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International Summaries

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From Finland

Indeterminate Incarceration of Dangerous Recidivists 1971-1986

Indeterminate sentencing has not effectively protected Finland from recidivists.

By Heikki Pihlajamaki

Introduction

Indeterminate incarceration in Finland refers to the practice of identifying dangerous recidivists and, as a means of controlling this group, incarcerating such offenders for an unspecified time beyond the court sentence for their offenses. The practice is based on a law passed in 1953 and a 1954 statute providing for its application. The incapacitation of dangerous criminals has become a favorite subject for criminal policy discussions in recent years, especially in the United States.

The institution of indeterminate sentencing is a vestige of the ideology of special prevention (and as such reflects policies that have been largely rejected). The use of indeterminate sentencing in Finland was primarily based on foreign research because methods of prediction and subjects do not differ substantially from country to country. No Finnish research exists on the subject, but conclusions have been drawn from the Finnish experience. The basis of this report is an empirical study of prisoners serving indeterminate sentences in the Finnish prisons after 1971, when the law was changed to severely restrict such sentences.

Summarized from *Pakkolaitokseen Eristaminen 1971-1986*, by Heikki Pihlajamaki, with permission of the National Research Institute of Legal Policy, 1987. 68 pp. NCJ 107587, Summary published Fall 1988.

This report explains how the criminal political ideologies and political compromises in indeterminate sentencing at the end of the 19th century have produced the present-day prison.

As a result of the amended legislation, the number of prisoners indeterminately sentenced decreased from approximately 300 to 10-20. (See Table 1.) This was largely due to the removal of relatively harmless criminals (those convicted of property crimes) from indeterminate sentencing.

Table 1
Number of prisoners indeterminately sentenced at year's end

Year	Number
1963	312
1968	378
1973	12
1978	6
1979	6
1980	6
1981	11
1982	13
1983	13

Background

Special prevention is still the primary ideology of the penitentiary. Scientific

discussion about dangerous recidivists began in Scandinavia at the end of the 19th century. Serlachius brought the new doctrine into Finland. In a 1907 article he stated that retarded criminals should receive special treatment in an institution with characteristics of both a prison and a hospital. Criminals would receive psychiatric care in an institution. Those who recovered would be released, and those who did not would stay incarcerated.

The 1932 law concerning dangerous recidivists

The doctrines of von Liszt and Serlachius became the ideological basis for Finnish criminal law, even though they did not become legislation. These ideas held that dangerous recidivists should be incarcerated for the safety of society.

Indeterminate sentencing was to be used only for criminals considered dangerous, who were divided into two groups: normal and abnormal. The 1932 law was based upon special prevention for essentially dangerous recidivists, who were prevented from committing additional crimes by incarceration. Despite Serlachius' doctrines, policymakers did not mandate systematic treatment for prisoners.

The prison board decided who would receive such sentences, as it still does today. Between 20 to 60 prisoners received indeterminate sentences each

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year in the thirties. The majority of these inmates, about 80 percent, were guilty of property crimes. The number sentenced indeterminately reached its peak at the end of that decade, when about 200 persons were so sentenced.

The 1953 law on the indeterminate sentencing of dangerous recidivists

Abnormal criminals were the object of special attention in the fifties. The concept of normality began to change slowly, so that a larger number of criminals was considered abnormal. Because abnormal criminals were considered treatable, indeterminate sentencing was deemphasized in many countries.

According to Anttila, Finland's policies were an exception to this, because a true psychopathological institution was never founded there, and indeterminate sentencing has always been used. In Anttila's opinion three factors accounted for this: the principles of classic criminology, the shortage of psychiatrists in Finland after the war, and Finland's relative lack of need to follow up severe punishment.

The 1953 law expanded the conditions for indeterminate sentencing tremendously, and such sentencing came into widespread use as the most severe form of punishment. The number of prisoners sentenced indeterminately began to rise, reaching a record in 1966 when 389 criminals or about 6 percent were so sentenced.

Criticism of the 1953 law

This system of controlling criminals was severely criticized in the late sixties. Many viewed control as a method of manipulating personality deviations: the mentally ill were put into sanatoriums, criminals into prisons, and so on. People believed that institutions interfered with inmates' personalities; although the idea of control was still acceptable, the system was considered flawed.

Prisons were subject to this criticism, which was directed toward the psychological concepts associated with indeterminate sentencing, the arbitrariness of characterizations of "dangerous," and the inmates' lack of legal support. The

reform movement of the late sixties and various publications, such as the *November Movement* and *Krim*, directed attention to the long incarcerations that resulted from indeterminate sentencing. Reform goals varied from less use of indeterminate sentencing to its complete abandonment.

In addition, a collection of articles published in 1967, "Forced Helpers," criticized treatment ideology. This collection was so influential that after its publication treatment was not required in a prison under any circumstances. The ideology had come full circle: in the thirties criminals were either healthy or sick; in the fifties they were all sick; and in the sixties all were healthy.

A 1969 committee that examined the indeterminate sentence law recommended that, although the prison system should be preserved, the number of indeterminate sentences should be reduced. The committee adopted the idea that all criminals might be recidivists. Crimes against property were still considered the province of dangerous criminals, although only when committed professionally or habitually.

Lawmakers criticized the committee's proposals as unlikely to solve the problems associated with indeterminate sentencing. The Finnish Cabinet estimated that the number of dangerous criminals—about 100—was too high to risk the elimination of indeterminate sentencing without replacing it with something. Intermediate steps reformed indeterminate sentencing only slightly, allowing for its use in certain cases. This gave rise to the present "mini" prison.

Changes in the law for indeterminate sentencing of dangerous recidivists in 1971

According to present law, crimes leading to indeterminate sentences are murder, manslaughter, robberies accompanied by violence, rape, life-threatening arson, and other extremely violent crimes. The conditions for indeterminate sentencing are generally the same as they were under the old law, except that the court cannot sentence someone indeterminately unless the prosecutor demands it.

The current law is considered fair, and the court has had no problem interpreting it. But its critics say it does not clearly define the offenses punishable by indeterminate sentencing.

The cases of inmates indeterminately sentenced before 1971 were reevaluated in light of the amended law, and the number serving such sentences decreased from 252 to 14.

An empirical study of indeterminate sentencing conducted from 1971 to 1986

Researchers studied 44 inmates serving indeterminate sentences, 14 of whom were sentenced prior to 1971; 32 were sentenced under the new law. Two of these inmates were not part of the study.

The researchers handled the 14 "old" cases separately from those commenced under the new law so they could determine the effect of changes in the law. In cases where an inmate served more than one indeterminate sentence, researchers considered only the first for study. For example, those sentenced indeterminately for parole violations were not considered.

Of the 44 subjects of this research, 28 were treated for mental problems, according to their own statements. Alcoholism played a role in their receiving indeterminate sentences.

Age and sex of subjects

Investigators categorized subjects by age at time of sentencing; ages ranged from

Table 2
Ages of subjects

Age	"Old"	"New"
15-17	—	—
18-20	—	—
21-24	—	2
25-29	—	7
30-39	3	6
40-49	3	5
Over 50	8	10
	14	30

22 to 70 years old (Table 2). Because all who received indeterminate sentencing were recidivists, they were older than the general population of violent criminals. (See Table 3.)

Most inmates serving indeterminate sentences under the new law were between 25 and 49 years old. A rather large number were over 50, however, because they had already spent some time in prison when the new law took effect.

Table 3
Ages of inmates convicted of violent crimes in 1975

Age	Number
15-17	763
18-20	1,496
21-24	1,690
25-29	1,366
30-39	949
40-49	534
Over 50	412
	<hr/> 7,210

Those serving indeterminate sentences were all men. Women are seldom found guilty of violent crimes. Of 594 people convicted of assault and battery in the lower courts in 1980, 30 were female.

Type of crimes

An indeterminate sentence is applied as the most severe punishment. If someone commits two such crimes simultaneously, the maximum punishment is determined by the legislation. Such an offender may receive an indeterminate sentence because of the second crime. Secondary crimes were factors in 18 of the subjects' cases.

Two considerations are apparent in secondary crimes leading to indeterminate sentences. First, according to the law, the offender must have used extreme violence or be pronounced dangerous. The second consideration is how to apply the sentencing when the infliction of wounds leads to the death of the victim.

Violent crimes involving alcohol are in a separate class. More than half (26) of the subjects' crimes were in this group. Another category is sexual offenses such as rape or child molestation; these crimes may also involve capital offenses. These offenders don't use alcohol as much as those in the former group, but they are more inclined towards violent crime.

Length of sentences

An indeterminate sentence requires at least 2 years of incarceration without parole. Because a relatively violent crime is always in question, the majority of sentences are long. (See Table 4.)

Even though the sentence for most violent crimes is long and indeterminate sentences are granted to those guilty of the most heinous crimes, the majority of subjects received a sentence of less than 8 years. This is because the majority of those indeterminately sentenced were considered mentally retarded. Only the time served under an indeterminate sentence was considered for this study, so some offenders may have been serving longer terms than the figures in Table 4 convey. Many who are sentenced indeterminately for violent crimes are also sentenced simultaneously for property offenses. Parole violators can also receive indeterminate sentences. In this study six prisoners had maximum prison terms of 20 years.

Table 4
Length of subjects' sentences

Length of Sentence	"Old"	"New"
2 yr. - 2 yr. 11 mo.	1	3
3 yr. - 3 yr. 11 mo.	2	1
4 yr. - 4 yr. 11 mo.	2	6
5 yr. - 5 yr. 11 mo.	1	1
6 yr. - 6 yr. 11 mo.	3	2
7 yr. - 7 yr. 11 mo.	-	3
Minimum 8 years	5	14

Previous criminality

According to the law, the crime meriting indeterminate sentencing must be the same type as that committed during the previous 10 years: it has to involve extreme violence or danger to another's life or health. (See Table 5.)

Table 5
Subjects' most serious previous crimes

Type of Crime	"Old"	"New"
Homicide	-	3
Manslaughter	3	7
Violent robbery	-	1
Leading to death	1	-
Rape	1	4
Violent A & B	3	13
Robbery	2	1
Violent resistance to arrest	1	-
Attempted murder	-	1
Attempted manslaughter	-	1
Attempted violent A & B	1	-
Attempted rape	1	-
	<hr/> 14	<hr/> 30

Mental examination and accountability

Of the study's subjects, 32 were mentally deficient and 12 were normal; 39 were tested for mental deficiencies. After the 1971 law passed, those who were found to be mentally defective were at greater risk of incarceration. For example, a great number of those with character disturbances were sent to prison.

Inmates with mental problems have difficulty passing from an indeterminate sentence to parole. The problem is enhanced for those offenders serving life sentences. In some instances a life sentence is a more severe punishment. (A life sentence is given for past crimes—not for possible future crimes—as is an indeterminate sentence.) Some one sentenced to life is not considered

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Table 6
Main diagnosis of subjects' mental examinations

Diagnosis	Number
Sociopath	7
Paranoic character	6
Explosive character	4
Other character disturbances	10
Limited intelligence	4
Alcoholism	3
	<hr/> 34

dangerous in the same way as is someone sentenced indeterminately. Moreover, someone serving life may have his sentence commuted by the President sooner than someone serving an indeterminate sentence. Persons not fully capable of understanding the consequences of their actions are considered dangerous to people in their surroundings. According to the Mental Illness Law, people who are dangerous to themselves or others can be placed in a mental health facility against their will.

The basis for indeterminate sentencing and the testimony of experts

The prison board expanded and made more precise the bases for indeterminate sentences and established guidelines for determining serious crimes in 1975. Since then, the prison psychiatrist, prison treatment center psychologist, and the director of the detention center all

express opinions on such sentencing. The prison board studies these recommendations thoroughly and considers such other factors as paranoia, neurosis, alcoholism, and low blood sugar. In practice, an offender is considered dangerous if psychopathic, alcoholic, and unemployed. Dangerous offenders are concentrated in the lower social classes. The prison board makes the sentencing decision based on the dangerousness of the offender, and it cannot be appealed.

Methods of terminating an indeterminate sentence

Indeterminately sentenced prisoners are held until no longer considered dangerous. Then they are paroled. Before the 1971 law, indeterminately sentenced offenders served from 2 to 3 years beyond their sentences. Because the prison board does not determine the dangerousness of such prisoners before granting parole, they may be just as dangerous upon release as when sentenced. Indeterminate sentencing, therefore, may not protect society after all.

Conclusion

Indeterminate sentencing is the legacy of prevention ideology. Its goal of protecting society has not been reached. The sentences do not guarantee that the most dangerous criminals will be continuously detained.

An erroneous decision of indeterminate sentencing may mean more years of incarceration for someone who can

become even more dangerous. On the other hand, a correct prediction of recidivism may merely postpone violent crimes because inmate treatment is poor. A method for predicting dangerousness is unavailable. Many think indeterminate sentencing should be abolished and that violent criminals should receive the same punishment as other criminals.

No statistics exist to indicate that indeterminate sentencing has a significant effect on the rate of violent crime. Furthermore, some Finnish criminologists fear that the sentencing law could be used in cases of drunken driving or drug pushing, although there is no evidence of this. In addition, the sentence is applied in cases of violent crimes committed by those in the lower classes, while perpetrators of crimes that widely affect the economy or the environment are not so sentenced. Finally, the accurate prediction of recidivism is questionable. Despite the use of psychiatrists in assessing recidivism, no data exists to evaluate such predictions.

The method used for evaluating criminals' dangerousness is inexpensive and logical, but it has limitations. It is no better than a psychiatric examination for assessing dangerousness.

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