§ 10.08 Procedures under this article.

(a) When a respondent submits to an examination pursuant to an order issued in accordance with this article, any statement made by the respondent for the purpose of the examination shall be kept confidential in accordance with the provisions of section 33.13 of this chapter and shall be inadmissible in evidence against him or her in any criminal action or proceeding, provided that such statements may be used in proceedings under this article.

(b) A psychiatric examiner chosen by the attorney general shall have reasonable access to the respondent for the purpose of such examination, as well as to the respondent's relevant medical, clinical, criminal or other records and reports. A psychiatric examiner chosen by or appointed on behalf of the respondent shall have reasonable access to the respondent's relevant medical, clinical or criminal records and reports, except that such psychiatric examiner shall not have access without court order and for good cause shown to the name of, address of, or any other identifying information about the victim or victims. To the extent possible, such identifying information should be redacted so as to provide the examiner with access to the balance of the document. In conducting examinations under this article, psychiatric examiners may employ any method that is accepted by the medical profession for the examination of persons alleged to be suffering from a mental disability or mental abnormality.

(c) Notwithstanding any other provision of law, the commissioner, the case review panel and the attorney general shall be entitled to request from any agency, office, department or other entity of the state, and such entity shall be authorized to provide upon such request, any and all records and reports relating to the respondent's commission or alleged commission of a sex offense, the institutional adjustment and any treatment received by such respondent, and any medical, clinical or other information relevant to a determination of whether the respondent is a sex offender requiring civil management. Otherwise confidential materials obtained for purposes of proceedings pursuant to this article shall not be further disseminated or otherwise used except for such purposes. Nothing in this article shall be construed to restrict any right of a respondent to obtain his or her own records pursuant to other provisions of law.

(d) The attorney general shall make records in his or her possession and relevant to the respondent available for inspection or copying by counsel for the respondent for purposes of hearing, trial, and appeal provided, however, that counsel shall not have access to the name of, address of, or any other identifying information about the victim or victims, or to any investigative or other reports that relate to matters beyond the scope of the proceedings and are confidential or privileged from disclosure. To the extent possible, such identifying information should be redacted so as to provide counsel with access to the balance of the document.

(e) At any hearing or trial pursuant to the provisions of this article, the court may change the venue of the trial to any county for good cause, which may include considerations relating to the convenience of the parties or witnesses or the condition of the respondent.

(e-1) Records or reports provided to the respondent in accordance with this article shall be disclosed in the circumstances and in the same manner as records and reports disclosed pursuant to the provisions of section 33.16 of this chapter.

(f) Time periods specified by provisions of this article for actions by state agencies are goals that the agencies shall try to meet, but failure to act within such periods shall not invalidate later agency action except as explicitly provided by the provision in question. The court may extend any time period at the request, or on the consent, of the respondent. No provision of this article shall be interpreted so as to prevent a respondent, after opportunity to consult with counsel for respondent, from consenting to the relief which could be sought by an agency with jurisdiction by means of a court proceeding under this article.

(g) In preparing for or conducting any hearing or trial pursuant to the provisions of this article, and in preparing any petition under the provisions of this article, the respondent shall have the right to have counsel represent him or her, provided that the respondent shall not be entitled to appointment of counsel prior to the time provided in section 10.06 of this article. The attorney general shall represent the state. Any relevant written reports of psychiatric examiners shall be admissible, regardless of whether the author of the report is called to testify, so long as they are certified pursuant to subdivision (c) of

rule forty-five hundred eighteen of the civil practice law and rules, in any proceeding or hearing held pursuant to subdivision (g) or (h) of section 10.06 of this article, paragraph two of subdivision (a), or paragraph four of subdivision (d), or subdivision (e), (g) or (h) of section 10.11 of this article. In all other proceedings or hearings held pursuant to this article, such admissibility shall require a showing of the author's unavailability to testify, or other good cause. All plea minutes and prior trial testimony from the underlying criminal proceeding, and records from previous proceedings under this article, shall be admissible. Each witness, whether called by the attorney general or the respondent, must, unless he or she would be authorized to give unsworn evidence at a trial, testify under oath, and may be cross-examined. The respondent may, as a matter of right, testify in his or her own behalf, call and examine other witnesses, and produce other evidence in his or her behalf. The respondent may not, however, cause a subpoena to be served on the person against whom the sex offense was committed or alleged to have been committed by the respondent, except upon order of the court for good cause shown. Either party may request closure of the courtroom, or sealing of papers, for good cause shown.

(h) The procedures and standards set forth in this article governing the imposition of conditions upon the respondent are intended to be the minimum required to provide for the protection of the public and treatment of the respondent. Nothing in this article shall be construed to require the availability or imposition of forms of treatment or supervision other than those for which this article specifically provides.

(i) * (1) At a proceeding conducted pursuant to subdivision (g) or (h) of section 10.06 of this article, a psychiatric examiner called to testify may be permitted, upon good cause shown, to testify by electronic appearance in the court, as that phrase is defined in section 182.10 of the criminal procedure law. It shall constitute good cause to permit such an electronic appearance that such proposed witness is currently employed by the state at a secure treatment facility or another work location unless there are compelling circumstances requiring the witness' personal presence at the court proceeding.

* NB Effective until September 1, 2028

* (1) At a proceeding conducted pursuant to subdivision (g) or (h) of

section 10.06 of this article, a psychiatric examiner called to testify may be permitted, upon good cause shown, to testify by electronic appearance in the court by means of an independent audio-visual system, as that phrase is defined in subdivision one of section 182.10 of the criminal procedure law. It shall constitute good cause to permit such an electronic appearance that such proposed witness is currently employed by the state at a secure treatment facility or another work location unless there are compelling circumstances requiring the witness' personal presence at the court proceeding.

* NB Effective September 1, 2028

(2) A copy of any clinical record or other document that the party calling such psychiatric examiner intends to present to the witness or introduce during the direct testimony of such psychiatric examiner by electronic appearance shall be provided to opposing counsel and, in a manner consistent with section 33.16 of this chapter, the respondent: (i) five days or more before the date such person is called to testify by electronic appearance at a proceeding conducted pursuant to subdivision (g) of section 10.06 of this article, and (ii) twenty-four hours or more before the date such person is called to testify by electronic appearance at a proceeding conducted pursuant to subdivision (h) of such section 10.06.

(3) Except as provided in paragraph four of this subdivision, copies of clinical records and documents not made available to opposing counsel and, where applicable, the respondent as required by paragraph two of this subdivision shall not be permitted to be presented to the witness on direct examination or introduced in evidence without the consent of opposing counsel provided, however, that where good cause is shown why such clinical record or other document was not provided sufficiently in advance as required by this subdivision, the court shall allow such clinical record or other document to be provided by appropriate means, including but not limited to facsimile or electronic means, and then used or considered in the same manner as if timely advance disclosure had been made.

(4) The court shall order that copies of clinical records and other documents relevant for cross-examination, re-direct examination or re-cross examination of such witness testifying by electronic means, not otherwise provided pursuant to this subdivision, be provided to opposing

counsel and, in a manner consistent with section 33.16 of this chapter, the respondent, by appropriate means, including but not limited to facsimile or other electronic means.

(5) For purposes of this subdivision, an "electronic appearance" means an appearance at which a participant is not present in the court, but in which all of the participants are able to see and hear the simultaneous reproductions of the voices and images of the judge, counsel, respondent and any other appropriate participant. When a witness makes an electronic appearance pursuant to this subdivision, the court stenographer shall record any statements in the same manner as if the witness had made a personal appearance.