



**TESTIMONY BEFORE THE JOINT LEGISLATIVE HEARINGS ON THE  
NEW YORK STATE PUBLIC PROTECTION BUDGET FOR FY2020-2021**

**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 Joint Committee for inviting Prisoners' Legal Services (PLS) to testify before you today. As many of you know, PLS' mission is to provide high quality, effective legal representation and assistance to indigent incarcerated New Yorkers and to help them secure their civil and human rights. Created by New York State in 1976 in response to the 1971 Attica prison uprising, PLS protects the civil and constitutional rights of incarcerated individuals, and helps ensure respect for human dignity, thereby reducing the likelihood of another prison uprising, while helping incarcerated individuals prepare for successful reintegration into their communities upon release.

PLS currently has five offices statewide in proximity to most of the state's 52 prisons. Our offices are in Albany, Buffalo, Ithaca, Newburgh and Plattsburgh. Last year, PLS received and responded to over 10,000 requests for assistance from incarcerated New Yorkers. Due to our limited resources, we are not able to accept and investigate every request for assistance, but our advocacy in the cases we do accept each year, changes our clients' lives for the better.

PLS represents incarcerated individuals on a myriad of issues relating to their conditions of confinement including: helping ensure that the sentences of incarcerated individuals are calculated accurately; challenging illegal disciplinary hearings that result in solitary confinement and loss of good time; fighting to restore the visitation rights of parents with their children; advocating for proper medical and mental health care; guaranteeing that youth under 22 and adults with disabilities are provided the educational and vocational programs to which they are entitled; representing hundreds of individuals every year in deportation hearings; and advocating on behalf of veterans and youth suffering from mental illness.

At one time, PLS had seven offices, but due to underfunding during the Pataki Administration, PLS was forced to close the offices located in New York City, Poughkeepsie and Watertown and lay off dozens of staff. The closure of the two downstate offices (New York and Poughkeepsie) was a devastating blow to PLS and our clients as it dramatically impacted our ability to have a presence in many of the downstate facilities (Sing Sing, Downstate, Fishkill, Green Haven, Shawangunk, Wallkill, Ulster, Eastern, Woodborune, Otisville, Sullivan, Bedford Hills, Taconic and others.)

This past year, however, with first time ever Senate funding of \$350,000, PLS was able to reopen our mid-Hudson office, which is now located in Newburgh. That office will be able to alleviate, to some degree, the burden placed on our Albany office as the Newburgh office will now be covering Downstate, Fishkill and Green Haven prisons. However, as will be set forth in detail below, a New York City office is still sorely needed.

For FY 2019-2020, PLS received total State funding of \$3.3 million, \$2.2 million in Executive funding and \$1.1 million from the Legislature (\$750,000 from the Assembly and \$350,000 from the Senate.) We commend Governor Cuomo, the Assembly and the Senate for providing this funding, as it is a clear indication of their continued commitment to civil and human rights and a testament to the value that New York State places on the rehabilitation and reintegration goals of our criminal justice system, as well as public safety (both inside and outside prison walls.)

For FY 2020-21, the Governor has again included PLS in his Executive budget at the same funding level of \$2.2 million. ***PLS asks both houses of the Legislature to jointly add \$1.8 million to the Governor's appropriation of \$2.2 million, resulting in a total operating budget of \$4 million for FY 2020-2021. This funding will:***

- Allow PLS to maintain our current level of services in each of our five offices;
- Ensure accountability and provide effective oversight of New York's prisons;
- Allow PLS to re-open its New York City Office;
- Allow PLS to include a Pre Release and Re-Entry Pilot project within the NYC office that will focus on preparing individuals for reintegration to their communities of origin upon their release from prison.

## **II. AN OVERVIEW OF PLS**

PLS provides critical civil legal services to the over 44,000 incarcerated individuals being held in prisons that are located across the state from Buffalo to Albany and from Plattsburgh to New York City. PLS helps fulfill New York State's commitment to the criminal justice goals of rehabilitation and reintegration. PLS assists our clients in resolving their disputes non-violently, thereby lowering tensions, reducing hostility and helping to create a safer environment for incarcerated individuals and correctional staff alike.

PLS advocates for incarcerated individuals on issues related to their conditions of confinement, thus preparing them for release and successful readjustment to their communities. Since most incarcerated individuals will eventually be released, PLS promotes public health and safety by ensuring that, while they are incarcerated, they are treated humanely, are able to participate in rehabilitative programming and have access to adequate medical and mental health care.

By counseling and advising incarcerated individuals regarding their rights and the merits of their claims for the past 44 years, PLS has earned the trust and respect of our clients, as well as 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 the Department of Corrections and Community Supervision (DOCCS.) In addition, Legislators and other governmental leaders, including the Governor’s office, are solicitous and 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.<sup>1</sup>

Below is a list of PLS’s principal activities:

**Direct Civil Legal Services:** PLS receives more than 10,000 requests for assistance annually and answers every one. PLS provides this underserved population with legal representation without charge on a myriad of civil legal issues associated with conditions of confinement including disciplinary hearings that result in solitary confinement, medical and mental health care, excessive use of force, family law and child visitation, jail time and sentencing and immigration.

**Mental Health Project:** PLS’ Mental Health Project (MHP) specifically focuses on the needs of youth under 21 and veterans who suffer from mental illness. 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. Through PLS’ MHP, 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. For 2018 and 2019 PLS’ MHP was funded, in part, by the van Ameringen Foundation.

**Family Matters Unit:** PLS’ Family Matters Unit (FMU) 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 and removing one of the major barriers to successful reintegration – the accumulation of insurmountable

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<sup>1</sup> In 2014, PLS received the Denison Ray Non-profit Organization Award from the New York State Bar Association (NYSBA) 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. Also, in 2017, the NYSBA presented PLS with the Outstanding Contribution in the Field of Correctional Services award. Albany Law School also honored PLS with the Pro Bono Partnership Award.

debt as a result of child support arrears. PLS' Family Matters Unit is funded, in part, by New York State's Judicial Civil Legal Services Fund.

***Immigration Unit:*** As part of the New York Immigrant Family Unity Project (NYIFUP), PLS provides free legal representation to all non-citizens incarcerated in New York State prison facing immigration removal proceedings under the Institutional Hearing Program (IHP). PLS also provides representation to non-citizens in immigration detention at the Albany County Jail in Albany, NY, the Buffalo Federal Detention Facility in Batavia, NY, and Clinton County Jail in Plattsburgh, NY. PLS represents non-citizens in the Bedford Hills, Downstate, and Ulster Immigration Courts, which are located inside those New York State correctional facilities; in the Batavia Immigration Court in Batavia, NY; on appeal to the Board of Immigration Appeals; and on petition for review before the Second Circuit Court of Appeals. PLS' immigration unit, which opened in 2014, handles over 300 deportation cases annually. In 2015, the success rate for incarcerated individuals facing deportation hearings without representation was reported to be 2%. The success rate for immigration clients represented by PLS attorneys has been close to 38%. PLS' Immigration Unit is funded through the New York Immigration Family Unity Project (NYIFUP) via the Vera Institute of Justice and, in part, by an anonymous donor.<sup>2</sup>

***Rapid Response Immigration Unit:*** PLS provides immigration representation to individuals detained or facing detention in the counties of Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington, Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis and St Lawrence County. PLS' Rapid Response Immigration Unit is funded by the Office of New Americans.

***Pro Bono Partnership Program:*** In July 2011, PLS created the Pro Bono Partnership Project (PBPP), a comprehensive program that includes partnerships with law firms, community agencies and law schools statewide. We also work with the New York State Bar Association (NYSBA) and various county bar associations

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<sup>2</sup> Since 2017, NYIFUP has made New York the first and only state in the nation to guarantee legal representation for every detained person facing deportation in a New York immigration court who is unable to afford an attorney. Unlike people facing criminal charges, people facing deportation are not guaranteed a public defender in spite of the fact that deportation can result in permanent separation from one's family or community and the forced return to dangerous or deadly conditions in another country. NYIFUP is critical to bringing a modicum of fairness and dignity to people facing deportation and to standing up to the federal government's attacks on immigrant New Yorkers. But its future and the wellbeing of the immigrants receiving representation are in jeopardy, as it was left out of the Governor's FY21 Executive Budget. NYIFUP has been funded through a program described by Governor Cuomo as the Liberty Defense Project (LDP) and administered by the Office for New Americans. Last year, LDP was allocated \$10 million to fund immigration legal services, including NYIFUP, which received \$4.25 million from that fund. This year, \$10 million is no longer enough to sustain NYIFUP and the other LDP programs. Because of this, PLS joins dozens of powerful advocates who are seeking immigration legal services funding of \$15.3 million, an increase of \$5.3 million, with \$6.5 million of the \$15.3 million being allocated to the NYIFUP. As a NYIFUP provider, PLS currently has over 300 deportation cases pending, with 14 of those cases being before the United States 2<sup>nd</sup> Circuit Court of Appeals, and we are opening dozens of new cases every month. Sustained and increased immigration funding is critical if PLS is to continue providing this crucial representation.

to identify possible pro bono counsel. Through this project, more than sixty (60) individuals and firms have been recruited to accept cases, and hundreds of incarcerated individuals have had legal representation that they otherwise would not have had.

**PLS Education Project:** In 2017, PLS created our Education Project which advocates on behalf of individual special education students to obtain the special education services to which they are entitled under the Individuals with Disabilities Education Act (IDEA) and other education laws. Our Education Project also engages in outreach to parents of at-risk special education students about their children's continuing rights under the IDEA should their children be sentenced to a NYS prison. This project is funded, in part, by a grant from the Herb Block Foundation.

**Albion and Bedford Hills Telephone Program:** The Albion and Bedford Hills Telephone Programs involves a partnership between DOCCS and PLS. Since its inception in 2014, more than 700 women have received legal assistance on numerous issues including evictions from pre-prison housing, identity theft, medical and mental health care and child visitation and custody. PLS' Albion and Bedford Hills Telephone Program is funded, in part, by an anonymous donor.

**PLS Newsletter:** PLS publishes a bi-monthly newsletter, *Pro Se*, which advises prisoners of changes in the law and explains technical aspects of various laws. PLS distributes *Pro Se* to all 44,000 incarcerated individuals (via the tablets that DOCCS is now providing) and more than 200 organizations and practitioners.

**PLS Client Educational Materials:** In addition to the counseling, advocacy and legal representation we provide, PLS produces and provides more than 75 educational memos on various prisoner rights issues. We continually update and add to these memos, ensuring we address specific areas of the law to help the incarcerated population navigate both the prison system and the courts.

**Partnerships with Law Schools & the Courts:** PLS partners with law schools to provide training and mentoring for students who work via work study, clinics, internships, externships or pro bono.

### **III. REOPENING OF PLS' NEW YORK CITY OFFICE**

PLS is seeking funding in the amount of \$750,000, (in addition to the maintenance of the current \$1.1 million "add" from both houses of the Legislature) to fund the re-opening of PLS' New York City Office. PLS plans to allocated \$400,000 to fund the core work of PLS, providing legal representation on issues associated with conditions of confinement to individuals confined

in Edgecombe, Queensboro, Sing Sing, Bedford Hills, Taconic, and Otisville and \$350,000 to fund a new PLS initiative: The Pre-Release and Re-Entry Pilot Project (PREP).

For over 20 years, from 1977 until 1998, PLS had an office in New York City. In 1998, then-Governor Pataki vetoed funding for PLS and we were forced to close our doors. A year later, we were able to reopen, but our funding had been drastically reduced, and because the majority of prisons are located significantly north of New York City, a decision was made not to reopen the New York City office.

The time has come to reopen the New York City office for a number of very important reasons: First, a downstate office will place a PLS office in closer proximity to several state prisons in the downstate area, allowing PLS to significantly increase its presence in the prisons. Our presence in the prisons typically translates into a reduction of harassment and brutality in the prisons.

Second, a NYC office will place PLS attorneys in closer proximity to Bedford Hills C.F., the only maximum-security prison for women in New York State. This is of crucial importance because our years of experience and our six-year old telephone program at Albion and Bedford Hills prisons (which PLS operates in cooperation with DOCCS) has taught us that female prisoners are much less likely to ask for assistance through writing letters. Increasing the opportunities for in-person interviews with incarcerated women will allow PLS to address the myriad of unique problems that incarcerated women face.

Third, and of vital significance, over the past decade experts in corrections have determined that it is crucial to successful reintegration that re-entry services begin before an individual leaves prison and continue until that person has been given the tools that will allow him/her to succeed in the community. While those who are paroled are supervised and connected



to re-entry organizations that provide various services, there is no safety net for those who “max out” of prison and are not subject to parole supervision. Nor does NYS have a full-service pre-release program that provides an in-depth and holistic approach to release preparation.

*Because of our history, our mission, our expertise, the trust relationship we have developed with incarcerated individuals and our record of accomplishments on behalf of the incarcerated population, PLS is the organization that can successfully fill that void. In light of this, we are proposing that, in addition to the conditions work that PLS already does, PLS’ NYC office would also begin a pilot program that focuses on preparing individuals who will be maxing out of prison and returning to NYC for reintegration into their communities. Set forth below are more details regarding this new initiative.*

### **PLS’ PRE-RELEASE & RE-ENTRY PILOT PROJECT**

The goals of PLS’ Pre-release and Re-entry Pilot Project (PREP) are threefold:

1. To better prepare people who currently receive little if any discharge planning for reentry prior to release;
2. To help people transition from prison to their communities by connecting them with available resources in the communities to which they are returning; and
3. To help reduce recidivism by improving the likelihood of successful reentry and reintegration.

### **FACTS**

- Hundreds of studies have found that it is crucial to successful reintegration that re-entry services begin *before* a person leaves prison and continue until that person has been given the tools that will allow them to succeed; it is often too late to begin the process once a person is released.
- For example, according to a 2011 Pew Report on recidivism, the state of Oregon recorded the lowest overall recidivism rate among 41 reporting states, a rate of 22.8%, attributing this low rate to reforms made across the board, from parole to the judiciary to its

corrections department. **One of its major reforms was to institute detailed transition planning for prisoners that begins six months before their release date.**

- New York State prisons do not provide intensive, focused, detailed, long-term pre-release transition planning for incarcerated individuals.
- In 2017, 3,527 incarcerated New Yorkers were released from New York State prisons directly to our communities and neighborhoods.
- Of those, 1,184 were released to post-release supervision where they were assigned to a parole officer to monitor their reentry, given various parole restrictions and required to participate in various programs.
- The remaining 2,343 were released because they had served their maximum prison sentences. Because they “maxed out,” unlike those who were released on parole, they were not required to report to anyone, to attend any programs or to comply with a mental health medication regime. As such, they were released to reintegrate into New York State’s 62 counties without any supervision or safety net.
- Each of the 2,343 individuals was given \$40.00 and a bus ticket to return to his/her “county of conviction.” (Correction Law Article 6, § 125[2]).
- Many were released to the streets directly from solitary confinement without receiving any educational, vocational, rehabilitative or transitional programming.
- Many were suffering from mental illness, substance abuse and/or physical ailments.
- Some of them had a place to live, a few had jobs, but most had—and will continue to have—insurmountable hurdles to overcome.
- Regardless of their mental or physical health, they will all have to deal with the collateral consequences of their criminal convictions, which include difficulty finding employment, accessing education, housing, and public benefits, securing their voting rights and determining their immigration status.
- In 2012, NYS reported an overall recidivism rate of 42.6%.
- Of that, 9.2% were returned for committing new crimes and 33.4% were returned as parole violators.
- Approx. 8.5% of the individuals who were released on parole or conditional release were returned for committing a new crime, but 17.6% of the individuals who “maxed out” were returned to prison for committing new crimes.

We believe that the reason for the heightened recidivism among those who “maxed out” is precisely because they were returned to society without any direction, planning, guidance or advice and without an established support system upon their release. In light of these facts, PLS is proposing to launch a new initiative titled the Pre-Release & Re-Entry Pilot Program (PREP) that would be housed in a re-opened PLS New York City office.

PREP would be a holistic and in-depth approach to reintegration. PLS would pilot the program by identifying incarcerated individuals from the Bronx and Manhattan who are within 6 to 12 months of their maximum release date. The PREP will begin with the hiring of two full-time attorneys, two social workers and one administrative assistant. The PREP staff will work with DOCCS to identify the individuals scheduled to be released to the Bronx and Manhattan on their maximum release date. PLS will send the individuals a questionnaire designed to identify the needs and capabilities of each. Based on a review of the questionnaires, the PREP staff will choose the individuals most likely to benefit from our services. Once selected, the PLS staff will work with the individuals for a minimum of 6 to 12 months prior to their release from prison, providing representation focused on preparing them for reintegration into their community. To maximize the likelihood of a successful transition from prison to the streets, the PLS PREP staff will focus on issues related to:

- Pre and post release education and programming;
- Discharge planning relating to medical and mental health care;
- Locating housing;
- Procuring legal documentation;
- Assisting with job placement;
- Resolving immigration issues;
- Obtaining benefits;
- Re-establishing family connections; and
- Upon a person's release, connecting him/her with available resources in the city, such as Fortune Society, Osborne Association and the Doe Foundation.

PLS will also follow those clients for up to a three-year period after their release to gather statistics on recidivism and, in turn, assess the successfulness of the program.

Because this would be a pilot project and the requested funding will only allow us to employ two attorneys, two social workers and one administrative assistant, we cannot provide the proposed services to the over 2,300 people who max out of prison each year. As such, we have

narrowed the target population by focusing on individuals who are being released to the Bronx and Manhattan. In 2017, 181 people were released to the Bronx and 286 were released to New York County on their maximum release dates. We chose to focus on individuals being released to the Bronx and Manhattan for a number of reasons, including the fact that over 50% of individuals released from prison ultimately return to the New York City area. In addition, we hope to be opening our NYC office either in or close to the Bronx in 2020, which would allow us to place the PREP staff in that office. We also chose Bronx and Manhattan because of the existence of a number of reentry-based organizations in the area with which we can collaborate in assisting our clients in their transition from prison to their home communities.

By engaging in early intervention and providing continuity of services to individuals coming out of prison, we hope to significantly reduce the recidivism rates of this population. Doing so will be of inestimable value to each individual who does not return to prison, to his or family members, and to his or her community and to society-at-large by welcoming back a healthier tax-contributing citizen.

Reducing the number of people who return to prison will also save New York State millions of dollars annually and significantly increase public safety. The cost of housing an individual in a NYS prison is well over \$60,000 per year.<sup>3</sup> Even if we were able to reduce the recidivism rate by only 2% (from 17.6% to 15.6%), the savings to the State would be close to \$3,000,000. Thus, while it is impossible to know exactly what the ultimate recidivism numbers will be once this program is fully functional, there is no question that a program such as this will result in significant fiscal savings for the State. We also expect increased revenue to the State because the individuals we serve will be working, paying taxes and contributing to their

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<sup>3</sup> The annual cost of housing a prisoner in a New York State prison is \$60,076.00: <http://www.vera.org/files/price-of-prisons-new-york-fact-sheet.pdf>

communities. And, while more difficult to measure, there will also be the cost savings from keeping families together, creating healthier communities, and putting an end to the generational revolving door of incarceration for families that have been caught up in the prison system for decades.

*The PREP proposal also has the strong support of DOCCS with whom we will be working to ensure the success of the program.*

#### **IV. 2019-2020 MAJOR ACHIEVEMENTS 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). To help meet that responsibility New York has wisely chosen to fund PLS to provide statewide representation since 1976. Since that time, 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.

Although PLS does not have the resources to provide representation to every incarcerated person who requests legal assistance, 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.

**Successfully Advocating For A Directive Regarding Special Education:** PLS advocated on behalf of incarcerated individuals who come to prison with an Individualized Education Plan and are entitled to specific accommodations regarding their education. Because of PLS' advocacy, this past year, DOCCS updated to its "Special Education Services" Directive

#4805. The updated directive contains major changes and a substantial number of revisions that

PLS suggested including:

- clarifying DOCCS child find process to into account special education history;
- improving the Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP) procedures;
- adding a Manifestation Determination process;
- clarifying that cell-study can include out-of-cell service;
- adding a requirement that instructors provide cell study students with one hour of instruction per week;
- listing the mandatory members of the Committee on Special Education (CSE);
- changing consultant teaching and the Resource Room from placements to supplemental services;
- broadening the scope of its initial educational placement evaluations;
- clarifying that the Career Development and Occupational Studies (CDOS) credential can be used to satisfy a vocational need;
- clarifying the contents of prior written notice and the form of its procedural safeguards notice;
- adding several responsibilities and accountability measures for the CSE and CSE Chairperson;
- adding IDEA-compliant time frames for referral and initial evaluations; and
- adding a process by which a disciplinary removal from the classroom can constitute a mitigating factor in a disciplinary proceeding.

### **Successfully Advocating For the Reversal of Hundreds of Disciplinary Hearings**

**Based on False Positive Drug Tests Results:** Over this past year, hundreds of incarcerated individuals contacted PLS complaining that they had been charged with drug use after testing positive for Suboxone/buprenorphine, AB-Pinaca, Marijuana and other opioids, but insisting that they had never used those drugs. Upon investigating the cases, we found that most of those who had contacted us indeed had no history of drug use. We advocated for each person individually and we also advocated to DOCCS' Central office demanding that DOCCS investigate the allegations of false positives.

Subsequently, DOCCS initially acknowledged that the Indiko Plus urinalysis-testing device – a device that DOCCS began using at some prisons in January 2019 – had been providing

unreliable test results with respect to Suboxone/buprenorphine. Accordingly, DOCCS advised PLS that it would be reversing all disciplinary dispositions where the evidence supporting the determination of guilt consisted of positive findings for Suboxone/buprenorphine use based on test results obtained from the Indiko Plus machines.

Soon thereafter, DOCCS also announced that it would be reversing all disciplinary dispositions involving the alleged use of AB-Pinanca (a/k/a “K3”) and, more recently, DOCCS has added marijuana and other opioids to that list.

In addition to reversing the hearing and expunging the references to the charges from individuals’ disciplinary records, DOCCS took steps to restore individuals to the position they were in before they were found guilty of drug use. Examples of significant consequences include:

- Loss of an open conditional release (CR) or parole release date;
- Denial of parole release;
- Denial of good time by the Time Allowance Committee (TAC);
- Loss of a preferred work assignment;
- Removal from a recommended, required or desired program;
- Transfer from a preferred facility or hub; and
- Denial of an application for the Family Reunion Program.

We commend DOCCS for taking the actions it has taken in an attempt to restore people to the status they had prior to being wrongfully accused of drug use. However, these individuals also suffered significant permanent damage that can never be “undone,” including being held in solitary confinement, losing parole or conditional release dates, being removed from programs which then resulted in them being denied parole, merit time or conditional release and losing their family reunion visits. Because of this, PLS, together with the law firm of Emery Celli Brinckerhoff & Abady PC, has filed a class action against the manufacture and installer of the new drug testing machines.

**Protecting Incarcerated Youth from Child Abuse or Maltreatment:** As part of PLS's work in monitoring DOCCS facilities that house youth under 21, pursuant to the settlement in the *Cookhorne v. Fischer* case, PLS discovered that DOCCS did not have any policies in place regarding the responsibility of DOCCS staff to report allegations of child abuse. In response, PLS worked with DOCCS on this issue with the result being the publication of a new DOCCS Directive #4029 that sets forth procedures for DOCCS's staff regarding their obligations as mandated reporters when they have reasonable cause to suspect child abuse or maltreatment of an incarcerated youth under the age of 18.

**Obtaining Jail Time, Sentencing, Merit Time & Good Time Credit and Reducing Solitary Confinement Time:** PLS ensures that DOCCS calculates the sentences of people in its custody accurately and that they provide to them all of the jail time credit to which they are entitled. Our advocacy regarding parole and merit time issues also results in DOCCS crediting our clients 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 30 years of jail time and sentence credit, reduced the time that our clients will spend in isolated confinement by over 78 years and prevented the loss of 29 years of good time credit.

**Eliminating Solitary for Juveniles:** In addition to obtaining the reversal or modification of dozens of disciplinary hearings, 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 Hudson



Correctional Facility and the recently opened adolescent offender facility at Adirondack. PLS is also working to ensure that DOCCS is providing the necessary education for juveniles, including those who suffer from learning disabilities and have come to prison with Individualized Education Plans (IEPs).

**Ensuring Adequate Housing Conditions:** This past year we were contacted by several families concerning their loved ones being subjected to freezing temperatures in cells at Downstate C.F. PLS immediately contacted the Superintendent, requesting that he work with his staff to ensure all living areas were properly heated to facilitate health, safety, and reasonable comfort. Shortly thereafter, the Superintendent informed PLS that he had addressed the complaints right away by adjusting temperature gauges, closing and repairing windows, reassigning people to other cells, and increasing monitoring of conditions.

**Ensuring Protection for Vulnerable Individuals:** This past year, PLS has advocated on behalf of a number of vulnerable individuals to obtain the housing placements and services they need. In one case, PLS' represented a client who cannot read or write, is disabled, and has a cognitive disability and history of receiving services from the Office for People With Developmental Disabilities (OPWDD.) Although our client was granted conditional release, the Board of Parole mandated that he find housing in an OPWDD facility, but neither DOCCS, nor the Office of Mental Health (OMH), took any steps to help him find housing. DOCCS continued to incarcerate him past his release date due to his disability in violation of the Americans with Disabilities Act (ADA), which requires the state to provide the most integrated setting appropriate after a disabled prisoner is granted a release date. PLS contacted OPWDD about our client's need for housing and secured our client's release to an OPWDD - Individualized Residential Alternative, saving our client over three years of potential incarceration in a DOCCS.

**Advocating for Appropriate Medical and Mental Health Care:** PLS also assisted hundreds of incarcerated individuals in obtaining adequate medical and mental health care. In one case, PLS represented a client who has a learning disability, suffers from cognitive impairment and mental illness and cannot read or write. Our client also suffers from impulse control and understanding the consequences of his actions. While meeting with him he informed us that DOCCS had cancelled his nose surgery because, even though he had been told not to eat or drink anything prior to the surgery, he was hungry and had eaten an apple. PLS informed the Superintendent of our client's disabilities and requested that his much-needed surgery be re-scheduled. Shortly thereafter, we received a letter from DOCCS that our client had indeed received the surgery.

**Reducing Barriers to Re-Entry:** PLS also helped reduce major barriers to successful re-entry for a number of clients. In one case, PLS represented a 19-year-old who suffered from an intellectual disability, who wrote to us about his placement in solitary confinement. He entered DOCCS at 18 years old, and spent nearly an entire year in solitary. When he contacted PLS, he had one and one-half years until his maximum release date, but had accumulated solitary confinement time that went beyond his release date. After advocacy to OMH and DOCCS, PLS was successful in obtaining a transfer for our client to the Correctional Alternative Rehabilitation (CAR) program, for individuals with limited intellectual capabilities serving disciplinary sanctions. Had PLS not intervened, our client would have been released back into the community directly from solitary confinement.

In another case, our client, a late-stage adolescent, was in solitary confinement in Upstate Correctional Facility and was only three months away from his maximum expiration date. He was scheduled to be released directly from solitary to the street. PLS contacted DOCCS and requested

that our client be placed into a transitional or step-down program to immediately begin preparing him for release from prison and, in response, DOCCS transferred him to a step-down program at Wende Correctional Facility.

**Ensuring Adequate Education:** This past year, PLS continued to advocate on behalf of students with special education needs pursuant to the Individuals with Disabilities Education Act (IDEA), a federal law that applies to disabled students under the age of 22. We know that the education of young people reduces recidivism and is vital to their ability to successfully re-enter society upon release, including obtaining employment. We have found that the special education issue is an increasingly demanding, systemic problem that requires us to expand our work in this area to meet the increasing need.

## **V. CONCLUSION**

PLS has two primary functions: First, PLS acts as a check on the exercise of power behind New York's prison walls by advocating for the peaceful resolution of grievances on behalf of incarcerated individuals which, in turn, helps reduce tensions and maintain safety and security within the prison. Second, by advocating on behalf of incarcerated individuals regarding their safety and security, and their need to maintain family connections, receive adequate educational and vocational programming and medical and mental health care, PLS helps prepare individuals for successful reintegration into their communities. The level of services that PLS is able to provide is 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 17 case handling attorneys, PLS staff attorneys are assigned an average of 588 cases annually. Obviously, 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, due to lack of resources, PLS is unable to provide representation on credible allegations of the denial of due process, the excessive use of force, the denial of federally mandated education to youth, or the deliberate indifference to medical or mental health needs, these problems go unaddressed and DOCCS and OMH employees responsible for violating the rights of incarcerated New Yorkers are not held accountable. As a result, prison tensions rise, increasing the chances of another Attica-like uprising, and decreasing the likelihood of successful reintegration upon release. The importance of remediating these difficult situations cannot be overstated and PLS' oversight role in this effort over the past 44+ years has been extensive. Adding \$1.8 million to PLS's current funding of \$2.2 million will help PLS continue its critically important work on behalf of the State of New York.

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