



Survivors Justice Project

March 30, 2023

To: Oregon Senate Committee on Judiciary
Re: SB1070 - Survivor Defendant Bill

The Survivors Justice Project works on the implementation of the New York State Domestic Violence Survivors Justice Act (DVSJA), codified in P.L. § 60.12 and C.P.L. § 440.47. Housed at Brooklyn Law School, SJP is an interdisciplinary collective of organizers, lawyers, social workers, students, and researchers -- many of whom are survivors of domestic violence and long-term incarceration. SJP offers training and technical assistance on the DVSJA and tracks the impact of the law through data collection and public/private partnerships with all stakeholders.

The DVSJA's sentencing and resentencing provisions became effective in New York in May and August 2019 respectively. In its first three and a half years, both provisions have resulted in agreed upon alternative sentences for many survivors. The experience in New York has reinforced that much of the effort to see the DVSJA successfully implemented has been reaching out to and supporting survivors eligible for relief. There has not been a surge of resentencing applications from individuals who have not experienced significant abuse – in fact quite the opposite.

For example, at the time the resentencing law went into effect, there were over 12,000 people incarcerated in NYS prisons who were potentially eligible to seek resentencing based solely on their conviction charge and their sentence. This included 487 people detained in facilities designated for women and 11,889 people detained in facilities designated for men. To date, approximately 442 people have begun the process and have either been assigned an attorney or have filed a resentencing application.

Our data on resentencing under the DVSJA shows that 43 domestic violence survivors serving sentences of 8 years or more have had their sentences retroactively reduced after filing DVSJA resentencing applications: 38 women, 4 men and 1 non-binary person. At the same time, 31 resentencing applications have been denied. Of the 43 people resentenced under the DVSJA, prosecutors supported resentencing in 36 cases. In the remaining seven, courts granted relief after an evidentiary hearing.

Passage of the DVSJA did not lead to extensive contested litigation about its terms. In fact, there have only been six cases in three and a half years that have required appellate court review after a DVSJA resentencing application.¹ This includes one case where a question recently arose

¹ See *People v. Williams*, 152 N.Y.S.3d 575 (App. Div. 1st Dept. 2021); *People v. Rangel*, 145 N.Y.S.3d 803 (App. Div. 1st Dept. 2021); *People v. Coles*, 158 N.Y.S.3d 611 (App. Div. 2d Dept. 2022); *People v. Burns*, 172 N.Y.S.3d 90 (App. Div. 2d Dept. 2022); *People v. Rodriguez*, 174 N.Y.S.2d 265 (App. Div. 1st Dept. 2022); *Maria S. v. Tully*, ___ N.Y.S.3d ___, 2023 WL 2669504 (App. Div. 2d Dept. March 29, 2023). There has also been **one** case that

during the pendency of the application regarding a subpoena for mental health records.² In the other five, the appellate court upheld the trial court's denial of resentencing in three cases and reversed the lower court in two cases.

The experience in New York under the DVSJA has not seen the floodgates of applications open or a significant burden on judicial resources. Instead, practice under the law has brought relief to a number of survivors who would have otherwise faced years, if not decades, in prison.

SJP strongly supports SB1070, one of several sentencing reform bills for domestic violence survivors proliferating across the country. We would be happy to provide any additional information that would be helpful to the Committee.

Kate Mogulescu
Project Director
Professor of Clinical Law, Brooklyn Law School
kate.mogulescu@brooklaw.edu

has reached the appellate court after a lower court denied DVSJA sentencing at the time of the survivor's original prosecution/sentencing. *People v. Addimando*, 152 N.Y.S.3d 33 (App. Div. 2d Dept. 2021).

² *Maria S. v. Tully*, __ N.Y.S.3d __, 2023 WL 2669504 (App. Div. 2d Dept. March 29, 2023).