

DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT SENTENCE CHART ALTERNATIVE SENTENCE

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

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

*Prepared by Alan Rosenthal
Updated September 1, 2019*

¹ Effective May 14, 2019.

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

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

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

DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT SENTENCE CHART ALTERNATIVE SENTENCING

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

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

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¹ Effective May 14, 2019.

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

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

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

DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT SENTENCE CHART ALTERNATIVE SENTENCING

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

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

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Updated September 1, 2019*

¹ Effective May 14, 2019.

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

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

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

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