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SEX OFFENDER MANAGEMENT BUREAU

A Report On The Sex Offender Management Treatment Act

April 1, 2021 to March 31, 2022

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INTRODUCTION

In passing the Sex Offender Management and Treatment Act of 2007 (SOMTA), the New York State Legislature recognized that sex offenders pose a danger to society. [1] Finding that some sex offenders have mental abnormalities that predispose them to engage in repeated sex offenses, the Legislature amended New York's Mental Hygiene Law, creating article 10, as opposed to amending the criminal laws.[2] The Legislature endeavored to create a comprehensive system which protects society, supervises offenders, manages their behavior to ensure they have access to proper treatment, and reduces recidivism.[3]

The legislature found that the most dangerous sex offenders need to be confined by civil process to provide long-term specialized treatment and to protect the public from their recidivistic conduct.[4] It also found that for other sex offenders, effective and appropriate treatment can be provided on an outpatient basis under a regimen of strict and intensive outpatient supervision.[5]

In response to the enactment of SOMTA, the 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 article10 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 article10 and ensure public safety.

[1] See Mental Hygiene Law (MHL) §10.01 (a) – Chapter 27 of the Consolidated Laws: Title B - Mental Health Act, Article 10 - Sex Offenders Requiring Civil Commitment or Supervision; and see also the Sex Offender Management and Treatment Act (SOMTA), ch. 7, 2007 N.Y. Laws 108, effective April 13, 2007.
[2] See MHL §10.01 (a-b).
[3] See MHL §10.01 (d).
[4] See MHL §10.01 (b).
[5] See MHL §10.01 (c).

This report provides an overview of the application of SOMTA since its inception. Part one, "The Civil Management Process," explains how convicted sex offenders are screened, evaluated, and referred for civil management, as well as how the subsequent legal process works. Part two, "Civil Management After 15 Years," provides updated statistics and case data that are current as of March 31, 2022. Part three, "Significant Legal Developments," highlights the most significant decisions rendered in article10 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

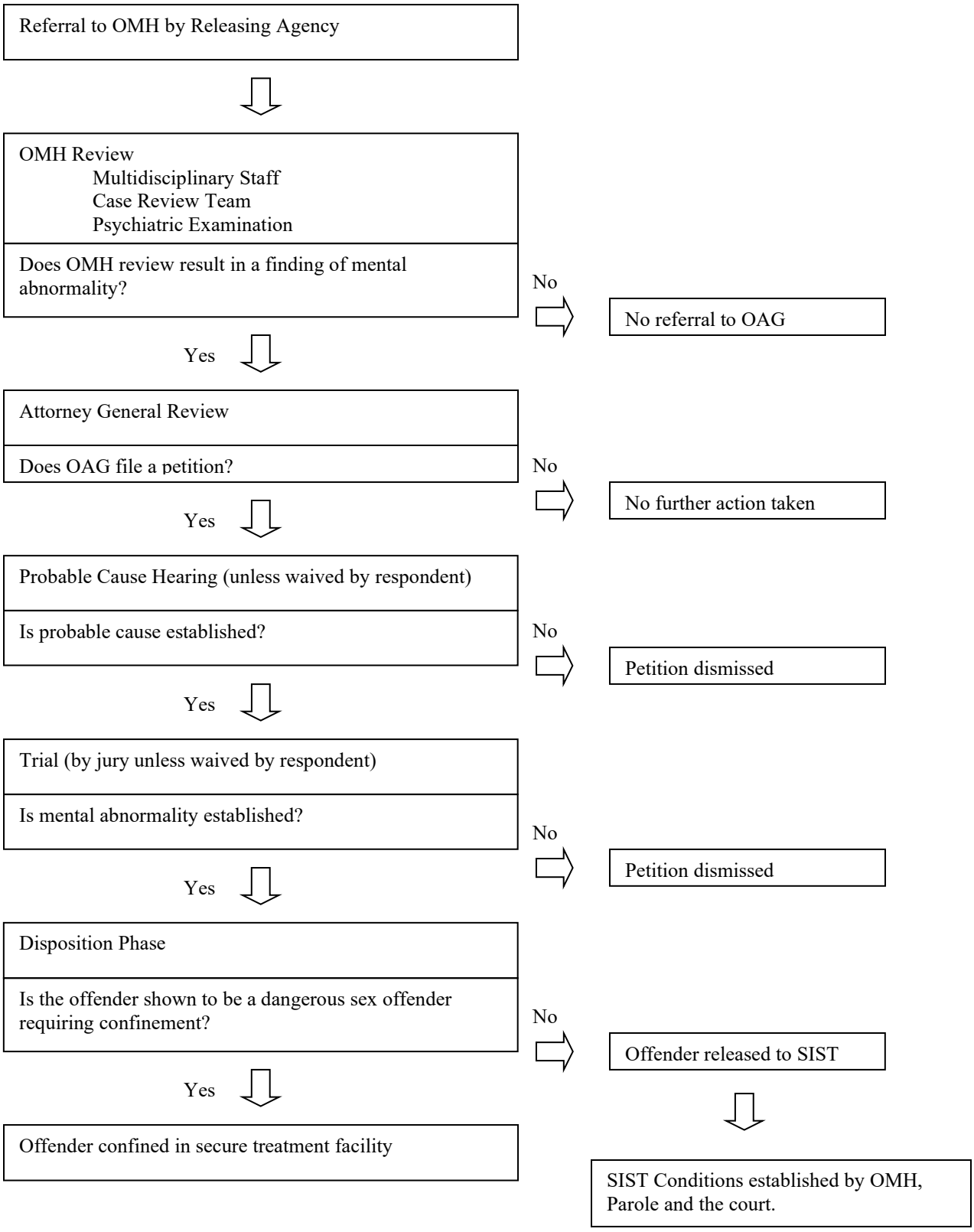
[6] MHL §§10.05, 10.03(a),(q),(g) and (i).

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 article10 contemplates two distinct dispositional outcomes: civil confinement or SIST. The modality of treatment an offender receives depends upon whether he or she has such a strong predisposition to commit sex offenses, and such an inability to control their behavior, that he or she is likely to be a danger to others and commit sex offenses if not confined to a secure treatment facility.[7] [8] The final disposition is made by the court after a hearing on dangerousness requiring confinement. If the court does not find dangerousness requiring confinement, it is required to find the offender appropriate for SIST in the community.[9]

Third, civil management is part of a comprehensive system designed to protect the public, reduce recidivism, and ensure offenders have access to proper treatment. The legislature expressly identified the need to protect the public from a sex offender's recidivistic conduct. Prior to SOMTA, a detained sex offender who suffered from what is now defined as a mental abnormality would often be paroled from prison into the community under standard supervision conditions or released with no supervision at all, and in either case, the offender would not receive treatment specific to his 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 OMH and the OAG.[11] The 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 psychiatric 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 for civil management.[14]

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

In practice, the actual time in which the OAG receives OMH's determination is much less. In 2007, the actual average time between the OAG's receipt of such notification and the offender's release date was 4 days; in 2008 it was 16 days; in 2009 it was 34 days; in 2010 it was 15 days; in 2011 it was 12 days; in 2012 it was 11 days; in 2013 it was 8 days; in 2014 it was 12 days; in 2015 it was 16 days; in 2016 it was 16 days; in 2017 it was 9 days; in 2018 it was 12 days; in 2019 it was 22.5 calendar days; in 2020 it was 14 days; in 2021 it was 11 days, and in 2022 it was 18 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 in 2007, and though it slightly increased in, or about, the 2013 time-period, it has now leveled off.

In the 2007-2008 fiscal year, OMH referred 134 cases to the OAG for filing a civil management proceeding. In 2008-2009 OMH referred 119 cases, in 2009-2010, there were 65 cases referred; in 2010-2011 65 cases; in 2011-2012, 34 cases; in 2012-2013, 99 cases; 2013-2014, 84 cases; in 2014 - 2015, 56 cases; in 2015-2016, 51 cases; in 2016-2017, 49 cases; in 2017-2018, 44 cases; in 2018-2019, 97 cases; in 2019-2020, 45 cases; in 2020-2021, 45 cases; and in 2021-2022, 52 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 on behalf of the State of New York by the OAG in the supreme or county court where the sex offender is located.[15] At the time a petition is filed, the sex offender is generally

[15] MHL §10.06(a).

"located" in a state prison responsible for his or her custody. Therefore, the petition is typically filed in the county within which the prison is located. Once a petition is filed, the offender is entitled to an attorney. Most sex offenders are represented by Mental Hygiene Legal Service (MHLS), a state-funded agency. If a court determines MHLS cannot represent the offender, it will appoint an attorney eligible for appointment pursuant to County Law article18-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 to the county of the underlying sex offense, the OAG may bring a motion for such transfer.[18]

Shortly after the petition is filed, a hearing is held to determine whether there is probable cause to believe respondent[19] is a sex offender requiring civil management.[20] If the court finds probable cause exists, the offender is transferred to an OMH secure treatment facility pending trial. The appellate courts have determined that a finding of probable cause is sufficient to hold a respondent in a secure treatment facility pending final disposition of the matter. In lieu of transfer to a secure treatment facility, an offender may request to remain in prison under the custody of DOCCS pending trial.[21] If the court determines that probable cause has not been established, it will dismiss the petition and the offender will be released in accordance with other provisions of article10. [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

[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*.

"detained sex offender" who suffers from a "mental abnormality."[23] The respondent is entitled to a twelve-person jury trial, but may waive the jury and proceed with a trial before the judge alone.[24]

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

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

The jury, or judge if the jury is waived, must find by unanimous verdict that the State of New York met its burden that the respondent is a "detained sex offender" who suffers from a "mental abnormality." If a jury does not reach a unanimous verdict, the sex offender will remain in custody and a second trial will be held. If the jury in the second trial is unable to render a unanimous verdict, the petition is dismissed.[28] On the other hand, if a unanimous jury , or 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

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

civil management trial is known as the dispositional phase and the court alone must consider whether the sex offender is a "dangerous sex offender requiring confinement" (DSORC) in a secure treatment facility or a sex offender requiring strict and intensive supervision and treatment (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 article10, some sex offenders have mental abnormalities that predispose them to engage in repeated sex offenses and it is those offenders who

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

may require long-term specialized treatment to address their risk to re-offend. These are the offenders that a court determines to be "dangerous sex offenders requiring confinement" and in need of treatment in a secure treatment facility to protect the public from their recidivistic conduct.[34] Generally, a respondent found to be a dangerous sex offender requiring confinement is transferred to either Oakview in Marcy, New York, or Bridgeview in Ogdensburg, New York.

A determination that a respondent is found to be a dangerous sex offender requiring confinement does not mean the offender will serve the rest of his or her life in a secure treatment facility. An offender may at any time petition the court for discharge and/or release to the community under a regimen of SIST. While the court may hold an evidentiary hearing, it also has the authority to deny the petition if found to be frivolous or insufficient for a re-examination at that time.[35]

Furthermore, and by statute, each dangerous sex offender requiring confinement is examined once a year for evaluation of their mental condition to determine whether they are currently a dangerous sex offender requiring confinement.[36] Each such 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]

At the annual review hearing, the OAG calls the OMH examiner to testify at the hearing and the respondent often presents independent expert testimony on his or her behalf. These safeguards ensure the offender's legal rights are protected and that civil confinement decisions

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

withstand legal scrutiny. If the State fails to prove that the offender still suffers from a mental abnormality, the court will order the offenders release from civil management. Assuming the offender's mental abnormality is established, the court has two option. If the court finds by clear and convincing evidence that the respondent is currently a dangerous sex offender requiring confinement, it will continue respondent's confinement. If it finds that respondent is a sex offender requiring strict and intensive supervision and treatment in the community, it will issue an order providing for the discharge of respondent into the community on a regimen of SIST.[38]

2. Strict and Intensive Supervision and Treatment (SIST)

The legislative findings further provide that 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, restrictions from the internet and social media platforms, specification of housing and residence, and prohibition of contact with identified past victims or individuals that may fall within the same category of the offender's established victim pool.[40]

A specific course of treatment in the community is also established after consulting with the psychiatrist, psychologist, or other professional primarily treating the offender.[41] Offenders placed into the community on SIST are required to attend sex offender treatment programs and often have to participate in anger management, alcohol abuse, or substance abuse counseling. Each

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

case is examined on an individual basis and the treatment plan is tailored to that individual's needs. Strict and intensive supervision is intended only for those sex offenders who can live in the community without placing the public at risk of further harm.

Specially trained parole officers employed by DOCCS are responsible for the supervision of sex offenders placed into the community on SIST. These parole officers carry a greatly reduced caseload ratio of 10:1, whereas other sex offenders (not subject to civil management) and certain mentally ill persons are supervised at a ratio of 25:1. In contrast, 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

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

commitment of the sex offender into a secure treatment facility. If the court finds the OAG has not met the threshold elements to establish that the respondent is a dangerous sex offender requiring confinement, it will return the offender to the community under the previous, or a modified, order of SIST conditions.[46] Not all violations of SIST conditions will result in confinement.

Unlike sex offenders in a secure treatment facility who are entitled to annual review, the offenders on SIST are entitled to review every two years. The offender may petition every two years for modification of the terms and conditions of SIST or for termination of SIST supervision.[47] Upon receipt of a petition for modification or termination, the court may hold a 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 of SIST supervision, the State of New York has the burden to show by clear and convincing evidence that the respondent remains a dangerous sex offender requiring civil management. If the State of New York does not sustain its burden, the court will order respondent discharged from SIST and released from civil management supervision.[49] From April 13, 2007 to March 31, 2022, 227 offenders who had been placed on SIST have had their SIST conditions terminated and have been discharged from civil management supervision.

As time passes, it is expected that the number of offenders on SIST will grow considerably because of (1) the number of offenders that are released to SIST after trial, but also because (2) every time an offender is released from a secure treatment facility, the court has

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

found he or she still suffers from a mental abnormality and releases him or her to SIST.

II. CIVIL MANAGEMENT AFTER 15 YEARS

A. REFERRALS AND CASES FILED

In the fifteen years since Mental Hygiene Law article10 became law, OMH has reviewed 24,905 sex offenders to determine whether they are appropriate for civil management referral to the OAG. Of the cases reviewed, OMH has referred a total of 1,043 sex offenders for civil management. Of the 1,043 cases referred, 1,022 have resulted in the OAG filing an article10 Petition. This includes what is considered the "Harkavy"[50] cases addressed in previous reports.

B. PROBABLE CAUSE HEARINGS

As referenced above, OMH has referred a total of 1,043 sex offenders for civil management to the OAG.[51] The OAG has filed 1,022 petitions and conducted 973 probable cause hearings. The courts found probable cause to believe the offender suffered from a mental abnormality and needed civil management 967 times out of the 973 hearings held to date.

C. MENTAL ABNORMALITY TRIALS

Since SOMTA's inception in 2007, 504 matters have proceeded to trial. Of the 504 trials, the jury or judge rendered a verdict that 426 of those sex offenders suffered from a mental abnormality and 78 were adjudicated to have no mental abnormality.

[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 article9 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. article10.

[51] These referrals include the Harkavy cases.

D. DISPOSITIONS

1. Dangerous Sex Offender Requiring Confinement (DSORC)

From April 13, 2007, to March 31, 2022, a total of 919 offenders have been found to be dangerous sex offenders requiring treatment in a secure OMH facility.

2. Strict and Intensive Supervision and Treatment (SIST)

From April 13, 2007 to March 31, 2022, a total of 472 offenders were placed on a regimen of SIST after a finding that they suffer from a mental abnormality.

3. SIST Violations

Presently, 168 offenders are currently on a regimen of SIST. The information below reflects the total number of offenders placed on SIST initially after trial, as well as those placed on SIST from 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 DOCCS policy that it would file a violation as to a Respondent if a Respondent violated any condition, e.g., late curfew, has changed.

In addition to the Court receiving quarterly reports on each offender's status on SIST, DOCCS and/or OMH may, as needed, submit Incident Reports, which are issued to inform the Court of a Respondent's concerning behaviors. Upon receipt of a quarterly report and/or Incident Report, the Court may schedule Compliance Calendars, at which the Respondent is brought to Court in an attempt to address and correct the behavior before it escalates and results in the filing of a violation. This new policy has led to less violations and to the overall success of Respondents

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. Some offenders have waived their right to a hearing and consented to continued treatment in the facility. However, since 2007, over 856 dangerous sex offenders have had an annual review hearing held by the court. In the current report period, April 1, 2021 to March 31, 2022, there have been 110 annual review hearings.

F. SIST MODIFICATION OR TERMINATION HEARINGS

Since 2007, 227 offenders have been released from SIST supervision altogether and are either being supervised under their standard conditions of parole or have reached their maximum expiration date for parole and are unsupervised in the community subject to the requirements of the Sex Offender Registration Act (SORA).

III. SIGNIFICANT LEGAL DEVELOPMENTS

In keeping with recent trends, between April 1, 2021, and March 31, 2022, the courts have decided a number of significant cases, each having a dynamic impact on article10 litigation.

A. FEDERAL CASES

There were no notable cases decided at the Federal level during this review period.

B. NEW YORK STATE COURT OF APPEALS

The Court of Appeals did not decide any MHL article 10 cases during this review period.

C. THE NEW YORK STATE APPELLATE DIVISIONS

FIRST DEPARTMENT DECISIONS:

1. No Need to Defer SORA Classification Pending Article 10 Civil Management.

Decided February 3, 2022, in People v. Boone, 202 A.D.3d 449, the Appellate Division, First Department held that the trial court "providently exercised its discretion in declining to grant an indefinite adjournment of defendant's sex offender classification [SORA] hearing based on the pendency of an article 10 civil commitment proceeding." The decision noted that "the possibility that the [trial] court would be in a better position to decide the risk assessment issue at the end of defendant's civil commitment, if any, is speculative."

2. Proper to Deny Delay of SORA Classification Pending Article 10 Proceedings.

Decided March 10, 2022, in People v. Cotto, 203 A.D.3d 492, the First Department reaffirmed prior precedent that upheld as proper the Supreme Court's exercise of discretion in declining to delay or defer a defendant's Sex Offender Registration Act (SORA) adjudication pending the outcome of his MHL article 10 proceeding. The Court noted that the timing of the hearing was consistent with statute and due process.

SECOND DEPARTMENT DECISIONS:

3. SIST Revoked for Violation of Conditions of Release.

Decided July 14, 2021, in Matter of New York v. Geoffrey P., 196 A.D.3d 588, the Appellate Division, Second Department affirmed the Supreme Court's determination that the

respondent was a dangerous sex offender requiring civil confinement. Respondent was convicted of a sex offense and in 2011 was found to be a dangerous sex offender requiring confinement in a secure treatment facility. He was later released onto a regimen of strict and intensive supervision and treatment (SIST) in 2017. Respondent violated the conditions of his SIST release by engaging in sexual touching with an 18-year-old co-resident of his rooming house without the co-resident's consent.

The Court heard from both the State's expert and Geoffrey P's expert. The State expert opined that the respondent suffered from both pedophilic disorder and antisocial personality disorder, the combination of which predisposes the respondent to commit sex offenses. The expert further reported that Geoffrey P.'s misconduct while on SIST against the co-resident of the rooming house where they both resided, with the attendant high risk of detection, along with a lack of awareness as to his offending cycle, demonstrated that the respondent cannot control himself. Additionally, the Geoffrey P. scored in the "well above average" range for reoffending compared to the average sex offender, and did not have a relapse prevention plan.

The Second Department found that the Supreme Court's decision to credit the testimony of the State's expert witness instead of the respondent's was supported by the record. Contrary to Geoffrey P.'s contention, the evidence presented was legally sufficient to establish that the respondent is a dangerous sex offender requiring civil confinement. The Court therefore affirmed the SIST revocation and order of confinement.

4. No Merit to Multiple Contentions on Appeal, Order for Confinement Upheld.

Decided November 3, 2021, in Matter of State of New York v. Benjamin M., 199 A.D.3d 690, the Second Department upheld the trial court order for civil confinement upon a non-jury verdict finding mental abnormality and a dispositional hearing finding that the respondent was a

dangerous sex offender requiring confinement. Benjamin M. appealed on multiple grounds. In affirming the trial court, the Second Department found all of the respondent's contentions meritless.

First, the Court determined that the State presented clear and convincing evidence that the respondent suffers from a mental abnormality. Though the respondent's expert witness disagreed, the Supreme Court's decision to credit the State's expert witness over that of the respondent's was supported by the record.

Second, the Court found there was clear and convincing evidence to support the trial court's finding at the dispositional hearing that Benjamin M. is a dangerous sex offender requiring civil confinement, in so far as the evidence showed that he failed to successfully engage in sex offender treatment, had no relapse prevention plan, and had demonstrated ongoing impulsivity by leaving intimidating voicemails for the State's attorney and a psychiatrist working for the Office of Mental Health during the proceedings.

Third, the Court upheld the trial court's pretrial ruling that certain hearsay evidence would be admissible at trial, since, contrary to respondent's contention, the Sixth Amendment right of confrontation does not apply to this civil proceeding.

Fourth, the Court upheld the Supreme Court determination permitting a witness to testify regarding the sexual offenses the respondent allegedly committed against her, as the testimony was relevant to the issue of mental abnormality and its probative value outweighed its prejudicial impact. Additionally, the court "providently exercised its discretion" in denying that branch of Benjamin M.'s motion seeking to depose that witness, since "he failed to demonstrate the need for such relief."

Fifth, the respondent failed to show that the Justice presiding over the nonjury trial

should have recused himself. After examining the record, the Appellate Division found "no suggestion of any judicial bias that would warrant recusal, reversal, and a new trial."

Sixth, Benjamin M.'s contention that he was improperly excluded from two sidebar conferences at the trial was meritless, since neither conference was about factual matters that would have been useful in advancing the respondent's or countering the State's position and therefore, did not constitute a material stage in the proceeding.

Finally, the Court found nothing in the record to suggest the respondent was deprived of the effective assistance of counsel. Finding no merit to any of Benjamin M.'s contentions, the Court affirmed the trial court's order for confinement.

5. Leave to Amend Petition Prior to PC Hearing Upheld; Sufficient Trial Evidence of Metal Abnormality.

Decided December 29, 2021, in Matter of State of New York v. Christian R., 200 A.D.3d 1046, the Appellate Division, Second Department affirmed the Supreme Court's determination that the respondent suffers from a mental abnormality and is a sex offender requiring SIST. The Court found that the trial court did not err in granting the State's cross-motion which sought leave to file an amended petition after the respondent moved to dismiss, prior to a probable cause hearing, since the allegations in the amended petition were not "palpably insufficient or patently devoid of merit, and there was no prejudice or surprise" to Christian R. The amended petition contained "sufficient statements alleging facts of an evidentiary character tending to support the allegation that [Christian R.] is a sex offender requiring civil management." The Appellate Division also determined that the Supreme Court properly denied respondent's motion to dismiss as the allegations in the amended petition were sufficient.. Additionally, there was legally sufficient evidence at trial to establish that the respondent suffers from a mental abnormality and the Supreme Court's determination was not contrary to the weight of the

evidence. Thus, the trial court's conclusion that the respondent suffers from a mental abnormality was warranted by the facts.

THIRD DEPARTMENT DECISIONS:

6. Mental Abnormality Finding Requires SIST or Confinement to STF, Commitment to MHL Article 9 Psychiatric Hospital Not an Option.

Decided January 6, 2022, in Matter of James WW. v. State of New York, 201 A.D.3d 1069, the Third Department affirmed the trial court order for confinement upon respondent's tenth annual review. After the Commissioner of the Office of Mental Health determined that respondent still required confinement, James WW. filed a petition for discharge to a Mental Hygiene Law article 9 psychiatric facility. Respondent did not dispute that he is a dangerous sex offender requiring confinement, but argued that his continued confinement in a secure treatment facility "violated his constitutional right to substantive due process because his psychological problems and deteriorating cognitive condition prevented him from meaningfully engaging in sex offender treatment." After a hearing where two testifying experts agreed that respondent remained a dangerous sex offender requiring confinement, the Supreme Court determined it was statutorily obligated to continue James WW.'s confinement in a secure treatment facility and dismissed the petition.

The Third Department concluded that the respondent's argument failed because, upon the Supreme Court's determination that James WW. suffered from a mental abnormality, it had only two dispositional options: confinement in a secure treatment facility or SIST. The Appellate Division further determined that "There is not, notwithstanding petitioner's desire of one, 'a third dispositional option, i.e., confinement in a Mental Hygiene Law article 9 psychiatric hospital." Additionally, it found the respondent's argument improper because MHL article 10 does not deprive respondents of substantive due process "given [the State's] strong interest in providing

treatment to sex offenders with mental abnormalities and protecting the public from their recidivistic conduct." Thus, the Court affirmed the order confining James WW. to a secure treatment facility.

7. Appeal Moot Upon Offenders Released from Civil Management After Annual Review.

Decided April 15, 2021, in Matter of N.Y. v. Kenneth, 193 A.D.3d 1229, the Third Department determined the issues presented on appeal were rendered moot since the respondent was released from civil confinement after an annual review and is no longer under civil management pursuant to MHL article 10.

8. Offender May Not Personally Examine Victim Witnesses While Proceeding Pro Se.

Decided May 6, 2021, in Matter of N.Y. v. John T., 195 A.D.3d 102, the Third Department vacated the trial court's order permitting the respondent to personally cross-examine two victim witnesses at trial. After respondent was permitted to proceed pro se, the State raised the issue of whether the respondent should be permitted to personally conduct the cross-examinations of his victims. In response, the Supreme Court denied the State's request to preclude John T. from cross-examining the victims, but directed that the witnesses "be permitted to testify by simultaneous two-way video."

In reversing, the Third Department agreed with the State that the Supreme Court did not engage in the proper analysis to resolve the issue of whether the respondent is entitled to personally conduct the cross-examinations of victim witness and, if so, under what circumstances. The Court noted that whether a respondent in an article 10 proceeding possessed a due process right to self-representation is an open question. Nevertheless, in assuming, without deciding, that the respondent has such right, the Court noted that the right to self-representation is not absolute and its scope is determined by applying a balancing test set forth in Mathews v.

Eldridge.[52] That balancing test consists of three factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and third, the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Applying these factors, the Court first found that the private interest at stake (John T.'s liberty) is "significant." However, requiring counsel to conduct the cross-examinations of victim witnesses is unlikely to increase the risk that the respondent is deprived of his liberty interest, and mandating counsel-conducted cross-examinations is only likely to aid, not impair, the proceedings. Lastly, the Court found that the State has a compelling interest in MHL article 10 proceedings, and that victim testimony is necessary in these proceedings, in light of the Court of Appeals 2013 decision in *Floyd Y.*[53] The Third Department agreed with the State that allowing a respondent to personally conduct the cross-examinations of the victim witnesses could "caus[e] the witnesses to back out of testifying or [impose] a 'chilling effect' on their testimony," thereby "thwarting or impairing" the State's ability to meet their burden of proof. Further, the Court acknowledged the State's compelling interest in protecting victim witnesses from additional trauma resulting from John T.'s personal cross-examination. Thus, the three-factor balancing test favored the State's argument that a respondent has no due process right to personally cross-examine witnesses whom he was adjudicated or alleged to have victimized. Thus, a unanimous Third Department vacated the Supreme Court's order and held that, notwithstanding the

[52] See 424 U.S. 319, 335 (1976).
[53] Matter of State of New York v. Floyd Y., 22 NY3d at 110 (2013) (holding in part that instead of admitting basis hearsay through expert testimony, "the better course would have been to require live confrontation of the declarant to ensure the statement's reliability" where a victim's allegations were not fully adjudicated).

respondent's pro se status, the cross-examination of the victim witnesses must be conducted by his standby counsel or other court-appointed counsel.

FOURTH DEPARTMENT DECISIONS:

9. New Trial for Respondent Improperly Denied Request to Proceed Pro Se.

Decided April 30, 2021, in Matter of N.Y. v. Michael M., 193 A.D.3d 1343, the Fourth Department reversed the Supreme Court's order committing respondent to a secure treatment facility and ordered a new trial. Though the Court determined that the State had proved the respondent suffered from a mental abnormality by clear and convincing evidence, it nevertheless agreed with Michael M.'s contention that the Supreme Court erred in denying his request to proceed pro se. The Court found that the respondent had made a "timely and unequivocal request to proceed pro se," and that he had an understanding of the trial court's warnings about the potential consequences of proceeding without counsel. The trial court, however, denied the request only because it thought that respondent "had a good chance of prevailing," yet would lose that chance if the court let the respondent represent himself without an attorney.

The Fourth Department concluded that the trial court's rationale, Michael M.'s lack of legal training and understanding of the law, was not an appropriate basis to deny his pro se request. Quoting the Court of Appeals from its 1993 decision in People v. Ryan, 82 N.Y.2d 497, the Appellate Division stated, "mere ignorance of the law cannot vitiate an effective waiver of counsel as long as the [respondent] was cognizant of the dangers of waiving counsel at the time it was made."

Thus, on the facts of Michael M.'s case, the Fourth Department agreed that the trial court's rationale for denying his pro se request was an error requiring reversal and a new trial.

10. SIST Violation: Sufficient Evidence Supported Confinement; Claimed Ineffective Assistance of Counsel Meritless.

Decided April 30, 2021, in Matter of N.Y. v. Steven A., 193 A.D.3d 1344, the Fourth Department unanimously affirmed the Supreme Court's order revoking respondent's regimen of SIST and committing him to a secure treatment facility.

On appeal, the Steven A. asserted that the State failed to prove by clear and convincing evidence that he is a dangerous sex offender requiring confinement (DSORC). However, the Court found that evidence presented at the SIST revocation hearing established that the State had met its burden. First, the Steven A. scored "well above average" for sexual recidivism and that he had not fully engaged in sex offender treatment. Furthermore, the evidence established that Steven A. had committed multiple SIST violations "that bore on his risk of sexually reoffending," such as possession of a smart phone containing a pornographic video of himself engaging in group sex. There was also evidence of other SIST violations that were not sexual in nature, but which "bore on his risk of recidivism." Consequently, the Court determined that the State had established by clear and convincing evidence that Steven A. is a DSORC.

Steven A. also contended that he was denied effective assistance of counsel during his hearing. He claimed that his counsel was ineffective for allowing his own independent expert to concede that Steven A. suffers from a mental abnormality. In rejecting that contention, the Appellate Court stated that "the issue whether respondent suffers from a mental abnormality was not before the Supreme Court at the SIST revocation hearing," but also could have been part of his attorney's "legitimate strategy." Since it was Steven A.'s burden on appeal to demonstrate the absence of strategic or other legitimate explanations for his attorney's actions, the Court found the ineffective assistance contention meritless.

Finding that respondent's remaining claims did not warrant modification or reversal, the Fourth Department affirmed the Supreme Court's order revoking Steven A.'s regimen of SIST and his commitment to a secure treatment facility.

11. Legally Sufficient Basis for SIST, Order Not Against the Weight of the Evidence.

Decided April 30, 2021, in Matter of Philip Q. v. N.Y., 193 A.D.3d 1385, the Appellate Division, Fourth Department unanimously affirmed the Supreme Court's order subjecting respondent to strict and intensive supervision and treatment (SIST). The Court rejected Phillip Q.'s contentions that the evidence was not legally sufficient to establish that he has a mental abnormality, and that such a determination was against the weight of the evidence.

Upon review of the record before it, the Appellate Division noted that the State's expert opined that the respondent suffers from ASPD, three substance abuse disorders, and possesses a moderate degree of psychopathic traits. The expert also testified regarding the early onset of petitioner's "recurrent and intense" sexual fantasies, the repetitious and chronic nature of his offenses, and that he was scored as a high-risk for recidivism on the assessment instrument. This led the expert to opine that respondent suffers from a mental abnormality. Though Phillip Q.'s expert presented testimony that supported a contrary finding, the Fourth Department stated that the Supreme Court's opportunity and ability to evaluate and weigh and the credibility of conflicting expert testimony is given great deference. In so deferring, the Court unanimously upheld the order for SIST.

12. Annual Review: ASPD and Provisional Diagnosis of Sexual Sadism Sufficient Evidence to Support Mental Abnormality.

Decided June 11, 2021, in Matter of Brandon D. v. N.Y., 195 A.D.3d 1478, the Fourth Department affirmed the trial court's order, entered after an annual review hearing, determining

that respondent is a dangerous sex offender requiring confinement and directing that he remain confined in a secure treatment facility.

Respondent contended that the evidence was legally insufficient to prove that he has a mental abnormality since he was only provisionally diagnosed with sexual sadism disorder and his remaining diagnoses of ASPD, psychopathy, and various substance use disorders are insufficient to support a finding that he is predisposed to sexually offend. Though respondent acknowledged that a provisional diagnosis in combination with other diagnoses can constitute legally sufficient evidence of a mental abnormality, respondent further contended that since neither expert was able to conclude to a reasonable degree of medical certainty that he actually suffers from sexual sadism, the evidence was insufficient to establish mental abnormality.

The Fourth Department rejected these contentions. Though the Court agreed that Brandon D.'s diagnoses alone are insufficient to support a finding of mental abnormality, both petitioner's expert and respondent's expert also opined that he exhibited psychopathic traits, and the State's expert opined that petitioner exhibited at least five behavioral traits of sexual sadism. These additional findings provide a legally sufficient basis for establishing mental abnormality. Furthermore, the Court found that the provisional diagnosis of sexual sadism disorder was properly supported by the record.

Thus, the Court concluded that there is "sufficient evidence of petitioner's diagnosis of ASPD, along with sufficient evidence of other diagnoses and/or conditions, to sustain a finding of mental abnormality," and that such a conclusion is not against the weight of the evidence. Consequently, the trial court's order continuing Brandon D.'s confinement in a secure treatment facility was affirmed.

13. Annual Review: Evidence Sufficient to Order Continued Confinement.

Decided June 17, 2021, in Matter of Clarence H. v. N.Y., 195 A.D.3d 1532, the Fourth Department unanimously affirmed a trial court order entered after an annual review hearing determining that respondent is a dangerous sex offender requiring confinement.

Clarence H. asserted that the evidence at the hearing was insufficient to establish that he has a mental abnormality. The State's expert diagnosed Clarence H. with ASPD and "the condition of psychopathy," and opined that he suffers from a mental abnormality. The Fourth Department found the evidence was legally sufficient to establish the required predisposition prong of a mental abnormality.

Respondent also argued that the Supreme Court's determination that he suffers from a mental abnormality was against the weight of the evidence. The Court found that though the respondent's expert did present testimony at trial that would support a contrary conclusion, "that merely raised a credibility issue for the court to resolve." The Court afforded deference to the weight of the evidence the trial court gave each expert in so resolving their conflicting testimonies.

Finally, Clarence H. contended that the State failed to show that he has "serious difficulty in controlling" his sexual conduct. The Court disagreed based on evidence of his behavior while confined, which included acts of aggression, dominance, and control. Such behaviors relate to his risk to reoffend because the sexual offenses for which he was convicted involved those behaviors. Further, both the State's expert and Clarence H.'s expert testified that he needs sexual offender treatment, but that he failed to complete the recommended programs while confined.

14. ASPD With Psychopathy or ASPD With Narcissistic Traits May Constitute Basis for Mental Abnormality.

Decided July 16, 2021, in Matter of Application for Discharge of Doy S. v. N.Y., 196 A.D.3d 1165, the Fourth Department unanimously reversed on the law the Supreme Court's determination that a combination of antisocial personality disorder (ASPD) with psychopathy or ASPD with narcissistic traits cannot constitute the basis for a finding of mental abnormality. Upon concluding that Doy S. did not suffer from a mental abnormality after his annual review hearing, the trial court ordered his discharge from civil management.

The trial court heard from both the State's expert and Doy S.'s expert. The State expert diagnosed Doy S. with ASPD with narcissistic features and the condition of psychopathy and testified that those diagnoses, along with his enduring hostility towards women, collectively constitute a mental abnormality. The State's expert acknowledged ongoing debate in the scientific community, but opined that the condition of psychopathy is distinct from the diagnosis of ASPD. In contrast, the respondent's expert agreed that Doy S. suffered from ASPD but testified that he had no other conditions in addition to that diagnosis that would constitute a mental abnormality. The expert also opined that psychopathy is simply an extreme variant of ASPD and should not be considered a separate condition.

The Supreme Court therefore determined that: 1) the diagnosis of psychopathy is still only a diagnosis of ASPD alone; and 2) the diagnosis of ASPD with narcissistic features is subsumed by the diagnosis of ASPD. In accordance with the holding from Matter of State of New York v. Donald DD., 24 N.Y.3d 174, that a diagnosis of ASPD by itself is insufficient to support a mental abnormality finding, the Supreme Court, believing that these diagnoses only constituted ASPD, held that the respondent did not suffer from a mental abnormality.

The Fourth Department disagreed and reversed. They found that the trial court failed to resolve the conflict between experts regarding ASPD and psychopathy by weighing their testimony. Instead, the Supreme Court determined that "a finding of ASPD and psychopathy can *never* provide a basis for a finding of mental abnormality," without regard for the facts of the Doy S.'s specific case. However, the Court clarified that the holding from Donald DD. did not state that a diagnosis of ASPD with psychopathy is legally insufficient to support a finding of mental abnormality. Rather, when supported by expert testimony, that diagnosis can be sufficient.

Furthermore, the Fourth Department found that the trial court erred in holding that the diagnosis of ASPD with narcissistic features is subsumed by ASPD, because its conclusion was not based on expert testimony. Instead, "the court substituted its own psychological judgment for that of parties' experts, which was improper."

Upon determining that a combination of ASPD with psychopathy or ASPD with narcissistic traits may in fact constitute the basis for a finding of mental abnormality depending on the specific facts of the case, the Court remitted the matter for a new hearing (before a different judge) on whether the respondent continues to suffer from a mental abnormality and remains a dangerous sex offender requiring confinement.

In light of this decision, on the same day, the Court unanimously dismissed Doy S.'s subsequent appeal challenging an amended order which extended the period of a stay of his release, which was granted while the above appeal was pending. See Matter of Application for Discharge of Doy S. v. N.Y., 196 A.D.3d 1168.

15. SIST Revocation Reversed Where Proof Showed Struggle, Not Inability to Control.

Decided January 28, 2022, in Matter of State of N.Y. v. Scott M., 201 A.D.3d 1356, the

Appellate Division, Fourth Department unanimously reversed the Supreme Court's decision revoking respondent's regimen of SIST and confining him to a secure treatment facility. The Court agreed with Scott M.'s contention that the State failed to meet its burden of proving that he is "presently unable to control his sexual conduct' and is thus a dangerous sex offender requiring confinement."

The Court found that the record did not establish that Scott M. touched an unknown adult female without her knowledge on an unknown date while on SIST – only that there was a possibility that such a violation might have happened. The other SIST violation allegations against him were "technical missteps" that did not convey an "inability" to control sexual misconduct," the Court said. Furthermore, the State's expert's report "failed to meaningfully address respondent's successful integration into the community while on SIST." Though the State established that Scott M. "was struggling with his sexual urges," they failed to prove that he was unable to control himself. Such a showing was legally insufficient to justify the respondent's confinement.

16. Order Continuing Confinement Unanimously Affirmed

Decided January 28, 2022, in Matter of Thomas R. v. State of New York, 201 A.D.3d 1304, the Appellate Division, Fourth Department unanimously affirmed, without discussion, the Supreme Court's order continuing the confinement of respondent in a secure treatment facility.

17. Appeal of Order Committing Respondent to Secure Treatment Facility Unanimously Dismissed

Decided February 4, 2022, in Matter of State of New York v. Jack D., 202 A.D.3d 1447, the Appellate Division, Fourth Department unanimously dismissed, without discussion, Jack D.'s appeal of the Supreme Court's order committing him to a secure treatment facility.

18. Habeas Corpus Petition Denied, Article 10 Proceeding is Proper Forum to Challenge Validity of Civil Management Petition.

Decided March 11, 2022, in People v. Mcculloch, 203 A.D.3d 1552, the Appellate Division, Fourth Department unanimously affirmed the Supreme Court's order denying Mcculloch's petition seeking habeas corpus relief with respect to his civil commitment to Central New York Psychiatric Center pursuant to MHL article 10. The Court also dismissed respondent's appeal from an order denying his motion for leave to reargue his petition.

Respondent's first appeal challenged the initiation of an MHL article 10 proceeding against him and the use of certain evidence within the proceeding. The Court rejected the habeas challenge and agreed with the Supreme Court that "the article 10 proceeding itself is the proper forum for [respondent] to challenge the validity of the . . . underlying article 10 petition." Therefore, habeas corpus relief was not proper in this case.

Second, the Court dismissed respondent's additional appeal of an order denying his motion for leave to reargue his petition because "no appeal lies" from such an order. Accordingly, the Fourth department unanimously affirmed the order of the Supreme Court.

19. Appeal of Order Continuing Confinement Unanimously Affirmed.

Decided March 11, 2022, in Matter of Edward T. v. State of New York, 203 A.D.3d 1580, the Fourth Department unanimously affirmed the decision of the Supreme Court continuing the respondent's confinement to a secure treatment facility.

D. TRIAL COURT DECISIONS:

1. Respondent Convicted of Related Offenses Qualifies as a Detained Sex Offender.

Decided June 17, 2021, in Matter of N.Y. v. Lance S., 72 Misc. 3d 798, the Supreme

Court of New York County concluded that the State's petition for sex offender civil management under MHL article 10 was not subject to dismissal because, despite respondent's contention, he properly fell under the definition of a "Detained Sex Offender" as defined by the statute.

Respondent was convicted of a sex offense in 2004 and placed on post-release supervision in 2012. In 2013, respondent was convicted of Assault in the Second Degree and sentenced to a term of imprisonment. Upon his imminent release, the State filed an MHL article 10 petition seeking respondent's civil management. Respondent asserted that since the crime he was sentenced for when the State filed the petition was not a sex offense, he did not qualify as a "Detained Sex Offender," which is a prerequisite for civil management.

The Supreme Court disagreed. Though the offenses at hand were not sex offenses, it noted that the definition of a "Detained Sex Offender" under MHL article 10 includes a person who has been convicted of a sex offense and is currently serving a sentence for such an offense or a related offense. Related offenses include any offenses "which are the bases of the orders of commitment received by the department of correctional services in connection with an inmate's current term of incarceration." The Court interpreted this to mean that where a respondent was previously convicted of a qualifying sex offense and is subject to orders of commitment to DOCCS for any crime, they may be subject to civil management.

The Supreme Court found that the respondent's sentence to a term of incarceration for the assault and unlawful imprisonment qualify as "related offenses," concluding that "the [respondent's] conviction for Assault in the Second Degree meets that test." Thus, the Court found that the respondent falls within the statutory definition of a "Detained Sex Offender" and can be subjected to civil management.

2. SIST Violation: Delay in Filing SIST Revocation Petition Proper Given Timing of Dual Offender's Incarceration on Parole Violation.

Decided August 3, 2021, in Matter of N.Y. v. Joseph CC, 73 Misc. 3d 299, the Supreme Court of Fulton County concluded that though the State did not file a SIST petition alleging respondent's violation of his SIST conditions within five days of his incarceration, the order finding probable cause to believe that respondent was a dangerous sex offender requiring confinement (DSORC) did not need to be vacated. The Court's decision was based on multiple grounds.

Joseph CC was civilly managed under a regimen of SIST and was simultaneously being supervised by DOCCS under post-release supervision pursuant to his criminal sentence. The Supreme Court's decision came after respondent was taken into custody on May 17, 2018, for soliciting a 15-year-old boy to send him photos of the boy's penis. This conduct was in violation of both conditions of his Post-Release Supervision (PRS) and SIST. For this, he was found in violation of his PRS conditions and was reincarcerated until the expiration of his criminal sentence on May 27, 2021. At the time of his parole violation, the State did not file a petition seeking SIST revocation. Instead, the State notified the Court and Respondent's attorney by letter that towards the conclusion of his term of incarceration, but before his release from DOCCS, the Office of Mental Health (OMH) would evaluate Joseph CC to determine whether he was a dangerous sex offender requiring confinement (DSORC).

Upon respondent's imminent release from parole, OMH conducted an evaluation determining that Joseph CC was indeed a DSORC. The State thereafter petitioned the court on March 24, 2021, declaring respondent in violation of his SIST conditions and alleging that respondent is a DSORC in an order to show cause and petition which sought his confinement pending the outcome of any SIST violation hearing. On March 26, 2021, based on the State's

petition and the order to show cause, the Supreme Court found probable cause to believe that respondent is DSORC and authorized his confinement pending disposition of the SIST violation.

The respondent filed a motion to vacate the order, reasoning that since the State waited to file a SIST violation petition until respondent's release from incarceration on the parole violation, the Court had no authority to find probable cause. Respondent based his argument on the MHL § 10.11(d)(2), which provides that the State may file a petition for confinement after respondent violates SIST, but that it "shall seek to file the petition within five days after the person is taken into custody for evaluation. If no petition is filed within that time, the respondent shall be released immediately."

The Court noted that when presented with a question of statutory interpretation, its "primary consideration is to ascertain and give effect to the intention of the legislature." Further, though the text of the statute is a clear indicator of legislative intent, "all parts of a statute must be considered in harmony with one another" to understand the general intent of the entire statue.

The Supreme Court found the legislative purpose of MHL article 10 clear – to protect the public by reducing recidivism. Additionally, the Legislature intended to provide "procedural flexibility" in article 10 proceedings; the statute explicitly states that the "time periods . . . are goals that the agencies shall try to meet, but failure to act within such periods shall not invalidate later agency action." Furthermore, language in the statute also states that the "failure to file a petition within such time shall not affect the validity of such petition or any subsequent action." MHL §10.11(d)(2).

Considering such language, the Court determined that a "strict construction" of the provision at issue, as urged by Joseph CC, "conflicts with the overarching procedural structure of MHL article 10 and those provisions that call for flexibility." Instead, a "harmonious reading" of

the entire statute compels a contrary conclusion because, if the failure to timely file a petition does not invalidate "any subsequent action," as stated in the legislation, then such a failure cannot prohibit the court from finding probable cause.

In addition, the Court also found that respondent's proposed interpretation "presents the danger of absurdity." It reasoned that requiring the State to bring the matter to court but then hold it in abeyance for many years until ready for adjudication is "contrary to the principles of justiciability." The filing of such a petition in accordance with the five-day timeframe in cases like this would therefore present the Court with an "unripe controversy," rendering it unable to afford meaningful relief to either party. Accordingly, the Supreme Court rejected Joseph CC's interpretation of the law, concluding that the Court does in fact have the authority to find probable cause to believe that the respondent is DSORC and to order him detained pending a SIST violation hearing.

3. Civil Management Petition Dismissed – Respondent Does Not Suffer from Mental Abnormality

Decided February 15, 2022, in Matter of State of New York v. M.M., 2022 N.Y. Slip Op. 22146, upon a bench trial held virtually, the Supreme Court of Greene County found that the respondent was not a sex offender requiring civil management because the State failed to prove that respondent suffered from a mental abnormality. After considering the expert testimony of the State's experts and respondent's expert, the Court concluded that though the respondent's mental illness does affect his emotional, cognitive, and volitional capacity, the State did not meet its burden in showing that respondent's mental health conditions predispose him to commit sex offenses.

The Court found significant that the respondent was not diagnosed with any sexually-

focused mental illnesses. Though MHL article 10 does not require a sexual diagnosis, in the absence of one, the Court stated it was required to find a causal link between the respondent's mental health conditions and his sexual misbehavior. The Court found it meaningful that though the respondent has been suffering from mental illness since his teenage years, he has only committed one sex offense in his lifetime. Much of the behaviors respondent engaged in were misdemeanor offenses that by definition, do not amount to the felony sex offenses delineated by MHL article 10. Those factors, coupled with the fact that there was nothing in evidence to suggest that respondent's behavior had been recently escalating, led the Court to conclude that the State's evidence fell short of establishing respondent's predisposition to commit sex offenses. Accordingly, the Supreme Court concluded that the respondent does not suffer from a mental abnormality and dismissed the State's petition for civil management.

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. L.S. – L.S. committed his first known sex offenses in 1997, at age 21, while living in North Carolina. There, he raped a 22-year-old female he had met at a bar through mutual friends. While driving the victim home, he told her that he needed to stop at his house to use the bathroom and the victim accompanied him inside. While there, L.S. violently raped and anally sodomized her. While out on bail and pending prosecution on those charges, he raped another 20-year-old girl he met through mutual friends at a bar under similar circumstances. He offered to drive her home, he stopped at his apartment to use the bathroom, and once inside, he raped her. The State of North Carolina convicted him of Sodomy and sentenced him to 10 months

incarceration and probation. He violated his probation and was reincarcerated until 1999.

In August 2003, now living in New York, he raped a 27-year-old female after conning her into believing he was a professional football player for the New York Jets. He promised the victim he would introduce her to the Jets' general manager and help her obtain a job with the team. Instead, he used that ruse to groom her and lure her into several other meetings. In gaining her trust, he obtained the opportunity to steal her apartment key without her knowledge. After leaving the last meeting with L.S., the victim realized she didn't have her key and had to be let into her apartment by the doorman. That same night, she woke up to find L.S. standing over her with his hand over her mouth. He proceeded to sodomize her digitally, orally, and anally as well as vaginally rape her.

A few weeks after that rape, L.S. victimized another young woman. Again, while pretending to be a Jets football player, L.S. contacted a massage therapist to meet him in a hotel room for a massage. The victim requested payment for the massage up front and L.S. refused. When the victim noticed money missing from her purse, she confronted L.S. who became violent, pinned her down and smothered her with a pillow while he raped her. L.S. then left the hotel and returned a short time later to pay her the money; but the victim had engaged the safety latch on the hotel door to prevent his entrance. For these two separate assaults, L.S. was indicted on multiple counts of Rape and Sexual Assault. He was allowed to plea to one count of Rape, First-Degree and he was sentenced to 10 years' incarceration, with 5 years post release supervision.

After serving eight years, L.S. was paroled in 2012. Less than a year after his release, L.S. violated parole by committing at least two known sex offenses against two other young women. In July 2013, again pretending to be an NFL football player who needed a date to a

social event, he hired a 26-year-old escort to meet him at a hotel where he promised the victim that a professional stylist would join them and help her with her hair and makeup for the occasion. The stylist never arrived and, instead, L.S. told her he wanted to have sex. When she refused, he violently ripped off her clothing and attempted to rape her. During the struggle, the victim sprayed L.S. with pepper spray, which enraged him and led to him choking her and slamming her head into a mirror. The commotion alerted other hotel guests and police arrived and arrested him on the scene. At the time of the arrest, he was already under investigation for a previous allegation of raping another 24-year-old victim. For these incidents, L.S.'s parole was revoked, and he was convicted of Assault Second-Degree and Unlawful Imprisonment and he was sentenced to an additional seven-year term of incarceration as well as an additional five-year term of post release supervision.

L.S. has several other convictions for bad check, forgery, and larcenous type crimes. He has been diagnosed with Other Specified Paraphilic Disorder (Arousal to Non-consent); Other Specified Personality Disorder (With Antisocial and Narcissistic Traits); Sexual Preoccupation/Hypersexuality; and Psychopathy.

State v. L.H. - L.H. committed his first known sex offense in 2006 at age 28. L.H. offended against 12 and 14-year-old female acquaintances who were sisters. He placed his hand down the back of the 12-year-old's pants, touching her underwear and her bare buttocks. L.H. offended against the 14-year-old by having her touch his penis and rubbing his penis on her vagina. He also reported playing with her breasts and nipples, playing with her vagina while she had her pants on, and licking her vagina when she had her clothes off. L.H. stated this behavior went on for several weeks and that he would take her to the woods, or a work shed in the back yard in

order to sexually abuse her. These offenses were discovered after L.H.'s arrest for his second sex offense described below. Respondent pled guilty to two counts of Endangering the Welfare of a Child and was sentenced to three years' probation for these offenses.

L.H. committed his second set of offenses in between December of 2006 and March of 2007 by exposing his penis and touching the breasts of his 11 and 14-year-old nieces. The 11-year-old victim reported that when she told him to stop, he offered to give her money to touch her breasts. The victims also stated that respondent had watched pornographic movies in front of them and had asked them to watch with him on several occasions. The 14-year-old victim additionally reported that L.H. touched her breasts under her clothing on at least six occasions as well as touched her vagina. He also asked her several times to touch his penis, though she denied doing so. For these crimes, L.H. pled guilty to Acting in a Manner Injurious to a Child Less Than 17 and was sentenced to a three-year conditional discharge.

One year later, in 2008 and while on probation for the previous sex offense, L.H. was arrested and charged with Sexual Abuse Third Degree. This time, the victim was his 18-year-old female cousin who was developmentally disabled. The girl was living with L.H. and his mother at the time when, on at least three occasions, the respondent stuck a broomstick handle up her rectum. The victim also admitted to previously having sex with L.H. when she was 17 years old.

L.H. pled guilty and received 89 days' concurrent to his sentence of 300 days' incarceration for violating the terms of his probation from the 2007 sex offense.

L.H.'s article 10 qualifying offenses occurred in 2015 when he was 37 years old. L.H. orally and anally sodomized a 19-year-old mentally disabled male acquaintance. The victim first reported that while L.H. was visiting his house, he asked the victim to lay face-down on the victim's father's bed and pull his pants down. L.H. then inserted his penis into the victim's

rectum for approximately 25 minutes, causing pain and bleeding from the victim's anus. The victim also reported that on another occasion, L.H. asked if he wanted to "jerk off" while watching television, and then pulled down his own pants and instructed the victim to put L.H.'s penis in his mouth. The victim stated that he sucked L.H.'s penis until he was instructed to pull down his pants and lie face-down on the bed, so that L.H. could insert his penis inside of boy's rectum for about 10 minutes. The victim reported complying with these requests because he was afraid that L.H. would take the victim's phone away and ground him.

After the victim reported these offenses to his grandmother, L.H. was arrested and pled guilty to two counts of Criminal Sexual Act in the Second Degree and was sentenced to consecutive sentences of three and a half year terms of incarceration and 10 years post-release supervision for each count.

L.H. has an extremely poor history of compliance with community supervision. In addition to sexually reoffending, L.H. violated other terms of his probation by failing to maintain employment, living in an unapproved residence, accessing the internet without authorization, and possessing pornographic material. Specifically, his probation officer searched a computer at his mother's residence and found a pornographic video and evidence that respondent was exchanging nude photographs with an undisclosed female. Though L.H. participated in a sex offender treatment program in 2008, reports from the clinic indicate his attendance was poor and that he was reluctant to talk about his sexual offending behavior.

L.H. is diagnosed with Antisocial Personality Disorder; Borderline Personality Disorder; Depressive Disorder; and Post-Traumatic Stress Disorder (provisional). His Static 99R score is a 6, which places him at "well above average risk" for sexual recidivism and when combined with his dynamic risk factors, like childhood behavior problems, violation of conditional release,

sexualized violence, hypersexuality/sexual preoccupation, and noncompliance with supervision, he is at high risk to reoffend.

State v. E.A. – E.A. committed his first known sex offense in May of 2010 when he allegedly entered an apartment and touched a woman's breast. Though he was charged with Criminal Trespass and Harassment in the Second Degree, the charges were later dismissed.

Two months later in July of 2010 and while the above charges were still pending, E.A. was arrested for Rape in the Third Degree, Criminal Sexual Act in the Third Degree, and Endangering the Welfare of a Child. He admitted to impregnating a fifteen-year-old female who he was in a relationship with since she was fourteen. E.A. was twenty-two years old at the time. Respondent entered a plea of guilty to Endangering the Welfare of Child and was sentenced to a one-year conditional discharge.

E.A. was arrested for his third offense four months later in November of 2010. The victim reported that while at her apartment, E.A. grabbed her by the throat, stuck his hand down her pants, and digitally penetrated her. Respondent pled guilty to Forcible Touching and was sentenced to a three-year term of probation and thirty days of incarceration.

E.A. committed his next offense in December of 2011. E.A. admitted to making multiple sexually harassing phone calls to a sixteen-year-old female stranger over a five to six-week period. During the phone calls, E.A. told the victim that he wanted to rape and anally penetrate her. He called her approximately one hundred times. Respondent pled guilty to Aggravated Harassment and was sentenced to four months of incarceration with a one-year conditional discharge.

E.A.'s article 10 qualifying offense was committed in August of 2012 at age twenty-four.

The victim, a seventeen-year-old female stranger, went to the home of a friend who was not there. E.A. was there and dragged the victim by her hair to the bedroom and threatened her with a knife. E.A. digitally penetrated and raped her. Respondent admitted to these crimes and pled guilty to Rape in the First Degree. He was sentenced to a five-year determinate sentence and six years post-release supervision.

E.A. has a poor history of compliance with community supervision and has continued to engage in criminal activity. While on sex offender-specific parole for the article 10 qualifying offense, E.A. was arrested on three separate cases including Reckless Endangerment, Reckless Endangerment Property, Assault in the Second Degree, and Criminal Mischief Third Degree for shooting at people with a BB gun. The parole violation warrant also included violations for use of marijuana and cocaine. Respondent pled guilty to Attempted Assault Second Degree and was sentenced to one to three years of incarceration for that charge, and eighteen months to three years for the parole violation, sentences running concurrently.

In addition, E.A. has repeatedly violated his conditions of probation. While on probation for the November 2010 offense, a probation violation was issued only two months into the sentence after E.A. was discovered to have accessed the internet without permission, possessed pornographic images on his cell phone, lived with unapproved individuals, and possessed a knife. Respondent was resentenced to six months incarceration for the violation.

E.A. is diagnosed with Borderline Intellectual Functioning; Persistent Depressive Disorder (Dysthymia), Mild; Antisocial Personality Disorder; Other Specified Paraphilic Disorder: Non-Consent; Alcohol Use Disorder, Severe, in a Controlled Environment; and Cocaine Use Disorder, Severe, in a Controlled Environment. His Static 99R score is an 8, which is “well above average” risk to reoffend and when combined with his dynamic risk factors, like

resistance to rules and supervision, hypersexuality/sexual preoccupation, impulsivity/recklessness, and sexual deviance, he poses a high risk to reoffend.

State v. J.B. – J.B. committed his first known sex offense in 1971 at the age of 22. The offense involved him having sex with a sixteen-year-old girl. Respondent pled guilty to Sexual Misconduct and was sentenced to three years' probation.

J.B. committed his next offense in 1993 at age 45 by sexually abusing two daughters of his girlfriends. He fondled the breasts and digitally penetrated the vagina of one victim. He fondled the breasts and vagina of the second victim on two occasions. J.B. pled guilty to four counts of Sex Abuse in the First Degree, Forcible Compulsion; one count of Sex Abuse in the First Degree, sexual contact with individual under age 11; and two counts of Endangering the Welfare of a Child. Respondent was sentenced to five years' probation.

Seven years later in 2000, and while on probation for the above offense, J.B. was convicted after a jury trial of Sexual Abuse in the Second Degree. The offense involved locking a girl in a shed on his property for two hours, touching her breasts, and forcing her to touch his penis. The victim appeared to be a stranger who was riding her bike past J.B.'s car lot and asked him for help putting air in her flat tire. Respondent's probation was revoked, and he was sentenced to one year of incarceration.

J.B.'s article 10 qualifying offense occurred at the age of 70. J.B. reportedly pushed an eleven-year-old and nine-year-old girl into his car. He touched the breasts and buttocks of the eleven-year-old. He then closed and locked the car door as well as the gate to the car lot where the incident happened. He also urinated outside the car, exposing his penis to one of the victims. Respondent pled guilty to Lure a Child into Vehicle/Building to Commit a Class A Felony, and

Sexual Abuse in the First Degree and was sentenced to three years of incarceration with ten years of post-release supervision.

J.B. has a poor history of compliance with community supervision. He has violated probation multiple times by committing criminal offenses, both of sexual and non-sexual nature. In addition to his sexual offenses, J.B. has convictions including Attempted Criminal Possession of a Weapon; Grand Larceny; Attempted Petit Larceny; and a Firearm Violation in Pennsylvania.

J.B. is diagnosed with Pedophilic Disorder, sexually attracted to females, non-exclusive, not limited to incest; and Other Specified Personality Disorder with Antisocial Traits. His Static 99R score is a three, which means he has an "average risk" of reoffending. When combined with J.B.'s dynamic risk factors, like deviant sexual interests, conflicts in intimate relationships, and resistance to rules and supervision, he poses a high risk to reoffend.

State v. E.J. – E.J. has two qualifying article 10 sex offenses committed between July 2003 and July 2004. He was first arrested for a sex offense committed in July 2004 at the age of 27. E.J. forcibly raped a 21-year-old acquaintance, during which he choked her with his hands and told her to take her pants off or he would kill her. He entered a guilty plea in connection with this offense, which required him to provide a DNA sample.

His DNA was a match to the DNA profile developed for an offense reported in July of 2003. There, E.J. entered the elevator in an apartment building with a nine-year-old girl and forced her to the building's roof where he threatened to throw her off the building if she resisted him. He then forced her to touch his penis with her hand, forced his penis into her mouth, and vaginally raped her. The DNA profile was developed from a semen stain on the victim's shirt. He was on parole for Attempted Criminal Sale of a Controlled Substance at the time of this

offense.

E.J. pled guilty to Rape in the First Degree and two counts of Criminal Sexual Act in the First Degree for these offenses. He was sentenced to an eight-year determinate term of incarceration and a five-year term of post-release supervision for the Rape charge, as well as twenty-year terms of incarceration on each count of Criminal Sexual Act, all to be served concurrently.

E.J. has a poor history of compliance with community supervision. In addition to committing the 2003 sex offense while on parole, he was arrested on a parole violation in 2004 and re-incarcerated. He also continued to acquire criminal sanctions while on five years' probation beginning at age 18; he was convicted of Criminal Trespass 2nd and two drug related offenses while under supervision. Likewise, E.J. has a poor history of compliance while incarcerated. During his current period of incarceration, he has accumulated a total of 24 disciplinary tickets, including six sexual tickets.

E.J. is diagnosed with Antisocial Personality Disorder; Exhibitionistic disorder, sexually aroused by exposing genitals to physically mature individuals, in a controlled environment; Cannabis Use Disorder, moderate, in early remission, in a controlled environment; Condition of Hypersexuality; and the Condition of Psychopathy. His Static-99R score is a six, which is "well above average" risk to reoffend and when combined with his dynamic risk factors, like sexual preference for children, non-compliance with supervision, and impulsivity/recklessness, he poses a high risk to reoffend.

State v. R.G. – R.G.'s qualifying article 10 offenses occurred in 2009 at the age of 40. He was arrested in 2010 for repeatedly sexually offending against the 11-year-old daughter of his

girlfriend over several months. R.G. touched the victim's breasts, buttocks, and vagina, rubbed his penis on the child's vaginal area, and would lay on top of her. He also forced the victim to hold his penis while he masturbated. On one occasion, he ejaculated on the victim's pajamas. Respondent pled guilty to one count of Sexual Abuse in the First Degree and was sentenced to ten years' probation. After a probation violation in 2011, respondent was re-sentenced to a four-year determinate term of imprisonment, plus a ten-year period of post-release supervision.

R.G. was arrested for another sex offense in 2014 while serving the above sentence. The arrest was based upon a positive DNA match between a sample provided by R.G. following his conviction for the above offense, and a sample in a "cold case" from 2005. Respondent was found guilty of Rape in the First Degree for the 2005 offense and sentenced to nineteen years' incarceration. In 2021, the Appellate Division, Fourth Department overturned this conviction and remanded the case for a new trial. The respondent was scheduled to be released from DOCCS on the qualifying article 10 case in 2014, but the release was stayed due to his arrest for the 2005 cold case. He is currently under the jurisdiction of DOCCS pursuant to the ten-year term of post-release supervision from the 2011 probation violation and is still in custody on the 2005 cold case that was remanded for a new trial.

R.G. has a poor history of compliance with community supervision. In addition to the probation violation committed in 2011, R.G. committed a violation in 2003 while on probation for a 2001 conviction for Criminal Possession of a Controlled Substance. He was reincarcerated as a result of a new criminal conviction.

R.G. is diagnosed with Other Specified Personality Disorder (antisocial traits); Alcohol Use Disorder, in sustained remission, in a controlled environment; and Cannabis Use Disorder, in sustained remission, in a controlled environment. His Static 99R score is a five, which places

him in the category of having an "above average risk" of reoffending. When combined with his dynamic risk factors, such as resistance to rules and supervision, poor cognitive problem solving, and lack of emotionally intimate relationships, he poses a high risk to reoffend.

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, 2022, 967 dangerous sex offenders with mental abnormalities are being civilly managed. Of that, 799 are being treated in a secure treatment facility, while 168 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.*