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## SEX OFFENDER MANAGEMENT BUREAU

A Report On The Sex Offender Management Treatment Act

**April 1, 2022 to March 31, 2023**

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# INTRODUCTION

In passing the Sex Offender Management and Treatment Act of 2007 (SOMTA), the New York State Legislature recognized that sex offenders pose a danger to society. [1] Finding that some sex offenders have mental abnormalities that predispose them to engage in repeated sex offenses, the Legislature amended New York's Mental Hygiene Law, creating Article 10, as opposed to amending the criminal laws.[2] The Legislature endeavored to create a comprehensive system which protects society, supervises offenders, manages their behavior to ensure they have access to proper treatment, and reduces recidivism.[3]

The legislature found that the most dangerous sex offenders need to be confined by civil process to provide long-term specialized treatment and to protect the public from their recidivistic conduct.[4] It also found that for other sex offenders, effective and appropriate treatment can be provided on an outpatient basis under a regimen of strict and intensive outpatient supervision.[5]

In response to the enactment of SOMTA, the NYS Office of the Attorney General (OAG) created the Sex Offender Management Bureau (SOMB). This Bureau represents the State of New York in all MHL Article 10 litigation. SOMB develops statewide protocols in conjunction with the NYS Office of Mental Health (OMH), the NYS Department of Corrections and Community Supervision (DOCCS), the NYS Office for People with Developmental Disabilities (OPWDD), and the NYS Division of Criminal Justice Services (DCJS) to further the goals of Article 10 and ensure public safety.

[1] See Mental Hygiene Law (MHL) §10.01 (a) – Chapter 27 of the Consolidated Laws: Title B - Mental Health Act, Article 10 - Sex Offenders Requiring Civil Commitment or Supervision; and see also the Sex Offender Management and Treatment Act (SOMTA), ch. 7, 2007 N.Y. Laws 108, effective April 13, 2007.
[2] See MHL §10.01 (a-b).
[3] See MHL §10.01 (d).
[4] See MHL §10.01 (b).
[5] See MHL §10.01 (c).

This report provides an overview of the application of SOMTA since its inception. Part one, "The Civil Management Process," explains how convicted sex offenders are screened, evaluated, and referred for civil management, as well as how the subsequent legal process works. Part two, "Civil Management After 16 Years," provides updated statistics and case data that are current as of March 31, 2023. Part three, "Significant Legal Developments," highlights the most significant decisions rendered in Article 10 cases over the last year. Part four, "Profiles of Sex Offenders Under Civil Management," provides case synopses of sex offenders who entered the civil management system over the past year. Finally, the report concludes with part five, "SOMTA's Impact on Public Safety." An appendix containing resources for victims is also provided.

# I. THE CIVIL MANAGEMENT PROCESS

## A. OVERVIEW

At the outset, it is important to understand three key elements of New York's civil management of sex offenders. First, civil management does not apply to every convicted sex offender. Instead, the statute applies only to a specific group of sex offenders who:

- have been convicted of a sex offense or designated felony; and
- are nearing anticipated release from parole or confinement by the agency responsible for the offender's care, custody, control, or supervision at the time of review; and
- have been determined to suffer from a mental abnormality.[6]

Second, New York's civil management system is unique in the United States. While at least twenty states and the Federal government have similar civil confinement laws for dangerous sex offenders, New York is unique in that it provides an alternative to civil confinement and allows

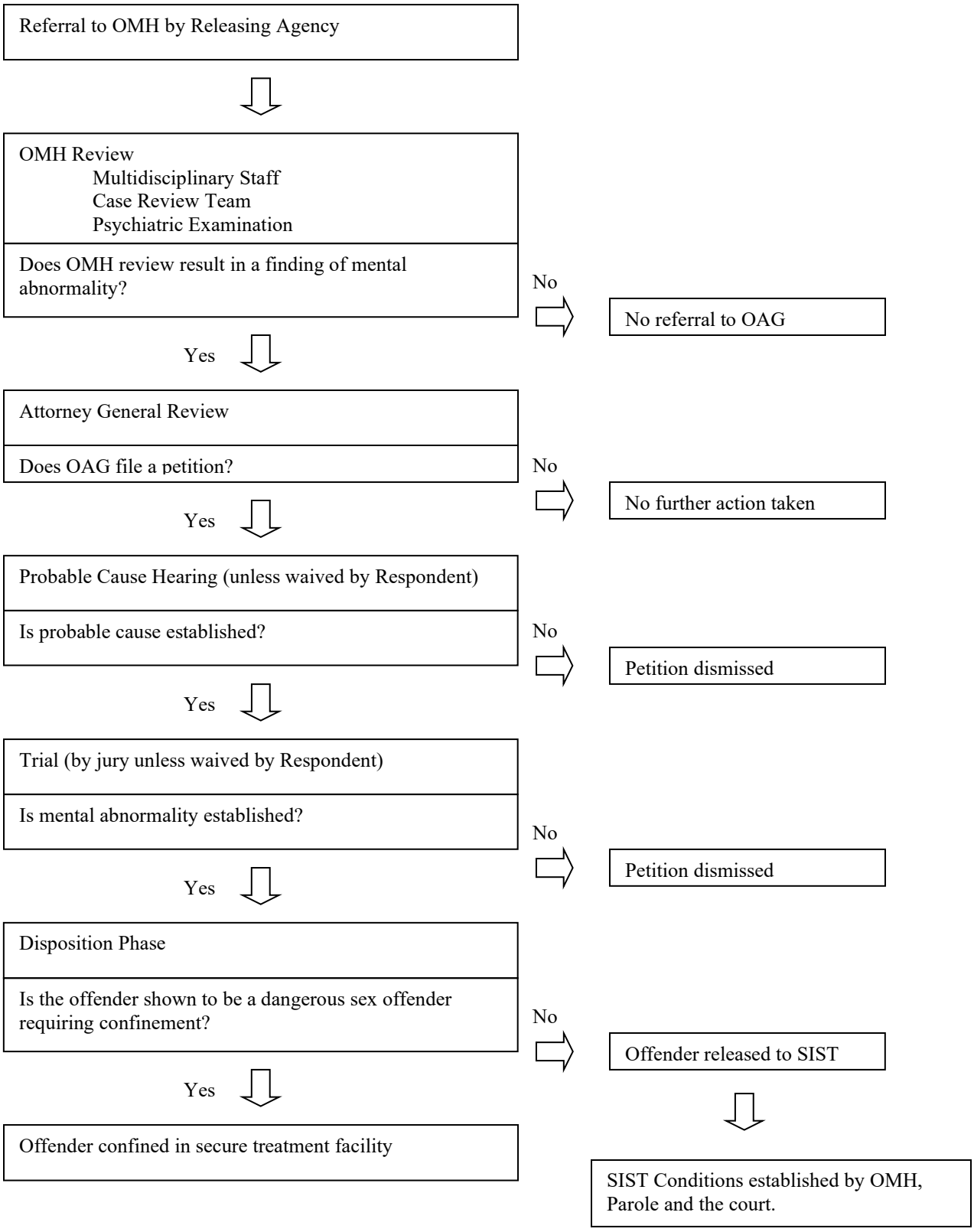
[6] MHL §§10.05, 10.03(a),(q),(g) and (i).

some offenders to be managed in the community under strict and intensive supervision and treatment (SIST). After a legal finding that an offender suffers from a "mental abnormality," MHL Article 10 contemplates two distinct dispositional outcomes: civil confinement or SIST. The modality of treatment an offender receives depends upon whether he or she has such a strong predisposition to commit sex offenses, and such an inability to control their behavior, that he or she is likely to be a danger to others and commit sex offenses if not confined to a secure treatment facility.[7] [8] The final disposition is made by the court after a hearing on dangerousness requiring confinement. If the court does not find dangerousness requiring confinement, it is required to find the offender appropriate for SIST in the community.[9]

Third, civil management is part of a comprehensive system designed to protect the public, reduce recidivism, and ensure offenders have access to proper treatment. The legislature expressly identified the need to protect the public from a sex offender's recidivistic conduct. Prior to SOMTA, a detained sex offender who suffered from what is now defined as a mental abnormality would often be paroled from prison into the community under standard supervision conditions or released with no supervision at all, and in either case, the offender would not receive treatment specific to his sex offending conduct. Under SOMTA, an offender may still be released into the community under the supervision of parole, but will be subject to enhanced conditions of supervision and treatment that specifically address the sexual offending behavior. Whether an offender is subject to treatment in a secure facility or in the community, the treatment and supervision will continue until such time that a court determines the offender is no longer a "sex offender requiring civil management."

[7] Also known as a dangerous sex offender requiring confinement and referred to hereafter as DSORC.
[8] MHL §10.07(f).
[9] *Id*.

# THE MHL ARTICLE 10 CIVIL MANAGEMENT PROCESS



## B. THE EVALUATION PROCESS

When an individual who may be a "detained sex offender" is nearing anticipated release from custody of an agency with jurisdiction,[10] the agency gives notice of the offender's anticipated release to both OMH and the OAG.[11] The most common referrals are made when a convicted sex offender nears a release date from prison or parole supervision.

Once OMH receives notice of an offender's anticipated release date, the case is screened by the OMH multidisciplinary team (MDT).[12] After review of preliminary records and assessments, the MDT either refers the matter to a case review team (CRT) for further evaluation or determines that the individual does not meet the criteria for further evaluation and the case is closed. If a case is referred to the CRT, notice of that referral is given to the OAG and the offender. The CRT reviews records and arranges for a psychiatric examination of the offender.[13] If the CRT and psychiatric examiner determine the offender is appropriate for civil management, the case is referred to the OAG. to determine whether to commence legal proceedings. If the CRT and psychiatric examiner find the offender does not require civil management, the case is not referred and is closed.

When an individual who may be a "detained sex offender" nears anticipated release, the statute requires the agency with jurisdiction to provide OMH and the OAG 120 days-notice of the upcoming release. Within 45 days of its receipt of such notice, OMH is required to provide the offender and the OAG with written notice of its determination whether the case will be referred

[10] The agency with jurisdiction can include the Department of Corrections and Community Supervision (DOCCS), the Office of Mental Health (OMH), and the Office for People with Developmental Disabilities (OPWDD). See MHL §10.03(a).
[11] MHL §10.05(b).
[12] MHL §10.05(d)
[13] MHL §10.05(e).

for civil management.[14]

In practice, the actual time in which the OAG receives OMH's determination is much less. In 2007, the actual average time between the OAG's receipt of such notification and the offender's release date was 4 days; in 2008 it was 16 days; in 2009 it was 34 days; in 2010 it was 15 days; in 2011 it was 12 days; in 2012 it was 11 days; in 2013 it was 8 days; in 2014 it was 12 days; in 2015 it was 16 days; in 2016 it was 16 days; in 2017 it was 9 days; in 2018 it was 12 days; in 2019 it was 22.5 days; in 2020 it was 14 days; in 2021 it was 11 days, and in 2022 it was 18 days, and in 2023 it was30 days.

These notification time frames are advisory, not mandatory, but together recognize that OMH should give the OAG approximately 75 days-notice of its determination of referral for civil management. The number of cases referred by OMH had declined dramatically since the inception of SOMTA in 2007, and though it slightly increased in, or about, the 2013 time-period, it has now leveled off.

In the 2007-2008 fiscal year, OMH referred 134 cases to the OAG for filing a civil management proceeding. In 2008-2009 OMH referred 119 cases, in 2009-2010, there were 65 cases referred; in 2010-2011 65 cases; in 2011-2012, 34 cases; in 2012-2013, 99 cases; 2013-2014, 84 cases; in 2014 - 2015, 56 cases; in 2015-2016, 51 cases; in 2016-2017, 49 cases; in 2017-2018, 44 cases; in 2018-2019, 97 cases; in 2019-2020, 45 cases; in 2020-2021, 45 cases; and in 2021-2022, 52 cases; and in 2022-2023 it was 33 cases. The various and complex factors driving annual referrals exceed the scope of this report.

[14] MHL §10.05(g).

## C. Legal Proceedings

If upon referral by OMH, the OAG determines that civil management is appropriate, a petition is filed on behalf of the State of New York by the OAG in the supreme or county court where the sex offender is located.[15] At the time a petition is filed, the sex offender is generally "located" in a state correctional facility responsible for his or her custody. Therefore, the petition is typically filed in the county within which the correctional facility is located. Once a petition is filed, the offender is entitled to an attorney. Most sex offenders are represented by Mental Hygiene Legal Service (MHLS), a state-funded agency. If a court determines MHLS cannot represent the offender, it will appoint an attorney eligible for appointment pursuant to County Law Article 18-B.[16]

After the OAG files a petition in the county where the respondent is located, the statute authorizes the sex offender to file a notice of removal to the county of the underlying criminal sex offense charges, without having to file a motion, and further authorizes the attorney general to move for retention of venue.[17] The trial shall be held before the same court that conducted the probable cause hearing, referenced below, unless either the attorney general or the respondent has moved for a change of venue and the motion has been granted by the court.[18]

Shortly after the petition is filed, a hearing is held to determine whether there is probable cause to believe Respondent[19] is a sex offender requiring civil management.[20] If the court finds

[15] MHL §10.06(a).
[16] MHL §10.06(c).
[17] MHL §10.06 (a) &(b).
[18] *Id*., MHL §10.07(a).
[19] Once a petition is filed, the sex offender is referred to as the "Respondent" in the legal proceedings.
[20] MHL §10.06(g).

probable cause exists, the offender is transferred to an OMH secure treatment facility pending trial. The appellate courts have determined that a finding of probable cause is sufficient to hold a Respondent in a secure treatment facility pending final disposition of the matter. In lieu of transfer to a secure treatment facility, an offender may request to remain in a correctional facility under the custody of DOCCS pending trial.[21] If the court determines that probable cause has not been established, it will dismiss the petition and the offender will be released in accordance with other provisions of Article 10. [22]

Once it is established there is probable cause to believe Respondent is a sex offender requiring civil management, the case proceeds to trial to determine whether Respondent is a "detained sex offender" who suffers from a "mental abnormality."[23] The Respondent is entitled to a twelve-person jury trial, but may waive the jury and proceed with a trial before the judge alone.[24]

A civil management trial is a bifurcated proceeding. The first part of the trial is to determine whether the Respondent is a "detained sex offender" who suffers from a "mental abnormality" as those terms are defined by statute.[25] The State of New York has the burden to prove by clear and convincing evidence that the Respondent is a "detained sex offender"[26] who suffers from a "mental abnormality." A “mental abnormality” is statutorily defined as:

> a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct.[27]

The jury, or judge if the jury is waived, must find by unanimous verdict that the State of

[21] MHL §10.06(k).
[22] *Id*.
[23] MHL §10.07(a).
[24] MHL §10.07(b).
[25] MHL §10.07(a), (d), MHL 10.03(g), (i).
[26] MHL §10.03(g)
[27] MHL §10.03(i).

New York met its burden that the Respondent is a "detained sex offender" who suffers from a "mental abnormality." If a jury does not reach a unanimous verdict, the sex offender will remain in custody and a second trial will be held. If the jury in the second trial is unable to render a unanimous verdict, the petition is dismissed.[28]. If a unanimous jury, or court if a jury is waived, determines the State of New York did not meet its burden, the petition is dismissed, and the Respondent is released in accordance with other provisions of law.[29]

When the jury, or court if a jury is waived, determines that the State of New York met its burden of proof and found that the Respondent is a detained sex offender who suffers from a mental abnormality, the court must then determine what the disposition will be. The second part of the civil management trial is known as the dispositional phase and the court alone must consider whether the sex offender is a "dangerous sex offender requiring confinement" (DSORC) in a secure treatment facility or a sex offender requiring strict and intensive supervision and treatment (SIST) in the community.[30]

A "dangerous sex offender requiring confinement" is defined as:

> A detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility.[31]

If the court finds the Respondent is a "dangerous sex offender requiring confinement," the offender is committed to a secure treatment facility for care, treatment, and control until such time as he or she no longer requires confinement.[32]

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[28] *Id*.
[29] MHL §10.07(e).
[30] MHL §10.07(d), (f).
[31] MHL §10.03(e).
[32] MHL §10.07(f).

If the court finds the sex offender is not a "dangerous sex offender requiring confinement," then it must find that Respondent is a sex offender requiring strict and intensive supervision and treatment in the community.[33] A sex offender placed into the community under a regimen of SIST is supervised by parole officers from DOCCS and is required to abide by conditions set by the court.

## D. Treatment After Mental Abnormality Is Established

### 1. Dangerous Sex Offender Requiring Confinement (DSORC)

As reflected in the legislative findings of MHL Article 10, some sex offenders have mental abnormalities that predispose them to engage in repeated sex offenses and it is those offenders who may require confinement and long-term specialized treatment to address their risk to re-offend. These are the offenders that a court determines to be "dangerous sex offenders requiring confinement" and in need of treatment in a secure treatment facility to protect the public from their recidivistic conduct.[34] Generally, a Respondent found to be a dangerous sex offender requiring confinement is transferred to either Oakview Secure Treatment Facility in Marcy, New York, or Bridgeview Secure Treatment Facility in Ogdensburg, New York.

A determination that a Respondent is found to be a dangerous sex offender requiring confinement does not mean the offender will serve the rest of his or her life in a secure treatment facility. An offender may at any time petition the court for discharge and/or release to the community under a regimen of SIST. While the court may hold an evidentiary hearing, it also has the authority to deny the petition if found to be frivolous or insufficient for a re-examination at that time.[35]

[33] *Id*.
[34] MHL §10.01(b).
[35] MHL §10.09(f).

Furthermore, and by statute, each dangerous sex offender requiring confinement is examined once a year for evaluation of their mental condition to determine whether they are currently a dangerous sex offender requiring confinement.[36] Each such Respondent is entitled to an annual review hearing based upon the findings of the annual evaluation. The court will hold an evidentiary hearing if the sex offender submits a petition for annual review or if it appears to the court that a substantial issue exists as to whether the offender is currently a dangerous sex offender requiring confinement.[37]

At the annual review hearing, the OAG calls the OMH examiner to testify at the hearing and the Respondent often presents independent expert testimony on his or her behalf. These safeguards ensure the offender's legal rights are protected and that civil confinement decisions withstand legal scrutiny. If the State fails to prove that the offender still suffers from a mental abnormality, the court will order the offenders release from civil management. Assuming the offender's mental abnormality is established, the court has two options. If the court finds by clear and convincing evidence that the Respondent is currently a dangerous sex offender requiring confinement, it will continue Respondent's confinement. If it finds that Respondent is a sex offender requiring strict and intensive supervision and treatment in the community, it will issue an order providing for the discharge of Respondent into the community on a regimen of SIST.[38]

### 2. Strict and Intensive Supervision and Treatment (SIST)

The legislative findings further provide that some sex offenders can receive treatment under a regimen of strict and intensive supervision and treatment in the community, and still protect the public, reduce recidivism, and ensure offenders have proper treatment.[39]

[36] MHL §10.09(b).
[37] MHL §10.09(d).
[38] MHL §10.09(h).
[39] MHL §10.01(c).

Before a sex offender is released into the community, DOCCS and OMH conduct a SIST investigation to develop appropriate supervision requirements. These requirements may include, but are not limited to electronic monitoring or global positioning satellite (GPS) tracking, polygraph monitoring, restrictions from the internet and social media platforms, specification of housing and residence, and prohibition of contact with identified past victims or individuals that may fall within the same category of the offender's established victim pool.[40]

A specific course of treatment in the community is also established after consulting with the psychiatrist, psychologist, or other professional primarily treating the offender.[41] Offenders placed into the community on SIST are required to attend sex offender treatment programs and often have to participate in anger management, alcohol abuse, or substance abuse counseling. Each case is examined on an individual basis and the treatment plan is tailored to that individual's needs. Strict and intensive supervision is intended only for those sex offenders who can live in the community without placing the public at risk of further harm.

Specially trained parole officers employed by DOCCS are responsible for the supervision of sex offenders placed into the community on SIST. These parole officers carry a greatly reduced caseload ratio of 10:1, whereas other sex offenders (not subject to civil management) and certain mentally ill persons are supervised at a ratio of 25:1. In contrast, the other parole cases are supervised according to their risk of recidivism and level of need with caseloads that can vary from 40:1, 80:1 and even 160:1.

Sex offenders in the community on a regimen of SIST are subject to a minimum of 6 face-to-face supervision contacts and 6 collateral contacts with their parole officer each month.[42] This

[40] MHL §10.11(a)(1).
[41] *Id*.
[42] MHL §10.11(b)(1).

minimum of 12 contacts with the parole officer each month ensures the offender is closely monitored. Furthermore, the court that placed the sex offender on SIST receives a quarterly report that describes the offender's conduct while on SIST.[43]

If a parole officer believes a sex offender under SIST has violated a condition of supervision, the statute authorizes the parole officer to take the offender into custody.[44] After the person is taken into custody, the OAG may file a petition for confinement and/or a petition to modify the SIST conditions.[45] If the OAG files a petition for confinement, a hearing is held to determine whether the Respondent is a dangerous sex offender requiring confinement. If the court finds the OAG has met its burden of establishing by clear and convincing evidence that a Respondent is a dangerous sex offender requiring confinement, it will order the immediate commitment of the sex offender into a secure treatment facility. If the court finds the OAG has not met the threshold elements to establish that the Respondent is a dangerous sex offender requiring confinement, it will return the offender to the community under the previous, or a modified, order of SIST conditions.[46] Not all violations of SIST conditions will result in confinement.

Unlike sex offenders in a secure treatment facility who are entitled to annual review, the offenders on SIST are entitled to review every two years. The offender may petition every two years for modification of the terms and conditions of SIST or for termination of SIST supervision.[47] Upon receipt of a petition for modification or termination, the court may hold a hearing. The party seeking modification of the terms and conditions of SIST has the burden to

[43] MHL §10.00(b)(2).
[44] MHL §10.11(d)(1).
[45] MHL §10.11(d)(2).
[46] MHL §10.11(d)(4).
[47] MHL §10.11(f).

establish by clear and convincing evidence that the modifications are warranted.[48] However, when the sex offender brings a petition for termination of SIST supervision, the State of New York has the burden to show by clear and convincing evidence that the Respondent remains a dangerous sex offender requiring civil management. If the State of New York does not sustain its burden, the court will order Respondent discharged from SIST and released from civil management supervision.[49] From April 13, 2007, to March 31, 2023, 255 offenders who had been placed on SIST have had their SIST conditions terminated and have been discharged from civil management supervision.

As time passes, it is expected that the number of offenders on SIST will grow considerably because of (1) the number of offenders that are released to SIST after trial, but also because (2) every time an offender is released from confinement in a secure treatment facility, they are released to SIST, based on the court's determination that he or she still suffers from a mental abnormality.

# II. CIVIL MANAGEMENT AFTER 16 YEARS

## A. REFERRALS AND CASES FILED

In the sixteen years since Mental Hygiene Law Article 10 became law, OMH has reviewed 25,969 sex offenders to determine whether they are appropriate for civil management referral to the OAG. Of the cases reviewed, OMH has referred a total of 1,076 sex offenders for civil management. Of the 1,076 cases referred, 1,053 have resulted in the OAG filing an Article 10 Petition. This includes what is considered the "Harkavy"[50] cases addressed in previous reports.

[48] MHL §10.11(g).
[49] MHL §10.11(h).
[50] There were 123 patients, referred to as the "Harkavy" patients, who were civilly confined before SOMTA under the direction of former Governor Pataki using the provisions of Article 9 of the Mental Hygiene Law. That initiative was challenged in court. In *State of N.Y. ex rel. Harkavy v. Consilvio*, 7 N.Y.3d 607 (2006) ("Harkavy I"), the Court

## B. PROBABLE CAUSE HEARINGS

As referenced above, OMH has referred a total of 1,077 sex offenders for civil management to the OAG.[51] The OAG has filed 1,053 petitions and conducted 1,004 probable cause hearings. The courts found probable cause to believe the offender suffered from a mental abnormality and needed civil management 998 times out of the 1,004 hearings held to date.

## C. MENTAL ABNORMALITY TRIALS

Since SOMTA's inception in 2007, 514 matters have proceeded to trial. Of the 514 trials, the jury or judge rendered a verdict that 432 of those sex offenders suffered from a mental abnormality and 82 were adjudicated to have no mental abnormality.

## D. DISPOSITIONS

### 1. Dangerous Sex Offender Requiring Confinement (DSORC)

From April 13, 2007, to March 31, 2023, a total of 1,134 offenders have been found to be dangerous sex offenders requiring treatment in a secure OMH facility.

### 2. Strict and Intensive Supervision and Treatment (SIST)

From April 13, 2007 to March 31, 2023, a total of 512 offenders were placed on a regimen of SIST after a finding that they suffer from a mental abnormality.

### 3. SIST Violations

Presently, 154 offenders are currently on a regimen of SIST. The information below reflects the total number of offenders placed on SIST initially after trial, as well as those placed on

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of Appeals held that M.H.L. Article 9 had been improperly used to confine these offenders. On April 13, 2007, SOMTA became effective establishing the current civil management process. Subsequently, on June 5, 2007, the Court of Appeals decided *State of N.Y. ex rel. Harkavy v. Consilvio*, 8 N.Y.3d 645 (2007) ("Harkavy II"), holding that all sex offenders still being held in an OMH facility under the Pataki initiative had to be re-evaluated under SOMTA's new procedures established in M.H.L. Article 10.

[51] These referrals include the Harkavy cases.

SIST from confinement, and the number of those offenders who violated a condition of SIST. In SOMTA's second year, the violation rate was 32%, with 40% of those violations taking place the first month on SIST. By the end of the third year, the violation rate was up to 44%, increasing to 59% in the fourth year. In the fifth and sixth years it leveled to 61% and 62%, respectively. Since then, however, the DOCCS policy that it would file a violation as to a Respondent if a Respondent violated any condition, e.g., late curfew, has changed.

In addition to the Court receiving quarterly reports on each offender's status on SIST, DOCCS and/or OMH may, as needed, submit Incident Reports, which are issued to inform the Court of a Respondent's concerning behaviors. Upon receipt of a quarterly report and/or Incident Report, the Court may schedule Compliance Calendars, at which the Respondent is brought to Court in an attempt to address and correct the behavior before it escalates and results in the filing of a violation. This new policy has led to less violations and to the overall success of Respondents on SIST.

## E. ANNUAL REVIEW HEARINGS

The number of annual review hearings held each year trends consistently with the increases in the number of sex offenders who are receiving treatment in a secure facility. The number of dangerous sex offenders requiring confinement who petition for annual review is expected to rise. Some offenders have waived their right to a hearing and consented to continued treatment in the facility. However, since 2007, over 986 dangerous sex offenders have had an annual review hearing held by the court. In the current report period, April 1, 2022 to March 31, 2023, there have been 130 annual review hearings.

## F. SIST MODIFICATION OR TERMINATION HEARINGS

Since 2007, 255 offenders have been released from SIST supervision altogether and are

either being supervised under their standard conditions of parole or have reached their maximum expiration date for parole and are unsupervised in the community subject to the requirements of the Sex Offender Registration Act (SORA).

# III. SIGNIFICANT LEGAL DEVELOPMENTS

In keeping with recent trends, between April 1, 2022, and March 31, 2023, the courts have decided a number of significant cases, each having a dynamic impact on Article 10 litigation.

## A. FEDERAL CASES

Three notable cases were decided at the Federal level during this review period.

### 1. Pro Se Petition for Habeas Corpus Denied, Absent Constitutional Violations.

Decided September 23, 2022, in Bennett v. Dill, 2022 U.S. Dist. LEXIS 172686, the U.S. District Court, Eastern District of New York, issued a Memorandum and Order denying Petitioner's pro se motion for a writ of habeas corpus, as well as other relief, in its entirety.

The Petitioner, a sex offender confined to an OMH secure treatment facility under MHL Article 10, submitted a pro se Petition for a writ of habeas corpus relief, based on three issues. First, he alleges that the New York State Appellate Division erred in determining that the Other Specified Paraphilic Disorder OSPD (nonconsent) diagnosis testimony admitted at Petitioner's bench trial was harmless error. Second, that the trial court lacked sufficient evidence to support its finding that Petitioner has a mental abnormality and is a dangerous sex offender that requires confinement, thereby violating his 14th Amendment right to due process. Third, that admission of testimony relating to Petitioner's Wiccan religious beliefs was prejudicial and violated his 1st and 14th Amendment rights.

Rejecting Petitioner's claim on the first issue, the U.S. District Court states that, "the

admission of testimony regarding OSPD (nonconsent), while erroneous, was not so material as to provide the basis for Petitioner's confinement." The Court also referenced the Appellate Division's finding that Petitioner's other diagnoses were sufficient to support a finding of mental abnormality, even if the OSPD diagnosis had not been admitted. The Court also noted that , "diagnostic labels such as OSPD (nonconsent) are 'rarely dispositive,' rather, the focus of the inquiry is on the behavior and manifestations those labels seek to explain."

Rejecting Petitioner's second issue regarding sufficiency of evidence as to the finding that Petitioner is a dangerous sex offender requiring confinement, the U.S. District Court used the standard provided by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(b)(1). Under the AEDPA, federal habeas corpus relief pursuant to the judgment of a state court is only appropriate if that court's adjudication of the claim resulted in a decision that is contrary to clearly established federal law, as determined by the Supreme Court of the United States, or resulted in a decision that was based on an unreasonable determination of the facts considering the evidence. The court indicated that AEDPA establishes a deferential standard of review, meaning that application of clearly established federal law must not just be erroneous, but also unreasonable. Here, the District Court found that the state trial court's finding in the MHL Article 10 proceeding, as well as the New York Appellate Division's review, were neither contrary to, nor an unreasonable application of clearly established federal law. In this instance, the District Court found that the state court determinations were based on testimony of two different expert witnesses and was reached "not because of a particular diagnosis, but rather a plethora of evidence."

While addressing the final issue raised by the Petitioner, the Court determined that testimony about his Wiccan religion was appropriate and proper. As decided in Dawson v.

Delaware, 503 U.S. 159 (1992), "[t]estimony about a person's religious beliefs is proper only if it has 'relevance to the issue being decided in the proceeding.'" The Court found that testimony relating to his religion was relevant here, because the Petitioner himself identified the religion as relevant to his sexual misconduct. The testimony was related to the Petitioner referencing the similarity between the Wiccan rituals and his own "cruising" for future victims. Since the testimony was directly related to the ways the Petitioner's behavior manifests his beliefs, it was relevant to the determination before the court.

**2. Pro Se Federal Habeas Corpus Petition Seeking SIST Termination Denied For Insufficient Pleadings; Leave to Amend Pleadings Within 60 Days Granted.**

Decided December 19, 2022, Clark v. New York, 2022 U.S. Dist. LEXIS 229066; 2022 WL 17822587, the U.S. District Court for the Southern District, directed Clark, a pro se petitioner for habeas corpus relief, to file an amended petition, which complies with Rule 2(c) of 28 U.S.C. § 2254 (governing writs of habeas corpus) within 60 days.

In 1985, Clark was convicted of rape in the first degree and kidnapping in Westchester County. In 2007, he was released to discretionary parole which he violated. His parole was subsequently revoked and he was returned to incarceration until his 2012 conditional release date. At that time, the State of New York filed an MHL Article 10 petition seeking his civil management. In 2016, he was found to suffer from a mental abnormality and was ordered confined to a secure treatment facility. In 2019, he was release to SIST after an annual review hearing. In March 2021, Clark filed a petition in Westchester County Supreme Court seeking his immediate discharge from civil management, as well as the admission of a February 2020 polygraph test to retroactively challenge his 2007 parole revocation. The Supreme Court denied his petition by order dated July 15, 2021, and Clark appealed. The Second Department held the order of Supreme Court was not appealable as of right and denied him leave to appeal. Clark

filed a motion for reargument which was denied. He also filed a prior writ of habeas corpus in federal court challenging his 2007 parole revocation which was dismissed as moot.

Here, Federal District Court explained that it could entertain a petition for writ of habeas corpus on behalf of a person in custody pursuant to a State court judgment only on the ground that said custody is in violation of the Constitution, laws, or treaties of the United States. The Court further cited the liberal standard of review in pro se habeas proceedings, obliging it to interpret the pleadings to "raise the strongest arguments they suggest." (citation omitted). The decision notes that a federal court has authority to review and dismiss a habeas petition without ordering responsive pleadings, if it plainly appears the petitioner is not entitled to relief in the district court. (citations omitted).

The Court cited Rule 2(c) of 28 U.S.C. § 2254 governing pro se habeas cases, which requires a petition to specify all the Petitioner's available grounds for relief. The petition must permit the Court and the Respondent to comprehend both the grounds for relief and the underlying facts and legal theory supporting each ground so that the issues may be adjudicated.

In this case Petitioner did not adequately specify his grounds for relief or provide any supporting facts. As his Section 2254 petition, he submitted his type-written State appeal brief with captioning for the Second Department crossed off and a handwritten edit to include the Federal District Court's name instead. With that brief, he also submitted hundreds of pages of documents from his criminal case, state appeals, and his prior federal habeas case. The Court stated that "Petitioner's cache of documents appears to have been submitted without any discernment as to their relevancy and contains many duplicates of the same papers." Moreover, the Court noted that because Petitioner did not y state the constitutional grounds for the petition, it was not able to determine a basis for the relief Petitioner seeks.

Nevertheless, the Court allowed the Petitioner 60 days from the date of its order to submit an amended petition which complies with Rule 2(c). The Federal District court provided the Petitioner a Section 2254 Amended Petition form as part of its decision and directed petitioner to complete and submit with further instruction and warning that if he does not comply, the petition will be denied.

**3. Pro Se Petition for Habeas Corpus Denied, Absent Constitutional Violations; Release from Civil Management Rendered Claim Moot.**

Decided February, 13, 2023, in James v. Dill, No. 18-CV-932-(KMK)(PED); (2023 U.S. Dist. LEXIS 24225; 2023 WL 1967582) the Federal District Court for the Southern District of New York, upon adoption of the Federal Magistrate's Report and Recommendation, denied Petitioner's pro se writ of habeas corpus in its entirety, and deemed the application moot.

Petitioner, Wayne J., at the time of commencing this Federal habeas corpus action was a resident of the Central New York Psychiatric Center under a MHL Article 10 order for civil confinement. Petitioner made several claims in support of his writ, namely, that when the State filed its initial MHL Article 10 petition seeking civil management, he was a parolee and that his parole revocation hearing was improper, and thus, there was no jurisdiction for civil management. He also challenged his previous waiver of a dispositional hearing and his consent to being a sex offender requiring strict and intensive supervision and treatment (SIST). Both of these challenges had been previously litigated in the New York Appellate Division and were deemed without merit by the Appellate Division.. Matter of Wayne J., 127 A.D.3d 1211 (2nd Dep't 2015); Matter of Wayne J., 143 A.D.3d 834 (2nd Dep't 2016).

On February 16, 2018, Wayne J.'s petition for a writ of habeas corpus was referred to a Magistrate Judge, who, upon l review, wrote a Report and Recommendation that the petition be

denied in its entirety. Petitioner filed timely objections to the Report and Recommendation on August 20, 2021, prompting the District Court's review.

In its decision, the District Court made clear that only federal claims involving violations of the U.S. Constitution or laws are justiciable under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) which governs writs of habeas corpus. 28 U.S.C. § 2254(a).

The District Court reiterated that a writ of habeas corpus will not be issued for claims decided on the merits by state courts unless such state court decision was contrary to or involved an unreasonable application of clearly established Federal law or was based upon an unreasonable interpretation of the facts. The Court wrote, "it is the habeas applicant's burden to show that the state court applied federal law to the facts of his case in an objectively unreasonable manner" (internal quotations and citations omitted). Moreover, the Court stated that "[t]he question under the AEDP is not whether a federal court believes that that state court's determination was incorrect but whether that determination was unreasonable – a substantially higher threshold." Under this analysis, the "factual findings of state courts are presumed to be correct" and the pro se petitioner, though his pleadings are to be construed to raise the strongest arguments they suggest (citation omitted), must nevertheless rebut that presumption by clear and convincing evidence.

Here, upon a de novo review of the Federal Magistrate's Report and Recommendation as well as the Petitioners timely objections thereto, the District Court determined that Petitioner's claims failed to meet the required standard. The Petitioner did not make a substantial showing of a violation of a constitutional right. Moreover, during the pendency of these proceedings, Petitioner was ordered released from MHL Article 10 civil management after an annual review hearing, wherein he was found to no longer suffer from a mental abnormality. Since his writ

challenged his civil confinement instead of his criminal conviction upon which it was predicated, his habeas corpus claim was also determined to be moot.

## B. NEW YORK STATE COURT OF APPEALS

There were no reported MHL Article 10 cases decided by the Court of Appeals during this review period.

## C. THE NEW YORK STATE APPELLATE DIVISIONS

### FIRST DEPARTMENT DECISIONS:

The First Department issued one MHL Article 10 decision during this review period.

**1. Detained Sex Offender: Nonsexual Conviction Qualifies as Related Offense Under MHL if Committed While on Parole for Sex Offense; State's Evidence Sufficient.**

Decided June 14, 2022, in Matter of State of New York v. David D., 206 A.D.3d 481, the First Department affirmed the Supreme Court's order for civil confinement, finding that the State's expert, contrary to Respondent's claim, validly linked Respondent's mental disorders to his predisposition to commit sex offenses.

Respondent first appealed the Supreme Court's denial of his pretrial motion to dismiss the State's petition, arguing that he was not a "detained sex offender" as defined by MHL § 10.03(g)(1) because the petition was filed while Respondent was serving a prison sentence for the nonsexual offenses of burglary and assault. Citing concurrent precedent in the Second Department, the First Department affirmed that a conviction for any offense while serving a sentence for a qualifying sex offense under MHL § 10.03(p) is treated as a related offense under § 10.03(l). In Respondent's case, he was arrested for burglary and assault while on parole for a

qualifying sex offense. Respondent was reincarcerated due to his parole violation, where he served the remainder of his sentence for the initial sex offense and without interruption, the subsequent sentence for burglary and assault. Therefore, Respondent was a detained sex offender as a matter of law.

Next, Respondent appealed the jury verdict based on a challenge to the sufficiency of evidence of his mental abnormality. At trial and at the dispositional hearing, the State's expert psychologist recounted Respondent's extensive criminal record and diagnosed him with antisocial personality disorder, psychopathy, narcissistic personality disorder, an unspecified neurodevelopmental disorder, and alcohol use disorder. The expert further testified that Respondent failed to participate in sex offender treatment in prison or on parole, made "minimal…or no progress" in treatment during pendency of the trial, and failed to attend treatment sessions or would ignore the discussion if he attended. Further, the Court noted that expert testimony established Respondent had no realistic strategy for avoiding reoffending, that he refused to participate in developing a written treatment plan and relapse prevention plan and that Respondent was recorded as stating that he did not see himself as a sex offender. The First Department further noted d that Respondent refused to be interviewed or examined by the State's expert, which would have been helpful in the overall evaluation. Lastly, the Court noted that the Respondent offered no witnesses at trial.

The First Department concluded that the State's evidence of Respondent's multiple mental disorders supports his predisposition to commit sexual offenses. The Court explained that where a Respondent is diagnosed with multiple mental disorders, "a reviewing court does not view each in isolation . . . [r]ather, the court assesses whether and how those disorders, in combination" predisposes a Respondent to the commission of conduct constituting sex offenses.

The Court highlighted the State expert's explanation that Respondent's diagnoses contribute to "life-long problems with impulsivity" and a "severe inability to control," which place him at an "[e]xtremely high risk for sexually re-offending."

The Court wrote, ". . . it is the totality of [R]espondent's mental abnormalities, coupled with his history of substance abuse, impulsivity, lack of remorse or acceptance of his crimes, scores on the risk assessment instruments administered, and lack of sex offender treatment, that evinces [his] predisposition to commit sex offenses without the ability to control his sex offending conduct." Thus, the Court found that the evidence upon which the jury made its determination was legally sufficient to support the verdict. Similarly, it held the trial court's finding that Respondent was a dangerous sex offender requiring confinement was supported by clear and convincing evidence.

## SECOND DEPARTMENT DECISIONS:

The Second Department issued three notable MHL Article 10 decisions during this review period.

### 1. Order for Confinement Affirmed: Offender's Jury Waiver, Due Process, *Frye* Hearing, and Burden of Proof Challenges Lack Merit.

Decided July 20, 2022, in Matter of State of New York v. Allan A., 207 A.D.3d 635, the Second Department affirmed Supreme Court's order, upon a finding, made after a bench trial, that Respondent was a detained sex offender who . suffers from a mental abnormality and, after a dispositional hearing, finding that he is a dangerous sex offender requiring confinement.

Respondent appealed on several grounds. First, he challenged his waiver of the right to trial by jury on the issue of mental abnormality. Though the Second Department found that Respondent failed to preserve this challenge to the waiver for appellate review, it nevertheless

stated that Respondent's on-the-record colloquy showed that he knowingly and voluntarily waived his right to a jury trial after an opportunity for consultation with counsel.

Second, Respondent raised a due process challenge to hearsay evidence, which was admitted through the State's expert, regarding statements that Respondent made to the court-appointed psychiatric examiner about an uncharged sexual offense. The Second Department rejected this challenge, finding that admitting this evidence was proper under the test for reliability and substantial relevance of hearsay established by the Court of Appeals in Floyd Y., 22 N.Y.3d. 95 (2015). Furthermore, the Second Department found that Respondent's own statements are a proper basis for the State's experts to opine that the Respondent's underlying felony of attempted burglary was sexually motivated.

Respondent also challenged the trial court's conclusion that expert testimony on the condition of hypersexuality could be admitted into evidence without a *Frye* hearing. The Second Department rejected this challenge, finding that the trial court properly relied on the 2018 Supreme Court decision in Matter of State of New York v. Victor H., 59 Misc.3d 1204(A) (Sup. Ct. Kings County 2018), which determined, following a *Frye* hearing, that hypersexuality is a condition generally accepted within the relevant psychological community.

Lastly, Respondent challenged whether the State had proven by clear and convincing evidence that he suffers from a mental abnormality and is a dangerous sex offender requiring confinement. As to mental abnormality, the Second Department found that the State presented clear and convincing evidence of Allan A.'s regression during sex offender treatment, his violations of parole shortly after being released, and his disciplinary infraction involving the rape of another inmate while in prison —combined with evidence of several predisposing mental disorders—and demonstrated that he had serious difficulty controlling his sexual conduct. As to

the dispositional hearing, the Court determined that the State presented clear and convincing evidence that Respondent requires civil confinement in a secure facility, and that he would not be able to comply with the conditions of SIST.

**2. Offender's Multiple Disorders Sufficient to Court's Finding of Mental Abnormality.**

Decided October 19, 2022, in Matter of State of New York v. Michael T., 209 A.D.3d 861, the Appellate Division, Second Department affirmed the Supreme Court's order for civil management after a bench trial, wherein the Court found Respondent to suffer from a mental abnormality. At the trial, the Court heard from the State's two expert witnesses as well as Respondent's expert. In opining that he suffered from a mental abnormality, the State's experts testified that Respondent is diagnosed with Other Specified Personality Disorder with antisocial, narcissistic, and schizoid traits, as well as Cannabis Use Disorder. The Respondent's own expert diagnosed him with Other Specified Anxiety Disorder, Avoidant Personality Disorder, and Cannabis Use Disorder, but did not opine that he suffered from a mental abnormality.

Noting that the trial court credited the testimony of the State's two experts in finding the Respondent to suffer from a mental abnormality, (which was predicated upon more than one condition, disease, or disorder) the Second Department stated that "the evidence at trial was legally sufficient to support that finding," and that such finding "was not against the weight of the evidence."

**3. After Appeal of Jury Verdict and Upon Nonjury Retrial, Supreme Court's Order for Civil Management and Confinement Upheld.**

Decided March 8, 2023, in Matter of the State of New York v. Timothy R., 2023 Slip Op. 01196, the Appellate Division, Second Department upheld the trial court orders finding, after a bench trial, that Respondent suffers from a mental abnormality and, after a dispositional hearing,

confining him to a secure treatment facility as a dangerous sex offender requiring confinement..

Respondent previously appealed a prior order granting the State's petition for his civil management upon a jury verdict, (see Matter of State of New York v. Timothy R., 168 A.D.3d 146 [2018], *court erred in answering a jury note question*), which was reversed and remanded for a new trial. Upon retrial, Respondent waived his right to a jury. After conducting the bench trial, Supreme Court found him to suffer from a mental abnormality. As a result of his dispositional hearing, the Supreme Court found Respondent to be a dangerous sex offender requiring confinement and ordered him to a secure treatment facility. Respondent's appeal followed. .

The Second Department explained that on an appeal of a nonjury trial determination, the Appellate Division's authority is as broad as that of the trial court and that "it may render judgment that it finds warranted by the facts, taking into account that in a close case, the trial judge had the advantage of seeing and hearing the witnesses."

Upon review of the record before it, the Second Department stated that "contrary to appellant's contentions, the Supreme Court's finding that he suffers from a mental abnormality was supported by legally sufficient proof, and was not against the weight of the evidence." The Court noted that the State's uncontroverted evidence of Timothy R.'s frotteuristic disorder alone, but also when considered with substance use and schizotypal personality disorders – which further disinhibited his behavior – predisposes him to commit sex offenses and impairs his ability to control such conduct.

Additionally, finding no basis to disturb Supreme Court's determination to credit the testimony of the State's experts at the dispositional hearing, the Second Department upheld the finding that Timothy R. is a dangerous sex offender requiring confinement.

## THIRD DEPARTMENT DECISIONS:

The Third Department issued three notable decisions during this review period.

### 1. A Nexus Between the Offender's SIST Violations and His Inability to Control Sexual Behavior are Sufficient to Uphold the SIST Revocation and Confinement.

Decided May 5, 2022, in Matter of State of New York v. David HH., 205 A.D.3d 1105, the Third Department affirmed the Supreme Court's order revoking Respondent's SIST release and confining him to a secure treatment facility. The State initiated a petition for SIST revocation after Respondent violated numerous conditions of his SIST release. Respondent was convicted of rape in 2008 and had previously been under SIST release in 2018 before violating his parole and being reincarcerated until 2019, when he was returned to SIST supervision.

At the SIST revocation hearing, Respondent's parole officer testified that soon after being released to SIST in 2019, Respondent viewed pornography, used drugs on a regular basis, attempted to avoid mandatory drug tests, failed to charge his GPS tracking unit batteries, failed to document his activities in a journal as required, and violated his curfew. Respondent had also been unsuccessfully discharged from his mandatory sex offender and anger management treatment, in part, for failing to attend sessions and behaving in a hostile manner toward his treatment providers. Furthermore, the parole officer testified that Respondent entered into a prohibited intimate relationship with a convicted felon who had enabled Respondent's use of drugs and pornography and had sent him pictures of her toddler-aged grandchild. Before violating him, the SIST team attempted to provide graduated levels of intervention, which, instead of positive adjustment, were met with Respondent's resistance.

The State's expert psychologist testified that the Respondent's relationship with the convicted felon was unhealthy and that it enabled high-risk activities, which Respondent

admitted were part of his sexual offense cycle. Moreover, Respondent's scores on actuarial risk assessments, according to the psychologist, indicated an elevated risk of recidivism.

The psychologist called to testify on David HH.'s behalf opined that his advancing age and the relationship with the adult female, though prohibited, indicated that Respondent was less likely to sexually reoffend. The Respondent's psychologist also testified that David HH.'s drug use was not predictive of his sexual offense cycle and that he had demonstrated an ability to control his sexual conduct toward children.

Upon review of the record, the Third Department found that the State had proven by clear and convincing evidence that Respondent was a dangerous sex offender requiring civil confinement. Addressing Respondent's argument that his SIST violations were nonsexual in nature, the Court noted that the State's expert opined that his use of drugs and pornography were nevertheless part of his sexual offense cycle. As such, the State had met is burden of demonstrating a nexus between Respondent's SIST violations and his inability to control his sexual behavior. Citing State v. George N., 160 A.D.3d 28, 31 (4th Dep't. 2018), the Court reiterated that the State need not await further sexual offending before filing a SIST violation.

**2. Despite Physical Limitations After Suffering a Stroke, Respondent's Confinement was Proper, Given Trial Court's Ability to Weigh Conflicting Expert Opinion.**

Decided January 26, 2023, in Matter of State of New York v. Tony A., 2023 NY Slip Op 00357, the Third Department affirmed the trial court order for confinement after a dispositional hearing. Respondent had multiple sex offenses involving the breaking and entering of women's homes, violently attacking and restraining them, and forcefully raping his victims.

Respondent was found to suffer from a mental abnormality at his MHL Article 10 trial. Between his trial and the dispositional hearing, Respondent suffered a stroke, which caused significant impairments to the entire right side of his body. After a dispositional hearing,

wherein experts for the State and the Respondent testified, the Court found Tony A. to be a dangerous sex offender requiring confinement. The Third Department, deferring to the trial court as the trier of fact, noted that the Supreme Court is in the "best position to evaluate the weight and credibility of any conflicting expert testimony."

At the dispositional hearing, the trial court heard conflicting expert opinion as to whether the Respondent's post-stroke physical limitations lessened his risk to reoffend. The State's experts noted that Respondent's left side remained unaffected by the stroke. Further, there was no indication that he was permanently disabled, and there was no apparent effect on Respondent's ability to develop or maintain an erection, or that his libido was reduced. One of the experts noted that even if Respondent's ability to commit offenses in a similar manner to his prior rapes was compromised, he nevertheless "maintained the ability to engage in sexual deviant conduct within his capacities." Both State experts agreed that Respondent was a dangerous sex offender requiring confinement.

In addition to calling his physical therapist, who testified that his prognosis for regaining full use of his right arm was poor, the Respondent also called his expert psychologist. Originally, that expert had opined that Respondent was a dangerous sex offender requiring confinement, but he changed his opinion after Respondent suffered the stroke. His new impression was that Respondent no longer required confinement and could be managed in the community on SIST. He reasoned that since the stroke had left the Respondent significantly debilitated, it precluded him from committing the kind of sex offenses of his past.

In upholding the order for confinement, the Third Department stated, "[w]hile the experts differed as to the Respondent's likelihood to adapt his sexual behavior to conform to his disabilities in assessing his likelihood to reoffend, Supreme Court was in the best position to

evaluate matters of credibility pertaining to the testimony of the parties' respective experts and was free to credit conclusions of [the State's] over those of [Respondent's]."

### 3. MHLS Has Discretion to Represent Confined Residents On Issues Not Directly Related to Civil Management.

Decided April 14, 2022, in Horowitz v. Fallon, 204 A.D.3d 1177, the Third Department upheld a Supreme Court order dismissing a complaint brought by Horowitz, a sex offender confined to a secure treatment facility, against Sarah Fallon, (then) Director of Mental Hygiene Legal Services, Fourth Department. Horowitz was confined to an OMH secure treatment facility (STF) after an MHL Article 10 proceeding and order for confinement. Horowitz sought legal assistance from MHLS Fourth Department in his effort to challenge various matters including unspecified conditions of his confinement at the STF. MHLS declined to provide him with said legal assistance. Horowitz then brought this action seeking declaratory judgment, arguing, in essence, that MHLS was obligated to provide him legal assistance and asked the Court to direct said assistance. The Supreme Court dismissed the action upon a CPLR 3211(a)(1)(7) motion to dismiss brought by MHLS.

The Third Department reviewed the matter under the standard for dismissal of complaints under CPLR 3211(a)(1)(7) by affording the pleading a liberal construction and accepting the facts as alleged to be true, while affording the benefit of favorable inferences, in order to determine whether they fit any cognizable legal theory. However, the Court pointed out that this favorable treatment, concerning the standard for motions to dismiss, is not endless, and where the allegations and inferences consist of bare legal conclusions and fails to assert facts in support of the elements of the claim, or do not allow an enforceable right of recovery, dismissal is warranted.

Under that standard, the Court found that the plaintiff's claim failed to meet the requirements of CPLR 3013, in that it did not sufficiently allege factual allegations to give the court and parties notice of the transactions and occurrences to be proven and the material elements of each cause. The claim was "properly dismissed to the extent that it sought to review MHLS's failure to provide legal representation to plaintiff in any specific instance," the Court said.

Turning to the scope of MHLS' representation, the Third Department noted that MHLS is directed to provide legal services and assistance related to subjects of admission, retention, and care and treatment of resident/patients, but only to refer those individuals to other appropriate legal resources if the situation does not "directly relate" to those subjects. Moreover, while the statute authorizes MHLS "to initiate and take any legal action deemed necessary to safeguard the right of any patient or resident to protection from abuse or mistreatment, which may include investigation into any such allegation," the language is discretionary in nature. Use of the terms "may" and "deemed necessary" imply that MHLS is not required to exercise that authority and nothing in the statute or legislative history of its enactment suggests a contrary reading. The Court wrote, that ". . . the statutory scheme leaves no doubt that MHLS is not at plaintiff's beck and call and has the discretion to determine whether it should provide assistance in such situations."

## FOURTH DEPARTMENT DECISIONS:

The Fourth Department issued five notable decisions during this review period.

### 1. Annual Review Hearing: Proof that Dangerous Sex Offender Requires Confinement Was Clear and Convincing; Offender was Adequately Provided Access to His Records.

Decided June 3, 2022, in Matter of Daniel J. v. State of New York, 206 A.D.3d 1561, the

Fourth Department affirmed the County Court's finding that Respondent is a dangerous sex offender requiring confinement. The County Court issued the order following an evidentiary hearing pursuant to Respondent's right to annual review under MHL 10.09(d).

The Fourth Department concluded that in contrast to the Respondent's "self-serving testimony at the hearing," the State offered two expert's written reports and the testimony of one expert to establish by clear and convincing evidence that Respondent was still a dangerous sex offender requiring confinement. The expert witness based their opinions on Respondent's escalating conduct, his persistent denial of culpability, his lack of treatment and a relapse prevention plan, his scores on certain risk assessment instruments, and the ineffectiveness of past punitive measures and counseling.

Respondent also argued on appeal that he was denied an opportunity to defend himself when the County Court ruled that Respondent's counsel could not disclose Respondent's Central New York Psychiatric Center (CNYPC) to him. The Fourth Department found this claim was not justiciable, insofar as Respondent's appellate brief conceded that he had "full access" to his CNYPC records. Moreover, to the extent that Respondent contended that CNNYPC may have withheld certain records, the Court determined that the contention was not properly before the Court and the Court lacked discretionary power to reach this contention.

**2. Annual Review Hearings: Subsequent Order for SIST Does Not Render Moot the Annual Review Court's Finding of Mental Abnormality.**

Decided September 30, 2022, in Matter of Joseph S. v. State of New York, 208 A.D.3d 1646, the Fourth Department unanimously affirmed the County Court's decision and order as it related to the determination that Respondent suffered from a mental abnormality. Respondent's appeal after an annual review hearing initially challenged both the County Court's mental

abnormality finding and his continued confinement as a dangerous sex offender. During the pendency of the appeal, Respondent was ordered released to a regimen of SIST. He subsequently withdrew his contention that the State had failed to establish by clear and convincing evidence that he was a dangerous sex offender requiring confinement. On the remaining challenge to the mental abnormality finding, the Fourth Department affirmed for reasons stated in the County Court's written decision and noted that the subsequent order for SIST does not render that issue moot.

**3. Annual Review Hearings: Predisposition Proven by Tandem of Multiple Illnesses.**

Decided December 23, 2022, in Matter of Ruben M. v. State of New York, 211 A.D.3d 1590, the Fourth Department unanimously affirmed the Oneida County Supreme Court's order for continued confinement of Ruben M. entered after an annual review hearing.

Ruben M. appealed the annual review Court's finding of mental abnormality and its determination that he is a dangerous sex offender requiring confinement as being against the weight of the evidence. He argued that the expert witnesses each diagnosed him with different disorders, constituting an irreconcilable conflict that negated both diagnoses. On the contrary, the Fourth Department held that an offender may suffer from multiple illnesses, which are not to be viewed in isolation, that work in tandem to predispose one to commit sex offenses. Moreover, conflicting expert testimony on diagnoses creates a question of fact to be resolved by the factfinder, and that here, Supreme Court's finding was consistent with a fair interpretation of the evidence.

Regarding the finding that he remained a dangerous sex offender requiring confinement, the Fourth Department rejected Ruben M.'s weight of the evidence challenge. The Court noted that both experts concluded he "would have serious difficulty controlling future sexual

misconduct due to his lack of engagement with treatment and his failure to acknowledge his sex crimes at all." Moreover, the Court notes that Ruben M. does not believe he should be considered a sex offender and that he "flatly denied any sexual problem," instead, blaming his victim, an ex-wife, for the brutal rape and torture she endured. While he had not demonstrated overt sexual misconduct while confined, the Fourth Department found that his aggressive misbehavior while confined is relevant to the determination that he has such an inability to control his behavior. Lastly, the Appellate Division pointed out that Ruben M. clearly indicated on the record he did not wish to be released to SIST, as he could not guarantee that he would comply with the terms and conditions imposed upon him.

**4. Attorney's Mistaken Advice Insufficient Basis for Ineffective Assistance of Counsel Claim; Credibility Issues Were Properly Resolved by the Trial Court.**

Decided March 17, 2023, in Matter of State of New York v. Robert T., 2023 NY Slip Op. 01449, the Fourth Department affirmed the Supreme Court's finding made after a dispositional hearing that Respondent is a sex offender requiring civil confinement and rejected Respondent's contention that he was denied effective assistance of counsel during the lower court proceedings, as well as other procedural and evidentiary challenges.

Robert T. argued that he was denied effective assistance of counsel because his attorney advised him to participate in a pre-trial interview with an independent expert appointed by the Supreme Court. Respondent's attorney mistakenly believed that Respondent's statements to the expert would be protected by either the attorney-client or doctor-patient privilege at trial. Rejecting Respondent's contention, the Fourth Department determined that, given the circumstances as a whole, the attorney's single mistake was not so egregious and prejudicial as to deprive Respondent of his right to a fair trial.

The Fourth Department further affirmed the Supreme Court's findings that Respondent was a detained sex offender who suffered from a mental abnormality and required confinement. Contrary to Respondent's assertions, the lower court's finding that Respondent suffered from a mental abnormality was not against the weight of evidence. Likewise, with respect to the finding that Respondent required confinement, the Court noted that Respondent had merely raised a credibility issue properly resolved by the court. Finding no basis to disturb the Supreme Court's decision to credit the testimony of the State's experts and the independent expert over Respondent's evidence, the matter was unanimously affirmed.

### 5. Annual Review Hearing: ASPD and Psychopathy in Conjunction May Constitute Evidence of Mental Abnormality; Findings Not Against the Weight of Evidence Despite Conflicting Testimony.

Decided March 17, 2023, in Matter of Francisco R. v. State of New York, 2023 NY Slip Op. 01451, the Fourth Department unanimously affirmed the County Court's determination that Respondent continues to suffer from a mental abnormality and requires continued confinement in a secure treatment facility.

Respondent contended that the determination that he is dangerous sex offender who suffers from a mental abnormality was against the weight of evidence presented at his annual review hearing. The Fourth Department, however, concluded that the lower court fairly reached this determination based on evidence of Respondent's antisocial personality disorder (ASPD) diagnosis, his alcohol, cannabis, and opioid use disorder, as well as his high degree of psychopathy. This evidence, taken as a whole, established that Respondent was predisposed to commit sexual offenses and had serious difficulty controlling his sexual conduct. Furthermore, the Court rejected Francisco R.'s argument that the County Court erred by concluding "as a matter of law" that ASPD and psychopathy in conjunction constitute a mental abnormality.

Instead, the Fourth Department noted that the County Court properly concluded those diagnoses "may" constitute evidence of a mental abnormality before conducting an individualized determination with respect to his particular case.

The Fourth Department also concluded that the County Court's determination that Respondent requires continued confinement was not against the weight of evidence. The State, through their expert, presented evidence that Respondent's engagement with treatment thus far was inadequate, insofar as it had not resulted in any insight into his offending behavior. The State's expert further testified that Respondent's scores on multiple risk assessment instruments indicated his "well above average" risk of sexually reoffending. The Respondent's expert's testimony to the contrary merely raised a credibility issue properly resolved by the lower court. The Fourth Department determined that , the County Court's determination on the credibility of the conflicting evidence was entitled to great deference.

## D. TRIAL COURT DECISIONS:

New York's trial courts decide the vast majority of MHL Article 10 cases. Each year, the trial courts write numerous decisions on a wide variety of important issues. Due to the large volume of cases, it is not feasible to include summaries of each case written in a given year in this annual report. However, below are seven examples of significant decisions that are shaping this dynamic area of New York law.

### 1. SIST Violations: Offender's Emotional Dysregulation, Paranoia, Overt Sexual Preoccupation, and Persistent Refusal to Engage in Treatment Sufficient for SIST Revocation and Confinement.

Decided May 2, 2022, in Matter of State New York v. John B., 2022 N.Y. Slip Op. 50334(U), the Supreme Court, Bronx County (Collins, AJSC) found Respondent to be a dangerous sex offender requiring confinement after a SIST violation petition and revocation

hearing pursuant to MHL § 10.11(d). The Supreme Court's written decision outlines the factual and procedural history of John B.'s case and the reasoning for its decision to revoke SIST and order his confinement.

Respondent's sex offense history began at age 35, when he was arrested for openly masturbating in public near the Bronx Community College, behavior that he admitted to doing approximately 50 times before being detected and arrested. At age 46, he was arrested after attacking two young females, ages 15 and 18, who knocked on his door to sell magazines. After inviting the girls into his apartment, he unzipped his pants and exposed his penis. When the girls attempted to flee, a struggle ensued and at some point, he grabbed a knife and stabbed the 18-year-old's stomach. He also put his hand over their mouths to muffle their screams and he punched the 15-year-old in the face after she bit his hand. During the struggle, John B. reached into the pants of the 15-year-old and grabbed her buttocks. He was convicted of Sexual Abuse in the First Degree and was sentenced to two years in prison, with 10 years of post-release supervision.

He was released from prison in 2009 and was returned after a violation and revocation of parole in 2011 for threatening to harm his treatment clinician. In 2012, he was released to parole supervision again, and after 8 months in the community, he committed the underlying Article 10 qualifying offense. That offense stems from Respondent, ,at age 51, tricking a 36-year-old female hotel employee into his hotel room by feigning trouble with his room key. Upon her assistance with opening the door, he forced her into the room where he proceeded to punch her in the face, grab her torso underneath her breasts, grab her by the waist and pull her towards the bed, as well as grabbing her buttocks. The victim screamed, alarming hotel guests and staff who came to her aid, which caused John B. to flee. He was apprehended later that day and

charged with Attempted Rape. He admitted to being high on crack cocaine during this offense. He was convicted of Attempted Sexual Abuse in the First Degree and was sentenced to a four-year term of incarceration, followed by a 12-year term of post-release supervision.

The State filed an Article 10 petition seeking civil management of John B. in 2016. The Respondent was found to have a mental abnormality following a jury trial in October 2017, and he was released to SIST on June 28, 2019, following a dispositional hearing. In December 2019 Respondent was unsuccessfully discharged from his mandated sex offender treatment program after failing to attend appointments. It was determined that he had also tampered with his GPS monitoring device and when questioned about his behaviors, he threatened suicide by jumping off the Brooklyn Bridge. He was taken into custody on January 9, 2020, for these violations of his SIST conditions.

A psychiatric evaluation was completed by an OMH examiner who diagnosed the Respondent with Schizoaffective Disorder, Bipolar Type; Cocaine Use Disorder, Severe, In a controlled environment; Antisocial Personality Disorder with Borderline Traits; and the condition of hypersexuality.

While in a secure treatment facility pending resolution of the SIST violation proceeding, John B. refused to take his prescribed medications and became increasingly emotionally dysregulated and paranoid. The Respondent told a female staff member that he was sexually frustrated. He made comments about being addicted to sex and he reported masturbating all day. His paranoia and acting out behaviors included tearing up clothes and books, screaming out loud, making aggressive and threatening statements to other residents and staff, delusions of being controlled by devils, his desire to starve himself, and running through the halls of the facility naked. In March of 2021, the Respondent became violent and was arrested for shoving another

resident to the ground, which resulted in the resident breaking his hip and requiring surgery. During sex offender treatment sessions, he was noted to be internally preoccupied, would isolate from others and sit with his back to the room facing a corner; if and when he did speak, it was unrelated to group discussion. He was noted to make frequent off-topic comments and spontaneous declarations, which included paranoia about the walls having listening devices, about his ability to smoke crack and look at pornography if he wanted. He was also noted to urinate in a container in his room instead of the bathroom.

After the SIST revocation hearing, the Court found that the State proved by clear and convincing evidence that the Respondent is a dangerous sex offender requiring confinement. In its analysis, the Court notes that the Respondent has never successfully finished any sex offender treatment despite being required to do so in multiple settings. The Court wrote that the goals of SIST "cannot be achieved when the Respondent refuses, or at least shows great reluctance, to participate in the program by threatening the provider, failing to do the assigned work, refusing to discuss sexual behavior and thoughts, missing scheduled attendance, and refusing to take proper medication."

Additionally, the Court discussed the Respondent's destruction of property and his increasingly violent outbursts towards peers and staff in his residential and program settings. The Court was troubled by John B.'s persistent denials and his refusal to fully acknowledge his mental illness, but it was deeply troubled by his refusal to discuss his preoccupation with sex. "Despite engaging in inappropriate behavior, such as masturbating in a public restroom or running naked in the halls, or increased frequency in masturbating, he has repeatedly refused to talk about his sexual thoughts, his masturbation and other sexual behaviors because [in his words] he does not need 'that kind of treatment,'" the Court wrote. Also highlighting John B.'s

increasingly high scores on recidivism risk assessment instruments, the Court noted that instead of engaging in treatment he chose to threaten or shut out his treatment providers.

Finding that the State had proven by clear and convincing evidence that John B. is a dangerous sex offender requiring confinement, the Court concluded by stating that "[i]n the end, there is nothing that being on a regimen of SIST can do at this moment to stop the Respondent from committing another sexual offense."

**2. SIST Violation Hearing: No DSORC, Despite Evidence of Offender Who (Among Other Violations) Impulsively Absconded and Used Crack-Cocaine.**

Decided on November 9, 2022, in the Matter of State of New York v. Jerome A., 77 Misc. 3d 1201(A), 176 N.Y.S. 3d 767, the Supreme Court, New York County (Conviser, JSC), held that the State had not proven by clear and convincing evidence that the Respondent is a dangerous sex offender requiring confinement ("DSORC"), after a SIST revocation hearing, and therefore ordered his release back to a regimen of SIST.

At the outset, the Court noted its extensive history with this case over the last seven years, having presided over multiple hearings and a bench trial, and having written several other decisions throughout the proceedings.[52] More recently, the Court found Jerome A. to have a mental abnormality in August 2020 and after a dispositional hearing, released him to SIST on June 9, 2021. The record indicated that he was staying at a shelter where he reported many residents were using drugs and alcohol.

Just over four months later, he absconded from SIST on October 25, 2021. His SIST Parole Officer attempted a site visit at the shelter, but the Respondent was not present and could

[52] This case involves a unique and long appellate history which is beyond the scope of this report. The interested reader is encouraged to see the court's full written decision as well as State v. Jerome A., 137 A.D.3d 557 (1st Dep't 2016)(reversing the trial court's dismissal of the petition), and State v. Jerome A., 172 A.D.3d 446 (1st Dep't 2019)(reversing a trial court verdict finding no mental abnormality).

not be located by phone. Tracking on Jerome A.'s mandatory GPS monitoring located him until its battery life was depleted on October 26, 2021. Thereafter, a SIST violation warrant was issued for his apprehension.

The Respondent was located and arrested on November 7, 2021 d for possessing two crack cocaine rocks. He was also charged with a Class A misdemeanor of Criminal Possession of a Controlled Substance in the 7th Degree. The Court noted that the Respondent was still wearing his GPS bracelet when arrested and that there was no evidence that he had tampered with it. Jerome A. had received an $1,800 stimulus check immediately prior to absconding. The Respondent was alleged to have violated his SIST conditions by failing to remain at his residence, not abiding by his curfew, failing to report to parole as directed, failing to attend treatment, and being in possession of crack cocaine.

The OMH Examiner testified for the State at the SIST Violation hearing. He concluded that the Respondent's cocaine use, and absconding from SIST returned the Respondent to his sexual offending cycle. The Respondent had previously stated that drug use was the main factor that led him to sexually offend. The SIST treatment providers described the Respondent as being in the beginning phases of treatment. However, there was no evidence that Respondent had sexually offended, attempted to sexually offend, or engaged in any sexual behaviors while in the community on SIST. While confined in a secure treatment facility while the SIST violation was pending, the Respondent refused to participate in sex offender treatment. Instead, he indicated that he was afraid that statements he made in treatment would be used against him. The Respondent told the OMH examiner during his evaluation that "willpower" and "avoiding people" was enough to prevent reoffending. He stated that he has no risk factors for sexual re-offense and should be taken at his word.

An independent examiner testified on behalf of the Respondent. He concluded that none of Jerome A.'s behaviors since the Court had originally decided to release him to SIST had "any bearing on the issue of inability to control sexual urges."

The Supreme Court, as it had in other decisions (see James F., 50 Misc.3d 690 (Sup Ct. NY Co. 2015)), respectfully disagreed with the Court of Appeals construction of the statute outlined in State v. Michael M., 24 NY3d 649 (2014). That ruling requires the State to prove by clear and convincing evidence that an offender has such an inability to control behavior that he is likely to be a danger to others and to commit sex offenses if not confined. In Supreme Court's view however, MHL Article 10 does not require an absolute inability to control sexually offending behavior before confinement may be ordered. "Rather, what is required is such a *degree* of inability to control behavior that the Respondent would likely offend again," the Court wrote. The decision goes on to discuss how the "standard if applied literally would not apply to almost anyone, since virtually every human being has some ability to control sexually offending behavior."

The Court cited to several appellate cases decided after Michael M., which involved its "inability to control" standard in unique factual situations, that resulted in less literal applications. See Husted, 145 A.D.3d 1637 (4th Dep't 2016); William J., 151 A.D.3d 1890 (4th Dep't 2017); George N., 160 A.D.3d 28 (4th Dep't 2018); Robert A., 187 A.D.3d 1326 (3rd Dep't 2020), lv. den. 36 N.Y.3d 908 (2021); David HH., 205 A.D.3d 1105 (3rd Dep't 2022). Despite the difference of opinion, the Court writes that it is constrained by the DSORC standard of the Michael M. decision.

Here, the Court was persuaded by evidence that the Respondent is 66 years old, that there was no evidence of current hypersexuality or sexual preoccupation, and no evidence to suggest

that his lack of control during his absconding on SIST implicated sexual offending in any way. The Court also noted that Respondent's scores on risk assessment instruments indicated he was at low risk to reoffend and that he had not engaged in any sexually offensive behavior since the instant offense 16 years ago.

"In this Court's view, there is not clear and convincing evidence today (as opposed to 16 years ago when Mr. A last sexually offended) that Mr. A. is unable to control his sexually offending behavior." While there is evidence he absconded from SIST and went on a crack binge, there is no evidence of "a single behavior which constituted, or was preparatory to sexual offending." Likewise, though there is evidence that the Respondent's crack cocaine use is connected to his previous sexual offending cycle, the Court found that there was no persuasive "direct link" between his most recent drug use and his ability or inability to control his sexual behavior, which, as cases subsequent to Michael M. make clear, is required. See David HH., at 1108 (quoting George N. at 31).

The Supreme Court acknowledged the difficult burden its decision to return Jerome A. to SIST imposes upon the State to effectively supervise him, especially given that it had no preliminary indication he would abscond and so, were without means to prevent such an impulsive act. The Court also indicated that it might determine that future non-sexual SIST violations would be sufficient to result in confinement, but that based on the record before it in this case, the DSORC standard was not met.

### 3. SIST Violation Hearing: Domestic Violence and Cocaine Use Are Not Specifically Connected to Sex Offending, Thus Insufficient to Confine Offender.

Decided November 21, 2022, in Matter of State of New York v. Ted B., 179 N.Y.S.3d 529, the Supreme Court, Orange County (Brown, JSC), denied the State's petition for

confinement and restored Ted B. to SIST after a revocation hearing held pursuant to MHL § 10.11(d).

In 1993, Ted B. was convicted of five counts of Rape in the First Degree, five counts of Sodomy in the First Degree, one count of Sex Abuse in the First Degree, four counts of Assault in the Second Degree, two counts of Unlawful Imprisonment in the First Degree, and two counts of Criminal Possession of a Weapon in the Fourth Degree; for which he was sentenced to an indeterminate term of incarceration between 13 and 26 years.

In 2017, he was adjudicated a sex offender suffering from a mental abnormality and a dangerous sex offender requiring confinement. On appeal, the Second Department affirmed the trial court's finding of mental abnormality, but remitted the matter for imposition of SIST, finding the State had not proven by clear and convincing evidence that Ted B. had an "inability" to control "sexual misconduct." Matter of State of New York v. Ted B., 174 A.D.3d 441 (2nd Dep't 2019).

In accordance with that decision, Supreme Court ordered Ted B. released to SIST on September 30, 2019. While on SIST, the Respondent was arrested and charged with Criminal Mischief in the 4th Degree and Harassment in the 2nd Degree stemming from a domestic violence incident involving his female partner. The criminal charges were later adjourned in contemplation of dismissal. However, a SIST violation warrant was issued on April 25, 2021, and the State filed a revocation petition seeking Ted B.'s confinement. The SIST violation resulted from the domestic violence incident where the Respondent damaged a female acquaintance's television, heater, DVD player and iron and verbally threatened to harm her. The Respondent was also found to have used cocaine while on SIST.

At the hearing, the State's independent examiner testified that the Respondent's drug use and alcohol use affect the Respondent's ability to control himself and that the Respondent's primary goals are to satisfy his own desires and needs in the moment. The examiner further opined that the Respondent is impulsive and had not begun to unpack his sexual offending, nor his sexual arousal and interest in sexual sadism. She concluded that Respondent could not be effectively treated as an out-patient and should be confined to a secure treatment facility.

Ted B.'s independent examiner testified that while Respondent does have a problem with anger, the SIST violation involved "simply anger, and not sexualized anger." Moreover, he testified that Ted B. does not suffer from Sexual Sadism Disorder, and that at age 50, he has matured and has not demonstrated a pattern of antisocial behavior. He further testified that individuals may commit non-sexual offenses which have little bearing on their ability to control their sexual behavior. He opined that the Respondent's non-sexual SIST violation was very different and unrelated to the Respondent's previous sexual offending in 1993.

Cognizant of the previous Appellate Division decision to remit for lack of evidence of Ted B.'s "inability to control his sexual conduct," and noting that SIST violations cannot be utilized as punishment or deterrence, the Supreme Court reviewed the instant violation for additional evidence of Respondent's inability to control "sexual behavior." In its decision, the Court noted that nonsexual SIST violations can be indicative of and form the basis for a determination that a person is a dangerous sex offender requiring confinement if the State can demonstrate that said behavior is connected in a specific manner to sex offending. However, the Court ruled that the facts in the instant matter do not sufficiently support such a determination. The Court further stated that the Respondent's wholly non-sexual SIST violations were not

connected in any specific manner to sex offending and that the State failed to prove by clear and convincing evidence that Ted B. is now "unable to govern his sexual conduct."

**4. SIST Violation Hearings: Former State Expert Refused to Provide Updated Opinion; Directed Verdict Proper Where State Could Not Prove Offender Was Currently a DSORC.**

Decided December 5, 2022, in Matter of the State of New York v. Jesus H., 77 Misc.3d 1211(A), 178 N.Y.S.3d 426, the Supreme Court, New York County (Conviser, JSC) granted Jesus H.'s motion for a directed verdict during a SIST violation hearing held pursuant to MHL § 10.11(d).

Supreme Court, New York County (Conviser, JSC) previously found Jesus H. to suffer from a mental abnormality and after a dispositional hearing, a sex offender that could be managed under SIST. Thus, Respondent was ordered released to SIST on May 1, 2019. He was taken into custody on a SIST violation nine months later, based on his use of cannabis and being discharged from his sex offender treatment program. After a hearing, the same Supreme Court released Jesus H. back to SIST on April 24, 2020.

He was in the community on SIST for approximately one year before being taken into custody on May 5, 2021. This second SIST violation stemmed from an incident following the Respondent being discharged from his shelter for misconduct. The Respondent, apparently after consuming a significant amount of alcohol, approached a female staff person who worked at the shelter, and was pregnant at the time, and began cursing and screaming at her. He aggressively blamed her for having him evicted from the shelter and placed in a different one on Wards Island, where he had previously had an altercation with another resident. He accused the woman of lying to him about that resident still being at the Wards Island shelter and blamed her for making him drink. The woman attempted to move away from him, but he moved closer, and he

then followed her when she left the shelter and walked across the street into a store, where he became violent and slammed items from his pocket into the wall. Police arrived but he had already left and Jesus H. claimed that he blacked out and had no recollection of these events.

After a SIST violation warrant, Jesus H. was evaluated by an OMH psychiatric examiner as required by the statute. OMH examiner conducted the evaluation while still an OMH employee and wrote a report dated July 2, 2021, wherein she opined that Respondent was a dangerous sex offender requiring confinement. Her report, per statute, was filed as support for the State's petition for revocation of SIST and confinement.

In March 2022, before the SIST violation hearing had been scheduled, the OMH examiner left her position at OMH. When the Court and parties were attempting to schedule the hearing, it was unclear when the OMH examiner would be available to testify. She eventually informed the State that she was too busy to review any new records and testify at the hearing. The state informed the Court that the OMH examiner was unavailable to testify. The Court requested an email or affidavit explaining the doctor's unavailability. The OMH examiner provided the Court with an affidavit that reported that she had three jobs as a psychologist, two of which required her to work a total of more than 60 hours per week, and one of which required her to work more than 15 hours per month. She further wrote that due to the demands of her current employment obligations, she was unable to allocate time to former OMH assignments without undue hardship and risk to her current career priorities.

In a Court appearance on August 4, 2021, the Court ruled that the OMH examiner's affidavit did not establish unavailability. In its written decision, the Supreme Court states that "being busy at work does not make a witness unavailable to testify in a judicial proceeding." Furthermore, the Court stated that unavailability is not established where, as here, "such

testimony is indispensable, the witness is offered the opportunity to testify virtually, the testimony consumes only a few hours, the testimony is scheduled to accommodate the witness's travel schedule and the witness is offered significant hourly compensation for her time."

The Court also refused to allow the State to call the OMH examiner's former OMH supervisor to testify in her place. The State later requested the Court to authorize OMH to appoint a new psychiatric examiner to evaluate the Respondent, but the Court denied that request based both on the Respondent's continued confinement and the Court's opinion that the original examiner was in fact available to testify despite her new employment. The Court signed a court-ordered subpoena for the OMH examiner to appear and testify at the hearing.

On September 6, 2022, the OMH examiner testified at the SIST violation hearing. She informed the Court that she had not reviewed and in fact refused to review any of the new psychiatric records which had been generated concerning Respondent since writing her report in July of 2021. Furthermore, she stated that she would not render any current expert opinion in this case. She told the Court that she was "not available" and did "not consent" to reviewing any additional records and providing a current opinion. She also declined the opportunity to be retained and paid for her testimony. The OMH examiner testified regarding her previous report and the records she had reviewed at that time. She repeatedly stated that her opinion was based on information from July 2, 2021, and that she did not have an opinion about whether the Jesus H. was currently a dangerous sex offender requiring confinement.

Following the conclusion of the State's case, the Respondent moved for a judgment during trial (a directed verdict) pursuant to CPLR 4401, due to the State's witness refusing to provide a current expert opinion.

The Court stated that a motion for a directed verdict should be granted when there is no rational process by which the trier of fact could base a finding in favor of the non-moving party. The Court writes in its decision that while a DSORC hearing is not a trial, the directed verdict statute allows a judgment on an "issue" and so may be applied to this hearing.

The Court notes that MHL Article 10 requires that the State demonstrate that a Respondent is "currently" a DSORC. The only expert opinion regarding the Respondent's current condition at the hearing was from the Respondent's expert, who opined that he was not currently a DSORC.

The Court reiterated that MHL Article 10 envisions a "battle of the experts" to determine outcomes in these proceedings. Citing its own statements during argument of the motion, the Court wrote, "I don't think there has ever been a case in the whole history of Article 10 where the State sustained a burden with someone who said that they didn't know anything about what has happened regarding the Respondent in the preceding 14 months."

The Court noted that the State acted in good faith and faced an extraordinarily difficult task in attempting to work with the OMH examiner, though it disagreed with the various arguments and actions it took to address her recalcitrance. Nevertheless, without a current opinion that Jesus H. is a dangerous sex offender requiring confinement, the Court granted his motion for a directed verdict.

In releasing him back to SIST, the Court directed OMH and DOCCS to prepare revised conditions which reflect the need to have Jesus H. outfitted with a SCRAM alcohol detection device, as well as placement in an in-patient substance abuse treatment program focusing on alcohol abuse, and intensive treatment to address his symptoms of PTSD.

**5. Dispositional Hearing: Complete Inability to Control Conduct Not Required to Prove DSORC.**

Decided December 27, 2022, in the Matter of State of New York v. John R., the Supreme Court, Clinton County (Powers, JSC), found John R. to be a dangerous sex offender requiring confinement after a dispositional hearing.

In 2005, John R. attempted to abduct a young female student in the parking lot of the Saratoga Springs High School. As the girl was entering her parked car, the Respondent, having been lying in wait for her, emerged from his van and grabbed her from behind. The victim resisted by kicking him and the struggle that ensued caught the attention of a nearby teacher who came to her aid and halted the abduction. In his van, which had the back seats removed, John R. was found in possession of a partially consumed bottle of whiskey, a tarp, a rope with slip-knots, a syringe, and antihistamine, all of which was offered as circumstantial evidence in support of the attempted abduction. John R. was convicted upon a plea of guilty to Attempted Kidnapping in the Second Degree and Attempted Unlawful Imprisonment in the First Degree. He was sentenced to a 12-year term of incarceration.

After the State brought an Article 10 petition seeking civil management, extensive motion practice ensued, particularly surrounding the admissibility of evidence of John R.'s violent sexual assaults of several other female victims, for which he was never arrested. By prior decision, and pursuant to Floyd Y., 22 N.Y.3d 95 (2013), the Court held that the alleged female victims would need to testify and be subject to cross examination at trial. Four women testified at trial and provided their accounts of suffering John R.'s sexual assaults and violence.

Three experts testified as well, two for the State and one for the Respondent. During the trial, the facts showed that John R. was diagnosed with Sexual Sadism Disorder, Unspecified

Paraphilic Disorder, Narcissistic Personality Disorder, and Alcohol Use Disorder. However, the Respondent's expert opined that he did not suffer from any paraphilic or sexual disorder.

A jury returned a verdict in favor of the State, finding that John R. suffered from a mental abnormality. The dispositional hearing took place on January 26, 2022 and February 25, 2022. In addition to the same three experts from the trial, John R. and his brother testified on his behalf at the dispositional hearing.

In the Court's written decision and order after the dispositional hearing, the Court noted that the central point of its analysis of the evidence presented is whether John R. has an ability or inability to control his behavior – in other words, his impulsivity to commit sexual offenses. The Court cited to the Court of Appeals decision in State v. Michael M., 24 NY3d 649 (2014), which espoused the standard as "an inability to control sexual misconduct." However, citing subsequent clarifying authority in James K., 135 A.D.3d 35 (3rd Dep't 2015), the Supreme Court stated here, that the State need not show a complete inability to control sexually offending behavior in order to justify confining the Respondent. "Rather, what is required is a finding that the Respondent has such a strong predisposition to commit sexual offenses, and such an inability to control his behavior, that he cannot be safely managed in the community.,"

Applying that standard to the evidence at the dispositional hearing, the Supreme Court discussed the factors it found most compelling. The Court noted that during the Respondent's term of incarceration, he was unsuccessful in sex offender treatment in 2015 and thereafter refused further treatment. Additionally, John R. had only three minor infractions while incarcerated, none of which were violent or sexual in nature. The Court acknowledged the Respondent's expert who testified that there were extended hiatuses between the Respondent's offenses, which purportedly show Respondent's ability to self-regulate for significant time

periods. Additionally, John R.'s expert believed that alcohol consumption played a large part in triggering loss of control of Respondent's sexual impulses. He concluded that because the Respondent is 65 years old and has family supports in the community, he was at low risk to re-offend, so long as his alcohol use was monitored.

The Court also discussed the State's proof as provided by its experts, who highlighted the Respondent's extreme minimization of his offending behavior and his utter failure to recognize the harm and severity of his past offenses. The Court was also persuaded by expert testimony that John R. had current cognitive distortions and that he is sexually aroused by exercising power and control over his victims while enjoying their suffering.

Though the Court found that the Respondent's current age and inmate behavior history to be the strongest risk mitigating factors in his favor, it nevertheless could not conclude that the Respondent was at low risk to reoffend, especially given his gross minimization and enduring refusal to recognize his past offenses, and his repeated rejection of available treatment. The Court opined that John R. made no effort to meaningfully address his utter disregard for societal norms that has typified his adult life and found especially troubling the evidence that he was encouraging other sex offenders not to take responsibility for their conduct.

Finding that the State had proven by clear and convincing evidence that John R. is a dangerous sex offender requiring confinement, the Court concluded that absent appropriate treatment, the Respondent is, in fact, likely to reoffend.

**6. Respondent's Request for Spanish Translation of Documents Denied.**

Decided January 4, 2023, in Matter of State of New York v. Jose B., the Supreme Court of Kings County (Johnson, JSC), denied Respondent's motion to compel the State to provide

written Spanish language translations of the Petition for Civil Management and any report from a psychiatric examiner obtained by the State pursuant to MHL § 10.06(d).

In his motion, the Respondent relied upon US v. Mosquera, 816 F. Supp. 168 (ED NY 1993), in which the government was ordered to provide written translations of certain documents to the Spanish speaking defendants in the case. However, the Court in this case recognized that Mosquera involved a vast drug trafficking conspiracy with eighteen Spanish speaking defendants and approximately ten thousand documents.

In the instant matter, the Supreme Court found that the Respondent failed to demonstrate that the documents sought were so voluminous and complex that the State should be compelled to provide written translations. The Court specifically noted that there was no reason to expect that any psychiatric evaluation pursuant to MHL § 10.06(d) would be so voluminous and complex to render it impossible for Respondent's counsel to discuss it with him with the aid of a Spanish interpreter. Additionally, the State had already provided a written translation of the Office of Mental Health psychiatric report. The Court further denied the Respondent's request for an order from the court appointing a court-provided translator to produce the requested written translations.

**7. Unspecified Paraphilic Disorder Diagnosis Admissible at Trial.**

Decided March 3, 2023, in State v. James G., 2023 N.Y. Slip Op. 23061, the Supreme Court, Bronx County (Collins, AJSC) held that the Unspecified Paraphilic Disorder diagnosis meets the threshold standard of reliability and admissibility.

In a pretrial motion to preclude, Respondent challenged the Unspecified Paraphilic Disorder diagnosis ascribed to him by the State's expert. The Bronx County Supreme Court ordered a hearing to evaluate whether the diagnosis of USPD met the threshold standard of

reliability and admissibility. The hearing took place on January 6, 2023, and the independent examiner was the sole witness. In addition to the independent examiner's testimony, the Court also considered reports submitted into evidence, literature in the psychological and psychiatric communities regarding USPD, and relevant case law.

The Respondent argued that the standard of proof at the hearing should be by clear and convincing evidence, since that is what is required at a mental abnormality trial. However, the Respondent did not offer any supporting case law or statutory authority to support this position and the Court was unable to find any such case on its own research.

The Court stated, in "the absence of any case on point, the Court is not persuaded by the Respondent's argument for a higher quantum of proof." Instead, the Court stated that general rules of evidence regarding relevance would be applied in analyzing whether USPD is admissible.

Quoting State v. Jerome A., 58 Misc3d 1202 [A], the Court writes that "it is of utmost importance to require the clinician to provide a supporting narrative describing why the diagnosis is appropriate when assigning a USPD designation in a forensic setting."

The Court credited the independent examiner's testimony and rejected the Respondent's claim that the independent examiner diagnosed him with USPD to avoid having to assign diagnoses that have been rejected by the DSM-5 or various New York courts. The Court was persuaded by the independent examiner's testimony that the Respondent has a paraphilia that cannot be neatly placed into one "paraphilic box." Further, the Court agreed that James G.'s offending patterns demonstrate his deviant sexual interest in teenage girls, rape, violence, and pre-pubescent children.

In addition to the independent examiner's testimony, the State argued that there was an

adequate foundation for the diagnosis based on the Respondent's own statements, his PPG results, and his sex offender history. The Court also noted that the Respondent committed his sexual offenses because of his sexual arousal, not because of his lack of inhibition, which is shown through objective test results like the PPG. According to the PPG results, the Respondent's profile demonstrated "a broad range of deviant sexual arousal responses combined with sexual arousal responses that were within the normal range." This objective data was also corroborated by the Respondent's own statements made during sex offender treatment, where he admitted to being aroused by teenagers, and by watching rape scenes in movies. He further admitted to becoming aroused on at least one occasion by an 11-year-old sitting on his lap, and to masturbating to thoughts of his victims. The Court also noted the additional element of sexual sadism found in James G.'s psychological profile.

The Court credited the independent examiner's testimony and opinion that there is not enough information to assign any specific paraphilic disorder, which makes the USPD diagnosis the most appropriate. Finally, the Court found that the probative value of the USPD diagnosis was not outweighed by the risk of undue prejudice to the Respondent. It noted that by nature, MHL Article 10 cases involve sex crimes, deviant sexual interests, and discussions of mental abnormality, and that given the Court's determination about the underlying reliability of the USPD diagnosis, there is no undue prejudice. Thus, the Court denied the Respondent's motion to preclude the diagnosis of USPD, rendering it admissible at trial.

## IV. PROFILES OF OFFENDERS UNDER CIVIL MANAGEMENT

The following are profiles of sex offenders that the OAG filed petitions against during the review period. The names of the sex offenders are represented only by initials.

**State v. D.K.** – D.K.'s sex offense history commenced at age 20 when he was alleged to have grabbed the genitals of at least two separate and unidentified persons in February 2013. Though he was charged with Sex Abuse 1st Degree and Forcible Touching, records are unclear as to the outcome of these allegation. D.K.'s known offense history began later that year in April, when he was arrested after touching the breasts and bodies of two young female victims, one of which was under the age of 14. He also reportedly bit the breasts of the girls.

For the Article 10 qualifying cluster of offenses, D.K. approached three separate young girls in three different incidents, all on May 13, 2013, while the charges from April were still pending. While the first girl he only verbally harassed, the other two he physically attacked.

The first girl was a 15-year-old student that he approached on school grounds and asked for a high five. When the girl ignored him, he asked why she wasn't talking to him and then said to her, "you can hold my beef in your mouth." When a school guidance counselor spotted him, he was asked to leave. That counselor had told D.K. not to come around the school on several other occasions and that D.K. had a history of lingering around school.

The next incident involved approaching a 12-year-old female stranger on the street and saying, "let me show you how I greet women." He then grabbed her, encircling her body with his arms. After throwing her to the ground, he proceeded to get on top of her. She fought him off and was able to stand up, but D.K. again threw her down to the ground and got on top of her. She again tried to fight him off and was eventually able to access her phone to call police, but D.K. grabbed the phone and ran away.

Later that same day, D.K. approached another 15-year-old female stranger on the street, grabbed her around the neck and put her in a headlock. He let her go, but followed her down the street almost to the location of the previous assault, until he again approached her from behind.

He told her that he was going to hit her in three places: "your face, your crotch, and your butt," which he then proceeded to do. He then told her that he would "bend her over and fuck the shit out of you." He pushed her down to the ground and pinned her up against a cement road divider on the street. In the ensuing struggle, D.K. began holding and hugging her from behind, not letting her go. However, police arrived and interrupted his assault.

The charges for the behavior from May as well as those in April as described above were consolidated. A jury convicted D.K. of one count Sex Abuse 1st Degree and three counts of Forcible Touching. He was sentenced to an aggregate four-year term of incarceration, followed by five years' post-release supervision. While in DOCCS custody, D.K.'s sexual misconduct continued. He received 12 sex-related disciplinary tickets, which included behaviors of stalking female staff, writing sexually inappropriate letters to female staff, and exposing his penis and masturbating in front of female staff.

D.K., was adopted by his biological aunt from the foster care system, which he entered after his mother, who had a serious drug addiction, lost custody because of her neglect. He was born prematurely with a possible birth defect due to excessive exposure to drugs and alcohol in-utero. He was significantly developmentally delayed and has been deemed cognitively limited, with an extremely low IQ. Additionally, he struggled with ADHD (predominantly Hyperactive/Impulsive), Oppositional Defiant Disorder, Intermittent Explosive Disorder, Disruptive Mood Dysregulation Disorder, Cannabis Use Disorder, and possibly Bipolar Disorder as a child. He had several behavioral health and psychiatric hospital admissions for aggression, agitation, and disruptive behaviors during his school years. He was also on significant psychiatric medication throughout his childhood and during his incarceration, and at times, he has struggled with irritability, eating disorders, depression, self-harm, and suicidal ideation. He

reported physical abuse in the foster care system and having trauma from witnessing the death of his two-year old brother. He also reports becoming sexually active at age 12, having up to 50 different sexual partners, and fathering two children with two different young women.

D.K. has been diagnosed with Antisocial Personality Disorder, Unspecified Bipolar and Related Disorder, Attention Deficit Hyperactivity Disorder, Other Specified Neurodevelopmental Disorder, Borderline Intelligence, and Hypersexuality. While there was evidence for diagnosing him with Exhibitionistic Disorder, based on the number of times he has exposed himself or deliberately masturbated in front of female staff in prison, more information was needed to support this diagnosis.. D.K. was scored in the "well above average risk" for sexual recidivism on an actuarial risk assessment instrument.

**State v. J.O.** – J.O.'s known sexual offenses began at age 36, when he was charged with two counts of endangering the welfare of a child and public lewdness. This involved him exposing his erect penis to four young neighborhood girls under the age of 10. He provided police a statement that he deliberately showed them in hopes that they would be curious and "want to see more." Later that same year, J.O. was charged with sexual abuse upon allegations that he inappropriately touched the child of his upstairs tenant. He claimed the allegation was falsely made after an argument with the adult parent of the child who was leasing the apartment at the time.

The qualifying offenses involve sexual abuse of five young females, ranging in age from 3 to 11 years old. J.O. engaged in fondling, oral sodomy, and sexual intercourse with the girls over a period of two years, between January of 1998 and August of 2000. J.O. lived with two of the girls and their family for a period of time and he frequently babysat them and their cousins

and friends when they would come over to play. The abuse began with a child in the home when she was eight years old and continued until she was ten. J.O. successfully groomed her and was able to have her help him lure other children into the home where he would groom and abuse them as well. The victims referred to him as an "uncle" he babysat them so often.

J.O. blamed his initial eight-year-old victim for causing him to sexually offend by asking him to tickle her chest, and he called her the "ringleader," stating that she brought the other children in to the home for the abuse.

J.O. was charged with two counts of Sodomy 1st Degree, three counts of Course of Sexual Conduct 1st Degree: Two or More Acts Against a Child Less than 11 years old; Rape 2nd Degree; 10 counts of Possessing a Sexual Performance by a Child Less than 16; two counts of Sexual Abuse 2nd Degree, and five counts of Endangering the Welfare of Child. He pled guilty to at least four counts, and was sentenced to four concurrent 15-year terms and one seven- year term of incarceration, followed by a five -year term of post-release supervision.

He was released to parole in 2018 and violated in 2020 after being arrested for possession of unauthorized cell phones, unauthorized access to the internet, unapproved photos and videos of adult pornography, using an unauthorized email address, and possession of child pornography. J.O. was diagnosed with Pedophilic Disorder, sexually attracted to females, nonexclusive type.

**State v. D.G.** – D.G.'s known sex offense history began in 2000 at age 31, when he was charged with Sodomy 1st Degree, Sexual Abuse 1st Degree, and Criminal Possession of a Weapon 4th Degree. These charges resulted from D.G. forcing a prostitute to perform oral sex on him at knifepoint. After this act, he bound and gagged the victim with duct tape and left her in a secluded wooded area. D.G. claimed that the prostitute and her boyfriend owed him money for

drugs he had sold them and that the oral sex was partial payment. D.G. was also investigated for several other instances of similar sexual assaults on women who were known prostitutes, as he fit their multiple descriptions as the perpetrator, but no further charges were brought at that time.

His next offense, committed at age 34, involved D.G. following a 15-year-old in his car while she went to a store and bus stop. He followed the same girl the next day, eventually he pulled up next to her while still in the car, showed her some money and asked her to get into his car, which she refused. He drove away, but came back later and pulled up next to her again. This time she could see his penis and that he was visibly masturbating. He again asked her to get into the car with money visible in his other hand. This act was witnessed by others. He was arrested for Public Lewdness and Endangering the Welfare of a Child. He was offered and accepted a plea bargain to plead to one count of Harassment 2nd, a violation, and was sentenced to a conditional discharge. During this prosecution, he was also charged with and convicted of Failure to Register as a Sex Offender and was sentenced to a three-year term of probation.

His next sex offense was committed while on probation, at age 34, and is the Article 10 qualifying offense. There are conflicting reports as to whether he knew the victim or not, and as to how she got to the location of the assault. Still, records indicate that D.G. forcibly raped and anally sodomized the victim in a secluded area while holding a piece of broken glass to her neck and threatening to kill her if she did not cooperate. During the course of the rape, the victim told D.G. she needed to use the bathroom, in hopes that she would be able to escape. Instead, he wrapped a bandanna around her neck like a collar to restrain her, pulled her backwards on her heels and commanded her to squat and relieve herself there. While she was leaning back, she was able to reach a stick on the ground, which she grabbed and used to strike D.G. He fell backwards and loosened his grip on her, which allowed her to break free. He then used the broken glass to

slash her hands and neck, causing deep lacerations that required sutures and resulting in significant injury.

D.G. was charged with Rape 1st Degree, Criminal Sexual Act 1st Degree, and Assault 2nd Degree. He was convicted by plea of guilty to Rape 1st and was sentenced to a 15- year term of incarceration followed by five years' post-release supervision. He was paroled in 2019 and lived at a Rescue Mission shelter, where he engaged in inappropriate sexual behaviors toward female staff. He was also found to be in possession of an unauthorized cell phone with photos of pornography, and for failing to notify a change of address in violation of his sex offender conditions. His sister's boyfriend also made accusations that he had inappropriately touched their daughter (D.G.'s niece), but he was never charged with an offense. He was nevertheless violated, and his parole was revoked in 2020. He was also convicted of Failure to Report a Change of Address Within 10 Days, and he was sentenced to one year concurrent with his parole revocation bid.

Child Protective Services investigations also led to substantiated findings that D.G. sexually touched at least two of his own children, a boy and girl, when they were younger. Those allegations were founded, but because they occurred in Puerto Rico and were beyond the statute of limitations, he was not arrested or charged with offenses.

D.G. is diagnosed with Other Specified Personality Disorder, Antisocial and Narcissistic Features; Alcohol Use Disorder; Cocaine Use Disorder; as well as the conditions of Hypersexuality and Psychopathy.

# V. SOMTA'S Impact on Public Safety

In April 2007, New York State passed the Sex Offender Management and Treatment Act. The goals of the legislation, to protect the public, reduce sex offense recidivism, and ensure that sex offenders have access to proper treatment, have been and continue to be realized. The civil management system is functioning well across the State of New York, as the most dangerous sex offenders are being treated in a secure treatment facility or under enhanced supervision in the community.

Given that the stakes involved are the individual liberty interests of the sex offender and the public's safety, Article 10 cases are continuing to be a complex and contentious area of litigation. Despite the dynamic and rapidly changing legal landscape, there are positive trends emerging from civil management in New York. As of March 31, 2023, 457 dangerous sex offenders with mental abnormalities are being civilly managed. Of that, 332 are being treated in a secure treatment facility, while 125 are being treated under a regimen of enhanced community supervision on Strict and Intensive Supervision and Treatment. But for SOMTA, these recidivistic, mentally abnormal sex offenders would have been released into the community, possibly without any treatment or supervision whatsoever. These offenders are now receiving treatment for their sexual offending behaviors and other mental abnormalities and conditions from which they suffer.

New York's civil management program applies to only a very small percentage of overall offenders. It is hoped that because of the narrow focus, the process identifies the most dangerous

offenders. It is not possible to know just how many unsuspecting men, women, and children were saved from being victimized had these sex offenders not been placed into the civil management program. Nevertheless, it is obvious that civil management is making a difference in helping to protect communities from dangerous sex offenders.

# APPENDIX

## VICTIM RESOURCES

The OAG has a SOMB Victims Helpline number: 1-877-462-4697. The Crime Victims Advocate advises the OAG on matters of interest and concern to crime victims and their families and develops policy and programs to address those needs.

The New York State Office of Victim Services (OVS) is staffed to help the victim, or family member and friends of the victim to cope with the victimization from a crime. The website is *www.ovs.ny.gov*.

A victim can call Victim Information and Notification Everyday (VINE) to be notified when an offender is released from State prison or Sheriff's custody. For offender information, call toll-free 1-888-VINE-4-NY. You can also register online at the VINE website for notification by going to the website at: *www.vinelink.com*.

The New York State Department of Health offers a variety of programs to support victims of sexual assault. It funds a Rape Crisis Center (RCC) in every county across the state. These service centers offer a variety of programs designed to prevent rape and sexual assault and ensure that quality crisis intervention and counseling services, including a full range of indicated medical, forensic and support services are available to victims of rape and sexual assault. The agency also developed standards for approving Sexual Assault Forensic Examiner (SAFE) hospital programs to ensure victims of sexual assault are provided with competent, compassionate, and prompt care. See the NYS Department of Health (DOH) website for more information, including a Rape Crisis Provider Report which is organized by county and includes contact information. Visit the DOH website at:
*http://www.health.ny.gov/prevention/sexual_violence/resources.htm*.

The New York State Division of Parole welcomes victims to contact its agency to learn more about being able to have face to face meetings with a parole board member prior to an inmate's reappearance for review. The toll-free number to the Victim Impact Unit is 1-800-639-2650. *www.parole.ny.gov.*

Lastly, the NYS Police has a crime victim specialist program to provide enhanced services to victims in the State's rural areas. *www.troopers.ny.gov/Contact_Us/Crime_Victims.*