

**EXPERTS  
AND THE  
DOMESTIC  
VIOLENCE  
SURVIVORS  
JUSTICE ACT:  
A Guidebook for  
Defense Attorneys**

**PREPARED FOR AND DISTRIBUTED BY THE  
DVSJA STATEWIDE DEFENDER TASK FORCE**

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## **THE DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT<sup>1</sup>**

Domestic violence is now recognized “as a widespread, devastating societal problem, with consequences that reach far beyond the family.”<sup>2</sup> Frequently, survivors of domestic violence are prosecuted for behavior that is either in response to domestic abuse, at the behest of their abuser, or for conduct contributed to by domestic violence.

The Domestic Violence Survivors Justice Act (DVSJA) authorizes alternative sentences for individuals who are survivors of domestic violence for whom the abuse was a significant contributing factor to the offense.

Importantly, the DVSJA, enacted on May 14, 2019, accomplishes two things: (1) it gives judges the discretion to impose shorter prison terms and alternative to incarceration programs for survivors who are not yet sentenced,<sup>3</sup> and (2) it gives judges the ability to resentence survivors to shorter prison terms for offenses committed before August 12, 2019.<sup>4</sup>

### **What is Needed for Consideration Under the DVSJA?**

To obtain sentencing or resentencing subject to the DVSJA, a survivor of domestic violence must demonstrate that:

- (a) at the time of the instant offense, the individual was a victim of domestic violence subjected to substantial physical, sexual, or psychological abuse inflicted by a member of the same family or household as the individual;
- (b) such abuse was a “significant contributing factor” to the individual’s “criminal behavior”; and
- (c) having regard for the nature and circumstances of the crime and the history, character, and condition of the individual, that the sentence of imprisonment that was or would be imposed is “unduly harsh.”

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<sup>1</sup> This guidebook is based on training materials created by Alan Rosenthal, Esq., and Karlijn Kuijpers, PhD, and prepared by Mandy Jaramillo, Esq., and Daniel C. Speranza, Esq.

<sup>2</sup> Dorchen Leidholdt, Lynn Beller, *Domestic Violence and the Law: A New York State-Centric Overview and Update*, N.Y. St. B.J., May 2017, at 14.

<sup>3</sup> Penal Law § 60.12.

<sup>4</sup> CPL 440.47.

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An applicant must be sentenced as a first or second felony offender. An applicant sentenced as a second violent felony offender, persistent felony offender, or persistent violent felony offender will not qualify for sentencing or resentencing under the DVSJA. An applicant for resentencing must also be serving an incarceratory sentence of at least eight years.

The applicant cannot be serving a sentence for any of the following offenses:

- Aggravated Murder under Penal Law § 125.26;
- Murder in the First Degree under Penal Law § 125.27;
- Murder in the Second Degree under Penal Law § 125.25 (5);
- A crime related to terrorism under Penal Law Article 490;
- An offense which would require such person to register as a sex offender; or
- An attempt or conspiracy to commit any above-listed offenses.

### **Should You Use an Expert?**

The engagement of an expert witness may be helpful to counsel in attempting to obtain sentencing relief for clients under the DVSJA. An expert can testify to the dynamics of an abusive relationship and its effect on a victim's behavior. An expert may be able to dispel myths and misunderstandings surrounding domestic abuse.<sup>5</sup> An expert may help you better understand your client's narrative, so that you can in turn better educate the judge and prosecutor.

Experts provide a sense of objectivity and credibility in your case and afford the opportunity to explain the influence of abuse and trauma on your client's actions. In other words, an expert can opine on how the client's experiences amounted to substantial abuse, explain the nexus between the abuse and the criminal action,

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<sup>5</sup> In *People v. Addimando* (67 Misc3d 408 [Dutchess County Ct 2020]), the defense called a domestic violence expert to address the myths that abusers have anger management problems and that it is inexplicable that victims do not leave their abusers. While the trial court declined to sentence the defendant in accordance with the DVSJA, the Second Department overturned the decision, reducing the defendant's sentence from an indeterminate term of imprisonment of 19 years to life to a determinate term of imprisonment of 7 1/2 years to be followed by 5 years of post-release supervision (*People v. Addimando*, 197 AD3d 106 [2d Dept 2021]).

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and explain why domestic abuse was a “significant contributing factor” to the survivor’s decision-making and behavior.

**Using an expert is not required, however.** Retaining an expert may cost money and exhaust the limited resources to which assigned and pro bono counsel have access and might not be necessary in every case. In addition to researching and exploring the use of experts, defense attorneys are encouraged to keep and update a library of academic articles and other resources for the purpose of submitting them as exhibits to DVSJA motions. Lists of useful resources can be found on the websites of the New York State Defenders Association, NYS Office of Indigent Legal Services, and Survivors Justice Project, as well as in the appendix of this guidebook.

## **The Role of an Expert**

The factual circumstances of your case dictate the type of expert you should use and the expert’s role in the matter. The types of experts that may prove useful to your client’s matter include:

- Consulting mental health experts;
- Attorneys with domestic violence and trauma-informed practice experience;
- Academic or subject matter experts;
- Forensic experts who can contextualize a survivor’s account of the underlying criminal conduct;
- Domestic violence advocates; and
- Clients’ service providers and treating mental health professionals.

In addition to providing case specific testimony, experts may do the following and more:

- Interview and evaluate the client for post-traumatic stress disorder or other potential mental health conditions;
- Administer psychological testing;
- Review case files (police reports, statements, etc.);
- Interview family and friends of the client regarding abuse and trauma;
- Testify on typical and counterintuitive victim behavior;

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- Draft and provide a written report to counsel and/or the court;
  - Opine on whether experiences described by the survivor amount to substantial abuse;
  - Opine on whether domestic violence experienced by the survivor is a “significant contributing factor” to the crime committed;
  - Explain how traumatic experiences during childhood can contribute to behavior during adulthood because of the cumulative effects of trauma;
  - Educate counsel and the court on how abuse and trauma may have influenced the survivor’s behavior and statements leading up to and during the incident, as well as post-arrest; and
  - Explain the effects of coercive control on the client’s decision-making and behavior.

Expert testimony may be especially helpful in:

- Explaining the ongoing and cumulative effects of the trauma;
- Explaining the nexus and the temporal nexus<sup>6</sup> between the abuse and the ongoing abusive relationship and ongoing effects of trauma caused by domestic violence;
- Addressing how the abuse and trauma experienced by the client contributed to the conduct, which can be especially helpful where the client committed an act outside of an acute physically abusive incident;<sup>7</sup>
- Mitigating potentially difficult facts regarding the condition of the complainant/decedent; the force used by the client; the size, age and strength of the client compared to the abuser, etc.; and
- Explaining why survivors stay with an abusive partner.

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<sup>6</sup> To date, only one appellate court has interpreted the “at the time of” language of the first prong of Penal Law § 60.12 (1) (a) to require a temporal nexus between the abuse and the offense (*People v Williams*, 198 AD3d 466 [1st Dept 2021]). The court opined that this temporal nexus could be met by a showing that the “abuse or abusive relationship be ongoing.” Of course, the effects of trauma from domestic abuse can continue long after the abuse or abusive relationship has ended. This interpretation ignores current research and trauma science. You will want to use your expert to address this issue and preserve a challenge to *Williams* for appeal. You should use your expert to advance any or all of the following arguments: (1) the abuse and abusive relationship were ongoing; (2) the research and science of trauma rejects the notion of a temporal limitation and the only nexus to be proven is in prong two requiring a showing of “significant contributing factor;” (3) that if there is a temporal nexus requirement, the *Williams* court’s analysis was incomplete and should have considered that the temporal nexus can be satisfied by a showing that the effects of trauma from domestic abuse were ongoing at the time of the instant offense.

<sup>7</sup> Cheryl A. Terrance et. al., *Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome*, 88 ND L Rev 921 [2012].

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## **Contextualizing Physical and Psychological Harm**

An expert's evaluation of the client's physical or mental health can help to substantiate the client's testimony regarding their experience.<sup>8</sup> In particular, forensic psychologists can be helpful in addressing any claims that your client is "malingering." Oftentimes a survivor's testimony and statements regarding the physical and psychological abuse and trauma that they were subjected to by a family member or intimate partner come across as conflicted or ambivalent due to the stress and trauma of recollecting painful memories.<sup>9</sup>

Here, a mental health expert with experience diagnosing and treating the mental effects of trauma can clarify the survivor's decisions and behavior. Experts are important to the presentation of a client's case and may assist in demonstrating that the client suffered substantial abuse and that the trauma experienced was a significant contributing factor to the criminal behavior.

Even prior to filing an application for resentencing, a report from an expert on trauma and the dynamics of domestic violence may aid in negotiations with the prosecution for its consent to a more favorable disposition for your client. Furthermore, at DVSJA hearings, consideration should be given to introducing testimony from this type of expert to educate the court and encourage it to adopt a trauma-informed approach.<sup>10</sup>

## **Finding an Expert**

Finding and using expert witnesses is a crucial task in successful DVSJA sentence reduction proceedings. An attorney should have a good understanding of the facts of the matter and what expert testimony is needed before approaching prospective

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<sup>8</sup> In a motion for resentencing pursuant to CPL 440.47, you may consider submitting an expert report that assesses the reliability of your client's account of their prior abuse as one of the "two pieces of evidence corroborating the applicant's claim that he or she was, at the time of the offense, a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household" (CPL 440.47 [2] [c]).

<sup>9</sup> Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 NYU Rev L & Soc Change 191, 193 [2008].

<sup>10</sup> Alan Rosenthal, *The Complexity of Sentencing Under the DVSJA: A Challenge for Judges and Defense Counsel*, Atticus, Vol 32, No 2 [Spring 2020].

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expert witnesses. In other words, counsel should not take a “one size fits all” approach to choosing an expert.

Counsel should extensively interview an expert prior to retaining their services. During this interview, counsel should inquire about and consider an expert’s qualifications and body of work. A credible expert will be openminded and independent and will effectively communicate their findings or opinions. Counsel must also consider the cost of retaining an expert and formulate a plan to effectively use the resources at their disposal.

Counsel should speak with others who have used the expert in past proceedings. Understanding how an expert has assisted with DVSJA or other domestic violence matters will prove helpful in deciding whether a particular expert is a good fit for your case.

Certain experts may have knowledge about a particular aspect of trauma or victim behavior that may be helpful to your client’s position. Experts include academics who have researched and published literature on a given topic related to domestic violence, trauma, or victim behavior.

Experts may also be individuals such as attorneys with expertise in domestic violence and the effects of the trauma on survivors, licensed social workers, clinical psychologists, psychiatrists, the survivor’s service providers and clinicians, and other mental health professionals.<sup>11</sup>

## **Retaining an Expert**

Counsel should draft an engagement letter detailing the referral questions that counsel wishes the expert to address, the terms of payment, an index of case materials that counsel is providing to the expert, a confidentiality agreement, a

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<sup>11</sup> Significantly, counsel must inform their expert that any written notes during evaluations, interviews, and preparation sessions may be subject to disclosure at a hearing. If an expert uses a client’s medical and psychiatric records to formulate a report, those records may become subject to disclosure as well (*see infra* “Evidentiary Issues,” on page 10).

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statement advising the expert to avoid conflicts of interest, and a statement regarding the preliminary conference and potential future needs. A sample engagement letter and confidentiality agreement can be found at the end of these materials.

## **Working with an Expert**

Preparation is crucial to successfully utilizing an expert's skill set. Interviewing the expert and providing the expert with information necessary for the expert to perform an evaluation of the situation will allow them to communicate their opinions to counsel and the court effectively. The interchange of ideas between counsel and the expert only serves to help your client and reinforce your position.

To begin, counsel should take the time to educate experts about the nuances of the Domestic Violence Survivors Justice Act. For example, counsel should explain that the Appellate Division, First Department devised a temporal nexus requirement in *People v. Williams* (198 AD3d 466 [1st Dept 2021]). An expert's understanding of CPL 440.47 and Penal Law § 60.12 will allow both the expert and counsel to focus the report and questioning on the three-prong test and provide the court with a better understanding of how the survivor's circumstances qualify the survivor for alternative sentencing.

Counsel should review with the expert the meaning of "significant contributing factor" as it has been developed in case law and distinguish it from the higher standard of causation.

Counsel and the expert should also discuss the "unduly harsh" prong, which incorporates not only the "nature and circumstances of the crime," but also the "history, character and condition of" the client. In other words, the expert can explore how the trauma of incarceration may affect your client based on your client's particular vulnerabilities as a survivor of domestic violence.

Furthermore, counsel and the expert should review different resources in preparation for a DVSJA hearing. If your case involves coercive control, you and

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your expert should review [\*An Introductory Guide to Coercive Control for the DVSJA Attorney: Coercive Control Is Domestic Violence.\*](#)

DVSJA work provides an opportunity for a symbiotic relationship between defense counsel and the expert. As the expert learns more about the nuances of the statute, defense counsel continues to develop a trauma-informed approach with the expert's guidance.

### **Initial Oral Conference and Expert Report**

Counsel should hold an oral conference with the expert prior to the expert taking notes or drafting a report. The expert should be cautioned that their notes may be subject to disclosure to the prosecution. This initial conversation should determine whether a relationship with this expert should continue and whether the expert will be helpful in making an argument for sentencing or resentencing under the DVSJA.

Following a preliminary conference with the expert, counsel may want the expert to draft a report detailing their findings. A report may help to develop the narrative for your argument and provide the court with further explanation. Counsel should consider whether to rely on the report alone or supplement the report with testimony from the expert at the hearing.

Counsel may also want to submit a resentencing memorandum or a mitigation report to advance the client's narrative.

### **Evidentiary Issues**

Counsel may face evidentiary challenges to an expert's testimony or attempts to exclude their presence in the courtroom during parts of the hearing. Counsel should be well-versed in both NY Evidence Rule 7.01 and in the case law concerning expert witnesses.

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Expert witnesses are not subject to the exclusionary rule. They may be present in the courtroom during other parts of a trial or hearing, including during an opposing expert's testimony. Counsel may also consult with their expert during a hearing.<sup>12</sup>

The Court of Appeals has “long held evidence of psychological syndromes affecting certain crime victims to be admissible for the purpose of explaining behavior that might be puzzling to a jury.” In fact, the “majority of states permit expert testimony to explain delayed reporting, recantation and inconsistency...”<sup>13</sup>

For example, courts have allowed expert testimony regarding:

- The effects of post-traumatic stress disorder on battered women;<sup>14</sup>
- Rape trauma and the condition of learned helplessness;<sup>15</sup>
- Child sexual abuse accommodation syndrome (CSAAS);<sup>16</sup>
- Battered child syndrome;<sup>17</sup>
- Rape trauma syndrome;<sup>18</sup> and
- Coercive control and trauma bonding.<sup>19</sup>

In accordance with Penal Law § 60.12 (1) and CPL 440.47 (2) (e), “reliable hearsay shall be admissible” in a DVSJA sentencing or resentencing hearing. Therefore, you may request to have your expert's report, which will likely contain hearsay, considered.<sup>20</sup> At the hearing, the court may also consider oral and written arguments and take testimony from witnesses offered by either party to consider any relevant evidence. In a resentencing hearing, the court may additionally

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<sup>12</sup> *People v Santana*, 80 NY2d 92 [1992].

<sup>13</sup> *People v Spicola*, 16 NY3d 441, 445 [2011].

<sup>14</sup> *People v Milczakowsky*, 73 AD3d 1473 [4th Dept 2010].

<sup>15</sup> *People v Hryckewicz*, 221 AD2d 990 [4th Dept 1995].

<sup>16</sup> *Spicola*, 16 NY3d at 445.

<sup>17</sup> *People v Henson*, 33 NY3d 441 [1973].

<sup>18</sup> *People v Taylor*, 75 NY2d 277 [1990].

<sup>19</sup> *People v Abdur-Razaq*, 60 Misc3d 631 [Sup Ct, Bronx County 2018].

<sup>20</sup> See CPL 390.40 (explaining that the defense or prosecution may, prior to sentencing, file with the court “any information he may deem pertinent to the question of sentence” and “annex written statements by others in support of facts alleged”).

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consider the survivor’s institutional record of confinement. Any expert report or testimony must be relevant as well as reliable and accurate.<sup>21</sup>

Your expert witness’s testimony may include an opinion addressing an ultimate issue to be decided by the trier of fact,<sup>22</sup> such as whether the abuse was a significant contributing factor to the criminal behavior, if the criteria of NY Evidence Rule 7.01 are met.

However, keep in mind that a court may exclude relevant evidence if its probative value is outweighed by the danger that its admission would: (1) create undue prejudice to a party; (2) confuse the issues; (3) prolong the proceeding to an unreasonable extent without any corresponding advantage to the offering party; or (4) unfairly surprise a party, and no remedy other than exclusion could cure the prejudice caused by the surprise.<sup>23</sup>

It should be noted that while neither DVSJA nor CPL Article 245 authorize discovery from the defense in a post-conviction DVSJA proceeding,<sup>24</sup> a court may still choose to exercise its discretion to order reciprocal discovery even without explicit statutory authority to do so. Thus, carefully consider what materials you provide to your expert to review in connection with your client’s case.<sup>25</sup>

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<sup>21</sup> For more information regarding the admissibility of expert witness opinions, please refer to [Guide to New York Evidence Rule 7.01 \(Opinion of Expert Witnesses\)](#).

<sup>22</sup> See *People v Cronin*, 60 NY2d 430, 432-33 (1983) (reversing the conviction, ordering a new trial, and holding that the admissibility of expert testimony regarding the “ultimate questions and those of lesser significance” turns on whether the subject matter is within the ken of the typical juror and whether there is no better evidence than the expert’s opinion).

<sup>23</sup> For more information regarding the exclusion of relevant evidence, please refer to [Guide to New York Evidence Rule 4.07 \(Exclusion of Relevant Evidence\)](#).

<sup>24</sup> The prosecution, however, is under a continuing duty to disclose evidence and information that can mitigate punishment (see CPL §§ 245.20 (1) (k) (vii) [duty to disclose mitigation evidence], 245.60 [continuing duty to disclose]).

<sup>25</sup> See *Matter of Maria S. v Tully*, 2023 NY Slip Op 01680 (2d Dept 2023) (denying CPLR Article 78 petition seeking to prohibit DVSJA judge and the DA from enforcing judicial subpoena to produce the petitioner’s mental health records for in camera inspection and noting that the petitioner placed her mental health at issue in her DVSJA application); see also *People v N.P.*, 2023 NY Slip Op 23048 (Sup Ct, Erie County 2023) (ordering DVSJA petitioner to submit to a psychiatric examination by the prosecution’s expert).

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## **Direct Examination of an Expert Witness**

Careful and detailed preparation for the hearing with the expert witness is necessary. This kind of painstaking effort is beneficial both for the expert's testimony and for counsel's understanding of the expert's opinion. Counsel should understand how the expert will explain the criminal behavior in the context of the client's trauma and life circumstances. Counsel and the expert should review what myths and misconceptions surrounding domestic violence should be explained and dispelled. Any demonstrative evidence should be prepared and fully understood by counsel and the expert. Counsel should prepare their expert for cross-examination. The expert may also assist counsel in preparing to cross-examine the prosecution's expert, if any.

The first step in eliciting testimony from an expert witness is to establish their qualifications to demonstrate to the court that they have the requisite knowledge and experience to give a competent opinion on the matter at hand. The first line of questioning should be directed towards detailing the witness's educational and practical background, professional standing, writings, and relevant experiences.

Expert testimony that defines domestic and intimate partner violence places a survivor's actions in context for the court. Explaining common myths or misconceptions people have about abuse, trauma, and victims may persuade the court to interpret the client's actions within the context of their psychological state.<sup>26</sup> Testimony from treating therapists can explain how trauma affects memory, rationalization, and coping mechanisms.<sup>27</sup> Most importantly, expert witness testimony helps the judge understand how to interpret the survivor's narrative in a trauma-informed manner.

Working with your expert witness to develop direct examination is crucial to delivering clear, informative testimony to the court. The outline attached to this

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<sup>26</sup> Julie Stubbs, *The (Un)Reasonable Battered Woman? A Response to Eastreal*, 3 *Current Issues in Crim Just* 359, 360 [1992].

<sup>27</sup> Alan Rosenthal and Daniel Arshack, *DVSJA Paves the Way for Better Informed Sentencing*, *NYLJ* [September 2, 2021].

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guidebook aims to help attorneys compose their direct examination.<sup>28</sup> Counsel should work with their expert to adjust this set of questions on a case-by-case basis.

## **Anticipating Cross-Examination**

The prosecution will have the opportunity to cross-examine your expert witness. Anticipating possible areas of cross-examination before and during your direct examination and working with your expert to provide context will help to diffuse the effectiveness of the cross-examination.

For example, the prosecution will likely ask your expert about which, if any, documents the expert reviewed in connection with the case and in connection with your client's background. This may lead to questions about your client's personal history, including your client's criminal and institutional background; educational and/or foster care background; and medical, substance abuse, and/or mental health background. Additionally, the prosecution may also focus its inquiry on documents, articles, and academic theories with which your expert may or may not be familiar that may undermine your expert's conclusions.

## **Conclusion**

As new case law is developed surrounding the DVSJA, the impact of expert reports and testimony regarding the significant impact of domestic violence and trauma on survivors, as well as the connection between that trauma and criminal acts, will continue to play a vital role in the litigation of DVSJA matters.

Attorneys working on DVSJA claims must determine whether engaging an expert is necessary. The cost of using an expert should be balanced with the benefit an expert may provide in educating the court and countering misguided beliefs about domestic abuse and survivors.

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<sup>28</sup> This direct examination outline was authored by Alan Rosenthal, Esq.

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For any assistance regarding DVSJA claims, attorneys can contact the [Statewide Appellate Support Center](#) at the New York State Office of Indigent Legal Services, the [New York State Defenders Association DVSJA Attorney Support Project](#), and [Brooklyn Law School's Survivors Justice Project](#).

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# **APPENDIX**

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## SAMPLE EXPERT WITNESS ENGAGEMENT LETTER FOR DVSJA CASE

Date:

Name:

Address:

Dear \_\_\_\_\_.

This letter confirms the agreement between \_\_\_\_\_ (Expert) and \_\_\_\_\_ (Counsel), attorney for \_\_\_\_\_ (Client), for the purpose of providing consulting services and, if requested by Counsel, written reports, affidavits, and/or testimony in connection with Counsel's representation of the Client.

Counsel has retained you in order to obtain independent consultant services and advice, and to provide an objective expert opinion on matters relevant to the sentencing or resentencing of the Client pursuant to the Domestic Violence Survivors Justice Act (DVSJA) (Penal Law § 60.12 and CPL § 440.47). Counsel seeks your independent judgment and objective analysis, whether it is favorable or unfavorable to the Client.

### Terms of Payment

No retainer payment will be provided for this case. Counsel shall pay you a flat fee of \$\_\_\_\_\_ or at an hourly rate of \$\_\_\_\_\_, up to a total of \_\_ hours, for your work associated with reviewing records, interviewing and assessment of Client, consulting in person, on the phone or in court, writing reports, preparing for testimony or testifying – although the listing of these various types of work does not mean that you will be asked to undertake them. If you feel that the case will require more than \_\_ hours of work, you shall notify Counsel before incurring the cost associated with working additional hours. Reimbursement for out-of-pocket expenses reasonably and necessarily incurred by you in connection with the performance of your duties under this agreement shall be pre-approved by Counsel.

A voucher shall be submitted by you upon completion of the litigation which shall mean at the time of sentencing or a determination of the court regarding resentencing. The voucher shall be submitted no later than the end of the month after completion of your work on this case.

### Confidentiality

*See Addendum A – Confidentiality Agreement.*

### Roles and Obligations

Your obligation is to provide a preliminary oral report to Counsel based upon a review of all available documents provided by Counsel and an interview and evaluation of the Client. Upon completion of the preliminary oral report, Counsel will provide further instructions for you which may include preparation of a written report, an affidavit, preparation for testimony and testifying. You will make yourself available as reasonably requested to meet with and prepare

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prior to anticipated/scheduled testimony and for purposes of consultation. Your obligation is to provide those services if requested, and to meet any reasonable deadlines agreed upon by you and Counsel.

Counsel's obligation is to provide all available non-privileged documents and evidence relevant in this matter; be available as reasonably requested to meet with and prepare you prior to anticipated/scheduled testimony; provide you with prompt notice of any *Frye* type motions, motions *in limine*, or other pre-trial and pre-hearing motions made by anyone to restrict, exclude or in any way limit your testimony or participation in the underlying legal matter; promptly notify you of testimonial and other deadlines; and provide you with the relevant information needed by you to provide Counsel with your expert advice. Counsel's obligation includes payment of your fees and expenses.

### Referral Questions

Counsel's investigation has disclosed that Client may have been the victim of domestic violence inflicted by a member of Client's family or household as such term is defined in subdivision one of CPL § 530.11. Considering this context, Counsel asks that you conduct an evaluation of the Client and address the following issues:

1. When (Client) \_\_\_\_\_ committed (or is alleged to have committed) the crime of \_\_\_\_\_, had she previously been the victim of domestic violence?
2. What was the nature of the domestic abuse suffered by (Client) \_\_\_\_\_, if any? (physical, sexual or psychological)
3. What were the effects of this domestic abuse on (Client) \_\_\_\_\_, if any? (short-term, long-term, cumulative).
4. If (Client) \_\_\_\_\_ suffered domestic violence, did it affect his/her decision-making and autonomy? If so, how?
5. If (Client) \_\_\_\_\_ suffered domestic violence, how would you characterize that? (typology and degree of abuse).
6. If (Client) \_\_\_\_\_ suffered domestic violence, what effects did the domestic abuse have on (Client) \_\_\_\_\_, if at all, at the time he/she committed (or is alleged to have committed) the crime of \_\_\_\_\_?
7. Was domestic violence a "significant contributing factor" to (Client's) \_\_\_\_\_'s conduct?

### Index of Materials

Counsel is providing you with the following documents and materials (there may be more to provide than listed below):

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## Chronology and Official Documents

- Birth certificate
- Chronology

## Life-History Records

### Educational Records

- High School
- Grammar School
- College

### Medical Records

- Counseling/Treatment Records
- Hospital Records
- Emergency Room
- Medical History

### Family Court Records

- Orders of Protection
- Domestic Incident Reports

## Criminal Case Records

### Criminal Court Records

- Trial Transcript
- Police Reports
- Witness Statements
- Criminal History

## Preliminary Conference

Expert agrees that after completion of preliminary investigation and assessment, Expert will meet with Counsel for the purpose of providing an oral report to address the referral questions. After that oral report, Counsel will provide Expert with further instructions regarding the need for ongoing consulting services, a written report, affidavit, and/or testimony.

## Avoidance of Conflicts

Each of the parties has the right to terminate this agreement and the subject engagement immediately upon delivery of written notice. Your obligation regarding confidentiality under this agreement shall survive the termination of this agreement. In addition, any work outside of the primary contractual relationship shall be accompanied by an independently executed and accepted agreement, including the appropriate confidentiality and exclusivity term and conditions contained herein. This agreement is governed by the laws of the State of New York.

If this letter is consistent with your understanding, please indicate your agreement to

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these terms by signing and returning the attached duplicate of this letter. Should you have any questions or concerns about any of these terms, please call me immediately so that we may discuss these issues.

I look forward to working with you on this case.

Sincerely,

(Counsel)

SO ACCEPTED,

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Expert Name

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## ADDENDUM A

### CONFIDENTIALITY STATEMENT AND AGREEMENT

The following principles may be familiar or obvious to you, however, I am obligated to detail the boundaries of the fiduciary relationship established as a result of Counsel retaining you as an expert.

1. All information about this case starting from our initial conversation is confidential. Unless you become a witness, you are considered as a consultant to me as Counsel, and work within the confidentiality of the attorney-client privilege and my personal work product. These privileges cover all oral and written communications between us. Assume you are a consultant, until such time as I advise you that you will be needed to testify as a witness.

2. If, by chance, counsel or investigators from the prosecutor's office in this case contact you for help with the case, you cannot cooperate in any way. To cooperate in any manner with an adverse party in this case would be a conflict of interest and would breach our contractual and privileged relationship. Should the prosecution contact you about this case, your response must be, "I am sorry I cannot help you." You cannot even advise them that you are already retained by me, because the very fact of your retention is confidential and privileged.

3. If the prosecution contacts you for the express purpose of finding out if you are working for me on this case, that may be sanctionable misconduct on their part. All attorneys have an obligation to respect the privileges noted above.

If you are contacted by the prosecution, their investigator or expert, you must let me know immediately who contacted you, when and what they asked. If you are contacted about the case and the situation appears ambiguous, do not rely on the opinions of anyone else who says it is permissible for you to talk to the prosecution. You are to call me first. You can always call the person back after we resolve the ambiguity.

4. If you are publicly declared a witness for the defense in this case, the prosecution may contact you and you may choose to talk to the prosecutor, investigator or prosecution expert at that time. But, you have no obligation to do so unless ordered by a judge. If you do agree to talk with the prosecution, you may request that I be present in person or telephonically, and I will be there.

5. Your obligation of confidentiality is not time-limited. It does not conclude upon the resolution of the case in court. Unless expressly authorized by me or by my designating you as a witness in the case, you cannot ever reveal the contents of your consultation with me in this case.

6. This case may be very interesting, and you might want to discuss it with colleagues or professional gatherings. Please do not do so. Even discussing the facts without identifying the case name could give away the identity of the client to a prosecutor or their expert.

7. The fact of your retention is as confidential as the facts of the case. You may not

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list your role as consultant in this case on a C.V., resume or other document listing your qualification or experience, nor discuss your retention orally, unless you become an expert witness in this case.

8. Should you deem it necessary to consult with other experts on this case outside your office, please contact me beforehand. If we agree to consult other experts, we must first determine that they do not have a conflict of interest by any prior involvement in the case on behalf of the prosecution or another party. If they are to be privy to the facts of the case and our communications, they must also agree to consult within the same conditions of confidentiality as you. Thus, if you are going to consult with anyone else, it is necessary that I first establish these ground rules with them.

9. You have the responsibility to insure that employees and other staff in your office or in your employ are aware that the confidentiality obligations stated in this agreement apply to them as well.

10. All written communications between us should be labeled at the top of the document: "CONFIDENTIAL/PRIVILEGED COMMUNICATION."

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## SAMPLE DIRECT EXAMINATION OUTLINE

### *A. Introduction and Relationship to the Case*

- What is your name?
- What is your occupation or profession?
- Where are you employed?
- What is your business address?
- What are your employment responsibilities?
- What is your area of expertise or specialty?
- How long have you been working in this area of specialization?
- Have you been asked to investigate and evaluate the history and background of \_\_\_\_\_, and to provide the context for her criminal behavior in relationship to her having been subjected to domestic violence?
- Have you prepared an opinion on whether the domestic violence that Ms. \_\_\_\_\_ suffered was a "significant contributing factor" to her commission of the crime of?
- Before we get to your opinion in this case, what are your qualifications and expertise to give such an opinion?

### *B. Qualifications*

- What is your educational background?
- What special training have you undergone with regard to domestic violence and trauma?
- What experience have you had with victims of domestic violence?
- What licenses and certifications have you earned?
- Please tell us what publications you have authored pertaining to the field of domestic violence and trauma?
- What teaching experience do you have?
- What experience as an expert witness have you had?
- What is your employment history in the field of trauma and domestic violence?
- Have you worked with victims of domestic violence in the past?
- In what capacity?
- Where?
- Have you worked with victims of child abuse?
- In what capacity?
- Where?
- Have you worked with children of women who have been abused?
- In what capacity?

- Where?
- Have you worked with adolescents and adults who have been victims of intimate partner violence?
- In what capacity?
- Where?
- Have you previously testified on the subject of domestic violence and trauma in courts or other forums?
- Have you been recognized as an expert when you have testified?
- How many times?
- What kind of cases have you previously testified in?
- Have you previously been consulted regarding domestic violence cases by both the defense and the prosecution?

C. *Tendering a Witness*

A trial court is not required to formally declare or certify a witness to be an expert. *People v. Ratliff*, 165 AD2d 845, [2d Dept 2018]; *People v. Prowse*, 60 AD3d 73, [2d Dept 2009]. If you feel moved to tender your witness as an expert, it would sound something like this:

“I tender Dr. John Doe as an expert in the field of domestic violence and trauma, and I ask that the court receive his testimony as an expert and allow him to proceed to give his expert opinions.”

D. *Assignment (Referral Questions) and Overview of Basis for Opinion*

- Have you been retained to investigate and evaluate Ms. \_\_\_\_\_ in this case?
- Are you being compensated for your time?
- Is that compensation arrangement the usual and regular compensation for these types of matters?
- What was your assignment in this case?
- Were you asked to provide a social-ecological framework and a better understanding of the evidence as it relates to the effects of trauma and domestic violence and to dispel misconceptions about a survivor’s decision-making and actions?
- Does this provide context for the domestic violence and trauma experienced by Ms. \_\_\_\_\_?
- As a result, did you meet with Ms. Ms. \_\_\_\_\_?
- Explain?
- Did you review certain documents?
- What were those documents?
- Did you sit through the testimony of \_\_\_\_\_?

- What investigation, research, and assessments did you conduct for that assignment?
- What methodology or methodologies did you use for that investigation and assessment?
- Briefly explain the methodology or methodologies you used and why they are applicable to this case.
- What information did you analyze?
- What information did you rely upon?
- Is that type of information customarily relied on by experts in your field?
- Is there general acceptance within your field of the validity of the theories and principles underlying your method of investigation and assessment?
- Is there general acceptance within your field that the procedures and assessment methodology is reliable and produces accurate results?
- Did you conduct your investigation and assessments in such a way as to yield accurate results?
- Was the information and assessment results sufficient for the methodology used on this assignment?
- There are several different definitions of domestic violence. Did you use the definition of domestic violence specific to the DVSJA?
- What is the definition of domestic violence for the purpose of the DVSJA?
- So, it covers three types of abuse – sexual, physical, and psychological, is that correct?
- Are the terms psychological and emotional abuse used interchangeably?
- Can a person qualify for relief under the DVSJA by being the victim of domestic violence as a result of any one of those three types of abuse?
- Can a person experience all three types of abuse?
- Does the term domestic abuse as used in the DVSJA include coercive control?
- Could you explain?
- Under the DVSJA does the abuse have to be inflicted by a specific category of perpetrator? (CPL § 530.11 (1))?
- Who falls into that category?
- In this case, which perpetrators of abuse fall into that category?

*E. Opinions (For each opinion you seek to elicit, ask the following three questions)*

- Do you have an opinion to a reasonable degree of certainty within your profession whether Ms. \_\_\_\_\_ had been a victim of domestic abuse prior to the time she committed the offense of \_\_\_\_\_?
- What is that opinion?
- What is the basis for that opinion?

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*Examples of Opinion Questions for a DV/SJA case:*

- Do you have an opinion to a reasonable degree of certainty within your profession whether Ms. \_\_\_\_\_ had been a victim of domestic abuse prior to the time she committed the offense of \_\_\_\_\_?
- Do you have an opinion to a reasonable degree of certainty within your profession what the nature of the domestic abuse was?
- Do you have an opinion to a reasonable degree of certainty within your profession what were the effects of this domestic abuse on Ms. \_\_\_\_\_?
- Do you have an opinion to a reasonable degree of certainty within your profession as to whether the domestic violence Ms. \_\_\_\_\_ suffered affected her decision-making and autonomy?
- Do you have an opinion to a reasonable degree of certainty within your profession what effects the domestic abuse had on Ms. \_\_\_\_\_ at the time she committed the crime of \_\_\_\_\_?
- Do you have an opinion to a reasonable degree of certainty within your profession whether the domestic abuse suffered by Ms. \_\_\_\_\_ was a significant contributing factor to her commission of the crime of \_\_\_\_\_?
- Do you have an opinion to a reasonable degree of certainty within your profession what effect continued incarceration in prison will have on \_\_\_\_\_?

*F. Explanation of Opinion*

- You have told us your opinions about domestic violence and the context it provides for understanding Ms. \_\_\_\_\_'s behavior. Now let's look at how you arrived at those opinions.
- What methodology did you use for your investigation and assessment in this case?
- Why did you choose that methodology and those assessment instruments?
- Are these methodologies and assessment tools customarily used by experts in your field?
- Was that the best methodology for this assignment? Why?
- Could you explain for us the methodology used?
- What did you do to start your investigation for this assignment?
- What were the parameters of your investigation?
- Explain the investigation and assessment process.
- Please tell us what information and assessment tool results were relied upon.
- Was the information used by you sufficient for an assessment of Ms. \_\_\_\_\_?
- For each assessment, instrument, or tool you used, could you explain how they work and how they helped inform your opinion?

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- Please explain how your investigation and assessments support your ultimate opinion.
  - In arriving at your opinions regarding Ms. \_\_\_\_\_, what assumptions did you make?
  - Why did you make those assumptions?
  - How reliable are those assumptions?
  - Are the assumptions that you made of the type generally made by experts in your field of expertise?
  - What assumptions were not made by you?
  - Why were those assumptions not made?

**(Add in to educate the court about issues particular to your case)**

- Define domestic violence. (Distinguish legal from clinical definition.)
- Define Intimate Partner Violence.
- Explain why domestic violence is called a process.
- Define Battered Woman Syndrome?
- Explain how our understanding of BWS has evolved.
- Define battering and its effects.
- Define social framework evidence.
- Why is social framework evidence important?
- Can you explain what social framework evidence is important to consider in the context of Ms. \_\_\_\_\_'s criminal behavior?
- What is trauma?
- Please explain.
- What are the effects of trauma?
- What is complex trauma?
- What is chronic trauma?
- Has Ms. \_\_\_\_\_ suffered either complex or chronic trauma?
- What does it mean to take a trauma-informed approach to domestic violence?
- In general, how does trauma affect the survivor?
- Why do people react differently to trauma?
- What type of trauma was Ms. \_\_\_\_\_ subjected to?
- How did trauma affect Ms. \_\_\_\_\_?
- Can multiple events have a cumulative traumatic effect?
- Can this cumulative effect build up over a lifetime?
- Do the effects from trauma always show up immediately?

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- Can the effects of trauma show up after the event?
  - Do you find the effects of trauma in this case?
  - What effects did you find?
  - Can the effects of trauma be both short term and long term?
  - Does the research on adverse childhood experiences (known as ACEs) shed some light on the long-term effects of trauma?
  - Have science and research provided us with an understanding about the neurobiological response to trauma?
  - Could you summarize that for us in simple terms?
  - Can repeated instances of trauma dispersed throughout childhood and adolescence make an individual susceptible to the traumatic effects of domestic violence in early adulthood?
  - Are there signs that this happened to Ms. \_\_\_\_\_?
  - Is it unusual for an adult or adolescent to be both a victim of domestic violence by an intimate partner and to have also been a victim of childhood sexual, physical or psychological abuse?
  - Were you able to detect any indicators of trauma from your review of the records in this case?
  - What were some of the indicators?
  - Can trauma affect behavior and decision-making?
  - How?
  - Can trauma caused by exposure to domestic violence in childhood and in adolescence by an intimate partner cause low self- esteem?
  - Is there an indication that Ms. \_\_\_\_\_ suffered from low self-esteem in the psychotherapy records?
  - Can low self-esteem affect a person's behavior and decision-making?
  - How?
  - In your opinion did that occur in this case?
  - What is meant by the term behavioral adaptation to trauma?
  - Is that applicable in this case?
  - When considering trauma, why is it important to consider the history of the survivor?
  - Are there some commonly referenced concepts or theories in the field of domestic violence that help us understand the decision-making and behavior of Ms. \_\_\_\_\_?
  - How does the research and literature in the field of domestic violence about the effects on a child witnessing their mother being abused in the home inform us about this case?
  - What is meant by the term the dynamics of domestic violence?

- How does it apply in the context of the case of Ms. \_\_\_\_\_?
- What is meant by the term coercive control?
- How is it assessed?
- Does it apply in the context of Ms. \_\_\_\_\_?
- How?
- What are some of the tactics of coercive control?
- What tactics of coercive control were evident in this case?
- What is the generally accepted purpose of an abuser who uses coercive control as a tactic?
- Does coercive control require physical abuse?
- How do abusers choose their coercive control tactics?
- What was Ms. \_\_\_\_\_ most obvious vulnerabilities?
- Did Mr. \_\_\_\_\_ exploit those vulnerabilities?
- How?
- When there have only been a few instances of physical abuse, can we assume that there is no coercive control?
- Can you tell us what your assessment of Ms. \_\_\_\_\_ is in the context of the domestic abuse she suffered and how she was affected by it?
- How does trauma affect a victim's ability to recall and describe a particular event of abuse?
- How did trauma affect Ms. \_\_\_\_\_?
- In domestic violence literature there is often a reference to the "counterintuitive" behavior of victims of domestic violence? Are you familiar with that terminology?
- What does it mean?
- Is the understanding and appreciation for the reason for this so-called "counterintuitive" behavior generally accepted in the legal and scientific communities?
- If a person claims to have been abused by an intimate partner, but stays in that relationship, should their claim of abuse be treated as less credible?
- It is often said that "it can't have been as bad as she said it was because she wouldn't have stayed." Based upon research, literature and your experience, what is your reaction to that commonly held notion?
- Why do survivors remain in abusive relationships?
- What do we know about why it is difficult to leave an abusive relationship?
- What is meant by the term "separation assault?"
- Were you able to determine why Ms. \_\_\_\_\_ stayed in her relationship with her husband?

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- What is meant by the term “trauma bonding?”
  - What are the three basic conditions of trauma bonding?
  - Were there signs of trauma bonding in this case?
  - What were they?
  - What are some of the coping mechanisms that survivors adopt in trauma bonding?
  - How does trauma bonding help explain Ms. \_\_\_\_\_’s behavior?
  - Does it have applicability to your assessment of Ms. \_\_\_\_\_?
  - Ms. \_\_\_\_\_ never reported many of these instances of domestic violence. Does that make her claims of abuse less credible?
  - Ms. \_\_\_\_\_ reported one incident of domestic violence but then recanted. Does that make her less credible? What do we know about these phenomena?
  - Ms. \_\_\_\_\_ repeatedly broke up with Mr. \_\_\_\_\_, but then reconciled. Does that cast doubt on her claims of physical abuse?
  - Ms. \_\_\_\_\_ has difficulty telling a linear story about abusive events, and has difficulty remembering certain details, and at times has contradicted herself. Is that a strong indicator that she is not credible?
  - Are you familiar with the term coping mechanisms?
  - What does this term mean?
  - Where does the concept of survivors’ coping mechanisms fit into explaining survivors’ behavior?
  - Based upon the social-ecological factors in this case, and in light of the concepts that you previously discussed, what coping did Ms. \_\_\_\_\_ demonstrate that explains her criminal behavior?
  - Could you explain what a “danger assessment” or lethality assessment” is?
  - Have you performed such an assessment for Ms. \_\_\_\_\_?
  - What danger assessment did you use?
  - Is it widely used?
  - What did you find?
  - What is an ACEs assessment?
  - Is it widely used?
  - Did you perform one for Ms. \_\_\_\_\_?
  - What did you find?
  - Can Adverse Childhood Events increase the likelihood of criminal behavior later in life?
  - What is the pathways perspective as it relates to women who commit criminal offenses?

- Does this pathways perspective explain why domestic violence can make criminal behavior more likely in women who have experienced sexual or physical abuse?
- Did you assess Ms. \_\_\_\_\_ for trauma?
- What assessment instrument did you use?
- Did you assess Ms. \_\_\_\_\_ for PTSD?
- What assessment instrument did you use?
- What were your findings?
- How does PTSD affect a survivor’s behavior?
- Were you able to assess whether Ms. \_\_\_\_\_ was intentionally misreporting the abuse events?
- What is an assessment instrument known as TOMM? (Test of Memory Malinger)
- Did you administer that instrument?
- What were your findings?
- At the time of the instant offense was the abuse of Ms. \_\_\_\_\_ by Mr. \_\_\_\_\_ ongoing?
- At the time of the instant offense was the abusive relationship between Ms. \_\_\_\_\_ and Mr. \_\_\_\_\_ ongoing?
- At the time of the instant offense were the effects of the trauma from the domestic abuse inflict on Ms. \_\_\_\_\_ by Mr. \_\_\_\_\_ ongoing?
- Please explain.
- Under the DVSJA, including Penal Law § 60.12 and Criminal Procedure Law § 440.47, what are some of the factors that should be considered in determining whether the sentence Ms. \_\_\_\_\_ is now serving is unduly harsh?

### Concluding the Direct Examination

1. You have given us your opinion that the domestic violence suffered by Ms. \_\_\_\_\_ was a “significant contributing factor” to her commission of the crime of \_\_\_\_\_. Why are you so confident of that opinion?
  - a. **Here, you are trying to end strong by giving your expert the opportunity to succinctly summarize their opinion and not just repeat prior testimony. The expert can use this question to explain the underlying investigation, research, literature, methodology, assessments, instruments used, and clinical assessment to arrive at their opinion.**

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## ***Anticipating Cross Examination***

### *A. Credibility of the Witness*

- Expertise and qualifications
- Relationship to the party or the attorney
- Difficulty in communicating

### *B. Validity of Expert's Methodology*

- Whether expert is testifying within their area of expertise
- Integrity of the methodology within the profession
- Applicability of the methodology to this fact situation

### *C. Quality of Investigation*

- Validity and reliability
- Information relied on not reliable
- The information gathered from Ms. \_\_\_\_\_ to form the basis of the expert's opinion is not reliable.
- The information provided by Ms. \_\_\_\_\_ is not true.
- Information that was left out of consideration in making the expert opinion

### *D. Validity of Assumptions*

- Propriety of each assumption made by the expert
- Reliability of each assumption made by the expert
- If each assumption was not made, would the opinion change?
- Propriety and reliability of assumptions not made
- If any of these assumptions were made, would that change the expert opinion?

### *E. Prior Writings and Testimony*

- Does the expert have any prior writings or testimony which relate in any way to this case?
- Could there be any contradictory writings or testimony from this expert?

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## Cases of Interest

### Appellate Division

#### *People v Addimando*

County Court abused its discretion in not imposing an alternative sentence under the DVSJA for the defendant's murder conviction. Term of 19 years to life imprisonment reduced to 7 1/2 years of incarceration plus PRS. Preponderance-of-evidence standard applied. Sentencing court applied outdated notions about domestic violence in finding her proof insufficient, thus violating the spirit and purpose of the statute.

[People v Addimando, 197 AD3d 106 \[2d Dept 2021\]](#)

#### *People v Burns*

DVSJA resentencing granted. The father's substantial abuse of the defendant was a significant contributing factor to the murder of the father's girlfriend. Term of 25 years to life imprisonment was unduly harsh given the nature of the crime, the defendant's age at the time, his accomplishments in prison, and his family support.

[People v Burns, 207 AD3d 646 \[2d Dept 2022\]](#)

#### *People v Coles*

Summary denial of CPL 440.47 motion reversed and remitted for further proceedings. Supreme Court erred in finding that the defendant failed to make the requisite preliminary evidentiary showing. She submitted affidavits of her sister and mother and a transcript of her interrogation by police.

[People v Coles, 202 AD3d 706 \[2d Dept 2022\]](#)

#### *People v Williams*

Denial of CPL 440.47 motion for resentencing under the DVSJA affirmed. The evidence did not show that the crime victim's behavior toward the defendant constituted substantial abuse. There must be a temporal nexus between the abuse and the offense.

[People v Williams, 198 AD3d 466 \[1st Dept 2021\]](#)

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*Matter of Maria S. v Tully*

The petitioner commenced a CPLR Article 78 proceeding seeking to prohibit a justice of the Kings County Supreme Court and the Kings County DA from enforcing a judicial subpoena. The subpoena directed the NYS Office of Mental Health to produce certain mental health records for in camera inspection in relation to the petitioner’s CPL 440.47 application. The Second Department denied the petition and dismissed the proceeding. Issuance of the subpoena was not “an unlawful use or abuse of the entire action.” The petitioner placed her mental health at issue in her application—if issuing the subpoena was an error, it would constitute an error related to the proper purpose of the proceeding.

[\*Matter of Maria S. v Tully\*, 2023 NY Slip Op 01680 \[2d Dept 2023\]](#)

Lower Court Decisions

*People v D.L.*

Resentenced under DVSJA. As a child, the defendant was severely sexually abused by his uncle for several years and suffered trauma which continued throughout his adult life and led to his drug addiction. To get cash to buy drugs, the defendant committed burglaries, including the instant crime. Positive testimony from therapist and recovery coach. The court distinguished between trauma as a causal factor of crime and the lower statutory standard of “significant contributing factor.”

[\*People v D.L.\*, 72 Misc3d 257 \[Columbia County Ct 2021\]](#)

*People v D.M.*

DVSJA resentencing granted. The defendant had been convicted of 1st degree manslaughter and sentenced to 15 years’ imprisonment with five years’ PRS. She was resentenced to five years’ imprisonment plus four years’ PRS. A psychiatrist testified about the defendant’s complex trauma history and abuse by the codefendant. Incarceration was re-traumatizing. The DVSJA called for compassion. She completed treatment programs. Community-based programs available upon release were far more effective than prison in allowing survivors to rebuild relationships with their families and contribute to society.

[\*People v D.M.\*, 72 Misc3d 960 \[Sup Ct, Queens County 2021\]](#)

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*People v N.P*

Defendant filed a motion, which included an expert opinion report, seeking resentencing pursuant to the DVSJA. After the court determined that the defendant was entitled to a hearing, it granted an OTSC filed by the prosecution requesting an order directing the defendant to submit to a psychiatric examination by their expert. Pursuant to its broad discretion, the resentencing court granted the prosecution's "request for their psychiatric expert to examine the defendant prior to the hearing." The court denied as overbroad the prosecution's request for the defendant's medical and psychiatric records as there was no indication that the defense expert relied on such records to prepare the report.

[People v N.P., 2023 NY Slip Op 23048 \[Sup Ct, Erie County 2023\]](#)

*People v S.M.*

DVSJA resentencing granted. The defendant had been convicted of 1st degree robbery and sentenced to 9 1/2 years' imprisonment followed by 5 years of PRS. She was resentenced to 4 years' incarceration plus 2 1/2 years of PRS. Her release before the resentencing hearing did not affect her eligibility. She did not have to establish that the abuse was the exclusive or even overriding factor for her criminal conduct. The defendant had an impeccable institutional record and an excellent reentry plan. PRS was a burden, especially for domestic violence survivors.

[People v S.M., 72 Misc3d 809 \[Erie County Ct 2021\]](#)

*People v Smith*

Defendant's DVSJA resentencing granted. The defendant had been convicted of two counts of second-degree murder and first-degree robbery and sentenced to concurrent indeterminate terms of 25 years to life imprisonment on the murder counts, as well as 10 years on the robbery count. Defendant, beginning at 15 years old, was subjected to abuse, coercion, and sexual exploitation by a 71-year-old man. Given defendant's age at the time of the offense, the abuse she suffered, her record while incarcerated, and the sentence originally imposed, defendant was resentenced to concurrent determinate terms of 12 years for the murder convictions.

[People v Smith, 69 Misc3d 1030 \[Erie County Ct 2020\]](#)

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*People v Theresa G.*

Defendant's DVSJA resentencing granted. The defendant had been convicted upon guilty plea of Assault in the First Degree and sentenced to 8 years' incarceration followed by 5 years of PRS and was resentenced to 4 years' incarceration followed by 2 1/2 years of PRS. She had been in an abusive relationship with her boyfriend, the complainant, who was creating an environment of "physical and psychological tumult," when she stabbed him three times. The court found that even if the prosecution's theory was true that she stabbed him from behind while angry and after excessively drinking, this did not negate "the relentless abuse" by him that "provoked anger as well as fear of dangerous escalation." She had no criminal history and an impeccable institutional record.

[\*People v Theresa G.\*, 2023 NY Slip Op 23087 \[Sup Ct, Kings County 2023\]](#)

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## Suggested Reading

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[Rogers, Audrey, \*Prosecutorial Use of Expert Testimony in Domestic Violence Cases: From Recantation to Refusal to Testify\*, 8 Columbia J of Gender & L 67 \[1998\].](#)

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[Seckinger, James, \*Presenting Expert Testimony\*, 15 Am J Trial Advoc 215 \[1991-1992\].](#)

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[Terrance, Cheryl, Plumm, Karyn, and Rhyner, Katlin, \*Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome\*, 88 N Dakota L Rev 921 \[2012\].](#)

[Zykorie, Lauren, \*Can a Domestic Violence Advocate Testify as an Expert Witness? Follow the ABC's of Expert Testimony Standards in Texas Courts\*, 11 TX J of Women and the Law 275 \[2002\] \[available on Westlaw\].](#)