

February 2017

2016 Annual Report on the Implementation of Mental Hygiene Law Article 10

Sex Offender Management and Treatment Act of 2007



**Office of
Mental Health**

Introduction

This report is submitted to the Governor and Legislature by the Commissioner of the New York State Office of Mental Health (OMH) pursuant to Article 10 of the Mental Hygiene Law (MHL). Specifically, MHL 10.10(i) requires the Commissioner to submit to the Governor and Legislature "a report on the implementation of this article. Such report shall include, but not be limited to, the census of each existing treatment facility, the number of persons reviewed by the case review teams for proceedings under this article, the number of persons committed pursuant to this article, their crimes of conviction, and projected future capacity needs."

SOMTA was enacted as Chapter 7 of the Laws of 2007. It became effective April 13, 2007. The legislation amended sections of New York State's Correction, County, Criminal Procedure, Executive, Judiciary, Penal, and Mental Hygiene Laws and the Family Court Act, and created a process for the civil management of certain sex offenders. The purpose of civil management is to provide offenders with comprehensive treatment to address and reduce their risk of sexually reoffending.

SOMTA, through the creation of Article 10, established a process to review certain sex offenders in the custody of "Agencies with Jurisdiction" for the purposes of civil management.¹ Article 10 requires the NYS Office of Mental Health (OMH) to evaluate and recommend individuals for civil management and provide treatment to individuals found by the court to be in need of civil management. More specifically, the statute provides for the Commissioner of the Office of Mental Health to designate several levels of clinical review such as multidisciplinary staff, case review teams, and psychiatric examiners to identify persons suffering from a condition or disease that predisposes them to sexual recidivism and that results in that person having serious difficulty controlling such conduct (referred to as a "mental abnormality") and who may require civil management.² It also requires OMH to develop treatment plans for persons released to the community under Strict and Intensive Supervision and Treatment (SIST) and to establish secure treatment facilities for persons deemed in need of treatment within a confined setting.

Assessment of Sex Offenders for Civil Management

OMH established a Risk Assessment and Record Review (RARR) unit to evaluate all offenders convicted of qualifying offenses who are referred for assessment under Article 10. (See Appendix 1-A).³ Each assessment involves the review of multiple records including, but not limited to, police reports, district attorney records, victim statements, court transcripts, pre-

¹ MHL § 10.01(a) defines an Agency with Jurisdiction as the agency responsible for supervising or releasing such person (sex offender) and can include the Department of Corrections and Community Supervision, the Office of Mental Health, and the Office for People with Developmental Disabilities.

² The definition of mental abnormality under New York's statute is similar to that of other states with Sexually Violent Predator statutes. MHL Article 10 defines mental abnormality 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."

³ Persons referred for assessment for civil management include (1) sex offenders with qualifying offenses in the custody of DOCCS (Corrections) who are approaching release, (2) persons under supervision of DOCCS (Community Supervision) who are approaching the end of their terms of supervision, (3) persons found not responsible for criminal conduct due to mental disease or defect and who are due to be released, (4) persons found incompetent to stand trial and who are due to be released, and (5) persons convicted of sexual offenses who are in a hospital operated by OMH and were admitted per an Executive Directive (i.e., Harkavy cases).

sentence investigation reports, parole board hearing minutes, and correctional and mental health records. The goal of the assessment process is to identify and refer sex offenders for civil management who suffer from a mental abnormality, as defined in the statute.

Two separate clinical teams are utilized in the civil management review process. The Multidisciplinary Review (MDR) team, comprised of three randomly selected clinicians with extensive training and expertise in sex offender assessment, diagnosis, treatment, and/or management of sex offenders, completes initial reviews of cases. Through this initial assessment, the MDR team determines whether the case should be referred to the Case Review Team (CRT) for a more comprehensive and in-depth evaluation. Like the MDR team, the CRT is also comprised of three staff (two of whom were not part of the MDR team) with expertise in the assessment, diagnosis, treatment, and/or management of sex offenders. The CRT undertakes an in-depth review of the causes and patterns of the individual's sexual offending, his or her criminal, mental health, and substance abuse history, history of participation in sex offender treatment, and related problem behaviors while incarcerated and during periods of supervision in the community. If the initial CRT review indicates that civil management may be warranted, the CRT requests that a psychiatric examiner evaluate the respondent for the presence of a mental abnormality, as defined by statute.

When the CRT requests a psychiatric examination, a licensed psychologist conducts a detailed psychological examination to assess for mental abnormality using methods approved by clinical and professional practice groups.⁴ The findings from this evaluation are incorporated into a report that is presented to the CRT for final determination as to whether the individual is in need of civil management. Based upon information obtained from the psychiatric evaluation, as well as the comprehensive record review, the CRT makes a determination whether to refer the individual to the New York State Office of the Attorney General (OAG) to seek civil management. OMH then issues a Notice of Determination to the relevant parties (e.g., referring agency, OAG, referred individual) noting its findings on the issues of mental abnormality and the need for civil management. The CRT does not make recommendations as to whether the individual is a dangerous sex offender in need of civil confinement or a sex offender in need of SIST. The dangerousness determination is made by the court, after the court finds mental abnormality. The SIST/confinement determination is based upon a court-ordered SIST investigation where a recommendation is made by OMH as to whether a person is SIST appropriate and/or by testimony of one or more psychiatric examiners at a dispositional hearing. During the dispositional hearing, the psychiatric examiner speaks to risk and protective factors warranting confinement or a SIST determination.⁵

Results of Civil Management Screening by OMH

From November 1, 2015, to October 31, 2016, 1,524 referrals were reviewed by OMH for possible civil management, involving 1,494 unique individuals. Of the 1,494 unique individuals referred, 115 (7.7%) progressed to the secondary level of review by the CRT and were referred for a psychiatric exam, and 54 (3.6%) were recommended for civil management. The SOMTA-

⁴ Clinicians follow protocols and practices recommended by the American Psychological Association and the Association for the Treatment of Sexual Abusers.

⁵ Sex offenders requiring civil management include "dangerous sex offenders requiring confinement" and those appropriate for SIST. A "dangerous sex offender requiring confinement" means a person who is 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. A sex offender requiring SIST means a detained sex offender who suffers from a mental abnormality, but is not a dangerous sex offender requiring confinement.

qualifying offense categories for offenders reviewed by OMH during the reporting period are presented in Table 2.

Crimes of Conviction for SOMTA-Qualifying Offenders			
	Rape	44.8%	
	Sexual Abuse	24.3%	
	Criminal Sexual Act (Sodomy)	19.5%	
	Course of Sexual Conduct Against a Child	6.1%	
	Incest	<0.1%	
	Designated Felony ¹	5.2%	
¹ See Appendix Table 1-A for a listing of qualifying sexual offenses and designated felonies.			

Treatment within Civil Management

Strict and Intensive Supervision and Treatment (SIST)

Article 10 provides for either confinement in secure treatment or management in the community under a SIST order, depending on the Court's dangerousness determination. The primary goal of SIST is to successfully manage, in the community, sex offenders who are determined to suffer from mental abnormalities that predispose them to commit sexual offenses, but whose level of dangerousness is deemed by the court to be such that they can be treated and supervised in the community.

Since the inception of SOMTA (April 13, 2007) through October 31, 2016, 314 individuals have been subject to SIST orders, 49 of whom were ordered onto SIST during the reporting period of November 1, 2015, to October 31, 2016.

When a sex offender is placed on SIST, he agrees to abide by specific court-issued conditions, which are typically based upon the recommendations of DOCCS (Community Supervision) in consultation with OMH. These conditions are extensive and often involve global positioning satellite (GPS) tracking, polygraph monitoring, specification of residence, prohibited contact with identified past or potential victims, attendance and participation in treatment sessions, and other related treatment and supervision requirements. DOCCS (Community Supervision) is responsible for monitoring individuals on SIST, implementing the supervision plan, and assuring compliance with court-ordered conditions. OMH is responsible for the clinical monitoring of treatment regimens for individuals on SIST.

All sex offender treatment under SIST is based upon a cognitive-behavioral model, and incorporates a relapse prevention component. The treatment team seeks to assist the client in enhancing and maintaining control over deviant sexual arousal and behavior, antisocial thoughts and behavior, and other factors that may contribute to re-offending. Current sex offender research indicates that sexual offense specific treatment together with intensive community supervision and regular use of polygraph exams (commonly known as the containment model) is an effective method to manage high-risk sex offenders in the

community.⁶ The containment model has been found to significantly reduce sexual offense recidivism.

SIST Violation Process

If a SIST client seriously or repeatedly violates the conditions of the SIST order, the client is taken into custody, and a psychiatric evaluation is ordered. The purpose of the psychiatric evaluation is to determine whether modifications are needed to the SIST Order (e.g., supervision and/or treatment plan), or whether the individual is a dangerous sex offender in need of confinement. As stipulated in Article 10, once a SIST violation has occurred, the psychiatric evaluation must be conducted within five calendar days of the individual's being taken into custody (usually in a county jail). If the SIST Client is simultaneously serving a community supervision term or the violation results in new criminal charges, the psychiatric evaluation is conducted 90 days prior to his release from incarceration. Once the psychiatric evaluation is completed, it is forwarded to the OAG, who files either a petition for confinement or modification of the SIST conditions. During the reporting period of November 1, 2015, to October 31, 2016, there were a total of 42 SIST violations.

Termination of SIST Order

In accordance with MHL Article 10.11(4)(f), a SIST client may petition every two years for modifications or termination of the SIST order. As of the end date of this reporting period, 85 individuals have petitioned for discharge from SIST and 56 petitions have been granted since the inception of SOMTA in April 2007. On average, SIST clients spent 4.3 years on SIST prior to discharge.

Census in OMH Secure Facilities

Section 10.10(a) of the MHL authorizes OMH to accept custody of and confine respondents in secure treatment facilities for the purposes of providing care, treatment, and control. Currently, OMH operates Sex Offender Treatment Programs (SOTPs) within the secure treatment facilities (STFs) located on the grounds of Central New York Psychiatric Center (CNYPC) and St. Lawrence Psychiatric Center (SLPC).⁷ The CNYPC program has a bed capacity of 330 residents (only 280 beds were staffed during this reporting period), while SLPC currently can accommodate up to 92 residents. As of October 31, 2016, 311 respondents were confined by court order in secure treatment facilities as dangerous sex offenders. In addition, 53 respondents were confined in an STF awaiting adjudication under MHL Article 10.

As can be seen below in Table 4, a slight majority of respondents (158 of 311) confined to secure treatment facilities as dangerous sex offenders were either confined by consent or confined after a violation of SIST. In total, 52 (16.7%) of the 311 civilly confined residents were afforded periods of time in the community under SIST prior to being civilly confined in a secure treatment facility.

⁶ English, K., Jones, L., & Patrick, I. (2003). Community containment of sex offender risk: A promising approach. In B.J. Winick & J.W. LaFond (Eds.), *Protecting society from dangerous offenders: Law, justice, and therapy* (pp. 265–277). Washington, D.C.: American Psychological Association; English, K., Pullen, S., & Jones, L. (Eds.) (1996). *Managing adult sex offenders: A containment approach*. Lexington, KY: American Probation and Parole Association.

⁷ MHL Article 10.10(e) states that secure treatment facilities are separate and distinct facilities from psychiatric hospitals (§7.18[b]) and that residents must be kept separate from other persons in the care, custody, or control of the Commissioner of OMH.

Table 4: SOTP Bed Census (Designated) as of 10.31.16			
	CNYPC	SLPC	Total
Post-Probable Cause/Pre-Commitment	43	10	53
Post-Confinement			
By Trial	123	30	153
By Consent	70	39	109
After SIST Violation	41	8	49
Total Post-Confinement	234	77	311
Confined, Awaiting Release to SIST	2	2	4
Total	279	89	368

Program Mission

The primary mission of the OMH SOTP is to promote community safety by providing secure custody, care, and treatment to persons confined by the courts under MHL Article 10. The SOTP provides quality sex offender treatment services in a secure setting and employs evidence-based methods that are consistent with best practices in the field of sex offender treatment. As new research emerges and best practices evolve, the SOTP continues to adapt its services accordingly. Treatment services are individualized and strength-based, with the intended outcome of reducing the residents' risks of sexually re-offending, while promoting growth in key areas such as treatment engagement, self-regulation, managing sexual deviance, and developing pro-social attitudes and behavior.

Reviews of Continued Need for Confinement

Each resident committed to SOTP pursuant to MHL Article 10 receives an annual review by OMH to determine whether they remain "a dangerous sex offender requiring confinement." This review includes a psychiatric evaluation by an OMH psychiatric examiner. The psychiatric examiner reviews all historical records and treatment progress notes and, with consent of the resident, completes an interview of the resident. The psychiatric examiner then submits his or her written report to the OMH Commissioner or designee for review and recommendation. The Commissioner or designee notifies the court, in writing, regarding his/her determination and the findings of the psychiatric examination. The court holds an evidentiary hearing that often includes testimony from the psychiatric examiner as well as any psychiatric examiner retained by MHLS. Ultimately, the court determines whether the respondent is currently a dangerous sex offender requiring confinement or orders the respondent to a regimen of SIST (unless it finds that the respondent no longer suffers from a mental abnormality).

During the reporting period, OMH psychiatric examiners completed 179 annual review evaluations. From April 13, 2007, to October 31, 2016, psychiatric examiners completed 1,220 annual review evaluations. In total, the courts have released 91 residents from confinement to SIST since April 2007 and an additional 19 were found by the court to no longer require civil management. The average length of stay in the STF for those residents who were released to SIST was 38.4 months (3.2 years).

Appendix 1-A
Article 10 Qualifying Sexual Offenses

Article 10
Sexual Offenses

(Includes Felony Attempt and Conspiracy to Commit)

PL SECTION		
130.25	RAPE 3RD DEGREE	E Felony
130.30	RATE-2 ND	D Felony
130.35	RAPE-1 ST	B Felony
130.40	CRIMINAL SEXUAL ACT-3RD (AKA Sodomy)	E Felony
130.45	CRIMINAL SEXUAL ACT-2ND (AKA Sodomy)	D Felony
130.50	CRIMINAL SEXUAL ACT-1ST (AKA Sodomy)	B Felony
130.53	PERSISTENT SEXUAL ABUSE	E Felony
130.65	SEXUAL ABUSE-1ST	D Felony
130.65-A	AGGRAVATED SEXUAL ABUSE 4TH	E Felony
130.66	AGGRAVATED SEXUAL ABUSE -3RD	D Felony
130.67	AGGRAVATED SEXUAL ABUSE 2ND	C Felony
130.70	AGGRAVATED SEXUAL ABUSE-1ST	B Felony
130.75	COURSE SEX CONDUCT-CHILD 1ST	B Felony
130.80	COURSE SEX CONDUCT-CHILD 2ND	D Felony
130.85	FEMALE GENITAL MUTILATION	E Felony
130.90	FACILIT SEX OFF/CONTROL SUBST	D Felony
130.95	PREDATORY SEXUAL ASSAULT	A-II Felony
130.96	PREDATORY SEXUAL ASSAULT AGAINST A CHILD	A-II Felony
230.06	PATRONIZE PROSTITUTE-1ST	D Felony
255.26	INCEST 2ND	D Felony
255.27	INCEST 1ST	B Felony

Article 10
Designated Felonies if Sexually Motivated*
(Includes Felony Attempt and Conspiracy to Commit)

120.05	ASSAULT -2ND	D Felony
120.06	GANG ASSAULT 2ND DEGREE	C Felony
120.07	GANG ASSAULT 1ST DEGREE	B Felony
120.10	ASSAULT 1ST DEGREE	B Felony
120.60	STALKING 1ST DEGREE	D Felony
121.13	STRANGULATION 1ST DEGREE	C Felony
121.12	STRANGULATION 2ND DEGREE	D Felony
125.15	MANSLAUGHTER-2ND	C Felony
125.20	MANSLAUGHTER -1ST	B Felony
125.25	MURDER-2ND DEG	A-1 Felony
125.26	AGGRAVATED MURDER	A-1 Felony
125.27	MURDER-1ST DEGREE	A-1 Felony
135.20	KIDNAPPING 2ND	B Felony
135.25	KIDNAPPING-1ST	A-1 Felony
140.20	BURGLARY-3RD	D Felony
140.25	BURGLARY-2ND	C Felony
140.30	BURGLARY-1ST	B Felony
150.15	ARSON-2ND:INTENT PERSON PRESENT	B Felony
150.20	ARSON-1ST:CAUSE INJ/FOR PROFIT	A-1 Felony
160.05	ROBBERY-3RD	D Felony
160.10	ROBBERY-2ND	C Felony
160.15	ROBBERY-1ST	B Felony
230.30	PROMOTING PROSTITUTION-2ND	C Felony
230.32	PROMOTE PROSTITUTION-1ST	B Felony
230.33	COMPELLING PROSTITUTION	B Felony
235.22	DISSEM INDECENT MAT MINOR 1ST	D Felony
263.05	USE CHILD <17- SEX PERFORMANCE	C Felony
263.10	PROM OBSCENE SEX PERF-CHILD<17	D Felony
263.15	PROM SEX PERFORMANCE-CHILD <17	D Felony

*MHL § 10.03(6)(s) defines sexually motivated as: "... means that the act or acts constituting a designated felony were committed in whole or substantial part for the purpose of direct sexual gratification of the actor."