

Opinion No. 55-6275

September 6, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. B. Swope, Warden, Penitentiary of New Mexico, P. O. Box 1059, Santa Fe, New Mexico

Your request for opinion, dated August 29, 1955, has been received.

You indicate that you have received for commitment to your institution a person convicted of the crime of sodomy. The commitment, specifying the term of imprisonment, reads:

"not less than one year (Indeterminate sentence)."

The statute providing the penalty upon conviction of the crime of sodomy reads:

"Any person convicted of the crime of sodomy, as defined in section 1 of this act [40-7-6] shall be imprisoned for not less than one (1) year, or fined in any sum not less than one thousand dollars (\$ 1,000.00), or both, in the discretion of the court." Section 40-7-7, N.M.S.A., 1953 (pocket supplement).

It is noted that no maximum is, in terms, provided for in the statute, and the commitment reads as does the statute.

Your question: What is the maximum term of imprisonment for the crime above and other comparable cases where the penalty provisions of the statutes provide only that the minimum shall not be less than a specified period but do not provide, in terms, a maximum?

Construing a statute reading, "Robbery is punishable by imprisonment in the state prison **not less than one year**" (emphasis ours), the Supreme Court of California held:

"We can see no merit in the claim that the law does not prescribe the maximum penalty for the crime of robbery. The maximum penalty 'prescribed by the law' is the extreme penalty that the law authorizes to be imposed; that is, life imprisonment in the present case, as we have seen." People v. Gonzales, 173 P. 407. See also People v. Rossi, 174 P. 916.

Based upon the above authority, it is the opinion of this office that the maximum term of imprisonment in the instances which you ask about is life.

I trust this answers your inquiry satisfactorily.

By Santiago E. Campos

Assistant Attorney General