

ADOPTED

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association, having adopted Resolution 502
2 at the Annual Meeting 2022 urging federal, state, local, tribal, and territorial
3 governments to enact legislation permitting courts to hear petitions that allow *de*
4 *novo* hearings to take a “second look” at criminal sentences where persons have
5 been incarcerated for ten years, now urges federal, state, local, territorial, and
6 tribal governments to adopt Prosecutor-Initiated Resentencing legislation that
7 permits a court at any time to recall and resentence a person to a lesser
8 sentence upon the recommendation of the prosecutor of the jurisdiction in which
9 the person was sentenced; and

10
11 FURTHER RESOLVED, That the American Bar Association urges federal, state,
12 local, territorial, and tribal, governments that adopt Prosecutor-Initiated
13 Resentencing legislation to:

- 14 (1) enable prosecutors to recommend recalling the sentence of a person who
15 has been committed to correctional facilities and the resentencing of that
16 person to a lesser sentence to further the interests of justice;
- 17 (2) allocate resources specifically designated for Prosecutor-Initiated
18 Resentencing to prosecutor’s offices, partner community-based
19 organizations, and other relevant stakeholders;
- 20 (3) identify and evaluate current sentences that may no longer be in the
21 interest of justice;
- 22 (4) conduct victim outreach in compliance with state and federal law; and
- 23 (5) establish eligibility criteria and policies for sentences that will be
24 considered for recall and resentencing.

REPORT

Introduction

At the Annual Meeting 2022, the American Bar Association adopted Resolution 22A502 “urg[ing] federal, state, local, territorial, and tribal governments to authorize judicial decision-makers to hear petitions for *de novo* “second look” resentencing brought by any incarcerated person who has served at least ten continuous years of a custodial sentence.”¹ The Report noted the broad agreement across ideological and party lines that too many people are behind bars and that society has recognized the overuse of incarceration as a means of protecting public safety.² This Resolution is proposed to build upon Resolution 22A502, recognizing that multiple pathways are needed to address the problem of overincarceration.

As of Spring 2023, about two million people were incarcerated in United States prisons and jails.³ Despite a decline in recent years,⁴ the U.S. continues to have the highest incarceration rate in the world.⁵ Moreover, racial and ethnic disparities persist in the U.S. justice system, with Black people incarcerated at five times the rate of white people and Hispanic/Latinx people incarcerated at 1.3 times the rate of white people.⁶ While reforms have been implemented to address mass incarceration, at the current rate of decline it will take nearly 60 years to cut the U.S. prison population in half.⁷

The single most important reason for the rise of incarceration in recent decades has not been crime rates, but rather the choice by policymakers to increase the use of prisons as a response to crime.⁸ Harsh criminal penalties enacted from the 1970s through the 90s resulted in more people behind bars for longer periods of time.⁹ Today, there is widespread agreement that many of these policies were too harsh and that the U.S. has

¹ *Resolution 22A502*, <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2022/502-annual-2022.pdf>.

² *Id.*

³ The Sentencing Project, *Criminal Justice Facts*, <https://www.sentencingproject.org/research>.

⁴ See John Gramlich, *America’s Incarceration Rate Falls to Lowest Level Since 1995*, Pew Rsch. Ctr. (Aug. 16, 2021), <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995>.

⁵ Prison Policy Initiative, *States of Incarceration: The Global Context*, <https://www.prisonpolicy.org/global/2021.html>.

⁶ See Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project (Oct. 13, 2021), <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project>.

⁷ Nazgol Ghandnoosh, *Can We Wait 60 Years to Cut the Prison Population in Half?* The Sentencing Project (Jan. 22, 2021), <https://www.sentencingproject.org/publications/can-we-wait-60-years-to-cut-the-prison-population-in-half>.

⁸ See *Nat’l Research Council, The Growth Of Incarceration In The United States: Exploring Causes And Consequences* 3 (Jeremy Travis et al. eds., 2014), <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

⁹ *Id.*

over-relied on incarceration as a mechanism to ensure public safety.¹⁰ Research suggests that unduly long sentences do little to make communities safer.¹¹ Understanding that there are thousands of currently incarcerated people who could be safely released—and given the high cost to keep these people in prison—many of these long sentences have diminishing returns.¹²

With growing concerns regarding the long-term benefit of lengthy sentences, prosecutors have begun to raise questions about whether certain cases deserve a second look.¹³ Since 2019, prosecutors in jurisdictions across the country, and across the political spectrum, have used Prosecutor-Initiated Resentencing (PIR) to reevaluate lengthy sentences and petition the court for resentencing, with input from victims of the initial crime.¹⁴ Through this new PIR tool, prosecutors have found that there are many incarcerated people who have served a significant portion of their sentence, made meaningful strides toward rehabilitation, and can be safely released or have their sentences modified.¹⁵

The Role of a Prosecutor

Prosecutors are arguably the most powerful actors in the criminal justice system.¹⁶ From choosing which cases to charge to setting the terms of plea bargains, prosecutors make hundreds of decisions each day affecting the lives of people and entire communities.¹⁷ With this power comes great responsibility—a responsibility that is unique and complex compared to other actors in the justice system.

The role of a prosecutor has been defined as a “minister of justice,” and as such, prosecutors are obligated not merely to seek convictions but to pursue just outcomes.¹⁸ This duty ranges from the pursuit of appropriate criminal charges to making sure a punishment fits the crime. In carrying out their duties, prosecutors are expected to act with integrity and sound judgment as they work to increase public safety. Moreover,

¹⁰ See Maggie Astor, *Left and Right Agree on Criminal Justice: They Were Both Wrong Before*, N.Y. Times (May 17, 2019), <https://www.nytimes.com/2019/05/16/us/politics/criminal-justice-system.html>.

¹¹ See Nat'l Research Council, *The Growth Of Incarceration In The United States: Exploring Causes And Consequences* 4-5 (Jeremy Travis et al. eds., 2014), <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

¹² Eisen, L-B. et al. *How many Americans are unnecessarily incarcerated?* Brennan Center for Justice (Dec. 9, 2019), <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.

¹³ See Nazgol Ghandnoosh, *A Second Look at Injustice*, The Sentencing Project (2021), <https://www.sentencingproject.org/reports/a-second-look-at-injustice>.

¹⁴ See For The People, *Prosecutor-Initiated Resentencing: California's Opportunity to Expand Justice and Repair Harm* (Dec. 2021), https://www.forthepeople.org/s/ForThePeople_Report_121321.pdf.

¹⁵ *Id.*

¹⁶ See Angela J. Davis, *Arbitrary Justice: The Power Of The American Prosecutor* (2009).

¹⁷ *Id.*

¹⁸ See *Criminal Justice Standards For The Prosecution Function* (Am. Bar Ass'n 4th ed. 2017), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.

prosecutors also work to strengthen the criminal justice system as a whole.¹⁹ According to the American Bar Association's Criminal Justice Standards:

The prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system. The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action.²⁰

A prosecutor's duty to seek justice therefore extends beyond the courtroom walls, and it does not end after conviction and initial sentencing. For example, upon learning that evidence used to convict a person is untrustworthy, prosecutors have a duty to review that information and determine whether the conviction should be revisited.²¹ In the same way, a prosecutor's job is also to ensure sentences are just—at the time of sentencing and, in some cases, years or decades later. If a lengthy prison sentence is no longer in the interest of justice—because the sentence is too harsh or outdated, or because the incarcerated person has turned their life around in prison—prosecutors who have adopted PIR are taking action to correct that injustice.

Legal scholars have long recognized that our sense of justice can evolve: a punishment that may have seemed proportionate in one era can be widely accepted as disproportionate in the next.²² Through PIR, prosecutors are empowered to carry out their duty of administering justice—not just to convict, but to remedy sentences that have since been shown to be unjust.

Precedent for Looking Back

Prosecutors looking back at past sentences is not unprecedented. For more than a decade, prosecutors have been launching Conviction Integrity Units/Conviction Review Units (CIUs/CRUs) and have been “looking back” at past cases where an injustice has occurred.²³ CIUs/CRUs have now been established nationwide, as prosecutors have embraced the review of wrongful conviction cases as an integral part of their job and have championed the need to exonerate innocent people.²⁴

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Model Rules of Professional Conduct R. 3.8. (2022), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_8_special_responsibilities_of_a_prosecutor.

²² See Lawrence M. Friedman, *Crime and Punishment in American History* (1993).

²³ See Noah Fromson, *Conviction Integrity Units Expand Beyond Lone Star State Roots*, Texas Tribune (March 12, 2016), <https://www.texastribune.org/2016/03/12/conviction-integrity-units-expand-beyond-texas-root/>.

²⁴ *Id.*

Moreover, in recent years, policymakers have begun taking a “second look” at harsh sentences imposed in previous decades.²⁵ As of 2021, second look bills had been introduced in at least 25 states, including Minnesota, Vermont, West Virginia, and Florida.²⁶ At the federal level, proposed legislation would allow any person who has served at least 10 years in federal prison to petition a court to take a second look at their sentence before a judge and determine whether they are eligible for a sentence reduction or release.²⁷

PIR, which was first enacted in California in 2018, was born out of the effort to correct injustices.²⁸ PIR is often referred to as an expansion of *conviction* review to now include *sentence* review.²⁹ While CIUs/CRUs pertain to issues involving the validity of the conviction, PIR instead pertains to issues involving the length of sentence.³⁰ However, until very recently, prosecutors had no legal mechanism to proactively redress these types of excessive sentences.³¹

Focus on Lengthy Sentences

The prison population is not only a function of how many people are sent to prison, but also the length of time they are kept there. Since 1980, sentence length—for serious crimes in particular—has greatly increased, fueling the unprecedented growth of incarceration.³² The increase in long sentences has been driven by the proliferation of enhancements for second and third offenses, the abolition of parole in many states, and other shifts in sentencing policy.³³

As of 2019, nearly one in five people in U.S. prisons—over 260,000 people—had already been incarcerated for at least 10 years—a dramatic increase compared to the year 2000.³⁴ More than half (56%) of the people in U.S. prisons were serving sentences

²⁵ See Nazgol Ghandnoosh, *A Second Look at Injustice*, The Sentencing Project (2021), <https://www.sentencingproject.org/reports/a-second-look-at-injustice/>.

²⁶ *Id.*

²⁷ Booker, Bass to Introduce Groundbreaking Bill to Give “Second Look” to Those Behind Bars, July 15, 2019, <https://www.booker.senate.gov/news/press/booker-bass-to-introduce-groundbreaking-bill-to-give-and-ldquo-second-look-and-rdquo-to-those-behind-bars>.

²⁸ See For The People, *Prosecutor-Initiated Resentencing: California’s Opportunity to Expand Justice and Repair Harm* (Dec. 2021), https://www.fortheppl.org/s/ForThePeople_Report_121321.pdf.

²⁹ See For The People, *Advancing Prosecutor-Initiated Resentencing: A Guide for Prosecutors, Policymakers, and Advocates* (Sept. 2022), <https://www.fortheppl.org/publications>.

³⁰ *Id.*

³¹ *Id.*

³² See Nat’l Research Council, *The Growth Of Incarceration In The United States: Exploring Causes And Consequences* 52 (Jeremy Travis et al. eds., 2014), <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

³³ *Id.*

³⁴ Nazgol Ghandnoosh and Ashley Nellis, *How Many People Are Spending Over a Decade in Prison?* The Sentencing Project (Sept. 2022), <https://www.sentencingproject.org/publications/how-many-people-are-spending-over-a-decade-in-prison>.

of 10 years or more, up from 46% in 2005.³⁵ Further, one in seven people in prison is serving a life or virtual life sentence.³⁶ Many of these people received their sentence during the height of extreme punishment or have already served decades.³⁷

More and more research shows that not all lengthy sentences automatically result in safety and even sometimes have diminishing returns, especially involving cases where people are kept in prison long after they pose a threat to public safety.³⁸ For this and other reasons, the American Bar Association adopted a “second look” resolution urging governments to authorize courts to hear petitions for resentencing brought by people who have been incarcerated for at least 10 years.³⁹ Given the high cost of incarceration, unnecessary incarceration displaces critical resources that could be spent on drug or mental health treatment, education, and other activities that promote public safety. Through PIR, many people serving excessively long sentences can be safely released, with savings redirected back into the community to prevent incarceration in the first place.

Addressing Racial Disparities

Though the percentage of people serving long sentences has grown over time for both Black and white people, racial disparities in sentence length have widened.⁴⁰ In 2005, Black people were 1% more likely than white people to receive long sentences; by 2019 that gap had increased, as Black people were 4% more likely than white people to receive such sentences.⁴¹ As of 2019, Black people represented 33% of the total prison population and 46% of the prison population who had already served 10 years or more.⁴² Of the people serving a life or virtual life sentence, two-thirds are people of color.⁴³

³⁵ See Council on Criminal Justice, *Long Sentences by the Numbers* (July 20, 2022), <https://counciloncj.foleon.com/tfils/long-sentences-by-the-numbers>.

³⁶ See Ashley Nellis, *No End In Sight: America's Enduring Reliance On Life Imprisonment*, The Sentencing Project (2021), <https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment>.

³⁷ *Id.*

³⁸ See Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev. 113-31 (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/11/UMKC-Law-Review-Scale-of-Punishment.pdf>.

³⁹ American Bar Association, *Resolution 502* (Aug. 2022), http://www.americanbar.org/news/reporter_resources/annual-meeting-2022/house-of-delegates-resolutions/502.

⁴⁰ See Council on Criminal Justice, *Long Sentences by the Numbers* (July 20, 2022), <https://counciloncj.foleon.com/tfils/long-sentences-by-the-numbers>.

⁴¹ *Id.*

⁴² Nazgol Ghandnoosh and Ashley Nellis, *How Many People Are Spending Over a Decade in Prison?* The Sentencing Project (Sept. 2022), <https://www.sentencingproject.org/publications/how-many-people-are-spending-over-a-decade-in-prison>.

⁴³ See Ashley Nellis, *No End In Sight: America's Enduring Reliance On Life Imprisonment*, The Sentencing Project (2021), <https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment>.

Given the disproportionate number of Black and Brown people serving long sentences, Prosecutor-Initiated Resentencing (PIR) is a potentially powerful tool to address such disparities. For example, an analysis by For The People in 2021 found that Black people in California make up a greater proportion of incarcerated who have served at least 10 years of their sentence compared to other racial/ethnic groups.⁴⁴ Similar disparities can be found among racial groups in other states. Moreover, the proportion of Black people, Hispanic/Latinx people, and American Indian people who would be eligible under PIR criteria⁴⁵ established by District Attorneys' offices in California is higher than the proportion of potentially eligible people in other racial groups.⁴⁶ Thus, people of color would be among the most likely candidates to benefit from PIR.

Strengthening Public Safety

Because public safety resources are not infinite, every dollar spent on unnecessary incarceration is a dollar that is not spent on more effective interventions to reduce crime and to build healthier communities. It is therefore essential to strike an appropriate balance by ensuring that people are not kept in prison beyond what is required to keep communities safe.

Unduly long sentences can be a counterproductive means of achieving public safety. While there may be a popular perception that lengthy sentences deter crime, severe penalties do not always have the expected deterrent effect.⁴⁷ In fact, research suggests it is the certainty of being punished for committing a crime, rather than its severity, that primarily creates deterrence.⁴⁸ Research also shows that most people age out of crime.⁴⁹ And yet, a significant proportion of the nation's prison population is aged 50 or older⁵⁰—well past the peak age of criminal involvement. The share of people aged 55 or older who were serving long sentences increased from 8% in 2005 to 20% in 2019.⁵¹

Given that public safety dollars are scarce, resentencing people who can be safely released can actually lead to safer and thriving communities and free up additional resources for investments in programs that better address the root causes of crime. In

⁴⁴ See For The People, *Prosecutor-Initiated Resentencing: California's Opportunity to Expand Justice and Repair Harm* (Dec. 2021), https://www.fortheppl.org/s/ForThePeople_Report_121321.pdf.

⁴⁵ During the early years of PIR implementation, most DA offices in California have prioritized non-violent, non-serious, and non-sex cases, residential burglary cases, and robbery cases in which the incarcerated person has served at least 10 years of their sentence.

⁴⁶ See For The People, *Prosecutor-Initiated Resentencing: California's Opportunity to Expand Justice and Repair Harm* (Dec. 2021), https://www.fortheppl.org/s/ForThePeople_Report_121321.pdf.

⁴⁷ See Nat'l Inst. of Justice, *Five Things About Deterrence* (May 2016), <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

⁴⁸ *Id.*

⁴⁹ See Dana Goldstein, *Too Old To Commit Crime?* N.Y. Times (March 22, 2015), <https://www.nytimes.com/2015/03/22/sunday-review/too-old-to-commit-crime.html>.

⁵⁰ Prison Policy Initiative, *Beyond the Count: A Deep Dive into State Prison Population* (April 2022), <https://www.prisonpolicy.org/reports/beyondthecount.html>.

⁵¹ See Council on Criminal Justice, *Long Sentences by the Numbers* (July 20, 2022), <https://counciloncj.foleon.com/tf/s/long-sentences-by-the-numbers>.

addition, families are financially burdened by the various costs associated with having an incarcerated family member.⁵² For instance, these costs can include the loss of income and opportunity costs for partners and childcare providers, childcare costs, and the costs of phone calls and visitations with their incarcerated family members.⁵³ Conversely, when incarcerated people return to their communities, they can provide support through gainful employment, caregiving for elderly relatives, and co-parenting support, while also eliminating the out-sized costs that come with having an incarcerated family member. Additionally, when incarcerated people are safely released, they are uniquely poised to mentor young people and to provide counseling for substance abuse and mental health issues, which have the potential to interrupt cycles of future crime.⁵⁴

Finally, PIR helps build community trust with law enforcement, which in turn strengthens public safety. Community members are asking government institutions to be responsive and transparent, and to make better use of limited public safety resources. Spending taxpayer dollars on drug or alcohol treatment, mental health care, victim services, or other crime-reducing interventions can be a more cost-effective approach to making communities safe, rather than spending billions of dollars each year to incarcerate people who no longer need to be in prison. Further, seeing members of law enforcement take proactive steps toward reuniting families illustrates their commitment to the holistic safety of their communities.

Protecting Victims

The primary duty of prosecutors is to seek justice, and they must always weigh the interests of victims in exercising their discretion as to whether to prosecute.⁵⁵ While victims want accountability for people who commit crimes against them, they do not uniformly favor long sentences. In a national survey, three quarters of crime survivors preferred accountability measures beyond prison.⁵⁶ A majority of victims said the criminal justice system should focus more on rehabilitation, rather than punishment.⁵⁷ And according to a separate survey, 51% of crime victims in California stated that they believed that incarceration increases a person's chance of committing future crimes, rather than helping rehabilitate a person.⁵⁸

⁵² See Saneta deVuono-powell, Chris Schweidler, Alicia Walters & Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, Forward Together & Research Action Design (2015), <https://ellabakercenter.org/who-pays-the-true-cost-of-incarceration-on-families>.

⁵³ *Id.*

⁵⁴ See For The People, *Prosecutor-Initiated Resentencing: California's Opportunity to Expand Justice and Repair Harm* (Dec. 2021), https://www.fortheppl.org/s/ForThePeople_Report_121321.pdf.

⁵⁵ See *Criminal Justice Standards For The Prosecution Function* (Am. Bar Ass'n 4th ed. 2017), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.

⁵⁶ See Alliance for Safety and Justice, *Crime Survivors Speak: The First-Ever National Survey of Victims' Views On Safety and Justice* (2016), <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

⁵⁷ *Id.*

⁵⁸ See Alliance for Safety and Justice, *California Crime Survivors Speak: A Statewide Survey of California Victims' Views On Safety and Justice* (2019), https://safeandjust.org/wp-content/uploads/ASJ_CACrimeSurvivorBrief-RD1-1.pdf.

Using trauma-informed practices⁵⁹ in the context of PIR, crime survivors may play a critical role by participating in dialogue with prosecutors during their review and evaluation of past sentences. While some victims may choose not to participate in the PIR process, which can potentially open old wounds, others may see resentencing as an opportunity for greater healing, closure, and support. As of late 2022, all PIR laws require victims to be notified of the resentencing proceedings and to be given an opportunity to make their voices heard in the process.⁶⁰

Prosecutor-Initiated Resentencing in Practice

Prosecutor-Initiated Resentencing (PIR) is a new legal mechanism that empowers prosecutors to revisit past cases and facilitate the safe release of people serving sentences that are no longer in the interest of justice.⁶¹ Through PIR, prosecutors can initiate a thorough and methodical review of the prison population in their jurisdiction to identify people who can be safely given a shorter sentence, and ask the court for recall and resentencing.⁶² PIR gives prosecutors a tool to provide redress for people where confinement is no longer in the interest of justice. When done with care, the PIR process can have lasting benefits for prosecutor offices, incarcerated people, families, and communities, and will positively contribute to public safety.

The nation's first PIR law was enacted in California.⁶³ The law empowers prosecutors to review past cases of current incarcerated people whose original sentence is no longer in the interest of justice, and to recommend that the court impose a lesser sentence. In 2021, the California legislature invested \$18 million over three years to expand PIR throughout the state and to study its benefits.⁶⁴ The California County Resentencing Pilot is the first of its kind across the country and spans nine counties of varied geography, voter base, prosecutor leadership, reentry resources, prison population, and incarceration rates. The California Pilot will allow for learnings on PIR to be captured and applied across new regions as the legal mechanism expands.

Now, as of mid-2022, PIR has been enacted in five states—California, Illinois, Louisiana, Oregon, and Washington State. Legislation has been proposed or introduced in Florida, Georgia, Maryland, Massachusetts, Minnesota, New York, and Texas.⁶⁵

⁵⁹ See, e.g., Office for Victims of Crime Training and Technical Assistance Center, *Human-Trafficking Task Force e-Guide*, <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/41-using-a-trauma-informed-approach>.

⁶⁰ See For The People, *Advancing Prosecutor-Initiated Resentencing: A Guide for Prosecutors, Policymakers, and Advocates* (Sept. 2022), <https://www.fortheppl.org/publications>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Cal. A.B. 2942, 2017-18 Reg. Session. (2018).

⁶⁴ See For The People, *California County Resentencing Pilot Program*, <https://www.fortheppl.org/ca-pilot>.

⁶⁵ See For The People, *Advancing Prosecutor-Initiated Resentencing: A Guide for Prosecutors, Policymakers, and Advocates* (Sept. 2022), <https://www.fortheppl.org/publications>.

Though PIR laws vary depending on the state, all PIR laws give prosecutors discretion to identify people whose prison sentences no longer serve the interest of justice, and to recommend resentencing by the court.⁶⁶ Under PIR, the court may resentence an incarcerated person for any reason rationally related to lawful sentencing as if the person had not previously been sentenced. The court may use its full judicial powers at resentencing, including deciding the new term; and, if there are multiple charges, whether sentences should run consecutively or concurrently; but the new sentence cannot exceed the original sentence. At the time of resentencing, the court must award credit for time served on the original sentence and must rely on sentencing rules of the state's judicial council to avoid disparity of sentences.

PIR is discretionary, meaning prosecutors may choose to review cases and recommend cases for resentencing to the court, but they are not required to do so.⁶⁷ Further, all PIR laws enacted to date allow prosecutors' offices to set their own criteria to determine the types of cases they will prioritize in their review and resentencing of cases. Therefore, review depends on policies established by a prosecutor's office, whether by selecting a group of cases that meet an established set of criteria, by reviewing external resentencing requests, or both.

Conclusion

In recent years, a growing number of policymakers across the political spectrum have recognized that the U.S. incarcerates too many people who do not pose a threat to public safety, and it keeps many imprisoned for too long. Moreover, lengthy prison terms are sometimes at odds with the needs of crime survivors and communities. PIR provides an opportunity to revisit lengthy sentences, consult with victims, and ensure that the sentence—then and now—is consistent with public safety goals.

Through PIR, prosecutors can initiate a thorough and methodical review of the prison population in their jurisdiction to identify people who can be safely released from prison and ask the court for recall and resentencing. PIR gives prosecutors a tool to provide redress for people where confinement is no longer in the interest of justice while keeping victims and community safety at the forefront of their decisions. When done with care, the PIR process can have lasting benefits for prosecutor offices, incarcerated people, families, and communities, and will positively contribute to public safety.

Respectfully submitted,

Justin Bingham, Chair
Criminal Justice Section

August 2023

⁶⁶ *Id.*

⁶⁷ *Id.*

GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Justin Bingham, Chair

1. Summary of the Resolution(s).

This Resolution urges governments to adopt Prosecutor-Initiated Resentencing legislation that permits a court at any time to recall and resentence a person upon the recommendation of the prosecutor of the jurisdiction in which the person was sentenced.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

3-Eliminate Bias and Enhance Diversity, 4-Advance the Rule of Law – This Resolution encourages steps to examine resentencing possibilities that would increase justice, reduce mass incarceration, and address chronic racism issues within the criminal justice system.

3. Approval by Submitting Entity.

This Resolution was adopted by the Criminal Justice Section Council on April 22, 2023.

4. Has this or a similar resolution been submitted to the House or Board previously?

No

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

None.

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

7. Status of Legislation. (If applicable)

N/A

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Adoption of the Resolution will allow the ABA to collaborate with other entities related to training on and advancement of this Resolution. Adoption of this Resolution will also permit the ABA to engage in discussions concerning potential legislation regarding resentencing and file Amicus briefs where appropriate to advance this Resolution.

9. Cost to the Association. (Both direct and indirect costs)

N/A

10. Disclosure of Interest. (If applicable)

N/A

11. Referrals.

Judicial Division
Section of Litigation
Government and Public Sector Lawyers Division
Solo, Small Firm and General Practice Division
Standing Committee on Legal Aid and Indigent Defense
National Legal Aid and Defenders Association
National Association of Criminal Defense Lawyers
National Association of Attorneys General

12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.)*

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Kevin Scruggs, Section Director
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13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

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EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution urges governments to adopt Prosecutor-Initiated Resentencing legislation that permits a court at any time to recall and resentence a person upon the recommendation of the prosecutor of the jurisdiction in which the person was sentenced.

2. Summary of the issue that the Resolution addresses.

This Resolution addresses concerns related to resentencing and proposes various Principles to achieve a fairer, more just, and more transparent system.

3. Please explain how the proposed policy position will address the issue.

The Resolution addresses these issues by adopting policy that can guide reform efforts in the resentencing space. As this is a current focus of the criminal justice reform movement, the creation of ABA policy on this matter is important to our participation in this work.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.