

**OFFICE OF THE NEW YORK STATE
ATTORNEY GENERAL**

**THE SEX OFFENDER MANAGEMENT AND
TREATMENT ACT: THE FIRST YEAR**

**A REPORT ON THE 2007 LAW THAT ESTABLISHED
CIVIL MANAGEMENT FOR SEX OFFENDERS**

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INTRODUCTION

On April 13, 2007, the Sex Offender Management and Treatment Act (SOMTA) took effect. The law established Civil Management for sex offenders suffering from a “mental abnormality.”¹ SOMTA is a new legal process designed to closely supervise and treat sex offenders who are about to be released from prison or parole, and who, based on their mental illnesses, pose a substantial risk to commit new sex crimes.

SOMTA has been in effect for a little over a year. Since its enactment, New York State established a system to evaluate, process, and litigate Civil Management cases. First, the Department of Corrections (DOCS) and the Division of Parole (Parole) identify detained sex offenders with felony convictions that qualify them for Civil Management. Next, the Office of Mental Health (OMH) identifies which of these offenders suffer from a mental abnormality and refers only those cases to the Attorney General. Then, the Attorney General reviews each case, files Civil Management petitions and conducts the litigation.

The Attorney General has created a new statewide bureau to handle Civil Management cases and has provided the resources to make this program a success. In the first year, the Attorney General filed 198 Civil Management petitions. As a result, courts have committed 40 dangerous mentally abnormal sex offenders into secure psychiatric

¹The Mental Hygiene Law defines a “sex offender requiring civil management” as a “detained sex offender who suffers from a mental abnormality. A sex offender requiring civil management can, as determined by procedures set forth in this article, be either (1) a dangerous sex offender requiring confinement or (2) a sex offender requiring strict and intensive supervision.” MHL § 10.03(q).

The Mental Hygiene Law defines mental abnormality 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.” MHL § 10.03(i).

treatment facilities and placed 21 offenders on outpatient Strict and Intensive Supervision and Treatment (“SIST”) in the community.

This report gives an overview of the implementation of SOMTA. It is divided into two parts: an explanation of the Civil Management process and a snap shot of the Civil Management system after one year.

ACCOMPLISHMENTS IN ONE YEAR

- Sex Offender Civil Management is now operational in New York State.
- The Attorney General reviews cases, files petitions and conducts the litigation.
- The Attorney General filed 198 Civil Management petitions.
- The courts civilly confined 40 dangerous sex offenders.
- The courts placed 21 offenders into the community under Strict and Intensive Supervision and Treatment (SIST).

HOW CIVIL MANAGEMENT WORKS

There are three key elements necessary to understanding Civil Management in New York State. First, Civil Management does not apply to every sex offender. The legislation targets only those who suffer from a diagnosed mental abnormality and pose the greatest risk to commit new sex crimes. Currently, only 9% of eligible sex offenders meet the criteria for referral to the Attorney General for Civil Management upon release from prison or parole.

Second, New York’s system is unique in that it offers two options for treating and supervising sex offenders suffering from a mental abnormality. Courts have the option of confining these offenders to a secure psychiatric hospital, *or* placing them on Strict and Intensive Supervision and Treatment (“SIST”). SIST provides close supervision of offenders in the community and ensures that they receive the treatment and support they need.

Third, Civil Management enhances public safety by filling a void. Before SOMTA, mentally abnormal sex offenders were released from prison or parole with no supervision or treatment. Now, SOMTA permits the State to petition the courts to have mentally abnormal sex offenders treated and supervised on SIST or, for the most dangerous individuals, committed to a secure psychiatric facility for treatment until they can be safely released to the community. The placements are not permanent. They are reviewable by a court at any time, and, in the case of inpatient commitment, the decision must be reviewed annually by a court to determine if such placement is still appropriate.

KEY FACTS

- Civil Management applies to only 9% of all sex offenders with qualifying convictions.
- New York has two options: (1) outpatient Strict and Intensive Supervision and Treatment (“SIST”) or (2) inpatient commitment to a psychiatric facility. Neither option is permanent and both are reviewable by a court at any time.
- Public safety benefit: Before Civil Management, most of these offenders were released into the community with no supervision and no treatment. SOMTA allows the State to require inpatient treatment for the most dangerous offenders and to treat and supervise the rest in the community.

The Stages in the Civil Management Process

The process usually begins when a sex offender is about to be released from prison or his time on parole is about to expire. SOMTA also qualifies some offenders in the custody of OMH or the Office of Mental Retardation and Developmental Disabilities (OMRDD). Every case is reviewed by OMH, which carries out a multi-tier appraisal and assessment. OMH weeds out the majority of cases, as most sex offenders do not suffer from a mental abnormality. In fact, 91 out of every 100 sex offenders released from DOCS or coming off Parole supervision are not referred for Civil Management. The few offenders who meet the threshold for Civil Management are evaluated by a psychologist or psychiatrist. If the medical professionals determine that the offender suffers from a mental abnormality, the case is referred to the Attorney General for litigation.

If the Attorney General determines the offender legally appropriate for Civil Management, he files a petition in court. As soon as the petition is filed, the sex offender, now the “respondent,” is entitled to legal representation which continues throughout the litigation. The respondent has a right to a twelve person jury trial, whose verdict must be unanimous. At trial, the State carries the burden of proving, “by clear and convincing evidence,” the most stringent standard in a civil court proceeding, that the respondent suffers from a mental abnormality.

The jury decides only whether the respondent suffers from a mental abnormality. The jury does not decide whether the respondent will receive inpatient treatment and committed to a secure psychiatric treatment facility or will receive treatment on an outpatient basis while supervised in the community under SIST. The determination as to how a mentally abnormal sex offender will be treated and supervised is for the court

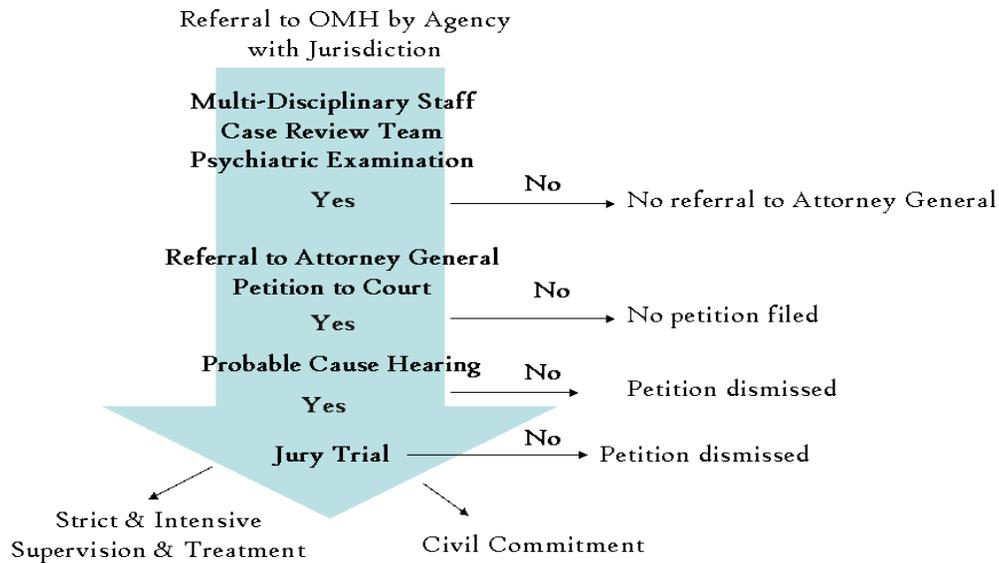
exclusively. The court makes that decision only after the jury first determines that the respondent suffers from a mental abnormality.

If the court finds that the respondent can safely be supervised in the community, he is placed under the supervision of Parole and monitored by the court. He is allowed to live in the community as long as he complies with all the conditions set by the court and Parole, does not break the law, and receives the treatment he needs. On the other hand, should the court find that the respondent is a “dangerous sex offender requiring confinement,” he can be civilly confined in a secure treatment facility run by OMH.² A finding for civil commitment can be re-visited at any time by the court and must be reviewed annually to ensure the patient currently suffers from a mental abnormality to such a degree as to be a danger to the community if not committed to a psychiatric hospital.

While Civil Management is a complex process, these safeguards are necessary to ensure that the respondent’s legal rights are respected and that decisions to civilly manage individuals withstand legal scrutiny. The following graphic gives a brief outline of the process. See Attachment #1 for a more detailed description of the process.

² The Mental Hygiene Law defines “dangerous sex offender requiring confinement as “a person who is 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.” MHL § 10.03(e).

MHL Article 10 Civil Management Process



STAGES IN THE CIVIL MANAGEMENT PROCESS:

- 1. Initial referral:** The case is referred to OMH (usually from DOCS or Parole).
- 2. Evaluation:** OMH evaluates each case, and refers to the Attorney General those few cases where the sex offender suffers from a mental abnormality (only about 9% of those reviewed).
- 3. Litigation:** The Attorney General files a petition in court. A jury trial ensues. If there is a unanimous verdict for Civil Management, the judge then decides the inpatient or outpatient treatment options.
- 4. Supervision, treatment and review:** If an offender is placed on SIST, he is closely monitored by the court and Parole. He must receive sex offender treatment. If the court orders confinement, he will be sent to a secure psychiatric facility for treatment. All patients continue to be represented by an attorney and the court continually and periodically reviews each case.

The Difference Between SIST and Civil Confinement

As mentioned above, New York provides two options for mentally abnormal sex offenders: Strict and Intensive Supervision and Treatment (SIST) or civil confinement. SIST is intended for those patients who need close supervision and monitoring, but who can, with supervision and support, live safely in the community. Before a patient is placed on SIST, Parole investigates factors such as his background and where he intends to live. The court ultimately decides which patients are placed on SIST and must monitor each patient under community supervision and treatment.

All patients on SIST are supervised by specially trained parole officers with a greatly reduced case ratio of 10:1. By contrast, a normal parolee to parole officer caseload ratio is 60:1, and a normal parolee to parole officer sex offender caseload is 25:1. In addition, Civil Management patients are required to have six face-to-face supervision contacts and six collateral contacts each month allowing the parole officer to closely monitor the patient, unlike traditional parolees, who have three such contacts per month. Patients are also required to abide by a set of conditions that specifically relate to known risk factors and the patient's prior behavior. For example, these conditions may mandate that the patient cannot have contact with minors, must abide by a curfew, and cannot use a computer. The patients are required to attend sex offender treatment and are subject to substance abuse testing and sex offender polygraph examinations.

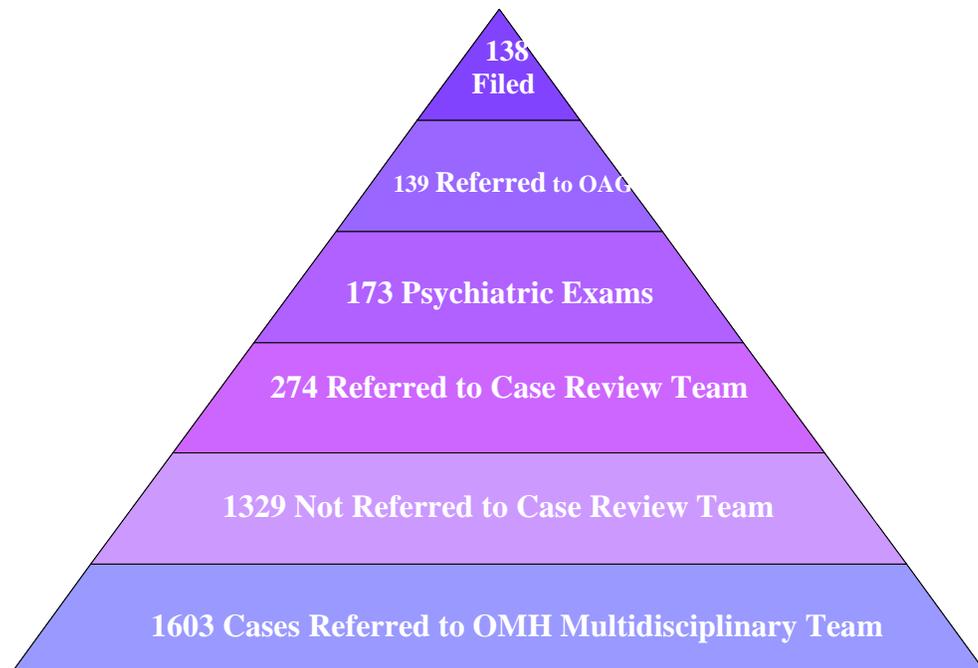
If a patient violates any SIST conditions, his parole officer is authorized to take him into custody. The Attorney General will then decide what further action to take, including bringing the case before the court for modification of the SIST conditions.

Under some appropriate circumstances, the Attorney General may petition the court to confine the patient to a secure psychiatric treatment facility.

Confinement, unlike SIST, is intended for the most dangerous mentally abnormal sex offenders, those who cannot safely live in the community. For both the public's safety and the treatment needs of the patient, these individuals must be confined in a secure mental hospital, where they can receive treatment. There are two such facilities in New York: Central New York Psychiatric Center (CNYPC) near Utica and St. Lawrence Psychiatric Center (SLPC) near Ogdensburg.

A SNAP SHOT OF CIVIL MANAGEMENT AFTER ONE YEAR

Civil Management applies only to a small percentage of sex offenders. During the first year of SOMTA, OMH screened 1,603 new cases. Only 139 of the 1,603 with a qualifying offense were ultimately referred for litigation (9% of the total cases reviewed). The pyramid below represents new cases evaluated during the first year of SOMTA.



In addition to the cases concerning individuals who were about to be released from prison or whose parole term was ending, OMH evaluated an additional 123 cases. These 123 patients, who are referred to as the “Harkavy” patients, consist of individuals 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 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 delineated in M.H.L. Article 10. As a result, over the past year OMH had to re-evaluate 123 patients for Civil Management under SOMTA. OMH found that 60 of those patients met criteria for Civil Management under M.H.L. Article 10 and referred those cases to the Attorney General.

Including both “new” Civil Management cases, and prior “Harkavy” cases, OMH referred a total of 199 individuals to the Attorney General’s office for Civil Management during SOMTA’s first year. The Attorney General filed 198 petitions and conducted 136 probable cause hearings. The courts found probable cause to believe the offender was mentally abnormal and in need of management in 135 of 136 hearings. The courts held 15 trials. In 11 trials, the jury (or the judge in one case where the jury was waived) found that the patient warranted Civil Management. In 4 trials, the jury found that the offender did not warrant management. For the first few months after SOMTA became effective

there were relatively few trials. However, the number of trials has steadily climbed and it is anticipated that this trend will continue.

In addition to the cases decided at trial, there have been a number of settlement dispositions. In 33 cases, the patient, represented by an attorney, consented to inpatient treatment in a secure psychiatric facility. In each of these cases, the patient admitted he suffered from a mental abnormality and that he was likely to commit a sex offense if not confined in a secure facility.

In total, the courts have committed 40 Civil Management patients to a secure psychiatric treatment facility. This includes the 7 post-trial confinements and 33 consent confinements. In another 21 cases, the court agreed that an outpatient SIST regimen was appropriate. Litigation is still ongoing in the remaining cases.

TOTAL NUMBERS - "NEW" AND "HARKAVY" CASES

- In the First Year of SOMTA, the Attorney General filed 198 petitions seeking to civilly manage detained sex offenders under MHL Article 10.
- The courts have conducted 136 Probable Cause hearings. The State has prevailed in 135 of the hearings.
- 40 Civil Management patients have been committed.
- 21 have been placed on Strict and Intensive Supervision and Treatment (SIST).
- 15 Civil Management trials have been held to date. The State prevailed in 11 trials and the respondent in 4.

IMPACT ON PUBLIC SAFETY

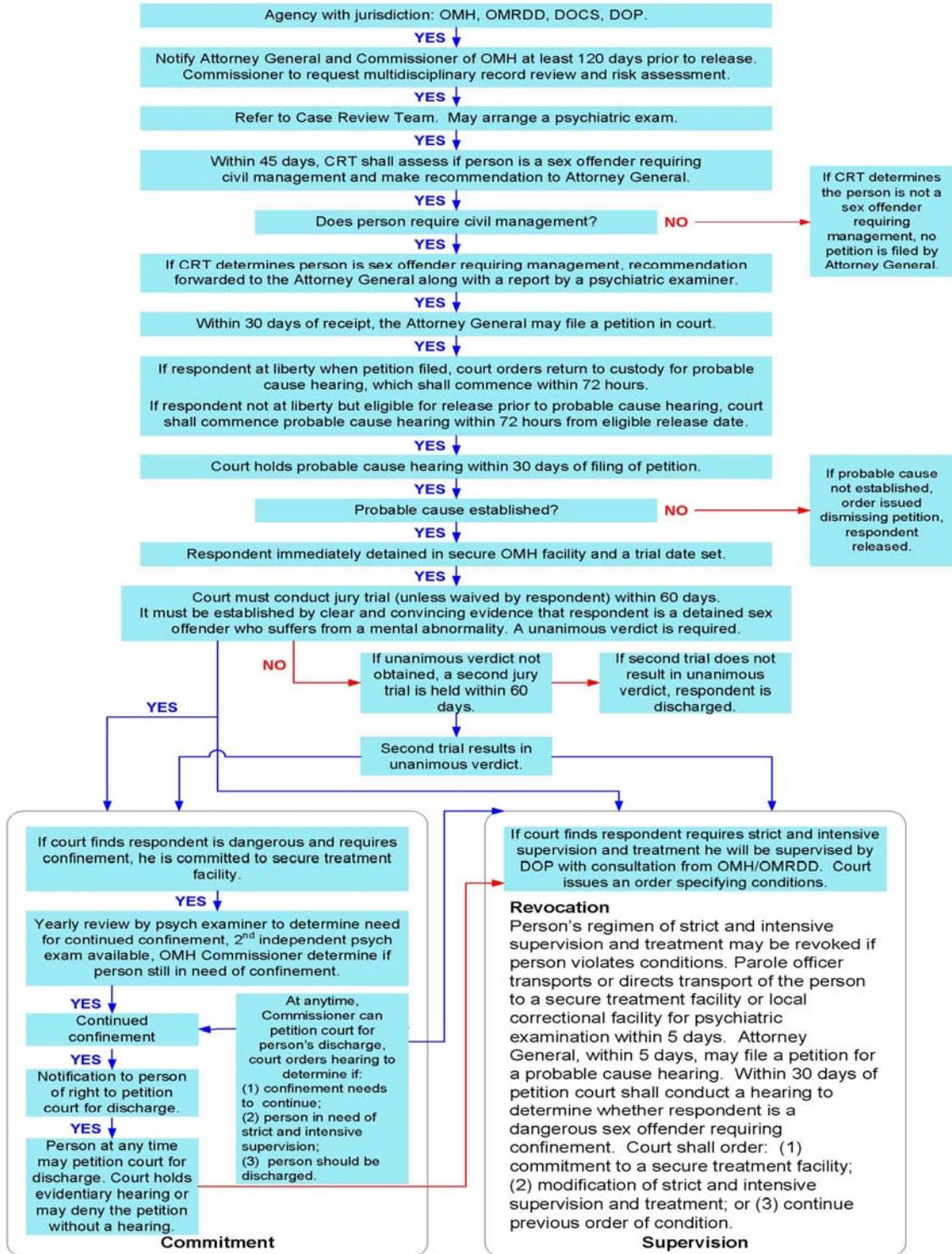
SOMTA has been in effect for only a year, therefore, it is difficult to gauge its impact. Civil Management was only intended to apply to a small number of offenders, and the system, just like any system, is not foolproof. It is impossible to predict with perfect accuracy who might commit a new sex crime or if that crime resulted from a diagnosable mental abnormality.

Despite these limitations, it appears that Civil Management may already be making a difference and helping to protect communities from the most dangerous sex offenders. [See attachment #3 - a letter received by the Office of the Attorney General from one grateful mother whose child had been victimized by a mentally abnormal sex offender.] During the first year, 40 dangerous sex offenders have been ordered civilly confined. If not for Civil Management, these offenders would have been released into the community. [See the attachment #2 for a discussion of some of the patients who have been confined in the first year – most of whom consented to their confinement in a secure psychiatric treatment facility.] In addition, 21 men with a mental abnormality predisposing them to committing sex offenses are being actively monitored by the courts. Each of them is undergoing treatment for their psychiatric illnesses and each of them is closely supervised by Parole using an unprecedented smaller caseload ratio.

CONCLUSION

In April of 2007, New York State passed the Sex Offender Management and Treatment Act to provide a new mechanism to protect New Yorkers from mentally abnormal and potentially dangerous sex offenders. During the last year tremendous strides have been made toward implementing this goal. Currently, the Civil Management system is functioning across the State and patients are being civilly confined and/or treated and supervised in the community. Although it may be too early to predict the SOMTA's long-term impact, one thing is clear: if not for SOMTA, many mentally abnormal and dangerous sex offenders would be released into the community with little or no oversight or treatment. Because SOMTA gives New York more tools and more resources to treat the State's most dangerous and mentally abnormal sex offenders, New York communities are safer.

MHL Article 10 Process



ATTACHMENT #2

SNAPSHOTS OF OFFENDERS COMMITTED TO SECURE PSYCHIATRIC TREATMENT FACILITIES IN THE FIRST YEAR UNDER SOMTA

A. J. (**Albert Joslyn**), an alcoholic with Anti Social Personality Disorder and five sex offense convictions, repeatedly raped and sodomized his 14 year-old daughter over a six month period. He also raped and tortured his wife with an electrical cord and a drill. On one occasion, he made his wife suck the condom he had just used while raping their daughter.

M.M. (**Michael Moran**), a diagnosed Psychotic and Sexual Sadist with Schizoaffective and Bi-Polar Disorder, kidnapped a 14 year-old girl. He forced the child into a wooded area and anally raped her at knifepoint. He then forced her to perform oral sex, stabbed her in the neck, and set her hair on fire.

K.M. (**Kennedy Martin**), a Sexual Sadist and Pedophile with Anti Social Personality Disorder, forced his 10 year-old stepdaughter to watch as he had sex with her aunt and then forced the girl to put his penis in her mouth. On another occasion, he raped the 10 year-old child under threat of a beating. Over a nine month period he repeatedly forced his 9 year-old biological daughter to squat naked over a large knife, view pornographic movies with him, and watch as he forced his son to lick a dog's penis.

M.G. (**Michael Guillery**), a diagnosed Pedophile, digitally penetrated the vagina of his wife's 2 month-old baby. He had been on parole for 4 months when he committed this offense. He was on parole as a result of raping of a 6 year-old girl. He had been involved in a sex triangle with the child's step father. Both men were active together in sexually abusing the child.

R.V. (**Robert VanValkenburgh**) a diagnosed Pedophile who is sexually attracted to both boys and girls, fondled the genitals of young girls, ages 4 & 7, and a boy, age 7. He has a history of committing sex offenses against children under 10 years-old. He has a total of 7 known child victims.

D.S. (**Douglas Smith**), a diagnosed Pedophile with Mood Adjustment Disorder and suffering from Depression, forced his penis into the mouth of a 3 year-old boy. At the time of his arrest for that offense, he admitted to sexually abusing the boy's 2 sisters, ages 5 & 9. Prior to that offense, he forced his penis into the mouth of a 7 year-old boy and made him suck it. He also placed the boy's penis into his mouth and sucked on it. Further, he admitted to fondling the boy's sister when she was 6 years-old.

J.G. (**Joseph Galanti**), a diagnosed Pedophile sexually attracted to young girls who also suffers from Schizotypal Personality Disorder, performed oral sex on a 6 year-

old girl. Additionally, he performed oral sex on a 12 year-old girl and forced her to masturbate him. He admits to being sexually aroused by and fixated on young children.

A.C. (**Anthony Cuevas**), a diagnosed Pedophile with Anti Social Personality Disorder, Polysubstance Dependence, Adjustment Disorder with Mixed Anxiety and Depression, subjected a 4 year-old female victim to sexual contact by rubbing her vagina and buttocks, and inserting his finger into the child's anus. He admits to having raped 2 children in the past. He also admits to having a propensity for young girls stating that "only death will stop him."

P.H. (**Phillip Heckman**), a diagnosed Pedophile sexually attracted to pre-pubescent boys and girls, performed oral sex on a 12 year-old boy and anally raped the child. The abuse went on for 4 years. He also abused his step-daughter for 5 years starting when she was 7 years old. He forced the child to give him oral sex and raped her vaginally and anally. He also regularly beat the child with a wooden stick.

R.F.C. (**Ronald Floyd Cook**), who is diagnosed with Paraphilia (meaning he is sexually aroused by women who do not consent to having sex with him) and suffers from Anti Social Personality Disorder, lured a 24 year-old woman, who was 8 months pregnant, into his apartment under the pretense of selling her furniture. There he forcibly raped her. Previously, he had raped two different women and served time in prison for each of those crimes.

E.C. (**Eugene M. Coffey**), a diagnosed Pedophile with Psychotic Disorder and Alcohol Dependence, subjected a 12 year-old girl to sexual abuse by forcibly fondling her breasts and vagina. He had been released from prison just 2 months before that offense where he had been incarcerated for sexually abusing his 16 month-old daughter.

P.S. (**Pretzel Smith**), a diagnosed Pedophile sexually attracted to both boys and girls including toddlers, subjected a 2 year-old girl to sexual contact by rubbing her vagina and buttocks and exposing his penis while instructing her to put her mouth on it "like a lollipop." Prior to that offense, he had inserted his penis into the mouth of an 11 year-old girl.

E.J. (**Ernest Johnson**), a diagnosed Pedophile with Anti Social Personality Disorder, subjected his 12 year-old mentally handicapped niece to sexual abuse by fondling her breasts and inserting his fingers into her vagina and raping her. Prior to that, he abducted a 5 year-old girl, held her against her will and fondled her genitals. He also removed a six year-old girl from a public school, took her to an abandoned house and inserted a popsicle stick into her vagina. In addition, he sexually molested a 3 year-old child.

D.R. (**Dale Robinson**), a diagnosed Pedophile with Anti Social Personality Disorder, vaginally raped a 6 year-old girl multiple times and on several occasions. At the age of 30, he engaged in sexual intercourse with a 16 year-old girl over a period of

months. In addition, on at least two prior occasions, he has been convicted of endangering the welfare of children.

R.B. (**Richard Belden**) a diagnosed Psychotic Pedophile with Depressive Disorder, Intermittent Explosive Disorder and Antisocial Personality Traits, engaged in an ongoing pattern of sadistic sexual abuse of a young child. He raped, sodomized and tortured the girl over a two year period The torture culminated in his tying the 9 year-old girl to a tree and igniting a ring of fire around her, attempting to burn her alive in order to “destroy the evidence.”

ATTACHMENT #3

Letter from a concerned parent:

Dear Ms. [AAG]:

To say that I was appalled when I discovered the person who molested my 5 year old daughter was being released from prison is an understatement. This whole episode was a horrific nightmare for my daughter, my entire family, and for me. When I received the news from your office a few days ago that this man was not going to be released any time soon I was absolutely jubilant. Upon hearing that good news I couldn't wait to share it with my friends, neighbors and family members. Needless to say we all breathed a sigh of relief.

My daughter fell prey to her predator shortly before her 5th birthday. After months of counseling I hoped this traumatic episode was behind her. You can imagine my dismay when this past June, out of the blue, my daughter blurted out, "Mommy I'm scared." I asked her what she was afraid of and she said that it had been 6 years and respondent (name redacted) is going to get out of jail. At that point I knew she was still living with the harrowing nightmare of her sexual assault.

I felt absolutely helpless. I thought how could the State of New York release predators such as this on the children of our society. Moreover I wondered how many young children had been emotionally scarred because such predators were set free, only to repeat their offenses. As I pondered this it was very unsettling for me. Within 3 or 4 weeks though your office contacted me with the good news that my daughter's assailant was not going to be released to the community any time soon. As I mentioned earlier, when I first heard this news I was elated. I knew I must share it with my daughter. As we shared our tears of joy I wondered just how much emotional distress my daughter had been going through, and how much was yet to come.

At any rate, me and my entire family would like to extend a personal thank you to Sr. Investigator [AG INV]. When I first met with him he assured me he would do everything in his power to see to it that my daughter's assailant would not be allowed to prey on anyone else. It now appears as though he has done just that, so we applaud him for his efforts in keeping his word. Please give him our warmest regards and our heartfelt thanks. Additionally we would like to thank you and your office staff for the gratifying bit of closure you have given our family. We sincerely appreciate the obvious effort that went into bringing this matter to what we hope is a successful conclusion.

With sincere appreciation,
[Mother of victim]