

**DOMESTIC VIOLENCE
SURVIVORS JUSTICE
ACT:**

***SENTENCING
AND
RESENTENCING***

Prepared by:

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***In Cooperation with the
Onondaga County Bar Association
Assigned Counsel Program***

TABLE OF CONTENTS

Statutes.....	3
Procedures for DVSJA Penal Law § 60.12 Alternative Sentence	10
DVSJA Alternative Sentence Charts	12
Sample Initial Letter to Prospective Client.....	15
Initial Questionnaire.....	17
DVSJA CPL § 440.47 Resentencing Application Process (Step-by-Step).....	20
DVSJA Eligibility Checklist.....	23
Request to Apply for Resentencing	25
Judicial Notification.....	27
Evidentiary Eligibility Checklist.....	28
Questionnaire – Identifying and Investigating Domestic Violence.....	29
Application for Resentencing (Sample).....	32

DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT

§ 60.12. Authorized disposition; alternative sentence; domestic violence cases.

1. Notwithstanding any other provision of law, where a court is imposing sentence upon a person pursuant to section 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title, other than for an offense defined in section 125.26, 125.27, subdivision five of section 125.25, or article 490 of this chapter, or for an offense which would require such person to register as a sex offender pursuant to article six-C of the correction law, an attempt or conspiracy to commit any such offense, and is authorized or required pursuant to sections 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title to impose a sentence of imprisonment, the court, upon a determination following a hearing that (a) at the time of the instant offense, the defendant 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 defendant as such term is defined in subdivision one of section 530.11 of the criminal procedure law; (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to section 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title would be unduly harsh may instead impose a sentence in accordance with this section.

A court may determine that such abuse constitutes a significant contributing factor pursuant to paragraph (b) of this subdivision regardless of whether the defendant raised a defense pursuant to article thirty-five, article forty, or subdivision one of section 125.25 of this chapter.

At the hearing to determine whether the defendant should be sentenced pursuant to this section, the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. Reliable hearsay shall be admissible at such hearings.

2. Where a court would otherwise be required to impose a sentence pursuant to section 70.02 of this title, the court may impose a definite sentence of imprisonment of one year or less, or probation in accordance with the

provisions of section 65.00 of this title, or may fix a determinate term of imprisonment as follows:

(a) For a class B felony, the term must be at least one year and must not exceed five years;

(b) For a class C felony, the term must be at least one year and must not exceed three and one-half years;

(c) For a class D felony, the term must be at least one year and must not exceed two years; and

(d) For a class E felony, the term must be one year and must not exceed one and one-half years.

3. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to section 70.00 of this title, the court may fix a determinate term of imprisonment of at least five years and not to exceed fifteen years.

4. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (i) of paragraph (b) of subdivision two of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least five years and not to exceed eight years.

5. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (i) of paragraph (b) of subdivision three of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least five years and not to exceed twelve years.

6. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (ii) of paragraph (b) of subdivision two of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least one year and not to exceed three years.

7. Where a court would otherwise be required to impose a sentence for a class A felony offense pursuant to subparagraph (ii) of paragraph (b) of subdivision three of section 70.71 of this title, the court may fix a determinate term of imprisonment of at least three years and not to exceed six years.

8. Where a court would otherwise be required to impose a sentence pursuant to subdivision six of section 70.06 of this title, the court may fix a term of imprisonment as follows:

(a) For a class B felony, the term must be at least three years and must not exceed eight years;

(b) For a class C felony, the term must be at least two and one-half years and must not exceed five years;

(c) For a class D felony, the term must be at least two years and must not exceed three years;

(d) For a class E felony, the term must be at least one and one-half years and must not exceed two years.

9. Where a court would otherwise be required to impose a sentence for a class B, C, D or E felony offense pursuant to section 70.00 of this title, the court may impose a sentence in accordance with the provisions of subdivision two of section 70.70 of this title.

10. Except as provided in subdivision seven of this section, where a court would otherwise be required to impose a sentence pursuant to subdivision three of section 70.06 of this title, the court may impose a sentence in accordance with the provisions of subdivision three of section 70.70 of this title.

11. Where a court would otherwise be required to impose a sentence pursuant to subdivision three of section 70.06 of this title, where the prior felony conviction was for a felony offense defined in section 70.02 of this title, the court may impose a sentence in accordance with the provisions of subdivision four of section 70.70 of this title.

§ 440.47 Motion for resentencing; domestic violence cases.

1.

(a) Notwithstanding any contrary provision of law, any person confined in an institution operated by the department of correction and community supervision serving a sentence with a minimum or determinate term of eight years or more for an offense committed prior to the effective date of this section and eligible for an alternative sentence pursuant to section 60.12 of the penal law may, on or after such effective date, submit to the judge or justice who imposed the original sentence upon such person a request to apply for resentencing in accordance with section 60.12 of the penal law. Such person must include in his or her request documentation proving that she or he is confined in an institution operated by the department of corrections and community supervision serving a sentence with a minimum or determinate term of eight years or more for an offense committed prior to the effective date of this section and that she or he is serving such sentence for any offense eligible for an alternative sentence under section 60.12 of the penal law.

(b) If, at the time of such person's request to apply for resentencing pursuant to this section, the original sentencing judge or justice is a judge or justice of a court of competent jurisdiction, but such court is not the court in which the original sentence was imposed, then the request shall be randomly assigned

to another judge or justice of the court in which the original sentence was imposed. If the original sentencing judge is no longer a judge or justice of a court of competent jurisdiction, then the request shall be randomly assigned to another judge or justice of the court.

(c) If the court finds that such person has met the requirements to apply for resentencing in paragraph (a) of this subdivision, the court shall notify such person that he or she may submit an application for resentencing. Upon such notification, the person may request that the court assign him or her an attorney for the preparation of and proceedings on the application for resentencing pursuant to this section. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law and the related provisions of article eighteen-A of such law.

(d) If the court finds that such person has not met the requirements to apply for resentencing in paragraph (a) of subdivision one of this section, the court shall notify such person and dismiss his or her request without prejudice.

2.

(a) Upon the court's receipt of an application for resentencing, the court shall promptly notify the appropriate district attorney and provide such district attorney with a copy of the application.

(b) If the judge or justice that received the application is not the original sentencing judge or justice, the application may be referred to the original sentencing judge or justice provided that he or she is a judge or justice of a court of competent jurisdiction and that the applicant and the district attorney agree that the application should be referred.

(c) An application for resentencing pursuant to this section must include at least 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 as the applicant as such term is defined in subdivision one of section 530.11 of this chapter.

At least one piece of evidence must be either a court record, pre-sentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection. Other evidence may include, but shall not be limited to, local and state department of corrections records, a showing based in part on documentation prepared at or near the time of the commission of the offense or the prosecution thereof tending to support the person's claim, or when there is verification of consultation with a licensed medical or mental

health care provider, employee of a court acting within the scope of his or her employment, member of the clergy, attorney, social worker, or rape crisis counselor as defined in section forty-five hundred ten of the civil practice law and rules, or other advocate acting on behalf of an agency that assists victims of domestic violence for the purpose of assisting such person with domestic violence victim counseling or support.

(d) If the court finds that the applicant has not complied with the provisions of paragraph (c) of this subdivision, the court shall dismiss the application without prejudice.

(e) If the court finds that the applicant has complied with the provisions of paragraph (c) of this subdivision, the court shall conduct a hearing to aid in making its determination of whether the applicant should be resentenced in accordance with section 60.12 of the penal law. At such hearing the court shall determine any controverted issue of fact relevant to the issue of sentencing. Reliable hearsay shall be admissible at such hearings.

The court may consider any fact or circumstances relevant to the imposition of a new sentence which are submitted by the applicant or the district attorney and may, in addition, consider the institutional record of confinement of such person, but shall not order a new pre-sentence investigation and report or entertain any matter challenging the underlying basis of the subject conviction. The court's consideration of the institutional record of confinement of such applicant shall include, but not be limited to, such applicant's participation in or willingness to participate in programming such as domestic violence, parenting and substance abuse treatment while incarcerated and such applicant's disciplinary history. The fact that the applicant may have been unable to participate in treatment or other programming while incarcerated despite such applicant's willingness to do so shall not be considered a negative factor in determining a motion pursuant to this section.

(f) If the court determines that the applicant should not be resentenced in accordance with section 60.12 of the penal law, the court shall inform such applicant of its decision and shall enter an order to that effect. Any order issued by a court pursuant to this section must include written findings of fact and the reasons for such order.

(g) If the court determines that the applicant should be resentenced in accordance with section 60.12 of the penal law, the court shall notify the applicant that, unless he or she withdraws the application or appeals from such order, the court will enter an order vacating the sentence originally imposed and imposing the new sentence to be imposed as authorized by

section 60.12 of the penal law. Any order issued by a court pursuant to this section must include written findings of fact and the reasons for such order.

3. An appeal may be taken as of right in accordance with applicable provisions of this chapter: (a) from an order denying resentencing; or (b) from a new sentence imposed under this provision and may be based on the grounds that (i) the term of the new sentence is harsh or excessive; or (ii) that the term of the new sentence is unauthorized as a matter of law. An appeal in accordance with the applicable provisions of this chapter may also be taken as of right by the applicant from an order specifying and informing such applicant of the term of the determinate sentence the court would impose upon resentencing on the ground that the term of the proposed sentence is harsh or excessive; upon remand to the sentencing court following such appeal the applicant shall be given an opportunity to withdraw an application for resentencing before any resentence is imposed. The applicant may request that the court assign him or her an attorney for the preparation of and proceedings on any appeals regarding his or her application for resentencing pursuant to this section. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law and the related provisions of article eighteen-A of such law.

4. In calculating the new term to be served by the applicant pursuant to section 60.12 of the penal law, such applicant shall be credited for any jail time credited towards the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.

§ 390.50. Confidentiality of pre-sentence reports and memoranda

2. Pre-sentence report; disclosure, victim access to impact statements; general principles.

(a) Not less than one court day prior to sentencing, unless such time requirement is waived by the parties, the pre-sentence report or memorandum shall be made available by the court for examination and for copying by the defendant's attorney, the defendant himself, if he has no attorney, and the prosecutor. In its discretion, the court may except from disclosure a part or parts of the report or memoranda which are not relevant to a proper sentence, or a diagnostic opinion which might seriously disrupt a program of rehabilitation, or sources of information which have been

obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the report or memoranda are not disclosed, the court shall state for the record that a part or parts of the report or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to appellate review. The presentence report shall be made available by the court for examination and copying in connection with any appeal in the case, including an appeal under this subdivision. Upon written request, the court shall make a copy of the presentence report, other than a part or parts of the report redacted by the court pursuant to this paragraph, available to the defendant for use before the parole board for release consideration or an appeal of a parole board determination **or an application for resentencing pursuant to section 440.46 or 440.47 of this chapter.** In his or her written request to the court the defendant shall affirm that he or she anticipates an appearance before the parole board or intends to file an administrative appeal of a parole board determination **or meets the eligibility criteria for and intends to file a motion for resentencing pursuant to 440.46 of this chapter or has received notification from the court which received his or her request to apply for resentencing pursuant to section 440.47 of this chapter confirming that he or she is eligible to submit an application for resentencing pursuant to section 440.47 of this chapter.** The court shall respond to the defendant's written request within twenty days from receipt of the defendant's written request.

PROCEDURES FOR DVSJA PENAL LAW § 60.12 ALTERNATIVE SENTENCE

Step 1: Defense counsel notifies the sentencing court that the defendant seeks an alternative sentence based upon being a victim of domestic violence pursuant to Penal Law § 60.12.

To be eligible the court must be considering imposition of a sentence pursuant to Penal Law §§ 70.00, 70.02, 70.06 or 70.71 (2) or (3).

The offense for which the defendant is about to be sentenced cannot be for:

- Murder in the second degree under Penal Law § 125.25 (5) (killing a child less than 14 years old by a person 18 years old or more during certain sexual acts
- Aggravated Murder under Penal Law § 125.26
- Murder in the first degree under Penal Law § 125.27
- A crime related to terrorism under Penal Law Article 490
- An offense which would require such person to register as a sex offender
- An attempt or conspiracy to commit any above-listed offense

Step 2: The court conducts a hearing to determine whether the defendant should be sentenced pursuant to Penal Law § 60.12. The court must consider oral and written arguments, take testimony from witnesses offered by either party and consider relevant evidence. Reliable hearsay is admissible at such hearings.

Step 3: Court makes a determination after the hearing.

The court must find that all three conditions exist in order to impose an alternative sentence:

- (a) At the time of the instant offense, the defendant 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 defendant as such term is defined in CPL § 530.11 (1); and
- (b) Such abuse was a significant contributing factor to the defendant's criminal behavior; and
- (c) Having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to Penal Law §§ 70.00, 70.02, 70.06 or 70.71 (2) or (3) would be unduly harsh.

Step 4: Court imposes a sentence authorized by Penal Law § 60.12 (2) – (11)
or
If the court determines any of the conditions in Step 3 have not been established, a Penal Law §§ 70.00, 70.02, 70.06 or 70.71 (2) or (3) sentence will be imposed.

**DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT SENTENCE CHART
ALTERNATIVE SENTENCE**

**Class A Felony Sentencing
Penal Law § 60.12 (3) – (7)¹**

Class Felony	Determinate Sentence Term	Post-Release Supervision	Probation Permitted	Alternative Definite Sentence Permitted	Shock Permitted	Judicial Order of Shock Permitted
A-I Non-Drug First Offense	5-15	5	No	No	No	No
A-I Drug First Offense	5-8	1 ½-3	No	No	No	No
A-I Drug Prior Non-Violent	5-12	1 ½-3	No	No	No	No
A-II Drug First Offense	1-3	1 ½-3	Yes/Life ²	No	Yes ³	Yes ⁴
A-II Drug Prior Non-Violent	3-6	1 ½-3	Yes/Life ²	No	Yes ³	Yes ⁴

*Prepared by Alan Rosenthal
Updated September 1, 2019*

¹ Effective May 14, 2019.

² Probation is not specifically authorized by Penal Law § 60.12, however, it is authorized pursuant to Penal Law § 70.71 (2) and (3) for A-II drug offense. For probation for an A-II drug offense it requires recommendation of DA, material assistance in prosecution of drug offense and court approval. (Penal Law §70.71 (2) and (3) and §65.00 (1)(b).

³ Correction Law § 865 allows for shock eligibility for an A-II drug offense in the discretion of DOCCS.

⁴ A judicial order of shock for an A-II drug offense is authorized pursuant to Penal Law § 60.04 (7).

**DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT SENTENCE CHART
ALTERNATIVE SENTENCING**

**Current Non-Violent (First and Second Felony, Non-Drug)
Penal Law § 60.12 (9), (10) and (11)¹**

Class Felony	Determinate Sentence Term	Post-Release Supervision	Probation Permitted	Alternative Definite Sentence Permitted	Parole Supervision Sentence Permitted	Shock Permitted²	Judicial Order of Shock Permitted
B First Offense	1-9	1-2	Yes/3-5	Yes 1 year or less	No	Yes	No
B Prior Non-Violent	2-12	1-2	Yes/Life ³	No	No	Yes	No
B Prior Violent	6-15	1 ½-3	No	No	No	Yes	No
C First Offense	1-5 ½	1-2	Yes/3-5	Yes 1 year or less	No	Yes	No
C Prior Non-Violent	1 ½-8	1-2	Yes/3-5	Yes	Yes ⁴	Yes	No
C Prior Violent	3 ½-9	1 ½-3	No	No	No	Yes	No
D First Offense	1-2 ½	1	Yes/3-5	Yes 1 year or less	No	Yes	No
D Prior Non-Violent	1 ½-4	1-2	Yes/3-5	Yes	Yes ⁴	Yes	No
D Prior Violent	2 ½-4 ½	1 ½-3	No	No	No	Yes	No
E First Offense	1-1 ½	1	Yes/3-5	Yes 1 year or less	No	Yes	No
E Prior Non-Violent	1 ½-2	1-2	Yes/3-5	Yes	Yes ⁴	Yes	No
E Prior Violent	2-2 ½	1 ½-3	No	No	No	Yes	No

*Prepared by Alan Rosenthal
Updated September 1, 2019*

¹ Effective May 14, 2019.

² Less than 50 years old. Excludes crimes listed in Corr. L § 865 (1). For terms where earliest release is more than 3 years, must wait for rolling admission. For prior violent, eligible if served no state prison time on prior violent felony.

³ Penal Law § 60.12 (10) authorizes a sentence in accordance with Penal Law § 70.70 (3) which includes a sentence of probation for life, however, it appears to require the recommendation of the DA, material assistance in prosecution of drug offense and court approval. Pursuant to Penal Law § 65.00 (1)(b).

⁴ If the current offense is a Willard eligible, CPL § 410.91, specified offense.

**DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT SENTENCE CHART
ALTERNATIVE SENTENCING**

**Current Violent (First and Second Felony)
Penal Law § 60.12 (2) and (8)¹**

Class Felony	Determinate Sentence Term	Post-Release Supervision	Probation Permitted	Alternative Definite Sentence Permitted	Parole Supervision Sentence Permitted	Shock Permitted	Judicial Order of Shock Permitted
B First Offense	1-5	2 ½-5	Yes/3-5	Yes 1 year or less	No	No	No
B Prior Non-Violent	3-8	2 ½-5	No	No	No	No	No
C First Offense	1-3 ½	2 ½-5	Yes/3-5	Yes 1 year or less	No	Yes ²	Yes ³
C Prior Non-Violent	2 ½-5	2 ½-5	No	No	No	Yes ²	Yes ³
D First Offense	1-2	1 ½-3	Yes/3-5	Yes 1 year or less	No	Yes ⁴	Yes ⁵
D Prior Non-Violent	2-3	1 ½-3	No	No	No	Yes ⁴	Yes ⁵
E First Offense	1-1 ½	1 ½-3	Yes/3-5	Yes 1 year or less	No	No	No
E Prior Non-Violent	1 ½-2	1 ½-3	No	No	No	No	No

*Prepared by Alan Rosenthal
Updated September 1, 2019*

¹ Effective May 14, 2019.

² Only Shock eligible if the conviction is for Burg 2 (2) or Rob 2 (1).

³ Only eligible for a judicial order of Shock if conviction is for Burg 2 (2) or Rob 2 (1).

⁴ Only Shock eligible if the conviction is for Attempt Burg 2 (2) or Rob 2 (1)

⁵ Only eligible for a judicial order of Shock if the conviction is for Attempt Burg 2 (2) or Rob 2 (1).

**ONONDAGA COUNTY BAR ASSOCIATION
ASSIGNED COUNSEL PROGRAM
State Tower Building
109 S. Warren Street, Suite 220
Syracuse, New York 13202**

September 1, 2019

Jane Doe DIN # 15-G-0872
Bedford Hills Correctional Facility
247 Harris Road
Bedford Hills, NY 10507-2400

Dear _____;

As you may be aware, the New York State Legislature recently enacted the Domestic Violence Survivors Justice Act (DVSJA). The law became effective August 12, 2019.

The Onondaga County Bar Association Assigned Counsel Program (ACP) has identified you as a person who is serving a state prison sentence for an offense committed in Onondaga County, and who likely meets the preliminary requirements to be eligible to benefit from the DVSJA. If it is determined that you meet the preliminary requirements, a more in-depth investigation will be needed to determine if you meet the criteria for a motion to be resentenced to a reduced sentence.

WHAT IS THE DVSJA?

The DVSJA amended Penal Law § 60.12 and added new Criminal Procedure Law § 440.47. The newly enacted Criminal Procedure Law § 440.47 allows certain people serving state prison sentences to apply for a reduced sentence, if they meet the eligibility criteria as victims of domestic violence.

Step One: The first step in determining eligibility for a DVSJA resentencing motion is to meet all of the basic requirements as follows:

1. You must be confined in an institution operated by DOCCS at the time you apply for resentencing; and
2. You must be serving a sentence with a minimum or determinate term of 8 years or more; and
3. The offense must have been committed prior to August 12, 2019; and
4. You must be serving a sentence for any offense eligible for an alternative sentence under new Penal Law § 60.12.

In order to move forward with Step One, a request must be submitted to the original sentencing judge with documentation showing that you meet the above four requirements. The

ACP will prepare this request for you. If the four basic requirements are met, the judge must notify you that you may *apply for* resentencing.

Step Two: After the judge has given you notification that you may apply for resentencing, the difficult legal work and investigation begin. ACP will work with you to develop the evidence that will be needed and to prepare the resentencing application. To qualify for resentencing, we must establish all of the following:

1. At the time of your offense, you were a victim of domestic violence and were subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household; and
2. Such abuse was a significant contributing factor to your criminal behavior; and
3. Taking into account the nature and circumstances of your crime and your history, character and condition, that your original sentence of imprisonment is unduly harsh.

If, after holding a hearing, the court determines that we have met all three of these Step Two criteria, the court must determine whether you should be resentedenced in accordance with the reduced sentences provided for in Penal Law § 60.12.

WHAT DO YOU NEED TO DO?

The enclosed questionnaire will assist the ACP in determining whether you meet the four basic requirements to satisfy Step One. The questionnaire will also help the ACP determine if you meet the financial eligibility for the assignment of counsel. Please fill out the questionnaire to the best of your ability and return it to the ACP office.

You have the right to a lawyer. If you cannot afford one, the ACP will provide the legal representation for this resentencing application. You may instead hire legal counsel of your choosing at your own cost. Please fill out the questionnaire and let us know how you would like to proceed.

Step Two, referenced above, may seem overwhelming. You might think you do not meet the standard of being a victim of domestic violence or that you cannot prove that the abuse was a significant contributing factor in your criminal behavior. Please do not jump to any negative conclusions. Domestic violence is a very complex matter. Give us the opportunity to thoroughly investigate and have your case reviewed by an expert before you decide whether or not DVSJA resentencing applies to you.

We look forward to receiving the completed and signed enclosed questionnaire and to working with you in search of justice.

Very truly yours,

QUESTIONNAIRE

ELIGIBILITY TO REQUEST RESENTENCING AND ASSIGNMENT OF COUNSEL PURSUANT TO CRIMINAL PROCEDURE LAW § 440.47 (DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT)

Please fill out this questionnaire completely and sign it at the end. If you do not know the answer to any of the questions write "I don't know." Please only answer the questions about the convictions for which you are seeking resentencing. Send the completed questionnaire back to the Onondaga County Bar Association Assigned Counsel Program Office to the attention of David Savlov.

BIOGRAPHICAL INFORMATION

Name: _____ Date of Birth: _____

Indictment No.: _____ Sentencing Judge: _____

Sentencing Date: _____ DIN No.: _____

Current Conditional Release Date: _____ Next Parole Eligibility Date: _____

ELIGIBILITY FOR RESENTENCING

1. Are you currently in prison? Yes No

Which facility? _____

2. Are you serving a determinate sentence of 8 years or more? Yes No

3. Are you serving an indeterminate sentence with a minimum of
8 years or more? Yes No

4. What was your sentence? _____

5. Were you sentenced as a:

- a. Second violent felony offender? Yes No
- b. Persistent violent felony offender? Yes No
- c. Second A-I or A-II drug offender with prior violent Yes No

6. Were you convicted of any of the following crimes:

- a. Murder second degree under Penal Law § 125.25 (5)?¹ Yes No
- b. Aggravated murder under Penal Law § 125.26? Yes No
- c. Murder in the first degree under Penal Law §125.27? Yes No
- d. A crime related to terrorism under Penal Law Article 490? Yes No
- e. A crime for which you will be required to register as a sex offender as a result of the conviction? Yes No
- f. Attempt or conspiracy to commit any of the crimes listed above in questions 6.a through 6.e above? Yes No

If you checked “No” to all of the above crimes, what crime(s) were you convicted of? _____

7. Was the crime(s) committed before August 12, 2019? Yes No

¹ Murder in the second degree under Penal Law § 125.25 (5) means someone over 18 years old killed a child under 14 years old while engaging in rape, a criminal sexual act, sexual abuse, or incest against the child.

What was the date(s) of the crime(s)? _____

QUALIFICATIONS FOR ASSIGNMENT OF COUNSEL

8. Who represented you on the case for which you are now serving a sentence?

Assigned Counsel

Retained Private Counsel

Name of Defense Attorney _____

9. Can you afford to pay an attorney for this resentencing motion? Yes No

10. Will you provide additional financial information if necessary? Yes No

REQUEST FOR REPRESENTATION

11. I request the Assigned Counsel Program (ACP) to provide legal representation for the purpose of my application for DVSJA resentencing Yes No

12. I agree to permit ACP to investigate the merits of my application for resentencing Yes No

13. I agree to sign a request prepared and signed by ACP to be submitted to the sentencing judge seeking notification that I can proceed with the resentencing motion Yes No

Dated: _____

Signature

DVSJA CPL § 440.47 RESENTENCING APPLICATION PROCESS

*These cases are processed following the procedures
set out in CPL § 440.47 and Penal Law § 60.12*

Step 1: Applicant/counsel submits a request to apply for resentencing to the original sentencing judge.

The request must include documentation proving that she or he is subject to the following:

- (i) Confined in an institution operated by DOCCS
- (ii) Serving a sentence with a minimum or determinate term of 8 years or more
- (iii) The sentence being served is for an offense committed prior to 8/12/19
- (iv) Serving a sentence for an offense eligible for an alternative sentence pursuant to Penal Law § 60.12

Step 2: Judge issues notification to the applicant/counsel that the defendant may submit an application for resentencing if the court finds that the four requirements in Step 1 have been met,
or
Judge issues notification to the applicant/counsel that the request has been dismissed without prejudice if the court finds that the four requirements in Step 1 have not been met.

Step 3: Either at Step 1 or at Step 3 the applicant may request that the court assign an attorney for the preparation of and proceedings on the application for resentencing.

Step 4: The court must assign an attorney if the defendant is indigent.

Step 5: The applicant files an application for resentencing.

The application must include at least 2 pieces of evidence corroborating the applicant's claim that he or she was:

- (i) At the time of the offense, a victim of domestic violence; and
- (ii) Subjected to substantial physical, sexual or psychological abuse;
and
- (iii) The abuse was inflicted by a member of the same family or household as the applicant as defined in CPL § 530.11 (1)

CPL § 440.47 (2)(c) describes what at least one document must be and what other documents may be.

Step 6: Upon the court’s receipt of the application for resentencing, the court shall promptly notify the district attorney and provide the district attorney with a copy of the application.

Step 7: If the court finds that the applicant has not complied with Step 5, the court shall dismiss the application without prejudice,
or
If the court finds the applicant has complied with Step 5, the court must conduct a hearing to aid in making its determination whether the applicant should be resentenced in accordance with Penal Law § 60.12.

Step 8: A hearing is conducted. The court must consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. Reliable hearsay is admissible. (Penal Law § 60.12.

At the hearing the court must determine any controverted issue of fact. (CPL § 440.47 (2)(c).

The court may consider:

- (i) Any fact or circumstances relevant to the imposition of a new sentence submitted by either party
- (ii) The institutional record of confinement of the applicant (including programming and disciplinary record per CPL § 440.47 (2)(c).

The court may not consider:

- (i) A new PSI
- (ii) Any matter challenging the underlying basis of the conviction

Step 9: Determination following a hearing.

The court must determine whether all of the following have been established:

- (a) At the time of the instant offense, the defendant 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 defendant as such term is defined in CPL § 530.11 (1)
- (b) Such abuse was a significant contributing factor to the defendant’s criminal behavior
- (c) Having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to Penal Law §§ 70.00, 70.02, 70.06 or 70.71 (2) or (3) would be unduly harsh may instead impose a sentence in accordance with Penal Law § 60.12

Step 10: Order denying resentencing.

If the court determines that Step 9 has not been met, the court shall inform the applicant and enter an order. Any order must include written findings of fact and the reasons for such order

or

Order granting resentencing.

If the court determines that Step 9 has been met, the court shall notify the applicant that, unless he or she withdraws the application or appeals from such order offering a specified new sentence, the court will enter an order vacating the sentence originally imposed and impose the new sentence.

Step 11: Resentencing

Step 12: Appeal

Appeal as of right:

- (a) From an order denying resentencing; or
- (b) From a new sentence imposed under CPL § 440.47 based upon:
 - (i) New sentence is harsh and excessive; or
 - (ii) The term of the new sentence is unauthorized as a matter of law; or
- (c) From an order specifying and informing applicant of the term of the new determinate sentence offered to be imposed based upon the proposed sentence being harsh and excessive; upon remand to the sentencing court following such appeal the applicant shall be given the opportunity to withdraw an application for resentencing before any resentence is imposed.

Applicant is entitled to the assignment of counsel on appeal.

DVSJA ELIGIBILITY CHECKLIST

Eligibility for Request to Apply for Resentencing

- Applicant is currently imprisoned in a DOCCS prison
- Applicant's sentence is a determinate term of 8 years or more or an indeterminate sentence with an 8-year minimum or more
- Applicant's offense was committed prior to August 12, 2019
- Applicant is serving a sentence for any offense other than the following excluded offenses:
 - Murder in the second degree under Penal Law § 125.25 (5) (killing a child less than 14 years old by a person 18 years old or more during certain sexual acts)
 - Aggravated Murder under Penal Law § 125.26
 - Murder in the first degree under Penal Law § 125.27
 - A crime related to terrorism under Penal Law Article 490
 - An offense which would require such person to register as a sex offender
 - An attempt or conspiracy to commit any above-listed offense

Eligibility by Sentencing Status

- Applicant is serving a sentence for which a sentence was or could have been imposed pursuant to Penal Law § 70.00 (first felony, non-drug, non-sex, non-violent); Penal Law § 70.02 (first felony, violent); Penal Law § 70.06 (second felony offender excluding § 70.04 second violent felony offender); Penal Law § 70.71 (2) or (3) (first A-I or A-II felony drug offender or second A-I or A-II felony drug offender with a prior non-violent felony)
- Sentence cannot have been imposed for any of the following:
 - Second violent felony offender (Penal Law § 70.04)
 - Persistent violent felony offender (Penal Law § 70.08)
 - Second A-I or A-II drug offender with a prior violent (Penal Law § 70.71 [4])

Motion Must Include Allegations and Documents in Order to Qualify for Resentencing Hearing

- Applicant was, at the time of the instant offense, 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 applicant as such term is defined in CPL § 530.11 (1)
- Two pieces of evidence corroborating the applicant’s allegations immediately above, being sufficient to meet the documentary requirements of CPL § 440.47 (2)(c)

Other Facts or Circumstances the Court May Consider

- Any fact or circumstances relevant to the imposition of a new sentence which are submitted by the applicant or the district attorney
- The institutional record of confinement of the applicant including the criteria in CPL § 440.47 (2)(e)

Factors that Must Be Established at the Resentencing Hearing in Order for the Court to Determine that Resentencing Should Be Imposed

- Applicant was, at the time of the instant offense, 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 applicant as such term is defined in CPL § 530.11 (1)
- Such abuse was a significant contributing factor to the defendant’s criminal behavior
- Having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to Penal Law §§ 70.00, 70.02, 70.06 or 70.71 (2) or (3) would be unduly harsh

Onondaga County Bar Association Assigned Counsel Program

COUNTY COURT ONONDAGA COUNTY
STATE OF NEW YORK

People of the State of New York,

vs.

Request to Apply for Resentencing
in Accordance with Penal Law
§ 60.12

Jane Doe,

Defendant

Indictment #: _____

The applicant, _____, presents to this Court, that she meets the requirements of CPL § 440.47 (1)(a) to apply for resentencing in a case involving domestic violence.

The applicant satisfies the criteria as she is subject to the following:

- (i) She is currently confined at _____ Correctional Facility, an institution operated by the Department of Corrections and Community Supervision; and
- (ii) She is serving a sentence with a minimum of determinate term of eight years or more, that being a sentence of _____, imposed by Judge _____, in Onondaga County Court on _____.
- (iii) The sentence she is serving is for an offense committed prior to August 12, 2019, the offense having been committed on _____.
- (iv) The sentence she is serving is for an offense eligible for an alternative sentence under Penal Law § 60.12, that being the offense of _____, in violation of Penal Law § _____.

The applicant includes with this request, and attached hereto, the following documentation that establishes that she meets the above four criteria:

- (i) Uniform Sentence and Commitment
- (ii) New York State Department of Corrections and Community Supervision time computation sheet
- (iii) New York State Department of Corrections and Community Supervision Inmate Lookup printout
- (iv) Certificate of Conviction

The applicant requests that this Court issue notification pursuant to CPL § 440.47 (1)(c) that the applicant may submit an application for resentencing.

The applicant further requests that she be allowed to proceed with the assignment of counsel as provided by the Onondaga County Bar Association Assigned Counsel Program (ACP) for the purpose of this request and subsequent application.

_____, Esq. having been authorized by the ACP to represent Ms. _____, joins in this request hereby submitted.

Dated: _____

Applicant

(Name of Defense Counsel)
Attorney for Defendant
1 Liberty Drive
Suite 204
Syracuse, New York 13202
(315) _____

COUNTY COURT ONONDAGA COUNTY
STATE OF NEW YORK

People of the State of New York,

vs.

Jane Doe,

Defendant

Notification Authorizing Defendant
to Submit an Application for
Resentencing

Indictment #: _____

This Court has reviewed the request submitted by the applicant, _____,
dated _____, and

This Court finds that such person has met the requirements set forth in CPL § 440.47
(1)(a) in order to qualify to apply for resentencing.

Notification is hereby given that _____ may submit an application for
resentencing pursuant to CPL § 440.47, and that the assignment of counsel, _____, Esq.,
shall continue; and

Notice is further given that the application for resentencing must comply with the
statutory requirements of CPL § 440.47 (2)(c). If the Court finds that the applicant has not
complied with the provisions of CPL § 440.47 (2)(c), the Court will dismiss the application
without prejudice as provided in CPL §440.47 (2)(d).

Date: _____

Onondaga County Court Judge

EVIDENTIARY ELIGIBILITY CHECKLIST

In order to qualify for a resentencing hearing and to avoid dismissal of the resentencing application, the application must satisfy the requirements of CPL § 440.47 (2)(c). The application must include at least 2 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 as the applicant.

At least one piece of evidence must be either:

- a court record
- presentence report
- social services record
- hospital record
- sworn statement from a witness to the domestic violence
- law enforcement record
- domestic incident report
- order of protection

At least one additional piece of evidence that may include, but not be limited to, any of the following:

- any of the above
- local or state department of corrections records
- documentation prepared at or near the time of the commission of the offense or prosecution
- verification of consultation with a licensed medical or mental health provider, employee of the court, member of the clergy, attorney, social worker or rape crisis counselor, or other advocate acting on behalf of an agency that assists victims of domestic violence for the purpose of assisting such person with domestic violence victim counseling or support

QUESTIONNAIRE

IDENTIFYING AND INVESTIGATING DOMESTIC VIOLENCE

1. There are many forms of domestic violence. This includes physical, sexual and psychological abuse. Think about abuse in its broadest terms. Considering your circumstances prior to the incident for which you are now incarcerated, did you ever experience any form of domestic abuse?

Yes No

Comments:

2. Were you abused by any of the following:

- Spouse or former spouse
- Registered domestic partner
- Fiancé or former fiancé
- Someone with whom you had an intimate or sexual relationship
(Even if you never lived together)
- Someone with whom you have or had a child
- Someone who lived in the same home as you (including foster home)
- Parent
- Sibling
- Aunt
- Uncle
- Cousin
- grandparent
- Spouse's relatives
- In-laws

Comments:

3. Did you ever go to the hospital or seek any kind of medical attention as a result of the abuse(s)?

Yes No

Comments:

4. Did you or someone else ever report the abuse(s) to a social services agency?
 Yes No

5. Did you or someone else ever report the abuse(s) to a police officer or call 911?
 Yes No

6. Did you ever get an Order of Protection against your abuser(s)? (Family or criminal court)
 Yes No

7. Did you ever file any court documents, testify under oath, or sign any kind of legal document in which you described or mentioned any of the abuses(s)?
 Yes No

8. At the time of the abuse, did you tell anyone what was happening to you?
 Yes No

9. To your knowledge, did anyone ever witness the abuse(s)?
 Yes No

10. Did anyone ever overhear the abuse or comment upon any injuries that you had as a result of the abuse?
 Yes No

11. Did you ever call or seek help from an organization that assists victims of domestic violence and/ or sexual assault?
 Yes No

12. Did you mention the abuse to a social worker, mental health counselor, clergy member, or any other professional?
- Yes No
13. Following your arrest and/ or incarceration, did you mention the abuse to anyone? (This might include your lawyer, investigator, the police, social worker, probation department, jail or prison staff, OMH)
- Yes No
14. Before your conviction, were you ever interviewed or evaluated by anyone regarding abuse you experienced? (This might include a mental health professional who was a part of or hired by your defense team and/or by the prosecution).
- Yes No
15. During your incarceration, have you been involved in any groups relating to domestic violence or sexual abuse?
- Yes No
16. If you have ever appeared before the Board of Parole, did you ever mention any experiences of abuse during your interview?
- Yes No
17. Have you ever filed a clemency petition with the Governor that mentions any experiences of abuse?
- Yes No
18. Was the court, prosecution or probation officer who prepared the presentence report ever made aware that you were a victim of domestic violence?
- Yes No
19. Are you aware of any photographs that document any bruises, contusions or any other injuries caused to you by abuse?
- Yes No

COUNTY COURT ONONDAGA COUNTY
STATE OF NEW YORK

People of the State of New York,

Notice of Application for
Resentencing Pursuant to
CPL § 440.47

vs.

Jane Doe,

Indictment #: _____

Defendant

Please take notice that upon the attached affirmation of _____, Esq. attorney for the applicant, and its accompanying exhibits, the undersigned requests the Court promptly notify the Onondaga County District Attorney of the Court's receipt of this application and provide a copy of the application to the Onondaga County District Attorney, and notify the parties of a date to appear before the Court to be heard, and applicant further moves the court for the following pursuant to CPL § 440.47:

- (1) Find that the Applicant has complied with the provisions of CPL § 440.47 (2)(c); and
- (2) Conduct a hearing to aid in making the Court's determination of whether the applicant should be resentenced in accordance with Penal Law § 60.12 and to consider any fact or circumstances relevant to the imposition of a new sentence; and
- (3) Upon determination that the applicant should be resentenced in accordance with Penal Law § 60.12, issue an order notifying the applicant of the term and nature of the new sentence proposed to be imposed, and further give notice that unless she withdraws the application or appeals from such order, that the Court will enter an order vacating the sentence originally imposed; and

(4) Upon acceptance of the proposed new sentence by the applicant, enter an order vacating the sentence of _____ originally imposed, and imposing the new sentence as authorized by Penal Law § 60.12.

Dated: Syracuse, New York
October 1, 2019

(Name of Defense Counsel)
Attorney for Applicant
1 Liberty Drive
Suite 204
Syracuse, New York 13202
(315) _____

To: James Makowiec, Chief Clerk
Onondaga Court Court/ Supreme Court Clerk
Criminal Courts Building
505 South State Street, Room 110
Syracuse, New York 13202

Presiding Judge
Criminal Courts Building
505 South State Street, Room 110
Syracuse, New York 13202

COUNTY COURT ONONDAGA COUNTY
STATE OF NEW YORK

People of the State of New York,

Affirmation in Support of
Application for Resentencing
Pursuant to CPL § 440.47

vs.

Jane Doe,

Indictment #: _____

Defendant

_____, an attorney duly admitted to practice in the Courts of the State of New York, and not a party to this action, pursuant to CPLR § 2106, subscribes and affirms the following to be true under the penalties of perjury:

1. I have been assigned to represent Jane Doe for the purpose of an application for resentencing pursuant to CPL § 440.47, in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-one of the county law, and the related provisions of article eighteen-A of such law.

2. I move this court pursuant to CPL § 440.47 and Penal Law § 60.12 to resentence Jane Doe to a determinate sentence of _____ years and _____ years of post-release supervision. (*or any other appropriate alternative sentence*).

3. I am familiar with all of the facts and circumstances contained in this affirmation based upon interviews with Jane Doe, her family, witnesses, experts and the review of documents including court documents, medical records, police records, treatment records, and DOCCS institutional records. The facts set forth in this document are true to the best of my ability to so determine, and as to those matters based upon information and belief, are believed to be true.

4. Jane Doe is currently incarcerated at _____ Correctional Facility. She was convicted of the offense of _____, Penal Law § _____. She was sentenced by Onondaga County Court Judge _____ on _____, 20____, to a sentence of _____, for the offense that occurred on _____, 20____, and prior to August 12, 2019, the effective date of CPL § 440.47.

5. The applicant submitted her request to apply for resentencing dated _____, 2019 to the Court. The applicant, Jane Doe, was found to meet the initial eligibility requirements of CPL § 440.47 (1)(a), and received Judicial Notification of that finding and was granted permission to proceed with this application for resentencing by Notification dated _____, signed by Onondaga County Court Judge _____.

6. This application meets the requirements of CPL § 440.47 (2)(c) that the application include at least two pieces of evidence corroborating the applicant's claim that 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 as the applicant as such term is defined in CPL § 530.11 (1).

7. At least one piece of evidence attached to this application meets the statutory requirement of being either a court record, presentence report, social services record, hospital report, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection. Attached hereto is the _____.
(Exhibit A).

8. A second piece of evidence is also attached to this application, and falls within the type of evidence that CPL § 440.47 ((2)(c) indicates may be included to satisfy the requirement

of an additional piece of evidence. Attached hereto is the _____.
(Exhibit B).

9. As corroborated by Exhibits A and B, and additional Exhibits ____ and _____, Jane Doe was, at the time of the offense on _____, 20_____, a victim of domestic violence subject to substantial physical, sexual or psychological abuse by a member of her family or household, that being _____, her _____.

10. Having satisfied the requirement that the application include at least two pieces of evidence corroborating her claim of being a survivor of domestic violence, affiant requests that this court conduct a hearing as mandated by CPL § 440.47 (2)(e), to determine whether she should be resentenced in accordance with Penal Law § 60.12.

11. The applicant meets the three requirements of Penal Law § 60.12 (1)(a), (b) and (c) as follows:

(a) at the time of the instant offense, the defendant 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 defendant as such term is defined in CPL § 530.11 (1); and

(b) such abuse was a significant contributing factor to the defendant's criminal behavior; and

(c) The sentence previously imposed on _____, 20__ of _____ years pursuant to Penal Law § [70.00, 70.02, 70.06 or 70.71 (2) or (3)] is unduly harsh when considered having regard for the nature and circumstances of the crime and the history, character and conditions of the defendant.

12. At the hearing to be held pursuant to Penal Law § 60.12 and CPL § 440.47 the applicant will present sufficient proof to support the Court's favorable determination of the Penal Law § 60.12 (1) requirements listed above in paragraph "11."

BASIS FOR RELIEF

13. "For most of human history, acts of domestic violence have been minimized, denied, swept under the carpet, and hidden behind closed doors. It is only in the last few decades that our criminal justice system and our culture have recognized domestic violence for the insidious and destructive crime that it is." (*Lawyer's Manual on Domestic Violence: Representing the Victim*, 6th Edition, Foreword by Hon. Jonathan Lippman). In recent years, people who work with survivors of domestic have become increasingly aware of the connection between trauma and domestic violence, as well as other effects of domestic violence on a survivor's mental health and resulting behavior. The link between domestic violence and the survivor's pathway to prison is now undisputed. In recognition of the deep, pernicious effect upon those who have been subjected to "substantial physical, sexual or psychological abuse" by "a member of the same family or household" *see* Penal Law § 60.12, as amended by L 2019, ch 31, § 1, New York took steps to significantly alter its sentencing laws for those touched by the trauma of domestic violence.

14. During the 2019 Legislative session the Domestic Violence Survivors Justice Act (DVSJA) was passed by the New York State Senate and Assembly and was signed into law by the Governor on May 14, 2019. L 2019, ch 31 §1, § 2 and § 3. (A.3974/S.1077).

15. The DVSJA includes amendments to Penal Law § 60.12 and new CPL § 440.47. The amendments to Penal Law § 60.12 became effective May 14, 2019. CPL § 440.47 became effective August 12, 2019.

16. In 1998, the New York Legislature enacted Penal Law § 60.12, New York's initial attempt to create a domestic violence sentencing exception. "At the time state officials thought this exception would lead to less punitive sentencing for survivors unfortunately, it did not." Sponsor's Memo, A.3974. Very few survivors received the amelioration of the former domestic violence exception.

17. The New York State Sentencing Commission, established in 2007, noted that Penal Law § 60.12 "should be replaced with a comparable ameliorative provision that would allow for the imposition of less harsh, determinate sentencing scheme." Sponsor's Memo A.3974. The DVSJA is a response to the Sentencing Commission's recommendation.

18. Governor Cuomo advanced the DVSJA, recognizing the need for "more meaningful sentence reductions" for domestic abuse survivors. *2019 Women's Justice Agenda*, p. 15.

19. Although "domestic violence has been increasingly recognized as a national epidemic," the criminal justice system has been slow to respond to reforming a sentencing regimen that punishes domestic violence survivors whose domestic abuse was a significant contributing factor to their criminal conduct. Much of this punishment is a result of our state's current sentencing structure which does not allow judges discretion to fully consider the impact of domestic violence when determining sentence lengths." Sponsor's Memo A.3974.

20. It was the legislative intent that the "DVSJA will help New York 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." Sponsor's Memo A.3974.

LEGAL FRAMEWORK

21. The resentencing procedure commences with an applicant's request to apply for resentencing to the judge who imposed the original sentence. The request must include documentation proving that the requirements of CPL § 440.47 (1)(a) have been satisfied. If, as in the instant case, the court finds that the applicant has met the initial requirements for resentencing, the court gives notification to such person that he or she may submit an application for resentencing. (Judicial Notification attached).

22. The second step of the resentencing procedure requires the applicant to submit an application for resentencing. The application must include at least 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 as the applicant. This evidentiary showing is required by CPL 440.47 (2)(c).

23. If the court finds that the applicant has complied with CPL § 440.47 (2)(c), the court must conduct a hearing to aid in making its determination of whether the applicant should be resentenced in accordance with Penal Law § 60.12.

24. Following the hearing, in order to impose an alternative sentence authorized by Penal Law § 60.12, the court must determine the following:

- (a) at the time of the instant offense, the defendant 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 defendant as such term is defined in CPL § 530.11 (1); and

(b) such abuse was a significant contributing factor to the defendant's criminal behavior; and

(c) The sentence previously imposed on _____, 20__ of _____ years pursuant to Penal Law § [70.00, 70.02, 70.06 or 70.71 (2) or (3)] is unduly harsh when considered having regard for the nature and circumstances of the crime and the history, character and conditions of the defendant.

FACTUAL BACKGROUND

25. During the time leading up to the instant offense, Jane Doe was a victim of domestic violence by her _____, Mr. _____. Mr. _____ was a member of Jane Doe's household or family in that he _____.

26. Mr. _____ subjected Jan Doe to substantial physical, sexual or psychological abuse as detailed below.

27. This abuse consisted of the following:

28. This abusive conduct is corroborated by the following evidentiary documentation contained in Exhibits A and B and additional Exhibits C through _____:

29. The abuse by Mr. _____ was a significant contributing factor to Jane Doe's criminal behavior, as explained by the reports of _____ and _____ attached as Exhibits _____ and _____. In summary these reports indicate the following:

30. Jane Doe suffered substantial trauma at the hands of Mr. _____. This trauma had a cumulative effect and undoubtedly contributed to her behavior on _____ as recognized in the report of _____.

31. There are facts and circumstances relevant to the imposition of a new sentence as follows:

- a) Institutional record –

- b) Relationship to family and children –

- c) Evidence of good character –

- d) Evidence of rehabilitation –

- e) Reentry plan -

RESENTENCING

32. Jane Doe is a survivor of substantial domestic violence. The trauma from this domestic abuse changed her life and her behavior. It had devastating and long-lasting effects. While incarcerated she has worked to repair that damage through self-examination, reflection, counseling and programs. She falls into that category of people for whom the DVSJA was intended to help with increased discretion in sentencing, with amore compassionate and less punitive approach.

33. Jane Doe meets the eligibility criteria for resentencing pursuant to Penal Law § 60.12 as she was subjected to substantial abuse which had a significant contributing factor to her criminal behavior.

34. Jane Doe was sentenced to a sentence of _____. At the time of her sentencing, without the benefit of hindsight, it may have appeared that the sentence was appropriate to satisfy the five sentencing goals of deterrence, incapacitation, retribution, rehabilitation, and the promotion of her successful and productive reentry and reintegration into society. Penal Law § 1.05 (6). With the benefit of hindsight, a unique perspective provided in the case of resentencing, Jane Doe's institutional record, including her behavior and programming, show her to have made much greater and quicker progress than was initially anticipated. She has used her time in prison for self-improvement and transformation. As a result, in retrospect regarding her progress and with a deeper understanding of the domestic violence that she suffered, a sentence of _____, now appears unduly harsh.

35. In consideration of all of the facts and circumstances that have come to light since the initial sentencing, upon resentencing, a sentence of _____ is suggested as one that is not unduly harsh, is more humane, and consistent with our current standards of fair and appropriate treatment for survivors of domestic violence.

WHEREFORE, the undersigned requests the Court to promptly notify the Onondaga County District Attorney of the Court's receipt of this application and provide a copy of the application along with that notification, and notify the parties of a date to appear before the court to be heard, and applicant further moves the Court for the following pursuant to CPL § 440.47:

(1) Find that the Applicant has complied with the provisions of CPL § 440.47 (2)(c); and

- (2) Conduct a hearing to aid in making the Court's determination of whether the applicant should be resentenced in accordance with Penal Law § 60.12 and to consider any fact or circumstances relevant to the imposition of a new sentence; and
- (3) Upon determination that the applicant should be resentenced in accordance with Penal Law § 60.12, issue an order notifying the applicant of the term and nature of the new sentence proposed to be imposed, and further give notice that unless she withdraws the application or appeals from such order, that the Court will enter and order vacating the sentence originally impose; and
- (4) Upon acceptance of the proposed new sentence by the applicant, enter an order vacating the sentence of _____ originally imposed, and imposing the new sentence as authorized by Penal Law § 60.12.

Dated: Syracuse, New York
October 1, 2019

(Name of Defense Counsel)
Attorney for Applicant
1 Liberty Drive
Suite 204
Syracuse, New York 13202
(315) _____