LETITIA JAMES

ATTORNEY GENERAL

NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

SEX OFFENDER MANAGEMENT BUREAU

A Report On The Sex Offender Management Treatment Act

April 1, 2018 to March 31, 2019

TABLE OF CONTENTS

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

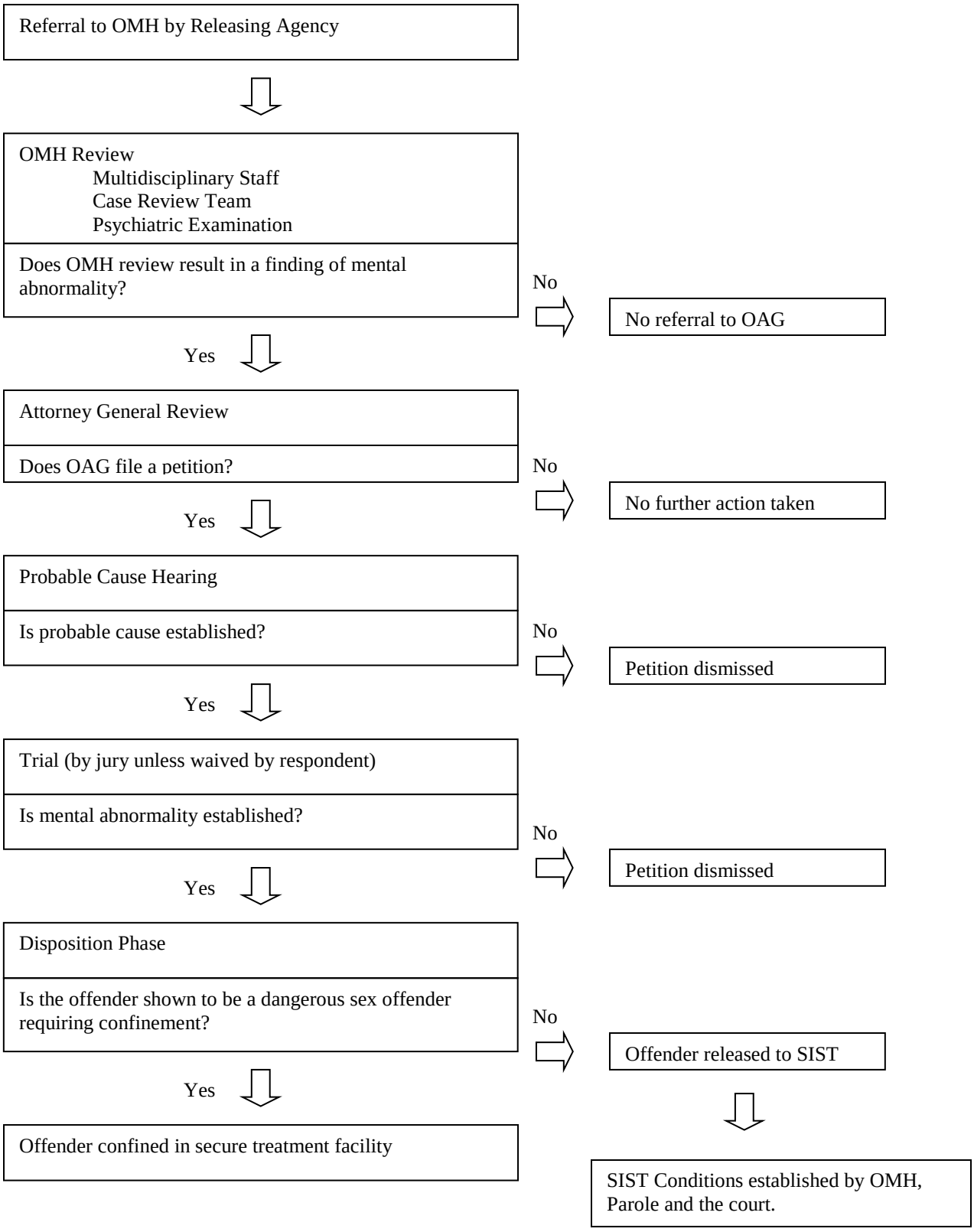
[6] MHL §§10.05, 10.03(a),(q),(g) and (i).

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

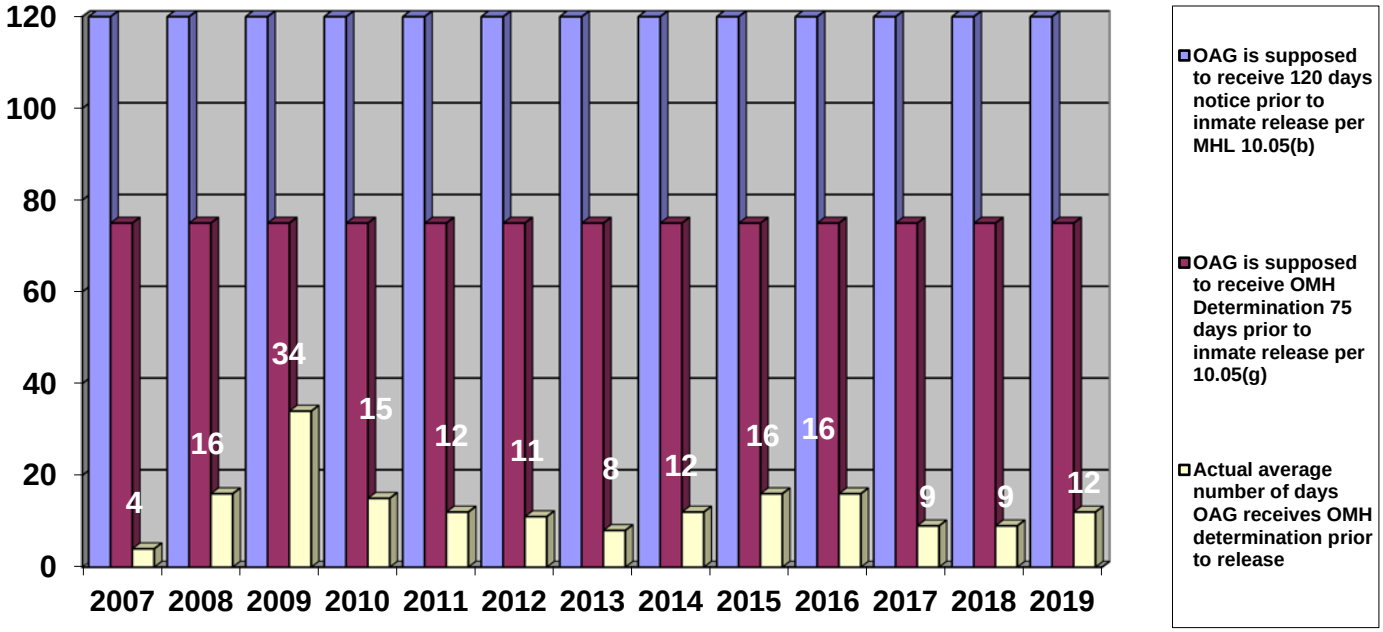
When an individual who may be a "detained sex offender" is nearing anticipated release from custody of an agency with jurisdiction,[10] the agency gives notice of the offender's anticipated release to both the NYS Office of Mental Health (OMH) and the NYS Office of the Attorney General (OAG).[11] The 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 12 days.

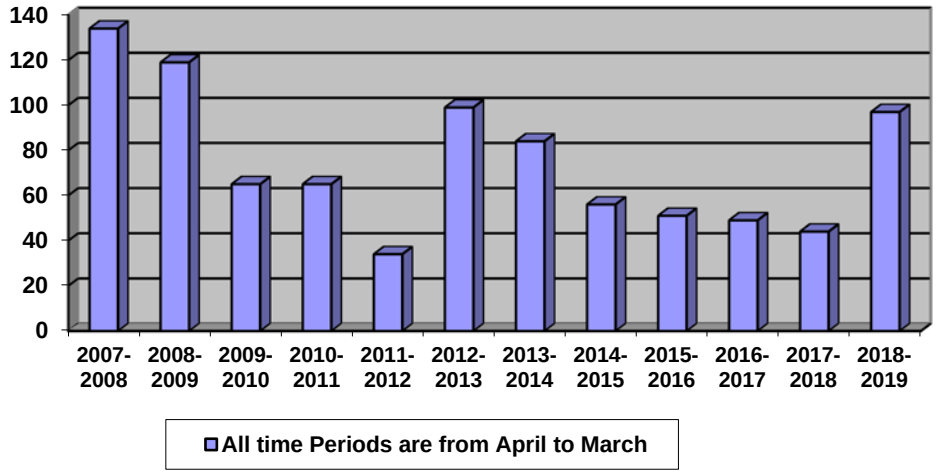


These notification time frames are advisory, not mandatory, but together recognize that OMH should give the OAG approximately 75 days-notice of its determination of referral for civil management. The number of cases referred by OMH had declined dramatically since the inception of SOMTA, and though it 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 OMH referred 65 cases; in 2011-2012 34 cases; in 2012-2013, 99 cases; 2013 - 2014, 84 cases; and in 2014 to 2015, 56 cases. Between April 1st, 2015 and March 31st,

2016, OMH referred 51 cases. Between April 1st 2016 and March 31st 2017, 49 cases. Between April 1, 2017 and March 31st, 2018 44 cases. Between April 1st, 2018 and March 31st, 2019, 97 cases. The various and complex factors driving annual referrals exceed the scope of this report.

Referrals to OAG



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

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

sex offense conviction(s).[17] If an offender does not request venue to be transferred back to the county of the underlying sex offense, the OAG may bring a motion for such transfer.[18]

Shortly after the petition is filed, a hearing is held to determine whether there is probable cause to believe respondent[19] is a sex offender requiring civil management.[20] If the court finds probable cause exists, the offender is transferred to an OMH secure treatment facility pending trial. The appellate courts have determined that a finding of probable cause is sufficient to hold a respondent in 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

[17] MHL §10.06(b).
[18] *Id*., MHL §10.07(a).
[19] Once a petition is filed, the sex offender is referred to as the "respondent" in the legal proceedings.
[20] MHL §10.06(g).
[21] MHL §10.06(k).
[22] *Id*.
[23] MHL §10.07(a).
[24] MHL §10.07(b).
[25] MHL §10.07(a), (d), MHL 10.03(g), (i).

prove by clear and convincing evidence that the respondent is a "detained sex offender"[26] who suffers from a "mental abnormality."

A “mental abnormality” is statutorily defined as:

> a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct.[27]

The jury, or judge if the jury is waived, must find by unanimous verdict that the State of New York met its burden. 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

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

> danger to others and to commit sex offenses if not confined to a secure treatment facility.[31]

If the court finds the respondent is a "dangerous sex offender requiring confinement," the offender is committed to 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

[31] MHL §10.03(e).
[32] MHL §10.07(f).
[33] *Id*.
[34] MHL §10.01(b).

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 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

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

under a regimen of strict and intensive supervision and treatment in the community, and still 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.

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

Sex offenders in the community on a regimen of SIST are subject to a minimum of 6 face-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

[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).

supervision.[47] Upon receipt of a petition for modification or termination, the court may hold a hearing. The party seeking modification of the terms and conditions of SIST has the burden to establish by clear and convincing evidence that the modifications are warranted.[48] However, when 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, 2019 ninety eight 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.

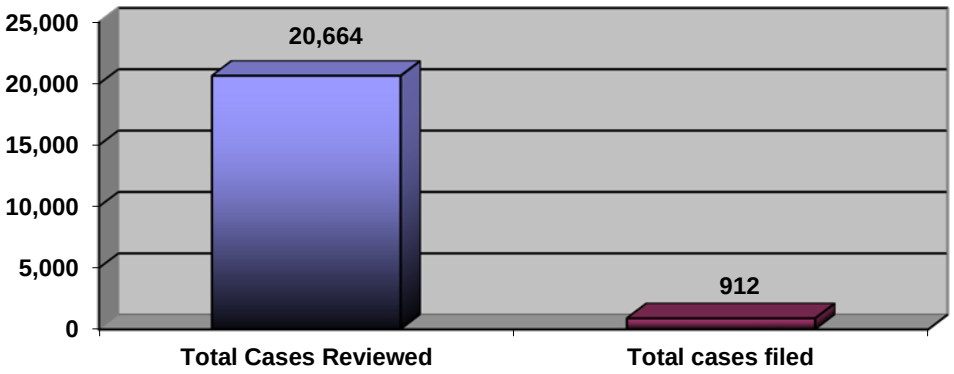
As time passes, it is expected that the number of offenders on SIST will grow considerably because of (1) the number of offenders that are released to SIST after trial, but also because (2) every time an offender is released from a secure treatment facility, the court has found he or she still suffers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

II. CIVIL MANAGEMENT AFTER 12 YEARS

A. REFERRALS AND CASES FILED

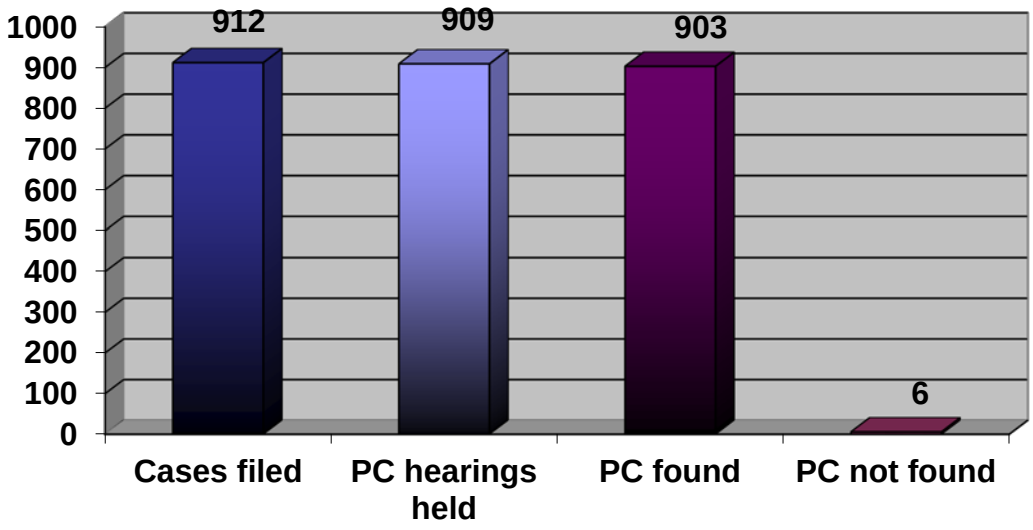
In the twelve years since Mental Hygiene Law Article 10 became law, the New York State Office of Mental Health has reviewed 20,664 sex offenders to determine whether they are appropriate for referral to civil management. Of the cases reviewed, only 912 have resulted in OAG filing an Article 10 Petition. This includes what is considered the "Harkavy" cases addressed in previous reports.

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



B. PROBABLE CAUSE HEARINGS

In the twelve years since SOMTA's inception, OMH referred a total of 912 sex offenders for civil management.[50] The OAG has filed 909 petitions, conducted 676 probable cause hearings, and respondent has waived his right to the hearing on 223 occasions. The courts found probable cause to believe the offender suffered from a mental abnormality and was in need of civil management 903 times out of the 909 hearings held to date.

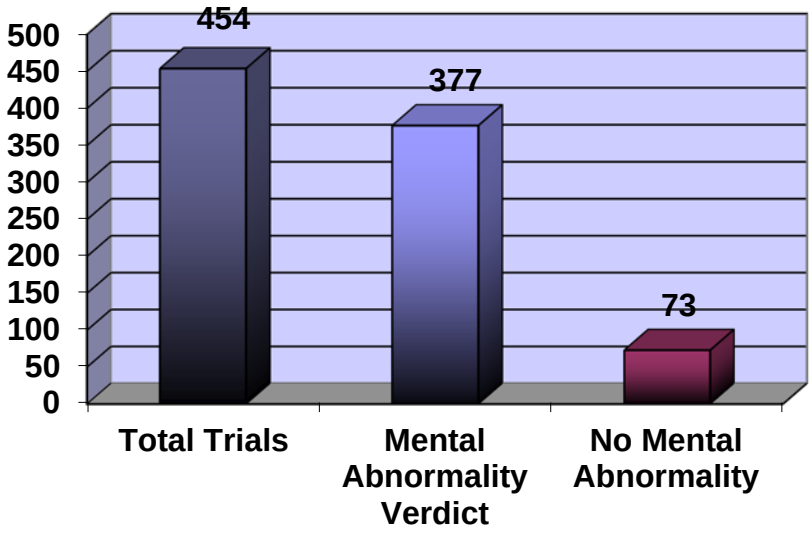


[50] These referrals include the Harkavy cases.

C. MENTAL ABNORMALITY

Trials

Of the 454 trials, the jury or judge rendered a verdict that 377 of those sex offenders suffered from a mental abnormality and 77 were adjudicated to have no mental abnormality.



D. DISPOSITIONS

1. Dangerous Sex Offender Requiring Confinement (DSORC)

From April 13, 2007, to March 31, 2019, a total of 641 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, 2019, a total of 345 offenders were placed on a regimen of SIST after a finding that he suffers from a mental abnormality. Of that number, 134 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	2018-2019
Total Released to SIST	21	62	82	97	117	133	163	201	294	344	392	437
Total SIST Violations	9	20	36	57	71	83	141	157	176	198	233	260

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 dangerous sex offenders requiring confinement who petition for annual review is expected to rise.

[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.

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, 2018 to March 31, 2019, there have been 153 evidentiary hearings.

F. SIST MODIFICATION OR TERMINATION HEARINGS

Of the 437 offenders placed on SIST, 98 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

In keeping with recent trends, between April 1, 2018, and March 31, 2019, the courts have decided a number of significant cases, each having a dynamic impact on Article 10 litigation.

A. FEDERAL CASES

1. Fifth Amendment does not apply to Article 10

Decided June 28, 2018, in Steinmetz v. Annucci, 2018 U.S. Dist. LEXIS 109396, the U.S. District Court, Western District of New York, granted the State's cross-motion to dismiss pro se Plaintiff's complaint that he was being forced to participate in sex offender counseling and treatment program (SOCTP), and was also forced to sign a waiver of confidentiality that would permit his statements to be used against him in a future Article 10 proceeding. Plaintiff's claim that SOCTP subjected him to self-incrimination and review under Article 10 was dismissed by the Court because, as previously affirmed, the Fifth Amendment does not apply to civil, Article 10 proceedings. See also Matter of State of New York v. C.B., 889 N.Y.S.2d 884, (Bronx Cty. Sup. Ct. 2009); and Ughetto v. Acrish, 130 A.D.2d 12, 20, 518 N.Y.S.2d 398 (2d Dept. 1987).

2. State Psychiatric Examiners, Presiding Judge, Respondent's Attorney Have Immunity From § 1983 Civil Rights Litigation Brought by Article 10 Respondent.

Decided February 13, 2019, in Young v. N.Y. State Corr. & Cmty. Supervision, 2019 U.S. Dist. LEXIS 23626, the U.S. District Court, Eastern District of New York, dismissed the complaint of a parolee who was also on SIST under MHL Article 10 which sought money damages for various alleged grievances suffered Plaintiff as the result of the psychiatric examiners use of his criminal history, decisions of the judge, and the advice of his own attorney during the course of the Article 10 proceeding. The Court outlined several immunities that applied in this case. Specifically, the Eleventh Amendment provides immunity to state agencies, judges are subject to judicial immunity, and the psychiatric witnesses in Article 10 proceedings are subject to witness immunity. Plaintiff's complaint against his attorney was also dismissed because she was not a state actor for purposes of § 1983 civil rights litigation.

3. Not entitled to damages for retention past maximum release date

Decided March 22, 2019, in Roache v. Connell, 2019 U.S. Dist. LEXIS 52062, the U.S. District Court, Southern District of New York, dismissed Plaintiff's complaint arising from his retention in the Department of Corrections and Community Supervision (DOCCS) for two (2) months past his maximum release date while his MHL Article 10 proceeding was pending. The Court held Plaintiff's request that DOCCS cease from using handcuffs, shackles, or a black box to restrain Plaintiff was moot because Plaintiff had been transferred to the custody of OMH.

B. NEW YORK STATE COURT OF APPEALS

The Court of Appeals issued two decisions which impact civil management under MHL Article 10 between April 1, 2018, and March 31, 2019. The cases are summarized below.

5. No Heightened Duty for DOCCS to Find Inmates Housing in Community.

Decided November 27, 2018, in Matter of Gonzalez v. Annucci, 32 N.Y.3d 461, the Court of Appeals held that the Third Department erred in finding that the Department of Corrections and Community Supervision (DOCCS) has an obligation to provide sex offenders residing in a residential treatment facilities (RTF) with "substantial assistance" in finding appropriate housing. Pursuant to Correction Law § 201(5), the DOCCS "shall assist inmates eligible for community supervision and inmates who are on community supervision to secure employment, educational or vocational training, and housing." Id. at 471. However, the Court held § 201(5) does not impose a heightened duty on DOCCS to provide substantial assistance to inmates searching for housing. This decision applies to offenders under civil management who are being released to the community for SIST.

6. MHLS is not entitled to participate in treatment planning

Decided February 14, 2019, in Matter of Mental Hygiene Legal Serv. v. Sullivan, 32 N.Y.3d 652, 654, the Court of Appeals held that Mental Hygiene Legal Service counsel "is not entitled to be given an interview and an opportunity to participate in treatment planning simply by virtue of an attorney-client relationship with an article 10 respondent." In reading MHL §§ 10.10(b) and 29.13(b), the Court found MHLS was not intended to be included as an "authorized representative" or "significant individual." However, as "OMH concedes, a facility has the discretion to permit MHLS counsel to participate in treatment planning and, in a particular case, it is possible that counsel could develop and demonstrate a sufficient personal relationship with a patient such that counsel could qualify as a 'significant individual.'" Id. at 662.

C. 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:

There were no reported decisions from the Appellate Division, First Department during the period April 1, 2018 to March 31, 2019.

SECOND DEPARTMENT:

1. **Potential Civil Management Impact on Plea Bargain in Criminal Prosecution.**

Decided May 2, 2018, in People v. Balcerak, 161 A.D.3d 764, the Second Department vacated a plea taken in a criminal case wherein the Defendant was not properly advised of the realistic possibility that the State could pursue an MHL Article 10 petition for civil management given the underlying acts for which he was convicted.

2. **Evidence: Sufficient Proof of Mental Abnormality.**

Decided July 11, 2018, in State v. Claud McC, 163 A.D.3d 686, the Second Department affirmed the trial court's finding of mental abnormality, noting the interaction of Respondent's various diagnoses and his continued drug use, his failure to make meaningful progress in treatment and his commission of a prison disciplinary infraction which involved threatening female staff with sadistic sexual behavior.

3. **Evidence and Hearsay: Dismissed Counts of Indictment Deemed Admissible Where Conviction Resulted from Other Counts Under *Floyd Y* Analysis.**

Decided July 18, 2018, in State v. Roderick L, 163 A.D.3d 826, the Second Department affirmed a lower court finding of mental abnormality and that Respondent was a dangerous sex offender requiring confinement. Notably, the appellate court found admissible hearsay evidence of certain crimes dismissed in full satisfaction of a plea to a different count in an indictment. The

appellate court also found error in the admission of hearsay evidence regarding a separate sexual assault of a six-year-old girl but deemed it to be harmless.

4. **Due Process and Jurisdiction: Status as a Detained Sex Offender Nearing Release Sufficiently Established, Mental Abnormality and DSORC Findings Upheld.**

Decided September 19, 2018, in State v. Anthony J., 164 A.D.3d 1346 the Second Department affirmed a lower court finding of mental abnormality and that Respondent was a dangerous sex offender requiring confinement, and rejected Respondent's renewed due process claim that he was not a detained sex offender nearing an anticipated release and therefore not subject to a MHL Article 10 filing.

5. **Evidence: Sufficient Mental Abnormality Verdict, Admissible Hearsay.**

Decided October 31, 2018, in State v. Walter J.R.**,** 165 A.D.3d 1267, the Second Department affirmed the trial court finding of mental abnormality and that Respondent was a dangerous sex offender requiring confinement, and upheld the trial court testimony of experts based upon hearsay evidence of a statement by Respondent in connection with his prior conviction for Public Lewdness.

6. **Evidence and Jury Deliberations: Mental Abnormality Verdict Reversed Based on Trial Court Response to Jury Note.**

Decided December 26, 2018, in State v. Timothy R., 168 A.D.3d 146, the Second Department reversed a verdict of mental abnormality based upon the trial court's response to a note from the jury during its deliberations, which read as follows: "Do we have to agree with one of the expert's diagnoses that he has a mental abnormality?" The trial court, after consultation with the attorneys incorrectly responded "no" – which, the appellate court held was error. The Second Department held that the Judge's answer to the jury note was error because it failed to clarify that while the jury could accept or reject all or portions of testimony of one or all of the experts, in order to find that the Respondent suffered from a mental abnormality, the jury must

have concluded that at least one of the State's experts established that the Respondent had a congenital or acquired condition, disease, or disorder that predisposed him to commit sex offenses by clear and convincing evidence.

7. Criminal Case Involving MHL Article 10

Decided January 24, 2019, in People v. Norris, 168 A.D.3d 1003, the Second Department held that neither the statutory scheme in SORA nor due process requires the hearing court to adjourn the SORA hearing or risk level determination until resolution of a MHL Article 10 proceeding. The appellate court further reasoned that the Defendant could always seek a modification of the risk level determination in the future.

8. Mental Abnormality / DSORC Finding Affirmed

Decided February 27, 2019, in State v. Gary C., 169 A.D.3d 1054, the Second Department affirmed a trial court finding that Respondent was a dangerous sex offender requiring confinement after his earlier consent to a finding of mental abnormality. In reviewing the decision of the lower court, the Second Department noted that it has power as broad as that of the trial court in rendering a judgment it finds warranted by the facts, but "taking into account that in a close case, the trial court or hearing judge had the advantage of seeing and hearing the witnesses."

THIRD DEPARTMENT:

1. Trial: Good Cause to close the Courtroom to the Public During Trial.

Decided July 5, 2018, in Matter of the State of New York v. John T., 163 A.D.3d 1148, the Third Department reversed as error the trial court's denial of Respondent's motion to close the courtroom during the upcoming trial pursuant to MHL 10.08 (g). The Respondent cited as "good cause" for closing the courtroom, the necessity to protect the confidentiality of his mental health information. Petitioner joined in Respondent's request to close the courtroom, but solely

for the purpose of protecting the victims' confidentiality. The Court found that although public policy generally disfavors "limitations on public access to public proceedings," there is also a strong public policy in favor of protecting the confidentiality of victims of sex offender. The Court held that upon balancing the competing interests in the particular circumstances of this case, there was a significant risk that a public trial may compromise the anonymity of the Respondent's victims.

2. Due Process: Contempt Sanctions and SIST

Decided October 25, 2018, in Matter of New York State v. Jefferson CC., 165 A.D.3d 1525, the Third Department held that it is permissible to include a warning to a Respondent being released on a regimen of Strict and Intensive Supervision and Treatment ("SIST") that contempt sanctions would be imposed for violations of SIST conditions as such sanctions are permissible under the Judiciary Law Section 750 (A)(3) and 750 (A)(1).

3. Diagnosis and *Frye*: Other Specified Paraphilic Disorder (Nonconsent)

Decided October 25, 2018, in the Matter of Miguel II v. State of New York, 165 A.D.3d 1513, the Third Department found that the Supreme Court's denial of petitioner's application for a *Frye* hearing to challenge the diagnosis of other specified paraphilic disorder ("OSPD") (nonconsent) was improper and remitted the matter to Supreme Court for said hearing on whether the diagnosis had gained general acceptance in the relevant scientific community. The Court reasoned that, although not binding, a prior trial court's finding that said diagnosis did not meet the *Frye* standard was persuasive. Also, the Court noted that at the hearing both experts as well as the Judge acknowledged that the diagnosis of OSPD (nonconsent) was "highly controversial."

4. Evidence and Ineffective Assistance of Counsel: Combined Diagnoses Legally Sufficient Evidence of Mental Abnormality; No Conflict of Interest and Substitute Counsel Provided Meaningful Representation.

Decided December 20, 2018, in the Matter of David J., 167 A.D.3d 1251, the Third Department addressed two issues on appeal. The first was whether the jury verdict was supported by legally sufficient evidence. Respondent asserted that the State's two expert's opined that he suffered from a mental abnormality based solely upon a diagnosis of antisocial personality disorder in violation of his due process rights. However, the Court found that each opinion was instead based upon Respondent's combined diagnoses, which included delusional disorder with persecutory and grandiose themes with bizarre content, fetish disorder, sexual preoccupation and hypersexuality, psychotic disorder, schizophrenia, thinking impairment, unspecified paraphilic disorder, and high psychopathic traits, in addition to ASPD. As such the Court held that there was no basis to disturb the jury verdict.

The second question before the Court dealt with whether the first attorney assigned to represent Respondent had a conflict of interest based on his prior employment with the District Attorney's Office that prosecuted his underlying sex offense. Respondent's initial MHLS attorney advised the Supreme Court at a pretrial conference that he had a role in Respondent's underlying criminal case as he was an Assistant District Attorney at the time of Respondent's criminal prosecution. In Respondent's criminal matter his initial assigned MHLS attorney had, in his former capacity as an Assistant District Attorney, responded to an omnibus motion and was present at Respondent's sentencing. With Respondent's consent, the trial court substituted a second MHLS attorney as his assigned counsel to represent the Respondent during the MHL Article 10 proceeding. On appeal, and contrary to the Respondent's assertions, the Third Department found that the first attorney's prior employment as a prosecutor presented no

conflict of interest, as there was no indication in the record that the attorney "obtained any information about Respondent through his prior employment as an Assistant District Attorney that compromised his representation of him" during the MHL Article 10 proceeding. In rejecting Respondent's contention that the initial MHLS attorney created the "appearance of impropriety," the Court stated, "[w]here, as here, there is an absence of actual prejudice or a substantial risk thereof, the appearance of impropriety alone is not sufficient to require disqualification." The Court further noted, contrary to the Respondent's assertions, that the second MHLS attorney appointed upon consent, provided "meaningful representation." For these reasons, the Court found no merit in Respondent's ineffective assistance of counsel arguments.

5. Evidence and Ineffective Assistance of Counsel: Offender's Combined Diagnoses, Marginal Participation in Treatment, and Lack of Relapse Prevention Plan Sufficient; Meaningful Representation Established.

Decided January 17, 2019, in Matter of Jamie KK, 168 A.D.3d 1231, the Respondent challenged the trial court's finding that he suffers from a mental abnormality. The offender asserted that the State did not prove by clear and convincing evidence that he had serious difficulty in controlling his deviant sexual behavior. Third Department affirmed the trial Court's finding and credited the testimony of two psychological experts who came to the same opinion that Respondent's disorders combined to cause a serious difficulty in controlling his deviant sexual behavior. The experts also opined that his behavior was not countered by either his marginally adequate participation in treatment or his inadequate plan to prevent relapses. Additionally, the Respondent argued that his attorney was ineffective in advising him to waive his dispositional hearing and consent to an order of commitment. Prior to the waiver, the court-appointed psychiatric examiner issued an addendum to reflect his changed opinion that the

Respondent met the criteria for dangerous sex offender requiring confinement. Respondent acknowledged in open court that he fully discussed with counsel the consequence of his appointed expert's opinion and the effect it had on his prospect of being found appropriate for release to SIST. Upon the Third Department's further review of the record, the Court rejected the offender's claims that he received ineffective assistance of counsel and instead, concluded that his attorney had provided him meaningful representation.

6. Sex Offender Treatment: Adequacy of Treatment and Interpreting Services.

Decided January 24, 2019, in the Matter of Juan PP v. Sullivan, 168 A.D.3d 1297, the Third Department held that an offender's challenge to the adequacy of his sex offender treatment and interpreting services he was receiving at St. Lawrence Psychiatric Center was without merit. In this case, the Petitioner is a native Spanish speaker who can neither read or write in English or Spanish and based on claims of inadequate treatment, he requested a transfer to an MHL Article 9 psychiatric hospital. The Court found that the offender could engage two live interpreters for three hours a day on Monday and for four hours a day Tuesday through Friday during treatment hours, as well as his ability to access telephone interpreting services twenty-four hours a day. Further, the court noted that the offender's treatment program was tailored to meet his language ability and he was making progress in that treatment. Therefore, the Court held that the Supreme Court properly dismissed the offender's request for transfer from a secured treatment facility to a MHL Article 9 hospital.

FOURTH DEPARTMENT:

1. Sexual Sadism Disorder Sufficient to Find Mental Abnormality.

Decided April 27, 2018, in Matter of State of New York v. Scott W., 160 A.D.3d 1424,

the Fourth Department held that the offender was not denied a fair trial based on his expert's failure to update her report after her receipt of additional information and an additional interview of the Respondent. The State's and the offender's expert witnesses opined that the offender suffered from sexual sadism disorder. The State's experts also testified about the offender's deviant thoughts, offending even after incarceration, and lack of progress in treatment. Therefore, the Court determined that the State had successfully met its burden and proved the offender suffers from a mental abnormality and is a dangerous sex offender requiring confinement.

2. Evidence: Trial Court in Best Position to Evaluate Sufficiency of Evidence.

Decided May 4, 2018, in Matter of State of New York v. Edward T., 161 A.D.3d 1589, the Fourth Department upheld the Supreme Court's finding that the Respondent is a dangerous sex offender requiring confinement. The Court held, "[t]he court was in the best position to evaluate the weight and credibility of the uncontradicted testimony of petitioner's expert, and we see no reason to disturb the court's determination."

3. Evidence: SIST Determination Affirmed.

Decided June 15, 2018, in Matter of Shannon S. v. State of New York, 162 A.D.3d 1673, the Fourth Department affirmed the Supreme Court's order finding the Petitioner is a person subject to Strict and Intensive Supervision and Treatment.

4. Jury Selection and Trial Evidence: No Error in Denial for Cause and Court Dismissal of Prospective Juror; Prison Disciplinary Records Admissible Hearsay Under *Floyd Y* Standard.

Decided October 5, 2018, in Matter of State of New York v. James R. C., 165 A.D.3d 1612, the Fourth Department affirmed a jury's determination that Respondent suffered from a mental abnormality. The Court held the Supreme Court did not err in denying Respondent's challenge for cause of one prospective juror because he did not exhaust all preemptory

challenges. The Court also upheld the Supreme Court's *sua sponte* dismissal of a prospective juror for cause. Additionally, the Court found prison disciplinary adjudications for sexual misconduct were properly admitted pursuant to Floyd Y., 22 N.Y.3d 95 as adjudications unfavorable to the offender.

5. **Due Process and Diagnosis: Unspecified Paraphilic Disorder Satisfies Due Process.**

Decided November 16, 2018, in Matter of Luis S. v. State of New York, 166 A.D.3d 1550, the Fourth Department determined that the diagnosis of unspecified paraphilic disorder, as contained in the Diagnostic and Statistical Manual-5th Edition, is very similar to the former diagnosis of paraphilia not otherwise specified (paraphilia NOS). Therefore, unspecified paraphilic disorder meets the requirements of due process. Additionally, the Court held Dennis K., 27 N.Y.3d at 733, and Shannon S., 20 N.Y.3d at 106, apply to unspecified paraphilic disorder. "[T]he acceptance of the diagnosis of unspecified paraphilic disorder by mental health professionals, coupled with the specific features that a mental health professional must find in order to issue that diagnosis, allow it to be used as the basis for a finding of mental abnormality."

6. **Evidence and SIST: Mental Abnormality Not at Issue in SIST Violation Hearing; Though Not Directly Sexual Misconduct, Offender's Actions Increased His Risk to Reoffend and Bore a Causative Relationship to Sex Offending.**

Decided December 21, 2018, in Matter of State of New York v. Jamaal A., 167 A.D.3d 1526, the Fourth Department, in upholding the trial Court's revocation of the offender's release to SIST and finding that he is a dangerous sex offender requiring confinement, opined that the issue following a SIST revocation hearing is the same as the issue before the Court at a dispositional hearing after a trial verdict finding mental abnormality or a waiver of trial and stipulation to mental abnormality: that is, whether civil confinement in a secure facility or release back to the community on a regimen of SIST is appropriate. The Court reasoned, contrary to the

offender's arguments, that mental abnormality was not at issue, since that had already been established in prior proceedings. The Fourth Department found although Respondent's actions did not involve direct sexual acts, they revealed "increased sexual preoccupation," and they were "deceptive, manipulative, and victim-grooming." As such, the Court held evidence of his behavior "bore a close causative relationship to sex offending," which it considered highly relevant to the level of danger he poses and his risk to reoffend.

D. TRIAL COURT DECISIONS

1. Evidence and Diagnosis: Anthony B. should not be regarded as changing the *Frye* Standard.

Decided June 12, 2018, in the Matter of State of New York v. Nicholas T., 60 Misc.3d 522 (Supreme Court, New York County), following a ruling that "unspecified paraphilic disorder" (USPD) is not generally accepted in the relevant psychiatric community under the *Frye* standard, the State moved to reargue. The State claimed that the appellate division in Anthony B., 2018 N.Y. Slip Op, 68466 (U), 2018, outlined a new method for analyzing *Frye* issues and that such issues must be evaluated on a case-by-case basis. The Court finds that "applying such a rule would presumably allow any party in any case to seek and obtain a *Frye* hearing on any proposition, no matter how generally accepted it was, because a new hearing would create a new record, which might result in a different determination than one which had been made by the Appellate Division or the Court of Appeals." This Court finds that *Anthony B.* "should not be regarded as changing the *Frye* standard or negating the binding effect of the Second Department's other *Frye* rulings." The Motion to reargue is denied.

**(The Appellate Division, First Department reversed this decision on May 7, 2019. See 2019 N.Y. Slip Op. 03531, which will appear in the 2019-2020 Annual Report).*

2. Evidence: Correspondence and Recorded Jail Calls Made During Offender's Incarceration are Relevant and Admissible.

Decided September 14, 2018, in the Matter of the State of New York v. Victor H., 61 Misc. 3d 652 (Supreme Court, Kings County), the Court denies the offender's motion in its entirety. The Supreme Court found that letters written by the offender and telephone conversations had by him while incarcerated were previously provided to his attorney. Victor H.'s motion to suppress and preclude said letters and recorded conversations was denied for several reasons. The Supreme Court, citing Turner v. Safley, 482 U.S. 78, reasoned that "[i]t is well established that where good cause is shown mail may be read without violating inmates' constitutional rights and intrusion of privacy interests is justified to the extent that it is 'reasonably related to legitimate penological interest.'" The Court found that the letters and calls are "admissible as statements or admissions that are inconsistent with respondent's current position and are exceptions to the rule against hearsay." Respondent's motion to preclude expert testimony was also denied. Respondent sought to preclude two psychiatric examiners from testifying at trial because they used the letters and recorded telephone calls as part of their psychological evaluation of the of the offender. The Court found that pursuant to MHL 10.05(d), the case review team "shall review and asses relevant medical, clinical, criminal, and institutional records." Also, pursuant to MHL 10.05(d), a psychiatric examiner shall have reasonable access to the sex offender's "relevant medical, clinical, criminal or other records and reports" The Court found that "records telephone calls and correspondence that respondent objects to are clearly institutional records and/or information relevant to the determination of whether the respondent is a sex offender requiring civil management as set forth by the statute." The Court cited Matter of State of New York v. Donald DD 24 N.Y.3d 174 to emphasize that the evidence the offender sought to suppress and preclude are the type of items that experts rely upon to form a "detailed psychological portrait." The Court also rejected the offender's argument that the expert

witnesses should be precluded from stating their ultimate opinion. Again, citing Donald DD., the Court found that the case law is clear that the psychiatric examiners are not precluded from discussing their ultimate conclusion.

3. Diagnosis Required for Mental Abnormality Finding

Decided January 17, 2019, in the Matter of the State of New York v. Wilson, 62 Misc. 1208(A) (Supreme Court, Queens County), the Court granted the sex offender's motion for summary judgment and released him from custody. Wilson moved for summary judgment and dismissal of the MHL Article 10 petition claiming no triable issue of fact after the Court's prior evidentiary ruling precluded evidence of Other Specified Paraphilic Disorder (OSPD); Hebephilia, the sole diagnosis assigned to him by the psychiatric examiner. The Court stated, "from the plain reading of the statute along with the holdings of several appellate courts and courts of concurrent jurisdiction, that a valid diagnosis is required" for a finding of mental abnormality. Upon preclusion of OSPD, Hebephilia, the Court "finds there is no valid diagnosis supporting a determination of mental abnormality, as defined in MHL §10.03(i)."

4. SIST Termination: Serious Difficulty

Decided October 20, 2018, in the Matter of Glen H. v. State of New York, 61 Misc.3d 693 (Supreme Court, Orange County), the Court found that Glen H. remains a sex offender requiring civil management pursuant to MHL§10.03(i) after a SIST termination hearing. The Court cited evidence from the hearing that Glen H. continued to experience strong arousal to young girls, including random females he encountered for example at a department store and an incident where he found the innocuous actions of a young girl flipping her hair a certain way as "attractive" and reminiscent of his ex-girlfriend. The Court credited the testimony of the State's expert that those incidents, coupled with his ongoing attempts to deceive and manipulate

situations to gain access to children were consistent with his historical pattern of grooming his victims. The Court also found alarming the evidence of Glen H.'s hostility to treatment providers, denials of his attraction to children, and failure to meaningfully participate in treatment or develop a viable relapse prevention plan. In denying his petition for release from civil management and continuing his regimen of SIST, the Court found that although Glen H. did not commit a sexual offense while released under a regimen of SIST, he nevertheless "has not learned sufficient skills and modalities in treatment that provide him with a sufficient foundation to help him control himself from engaging in criminal sexual conduct."

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. G.C. -- G.C.'s offense history began at age 19 when he forced an 8-year-old boy to perform oral sex on him. In that case, he was convicted upon a plea of guilty to Sodomy in the Second Degree and was sentenced to one year of incarceration. G.C. admitted that he made his younger sister perform oral sex on him "six or seven different times" when she was 11 or 12 and he was 14 or 15. At age 20, G.C. and 16-year-old girlfriend broke into a home and had sexual intercourse, with her unable to consent to the sex due to age. G.C. entered a guilty plea to Criminal Trespass in the Third Degree in satisfaction of all charges connected to this incident. After entering the above guilty plea G.C. wrote several letters to the girlfriend in which he threatened to commit suicide and murder an unnamed person upon his release from jail. At age 32, G.C.'s girlfriend reported several incidents of sexual abuse that he committed against her daughters. The first daughter reported that over a span of five or six years, starting when she was nine or ten years old G.C. repeatedly touched her breasts and genitals, and forced her to perform oral sex and at 12 he forced her to undress then vaginally raped her. The second daughter reported that at age 13 G.C. put his penis in her mouth and when she tried to push away he pulled the back of her head and forced his penis deep into her mouth until he nearly choked her. She also reported another incident where G.C. came into her bedroom at night, pulled down her underwear and rubbed his penis against her genitals. G.C. also admitted that he went into a third daughter's bedroom when she was 10, laid next to her, placed his arm around her and masturbated. He was convicted upon a plea of guilty to one count of Sodomy in the Second Degree to satisfy all charges involving these three Victims. At age 52, G.C. purchased a cell phone for a 15-year-old girl he did not know. The girl's 14-year-old friend, who had also never met G.C., began receiving increasingly vulgar text messages from him. He told her he had been looking for her. When the Victim told him to leave her alone and that she did not know him he

raised his voice, got angry, pulled out a knife, grabbed her by the hair and put the knife to her side. G.C. then took the 14-year-old Victim into the woods where he removed her clothes and performed oral sex on her. He was interrupted by someone walking nearby, so he instructed her to be quiet and then led her to another area in the park where he performed oral sex on her again and forced his penis into her mouth. He then pushed her legs open and vaginally raped her. The Victim reported that during the attack G.C. punched her in the face and held her down by her arms. This crime was committed just three months after he was released from state prison following his second Parole violation in connection with his second felony conviction for Failure to Register as a Sex Offender. G.C.'s diverse criminal history began as a juvenile and includes multiple arrests. These arrests range from Burglary; Grand Larceny; Resisting Arrest; Bail Jumping; DWI; Reckless Endangerment; Criminal Impersonation; Criminal Mischief; and Failure to Register. G.C. is diagnosed with Antisocial Personality Disorder and Pedophilic Disorder. G. C. waived his trial and stipulated to suffering from a mental abnormality. After waiving a dispositional hearing, the Court determined him to be sufficiently dangerous to require treatment in a secure treatment facility.

State v. R.P.

R.P.'s criminal history began at the age of 17 with an aggravated assault in Florida. He was adjudicated Innocent by Reason of Insanity and committed to a State hospital for treatment. While there, he exposed himself to female staff. Upon his release, he moved to New York State and shortly after his arrival committed a violent attack wherein he and a co-defendant raped and orally sodomized a young woman who was sitting in a parked car with her boyfriend. R.P. and his accomplice forced the victims to remove their clothing. They assaulted the male victim, and proceeded to take turns sexually assaulting the female victim. The male victim escaped the vehicle and ran, naked, to alert police. R.P. and his accomplice fled, taking jewelry, money and credit cards. One week later, R.P. approached a woman as she was exiting her car. He forced her into her vehicle and began driving to an unknown area, beating the woman with his fists as he drove. R.P.'s erratic driving attracted police attention. He led police on a chase and was apprehended after crashing the car. He was convicted of Rape in the First Degree and Robbery in the Second Degree. While incarcerated, he repeatedly exposed himself to female staff, masturbated and made threats to rape a prison social worker as recently as 2016. His prison disciplinary history is replete with violent conduct, including tickets for fighting, assaulting staff, assaulting inmates and possessing weapons. He is diagnosed with Schizoaffective Disorder, Exhibitionistic Disorder and Antisocial Personality Disorder. R.P. had explosive outbursts of temper during the jury trial and was removed from the courtroom twice. In July 2018 a jury rendered a verdict finding mental abnormality and he was subsequently determined to be a dangerous sex offender requiring confinement.

State v. M.M

M.M., who was diagnosed by every expert with Pedophilic Disorder, was found to have a Mental Abnormality after a week-long jury trial in Niagara County in the fall of 2018. M.M. offended against four children, ages 6-10. He exposed himself to the children, took group showers with them, kissed and fondled them. He was also found in possession of nude photographs of the children. M.M. was placed under Parole supervision three times and violated conditions of his release all three times. His violations included possessing erotic images of children and threatening his Parole Officer. After requesting to represent himself *pro* se at his Article 10 trial,

the court rejected the M.M.'s request after a lengthy colloquy. Stating that he would refuse to be transported from Central New York Psychiatric Center to Niagara County for trial, the court advised the Respondent of his right to be present and warned that the trial would be conducted in his absence should he refuse to participate. M.M. initially agreed to participate via video teleconference, but during the first day of jury selection, the Respondent ended his participation and refused to appear. The trial proceeded in M.M.'s absence and the jury returned a verdict of Mental Abnormality.

State v. M.R. – M.R.'s offense history began at age 19 when he was convicted upon a plea of guilty to Rape in the First Degree and sentenced to 4 to 12 years in State prison. M.R.'s qualifying offense and convictions result from a series of events that occurred between July and September 1993, at age 26 and while under parole supervision. First, M.R. broke into the residence of an 83-year-old woman where he violently assaulted her until she lost consciousness. He then dragged her into her bedroom and attempted to vaginally rape her, but when he was unable to, he obtained Vaseline and instead anally sodomized her. He also admitted to forcing a comb into the elderly victim's rectum. In a separate incident, M.R. assaulted two women in a hospital after entering the women's locker room where he punched one victim until she was unconscious. When the second woman entered the room, M.R. punched her in the face and about her body. Evidence revealed his blood on the bra and underwear of one of the victims. While in prison, M.R. received 15 non-violent tickets ranging from infractions including search/frisk, false information, no ID card, altered item, assigned area, harassment, and interference. More recently, M.R. has received infractions including unauthorized tools, tampering with electricity, direct order, harassment, false info, unauthorized valuable, loss/damage to property, vandalism/stealing, interference, threats, altered item, counterfeiting, impersonation and bribery/extortion. In addition to having a high number of psychopathic traits, M.R. is diagnosed with stimulant use disorder, antisocial personality disorder, sexual sadism disorder. After a bench trial, the Court found M.R to suffer from a mental abnormality and sufficiently dangerous to warrant treatment in a secure treatment facility.

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. 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 obvious 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. The Crime Victims Advocate advises the OAG on matters of interest and concern to crime victims and their families and develops policy and programs to address those needs.

The New York State Office of Victim Services (OVS) is staffed to help the victim, or family member and friends of the victim to cope with the victimization from a crime. The website is *www.ovs.ny.gov*.

A victim can call Victim Information and Notification Everyday (VINE) to be notified when an offender is released from State prison or Sheriff's custody. For offender information, call toll-free 1-888-VINE-4-NY. You can also register online at the VINE website for notification by going to the website at: *www.vinelink.com*.

The New York State Department of Health offers a variety of programs to support victims of sexual assault. It funds a Rape Crisis Center (RCC) in every county across the state. These service centers offer a variety of programs designed to prevent rape and sexual assault and ensure that quality crisis intervention and counseling services, including a full range of indicated medical, forensic and support services are available to victims of rape and sexual assault. The agency also developed standards for approving Sexual Assault Forensic Examiner (SAFE) hospital programs to ensure victims of sexual assault are provided with competent, compassionate and prompt care. See the NYS Department of Health (DOH) website for more information, including a Rape Crisis Provider Report which is organized by county and includes contact information. Visit the DOH website at:
http://www.health.ny.gov/prevention/sexual_violence/resources.htm.

The New York State Division of Parole welcomes victims to contact its agency to learn more about being able to have face to face meetings with a parole board member prior to an inmate's reappearance for review. The toll-free number to the Victim Impact Unit is 1-800-639-2650. *www.parole.ny.gov*.

Lastly, the NYS Police has a crime victim specialist program to provide enhanced services to victims in the State's rural areas. *www.troopers.ny.gov/Contact_Us/Crime_Victims.*