

Prisoners' Legal Services of New York



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PRISONERS' LEGAL SERVICES PRESS RELEASE

**For Immediate Release
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PRISONERS' LEGAL SERVICES REACHES LANDMARK SETTLEMENT FOR JUVENILES

Prisoners' Legal Services of New York (PLS) has reached a landmark settlement with the State of New York in *Cookhorne v. Fischer* that provides much comprehensive relief to 16 and 17 year olds who face solitary confinement following disciplinary hearings in NYS prisons (see attached October 21, 2014 press release from the NYS Department of Corrections and Community Supervision (DOCCS).)

The settlement includes numerous amendments to NYS regulations regarding the discipline of juveniles in the prisons and builds upon the settlement reached last year in *Peoples v. Fischer*. The regulations, among other things, will now mandate that a juvenile's age is a mitigating factor in disciplinary proceedings and require that hearing officers include a written record of how a juvenile's age affected the disposition.

Maria Pagano, the PLS attorney who represented the plaintiff, noted: "16 and 17 year olds are in the adolescent stage of human development. The science is dispositive that frontal lobe development is lacking in adolescent brain structure and, as a result, children this age and up to 25 years of age, react to stressful situations quite differently than adults. With the settlement in this case, the State of New York recognizes that to protect the rights of adolescents in its custody, their unique characteristics and needs must be identified and that, when punished, their young age must be taken into account."

The case stems from a November 22, 2011 sentencing of then 17-year-old Paul Cookhorne to four years in solitary confinement following a disciplinary hearing for allegedly assaulting a correctional officer. He was also deprived of phone calls, packages, commissary and good time credits for four years. Solitary confinement in NYS prisons is 23 hours a day in a cell the size of a small parking space.

PLS filed a legal action in NYS Supreme Court arguing that the hearing disposition was so excessive that it shocked the conscience and was deliberately indifferent to the medical and mental health needs of 16 and 17 year olds who are entering the final stages of childhood development. The lawsuit also sought a declaratory judgment from the court that (1) solitary confinement of 16 and 17 year olds violates the prohibitions contained in both the NYS State and Federal Constitutions against cruel and unusual punishment and (2) DOCCS' regulations allowing solitary confinement to be imposed on 16 and 17 year olds is unconstitutional because the regulations do not require that DOCCS consider a person's age when imposing punishment at disciplinary hearings.

The case was first heard by the State's Appellate Division, Fourth Department, which agreed with PLS and ruled that Mr. Cookhorne's sentence of four years in solitary confinement was so disproportionate to the alleged offense that it was shocking to one's sense of fairness in light of his young age. The Appellate Division then sent the declaratory judgment part of the case to State Supreme Court for adjudication.

The State, in settling the case, also agreed to the following changes to be implemented by DOCCS:

- abolishing the use of solitary confinement for juveniles by limiting their time of confinement to no more than 18 hours a day during the week and 22 hours a day during the weekend;
- including within the six hours per day of out-of-cell time during the week, four hours of programming and two hours of recreation;
- hiring three masters' degree social workers with youth specialties;
- conducting a one-time review of all juveniles and former juveniles in solitary and assessing them for special education needs and programming;
- establishing a Juvenile Separation Unit with positive, adolescent-appropriate programming, including a plan to transition juveniles back to general population and create an incentive-based system which rewards positive behavior;
- providing training materials for hearing officers regarding mitigation of punishment based upon a juvenile's age and mandating training for all DOCCS' staff who work with juveniles; and
- mandating review by supervisory staff of all sanctions resulting in any disciplinary confinement of juveniles in DOCCS custody.

Said PLS Executive Director, Karen Murtagh: "Although we still have a long way to go to fulfill the goal set forth by the NYS Bar Association's House of Delegates to drastically limit the use of solitary confinement in NYS prisons, we are very satisfied with the progress made in Mr. Cookhorne's case. I want to personally thank former DOCCS Commissioner Brian Fischer for his tremendous efforts in getting this ball rolling and Acting DOCCS Commissioner Anthony Annucci for the progressive steps he has taken to bring us to this moment. I look forward to continued, positive collaborations with Commissioner Annucci and the Department."



NYS Department of Corrections and Community Supervision

Anthony J. Annucci, Acting Commissioner

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FOR IMMEDIATE RELEASE: October 21, 2014

Department of Corrections and Community Supervision Resolves Litigation Regarding Segregated Housing for Juveniles

ALBANY - The Department of Corrections and Community Supervision today announced that they have resolved a lawsuit, Cookhorne vs. Fischer, that was filed by Prisoners' Legal Services and will result in updated agency policies that will preclude inmates under the age of 18 from being housed in segregated confinement.

The settlement stipulation, filed October 17, 2014 in New York State Supreme Court, is consistent with efforts that have already been made to address the special circumstances presented by inmates with serious mental illness and those inmates who are intellectually challenged.

Some of the highlights under the agreement include 1) A one time review of all juveniles in SHU; 2) An assessment of every juvenile currently held in SHU and formerly held in SHU up to the age of 21 to determine their need for an individual education plan; 3) The hiring of social workers to work with juveniles in the new housing units; 4) The enactment of a new regulation that will consider age as mandatory mitigating factor in disciplinary cases; 5) Limiting of disciplinary confinement for juveniles; and 6) Training hearing officers in the new procedures and rules.

Acting Commissioner Anthony J. Annucci said, "By signing the agreement, the Department reinforced its continued progressive thinking and commitment to make appropriate changes to the management of young inmates who engage in acts of misbehavior based upon special circumstances while still maintaining the essential need for safety and security."

The agreement took effect October 17, 2014 and will expire in 24 months with DOCCS' intention to continue to adhere to the agreed-to principles.

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