

HB

106

# Alaska Association Chiefs of Police



February 2, 1991

Representative Dave Donley  
Alaska State Legislature  
P. O. Box V (MS 3100)  
Juneau, AK 99811

Dear Representative Donley,

I am writing this letter to express the support of the Alaska Association of Chiefs of Police for House Bill 106. Existing law only allows for imposition of five years of probation. We support extending this to ten years as proposed in your bill.

Probation can be an excellent tool in protecting the public. We submit, however, that judges under current law are too limited and should be given the ability to require persons convicted of serious crimes to be monitored and supervised for longer periods of time when necessary.

If we can be any assistance in the passage of your bill, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland".

Duane S. Udland  
President

BILL NO: HB 106

DATE: 2/8/91

TITLE: An Act Extending the Maximum  
Period of Probation

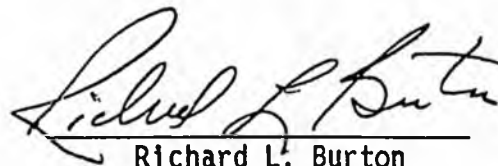
CONTACT: Gayle A. Horetski  
Deputy Commissioner

DEPARTMENT OF  
PUBLIC SAFETY

HB 106 extends, from five to ten years, the maximum period of probation to which a convicted criminal defendant can be sentenced. There may be situations in which the court wishes to continue probation supervision of an offender for longer than the five-year period now allowed by law. This bill would allow the courts the flexibility to fashion a sentence which best fits a particular offense or defendant.

The Department of Public Safety supports this bill.

POSTER /



Richard L. Burton  
Commissioner

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 106

Revision Date: \_\_\_\_\_  
Title: An Act Extending the Maximum  
Period of Probation  
Sponsor: House Judiciary  
Requestor: House Judiciary

Department Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments

COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated

Prepared by: Gavle A. Horetski Phone: 465-4322  
Division: Commissioner's Office Date: 2/7/91  
Approved by Commissioner: *Gavle A. Horetski* for Richard L. Burton  
Agency: Department of Public Safety Date: 2/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

BILL NO: HB 106

DATE: February 15, 1991

TITLE: An Act extending the maximum period of probation after conviction.

CONTACT: Barbara Miklos  
Executive Director  
Council on Domestic Violence  
and Sexual Assault

COUNCIL ON DOMESTIC VIOLENCE  
AND SEXUAL ASSAULT

The Council on Domestic Violence and Sexual Assault supports HB 106. This bill changes the maximum allowable period of probation from 5 years to 10 years.

The Council supports this legislation primarily because of its effect on sex offenders who have extremely high rates of recidivism. In order to prevent re-offending, sex offenders should be monitored closely and for a substantial amount of time. Monitoring is particularly necessary for offenders who do not participate in or complete treatment while incarcerated. However, offenders who do engage in treatment while incarcerated also need continuing treatment and parole supervision after their release to monitor their life-style and behavior. Monitoring the behavior of sex offenders for a longer period of time will help protect victims of crime.

*Andy Klanser*  
Andy Klanser, Chair  
Council on Domestic Violence  
and Sexual Assault

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. H.B. 106

Revision Date: \_\_\_\_\_ Department Affected: Corrections  
 Title: An act relating to the maximum BRU: \_\_\_\_\_  
period of probation... Component: \_\_\_\_\_  
 Sponsor: House Judiciary Committee  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0 -	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 The number of individuals receiving 10 year probation periods is not quantifiable, the impact may be on how many instances would represent serving suspended sentences as part of the probation stipulations.

Prepared By: Tom Sutton, Director *Tom Sutton* Phone: 465-3376  
 Division: Administrative Services Date: 2-10-91  
 Approved by Commissioner: *Stacy Thomas*  
 Agency: Department of Corrections Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 106

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act extending the maximum period of probation..." BRU: Prosecution  
 Sponsor: House Judiciary Committee Component: Criminal Justice Litigation  
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

This bill amends AS 12.55.090(c) to extend the maximum period of probation after conviction to ten years from five years. This is a sentencing provision that may have some impact on Probation and Parole, but it will not have an impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: February 11, 1991  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: February 11, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 106

Revision Date: December 19, 1991 Department Affected: Department of Law  
 Title: "An Act extending the maximum period of probation..." BRU: Prosecution  
 Component: Criminal Justice Litigation  
 Sponsor: House Judiciary Committee  
 Requestor: Governor's Office COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

This bill amends AS 12.55.090(c) to extend the maximum period of probation after conviction to ten years from five years. This is a sentencing provision that may have some impact on Probation and Parole, but it will not have an impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: December 19, 1991  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: December 19, 1991

**FISCAL NOTE**

**STATE OF ALASKA  
1991 LEGISLATIVE SESSION**

**Bill No. HB 106**

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act extending the maximum BRU: Trial Courts  
period of probation after conviction Components: \_\_\_\_\_  
 Sponsor: Judiciary Committee  
 Requestor: Judiciary Committee COMPONENT SERIAL NO. 

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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

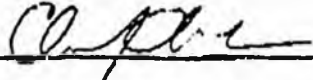
**POSITIONS:**


FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Division: Alaska Court System Date: 02/08/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 02/08/91  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 4, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-11-91

The JUDICIARY Committee considered:

HB 106

HOUSE BILL NO. 106

EXTEND MAXIMUM PERIOD OF PROBATION

"An Act extending the maximum period of probation after conviction."

RECOMMENDATIONS:

[ ] the same title  
be replaced with [ ] a new title

[ ] have attached amendments(s)

do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_

See  zero fiscal note LAW, Pub. SAF., Corrections Court [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Signature	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>David J. Douley</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				<i>X needs true fiscal</i>
<i>[Signature]</i>				

*David J. Douley*  
Chairman's Signature

HOUSE BILL NO. 106

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 2/4/91

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the maximum period of probation after conviction."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 \* Section 1. AS 12.55.090(c) is amended to read:

4 (c) The period of probation, together with any extension, may [SHALL] not exceed 10  
5 [FIVE] years.

6 \* Sec. 2. AS 12.55.090(c), as amended by sec. 1 of this Act, does not apply in the case of a  
7 conviction for a criminal act committed before the effective date of this Act. unless apply.

*MG - allow - Rule 35.1 motion*  
*except credit*

## NOTES TO DECISIONS

Cited in *Fermoyle v. State*, 638 P.2d 1320 (Alaska Ct. App. 1982); *Nell v. State*, 642 P.2d 1361 (Alaska Ct. App. 1982); *State v. Price*, 715 P.2d 1183 (Alaska Ct. App. 1986).

Collateral references. — Power of state court, during same term, to increase severity of lawful sentence — modern cases. 26 ALR4th 906.

**Sec. 12.55.090. Granting of probation.** (a) Probation may be granted whether the crime is punishable by fine or imprisonment or both. If a crime is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

(b) The court may revoke or modify any condition of probation, or may change the period of probation.

(c) The period of probation, together with any extension, shall not exceed five years.

(d) [Repealed, § 11 ch 68 SLA 1965.]

(e) [Repealed, § 11 ch 68 SLA 1965.] (§ 8.09 ch 34 SLA 1962; am § 25 ch 43 SLA 1964; am § 11 ch 68 SLA 1965)

## NOTES TO DECISIONS

- I. General Consideration.
- II. Five-Year Limitation.

### I. GENERAL CONSIDERATION.

Parallels 18 U.S.C. § 3651. — Alaska's probation statutes, this section, AS 12.55.080, and 12.55.100 closely parallel the federal statute, 18 U.S.C. § 3651, which empowers federal district courts to grant probation. *Brown v. State*, 559 P.2d 107 (Alaska 1977).

The Alaska probation statutes, this section and AS 12.55.080 and 12.55.100, use much of the same language as 18 U.S.C. § 3651 (1976), and were apparently derived from the federal law. *Gonzales v. State*, 608 P.2d 32 (Alaska 1980).

Alaska Statutes 12.55.080 and this section appear to have been modeled after the federal statute, 18 U.S.C. § 3651. *Tiedeman v. State*, 576 P.2d 114 (Alaska 1978).

This section and AS 12.55.080 construed in *pari materia*. — Since both essentially identical sections were enacted together in § 1, ch. 195, SLA 1955, AS 12.55.080 and this section must be con-

strued with reference to each other as in *pari materia*. *Jackson v. State*, 541 P.2d 23 (Alaska 1975).

**Second sentence of subsection (a) construed.** — An appropriate construction of the segment of this statute which provides "if a crime is punishable by both fine and imprisonment the court may impose a fine and place the defendant on probation as to imprisonment" is that it authorizes the trial court to impose a fine as a separate punishment in addition to probation where the penalty provision of the violated criminal statute provides for both fine and imprisonment. Any fine meted out as a sanction by the trial court in such circumstances would be subject to the fine limitation prescribed under the penalty section of the statute involved. *Brown v. State*, 559 P.2d 107 (Alaska 1977).

**Fine as condition of probation.** — Sentencing court may impose a fine as condition of probation upon a defendant's conviction of a crime which is not directly