# Prisoners' Legal Services of New York **Essentials of Life**

A NEWSLETTER DEDICATED TO HELPING WOMEN FACE THE CHALLENGES OF

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#### Efforts to Reform Solitary Confinement Fall Short: A Word From the Executive Director

By Karen Murtagh, Esq., Executive Director



several bills focused on reducing the pass the bill so it can become law. use of solitary confinement in New evidence-based research that •

successful reintegration, into compliance with international human rights \$5900, in the Senate. standards - standards that recommend that • for more than 15 days.

pregnant women and nursing mothers in prison. introduced by Senator Perkins in the Senate. Speaking in support of the bill, Assemblymember pregnant women. women can receive the critical care, exercise, and Warm Regards, nutrition a healthy pregnancy requires." This bill Karen passed the Assembly and was sent to the Senate for its consideration.

An identical bill (S5729) was introduced in the Senate, sponsored by Senators Lanza and Squadron). There was some optimism that this bill would pass the Senate because of the crosssponsorship of the bill but, unfortunately, the legislative session concluded before the Senate

This past legislative session, took action on the bill. It is likely that the bill will be members of the New York State reintroduced next session and will again pass the Assembly and Senate introduced Assembly with the hope that the Senate will also

Two other solitary reform bills were introduced York's prisons. The bills rely on this past session, but failed to pass both houses:

- A1346, introduced by Assemblyman Daniel demonstrates that solitary confinement does not O'Donnell, Chair of Corrections, would require that make prisons safer. In fact, it has been proven all solitary confinement sanctions be imposed as a repeatedly that solitary confinement actually measure of last resort, and for the minimum period increases violence in prisons and reduces the necessary. It would also ban solitary confinement thus for inmates under 21 years of age, and for the increasing recidivism. Many of the bills that were mentally ill and developmentally disabled. Senator introduced also focused on bringing New York Ruth Hassel-Thompson introduced the same bill,
- A4401, introduced by Speaker Pro Tempore, solitary confinement be used as a last resort and Jeffrion Aubry, would restrict the use of segregated in as limited a fashion as possible, suggesting confinement and create alternative therapeutic and that no one be confined to solitary confinement rehabilitative confinement options; limit the length of time a person may be in segregated confinement Assemblymember Nily Rosic introduced A1347 and exclude certain persons from being placed in which would ban solitary confinement for segregated confinement. The same bill, S2659, was

As stated by Assemblyman O'Donnell: "New Rosic noted: "The findings of the United Nations York's prisons should be places of rehabilitation, not Committee against Torture clearly indicate that holding cells that make inmates even more prone to we need to re-evaluate the disciplinary practices violence and crime than they were before. Reducing used in facilities across New York and consider overreliance on solitary confinement is an important humane alternatives." Assemblymember Rozic step in this direction. Its excessive use is added, "While solitary confinement is difficult on counterproductive, and has been shown to be all inmates, it is an excruciating hardship on particularly damaging to young people, pregnant Extreme conditions and women, and those with mental illness. . . . [T]he restricted access to medical and mental health Committee against Torture has established so care makes time spent in SHU devastating and clearly that only minimal use of solitary confinement detrimental to the life of a woman and her child. I is acceptable, and that no solitary confinement for look forward to passing these reforms so that the young and the mentally disabled is acceptable.."

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### Legal Eagle - Marriage Equality (in a Nutshell)

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

In a landmark decision, Obergefell et al. v. Hodges, Director, Ohio Department of Health, et al., 576 U.S. \_\_\_\_\_ (2015), the United States Supreme Court ruled that all fifty states must recognize same-sex marriages.

This case was brought on behalf of fourteen same-sex couples hailing from Ohio, Kentucky, Tennessee, and Michigan, each of which previously defined marriage as a union between one man and one woman.

#### The Legal Questions Raised

The court was faced with two legal questions: (1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex? (2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their lawfully marriage was licensed and performed outof-state?

The second question is particularly important same-sex couples have been able to get marriage licenses in at least one state since 2004, when May Massachusetts started allowing same-sex couples to get married.

#### **The Majority Opinion**

The Court held that "The Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the when their same sex marriage was lawfully licensed and performed outof-State."

The majority opinion was written by Justice Anthony Kennedy, who has served on the Supreme Court since 1988. Appointed by former President Ronald Reagan, Justice Kennedy is known "swing judge" sometimes siding with the more conservative judges (Scalia, Thomas, Alito and Roberts) and sometimes with liberal judges the more (Breyer, Kagan, Sotomayor and Ginsburg).

In its analysis, the majority looked at the history of "right to marry" cases, which include Loving v. Virginia, 388 U.S. 12 1, (1967)(holding that bans interracial marriage were unconstitutional), Zablocki v. Redhail 434 U.S. 374, 384 (1978) (holding that a law prohibiting men with outstanding child support represents

obligations could not marry was an impermissible burden on the right to marry), and *Turner v. Sagley*, 482 U.S. 78, 95 (1987) (striking down regulations that prohibited incarcerated persons from marrying). In so doing, the Court noted that these cases all held that the Constitution protected the right to marry.

The Court also looked to reasons for past support of the institution of marriage. Specifically, the Court looked "four principles and traditions [that demonstrate why] marriage is fundamental under the Constitution," and, applies same-sex thus, to couples. Obergefell, slip op. at

The first principle considered was the Court's prior cases which supported the position that "the right to personal choice regarding marriage is inherent in the concept of individual autonomy." Id. at 12). The Court compared entering a marriage to choices concerning contraception, family relationships, procreation and childrearing of which are rights protected by the Constitution.

The Court next discussed the importance of marriage as it represents a commitment

between two people, and how this principle was also fulfilled by the petitioners - each of whom had been in a long-term, committed relationship with his/her same-sex partner.

Third, the Court noted that protecting marriage protects children and families, by ensuring stability and dignity.

Finally, the Court stated that marriage is "a keystone of our social order," and involves not only a commitment between two partners but also a commitment between the couple and their community. *Id.* at 16.

They concluded that there is no difference between samesex and opposite-sex couples, in regard to how the four identified principles justify support for the institution of marriage. Indeed, the Court held that they support the protection of same-sex marriage as, without said protection, same-sex couples face family instability.

Ultimately, the Court found that same-sex marriage is a right protected by the Due Process Clause of Fourteenth Amendment, which bars state and local governments from denying any "life, person liberty or property, without due process of law," and prevents the government from "deny[ing] to any person within its jurisdiction the protection of the laws."

The last paragraph of the constitutional authority by decision has received extra telling states what to do. attention due to its The basis for this position compassion and poignancy: is the argument that rights

"No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right."

#### The Dissents

Justices Roberts, Alito, Scalia, and Thomas all wrote dissenting opinions, disagreeing with the opinion of the majority of the Court.

"life, The dissents focused on a put due couple themes, including that revents marriage has, historically, eny[ing] been defined as between one in its man and one woman and that equal the majority overstepped its

telling states what to do. The basis for this position is the argument that rights obligations and not explicitly provided for in the Constitution are left to the states (i.e. since the Constitution does not define what constitutes a marriage, it is up to the states to decide). The dissents also noted that the Due Process Clause protects people from intrusion bу t h e government, but does not receipt entitle o f government benefits.

#### The Aftermath

So, you may be wondering what this means for you? Well, if you are in a same-sex relationship or if you hope to get married to a person of the same sex, it means that you are not only entitled to, but that the states *must* allow it.

It also means that, once married, you and your partner are entitled to the more than 1000 federal and state benefits bestowed on married couples (which include the right to visit a spouse in a hospital, retain legal parental rights of a child when the biological dies, inheritance parent rights, and a myriad of tax benefits).

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#### Legal Eagle - Women's Equality Act

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

In July, Governor Cuomo signed several bills, collectively referred to as the Women's Equality Act, into law. The bills represented nine-points of a previously proposed ten-point plan to secure equality for women in New York State. The new nine laws will\*\*:

- 1. Strengthen existing laws that require equal pay for equal work by closing a loophole in NY's current law that allows employers to justify paying female employees less; outlaw workplace wage secrecy policies; and increase damages available to a prevailing litigant to 300% of unpaid wages.
- 2. End sexual harassment on the job for every employee by extending the prohibition on sexual harassment in the workplace to workplaces with fewer than four employees.
- 3. Allow litigants who win an employment, credit or housing sex discrimination suit to collect attorneys' fees.
- 4. End familial status discrimination by outlawing discrimination against parents in the workplace.
- 5. End discrimination in housing based on domestic violence victim status and source of income by prohibiting building owners/managers/leasing agents from refusing to lease or sell, or evicting a tenant based on their status as a domestic violence victim, and creating a task force to study the impact of discrimination based on source of income in housing, in particular discrimination against tenants receiving Section 8 rental assistance, with focus on any sex-based impact.
- 6. Ensure that domestic violence victims are not punished for "violating" their own orders of protection.
- 7. Create a pilot program for remote access to orders of protection.
- 8. Strengthen laws against human trafficking by creating an affirmative defense to a prostitution charge that the individual was a trafficking victim; increasing penalties across the board for human trafficking; creating new offenses, in increasing degrees, of aggravated patronizing a minor; and creating a civil action for victims of trafficking against their perpetrators.
- 9. End pregnancy discrimination by requiring employers to provide reasonable accommodation to pregnant workers.

The only point that was not signed into law was one that further protected a woman's right to choose an abortion and protected physicians providing abortions from criminal prosecution.

<sup>\*\*</sup> Information on the Women's Equality Act from the NY Women's Equality Coalition website, nywomensequality.org/10-point-plan/

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The Capital Region Prison Letter Writing Group (CRPLWG) is a grassroots group of community members who create friendships 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 c/o Albany Social Justice Center 33 Central Avenue 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:

When I was younger, before I came to prison, I was sexually abused by my father. I am so angry and depressed all the time. I never really got help when I was on the outside but I am ready to get help now. Are there programs in prison that can help me deal with this?

#### Sincerely,

#### Belated Request for Assistance Vanquishing Exploitation

#### Dear BRAVE one:

Firstly, I am very sorry to hear of what you experienced when you were younger. No one should have to go through something like that. One thing I will say is that you are not alone in this experience. According to the Correctional Association of NY, 90% of

women in New York State Prisons have experienced sexual or physical abuse in their lifetime. Although we all would like this percentage to be zero, it is important for you to know that others have had similar experiences with sexual abuse. You have taken a very important step by reaching out for help.

In both Taconic and Albion, there is a program called the Female Trauma Recovery Program (FTRP). This is a six-month residential specialized treatment program that helps women with unresolved trauma, particularly childhood sexual abuse. The program also substance addresses use, parenting, health issues, and building networks and relationships. Once you complete the FTRP. an aftercare plan will be developed to help you as you move forward, I would encourage you to speak with your counselor about the details of this program and to see if you are eligible to participant in it.

Unfortunately, Bedford Hills does not have an FTRP, but they do have a Family Violence Program that helps survivors of domestic violence.

You may also want to consider speaking to someone with the Office of Mental Health (OMH). Oftentimes, past trauma causes depression - which you mention you have - anxiety, and other negative mental health issues. OMH can not only provide a counselor for you to speak with but may also prescribe a mental health medication to help treat any mental health issues from which you suffer.

Again, I am happy that you reached out for help. It is truly courageous. I wish you all the best on getting the treatment that you need.

We want to hear from you! Please send your questions to Annabelle!

# Reentry Corner: Barriers to Obtaining Professional Certifications and Licensure Upon Release

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

New York's laws prohibit employers from denying employment or licensure to a probationer, parolee, or ex-offender because of his or her conviction record, though there are two exceptions to categorical acceptance: (1) if the hiring or licensure would create an unreasonable risk to property or to public or individual safety, and (2) if there is a direct relationship between the offenses for which the person was convicted and the job or license sought.

In 2006, the Legal Action Center\* published a survey of the various professions that had hiring or licensure restrictions based on a criminal record. Jobs may have *mandatory* or *discretionary* bars. Below is a summary of the professions that have *mandatory* bars on distributing licenses/certificates to persons with certain criminal convictions:

- 1. **Alcoholic Beverage Wholesaler/Manufacturer/Retailer** The State Liquor Authority has a mandatory bar for felonies and specific misdemeanors for licenses and employees, and requires the applicant to disclose whether his/her spouse has been convicted of certain crimes.
- 2. **Bail Bondsman** The State Insurance Department has a mandatory bar regarding convictions of any offense involving "moral turpitude" or of any crime.
- 3. **Bus Driver** The Department of Motor Vehicles prohibits people convicted of certain sex offenses and other vehicular offenses from becoming bus drivers.
- 4. **Emergency Medical Technician (EMT)** The State Emergency Medical Services Council bars licensure to persons with a conviction for certain felonies (including murder, manslaughter, theft, drug offenses, robbery, fraud, assault, sexual abuse) and embezzlement.
- 5. **Firearms Carrier** There is a mandatory denial for applicants with felony and other serious offenses. The law also requires an automatic revocation of a firearms carrier license when a person is convicted of a felony or serious offense while licensed.
- 6. **Firefighter** There is a mandatory bar for people with felony convictions to become firefighters.
- 7. **Junk Dealer** There is a mandatory bar for people who have been convicted of larceny or knowingly receiving stolen property.
- 8. **Notary Public** The Department of State prohibits persons with felony and specific misdemeanor convictions (e.g. drug offenses) from becoming notary publics.
- 9. **Pier Superintendent/Hiring Agent/Stevedore** The Waterfront Commission prohibits persons with felony or specific misdemeanor convictions (e.g. drug offenses) from these positions.
- 10. **Police Officer** The Police Department has a permanent mandatory bar for persons with felony convictions.
- 11. **Private Investigator (PI) (and employees)** The Department of State prohibits persons with felony and specific misdemeanor convictions from becoming PIs or employees at PI firms.
- 12. **Public Adjuster** The State Insurance Department bars people with felony and specific misdemeanor convictions involving fraudulent or dishonest practices from this position.
- 13. **Real Estate Broker/Salesperson** The Secretary of State prohibits anyone with a felony conviction from this occupation.
- 14. **Security Guard** The Department of State has a mandatory bar for people with felony convictions or convictions for certain misdemeanors related to the functions of the job.
- 15. **Taxi Drivers** The Department of Motor Vehicles requires (mandatory) revocation of a license for certain vehicular offenses, certain drug-related felonies and misdemeanors, and for assault against a traffic enforcement agent.
- \* New York State Occupational Licensing Survey, Legal Action Center, 2006.



"Justice denied anywhere diminishes justice everywhere."

-Martin Luther King, Jr.

Giving prisoners a voice since 1976



## Need to talk to a lawyer? Sign up and we will call you!

#### What is PLS?

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

#### What kind of legal matters can PLS help me with?

- Disciplinary hearings
- Child visitation
- · 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 offenders are getting the services or care that they need.
- In other cases, we provide written materials to help offenders advocate for themselves.
- In some cases, PLS represents offenders 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?

- Write to the Correction Counselor Aide in the Castle.
- Calls are made on Wednesdays between 1:00 and 3:30 p.m.















We want to hear from you! To submit your story, poem, and/or 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 copy, free of charge, write to us and ask that we add you to our mailing list.

You can write to us at:

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

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