



SENTENCING REFORM FOR CRIMINALIZED SURVIVORS OF ABUSE IN NEW JERSEY

A Report from the New Jersey Reentry Corporation's Women's Project

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PHILIP D. MURPHY
GOVERNOR

March 31, 2025

My Dear Fellow New Jerseyan,

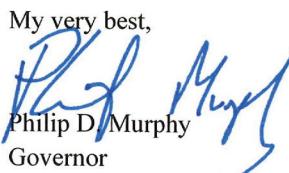
New Jersey is the state for second chances, allowing all residents to pursue a life of freedom and prosperity. Throughout my Administration, we have worked with the Legislature to reform New Jersey's expungement process, restore voting rights for individuals on probation and parole, and ensure that individuals with criminal records have a fair chance to find affordable housing and employment. As Governor, I have made criminal justice reform a priority.

To that end, I have created a Clemency Advisory Board to provide the Office of the Governor with recommendations on applications for pardons and commutations. To address inequalities and unfairness in the justice system, victims of domestic or sexual violence or sex trafficking can receive expedited review by the board if they are incarcerated for crimes related to their abuse. In December of 2024, I commuted the sentences of three survivors of abuse – Myrna Diaz, Dawn Jackson, and Denise Staples.

Unfortunately, Myrna Diaz, Dawn Jackson, and Denise Staples are far from the only survivors of abuse who have faced harsh sentences in New Jersey. This falls in stark contrast to the guiding principles of our state — justice, equity, and fairness. We in New Jersey must examine how our current system of justice fails victims of abuse. We must examine the impacts of these injustices on our neighbors and work towards an equitable solution.

In this vein, the New Jersey Reentry Corporation's (NJRC) Annual Conference, which will be held on April 17, 2025, at St. Peter's University in Jersey City, will focus on the specific challenges survivors of domestic violence, sexual abuse, and human trafficking face in the criminal justice system. I invite all to reflect on the unique ways these issues affect our fellow New Jerseyans and consider what we can do to make New Jersey more just and compassionate.

Thank you for NJRC's advocacy and the Annual Reentry Conference 2025 focus on this critical issue.

My very best,

Philip D. Murphy
Governor



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Fellow New Jerseyans,

April 1, 2025

As Assemblywoman, I am committed to supporting survivors of domestic violence and ensuring they receive the justice and protection they deserve. In 2023, I sponsored legislation requiring domestic violence restraining orders and notices to be issued in the most commonly spoken languages in New Jersey. Signed into law by Governor Phil Murphy, this bill removed a critical barrier for some of our state's most vulnerable residents, ensuring that language access does not stand in the way of safety.

However, far too many survivors of domestic violence remain trapped—not just by their abusers, but by our criminal justice system. Across the United States, including here in New Jersey, survivors who acted in self-defense or out of desperation find themselves behind bars. A 2023 Department of Corrections survey revealed that an alarming 72% of first-time offenders convicted of a violent crime at Edna Mahan, New Jersey's women's correctional facility, were previously abused by the victims of their crimes. While New Jersey law allows judges to consider mitigating factors in sentencing, a history of abuse is not explicitly recognized.

New Jersey must follow the lead of New York and other states by enacting a Domestic Violence Survivors Justice Act (DVSJA)—a crucial reform that would allow judges to consider the impact of abuse when sentencing or resentencing survivors. This critical legislation would allow judges to account for the impact of past abuse when sentencing or resentencing survivors, ensuring that they are no longer revictimized by the system meant to protect them.

The urgency of this issue will take center stage at the New Jersey Reentry Corporation's (NJRC) Annual Conference on April 17, 2025, at St. Peter's University in Jersey City. The conference will shine a light on the challenges faced by survivors of domestic violence, sexual abuse, and human trafficking within the criminal justice system. This is a moment for all of us to reflect on how we can build a system that truly protects and empowers survivors.

I urge my colleagues in the New Jersey Legislature to join me in championing a New Jersey DVSJA. It's time to bring justice to those who need it most.

Sincerely,

A handwritten signature in blue ink that reads "Eliana Pintor Marin".

Assemblywoman Eliana Pintor Marin



April 11th, 2025

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Dear Fellow New Jerseyans,

A staggering number of survivors of domestic violence are currently incarcerated for their abuser's crimes, for defending themselves against abuse, or for offenses directly stemming from their trauma. Over 70% of incarcerated women report having been victims of intimate partner violence before their incarceration (Council on Criminal Justice, 2024). Through prosecuting sex crimes, working with women in the Hudson County Correctional Facility, and serving as Executive Director of New Jersey Reentry Corporation (NJRC), I have witnessed the pain these survivors continue to suffer "behind the wall" firsthand.

Legislators throughout the Nation have begun to address the enormity of the challenges faced by domestic violence, sexual abuse, and human trafficking victims. Illinois, Oklahoma, and New York have passed legislation allowing survivors of domestic violence to be issued revised sentences accounting for prior abuse.

Governor Phil Murphy has prioritized commutations for survivors of gender-based violence, recently commuting the sentences of Myrna Diaz, Dawn Jackson, and Denise Staples. New Jersey must join our fellow states in passing a Survivors Justice Act, providing fair consideration to these women. We would like to thank Governor and First Lady Murphy, Senate Majority Leader Ruiz, Assemblywoman Pintor Marin, and Assemblywoman Lopez for their advocacy for women throughout our state.

The following report outlines the issue of criminalization of survivors and what New Jersey can learn from efforts to create a more equitable system.

NJRC is grateful to Calcagni & Kanefsky LLP for providing legal research for our Women's Project 2025 report. Thank you particularly to Courtney Fulcher and TJ Gembala for their research, thinking, and writing of this critical report.

Best, fondly,

A handwritten signature in blue ink that reads "James E. McGreevey". The signature is fluid and cursive, with a large, stylized "E" and "M". A blue checkmark is drawn to the right of the signature.

Jim McGreevey
Executive Director, New Jersey Reentry Corporation

Executive Summary:

The New Jersey Reentry Corporation Women's Project urges New Jersey to join the growing number of states that have initiated sentencing reform legislation to address the criminalization and over-incarceration of abuse survivors.

These sentencing reform laws, known as Survivors Justice Acts (SJAs), empower Courts to consider past abuse and its contribution to the offense in sentencing. Those who are able to prove that they were survivors of abuse at the time of their offense and that such abuse was a contributing factor in their offense may receive reduced or non-carceral sentences. SJAs vary in whether survivors can apply for resentencing if they committed their offense post-enactment of the law. Survivors can also use the SJA to receive alternative sentences during their initial sentencing process.

New Jersey's passage of an SJA would have an immediate, tangible impact as the statutory absence of an explicit mitigating factor currently stifles Courts' ability to impose just sentences on survivors. The New Jersey Reentry Corporation Women's Project proposes that a New Jersey SJA should consist of:

Mitigating Factor Applicable to All Offenses: New Jersey's SJA should introduce a new mitigating factor for offenses stemming from the offender's history of being abused and allow such mitigating factor to apply to all offenses and a broad range of relationships, allowing victims of trafficking, sexual assault, familial abuse, and domestic violence to be considered.

Broad Eligibility Criteria: Criminalized survivors should be eligible to seek relief under New Jersey's SJA for all criminal offenses, regardless of whether they accepted a plea deal or initially plead guilty. In New York, eligibility is restricted to those with minimum sentences of at least eight years. New Jersey should require a minimum sentence of three or four years to allow applications to be processed.

Retroactive and Proactive Resentencing: Survivors should be allowed to petition for resentencing, no matter when they were initially sentenced. Illinois's law follows this model.

Common Sense Bound by Judicial Discretion: Eligibility should be proven by a preponderance of evidence that the defendant is a survivor of physical, sexual, or psychological abuse and that abuse was a relevant contributing factor to the defendant's commission of the offense. If eligibility is established by that standard, then the defendant should be entitled to a rebuttable presumption that an alternative sentence—including a non-carceral sentence—is appropriate. There should be clear procedures and standards, and a focus on the reduced culpability of survivors, rather than the immediacy or severity of abuse. Relief should not be limited to cases of self-defense or where the victim was also the perpetrator of abuse against the survivor.

Flexible and Realistic Evidentiary Requirements: SJA legislation should impose evidentiary requirements that consider the effects of trauma on survivors. Many survivors of abuse are unable or unwilling to document their abuse due to fear and social stigma, which leads to evidentiary requirements reliant on arrest reports or hospital records that are overly burdensome on survivors. The New Jersey SJA legislation should allow Courts to determine the weight of the evidence based upon the proofs and the significance of the evidence in terms of its relationship to the crime, but the full range of types of evidence should be able to be considered, without limitation, including hearsay evidence.

Alternative Sentences that Include Non-Carceral Options: Survivors eligible for resentencing under New Jersey's SJA should qualify for non-carceral sentences, including pre-trial intervention, conditional discharge, conditional dismissal, and probation. SJA legislation should require the prompt development of sentencing guidelines for judges, allowing non-carceral diversion options, and reduced maximum sentences. Non-carceral sentences should also be permitted based upon agreements between prosecutors and defense counsel.



Introduction:

The criminal justice system often fails to secure justice for survivors of abuse.¹ The system actively criminalizes survivors by arresting, prosecuting, convicting, and incarcerating them for offenses into which they were coerced by their abusers and their desperate efforts to protect themselves and their loved ones from abusers.² The trauma from abuse often leads survivors to long-term social and financial instability, mental health problems, and substance abuse—which, in turn, can lead to arrest, prosecution, conviction, and incarceration.³ At sentencing, Courts often fail to give due weight to criminalized survivors'⁴ trauma as a mitigating factor. The resulting sentences are excessive.

New Jersey's legal system follows the nationwide trend to criminalize and over-incarcerate domestic violence survivors as reflected by its prison population. In New Jersey, the incarcerated female population grew by 241 percent between 1978 and 2022.⁵ The New Jersey Department of Corrections found in 2023 that 72 percent of the first-time offenders in Edna Mahan Correctional Facility for Women convicted of violent crimes were previously abused by the victim of their crime.⁶ The combined findings of several state-level studies found over 70 percent of incarcerated women report having been victims of intimate partner violence before their incarceration.⁷ This figure, based on self-reporting, may undercount the prevalence of female inmates' prior victimization.⁸

The unjust and socially destructive over-incarceration of domestic violence survivors results from New Jersey's inflexible sentencing laws. New Jersey statute requires judges to consider a fixed set of fourteen aggravating and mitigating factors. Judges are not asked to consider whether the defendant suffered physical, sexual, or emotional abuse (by the victim or otherwise) and whether this abuse contributed to the defendant's criminal behavior.

However, New Jersey is beginning to recognize the injustice of incarcerating survivors. In November of 2024, Governor Phil Murphy commuted the sentences of three survivors of domestic violence: Myrna Diaz, Dawn Jackson, and Denise Staples. Though commutations and pardons are a meaningful and symbolic step, systemic change will only be accomplished through codification of abuse as a mitigating factor in New Jersey.

The New Jersey Reentry Corporation (NJRC) Women's Project urges New Jersey to join the growing number of states that have initiated sentencing reform legislation to address the criminalization and over-incarceration of domestic violence survivors. These sentencing reform laws empower Courts to impose alternative, shorter (or non-carceral) sentences on survivors whose prior abuse significantly contributed to their offense. The statutory absence of an explicit mitigating factor currently stifles Courts' ability to impose just sentences on survivors. New Jersey's passage of a Survivors Justice Act (SJA) would have an immediate, tangible impact.

In 2019 New York enacted its Domestic Violence Survivors Justice Act (DVSJA), which can serve as a model for New Jersey. Other legislation has been enacted in Illinois, California, and Oklahoma. SJAs continue to gain legislative momentum. Though New York's legislation has been narrowly construed by reviewing Courts and contains burdensome provisions such as stringent corroboration records of abuse, New Jersey should embrace and improve upon the New York DVSJA.

The NJRC Women's Project submits that a New Jersey SJA should feature expansive eligibility criteria; adopt flexible, reasonable evidentiary requirements; and empower judges to exercise broad discretion while providing clear sentencing procedures and standards. Judges should focus on the criminalized survivor's reduced culpability or diminished capacity, not the severity or immediacy of the abuse. Relief should be available to all criminalized survivors, not only those who acted in self-defense or in response to a past pattern of abuse by the victim of the offense.

Part I of this report provides both nationwide and New Jersey-specific overviews of the criminalization and over-incarceration of survivors of abuse. **Part II** reviews New York's DVSJA and similar legislation that has been passed or proposed in other states. **Part III** outlines a proposed SJA for New Jersey and discusses the key reasons why a New Jersey SJA should be adopted and the core principles that it should embody.



Part I: The Problem—Criminalization of Domestic Violence Survivors



A. From Victimization to Incarceration

The incarceration rate of women in the United States has increased significantly over the past several decades.⁹ Between 1982 and 2007, it grew by 431 percent;¹⁰ In 2024, the female incarcerated population was seven times larger than it was in 1980.¹¹ In New Jersey, the female incarcerated population grew by 241 percent between 1978¹² and 2022.¹³ The reasons for this staggering increase include the escalation in tough-on-crime policing efforts and harsh drug sentencing laws as well as unique risks that women face in the justice system.¹⁴

Over the past two decades, multiple researchers have identified key risk factors disproportionately affecting women and common pathways to criminalization.¹⁵ This research shows that women engage in crime due to factors that (i) are uncommon for men (for example, sex work or retaliation against abusive partners); (ii) are more prevalent among women than men (for example, sexual abuse); or (iii) occur through women's intimate relationships with abusive partners.¹⁶ This research also indicates that incarcerated women experience significantly higher rates of mental health and substance use disorders than men.¹⁷

Women incarcerated in state and federal prisons are more likely to have histories of a mental health problem at 69 percent and 52 percent respectively than men incarcerated in state and federal prison at 41 percent and 21 percent.¹⁸ Below, we discuss (1) the links between domestic violence, sexual assault, human trafficking, child abuse, and women's incarceration; and (2) the high prevalence of mental health and substance use disorders among incarcerated women.

This aspect of the criminal justice system has previously been overlooked by researchers. In our investigation of the population of incarcerated survivors of abuse, we were disappointed by the dearth of studies examining the issue. The true number of women in prison for crimes committed due to their abuse is unknown. While some private entities such as nonprofits attempt to track survivor resentencing,¹⁹ no governmental entity tracks and reports the number of survivors who have been released through *vacatur* or resentencing. To understand the breadth and scale of criminalization, a greater investment must be made into studying this population.



1. Domestic Violence, Sexual Assault, Human Trafficking, and Child Abuse

As a 2011 report stated: "The link between domestic violence and women's incarceration is inextricable and undeniable."²⁰ The statistics are troubling:

- The combined findings of several state level studies found over 70 percent of incarcerated women report previously having been victims of intimate partner violence.²¹ Researchers suspect this figure, based on self-reporting, may undercount female inmates' prior victimization rates, and some studies have identified higher rates.²²
- 43.2 percent of incarcerated women in state prisons report having been victims of sexual abuse, with 56 percent of those women reporting that the abuse included rape and another 13 percent of those women reporting that it included attempted rape.²³
- Incarcerated women are three to four times more likely than incarcerated men to have experienced physical or sexual abuse during their lifetime.²⁴

New Jersey is not an exception. 42 percent of the 908 incarcerated women at New Jersey's Edna Mahan facility had experienced sexu-

al assault, 54 percent had experienced physical abuse, and 62 percent had experienced emotional/verbal abuse according to a 2006 study.²⁵

The pathway from victimization to incarceration is often direct. Studies have found consistently that many women are incarcerated for crimes directly related to their victimization and abuse. For example:

- A 2020 analysis (based on survey responses from over six hundred incarcerated women in state facilities in twenty-two states) indicated that at least 30 percent of the women imprisoned for murder or manslaughter had been protecting themselves or a loved one when they committed the crime for which they were convicted.²⁶
- 74.2 percent of respondents who completed the Composite Abuse Scale met the threshold for Intimate Partner Violence²⁷ in a 2024 study of women incarcerated for murder or manslaughter in California state prisons. An additional 8.6 percent reported some abuse. Some 66.4 percent of respondents who met the Intimate Partner Violence threshold were in extreme danger of being killed by their partner in the year before their offense.²⁸
- A study conducted by the New York State Department of Correctional Services found

that 67 percent of the women imprisoned in 2005 for killing someone close to them had been previously abused by their victims.²⁹

- 66.2 percent of incarcerated women surveyed in a 2014 Oklahoma study reported that they had been physically abused in a relationship in the year prior to being incarcerated.³⁰
- 93 percent of women in New York convicted of killing intimate partners had been physically or sexually abused by an intimate partner during adulthood according to a 1996 study.³¹

The trend in New Jersey is consistent with New York and nationwide data. According to a 2023 study conducted by the New Jersey Department of Corrections, approximately 72 percent of the first-time offenders in Edna Mahan convicted of a violent crime were previously abused by the victim of their crime.³²



i. New Jersey's Self-Defense Laws

New Jersey's self-defense laws criminalize survivors of domestic abuse. Self-defense claims become closely linked to property rights in the context of domestic abuse survivors defending themselves against their abusive cohabitants.³³ The emphasis on property constitutes a component of New Jersey self-defense law known as the "castle doctrine." The principle originated from

English Common law, establishing a difference in how men should defend themselves in private and in public. A duty to retreat is in effect in public, however this is not the case in one's private residence. This concept stemmed from the belief that a man in his home held the right to protect his family, property, and self against attackers.³⁴ This belief informs New Jersey's self-defense laws,³⁵ which endorse castle doctrine explicitly.

Courts do not view use of force as justified in cases where the primary or shared owner of the property is the aggressor. In cases of domestic violence where both parties share the same residence, the status of the aggressor as the "occupier or possessor" of the property entitles them to protect, reenter, or reclaim that property.³⁶ The "duty to retreat" also negatively impacts victims of domestic violence.³⁷ Retreat is not necessary when in one's dwelling or protecting one's property; however, applicability becomes less clear in cases where the aggressor is a cohabitant. The wording surrounding duty to retreat, as it relates to the protection of one's home and property, specifies protecting against an intruder. It would be difficult to classify the aggressor as an intruder in cases where they have a legal right to the dwelling or property.³⁸

In cases involving deadly force, self-defense is not justifiable if it could have been avoided by retreating or complying with the aggressor's demands. N.J.S.C. 2C:3-4 provides that the use of deadly force would be unjustified if the actor knows it could be avoided "by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take," unless, "upon or toward an intruder who is unlawfully in a dwelling is justifiable when the actor reasonably believes that the force is immediately necessary for the purpose of protecting himself or other persons in the dwelling against the use of unlawful force by the intruder."³⁹

One influential New Jersey case is *State v. Gartland* (1997). John Gartland had long abused his wife, Ellen. One night after enduring threats to her life, Ellen took her son's shotgun from their closet and, standing in her private bedroom,

warned him that she would shoot him if he didn't leave. After John threatened her life again and lunged at her, Ellen fatally shot him and immediately called for an ambulance. Despite all appearances of self-defense, she was found guilty of reckless manslaughter. The decision rested on the castle doctrine and duty to retreat. Though Ellen Gartland had good reason to fear for her safety and had made a reasonable effort to deter her husband without force, her shared residence of the household placed a duty to retreat upon her. Despite being in a private bedroom she had never shared with her husband, she was legally obligated to flee, past her husband threatening her life, before she would be allowed to use deadly force for self-defense.



ii. Human Trafficking

Survivors of domestic violence are not the only women criminalized by the criminal justice system. Many victims of human trafficking are coerced or forced into sex work by their abusers and then criminalized by law enforcement. Human trafficking and domestic violence are closely linked. Many women arrested for charges stemming from commercial sex work self-identify as trafficking victims and report a prior history of abuse.

- 80 percent of women facing prostitution charges in the Midtown Community Court in New York City had reported suffering sexual, physical, or domestic violence.⁴⁰

- 96 percent of self-reported trafficking survivors reported having experienced some form of physical, sexual, and emotional abuse, according to the Polaris Project's National Survivor Study.⁴¹

The handling of cases of trafficking and commercial sex work criminalizes survivors of trafficking. While both solicitation and procurement of commercial sex is illegal, enforcement falls largely on predominantly female commercial sex providers. Rather than focusing enforcement efforts on traffickers, law enforcement often targets survivors revictimizing and retraumatizing them through arrest, prosecution, and incarceration. The eradication of human trafficking can only happen through the investigation and prosecution of traffickers.

According to the FBI's Uniform Crime Reporting (UCR) database, nationally:

- 29,975 individuals were arrested on charges of prostitution between 2020 and 2024, 22,699 of whom were female (62.65 percent).⁴²
- However, only 7,340 individuals were arrested on charges of human trafficking, 6,244 of whom were male (67.39 percent).⁴³

The gender disparity in enforcement remains consistent for the lower level offense of purchasing commercial sex.

- Only 29,975 individuals nationwide were arrested for purchasing commercial sex between 2020 and 2024, 8,566 of whom were male (88.1 percent).⁴⁴

These trends hold true in New Jersey as well, where the FBI's UCR database shows:

- Four hundred ninety-three individuals were arrested on charges of prostitution, 349 of whom were female (70.79 percent).⁴⁵
- Only six individuals were arrested on charges of human trafficking, five of whom were male (83.33 percent).⁴⁶

- Similarly, only forty-one individuals were arrested on charges of purchasing prostitution, twenty-eight of whom were male (68.29 percent).⁴⁷

This data reflects law enforcement's priorities. While a slight disparity in the amount of arrests between sex work providers and traffickers is to be expected due to a difference in sheer numbers, the gap is too large. The lack of enforcement of sex trafficking laws is apparent in New Jersey's arrest figures: over 82 sex trafficking victims are arrested for every trafficker. This disparity is further evidenced in the number of those arrested for purchasing prostitution: over twelve commercial sex workers are arrested for every commercial sex purchaser. Again, the gap is excessive.



iii. *Criminalization of Sexual Assault Survivors: "False Reporting"*

Sexual assault survivors (who, in many cases, are merely responding to police questioning) often face charges for filing false reports to law enforcement. Many police officers approach sexual assault cases biased against believing survivors' accounts and will search for disqualifying factors in their interviews.⁴⁸ A 2010 Department of Justice study of forty-nine detectives serving on special

sexual assault units found that officers believe 40 to 80 percent of reports are false⁴⁹ while research suggests the true rate of false reports is between 2 to 8 percent.⁵⁰

When police suspect that a sexual assault survivor is lying to them, the tone of their interview shifts completely. Rather than employing a trauma-informed process, police begin to treat survivors as criminals, employing interrogation tactics that involve lying to victims.⁵¹

Police rarely receive adequate training in trauma-informed interviewing and often revert back to interrogation tactics while interviewing survivors, particularly those they suspect of lying.⁵² Survivors of abuse such as sexual assault will often omit details of the incident out of shame or fear, and they typically will be unable to recall the full details of the event due to the effects of trauma.⁵³ Officers often interpret this as dishonesty and begin interrogating victims with more suspicion. This results in a mutual lack of trust in the interview process, leading to increased difficulty in establishing an accurate timeline of events and frustrating the rest of the investigation.⁵⁴

Many survivors will change or recant their statements to be able to leave the interrogation room to retreat from police interrogation tactics. An analysis of fifty-two criminal cases related to false reporting of sexual assault or rape in five states revealed that when officers employed interrogation techniques such as ruses and bluffs, nearly two thirds of questioned survivors recanted their statements.⁵⁵

After recanting, survivors receive even harsher treatment. In some cases, officers will use survivors' recantations as justification for charging the survivors with filing false reports. In nine of the fifty-two previously mentioned cases, the survivor's recantation was the only evidence cited as justification for the false report charge.⁵⁶

Survivors will frequently accept plea agreements after being charged with filing a false report. After being criminalized for reporting assault, many survivors distrust the legal system and want to avoid the long and expensive process of going

to trial. Many child survivors plead to youthful offender charges to keep their records sealed, fearing judgement by their peers.⁵⁷ Victims of sexual assault find themselves with criminal records simply for reporting their abuse to law enforcement.



2. Mental Health and Substance Use Disorders

Victims of domestic violence are more likely to suffer from mental health and addiction disorders than men and women who have never suffered domestic abuse. A 2016 study of 260 women who had experienced intimate partner violence found that four in five participants experienced a past mental health problem.⁵⁸ In addition to experiencing higher rates of domestic violence, sexual abuse, abuse during childhood, and abuse towards their children, incarcerated women also report higher rates of mental health and substance use disorders than incarcerated men.⁵⁹ 66 percent of women in prison and 68 percent of women in jail have been diagnosed with a mental health disorder, according to the most recent national data available (from 2011–12) as compared to 35 percent of men in prison and 41 percent of men in jail.⁶⁰ Incarcerated women are significantly more likely than incarcerated men to have been diagnosed with a substance use disorder and to have been intoxicated at the time of their offense—specifically:

- 69 to 72 percent of incarcerated women in state prisons and jails meet the criteria for a substance use disorder, compared to 57 to 62 percent of their male counterparts;⁶¹ and
- 46 to 49 percent of incarcerated women were using drugs at the time of their offense, as compared to 36 to 41 percent of incarcerated men.⁶²

New Jersey falls in line with these national trends: 72.5 percent of women imprisoned in New Jersey have struggled with addiction before or during their incarceration according to data collected by NJRC.⁶³ In surveys of current and former Edna Mahan inmates:

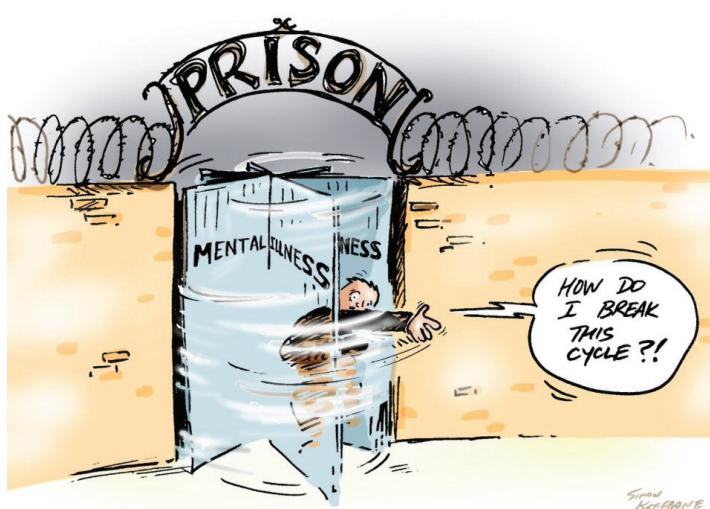
- Nearly half of inmates reported feeling as if they needed mental health and/or substance use disorder treatment during their incarceration, and another 15 percent reported that they had received some form of behavioral health treatment before incarceration and felt they needed the same treatment in prison.⁶⁴
- Approximately two-thirds of the women reported having actively abused substances in the six months leading up to their incarceration.⁶⁵
- Roughly half of the women reported that they were using a substance at the time of their offense.⁶⁶
- Many reported an inability to access addiction treatment and recovery services before their incarceration.⁶⁷

A similar trend is apparent for survivors of human trafficking. Traffickers often target vulnerable populations such as those struggling with mental health and substance use disorders. Traffickers sometimes use access to illicit substances as a means of control: either restricting access to drugs to enforce compliance, encouraging substance use to foster an addiction and dependency, or damaging the victim's credibility to authorities.⁶⁸

- 93 percent of respondents in the Polaris Project's 2021 survey reported having experienced some form of substance abuse and mental health challenges.⁶⁹
- 29 percent of commercial sex work charges also had co-occurring drug/narcotic violations according to FBI UCR data.⁷⁰
- 48.8 percent (338) of the 692 sex workers surveyed had previously been diagnosed with a mental health issue according to the National Institute of Health.⁷¹

The prevalence of co-occurring cases of domestic violence and child abuse is alarming:

- Research has found between 18 to 67 percent of domestic violence cases involve co-occurring child abuse, depending on the definitions of child abuse.⁷²
- Within New Jersey, one in fifteen children are exposed to intimate partner violence, whether through direct victimization or through witnessing the abuse, which accounts for 90 percent of these children.⁷³



B. Gender Disparities in Recidivism

Women's recidivism rates are low, relative to men's. According to the most recent national analysis, based on state-level data from 2012 to 2017:

- 63 percent of women released from prison are rearrested or reincarcerated within five years of their release, as compared to 72 percent of men;⁷⁴
- Women are half as likely as men to return to prison for committing violent crimes (16 versus 30 percent);⁷⁵ and
- Women are less likely than men to recidivate for committing drug crimes (29 versus 33 percent) or public order offenses (45 versus 55 percent).⁷⁶

New Jersey follows these nationwide gender disparities in sentencing and recidivism. The most recent data available from the New Jersey State Parole Board indicate that:

- Only 40.6 percent of women released from New Jersey prisons in 2018 have been rearrested (though not necessarily convicted or reincarcerated), as compared to 45.8 percent of male releasees.⁷⁷
- Only 23.3 percent of the women released in 2018 from New Jersey prisons were reincarcerated within three years, versus 28.6 percent of all releasees. Only 1.8 percent of female releasees were reincarcerated for a new offense rather than for a technical parole violation versus 4.4 percent of all releasees.⁷⁸
- Only 19.6 percent of the women released from New Jersey prisons in 2019 were reincarcerated within three years as compared to 25.1 percent of male releasees, and only 2 percent of female releasees were reincarcerated for a new offense rather than for a technical parole violation versus 4 percent of male releasees.⁷⁹

C. New Jersey's Inflexible Sentencing Laws: No Explicit Mitigating Sentencing Factor for Domestic Violence Survivors

There are multiple causes of criminalization and over-incarceration of domestic violence survivors in New Jersey. One is obvious: New Jersey does not recognize a history of being abused as

an explicit mitigating factor in sentencing.

New Jersey judges consider a statutorily defined set of aggravating and mitigating factors at sentencing.⁸⁰ The fourteen mitigating factors do not include whether the defendant was a survivor of domestic violence (by the victim or otherwise) prior to or at the time the defendant committed the offense.⁸¹ As a result, Courts often fail to account for prior abuse of a defendant when imposing a sentence.

Conscientious Courts—at the recommendation of attentive defense counsel—will sometimes consider a defendant’s history of physical, sexual, or psychological abuse in determining whether one of the more general mitigating factors applies.⁸² The mitigating factor most commonly applied in such circumstances is “substantial grounds tending to excuse or justify the defendant’s conduct, though failing to establish a defense.”⁸³ The existing mitigating factors have proven insufficient in ensuring that criminalized survivors’ prior histories of abuse are adequately considered at sentencing. This is especially true given (i) the prevalence of such abuse—particularly among female defendants—and (ii) the substantial impact of such abuse on character and conduct as established by extensive research.⁸⁴

The New Jersey Criminal Sentencing & Disposition Committee (CSDC) recently concluded that New Jersey needs a mitigating factor for survivors of abuse. In its March 2023 and November 2024 reports, the CSDC urged the legislature to amend the existing statute to add a mitigating factor explicitly requiring Courts to consider whether “the defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime.”⁸⁵ The legislature unfortunately has not yet acted on this recommendation⁸⁶ and New Jersey remains out of step with a growing national consensus that criminalized survivors’ past abuse should be considered as a mitigating factor at sentencing.⁸⁷

The CSDC’s recommendation omits an important consideration: not all criminalized survivors are incarcerated for offenses against people who have abused them. Many criminalized sur-

vivors were coerced by their abusers into participating in offenses.⁸⁸ Not all criminalized survivors are convicted of violent offenses.⁸⁹ As we discussed in Part I, the criminalization of survivors is complex and can include charges related to drug possession, property crimes, commercial sex work, or filing a false report—charges directly related to their status as survivors of abuse.

A mitigating factor that considers a defendant’s history of being abused should not be limited to a certain category of offense. Mitigating factors in California,⁹⁰ Illinois,⁹¹ New York,⁹² and Oklahoma⁹³ do not require that a survivor’s crime have a specific victim nor that the victim of the crime be the perpetrator of abuse against the survivor.⁹⁴

NYSCADV

NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE

Part II: The Model—New York’s Domestic Violence Survivors Justice Act

In Part II, we review New York’s groundbreaking Domestic Violence Survivors Justice Act (DVSJA). Passed in 2019,⁹⁵ the DVSJA inspired a wave of ambitious and comprehensive sentencing reform legislation addressing the incarceration of abuse survivors. Section A gives an overview of New York’s DVSJA. Section B discusses the law’s successes as well as areas for improvement. Section C reviews similar legislation that has been passed and proposed in other states.

A. New York’s DVSJA: A Brief Overview

The DVSJA permits Courts to impose alternative, less severe sentences in cases involving defendants who are survivors of domestic violence: both at initial sentencing or, for survivors who are already incarcerated, via resentencing.⁹⁶ Below, we review the law’s eligibility criteria, its retroactivity and resentencing requirements, and the legal standard that must be satisfied by defendants seeking to qualify for reduced sentences.

General Eligibility Criteria: The DVSJA makes many survivors eligible for relief. It applies to first and second-time felony offenses—both violent and non-violent, including Class A felonies—with some exceptions.⁹⁷ The exceptions are (1) aggravated murder, (2) first-degree murder, (3) second-degree murder in the course of committing rape, (4) terrorism, (5) sex offenses requiring a defendant to register as a sex offender, and (6) conspiracy to commit any of the aforementioned crimes.⁹⁸ Eligibility is not limited only to offenses where the victim was the defendant's abuser.⁹⁹

Retroactivity and Resentencing: The DVJSA is retroactive, allowing defendants who committed their crimes before the DVSJA went into effect to seek resentencing under the DVSJA if they are serving a minimum sentence of at least eight years. It is also proactive, allowing future defendants to seek initial sentencing under its provisions.¹⁰⁰ To obtain a hearing, a criminalized survivor must provide at least two pieces of evidence corroborating their claim of abuse, one of which must be “a Court record, presentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection.”¹⁰¹

Legal Standard: To obtain an alternative sentence under the DVJSA—at initial sentencing or retroactively at resentencing—a defendant must establish by a preponderance of the evidence¹⁰² that:

- (1) “At the time of offense,” the defendant “was a victim of domestic violence in which the defendant was subjected to substantial physical, sexual, or psychological abuse by a member of the same household;”
- (2) The abuse was a “relevant contributing factor” to the offense; and
- (3) The sentence that would be imposed in the absence of DVSJA mitigation—or that was imposed if resentencing—is “unduly harsh.”¹⁰³

If a defendant satisfies the above criteria, the Court has the discretion to impose substantially reduced sentences—even where a statutory mandatory minimum sentence would otherwise apply. Specifically, when a Court determines that the above criteria are satisfied, the minimum sentence for the offense becomes the maximum penalty, and alternative sentences—such as conditional discharges or probation—are permissible.¹⁰⁴

B. The Success of New York’s DVSJA—and Room for Improvement

1. New York’s DVSJA’s Successes

New York’s DVSJA has improved the status quo for criminalized survivors in New York and compiled a track record of success:

- Sixty-eight survivors have successfully petitioned for and received resentencing relief in the six years following enactment according to statistics collected by The Sentencing Project and the Survivors Justice Project.¹⁰⁵
- The law has not led to an explosion of contested litigation over its terms contrary to fears expressed by the DVSJA’s opponents before its enactment.¹⁰⁶ By March of 2023, only six cases had required appellate Court review after a DVSJA resentencing application according to data compiled by the Survivors Justice Project.¹⁰⁷
- The DVSJA has also enjoyed growing acceptance and support among prosecutors and judges.¹⁰⁸ As of December 2024, at least thirty-three of the sixty-eight successful DVSJA resentencing cases did not involve prosecutors opposing the survivor’s request for sentencing reduction.¹⁰⁹ In at least nine of those cases, the prosecution initially opposed resentencing but then changed position during the adjudication process.¹¹⁰
- Consistent with the statewide trend, as of February 2024, the Bronx District Attorney’s Office joined over half of the DVSJA resentencing applications it received.¹¹¹ The Os-

wego County District Attorney offered the following support:

I am thankful that the [DVSJA] created an avenue for us to consider how a person's trauma history contributed to her conviction. Recognizing that her conduct was influenced by outside forces, including persistent abuse and ongoing trafficking by her codefendant, we were able to develop a new sentence that was fair, just, and more accurately reflected her actual culpability. The DVSJA provides prosecutors a mechanism to evaluate new information, consider the unique circumstances of the individual, and craft a new sentence that helps us achieve justice, which is always our goal.¹¹²

2. Areas for Improvement

Advocacy groups have identified areas for improvement in the DVSJA including:

- **Limited Window for Relief:** One limitation of the DVSJA is the limited window of opportunity to seek resentencing. Currently, only survivors who were initially sentenced before the DVSJA was in effect are permitted to seek resentencing. Survivors often do not report their victimization at or before the initial sentencing stage because of psychological and logistical barriers. This blanket restriction on eligibility prevents resentencing applications from survivors serving out unduly harsh sentences who would otherwise be eligible.¹¹³
- **Harsh Mandatory Minimum:** The DVSJA is also limited by the requirement that those seeking resentencing are serving a sentence of at least eight years, arbitrarily restricting eligibility.¹¹⁴
- **Evidentiary Hurdles/Corroboration Difficulties:** The DVSJA's stringent corroboration requirement is another limitation on relief.¹¹⁵ Under the DVSJA, criminalized-survivors seeking resentencing must provide at least two pieces of corroborating evidence. One piece of evidence must

be a "Court record, presentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection."¹¹⁶ This evidentiary requirement presents a hurdle to many survivors seeking relief, limiting judicial discretion even to grant them a hearing.¹¹⁷

- **Judicial Narrowing of Legal Standard:** The New York Court of Appeals (New York's highest Court) will hear at least three cases related to DVSJA petitions in 2025,¹¹⁸ hopefully settling questions that have arisen in some Courts. The phrase "at the time of the instant offense," has been interpreted as a requirement that the criminalized survivor suffered substantial abuse contemporaneously with their commission of the offense.¹¹⁹ Advocates who fought for the DVSJA's passage did not intend for the standard to be read in this way.¹²⁰ The interests of justice and common sense also reject this reading.
- A Court should be able to take into account that domestic violence contributed to the commission of an offence if a defendant had been a victim of domestic violence, even if no acts of domestic violence were proximate to the defendant's conduct so long as all other criteria are met.
- The "unduly harsh" standard creates a hurdle for petitioners by granting judges an excessive degree of discretion. Courts may acknowledge survivors suffered abuse that contributed to their offenses, but deny relief anyways.¹²¹ Excessive judicial discretion should be mitigated by a clear set of sentencing guidelines.

C. Similar Efforts

In 2022, a New Jersey Supreme Court ruling established second look sentencing for individuals tried for offenses they committed under the age of eighteen, allowing those who have served more than twenty years to apply for resentencing.¹²² Resentencing for survivors should

be considered in the context of broader efforts to reconsider sentences for certain vulnerable populations including: elderly people, veterans, and people sentenced as juveniles.¹²³ In addition to New York, at least three other states have passed and twelve other states have proposed sentencing reform legislation to address the criminalization and over-incarceration of domestic violence survivors.

1. Second Look Sentencing

Illinois

- Illinois initially passed sentencing reform for domestic violence survivors convicted of forcible felonies in 2015 and enacted the law in 2016 prior to the 2019 passage of New York's DVSJA.¹²⁴
- The Office of the State's Attorney in Cook County initially opposed nearly all petitions, citing a belief that the resentencing provisions of the law were only applicable to those filing their petition within two years of their initial sentencing. This meant that, upon its passing, only those sentenced after 2014 could petition for relief. Following public pressure on the office, this policy was reversed and those sentenced before 2014 were supported in their petition for relief.¹²⁵
- In 2023, the law was amended to expand eligibility. Under the new law, defendants "convicted of a forcible felony," who can prove their "participation in the offense was related to him or her previously having been a victim of domestic violence or gender-based violence," are eligible for resentencing.¹²⁶
- The inclusion of "gender-based violence" in this law broadened eligibility of sentencing relief to survivors of trafficking, stalking, and sex crimes as well as redefining the law beyond violence from an intimate partner, or someone the victim personally knows and the type of abuse that can be considered.

- The law's effectiveness was limited again by a 2023 Illinois Supreme Court ruling. The Court ruled that resentencing did not apply to those who originally plead guilty or accepted plea deals.¹²⁷ To remedy this, a new version of the law was enacted in August of 2024 to clarify that applicability included those who pleaded guilty or accepted plea deals.¹²⁸

- The Illinois law also allows defendants who have already been sentenced to petition for resentencing even if evidence of abuse was initially presented at trial as long as new evidence is presented and it is "material and noncumulative of other evidence offered at the sentencing hearing."¹²⁹
- Unlike New York's DVSJA, resentencing under the Illinois law is not limited to defendants whose crimes were committed before the enactment of the law.

ii. Oklahoma

- The Oklahoma Survivors' Act requires sentencing Courts to "consider as a mitigating factor that the person has been abused physically, sexually, or psychologically by the person's sexual partner, family member or member of the household, the trafficker of the person, or other individual who used the person for financial gain."¹³⁰
- Like New York's DVSJA, the Oklahoma Survivors' Act establishes a process for incarcerated individuals convicted before the bill's enactment to apply for resentencing if they meet certain eligibility criteria.¹³¹

iii. Minnesota (Felony Murder)

- Forty-eight states have some form of a felony murder law.¹³² Some states including Minnesota have revised the law to require proof of intentionality. "Felony murder" places anyone involved in the commission of a murder, even those who had no direct involvement with or intent regarding the

homicide, to be charged with murder.¹³³ The United States and certain states in Australia are the only places in the world to have such law.¹³⁴

- Survivors of abuse are often connected by felony murder statutes to their abusers' crimes through coercion or mere physical presence.¹³⁵ Though they bear no direct responsibility for these crimes, this policy allows them to be unfairly prosecuted. Due to a history of intimidation and assault, many survivors are unable to physically separate themselves from their abusers, and may be exposed to their abusers' criminal conduct as a result of their proximity.
- In 2022, the Minnesota Task Force on Aiding and Abetting Felony Murder made the unanimous recommendation to revise the statute to exempt those who didn't cause or intend to cause a death and who weren't major participants in the death from being prosecuted for felony murder. The Task Force also recommended resentencing provisions for those already convicted.¹³⁶
- This recommendation resulted in the passage of HF 1406, which implemented the changes recommended by the Task Force. In addition to forbidding those who did not intentionally "aid, advise, hire, counsel, conspire with, or otherwise procure the individual directly responsible for the killing."¹³⁷ It allows for those previously convicted to apply for sentencing relief and to have their conviction vacated.

2. **Vacatur**

Vacatur is the judicial process by which convictions are vacated.

i. **New Jersey: Vacatur for Human Trafficking Survivors**

Commencing in 2013, New Jersey has allowed survivors of human trafficking to obtain va-

catur for charges other than murder, manslaughter, aggravated manslaughter, kidnapping, luring or enticing a child, and sexual assault.¹³⁸ Through vacatur, human trafficking survivors are able to invalidate previous convictions relating to their trafficking.¹³⁹ New Jersey provides a pathway for victims to apply for expungement as well, effectively removing any charges entirely. Unlike California,¹⁴⁰ New Jersey does not provide in-depth guidance on the restriction of records with outside law enforcement agencies nor stipulate the destruction of records.¹⁴¹

ii. **California: Habeas Corpus and Vacatur**

In 2002, California amended its penal code to allow prisoners who experienced domestic abuse to petition via *habeas corpus*. This statute is unique among domestic violence resentencing laws for using *habeas corpus*. This amendment only applies to violent felonies committed before August 29, 1996, when the California Supreme Court held that expert testimony on battering was relevant to self-defense claims.¹⁴²

- Survivors of sexual violence, intimate partner violence, and human trafficking are eligible for vacatur, including the sealing and destroying of arrests and convictions, under California's Penal Code for nonviolent offenses.¹⁴³
- In recent years proposals have been introduced to expand vacatur to all offenses and stipulate that records of arrests and convictions must be sealed and destroyed within a certain time frame.¹⁴⁴

iii. **Washington**

- Washington allows vacatur for survivors "of sex trafficking, prostitution, or commercial sexual abuse of a minor, sexual assault, or domestic violence" in misdemeanors and Class B and C Felonies.¹⁴⁵ In Washington, Court records cannot be destroyed. Offense type and a note of vacatur are included on Court indices available to the public.¹⁴⁶ Expungement is not automatic through the vacatur process.

3. California, Connecticut, Georgia, Louisiana, Massachusetts, Minnesota, Missouri, Oregon, Pennsylvania, Tennessee, and Washington

- The Oklahoma Survivors' Act is part of a wave of legislative advocacy that the success of New York's DVSJA has inspired.¹⁴⁷
- In the past four years, survivors' justice legislation similar to the DVSJA has also been proposed in California,¹⁴⁸ Connecticut,¹⁴⁹ Georgia,¹⁵⁰ Louisiana,¹⁵¹ Massachusetts, Minnesota,¹⁵² Missouri,¹⁵³ North Carolina,¹⁵⁴ Oregon,¹⁵⁵ Pennsylvania,¹⁵⁶ Tennessee,¹⁵⁷ and Washington.¹⁵⁸
- Sentencing reform bills proposed in California, Georgia, Louisiana, Massachusetts, Minnesota, Missouri, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington have not yet been enacted—advocacy groups in these states have vowed to continue pressing for passage.¹⁵⁹ Oklahoma provides an encouraging example—there, survivors' justice legislation failed twice before its successful enactment in 2024.¹⁶⁰
- The Massachusetts legislature currently has a bill pending that would afford survivors of abuse, sexual assault, and human trafficking who are facing charges related to their suffering an opportunity for resentencing. Survivors could apply for relief at any point pretrial or post-conviction and may be offered diversion programs as well. Survivors would be able to apply for resentencing even after the enactment of the bill. Qualification for release requires testimony from certain types of witnesses, including health professionals and those privy to the abuse.
- This bill, if passed, would require annual reports by the Office of the Attorney General to the joint judiciary committee. The reports would include the number of motions filed and granted, the sentence requested by the prose-

cutor and the sentence granted, and the county, race, and gender of the defendant, offering easy tracking of the effectiveness of the legislation.

- The Court must find, by a preponderance of evidence, that the defendant is a survivor of the abuses previously mentioned, and such abuses were related to their commission of the crime.
- The provided sentencing ranges significantly reduce the periods of incarceration: from life without possibility of parole to ten years or less, from life with possibility of parole to seven years or less, and the remainder of sentences cut to roughly one-fifth.¹⁶¹

Part III: The Proposal—An SJA for New Jersey

NJRC strongly supports sentencing reform legislation in New Jersey, modeled after New York's DVSJA, that targets the criminalization and over-incarceration of domestic violence survivors.

In Section A, we discuss why a law like the DVSJA makes sense for New Jersey, highlighting the key virtues of such a law and the concrete benefits it would provide to New Jersey. In Section B, we discuss the core principles we believe are essential to the success of a New Jersey SJA.

A. Why a DVSJA-Like Law Makes Sense for New Jersey

New Jersey should pass a law similar to the DVSJA for at least three reasons:

Justice/Fairness. Under the status quo, New Jersey's inflexible sentencing laws prevent sentencing judges from accounting for significant mitigating circumstances, namely criminalized survivors' history of abuse and its connection to their offenses. As discussed above, in New Jersey and nationwide, incarcerated women are overwhelmingly and disproportionately likely

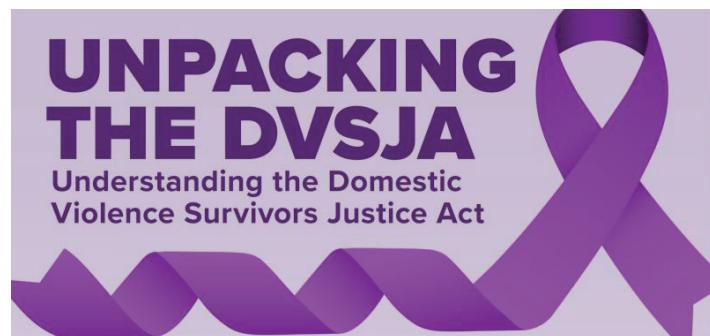
to have suffered from domestic violence, sexual assault, or child abuse before their convictions. Absent an SJA, this vulnerable population will not receive fair sentencing.

Substantial Benefits to Families: Approximately 60 percent of incarcerated women are parents to minor children,¹⁶² compared to less than half of incarcerated men.¹⁶³ Incarcerated mothers are more than twice as likely as incarcerated fathers to have been their children's sole or primary caretaker before their incarceration.¹⁶⁴ The incarceration of mothers wreaks predictable and devastating consequences on children and families, as numerous studies have shown.¹⁶⁵ Approximately 65,000 children in New Jersey suffered at least one incarcerated parent as of 2016.¹⁶⁶ By empowering judges to impose just sentences on survivors of domestic violence—shortening their sentences or, in appropriate circumstances, allowing them to avoid incarceration entirely—a New Jersey SJA would benefit New Jersey families by reuniting mothers with their children.

Widespread Relief: Passage of a New Jersey SJA would yield immediate and widespread relief. As of January 1, 2024, New Jersey's Edna Mahan facility—the sole state prison for incarcerated women—housed 386 women,¹⁶⁷ nearly 72 percent of whom were serving mandatory minimum sentences (with a median mandatory minimum term of 8.9 years).¹⁶⁸ Nationwide and New Jersey-specific data suggest at least 70 percent of these women were survivors of abuse before their incarceration¹⁶⁹ (including a staggering 72 percent of first-time violent offenders who were abused by the very people against whom they offended);¹⁷⁰ even if only half of these women are ultimately entitled to SJA relief, that would still be one hundred women—over 25 percent of Edna Mahan's population—who would be immediately eligible for reduced sentences.¹⁷¹

Though the issue of criminalized survivors of domestic violence disproportionately affects women,¹⁷² the sentencing relief offered by the SJA is not exclusive to women. The men in New Jersey prisons currently serving sentences for retaliating against their abusers would be able to

receive the same relief as incarcerated women. As of December 2024, a total of sixty-eight survivors have been resentenced under New York's DVSJA, seven of whom are men.¹⁷³



B. Core Principles of the Proposed New Jersey SJA

1. Mitigating Factor Applicable to All Offenses

- As reviewed in Part I, judges are not asked to consider a defendant's history of abuse and how such abuse might have impacted their crime. A New Jersey SJA should adopt a mitigating factor that can be applied to all offenses, rather than a certain subset.
- Per a recent New Jersey Supreme Court ruling, mitigating factors under N.J.S.A. 2C:44-1(b) are not retroactive, as the holding contains no language stating it applies to those sentenced prior to its effective date.¹⁷⁴ To provide relief for survivors, both a mitigating factor and resentencing must be enacted.

A new mitigating factor should:

- Apply to a broad range of offenses, including offenses resulting from subsequent trauma (e.g., drug possession, disorderly conduct), offenses stemming from forced or coerced participation in abuser's criminal conduct, and offenses where the victim of the offense had a history of abusing the defendant.
- Apply to a broad range of relationships, allowing victims of trafficking, familial abuse, and domestic violence to be considered.

- Make clear that there should be a relationship between the abuse and the subsequent offense(s), but does not require defendants to satisfy an unjustly harsh burden of proving sole causation.

2. Broad Eligibility Criteria and Retroactivity

- A New Jersey SJA should feature broad eligibility criteria, informed by a realistic appreciation for how criminalized survivors' experiences of trauma can affect their ability to document their abuse and to feel safe disclosing that abuse to those in a position to help.¹⁷⁵
- Beyond adopting an expansive definition of domestic abuse—one that includes intimate partner violence, abuse in other family relationships, sexual assault, and commercial sexual exploitation—a New Jersey SJA should also improve on New York's DVJSA as follows:¹⁷⁶
 - **Eligible Offenses:** Criminalized survivors should be eligible to seek relief under New Jersey's SJA for all criminal offenses. The law should not carve out certain crimes; such categorical exceptions would dramatically reduce the law's effectiveness by barring eligibility based on a factor—the crime of conviction—that is often driven not by the nature of the offense but rather by (i) prosecutors' discretionary charging decisions and (ii) defendants' decision to go to trial or plead to a lesser crime.¹⁷⁷ Concerns that providing eligibility for all crimes would result in overly lenient sentences for serious crimes are misplaced because the decision to impose an alternative sentence is always ultimately in the discretion of the sentencing judge, who can and must determine whether mitigation is appropriate in each case.
 - **Eligible Pleas:** Survivors should be eligible regardless of whether they initially pled guilty or accepted a plea deal.

- **Eligible Sentence Lengths:** For similar reasons, New Jersey should not follow New York in restricting eligibility for resentencing to those with minimum sentences of at least eight years. That restriction holds little significance and, if implemented in New Jersey, would prevent worthy survivors from seeking relief for which they should be eligible. Some threshold minimum sentences are necessary; it would be wasteful and inefficient to allow SJA applications from individuals whose remaining sentences will likely be served out before their applications can be processed. A required minimum sentence of three or four years would strike a better balance.

- **Retroactivity and Resentencing:** Following New York's DVSJA, a New Jersey SJA should be retroactive, allowing those sentenced before its enactment to seek resentencing under its terms. But resentencing should not be available only to those initially sentenced before the DVSJA's enactment. Instead, following Illinois, criminalized survivors should be allowed to petition for resentencing—no matter when they were initially sentenced—if they can show that (i) evidence of domestic violence was not presented during their initial sentencing; (ii) the evidence is material and noncumulative of evidence presented at the initial sentencing; and (iii) the failure to present the evidence at the initial sentencing was due to ineffective assistance of counsel, excusable neglect, a survivor's belated processing of trauma, or other exceptional circumstances.

3. Common-Sense Legal Standard Bound by Judicial Discretion

- Under a New Jersey SJA, an applicant should be eligible for an alternative sentence if she or he can show by a preponderance of evidence that:

- At the time of the offense, the defendant was (or had been) a survivor of physical, sexual, or psychological abuse by a member of the same family or household, a sexual partner, a trafficker of the defendant, or a person who used the defendant for financial gain; and
- The abuse was a relevant contributing factor to the defendant's commission of the offense.

If a criminalized survivor proves the above elements by a preponderance of evidence, then the defendant should be entitled to a rebuttable presumption that an alternative sentence is appropriate. The presumption can be rebutted by: A showing by the prosecution that, given the nature and circumstances of the crime and the history, character, and condition of the defendant, the non-SJA sentence is not unduly harsh and would be more appropriate.

- The above approach is based on similar standards outlined in New York's DVSJA, Oklahoma's recently enacted Survivors' Justice Act, and the comparable Illinois law.
- The legal standard that is adopted should:
 - Create clear procedures and standards for judges;
 - Focus on the criminalized survivor's reduced culpability rather than the severity or immediacy of the abuse;
 - Make clear that relief is not limited to circumstances of self-defense; and
 - Make clear that relief is not limited to offenses where the victim was also the perpetrator of abuse against the criminalized survivor.¹⁷⁸
- The implementation of the Illinois act was delayed by disagreements in the Courts by the prosecutors and Supreme Court, resulting in continued incarceration and uncertainty for survivors of domestic abuse in prisons.¹⁷⁹

Considering the misinterpretations which plagued the Illinois domestic violence survivors resentencing act, clear legislative intent is of the utmost importance.

4. Flexible, Realistic Evidentiary Requirements

- Concerning both sentencing and resentencing, a New Jersey SJA should adopt flexible and realistic evidentiary requirements.
- Survivors of domestic violence are often unable or unwilling to document their abuse, to preserve such documentation, or to disclose their abuse to law enforcement or other official channels. This unfortunate reality causes predictable problems for criminalized survivors faced with the task of proving the abuse (and its effects) at sentencing or resentencing.¹⁸⁰
- At a minimum, a New Jersey SJA should eschew rigid and narrow evidentiary requirements. Criminalized survivors seeking relief under a New Jersey SJA should be allowed to rely on any existing evidence, subject only to normal evidentiary rules.
- At a minimum, the same standard—proof by a preponderance of the evidence—will govern. Certain kinds of evidence (such as Court or hospital records) may inevitably hold special weight with a judge, but the existence of such evidence should not be a prerequisite to seeking or obtaining relief.

5. Alternative Sentences That Include Non-Carceral Options

- Currently only three cities in the country operate a specific diversion program for criminalized survivors.¹⁸¹ Different models for human trafficking intervention Courts, which also address gender-based violence, have been implemented.
- Diversion Courts, such as New York's Human Trafficking Intervention Courts, centralize similar types of cases, which allows them to be heard before a knowledgeable judge and

establishes relationships between the Court and rehabilitative social services that offer alternatives to incarceration.¹⁸²

- New Jersey should implement a similar model to New York, diverting criminalized survivors of human trafficking and domestic abuse and sexual assault to rehabilitative services
- When criminalized survivors seeking relief under a New Jersey SJA meet the requisite legal standard, sentencing judges should be (1) freed of New Jersey law's normally rigid sentencing options—and its mandatory minimums—and (2) given the ability to impose alternative sentences, including non-carceral sentences.
- A New Jersey SJA should provide judges with alternative sentencing guidelines to follow in cases where criminalized survivors have shown they are entitled to relief. Under New York's DVSJA, for example, when the relevant criteria are satisfied and an applicant is thus entitled to relief, any minimum sentence for the offense of conviction becomes the maximum, and alternative, non-carceral sentences (for example, probation) become permissible. New Jersey should adopt a similar framework.
- A New Jersey SJA should also make use of New Jersey's preexisting diversionary programs: pretrial intervention, conditional discharge, and conditional dismissal. Specifically, a New Jersey SJA should provide that, for certain crimes, when prosecutors agree that the SJA criteria are satisfied, survivors should be eligible for these diversionary programs.

Conclusion

New Jersey must address the number of domestic violence, sexual abuse, and human trafficking survivors incarcerated in our state. Numerous survivors in prison acted in self-defense, were criminalized for the actions of their abusers, or committed offenses due to the addiction and mental health issues tied to their abuse.

New Jersey has an opportunity to rectify this injustice for survivors and their families, ensuring that in the future, survivors will no longer face unnecessarily punitive sentences, and that the judicial system will fully consider the context and causes of their offenses. New York and other states offer laudable model statutes. The passage of New Jersey's Survivors Justice Act would afford these criminalized survivors an opportunity for justice that they have been denied.

In addition to passing resentencing provisions, New Jersey must work to develop diversion programs so that criminalized survivors can avoid the carceral system and receive trauma-informed treatment. Law enforcement must work to identify survivors and provide them with the resources they need to leave abusive situations, rather than prosecuting survivors for their actions. Though there is much work to be done to ensure justice for criminalized survivors, the passage of a New Jersey SJA would be an essential first step.

¹"It Reminds Us How We Got Here: (Re)Producing Abuse, Neglect, and Trauma in New York's Prisons for Women" (Correctional Association of New York, 2020), https://static1.squarespace.com/static/62f1552c1dd65741c53bbcf8/t/63f29998bacaa63f8dcce459/1676843422728/2020_ItRemindsUs.pdf.

²Liz Komar et al., "Sentencing Reform for Criminalized Survivors: Learning from New York's Domestic Violence Survivors Justice Act" (The Sentencing Project, April 19, 2023), <https://www.sentencingproject.org/reports/sentencing-reform-for-criminalized-survivors-learning-from-new-yorks-domestic-violence-survivors-justice-act/>.

³Komar et al., "Sentencing Reform for Criminalized Survivors."

⁴The term "criminalized survivors," as used in this report, refers to current or convicted defendants in criminal cases who are survivors of domestic violence and for whom that abuse was a contributing factor in the commission of their crimes.

⁵Vera Institute of Justice, "Incarceration Trends in New Jersey," December 2019.

⁶Derick Dailey et al., "New Jersey Criminal Sentencing & Disposition Commission: March 2023 Report" (New Jersey: New Jersey Criminal Sentencing & Disposition Commission, March 2023), <https://pub.njleg.gov/publications/reports/CSDC%20Third%20Report.pdf>, 10.

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New Jersey Reentry Corporation (NJRC)

Female Program Statistics



NJRC is committed to providing critically needed services to court-involved individuals. Case management and legal services link clients to addiction treatment, structured sober housing, job training and employment, mental health and medical care; thereby, assisting clients to achieve healthy self-sufficiency, reducing recidivism, and fostering safer communities.

10 Locations

- Bergen County • Essex County
- Hudson County • Middlesex County
- Monmouth County • Ocean County
- Passaic County • Union County

5,642 NJRC Female Participants

60.43% Employment/Education/Training

76 Female Veterans Served

Sources: Salesforce, CDC;

* Individuals may have more than single employer.

NJRC Female Statistics - Salesforce



3,366

Medicaid Enrollment



1,613

Addiction Treatment



1,091

Medication Assisted Treatment



1,991

Medical Treatment



60.43%

Annualized Employment/
Education/Apprenticeship Training



813

Birth Certificates Obtained



381

MVC Identification
Drivers Licenses



219

Training

Women's Project Team

Dr. Gloria Bachmann, Medical Director

LaceyAnn Francis, Integrated Systems

Sharon McGreevey, Veterans Services

Kristen Rendini, LSW

Tatyanna Aponte, Salesforce Specialist

New Jersey Reentry Corporation (NJRC)

Program Data



10 Locations

- Bergen County • Essex County
- Hudson County • Middlesex County
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NJRC is committed to providing critically needed services to court-involved individuals. Case management and legal services link clients to addiction treatment, structured sober housing, job training and employment, mental health and medical care; thereby, assisting clients to achieve healthy self-sufficiency, reducing recidivism, and fostering safer communities.

25,147 NJRC Program Participants

11,964 NJRC Jobs Secured *

1,069 NJRC Veterans Served

Sources: Salesforce, CDC; NJCares 2020

* Individuals may have more than single employer.

NJRC Stats - Salesforce



19.7%
Rearrest



10%
Reincarceration



50%
Employment
(adjusted seasonally)



5,075
The Women's Project
Enrollment



18,743
Medicaid Enrollment



13,955
Addiction
Treatment Referrals



12,632
Medical
Treatment



7,759
Psychiatric Treatment Facilities
Behavioral/Mental Health



6,305
Medication
Assisted Treatment



4,686
Birth Certificates
Obtained



4,448
MVC Identification
Drivers Licenses



73
Pro Bono
Attorneys



2,680
Emergency Kits
Delivered in Prison



17,550
Training



5,935
Participants Enrolled
During PHE



17
Latin American Nations
Documents



Thank you to our business partners, training vendors, ambassadors, and many community partners for supporting the reentry community and individual efforts to secure “industry recognized” credentials and meaningful employment. We believe in a God of Second Chances.

Thank you for your commitment and faith in our program participants.

Training Center Director Michael Hayek

Intake Coordinator Lamar Williams

Executive Administrative Assistant Emily Roemer

