

PRISONERS' LEGAL SERVICES OF NEW YORK

TESTIMONY BEFORE THE

JOINT LEGISLATIVE HEARINGS

ON THE

NEW YORK STATE PUBLIC PROTECTION BUDGET FOR

2015

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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 many of you know, 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. Created by New York State in 1976, and in response to the 1971 Attica prison uprising, PLS acts as a safety valve to help prevent another prison riot and protects the civil and constitutional rights of incarcerated individuals.

In FY 2014-2015, PLS received total state funding of \$2.2 million; \$1 million in Executive funding and an additional \$1.2 million from the Legislature. We commend both Governor Cuomo and the Legislature for providing this funding as it is a clear indication of the commitment of both the Governor and the Legislature to civil and human rights and a testament to New York State's sense of justice.

This is the fourth year in a row that Governor Cuomo has included PLS in his Executive Budget for \$1 million. While we appreciate this inclusion, the \$1 million in funding is insufficient to adequately fund PLS to provide statewide services to over 54,000 incarcerated individuals. As such, we are requesting a legislative add of \$2.5 million which will result in a total operating budget of \$3.5 million for 2015-2016. Funding of \$3.5 million will allow PLS to: reopen its New York City office; adequately staff its current offices; and cover increased annual operational expenses. The requested funding is necessary for PLS to provide the critical civil legal services that New York State has tasked PLS to provide and to allow PLS to continue partnering with the State on crucial criminal justice issues.

II. AN OVERVIEW OF THE WORK OF PLS

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.

As a state-wide agency, PLS listens and responds to the concerns and grievances of incarcerated New Yorker's 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

As part of our core work, PLS reviews disciplinary hearings and, either through administrative advocacy or litigation, we are often successful in having these disciplinary hearings reversed. As a result, inmates are released from solitary confinement and recommended loss of good time is restored. In addition, we review and advocate for corrections in sentence and jail time computations and such advocacy often results in our clients being credited with significant time toward their sentences. Our advocacy regarding parole and merit time issues also results in our clients being credited with time toward their sentences. PLS also assists incarcerated individuals with obtaining adequate medical and mental health care and investigates claims of guard brutality and harassment.

PLS provides these services to over 54,000 inmates confined in 54 New York State prisons – prisons that are located across the State from Buffalo to Albany and from the Canadian border near Plattsburgh to New York City.

¹In 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.

PLS receives over 10,000 requests for assistance annually and we answer every letter we receive. To do this, we have 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 8,000 New York State prisoners at no cost. *Pro Se* advises prisoners 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 prisoners.

Over the past two years, PLS has also developed the Albion Telephone Program. The project involves a partnership between the Department of Corrections and Community Supervision (DOCCS) and PLS. Since its inception, over 250 women have received legal assistance on numerous issues including evictions from pre-prison housing, identity theft, medical and mental health care and child visitation and custody.

PLS also has a comprehensive Pro Bono Partnership Project which includes partnerships with law firms, community agencies and law schools statewide. We also work with the New York State Bar Association 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 over two dozen prisoners have had legal representation that they otherwise would not have had.

III. THE INCREASE IN REQUESTS FOR SERVICES

In 2014, PLS received 1,492 requests for assistance from prisoners sentenced to solitary confinement (up 256 from 2013); hundreds of whom had been sentenced to years in isolation. PLS does not have the staff to investigate all of these requests but, as part of our safety valve function, we do respond to every request. Of the 1,492 requests we received, we accepted 282 cases for full investigation. Of those cases, 144 are still pending, but the advocacy we have done

thus far has resulted in over 63 years of solitary confinement time being expunged from prisoners' records. This, in turn, resulted in the mandated release of prisoners from solitary confinement and their subsequent participation in rehabilitative and educational programs that have been proven crucial to successful reentry.

Similarly, PLS is constantly correcting jail time, sentencing and good time errors; errors which, if left uncorrected, deny an individual his constitutional right of liberty. In 2014, PLS received 1,635 requests to investigate parole, jail time, sentencing and good time issues. Due to our limited resources, we were only able to accept approximately 20% of those cases for review but, even with the limited number of cases we accepted, PLS' advocacy resulted in over 56 years of jail time, sentencing time and good time being restored to incarcerated individuals 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.

Finally, as some of you may have seen, the New York State Correctional Officers & Police Benevolent Association (NYSCOPA) has embarked upon a "public relations campaign to address an increase of assaults on Correction Officers and other major safety concerns."² Along those lines, NYSCOPA recently took out a billboard advertisement on the southbound side of I-787 as you enter downtown Albany. The advertisement asserts the assault by prisoners on corrections officers has increased by 24 percent since 2010. This assertion alone indicates that tensions within New York State prisons are on the rise.

PLS has witnessed a similar increase in allegations of guard brutality from our clients. The prison population has decreased by 6,000 prisoners since 2009, but the number of

² See: <http://www.nyscopba.org/assault-campaign>

complaints PLS receives every year has remained approximately the same. In 2009, PLS received 653 complaints of guard brutality and harassment. In 2014, we received 650 such complaints. Thus, on a per capita basis, the allegations of guard brutality have increased over the past six years. Again, such statistics demonstrate the rising tensions in our state prisons.

As shown above, injustices are occurring daily behind New York State's prison walls; injustices identical to those which gave rise to the 1971 Attica uprising. Just as I am doing now, the State was given notice of these injustices in 1971, five months before the Attica uprising, when a group of prisoners sent Governor Rockefeller a letter setting forth a number of complaints regarding their conditions of confinement. The letter complained about the overuse of solitary confinement, the miscalculation of sentences, the lack of adequate medical and mental health care and the increased instances of guard brutality and harassment. Governor Rockefeller ignored the letter. I am here today to ask you to choose a different path.

IV. PLS – AN ESSENTIAL AND CRITICAL CRIMINAL JUSTICE PARTNER

By counseling and advising prisoners regarding their rights and the merits of their claims for the past 39 years, PLS has earned the trust and respect of incarcerated New Yorkers, 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 solicitous 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.

For example, over the past several years, PLS has worked closely with DOCCS in the area of re-entry by, not only providing training on reentry issues at various facilities, but also

partnering with DOCCS on a re-entry video for all prisoners preparing for release. PLS, DOCCS, the Attorney General's office and others also worked together to present a continuing legal education course on prisoners' rights to the Appellate Division, Third Department (including judges and staff). This training was subsequently used by DOCCS to train its hearing officers on issues associated with disciplinary hearings.

In addition, due to PLS' trust relationship with incarcerated New Yorkers, the Executive requested PLS' assistance in educating prisoners about the opportunity to apply for Medicaid while in prison. As a result, and in collaboration with DOCCS, PLS engaged in a concerted effort to educate prisoners and encourage them to apply for Medicaid. I can report to you today that PLS' efforts on this front have resulted in hundreds of incarcerated individuals signing up for Medicaid, saving the State millions annually.

PLS also accepts numerous referrals annually from the Executive, Judiciary and Legislative, including members of the Assembly and the Senate, where prisoners have written to them complaining about their conditions of confinement. Most recently, in response to a request by Second Circuit Chief Judge Robert Katzman and Immigration Judges Robert Weisel and Roger Sagerman, PLS began providing representation at immigration hearings to prisoners facing deportation. In addition, over the past three months, the New York Court of Appeals has reached out to PLS on two different occasions asking PLS to provide representation on two cases for which it had granted leave to appeal.

Moreover, 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.

In sum, PLS' partnership role with the Executive, the Judiciary and Legislature has become an invaluable one and with adequate funding PLS will be able to continue that role.

V. PLS – AN ECONOMICALLY SOUND INVESTMENT

For every year of good time restored, jail time credited and sentence computations corrected, PLS saves the State at least \$60,076.00 annually.³ When prisoners 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.⁴ 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.

Last year, PLS was funded at \$2.2 million, but PLS saved the State over \$5 million by obtaining reversals in Tier III disciplinary hearings resulting in the expungement of 63 years of solitary confinement, restoring 34 years of lost good time, and correcting jail time and sentencing errors that resulted in over 22 years being credited to prisoners' sentences. But for PLS, it is unlikely that these savings to the State would have occurred.

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

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

⁴ Although there has been no research comparing the success rates of prisoners released to the community from general population and those released to the community from isolated housing, a 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. David Lovell & Clark Johnson, *Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State: A Pilot Study*, available at: <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>.

memos on various areas of the law and bi-monthly publication of *Pro Se* provide incarcerated individuals with peaceful ways in which to resolve their grievances through our legal system.

There are also 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.

Most importantly 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 interest 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 with doing.

VI. PLS' FUNDING HISTORY

Four years after the 1971 Attica uprising, the McKay Commission Report was issued recommending that prisoners be provided with access to the courts to air their grievances. In response, the New York State Bar Association submitted a grant application to the Law Enforcement Assistance Administration (LEAA) to develop a plan for providing a comprehensive program of legal services to inmates.⁵ The New York State Crime Control

⁵September 13, 1971, has come to be known as the day when “the bloodiest prison confrontation in U.S. history” occurred. This was the day when then-Governor Rockefeller ordered state law enforcement agents to forcibly retake control of the Attica prison. As a result of the uprising, a special state Commission was created to investigate and report on the incident. In “The McKay Commission Report,” the Commission chastised New York State prison authorities for: failing to provide adequate programming and education for prisoners; the lack of any procedures for prisoners to air or resolve their grievances; poor conditions in the prisons and the overall mistreatment of prisoners.

Planning Board approved the Bar Association's grant application and PLS opened its doors in 1976 with annual funding of \$1 million. Since that time, PLS has provided exceptional legal advocacy and representation to thousands of incarcerated individuals.

In the 1980's, the 'prison boom' resulted in the building of over thirty new prisons in New York State and between 1983 and 1993 the prison population more than doubled from 30,000 to over 64,000. During that time, Executive funding for PLS increased steadily from the initial \$1 million in 1976 to approximately \$3 million by 1995. The Legislature, cognizant of the need for increased services due to the exploding prison population, regularly added funding to the baseline Executive funding resulting in total funding in 1995 of \$3.7 million. As a result, by 1995, PLS had grown from four offices to seven and from a staff of 30 to a staff of 52 (37 of whom were attorneys.) With offices located in New York, Poughkeepsie, Albany, Plattsburgh, Ithaca, Watertown and Buffalo, PLS had staff located in close proximity to all 72 New York State prisons.

In 1996, PLS was not included in the Executive Budget. Thankfully the Legislature came through and provided funding for PLS through a Legislative member item. In 1997 legislative funding increased to \$4 million resulting in PLS having a staff of 58 (42 of whom were attorneys.)

In 1998, although PLS was included as a member item for \$4,750,000, the funding was vetoed by Gov. Pataki. As a result, in 1998, PLS was forced to close its doors.

In 1999, thanks again to funding of \$3.5 million provided by the Legislature, PLS was able to reopen its doors. However, because the 1999 funding was \$500,000 less than the 1997 funding, PLS was unable to reopen its New York City office. During this time PLS employed 40 staff (32 of whom were attorneys.)

In 2001, PLS received a 35% cut to its funding resulting in a budget of \$2,285,000, this, in turn, forced PLS to lay off 8 staff attorneys and close another office.

PLS received that same annual funding from 2001-2010.⁶ Consistent but stagnant funding over this 10 year period resulted in PLS being forced to close a third office and continue laying off staff to cover increased operating expenses. As a result, by 2010, PLS had only four offices and only 28 staff (22 of whom were attorneys.)

In 2011, PLS was not included in the Governor's budget. Once again the Legislature came through and provided funding for PLS. However, due to the economic downturn, the \$1 million in funding provided was less than ½ of the prior year's funding. As a result, in 2011, PLS was forced to lay off more than half of its staff, leaving PLS with only eight attorneys.

In 2012, PLS' funding was increased to \$1.5 million; in 2013 it was increased to \$2.050 million; and in 2014 it was increased to \$2.2 million. These steady increases have allowed PLS to begin restoring some staff positions: PLS currently has a staff of 23, including 15 staff attorneys. However we are far from being able to respond to the continued increase in demand for services.

VII. PLS TODAY

Today PLS' 15 attorneys are responsible for representing over 54,000 incarcerated individuals housed in 54 facilities across the state. We respond to over 10,000 requests for assistance annually. When PLS opened its door in 1976, it employed 35 attorneys, 10 legal assistants and numerous support staff to serve a prison population of slightly more than 16,000, establishing a ratio of one lawyer to approximately 450 prisoners. The prison population today is

⁶ In 2010, Legislative member items were abolished but, thankfully, Governor Paterson came to PLS' rescue and provided funding of \$2,285 million in 2010.

over three times what it was in 1976 and yet, PLS' staff is less than half of what it was during that same time period. The lawyer to prisoner ratio today is 1 to 3600.

Accounting for the number of prisons, the number of prisoners and inflation, to restore PLS to the equivalent of its 1976 funding level would require total funding of over \$16 million, 12 regional offices and 120 lawyers. However, we are cognizant of the economic realities of the day and are asking only for an increase sufficient to restore PLS to a funding level of \$3.5 million, an amount that would allow PLS to re-open a downstate office, restore critical staff attorney positions that have been lost over the past decade, so as to achieve an attorney-client ratio more appropriate for a statewide agency that has become an integral part of New York's criminal justice system, and cover rising operational costs.

A. Reopening a New York City office

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 with the responsibility of providing representation to over 20,000 prisoners spread out in 26 prisons spanning a geographical area of over 240 miles. The American Bar Association recommends 1 lawyer to every 400 individuals, but the ratio of attorney to prisoner for the facilities covered by our Albany office is ten times that: 1 to 4000.

A PLS downstate office will place a PLS office in close proximity to over 17 state prisons, seven of which are maximum security prisons. This will allow PLS to significantly increase its presence in the prisons. PLS' presence in the prisons has historically translated into a reduction of guard harassment and brutality.

A PLS downstate office will also place a PLS office in close proximity to one of the two major female facilities in New York State, Bedford Hills, which is of crucial importance because our experience has taught us that female prisoners are much less likely to ask for assistance through writing. Increasing the opportunities for in-person interviews with incarcerated females will allow PLS to address the myriad of unique problems that female prisoners face.

A PLS downstate office will also allow PLS to work more closely on re-entry initiatives with local organizations and agencies. Since a majority of New York State prisoners are released to the downstate area, a downstate office will add continuity to our representation as our clients move from upstate prisons to their downstate communities. PLS is already known and trusted by incarcerated individuals. In addition, we have the legal knowledge necessary to address re-entry issues before individuals are released so that when the time comes for them to reintegrate they will be better positioned to do so. Addressing issues associated with ensuring correct sentence calculations, obtaining appropriate medical and mental health care, ensuring that individuals do not languish in solitary confinement and preventing guard harassment and brutality, all affect an individual's ability to reintegrate upon release.

B. Restoring Critical Staff Attorney Positions

Unlike a typical law office that can control the number of cases that come in to their offices, PLS has a State-imposed responsibility to accept cases where an individual's constitutional rights are being violated.⁷ PLS is the equivalent of a prosecutor's office, but without the accompanying adequate funding. We must conduct investigations as needed, determine which complaints warrant administrative or judicial advocacy and respond

⁷ As noted above, 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).

appropriately to all complaints. Unlike prosecutors' offices' however, PLS does not have sufficient funding to hire investigators or experts to assist in reviewing every complaint we receive.

Last year, State funding of \$2.2 million allowed PLS to operate four offices, but with only two staff attorneys in the Plattsburgh and Buffalo office. The PLS Buffalo office is tasked with providing representation to over 10,000 prisoners being held in 11 various prisons within a 100 mile radius. The PLS Plattsburgh office is tasked with providing representation to over 9,000 prisoners being held in 9 various prisons within a 160 mile radius. A staff of two attorneys in a law office tasked with the responsibility of representing thousands of incarcerated New Yorkers is inadequate, especially in light of the fact that PLS cannot control its workload. As such, it is imperative that each PLS office be able to handle routine and emergency caseload matters; likewise, each office must be able to withstand staff absences or other disruptions. A reasonable minimal office size for a law office that faces the demands of the entire state prison population should be no less than four staff attorneys, a figure that allows for adequate coverage in the event of planned and/or unplanned absences or crises. To bring the Plattsburgh and the Buffalo offices up to minimal staffing levels, PLS needs funds sufficient to hire at least two additional attorneys for each office.

In addition, PLS, as a whole, simply does not have a sufficient number of staff to adequately respond to the over 10,000 requests for assistance we receive every year. As noted above, the PLS lawyer to prisoner ratio today is 1 to 3600, a ratio which is simply untenable given the number and seriousness of the complaints we receive annually.

C. Covering Rising Operational Costs

Investigatory, Pre-Litigation and Litigation Expenses: One of the primary reasons PLS has been so successful in keeping the peace and in improving conditions in our state prisons, is that it acts as a funnel by screening possible cases for merit and not advocating or litigating unless there is a high likelihood of success. To do this, staff must engage in in-depth investigations, research and analysis, and often must seek out expert opinions. For instance, PLS is currently working on the case of a deaf prisoner who has been held in solitary confinement for over eight years and has over eight more years to serve in solitary. To adequately present his case, PLS will have to employ the services of, at the very least, a mental health expert regarding the effects of long term isolation and an expert on deafness and the effects of solitary confinement on a deaf person. Such expenses will amount to thousands of dollars. PLS may be able to resolve this issue before engaging in extensive litigation, thus saving DOCCS and the AG's office, along with the Judiciary, thousands of dollars, but this will only be possible because PLS will spend the funds up front to come up with a workable solution. With over 10,000 requests for assistance annually, PLS needs an increase in funding to cover the necessary expenses associated with investigating these types of cases and preparing them for administrative advocacy and/or litigation.

Infrastructure: Because PLS has been fighting to keep its head above water for the past 14 years, it has not had the financial ability to address infrastructure issues within the organization. As a result, PLS' phone system in two of its four offices is over 20 years old and our case management system is outdated and on the verge of collapse. PLS also needs to replace a number of outdated computers and printers.

Increased Expenses: As you know, every year operating costs go up. Whether it is medical coverage, workers compensation, Westlaw and library expenses, rent, travel or postage, expenses typically rise. Worse yet has been the unanticipated repercussions of the budget cuts that PLS suffered in 2011 and 2012. The budget cuts forced extensive layoffs and, due to unemployment claims filed by those PLS employees who were laid off, there was a 300% increase in unemployment insurance expenses from \$10,000 to over \$30,000. PLS needs additional funds to cover rising operational costs.

CONCLUSION

For 39 years, 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. 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. 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. Adding \$2.5 million to PLS current funding of \$1 million will allow PLS to continue this critically important work.

Dated: February 23, 2015

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