

**MESSAGE FROM THE STAFF OF PRISONERS' LEGAL SERVICES OF
NY REGARDING THE COVID-19 PUBLIC HEALTH EMERGENCY
(5/11/20)¹**

The staff of Prisoners' Legal Services is extremely concerned about your health and safety and the health and safety of everyone in DOCCS custody during this pandemic. To that end, PLS, other prisoners' rights advocacy organizations and Legislators have been in regular contact with DOCCS, the Board of Parole and Governor Cuomo's office about our concerns, particularly with respect to reducing the prison population by selectively releasing people who are close to their release dates, medically compromised or in custody due to technical parole violations.

In New York, Governor Cuomo, through clemency grants, has the power to release sentenced individuals in DOCCS custody. PLS has therefore urged the Governor's office to follow the lead of the New Jersey and Pennsylvania Governors who issued Executive Orders mandating the release of certain categories of individuals from prison. PLS is also working closely with various Legislators to advocate for the release of vulnerable at-risk individuals. This approach appears to be working. In March and April, DOCCS released 760 technical parole violators and in mid-April, began releasing non-violent felony offenders who are 55 years of age or older and within 90 days of a release date and pregnant women who had not been convicted of violent crimes and were within six months of release. On May 6, the governor's office reported that the state was expanding eligibility for release and would begin releasing individuals with 90 days or less on their sentence and whose underlying crime was not a sex offense or a violent felony, regardless of age.

Due to the danger of widespread Covid-19 infection in prisons, there have been numerous lawsuits in state and federal courts seeking the release of prisoners serving sentences imposed by state court judges. To date, the lawsuits have not led to the release of any state sentenced prisoner. The reasoning used by these courts to deny relief varies, but is rooted generally in various procedural and substantive legal hurdles. Lawsuits seeking more tailored relief, for example the release of pre-trial detainees and people charged with technical parole violations, have been more successful.

Our administrative advocacy efforts, however, do not preclude bringing a lawsuit down the road. As you all know, we are in uncharted, rapidly changing waters and, because of that, we are constantly re-evaluating the situation and closely watching what is happening in courts across the country. Our goal is to take whatever action we believe is the most likely to result in protecting, to the greatest extent possible, the health and safety of the incarcerated population.

We have also demanded that DOCCS take immediate measures to reduce the spread of the virus in the prisons by providing regular access to soap, clean towels, cleaning supplies, and hot water.

¹ The coronavirus public health emergency and the actions being undertaken in response to it are continuously and rapidly changing. PLS can only represent that as of May 11, 2020, the information in this message is current and accurate.

We asked DOCCS to be more transparent in reporting COVID-19 cases within the prison and urged DOCCS to create a COVID-19 dedicated webpage to provide detailed and updated information related to COVID-19. On April 10, DOCCS went live with its COVID-19 webpage. See: <https://doccs.ny.gov/doccs-covid-19-report>.

Posted on DOCCS' COVID-19 website is a listing, updated daily, of COVID-19 positive cases for incarcerated individuals, parolees and DOCCS staff. More recently, in response to pressure from PLS and other prisoners' rights advocates, DOCCS began providing information on the spread of the virus within each prison. The information on incarcerated individuals includes the number of prisoners tested, the number of positive and negative test results, the number of prisoners who have died and the number prisoners who have recovered.

Reducing the Spread of the Virus

On May 6, DOCCS began providing all incarcerated individuals with surgical-type masks to further reduce the risk of secondary transmission of COVID-19. Correction officers, parole officers and civilian staff are required to wear masks while on duty.

According to its website, DOCCS continues to implement enhanced cleaning/sanitizing measures and disinfecting procedures for office surfaces and devices consistent with the Centers for Disease Control and Prevention and New York State Department of Health guidelines.

In addition, DOCCS uses the protocol below for reducing the spread of the virus:

- Incarcerated individuals who have been exposed to an individual who has tested positive for COVID-19 are quarantined for 14 days;
- Incarcerated individuals who show symptoms of COVID-19 are tested.
- Individuals who test positive for COVID-19 are placed in isolation rooms in the facility medical unit or other available areas.
- Individuals who need medical care beyond that which can be provided in a facility are transferred to local hospitals.

To further reduce the spread of COVID-19 DOCCS has taken the following steps:

- Suspended all intake of incarcerated individuals from county facilities.
- Stopped internal transfers of incarcerated individuals, except for medical and other exigent circumstances.
- Released a number of technical parole violators from city, county and state custody.
- Initiated reviews for expedited release of pregnant women serving sentences for non-violent offenses serving who are within six months of their earliest release date and individuals serving sentences for non-violent offenses who are within 90 days of their earliest release date and have a stable and non-shelter residence available.
- Suspended visitation until at least May 15. It is likely the suspension will be continued beyond this date.
- Implemented a policy requiring non-essential staff to remain at home.
- Implemented fever checking and a health/travel questionnaire for staff entering facilities and community supervision offices.

Contact with Loved Ones and Family

On March 14, DOCCS first suspended all personal visits. In place of visits, DOCCS is now providing:

- Five (5) free stamps per week for use in accordance with Directive #4422, Inmate Correspondence Program;
- Two (2) free secure messages per week via electronic tablet, with additional stamps as part of their bundles;
- Three (3) free 30-minute phone call per week in accordance with Directive #4423 Inmate Telephone Calls (the Directive governing phone calls for people in general confinement); and
- Starting Wednesday, April 15, 2020 and every Wednesday thereafter until further notice, every secure message sent by a friend or family member on Wednesday will be accompanied with a free prepaid stamp that will allow the incarcerated individual to reply to the sender.

PLS continues to urge DOCCS to increase access to free stamps, emails, and phone calls during the suspension of visits. Specifically, we have called upon DOCCS to provide unlimited postage, emails and phone calls without charge.

General Population Tablet Program.

On April 27, DOCCS expanded the offerings to the incarcerated population to include

- One free movie rental each Monday available for seven days; and
- One free game each Monday available for download. Once the game is downloaded, it will remain in the incarcerated individual's account until the individual deletes it.

Beginning Friday, May 1, incarcerated individuals will receive a free month's subscription to the vendor's Newsstand application. The Newsstand provides access to local and world news, sports and current events. The tablet must be updated to receive the Newsstand application and to subscribe to the service. Daily updates are available via kiosks.

Changes in State Court Operations

On March 20, 2020, New York Governor Cuomo issued Executive Order 202.8. **The terms of this order were extended on April 7 and 16 and again on May 6.** This Executive Order tolled (stopped the clock running) on **all state court filing deadlines**, including *state* statutes of limitations, **currently through midnight on June 6, 2020.**

Changes in State Statutes of Limitations and Court Filing Deadlines

This suspension includes any state statute of limitation for commencing actions that are set by Criminal Procedure Law, the Family Court Act, the Civil Practice Law and Rules, the Court of Claims Act, the Surrogate's Court Procedure Act, and the Uniform Court Acts, or by any other statute, local law, ordinance, order, rule, or regulation.

Example: On March 20, you received a decision on a Tier III appeal. The four-month statute of limitation on your Article 78 would normally begin running on March 20. Due to the suspension of statutes of limitation, the clock stopped running on that deadline on March 20 and will recommence running on June 6, 2020. Thus, in the example, you will have 4 months from June

6, within which to file an Article 78 petition. In effect, the period during which all these deadlines are tolled does not count toward your deadline.

In addition, if you try to commence a lawsuit in the state courts before June 6, **with limited exceptions**, it will likely be rejected.

On March 22, Lawrence Marks, the Chief Administrative Judge of Unified Court System issued an Administrative Order providing that only “essential” filings will be accepted for filing at this time. See list of Essential Proceedings, below. On April 7, 2020, the Chief Administrative Judge announced that to a limited extent, judges can resume processing already filed non-essential cases. Judge Marks noted that all conferences and appearances will be conducted remotely, that is, using video-conferencing. He anticipated that with respect to non-essential cases, judges will now decide fully submitted motions and conduct conferences to address discovery disputes and other matters that will be helpful in advancing the progress of a case. On May 1, Judge Marks announced that effective May 4, in pending matters, both essential and non-essential, courts will:

- Accept filings of new motions and additional filings in pending motions;
- Accept filings of stipulations of all kinds, notes of issue and notices of appeal;
- Refer matters to alternative dispute resolution on court-established panels, community dispute resolution centers and ADR-dedicated Uniform Court System court staff; and
- Conduct virtual court conferences in problem-solving courts with counsel, court staff, service providers, and, where practicable, clients.

On May 4, 2020, the Unified Court System implemented the Electronic Document Delivery System (EDDS) for delivery and filing of documents in place of paper filing throughout the New York State court system during the COVID-19 public health emergency.

Changes to the State Court Appeals Process

Appellate Divisions, All Departments

All departments of the Appellate Division are accepting motions via electronic filing only.

First Department

On April 17, the First Department, which had adjourned matters scheduled for its April term, announced that it was “transitioning to a virtual court until further notice.” The court has resumed calendaring appeals and motions and processing attorney grievance complaints. All calendared matters will be heard on submission or orally argued via Skype.

The court has scheduled two special terms in May and June. The May term runs between May 4 and May 29, 2020. The June term runs between June 1 and June 26, 2020. All calendared matters will be on submission or argued via Skype. There will be no adjournments.

The court continued the suspension of perfection, filing, and other deadlines for the remaining terms of court. Litigants may consensually perfect appeals and file motions.

The court suspended requirements for submitting paper copies of records, appendices and briefs until further notice. Paper copies are not permitted for the safety of the court’s employees and the public.

Second Department

Criminal Appeals

The deadlines for briefs which were due to be filed between 3/16/20 and 3/31/20 is 7/6/20;
The deadlines for briefs which were due to be filed between 4/1/20 and 4/15/20 is 7/20/20; and
The deadlines for briefs which were due to be filed between 4/16/20 and 5/6/20 is 8/3/20.
Paper copy filings may be made.

All Motions: With the exception of motions in which filing deadlines were set by order or directive of the Clerk of the Court, motions which were returnable between 3/16/20 and 5/5/20 are adjourned as follows:

Motions returnable between 3/16/20 and 3/31/20 are returnable on 5/18/20;
Motions returnable between 4/1/20 and 4/15/20 are returnable on 6/1/20; and
Motions returnable between 4/16/20 and 5/6/20 are returnable on 6/15/20.

Paper copy filings are permitted and will be deemed filed as of the time hard copies of the submissions are received and stamped by the office of the clerk.

Third Department

The order entered March 17, 2020 suspending perfection, filing and other deadlines is modified as follows:

If your answering brief or responding brief was due:	It is now due:
March 16 – March 27	June 19
March 30 – April 10	June 26
April 13 – April 24	July 2
April 27 – May 6	July 10

For any answering or responding brief due on or after May 7 through June 8, the deadline is extended an additional 45 days.

The above schedule shall not apply to any deadline for filing an answering or responding brief as ordered or directed by Court order issued on or after March 17, 2020, in which case the court-ordered deadline shall control.

This portion of the March 17, 2020 order continues until further order of the Court:

As of March 17, 2020, all perfection deadlines set forth by any order of the Third Department, Rules of the Appellate Division, All Departments (22 NYCRR parts 1240 and 1250), Rules of the Appellate Division, Third Department (22 NYCRR parts 806 and 850), or Electronic Filing Rules of the Appellate Division (22 NYCRR part 1245), are suspended indefinitely and until further directive of the Court.

Fourth Department

All matters scheduled for the May term were adjourned, to be re-calendared at a later date. In light of advice from public health officials, until further notice, hard copy filings are no longer permitted.

Effective March 17, 2020, in all matters pending before the Fourth Department, all perfection, filing and other deadlines set forth in an order from the Fourth Department, the Rules of the Appellate Division, the Rules of the Fourth Department, or the Electronic Filing Rules of the Appellate Division were suspended indefinitely until further order of the court. On April 17, the Court lifted the suspension with respect to perfecting appeals, filing and other deadlines, and ordered that the perfection and or filing deadline in any matter affected by the Court's March 17 order:

If your deadline to perfect was/is:

On or before March 20, 2020

March 23 to March 27, 2020

March 30 to April 3, 2020

April 6 to April 10, 2020

April 13 to April 17, 2020

April 20 to May 22, 2020

Your new deadline to perfect is:

May 19, 2020

May 26, 2020

June 2, 2020

June 9, 2020

June 16, 2020

May 26, 2020

Changes to Federal Court Procedures

The federal courts have not announced comparable tolling provisions. You are still responsible for complying with statutes of limitations and deadlines relating to federal court claims and filings.

Essential Proceedings Per Administrative Order AO/78/20 March 22, 2020

A. Criminal matters

1. arraignments
2. bail applications, reviews and writs
3. temporary orders of protection
4. resentencing of retained and incarcerated def'ts
5. essential SORA matters

C. Supreme Court

1. Mental Hygiene Law (MHL) applications and hearings addressing patient retention or release
2. MHL hearings addressing the involuntary administration of medication and other medical care
3. newly filed MHL applications for an assisted outpatient treatment (AOT) plan
4. emergency applications in guardianship matters
5. temporary orders of protection
6. emergency applications related to the COVID-19
7. emergency Election Law applications
8. extreme risk protection orders (ERPO)

B. Family Court

1. child protection intake cases involving removal applications
2. newly filed juvenile delinquency intake cases involving remand placement applications, or modification thereof.
3. emergency family offense petitions/temporary orders of protection.
4. orders to show cause
5. stipulations on submission

D. Civil/Housing matters

1. applications addressing landlord lockouts
2. applications addressing serious code violations
3. applications addressing serious repair orders
4. applications for post-eviction relief

E. All Courts

1. any other matter that the court deems essential