

1916

## Operation of the Indeterminate Sentence and Parole Law

Amos W. Butler

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Amos W. Butler, Operation of the Indeterminate Sentence and Parole Law, 6 J. Am. Inst. Crim. L. & Criminology 885 (May 1915 to March 1916)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

# THE OPERATION OF THE INDETERMINATE SENTENCE AND PAROLE LAW.

---

A STUDY OF THE RECORD OF EIGHTEEN YEARS IN  
INDIANA.<sup>1</sup>

---

AMOS W. BUTLER.<sup>2</sup>

---

We have come to understand that men who are so lacking in self-control as to violate law need reformatory treatment rather than punishment. For humiliating, degrading, often brutal methods of punishment, once accepted as the proper accompaniment of a prison sentence, we are substituting mental, moral and industrial training, conditional release and after-care. We are attempting to protect society from crime by reforming the criminal. Better still, by adding daily to our knowledge of crime, we are attempting to prevent the conditions from which it springs. Infinitely more humane, more intelligent, is this newer method; immeasurably better are its results.

From its beginning, this Association has been the greatest single factor in this country in the improvement of prisons and the more rational treatment of offenders. It has been largely instrumental in the adoption of the so-called indeterminate sentence law, which is one of our most effective tools in the work of reforming criminals. Perhaps "indefinite" sentence is a better name, since the law prescribes the minimum and maximum terms for specified crimes. It is not a new thing. The underlying principle has long been in successful operation in our reformatory institutions for children. In more recent years we have begun to apply it to children older grown. Mr. Z. R. Brockway, in 1869, when he was in charge of the Detroit House of Correction, secured the enactment of what became known as "the three years law."<sup>3</sup> This has been termed "the beginning," and the

---

<sup>1</sup>Read at American Prison Association, Oakland, California, October 11, 1915.

<sup>2</sup>Secretary Board of State Charities, Indianapolis, Indiana.

<sup>3</sup>Fifty Years of Prison Service, p. 126, Laws of Michigan, 1869, chap. 145.

bill before the Michigan Legislature of 1870-71, "the first attempted application in America of the profound principle of the indeterminate sentence system, which substitutes both in the laws and in prison practice reformatory, in place of the usual punitive regime."<sup>4</sup> Mr. Brockway says in his autobiography that he was credited with originating the idea of this form of sentence and for a long time innocently accepted the credit, not knowing until years afterward that the plan had been fore-shadowed and attempted in England as early as 1832.<sup>5</sup>

The first full, formal, public presentation of the scheme will be found in Mr. Brockway's notable paper before this Association, at its first meeting, Cincinnati, 1870.<sup>6</sup> Forty years later, the International Prison Commission met in Washington and the practical operation of the law in the United States was described to the representatives of the different governments, after they had been given an opportunity to see it in actual practice in a number of institutions.<sup>7</sup> It was inspiring to hear their discussions. When a final vote was taken, and we came to realize that there had been formally recommended for the world the same principles that had been adopted by this Association forty years before for the States of the Union, every American felt proud. We could realize as never before the beginning of the prophecy of Charlton T. Lewis, our late colleague and a former president of this Association, that the indeterminate sentence "is destined radically to change man's habits of thought concerning crime and the attitude of society towards criminals, to rewrite from end to end every penal code in Christendom and modify and ennoble the fundamental law of every State."<sup>8</sup>

It was not until 1897 that Indiana adopted the indeterminate sentence. In 1816, her Constitution declared that her penal code should be "founded on the principles of reformation and not of vindictive justice,"<sup>9</sup> but it was eighty-one years before these principles were enacted into statute law. The passage of the law was accompanied by a radical change in the state's prison methods. The legislative commission of 1895, which recommended its enactment, advocated at the same time the establishment of a reformatory for young men, the passage of a bill authorizing courts to suspend sentences and, finally, the absolute separation of prisons from politics.

<sup>4</sup>Ibid, p. 133.

<sup>5</sup>Ibid, p. 134.

<sup>6</sup>Proceedings Nat. Congress on Penitentiary and Reformatory Discipline, 1870, p. 54.

<sup>7</sup>Acts du Congress Penitenciaire International de Washington, Oct. 1910. Vol. I, pp. 129, 130.

<sup>8</sup>Brockway: Fifty Years of Prison Service, p. 132.

<sup>9</sup>Constitution, 1816, Art. IX, sec. 4.

"Much, if not most, of the good that would come to our State by reason of the passage of the bills reported will be lost if the prisons \* \* \* are not taken out of politics and the best and most efficient officers secured to manage and control them without regard to their political predilection." So reads the report. Reforms of this nature had long been urged by the Board of State Charities. They were revolutionary measures for Indiana, yet all became laws in the decade of 1897-1907.

In 1897, with the indeterminate sentence and parole law, came the establishment of the Indiana Reformatory. A classification of prisoners was effected by a transfer between the two state prisons whereby all the men under thirty years of age were confined in the prison at Jeffersonville (which became the Reformatory), all over that age in the one at Michigan City.<sup>10</sup> The exception to this rule was of men convicted of treason or murder in the first or second degree, who, regardless of age were retained by, and thereafter sentenced to the State Prison at Michigan City. A later law provides that all men serving a life sentence shall be confined in the State Prison. This excludes two more classes from the Reformatory—those convicted for felony for the third time, or of rape upon a child under twelve years of age.

In 1899 the Reformatory board of trustees was made bipartisan. In 1905 trade schools were established and the labor of convicts was limited to the manufacture of goods on state account. In 1907 the legislature extended to all the state institutions what had long been in practice in most of them—uniform, non-partisan management and the selection of all employes on the merit system. That year, also, it authorized the establishment of a binder twine plant at the State Prison and it passed the suspended sentence and probation law.

I have mentioned this series of laws because they had much to do with the successful operation of the system of parole adopted in 1897. Under them the State has taken long steps toward the standard raised by the framers of our Constitution, that our law-breakers should not be made objects of vindictive justice but should be reformed. Our prisons are no longer political spoil. They are educational institutions, working out a scientific problem—the reformation of men. Only merit counts with the convict. Where merit is the test with the inmates, nothing else should be the standard in the employment and promotion of the officers.

Our indeterminate sentence law applies to men over sixteen years

---

<sup>10</sup>There were no women in these two prisons. They had been removed to the Women's Prison in 1873.

of age and women over eighteen years. With the exceptions mentioned, in which the sentence is death or life imprisonment, all persons convicted of felony are subject to its provisions. We hope some day to have it extended to misdemeanants. It has been in operation at the Reformatory and the State Prison since 1897, at the Woman's Prison since 1899. Such public opposition as developed soon gave way to approval and support.<sup>11</sup> Its constitutionality was upheld by our Supreme Court in 1898. As first enacted, it provided that the several parole boards should include the superintendent, physician and chaplain of the institution in addition to the board of trustees. This is still in force at the the Woman's Prison, but at the two prisons for men the board of trustees only, through an amendment which unfortunately overlooked the Woman's Prison, constitutes the parole board.

In considering the parole of a prisoner the boards are prohibited by law from entertaining any other form of application or petition than that of the prisoner himself. They are allowed a wide latitude in granting paroles and in withdrawing paroled prisoners from liberty.

I should like here to distinguish between the words parole and probation. There is much confusion in the use of these terms. I think I can give a definition of each with which we will all agree. Parole releases a man from prison conditionally, before the expiration of his maximum sentence. Probation saves him from going to prison at all. Parole follows such reformatory treatment as the State through its institutions is prepared to give its law-breakers. Probation assumes that some offenders do not need institutional treatment and that their interests and those of the State will be best served by saving them from the odium attaching to it. Paroles are granted by the institution management—at least this is the practice in Indiana—though some States have separate parole boards. The courts themselves place men and women on probation, to be sent to prison only in the event that they fail to live up to the conditions imposed.

You may want to know the method of procedure under our indeterminate sentence law. Let us assume that a man under thirty years of age has been indicted for petit larceny. The jury finds that he is guilty and that his age is so many years. The judge asks if he has anything to say before sentence is pronounced. He next says, "Having been found guilty, you stand sentenced under

<sup>11</sup>"Ten Years of the Indeterminate Sentence," Amer. Statistical Assn. Pub., Vol. XI, No. 81, p. 84. Transactions, Indiana State Bar Association, 1906, p. 403; 1907, p. 190. Report of Committee on Discharged Prisoners, Amer. Pris. Assn., 1902, p. 289.

the law." The provision of law for this particular crime is not less than one nor more than eight years. Under the law a prisoner must be transferred to the institution within five days after sentence. He is taken there by the sheriff, receipted for by the superintendent and his institutional life begins.. He is put through a course in physical, mental, moral and industrial training, in all of which he must pass a certain standard before he is eligible for parole. He can be released at any time after the expiration of his minimum sentence, if that is deemed the best thing for him and for society. The test is that he has faithfully kept the rules of the institution, that he has gained the confidence of the management in his ability to keep the law if conditionally released, and that his parole is not contrary to the public sense in the community from which he was committed. Effort is made especially to learn the attitude of the judge and the prosecuting attorney. If in view of all the facts the prisoner is deemed entitled to a parole, this is authorized. He is not released, however, until employment has been found for him. If his friends are unable to secure it, it is found by the state agents. The conditions of his parole are that he shall obey the law faithfully, shall not associate with bad company or frequent questionable or disreputable places and that he shall report regularly each month the amount of work he has performed, his earnings and expenditures, what reading he has done, and any other facts that will serve to indicate the manner in which he has spent his time and money, all of which must be certified by his employer. Failure to make this report or violation of any of the conditions of parole will result in his immediate return to the institution. If one has faithfully fulfilled his agreement of parole for one year, he may be unconditionally discharged by the parole board; or, if its members are not fully satisfied of his ability to live right on the outside, his parole may be continued from year to year, until such time, within the limit of his maximum sentence, as it sees fit to release him.

The methods of the two state prisons are substantially the same as those of the Reformatory. Each has agents to secure employment for paroled prisoners and to supervise them throughout the parole period. Few States, I am convinced, are giving sufficient attention to this important matter—the re-adaptation of the offender to free life. Under this law the institutional treatment of the offender becomes an important part of the judiciary system of a State. It is of great value, if not indeed absolutely essential to the proper administration of justice that the judge shall visit each of the penal institutions and know what they claim to do and how they do it.

Now for results. The best test of a correctional institution is the fruit it yields. This first of all is the number of persons who can leave its doors and maintain themselves as law-abiding citizens under free living conditions.

The Indiana institutions have kept careful record of their paroled prisoners, and in recent years have sent a summary to the Board of State Charities every six months. On April 1, 1915, we completed eighteen years' experience under the law. In that period 9,034 men and women were paroled. Of this number 5,422 observed faithfully the conditions of their release and were discharged; the maximum sentence of 459 expired during the parole period and they were free from supervision; 154 died; 618 were still on parole and were making the required reports. This leaves 2,381 to be accounted for. They are the delinquents, the unsatisfactory cases. They constitute 26.3 per cent of the whole number paroled. Sixty per cent of the number paroled were young men under thirty years of age. The proportion of unsatisfactory cases among this class, 25.7 per cent, was less than among the women, 28.6 per cent, and the older men, 27.2 per cent. These men and women maintained themselves during the parole period, and at the time they ceased reporting had on hand or due them \$454,416.25, an average of \$50.30 each. It should be clearly understood that all that is claimed for these figures is that they are a record of results for the time the paroled prisoners were under supervision, which was in few cases less than one year.

TABLE I.

OPERATIONS OF THE PAROLE LAW—APRIL 1, 1897, TO APRIL 1, 1915—18 YEARS.

	Reformatory, Jeffersonville,	State Prison, Michigan City	Woman's Prison, Indianapolis	Total
Served parole and given final discharge.....	3 211	2 078	133	5 422
Sentence expired during parole period.....	298	137	24	459
Returned for violation of parole.....	715	641	42	1,398
Delinquent and at large.....	664	288	31	983
Died.....	87	59	8	154
Reporting April 1 1915.....	390	211	17	618
Total paroled.....	5 365	3 414	255	9 034
Percentage of unsatisfactory cases.....	25.7	27.2	28.6	26.3
Earnings of paroled prisoners.....	\$1 537 495.46	\$989 140.08	\$3 563.86	\$2 530 199.40
Expenses.....	1 306 256.32	767 658.97	1 867.86	2 075 783.15
Savings.....	231 239.14	\$221 481.11	\$1 696.00	\$454 416.25
Average savings.....	\$43.10	\$64.87	\$6.65	\$50.30

In this connection has been noted a striking fact in regard to the number of commitments for felony in recent years, and the daily

average population of our state penal institutions. The former is less, the latter more, than when prisoners were sentenced for a definite time. Taking a period of twenty-one years, the ten preceding and the ten following the enactment of our indeterminate sentence law in 1897, I find a total of 7,539 commitments from 1887 to 1896, and a total of 6,632 commitments from 1898 to 1907, inclusive. They averaged 754 annually under the definite sentence, 663 annually under the indeterminate sentence. It means a decrease of 12 per cent annually in favor of the latter. It may be well to mention here that in the two decades from 1890 to 1910 the population of Indiana increased 23 per cent. That this increase in general population was accompanied by a decrease in prison commitments was probably not due wholly to the effects of the indeterminate sentence law, but it seems to me very significant.

In the prison population, on the other hand, the increased average daily attendance is no less significant. Under the definite sentence, our courts measured out so much punishment for so much crime. Having served his time, the prisoner was free to go. Under the present system of indeterminate sentence with parole, accompanied as it is with efforts at reformation, the average length of sentence is markedly longer. We have found from a study of our State Prison records that 304 men committed beginning in 1890, for a definite time, served an average of two years and two months each. The average time served by the first 304 men committed after January 1, 1900, under the indeterminate sentence, for the same crimes, was six months and twenty-three days longer. The average time served by 304 men committed for the same crimes after January 1, 1906, was 1 year, 2 months, 5 days longer.

TABLE II.

INDIANA STATE PRISON.

TABLE SHOWING AVERAGE TIME SERVED UNDER DEFINITE SENTENCE AS COMPARED WITH INDETERMINATE SENTENCE.

CRIME	Number Men	AVERAGE TIME SERVED								
		Definite Sentence 1890			Indeterminate Sentence 1900			Indeterminate Sentence 1906		
		Yrs.	Mos.	Days	Yrs.	Mos.	Days	Yrs.	Mos.	Days
Petit larceny.....	110	1	2	10	1	11	26	2	5	6
Grand larceny.....	77	1	10	12	2	10	13	2	11	26
Burglary.....	62	2	4	17	3	1	23	4	9	2
Assault and battery to kill.....	14	2	11	.....	2	6	1	3	6	2
Forgery.....	11	2	.....	27	2	2	23	2	8	10
Receiving stolen goods.....	6	.....	11	.....	1	8	11	3	6	15
Rape.....	6	2	3	10	3	1	.....	3	.....	9
Perjury.....	4	1	10	22	2	2	22	2	2	19
Manslaughter.....	4	1	9	.....	4	4	18	2	6	10
Arson.....	4	3	6	7	1	7	10	3	6	12
False pretense.....	4	1	6	7	1	9	20	2	6	9
Incest.....	2	1	9	.....	3	3	16	4	6	.....
Total.....	304	2	.....	2	2	6	25	3	2	7

A similar study of three groups of commitments to the Indiana Reformatory was made—the last 300 under the definite sentence and the first and second groups of 300 each under the indeterminate sentence. Compared with the first group, the second group served an average of 7 months, 14 days longer; the third group, 1 year, 2 months and 14 days longer.

TABLE III.

## INDIANA REFORMATORY.

TABLE SHOWING AVERAGE TIME SERVED UNDER DEFINITE SENTENCE AS COMPARED WITH INDETERMINATE SENTENCE.

CRIME	AVERAGE TIME SERVED											
	Number Men	Definite Sentence (1)			Number Men	Indeterminate Sentence (2)			Number Men	Indeterminate Sentence (3)		
		Yrs.	Mos.	Days		Yrs.	Mos.	Days		Yrs.	Mos.	Days
Grand larceny.....	69	2		22	50	2	2	14	69	3		22
Petit larceny.....	133	1	3		150	2	2		133	2	6	24
Forgery.....	15	2		27	10	2	8	7	15	3	2	19
Burglary.....	19	2		12	33	3	1	29	19	4	6	11
Robbery.....	9	1	10	21	3	3	3	14	9	3	4	19
False pretense.....	10	1	5	27	2	1		15	10	3	1	11
Manlaughter.....	3	4	7	20	8	2	1	22	3	3	5	14
Assault and battery.....	29	2	1	8	26	2	7	18	29	3	1	6
Rape.....	4	4	1	22	4	2	9	11	4	2	4	28
Perjury.....	2	1	9	4	2	2	6	2	2	2		28
Murder.....	3	2							3	3	1	25
Embezzlement.....	2	1	4	1					2	1	6	23
Blackmail.....	1		11						1	1	6	29
Incest.....	1	3	9						1	2	11	9
Arson.....				2	1	9	1					
False claim.....				1	2							
Receiving stolen goods.....				4	1	3	24					
Seduction.....				1	2	4	3					
Bigamy.....				1	2		10					
Entering house to commit felony.....				2	3	11						
An accessory after the fact of manslaughter.....				1	2	2	11					
Total.....	300	1	8	22	300	2	4	6	300	2	11	6

(1) Last 300 commitments under definite sentence.

(2) First 300 commitments under indeterminate sentence.

(3) First 300 commitments under indeterminate sentence after January 1 1906.

The records show that in 1887 the three state penal institutions had an average daily population of 1,225. Ten years later it was 1,617. The decade from 1898 to 1907 began with an average of 1,782 and closed with 2,243. The increase year by year from 1887 to 1907 averaged 50.

More recently both commitments and average daily population have shown the effects of our adult probation law of 1907 and the establishment in 1911 of our hospital for insane criminals in connection with the State Prison. For that reason I have included no statistics after 1907 in the comparisons given. Aside from the insane, however,

there are other mental defectives in prison. Of course they should not have been sent there. They are a refractory element and they form a residuum which tends to increase the population and also the average length of imprisonment. The defectives for which reformatories are intended are those who are lacking and who need treatment and training and discipline, to fit them for free life.

One day last August I visited Mr. Brockway at his home in Elmira. He is now approaching the age of eighty-nine years. I asked him to think back over the forty-five years that have elapsed since the presentation of his memorable paper at the first Prison Congress in 1870 and to tell me in a few words how, in the light of the years that have passed, he now views the indeterminate sentence and parole law. His statement was: "I presume that no high ideal is ever completely realized. Nowhere yet has the principle of the indeterminate sentence, pure and simple, been enacted into law. Nevertheless I am as firmly convinced as ever that it is the true principle under which offenders should be committed for institutional treatment. When, later, as must be, the present lackadaisical, fanciful, obtrusive sentiment about offenders is replaced by passionlessness, neither vindictive nor lovelorn— a firm, noble, corrective system of laws and prison administration established and allowed, then surely, the *full* indeterminate sentence will be adopted and under it offenders will be cured or continuously restrained."