

WHAT IS THE DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT?

Criminal Procedure Law § 440.47(1), known as the Domestic Violence Survivors Justice Act (DVSJA), allows the sentencing court to resentence a domestic violence survivor who suffered sexual, psychological or physical abuse that contributed to his or her conviction if certain, specific criteria are met.

Seven factors determine eligibility, and the application process differs slightly for applicants who are represented by their court-appointed appellate attorney, and applicants who are not.

I. Eligibility

- (1) Incarceration/Prison Sentence: applicant must currently be incarcerated and serving a sentence of at least 8-years;
- (2) Sentencing Status: only applicants who were sentenced as first or second felony offenders are eligible; applicants sentenced as second violent felony offenders or persistent violent felony offenders are not qualified; sentence and commitment sheet and/or sentencing minutes should contain this information;
- (3) Conviction: the underlying conviction upon which resentencing is sought **cannot be** for any of the following crimes:
 - **Second-degree murder under P.L. § 125.25 (5) (killing of a child under 14 years old by a person over 18 years of age during a sexual act)**
 - **First-degree murder under P.L. § 125.27**
 - **Aggravated murder under P.L. § 125.26**
 - **Acts of terrorism under P.L. Art. 490**
 - **The attempt or conspiracy to commit any of the above-listed crimes**
 - **Any offense requiring registration under the Sex Offender Registration Act**
- (4) Crime Date: the alleged crime must have been committed before August 12, 2019;
- (5) Domestic Abuse: applicant must have been the victim, or suffering from the effects, of domestic violence in that he or she was subjected to substantial physical, sexual or psychological abuse;
- (6) Abuser: applicant’s abuser must have been a family member or someone who lived in the same household or foster home; that includes someone the applicant was or is married or engaged to, someone related by blood or adoption (for example, a parent, sibling, aunt/uncle, cousin), someone who usually lived in the same home, someone the applicant has a child with, or someone the applicant has or had an intimate relationship with even if they never lived together;
- (7) Relationship of the Crime to the Abuse: the abuse must have been a “significant contributing factor” to the alleged criminal behavior. However, the abuser does not have to be the alleged victim of the crime of which the applicant was convicted.

II. Application Process

(1) Applicants Not Represented by Assigned Appellate Counsel: applying for resentencing is a two-step process.

a. Submit an Affidavit to Apply for Resentencing & Assignment of Counsel Form

(i) This is a sworn affidavit in which the applicant attests to satisfying the (7) factors listed above as well as additional factors demonstrating the financial need for a free attorney. Applicants can obtain this form by writing to:

1. For applicants convicted in New York City:

Center for Appellate Litigation
120 Wall Street, 28th Floor
New York, NY 10005
ATTN: Domestic Violence Survivors Justice Act Information

2. For applicants convicted outside of New York City:

Cynthia Feathers
NYS Office of Indigent Legal Services
Alfred E. Smith Building
80 S. Swan Street, Suite 1147
Albany, NY 12210

(ii) For convictions arising **outside** of New York City only: documentation, like a DOCCS inmate locator printout or time sheet, should also be submitted as proof that the applicant is still incarcerated and serving at least an 8-year sentence.

(iii) Where to send completed forms: depends upon the county in which the applicant was convicted:

1. Upstate Counties: send form **and** supporting documents to the judge that imposed the sentence the applicant is currently serving.

2. New York County:

The CAP Unit
Criminal Term, New York County Supreme Court
100 Centre Street Courthouse, 10th Floor
New York, NY 10013

* a courtesy copy can be sent to the sentencing judge as well

3. Bronx County:
Hon. Robert E. Torres, Administrative Judge
Criminal Term, Bronx County Supreme Court
265 East 161st Street
Bronx, NY 10451
 4. Kings County:
Kings County Supreme Court, Criminal Term
Motions Department
320 Jay Street
Brooklyn, New York 11201
 5. Queens County:
Honorable Joseph A. Zayas
Administrative Judge
Queens County Supreme Court, Criminal Term
125-01 Queens Boulevard
Kew Gardens, New York 11415
 6. Richmond County:
Richmond County Supreme Court, Criminal Term
Motions Department
26 Central Avenue
Staten Island, New York 10301
- b. Decision on Requests: the court will notify the applicant by mail as to whether their request to apply for resentencing & assignment of counsel has been accepted or rejected.
- (i) If Accepted: applicant will be represented by an attorney and can submit a motion to be resentenced.
 1. This motion must include at least two documents showing the applicant was subjected to domestic violence. At least one document must be one of the following:
 - (a) court record
 - (b) pre-sentence report
 - (c) social services record
 - (d) hospital record
 - (e) sworn statement from a witness to the domestic violence
 - (f) law enforcement record
 - (g) domestic incident report
 - (h) order of protection

2. The motion should also demonstrate why the applicant should be resentenced by:
 - (a) explaining how the abuse was a substantial contributing factor to the criminal behavior; and
 - (b) providing other mitigating information that shows the court why the applicant is a good candidate for resentencing, such as the applicant's institutional record of confinement, including disciplinary history, participation in parenting, substance abuse, and domestic violence programs, or an explanation of why the applicant has not yet participated in programming.
- (ii) If Rejected: submit a new application if applicant or court made an error; if application is rejected a second time, applicant should contact the provider from which he or she obtained the affidavit form for further assistance (see Section II (1) (a) (i)).
- (2) Applicants Currently or Previously Represented by one of the following Assigned Appellate Providers:

Office of the Appellate Defender
Legal Aid Society
Center for Appellate Litigation
Appellate Advocates

-- may not have to submit a form affidavit; applicant should contact assigned counsel directly; with counsel, applicant may be able to automatically submit a resentencing motion to the court that imposed the sentence they are currently serving. This motion is the same as described in Section II (1) (b) (i).