



**SUPPORT JUDICIAL DISCRETION WITH RESPECT TO
SENTENCING OF DOMESTIC VIOLENCE VICTIMS
CONVICTED OF COMMITTING A CRIME**

***The Domestic Violence Survivors Justice Act (DVSJA)
A.7874/S.5436***

NYSPAC Position: SUPPORT

The New York State Public Affairs Committee (NYSPAC) of the Junior League supports the enactment of legislation that would allow for judicial discretion during sentencing of victims of domestic violence who are convicted of crimes directly related to the abuse they suffered. Specifically, the Domestic Violence Survivors Justice Act (DVSJA) would allow judges discretion to fully consider the impact of domestic violence when determining sentence lengths for victims of domestic violence by: (1) giving judges discretion to grant shorter prison terms and, in appropriate cases, to sentence women to serve their time in the community as an alternative to incarceration, where they can take responsibility for their actions while rebuilding their lives and families; 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.

Domestic violence and women's incarceration are inextricably linked: 90% of incarcerated women have experienced severe physical or sexual violence in their lifetimes. Research and experience suggest such abuse often leads victims—the majority of whom are women—to commit crimes to protect themselves from an abuser's violence, which leads to their incarceration. The passing of the DVSJA would help assure that sentences for such victims take into account the impact that severe physical, sexual or psychological abuse can have on criminal behavior.

Once enacted, the DVSJA would recognize that, while not seeking to diminish the seriousness of their crimes, such defendants may warrant additional consideration. These women are themselves crime victims, pose virtually no threat to public safety, have lower recidivism rates than the general prison population, and often have neither prior criminal records nor a history of violence. To ensure appropriate use of discretion, under the DVSJA a judge can only grant an alternative sentence if:

- (1) 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 member of the same family or household;
- (2) the abuse was a *significant* contributing factor to the defendant's criminal behavior;
- (3) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that the sentence [under the normal sentencing provisions] would be unduly harsh.

A recent report by the Avon Global Center for Women and Justice at the Cornell Law School and the Women in Prison Project of the Correctional Association of New York documents how female "survivor-defendants," in particular, pose a limited risk to public safety. Notably, the report points out that the vast majority of New York women sentenced for violent felonies in 2009 had no prior felony convictions and women sentenced for murder that were released between 1985 and 2003 had a **0% recidivism rate**.

Prior to their imprisonment, incarcerated victims of domestic violence were often the primary caretakers of their children, and the separation resulting from their incarceration creates additional hardship and trauma to their already-suffering families. **The DVSJA, if enacted, would facilitate reunification for families that have suffered the trauma of domestic abuse**, thereby increasing the likelihood that children will receive the support they need to become healthy, productive adults.

In addition, the DVSJA **has the potential to ease the expense and physical burden on the prison system**. According to the Vera Institute of Justice, the average annual cost of incarcerating a person in a New York State prison is \$60,000. Given the substantial number of defendants who are domestic violence victims, coupled with the number of victims who could be eligible for resentencing and earlier release under the proposed Act, the Coalition for Women Prisoners has estimated a **potentially significant cost savings to the State**.

On behalf of more than 8,000 women represented by the 18 Junior Leagues of New York State, we urge you to support judicial discretion in the sentencing of victims of domestic violence to ensure that they receive sentences more commensurate with their crimes, by enacting the DVSJA. **For more information, please contact NYSPAC at info@jl-nyspac.org.**

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