



## **Illinois Resentencing Law Fact Sheet**

In the spring of 2021, the Illinois General Assembly passed [Senate Bill 2129](#), a measure that gives state’s attorneys the authority to bring cases back into court for resentencing, no matter when the original sentence was imposed. Called “Motion to Resentence by the People,” the law creates political opportunities for prosecutors to address unjust and excessive sentences.

Importantly, **it does not entitle anyone in prison to resentencing** or even have their sentences reviewed. Rather, the law creates a mechanism for the court to consider resentencing requests made by state’s attorneys.

### **What rights does the resentencing bill give people in prison?**

None.

### **Who decides who is eligible for resentencing?**

The State’s Attorney Office in the county where a person was originally convicted and sentenced has complete and total authority to determine who is eligible for resentencing. The state’s attorney’s decision to seek—or not to seek—resentencing is not reviewable by any other agency or actor.

### **What is the process for applying for resentencing?**

Presumably, each state’s attorney will create a process for reviewing cases for potential resentencing. At this point, we do not know of any office that has created such a process.

### **How did this law change the state of resentencing in Illinois?**

It’s not clear yet. Under a rarely used provision in Illinois law, state’s attorney offices already had the ability to seek a new sentence through a doctrine called revestment. Under the revestment doctrine, a judge can revisit an old order (like a sentencing order) if three conditions are met. First, both parties must participate in the proceedings; second, neither party can object to the proceedings, and third, the parties must ask for a different outcome than the prior order. In a resentencing, that means both the incarcerated people and the state’s attorney must participate in the hearing, neither party can object to the resentencing request, and the parties must ask for a different—presumably shorter—sentence.

Despite its ease, the revestment doctrine is rarely used, as state’s attorneys rarely agree to participate in, and not object to, the process. Their reluctance might be because the doctrine is



not codified into law. Although the resentencing law does not make the process logistically easier, we are hopeful that state's attorneys will be more willing to use the mechanism now that it has been passed by the legislature.

### **Text of the Bill**

(a) The purpose of sentencing is to advance public safety through punishment, rehabilitation, and restorative justice. By providing a means to reevaluate a sentence after some time has passed, the General Assembly intends to provide the State's Attorney and the court with another tool to ensure that these purposes are achieved.

(b) At any time upon the recommendation of the State's Attorney of the county in which the defendant was sentenced, the State's Attorney may petition the sentencing court or the sentencing court's successor to resentence the offender if the original sentence no longer advances the interests of justice. The sentencing court or the sentencing court's successor may resentence the offender if it finds that the original sentence no longer advances the interests of justice.

(c) Upon the receipt of a petition for resentencing, the court may resentence the defendant in the same manner as if the offender had not previously been sentenced; however, the new sentence, if any, may not be greater than the initial sentence.

(d) The court may consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and evidence that reflects changed circumstances since the inmate's original sentencing such that the inmate's continued incarceration no longer serves the interests of justice. Credit shall be given for time served.

(e) Victims shall be afforded all rights as outlined in the Rights of Crime Victims and Witnesses Act.

(f) A resentencing under this Section shall not reopen the defendant's conviction to challenges that would otherwise be barred.

(g) Nothing in this Section shall be construed to limit the power of the Governor under the Constitution to grant a reprieve, commutation of sentence, or pardon.