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SEX OFFENDER MANAGEMENT BUREAU

A Report On The Sex Offender Management Treatment Act

April 1st, 2017 to March 31, 2018

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INTRODUCTION

In passing the Sex Offender Management and Treatment Act of 2007, 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 NYS Office of the Attorney General (OAG) created the Sex Offender Management Bureau (SOMB). This Bureau 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 of People with Developmental Disabilities (OPWDD), and the NYS Division of Criminal Justice Services (DCJS) to further the goals of 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 over the past decade. 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 of the report, "Civil Management After 10 Years," provides updated statistics and case data that are current as of March 31, 2018. 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," will provide 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 understand 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 confinement and allows

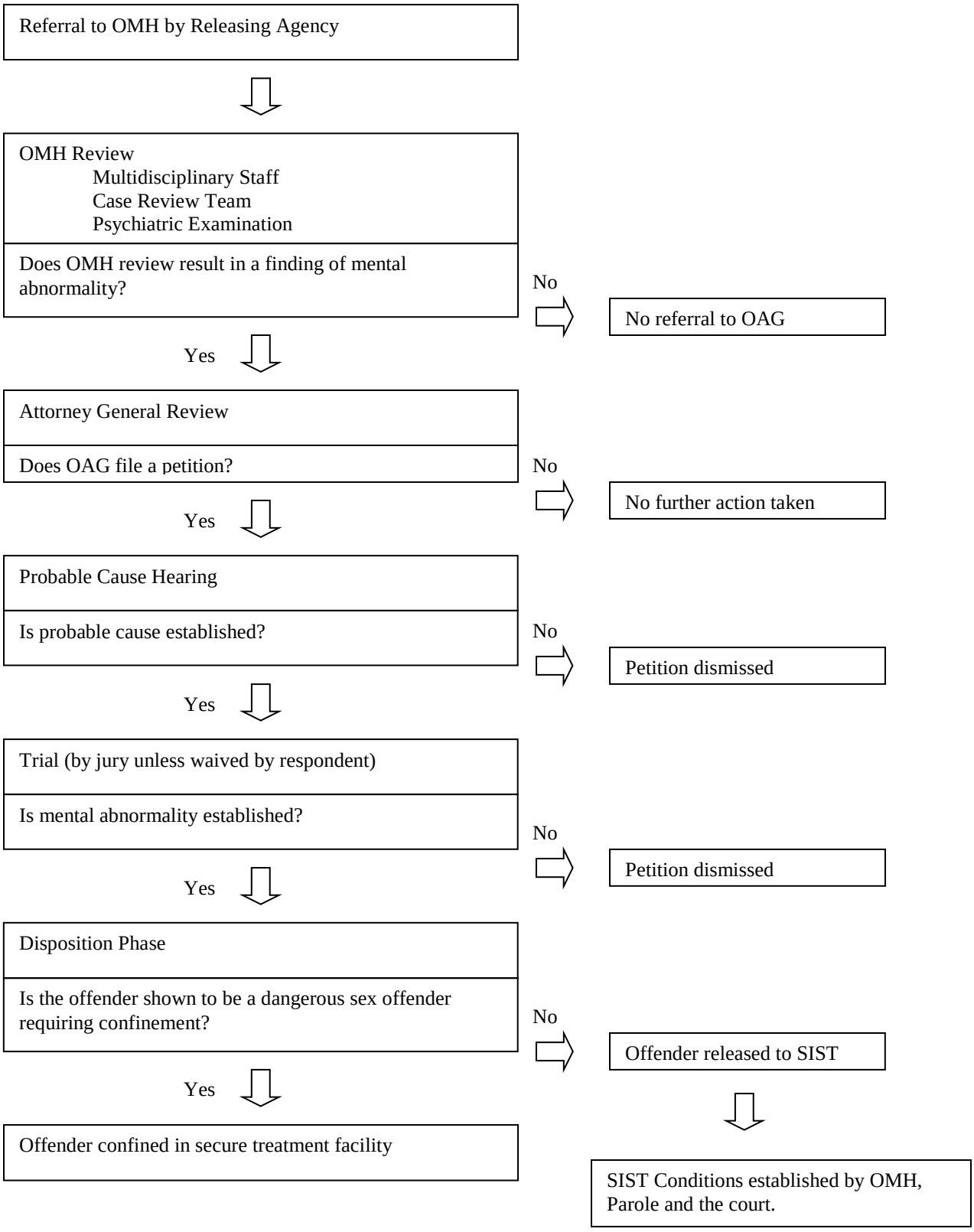
[6] MHL §§10.05, 10.03(a),(q),(g) and (i).

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; 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 identifies 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 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

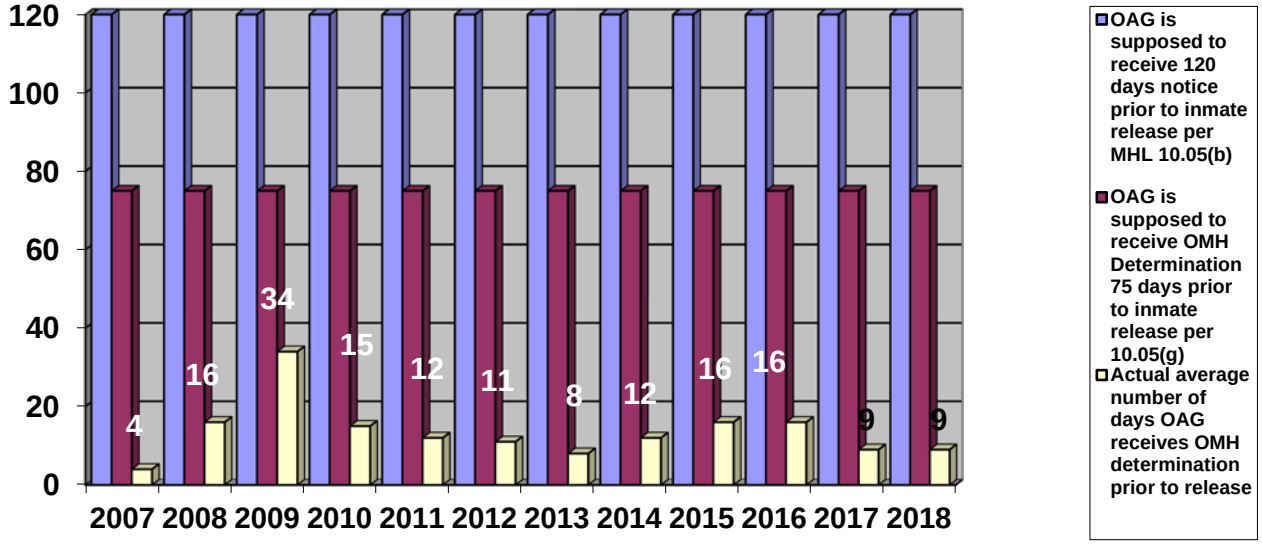
When an individual who may be a "detained sex offender" is nearing anticipated release from custody of an agency with jurisdiction,[10] the agency gives notice of the offender's anticipated release to both the NYS Office of Mental Health (OMH) and the NYS Office of the Attorney General (OAG).[11] The two most common referrals are made when a convicted sex offender nears a release date from prison 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 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 to commence legal proceedings. If the CRT and examiner find the offender does not require civil management, the case is not referred and is closed.

When a "detained sex offender" nears anticipated release, the statute requires the agency with jurisdiction to provide OMH and the OAG 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 written notice of its determination whether the case will be referred for civil management.[14]

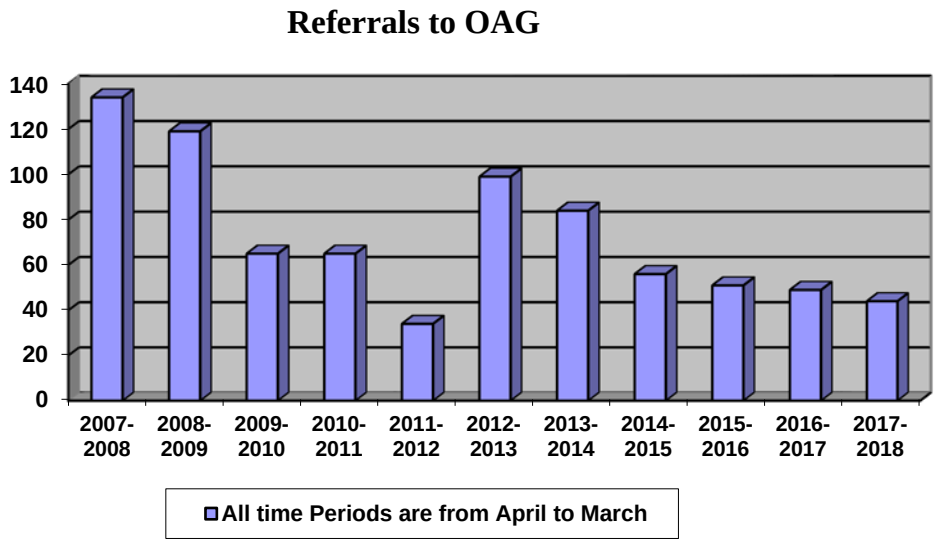
[10] The agency with jurisdiction can include the Department of Corrections and Community Supervision (DOCCS), the Office of Mental Health (OMH), and the Office for People with Developmental Disabilities (OPWDD). See MHL §10.03(a).
[11] MHL §10.05(b).
[12] MHL §10.05(d)
[13] MHL §10.05(e).
[14] MHL §10.05(g).

In practice, the actual time in which the OAG receives OMH's determination is much less. In 2007, the actual 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 and through 2018 it was



These notification time frames are advisory, not mandatory, but together recognize 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, and though it slightly increased in 2013, it has now leveled off.

In 2007-2008 OMH referred 134 cases to the OAG for filing a civil management proceeding. In 2008-2009 OMH referred 119 cases, and in 2009-2010 there were 65 cases referred. In 2010-2011 that agency referred 65 cases; in 2011-2012 it referred 34 cases; in 2012-2013, 99 cases were referred; in 2013 to 2014, 84 cases were referred; and in 2014 to 2015, 56 cases were referred. Between April 1st, 2015 and March 31st, 2016, OMH has referred 51 cases to the OAG. 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, a petition is filed in 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 prison responsible for his or her custody. Therefore, the petition is filed in the county within which the prison is located. Once a petition is filed, the offender is entitled to an attorney. Most sex 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 sex offender to remove the case to the county of the underlying sex offense conviction(s).[17] If an offender does not request venue to be transferred back to the

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

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 custody 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 the Department of Corrections and Community Supervision (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 law. [22]

Once it is established there is probable cause to believe 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."

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[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).
[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)

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. 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 petition is dismissed.[28] On the other hand, if the jury unanimously, or the court if a jury is waived, determine 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 law.[29]

When the jury, or court if a jury is waived, determines that the State of New York met its burden of proof and found 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 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 (SIST) 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]

[27] MHL §10.03(i).
[28] *Id*.
[29] MHL §10.07(e).
[30] MHL §10.07(d), (f).
[31] MHL §10.03(e).

If the court finds the respondent is a "dangerous sex offender requiring confinement," the offender is committed to a 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 SIST is supervised by parole officers from DOCCS and abides 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 MHL 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] Generally a respondent found to be a dangerous sex offender requiring confinement is transferred to either Central New York Psychiatric Center (CNYPC) in Marcy, New York, or St. Lawrence Psychiatric Center in Ogdensburg, New York.

The fact that a respondent is found to be a dangerous sex offender requiring confinement is not a life sentence and does not 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. The court may deny the petition finding it is frivolous

[32] MHL §10.07(f).
[33] *Id*.
[34] MHL §10.01(b).

or that it does not provide sufficient basis for re-examination at that time, or the court may order an evidentiary hearing be held.[35]

Furthermore, and by statute, each sex offender is examined once a year for evaluation of their mental condition to determine whether they are currently a dangerous sex offender requiring confinement.[36] Each respondent is entitled to an annual review hearing based upon the findings of the 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] The Attorney General calls the OMH examiner to testify at the annual review hearing and the respondent often presents independent expert testimony on his or her behalf. These safeguards ensure the offender's legal rights are respected and that civil commitment decisions withstand legal scrutiny. 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 respondent is not currently a dangerous sex offender requiring confinement, it will issue an order providing for the discharge of respondent into the community on a regimen of SIST.[38] As of March 31, 2018, one hundred twelve offenders have been released from secure treatment facilities back into the community on a regimen of SIST.

2. Strict and Intensive Supervision and Treatment (SIST)

The legislative findings further provide that some sex offenders can receive treatment under a regimen of strict and intensive supervision and treatment in the community, and still

[35] MHL §10.09(f).
[36] MHL §10.09(b).
[37] MHL §10.09(d).
[38] MHL §10.09(h).

protect the public, reduce recidivism, and ensure offenders have proper treatment.[39]

Before a sex offender is released into the community, DOCCS and OMH conduct a SIST investigation to develop appropriate supervision requirements. These requirements may include, but are not limited to, electronic monitoring or global positioning satellite (GPS) tracking, polygraph monitoring, specification of 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 have to 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 seriously mentally ill persons are supervised at a ratio of 25:1. In contrast, the 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 6 face-

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

to-face supervision contacts and 6 collateral contacts with their parole officer each 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 OAG 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 OAG 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] Not all violations of SIST conditions will result in confinement.

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

[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).

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 the sex offender brings a petition for termination, 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 into the community.[49] As of March 31, 2018, sixty nine offenders who had been placed on SIST have had their SIST conditions terminated and have been discharged from civil management supervision back into the community.

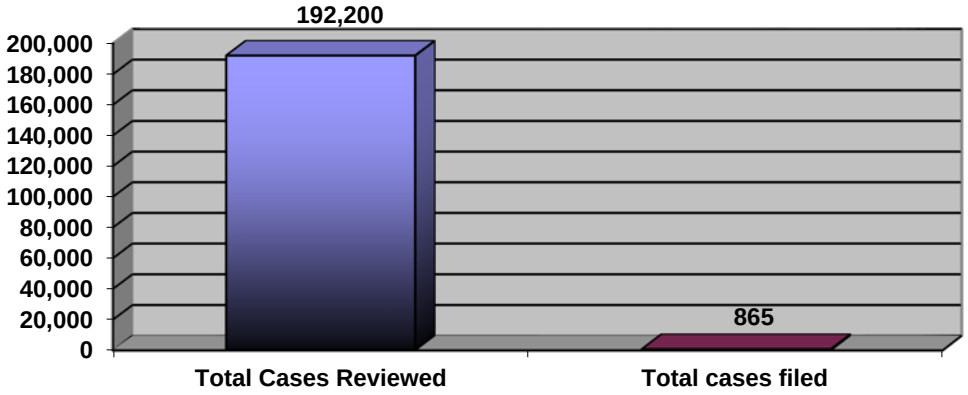
As time passes, it is expected that the number of offenders on SIST will grow considerably because of (1) the number of offenders that are released to SIST after trial, but also because (2) every time an offender is released from a secure treatment facility, the court has found he or she still suffers from a mental abnormality and releases him or her to SIST.

II. CIVIL MANAGEMENT AFTER 11 YEARS

A. REFERRALS AND CASES FILED

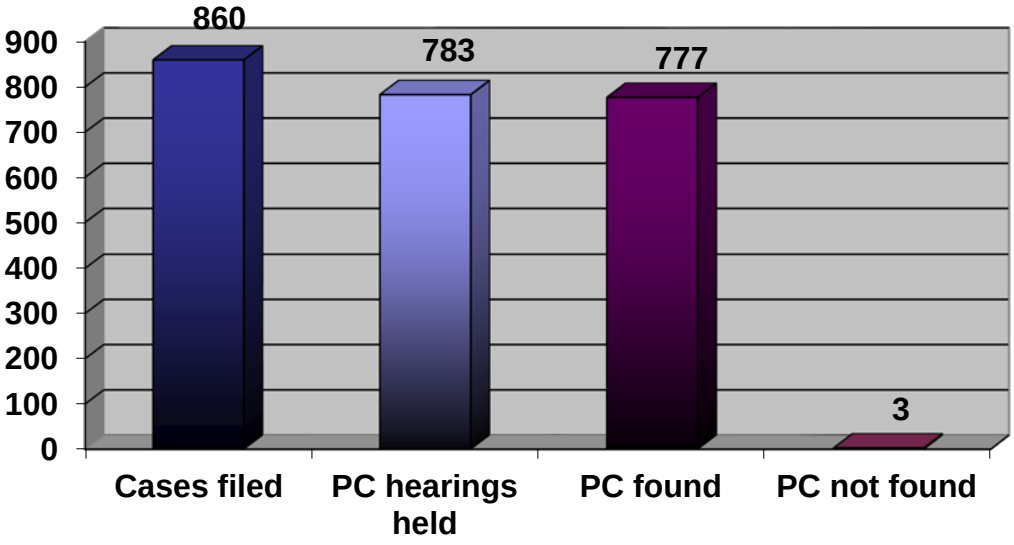
In the eleven years since Mental Hygiene Law Article 10 became law, the New York State Office of Mental Health has reviewed 19,220 sex offenders to determine whether they are appropriate for referral to civil management. Of the cases reviewed, only 865 have resulted in OAG filing an Article 10 Petition. This includes what is considered the "Harkavy" cases addressed in previous reports.

[48] MHL §10.11(g).
[49] MHL §10.11(h).



B. PROBABLE CAUSE HEARINGS

In the eleven years since SOMTA's inception, OMH referred a total of 865 sex offenders for civil management.[50] The OAG has filed 860 petitions, conducted 661 probable cause hearings, and respondent has waived his right to the hearing on 213 occasions. The courts found probable cause to believe the offender suffered from a mental abnormality and was in need of civil management 777 times out of the 785 hearings held to date.

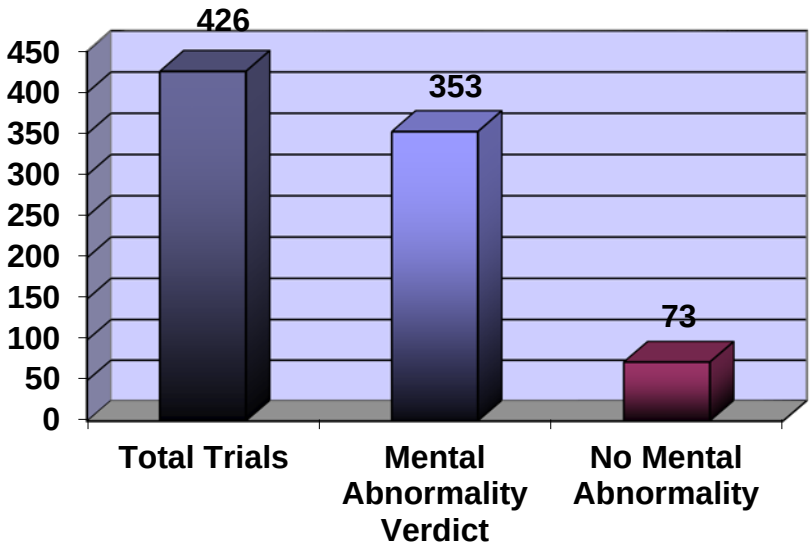


[50] These referrals include the Harkavy cases.

C. MENTAL ABNORMALITY

Trials

Of the 426 trials, the jury or judge rendered a verdict that 353 of those sex offenders suffered from a mental abnormality and 73 were adjudicated to have no mental abnormality.



D. DISPOSITIONS

1. Dangerous Sex Offender Requiring Confinement (DSORC)

From April 13, 2007, to March 31, 2018, a total of 421 offenders have been found to be dangerous sex offenders requiring treatment in a secure OMH facility. .

2. Strict and Intensive Supervision and Treatment (SIST)

From April 13, 2007, to March 31, 2018, a total of 328 offenders were placed on a regimen of SIST after a finding that he suffers from a mental abnormality. Of that number, 122 are currently on a regimen of SIST.

3. SIST Violations

The data below reflects the total number of offenders placed on SIST initially after trial, as

well as those placed on SIST from confinement, and the number of those offenders who violated.[51]

	2007-2008	2007-2009	2007-2010	2007-2011	2007-2012	2007-2013	2007-2014	2007-2015	2007-2016	2016-2017	2017-2018
Total Released to SIST	21	62	82	97	117	133	163	201	294	344	392
Total SIST Violations	9	20	36	57	71	83	141	157	176	198	233

In SOMTA's second year, the violation rate was 32%, with 40% of those violations taking place the first month on SIST. By the end of the third year, the 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 policy that if a Respondent was violating any condition, i.e. late curfew, the Department of Corrections and Community Supervision would violate the Respondent has changed. There has since been an implementation of the use of Incident Reports, in which DOCCS issues a report for informational purposes. The report contains the Respondent's concerning behavior and the report is then provided to the Court. Along with an Incident Reports, the Court now schedules Compliance Calendars in which the Respondent is brought to Court in an attempt to correct the behavior before a violation is filed. This new policy has led to less violations and to the overall success of Respondent's on SIST.

E. ANNUAL REVIEW HEARINGS

The number of annual review hearings held each year trends consistently with the increases in the number of sex offenders who are receiving treatment in a secure facility. The number of

[51] This data is represented as cumulative for ease of comparison with Parole and DCJS data that is calculated by those agencies on a cumulative basis.

dangerous sex offenders requiring confinement who petition for annual review is expected to rise. Since SOMTA's inception, while some offenders have waived their right to a hearing and consented to continued treatment in the facility, over 641 dangerous sex offenders have had an annual review hearing held by the court. In the current report period, April 1, 2015 to March 31, 2018, there have been 127 evidentiary hearings.

F. SIST MODIFICATION OR TERMINATION HEARINGS

Of the 328 offenders placed on SIST, 83 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

Again this year, as has been the trend over the past several, between April 1, 2017, and March 31, 2018, courts decided a number of remarkable cases, each having a dynamic impact on Article 10 litigation.

A. NEW YORK STATE COURT OF APPEALS

The New York Court of Appeals issued three decisions, one with an opinion, in MHL Article 10 cases between April 1, 2017, and March 31, 2018. The case issued with opinion is summarized below.

1. Evidence: Trial Court Affirmed Where Evidence of Mental Abnormality was Based on Detailed Psychological Portrait.

Decided October 24, 2017, in State v. Floyd Y. 30 N.Y.3d 693, the Court of Appeals

affirmed a finding of Mental Abnormality based upon detailed expert testimony about the manner in which the Respondent's multiple psychiatric disorders predisposed him to engage in conduct constituting a sexual offense and resulted in him having serious difficulty in controlling such conduct.

B. THE NEW YORK STATE APPELLATE DIVISIONS

Statewide, between April 1, 2017 and March 31, 2018, the Appellate Divisions decided a total of 30 cases addressing MHL Article 10 matters. The breakdown is as follows:
The First Department rendered 2 decisions; the Second Department delivered 11 decisions; the Third Department decided 8 cases; and the Fourth Department issued 9 decisions. The following sections summarize the notable decisions.

FIRST DEPARTMENT:

2. Due Process and Jurisdiction: No Strict 60–Day Time Limit.

Decided April 27, 2017, in State v. Keith F.,149 A.D.3d 671, the First Department held that the 60 day deadline prescribed by MHL Section 10.07(a) is not a strict time limit and compliance with that time frame is not a prerequisite to continued jurisdiction.

3. Evidence: Trial Court Reversed Where Serious Difficulty Controlling Conduct was Insufficient to Sustain Mental Abnormality.

Decided June 29, 2017, in State v. Howard H., 151 A.D.3d 648, the First Department reversed the trial court's finding of mental abnormality and found that the "psychological portrait" described by the State's experts was insufficient to establish, by clear and convincing evidence, that the Respondent's psychological disorders resulted in him having serious difficulty in controlling his sexual-offending conduct.

SECOND DEPARTMENT:

4. Coram Nobis Relief and Ineffective Assistance of Counsel.

Decided April 12, 2017, in Matter of State of New York v. Wayne J., 149. A.D.3d 846, the Second Department decided that despite the civil nature of MHL article 10 proceedings and the normally binding nature of an attorney's errors or omissions on a civil litigant in civil proceedings, given the liberty interests at stake, a writ of error coram nobis is available to an offender seeking relief based upon alleged ineffective assistance of counsel. Here however, the Court held that Wayne J. did not sufficiently establish ineffective assistance based merely on the claim that his attorney failed to challenge alleged defects at the probable cause hearing. In its reasoning, the Court made note that subsequent to the probable cause hearing, Wayne J. consented to mental abnormality and waived a dispositional hearing.

5. Due Process: SORA Proceedings, Like MHL Article 10, Civil in Nature.

Decided June 28, 2017, in People v. Parris, 153 A.D.3d 68, the Second Department, citing Daniel OO (3d Dep't), held that a SORA proceeding, like SOMTA, is civil in nature and not penal, and reaffirmed the principle that proceeding against an incapacitated person complies with due process.

6. Trial: Voir Dire Challenge for Cause.

Decided July 5, 2017, in State v. Keith G., 152 A.D.3d 527, the Second Department reversed as error the trial court's denial of a challenge for cause during voire dire. Counsel for Respondent challenged the prospective juror, who upon learning of Respondent's criminal history, was observed turning away from counsel during the selection process and audibly stating

"wow" numerous times. Upon questioning, the prospective juror acknowledged that he remembered news reports referring to the Respondent as the "Flatbush Rapist."

7. Trials and Evidence: Preclusion of Non-Expert Lay Witness Testimony Does Not Deny a Fair Trial.

Decided November 8, 2017, in State v. Lionel W., 155 A.D.3d 749, the Second Department affirmed the jury trial verdict and Order of Supreme Court Queens County which granted civil management and confinement of Lionel W. In denying the sex offender's contention that the trial court erred by precluding testimony of five non-expert, lay witnesses he wished to call, the Court rejected his contention that he was denied a fair trial. In affirming, the Appellate Division held that the jury verdict was supported by legally sufficient evidence, since there was a valid line of reasoning by which it could conclude that the appellant suffered from a mental abnormality. The decision also upholds the trial court's finding that the Lionel W.'s level of dangerousness required confinement rather than strict and intensive supervision after conducting a dispositional hearing on that issue.

8. SIST Violations: Prior Admission to MA Sufficient For Subsequent Violation Proceeding; Violation Need Not Be Sexual, But Relevant to Risk of Recidivism.

Decided November 29, 2017, in Jameek B. 155 A.D.3d 1051, the Second Department held that Respondent's prior admission that he suffered from a mental abnormality was sufficient to establish that he suffered from mental abnormality for the purposes of subsequent proceedings to revoke his release to SIST. Though the Respondent's violations of SIST were not directly sexual in nature, the Court nevertheless found they were "highly relevant regarding the level of danger" and his recidivism risk out in the community, such that his level of dangerousness required confinement.

9. Timing of Probable Cause Hearings; Access to Sealed Records; Expert Testimony Based on Hearsay.

Decided December 13, 2017, in Kerry K. 157 A.D.3d 172, the Second Department held that the failure to conduct a probable cause hearing within the statutorily prescribed period under MHL § 10.06 does not deprive the Court of jurisdiction. Further, the Court interpreted MHL § 10.08(c) to allow discovery of sealed records from local government entities as well as state agencies. Lastly, in granting a new trial, the Court found that the trial court erred in admitting expert testimony based on hearsay evidence of sex offenses for which Kerry K. had been exonerated based on DNA evidence and after his appeal vacated the conviction.

10. Due Process: No Violation for Second Psychiatric Evaluation Prior to Filing.

Decided December 20, 2017, in David B. 2017 Slip Op. 08831, the Second Department denied Respondent's motion to dismiss and held that a second psychiatric evaluation of the Respondent prior to filing of the MHL Article 10 petition was not a violation of MHL Section 10.05(e) and did not violate due process.

11. Evidence: General Acceptance of Static-99R Recognized in SORA Hearing.

Decided December 27, 2017, in People v. Curry, 158 A.D.3d 52, the Second Department recognized the reliability of the Static 99-R risk assessment instrument as generally accepted but rejected the Defendant's request for a downward departure in a SORA hearing based upon such a reading standing alone.

12. Evidence: *Frye* and Unspecified Paraphilic Disorder.

Decided February 14, 2018, in Hilton C., 158 A.D.3d 707, the Second Department reversed the lower court's finding after a *Frye* hearing that the Unspecified Paraphilic Disorder

diagnosis was generally accepted within the psychological and psychiatric communities, and remanded the case for a new trial. The Appellate Court held that the State had failed to establish on the record that the subject diagnosis has reached the required general acceptance under *Frye*, so as to make expert testimony with respect to that diagnosis admissible at trial.

13. Evidence: *Frye* and Paraphilia NOS, Non Consent.

Decided February 14, 2018, in Richard S., 158 A.D.3d 710, the Second Department affirmed the lower court's finding after a *Frye* hearing challenging the diagnosis of Paraphilia Not Otherwise Specified (non-consent) that determined the diagnosis was not generally accepted in the psychological and psychiatric communities and remanded the case for a new trial. The Appellate Court held that the State had failed to establish on the record that the subject diagnosis has reached the required general acceptance under the *Frye* analysis, so as to make expert testimony with respect to that diagnosis admissible. The Appellate Court also noted that the evidence presented at the *Frye* hearing showed that there is no clear definition or criteria for the diagnosis, the diagnosis could not distinguish other motivations for rape, the articles offered in support of the diagnosis were insufficient to show a wide, significant or well-rounded body of research and the diagnosis had repeatedly been rejected for inclusion in the Diagnostic and Statistical Manual of Mental Disorders (DSM).

14. Evidence: Prior *Frye* Ruling Rejecting Diagnosis Is Fact Specific, New Hearing Proper When Requested.

Decided March 30, 2018, in Anthony B., 2018 NY Slip Op 68466(U), the Second Department again remitted the case to the trial court to conduct a *Frye* hearing on the diagnosis known as Other Specified Paraphilic Disorder (Non-Consent) after the trial court incorrectly ruled that a *Frye* hearing was unnecessary because of the binding effect of the Richard S.

decision in the Second Department, rendered on February 14, 2018.

THIRD DEPARTMENT:

15. Annual Review: Trial Court in Best Position to Weigh Sufficient Evidence of DSORC.

Decided April 13, 2017, in Matter of Juan U., 149 A.D.3d 1300, the Third Department affirmed the lower court's finding that the Respondent was a dangerous sex offender requiring confinement and reaffirmed the often used principle that the trial court is in the best position to evaluate the credibility and weight of conflicting expert testimony.

16. Annual Reviews: Subsequent Annual Review Moots Appeal of Prior Determination.

Decided May 11, 2017, in Matter of Ernest V., 150 A.D.3d 1434, the Third Department held that the Respondent's current appeal of a dismissal by the lower court of his application for discharge was rendered moot by a subsequent determination by an annual review court that Respondent was a dangerous sex offender requiring confinement.

17. Evidence: Sufficient Criteria for Dangerous Sex Offender Requiring Confinement.

Decided June 1, 2017, in Matter of Craig W., 151 A.D.3d 1135, the Third Department upheld a finding by the lower court that Respondent was a dangerous sex offender requiring confinement and again reaffirmed the principle that the trial court is in the best position to evaluate the credibility and weight of conflicting expert testimony.

18. Evidence: Diagnoses and *Donald DD.*

Decided June 15, 2017, in Matter of Christopher PP., 151 A.D.3d 1334, the Third

Department upheld the lower court's dismissal of Respondent's application for discharge, ruling that the combination of the diagnoses of Anti-Social Personality Disorder and Sexual Pre-Occupation survive a challenge under Donald DD, 24 N.Y.3d 174(2014).

19. Right to Counsel Cannot Interfere with Sex Offender Treatment.

Decided July 13, 2017, in the Matter of Mental Hygiene Legal Service v. Sullivan, 153 A.D.3d 114, the Third Department ruled that Respondent's counsel was not allowed to attend meetings during the client's sex offender treatment program since such representation was not authorized under the statute governing treatment plans.

20. MHL Article 10 Probable Cause and Effect on Parole Status.

Decided September 14, 2017, in Matter of Abreu v. Stanford, 153 A.D.3d 1455, the Third Department affirmed the finding of the lower court in a CPLR Article 78 proceeding challenging a ruling of the NYS Board of Parole that revoked Respondent's post-release supervision period for threatening staff and defecating on the floor. The appellate court held that the Board of Parole had jurisdiction to conduct a final revocation hearing and revoke the post-release supervision notwithstanding a finding of probable cause within the context of a Mental Hygiene Law Article 10 proceeding.

FOURTH DEPARTMENT:

21. Procedure and Vacatur of Order for Civil Management:

Decided April 28, 2107, in Matter of State of New York v. William D., 149 A.D.3d 1556, the Fourth Department upheld the trial court's order denying William D.'s CPLR 5015 motion to vacate its prior order granting civil management. The Appellate Division notes that

William D. conceded that none of the grounds enumerated in CPLR 5015 were applicable to his case and that he instead was relying upon the inherent authority of the trial court to vacate its own orders. The appeal was taken on the order denying the motion to vacate, which the Court found was a viable use of discretion. However, on the merits of the case before it, the Court could not say that it was abuse of discretion to deny the discretionary vacatur and alluded to the statutory provisions for annual review and bi-annual SIST review as the more appropriate remedies to challenge the substance of his claims that he did not suffer from a mental abnormality.

22. Evidence: Sufficient Criteria for Dangerous Sex Offender Requiring Confinement

Decided March 16, 2018, in Matter of the State of New York v. Steven M., 159 A.D.3d 1421 (2018), the Appellate Division affirmed the Supreme Court's determination following a nonjury trial and a dispositional hearing that the Respondent suffers from a mental abnormality and is a dangerous sex offender requiring confinement. The testimony of Petitioner's experts, who testified that Respondent has a provisional diagnosis of pedophilic disorder as well as alcohol dependence, cannabis abuse, and antisocial personality disorder, coupled with sexual preoccupation, was legally sufficient to sustain a finding of mental abnormality. Respondent failed to preserve his claim that there was insufficient evidence that he has serious difficulty controlling his sexual misconduct by failing to move for directed verdict or to otherwise challenge the sufficiency of the evidence. Any conflicting testimony between the party's experts was a credibility issue that was properly left to the trial court to resolve.

23. Evidence: Sufficient Criteria for Dangerous Sex Offender Requiring Confinement

Decided June 30, 2017, in Matter of the State of New York v. William J., 151 A.D.3d 1890 (2017), the Appellate Division affirmed the Supreme Court's determination following a SIST revocation hearing that Respondent is a dangerous sex offender requiring confinement. The Appellate Division rejected Respondent's argument that the evidence was insufficient due to the absence of evidence that Respondent's SIST violations involved any sexually inappropriate conduct. Petitioner's expert testified that he suffers from antisocial personality disorder, substance abuse disorder, and severe cocaine and alcohol use disorder. His current SIST violations included cocaine use on at least two occasions within one month of his release and two prior SIST violations also involved cocaine use. Respondent's current cocaine use was described as "escalating" in nature and was coupled with a demonstrated lack of cooperation and resentment towards substance abuse and sex offender treatment. Moreover, the hearing record contained numerous admissions from Respondent that his sex offending behavior was linked to his cocaine use. This evidence, together with the results of the Static-99 and the Acute-2007, provided clear and convincing evidence that Respondent is a dangerous sex offender requiring confinement.

24. Evidence: Sufficient Criteria for Dangerous Sex Offender Requiring Confinement.

Decided February 9, 2018, in Matter of the State of New York v. George N., 160 A.D.3d 28 (2018), the Appellate Division reversed the Supreme Court's determination following a SIST revocation hearing that Respondent is a dangerous sex offender requiring confinement. The Respondent consumed alcohol, which was a violation of his SIST conditions. Like the other Departments, the Court made clear that, the "inability" to control need not be established only by

evidence of sexually inappropriate conduct while on SIST. However, the Court cautioned that William J. should not be read too broadly and that the State is obliged to prove that Respondent has an "inability" to control his sexual conduct. In short, "it is incumbent upon the State to demonstrate a persuasive link between a nonsexual violation and the offender's ability to control his sexual behavior." Id. at 31. Here, Respondent had not sexually offended for years, even though he had not maintained sobriety, he had made excellent progress in sex offender treatment, he did not display signs of resuming a cycle of deviant arousal, and the violations were not connected in any manner to sex offending. This evidence was not legally sufficient to support the trial court's finding.

25. Evidence: Sufficient Criteria for Dangerous Sex Offender Requiring Confinement.

Decided December 22, 2017, in Matter of Sincere v. State of New York, 156 A.D.3d 1427 (2017), the Appellate Division affirmed the Supreme Court's determination following an annual review hearing that Respondent is a dangerous sex offender requiring confinement. The testimony of the State's two psychologists was legally sufficient even in "the absence of evidence that [Respondent] has engaged in sexual misconduct while confined." Id. at 1427.

26. Habeas Corpus and Article 10 Proceedings.

Decided November 9, 2017, in People v McCulloch, 155 A.D.3d 1559 (2017), the Appellate Division affirmed the Supreme Court's determination to deny the Petitioner's application for poor person relief and to dismiss his habeas corpus petition. Supreme Court found no reason to depart from the traditional orderly proceedings provided by Mental Hygiene Law Art 10, including the right to annual reviews, in the absence of any claim set forth that Petitioner had a meritorious claim. The Appellate Division agreed that the habeas corpus

petition had no merit and that any remaining challenges are properly addressed in the course of the Article 10 proceeding itself.

27. Annual Reviews: Availability of Lay Witness is Good Cause for a Change of Venue.

Decided 28, 2017, in Matter of Charada T. v. State of New York, 2017 NY Slip Op 03379, the Fourth Department reversed on the law the Supreme Court's order that denied petitioner's motion for a change of venue for the convenience of witnesses in an annual review proceeding.

The petitioner argued that the trial court improvidently exercised its discretion in denying his motion for a change of venue due to his mother's residence in New York County. While the Fourth Department agreed with the State that the subject of the mother's proposed testimony may also be the subject of expert testimony, they relied upon Matter of State of New York v Enrique D., 22 NY3d 941 (2013), in that "the pertinent question is whether a witness-expert or lay-has material and relevant evidence to offer on the issues to be resolved."

In this decision, the Fourth Department found that petitioner's mother's proposed testimony concerning his stated goals and priorities, likely living arrangements, and familial support system, is relevant and material to the issue of whether or not he is a dangerous sex offender requiring civil commitment. Therefore, they concluded that petitioner established the requisite good cause for a change of venue.

28. Evidence: Deference Given to Trial Court on Conflicting Expert Opinion.

Decided April 28, 2017, in Matter of Christopher J. v. State of New York, 2017 Slip Op 03331, the Fourth Department affirmed the trial court's determination finding mental abnormality after a non-jury trial.

The Fourth Department noted the detailed psychological portrait presented by the respondent's expert, which included the petitioner's combination of diagnoses and his prolific offending history. The respondent's expert found that the petitioner's combination of diagnoses created the perfect storm that predisposes the petitioner to commit sexual offenses and causes him difficulty in controlling his pedophilic urges. The petitioner's expert testified at trial that petitioner demonstrated control over his offending behavior by exhibiting patience in grooming his child victims and their adult caretakers. The Fourth Department noted that this testimony created a credibility issue that the trial court was entitled to resolve against petitioner's expert. Citing Matter of State of New York v. Chrisman, 75 A.D.3d 1057 (2010) the court stated that such determination by the trial court is permitted great deference given the trial court's "opportunity to evaluate the weight and credibility of conflicting expert testimony."

29. Evidence: Adjudication of Prison Disciplinary Proceeding Satisfies *Floyd Y*.

Decided October 5, 2018, in the Matter of the Application of State of New York v James R.C., an Inmate in the Custody of New York State Department of Corrections and Community Supervision, the Fourth Department unanimously affirmed an order of the trial court, committing respondent to a secure treatment facility after a jury verdict finding mental abnormality and a dispositional finding that he is a dangerous sex offender requiring confinement.

On appeal, respondent argued that the trial court erred in its rulings with respect to two prospective jurors. The Fourth Department, citing People v. Harris, 19 N.Y.3d 679 (2012), reaffirmed that when a prospective juror makes a statement that raises a serious doubt regarding their ability to be fair and impartial, that juror "must be excused unless the juror states unequivocally on the records that he or she can be fair and impartial."

Respondent also contended on appeal that records from the respondent's prison

disciplinary proceeding were not reliable. The respondent was found guilty at a disciplinary proceeding of an infraction that was sexual in nature. The Fourth Department rejected this contention and noted that the trial court properly admitted these records in evidence because they satisfied the two-part test set forth in Matter of State of New York v. Floyd Y., 22 N.Y.3d 95 (2013).

C. TRIAL COURT DECISIONS

30. Annual Reviews: Sufficient Basis for Predisposition

Decided November 21, 2017, in Matter of Cerrick D. v State, 58 Misc.3d 479 (Supreme Court, Oneida County, 2017), following an annual review hearing, the trial court found that the Respondent suffers from a mental abnormality and that he is a dangerous sex offender requiring confinement. The Court agreed with the OMH psychiatric examiner in concluding that the Respondent suffers from Sexual Sadism, finding it sufficient that even though the Respondent had denied the majority of his sexual offense history and thus too his sexual arousal to pain and suffering, such an admission was not a prerequisite to diagnosing Sexual Sadism and the Respondent had endorsed sadistic symptoms. In addition, the Court found that even though Respondent's behavior did not meet the general rule of having three or more victims, there were multiple instances when Respondent inflicted pain and suffering upon the same victim. The Court further found, based upon the breadth of precedent, that Bipolar Disorder could form the basis for predisposition to commit sex offenses.

31. Annual Reviews: Pro Se Representation and Subpoena Practice.

Decided March 26, 2018, in Matter of Richard R. v State, 59 Misc.3d 941 (Supreme Court, Oneida County, 2018), the trial court decided three successive motions of the Respondent

who represented himself. Upon recounting the timeline of the proceeding through the annual review hearing, the Court denied Respondent's motion for summary judgment, concluding that the statute does not envision that such hearings will be conducted annually and that any delays here were attributable to the Respondent or the Court. The Court further denied the motion for directed verdict, finding the evidence at the hearing from both doctors was sufficient to allow the case to proceed. The Court found that Respondent's request for subpoenas for witnesses from CNYPC was improper as Respondent is not a lawyer, but the Court treated the application as one for court-issued subpoenas. The Court denied subpoenas for records as Respondent has the ability to access records under MHL section 33.16, but granted subpoenas for witnesses who would be permitted to testify only within the bounds of the rules of evidence.

32. Right to Self-Representation in an Article 10 Proceeding.

Decided October 2, 2017, in Matter Richard R. v. State of New York, Supreme Court of New York, Oneida County CA2016-001554, Hon. Louis P. Gigliotti, AJSC held that absent a decision by the Appellate Division, Fourth Department on the issue it is bound to follow applicable decisions in another Department.

By letter, with accompanying motion papers Richard R. asked the Court to relieve Mental Hygiene Legal Service as counsel and permit him to represent himself. Richard R. was asked by the court to disclose in writing his age, education, occupation prior to confinement, access to legal resources and the extent of his personal involvement in prior legal proceedings, as well as outline a generalized statement of what strategy he would use in conducting his annual review hearing, so that the Court could determine whether his self-representation would disrupt or prevent the orderly conduct of the proceeding. Richard R. provided the Court with same by letter dated July 30, 2017. At the invitation of the Court MHLS also responded to Richard R.'s

motion stating that Agency remained ready to represent Richard R. should the Court deny his motion. The New York State Attorney General's Office also submitted a letter indicating that it took no position, except to offer to provide a series of questions and a waiver form for use in the event the Court were to conduct an in person examination of Richard R. as a predicate to representing himself.

The Court held that it was bound to follow Matter of Raul L., 120 A.D.3d 52, 61-62, 988 N.Y.S.2d 190 (2d Dep't 2014), and Ordered that an inquiry on the record of Richard R. would be conducted on October 25, 2017, with counsel from Mental Hygiene Legal Service required to attend. The Attorney General's Office was also required to be present and to submit proposed questions and a form waiver.

33. SIST Conditions: Court Modification Appropriate After Two Years.

Decided April 4, 2017, in State of New York v. Floyd Y., 56 Misc.3d 271 (2017), New York County Supreme Court denied Respondent's motion to eliminate Condition #26 of his regimen of Strict and Intensive Supervision and Treatment (SIST), which provides that respondent may not knowingly enter publicly accessible areas within 1,000 feet of a school while minors are present. In the case of Floyd Y., the respondent argued that Condition #26 was impairing his ability to obtain suitable housing, and he was therefore unable to move out of the homeless shelter where he was living. While the Court credited respondent's claim, the Court ruled that Article 10 of the Mental Hygiene Law does not allow the Court to modify the SIST conditions until two years after the commencement of SIST. The Court noted that the statute authorizes the Court to modify SIST conditions at any time only "on the petition of the supervising parole officer, the commissioner [of Mental Health] or the attorney general" (citing

MHL 10.11(F)). The Court directed the respondent to renew his motion after he has completed two years of SIST.

IV. PROFILES OF OFFENDERS UNDER CIVIL MANAGEMENT

The following are examples of MHL Article 10 cases that the OAG litigated during the past year. The names of the sex offenders are represented only by initials.

State v. M.R. -- M.R.'s offense history began at age 19 when he assaulted, raped and robbed a woman who was on her way home from grocery shopping. In that case, he was convicted upon a plea of guilty to Rape in the First Degree and Robbery in the First Degree and sentenced to 4 to 12 years incarceration. While on Parole for this offense, M.R. committed his qualifying offense. M.R.'s qualifying offenses consists of two separate crimes that occurred when he was 26 years old. During the first offense, he broke into the home of an 83-year-old woman, beat her unconscious, then anally raped her, and forcibly inserted a comb into her anus. He was linked to this crime through DNA analysis. He was convicted upon a plea of guilty to numerous charges, including Sodomy, Robbery in the First Degree and Assault in the First Degree, and sentenced to 10-20 years incarceration. During the second offense, M.R. assaulted two female employees at Southside Hospital. He entered the women's locker room and punched one woman until she fell unconscious and then repeatedly punched a second woman. He was convicted upon a plea of guilty to Assault in the First Degree and Burglary in the First Degree and sentenced to 80 months to 15 years incarceration. While incarcerated for the instant offense, M.R. has incurred 10 Tier Two disciplinary violations and 2 Tier Three disciplinary violations. M.R. is diagnosed with Antisocial Personality Disorder, Sexual Sadism Disorder and Stimulant Use Disorder, Severe, In Sustained remission, in a Controlled Environment. M.R. was found to have a mental abnormality after a bench trial and is currently awaiting a hearing to determine if he is a dangerous sex offender requiring confinement.

State v. J.H. – J.H.'s known sexual offenses began when he was 50 years old, approximately 25 years ago. He was terminated from his job as a Private Aide at a nursing home after one of the residents reported that he discussed his sex life, inquired about her sex life, and sexually propositioned her while caring for her. The next year, at another job, a patient with multiple sclerosis reported that J.H. had sexually abused her by putting his fingers into her vagina while giving her a bath. That same year, J.H. was arrested for advertising himself as a Ph.D. sex therapist and pled guilty to Unauthorized Practice of a Profession, Petit Larceny, Falsifying Business records, False Advertising and Unauthorized Use of a Professional Title. He was sentenced to 3 years of probation. J.H. has also self-reported numerous sexual offenses. He states that he was fired from his job as a janitor for looking over a bathroom stall to watch a woman urinate. He also states that he engaged or intended to engage in sexual conduct with his 13 and 14-year-old step-daughters from his first marriage. Both stepdaughters have made statements confirming that J.H. raped and physically assaulted them. J.H.'s qualifying offense occurred while he was employed at a nursing home as a Certified Nursing Assistant. He

engaged in sexual intercourse with a comatose patient, impregnating her as a result. DNA testing identified J.H. as the perpetrator. He was convicted of Rape in the First Degree and sentenced to 100 months to 25 years incarceration. While being investigated for the qualifying offense, J.H. sent a sexually explicit letter to a 14-year-old girl in Canada. The girl's mother alerted the authorities. J.H. is diagnosed with Narcissistic Personality Disorder, Other Specified Paraphilic Disorder, Somnophilia, and Unspecified Paraphilic Disorder. After a non-jury trial, J.H. was found to be a dangerous sex offender requiring confinement.

State v. A.M.-A.M.'s first conviction for sexually abusing a very young child occurred in 1995 at the age of 24. During that incident, A.M. placed his penis in the mouth of a 3-year-old boy. A.M. was convicted and sentenced to 9 months in jail. In 2001, he sexually assaulted his 4-year-old nephew by, again, engaging in mouth to penis and hand to penis contact with the child. A.M. was convicted and sentenced to 5 years in prison. Upon his release from incarceration for that offense in 2007, the New York State Attorney General's Office filed a petition seeking civil management of A.M. pursuant to MHL Article 10. In 2010, a New York State Supreme Court Judge dismissed the Article 10 petition, releasing A.M. back into the community unsupervised. In 2014, A.M. engaged in hand to penis contact with a 6-year-old boy. He was arrested based upon that incident, convicted and upon his release the New York State Attorney General's Office filed a petition again seeking civil management of A.M. A jury found A.M. to have a mental abnormality after trial. After a dispositional hearing, A.M. was found to meet the criteria for a dangerous sex offender requiring confinement.

State v. D.S.-D.S.'s qualifying offense is a conviction for Manslaughter in the First Degree. That conviction arose out of events that occurred on October 25, 1997. While engaging in sexual intercourse with an adult female D.S. began choking her, which resulted in her death. D.S.'s diverse criminal history began as a juvenile and includes 22 arrests. These arrests range from a Youthful Offender conviction for Arson in the Fourth Degree, Robbery, Grand Larceny and Violation of Parole Conditions as well as three sexual assaults. In March of 1985, D.S. raped an adult female while she was handcuffed to a bed. He was later sentenced to 2 to 4 years in State prison. In March of 1995, D.S. went to a women's home to sell her drugs. While at the residence he held a gun to the victims head and raped her. All charges that arose from that incident were ultimately dismissed leaving D.S. to remain in the community until his arrest for the 1997 homicide. D.S. is diagnosed with Antisocial Personality Disorder, Alcohol Use Disorder and Cannabis Use Disorder. He was found to have a mental abnormality after a bench trial and to meet the criteria for dangerous sex offender requiring confinement.

State v. R.P.- R.P. committed his first known sexual assaults between May of 1986 and January 1989. During this time, he was arrested in Florida and New York and charged with the rape of three separate adult females. Those arrests did not result in conviction. In addition to the sexual offenses during this time period, R.P. had multiple arrests for various other offenses such as Possession of a Controlled Substance, Menacing, Grand Larceny and Robbery. R.P.'s qualifying offense occurred on September 29, 1989, when he was 21 years old. On that date, he and a co-defendant approached a male and female sitting in their car in a parking lot and engaged them in conversation. R.P then robbed the male victim and forced him into the back seat of the vehicle while his co-defendant threatened both victims at knifepoint. While the victims remained held in the vehicle, R.P. and his co-defendant began consuming alcohol and forced both victims to

remove their clothing. R.P. then moved the vehicle from the parking lot to a nearby loading dock. He then forced the female victim out of the car, taking her to a more secluded area. Once there he forced his penis into her mouth, dragged her to the ground and raped her. Before R.P. and his co-defendant fled, they stole jewelry, money and credit cards from the victims. While serving his sentence R.P. committed 87 disciplinary infractions. The infractions were a result of a number of lewd and violent acts. For instance, in 2004, R.P. was ticketed for standing naked in his cell, yelling obscenities to a female Corrections Officer. In 2010, he was also disciplined for possessing pornography while participating in sex offender treatment. R.P. is diagnosed with Antisocial Personality Disorder, Schizoaffective Disorder as well as Alcohol and Cocaine Use Disorder. After trial, a jury found R.P. suffers from a mental abnormality. He is currently awaiting a hearing to determine if he meets the criteria as a dangerous sex offender requiring confinement.

CONCLUSION

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 are proving to be a complex and contentious area of litigation. Despite the dynamic and rapidly changing legal landscape, there are positive trends emerging from civil management in New York. As of April 1st, 2018, 454 dangerous sex offenders with mental abnormalities are being civilly managed. Of that, 351 are being treated in a secure treatment facility, while 112 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, it is readily apparent that 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. In addition, a Crime Victims Advocate will be joining the OAG to advise the OAG on matters of interest and concern to crime victims and their families and develop 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.*