

THE APPEAL

[Sarah Lustbader](#) Jun 06, 2019

SPOTLIGHT: INCARCERATED WOMEN HELPED DRAFT NEW YORK LAW TO FREE DOMESTIC VIOLENCE SURVIVORS

A law called the Domestic Violence Survivors Justice Act (DVSJA) does not, at first blush, sound like reform. In this context, one could be forgiven for guessing that “justice” is interpreted in a decidedly regressive way: harsher penalties that don’t make anyone safer. This describes many laws named for sympathetic or vulnerable groups.

But that is not the case for the DVSJA, a bill that became law in New York last month. The content of the law, and its decade-long path to existence, represent a new kind of lawmaking—a process that originates with the people who have the most at stake and is shepherded by a diverse coalition. It resulted in a law that chips away at the misleading offender-victim distinction, and ultimately seeks not to inflict harm, but to mitigate it.

The law allows—but does not require—a sentencing judge to consider whether abuse was directly related to a person’s crime and, if so, gives judges the flexibility to sentence the “survivor-defendant” to shorter sentences or to alternative-to-incarceration programs. This extends not only to acts of self-defense but also to scenarios where an abuser coerced a person into committing a crime. The law also gives those sentenced prior to its enactment the chance to apply for resentencing.

The Daily Appeal spoke to Andrea Williams, Strategic Learning Director at STEPS To End Family Violence (a division of Rising Ground), which works directly with survivors and their families to overcome histories of abuse, while also advocating for them in schools, courts, legislatures, and the community at large. Williams was part of the coalition that brought the law into being, along with defense attorneys, judges, women’s rights advocates, prisoners’ rights advocates, legislators, and many survivor-defendants.

Williams and her cohort have been developing and advocating for the law for over a decade. For years, Williams and her colleagues, including celebrated advocate and therapist [Sister Mary Nerney](#), would visit women in New York prisons to offer treatment and programs, and also to listen to them. Again and again, they heard the same thing: “When we met women who were serving long prison sentences and learned more about their stories, we found that a number of women were survivors of violence,” said Williams. But “that violence was not considered by the courts.”

In 1999, the Department of Justice released a report that found that approximately half of incarcerated women had experienced past physical or sexual abuse, wrote Victoria Law for The Atlantic. In New York, the Department of Correctional Services found that in 2005, “two-thirds of women incarcerated for killing someone close to them had been abused by that person. (Black women experience domestic violence at a higher rate than white women, and are imprisoned at nearly twice the rate.)” Advocates began raising awareness that courts “often excluded evidence of abuse or expert testimony that would enable jurors to understand the circumstances of the survivor’s crime.”

The group of New York survivor-defendants studied how to talk about their experiences with reporters and how to make the case for the bill. Several times a year, wrote Law, they woke before dawn to go meet with members of the state legislature.

Advocates in other states, meanwhile, particularly those where Democrats controlled the legislature, were finding success. In 2012, California passed two laws: One addressed prior exclusion of expert testimony about abuse, and the other required parole boards to accept and seriously consider evidence of abuse during parole hearings. In 2016, Illinois passed a law directing judges to consider the role of abuse during sentencing, and allowing currently incarcerated survivors to petition for resentencing if evidence of abuse was not initially presented. Law adds, “More recently, the #MeToo movement appears to have increased public understanding about not only abuse, but the criminalization of abuse survivors.”

New York’s District Attorneys Association was the only significant opponent of the bill. Prosecutors argued that it didn’t consider the rights of crime victims who had not abused the defendant and raised the issue of costs associated with resentencing. The Republican-controlled state Senate killed the bill year after year until this year, when Democrats took control of both legislative houses.

One of the most striking things about the law is that it chips away at the entrenched notion that some people in society do harm and others suffer harm. In reality, many people who harm others have themselves been harmed. Prosecutors would do well to internalize that the complainants they present in court as pure victims are often people that their own office has prosecuted in the past, or will prosecute in the future. Put a different way, crime is almost never as simple as a person waking up one morning and, out of the blue, choosing to hurt another.

“The survivor-defendant is at that nexus [of victim and offender],” said Williams. “One of the things that the DVSJA does is to help to point out to people that they are both.” This is because “somewhere along the line, someone didn’t see or take into consideration what was happening to them. We needed a DVSJA because the systems failed these women, when they were calling police or showing up at the hospital, somehow they were not protected. The interventions that were supposed to work didn’t work and they ended up being involved in the criminal legal system. And then the criminal legal system didn’t really see them. It’s these multiple systemic failures along the way.”

“Now our work is implementation,” Williams said, “educating people about how to use this law.” There are abuse survivors who are in prisons across the country who she says need this

exact same consideration. Moving forward, the law elevates “the need to move toward more restorative and transformative forms of justice and to recognize that there are structural things that fail and end up doing more harm.” One part of that would be to explore front-end changes so that we don’t need post-conviction remedies. “If you look at *Survived and Punished*, one of the things they’re doing is pressuring district attorneys not to charge in the first place. It’s challenging the way we all look at and approach these kinds of situations. That’s the moment we’re in, and it seems to me that that’s a good thing.”