§ 10.06 Petition and hearing.

(a) If the case review team finds that a respondent is a sex offender requiring civil management, then the attorney general may file a sex offender civil management petition in the supreme court or county court of the county where the respondent is located. In determining whether to file such a petition, the attorney general shall consider information about any continuing supervision to which the respondent will be subject as a result of criminal conviction, and shall take such supervision into account when assessing the need for further management as provided by this article. If the attorney general elects to file a sex offender civil management petition, he or she shall serve a copy of the petition upon the respondent. The petition shall contain a statement or statements alleging facts of an evidentiary character tending to support the allegation that the respondent is a sex offender requiring civil management. The attorney general shall seek to file the petition within thirty days after receiving notice of the case review team's finding, but failure to do so within that period shall not affect the validity of the petition.

(b) Within ten days after the attorney general files a sex offender civil management petition, the respondent may file in the same court a notice of removal to the county of the underlying criminal sex offense charges. The attorney general may, in the court in which the petition is pending, move for a retention of venue. Such motion shall be made within five days after the attorney general is served with a notice of removal, which time may be extended for good cause shown. The court shall grant the motion if the attorney general shows good cause for such retention. If the attorney general does not timely move for a retention of venue, or does so move and the motion is denied, then the proceedings shall be transferred to the county of the underlying criminal sex offense charges. If the respondent does not timely file a notice of removal, or the attorney general moves for retention of venue and such motion is granted, then the proceedings shall continue where the petition was filed.

(c) Promptly upon the filing of a sex offender civil management petition, or upon a request to the court by the attorney general for an order pursuant to subdivision (d) of this section that a respondent submit to an evaluation by a psychiatric examiner, whichever occurs

earlier, the court shall appoint counsel in any case where the respondent is financially unable to obtain counsel. The court shall appoint the mental hygiene legal service if possible. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal representation services under subdivision (c) of section 10.15 of this article. Counsel for the respondent shall be provided with copies of the written notice made by the case review team, the petition and the written reports of the psychiatric examiners.

(d) At any time after receiving notice pursuant to subdivision (b) of section 10.05 of this article, and prior to trial, the attorney general may request the court in which the sex offender civil management petition could be filed, or is pending, to order the respondent to submit to an evaluation by a psychiatric examiner. Upon such a request, the court shall order that the respondent submit to an evaluation by a psychiatric examiner chosen by the attorney general and, if the respondent is not represented by counsel, the court shall appoint counsel for the respondent. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the attorney general, to counsel for the respondent, and to the court.

(e) At any time after the filing of a sex offender civil management petition, and prior to trial, the respondent may request the court in which the petition is pending to order that he or she be evaluated by a psychiatric examiner. Upon such a request, the court shall order an evaluation by a psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the respondent or counsel for the respondent, to the attorney general, and to the court.

(f) Notwithstanding any other provision of this article, if it appears that the respondent may be released prior to the time the case review team makes a determination, and the attorney general determines that the protection of public safety so requires, the attorney general may file a securing petition at any time after receipt of written notice pursuant

to subdivision (b) of section 10.05 of this article. In such circumstance, there shall be no probable cause hearing until such time as the case review team may find that the respondent is a sex offender requiring civil management. If the case review team determines that the respondent is not a sex offender requiring civil management, the attorney general shall so advise the court and the securing petition shall be dismissed.

(g) Within thirty days after the sex offender civil management petition is filed, or within such longer period as to which the respondent may consent, the supreme court or county court before which the petition is pending shall conduct a hearing without a jury to determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management.

(h) If the respondent was released subsequent to notice under subdivision (b) of section 10.05 of this article, and is therefore at liberty when the petition is filed, the court shall order the respondent's return to confinement, observation, commitment, recommitment or retention, as applicable, for purposes of the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's return. If the respondent is not at liberty when the petition is filed, but becomes eligible to be released prior to the probable cause hearing, the court shall order the stay of such release pending the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's anticipated release date. In either case, the release of the respondent shall be in accordance with other provisions of law if the hearing does not commence within such period of seventy-two hours, unless: (i) the failure to commence the hearing was due to the respondent's request, action or condition, or occurred with his or her consent; or (ii) the court is satisfied that the attorney general has shown good cause why the hearing could not so commence. Any failure to commence the probable cause hearing within the time periods specified shall not result in the dismissal of the petition and shall not affect the validity of the hearing or the probable cause determination.

(i) The provisions of subdivision (g) of section 10.08 of this article

shall be applicable to the hearing. The hearing should be completed in one session but, in the interest of justice, may be adjourned by the court.

(j) The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the probable cause hearing, whenever it appears that: (i) the respondent stands convicted of such offense; (ii) the respondent previously has been found not responsible by reason of mental disease or defect for the commission of such offense or for an act or acts constituting such offense; or (iii) the respondent was indicted for such offense by a grand jury but found to be incompetent to stand trial for such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether there is probable cause to believe that the commission of such offense was sexually motivated shall be determined by the court.

(k) At the conclusion of the hearing, the court shall determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management. If the court determines that probable cause has not been established, the court shall issue an order dismissing the petition, and the respondent's release shall be in accordance with other applicable provisions of law. If the court determines that probable cause has been established: (i) the court shall order that the respondent be committed to a secure treatment facility designated by the commissioner for care, treatment and control upon his or her release, provided, however, that a respondent who otherwise would be required to be transferred to a secure treatment facility may, upon a written consent signed by the respondent and his or her counsel, consent to remain in the custody of the department of corrections and community supervision pending the outcome of the proceedings under this article, and that such consent may be revoked in writing at any time; (ii) the court shall set a date for trial in accordance with subdivision (a) of section 10.07 of this article; and (iii) the respondent shall not be released pending the completion of such trial.

(l) (1) If a respondent who is transferred to a secure treatment facility pursuant to subdivision (k) of this section, has not yet reached his or her maximum expiration date on the underlying determinate or indeterminate sentence of imprisonment, is significantly disruptive

of the treatment program at such secure treatment facility, the person in charge of treatment programs at such facility may initiate a proceeding to obtain an order that the respondent shall be transferred to the custody of the department of corrections and community supervision for such conduct.

(2) Such a proceeding shall be initiated by a written notice served upon the respondent, and provided by mail to his or her counsel (or by electronic mail or facsimile to a destination identified by such counsel for such purpose). Such notice shall identify in detail the dates, times and nature of the alleged misconduct pursuant to paragraph one of this subdivision, the possible sanctions, and the date, time and location of the hearing.

(3) A hearing on the allegations shall be held no less than ten days nor more than sixty days after such notice is served on the respondent and provided to his or her counsel. The hearing shall be conducted by the director of the secure treatment facility, or his or her designee. The respondent may be represented by counsel. Evidence shall be introduced through witnesses and documents, if any, and both the person in charge of the treatment program presenting the case and the respondent may call and cross-examine witnesses and present documentary evidence relevant to the question of whether the respondent has been significantly disruptive of the treatment program. The presiding officer may accept such evidence without applying formal state or federal rules of evidence. The hearing shall be recorded or a stenographic record of the proceeding shall be kept. When hearing the matter and, if the allegations are sustained, the presiding officer shall consider the respondent's mental health condition and its effect, if any, on his or her conduct.

(4) At the conclusion of the hearing, if the presiding officer is satisfied that there is a preponderance of evidence that the respondent has been significantly disruptive of the treatment program at the secure treatment facility, the presiding officer shall so find. In such event, the presiding officer may order the respondent's transfer back to the custody of the department of corrections and community supervision for a period of up to six months, provided however, that when such respondent reaches the maximum expiration date of his or her underlying sentence he or she shall be returned to a secure treatment facility unless he or she

consents in writing as provided in subdivision (k) of this section to remaining in the custody of the department of corrections and community supervision and provided further that he or she shall be returned to a secure treatment facility if the final order issued pursuant to subdivision (f) of section 10.07 of this article requires placement in a secure treatment facility.

(5) At the conclusion of the hearing, the presiding officer shall prepare a written statement, to be made available to the respondent and his or her counsel, indicating the evidence relied on, the reasons for the determination and specifying the procedures and time frame for administrative appeal to the commissioner. The determination may be appealed to the commissioner in accordance with procedures established in writing by the department. The respondent shall be given at least ten days after notice of the determination has been served and the transcript or recording of the proceeding (with appropriate access equipment) has been provided to perfect the appeal. The respondent may be represented by counsel on the administrative appeal.