

Domestic Violence Survivors Justice Act

A. 3110 Assemblymember Jeffrion Aubry

S.1077 Senator Roxanne Persaud

Violence Against Women Committee

Coalition for Women Prisoners

The DVSJA:

1. **Provides flexibility to prevent unjust sentencing.** It allows judges to sentence domestic violence survivors convicted of offenses caused by that violence to shorter sentences or to alternative-to-incarceration programs instead of prison.
2. Gives survivors sentenced prior to the law's enactment the opportunity to apply for **resentencing**. It allows survivors who are currently in prison for crimes stemming from abuse to ask the court to resentence them, in narrowly defined circumstances. Survivors get a chance for fair sentencing if they were sentenced before the bill becomes law. They will **NOT** get "two bites of the apple": survivors can use the sentencing provision **at the time of sentencing OR** apply for **resentencing, NOT BOTH**.

Defendants must meet **strict criteria** to be eligible for sentencing under the DV Survivors Justice Act:

- **At the time of the offense**, the defendant was a victim of domestic violence subjected to **substantial** physical, sexual or psychological abuse inflicted by a spouse or intimate partner, or a relative (by blood or marriage). Past abuse during childhood does not make someone eligible.
- The domestic violence was a **significant contributing factor** in the defendant's participation in the offense.
- A sentence under the current law would be "**unduly harsh.**"

The bill **excludes** people convicted of: Murder in the First Degree, Aggravated Murder, Sex Offenses, and Terrorism Offenses.

Additional requirements for survivors applying for **resentencing**:

- The sentence is 8 years or more.
- The survivor is **currently** incarcerated.

How many people will be eligible?

- About 185 CURRENTLY incarcerated women survivors would be potentially eligible for RESENTENCING under the bill and about 175 incarcerated male survivors (360 total).
- About 365 women survivors would be potentially eligible for DVSJA ALTERNATE SENTENCING per year, either receiving lower sentences or diversion to ATIs, and about 115 male survivors (480 total).

The new law is only available for survivors who were being abused AT THE TIME OF THE OFFENSE. In other words, having a history of childhood abuse does NOT make a person eligible under this bill.

Judges are NOT obligated to use the discretion they are granted under this bill. The judge can always sentence a defendant to a longer sentence if they think it is necessary.

NOT all individuals in the pool of people whose crimes are related to surviving abuse will be eligible. We expect many more women than men to be eligible, given that domestic violence disproportionately affects women.

Why is the Domestic Violence Survivors Justice Act important?

Domestic violence (DV) affects women in prison in staggering numbers:

- 75% of women in NY's prisons suffered severe physical violence by an intimate partner during adulthood. The NYS Department of Corrections and Community Supervision found that 67% of women sent to prison in 2005 for killing someone close to them were abused by the victim of their crime.
- All too often, the criminal justice system's response to DV survivors who act to protect themselves from an abuser's violence is to send them to prison, often for many years. This represents a shameful miscarriage of justice. Instead of giving survivors who have suffered life-shattering abuse compassion and assistance, we give them harsh punishment and prison. Instead of providing protection, the criminal justice system becomes one more entity in the continuum of violence in survivors' lives. We are failing survivors twice, first by failing to protect them from abusive relationships, and second by sending them to prison.
- The current law's mandatory sentencing provisions force judges to send survivors to prison for a long time even when they think an alternative to incarceration program or a lower sentence is more appropriate. The DV Survivors Justice Act would change this. By untying judges' hands and giving them discretion in these cases, the Act would help restore humanity and justice to the way we treat survivors who protect themselves. By allowing incarcerated survivors to apply for resentencing, the Act would bring long overdue relief to survivors who have been locked up for years and who pose no threat to public safety.

Who supports this bill?

A broad coalition of over **130 domestic violence organizations, women's groups, crime victims groups and criminal justice organizations and thousands of individuals from across the state** are united in support of this legislation. In addition, the New York State Coalition Against Domestic Violence, the collective voice of domestic violence programs statewide, made this bill part of their legislative package of bills that they supported in 2018.

One survivor's story:

"I was a victim before I was a defendant." At age 20, Kate began to date Dave. Looking back, Kate realizes that Dave's initial attentiveness was the first sign of his need to isolate and control her. "He instilled fear in me, and once the fear is instilled, it's always there." In the years that followed, Dave beat, choked, and raped Kate. She had him arrested five times, but it never stopped the violence. On three occasions, Kate's injuries were so severe that she went to the hospital. Twice, she admitted to hospital staff that Dave had beaten her.

One day, while they were in the car, Dave pulled over and started choking Kate. As they struggled, Kate reached for a gun Dave kept under the seat. She swung up to a sitting position and the gun went off. Kate got out of the car and ran. Dave drove away. Two days later, the police arrested Kate and told her that Dave had died.

The prosecutor refused to lower his plea offer of eight years in prison. "They said I didn't fit the profile of a battered woman because I had a job." Kate did not want to plead guilty and instead went to trial. At trial, no DV expert was called to testify on her behalf, and documents attesting to the abuse were never entered into the record. Kate was convicted of Manslaughter in the First Degree and sentenced to 8¹/₃ to 25 years in prison. "I can tell you that prison is not a place for a woman to rebuild herself after being dehumanized by her abuser." She was denied parole five times and she served 17 years before her release from prison.

For more information, please contact:

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