§ 670.10 Use in a criminal proceeding of testimony given in a previous proceeding; when authorized.

1. Under circumstances prescribed in this article, testimony given by a witness at (a) a trial of an accusatory instrument, or (b) a hearing upon a felony complaint conducted pursuant to section 180.60, or (c) an examination of such witness conditionally, conducted pursuant to article six hundred sixty, may, where otherwise admissible, be received into evidence at a subsequent proceeding in or relating to the action involved when at the time of such subsequent proceeding the witness is unable to attend the same by reason of death, illness or incapacity, or cannot with due diligence be found, or is outside the state or in federal custody and cannot with due diligence be brought before the court. Upon being received into evidence, such testimony may be read and any videotape or photographic recording thereof played. Where any recording is received into evidence, the stenographic transcript of that examination shall also be received.

2. The subsequent proceedings at which such testimony may be received in evidence consist of:

(a) Any proceeding constituting a part of a criminal action based upon the charge or charges which were pending against the defendant at the time of the witness's testimony and to which such testimony related; and

(b) Any post-judgment proceeding in which a judgment of conviction upon a charge specified in paragraph (a) is challenged.