

# Indeterminate Sentences, Once Urged as Reform,

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SACRAMENTO, Calif., Sept. 26—The indeterminate sentence—once the pride of California prison reformers—is coming under increasingly heavy criticism as unrest smolders in the state's penal institutions.

Such sentences have been adopted here and in several other states to prevent courts from imposing harshly unequal penalties for similar crimes. Basically, they require a judge to give the sentence called for by law, which usually specifies minimum and maximum terms, leaving the actual time served to a paroling authority.

The case of George Jackson, the "Soledad Brother" who had served almost 11 years for a \$71 armed robbery committed just before he turned 19 following two convictions for lesser crimes, has been used by many to point what they consider the injustice of the law.

Convicts and present day reformers complain that under the system as it is applied, a man can languish in prison for years beyond the date when he could normally expect parole.

They insist that many prisoners are serving these years of additional time, not because of the severity of their original crimes, but because of relatively minor infractions of prison rules, attitudes the correctional authorities consider negative or a lack of interest in rehabilitation programs such as job training or education.

Such continued detention, they contend, adds to the dangerous overcrowding of prisons and costs the taxpayer thousands of dollars a year for the support of each prisoner, money that could be better spent for the improvement of correctional programs or facilities.

Worse still, the critics argue, a convict who does not know when he can expect release or who has been turned down repeatedly for parole becomes bitter, frustrated, hopeless and ripe for violence or rebellion.

"Increasingly, the men who go to prison," California Assemblyman Leo J. Ryan, a tall, graying 45-year-old Democrat who is a vocal advocate of reform, said in an interview, "because their sentences drag on and on until they're screaming—well, they feel they've just got to get out."

Assemblyman Ryan, who voluntarily spent a week in a maximum security cell in Fol-

som Prison last year, sponsored a bill in this session of the legislature to modify the indeterminate sentence law. The bill was passed by the Assembly but killed by the Senate Judiciary Committee.

Mr. Ryan, who obviously was deeply moved by the time he spent in prison, said that he intended to keep pressing for adoption of his bill in some form.

"I tend to believe that if you reduce the level of desperation, you bring the thing back into control," he said in recalling the violence of recent months at San Quentin, Soledad and other California prisons. "You reduce the level of crime and violence. And by reducing

it inside prison, you reduce it outside prison."

Even the Department of Corrections concedes that the indeterminate sentence has created problems that its early advocates did not foresee.

"We have agreed in this department with critics of how the indeterminate sentence is administered," Philip Guthrie, chief of information and community relations, acknowledged. "The big criticism is that guys exist from year to year in limbo without knowing when they can get out.

"In 1970, the parole board began setting a guy's date much earlier than before, telling him 18 months or a year before that on such and such a date he could get out."

Before 1970, Mr. Guthrie said, members of the California Adult Authority, which functions as a parole board, would set release dates for about 30 per cent of the prisoners who went before them each month. The remainder were simply denied parole and a hearing date was set, usually for another year.

"That's now up to 50 per cent," he added. "A great many more guys in prison now know when they'll get out. What we'd like to see is 60 per cent of the guys who go before the board have their dates set at the first hearing. Maybe another 20 per cent would be marginal and the rest would be outright denied. We think the board is moving in that direction and we're very pleased."

While criticism of the "limbo" aspect of the indeterminate sentence has existed for some time, the case of George Jackson, who was shot to death last month during what the authorities said was an escape attempt from San Quentin, focused na-

## Now Attacked

tional attention on it.

In "Soledad Brother, the Prison Letters of George Jackson," the widely read book that was published after Jackson a two other blacks were accused of the murder of a white guard at Soledad, the growing bitterness of his prison years is apparent.

Between February, 1962, when he was first eligible, and June, 1970, he was denied parole 10 times. His disciplinary file contained 47 entries, beginning in August, 1961. Many of the early ones were minor, but they became increasingly serious—including the stabbing of another prisoner and an assault on a guard—until he was charged

in January, 1970, with the murder of the Soledad guard.

In California, which pioneered legislation on the indeterminate sentence in 1917, a judge sentencing a convicted felon must do so "for the term prescribed by law." In the case of armed robbery, for instance, this is five years to life.

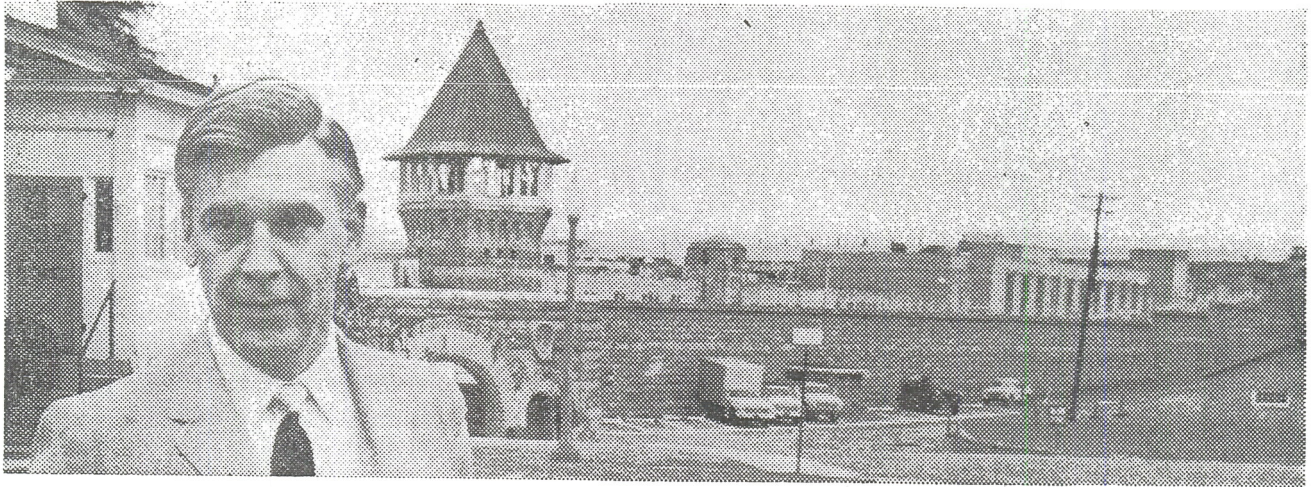
After a minimum time set by law (20 months for armed robbery), the Adult Authority has sole jurisdiction over the length of time a convict must serve up to the maximum that is specified.

Two other states, Hawaii and Washington, have similar laws. In several others, such as Alaska and Illinois, where judges set minimum and maximum dates, there are variations on the law. In recent years, the Federal courts have also been giving indeterminate sentences with increasing frequency.

In addition to preventing judges from giving widely disparate sentences for similar crimes, the indeterminate sentence was also intended to provide an incentive to the inmate to prove by his behavior in prison and by his willingness to learn a trade or otherwise "rehabilitate" himself that he was ready for early release.

Moreover, it was argued that a paroling authority would be able to set a term in much more dispassionate circumstances than a judge or jury who had just gone through a trial.

The problem with the law, according to the critics, is that



Leo J. Ryan, California Assemblyman, leaving Folsom Prison after voluntarily spending week in maximum-security cell The New York Times/Bob Moore

it can be easily abused. They say it can be held as a club over the heads of prisoners, that guards or other correctional authorities can make it almost impossible for a prisoner to be paroled if he does not conform to their concept of good behavior.

In prison, they contend, convicts are often under even more pressure to conform to the standards of the inmates around them and must often be tough or fight just to protect themselves from homosexual rape or other abuses.

Despite these criticisms, it is difficult to find anyone who wants to do away with the indeterminate sentence and revert to fixed sentences imposed by judges.

Assemblyman Ryan's bill, which was co-sponsored by the Democratic majority leader, Walter Karabian, another ardent prison reformer, was designed primarily to require the Adult Authority to determine early in a person's imprisonment when he would be released.

Under the bill, if a person was sentenced to a minimum of less than five years, the Adult Authority would have had to set the length of his term by the end of his first year in prison. If the minimum sentence was five years or more, the determination would have had to have been made in 30 months.

The Adult Authority would also have been required to parole prisoners no later than

the end of the minimum term prescribed by law unless their offenses "were substantially more serious than usual," there was "substantial danger" that they would injure others if released, they were "habitual criminals" as defined by law, or were parole violators.

Despite his advocacy of reform, Mr. Ryan does not consider himself a "do-gooder." Three years ago his secretary was murdered by two young men she surprised while they were robbing her apartment.

"I have nothing but revulsion in my mind for that," he said, "but the fact is, they're in and we have to define—for me as an individual—what they deserve."

"The idea of the indeterminate sentence is fine. Under my definition, there are a lot of guys who are in prison who would never get out. There are a lot of guys who are in there that I wouldn't want to see get out, who will under the present system."

"But if people know when they're going to get out, then you don't have guys at San Quentin joining a riot because then they've got something to lose."

Joseph A. Spangler, administrative officer of the Adult Authority, acknowledges that "there's been a lot of unhappiness on the part of the inmates and on the part of some of the families that the guy doesn't know when he's going home."

Noting the authority's attempt to speed up the determination of release dates, he add-

ed: "Some of them are pleased with this and some of them are very unhappy. They say, 'You gave me a date, but I want to get out now.' There's only one thing any prisoner wants and that's to go home."

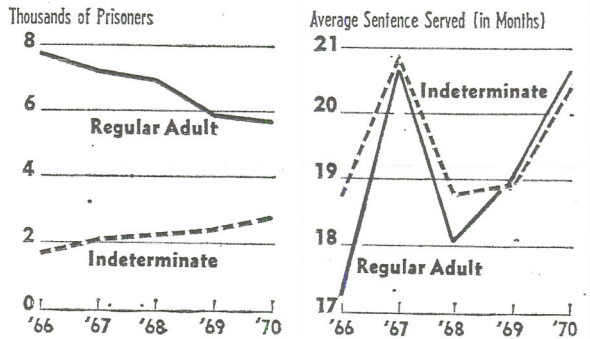
In support of his contention that the setting of definite release dates for inmates would not solve all the problems of prisons, he recalled the recent massive riot at Attica State Prison in New York.

"All those people at Attica had some idea when they were going home," he said.

### Sentencing of Adults to Federal Institutions

Regular adult sentence: Prisoner is not eligible for parole until he has served  $\frac{1}{3}$  of his maximum sentence.

Indeterminate sentence: Prisoner can be paroled earlier than  $\frac{1}{3}$  of his maximum sentence, at the discretion of the parole board.



Source: U.S. Board of Parole