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# INDETERMINATE SENTENCE, RELEASE ON PAROLE AND PARDON

(Report of Committee "F" of the Institute)

EDWARD LINDSEY, CHAIRMAN<sup>1</sup>

This year's sessions of the legislatures have not been prolific of legislation on the subject of the indeterminate sentence, the parole system or pardon. No state not already having adopted the indeterminate sentence or the parole system has made either a part of its statutory law although the Vermont practice of conditional liberation under executive pardon, which had grown up, as noted in this committee's report for the year 1915, has now received statutory sanction by action of the legislature this year. However, amendments to the statutes have been made in some of the states to accomplish changes in the operation of the parole acts.

California provides that except in cases where a different minimum punishment is prescribed by law, for every offense declared to be a felony and punishable by imprisonment in the state prison, the minimum punishment shall be imprisonment in the state prison for not less than six months. By two acts approved on April 11th, 1919, it is also provided that a person sentenced to imprisonment in the state prison for life is thereafter to be deemed "civilly dead" and that a sentence of imprisonment in a state prison for any term less than life shall suspend all the civil rights of the person so sentenced and forfeit all public offices and "all private trusts, authority or power" during such imprisonment, provided that in any such cases if the person so sentenced be liberated from prison by parole under the parole laws of the state, the board of prison directors having the power to grant paroles may permit to such person civil rights other than the right to act as a trustee or hold public office or exercise the privilege of an elector during the term of such parole. The scope or extent of such civil rights is to be determined by the board "either at the time the parole is granted or at such other time as in the judgment of such board is for the best interest of society and such paroled person." By

<sup>1</sup>The personnel of this committee is as follows:  
Edward Lindsey, Esq., Warren, Pa., Chairman.  
Will Colvin, Commissioner of Pardons and Paroles, Springfield, Ill.  
Amos Butler, Commissioner of Charities and Correction, Indianapolis, Ind.  
Allan Carter, Esq., Evanston, Ill.

another act it is made the duty of the court, assisted by the district attorney, before judgment is pronounced upon any person convicted of an offense punishable by imprisonment in the state prison, "to ascertain in a summary manner and by such evidence as is obtainable, whether such person has learned and practiced any mechanical or other trade and also such other facts tending to indicate the causes of the criminal character or conduct of such convicted person or calculated to be of assistance to the court in determining the proper punishment of such person or to the state board of prison directors in the performance of the duties imposed upon it by law as the court shall deem proper. Within thirty days after judgment has been pronounced the judge and district attorney respectively shall cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with such reports as the probation officer may have made relative to the prisoner." A copy of such statements and reports and of the evidence taken is to be transmitted to the warden of the prison to which the convicted person has been sentenced. An act approved May 24, provides that the board of prison directors shall have power to provide for assisting paroled and discharged prisoners and to secure employment for them and makes an appropriation for this purpose.

Nebraska provides that "any person sentenced to be punished for any felony, when sentence shall not have been reversed or annulled, shall be deemed incompetent to be an elector or juror, or to hold any office of honor, trust or profit within this state, unless such convict shall receive from the governor of this state a general pardon under his hand and the seal of the state, in which case said convict shall be restored to his civil rights and privileges."

In Maine several amendments to the indeterminate sentence and parole law were made at this year's session of the legislature. In the case of any person sentenced to imprisonment in the state prison it is provided that the court imposing sentence shall not fix a definite term in said state prison, but shall fix maximum and minimum terms. The maximum sentence shall not exceed the longest term fixed by law for the punishment of the offense of which the person sentenced is convicted and the minimum sentence shall not exceed one-half of the maximum term of imprisonment fixed by statute and shall not be less than six months in any case. "The judge, before or at the time of pronouncing the sentences, shall ascertain by examination of the prisoner and by such other evidence as can be obtained any facts tending to indicate briefly the causes of the criminal character or conduct

of such prisoner, which such facts, and such other facts as shall appear to be pertinent to the case, he shall cause to be entered upon the minutes of the court." It is the duty of the clerk of the court to make and forward to the warden of the institution to which the convict is sentenced a record containing a copy of the information or complaint, the sentence pronounced by the court, the name and residence of the judge presiding at the trial, prosecuting attorney and sheriff, and the names and post office addresses of the jurors and the witnesses sworn at the trial, together with a statement of any fact or facts which the presiding judge may deem important or necessary for a full comprehension of the case and a reference to the statute under which the sentence was imposed. It is also provided that "no prisoner shall be released on parole until the board of prison commissioners shall have satisfactory evidence that arrangements have been made for such honorable and useful employment of the prisoner as he is capable of performing and some responsible person shall agree to act as his 'first friend and adviser,' who shall execute an agreement to employ the prisoner or use his best efforts to secure suitable employment for him. Said 'first friend and adviser' may, in the discretion of said board, be required to furnish a bond or other satisfactory security to the treasurer of state for the faithful performance of his obligation as such 'first friend and adviser.'" At the time of granting parole the board of prison commissioners is to determine the length of time the prisoner shall remain on parole, which may be subsequently extended or reduced, but shall not be more than four years in any case. After the paroled prisoner has faithfully performed all the obligations of his parole, including the making of monthly reports for the time fixed, he shall be deemed to have fully served his entire sentence and shall receive a certificate of final discharge from the warden in whose custody he is. By a further amendment the prison commission is empowered to appoint a state probation officer to serve during its pleasure and perform such duties in connection with the employment, care and supervision of paroled convicts as the commissioner may determine. A summary of the law as amended will be found in the Appendix to this report, which may be compared with the summary of the original act in the report of this committee for 1913.

The Oregon legislature, at its 1919 session, enacted several provisions of interest in connection with this subject. Excepting for the crimes of murder and treason the minimum period of imprisonment in the case of felonies is abolished and the court in any case of conviction of a felony shall, unless it impose other sentence than a sen-

tence to serve a term in the penitentiary, sentence such person to imprisonment in the penitentiary without limitation of time, stating in such judgment and sentence the maximum penitentiary penalty for such crime, which shall not exceed the maximum term of imprisonment provided by law therefor, "and such sentence shall be known as an indeterminate sentence." Any person so sentenced may be paroled by the governor upon his own motion or upon the recommendation of the parole board, in the case of a person under the age of 20 years at the time of sentence who has not been previously convicted of a crime at any time after said person is committed to the penitentiary and in the case of a person over the age of 20 years at the time of sentence who has not been previously convicted of a crime at any time after such person has served one-fourth of the maximum term for which he has been sentenced, provided that a record of good conduct, industry and evidence of general reformation certified to by the warden shall entitle such person to a deduction of five days for each month of said one-fourth of maximum sentence when such one-fourth is one year or less and ten days for each month of such period beyond one year. Any person who has previously been sentenced to serve a term in any penitentiary or reformatory shall be entitled to an indeterminate sentence, but the court shall take that fact into consideration in fixing the term of sentence. Another act provides that "all persons heretofore convicted of felonies and sentenced to the penitentiary for a definite term of years may be allowed deductions from their term of service in said penitentiary in the same manner and with like effect as in the case of persons who have received an indeterminate sentence, and may be paroled by the governor on his own motion or upon recommendation of the parole board, whenever the certificate of the warden of the penitentiary shall show that the prison record of such person entitles them to be considered for parole." Another enactment of interest provides that "in order to minimize the cost of maintaining the several institutions, all wards of the state who are capable of a reasonable amount of work without physical or mental injury to themselves, shall be use as fully as possible in the production and manufacture of articles for the use of the state and for sale in the open market and in the performance of labor for the state, but it shall be unlawful for the board to enter into any agreement or contract with any private person, firm or corporation for the direct employment of convicts of the Oregon State Penitentiary." However, by a subsequent act authority is given to the board of control to enter into contract with any person or persons who in their discretion may be advis-

able in connection with the Oregon State Penitentiary for employment of convicts therein in clearing unimproved land in the State of Oregon.

In Tennessee two changes were made at this year's session of the legislature. By one the board of control was abolished and a "Board for the Administration of State Institutions" created, to consist of the governor, the state treasurer and a general manager, which succeeds to the rights and duties of the former board of control, among them being the exercise of the parole powers. Under the indeterminate sentence law as heretofore existing the statute itself fixed the punishment at a maximum and minimum for each offense. This has been amended so that the trial judge in passing sentence in each case may fix a minimum at some time not less than the minimum fixed by statute and a maximum at some time not greater than the maximum fixed by statute.

Vermont has adopted the system of conditional pardon by an act providing that "the governor may, in his discretion, grant a pardon for offenses against the state upon such conditions as he judges proper. Until a person to whom such conditional pardon is granted is excused from the performance of the conditions thereof, the governor shall have all the authority, rights and powers over and in relation to such person which he would have if he were surety in the case upon the recognizance of such person before conviction, and he shall be the sole and exclusive judge as to whether the conditions of such pardon have been violated. If, in the judgment of the governor, such conditions have been violated, he may cause such person to be apprehended and returned to his former condition of custody that execution of sentence may be complied with."

Wisconsin passed this year a codifying act on the subjects of probation, parole and pardon, in which the various statutes on these subjects were consolidated, rearranged and revised as to phraseology, but without changing the existing law in any essential features.

## APPENDIX

### QUESTIONS

1. Who may be committed under the indeterminate sentence?
2. Provisions for maximum and minimum term.
3. Parole board.
4. Duties of parole board.
5. Regulation of petition or argument.
6. Prisoners eligible to parole.
7. Points considered in granting parole.
8. Conditions of parole.

9. What constitutes violation of parole?
10. System of arrest for violation of parole and fee attached thereto.
11. Penalty for violation of parole.
12. Conditions for final discharge of prisoners from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of parole system.
16. Number of prisoners now under parole.
17. Note. Miscellaneous remarks. Special provisions.

#### ANSWERS

##### *Maine*

1. All prisoners who have completed their minimum sentence.
2. Fixed by the judge who imposes sentence. The maximum must not exceed limit fixed by law and minimum one-half maximum.
3. Board of Prison Commissioners.
4. Exclusive jurisdiction in matters of parole.
5. Written application is filed with proposal of some party to act as first friend and adviser. Considered at monthly meeting of commissioners.
6. All who have completed minimum term.
7. Previous record, conduct in prison, domestic relations, dependents, opportunity for useful employment, health of prisoner and apparent determination of prisoner to lead a correct life if paroled.
8. Monthly report. Not to leave the state without permission. Continued good conduct on parole and such special conditions as may seem wise.
9. Failure to report, misconduct (felony or misdemeanor) on parole and failure to observe any special conditions.
10. Return to prison to serve unexpired portion of maximum sentence.
11. Warrant issued by warden of prison. Rewards may be offered.
12. Faithful observance of conditions for full period of parole which must not exceed four years.
13. Certificate of final discharge is furnished.
14. Since the law went into effect in 1913, 210 paroles have been granted to April, 1919, 52 violations, 25%.
15. State system.
16. Seventy-eight.
17. Since the present Board of Prison Commissioners assumed office violations reduced to 10%.