

NEW YORK SUPREME COURT
APPELLATE DIVISION – SECOND DEPARTMENT

THE PEOPLE OF THE STATE OF
NEW YORK,
Respondent,

v.

NICOLE ADDIMANDO,
Defendant-Appellant.

App. Div. Docket No. 2020-02485

Dutchess County Indictment
No. 74/2018

**NOTICE OF MOTION FOR
LEAVE TO FILE THE
ATTACHED PROPOSED BRIEF
OF LEGISLATORS AS *AMICI
CURIAE***

PLEASE TAKE NOTICE that, on the attached affirmation of Eric R. Breslin (the “Breslin Affirmation”), dated August 6, 2020, Assemblyman Jeffrion L. Aubry, Senator Brian A. Benjamin, Senator Alessandra Biaggi, Senator David Carlucci, Senator Andrew Gounardes, Senator Brad Hoylman, Senator Monica R. Martinez, Senator Shelley B. Mayer, Senator Zellnor Myrie, Senator Kevin S. Parker, Senator Roxanne J. Persaud, Senator Gustavo Rivera, Senator Diane J. Savino, and Senator Luis R. Sepúlveda will move this Court, at a term for motions to be held on August 24, 2020, at the Appellate Division Courthouse, 45 Monroe Place, Brooklyn, New York, 11201, at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order granting them leave to file a brief as *amici curiae*, pursuant to 22 NYCRR §§ 670.4(c), 1250.4(f). A copy of the brief is attached to the Breslin Affirmation and is submitted in support of the Brief for Appellant, Nicole Addimando, filed on July 30, 2020.

PLEASE TAKE FURTHER NOTICE that, under CPLR 2214(b), answering papers, if any, shall be served on the undersigned counsel at least seven (7) days prior to the return of this motion.

Respectfully submitted,

Dated: August 6, 2020
New York, New York



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**AFFIRMATION OF ERIC R.
BRESLIN IN SUPPORT OF
MOTION FOR LEAVE TO FILE
THE ATTACHED PROPOSED
BRIEF OF LEGISLATORS AS
*AMICI CURIAE***

ERIC R. BRESLIN duly affirms under penalties of perjury as follows:

1. I am an attorney at law admitted to practice in the State of New York and a member of the law firm Duane Morris LLP, counsel to Assemblyman Jeffrion L. Aubry, Senator Brian A. Benjamin, Senator Alessandra Biaggi, Senator David Carlucci, Senator Andrew Gounardes, Senator Brad Hoylman, Senator Monica R. Martinez, Senator Shelley B. Mayer, Senator Zellnor Myrie, Senator Kevin S. Parker, Senator Roxanne J. Persaud, Senator Gustavo Rivera, Senator Diane J. Savino, and Senator Luis R. Sepúlveda, collectively the “Proposed Amici.”

2. I am familiar with the facts and circumstances set forth below and submit this affirmation in support of a motion, under 22 NYCRR §§ 670.4(c), 1250.4(f), by the Proposed Amici for leave to file the attached proposed brief as

amici curiae in support of the Brief for Appellant, submitted by Nicole Addimando on July 30, 2020.

3. We request permission to file the accompanying brief for the following reasons:

4. Proposed Amici are members of the New York Senate and Assembly who sponsored or supported the passage of the Domestic Violence Survivors Justice Act (the “DVSJA”), which was passed in March 2019 and signed into law in May 2019.

5. Proposed Amici come from areas across the State and count over 4.37 million people as constituents. The following legislators have agreed to be Proposed Amici:

- a. Assemblyman Jeffrion L. Aubry, Assembly District 35
- b. Senator Brian A. Benjamin, 30th Senate District
- c. Senator Alessandra Biaggi, 34th Senate District
- d. Senator David Carlucci, 38th Senate District
- e. Senator Andrew Gounardes, 22nd Senate District
- f. Senator Brad Hoylman, 27th Senate District
- g. Senator Monica R. Martinez, 3rd Senate District
- h. Senator Shelley B. Mayer, 37th Senate District
- i. Senator Zellnor Myrie, 20th Senate District

- j. Senator Kevin S. Parker, 21st Senate District
- k. Senator Roxanne J. Persaud, 19th Senate District
- l. Senator Gustavo Rivera, 33rd Senate District
- m. Senator Diane J. Savino, 23rd Senate District
- n. Senator Luis R. Sepúlveda, 32nd Senate District

6. Proposed Amici have a strong interest in this case because it presents the first opportunity for the Appellate Division to consider the application of the DVSJA to a victim of domestic violence. Indeed, the trial court in this case was among the first to address the statute and determine its applicability.

7. As Proposed Amici explain in the attached brief, this appeal therefore serves as a test of the effectiveness of this new legislation, which was designed to reform the methods by which courts impose criminal sentences on survivors of domestic violence.

8. As set forth in the attached brief, Proposed Amici are particularly interested in ensuring that this Court appreciates the goal of the Legislature in passing the DVSJA—namely, to encourage judges to impose more appropriately tailored sentences for domestic violence survivors who commit crimes that have a substantial connection to their history of abuse.

9. Proposed Amici therefore seek leave to submit this brief to provide this Court with the legislative history of the DVSJA and an understanding of the

purpose of the DVSJA from the perspective of those who sponsored, advocated for, and supported this legislation.

10. The attached brief by Proposed Amici further explains that the DVSJA was enacted to protect individuals like Nicole Addimando, the defendant here, who presented credible evidence of her history of abuse and how that abuse led to the death of her abuser. Rather than giving effect to this legislation, the trial court reverted to outdated ideas of domestic violence and discredited theories in which victims of abuse are faulted for not leaving their abusers or fighting back to protect themselves. By relying on these outdated conceptions, the court misapplied the DVSJA and ignored the intent of the legislation.

11. The Proposed Amici are concerned that, if the trial court's decision not to apply the DVSJA is upheld, the DVSJA will be rendered effectively meaningless. Indeed, if the trial court's rationale is affirmed, it may become almost insurmountably difficult for most survivors of domestic violence to gain the intended benefit of the Act.

12. If Ms. Addimando's conviction is otherwise affirmed, Proposed Amici urge this Court to vacate the sentence imposed and remand with instructions to sentence Ms. Addimando under the DVSJA.

13. Proposed Amici's motion is made on notice to all parties.

14. Counsel for Proposed Amici have contacted the attorneys for all parties to this action to seek consent. Counsel for Appellant Nicole Addimando has consented. No other parties have yet consented.

15. Because the Proposed Amici believe the proposed brief will be of special assistance to this Court, we respectfully request that the Proposed Amici be granted leave to submit the accompanying brief, together with such other and further relief as the Court may deem to be just and proper.

Respectfully submitted,



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Dated: August 6, 2020
New York, New York

New York Supreme Court

Appellate Division – Second Department

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THE PEOPLE OF THE STATE OF NEW YORK,

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- against -

NICOLE ADDIMANDO,

Defendant-Appellant.

BRIEF OF LEGISLATORS AS *AMICI CURIAE*

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INTEREST OF AMICI CURIAE

Amici curiae are members of the New York Senate and Assembly who sponsored or supported the passage of the Domestic Violence Survivors Justice Act (the “DVSJA”), which was passed in March 2019 and signed into law in May 2019. Amici come from areas across the State and count over 4.37 million people as constituents. The following legislators are signatories to this brief:

Assemblyman Jeffrion L. Aubry, Assembly District 35

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Senator Gustavo Rivera, 33rd Senate District

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Senator Luis R. Sepúlveda, 32nd Senate District

Amici have a strong interest in this case because it presents the first opportunity for the Appellate Division to consider the application of the DVSJA to a victim of domestic violence. Indeed, the trial court in this case was among the first to address the statute and determine its applicability. This appeal therefore serves as a test of the effectiveness of this new legislation, which was designed to reform the methods by which courts impose criminal sentences on survivors of domestic violence.

Amici are particularly interested in ensuring that this Court appreciates the goal of the Legislature in passing the DVSJA—namely, to encourage judges to impose more appropriately tailored sentences for domestic violence survivors who commit crimes that have a substantial connection to their history of abuse. Amici therefore submit this brief to provide this Court with the legislative history of the DVSJA and an understanding of the purpose of the DVSJA from the perspective of those who sponsored, advocated for, and supported this legislation. This brief further explains that the DVSJA was enacted to protect individuals like Nicole Addimando, the defendant here, who presented credible evidence of her history of abuse and how that abuse led to the death of her abuser.

Rather than giving effect to this legislation, the trial court reverted to outdated ideas of domestic violence and discredited theories in which victims of abuse are faulted for not leaving their abusers or fighting back to protect

themselves. By relying on these outdated conceptions, the court misapplied the DVSJA and ignored the intent of the legislation. The signatories of this brief are concerned that, if the trial court's decision not to apply the DVSJA is upheld, the DVSJA will be rendered effectively meaningless. Indeed, if the trial court's rationale is affirmed, it may become almost insurmountably difficult for most survivors of domestic violence to gain the intended benefit of the Act. If Ms. Addimando's conviction is otherwise affirmed, Amici urge this Court to vacate the sentence imposed and remand with instructions to sentence Ms. Addimando under the DVSJA.

INTRODUCTION AND SUMMARY OF ARGUMENT

Nicole Addimando suffered brutal abuse from her domestic partner, Christopher Grover, for many years. Mr. Grover tortured, burned, and raped Ms. Addimando and engaged in all manner of sadistic and manipulative behavior. *See, e.g.*, Trial Tr. at 640, 647-75, 697-705, 734-36. During the evening of September 27, 2017, after being visited by Child Protective Services earlier in the day because of reports that Mr. Grover was abusing Ms. Addimando, Mr. Grover brandished a gun and threatened to kill Ms. Addimando, leaving their two young children without a mother. Trial Tr. at 719-21, 740-41, 1053. Faced with these threats against the backdrop of terror and trauma that Mr. Grover's repeated abuse instilled, Ms. Addimando retrieved the gun and fatally shot Mr. Grover. Trial Tr. at 744. At her trial, Ms. Addimando recounted the horrific abuse she suffered and the ever-present fear for her life. *See, e.g.*, Trial Tr. at 641, 644-78, 686-716. The jury nevertheless found her guilty of second-degree murder. Ms. Addimando then asked the court to sentence her under the newly-enacted Domestic Violence Survivors Justice Act (the "DVSJA" or "Act"), codified in Penal Law § 60.12.

The DVSJA allows judges to use their discretion to impose tailored sentences for individuals like Ms. Addimando—survivors of domestic violence who are convicted of crimes, including against the perpetrator of domestic violence. The DVSJA reflects the New York State Legislature's recognition of the

inextricable connection between domestic violence and the incarceration of women. The DVSJA is the culmination of the Legislature's repeated efforts to reform a criminal justice system that responds too harshly to domestic violence survivors who commit crimes that are substantially related to the effects of domestic violence. Now, if survivor-defendants demonstrate their eligibility for the alternative sentencing mechanisms in the DVSJA, judges have the discretion to impose shorter sentences or, in appropriate cases, utilize alternatives to incarceration.

Ms. Addimando was a prime candidate for sentencing under the DVSJA. She supported her request for sentencing under the DVSJA with days of testimony from friends, acquaintances, and medical professionals who observed and documented the injuries she suffered at the hands of Mr. Grover. *See, e.g.*, CPL § 60.12 Hearing Tr. at 12-13, 16-20 (testimony of Lori Horning, a social worker and neighbor); CPL § 60.12 Hearing Tr. at 52-53, 59-69, 73-77, 83-97, 116-19, (testimony of Sarah Caprioli, a licensed therapist and friend); CPL § 60.12 Hearing Tr. at 276, 278-81 (testimony of Robin Jane Nason, a licensed clinical social worker). These witnesses also testified that they had observed circumstantial evidence that Mr. Grover had taken pictures of Ms. Addimando—who was naked, bound, and gagged—and posted them on pornography websites without her consent. CPL § 60.12 Hearing Tr. at 97-101, 107-10.

Ms. Addimando corroborated this testimony with pictures and other records of her injuries and abuse. *See, e.g.*, Defendant’s Exhibits HH-OO, QQ-YY, BBB, DDD, FFF-KKK, MMM, BBBB. And at trial, Ms. Addimando offered her own testimony about Mr. Grover’s sadistic treatment. *See, e.g.*, Trial Tr. at 641, 644-78, 686-716. An expert on domestic violence testified on Ms. Addimando’s behalf to explain why victims of abuse remain in abusive relationships, fail to take advantage of resources to help them leave their abusers, and may not want their abusers to be prosecuted. CPL § 60.12 Hearing Tr. at 305-31. Based on her history of abuse, the un rebutted evidence that her abuse significantly contributed to her crime, and her lack of any criminal history, Ms. Addimando requested to be sentenced to five to fifteen years’ imprisonment in accordance with the DVSJA.

The trial court declined to apply the statute and instead imposed a life sentence with the possibility of parole after nineteen years. In ruling that the DVSJA did not apply to Ms. Addimando’s case, the judge faulted Ms. Addimando for failing to leave her abuser, remarking that she had “advice, assistance, support, and opportunities to escape her alleged abusive situation.” Decision and Order re: CPL § 60.12, dated February 4, 2020, at 42. The court concluded that “[t]he decision not to accept the advice and help of these individuals when viewed in the context of the homicide facts, significantly weakens the defendant’s position in her

use of deadly force.” *Id.* Similarly, the court determined that Ms. Addimando should have escaped the house rather than shoot Mr. Grover. *Id.* at 43.

By denying Ms. Addimando’s motion to be sentenced under the DVSJA, the court ignored the intent of the Legislature in passing the Act. The court compounded its error by relying on outdated conceptions of how domestic violence victims should act and the circumstances that might lead them to commit crimes, especially against their abusers. As discussed in detail below, the Legislature expressly disproved of these outdated notions when it chose to enact the DVSJA. Importantly, the Legislature specifically rejected the idea that an abuse victim should be expected to leave her abuser in order to avoid harsh criminal penalties.

The court’s decision in refusing to apply the DVSJA disturbingly results in an interpretation of the Act that renders the statute’s conditions practically impossible for any domestic violence survivor to satisfy. Rather than recognizing the significant trauma that victims of domestic violence suffer, considering that trauma during sentencing, and treating Ms. Addimando with compassion, the trial court discounted the evidence Ms. Addimando presented. Moreover, the court unduly emphasized Ms. Addimando’s failure to leave her abuser—a fact that is present in many cases in which victims of abuse kill their abuser. If left uncorrected, the trial court will have rendered the DVSJA effectively powerless to protect those most in need of protection in the criminal justice system, including

Ms. Addimando. This Court should therefore vacate Ms. Addimando’s sentence and remand for re-sentencing under the DVSJA, if she is not granted a new trial.

ARGUMENT

I. The Legislature amended Penal Law § 60.12 to remedy the defects in prior legislation.

The DVSJA allows trial courts to sentence a defendant who was also the victim of domestic violence to a shorter, determinate sentence than the one she would receive under the otherwise-applicable sentencing scheme. By allowing the court to use its discretion to sentence survivor-defendants to shorter, determinate sentences, the DVSJA remedied one of the major problems with the prior legislation that was supposedly meant to benefit domestic violence survivors. *See* New York State Assembly Memorandum in Support of Legislation, Bill No. A3974 (“Assembly Memorandum of Support”), at 2, attached as Appendix A.¹ Under the prior version of Penal Law § 60.12, which was enacted as part of the 1998 Sentencing Reform Act, more commonly known as Jenna’s Law, judges were allowed to sentence survivors of domestic violence to indeterminate sentences. *Id.*

Although the Legislature, when passing Jenna’s Law, assumed that the provision would result in survivor-defendants receiving shorter sentences than if

¹ The Assembly Memorandum of Support is available at: https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03974&term=2019&Memo=Y (last visited July 6, 2020).

they had been sentenced without regard to their status as victims of domestic violence, that turned out not to be the case. *Id.* Instead, Jenna’s Law was only used once between 1998 and 2019, and, in that case, it actually had the opposite effect of that intended by the Legislature. *Id.* Rather than receiving a shorter sentence, the survivor-defendant was sentenced to a longer term of imprisonment than the minimum term allowed if Jenna’s law had not been applied. *Id.* Thus, Jenna’s Law failed to accomplish the Legislature’s aim of imposing more compassionate sentences on victims of domestic violence who commit crimes because of the violence they suffered.

The DVSJA was meant to remedy the problems with Jenna’s Law. The Legislature recognized that Jenna’s Law failed to instruct members of the judiciary to consider fully the impact of domestic violence on survivors during sentencing. *Id.* Without such consideration of and appreciation for the circumstances that may have caused a victim of domestic violence to commit a crime, the trial courts often imposed “long, unfair prison sentences.” *Id.*

The DVSJA aimed to ameliorate these problems and implement the New York State Sentencing Commission’s recommendation that Jenna’s Law be replaced with “a comparable ameliorative provision that would allow for the imposition of less harsh, determinate sentences” in cases involving defendants who were victims of domestic violence. *Id.* Rather than imposing more requirements

on judges and making it harder for domestic violence survivors to be sentenced to shorter prison terms, the DVSJA reflected the Legislature’s intent to remove restrictions on judges and allow for less punitive sentences.

II. The Legislature intended victims of domestic violence to be sentenced compassionately, not further victimized.

In proposing the DVSJA, the sponsors of the bill recognized that, “[o]ver the past 30 years, domestic violence has been increasingly recognized as a national epidemic.” *Id.* As Assemblymember Aubry, a principal sponsor of the bill and signatory of this brief recognized, “[p]eople for many years did not report domestic violence” and “did not record it, afraid that they would be treated differently.” N.Y. Assembly on No. A03974, March 4, 2019, at 12, attached as Appendix B.² Once domestic violence cases started being recorded, studies showed the close linkage between domestic violence and the incarceration of women. For example, 90% of incarcerated women have experienced severe physical or sexual violence during their lives, and 75% of incarcerated women suffered severe physical violence at the hands of an intimate partner. *See* Assembly Memorandum of Support, at 1, Appendix A.³

² The transcript is available at: <http://www2.assembly.state.ny.us/write/upload/transcripts/2019/3-4-19.pdf> (last visited July 6, 2020).

³ These statistics have been verified in a number of studies. For example, in a 1999 study of women incarcerated at the Bedford Hills Correctional Facility, 75% of

Yet, even with the significant advances in social services and in society as a whole in recognizing the scourge of domestic violence, until passage of the DVSJA, the Legislature had not been succeeding in “reforming the unjust ways in which the criminal justice system responds to and punishes domestic violence survivors who act to protect themselves from an abuser’s violence.” *Id.* The sponsors of the Act were concerned that, in too many cases, when a survivor of abuse acts to defend herself and her children, the “criminal justice system responds with harsh punishment instead of with compassion and assistance.” *Id.* The Legislature attributed this problem to the current sentencing scheme under which judges lacked the discretion to consider fully “the impact of domestic violence

incarcerated women suffered severe physical violence by intimate partners, with 35-40% experiencing the most severe forms of abuse, such as being choked, threatened with a knife or gun, or forced to participate in sexual activity. *See* Angela Browne, et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, 22 *Int’l J. of Law & Psychiatry* 301, 308, 313 (1999). Similarly, a study by the New York State Division of Criminal Justice Services found that 93% of women convicted of killing an intimate partner had also been physically or sexually abused by an intimate partner. *See* New York State Division of Criminal Justice Services, *Homicide by Women*, at 8 (June 1996). Overall, experts agree that there is “a strong connection . . . between women’s victimization by intimate partners and the incidence of homicide women commit against those partners,” with most homicides by women resulting from “physical, sexual, and emotional abuse that has escalated to the point that women feel their well-being and even their lives are in immediate danger and kill as an effort toward self-preservation or in self-defense.” Vickie Jensen, *Why Women Kill* 11-12 (1996).

when determining sentence lengths.” *Id.* This lack of discretion led to “long, unfair prison sentences for many survivors.”⁴

The DVSJA was therefore proposed to “chang[e] the system that treats [domestic violence survivors] even more harshly than they do others in the criminal justice system.” N.Y. Senate on No. S1077, March 12, 2019, at 1576

⁴ Notably, “[t]he average prison sentence of men who kill their women partners is 2 to 6 years. Women who kill their partners are sentenced on average to 15 years, despite the fact that most women who[] kill do so in self-defense.” Bernice R. Kennedy, *Domestic Violence: A.K.A. Intimate Partner Violence (IPV)* 52 (2007). Women are also often charged with more serious crimes than their male counterparts after killing a partner. See Elisabeth Ayyildiz, *When Battered Woman’s Syndrome Does Not Go Far Enough: The Battered Women as Vigilante*, 4 J. of Gender & The Law 141, 142-43 (1995). These trends hold true in New York as well. For example, Valerie Seeley was sentenced to 19 years to life for killing her abusive partner during an argument. (See *People v. Seeley*, 683 N.Y.S.2d 795, 798-99 [Sup. Ct., Kings County 1998]); see also *Seeley v. Perez*, No. 06 Civ. 1916, 2008 WL 3992289, at *1 (E.D.N.Y. Aug. 26, 2008). Niki Rossakis was initially sentenced to 23 years to life for killing her abusive husband; her sentence was reduced on appeal to 15 years to life. (*People v. Rossakis*, 256 A.D.2d 366 [2d Dept 1998]). Cynthia Galens was sentenced to 23 years after being convicted of first-degree manslaughter for poisoning and killing her abusive partner. See *Galens v. Kaplan*, 15-CV-37A, 2017 WL 2774194, at *2, 4 & nn. 7-8 (W.D.N.Y. May 15, 2017). Kelly Forbes was sentenced to 21 years’ imprisonment for first-degree manslaughter for killing her husband after he tried to strangle her. (See *People v. Forbes*, 75 A.D.3d 608 [2d Dept 2010] and associated briefing). Theresa Debo was convicted of second-degree murder and was sentenced to 22 years to life for killing her partner, even though her partner was abusive for many years and, on the night in question, hit her on the head with a beer bottle and threatened her with a gun. (See *People v. Debo*, 45 A.D.3d 1349 [4th Dept 2007] and associated briefing).

(statement of Senator Montgomery), attached as Appendix C.⁵ As many in the Assembly and the Senate recognized, “all too often in our court system when women are defending themselves against domestic violence, instead of being met with a judge with compassion and assistance and help, the judge is just putting forth punishment.” *Id.* at 1572 (statement of Senator Carlucci).

The Legislature intended the DVSJA to change that paradigm by ensuring judges would only sentence victims in accordance with all the facts of a case, including their history of domestic abuse. N.Y. Assembly on No. A03974, March 4, 2019, at 18, Appendix B. As Senator Persaud, the principal sponsor of the Act in the Senate, explained, “we should not hold [domestic violence survivors] accountable to the extent that the law has been holding them accountable. The law should take into consideration the circumstances that they were living under when they’re being sentenced.” N.Y. Senate on No. S1077, March 12, 2019, at 1569-70, Appendix C.

Among the factors that judges can consider are the system’s failure to protect these victims, even when some resources are available. As Assemblymember Barron explained when speaking in support of the Act,

⁵ Transcript is available at: <https://legislation.nysenate.gov/pdf/transcripts/031219.txt/> (last visited July 6, 2020).

“sometimes these victims are not protected and . . . commit desperate acts for whatever reasons.” N.Y. Assembly on No. A03974, March 4, 2019, at 20, Appendix B. Assemblymember Barron recognized that “we don’t know what it means emotionally and physically to be a victim of domestic violence,” and for that reason, survivors of abuse should receive the “highest of reconsideration and sensitivity.” *Id.*

The Legislature did not intend for the Act to absolve victims of abuse of all consequences of their crimes; however, it sought to recognize that “these women are victims, [and] they should be treated as such.” N.Y. Senate on No. S1077, March 12, 2019, at 1570, Appendix C. In many cases, these victims “have suffered enough,” and the sentencing judge should “take into consideration what [the defendants] have gone through [and] what they were living with.” *Id.*

The Legislature also supported the DVSJA because it allows the victim-defendants to return home to their families much sooner and rebuild their relationships with their children. *See* Assembly Memorandum of Support, at 2, Appendix A. Allowing for shorter prison sentences for victim-defendants is particularly appropriate because, in most cases, they have “no prior criminal records, no history of violence, and extremely low recidivism rates.” *Id.* Remarkably, “of the 38 women convicted of murder and released between 1985

and 2003, not a single one returned to prison for a new crime within a 36-month period of release—a 0% recidivism rate.” *Id.*

Most importantly, the Legislature recognized that the ability to live free from violence is an essential human right. *Id.* By enacting the DVSJA, the government of New York “recognized its responsibility to preserve this right and provide support” for survivors of domestic violence. *Id.* This responsibility crucially “does not end when a survivor becomes involved in the criminal justice system because of the abuse she suffers.” *Id.*

Ultimately, the DVSJA was meant to “address the years of injustice faced by survivors whose lives have been shattered by domestic abuse and decrease the likelihood of survivors being victimized by the very system that should help protect them.” *Id.* On that basis, the DVSJA enjoyed overwhelming support, with 54 Senators and 103 Assemblymembers voting in favor of the Act.

III. The DVSJA was meant to be used to sentence survivor-defendants like Ms. Addimando.

For the Act to have any meaning, judges must recognize the spirit of the law and actually implement it to help those who have suffered for years as victims of abuse and become involved in the criminal justice system as a result. The judge in Ms. Addimando’s case failed to do so, further victimizing Ms. Addimando and stripping the DVSJA of its intended effect.

A. By refusing to apply the DVSJA, the trial court failed to adhere to the spirit of the law.

As explained in detail above, the primary purpose of the DVSJA was to avoid further victimizing survivors of domestic abuse when they enter the criminal justice system because of the abuse they suffered. Such survivors should be treated with compassion, and all the circumstances of their abuse should be accounted for when imposing a sentence.

The trial court failed in these goals in Ms. Addimando's case. Rather than taking Ms. Addimando's circumstances into account when imposing a sentence, the trial court disregarded and discredited her history of abuse. Despite calling Ms. Addimando's story "compelling," the court refused to apply the DVSJA because, in the court's view, Ms. Addimando gave inconsistent statements about her history of abuse. Decision and Order re: CPL § 60.12, dated February 4, 2020, at 41-42. The court thought Mr. Grover did not fit the profile of an abuser and discredited Ms. Addimando's testimony because she revealed the identity of her abuser "to only two witnesses." *Id.* at 16, 41-42. The court also denied application of the DVSJA because Ms. Addimando did not leave her abuser when she had the chance, either in the weeks and months before Mr. Grover's death, or in the moments before shooting Mr. Grover when she had, in the court's perception, a path to escape. *Id.* at 42-43.

On the basis of these findings, the court found that Ms. Addimando failed to establish each of the three elements of the DVSJA. The court's opinion denying the motion for sentencing under the DVSJA makes clear that the court failed to give meaningful consideration to the purpose and the goals of the Act. The court refused to recognize the DVSJA as the paradigm shift that the Legislature intended it to be. The result is a sentence that utterly fails to take into account the circumstances in which Ms. Addimando found herself on the night of September 27, 2017.

B. Using the DVSJA to sentence Ms. Addimando would fulfill all the policy goals advanced by the Legislature in passing the DVSJA.

If the trial court had met Ms. Addimando with understanding rather than hostility, the court would have recognized that Ms. Addimando's case was ripe for application of the DVSJA. Ms. Addimando testified credibly about her extensive and horrific history of abuse. *See, e.g.*, Trial Tr. at 640, 647-75, 697-705, 734-36. She explained how she was raped, burned, strangled, bitten, and beaten by Mr. Grover. *Id.* During the abuse, Mr. Grover filmed and photographed her and then posted those videos and photographs on pornography sites without her consent. CPL § 60.12 Hearing Tr. at 97-101, 107-10. When evaluated by counselors experienced with domestic violence, Ms. Addimando was judged to be in severe danger. *Id.* at 119. Yet, Ms. Addimando did not leave her abuser or report him to the police. Ms. Addimando also knew that the most dangerous time for a victim of

domestic abuse is when she tries to leave her abuser. *See* Sentencing Tr. of Feb. 11, 2020 at 27.

In the evening of September 27, 2017, after being visited by Child Protective Services, Mr. Grover threatened Ms. Addimando with a gun. Trial Tr. at 721-28, 730-31. He claimed that he would kill her and then commit suicide so that the children would be orphans. *Id.* at 741-43. He conducted Internet searches on his phone about killing Ms. Addimando in her sleep. *Id.* at 731-32, 113-14. And when he continued his threats, Ms. Addimando shot Mr. Grover with the same gun that he had been pointing at her. *Id.* at 744-46.

At her sentencing, Ms. Addimando explained that she wished “more than anything this ended another way.” Sentencing Tr. of Feb. 11, 2020, at 27:2-3. Ms. Addimando recognized that if it had ended differently, she would not be in the courtroom but, in her view, she also “wouldn’t be alive either, and [she] wanted to live.” *Id.* at 27:3-5. Ms. Addimando explained, “I wanted this all to stop. I was afraid to stay, afraid to leave, afraid that nobody would believe me, afraid of losing everything. This is why women don’t leave.” *Id.* at 27:5-8. Ms. Addimando expressed that she knew “killing is not a solution and staying hurts, but leaving doesn’t mean living. So often we end up dead or where I’m standing alive but still not free.” *Id.* at 27:9-12.

Ms. Addimando was a prime candidate for sentencing under the DVSJA. As her statement and the testimony at trial demonstrate, Ms. Addimando experienced cumulative, long-term physical and psychological abuse by an intimate partner. Because of that abuse, she killed her partner. She deserves compassion and understanding rather than further victimization by the criminal justice system. And her sentence should have taken into account the suffering she has already experienced rather than just heaping on punishment.

The primary goal of the DVSJA is to allow and, in fact, to encourage judges to shift their thinking about what it means to be a victim of domestic violence. The DVSJA recognizes the profound suffering that has led these victims to commit crimes and seeks to prevent further victimization through inappropriately harsh punishments. The DVSJA should be read and applied broadly to effectuate this goal.

Furthermore, Ms. Addimando's case does not present any public safety concerns that should preclude sentencing under the DVSJA. Like many other survivor-defendants, Ms. Addimando has no prior criminal history and no history of violence. Just as most incarcerated women have very low recidivism rates, Ms. Addimando, too, is highly unlikely to reoffend. Moreover, she has two young children, who were ages two and four on the night their father died. They are now facing a minimum of almost twenty years without any parents in their lives.

Sentencing Ms. Addimando under the DVSJA would allow her to be reunited with her children with less damage to their lives and development, and a meaningful opportunity to rebuild her family.

The DVSJA was enacted with the understanding and intent that it should actually be employed by courts and given its full effect. It was meant to help victims and to reform a system that was unduly harsh and punitive when addressing survivors of domestic violence. Ms. Addimando's case presented one of the first opportunities for application of the DVSJA, but the trial court failed to give the act its intended effect. Moreover, the trial court's reasoning for refusing to apply the DVSJA made clear that the court's decision was rooted in outdated and roundly-rejected misunderstandings of domestic violence and its profound impact on survivors.

The court clearly did not consider the legislative history of the Act. Nor did the court effectuate the goal of the Legislature in allowing individuals like Ms. Addimando to receive more compassionate and tailored sentences in recognition of the abuse they suffered and how that abuse led them to commit the offense at issue. This Court should correct that error now and preserve the DVSJA's status as a meaningful legislative reform to the criminal justice system.

CONCLUSION

Ms. Addimando was precisely the type of survivor-defendant that the Legislature intended to help by enacting the DVSJA. The court erred by failing to apply the DVSJA and recognize that a more compassionate sentence under the Act was warranted and appropriate here. If this Court declines to overturn Ms. Addimando's conviction, it should vacate her sentence and remand with instructions to sentence Ms. Addimando under the DVSJA.

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CERTIFICATE OF COMPLIANCE WITH 22 NYCRR 670.10.3(a)(f)

Eric R. Breslin, an attorney duly admitted to practice in the courts of the State of New York and attorney for the Amici, certifies that the foregoing brief was prepared on a computer using size 14 Times New Roman font and is double spaced. According to the word count function of Microsoft Word, the brief contains 4,690 words, not including the table of contents, table of authorities, and this certificate of compliance.

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