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Appellate Division–Second Department Docket No. 2021-07149

Court of Appeals

of the

State of New York

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

– against –

NICOLE HUDSON,

Defendant-Appellant.

BRIEF FOR *AMICI CURIAE* 25 MEMBERS OF THE NEW YORK STATE SENATE AND ASSEMBLY IN SUPPORT OF DEFENDANT-APPELLANT

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QUESTION PRESENTED

Whether the State can require a domestic violence survivor to waive their right to a hearing under the Domestic Violence Survivors Justice Act, New York Penal Law § 60.12 (the "DVSJA"), as a condition of a plea agreement.

INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are 25 members of the New York Senate and Assembly who either co-sponsored the DVSJA, which was passed in March 2019 and signed into law in May 2019, and are deeply familiar with its legislative history, intent, and goals, or took office after the bill's passage and support the legislative intent that inspired it. *Amici* represent dozens of communities across the State of New York and close to five million people as constituents.

Amici have a strong interest in this case because the Appellate Division's statutory interpretation, if upheld by this Court, has the potential to undermine the purpose of this remedial statute by forcing domestic violence victims to go to trial in order to seek alternative sentencing under the DVSJA. This case presents the first opportunity for this Court to consider whether defendants can be required to waive their right to a P.L. § 60.12 hearing as a condition of a plea agreement. While the

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[1] No counsel for a party contributed content to this brief or participated in the preparation of this brief in any other manner, and no entity or person, aside from *Amici* and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

question before this Court is a narrow one, the stakes are high: the Court's decision here has the power to allow prosecutors to gut the DVSJA, which *Amici* fought so hard for years to pass precisely in order to ensure that *judges* have the authority at sentencing to consider whether a defendant's history of abuse may have played a significant contributing factor in their commission of the offense.

As co-sponsors and supporters of the DVSJA, *Amici* have a strong interest in ensuring that the Court understands the Legislature's goals in passing that legislation. This brief explains why permitting prosecutors to use waiver of a defendant's right to a § 60.12 hearing as a plea-bargaining chip would contravene the Legislature's intent in passing the DVSJA and arrogate to prosecutors the sentencing discretion the Legislature specifically placed in the hands of judges.

A full list of *Amici* appears in the Appendix.

SUMMARY OF ARGUMENT

Because the Legislature intended to create a broadly ameliorative sentencing regime for domestic violence survivors, a prosecutor cannot condition a plea bargain on the waiver of the right to a § 60.12 hearing. To conclude otherwise would directly contravene the intent of the Legislature in passing the statute.

Here, the legislative record makes clear that the DVSJA was enacted to advance several important interests. *First*, the DVSJA was intended to protect survivors from the harmful effects of excessive sentences. *Second*, the DVSJA was

designed to give courts discretion to holistically evaluate the role domestic violence played in a criminal offense and to determine appropriate sentences for defendant-survivors. *Third*, the statute was intended to cure the defects of the DVSJA's statutory predecessor, Jenna's Law, which was more narrowly tailored and ineffective as a result. To accomplish these goals, § 60.12 grants survivors an essential right: the entitlement to a sentencing hearing, at which a judge can consider evidence regarding domestic violence history, whether the survivor's history of abuse may have played a significant contributing role in their commission of the offense, and whether—under all of the circumstances—a sentence within the standard range would be unduly harsh. In keeping with the Legislature's intent, these hearings are not discretionary: the statutory text was written to *require* judges to hold § 60.12 hearings in applicable cases.

In short, the Legislature's intent is at the heart of this appeal, and there can be no question, based on the legislative history, that the Legislature intended to afford domestic violence survivors the opportunity to have their traumatic experiences taken into account at sentencing—by a judge—in every applicable case.

INTRODUCTION

The DVSJA was enacted in 2019 in response to flaws in the prior state sentencing law, New York Penal Law § 70.85 ("Jenna's Law"), which largely prevented judges from giving full consideration at sentencing to how domestic

violence survivors' histories of abuse may have contributed to the commission of the offense. DVSJA History, SURVIVORS JUSTICE PROJECT, https://www.sjpny.org/dvsja/history (last visited Oct. 30, 2025) ("DVSJA History"). State legislators introduced the first version of the law in 2011, *id.*, after the New York State Sentencing Commission recommended the enactment of an "ameliorative provision that would allow for the imposition of less harsh, determinate sentences" on survivors of domestic violence, New York State Assembly Memorandum in Support of Legislation, Bill No. A03974 ("Assembly Memorandum of Support"). In so recommending, the State Sentencing Commission recognized that the then-existing sentencing regime for domestic abuse survivors utterly failed in its mission to provide alternative sentencing for domestic violence survivors. In fact, Jenna's Law was only applied in a single sentencing between 1998 and 2007. *Id.*

The proposed ameliorative legislation—which would become the DVSJA—received broad support from women's advocacy groups, domestic and sexual violence organizations, public defense offices, prisoners' rights groups, bar association committees, state court judges, and houses of worship. *See* DVSJA History. The District Attorneys Association of the State of New York (DAASNY) opposed the DVSJA, arguing that it would "greatly expand the relief provided [under the statute]," "dramatically reduce" sentences, and "even provide for sentences of probation" in some cases. Dist. Att'ys Ass'n of the State of N.Y., *2012 DAASNY*

Opposition to DV Sentencing and Resentencing Bill (DiFiore) (May 8, 2012), https://www.daasny.com/wp-content/uploads/2014/08/2012-DAASNY-Opposition-to-DV-Sentencing-and-Resentencing-Bill-DiFiore.pdf. Pushback from prosecutors stalled the legislative proposal, but advocates nonetheless continued fighting for its passage from 2012 to 2019. *See* DVSJA History.

In 2019, advocates, who included domestic violence survivors, finally succeeded in securing passage of what was hailed as landmark legislation because of the flexibility it gave judges to fashion appropriate sentences for domestic violence survivors. *See* Press Release, *New York City Bar, Statement on the Enactment of the Domestic Violence Survivors Justice Act* (May 14, 2019), https://www.nycbar.org/press-releases/statement-on-the-enactment-of-the-domestic-violence-survivors-justice-act. In particular, the DVSJA gives judges the discretion to impose alternative indeterminate sentences of imprisonment, determinate sentences of imprisonment, and alternatives to incarceration depending on the crime of conviction. *Id.* The final bill had more than seventy-five legislative sponsors and co-sponsors across both houses of the Legislature. *See* DVSJA History.

ARGUMENT

I. The Legislature Enacted The DVSJA To Protect Domestic Abuse Survivors From Unjust Punishment

A survivor's right to a § 60.12 hearing is not waivable, consistent with the purpose and intent of the statute. When interpreting a statute, a court's "primary consideration is to ascertain and give effect to the intention of the Legislature." *People v. Hernandez*, ---N.E.3d---, 2025 WL 2979522, at *2 (N.Y. Oct. 23, 2025) (cleaned up). Although that analysis always begins with a review of statutory text, the Court also considers "the purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history." *Peyton v. N.Y.C. Bd. of Standards & Appeals*, 36 N.Y.3d 271, 280 (2020) (quoting *Town of Aurora v. Vill. of E. Aurora*, 32 N.Y.3d 366, 372, (2018)); *see also People v. Badji*, 36 N.Y.3d 393, 399 (2021) ("[A]lthough the strongest indication of the statute's meaning is in its plain language, 'the legislative history of an enactment may also be relevant and is not to be ignored, even if words be clear.'") (internal citation omitted). Accordingly, in *People v. Rudolph,* this Court relied on the legislative intent of another remedial statute granting judges the ability to determine whether a criminal defendant is entitled to youthful offender status, concluding that a defendant's right to such a judicial determination cannot be waived by plea bargain. 21 N.Y.3d 497, 500–01 (2013).

In interpreting the DVSJA, courts across the state, including this Court, recognize the importance of effectuating the Legislature's policy goals. *See Hernandez*, 2025 WL 2979522, at *2–3 (relying in part on the purpose and legislative history of the DVSJA to interpret the statute); *People v. Ava OO.*, 233 A.D.3d 1186, 1188–89 (3d Dep't 2024) (analyzing the second prong of the DVSJA through the "prism" of the remedial intent of "the new statutory language"); *People v. Addimando*, 197 A.D.3d 106, 117 (2d Dep't 2021) (reversing denial of DVSJA sentencing on ground that survivor could have withdrawn from her abuser, reasoning that such an "approach simply runs afoul of the spirit and intent of the statute").

Here, analysis of the legislative intent of the DVSJA requires the same result as in *Rudolph*—a determination that the right to a § 60.12 hearing is not waivable. The Court need not look further than the Assembly Memorandum of Support, which makes pellucid that the DVSJA's "[p]urpose" is "[t]o *expand* upon the existing provisions of alternative sentencing for domestic violence cases" in light of the "inextricabl[e] link[]" between domestic violence and women's incarceration. *See* Assembly Memorandum of Support, at 1 (emphasis added) (observing that "9 out of 10 incarcerated women have experienced severe physical or sexual violence in their lifetimes; 6 out of 10 experienced serious physical or sexual violence during childhood; 75% suffered severe physical violence by an intimate partner during adulthood"). To explain that purpose, the Assembly Memorandum of Support

highlights the primary issue that the Legislature intended the DVSJA to address—"the 'national epidemic' of domestic violence and the failure of [New York's] prior law to '*allow judges discretion* to fully consider the impact of domestic violence' in making sentencing determinations." *Hernandez*, 2025 WL 2979522, at *2 (quoting *People v. Brenda WW.*, ---N.E.3d---, 2025 WL 1688473, at *2 (N.Y. June 17, 2025) (emphasis added)); *see also* Assembly Memorandum of Support, at 1. The Assembly Memorandum of Support also discusses how the DVSJA provides avenues for lesser or non-incarceratory sentences, something that New York's prior sentencing structure and other past attempts at reform failed to achieve. *See* Assembly Memorandum of Support, at 1–2 (explaining that "alternatives to incarceration for women survivors [are] particularly appropriate as they most often have no prior criminal records, no history of violence and extremely low recidivism rates").

As discussed *infra* in Section II, the § 60.12 hearing before a judge is the primary mechanism the Legislature created to ensure judges could appropriately balance "the crime charged, the particular circumstances of the individual before the court and the purpose of a penal sanction" in sentencing domestic violence survivors. *People v. Farrar*, 52 N.Y.2d 302, 305 (1981). Without the § 60.12 hearing, a sentencing judge cannot fully consider "the particular circumstances of the individual before the court." *Id.* Given that the § 60.12 hearing is the backbone of

the statute—the means by which the Legislature sought to achieve its express goal of providing alternative sentences for survivors where warranted—the Legislature clearly intended for survivors to have the right to a hearing solely devoted to determining whether they are entitled to more lenient sentencing as a result of the abuse they suffered. Waiver of the § 60.12 hearing as a condition of a plea bargain effectively guts the DVSJA and is repugnant to the Legislature's intent.

The legislative history of the DVSJA further reflects the Legislature's focus on ensuring that a survivor's experience is taken into account at sentencing. For example, Senator Persaud, the principal sponsor of the Act in the Senate, emphasized during floor debates on the bill that judges "should take into consideration the circumstances that [domestic violence survivors] were living under when they're being sentenced" because "[the Legislature is] saying these women are victims, [and] they should be treated as such." NY Sen. Deb. Sen. B. S1077, Mar. 12, 2019 (Sen. Transc.) at 1569–70. Assemblymember Barron recognized that "we don't know what it means emotionally and physically to be a victim of domestic violence," and for that reason, survivors of abuse should receive the "highest [level] of reconsideration and sensitivity." N.Y. Assembly on No. A03974, March 4, 2019, at 20. Thus, the Legislature intended consideration of a survivor's full history at sentencing and clearly did not contemplate delegating this consideration to

prosecutors during the plea bargaining process. Waiver of the very hearing that ensures consideration of a survivor's history thwarts that intent.

II. The DVSJA Was Designed To Ensure That Judges, Not Adversaries, Are The Decision-Makers In This Ameliorative Sentencing Regime

The Legislature specifically drafted the DVSJA with the intent that impartial judges have the discretion to determine whether a domestic abuse survivor should receive a DVSJA sentence. The Second Department's holding essentially allows prosecutors to arrogate to themselves the power to determine whether a defendant is deserving of relief under the DVSJA.

The legislative record for the DVSJA establishes that the Legislature sought to give courts discretion to impose an appropriate sentence where a defendant has suffered domestic violence. During the floor debates on the DVSJA, Assemblymember Aubry emphasized repeatedly the centrality that judicial discretion played in effectuating the bill's purpose. *See* N.Y. Assembly on No. A03974, March 4, 2019, at 9 ("This bill would provide a judge with discretion in sentencing and resentencing domestic violence survivors who are convicted of certain crimes where domestic violence was a significant contributing factor in their criminal behavior."); *id.* at 11 ("There are three tests that ha[ve] to be required. The application for this . . . gives the judge the discretion to provide this relief."); *id.* at 12 (clarifying, in response to an assembly member's inquiry on how the DVSJA would impact sentencing, that the bill "does reduce the sentences greatly, but the

judge has the discretion to establish that"); *id.* at 13 (emphasizing that under the DVSJA, sentencing determinations remain "subject to the discretion of the judge"). Emphasis on judicial discretion played a similarly large role in the Senate debate. *See* N.Y. Senate on No. S1077, March 12, 2019, at 1573–74 (explaining that the bill seeks to "actually allow judges to have discretion -- and we give judges discretion in so many other areas of law, but when it comes down to folks who have suffered at the hands of an abuser, we had not until today had that discretion") (statement of Sen. Jamaal T. Bailey).

The necessary predicate for that discretion is the DVSJA hearing. The Legislature envisioned a justice system that would "recognize th[e] scourge on [] society" that is domestic violence, a system "[where courts will] be able to look at [all of] the facts of a case." N.Y. Assembly on No. A03974, March 4, 2019, at 18. It designed the DVSJA to "chang[e] the paradigm" from one that is "black or white . . . where the judge doesn't have discretion," to one where judges "take into consideration what [the defendants] have gone through [and] what they were living with." N.Y. Senate on No. S1077, March 12, 2019, at 1571–72. As Senator Carlucci emphasized during debate on the bill, "all too often in our court system[,] when women are defending themselves against domestic violence . . . the judge is just putting forth punishment[,]" but the DVSJA "is really changing the paradigm, to make sure" judges have discretion in sentencing because "[w]e want to make sure

that[] [a survivor's history is] taken into consideration, that the full picture is examined." *Id.*; *see also People v. Brenda WW.*, 222 A.D.3d 1188, 1193 (3d Dep't 2023), *aff'd as modified and remanded*, --- N.E.3d ---, 2025 WL 1688473 (N.Y. June 17, 2025) (explaining, in light of the legislative history of the DVSJA, that court must consider "the lengthy history of abuse suffered by defendant."); *Addimando*, 197 A.D.3d at 112 (quoting Senator Carlucci's testimony). Through the passage of the DVSJA, the Legislature intended "[t]o make sure that we are in a place and a position and a time *where we actually allow judges to have discretion*" to sentence more leniently following a determination that the abuse was a significant contributing factor to the offense. N.Y. Senate on No. S1077, March 12, 2019, at 1573–74 (emphasis added).

Consistent with that intent, the text of the DVSJA uses mandatory language and requires courts to hold a hearing to determine whether a defendant should be sentenced under the DVSJA. *See* P.L. § 60.12 (mandating that "the court, upon a determination following a hearing" decide whether to "impose a sentence in accordance with the section"). Although the text gives judges the discretion to decide whether a defendant qualifies for DVSJA status, it does not grant judges the discretion to choose whether to hold a § 60.12 hearing to make that determination.

Respondent does not dispute that the DVSJA was passed "to allow judges discretion to fully consider the impact of domestic violence in making sentencing

determinations." Opp. at 19 (quoting *Brenda WW.*, 2025 WL 1688473, at *4). Respondent also recognizes that a § 60.12 hearing allows judges to carefully and thoroughly consider how, and to what extent, domestic violence may have contributed to the offense. *Id.* But Respondent complains about the impact of the DVSJA on the finality prosecutors desire from plea bargaining—arguing that "when a [§] 60.12 hearing occurs [following a plea negotiation]" it "result[s] in, effectively, a mini-trial concerning the defendant's allegations of domestic-violence abuse . . . creating uncertainty instead of finality." Opp. at 44. But this was exactly the Legislature's intent: that in the specific context of domestic violence survivors, prosecutors' desire to know—and even control—exactly what sentence a defendant will receive cannot outweigh the DVSJA's mandate to provide judges the final say in determining whether a lesser sentence is appropriate. *See People v. Liz L.*, 221 A.D.3d 1288, 1289–91 (3d Dep't 2023) (recognizing the legislative intent and history of the DVSJA in finding that a prosecutor's consideration of the defendant's domestic violence history does not satisfy the DVSJA's mandate).

Just as in the youthful offender context analyzed by this Court in *Rudolph*, the Legislature made a considered determination that sentencing discretion in the domestic violence survivor context should be placed in the hands of judges, not prosecutors. The Court noted in *Rudolph*, "[t]he judgment of a court as to which young people have a real likelihood of turning their lives around is *just too valuable*

. . . to be sacrificed in plea bargaining. Of course there will be many cases in which the interests of the community demand that youthful offender treatment be denied . . . but *the court* must make the decision in every case[, not prosecutors]." 21 N.Y.3d at 502 (emphasis added). The same is true here: the right of a domestic abuse survivor to have their history of trauma taken into account at sentencing is simply too valuable to be subject to plea bargaining. *See id.* (explaining that "no purpose is served by a plea bargain that takes the decision out of the court's hands").

Respondent argues that sentencing courts will still have the decision-making power the Legislature intended because courts must sign off on the sentences agreed upon by the parties as part of any plea deal. Opp. at 49. Not so. Judicial authority to accept or reject a plea deal is a binary decision: either judges can accept a plea bargain that requires waiver of the § 60.12 hearing, or judges can reject such plea bargains, forcing defendants to go to trial in order to preserve their right to a § 60.12 hearing. Neither available choice would effectuate the intent of the Legislature in passing the DVSJA. A plea bargain negotiated by a prosecutor removes any ability for the judge to determine an alternate sentence based on a defendant's status as a survivor. Forcing survivor-defendants to trial in order to preserve their DVSJA rights reduces their ability to accept responsibility for their actions and compels them to undergo trial for the wrong reason. Moreover, if the Legislature believed that the existing sentencing regime gave courts sufficient opportunity to consider how a

defendant's past domestic abuse contributed to the underlying offense, it would not have incorporated a separate hearing into the legislative scheme. N.Y. Senate on No. S1077, March 12, 2019, at 1574–75 (noting judges had not been allowed discretion when it came to the sentencing of survivors until the passage of the DVSJA).

III. The DVSJA Was Intended To Cure Defects In The Prior Sentencing Statute To Ensure That This Ameliorative Regime Reaches As Many Survivors As Possible

Through the passage of the DVSJA, the Legislature intended to rectify the failure of the prior sentencing regime to meaningfully reach and benefit survivor-defendants. Were this Court to adopt the Second Department's reasoning and allow for a waiver of a defendant's right to a § 60.12 hearing as a condition of a plea, survivors would find themselves in the same ineffective regime as under Jenna's Law, the very one the Legislature sought to change.

Correcting the mistakes of Jenna's Law was an explicit motivation for the passage of the DVSJA. Indeed, the Assembly Memorandum of Support noted that the DVSJA "would address [the] shortcomings" of Jenna's Law, including its failure to broadly reach survivors and the inflexible effect of requiring indeterminate sentencing. Assembly Memorandum in Support at 1. Under Jenna's Law, survivor-defendants could only benefit from the ameliorative sentencing regime if the victim of the underlying offense was their abuser, and this narrow eligibility resulted in its

application in only a singular instance. The DVSJA expanded the reach of the alternative sentencing provision to include survivor-defendants whose victims were third parties but whose abuse was a contributing factor to the offense. N.Y. Assembly on No. A03974, March 4, 2019, at 10.

Now, all of that is being undone as county prosecutors across the state are requiring waiver of the defendant's right to a § 60.12 hearing as a mandatory condition of plea offers. Disturbingly, Respondent thinks such practices are "entirely reasonable." Opp. at 57. But given that all but 2% of New York felony cases result in a plea bargain, Reply at 23 n.7, those policies would effectively gut the DVSJA by ensuring that 98% of all defendants cannot benefit from it. As noted above, the Legislature intended to *expand*, not restrict, the scope of the ameliorative sentencing regime for domestic violence survivors, and therefore compelling waiver of DVSJA relief is entirely inconsistent with the legislative intent behind the statute.

Respondent claims that "there is no evidence . . . that the Legislature intended to craft a public policy that would disempower a particular group of defendants, by prohibiting them from exercising agency in plea bargaining." Opp. at 40. But that argument refutes itself. It is the *prosecutor's* practice of forcing a survivor-defendant to waive their right to a DVSJA hearing as a condition of plea bargaining that reduces a defendant's "agency." By contrast, the result that Appellant advocates here is consistent with the legislative purpose of the DVSJA, which is to *empower*

domestic violence survivors within the criminal justice system to seek—and courts to grant—alternative sentences that account for survivors' history of domestic violence.

IV. The Second Department's Decision Must Be Reversed As Contrary To The Legislature's Intent

The Second Department misapprehended the Legislature's intended purpose and policy goals in enacting the DVSJA, understating the immense impact that a § 60.12 hearing can have on a survivor's sentence.

The Second Department erroneously concluded that the "purpose and policy goals of the Legislature in enacting" the DVSJA indicate that a § 60.12 hearing "is in the category of rights" that may be waived. *See People v. Hudson*, 232 A.D.3d 200, 205 (2d Dep't 2024) (quoting *People v. Muniz*, 91 N.Y.2d 570, 574 (1998)). The decision, however, does not cite, consider, or rely on any legislative materials in making this determination. *See id.* at 205–07. Nor could it, as the legislative history and purpose demonstrate the Legislature's consensus that the "judgment of a court" of a defendant's status as a domestic abuse survivor "is just too valuable, both to the offender and to the community, to be sacrificed in plea bargaining." *See Rudolph*, 21 N.Y.3d at 501. As discussed above in detail, *see supra* Section I, the Assembly Memorandum of Support clearly indicates that a defendant's right to a judicial determination of their status as a victim of domestic violence holds great significance—both for the defendant and the community. Recognition of a

defendant's status as a survivor has a profound impact on that defendant, most obviously by permitting them to receive a non-incarceratory or lesser sentence. But the designation's effects extend beyond sentencing—the designation also powerfully represents to the defendant that a judge acknowledged their trauma and how it diminished their culpability. *See* Assembly Memorandum of Support at 1.

Further, the Assembly Memorandum of Support described how the bill's ameliorative sentencing goals provide numerous benefits to the community. First, it explained that alternative and shorter prison sentences are "far more effective . . . in allowing survivors to rebuild relationships with their families, recover from abuse, and take responsibility while positively participating in their communities." *Id.* at 2. This is because "[a]llowing mothers to live in the community while serving sentences also 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." *Id.* The Assembly Memorandum of Support also identifies the significant savings that alternative sentencing provides to taxpayers. It explains that "sentencing DV survivors to lower sentences and alternative programs" saves taxpayers "tens of thousands of dollars per person each year while helping to build healthy and safe individuals and communities." *Id.* Finally, the Assembly Memorandum highlights the importance of the DVSJA's compliance with "[d]omestic and international human rights standards [to] uphold

the right of women and all people - to live free from violence." *Id.* at 2. The DVSJA is a recognition by "[o]ur government" of "its responsibility to preserve this right and provide support for DV survivors . . . [which] does not end when a survivor becomes involved in the criminal justice system because of the abuse she suffers." *Id.* Thus, the significance the Legislature accorded a judicial determination of a defendant's status as a victim of domestic violence makes clear that it did not intend for the right to a § 60.12 hearing to be waivable.

The Second Department also erroneously concluded that DVSJA status, unlike the youthful offender determination discussed in *Rudolph*, does not implicate a "defendant's conviction []or the integrity or fairness of the criminal process." *Hudson*, 232 A.D.3d at 208. This conclusion directly conflicts with the Legislature's intent. A DVSJA determination goes to the very heart of fairness in the criminal process—it is a judicial acknowledgement of a survivor's lessened culpability and the need for more compassionate sentencing in light of that recognition. NY Sen. Deb. Sen. B. S1077, Mar. 12, 2019 (Sen. Transc.) at 1569–70 ("We should not hold [survivors] accountable to the extent that the law has been holding them accountable. The law should take into consideration the circumstances that they were living under when they're being sentenced.").

In short, the history and policy goals of the DVSJA make clear the Legislature's judgment that a § 60.12 hearing is "too valuable . . . to be sacrificed in

the plea negotiating stage." *Rudolph*, 21 N.Y.3d at 501. The Second Department decision to the contrary misapprehends the legislative intent of the DVSJA.

CONCLUSION

For the foregoing reasons, the Second Department erred in holding that § 60.12 hearings can be waived as a condition of plea, and this Court should remit Ms. Hudson's case to the trial court for a § 60.12 hearing to determine whether she is eligible for relief under the DVSJA.

Date: November 6, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the word count for the body of this brief, including footnotes, is 4,585 words. 22 N.Y.C.R.R. §§ 500.13(c)(1), (3). This brief was prepared on a computer, using Microsoft Word 365, in Times New Roman, a serified proportionally spaced typeface. This body, including footnotes, is printed in fourteen-point type. The body is double-spaced, and the footnotes are single-spaced.

Dated: November 6, 2025

Alison Moe

APPENDIX: LIST OF *AMICI CURIAE*

Prime sponsors of DVSJA:

(1) *Senator Roxanne J. Persaud*, 19th Senate District (Kings), Chair of Committee on Social Services

(2) *Assemblymember Jeffrion R. Aubry* (retired), 35th Assembly District (Queens), former Chair of Committee on Corrections, Speaker Pro Tempore of the NY Assembly (2013-2024)

Members in office in 2019 who supported the DVSJA (co-sponsor – indicated with * – and/or voted "aye"):

(1) *Senator Andrew S. Gounardes*, 26th Senate District (Kings)*

(2) *Senator Shelly Mayer*, 36th Senate District (Westchester)*

(3) *Senator Zellnor Myrie*, 20th Senate District (Kings)

(4) *Senator Gustavo Rivera*, 33rd Senate District (Bronx)*

(5) *Senator Julia Salazar*, 18th Senate District (Kings/Queens)* – was Chair of Committee on Women's Issues in 2019, and since 2021, has been Chair of Committee on Crime Victims, Crime & Correction

(6) *Senator James Sanders, Jr.*, 10th Senate District (Queens)*

(7) *Senator Luis Sepulved*a, 32nd Senate District (Bronx)* – was Chair of Committee on Crime Victims, Crime & Correction in 2019

(8) *Assemblymember Catalina Cruz*, 39th Assembly District (Queens)*

(9) *Assemblymember Amy R. Paulin*, 88th Assembly District (Westchester)

(10) *Assemblymember Linda B. Rosenthal*, 67th Assembly District (Manhattan)*

(11) *Assemblymember Nily Rozic*, 25th Assembly District (Queens)*

(12) *Assemblymember Jo Anne Simon*, 52nd Assembly District (Kings)*

Members who joined the legislature after 2019 and who join the brief to express support for adherence to the proper interpretation of the legislative intent of the DVSJA:

(1) *Senator Cordell Cleare*, 30th Senate District (Manhattan)

(2) *Senator Michelle Hinchey*, 41st Senate District (Columbia, Greene, Dutchess, Ulster)

(3) *Senator Lea Webb*, 52nd Senate District (Tompkins, Cortland, Broome), Chair of Committee on Women's Issues

(4) *Senator Jabari Brisport*, 25th Senate District (Kings)

(5) *Senator Kristen Gonzalez*, 59th Senate District (Queens, Kings, New York)

(6) *Assemblymember Emily Gallagher*, 50th Assembly District (Kings)

(7) *Assemblymember Dr. Anna Kelles*, 125th Assembly District (Tompkins, Cortland)

(8) *Assemblymember Dana Levenberg*, 95th Assembly District (Putnam, Westchester)

(9) *Assemblymember Gabriella Romero*, 109th Assembly District (Albany)

(10) *Assemblymember Sarahana Shrestha*, 103rd Assembly District (Dutchess, Ulster)

(11) *Assemblymember Claire Valdez*, 37th Assembly District (Queens)

STATE OF NEW YORK	)		**AFFIDAVIT OF SERVICE**
	)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF NEW YORK	)		**EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On November 6, 2025

deponent served the within: ***BRIEF FOR* AMICI CURIAE *25 MEMBERS OF THE NEW YORK STATE SENATE AND ASSEMBLY IN SUPPORT OF DEFENDANT-APPELLANT***

upon:

Party Name:	**The People**
Party Role:	**Respondent**
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Attorney:	**Jean M. Joyce Esq.**
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Party Name:	**Nicole Hudson**
Party Role:	**Appellant**
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	New York NY 10038
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the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on November 6, 2025

Mariana Braylovskiy

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

T. Heath

Job# 387335