

New York State's Domestic Violence Survivors Justice Act

BILL NUMBER: S5436

An act to amend the penal law and the criminal procedure law, in relation to sentencing and resentencing in domestic violence cases.

PURPOSE:

To expand upon the existing provisions of alternative sentencing for domestic violence cases; second, to allow judges the opportunity to resentence currently incarcerated persons for offenses in which certain domestic violence criteria was a significant element of the offense.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends §60.12 of the penal law and adds new subparagraphs 4 and 5 to specify which offenses may be considered under the alternative indeterminate sentence of imprisonment for domestic violence cases.

Section 2 of the bill amends §70.45 of the penal law to permit determinate sentencing for persons sentenced pursuant to §60.12(5).

Section 3 of the bill adds a new §440.47 to the criminal procedure law to allow currently incarcerated persons to apply for resentencing pursuant to §60.12 of the penal law.

Section 4 of the bill amends §450.90 of the criminal procedure law to grant leave for appeal.

Section 5 of the bill provides that these amendments would take effect 120 days after it shall have become law.

JUSTIFICATION:

Domestic violence and women's incarceration are inextricably linked: nine of 10 incarcerated women have experienced severe physical or sexual violence in their lifetimes, eight of 10 experienced serious physical or sexual violence during childhood; 75% suffered severe physical violence by an intimate partner during adulthood; and 37% were raped before their incarceration. 93% of women convicted of killing an intimate partner were abused by an intimate partner in the past.

Over the past 30 years, domestic violence has been increasingly recognized as a national epidemic. Unfortunately, the significant advances made by the anti-violence movement have stopped short of reforming the unjust ways in which the criminal justice system responds to and punishes domestic violence survivors who act to protect themselves from an abuser's violence. All too often, when a survivor defends herself and her children, our criminal justice system responds with harsh punishment instead of with compassion and assistance. Much of this punishment is a result of our state's current sentencing structure which does not allow judges discretion to fully consider the impact of domestic violence when determining sentence lengths. This leads to long, unfair prison sentences for many survivors.

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The [Domestic Violence Survivors Justice Act](#) would address this problem for both male and female survivors of domestic violence by:

(1) allowing judges to sentence survivors to alternative sentences of imprisonment including determinate sentences and, in some cases, community-based alternative-to-incarceration program and

(2) providing survivors currently in prison the opportunity to apply for resentencing, granting much-deserved relief for incarcerated individuals who **pose no threat to public safety**.

The Act contains protections to ensure appropriate use of this discretion - a judge can only grant an alternative sentence to a defendant if s/he finds that:

(1) the defendant was, at the time of the offense, a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the "same family or household" as the defendant as that term is defined in subdivision one of section 530.11 of the criminal procedure law;

(2) the abuse was a "significant contributing factor" to the defendant's participation in the crime;

(3) a sentence under current law would be "unduly harsh."

The bill requires a judge to apply the same test when determining resentencing eligibility for an incarcerated survivor who submits a resentencing application to the court. In order to be considered for eligibility, an incarcerated survivor is also required to include evidence corroborating the claim she was, at the time of the offense, a victim of domestic violence. The Act would address shortcomings in New York's current domestic violence sentencing exception, enacted as part of the state's **1998 Sentencing Reform Act**, commonly known as **Jenna's Law**. This exception allows judges to give survivors indeterminate sentences. At the time, state officials thought this exception would lead to less punitive sentencing for survivors - **unfortunately, it did not**. In 2007, only one person had been sentenced under this exception. He received 6 to 12 years longer than the minimum term allowed for individuals not sentenced under this provision) and was denied parole twice. In 2009, not a single person was incarcerated under the exception. The New York State Sentencing Commission, established in 2007, noted that this law should be replaced "with a comparable ameliorative provision that would allow for the imposition of less harsh, determinate sentences in such cases."

The **Domestic Violence Survivors Justice Act** would do just that. Eligibility for alternative indeterminate sentences of imprisonment, determinate sentences of imprisonment and alternatives to incarceration for women survivors is particularly appropriate as they most often have no prior criminal records, no history of violence and extremely low recidivism rates: of the 38 women convicted of murder and released between 1985 and 2003, not a single one returned to prison for a new crime within a 36-month period of release - a 0% recidivism rate. Community-based alternative programs are far more effective than prison in allowing survivors to rebuild relationships with their families, recover from abuse, and take responsibility while positively participating in their communities. Allowing mothers to live in the community while serving sentences also permits them to maintain ties to children and lessen the trauma of

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separation - thereby increasing the likelihood that children will receive the support they need to become healthy, productive adults.

In addition, New York can save substantial costs by sentencing DV survivors to lower sentences and alternative programs. **It costs approximately \$43,000 per year to incarcerate a person in a New York State prison**, while the annual cost per participant of an alternative to incarceration program in New York City is only \$11,000. Alternative programs save taxpayers tens of thousands of dollars per person each year while helping to build healthy and safe individuals and communities.

Domestic and international human rights standards uphold the right of women - and all people - to live free from violence. Our government has recognized its responsibility to preserve this right and provide support for DV survivors. This responsibility does not end when a survivor becomes involved in the criminal justice system because of the abuse she suffers - in part because the very lack of adequate protection, intervention and support is what often leads to this involvement in the first place. With no compromise to public safety, the DV Survivors Justice Act will help New York address the years of injustice faced by survivors whose lives have been shattered by domestic abuse and decrease the likelihood of survivors being victimized by the very system that should help protect them.

PRIOR LEGISLATIVE HISTORY:

None.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

Given that this legislation may result in: (1) alternative sentences and non-incarcerative sentences for at least some domestic violence survivor-defendants and (2) resentencing and conditional release for at least some currently incarcerated survivors, it is very likely that this bill will save the state funds.

EFFECTIVE DATE: This legislation would take 120 days after enactment.

Source: <http://open.nysenate.gov/legislation/bill/S5436-2011>

Also see: <http://dvsurvivorsjusticeact.org/>