

State Prison, Inmate of. Convict in State Prison, Term of How Construed. Term of State Prison Convict, How Returned. "Good Time" Earned by State Prison Convict, How Computed.

The various laws of the State relating to the term of sentence of a convict in the State Prison, and the method of ascertaining the term, right to parole, construed. See opinion.

March 20, 1915.

Hon. Frank Conley,
Warden of the Montana State Prison,
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your letter submitting the following questions, relating to the application of the recently enacted indeterminate sentence law, to-wit:

1. "A prisoner is sentenced to a term of not less than 10 and not more than 15 years. Under the provisions of Section 9737 of the Revised Codes of 1907 he would be allowed 6 years and three months for good behavior, on a 15-year sentence, making his term of imprisonment 8 years and 9 months. Under the provisions of the indeterminate sentence law he is eligible for parole after he has served 10 years. Under the provisions of the existing parole law he is eligible for parole after he has served one-half of his sentence, 7 years and 6 months. How is his final expiration determined and by what rule is his parole date fixed?
 2. "A prisoner is sentenced to a term of not less than 10 and not more than 30 years. Do the provisions of Section 9737 apply to both the minimum and maximum sentences? Must he serve 10 years solid before he may be paroled under the provisions of the indeterminate sentence law?
 3. "A prisoner is sentenced to a term of not less than 1 and not more than 14 years; he is paroled after having served his minimum sentence. Is he on parole for the balance of the maximum sentence, or can the Board fix the duration of his parole?
 4. "Does the clause contained in the indeterminate sentence law providing for the parole of any convict when he has completed his minimum sentence apply to prisoners who were sentenced before the passage of this law and who are now confined in this institution?"
1. The consideration of the propositions submitted by you requires reference to the four distinct laws now existing, relating to the sentencing, paroling and discharging of convicts in the State Prison. The term of imprisonment which may be imposed upon conviction of any crime, is found in the various laws relating to the particular crime, of which the party is convicted. The parole law of the state is included in the provisions of Section 9573, et seq. of the Revised Codes. The commutation of sentence for good behavior, usually referred to as "good time," is found in the provisions of Sections 9737 and 9738, Revised Codes. Chapter 21 of the laws of the 13th Legislative Assembly, known as the "Suspended Sentence Law," confers authority upon the court imposing the sentence, in effect, to parole the convict at the time of the sentence—while House Bill No. 81, enacted by the 14th Legislative Assembly, and approved February 18th, 1915, is the "Indeterminate Sentence Law," referred to in your inquiry. The parole law of the State has nothing whatever to do with the law relating to the imposition of the original sentence, but relates wholly to conferring authority upon the State Board to grant to a convict permission to

be absent from the State Prison. Neither does the Suspended Sentence Law attempt in any manner to fix the penalty which may be imposed upon a conviction for any offense. Nor does it amend the parole law, except that it makes it applicable to persons convicted of certain crimes immediately after conviction, without the necessity of the convict actually serving the time named in the parole law. Neither do the provisions of the "good time" Law have any relation to the tenure of the original sentence imposed; and the "Indeterminate Sentence Law" does not, at least so far as any of the questions here presented are concerned, have any relation to the tenure of the original sentence. Each of these laws is a separate enactment, and each one confers additional authority either upon the court, or the State Board, but all are supposed at least to work in harmony. The "Indeterminate Sentence Law" by its terms recognizes the different laws of the State which fixes the penalty for specific crimes. It also disclaims any intention of repealing or amending the provisions of the law relating to suspended sentences, and likewise with reference to the laws of the State relating to paroles, except that the convict must serve the minimum time.

This Indeterminate Sentence Law makes it compulsory upon the court in passing sentence to name both the minimum and maximum time, but leaves it wholly with the discretion of the court to fix both the minimum and the maximum, except that both must be within the limits of the law which prescribes the penalty for the specific offense. The act, then, in specific and positive terms, provides that the convict may "be paroled at any time after he shall have served * * * the minimum time specified in the judgment." We have, then, by the positive mandate of this last enactment, the provision that the court must fix a minimum and a maximum time, and that the convict is not eligible to parole until he has served the minimum time named in the sentence, unless the court at the time of imposing the sentence, applies to the convict the provisions of the Suspended Sentence Law, which is also within the discretion of the court. The effect of this Indeterminate Sentence Law is to confer authority upon the district court to fix the minimum at such a time as will wholly defeat the application of the Parole Law, or the court may fix the minimum at such a time as will make the Parole Law applicable to the convict at an earlier date than that required by the provisions of the general Parole Law of the State. In the case stated by you in question No. 1, wherein the minimum time was ten years and the maximum time fifteen years, the convict would not be eligible to parole until the minimum time was served, but under the provisions of the "Good Time" Law, his sentence of fifteen years would have wholly expired at the end of eight years, nine months. Hence, he would have been discharged one year and three months prior to the time when the Parole Law could apply. The result is simply that by the decree of the court the Parole Law never attaches to him, and as the "Good Time" Law is not repealed, the convict would simply serve eight years and nine months, then be discharged. Whether this is wise or unwise, it is immaterial. It is the law.

2. Under the positive mandate of said House Bill No. 81 (Indeterminate Sentence Law), the convict is not eligible to parole until he has served the minimum time named in the sentence. The "good time" provided for in Section 9737, Revised Codes, is subtracted from the maximum time named in the sentence, not from the minimum time, for by the provisions of Section 9738, the convict may at any time, by violation of the rules, forfeit all the "good time" earned by him.

3. Under the rules adopted and followed by the State Board, the convict on parole is allowed the benefit of the commutation for "good time," expressed in Section 9737, the same as though he were still serving within the prison walls. Hence, the convict whose maximum sentence is fourteen years, whether on parole or confined in the prison, would be entitled to his discharge at the end of eight years and three months, unless by improper conduct or violation of the rules, he had forfeited the "Good time" earned by him.

4. The Indeterminate Sentence Law cannot have relation to sentence imposed prior to its enactment, for the reason that the law does not by its terms relate to any past convictions, and no minimum sentence is named in such prior judgments of conviction.

The supreme Court of this State in

Stevens v. Conley, 48 mont. 352, 364,

indicated a method of procedure to be followed in applying the provisions of Section 9737, Revised Codes.

Yours very truly,

D. M. KELLY,

Attorney General.