

# Prisoners' Legal Services of New York Essentials of Life

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

Vol. 3, No. 5

October 2014

## A Word from the Executive Director



*Karen Murtagh,  
Executive Director*

Every September, a sense of melancholy washes over me. Perhaps it is because I associate autumn with returning to school which, although I always enjoyed, meant the end of summer. Perhaps it is because the days become shorter, the

flowers lose their blooms, shoes replace sandals and sundresses are tucked away in storage. Perhaps it is because September 25, 1922 was my father's birthday, a man I loved dearly, but he is gone now. Perhaps it is because, as I get older, I feel as if I am entering the autumn of my life, a beautiful and colorful time, but a time that is closer to the end than it is to the beginning. Of course, it is all those things and more.

This past week I had the opportunity to attend an awards dinner during which Prisoners' Legal Services was given the Denison Ray Nonprofit Organization Award. I have written at length about the event in the current issue of *Pro Se*, so I won't repeat that story here, but what I didn't share was the conversation I had with John Dunne, a partner with the law firm of Whiteman, Osterman and Hanna, a current PLS Board member, and a past New York State Senator and Assistant United States Attorney General for the Civil Rights Division under President George H.W. Bush. John asked me when it was that I decided I wanted to be a lawyer.

I told him that I knew at a very young age because my father was a lawyer and I wanted to be able to do the things he did, most notably, fight for justice. I told Senator Dunne that, if it wasn't for the support of my family and friends, I would never have made it. I then shared with him this story:

When I was in eighth grade, attending a private catholic school, I was called into the guidance office to meet with the nun who was assigned to be my guidance counselor. She asked me what I wanted to be when I grew up. Without hesitation I told her I wanted to be a lawyer. She paused, looked down at her pad of paper, then looked up again and said, "Now Karen, that's a dream. What is it that you really want to be.

"Had I not had the good fortune of having my father as a role model, the support of my parents and the encouragement of my extended family and friends, I may have listened to this person and I may have believed her. Had she been my sole source of guidance, I might have bought into the idea that, either I wasn't capable or, as a woman, it just wasn't an appropriate career choice.

So this autumn my wish for all young and older women alike is that you have the good fortune of having at least one person in your life, be it a mother, father, brother, sister, aunt, uncle, grandparent, teacher, dear friend or mentor, who believes in you and encourages you to follow your dream. Even more importantly, my wish is that, regardless of what the naysayers in your life may tell you, you have the insight to realize they are wrong, the strength to carry on despite them, and the confidence to know that you can be whoever and accomplish whatever you choose.

And to my father I would like to say: Happy Birthday Dad and . . . thanks! *Karen*

### Inside This Issue

What Happens After the Hearing to Terminate Parental Rights? . . . . .	2
Legal Eagle . . . . .	3
Easier Access to IDs for People Returning to NYC . . . . .	4
Dear Annabelle . . . . .	5
Albion Hotline Information . . . . .	7

# What Happens After the Hearing to Terminate Parental Rights?

By Jennifer Cunha, Esq., Pro Bono Attorney

In previous issues of EOL, we discussed the responsibilities and rights of incarcerated parents and the importance of exercising your rights under NY's Adoption and Safe Families Act. This article will review what can happen after the hearing to terminate your rights.

Once the fact-finding and dispositional hearings are over, one of the following will happen:

**The state does not prove that your parental rights should be terminated.**

If the state cannot meet its burden (i.e. it cannot show that terminating your parental rights is in the child's best interest or that the child has been abused, neglected, abandoned or that you are mentally incapable of caring for your child), by clear and convincing evidence, the judge will dismiss the case, which means you retain your parental rights.

Note that the state cannot initiate another termination proceeding unless it has new evidence of abandonment, abuse, neglect, or mental inability to care for your child.

**The judge issues a "suspended judgment."**

The Court may issue a suspended judgment - for up to one year - when you show the judge that you are taking steps to cooperate with the agency's service plan. The court must also find that your child will benefit from more time with you.

You can also enter into an agreement with the state/agency to seek a suspended judgment from the Court. You should, however, talk to your lawyer before agreeing to such a deal, as the agreement may require you to admit that the Court can terminate your rights *and* that you neglected, abandoned, or abused your child or are mentally incapable of caring for your child.

If the Court issues a suspended judgment, it must tell you what you have to do to avoid termination and what will happen if you do not follow the Court's instructions. Make sure you fully understand the worst-case consequences before agreeing to a suspended judgment.

**You and the state agree to surrender your parental rights.**

This is one of the only ways to voluntarily terminate your parental rights. The benefit of this agreement is that you can negotiate for some control over what happens to your child after your rights are terminated.

There are two types of surrender agreements. The first is a regular surrender agreement, in which you give up your parental rights without any conditions.

The second type of surrender agreement is a conditional surrender, through which you give up your parental rights in exchange for control over certain parts of your child's adoption (e.g., you may specify who you want to adopt your child, or to request an open adoption, which allows continued communication with your child after the adoption).

The judge must agree to the conditions before the agreement can become final. The judge will compare your conditions to the attorney's (Continued from page 2 - TPR Hearings) and/or state's statement on what is in your child's best interest and make sure that you are competent to terminate your rights and that no one is forcing you to do so.

### **The judge will terminate your parental rights.**

This means you no longer have a right to communicate with or receive visits from your child and no longer have the right to information about your child's well-being. Your child's caregiver does not need your permission to make decisions for your child.

**You can appeal** the Family Court's order to terminate your parental rights, but must do so within 30 days of the date the judge issued the order (not when you received it). If you do not appeal within 30 days, the order becomes permanent. If you are unsure about whether to appeal the order, ask your lawyer for more information.

## **Legal Eagle - Understanding the Court System**

By Samantha Howell, Esq., Director of Pro Bono & Outreach

We often receive requests for help in dealing with courts and legal processes. While we are not always able to provide personalized assistance, we will be addressing some frequent issues through this column. This month, we are addressing courts in New York.

**Civil vs. Criminal** - The first thing to understand is whether your issue is a criminal issue or a civil one, since there are different courts for each. Criminal cases are where someone is accused of committing a crime (violating a law). Civil cases do not involve criminal penalties. Rather, they involve situations where one person has failed to carry out a legal duty owed to another.

**Court of Claims** - This is where you can sue New York State for money for actions committed by state employees. The State is the *only* permissible defendant (i.e., you cannot sue individuals in the Court of Claims).

**New York State Supreme Courts** - There is a Supreme Court in every county in New York. These courts have general jurisdiction, meaning that they can handle many types of cases, including §1983 actions, tort claims against defendants who are not state employees, divorce actions, habeas corpus actions and Article 78 proceedings.

**Federal District Courts** - There are four federal district courts in New York - one each for the Eastern, Southern, Northern and Western Districts. These courts can hear lawsuits that allege a violation of federal rights (such as right to practice religion, First Amendment cases, deliberate indifference).

**Family Courts** - Family courts hear cases that involve families, but they *cannot* grant divorces. Cases heard in these courts include adoption, persons in need of supervision (PINS), termination of parental rights, custody, visitation, support and guardianship.

**Surrogates Courts** - Surrogates courts hear cases involving people who have passed away, such as probate (processing of wills) and the administration of estates.

***If you have more questions about the type of case you have, or where you can file it, please write to EOL.***

# Easier Access to IDs for People Returning to NYC

By Mik Kinkead, Staff Attorney

While Prisoners' Legal Services knows that life inside prison is very difficult, we also know that people face tremendous emotional, financial, and practical difficulties going from prison to the free world. Therefore we always keep a look-out for improvements that might make the transition a bit easier. One thing that often creates difficulties for people is the lack of access to proper government ID. Without proper ID it can be hard to vote, sign up for benefits, or even pick up your children from school. This summer New York City's new Mayor, Bill de Blasio, signed into law a bill that provides *all* New York City residents with a photo ID card that will hopefully make this part of the transition a little smoother.

This card is known as the "New York City Identity Card." Although it was signed into law this July, the City will not be issuing them until January 2015 so some information is still not known. At the July press conference, however, Mayor de Blasio stated that the New York City Identity Card will be honored as proper government identification by all city agencies. This means everything from applying for housing and welfare benefits to picking up prescriptions, entering your child's school for a parent-teacher conference or checking out library books will be available to people who might not be able to afford or put together the needed documents to have a New York State ID.

The New York City Identity Card will benefit many people and the City is pushing for *everyone* to get one regardless of whether or not they already have a State ID. Although information about applying has not been solidified yet, at the July press conference it was suggested that the cards will initially be free and that a birth certificate and proof of residency would be sufficient to acquire one. City Council Speaker Melissa Mark-Viverito told reporters that the card will most likely include a photograph, name, date of birth, and address. If you wish, you may choose to include your gender on the card as well, however that is not mandatory.

With this law, New York City joins San Francisco, Los Angeles, and New Haven as cities across the United States are trying to make proper IDs more accessible. The New York City



Identity Card will help many people. Immigrants who are here without documents or are here on a temporary basis, people leaving domestic violence situations who might have left IDs at home, people who have been homeless for such a long period that their IDs are hard to find or track, and transgender people who seek an ID that reflects their lived gender identity, will all find this ID much easier to use.

As we learn about more opportunities to make re-entry from prison a bit smoother, we will share them with you in Essentials of Life. Please feel free to write to the Editors with any questions or suggestions.

*It's your outlook on life that counts. If you take yourself lightly and don't take yourself too seriously, pretty soon you can find the humor in our everyday lives. And sometimes it can be a lifesaver.*

*- Betty White -*

## ***Celebrate National Pro Bono Week with Prisoners' Legal Services on October 22, 2014!!***

Join Prisoners' Legal Services of New York on ***October 22, 2014***,  
when the PLS Pro Bono Partnership Program hosts its  
4th Annual Pro Bono Celebration Event

### ***Within Prison Walls: Reflections on 100 Years of Incarceration in New York State***

Through the stories of those who are presently or formerly incarcerated and the volunteers who provide free legal assistance, attendees will be introduced to the state of incarceration in New York and the struggles faced by this oft-forgotten population.

**Date: October 22, 2014**

**Time: 6 p.m. - 9 p.m.**

**Place: Albany Barn, 56 Second Street, Albany, NY 12210**

*Tickets are \$20 in advance (\$25 at the door), and can be purchased at [plsny.org](http://plsny.org) or by contacting: Samantha Howell, Esq. Director of Pro Bono & Outreach, Prisoners' Legal Services of New York, 41 State St., Ste M112, Albany, NY 12207.*

### ***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 need your help. I have done some terrible things in my life and I feel guilty, but I want to feel better. I don't deny what I did to end up in prison but how can I apologize to those I've hurt? Should I even try?

Sincerely,

A Mom Extremely in Need of Direction Soon

#### **Dear AMENDS,**

I want to start by thanking you for your question and for acknowledging that your actions have hurt others. Such a statement is hard to make and very brave of you!

If you are in recovery, you are probably familiar with Step Nine which asks us to make "direct amends to such people wherever possible, except when to do so would injure them or others."

This is good advice for everyone, and you may want to start by writing a letter to the person, or acting out in your head the different scenarios of what may happen when you talk to him/her.

Sometimes, telling someone how sorry you are for your actions causes more harm than good. Sure, it may make you feel good, but if you cause another person more pain, what was the point?

There are some acts for which we may never receive forgiveness. But, it is also important to do an honest assessment of the action(s) at issue, the effect(s) on the other

person, the likelihood that making direct amends would do more harm than good and the possibility of moving forward - whatever that means - with or without making direct amends.

Above all else, it is important to remember that each person is entitled to his or her own feelings. Even though you seek to make amends, the other person is not required to accept it.

But taking responsibility for our actions, and the harm they may cause, is important not only for recovery, but also for rehabilitation and repairing our relationships.

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

## “What I Want for the Holidays” Contest

We would like to hear from you ...

If you could ask for anything this holiday season, what would it be? What are you most thankful for?

We will be accepting submissions through December 1st. The winning submission will be published in our February issue of *Essentials of Life*. Submissions may be stories, lists, pictures, or any other depiction of what you are thankful for or what you would like to have.



## The Capital Region Prison Letter Writing Group

(CRPLWG) is a grassroots group of community members who create friendship and intellectual and creative engagement with individuals in prison.

Are you looking for a pen pal, but not a romantic relationship? Do you want someone to share your creative ideas or artwork with? Write a letter to the CRPLWG!



Capital Region Prison Letter Writing Group  
Albany Social Justice Center  
33 Central Avenue  
Albany, NY 12210

## Clarification on Last Issue’s Article “What Happens at a Hearing to Terminate Parental Rights?”

Following our last issue of EOL, we received a call indicating that clarification was needed in regard to some of the terms or phrases that we used in our article on the termination of parental rights.

In our description of what happens at a termination of parental right hearing, we indicated that the attorney for the State’s job was to prove that it was more likely than not that you harmed your child. We later stated that the State must prove its case by clear and convincing evidence. To clarify, the legal standard that must be met by the State’s attorney is clear and convincing evidence. To meet the standard and prove something by clear and convincing evidence, a party must prove that it is substantially more likely than not that it is true.

We also stated that the law guardian, the attorney who represents the child, is tasked with representing the child’s best interests. Although “law guardian” is still used in conversation,

the new legal term is “attorney for the child,” and his/her job is to represent the child, which may involve advocating for the child’s wishes *or* his/her best interests. According to the Rules of the Chief Judge, Section 7.2, “[i]f the child is capable of knowing, voluntary and considered judgment,” the attorney should represent the child’s wishes, even if they are not in the child’s best interests. If, however, the child is *not* capable of “knowing, voluntary and considered judgment,” or the child’s wishes are “likely to result in a substantial risk of imminent, serious harm to the child,” the attorney may advise the court of the best interests of the child in addition to the child’s wishes.

We apologize for the confusion and, as always, thank you for reading *Essentials of Life* and contacting us with your questions and comments.



*"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 Correction and Community Supervision 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, or artwork, 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 copy, 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***

This project was supported by a grant administered by the New York State Division of Criminal Justice Services. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Division of Criminal Justice Services.