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THE SURVIVAL DEFENSE: NEW BILL WEIGHS DOMESTIC VIOLENCE HISTORY

Legislation would reduce sentences for inmates who can prove link between abuse and crime.

By Cassi Feldman

Heidi Messenger stabbed her boyfriend. That much is fact - but it's not the whole story. On May 25, 2002, she recalls, they spent much of the day drinking and fighting, a combination that had proven dangerous several times before. At home in their apartment in Port Jervis, New York, he attacked her, she said, beating her with the body of a vacuum cleaner and threatening to kill her. "It felt like my head was on a spring," she said. "Everything was bouncing." She waited until he left the room, then crawled to a closet and found his seven inch collector's knife, a gift from a friend in the Marines. When he came back, she was on the bed, holding out the knife.

"I thought I would die," she said. "I told him 'Don't hit me any more,'" When he swung again, she lunged, tearing into his left arm and chest. He reeled back. "Ah bitch, you stabbed me," she remembers him saying. Terrified, she helped him downstairs and screamed for a neighbor to call 911. "I just wanted him to be okay," she said. "I thought, 'If anything happens to him, I'm going to kill myself.'"

Her boyfriend, whom she declined to name, survived. But the district attorney pressed charges against Messenger. Given the history of domestic violence, she got off easy, with six months in Orange County jail and five years of probation. Judge Stewart Rosenwasser ordered her to stay away from her boyfriend. But she couldn't. A few months later, they scuffled again. He wound up with a gash on his head and she went back to jail. Afraid for them both, Judge Rosenwasser imposed the maximum sentence: seven years in state prison. Messenger, 41, who has giant blue-gray eyes and blond hair graying at the temples, admits that she was wrong. She even thinks her three years in prison, first at the Bedford Hills Correctional Facility, now at the Taconic Correctional Facility, saved her from self-destruction. She just doesn't think she needs another four years away from her family. "It was an act of human survival," she said.

A growing group of advocates and politicians agree with her. This spring, they introduced legislation in both the State Senate and Assembly that would reduce sentences for individuals like Messenger, who can prove that they were victims of "substantial physical, sexual or psychological abuse," and that the abuse was a "substantial factor" in their crime.

The "**Merit Time**" bill would allow these inmates to earn reductions of up to one-third of their sentences by completing activities like community service or drug treatment, at the discretion of the state Department of Correctional Services. As it stands, people convicted of violent felonies are banned from participating. A similar exception, allowing those who committed homicide or assault crimes against their batterers to participate in work release programs, passed in 2002. The new bill would expand that exception to include crimes that did not result in bodily harm to the abuser, such as a woman who was forced by her abuser to assist in an armed robbery. It would also revise the criteria used to determine who can earn merit time; include a wider range of domestic relationships; and allow a broader range of materials that an inmate could use to prove that she was abused.

"This bill would give a small measure of justice back to survivors who are in prison because they've been failed by society and the courts," said Tamar Kraft-Stolar, director of the Women in Prison Project of the Correctional Association of New York, a local advocacy group. "Too often a woman's history of domestic violence is a light background noise rather than an integral part of how the criminal justice system sees the person and the crime."

Kraft-Stolar points to data on repeat offenses collected by the New York State Division of Criminal Justice Services between 1980 and 2005. **Only 9 percent of women sentenced for violent offenses in 1980 committed subsequent violent crimes**, compared to 35 percent of men.

Identical merit time bills were introduced by State Senator Dale Volker (R-Depew) and State Assemblymember Helene Weinstein (D-Brooklyn). "These women are not career criminals," said Weinstein. "Many of them are mothers

have children they were separated from, children who were traumatized once by the domestic violence and now again by having their mothers incarcerated.”

In April, the Coalition for Women Prisoners brought five busloads of formerly incarcerated women and their advocates to Albany to lobby for this and other legislation. It seems to have helped: The bill was recently reported out of the necessary committees in both the Senate and the Assembly and may be voted on as early as this week. Governor Pataki’s office has not yet taken a position.

For Messenger, earning merit time would take a full year off her sentence. She dreams of attending college and meeting her new granddaughter, along with simple pleasures like eating Belgian waffles at IHOP or putting on a pair of jeans. “This used to be my color,” she said, pulling at her hunter green prison shirt. “I’ll never wear it again.”