

NYSATSA and Alliance Position Paper Regarding The Sex Offender Management and Treatment Act

On April 14th, 2007, The Sex Offender Management and Treatment Act (S3318 and A06162), now known as Article 10 of the Mental Hygiene Law (10.01-10.17), Sex Offenders Requiring Civil Commitment or Supervision, became law in New York State.

NYSATSA and the Alliance were asked to provide commentary on the law after Governor Spitzer signed it. Copies of this commentary will, in the vernacular of New York State Legislature, be “bound” to the law, i.e. filed with it in the archives of Albany. The text of our statement is as follows:

“The New York State Alliance of Sex Offender Service Providers is a not-for-profit professional education and support organization comprised of probation and parole officers, mental health professionals, corrections personnel, victim advocates and law enforcement officers. Our members work to enhance community safety by improving the investigation, prosecution, community supervision, treatment and re-entry of sex offenders using a victim-centered model. We appreciate the invitation to provide comments regarding the Sex Offender Management and Treatment Act.

“Our members strongly support the Sex Offender Management and Treatment Act, and anticipate that it will result in significant improvement in community safety. We applaud the Governor, Assembly and Senate for working together to create this vastly improved strategy for sex offender management.

“Our members acknowledge that there are some persistent and dangerous sex offenders whose high risk for recidivism creates a danger to the community. The civil commitment aspects of this Act appear to strike a balance between safeguarding the community and ensuring the highest degree of protection for individual rights and freedoms.

balance between safeguarding the community and ensuring the highest degree of protection for individual rights and freedoms. The several phases of evaluation, prior to sex offenders being released from prison or parole supervision appears to limit the number of inmates likely to be found in need of civil commitment to those who genuinely require long-term separation from the community. We note the wisdom of allowing sex offenders to waive a jury trial during their commitment hearings, having learned from other states that juries typically vote to civilly commit, whereas judges tend more to form opinions based on the merits of each individual case.

“Historically, civil commitment programs struggle with the task of motivating inmates to participate in, and successfully complete, a specialized treatment program. In this Act, motivation to participate in rehabilitation services is maximized by providing the committed sex offenders with ample opportunity for re-evaluation and potential release. We anticipate that issues regarding privacy and confidentiality will be clarified during the implementation phase. Our membership notes that incarcerated or civilly committed sex offenders are not likely to volunteer information about other, as-of-yet undocumented offenses if that volunteered information is going to reduce their likelihood of release. That is, we know that eighty-seven percent of all sex offenses are not reported to the authorities, and that it is more often the rule than the exception that a dangerous sex offender has committed more offenses than are represented in his legal history. For treatment to be effective, it will be important for that sex offender to explore all his sexually offensive behaviors, not just those represented in his legal history. This creates a difficulty if the information he provides concerning non-documented offenses is going to be used to bolster a case for his civil commitment.

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There is no easy answer to this issue, except to provide both a degree of privacy regarding this information, as well as to have it be considered by the expert evaluators, who will note that such voluntarily provided data is an act of good faith and sometimes a characteristic of genuine rehabilitation. During the implementation of this Act, further consideration must be given concerning the privacy of information elicited during the course of sex offender treatment.

“Because of the high cost of civil commitment, it would be advisable for the State to give further exploration to ensuring that a specialized sex offender evaluation and risk assessment be conducted on every convicted sex offender prior to sentencing. For those sex offenders who appear to be potential candidates for civil commitment proceedings in the future, the Court can institute a longer sentence, thereby reducing the long-term cost by using the correctional system rather than mental health resources.

“The members of the New York State Association for the Treatment of Sexual Abusers strongly support the provision of sex offender treatment within the facilities of the Department of Correctional Services. We note that such specialized sex offender treatment programs often require at least two years, and that some sex offenders should be able to have their duration in treatment extended beyond the two-year mark.

“A majority of sex offenders receive their treatment in the community, usually as a Condition of Probation. Some of these sex offenders fail to access specialized sex offender treatment services, despite Court mandate, because they do not have the ability to pay for their own treatment. Strategies should be clarified during the implementation of this Act to ensure that specialized sex offender treatment is provided to all the sex offenders in the community who genuinely require this service. Perhaps this could be implemented through funding to the local Probation Departments, to provide a partial subsidy in order to ensure that treatment is provided to all who require this service.

“The members of New York State Association for the Treatment of Sexual Abusers strongly support the option of Intensive Supervision, and applaud the Governor and legislature for providing the resources to strengthen the supervision agencies. Similarly, we have learned from the experiences of many other states that the option of sentencing sex offenders to much longer periods of supervision is a very effective strategy for reducing re-offenses by those offenders for whom the propensity to re-offend is a chronic, even life-long disability. As we have learned from the State of Texas, intensive supervision and longer periods of supervision are highly effective strategies for improving community safety, as well as containing cost. We support the aspects of this Act that provide the option of longer periods of supervision and intensive supervision.

“Finally, the creation of the Office for Sex Offender Management offers perhaps the most significant strategy for enhancing community safety, by ensuring that the wide variety of state agencies can work in concert. By implementing best practices models, and ensuring interagency collaboration, the Office for Sex Offender Management will have far-reaching positive effects. Using the strategies developed, for example, by the Colorado State Board for Sex Offender Management, practices around the state can be evaluated and improved.

“In summary, the New York State Association for the Treatment of Sex Offenders is strongly in support of the Sex Offender Management and Treatment Act.

Respectfully Submitted by:

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