



**TESTIMONY BEFORE THE JOINT LEGISLATIVE HEARINGS**

**ON THE**

**NEW YORK STATE PUBLIC PROTECTION BUDGET**

**FOR FY2021-2022**

**CONDUCTED BY**

**THE ASSEMBLY WAYS AND MEANS & SENATE FINANCE COMMITTEES**

**Legislative Office Building, Albany, NY**

**February 10, 2021**

**Presented by:**

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## **I. INTRODUCTION**

I 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 and human rights, thereby reducing the likelihood of another prison uprising, while helping incarcerated individuals prepare for successful reintegration into their communities upon release.

## **II. PLS' FUNDING REQUEST FOR FY 2021-2022**

PLS currently has five offices statewide, located 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, thousands of those requests being related to COVID-19 in the prisons.

PLS represents incarcerated individuals on a myriad of issues relating to their conditions of confinement including:

- advocating for proper medical and mental health care;
- helping ensure that sentences 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;

- 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;
- advocating on behalf of veterans and youth suffering from mental illness; and
- preparing individuals who are “maxing” out of prison for successful reintegration into their communities.

For FY 2019-2020, PLS received total State funding of \$3.3 million. We received \$2.2 million in Executive funding and \$1.1 million from the Legislature (\$750,000 from the Assembly and, as noted above, \$350,000 from the Senate.) Thanks to the first-time ever funding from the Senate, we were able to reopen our mid-Hudson office, one of the three offices PLS was forced to close due to sharply decreased funding during the Pataki Administration. That office, located in Newburgh, New York has helped alleviate, to some degree, the burden placed on our Albany office by the prior office closings, as the Newburgh office now covers requests for assistance from, and representation of, individuals at Downstate, Fishkill and Green Haven prisons. In addition, as will be explained in more detail below, the PLS Newburgh office is the home of our new Pre-Release and Re-Entry Pilot Project (PREP), a program that focuses on assisting people scheduled to be released from prison on their maximum release date with pre-release planning and then working with them upon release to ensure their successful reintegration.

For FY 2020-2021, the Governor again included PLS in his Executive budget at the same funding level of \$2.2 million; however, our total legislative funding was decreased, from \$1.1 million to \$900,000. The Assembly appropriation of \$750,000

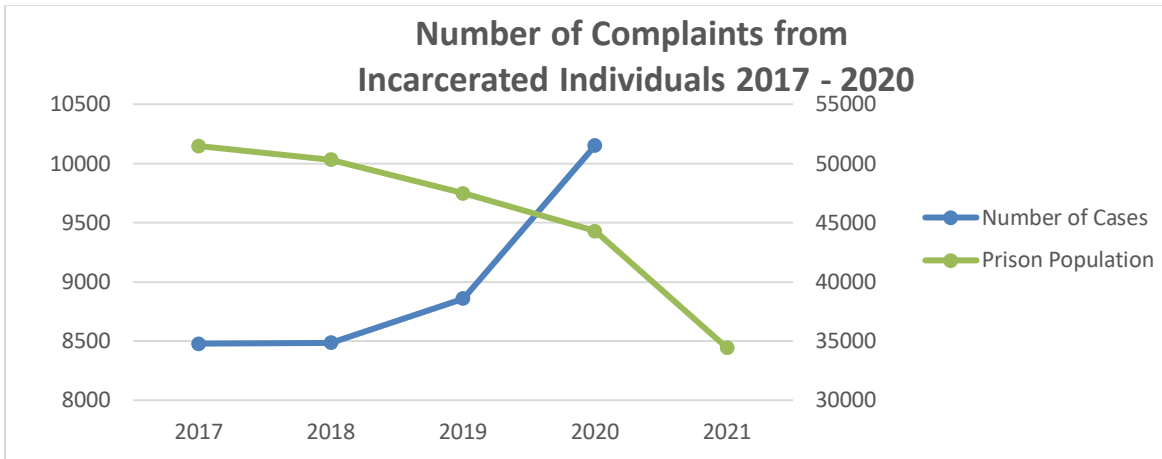
remained the same, but unfortunately, funding from the Senate was reduced from \$350,000 to \$150,000. The \$200,000 appropriation that had been included in the 2019 budget and specifically allocated for PLS to open the Newburgh office, was not included in the budget. As a result, this past year we were forced to rely on attrition in the other offices to keep our Newburgh office open and operating.

This year, Governor Cuomo has again included PLS in his Executive budget for \$2.2 million. **PLS is requesting both houses of the Legislature to jointly add \$1,400,000 ( \$850,000 from the Assembly and \$550,000 from the Senate) resulting in total funding of \$3.6 million.)** This funding will allow PLS to:

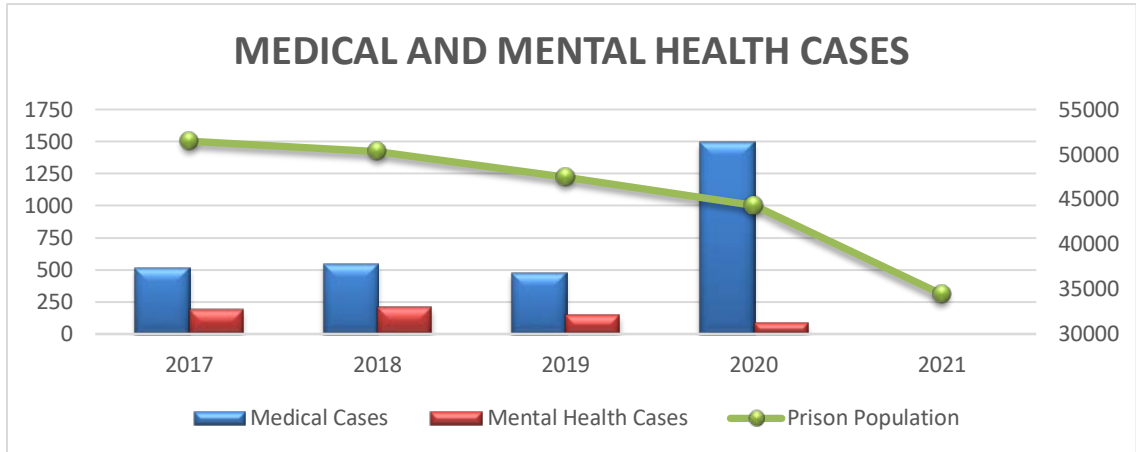
- a. maintain operations in its five offices across the state – Albany, Buffalo, Ithaca, Newburgh & Plattsburgh;
- b. continue providing critical legal services to incarcerated people in state prisons;
- c. fill the hole that was created by the \$200,000 decrease in funding last year, thereby allowing PLS to refill vacant positions lost to last year's underfunding;
- d. continue COVID-19 related advocacy; and
- e. continue PLS' PREP program in the PLS Newburgh office.

### **III. PLS' COVID-19 ADVOCACY**

While the State's prison population has steadily declined over the past several years (from 51,468 on January 3, 2017 to 34,414 on January 3, 2021), complaints continue to rise as shown below.



Complaints concerning medical care experienced a monumental increase, specifically as related to the COVID-19 virus. As the below chart demonstrates, the number of medical care complaints PLS received this past year were three times the number of complaints we received in prior years.



In response to these cries for help, PLS persuaded the Department of Corrections and Community Supervision (DOCCS) to take a number of measures including:

- Adding the incarcerated population over the age of 65 to the vaccination priority group 1b, New Yorkers over the age of 65; inexplicably, incarcerated individual had not originally been included in this group;

- Expanding release criteria (as is set forth more fully below);
- Ensuring incarcerated individuals were able to continue communicating with their loved ones when visitation was suspended, by convincing DOCCS to provide the population with free postage and telephone calls, and negotiate with Jpay (the company that supplies the tablets to DOCCS) to provide limited free e-mail;
- Ensuring incarcerated people were able to communicate with their attorneys by convincing DOCCS to increase the duration and frequency of attorney-client phone calls;
- Distributing informational flyers created by PLS to the incarcerated population regarding:
  - Information from the CDC and the DOH on best practices to avoid contracting the COVID-19 virus;
  - The eligibility of incarcerated individuals to apply for the Cares Act stimulus checks (to date, many individuals have actually received their stimulus checks); and, most recently,
  - Information on the vaccines to encourage the population to consider accepting the vaccine.<sup>1</sup>
- Increasing testing at prisons where there were indications of rising infection rates, particularly among certain more vulnerable populations;
- Ensuring that adequate cleaning materials, hand sanitizer and masks were available to the incarcerated population;
- Ensuring that common use areas and shared items such as phones, hand railings, etc., were adequately cleaned and disinfected;
- Creating a COVID-19 dedicated webpage documenting DOCCS' efforts to manage the coronavirus within the prisons and posting daily statistics relating to the number of infected individuals at each prison and the number of COVID-19 tests administered at each prison and the test results; and
- Requiring investigators from the DOCCS' Office of Special Investigations (OSI) to randomly review videos from the video surveillance cameras throughout the prisons as part of its efforts to monitor staff compliance with COVID-19 protocols.

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<sup>1</sup> Less than 1/3 of the prison population accepts the flu vaccine that is offered by DOCCS annually. Because of this, PLS recently published a Vaccine Frequently Asked Questions handout that is being distributed to the entire prison population in an effort to educate the population about the COVID-19 vaccine. The Vaccine FAQ answers many of the questions we have received from incarcerated individuals and their families regarding the vaccine and dispels several myths surrounding the vaccine.

As noted above, PLS encouraged DOCCS to authorize the immediate release of incarcerated individuals, especially those who were vulnerable to contracting COVID-19 and whose presence in their communities would not adversely affect public safety.<sup>2</sup> We noted that the release of these individuals would limit the spread of the virus and save lives by reducing the size of the prison population and, in turn, allowing for increased social distancing.

In our communication with DOCCS, we pointed out that because prisons are incubators of air-borne diseases and because, by design, prisons house large numbers of people in confined spaces for prolonged periods of time, prisons are vectors for transmission both within the prisons and in the surrounding communities when infected staff carry the virus home at shift change. We asked that DOCCS immediately convene an Emergency Coronavirus Release Commission with the mission of releasing as many incarcerated individuals as possible, within the bounds of public safety.

The State's ultimate response to the need to reduce the prison population was to create a COVID-19 early release program through which non-violent felony offenders who have not been convicted of sex offenses and who are within 90 days of their next possible release date are considered for release. Medical vulnerability is not included among the factors considered for early release.<sup>3</sup>

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<sup>2</sup> PLS' lists of medically vulnerable individuals, as well as PLS' letter to Governor Cuomo & DOCCS Commissioner Annucci from John Kiernan, PLS Board Chair and Dr. Robert Greifinger, PLS Board Member and former Chief Medical Officer of DOCCS, encouraging the release of said individuals are available to your committees upon request.

<sup>3</sup> An example of one of the individuals who is not, under the current release criteria, eligible for early release is a 60-year old female with COPD, chronic asthma and bronchitis. She is serving sentences for non-violent drug offenses. Her earliest release date is in August 2022. Despite her age and medical vulnerability, she remains incarcerated at this time. Another example is a 43-year old woman suffering from severe cardiac, pulmonary and renal disease. She is serving three years for attempted criminal possession of a controlled substance in the third degree. Her earliest release date is June 8, 2021. Rather than releasing her to parole supervision, on March 26, DOCCS sent our client to Mount Vernon

Between January 1, 2020 and January 29, 2021, DOCCS' population declined by almost 10,800. The decreased population is a culmination of early releases (approximately 3,557), regularly scheduled releases and DOCCS' suspension of transfers of state ready individuals from county jails during this timeframe. While we commend DOCCS' early release program in that it has helped in reducing the current prison population, PLS continues to urge DOCCS to expand early release criteria so as to increase the ability of the remaining individuals to engage in appropriate social distancing. We also continue to urge DOCCS to consider a person's medical condition as a stand-alone factor in determining an individual's eligibility for release.

**IV. EXCESSIVE USE OF FORCE, AS WELL AS DISCIPLINARY, JAIL TIME & SENTENCING CASES INCREASE DESPITE REDUCTION IN POPULATION**

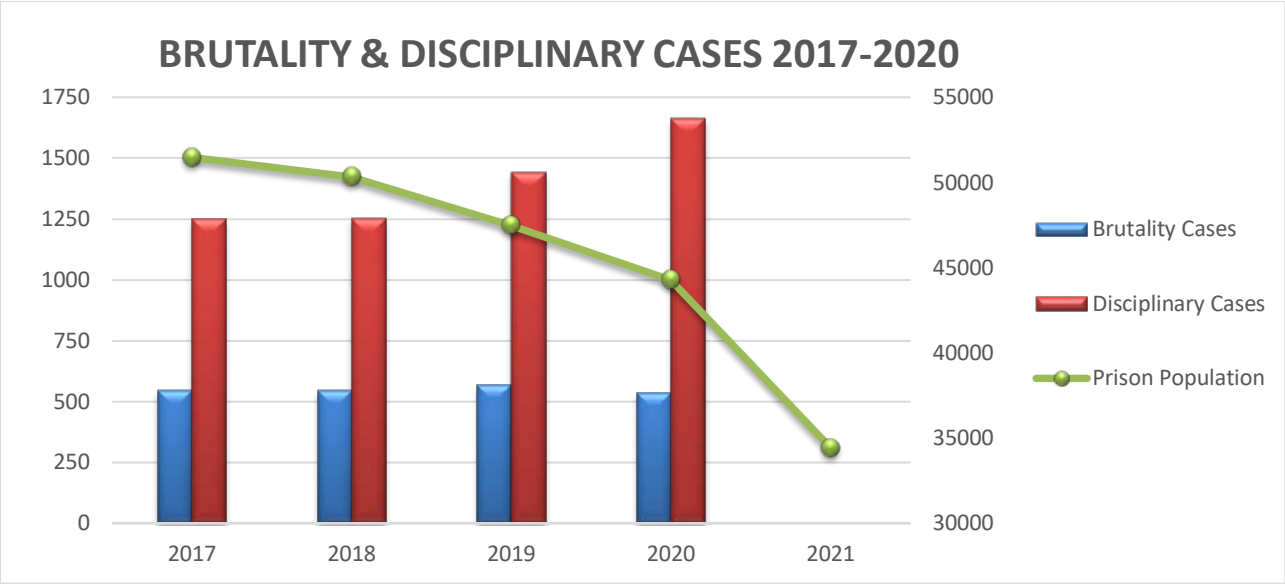
In 2017, PLS handled approximately 10 brutality cases for every 1000 incarcerated individuals. In 2020, that number rose to 12. The rise in disciplinary complaints is even more troubling due to the decrease in the number of incarcerated individuals. In 2017, PLS received 24 disciplinary complaints for every 1000 people in state prison. In 2020 that number rose to 38 complaints per 1000. In other words, since 2017, brutality complaints per person have increased by approximately 20% and

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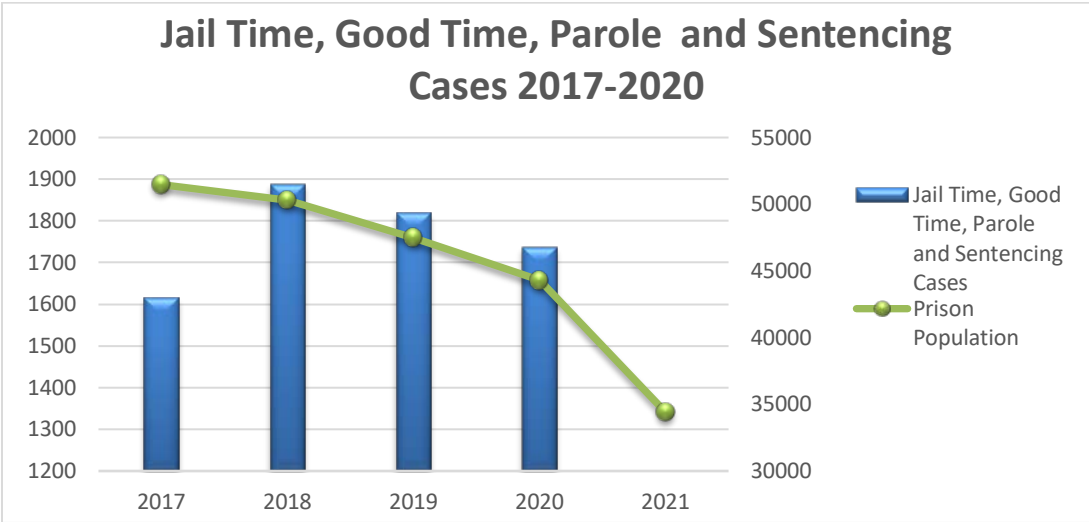
hospital. There was no unusual medical need that required her to be in the hospital, i.e., no special tests or procedures, but because she needed to leave the facility three days a week for dialysis, due to COVID-19, DOCCS decided to limit traveling back and forth by hospitalizing her. Our client remained in the hospital for over four months before returning to prison. She reports that while she was hospitalized, she had no fresh air, no real exercise, no underclothes and no mail. She was allowed three calls a week, if the CO on duty chose to let her call. She said being at the hospital was like "death knocking at [her] door."



disciplinary complaints per person have risen approximately 60% as in indicated in the chart below:



The actual numbers of requests for assistance with jail time, good time, parole and sentencing decreased slightly from last year, but again, when compared to the decrease in the prison population, cases per person have actually increased.



## V. PLS' CORE WORK

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 to individuals incarcerated in New York State prisons. Since 1976, 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.

PLS provides critical civil legal services to over 33,000 incarcerated individuals in prisons 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 by advocating for incarcerated individuals on issues related to their conditions of confinement. PLS also 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.

Most incarcerated individuals will eventually be released. PLS promotes public health and safety by ensuring that, while incarcerated, people in our state prisons are treated humanely, maintain family ties, are able to participate in educational and 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 45 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 DOCCS. In addition, legislators and other governmental leaders, including the Governor's office, solicit our perspective and appreciate our advice on prison-related issues, as do many other individuals and organizations within the state's criminal justice and legal services community.<sup>4</sup>

PLS' principal activities include:

**Direct Civil Legal Services:** We receive more than 10,000 requests for assistance annually and answers every one. We provide 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.

**Education Project:** Initiated in 2018, the Education Project focuses on ensuring that incarcerated individuals are provided with the education to which they are entitled by law. The Education Project also ensures that DOCCS is complying with various federal and state education laws including the Individuals with Disabilities Education Act (IDEA) and the American with Disabilities Act (ADA). To date, the Education project has:

- Educated parents of at-risk special education students regarding their child's continuing rights under the IDEA should they become incarcerated.
- Analyzed DOCCS regulations, directives and policies relevant to special education to identify systemic failures with respect to compliance with the mandates of the IDEA and NYS education law.
- Made recommendations to DOCCS to amend its policies to achieve compliance with IDEA and NYS education law mandates.
- Advocated and litigated to achieve DOCCS' compliance with both the IDEA and NYS education law.

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<sup>4</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. 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.

**Mental Health Project:** Our Mental Health Project (MHP) focuses on the needs of youth under 21 and veterans who suffer from mental illness. We focus on these two populations because they are two of the largest segments of the prison population and include the most vulnerable people. Youth under 21 and veterans experience higher rates of mental illness than are experienced by other groups of prisoners. Through our MHP, eligible individuals obtain needed mental health care and we work to ensure that they are not subjected to conditions, such as long-term solitary confinement, that exacerbate their mental illness.

**Family Matters Unit:** Our Family Matters Unit (FMU) assists incarcerated parents in challenging prison disciplinary sanctions suspending or terminating visitation with their children, drafts child visitation petitions, provides representation in court on visitation and support petitions, helps clients access court records, enforce visitation orders and draft 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 debt as a result of child support arrears.

**Pro Bono Partnership Program:** Our Pro Bono Partnership Project (PBPP) is a comprehensive program comprised of 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 to identify possible pro bono counsel. Through this project, since 2011, more than 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.

**Albion and Bedford Hills Telephone Program:** Our 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, sentencing and jail time issues, medical and mental health care and child visitation and custody.

**Pre-Release and Reentry Project:**<sup>5</sup> Our Pre-Release & Reentry Project is a holistic approach to reintegration focused on incarcerated individuals from the Bronx and New York County who are within six to 12 months of their maximum release date. PLS sends these individuals a questionnaire designed to identify their needs and then accepts those individuals into the program who are most likely to benefit from our services. We then work with these individuals for six to 12 months prior to their release from prison, providing representation focused on preparing them for reintegration into

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<sup>5</sup>The PLS PREP project is funded, in part, by New York Community Trust.

their community. To maximize the likelihood of a successful transition, we 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 our clients with available resources in NYC, such as the Fortune Society, Osborne Association and the Doe Foundation.

We follow these 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.

**PLS Newsletters:** PLS publishes a bi-monthly newsletter, *Pro Se*, which advises prisoners of changes in the law and explains technical aspects of various laws. *Pro Se* is distributed to all incarcerated individuals via the tablets that incarcerated individuals are now provided and more than 200 organizations and practitioners.

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

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

**Immigration Unit:**<sup>6</sup> The Immigration Unit provides representation to all immigrants in New York State prisons who are facing deportation hearings. 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

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<sup>6</sup> PLS' Immigration Unit is funded through the New York Immigration Family Unity Project via the Vera Institute of Justice.

success rate for clients represented by PLS attorneys has been close to 38%.

**Rapid Response Unit:**<sup>7</sup> We provide immigration representation to individuals detained or facing detention in Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington, Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, St Lawrence County jails.

**Unaccompanied Minors Project:**<sup>8</sup> Under the Homeland Security Act of 2002, the U.S. Department of Health and Human Services (“HHS”), Administration for Children and Families, Office of Refugee Resettlement is tasked with overseeing the care and placement of unaccompanied children (“children”). HHS contracted with Vera Institute of Justice to develop and coordinate regional programs to increase pro bono services, including representation, for children in HHS custody and who are released from HHS custody. Vera, in turn, selected PLS as the non-profit legal services provider to provide these services to the children being held at Berkshire Farms in Canaan, New York. PLS provides a wide range of services to these children, including:

- Providing a “Know Your Rights Orientation” (KYR);
- Conducting initial interviews (“screenings”) with unrepresented children in HHS custody;
- Providing courtroom assistance for all unrepresented children in HHS custody who are required to appear in court while in custody;
- Assisting where unrepresented children in HHS custody, care provider managers, or other relevant persons are required by immigration court practice and procedures to file paperwork with DHS or DOJ;
- Coordinating the assignment of Pro Bono Attorneys for children in HHS custody;
- Providing legal referrals to children as they move through the ORR system; and
- Conducting training on immigration law and procedures for newly recruited attorneys, both in-house and volunteer.

## **VI. PLS – A SMART INVESTMENT ON ALL FRONTS**

PLS ensures that sentences of incarcerated New Yorkers are calculated correctly, that they receive all of the jail time credit to which they are entitled and that they do not

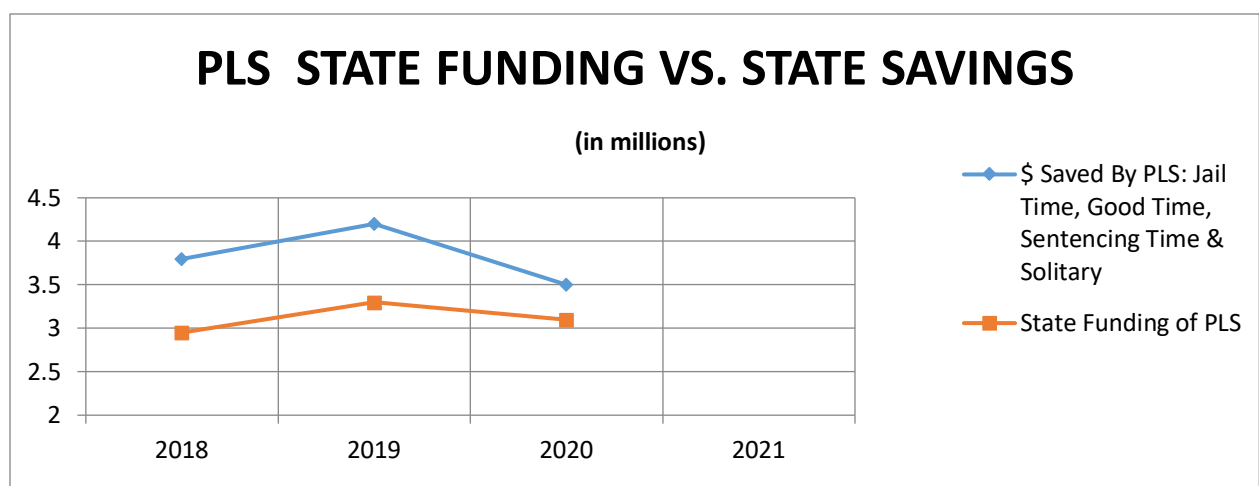
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<sup>7</sup> PLS’ Rapid Response Immigration Unit is funded by the Office of New Americans.

<sup>8</sup> PLS’ Unaccompanied Minors Project is funded through the Vera Institute of Justice.

unlawfully lose good time credits. PLS also ensures that unlawful disciplinary hearings are reversed and individuals subjected to those disciplinary hearings do not unlawfully spend time in isolated confinement, a form of confinement which significantly increases recidivism rates.

In 2020, PLS' advocacy resulted in the expungement of approximately 24 years of solitary confinement from individuals' disciplinary records, the restoration of almost 10 years of good time and the correction of 18 years of jail time, parole time and sentencing credit. According to a 2015 report by the Vera Institute of Justice the average annual cost of incarceration in New York State is \$69,355 per prisoner.<sup>9</sup> As a result, in 2020 alone, PLS saved the State over \$3.5 million.



But there are other deeper, more compelling reasons to fund PLS beyond the fact that PLS pays for itself through the money it saves the State.

As noted, 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 promote prison and public

<sup>9</sup> <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends>

safety for over 45 years. In addition, as shown in the above graphs, the continued annual increase in the number of complaints PLS receives annually sufficiently counters any suggestion that the declining prison population reduces the need for PLS' services. A look-back at where things stood when the Attica uprising occurred is even more instructive.

On September 10, 1971, when a group of incarcerated individuals took over the D-yard at Attica, and three days later, on September 13<sup>th</sup>, when the state police and prison officials retook the prison in the bloodiest recorded conflict within the United States since the civil war, the prison population at Attica was 1,281. Today Attica imprisons 1,644 people. In 1971, there was a total of 18 prisons across New York State and a total incarcerated population of 12,525. Today we have 52 prisons and a population of 33,651. As such, while we have certainly witnessed a significant decrease in New York's prison population over the past several years, with a current prison population that is approximately three times that of what it was when NYS experienced its worst prison riot in U.S. history, the need for PLS services remains crucial.

Adequately funding PLS provides an enormous social, moral and economic benefit to New York State. The critical work PLS engaged in this past year – helping to address the COVID-19 crisis in the prisons – is just one example. PLS' ability to immediately address situations like COVID and, in the past, HIV Aids, Hepatitis C, etc., while continuing to insist on transparency, provide oversight and offer direct legal services to thousands of incarcerated New Yorkers every year, has been instrumental in helping to prevent another Attica. The New York State Association of Criminal Defense Lawyers (NYSACDL) has stated that PLS' "work has made the prisons safer, more



humane and less violent.” New York State Bar Association Past President Stephen Younger stated: “One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the devastating Attica riot. PLS is – and should remain – a vital, integral part of the state’s criminal justice system and a critical component of public safety.” The cost of another Attica would be astronomical, not just in dollars but in lives and the threat to the future stability of our criminal justice system.

## **VII. CONCLUSION**

PLS has two primary functions:

(1) Acting as a check on the exercise of power behind New York’s prison walls by advocating for the peaceful resolution of the incarcerated population’s grievances thereby reducing tensions and maintaining safety and security within the prisons;

and

(2) Helping individuals prepare for successful reintegration into their communities by advocating with respect to their safety and security, helping maintain family connections, and ensuring adequate educational and vocational programming and medical and mental health care.

We commend Governor Cuomo, the Assembly and the Senate for providing PLS with funding in the past, as it is a clear indication of their continuing 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.) We thank Governor Cuomo for, once again, including PLS in his FY 2021-2022 Executive Budget and we ask the Legislature to add

\$1.4 million to the Executive appropriation of \$2.2 million to ensure PLS' ability to continue its critically important work on behalf of the State of New York.

Dated: February 5, 2021

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