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A Report On The Sex Offender Management Treatment Act

April 1, 2025 to March 31, 2026



TABLE OF CONTENTS

INTRODUCTION.....	1
<u>PART I. THE CIVIL MANAGEMENT PROCESS.....</u>	<u>2</u>
A. OVERVIEW.....	2
<i>FLOW CHART: THE MHL ARTICLE 10 CIVIL MANAGEMENT PROCESS</i>	4
B. THE EVALUATION PROCESS.....	5
C. LEGAL PROCEEDINGS.....	6
D. TREATMENT AFTER MENTAL ABNORMALITY IS ESTABLISHED	9
1. Dangerous Sex Offender Requiring Confinement (DSORC).....	9
2. Strict and Intensive Supervision and Treatment (SIST).....	11
<u>PART II. CIVIL MANAGEMENT AFTER NINETEEN YEARS.....</u>	<u>14</u>
A. REFERRALS AND CASES FILED	14
B. PROBABLE CAUSE HEARINGS	
.....	144
C. MENTAL ABNORMALITY TRIALS	15
D. DISPOSTIONS	15
1. Dangerous Sex Offender Requiring Confinement (DSORC)	15
2. Strict and Intensive Supervision and Treatment (SIST)	15
3. SIST Violations.....	16
E. ANNUAL REVIEW HEARINGS.....	16
F. SIST TERMINATION HEARINGS	16
<u>PART III. SIGNIFICANT LEGAL DEVELOPMENTS</u>	<u>17</u>
A. FEDERAL CASES.....	17
B. NEW YORK STATE COURT OF APPEALS	17
C. THE NEW YORK STATE APPELLATE DIVISIONS	17
FIRST DEPARTMENT DECISIONS.....	17
SECOND DEPARTMENT DECISIONS.....	20
THIRD DEPARTMENT DECISIONS.....	22
FOURTH DEPARTMENT DECISIONS.....	24

D. TRIAL COURT DECISIONS26

PART IV. PROFILES OF OFFENDERS UNDER CIVIL MANAGEMENT 35

PART V. SOMTA’S IMPACT ON PUBLIC SAFETY46

APPENDIX: Victim Resources..... 48

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 19 Years,” provides updated statistics and case data that are current as of March 31, 2026. 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 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). Specifically, 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"¹⁰ who suffered from what is now defined as a mental abnormality under SOMTA 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 their 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."

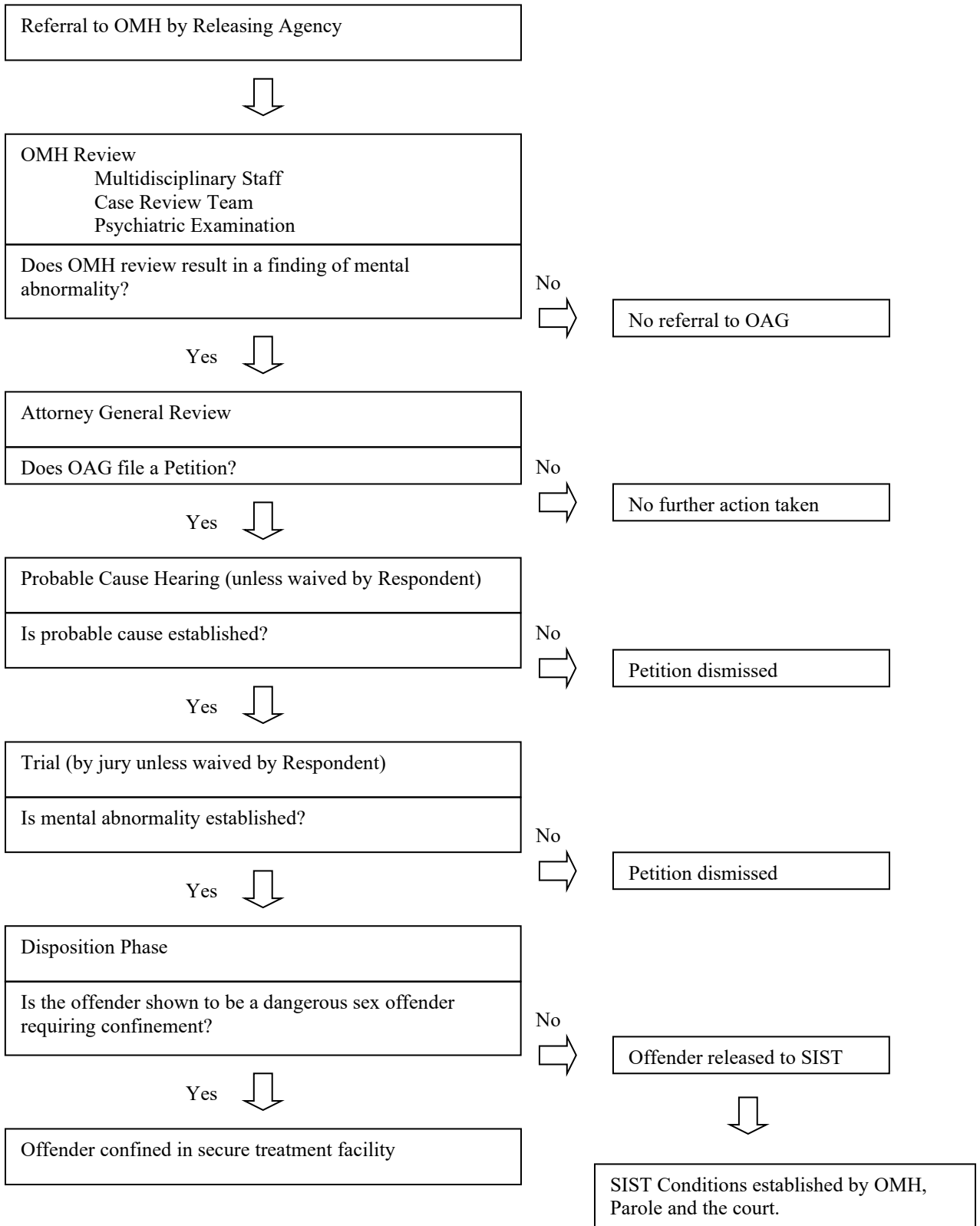
⁷ Also known as a dangerous sex offender requiring confinement and referred to hereafter as DSORC.

⁸ MHL §10.07(f).

⁹ *Id.*

¹⁰ MHL §10.03(g).

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,¹¹ the agency provides notice of the sex offender's anticipated release to both OMH and the OAG.¹² 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).¹³ After completing a 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.¹⁴ 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 to the OAG 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

¹¹ 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).

¹² MHL §10.05(b).

¹³ MHL §10.05(d).

¹⁴ MHL §10.05(e).

45 days of its receipt of such notice, OMH is required to provide the offender and the OAG with written notice of its determination whether the case will be referred for civil management.¹⁵

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. In practice, the actual time in which the OAG receives OMH's determination is much shorter.

The number of cases referred by OMH has varied dramatically since the inception of SOMTA in 2007. In the 2007-2008 fiscal year, the first year of the statute, OMH referred 134 cases to the OAG for filing a civil management proceeding. Over the last five years (2021-2022 through 2025-2026) an average of 39 cases have been referred each year. 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 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.¹⁶ 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 authorizes the Respondent to seek removal of the case to the county of the underlying sex offense conviction(s).¹⁷ The OAG may, in the court in which the Petition is pending, move for retention of venue.¹⁸

¹⁵ MHL §10.05(g).

¹⁶ MHL §10.06(a).

¹⁷ MHL §10.06(b).

¹⁸ MHL §10.06(b).

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.¹⁹

Shortly after the Petition is filed, a hearing is held to determine whether there is probable cause to believe Respondent²⁰ is a sex offender requiring civil management.²¹ 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 an OMH secure treatment facility, an offender may request to remain in prison under the custody of DOCCS pending trial.²² If the court determines that probable cause has not been established, it will dismiss the Petition, and the offender will be released in accordance with other provisions of Article 10.²³

If it is established that 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.²⁴ The Respondent is entitled to a twelve-person jury trial but may waive the jury and proceed with a trial before the judge alone.²⁵

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

¹⁹ MHL §10.06(c).

²⁰ Once a Petition is filed, the sex offender is referred to as the "Respondent" in the legal proceedings.

²¹ MHL §10.06(g).

²² MHL §10.06(k).

²³ *Id.*

²⁴ MHL §10.07(a).

²⁵ MHL §10.07(b).

terms are defined by statute.²⁶ The State of New York has the burden to prove by clear and convincing evidence that the Respondent is a detained sex offender²⁷ 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.²⁸

The jury, unless the jury is waived by Respondent, 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.²⁹ 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 the Respondent is released in accordance with other provisions of Article 10.³⁰

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" in a secure treatment facility or a sex offender requiring "strict and intensive supervision and treatment" in the community.³¹

²⁶ MHL §10.07(a), (d), MHL 10.03(g), (i).

²⁷ MHL §10.03(g).

²⁸ MHL §10.03(i).

²⁹ *Id.*

³⁰ MHL §10.07(e).

³¹ MHL §10.07(d), (f).

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.³²

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.³³

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.³⁴ A sex offender placed into the community under a regimen of SIST is supervised by parole officers from DOCCS and is required to abide by conditions set by the court.

D. TREATMENT AFTER MENTAL ABNORMALITY IS ESTABLISHED

1. Dangerous Sex Offender Requiring Confinement (DSORC)

As reflected in the legislative findings of 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.³⁵ A

³² MHL §10.03(e).

³³ MHL §10.07(f).

³⁴ *Id.*

³⁵ MHL §10.01(b).

Respondent found to be a DSORC 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 DSORC does not necessarily mean the offender will spend 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.³⁶

Furthermore, by statute, each dangerous sex offender requiring confinement is examined by an OMH Psychiatric Examiner once a year 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.³⁷ Each Psychiatric Examiner shall report his or her findings to the OMH Commissioner and counsel for Respondent and the Commissioner shall then make a determination in writing as to whether Respondent is currently a DSORC.³⁸ 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 DSORC.³⁹

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

³⁶ MHL §10.09(f).

³⁷ MHL §10.09(b).

³⁸ MHL §10.06(b).

³⁹ MHL §10.09(d).

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 ensures that the Respondent's legal rights are protected and civil confinement decisions withstand legal scrutiny. If the State fails to prove that the Respondent still suffers from a mental abnormality, the court will order the Respondent's release from civil management. If the Respondent's mental abnormality is established by the State, 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.⁴⁰

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 in the community.⁴¹

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.⁴²

⁴⁰ MHL §10.09(h).

⁴¹ MHL §10.01(c).

⁴² MHL §10.11(a)(1).

A specific course of treatment in the community is established after consulting with the psychiatrist, psychologist, or other professional primarily treating the offender.⁴³ Respondents 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. SIST is only intended 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 month.⁴⁴ This minimum of 12 contacts with the parole officer each month is intended to ensure that 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.⁴⁵

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.⁴⁶ After the person is taken into custody, the OAG may file a Petition for confinement and/or a Petition to

⁴³ *Id.*

⁴⁴ MHL § 10.11(b)(1).

⁴⁵ MHL § 10.00(b)(2).

⁴⁶ MHL § 10.11(d)(1).

modify the SIST conditions.⁴⁷ 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 in 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.⁴⁸

Unlike sex offenders in a secure treatment facility who are entitled to annual review, 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.⁴⁹ Upon receipt of a Petition for modification or termination of SIST, 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.⁵⁰ However, when the sex offender files a Petition for termination of SIST supervision, the State has the burden to show by clear and convincing evidence that the Respondent remains a dangerous sex offender requiring civil management. If the State does not sustain its burden, the court will order Respondent discharged from SIST and released from civil management supervision.⁵¹ From April 13, 2007, to March 31, 2026, 337 offenders who had been placed on SIST have had their SIST conditions

⁴⁷ MHL §10.11(d)(2).

⁴⁸ MHL §10.11(d)(4).

⁴⁹ MHL §10.11(f).

⁵⁰ MHL §10.11(g).

⁵¹ MHL §10.11(h).

terminated and have been discharged from civil management supervision.

As time passes, it is expected that the number of offenders placed on SIST will increase considerably. This is because, in addition to the number of offenders released to SIST after their initial trial, those who were confined to a secure treatment facility after being found to be DSORC and later released are often found to be appropriate for SIST at an annual review hearing.

II. CIVIL MANAGEMENT AFTER 19 YEARS

A. REFERRALS AND CASES FILED

In the nineteen years since Mental Hygiene Law Article 10 became law, OMH has reviewed 28,196 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 1,182 sex offenders for civil management. Of the 1,182 cases referred, 1,160 have resulted in the OAG filing an Article 10 Petition. This includes what are referred to as the "Harkavy".⁵² cases addressed in previous reports.

B. PROBABLE CAUSE FINDINGS

As referenced above, OMH has referred a total of 1,182 sex offenders for civil management to the OAG.⁵³ The OAG has filed 1,160 Petitions and conducted 1,066 probable cause hearings in cases where the sexual offender did not waive their right to a probable cause hearing. The courts

⁵² 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.

⁵³ These referrals include the *Harkavy* cases.

found probable cause to believe the offender suffered from a mental abnormality and needed civil management 1,058 times.

C. MENTAL ABNORMALITY TRIALS

Since SOMTA's inception in 2007, 566 matters have proceeded to trial. Of the 566 trials, the jury or judge rendered a verdict that 472 of those sex offenders suffered from a mental abnormality and 94 were adjudicated to have no mental abnormality.

D. DISPOSITIONS

1. Dangerous Sex Offender Requiring Confinement (DSORC)

From April 13, 2007, to March 31, 2026, a court determined in 1,829 instances that an offender is a dangerous sex offender requiring confinement in a secure OMH facility. This number includes offenders found to be a DSORC after initial trials, annual review hearings, and SIST Violation Hearings. Because an offender can be found to be a DSORC following the initial trial, be released to SIST following an annual review hearing, violate SIST and be found to be a DSORC following a SIST Violation Hearing, there are more findings of DSORC than offenders referred for civil management.

2. Strict and Intensive Supervision and Treatment (SIST)

From April 13, 2007, to March 31, 2026, a total of 641 offenders were placed on a regimen of SIST after a finding that they suffer from a mental abnormality. Currently, 149 offenders are on a regimen of SIST.

3. SIST Violations

The information below reflects the total number of offenders placed on SIST initially after trial, those migrating from confinement to SIST after an annual review hearing, and 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 of SOMTA, the SIST violation rate was up to 44%, increasing to 59% in the fourth year. In the fifth and sixth years of SOMTA, SIST violations leveled to 61% and 62%, respectively. Since then, however, DOCCS changed its policy regarding filing against a Respondent for violating a technical condition of SIST, e.g., late curfew, thereby reducing the number of SIST violations.

In addition to quarterly reports to the court on each offender's status on SIST, DOCCS and/or OMH may, as needed, submit Incident Reports, issued to inform the court of a Respondent's concerning behaviors, which do not rise to the level of requiring a SIST violation to be 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 SIST violation.

E. ANNUAL REVIEW HEARINGS

As referenced above, a court will hold an evidentiary hearing if a dangerous sex offender requiring confinement 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. However, some Respondent's will waive their right to an annual review hearing and consent to continued treatment in the facility. Since 2007, over 1,255 dangerous sex offenders have had an annual review hearing held by the court. In the current review period, April 1, 2025, to March 3, 2026, there have been 85 annual review hearings.

F. SIST TERMINATION HEARINGS

Since 2007, 337 offenders have been released from SIST supervision, and civil management 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, 2025, and March 31, 2026, the courts have decided a number of significant cases, each having a dynamic impact on Article 10 litigation.

A. FEDERAL CASES

There were no significant cases impacting Article 10 decided at the Federal level during this review period.

B. NEW YORK STATE COURT OF APPEALS

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

C. THE NEW YORK STATE APPELLATE DIVISIONS

FIRST DEPARTMENT DECISIONS:

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

1. Community-Based Residential Treatment Centers are not an Option Under Article Ten of the Mental Hygiene Law.

Decided May 27, 2025, in Matter of A.A., 238 A.D.3d 651, *lv denied* 44 N.Y.3d 909, the First Department re-affirmed that hybrid community supervision is not available under Article 10. The only two treatment options under the statute are confinement in a secure treatment facility run by OMH, or release to the community under SIST. The Court held that “[a]lthough there was

expert testimony that Respondent could find better treatment options if he

lived in a community-based residential treatment center, community-based treatment was not a dispositional option available to the court.”

2. Waiver of Appearance in Court was Knowing, Intelligent, and Voluntary.

Decided October 14, 2025, in Matter of T.N., 242 A.D.3d 533, the First Department found that Respondent had made a knowing, intelligent, and voluntary waiver of his right to be present in court and the Supreme Court properly proceeded with the trial in his absence.

A few weeks before his trial date, Respondent requested to appear virtually due to health concerns, specifically the risk of being exposed to COVID 19. On the first day of trial, Respondent refused to be transported to court, and the Supreme Court permitted him to appear virtually and gave him instructions regarding his right to be present, and his possible forfeiture of that right, consistent with People v. Parker, (57 N.Y.2d 136). Respondent indicated he understood the warnings and renewed his request to appear virtually. The next day there was no video conferencing equipment available at Respondent’s facility, and the Court was advised that the availability of such equipment would be limited throughout the scheduled trial dates. The Court adjourned the trial for one week and required Respondent to attend in person, which he did for two days, at which point the trial was adjourned for approximately one month.

Before the trial was scheduled to resume, Respondent renewed his request to appear virtually because he had recently undergone shoulder surgery. Less than a week before the trial date he executed a written “Refusal/Waiver of Right to be Physically Present” indicating that he was refusing to attend in person. The written refusal stated, “I fully understand that I have the right to be physically present, nevertheless I wish to waive my right to be physically present.”

After confirming that Respondent was medically cleared to attend in person, the court denied the request to appear virtually but instead offered to adjourn the trial for him to appear in person, or alternatively, to maintain his waiver of his right to be present. Respondent indicated that it was in his attorney's hands and that he was not coming to court.

On the next trial date, when Respondent again did not appear, the court asked counsel if Respondent would attend if the date was adjourned. Counsel replied that Respondent had "made it very clear that he is not coming to court." The Supreme Court then inquired if counsel was waiving his right to be present so the trial could proceed, and counsel replied "I'll leave it up to the Court. If you would like to move forward, we are prepared to move forward." The Court then proceeded with the conclusion of the trial without Respondent present in person, or appearing virtually.

On appeal, Respondent claimed the court violated his right to be present at his trial. The First Department found such claim to be unpreserved as Respondent had not objected to the court's denial of his request to appear virtually as a medical accommodation, nor did he object to the court's offer to either waive his appearance or adjourn the trial to another date. The record "contains no protest by either defendant or defense counsel 'sufficient to apprise the court, in a timely fashion, of the claimed error in order to permit it to be remedied.'" The First Department went on to hold, as an alternative holding, that the waiver ruling was not in error because it was not an "exceptional case" with "unusual circumstances" where the court acted improperly in denying a request for a virtual appearance and limiting a defendant's choice of appearing in person despite medical conditions or waiving his appearance entirely. By offering him a choice between waiving his right to be present or to adjourn the proceeding until he could appear, the record supports the Supreme Court's conclusion that Respondent made a knowing, intelligent, and

voluntary waiver of his right to appear and the appeal was denied.

3. Combination of Diagnoses are Part of a Detailed Psychological Portrait and are Sufficient to Find DSORC.

Decided November 13, 2025, in Matter of K.W., 243 A.D.3d 457, the First Department held that the combined diagnoses of Antisocial Personality Disorder (ASPD) and two substance use disorders can be enough to find both mental abnormality and dangerousness when the experts credibly link the combined diagnoses to their opinion. The Court found that these disorders, in combination, may provide the foundation for a mental abnormality finding because the experts testified that Respondent's antisocial traits, including cognitive distortions, aggression, and impulsivity lead him, as evidenced by his extensive history of sex offending conduct, to seek sexual gratification without regard for the rules of society or the rights of others. Moreover, the Court determined that these disorders, in combination, shows that Respondent suffers from a substance use disorder that simultaneously increases his sexual desire and removes the inhibitions that might prevent him from committing sex offenses.

The Court distinguished this case from George N., 160 A.D.3d 28, and clarified that George N. found that nonsexual misconduct consisting of using drugs and alcohol while on SIST did not establish inability to control sexual conduct in that specific case. The Court determined that George N. did not hold that ASPD and substance use can never be enough to establish mental abnormality under Article 10. In Matter of K.W., because there was expert testimony specifically regarding the combination of a diagnosed substance use disorder and ASPD, along with other considerations, the detailed psychological portrait showed that Respondent suffers from a mental abnormality and was dangerous.

SECOND DEPARTMENT DECISIONS:

There was one significant reported case impacting Article 10 decided by the Second

Department during this review period.

1. Trial Court's Order That Respondent be Released Following Bench Trial Verdict That He Does not Suffer From a Mental Abnormality is Stayed Pending Appeal.

Decided July 7, 2025, in Matter of Ezekiel R., the Second Department held that the trial court's order that Respondent be released from confinement should be stayed in order to provide the State with time to perfect an appeal of the verdict that Respondent does not suffer from a mental abnormality.

As Ezekiel R. neared release from DOCCS, an Article 10 Petition seeking civil management was filed. Bronx County Supreme Court denied the State's Petition, finding that the State's evidence was insufficient to show by clear and convincing evidence that Respondent suffered from a mental abnormality. Supreme Court based the decision on a determination of a combination of Antisocial Personality Disorder with Psychopathy could not support a finding of mental abnormality. The order denying the Petition was appealed, and the Second Department reversed the order and returned the case for trial.

A second bench trial was held in Bronx County before a different Justice. At the conclusion of the trial, the court found that there was an abundance of evidence that Respondent has long been, and remains, a dangerous person who does not hesitate to threaten and then physically assault others to get his way or simply to blow off steam. The Court held that, based upon the testimony of three expert witnesses, Respondent's enduring and rampant anti-sociality was undisputed. The Court also credited the State's two experts in finding that the diagnosis of Psychopathy or Psychopathic traits are justified and sufficiently distinguishable from Antisocial Personality Disorder. Despite crediting the diagnoses, and describing both of his sexual offenses as horrific, the court ruled that neither the timing nor the nature of Respondent's offenses offered

an adequate basis to conclude that he is a serial or compulsive sexual offender as a result of his conditions. The court found that the State had not shown that Respondent currently suffers from a mental abnormality, denied the Petition seeking civil management, and directed that he be released from custody. The State sought a stay of the order directing Respondent's release pending hearing and determination of the appeal of the verdict. The Second Department granted the Stay on July 7, 2025. The appeal of the trial verdict remains pending.

THIRD DEPARTMENT DECISIONS:

There was one significant reported case impacting Article 10 decided by the Third Department during this review period.

1. SIST Violation: State is not Required to Produce Original Child Sexual Assault Materials in a SIST Violation Hearing.

Decided December 24, 2025, in Matter of Justin Q., 244 A.D.3d 1652, the Third Department held that the trial court properly found that the State satisfied its burden and established that Respondent was a dangerous sex offender requiring confinement following a SIST violation hearing.

Following the filing of a Petition seeking civil management, Respondent consented to a finding that he suffered from a mental abnormality and to an order releasing him to the community under a regimen of SIST. Within one month of being released he was alleged to have violated the conditions of both his SIST and Post Release Supervision. He was found to have violated his Parole and returned to DOCCS for 24 months.

At the SIST violation hearing following his release from DOCCS, the State called two Parole Officers who testified that they supervised sex offender parolees in the Niagara Falls area and as part of that supervision they conducted searches of two different Parolees' cell phones. During the searches they discovered text messages and photographs sent by Respondent, including

explicit photographs of naked men, women, and children. Some of the photos of naked children appeared to be “very young. The youngest...was maybe six” and had names and ages attached to them. The text messages contained statements describing sexual acts involving the children. Copies of the photographs and messages were not offered; rather, the State offered the descriptions from the Parole Officers based on what they saw during the searches of the phones. Respondent’s Parole Officer also testified that, after being contacted by the Parole Officers in Niagara Falls, she searched Respondent’s phone in the Albany area. The search revealed images of naked males, females, and individuals that appeared to be less than 18 years old, photos of Respondent’s treatment providers, sexually explicit materials, digital images, and sexual chats. Respondent also admitted to communicating with two sex offender parolees in the Niagara Falls area. The State also called a psychiatric examiner from OMH who testified regarding her evaluation and how these behaviors led her to the opinion that Respondent was dangerous and required confinement. The Court credited the State’s witnesses over the expert psychiatric examiner called by Justin Q. and ordered his confinement.

On appeal, Respondent argued that the testimony of the Parole Officers violated his right to due process and the best evidence rule. The Court held that the due process argument was not preserved as it was raised for the first time on appeal. While the best evidence rule requires the production of an original writing where its contents are in dispute and sought to be proven, under a long-recognized exception, secondary evidence of the contents of an unproduced original may be admitted upon threshold factual findings by the trial court that the proponent of the substitute has sufficiently explained the unavailability of the primary evidence. Here, the Third Department credited the Parole Officers’ testimony that they did not have possession of the phones as they had been turned over to law enforcement, and the State never had possession of the phones, and more

importantly, never forwards or distributes the pornographic contents of phones, especially if it involves children, as it is inappropriate and is not being offered for the truth regarding the children's ages as Respondent is not being charged with a crime regarding the images. The Court held that under those circumstances, the Parole Officers testimony as to the photographs and texts was admissible. The Appellate Division went on to point out that the trial court had placed little emphasis on the photos and texts and instead relied on other evidence relating to Respondent's sexual control, including his expressed sexual desires regarding minors, his taking pictures of female treatment providers without their permission, the number and severity of his sexual crimes against children, and the doctor's expert report and opinion, and affirmed the decision of the trial court.

FOURTH DEPARTMENT DECISIONS:

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

- 1. Basing a Finding of Mental Abnormality in Part Upon a Diagnosis of Unspecified Paraphilic Disorder Does not Violate the Requirements of Due Process, and Failure to Move for a Directed Verdict on the Specific Ground Raised on Appeal Fails to Preserve the Issue for Appellate Review.**

Decided October 3, 2025, in Matter of John R., 242 A.D.3d 1571, the Fourth Department unanimously affirmed the trial court's finding that Respondent currently suffered from a mental abnormality and remained a dangerous sex offender requiring confinement. The Court rejected the argument that basing a determination of mental abnormality in part upon a diagnosis of Unspecified Paraphilic Disorder does not comport with the requirements of due process. The Court also found that Respondent failed to preserve for appellate review his contention that the

State failed to establish by sufficient evidence that he suffers from a mental abnormality, inasmuch as he did not move for a directed verdict on the specified grounds raised on appeal.

2. The Decision to Restrict a Respondent’s Communication With Incarcerated Individuals and Registered Sex Offenders was not Arbitrary or Capricious.

Decided November 21, 2025, in Matter of Joseph R. v. Office of Mental Health, 243 A.D.3d 1280, *re-argument denied* 246 A.D.3d 1512, *lv denied* 247 A.D.3d 1579, the Fourth Department affirmed the Supreme Court’s dismissal of a Petition pursuant to CPLR Article 78. Joseph R. is confined in an Office of Mental Health Secure Treatment and Rehabilitation Center. The facility placed restrictions on his ability to correspond with certain individuals, including incarcerated individuals and registered sex offenders, as well as a requirement that his non-legal outgoing mail be left unsealed to permit the treatment team to review it to ensure he was not corresponding with individuals on the restricted list.

Joseph R. filed an Article 78 Petition challenging the restrictions, and the Supreme Court dismissed the Petition. The Fourth Department held that the dismissal was proper and that the restrictions were not arbitrary or capricious. “In the context of civilly confined individuals, administrative decisions...will not be considered arbitrary or capricious when they have a ‘sound basis in reason and [are] supported by legitimate concerns regarding the security of the institution and the welfare of the residents therein’” Matter of Pratt v. NY State Office of Mental Health, 153 A.D.3d 1065, 1066. Here, Joseph R.’s medical records provided a rational basis to support OMH’s conclusion that the restrictions were imposed for legitimate treatment reasons to support his welfare.

D. TRIAL COURT DECISIONS

Each year, New York's trial courts write numerous decisions on a wide variety of important issues related to Article 10. 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. Detained Sex Offender: When Respondent is in the Care, Custody, Control, or Supervision of an Agency with Jurisdiction When the Article 10 Petition is Filed, it Does not Matter if the Care, Custody, Control, or Supervision is Lawful or Unlawful.

Decided March 31, 2025, in Matter of Robert M., the Supreme Court, Dutchess County (Hayes, A.J.S.C.) denied Respondent's motion to dismiss the Article 10 Petition for lack of subject matter jurisdiction based on an argument that he was not a lawfully detained sex offender.

In January 2020, Respondent was found guilty of Persistent Sexual Abuse following a jury trial and was sentenced as a persistent violent felony offender to an indeterminate term of imprisonment of 4 years to life. On appeal, the People conceded that the trial court erroneously sentenced him as a mandatory persistent violent felony offender, and the case was remanded for re-sentencing. In September 2024, the trial court re-sentenced him to a determinate sentence of 4 years incarceration to be followed by 5 years of Post Release Supervision. DOCCS calculated his Maximum Expiration Date as August 17, 2022, a date more than 2 years in the past, and that his Post Release Supervision would expire on August 16, 2027, a date more than 2 years in the future. On October 2, 2024, DOCCS notified OMH and the Attorney General that Respondent may be a detained sex offender nearing release. On October 22, 2024, the State commenced an Article 10 proceeding by filing a Petition and Order to Show Cause, which the Court signed on October 23, 2024. It is undisputed that, despite the lapse of his recalculated Maximum Expiration Date prior

to the commencement of the Article 10 proceedings, Respondent remained in the physical custody of DOCCS and was subject to Post Release Supervision.

The Court followed the Court of Appeals decision in People ex rel Joseph II v. Superintendent of Southport Correctional Facility, 15 N.Y.3d 126 (2010), that held in an Article 10 proceedings, the legality of the prisoners' custody is irrelevant when determining whether that person is a detained sex offender. Even assuming that such custody was not lawful, the Court of Appeals has made it clear that the inquiry ends with custody. The legality of that custody is irrelevant. Therefore, the Motion to dismiss the Article 10 Petition was denied.

2. SIST Violation: a Court is not Limited to Considering the Facts of a SIST Violation but Rather is Entitled to Rely on all of the Relevant Facts.

Decided May 23, 2025, in Matter of Carl S., the Supreme Court, Kings County (Johnson, A.J.S.C.) found, after a SIST violation hearing, that the State had proven by clear and convincing evidence that Respondent was a DSORC. Respondent was placed on SIST in 2017, and in 2020, he violated his SIST conditions by establishing a sexual relationship with a woman whom he lied to about having a sexually communicable disease and insisted on having anal sex despite the pain it caused her. During a search of his cell phone, his Parole Officer discovered an unapproved Facebook account under a false name and several messages to a woman, including photos of his penis, a video of him masturbating, and demands that she send him nude pictures. Respondent was then directed to have a meeting with his sex offender treatment team and to undergo a polygraph. While waiting for the polygraph examination, Respondent engaged in what the Court described as a "dramatic violation of the conditions of release to SIST." He absconded from the Parole office, cut his GPS monitor off, and stole a car by threatening the salesman with a machete. The Court noted that this was the second time he had removed his GPS monitor, with the first

occurring in 2017, approximately five days after a polygraph exam indicated he had been deceptive.

The Court adopted the Fourth Department’s standard from Matter of George N., 160 A.D.3d 28 (2018), that held “in the absence of sexually inappropriate conduct while on SIST” the State must show a “persuasive link” between the nonsexual misconduct and his inability to control his sexual behavior. The “persuasive link” does not mean that the court is limited to examining each SIST violation to determine whether it is or is not directly connected to a likelihood of sexual re-offense. Rather, the court is “entitled to rely on all the relevant facts and circumstances tending to establish that Respondent was a dangerous sex offender.” Matter of Robert A., 187 A.D.3d 1326 (3d Dep’t 2020). The Court found that while Respondent’s actions fell short of being a new criminal sex offense, they were “sexually inappropriate conduct” while on SIST. Establishing the Facebook account under a false name, using it to send naked images of himself and videos of him masturbating, and pressuring a woman to send him naked pictures of herself was a clear violation of a SIST condition prohibiting the possession or acquisition of any pornographic or sexually explicit material. The Court was also persuaded by the fact that Respondent’s long-time treatment provider reported that “every element in Respondent’s texting to this woman was sexually deviant,” and that while he attended his sex offender treatment as scheduled, his participation was described as superficial, argumentative, and he was making minimal progress. Respondent denied having any interest in sex at all, while simultaneously engaging in the secretive, unauthorized communications.

The Court also rejected Respondent’s argument that the State was required to present statistical evidence that demonstrate that his risk is higher than it was when he was released to SIST. The Court found such an argument not only has no legal support but makes little sense in

the case of someone whose assessed risk level has been relatively high throughout all of their assessments. The court may consider not just whether the measured risk level has gone up, but also whether conduct while on SIST revealed that Respondent has less ability to control sexually offending behavior than was apparent when he was released to the community.

3. Probable Cause Hearing: the Determination of Whether a Diagnosis is Generally Accepted in the Relevant Scientific Community is a Determination to be Made at Trial, not at the Probable Cause Hearing.

Decided June 16, 2025, in Matter of Ryan C., the Supreme Court, Oneida County (Merrell, J.S.C.) found after a Probable Cause Hearing, that the State had shown that there was reasonable cause to believe that Respondent is a sex offender requiring civil management. One of the diagnoses opined to be present by the OMH examiner was Other Specified Paraphilic Disorder: Hebephilia which involves a sexual preference for pubescent children, typically ages 11-14. In a previous, unrelated MHL Article 10 case in 2019, the Court presided over a Frye hearing and determined that the diagnosis was not generally accepted in the relevant scientific community. However, in this decision, it held that the current law and science on the issue are matters for the trial court to determine at the trial stage rather than the court presiding over a Probable Cause Hearing.

4. Motion for Addiction Specialist Denied.

Decided June 16, 2025, in Matter of Matthew E., the Supreme Court, Oneida County (Merrell, J.S.C.) denied a motion from Respondent to assign a board-certified addiction medicine specialist to review clinical records, conduct interviews, consult with counsel, and provide a report to the Court addressing the effects of Respondent's opioid and stimulant addictions on his risk to sexually reoffend and the effectiveness of treatments in that regard. The Court recognized that, while it has no authority to order a particular type of treatment, and Respondent had not requested

such an Order, the availability of outpatient substance abuse treatment as a condition of SIST may be relevant to the issue of whether Respondent can be safely released into the community. Similarly, the Court recognized that the unavailability or failure to provide meaningful treatment to a confined individual may have some relevance to the issue of Respondent's need for confinement. However, all three experts in the case opined that Respondent suffered from a mental abnormality and was a DSORC, and the thrust of their testimony was that even if Respondent were to receive effective substance abuse treatment it would not alter their opinion that he was a DSORC. The Court therefore held that, based upon said expert testimony, there was an insufficient foundation for additional expert testimony from an addiction medicine specialist and denied the motion to assign an addiction medicine specialist.

5. Other Specified Paraphilic Disorder: Hebephilia is Generally Accepted in the Scientific Community, and a Frye Hearing is not Required.

Decided September 23, 2025, in Matter of Jordan C., the Supreme Court, Otsego County (Burns, J.S.C.) denied a motion to preclude evidence regarding the diagnosis of Other Specified Paraphilic Disorder: Hebephilia, or in the alternative to hold a Frye hearing to determine the admissibility of testimony related to the diagnosis. The Court held that while general acceptance may be established at a Frye hearing, a hearing is not necessary in all cases, and general acceptance can be established through legal precedent. The Court also pointed out that while it would be bound by precedent set at the appellate level there are no decisions from any of the appellate courts establishing precedent on this topic. The Court also pointed out that it can be guided by decisions of other trial courts that were presented with the same legal problem.

The Court then reviewed a trial court decision from Onondaga County (McMahon, J.S.C.) in Matter of Fredick B., which was decided in 2023 following a full Frye hearing and held that “the diagnosis of Hebephilia has gained acceptance in both the community of scientists writing

and reviewing the articles and in the clinical community” and permitted evidence of the diagnosis to be admitted at trial. The Court also pointed to a decision from St. Lawrence County (Farley, J.S.C.) from 2024, which also held that Hebephilia is now generally accepted in the relevant scientific community.

The Court, relying on the guidance from those two decisions, found that the State had established that the diagnosis of Hebephilia is generally accepted in the scientific community, a Frye hearing was not required, and the motion to preclude evidence concerning said diagnosis was denied.

6. MHL 10.11(d)(4) Requires a Respondent to be Transferred to a Secure Treatment Facility “Immediately” After Being Determined to Have Violated SIST and to be a Dangerous Sex Offender Requiring Confinement.

Decided September 19, 2025, in Carl S. v. New York City Department of Corrections and New York Office of Mental Health, the Supreme Court, Kings County (O’Neale, J.S.C.) granted a Petition pursuant to CPLR Article 78 and ordered that Carl S. be transferred to an OMH secure treatment facility (STF) no later than 14 days of the State being served with a copy of the Order and Judgment with Notice of Entry.

MHL 10.11(d)(4) clearly states that once an individual has been found to be a DSORC following a SIST violation hearing they must be committed to a STF “immediately.” The Court found that the statutory language permits no discretion as to when the transfer must occur, and the fact that there were currently no beds available at the facilities is not the kind of limited exigent circumstance that excuses the already three-month delay in transferring him to a STF. The statutory language creates a ministerial duty that requires compliance by the agency without the exercise of discretion.

The Court denied the requested alternative relief sought by Carl S. of being released to a regimen of SIST because MHL 10.11(d)(4) mandates that a person that has been determined to be a DSORC must be committed to a Secured Treatment Facility, not released to SIST. Justice O’Neale also held that because the issues were resolved by the plain language of the statutory text, the well-established rule that a court should not address a constitutional question under these circumstances must be followed and denied the portions of the Petition premised on due process violations as academic.

7. *Pro Se* Request to Change Venue for an Annual Review Hearing Granted.

Decided January 22, 2026, in Matter of State of New York v. Richard R., the Supreme Court, Oneida County (Ramseier, J.S.C.) granted Respondent’s request to change the venue for his annual review hearing from Oneida County, where Respondent was confined in an OMH Secure Treatment Facility, to Bronx County.

Respondent’s motion was based upon the fact that he was a long time resident of Bronx County, it was his intention to return there if released, he believed he could not receive a fair adjudication of his annual review in Oneida County, and that justice would be better served if a decision was made by a court close to his home. The State opposed the motion and argued that Respondent had not articulated good cause for a change of venue or set forth any specific facts sufficient to demonstrate a sound basis for the transfer.

The Court admitted to liberally interpreting MHL 10.08(e), which reads “At any hearing or trial pursuant to the provisions of this Article, the court may change the venue of the trial to any county for good cause, which may include considerations relating to the convenience of the parties or witnesses or the condition of the Respondent.” The Court granted the motion, transferred the hearing to Bronx County, and relieved stand-by Counsel who was in Oneida County with the

understanding that Respondent could request appointment of stand-by Counsel in Bronx County once the matter was transferred to Bronx County.

8. Order to Show Cause Denied Seeking Voluntary Transfer From Local Jail to OMH Facility in 14 Days While SIST Violation is Pending.

Decided March 5, 2026, in Matter of Michael S., the Supreme Court, Oneida County (McClusky, J.S.C.) denied an Order to Show Cause requesting that Michael S. be transferred from the local jail to an OMH secure treatment facility within 14-days, or in the alternative, that he be released under conditions of SIST while a SIST Violation proceeding was pending. MHL Article 10 permits a Respondent to request a transfer to an OMH facility while a SIST Violation is pending, so the Court granted that portion of the request. However, the Court refused to order that the transfer be done within 14 days as requested by Respondent, or that he be released to SIST during the pendency of the hearing. Instead, the Court ordered that Michael S. be placed on the waiting list for admission to the secure treatment facility and remain in the custody of the local jail until he is next in line for admission to OMH, or there is another order of the Court.

9. The Evidence at Trial Showed Respondent was a Detained Sex Offender Who Suffers From a Congenital or Acquired Condition, Disease, or Disorder That Predisposes Her to the Commission of Conduct Constituting a Sex Offense, but was Insufficient to Support a Finding That She Has an Inability to Control Her Sexual Offending Behavior.

Decided November 10, 2025, in Matter of Kirby H., the Supreme Court, Bronx County (Bowen, A.J.S.C.) found, following a bench trial, that the State had proved that Respondent was a detained sex offender whose chronic Pedophilic Disorder predisposed her to the commission of conduct constituting a sex offense, but did not find that Respondent had a serious difficulty in controlling her pedophilic “disposition” and was likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility. Therefore, the Article 10 Petition was dismissed.

Kirby H.'s criminal sexual history commenced at the age of 20 in Pennsylvania. Respondent was employed as a camp counsellor and sexually offended against two boys, both seven-years-old by placing one boy's penis into her mouth and masturbating the other boy. Respondent was sentenced to six to 13 years of incarceration. After serving approximately 10 years, Kirby H. was released to Parole and living in the community subject to SORA registration requirements. She was discharged from sex offender treatment after it was discovered that she had engaged in an unauthorized, consensual, sexual relationship with another adult offender in the same treatment program. That discharge from treatment resulted in a parole violation and return to incarceration until the beginning of 2017.

In December 2017, at age 35, after moving to New York, Kirby H. began sexually offending against the 11-year-old autistic son of a friend whom she was helping to care for. For nearly two years she would touch his penis as he bathed, climbed into bed with him and touch his penis under his clothes. She subsequently pled guilty to Sexual Abuse in the First Degree and was sentenced to prison.

A Petition for civil management was filed as she neared release from State Prison. At the trial, the State presented evidence of non-sexual rule infractions committed by Respondent in prison. Specifically, she had unauthorized wigs in her cell, inappropriate decorations on the wall, and during video calls with family members small children's voices could be heard. The Court gave "little evidentiary weight" to these non-sexual violations of institutional rules, finding it "unremarkable" that, "when institutional rules are unevenly enforced, the governed tend to gravitate toward the more lax enforcers thereof." The Court did not credit the weight given to these incidents by the State's experts because the institutional responses to the repeated violations rarely went beyond her being "educated" and told not to do it again.

The State also presented evidence regarding numerous incidents where Respondent engaged in sexual activity with other consenting, adult, incarcerated individuals while in prison. The Court found that “consensual adult sexual conduct, while rule breaking, is far from uncommon in correctional and treatment environments and does not, without more, clearly and convincingly evince an inability by Respondent to control specifically her pedophilic impulses.” The Court did not view Kirby H.’s perceived difficulty in controlling her libido in general as evidence of a mental abnormality because there was no evidence that it was caused by the condition that predisposes her to conduct constituting a sex offense, therefore there was insufficient evidence that Respondent has a serious difficulty in controlling her Pedophilic disposition.

IV. PROFILES OF OFFENDERS UNDER CIVIL MANAGEMENT

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

1. State v. J.A.

J.A.’s qualifying sexual offense convictions involve his repeated sexual abuse of multiple young children. Between October 2011 and August 2012, he repeatedly offended against the 10-year-old daughter of his girlfriend. The abuse included hand to breast and hand to vagina contact as well as raping and sodomizing the victim. He also sexually abused his twin daughters who were between eight and nine years old at the time of the abuse. He placed his fingers in the genital area of one daughter, squeezed her buttocks and rubbed his penis between her legs until he ejaculated. The abuse of the second daughter involved him putting his penis between her legs until he ejaculated, rubbing his penis on her buttocks, and subjecting the victim to mouth to penis contact. He also forced his son to engage in sexual activity with his sisters. He was convicted of two counts

of Course of Sexual Conduct Against a Child in the First Degree and was sentenced to ten years incarceration to be followed by twenty years of Post Release Supervision; and Course of Sexual Conduct Against a Child in the Second Degree for which he received a sentence of seven years incarceration to be followed by ten years of Post Release Supervision.

After being released from prison, and while under Parole Supervision for the above sex crimes, J.A. entered the bedroom of a couple and began performing oral sex on the male. The victim told him to stop twice and then had to physically push J.A. off of him. J.A. was found to be in violation of his Parole and returned to prison.

A Petition for civil management was filed and remains pending.

2. State v. R.C.

In 2012, at age 25, R.C. exchanged sexually explicit text and computer messages, and attempted to arrange a meeting, with a 14-year-old female. He told her he was 18 years old, but then indicated he was 24 years old. He encouraged the victim to sneak out of her house so they could engage in sexual acts. He was charged with one count of Acting in a Manner Injurious to a Child Less Than 17 years old.

R.C.'s qualifying sex offense convictions for Rape in the First and Second Degrees involved him repeatedly having sexual intercourse with two victims, ages 12 and 14. Respondent was 25 years old at the time. He met the 12-year-old victim by messaging her on Facebook, he told the victim he was 17 years old. After exchanging messages, he convinced her to send him a photograph of herself in her underwear. When she stopped responding to his messages, he threatened to show that photo to everyone at her school. Out of fear she agreed to meet him in person. It was during those meetings that R.C. engaged in hand to breast and contact; inserted his

fingers into the victim's vagina; his penis into her vagina; attempted to insert his penis into her anus; as well as having mouth to vagina contact.

R.C. also met the 14-year-old victim on Facebook using a fake name and claiming he was 17 years old. He convinced the victim to meet him in person and vaginally raped her numerous times.

In 2021, while incarcerated for the qualifying offense, approximately 2 weeks after completing a Sex Offender Counseling and Treatment Program, R.C. was discovered requesting pornographic materials consisting of over 100 sexually explicit photos, including nude images of an underage person wearing a school uniform.

In June 2023, while incarcerated for the qualifying offense, R.C. was found to be corresponding with another sex offender in the community he had met in treatment. The two exchanged pictures of female children; discussed instructional videos for engaging in sexual intercourse with young children; and plans to "obtain" females under the age of 12 for purposes of sexually assaulting them. A Petition seeking civil management was filed and remains pending.

3. State v. F.M.

F.M.'s qualifying sexual offense involves his sexual abuse of a friend's nine-year-old niece. The victim was sleeping when she woke up and saw F.M. sitting on the other side of the bed, staring at her. He pulled the covers off her, removed her clothing and raped her. When she yelled for help, he told her to "shut up" and told her not to say anything because he knew where she lived.

Later that same day he also sexually assaulted a fifty-three-year-old woman he encountered walking on a bike path. He punched her in the back of the head, knocking her to the ground. He then choked her and held his knee on her chest until she began losing consciousness. When she

regained consciousness, she was not wearing any pants, and Respondent inserted his finger into her anus and put his mouth on her to breast. F.M. then pushed the victim into a nearby canal. The victim's injuries included the loss of three front teeth; a broken back; and a broken rib. F.M. pled guilty to one count of Assault in the First Degree to satisfy all charges from this incident and was sentenced to a determinate sentence of twenty years of incarceration to be followed by five years of Post Release Supervision.

A Petition seeking civil management was filed. F.M. consented to the court finding that he was a detained sex offender who currently suffers from a Mental Abnormality and is a dangerous sex offender requiring confinement.

4. State v. G.J.

G.J.'s first sex offense was in 1989 when he raped a woman in her home. He was convicted after trial of Rape in the Second Degree and sentenced to a determinate sentence of ten years.

His second sex offense occurred in 2004, one day after being released to Parole Supervision. At the time, G.J. claimed that he approached a woman on the street and offered her money for sex. The victim rejected his advances and G.J. choked her, removed her pants and inserted his hand into her vagina. A witness overheard the assault and called the police. G.J. entered a plea of guilty to Assault in the Third Degree and Sexual Abuse in the Third Degree. He was sentenced to 90 days of incarceration.

His third sex offense was in 2012. G.J. detained a female on the street, held her by the arm and said that he wanted to see her vagina. When the victim refused, he choked her and threw her to the ground. He then forcibly removed her pants and underwear and inserted his fingers into her vagina. Witnesses walked by during the assault, at which time G.J. fled. He was arrested and

charged with Aggravated Sexual Abuse in the Third Degree, Robbery in the Third Degree, and Grand Larceny in the Fourth Degree.

G.J.'s qualifying sexual offense involves the rape of a 25-year-old female. He led the victim to an abandoned building on the premise of getting her a cigarette lighter. Instead G.J. threw her to the ground, punched her, and repeatedly raped her for over an hour before the victim was able to escape. G.J. was convicted of Rape in the First Degree and sentenced to ten years of incarceration to be followed by ten years of Post Release Supervision.

A Petition seeking civil management was filed and remains pending.

5. State v. E.P.

In 2003, at the age of 29, Respondent entered a hotel room where a female employee was cleaning, propositioned her for sex, and then prevented her from leaving the room. He was convicted of one count of false imprisonment. The following year, at age 30, he entered a limousine business and held two employees hostage. During the incident he exposed his penis to the female hostage and made both hostages remove their clothing. Respondent also reported to the police that he had a bomb and envelopes containing anthrax. This incident involved a nine-hour standoff. He was convicted of numerous non-sexual offenses including Kidnapping in the First Degree, Resisting Arrest, and False Public Alarm and was sentenced to five years of incarceration.

His Article 10 qualifying offense occurred in 2010 when he entered the women's bathroom in a movie theater and sexually assaulted a seven-year-old girl. He fled the scene after the attack, but his DNA was located in the victim's underwear. Five days after the movie theater incident, and before he was apprehended, he approached a ten-year-old girl on school grounds, asked her to attend a concert with him, offered her \$500 for her dress, and asked her to get into his car. He was

convicted of Attempt to Lure a Minor and Sexual Abuse in the First Degree. Respondent received a ten-year determinate sentence.

A Petition seeking civil management was filed. After a bench trial the court determined that he currently suffers from a Mental Abnormality. A Dispositional Hearing will now be scheduled.

6. State v. J.P.

J.P. was first charged with a sexual offense in 1995, at the age of 16, when he laid between the legs of his seven-year-old cousin and imitated sexual intercourse. He was adjudicated a youthful offender and sentenced to three years of Probation Supervision.

His Article 10 qualifying offense involves two separate incidents committed against two different victims. The first occurred in 2019, when at the age of 40, he placed his hand inside the diaper of his two-year-old niece, inserted his finger in her vagina, and attempted to place her hand inside his pants and onto his penis. He entered a guilty plea to Attempted Sexual Abuse in the First Degree and was sentenced to two years of incarceration and ten years of Post Release Supervision.

His second sexual offense occurred in 2022, three months after being released on Parole for the 2019 conviction. At the age of 43, he brought a four-year-old female neighbor to a tree house in the woods, touched her buttocks over her clothes, and attempted to pull down her underwear. He told police “A couple days ago I saw her take her dress off in the back yard and it made me feel aroused. When I saw her in the woods, I felt aroused again. I wanted to see her naked.” He entered a guilty plea to Attempted Sexual Abuse in the First Degree and was sentenced to four years of incarceration to be followed by twenty years of Post Release Supervision.

A Petition seeking civil management was filed and remains pending.

7. State v. J.T.

J.T.'s first conviction for a sexual offense was at the age of 17, for Rape in the Third Degree. He was sentenced to one-year of incarceration. Approximately a year and a half after he was released from incarceration, at the age of 20, he forced a 21-year-old victim to perform oral sex on him, pulled her hair, stole her phone, and placed what the victim believed to be a gun to the back of her head. While charges were pending for that incident, he entered the home of a 27-year-old woman and vaginally raped her while threatening her with a knife. J.T. was convicted of Criminal Sexual Act in the First Degree and Rape in the First Degree. He was sentenced to ten years incarceration to be followed by ten years of Post Release Supervision.

A Petition seeking civil management was filed. Following a jury trial, J.T. was found to be a detained sex offender who suffers from a Mental Abnormality. A Dispositional Hearing was held, during which the Court considered several pieces of evidence, including the fact that all three expert witnesses scored Respondent in the well-above-average risk category; his early onset of sexual offending; minimization of his responsibility; repeated substance abuse while incarcerated; his impulsive and reckless behavior; and his continued poor decision making. The Court further considered that he had made minimal to no progress in his sex offender treatment and was ultimately suspended from that program.

The Court found that that J.T. is a dangerous sex offender requiring confinement.

8. State v. J.M.

J.M.'s qualifying sexual offense consists of three separate offenses; two occurred in 2014 and one occurred in 2016. In the first offense, J.M. approached an unknown 28-year-old female. He first asked for directions then asked the victim to let him see her underwear. The victim ran

away with J.M. in pursuit. J.M. was able to subdue the victim and subjected her to hand to vagina contact. The victim began to scream and J.M. released her and ran away.

On the same day, approximately 10 minutes after the above sexual assault, J.M. began following an unknown 30-year-old female to her building. He entered the victim's building and followed her up the stairs. J.M. grabbed the victim from behind and threw her to the ground, subjecting her to hand to vagina as well as hand to breast contact. He then pulled his pants down, exposed his penis, and pushed it into the victim's mouth. J.M. released the victim and ran away. J.M. was arrested for the offenses and bail was set to secure his return to court. J.M. eventually made bail and was released while the charges were pending.

Approximately one month after being released on bail for the above offenses, at age 18, J.M. approached an unknown 25-year-old female outside of her apartment building. He asked her if she lived alone and offered her a cigarette. J.M. then exposed his penis to the victim. The victim attempted to get away from him by entering her apartment building. J.M. followed the victim forcing his way through the door. While in the hallway J.M. pushed the victim to the floor and attempted to remove her shorts. When the victim began screaming J.M. told the victim he had a gun and threatened to kill her if she did not "shut up". J.M. was convicted on charges connected to all three assaults and was sentenced to a 10 year determinate sentence to be followed by 10 years of Post Release Supervision.

A Petition for civil management was filed and remains pending.

9. State v. T.G.

T.G.'s sexual offending began at the age of 20 when he forcibly raped a 14-year-old female acquaintance who he had met on-line two years earlier when the victim was 12 years old. During

this time, they exchanged nude pictures. T.G. extorted \$800.00 from the victim by threatening to post nude pictures of her on the internet. He was arrested and released on bail.

In May 2014 while released on bail from the prior charge, T.G. forcibly raped a 16-year-old female. He was 22 years old at the time. He was arrested and again released on bail.

In October 2015 at the age of 24, while released on bail for both previous sex offenses and enrolled in community-based sex offender treatment, T.G. threatened to kill the family of the 14-year-old victim if she did not send him nude pictures of herself. The victim sent T.G. eight pictures. When she refused to send additional pictures T.G. sent pictures of the victim to one of her friends.

In June 2017, at the age of 25 and while on Probation for his three prior offenses, T.G. was found in possession of child sexual assault material. He was arrested and it was discovered that he engaged in forcible rape of a female victim while she was 12 and 13 years old. Pictures of the victim were found on his cell phone that was seized by his Parole Officer.

T.G. was convicted of Rape in the First Degree. He was sentenced to an 11 year term of incarceration and 20 years of Post Release Supervision.

A Petition for civil management was filed and in January 2025, a jury trial was held. The jury reached a verdict that T.G. suffers from a mental abnormality and requires civil management. In the subsequent Dispositional Hearing, the Court found that T.G. offends impulsively and that he has not made enough progress in treatment to safely transition into the community. The Court ultimately found that T.G. is a dangerous sex offender requiring confinement.

10. State v. A.R.

In November 2008, a 28-year-old female who was walking up the stairs of her apartment building encountered A.R. coming down the staircase naked. A.R. punched the victim several

times, breaking her nose. Once the victim was on the ground A.R. pulled her pants and underwear off, then attempted to penetrate her vagina with his penis. A neighbor who heard the victim screaming interceded, pulling A.R. off of the victim. A.R. fled the scene but was later arrested, convicted and sentenced to seven years incarceration and seven years of Post Release Supervision.

In August 2019, while incarcerated at Rikers Island Correctional Facility on a violation of Parole for the 2008 rape, A.R. forcibly touched four incarcerated individuals with his genitals. Later that day he walked naked from the showers encountering a female Corrections Officer who was alone in a hallway. A.R. grabbed her arm, pulled her close to his naked body while masturbating. Another officer attempted to intervene but was unsuccessful. A.R. then pushed the female Correction Officer up against a window and pulled her pants down. A third Corrections Officer entered the area and saw A.R. “mounted on the victim from behind gripping her hips.” That Corrections Officer was able to intercede, freeing the victim and restraining A.R. A.R. was arrested, convicted and sentenced to six years incarceration and nine years of Post Release Supervision.

A Petition for civil management was filed and A.R. consented to the Court finding that he was a detained sex offender who currently suffers from a Mental Abnormality. A Dispositional Hearing was held, and the Court reserved decision.

11. State v. M.F.

M.F. was admitted to the Manhattan Children’s Psychiatric Center (MCPC) when he was 12 years old due to sexually deviant behavior. He was treated at MCPC from ages 12 to 15 where he continued to display sexually inappropriate behavior towards female staff and peers. Two weeks after he was discharged from MCPC at age 16, he sexually assaulted a female staff member in the parking lot. He restrained her and began tearing her clothing. A security guard witnessed

the event and interceded. M.F. was returned to MCPC where he remained on an inpatient basis until he was 17 and one-half years old.

At age 20, M.F. was in an apartment building elevator with an unknown female. He got off on the same floor as the victim. He opened a door to an apartment and dragged the victim into the apartment. He demanded that the victim remove her clothing. When she refused, M.F. threatened her with a knife. The victim struggled and screamed for help. M.F. ran out of the apartment and the victim escaped out a window. The police later found M.F. attempting to enter another apartment.

In July 2010, M.F. approached an 18-year-old female student on a subway platform. M.F. discovered that the victim needed directions. M.F. lured the victim out of the subway station to the roof of an apartment building under the guise of helping her. Once on the roof he ordered the victim to take off her clothes saying, he “liked virgins just like you who are fresh”. M.F. threatened he would kill her if she did not comply. The victim’s screaming was heard by two men in the building who went to the roof. M.F. ran off but was later arrested. M.F. was charged, convicted, and sentenced to fifteen years of incarceration to be followed by seven years of Post Release Supervision.

A Petition seeking civil management was filed. M.F. consented to the Court finding that he was a detained sex offender who currently suffers from a Mental Abnormality, and in October 2025, the Court released M.F. to a regimen of Strict and Intensive Supervision and Treatment.

12. State v. L.C.

L.C. has a history of arrests for sexual offences going back to the 1970’s. His qualifying sexual offense was committed in 2009, at the age of 79, when he placed his finger in the rectum of a 7-year-old girl whom his paramour was babysitting. He entered a guilty plea to Sexual Abuse

in the First Degree and was sentenced to time served and 10 years of Probation. That plea satisfied allegations that at the age of 78 he had sexual contact on multiple occasions with a 5-year-old female whom his paramour was also babysitting. In 2019 he was re-sentenced to 5 years incarceration for violating the terms of his Probation by repeatedly touching the penis of his paramour's 10-year-old son and performing oral sex on him over a 9-month period. He was charged with Predatory Sexual Assault Against a Child, but those charges were dismissed in satisfaction of his re-sentencing on the Probation Violation.

A Petition for civil management was filed and a *guardian ad litem* was appointed on L.C.'s behalf due to his cognitive issues. L.C. consented to the Court finding that he was a detained sex offender who currently suffers from a Mental Abnormality and is suitable for supervision on SIST.

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, 2026, 518 sex offenders with mental abnormalities are being civilly managed. Of that, 369 are being treated in a secure treatment facility, while 149 are being treated under a regimen of enhanced community supervision on SIST. But for SOMTA, these recidivistic,

sex offenders with mental abnormalities 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 members 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.