COUNTY COURT OF ERIE COUNTY
STATE OF NEW YORK

People of the State of New York,	:	
	:	Attorney Affirmation in Support of
v.	:	Application for Resentencing
	:	Pursuant to C.P.L. § 440.47
[redacted]	:	
	:	Indictment # 01001-2012
Defendant	:	

I, Alexandra Harrington, an attorney duly admitted to practice in the State of New York, hereby affirm:

1. I am an attorney with Criminal Justice Advocacy Clinic at the University at Buffalo School of Law. I represent the Defendant-Petitioner [redacted] for the purpose of an application for resentencing pursuant to Criminal Procedure Law ("CPL") § 440.47.
2. I move this court pursuant to CPL § 440.47 and Penal Law § 60.12 for a hearing to resentence [redacted] and for other such relief as this Court may deem just and proper.
3. I am familiar with all of the facts and circumstances contained in this affirmation based upon interviews with [redacted] her family, witnesses, and the review of documents including the court file, medical records, police records, treatment records, Department of Corrections and Community Service ("DOCCS") institutional records, and such other sources as referenced below.

I. GROUNDS FOR RELIEF

4. The Domestic Violence Survivors Justice Act ("DVSJA") was passed into law on May 14, 2019 in order to recognize the effects of domestic violence on those who have been subjected to physical, sexual, or psychological abuse at the hands of a member of their

family or household. The DVSJA allows for alternative reduced sentences for abuse survivors and is meant to "give the courts discretion to ameliorate the harsh effects of lengthy, mandatory sentences for victims of domestic violence where that violence was a significant contributing factor to their criminal behavior." *People v.* [redacted] 132 N.Y.S. 3d 251, 254 (N.Y. Co. Ct. 2020).

5. The first step under the DVSJA is to determine the applicant's eligibility to apply for resentencing. This Court found Ms. [redacted] eligible to apply by Notification dated December 3, 2020.[1] She is currently incarcerated at Albion Correctional Facility.[2] She was convicted of robbery in the first degree in violation of Penal Law § 160.15(4).[3] She was sentenced by Hon. Thomas P. Franczyk on [redacted] 2013 to a sentence of nine and a half years and post-release supervision of five years for the offense that occurred on [redacted] 2012, prior to the effective date of CPL § 440.47.[4]

6. After the court grants the applicant permission to apply, the petitioner must establish that (1) at the time of the offense she was subject to substantial physical, sexual or psychological abuse inflicted by a member of her family or household; (2) that such abuse was a significant contributing factor to her criminal behavior; and (3) that the original sentence is unduly harsh.

7. Ms. [redacted] is eligible for resentencing pursuant to CPL § 440.47 because (1) at the time of the instant offense she was a victim of domestic violence subjected to substantial physical, sexual, and psychological abuse; (2) such abuse was a significant contributing

[1] Notification Authorizing Defendant to Submit an Application for Resentencing, December 3, 2020, attached as **Exhibit A**.
[2] *See* Department of Corrections and Community Supervision Inmates Information, attached as **Exhibit B**.
[3] *See* Certificate of Conviction, [redacted] 2014, attached as **Exhibit C**.
[4] *See* Sentence & Commitment, [redacted] 2013, attached as **Exhibit D**.

factor to her commission of the offense; and (3) the original sentence imposed in this matter was unduly harsh.

8. This application includes at least two pieces of evidence corroborating the applicant's domestic violence. At least one piece of evidence attached to this application meets the statutory requirement of being either a court record, presentence report, social services record, hospital report, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection. Attached hereto are, [redacted] [redacted] medical records dated August 6, 2012 from Niagara Falls Memorial Medical Center (Exhibit E); YWCA of Niagara Safe House records (Exhibit F); Niagara Falls Police Department Domestic Incident Report dated August 6, 2012 (Exhibit G); Records from the Child Advocacy Center Family Services Advocate dated August 6, 2012 (Exhibit H); and a Niagara Falls City Court Temporary Order of Protection dated August 9, 2012 (Exhibit I). Ms. [redacted] Pre-sentence Memorandum by Tara S. Evans, dated November 14, 2013, the Presentence Investigation Report ("PSI"),[5] and the Sentencing Minutes[6] in this case also corroborate that Ms. [redacted] was a victim of

[5] Pursuant to C.P.L. § 390.50, the pre-sentence memorandum and PSI are not attached to this affirmation in order to preserve their confidentiality. A copy of the pre-sentence memorandum can be provided upon request.

[6] Sentencing Minutes, *People v.* [redacted] Indictment No. 01001-2012, November 18, 2013, at 4-5 (defense counsel explaining:

> And by way of explanation and not excuse, she was in a position in her marriage to the person who committed the murder where she was under extreme coercion. She didn't have much choice in participating or not. The instances of domestic violence between Mr. [redacted] and my client were numerous. He was incarcerated – Mr. [redacted] was incarcerated last summer, the summer before last as a result of one of those incidents. . . . my client was stuck in that relationship to the point where he basically branded her. . . . had her branded like a piece of cattle, a head of cattle. My client was not treated like a human being by this person. He was – she was treated almost as chattel and that's indicative of the relationship that she had with Mr. [redacted]

at 7 (judge expressing doubt regarding whether Ms. [redacted] was "operating under duress" but acknowledging "it seems like you had an abusive relationship with this character [redacted] [redacted] . . ." and "I'm not suggesting that you were not in an abusive relationship with [redacted] [redacted] this kid's a punk in every sense of the word, but you're not a victim to me. . . .").

substantial domestic violence.

9. In addition to this evidence of substantial abuse in her relationship with [redacted] [redacted] Ms. [redacted] history of childhood abuse, her positive institutional record and achievements, and the negative consequences of a lengthy period of post-release supervision all support Ms. [redacted] application for resentencing under the DVSJA. For these reasons, Ms. [redacted] requests that this court conduct a hearing and resentence her in accordance with Penal Law § 60.12.

II. FACTUAL BACKGROUND

A. Ms. [redacted] experienced substantial abuse, both as a child and, significantly, during the course of her relationship with [redacted] [redacted]

ABUSE IN CHILDHOOD

1. As a child, Ms. [redacted] faced many hardships. She was born to a mother who suffered from drug abuse. Ms. [redacted] was an active child who was diagnosed with ADHD and placed on Ritalin. Because of her energetic disposition, she was subjected to whippings and was hit with belts and paddles. [7]
2. Ms. [redacted] had little paternal support: her father lived out of town, and she was abandoned by her mother at an early age. Around age five she entered a series of placements in different homes and also spent a period of time living with her grandmother.[8]
3. Ms. [redacted] encountered physical and sexual abuse in these alternate placements. Her grandmother took on multiple jobs in order to take care of Ms. [redacted] and four other children and was often not home. Ms. [redacted] was sometimes left in the care of older male

[7] *See* Pre-sentence Memorandum from Tara S. Evans, Nov. 13, 2013 at 2-3 (hereinafter "Evans Memo").
[8] *See* Evans Memo at 3. *See also* PSI at 6. Pursuant to C.P.L. § 390.50, the memorandum is not attached to this affirmation in order to preserve its confidentiality, but a copy can be provided upon request.

family members. Beginning when she was about five-years-old, her uncle and her older cousin would sexually abuse her.[9] Her uncle would touch her genitals with his fingers and would forcibly perform oral sex on her. He would also whip her. Ms. [redacted] older cousin would grind his body onto hers and touch her genitals with his hands. This abuse occurred regularly—the uncle's more regularly than the cousin's—for several years.

4. Ms. [redacted] returned to her mother's custody when she was a young teenager. Although Ms. [redacted] did not see her mother being abused by her boyfriend, Ms. [redacted] could hear their scuffles and often saw her mother with black eyes and other facial disfigurements. She saw bloody towels and tissues and blood stains that were evidence of the abuse against her mother.

5. Ms. [redacted] has two children. Her oldest is a daughter whom she had at age 16 and whom her mother convinced Ms. [redacted] to let her raise as if the daughter were her mother's. She had her youngest child, a son nicknamed "[redacted]", when she was 25 years old, and she raised him in her own household as a single parent.[10]

6. Ms. [redacted] always wanted to be a part of a happy family and to raise [redacted] in a loving home. Yet, she was unfortunately caught in more than one abusive relationship. Ms. [redacted] came to know abandonment and abuse as normal.

SUBSTANTIAL ABUSE BY [redacted]

7. When Ms. [redacted] was thirty-years-old, she met a man named [redacted] They began dating shortly thereafter. After dating for only a few weeks, Mr. [redacted] moved into Ms. [redacted] apartment with her and her young son. Though their relationship was initially, briefly happy—Mr. [redacted] at first made Ms. [redacted] feel secure and cared for—it

[9] *See* Evans Memo at 3 (referencing abuse by aunt's husband).
[10] *See* Evans Memo at 3-4.

became abusive not long after it began. For the duration of their relationship, Mr. [redacted] inflicted substantial physical and psychological abuse on Ms. [redacted][11]

8. Although Ms. [redacted] did not initially know that Mr. [redacted] was involved in a gang, she soon found out that he was a high-ranking gang member who sold drugs for a gang called "Gangster Killer Bloods". She saw a change in Mr. [redacted] early on in the relationship when she caught wind of his gang affiliation. He became cold and abusive. He attempted to control Ms. [redacted] how she spent her money, what she could do. Mr. [redacted] would often drink, and when he got inebriated he became angry and hit Ms. [redacted] After that point Mr. [redacted] would physically abuse Ms. [redacted] almost every day. He would regularly call her vulgar names, belittle her, and tell her she was "a stupid bitch" and "dumb as hell".[12]

9. One instance when Mr. [redacted] became particularly violent was on New Year's Eve of 2010. The two were at the [redacted] family party. Ms. [redacted] had allowed Mr. [redacted] brother to borrow one of her cars. Mr. [redacted] became angry and ordered Ms. [redacted] never to let anyone borrow her car without his permission. Mr. [redacted] hit her in her face. He split her lip and caused her nose to bleed. He grabbed her by her hair and dragged her to the bathroom where he demanded she clean the blood from her face.

10. On another occasion, Mr. [redacted] beat Ms. [redacted] after she caught him cheating on her with another woman. Ms. [redacted] tried to confront Mr. [redacted] about his infidelity, which

[11] *See* Evans Memo at 4.

[12] *See* Evans Memo at 4 (detailing abuse from Mr. [redacted] *See* also PSI at p 5 (describing "violent relationship with Mr. [redacted] Ms. [redacted] fear for "her own safety", and "the violent situation she was in with [redacted] [redacted] 6 ("She characterizes the relationship [with [redacted] [redacted] as violent and notes that she is relieved that Mr. [redacted] is facing a lengthy period of incarceration…."); 8 ("did not feel she could have refused to be a part of it . . . "she feels relief that Mr. [redacted] will be going to prison for a long time as it now gives her 'freedom' for their reportedly abusive relationship").

sparked an argument. He yelled at her, and the situation quickly became violent. He swung at her with closed fists, and then he grabbed her and wrestled her to the floor in order to pin her down. He head-butted Ms. [redacted] causing her to become dizzy and disoriented. To get away from him, Ms. [redacted] threatened to call Mr. [redacted] parole officer. The next morning, Ms. [redacted] forehead and eyes were so swollen that she could not see properly and couldn't drive her son to school.

11. On another occasion in 2011, Mr. [redacted] who had been drinking with friends, became angry and violent. Seeking to avoid further violence, Ms. [redacted] walked to a nearby store where she called the police. After returning home, Mr. [redacted] began yelling at her and grabbing at her. He grabbed her while they both were at the top of the stairs, and she ended up at the bottom of the stairs. Mr. [redacted] continued assaulting her, dragging her outside onto the front lawn. At that point a police officer arrived. Mr. [redacted] was arrested and charged with parole violation.[13]

12. After this incident, Ms. [redacted] intended to move herself and her son to a women's shelter to get away from Mr. [redacted] gang members.[14] Mr. [redacted] brothers and fellow gang members visited Ms. [redacted] at her home before she could leave. They threatened her and her son. They told her not to testify against Mr. [redacted] They forced her to visit Mr. [redacted] in prison and to send him money for his prison account. She complied with their demands. She visited Mr. [redacted] on an almost daily basis, which meant an hours-long round trip commute. She sent him money that she needed to pay bills and to provide for her son.

[13] *See* YWCA of Niagara Safe House records, attached as **Exhibit F**, at 29 (indicating Ms. [redacted] had called police on Mr. [redacted] in January of 2011 but had dropped the charges).
[14] *See* Evans Memo at 4 (describing attempts to leave).

13. On August 6, 2012, Mr. [redacted] beat Ms. [redacted] so badly that she ended up in the hospital. The altercation began after Mr. [redacted] took Ms. [redacted] new truck. She used her spare key to retrieve her truck and drive it back home. Mr. [redacted] went to her house where Ms. [redacted] was watching his son as well as hers, and he yelled at her to return the truck and to hand over his son. He charged at her in order to snatch the spare key out of her hand. She tried to push him off of her, and he then pulled out a pistol, pointed it at her, and yelled at her to "give [him] the fucking kid." Ms. [redacted] fearful for the boys' safety, refused. Mr. [redacted] smashed her on the head with the pistol. Ms. [redacted] fell to the floor, disoriented and bleeding. Mr. [redacted] left with his son.

14. The police came, and Ms. [redacted] was taken by ambulance to the Niagara Falls Memorial Medical Center Emergency Unit where her wound was sutured. The attending doctor made note of the domestic violence that led to her injury.[15] An attending nurse noted that a police officer spoke with Ms. [redacted] about the domestic violence incident.[16] Hospital staff also referred Ms. [redacted] to a shelter for women and children and to the Child Advocacy Center because of the domestic violence.[17] She was discharged to the care of the shelter.[18]

15. The Family Services Advocate notes from the Child Advocacy Center explained in the reason for services that Ms. [redacted] had a "long history of domestic violence" and "present[ed] via EMS after being hit in the head with pistol by her husband".[19] The Case

[15] Niagara Falls Memorial Medical Center, Records from Aug. 6, 2012, attached as **Exhibit E**, at 15-17. *See also* YWCA of Niagara Safe House records, Safe House Screening Form, attached as **Exhibit F**, at 24 ("came to house today and pistol whipped her…"), 31 ("pistol whipped in head"); Niagara Falls Police Department Domestic Incident Report, Aug. 6, 2012, attached as **Exhibit G**, at 34-35 (describing incident where Mr. [redacted] "pulled out a silver handgun and pointed it at [redacted] then struck [redacted] on her head causing a laceration").
[16] **Exhibit E** at 17-18.
[17] *Id*. at 18.
[18] *Id*. at 22.
[19] Niagara Falls Memorial Medical Center, Records from Child Advocacy Center Family Services Advocate, Aug.

Notes further described Ms. [redacted] report of "a long and chronic hx [history] of domestic violence."[20] The YWCA of Niagara Safe House records similarly described a history of "verbal, mental, physical" abuse by a partner who was "very controlling".[21]

16. After this incident, Ms. [redacted] obtained a Temporary Order of Protection against Mr. [redacted] requiring him to stay away from her and her son.[22]

17. Beyond physical abuse, Mr. [redacted] also forced Ms. [redacted] to brand herself as his property. Ms. [redacted] had expressed an interest in getting a romantic tattoo with Mr. [redacted] name on it. Mr. [redacted] demanded instead that she get a tattoo that read "Property of Face Off."[23] Ms. [redacted] did not want a tattoo that labeled her anybody's property. However, one of Mr. [redacted] gang "sisters" was tattooing her, and his gang brothers stood around her as she got the tattoo, so Ms. [redacted] felt as though she had no choice but to comply.

18. Ms. [redacted] suffered abuse from members of Mr. [redacted] gang as well.[24] On two separate occasions, Mr. [redacted] ordered members of his gang to "jump" Ms. [redacted] The first time occurred in late 2010 because Mr. [redacted] felt that she had disrespected him. At Mr. [redacted] instruction, several gang members, proceeded to punch, kick, slap, pull, punch and drag Ms. [redacted] According to the gang "rules", this would normally last for 31 seconds. However, Ms. [redacted] did not fall to the floor, so two or three more men joined in to make sure she fell to the ground, and the beating lasted longer than 31 seconds.

6, 2012, attached as **Exhibit H**, at 37.
[20] *Id*. at 42.
[21] **Exhibit F** at 29.
[22] Niagara Falls City Court, Temporary Order of Protection, Aug. 9, 2012, attached as **Exhibit I.**
[23] "Face-Off" was Mr. [redacted] "gang name". *See* PreSentence Investigation Report at 3 (documenting tattoo on right forearm: "Property of Face Off").
[24] *See* Evans Memo at 4.

When the gang finished beating her, she was left on the ground in her own back yard. After she made her way into her home, Mr. [redacted] handed her a raw steak to place on her swollen face and told her "it's not personal."

19. Members of the gang attacked Ms. [redacted] a second time in 2012 at Mr. [redacted] behest. Mr. [redacted] felt entitled to settlement money that Ms. [redacted] received. She wanted to spend the money on necessities and taking care of her son. During another gang meeting at her house, Mr. [redacted] ordered several female gang members to "jump" Ms. [redacted] Once again, she was punched, kicked, slapped, dragged, pushed, pulled, and beaten.

THE INSTANT CRIME

20. On May 19th, 2012, Mr. [redacted] told Ms. [redacted] that he wanted her to drive him someplace. She reluctantly agreed to drive him. Once in the car, Mr. [redacted] instructed Ms. [redacted] to pick up J[redacted] Y[redacted].

21. Ms. [redacted] drove the two men around the city. As she drove, Mr. [redacted] told her to pull over on the side of the road. Mr. [redacted] got out of the car and proceeded to rob a pedestrian on the street, taking the victim's money and other valuable items. Mr. [redacted] and his friend Mr. Y[redacted] robbed multiple people during the course of the day. When they saw someone they wanted to rob, Mr. [redacted] would direct Ms. [redacted] to pull the car over.

22. At one point, Ms. [redacted] drove to Mr. [redacted] sister's house where her son was, and pleaded with Mr. [redacted] to let her stay there and get her son. She tried to go into the house, but Mr. [redacted] grabbed her by her hair and dragged her back to the car. Because she didn't want to drive, she got into the passenger seat. Mr. [redacted] headbutted her and struck her in the face, causing her to bleed. Ms. [redacted] complied with his demands to get

in the driver's seat and drive off.

23. At some point during the string of robberies, they encountered S W . Mr. pulled out his shotgun, and shot Mr. W . Returning to the car, Mr. yelled at Ms. to drive off. As she drove away, she was distraught and fearful of what Mr. would do if she said anything.

B. The abuse Ms. suffered was a significant contributing factor to the offense

24. Ms. actions on the day of the instant offense were inseparable from the abuse she suffered from Mr. Analysis under the DVSJA requires the courts to look at the "full picture" and "take into consideration the circumstances that [the applicant was] living under" in order to determine if the abuse was a significant contributing factor to the criminal conduct.[25]

25. The DVSJA applicant does not need to establish that "the abuse she suffered was the exclusive, or even the overriding factor to her criminal conduct." *People v.* 132 N.Y.S. 3d at 257.

26. In this case, as explained more fully in the accompanying memorandum of law, Ms. participation in the robberies and the tragic events of that day were a direct result of threats, coercion, and physical assault of Ms. Her action was informed not just by his abuse on that day, but also by the abuse she had suffered throughout their relationship.

27. The DVSJA does not excuse or ignore the tragic consequences of the underlying crime. Rather, it allows this court to recognize the role of domestic violence in Ms.

[25] New York State Senate, Regular Session, March 12, 2019, at 1569-72.

participation in this offense, and to resentence her accordingly.

III. RESENTENCING MS. [redacted] UNDER THE DVSJA WOULD SERVE THE INTERESTS OF JUSTICE

A. The original sentence, including the term of post-release supervision, imposed on Ms. [redacted] is unduly harsh

28. Considering the "full picture," Ms. [redacted] sentence is unduly harsh. Her original sentence did not account for the effect of domestic violence on her actions. Ms. [redacted] has worked hard for the past eight years, taking classes, earning a degree, working, and taking programs to grow and learn. As explained further in the accompanying memorandum of law, Ms. [redacted] case is an example of the type of harsh sentence the legislature intended to remedy with the DVSJA.

INSTITUTIONAL RECORD

29. While Ms. [redacted] has been incarcerated, she has made many improvements in her life. The one of which she is perhaps most proud is her educational achievement. She completed a high school equivalency course in 2016[26] and in December 2020 received her Associates of Science degree from Medaille College.[27] Ms. [redacted] graduated *cum laude* with a 3.65 GPA.[28] To complete her degree, Ms. [redacted] took a number of courses over two and a half years, including Algebra, U.S. History, World Cultures, Psychology, College Writing, Literature, and Fundamentals of Management.[29]

30. While Ms. [redacted] was taking classes, she was also regularly working. Most recently she has worked as an administrative clerk for chaplain services. While working towards her

[26] *See* Training Achievement & Potential Employability Report, attached as **Exhibit J**, at 52.
[27] Medaille College Transcript, Jan. 21, 2021, attached as **Exhibit J.**
[28] *Id*.
[29] *Id*.

degree, she would go to her job for the chaplain during the day and then attend three-hour night classes multiple times a week. Previously, Ms. [redacted] has also held the positions of porter, greenhouse laborer, recreation aide, and hospital porter.

31. Ms. [redacted] has also completed numerous programs: most recently in January 2021, the Phase III program designed to assist with transition to the community; in 2018 the Inmate Program Associate training, which is carefully screened and allows incarcerated individuals to assist staff in providing programming; in 2017 the twelve-week long PathStone Peer Facilitator Training; also in 2017 the Basic Parenting Skills Program; in 2017 the Alternatives to Violence Facilitators Workshop, in addition to 2015 basic and advanced courses in nonviolent conflict resolution; a number of workshops in the Hour Children Parenting Center Program at Bedford Hills in 2014-2015, including a parenting workshop on talking with your child on the telephone, a shared parenting class, a foster care and child custody workshop, a journal and letter writing workshop, and a parenting workshop on improving telephone skills; in 2015 the Family Violence Program's Child Victim Group; and in 2014 Phase I of the ACE Program.[30]

32. Ms. [redacted] has received a number of positive Inmate Progress Reports from the Department of Corrections and Community Supervision. She was described by one of her education supervisors in the associates degree program as having "an enthusiastic attitude" and proving "valuable contributions in class discussions."[31] Another rated her above average and encouraged her to "keep up the good work and effort".[32] Teachers in the high school equivalency program described her focus on passing her math subject

[30] *See* Program Certificates, attached as **Exhibit K**.
[31] Inmate Progress Report, Dec. 2019, attached as **Exhibit L**, at 74.
[32] Inmate Progress Report, June 20, 2019, attached as **Exhibit L**, at 75.

test, which she originally failed, shortly before Ms. [redacted] succeeded in passing the test and earning her GED.[33] A vocational instructor in the horticulture program rated her excellent and described her as a "good student who works hard".[34] A social worker in the Family Violence program wrote that Ms. [redacted] "was an active member of the group" and "openly discussed her own issues and gave positive feedback to others".[35] Another Family Violence facilitator reported that she was an "active participant," was "very supportive of others," "showed growth during the group," and was a "good group member."[36]

POST RELEASE PLAN

33. Ms. [redacted] is most eager to reunite with her son with whom she has maintained a close relationship. She looks forward to being reunited with him, welcoming him back into her household, and being able to support him once she has gotten herself on her feet.

34. Ms. [redacted] has also developed a close relationship with her father since being incarcerated. Ms. [redacted] now talks to her father at least twice a week. Her father has expressed that he sees a positive change in his daughter. He is proud of her and what she has accomplished with school. He looks forward to her release so that she may start her new life as a rehabilitated woman. He plans on helping Ms. [redacted] by providing her with emotional support and encouragement when she is released.

35. Ms. [redacted] has created a sustainable post-release plan in order to maintain her safety and well-being once she is released. She plans to be released to a women's shelter for her

[33] *See* Inmate Progress Reports, Apr. 25, 2016, Nov. 30, 2015, attached as **Exhibit L**, at 76-77. *See also* Inmate Progress Report, June 4, 2015, Feb. 2015, attached as **Exhibit L**, at 79-80 (rated excellent, "keep up the good work!")
[34] Inmate Progress Report, Oct. 30, 2015, attached as **Exhibit L**, at 78.
[35] Inmate Progress Report, Jan. 22, 2015, attached as **Exhibit L**, at 81.
[36] Inmate Progress Report, Sept. 18, 2014, attached as **Exhibit L**, at 82.

own safety and to avoid Mr. [redacted] family and his fellow gang members. Because of her history with his gang and her testimony against Mr. [redacted] she would ultimately like to move out of state with her son as soon as she is able to afford it. She fears that her only chance for safety for her family will be to start a new life outside the reach of the gang. She has family and a support system in the south, and would like to move closer to them. She also plans to join a support group for domestic violence survivors.

36. Ms. [redacted] intends to begin searching for a job as soon as she is released. She will be helped by her Associate's Degree, her job experience, her work ethic, and the programs she has completed.

37. Ms. [redacted] would like to become an advocate for those who are also survivors of domestic violence. She would like to tell her story with the hopes that she could save at least one life.

THE LENGTHY PERIOD OF POST-RELEASE SUPERVISION THAT MS. [redacted] FACES IS UNDULY HARSH

38. Ms. [redacted] will be released from custody to post-supervision release shortly. Once released, she will be subject to half a decade of post-release supervision. This lengthy period of post-release supervision is unduly harsh, as elaborated further in the accompanying memorandum of law.

39. The DVSJA recognizes that many domestic violence survivors commit their offense as a result of the abuse, which has the coincidental effect of domestic violence survivors being unlikely to recidivate.[37] Ms. [redacted] has a minor criminal record and has worked over the

[37] N.Y. State Assemb. Memorandum in Support of Bill A3110 (Jan. 26 2017). https://nyassembly.gov/leg/?default_fld=&leg_vIdeo=&bn=A03110&term=2017&Summary=Y&Actions=Y&Committee%2526nbspVotes=Y&Floor%2526nbspVotes=Y&Memo=Y&Text=Y.

last several years to improve herself. Although Ms. [redacted] will no longer be incarcerated, the lengthy period of post-release supervision she still faces is unduly harsh.

40. The burden of post-release supervision is well-documented.[38] Re-entry for women who have been incarcerated is complex, particularly for domestic violence survivors. These survivors have experienced the trauma of the abusive relationship/s as well as the trauma of incarceration. Upon release, the strict constraints and limits on one's freedom can mimic the controlling, abusive relationships that domestic violence survivors have experienced in the past.[39] In this case, it will also have the effect of keeping Ms. [redacted] in the same location where she fears reprisal from her abuser's associates.

1. Ms. [redacted] will be subject to strict conditions of supervision.[40] Any technical violation could expose her to reincarceration. Facing the risk of re-incarceration as the result of a technical violation runs counter to the DVSJA's goals of protecting survivors of domestic violence as well as to its subsidiary goal of saving the state funds.
2. Most recidivism by those on post-release supervision occurs within the first few months of re-entry. The American Law Institute therefore recommends that post-release

[38] See e.g., Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 THE J. OF CRIMINAL L. AND CRIMINOLOGY, 1015, 1035 (2013); Jennifer K. Wesely & Susan C. Dewey, *Confronting Gendered Pathways to Incarceration: Considerations for Reentry Programming*, 45 SOCIAL JUSTICE, 57, 61 (2018).

[39] *See* Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 THE J. OF CRIMINAL L. AND CRIMINOLOGY, 1015, 1060 (2013) (discussing how post-release supervision should be more limited in terms of how much freedom is restricted to those trying to successfully reenter); Priscilla A. Ocen, *Awakening to a Mass-Supervision Crisis*, THE ATLANTIC (2019) (remarking that parole officers may not understand "why women who have experienced abuse may not respond positively to coercive forms of supervision"; describing how a survivor experienced supervision as "remind[ing] her of her abusive relationship").

[40] *See* Conditions of Parole, attached as **Exhibit M**. (Conditions include participating in substance and alcohol abuse treatment programs as directed by the parole officer; abstaining from alcohol; and staying away from any bars, pubs, wine bars, etc. without permission of the parole officer, despite lack of evidence that substance or alcohol use by Ms. [redacted] had anything to do with the underlying offense. Conditions also include abiding by a curfew set by the parole officer and complying with geographic restrictions imposed by the officer.)

supervision lengths should be separated from the original sentence and be limited in time; it should not be a life sentence of post-release supervision.[41]

3. There is no additional benefit to the public from a lengthy period of supervision for Ms. [redacted] our modern understanding of recidivism indicates that Ms. [redacted] is incredibly unlikely to commit another offense given her age and gender, as well as her minimal criminal history and the significant connection of domestic abuse to her only violent offense.

IV. CONCLUSION

41. [redacted] [redacted] is a survivor of substantial domestic violence that has had devastating and long-lasting effects on her life. Ms. [redacted] was sentenced to a determinate sentence of nine and a half years with five years of post-release supervision. Over the past eight years of incarceration, she has worked on overcoming her trauma and improving herself through education, work, and programming.

42. The DVSJA recognizes that domestic violence survivors commit crimes, and it does not seek to undo the conviction. Rather, the DVJSA serves to mitigate harsh sentencing of survivors. Accordingly, Ms. [redacted] respectfully requests that a hearing be set so that she may be resentenced in accordance with Penal Law § 60.12.

[41] Edward E. Rhine, Joan Petersilia, & Kevin R. Reitz, *Improving Parole Release in America*, 28 FEDERAL SENTENCING REPORTER 96, 102 (2015).

Respectfully submitted,

Dated: Buffalo, New York
February 9, 2021

Alexandra Harrington, Esq.
Attorney for [redacted]
University at Buffalo School of Law
Criminal Justice Advocacy Clinic
507 O'Brian Hall
Buffalo, New York 14260
(716) 984-2453
aharr@buffalo.edu