

# Close the Gaps



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

DISCRIMINATION

HOUSING

EMPLOYMENT

ECONOMIC

GEOGRAPHY

JUSTICE

INEQUALITY

**LEGISLATIVE**  
**AWARENESS**  
**DAY**  
**APRIL 29, 2014**

## The New York State Coalition Against Domestic Violence (NYSCADV)

### SUPPORTS

*Allowing judicial discretion in cases involving domestic violence survivor-defendants convicted of crimes directly related to the abuse they suffered*

*A.4314-B Aubry/S.3337-B Hassell-Thompson*

*NYSCADV urges the legislature to promote justice for domestic violence survivor-defendants by allowing for judicial discretion in sentencing defendant who were victims of domestic violence at the time of their crime.*

#### Background

The mid to late 1990's saw change in state law regarding sentencing for people convicted of violent felony offenses.

- The Sentencing Reform Act of 1995 *eliminated parole release* for people convicted of two violent felony offenses.
- The Sentencing Reform Act of 1998, known as "Jenna's Law," *went even farther by eliminating parole release for ALL people convicted of violent felony offenses*. This Act also required *all people convicted of violent felony offenses* to serve 6/7's of their court imposed sentence before being released.

However, "Jenna's Law" recognized that survivors of violence incarcerated for defending themselves against abusers pose little threat to public safety - 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.

- Of the 38 women convicted in New York State of murder and released between 1985 and 2003, not a single one returned to prison for a new crime within a 36-month period of release - a 0% recidivism rate<sup>1</sup>.
- 84% of women sent to prison for violent felony offenses in 2008 were first time felony offenders<sup>2</sup>.
- Of the total number of women sent to prison in 1980 for a violent felony offense, *only about 9% were convicted of another violent felony after their release*<sup>3</sup>.

Therefore, "Jenna's Law" has an exception which permits judges to grant indeterminate sentences (sentences that have a minimum and a maximum range of time such as "five to ten years," and offer a possibility of parole at the end of the minimum term) to domestic violence survivors convicted of homicide and assault crimes against their abusers.

#### The "Jenna's Law" exception benefits only a few.

At the time of the Jenna's Law exception, the Legislature thought that retaining indeterminate sentencing would lead to less punitive sentencing for survivors. While the "Jenna's Law" exception has the potential to allow for indeterminate sentencing of survivors of domestic violence convicted of crimes against their abusers, it is hardly being used. For example, the New York State Sentencing Commission found that:

- In 2007, only one survivor of domestic violence was incarcerated under the "Jenna's Law" exception. He received an indeterminate sentence of 6 to 12 years - longer than the five-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.

<sup>1</sup> Alliance for Rational Parole Policies. (2008). Testimony Before the New York State Senate Standing Committee on Crime Victims, Crime and Correction, January 15, 2008.

<sup>2</sup> New York State Department of Correctional Services. (2008) *2008 New Court Commitments to NYSDOCS*.

<sup>3</sup> New York State Division of Criminal Justice Statistics, DCJS Computerized Criminal History System.

### **The “Jenna’s Law” exception does not provide less punitive sentencing for survivors.**

Beyond the underutilization of the “Jenna’s Law” exception, it doesn’t provide significantly lower prison terms than allowed under the general statute, it doesn’t allow judges to sentence survivors to alternative-to-incarceration programs instead of prison, and it only applies to survivors convicted of crimes committed directly against their batterers (homicide or assault). Thus, it leaves out the numerous survivors of domestic violence who are convicted of other types of crimes, such as burglary or robbery, committed 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.

- The New York State Department of Correctional Services found that 67% of women sent to prison in 2005 for killing someone close to them were abused by the victim of their crime<sup>4</sup>.
- A study of women in Rikers Island, New York City’s main jail, found that most of the survivors interviewed reported engaging in illegal activity in response to experiences of abuse, the threat of violence, or coercion by a male partner<sup>5</sup>.
- Another study found that of 525 abused women 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.”<sup>6</sup>

In addition to those facts, we know that so many incarcerated women have been victims of physical or sexual abuse during their lifetimes:

- A 1999 study found that 82% of women at New York’s Bedford Hills Correctional Facility had a childhood history of severe physical and/or sexual abuse and that 94% had suffered physical or sexual violence in their lifetimes.<sup>7</sup>
- This study also found that 75% of the women had experienced severe physical violence by an intimate partner during adulthood<sup>7</sup>.
- Nationwide, more than 57% of women in state prisons and 55% of women in local jails report having been physically and/or sexually abused in the past<sup>8,9</sup>.

### **This Bill Would Provide Justice for Survivor-Defendants and Incarcerated Survivors of Domestic Violence.**

This bill would:

- allow judges to sentence domestic violence 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.
- provide domestic violence 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.

To be eligible:

- a judge must find that the defendant was, at the time of the offense, 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).
- the abuse must be a “significant contributing factor” to the crime.
- the judge must find that a sentence under the law’s general sentencing provisions would be “unduly harsh.”

***The Domestic Violence Survivors Justice Act would provide judges critical discretion and allow more survivors whose lives have been shattered***

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<sup>4</sup> New York State Department of Correctional Services (2007). *Female Homicide Commitments: 1986 vs. 2005*

<sup>5</sup> Richie, B. E. (1996). *Compelled to Crime: The Gender Entrapment of Battered Black Women*. Routledge Press. New York.

<sup>6</sup> Loring, M.T., Beaudoin, P. (2000) *Battered Women As Coerced Victim-Perpetrators*.

<sup>7</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>8</sup> U.S. Department of Justice (1999). *Prior abuse reported by inmates and probationers*. Washington, DC.

<sup>9</sup> James, D.J. (2004). *Profile of jail inmates, 2002*. Bureau of Justice Statistics, U.S. Department of Justice.