

PRISONERS' LEGAL SERVICES
OF
NEW YORK

**TESTIMONY BEFORE THE JOINT LEGISLATIVE HEARINGS ON THE
NEW YORK STATE PUBLIC PROTECTION BUDGET FOR FY2018-2019**

CONDUCTED BY THE ASSEMBLY WAYS AND MEANS

AND SENATE FINANCE COMMITTEES

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Presented by:

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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. PLS' mission is to provide high quality, effective legal representation and assistance to indigent incarcerated individuals and to help them secure their civil and human rights. Created by New York State in 1976, and in response to the 1971 Attica prison uprising, PLS protects the civil and constitutional rights of incarcerated individuals, and helps ensure the respect for human dignity, thereby acting as a safety valve to help prevent another prison uprising while helping incarcerated individuals prepare for successful reintegration into their communities upon release.

In fiscal year 2017-2018, PLS received total state funding of \$2.95 million; \$2.2 million in Executive funding and an additional \$750,000 from the Legislature. We commend both Governor Cuomo and the Legislature for providing this funding as it is a clear indication of the continued commitment of both to civil and human rights and a testament to the value that New York State places on the rehabilitation and reintegration goals of our criminal justice system. While we are enormously appreciative for the funding we received in 2017-2018, it was far from sufficient to enable PLS to do the job it has been tasked to do.

Last year PLS received over 10,000 complaints from incarcerated New Yorkers. With funding of \$2.95 million, PLS was able to accept and investigate approximately 2000 (20%) of those cases. This year, as discussed in more detail below, in light of the new Raise the Age legislation we predict a significant increase in the number of requests for assistance from 16 and 17-year olds who will be placed in New York State prisons. These youth will be housed in facilities covered by our Plattsburgh and Buffalo offices both of which are staffed by only three attorneys. In addition, and as also discussed more fully below, with respect to the younger population, we

have identified systemic special education issues that must be addressed to ensure that incarcerated youth are being provided with the education and services mandated by federal and state law.

As such, to ensure PLS' ability to respond to the projected increased population, provide effective oversight of New York's prisons and ensure accountability, PLS needs the Legislature to add to the Governor's appropriation of \$2.2 million. While we recognize that our current economic environment makes full and adequate funding for PLS difficult, we are urging that, at the very least, the Legislature add \$1.3 million to the Governor's appropriation of \$2.2 million, resulting in a total operating budget of \$3.5 million for FY 2018-2019. This funding will allow PLS to maintain current services and hire staff to manage the increased caseload that will occur as a result of the 'Raise the Age' legislation.

II. AN OVERVIEW OF PLS

PLS has regional offices in Albany, Ithaca, Plattsburgh and Buffalo. Each office is in close proximity to a significant number of New York State's 54 prisons. Currently, PLS employs a total staff of 26, 19 of whom are attorneys. PLS provides critical civil legal services to the over 51,000 prisoners confined in prisons that are located across the state from Buffalo to Albany and from the Canadian border near Plattsburgh to New York City. Through its services, PLS assists prisoners in resolving their disputes non-violently, thereby lowering tensions, reducing hostility and helping to create a safer environment for prisoners and correctional staff alike. PLS receives over 10,000 requests for assistance annually and, although we cannot accept every case, we answer every letter we receive and, even in cases we cannot accept, we provide self-help materials to incarcerated individuals to assist the more literate prisoners in representing themselves. We do this, by publishing over 75 client educational memos that address specific areas of the law. We also publish

a bi-monthly newsletter, *Pro Se*, which is distributed to over 8,500 New York State prisoners at no cost. *Pro Se* advises incarcerated individuals of changes in the law, publishes practice pieces to assist them in complying with statutory and regulatory requirements, and explains technical aspects of various laws affecting the prison population. The effectiveness of our publications is demonstrated by the numerous letters that we receive from incarcerated individuals describing their pride in their successful advocacy and litigation.

PLS has a Pro Bono Partnership Program which has established partnerships with law firms and community agencies statewide. We also work with the New York State Bar Association (NYSBA) and various county bar associations to identify possible pro bono counsel. Through this project, over sixty (60) individuals and firms have been recruited to accept cases, and hundreds of incarcerated individuals have had legal representation that they otherwise would not have had. Through our Pro Bono project, PLS also partners with law schools to provide training and mentoring for students who work via work study, clinics, internships, externships or pro bono.

In 2013, in partnership with the Department of Corrections and Community Supervision (DOCCS), PLS created the Albion Telephone Program. In 2017, again in partnership with DOCCS, we expanded the Telephone Program to Bedford Hills. Since its inception, more than 800 women have received legal assistance on numerous issues including medical and mental health care and child visitation and custody.

PLS also has a Mental Health Project that specifically focuses on the needs of youth under 21 and veterans (*including anyone who has served in the military or armed forces*) who suffer from mental illness. In 2014, there were 2,240 prisoners under the age of 21 and 2,146 prisoners who were veterans in DOCCS custody. PLS' Mental Health Project specifically focuses on these two populations because they are two of the largest segments of the prison population and are

among the most vulnerable individuals confined in prisons. Youth under 21 and veterans experience higher rates of mental illness than are experienced by other incarcerated individuals, with diagnoses that include post-traumatic stress disorder, bipolar disorder, major depressive disorder and schizophrenia.

This past year, PLS' Mental Health Project interviewed dozens of veterans and other stakeholders regarding the needs of incarcerated veterans. We researched the successfulness of various veteran programs across the country, including specific housing for incarcerated veterans. We identified the types of programs and housing environments for veterans that enhance rehabilitation and decrease the chances of recidivism upon release. Based on this research we drafted a proposal to expand veteran programs to maximum security facilities and submitted this proposal to DOCCS. In response, as many of you probably know, Governor Cuomo, in his 2018-2019, has included funding for the expansion of veteran programs into maximum security facilities.

PLS also has a Family Matters Unit that assists incarcerated parents in challenging prison disciplinary proceedings that result in suspension or termination of visitation with their children, drafting child visitation petitions, providing representation in court on visitation and support petitions, helping clients access court records, enforcing visitation orders and drafting child support modification papers. The Unit is a critical resource for incarcerated parents, helping them maintain family ties during their incarceration. For parents who are subject to child support orders, PLS works to help remove one of the major barriers to successful reintegration – the accumulation of insurmountable debt as a result of child support arrears.

PLS also provides representation to all detained immigrants in New York State prisons facing deportation hearings, extending critical legal assistance to another of our most vulnerable populations.

By counseling and advising incarcerated individuals regarding their rights and the merits of their claims for the past 42 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, are appreciative of our opinions on prison-related issues and welcome our suggestions, as do many other individuals and organizations within the state criminal justice and legal services communities.

PLS helps fulfill New York State's commitment to the criminal justice goals of rehabilitation and reintegration. PLS advocates for 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.

III. THE WORK OF PLS

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

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

Although PLS does not have the resources to provide representation 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.

Jail Time, Sentencing Credit, Merit Time, Good Time and Solitary Confinement: PLS ensures that prisoners' sentences are calculated accurately and that they receive all of the jail time credit to which they are entitled. Our advocacy regarding parole and merit time issues also results in our clients being credited with time toward their sentences. PLS also ensures that unlawful disciplinary hearings are reversed and prisoners subject to those disciplinary hearings do not unlawfully spend time in isolated confinement or unlawfully lose good time credits to which they would otherwise be entitled. Over the past two years, PLS has recouped over 41 years of jail time and sentence credit, reduced the time that our clients will spend in isolated confinement by over 117 years and prevented the loss of 40 years of good time credit for our clients.

Excessive Use of Force by Corrections Officers: PLS also helps to ensure that incarcerated individuals are treated humanely and are not subjected to harassment or brutality, and if they are, PLS helps to hold the responsible individuals accountable for their actions. Over the

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

past two years, PLS has successfully litigated a number of excessive use of force cases, holding individuals accountable for their unconstitutional actions.

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

Medical and Mental Health Advocacy: PLS also assisted hundreds of incarcerated individuals in obtaining adequate medical and mental health care, including obtaining treatment for life threatening diseases such as diabetes. For example, PLS recently had a 19-year-old client who suffered with Type 1 diabetes. He had successfully managed his diabetes in the community for over a decade, but upon admission to DOCCS, medical staff arbitrarily restricted the number of units of insulin he could receive, which adversely affected his blood glucose levels. We obtained medical records and submitted several letters to facility medical staff highlighting the poor control of our client's blood sugar under his then-current treatment plan, and requested appropriate modifications. We recently received a thank you letter from our client's mother advising that medical staff has changed his treatment plan and "it has improved his health condition drastically."

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

IV. THE IMPACT OF ‘RAISE THE AGE’

As you may know, the *Cookhorne v Fischer* settlement agreement, signed in October of 2014, gave PLS the ability to monitor and tour DOCCS newly established juvenile facilities. During the past three years PLS staff has toured and monitored the treatment of children at Woodbourne, Greene, Coxsackie and Hudson correctional facilities. During this period, we have reported our findings, comments and suggestions to DOCCS as well as advocated on behalf of individual children in DOCCS custody on a variety of issues including excessive discipline, alleged assault by staff, and education issues.

DOCCS staff and administration have been receptive to our comments and suggestions, and have seriously considered our advocacy on behalf of children in deciding on appropriate ways to address our concerns and their needs.

Notably, we have continued to advise DOCCS against disciplining juveniles with long or continuous confinement time as this is damaging to their mental and physical health. Through reports obtained pursuant to the *Cookhorne* settlement over the past few years, we have noticed a considerable decrease in both the length of confinement time as punishment, and in the aggregation of continuous, confinement time sanctions. We believe this is a direct result of our work.

NY’s Raise the Age Legislation (RTA) creates new categories of juvenile offenders, including the violent, Adolescent Offender (VAO), and the non-violent Adolescent Offender (AO).

The VAO is a youth who was 16 or 17 years old at the time of the offense and convicted of a felony during which the youth, 1) displayed a firearm, shotgun, rifle, or deadly weapon, or 2) engaged in certain criminal sexual conduct, or 3) caused significant physical injury on a non-participant in the crime.

The RTA legislation requires DOCCS to create one or more facilities to house AO's impacted by the legislation. AO's with a sentence of one year or more, who were under the age of 18 at the time of sentencing, will be housed in these new DOCCS facilities. Youth who commit crimes when they are 16 or 17 years old, and are sentenced to one year when they are 18 or older, will be placed in existing DOCCS adult facilities.

DOCCS has identified two new sites to serve as AO facilities, Adirondack C.F. and the former Groveland Annex. Adirondack will have a housing capacity of 142 juveniles and Groveland will have a housing capacity of 110 juveniles. The total number of juveniles in DOCCS custody on December 4, 2017 at Hudson and Coxsackie correctional facilities combined was 70.

We anticipate a threefold increase in the number of juveniles in DOCCS' custody due to the RTA legislation as the agency is adding 252 new beds for juveniles at its new AO facilities. Additionally, as an interim measure, DOCCS will continue to review requests from counties to house 16 and 17 year olds who receive a definite sentence of imprisonment in excess of 90 days pursuant to Executive Order #150, which established Hudson C.F. PLS will need more staff and resources to adequately serve the individual needs of increasing numbers of juveniles in DOCCS custody as well as any facility-wide issues that may arise.

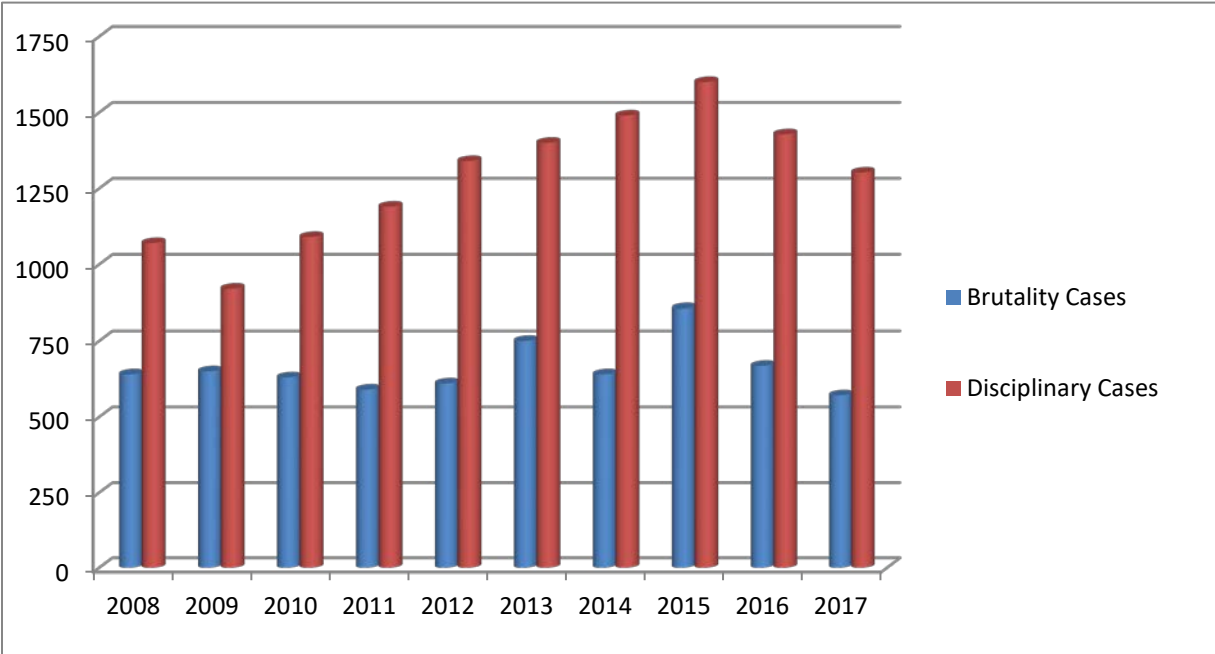
V. SPECIAL EDUCATION

We have also advocated on behalf of students with special education needs pursuant to Federal law – the Individuals with Disabilities Education Act (IDEA), which applies to disabled students under the age of 22. To that end, we are in discussion with DOCCS regarding its compliance with this law. PLS, along with Disability Rights New York (DRNY), filed the first ever IDEA Complaint against DOCCS due to its failure to provide special education to a disabled student pursuant to the IDEA. We received the first NYS Department of Education Impartial Hearing Officer’s decision regarding DOCCS’ responsibilities under the IDEA. The hearing officer found that DOCCS was in gross violation of the IDEA and ordered compensatory education. We know that the appropriate education of young prisoners reduces recidivism and is vital to a person’s 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 which requires us to expand our work in this area to meet increasing need.

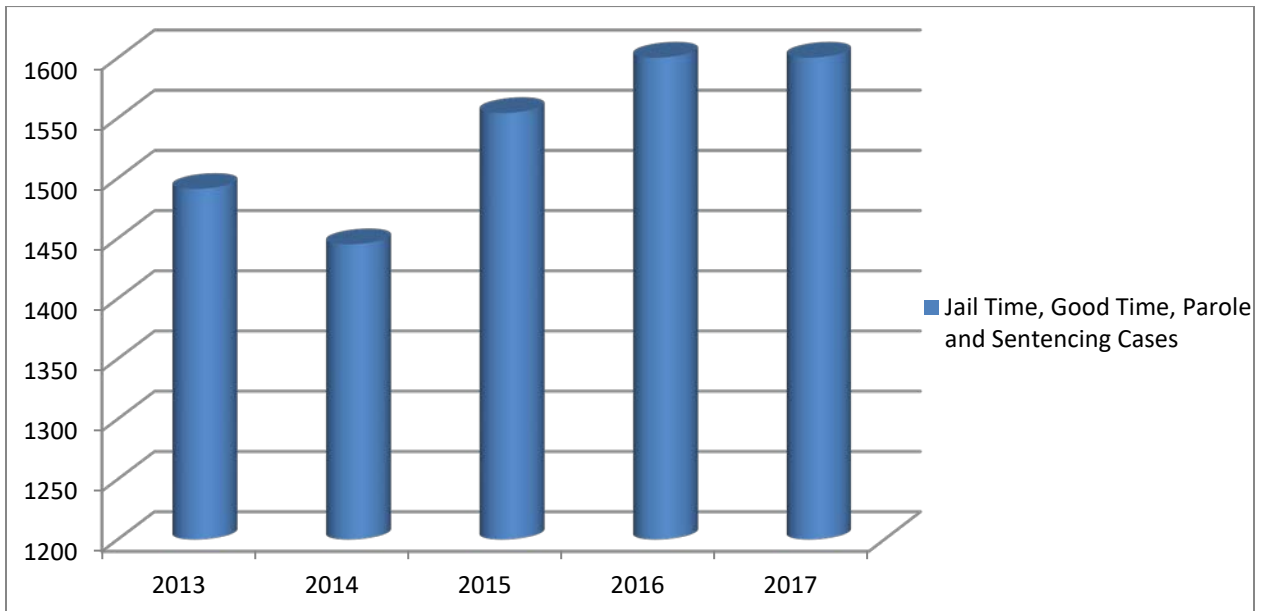
VI. COMPLAINTS ON THE RISE

While the State's prison population has declined roughly 18.5% since 2008 (from 62,036 to 50,500), the total number of brutality and inappropriate disciplinary actions has actually increased. The amount of brutality and inappropriate disciplinary complaints per 1000 prisoners has risen from 28 in 2008 to 37 in 2017, an increase of over 30%. Jail time, good time, parole and sentencing cases are up by even more, as indicated in the charts below:

BRUTALITY AND DISCIPLINARY CASES 2008-2017



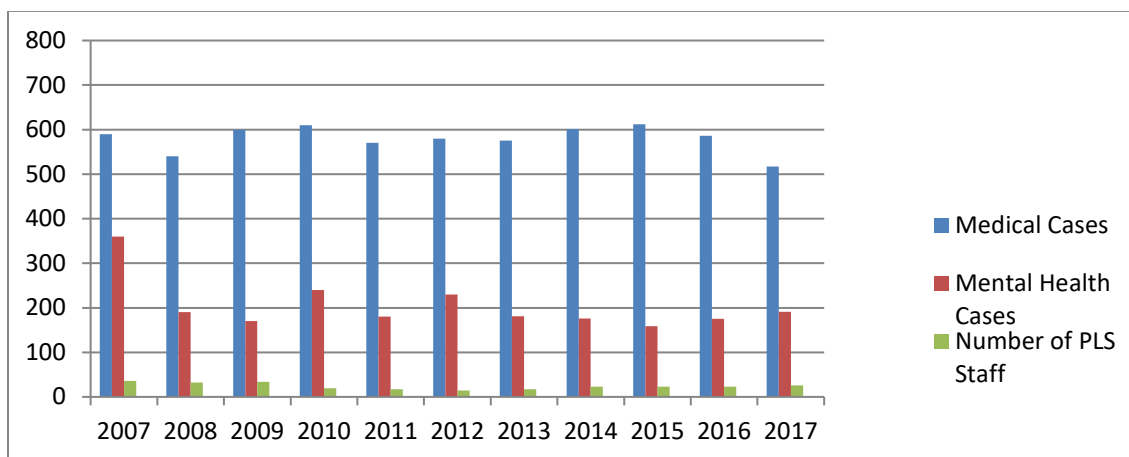
Jail Time, Good Time, Parole and Sentencing Cases 2013-2017



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

RATIO OF PLS STAFF

TO MEDICAL AND MENTAL HEALTH CASES FROM 2011-2017



VII. PLS – AN ESSENTIAL AND CRITICAL CRIMINAL JUSTICE PARTNER

Because PLS has earned not only the trust and respect of incarcerated New Yorkers and their families, but also that of the Judiciary, the Executive, the Legislative, the AG's office and DOCCS, we have been able to implement positive criminal justice reforms. For example, we have successfully partnered with the following entities to produce the stated results: DOCCS, to create a re-entry video that is shown to all prisoners preparing for release; DOCCS, to establish veteran's programs in maximum security prisons; DOCCS, to create a telephone program for incarcerated females at Albion and Bedford Hills allowing them to contact PLS for legal services via telephone; DOCCS and the Attorney General's office, to present a continuing legal education course on prisoners' rights to the Appellate Division, Third Department (including judges and staff); the Executive and Division of Budget (DOB), to educate and encourage incarcerated individuals to sign-up for Medicaid and to promote the Executive's clemency efforts; the New York Court of Appeals, to provide representation on cases for which it had granted leave to appeal; and the State Legislature, to respond to prisoner complaints that have been referred to PLS by various Legislators for resolution.

VIII. PLS – AN ECONOMICALLY SOUND INVESTMENT

The annual cost of housing a person in prison is estimated to be at least \$60,076.00.² Thus, for every year of jail time, good time or sentence time credited, PLS saves the State at least \$60,000. Individuals released from solitary confinement can participate in educational and rehabilitative programs. Participation in such programs increases the likelihood of early release and dramatically reduces the recidivism rate. In addition, if an individual is in general population

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

as opposed to solitary confinement when he/she appears before the parole board, release is much more likely. Thus, although release from solitary confinement may not save the State the entire \$60,000 per person, it does significantly reduce the overall cost to the State.

Last year, PLS was funded at \$2.95 million, but PLS saved the State over \$4.4 million by obtaining reversals in Tier III disciplinary hearings, resulting in the expungement of over 55 years of solitary confinement, restoring 20 years of lost good time, and correcting jail time and sentencing errors that resulted in over 25 years being credited to prisoners' sentences. But for PLS, these savings to the State would not have occurred.

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

PLS' work also provides immeasurable financial benefits to the community in terms of public safety. Because of our work, many incarcerated people receive the mental health care, medical care, programming and education they need to succeed in life once they are released. Through our work, they learn that society will not tolerate unjust treatment of its people, instilling in them 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.

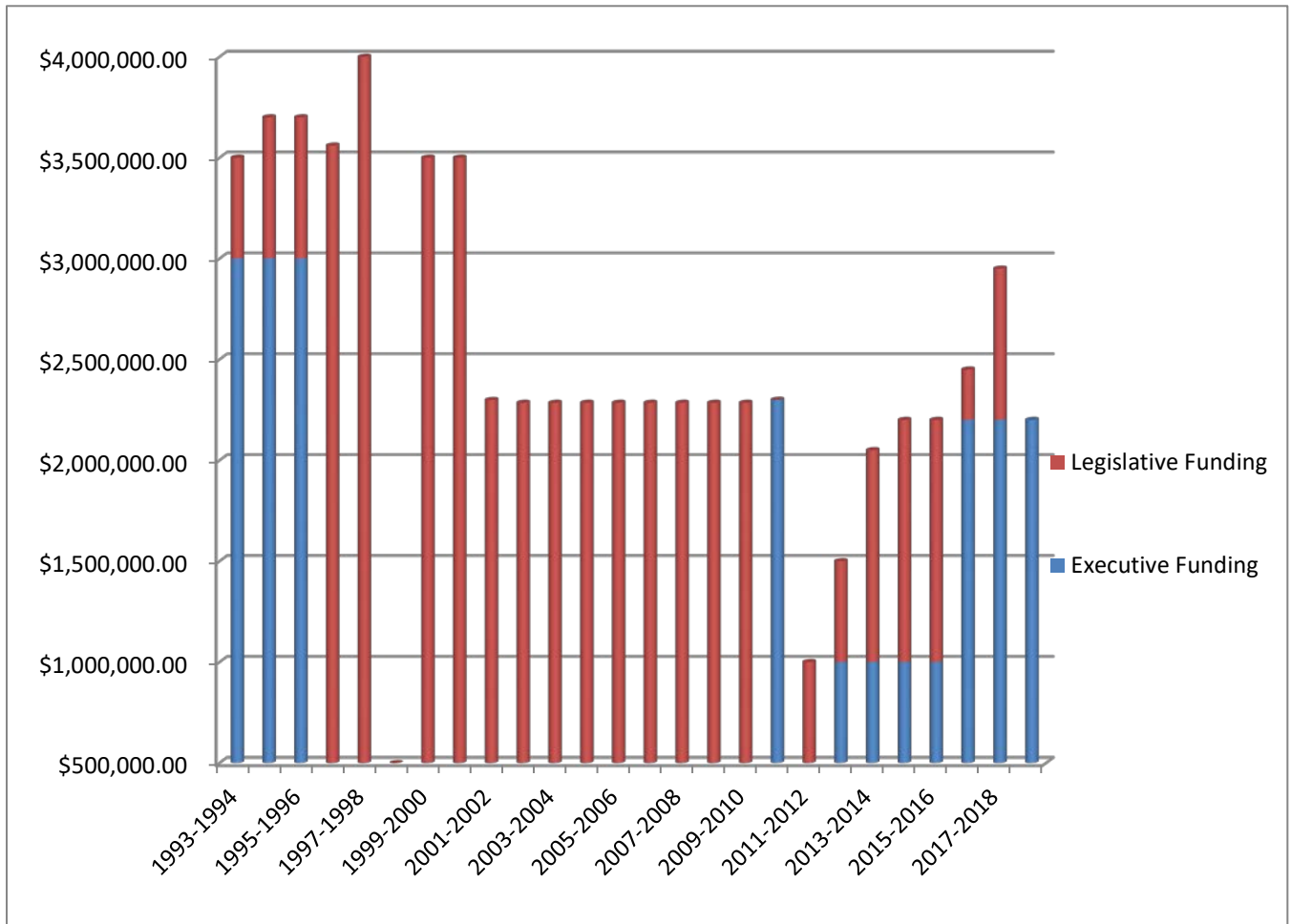
Most important is the immeasurable benefit PLS has provided to New York State in helping to prevent another Attica. The cost of another Attica would be astronomical, not just in dollars, but in lives and in the threat to the future stability of our criminal justice system. It is in the best

interests of New York State, both from an economic and a public safety aspect, to provide adequate funding for PLS so that we can do the job we have been tasked to do by the State.

IX. PLS’ NEED FOR ADEQUATE AND SUSTAINABLE FUNDING

As shown by the chart below, but for FY 1998-1999, when a legislative appropriation of \$4.7 million in funding for PLS was vetoed by then-Governor Pataki, for over two decades, PLS has been sustained through a combination of both Executive and Legislative funding with the Executive providing the majority of the funding throughout the 1980’s and early 1990’s; the Legislature providing the majority of the funding between 1996 and 2015; and the Executive, once again, providing the majority of the funding for 2016-2018.

PRISONERS’ LEGAL SERVICES FUNDING 1993-2016



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

PLS needs the Legislature, as it has for more than two decades, to provide additional revenue to ensure that PLS is funded at a level that is adequate to allow its staff to do the job the State has asked us to do. We are asking the Legislature to add \$1.3 million to PLS' current Executive appropriation of \$2.2 million for total funding in FY 2018-2019 of \$3.5 million, the same amount PLS was funded at over two decades ago.

CONCLUSION

One of the primary roles of PLS is to act as a check on the exercise of power behind New York's prison walls and to help reduce tensions by advocating for the peaceful resolution of grievances on behalf of incarcerated individuals. The level and degree of services that PLS is able to provide are directly proportional to the level of funding PLS receives. As noted earlier, PLS receives over 10,000 requests for assistance annually and with the new Raise the Age legislation we project that number to increase. With a current staff of 18 case handling attorneys, PLS staff attorneys are assigned an average of 555 cases annually. Of course, it is impossible for one attorney to provide adequate representation on so many cases. As such, we are forced to reject many meritorious cases.

There is reason to be concerned when PLS is unable to accept meritorious cases in addition to the fact that correcting injustices is a basic premise of our justice system. When, due to lack of resources, PLS is unable to provide representation on credible allegations of denial of due process, excessive use of force, denial of federally mandated education to youth, and deliberate indifference to medical or mental health needs, these problems go unaddressed and those responsible for violating the rights of others are not held accountable. As a result, prison tensions rise and the likelihood of successful reintegration upon release decreases. The importance of remediating these difficult situations cannot be overstated and PLS' role in this effort over the past 40+ years has been extensive. Adding \$1.3 million to PLS' current funding of \$2.2 million will help PLS to continue its critically important work on behalf of the State of New York

Dated: January 30, 2018

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