

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 31, 2023

1:30 p.m.

**MEMBERS PRESENT**

Senator Matt Claman, Chair  
Senator Jesse Kiehl, Vice Chair  
Senator James Kaufman  
Senator Cathy Giessel

**MEMBERS ABSENT**

Senator Löki Tobin

**COMMITTEE CALENDAR**

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

**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
03/22/23	(S)	Heard & Held
03/22/23	(S)	MINUTE(JUD)
03/31/23	(S)	JUD AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

Kathe Tallmadge, Aide  
John Skidmore  
Office of the Attorney General  
Criminal Division  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Provided the sectional analysis for SB 64.

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

**POSITION STATEMENT:** Answered questions about SB 64.

Sidney Wood, Deputy Director  
Division Operations  
Department of Corrections,

**POSITION STATEMENT:** Responded to questions about SB 64

#### **ACTION NARRATIVE**

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**CHAIR MATT CLAMAN** called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Kaufman, Kiehl, Giessel, and Chair Claman.

#### **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."

He noted that this was the second hearing and Ms. Tallmadge, aide to Deputy Attorney General John Skidmore, would present the sectional analysis for SB 64.

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Kathe Tallmadge, Aide to Deputy Attorney General John Skidmore, Office of the Attorney General, Criminal Division, Department of Law, Juneau, Alaska, reviewed the sectional analysis for SB 64. It read as follows:

**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.

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CHAIR CLAMAN asked for questions.

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SENATOR KIEHL asked about the definition of "delivers" in Section 1 and the range of conduct that it covers.

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JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, responded that "delivers" is a term used throughout the AS 11.71 drug statutes. It is defined in AS 11.71.900(7).

(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;

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SENATOR KIEHL surmised that the definition covers controlled substance importation or dealing. He wondered how the definition would apply to two individuals using drugs together. He asked if the person supplying the drugs would be "delivering" the drugs to the other.

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MR. SKIDMORE replied that the court must establish and prove beyond a reasonable doubt that one person provided the drugs to the other and who that person was. He believed the circumstances would fall under the definition, but he had never seen the prosecution of a case where one person hands drugs to another person. He explained that "delivery" normally defines the selling of controlled substances. He agreed that the definition of delivery is broader and does criminalize handing drugs from one person to another person.

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SENATOR KIEHL addressed a separate topic. He requested more information about the "causing death" language. He queried the frequency that "causing death" was moved from manslaughter to a murder charge.

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MR. SKIDMORE replied that the "causing death" provision is rarely used. He noted the difficulty in establishing the elements of the crime. The subsection of manslaughter was enacted in 2006 and since January 1, 2018 just seven people had been charged. He shared the story of a case in 2019 when four people were charged with the death of a fifth person. He explained that two of the four people charged simply shared the drugs with their friend and agreed to cooperate and testify against the person who sold them the drugs. The person who sold the drugs was convicted of manslaughter and sentenced to seven years.

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MR. SKIDMORE presented another case involving a person providing drugs to another person who died from an accidental overdose. The person did not sell the drugs, merely shared them. When the person began to overdose, the friend sharing the drugs neglected to call for help early enough and instead tried to revive the person with less than adequate means. Mr. Skidmore spoke graphically about the misguided attempts to revive the person overdosing before calling for medical help. The person was ultimately convicted for providing, not selling, a controlled substance because of the extenuating circumstances in the case.

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SENATOR KAUFMAN pointed to the lack of parsing of substances in the proposed legislation. He assumed that if a substance is capable of causing death, then it applies to the bill.

MR. SKIDMORE agreed with Senator Kauffman's assessment. He stated two rationales for the lack of labeling controlled substances in the bill. He stated that the drug fentanyl is responsible for significant increases in overdose deaths in Alaska. Fentanyl is often mixed with a host of other drugs. He added that a second drug, methamphetamine, also plays a significant role in overdose deaths. He stated that the controlled substances contributing to overdose deaths change over time. Drug overdoses are often attributed to a combination of drugs. He stated that heroin plus psychostimulants were the two most common lethal multidrug combinations found in 18.6 percent of all drug overdose deaths. He added that synthetic narcotics combined with psychostimulants resulted in an additional 18.4 percent of overdose deaths. He stated that a combination of drugs contributed to more than 58 percent of all overdose deaths. In 34 percent of all overdose deaths, there were three or more drugs used together. He stated that the manslaughter statute was originally drafted to encompass all drugs without parsing out drug definitions.

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SENATOR KAUFMAN wondered if the word "ingestion" on page 2, line 24, meant voluntary or involuntary absorption of a substance. He proposed that the word "mean" should read "means" for proper grammar and vocabulary.

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MR. SKIDMORE agreed with the terminology correction.

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CHAIR CLAMAN commented on public testimony offered on 3/22/2023. He recalled hearing one testifier state that the "street-level dealer who sold to her son should not go to jail, but instead should receive treatment." The testifier believed that the manufacturer of the drugs was more culpable and should be going to jail. He wondered if the bill neglected to provide that distinction.

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MR. SKIDMORE perceived the testimony differently. He recalled that the testifier believed that the law should address the person who sold the drugs. He perceived that the testifier sought to prosecute the dealers rather than those who were simply sharing controlled substances. He agreed that the goal of the legislation is to prosecute those selling controlled substances, then he revisited his earlier example where a person was prosecuted for neglecting to solicit medical help for an

accidental drug overdose. He added that a person sharing drugs might be held accountable during some incidences where additional conduct is harmful. He stated that prosecutors must make discretionary decisions with the laws as they exist now and with any future changes that the legislature offers.

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CHAIR CLAMAN called attention to the street-level dealer with addiction problems. He queried the justification for the milder treatment of a street-level dealer compared to one involved in the manufacture or larger-level distribution. He asked if the bill makes a distinction between the two hypothetical drug dealers.

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MR. SKIDMORE referred to other elements of Alaska law, which are known as aggravators. These include a person gaining a substantial pecuniary interest from the distribution of narcotics under AS 11.71. He opined that the aggravator or harsher sentence should be applied in some circumstances. He noted that the sentence range for murder in the second degree is a minimum of 15 years and a maximum of 99 years. He pointed out that the bill does not provide the distinctions mentioned by Senator Claman. The law allows for the distinctions to be drawn when it comes time for the court to assess the appropriate sentence or penalty.

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CHAIR CLAMAN queried the minimum and maximum sentence for manslaughter under the current statute.

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MR. SKIDMORE replied that manslaughter is a class A felony without a mandatory minimum sentence. The manslaughter charge has a presumptive sentence, which means that the sentence is typical but might depart from traditional sentencing due to aggravators or mitigators. He noted that a first-time sentence for manslaughter has a presumptive range of four to seven years and a maximum of twenty years.

CHAIR CLAMAN asked if an addicted street-level dealer should be sentenced to four-to-seven years, while a person convicted of manufacturing controlled substances should be sentenced to a minimum of 15 years for murder in the second degree. He queried a simple way to distinguish the two types of charges and sentences.

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MR. SKIDMORE said he was unsure whether a focus on manufacturing would lead to the proper sentencing distinctions because manufacturing and delivery address different stages of the process. He noted that the term manufacture would apply if the drugs originated in Mexico with a drug cartel, where the cartel would be subject to the murder charge, while all the other entities involved in distribution would be charged for delivery. Some analysis seeks to differentiate the quantity of the drug, which provides challenges because fentanyl is potent in very small quantities. He stated that a small quantity of methamphetamine or other drug does not pose the same risk to an individual. He highlighted the difficulties in differentiating the levels of controlled substances. He stated that Alaska law approaches the issue by using aggravators that review a substantial monetary gain. He regretted that he did not have alternative suggestions for labeling and sentencing distribution versus manufacturing of controlled substances as it applies to SB 64.

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CHAIR CLAMAN asked about page 3 and the proposal to eliminate good-time deduction for a felony drug offense. He wondered why every felony drug offense would lose the good-time options in prisons.

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MR. SKIDMORE replied that the rationale behind the provision is that fentanyl is frequently mixed with other drugs. Fentanyl is the cause of many overdose deaths, which leads to the stiff penalty. He stated that the provision discusses mandatory versus discretionary parole. He stated that mandatory parole relates to good behavior in custody, which is a tool utilized by the Department of Corrections to manage behavior. He added that the administration was amenable to more conversation about this aspect of the proposed legislation.

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SENATOR KIEHL asked if a person was not eligible for good-time would they spend less time in supervision when released from prison.

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MR. SKIDMORE said yes and added that mandatory versus discretionary parole means that a person is under supervision after release from prison. Without the good-time option, the person is in jail versus being supervised outside.

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CHAIR CLAMAN provided a hypothetical situation where a person has a thirty-year sentence and is eligible for good-time release after ten years and mandatory parole after twenty years. He asked if the hypothetical situation could be applied to Senator Kiehl's question.

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SIDNEY WOOD, Deputy Director, Division Operations, Department of Corrections, Palmer, Alaska, asked to hear the question again.

CHAIR CLAMAN repeated Senator Kiehl's question related to good-time release on parole and longer community supervision. He provided the hypothetical situation where a person is in jail with a thirty-year sentence and eligible for good-time release after 10 years and mandatory parole at 20 years.

MR. WOOD noted the discrepancy in terms. The good-time release is known as discretionary release. He explained that the person could not be released at the twenty-year mark without the good-time or discretionary release provision. The hypothetical person would instead be released to mandatory parole for the last ten years of the sentence. If the person were released at any point before the two-thirds mark or twenty-year mark on a discretionary release, the good-time would have no impact on the supervision length. He agreed with Mr. Skidmore's comment that removing the good-time release means that a person will spend more time in prison versus out on supervision if mandatory parole was part of the sentence. He noted that without a good-time option, a prisoner would face probation and zero supervision following release.

CHAIR CLAMAN asked Mr. Wood to focus on the good-time provision and Senator Kiehl's question.

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SENATOR KIEHL requested additional information about the policy-level issue including managing offenders in prison. He understood that good-time provisions tend to encourage better behavior. He wondered about the lost opportunity to reintegrate people into the community. He wondered about the desirability of less supervision following release.

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MR. WOOD replied that he could not comment on the desirability of either option. He remarked that the Department of Corrections

has two community placement programs that do not rely on good-time to qualify, including sentenced electronic monitoring and furlough.

MR. SKIDMORE agreed with Senator Kiehl about the importance of opportunities to reintegrate into the community. He described various types of parole including discretionary parole, mandatory parole, and probation. He stated that the bill limits one avenue for supervision after release while leaving other options in place. He restated the importance of community reintegration.

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CHAIR CLAMAN revisited his hypothetical scenario with a prisoner eligible for discretionary parole or good-time release. Removing the good-time option mandates that a person remains in prison for twenty years with ten supervised years outside. He wondered if the bill might be removing meaningful opportunities for supervision by eliminating the availability of the good-time provision.

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MR. SKIDMORE agreed that the bill creates limitations for one avenue of community supervision following release from prison, but it retains four valid options

CHAIR CLAMAN asked about probation. He understood that probation is appropriate when a person has completed the mandatory term of prison.

MR. SKIDMORE agreed with the statement.

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SENATOR GIESSEL commented on the seriousness of the controlled substances manufactured and delivered. She pointed to the recent cases Mr. Skidmore discussed and noted that the people committing the crimes described are often addicts themselves. She stated that the longer a person remains in a controlled environment, the more likely they are to receive addiction treatment. She believed that the elimination of good-time deduction provisions from the bill provided greater benefits to an addicted prisoner.

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SENATOR KIEHL commented that the majority of prison treatment options are offered at the end of the time served. He recalled two recommendations in the last six months including the

Governor's Council on Opiate Remediation and the Alaska Opiate Response. Both reports state the need for additional supervision following criminal sentences. He noted that neither recommendation calls for extended sentences. He shared his struggle to square the reports' recommendations with the language in the bill.

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CHAIR CLAMAN held SB 64 in committee.

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There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:10 p.m.