



OFFICE OF THE ATTORNEY GENERAL

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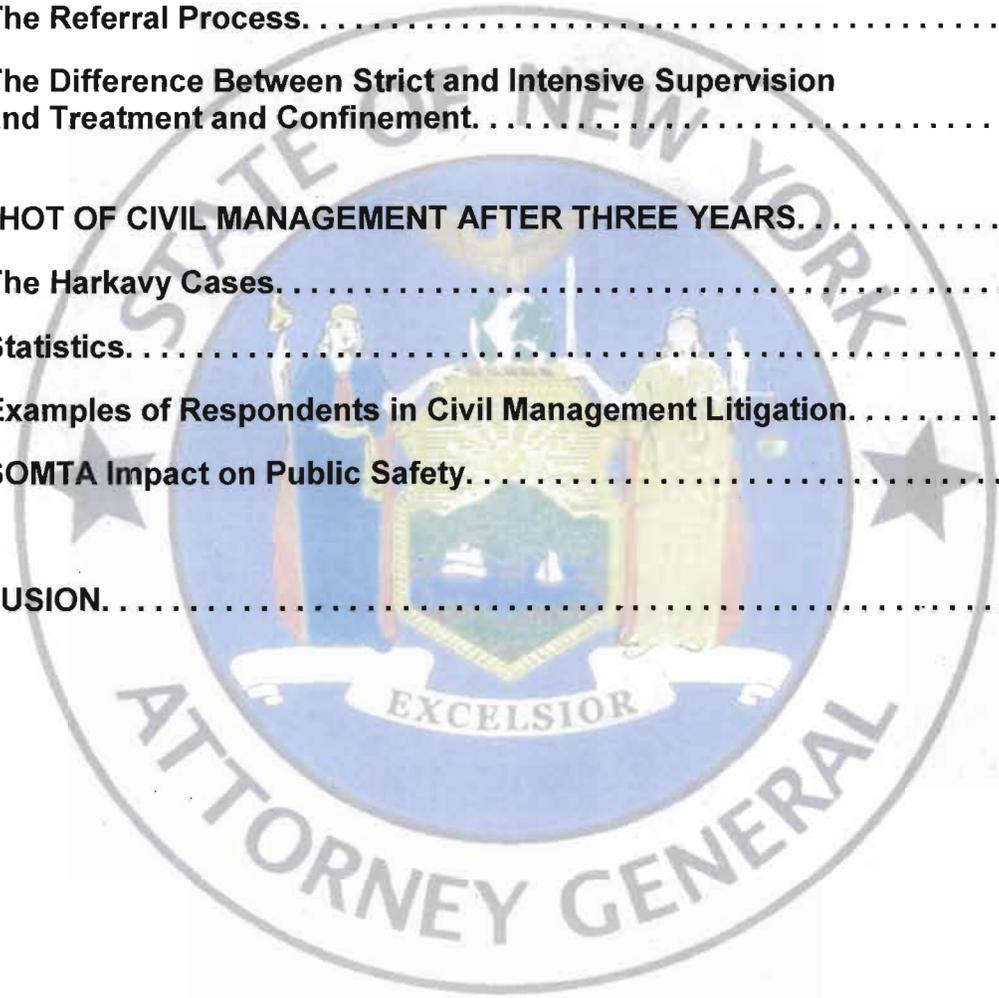
SEX OFFENDER MANAGEMENT BUREAU

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

APRIL 13, 2010

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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 three years, the Attorney General filed 377 petitions, conducted 349 probable cause hearings, and tried 111 cases. As a result, courts have committed 123 dangerous and mentally abnormal sex offenders into secure treatment facilities, while placing 79 sex offenders on a SIST program of outpatient treatment and community supervision.

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 three years, including recent updates. All statistics generated in this report are as of April 1, 2010.

ACCOMPLISHMENTS IN THREE YEARS

- Civil management of sex offenders is now operational in New York State.
- The Attorney General reviews cases, files petitions, and conducts litigation.
- The Attorney General filed 377 civil management petitions.
- Courts civilly confined 123 dangerous sex offenders.
- Courts placed 79 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 have been convicted of a qualifying felony offense, who suffers from a mental abnormality, and who pose the greatest risk to commit new sex crimes. In the first three years, only 7.4%¹ 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 releasing the offenders under strict and intensive supervision and treatment (SIST). SIST provides close supervision of mentally abnormal offenders who live in the community and ensuring 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

¹ It should be noted that the percent of eligible offenders meeting the criteria for referral increases to 8.6% when the "Harkavy" cases are included in the totals. The Harkavy cases are discussed later in this report.

be appropriate.

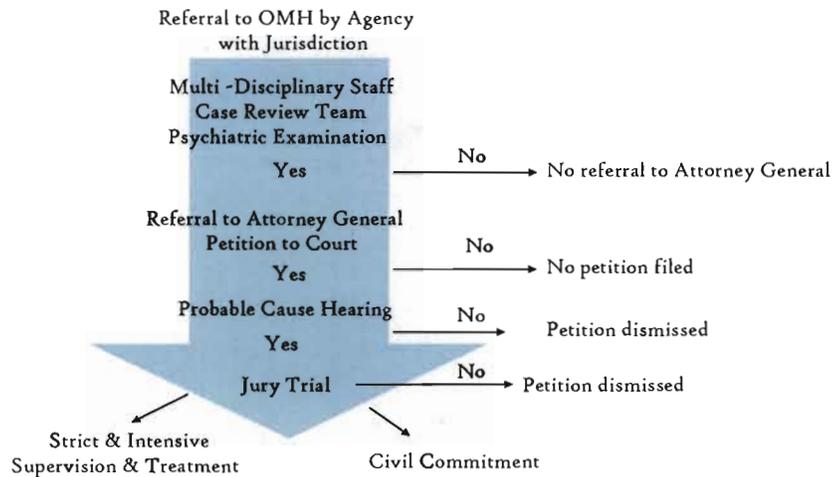
KEY FACTS

- Civil management has been applied to only 7.4% 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 three 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 the OMH Case Review Team (CRT) 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.

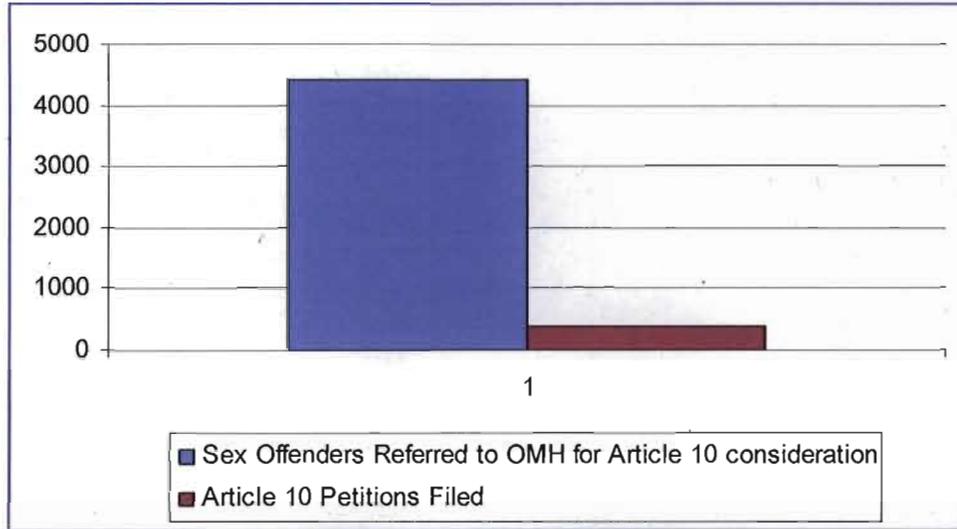
The jury decides only whether the respondent suffers from a mental abnormality. The jury does not decide whether the respondent will receive inpatient treatment at a secure psychiatric treatment facility or will receive treatment on an outpatient basis while supervised in the community under SIST. The 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. To date, only about 7.4% of those cases reviewed have been referred.
- 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 in the community 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 state 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 offender's progress under community supervision and treatment.

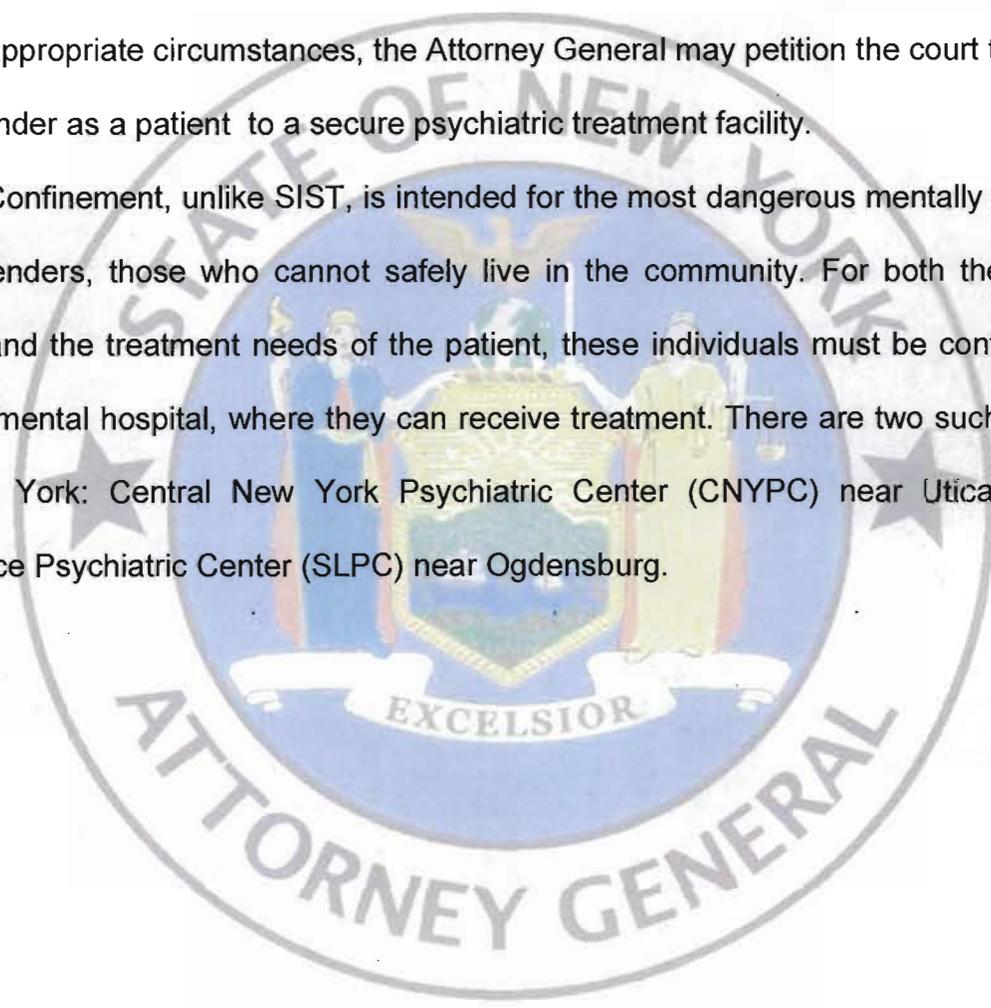
All offenders on SIST are supervised by specially trained parole officers with a greatly reduced case ratio of 10:1. By contrast, a normal parolee to parole officer caseload ratio is 60:1, and a normal parolee to parole officer sex offender caseload ratio is 25:1. In addition, SIST participants are required to have six face-to-face supervision contacts per month, allowing the parole officer to closely monitor the patient. Traditional parolees have half as many 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 offender's prior behavior. For example, these conditions may mandate that the offender cannot have contact with minors, must abide by a curfew, and cannot use a computer. The offenders are required to attend sex

offender treatment and are subject to substance abuse testing and sex offender polygraph examinations.

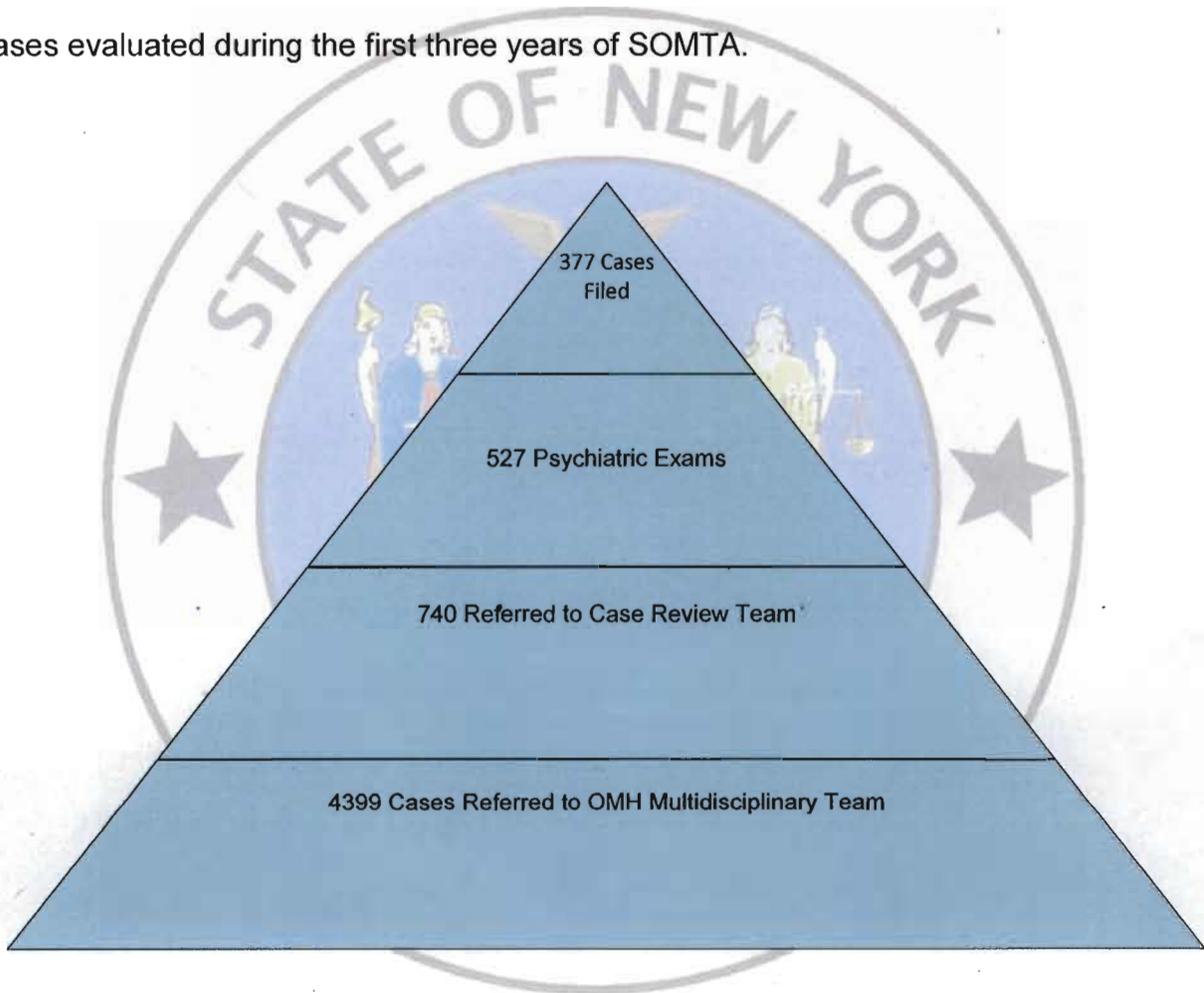
If an offender violates any SIST condition, his parole officer is authorized to take him into custody. If that happens, the Attorney General decides what further action to take, including bringing the case before the court for modification of the SIST conditions. Under appropriate circumstances, the Attorney General may petition the court to confine the offender as a 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 THREE YEARS

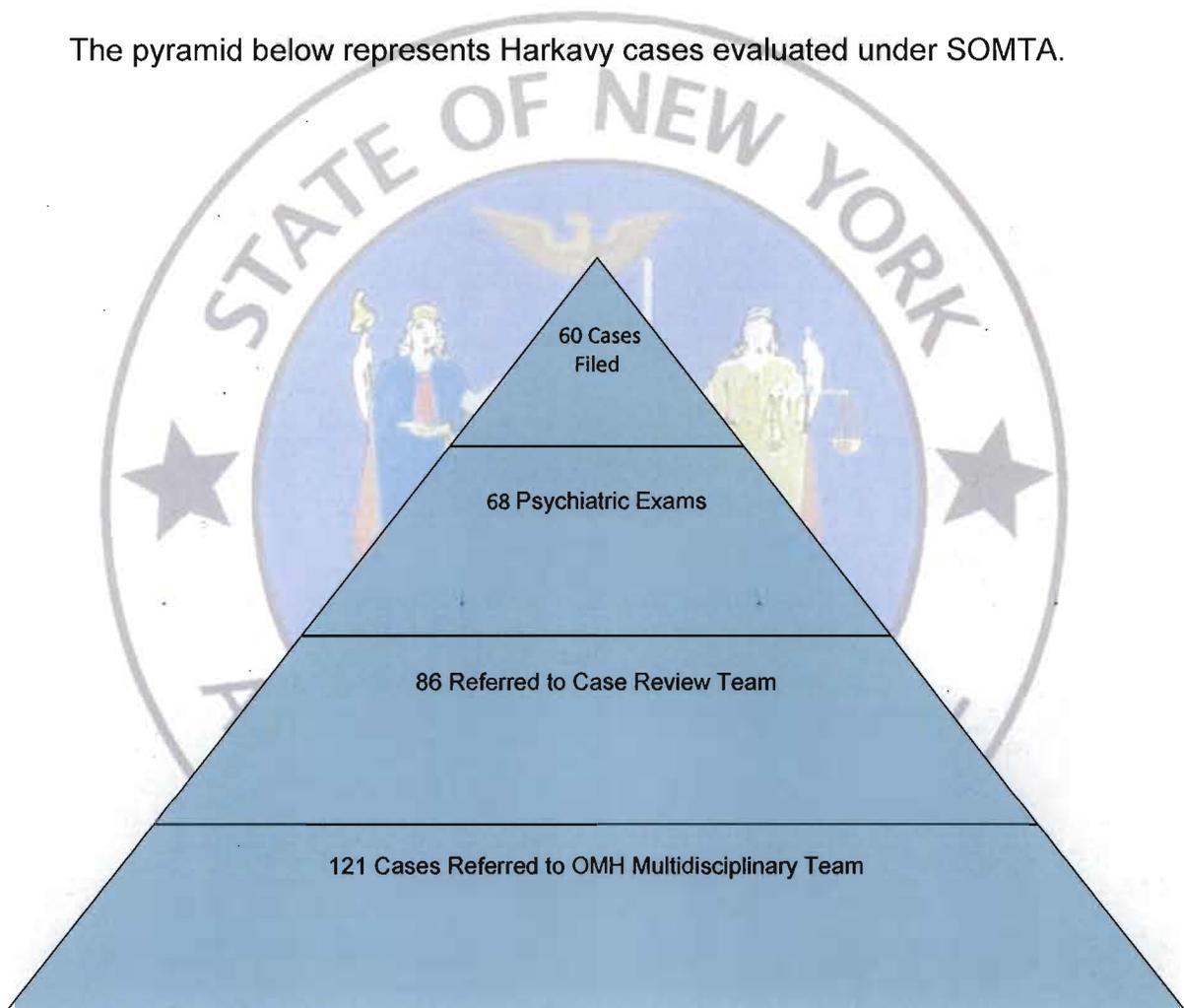
Civil management applies only to a small percentage of sex offenders. During the first three years of SOMTA, OMH screened 4,399 new cases. Only 383 of the 4,399 sex offenders with a qualifying offense were ultimately referred for litigation (8.7% of the total cases reviewed, including Harkavy cases). The pyramid below represents new cases evaluated during the first three years of SOMTA.



The Harkavy Cases

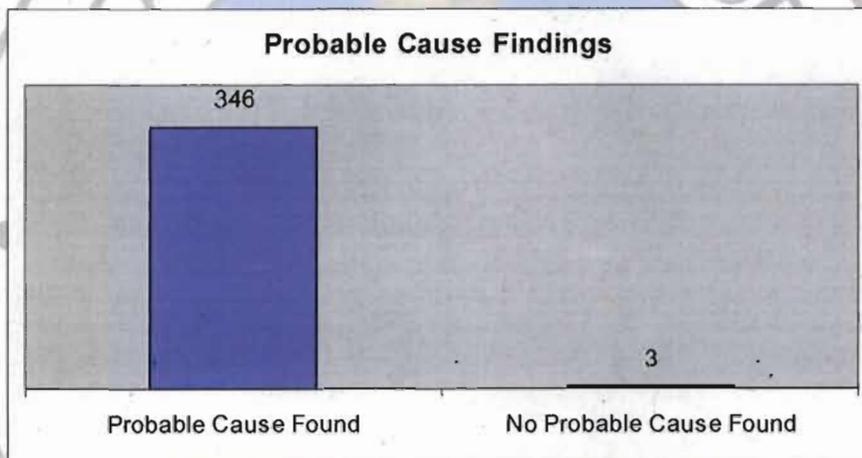
In addition to the cases concerning individuals who were about to be released from prison or whose parole term was ending, over the past three years, OMH evaluated 121 sex offenders that were hospitalized at OMH prior to SOMTA's enactment. These 121 patients, who are referred to as the "Harkavy" patients, 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 three years OMH re-evaluated 121 patients for civil management under SOMTA. OMH found that 60 of those offenders met criteria for civil management under MHL Article 10 and referred those cases to the Attorney General.

The pyramid below represents Harkavy cases evaluated under SOMTA.

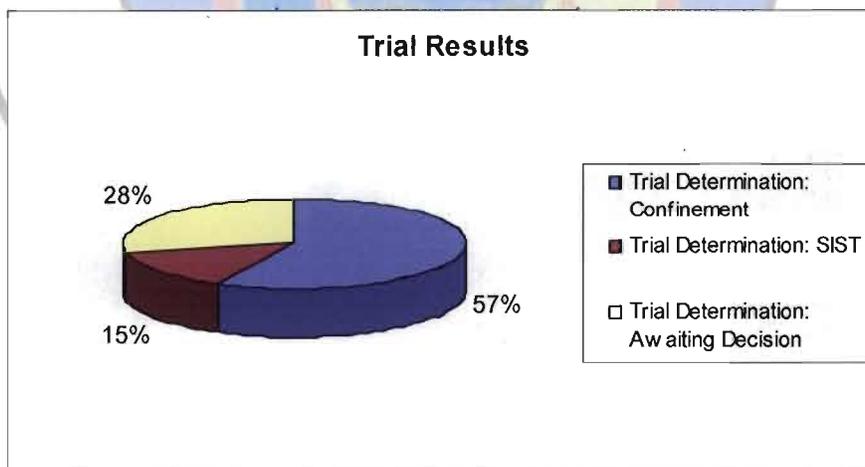
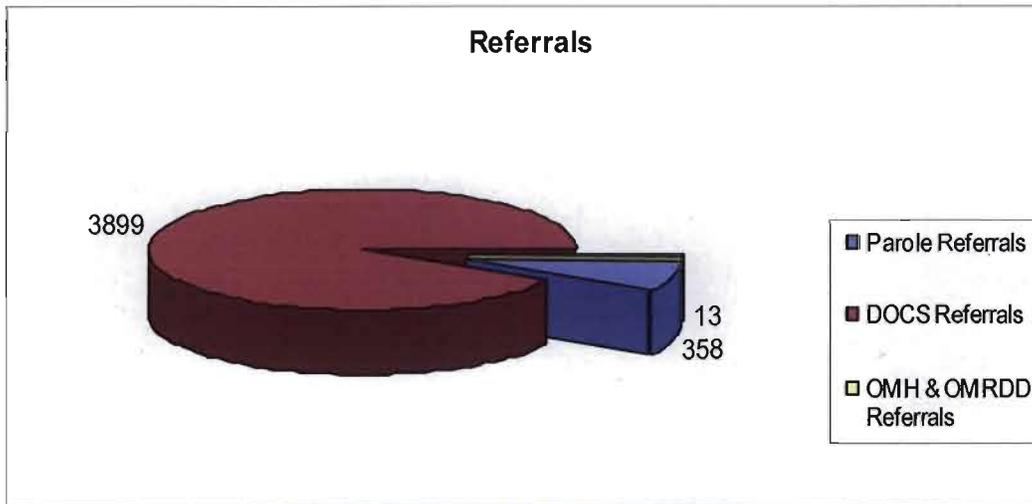


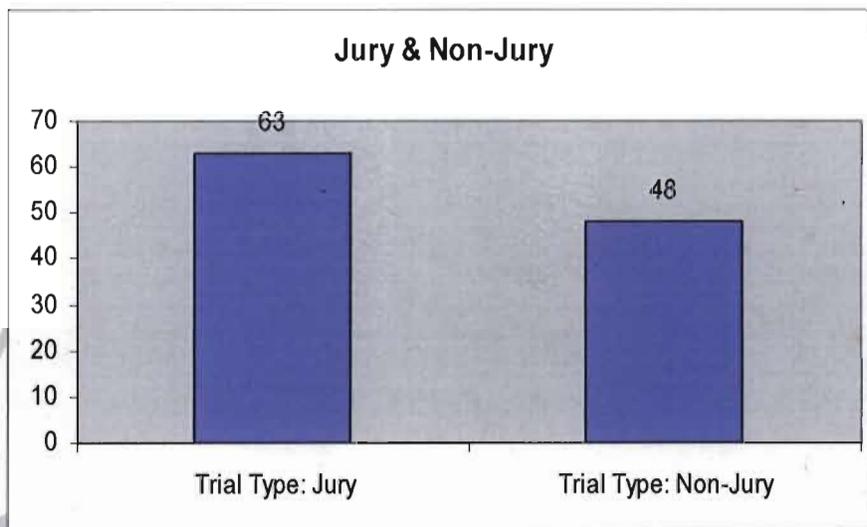
Statistics

In SOMTA's first three years, OMH referred a total of 383 individuals to the Attorney General's office for civil management. This number includes the both Harkavy cases and traditional referrals. The Attorney General filed 377 petitions and conducted 349 probable cause hearings. The courts found probable cause to believe the offender was mentally abnormal and in need of management in 346 of 349 hearings held to date. So far, the Attorney General petitioned courts for civil management of persons in the custody of DOCS, Parole, OMH, and OMRDD.

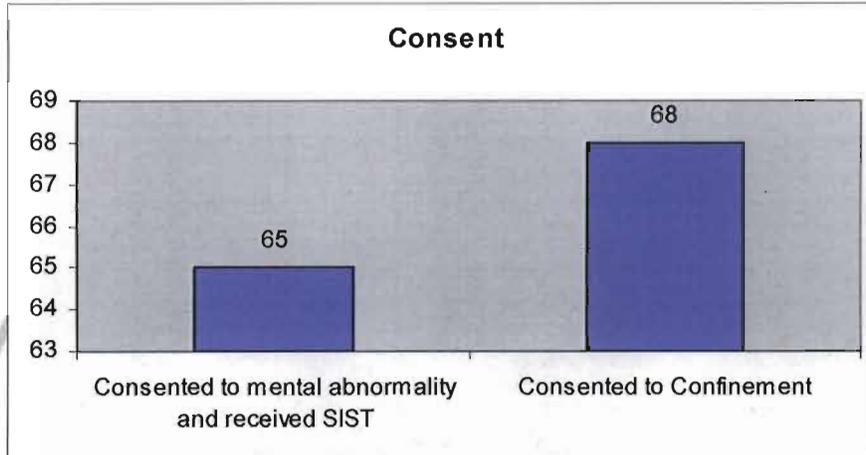


New York courts have held 111 civil management trials. In 69 trials, the jury (or the judge in cases where respondents waived their right to a jury) found that the patient warranted civil management. In 15 trials, the offender was found to not warrant management. In one case, there was a hung jury, and the case was retried successfully for civil management. The courts have held 63 trials before a jury. In 48 cases, the Respondent waived his right to a jury, and proceeded before the court alone.





In addition to the cases decided at trial, there have been a number of settlement dispositions. In 68 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 65 cases, the patient admitted abnormality and successfully persuaded the court to impose SIST.



In total, courts have committed 123 civil management patients to a secure psychiatric treatment facility. This includes 55 post-trial confinements and 68 confinements by consent. In another 79 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 are examples of cases filed against Respondents by the Attorney General under SOMTA and resulting in civil confinement over the past year. Names have been redacted.

State v. V.C.:

VC is 53 years old and diagnosed with Pedophilia. He began offending against girl relatives as a teenager, and since then has evolved his offending patterns to include non-relatives and boy victims. He has been convicted of felony child sexual assaults three times, and admits that he still masturbates to sexual thoughts about children.

State v. E.F.:

EF is a diagnosed pedophile, who was convicted of sexually assaulting his girlfriend's cousin, a 10 year-old boy and another 8 year-old boy. His criminal history revealed 26 arrests, resulting in 12 convictions, several as a result of sexual crimes committed against children. The pre-trial investigation done by the Attorney General's office revealed 17 sex offense victims.

State v. C.K.:

CK is a serial rapist who is diagnosed with Antisocial Personality Disorder and Paraphilia NOS. CK's most recent conviction stems from an incident where he commandeered a 68 year-old woman's car, drove to a remote location, forced his penis into the victim's mouth, and then anally raped her. After the attack, he destroyed evidence and stole an identification card from the victim, threatening retaliation if she reported the crime. In addition to this sexual attack, CK's background reveals 5 other sex crimes perpetrated against women. He committed his first sex offense at the age of 15. Later, at age 26, he forcibly raped a 19 year-old woman. He forced his penis into her anus at knifepoint, and he sliced her face after she struggled.

State v. K.R.:

KR is diagnosed with Antisocial Personality Disorder. While on parole for causing the death of his first wife, he forcibly raped his current wife (after savagely beating her despite her pleas for him to call for help) and sexually assaulted a 10 year-old neighbor.

State v. T.D.:

TD is diagnosed with Sexual Sadism and Personality Disorder NOS. His most recent offense involved a 12 hour ordeal where his victim was viciously and repeatedly raped and beaten in her own apartment. In addition to the rapes and beatings, he forcibly removed her clothing, bound and dragged her around the apartment, poured water on her when she asked for a drink, and beat her with a baseball bat and then inserted the bat into her vagina.

State v. R.P.:

RP is diagnosed with Pedophilia and Exhibitionism. In his latest offense, he lured young girls into the woods claiming he was searching for a lost dog, and then sexually assaulted them. This occurred despite lengthy hospitalizations in two other states for repeated exhibitionistic and pedophilic conduct. After these hospitalizations, RP absconded from parole supervision from one of those states. The authorities did not hear from him again until his arrest for the latest offense.

State v. R.W.:

RW is diagnosed with Pedophilia and Antisocial Personality Disorder. His felony sexual convictions include offenses against teenage boys, a blind 14 year-old boy who was previously unknown to him, a 10 year-old girl who was previously unknown to him, and a 9 year-old boy family member. When the 9 year-old boy's mother learned of the abuse, she confronted RW and called the police. Before the police could arrive, RW snuck into the boy's bedroom through a window and sexually assaulted the child one last time. RW has said that he is sexually attracted to young, vulnerable children and fantasizes about the famous image from a of a well-known child actor, wearing only a towel, slapping his face with his hands in a bathroom mirror. He has also admitted to molesting additional children at locations like video arcades, who failed to report the abuse.

State v. H.W.:

HW is diagnosed with Sadism, Paraphilia NOS, and Antisocial Personality Disorder. At age 25, he kidnapped, raped, and sodomized, both anally and orally, a 15 year-old girl as she was babysitting in a rural area. HW returned her to the home where she was babysitting, kept her underwear as a souvenir, and warned her not to tell anyone. As she telephoned for help, HW stood in the window smiling. This occurred after he forcibly raped his own sister when he was 16 years old and forcibly raped a female acquaintance a year later.

State v. A.L.:

AL is diagnosed with Exhibitionism, Fetishism and Paraphilia NOS. While wearing women's lingerie and a trench coat, AL exposed his penis and displayed a knife to 27 year-old woman. He forced her out of her clothes, grabbed her breasts, and attempted to rape her. This incident was the culmination of a 17 year history of similar offenses, including assaulting a woman with a knife while he wore a t-shirt and garter belt and masturbating while wearing women's clothing in front of a woman and her child.

SOMTA'S Impact on Public Safety

SOMTA has been in effect for just three years; therefore, it is difficult to gauge its long term impact. Civil management is intended to apply only 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. Accepted research shows that sex offender treatment can successfully reduce recidivism. After three years, 202 men are currently being civilly managed. Had the Attorney General not brought the 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 three years, tremendous strides have been made toward implementing this goal. Currently, the civil management system is functioning across New York 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.