiscal" to "calendar" on page 2, line 2, of HJR 2 in response to the concern regarding the timeliness of the GDP data transmittal to both the legislature and the governor for consideration of the spending cap. This change would make it so the calculation would be available during the crafting of the budget.

VICE CHAIR ALLARD asked whether the bill sponsor considered this a friendly amendment.

MR. AOTO answered yes.

[1:40:21 PM](#)

REPRESENTATIVE EASTMAN asked how much time the legislature would have to craft the budget upon receiving the GDP data, should Amendment 2 pass.

[1:41:20 PM](#)

ROB CARPENTER, Deputy Director, LFD, LAA, considered the FY 24 budget as an example. He explained that should Amendment 2 pass, the calendar year before the prior fiscal year would be 2021, so the relevant data would be from years 2017 to 2021,

which was readily available to both the governor and the legislature through the entirety of session.

REPRESENTATIVE GRAY asked whether Amendment 2 addressed LFD's unanswered questions about the bill.

MR. CARPENTER confirmed that it would clarify the intent of the bill and allow the division to make firm calculations.

[1:43:36 PM](#)

REPRESENTATIVE EASTMAN removed his objection. There being no further objection, Amendment 2 to HJR 2 was adopted.

[1:43:49 PM](#)

The committee took a brief at-ease.

[Vice Chair Allard returned the gavel to Chair Vance.]

[1:44:20 PM](#)

CHAIR VANCE invited final comments on HJR 2, as amended.

[1:45:05 PM](#)

REPRESENTATIVE GROH applauded the bill sponsor's desire for stability; however, he pointed out that reforming the constitutional spending cap would require amending the state constitution. For that reason, he urged the legislature to exercise caution, as the consequences of getting it wrong could be disastrous. He shared his understanding that provided testimony had indicated that HJR 2 was not the right reform. He recalled that the University of Alaska Anchorage (UAA) professor of economics, Kevin Barry, had stated that a GDP-based spending cap would be an economic trap during times of prolonged downturn and prevent the state from recovering. Further, he stated that the proposed legislation did not adequately address the two items that history had shown to increase the most when revenue spikes occurred: capital spending and permanent fund dividend (PFD) appropriations. Additionally, he opined that forging ahead with the spending cap would be counterproductive to the recommendations from the Fiscal Policy Working Group. He advised the committee not to mistake his comments as opposition to spending cap reform, as he would be in favor of constitutionalizing the percent of market value (POMV) formula or creating a revised formula based on population and inflation.

For those reasons, he said he would be offering a recommendation of "do not pass" unless substantially amended on HJR 2.

REPRESENTATIVE EASTMAN suspected that the proposed formula may not account for changes to inflation that could occur during "the five previous calendar years." Nonetheless, he acknowledged that the existing constitutional spending limit was not designed to be functional. He argued that the political pressure to spend what was available would always be present, adding that it was appropriate to implement checks and balances against that pressure to limit spending to a reasonable amount. He opined that HJR 2 did not adequately account for inflation and cautioned against making changes to the constitution that may not work.

[1:50:32 PM](#)

REPRESENTATIVE CARPENTER pointed out that this was only the first step in the committee process for the proposed legislation.

CHAIR VANCE added that she had intentionally avoided considering the fiscal impacts of HJR 2 in the House Judiciary Standing Committee, as that was the focus of other committees of referral in which anticipated further dialogue on the proposed legislation.

[1:51:24 PM](#)

REPRESENTATIVE ALLARD moved to report HJR 2, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 2(JUD) was reported out of the House Judiciary Standing Committee.

[1:51:50 PM](#)

The committee took a brief at-ease.

HB 38-APPROPRIATION LIMIT; GOV BUDGET

[1:52:47 PM](#)

CHAIR VANCE announced that the next order of business would be HOUSE BILL NO. 38, "An Act relating to an appropriation limit; relating to the budget responsibilities of the governor; and providing for an effective date."

[1:53:05 PM](#)

BERNARD AOTO, Staff, Representative Will Stapp, Alaska State Legislature, responded to unanswered questions from the previous hearing on HB 38, on behalf of Representative Stapp, prime sponsor. In response to a question regarding an exception that differed from the constitutional proposal detailing appropriations from the mental health trust settlement income account, he indicated that ultimately, what to include or exclude on the list of exceptions was a policy call. He cited the Weiss v. State lawsuit and indicated that Legislative Legal Services, [Legislative Affairs Agency], was unsure as to whether removing this exception would definitively lead to litigation.

[Chair Vance passed the gavel to Vice Chair Allard.]

[1:54:54 PM](#)

REPRESENTATIVE VANCE moved to adopt Amendment 1 to HB 38, [labeled 33-LS0295\A.6, Marx, 2/25/23], which read:

Page 2, line 2:

Delete the first occurrence of "**fiscal**"

Insert "**calendar**"

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

[1:55:06 PM](#)

REPRESENTATIVE VANCE explained that Amendment 1 would replace the first occurrence of "fiscal year" on page 2, line 6 of HB 38, with "calendar year" to address the concern regarding the timeliness of the GDP data transmittal to both the legislature and the governor for consideration of the spending cap. This change would make it so the calculation would be available for budget preparations.

VICE CHAIR ALLARD asked whether the bill sponsor considered this a friendly amendment.

MR. AOTO answered yes.

[1:55:41 PM](#)

REPRESENTATIVE EASTMAN removed his objection. There being no further objection, Amendment 1 to HB 38 was adopted.

[1:55:57 PM](#)

The committee took a brief at-ease.

[Vice Chair Allard returned the gavel to Chair Vance.]

[1:56:12 PM](#)

REPRESENTATIVE EASTMAN asked why the language referencing "the federal bureau" was maintained in HB 38 but removed from HJR 2.

CHAIR VANCE said she preferred that the state constitution make no reference to the federal government to retain its autonomy. In contrast, she explained that she wanted to maintain the original intent of having a GDP-based calculation in statute, as referenced by law in the constitutional amendment.

[1:58:00 PM](#)

CHAIR VANCE invited closing remarks from members of the committee.

REPRESENTATIVE EASTMAN expressed concern about creating a state spending cap that relied upon data from the federal government. He shared his belief that Alaska should be able to make its own calculations based on statewide economic data.

REPRESENTATIVE GROH noted that he stood by his previous comments regarding the constitutional amendment.

[1:59:10 PM](#)

REPRESENTATIVE ALLARD moved to report HB 38, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 38(JUD) was reported out of the House Judiciary Standing Committee.

[1:59:34 PM](#)

The committee took an at-ease from 1:59 p.m. to 2:03 p.m.

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

[2:03:46 PM](#)

CHAIR VANCE announced that the final order of business would be 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."

[2:04:12 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law (DOL), introduced HB 66, on behalf of the House Rules Standing Committee, sponsor by request of the governor. He paraphrased the transmittal letter [included in the committee packet], which read as follows [original punctuation provided]:

Dear Speaker Tilton:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to penalties for drug distribution and using controlled substances.

Drugs and drug overdoses have had a devastating effect on our state. According to the Department of Health's 2021 Drug Overdose Mortality Update, between 2020 and 2021, Alaska experienced the largest percent increase of drug overdose deaths of any state. In 2021, Alaska recorded over 100 deaths more than the previous year. Unfortunately, fentanyl, a highly potent opioid, makes up a large percentage of these drug related deaths. Increasingly, those who distribute drugs are mixing fentanyl with other types of drugs in order to cultivate addiction and attract buyers. These buyers may not necessarily know that fentanyl is mixed in with their drug of choice, increasing the risks associated with drug use.

This legislation attacks the problem at the point of distribution, making it second degree murder when a person distributes or manufactures a controlled substance and a person dies as a direct result of ingesting that substance. This legislation further serves to protect our communities by ensuring offenders convicted of distributing or manufacturing drugs will not be subject to early release due to a "good time" deduction from their sentence. Those who choose to manufacture or distribute drugs illegally should be put on notice that there are significant consequences for the harm they cause.

I urge your prompt and favorable action on this measure.

[2:16:57 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, DOL, on behalf of the House Rules Standing Committee, sponsor by request of the governor, presented the sectional analysis for HB 66 [included in the committee packet], which read as follows [original punctuation provided]:

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. The person must knowingly manufacture or deliver the controlled substance but there is no required mental state for the death.

Section 2. 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.

Section 3. This section is the repealer section.

Section 4. This section is the applicability section. This bill will apply to offenses occurring on or after the effective date.

Section 5. This section establishes the effective date as July 1, 2023.

CHAIR VANCE invited questions from members of the committee.

[2:19:02 PM](#)

REPRESENTATIVE GROH agreed that the rise in fentanyl-induced deaths was a plague on the state. He inquired about the presumptive and maximum penalties for murder in the second degree.

MR. SKIDMORE shared his understanding that second degree murder carried a mandatory minimum sentence of 20 years with a maximum penalty of 99 years.

REPRESENTATIVE GROH inquired about the presumptive sentencing.

MR. SKIDMORE explained that murder was different than other types of felonies in that most felonies were accompanied by a presumptive term, which could be varied by the presence of aggravators or mitigators. He corrected a previous misstatement, clarifying that the mandatory minimum sentencing for second degree murder was 15 years.

REPRESENTATIVE GROH understood that the punishable act would be manufacturing or delivery, as opposed to the sale of, [the controlled substance]. He asked whether that was correct.

MR. SKIDMORE confirmed that his understanding was accurate.

REPRESENTATIVE GROH asked whether "delivery" included gifting of a drug from one person to another without any compensation.

MR. SKIDMORE answered yes.

REPRESENTATIVE GROH shared his understanding that in some cases, death occurred as a result of one friend giving a drug to another friend without the commercial element. He asked whether that was correct.

MR. SKIDMORE agreed.

[2:21:51 PM](#)

REPRESENTATIVE GROH acknowledged the severity of the crimes in question; nonetheless, he cited the concern that someone could be charged with murder, which carried a maximum penalty of 99 years in prison, for giving a drug to another person. He asked Mr. Skidmore to discuss the prosecutorial power associated with the proposed legislation.

MR. SKIDMORE reflected on several real-world examples, in which two individuals provided drugs to a friend and were initially charged with manslaughter. After agreeing to cooperate with law enforcement, both individuals eventually plead down to the lower-level offense of misconduct involving a controlled substance. He cited case law, which indicated that murder in the second degree carried a typical sentence of 20-30 years;

therefore, he said it was unlikely that a person who distributed drugs to another person would be charged with a 99-year sentence. He added that typically speaking, for a penalty beyond 20-30 years to be imposed, far more egregious conduct or a significant criminal history would need to be present. He indicated that prosecutors were interested in going after drug dealers, as opposed to drug users. He added that prosecutors had the authority to engage in plea negotiations to get cooperation from a person in an effort to go after someone else - known as a "cooperation mitigator" in Alaska Statutes.

[2:26:30 PM](#)

REPRESENTATIVE GRAY recalled that Mr. Skidmore had cited five [manslaughter] charges in 2019, as well as a massive increase in overdose deaths. In light of the increasing rate of overdose related deaths, he asked whether there was a corresponding increase in the number of charges since 2019.

MR. SKIDMORE clarified that he had described five cases that occurred within a two-year timespan, of which four revolved around one single overdose death. In 2022, he said, those figures doubled, as two different cases involving two separate deaths occurred in that year alone.

REPRESENTATIVE GRAY asked how many of the cases resulted in convictions.

MR. SKIDMORE said the first five cases resulted in charges. The four revolving around one overdose death resulted in three convictions, of which one was for manslaughter, while the other two were reduced for a lower-level conviction. He stated that the fifth case [that occurred between 2018-2019] also resulted in a manslaughter conviction. He declined to provide details on the additional two cases that were charged in 2022, as they were active pending litigation.

REPRESENTATIVE GRAY observed that, although overdose rates were increasing, the number of charges being brought was low. He asked whether that was a fair characterization.

MR. SKIDMORE conveyed that Representative Gray was accurately highlighting the difficulty of acquiring adequate evidence in such cases, shown by the limited number of prosecutions. For that reason, when evidence can be obtained in these cases, he argued that drug dealers should be taken off the streets for a

longer period of time, which spoke to the proposal before the committee for harsher sentencing.

[2:30:55 PM](#)

REPRESENTATIVE GRAY shared his understanding that benzodiazepines were classified as a schedule IVA controlled substance. Referring to page 2, lines 21-24 of HB 66, which specifically addressed schedule IVA drugs, he asked what would happen if a mother gave her daughter a Klonopin and the daughter died from an allergic reaction to ingesting the drug.

MR. SKIDMORE cited AS 11.71.140(c)(29), which expressly listed fentanyl as a scheduled IA in Alaska. He suspected that Representative Gray was confusing the federal schedule, in which fentanyl was a schedule II, with Alaska's drug classification schedule. In response to the hypothetical scenario, he indicated that the focus of the proposed legislation was on illicit street drugs that were manufactured and distributed by drug cartels and often laced with fentanyl, adding that prosecutors had no desire to go after people who prescribed medications. He proceeded to explain that schedule IVA drugs were included in the bill because they were also being sold illicitly, and therefore, could be laced with fentanyl. He directed attention to page 4 of the supporting document, titled "Alaska Dept of Health Drug Facts (07-25-22)" [included in the committee packet], which listed the types of narcotics that resulted in overdose deaths across the state. He indicated that schedule IVA drugs would not be the primary focus of HB 66 unless they were mixed with something else.

[2:36:20 PM](#)

REPRESENTATIVE GRAY asked whether the intent of the bill was to increase sentencing.

MR. SKIDMORE answered yes.

REPRESENTATIVE GRAY asked whether that would cost the state more money.

MR. SKIDMORE answered yes.

REPRESENTATIVE GRAY asked whether there would be a fiscal note associated with that.

MR. SKIDMORE answered yes.

REPRESENTATIVE GRAY inquired about the purpose of "good time."

MR. SKIMORE stated that "good time" referred to mandatory parole, meaning that if a person was well-behaved while incarcerated, he/she would be released on mandatory parole after serving one-third of his/her sentence. In contrast, if that person was engaged in inappropriate behavior, good time could be reduced. He added that because good time was statutorily constructed, Alaska Statutes already set forth different types of crimes for which someone would be ineligible for mandatory - or "good time"- parole and could only apply for discretionary parole. He clarified that under HB 66, the distribution of drugs would be added to the list of crimes for which mandatory parole was restricted due to the significant increase in overdose deaths.

[2:39:37 PM](#)

REPRESENTATIVE ALLARD asked whether it was illegal to share prescription drugs.

MR. SKIDMORE answered yes.

REPRESENTATIVE ALLARD asked Mr. Skidmore to provide a scenario in which it was okay to share prescription drugs.

MR. SKIDMORE said he could not.

REPRESENTATIVE ALLARD asked whether the mom who shared prescription drugs in the aforementioned scenario posed by Representative Gray would be treated differently under the law.

MR. SKIDMORE confirmed that the behavior was illegal; however, he said it was not the type of conduct that prosecutors were interested in. He suggested that although ill-advised, sharing prescriptions between family members was common behavior. He reported that he had yet to see such a case be charged in his 25 years as a prosecutor.

REPRESENTATIVE EASTMAN attempted to clarify whether the intent of the bill is to strengthen the penalty for current illegal conduct or make it easier for prosecutors to prosecute.

MR. SKIDMORE conveyed that the intent was to increase sentencing.

2:42:00 PM

REPRESENTATIVE EASTMAN asked whether the "or" on page 2, line 11 is in the correct place, or whether it should be moved to line 19 [on page 2].

MR. SKIDMORE acknowledged the drafting error. He confirmed that the "or" in question should be moved to the end of the paragraph on page 2, line 19.

REPRESENTATIVE EASTMAN asked for the definition of "delivers."

MR. SKIDMORE described "to deliver" by its common meaning, "giving to someone else."

REPRESENTATIVE EASTMAN asked whether the drug dealer is the intended target or any/all persons who delivered the drug.

MR. SKIDMORE answered both.

REPRESENTATIVE EASTMAN remarked, "And so, there's not necessarily any particular intent when you make that delivery that the person you're delivering it to is going to be the one ingesting it."

MR. SKIDMORE responded, "That's correct."

REPRESENTATIVE EASTMAN considered a hypothetical example in which a postal worker delivered a package with a controlled substance in it. He asked whether that would fall under the definition of "deliver."

MR. SKIDMORE answered no, because the delivery must have an associated mens rea, meaning the person must have known that he/she was providing the controlled substance. For that reason, unless the postal worker knowingly delivered the controlled substance, he/she would have no criminal culpability.

REPRESENTATIVE EASTMAN sought to differentiate between knowing what was in the package or knowing how it would be used.

MR. SKIDMORE stated that knowing what was in the package would establish the mens rea.

REPRESENTATIVE EASTMAN considered a scenario in which someone was practicing medicine without a license, and someone died as a

result. He asked whether that person would be prosecuted for practicing medicine without a license or prosecuted for murder.

MR. SKIDMORE presumed that in the hypothetical, the person practicing medicine delivered a controlled substance and the controlled substance caused the death. He confirmed that the person delivering the controlled substance could be held accountable, as he/she would not be protected without a valid license.

REPRESENTATIVE EASTMAN asked whether the physician who was practicing without a license would be prosecuted for murder under the current law, or whether HB 66 would change that.

MR. SKIDMORE said the physician would be prosecuted for manslaughter under current law; however, if HB 66 were to pass, that person would be prosecuted for second degree murder.

REPRESENTATIVE EASTMAN asked whether a group of friends who passed a controlled substance from one to another would all be legally liable for murder in the second degree if the person on the receiving end were to die as result of ingestion.

MR. SKIDMORE said yes, they could be charged if the mens rea was established for each friend in the chain of delivery.

[2:49:15 PM](#)

REPRESENTATIVE CARPENTER emphasized the seriousness of the fentanyl crisis. He remarked, "whether the person dies of ingestion or dies because they crossed the center line and killed somebody head on, why are we focusing on consumption?"

MR. SKIDMORE briefly discussed the term "proximate cause." In response to the hypothetical, he speculated that the person who provided the controlled substance would not be charged with murder, as the ingestion was not the cause of death. He explained that the drug would need to be a substantial factor in bringing about the cause of death.

REPRESENTATIVE CARPENTER considered the scenario of a "drug deal gone bad," during which a person died as a result of gun fire. He opined that state laws should be structured such that the person responsible for manufacturing the drug should also be held responsible, despite not being at the scene of the crime.

MR. SKIDMORE said a "drug deal gone bad" would be prosecuted as murder in the second degree. He cited AS 11.41.110(a)(3), which read as follows [original punctuation provided]:

(3) under circumstances not amounting to murder in the first degree under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010(a), 11.71.021(a), 11.71.030(a)(2) or (9), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants;

MR. SKIDMORE added that if the person in the hypothetical scenario was both the drug dealer and the person who engaged in the shooting, he/she could be charged with distribution and felony murder.

REPRESENTATIVE CARPENTER clarified his query. He said he was suggesting that the supplier or manufacturer of the drug should also be held accountable.

MR. SKIDMORE clarified that Representative Carpenter was referring to a Racketeer Influenced and Corrupt Organizations Act (RICO) case, which was a conspiracy charge used by the federal government to hold everyone involved responsible.

REPRESENTATIVE CARPENTER shared his understanding that if a person died from ingesting a controlled substance, the bill would address the chain of custody from the delivery up to the manufacturer; however, under the "drug deal gone bad" scenario in which someone was shot, the manufacturer would not be charged. He sought to differentiate between the two scenarios.

MR. SKIDMORE confirmed that with a felony murder charge, only those present could be charged.

REPRESENTATIVE CARPENTER asked why a felony murder charge [involving a "drug deal gone bad"] could only go after those present if the goal was to get fentanyl off the streets.

MR. SKIDMORE reiterated that the elements of a felony murder charge required focus on the people who were present for the crime, whereas manslaughter [or murder in the second degree if HB 66 were to pass] was associated with delivery that resulted in ingestion. He added that because the two crimes involved different elements, different analyses were applied to each.

[2:59:11 PM](#)

CHAIR VANCE announced that HB 66 would be held over.

[2:59:50 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:59 p.m.