

TESTIMONY OF
PRISONERS' LEGAL SERVICES OF NEW YORK
BEFORE THE
JOINT LEGISLATIVE HEARINGS
ON THE
NEW YORK STATE PUBLIC PROTECTION BUDGET FOR 2013
CONDUCTED BY THE
ASSEMBLY WAYS AND MEANS AND SENATE FINANCE
COMMITTEES

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I. INTRODUCTION

We would like to thank the members of this Committee for inviting Prisoners' Legal Services (PLS) to testify before you today. As you know, PLS 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. Thus, PLS' mission is to provide high quality, effective legal representation and assistance to indigent prisoners and to help them secure their civil and human rights. Since 1976 PLS has worked tirelessly to fulfill that mission and to address and remedy the civil legal issues that were found to have caused the Attica riot.

Our testimony today will focus on PLS' funding request, the responsibility of the State to provide civil legal services to prisoners, 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 history of funding for PLS.

II. PRISONERS' LEGAL SERVICES REQUEST FOR ADDITIONAL FUNDING

As you may know, for the second year in a row, Governor Cuomo included PLS in his Executive Budget for \$1 million. Last year in our testimony, we commended the Governor for including PLS in the Executive Budget as it was the first time since 1995 that PLS was funded through the Executive, and we commend the Governor again this year. Governor Cuomo's inclusion of PLS in his Executive Budget is a clear indication of his commitment to civil and human rights and a testament to his sense of justice and fair play. The \$1 million in funding, however, is almost a 50% reduction from last year's operating budget and as a result, we are requesting a legislative add of \$1.5 million which will result in a total operating budget of \$2.5 million for 2013-2014. Funding of \$2.5

million will restore PLS to the funding level that it had when PLS was totally legislatively funded from 2001 to 2010. In addition, funding of \$2.5 million will allow PLS to maintain its current operations and provide the civil legal services that PLS has been tasked by the State to provide. We are asking for this because presently we do not have enough staff to do the work required and because funding PLS saves the State money.

Due to the decrease in our funding over the past several years, we have been forced to lay off one-third of our staff and cut existing salaries by 10%. As a result, we have two attorneys in each of our Plattsburgh and Buffalo offices, two attorneys in our Ithaca office and three in Albany. The Buffalo and Plattsburgh offices are responsible for providing services to over 10,000 prisoners, the Ithaca office 15,000, and the Albany office, over 30,000. 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.

Moreover, because of the work PLS attorneys do on jail time and sentencing issue, millions of dollars that would be spent on incarcerating people who should not be in prison, are saved every year. As a result, 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 additional dollars annually.

An additional \$1.5 million will allow PLS to restore four of the 10 positions that were lost in 2011 due to the cut in funding and retain existing staff. If we do not receive additional funding from the Legislature, PLS will be forced to lay off staff and close offices. In turn, it will be impossible for

PLS to continue to have a statewide presence and our ability to provide critical legal services will be significantly hampered.

III. THE STATE HAS A LEGAL OBLIGATION TO PROVIDE INCARCERATED NEW YORKERS ACCESS TO THE COURTS

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 historically and wisely chosen to fund PLS to help fulfill the State's legal responsibility in this area. In his testimony last year before this joint committee, then New York State Bar Association President Vincent Doyle citing to the Bounds case stated: "PLS helps to provide equal access to our system of justice for those who are incarcerated and would otherwise be deprived of such access. The program reflects one of the State Bar's highest priorities – the concept that the impoverished or unpopular individual should be able to invoke the power of the world's most advanced legal system to protect his or her rights." And past Presidents of the NYSBA have also commented on the duty of the State to fulfill the Bounds obligation by noting that "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."

IV. PRISONERS' LEGAL SERVICES IS THE ONLY STATEWIDE LEGAL SERVICES PROVIDER FOR PRISONERS

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

Although significant improvements have been made within our prison system, civil rights abuses still occur, and PLS is the only statewide legal services organization that prisoners can turn to for direct legal services representation.¹ This is borne out by the hundreds of referrals PLS receives annually from outside agencies, organizations and individuals, and the Executive, Legislative and Judicial branches, including Assembly members, Senators, Judges and lawyers. Donna Lieberman, Executive Director of the New York Civil Liberties Union explained it best when she addressed the reason why NYCLU refers prisoners' cases to PLS. She stated, "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. *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."

¹ 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.

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 also urge 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.

**V. 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.

A. *Protection from prolonged solitary confinement.*

There are over 4500 prisoners being held in solitary confinement across New York. A recent report by the New York Civil Liberties Union entitled, "Boxed In" notes that approximately 60% of those currently held in solitary confinement are serving more than a year in isolation and yet only 16% of those currently in solitary confinement are there for alleged violent conduct. A person can end up in solitary confinement for disciplinary, prison security or even personal safety reasons. There is no limit on the amount of solitary confinement time that can be imposed.

No one in New York prisons is exempt from the punishment of solitary confinement. 14% of those in isolation in New York State are on the mental health case load. Juveniles, the elderly and those suffering from sensorial disabilities are subjected to the same form of isolation. At PLS, we currently have a client who is 17 years old and has been sentenced to solitary confinement for four years due to a confrontation with a corrections officer. We also have a client who has been completely deaf since birth and has been held in isolation for the past 7 years and is currently scheduled to be held there until 2018. As was noted by Human Rights Watch in its 2009 report "Barred from Treatment," those with substance dependency are routinely subjected to extreme isolation.

There are other disturbing facts surrounding solitary confinement in New York such as: the lack of guidance on the type of rule infraction that can result in a sentence of solitary confinement; the bias that can corrupt the disciplinary process; the inconsistency in "box hits" penalties; the

difficulty in getting out of solitary confinement once you get in; and the racial disparity that results in a disproportionate number of black prisoners in SHU resulting in a concurrent rise in racial tension in isolation settings. The NYCLU report found that while blacks represent about 14 percent of the state's population, they account for nearly 50 percent of the prison population and 59 percent of the population in extreme isolation. A similar disturbing statistic exists for Latino prisoners. While Latino's account for 17.6% of the New York State's population, they represent 24.6% of the general prison population and 24.7% of those held in extreme isolation.

Although there is no national recidivism data on people who are released directly from solitary confinement to the community, a recent Washington State study found that people who were released *directly* from segregation had a much higher rate of recidivism than individuals who spent some time in the normal prison setting before returning to the community: 64 percent compared with 41 percent. When juxtaposed against the fact that over 2000 New York prisoners are released directly into our communities from solitary confinement annually, the projected 23% increase in recidivism for this population raises significant public safety issues.

There is overwhelming evidence that long term solitary confinement is neither a useful nor productive tool for prison administrators seeking to deal with problematic inmates. The international community, experts in the field, the courts, the New York County Bar Association, the New York Lawyers Bar Association and most recently the New York State Bar Association have all spoken out against the use of prolonged isolation and yet every day at PLS we review disciplinary hearing where people are placed in solitary confinement for months, and often years, at a time.

Last year PLS received 1200 requests from prisoners to review their 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, but of those

reviewed we found procedural and substantive errors in a substantial number of cases; 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 51 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.

B. *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 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.

In 2012, PLS received 1717 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 of those cases for review, but even with the limited number of cases we were able to accept, **PLS' advocacy resulted in over 54 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.

C. *Protection from cruel and inhuman treatment.*

PLS' work over the past 36 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 2012 PLS received 478 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 for swift and strong advocacy.

Once again, even though PLS receives hundreds of complaints annually, we are only able to fully investigate a limited number 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 and the results of our 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.

D. *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. In 2012, PLS received 649 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.

VI. 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, unfortunately, 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 22% less, 56,000. A concomitant reduction in PLS's funding, forgetting about inflation, would result in funding of \$3,112,000. The \$1 million allocation in this year's upcoming budget is a 75% reduction in funding as compared to PLS's funding in the 1990's. Moreover, the equivalent of \$4 million in funding in the mid-1990's would be over \$6 million today. With a current prison population of 56,000 prisoners, we cannot possibly do the job this State has asked us to do with funding of \$1 million.

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 Corporation entitled "Documenting the Justice Gap in America,"² 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 over ten times that: 1 to 5600.

VII. 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, Albion, 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. The closing of those two downstate offices has left our Albany office, staffed by three

² <http://www.lsc.gov/justicegap.pdf>

attorneys, with the responsibility of providing representation to over 30,000 prisoners spread out over 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.

VIII. 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 lost 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 \$4.79 million in 2012³, \$3.96 million in 2011, \$5.36 million in 2010, and over \$6.99 million in 2009,⁴ these amounts are directly proportional to the amount of State funding PLS received each year. PLS’ work since 2009 has resulted in over 300 years being credited to prisoners’ sentences and, through the reversals of disciplinary hearings, the expungement of 131 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 8,000 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

³ The cost of housing a prisoner was recently revised from \$55,000.00 <http://www.correctionalassociation.org/PPP/downloads/TimesUpForNYPrisonsDec2010.pdf> to \$60,076.00: <http://www.vera.org/files/price-of-prisons-new-york-fact-sheet.pdf>

⁴ Attached as an Appendix is a chart setting forth the amount PLS has saved the State annually since 2008.

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 and, as a result, they are more likely to successfully reenter to society upon their release. Through our work, incarcerated New Yorker's 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.

CONCLUSION

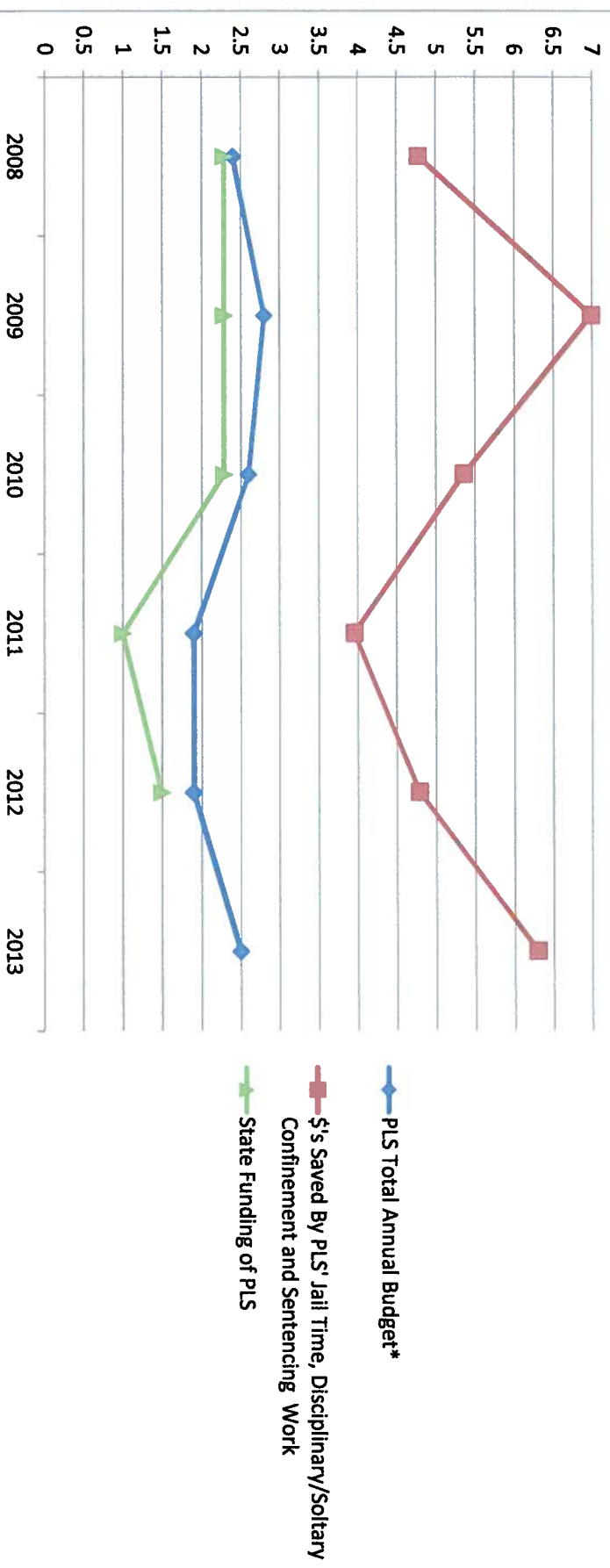
For 36 years, PLS has worked tirelessly to address the fundamental legal problems so often confronted by its clients, the indigent New Yorkers who have ended up confined in our State's prisons. PLS has helped keep the peace in our State prisons and has increased the likelihood that prisoners will be 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: February 6, 2013

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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 credit to which they are entitled. Up until 2011, the annual cost of housing a prisoner was estimated to be \$55,000.00 (<http://www.correctionalassociation.org/PPP/downloads/TimesUpForNYPrisonsDec2010.pdf>) but more recently this cost has been updated and is now estimated to be at least \$60,076.00 (<http://www.vera.org/files/price-of-prisons-new-york-fact-sheet.pdf>). Thus, for every year of jail time, good time or sentence time credited prior to 2012, PLS saved the State at least \$55,000.00 and for time saved from 2012 forward, PLS saved the State at least \$60,000 for each year credited. Inmate 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 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 - \$60,000.00 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, in 2012, PLS saved the State \$4.79 million. The total savings in 2012 to be over \$5.3 million. Thus, if PLS receives the \$2.5 million being requested it is estimated that PLS will save the State approximately \$6.30 million.

*PLS' Total Annual Budget includes State money carry over from prior years but for the 2013-2014 fiscal year PLS will not have any State money carry over.