

## Domestic Violence Survivors Justice Act: Basic Information for Trial Counsel

### What Is the Domestic Violence Survivors Justice Act (DVSJA)?

The DVSJA is a groundbreaking, remedial law passed in New York in 2019 that allows courts to impose alternative sentences when domestic violence survivors are convicted of crimes stemming from the abuse they suffered. The DVSJA has a retroactive component (Criminal Procedure Law [CPL] § 440.47) that applies to people whose offense date was before August 12, 2019, the date CPL § 440.47 went into effect. **The law also has a *prospective* component, amended Penal Law § 60.12, which applies to people whose offense date was on or after May 14, 2019, the date PL § 60.12 was amended.**

**ELEMENTS: To Qualify for Alternative Sentencing, the DVJSA Applicant must Prove that:**

- (1) They were, at the time of the offense, a victim of domestic violence subjected to substantial physical, sexual, or psychological abuse inflicted by an intimate partner or family members;
- (2) The abuse was a significant contributing factor to their participation in the crime; and
- (3) Considering all the circumstances of the case, the applicant's background, and their prospects for rehabilitation, a sentence under current law would be unduly harsh.

### The Importance of Investigating DVSJA Eligibility at Initial Sentencing

For clients whose offense occurred **after August 12, 2019**, their only chance to obtain an alternative sentence under the DVSJA is at their initial sentencing. As the law is currently written, they will not have the opportunity to seek retroactive resentencing under CPL § 440.47. This means that trial defenders have an obligation, when appropriate, to investigate potential DVSJA claims and seek a DVSJA hearing at sentencing in the first instance. **Failure to do so may result in a finding of ineffective assistance of counsel.**

### How Does the DVSJA Work at Initial Sentencing?

**Who?** A trial court must grant a DVJSA evidentiary hearing at sentencing upon request, so long as the applicant meets the initial requirements (qualifying crime of conviction and qualifying predicate status – see PL § 60.12[1]).

**When?** PL § 60.12 seems to contemplate defense counsel making an application for DVSJA consideration at—or just before—appearance for sentencing. In practice, however, DVSJA advocacy can and often should be pursued at the earliest stages of the case. Talking to clients about the DVSJA early on, conducting investigation, and gathering mitigating evidence can materially affect plea negotiations, as well as a potential trial strategy.

**How?** In some cases, the link between a client's domestic violence history and their offense may be very clear. In other instances—particularly in cases where the abuser is not the complainant, or where the predominant form of abuse was psychological—it can be more difficult to identify eligible clients. Some clients may not identify as DV victims and/or may feel uncomfortable talking about their abuse. Working with a social worker, mitigation specialist, and/or investigator can be extremely helpful in identifying whether a client may be eligible and in developing the claim. Defenders should also request DVSJA-related mitigating evidence as part of their discovery demands pursuant to CPL § 245(1)(k).

**Resources:** There are a number of resources available to trial defenders about the DVSJA:

- [ILS DVSJA Resources page \(https://www.ils.ny.gov/node/268/dvsja-resources\)](https://www.ils.ny.gov/node/268/dvsja-resources)
- [NYSDA's DVSJA Attorney Support Project \(https://cdn.ymaws.com/www.nysda.org/resource/resmgr/dvsja/dvsja\\_flyer\\_final.pdf\)](https://cdn.ymaws.com/www.nysda.org/resource/resmgr/dvsja/dvsja_flyer_final.pdf)

Defense teams can always [request a consult](#) with ILS' Statewide Appellate Support Center to discuss whether and how to pursue DVSJA sentencing relief in trial court. Here is the link for a consultation request:

<https://nysils.questionpro.com/a/TakeSurvey?tt=QaQQCBMLG80EChrPelW9eQ%3D%3D>