

# SEX OFFENDER MANAGEMENT AND TREATMENT ACT

## The Process for Civil Management in New York

### **NOTICE OF ANTICIPATED RELEASE § 10.05 (b)**

*Agency with jurisdiction* gives notice to the AG and Commissioner that respondent is nearing release and “shall seek” to give such notice 120 days prior to release. AG can file a securing petition (§ 10.06 (f) ) to stay respondent’s release from custody while process is proceeding.

### **MULTIDISCIPLINARY REVIEW § 10.05 (d)**

Commissioner’s multidisciplinary staff reviews case to determine if case should be referred to CASE REVIEW TEAM. Review can include actuarial assessments

No →

**Respondent released**  
at end of prison term.

Yes ↓

### **CASE REVIEW TEAM REPORT § 10.05 (a); 10.05 (e)-(g)**

Question for Team: Is the respondent a *sex offender requiring civil management*. This assessment can include an exam by a psychiatric examiner.

Timetable: Written report must be to AG 45 days from date Commissioner received notice of pending release.

No →

AG shall not file a Sex Offender Civil Management Petition § 10.05 (f)

Yes ↓

### **COUNSEL APPOINTED §10.06 (c)**

Counsel for respondent will be appointed here or when AG requests psych exam whichever is earlier. MHLS shall be appointed if possible.

### **SEX OFFENDER CIVIL MANAGEMENT PETITION (SOMP) § 10.06 (a)-(f)**

AG has discretion to file the petition in the Supreme Court or in the County where respondent is located. Timetable: Within 30 days of receiving case review team report. If respondent becomes eligible for release or has been released from incarceration before probable cause hearing the court will order the person’s confinement & commence a probable cause hearing within 72 hours.

### **NOTICE OF REMOVAL § 10.06 (b)**

Respondent can file a notice of removal to jurisdiction where the underlying sex offense changes. Timetable: within 10 days of receiving SOMP. AG may move to retain venue within 5 days after receipt of notice of removal.

At any time after the filing of the of the petition and before trial the respondent may request the court in which the petition is pending to order an evaluation by a psychiatric examiner. §10.06 (e).

### **PROBABLE CAUSE HEARING § 10.06 (g)-(k)**

Question for Judge: Is there probable cause to believe that respondent is a *sex offender requiring civil management?* i.e. Is respondent a detained sex offender who suffers from a mental abnormality? Timetable: Within 30 days of SOMP filing.

No →

### **Petition Dismissed § 10.06(k)**

State can appeal as of right. Respondent cannot appeal probable cause decision. State and respondent may appeal all final orders per CPLR Art. 55-57 § 10.13 (b)

Yes ↓

### **COMMITMENT ORDER TO SECURE TREATMENT FACILITY § 10.06 (k)**

### **JURY TRIAL (can be waived) § 10.07 (a)-(e)**

Question for Jury: Is respondent a detained sex offender who suffers from a mental abnormality? Timetable: Within 60 days of probable cause hearing Venue § 10.07 (a) Same court as probable cause hearing but AG or Respondent may move

Hung Jury?  
Commitment Order Continues →

**2nd Jury Trial §10.07 (e)**  
Timetable: Within 60 days 1st trial.

Hung Jury? →

### **Petition Dismissed § 10.07 (e)**

Petition also dismissed if unanimous verdict is for respondent.

Unanimous Verdict for State? ↓

Unanimous Verdict for State? ↓

**HEARING TO DETERMINE IF RESPONDENT IS A DANGEROUS SEX OFFENDER REQUIRING CIVIL CONFINEMENT. § 10.07 (f)**

SEE NEXT PAGE

# NEW YORK'S SEX OFFENDER MANAGEMENT AND TREATMENT ACT

## HEARING TO DETERMINE IF RESPONDENT IS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT § 10.07 ( f )

Question for Judge: Does the respondent have “a mental abnormality involving such a strong predisposition to commit sex offenses and such an inability to control behavior that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility?”

Burden: Clear and Convincing Evidence

Timetable: After jury trial

Yes

No

**FINDING: RESPONDENT IS DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT**  
Respondent is ordered to be confined in a secure treatment facility

**FINDING: RESPONDENT IS A SEX OFFENDER REQUIRING STRICT AND INTENSIVE SUPERVISION**

Secure treatment facility shall provide care, treatment, and control of the respondent until discharge. Treatment plan must be developed and implemented. Best practices shall be recommended by the Office of Sex Offender Management (created by legislation-codified under Executive Law § 837-r). Respondents are to be held separately from other persons in the care and custody of the Commissioner. § 10.10 (a)-(i)

Commissioner after consulting with professionals treating respondent shall recommend a specific course of treatment § 10.11 (a)(1)

Division of Parole shall recommend supervision requirements to the court. May include electronic monitoring, residence restrictions, etc. § 10.11 (a) (1) Must include at least 6 face-to-face contacts and 6 collateral contacts a month § 10.11 (b) (1).

**MANDATORY ANNUAL NOTICE OF RIGHT TO PETITION FOR DISCHARGE §10.09 (a)-(c)**  
Commissioner must provide to the court, the respondent, and respondent's counsel and ANNUAL written notice of the right to petition the court for discharge along with a report including the commissioner's written determinations as to whether the respondent is currently a dangerous sex offender requiring continued confinement. This report must be accompanied by a written report of a psychiatric examiner which must state whether the respondent is currently a dangerous sex offender requiring confinement. Respondent will also have a right to be evaluated by an independent psychiatric examiner.

AG & respondent have an opportunity to be heard. § 10.11 (a) (2)

**COURT ORDER ISSUED FOR STRICT AND INTENSIVE SUPERVISION AND TREATMENT § 10.11 (a) ( 2 ); 10.11 (b) and (c)**

Court issues an order of strict and intensive supervision which must include a written statement of the conditions of the strict and intensive supervision and treatment. Conditions go to respondent, respondent's counsel, and any designated service providers or treating professionals, Commissioner, AG, and supervising parole officer. Regimen of supervision does not toll any form of supervision in criminal cases. This order places respondent in the custody and control of the state division of parole. Every four months any agency, organization, professional, or service provider designated to provide treatment to respondent shall submit to the court a report describing the person's conduct while under a regimen of strict and intensive supervision and treatment.

**EVIDENTIARY HEARING ON RETENTION §10.09(d)**

SEE NEXT PAGE

SEE NEXT 4

# NEW YORK'S SEX OFFENDER MANAGEMENT AND TREATMENT ACT

## **EVIDENTIARY HEARING ON RETENTION (continued from page 2) § 10.09 (d)-(h)**

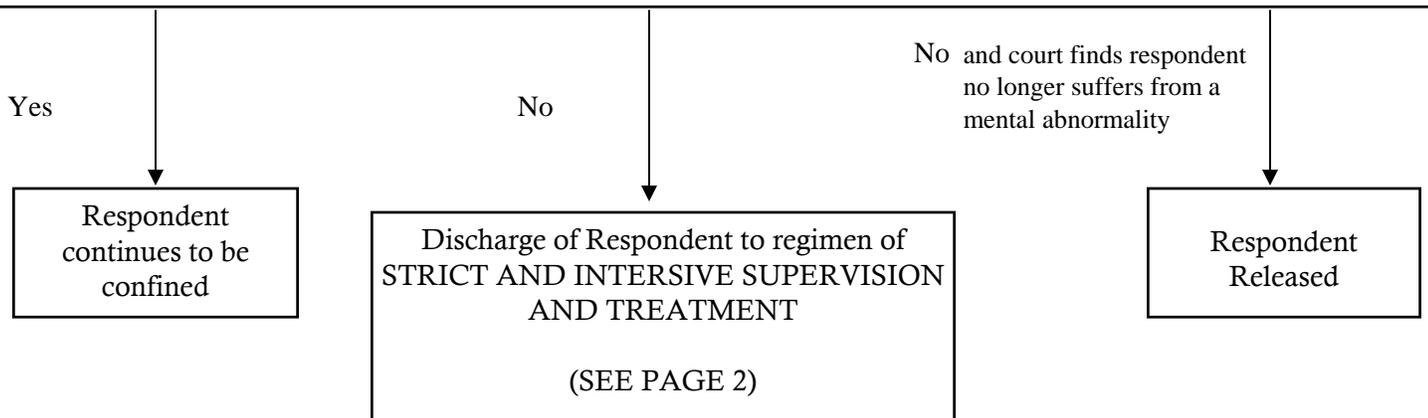
Question for Court: Is respondent currently a dangerous sex offender requiring confinement?

Burden of Proof: AG has burden-clear and convincing evidence

Court may direct the submission of evidence and may order a psychiatric evaluation if the court finds that any available examination reports are not current or otherwise insufficient.

### **Timetable:**

1. Within 45 days of the mandatory annual notice of right to petition for discharge if respondent has filed a petition or has not affirmatively waived the right to petition for discharge. The court can also call for a hearing *sua sponte* if it finds that on the basis of the reports submitted by the Commissioner, there is a substantial issue as to whether respondent remains a dangerous sex offender requiring confinement OR
2. Anytime upon the filing of a petition by the Commissioner that states that the respondent is no longer a dangerous sex offender requiring confinement OR
3. Anytime upon a petition of the respondent BUT court can deny the petition (other than in connection with an annual review #1 above) if the petition is either (1) frivolous or (2) does not provide a sufficient basis for reexamination prior to the next annual review.



# NEW YORK'S SEX OFFENDER MANAGEMENT AND TREATMENT ACT

## VIOLATION/RECOVATION OF STRICT AND INTENSIVE SUPERVISION § 10.11 (c)

(continued from page 2)

i.e. Does the parole officer have reasonable cause to believe that the respondent violated a condition of the regimen of strict and intensive supervision and treatment OR is there an oral or written evaluation or report by a treating professional indicating that the person may be a dangerous sex offender requiring confinement?

### RESPONDENT IS TAKEN INTO CUSTODY § 10.11 (d)(1)

Respondent is taken into custody and taken to either a Secure Treatment Facility, Correctional Facility, or psychiatric center for examination by a psychiatric examiner. If respondent is evaluated at a psychiatric center the respondent shall be returned to the secure treatment facility or correctional facility after evaluation.  
Timetable: 5 days from date custody commenced

### NOTIFICATION §10.11 (d)(1)

Parole notifies the AG and the MHLS when respondent is taken into custody.

AND/OR

### AG MAY FILE A PETITION TO MODIFY PREVIOUS ORDER OF STRICT AND INTENSIVE SUPERVISION AND TREATMENT § 10.11 (d)(2)

Timetable: 5 days from when respondent was taken into custody. If no petition is filed the respondent must be released subject to the terms of the previous order of strict and intensive supervision and treatment. Release of respondent does not foreclose subsequent action. If petition filed respondent must be released §10.11(e)  
Venue: Court that issued the original order imposing strict and intensive supervision and treatment.  
Service: Respondent & MHLS

### AG MAY FILE A PETITION FOR CONFINEMENT § 10.11 (d)(2)

Timetable: 5 days from when respondent taken into custody. If no petition is filed the respondent must be released subject to the terms of the previous order of strict and intensive supervision and treatment. Release of respondent does not foreclose subsequent action.  
Venue: Court that issued original order imposing strict and intensive supervision and treatment.  
Service: Respondent & MHLS

### Parole Officer's Sworn Statement § 10.11(d)(4)

Petition for confinement must include the parole officer's sworn allegations demonstrating reasonable cause to believe that the respondent violated a condition of strict and intensive supervision, along with any written evaluations or reports by a treating professional indicating the respondent may be a dangerous sex offender requiring confinement.

### PROBABLE CAUSE HEARING § 10.11 (d)(4)

Question for court: Is there probable cause to believe that respondent is a dangerous sex offender requiring confinement?

No

### Respondent Released

Court can order revised conditions of supervision and treatment pending completion of hearing.

Yes

### NON-JURY HEARING TO DETERMINE IF RESPONDENT IS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT § 10.11 (d) (4)

Question for Judge: Is Respondent a dangerous sex offender requiring confinement?  
Burden: AG by clear and convincing evidence.  
Timetable: Within 30 days of petition for confinement.

Yes

Order issued confining respondent to a secure treatment facility

No

Order issued releasing respondent under previous order of strict and intensive supervision and treatment.

No

Order issued modifying regiment of strict and intensive supervision and treatment.

### NON-JURY HEARING TO DETERMINE IF RESPONDENT'S TREATMENT & SUPERVISION SHOULD BE MODIFIED § 10.11 (e)

Burden: Party seeking modification.  
Timetable: Within 5 days of filing petition to modify previous