

# Coalition for Women Prisoners Memo in Support of the Domestic Violence Survivors Justice Act (A.7874-A/S.5436)

Sponsored by Assemblymember Jeffrion Aubry and Senator Ruth Hassell-Thompson

## What Does This Bill Do?

- Allows judges to sentence domestic violence (DV) survivors convicted of crimes directly related to the abuse they suffered to shorter prison terms and, in some cases, to community-based alternative-to-incarceration programs instead of prison.
- Provides DV survivors currently in prison the opportunity to apply to the courts for resentencing, thereby granting much-deserved relief for incarcerated survivors who pose no threat to public safety.

## Who is Eligible for DV Alternative Sentencing?

- To be eligible, a judge must find that:
  - 1) the defendant was, at the time of the offense, a DV victim subjected to substantial physical, sexual or psychological abuse inflicted by a spouse, intimate partner or relative, either by blood or marriage.
  - 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.”
- A judge must also apply this same test when determining resentencing eligibility. In addition, to be considered, an incarcerated survivor is required to include evidence corroborating the claim she was, at the time of the offense, a DV victim.

**“I was a victim before I was a defendant.”** From the time Kate was 7 until she was 10, a friend of Kate’s step-father sexually abused her. At 20, Kate began to date Darnell. Looking back, Kate realizes that Darnell’s initial attentiveness was the first sign of his need to isolate and control her.

**“He instilled fear in me and once the fear is instilled, it’s always there.”** In the years that followed, Darnell beat and raped Kate. She had him arrested five times, but it never stopped the violence. On three occasions, Kate’s injuries were so severe that she went to the hospital. Twice, she admitted to hospital staff that Darnell had beaten her. Friends wondered why she didn’t leave.

**“Experience taught me happiness didn’t come without pain. I thought dealing with Darnell’s temper was a small price to pay.”** One day, while driving, Darnell and Kate got into a terrible fight. Darnell pulled over and started choking Kate. As they struggled, Kate reached for a gun Darnell kept under the seat. She swung up to sitting position and the gun went off, the bullet hitting Darnell. Kate got out of the car and ran. Darnell drove away. The next day, the police arrested Kate and told her that Darnell had died.

The prosecutor refused to lower his plea offer of 8 years. **“I didn’t fit the profile of a battered woman because I had a job.”** Kate did not want to plead and instead went to trial. At trial, a DV expert did not testify on her behalf and documents attesting to the abuse were never entered into the record. Kate was convicted of Manslaughter in the 1st Degree.

Kate was sentenced to 8½ to 25 years. She was denied parole 4 times and served 17 years before her release in 2008.

## Why support this bill?

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 DV survivors who engage in acts to protect themselves from an abuser's violence.

The DV Survivors Justice Act will allow New York to take critical steps toward addressing the years of injustice faced by survivor-defendants whose lives have been shattered by abuse. By establishing a more compassionate sentencing structure for survivors and enhancing recognition of the impact of DV on survivor-defendants, the Act makes it less likely that survivors will be victimized by the very system that should help protect them.

## The DV Survivors Justice Act would:

### ⇒ Fix Failed 1998 Law Intended to Ameliorate Sentencing for DV Survivor-Defendants

- In 1998, the State Legislature passed "Jenna's Law" which ended parole for most people convicted of first-time violent felony offenses. The law made an exception, however, for DV victims convicted of crimes against their abusers.

"That night we got into an argument with each other and he came after me with a gun. During the course of the struggle, I was able to get the gun away from him. He [eventually] went into the bedroom and fell asleep. During the course of when he actually did fall asleep, I took the gun back and I shot him.

I just felt so strongly at that point that that evening it was either going to be a matter of his life or my life. That was the second time that he had tried to use a gun on me and it was also two weeks before he had actually tried to commit suicide...

I clearly felt that if he was going to take his own life, that he would take my life first and then take his life."

- The Jenna's Law DV exception, Penal Law §60.12, permits judges to grant indeterminate sentences to DV survivors convicted of crimes against abusers. At the time, the Legislature thought that retaining indeterminate sentencing – which offers individuals the possibility of being paroled at the end of their minimum term – would lead to less punitive sentencing for survivors. Unfortunately, it did not.

- The exception fails to offer sufficiently reduced sentences and has been woefully underused. In 2007, for example, the NYS Sentencing Commission found that only one person was incarcerated under the DV exception. He received an indeterminate sentence of 6 to 12 years – longer than the 5-year minimum term allowed under the law's general sentencing provisions – and was denied parole twice. In 2009, the Commission found that no individuals were incarcerated under the exception.

- Acknowledging this problem, the Sentencing Commission noted that the exception's underuse "militates in favor of **replacing that provision with a comparable ameliorative provision that would allow for the imposition of less harsh, determinate sentences in such cases.**" This is exactly what the DV Survivors Justice Act would accomplish.

## ⇒ Eliminate Unfair Punishment of Survivors Convicted of Crimes Directly Related to DV but Not Directly Against Their Abusers

- Another deficit of the Jenna's Law DV exception is that it applies only to survivors convicted of crimes committed directly against their batterers (homicide or assault). It does not apply to survivors convicted of other types of crimes, such as burglary or robbery, as a result of intimidation or coercion by an abusive partner. This overly narrow restriction disregards the complex role that abuse plays in a survivor's behavior and, in effect, creates an unfair double standard that penalizes survivors who do not commit physical acts directly against their abusers.
- For example, DV is just as significant a factor for a woman who serves as a robbery lookout to avoid being seriously harmed or killed by her abuser, as it is for a woman who shoots her abuser for the same reasons.
- Abusers control their victims through violence, coercion, intimidation, threats, isolation, and economic deprivation. Survivors are often unable to leave abusive relationships for a multitude of reasons, including fear of retaliation against themselves or their children, and lack of social supports and financial resources. In fact, the likelihood that a victim and her children will be harmed or killed by an abuser increases if the victim leaves or attempts to leave.

- 75% of women in prison suffered severe physical violence by an intimate partner during adulthood.
- 37% were raped before their incarceration.
- 93% of women convicted of killing an intimate partner were abused by an intimate partner in the past.
- 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 3 years of release.

- A study of women on Rikers Island jail found that most survivors reported engaging in illegal activity because of abuse or the threat of future abuse.
- Another study found that of 525 abused women evaluated at a mental health center who had committed at least one crime, nearly half had been coerced into committing crimes by their batterers as "part of a structural sequence of actions in a climate of terror and diminished, violated sense of self."

- Abusers often force survivors, through a range of power and control tactics – including physical attacks, threats of violence, manipulation, and provocation – to engage in crimes such as forgery, robbery, burglary, drug sale, shoplifting and prostitution. Threats of violence from abusers may be implicit, manifesting themselves in comments or actions that might seem insignificant to an outside observer but that carry signs of imminent attack for a DV survivor. Some survivors turn to illegal substances as a way of coping with ongoing abuse. Others confess to their abusers' crimes, fearing increased violence if they do not.

- To ensure that the law reflects our enhanced knowledge of the cumulative effects of repeated abuse and does not create an inappropriate double standard, alternate sentencing eligibility must include not only crimes committed against an abuser, but also crimes where DV was a significant contributing factor.

## ⇒ Save Significant State Funds While Maintaining Public Safety

- Substantial cost savings are made by sentencing DV survivors to lower sentences and diverting cases to alternative programs. Increased use of alternative programs and shorter sentences mean less tax payer dollars spent on incarceration.
- Establishing eligibility for alternatives to incarceration (ATIs) for women survivors is particularly appropriate as they most often have no prior criminal records and no history of violence.
- Although New York maintains an array of excellent ATI programs, there is only one in the state specifically designed for DV survivor-defendants: STEPS to End Family Violence.
- Allowing mothers to live in the community while serving sentences enables them to maintain ties to children and lessen the trauma of separation – thereby increasing the likelihood that children will receive the support they need to become healthy, productive adults.
- ATI programs lower recidivism rates, cost less than incarceration, and are more effective than prison in helping individuals heal from abuse, reconnect with children, and become productive community members.

- Cost per year to incarcerate a person in a New York State prison: \$55,000.
- Cost per year to send a person to an alternative to incarceration program in New York City: \$11,000.

## ⇒ Help protect the Human Rights of DV Survivors in the Criminal Justice System

- 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.
- Unfortunately, society often views women charged with crimes directly related to their abuse as perpetrators, not survivors, of violence. Our sympathy often ends at the precinct door. As the critical anti-violence movement presses forward, we must work to ensure that survivor-defendants are not overlooked or demonized.

## What is the Coalition for Women Prisoners?

The Coalition is a statewide alliance of more than 1,600 individuals from over 100 organizations dedicated to making the criminal justice system more responsive to the needs and rights of women and their families.

Created in 1994, the Coalition is coordinated by the Women in Prison Project of the Correctional Association of New York. Members include formerly incarcerated women and men, social service providers, academics, attorneys, city and state agency staff, women's and human rights organizations, faith and community leaders, and concerned individuals.

For more information, or sources on statistics used in this memo, please call 212-254-5700 or visit [www.correctionalassociation.org](http://www.correctionalassociation.org)