

**MESSAGE FROM THE STAFF OF PRISONERS' LEGAL SERVICES OF  
NY REGARDING THE COVID-19 PUBLIC HEALTH EMERGENCY  
(4/20/20)<sup>1</sup>**

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. 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.

**Due to the danger of widespread Covid-19 infection in institutions which rely on congregate housing, 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 courts have uniformly denied the relief sought.** The analysis 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.

In New York, Governor Cuomo, through clemency grants, has the power to release sentenced individuals in DOCCS custody. PLS has therefore focused its effort on pressuring the Executive and Legislative branches of government to address the situation. Along those lines, PLS has urged the Governor's office to follow the lead of the New Jersey and Pennsylvania Governors who recently issued Executive Orders mandating 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: First, on March 27, Governor Cuomo announced that DOCCS would be releasing 1,100 technical parole violators and on April 14, Governor Cuomo announced that DOCCS would begin reviewing for release incarcerated non-violent felony offenders who are 55 years of age or older and within 90 days of a release date.

These administrative advocacy efforts, however, do not preclude the possibility of 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.

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<sup>1</sup> 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 April 20, 2020, the information in this message is current and accurate.

We asked DOCCS for the protocols that the Department adopted to 1) screen staff for the virus, 2) advise staff with respect to the actions they should take if they become infected, and 3) provide more transparency in its reporting of 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. We learned on Friday, April 10, 2020, that we were successful in these efforts when 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, as well as the health and safety measures DOCCS has taken to-date, many of which were included in the PLS recommendations:

- Providing and permitting correction officers, parole officers, and civilian staff to wear face masks while on duty.
- Supplying incarcerated individuals subject to isolation and quarantine with surgical-type masks to further reduce the risk of secondary transmission of COVID-19.
- Allowing the incarcerated population to use state-issued handkerchiefs as masks.
- Displaying posters with information on COVID-19 and safety tips throughout DOCCS facilities and offices statewide.
- Regularly showing a video to the incarcerated population and staff at the facilities on proper handwashing.
- Issuing 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.

The Department also announced that:

- Incarcerated individuals who have been exposed to an individual who has tested positive for COVID-19 will be quarantined for 14 days and given a surgical-type mask.
- Incarcerated individuals who show symptoms of COVID-19 will be tested.
- Individuals who test positive for COVID-19 will be placed in isolation rooms in the facility medical unit.
- Individuals who need medical care beyond that which can be provided in a facility will be 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.
- Begun the review for expedited release individuals age 55 or older serving sentences for a non-violent offense who are within 90 days of their earliest release date and have a stable and non-shelter residence available.
- Suspended visitation until April 29.
- 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**

As you know, 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, and
- Three (3) free 30-minute phone call per week in accordance with Directive #4423 Inmate Telephone Calls.
- Starting Wednesday, April 15, 2020, for four (4) consecutive Wednesdays, 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, through May 6, 2020.

PLS continues to urge DOCCS to expand further 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.

### **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 again on April 16.** This Executive Order tolled (stopped the clock running) on **all state court filing deadlines**, including *state* statutes of limitations, **currently through midnight on May 15, 2020.**

### **Changes in State Statutes of Limitations and Court Filing Deadlines**

This includes any state statute of limitation for commencing actions, as well as deadlines for filing and service of motions and other state court filings in pending cases, 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 May 16, 2020. Thus, in the example, you will have 4 months from May 16, 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 file anything with the courts before May 16, **with limited exceptions**, it will likely be rejected. This is because 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. If you try to file any papers relating to matters not on the essential filings list, they will be rejected by the court until further notice.

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 anticipates 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.

## **Changes to the State Court Appeals Process**

### Appellate Divisions, All Departments

All departments of the Appellate Division are accepting emergency 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.

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

The court has begun to publish its calendars for April 27 through May 8, 2020. Matters scheduled on these calendars will be marked submitted or orally argued via Skype.

### Third Department

As of March 17, 2020, all matters before the Third Department, all perfection, filing and other 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), were suspended indefinitely and until further directive of the Court.

All motions or applications for an extension of time to perfect or file that were pending as of Tuesday, March 17, 2020, were granted to the extent that the time to perfect or file is suspended indefinitely and until further directive of the court.

All matters calendared for the March term were heard on submission only. All matters currently scheduled for the April term are adjourned and will be re-calendared for a later term.

## Fourth Department

All matters calendared for the March/April term are to be considered on submission. All matters scheduled for the May term are adjourned and will be re-calendared. In light of advice from public health officials, until further notice, hard copy filings will not be 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 (22 NYCRR Parts 1240 and 1250), the Rules of the Fourth Department (22 NYCRR Parts 1000 and 1020) or the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245) are suspended indefinitely until further order of the court. All motions or applications for an extension of time to perfect or file that were pending on March 17, 2020 were granted to the extent that the time to perfect or file is suspended indefinitely until further directive of the court. This order does not apply where a deadline is conferred by statute. Such deadlines have been suspended by the Governor's Executive Order through May 15, at 11:59 p.m.

## **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