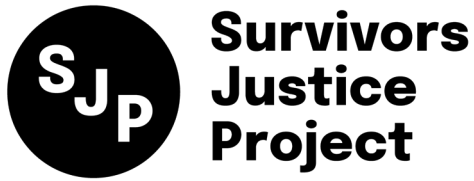




# Sentencing Reform for Criminalized Survivors

Learning from New York's Domestic Violence Survivors Justice Act





**Survivors  
Justice  
Project**

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The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. The Survivors Justice Project is a collective of activists, lawyers, social workers, students, and researchers – many of whom are survivors of domestic violence and long-term incarceration – that fights for decarceration through the New York Domestic Violence Survivors Justice Act.

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# EXECUTIVE SUMMARY

Despite the criminal legal system’s espoused goal of securing justice for crime victims, all too often, survivors of domestic violence<sup>1</sup> are arrested, prosecuted, and punished.<sup>2</sup> For instance, survivors may be criminalized for coerced criminal acts or for protecting themselves or a loved one. Victimization can also result in long-term destabilization that also leads to prosecution: loss of housing, income, and savings push individuals into committing crimes to meet basic survival needs. Coping with the effects of trauma can also lead individuals to substance use and arrest.

Across the country, a growing number of jurisdictions are responding to this problem by passing or considering bills designed to allow survivors of family violence, intimate partner violence, and human trafficking to receive shorter sentences for offenses deeply entwined with their victimization. Courts often already consider whether an individual has diminished culpability at sentencing, looking to factors like age, mental illness, intellectual disability, and, to a limited extent, prior victimization.<sup>3</sup> New York’s survivor sentencing law builds on that principle by allowing survivors to demonstrate their victimization to seek a lower sentence at the time of an original sentencing hearing or, for survivors who are already incarcerated, via resentencing.

New York State’s Domestic Violence Survivors Justice Act (DVSJA) passed in 2019. Thus far, 35 women, 4 men and 1 non-binary person, 28 of whom are people of color, have received retroactive sentencing relief. These sentence reductions saved a collective 80 years of incarceration based on what would have been the survivors’ earliest possible release date. Had the DVSJA been in effect when the 40 survivors were originally sentenced, its lower sentencing ranges could have saved them over 275 years in

prison.<sup>4</sup> In turn, the DVSJA has inspired a wave of legislative advocacy in Louisiana, Oklahoma, and Oregon.<sup>5</sup>

The need for sentencing reform for survivors is urgent. While research on the criminalization of survivors is egregiously scarce, two facts are clear: the incarceration rate of women has grown explosively over the last quarter century<sup>6</sup> and most women in prison report a history of abuse – significantly more than non-incarcerated women.<sup>7</sup> While not all of these incarcerated women would necessarily qualify for survivor resentencing, which requires a nexus between the victimization and offense, a meaningful number are likely to be eligible for relief. And survivor sentencing reform does not only benefit women – the majority of adult men serving felony sentences report a history of childhood abuse, and a portion would likely also qualify.<sup>8</sup> Higher rates of victimization also contribute to the disproportionate incarceration of LGBTQ+ individuals, who would likewise benefit from sentencing relief for survivors of abuse.<sup>9</sup>

Sentencing reform for survivors is part of a broader movement toward “second look” sentencing. A wealth of evidence makes clear that the vast majority of indi-

“I am thankful that the Domestic Violence Survivors Justice Act created an avenue for us to consider how a person’s trauma history contributed to her conviction. Recognizing that her conduct was influenced by outside forces, including persistent abuse and ongoing trafficking by her codefendant, we were able to develop a new sentence that was fair, just, and more accurately reflected her actual culpability. The DVSJA provides prosecutors a mechanism to evaluate new information, consider the unique circumstances of the individual, and craft a new sentence that helps us achieve justice, which is always our goal.”

—Oswego County, NY District Attorney Gregory Oakes on the value of the DVSJA to recalibrate harsh sentences

viduals age out of crime.<sup>10</sup> Lengthy sentences serve little criminological purpose, and many individuals currently serving 20- or 40-plus year sentences could safely return to the community after far less.<sup>11</sup> The Sentencing Project and the Survivors Justice Project recommend, for instance, that all individuals receive a judicial review of their sentence after no more than 10 years.<sup>12</sup> While such universal second look sentencing currently faces a difficult path to becoming law, survivor resentencing is an achievable near-term legislative goal – speaking to concerns about domestic violence and fundamental fairness on both sides of the aisle – and is a valuable way for jurisdictions to begin to explore broader sentencing reform. In New York State, for example, the DVSJA is the first piece of sentencing reform legislation to apply to felony offenses classified as violent.

Through the lens of the successes and challenges of New York’s DVSJA, this guide explores the need for similar bills across the country (referred to as DVSJA legislation, DVSJA laws or DVSJA relief) and offers recommendations for advocates and legislators developing and implementing those laws in their own jurisdictions. Drawing from case law and the guidance of survivors, advocates, and litigators, the guide offers a model bill, which can be adapted to fit any locality. Woven throughout are the experiences of those who have applied for DVSJA relief in New York or those who would benefit from such a law should it be enacted in their state.

Specifically, the guide recommends that states enact sentencing laws for domestic violence survivors that:

**1. Create broad and trauma-informed eligibility criteria:**

- Adopt an expansive definition of domestic abuse beyond intimate partner violence that includes all family relationships and commercial sexual exploitation.
- Make all offenses and sentence lengths eligible for relief.
- Ensure that survivors may apply for relief both at the time of sentencing and, if needed, at any point post-conviction.

**2. Develop a legal process accessible to survivors:**

- Strive to create a simple, procedurally just, and trauma-informed application process.

- Ensure access to counsel on resentencing matters.
- Develop realistic and trauma-informed evidentiary requirements.
- Provide trauma-informed support to survivors during the application, hearing process, and re-entry.
- Collect data to inform outreach efforts, judicial training, and evaluation of impact.

**3. Craft a trauma-informed and realistic legal standard:**

- Create clear procedures and standards for judges.
- Adopt a clear and trauma-informed legal standard focused on diminished culpability, not severity or immediacy of abuse.
- Make clear that DVSJA relief is not limited to circumstances of self-defense.
- Make clear that DVSJA relief extends to offenses against individuals other than those who perpetrate the abuse.

**4. Maximize sentence reductions:**

- Create a presumption in favor of alternate sentencing or resentencing if a survivor demonstrates that they suffered abuse and the abuse was a significant contributing factor to the offense.
- Weigh the costs and benefits within your jurisdiction of explicitly delineating DVSJA sentencing ranges or allowing judicial discretion.
- Encourage determinate sentencing and recognize that supervision (parole or probation) are forms of punishment that should be reduced as well.

The ultimate goal of these recommendations is to allow advocates to draw on lessons learned from New York’s DVSJA to strengthen efforts for survivor sentencing legislation already gaining ground across the United States.

Survivor sentencing reform still falls far short of bringing justice to criminalized survivors – which would require preventing abuse, avoiding criminalization altogether, and a reimagining of all of the ways to respond to survivors who both experience and cause harm. But reducing the cruel and needless incarceration of survivors is nevertheless a vital step towards healing and limiting some of the harms of the carceral system.

# INTRODUCTION

Survivors of domestic violence – meaning both survivors of family and intimate partner abuse – are all too often punished by the criminal legal system.<sup>13</sup> The criminalization of survivors, particularly women of color, is well-documented. Abuse and exploitation lead to criminalization through multiple, often overlapping, pathways. For instance, abusive partners or other family members may force survivors to participate in illegal conduct, vulnerable survivors may engage in crimes for their survival, or trauma may result in a substance use disorder or post-traumatic stress disorder (PTSD), the symptoms of which may cause criminal legal involvement. And once survivors come into contact with the criminal legal system, an array of structural, systemic, psychological, and legal barriers typically prevent them from being recognized as survivors and avoiding severe punishment.

**Abuse and exploitation lead to criminalization through multiple, often overlapping, pathways.**

In 2019, New York State passed a landmark bill to address this problem: the Domestic Violence Survivors Justice Act (DVSJA), a law that changed the sentencing framework for survivors of domestic violence convicted of offenses connected to their victimization. This guide is intended to assist advocates and policymakers

across the country in their efforts to enact sentencing reform for criminalized survivors by learning from the successes and challenges of New York’s DVSJA.

The DVSJA became law after 10 years of campaigning led primarily by the Coalition for Women Prisoners<sup>14</sup> and offers survivors convicted of most crimes the opportunity to receive a lower sentence – retroactively or at the time of their original sentencing – based on their history of abuse if they meet certain criteria.<sup>15</sup> The DVSJA allows

judges to depart from mandatory minimums and impose considerably shorter prison terms or alternative sentences in the community to survivors at the point of initial sentencing. It also offers retroactive sentencing relief for people who committed offenses before the law went into effect. To receive relief in either instance, a survivor must demonstrate that they meet three standards:

- “[A]t the time of the offense,” they had experienced “substantial physical, sexual, or psychological abuse.”
- The abuse was a “significant contributing factor” to the offense.
- The sentence imposed or that would be imposed in the absence of DVSJA mitigation is “unduly harsh.”<sup>16</sup>

If the judge finds that the survivor has met all three criteria, they have the discretion to impose significantly reduced sentences, as the minimum sentence for the offense becomes the maximum penalty and alternate sentences, such as conditional discharges or probation supervision, are permissible.

Since its passage, the DVSJA has freed people who otherwise would have spent considerably more time behind bars, but compromises that were necessary to secure its passage and implementation challenges have limited its impact. As of February 2023, 40 survivors have benefitted from the law’s retroactive resentencing provision while at least 32 survivors have been denied resentencing relief. Nevertheless, the DVSJA represents a first-of-its-kind model to address the criminalization, and over-incarceration, of survivors. The successes and challenges of its first three years offer vital insights to protect survivors in other states and further improve on New York’s law.



## MULUMBA KAZIGO

Mulumba Kazigo is a student, accomplished pianist, Habitat for Humanity supporter, and dedicated Quaker. He served 15 years of a 20-year sentence in New York State after being convicted of first-degree manslaughter for the killing of his abusive father. Kazigo was one of the first recipients of sentencing relief through the DVSJA.

Abuse was ever-present in Kazigo's home throughout his childhood. Kazigo's father severely beat Kazigo and his siblings, and his father's prestigious reputation as a doctor left the family isolated and afraid to seek help. When 26-year old Kazigo discovered that his father had plans to severely harm his mother, he killed him to protect her.

After his arrest, Kazigo's siblings filed affidavits confirming the abuse the entire family had suffered. The original charge of second-degree murder was pleaded down to manslaughter, but Kazigo was still sentenced to 20 years in prison. Despite the severe sentence and horrific conditions of incarceration, he found purpose in Sing Sing Correctional Facility's Carnegie Hall music program and his monthly \$5 donations to Habitat for Humanity from his meager prison pay.

**"I am painfully aware of  
those who deserve the  
justice I received."**

**-Mulumba Kazigo**

In May 2019, the DVSJA went into effect, and Kazigo applied for resentencing with the help of the law library clerk at Sing Sing, legal advocates from the Nassau County Legal Aid Society, and Brooklyn Law School's Criminal Defense and Advocacy Clinic. The Nassau County District Attorney's office joined in the application saying, "The Domestic Violence Survivors Justice Act was written to help survivors of abuse like Mulumba Kazigo, who are imprisoned for protecting themselves." On August 26, 2020, he gained his freedom. Today, Kazigo finds joy in the simple tasks of everyday life. On his daily walks, he reflects on those he left behind, "I am painfully aware of those who deserve the justice I received."

## Paths to Criminalization

Domestic violence survivors are frequently criminalized and left with little recourse within the criminal legal system. While this includes people of all genders, the link between victimization and criminalization is particularly clear for incarcerated women: one study found that 86 percent report having experienced sexual violence in their lifetime; 77 percent report partner violence; and 60 percent report caregiver violence. Other studies have found even higher rates.<sup>17</sup> Domestic violence survivors find themselves at a disadvantage in the criminal legal system: they may face arrest, skeptical authorities, a legal process hostile to survivors of trauma, and sentencing practices that offer little leeway to consider the role of their prior victimization.

Survivors of domestic violence enter the criminal legal system for an array of reasons. They may be arrested for defending themselves if they harm or kill the person who abused them, sometimes in order to escape or to protect themselves or another. In many instances, self-defense or justification laws don't protect them from prosecution and punishment. For example, most self-defense laws require an immediate or imminent risk of physical injury, defined in very narrow terms and confined to a threat of physical harm. Law enforcement and courts may not perceive an imminent risk of harm if the individual's actions are based on a history of abuse rather than an immediate physical altercation, even if the abuse took place mere hours before. When adjudicating cases, courts may also view the survivor's use of force as disproportionate if they believe that leaving the location or relationship was a viable option, despite the wealth of evidence that survivors are often unable to leave abusive relationships due to factors such as lack of financial resources and valid fears of harm to themselves or others.<sup>18</sup>

Alternately, survivors may be criminalized when their victimization leads them to harm someone other than the person who had abused them. Of the 40 survivors resentenced under the DVSJA thus far in New York, 19 cases involved a victim who was not the person perpetrating the abuse.<sup>19</sup> For example, one individual seeking DVSJA relief had suffered years of brutal physical abuse

from his father and observed similar abuse against his mother. At the age of 19, during an abusive outburst by his father, the young man fought back, killing his father and his father's girlfriend who intervened in the fight. He was convicted of the manslaughter of his father and the murder of his father's girlfriend and sentenced to 28 years to life. He was resentenced and released under the DVSJA after nearly 26 years of incarceration.<sup>20</sup>

**86% of incarcerated women report having experienced sexual violence in their lifetime.**

Survivors may also be coerced to participate in criminal activity. Coerced participation in a homicide could also result in a survivor facing conspiracy or felony murder charges, or even intentional murder charges as a principal or accomplice.<sup>21</sup> For example, another survivor resentenced under the DVSJA had faced years of severe physical and sexual abuse from her partner. He also controlled her finances and frequently threatened to kill her family, specifically if she did not assist him in a murder that he committed. Following the homicide, he beat her, stabbed her, and strangled her until she ultimately fled and reported the crime to police. Nevertheless, she initially received a 15-year-sentence for manslaughter. In 2021, after serving seven years in prison, she was resentenced under the DVSJA and immediately released.<sup>22</sup>

Survivors are also criminalized when authorities deem that they have failed to protect their children from abuse in their households. For example, Oklahoma's failure to protect law<sup>23</sup> has been used primarily against women, disproportionately women of color, and has sometimes resulted in survivors of abuse facing longer sentences for allegedly failing to protect their children from harm than the person who committed the abuse.<sup>24</sup> Since the law went into effect in 2009, 139 women in Oklahoma have been imprisoned solely for failure-to-protect charges.<sup>25</sup>





## APRIL WILKENS

April Wilkens is an outspoken advocate for survivors of domestic violence and is currently fighting for the passage of a DVSJA-type bill in Oklahoma. In 1998, she was sentenced to life in prison, where she remains incarcerated, for killing her abusive former partner.

Wilkens's history of abuse was well documented in over 14 police reports during the course of her relationship and following its breakup. Wilkens repeatedly informed the police that her partner raped her, beat her, broke into her

home, kidnapped her at gunpoint, stalked her, and blackmailed her. Multiple witnesses observed the abuse. Yet police refused to help her, and the man who abused her, the son of a prominent local business man, remained at liberty.

**“What does it say about a society that treats some of its most victimized and vulnerable citizens with so little compassion and mercy? How do we fix such a terrible injustice?”**

**-April Wilkens**

On the night that would lead to her incarceration, Wilkens's former partner beat and sexually assaulted her for hours until she was able to take his gun and fire multiple times, killing him. She waited for police to arrive, believing they would recognize she'd done nothing wrong, but they placed Wilkens under arrest.

Wilkens was charged with first degree murder. She testified for three days in her own defense, and her attorney argued that she suffered from “Battered Woman Syndrome.” The court and judge, however, were skeptical of the then-untried and novel legal defense in the state of Oklahoma, and her attorney's failure to offer an expert witness and the suppression of key evidence hurt her case. She was found guilty and sentenced to life in prison. Today, she is a

leader in Mabel Bassett Correctional Center where she encourages other women to heal and stand up for themselves. She hopes that the passage of a DVSJA-type bill in Oklahoma will bring her and many other women relief.

Substance use disorders are a common trauma-related response to abuse and further drive the criminalization of survivors. Studies of women seeking substance use treatment have consistently found high rates of prior intimate partner violence (IPV),<sup>26</sup> and lifetime rates of IPV among people who use substances are significantly higher than in the general population.<sup>27</sup> Survivors may use drugs or alcohol to self-medicate the long-term effects of past trauma or to cope with ongoing violence.<sup>28</sup> Alcohol or drugs can also be used as a means of coercive control.<sup>29</sup> An abusive partner may pressure a survivor to take substances so they become intoxicated or dependent in order to then coerce them into certain actions, such as commercial sex.<sup>30</sup> A substance use disorder can translate into an array of charges: unlawful possession or sale of a controlled substance, drug-motivated theft or robbery, charges related to being unhoused, or even reckless endangerment or vehicular homicide for driving while impaired.

Domestic violence can also have a profound, long-term destabilizing impact, causing people to lose housing, income, and savings, thereby propelling them to engage in conduct to survive that leads to their arrest. In general, New York State's DVSJA jurisprudence has not addressed this reality or offered relief to survivors based on childhood trauma for an offense not involving the person who abused them, except for one outlier case. In 2021, a court granted DVSJA resentencing on a burglary conviction, based on severe childhood sexual abuse that resulted in the applicant becoming homeless and developing a substance use disorder involving crack cocaine by age 16. He had spent most of his adult life without secure housing and committed burglaries to support himself.<sup>31</sup> The judge granted DVSJA relief by construing "substantial physical, sexual, or psychological abuse" "at the time of the offense" to mean that at the time of the offense the individual had a *history* of victimization. The case is atypical but it offers a model for how courts should ideally interpret the influence of childhood trauma on adult offenses, and one advocates should seek to advance.

### **The Trauma of Arrest & Prosecution**

Once facing charges, survivors face significant barriers in articulating and proving their victimization and avoid-

ing severe punishment. Domestic violence resentencing laws like New York's DVSJA have the potential to reduce these barriers and the severity of punishment.

A survivor may be unable or unwilling to share their experience of victimization with law enforcement, or even their defense attorney, prior to sentencing. Survivors may still be under the coercive control of the person who abused them – for instance, that individual may threaten to harm them or their family if they disclose. Or survivors may rely on the person who abused them or on that person's family for practical reasons, such as childcare. They may even be prosecuted alongside the person who abused them as a codefendant, which can severely chill their disclosure during the pendency of the case. Psychologically, they may resist identifying their partner's behavior as abuse, especially without access to counseling and support. Or they may be unable to process the issue from a cognitive perspective: memory disturbances are common in individuals with PTSD and/or traumatic brain injury, and inability to remember is a common product of the neurobiological changes that trauma can induce.<sup>32</sup>

Even if a survivor is in a position to articulate their victimization prior to sentencing, they often face disbelief and unrelenting scrutiny, exacerbated by processes that are not trauma informed. For example, at the point of arrest, police may fail to offer the survivor a safe space to speak. The survivor may be handcuffed and confronted by officers deeply skeptical of the abuse or biased against them, especially if they are people of color, LGBTQ+, or gender non-conforming survivors. The incarcerated survivor may then have limited meaningful opportunities to safely speak with legal counsel about the victimization, and their counsel may not be sufficiently trauma-informed to have that conversation. Trauma-informed lawyering requires incorporating an understanding of the impact of trauma in interviewing, counseling, and working with clients to reduce re-traumatization and improve the attorney-client relationship – a skillset still far outside the standard legal curriculum.<sup>33</sup> Past experiences of being disbelieved may lead survivors to distrust law enforcement, the court system, and even public defenders with their personal information. And then even after a disclosure, the prosecutor and court may be skeptical or open-

**At every stage of the criminal legal process, survivors confront obstacles that lead to severe and long-term punishment for offenses connected to the victimization that they have experienced.**

ly hostile. Being compelled to repeat their narrative may re-traumatize survivors while they are detained pre-trial in an environment devoid of emotional support.

Assuming the survivor is able to navigate the re-traumatizing process of disclosing their abuse, they may confront a court or legal standard in which their abuse is not deemed relevant. Their conduct may fall outside the bounds of a traditional legal defense, as discussed above. And trauma is not available as a defense to drug or property crimes. The vast majority of cases are resolved through plea agreements, and prosecutors may simply not view the person they are prosecuting as a victim. Prosecutors may offer a plea to a lower sentence but refuse to charge-bargain (the practice of allowing an individual to plead to a lesser offense than the one they are charged with), thereby leaving the survivor facing high mandatory minimums. Alternatively, the sentencing judge may be limited in their power to consider mitigating evidence or decline to because they are uneducated about the impact of trauma, disbelieve the survivor experienced abuse or to what extent they were abused, or disagree with domestic violence mitigation in principle. Defense counsel may even advise a survivor against disclosing their trauma while plea bargaining or in court if it could potentially be viewed as supporting the prosecution's theory of motive, or could expose the survivor to additional charges, such as child neglect or even deeper entanglement with harmful systems.

Finally, without DVSJA laws, if a survivor raises their victimization after sentencing, when they are equipped to, given the passage of time or other changes in their circumstances, relationships, or thinking, in most jurisdic-

tions they will have highly limited, if any, legal avenues to seek a lower sentence. If some form of survivor sentencing relief is available, then survivors may confront numerous practical barriers: lack of counsel, challenges procuring necessary forms and following court procedures, the cost of filing, lack of access to evidence and witnesses, retraumatization, and the absence of emotional support.

In short, at every stage of the criminal legal process, survivors confront obstacles that lead to severe and long-term punishment for offenses connected to the victimization that they have experienced. While DVSJA laws do not correct most of these underlying drivers of criminalization, they can reduce their harm by offering survivors an opportunity to seek a lower sentence.

### **Developing the Domestic Violence Survivors Justice Act**

The DVSJA was developed by a coalition of survivors and other advocates to respond to the issues described above and to address the specific needs of survivors facing sentencing and already sentenced in New York State.<sup>34</sup> This section presents key features of the law, while the subsequent section examines some of the compromises that accompanied its passage.

#### ***Eligibility for DVSJA relief***

To address the many ways survivors are criminalized, the DVSJA was designed to make a broad array of survivors eligible for relief. Its provisions apply to felony offenses classified as both violent and non-violent, including Class A felonies, with five exceptions. Individuals are eligible for relief unless they have been convicted of aggravated murder, first-degree murder, second-degree murder in the course of committing rape, terrorism, or any offense that requires an individual to register as having committed a crime of a sexual nature, or conspiracy to commit any of those crimes. DVSJA relief extends to people convicted of manslaughter and most second-degree murders. Importantly, the offense need not be directed towards the individual who committed the domestic abuse of the survivor.



## ASSIA SERRANO

Assia Serrano is a mother, doula, parenthood educator, and dedicated advocate for the rights of domestic violence survivors.

Serrano arrived in the United States from Panama at 15 years old. At 18 years old, Serrano met the man who would ultimately coerce her into crime. Twenty years her senior, he controlled almost all aspects of her life, isolated her from family, and sexually abused her.

Serrano became pregnant with his child at 19. She found work as a home health aid to support her anticipated child. Her partner, the father of her child, coerced her into robbing the 85-year-old woman she was caring for and, without any intention to injure her, Serrano bound the woman's hands with stockings to give herself time to flee, causing a blood clot. The woman later died in the hospital from surgical complications. Serrano was sentenced to 18 years to life in New York State after being convicted of felony murder and robbery in the second degree.

During her 17 years of incarceration, before receiving DVSJA relief, Serrano remained an active and doting mother; she gained her B.A in sociology and became a nursery doula, nursery facilitator, parent educator, and conflict mediator. When the DVSJA was passed, the district attorney joined Serrano's resentencing petition, and she was granted immediate release, with the judge wishing her "the very best in life." But as soon as she left the prison, U.S. Immigration and Customs Enforcement picked her up and, within 43 days, deported her back to Panama.

Today, Serrano lives in Panama, awaiting permission to return to the US and her children. If permitted to return, she intends to return to her work as a doula and mother, "When I get home, all I want is the things people take for granted; everyday life, meals with the kids, holiday shopping. That is all I want."

**"When I get home, all I want is the things people take for granted; everyday life, meals with the kids, holiday shopping. That is all I want."**

**-Assia Serrano**



The DVSJA offers retroactive relief in the form of resentencing for survivors who are currently incarcerated and serving a minimum or determinate sentence of eight years or more in prison for an offense committed prior to the law's effective date. But, individuals applying for DVSJA resentencing in New York face a high bar to even get to a hearing: the survivor must include two pieces of evidence corroborating their claim of abuse in their application, one of which must be a sworn statement from a witness, a court or law enforcement record, a hospital record, or a social services record.<sup>35</sup> As discussed further below, when experiencing abuse, many survivors cannot or do not seek assistance from such authorities for myriad reasons. And even those who sought assistance may struggle to procure records years or decades later from behind bars. Critically, however, the DVSJA also provides for the assignment of counsel, a practical necessity for survivors to complete a robust petition for relief.

Individuals whose offenses occurred after the enactment date of the DVSJA are not eligible to apply for resentencing, even if they were unable or declined to raise their DVSJA claim at their original sentencing. They are limited to seeking relief at their original sentencing hearing. As explored more below, this is highly problematic, and should be avoided in other jurisdictions.

### ***Legal standard for relief***

Ultimately, for relief under NY's law, a survivor must establish three things by a preponderance of the evidence: that they had experienced "substantial physical, sexual, or psychological abuse" "at the time of the offense," that the abuse was a "significant contributing factor" to the offense, and that the sentence imposed or that they would otherwise receive without DVSJA mitigation would be "unduly harsh." While "at the time of the offense" has largely been interpreted to mean that the abuse was occurring or ongoing at the time of the offense, as noted above, in one case to date, it was interpreted to mean that the survivor had an abuse history at the time of the offense. If the court finds that the survivor has met all three criteria, it has the discretion to impose a significantly reduced sentence: the minimum sentence for the offense becomes the maximum.

### ***Implementation***

To identify potential DVSJA beneficiaries and assist them in seeking relief, advocates engaged in multiple forms of outreach to incarcerated individuals. Without targeted outreach, potential applicants may be unaware of the law, the availability of legal assistance, or that their history of victimization is considered abuse. For many potential beneficiaries, individualized trauma-informed outreach by a community-based organization is necessary to ensure that they understand they can seek relief. The involvement of community-based organizations is essential: for instance, departments of correction should not administer surveys attempting to assess eligibility for relief. Not only are potential beneficiaries unlikely to disclose sensitive personal information to correctional authorities, to do so can carry significant risks. Likewise, incarcerated survivors may be hesitant to trust the accuracy of information provided by the department of corrections or other state authorities.

Outreach to potential DVSJA beneficiaries was shaped by analyses of correctional data – a practice other jurisdictions should consider when implementing their own DVSJA bills. In a process coordinated by the Survivors Justice Project, graduate students at the City University of New York Public Science Project and Brooklyn Law School students<sup>36</sup> assessed the cases of 487 individuals detained in New York State's prisons designated for women.<sup>37</sup> These individuals were identified by the Department of Corrections & Community Supervision (DOCCS) as potentially eligible for DVSJA relief because their sentence was at least eight years in length and they were not convicted of an excluded offense.<sup>38</sup> The students searched for all publicly available biographic and demographic information about the individuals. While DOCCS had no information on who in this group was or could be a survivor of domestic violence, it was a starting point for the advocacy community to begin to identify DVSJA resentencing claims with biographical research.<sup>39</sup>

The 487 people on the list were convicted of a broad range of offenses, both classified as violent and nonviolent. While two thirds were convicted of homicide offenses, the list included several other conviction charges such as robbery or burglary. And though it is often ex-

pected that individuals who apply for DVSJA relief would have committed an offense against an intimate partner who harmed them, approximately two thirds of the potentially qualifying applicants had a different relationship to the person harmed in the case. In many instances, it was another relative – a parent, child, or other family member. In over 13% of the 487 cases studied, the person harmed in the offense was a stranger.

The insights gained from this initial research allowed outreach and resources to be better directed. Many of the potential resentencing applicants on the list were also known to the formerly incarcerated advocates involved with planning the DVSJA's implementation, many of whom had spent decades in prison with the people now potentially eligible for resentencing. Formerly incarcerated advocates were able to reach out to people in prison via their personal networks to inform them about the DVSJA and the availability of legal assistance – an illustration of the advantage of coalitions including survivors of long-term incarceration. This process was only the beginning of identifying potential DVSJA beneficiaries – the Survivors Justice Project eventually engaged in outreach beyond the 487 individuals: to attorneys identified as handling DVSJA cases, defender offices, county court clerks, and assigned counsel, as well as incarcerated individuals themselves.

The Survivors Justice Project also developed a comprehensive and trauma-informed guide to assist survivors going through the DVSJA process.<sup>40</sup> To further support survivors attempting to access relief, other community-based organizations have also incorporated helping survivors navigate the complex and often retraumatizing process into their practice.<sup>41</sup>

### **Learning from the DVSJA: Key Principles for Survivor Sentencing Reform**

The DVSJA was a groundbreaking piece of legislation that has helped – and continues to help – a meaningful number of survivors receive less harsh sentences. With improvements, it could benefit even more. It represents a decade of bold and zealous survivor-led advocacy. The

DVSJA serves as a vehicle for a deeper understanding of how law enforcement and court systems respond to victims of domestic violence – one that acknowledges the wide range of experiences and backgrounds associated with domestic violence. The DVSJA, however, also reflects compromises required to enable it to pass within its political context. Before attempting to replicate the DVSJA in their own jurisdictions, advocates should consider the lessons learned from New York's initial years of DVSJA practice.

The DVSJA's first three years have seen important successes: 40 people have been resentenced as of February 2023.<sup>42</sup> By comparison, Illinois's 2016 domestic violence sentencing law has yielded relief for only four survivors given judicial resistance and disputed eligibility criteria, including arguments from prosecutors that the law does not apply to survivors sentenced prior to 2014.<sup>43</sup> The DVSJA, however, has also faced challenges, as described below. The Survivors Justice Project is aware of 32 individuals who have sought resentencing relief and been denied, and efforts to document such denials are ongoing. Those challenges, in part, represent limitations flowing from the negotiations necessary for the DVSJA's passage discussed below.

Today, advocates in New York are working to address the DVSJA's shortcomings and the potential improvements they have identified can inform similar bills elsewhere. Restrictions on eligibility, stringent procedural requirements, and judicial narrowing of the statute, among other issues have limited the impact of New York's DVSJA. These cautionary indicators should inform proposed DVSJA legislation elsewhere.

#### ***Restrictions on Eligibility and Window for Relief***

All survivors of domestic abuse should be eligible for sentencing relief, regardless of the offense committed, their own prior arrest history, or their sentence. The DVSJA was the first sentencing reform in New York that applied to felony offenses categorized as violent. Nonetheless it bars individuals convicted of some of the most serious crimes, including first-degree murder and many sex of-



## SUSAN BROWN

Susan Brown is a mother, advocate, renowned artist, and winner of The Prison Creative Arts Project Award. Twenty-one years ago, she was sentenced to life without parole for killing her estranged husband in Michigan, where she remains incarcerated.

Brown had left her abusive marriage a year prior and was 30 weeks pregnant with a new partner's child when her estranged husband attacked her. He beat her, raped her, and stabbed her pregnant

stomach. Brown fought back to defend herself and her unborn child's life—an account of the events which her former husband's family disputes. In a blur of events, she found herself in the hospital with her child born devastatingly premature and learned her estranged husband was dead. She was charged with first-degree murder.

Suffering from serious postpartum medical and psychiatric issues and the trauma of her attack, Brown struggled to participate in her own defense. In 2006, the Michigan Court of Appeals wrote that Brown “proffered no example of prior aggressive behavior [by her ex-partner], either before, or after the separation.” The first trial resulted in a mistrial, but the subsequent trial resulted in a conviction.

During her incarceration, Brown has remained an active mother, advocated for people with disabilities in prison, served as a conflict mediator, and created art that has been exhibited in Michigan and internationally. Her advocacy for second chances has bolstered proposed second look legislation in Michigan. She hopes to return home to her children and elderly mother but says, “Until I can physically be free I am ever so grateful for the opportunity to express my personal freedom of art with all of you. To my beautiful children, it is an honor to be a part of your lives. I love you so very much!”

**“Until I can physically  
be free I am ever  
so grateful for the  
opportunity to  
express my personal  
freedom of art with all  
of you.”**

**-Susan Brown**

fenses, from applying. Women serving life sentences are often a product of first-degree murder convictions, and women serving life sentences frequently report histories of physical and sexual violence.<sup>44</sup> In addition, the actual crime of conviction is often a matter of chance, depending on prosecutorial charging decisions, and on whether the survivor exercises their right to go to trial or to plead guilty to a lesser crime. This restriction thus arbitrarily prevents a significant number of survivors from accessing relief, especially the individuals serving the longest sentences who need it the most. Due to a drafting oversight, New York's DVSJA also excludes youth sentenced under its "juvenile offender" statute from relief. To avoid this type of error, other jurisdictions must do a comprehensive review of their sentencing statutes to make sure all are included.

DVSJA legislation should also permit survivors to raise their DVSJA claims at any point after sentencing, even if the law was in effect when they were initially sentenced. Given the potential psychological and logistical barriers to reporting victimization at the initial trial sentencing stage, survivors should always have the opportunity to seek resentencing, even if they did not raise a DVSJA claim at their original sentencing. The limitation on those sentenced after the law's enactment worked to assuage lawmakers' concerns regarding judicial capacity, but it ignores the lived experience of criminalized survivors and undermines the law's effectiveness.

### ***Corroboration Challenges***

Another stringent limitation on relief in the DVSJA is its corroboration requirement. Individuals applying for resentencing must offer two pieces of corroborating evidence in order to be granted a resentencing hearing. The nature of the corroborating evidence is specified by statute, including for instance, that one piece must be a court record, pre-sentence report, social services record (such as ACS/child welfare record or shelter record), hospital record, sworn statement from a witness, law enforcement record, domestic incident report, or an Order of Protection.<sup>45</sup>

This highly unusual evidentiary requirement poses a significant burden on survivors seeking relief and distinguishes DVSJA resentencing from other typical sentencing hearings, defenses asserted at trial or any other post-conviction application. In these other contexts, while such corroborating evidence may be persuasive, individuals are not required to present specific enumerated forms of evidence to meet their burden of proof, let alone to even proceed to a hearing. The DVSJA corroboration requirement significantly restricts judicial discretion by setting a high threshold for granting a hearing. For instance, even if a judge finds that an individual has offered strong evidence that they would qualify for DVSJA relief using pieces of evidence such as records from a crisis center that assisted them at the time, the sworn statement of a clergy member who counseled them, and dated photos of their own injuries, if that individual does not have the specific types of evidence enumerated in the statute, the case may not move forward.

Survivors of violence may be unable or unwilling to report their abuse to courts, law enforcement, social service providers, or medical providers for an array of reasons. For example, agents of these institutions are all mandated reporters of child abuse and may file a report if children witness but are not subject to abuse, endangering the survivor's custody. The individual who harmed the survivor may also have physically prevented them from contacting such institutions. Or a survivor may not have sought assistance because of deficiencies in those institutions: for instance, if no local domestic violence organizations offer services in their language or that affirm their gender identity. Reluctance to report abuse is particularly prevalent among groups with historically fraught relationships with law enforcement and government authorities, including people of color, LGBTQ+ individuals, and members of immigrant communities. Individuals may fear, based on current or historical discrimination, that they will not be believed or that they will be arrested or detained themselves, for instance if they are undocumented and interact with the police. And, even where a survivor reported their abuse and corroborating evidence exists, they may struggle to procure it from behind bars.



The corroboration requirement thus poses a significant impediment, and, even with the assistance of counsel, has the potential to bar the majority of survivors from retroactive relief. Because this requirement disproportionately impacts members of marginalized groups, it also reinforces racial and gender disparities that already favor white, cis-gender, female survivors. As discussed further below, specific forms of corroboration should not be required to obtain a hearing, and a DVSJA hearing should not be constrained by more stringent requirements than any other form of sentencing or post-conviction hearing.

### **Judicial Resistance**

As courts have begun to adjudicate DVSJA cases, some judges have resisted granting relief, regardless of the evidence presented. For example, Nicole Addimando's DVSJA sentencing application gained significant media attention following her 2020 trial for killing her intimate partner and the father of her children.<sup>46</sup> At trial, Addimando testified for three days about the sexual assault, beating, burning, sexual exploitation, and death threats he inflicted on her. She also offered evidence of abuse by others and multiple witnesses attested to her injuries. She was nevertheless convicted of second-degree murder. In adjudicating her request for DVSJA sentencing, the trial judge cited the "tremendous amount of advice, assistance, support, and opportunities to escape her alleged abusive situation" in denying her relief.<sup>47</sup> Later on, the appeals court critiqued the trial court's "antiquated impressions of how domestic violence survivors should behave."<sup>48</sup> It reversed the lower court's decision and granted relief, summarizing the prior decision as having erroneously concluded that while "the defendant may have been abused in her life, the choice she made that night and the manner in which the murder occurred outweighed what the court referred to as the defendant's 'undetermined abusive history.'"<sup>49</sup> Judicial resistance, particularly at the trial court level, illustrates the need for uniform training on the purpose and goals of DVJA laws, as well as trauma more broadly.

### **Judicial Narrowing of the Legal Standard**

As DVSJA cases have moved through the courts, some judges have also narrowly interpreted the legal standard in order to limit relief. To receive a reduced sentence, survivors must prove that they were a victim of domestic violence "at the time of the instant offense," meaning that they had experienced "substantial physical, sexual, or psychological abuse." They also must show that the abuse was a "significant contributing factor" to the offense, and that the sentence imposed or that they would otherwise receive without DVSJA mitigation would be "unduly harsh." Advocates who fought for the DVSJA's passage did not intend that the abuse itself be contemporaneous with the offense, only that at the time of the offense the survivor must have been a victim, yet not all courts have interpreted it this way. In *People v. Williams*, the trial court narrowly construed "at the time of the instant offense" to mean that the survivor must be experiencing substantial abuse at the time of the offense. When deciding the application for DVSJA resentencing, the trial court denied the survivor relief on the grounds that although she demonstrated past substantial abuse, her abuse at the time of the offense did not rise to the level of substantial. The appellate court affirmed this decision,<sup>50</sup> raising the specter that if New York's highest court, the state Court of Appeals, affirms it as well the DVSJA's impact may be significantly blunted.

The final prong of the DVSJA's three-part test for relief – that the original sentence must be "unduly harsh" – has also proven a barrier to relief for survivors. Leaving significant discretion in the hands of judges, the "unduly harsh" standard allows courts to find that survivors were abused and that the abuse contributed to the underlying offense, but nonetheless deny relief. For example, in *People v. Burns*, the case involving the young man who killed his father who was the perpetrator of his abuse and the father's girlfriend, the trial court judge held in part that the man's sentence of 25-years to life was not "unduly harsh" given the circumstances of the case. The "unduly harsh" requirement shifts the ultimate question

for relief from one of whether culpability was diminished to the proportionality of a sentencing. The sentencing court's judgment of proportionality, however, is likely to be skewed by the sentencing ranges that they are accustomed to imposing in non-DVSJA cases.

Nonetheless, support amongst prosecutors and judges in New York State for the DVSJA is growing. In 33 of the 40 successful DVSJA resentencing cases, prosecutors consented to the survivor obtaining relief in the form of a sentence reduction. In nine of those instances, prosecutors initially opposed the application but changed their position as the application was adjudicated, usually prior to but at least once in the middle of a hearing.<sup>51</sup>

Meanwhile advocates in New York are working to address the DVSJA's shortcomings. The DVSJA is worthy of replication with modifications to guarantee that relief is available to as many survivors as possible and that the law's provisions align with survivors' actual experience. The following section distills recommendations and best practices as other jurisdictions contemplate replicating the DVSJA.

# RECOMMENDATIONS FOR DOMESTIC VIOLENCE SURVIVOR SENTENCING LEGISLATION

## 1. Create broad and trauma-informed eligibility criteria.

***Adopt an expansive definition of domestic abuse beyond intimate partner violence that includes all family relationships and commercial sexual exploitation.***

New York State’s DVSJA embraces a broad definition of family abuse that captures a wide array of relationships and can serve as a model to other states.<sup>52</sup> Critically, New York recognizes family abuse beyond intimate partner relationships and includes other family members, such as parents and guardians, siblings, or caregivers. Among successful New York DVSJA resentencing cases where the person harmed or killed had committed the abuse, six involved the homicide of an abusive parent.<sup>53</sup>

**Retroactive relief is necessary for both fairness and to reduce the number of criminalized survivors in prison.**

New York’s definition of covered family relationships, however, does not explicitly include commercial sexual exploitation by another, commonly referred to as sex trafficking. Although the relationship between trafficker and survivor will often fall into one of the enumerated categories (such as intimate partners or household members), it does not always and DVSJA laws should acknowledge how trafficking into commercial sex can lead to participation in criminal offenses.<sup>54</sup> Advocates and lawmakers should consider specifying that survivors of sex trafficking (and labor trafficking as well ideally) are

eligible regardless of whether the relationship between the survivor and abuser falls within the definition of “family.”

***Make all offenses and sentence lengths eligible for relief.***

Exclusions for first-degree murder or any other offense dramatically undercut the impact of DVSJA legislation. Individuals who commit the most serious offenses may in fact be among those most deserving of relief, given the well-documented link between victimization and violent crime.<sup>55</sup> Excluding certain offenses also has the potential to create racial disparities among those who receive relief, given that prosecutors are more likely to bring serious charges against people of color and plea bargaining operates unevenly, often also at the expense of marginalized people.<sup>56</sup> If offense-based exclusions are unavoidable in a jurisdiction’s legislative context, advocates should attempt to draw them as narrowly as possible. Similarly, exclusions based on sentence length should be avoided to the extent possible. New York’s DVSJA limits the ability to apply for resentencing to individuals currently serving a minimum sentence of 8 years in prison – any proposed eligibility criteria should eliminate or significantly lower this threshold.

***Ensure that survivors may apply for relief both at the time of sentencing and at any point post-conviction.***

While prospective relief is often more politically feasible, retroactive relief is necessary for both fundamental fairness and to reduce the significant number of criminalized survivors in prison. Some survivors may be capable of articulating the trauma that they experienced that contributed to their offense at the time of their initial prosecution, but some may face barriers or take years to reach that point. As detailed above in “The Trauma of

Arrest and Prosecution,” survivors may be unable or unwilling to raise a DVSJA claim at the time of sentencing for a wide array of reasons. As such, offering survivors opportunities to seek relief both before and after a court imposes sentence without strict time limits is vital to ensuring that all survivors have access to sentence mitigation.

## **2. Develop a legal process that is as accessible as possible for survivors, taking into consideration trauma, ability to navigate the legal process, and indigency.**

### ***Strive to create a simple, procedurally just, and trauma-informed application process.***

Most legal processes are challenging for lay people to understand and navigate, and those challenges are compounded if an individual is in custody and dealing with the long-term effects of trauma. To reduce barriers to relief, specify in the statute that the state is responsible for creating and disseminating a form to all incarcerated individuals that elicits the necessary information to request relief in simple language. Additionally, mandating training for court clerks on how to process such applications can streamline implementation. Finally, judges, court personnel, defense counsel, and prosecutors can all benefit from education on how to apply DVSJA laws as well as on domestic violence, trauma, and procedural justice more broadly.

### ***Provide trauma-informed support to survivors during the application and hearing process and during reentry.***

The process of applying for DVSJA sentencing or resentencing requires survivors to relive their prior experiences and can be retraumatizing in itself. Just as victim services provide essential support to witnesses who have experienced trauma, survivors seeking relief under DVSJA laws strongly benefit from trauma-informed counseling and connection to a support network. Survivors need access to these resources pre-trial in order to develop a claim for sentencing relief.<sup>57</sup> Comprehensive sentencing reform must include funding to support these critical

services both behind bars and as individuals reenter the community, and absent public funding, philanthropic funding of such services is vital.

### ***Ensure access to counsel on resentencing matters.***

While survivors seeking to use the DVSJA pre-sentence will have legal representation, the assistance of counsel is also essential for survivors seeking resentencing. Assigning counsel ensures that relief will be accessible to individuals regardless of financial resources. Ideally, the DVSJA procedure should allow for the assignment of counsel prior to the individual filing an application for resentencing. If counsel is assigned after an application has been filed, the statute should permit individuals to subsequently amend their applications. Assigned counsel should receive appropriate training on the issues survivors face when arrested, prosecuted, and punished.

### ***Develop realistic and trauma-informed evidentiary requirements.***

The majority of people injured by an intimate partner do not receive medical care for their injuries<sup>58</sup> and less than half of intimate partner victimizations are reported to the police.<sup>59</sup> Survivors may be unable to report because they have no safe means to do so. Survivors may also choose to not report or disclose for numerous reasons, such as shame or stigma, a fear that reporting will result in loss of custody of their children, loss of employment, loss of vital household income or childcare, immigration consequences, or because of a well-founded fear they are unlikely to be believed. Likewise, child abuse is severely underreported.<sup>60</sup> As such, strict requirements that applications be corroborated with police reports, medical records, and witness affidavits have the potential to exclude many survivors from sentencing relief and should be avoided. Furthermore, requiring survivors to corroborate their abuse with supporting documentation disproportionately excludes survivors who belong to marginalized groups, such as people of color, LGBTQI survivors, and non-citizens — groups with reasonable distrust of law enforcement and other government record-keeping institutions.



Additionally, at DVSJA sentencing hearings judges should be able to consider all relevant evidence, including witness testimony, institutional and medical records, and hearsay. The statute should make clear, however, that the absence of certain evidence, such as a failure to participate in domestic violence related programming while incarcerated, should not be construed against the survivor. Ideally, resentencing hearings should be structured like sentencing hearings, not trials, with lower evidentiary burdens.

***Collect data to inform outreach efforts, judicial training, and statutory amendments.***

Once a DVSJA law is enacted, it is essential to collect and analyze data regarding its implementation. This promotes accountability and identifies patterns such as racial or geographic disparities and is valuable for informing outreach efforts, judicial training needs, and future statutory amendments. DVSJA statutes should include a data collection requirement to ensure that the appropriate agency tracks, at minimum, the outcomes of sentencing/resentencing applications, the demographics of DVSJA applicants, the jurisdiction and judge, the length of the original sentence, any new sentence, and the position of the prosecutor. A reporting requirement, such as an annual report to the legislature, and mandated release of the de-identified raw data so that it can be analyzed by third parties, will also improve transparency.

**3. Craft a trauma-informed and realistic legal standard for relief.**

***Create clear procedures and standards for judges.***

When developing a legal process for DVSJA claims, the standard of review at each stage should be carefully defined and review on the merits should be limited to the hearing stage. Ideally, prior to the hearing stage, the court should solely assess whether the individual has submitted a reasonably complete application for relief and whether their conviction and length of incarceration (for resentencing) fall within the statutory requirements.

***Adopt a clear and trauma-informed legal standard focused on reduced culpability, not the severity or immediacy of abuse.***

A simple legal standard such as “(1) the petitioner was the victim of physical, sexual, or psychological abuse or human trafficking and (2) such abuse was a significant contributing factor to their participation in the underlying offense” and clear guidance on how to interpret the legal standard within the text of the bill will help survivors access relief.

New York State’s DVSJA imposes a requirement that a petitioner demonstrate victimization “at the time of the offense.” This standard has the potential to exclude many survivors whose culpability is inextricably linked to their abuse history but may be temporally attenuated. It ignores the fact that trauma can severely impact an individual’s decision-making long after the traumatic event.<sup>61</sup> Similarly, requiring “substantial” abuse has the potential to exclude many survivors by opening the door to arbitrary judicial determinations of what abuse rises to the level of substantial, ignoring that, for example, PTSD can occur after a single severe incident of abuse.<sup>62</sup>

***Make clear that DVSJA relief is not limited to circumstances of self-defense.***

Without statutory instructions to the contrary, courts may default to assessing DVSJA claims in line with the familiar or well-known standard for a self-defense claim. Limiting DVSJA relief to such circumstances has the potential to exclude a significant number of survivors. New York’s DVSJA, for example, specifies that the court may determine that abuse was a significant contributing factor to an offense regardless of whether the individual raised a self-defense or justification claim. As discussed above, a history of abuse can contribute to a wide array of offenses, from substance use, to property crimes, to violence, and may cause someone to harm the person who abused them in situations other than in response to an immediate risk of attack or violence. Courts must look beyond the narrow frame of self-defense to ensure survivors in all circumstances have access to DVSJA relief.

***Make clear that DVSJA relief extends to offenses against individuals other than those who perpetrate the abuse.***

Survivors may be coerced to commit an offense against a third party or harm a third party in the process of defending themselves. Survivors' trauma history can also influence their decisions and reactions to others long after they have exited an abusive relationship. For example, a survivor with a history of domestic violence victimization may overreact in an altercation with a non-abusive partner, leading to the underlying offense in a situation that warrants DVSJA sentencing mitigation. Without clear guidance otherwise, however, the court may require that the victim of the underlying offense be the survivor's abuser and deny relief.

**4. Maximize sentence reductions.**

***Create a presumption of resentencing if a survivor demonstrates that they suffered abuse and the abuse was a significant contributing factor to the offense.***

New York State's DVSJA currently requires that individuals prove that they suffered abuse, the abuse was a significant contributing factor in their underlying offense, *and* that the sentence the person received (or would receive) is "unduly harsh" in light of the "nature and circumstances of the crime," and the survivor's "history, character and condition." In practice, that final highly discretionary factor has posed a barrier to relief to some survivors, as it allows judges to deny relief even if the survivors meet the high burden of demonstrating reduced culpability due to victimization. Removing this element and instead creating a presumption of relief for individuals who meet the first two criteria would broaden the availability of relief and reduce arbitrariness, while still leaving some discretion to courts.<sup>63</sup>

***Weigh the costs and benefits within your jurisdiction of explicitly delineating DVSJA sentencing ranges or allowing judicial discretion.***

New York State's DVSJA specifies significantly lower sentencing ranges for individuals who meet the statutory criteria for resentencing, with the normal minimum

sentence becoming the maximum for survivors under the DVSJA. Specifying narrow and low ranges for resentencing can be a valuable guarantee that individuals will receive meaningful reductions in their sentence, as opposed to small reductions from judges new to DVSJA. Practitioners in New York State, however, have observed instances in which the court declined to grant any relief because they felt the new sentencing range offered by the statute was too great a reduction. DVSJA statutes should take into account how a specific sentencing range is likely to play out within a given jurisdiction based on the existing sentencing scheme and general practice.

***Encourage determinate sentencing and impose limitations on the use of parole.***

Supervision is a carceral sanction and a heavy "burden, especially for women who are domestic violence survivors" because "the strict constraints of post-release supervision can mimic the abusive relationships that domestic violence survivors experienced in their relationships prior to incarceration."<sup>64</sup> Supervision also creates a risk of reincarceration for a technical violation that is "inconsistent with the intent of the DVSJA."<sup>65</sup> A DVSJA sentencing scheme should minimize parole/post-release supervision and discourage courts from imposing indeterminate sentences that leave release determinations in the hands of parole boards.

# CONCLUSION

Despite the challenges the DVSJA has faced in New York, its successes and the lessons learned from its first few years are already guiding and inspiring advocates across the country to fight for similar legislation.

For example, activist April Wilkens, who is serving her 25<sup>th</sup> year of incarceration for defending herself, urged the Oklahoma legislature to support Oklahoma’s version of DVSJA, the Domestic Abuse Survivorship Act, writing, “It is imperative that any legislation written to help survivors includes the opportunity for sentences to be mitigated on the front end, and the opportunity for survivors who have been serving decades the opportunity to introduce that evidence as well. These efforts must be trauma-informed and comprehensive.”<sup>66</sup> Her words echo the lessons learned from the DVSJA in New York and the work of Oklahoma advocates is already bearing fruit: on March 22, 2023, the Domestic Abuse Survivorship Act unanimously passed the Oklahoma House of Representatives.<sup>67</sup>

Wilkens is not alone – survivors and their allies across the country are calling on lawmakers to support survivor justice.<sup>68</sup> Their advocacy holds promise not just for criminalized survivors of domestic violence, but for all individuals harmed by extreme sentencing. Survivor resentencing will provide a second chance to many, and by demonstrating to legislators, judges, and prosecutors the importance of holistic sentencing and the value of a second look, it can open the door to even more.

**Survivor resentencing will provide a second chance to many, and by demonstrating to legislators, judges, and prosecutors the importance of holistic sentencing and the value of a second look, it can open the door to even more.**

# APPENDIX: MODEL DOMESTIC VIOLENCE AND HUMAN TRAFFICKING SURVIVOR JUSTICE SENTENCING LAW

The following model legislation includes many of the components of New York’s DVSJA, while incorporating the modifications and avoiding the pitfalls discussed in the recommendations above.

## I. Definitions

A. Within this Act, the following definitions shall apply:

1. Domestic Relationships –
  - a) persons related by consanguinity or affinity;
  - b) persons legally married to one another;
  - c) persons formerly married to one another regardless of whether they still reside in the same household;
  - d) persons not related by consanguinity or affinity who live in the functional or factual equivalent of a natural family, such as children and foster parents or congregate childcare workers;<sup>69</sup>
  - e) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and
  - f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an “intimate relationship” include but are not limited to the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship.”
2. Sex Trafficking – Compelling another to commit a commercial sex act through force, fraud, or coercion or promoting the commission of a commercial sex act by an individual under 18 years of age.<sup>70</sup>
3. Significant Contributing Factor – The effects of the domestic abuse were sufficiently important or meaningful to have likely helped to bring about the applicant’s participation in the offense. There can be more than one significant contributing factor. A significant contributing factor need not be a causal factor, the sole factor, or primary factor.

## II. Alternative sentences for survivors of domestic violence and trafficking

- A. Notwithstanding any other provision of law, where a court is imposing a sentence upon a person for any offense and is authorized or required to impose a sentence of imprisonment, the court shall instead impose a sentence in accordance with Subsection IV, upon a determination following a hearing that:
1. the applicant was subjected to physical, sexual, or psychological abuse inflicted in a domestic relationship as such term is defined in subdivision I of this Act or was a victim of sex trafficking as defined in subdivision I of this Act; and
  2. such abuse or victimization was a significant contributing factor to the applicant’s participation in the offense.



- B. In determining whether such abuse or victimization was a significant contributing factor to the applicant's participation in the offense, the court shall consider the cumulative impact of the abuse or victimization by one or more individuals on the applicant's mental state and culpability at the time of the underlying offense.
  - 1. The abuse or victimization need not result in physical injury, be of long-term duration, or occur contemporaneously with the underlying offense to meet this standard.
  - 2. The applicant's failure to allege or offer evidence of such abuse or victimization prior to sentencing shall not preclude the applicant from raising such abuse or victimization at sentencing and seeking an alternative sentence. Any such failure may not be considered adversely by the court when assessing the veracity of the applicant's claims.
- C. At the hearing to determine whether the applicant should be sentenced pursuant to this section, the court may consider oral and written arguments, take testimony from witnesses offered by either party, and consider any relevant evidence to assist in making its determination. Hearsay shall be admissible at such hearings. Expert testimony may be considered where relevant however shall not be required, and the applicant shall not be required to provide testimony. An applicant choosing not to provide testimony shall not be considered a negative factor in determining a motion pursuant to this section, and an applicant's testimony alone can be sufficient evidence to support the claim.
- D. *If your state has a Victim's Bill of Rights, specify here how the hearing will comply with that Act, for example, how notice and the opportunity to be heard will be given to victims.*

### **III. Resentencing for survivors of domestic violence and trafficking**

- A. Notwithstanding any contrary provision of law, any person may, on or after such effective date, submit to the court in which the original sentence was imposed upon such person an application for resentencing under this section.
- B. An individual shall be eligible for resentencing under this section if
  - 1. They are confined in an institution operated by the Department of Correction<sup>71</sup> or serving a sentence of community supervision;
  - 2. They were subjected to physical, sexual, or psychological abuse inflicted in a domestic relationship as the term is defined in Subsection I of this Act or were a victim of sex trafficking as defined in Subsection I of this Act; and
  - 3. Such abuse or victimization was a significant contributing factor to the individual's participation in the offense.
- C. When filing an application for resentencing under this section, the applicant may request that the court assign them an attorney for the preparation of and proceedings on the application for resentencing pursuant to this section. Upon receiving the request, the court shall assign an attorney in accordance with the provisions of *[relevant statutory provisions regarding the appointment of counsel]*.
- D. Upon making a determination as to assignment of counsel, the court shall also promptly order the disclosure of discovery to the person applying for resentencing and their counsel. The order of disclosure of discovery shall provide that:
  - 1. The prosecution shall produce all items and information that relate to the subject matter of the case and are in the possession, custody, and control of the prosecution or persons under their direction or control and make available for inspection any physical evidence secured in connection with the investigation or

- prosecution of the applicant, including all evidence that would be discoverable pursuant to other sections of the penal/criminal procedure law; and
2. The applicant's prior trial and appellate counsel shall make available to the applicant or their counsel their complete files relating to the case; and
  3. Court clerks and probation departments shall make available to the applicant or their counsel the court files or probation records pertaining to the case; and
  4. Nothing in this section shall preclude the court from conducting an in-camera inspection of discovery material and issuing a protective order pursuant to [insert relevant section of the penal law for protective orders] at the request of the prosecution or defense.
  5. The discovery order shall require that the prosecution and prior defense counsel produce all required discovery to the person applying for relief or their counsel no later than thirty days from the issuance of the order.
- E. An application for resentencing under this section must be filed in writing<sup>72</sup> and may include affidavits, declarations, letters, prison records, or other written and electronic material. The application must include a factual statement explaining how the applicant meets the eligibility requirements for resentencing described in Subsection III.B. An application filed under this section may be freely amended by counsel following appointment or by the applicant if they choose to proceed without counsel. An application under this section, and all pertinent papers and documents, shall be confidential and may not be made available to any person or public or private entity except where specifically authorized by the court.
- F. The Office of Court Administration<sup>73</sup> shall provide forms for an application under this section and the request for the assignment of counsel to all correctional facilities. The Department of Correction shall ensure that such forms are accessible to all incarcerated individuals and allow individuals to copy their completed forms at no cost. The form shall specify the point of contact in each county court for the receipt of such forms.<sup>74</sup>
- G. Upon receipt of the application for resentencing, the court shall schedule a hearing to aid in making its determination of whether the applicant should be resentenced in accordance with Subsection III.I if the court determines that the individual:
1. Is currently serving a qualifying sentence;
  2. Has submitted a complete application as defined by Subsection III.D.<sup>75</sup> The court shall not engage in an assessment of whether the person merits relief under Subsection III.I of this Act when determining whether to grant a hearing under this subsection. If a hearing is granted, the court shall promptly notify the appropriate district attorney<sup>76</sup> and provide such district attorney with a copy of the application.
- H. If the court denies a hearing, the court shall notify the applicant of the reason(s) for denying a hearing and dismiss their application without prejudice.
- I. After the filing of an application under this section, the court may direct the parties to expand the record by submitting additional materials relating to the motion. An application filed under this section may be freely amended.

- J. The court shall impose a sentence in accordance with Subsection IV, upon a determination following a hearing that:
1. Such individual was subjected to physical, sexual, or psychological abuse inflicted by a person with whom they had a domestic relationship as such term is defined in Subsection I of this Act or was a victim of sex trafficking as defined in Subsection I of this Act; and
  2. That such abuse or victimization was a significant contributing factor to the individual's participation in the offense.
- K. In determining whether such abuse or victimization was a significant contributing factor to the applicant's participation in the offense, the court shall consider the cumulative impact of the abuse or victimization on the applicant's mental state and culpability at the time of the underlying offense.
1. The abuse or victimization need not be contemporaneous with the underlying offense, of long-term duration, or result in physical injury, to meet this standard.
  2. The applicant's failure to allege or offer evidence of such abuse or victimization prior to filing a resentencing application shall not preclude the applicant from alleging such abuse or victimization in subsequent petitions for resentencing and such failure may not be considered adversely to the applicant by the court when assessing the veracity of the applicant's claims.
  3. Similarly, an applicant is not precluded from seeking relief where they previously alleged and offered evidence of such abuse or such abuse was considered as part of the original disposition.
- L. At such hearing the court shall determine any controverted issue of fact relevant to the issue of sentencing. Hearsay shall be admissible at such hearings. The court may consider any fact or circumstances relevant to the imposition of a new sentence which are submitted by the applicant or the prosecution. Relevant evidence may include, but applicants are not required to offer, medical records, social service records, police reports, domestic incident reports, the sworn statements of witnesses, and orders of protection. The court may, in addition, consider the institutional record of confinement of such person, but shall not order a new pre-sentence investigation and report or entertain any matter challenging the underlying basis of the subject conviction. The court's consideration of the applicant's institutional record of confinement shall include, but not be limited to, participation in or willingness to participate in programming such as domestic violence, parenting, and substance abuse treatment while incarcerated and such applicant's disciplinary history. The fact that the applicant may have been unable to participate in treatment or other programming while incarcerated despite their willingness to do so shall not be considered a negative factor in determining a motion pursuant to this section. Expert testimony may be considered where relevant but shall not be required, and the applicant shall not be required to provide testimony. An applicant choosing not to provide testimony shall not be considered a negative factor in determining an application pursuant to this section and an applicant's testimony alone can be sufficient evidence to support the claim.
- M. If the court determines that the applicant should not be resentenced in accordance with Subsection III.I, the court shall inform the applicant of its decision and shall enter an order to that effect. Any order issued by a court pursuant to this section must include written findings of fact and the reasons for such order.
- N. If the court determines that the applicant shall be resentenced in accordance with Subsection III.I, the court shall notify the applicant that, unless they withdraw the application, the court will enter an order vacating the sentence originally imposed and imposing the new sentence to be imposed as authorized by Subsection IV. Any order issued by a court pursuant to this section must include written findings of fact and the reasons for such order.

- O. In calculating any new term to be served by the applicant pursuant to Subsection IV, such applicant shall be credited for any jail time credited towards the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.
- P. The court shall not impose a new term greater than the applicant's original sentence.
- Q. An appeal may be taken as of right<sup>77</sup> by the applicant in accordance with applicable provisions of this chapter:
  - 1. from an order denying resentencing; or
  - 2. from a new sentence imposed under this provision and may be based on the grounds that
    - a) the term of the new sentence is harsh or excessive; or
    - b) that the term of the new sentence is unauthorized as a matter of law.
- R. The applicant may request that the court assign them an attorney for the preparation of and proceedings on any appeals regarding their application for resentencing pursuant to this Section. The applicant shall have the right to assignment of counsel if indigent and that court shall presume continuing indigence if counsel was assigned for prior proceedings on the application.
- S. This Act shall not be construed to abridge or modify any existing remedy an incarcerated individual may have under habeas corpus, statutory or judicial postconviction relief, or any other legal framework.
- T. An application under this Act shall not impact in any way or be impacted in any way by any pending petitions under habeas corpus or other post-conviction proceedings, nor shall the denial of a petition under this Act preclude an applicant from any such remedy to which they are otherwise entitled.
- U. *If your state has a Victim's Bill of Rights, specify here how the hearing will comply with that Act, for example, how notice and the opportunity to be heard will be given to victims.*

#### **IV. Reduced sentences for domestic violence and trafficking survivors**

- A. If the court finds, pursuant to Subsections II or III of this Act that the individual was subjected to physical, sexual, or psychological abuse inflicted in a domestic relationship or was a victim of sex trafficking as defined in Subsection I of this Act; and that such abuse or victimization was a significant contributing factor to the individual's participation in the offense, the court shall instead impose a sentence consistent with the following provisions.<sup>78</sup>
  - 1. *Specify lowered sentencing ranges for categories of offenses. Consider making the minimum sentence otherwise specified for an offense the maximum for DVSJA beneficiaries.*
- B. For purposes of resentencing, at any time after the filing of an application, with the permission of the court, the parties may agree to vacate the original sentence and impose a sentence that is less than the term of the original sentence.

#### **V. Domestic violence and human trafficking survivors sentencing data collection**

- A. Upon receipt of a request for alternate sentencing filed pursuant to pursuant to Subsection II of this Act, the clerk of the court shall report the following information to the office of court administration:
  - 1. The name, race, gender, and age of each person seeking sentencing pursuant to this Act;
  - 2. Whether the individual was granted or denied sentencing pursuant to this Act;
  - 3. The offenses for which the individual sought sentencing pursuant to this Act;
  - 4. The sentence imposed;



5. The county and the name of the judge deciding the request;
  6. Whether the prosecutor consented, opposed, or took no position on the request.
- B. Upon receipt of a request for resentencing filed pursuant to Subsection III of this Act, the clerk of the court shall report the following information to the office of court administration:
1. The name, race, gender, and age of each incarcerated person or person on community supervision seeking resentencing;
  2. The portion of the sentence already served by each applicant at the time of the request;
  3. Any new sentence imposed, if applicable;
  4. The county and the name of the judge deciding the request;
  5. Whether the prosecutor consented, opposed, or took no position on the request; and
  6. If the applicant had submitted any prior requests pursuant to this Act, the outcome of such applications and the date such applications were decided.
- C. The office of court administration shall provide an annual collective report containing the information received from the clerks of the court pursuant to paragraphs (a) and (b) of this subdivision to the governor and legislature. This report shall be made available to the public.

## ENDNOTES

<sup>1</sup> Survivors of domestic violence include both survivors of family and intimate partner abuse.

<sup>2</sup> Correctional Association of New York (2020). *It reminds us how we got her: (Re)producing abuse, neglect, and trauma in New York's prisons for women.*

<sup>3</sup> Byrne Hessick, C. & Berman, D. (2016). *Towards a Theory of Mitigation.* 96 B.U. L. Rev. 161.

<sup>4</sup> Data on file with the Survivors Justice Project. Calculation based on comparison of DVSJA sentence to original sentence.

<sup>5</sup> Botkin, B. (2023). *Lawmakers consider proposal to lighten sentences against domestic violence survivors.* Oregon Capital Chronicle; Promise of Justice (2023). *Justice for Survivors Act*; OK Survivor Justice Coalition (2023), *Oklahoma Domestic Violence Survivorship Justice Act.*

<sup>6</sup> Monazzam, N. & Budd, K. (2023). *Incarcerated Women and Girls.* The Sentencing Project.

<sup>7</sup> Jones, M., Worthen, M.G.F., Sharp, S.F., & McLeod, D. A. (2018). Life as she knows it: The effects of adverse childhood experiences on intimate partner violence among women prisoners. *Child Abuse and Neglect*, 85, 68-79. Between 1980 and 2021, the number of incarcerated women increased by more than 540%, and although more men are in prison than women, the rate of growth for female imprisonment has been twice as high as that of men since 1980. Monazzam (2023), see note 6.

<sup>8</sup> Weeks, R. & Widom, C. (1998). *Self-Reports of Early Childhood Victimization Among Incarcerated Adult Male Felons.* *Journal of Interpersonal Violence*, 13(3), 346-361.

<sup>9</sup> Stammen, E. & Ghandnoosh, N. (2022). *Incarcerated LGBTQ+ adults and youth.* The Sentencing Project.

<sup>10</sup> Ghandnoosh, N. (2021). *A Second Look at Injustice.* The Sentencing Project.

<sup>11</sup> Ghandnoosh (2021), see note 10.

<sup>12</sup> Ghandnoosh (2021), see note 10.

<sup>13</sup> Correctional Association of New York (2020), see note 2.

<sup>14</sup> The Coalition for Women Prisoners was a statewide alliance of individuals and advocates from over 100 organizations dedicated to advocating for the rights of currently and formerly incarcerated women and their families.

<sup>15</sup> To be eligible for DVSJA relief, individuals can be convicted of every offense other than aggravated murder, first-degree murder, second-degree murder in the course of committing rape, terrorism, or any offense that requires an individual to register for committing a crime of a sexual nature as a sex offender, and conspiracy to commit those offenses. Eligibility

is discussed further in the section “Developing the Domestic Violence Survivors Justice Act.”

<sup>16</sup> New York Penal Law § 60.12.

<sup>17</sup> Swavola, E., Riley, K., & Subramanian, R. (2016). *Overlooked: Women and Jails in an Era of Reform.* The Vera Institute for Justice; Lynch, S. et al. (2012). *Women's Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma.* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

<sup>18</sup> See, e.g., Anderson, M.A., Gillig, P.M., Sitaker, M. et al. (2003). “Why Doesn't She Just Leave?": A Descriptive Study of Victim Reported Impediments to Her Safety. *Journal of Family Violence* 18, 151–155 (2003).

<sup>19</sup> Data on file with the Survivors Justice Project.

<sup>20</sup> *People v. Burns*, 207 A.D.3d 646, 649, 172 N.Y.S.3d 90, 93 (2022).

<sup>21</sup> The California Coalition for Women Prisoners reports that the majority of their members convicted of felony murder were survivors criminalized for acts of survival. Ghandnoosh, N., Stammen, E., & Budaci, C. (2022). *Felony Murder: An On-Ramp for Extreme Sentencing.* The Sentencing Project.

<sup>22</sup> *People v. D.M.*, 72 Misc. 3d 960, 970, 150 N.Y.S.3d 553, 561 (N.Y. Sup. Ct. 2021).

<sup>23</sup> Child abuse - Child neglect - Child sexual abuse - Child sexual exploitation - Enabling - Penalties. 21 OK Stat § 21-843.5 (2014); FWD.us (2022). *Failing to protect: Oklahoma's Child Abuse and Neglect Statute Unfairly Punishes Mothers and Endangers Children.*

<sup>24</sup> Michaels, S. & Helenowski, M. (2022). *She Never Hurt Her Kids. So Why Is a Mother Serving More Time Than the Man Who Abused Her Daughter?* Mother Jones.

<sup>25</sup> Little, R. (2022). *An Obscure Law Is Sending Oklahoma Mothers to Prison in Droves. We Reviewed 1.5 Million Cases to Learn More.* Mother Jones.

<sup>26</sup> One study of women accessing substance abuse treatment services found that approximately 67% reported experiencing physical IPV in the past 6 months. Downs, W. R. (2001). *Alcohol problems and violence against women: Report of summary findings.* U.S. Department of Justice. Another study of women who use injectable drugs found that 31% reported experiencing IPV in the preceding year. Wagner, K. D., Hudson, S. M., Latka, M. H., Strathdee, S. A., Thiede, H., Mackesy-Amitti, M. E., & Garfein, R. S. (2009). *The effect of intimate partner violence on receptive syringe sharing among young female injection drug users: An analysis of mediation effects.* *AIDS and Behavior*, 13(2), 217–24. And a study of women who attended a methadone clinic found that 90% had experienced

IPV in their lifetime. Engstrom, M., El-Bassel, N., & Gilbert, L. (2012). *Childhood sexual abuse characteristics, intimate partner violence exposure, and psychological distress among women in methadone treatment*. *Journal of Substance Abuse Treatment*, 43(3), 366–76. See also Rivera, E. A., Phillips, H., Warshaw, C., Lyon, E., Bland, P. J., & Kaewken, O. (2015). *An applied research paper on the relationship between intimate partner violence and substance use*. National Center on Domestic Violence, Trauma & Mental Health.

<sup>27</sup> Black, M. C., Basile, K. C., Breiding, M. J., Smith, S. G., et al. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

<sup>28</sup> Rivera (2015), see note 26.

<sup>29</sup> Warshaw C., Lyon E., Phillips H., Bland P., Hooper, M. (2014). *Mental Health and Substance Use Coercion Survey: Report on Findings from the National Center on Domestic Violence, Trauma & Mental Health and the National Domestic Violence Hotline*. National Center on Domestic Violence, Trauma & Mental Health.

<sup>30</sup> Warshaw C., et al. (2014), see note 29.

<sup>31</sup> *People v. D.L.*, 72 Misc. 3d 257, 259, 147 N.Y.S.3d 335, 337 (N.Y. Co. Ct. 2021).

<sup>32</sup> Samuelson, K. (2011). Post-traumatic stress disorder and declarative memory functioning: A review. *Dialogues in Clinical Neuroscience*, 13(3): 346–351.

<sup>33</sup> Trauma-Informed Legal Advocacy Project (2019). National Center on Domestic Violence, Trauma & Mental Health.

<sup>34</sup> Survivors Justice Project (2022). DVSJA History.

<sup>35</sup> New York Criminal Procedure Law § 440.47(2)(c).

<sup>36</sup> Michelle Fine and Maria Torre supervised the graduate students at the CUNY Public Science Project and Kate Mogulescu supervised the law students at Brooklyn Law School.

<sup>37</sup> Correctional Association of New York (2020), see note 2.

<sup>38</sup> Data on file with the Survivors Justice Project.

<sup>39</sup> Prior to this process, the Correctional Association of New York, a non-profit organization with authority under state law to monitor prisons, administered a survey of the 487 individuals by mailing a questionnaire – however the survey had a 21% response rate, necessitating further research. Partnering with DOCCS to administer a survey is also not recommended, given the sensitivity of the information involved and the risk inherent in providing such information to correctional authorities. Correctional Association of New York (2020), see note 2.

<sup>40</sup> Survivors Justice Project (2022). DVSJA Resource Guide.

<sup>41</sup> For example, the Steps to End Family Violence Program and the Women’s Prison Association in New York City provide case management, therapeutic support, legal advocacy, and court accompaniment to women detained on Rikers Island and people who are court-involved living in the community. From Healing to Promoting Healthy Relationships (2023). Rising Ground; Programs (2023). Women’s Prison Association.

<sup>42</sup> The 40 survivors resentenced after filing applications under the DVSJA in New York include 35 women, 4 men, and 1 non-binary person. Of the 40, 28 are people of color and 12 were over the age of 50 when relief was granted. Resentencings have occurred in different parts of the state, with 21 of the 40 involving people initially prosecuted in the five counties of New York City, but the other 19 coming from a geographically diverse array of 13 additional counties. Data on file with the Survivors Justice Project.

<sup>43</sup> Lee, J. (2021). *Domestic violence survivors aren’t getting the reduced sentences they qualify for*. PBS NewsHour.; Werth, E. (2021). *Making Sure the Law Listens to Domestic Abuse Survivors in Illinois*. ACLU-IL.

<sup>44</sup> Nellis, A. (2021). *In the Extreme: Women Serving Life without Parole and Death Sentences in the United States*, The Sentencing Project, National Black Women’s Justice Institute, and the Cornell University Center on the Death Penalty Worldwide.

<sup>45</sup> The second piece of evidence is subject to less strict requirements and can include, but is not limited to, records prepared at or around the time of the offense supporting the claim, or verification from a licensed care provider, employee of the court, member of the clergy, attorney, or advocate acting on behalf of an agency that assists survivors of domestic violence. New York Criminal Procedure Law § 440.47(2)(c).

<sup>46</sup> Law, V. (2020). *New York Lawmakers Fear Court May Render Domestic Violence Survivor Law ‘Meaningless.’* The Appeal.

<sup>47</sup> *People v. Addimando*, 67 Misc.3d 408 (2020).

<sup>48</sup> *People v. Addimando*, 197 A.D.3d 106, 115 (N.Y. App. Div. 2021).

<sup>49</sup> *Addimando*, 197 A.D.3d at 115.

<sup>50</sup> *People v. Williams*, 198 A.D.3d 466, 467, 152 N.Y.S.3d 575, 576 (2021), *leave to appeal denied*, 37 N.Y.3d 1165, 181 N.E.3d 1113 (2022).

<sup>51</sup> Data on file with the Survivors Justice Project.

<sup>52</sup> New York Criminal Procedure Law § 530.11.

<sup>53</sup> Data on file with the Survivors Justice Project.

<sup>54</sup> Survivor Reentry Project (2019). *Workable Solutions for Criminal Record Relief*. American Bar Association.

<sup>55</sup> Gonzalez, J. (2014). Victim-Offender Overlap. *Encyclopedia of Theoretical Criminology*.

<sup>56</sup> The Sentencing Project and ACLU (2022). Shadow Report to the United Nations on Racial Disparities in Sentencing in the United States.

<sup>57</sup> As discussed in “Implementation,” such services can include case management, legal advocacy, therapeutic supports, court accompaniment, and more. Programs (2023). Women’s Prison Association.

<sup>58</sup> Truman, J. & Morgan, R. (2014). *Nonfatal domestic violence, 2003–2012*. Bureau of Justice Statistics.

<sup>59</sup> Morgan, R. and Thompson, A. (2021). *Criminal victimization, 2020*. Bureau of Justice Statistics.

<sup>60</sup> National Research Council, Institute of Medicine (2014). *New Directions in Child Abuse and Neglect Research*, 38-53; Eads, K. (2013). *Breaking Silence: Underreported Child Abuse in the Healthcare Setting*. Online Journal of Health Ethics, 9(1).

<sup>61</sup> See, e.g., Messman-Moore, T.L. & Bhuptani, P. H. (2017). *A review of the long-term impact of child maltreatment on post-traumatic stress disorder and its comorbidities: An emotion dysregulation perspective*. Clinical Psychology: Science and Practice, 24(2), 154–169.

<sup>62</sup> van der Kolk B. (2000). Posttraumatic stress disorder and the nature of trauma. *Dialogues in Clinical Neuroscience*, 2(1), 7–22.

<sup>63</sup> For an example of such a presumption, see New York’s 2004 Drug Law Reform Act, which directs courts to resentence individuals for certain drug offenses consistent with the new law “unless substantial justice dictates that the application should be denied.” Drug Law Reform Act of 2004 (L. 2004, ch. 738 § 23).

<sup>64</sup> *People v. S.M.*, 72 Misc. 3d 809, 816, 150 N.Y.S.3d 562, 567 (N.Y. Co. Ct. 2021).

<sup>65</sup> *S.M.*, 72 Misc. 3d at 816.

<sup>66</sup> Wilkens, A. (2023), *America Shouldn’t Punish Women for Defending Themselves and Their Children*. Daily Caller.

<sup>67</sup> Rose, B. (2023). *Groundbreaking domestic violence bill passes Oklahoma House*. ABC 7.

<sup>68</sup> Botkin (2023), see note 5; Oregon Capital Chronicle; Promise of Justice (2023), see note 5; OK Survivor Justice Coalition (2023), see note 5.

<sup>69</sup> This provision should employ language that describes the care of minors in foster families or congregate settings in your state.

<sup>70</sup> See National Conference of State Legislatures (2020). *Human Trafficking State Laws*.

<sup>71</sup> Insert the name of the relevant state prison agency.

<sup>72</sup> Provide for e-filing if available in your state.

<sup>73</sup> Align this term with the name of the administrative arm of the court system in your state.

<sup>74</sup> If possible, provide for forms to be mailed at no cost.

<sup>75</sup> This model bill creates a low threshold for applicants to receive a hearing, which may trigger judicial capacity concerns in many jurisdictions. Limiting gatekeeping prior to the hearing stage as much as possible is vital, but if necessary, a requirement that the applicant articulate a *prima facie* case for relief could be added here.

<sup>76</sup> Align with the title of the prosecuting attorney in your state.

<sup>77</sup> Align this provision with your state’s statutes regarding appeals as of right.

<sup>78</sup> If a relief provision this strong is not politically feasible in a particular state, stating instead that “the court shall instead impose a sentence consistent with the following provisions, unless substantial justice dictates otherwise” will afford judges more discretion.





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