

Davis Polk

Domestic Violence Survivors Justice Act

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New York's Domestic Violence Survivors Justice Act (DVSJA)

Passed in 2019, the DVJSA is the first law in the country that allows **reduced sentencing for survivors of domestic violence** *and* **resentencing** (and potential release) for survivors currently in prison when survivors are able to show that their history of abuse contributed to the offense for which they were arrested, prosecuted, and punished.

Relevant statutes

**Penal Law § 60.12
(Amended)**

Domestic Violence Alternative Sentence

Effective May 14, 2019

**CPL § 440.47
(New)**

Application for Resentencing

Effective August 12, 2019

Penal law

§60.12

Provides that court may impose an alternative sentence for all new sentences on or after May 14, 2019, if defense counsel can establish that the defendant was a survivor of domestic violence and meets the statutory criteria.

C.P.L. § 440.47
Motion for
resentence:
Domestic
violence cases

Provides for resentencing if defendant was a victim of domestic violence and meets the statutory criteria

DVSJA criteria:

- (a) At the time of the instant offense, the applicant was a victim of domestic violence subjected to **substantial physical, sexual or psychological abuse** inflicted by a **member of the same family or household...**
- (b) Such abuse was a **significant contributing factor** to their criminal behavior; and
- (c) Having regard for the nature and circumstances of the crime and the applicant's history, character and condition, *a traditional sentence* would be **unduly harsh**.

DVSJA criteria

Resentencing

In addition to meeting the 3 criteria for DVSJA sentencing, applicant must also:

- (a) Be serving a minimum or determinate sentence of 8 or more years in prison; and**
- (b) Be convicted of an offense committed before August 12, 2019.**
- (c) Not be convicted of enumerated excluded offenses.**

How is this unique?

- Allows for significantly reduced sentences
- Different than appeals or other 440 motions tied to record below or more limited legal issues
- Opportunities for:
 - Creative framing/storytelling
 - Educating
 - Decarcerating
 - Offering interdisciplinary support
 - Relationship-building

DVSJA resentencing process

01

Applicant/counsel submits a request to apply for resentencing to the original sentencing judge.

02

Judge issues notification to applicant that they may submit an application for resentencing.

03

Judge assigns counsel.

04

Applicant files application with 2 pieces of corroborating evidence.

05

Court notifies prosecutor and provides a copy of the application.

DVSJA resentencing process (cont.)

06

If the court finds the applicant has not complied with Step 4, the court shall dismiss the application without prejudice,

or

If the court finds the applicant has complied with Step 4, the court must conduct a hearing to aid in making the determination whether the applicant should be resentenced in accordance with Penal Law § 60.12.

07

Court conducts a hearing:

- must consider oral and written arguments;
- take testimony from witnesses offered by either party;
- reliable hearsay admissible.

08

Court makes a determination following a hearing.

09

Order denying or granting resentencing.

10

Resentencing.

Spotting clients with potential DVSJA cases:

Clients you meet with during IMLP sessions may be DVSJA eligible if:

- (a) Client mentions that crime of conviction was against an intimate partner or a child**
- (b) Client mentions that she is a victim of domestic violence or trafficking**
- (c) Client mentions that her intimate partner was a co-defendant**
- (d) Client was convicted outside of New York City, where quality of representation varies**