

# **NYSCADV**

## **NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE**

### **MEMORANDUM OF SUPPORT**

A.4409-B Aubry/S.2036-A Hassell-Thompson\*

\*not same as

### **DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT**

*NYSCADV supports this legislation and urges the New York State Legislature to act to promote justice for domestic violence survivor-defendants by allowing judicial discretion in sentencing defendants that were victims of domestic violence at the time of their crime.*

#### **THE PROBLEM**

Far too often, the criminal justice system's response to victims of domestic violence that have acted to protect themselves from an abuser's violence is to send them to prison, often for many years. Victims need compassion and assistance, but instead those that have suffered life-shattering abuse are given harsh punishment and prison. Survivors of domestic violence are being failed twice by the criminal justice system: first by refusing to protect them from abusers, and second by sending them to prison. Women are disproportionately affected by this issue as the numbers of women in prison in New York affected by domestic violence are staggering:

- 75% of women in New York prisons suffered severe physical violence by an intimate partner<sup>1</sup>
- The New York State Department of Corrections and Community Supervision found that in one year, 67% of women sent to prison for killing someone close to them were abused by the victim of their crime.<sup>2</sup>

#### **THE SOLUTION: THE DOMESTIC VIOLENCE SURVIVORS' JUSTICE ACT (DVSJA)**

The DVSJA gives judges discretion in sentencing and re-sentencing both domestic violence survivors who defended themselves against their abusers, and also those convicted of engaging in other illegal acts to protect themselves from their abuser's violence. It is important to include this second group, because abusers often force survivors to participate in crimes like forgery, robbery, burglary, drug sales and prostitution using physical attacks, threats of violence, manipulation and provocation. Additionally, some survivors turn to illegal substances as a way of coping with ongoing abuse, and other survivors confess to their abusers' crimes, fearing increased violence if they do not.

**The DVSJA would provide justice for survivor-defendants and incarcerated survivors of domestic violence by:**

1. Giving judges the ability to sentence domestic violence survivors convicted of crimes directly related to the abuse they suffered to shorter prison terms or to community-based alternative to incarceration programs; and
2. Giving domestic violence survivors currently in prison the opportunity to apply to the courts for re-sentencing, granting much-deserved relief for incarcerated survivors who pose no threat to public safety.

<sup>1</sup> Browne, Miller and Maguin (1999) *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*. International Journal of Law & Psychiatry 22 (3-4)

<sup>2</sup> New York State Department of Correctional Services (July 2007) *Female Homicide Commitments: 1986 vs. 2005*

**To be eligible a judge must find that:**

1. The defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a spouse, intimate partner or relative (either by blood or marriage) at the time the crime was committed;
2. The abuse must be a significant contributing factor to the crime; and
3. A sentence under the law's general sentencing provisions would be unduly harsh.

The re-sentencing component of this bill is crucial because granting mitigated sentencing eligibility to one group of survivors and not another based solely on their conviction date is counterintuitive and unjust. The bill ensures that re-sentencing is granted only to those survivors that meet the bill's three-part test (outlined above) by requiring two phases of screening prior to a hearing being granted.

**JENNA'S LAW IS NOT SUFFICIENT**

The Sentencing Reform Act of 1995 eliminated parole release for people convicted of two violent felony offenses. The Sentencing Reform Act of 1998 (Jenna's Law) went even further *by eliminating parole release for all people convicted of violent felony offenses*. Jenna's Law also required that all people convicted of violent felony offenses serve <sup>6</sup>/<sub>7</sub> of their court imposed sentence before being released. Jenna's Law, recognized that survivors of domestic violence incarcerated for defending themselves against abusers pose little threat to public safety because they have extremely low rates of recidivism, and most often, no criminal records and no history of violence other than the offense for which they are in prison.

Because of this, Jenna's Law has an exception that permits judges to grant indeterminate sentences (sentences that have a minimum and a maximum range, e.g. five to ten years, and offer a possibility of parole at the end of the minimum term) to victims of domestic violence convicted of homicide and assault crimes against their abusers. Unfortunately, the Jenna's Law exception only benefits a few, is underutilized, and doesn't provide significantly lower prison terms than allowed under the general statute. It also doesn't allow judges to sentence survivors to alternative to incarceration programs instead of prison, and only applies to survivors convicted of crimes committed directly against their abusers. This leaves out numerous survivors convicted of other types of crimes committed as a result of intimidation or coercion by an abuser, including burglary and robbery.

**THE DVSJA WILL SAVE THE STATE MONEY**

The DVSJA has cost-savings potential because some survivors would be sentenced to shorter prison terms, some would be diverted to alternative to incarceration programs, and some would be released early from prison. Incarceration is more costly and less effective than alternative to incarceration programs. It costs upwards of \$55,000 to incarcerate one adult per year in New York, and only \$11,000 for alternative to incarceration programs<sup>3</sup>. Alternative to incarceration programs also enhance public safety by reducing recidivism, keeping families together, and helping people build healthy, crime-free lives.

**The Domestic Violence Survivors Justice Act will provide judges critical discretion, will allow more survivors whose lives have been shattered by abuse to heal and rebuild, and will provide cost-savings to New York State.**

**NYSCADV urges the legislature to support this measure.**

<sup>3</sup> ATI/Reentry Coalition. 2010. The New York City Reentry Coalition Services Report 2010. Retrieved on March 26, 2015 from <http://www.ati-ny.org/files/ATI-final.pdf>