

Determinate vs. indeterminate sentence essay



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The punishment for a convicted criminal may require one or a combination of diverse aspects of consequence, including community service, compensation to the victim, probation or imprisonment. If imprisonment is imposed, the offender's release is contingent on the aggravating and mitigating circumstances, in addition to the nature of the crime committed. In addition, the convicted criminal's past criminal history, criminal offense in issue, conduct in the prison system, and recognized willingness to rehabilitate are also considered.

Although the concept of putting someone in jail for a predetermined length of time is not new to the American society, opposing theories still exist as to why some judges order, and why numerous laws require, convicted criminals to be imprisoned. Nevertheless, in actual practice, the decision to reject or accept the recommendation of the court revolves on which sentences effect in the earlier release opportunity. This is because in the United States, the imposition of prison term could either be determinate or indeterminate.

I. Determinate Sentence

Determinate sentencing imposes fixed incarceration or term; however, a convicted criminal sentenced under the aforesaid rule can be released early as a result of congestion, or good time credits. In addition, determinate sentencing usually eliminates any alternative to prison or possibility of probation. States with determinate sentencing prohibit the judge from making any discretion over the duration of the prison term as it shifts authority in the sentencing process from judges to prosecutors. Determinate

sentencing is considered one of the most significant innovations in modern sentencing.

Its foremost justification is that incarceration does not effectively rehabilitate criminals and that the rulings of the parole board are often unreliable, not based on the alleged treatment of the convict. Determinate sentences are based on the idea that the imprisoned criminals are receiving just deserts for the crimes they committed (Aba, American Bar Association. Commission on Effective Criminal Sanctions, 2007, p. 81). It restricts the early discharge of inmates and before they can be released, the law requires convicted criminals to serve a considerable portion of their prison terms.

In a few instances, however, convicted criminals sentenced under determinate sentences are still qualified for parole after serving a portion of their prison terms. Based on a set of standards established by regulations and statute, which does not involve the determination the Board of Parole, the inmate may receive " points" that may be applied toward the imprisonment period. Thus, the points awarded on a determinate sentence results in the earlier discharge of inmate. Advantages

Determinate sentences increase the possibility of convicted criminals being sent to prison. It suggests that the length of a convicted criminal's prison term will be decided by the nature of his or her crime rather than by his or her behavior following the imprisonment (Levinson, 2002, p. 876). This type of sentence reduces the apprehension in prison and restricts the leniency of the courts. In contrast, for the convicted criminals, the end of their parole period is considered the completion of their sentence (Warner, 2002, p. 245).

Nevertheless, one of the major advantages of the determinate sentence is that any concerned parties will know how much time the convicted criminal has to serve in prison. Disadvantages Determinate sentences have been cited as one of the primary causes leading to prison overpopulation. In addition, many people believe that determinate sentences are excessively restrictive for rehabilitative objectives, as it removes the Parole Board's authority as well as credit for rehabilitation programs involvement of the inmates. The parole system is a continued declaration that the government places public safety as its main concern.

Unfortunately, many determinates sentencing system in the United States have entirely removed parole even though it is an additional safeguard to the public welfare, given that the Board of Pardons and Parole has been given the continuing authority to monitor the convicted criminals following their release.

II. Indeterminate Sentence Indeterminate sentence is the punishment imposed subsequent to conviction for a crime which does not state a release date or specific period of prison term, other than the range of time, such as "10 to 20 years" of imprisonment.

In determining the actual date of prison release, some States introduce a set of standards that the Parole Board must follow; while in other States, the pronouncement is discretionary. The sentence becomes indeterminate in view of the fact that, at the time of sentencing, the convicted criminal does not know how long he or she will serve the prison term. Likewise, given that

all that is known is a specified range of prison term, the convicted criminal is also not aware when the parole board will eventually grant release.

In imposing an indeterminate sentence, the judge sets the maximum length of time that the convicted criminal can be incarcerated prior to his or her release. However, following the sentencing of the Court to the convicted criminal, the indeterminate sentencing law requires that before the aforesaid period is over, the Parole Board should set a minimum amount of service time before considering the inmate for parole. In most States, the prison terms imposed in juvenile courts and adult courts are indeterminate.

For offenders with indeterminate sentence, a juvenile court judge or an authorized State agency decides when the youthful offender shall be released, or a parole board in case of an adult offender (U. S. Department of Justice, 1998). Advantages Rather than the long-established instilling of fear in the mind of those undergoing imprisonment, the foremost objective of indeterminate sentence is to infuse hope. It also makes prisoners become conscious that their future lies in their own hands and they could secure an early release from jail if they demonstrate sincerity and interest in their respective labor and work.

However, the utmost advantage of indeterminate sentence lies on the rehabilitation processes, which is the theory behind indeterminate sentencing. For having a good behavior while in prison, the offender's good time reduces a portion of his or her prison term. Disadvantages Notwithstanding the advantages of the indeterminate sentence, it has been

denounced on several counts. The foremost protests to this system are as follows:

1. The most common protest raised against this system is the vagueness with reference to the exactness of the prison term which, from the psychological perspective, is a harsh punishment in itself (Manuel, 2009).
2. Erroneous judgment of the Prison Board concerning the suitability of a particular inmate for release is likely to result into a longer period of prison stay than that actually required in the given case (Manuel, 2009).
3. In absence of any adequate means of accurately determining the inmate's suitability for release, premature prison releases may result or conversely, detention of an inmate for an excessively longer period (Manuel, 2009).
4. Given that the release under indeterminate sentence generally depends on the prison warden's reports, the inmates who upset the former are likely held in prison for a longer time as a result of unfavorable reports against them (Manuel, 2009).
5. Because indeterminate sentence generates sweet talk among the inmates, it makes them work for the most part of securing untimely release instead of sincerely reforming themselves for a normal life (Manuel, 2009).
6. Finally, the inmates going through a determinate sentence are positively aware that following the completion of their prison term they have a legal right to demand release (Manuel, 2009). In contrast, this aspect of self satisfaction is absolutely absent in case of indeterminate sentence. Parole in Relation to Indeterminate Sentence Parole is the provisional discharge of a <https://assignbuster.com/determinate-vs-indeterminate-sentence-essay/>

convicted criminal from imprisonment. The parolee remains under the custody of the State pending the granting of the release date, as such, the parolee may be recalled if the authorities believe it to be necessary.

Then again, before parole can be utilized, it has to be proven that the offender is fit for release, rehabilitated, etc. The Board of Parole or any other parole authority determines the parole eligibility. The law provides that under the indeterminate sentence law, qualified inmates for parole eligibility must be determined following the service of the specified fraction of their full prison terms. In practice, release on parole from an indeterminate sentence is commenced by the endorsement and recommendation of parole authorities, field parole officers, and the prison staff personnel.

Conclusion Modern society accepts that there are consequences for criminal behavior, and that the consequences are generally unpleasant as they remove liberty from those proven guilty. Accordingly, dates of release from prison are determined from the type of sentence for which inmates have been imprisoned. The determination of prison term is either determinate or indeterminate. Indeterminate sentence are designed at correcting the convicted criminals instead of treating them badly.

However, the practice of imposing indeterminate sentence is an ongoing dispute as to whether it is better to put together unqualified prison terms without references to possible modification, rehabilitation, or future review. Those supporting the determinate sentencing highlight that imprisonment should be designed primarily for incapacitation, deterrence, as well as just deserts punishment. Nevertheless, regardless of the type of sentence, one

thing is for sure in the present criminal justice system, that from the moment a person is found guilty of a crime, punishment is imposed.