

25

PRISONERS' LEGAL SERVICES
OF
NEW YORK

**TESTIMONY BEFORE THE JOINT LEGISLATIVE HEARING ON THE
NEW YORK STATE PUBLIC PROTECTION BUDGET FOR FY2016-2017
CONDUCTED BY THE ASSEMBLY WAYS AND MEANS
AND SENATE FINANCE COMMITTEES**

Legislative Office Building, Albany, NY

February 4, 2016

Presented by:
Karen L. Murtagh, Esq., PLS Executive Director
John Dunne, PLS Board Member
Thomas J. Curran, PLS Board Member
Prisoners' Legal Services of New York
41 State Street, Suite # M112
Albany, New York 12207
(518) 445-6050
kmurtagh@plsnny.org

I. INTRODUCTION

We would like to thank the members of both the Assembly Ways and Means and the Senate Finance Committees for inviting Prisoners' Legal Services (PLS) to testify before you today. As many of you know, PLS' mission is to provide high quality, effective legal representation and assistance to indigent incarcerated 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 acts as a safety valve to help prevent another prison riot, protects the civil and constitutional rights of incarcerated individuals and prepares incarcerated individuals for successful reintegration into their communities upon release.

In fiscal year 2015-2016, 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 continued commitment of both the Governor and the Legislature to civil and human rights and a testament to the value that New York State places on achieving justice for all of its citizens.

For a fifth year in a row, Governor Cuomo has included PLS in his Executive Budget. For fiscal year 2016-2017, Governor Cuomo appropriated \$2.2 million in funding for PLS, for which we are enormously appreciative. By including PLS in his Executive Budget for this amount, the Governor has acknowledged the increased need to move toward adequate funding for PLS so that we can assist in the provision of independent oversight of our prison system and ensure that our prison system is held accountable. To make that oversight effective and ensure accountability, PLS needs the Legislature to add \$1.3 million to the amount appropriated by the Governor, resulting in a total operating budget of \$3.5 million for FY 2016-2017.

Since 2001, PLS has been grossly underfunded. Due to stagnant or decreased funding, PLS' average annual budget over the past 16 years has been \$2,055,000. By providing \$2.2 million in funding in the Executive Budget, the Governor is taking the first step in helping to begin to restore PLS to a funding level that will allow PLS to provide the critical civil legal services that New York State has tasked PLS to provide and continue partnering with the State on crucial criminal justice issues. It is imperative that the Legislature take this opportunity to ensure adequate funding by adding \$1.3 million to the current appropriation.

II. AN OVERVIEW OF PLS

PLS has regional offices in Albany, Ithaca, Plattsburgh and Buffalo. Each office is in close proximity to New York State's 54 prisons. Currently, PLS employs a total staff of 23, 15 of whom are attorneys. PLS provides critical civil legal services to the over 53,000 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 tension and 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 we answer every letter we receive. In order 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 8,500 New York State prisoners at no cost to them. *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. The effectiveness of our publications is demonstrated by the numerous letters that we receive from prisoners describing their pride in their successful litigation.

PLS also has a Pro Bono Partnership Program that has established partnerships with law firms, community agencies and law schools statewide. We also work with the New York State Bar Association (NYSBA) and various county bar associations to identify possible pro bono counsel. Through this project, over sixty (60) individuals and firms have been recruited to accept cases, and hundreds of prisoners have had legal representation that they otherwise would not have had. Most recently, our pro bono partnership successfully advocated for the release to medical parole of a terminally ill prisoner so that he could experience the benefit of in-home hospice care.

In 2013, in partnership with the Department of Corrections and Community Supervision (DOCCS), PLS created the Albion Telephone Program. Since its inception, more than 400 women have received legal assistance on numerous issues including medical and mental health care and child visitation and custody.

PLS also partners with law schools to provide training and mentoring for students who work via work study, clinics, internships, externships or pro bono.

By counseling and advising prisoners regarding their rights and the merits of their claims for the past 40 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 the Department of Corrections and Community Supervision (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 prisoners on issues surrounding their conditions of confinement, thus preparing them for release and successful readjustment to their communities.

Most prisoners will eventually be released. PLS promotes public health and safety by ensuring that prisoners returning to their communities have been treated humanely and have had access to adequate medical and mental health care and other programs while in prison.

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). New York has, in the past, wisely chosen to fund PLS to help fulfill that legal responsibility.

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

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

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.

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 45 years of jail time and sentence credit for 56 clients, saved 173 clients from over 145 years in solitary confinement and recouped over 71 years of good time for 119 clients.

Excessive Use of Force: PLS also helps to ensure that incarcerated individuals are treated humanely and are not subjected to harassment or brutality such as has been set forth in detail in the media recently. If harassment or brutality occurs, PLS helps to hold the responsible individuals accountable for their actions.

Eliminating Solitary for Juveniles: PLS also works to prevent vulnerable individuals, such as juveniles, from being placed in solitary confinement. This past year, PLS successfully challenged the imposition of four years of solitary confinement on a 17-year old. That challenge resulted in the negotiation of statewide changes to DOCCS regulations with respect to juveniles facing disciplinary hearings including:

- a prohibition on sentencing juveniles to solitary confinement;
- the creation of a transition program to move juveniles out of disciplinary confinement; and
- a mandate that age is a per se mitigating factor at disciplinary hearings.

That challenge also resulted in PLS taking on the responsibility, initially through a court order and then through negotiations with DOCCS, of monitoring the treatment of juveniles in New York State's prisons for the next four years.

Medical Parole: PLS also obtained the release of two clients on medical parole. One client was released seven days before this past Christmas. He died on January 11, 2016.

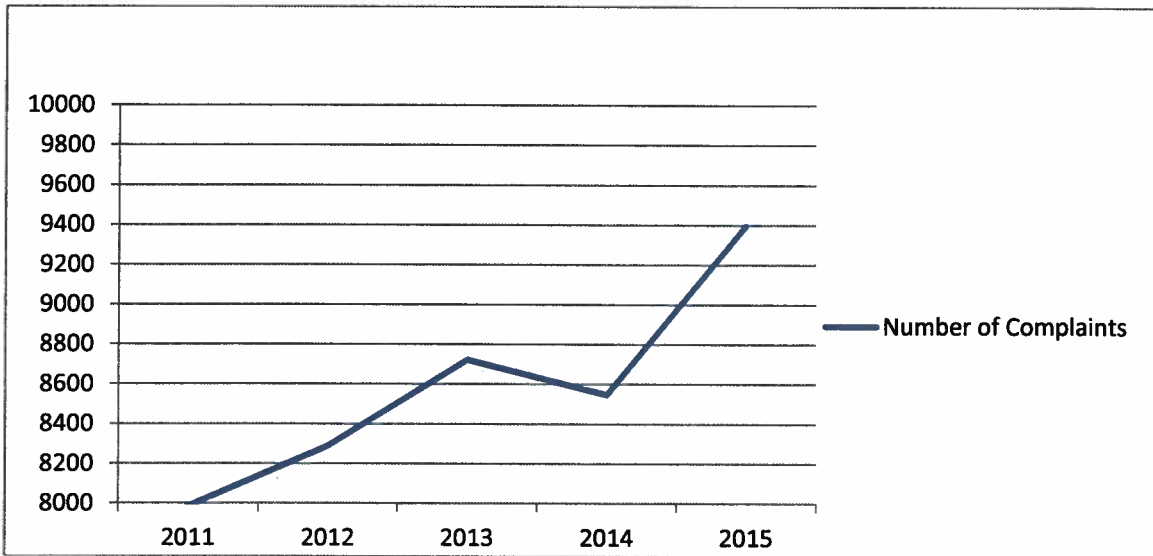
Medical and Mental Health Advocacy: PLS also assisted hundreds of incarcerated individuals in obtaining adequate medical and mental health care, including obtaining Hepatitis C treatment for an individual who was in grave need for such treatment, and successfully advocating for a change in DOCCS' policy regarding Hepatitis C treatment which increases the availability of such treatment for incarcerated individuals.

Reducing Barriers to Reentry: Finally, PLS also helped reduce a major barrier to re-entry for a number of clients by obtaining child support modifications for them while they are in prison.

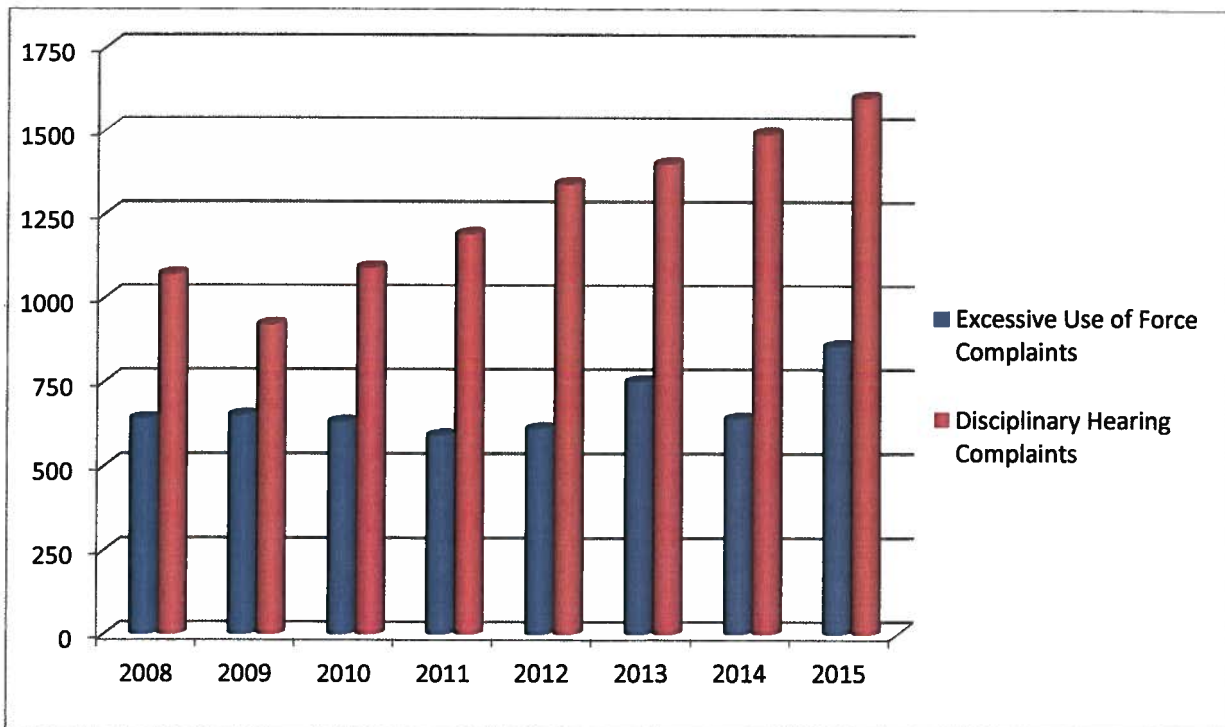
IV. COMPLAINTS ON THE RISE

While the State's prison population has declined since 2008 (from 62,036 to 52,415), requests for assistance received by PLS have not followed suit: Requests for assistance with prison disciplinary hearings are up 50%, and those relating to guard brutality have increased by a third. Yet PLS's yearly budget has either been reduced or remained stagnant, forcing cuts to critical staff positions. An increasing workload and a decreasing budget have together reduced PLS's ability to investigate and respond to prisoner complaints. Without more funding, meritorious complaints will not be recognized, much less reconciled, and legitimate grievances will never be resolved.

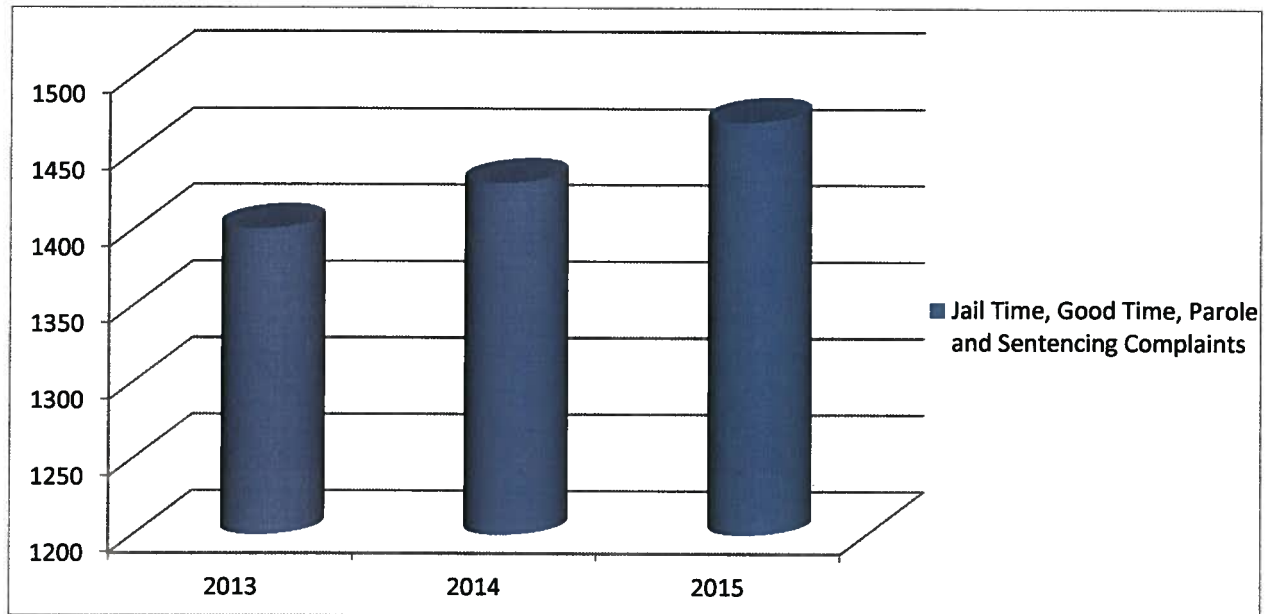
NUMBER OF PRISONER COMPLAINTS 2011-2015



EXCESSIVE USE OF FORCE AND DISCIPLINARY COMPLAINTS 2008-2015



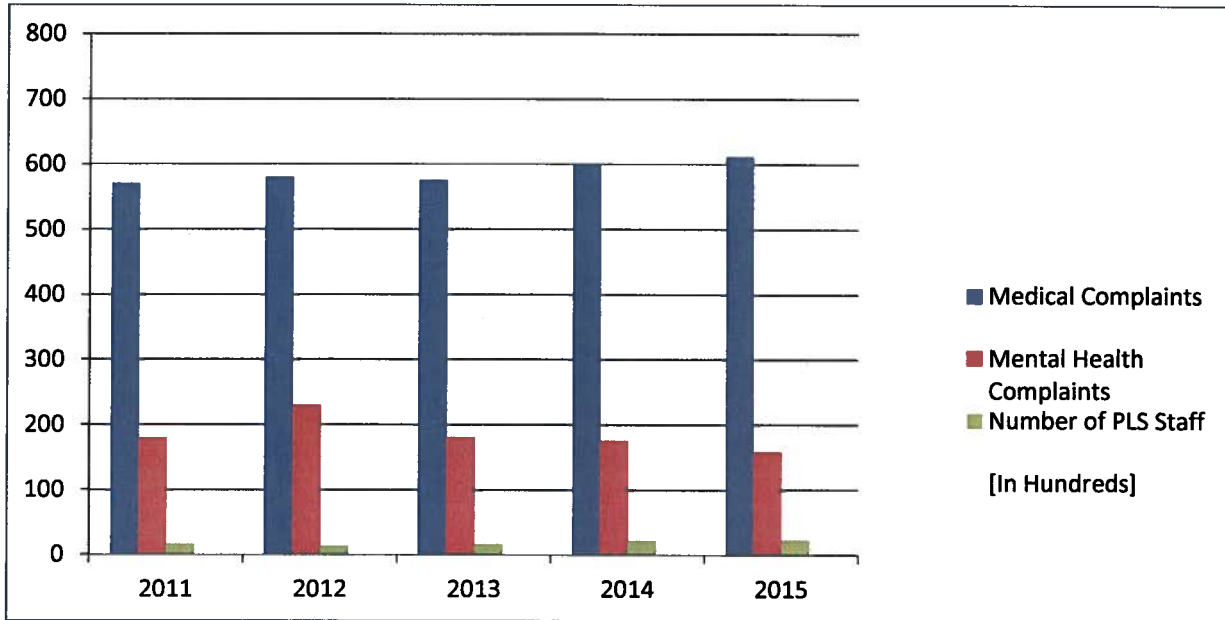
COMPLAINTS CONCERNING JAIL TIME 2013-2015



In approximately 50% of the disciplinary cases PLS reviews, we find significant due process and regulatory errors that warrant the filing of administrative appeals and or court challenges. PLS has a track record of prevailing in over 66% of those challenges. PLS' ability to review those hearings and advocate accordingly results in numerous men and women across New York State being removed from wrongfully imposed solitary confinement and having visitation privileges and good time restored. However, because PLS does not have the resources to accept every meritorious case, there are hundreds of other prisoners who are not as fortunate.

The same is true for complaints regarding jail time, good time and sentencing credit. PLS' advocacy this past year resulted in over 63 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.

RATIO OF PLS STAFF TO MEDICAL AND MENTAL HEALTH COMPLAINTS FROM 2011-2015



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 in the prison system as a whole. Additionally, when prisoners receive the medical and mental health care that they need, upon release, they are better able 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. Unfortunately, because of our limited resources, we are only able to accept a small percentage of the requests for assistance with medical and mental health care that our offices receive. As such, every year, thousands of prisoners with medical and mental health problems receive only self-help materials from PLS.

V. 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 that of the Judiciary, the Executive, the Legislature, the AG's office and DOCCS, we have been able to implement positive criminal justice reforms. For example, we have successfully partnered with DOCCS to create a re-entry video that is now shown to all prisoners preparing for release; with 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); with 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; with the New York Court of Appeals to provide representation on cases for which it had granted leave to appeal; and with Legislators to refer prisoner complaints to PLS for resolution.

The importance of PLS' role as a critical criminal justice partner is no more evident than in its work with both the Executive and the Legislature in the aftermath of the Clinton escape. PLS was contacted by dozens of wives, mothers and girlfriends of individuals incarcerated at Clinton, who were understandably frantic due to the fact that they were unable to find out any information whatsoever about the condition of their loved ones. By working with DOCCS and the Executive to gather and provide accurate and consistent information to family members, PLS was instrumental in calming the fears of family members and reducing tension in the prison.

PLS also received multiple complaints alleging improper denials of property and privileges, harassment, unlawful isolation and brutal interrogation techniques. PLS was in regular communication with DOCCS regarding these complaints and we successfully advocated

for the release from solitary of individuals who had been placed there without any due process, again reducing tensions in prisons statewide.

Finally, in response to a letter from 12 members of the Inmate Liaison Committee (ILC) of Clinton to DOCCS, complaining of conditions at Clinton, I, on behalf of PLS, together with Assemblyman Daniel O'Donnell, Assemblywoman Janet Duprey and staff from Assemblyman O'Donnell's office toured Clinton, met with the Superintendent and security staff, and met with the ILC. Subsequent to this meeting, we met with the Superintendent of Clinton and his security staff and shared the concerns of the ILC. We were assured that all of the complaints would be investigated and that the Administration would continue to listen to and work with the ILC to address any outstanding issues.

Although there is still work to be done, PLS' presence throughout the Clinton aftermath, and our involvement in the role as liaison between incarcerated individuals, their family members, DOCCS, the Executive and the Legislature, was instrumental in providing oversight and accountability, calming tensions and successfully advocating for those incarcerated individuals who had been wrongfully swept up in the initial response to the escape.

VI. PLS – AN ECONOMICALLY SOUND INVESTMENT

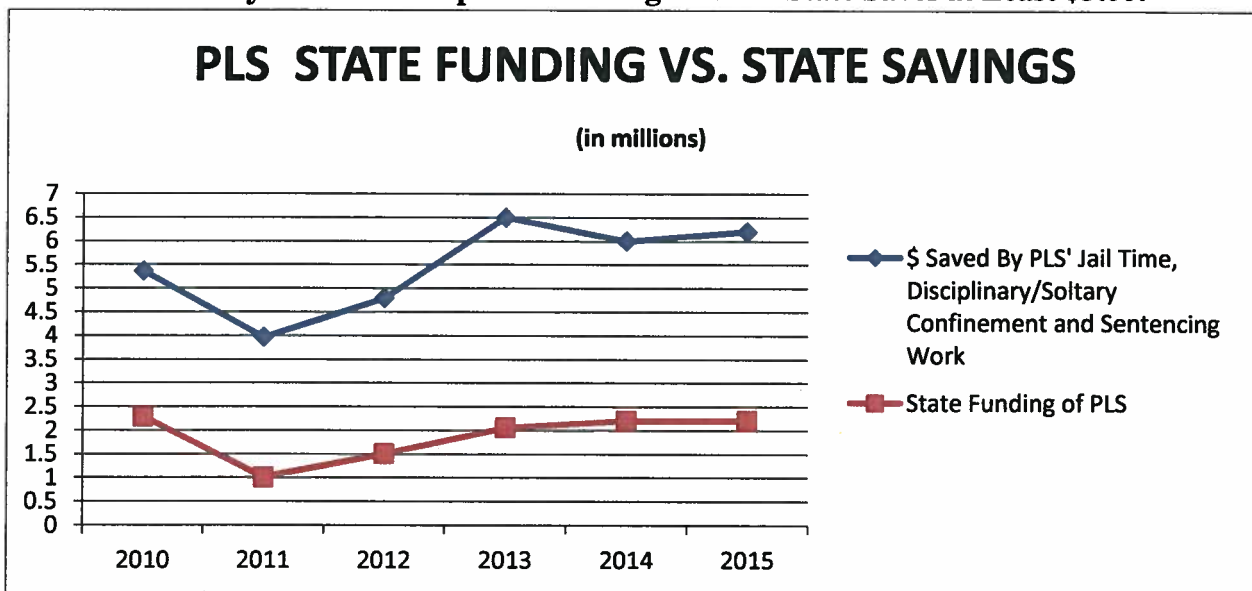
The annual cost of housing a prisoner is estimated to be at least \$60,076.00.² Thus, for every year of jail time, good time or sentence time credited, PLS saves the State at least \$60,000. Individuals released from solitary confinement can participate in educational and rehabilitative programs. Participation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

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

more likely. Thus, although release from solitary confinement may not save the State the entire \$60,000.00 per person, it does significantly reduce the overall cost to the State.

Last year, PLS was funded at \$2.2 million, but PLS saved the State over \$6 million by obtaining reversals in Tier III disciplinary hearings resulting in the expungement of 82 years of solitary confinement, restoring 37 years of lost good time, and correcting jail time and sentencing errors that resulted in over 26 years being credited to prisoners' sentences. But for PLS, it is unlikely that these savings to the State would have occurred. As the chart below shows, the amount PLS saves the State is directly proportional to the amount PLS receives in State funding.

For Every Dollar NYS Spends Funding PLS the State Saves at Least \$3.00.

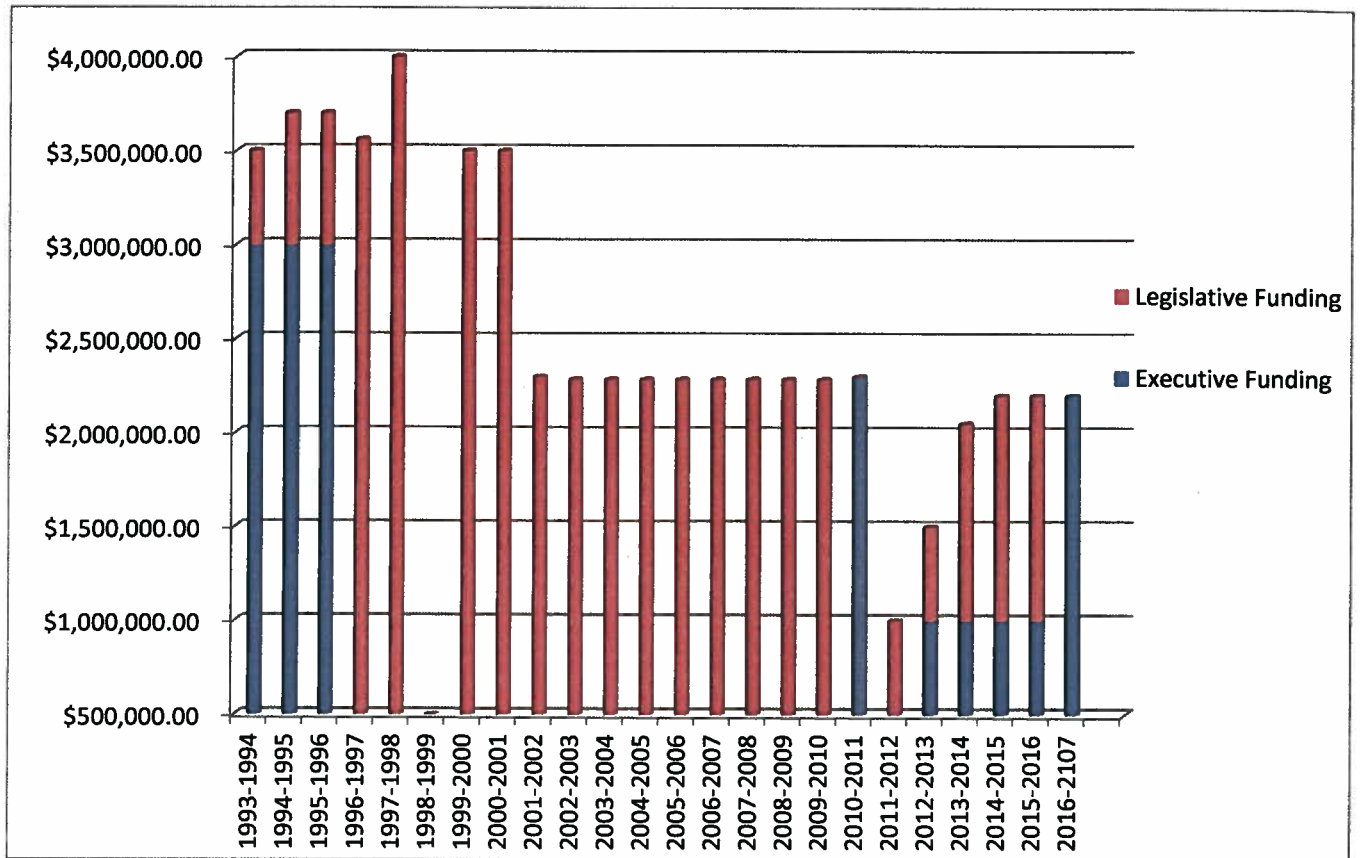


But PLS does so much more. By engaging in extensive educational efforts, PLS prevents hundreds of unnecessary lawsuits annually. PLS' extensive library of educational legal form memos on various areas of the law and bi-monthly publication of *Pro Se* provide incarcerated individuals with peaceful ways 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 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 interest of New York State, both from an economic and a public safety perspective, to provide adequate funding for PLS so that we can do the job we have been tasked to do by the State.

VII. PLS' NEED FOR ADEQUATE AND SUSTAINABLE FUNDING



PRISONERS' LEGAL SERVICES FUNDING 1993-2016

As shown by the above chart, 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, and the Legislature providing the majority of the funding between 1996 and 2015.

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, as shown by the above chart, PLS has reached a crossroads with respect to its

sustainability. Without additional and sustainable funding, PLS will not be able to adequately fulfill its mission of providing high quality, effective legal representation and assistance to indigent prisoners, helping them to secure their civil and human rights and advocating for more humane prisons and a more humane criminal justice system.

Because PLS has been grossly underfunded for years, we need 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 PLS to do the job it has been tasked 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 2016-2017 of \$3.5 million, the same amount PLS was funded at over two decades ago.

VIII. 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 allegations this summer by numerous prisoners about the treatment they were subjected to after the Clinton escape brought this stark reality to light. The same is true with respect to disciplinary hearings which result in the imposition of long-term solitary confinement on prisoners, often in violation of their procedural and substantive rights.

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. With a current staff of 15 attorneys, PLS staff attorneys are assigned an average of 666 cases annually. Of course, it is impossible for one attorney to provide adequate representation on that 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 PLS is unable to provide representation on credible allegations of denial of due process, excessive use of force or deliberate indifference to medical or mental health needs due to resource issues, those who are responsible for violating the rights of others are not held accountable. The importance of holding people accountable 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: February 4, 2016

Karen L. Murtagh, Esq., PLS Executive Director
John Dunne, PLS Board Member
Thomas J. Curran, PLS Board Member
Prisoners' Legal Services of New York
41 State Street, Suite # M112
Albany, New York 12207
(518) 445-6050
kmurtagh@plsny.org