

COMMENTS

Compassionate Causation in the Domestic Violence Survivors Justice Act

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This Comment evaluates the implementation of the Domestic Violence Survivors Justice Act (DVSJA), a New York law passed in 2019 to provide shortened sentencing ranges for domestic violence survivors convicted of crimes. It identifies an inconsistency in sentencing courts' application of the law's causation standard, which requires that a petitioner's experience of domestic violence be a "significant contributing factor" to their criminal conduct. Some courts interpret the prong narrowly, while others apply a broad causation standard. This Comment argues that courts should opt for the latter approach and consider causation in the DVSJA satisfied if domestic violence was "sufficiently significant to have likely helped bring about the criminal conduct."

The argument proceeds in three parts. First, the text of the DVSJA stipulates that courts may not hold petitioners to the same standards required by traditional affirmative defenses in criminal law. Courts that have narrowly interpreted the causation requirement have disregarded this statutory directive. Second, the legislative history of the DVSJA, frequently cited by courts on both sides of the debate, supports a broad reading of the standard. And finally, the Comment draws upon causation standards in other areas of law to identify the role of policy considerations in causation analyses and to ultimately argue that such policy considerations support the proposed standard.

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INTRODUCTION

In 2019, the New York state legislature passed the Domestic Violence Survivors Justice Act¹ (DVSJA), creating a novel sentencing scheme for incarcerated domestic violence survivors. The DVSJA applies to individuals convicted of crimes committed while they were victims² of domestic violence, if the abuse was a “significant contributing factor” to their crime.³ The statute offers these survivors shortened sentencing ranges, either at initial

¹ Ch. 31, 2019 N.Y. Laws 144 (codified as amended at N.Y. PENAL LAW § 60.12 (McKinney 2025) & N.Y. CRIM. PROC. LAW § 440.47 (McKinney 2025)).

² The Act uses the term “victim,” but some advocacy groups prefer to use “survivor” or use both interchangeably. I will use the term victim when needed for clarity, such as when referring to the statutory requirements, but survivor where possible. *See Key Terms and Phrases*, RAPE, ABUSE & INCEST NAT’L NETWORK, <https://perma.cc/33JZ-WVYW>.

³ PENAL § 60.12.

sentencing⁴ or through a resentencing application.⁵ At least seventy-two people have received DVSJA relief so far.⁶

The DVSJA reflects an innovative attempt to cure a gross oversight in the law. Sentencing schemes across the country fail to recognize that many incarcerated people, particularly women, are survivors of domestic violence.⁷ Domestic violence affects one in four women in their lifetimes, but three in four women who have been or are currently incarcerated.⁸ Sentencing frequently overlooks the fact that abuse is often directly related to these women's criminal conduct.⁹ The DVSJA attempts to correct this error. The Act incorporates an evolved understanding of domestic violence into the law, one that better accounts for how trauma affects decision-making and recognizes that the central goals of criminal punishment are rarely served by lengthy sentences for survivors.¹⁰ The statute's prototypical application is when an

⁴ *Id.*

⁵ CRIM. PROC. § 440.47.

⁶ This figure reflects data from the Survivors Justice Project as of April 4, 2025, shared with the author by Monica Szlekovics, Director Operations and Programs, through informal communications. For publicly released data, see *Surviving Injustice*, WOMEN & JUST. PROJECT, <https://perma.cc/TX8U-PUCM> (noting that “as of September 2024[,] 68 survivors have been resentenced after filing DVSJA applications,” which has saved “over 175 years of incarceration” and “16 potential life sentences”).

⁷ See *Sponsor's Memo to Bill No. A03974*, Bill Jacket, N.Y. L. 2019 [hereinafter *Sponsor's Memo*], <https://perma.cc/9GP9-QEQG> (“Domestic violence and women's incarceration are inextricably linked: 9 out of 10 incarcerated women have experienced severe physical or sexual violence in their lifetimes Ninety-three percent of women convicted of killing an intimate partner were abused by an intimate partner in the past.”).

⁸ Gabriella Alessi, Katy Maskolunas, Jocelyn Braxton, Tanisha Murden & Rylinda Rhodes, *Implementing Domestic Violence Peer-Support Programs in Jail*, SAFETY AND JUST. CHALLENGE (July 11, 2023), <https://perma.cc/BLE2-YQEX>; see also Melissa E. Dichter, *Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update*, VAWNET.ORG (July 2015), <https://perma.cc/PMR7-LN6S>.

⁹ See Lauren Courtney, Jamie Halper, Hayden Henderson, Kara Salovaara & Emily Vaughan, *Great Weight: A Review of California Board of Parole Hearings Transcripts to Assess Frequency and Consideration of Intimate Partner Violence Among Women Convicted of Homicide Offenses*, STAN. CRIM. JUST. CTR. (June 2023), <https://perma.cc/TM9X-USFE> (“Recent data on the exact number of women who are incarcerated for killing their abusers is sparse, but what data there is suggests that women in this category may account for a large percentage of women serving sentences for murder or manslaughter.”); see also Shannon Heffernan, *Serving Time for Their Abusers' Crimes*, THE MARSHALL PROJECT (June 13, 2024) <https://perma.cc/2FYY-L2VR> (describing a pattern in which incarcerated women are charged as co-defendants with their abusive partners, who directly committed the crimes).

¹⁰ For an overview of the theories of punishment, see Kevin M. Carlsmith, John M. Darley & Paul H. Robinson, *Why Do We Punish? Deterrence and Just Deserts as Motives for Punishment*, 83 J. PERSONALITY AND SOC. PSYCH. 284, 285–86 (2002) (describing

individual is convicted of a crime committed against their abuser,¹¹ but the Act's scope reaches further. The DVSJA eliminated the requirement in an earlier sentencing law, Jenna's Law,¹² that the crime must have been committed against the petitioner's abuser, acknowledging that abuse manifests in myriad ways.¹³ (For example, courts have granted DVSJA relief to a petitioner whose abusive partner was a co-defendant in their case.)¹⁴

The potential broad sweep of the DVSJA is a huge step forward in compassionate sentencing but has also led several New York courts to construe the statute narrowly, fearing its implications would be too dramatic.¹⁵ The key point on which courts have diverged is the Act's causation standard, set out by the requirement that domestic violence must be a "significant contributing factor" to the petitioner's crime.¹⁶ Some courts have taken an especially narrow approach on this point, holding that abuse must be the sole or primary factor to the criminal conduct.¹⁷ Such an analysis has excluded instances in which domestic violence was a

retributive and utilitarian theories as the two broad justifications for punishment). The DVSJA's sponsors justified the bill with these theories in mind. *See Sponsor's Memo, supra* note 7. Regarding deterrence, the sponsors wrote that an alternate sentencing structure "is particularly appropriate as [women survivors] most often have no prior criminal records, no history of violence and extremely low recidivism rates," thereby posing an already low risk of future offense. *Id.* Referencing incapacitation, they wrote, "Community-based alternative programs are far more effective than prison in allowing survivors to rebuild relationships with their families, recover from abuse, and take responsibility." *Id.* And regarding retributivist goals, the sponsors acknowledged that the state had also morally failed survivors: "[T]he very lack of adequate protection, intervention and support [from the state] is what often leads to [survivors'] involvement [in the criminal justice system] in the first place." *Id.*

¹¹ At signing, New York Governor Andrew Cuomo stated, "[T]oo often these women wind up in prison in the first place because they're protecting themselves from an abuser." Christopher L. Hamilton, "Alive but Still Not Free": Nikki Addimando and Judicial Failure to Apply the Domestic Violence Survivors Justice Act, 100 B.U. L. REV. ONLINE 174, 178 (2020).

¹² Jenna's Law, ch. 1, 1998 N.Y. Laws 1 (adding N.Y. PENAL LAW § 60.12); *Sponsor's Memo, supra* note 7.

¹³ *Sponsor's Memo, supra* note 7 ("At the time state officials thought [Jenna's Law] would lead to less punitive sentencing for survivors[:] unfortunately, it did not.").

¹⁴ *See, e.g.,* People v. S.M., 150 N.Y.S.3d 562, 565, 568 (N.Y. Cnty. Ct. 2021) (granting relief to a petitioner convicted of robbery charges for driving her abusive partner to those robberies); People v. D.M., 72 Misc. 3d 960, 966, 971 (N.Y. Sup. Ct. 2021) (granting relief to a petitioner whose co-defendant was her abusive partner who instructed her to assist in a murder).

¹⁵ *See infra* Part II.B.

¹⁶ *See infra* Part II.

¹⁷ *See, e.g.,* People v. B.N., 192 N.Y.S.3d 445, 466–67 (N.Y. Sup. Ct. 2023); People v. Addimando, 120 N.Y.S.3d 596, 619–21 (N.Y. Cnty. Ct. 2020); *see also infra* Part II.B.

key element of the narrative, but other factors may also have been at play, such as drugs, mental illness, or threats.¹⁸ Courts have also understood this element to impose immediacy or necessity requirements, reasoning that if the petitioner had alternatives to their criminal conduct, then domestic violence must not have been the “significant contributing factor.”¹⁹

This Comment argues that courts should understand the significant contributing factor requirement broadly and pragmatically. I endorse the legal standard used by at least one court, that the petitioner’s experience of domestic violence was a significant contributing factor if it “was sufficiently significant to have likely helped bring about the defendant’s criminal behavior.”²⁰ I argue that this is essentially a but-for causation standard. As such, the standard allows there to be multiple causes of a petitioner’s past criminal conduct, so long as domestic violence is one of them. But because this standard is not fully explained in any court decision, I clarify that courts should (1) refrain from imposing necessity or immediacy requirements in their causation analysis and (2) allow for policy considerations when conducting their causation analysis.

The standard I forward, which I will refer to as the “likely helped bring about” (LHBA) standard, is crucial to preserving the DVSJA’s force. Alternate understandings that import necessity and immediacy requirements make the statute redundant with existing affirmative defenses in criminal law, namely necessity, self-defense, duress, and extreme emotional disturbance. But these affirmative defenses are difficult to prove, and even the doctrine of self-defense is ill-suited to many domestic violence situations.²¹ And the DVSJA’s text explicitly rejects the notion that petitioners must satisfy affirmative defense requirements to receive relief under the statute.²² Therefore, conflating DVSJA causation

¹⁸ See, e.g., *People v. Jonathan H.*, 2024 WL 1627673, at *18 (N.Y. Sup. Ct. Apr. 9, 2024) (holding that threatening behavior from the crime victim, not domestic violence, was the relevant contributing factor to the petitioner’s criminal conduct); see also *infra* Part II.B.

¹⁹ See, e.g., *People v. Fisher*, 200 N.Y.S.3d 494, 496–97 (N.Y. App. Div. 2023); *Jonathan H.*, 2024 WL 1627673, at *17–18.

²⁰ *People v. D.L.*, 147 N.Y.S.3d 335, 340 (N.Y. Cnty. Ct. 2021).

²¹ See Jeffrey B. Murdoch, Comment, *Is Imminence Really Necessity? Reconciling Traditional Self-Defense Doctrine with the Battered Woman Syndrome*, 20 N. ILL. U. L. REV. 191, 202–05 (2000); see also *infra* Part III.A.1.

²² N.Y. PENAL LAW § 60.12 (McKinney 2025) (“A court may determine that such abuse constitutes a significant contributing factor . . . regardless of whether the defendant raised [certain specified affirmative defenses].”).

with the requirements of separate affirmative defenses runs counter to the statute's text and purpose.

The DVSJA is also motivated by laudable policy goals, as an “ameliorative provision” that aims for “the imposition of less harsh [] sentences” for survivors.²³ I argue that the statute's causation standard opens the door for petitioners to make arguments in line with these stated goals. This is because a court's choice of where to sever a causal chain always involves some policy judgments. Further, while some may fear that a broader causation standard could open the floodgates of litigation, the statute's other prongs provide sufficient guardrails to ensure that the Act applies only to survivors who pose a low public safety risk.

The DVSJA has already begun to serve as a model for reform. The Oklahoma Survivors Act,²⁴ which has nearly identical language and operation to the DVSJA, was passed in 2024, and a coalition is lobbying to pass similar legislation in Connecticut.²⁵ The Oregon legislature also considered, but did not pass, its own version of the DVSJA.²⁶ Moreover, other states have recently recognized the need for more sensitive sentencing schemes for survivors convicted of crimes. For example, Illinois has a law stipulating that domestic violence should be considered a “mitigating factor” in sentencing for certain survivors,²⁷ and California's penal code includes a provision allowing petitioners to apply for habeas relief if evidence of domestic violence was not properly considered at trial.²⁸

The DVSJA's role as a blueprint makes it essential for New York courts to properly apply the statute. Advocacy groups and reform-minded legislators are more likely to push for an effective statute that secures large-scale relief for intended beneficiaries. But an improper reading of the statute risks weakening DVSJA copycats elsewhere; other state courts will likely look to New York for persuasive guidance on the scope of their own DVSJA legislation. It is therefore pressing that New York courts

²³ *Sponsor's Memo*, *supra* note 7 (quoting N.Y. STATE COMM'N ON SENT'G REFORM, THE FUTURE OF SENTENCING IN NEW YORK STATE: A PRELIMINARY PROPOSAL FOR REFORM 18 (2007)).

²⁴ OKLA. STAT. ANN. tit. 22, § 1090.3 (West 2025).

²⁵ *Coalition Launches Campaign to Pass Historic Domestic Violence Survivors Justice Act in Connecticut*, YALE L. SCH. (Sept. 30, 2024), <https://perma.cc/93WH-HRWB>.

²⁶ S. 1070, 82d Gen. Assemb., Reg. Sess. (Or. 2023).

²⁷ Act of Aug. 17, 2015, No. 384, 2015 Ill. Laws 5573.

²⁸ CAL. PENAL CODE § 1473.5 (2024).

uniformly adopt a causation standard that properly addresses the Act's goals.

The argument proceeds as follows. In Part I, I lay out the legal framework of the DVSJA, illustrating its textual requirements, role in criminal procedure, and potential for sweeping impact. In Part II, through a survey of key decisions under the DVSJA, I highlight the wide variation in the Act's interpretation by sentencing judges and argue that this ambiguity needs resolution. In Parts III and IV, I advocate for the LHBA standard. I make three main arguments for this standard. First, I argue that the text of the DVSJA mandates a broad reading by stipulating that the causation prong does not require that traditional affirmative defense requirements are met. I discuss affirmative defenses under the New York Penal Code and argue that both under the textual mandate and in order to avoid statutory redundancy, the causation requirement of the DVSJA must be less stringent. Second, the legislative history of the DVSJA indicates that the causation requirement was not intended to be a strict limiting factor for relief. Courts on both sides of the debate have cited legislative history, so I adjudicate this issue and provide further support for a loose reading. Finally, I discuss causation standards in other areas of law to find support for the LHBA standard. In doing so, I highlight that causation standards instantiate policy considerations, and therefore, courts should not shy away from granting relief based on abstract notions of causation that run counter to important policy objectives and the legislative intent of the statute. I also address courts' fears that a lenient standard will open the floodgates and make the DVSJA too sweeping.

I. LEGAL FRAMEWORK OF THE DVSJA

In this Part, I outline the DVSJA's legal framework. I first discuss its procedural structure, including when in the criminal process it applies and how to petition for relief. Second, I discuss the three requirements for relief evaluated at a DVSJA hearing. Finally, I highlight scholarly critiques of this scheme. These critiques will inform my analysis in Parts II and III, in which I focus on the problems presented by some courts' narrow interpretation of the significant contributing factor requirement.

A. Procedural Structure of the DVSJA

The DVSJA can operate at two points in the criminal trial process: (1) at the initial sentencing stage or (2) in resentencing

applications under its lookback provision. First, during a criminal defendant's initial sentencing, the DVSJA can offer an alternative sentencing route. The trial judge holds a "hearing to determine whether the defendant should be sentenced pursuant to [the DVSJA],"²⁹ during which "the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence."³⁰ If the court concludes that the DVSJA applies, the petitioner receives a reduced sentence pursuant to the statute's specified ranges.³¹ If not, the petitioner is sentenced according to New York's standard sentencing rules.

Second, in resentencing proceedings for incarcerated applicants, the petitioner must initially request permission to apply for resentencing from the judge who sentenced them.³² Applicants must clear a low bar to receive such permission, as the statute only requires proof that the petitioner is "serving a sentence with a minimum or determinate term of eight years or more" for an offense "prior to the effective date of this section [August 12, 2019]."³³ Once the permission to apply for resentencing has been granted, the court appoints a lawyer (typically a public defender) to represent the petitioner and begin their resentencing application. Then, to qualify for a resentencing hearing, a petitioner must submit at least two pieces of evidence corroborating that they were a victim of abuse at the time of the offense.³⁴ One piece of evidence must be of a type specified by the statute, which lists a variety of qualifying official documentation, including law enforcement records, sworn witness statements, hospital records, and court records.³⁵ There are no precise requirements for the other piece of corroborative evidence, but the statute lists examples including statements from clergy, "verification of consultation with a licensed medical or mental health care provider," and corrections records.³⁶ The judge then assesses this evidence, in addition to any other relevant evidence presented by the petitioner

²⁹ N.Y. PENAL LAW § 60.12 (McKinney 2025).

³⁰ *Id.*

³¹ *Id.*

³² N.Y. CRIM. PROC. LAW § 440.47(1)(a) (McKinney 2025).

³³ *Id.*; THE DVSJA STATEWIDE DEF. TASK FORCE, INTAKE & CASE ASSESSMENT FOR DVSJA RESENTENCING (CPL § 440.47), at 2 (2024) (stating August 12, 2019, as the cutoff date for resentencing applications).

³⁴ CRIM. PROC. § 440.47(2)(c).

³⁵ *Id.*

³⁶ *Id.*

or the prosecutor opposing resentencing, and resolves any controverted issues of fact.³⁷ Reliable hearsay is also explicitly admissible at the hearing, unlike a criminal trial.³⁸ Finally, the judge rules on the petition.

Both applications can result in significantly reduced sentences for successful petitioners. For example, murder typically has a minimum sentence length of fifteen to twenty-five years (with a maximum of life) in New York.³⁹ In contrast, under the DVSJA, someone convicted of murder could be sentenced to five to fifteen years in prison, followed by five years of post-release supervision.⁴⁰ No amended sentencing ranges under the DVSJA include life sentence provisions.

Most litigation under the DVSJA so far has concerned resentencing applications because there is a backlog of qualifying cases. Yet this litigation involves a finite group of incarcerated individuals (those sentenced before 2019), and resentencing applications will trend downward as those petitioners complete their litigation. Future DVSJA cases are therefore more likely to arise during the initial sentencing phase. This Comment mostly draws upon the existing resentencing caselaw over the past five years, but because both types of DVSJA relief use the same three-prong standard, the analysis also applies to individuals applying for a DVSJA sentence directly after initial conviction.

B. The Three-Prong Test for DVSJA Relief

The DVSJA provides that:

[T]he 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 . . . ; (b) *such abuse was a significant contributing factor* to the defendant's

³⁷ *Id.* § 440.47(2)(e) (describing that “[t]he 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,” which can include “participation in . . . programming such as domestic violence, parenting and substance abuse treatment while incarcerated and . . . disciplinary history,” but the judge “shall not . . . entertain any matter challenging the underlying basis of the subject conviction”).

³⁸ *Id.*; N.Y. R. EVID. 8.01 (describing hearsay as generally not admissible).

³⁹ N.Y. PENAL LAW § 70(3)(a)(i) (McKinney 2025).

⁴⁰ *Id.* § 60.12.

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 [standard sentencing law] . . . *would be unduly harsh* may instead impose a sentence in accordance with this section.⁴¹

Thus, the statute establishes three requirements that a petitioner must satisfy to receive sentencing relief, either during their initial sentencing or in a resentencing application.

First, the Act requires that “at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial . . . abuse inflicted by a member of the same family or household.”⁴² This first element really imposes three separate requirements: (1) the petitioner must be a victim “at the time of” the offense, (2) the abuse must be “substantial,” and (3) that abuse must constitute *domestic* violence, meaning it was inflicted by a family or household member.

Second, the court must determine that “such abuse was a significant contributing factor to the defendant’s criminal behavior.”⁴³ This is the causation element of the statute and the subject of this Comment. As discussed in Part II, courts disagree on the breadth of this element, and its scope has the potential to dramatically expand or contract the class of beneficiaries of the DVSJA.

Third, the Act requires a determination that “a sentence of imprisonment pursuant to [standard sentencing law] . . . would be unduly harsh,” taking into account “the nature and circumstances of the crime and the history, character and condition of the defendant.”⁴⁴ The inquiry may hinge on whether the sentencing judge finds the petitioner’s crime particularly objectionable because the prong grants judges the discretion to consider “the nature and circumstances of the crime.” The crime may also frame judges’ determinations of the “character and condition of the defendant.” Additionally, courts have understood the prong to mean that a petitioner’s time while incarcerated is legally relevant,

⁴¹ *Id.* (emphasis added).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

giving the court the opportunity to consider good behavior, completion of rehabilitation programs, and opportunities upon release.⁴⁵

The text of the law offers little further clarification for several of the crucial terms in the statute, such as “substantial . . . abuse,” “domestic violence,” and “significant contributing factor.” As a result, the scope of these terms has been subject to vigorous contestation by both petitioners and prosecutors.⁴⁶ Even terms that are defined in the statute—such as “family or household,” which references standard family law definitions under New York Criminal Procedure Law § 530.11⁴⁷—are not entirely clear. Courts can disagree on what constitutes an intimate or family relationship: for instance, some have excluded cases involving casual relationships⁴⁸ or conflicts between someone’s former and current partner⁴⁹ from family court.

Given this sparse drafting, it is notable what the statute *does* make clear: “A court may determine that [domestic violence–related] abuse constitutes a significant contributing factor . . . regardless of whether the defendant raised [several affirmative defenses available under New York criminal law].”⁵⁰ The affirmative defenses listed are: justification defenses, which include necessity and self-defense;⁵¹ what the New York criminal code calls “other defenses involving lack of culpability,” which include duress and entrapment;⁵² and extreme emotional disturbance defenses.⁵³

⁴⁵ See, e.g., *People v. S.M.*, 150 N.Y.S.3d 562, 567 (N.Y. Cnty. Ct. 2021) (taking into consideration the petitioner’s education and employment while incarcerated, family ties, and participation in violence prevention programs); *People v. D.M.*, 72 Misc. 3d 960, 968 (N.Y. Sup. Ct. 2021) (noting the petitioner’s participation in substance abuse programs, job training while incarcerated, and potential mental health treatment opportunities).

⁴⁶ See, e.g., *People v. B.N.*, 192 N.Y.S.3d 445, 462 (N.Y. Sup. Ct. 2023) (holding that financial control, limited access to transportation, and slaughtering of domestic animals allegedly committed by the petitioner’s partner were “not fairly comparable to the severe abuse” the state legislature had contemplated in drafting the DVSJA); *People v. J.M.*, 211 N.Y.S.3d 762, 769–70 (N.Y. Cnty. Ct. 2024) (holding that there was no substantial abuse because the petitioner had “access to and communications with friends and family,” and the physical harm was “denigrating, inappropriate and unacceptable [but did] not rise to the level of ‘substantial’”).

⁴⁷ N.Y. CRIM. PROC. LAW § 530.11 (McKinney 2025).

⁴⁸ See, e.g., *Shannon M. v. Michael C.*, 947 N.Y.S.2d 831, 838–39 (N.Y. Fam. Ct. 2012).

⁴⁹ See, e.g., *Mark W. v. Damion W.*, 887 N.Y.S.2d 822, 823–24 (N.Y. Fam. Ct. 2009).

⁵⁰ N.Y. PENAL LAW § 60.12 (McKinney 2025) (referencing “a defense pursuant to article thirty-five, article forty, or subdivision one of section 125.25 of this chapter,” which correspond to the listed defenses above).

⁵¹ *Id.* § 35.

⁵² *Id.* § 40 (citation modified).

⁵³ *Id.* § 125.25.

These standard affirmative defenses are raised at the time of trial and either warrant a total acquittal or justify a downward departure of the offense's seriousness (e.g., from murder to manslaughter) with a concomitant reduction in the sentencing range.⁵⁴

As explained in Part III, this provision has important implications for the sweep of the significant contributing factor requirement. The legislature has specified that a petitioner's failure to qualify for affirmative defenses already included in criminal law should not be disqualifying for their ability to qualify for DVSJA relief. Therefore, when evaluating the scope of the significant contributing factor requirement, it is crucial for courts to ensure that the DVSJA is preserved as a sentencing mechanism that goes beyond these defenses, with less stringent requirements.

C. Criticisms of the DVSJA

Despite the DVSJA's breadth, scholars have criticized its ability to secure relief for survivors. Some critics have highlighted the shortcomings of the statute's corroboration requirements.⁵⁵ Professor Elizabeth Langston Isaacs has argued that these corroboration requirements foreclose relief for many deserving applicants and should be abolished.⁵⁶ Isaacs presented sociological evidence and discussed how Black people, women, and incarcerated people are frequently mischaracterized as liars by society, and that the nature of the DVSJA's evidentiary requirements only entrenches these harms.⁵⁷ Attorney Inès Zamouri similarly identified the lengthy screening process and high corroboration requirements as shortcomings of the DVSJA.⁵⁸ The evidentiary requirements exclude many petitioners who could otherwise be strong candidates for relief because (1) many survivors may not seek help from police or hospitals, and (2) many incarcerated

⁵⁴ *Id.* §§ 35, 40, 125.25.

⁵⁵ For the precise language of the corroboration requirements, see N.Y. CRIM. PROC. LAW § 440.47(2)(c) (McKinney 2025).

⁵⁶ Elizabeth Langston Isaacs, *The Mythology of the Three Liars and the Criminalization of Survival*, 42 YALE L. & POL'Y REV. 427, 505–09 (2024).

⁵⁷ *Id.*

⁵⁸ Inès Zamouri, *Self-Defense, Responsibility, And Punishment: Rethinking the Criminalization of Women Who Kill Their Abusive Intimate Partners*, 30 UCLA WOMEN'S L.J. 203, 261 (2023).

individuals are cut off from the ability to do information-gathering while in prison.⁵⁹

In a similar vein, authors have highlighted the shortcomings of the DVSJA when applied to particularly marginalized groups. For instance, an article written by advocate Assia Serrano—the first immigrant to obtain relief under the DVSJA—and immigration lawyer Nathan Yaffe highlights the statute’s failure to secure relief for immigrant survivors because the Act does not expunge or vacate convictions, leaving survivors vulnerable to deportation after resentencing.⁶⁰ Despite receiving relief under the DVSJA and being resentenced to time served, Ms. Serrano was transferred to federal custody and subsequently deported.⁶¹

Further, a note by law student Tashayla Sierra-Kadaya Borden details the DVSJA’s shortcomings in securing relief for Black women.⁶² Borden particularly highlighted that the “at the time of the offense” requirement, characterized by courts as a “temporal nexus” requirement, presents a high evidentiary burden for petitioners.⁶³ This burden is especially onerous for Black women, who are disproportionately likely to be indigent and who face heightened risk from interactions with law enforcement.⁶⁴ Borden offered several proposed reforms, including expanding this temporal nexus requirement “to include a fear of impending abuse and a more inclusive view of coercive control” rather than require that the abuse was actively ongoing at the time of the offense.⁶⁵

Even while acknowledging the shortcomings of the DVSJA, scholars and advocates have recognized it as a uniquely ambitious piece of legislation.⁶⁶ Many remain optimistic about the potential

⁵⁹ See Tamara Kamis & Emma Rose, *The Domestic Violence Survivors Justice Act Gets a Slow Start*, N.Y. FOCUS (May 7, 2021), <https://perma.cc/R6WS-SEFS> (quoting Kate Skolnick, a co-chair of the DVSJA Statewide Defender Task Force, critiquing the Act’s evidentiary requirements: “There have definitely been some cases of people we’ve screened, we’ve talked to them, they meet all the eligibility criteria . . . but [they] just can’t come up with the evidence they need”).

⁶⁰ Assia Serrano & Nathan Yaffe, *The Domestic Violence Survivors Justice Act and Criminalized Immigrant Survivors*, 26 CUNY L. REV. F. 24, 37 (2023).

⁶¹ *Id.* at 30–32 (“Instead of releasing me, [] officials . . . notified ICE officers of my new release date, and . . . made arrangements for my deportation.”).

⁶² Tashayla Sierra-Kadaya Borden, Note, *Criminalizing Abuse: Shortcomings of the DVSJA on Black Woman Survivorship*, 124 COLUM L. REV. 2065, 2077 (2024).

⁶³ *Id.* at 2084.

⁶⁴ *Id.* at 2084–85.

⁶⁵ *Id.* at 2098.

⁶⁶ E.g., Dorothy Caccioppoli, *Remolding the Court: The Need for Forward-Thinking Evidentiary and Sentencing Practices in Domestic Violence Cases with Battered Women*,

for the DVSJA to achieve its goals, especially if the statute is amended or courts begin to interpret it more favorably to survivors.⁶⁷ Some have advocated the DVSJA's adoption in every state.⁶⁸ These proposals for other states to follow New York in enacting domestic violence-sensitive resentencing legislation demonstrate that, despite its flaws, the DVSJA has gone further than other state statutes in its attempts to secure relief. If the DVSJA's efficacy can match its ambition, it offers an opportunity to reshape how the criminal law and society at large treat criminalized survivors of domestic violence.

II. THE SIGNIFICANT CONTRIBUTING FACTOR TEST

The focus of this Comment is the DVSJA's second prong: that "such abuse was a significant contributing factor to the defendant's criminal behavior," which operates as the DVSJA's causation standard.⁶⁹ Courts have interpreted this standard in varying ways; however, the New York Court of Appeals (the state's highest court) has remained silent on the matter. This uncertainty has led to uneven outcomes across counties and makes it difficult for petitioners to predict their chances of success under the Act.

To highlight this range of interpretations, this Part surveys several key decisions concerning this prong. On one hand, the New York County Court in *People v. D.L.*⁷⁰ held that the second prong required only that "the domestic violence was sufficiently significant to have likely helped bring about the defendant's

62 FAM. CT. REV. 228, 239 (2024) (describing the DVSJA as having "proven itself to be a 'measure of judicial mercy'" (quoting CBS N.Y., *Westchester Woman Has Sentence Reduced Under Domestic Violence Survivors Justice Act*, YOUTUBE (Oct. 11, 2022), <https://perma.cc/A57X-MVMA>)); Shirley LaVarco, *Reimagining the Violence Against Women Act from a Transformative Justice Perspective*, 98 N.Y.U. L. REV. 912, 959 (2023) (stating that the DVSJA "has provided life-changing relief to certain criminalized survivors"); Michael Milleman, *Challenging Overincarceration: The Roles of Law School Clinics Working in Partnership—A Symposium*, 23 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 135, 181 (2023) ("[The DVSJA] saved 105 years from [the incarcerated persons'] earliest possible release dates." (second alteration in original) (quotation marks omitted) (quoting Kate Mogulescu, Professor, Brooklyn L. Sch., Panel Discussion at the University of Maryland Francis King Carey School of Law Symposium: Decarceration: The Roles of Law School Clinics (Mar. 31, 2023))).

⁶⁷ See Caccioppoli, *supra* note 66, at 239–40 (arguing for amending the DVSJA to explicitly include a "preponderance of the evidence" standard and suggesting more judge trainings).

⁶⁸ See *id.*

⁶⁹ N.Y. PENAL LAW § 60.12 (McKinney 2025).

⁷⁰ 147 N.Y.S.3d 335 (N.Y. Cnty. Ct. 2021).

criminal behavior.”⁷¹ On the other hand, the New York Supreme Court (a state trial court) explicitly rejected that reasoning and applied a stricter standard under which “[m]inor,” “insignificant contributing factors will not pass muster.”⁷² No other courts have articulated a formal standard, yet they implicitly endorse different approaches. Some courts argue for judicial discretion⁷³ and a “cumulative . . . full picture approach,”⁷⁴ while others have ruled against petitioners when a more salient “contributing factor” to the crime is identified.⁷⁵ Two contrasting approaches have emerged: one construing “significant contributing factor” broadly and one treating it narrowly. I assess each approach in turn.

A. Cases That Adopt a Broad Standard for DVSJA Causation

Several courts have supported a broad reading of “significant contributing factor,” either explicitly or implicitly, by endorsing approaches with room for significant judicial discretion.

One high-profile case⁷⁶ decided under the DVSJA is *People v. Addimando*,⁷⁷ in which the trial court’s initial denial of DVSJA sentencing was reversed on appeal. During her sentencing hearing, petitioner Nicole Addimando testified to a lengthy history of physical, sexual, and psychological abuse from her husband. Her injuries were heavily corroborated, including by videos and testimony from her therapist, a police detective, and a medical professional who treated her prior to the offense.⁷⁸ Despite this corroboration, the trial court cast doubt on whether her husband was the abuser, and, more importantly for this analysis, held that because Addimando had the opportunity to escape the abuse prior to killing her husband, she did not qualify for DVSJA relief in any

⁷¹ *Id.* at 340.

⁷² *People v. B.N.*, 192 N.Y.S.3d 445, 466 (N.Y. Sup. Ct. 2023) (“No longer will any mere ‘factor’ qualify. Minor factors are insufficient now, and insignificant contributing factors will not pass muster.”).

⁷³ *See, e.g.*, *People v. Addimando*, 152 N.Y.S.3d 33, 39 (N.Y. App. Div. 2021).

⁷⁴ *People v. Wendy B.-S.*, 215 N.Y.S.3d 806, 810 (N.Y. App. Div. 2024) (quotation marks omitted) (quoting *People v. Smith*, 132 N.Y.S.3d 251, 258 (N.Y. Cnty. Ct. 2020)).

⁷⁵ *See, e.g.*, *People v. Jonathan H.*, 2024 WL 1627673, at *18 (N.Y. Sup. Ct. Apr. 9, 2024).

⁷⁶ Hamilton, *supra* note 11, at 175 (detailing coverage by major news outlets); *see, e.g.*, Rachel Louise Snyder, *When Can a Woman Who Kills Her Abuser Claim Self-Defense?*, THE NEW YORKER (Dec. 20, 2019), <https://perma.cc/S9T7-GFWV>.

⁷⁷ 152 N.Y.S.3d 33 (N.Y. App. Div. 2021).

⁷⁸ Hamilton, *supra* note 11, at 186; *People v. Addimando*, 120 N.Y.S.3d 596, 602–05 (N.Y. Cnty. Ct. 2020).

event.⁷⁹ The judge reasoned that she “had the opportunity to safely leave” earlier on the day of the offense, as well as “the moment before she shot [her husband].”⁸⁰ Because of this opportunity to escape, the judge held the abuse could not have been a significant contributing factor to Addimando’s conduct. The judge further wrote that the “choices the defendant made” and “did not make” in the days and moments leading up to the offense “provide insufficient evidence to sustain the defendant’s burden that her act was caused by abuse that was a ‘significant contributing factor.’”⁸¹

In this articulation of the significant contributing factor standard, the court required a very narrow causal chain, essentially understanding the standard to require no alternative be available for the defendant other than the criminal conduct. The court also implicitly rejected that domestic violence could be the cause of her conduct due to the intervening independent choice Addimando made (which tellingly, the court equated with the choice she “did not make,” i.e., to leave). This idea harkens to tort concepts of causation, in which intervening choices can sever a causal chain.⁸² And, as further explained in Part III.A, this analysis imports the legal requirements of self-defense into the DVSJA, making the Act powerless to grant relief to a new set of petitioners. Because self-defense vacates an individual’s conviction, no petitioner would ever be both eligible for a vacated conviction under the self-defense affirmative defense *and* eligible for DVSJA sentencing (which necessarily arises post-conviction).⁸³ In order to preserve the DVSJA’s power to grant relief at all, courts must therefore read its requirements as less stringent than those of self-defense.⁸⁴

In reversing the trial court’s ruling in Addimando’s case and granting her petition to be sentenced under the DVSJA, the appellate court articulated a less stringent significant contributing factor test—and therefore, a more expansive understanding of causation. The court wrote that the evidence of abuse “established that the abuse was a significant contributing factor to the defendant’s criminal behavior.”⁸⁵ This evidence included Addimando’s

⁷⁹ *Addimando*, 120 N.Y.S.3d at 619–21.

⁸⁰ Hamilton, *supra* note 11, at 190 (quoting *Addimando*, 120 N.Y.S.3d at 621).

⁸¹ *Addimando*, 120 N.Y.S.3d at 619–20.

⁸² See *infra* Part IV.A.

⁸³ See *infra* Part III.A.1.

⁸⁴ See *infra* Part III.A.

⁸⁵ *Addimando*, 152 N.Y.S.3d at 41.

testimony that her husband had sexually assaulted and threatened to kill her on the night of the crime.⁸⁶ The court cited remarks on the New York Senate floor by the DVSJA sponsor, New York State Senator Roxanne Persaud, for the proposition that a sentencing court should “exercise discretion in its analysis of the [] three factors.”⁸⁷ While the court did not articulate an alternate causation standard to the one applied by the trial court, it plainly rejected the trial court’s narrow position that domestic violence could only be a significant contributing factor to the crime if it left petitioner with no alternative course of action.

In another landmark DVSJA case, a sentencing court held that the statute’s second prong requires but-for causation but does not require that the petitioner lacked any alternative course of action. In *People v. Smith*,⁸⁸ the petitioner, a minor at the time of her offense, killed a man who had sexually abused her.⁸⁹ Although the petitioner arrived at the abuser’s house with an intent to kill him, the Erie County Court held that the abuse was still a significant contributing factor to the crime, which would not have happened “had it not been for the illicit and abusive relationship [the adult man] cultivated.”⁹⁰ Here, a but-for causal connection between the abuse and the crime sufficed for the court, regardless of whether the petitioner could have taken alternative actions. The court thus recognized that DVSJA relief is meant to go beyond traditional justification defenses in common law.

Other courts have followed suit. In *People v. Wendy B.-S.*,⁹¹ for instance, an appellate court endorsed *Smith*’s approach in finding that the abuse the petitioner experienced was a significant contributing factor to her role in her criminal offense.⁹² The court held that judges should “consider the cumulative effect of the abuse together with the events immediately surrounding the crime, paying particular attention to the circumstances under

⁸⁶ *Id.* at 41–42.

⁸⁷ *Id.* at 39. The court also quoted the DVSJA sponsor’s statement that “[t]he judge still has the discretion. We’re asking the judge to take into consideration what they have gone through, what they were living with.” *Id.* (quotation marks omitted) (quoting Stenographic Record at 1570, S. 1077, 2019 Leg., Reg. Sess. (N.Y. 2019) (statement of Senator Persaud)).

⁸⁸ 132 N.Y.S.3d 251 (N.Y. Cnty. Ct. 2020).

⁸⁹ *Id.* at 256.

⁹⁰ *Id.* at 258.

⁹¹ 215 N.Y.S.3d 806 (N.Y. App. Div. 2024).

⁹² *Id.* at 810. *But see id.* at 811 (ruling against resentencing on the “unduly harsh” prong).

which [the] defendant was living and adopting a ‘full picture’ approach in its review.”⁹³ Taken together, these decisions, including two at the appellate level (*Addimando* and *Wendy B.-S.*), highlight that many courts reject a blinkered approach to causation, instead taking a holistic approach, despite not explicitly setting out causation requirements.

Several other cases have taken the significant contributing factor test to simply require but-for causation—that, without the abuse, the crime would not have occurred. This includes cases where the petitioner’s crime was not against their abuser but against a third party with their abuser as a co-defendant.⁹⁴ And several more cases did not articulate the significant contributing factor test because the petitioner’s crime was against an abuser and the two were engaged in active struggle.⁹⁵ These cases did not impose a requirement that abuse was the sole cause of the crime, or that the petitioner had no choice but to engage in the criminal conduct, highlighting that many courts have rejected a narrow view of causation in the Act.

Finally, at least one case has further held that the significant contributing factor test allows for a petitioner who experienced childhood abuse to qualify for DVSJA relief. In *People v. D.L.*,⁹⁶ the court found that the petitioner’s childhood sexual abuse led to his drug addiction, and he committed burglaries in order to sustain this addiction.⁹⁷ Articulating its vision of the significant contributing factor standard, the court wrote that it “need not find that the abuse was the exclusive or even the overriding factor ‘Significant contributing factor’ means the domestic violence was sufficiently significant to have likely helped bring about the defendant’s criminal behavior.”⁹⁸ The court argued that the legislative history of the DVSJA supports its reading because, in

⁹³ *Id.* (alteration in original) (quoting *Smith*, 132 N.Y.S.3d at 258).

⁹⁴ *See, e.g.,* *People v. S.M.*, 150 N.Y.S.3d 562, 565, 568 (N.Y. Cnty. Ct. 2021) (finding that petitioner should receive DVSJA relief because she was in an abusive relationship with her co-defendant, who murdered a third party while she was present).

⁹⁵ *See* *People v. S.S.*, 2023 WL 4921324, at *4 (N.Y. Sup. Ct. July 7, 2023) (involving an abuser that threatened petitioner’s life and was brandishing a gun at petitioner); *People v. K.B.*, 2023 WL 9059850, at *2 (N.Y. Sup. Ct. Sept. 8, 2023) (involving an abuser that threw petitioner to ground and kicked her baby); *People v. Liz L.*, 201 N.Y.S.3d 514, 518 (N.Y. App. Div. 2023) (involving an abuser that aggressively screamed at and cornered petitioner).

⁹⁶ 147 N.Y.S.3d 335 (N.Y. Cnty. Ct. 2021).

⁹⁷ *Id.* at 337, 341.

⁹⁸ *Id.* at 340.

enacting the statute, the New York legislature (1) eliminated the requirement that the petitioner's crime be against their abuser and (2) changed the language in the penal code from "a factor in causing" to "significant contributing factor," removing the word "causing."⁹⁹ In doing so, the court argued, the legislature "directed a shift from a strict causation standard to the lower standard of a mere 'contributing factor.'"¹⁰⁰

These cases show that while many courts identify the need for a reading of significant contributing factor that is broad enough to account for the complex ways abuse manifests in survivors' behavior, there is no single rule that proponents of such a reading have settled on. Some cases, like *Addimando*, *Wendy B.-S.*, and *Smith*, seem to advocate for judicial discretion and holistic review. Others, like *D.L.*, seek to explicitly adopt a lower bar. But what all these cases share is the rejection of a strict causation standard that would limit DVSJA relief solely to cases in which the petitioner had no choice but to commit the crime.

B. Cases That Adopt a Narrow Standard for DVSJA Causation

Despite several decisions endorsing a holistic approach to the significant contributing factor prong, in which judges consider the cumulative effect of domestic violence on a petitioner's life, several courts have gone in the opposite direction with reasoning more like the trial court's in *Addimando*.

*People v. Jonathan H.*¹⁰¹ reflects this narrower approach. There, the court rejected the logic underlying the *D.L.* decision, holding instead that the childhood abuse the petitioner experienced was too attenuated from his crime to satisfy the significant contributing factor requirement.¹⁰² The petitioner in *Jonathan H.* was convicted for stabbing and killing a man living in his homeless shelter. The petitioner argued that his post-traumatic stress disorder stemming from childhood abuse had been triggered when the man threatened to kill him and sexually assault his wife.¹⁰³ The court held that because the man had been harassing the petitioner, these threats were a larger factor in the

⁹⁹ *Id.* (comparing the current DVSJA with its predecessor, Jenna's Law).

¹⁰⁰ *D.L.*, 147 N.Y.S.3d at 340.

¹⁰¹ 2024 WL 1627673 (N.Y. Sup. Ct. Apr. 9, 2024).

¹⁰² *Id.* at *17–18.

¹⁰³ *Id.*

petitioner's crime than any childhood abuse.¹⁰⁴ Construing the DVSJA's second prong narrowly, the court found the statute inapplicable on this basis.

In *People v. B.N.*,¹⁰⁵ the court explicitly articulated a more stringent causation standard. The court argued, again counter to the logic in *D.L.*, that legislative history in fact indicated that the legislature sought to *increase* the causation requirement in passing the DVSJA: "Prior to the DVSJA amendment, the statute required only that the 'abuse was a factor in causing the defendant to commit such offense.'" ¹⁰⁶ Therefore, the court reasoned, the statute had "raised the threshold to balance massive expansions the legislature made in other parts of the statute to obtain explicitly-stated objectives."¹⁰⁷ This reading focused on the addition of the word "significant" to the statute, while the court in *D.L.* focused on the removal of the word "causing." The court went on to cite legislative history in which the sponsors of the DVSJA spoke about how the bill would help "victims committing crimes" because "they were 'reacting' to abuse, 'protect[ing]' or 'defending' themselves or their children, acting 'as a result of' abuse, or being 'coerced' into committing crimes."¹⁰⁸ The court argued that these scenarios highlight that there is still a causation requirement in the statute and, further, that while "before the DVSJA, the abuse could have been a minor factor or a major factor, significant or insignificant . . . the statute now specifies . . . [that] [m]inor factors are insufficient."¹⁰⁹

Ultimately, under the narrow approach, causation serves as a rigid gatekeeper for DVSJA relief. This holds true whether the court endorses a strict causation requirement explicitly, as in *B.N.*, or implicitly, as in *Jonathan H.* If it appears that the causal chain between the petitioner's survival of abuse and their criminal conduct is too attenuated, their chances of relief sharply decline.

The decisions under the two approaches above highlight the sharp divergence among New York courts on how to conceive of causation in the statute and how few courts have weighed in on

¹⁰⁴ *Id.* (writing that the desire of the petitioner to stand up to harassment was likely not the result of his childhood abuse because wanting to stand up to harassment "would be understandable for anyone who had been subjected to threats of extreme violence . . . like the evidence in this case showed").

¹⁰⁵ 192 N.Y.S.3d 445 (N.Y. Sup. Ct. 2023).

¹⁰⁶ *Id.* at 463 (emphasis in original).

¹⁰⁷ *Id.* at 464.

¹⁰⁸ *Id.* at 465.

¹⁰⁹ *Id.* at 466.

what the precise standard should be. Without the Court of Appeals' input on the matter or additional legislative clarification, petitioners are left unsure about what is required of a successful bid for DVSJA sentencing.

III. ARGUING FOR A PROBABILISTIC, DISCRETIONARY STANDARD

These clashing interpretations demand resolution. In this Part, I argue for a probabilistic and discretionary interpretation of causation in the DVSJA. I borrow the language used in *D.L.* for DVSJA causation: that "the domestic violence was sufficiently significant to have likely helped bring about the defendant's criminal behavior" (i.e., the LHBA standard).¹¹⁰ Although the case does not specify how this standard should be applied, I argue it should be thought of as a probabilistic standard: if a petitioner can prove that domestic violence was likely a but-for cause of their criminal conduct, the causation element is satisfied. I also argue that this standard should not include necessity or immediacy requirements and should be applied generously with the policy goals of the DVSJA in mind.

In this Part, I give two main reasons for this standard. First, I argue that a reading of the DVSJA that only requires a but-for determination is most consistent with the text of the statute given its provision that explicitly distances the DVSJA's requirements from those of traditional affirmative defenses in criminal law. And second, although courts have drawn disparate conclusions from the DVSJA's legislative history, a broad reading of its causation prong is most consistent with the statute's purpose.

A. There Is a Strong Textual Basis for a Lenient Causation Standard

The text of the DVSJA lends strong support to a lenient causation standard. As explained above, the DVSJA explicitly rejects that the significant contributing factor standard should be as stringent as affirmative defenses traditionally offered in criminal law. Specifically, the statute reads that prong (2) may be satisfied "regardless of whether the defendant raised a defense pursuant to article thirty-five [justification defenses], article forty [other defenses involving lack of culpability], or subdivision one of

¹¹⁰ *D.L.*, 147 N.Y.S.3d at 340.

section 125.25 of this chapter [extreme emotional disturbance defenses].”¹¹¹ I discuss these three categories of affirmative defenses, highlighting their requirements, and then compare these standards to the causation requirements endorsed in key DVSJA cases. I argue that courts have frequently imported affirmative defense requirements into their causation analysis and that a correct reading of the statute mandates a less stringent causation standard.

1. Requirements of affirmative defenses.

Justification defenses, the first category distinguished in the DVSJA, are designed for circumstances under which the usually criminalized conduct is normatively acceptable.¹¹² These include necessity¹¹³ and self-defense,¹¹⁴ which “affirmatively permit[] the use of force under certain circumstances.”¹¹⁵ If a criminal defendant successfully argues for a justification defense, the court deems their conduct “not criminal” and there is no conviction.¹¹⁶

The necessity defense requires that (1) the otherwise criminal conduct must be necessary to avoid an injury, (2) the injury is imminent, (3) the situation necessitating such conduct is not the fault of the defendant, and (4) the harm prevented is clearly worse than that caused by the person’s conduct, using “ordinary standards of intelligence and morality.”¹¹⁷ The necessity defense is a tool to fill the gap between morally and legally permissible acts, recognizing the potential for the criminal law to be overinclusive and penalize socially desirable conduct.¹¹⁸

Despite the defense’s historical significance, New York courts have not granted a necessity defense in decades, believing the defense should only be used in “rare and highly unusual

¹¹¹ N.Y. PENAL LAW § 60.12 (McKinney 2019).

¹¹² See Edward B. Arnolds & Norman F. Garland, *The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil*, 65 J. CRIM. LAW & CRIMINOLOGY 289, 295 (1975) (explaining that such defenses necessarily “require[] a choice of values”).

¹¹³ See N.Y. PENAL LAW § 35.05(2) (McKinney 1968).

¹¹⁴ See *id.* § 35.15(1).

¹¹⁵ *People v. Rayford*, 183 N.Y.S.3d 669, 671 (N.Y. App. Div. 2023) (quoting *People v. McManus*, 469 N.E.2d 202, 204 (N.Y. 1986)).

¹¹⁶ PENAL § 35.05 (“[C]onduct which would otherwise constitute an offense is justifiable and not criminal when: [necessity elements are met].”); *id.* § 35.15(1) (“A person may . . . use physical force [when self-defense elements are met].”).

¹¹⁷ *Id.* § 35.05(2).

¹¹⁸ See Arnolds & Garland, *supra* note 112, at 291 (listing early applications of the necessity defense, including allowing prisoners to escape a burning jail and allowing a defendant to expose the public to a sick person when carrying the person to a doctor).

circumstances.”¹¹⁹ New York courts have interpreted an objective standard in the necessity defense, requiring that the defendants’ actions are “reasonably designed to actually prevent the threatened greater harm.”¹²⁰ Individuals thus must not only believe that their actions will prevent the anticipated harm, but their belief must also pass muster under a reasonableness threshold.¹²¹ The imminence requirement in the necessity defense is also a limiting factor because the harm sought to be prevented must be “impending” and “constitute[] a present, immediate threat . . . that is actual and at hand, not one that is speculative, abstract or remote.”¹²²

In contrast, self-defense, the other category of justification defenses, is a more central feature of state criminal law. New York Penal Law § 35.15 states that the use of force is only justified when the actor “reasonably believes such to be necessary to defend [] herself or a third person from what . . . she reasonably believes to be the use or imminent use of unlawful physical force.”¹²³ The use of deadly force imposes additional requirements, requiring that the actor also has no ability to retreat and “reasonably believes” that the other person “is using or about to use deadly physical force.”¹²⁴ New York’s statute contains the three principles that have long existed in common law for self-defense: necessity (the action was necessary to prevent the anticipated harm), proportionality (the harm created was not disproportionate to the harm sought to be prevented), and reasonable belief (the actor reasonably believed¹²⁵ both of the preceding conditions to be satisfied).¹²⁶

Scholars have long highlighted the shortcomings of self-defense law in the context of domestic violence. The imminence requirement has historically prevented many defendants who committed crimes in desperate attempts to escape abuse from raising self-defense claims because the harm they sought to prevent was

¹¹⁹ *People v. Craig*, 585 N.E.2d 783, 786 (N.Y. 1991) (referencing the legislative history).

¹²⁰ *People v. Gray*, 571 N.Y.S.2d 851, 869 (N.Y. Cnty. Ct. 1991).

¹²¹ See *Craig*, 585 N.E.2d at 786 (“Unlike the Model Code . . . the New York statutory standard is, by its terms, objective.”).

¹²² *Id.* at 787.

¹²³ N.Y. PENAL LAW § 35.15(1) (McKinney 2024).

¹²⁴ *Id.* § 35.15(2). There are exceptions to the “duty to retreat” rule, including if the actor is in their dwelling “and not the initial aggressor.” *Id.* § 35.15(2)(a)(i).

¹²⁵ The “reasonable belief” standard requires “that the belief comport with an objective notion of reasonableness,” not that the belief merely be reasonable in the actor’s own eyes. *People v. Goetz*, 497 N.E.2d 41, 48 (N.Y. 1986).

¹²⁶ See *Murdoch*, *supra* note 21, at 194.

foreseen but not immediate.¹²⁷ Further, the objective reasonable person standard may fail to account for how gender-based power dynamics and psychological trauma can reshape individuals' risk assessments.¹²⁸ Therefore, just as how necessity's objective components have sapped its relevance, self-defense is also relatively toothless, particularly in the domestic violence context. This weakness highlights the need for the DVSJA, as justification defenses will rarely provide any solace to domestic violence survivors facing convictions and imprisonment.

The second category of defenses listed in the DVSJA are the "other defenses involving lack of culpability" laid out by Article 40 of the penal code.¹²⁹ This category contains the duress,¹³⁰ entrapment,¹³¹ renunciation,¹³² and insanity¹³³ defenses, but the duress defense is most relevant to this discussion, as the standards it employs are most ripe for overlap with the standards for causation that courts have fashioned in the DVSJA context.

The duress defense, which is only successful in a narrow set of cases, is based on the principle that while the defendant's action might not be normatively justified (as in necessity or self-defense), the actions are morally permissible.¹³⁴ Duress defenses arise when individuals are coerced into the criminal activity. Like

¹²⁷ See, e.g., *id.* at 204 (describing several cases holding "that a self-defense instruction will not be given absent an imminent threat" as "unsettling, particularly when, despite the lack of such a threat, the defendants' responses appear to be the only way to avoid the harm sought to be inflicted upon them"); Lenore E. A. Walker, *Gender Based Violence: 45 Years of Battered Woman Syndrome in the Courts*, 57 SUFFOLK U. L. REV. 31, 35–36 (2024) (describing the imminence requirement as a "troubling part of the definition of self-defense" and arguing that it should not "necessarily mean immediate").

¹²⁸ See Walker, *supra* note 127, at 35 ("Who determines what is reasonable? A reasonable person in the law is usually determined from a man's perception, not from a woman's or even, more importantly, from a battered woman's perception.").

¹²⁹ N.Y. PENAL LAW § 40.00–40.15 (McKinney 1968) (citation modified).

¹³⁰ *Id.* § 40.00 (stating that it is an affirmative defense "that the defendant engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which . . . a person of reasonable firmness in his situation would have been unable to resist"). There is an exception to duress "when a person intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress." *Id.*

¹³¹ PENAL § 40.05.

¹³² *Id.* § 40.10.

¹³³ *Id.* § 40.15.

¹³⁴ See Claire O. Finkelstein, *Duress: A Philosophical Account of the Defense in Law*, 37 ARIZ. L. REV. 251, 265 (1995) (describing one common view of duress as based in the idea that "an individual who performs an action out of fear for his life may *lack the ability* to conform his behavior to the law" (emphasis in original)).

necessity and self-defense, duress contains an imminence requirement and is judged by an objective standard; the threat used to coerce the defendant must be “imminent” and one that a “person of reasonable firmness . . . would have been unable to resist.”¹³⁵ And also like justification defenses, successful duress defenses foreclose conviction.¹³⁶

Finally, the DVSJA also stipulates that success should not depend on whether the defendant has raised an extreme emotional disturbance (EED) defense.¹³⁷ In New York, the EED defense is one that mitigates a conviction down to manslaughter, provided that “[t]he defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse.”¹³⁸ The “reasonable explanation” is judged by whether the act is reasonable “from the viewpoint of a person in the defendant’s situation under the circumstances as the defendant believed them to be,” creating an objective standard while still limiting the test to the information the defendant possessed at the time.¹³⁹

2. The DVSJA’s text precludes importing affirmative defense requirements into the statute’s causation standard.

Examining cases denying DVSJA relief reveals the strong influence that common law affirmative defenses still have on judges’ reasoning, despite the explicit provision that prong (2) may be satisfied regardless of whether a petitioner raised an affirmative defense.¹⁴⁰ In *B.N.*, the court discussed how the DVSJA’s sponsors described applicable scenarios under the DVSJA as ones where the petitioner was “‘reacting’ to abuse, ‘protect[ing]’ or ‘defending’ themselves or their children, acting ‘as a result of’ abuse, or being ‘coerced’ into committing

¹³⁵ PENAL § 40.00. For a case in which imminence excluded a defendant from raising a duress defense due to domestic violence, see, for example, *People v. Jordan*, 44 N.Y.S.3d 584, 585 (N.Y. App. Div. 2016), which held that a defendant’s belief that her ex-husband would kill her and sexually abuse her son was not sufficient to establish duress in her offense of killing her son.

¹³⁶ PENAL § 40.00.

¹³⁷ *Id.* § 125.25; *id.* § 60.12.

¹³⁸ *Id.* § 125.25.

¹³⁹ *Id.*

¹⁴⁰ PENAL § 60.12.

crimes.”¹⁴¹ This language is strongly reminiscent of affirmative defenses: “reacting,” “protecting,” and “defending” all echo self-defense arguments (or, in the case of defending someone’s children, necessity), implying some degree of immediacy, and “being coerced” echoes duress. In fact, the only verb clause that does not evoke an affirmative defense—“acting as a result of” abuse—is actually much broader than the court has let on and is a catchall for a wide variety of actions, which the *B.N.* court did not grapple with. This clause on its own does not suggest a narrow causation standard; instead, it only raises the question of what constitutes “a result of” abuse and how attenuated the causal chain can be.

The trial court decision in *People v. Addimando*¹⁴² and its subsequent reversal also demonstrate the influence of affirmative defense standards in DVSJA decisions. At trial, the jury rejected Ms. Addimando’s justification defense, despite the facts that she testified that her abuser had raped her and threatened to kill her, the two had struggled over a gun, and there was external evidence that he had contemplated killing her that night.¹⁴³ As explained in the previous Part, the sentencing court adopted the prosecution’s theory that the DVSJA did not apply because Addimando had the chance to safely leave.¹⁴⁴ This decision demonstrates the influence of affirmative defense requirements on sentencing judgment: because the jury rejected the justification defense, the court also rejected DVSJA resentencing on similar immediacy and necessity grounds. But, as the appellate court noted, it makes little sense to require affirmative defense-like standards in DVSJA resentencing: “Clearly, . . . had her actions been found to be legally justified, [the DVSJA] would have no application or effect in this case.”¹⁴⁵ Further, the appellate court criticized the trial court’s high bar for immediacy, writing that it “frustrate[d] [the

¹⁴¹ *People v. B.N.*, 192 N.Y.S.3d 445, 465 (N.Y. Sup. Ct. 2023) (alteration in original) (summarizing the bill’s legislative history).

¹⁴² 120 N.Y.S.3d 596, 621 (N.Y. Cnty. Ct. 2020).

¹⁴³ *Id.* at 617–18. Her husband’s search history on the night of his death included searches for “[w]ill police know if [she] was asleep when I shoot her?” and “what will happen if someone was asleep and then someone shot them in the head[?]” Hamilton, *supra* note 11, at 187. The prosecution argued that Addimando was a “master manipulator” who had done these searches on his phone. *Id.* at 188.

¹⁴⁴ *Addimando*, 120 N.Y.S.3d at 619.

¹⁴⁵ *Addimando*, 152 N.Y.S.3d at 42.

DVSJA's] legislative intent by applying outdated notions regarding domestic violence issues.”¹⁴⁶

Other cases have imported the immediacy requirement by conflating the first and second prongs of the statute. In *People v. Fisher*,¹⁴⁷ the court held that because the abuse from the petitioner's father was no longer ongoing, it could not have been a significant contributing factor to her assaulting him with a baseball bat.¹⁴⁸ This analysis implicitly endorses an immediacy requirement. The court justified its analysis by arguing that prong (1) of the DVSJA requires that the petitioner was a victim of abuse “at the time of” the offense, which, while not requiring that “the abuse and the offense occur contemporaneously,” still requires a “temporal nexus” between the abuse and the offense.¹⁴⁹ In *Jonathan H.*, the court made a similar argument that the time between the abuse and the offense disqualified the petitioner for relief, also endorsing an immediacy- or necessity-like requirement in prong (2).¹⁵⁰

But this analysis conflates the first and second prongs of the statute. While prong (1) may include a temporal requirement, the “significant contributing factor” standard is not by its own terms temporally limited; imposing such a limitation imports the same immediacy concepts included in affirmative defenses. Further, other courts have held that the “temporal nexus” requires that the effects of the abuse, but not the abuse itself, be ongoing.¹⁵¹

True, the courts in the above cases did not explicitly argue that the defendant must qualify for an affirmative defense in order to secure DVSJA relief. That would have baldly violated the textual provision denying that petitioners need to raise an affirmative defense to secure relief under the Act.¹⁵² Yet the degree of sympathy afforded petitioners seems strongly influenced by the background normative principles associated with affirmative defenses.

¹⁴⁶ *Id.*

¹⁴⁷ 200 N.Y.S.3d 494 (N.Y. App. Div. 2023).

¹⁴⁸ *Id.* at 496–97.

¹⁴⁹ *Id.* at 497 (quoting *People v. Williams*, 152 N.Y.S.3d 575, 576 (N.Y. App. Div. 2021)).

¹⁵⁰ *Jonathan H.*, 2024 WL 1627673, at *17–18.

¹⁵¹ See, e.g., *People v. D.L.*, 147 N.Y.S.3d 335, 337, 341 (N.Y. Cnty. Ct. 2021); *People v. Liz L.*, 221 N.Y.S.3d 514, 517–18 (N.Y. App. Div. 2023) (“[N]othing in the DVSJA requires a finding that the abuse and the offense occur contemporaneously, and to hold otherwise would be tantamount to requiring that a defendant make a showing akin to a justification defense . . . which is inapposite to the legislative history.”).

¹⁵² N.Y. PENAL LAW § 60.12 (McKinney 2019).

This influence also violates a clear principle of statutory interpretation. The rule against surplusage is designed to render every clause and word of a phrase meaningful, assuming that the legislature did not wish to write in redundant or meaningless provisions.¹⁵³ If this provision of the DVSJA had simply been stating the obvious—that a defendant’s failure to fully raise these defenses should not count against them—then it would not have been included in the statute, as the absence of an affirmative defense requirement would be sufficient to ensure that no defendants were formally excluded for their failure to raise an affirmative defense. More fundamentally, if the DVSJA were designed to replicate aspects of affirmative defense legislation, there would not need to be a DVSJA statute at all—the survivors the legislature wanted relief for would have already received it, a point not lost on the appellate court in *Addimando*.¹⁵⁴ In fact, the state legislature recognized the pitfalls and inadequacies of existing criminal law by creating a compassionate resentencing regime in the first place, providing that a “guilty” conviction should not foreclose relief.

While conflating the requirements of the DVSJA with those of affirmative defenses represents a clear legal error on the part of sentencing judges, it is unsurprising given cultural understandings of when criminalized individuals deserve relief. For years, many judges have been conditioned to think that the only time defendants should be afforded relief is when the law has decided they are less culpable—that they qualify for an affirmative defense. But sentencing statutes serve a separate purpose in criminal law. Sentencing reform is not about whether the defendant is normatively more or less culpable¹⁵⁵ (which is evaluated in the conviction itself), but about the proper scope and implementation of our current punishment regime, where primary goals should be deterrence and rehabilitation.¹⁵⁶ These welfare-oriented

¹⁵³ See *Canons of Construction (Adapted From Scalia & Garner)*, UNIV. HOUS. L. CTR. 2 [hereinafter *Canons of Construction*], <https://perma.cc/5H3T-NUMJ>.

¹⁵⁴ See *Addimando*, 152 N.Y.S.3d at 42; see also text accompanying note 145.

¹⁵⁵ Many people do believe successful DVSJA petitioners are less culpable. But this culpability determination is not the decisive element of a petitioner’s case. For a scholar’s suggestion on adding a new affirmative defense, “survival homicide,” that would incorporate the idea of lessened culpability for a domestic violence survivor committing homicide against their abuser, see Michal Buchhandler-Raphael, *Survival Homicide*, 44 CARDOZO L. REV. 1674, 1719 (2023).

¹⁵⁶ See Dawinder S. Sidhu, *Towards the Second Founding of Federal Sentencing*, 77 MD. L. REV. 485, 489–90 (describing the historical goals of sentencing regimes as reflecting a combination of deterrence and rehabilitative goals).

goals are separate concerns from culpability, and to reify the importance of culpability in sentencing is to shift our sentencing regime backwards to a more retributive approach to justice rather than a forward-looking one.

In providing that the second prong should not hinge on whether the petitioner has previously raised an affirmative defense,¹⁵⁷ the legislature indicated that the requirements of the DVSJA are looser than those of the affirmative defenses themselves. This follows in two steps. First, if the legislature's intent had been to impose an equivalent standard, then no such clarification would be necessary; in fact, the DVSJA in its entirety would be unnecessary. Second, although the DVSJA's requirements could in theory be stricter or looser than those of the affirmative defenses, imposing a stricter requirement under the DVSJA would be illogical. Major consequences follow from affirmative defenses: they either wipe out a conviction entirely or change the very crime for which an individual is convicted. Imposing similar requirements in the sentencing context fails to reflect the fact that petitioners are convicted regardless of their DVSJA outcome and that sentencing typically considers much more information extraneous to the crime itself, such as family ties, degree of remorse, and future risk of violence. As discussed below, the DVSJA does not deal with culpability, but instead intends to mitigate the retraumatizing effects of prison on survivors, recognizing the low public safety benefits of incarceration for this group.¹⁵⁸

In sum, the text rejects that imminence, necessity, and objective reasonableness standards be imported as requirements for the DVSJA's significant contributing factor standard. A petitioner's culpability in the eyes of the law should never be a disqualifying factor for her DVSJA relief.

Although the text of the statute demonstrates that DVSJA causation was not intended to require the same strict elements as affirmative defenses, the rule of lenity canon also supports this proposition. The rule of lenity dictates that "[a]mbiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant's favor."¹⁵⁹ Although in this case, the DVSJA does not create a *new* penalty scheme, the rule of lenity still ought to

¹⁵⁷ N.Y. PENAL LAW § 60.12 (McKinney 2019).

¹⁵⁸ See *infra* Part IV.B.

¹⁵⁹ *Canons of Construction*, *supra* note 153, at 4.

apply directionally (i.e., in favor of a lesser penalty for the affected parties). This directional approach is not unprecedented, as demonstrated by federal courts' use of the rule of lenity to interpret sentencing schemes.¹⁶⁰ By shortening prison sentences, DVSJA relief lessens the penalties (years of a sentence) imposed on a petitioner. Therefore, if there is any remaining ambiguity in the statute, the rule of lenity would demand a lower causation standard in order to err in favor of lesser penalties imposed on defendants.

B. Legislative History Supports a Broad Understanding of Causation

The DVSJA's legislative history further supports that the LHBA standard is a preferable reading of the Act's causation element. This issue has been actively debated in the courts, particularly in dueling decisions by the Columbia County Court in *D.L.* and the Cayuga County Court in *B.N.*, highlighting the salience of legislative history as a guide for New York courts.¹⁶¹

In 2021, the Columbia County Court granted DVSJA relief to *D.L.*¹⁶² The court partly based its decision on an argument that the Act loosened the causation requirements in Jenna's Law, which explicitly required that domestic violence be "a factor in *causing*" the crime.¹⁶³ The *B.N.* petitioner cited *D.L.* in her petition for DVSJA relief.¹⁶⁴ But the decision in *B.N.* strongly criticized *D.L.*'s analysis of the Act's legislative history, instead arguing that the legislature aimed to strengthen the causation requirement.¹⁶⁵ Since the decision in *B.N.*, no court has weighed in or challenged the Cayuga County Court's characterization of the DVSJA's legislative history. The approach that courts take in the future is therefore highly uncertain, and there is a risk that courts view this issue as a wash. But in fact, the legislative history clearly supports *D.L.*'s reading.

¹⁶⁰ See, e.g., *United States v. Parkins*, 835 F.3d 63, 66 (2d Cir. 2019) (applying the rule of lenity to the Federal Sentencing Guidelines); *United States v. Savani*, 733 F.3d 56, 66 (3d Cir. 2013).

¹⁶¹ Compare *D.L.*, 147 N.Y.S.3d at 340, with *B.N.*, 192 N.Y.S.3d at 465–66.

¹⁶² See *supra* Part II.A.

¹⁶³ *D.L.*, 147 N.Y.S.3d at 340; compare DVSJA, ch. 31, § 1, 2019 N.Y. Laws 144, 145, with Jenna's Law, ch. 1, § 1 1998 N.Y. Laws 1, 1.

¹⁶⁴ *B.N.*, 192 N.Y.S.3d at 464.

¹⁶⁵ *Id.* at 464, 466.

The first dispute to resolve between the two cases is whether the legislature wanted to raise the bar for causation.¹⁶⁶ The original provision stated that abuse must be “*a factor* in causing the defendant to commit such offense,” and the current version states that the abuse must be “*a significant contributing factor* to the defendant’s criminal behavior.”¹⁶⁷ *B.N.* argues that the addition of the words “significant contributing” raised the bar from abuse being “any kind of factor at all” to a “major factor” that “play[ed] a significant part in making [the Defendant’s criminal behavior] happen.”¹⁶⁸ But *D.L.* contends that the removal of the word “causing” demonstrates that the legislature intended “a shift from a strict causation standard to the lower standard of a mere ‘contributing factor.’”¹⁶⁹

By examining the legislative history of the DVSJA, it becomes clear that *D.L.*’s reading is the correct one. The stated purposes of the DVSJA are “[t]o *expand upon* the existing provisions of alternative sentencing for domestic violence cases” and “to allow judges the opportunity to resentence currently incarcerated persons for offenses in which certain domestic violence criteria was a significant element of the offense.”¹⁷⁰ Per the prefatory-materials canon, a bill’s purpose clause is a permissible indicator of statutory meaning.¹⁷¹ If the legislature intended to *expand* upon existing alternative sentencing provisions, a reading that assumes the legislature wanted to raise the standard to receive relief would run counter to that goal. Additionally, the *B.N.* court’s reading of the prior version of the statute cherry-picked only certain elements of the sentence, focusing on the addition of the “significant contributing” language, but not the removal of the language “in causing the offense.” It is likely that the addition of “significant contributing” to modify “factor” was intended to retain some causal connection requirement once “in causing” was removed but to still lower the bar. For instance, the legislature may have wanted to be clear that the DVSJA would still exclude cases where the domestic violence did not “bring about” the crime, even if it was a “factor” in the petitioner’s life. Such cases would also fail under the LHBA standard, which still requires a

¹⁶⁶ *Id.* at 466.

¹⁶⁷ *Id.* (emphasis in original).

¹⁶⁸ *Id.* (alterations in original) (quotation marks omitted).

¹⁶⁹ *D.L.*, 147 N.Y.S.3d at 337, 340.

¹⁷⁰ *Sponsor’s Memo*, *supra* note 7 (emphasis added).

¹⁷¹ *Canons of Construction*, *supra* note 153, at 2.

probabilistic (more likely than not) judgment and an articulable connection between the domestic violence and criminal conduct (that the abuse helped “bring about” the conduct). The court’s argument that prior to the statute’s amendment, the factor could have been “any kind” of factor, not just a major one, is also misguided. The statute did not allow “any kind” of factor to suffice because the factor explicitly had to be causal, as stated later in the same sentence.

The second major point raised by the court in *B.N.* is that in the bill jacket, which is a record documenting information considered by the governor in signing a bill,¹⁷² the DVSJA was referred to as applying to a narrow set of crimes directly in response to abuse.¹⁷³ But the bill jacket is not limited to those cases. It instead lists cases in which the committed offense is “due to” coercion by an abuser or coercion “at the behest of an abuser,” neither of which are solely self-protective.¹⁷⁴ And the DVSJA’s sponsor’s memo explicitly advocates for discretion rather than a narrow category of qualifying crimes, stating that “[m]uch 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.”¹⁷⁵ Further, the elimination of the explicit requirement that an individual’s crime must have been against their abuser¹⁷⁶ proves more than legislative statements ever could regarding what types of crimes the legislature sought to include. The legislature could have let that provision stand if it really intended only a narrow set of crimes directly “reacting” or “defending against” abuse to qualify.

Finally, in evaluating any legislative history debate, it is important to keep front of mind the policy considerations facing the New York state legislature when passing the DVSJA. The DVSJA’s sponsor’s memo details three main policy reasons for the act: (1) to mitigate the effects of incarceration on survivors and

¹⁷² *Legislative Bill and Veto Jackets*, N.Y. STATE ARCHIVES, <https://perma.cc/YRB7-A22S>.

¹⁷³ *B.N.*, 192 N.Y.S.3d at 465.

¹⁷⁴ DIV. OF THE BUDGET, BILL MEMORANDUM, S. 1077, 2019 Leg., Reg. Sess., at 9 (N.Y. 2019).

¹⁷⁵ *Sponsor’s Memo*, *supra* note 7.

¹⁷⁶ *Provisions of Jenna’s Law*, N.Y. DIV. CRIM. JUST. SERVS., <https://perma.cc/CJN2-3XMM> (requiring that “the defendant was the victim of physical, sexual or psychological abuse by the victim or intended victim of the instant offense”).

their family;¹⁷⁷ (2) to rectify the failure of Jenna's Law to provide meaningful relief;¹⁷⁸ and (3) to recognize that the state has already failed survivors once in failing to secure a life free from violence for them, so this failure must be rectified now to offer survivors a path forward.¹⁷⁹ Notably, this policy discussion includes no fears of overinclusiveness and no indication of a desire to ensure punishment is meted out to survivors. In fact, the sponsors cite a recidivism rate of 0% for women convicted of murder between 1985 and 2003, indicating that the legislature was not concerned with a strictly limited vision of the DVSJA for any public safety reasons.¹⁸⁰ Therefore, a more relaxed standard of causation is more consistent with the legislature's goals and better enables its efforts to free survivors.

IV. CAUSATION AS A VEHICLE FOR POLICY CONSIDERATIONS

While Part III established that the text and purpose of the DVSJA reject a narrow causation standard, this Part turns to policy rationales to argue for the LHBA standard specifically. This approach is precedented; judges often set the stringency of a causation standard (either in common law or statutory interpretation) to create the best incentives in society. When evaluating the potentially relevant causal factors, the judge is not limited to determining which cause is the largest or most direct, but instead which understanding of causation would lead to the best results. This Part demonstrates this basic principle in two other areas of law—tort law and criminal procedure. In both circumstances, judges settle on causation standards based on policy considerations. These two areas are particularly ripe for commentary because they include a wide variety of policy considerations, from socially efficient deterrence to evidentiary considerations. Tort causation has been developed in the common law by years of judicial wisdom, and the criminal procedure issue I discuss—that of racial bias within juries—was evaluated in 2017 by the

¹⁷⁷ *Sponsor's Memo*, *supra* note 7 (“Allowing mothers to live in the community . . . permits them to maintain ties to children and lessen the trauma of separation—thereby increasing the likelihood that children will receive the support they need to become healthy, productive adults.”).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* (“Our government has recognized its responsibility to . . . DV survivors. This responsibility does not end when a survivor becomes involved in the criminal justice system . . . in part because the very lack of adequate protection, intervention and support is what often leads to this involvement in the first place.”).

¹⁸⁰ *Id.*

Supreme Court. Therefore, neither area of law is a radical outlier, but instead an established legal doctrine. I then argue that these same policy considerations justify the conclusion that petitioners need not prove that domestic violence was the sole or even the primary cause of their crime, but instead just that it likely helped to bring about the crime.

This Part proceeds as follows. First, I use these areas of law to highlight several policy considerations relevant to causation analysis. Second, I apply these considerations to the DVSJA. I conclude that some policy considerations from other areas of law remain highly relevant in the DVSJA context, such as accounting for particularly vulnerable actors in a causal chain and considering evidentiary constraints when there is a particularly salient causal factor. Other factors, which courts have used to justify narrow understandings of causation, do not hold the same weight in the DVSJA context. These factors include a fear of opening the floodgates of litigation and a desire to deter the most deterrable actors.

A. Going Beyond Direct Causation in Other Areas of Law

Causation operates in the background of every area of law: the very notion of legal responsibility presupposes a degree of causation. In this Section, I argue that courts often formulate causation standards with policy goals at the forefront. I highlight several of these policy considerations by walking through two areas of law: tort law and criminal procedure. Ultimately, from these two areas of law, several key considerations materialize for assigning causal responsibility.

Tort law proves instructive in demonstrating the policy implications of causation.¹⁸¹ In particular, it provides a framework for evaluating multiple causal factors contributing to an outcome, sometimes with intervening actors, and subsequently how to best assign sanctions to prevent future harm.

¹⁸¹ While tort law is common law, not statutory, common law is a helpful tool for statutory interpretation. In fact, the “Canon of Presumption Against Change in Common Law” and “Canon of Imputed Common-Law Meaning” recognize the foundational nature of common law and therefore suggest a strong presumption against departing from common law understandings of terms without a clear directive to do so. See *Canons of Construction*, *supra* note 153, at 4.

As a framing matter, in tort law, there are two types of causation: but-for and proximate causation.¹⁸² Both types of causation must be present in order to establish the element of causation required to prove liability.¹⁸³ But-for causation, sometimes called factual causation, is straightforward, hinging on whether the damage would not have occurred if the defendant had not been negligent.¹⁸⁴ Proximate cause, in contrast, is a “probabilistic” judgment “in that knowledge of the defendant’s negligence would lead one to predict the plaintiff’s injury.”¹⁸⁵ But because it is hard to determine when one would truly predict the plaintiff’s injury, many judges have ultimately treated it as a policy decision about when to sever the causal chain between negligence and the damage caused, with the aim of creating proper incentives for regulated parties. This basic dynamic been noted by scholars for over eighty years.¹⁸⁶ In analyzing proximate cause, courts thus often draw causal chains to assign liability to the party who is in the best position to take precautions in the future.¹⁸⁷

Courts apply this policy-informed framework to assign liability in trickier cases: eggshell plaintiff and third-party actor cases. First, in eggshell plaintiff cases, the plaintiff suffered a more severe injury than the defendant predicted due to unique vulnerabilities (for instance, if the defendant’s negligence triggered a rare, unforeseeable medical condition in the plaintiff).¹⁸⁸ The defendant is still liable because even very unlikely risks should still be considered when companies and individuals make ex ante risk

¹⁸² Keith N. Hylton, *Causation in Tort Law: A Reconsideration*, in RSCH. HANDBOOK ON ECON. TORTS 98 (2013).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See, e.g., Charles O. Gregory, *Proximate Cause in Negligence—A Retreat from “Rationalization”*, 6 U. CHI. L. REV. 36, 37 (1938) (“The courts . . . will look at only the ‘proximate’ and not the ‘remote’ consequences of the defendant’s conduct. . . . The courts, indeed, soon discover that this [] principle is effective not only in deciding causation problems but also in concealing grave and delicate issues of policy.”).

¹⁸⁷ See MICHAEL S. MOORE, CAUSATION AND RESPONSIBILITY 94–95 (2009) (“On this Coasean analysis of tort law, there is simply no need for liability to turn on causation. Rather, either tort liability is irrelevant to efficient resource allocation . . . or tort liability should be placed on the cheapest cost-avoider . . . in order to induce that person to take the cost-effective precautions.”); see also, e.g., *In re Kinsman Transit Co.*, 338 F.2d 708, 716–17 (2d Cir. 1964).

¹⁸⁸ See RESTATEMENT (SECOND) OF TORTS § 461 (AM. L. INST. 1977); see also, e.g., *Colonial Inn Motor Lodge, Inc. v. Gay*, 680 N.E.2d 407, 416 (Ill. App. Ct. 1997); *Pridham v. Cash & Carry Bldg. Ctr., Inc.*, 359 A.2d 193, 195 (N.H. 1976).

assessments. But this reason is not necessarily a judgment about what factor *really* caused the accident, or even how likely the defendant's conduct was to cause such a harm in general. Causation thus becomes a vehicle for policy concerns, specifically deterrence: the eggshell plaintiff cannot be deterred from having the rare disease, and therefore assigning causal relevance to the disease serves no function.

Second, deterrence similarly informs tort law's treatment of intervening causes. Proximate cause can still be satisfied despite a longer causal chain that includes actions taken by third parties, such as when the defendant negligently made the plaintiff abnormally vulnerable to foreseeable compliance errors (either by another actor or the plaintiff) further down the causal chain.¹⁸⁹ The same logic applies when the defendant has created an unusually tempting opportunity for a third party to do harm.¹⁹⁰ In both types of cases, the court decides that despite another individual acting in the causal chain, liability is best ascribed to the initial tortfeasor. Although the third parties may have contributed more directly to the harm in our common understanding, they are less likely to be able to prevent such harm in the first place. This reflects again that causation is not a question of either moral responsibility or who did more to create the accident, but instead about who in the causal chain is best positioned to avoid future harm (and for whom assigning liability *would not* achieve this).

A final factor courts consider in tort cases is a meta-level concern about the litigation incentives created by various causation standards. A common fear is that an overly broad causation standard opens the floodgates of litigation. This fear partly explains why proximate cause exists at all: accidents happen every minute, and the court system is not equipped to handle scenarios in which any plaintiff can sue anyone remotely connected to the causal chain of an accident.¹⁹¹ This is where causation steps in—according to some tort scholars, “the causation test reduces the tendency toward socially excessive precaution when there is uncertainty surrounding the application of the negligence test.”¹⁹²

¹⁸⁹ See Mark F. Grady, *Proximate Cause Decoded*, 50 UCLA L. REV. 293, 312–15 (2002). See generally, e.g., *Village of Carterville v. Cook*, 22 N.E. 14 (Ill. 1889).

¹⁹⁰ See Grady, *supra* note 189, at 306–12; see also, e.g., *Brauer v. New York Central*, 103 A. 166, 167 (N.J. 1918).

¹⁹¹ Hylton, *supra* note 182, at 103.

¹⁹² *Id.*

In sum, tort law imports policy considerations into its causation analysis in at least three ways: (1) through the notion of proximate cause itself, (2) by assigning responsibility to the actor for whom deterrence is most effective in the causal chain, and (3) by using causation standards to control the number of potential litigants.

Another area of law in which policy determinations have shaped the proper bounds of causation is in criminal procedure, particularly in a 2017 case involving racial bias among jurors, *Peña-Rodriguez v. Colorado*.¹⁹³ In *Peña-Rodriguez*, the Supreme Court held that while jurors' deliberations are generally protected by the "no-impeachment rule," this protection does not apply in cases where there is "compelling evidence" that a juror "made clear and explicit statements indicating that racial animus was a significant motivating factor in his or her vote to convict."¹⁹⁴ In that case, one juror reported to the trial judge that another juror had made racist statements about Hispanic men. (The defendant was a Hispanic man.) The court held that these statements were sufficient to meet the "significant motivating factor" standard and overcome the no-impeachment rule.¹⁹⁵

This case provides a strong example of judges using policy factors to justify a particular causation standard, highlighting two more relevant policy considerations for causation analyses.

First, in putting forward a particularly discretionary causation standard, the Court in *Peña-Rodriguez* afforded trial judges broad latitude to make fact-intensive determinations. In particular, judges are granted discretion to determine when racial bias was likely to have influenced a juror's decision to convict. The Court clarified that the "significant motivating factor" test is one where the judge must be given "substantial discretion" to consider "in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence."¹⁹⁶ Because racism comes in many forms and can be indicated by a wide range of statements, the Court recognized the necessity of a case-by-case determination rather than a rigid list of requirements. A more rule-like formulation may have served more as a roadmap for evasion than as a guide for judges. For example, the Court granted judges the ability to consider the

¹⁹³ 580 U.S. 206 (2017).

¹⁹⁴ *Id.* at 211, 229.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 225–26.

“content” of the statements but did not describe what in the contents would indicate animus;¹⁹⁷ inevitably, there would be something left out of such a description. This broadly worded “significant motivating factor” standard therefore allows judges to use their own discernment, guided by as much information as possible, about when animus led to an individual’s vote to convict.

Second, the decision revealed a fear that certain evidence will never be available, and therefore a strict causation standard will foreclose relief from any defendant whose conviction was motivated by animus. For instance, if the Court were to require that the trial judge find that racial animus was the *deciding* factor in a juror’s decision to convict, it would be very difficult for challenges to racial bias to succeed because jurors would likely provide a pretextual reason for conviction, even in cases where racism is the primary motivation. The Court ultimately made a policy judgment, holding that cases in which there are “clear and explicit statements indicating [] racial animus” have sufficiently undermined trust in the verdict.¹⁹⁸ Even if there are edge cases in which such statements were not the true cause of conviction, the Court has determined that it is more beneficial to the jury system and to safeguarding the rights of criminal defendants to allow the no-impeachment rule to be waived in such instances.

B. Applying These Policy Considerations to the DVSJA

In the previous Section, a brief survey of two different areas of law surfaced several relevant policy considerations courts use in setting causation standards. In this Section, I discuss how considerations involving deterrence, judicial capacity, and litigation volume play out in the DVSJA context.

As a framing matter, proximate cause is generally intended to be a welfare-maximizing doctrine. While the following sections draw specific analogues to policy considerations courts have taken, it would be remiss to not mention that the DVSJA provides a narrow class of petitioners with life-changing relief. As explained in the Section describing the legislative history,¹⁹⁹ the DVSJA is designed to serve welfare-maximizing goals. It helps keep families together, offers an opportunity for survivors to

¹⁹⁷ *Id.*

¹⁹⁸ *Peña-Rodriguez*, 580 U.S. at 211.

¹⁹⁹ *See supra* Part III.B.

begin building a better life for themselves, and prevents the further retraumatizing effects of incarceration.²⁰⁰

Despite the fact that the DVSJA is a sentencing statute, many courts' understandings of causation in the DVSJA are more limited than tort causation. For instance, in several of the cases described in Part III, such as *B.N.* and *Jonathan H.*, courts have required that the domestic violence be the sole identifiable cause of the petitioner's conduct. In declining to apply the DVSJA in *Jonathan H.*, the court found it dispositive that the person Jonathan assaulted had previously threatened Jonathan, triggering his post-traumatic stress disorder. The court reasoned that many people might respond violently to threats and harassment, regardless of whether they were survivors of domestic violence. But tort law punishes negligence even when there are multiple but-for causes of an injury. Courts could conceive of domestic violence and the DVSJA similarly: while multiple factors often contribute to a petitioner's initial offense, the existence of other causes does not prevent domestic violence from being a significant contributing factor. The LHBA standard would serve that goal because it still requires *some* causal connection—that it was likely that the substantial domestic violence “helped bring about” the crime—while requiring neither dispositive proof that it was certainly the cause nor that the domestic violence was the sole cause. The following sections illustrate more specific benefits of the LHBA standard.

1. Deterrence.

Like in tort law, deterrence is a key goal for the criminal justice system.²⁰¹ Sentencing schemes particularly have an eye toward deterrence objectives; for instance, the federal sentencing statute names “afford[ing] adequate deterrence” as a key factor that the court “shall consider” in imposing a sentence “sufficient, but not greater than necessary.”²⁰² Tort law's understanding of how to resolve situations with multiple causes, and when to apply causation to factors that may have made an actor in the causal chain especially vulnerable, can inform this deterrence analysis.

In intervening actor cases, the existence of other independent decisions along the causal chain does not change that the most

²⁰⁰ See *Sponsor's Memo*, *supra* note 7.

²⁰¹ See Carlsmith, *supra* note 10, at 285.

²⁰² 18 U.S.C. § 3553(a).

important factor was the defendant's negligence.²⁰³ This is largely due to deterrence concerns; while it is unlikely that an individual who makes a predictable compliance error can be properly deterred, the person who made that situation more likely, and could foresee the danger, could be deterred. The court thus assigns liability to the party who can be deterred.

Here, deterrence concerns, and therefore a stringent understanding of liability, should not lie with the domestic violence survivor. It is highly unlikely that any sentence length makes it more or less probable for an individual to respond to terrifying situations of abuse with criminal conduct of their own; these decisions are made out of desperation and not cost-benefit analyses.²⁰⁴ As attorney Inès Zamouri further explained, "In that moment of intense fear and desperation, it is unlikely that she will stop to think about the possible penal consequences of her action. Even if she does . . . , she is likely to conclude that prison is a less onerous fate than being killed [by] her abusive partner."²⁰⁵ For the purpose of the statute, the domestic violence should remain the most legally relevant cause of the criminal conduct, regardless of the choices that the survivor could have made to have potentially avoided criminal liability. This would best reflect that the abuse was likely a hugely affecting force in their life and shaped their ability to make other choices at the time. The existence of other causes (or the fact that to some extent, the petitioner may have chosen to engage in criminal conduct) does not negate the fact that a separate punishment regime is justified when domestic violence played a crucial role in the petitioner's circumstances.

Second, we can draw parallels to the treatment of eggshell plaintiffs in tort law in which courts have long rejected a one-size-fits-all approach to resolving these questions and instead understand that deterrence considerations include extenuating circumstances. In eggshell plaintiff cases, an unusually vulnerable plaintiff can still recover for damages that they suffered, regardless of whether someone else would have suffered the same effects

²⁰³ See *supra* Part IV.A.

²⁰⁴ See Zamouri, *supra* note 58, at 252–53 (countering the specific deterrence argument by noting that "victims/survivors do not need to be deterred from killing because they do not want to commit these crimes," and responding to the general deterrence arguments with the point that such frameworks "presuppose[] that potential wrongdoers are 'calculators who, before committing crimes, evaluate how much they stand to gain or lose'" (quoting Transcript at 142, *State v. Norman*, 324 S.E.2d 8 (N.C. 1988) (No. 161PA88)).

²⁰⁵ *Id.* at 253.

of a similar injury, and relief has been granted in cases involving post-traumatic stress disorder and other mental illnesses that exacerbated the effects of an accident.²⁰⁶ Domestic violence and long-term effects of trauma alter an individual's decision-making and risk assessment capabilities.²⁰⁷ If in tort law the understanding of causation can be altered to account for altered capabilities of individuals suffering harm, so too can the courts take into account the pernicious effects of trauma on an individual's decision-making. The lingering effects of trauma mean that what may appear to be a long causal chain is actually much shorter, as individuals continuously reexperience the harms that alter their decision-making.

2. Judicial discretion and evidentiary concerns.

The lessons from *Peña-Rodriguez* on how causation standards can allow for judicial discretion can also further justify the LHBA standard. Recall that the Court gave judges “substantial discretion” in judging whether racial bias was a “significant motivating factor” in a juror's decision to convict “in light of all the circumstances.”²⁰⁸ This discretion is crucial because judges may be able to pick up on a variety of indicators of racial bias that a rigid formula would not fully account for. Similarly, domestic violence is incredibly varied, and each case is different. A rigid understanding of abuse might ignore the complex ways abusers may exert control over their victims. Therefore, judges must similarly use their judgment to view each petitioner holistically to understand the role abuse played in the criminal conduct. The LHBA standard does just that, by allowing the judge discretion to determine when the domestic violence was “likely to have helped bring about” the crime, and by not including a requirement that domestic violence be the sole or even predominating factor.

Further, the evidentiary concerns underlying the *Peña-Rodriguez* decision are present in DVSJA cases as well. To be fair, the jury context is uniquely difficult because juries are intended to be a black box and because proving an individual's racism, as a state of mind, can be difficult without relying on indirect methods. But here too, there would be stark difficulties in proving that

²⁰⁶ See, e.g., *Steinhauser v. Hertz Corp.*, 421 F.2d 1169, 1172 (2d Cir. 1970) (allowing a jury to consider evidence that a car accident had precipitated plaintiff's child's mental illness by triggering preexisting tendencies in the child).

²⁰⁷ Jon Finch, *How Does Trauma Affect Decision Making?*, CTR. FOR CLINICAL PSYCH. (July 8, 2024), <https://perma.cc/E3E3-9YTR>.

²⁰⁸ *Peña-Rodriguez*, 580 U.S. at 225–26.

domestic violence was the sole cause of a petitioner's crime. First, requiring proof that domestic violence was the sole factor to the crime would prevent the judge from making logical inferences from the extent of the abuse to the commission of the crime, while the LHBA standard does not. A "sole factor" standard may also require further evidence, and as highlighted in Part I, the DVSJA already poses evidentiary problems: it is very difficult for incarcerated petitioners to do the proper record gathering, and domestic violence often goes unreported.²⁰⁹ Second, the presence of one cause can cast doubt on all other evidence the judge might consider. In the case of juries, one racist comment may lead a judge to wonder whether the juror's other stated reasons for conviction were disingenuous. Although the analogy is not perfect, in the case of the DVSJA, the presence of domestic violence in a petitioner's life should also frame the court's analysis of other factors. For example, even if drug use were another factor to the crime, the court might want to consider how the survivors' drug use may have been in part spurred by the domestic violence. The LHBA standard does not specify how short a causal chain must be.

The language of both standards offers further support for the analogue between the DVSJA and *Peña-Rodriguez* context. The significant contributing factor prong of the DVSJA uses similarly broad language to the "significant motivating factor" standard, also reflecting its discretionary nature. The word "contributing" in prong (2) is even more broad than the word "motivating" used by the Court. While "contribute" means to "play a significant part in making something happen,"²¹⁰ motivate means to "provide with a motive: impel," implying a stronger intentional component.²¹¹

3. Floodgates of litigation.

Finally, we can apply a policy consideration from tort law—the fear of an overwhelming amount of litigation—to the DVSJA's causation standard. That fear is unfounded for two reasons. First, the DVSJA's construction is already incredibly limiting for potential petitioners. Second, the current procedural structure of the DVSJA presents a very low bar for potential claimants to get *into* court but a much higher bar to receive relief. As a result, the

²⁰⁹ See *supra* note 59 and accompanying text.

²¹⁰ *Contribute*, MERRIAM-WEBSTER, <https://perma.cc/JJ7K-CWEF>.

²¹¹ *Motivate*, MERRIAM-WEBSTER, <https://perma.cc/S3SY-FZN6>.

absolute amount of litigation and use of state resources is unlikely to be affected by the causation requirement for petitioners.

The *B.N.* court raised the fear of floodgates of litigation in the DVSJA context. The court wrote that a broad reading of the significant contributing factor prong “would cast such a broad net that most offenders in the state would be eligible” and that this would run counter to the legislature’s desire “that it would only be a low percentage of criminal *offenders* who would be eligible for DVSJA relief.”²¹² The court further reasoned that “[g]iven the expansive category of *offenses* eligible under the DVSJA, the only way to not have nearly every criminal *offender* in New York State eligible for DVSJA relief was to raise the standard those offenders must satisfy.”²¹³ That is, the court believed that because the DVSJA did not limit relief to offenses committed directly against an abuser, the causation standard must serve as a strict gatekeeper to keep the class of potential recipients fairly small.

This logic is flawed. First, even accepting the premise in the *B.N.* court’s argument—that the class of DVSJA recipients should be small, which is not as self-evident as the court suggests—this argument fails because the other prongs of the DVSJA already serve as strict gatekeepers in terms of who actually receives relief. Recall that prong (1) of the DVSJA requires that the petitioner was the victim of “substantial” domestic violence, which courts have used to deny relief to petitioners who experienced abuse they considered infrequent or minor.²¹⁴ The same prong requires that the petitioner was a victim “at the time of” the offense,²¹⁵ and this requirement has been interpreted to mean that there must be a “temporal nexus” between the abuse and the offense.²¹⁶ This nexus requirement means that the *B.N.* court was incorrect that “most offenders in the state” would be eligible under a broad reading of the second prong; the effects of the abuse must be ongoing to some extent.

Second, the DVSJA allows a wide range of petitioners to qualify for appointed counsel and a resentencing hearing, meaning

²¹² *B.N.*, 192 N.Y.S.3d at 465–66 (emphasis in original).

²¹³ *Id.* at 467 (emphasis in original).

²¹⁴ N.Y. PENAL LAW § 60.12 (McKinney 2025); *see also supra* note 46 (providing examples in which the abuse was not held to be substantial).

²¹⁵ PENAL § 60.12.

²¹⁶ *Fisher*, 200 N.Y.S.3d at 497 (quoting *People v. Williams*, 152 N.Y.S.3d 575, 576 (N.Y. App. Div. 2021)).

that the floodgates, if opened, do not hinge on the causation standard. The Act grants permission to initially apply for resentencing to anyone “serving a sentence with a minimum or determinate term of eight years or more.”²¹⁷ This step qualifies the petitioner for counsel, perhaps the largest expenditure of state resources during the process. Resentencing hearings are subsequently granted to anyone who provides at least two pieces of evidence corroborating that they were a victim of abuse at the time of the offense.²¹⁸ Therefore, the absolute number of hearings is unaffected by the strictness of the DVSJA’s causation standard because nowhere in the process does the court have the opportunity to exclude litigants on its basis before the hearing. Further, as the number of applicants eligible for resentencing under the DVSJA continues to decline, the Act’s application will soon be limited primarily to the initial sentencing phase, replacing a typical sentencing hearing.²¹⁹ Here too, any survivor convicted of a crime who meets the corroboration requirements is likely to request a DVSJA hearing, and the causation determination will not change the number of requests for these hearings.

Therefore, neither of the barriers to receiving a hearing require any proof of causation, no matter how courts construe the causation test, making it unlikely that a different standard could meaningfully increase the number of DVSJA cases courts hear. Further, releasing individuals earlier from prison will save significant state resources, so any discussion of potential state expense must be considered in that context.²²⁰

CONCLUSION

Traditional sentencing regimes have long been blunt instruments, but their shortcomings have been especially apparent when applied to domestic violence survivors. When the majority of women in prison have experienced abuse prior to their incarceration,²²¹ this defect is not a mere oversight, but a system-wide

²¹⁷ N.Y. CRIM. PROC. LAW § 440.47(1)(a) (McKinney 2025).

²¹⁸ *Id.* § 440.47(2)(c).

²¹⁹ See *supra* Part I.A.

²²⁰ It costs an estimated \$115,000 per year to incarcerate someone in New York. Jullian Harris-Calvin, Sebastian Solomon, Benjamin Heller & Brian King, *The Cost of Incarceration in New York State*, VERA INST. JUST. (Oct. 31, 2022), <https://perma.cc/8G4A-ZSSF>.

²²¹ See *Georgetown and ACLU Comment: Proposed Rule, National Standards to Prevent, Detect, and Respond to Prison Rape*, ACLU (Apr. 29, 2011), <https://perma.cc/5GQS-RE73>

failure. In the five years since the DVSJA's enactment, New York courts have been a laboratory for sentencing reform for survivors. The DVSJA is a remarkable step forward, providing relief to at least seventy-two applicants,²²² but must now live up to its potential. The law's inconsistent application among county courts and individual judges means that when petitioners apply for relief, they roll the dice. There is thus an urgent need for not only faithfulness to the DVSJA's initial goals, but also consistency and predictability in its application.

As argued above, there are several reasons for a broad understanding of the "significant contributing factor" prong, one that requires petitioners show that domestic violence was sufficiently significant to have likely helped bring about the criminal conduct.

First, courts must be vigilant in ensuring they do not import the traditional common law standards of culpability that led to the need for reform in the first place. The influence of imminence and necessity in courts' adjudications of DVSJA petitions risks making the DVSJA irrelevant, as these affirmative defense requirements should already come into play at the initial trial and conviction stages.

Second, the legislative history of the DVSJA indicates that it was intended to broaden rather than narrow the class of individuals deserving of relief, a fact that some courts have blatantly ignored in their decisions. The legislature intended the DVSJA to be an avenue for courts to consider the holistic life story of a petitioner in determining whether the goals of the criminal system are properly served by further incarceration. As such, narrow causation readings that throw out cases based on overly technical rationale run counter to these underlying principles.

Finally, while the DVSJA is a revolutionary advancement in sentencing reform and legal understandings of the aftereffects of domestic violence, the causation standard I advance is not revolutionary relative to other legal conceptions of causation. In tort law, multiple legally recognized but-for causes can exist, and the proximate cause doctrine demonstrates how courts' recognition of a causal relationship is often dependent on policy goals. A longer causal chain, even with intervening causes, can still satisfy causation. Analogously, in criminal procedure, bias is recognized as such a significant factor that it remains legally relevant even

("Many incarcerated women—nearly 60% of female state prisoners nation-wide and as many as 94% of certain female prison populations—have a history of physical or sexual abuse.").

²²² See *supra* note 6.

when it is one of multiple causal factors. In DVSJA cases, there may similarly be other causes of a petitioner's conduct, but that should not foreclose the court from recognizing that domestic violence was still a relevant causal factor.

Survivors granted DVSJA relief may leave the prison environment where they are continuously retraumatized.²²³ They may reunite with their loved ones and begin to heal from abuse. A causation standard which properly executes the DVSJA's mission is therefore imperative—its uniform adaptation by New York courts would lead to many more of these stories, offering a path forward for survivors.

²²³ Prisons significantly worsen prisoners' mental health. *See* Christopher Monihan, *What Caused His PTSD? This Prison, Right Here*, PRISON JOURNALISM PROJECT (Mar. 3, 2023), <https://perma.cc/W43J-CEA7>. Prisoners also lack adequate resources to support survivors of domestic violence. *See* Alessi et al., *supra* note 8, at 5–6.