

LAW OFFICES OF ALAN ROSENTHAL

Alan Rosenthal, Esq.
Telephone: (315) 559-2240

White Memorial Bldg, Suite 204
100 East Washington Street
Syracuse, New York 13202

WHAT HAS CHANGED TO BRING US THE DVSJA IN NY?

WHY IS IT AN IDEA WHOSE TIME HAS COME?

First, there has been a changed perspective about domestic violence. Domestic violence has slowly but surely come to be recognized as a widespread societal problem with far reaching consequences. It is only in the last few decades that our criminal legal system has recognized domestic violence for the insidious and destructive act that it is. Over this period, the New York court system has embraced innovative approaches to domestic violence cases. Unfortunately, for most of this time, survivors who committed crimes due to their own victimization, have been both ignored, and worse, severely punished. Now there is a critical shift occurring in community awareness. We have come to see survivors in context and with compassion.

Second, there is growing support and voice within the Anti-Domestic Violence community, victim's rights groups, shelters, advocates and counsellors for survivors of domestic violence who become criminal defendants.

Third, there have been advances in trauma theory research and the neurobiology of trauma. The research and literature from the various fields of behavioral science help clarify the process by which trauma can lead to a host of devastating psychological and behavioral consequences, including violence, drug abuse and other criminal conduct. It helps place the behavior of survivors in a context, not to excuse, but to allow for a fully balanced perspective.



Lamentably, sentencing laws across the United States have not kept up with behavioral science. For New York, the DVSJA captures the shift in society's sense of justice and fairness and the advances in science and research.

Fourth, a Gendered Pathways Theory has developed. A recognition that men and women, for the most part, have different pathways into criminal behavior.

This gendered pathway theory was recognized by the New York State DOCCS Commissioner when he addressed the Legislature about the DVSJA.

“We recognize that [women's] pathways into the criminal justice system are different than their male counterparts. A significant number of incarcerated women have been victims of domestic violence, sexual abuse, or assault.”

Women who have experienced abuse are more likely to become incarcerated than women who have not experienced abuse.

Fifth, for many years the criminal legal system embraced a false dichotomy between victims and defendants. A recognition that there are victims of domestic violence who are driven down a pathway to criminal behavior has caused us to reject that false dichotomy. The survivor-defendant is real.

I would underscore that recognition of a defendant's status as a victim of domestic violence for sentencing purposes is neither pro-defense nor anti-prosecution. It is a recognition borne out of human decency. In fact, I estimate that in at least half of the DVSJA cases that have been granted in New York, the prosecution has recognized that domestic abuse was a contributing factor to the criminal conduct of the defendant and consented to an ameliorated sentence.

I would like to briefly respond to several comments at the hearing offered from a prosecutorial perspective.

First, it is well recognized that childhood trauma caused by physical or sexual abuse is an increased risk factor to further abuse in adulthood. It is also well recognized that the effects of trauma are cumulative and can emerge months or years later.

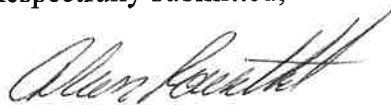
Second, any concern about this legislation opening the “floodgates” has simply not proven to be true in New York.

Intimate partner abuse is only one form of domestic violence and the bill should not be limited to that type of abuse. Abuse may be meted out by siblings, parents, and others who have some relationship to the victim that does not qualify as an intimate partner, and all these forms of abuse are equally insidious, can cause trauma, and can effect the behavior of the person abused.

Finally, the prosecutorial perspective was expressed that certain language in the bill may require interpretation. That is exactly what courts are called upon to do every day. The courts in New York have adapted well to New York’s version of this bill and have had little problem interpreting language similar to that included in HB 2825.

Thank you.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alan Rosenthal".

Alan Rosenthal