

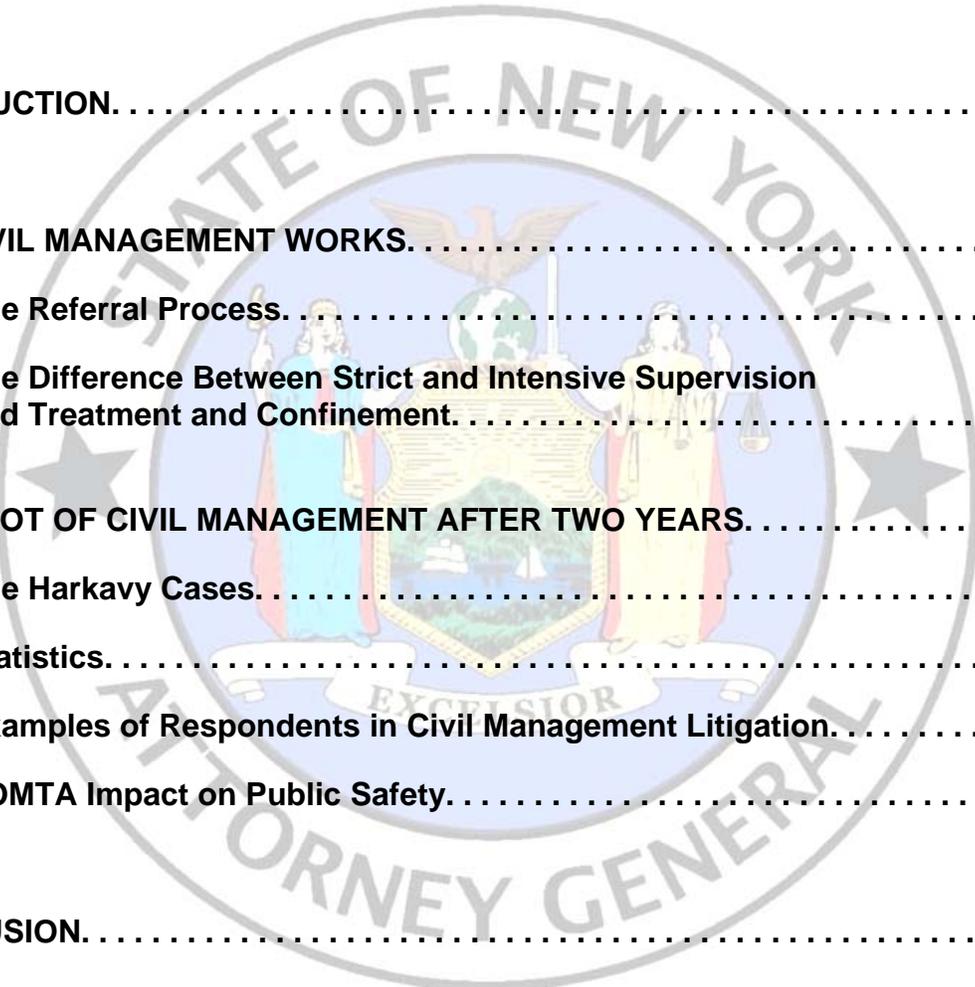
OFFICE OF THE ATTORNEY GENERAL
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SEX OFFENDER MANAGEMENT UNIT



A REPORT ON THE 2007 LAW THAT ESTABLISHED CIVIL
MANAGEMENT FOR SEX OFFENDERS IN NEW YORK STATE

APRIL 13, 2009

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The seal of the New York State Attorney General is centered in the background. It features a circular design with the words "STATE OF NEW YORK" at the top and "ATTORNEY GENERAL" at the bottom. In the center, there is a shield with a sun, a globe, and two figures. The word "EXCELSIOR" is written on a banner below the shield. Two stars are positioned on either side of the shield.

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INTRODUCTION

In March 2007, the Legislature enacted the Sex Offender Management and Treatment Act (“SOMTA”). Act of March 14, 2007, ch. 7, 2007 N.Y. Laws 108 (McKinney). The Act is designed both to protect society from sex offenders with mental abnormalities that predispose them to engage in repeated criminal sexual activity and to provide these offenders with specialized care and mental health treatment. See Mental Hygiene Law (“MHL”) § 10.01. It became effective April 13, 2007.

The centerpiece of SOMTA was the creation of MHL Article 10, which establishes new standards and procedures for the civil management of certain sex offenders upon release from prison or other state custody. SOMTA, ch. 7, § 2, 2007 N.Y. Laws 107, 107. To qualify as a “sex offender requiring civil management,” a person must, among other things, suffer from a “mental abnormality,” defined as:

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

MHL § 10.03(i).

When an eligible sex offender, referred to as a respondent, nears his release from state custody, the custodial agency notifies the Office of Mental Health (“OMH”) and the Office of the Attorney General (“OAG”). MHL §§ 10.03, 10.05(b). Upon receiving that notice, OMH appoints a multidisciplinary team of

clinical and professional staff to review preliminarily whether the respondent requires civil management. Respondents meeting the multi-disciplinary team's screening criteria are referred to a case review team for further review, which may include a psychiatric evaluation. MHL § 10.05(d), (e).

If the case review team concludes that the respondent is a sex offender requiring civil management, notice of that conclusion, together with the report of any psychiatric evaluation conducted at the case review team's request, is provided to the respondent and OAG. MHL § 10.05(g). Upon receiving such notice, OAG may file a sex offender civil management petition in Supreme Court or County Court. MHL § 10.06(a).

After a petition is filed, a court must hold a hearing "to determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management." MHL § 10.06(g). At the probable cause hearing, and at any subsequent trial, the respondent has the right to counsel and "may, as a matter of right, testify in his or her own behalf, call and examine other witnesses, and produce other evidence in his or her behalf." MHL § 10.08(g); see *also* MHL §§ 10.06(i), 10.07(b). If the court determines that there is no probable cause, the petition is dismissed and the respondent is released to the extent consistent with other applicable law (*e.g.*, if he has completed his criminal sentence).

If, on the other hand, the court finds probable cause, it must set the matter for trial. MHL § 10.06(k). At the trial, if the jury, or the judge in a non jury trial, finds that the State has not proved its case, the petition is dismissed and the respondent is released to the extent consistent with other applicable law. MHL

§ 10.07(e). If, however, the jury unanimously finds that the State has proved its case, the court must order that the respondent either be confined at a secure treatment facility or undergo a regimen of strict and intensive supervision and treatment (“SIST”) in the community. MHL § 10.07(d), (f).

Upon the enactment of the SOMTA, the Attorney General created a new statewide bureau to handle the influx of civil management cases and armed it with resources to make the program a success. In the first two years, the Attorney General filed 315 petitions, conducted 282 probable cause hearings, and tried 56 cases. As a result, courts have committed 82 dangerous and mentally abnormal sex offenders into secure treatment facilities, while placing 61 sex offenders on a SIST program of outpatient treatment and community supervision.

Accomplishments in Two Years

- Civil management of sex offenders is now operational in New York State.
- The Attorney General reviews cases, files petitions, and conducts the litigation.
- The Attorney General filed 315 Civil Management petitions.
- The courts civilly confined 82 dangerous sex offenders.
- The courts placed 61 offenders into the community under strict and intensive supervision and treatment (SIST).

This report gives an overview of the implementation of SOMTA. It is divided into two parts: (1) an explanation of the civil management process; and (2) a snapshot of the civil management system after two years, including recent updates. All statistics generated in this report are as of April 1, 2009.



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 have been convicted of a qualifying felony offense, who suffer from a mental abnormality, and who pose the greatest risk to commit new sex crimes. In the first two years, only 7.7% of eligible offenders met the criteria for referral to the Attorney General for civil management.

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 may choose between confining offenders to a secure psychiatric hospital or imposing SIST conditions. 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, courts must review the decision at least annually to determine whether such placement continues to be appropriate. The respondent may also request review at any time.

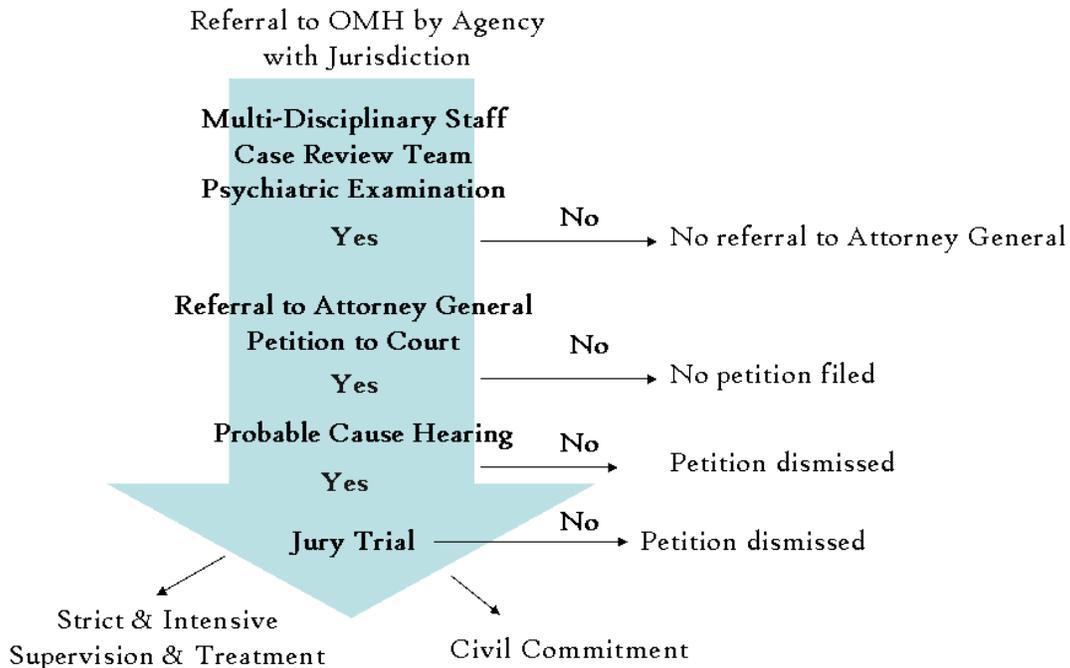
KEY FACTS

- Civil Management has been applied to only 7.7% 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 Referral Process

The first stage in the civil management process is the referral process, which begins when the sex offender is about to be released from prison, parole, or detention at OMH or the Office of Mental Retardation and Developmental Disabilities (“OMRDD”). Every sex offender is reviewed by OMH. OMH employs a multi-tiered assessment and weeds out the majority of cases, because most sex offenders do not suffer from a mental abnormality. In fact, during the first two years of SOMTA, less than 8 out of every 100 sex offenders due to be released from DOCS or the Division of Parole (“DOP” or “Parole”) were referred for civil management. The few offenders who meet the threshold for civil management are then evaluated by a psychiatric examiner. If the psychiatric examiner and OMH case review team determine that the offender suffers from a mental abnormality, the case is referred to the Attorney General for litigation.

MHL Article 10 Civil Management Process



If the Attorney General determines the offender is 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 have a twelve-person jury decide his case at trial, and their 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 at 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 reaches 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. MHL Article 10 defines dangerous sex offender requiring confinement 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.

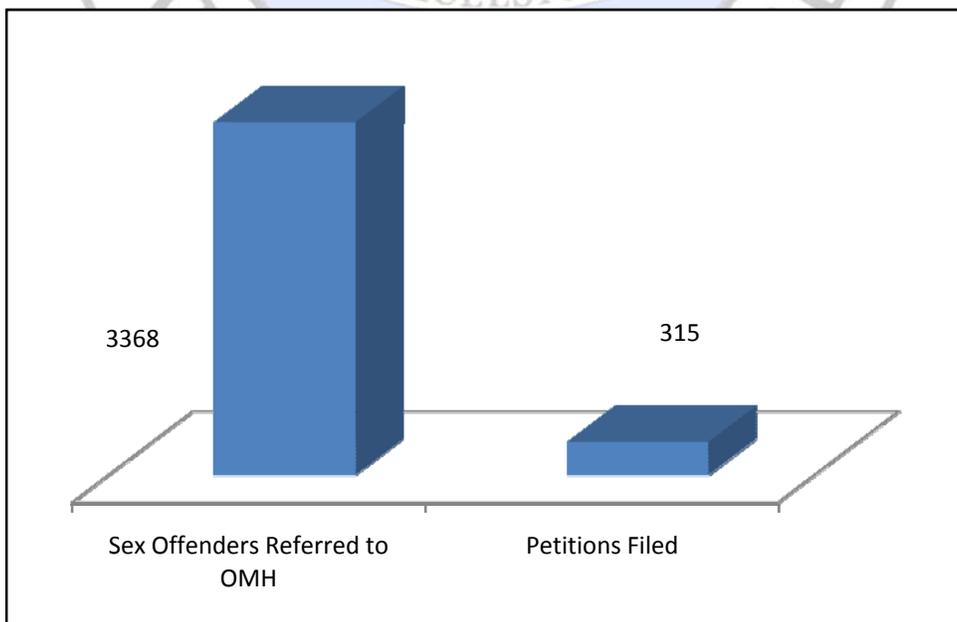
MHL § 10.03(e).

A finding for civil commitment can be re-visited at any time by the court and must be reviewed at least annually to ensure the patient suffers from a mental abnormality to such a degree as to be a danger to the community if not committed to a psychiatric hospital. These safeguards are necessary to ensure

that the respondent's legal rights are respected and that decisions to civilly manage individuals withstand legal scrutiny.

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 7.7 % 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 between 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 Strict and Intensive Supervision and Treatment 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 conducts an investigation to determine whether the Respondent's proposed living arrangements are lawful and appropriate. Parole's Investigation is done with the input of OMH, who researches available outpatient treatment options. The court ultimately decides which patients are placed on SIST and monitors each patient's progress 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 ratio is 25:1. In addition, SIST participants are required to have six face-to-face supervision contacts per month, allowing the parole officer to closely monitor the patient. Traditional parolees have three such contacts per month. Parole officers charged with monitoring SIST participants are also responsible for conducting three collateral contacts per month.

SIST participants 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

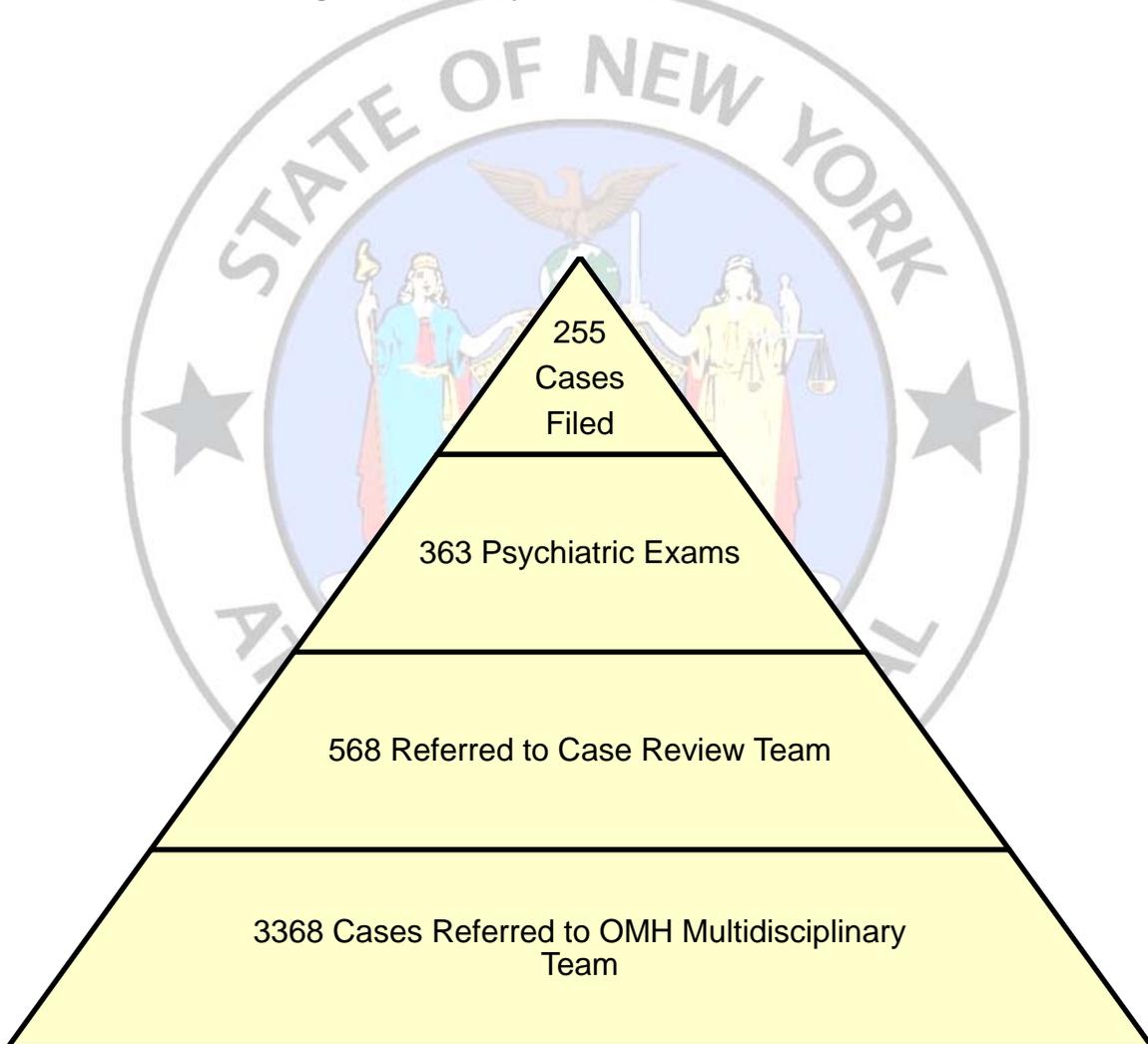
with minors, must abide by a curfew, and cannot use a computer. The patients are required to attend sex offender treatment and are subject to substance abuse testing and sex offender polygraph examinations.

If a patient violates any SIST condition, 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 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.

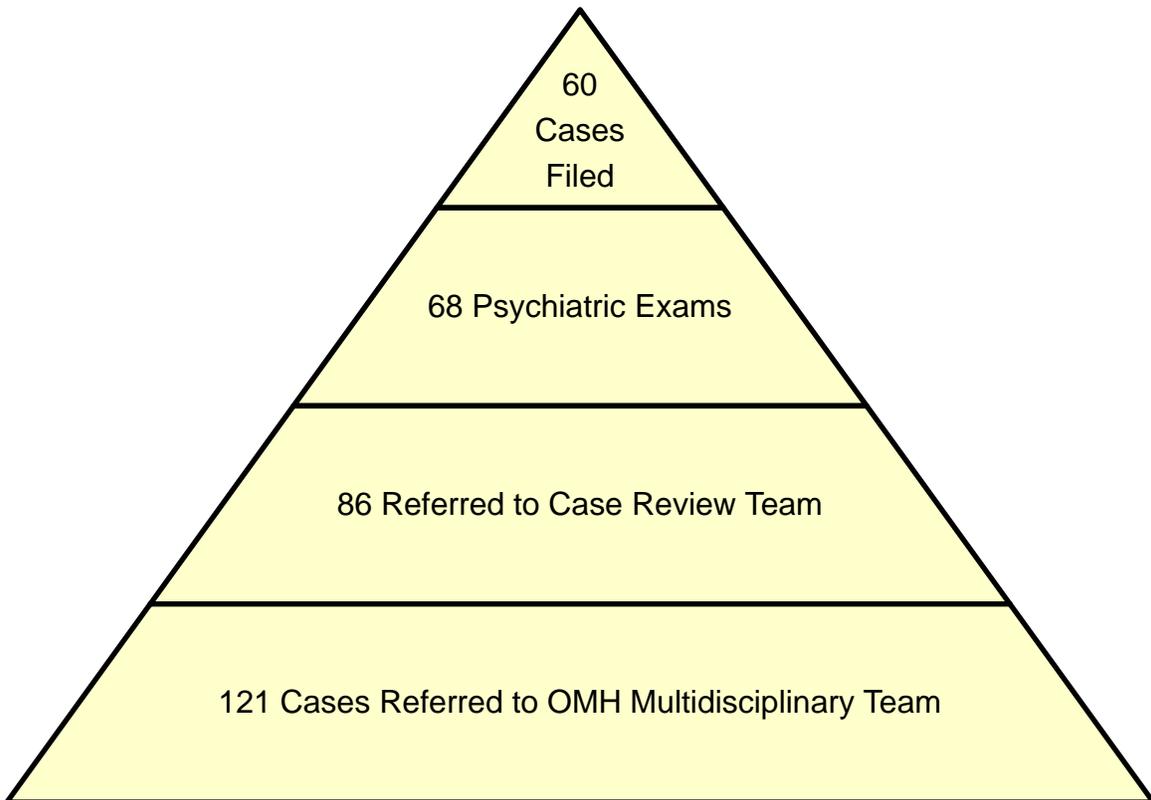
SNAPSHOT OF CIVIL MANAGEMENT AFTER TWO YEARS

Civil management applies only to a small percentage of sex offenders. During the first two years of SOMTA, OMH screened 3368 new cases. Only 258 of the 3368 sex offenders with a qualifying offense were ultimately referred for litigation (7.7% of the total cases reviewed). The pyramid below represents new cases evaluated during the first two years of SOMTA.



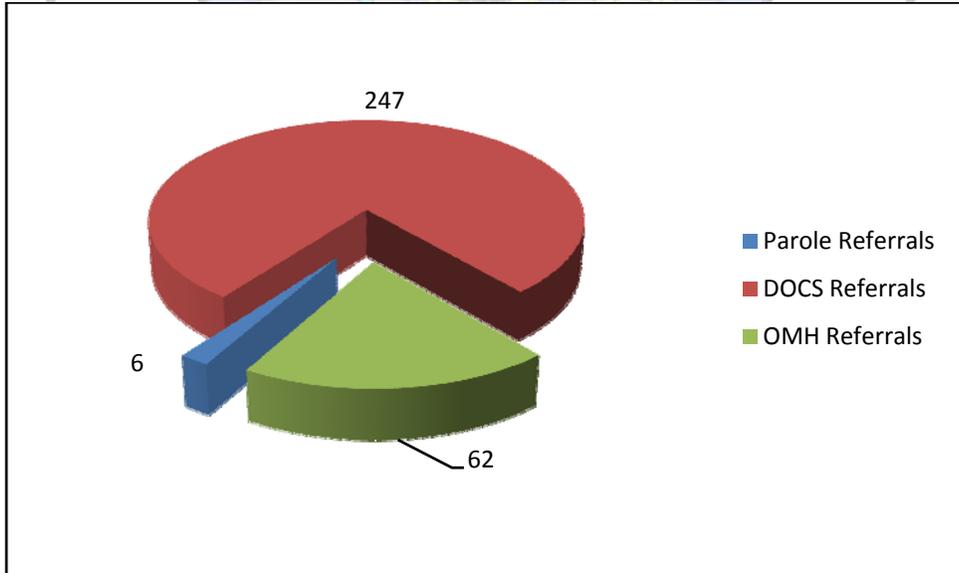
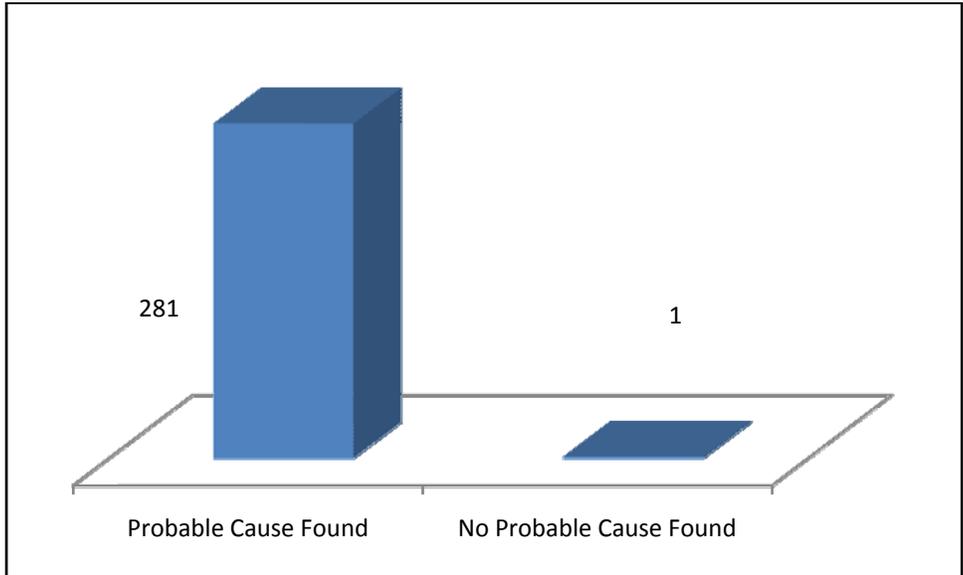
The Harkavy Cases

In addition to the cases concerning individuals who were about to be released from prison or whose parole term was ending, over the past two years, OMH evaluated 121 sex offenders that were hospitalized at OMH prior to SOMTA's enactment. These 121 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 MHL Article 9 had been improperly used to confine these offenders. Then, 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 MHL Article 10. As a result, over the past two years OMH had to re-evaluate 121 patients for civil management under SOMTA. OMH found that 60 of those patients met criteria for civil management under MHL Article 10 and referred those cases to the Attorney General. Today, 55 of the 60 Harkavy cases remain active. Of those 55 cases, 17 patients consented to civil management, 8 patients were found in need of civil management after an MHL Article 10 trial, and 30 patients are pending trial.

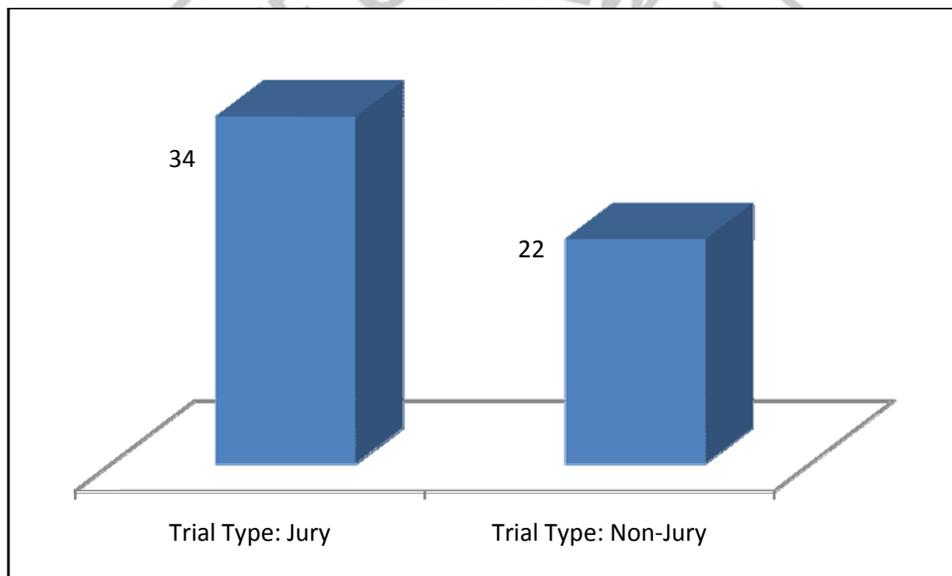


Statistics

In SOMTA's first two years, OMH referred a total of 320 individuals to the Attorney General's office for civil management. This number includes the both Harkavy cases and traditional referrals. The Attorney General filed 315 petitions and conducted 282 probable cause hearings. The courts found probable cause to believe the offender was mentally abnormal and in need of management in 281 of 282 hearings held to date. So far, the Attorney General petitioned courts for civil management of persons in the custody of DOCS, DOP, and OMH. OMH has not yet referred a civil management candidate from OMRDD.



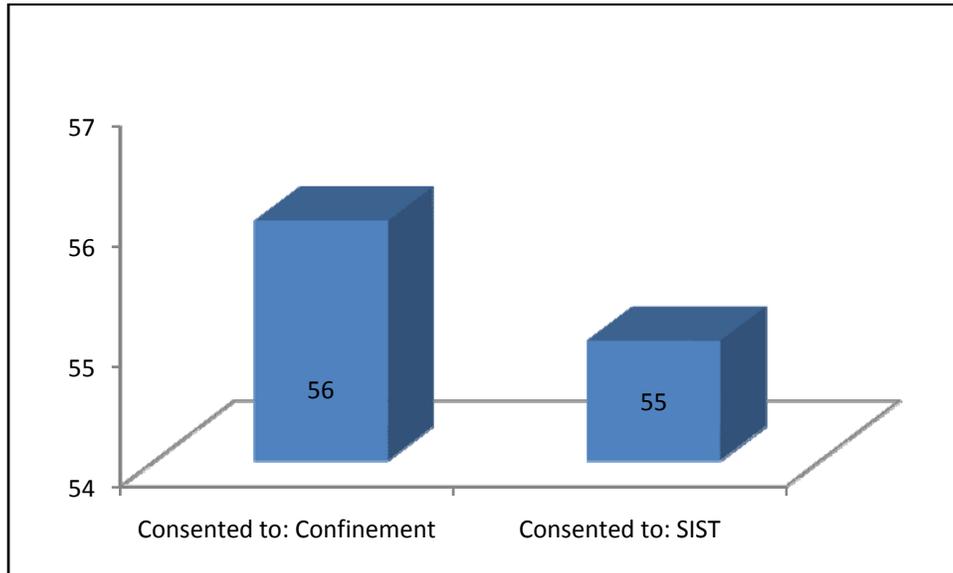
New York courts have held 56 civil management trials. In 46 trials, the jury (or the judge in cases where respondents waived their right to a jury) found that the patient warranted civil management. In 9 trials, the offender was found to not warrant management. In one case, there was a hung jury, and the case was retried successfully for civil management. The courts have held 34 trials before a jury. In 22 cases, the Respondent waived his right to a jury, and proceeded before the court alone.



Although there were relatively few trials in the first few months after SOMTA's enactment, the number of trials has steadily climbed. 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 56 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 another 55 cases, the patient admitted abnormality and successfully persuaded the court to impose SIST.



In total, courts have committed 81 civil management patients to a secure psychiatric treatment facility. This includes 25 post-trial confinements and 56 confinements by consent. In another 61 cases, the courts imposed an outpatient SIST regimen. Litigation is still ongoing in the remaining cases.

Examples of Respondents in Civil Management Litigation

The following list shows examples of cases filed against Respondents by the Attorney General pursuant to SOMTA that resulted in civil confinement.

Names have been redacted.

- *State v. A.J.*
A.J. is an alcoholic with Antisocial Personality Disorder and five sex offense convictions. He 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.
- *State v. M.M.*
M.M. is a diagnosed Psychotic and Sexual Sadist with Schizoaffective and Bi-Polar Disorder, convicted for kidnapping 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.
- *State v. K.M.*
K.M. is a Sexual Sadist and Pedophile with Antisocial Personality Disorder. He 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.
- *State v. M.G.*
M.G. is a diagnosed Pedophile, who digitally penetrated the vagina of his wife's 2 month-old baby. At the time of the offense, he had been on parole for 4 months for the rape 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.
- *State v. D.A.*
D.S. is a diagnosed Pedophile with Mood Adjustment Disorder and Depression. He 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 and 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 6 year-old sister.

· *State v. E.J.*

E.J. is a diagnosed Pedophile with Antisocial Personality Disorder. He subjected his 12 year-old mentally handicapped niece to sexual abuse by fondling her breasts, 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.

· *State v. R.B.*

R.B. is a diagnosed Psychotic Pedophile with Depressive Disorder, Intermittent Explosive Disorder, and Antisocial Personality Traits, who engaged in a 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."

· *State v. T.H.*

T.H. is a diagnosed Pedophile, with Antisocial Personality Disorder, who suffers from depression. While incarcerated for a felony sex offense, he had sexual fantasies about his 2 year-old nephew. These fantasies continued until his release, when the boy was 8. In the first 20 minutes T.H. was able to secure with his nephew alone, he orally sodomized him and forced him to suck on his penis until ejaculation. At the time of his interview with an OMH psychologist, he stated he still has fantasies and urges to kidnap, rape, and murder young children, and that he will immediately seek to sexually assault a prepubescent child upon release.

· *State v. T.S.*

T.S. forcibly abducted a six year-old boy from his driveway, took him to a sand pit, repeatedly spanked him, and orally sodomized him. The New York State Police located T.S. less than an hour after the abduction at the sand pit with a freshly-dug hole (1 ½ feet deep, by 3 feet long, and 3 feet wide). In his car, police found duct tape, rope, a brush and paddle used to spank the victim, an artificial vagina, computer books, and a road atlas. Books entitled 'The Rapist' and '5 Years of Rape and Murder' were found in his possession, together with pornography magazines and what appeared to be bondage videos.

· *State v. J.W.*

J.W. is a diagnosed Pedophile with a Personality Disorder and an alcohol dependence. Over a period of many years, J.W. allowed men he met in

bars to sexually abuse his daughter, often while he held her down. This started when she was six. J.W. and these men would sometimes perform sex acts on each other, in her presence. Prior to committing these offenses, J.W. was convicted of sexually assaulting a 4 year-old boy.

• *State v. M.T.*

M.T. is a diagnosed Pedophile, and his first sexual assault conviction resulted from the repeated sexual abuse of 3 boys in one family and one boy in another family, over a period of several years. After being released from prison for this offense, he sexually assaulted an 11 year-old boy for two years. This conduct resulted in a second prison sentence. Thereafter, M.T. violated his parole for having contact with a 23 year-old mentally handicapped and physically immature man. M.T. admitted to having a sexual relationship with the man, including paying him for sex.

SOMTA'S Impact on Public Safety

SOMTA has been in effect for just two years; therefore, it is difficult to gauge its long term 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 is making a difference and helping to protect communities from the most dangerous sex offenders. After two years, 142 men are currently being civilly managed. Had the Attorney General not brought these cases forward, these recidivistic, mentally abnormal sex offenders would have been released into the community without treatment and/or supervision. Now, all of them are receiving treatment for their mental disorders and are being supervised by Parole or in an OMH facility. The goal of the SOMTA is to provide these men with the therapy that they need to live

an offense-free life. This, taken together with the goals of the criminal justice process, will protect the public, reduce recidivism, and ensure offenders receive needed treatment.

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 dangerous sex offenders. During the last two years, 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, mentally abnormal and recidivistic 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.