

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 22, 2023

1:48 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Löki Tobin

MEMBERS ABSENT

Senator Cathy Giessel

COMMITTEE CALENDAR

PRESENTATION(S) : ALASKA COURT RULES AND GRAND JURY OVERVIEW

- HEARD

SENATE BILL NO. 64

"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

SENATE BILL NO. 53

"An Act relating to involuntary civil commitments."

- BILL HEARING CANCELED

SENATE BILL NO. 37

"An Act relating to involuntary civil commitments."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 64

SHORT TITLE: CONTROLLED SUB.;HOMICIDE;GOOD TIME DEDUC.

SPONSOR(S) : RULES BY REQUEST OF THE GOVERNOR

02/08/23 (S) READ THE FIRST TIME - REFERRALS

02/08/23 (S) JUD, FIN
03/22/23 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the Alaska Court Rules and Grand Jury Overview.

JOHN SKIDMORE, Deputy Attorney General
Office of the Attorney General
Criminal Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Introduced SB 64 and responded to questions about the Alaska Rules and Grand Jury Overview.

SANDY SNODGRASS, Chief Executive Officer
AK Fentanyl Response Project
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 64.

KAREN MALCOLM-SMITH, Founder
The David Dylan Foundation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 64.

STACY EISERT, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 64.

JULIE BOUCHARD, representing self
Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 64.

ACTION NARRATIVE

[1:48:40 PM](#)

CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:48 p.m. Present at the call to order were Senators Kaufman, Tobin, Kiehl and Chair Claman.

PRESENTATION(S): ALASKA COURT RULES AND GRAND JURY OVERVIEW

[1:49:23 PM](#)

CHAIR CLAMAN announced the overview of the Alaska Court Rules and Grand Jury.

[1:49:48 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, Alaska, provided a summary of the grand jury process and functions. She relayed that she planned to speak about a recent court rule change related to grand jury functions. She offered to answer questions related to the grand jury process.

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MS. MEADE informed the committee that a grand jury is comprised of 12-18 citizens empowered by law to consider evidence presented by a prosecutor. The grand jury decides whether to issue a true bill of indictment or a "not true bill," when the evidence presented is not substantial enough to charge the defendant. She explained that the grand jury is a legal proceeding used to ensure that the state has probable cause to believe that a crime was committed by the defendant. She remarked that a grand jury serves for an established time and hears felony charges only. The grand jury process continues until the prosecutor concludes the case presentations.

MS. MEADE explained that the grand jury presents a list of indictments and decisions following the prosecutor's presentation. A judge then accepts the grand jury's list and recommendations. A grand jury might hear multiple cases per sitting. She added that the grand jury proceedings are private. The secrecy of the proceedings protects the target, protects the grand jurors, and prevents the target from interfering in the proceedings. The secrecy also allows witnesses to provide full and frank disclosure of the facts without fear.

MS. MEADE stated that a grand jury proceeding houses 12-18 jurors: the prosecutor presenting the evidence, witnesses called by the prosecutor, and a court clerk recording the hearing. Witnesses are not allowed to bring an attorney. The evidence is presented by the prosecutor alone and the defense is unable to rebut the evidence. The grand jury proceeding is a preliminary step to ensure that the state has probable cause to continue a felony case.

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MS. MEADE explained that the Alaska Constitution, Article 1, Section 8 states that "the power of grand juries to investigate

and provide recommendations concerning the public welfare or safety should never be suspended." This power led to the recent court rule changes. She remarked that the constitutional right was exercised rarely in the past. She cited the history of grand jury investigations in 1985 related to Governor Sheffield and irregularities found with awarding a contract. She furthered that an investigative grand jury was convened by the attorney general resulting in a report recommending impeachment proceedings against Governor Sheffield.

MS. MEADE continued that the next investigative grand jury was summoned in 1990 when the attorney general submitted a case concerning a teacher in the Anchorage School District who was allegedly having inappropriate relationships with students. The police department was involved in the investigation. She recalled that litigation termed the O'Leary case alleged that the power of the grand jury to investigate should be completely unfettered. The court disagreed with the analysis and recommended continued constraints.

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MS. MEADE elaborated that the next grand jury investigation in Alaska occurred in 2015. She mentioned that a legislator wished to have a grand jury assess the Office of Children's Services (OCS) for perceived irregularities. The request was brought to the attorney general's office and presented to an investigative grand jury. The final report concluded that the issue was better addressed by the Office of the Ombudsman within the legislative branch.

MS. MEADE continued to provide a history of investigative grand juries in Alaska. She noted that in 2022, there were three different requests brought to the court's attention by citizens requesting an investigative grand jury. She explained that the court system lacked adequate procedures to honor the requests consistently across the districts. The three different requests came to the attention of three different judges in three different courts. The issue came to the attention of the Alaska Supreme Court, which has the constitutional power to make rules of practice and procedure.

MS. MEADE discussed the Alaska Supreme Court rules of court including criminal, minor offense, civil and probate rules. She reminded the committee that Article 4, Section 15 states that the Alaska Supreme Court shall adopt these rules. Before 2022, concerned citizens approached the attorney general's office to request an investigative grand jury. She stated that the Alaska

Supreme Court determined that it required recommendations to approach the issue and a group was commissioned to develop the recommendations. She added that the recommendations were considered by the Alaska Supreme Court, which led to the adoption of change to Criminal Rules 6 and 6.1. She stated that Criminal Rule 6 relates to indictments in a criminal case through the grand jury process. The rule addresses issues such as how a grand jury is summoned, how a foreperson is chosen, and where they will meet. In addition, the court adopted explicit changes related to summoning an investigative grand jury.

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MS. MEADE referred to "In the Supreme Court of the State of Alaska Order No. 1993." She pointed out changes on page 2 to Criminal Rule 6.1. The Alaska Supreme Court provided rules about public welfare and safety matters that lead to a grand jury investigation. She added that subsection (b) on page 4 addresses a grand juror requesting an investigation related to public welfare and safety. She cited a statute stating that a seated grand juror can bring up issues to fellow grand jurors related to investigations.

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MS. MEADE moved to page 5 of the order related to citizens requesting an investigative grand jury. She noted no gap in past procedures because citizens routinely approached the district attorney for investigative grand juries. To provide consistency and clarity, the Alaska Supreme Court developed the updated court rules. The new rules allow a citizen to direct their concern to the attorney general's office where the issue is reviewed for a grand jury proceeding and possibly an investigation.

MS. MEADE noted criticism and comments from people seeking a citizen-led grand jury. The concerned citizens fear that the new court rule suspends or curbs constitutional rights. She clarified that the court rule effectuates constitutional and statutory rights by clearly ensuring that people understand how to proceed when seeking an investigative grand jury. She added that the prosecutor brings criminal cases to the grand jury. The court rule ensures that the grand jury considers admissible evidence and is led formally down a path toward an investigation.

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SENATOR KAUFMAN asked about the reason for the differing opinions related to summoning a grand jury investigation.

MS. MEADE replied that three people requested investigative grand juries in three different areas of the state. One person requested that the grand jury investigate problems with the judicial system. She mentioned an allegation of corruption permeating different legal entities. She sensed that the person found it improper for the Alaska Supreme Court to adopt a rule that would guide a person to the attorney general's office. She noted that the court rule has provisions for a conflict of interest with the attorney general's office. She stated that the rule ensures that the attorney general can appoint a neutral prosecutor to lead the investigation. She added that a person on the grand jury who believed there was a continued conflict of interest without appropriate prosecution could bring the issue to the judge's attention.

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CHAIR CLAMAN asked about the process used when the Alaska Supreme Court adopts new criminal rules.

MS. MEADE replied that the Alaska Supreme Court receives recommendations for rule changes from a rules committee. Alaska has eight standing rules committees with members appointed by the Alaska Supreme Court. She explained that the Criminal Rules Committee and Civil Rules Committee consider proposals and make recommendations to the Alaska Supreme Court. She added that the Alaska Supreme Court also has the authority, when necessary, to adopt rules in another manner. After adopting the rule changes, the court may ask the rules committees for additional analysis.

CHAIR CLAMAN asked how the Criminal Rules Committee is populated.

MS. MEADE responded that the Criminal Rules Committee is comprised of thirteen members, including five judges, and four people with a prosecutorial outlook. She furthered that four defense attorneys, two private defense lawyers, and an attorney from the Office of Public Advocacy (OPA) complete the committee makeup. She noted that the Alaska Supreme Court appoints a balanced committee to allow a full airing of the issues.

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SENATOR KIEHL asked for additional information about an investigative grand jury.

MS. MEADE suggested that the query was best suited for the Department of Law. She noted that the rule change leaves the

conduct of the grand jury to the attorney general's office. She noted that some aspects of grand jury selection are left in the hands of the Department of Law. She admitted her lack of knowledge about the investigative grand jury selection.

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SENATOR KIEHL reported that some Alaska delegates struggled with understanding the differences between traditional and investigative grand juries. He requested further help understanding how investigations are summoned by a person sitting on a grand jury.

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MS. MEADE noted that in 1959 grand juries met about once a year. She stated that a person can waive a grand jury, but currently few do. She referred to the Alaska Supreme Court order, 1993, beginning on page 4, new rule 6.1(b), "grand juror request to investigate a manner of public welfare or safety." She quoted, "An individual grand juror may propose to the prosecuting attorney that the grand jury investigate a matter concerning the public welfare or safety."

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MS. MEADE explained that shortly after the effective date of the new court rule, the Alaska Supreme Court reconsidered one change. She noted that the original change stated that "the same grand jury who investigates should not thereafter be the same individuals who consider the possibility of an indictment." Upon reconsideration, the Alaska Supreme Court reviewed minutes from the Alaska Constitutional Convention leading them to remove the restriction. The prosecutor is no longer prohibited from both investigating and indicting with the same sets of facts. The change she referred to was titled the "Alaska Supreme Court Order 2000, effective February 6, 2023."

CHAIR CLAMAN welcomed Mr. Skidmore to contribute to the overview of grand juries and court rules.

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JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, echoed and agreed with Ms. Meade's comments. He offered to answer the query about the differences between investigative and other sitting grand juries. He noted that the primary function of the grand jury is to screen cases and decide whether a person ought to be tried for a felony charge. An investigative grand jury can address criminal matters and is similar to a

federal grand jury. The grand jury process can be used as an investigative function in cases where it is cumbersome for police to investigate a case. A grand jury subpoena need not be based on probable cause, while a police department seeking records, must have a search warrant to obtain them.

MR. SKIDMORE continued that grand juries serve subpoena authority, involve citizen participation, and grant immunity to certain witnesses via closed proceedings. He highlighted the grand jury's secrecy requirements. Investigative grand juries are generally considered for racketeering or drug operation cases. He stated that the grand jury process can be powerful, however, investigative grand juries typically address public welfare or safety as opposed to criminal matters. Grand juries were traditionally convened once a year to consider state issues of citizen concern.

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CHAIR CLAMAN understood that federal investigative grand juries outnumber state investigative grand juries. He asked if the federal power for investigative grand juries was different than the state's power.

MR. SKIDMORE responded that the State of Alaska can conduct an investigatory grand jury to charge a crime, but cases of that nature are rare. He noted the different types of conduct a state assesses versus a federal grand jury. He explained that the Alaska State Ombudsman was enacted by law in 1975. The ombudsman office now receives complaints related to the state government. He shared the ombudsman statute, AS 24.55.010-340, that enables the investigation of issues and when appropriate, refers cases to a grand jury. He added that the ombudsman adopted some of the prior grand jury investigations related to public welfare or safety within the state. He stated an example of a recent grand jury investigation involving OCS that was resolved with a referral to the ombudsman's office. He noted that the rule change was designed for citizens requesting a grand jury proceeding. He clarified that a neutral prosecutor might be a member of the Department of Law through the Office of Special Prosecutions. He acknowledged that some cases are best served by an attorney appointed from outside the department.

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MR. SKIDMORE offered to respond to further questions about the grand jury process or new court rules.

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SENATOR KIEHL asked Mr. Skidmore about a comment originating from the Alaska Supreme Court stating that decisions about what to present to the grand jury rest with the executive branch.

MR. SKIDMORE replied that the grand jury is a function of two branches of government that must cooperate; these are the judicial and executive branches. The judicial branch is the entity that can summon a grand jury and review decisions to determine whether they follow the law. The presentations of evidence by the grand jury occur via the executive branch. He believed that the Alaska Supreme Court adopted the rule to indicate that the executive branch would review the issue first to determine whether the public welfare or safety threshold is met. The executive branch intends to bring any case that meets the threshold of public welfare or safety to a grand jury. He added that grand juries are recognized to be costly and cumbersome but can offer citizens protection.

SENATOR KIEHL stated that he was grappling with the requirement that the executive branch serves as a precursor for invoking a grand jury.

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MS. MEADE explained that all grand jury proceedings require a legal advisor in the room, and that is always the prosecuting attorney. The commentary related to the executive branch is pinned on AS 12.40.070, which states that the prosecutor must bring everything to a grand jury. She cited Criminal Rule 6(i) "The prosecuting attorney shall prepare all indictments and presentments to the grand jury, shall attend its sittings to advise it of its duty and to examine witnesses in its proceedings."

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SENATOR KIEHL discussed the Alaska Constitutional Convention delegates' concern with runaway grand juries. He appreciated the description of the rules of evidence. He struggled with the constitutional provision stating that the power of the grand jury should never be suspended.

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MS. MEADE agreed that the Alaska Constitution is worded uniquely to clarify the rights of the citizens. The statement that the power of the grand jury will not be suspended is further evidence that citizens are not afforded a direct right to confront a grand jury, but grand juries themselves can determine whether to move forward with an investigation. She mentioned

runaway grand juries in other jurisdictions that did not utilize investigative grand juries. She noted that the court rule change does not suspend the power of the grand jury.

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MR. SKIDMORE agreed with Ms. Meade's comments. He understood that the power should never be taken from the grand jury. He added that the court rules indicate how the power of the grand jury should be exercised. He noted that the amendments create a clear path for grand jury functions. He agreed that most other rights articulated in the Constitutional Convention minutes were those of the citizens. A grand jury is not an individual citizen's right, but a power of the body itself. He highlighted significant case law addressing individuals who approached grand juries in an attempt to influence the operation.

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CHAIR CLAMAN commented that the language "shall not be suspended" held for the recent Covid-19 pandemic closures.

MR. SKIDMORE responded that the grand jury did continue to function during the pandemic.

SENATOR KIEHL noted that the Alaskans reacting negatively to the court rule are concerned that the gatekeeper rule has become a bar to entry. The gatekeeper has become a suspension of the grand jury's power of inviting new cases.

CHAIR CLAMAN thanked the presenters.

SB 64-CONTROLLED SUB.;HOMICIDE;GOOD TIME DEDUC.

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CHAIR CLAMAN announced the consideration of SENATE BILL NO. 64 "An Act relating to homicide resulting from conduct involving controlled substances; relating to the computation of good time; and providing for an effective date."

[2:39:26 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, introduced SB 64 on behalf of the administration. He remarked that the annual number of deaths from drug overdose had increased substantially in Alaska. This requires a response, and SB 64 provides one piece of the proposed response. He explained that the provision in question relates to the crime of manslaughter. If a person knowingly manufactures or delivers a

controlled substance in violation of other state laws and a person dies as the direct result of the ingestion of that controlled substance, the crime is classified as manslaughter, which is a Class A felony offense. Manslaughter has a presumptive range of four to seven years for a first-time offender and a maximum of twenty years.

MR. SKIDMORE explained that the bill would move the provision of manslaughter to murder in the second degree. The bill lifts the provision because of the dramatic increase in drug overdose deaths. He noted that the increase in deaths is driven by fentanyl and methamphetamine poisoning.

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MR. SKIDMORE pointed to a document in the bill packets titled, "Alaska Department of Health 2021 Drug Overdose Mortality Update." He moved to the graph on page 5, "Overdose Death Rates by Drug (2012-2021)." He quoted the language on page 6, "of the drugs evaluated in the report, the largest increases were seen in overdose deaths involving fentanyl (a synthetic opioid) and methamphetamine (a psychostimulant), increasing 150 percent and 148 percent, respectively." He added that the ability to prosecute overdose death cases is limited. The court must prove that the drugs supplied were a direct cause of death for the person involved. The drugs must be traced back to the individual who provided them. The bill attempts to authorize a greater penalty associated with engaging in the conduct.

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CHAIR CLAMAN moved to invited testimony.

[2:45:21 PM](#)

SANDY SNODGRASS, CEO, AK Fentanyl Response Project, Anchorage, Alaska, testified by invitation in support of SB 64. She reported that her son, Robert Bruce Snodgrass, died from fentanyl poisoning in Anchorage on October 21, 2021. Since viewing the toxicology report following her son's death, she has worked in various capacities to create a response to the fentanyl epidemic. She utilizes prevention and outreach efforts and SB 64 addresses public safety. She expressed hope that the legislature will consider moving the bill along to protect Alaska's children. She opined that SB 64 could be used by prosecutors to negotiate with lower-level drug dealers. She seeks the prosecution of drug trafficking organizations that are targeting Alaskans because of the inflated prices of illicit drugs in rural areas. She mentioned a newer drug known as

xylazine that is gaining momentum as another dangerous substance and is often paired with fentanyl.

CHAIR CLAMAN expressed condolences for the death of her son.

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SENATOR KAUFMAN referred to an earlier conversation with Ms. Snodgrass where she compared drug overdose deaths to aircraft crashes. He asked her to share the comparison with the other committee members.

MS. SNODGRASS offered the estimate that 300 Americans die from drug-related overdoses every day in the United States. She pointed out that 300 people can travel on a jumbo jet therefore the daily deaths were analogous to a daily plane crash. She presumed that the country would cease all flying operations if a jet crashed, killing 300 people every day. She acknowledged the lack of response to the increase in drug overdose deaths and fentanyl poisoning.

SENATOR KAUFMAN offered to connect Ms. Snodgrass with community councils and other community meetings. He asked how the legislature might otherwise signal the issue in Alaska.

MS. SNODGRASS reminded the committee about her grassroots efforts through the AK Fentanyl Response Project, a community-based organization used to educate Alaskans about fentanyl poisoning. She noted that her organization works closely with the Alaska Drug Enforcement Administration (DEA) to provide Naloxone training and distribution. She provided an anecdote about utilizing Naloxone to save a life in Washington, DC.

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CHAIR CLAMAN stated that he appreciated having Naloxone available. He asked about her priority of targeting larger drug trafficking organizations versus street dealers. He wondered about the distinction.

MS. SNODGRASS replied that the person who sold her son the drugs that led to his death was likely a person with an addiction disorder. She did not believe that prison was the appropriate place for low-level drug dealers unless they have a long criminal history and are felons. She stated that the person who sold or shared drugs with her son was likely a friend who needed help with addiction rather than a prison sentence. She hoped that large drug distribution organizations would be disabled and that people who profit from suffering would go to prison.

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CHAIR CLAMAN opened public testimony on SB 64.

KAREN MALCOLM-SMITH, Founder, David Dylan Foundation, Anchorage, Alaska, stated that she is a member of the Alaska Mental Health Advisory Board, but her statement did not reflect the opinions or recommendations of that board. She informed the committee that her 25-year-old son, Dylan, passed away in 2017 from a drug overdose death. She started the David Dylan Foundation to provide education about fentanyl poisoning.

CHAIR CLAMAN offered his condolences for her loss.

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STACY EISERT, representing self, Anchorage, Alaska, testified in support of SB 64 and the companion House bill. She stated that she lost her son to fentanyl poisoning. On March 10, 2021, her son ingested drugs laced with fentanyl. She spoke about the tragic loss of her son. She perceived that her son's death was an act of homicide by people who knowingly delivered a controlled substance. She wondered how many more lives would be ruined by the blatant acts of homicide. She advocated for consequences for trafficking dangerous substances.

CHAIR CLAMAN offered his condolences for her loss.

[3:05:45 PM](#)

JULIE BOUCHARD, representing self, Palmer, Alaska, testified in support of SB 64. She reported that her 21-year-old son was killed by a lethal dose of fentanyl. She held the person who sold her son drugs responsible for his death. She noted that an open trooper investigation was ongoing, which prevented her from sharing too many details. She reported knowing five other Alaskan mothers who lost children to fentanyl poisoning. She remarked about the 58 percent increase in fentanyl poisoning deaths in Alaska. She believed that a person found guilty of selling fentanyl-laced products should be charged with second-degree murder.

CHAIR CLAMAN offered his condolences for her loss.

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CHAIR CLAMAN closed public testimony on SB 64 and held the bill for further review.

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There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 3:09 p.m.