

**TESTIMONY OF**  
**PRISONERS' LEGAL SERVICES OF NEW YORK**  
**BEFORE THE**  
**JOINT LEGISLATIVE HEARINGS**  
**ON THE**  
**NEW YORK STATE PUBLIC PROTECTION BUDGET FOR 2012**  
**CONDUCTED BY THE**  
**ASSEMBLY WAYS AND MEANS AND SENATE FINANCE**  
**COMMITTEES**

**Legislative Office Building**

**Albany, NY**

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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. As you all know, PLS is a statewide agency that was created by New York State in 1976 in response to the Attica prison uprising to act as a safety valve to help prevent another prison riot and in recognition that indigent individuals need competent legal representation to ensure that their civil and constitutional rights are protected. Since then, PLS has operated legal services offices across the State in close proximity to the prisons we serve, working tirelessly to address the civil legal issues that were found to have caused the Attica riot.

As you may know, for the first time in almost two decades, PLS was included in the Executive Budget. We commend Governor Cuomo for acknowledging the importance of our work and for his commitment to the fair administration of justice in New York for all people. However, the amount that PLS has been allocated is a 50% reduction from last year's operating budget; a budget which had already been cut in half from the prior year. As a result, if we do not receive \$1.5 million in additional monies from the Legislature, PLS's ability to provide critical legal services will be significantly hampered and it will be all but impossible for PLS to continue to have a statewide presence.

Our testimony today will focus on the responsibility of the State to provide civil legal services to prisoners and the unique expertise PLS has in providing those services, the critical and increasing legal services needs of prisoners, the importance of PLS maintaining its statewide presence, the cost-effectiveness of funding PLS and the funding needed for PLS to provide the civil legal services we have been tasked to provide.

**PRISONERS' LEGAL SERVICES IS THE ONLY STATEWIDE  
LEGAL SERVICES PROVIDER FOR PRISONERS**

The State has a legal responsibility to provide meaningful access to the courts for inmates confined in state prisons. Bounds v. Smith, 430 U.S. 817 (1977). New York has, in the past, wisely chosen to fund PLS to provide this access to at least part of the inmate population. In a letter to Governor Pataki several years ago, the then President, the immediate past President and the President-Elect of the New York State Bar Association, addressed the need for PLS' continued funding: "Experience demonstrates that citizens are not able to adequately represent themselves in litigation, particularly that which requires discovery or trial. And inmates who are not literate, who do not speak English well or who are mentally ill surely are entitled to the services of lawyers. The fact is that lawyers are essential to the fair administration of justice for prisoners."

PLS' clients are similar to the clients of other civil legal services programs; they are low income New Yorkers, predominately people of color, many are illiterate, physically impaired or disabled and many suffer from developmental disabilities or mental illness. But unlike the clients of other civil legal services organizations who often have a number of options available to them when it comes to legal services, the low income New Yorkers we represent, because they are incarcerated, only have one option – PLS.

Although significant improvements have been made within our prison system, abuses still occur, and PLS is the only statewide legal services organization that prisoners can turn to for direct legal services representation.<sup>1</sup> This is borne out by the hundreds of referrals PLS receives annually from outside agencies, organizations and individuals including requests from the Executive, Legislative and Judicial branches including Assembly members, Senators, Judges and lawyers asking us to investigate prisoner complaints that are received in their offices.

The New York Civil Liberties Union (NYCLU) notes that NYCLU, “which is not a direct legal services organization, receives many hundreds of compelling requests for assistance each year, from prison inmates who have been assaulted, deprived of necessary medical or mental health care, and denied fundamental constitutional rights.

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<sup>1</sup> Although the Legal Aid Society's Prisoners' Rights Project does handle some prison related cases, PRP focuses primarily on class action litigation in the State prisons and in the New York City jails concerning sexual assaults.

*Almost all of these cases are referred to PLS, as only it has the mandate, the expertise, and the capacity to address these matters.”* (Emphasis added)

The Office of the Appellate Defender points out that, “PLS is the sole organization that serves the entire population of incarcerated individuals in the State....PLS serves as a vital resource to other legal service providers in the State, as well as families of incarcerated persons. Our attorneys often call upon our PLS colleagues for advice on handling certain matters within their expertise. Moreover, when we encounter situations that are outside of our purview, we will refer individuals directly to PLS for representation....As a matter of fairness and decency, and as a matter of public safety, PLS must not be permitted to close.”

Disability Advocates, Inc. states: “We have worked with PLS for many years, and can assure you that if this fine organization goes out of existence there is no other organization that can pick up the task.”

The Correctional Association of New York notes that PLS provides “an essential avenue for incarcerated persons to obtain meaningful access to civil lawyers, the courts, and legal rights information. It is a strength of New York State that the Executive and Legislative branches have consistently recognized this fact and protected this civil legal access.”

The New York State Defenders Association noted the overwhelming requests for assistance that were received when PLS went unfunded for one year in 1998.

“Before the demise of PLS, we received approximately 300 requests a year from prisoners. A majority were referable to PLS, most of which were resolvable by PLS without litigation. At least three times that many cases are now coming into our office, most not referable.”

And solo practitioners across the State are also urging funding for PLS. One such attorney writes: “PLS has helped me perform my job as an Assistant Public Defender better. I often get letters requesting assistance that my office cannot provide; I refer them to PLS and never get letters back saying they were not able to help. PLS provides services that help us all in ways many do not see or understand.”

The above is just a small sample of the comments made by organizations and individuals who understand the purpose and need for Prisoners’ Legal Services and who know, first-hand, that PLS is the only organization they can turn to for individualized legal assistance in cases concerning conditions of confinement in State prisons.

### **THE CRITICAL AND INCREASING LEGAL SERVICES NEEDS OF PRISONERS**

Unlike the civil legal services needs of most indigent clients, the legal needs of prisoners are unique in that they often involve issues associated with our most basic fundamental rights; issues such as protection from torture, the fundamental right to freedom which, for prisoners, manifests itself as the right to be released from prison on

the court ordered release date, the right to be free from cruel and unusual punishment and the right to adequate medical and mental health care. PLS is the only statewide organization that has the expertise to respond to these unique and often complex civil legal issues.

***1. Protection from prolonged solitary confinement.***

New York State prisoners can be disciplined for a host of prison rule violations including, e.g., failing to have an ID card; being out of place; creating a disturbance; fighting; drug charges; and assaults. If a prisoner is charged with misconduct, a disciplinary hearing is held against him. Although prisoners have some limited rights at these hearings such as notice of the charges and the right to call, but not cross-examine, witnesses, for the vast majority of prisoners facing disciplinary hearings, there is no right to counsel.

The punishment for violating a prison rule can range from ‘counsel and reprimand’ to placement in solitary confinement, loss of good time and loss of packages, phone and commissary privileges and loss of good time. Although the Department of Corrections and Community Supervision (DOCCS) has internal “guidelines” for imposing solitary confinement,<sup>2</sup> these “guidelines” are not mandatory and are often exceeded and the fact is that there is no limit to the amount of time a

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<sup>2</sup> For instance, DOCCS’ guidelines for an assault without a weapon and minor or no injury has a guideline range of 3 to 9 months in solitary confinement and 3-6 months loss of good time; an assault with a weapon with serious injury has a guideline range of 12-24 months in solitary confinement and 12-24 months loss of good time.

prisoner in New York State can be placed in solitary confinement.<sup>3</sup> Placing someone in solitary confinement, often for years at a time, without sufficient evidence that such punishment is warranted, is unjust and violative of the Constitution; yet, such incidents occur within our State prisons all too often.

Since 2009, PLS has received requests from prisoners to review over 2400 disciplinary hearings – hearings that resulted in dispositions of prolonged placement in solitary confinement. Due to our limited funding we were only able to review approximately 16% of those hearings. Of the 389 cases that we were able to review we found that, in many of the hearings, there were procedural and substantive errors that warranted the filing of an administrative appeal and, if unsuccessful, an Article 78 proceeding. **PLS’ advocacy on those cases resulted in expungement of a total of over 80 years of solitary confinement time from prisoners’ records.** PLS’ ability to review those hearings and advocate accordingly resulted in numerous men and women across New York State being removed from wrongfully imposed solitary confinement, but there are hundreds of other prisoners who were not as fortunate.

## ***2. Protection of an individual’s right to freedom.***

Our Constitution ensures the right of liberty for all citizens, but often prisoners are held beyond their court ordered release date. Whether the error is due to a jail time or sentencing computation mistake, or loss of good time as a result of a due process

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<sup>3</sup> Human rights experts across the world, including Human Rights Watch, the Human Rights Committee and the

violation at a disciplinary hearing, denying an individual's right to freedom flies in the face of one of the most fundamental constitutional rights that exists in America.

For 2010 and 2011, PLS received over 6000 requests from prisoners to investigate parole, jail time, sentencing and good time issues. Once again, due to our limited resources we were only able to accept a fraction (13%) of those cases for review, but even with the limited number of cases we were able to accept, **PLS' advocacy resulted in over 246 years of jail time, sentencing time and good time being restored to prisoners across New York State.** Although the clients whose freedom we were able to protect are very appreciative, there are literally thousands of others for whom our services were unavailable due to our lack of adequate resources.

### 3. *Protection from cruel and inhuman treatment.*

PLS' work over the past 35 years to eliminate the use of excessive force in the State's prisons has resulted in the placement of cameras in most facilities, better training in the use of force and alternatives to using force for prison guards, a requirement that officers submit detailed use of force reports and improved medical exams after the use of force. In spite of these gains, in 2010 PLS received over 600 complaints alleging excessive use of force or harassment by correctional officers. Although the use of excessive force is not the norm, when it does occur, there is a need

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Committee against Torture, have criticized the use of long term solitary confinement See:  
<http://www.hrw.org/en/news/2010/03/22/solitary-confinement-and-mental-illness-us-prisons>

for swift and strong advocacy. Take, for example, the case of Mr. Williams.<sup>4</sup> Mr. Williams was assaulted in a State prison by a number of corrections officers. He suffered a broken nose, fractured orbit, fractured thumb and possibly fractured rib. He also had a large laceration around one eye requiring 32 sutures. His broken nose required surgical repair. His broken thumb required immobilization in a cast for six weeks. PLS filed a federal 42 U.S.C. Section 1983 action and engaged in extensive discovery lasting over two years and, just recently, the State agreed to settle the case.

Interestingly, although the prison population has decreased approximately 7.4 percent since January 1, 2008,<sup>5</sup> the volume of requests for assistance with excessive use of force complaints does not appear to be following the same trend. In 2008, PLS received 609 complaints of brutality by guards and, as stated above, we received 600 such complaints in 2010. These figures demonstrate that brutality complaints are on the rise.<sup>6</sup>

Once again, even though PLS receives hundreds of complaints annually, we are only able to fully investigate a handful of them, and although not all of the allegations of excessive use of force result in the need for PLS to intervene, the sheer number of complaints, the evidence that such complaints may be increasing and the results of our

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<sup>4</sup> The name of the client has been changed to protect honor attorney-client confidences.

<sup>5</sup> [http://www.pewcenteronthestates.org/uploadedFiles/Prison\\_Count\\_2010.pdf](http://www.pewcenteronthestates.org/uploadedFiles/Prison_Count_2010.pdf) DOCCS' reported prison population as of January 1, 2008 was 60,347. DOCCS' reported prison population as of June 22, 2011 was 55,871.

<sup>6</sup> Attached as Appendix 1 is chart showing the number of guard brutality, disciplinary and jail time complaints received by PLS from 2008-2011

advocacy in the cases we do accept, highlight the need for civil legal services in this area. Moreover, experience, as well as anecdotal evidence, strongly suggests that PLS' mere presence and proven ability to investigate and litigate such claims when necessary, serves as an important deterrent to staff abuse and misconduct.

4. *Ensuring adequate medical and mental health care.*

Adequate 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 translates into a reduction in tension within the prison population. Additionally, because they are treated for their medical and mental health issues, upon release, they are better able to reintegrate into society and reunite with their family and loved ones which often lessens the likelihood that they will re-offend and return to prison.

Although PLS' advocacy in the area of mental and medical health has resulted in significant improvements in care, there remain significant deficiencies; for instance, suicides are on the rise, soaring in 2010 to their highest in 28 years. Since 2010, PLS has received over 1135 complaints concerning inadequate medical and mental health

care but was only able to accept approximately 20% of those cases. Such statistics demonstrate the critical need for the type of civil legal services that PLS provides.<sup>7</sup>

### **THE STEADY DECLINE OF FUNDING FOR PLS**

As can be seen from the case acceptance numbers set forth above, the scope of the unmet legal needs of prisoners is widespread and significant. Our inability to accept a greater number of cases stems from the stagnant and then reduced funding that has occurred over the past decade, which has, in turn, resulted in a significant reduction in staff.

In the 1990's when the prison population reached 72,000, PLS had a staff of 40 attorneys plus additional support staff and an allocated State budget of over \$4 million. Today the prison population is approximately 55,000.00, our 2012-2013 proposed State funding is \$1 million and PLS has a staff of 11 attorneys.

To understand the breadth of the unmet legal need for prisoners in New York State it is helpful to look not only at case acceptance numbers and current PLS staffing, but at a comparison of the number of private attorneys providing civil legal services to the general population with the number of PLS attorneys providing civil legal services to New York State's prison population. Per a 2007 report by the Legal Services

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<sup>7</sup> Attached as Appendix 2 is a chart setting forth the ratio of PLS staff to medical and mental health complaints from 2008 to 2012.

Corporation entitled “Documenting the Justice Gap in America”<sup>8</sup> the ratio of private attorneys providing civil legal services to the U.S. population in 2000 was roughly 1 to 525. The present ratio of PLS attorneys providing civil legal services to prisoners is 1 to 5090.

### **THE IMPORTANCE OF MAINTAINING A STATEWIDE PRESENCE**

Soon after its creation, in addition to its office in Albany, PLS opened offices across the State in Plattsburgh, New York, Ithaca and Buffalo. The location of these offices in close proximity to some of the most problematic prisons was not coincidental. Being within an hour drive of Attica, Auburn, Clinton, Great Meadow, Coxsackie, Sing Sing, Green Haven, Bedford Hills and Fishkill, meant that PLS attorneys could quickly respond to emergencies, interview clients and witnesses, and interact with prison personnel. PLS mere presence in the prisons almost immediately translated into a reduction of guard harassment and brutality.

In the 1980s, the ‘prison boom’ resulted in the building of over thirty new prisons in New York State. During that time, PLS also grew, expanding from five offices to seven by adding offices in Poughkeepsie and Watertown. But due to the decreases in our funding in the late 1990s and the stagnant funding since 2001, we were forced to close three of our seven offices. The biggest blow to our organization was the closing of both of our New York City (1999) and Poughkeepsie (2001) offices.

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<sup>8</sup> <http://www.lsc.gov/justicegap.pdf>

The closing of those two downstate offices has left our Albany office, with a staff of four attorneys, with the responsibility of providing representation to over 20,000 prisoners spread out in 35 prisons spanning a geographical area of over 240 miles.

At present, we are stretched as far as we can be with respect to our ability to cover facilities across the State and maintain our presence within the prisons - a presence that has been crucial to ensuring the safety and security of prisoners and staff alike. Closing any other PLS offices would be a monumental mistake, but without additional funding we will have no other choice.

## **ECONOMIC AND SOCIAL CONSEQUENCES OF REDUCED OR ELIMINATED PLS' SERVICES**

### **A. PLS' WORK HAS HELPED PREVENT ANOTHER "ATTICA"**

PLS was created to address the issues that were found to have caused the Attica rebellion. We have helped reduce the use of excessive force against prisoners, we have significantly reduced the use and misuse of solitary confinement, we have worked to increase programming and education for prisoners, we have assisted prisoners in peacefully airing and resolving their grievances and we have been instrumental in improving the overall conditions of New York State prisons. In addition, over the years PLS has been instrumental in the development of significant case law in the areas of

prison discipline, jail time and sentence calculation, and parole, as well as federal civil rights and due process protections.

The benefit that PLS provides to New York State in helping to prevent another Attica is immeasurable. 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 in the threat to the future stability of our criminal justice system. Thus, the economic and social consequences of continuing to reduce PLS' services cannot be overstated.

**B. PLS SAVES THE STATE MILLIONS OF DOLLARS EVERY YEAR**

By correcting jail time and sentencing errors and successfully seeking restoration of good time, **PLS saved the State over \$3.96 million in 2011, \$5.36 million in 2010, and over \$6.99 million in 2009,<sup>9</sup> these amounts being directly proportional to the amount of State funding PLS received each year.** PLS' work since 2009 has resulted in a total of 246 years being credited to prisoners' sentences

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<sup>9</sup> Attached as Appendix 3 is a chart setting forth the amount PLS has saved the State annually since 2008.

and, through the reversals of disciplinary hearings, the expungement of 80 years of solitary confinement. But for PLS' work, men and women would have been illegally held in our prisons or in solitary confinement for years, costing the State millions of unnecessary dollars in actual confinement costs and untold dollars in subsequent wrongful confinement awards. NYSACDL has stated that: "***It is quite probable that the work of PLS has protected the State from litigation and judgments for faulty jail time calculations or sentencing errors.***"

In addition, PLS, by answering over 10,000 prisoner complaints annually, has discouraged, and often prevented, the filing of many lawsuits that would have otherwise been a costly burden to DOCCS, OMH, the Judiciary and the Attorney General's Office. In addition, when PLS accepts a case, the courts benefit from having experienced legal counsel steering the litigation. Through our *Pro Se* newsletter, Facebook page and website, PLS educates, not only prisoners, but their families and society at large on the constitutional and regulatory rights of prisoners, our criminal justice system in general, prison conditions and reentry resources.

Finally, there are 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 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.

### **PLS' FUNDING NEEDS**

PLS has been included in the Executive 2012-2013 budget for \$1 million. We need a total operating budget of \$2.5 million to maintain our current operations and to provide the civil legal services we have been tasked to provide. We are asking the Legislature to add an additional \$1.5 million to the current 2012-2013 budget to insure PLS' ability to remain open and continue providing necessary services. We are asking for this because presently we do not have enough staff to do the work, the staff we have is struggling to keep their heads above water both from a professional standpoint and from a personal financial standpoint and because for every dollar spent on PLS, PLS saves the State at least two dollars.

Due to the decrease in our budget last year we were forced to lay off one-third of our staff. As a result, we have two attorneys in each of our Plattsburgh and Buffalo offices, three attorneys in our Ithaca office and four in Albany. The Buffalo and Plattsburgh offices are responsible for responding to over 10,000 prisoners, the Ithaca office 15,000, and the Albany office, over 20,000. Each office receives hundreds of requests for assistance every month and we simply do not have the staff to adequately respond to all of the complaints.

Because of their dedication to the protection of their clients constitutional rights and in a collective effort to keep PLS open and operating, the entire PLS staff accepted a 10% pay cut last year. They agreed to this even though they had not had a cost of living increase for the past three years. The PLS staff is unmatched in their commitment, passion and dedication to their clients.

Finally, as is shown by Appendix 3, for every dollar spent funding PLS, the return is at least two dollars; it simply makes economic sense to provide sufficient resources to PLS. With adequate staff we can review and correct even more disciplinary cases and jail time and sentencing errors, thus ensuring that all prisoners are released on their correct date and in turn saving the State millions of dollars every year.

An additional \$1.5 million will allow PLS to restore four of the 10 positions that were lost last year due to the cut in funding and provide adequate salaries for existing staff.

## **CONCLUSION**

For 35 years, PLS has worked tirelessly to address the fundamental legal problems so often confronted by its clients, the indigent New Yorkers who have ended up confined in our State's prisons. PLS has helped keep the peace in our State prisons and has increased the likelihood that prisoners will be able to successfully reintegrate into society when they are released. PLS is a critical and necessary component of New

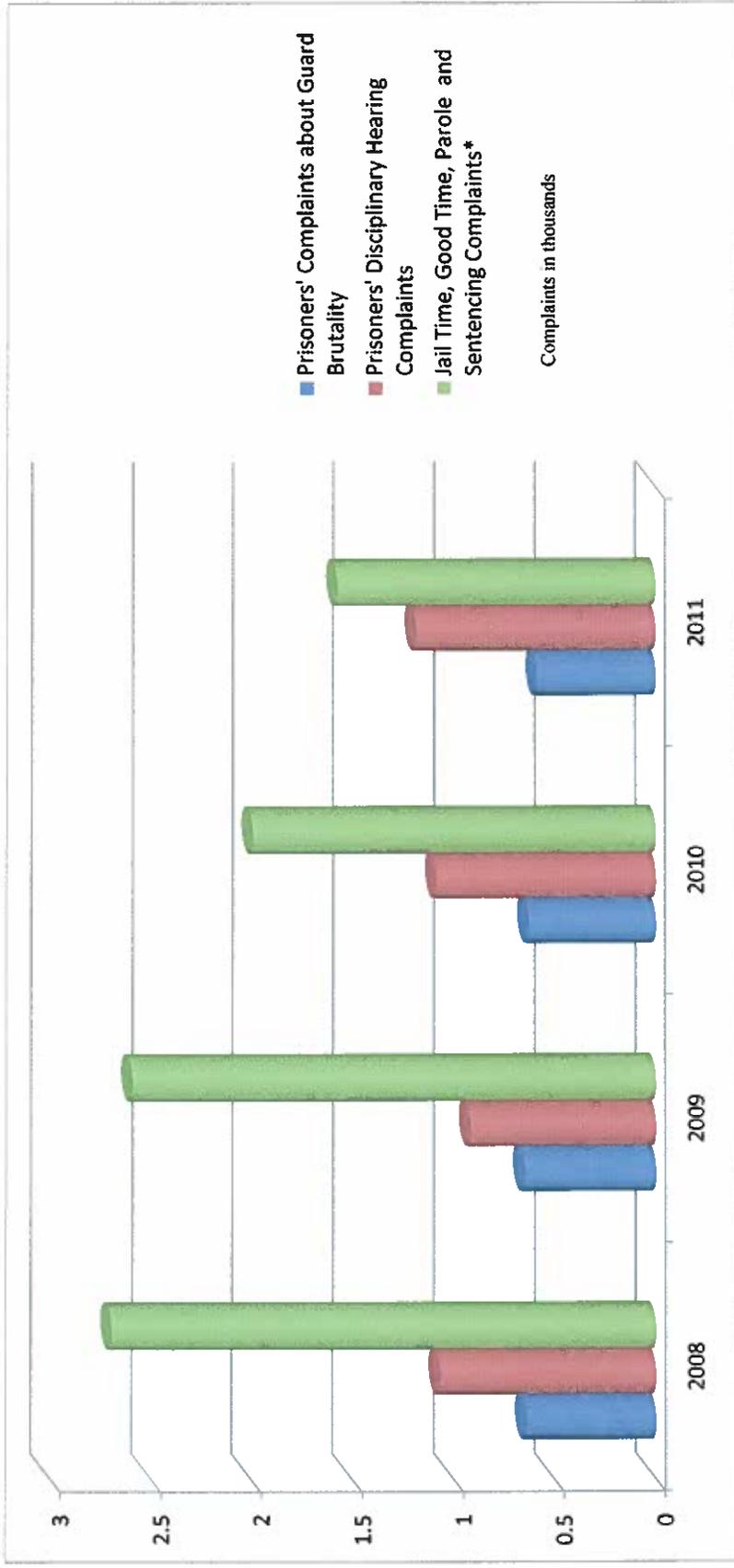
York State's civil legal services infrastructure. PLS is also an important, necessary and sound investment, not only from an economic, but also from a moral, ethical and human rights vantage point.

Dated: January 30, 2012

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## Complaints from Prisoners' Concerning Guard Brutality, Disciplinary and Jail Time 2008-2011

The prison population has been steadily decreasing for the past decade. In 2008 the prison population was 60,081. Today it is 55,869, a decrease of over 4000 prisoners or approximately 7%. However, despite the decrease in the prison population, prisoner disciplinary complaints continue to rise and guard brutality complaints remain steady. Yet, due to decreased funding, PLS' staff has decreased from 36 to 17 and thus our ability to adequately respond to and investigate these complaints has been drastically reduced.

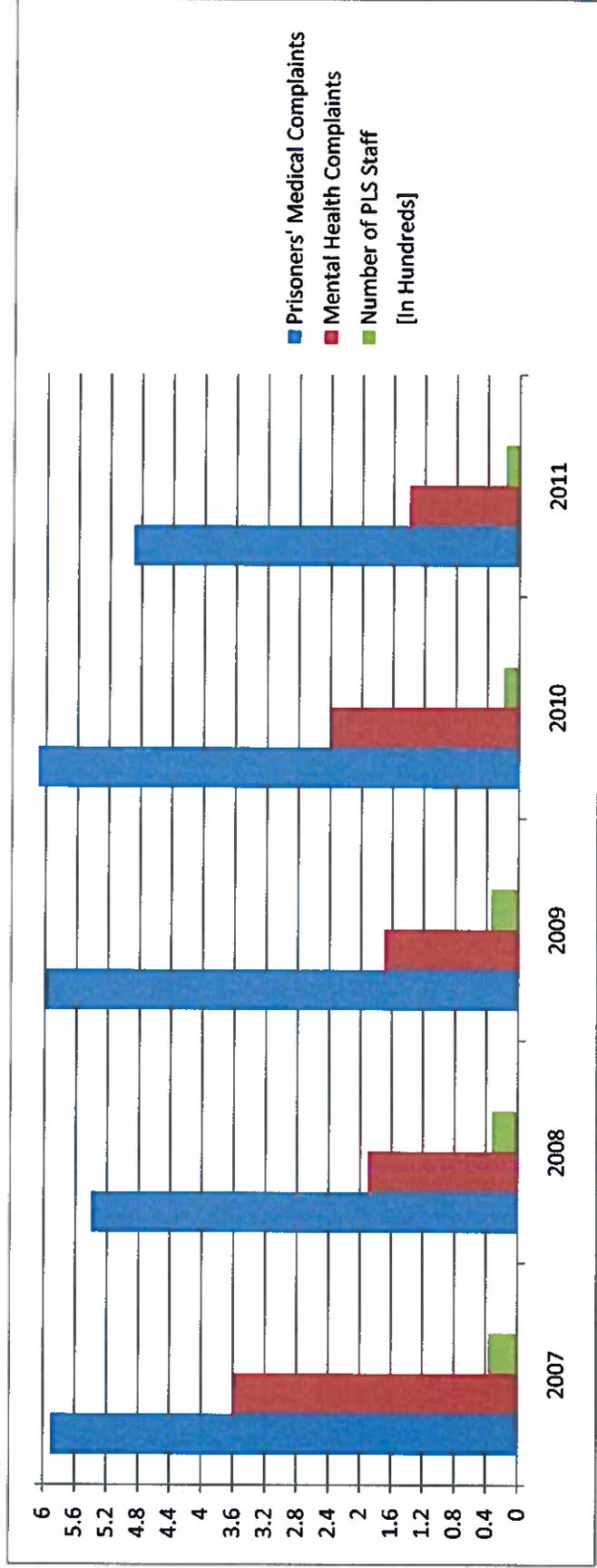


\*Jail time, parole and sentencing complaints spiked from 2008 - 2010 due to issues that arose around Rockefeller Drug Reform and Post Release Supervision.

## RATIO OF PLS STAFF TO MEDICAL AND MENTAL HEALTH COMPLAINTS FROM 2008-2012

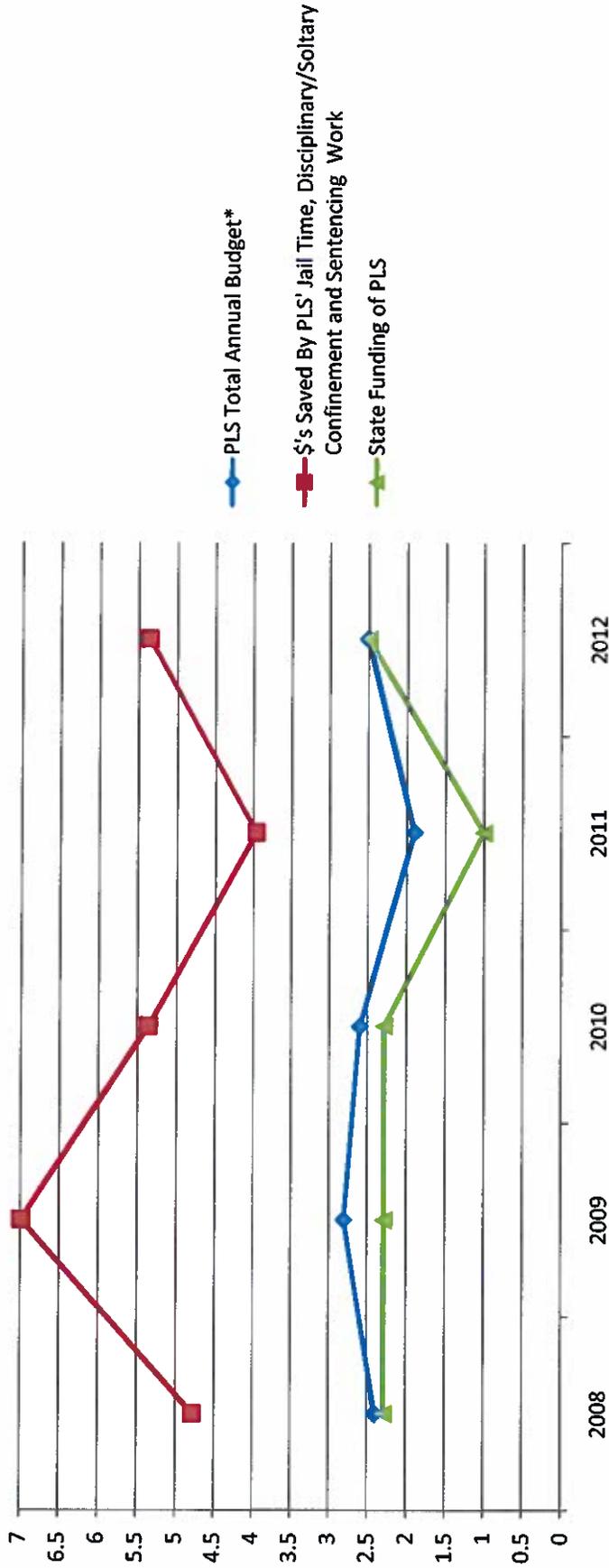
Adequate medical and mental health care for prisoners is not only constitutionally required, but critically important to public health and safety. PLS investigates hundreds of allegations of inadequate medical and mental health care claims annually. We successfully advocate in many of those cases. As a result of our work, many prisoners receive the medical and mental health attention that they need which translates into a reduction in tension within the prison population. Additionally, because they are treated for their medical and mental health issues, upon release, they are better able to reintegrate into society and reunite with their family and loved ones which often lessens the likelihood that they will re-offend and return to prison.

In 2007, together with Prisoners' Rights Project and Disabilities Advocates, PLS settled a lawsuit focused on the treatment of the mentally ill in prison. As a result the treatment of the seriously mentally ill in prison has improved. However, as reported by the *Poughkeepsie Journal* on December 26, 2010, there remain significant deficiencies in the care and treatment of the mentally ill in our State prisons as suicides are on the rise and "mental health care was criticized in 9 of the 21 suicides that occurred since the prison lawsuit was settled....Suicides in New York state prisons soared in 2010 to their highest rate in 28 years as 20 inmates took their own lives." Since 2010, PLS has received over 1135 complaints concerning inadequate medical and mental health care but we were only able to accept approximately 20% of those cases. Such statistics demonstrate the critical need for the type of civil legal services that PLS provides.



# PLS STATE FUNDING VS. STATE SAVINGS CHART

(in millions)



**Jail Time, Disciplinary/Solitary Confinement and Sentencing:** PLS ensures that prisoners' jail time is calculated accurately, that prisoners receive reversals on illegal or unlawful disciplinary hearings and that prisoners receive all of the sentencing credit to which they are entitled. The annual cost of housing a prisoner is \$55,000.00 (<http://www.correctionalassociation.org/ppp/downloads/TimesUpForNYPrisonsDec2010.pdf>) and thus, for every year of jail time, good time or sentence time credited, PLS saves the State at least \$55,000.00. When inmates are released from solitary confinement they are able to participate in educational and other rehabilitative programs. Participation in such programs increases the likelihood of early release and dramatically reduces the recidivism rate. In addition, if an inmate 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 \$55,000.00-per inmate, it does significantly reduce the overall cost to the State, thus we factor SHU time at only half the total time saved.

The amount PLS saves the State is directly proportional to the amount PLS receives in State funding. In 2008, PLS saved the State approximately \$4.1 million; in 2009, \$6.9 million; in 2010, \$5.3 million; 2011, \$3.96 million; and, if we receive State funding for 2012 at the requested \$2.5 million, we project the total savings in 2012 to be over \$5.3 million.

\*PLS' Total Annual Budget includes State money carry over from prior years but for the 2012-2013 fiscal year PLS will not have any State money carry over.