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## Study Backs Leniency for Domestic Abuse Victims Who Break the Law

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Judges should be given the discretion to impose shorter sentences or bypass incarceration entirely for domestic violence survivors who become criminal defendants in New York state, a report released Tuesday recommends.

An estimated 75 percent of the 2,480 women in New York's prisons "have suffered severe violence at the hands of spouse or other intimate partner during adulthood," according to the report, "[From Protection to Punishment: Post-Conviction Barriers to Justice for the Domestic Violence Survivor.](#)"

The study, which was prepared by the Women in Prison Project of the Correctional Association of New York and Avon Global Center for Women and Justice at Cornell Law School, argues that "mandatory minimum sentences constrain judges' ability to take survivor-defendants' experiences of abuse into account."

The report backs a bill introduced in the state Legislature—the Domestic Violence Survivors Justice Act ([A7874-S5436](#))—that would expand on existing law by allowing judges to impose shorter, determinate sentences or place survivor-defendants in alternative-to-incarceration programs when abuse was a "significant contributing factor" to the crime committed.

The proposed law would apply to a broad range of crimes committed by a survivor of domestic violence, not just those assaults and homicides committed against abusers. For example, a woman coerced by her abuser into committing a robbery who feared retribution could receive a shorter sentence. However, those convicted of murder I, aggravated murder, sex and terrorism offenses are excluded.

The bill also envisions greater use of alternatives to incarceration and would permit the re-sentencing of already incarcerated defendants, much as the reform of the Rockefeller drug laws allowed offenders to seek more lenient sentences.

"It give judges more discretion, which is something they always want," said Senator Ruth Hassell-Thompson, D-Mount Vernon, a sponsor of the measure.

Tamar Kraft-Stolar, the director of the Women in Prison Project, noted that judges would not be obligated to use the new discretion the bill grants them.

"They can always give a defendant a higher sentence if they think the defendant doesn't fit the targeted pool for the DV alternative sentencing scheme," she said.

New York law now provides limited alternative prison sentencing options for some abuse victims who are convicted of killing or assaulting their abusers, but Ms. Kraft-Stolar called these options "woefully insufficient."

According to the New York State Sentencing Commission, the exception was applied to only one person in 2007 and none in 2009. Moreover, the law does not offer sufficiently lower sentences or alternative to incarceration options for defendants and "penalizes survivors who do not commit physical acts directly against their abusers," according to the new report.

"The intention was a positive law that has been a failure and needs to be overhauled which is what the Domestic Violence Survivors Justice Act would do," said Ms. Kraft-Stolar.

The bill, which is sponsored in the Assembly by Jeffrion Aubry, D-Queens, has been referred to committee in both houses.

Ms. Hassell-Thompson noted that not every victim of domestic violence would be eligible for alternative sentencing under her proposal. The proposed law stipulates that 1) the defendant was a victim of domestic violence at the time of the offense; 2) the abuse was a "significant contributing factor" to the crime; 3) a sentence under the law's general sentencing provisions would be "unduly harsh."

Applicants for re-sentencing would be required to meet the same test.

According to Ms. Kraft-Stolar, the bill "will not effect a huge number of people," saying that fewer than 175 currently incarcerated women would possibly be eligible for resentencing and "approximately 240 women convicted of crimes directly related to abuse per year would be eligible for DV alternate sentencing, either lower sentences or diversion" to alternatives to incarceration.

#### Prosecutors Skeptical

Derek P. Champagne, the president of the District Attorneys Association of the State of New York, said that prosecutors are "wary" of sentencing reforms, suggesting that legislation should instead focus on stopping abuse.

The law needs to focus on the abuser, Mr. Champagne said in an interview, "so it doesn't reach the point where a woman has to take it into her own hands."

Mr. Champagne, who is the Franklin County district attorney, noted that Manhattan District Attorney Cyrus R. Vance Jr. has proposed legislation that would upgrade an abuser's second domestic violence offense to a felony.

"If we can get the abuser out of the house and incarcerated by having tougher laws in place on the front end," back-end statutes such as Ms. Hassell-Thompson's proposal would not be necessary, he said.

District attorneys, Mr. Champagne said, take into account a history of domestic violence when dealing with survivor-defendants. He fears statutes like the domestic violence measure would entice women to go to trial rather than accept a plea bargain, ultimately leading to longer mandatory sentences if they are convicted.

However, some judges have spoken out publicly in favor of the proposal.

"Based on statistics and based on some of the anecdotal stories we've heard there is a need to reform," Manhattan Acting Supreme Court Justice Debra A. James said in an interview.

Justice James is the chair of the New York Women in Prison Committee of the National Association of Women Judges and wrote the foreword to the report.

"We're concerned that women who become defendants suffer additional punishment that has devastating impacts on their families because of illegal acts" they commit due to their history of victimization, she said.

In a letter addressed to Governor Andrew M. Cuomo and members of the Legislature, New York City Housing Court Judge Cheryl J. Gonzales noted that "with no compromise to public safety, the DV Survivors Justice Act will help New York address the injustice suffered by DV survivors given inappropriate and harsh penalties for acting to protect themselves and their families, and decrease the likelihood that survivors will be victimized by the very system that should protect them."

The report notes that it costs an average of \$55,000 a year to incarcerate one defendant, compared to a cost of \$11,000 for alternative programs.

The report argues that survivor-defendants are good candidate for alternative sentences because "the vast majority have no prior felony convictions and pose no risk to public safety."

It observes that of the 38 women convicted of murder and released between 1985 and 2003, none returned to prison within a 36-month follow-up period.

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