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FEATURE

Understanding Prosecutor-Initiated Resentencing: How and Why Prosecutors Are Using a New Tool to Expand Justice

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This piece is adapted exclusively for the ABA from the recent publication [Advancing Prosecutor-Initiated Resentencing: A Guide for Prosecutors, Policymakers, and Advocates](#) (Sept. 2022).

I have prosecuted thousands of cases. This is the right thing to do no matter what side of the aisle you fall on. If people go to prison for a very long time and it doesn't seem just, or they've done a great job at rehabilitating themselves, why wouldn't we as prosecutors consider that? It's just the right thing to do. —Jeff Reisig, Yolo County District Attorney

As of Summer 2022, about two million people were incarcerated in US prisons and jails. Despite a decline in recent years, the United States continues to have the highest incarceration rate in the world. Research suggests that unduly long sentences do little to make communities safer. See Nat'l Rsch. Council, [The Growth of Incarceration in the United States: Exploring Causes and Consequences](#), ch. 5 (Jeremy Travis et al. eds., 2014). 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.

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With growing questions and concerns regarding the long-term benefits of lengthy sentences, prosecutors themselves have begun to raise questions about whether certain cases deserve a second look. Since 2019, prosecutors in jurisdictions across the country, and across the political spectrum, have used a new tool to identify hundreds of people for resentencing and release from prison. This tool is called Prosecutor-Initiated Resentencing (PIR). Through this mechanism, prosecutors have found that many incarcerated people have served a significant portion of their sentence, made meaningful strides toward rehabilitation, and can be safely released—people who deserve a second chance.

This article seeks to examine why and how prosecutors across the country—from California to Louisiana—are bringing past cases to court for resentencing and potential release. It assesses the role of the prosecutor in implementing this emerging legal tool, shows how it strengthens public safety, and offers recommendations for prosecutors who wish to establish PIR in their jurisdictions. For a wider look at understanding, enacting, and implementing PIR, visit <https://forthepl.org/publications>, where you can find a comprehensive guide.

Why Prosecutors Are Increasingly Focusing on Lengthy Sentences

Following a four-decade buildup of incarceration in the United States, in which the number of people behind bars rose nearly 700 percent, the nation's prison population has begun to decline. See John Gramlich, [America's Incarceration Rate Falls to Lowest Level Since 1995](#), Pew Rsch. Ctr. (Aug. 16, 2021). Growing concerns about the number of people incarcerated and associated racial disparities have led to myriad reforms throughout the country aimed at reducing the nation's reliance on incarceration and improving outcomes for people when they are released. Though a number of states and the federal government have achieved some reductions in their prison populations in recent years, the United States continues to incarcerate its people at a rate that exceeds every other nation. See [States of Incarceration: The Global Context 2021](#), Prison Policy Initiative (last updated Sept. 2022). Moreover, racial and ethnic disparities persist in the justice system, with Black men incarcerated at six times the rate of white men and Hispanic/Latinx men incarcerated at 2.5 times the rate of white men. See [Criminal Justice Facts](#), The Sentencing Project (last updated Sept. 2022).

The percentage of people serving long sentences has grown over time for both Black and white people, and racial disparities in sentence length have widened. See [Long Sentences by the Numbers](#), Council on Crim. Just. (July 20, 2022). As of 2019, 57 percent of people in prison were

serving sentences of 10 years or more. Further, one in seven people in prison is serving a life or virtual life sentence, and many of these people received this sentence during the height of extreme punishment or have already served decades. See Ashley Nellis, [No End in Sight: America's Enduring Reliance on Life Imprisonment](#), Sentencing Project (Feb. 17, 2021). Since then, 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. See Marc Mauer, [Long-Term Sentences: Time to Reconsider the Scale of Punishment](#), 87 UMKC L. Rev. 113 (2018). 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. Many people serving excessively long sentences can be safely released, with savings redirected back into the community to prevent incarceration in the first place and combat racial disparities.

Within prosecutor offices, innovations are needed on both the front end (e.g., diversion programs, alternatives to incarceration, behavioral health court) and the back end (e.g., support for rehabilitative programming, conviction integrity and review). 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 errors may have occurred. See Noah Fromson, [Conviction Integrity Units Expand Beyond Lone Star State Roots](#), Tex. Trib. (Mar. 12, 2016). CIUs/CRUs are now widely accepted, as many prosecuting agencies champion the need to review and correct erroneous convictions and exonerate innocent people.

PIR was born out of this effort and is often referred to as an expansion of *conviction* review to now include *sentence* review. While CIUs/CRUs pertain to issues involving the validity of the conviction, PIR instead pertains to issues involving the length of the sentence. However, until very recently, prosecutors had no legal mechanism to proactively redress these types of past sentences.

How the Emerging Law Works: The Scope and Reach of Prosecutor-Initiated Resentencing

Today, PIR is a new legal mechanism that enables and empowers prosecutors to revisit past cases and facilitate the release of people serving sentences that are no longer in the interest of justice. 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 then 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. When done with care and diligence, 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, *See* Cal. A.B. 2942, 2017-18 Reg. Sess. (2018), and it empowers prosecutors to review past cases of current incarcerated people whose continued incarceration 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. *See* [California County Resentencing Pilot Program](#), For The People (last updated Sept. 2022). The California 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 County Resentencing 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. Legislation has been proposed or introduced in Florida, Georgia, Maryland, Massachusetts, Minnesota, New York, and Texas. *See* For The People, [Prosecutor-Initiated Resentencing: California's Opportunity to Expand Justice and Repair Harm](#) (Dec. 2021).

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; whether to strike enhancements; 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. Further, all PIR laws enacted to date allow prosecuting agencies to set their own eligibility criteria and determine the types of cases they will prioritize in their review and resentencing of cases. Therefore, eligibility 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.

Besides state-specific restrictions under existing sentencing laws, there are currently no exclusions in existing PIR laws or directives on the types of cases a prosecutor must review. A prosecuting agency can recommend resentencing for any type of offense, any type of sentence length, and any amount of time served. In practice, many prosecutors' offices choose an initial group of cases to prioritize based on the history and context of their jurisdiction's sentencing practices, such as nonserious, nonviolent, and nonsex offense cases where the incarcerated person has already served a significant amount of time. Offices have also prioritized cases where the person was sentenced under a habitual offender statute that has since been amended, cases where the person was a child or young adult minor at the time of the offense, or cases in which the person is currently elderly.

If a court decides to hear a case and recall the sentence, it will hold a sentencing hearing as if the person had not previously been sentenced. Depending on the jurisdiction, the court can use all of its judicial powers at the time of resentencing, including new authority to strike enhancements under recent reforms. In all cases, the court cannot resentence a person in excess of the original sentence, and it must award credit for time served on the original sentence.

Most PIR laws provide a list of post-conviction factors that the court may or shall consider in determining whether a person can be safely released and whether further confinement is no longer in the interest of justice. These factors typically include the person's disciplinary record and record of rehabilitation while incarcerated; evidence that reflects whether age, time served, or diminished physical condition have reduced the person's risk for future violence; and any evidence reflecting circumstances that have changed since the original sentencing leading to a conclusion that continued incarceration is no longer in the interest of justice.

What makes a resentencing hearing unique is that the court can now consider new evidence, such as programming completed while incarcerated, college courses and degrees obtained, vocational certificates and job training, reentry plans, letters from community members, and character and support letters from correctional staff. All of these supporting documents can help illustrate to the court that the person no longer needs to be incarcerated, as well as the positive community impact that could come from the person being released. After considering these factors, the court will decide whether to impose a new sentence and what the new sentence will be.

Although there are costs associated with PIR—including costs to prosecutors' offices that review cases, file motions, and appear in court—the policy ultimately saves resources, as resentencing a

person allows the diversion of the costs associated with unnecessary incarceration.

Some state legislatures and county jurisdictions have dedicated funding to support PIR, recognizing its potential to free up taxpayer dollars for other public safety needs. In addition, some prosecutors' offices have been able to leverage existing internal resources—for example, by incorporating PIR into Conviction Review Units or appellate divisions—without incurring significant additional costs.

For prosecutors' offices that are unable to absorb or allocate internal resources or secure funding to support PIR, partnerships with law schools, pro-bono attorneys, and community organizations trained in participatory defense can share the workload.

Although no single policy can address all of the challenges in the criminal justice system, PIR is a valuable tool for revisiting past sentences and releasing people who no longer need to be in prison. PIR addresses the growing need for a reduction in the nation's reliance on incarceration, strengthening public safety, and safely reuniting people with their families and communities.

The Prosecutor's Role in Looking Back

Prosecutors are arguably the most powerful actors in the criminal justice system. *See* Angela J. Davis, [Arbitrary Justice: The Power of the American Prosecutor](#) (2009). 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. With this power comes great responsibility—a responsibility that is unique and complex compared to other actors in the justice system.

The role of prosecutors has been defined as “ministers of justice,” and as such, prosecutors are obligated not merely to seek convictions but to pursue just outcomes. 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, prosecutors also work to strengthen the criminal justice system as a whole. 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.

See [Crim. Just. Standards: Prosecution Function](#) (Am. Bar Ass'n 4th ed. 2017).

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. Prosecutors carrying out PIR believe that a prosecutor's job is to ensure sentences are just—at time of sentencing and years or decades later. Therefore, 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. Through PIR, prosecutors are empowered to carry out their duty of administering justice—not just to convict, but to remedy sentences that are not in the interest of justice.

How Prosecutor-Initiated Resentencing Promotes Public Safety

Although there may be a popular perception that long sentences deter crime, severe penalties do not always have the expected deterrent effect. See Nat'l Inst. of Just., [Five Things About Deterrence](#) (May 2016). In fact, research suggests it is the *certainty* of punishment, rather than its *severity*, that primarily creates deterrence. Research also shows that most people age out of crime. See Dana Goldstein, [Too Old to Commit Crime?](#), N.Y. Times (Mar. 22, 2015). And yet, a substantial proportion of the nation's prison population is aged 50 or older—well past the peak age of criminal involvement.

Given that public safety dollars are scarce, resentencing people who can be safely released can actually lead to safer, thriving communities and free up additional resources for investments in programs that better address the root causes of crime. In addition, families are financially burdened by the various costs associated with having an incarcerated family member. See Saneta deVuono-powell, Chris Schweidler, Alicia Walters & Azadeh Zohrabi, [Who Pays? The True Cost of Incarceration on Families](#) (Ella Baker Ctr., Forward Together & Rsch. Action Design 2015). 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. 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 outsized costs that come with having an incarcerated family member. Additionally, when incarcerated people are safely released, they are uniquely poised to mentor young people, which has the potential to interrupt cycles of future crime. *See For The People, Prosecutor-Initiated Resentencing, supra.*

PIR is proving to be a powerful tool for promoting public safety within the prison walls and is sparking commitments to plan for positive futures. For instance, Isaiah Love, who was resentenced and released under PIR, recounted his conversations while in prison with incarcerated people who upon learning of his release were inspired to follow in his footsteps. *See Stories, For The People, forthepp.org/stories (last updated Sept. 2022).* Love was convicted of multiple robberies as a young man and was sentenced to 28 years in prison. Based on the work Love did to turn his life around while in prison, the DA determined that he had served enough time and could be safely released. Today, Love is home with his family and works as a software engineer. These stories have been told by dozens of people who have now been resentenced and released through PIR: When people in prison learn about PIR and see others being released from prison, they become motivated to further their education, seek out substance abuse treatment, and pursue other rehabilitative programming. *See id.*

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.

Ensuring PIR Centers Victims' Voices

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. *See Crim. Just. Standards, supra.*

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. See All. For Safety & Just., [Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice](#) (2016). A majority of victims said the criminal justice system should focus more on rehabilitation, rather than punishment. And according to a separate survey, nearly 80 percent 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. See All. For Safety & Just., [California Crime Survivors Speak: A Statewide Survey of California Victims' Views on Safety and Justice](#) (2019).

A humane response to crime addresses the needs of crime survivors while simultaneously ensuring justice, public safety, and human dignity. See, e.g., [Restorative Justice Project](#), Impact Just. (last updated Sept. 2022). In a PIR process using trauma-informed practices, see, e.g., Off. for Victims of Crime, Training & Tech. Assistance Ctr., [Human-Trafficking Task Force e-Guide](#) (last updated Sept. 2022), in the context of resentencing, 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 mid-2022, all PIR laws enacted to date require victims to be notified of the resentencing proceedings and to be given an opportunity to make their voices heard in the process. Consultation with victims is not only required by law, but for some victims, the incorporation of restorative justice practices, like victim-offender mediation, may bring about further closure. See, e.g., [What Is Restorative Justice?](#), Impact Just. (last updated Sept. 2022).

The Emerging Law in Action: A Case Study in PIR

In 2000, at the age of 31, Alwin Smith was struggling with financial obligations and drug addiction. Needing money to sustain his addiction, Alwin robbed a Motel 6. Alwin was later convicted of second-degree robbery and possession of a controlled substance. For this offense, he was given an indeterminate sentence of 40 years to life.

While incarcerated, Alwin eagerly began a spiritual education to rehabilitate and improve himself. In addition to focusing on his spirituality, Alwin dedicated himself to living a substance-free life. In

2006, he voluntarily applied for the Facility-A Honor program, which involved setting significant goals around sobriety and being subjected to random drug testing. Since then, Alwin actively engaged in Celebrate Recovery Inside, a Christ-centered 12-step program, becoming a facilitator and preparing lessons for fellow incarcerated persons. He obtained an Associate of Ministry degree in 2014 and has continued to take faith-based courses in recent years. Through his Christian faith and his dedication to tackling his addictions, Alwin transformed his life and developed an array of tools that would one day assist him upon his return home.

On July 8, 2021, at the recommendation of the Riverside County District Attorney, Alwin was resentenced to time served at the age of 51. He served 20 years and had 20 years to life remaining on his sentence. Now skilled in a variety of areas, and with an Associate of Ministry degree, a host of tools to help him navigate various triggers, and strong connections in the reentry community, Alwin is taking full advantage of his second chance at life. Alwin is currently the Fair Chance Employment Specialist at reentry non-profit Root & Rebound, supporting others in successful reintegration as they return home from prison. He also interns at a local church, where he helps provide showers and meals for people experiencing homelessness. Finally, Alwin started his own ministry and is still deeply invested in his faith-based practices. If Alwin had not been resentenced in 2021, the state would have spent at least an additional \$2 million to continue incarcerating Alwin for the remainder of his term.

Recommendations for Prosecutors

Prosecutors across the country are steadily adopting PIR and thus seeing successful reentry stories like Alwin's arise in their own communities. It's been said that in order to look forward, we must also look back—in this case, at prior sentences that deserve further consideration. Below, find recommendations for prosecutors' offices to begin looking back, so that they may also look forward:

- Propose PIR Legislation in Your State. If a state does not currently have PIR legislation in place, prosecutors' offices should work to propose legislation enabling them to look back at past sentences for potential resentencing and release. Lawmakers and prosecutors can find detailed support on the process in For The People's guide *Advancing Prosecutor-Initiated Resentencing, supra*, including turning the idea into legislative text, framing the issue, building support, and using prison data to illustrate opportunities realized through PIR.

- Establish a Resentencing Unit. If a PIR law or mechanism is active in the state, prosecutors' offices should establish a Resentencing Unit. They should identify a team of attorneys, investigators, or other legal professionals who are dedicated to seeking justice and provide sufficient resources to carry out their work. The Resentencing Unit should be staffed with experienced felony trial attorneys and paralegals. Prosecutors' offices should establish a rotation structure within the office for line prosecutors to serve in the unit to systemize this work.
- Build Partnerships. PIR is best achieved through a collaborative approach. Resentencing Units are most successful when they have strong relationships with key stakeholders in the justice system. To start, it is recommended that they build partnerships with the following agencies and groups: corrections department, public defenders/defense attorneys, victim services groups, and community-based organizations. This will enhance the Resentencing Unit's ability to gather prison data, streamline case review, and develop reentry plans.
- Get Training. PIR training—for the team launching a Resentencing Unit, as well as for executive-level staff in the prosecutor's office—will help ensure a shared understanding of roles and responsibilities and will contribute to better outcomes.
- Evaluate Current Prison Data. Prosecutors' offices should regularly request up-to-date prison data on the incarcerated people sentenced from their county to understand trends, racial and ethnic demographics, discrepancies in past sentences, incarceration rates, and categories of sentences that may warrant review.
- Establish Eligibility Criteria for Implementation. Prosecutors' offices should determine a systematized approach to identify cases for PIR consideration, as this can ensure fairness by avoiding unwarranted disparities among the cases considered for resentencing. We recommend developing clear eligibility criteria for the types of cases your office will review during the initial phase of PIR implementation. As work progresses, eligibility criteria can be reassessed and adjusted, taking into account lessons learned and available resources.
- Institute PIR Policy for Your Office. Once a Resentencing Unit has been established and eligibility criteria have been determined, PIR policies—both internal and external—should be formalized in writing. The internal policy should include eligibility criteria, guidelines for coordinating with external partners, procedures for reviewing and resentencing cases, instructions for processing external requests, parameters for the resentencing team's work,

and additional considerations. An external policy, including FAQs, also should be developed and published on the office's website to provide guidance to the public with regard to the Resentencing Unit's work.

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