



Report to the Governor and the Legislature

Pursuant to Article 10
of New York State Mental Hygiene Law

January 28, 2008



New York State
Eliot Spitzer, Governor

Office of Mental Health
Michael F. Hogan, Ph.D., Commissioner

Report to the Governor and the Legislature

This report is submitted to Governor and the 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 the 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.”

Background:

The Sex Offender Management and Treatment Act (SOMTA) was enacted as Chapter 7 of the Laws of 2007, and became effective April 13, 2007. The centerpiece of the legislation was the creation of a new Article 10 of the MHL.

Among the provisions of SOMTA are the following legislative findings:

- ◆ That recidivistic sex offenders pose a danger to society that should be addressed through comprehensive and integrated programs of treatment and management. {§ 10.01(a)}
- ◆ That some offenders with mental abnormalities are predisposed to engage in repeated sex offenses. These offenders may require long-term specialized treatment modalities to address their risk to re-offend. That treatment should continue following incarceration. In extreme cases, confinement will need to be extended by civil process in order to ensure treatment and protect the public. {§10.01(b)}
- ◆ That for other sex offenders, it can be effective and appropriate to provide treatment in a regimen of strict and intensive outpatient supervision. Civil commitment should be only one element in a range of responses. {§ 10.01(c)}

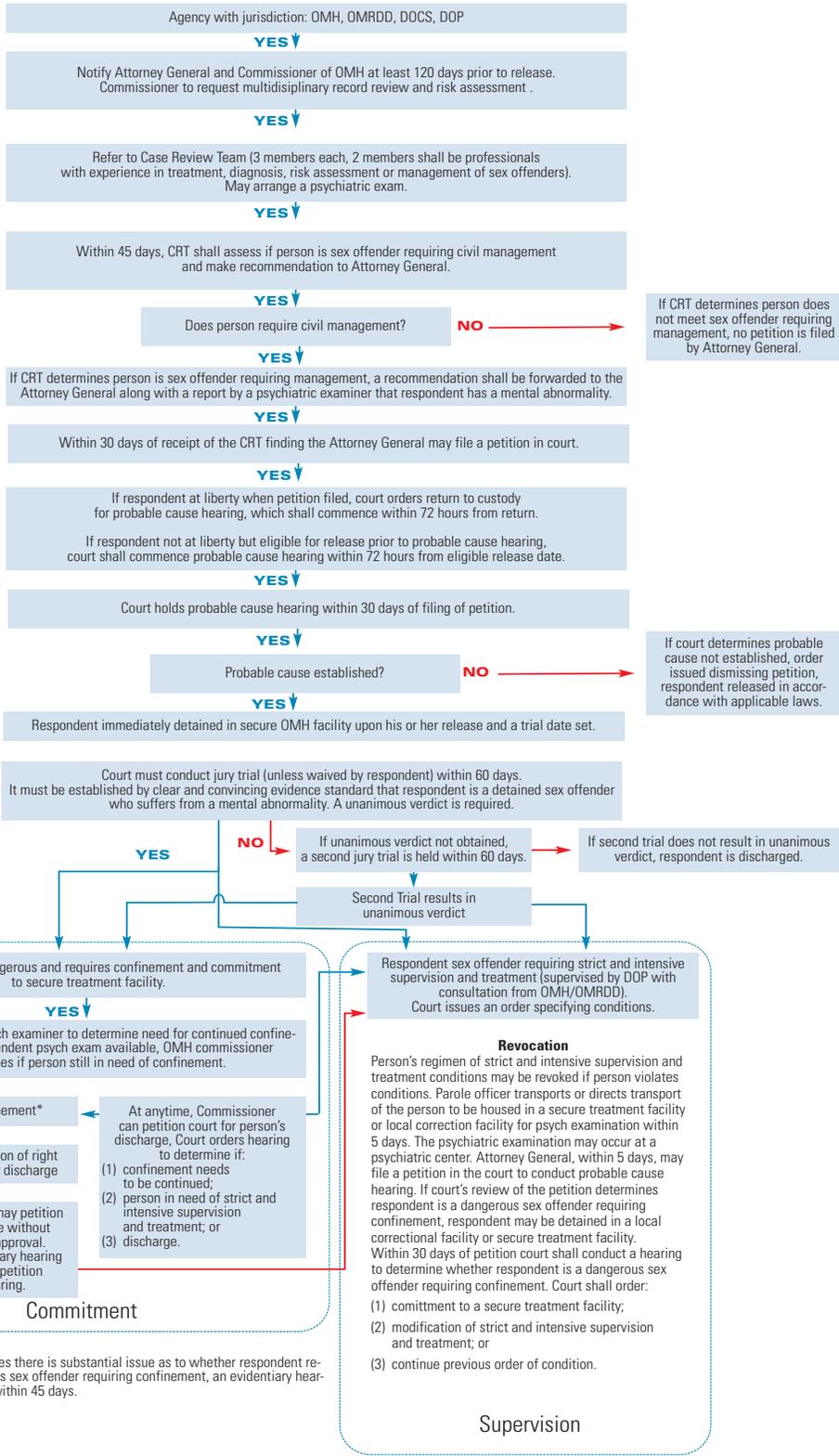
- ◆ That the system for responding to recidivistic sex offenders with civil measures must be designed for treatment and protection. It should be based on the most accurate scientific understanding available, including the use of current, validated risk assessment instruments. {§10.01(e)}
- ◆ That the system should offer meaningful forms of treatment to sex offenders in all phases of criminal and civil supervision. {§ 10.01(f)}
- ◆ That sex offenders in need of civil commitment comprise a different population with different needs from traditional mental health patients. The civil commitment of sex offenders should be implemented in ways that do not endanger, stigmatize, or divert needed treatment resources away from traditional mental health patients. {§ 10.01(g)}

MHL Article 10 establishes an elaborate process for evaluating the mental condition of certain sex offenders who are scheduled to be released from the custody of “agencies with jurisdiction” to determine whether the individual is a “sex offender requiring civil management.” A sex offender requiring civil management can be either (1) a dangerous sex offender requiring civil confinement (who would be confined to a secure treatment facility operated by OMH), or (2) a sex offender requiring strict and intensive supervision and treatment (who would be supervised by a Parole Officer in the community). The statute assigns a number of duties and responsibilities to OMH relative to the identification, assessment and care of individuals found by the court to be in need of civil management. For example, the statute requires the Commissioner of OMH to have multidisciplinary staff, Case Review Teams and psychiatric examiners evaluate all persons with requisite sex offenses who are scheduled for release by an agency with jurisdiction. The requisite sex offenses include felony sex offenses (pursuant to article 130 of the Penal Law), sexually motivated felonies, certain prostitution and incest offenses, and attempts or conspiracy to commit any such offenses.

A flow chart depicting the provisions for civil management pursuant to Article 10 is displayed in Figure 1.

Figure 1

Legislation: Sex Offender Management and Treatment Act



* If the court believes there is substantial issue as to whether respondent remains a dangerous sex offender requiring confinement, an evidentiary hearing may be held within 45 days.

The Civil Management Process

Section 10.05 of the Mental Hygiene Law delineates the process for OMH's review of individuals referred by an agency with jurisdiction for the purpose of evaluating whether such individuals are appropriate candidates for civil management. OMH has developed a multi-tiered assessment process which is briefly described below.

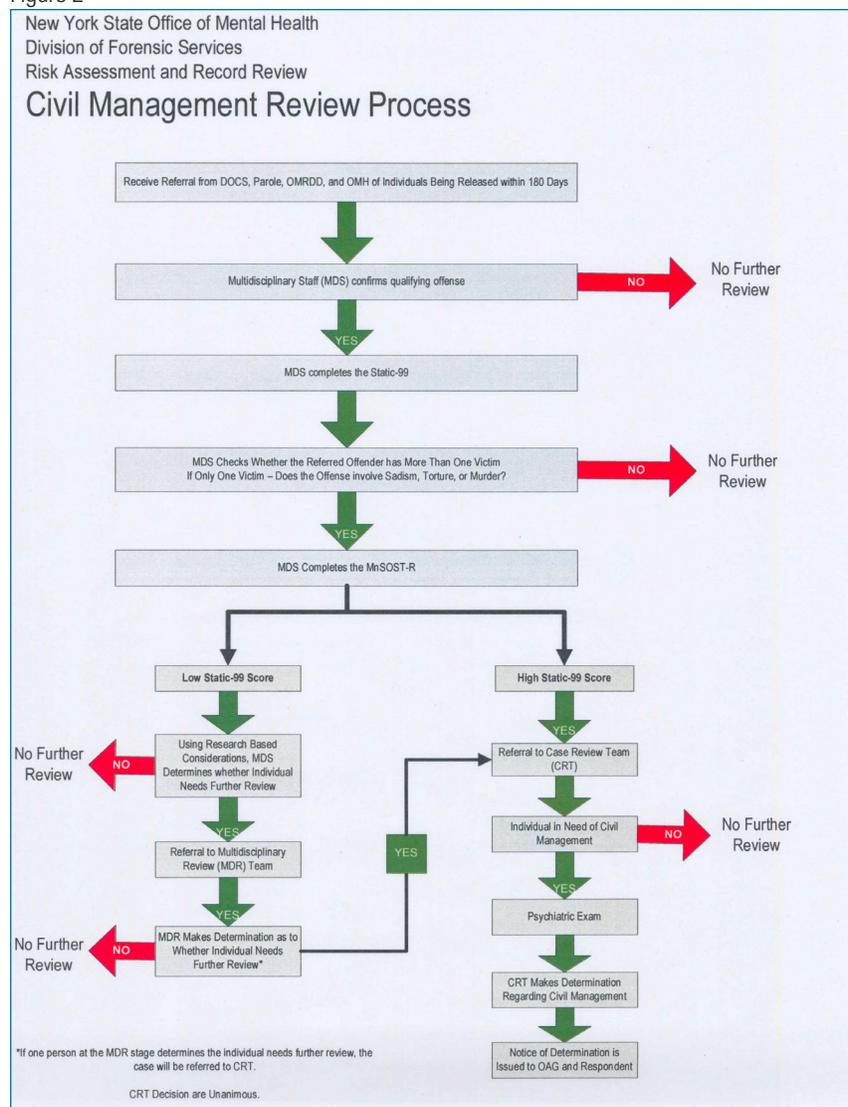
The OMH review process commences with a referral of a detained sex offender by an "agency with jurisdiction."¹ If OMH determines that the referred sex offender suffers from a mental abnormality² which predisposes him or her to sexual offending, OMH provides a psychiatric report

and notifies the Office of the Attorney General (OAG) who then exercises discretion in filing petitions for civil management.

The first step in the OMH assessment process involves a records review by the Multidisciplinary Review (MDR) team. The MDR team reviews case records to ensure that the respondent is eligible for civil management and completes actuarial risk assessments (research based validated assessment instruments) to determine whether the case should be forwarded for review by a Case Review Team (CRT). Sex offenders who meet the screening criteria established for the MDR teams are statutorily designated to enter a second level of review conducted by the CRT. The

CRT conducts second step reviews and appoints psychiatric examiners to evaluate respondents. Based on the CRT's assessment and the findings of the examiners, the CRT has statutory authority for making the determination as to which respondents are referred to the OAG for petitioning for civil management. Figure 2 depicts OMH's Civil Management Process.³

Figure 2



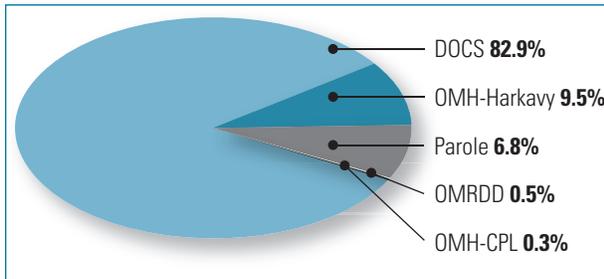
NOTES

1. Agencies with jurisdiction include the Department of Correctional Services (DOCS), the Division of Parole, the Office of Mental Health, and the Office of Mental Retardation and Developmental Disabilities.
2. The construct of "mental abnormality" is defined in MHL § Article 10 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". A condition, disease or disorder that affects the emotional, cognitive, or volitional capacity includes mental disorders that specifically drive the individual in a manner that causes him or her to commit sex offenses. A predisposition to commit sex offenses is often supported by the presence of multiple victimizations.
3. OMH developed this process in consultation with nationally recognized experts in the assessment and treatment of sex offenders. Staff from OMH have also visited sex offender commitment programs in operation in the states of New Jersey and Wisconsin.

Characteristics of cases referred to OMH for Civil Management Screening

Between April 13, 2007 (the date SOMTA was enacted) and January 3, 2008, 1,299 detained sex offenders with release dates within the statutory time frames were referred to OMH for civil management screening and assessment. The majority of referrals originated from the Department of Correctional Services (82.9%, $n = 1,077$ See Figure 3).

Figure 3. Source of Referrals by Agency with Jurisdiction⁴



A month by month breakdown of the 1,299 referrals for civil management review is displayed in Figure 4.

Figure 4. Number of Referrals per Month⁵



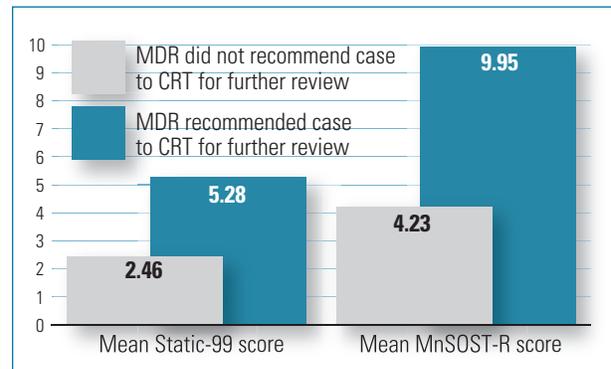
For all referrals for civil management, the mean age was 39.1 years. The majority of referrals were Caucasian (49.0%) followed by African American (37.2%). Of the referrals for civil management screening, 36.2% were serving sentences for rape, 24.7% for sexual abuse and 16.1% for criminal sexual act/sodomy.⁶

Characteristics of cases who received a MDR review

Of the 1,299 referrals with release dates between April 13, 2007 and January 3, 2008, 1,142 (87.9%) were reviewed for civil management by the Multidisciplinary Review (MDR) team.⁷ Similar to the overall sample of referrals, the majority of referrals reviewed by the MDR were from DOCS (81.0%). The average age of persons who were reviewed by the MDR team for possible civil management was 39.5 years. The majority of referrals were Caucasian (51.1%) followed by African American (35.8%). Of those reviewed, 36.8% were serving sentences for rape, 26.7% for sexual abuse and 16.7% for criminal sexual act/sodomy.

Of the cases reviewed by the MDR, 281 (24.6%) were recommended to the CRT for further review. Cases that the MDR recommended for further evaluation were an older age than the average age of all referrals at the time of their release date (42.5 years old vs. 38.6 years old, respectively), and scored significantly higher on both the Static-99 (5.28 vs. 2.46, respectively) and the MnSOST-R (9.95 vs. 4.23, respectively). The scores on the actuarial assessments are displayed in Figure 5 below. Persons recommended to the CRT for further review were less likely than those not recommended to currently be serving a prison sentence for a rape conviction.

Figure 5. Actuarial Risk Scores by MDR Decisions⁸

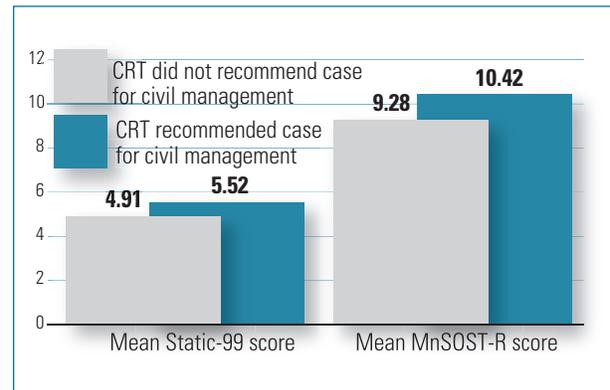


Characteristics of cases who received a CRT review

From the 281 cases that the CRT reviewed, 203 (72.2%) were referred for a psychiatric evaluation. A mental abnormality was found in 177 (87.2%) of the cases and the CRT ultimately recommended 163 (80.3%) of those cases for civil management. All referrals for civil management were males, and on average were 42.5 years old. The majority of detained sex offenders who were reviewed for civil management consideration by the CRT were either Caucasian (47.7%) or African American (38.8%). Persons recommended to the CRT for further review were less likely than those not recommended to currently be serving a prison sentence for conviction of sexual abuse, and slightly less likely to be serving a prison sentence for a rape conviction.

Cases for whom the CRT recommended civil management were slightly older than those cases not referred at the time of their release date (43.9 years old vs. 40.8 years old, respectively), and scored higher on both the Static-99 (5.52 vs. 4.91, respectively) and the MnSOST-R (10.42 vs. 9.28, respectively). The scores on the actuarial assessments for cases reviewed by the CRT are displayed in Figure 6. Persons for whom the CRT recommended civil management were more likely than those not recommended to currently be serving a prison sentence for a conviction of sexual abuse, and slightly less likely to be serving a prison sentence for a rape conviction.

Figure 6.
Actuarial Risk Scores by CRT Decisions



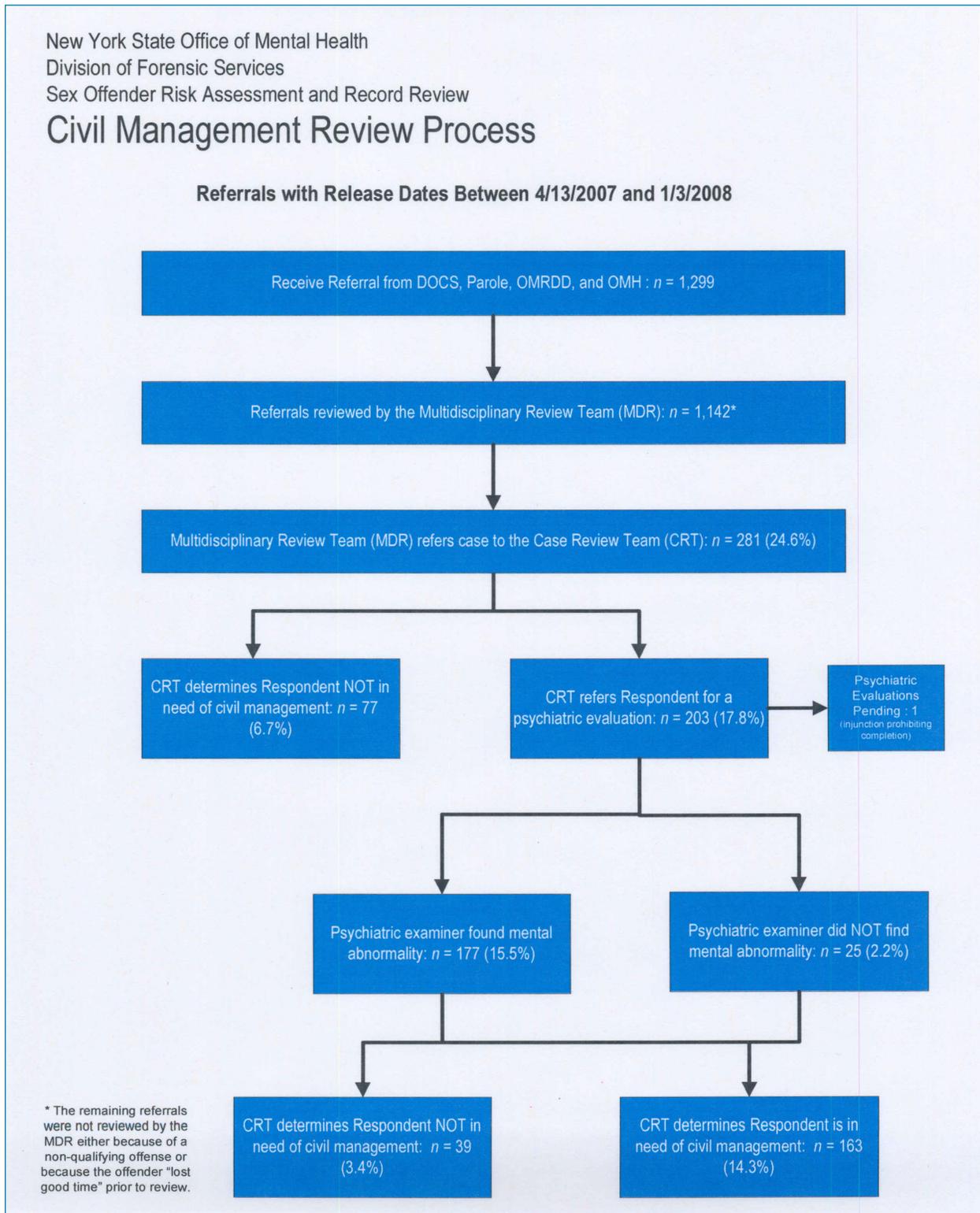
Clinical evaluations for all cases recommended for civil management included a psychological examination by a licensed psychologist to diagnose the presence of a mental abnormality that predisposed the respondent to sexually offend. The majority of cases recommended for civil management were diagnosed with Paraphilia/Sexual Disorder NOS, Pedophilia, or Antisocial Personality Disorder.

A complete summary of the case processing of referrals to OMH appears on the next page in Figure 7.

NOTES

- OMH-Harkavy referrals pertain to individuals committed to OMH secure treatment facilities under Executive Directive prior to enactment of MHL Article 10. Following the Court of Appeals Decision in "Harkavy II", OMH was required to re-evaluate prior commitments pursuant to the provisions of Article 10.
- This table excludes Harkavy cases as well as six referrals to OMH with unspecified release dates.
- The numbers and percentages above do not include those cases referred to OMH, but who were not reviewed due to administrative reasons (e.g., Pre-SOMTA referrals, or those referrals of persons who, after an initial referral, were determined by DOCS to not have a qualifying offense).
- The remaining 157 cases referred to OMH were not reviewed by the multidisciplinary staff due to the absence of a qualifying offense or a change in their anticipated release status.
- The Static-99 and MnSOST-R are actuarial assessment instruments that have undergone extensive research validation studies and are accepted measures of risk for recidivism. They are part of OMH's overall risk assessment process that also includes detailed records review and structured clinical reviews. In select cases, psychiatric examiners and CRT members complete the Psychopathy Checklist-R (PCL-R), which also has strong predictive validity. This assessment process is similar in nature to procedures in other states with civil management statutes.

Figure 7.
Case Processing of Referrals to OMH



Sex Offender Treatment Program

Sex offender treatment under Article 10 may occur within a secure treatment facility or in the community under Strict and Intensive Supervision and Treatment, (SIST). If a jury, or the court if a jury trial is waived, finds that a sex offender suffers from a mental abnormality, the court then determines whether the sex offender is dangerous and requires confinement or whether he or she can be managed in the community under strict and intensive supervision. Sex offenders who are deemed to be dangerous and to require confinement are committed to a secure treatment facility. Secure treatment facilities are located at Central New York Psychiatric Center, Manhattan Psychiatric Center and St. Lawrence Psychiatric Center. Sex offenders with a mental abnormality who are not found by the court to be dangerous are placed in the community under strict and intensive supervision and treatment. Similarly, offenders committed to a secure treatment facility eventually may be transitioned back into the community through the SIST program. Conversely, sex offenders committed to SIST may be elevated to a secure treatment program if they fail to abide by their conditions of supervision and treatment. Treatment within the secure facilities and treatment within the SIST program has been carefully developed by OMH in close consultation with national experts.

Secure Treatment Facility Programming

The Sex Offender Treatment Programs (SOTP) delivered in the secure treatment facilities seek to protect the public by providing evidence-based programming to effectively assess and treat sexual deviance and personality disorders. The primary treatment modality is cognitive-behavioral therapy augmented by relapse prevention strategies provided through therapy groups, psychosocial groups, and individual sessions. The guiding principle of treatment is relapse prevention with a focus on identifying and addressing relapse risk factors in an effort to reduce the risk of future sexual violence. Treatment also focuses on assisting clients to improve their overall social functioning through structured educational, vocational and recreational activities. The programs are embedded within therapeutic communities that support personal growth, healthy lifestyles and

acceptance of personal responsibility for behavior and relapse prevention.

OMH is currently developing the capacity to provide pharmacologic interventions to augment cognitive-behavioral therapies. The use of pharmacologic agents to deal with deviant arousal interests has demonstrated success. Pharmacologic agents in the treatment of sex offenders are an accepted intervention in Canada and Europe. In March 2008, via contract with the Royal Ottawa Healthcare Group, OMH will be sending seven physicians to participate in a week long training seminar in the prescribing of androgen reduction agents and Selective Serotonin Reuptake Inhibitors.

The program engages clients in a phased-treatment process where they are expected to master particular skills before moving on to the next phase of treatment. SOTP is built around educational, therapeutic, and skill mastery modules. Each phase of treatment has specific goals and measurable outcomes. Progression through the phases of treatment is reviewed by the clinical and administrative staff within each facility. Broad areas of treatment programming include the identification and treatment of sexual offending behaviors, psychosocial deficits, general behavioral problems, interpersonal difficulties, issues related to irresponsible lifestyles, chemical dependency, and/or psychiatric disorders. During each phase, various types of assessments may be required. Some of these assessments are designed to evaluate how much clients are learning from the educational groups, while others are designed to measure attitude change, symptom patterns, sexual arousal, and other areas of treatment focus. Standard psychological assessments, polygraph, and penile plethysmograph may be used.

SOTP phases of treatment

I: Treatment readiness

Phase I requires clients to demonstrate a basic understanding of the commitment and treatment process, acknowledge that they have committed a sex offense, express desire to avoid reoffending, and agree to participate fully in treatment.

II: Skills Application A

Phase II includes an introduction to process-oriented therapy groups. Clients begin to explore their offense history, impact on victims, personal values, sexuality issues, arousal patterns, risk factors, and strategies to prevent relapse.

III: Skills Application B

Phase III includes a continuation of Phase II programming, and also requires a more in-depth understanding of the impact of sex crimes on victims and a demonstrated ability to challenge and replace cognitive distortions that interfere with the assumption of responsibility for sex offending and to utilize behavioral techniques to address disordered arousal.

IV: Discharge Readiness/Release Planning

In Phase IV, clients begin to develop pre-discharge plans (relapse prevention plans). Clients must demonstrate realistic short-term and long-term goals, thorough planning for transition, and the identification of and contact with a community support system including community service providers and, if appropriate, family and other community members who may assist in the transition process.

V: Outpatient (Discharge)

Clients are recommended for discharge to the community only after clinical staff has reviewed the progress, and determined that all treatment goals have been achieved and comprehensive discharge plans are in place. OMH will then recommend discharge, which must be approved by the court. As part of the judicial process under SOMTA, the courts will consider clients for SIST under the Division of Parole upon discharge from civil confinement. It is anticipated that many, if not all, discharged individuals will be appropriate for monitoring under SIST.

Secure Treatment Facility Census

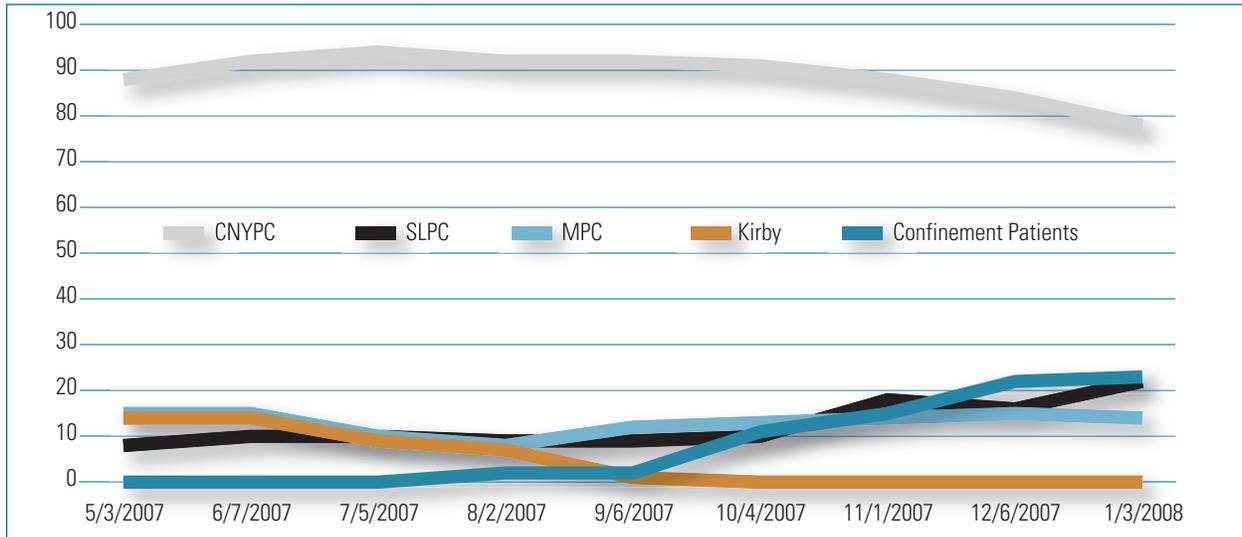
Three distinct populations currently reside in OMH's three secure treatment facilities. They include (1) respondents who are in the "pre-trial" phases of civil commitment and have been determined to meet "probable cause" for civil management, (2) clients committed under Article 10 (subsequent to their consent or a trial verdict and judicial determination of dangerousness) and (3)

clients originally committed under Article 9, but who did not meet the criteria for civil commitment under Article 10 and, thus, are awaiting return to the community. As of January 4, 2008, 114 clients resided within the three secure treatment facilities. It should be noted that some fifty respondents deemed eligible for civil management through the evaluation process noted above remain in DOCS' custody and could be confined to OMH secure treatment facilities pending the outcome of civil management proceedings. These respondents have not reached their mandatory release dates or have decided to voluntarily remain in DOCS' custody pending civil management proceedings.

Current sex offender treatment bed capacity at the secure treatment facilities is 181, and is distributed across the three facilities as follows: Central New York Psychiatric Center ($n = 125$), St. Lawrence Psychiatric Center ($n = 36$) and Manhattan Psychiatric Center ($n = 20$). Central New York has the physical capacity to serve 150 clients (one 25 bed ward has not yet been staffed), while St. Lawrence has a total physical capacity to serve 80 clients (two 22 bed wards have yet to be staffed.) Figure 8, on page 9, displays the census between May 3, 2007 and January 3, 2008. In addition, 150 new beds are scheduled to become available in the Annex Building adjacent to Central New York in July, 2008. A staffing plan to support that program has been submitted to the Department of Civil Service.

While development of the 150 new beds will assure sufficient capacity in the short-term, long-term projections remain a work in progress. As with most newly established court-related initiatives, the pattern of civil commitment litigation continues to develop and change. OMH is consistently referring approximately 10% of reviewed cases to the OAG for consideration for civil management. This rate of referral is comparable to rates in many other states. However, it is difficult to predict, at this early point in the process, future patterns of jury dispositions and court placements. OMH will continue to monitor case processing to insure the availability of adequate treatment slots.

Figure 8.
Secure Treatment Facility Census by Month



Strict and Intensive Supervision and Treatment

OMH works collaboratively with the Division of Parole, OAG, and treatment providers in state correctional facilities, forensic facilities and in the community to develop plans for SIST. These efforts begin with contact from the OAG that a SIST disposition is being considered. The viability of a SIST disposition may be, and often is, explored prior to a case proceeding to jury trial. A preliminary review of the case for a possible SIST disposition is initiated by the OAG and involves OMH, Parole and treatment staff from the referring agency. If the OAG determines that a SIST disposition may be appropriate, the respondent may agree to a finding of mental abnormality without a trial and the court may order a SIST investigation. A SIST investigation also may be ordered by the court subsequent to a trial verdict finding of mental abnormality.

When a SIST investigation is requested by the court, OMH works closely with the Division of Parole, institutional and community treatment providers and other pertinent parties to determine whether the sex offender can be adequately managed in the community. The SIST team must find an appropriate residence for the individual, identify treatment providers, and propose a treatment and supervision plan. If the sex offender is a confined sex offender, the SIST team works closely with the institutional transitional service program to ensure continuity of

treatment and well-planned reintegration back into the community. Signed releases of information from the individual are obtained for all designated service providers and all issues relating to the delivery of and payment for treatment services are addressed.

When the investigation is complete and the information and recommendation is returned to the court, the court may order an individual to be released into the community under a SIST order, which includes a specific regimen of supervision and treatment. The Division of Parole has the responsibility to implement the supervision plan and assure compliance with the conditions of the court ordered regimen of supervision and treatment. OMH oversees the delivery of treatment services. Some offenders may require multiple treatment programs, including treatment for sexual deviance, substance abuse treatment and mental health treatment.

OMH and the qualified sex offender treatment providers work closely with the assigned parole officer in helping to successfully manage and treat the individual under the SIST conditions. In order to manage and supervise sex offenders in the community, it is clear that SIST individuals require a team of professionals, and that the supervision/treatment team must communicate frequently, examine the progress of the individual on a regular basis, and ensure that any necessary revisions in the supervision/ treatment plan be identified and instituted in a timely manner.

SIST Census

As of December 31, 2007, 10 sex offenders had been placed, by the courts, into SIST supervision. Another eight cases were under investigation for possible SIST placement. Four of the 10 SIST placements were later revoked due to parole violations. One of the four involved

an arrest in the NYC subway system for a hands-on touching incident. The matter is being pursued in criminal court. The three other violations were for technical violations of the terms of supervision. Six active SIST cases are under supervision in Onondaga (three cases), Westchester and Rockland Counties and the City of New York.