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THE MINNESOTA  
COUNTY ATTORNEYS  
ASSOCIATION

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February 27, 2023

Representative Jaime Long  
459 State Office Building  
Saint Paul, Minnesota 55155

Dear Representative Long,

Thank you for your long standing leadership and partnership with the Minnesota County Attorneys Association to advance important probation legislation. Our work to advance a statutory framework that places appropriate limits on probation terms yet allows for individualized review and oversight has been a part of the legislative dialog for many years. We are hopeful this year a bill can pass.

I write to express the support of the Minnesota County Attorney's Association for House File 1607 and its underlying objective of a statutory five year cap. The issue of retroactivity contained in the bill, however, is a concept that gives us considerable pause. Automatically allowing all previous probation terms to be converted to five years, without a public process to include victim notification, awareness and prosecutor review or input is a concern for our Association. We prefer a clear framework and court process and have outlined a proposal in a draft amendment we shared recently with you and it is attached to this letter for broader review.

Our Association also believes the statutory framework provided in this bill should mirror the Minnesota Sentencing Guidelines and allow a judge to go above the five year cap if there are substantial and compelling reasons to support a departure and therefore impose a longer probation term. While we expect the circumstances this discretion would be utilized is likely to be limited, similar to the recent data we reviewed since the five year cap was imposed by the Sentencing Guidelines, having a safety valve for those circumstances that require greater scrutiny is an important public safety measure we recommend be added to the legislation.

We appreciate the opportunity to offer these suggestions and hope that you and your colleagues help add these important safeguards as the bill advances.

Sincerely,



Robert Small  
Executive Director

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State of Minnesota

HOUSE OF REPRESENTATIVES NINETY-THIRD

SESSION **1607**

**H. F. No.**

02/13/2023 Authored by Long, Moller and Frazier  
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy

1.1 A bill for an act  
1.2 relating to public safety; establishing a limit of five years on the length of probation  
1.3 in most felony sentences; providing for retroactive application; amending Minnesota  
1.4 Statutes 2022, section 609.135, subdivisions 1a, 1c, 2.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2022, section 609.135, subdivision 1a, is amended to read:

1.7 Subd. 1a. **Failure to pay restitution.** If the court orders payment of restitution as a  
1.8 condition of probation and if the defendant fails to pay the restitution in accordance with  
1.9 the payment schedule or structure established by the court or the probation officer, the  
1.10 prosecutor or the defendant's probation officer may, on the prosecutor's or the officer's own  
1.11 motion or at the request of the victim, ask the court to hold a hearing to determine whether  
1.12 or not the conditions of probation should be changed or probation should be revoked. The

1.13 defendant's probation officer shall ask for the hearing if the restitution ordered has not been  
1.14 paid prior to 60 days before the term of probation expires. The court shall schedule and hold  
1.15 this hearing and take appropriate action, including action under subdivision 2, paragraph  
1.16 ~~(g)~~ (h), before the defendant's term of probation expires.

1.17 Nothing in this subdivision limits the court's ability to refer the case to collections under  
1.18 section 609.104 when a defendant fails to pay court-ordered restitution.

1.19 Sec. 2. Minnesota Statutes 2022, section 609.135, subdivision 1c, is amended to read:

1.20 Subd. 1c. **Failure to complete court-ordered treatment.** If the court orders a defendant  
1.21 to undergo treatment as a condition of probation and if the defendant fails to successfully  
1.22 complete treatment at least 60 days before the term of probation expires, the prosecutor or

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2.1 the defendant's probation officer may ask the court to hold a hearing to determine whether  
2.2 the conditions of probation should be changed or probation should be revoked. The court  
2.3 shall schedule and hold this hearing and take appropriate action, including action under  
2.4 subdivision 2, paragraph ~~(h)~~ (i), before the defendant's term of probation expires.

2.5 Sec. 3. Minnesota Statutes 2022, section 609.135, subdivision 2, is amended to read:

2.6 Subd. 2. **Stay of sentence maximum periods.** (a) Except as provided in paragraph (b),  
2.7 if the conviction is for a felony other than section 609.2113, subdivision 1 or 2, 609.2114,  
2.8 subdivision 2, or section 609.3451, subdivision 1 or 1a, or Minnesota Statutes 2012, section  
2.9 609.21, subdivision 1a, paragraph (b) or (c), the stay shall be for not more than ~~four~~ five  
2.10 years or the maximum period for which the sentence of imprisonment might have been  
2.11 imposed, whichever is longer less. A longer length of stay may be imposed if the court identifies  
and articulates substantial and compelling reasons to support a departure from this subdivision.

2.12 (b) If the conviction is for a felony described in section 609.19, 609.195, 609.20,  
2.13 609.2112, 609.2662, 609.2663, 609.2664, 609.268, 609.342, 609.343, 609.344, 609.345,

2.14 609.3451, or 609.3458, the stay shall be for not more than the maximum period for which  
2.15 the sentence of imprisonment might have been imposed.

2.16 ~~(b)~~ (c) If the conviction is for a gross misdemeanor violation of section 169A.20,  
2.17 609.2113, subdivision 3, or 609.3451, ~~or for a felony described in section 609.2113,~~  
2.18 ~~subdivision 1 or 2, 609.2114, subdivision 2, or 609.3451, subdivision 1 or 1a,~~ the stay shall  
2.19 be for not more than **six five** years. The court shall provide for unsupervised probation for the  
2.20 last year of the stay unless the court finds that the defendant needs supervised probation for  
2.21 all or part of the last year.

2.22 ~~(e)~~ (d) If the conviction is for a gross misdemeanor not specified in paragraph ~~(bc)~~, the  
2.23 stay shall be for not more than two years.

2.24 ~~(d)~~ (e) If the conviction is for any misdemeanor under section 169A.20; 609.746,  
2.25 subdivision 1; 609.79; or 617.23; or for a misdemeanor under section 609.2242 or 609.224,  
2.26 subdivision 1, in which the victim of the crime was a family or household member as defined  
2.27 in section 518B.01, the stay shall be for not more than two years. The court shall provide  
2.28 for unsupervised probation for the second year of the stay unless the court finds that the  
2.29 defendant needs supervised probation for all or part of the second year.

2.30 ~~(e)~~ (f) If the conviction is for a misdemeanor not specified in paragraph ~~(de)~~, the stay 2.31  
shall be for not more than one year.

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3.1 ~~(f)~~ (g) The defendant shall be discharged six months after the term of the stay expires,  
3.2 unless the stay has been revoked or extended under paragraph ~~(g)~~ (h), or the defendant has  
3.3 already been discharged.

3.4 ~~(g)~~ (h) Notwithstanding the maximum periods specified for stays of sentences under  
3.5 paragraphs (a) to ~~(f)~~ (g), a court may extend a defendant's term of probation for up to one

3.6 year if it finds, at a hearing conducted under subdivision 1a, that:

3.7 (1) the defendant has not paid court-ordered restitution in accordance with the payment 3.8  
3.9 schedule or structure; and

3.10 (2) the defendant is likely to not pay the restitution the defendant owes before the term  
3.11 of probation expires.

3.12 This one-year extension of probation for failure to pay restitution may be extended by the  
3.13 court for up to one additional year if the court finds, at another hearing conducted under  
3.14 subdivision 1a, that the defendant still has not paid the court-ordered restitution that the  
3.15 defendant owes.

3.16 Nothing in this subdivision limits the court's ability to refer the case to collections under  
3.17 section 609.104.

3.18 ~~(h)~~ (i) Notwithstanding the maximum periods specified for stays of sentences under  
3.19 paragraphs (a) to ~~(f)~~ (g), a court may extend a defendant's term of probation for up to three  
3.20 years if it finds, at a hearing conducted under subdivision 1c, that:

3.21 (1) the defendant has failed to complete court-ordered treatment successfully; and

3.22 (2) the defendant is likely not to complete court-ordered treatment before the term of  
3.23 probation expires.

3.24 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to sentences  
3.25 announced on or after that date.

3.26 **Sec. 4. PROBATION LIMITS; RETROACTIVE APPLICATION.**

3.27 (a) Any person placed on probation before August 1, 2023, is eligible for resentencing 3.27 if:

3.28 (1) the person was placed on probation for a felony violation and did not receive a dispositional  
3.29 departure;

3.29 (2) the court placed the person on probation for a length of time that exceeded five years which was not as a result of the court imposing a longer period of probation under Minn. Sent. Guidelines 3.A.2.a (2023);

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4.1 (3) under Minnesota Statutes, section 609.135, subdivision 2, the maximum length of  
4.2 probation the court could have ordered the person to serve on or after August 1, 2023, is  
4.3 five years; and

4.4 (4) the sentence of imprisonment has not been executed.

4.5 (b) Resentencing shall be treated as a correction or reduction of sentence pursuant to  
4.6 rule 27.03, subdivision 9, of the Rules of Criminal Procedure. The court must provide notice of its  
intent to issue an order under this subdivision to the prosecutorial authority with jurisdiction over the  
offense(s) at least 14-days prior to issuing the order.

4.7 (c) The term of the stay of probation for any person who is eligible for resentencing  
4.8 under paragraph (a) and who has served five or more years of probation as of August 1,  
4.9 2023, shall be considered to have expired on October 1, 2023, unless:

4.10 (1) the term of the stay of probation would have expired before that date under the  
4.11 original sentence; or

4.12 (2) the length of probation is extended pursuant to Minnesota Statutes, section 609.135, 4.13  
subdivision 2, paragraph (h) or (i).

4.14 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to sentences 4.15 **announced before that date.**

Sec. 4.