

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 6, 2023

1:30 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

OTHER LEGISLATORS PRESENT

Representative Justin Ruffridge

COMMITTEE CALENDAR

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

HOUSE BILL NO. 82

"An Act relating to the selection, retention, and rejection of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; and relating to the duties of the Commission on Judicial Conduct."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
02/27/23 (H) Heard & Held
02/27/23 (H) MINUTE (JUD)
03/01/23 (H) JUD AT 1:00 PM GRUENBERG 120
03/01/23 (H) Heard & Held
03/01/23 (H) MINUTE (JUD)
03/03/23 (H) JUD AT 1:00 PM GRUENBERG 120
03/03/23 (H) Heard & Held
03/03/23 (H) MINUTE (JUD)
03/06/23 (H) JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

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

POSITION STATEMENT: Answered questions during the hearing on HB 66, on behalf of the House Rules Standing Committee, sponsor by request of the governor.

ACTION NARRATIVE

[1:30:55 PM](#)

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 1:30 p.m. Representatives Carpenter, C. Johnson, Gray, Groh, Eastman, Allard, and Vance were present at the call to order.

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

[1:32:26 PM](#)

CHAIR VANCE announced that the first 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."

[1:33:02 PM](#)

REPRESENTATIVE C. JOHNSON moved to adopt Amendment 1 to HB 66, labeled 33-GH1482\A.2, Radford, 2/25/23, which read:

Page 1, line 1, following "**substances**":

Insert "relating to misconduct involving a controlled substance in the first degree;"

Page 2, following line 25:

Insert new bill sections to read:

"* **Sec. 2.** AS 11.71.010(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the first degree if the person

(1) delivers any amount of a schedule IA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance;

(2) delivers any amount of a schedule IIA or IIIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; [OR]

(3) engages in a continuing criminal enterprise; or

(4) delivers any amount of a schedule IA, IIA, or IIIA controlled substance to a person who is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a controlled substance is being delivered.

* **Sec. 3.** AS 11.71.010(b) is amended to read:

(b) For purposes of this section,

(1) a person is engaged in a "continuing criminal enterprise" if

(A) [(1)] the person commits a violation of this chapter which is punishable as a felony; and

(B) [(2)] that violation is a part of a continuing series of five or more violations of this chapter

(i) [(A)] which the person undertakes in concert with at least five other persons organized, supervised, or otherwise managed by the person; and

(ii) [(B)] from which the person obtains substantial income or resources;

(2) "incapacitated" has the meaning given in AS 11.41.470;

(3) "mentally incapable" has the meaning given in AS 11.41.470."

Renumber the following bill sections accordingly.

Page 3, line 16, following "Act,":

Insert "AS 11.71.010(a), as amended by sec. 2 of this Act, AS 11.71.010(b), as amended by sec. 3 of this Act,"

Page 3, line 17:

Delete "sec. 2"

Insert "sec. 4"

REPRESENTATIVE EASTMAN objected.

[1:33:12 PM](#)

REPRESENTATIVE GRAY moved to adopt [Conceptual Amendment 1] to Amendment 1 to HB 66, labeled 33-GH1482\A.7, Radford, 3/6/23, which read:

Page 1, line 1, following "**substances;**":

Insert "**relating to misconduct involving a controlled substance in the first degree;**"

Page 2, following line 25:

Insert new bill sections to read:

*** Sec. 2.** AS 11.71.010(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the first degree if the person

(1) delivers any amount of a schedule IA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance;

(2) delivers any amount of a schedule IIA or IIIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; [OR]

(3) engages in a continuing criminal enterprise; or

(4) delivers any amount of 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, unless the person delivering the substance is acting in the scope of the person's duties as a licensed medical professional, caregiver, or guardian of the person.

*** Sec. 3.** AS 11.71.010(b) is amended to read:

(b) For purposes of this section,

(1) a person is engaged in a "continuing criminal enterprise" if

(A) [(1)] the person commits a violation of this chapter which is punishable as a felony; and

(B) [(2)] that violation is a part of a continuing series of five or more violations of this chapter

(i) [(A)] which the person undertakes in concert with at least five other persons organized, supervised, or otherwise managed by the person; and

(ii) [(B)] from which the person obtains substantial income or resources;

(2) "incapacitated" has the meaning given in AS 11.41.470;

(3) "mentally incapable" has the meaning given in AS 11.41.470."

Renumber the following bill sections accordingly.

Page 3, line 16, following "Act,":

Insert "AS 11.71.010(a), as amended by sec. 2 of this Act, AS 11.71.010(b), as amended by sec. 3 of this Act,"

Page 3, line 17:

Delete "sec. 2"

Insert "sec. 4"

REPRESENTATIVE CARPENTER objected.

[1:33:30 PM](#)

The committee took a brief at-ease.

[1:34:39 PM](#)

REPRESENTATIVE GRAY stated that Conceptual Amendment 1 to Amendment 1 would add schedule IVA controlled substances to page 1, line 17, of Amendment 1. Additionally, it would add the following: "unless the person delivering the substance is acting in the scope of the person's duties as a licensed medical professional, caregiver, or guardian of the person." The purpose of the proposed amendment, he said, was to protect medical personnel, caregivers, and guardians from being charged with second degree murder if the delivery of a controlled substance resulted in death.

[1:35:55 PM](#)

REPRESENTATIVE ALLARD asked Mr. Skidmore to speak to the inclusion of schedule IVA controlled substances, also referred to as "date rape" drugs, as proposed in Conceptual Amendment 1 to Amendment 1.

[1:36:48 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law (DOL), on behalf of the House Rules Standing Committee, sponsor by request of the governor, provided a summary of the underlying amendment before addressing the question posed by Representative Allard. He explained that Amendment 1 sought to add a new subsection to AS 11.71.010 [misconduct involving a controlled substance in the first degree], which would elevate the criminal conduct of delivering a schedule IA, IIA, or IIIA controlled substance to a person who is mentally incapable; incapacitated; or unaware that a controlled substance is being delivered from a class A felony to an unclassified felony. He continued to explain that in addition to the inclusion of schedule IVA drugs, Conceptual Amendment 1 to Amendment 1 would exclude licensed medical professionals, caregivers, or guardians. He directed attention to page 1, line 8, of Amendment 1, which referenced an exception for individuals authorized under AS 17.30. He conveyed that AS 17.30 authorized medical professionals to possess, prescribe, dispense, and administer controlled substances to patients. For that reason, he believed that the added language regarding the scope of duties for licenses professionals, caregivers, or guardians [lines 19-21 of] Conceptual Amendment 1 to Amendment 1 was superfluous. He noted that "caregiver" was not specifically defined in Alaska Statutes, adding that nothing in statute expressly addressed the issue of parents providing a prescribed controlled substance to a child, for example. He opined that the lack of a definition for "caregiver" and "guardian" presented a difficulty if the proposed amendment to the amendment were adopted.

[1:45:09 PM](#)

REPRESENTATIVE CARPENTER asked whether caregivers or guardians must obtain a Drug Enforcement Administration (DEA) license to prescribe drugs.

MR. SKIDMORE clarified that the DEA only licensed medical professionals who had received educational training to prescribe controlled substances. He indicated that the DEA would not grant licenses to caregivers or guardians.

REPRESENTATIVE CARPENTER inquired about the impact of excluding caregivers and guardians.

MR. SKIDMORE explained that if Conceptual Amendment 1 to Amendment 1 were to pass, caregivers or guardians - both of which were undefined in statute - could not be prosecuted under AS 11.71.101(a)(4) for providing schedule IA through IVA controlled substances to a person who was mentally incapable, incapacitated, or unaware.

REPRESENTATIVE CARPENTER asked Representative Gray, the maker of the amendment, to speak to the purpose of the language in question.

[1:47:21 PM](#)

REPRESENTATIVE GRAY expressed concern that the provision [paragraph (4)] in Amendment 1 could be used against a family member administering pain medication to an individual on hospice care. He presented a hypothetical scenario.

[1:48:15 PM](#)

REPRESENTATIVE ALLARD asked whether a caregiver was legally allowed to provide morphine to a spouse suffering from a life-ending disease.

MR. SKIDMORE answered no, Alaska Statutes did not authorize a caregiver or guardian to provide a controlled substance to someone else. He referenced AS 17.30.080, which allowed a person to administer drugs when properly licensed.

CHAIR VANCE asked whether Conceptual Amendment 1 to Amendment 1 was considered a friendly amendment.

[1:49:33 PM](#)

REPRESENTATIVE C. JOHNSON asked Mr. Skidmore to opine on the addition of schedule IVA controlled substances to page 1, line 17, of Amendment 1.

MR. SKIDMORE said it would not create any drafting issues. He agreed with Representative Gray that schedule IVA drugs could potentially be used for sexual assault.

REPRESENTATIVE EASTMAN asked whether Mr. Skidmore had ever prosecuted a case in which a person was poisoned to the point of death after receiving a date rape drug.

MR. SKIDMORE answered no.

REPRESENTATIVE C. JOHNSON said he considered Conceptual Amendment 1 to Amendment 1 "partially friendly." He expressed concern about the exception for caregivers and guardians without a corresponding definition in statute.

[1:50:55 PM](#)

REPRESENTATIVE CARPENTER suggested "dividing the question," indicating his desire to divide Conceptual Amendment 1 to Amendment 1 into two separate parts: firstly, the addition of schedule IVA controlled substances; secondly, the exception for licensed medical professionals, caregivers, and guardians.

REPRESENTATIVE ALLARD asked whether the intent was to bifurcate Conceptual Amendment 1 to Amendment 1.

REPRESENTATIVE CARPENTER answered yes. He explained that the purpose was to vote separately on each issue.

CHAIR VANCE inquired about page 2 of Conceptual Amendment 1 to Amendment 1.

REPRESENTATIVE CARPENTER stated that page 2, lines 11-12 would be included in the first motion pertaining to the inclusion of IVA controlled substances.

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REPRESENTATIVE CARPENTER moved to bifurcate Conceptual Amendment 1 to Amendment 1 to HB 66.

REPRESENTATIVE ALLARD objected.

REPRESENTATIVE CARPENTER noted that effectually, adopting the proposed motion would allow for the committee to add solely IVA controlled substances to Amendment 1 [page 1, line 17].

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The committee took a brief at-ease.

[1:55:36 PM](#)

REPRESENTATIVE EASTMAN pointed out that there were no instances of a person dying as a direct result of ingesting date rape drugs in Alaska. For that reason, he was uncomfortable with adding IVA controlled substances to the list, particularly as it related to date rape drugs, which generally did not result directly in murder.

CHAIR VANCE shared her understanding that schedule IVA drugs were only being added to the new subsection under AS 11.71.010 [misconduct involving a controlled substance in the first degree].

[1:58:11 PM](#)

REPRESENTATIVE GROH asked whether trazadone was listed under schedule IVA controlled substances.

MR. SKIDMORE did not know the answer.

REPRESENTATIVE GRAY shook his head in the negative.

[1:59:26 PM](#)

REPRESENTATIVE EASTMAN inquired about the classification of criminal behavior in [paragraph (4) of] Amendment 1 and how that would be impacted by the inclusion of IVA controlled substances.

MR. SKIDMORE answered, "It's misconduct involving a controlled substance in the third degree, and it would be moving to an unclassified [felony] for schedule IV[A]."

REPRESENTATIVE EASTMAN inquired about the existing designation.

MR. SKIDMORE said it was a class B felony that would be elevated to an unclassified felony for the delivery of drugs to a person that was mentally incapable, incapacitate.

[2:01:05 PM](#)

A roll call vote was taken. Representatives Carpenter, Johnson, Gray, Groh, Allard, and Vance voted in favor of the motion to adopt first portion of the bifurcated Conceptual Amendment 1 to Amendment 1 to HB 66. Representative Eastman voted against it. Therefore, part 1 of Amendment 1 to Amendment 1 was adopted by a vote of 6-1.

[2:01:49 PM](#)

A roll call vote was taken. Representatives Gray and Groh voted in favor of the motion to adopt second portion of the bifurcated Conceptual Amendment 1 to Amendment 1 to HB 66. Representatives Allard, Carpenter, C. Johnson, Eastman, and Vance voted against it. Therefore, part 2 of Amendment 1 failed by a vote of 2-5.

CHAIR VANCE resumed the discussion on Amendment 1, as amended.

[2:02:27 PM](#)

REPRESENTATIVE C. JOHNSON asked Mr. Skidmore to speak to Amendment 1, as amended.

MR. SKIDMORE reiterated that Amendment 1, as amended, would elevate the delivery of a schedule IA, IIA, IIIA, or IVA controlled substance to a person who is mentally incapable, incapacitated, or unaware, to an unclassified felony.

REPRESENTATIVE CARPENTER objected for the purpose of discussion.

[2:03:56 PM](#)

REPRESENTATIVE EASTMAN said, based on the definition of delivery, he was not prepared to add schedule IA through IVA controlled substances [to AS 11.71.010(a)(4)], which would amount to an unclassified felony. He further noted that in addition to murder in the first degree, an unclassified felony was the most severe charge in Alaska.

[2:04:58 PM](#)

REPRESENTATIVE GRAY expressed his interest in ensuring that Amendment 1 would not be used to punish parents, guardians, or caregivers, with an unclassified felony for administering medication to a loved one.

MR. SKIDMORE assured Representative Gray that in his 25 years as a prosecutor, he could not recall any instances of a loved one being prosecuted for a drug crime for administering medication.

REPRESENTATIVE EASTMAN asked whether assisted suicide was legal in Alaska.

MR. SKIDMORE did not know the answer.

REPRESENTATIVE EASTMAN asked Mr. Skidmore to provide additional clarity.

MR. SKIDMORE conveyed that he had not seen referrals for assisted suicide. He clarified that Amendment 1 pertained to the prosecution of an individual for delivering a controlled substance to another person. He emphasized that it was not concerning a delivery that resulted in death.

REPRESENTATIVE EASTMAN asked whether anything in Amendment 1 would preclude the state from prosecuting a case in which the delivery of controlled substances resulted in a death.

MR. SKIDMORE clarified that Representative Eastman was referring to the manslaughter provision in the underlying bill. He shared his belief that nothing in [the amendment] would preclude the state from prosecuting such a case; however, he offered to verify that there was no existing protection for assisted suicide somewhere in statute.

[2:08:21 PM](#)

REPRESENTATIVE CARPENTER referred to page 1, lines 19-21, of Amendment 1. He asked whether the inclusion of subparagraph (C), "unaware that a controlled substance is being delivered", suggested that someone who was mentally capable and not incapacitated could potentially be charged with an unclassified felony if he/she delivered a controlled substance.

MR. SKIDMORE explained that if the person delivering the package knew that it contained a controlled substance and handed it to someone who was unaware of its contents, he/she would be guilty of the crime outlined in Amendment 1.

REPRESENTATIVE CARPENTER sought to verify that the proposed amendment addressed the crime of misconduct involving a controlled substance in the first degree. He asked for confirmation that an individual who deliberately delivered a controlled substance to a person who was unaware that the package contained a controlled substance would be guilty of an unclassified felony should the proposed amendment be adopted.

MR. SKIDMORE answered yes.

[2:12:32 PM](#)

REPRESENTATIVE ALLARD inquired about a scenario in which the person making the delivery was unaware that the package contained a controlled substance, but the recipient was aware of its contents.

MR. SKIDMORE said the person receiving the drugs would not be guilty of delivering a controlled substance [the criminal behavior proposed in Amendment 1]; however, that individual could be guilty of possession. He continued to explain that if the person making the delivery was unaware that the package contained a controlled substance, no crime was being committed.

REPRESENTATIVE GRAY expressed his confusion as to the meaning of "delivers." He shared his understanding that the intent of Amendment 1, as amended, was to capture the conduct of putting drugs into another person's drink.

[2:14:54 PM](#)

REPRESENTATIVE CARPENTER removed his objection to the motion to adopt Amendment 1, as amended.

REPRESENTATIVE EASTMAN objected. He [moved to adopt Conceptual Amendment 2 to Amendment 1, as amended, to HB 66], such that "delivers" on page 1, line 17, would be changed to "administers." He shared his belief that the provision should be limited in scope to the administration of a controlled substance into another person's body.

REPRESENTATIVE ALLARD objected. She asked Mr. Skidmore to explain the difference between the statutory definitions of "deliver" and "administer."

MR. SKIDMORE cited AS 11.71.900 and proceeded to read the following definitions:

(1) "administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means into the body of a patient or research subject by

(A) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(B) the patient or research subject at the direction and in the presence of a practitioner;

MR. SKIDMORE opined that replacing "delivers" with "administers" would not get to the conduct that the maker of Amendment 1 had intended to address. He defined "deliver" as follows:

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

MR. SKIDMORE maintained his belief that "delivers" would more accurately capture the original intent of Amendment 1.

[2:18:21 PM](#)

REPRESENTATIVE EASTMAN withdrew [Conceptual Amendment 2 to Amendment 1, as amended]. He [moved to adopt Conceptual Amendment 3 to Amendment 1, as amended, to HB 66], such that "delivers" on page 1, line 17, would be changed to "causes a person to ingest."

REPRESENTATIVE CARPENTER objected for the purpose of discussion.

[2:18:47 PM](#)

REPRESENTATIVE ALLARD asked for the legal definition of "causing someone to ingest."

MR. SKIDMORE informed the committee that "ingest" was not defined in Alaska Statutes. He surmised that "ingestion" referred to digestion through the mouth, which would not include injection or inhalation.

REPRESENTATIVE ALLARD asked for the definition of "causes."

MR. SKIDMORE explained that "causes" was a broader term subject to interpretation and the way in which it was argued during litigation.

[2:20:40 PM](#)

REPRESENTATIVE EASTMAN shared his understanding that that the definition of ingestion was included in the bill.

MR. SKIDMORE directed attention to page 2, line 24 of HB 66, which defined ingestion as "the voluntary or involuntary taking of a substance into the body in any manner." He indicated that based on the proposed definition, causing a person to ingest a

controlled substance would broadly cover a large range of conduct, including inhalation and injection.

CHAIR VANCE asked whether the proposed conceptual amendment was considered "friendly" by the maker of Amendment 1.

REPRESENTATIVE C. JOHNSON answered yes.

REPRESENTATIVE GRAY asked whether Conceptual Amendment [3] to Amendment 1 would change "delivered" to "ingested" on page 1, line 21, in addition to the change on line 17.

REPRESENTATIVE EASTMAN expressed his interest in granting drafters the authority to make conforming changes to allow for uniformity.

MR. SKIDMORE said he was cautious of drafting amendments on the fly. He pointed out that the description of "ingestion" on page 2, line 24, of HB 66, was preceded by the words "in this paragraph" meaning that the definition was applicable to the murder statutes, as opposed to the statutes for misconduct involving a controlled substance. He indicated that the language would need to be added to the appropriate section of statutes for applicability.

[2:24:39 PM](#)

REPRESENTATIVE EASTMAN suggested that he had phrased his motion such that Conceptual Amendment [3] to Amendment 1 would refer to the definition of ingestion already contained in HB 66.

REPRESENTATIVE ALLARD withdrew her objection to the motion to adopt Conceptual Amendment [3] to Amendment 1, as amended.

REPRESENTATIVE CARPENTER objected. He inquired about the implication of replacing "delivers" with "causes to ingest."

MR. SKIDMORE explained that the impact would not go beyond the new provision in paragraph (4) [Amendment 1, as amended], which expressly related to recipients who were mentally incapable, incapacitated, or unaware. He assured committee members that the conduct for delivering a schedule IA through IVA controlled substance was still criminalized in other sections of statute.

[2:27:57 PM](#)

REPRESENTATIVE CARPENTER directed attention to subsection (a), paragraph (1), starting on page 1, line 10, of Amendment 1. He asked whether the age factor - specifically a person under 19 years of age - was applicable to paragraph (4).

MR. SKIDMORE stated that subsection (a)(1) was its own provision within AS 11.71.010; consequently, it had no influence over paragraph (4). However, he explained that if the recipient of the controlled substance was under the age of 19 and also mentally incapable or incapacitated, the offender could be charged with both provisions.

[2:29:57 PM](#)

REPRESENTATIVE EASTMAN summarized his understanding of the discussion thus far.

[2:31:50 PM](#)

The committee took a brief at-ease.

[2:33:09 PM](#)

REPRESENTATIVE ALLARD asked Mr. Skidmore to opine on the proposed conceptual amendment.

[2:33:33 PM](#)

MR. SKIDMORE reiterated that he preferred not to make changes quickly. He stated that he favored "deliver" over "ingest," as it was the verbiage used in case law and existing Alaska Statutes. He opined that "deliver" was the cleanest, clearest option.

[2:36:31 PM](#)

The committee took a brief at-ease.

[2:37:35 PM](#)

REPRESENTATIVE CARPENTER moved to table the discussion on HB 66 to allow for more time to reflect on the proposed changes.

[2:38:12 PM](#)

The committee took a brief at-ease.

[2:39:32 PM](#)

REPRESENTATIVE CARPENTER withdrew the motion to table HB 66. He maintained his objection to Conceptual Amendment 3 to Amendment 1, as amended.

[2:40:24 PM](#)

REPRESENTATIVE GROH requested that Conceptual Amendment [3] to Amendment 1, as amended, be restated.

[2:40:43 PM](#)

REPRESENTATIVE EASTMAN restated that the proposed amendment would change the word "delivers" on page 1, line 17, of Amendment 1, as amended, to "causes to be ingested". He added that for the purposes of paragraph (4), the definition of "ingestion" was defined on page 2, lines [24-25], of HB 66.

[2:41:51 PM](#)

A roll call vote was taken. Representatives Groh and Eastman voted in favor of the motion to adopt Conceptual Amendment [3] to Amendment 1, as amended, to HB 66. Representatives Allard, Carpenter, C. Johnson, Gray, and Vance voted against it. Therefore, Conceptual Amendment [3] to Amendment 1 failed by a vote of 2-5.

[2:42:41 PM](#)

A roll call vote was taken. Representatives Gray, Groh, Allard, Carpenter, C. Johnson, and Vance voted in favor of the motion to adopt Amendment 1, as amended, to HB 66. Representative Eastman voted against it. Therefore, Amendment 1, as amended, was adopted by a vote of 6-1.

[2:43:28 PM](#)

REPRESENTATIVE C. JOHNSON moved to adopt Amendment 2 to HB 66, labeled 33-GH1482\A.1, Radford, 2/21/23, which read:

Page 1, line 1, following "**substances**";:
Insert "**relating to sentencing**;"

Page 2, following line 25:
Insert a new bill section to read:
"* **Sec. 2.** AS 12.55.125(c) is amended to read:

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, four to seven years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS 11.71.021(a)(2)(A) or (B), seven to 11 years if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(C) and the conviction is for manufacturing or delivery related to fentanyl under AS 11.71.021(a)(1), seven to 11 years;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 to 20 years."

Renumber the following bill sections accordingly.

Page 3, line 16, following "Act,":

Insert "AS 12.55.125(c), as amended by sec. 2 of this Act,"

Page 3, line 17:

Delete "sec. 2"

Insert "sec. 3"

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

[2:43:39 PM](#)

REPRESENTATIVE C. JOHNSON stated that Amendment 2 would elevate the penalty for manufacturing or delivering fentanyl. He referred to Mr. Skidmore for further explanation.

[2:43:55 PM](#)

MR. SKIDMORE directed attention to page 2, lines 7-8, of Amendment 2. He confirmed that a person convicted of manufacturing or delivering fentanyl would be subject to a penalty of 7-11 years, as opposed to the existing penalty of 4-7 years.

CHAIR VANCE moved Conceptual Amendment [1] to Amendment 2, such that the word "fentanyl" would be deleted and replaced with "a schedule IA [controlled] substance."

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

REPRESENTATIVE VANCE explained that the intent of the conceptual amendment was to maintain consistency with the underlying bill language and avoid prescriptively referencing one specific drug.

[2:45:17 PM](#)

REPRESENTATIVE GRAY stated his support for Amendment 2, as drafted, because it would keep the scope limited to fentanyl, which was the original intent of the legislation.

REPRESENTATIVE EASTMAN expressed concern about the broad changes being made, such as the use of the word "delivery." He opined that [the scope] of the bill had been expanded past the initial intent, which was originally limited to fentanyl related deaths. He pointed out that oxycodone was a schedule IA drug and questioned the appropriateness of increasing the penalty for sharing such drugs.

[2:46:50 PM](#)

REPRESENTATIVE C. JOHNSON expressed his opposition to [Conceptual Amendment 1] to Amendment 2. He maintained that the focus should specifically remain on fentanyl.

CHAIR VANCE withdrew Conceptual Amendment 1 to Amendment 2. She returned the discussion to Amendment 2.

[2:48:21 PM](#)

REPRESENTATIVE EASTMAN inquired about the phrase "related to fentanyl" on page 2, line 8, of Amendment 2, characterizing the verbiage as ambiguous.

MR. SKIDMORE perceived the provision to be referring to fentanyl; however, he did not know why the drafter chose the words "related to."

[2:50:11 PM](#)

REPRESENTATIVE EASTMAN asked whether there would be a legal difference between "for manufacturing or delivery related to fentanyl" and "for manufacturing or delivery of fentanyl."

MR. SKIDMORE said, personally, he would read them the same.

[2:50:42 PM](#)

REPRESENTATIVE EASTMAN [moved to adopt Conceptual Amendment 2 to Amendment 2 to HB 66], such that "related to fentanyl" on page 2, line 8, would be deleted and replaced with "of fentanyl".

REPRESENTATIVE ALLARD objected. She considered a scenario in which marijuana was laced with fentanyl and asked whether that would be considered "fentanyl related."

MR. SKIDMORE answered yes.

REPRESENTATIVE ALLARD asked how that scenario would be prosecuted.

MR. SKIDMORE explained that the prosecutor would need to prove that the offender knew the marijuana was laced with fentanyl.

REPRESENTATIVE ALLARD inquired about the impact of Conceptual Amendment 2 to Amendment 2. She asked whether deleting "related to" would affect existing statutes.

MR. SKIDMORE shared his understanding that there would be no substantive impact.

REPRESENTATIVE ALLARD said, "Basically, what I just heard you say is that the amendment is not needed."

[2:53:43 PM](#)

REPRESENTATIVE EASTMAN discussed the importance of avoiding vagueness in statute. He opined that the proposed conceptual amendment would remove some of the ambiguity and vagueness, and ultimately help the prosecution.

[2:54:13 PM](#)

REPRESENTATIVE ALLARD maintained her objection.

[2:54:23 PM](#)

A roll call vote was taken. Representatives Eastman, Gray, and Groh voted in favor of the motion to adopt Conceptual Amendment 2 to Amendment 2 to HB 66. Representatives Allard, Carpenter, C. Johnson, and Vance voted against it. Therefore, Conceptual Amendment 2 to Amendment 2 failed by a vote of 3-4.

[2:55:21 PM](#)

A roll call vote was taken. Representatives C. Johnson, Gray, Groh, Allard, Carpenter, and Vance voted in favor of the motion to adopt Amendment 2 to HB 66. Representative Eastman voted against it. Therefore, Amendment 2 was adopted by a vote of 6-1.

CHAIR VANCE announced that HB 66 would be held over.

[2:56:47 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:56 p.m.