

PRISONERS' LEGAL SERVICES
OF
NEW YORK

**TESTIMONY BEFORE THE JOINT LEGISLATIVE HEARINGS ON THE
NEW YORK STATE PUBLIC PROTECTION BUDGET FOR FY2017-2018
CONDUCTED BY THE ASSEMBLY WAYS AND MEANS
AND SENATE FINANCE COMMITTEES**

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I. INTRODUCTION

We would like to thank the members of this Committee for inviting Prisoners' Legal Services (PLS) to testify before you today. PLS' mission is to provide high quality, effective legal representation and assistance to indigent incarcerated individuals and to help them secure their civil and human rights. Created by New York State in 1976, and in response to the 1971 Attica prison uprising, PLS protects the civil and constitutional rights of incarcerated individuals, acting as a safety valve to help prevent another prison riot and helping to prepare incarcerated individuals for successful reintegration into their communities upon release.

In fiscal year 2016-2017, PLS received total state funding of \$2.45 million; \$2.2 million in Executive funding and an additional \$250,000 from the Legislature. We commend both Governor Cuomo and the Legislature for providing this funding as it is a clear indication of the continued commitment of both to civil and human rights and a testament to the value that New York State places on achieving justice for all of its citizens.

For a sixth year in a row, Governor Cuomo has included PLS in his Executive Budget. For fiscal year 2017-2018, Governor Cuomo has again appropriated \$2.2 million in funding for PLS, for which we are enormously appreciative. By including PLS in his Executive Budget for this amount, the Governor has acknowledged the need to move toward adequate funding for PLS to assist in the provision of independent oversight of our prison system and ensure that it is held accountable. With our current funding, PLS is only able to accept approximately 20% of the over 10,000 cases that come in. To make PLS' oversight effective and ensure accountability, PLS needs the Legislature to add \$1.3 million to the Governor's appropriation of \$2.2 million, resulting in a total operating budget of \$3.5 million for FY 2017-2018. This funding will allow PLS to accept an additional 1,300 cases, thereby reducing the unmet need by almost 34 percent.

II. AN OVERVIEW OF PLS

PLS has regional offices in Albany, Ithaca, Plattsburgh and Buffalo. Each office is in close proximity to New York State's 54 prisons. Currently PLS employs a total staff of 23, 15 of whom are attorneys. PLS provides critical civil legal services to the over 51,000 prisoners confined in prisons that are located across the state from Buffalo to Albany and from the Canadian border near Plattsburgh to New York City. Through its services, PLS assists prisoners in resolving their disputes non-violently, thereby lowering tension, reducing hostility and helping to create a safer environment for prisoners and correctional staff alike.

PLS receives over 10,000 requests for assistance annually and, although we cannot accept every case, we answer every letter we receive and, even in cases we cannot accept, we at least provide tools for incarcerated individuals to try to represent themselves. We do this, by publishing over 75 client educational memos that address specific areas of the law. We also publish a bi-monthly newsletter, *Pro Se*, which is distributed to over 8,500 New York State prisoners at no cost. *Pro Se* advises prisoners of changes in the law, publishes practice pieces to assist them in complying with statutory and regulatory requirements, and explains technical aspects of various laws affecting prisoners. The effectiveness of our publications is demonstrated by the numerous letters that we receive from prisoners describing their pride in their successful advocacy and litigation.

PLS has a Pro Bono Partnership Program which has established partnerships with law firms and community agencies statewide. We also work with the New York State Bar Association (NYSBA) and various county bar associations to identify possible pro bono counsel. Through this project, over sixty (60) individuals and firms have been recruited to accept cases, and hundreds of prisoners have had legal representation that they otherwise would not have had.

Through our Pro Bono project, PLS also partners with law schools to provide training and mentoring for students who work via work study, clinics, internships, externships or pro bono.

In 2013, in partnership with the Department of Corrections and Community Supervision (DOCCS), PLS created the Albion Telephone Program. Since its inception, more than 500 women have received legal assistance on numerous issues including medical and mental health care and child visitation and custody.

PLS also has a Mental Health Project that specifically focuses on the needs of youth under 21 and veterans (*including anyone who has served in the military or armed forces*) who suffer from mental illness. In 2014, there were 2,240 prisoners under the age of 21 and 2,146 prisoners who were veterans in DOCCS custody. PLS has a unit that specifically focuses on these two populations because they are two of the largest segments of the prison population and are among the most vulnerable prisoners. Youth under 21 and veterans experience higher rates of mental illness than are experienced by other groups of prisoners, with diagnoses that include post-traumatic stress disorder, bipolar disorder, major depressive disorder and schizophrenia. Through PLS' Mental Health Project, eligible clients obtain the mental health care they need and PLS works to ensure that they are not subjected to conditions, such as long-term solitary confinement, that will exacerbate their mental illness.

PLS also has a Family Matters Unit that assists incarcerated parents in challenging prison disciplinary proceedings that result in suspension or termination of visitation with their children, drafting child visitation petitions, providing representation in court on visitation and support petitions, helping clients access court records, enforcing visitation orders and drafting child support modification papers. The Unit provides a critical resource to incarcerated parents; helping them maintain family ties during their incarceration. For parents who are subject to child

support orders, PLS works to help remove one of the major barriers to successful reintegration – the accumulation of insurmountable debt as a result of child support arrears.

PLS provides representation to detained immigrants facing deportation hearings providing critical legal assistance to one of our most vulnerable populations. In one recent case, PLS represented an individual who was wrongly placed in removal proceedings. After presenting the case to an immigration judge, the judge terminated the removal proceeding. After being released, our client was able to reunite with his mother and sister. Without PLS' help, this person would have been wrongly deported to Jamaica, a country that he left over a decade ago.

By counseling and advising prisoners regarding their rights and the merits of their claims for the past 40 years, PLS has earned the trust and respect of incarcerated New Yorkers, their families and loved ones. Our history, expertise, and willingness to work toward reasonable compromise, while at the same time zealously advocating for our clients, has also earned us the trust and respect of judges, the Attorney General's office and DOCCS. In addition, Legislators and other governmental leaders, including the Governor's office, are appreciative of our opinions on prison-related issues and welcome our suggestions, as do many other individuals and organizations within the state criminal justice and legal services communities.

PLS helps fulfill New York State's commitment to the criminal justice goals of rehabilitation and reintegration. PLS advocates for prisoners on issues surrounding their conditions of confinement, thus preparing them for release and successful readjustment to their communities. Most prisoners will eventually be released. PLS promotes public health and safety, by ensuring that prisoners returning to their communities have been treated humanely and have had access to adequate medical and mental health care and other programs while in prison.

III. THE WORK OF PLS

The State has a legal responsibility to provide meaningful access to the courts for people confined in state prisons. Bounds v. Smith, 430 U.S. 817 (1977). New York has, in the past, wisely chosen to fund PLS to help fulfill that legal responsibility.

As a statewide entity, PLS listens and responds to the concerns and grievances of incarcerated New Yorkers regarding their conditions of confinement. PLS has been recognized as an agency with an extraordinary commitment to strengthening access to justice and delivering civil legal services to low-income and disadvantaged clients.¹

Although PLS does not have the resources to provide representation in every case we receive, we have a 70 percent success rate for those cases we do accept. Below is an overview of the work PLS does with specific emphasis on major achievements accomplished by PLS over the past two years.

Jail Time, Sentencing Credit, Merit Time, Good Time and Solitary Confinement:

PLS ensures that prisoners' sentences are calculated accurately and that they receive all of the jail time credit to which they are entitled. Our advocacy regarding parole and merit time issues also results in our clients being credited with time toward their sentences. PLS also ensures that unlawful disciplinary hearings are reversed and prisoners subject to those disciplinary hearings do not unlawfully spend time in isolated confinement or unlawfully lose good time credits to which they would otherwise be entitled. Over the past two years, PLS has recouped over 43 years of jail time and sentence credit, saved over 144 years in solitary confinement and recouped over 56 years of good time for our clients.

¹ In 2014, PLS received the 2014 Denison Ray Non-profit Organization Award which recognized PLS' extraordinary commitment to: strengthening access to justice initiatives; delivering the provision of civil legal services to low-income and disadvantaged clients; increasing the provision of pro bono services; and marshaling resources to maximize services to the community.

Excessive Use of Force by Corrections Officers: PLS also helps to ensure that incarcerated individuals are treated humanely and are not subjected to harassment or brutality, and if they are, PLS helps to hold the responsible individuals accountable for their actions. Over the past two years, PLS has successfully litigated a number of excessive use of force cases, holding individuals accountable for their unconstitutional actions.

Eliminating Solitary for Juveniles: On the issue of solitary confinement, PLS also continued its work in the case of *Cookhorne v. Fischer, et. al.*, which put an end to solitary confinement for juveniles. As part of the *Cookhorne* settlement, over the past year PLS reviewed all disciplinary sanctions for 16 and 17-year olds and advocated on their behalf, engaged in annual monitoring tours of the juvenile units at Coxsackie and the newly-created unit at Hudson Correctional Facility, and provided significant feedback to DOCCS regarding needed improvements at both facilities. PLS is also working to ensure that DOCCS is providing the necessary education for juveniles, including those who suffer from a learning disability and have come to prison with an Individualized Education Plan (IEP).

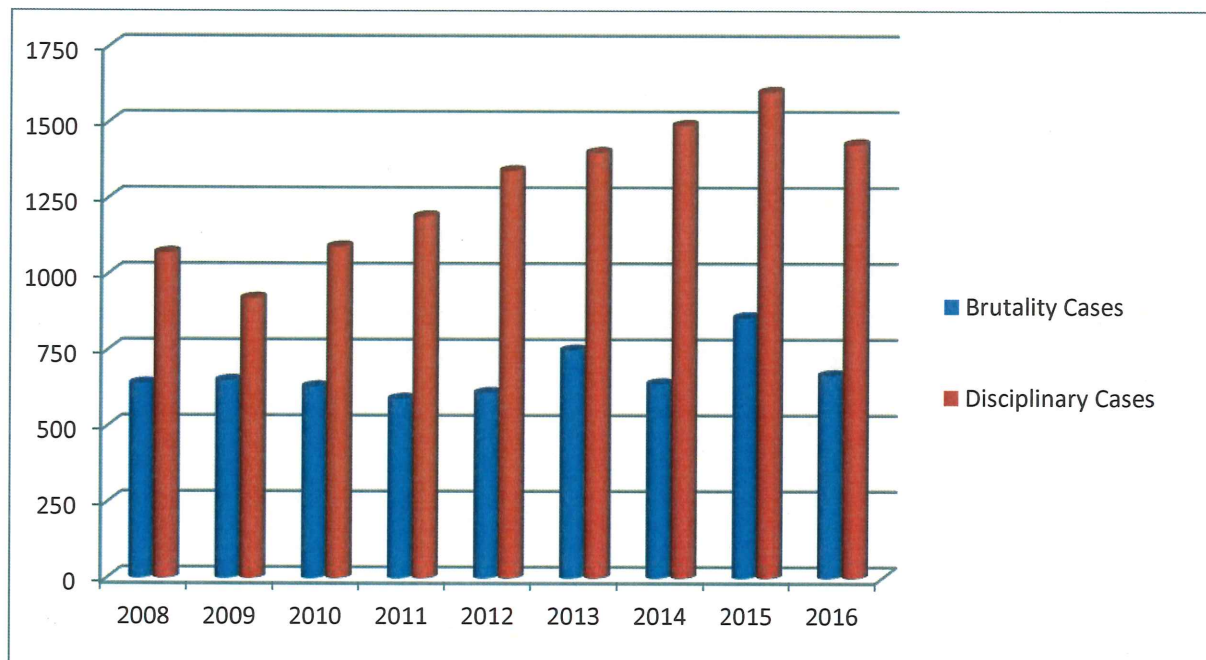
Medical and Mental Health Advocacy: PLS also assisted hundreds of incarcerated individuals in obtaining adequate medical and mental health care, including obtaining Hepatitis C treatment for an individual who was in grave need for such treatment, and successfully advocating for a change in DOCCS' policy regarding Hepatitis C treatment which increases the availability of such treatment for incarcerated individuals. PLS was also successful as amicus in a challenge to DOCCS' blanket ban on motorized wheelchairs as violating the American with Disabilities Act and the Rehabilitation Act.

Reducing Barriers to Reentry: Finally, PLS also helped reduce two major barriers to re-entry for a number of clients by ensuring visitation with their children and obtaining child support modifications when appropriate.

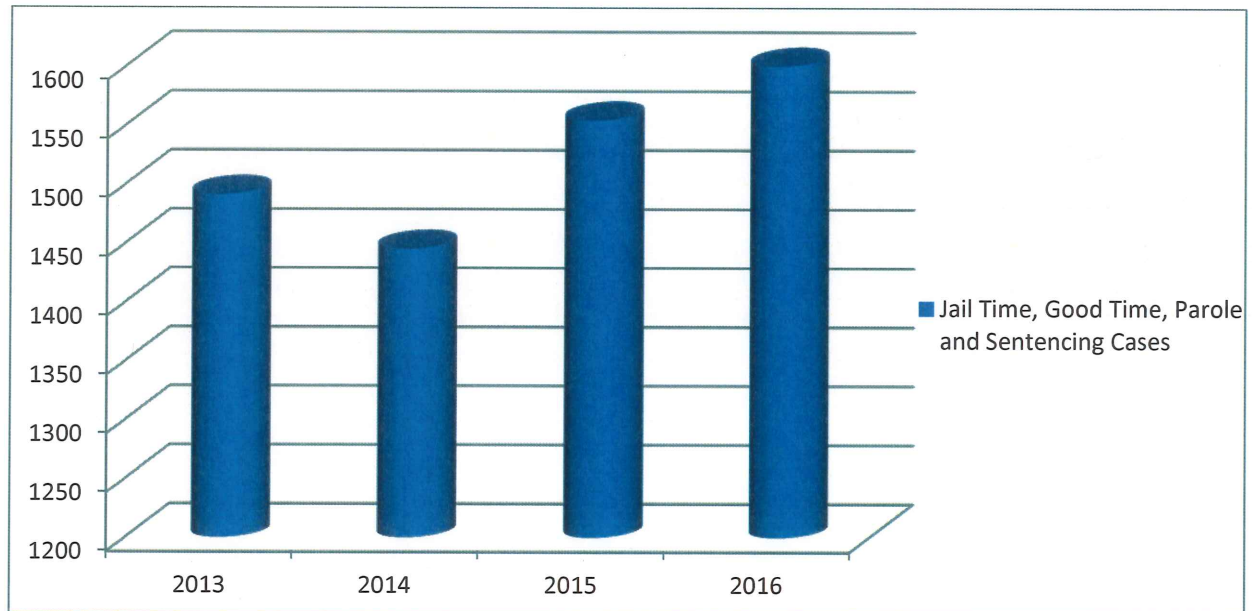
IV. **COMPLAINTS ON THE RISE**

While the State's prison population has declined since 2008 (from 62,036 to 51,499), complaints of brutality or inappropriate disciplinary action per prisoner have not followed suit. In 2008, PLS handled ten brutality/disciplinary cases for every thousand prisoners; last year that number rose to 13. In other words, disciplinary and brutality complaints per prisoner are up by approximately 30%. Jail time, good time, parole and sentencing cases are up by even more as indicated in the charts below:

BRUTALITY AND DISCIPLINARY CASES 2008-2016

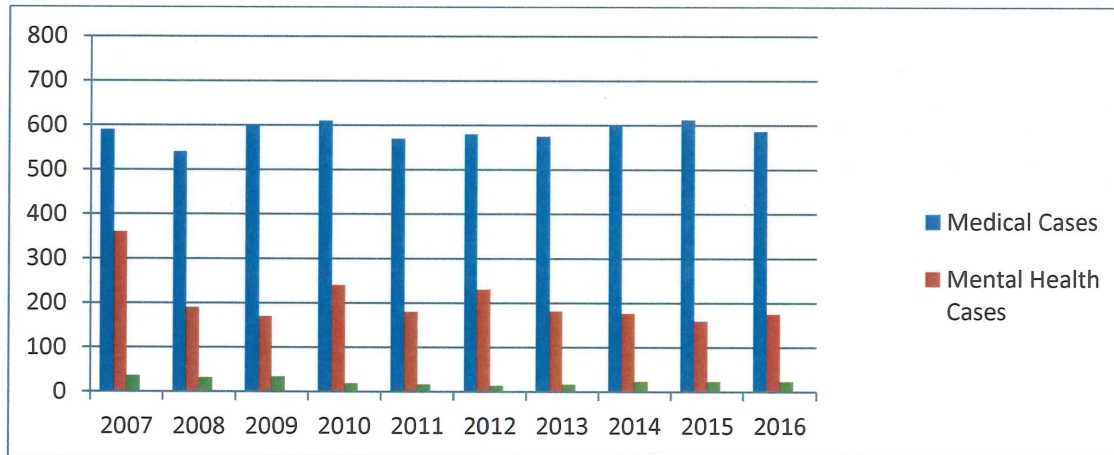


Jail Time, Good Time, Parole and Sentencing Cases 2013-2016



Timely access to an appropriate level of medical and mental health care for prisoners is not only constitutionally required, but critically important to public health and safety. PLS investigates hundreds of allegations of inadequate medical and mental health care claims annually. We successfully advocate in many of those cases. As a result of our work, many prisoners receive the medical and mental health attention that they need which reduces morbidity and translates into a reduction in tension in the prison system as a whole. Additionally, when prisoners receive the medical and mental health care that they need, upon release, they are better able to reintegrate into society and reunite with their families and loved ones, thereby lessening the likelihood that they will re-offend and return to prison. However, as shown in the chart below, PLS does not have anywhere near the resources needed to accept all of the requests for medical and mental health assistance that we receive. Thus, hundreds of individuals are forced to go unrepresented and are often unable to obtain medical and mental health care that is crucial to their successful reentry upon release.

**RATIO OF PLS STAFF
TO MEDICAL AND MENTAL HEALTH CASES FROM 2011-2016**



V. PLS – AN ESSENTIAL AND CRITICAL CRIMINAL JUSTICE PARTNER

Because PLS has earned not only the trust and respect of incarcerated New Yorkers and their families, but also that of the Judiciary, the Executive, the Legislative, the AG’s office and DOCCS, we have been able to implement positive criminal justice reforms. For example, we have successfully partnered with the following entities to produce the stated results; DOCCS to create a re-entry video that is shown to all prisoners preparing for release; DOCCS and the Attorney General’s office to present a continuing legal education course on prisoners’ rights to the Appellate Division, Third Department (including judges and staff); the Executive and Division of Budget (DOB) to educate and encourage incarcerated individuals to sign-up for Medicaid and to promote the Executive’s clemency efforts; the New York Court of Appeals to provide representation on cases for which it had granted leave to appeal; and Legislators to refer prisoner complaints to PLS for resolution.

VI. PLS – AN ECONOMICALLY SOUND INVESTMENT

The annual cost of housing a prisoner is estimated to be at least \$60,076.00.² Thus, for every year of jail time, good time or sentence time credited, PLS saves the State at least \$60,000. Individuals released from solitary confinement can participate in educational and rehabilitative programs. Participation in such programs increases the likelihood of early release and dramatically reduces the recidivism rate. In addition, if an individual is in general population as opposed to solitary confinement when he/she appears before the parole board, release is much more likely. Thus, although release from solitary confinement may not save the State the entire \$60,000.00 per person, it does significantly reduce the overall cost to the State.

Last year, PLS was funded at \$2.45 million, but PLS saved the State over \$4 million by obtaining reversals in Tier III disciplinary hearings resulting in the expungement of over 61 years of solitary confinement, restoring 19 years of lost good time, and correcting jail time and sentencing errors that resulted in over 17 years being credited to prisoners' sentences. But for PLS, these savings to the State would not have occurred.

But PLS does so much more. By engaging in extensive educational efforts, PLS prevents hundreds of unnecessary lawsuits annually. PLS' extensive library of educational legal form memos on various areas of the law and bi-monthly publication of *Pro Se* provide incarcerated individuals with peaceful ways in which to resolve their grievances through our legal system.

There are also immeasurable financial benefits to the community in terms of public safety. Because of our work, many prisoners receive the mental health care, medical care, programming and education they need to succeed in life once they are released. Through our work, prisoners learn that society will not tolerate unjust treatment of its people. Our work instills in prisoners the sense that the criminal justice system is fair and just. Thus, when they are

² <http://www.vera.org/files/price-of-prisons-new-york-fact-sheet.pdf>

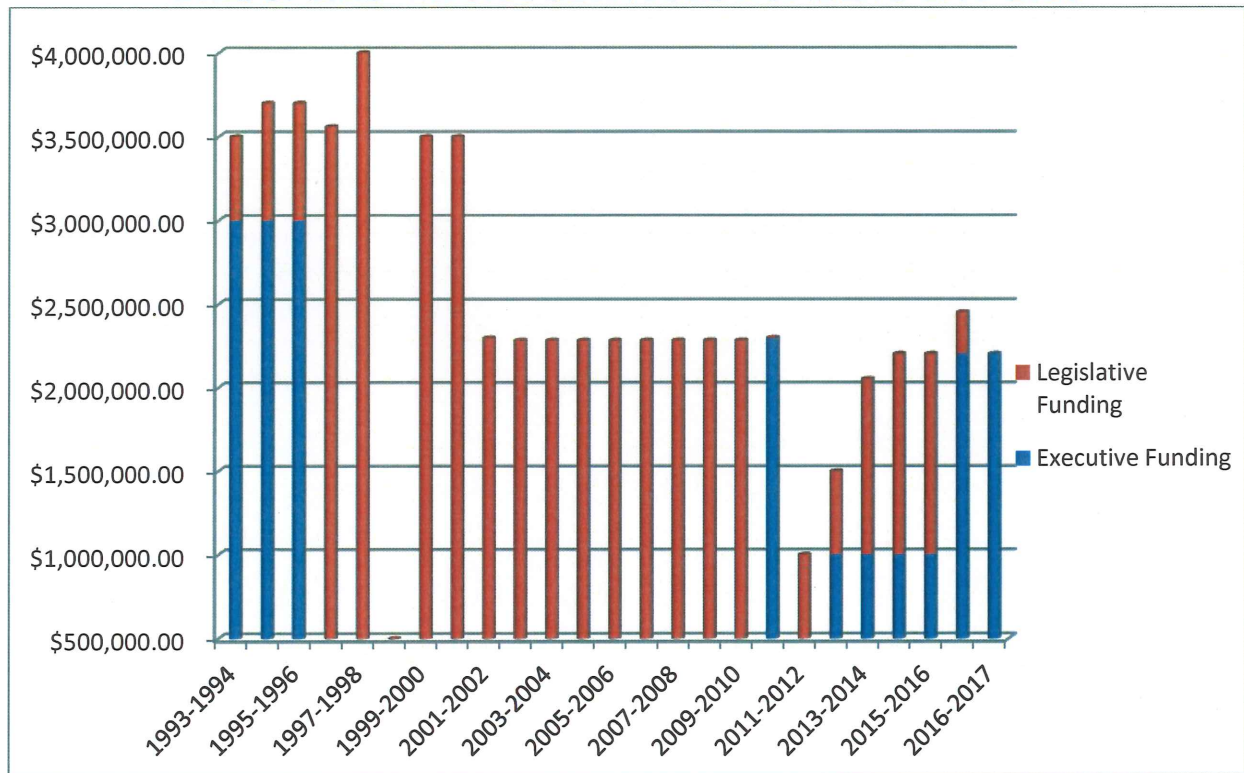
released from prison, our clients are much more likely to successfully adjust to life outside the prison walls and become law-abiding productive members of society.

Most importantly is the immeasurable benefit PLS has provided to New York State in helping to prevent another Attica. The cost of another Attica would be astronomical, not just in dollars, but in lives and in the threat to the future stability of our criminal justice system. It is in the best interest of New York State, both from an economic and a public safety aspect, to provide adequate funding for PLS so that we can do the job we have been tasked to do by the State.

VII. PLS' NEED FOR ADEQUATE AND SUSTAINABLE FUNDING

As shown by the chart below, but for FY 1998-1999, when a legislative appropriation of \$4.7 million in funding for PLS was vetoed by then-Governor Pataki, for over two decades, PLS has been sustained through a combination of both Executive and Legislative funding with the Executive providing the majority of the funding throughout the 1980's and early 1990's, the Legislature providing the majority of the funding between 1996 and 2015 and the Executive, once again, providing the majority of the funding for 2016-2017.

PRISONERS' LEGAL SERVICES FUNDING 1993-2016



PLS, created in the wake of the Attica uprising, is an integral part of New York State's criminal justice system and has helped to ensure prison and public safety for over 40 years. That being said, PLS has reached a crossroads with respect to its sustainability. Without additional and sustainable funding, PLS will not be able to adequately fulfill its mission of providing high quality, effective legal representation and assistance to indigent prisoners, helping them to secure their civil and human rights and advocating for more humane prisons and a more humane criminal justice system.

PLS needs the Legislature, as it has for more than two decades, to provide additional revenue to ensure that PLS is funded at a level that is adequate to allow PLS to do the job it has been tasked to do. We are asking the Legislature to add \$1.3 million to PLS' current Executive appropriation of \$2.2 million for total funding in FY 2017-2018 of \$3.5 million, the same amount PLS was funded at over two decades ago.

CONCLUSION

One of the primary roles of PLS is to act as a check on the exercise of power behind New York's prison walls and to help reduce tensions by advocating for the peaceful resolution of grievances on behalf of incarcerated individuals. The level and degree of services that PLS is able to provide are directly proportional to the level of funding PLS receives. As noted earlier, PLS receives over 10,000 requests for assistance annually. With a current staff of 15 attorneys, PLS staff attorneys are assigned an average of 666 cases annually. Of course, it is impossible for one attorney to provide adequate representation on so many cases. As such, we are forced to reject many meritorious cases.

There is reason to be concerned when PLS is unable to accept meritorious cases in addition to the fact that correcting injustices is a basic premise of our justice system. When PLS is unable to provide representation on credible allegations of denial of due process, excessive use of force or deliberate indifference to medical or mental health needs due to resource issues, those who are responsible for violating the rights of others are not held accountable. The importance of holding people accountable cannot be overstated and PLS' role in this effort over the past 40 years has been extensive. Adding \$1.3 million to PLS' current funding of \$2.2 million will help PLS to continue its critically important work on behalf of the State of New York

Dated: January 31, 2017

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