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SEX OFFENDER MANAGEMENT BUREAU

A Report On The Sex Offender Management Treatment Act

April 1, 2019 to March 31, 2020

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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 for 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 13 Years," provides updated statistics and case data that are current as of March 31, 2020. Part three, "Significant Legal Developments," highlights the most significant decisions rendered in Article 10 cases over the last year. Part four, "Profiles of Sex Offenders Under Civil Management," provides case synopses of sex offenders who entered the civil management system over the past year. Finally, the report concludes with part five, "SOMTA's Impact on Public Safety." An appendix containing resources for victims is also provided.

I. THE CIVIL MANAGEMENT PROCESS

A. OVERVIEW

At the outset, it is important to 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 civil confinement and allows

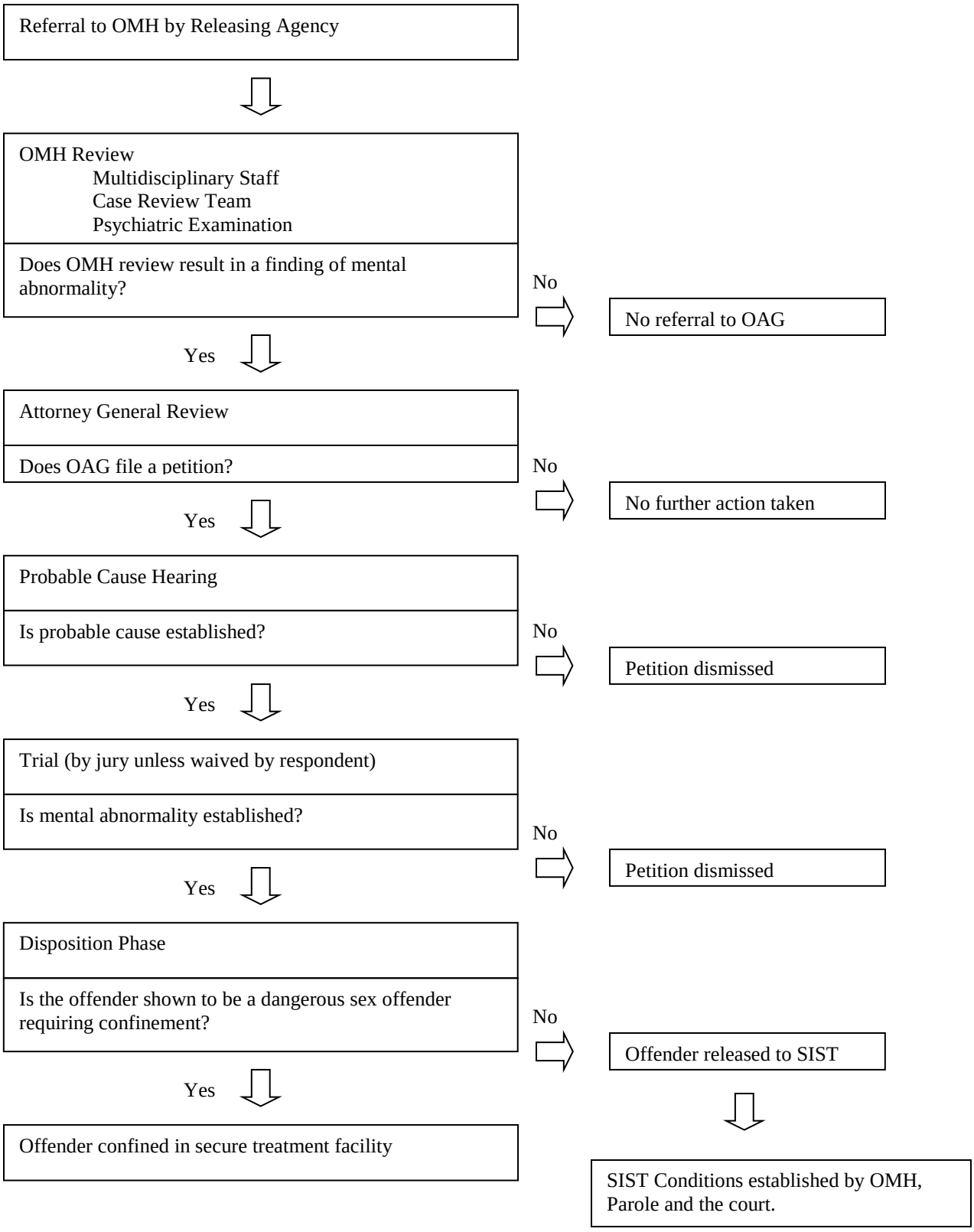
[6] MHL §§10.05, 10.03(a),(q),(g) and (i).

some offenders to be managed in the community under strict and intensive supervision and treatment (SIST). After a legal finding that an offender suffers from a "mental abnormality," MHL Article 10 contemplates two distinct dispositional outcomes; civil confinement or SIST. The modality of treatment an offender receives depends upon whether he or she has such a strong predisposition to commit sex offenses, and such an inability to control their behavior, that he or she is likely to be a danger to others and commit sex offenses if not confined to a secure treatment facility.[7] [8] The final disposition is made by the court after a hearing on dangerousness requiring confinement. If the court does not find dangerousness requiring confinement, it is required to find the offender appropriate for SIST in the community.[9]

Third, civil management is part of a comprehensive system designed to protect the public, reduce recidivism, and ensure offenders have access to proper treatment. The legislature expressly 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 an individual who may be a "detained sex offender" nears anticipated release, the statute requires the agency with jurisdiction to provide OMH and the OAG 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

[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).

for civil management.[14]

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 in 2018 it was 12 days and in 2019 it was 22.5 calendar 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 the 2007-2008 fiscal year, OMH referred 134 cases to the OAG for filing a civil management proceeding. In 2008-2009 OMH referred 119 cases, 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 - 2015, 56 cases. In 2015-2016, OMH referred 51 cases. In 2016-2017, 49 cases. In 2017-2018 44 cases. In 2018-2019, 97 cases. In 2019-2020, 45 cases. The various and complex factors driving annual referrals exceed the scope of this report.

C. Legal Proceedings

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

[14] MHL §10.05(g).
[15] MHL §10.06(a).

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 seek the removal of the case to the county of the underlying sex offense conviction(s).[17] If an offender does not request venue to be transferred 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 a secure treatment facility pending final disposition of the matter. In lieu of transfer to a secure treatment facility, an offender may request to remain in prison under the custody of 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

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

a twelve-person jury trial, but may waive the jury and proceed with a trial before the judge alone.[24]

A civil management trial is a bifurcated proceeding. The first part of the trial is to determine whether the respondent is a "detained sex offender" who suffers from a "mental abnormality" as those terms are defined by statute.[25] The State of New York has the burden to prove by clear and convincing evidence that the respondent is a "detained sex offender"[26] who suffers from a "mental abnormality."

A "mental abnormality" is statutorily defined as:

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

The jury, or judge if the jury is waived, must find by unanimous verdict that the State of New York met its burden. 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, determines the State of New York did not meet its burden, the petition is dismissed and the respondent is released in accordance with other provisions of 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

[24] MHL §10.07(b).
[25] MHL §10.07(a), (d), MHL 10.03(g), (i).
[26] MHL §10.03(g)
[27] MHL §10.03(i).
[28] *Id*.
[29] MHL §10.07(e).

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]

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 is required to abide by conditions set by the court.

D. Treatment After Mental Abnormality Is Established

1. Dangerous Sex Offender Requiring Confinement (DSORC)

As reflected in the legislative findings of 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

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

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.

A determination that a respondent is found to be a dangerous sex offender requiring confinement 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 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 confinement 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

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

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] From April 13, 2007 to March 31, 2020, one hundred thirty-five 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 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.

[38] MHL §10.09(h).
[39] MHL §10.01(c).
[40] MHL §10.11(a)(1).
[41] *Id*.

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-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

[42] MHL §10.11(b)(1).
[43] MHL §10.00(b)(2).
[44] MHL §10.11(d)(1).
[45] MHL §10.11(d)(2).

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 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] From April 13, 2007 to March 31, 2020, 179 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 13 YEARS

A. REFERRALS AND CASES FILED

In the thirteen years since Mental Hygiene Law Article 10 became law, the New York State

[46] MHL §10.11(d)(4).
[47] MHL §10.11(f).
[48] MHL §10.11(g).
[49] MHL §10.11(h).

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 909 have resulted in OAG filing an Article 10 Petition. This includes what is considered the "Harkavy"[50] cases addressed in previous reports.

B. PROBABLE CAUSE HEARINGS

In the thirteen years since SOMTA's inception, OMH referred a total of 983 sex offenders for civil management.[51] The OAG has filed 972 petitions, conducted 924 probable cause hearings, and respondent has waived his right to the hearing on 248 occasions. The courts found probable cause to believe the offender suffered from a mental abnormality and was in need of civil management 918 times out of the 924 hearings held to date.

C. MENTAL ABNORMALITY

Trials

Of the 482 trials, the jury or judge rendered a verdict that 405 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, 2020, a total of 714 offenders have been found to be dangerous sex offenders requiring treatment in a secure OMH facility.

[50] There were 123 patients, referred to as the "Harkavy" patients, who were civilly confined before SOMTA under the direction of former Governor Pataki using the provisions of Article 9 of the Mental Hygiene Law. That initiative was challenged in court. In *State of N.Y. ex rel. Harkavy v. Consilvio*, 7 N.Y.3d 607 (2006) ("Harkavy I"), the Court of Appeals held that M.H.L. Article 9 had been improperly used to confine these offenders. On April 13, 2007, SOMTA became effective establishing the current civil management process. Subsequently, on June 5, 2007, the Court of Appeals decided *State of N.Y. ex rel. Harkavy v. Consilvio*, 8 N.Y.3d 645 (2007) ("Harkavy II"), holding that all sex offenders still being held in an OMH facility under the Pataki initiative had to be re-evaluated under SOMTA's new procedures established in M.H.L. Article 10.

[51] These referrals include the Harkavy cases.

2. Strict and Intensive Supervision and Treatment (SIST)

From April 13, 2007 to March 31, 2020, a total of 372 offenders were placed on a regimen of SIST after a finding that they suffer from a mental abnormality. Of that number, 135 are currently on a regimen of SIST.

3. SIST Violations

The information 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 a condition of SIST. 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 file a violation as to 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. Since SOMTA's inception, while some offenders have waived their right to a hearing and

consented to continued treatment in the facility. From April 13, 2007 to March 31, 2020, over 641 dangerous sex offenders have had an annual review hearing held by the court. In the current report period, April 1, 2019 to March 31, 2020, there have been 127 annual review hearings.

F. SIST MODIFICATION OR TERMINATION HEARINGS

Of the 372 offenders placed on SIST, 101 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, 2019, and March 31, 2020, the courts have decided a number of significant cases, each having a dynamic impact on Article 10 litigation.

A. FEDERAL CASES

There are no Federal cases reported during this period.

B. NEW YORK STATE COURT OF APPEALS

There are no Court of Appeals cases issued during this period.

C. THE NEW YORK STATE APPELLATE DIVISIONS

Statewide, between April 1, 2019 and March 31, 2020, the Appellate Divisions decided a total of 30 cases addressing MHL Article 10 matters. The breakdown is as follows:
The First Department rendered 3 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:

1. DSM-5 Inclusion of Unspecified Paraphilic Disorder Signals General Acceptance in the Scientific Community under *Frye* - Preclusion Was Error.

Decided May 7, 2019, in State v. Jerome A., 172 A.D.3d 446, the First Department reversed and remanded a trial court decision that rendered a verdict of no mental abnormality, dismissed a petition for civil management, and released an offender from custody. In reaching its verdict below, the trial court had precluded the State's evidence that Respondent suffered from Unspecified Paraphilic Disorder (USPD), in so far as it deemed constrained by the Second Department ruling in Matter of State of New York v Hilton C. (158 AD3d 707, (2d Dep't 2018), which held that USPD had not yet gained general acceptance in the relevant scientific community.

Notwithstanding Hilton C., the First Department noted that evidence in a subsequent *Frye* hearing held in the Fourth Department determined that its inclusion in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) signals that USPD has in fact gained general acceptance in the relevant scientific community, so as to make expert testimony regarding that diagnosis admissible. Matter of Luis S. v State of New York,166 AD3d 1550, (4th Dept 2018). The Order was reversed, the verdict vacated, and the matter remanded for further proceedings in the trial court.

2. No Deference When Judge Fails to Explain Refusal to Credit Expert's Testimony.

Decided October 31, 2019, in State v. Jesus H., 176 A.D.3d 646, the First Department agreed with the Supreme Court's conclusion that Respondent suffered from a mental abnormality, but found that the trial court erred by failing to credit the expert diagnosis of sexual sadism disorder. The First Department stated that the diagnosis was clearly supported by the record and that the Supreme Court was owed no deference because of its failure to explain or

indicate why it declined to credit the expert testimony with respect to the diagnosis of sexual sadism disorder, while crediting the same experts' antisocial personality disorder (ASPD) diagnosis. The Court reiterated that under Donald DD., 24 NY3d 174 (2014), ASPD can be "used to support a finding [of] mental abnormality as defined by Mental Hygiene Law § 10.03(i) when it is . . . accompanied by *any* other diagnosis of mental abnormality." Emphasis in original.

3. Unspecified Paraphilic Disorder Admissible – Preclusion Was Error.

Decided on January 30, 2020, in State v. Gary K., 179 A.D.3d 623, the First Department, relying on its recent decision in Jerome A., *supra*., decided that USPD is generally accepted by the psychiatric community because it is included in the DSM-5. The Court vacated the verdict finding that respondent does not suffer from a mental abnormality and the matter was remanded for further proceedings.

SECOND DEPARTMENT:

4. Pedophilic and Intellectual Development Disorders Sufficient Predicate Conditions for Civil Management.

Decided April 10, 2019, in State v. James N., 171 A.D.3d 930, the Second Department affirmed the trial court's findings and orders. The Court held that the State's proof of Respondent's Pedophilic and Intellectual Development Disorders sufficiently established by "clear and convincing evidence the existence of a predicate "condition, disease, or disorder,'" that predisposes the respondent to committing further sexual offenses, and that the respondent has "serious difficulty in controlling such conduct." Further, the Court concluded that the Supreme Court's failure to conduct a *Frye* hearing to determine whether the diagnosis of "other specified paraphilic disorder" is generally accepted was harmless error. The Court held that in

light of the State's proof of Pedophilic Disorder and Intellectual Development Disorder, there is no reasonable possibility that if OSPD had been precluded, a trier of fact could have reached a contrary conclusion.

5. Facts Legally Sufficient to Confine Appellant to a Secure Facility.

Decided on January 8, 2020, in State v. Claude McC., 179 A.D.3d 707, the Second Department held that the State met its burden to confine appellant to a secure facility after appellant violated several conditions of his SIST. The evidence included appellant's violations of the treatment program, testimony from a psychologist, and actuarial risk assessments of recidivism. The psychologist testified that appellant could not control his behavior due to drug use. The actuarial assessment scores indicated that appellant was a "high risk to reoffend." As such, the Second Department stated that the trial court's decision was warranted by the facts and upheld the order to confine appellant in a secure treatment facility.

6. Admitting Diagnosis of OSPD Non-Consent was Harmless Error.

Decided February 5, 2020, in State v. Anthony B., 180 A.D.3d 688, the Second Department affirmed the Supreme Court's decision that Respondent suffered from a mental abnormality. The Supreme Court had originally made that determination after a bench trial, predicated in part upon evidence of Other Specified Paraphilic Disorder, Non-Consent (OSPD-NC). Respondent had requested preclusion of OSPD-NC or a *Frye* hearing to challenge whether the diagnosis had gained general acceptance in the relevant scientific community so as to be admissible, which Supreme Court denied. On initial appeal, the Second Department remanded the matter with an order to conduct a *Frye* hearing. After said Frye hearing, Supreme Court held that OSPD-NC has not yet gained general acceptance in the scientific community and reported that finding back to the Second Department. Subsequently, the Second Department concurred

with the trial court's *Frye* finding, but nevertheless, it affirmed the original finding of mental abnormality citing harmless error. The Court noted, notwithstanding the OSPD-NC diagnosis, there was sufficient evidence of Respondent's mental abnormality based on his ASPD and Narcissistic Personality Disorder. Further, the Second Department upheld the trial court's determination reached after a dispositional hearing, that Respondent was a dangerous sex offender requiring confinement.

7. Conflicting Expert Testimony Does Not Inherently Render Evidence Insufficient; Psychopathy As Measured By the PCL-R Passes *Frye* Standard.

Decided February 13, 2020, in State v. Marcello A., 180 A.D.3d 786, the Second Department affirmed the lower court's decision in civilly confining appellant. The appeal was based on an alleged lack of sufficient evidence that appellant had a mental abnormality. This was due to differing opinions from the expert witnesses on each side. However, the lower court held, and the Second Department affirmed, that "it was legally sufficient to support the verdict since there is a valid line of reasoning by which the factfinder could conclude the appellant was an individual with a mental abnormality." Further, while one of the State's expert witnesses was self-admittedly inconsistent, and she failed to "set forth the diagnostic criteria," it did not matter in light of the other evidence proffered at trial. This is because the "conflicting expert testimony merely amounted to a 'battle of the experts.'"

Additionally, the Second Department affirmed the Supreme Court's finding after a *Frye* hearing that the condition of psychopathy as measured by the Psychopathy Checklist Revised (PCL-R) had gained general acceptance in the relevant scientific community.

8. Insufficient Proof of "Such an Inability" To Control Behavior Results in SIST.

Decided July 10, 2019, in State v. Ted B., 174 A.D.3d 630, the Second Department found the State did not meet its burden of showing appellant had "such an inability" to control his

behavior that he is likely to be a danger if not confined. The State relied in part on testimony from an expert psychologist who testified that it is "very difficult to ascertain whether an individual committed a crime because he or she was unable to control his or her conduct or because he or she chose not to control it, and that the distinction between the two was largely irrelevant." Additionally, the State relied in part upon the testimony of another expert psychologist who "opined that there was insufficient evidence to conclude that the appellant had an inability to control his behavior such that he was a danger to others." The Second Department concluded that this evidence was insufficient to meet the clear and convincing burden of proof that Ted B. was a dangerous sex offender requiring confinement. The Appellate Division thus reversed on the law the Supreme Court's Order for confinement and remitted the matter back to the trial court for the imposition of a regimen SIST.

9. Legally Sufficient to Show Appellant Suffers from a Mental Abnormality

Decided August 28, 2019, in State v. Kaysheem P., 175 A.D.3d 692, the Second Department held that the State met its burden of proving that Kaysheem P. suffers from a mental abnormality and is a dangerous sex offender requiring confinement, as those terms are defined by MHL §10.03. Contrary to the appellants contention, the facts supported the Supreme Court's findings.

THIRD DEPARTMENT:

10. Poor Insight Into Risk Supported DSORC Finding; Second SIST Hearing Not Required After Inquiry and Valid On-Record Waiver.

Decided May 2, 2019, in State v. Karl X., 172 A.D.3d 1498, the Third Department upheld a trial court finding resulting from a SIST violation hearing wherein the State proved that the respondent was a dangerous sex offender requiring confinement. A psychologist diagnosed

him with pedophilia and avoidant personality disorders and such disorders contributed to his behaviors. Further, he was a risk of committing future acts against children and, based on his admission that he enjoyed viewing nude pictures of children and saw nothing wrong with it and that he would always be attracted to children, Supreme Court properly concluded he lacked sufficient insight into his risk of committing new sex offenses. Additionally, the trial court judge who conducted the SIST violation hearing retired before rendering decision and the Justice who took over the assignment offered Karl X. a new hearing. However, after the Court's searching inquiry, and after discussing that matter with his counsel, Karl X. waived the second hearing and agreed to have the new judge render decision based upon review of the transcript. The Third Department concluded that respondent's argument that the Supreme Court erred in rendering a decision without a second SIST hearing was waived.

11. PRS Dates Must Be Decided When Petitioner is Released to DOCCS's Supervision.

Decided September 26, 2019, in Lumpkins v. Annucci, 175 A.D.3d 1736, the Third Department found that the Department of Corrections and Community Supervision ("DOCCS") properly calculated petitioner's post-release supervision (PRS) date, which did not include time spent civilly confined under MHL Article 10. Petitioner believed his PRS date should have started either on his conditional release date or when he was transferred to a secure treatment facility. The Third Department found that unpersuasive, and instead affirmed that his transfer to the facility did not release him to DOCCS custody for "reintegration into the community," as he was held in civil confinement during that period. As such, DOCCS did not err in finding petitioner's PRS date, and the Supreme Court order dismissing Lumpkin's Article 78 petition was affirmed.

12. Expert Testimony Not Refuted by Layperson Fact Witnesses Who Never Saw Sex Offender's Inappropriate Behaviors.

Decided on October 24, 2019, in State v. Horowitz, 176 A.D.3d 1404, the Third Department held the lower Court did not err in concluding that the respondent had serious difficulty controlling his sexually-offending conduct. The Third Department concluded that clear and convincing evidence supported the Supreme Court's decision based upon unrefuted expert testimony. This evidence consisted of an expert psychologist who explained the significance of the respondent's belief that he did not need treatment, his poor insight, the chronic nature of his diagnosed disorders, and his violation of parole by being around children. The Third Department noted that while the offender called laypersons to testify on his behalf they never witnessed him engage in sexually inappropriate behavior, such fact witnesses were insufficient to overcome the unrefuted expert testimony, and the Appellate Division deferred to the trial court's assessment of the value of that evidence in ultimately finding that he was a dangerous sex offender requiring confinement. Finally, the Court held that the lower court did not err when it denied the motion for substitution of counsel as there was simply a disagreement of strategy.

13. OSPD Non-Consent Has Yet to Meet *Frye* Standard.

Decided on December 5, 2019, in Miguel II. v. State, 178 A.D.3d 1157, the Third Department held that the issues presented for review on appeal were rendered moot because the Supreme Court concluded that petitioner did not suffer from a mental abnormality under Mental Hygiene Law §10.03. Originally, the Supreme Court denied petitioner's motion for a *Frye* hearing to determine if OSPD Non-Consent is a generally accepted diagnosis in the psychiatric and psychological communities. On initial appeal, the Third Department remitted the case back to the trial court with instruction to hold a *Frye* hearing. The Supreme Court held such *Frye* hearing and concluded that the State failed to show that OSPD Non-Consent was generally accepted. As such, the Supreme Court held that petitioner no longer continued to suffer from a

mental abnormality and was discharged from supervision. The Third Department held that the appellant's remaining contentions on the original appeal were rendered moot. The State has filed a notice of appeal on the trial court's decision to discharge petitioner from civil management.

14. Offender's Numerous Challenges on Appeal Not Preserved at Trial; Sufficiency of Proof of Mental Abnormality Upheld.

Decided on January 2, 2020, in State v. Robert G., 179 A.D.3d 1164, the Third Department held that because the respondent did not preserve his arguments at the trial level, they are unpreserved for their review and cannot be resurrected by Robert G.'s subsequent CPLR 4404 motion. The arguments were that the jury verdict was not based on legally sufficient evidence of a mental abnormality, in part, because that jury relied upon evidence of OSPD Non-Consent, and that the trial court erred in denying his post-trial request to preclude OSPD Non-Consent evidence. He also challenged whether there was sufficient evidence that he was a dangerous sex offender requiring confinement, but that was not preserved for appellate review, as he did not make a motion for a directed verdict at the hearing or otherwise challenge the sufficiency of said evidence in the lower court. Furthermore, the Third Department noted that Robert G. did not move to preclude OSPD Non-Consent evidence at trial and did not object to the testimony on that diagnosis. As such, those issues were not preserved at trial and Robert G.'s subsequent CPLR 4404 motion could not resurrect those arguments on appeal. The Appellate Division held there was a logical line of reasoning by which the jury reached their verdict in affirming the trial court order granting civil confinement.

Further, Robert G. challenged his underlying sex offense conviction based on his plea bargain agreement. The Respondent sought specific performance of his plea agreement claiming that he should have been told of the potential for civil confinement under Article 10 prior to his plea. However, the Third Department, citing numerous cases on this issue as precedent, noted

that his plea took place prior to enactment of the SOMTA statute in 2007. Moreover, while civil management under article 10 is a potential "collateral consequence of a guilty plea[,]" to a sex offense under the penal law, the plea bargain is part of a criminal matter and is wholly distinct from the civil matter under MHL article 10. Third Department held that he was not required to receive notification. As such, the trial court's orders for civil management were affirmed.

FOURTH DEPARTMENT:

15. Respondent's Burden to Demonstrate Legitimate Explanations of Improper Counsel

Decided July 5, 2019, in New York v. Leslie L., 174 A.D.3d 1326, the Fourth Department found that respondent's contention that he had improper counsel was without merit. Respondent contends his counsel was ineffective as they did not seek to replace the Supreme Court appointed examiner after it was found there would be great delay before the examiner could issue his findings. However, the Court asserted that not replacing the examiner could be seen as a beneficial strategy to give respondent the opportunity to make progress in treatment. With more time, respondent would likely have had a better chance at persuading the court that he should not be confined. Based on the facts of this case, the Fourth Department could not find ineffective assistance of counsel.

Further, respondent failed to preserve his contention that he did not validly waive his right to a jury trial with respect to whether he suffers from a mental abnormality. The Fourth Department noted such argument is without merit given that the record showed he made an informed colloquy on the record waiving his right to a jury trial.

Lastly, the Fourth Department held that based on the facts adduced at trial and the dispositional hearing and in light of all experts who testified agreeing that Respondent would not be successfully managed in the community under SIST, the Supreme Court was afforded

deference in finding that respondent is a dangerous sex offender requiring confinement.

16. A Diagnosis of an Unspecified Paraphilic Disorder Meets Due Process.

Decided July 31, 2019, in Derek G. v. State, 174 A.D.3d 1360, the Fourth Department, citing its own recent decision, held that a diagnosis of an unspecified paraphilic disorder meets the requirement of due process to be admissible evidence of a mental abnormality. See Matter of Luis S. v State of New York, 166 A.D.3d 1550 (4th Dep't 2018). The Respondent's expert testified that the petitioner had numerous paraphilic markers including elements of sadism and pedophilia which were best explained by diagnosing Unspecified Paraphilic Disorder (USPD). Further, the unspecified paraphilic disorder combined with his psychopathy and sexual deviance were driving the petitioner's sexually offensive behavior. The expert's analogy was that the USPD diagnosis and his sexual deviance were the "green light," while his Antisocial Personality Disorder was the absence of a "red light." As such, it was legally sufficient to establish that the petitioner had a disorder which predisposed him to committing sex offenses and sufficient to conclude that he had serious difficulty controlling such conduct. Thus, the Appellate Division affirmed the determination that petitioner suffers from a mental abnormality, as it was not against the weight of the evidence.

17. Sex Offender's Suit for False Imprisonment Barred by Statute of Limitations.

Decided December 20, 2019, in Michael M. v. Cummiskey, 178 A.D.3d 1457, the Fourth Department held that the Supreme Court properly concluded that (article 10 sex offender) plaintiff's false imprisonment claim was barred by the statute of limitations. The plaintiff was sentenced to confinement under MHL article 10, after he was found to be a dangerous sex confinement. The Court of Appeals reversed that determination and plaintiff brought action for false imprisonment against various state psychologists and treatment providers. The Supreme

Court held that since the plaintiff did not bring the action within the required one-year period, it was barred by the statute of limitations. Plaintiff further contended that his remaining causes of action accrued at a later date within the three-year limitations period, however, the Fourth Department refused to entertain that claim, stating that this argument was being raised for the first time on appeal and therefore was not properly preserved for appellate review.

18. Problematic for a Judge to Call and Cross-Examine His Own Witness

Decided February 7, 2020, in State v. Richard F., 180 A.D.3d 1339, the Fourth Department reversed the trial court determination that Richard F. was a dangerous sex offender requiring confinement. In reversing, the Fourth Department concluded that the Supreme Court's decision to confine the respondent was against the weight of the unanimous expert evidence from both the State's expert and Richard F.'s expert, indicating he was "not unable" to control his conduct.

Further, the Fourth Department expressed grave concern over the trial judge's "abandonment of her neutral judicial role" by calling a witness to the stand and "aggressively cross-examining" that witness, while repeatedly overruling objections to her questions. In reversing, the Fourth Department directed that "further proceedings in this matter be conducted before a different judge."

19. Respondent Not Allowed to Withdraw Waiver of Right to Jury Trial; Admission of Hearsay Testimony Harmless

Decided February 7, 2020, in State v. Daniel J., 180 A.D.3d 1347, the Fourth Department first rejected respondent's argument that the court erred in denying his request to withdraw his waiver of the right to a jury a trial. The Fourth Department noted that the court conducted an on-the-record colloquy with respondent and that he knowingly and voluntarily waived his right to a jury trial after consultation with his attorney. Additionally, although the Fourth Department

found that the court erred in the admission of hearsay testimony, this was deemed harmless because there was sufficient admissible evidence presented to support the respondent's admission to a mental abnormality. The Appellate Divisions also dismissed other claims of Respondent on appeal, including ineffective assistance of counsel and his appeal of the trial court denials of his pro se motions brought pursuant to CPLR sections 4404 and 50515, noting they are without merit.

D. TRIAL COURT DECISIONS

1. Hypersexuality Satisfies *Frye* Analysis, Hebephilia Does Not.

Decided May 6, 2019, in the Matter of Fernando L. (Supreme Court, Oneida County), the Court, after an extensive *Frye* hearing conducted over a period of eight days, ruled that the condition of "hypersexuality," also commonly referred to as "sexual preoccupation," was generally accepted as reliable within the scientific community but the diagnosis of "Other Specified Paraphilic Disorder (OSPD) – Hebephilia" was not.

The Court found that although hypersexuality was not generally accepted as a mental diagnosis or disorder, it is generally recognized as a "construct" or condition "…describing a cluster of behaviors or symptoms" and is often considered in analyzing risk of recidivism or as a comorbid condition with other paraphilias.

With respect to hebephilia, the Court agreed with several New York City trial courts that the majority of the relevant scientific community does not support hebephilia as a viable diagnosis. In precluding evidence of hebephilia, the Court particularly noted, that along with other disagreements within the scientific community, hebephilia had been rejected for inclusion in the DSM-5 and lacked a consistent definition and age parameters.

2. No Right to Counsel at CRT Interview Stage

Decided June 12, 2019, in the Matter of Steven W. (Supreme Court, Bronx County), the Court denied a motion to preclude the testimony of the psychiatric examiner who interviewed the Respondent for the New York State Office of Mental Health Case Review Team (CRT) prior to the filing of a Mental Hygiene Law (MHL) Article 10 Petition. Respondent alleged that his right to counsel at such interview was coextensive with that of a defendant in a criminal proceeding and that any statements made by Respondent in the absence of counsel should be suppressed. Although noting that due process requires the application of some constitutional protections in the context of MHL Article 10, the Court reaffirmed that the proceeding is civil in nature, not criminal, and ruled that the absence of counsel at this stage of the proceeding did not violate Respondent's right to due process.

3. **Motion to Share Clinical Records with Respondent Denied.**

Decided July 16, 2019, in the Matter of Allan M. (Supreme Court, Oneida County), the Court denied Respondent's attorney's motion requesting permission to share clinical records with the Respondent. The Court found that such a request was a direct violation of MHL §33.16 and MHL §10.08(e)(1), as well as premature for failure to take the appropriate administrative steps in requesting such records, which was a direct violation of MHL§33.16(e)(5).

4. **Respondent's Failure to Meaningful Engage in Sexual Offender Treatment While Confined Supported Trial Verdict of Mental Abnormality.**

Decided September 10, 2019, in the Matter of State of New York v. Jesus M. (Supreme Court, Kings County, Brooklyn), the Court found Respondent to suffer from a mental abnormality after a bench trial. In reaching its verdict, among other considerations, the Court found that while Respondent had not accumulated a significant number of disciplinary infractions during his incarceration, and while there was no evidence of Respondent acting out

sexually while confined, there was, nevertheless, clear and convincing evidence of the Respondent's mental abnormality.

The Court was persuaded, in part, by Respondent's rape and abuse of his biological daughter over a period of five years, which resulted in the victim being impregnated seven times from ages 13 to 18 years old. Respondent also began to sexually abuse his younger biological daughter when the victim of the qualifying offense moved out of the home.

In addition to the chronic nature of his offenses and his diagnoses, the Court noted Respondent's lack of meaningful engagement in sexual offender treatment as a key aspect in determining that he suffers from a mental abnormality. Despite Respondent's ample opportunity to engage in sex offender treatment while confined, the Court found persuasive that Respondent had made little to no meaningful progress in treatment. Moreover, the Court noted that Respondent continues to deny that he had sexually abused his second biological daughter. The Court found that Respondent's lack of insight and outright denials about Respondent's sexual offending cycle essentially has caused Respondent to change little since his conviction for the qualifying offense, thus there was clear and convincing evidence of his mental abnormality.

5. **Criminal Contempt Imposed for SIST Violation.**

Decided November 6, 2019, in the Matter of Richard W. (Supreme Court, Warren County), after a SIST violation hearing, the Court found that Respondent was not a dangerous sex offender requiring confinement. Nevertheless, Supreme Court imposed a term of 30-days incarceration for criminal contempt as a result of violating a lawful mandate of the court, pursuant to Judiciary Law §750(a)(3). Among the Respondent's SIST conditions, he was specifically prohibited from any contact with a particularly named female and any of her children. The Responded violated those conditions when he admitted that he had married that

particular female while on SIST. Though the Respondent avoided civil confinement under MHL Article 10, the Court exercised its discretion under the Judiciary law and imposed a criminal contempt sanction.

6. **Antisocial Personality Disorder Supported by an Additional Diagnosis Sufficient for a Finding of Mental Abnormality**

Decided December 18, 2019, in the Matter of State of New York v. Christian R (Supreme Court, Suffolk County), the Court found Respondent to suffer from a mental abnormality after a bench trial. The NYS Office of Mental Health psychiatric examiner diagnosed Respondent with Antisocial Personality Disorder (ASPD) as a sole diagnosis. As per Matter of State of New York v. Donald DD, 24 NY3rd 174, a finding of ASPD alone is legally insufficient for a finding of mental abnormality. At trial however, the State also proffered expert testimony from the Attorney General's independent expert who found Respondent to also suffer from Narcissistic Personality Disorder.

The Court reasoned that although both diagnoses are not exclusively sexual in nature, they both are linked to his predisposition to conduct that constitutes a sexual offense. The State proved that Respondent's ASPD resulted in a need for Respondent to exert his power and control through sexual violence and that this core tenant of his personality structure will lead to a cycle of sexual offending behaviors regardless of consequences.

The Supreme Court also incorporated language from Matter of State v. Dennis K., 27 N.Y.3d 718, 2016, stating that ASPD, in conjunction with Respondent's Narcissistic Personality Disorder, and in light of establishing his victim pool, triggers, and offense cycle, the State had laid out a detailed psychological portrait sufficient to find that he suffered from a mental abnormality.

7. **Sexually Motivated finding for Mental Abnormality**.

Decided January 16th, 2020, in the Matter of State of New York v. Todd L. (Supreme Court, Queens County), following a unanimous jury trial verdict that Respondent's felony conviction of Assault in the Second degree was sexually motivated as that term is defined by statute. The Court noted that Respondent committed a sexually motivated felony when he assaulted his victim for the purpose, in whole or substantial part, for his own direct sexual gratification. The Respondent argued that a conviction for Assault in the Second Degree was not sexually motivated because it was not supported by evidence that Respondent's intent in the commission of the assault was sexual in nature.

The trial Court found that the Respondent had enlisted the victim of the qualifying offense into a prostitution ring. Furthermore, when the Respondent determined that victim was not following his established rules of the prostitution business, Respondent forced the victim to strip naked and face the wall while he whipped her with a cord.

Respondent argued that this was part of a business transaction and, although heinous in nature, he was not sexually motivated by the act. The State argued that pursuant to a recent Court of Appeals decision in State v. Dennis K., 27 N.Y.3d 718, 2016, an examination of Respondent's psychological portrait was warranted, especially considering Respondent's past sexual criminal behavior where on multiple occasions he stripped, beat, and raped women who were employed by him as prostitutes. The State proved through expert testimony that Respondent is sexually aroused to the pain and suffering of his victims during the beatings and that physical sexual contact need not occur for the act to be sexually motivated.

8. **Hypersexuality as a Condition Passes *Frye,* Hebephilia Does Not.**

Decided February 6, 2020, in the Matter of the State of New York v. Ian I. (Supreme Court, Dutchess County), following lengthy *Frye* hearings on the conditions of Hypersexuality

and Hebephilia, which were requested by MHLS, the trial court found that hypersexuality is generally accepted as a condition and may be relevant to the issue of whether the respondent suffers from a mental abnormality as statutorily defined. The trial court, however, concluded that hebephilia is not generally accepted as a condition at this time and is therefore not relevant on the issue of whether the respondent suffers from a mental abnormality.

9. ***Pro se* Respondent May Personally Cross-Examine His Victims Who Testify at Trial.**

Decided March 4, 2020, in the Matter of the State of New York v. John R. (Supreme Court, Clinton County), following oral arguments and written submissions, the trial court ruled that a *pro se* Respondent, (serving as his own attorney), is permitted to personally conduct the cross-examination of his past victim's should they testify at trial. In its decision, the trial court permitted the victims to testify via simultaneous two-way video at trial. The State has taken a procedural appeal of the Court's decision. The Respondent has cross-appealed that part of the trial court's decision that permits video testimony, arguing that his victims should appear in the courtroom so that he may conduct the cross-examination in-person.

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. E.B. – E.B.'s qualifying offense occurred after an investigation revealed that between the months of February and April 2014, he touched the vagina of a three-year-old girl who was the daughter of his live-in girlfriend after pulling down her underwear and inserting one of his fingers into her vagina for several minutes. After his plea of guilty to the charge of Sexual Abuse First Degree, E.B. admitted (in later interviews regarding the offense) to sexually abusing the three-year-old victim one time prior to the qualifying offense. That offense also involved the Respondent touching the vagina of the victim while being sexually aroused. For the qualifying offense he was sentenced to a 10-year term of probation. His probation was revoked on July 27, 2018, and he was resentenced to a three-year determinate term of incarceration, followed by a 10-year term of post release supervision. E.B. has made detailed admissions to sexual offenses involving approximately twenty other little girls ranging in age from five to 16 on repeated and

numerous occasions. The offenses involved both rubbing the genitals of the girls to full intercourse. These offenses began when he was approximately 16 years old and continued up until the time of the instant offense when he was in his late 20's. E.B. has also reported a history of various paraphilic behaviors, such as peeping in his home and the homes of other unsuspecting victims (voyeurism), rubbing against others in nightclubs (frotteurism), having sex with a dog on multiple occasions (zoophilia), and masturbating with female underwear including his own sister's. E.B. meets the diagnostic criteria for Pedophilic Disorder, Nonexclusive Type, Sexually Attracted to Females; Antisocial Personality Disorder; Alcohol Use Disorder, in sustained remission, in a controlled environment; Cannabis Use Disorder, in a sustained remission, in a controlled environment; and Cocaine Use Disorder, in a sustained remission, in a controlled environment.

State v. F.R. – F.R's known sexual offenses began at age 18, when he was arrested for Rape 1st: Forcible Compulsion and Assault 2nd, though those charges would ultimately be dismissed. At age 21, he was arrested for Rape 1st: Forcible Compulsion, Burglary 1st: Use or Threaten to Use Dangerous Weapon, Robbery 1st: Use or Threaten to Use Dangerous Weapon, and Rape 2nd. F.R. admitted to having forcible sex with a 13-year-old and stealing her bicycle to sell for drugs. He was convicted upon a plea of guilty to Burglary 3rd: Illegal Entry with the Intent to Commit a Crime and was sentenced to an indeterminate 30 months to seven years of incarceration. The qualifying offense occurred in 2007 when, at age 29, F.R. engaged in forcible vaginal and anal intercourse with his paramour's 11-year-old daughter. The victim advised investigators that on at least one occasion during that same time period, F.R. touched her 7-year-old sister's vagina as well. He pled guilty to Rape 1st, Criminal Sexual Act 1st in full satisfaction of all charges and was sentenced to a 15-year term of incarceration with a 5-year term of post-release supervision. F.R. meets the diagnostic criteria for Antisocial Personality Disorder; Pedophilic Disorder, Nonexclusive Type, Sexually Attracted to Females; Alcohol Use Disorder, in a controlled environment, severe; Cannabis Use Disorder, in a controlled environment, moderate; Other Hallucinogen Use Disorder, in a controlled environment, severe; and presents with a high number of psychopathic traits.

State v. E.R. – E.R.'s offense history began on October 12, 1983, when he, along with two co-defendants, illegally entered an apartment of a female neighbor who lived across the street. While there, E.R. displayed a gun, vaginally raped the victim, and forced her to perform oral sex. E.R. urinated in her mouth and forced her to swallow the urine. After the repeated rape which occurred over a four-hour period, they tied up the victim and her elderly mother with an electrical cord and stole property from them. E.R. was convicted of Rape in the First Degree: Forcible Compulsion, and Robbery in the First Degree. E.R.'s most recent and qualifying offense occurred in 2007 and results from E.R. luring a woman he had known for approximately six (6) weeks, into a vacant apartment under the pretense of promising her employment. While there, the Respondent violently struck her in the head with his fists and threatened to kill her if she did not comply. He forced her to strip naked, placed his mouth on her breasts, and shoved his fingers inside of her vagina. He forced the victim to place his penis inside her vagina. During the incident, his penis penetrated both her anus and vagina. After she got dressed, he struck her over the head and face with a padlock causing injuries. He forced her to strip once again and when she tried to escape, the Respondent struck her repeatedly and choked her until she lost consciousness. A jury convicted him of Criminal Sexual Act 1st: By Forcible Compulsion and at

least two counts of Assault 2nd. He was sentenced to an aggregate concurrent 20-year term of incarceration and 25 years of post-release supervision for the Criminal Sexual Act 1st and Assault 2nd. In 2013, his conviction for the Criminal Sexual Act 1st: By Forcible Compulsion charge was reversed by the Appellate Court. During his current incarceration in DOCCS custody, the Respondent received eight (8) Tier II (moderate severity) and six (6) Tier III (high severity) infractions. The infractions were for the following: violent conduct; fighting; refusing to obey orders; and one incident of lewd conduct. During prior incarcerations, the Respondent received a total of fifty-six (56) infractions. At the age of fourteen (14) E.R. was placed by Family Court at a residential facility for emotionally disturbed children. He was also hospitalized in Kings County for a period of seven (7) months. He has been prescribed medication since the age of seven (7) and was diagnosed with Schizophrenia, Paranoid Type at age eleven (11). Currently, E.R. is refusing mental health treatment and he has refused to participate in sex offender treatment programs.

State v. S.G. – S.G.'s offense history began at age 24 when he sexually abused his girlfriend's two daughters over a period of approximately 16 months. One Victim was between the ages of 12 to 14 and the other victim was between the ages of 10 to 12 during the course of the abuse. In 1993, he entered a guilty plea to two counts of Rape in the Second Degree and was sentenced to an indeterminate two to six-year term of incarceration. In 1997 he violated parole after only one month in community due to his having contact with multiple minors. In 2001, at age 33, S.G. was again arrested after possessing a computer disk containing images depicting young boys performing sexual acts. This was while he was on probation for a non-sexual conviction. For this offense he entered a guilty plea to one count of Possessing an Obscene Sexual Performance by a Child Less Than 16 Years Old and was sentenced to an indeterminate 3-year term of incarceration. In 2004, after being released to the community under Parole Supervision for the child pornography conviction, his parole was again violated after he was arrested for multiple driving offenses. S.G.'s most recent and qualifying offense occurred when he touched the penis of an 11-year-old male acquaintance on numerous occasions. S.G. entered a plea of guilty to Sexual Abuse in the First Degree and was Sentenced to 6 years' incarceration, 15 years' post-release supervision. S.G. meets the diagnostic criteria for Pedophilic Disorder, attracted to both male sand females, nonexclusive type.

State v. A.R. – A.R.'s known offense history began around age 17 and continued until he was approximately 20 years old. During that time, he sexually abused his younger brother, who was 8 years-old when the abuse began and 11 years-old when A.R. was arrested. A.R. orally and anally sodomized his brother, as well as had his brother perform oral sex on him. He also forced his brother to perform analingus, which he reciprocated on his brother. A.R. was convicted on one charge of Attempted Criminal Sexual Act 1st: Actor 18+, Victim Less Than 13. Although A.R.'s only conviction is the qualifying sex offense, he has admitted to having other victims during disclosure in his sex offender treatment program and during polygraph examination while on parole. A.R. admitted to grabbing the vagina of a 7 or 8-year-old girl who was a stranger. He also reported in sex offender treatment that there were other children he tried to have sexual contact with, but these attempts were unsuccessful. He admitted that these additional attempts included three prepubescent girls (aged 8 and 11 or 12) and one pre-pubescent boy (age 8). A.R. also admitted to raping his dog. After evaluation, a Medical Examiner expressed the opinion that A.R. met the criteria for several diagnoses including Autism Spectrum Disorder; Pedophilic Disorder,

attracted to both males and females, not limited to incest; Transvestic Disorder with Fetishism, in a controlled setting; Hypersexuality; and Zoophilia.

State v. J.P. – J.P.'s offense history began as a juvenile when at age eleven he sexually abused multiple male children who were between the ages of four and nine years old and were his neighbors. These offenses included fondling the genitals of the victims, anally and orally sodomizing them, and forcibly compelling them to masturbate him. J.P. was convicted as a Juvenile Delinquent for the charge of Sexual Abuse 2nd and sentenced to a one-year placement in New York State Division for Youth. J.P.'s next offense occurred at eighteen years old when he sexually abused a three-year-old girl and two-year-old boy while he babysat them. This included inserting his finger into the vagina of the three-year-old, touching the two-year-old's penis and anus and masturbating in front of both victims. J.P. pled guilty to Sexual Abuse 1st: Sexual Contact with Individual Less Than 11 Years Old and was sentenced to 2 to 4 years' incarceration. J.P.'s most recent and qualifying offense occurred at the age of twenty-six when he performed oral sex on an eight-year-old acquaintance, fondled his penis, compelled him to perform oral sodomy on him and inserted a pencil into the victim's anus. J.P. also sexually abused the victim's eleven-year-old sister by fondling her genitals and breast area and performing oral sex on her; he also rubbed his penis against her genitals. J.P. was a friend of their mother and stayed for extended periods of time as a guest in their home. He pled guilty to two counts of Course of Sexual Conduct 1st: 2 or More Acts Against a Child Younger Than 11 Years Old. J.P. meets the criteria for Pedophilic Disorder, nonexclusive type, sexually attracted to both males and females.

State v. J.O. – J.O. has an extensive and diverse criminal history, spanning multiple states and beginning as early as 1979 when J.O. was 19 years old. J.O.'s convictions in the instant case arose out of events that occurred on June 27, 1994. J.O. and the victim dated for several weeks, with no intimacy or sexual contact, before the victim decided she was not interested in pursuing a relationship with J.O. At that time, the victim shared a phone number with her roommate who moved out and took the phoneline with her. Thereafter, when J.O. kept calling the roommate's phone number seeking to speak to the victim, he became increasingly angry and accusatory that the victim was purposely avoiding him. J.O. subsequently broke into the victim's home where she was sleeping with her daughter. While threatening the victim with a knife, J.O. locked the victim's daughter in a closet and proceeded to orally and digitally sodomize the victim several times. J.O. was arrested in Wyoming County later that day. J.O. was charged with Burglary in the First Degree, Sodomy First Degree, Sexual Abuse in the First Degree, and Unlawful Imprisonment in the First Degree in Saratoga County, as well as three counts of Criminal Possession of a Weapon in the Third Degree, and Unlawful Possession of Noxious Matter in Wyoming County. While these charges were pending, during transport between Wyoming County Jail and Saratoga County Court, J.O. escaped from State Police custody, stole a car, and fled to Vermont. This led to an extensive two-week manhunt. After his capture in Vermont, he was extradited back to New York where Escape in the First Degree and Grand Larceny in the Third-Degree charges were added in Saratoga County. On January 27, 1995, J.O. pled guilty to Burglary in the First Degree and Escape in the First Degree in full satisfaction of the remaining Saratoga charges. He was sentenced in 1995 to six and a half to 13-year indeterminate term of incarceration for the Burglary in the First Degree, and a consecutive three and a half to seven-year indeterminate term of incarceration on the Escape in the First-Degree conviction. He also

pled guilty to one count of Criminal Possession of a Weapon in the Third Degree in Wyoming County and was sentenced to a consecutive two and a half to five-year indeterminate term of incarceration. During his initial 23-year and 7-month incarceration, J.O. received 31 disciplinary tickets, including possession of drugs, attempted escape, attempted bribery and extortion of corrections officers, solicitation, and harassment of female corrections officers. J.O. has self-reported to at least one other sex offense during his prison-based sex offender treatment assignment. J.O. wrote in the assignment that he gave a girl a ride home and forced himself on her, using more force than was necessary. He further indicated that he did not pay attention to a girl's age, if he wanted to have sex, he would excuse or defend his behavior with underage girls. Regarding the instant offense, J.O. has admitted on numerous occasions that he broke into the victim's home with the specific intent to engage in sex with her for his own gratification. J.O. was paroled to the community in 2018 for seven months before he violated by engaging in disturbing and aggressive behaviors directed at least three unknown women with whom he sought sexual encounters. J.O. received a 17-month hold for this violation and was returned to prison. J.O. is diagnosed with Other Specified Personality Disorder, with Antisocial Traits, and Alcohol Use Disorder, Moderate, Presence of Four or Five Symptoms, in Full Remission, in a Controlled Environment.

State v. N.B. – N.B. committed his first known sexual offense on August 27, 1986, at 16 years of age. During that incident, N.B. served as a babysitter for the six-year-old female victim. He inserted his penis into the victim's vagina and ejaculated. Shortly after, the six-year-old was diagnosed with gonorrhea, which N.B. had during the sexual offense. His first known sexual offense case led to a Sexual Abuse in the First-Degree charge and he was sentenced to one to three-year(s) incarceration with a five-year term of post release supervision. Ten years later, N.B. was again arrested for a sexual offense committed against a 12-year-old female. At the time of the incident, N.B. had been volunteering with a local school and organized a trip for the students at a public pool. N.B. placed his hands between the victim's legs and touched her genitals, which resulted in a guilty plea to Sexual Abuse in the Second Degree and a one-year term of incarceration. He was released to parole in July 1998 and violated his conditions eight months later. In May 1999, N.B. had his parole revoked and he was returned to prison. N.B. was arrested for his qualifying offense in 2008, when he was 38 years old. Over a span of time, N.B. digitally penetrated and engaged in sexual intercourse, both anally and vaginally, with his female godchild when she was three and four years old and then, again, when she was six and seven years old. Additionally, N.B. offended against three other female children that he babysat for a wheelchair-bound mother. He offended against one of the victims when she was between five and seven years old, another when she was between eight and nine years old, and the third victim when she was nine until she was 11-years old. N.B. was convicted upon a plea of guilty to three counts of Course of Sexual Conduct Against a Child in the First Degree, and one count to Course of Sexual Conduct Against a Child in the Second Degree. He was sentenced to 12 years in prison with 20 years of post-release supervision. N.B. self-reported that during his childhood, he received sexual gratification from setting fires, intentionally killed his family's dog at the age of 13 and was himself sexually victimized at the age of five. While incarcerated for his qualifying offense, N.B. received four Tier II and zero Tier III disciplinary tickets. Three of the four tickets were for fighting and the fourth was for providing false information. N.B. is currently diagnosed with Pedophilic Disorder, Nonexclusive Type, Sexually Attracted to Females; Delusional Disorder, Unspecified Type.

State v. V.F. – V.F.'s offense history began at the age of 22 when he sexually offended against a six-year-old male. V.F. and the victim lived in the same apartment building and had known each other for several years. During the offense, V.F brought the victim to the roof of their building through the use of force, removed the victim's clothes, licked his anus, and then anally penetrated him. In that case, he was convicted upon a plea of guilty to Sexual Abuse in the First Degree and was sentenced to six months incarceration followed by five years' post-release supervision. In 2003, V.F. pled guilty to Attempted Sexual Abuse in the First Degree and was sentenced to four years in prison followed by five years post-release supervision. During that incident, V.F. offended against a seven-year-old female in a laundromat by attempting to touch her genitals outside of her clothing and telling the victim to spread her legs. While on probation for this offense, V.F. committed the qualifying offense against a six-year-old male inside of a pharmacy. V.F. approached the victim, touched his buttocks and anus with his hand, kissed the victim's buttocks, and then kissed the victim on the mouth. In 2004, V.F. pled guilty to two counts of Sexual Abuse in the First Degree and was sentenced to 14 years in prison followed by five years of post-release supervision. While incarcerated for the instant offense, V.F. received 20 Tier II and three Tier III disciplinary tickets. V.F. is diagnosed with Pedophilic Disorder, Nonexclusive Type, Sexually Attracted to Both.

State v. F.H. – F.H. was first arrested at the age of 18 for Assault in the Second Degree in 1960 due to forcibly touching a 24-year-old female. He was adjudicated a Youthful Offender and charged with Assault in the Third Degree and sentenced to one-year probation. At the age of 19, F.H. was arrested for Assault in the Second Degree for striking a 19-year-old female over the head with a rock. A few days later, F.H. repeatedly struck another female victim over the head with bottle. One year later, in 1963, F.H. was convicted of Assault in the Third Degree. In 1972, F.H. followed a car driven by a 21-year-old female and purposefully struck the rear of her vehicle. Both F.H. and the victim exited their cars to exchange insurance information. F.H. got back into his vehicle and ran directly into the victim and proceeded to get out of the vehicle and drag the victim into bushes. He put mud into her mouth to stop her screams and began to touch her body until a man noticed and yelled at F.H. to stop. The 21-year-old victim suffered from a crushed pelvis and lacerations. However, no arrest was made at the time of this incident. Two years later, at the age of 31, F.H. committed two additional sexual offenses. During the first incident, F.H. accosted an 18-year-old female while she was leaving a bar/restaurant. He punched her in the head, pulled her pants down, knocked her to the ground, and digitally penetrated her vagina. A couple weeks after that incident, F.H. followed a 23-year-old female to her car, and forced the victim into the car, had her remove all of her clothes. He then performed oral sex on her. F.H. then forced the victim to perform oral sex on him by pushing her head onto his penis. The following month, in February, F.H. was arrested for two counts of Sodomy. The offense in 1972 and the two offenses in 1974 resulted in a conviction upon a guilty verdict after trial of two counts of Sodomy in the First Degree, Assault in the First Degree, Attempted Rape in the First Degree, and Forcible Compulsion. F.H.'s qualifying sexual offense is a conviction upon a plea of guilty for Robbery in the Second Degree, Physical Injury Display Firearm, Sexual Abuse in the First Degree, and two counts of Contact by Forcible Compulsion. More recently, in 2006, F.H. went to an 82-year-old female victim's home and physically assaulted her. During the incident, F.H. restrained her with tape and sexually assaulted her by digitally penetrating her vagina twice, pinching her breasts, and attempting to anally penetrate her with his penis. He also

stole $776.00 from her purse. F.H. was sentenced to an aggregate 15-year term of incarceration, with five years of post-release supervision. While incarcerated for the qualifying offense, F.H. received one violent and 6 non-violent disciplinary tickets. F.H. is diagnosed with Antisocial Personality Disorder and presents with elements of Sexual Sadism Disorder.

State v. J.Y. – In 2007, at the age of 21, and while on probation for a Burglary conviction, J.Y. was arrested for Rape in the Second Degree. This was the result for impregnating a 14-year-old female whom he met at a "dance place." Shortly after meeting her, they engaged in sexual activity and he eventually moved in with her and her mother. J.Y. was sentenced to six months incarceration followed by three-years of probation and was ordered to stay away from the victim. J.Y. confirmed that he knew the victim was 14-years-old and affirmed that they had sexual relations twice. Moreover, and despite the order of protection, J.Y. continued this relationship and tried to hide it from his probation officer. One year later, J.Y. again impregnated the same victim. J.Y. continued contact with the victim over the internet and through three-way calls with the victim's friends. He was arrested for Rape in the Third Degree and upon a plea of guilty was sentenced to one-year incarceration, a $1,000 fine, and an order of protection for the victim. Both children were subject to DNA testing and confirmed that J.Y. is the biological father of the victim's children. J.Y.'s third offense occurred at the age of 24, in 2010, when had a 16-year-old girl perform oral sex on him. The victim lived with one of J.Y.'s friends and shortly after the offense occurred, both J.Y. and the victim moved in together. Once they lived together, J.Y. and the 16-year-old victim had sexual intercourse approximately 25 times. This offense resulted in an arrest for Criminal Sexual Act in the Third Degree. Upon a plea of guilty, J.Y. was sentenced to three-years of incarceration and five-years post release supervision, along with an order of protection. J.Y.'s qualifying offense is for a conviction of Predatory Sex Assault Against a Child, Criminal Sexual Act in the First Degree, and Sexual Abuse in the First Degree. He was sentenced to an indeterminate three-years to life term of incarceration. This conviction arose out of an event that occurred in 2013. During this offense, J.Y.'s father drove his niece (the victim) and J.Y. to their aunt's house, but when they arrived no one was home. J.Y. then proceeded to forcibly engage in sexual intercourse with his 12-year-old female cousin. J.Y. is diagnosed with Other Specified Paraphilic Disorder, Hebephilia, Sexually Attracted to Females; Intellectual Disability; Antisocial Personality Disorder; Alcohol Use Disorder; and Cannabis Use Disorder.

State v. L.J. – L.J.'s committed his first two sexual offenses between the ages of 15–16 years old. During his first offense, L.J. robbed and sexually assaulted a young female. During the second offense, L.J. vaginally raped a pubescent girl. He was adjudicated as a juvenile delinquent for both of these offenses and sent to a Division of Youth Facility. The second sexual offense occurred within approximately one month after he was adjudicated for the first sexual offense. While in the custody of the Division of Youth, and on a field trip sanctioned by the Division of Youth, L.J. lured a 12-year-old female into a basement, and vaginally raped her at knife point. L.J. committed this sexual offense approximately two months after his adjudication for his second sexual offense that occurred in 1976. He was adjudicated as a youthful offender and was sentenced to four years' incarceration. After being incarcerated for three years for his third sexual offense, L.J. was released to parole on March 13, 1979. Within 10 months of being released, between the dates of January 25, 1980 through May 7, 1980, L.J. raped 7 female strangers between the ages of 11 and 16 years old. He used a knife in 6 of the 7 offenses and lured them with the offer of a free bicycle. He was convicted and served 10 years' incarceration.

L.J. was released to sex offender specific parole on September 21, 1990, and the first of the five rapes of the qualifying sexual offense spree occurred only 24 days after the L.J.'s release from incarceration. L.J. threatened, forcibly raped, and orally sodomized four women ages 20–72 years old, as well as a 12-year-old female child. He vaginally raped all five victims, sodomized three of the victims, and anally raped two of the five victims. All five of the rapes occurred within a three-month period. Following his arrest, L.J. pled guilty to four counts of Rape in the First Degree, and one count of Sodomy in the First Degree, all B level felony offenses and was sentenced to 12 1/2–25 years indeterminant along with 11–23 years indeterminant concurrent. During his incarceration, L.J. received 9 Tier II Disciplinary Tickets and 2 Violent Tickets for Fighting. L.J. has a history of non-compliance with community supervision as he was on sex offender specific parole when he committed almost all of his 15 sexual offenses. He is diagnosed with Other Specified Trauma and Stressor Related Disorder (Posttraumatic Stress Like Disorder without Alterations in Arousal and Reactivity Associated with the Traumatic Event).

State v. T.N. – T.N.'s sexual offense history began at age 22 when he was working at the YMCA. T.N. sexually molested two 9-year-old boys at the YMCA by rubbing their penises and making them touch his. He pled guilty to one count of Attempted Sexual Abuse in the First Degree on January 23, 1979 and was sentenced to 90 days in jail. He was next arrested, for a sexual offense, on September 20, 1989 for crimes committed during the period of May through November of 1988 when he was 32 years old. T.N. sexually assaulted two 12-year-old boys by fondling their penises over and under their clothes, kissing them about the head and body, rubbing their penises and buttocks, showing them pornography, masturbating by rubbing himself against the boys, and forcing at least one of the boys to perform oral sex on him. He took his case to trial, by bench, and was convicted of 3 counts of Criminal Sexual Act Second Degree, Sexual Abuse Second Degree, and Attempted Criminal Sexual Act in the Second Degree. On September 28, 1990, he was sentenced to a total of 5 to 10 years and was released to parole on May 17, 1996. On June 23, 1998, T.N. was arrested for Attempted Sodomy: Intercourse Forcible Compulsion (four counts), Sexual Abuse in the First Degree: Forcible Compulsion (11 counts), Sexual Abuse First Degree: Individual Less than 11 Years old (10 counts) and Endangering the Welfare of a Child (25 counts) after sexually abusing two brothers ages 10 and 13 years old. Notably, at the time of the crimes, T.N. was on parole from his 1989 sex offense conviction and had been in the community just over two years when he was arrested. T.N. met the boys during their summer break in June of 1998, when they were staying with their grandparents, who T.N. knew. He asked the grandparents if he could get the boys into a basketball camp. During a 10-day period, he picked the boys up every morning for "camp." Instead, T.N. took them to his residence, and returned them to their grandparents around seven in the evening. During the qualifying offense, T.N. played pornography on several occasions, fondled both boys' penises/buttocks, kissed them and masturbated each of them. On at least one occasion, he performed oral sex on the 13-year-old victim and anally penetrated him. Following a jury trial, he was convicted of Sexual Abuse in the First Degree (two counts), Criminal Sexual Act Second Degree (two counts), Sexual Abuse Second Degree (six counts) and Endangering the Welfare of a Child (two counts). T.N. was sentenced to a term of 19 to 21 years in total for each of the convicted counts. During his incarceration, T.N. received 5 tier III and 14 tier II infractions. One of the disciplinary tickets was for exposure of his private parts (1989) and another one was for performing fellatio on another inmate (1992). He also failed to adequately seek employment by

routinely feigning illness or injury and has a history of Bench Warrants for failing to appear in court. T.N. is diagnosed with Pedophilic Disorder, Non-Exclusive Type, Sexually Attracted to Males, Antisocial Personality Disorder, Narcissistic Personality Disorder, Other Specified Personality Disorder: Schizotypal Features, and Unspecified Neurocognitive Disorder (provisional).

State v. S.C. – S.C.'s sexual offense history began at the age of 19, in 1997, when he was convicted of Sexual Abuse in the First Degree and Sexual Contact with Individual Less Than 11 years old. These convictions were the result of S.C. rubbing his exposed penis on his male cousin's clothed buttocks on approximately 9 occasions after which he would immediately go to a private place to masturbate. He was sentenced to 1 to 3 years' incarceration. At the age of 23, S.C. was convicted upon a plea of guilty to Public Lewdness and sentenced to one-year of probation. S.C.'s conduct leading to this plea consisted of masturbating in a car on the side of the street while watching two nine-year old boys playing outside. He admitted to publicly masturbating on multiple occasions prior to being caught. His next offense was at the age of 27 when he was convicted of Criminal Possession of a Sexual Performance by a Child Less than 16 years of Age. He was sentenced to 18 months to 3 years of incarceration. This was the result of a home visit by probation for a sex offender registry violation. While inspecting the home, his probation officer found S.C. to be in possession of three child pornography videos on his home computer. S.C. showed signs of being unable to appreciate the offense despite having been enrolled in a community based sexual offender program. In 2011 at the age of 32, S.C. was convicted upon a plea of guilty for a misdemeanor crime of Acting in a Manner Injurious to a Child less than 17 years of age and sentenced to nine months of incarceration. This plea arose because S.C. was again masturbating in public, a park, watching minor children play. S.C. has 3 non-sexually based criminal offenses. He violated the Sex Offender Registry for Failure to Report Change Address/Status one of which was declined prosecution and the other which he was convicted of and sentenced to 60 days of incarceration and three years of probation. Additionally, in May of 2005 S.C. was convicted of Attempted Criminal Mischief: Intent to Damage Property and Operator Leaves the Scene of Accident and was sentenced to two 65-day terms of incarceration. While incarcerated, he violated the rules of Prison Based Sex Offender Treatment Program for attempting to grab a peer's buttocks. S.C. is diagnosed with Hebephilic Disorder, Pedophilic Disorder- Sexually Attracted to Males, Frotteuristic Disorder- In a Controlled Environment (Provisional), and Relevant of Hypersexuality- In a Controlled Environment. S.C. has been found to be in the well above average risk category to reoffend and has not successfully completed sex offender treatment programs.

State v. L.F. – L.F. began committing sexual offenses at the age of 12 when he was arrested and charged with Criminal Sexual Act in the First Degree. He was sexually abusing his three-year-old foster brother on at least two known occasions. L.F. was adjudicated as a juvenile delinquent for Attempted Sexual Abuse in the First Degree and placed in an Office of Children and Family Services Facility for 18 months. This placement was extended and L.F. was transferred to several different residential treatment facilities for behavioral problems until he "maxed out" at the age of 18. L.F. committed the qualifying offense at the age of 19. He was convicted by plea of guilty to one count of Sexual Act in the First Degree in full satisfaction of Criminal Sexual Act in the First Degree and Predatory Sexual Assault Against a Child. This was the result of sodomizing a 7-year-old boy known to L.F. who was staying overnight at L.F.'s 16-year-old girlfriend's house

where he reportedly lived. He was sentenced to 7 years' incarceration and 10 years of post-release supervision. L.F. has a history of disciplinary issues during incarceration. He obtained 18 Tier II disciplinary tickets (including for violent conduct and fighting) and one Tier III ticket for a sex offense. He is diagnosed with Pedophilic Disorder, Nonexclusive Type, Sexually Attracted to Males and Females. He is also diagnosed with Borderline Personality Disorder, with Antisocial Traits.

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 March 31, 2020, 486 dangerous sex offenders with mental abnormalities are being civilly managed. Of that, 351 are being treated in a secure treatment facility, while 135 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 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.*