

his present imprisonment should be computed from October 24, 1931, the date of commitment, provided that the commitment was issued on the day sentence was imposed. The fact that he continued in custody in the Indiana state prison under commitment on a previous conviction until October 28, 1932, is immaterial. During the interim, the sentences must be considered as having run concurrently.

GOVERNOR: Prison term—power of Indiana prison officials to hold prisoner until unpaid fine is paid or stayed, when ordered to do so by commitment.

November 14, 1933.

Hon. Wayne Coy,
Under Secretary to Governor,
Executive Department,
Indianapolis, Indiana.

Honorable Sir:

I have before me your request that an official opinion issue in response to the following inquiry:

“Does the fine become a part of the minimum sentence of a prisoner’s sentence on an indeterminate sentence?”

“In explanation, I wish to point out that the Michigan City prison has followed the policy of not regarding the fine as a part of a minimum sentence. In other words, they have felt that the board of trustees of the institution had the authority to release a prisoner at the end of a minimum term even though there was an unpaid fine against him. On the other hand, they regard that an unpaid fine is a part of a sentence in all determinate sentence cases. I am quite anxious to clarify this situation.”

In the State of Indiana, provision is made by statute for enforcing the payment of fines by imprisonment of the party fined,

Peed v. Brewster, 168 Ind. 51;
Flora v. Sachs, 64 Ind. 155;
Smith v. State, 23 Ind. 132;
McCool v. State, 23 Ind. 127;

and it has been held that when a person is sentenced to be imprisoned and also to pay a fine, the term of imprisonment for the enforcement of the fine will begin after the expiration of the term of imprisonment named as punishment.

Ex Parte Tongate, 31 Ind. 370.

The provision of the statutes pertinent to this discussion is section 2355 of Burns Annotated Indiana Statutes (1926 Revision), the language of which follows:

“Whenever a person is adjudged guilty of a misdemeanor or felony, and his punishment is by fine, or by fine and imprisonment, the judgment shall be that he stand committed until such fine is paid or replevied; and it shall be unlawful for the sheriff or constable to release such person until such judgment is either paid in money or replevied by good freehold surety residing in the county where the judgment is rendered. In case such judgment is replevied, it shall be the duty of the clerk, justice of the peace, or city judge, upon the expiration of the time for the stay of execution thereon, to issue to the sheriff or constable a copy of such judgment, with his mandate attached, under the hand, or hand and seal, of the court; and it shall be the duty of the sheriff or constable to arrest the defendant and commit him to jail unless or until such fine and costs are paid: Provided, That any defendant imprisoned under the provisions of this section may be released therefrom as now provided by law. Any clerk, sheriff, justice of the peace or constable failing to perform the duties specified in this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not to exceed one hundred dollars for each offense.”

It has been held, under a statute authorizing imprisonment for the non-payment of a fine, that if the primary punishment includes a term of imprisonment in a state prison, the convict may be required to serve out his fine in the same institution and need not be transferred to a county jail for this purpose.

People v. Sage, 43 N. Y. Supp. 372, 13 App. Div. 135;

Haddox v. Richardson, 168 Fed. 635, at 639-40.

After making an exhaustive study of the law concerning determinate and indeterminate sentences, I am of the opinion that, insofar as the instant question is concerned, there is no real ground for holding that an imprisonment for failure to pay fines should be visited upon a defendant who has received a determinate sentence and on the other hand such incarceration should not be visited upon one who has been given an indeterminate sentence. There is no legal basis for such discrimination.

Your attention is specifically directed to the exact wording of the commitment in each individual case. This should contain a provision that the defendant stand committed until such fines are payed or stayed and in the absence of such provision, it is extremely doubtful that the imprisonment for the failure to pay the fine can be enforced in the state prison. Where the trial court has failed to make such a provision a part of the judgment, further action to procure the payment of the fine rests with the officials of the county in which the judgment was rendered.

In response to your inquiry, it should be noted that a direction in a judgment imposing a fine shown in the commitment that the defendant stand committed until the fine is paid, is no part of the penalty of the offense, but is a mechanism by which the court's order is insured of obedience. Hence, technically, it does not become a part of a prisoner's minimum sentence, but rather the term of imprisonment for the collection of the fine begins after the expiration of the term of imprisonment named as the punishment. The imprisonment for the enforcement of the fine would follow a minimum sentence in cases where the prisoner would otherwise be discharged at the end of the minimum term; if the prisoner should be forced to serve more than the minimum sentence, the imprisonment for the fine would follow the expiration of his term, whatever it might be. In cases wherein the judgment names a determinate sentence, the imprisonment for the enforcement of such fine would follow immediately upon the expiration of such determinate sentence. In each case set forth above, the imprisonment occasioned by the fine may be served in the state prison where the judgment provides that the prisoner stand committed until such fines are satisfied.