

Indeterminate Sentence Law, Term Under. Term of Sentence, Where no Minimum is Prescribed.

The indeterminate sentence law does not change existing laws respecting punishment for crime; its object being only to provide for the parole of a convict after he has served a part of his sentence. The term is the maximum time fixed in the verdict or judgment.

May 3, 1913.

Hon. Frank Arnold,
County Attorney,
Livingston, Montana.

Dear Sir:

I am in receipt of your letter of the second instant, setting forth that in a trial which you recently prosecuted against a defendant charged with the crime of burglary, you prepared an instruction based upon the indeterminate sentence law, recently passed by the legislature, the purport of which was that if the jury found the defendant guilty of burglary in the second degree, his sentence should not exceed five years and be not less than six months. The law prescribing the punishment for burglary in the second degree, fixes the penalty at not to exceed five years, but names no minimum. You state the court refused to give the proffered instruction, and that you desire my opinion as to the proper interpretation to be placed upon the indeterminate sentence law where no minimum penalty is prescribed by law for a designated crime which fixes a maximum.

In my judgment the indeterminate sentence law does not undertake to change the existing laws relating to punishment for crime, its object being only to provide for the parole of a convict after he has served a part of his sentence. The term of his imprisonment is the maximum time fixed in the verdict or judgment. The minimum time has nothing whatever to do with his term of imprisonment, for even after the minimum time is served, it is wholly optional with the Governor and State Board of Prison Commissioners whether he be paroled.

In my opinion your offered instruction was properly refused. The true construction to be placed upon this law, is, in my opinion, that in cases where no minimum punishment is fixed by law, it is proper for

the court to instruct that if the jury find defendant guilty, they may also fix his punishment at not to exceed the time prescribed by law for the particular offense, and in case the time prescribed exceeds six months, and is fixed by the jury for a greater term than six months, the jury may also prescribe the minimum at not less than six months, i. e., may fix the time when the convict may become subject to parole. In a case where the maximum is named in the law, but no minimum is fixed, if the jury convict, it is within their province to fix the punishment at less than six months, in which event, there would be no minimum time to prescribe, because the term in such case would be less than the defendant would be required to serve in order to entitle him to the benefit of a parole.

Yours very truly,

D. M. KELLY,

Attorney General.