§ 1038. Records and discovery involving abuse and neglect. (a) Each hospital and any other public or private agency having custody of any records, photographs or other evidence relating to abuse or neglect, upon the subpoena of the court, the corporation counsel, county attorney, district attorney, counsel for the child, or one of the parties to the proceeding, shall be required to send such records, photographs or evidence to the court for use in any proceeding relating to abuse or neglect under this article. Notwithstanding any other provision of law to the contrary, service of any such subpoena on a hospital may be made by certified mail, return receipt requested, to the director of the hospital. The court shall establish procedures for the receipt and safeguarding of such records.

(b) Pursuant to a demand made under rule three thousand one hundred twenty of the civil practice law and rules, a petitioner or social services official shall provide to a respondent or the child's attorney any records, photographs or other evidence demanded relevant to the proceeding, for inspection and photocopying. The petitioner or social services official may delete the identity of the persons who filed reports pursuant to section four hundred fifteen of the social services law, unless such petitioner or official intends to offer such reports into evidence at a hearing held pursuant to this article. The petitioner or social services official may move for a protective order to withhold records, photographs or evidence which will not be offered into evidence and the disclosure of which is likely to endanger the life or health of the child.

(c) A respondent or the child's attorney may move for an order directing that any child who is the subject of a proceeding under this article be made available for examination by a physician, psychologist or social worker selected by such party or the child's attorney. In determining the motion, the court shall consider the need of the respondent or child's attorney for such examination to assist in the preparation of the case and the potential harm to the child from the examination. Nothing in this section shall preclude the parties from agreeing upon a person to conduct such examination without court order.

Any examination or interview, other than a physical examination, of a child who is the subject of a proceeding under this article, for the

purposes of offering expert testimony to a court regarding the sexual abuse of the child, as such term is defined by section one thousand twelve of this article, may, in the discretion of the court, be videotaped in its entirety with access to be provided to the court, the child's attorney and all parties. In determining whether such examination or interview should be videotaped, the court shall consider the effect of the videotaping on the reliability of the examination, the effect of the videotaping on the child and the needs of the parties, including the attorney for the child, for the videotape. Prior to admitting a videotape of an examination or interview into evidence, the person conducting such examination or the person operating the video camera shall submit to the court a verified statement confirming that such videotape is a complete and unaltered videographic record of such examination of the child. The proponent of entry of the videotape into evidence must establish that the potential prejudicial effect is substantially outweighed by the probative value of the videotape in assessing the reliability of the validator in court. Nothing in this section shall in any way affect the admissibility of such evidence in any other court proceeding. The chief administrator of the courts shall promulgate regulations protecting the confidentiality and security of such tapes, and regulating the access thereto, consistent with the provisions of this section.

(d) Unless otherwise proscribed by this article, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to proceedings under this article. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay.