

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 28, 2024

1:45 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator James Kaufman
Senator Cathy Giessel

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 66(FIN) AM

"An Act relating to homicide resulting from conduct involving controlled substances; relating to misconduct involving a controlled substance; relating to sentencing; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 165

"An Act relating to legal representation of public officers in ethics complaints."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 66

SHORT TITLE: CONTROLLED SUB;HOMICIDE;CRIMES;SENTENCING

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
 03/06/23 (H) Heard & Held
 03/06/23 (H) MINUTE(JUD)
 03/24/23 (H) JUD AT 1:00 PM GRUENBERG 120
 03/24/23 (H) Moved CSHB 66(JUD) Out of Committee
 03/24/23 (H) MINUTE(JUD)
 03/27/23 (H) JUD RPT CS(JUD) NEW TITLE 4DP 1DNP 1NR
 1AM
 03/27/23 (H) DP: C.JOHNSON, CARPENTER, ALLARD, VANCE
 03/27/23 (H) DNP: EASTMAN
 03/27/23 (H) NR: GROH
 03/27/23 (H) AM: GRAY
 04/13/23 (H) FIN AT 1:30 PM ADAMS 519
 04/13/23 (H) Heard & Held
 04/13/23 (H) MINUTE(FIN)
 05/01/23 (H) FIN AT 1:30 PM ADAMS 519
 05/01/23 (H) Heard & Held
 05/01/23 (H) MINUTE(FIN)
 05/05/23 (H) FIN AT 9:30 AM ADAMS 519
 05/05/23 (H) Moved CSHB 66(FIN) Out of Committee
 05/05/23 (H) MINUTE(FIN)
 05/08/23 (H) FIN RPT CS(FIN) NEW TITLE 2DP 5NR 2AM
 05/08/23 (H) DP: EDGMON, D.JOHNSON
 05/08/23 (H) NR: CRONK, HANNAN, STAPP, ORTIZ, FOSTER
 05/08/23 (H) AM: JOSEPHSON, GALVIN
 05/11/23 (H) TRANSMITTED TO (S)
 05/11/23 (H) VERSION: CSHB 66(FIN) AM
 05/12/23 (S) READ THE FIRST TIME - REFERRALS
 05/12/23 (S) JUD, FIN
 05/15/23 (S) JUD WAIVED PUBLIC HEARING NOTICE, RULE
 23
 05/16/23 (S) JUD AT 9:00 AM BUTROVICH 205
 05/16/23 (S) -- MEETING CANCELED --
 02/28/24 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 165

SHORT TITLE: DEFENSE OF PUB. OFFICER: ETHICS COMPLAINT
 SPONSOR(s): CLAMAN

01/16/24 (S) PREFILE RELEASED 1/8/24
 01/16/24 (S) READ THE FIRST TIME - REFERRALS
 01/16/24 (S) JUD, FIN
 02/28/24 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Introduced HB 66 on behalf of the administration.

MICHAEL GARVEY, Advocacy Director
American Civil Liberties Union (ACLU) of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 66.

CARLY DENNIS, Staff
Senator Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 165.

ANDREE MCLEOD, Good Government Director
Alaska Public Interest Research Group
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 165.

ACTION NARRATIVE

[1:45:34 PM](#)

CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:45 p.m. Present at the call to order were Senators Kiehl, Tobin, and Chair Claman.

HB 66-CONTROLLED SUB;HOMICIDE;CRIMES;SENTENCING

[Contains discussion of SB 64.]

[1:46:00 PM](#)

CHAIR CLAMAN announced the consideration of CS FOR HOUSE BILL NO. 66(FIN) am "An Act relating to homicide resulting from conduct involving controlled substances; relating to misconduct involving a controlled substance; relating to sentencing; and providing for an effective date."

This is the first hearing of HB 66 in the Senate Judiciary Committee. The committee heard the companion bill, SB 64, during the last session. He invited Ms. Schroeder to identify herself for the record and present the bill.

[1:46:37 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law (DOL), Juneau, Alaska, introduced HB 66 on behalf of the administration. The Governor's Office requested the introduction of HB 66 and SB 64 to address a stark increase in overdose deaths. Overdose deaths in Alaska remain high due in large part to synthetic opioids, such as fentanyl, and stimulants, such as methamphetamines.

MS. SCHROEDER sought confirmation that the committee wanted a recap of SB 64, followed by an introduction of HB 66.

CHAIR CLAMAN confirmed that is the way to proceed.

[1:47:53 PM](#)

MS. SCHROEDER explained that SB 64 consists of two main operative sections:

Section 1

Increases the crime from manslaughter to murder in the second degree for a person who knowingly manufactures or delivers a controlled substance in violation of:

AS 11.71.010 - AS 11.71.030

These statutes pertain to misconduct involving a controlled substance in the first through third degrees, and

AS 11.71.040(a)(1)

This statute pertains to misconduct involving a controlled substance in the fourth degree, but only as it pertains to schedule IV-A controlled substances.

MS. SCHROEDER summarized Section 1. She said that the current law could hold a person responsible for manslaughter if they deliver these drugs in violation of these statutes to someone who dies as a direct result of their ingestion. She said that SB 64 elevates the offense; it proposes the law could hold that person responsible for murder in the second degree.

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CHAIR CLAMAN asked about the distinction between the two groups of schedules and the drugs involved with them.

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MS. SCHROEDER referred to a Department of Law handout dated March 1, 2023, available on The Alaska State Legislature

website, <https://www.akleg.gov/basis/Committee/List/33>. She described the handout. The front page charts out misconduct involving controlled substance statutes, listing felony class, sentence range, and types of misconduct, such as delivery, manufacture, and possession of drug. The second page charts the schedules and examples of drugs in those schedules. She said the statutes reference misconduct involving controlled substance crimes and encompass a wide range of substances. She said the crime depends on which drugs and a person's conduct with them; she noted this bill includes schedule IV-A drugs.

MS. SCHROEDER drew attention to AS 11.71.010, .021, and .030, explaining SB 64 proposes the law could hold a person responsible for murder in the second degree if:

- a person violated all elements in a given section, in its entirety, with no subsections excluded, and
- someone dies as a result of ingesting the substance.

MS. SCHROEDER drew attention to AS 11.71.040, stating this section pertains to schedule IV-A controlled substances, which include ketamine and benzodiazepines, like Ativan, and Valium. The most serious level drugs are schedule I-A substances, including heroin, fentanyl, and gamma-hydroxybutyric acid (GHB), commonly known as a date rape drug. Schedule II-A drugs include peyote, methamphetamine, and cocaine. Schedule III-A includes stimulants such as appetite suppressants, depressants, and certain anesthetics. These are the levels of drugs under discussion.

MS. SCHROEDER stated that controlled substances not included in this bill are schedule V-A, which includes buprenorphine, and VI-A, which includes marijuana.

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MS. SCHROEDER explained Section 2 of SB 64:

Section 2

This provision prohibits good time for felony drug dealing. A person who committed a crime involving the distribution or manufacture of drugs would not be eligible for good time.

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MS. SCHROEDER summarized SB 64, stating the bill is short and has two primary sections. Sections 3, 4, and 5 are technical and

include the repealer, applicability, and effective date sections.

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MS. SCHROEDER moved on to HB 66, stating it differs greatly from SB 64. She walked the committee through the bill by section as follows:

Section 1

This section is the most similar to SB 64. It elevates the crime of a death that results from the direct ingestion of a controlled substance in violation of AS 11.71.010, AS 11.71.021, or AS 11.71.030 to the offense of murder in the second degree. One difference is that HB 66 does not elevate the offense for violating AS 11.71.040; that crime would remain manslaughter for schedule IV-A drugs, which is current law.

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Section 3

The House decided to break up the definition section. The word "ingestion" appears multiple times, so the drafter needed to include it in the general definition section. This is the sole purpose of Section 3.

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Section 4

This section is new. It states that a person commits the crime of misconduct involving a controlled substance in the first degree if that person delivers any amount of a schedule I-A, II-A, III-A, or IV-A controlled substance to a person who is:

- mentally incapable;
- incapacitated; or
- unaware that a controlled substance is being delivered.

MS. SCHROEDER explained that this is an unclassified felony subject to a sentence of five to 99 years. She explained the rationale for Section 4, stating that the division had seen cases where people administered drugs by slipping them into a milkshake or injected an individual while they slept to keep them unconscious longer. She described a mentally incapable individual who was injected with methamphetamine and targeted because of their mental incapacity. These offenses are serious. This bill does not require the law to prove motive; it only requires that the act was done. HB 66 encompasses slipping a controlled substance into a drink, like at a bar. HB 66 proposes that the law elevate the offense to an unclassified felony when

the person is mentally incapable, incapacitated, or unaware that a controlled substance is being administered.

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CHAIR CLAMAN sought clarification that HB 66 and SB 64 do not identify new criminal conduct; instead, they raise the level of existing offenses, thereby increasing the penalty when someone is found guilty.

[1:56:06 PM](#)

MS. SCHROEDER agreed, noting one exception. She expressed her belief that one part of the bill potentially lowers penalties slightly. She said she would discuss this later.

CHAIR CLAMAN sought confirmation that HB 66 does not create new crimes.

MS. SCHROEDER replied, correct. She referred to Section 4, stating that current law classifies the misconduct involving a person who slips someone a schedule I-A drug as "delivery."

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SENATOR TOBIN sought confirmation that the definition section would not affect any of the services provided under Crisis NOW or in AS [47] holds.

MS. SCHROEDER replied that she did not think so. She stated that DOL pulled the definitions from sexual assault statutes and is familiar with them. She said that, to her knowledge, the definitions would not affect those services.

[1:57:10 PM](#)

MS. SCHROEDER moved on to Section 5.

Section 5

This is the definition section. DOL is familiar with these terms; they are in the sexual assault statutes and used in litigation. She stated that applying these terms in this context should not pose significant challenges.

Section 6

This section elevates the delivery of methamphetamine from a Class B felony to a Class A felony. Under current law, this is misconduct involving a controlled substance in the third degree. HB 66 proposes to elevate this offense to misconduct involving a controlled substance in the second degree.

[1:58:14 PM](#)

Sections 7

Sections 7 and 8 relate to the distribution of marijuana. Under current law, a person commits a Class B felony if that person delivers marijuana to somebody under 19 years of age who is at least three years younger than the person delivering the substance. The House restructured and tiered this so that a person commits a Class B felony if that person delivers marijuana to somebody under 18 who is three years younger than the person delivering the substance.

Section 8

This section relates to the distribution of marijuana. A person commits a Class C felony if that person delivers marijuana to a person who is 18 years of age. A person commits a Class A misdemeanor if a person delivers marijuana to a person who is 19 to 21 years of age. HB 66 has a graduation of offenses based on conduct. She clarified that the misdemeanor does not appear in the bill, explaining that the bill works in conjunction with current law. Only the felony restructuring appears in HB 66.

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CHAIR CLAMAN asked whether Section 7 proposes to increase the penalty for delivering marijuana to a person under 19.

MS. SCHROEDER replied that under current law, it is a Class B felony if a person delivers marijuana to someone under 19 years of age who is at least three years younger than the person delivering the substance. Section 7 draws the line at 18. Current law sets the age at 19, while HB 66 sets it at 18. This reduces the group of people subject to a class B felony. HB 66 proposes that a person commits a Class C felony if that person delivers marijuana to a person who is 18 years of age.

[2:00:12 PM](#)

MS. SCHROEDER moved on to Section 9, stating:

Section 9

Section 9 is new and amends the sentencing statutes for Class A felonies. HB 66 proposes the presumptive range would be seven to 11 years if the conviction were for manufacturing or delivering fentanyl or delivering meth. This represents a sentencing enhancement for that conduct.

Section 10

This is the applicability section.

Section 11

This is the effective date section.

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SENATOR KIEHL brought up a hypothetical situation where two people with an addiction are using together. One person overdoses. The other does everything right to assist, administers CPR, and calls for help. He said that under the text of the original bill, this person could still be charged with murder in the second degree. He asked whether the House addressed this "fellow addict" problem in the bill.

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MS. SCHROEDER replied that HB 66 does not address that issue. She stated that sharing or delivering drugs is already criminal, and the courts can prosecute such conduct. She said the statute is the floor, meaning the courts have the discretion to prosecute but are not obligated to do so. Prosecutors factor in the behavior of a person who does everything right. They analyze the circumstances and determine whether or how to charge a "fellow addict." She emphasized that there is no safe harbor for delivery, though there is one for possession in lower-level offenses, which HB 66 does not address.

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SENATOR KIEHL clarified that he was not suggesting a safe harbor for delivery. He explained that prosecutors are not applying the totality of circumstances in a growing body of cases in other states, at least not as he believes they should.

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CHAIR CLAMAN asked whether there is an affirmative defense for a co-addict who does everything right in the "fellow addict" scenario. He wondered whether there is an affirmative defense to address this and show that this is different from criminalized conduct.

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MS. SCHROEDER replied that AS 11.71.311 restricts prosecution for possession. She said possession might be charged if it is unclear whether they were sharing. If the person calls for medical help, cooperates with law enforcement, and does everything right, there is a restriction on prosecution in this statute. She emphasized that this restriction is limited to possession.

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CHAIR CLAMAN offered an option to address this scenario. Amend that section of the statute in the form of an affirmative defense, not as a prohibition on prosecution. He said the question becomes whether that would be a complete defense to the charge or the basis for reducing the charge.

[2:04:12 PM](#)

MS. SCHROEDER replied that if the committee wants to consider an amendment, the Criminal Division is interested in its drafting.

[2:04:52 PM](#)

CHAIR CLAMAN asked whether there are issues arising from other drugs or if fentanyl is the primary cause of overdoses.

MS. SCHROEDER replied that opioids and stimulants like methamphetamine are large drivers, but other drugs are of concern. She explained that the administration drafted this bill to encompass a broader range of drugs, not just fentanyl. She referred to a Department of Health (DOH) report from the Office of Substance Misuse and Addiction Prevention. This "Alaska Facts and Figures, 2021 Drug Overdose Mortality Report" was updated on July 25, 2022. She expressed her belief that the report might help answer the question.

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CHAIR CLAMAN opened public testimony on HB 66.

[2:06:56 PM](#)

MICHAEL GARVEY, Advocacy Director, American Civil Liberties Union (ACLU) of Alaska, Anchorage, Alaska, testified in opposition to HB 66, stating that the ACLU fully recognizes the pain created by overdose deaths and supports the legislature in taking action to address them. However, HB 66 relies on a punitive strategy, which will not reduce overdose deaths. However, it will decrease resources the State could use for more effective strategies.

MR. GARVEY suggested the State focus on substance misuse prevention, ensuring that all Alaskans have access to high-quality treatment and recovery supports. These recommendations recognize the crisis for what it is, a public health crisis. They align with the Governor's Advisory Council on Opioid Remediation.

MR. GARVEY acknowledged that law enforcement plays a critical role in reducing overdose deaths by disrupting supply and tracking overdoses to warn communities when dangerous drugs are

spreading. However, research has shown that the certainty or perception of being caught is a more effective deterrent than the severity of penalties. This includes research from the Alaska Criminal Justice Commission. Alaska already has criminal penalties for the behaviors described in HB 66. These penalties can be enforced rather than pursuing more complex prosecutions.

MR. GARVEY warned that increasing penalties may have the opposite effect as intended. He said that overdose deaths increased due to hesitancy in seeking help in jurisdictions where similar legislation passed. Alaska must reduce the rate of overdose deaths. However, putting people in prisons, where 80 percent of people have a substance use disorder, for more extended periods will not achieve this goal. ACLU opposes HB 66 because Alaska must prioritize its resources for the public health and law enforcement strategies that are shown to work.

[2:09:01 PM](#)

CHAIR CLAMAN closed public testimony on HB 66.

CHAIR CLAMAN held HB 66 in committee.

SB 165-DEFENSE OF PUB. OFFICER: ETHICS COMPLAINT

[2:09:11 PM](#)

CHAIR CLAMAN announced the consideration of SENATE BILL NO. 165 "An Act relating to legal representation of public officers in ethics complaints."

This is the first hearing of SB 165 in the Senate Judiciary Committee. The chair passed the gavel to Senator Kiehl for the duration of the bill presentation.

[2:09:30 PM](#)

VICE-CHAIR JESSE KIEHL invited the bill sponsor and his staff to identify themselves for the record and introduce the legislation.

[2:10:00 PM](#)

CHAIR CLAMAN, speaking as sponsor, presented the following sponsor statement:

[Original punctuation provided.]

Senate Bill 165
Sponsor Statement – Version A

SB 165 would prohibit the Department of Law, including the Attorney General, from representing or advising a public officer or former public officer in a complaint filed under the Executive Branch Ethics Act. While State employees may be represented or recompensated by the State for cases filed against them in an official capacity, it is a conflict of interest for the Department of Law to represent top officials who are accused of acting unethically. The essence of an ethics complaint is that a public official is acting outside their official capacity. It would be inappropriate to use taxpayer money to defend the Governor, Lieutenant Governor, and Attorney General if they act unethically.

Until November of 2023, the Department of Law did not defend ethics complaints against executive branch officials. Consistent with the 2009 opinion from Attorney General Dan Sullivan, public officials could request reimbursement from executive branch agencies in cases of exoneration. SB 165 would return to this prior practice.

In 2023, the Governor changed regulation 9 AAC 52.140 to allow the Department of Law, which is already overloaded and understaffed, to represent the Governor, the Lieutenant Governor, and the Attorney General in ethics cases brought against them. During the public comment period for that regulation change, the Department received 120 emails and letters in opposition to the proposed change and none in favor.

SB 165 would reverse the regulations and ensure that public officials are held accountable if they violate the ethics laws.

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CHAIR CLAMAN said the goal is to return to the policy that existed following Attorney General Dan Sullivan's opinion, which basically said these public officers should secure their own lawyer. If they are found not to have violated ethics laws, they would be eligible for reimbursement. The executive branch would reimburse them. He expressed his belief that this is the appropriate way to proceed.

[2:12:25 PM](#)

CARLY DENNIS, Staff, Senator Matt Claman, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 165:

[Original punctuation provided.]

Senate Bill 165
Sectional Analysis – Version A

Section 1

AS 39.52.165. Representation of Public Officers

Prohibits the Department of Law, including the attorney general, from representing or advising the governor, the lieutenant governor, or another public officer or former public officer in a matter in which that public officer or former public officer is the subject of a complaint filed under the Executive Branch Ethics Act [AS 39.52].

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VICE-CHAIR KIEHL sought clarification that SB 165 would not create an impediment to the reimbursement method, asking whether reimbursement would still be allowable under the text of this legislation.

SENATOR CLAMAN replied yes, that is correct.

VICE-CHAIR KIEHL wondered how the Legislative Ethics Act compares in terms of legislators accused of personal impropriety. He asked whether legislators are entitled to public representation or must defend themselves at their own expense.

SENATOR CLAMAN replied that legislators hire attorneys at their own expense or represent themselves.

VICE-CHAIR KIEHL asked whether legislators who are exonerated or cleared of a charge are eligible for reimbursement.

SENATOR CLAMAN replied that he would find out, noting that it is his impression that Legislative Council has not routinely approved requests for reimbursement.

VICE-CHAIR KIEHL noted that, to his knowledge, he has never seen a request for reimbursement approved. He commented that it would be excellent information to gather for the record.

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SENATOR CLAMAN expressed his perspective that the Alaska State Legislature does not reimburse legislators for legal expenses incurred in defense of a complaint. He expressed his belief that he would have heard in various trainings if legislators were eligible for reimbursement.

VICE-CHAIR KIEHL commented that he tends to agree.

CHAIR CLAMAN said that he would confirm.

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VICE-CHAIR KIEHL returned the gavel to the chair.

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CHAIR CLAMAN opened public testimony on SB 165.

[2:16:33 PM](#)

ANDREE MCLEOD, Good Government Expert, Alaska Public Interest Research Group (AKPIRG), Anchorage, Alaska, testified in support of SB 165 which would prohibit the use of public dollars and resources to foot the legal bills of the governor, lieutenant governor and attorney general if they are the subject of ethics complaints.

MS. MCLEOD said that the recent change in law allows the governor, lieutenant governor, and attorney general to be represented by state attorneys when facing ethics complaints and investigations for misconduct. This policy, implemented by the Governor Dunleavy administration and Attorney General Taylor last year, allows the use of state funds and resources for their legal defense even if they are found to have violated ethics laws. This is bad government.

MS. MCLEOD said that the rule of law governs society, not the privileged elite. It harms Alaskans when public officials put themselves above the law and circumvent constitutional checks and balances for personal benefit. It undermines public trust and confidence in government. The legislative branch established ethical standards to prevent political corruption. She said that one reason she took issue with the administration's changes to law last year was with its process. The attorney general made these changes, not the legislature. A couple of Legislative Legal opinions found the changes to be illegal as they potentially violate clauses of the Alaska Constitution, including public purpose, separation of powers, and equal protection.

[2:19:01 PM](#)

MS. MCCLEOD said AKPIRG agrees with former Alaska Attorney General Jahna Lindemuth, who said the attorney general's charge is representing the State of Alaska. The governor is not the client except to the extent he represents the State. Allowing the attorney general to defend ethics complaints against the governor, lieutenant governor, or DOL to defend the attorney general is inappropriate and inconsistent with the attorney general's role. It is an improper use of state resources. She urged the committee to report the bill out of committee to prevent corruption and further self-dealings of the administration and its attorney general.

[2:19:52 PM](#)

CHAIR CLAMAN closed public testimony on SB 165.

CHAIR CLAMAN held SB 165 in committee.

[2:20:26 PM](#)

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:20 p.m.