

A Newsletter
Dedicated to
Helping Women
Face the
Challenges of
Prison Life

Essentials of Life

Vol. 3, No. 4

August 2014

A Word from the Executive Director

By Karen Murtagh, Esq., Executive Director



*Karen Murtagh,
Executive Director*

For those of you who don't know about it, I'd like to take a minute to tell you about the PLS Phone Program at Albion, Correctional Facility. For several years I noticed that men contact PLS for assistance at a much higher rate than do women. Although I have no concrete evidence as to why

that is the case, I have always thought that perhaps women are more inclined to talk to someone about their legal problems and/or questions on the telephone than to write. As such, I have advocated for other ways to encourage women to reach out to us including a phone program where incarcerated women could call PLS for assistance. In response, in July 2012, PLS received an anonymous donation of \$10,000 with a request that it be used to set up a hotline for women prisoners.

Upon receiving the donation, I contacted then-Assistant Commissioner Anthony Annucci and requested that he consider working with PLS to set up a pilot project at Albion where women from Albion would be given the opportunity to talk to a PLS attorney or law student about whatever legal issues they might be experiencing. As a result of the support and cooperation of Commissioner Annucci, then-Albion Superintendent Powers and his staff, and the hard work and dedication of the PLS Ithaca staff, we began the Albion phone project on March 13, 2013.

The program has been up and running now for over a year and has been a tremendous success. We speak with, on average, 34 women each month. The types of cases handled thus far have included visitation and custody, disciplinary, jail time credit, sentencing issues, parole, medical and mental health care, and problems with using the grievance system.

I want to thank Acting Commissioner Annucci and Superintendent Powers for facilitating the implementation of the Albion phone program and Acting Superintendent Lowerre and Superintendent Zenzen for their willingness to continue to work with us to assure the program's success. I am hopeful that, in the future, we may be able to implement the same program at other female facilities. If you are currently incarcerated at Albion and would like to talk to a PLS attorney or supervised law student about a legal issue, please see the flyer inside this issue of EOL for information on how to go about setting up a legal call.



Until next time,

Karen

Inside This Issue	
What Happens at a Hearing to Terminate Parental Rights?	2
Legal Eagle	3
Finding Housing When Reentering - Albany County	4
Dear Annabelle	5
Worse than Second Class	6
Albion Hotline Information	7

What Happens at a Hearing to Terminate Parental Rights?

By Jennifer Cunha, Esq., Pro Bono Attorney

The first two articles in this series discussed the rights and responsibilities of incarcerated parents with children who are in foster care or at risk of entering the foster care system. We noted that exercising your parental rights under NY's Adoption and Safe Families Act (ASFA) could help you keep your parental rights. In this issue, we will go over some frequently asked questions about the termination of parental rights (TPR) hearing.

Who will be at the hearing?

Four people *must* be at any court hearing to terminate parental rights: you, your lawyer, an attorney for the State, and a law guardian.

You have the right to an attorney at a TPR hearing. You can hire your own or, if you cannot afford one, the court must appoint one to represent you. In most cases, the court-appointed attorneys will specialize in family law, though some will also specialize in criminal defense. If you are unsure about the pros and cons of a court-appointed attorney in your county, ask the judge to explain them to you.

The attorney for the State is similar to a prosecutor. His/her job is to prove it is more likely than not that you harmed your child(ren) through neglect, abuse, abandonment, or an inability to parent due to mental illness or disability.

Finally, the law guardian is the attorney who represents your child's best interests. This lawyer *does not* represent your child. Rather, s/he is responsible for figuring out what is best for your child's physical, emotional, and mental development and safety. S/he will investigate and interview all interested parties before making a recommendation to the judge.

Note that an attorney may volunteer to represent your child or someone may pay for your child to have an attorney (e.g. potential adoptive parents). If an attorney is hired to represent your child, s/he will be at the hearing. Your child does not, however, have the right to an attorney and the court will not appoint for him/her.

In some circumstances, your child's father may also have a right to be at court hearings and have a right to an attorney at the hearing. If so, the father and his attorney will be there, too. Witnesses for the lawyer may also be there.

What happens at the hearing?

There are actually two types of hearings you may have.

The first is a fact-finding hearing, where the focus is to find out whether your parental right *can* be terminated. The State agency involved or the foster care agency will argue that your rights can be terminated, and it must prove

its case by clear and convincing evidence. At this hearing, you and your lawyer will argue that your rights cannot be terminated. If you are challenging the application to terminate your parental rights, your lawyer will do this by cross-examining the State's witnesses and presenting evidence that what the State says is not true.

The second hearing is a dispositional hearing. The focus of this hearing is whether your rights *will* be terminated. Here, the law guardian will make his/her case for whether TPR is in your child's best interest. Your lawyer will present evidence on why TPR is *not* in your child's best interests. The State can also make a case (e.g, if it disagrees with the law guardian's recommendation). Then, the judge will make a decision on whether to actually terminate your parental rights.

Do I have to go to court? If you want to keep your parental rights, you must do everything you can to have your facility produce you for court hearings, as the judge will hold the hearing without you.

In the next issue, we will discuss the possible judgments at a TPR hearing. For now, know that you can voluntarily terminate your parental rights if you no longer want your child. If you would like more information on voluntary TPR, please contact PLS.

Legal Eagle - Bills Passed in 2014

By Chase Evans, Law Student, Volunteer Contributor

Between January and July 2014, four bills were passed by the legislature and signed into law by Governor Cuomo. The first two became effective on April, 10, 2014, while A10128/S7869 became effective on July 23, 2014, and A8820/S4187 will become effective 90 days from the Governor's signing.

Bill S06346 – Act in relation to probation sentences and revocations

This bill allows probation departments to provide more supervision to those who need it, and will reduce the amount of time given to low risk offenders who may not need to be on probation for a lengthy amount of time. It will also give judges greater discretion to revoke, continue, or modify a probation sentence. The Governor's approval message explains that he signed this bill with the intent that through a chapter amendment, the Legislature will clarify a defendant's due process before his/her probation can be lengthened and whether a probationer receives credit for time under supervision or incarceration when s/he is given an extended sentence.

Bill S4664A – Relates to the Sentences of Probation and Pre-sentence Reports

This bill changes the standard of determining probation sentences, from sentences based upon the type of conviction, to sentences that are based on the offender's history. For example in the past, any individual felony conviction (except for certain drug-related and sexual assault offenses) resulted in five (5) years probation. This was without considering the offender's prior criminal history, his/her culpability level in committing the crime, his/her risk of re-offense, or the risk he/she posed to the community. Now judges will have discretion to consider those factors and others when considering an offender's probation sentence. Depending on the factors and the nature of felony, the period of probation could be as low as 3 years. This will apply to some misdemeanors as well.

Additionally, judges will not be limited in their options when a probationer violates the conditions of

his/her probation. Now judges will be able to use their discretion to impose a longer probationary sentence on the violating probationer in addition to the original probation sentence (and in addition to other options, such as incarceration, a period of probation and incarceration, or release and return to probation.

Finally, this bill adds a subdivision to the Criminal Procedure Law (390.20(5)), that states, a pre-sentence investigation and report (PSI) will not be required. Specifically, in cities with a population of at least one million, no PSI will be required where

- the parties negotiated a term of imprisonment for 365 days or less;
- the negotiation was the result of a conviction or the revocation of probation;
- no sentence of probation will be imposed; and
- the judge consented to the agreement.

A10128/S7869 and A7720/S4187 - Bills in relation to stalking and aggravated harassment

The first bill (A10128/S7869) was passed in response to the Court Appeals' May decision in *People v. Golb*, 2014 NY Slip Op 03426, in which the Court of Appeals held that NY's second degree aggravated assault statute was unconstitutionally vague. The previous definition of second degree aggravated assault prohibited communication with a person "in a manner likely to cause annoyance or alarm." The new law applies when the offender knows or reasonably should know that a communication will cause another to "reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household," where an offender knows, or reasonably knows, of the fear.

The second bill amended the definition of illegal "following" in the fourth-degree stalking statute to include the unauthorized tracking of an individual with a global positioning system or through other electronic means.

Finding Housing In Albany County

By Kelly O'Donovan Law School Graduate, Volunteer Contributor

Whether an individual is starting out with nothing, or has the ability to pay a small amount in monthly rent, Albany County offers many options to aid in finding housing after release from incarceration.

The **Albany Housing Authority** operates 1,800 public housing units for low-income households in Albany. An application and screening process is required for these units.

The **Section 8 Rental Voucher Program** also provides access to affordable housing by allowing those who are eligible to receive rent assistance for privately-owned rental housing units. Section 8 applications should be submitted to the Albany Office for Housing and Urban Development (HUD).

The **Homeless and Travelers Aid Society** acts as an intake, assessment, and referral point for homeless individuals and makes placements for the homeless in Albany area shelters. Some area homeless shelters require referrals from the Homeless and Travelers Aid Society before providing shelter. The Homeless and Travelers Aid Society also provides permanent housing to homeless individuals with disabling health conditions.

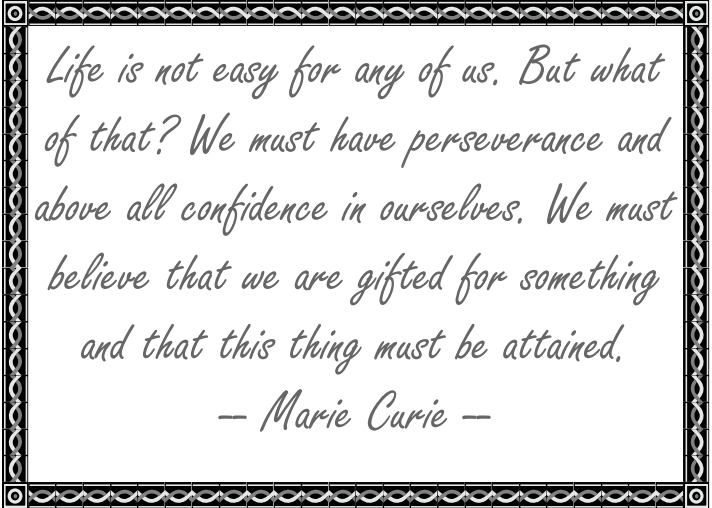
The **Catholic Charities Housing Office** provides emergency shelter for both men and women through permanent single-room occupancy units and apartments for low-income families. Meals and case management services are also provided at the single-room occupancy sites. A referral is required from the Homeless and Travelers Aid Society to stay in a Catholic Charities shelter and an application and screening process must be completed for the single-room occupancy housing and family apartments.

The **Capital City Rescue Mission** provides many services for the homeless and needy of the Capital Region. The Mission provides three meals a day, emergency shelter for men for thirty consecutive nights, a medical clinic on

Tuesdays and Fridays from 10a.m.-3p.m., and clothing. The Mission also provides housing for a year for women who enter their New Faith Program, which provides education and career development, employment readiness, spiritual support, addiction recovery, health care and child care. Men who enter the New Life Program - which provides education, employment readiness, health care, exercise facilities, help with substance abuse, and bible study - may also receive housing for up to nine months.

The **Interfaith Partnership for the Homeless** provides an emergency shelter for single men and women, as well as meals, showers, laundry, case management, and life skills groups. The Partnership runs the Sheridan Hollow Drop-In Center which provides free health care services, daily meals, showers, laundry, case management, life skills groups, mailboxes, lockers, clothing, and access to telephones, computers and fax machines. The Partnership also operates a housing program with three permanent affordable housing sites in Albany and helps with budgeting and housing placement.

Those suffering from mental illnesses may also be able to find housing with **Capital Area Peer Services** which maintains a residence for nine individuals and also aids with medication monitoring, money management, and connecting residents with other needed services.



Life is not easy for any of us. But what of that? We must have perseverance and above all confidence in ourselves. We must believe that we are gifted for something and that this thing must be attained.

— Marie Curie —

The **Homeless Action Committee** provides permanent single-room occupancy housing for those who are homeless and struggle with alcoholism.

Veterans can find affordable rentals and both transitional and permanent single-room occupancy housing with the **Albany Housing Coalition**.

Please note that each program has its own eligibility criteria and should be contacted for more information about how to qualify/apply for assistance.

Albany Housing Authority, 200 South Pearl Street, Albany, NY 12202

Albany Housing and Urban Development Office, 52 Corporate Circle, Albany, NY 12203

Homeless and Travelers Aid Society, 138 Central Avenue, Albany, NY 12206

Catholic Charities Housing Office, 41 North Main Avenue, Albany, NY 12203

Capital City Rescue Mission, 259 South Pearl Street, Albany, NY 12202

Interfaith Partnership for the Homeless Albany Emergency Shelter, 176 Sheridan Avenue, Albany, NY 12210

Interfaith Partnership for the Homeless Sheridan Hollow Drop-In Center, 26 South Swan Street, Albany, NY 12210

Capital Area Peer Services, 354 Central Avenue, Albany, NY 12208

Homeless Action Committee, 393 North Pearl Street, Albany, NY 12207

Albany Housing Coalition, 278 Clinton Ave., Albany, NY 12210

Dear Annabelle . . . A column to answer your questions

This column will feature your questions about legal matters, reentry opportunities/programs and rehabilitation issues.

Dear Annabelle,

I have been having some “female problems”. What are my rights, as an incarcerated woman, to medical care related to female health issues?

Hanging on Every Little Prayer

Dear HELP,

Great question! First, I encourage you to speak to your facility’s medical staff. If you are not satisfied with their assistance, you can file a grievance.

In NYS prisons, women should have a complete physical examination including an HIV

test, a pregnancy test, a sexually transmitted infection test, and gynecological and clinical breast exams within 14 days of entry into DOCCS’ custody.

According to the Women’s Health Primary Care Practice Guidelines, after the initial health appraisal, periodic health appraisals should occur every 5 years for women up to age 49 and annually for those 50 and older. If you have a chronic medical condition, the periodic health appraisal may differ based on that disease or condition. Additionally, women should receive a clinical breast exam whenever clinically necessary and receive education about the benefits of breast self-examination. Finally, all women should receive an annual gynecological exam with Pap test, a digital rectal

examination, and Human Papillomavirus (HPV) testing. HIV testing should be offered at every health appraisal and HIV positive women should be offered a gynecological exam with Pap test every 6 months.

You may request educational materials available on a variety of women’s reproductive health topics including: Amenorrhea (absent menstruation); Breast Cancer; Dysmenorrhea; (painful periods); Menopause; Pap Tests; Premenstrual Syndrome; and Vaginal Infection, at any health care center, reception, sick call, emergency visit, or at routine health care clinic appointments.

**We want to hear from you!!!
Please send your questions about legal matters, reentry opportunities and rehabilitation issues to Annabelle!!**

Worse than Second Class: Solitary Confinement of Women in the United States

By Jennifer Cunha, Esq., Pro Bono Attorney

In April 2014, the American Civil Liberties Union (ACLU) published a report entitled *Worse than Second Class: Solitary Confinement of Women in the United States*, that addressed issues faced by specific groups of women in prison.

Mental Illness

The report notes that persons with mental illness who spend more than 10 days in solitary confinement are more likely to experience depression, anxiety, paranoia and hallucinations, and more likely to self-harm. The report also notes that 75% of incarcerated women live with a mental illness.

In NYS DOCCS' 2013 report, it estimated that as many as 9.9% of women in custody suffered from a serious mental illness.

In NY, it is illegal to require a person who is seriously mentally ill to serve a Tier III penalty in SHU or keeplock. Instead, individuals with serious mental illnesses serve their penalties in Residential Mental Health Units (RMHUs). Individuals in the RMHU have access to mental health treatment and programs and at least four hours a day outside of their cell.

It is important to know that mental health is a mitigating factor in Tier III hearings and the hearing officer must consider the accused's mental health if s/he: is classified as OMH Level 1 or S; was charged with a self-harm offense; committed an offense at CNYPC or was confined at CNYPC within 9 months prior to the incident or; was at, or being moved to or from, an OMH

satellite unit when the incident occurred; was transferred to CNYPC or an OMH satellite unit, delaying the hearing; or if the officer believes mental health is an issue.

Finally, to address the public outcry around the use of solitary, the NYC Department of Correction recently moved all persons with mental illness from punitive segregation to other units where they could access more therapeutic resources.

Survivors of Abuse

The report discussed how solitary confinement can reopen old psychological wounds from past abuse. Survivors who struggle with post-traumatic stress disorder (PTSD) can suffer greatly in SHU due to the lack of activity and human contact.

While anyone can have PTSD, it is a particularly severe problem for women: the Correctional Association estimates that 90% of women incarcerated at Bedford Hills have suffered from abuse and it is widely reported that 1 in 4 women are abused.

The report also noted that correction officers sometimes use SHU to retaliate against women who try to report sexual abuse. This behavior is illegal under the Prison Rape Elimination Act (PREA) and violates your rights under both the 1st and 8th Amendments to the United States Constitution.

Pregnant Women

The report noted that being housed in SHU restricted a pregnant woman's access to prenatal care and other basics necessary to the fetus's development.

In February 2014, DOCCS agreed to create and apply a written policy that established a presumption against using SHU as a disciplinary penalty for pregnant women. A presumption, however, does not mean that SHU cannot be imposed just because one is pregnant.

Visitation with Children

In New York, a hearing officer can only take away your visits for misbehavior related to a visitor or the visitation room, and for certain drug offenses. It is important for you to maintain contact with your children if you want to retain your parental rights. Thus, you should object when a hearing officer imposes a penalty that takes away your visits. If you believe DOCCS has improperly taken away your visits, please contact PLS.

Transgender Women

Finally, the report noted that transgender women in male prisons are often placed in protective custody, which is similar to solitary confinement. The report argued that solitary confinement should not be used to protect vulnerable populations and called for the enforcement of PREA standards, including individualized housing assessments based on one's gender identity, rather than physical anatomy, impose limits on the use of protective custody and include protections against abusive searches.

Please contact PLS for more information about your rights and what, if any, legal options are available to you. Note, however, that due to resources, we cannot accept every case.



*"Justice denied anywhere
diminishes justice everywhere."
-Martin Luther King, Jr.*

Giving prisoners a voice since 1976

PLS of New York



Need to talk to a lawyer? If you are at Albion, you can call one!

PLS has partnered with the Department of Corrections to offer the Albion Hotline, an opportunity for women incarcerated at Albion to contact Prisoners' Legal Services, via phone, for assistance with legal matters.

What is PLS?

- PLS is a non-profit legal services organization that provides civil legal services to inmates in NY State correctional facilities in cases where no other counsel (lawyer) is available
- We help inmates in NY State prisons with issues that arise **during** their incarceration.
- PLS does not assist inmates with criminal appeals or issues related to their criminal cases.

What kind of legal matters can PLS help me with?

- Disciplinary hearings
- Prison conditions
- Housing and protective custody
- Health, mental health, and dental care
- Jail time credit and sentence computation issues

What kind of help will PLS give me?

- In some cases our attorneys investigate a case and communicate with DOCCS to be sure that inmates are getting the services or care that they need.
- In other cases we provide written materials to help inmates advocate for themselves.
- In some cases PLS represents inmates in lawsuits against the state.

How long can I talk about my problem?

- Phone calls are limited to 15 minutes each.

How do I arrange a call?

- Your Corrections Counselor or Offender Rehabilitation Coordinator, Ms. Hardner, will help you arrange a call and will give you all the details about where to go and when we will call.





***Promoting justice,
fair treatment and humane
conditions since 1976.***

We want to hear from you! To submit your story, poem, picture, send to the below address. PLS reserves the right to edit content to fit the publication.

If you enjoyed reading this issue of *Essentials of Life* and would like to receive your own copies, free of charge, write to us and ask that we add you to our mailing list. You can write to us at:

Attention: EOL Staff
Prisoners' Legal Services of New York
41 State Street, Suite M112
Albany, New York 12207

Please notify *EOL* each time you are transferred. DOCCS will not forward *EOL*.

Essentials of Life Staff
Editors: Karen L. Murtagh, Esq., Samantha Howell, Esq., Jennifer Cunha, Esq.
Production and Copy Editing: Patti Kane