LETITIA JAMES

ATTORNEY GENERAL

NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

SEX OFFENDER MANAGEMENT BUREAU

A Report On The Sex Offender Management Treatment Act

April 1, 2024 to March 31, 2025

TABLE OF CONTENTS

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 New York State Office of the Attorney General (OAG) created the Sex Offender Management Bureau (SOMB). SOMB 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 MHL 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 18 Years," provides updated statistics and case data that are current as of March 31, 2025. 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 note 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

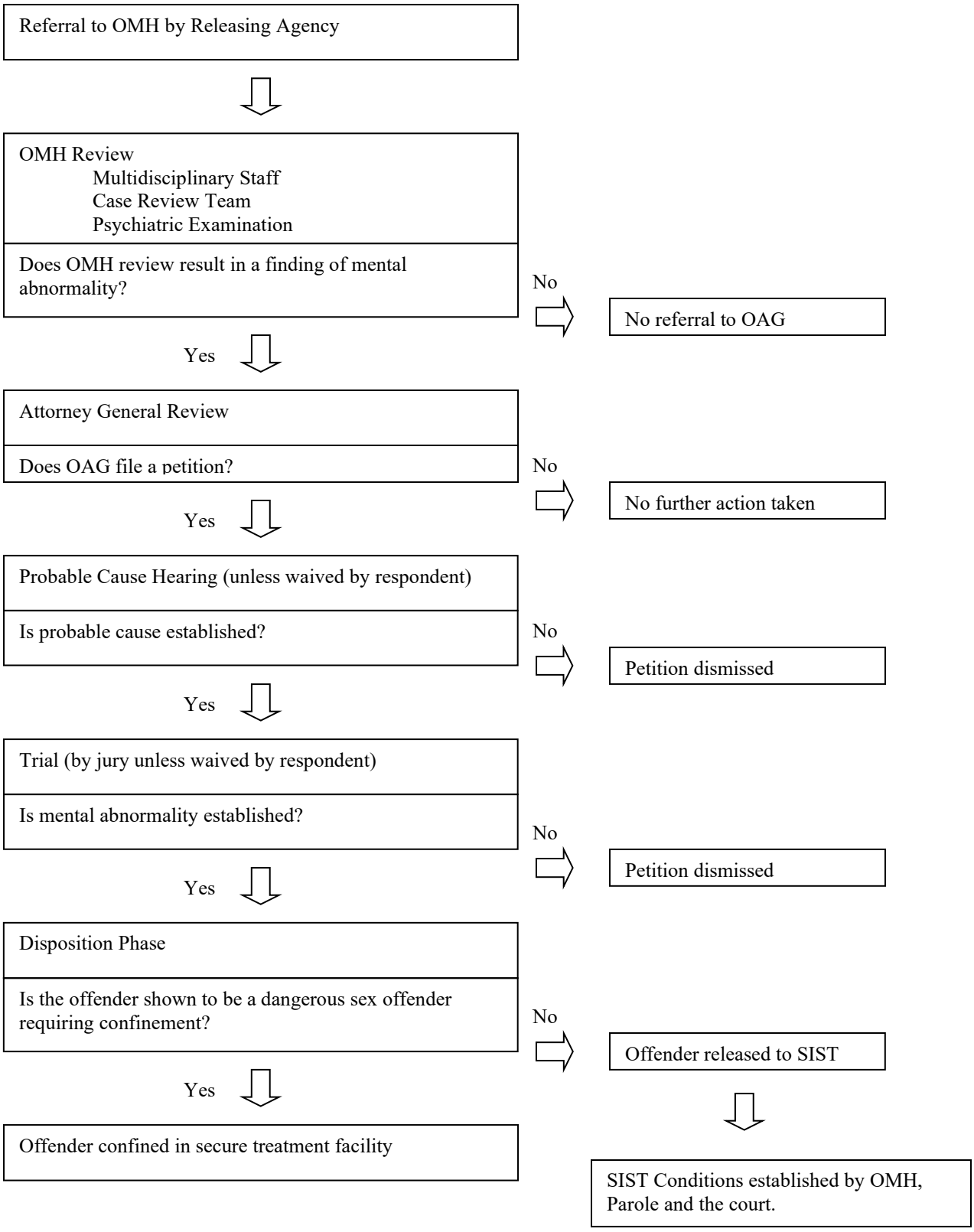
[6] MHL §§10.05, 10.03(a),(q),(g) and (i).

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 or her 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 provides notice of the sex offender's anticipated release to both OMH and the OAG.[11] The two most common referrals are made when a convicted sex offender nears a release date from a correctional facility 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 sex 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 for possible commencement of legal proceedings under Article 10. If the CRT and psychiatric examiner find the offender does not require civil management, the case is not referred and is closed.

The statute provides a time frame for the evaluation process: 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 with 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

[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).

written notice of its determination whether the case will be referred for civil management.[14]

In practice, the actual time in which the OAG receives OMH's determination is much shorter. In 2007, the 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; in 2022 it was 18 days; in 2023 it was 30 days; in 2024 it was 15 days; and in 2025 it was 12.5 days. These notification time frames are advisory, not mandatory, but the statute contemplates 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 and the 2018-2019 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; in 2021-2022, 52 cases; in 2022-2023, 33 cases; in 2023-2024, 51 cases; and in 2024-2025, 32 cases. The various and complex factors driving annual referrals exceed the scope of this report.

C. LEGAL PROCEEDINGS

If, upon referral by OMH, the OAG determines that civil management is appropriate, an

[14] MHL §10.05(g).

Article 10 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. The statute provides that once a petition is filed, the offender is entitled to an attorney. Most 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]

The statute authorizes the offender to seek the removal of the case to the county of the underlying sex offense conviction(s).[17] If an offender does not request venue to be transferred to the county of the underlying sex offense, the OAG may bring a motion for such transfer.[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 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 prison 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

[15] MHL §10.06(a).
[16] MHL §10.06(c).
[17] MHL §10.06(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).
[21] MHL §10.06(k).

Article 10. [22]

Once it is established there is probable cause to believe a 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 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 Article 10 petition is dismissed.[28] If a unanimous jury, or a court if a jury is waived, determines the State of New York did not meet its burden, the petition is dismissed, and

[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).
[28] *Id*.

the respondent is released in accordance with other provisions of Article 10.[29]

When the jury, or judge if a jury is waived, determines that the State of New York met its burden of proof and finds 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" 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 an OMH secure treatment facility for care, treatment, and control until such time as he or she no longer requires confinement.[32]

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 "strict and intensive supervision and treatment" is supervised by parole officers from DOCCS and is required to abide by conditions set by the court.

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

D. TREATMENT AFTER MENTAL ABNORMALITY IS ESTABLISHED

1. Dangerous Sex Offender Requiring Confinement (DSORC)

As reflected in the legislative findings of 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 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] A respondent found to be a "dangerous sex offender requiring confinement" is transferred to an OMH Secure Treatment and Rehabilitation Center, generally either Oakview in Marcy, New York, or Bridgeview in Ogdensburg, New York.

A determination that a respondent is found to be a "dangerous sex offender requiring confinement" does not necessarily 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]

Furthermore, and by statute, each "dangerous sex offender requiring confinement" is examined once a year by OMH for an evaluation of their mental condition to determine whether they are currently a "dangerous sex offender requiring confinement" and, at such time, the respondent has the right to be evaluated by an independent psychiatric examiner.[36] Each such respondent is entitled to this Article 10 annual review hearing based upon the findings of the OMH

[34] MHL §10.01(b).
[35] MHL §10.09(f).
[36] MHL §10.09(b).

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, in most instances the OAG will call the OMH examiner to testify at the hearing concerning their evaluation of respondent's mental condition and their determination of whether respondent is currently a "dangerous sex offender requiring confinement", and the respondent often presents independent expert testimony on his or her behalf. In some instances, the independent examiner selected by respondent opines that respondent suffers from a mental abnormality and remains a "dangerous sex offender requiring confinement" and the OAG will call the independent examiner as a witness to present their expert opinion to the Court.

The annual review hearing and the right to be evaluated by an independent psychiatric examiner 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 offender's 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", 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 it can be effective and appropriate to provide treatment for some sex offenders in a regimen of "strict and intensive supervision and treatment"

[37] MHL §10.09(d).
[38] MHL §10.09(h).

in the community.[39]

Before a sex offender is released into the community, DOCCS and OMH conduct a SIST investigation to develop appropriate supervision requirements. These supervision 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 must 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, 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 six face-to-face supervision contacts and six collateral contacts with their parole officer each

[39] MHL §10.01(c).
[40] MHL §10.11(a)(1).
[41] *Id*.

month.[42] This 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 State of New York 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 State of New York 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]

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 establish by clear and convincing evidence that the modifications are warranted.[48] However, when

[42] MHL §10.11(b)(1).
[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).
[48] MHL §10.11(g).

the sex offender files 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, 2025, 305 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) typically when an offender is released from a secure treatment facility, the court has found he or she still suffers from a mental abnormality and releases him or her to SIST.

II. CIVIL MANAGEMENT AFTER 18 YEARS

A. REFERRALS AND CASES FILED

In the eighteen years since Mental Hygiene Law Article 10 became law, OMH has reviewed 27,306 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 1,155 sex offenders for civil management. Of the 1,155 cases referred, 1,134 have resulted in the OAG filing an Article 10 Petition. This includes what is considered the "Harkavy"[50] cases addressed in previous reports.

[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 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.

B. PROBABLE CAUSE HEARINGS

As referenced above, OMH has referred a total of 1,155 sex offenders for civil management to the OAG.[51] The OAG has filed 1,134 petitions and conducted 1,053 probable cause hearings. The courts found probable cause to believe the offender suffered from a mental abnormality and needed civil management 1,047 times out of the 1,053 hearings held to date.

C. MENTAL ABNORMALITY TRIALS

Since SOMTA's inception in 2007, 550 matters have proceeded to trial. Of the 550 trials, the jury or judge rendered a verdict that 460 of those sex offenders suffered from a mental abnormality and 90 were adjudicated to have no mental abnormality.

D. DISPOSITIONS

1. Dangerous Sex Offender Requiring Confinement (DSORC)

From April 13, 2007, to March 31, 2025, a court determined in 1,601 instances that an offender is a "dangerous sex offender requiring confinement" in a secure OMH facility. This number includes individuals who were released to SIST, who violated and were ordered to confinement.

2. Strict and Intensive Supervision and Treatment (SIST)

From April 13, 2007, to March 31, 2025, a total of 604 offenders were placed on a regimen of SIST after a finding that they suffer from a mental abnormality.

3. SIST Violations

Presently, 157 offenders are 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 SIST from

[51] These referrals include the *Harkavy* cases.

confinement after an annual review hearing, and the number of those offenders who violated a condition of SIST. In SOMTA's second year, the SIST violation rate was 32%, with 40% of those violations taking place the first month on SIST. By the end of the third year, the SIST 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 if a respondent violated any condition, e.g., late curfew, has changed, and therefore decreased the number of violations that are filed.

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 which do not rise to the level of having a violation filed. Upon receipt of a quarterly report and/or Incident Report, the Court may schedule Compliance Calendars, at which the respondent is brought to Court to address and correct the behavior before it escalates and results in the filing of a violation. This new policy has led to less SIST violations and to the overall success of respondents on SIST.

E. ANNUAL REVIEW HEARINGS

The number of annual review hearings 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 1,170 dangerous sex offenders have had an annual review hearing held by the court. In the current report period, April 1, 2024, to March 31, 2025, there have been 91 annual review hearings.

F. SIST MODIFICATION OR TERMINATION HEARINGS

Since 2007, 305 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

Between April 1, 2024, and March 31, 2025, the courts have decided a number of significant cases, each having a dynamic impact on Article 10 litigation.

A. FEDERAL CASES

There was one significant case impacting Article 10 decided at the Federal level during this review period.

1. Federal Habeas Corpus Relief Cannot be Granted Until All Available State Court Remedies Have Been Exhausted.

Decided September 11, 2024, in Fair v Ramseier, 2024 WL 4144916 the District Court for the Northern District of New York determined that petitioner was not entitled to federal habeas corpus relief because he had not exhausted all state court remedies, or shown good cause for not having exhausted all state remedies or any prejudice that he has suffered or demonstrated that failure to consider the claim would result in a miscarriage of justice.

In this matter, petitioner properly filed a petition for discharge from confinement in the appropriate state court by seeking an annual review hearing pursuant to MHL 10.09. That request for discharge was denied. He then properly challenged his involuntary confinement by filing a state habeas corpus proceeding, which was denied. He did not, however, appeal the denial of his habeas petition. The district court noted that state court appellate review is specifically authorized

for the denial of a state writ of habeas corpus, and, therefore, by not appealing the denial of his habeas petition, petitioner failed to fully exhaust his remedies in state court before filing the federal habeas corpus petition. The court further determined that the ultimate consequence of asserting unexhausted habeas claims in federal court is that the court must consider such claims procedurally defaulted and that procedurally defaulted claims must be dismissed unless "the petitioner can show cause for the default and prejudice or demonstrate that failure to consider the claim will result in a miscarriage of justice." Here, petitioner failed to assert any cause for his failure to exhaust or the prejudice that arises from it. The court directed petitioner to file an affirmation that identifies the cause, if any, for his failure to exhaust state remedies as well as what, if any, prejudice he has sustained.

B. NEW YORK STATE COURT OF APPEALS

There was one significant reported case impacting Article 10 decided by the Court of Appeals during this review period.

1. SIST Violation/ SIST Revocation Proceeding: In the Context of the Initial Step in a SIST Revocation Proceeding, a Finding of Probable Cause That a Respondent is a Dangerous Sex Offender Requiring Confinement Based Solely Upon the Allegations of the SIST Violation Petition does not Violate Procedural Due Process.

Decided October 22, 2024, in Neville v Toulon, 43 N.Y.3d 1, the Court of Appeals affirmed the Third Department ruling that an adversarial proceeding is not necessary to satisfy due process in the context of the initial step in the process of revoking SIST. A court may find probable cause exists to believe a respondent is a dangerous sex offender requiring confinement based solely on review of SIST revocation papers filed by the State, without any adversarial proceedings or opportunity for respondent to be heard, before being temporarily confined for violating SIST.

MHL 10.11 (d) (4) provides that a person's regimen of SIST may be revoked, and a person taken into custody, upon a violation of a condition of SIST. MHL 10.11 (d) (4) further permits pre-hearing confinement upon a prompt judicial finding of probable cause to believe that the respondent is a "dangerous sex offender requiring confinement." In this matter, the Court concluded that "the current statutory scheme appropriately balances the relevant individual and state interests and provides sufficient process to mitigate the risk of erroneous confinement without a respondent's participation at the probable cause stage." 43 N.Y.3d at 3.

The Court considered three factors in determining that an adversarial probable cause proceeding is not required when a court reviews a SIST revocation petition and determines that there is probable cause to temporarily confine an offender during the pendency of a SIST revocation proceeding: the private interest of the litigant; the risk of erroneous deprivation in the absence of substitute procedures; and the State's interest in avoiding additional procedures.

Regarding the private interest of the litigant, the Court held that, at the point of a SIST revocation proceeding, a respondent possesses a diminished and temporary physical liberty interest. This is due to the fact that there has already been an initial judicial determination after trial that the individual possesses a mental abnormality, and the trial process provides extensive due process safeguards. Furthermore, by statute, a release to SIST is expressly subject to revocation, and the statute does not contemplate indefinite detention based upon the initial probable cause finding when SIST revocation papers are filed. Rather, Article 10 provides that a hearing must take place within 30 days of the petition being filed; therefore, an adversarial proceeding is not required prior to any determination resulting in a Court ordering respondent held while the SIST revocation proceeding is pending.

Second, as to the risk of erroneous deprivation in the absence of substitute procedures, the

degree to which an adversarial probable cause proceeding would provide additional protection against erroneous probable cause determinations is minimal. The court found this factor did not require an adversarial proceeding based on the fact that the statute requires an independent judicial probable cause determination, which provides a significant safeguard; the respondent plays a role in the determination because the psychiatric report that forms the basis of the revocation petition permits an interview with respondent, often with counsel present; and a full SIST revocation hearing is statutorily required to be held in 30 days. The Court held that the level of added protection an adversarial preliminary hearing would provide is slight and case dependent. It further noted that courts are well-equipped to engage in a straightforward probable cause analysis without adversarial proceeding, and that there is no evidence that courts frequently make erroneous probable cause determinations without respondents' participation, and allowing full participation in an initial hearing could undermine the statute's requirement of an expeditious probable cause determination.

Finally, the Court determined that the state's interest in avoiding additional procedures weighs heavily in the government's favor. The Court noted that the state has a strong interest in moving expeditiously to ensure that a respondent, who has been shown to be a serious threat to public safety, be removed from situations where they may harm members of the public. The Court held that requiring adversarial proceedings prior to a temporary confinement could pose a serious risk to the public.

In summary, the Court found that the procedures outlined in Article 10 for SIST revocation matters appropriately balanced the need to safeguard respondents' due process rights by prioritizing an expeditious probable cause determination with the need to protect the public from those deemed to be likely to be a danger to others and to commit sex offenses if not confined in a

secure treatment facility.

C. THE NEW YORK STATE APPELLATE DIVISIONS

FIRST DEPARTMENT DECISIONS:

There were two significant reported cases impacting Article 10 decided by the First Department during this review period.

1. Trial Court Committed Several Fundamental Errors Which in Totality Constituted Reversible Error Resulting in the Reversal of the Court's Finding of No Mental Abnormality.

Decided April 23, 2024, in Matter of Richard V., 228 A.D.3d 109, the First Department reversed a trial court's decision to dismiss the State's Article 10 petition after a non-jury trial. The First Department found that the trial court committed three errors which, when taken together, required the reversal of the trial court's finding of no mental abnormality. First, the trial court incorrectly conflated the proper legal standards when assessing whether the State satisfied its burden of showing that respondent suffered from a mental abnormality. In its decision regarding the mental abnormality issue, the trial court vacillated between the proper "serious difficulty" standard required for a determination of the presence of a mental abnormality, and the "inability to control" standard that is used at the dispositional phase to determine whether respondent is a dangerous sex offender requiring confinement. Therefore, the trial court's credibility determinations regarding the State's experts were inappropriately based upon the court's failure to utilize the correct standard. Second, the trial court erred by refusing to follow binding precedent establishing that a combination of diagnoses or disorders may support a finding of mental abnormality given the litany of case law holding that an expert may rely on a combination of

disorders to establish a mental abnormality when no individual diagnosis would do so. The First Department determined that the trial court committed reversible error in finding that the State could not use a "constellation" of conditions, diseases, and disorders to establish that respondent currently suffers from a mental abnormality. Finally, and perhaps most critically, the First Department held that the trial court improperly analyzed and relied upon extra-record scientific and psychological research on several important issues without notifying the parties. The First Department noted that, while deference is typically accorded to the trial court's assessment of expert witnesses, and a judgment following a bench trial should be set aside only where it cannot be supported by any fair interpretation of the evidence, such a determination cannot be upheld when there is a reasonable possibility that the court could have reached a different conclusion had it not independently reviewed scientific literature and relied on facts not in evidence. The First Department determined that the trial court cited to a multitude of facts outside the record that can be reasonably found to have influenced its finding and that such extensive usage of outside research blurred the lines between the roles of judge and counsel, depriving the parties of the opportunity to respond.

In sum, the underlying order and judgment were reversed, the petition for civil management was reinstated, and the case was remanded for a new trial.

2. SIST Violation: Absent Evidence of Sexually Inappropriate Conduct While on SIST, it is Incumbent on the State to Demonstrate a Persuasive Link Between a Nonsexual SIST Violation and Offender's Ability to Control His Sexual Behavior.

Decided June 20, 2024, in Matter of Anthony R., 228 A.D.3d 541, the First Department joined the Fourth Department in holding that "In the absence of evidence of sexually inappropriate conduct while on SIST, it becomes incumbent on the State to demonstrate a persuasive link between a nonsexual SIST violation and the offender's ability to control his sexual behavior" and

that a "mere tendency to engage in risky or socially undesirable conduct – even if that conduct provides an opportunity for, or increases the likelihood of, sexual offending – is quintessentially insufficient to establish inability" and a respondent's "mere struggling with sexual urges is insufficient to show inability to control."

The State had previously filed a SIST revocation petition against Anthony R., and following a hearing, the trial court determined that he was not a dangerous sex offender requiring confinement and ordered him released from custody and restored to SIST. Three days after release back to SIST, Anthony R. was taken into custody by his parole officer based on alleged violations of multiple SIST conditions including, breaking curfew, travelling outside of his approved area in order to purchase marijuana, being late to the intake appointment at his approved residence, being late to his sex offender treatment program, and testing positive for marijuana and fentanyl. After a hearing on the SIST revocation petition, the trial court found that Anthony R. was a dangerous sex offender requiring confinement, revoked his regimen of SIST, and ordered him confined in an OMH secure treatment facility. The trial court found that Anthony R. was unable to control his sex offending behavior based upon: 1) his failure to exhibit a desire to make progress in his sex offender treatment as shown by previous SIST violations, lateness to his intake and treatment appointments, and nonchalance about his underlying offense; 2) his drug use immediately upon the short time he was released, and the fact that drug use leads to his impaired decision making and sexual preoccupation; 3) the aggressive behavior he showed towards care providers including general combativeness and balling his fists during conversations with female staff; 4) his lack of transparency with Parole and his acknowledgment that he knew of his SIST conditions when he violated curfew; and 5) the State's psychologist finding that he was emotionally dysregulated, as shown by his angry outburst during their interview which resulted in the interview being

terminated.

The First Department overturned the finding and the order for confinement. It noted that the applicable standard is that the State must show that a respondent is "presently unable" to control his sexual conduct, and it was undisputed at the hearing that during the time Anthony R. was most recently released to the community he made no sexual threats, did not approach any treatment staff in a sexual manner, and did not express any sexual impulses or urges. The First Department agreed with the trial court's finding that while substance abuse could disinhibit sexual decision making, there was no evidence presented that his alleged substance use directly resulted in any sexual behavior during the three days he was in the community and the State made no showing of a causal link between his substance abuse and sexual compulsion. The First Department also found that while it was "disquieting," his demeanor towards his care workers and the State's expert did not even approach the level of explicit threats of violence demonstrated in other cases to establish an inability to control his sexual conduct. Finally, the First Department found that his lack of transparency with Parole regarding his curfew violations, as well his lateness for appointments, did not establish that respondent is incapable of controlling his sexual impulses. Accordingly, the order of confinement was reversed, and Anthony R. was restored to SIST.

SECOND DEPARTMENT DECISIONS:

There were two significant reported cases impacting Article 10 decided by the Second Department during this review period.

1. **Right to Counsel: A Respondent's Right to Counsel May Be Forfeited as a Result of Their Ongoing Uncooperative and Negative Behaviors.**

Decided October 9, 2024, in Matter of Victor H., 231 A.D.3d 837, the Second Department held that Supreme Court properly found that respondent had forfeited his right to

counsel at trial by his "persistent pattern of threatening, abusive, obstreperous, and uncooperative behavior with successive assigned counsel."

2. The Trial Court Improperly Precluded the State from Presenting Admissible Evidence.

Decided January 29, 2025, in Matter of Kevin W., 234 A.D.3d 977, the Second Department held that the trial court improperly precluded the State from presenting expert testimony that respondent suffered from sexual sadism, the underlying hearsay basis evidence for that diagnosis, and testimony from a victim regarding violence and sexual offenses respondent committed against her.

The Second Department found that it was improper for the trial court to preclude the proposed expert opinion testimony that was based upon a statement made by a victim to the State's expert. The Second Department determined that the hearsay basis evidence testimony was reliable since respondent was convicted of Sexual Abuse in the First Degree with respect to that victim, and the probative value of the hearsay, which would assist the jury in evaluating the expert's opinion, substantially outweighed its prejudicial effect. Finally, it was determined that the trial court also erred in precluding the State from calling a previous victim of the respondent's sexual offenses. The court determined that testimony regarding the violence and sexual offenses that respondent allegedly committed against the witness was not hearsay, was relevant to the issue of whether the respondent suffered from a mental abnormality, and its probative value outweighed its prejudicial impact, particularly since the State's expert expressly considered it in forming her opinion. The Second Department determined that a new trial was warranted because the improperly precluded opinion testimony of the State's expert may have had a substantial influence upon the result of the trial if it had been admitted.

THIRD DEPARTMENT DECISIONS:

There were no significant MHL Article 10 cases decided by the Third Department during this review period.

FOURTH DEPARTMENT DECISIONS:

There were three significant reported cases impacting Article 10 decided by the Fourth Department during this review period.

1. **Annual Review: The Court's Determination of DSORC Was Not Based Upon Inadmissible Evidence of Uncharged Crimes.**

Decided July 3, 2024, in Matter of Daniel J., 229 A.D.3d 1147, the Fourth Department held that the trial court did not rely on unreliable hearsay evidence of uncharged crimes when it determined that Daniel J. is a "dangerous sex offender requiring confinement" under Article 10. The Fourth Department determined that, even though the report prepared by the State's expert contained references to allegations of uncharged sexual offenses, the trial court did not rely upon that hearsay evidence in reaching its decision to continue confinement. At the time of the annual review hearing, the trial court agreed with the parties' joint request that it not consider said uncharged allegations. In its written decision and order, the trial court specifically indicated that the uncharged conduct "was excluded, not considered and wholly disregarded." Instead, the trial court relied upon the undisputedly admissible evidence relating to petitioner's commission of other sexual offenses, for which he was convicted. Overall, the Fourth Department found that the inclusion of uncharged sex offenses in the expert report did not undermine the trial court's determination given the extent of other evidence relied upon, and affirmed the decision.

2. **Appeal Rejected Where Defendant was Advised of the Possibility of Civil Management at the Time He Pled Guilty.**

Decided July 26, 2024, in Matter of John J. Motell, IV, 229 A.D.3d 1330, the Fourth Department found that by failing to move to withdraw his guilty plea, or to vacate the judgment of conviction, petitioner failed to preserve his contention that the guilty plea in a criminal proceeding was not knowingly, intelligently, and voluntarily entered. Petitioner's appeal was based on his claim that he was not advised of the sex offender registration fee or the possibility of civil confinement at the time of his guilty plea. The Fourth Department found not only that he waived his right to appeal, but that the underlying contention was without merit because petitioner was made aware of the possibility of civil confinement pursuant to Article 10 by the written sentence agreement that was prepared and reviewed at the plea proceeding.

3. Article 10 of the Mental Hygiene Law Only Provides Two Types of Civil Management, Confinement at an OMH Secure Treatment Facility, or Strict and Intensive Supervision and Treatment also referred to as SIST.

Decided November 15, 2024, in Matter of Mahwee S., 232 A.D.3d 1325, the Fourth Department once again clarified that Article 10 does not permit confinement as part of SIST. In this matter, respondent's expert agreed that respondent had a strong predisposition to commit sex offenses and an inability to control his behavior, but she opined that respondent did not require confinement, but rather needed 24-hour supervision in a group home run by the Office for People with Developmental Disabilities. The Fourth Department held that Article 10 provides for only two dispositional outcomes – confinement in an OMH Secure Treatment Facility or outpatient regimen of SIST. The Fourth Department also held that placing respondent at an OPWDD facility constitutes involuntary confinement and thus it was not a permissible option under Article 10 to release respondent on SIST and require he be confined at an OPWDD facility.

D. TRIAL COURT DECISIONS:

Each year, New York's 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 trial court decision within a given year in this annual report. However, below are several examples of significant decisions that are shaping this dynamic area of Article 10 civil management in New York.

1. **Subject Matter Jurisdiction: When Respondent is Arrested on New Criminal Charges During an Article Ten Proceeding, and a Conviction of Said Charges May Result in a Lengthy Sentence, the Article Ten Court May Lose Subject Matter Jurisdiction.**

Decided June 12, 2024, in Matter of Efrain V. the Supreme Court, Bronx County (Collins, A.J.S.C.) granted respondent's motion to dismiss the Article 10 petition. The Court found that while the order to show cause and petition were timely filed when respondent was nearing his release date from an underlying conviction for a qualifying sexual offense, the fact that he was subsequently arrested for new charges (including a class A-II felony which carries a possible life sentence) meant that his anticipated release date is now unknown and, thus, it cannot be said to be "nearing" as required by the statutory language. Therefore, since the anticipated release date is unknown, the Court determined that the Article 10 proceeding is not ripe, the Court no longer has subject matter jurisdiction, and the petition was dismissed with leave to renew.

2. **Expert Witnesses: The State May Call Two Expert Witnesses, One of Whom is an Examiner Employed by OMH or Retired From OMH, and the Other, a Court Appointed Expert. A Former OMH Examiner Who Evaluated the Respondent Prior to her Retirement is not a Court Appointed Expert, and May Provide Testimony Pursuant to Public Officers Law 73 (8a).**

Decided September 10, 2024, in Matter of Neil H., the Supreme Court, Kings County (Quinones, J.S.C.) found that, by its plain language, Article 10 places a limit on court appointed experts who may examine the respondent and testify at trial. However, the court also found that the Office of Mental Health doctor who completed the initial evaluation and report and was to

testify at trial was not a "court appointed expert" under Judiciary Law 35. The Court followed the Court of Appeals decision in Matter of John P., 20 N.Y.3d 941 (2012), holding that the psychiatric examination under MHL 10.05(e) is not a court-ordered examination because it is held before the petition is filed, before the case is referred to the Attorney General, and is part of the process to identify which cases should be brought under Article 10.

Similarly, the Court denied respondent's request pursuant to MHL 10.06(d) to preclude the State from calling a second expert witness at trial. The Court cited to the Third Department's decision in Matter of James K., 135 A.D.3d 35 (2025), which held that it was not fundamentally unfair to allow the State to present two expert witnesses against the respondent's one because Article 10 contains no requirement that both parties must have the same number of expert witnesses. The Court therefore determined that it was is not fundamentally unfair or a denial of due process to permit the State to present two expert witnesses.

Respondent also argued that the State has no authority to call a psychiatric examiner who completed an evaluation under MHL 10.05(e) as a witness at trial because the statute does not indicate that the examiner can continue to participate in subsequent proceedings after completing the evaluation. The Court again turned to the Matter of James K., which held "nothing in the statute affirmatively precludes such continued participation, and the Court of Appeals has held that relevant evidence may be admissible in Article 10 proceedings when no statute prohibits its use." The Court determined that, in the absence of any rule prohibiting such evidence, the test of admissibility is whether the testimony is material and relevant. The Court held that the OMH examiner's testimony was clearly relevant and material to the instant proceedings. Her evaluation established that there was probable cause to believe respondent suffers from a mental abnormality; as an expert who interviewed him and conducted an extensive review of his health and criminal

records, her knowledge of his pathology is germane to the issues to be addressed at trial; and her testimony becomes even more significant given respondent's expressed intention to refuse to communicate with the State's appointed examiner.

Finally, the Court also denied respondent's request to preclude the State from calling the OMH examiner as a witness because she retired after completing the report and was no longer an employee of OMH. The clear language of 10.03(j), which defines a psychiatric examiner, says the person "may, but need not, be an employee" of OMH. Therefore, her retirement did not disqualify her from serving as a psychiatric examiner or testifying as an expert at this trial. Similarly, Public Officers Law 73(8-a) provides express authority for former employees to continue to gather and review information in preparation for trial, and MHL 10.05(e) provides the examiner with extensive access to health records so granting continued access would not be a HIPAA violation.

3. Judicial Subpoena Denied: The Court Denied State's Motion for Judicial Subpoena for Records of a Non-State Agency.

Decided September 20, 2024, in Matter of Jose G., Supreme Court, Oneida County (McClusky, J.S.C.) denied the State's request for judicial subpoenas for records from three agencies that purportedly provided mental health services to respondent. The Court ruled that because the agencies were independent, private entities rather than State facilities or agencies, they are entitled to keep their private records private. The Court determined that MHL 10.08(c) only permits the State to request records from State agencies, which does not include private not-for-profit entities.

4. Hearsay: The Constitutional Protections of the Fifth and Sixth Amendments do not Apply to Article 10 Civil Proceedings.

Decided October 31, 2024, in Matter of Jose D. R., the Supreme Court, Bronx County (Collins A.J.S.C.) found that the recent United States Supreme Court decision in Smith v Arizona,

602 U.S. 779 (2024) does not require a re-examination of the New York Court of Appeals decision in State v Floyd Y., 22 N.Y.3d 95 (2013), concerning the admissibility of hearsay basis evidence in Article 10 cases. The Bronx Supreme Court distinguished Article 10 cases from Smith because Smith was a criminal matter, while Article 10 is clearly a civil statute.

The Supreme Court agreed with the Floyd Y. holding that the constitutional protections of the Fifth and Sixth Amendments do not apply in Article 10 civil proceedings; instead, the Due Process Clauses of the Fifth and Fourteenth Amendments govern the scope of procedural due process. The Supreme Court held that a respondent's Due Process rights are protected if the hearsay basis evidence falls into a recognized hearsay exception, the proponent demonstrates that it is reliable, and its probative value outweighs any prejudice. It also determined that Due Process is further protected by the fact that respondents have the right to present their own expert witness to challenge any hearsay basis evidence and through a proper limiting instruction from the trial court.

5. Statements Made in Conjunction with Polygraph Examinations are Admissible.

Decided November 6, 2024, in the Matter of the State of New York v. Efrain R., the Supreme Court, Westchester County (Prisco, A.J.S.C.) denied Efrain R.'s motion to preclude any evidence or expert opinion testimony concerning the use or results of any polygraph. The Court recognized that, while it is well established that polygraph examinations and their results are inadmissible during criminal trials as they are not considered competent or reliable, courts have not delineated what sources can be utilized as sources of sufficient evidence of a serious difficulty controlling sex-offending conduct while creating the detailed psychological portrait of a sex offender in an Article 10 proceeding. The Court determined that it is clear that statements made

by an offender, among other things, can be relied upon by experts in reaching their determination and creating the detailed psychological portrait.

The Court also held that experts should be permitted to testify about any statements made by respondent during or before the polygraph examination, and any opinions or determinations derived therefrom, but the experts may not testify as to the veracity of the polygraph examination and its results.

6. SIST Violation: The State Does Not Have to Await New Sexual Offending to Show Respondent is Unable to Control Sexual Behaviors.

Decided November 6, 2024, in the Matter of the State of New York v. Keegan R. the Supreme Court, Seneca County (Dinolfo, J.S.C.) determined that the State had satisfied its burden in a SIST violation hearing and demonstrated that the respondent was a "Dangerous Sex Offender Requiring Confinement". A SIST violation was filed based upon respondent admitting to masturbating to a Playboy magazine 25-30 times in a day, possessing sex toys, magazines with images of young female children, and videos of young female cheerleaders. He also admitted to being sexually attracted to girls between ages 10-13.

The Court held that respondent's history establishes his capability of "creating victims", just as he has demonstrated a capability for deception. Taken together with respondent's inability to control his sexual conduct, this is precisely the "glint of steel" warned of by the George N. court and the State was not required to wait until a respondent on SIST creates a new victim via hands on sexual offending before concluding that he is unable to control his sexual behavior and requires confinement. The Court determined that respondent was aware of the potential consequences of his conduct that led to the SIST violation and disregarded those consequences in order to satiate his sexual urges. In the Court's opinion "that is not difficulty controlling conduct, but rather an inability to do so."

7. SIST Termination Granted.

Decided December 16, 2024, in the Matter of Robert S. v. State of New York, the Supreme Court, Broome County (Blaise, J.S.C.) granted petitioner's request to be terminated from SIST and found that he no longer suffered from a mental abnormality.

Petitioner had a long history of sexual offenses committed between 1990 and 2012 for sex offenses committed against a seven-year-old girl, a three-year-old girl, and a four-year-old girl. After being incarcerated from 2012-2016, a petition for civil management was filed, and granted, resulting in Robert S. being placed on SIST. He initially appeared to be doing well on SIST in 2016 and 2017, but then had several serious SIST violations. However, the Court found the SIST violations were not sufficiently linked to his underlying pedophilia and did not indicate that he was a significant risk to re-offend. Specifically, in 2018, petitioner admitted to having an unauthorized sexual relationship with a female prostitute and allowing her to live with him without permission of his parole officer. In 2023, he admitted living with an ex-paramour with limited intellectual capacity who was the mother of one of his victims, without permission of his parole officer. The Court found it compelling that this cohabitation occurred while he was recovering from prostate cancer surgery. In 2024, petitioner repeatedly visited Walmart at prohibited times when children were likely to be found in the store. The Court found that these visits were accompanied by his sister who was his major support in the community as a chaperone. Later in 2024, Robert S. again allowed his ex-paramour to live with him and they were visited by her daughter, one of his previous victims. The Court was swayed by the fact that the daughter's visit

was to comfort her mother whose son had passed away and there was no direct contact between her and Robert S. Again, later in 2024, Robert S. admitted that he was aroused by, and masturbated to, the movie "Teen Wolf." The Court was not concerned with this admission because it was adult actresses playing teenagers as opposed to prepubescent girls, and the masturbation occurred in the privacy of his own home.

The Court ruled that the petition to terminate SIST should be granted as the State did not satisfy the burden of showing that Robert S. continues to have a mental abnormality and requires civil management. That decision was based upon the fact that Robert S. had been in the community on SIST for 8 years without committing any new sexual offenses, the recidivism rate for sex offenders on SIST for more than 5 years was under 4%; Robert S. is now of an advanced age, 63, when the research shows a decrease in sexual offending; and that he currently suffers from significant physical and medical issues including prostate cancer and diabetes.

8. The Court is Not Required to Hold a Dispositional Hearing Where Witnesses Are Subject to Direct and Cross Examination by Counsel.

Decided December 16, 2024, in Matter of Donald G., Supreme Court, Cayuga County (Valleriani, J.S.C.) found that MHL 10.07(f) does not require a hearing where witnesses are called and subject to direct and cross examination at the disposition stage of Article 10. Rather, the clear language of the statute states that parties "may offer additional evidence" and the Court "shall hear argument" on which form of civil management is appropriate. The Court explained that while a hearing involving testimony from witnesses was permitted under the statute, it was not required. Rather, it is up to the sound discretion of the trial court based on its management of the proceedings and the particulars of the case at bar.

The Court went on to hold that there is no burden of proof on either party during the 10.07(f) dispositional hearing. A plain reading of the statutory language shows that a burden of

proof is never mentioned in 10.07(f). The law only sets forth the obligations of the court, i.e. to hear argument. The Court held that this is distinguishable from several other sections of Article 10 where a burden of proof is clearly placed on a party by the language of the statute. The Court found that the "Legislature's omission of any mention of a burden of proof at the dispositional phase is a dispositive distinction that manifests an intentional omission and warrants the conclusion that petitioner bears no burden of proof at the dispositional phase under Mental Hygiene Law 10.07(f)."

9. SIST Violation: Summary Judgment Motions Are Not Permitted in SIST Violations.

Decided December 20, 2024, in State of New York v. Carl S. and State of New York v. Morpheus G., Supreme Court, Kings County (Johnson, A.J.S.C.) found in a joint decision that summary judgement motions for SIST violations are not appropriate on both procedural and substantive grounds. The Court pointed out that there is nothing in the language of Article 10 that either prohibits or authorizes such motions and recognized that other trial Courts have entertained and granted motions for summary judgment to dismiss initial petitions in Article 10 cases. However, the Court also pointed out that none of those decisions contained any discussion of the procedural propriety of the motions, and more importantly, no appellate court has expressly sanctioned it. Ultimately, the Court found that there are significant differences between an initial petition for civil management and a petition for confinement following a SIST violation which militate against allowing a summary judgment motion in a SIST violation proceeding by reviewing an analogous Court of Appeals decision.

The Court looked at the Court of Appeals decision in People ex rel. Neville v. Toulon, 43 N.Y.3d 1 (Oct 22, 2024), which did not address summary judgment motions directly but did look at the balance of interests that would be affected by introducing an additional adversarial element

into the expedited procedures for resolving a petition to revoke SIST. That case involved a claim that offenders were entitled to a full adversarial Probable Cause hearing at the time the State filed a petition for confinement following an alleged SIST violation. The Court of Appeals held that there was no constitutional due process right to such a Probable Cause hearing based upon three factors. First, the respondent had already been found to suffer from a mental abnormality and to require civil management but had been placed under revocable supervision and therefore possessed a "diminished and temporary physical liberty interest." Second, the trial court's independent probable cause finding was considered adequate to protect the respondent against erroneous determinations, especially since his right to a full adversarial hearing within 30 days is granted by the statute. Finally, and most significantly, the State has a strong interest in avoiding additional procedures to determine if confinement is necessary given the serious risk to the public that is created by delaying confinement of a dangerous sex offender, while at the same time avoiding additional time a respondent must be held in custody pending a preliminary adversarial process.

The Court found those factors applied similarly in this matter given that the Legislature clearly intended it to be an expedited proceeding to resolve a petition to revoke SIST. The Court also found that summary judgment motions would present risks similar to those that would be created if adversarial Probable Cause hearings had been permitted. By definition, respondents on SIST have already been determined to suffer from a mental abnormality and require civil management. By signing the revocation petition, the Court already found probable cause existed based upon the petition and attached psychiatric report, and a summary judgment motion would simply require the Court to review the same question, but with an even lower standard of proof. The Court held that the dangers of unnecessary delay are equally implicated as demonstrated by the fact that it took roughly six weeks for the full submission of papers on the argument for a

summary judgment motion versus the few days it took to render a non-adversarial probable cause determination.

Finally, the Court also found that summary judgment motions must be denied on the substantive ground that a material issue of fact is in contest in SIST revocation cases. "Each offender's diagnoses and behaviors, participation (or not) in treatment, and use, if any, of intoxicants differs, and each of these factors interacts with the others in a fashion unique to the individual." Therefore, there is a triable issue of fact that must be determined following a hearing and cannot be dismissed via a summary judgment motion.

10. SIST Violation: The Respondent Was Restored to SIST Because the Evidence Did Not Show a Persuasive Link Between the Respondent's SIST Violations and an Inability to Control His Sexual Behaviors.

Decided March 6, 2025, in Matter of William T., Supreme Court, Bronx County (Collins, A.J.S.C.) found that the evidence presented at a SIST Revocation Hearing did not establish that Respondent is a Dangerous Sex Offender Requiring Confinement.

Respondent allegedly violated the terms and conditions of SIST in several ways, including: inappropriate behavior towards female staff at his residence by taking photographs of one woman's buttocks; making inappropriate comments to another female staff member on two occasions; trying to hug her without consent; smoking marijuana on an almost daily basis even after being told by his Parole Officer and treatment team that he had to stop; not being compliant with his psychotropic medication; violating curfew; not consistently attending treatment sessions; taking a job without discussing it with his Parole Officer and obtaining permission, especially since the work hours conflicted with his curfew requirements; missing appointments with his psychiatrist, substance use and sex offender treatment programs; and having an unauthorized Instagram account with pornographic advertisements in his "in-box" that had not been opened.

After a hearing at which the OMH examiner and respondent testified, the Court found that respondent was not a "Dangerous Sex Offender Requiring Confinement". While the Court agreed that the credible evidence, including respondent's admissions, showed that he violated the terms and conditions of SIST, and the information before the Court "paints a picture of a rude, disagreeable, deceitful, manipulative, and angry individual," she did not agree that the violations indicated he was sexually preoccupied, violent, aggressive, or had an inability to control his sex offending behaviors, mainly because it was not disputed that he had been in the community for approximately three years and had not committed another known sex offense. While the incidents reported by the female staff members at the residence were "concerning" and the respondent's behavior must be addressed to ensure a safe environment for staff, the Court felt the incidents were not sexually inappropriate or threatening. The Court indicated it would like to see more meaningful participation and work towards understanding his offending behavior, but respondent was showing up to treatment and only missed one sex offender treatment appointment.

The fact that respondent refused to stop smoking marijuana and inconsistently attended and participated in substance use and psychiatric counseling was problematic to the Court, but the records and evidence showed that he was self-medicating with marijuana, and respondent testified that he did not take his prescribed medications due to the negative side effects he experienced when taking them. He was now prescribed a different medication which did not have the same negative side effects. Respondent also testified that he was maintaining his sobriety and not smoking marijuana even though it was accessible, and he identified alternatives to drugs for dealing with his stress.

The Court held that there was no persuasive link between his non-sexual SIST violations and his ability to control his sexual behavior. Despite appellate authority holding that the State

need not await sexual offending before concluding that an offender is unable to control his sexual behavior, the Court determined that there was no evidence that he has struggled with any sexual urges during his time on SIST, let alone to the point that he cannot control them. The petition was denied, and respondent was restored to SIST.

IV. PROFILES OF OFFENDERS UNDER CIVIL MANAGEMENT

The following are case synopses of sex offenders who entered the civil management system during this review period. The names of the sex offenders are represented only by initials.

1. State v. M.F.

M.F.'s known sexual offense history began in 1983, when at the age of 27, he was arrested for multiple counts of Sodomy in the First Degree for repeatedly orally sodomizing his 5-year-old stepson. While those charges were pending, he was arrested in a neighboring county for Sexual Abuse in the First Degree, for orally sodomizing the same 5-year-old victim in that jurisdiction. M.F. entered a guilty plea to a single count of Sexual Abuse in the First Degree to satisfy all charges in both counties and was sentenced to six months in county jail to be followed by five years of probation supervision.

In 2011, at age 56, M.F. was charged with Forcible Touching and Endangering the Welfare of a Child for digitally penetrating the vagina of a 13-year-old girl, his step-granddaughter. He was convicted by guilty plea to one count of Endangering the Welfare of a Child and sentenced to three years of probation supervision. One week after that sentencing, his probation was revoked, and he was re-sentenced to incarceration in the local jail.

For his Article 10 qualifying offense, throughout 2018, at the age of 65, M.F. repeatedly abused his 16-year-old step-grandson. The abuse included him sexually touching the victim while he was doing chores around M.F.'s house, pulling his pants down, forcing him onto his lap and

masturbating the victim. M.F. was convicted of Sexual Abuse in the First Degree and sentenced to a two-year determinate sentence to be followed by a 10-year term of post release supervision.

In the Article 10 proceeding, M.F. waived his right to a jury trial and requested a bench trial. Following said bench trial in April 2024 Justice Clark issued a written decision in which she found that the State had proven by clear and convincing evidence that M.F. currently suffered from a mental abnormality.

M.F. then waived his right to a dispositional hearing after both the psychiatric examiner from the Office of Mental Health, and the independent psychiatric evaluator appointed on his behalf, opined that he was suitable for release on a regimen of Strict and Intensive Supervision and Treatment in the community rather than confinement in a secure treatment facility. Justice Clark held that given the unanimous expert opinion coupled with the waiver of a dispositional hearing, the Court must accept the expert opinions at face value and release respondent because the Court was without authority to probe into the credibility or factual accuracy of the reasoning underlying the unanimous expert opinions.

2. State v. J.H.

J.H. was first arrested on October 13, 1965, for Assault in the First Degree. The respondent stabbed the 17-year-old female victim in her chest as she was walking home. He reported that the stabbing her felt like he "was putting [his] sex bone into her." On May 31, 1966, the respondent was adjudicated a youthful offender and sentenced to three (3) years of probation.

The respondent was next arrested on or about September 13, 1969, for Assault with Intent to Cause Serious Injury with Weapon. On or about September 12, 1969, the 20-year-old respondent attacked the female victim in a parking lot. He stabbed her 13 times in her left arm, left side, breasts, chest, back, and head. He reported masturbating after committing this offense. The

respondent was convicted of Assault in the First Degree on July 9, 1970, and sentenced to five years of incarceration.

For his Article 10 qualifying offense, on or about January 5, 1975, the respondent broke into the victim's home to have sexual intercourse with her. The victim was asleep in a bed with her two daughters. When the woman refused to have sex with him, he repeatedly stabbed her, thereby killing her. As he was leaving the residence, the respondent encountered the victim's husband who secured the respondent in a bathroom until the police arrived. The respondent reported that stabbing the victim felt like putting his penis inside her. He was arrested and charged with Murder: Intentional, Burglary: Illegal Night Entry Cause Injury, and Criminal Possession of a Weapon in the 3rd Degree. He pled guilty to all charges and was sentenced to concurrent terms of three to six years, five to ten years, and 20 to a lifetime of indeterminate incarceration.

An Article 10 petition seeking civil management was filed on December 4, 2024, and is currently pending in Wyoming County. Respondent is currently 75 years old.

3. State v. F.B.

F.B. is a former police officer whose qualifying conviction is for Sexual Abuse 1st: Person Incapable of Consent- Physically Helpless. The offense occurred in 2009 and involved him sexually abusing 2 young boys (13-14 years old) whom he knew from patrolling their neighborhood while on duty. As a result, he left the police force and was sentenced to 7 years' incarceration.

After serving 5 years' incarceration for the Sexual Abuse 1st conviction, he was released to Parole in 2015. In 2020, while on Parole, F.B. solicited sexual contact with a 14-year-old boy (his nephew's stepson) and eventually pled guilty to Endangering the Welfare of a Child and was sentenced to 364 days incarceration.

On January 27, 2022, an Article 10 petition was filed seeking civil management. Respondent subsequently changed venue to the location of the underlying sexual offense convictions. He also filed a *Frye* motion seeking to preclude any testimony or evidence regarding the diagnosis of Other Specified Paraphilic Disorder: Hebephilia. Following a hearing, the Court held the State had shown that the diagnosis is generally accepted in the relevant field and denied the motion to preclude any evidence on the diagnosis.

A jury trial was held in November 2024, after which the jury found that F.B. currently suffers from a mental abnormality. A dispositional hearing is scheduled for May 2025.

4. State v. C.G.

C.G. has a history of sex offending behaviors that span over three decades. In 1990, at the age of 24, he physically assaulted and raped an 11-year-old acquaintance. He entered the victim's bedroom, while her two-month-old and two-year-old brothers were also present, punched the girl, threatened to kill her multiple times, and vaginally and anally penetrated her with his penis. C.G. has vacillated between denying that the crime occurred, admitting he was present but did not offend against her, and stating that the 11-year-old girl "came on to him." C.G. entered guilty pleas to sexual offenses and was sentenced to two to six years' incarceration.

In 1995, at the age of 28 or 29, only six months after being released to sex offender specific Parole supervision following the above conviction, C.G. raped a 14-year-old girl that he considered to be a niece. He invited the victim to his apartment under the guise of having something to show her. When the victim entered his bedroom, he closed the door and prevented her from leaving, physically assaulted her, threatened to hold a pillow over her face so she could not breathe, and then digitally penetrated her vagina and then penetrated her vagina with his penis. He entered a guilty plea to Sexual Abuse in the First Degree and was sentenced to three to six years

incarceration. After serving approximately three and one-half years in prison he was released to parole supervision after telling the Board that this victim also came on to him. He then incurred two parole violations and was returned to DOCCS until his maximum release date.

In 2005, at age 38 or 39, C.G. pled guilty to Unlawful Imprisonment in the Second Degree after pulling the hair of an adult woman, throwing her onto a bed, and attempting to penetrate her vaginally with his penis.

In 2019, at the age of 54, C.G. committed the qualifying sexual offense. In this case he repeatedly had sexual contact with a 14-year-old girl whom he met on Facebook. He did not wear a condom, and the victim became pregnant. The evidence also showed that C.G. knowingly and freely infected the victim with a serious medical condition from which she will suffer for the rest of her life. C.G. pled guilty to Rape in the Second Degree and was sentenced to three and one-half years' incarceration. Once again, C.G. provided varying accounts about this offense, claiming he did not know the victim, admitting the sexual contact occurred but that she was his girlfriend, and that he was not aware of her age.

A bench trial was held in June 2024 at which the State called two psychiatric examiners who opined that C.G. satisfied the diagnostic criteria for Antisocial Personality Disorder and Narcissistic Personality Disorder, and also suffered from the condition of high psychopathic traits. C.G. called an expert witness who also diagnosed him with Antisocial Personality Disorder, but nothing else. The Court credited all three expert's testimony regarding the presence of Antisocial Personality Disorder and also the two experts from the State regarding the presence of Narcissistic Personality Disorder and high psychopathic traits. The Court found that the State satisfied its burden and had proven that C.G. currently suffers from a mental abnormality as defined in MHL Article 10. A dispositional hearing will now be scheduled to determine the type of civil

management that is most appropriate for respondent.

5. State v. A.B.

A.B. has a documented history of sex offending that begins when he was 5 years old. At that time, he inappropriately touched a female classmate in a sexual manner which resulted in a PINS Petition in Family Court. Then, between the ages of 9-14 he was sanctioned for inappropriate sexual behaviors on five different occasions. The sexual behaviors included: exposing his penis to both children and adults, rubbing his penis against female children, and touching the penises of two boys. A.B.'s adult sexual offense history included him exposing his penis and masturbating in the presence of a 41-year-old female stranger when he was 19; exposing his penis and masturbating in the presence of three adult women in separate incidents when he was 23; allegedly peeping under a bathroom stall to observe a woman using the toilet when he was 24; exposing himself and masturbating in the presence of a 10-year-old female stranger when he was 24; and demonstrating similar behaviors towards 15 and 16-year-old female strangers when he was 25.

A.B.'s qualifying sexual offense occurred in 2011, when at the age of 23 he broke into the home of a 48-year-old female stranger, who was sleeping in her bed. A.B. got on top of the victim, placed a pillow over her head and choked her. The victim fought back and managed to get the pillow off her face, at which point A.B. began choking her with his hands. While choking the victim A.B. shoved his fingers into the victim's anus. While fighting back against A.B. the victim managed to scratch his skin with her fingernails. A.B. fled the home, and the victim called 911. New York State Police investigated, and a rape kit was done on the victim, which included taking DNA samples from under her fingernails. A medical examination of the victim revealed abrasions, bruising on her neck, and swelling of her right eye and face. Two years later there was a match on the DNA from under the victims' fingernails to a sample A.B. was required to provide following

an unrelated conviction.

A petition seeking civil management was filed in June 2024. A.B. waived his right to a probable cause hearing and the petition remains pending.

6. State v. D.F.

D.F.'s qualifying sexual offense occurred during the summer of 2014 when he sexually abused a 9-year-old and a 7-year-old female acquaintance. D.F. was convicted upon plea of guilty to Attempted Sexual Abuse 1st: Sexual Contact with Individual <11 (two counts). He was sentenced to 6 months of incarceration and 10 years of probation. D.F. was later found to have violated the terms and conditions of his probation, and he was re-sentenced to four years' incarceration on each count (to be served consecutively) and 10 years of post-release supervision.

After less than a year on probation for the qualifying sex offense, it was alleged that D.F., age 55, sexually abused the 6-year-old daughter of a woman with whom he was having an unauthorized relationship. The probation department was notified that the local police department and the Office of Children and Family Services were conducting a hotline investigation on D.F. There were allegations that D.F. sexually abused the victim while she was in his care.

D.F. has several previous sex offense convictions, including Sexual Misconduct at age 20; and Burglary in the First Degree and Rape in the First Degree: Forcible Compulsion at age 22.

A petition for civil management was filed in June 2024. D.F. waived his right to a trial and stipulated that he currently suffers from a mental abnormality. A SIST Investigation was completed which recommended that he be released to a regimen of SIST. In January 2025, the Court signed an Order directing that D.F. be placed on a regimen of SIST and he is currently being supervised in the community.

7. State v. R.M.

R.M.'s first sex offense conviction occurred when he was 41 years old, and he forcibly raped and sodomized his thirteen-year-old biological daughter whom he had only known for a few months. R.M. took his daughter out to dinner and when they returned to his apartment to watch a movie, he presented his daughter with a pink/purple robe, described by R.M. in the records as a "negligee." R.M. demanded that his daughter put on the negligee. When she refused, he grabbed her from behind, choked her and demanded that she remove her clothing. He threatened his daughter, "[j]ust do it or I'll put you to sleep," and he continued to choke his daughter. When the victim told R.M. that she wanted to go home, he responded, "[y]ou are with me now." R.M. removed the victim's clothing, pried her legs apart, and forcibly penetrated her vagina with his penis. He then forced the victim to manually stimulate his penis and perform oral sex on him. He sucked on her breasts, orally sodomized her and again vaginally raped her. Afterward, R.M. made the victim take a shower with him and he sucked on her breasts. R.M. entered a guilty plea to one count of Attempted Rape in the First Degree: Forcible Compulsion, in full satisfaction to satisfy all charges and was sentenced to eight years of incarceration and five years of post-release supervision.

In 2017, at age 53, R.M. forcibly touched the buttocks of an adult female stranger while they were boarding the Staten Island Ferry. The victim immediately reported the incident to the police while still on the ferry and R.M. was arrested. He was convicted after a jury trial of Sexual Abuse in the Third Degree and Forcible Touching and was sentenced to one-year incarceration.

R.M.'s qualifying sexual offense occurred in 2018, less than one week after being released from his sentence for the 2017 conviction. In this incident, he once again without consent, squeezed the buttocks of a twenty-two-year-old female stranger who was standing in line in front of him on the Staten Island Ferry. He was immediately arrested and ultimately convicted after a

jury trial of Persistent Sexual Abuse and was sentenced to four years' incarceration to be followed by five-years of post-release supervision.

A petition for civil management was filed in October 2024 and is currently pending.

8. State v. C.W.

C.W. has only one conviction for a sexual offense. In 1981, at the age of 19, he followed a 6-year-old girl from his neighborhood into her apartment building and took her to the roof where he vaginally raped her. During the attack the victim was fighting against him and screaming to be released and C.W. picked her up over his head and threw her off the roof of the six-story building. The victim died as a result of the injuries she sustained. The Medical Examiner's report revealed at least partial penetration of her vagina, a tear from the victim's vagina to anus that was three quarters of an inch in length and one half of an inch wide which was caused by an attempt at penetration, not from the impact with the ground, and her hymen ring was enlarged and bleeding. C.W. was convicted after trial of two counts of Murder in the Second Degree and two counts of Rape in the First Degree. He was sentenced to 25 years to life for the Murders counts, and 8 and one-third years on each count of Rape.

While in prison, C.W. received multiple sexually related discipline tickets for behaviors including exposing his private parts in a lewd manner, giving a female Corrections Officer a note indicating he wanted to have sex with her, exposing his genitals to a female Corrections Officer and refusing to get dressed, and shouting sexual obscenities at a sergeant.

A petition seeking civil management pursuant to Article 10 was filed in March 2025 and remains pending.

9. State v. J.Z.

J.Z.'s sexual offending history spans over 50 years, starting at the age of 19 and continuing

until his Article 10 qualifying conviction at age 70. He has committed sexual offenses in four different states.

J.Z.'s first arrest for a sexual offense occurred in 1968 in New York when at the age of 19 he molested a 10-year-old female on a playground. No further details regarding this incident are available.

In 1971, in New York at the age of 22, he was reported to have touched the private parts of two girls and a warrant was issued for his arrest for Sexual Abuse. Again, no further details of this case are available.

In 1973, in California, at the age of 24, he was arrested for the forcible Rape of an 11-year-old girl. J.Z. and the victim were in an elevator together and he pushed the emergency stop button which cause the elevator to stop and alarm to sound. He told the victim she had a pretty face, pushed her to the floor of the elevator, pulled off her pants and underwear, kissed her face and vaginal area and inserted his tongue and fingers into her vagina. The victim screamed, kicked, bit him on the forearm and shoulder, and scratched his neck which led him to cover her mouth with his hands. He then inserted his penis in her vagina and told her "Shut up! If you don't shut up, you won't live to see your mommy and daddy again." He was convicted after a jury trial of Forcible Rape and Child Molesting and sentenced to 60 months of Probation Supervision.

In 1979, in Florida, at age 31 and while on Probation, he was charged with three counts of Lewd and Lascivious or Indecent Act Upon a Child. These charges stemmed from him approaching a group of children, grabbing a 6-year-old girl and stating, "I want to see if you are a girl," pulled her pants down, touched her vagina with his fingers, and put his face near her vaginal area. He then grabbed another 6-year-old girl, pulled her pants down and touched her vagina with his hand. He then grabbed that victim's 8-year-old sister and tried to pull her pants down, but she

was able to escape and run away. He was convicted of two counts of Lewd and Lascivious or Indecent Act Upon a Child, and one count of Attempted Lewd and Lascivious or Indecent Act upon a Child and was sentenced to concurrent sentences of 10 years' incarceration on the first two counts and a consecutive term of 5 years on the attempt count. He was also classified as a Mentally Disordered Sex Offender.

In 1991, in Massachusetts, at age 42, J.Z. approached a 6-year-old girl while she was outside of her house, grabbed his crotch and asked, "Do you want me to put this in you and have a baby?" The victim was able to run into her house and notify her mother. J.Z. was found guilty of Assault with Intent to Rape a Child, Open and Gross Lewdness, and Accosting Person of the Opposite Sex. He was sentenced to Probation and discharged from supervision in 1993.

J.Z.'s qualifying offense occurred in New York in 2019 when, at the age of 70, he sexually abused a 5-year-old girl playing outside of his building. He approached her and asked if she wanted to go for a walk. When the victim said no, he pulled her by the arm and brought her into the building, kissed her forehead, put his hands down her pants, touched her buttocks, and forcibly inserted his finger into her anus. He entered a guilty plea to Sexual Abuse in the First Degree and was sentenced to 7 years' incarceration and ten years post-release supervision.

A petition seeking civil management pursuant to Article 10 was filed in Dutchess County in February 2025 and remains pending.

10. <u>State v. J.R.</u>

J.R.'s qualifying sexual offense convictions stem from two separate incidents in 2014 when he was 15 years old. In this offense he approached a 23-year-old female stranger who was walking home from work from behind and put a knife to her throat. J.R. then dragged her between two cars and started to pull her clothes off. He bent the victim over a car and attempted to vaginally rape

her. She screamed for help, and he covered her mouth and pushed the knife harder into her neck while threatening her. He then forced the victim to a nearby elementary school where he repeatedly forced her to perform fellatio, while threatening her and making derogatory comments to her. He then repeatedly anally sodomized the victim, forcing her from her knees to her stomach. When the victim cried in pain J.R. covered her mouth and nose and continued to sodomize her until he ejaculated. After the attack he threatened the victim and told her not to contact the police. The victim immediately called 911, was taken to the hospital where a rape kit was conducted. She suffered cuts to her hand and anal tears. A later DNA test matched J.R.'s semen that was on file for another offense.

Shortly, after the above sexual assault, J.R was arrested for nonsexual robberies and was held in custody for approximately one month until he was released on bail. Three days after his release J.R. committed the second qualifying offense when he raped, orally and anally sodomized an 11-year-old female child. The child was walking home from a Christmas tree lighting ceremony at the public library when J.R. ran up and grabbed her. The child pleaded with him to not hurt her, he pulled out a fixed blade knife and threatened to kill her if she screamed. He forced the child to the same elementary school where he had raped the previous victim. J.R. forced the child to remove her clothes and for the next 45 minutes he vaginally raped the child; and orally and anally sodomized her. He forced the child to orally sodomize him after he had anally sodomized her. He continued to force his penis into her mouth after she gagged and vomited. When she cried in pain he pushed his penis further into her anus. J.R. continued to taunt the child, telling her she could leave if she got her clothes on first. He then forced her to remove her clothes again, after which he again vaginally raped, and anally and orally sodomized her until he ejaculated in her mouth. J.R. allowed the victim to leave after threatening again to kill her if she told anyone. The victim

rushed home and reported what had happened. Police were called and the victim was taken to the hospital where a rape kit was conducted. A later DNA test matched J.R.'s semen that was recovered from the 11-year-old victim.

J.R. was convicted as a Juvenile Offender of Rape in the First Degree and Criminal Sexual Act to satisfy all charges from the incidents and was sentenced to three and one-half to ten years incarceration. Due to his age, he was remanded to an Office of Children and Family Services facility until he reached age 21. He was placed on the Sexually Harmful Behavior Treatment Unit at Goshen Secure Center. While housed there, a 16-year-old male victim reported that in December of 2019, J.R., age 20, propositioned him with protection from other residents in exchange for oral sex. J.R. also insinuated that he would physically harm the victim if he refused his offer. Out of fear, the victim complied. Between December 2019 and February 2020, on four separate occasions, J.R. forced the victim to perform oral sex in the men's bathroom and ejaculated into the victim's mouth. In April 2020, after refusing to continue with the coerced arrangement, the victim was physically attacked by J.R. in the presence of staff. In May 2020, J.R. was arrested for Criminal Sex Act in the Third Degree: Victim Incapable of Consent; and Harassment in the Second Degree: Physical Contact.

In August 2021, an Article 10 petition was filed in Oneida County where J.R. was incarcerated at the time. After that petition was filed, DOCCS advised that J.R. had lost "good time" and no longer had a conditional release date, but rather would be held until his maximum expiration date in December 2024. The State then withdrew the Article 10 petition, and the case was dismissed without prejudice to refile once he was nearing an anticipated release date. A new petition for civil management was filed in December 2024 and is still pending.

V. SOMTA'S Impact on Public Safety

In April 2007, New York State passed the SOMTA. 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 continue to be a complex and contentious area of litigation. Despite the dynamic legal landscape, there are positive trends emerging from civil management in New York. As of March 31, 2025, 522 dangerous sex offenders with mental abnormalities are being civilly managed. Of that, 395 are being treated in a secure treatment facility, while 157 are being treated under a regimen of enhanced community supervision on SIST. 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, civil management is making a difference in helping to protect communities from dangerous sex offenders.

APPENDIX

VICTIM RESOURCES

The OAG has a general Crime Victims Helpline number: 1-800-771-7755. 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.*