

## Chapter 10:

# Discovery

<b>10.1 Overview</b>	<b>154</b>
<b>10.2 Terminology Used in This Chapter</b>	<b>154</b>
<b>10.3 Procedures for Obtaining Discovery</b>	<b>155</b>
A. Discoverable Information Pursuant to Statute	
B. Motion and Order Required	
C. When to File Motion	
D. Contents of Motion	
E. Hearing on Motion for Discovery	
F. Continuing Duty to Disclose	
G. Continuances and Sanctions	
<b>10.4 Juvenile’s Statutory Right to Discovery</b>	<b>157</b>
A. Statement of the Juvenile and Co-Respondents	
B. “Within the possession, custody, or control”	
C. Names of Witnesses	
D. Documents and Tangible Objects	
E. Reports and Examinations	
F. “Work Product” Exception	
G. Consequences of Juvenile Obtaining a Discovery Order	
H. Local Discovery Rules	
<b>10.5 Juvenile’s Constitutional Right to Disclosure of Exculpatory Evidence</b>	<b>160</b>
A. <i>Brady</i> Material	
B. Evidence Required to be Disclosed under <i>Brady</i>	
<b>10.6 North Carolina Rules of Professional Conduct</b>	<b>162</b>
<b>10.7 Voluntary Disclosure by State</b>	<b>162</b>
<b>10.8 State’s Statutory Right to Discovery</b>	<b>162</b>
A. Names of Witnesses	
B. Right Based on Juvenile’s Order for Discovery Following State’s Motion and Order for Discovery	
<b>10.9 Protective Order</b>	<b>163</b>
<b>Appendix 10-1 Motion for Discovery and Exculpatory Material</b>	<b>165</b>
<b>Appendix 10-2 Motion to Preserve the Rough Notes of Investigators</b>	<b>169</b>

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## 10.1 Overview

**Generally.** The parties to a juvenile proceeding have rights to obtain evidence and information from each other through the process of discovery. A juvenile has the right to discovery in all cases, regardless of whether the underlying offense alleged is a misdemeanor or felony. This chapter discusses grounds and procedures for obtaining discovery, including statutory rights to discovery of each party under the Juvenile Code and constitutional rights of the juvenile to obtain information from the State. Discovery is essential to development of a strong defense for the juvenile and evaluation of the State's case.

**Statutory rights.** The parties' statutory rights to discovery are set forth in Article 23 of the Juvenile Code. G.S. 7B-2300 to -2303. There is no "open file" discovery statute comparable to that found in the Criminal Procedure Act. *See* G.S. 15A-903. Counsel must file a motion and obtain an order for disclosure of specific information or materials.

The State's statutory right to discovery is largely dependent on the juvenile's exercise of rights under G.S. 7B-2300, and is limited to evidence that the juvenile intends to introduce at hearing. G.S. 7B-2301.

**Constitutional rights.** Disclosure by the State of exculpatory evidence that is material to the defense, commonly known as *Brady* material, has been recognized by the U.S. Supreme Court as essential under the Due Process Clause of the Fourteenth Amendment to ensuring fairness in a criminal case. The constitutional requirements of due process under the 14th Amendment are applicable to juvenile cases under *Gault*. *See infra* § 10.5 (Juvenile's Constitutional Right to Disclosure of Exculpatory Evidence).

**Local rules governing discovery.** Some districts have adopted local rules of discovery that may include deadlines for filing discovery motions and for producing discovery.

**Other bases for disclosure.** There are several other means of obtaining information in juvenile proceedings. Voluntary disclosure by the State is specifically allowed by statute. The North Carolina Rules of Professional Conduct require disclosure by the prosecutor of certain information in criminal cases and may be applicable to juvenile proceedings. Finally, counsel may use a subpoena to require a witness to appear and produce documents or move for production of documents from a non-party witness. *See* 1 NORTH CAROLINA DEFENDER MANUAL §§ 4.7A (Evidence in Possession of Third Parties), 4.8 (Subpoenas) (May 1998), at [www.ncids.org](http://www.ncids.org).

## 10.2 Terminology Used in This Chapter

*Brady material* is evidence or information that is favorable to the defense and material to the outcome of either the guilt-innocence or sentencing phase of a trial. This evidence must be disclosed by the State in a criminal case under the Due Process Clause of the 14th

Amendment pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. *See infra* § 10.5A (*Brady* Material).

*Petitioner* is “the individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.” G.S. 7B-1501(20). The term “petitioner” as used in the discovery statute is used to refer to agents of the State acting on behalf of the petitioner, including the prosecutor, law enforcement officers, and juvenile court counselors.

## 10.3 Procedures for Obtaining Discovery

### A. Discoverable Information Pursuant to Statute

The categories of information that each party is statutorily entitled to obtain are set forth in G.S. 7B-2300. *See infra* §§ 10.4 (Juvenile’s Statutory Right to Discovery) and 10.8 (State’s Statutory Right to Discovery). There is no statutory “open file” discovery as provided in criminal cases pursuant to G.S. 15A-903.

### B. Motion and Order Required

Each statutory section providing for discovery requires that a motion be filed and an order obtained. G.S. 7B-2300. It is common practice to file a single motion identifying all the categories of information sought. *See infra* Appendix 10-1 (Motion for Discovery and Exculpatory Material). Counsel should ask that discovery be produced by a specific date and request a hearing on the motion, if necessary.

In some districts the prosecutor has an open file policy or the juvenile court counselor routinely provides discovery materials to the juvenile’s counsel. Even if discovery materials are voluntarily provided, counsel should file a discovery motion to protect the juvenile’s rights to discoverable information that might not have been provided by the State. In criminal cases in which the defendant has failed to make a formal request for discovery from the State pursuant to the statutory requirements, the courts have held that the defendant has no remedy if the State fails to produce the information voluntarily. *See State v. Abbott*, 320 N.C. 475 (1987) (prosecutor not barred from using defendant’s statement at trial even though it was discoverable under statute and was not produced before trial; open-file discovery policy was no substitute for formal request and motion).

Counsel should file a motion for discovery and secure an order compelling discovery to protect the juvenile’s rights in all cases. There is not a specific statutory provision in the Juvenile Code comparable to G.S. 15A-902(b) under the Criminal Procedure Act, assuring the juvenile’s rights to discovery through the making of a formal request and securing of the prosecutor’s agreement to comply. This further underscores the need for counsel to prepare and file a written, comprehensive motion for discovery in juvenile cases.

### C. When to File Motion

The Juvenile Code does not specify a deadline for moving for discovery. A motion for discovery should be filed early in the proceeding, however, so that counsel will have as much time as possible to review the information and evidence produced, investigate the evidence, and make additional motions if necessary. Discovery material may also be important for a probable cause hearing. Because adjudicatory hearings are usually set for hearing soon after the filing of the petition, discovery must proceed in a timely manner so that counsel will be prepared for the hearing. This is particularly important if the juvenile is in secure custody pending adjudication, making it especially important to avoid unnecessary continuances of the hearing.

### D. Contents of Motion

A discovery motion should be broad enough to include all evidence and information covered by statute. Although cases subsequent to *Brady* have held that a specific request is not required, the motion should also ask for all exculpatory information to put the State on notice of the information it should produce and to strengthen the record in the event of an appeal. *See infra* §§ 10.4 (Juvenile's Statutory Right to Discovery) and 10.5 (Juvenile's Constitutional Right to Disclosure of Exculpatory Evidence).

The motion for discovery should also include a request for any other information believed to be helpful to the juvenile's case regardless of whether the information is specified by statute. The duty to advocate zealously for the juvenile requires that counsel seek all evidence necessary to mount an effective defense.

Although the Juvenile Code does not set a deadline for production of discovery, counsel should request that the court specify a deadline in its order. Local rules in some districts provide deadlines for production of discovery. Counsel should be familiar with these rules to protect the juvenile's rights.

### E. Hearing on Motion for Discovery

The discovery statute does not specify that a hearing is required, as the wording is mandatory that "upon motion" the court "shall order" disclosure of the information. G.S. 7B-2300(a)-(d). It may be necessary to schedule a hearing and give notice, however, if required by the court, local rules or custom, or if the State objects to entry of an order for discovery. Also, a hearing may be beneficial to obtain an order setting a deadline for production of discovery or if the State has not produced requested information in a timely manner.

At the hearing counsel should be prepared to cite the statutory bases for disclosure of the material, as well as the constitutional bases for exculpatory material requested under *Brady*. *See infra* § 10.5 (Juvenile's Constitutional Right to Disclosure of Exculpatory Evidence).

### F. Continuing Duty to Disclose

Each party who has been ordered to disclose information or evidence is under a continuing duty to disclose newly-discovered evidence that is subject to discovery. The other party

must be given prompt notice of the new or additional evidence. G.S. 7B-2303. The State has an additional continuing duty under *Brady* and related cases to disclose evidence that is favorable to the juvenile and is material to the outcome of the case. *See infra* § 10.5 (Juvenile’s Constitutional Right to Disclosure of Exculpatory Evidence).

### G. Continuances and Sanctions

Counsel may need additional time to review evidence that has just been disclosed by the State. In some instances, the failure of the State to disclose evidence under a discovery order in a timely manner may justify a motion to dismiss, or a request for one of the sanctions available in criminal cases under G.S. 15A-910, for violation of the juvenile’s statutory or constitutional rights.

Counsel should promptly turn over information that the juvenile is required by law or ordered to disclose to avoid a request for a continuance by the State or sanctions.

## 10.4 Juvenile’s Statutory Right to Discovery

### A. Statement of the Juvenile and Co-Respondents

The State must provide information regarding both written and oral statements made by the juvenile or by any co-respondents. G.S. 7B-2300(a). Specifically, on motion and order, the State must:

- allow the juvenile to inspect *and* copy any relevant written or recorded statements within the possession, custody, or control of the petitioner made by the juvenile or any other party charged in the same action; and
- divulge, in written or recorded form, the substance of any oral statement made by the juvenile or any other party charged in the same action.

G.S. 7B-2300(a)(1), (2).

A copy of a waiver form read to or signed by the juvenile during any questioning should also be requested in the discovery motion. Counsel should review the particular waiver form to determine whether the juvenile’s constitutional or statutory rights were violated. If an adult waiver form was used it is likely that the juvenile did not receive adequate information regarding statutory rights, such as the right to have a parent or guardian present during questioning. *See infra* § 11.4H (Knowing, Willing, and Understanding Waiver of Rights).

### B. “Within the possession, custody, or control”

Under the first provision of the statute, the prosecutor is required to produce certain written or recorded statements “within the possession, custody, or control of the petitioner.” G.S. 7B-2300(a). Thus, any information subject to discovery received by the prosecutor must be produced, whether generated by the prosecutor’s office or other entities. These materials could include Department of Social Services reports, psychological evaluations, or reports of school resource officers. *See, e.g.*, G.S. 7B-307(a) (social services department must report

to the district attorney evidence of child abuse, and law enforcement must coordinate its investigation with the protective services investigation). Further, the phrase “possession, custody, or control” has been construed to mean “within the possession, custody, or control of the prosecutor *or those working in conjunction with him and his office.*” *State v. Pigott*, 320 N.C. 96, 102 (1987) (emphasis in original). The prosecutor is therefore obligated to produce materials and information connected with the case, such as information in the possession of law enforcement, whether or not contained in the prosecutor’s files.

### C. Names of Witnesses

The State must provide, on motion and order, the names of all persons to be called as witnesses. Counsel should include in the motion a request for the records of any witnesses under the age of 16, which must be provided “if accessible to the petitioner.” G.S. 7B-2300(b). The requirement that the State provide the records of juvenile witnesses implies that they may be used to impeach the credibility of a juvenile witness. *See also infra* § 12.5C (prior adjudication of delinquency may be used to impeach juvenile or juvenile witness). Impeachment by a juvenile record may be particularly important if a co-respondent is testifying against the juvenile.

### D. Documents and Tangible Objects

The State must allow the juvenile, on motion and order, to inspect *and* copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, and tangible objects. G.S. 7B-2300(c). These materials must meet two conditions:

- First, the information must be within the possession, custody, or control of the petitioner, prosecutor, or an investigating law enforcement officer. This language reinforces the obligation of the prosecutor to turn over discoverable information even if it is not in the immediate possession of the prosecutor. *See supra* § 10.4B (“Within the possession, custody, or control”); and
- Second, the information must be material to the preparation of the defense, *or* intended for use by the State as evidence, *or* obtained from or belonging to the juvenile.

G.S. 7B-2300(c)(1), (2).

Counsel should include in the motion a request for any documents or tangible objects obtained from the scene of the offense or from the alleged victim. The motion may include a request for such items as videotapes of the alleged victim or the scene of the offense, which may have to be copied from a computer hard drive, as well as any audio recordings describing the scene of the offense, of a call to 911, or of the alleged victim’s statement. In some instances it may be easier for counsel to obtain information directly from the source, such as a recording of a call to 911. It may be necessary to file a motion to preserve evidence that law enforcement may routinely destroy after a certain amount of time has elapsed. *See infra* Appendix 10-2 (Motion and Order to Preserve the Rough Notes of Investigators).

## E. Reports and Examinations

**Tests.** The State must allow the juvenile, on motion and order, to inspect and copy the results of tests and examinations within its possession, custody, or control. Results of physical or mental examinations, and tests, measurements, or experiments made in connection with the case, as well as underlying data, must be disclosed. G.S. 7B-2300(d); *see State v. Cunningham*, 108 N.C. App. 185 (1992) (defendant entitled to data underlying lab report on controlled substance). Counsel should request copies of any physical or mental examinations of the alleged victim, the juvenile, or witnesses. Further, the data underlying tests, experiments, and measurements made should be specifically requested in the motion, particularly regarding evidence obtained from the alleged victim or scene of the offense.

**Physical evidence.** Physical evidence that the State intends to offer at the adjudication is discoverable by the juvenile. On motion of the juvenile, the court must order the State to allow the juvenile access to the physical evidence, or a sample of it, for the juvenile to inspect, examine, and test under appropriate safeguards. G.S. 7B-2300(d).

## F. “Work Product” Exception

The Juvenile Code provides that the State is not required to produce “reports, memoranda, or other internal documents made by the petitioner, law enforcement officers, or other persons acting on behalf of the petitioner” in the investigation or prosecution of the case unless required pursuant to G.S. 7B-2300(a)–(d). G.S. 7B-2300(e). Additionally, there is no statutory requirement that the State produce statements made by witnesses, the petitioner, or anyone acting on behalf of the petitioner unless otherwise required by the statute. *Id.* This type of information is commonly referred to as “work product.” The definition of “work product” may vary, however, based on the type of proceeding and applicable statutory provisions. *Compare* G.S. 15A-904 (adult criminal “work product” provision).

Information that falls within the discovery statute, or that must be disclosed pursuant to constitutional mandates, must be produced. Statutory and constitutional disclosure requirements override any work product exception. *See infra* § 10.5 (Juvenile’s Constitutional Right to Disclosure of Exculpatory Evidence).

## G. Consequences of Juvenile Obtaining a Discovery Order

Except for the names of the juvenile’s witnesses, the State’s statutory right to discovery is dependent on the juvenile’s exercise of statutory rights under G.S. 7B-2300, and is limited to evidence that the juvenile intends to introduce at the hearing. G.S. 7B-2301. If the juvenile obtains an order for *any* discovery under the statute, the State may obtain information from the juvenile as allowed by statute. G.S. 7B-2301(b), (c); *see infra* § 10.8 (State’s Statutory Right to Discovery).

In most cases, the State has more information than the juvenile, so the benefits of obtaining information from the State outweigh the risks of disclosing evidence. It is therefore generally best to file a broad request for discovery as early as possible in the proceeding.

## H. Local Discovery Rules

Some districts have adopted local rules governing discovery. These rules may expand the information available to the juvenile or may set deadlines for requesting and producing discovery. It is vital for counsel to be familiar with any local rules to ensure that all discoverable information is requested and obtained in a timely manner.

## 10.5

### Juvenile's Constitutional Right to Disclosure of Exculpatory Evidence

#### A. *Brady* Material

The U.S. Supreme Court recognized the constitutional right of a criminal defendant under the Due Process Clause of the 14th Amendment to disclosure by the State of evidence that is:

- favorable to the defense, *and*
- material to the outcome of either the guilt-innocence or the sentencing phase of the trial.

*Brady v. Maryland*, 373 U.S. 83, 87 (1963). Subsequent cases have clarified that the right to disclosure is not dependent on a request by the defendant for the exculpatory information. *Kyles v. Whitley*, 514 U.S. 419, 433 (1995); *United States v. Bagley*, 473 U.S. 667 (1985).

The North Carolina Court of Appeals has stated in a juvenile appeal of an adjudication of delinquency that “it is true that suppression of evidence favorable to an accused upon request violates due process where the evidence is material to guilt,” citing *Brady. In re Coleman*, 55 N.C. App. 673, 674 (1982) (although *Brady* applies, Court unable to determine matter on appeal because neither document in question nor its contents included in record).

Although not required by *Kyles* and *Bagley*, *supra*, it is good practice to file a motion requesting that the State produce exculpatory evidence and specifying to the extent known the evidence that counsel wants the State to produce. This will put the State on notice and will strengthen the record in the event of an appeal.

#### B. Evidence Required to be Disclosed under *Brady*

***Defender Manual.*** The North Carolina Defender Manual contains a more complete discussion of information required to be disclosed under *Brady* and related cases. See 1 NORTH CAROLINA DEFENDER MANUAL § 4.6 (*Brady* Material) (May 1998), at [www.ncids.org](http://www.ncids.org).

***Favorable to the defense.*** Categories of evidence that must be disclosed as favorable to the defense are discussed, with case citations, in § 4.6B of the North Carolina Defender Manual, *supra*. Favorable evidence includes evidence that tends to negate guilt, mitigate an offense

or sentence, or impeach the truthfulness of a witness or reliability of evidence. Examples of favorable evidence include:

- impeachment evidence, such as:
  - false statements of a witness
  - prior inconsistent statements
  - bias of a witness
  - witness's capacity to observe, perceive, or recollect
  - psychiatric evaluations of a witness
  - prior convictions and other misconduct
- evidence discrediting police investigation and credibility
- other favorable evidence, such as:
  - evidence undermining identification of defendant
  - evidence tending to show guilt of another
  - physical evidence
  - “negative” exculpatory evidence (i.e., defendant not mentioned in statement regarding crime)
  - identity of favorable witnesses

**Material to outcome.** Under *Brady*, evidence must be material to the outcome of either the guilt-innocence or the sentencing phase of the case, in addition to being favorable to the defense. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The U.S. Supreme Court, in *Kyles v. Whitley*, 514 U.S. 419 (1995), provided further guidance regarding when evidence is material to the outcome of the case and must be disclosed. In *Kyles*, the Court stated four aspects of materiality under *Brady*:

- The standard of review for constitutional error for failure to disclose by the State is a “reasonable probability” that the outcome of the trial would have been different.
- The test is not the sufficiency of the evidence presented, but rather whether the favorable evidence might have cast a different light on the evidence presented, thereby undermining confidence in the verdict.
- If constitutional error is found the defendant is entitled to a new trial; the harmless error standard is not applicable.
- Materiality is determined by the cumulative effect of all undisclosed evidence, not on an item-by-item basis.

*Kyles v. Whitley*, 514 U.S. 419, 434–37 (1995).

## 10.6

### North Carolina Rules of Professional Conduct

Rule 3.8(d) of the Rules of Professional Conduct requires that the prosecutor in a criminal case disclose evidence that “tends to negate the guilt of the accused or mitigates the offense” and information that might mitigate at sentencing. Although this rule does not specifically apply to juvenile cases, the reasons underlying the duty to disclose are equally applicable. The rule requires the State to make “reasonably diligent inquiry” and to disclose non-privileged evidence as required by law, rules of procedure, or court opinions unless a protective order is entered.

## 10.7

### Voluntary Disclosure by State

The Juvenile Code specifically provides that the State is not prohibited from making voluntary disclosure of evidence “in the interest of justice.” G.S. 7B-2300(f). It is important, however, for counsel to file a broad motion for discovery even when the State voluntarily discloses evidence. The right to discovery under the statute requires that a motion be filed and an order for discovery be entered. *See supra* § 10.3B (Motion and Order Required). Although *Brady* and the Rules of Professional Conduct do not necessarily require that a motion be filed to invoke the State’s duty to disclose, counsel should file a written motion to highlight the information being sought and to strengthen the record in the event of appeal. If the prosecutor fails to disclose information after receiving a specific request, the juvenile may be in a stronger position to argue for sanctions.

## 10.8

### State’s Statutory Right to Discovery

#### A. Names of Witnesses

The juvenile must provide, on motion and order, the names of all persons to be called as witnesses. G.S. 7B-2301(a).

#### B. Right Based on Juvenile’s Order for Discovery Following State’s Motion and Order for Discovery

If a juvenile has obtained an order for discovery of *any* information under G.S. 7B-2300, the State has the right to discover the evidence or information listed below. G.S. 7B-2301(b), (c). The juvenile has no obligation to disclose evidence or information unless the State has filed a discovery motion and obtained an order compelling disclosure.

**Documents and tangible objects.** On motion of the State, the court must order the juvenile to allow the State to inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, and tangible objects. These materials must be:

- within the possession, custody, or control of the juvenile; *and*
- intended to be introduced as evidence by the juvenile.

G.S. 7B-2301(b).

**Reports of examinations and tests.** On motion of the State, the court must order the juvenile to allow the State to inspect and copy the results of certain tests and examinations. Results of physical or mental examinations, tests, measurements, or experiments made in connection with the case must be disclosed. The information must be:

- within the possession and control of the juvenile; *and*
- intended to be introduced as evidence or prepared by a witness whom the juvenile intends to call to testify about the result of the examination or test.

G.S. 7B-2301(c).

**Physical evidence.** On motion of the State, the court must order the juvenile to allow the State to inspect, examine, and test, subject to appropriate safeguards, physical evidence or a sample of it if the juvenile intends to offer the evidence or tests or experiments in connection with the evidence in the case. G.S. 7B-2301(c).

## 10.9 Protective Order

Either party is allowed to file a motion requesting an order that discovery be denied, restricted, or deferred. G.S. 7B-2302(a).

In the court's discretion, a party moving to restrict discovery may submit supporting affidavits or statements for *in camera* inspection. If the motion for relief is granted, the material inspected *in camera* by the court must be preserved for review by the Court of Appeals on appeal. G.S. 7B-2302(b).



# Appendix 10-1

## Motion for Discovery and Exculpatory Material

STATE OF NORTH CAROLINA  
 [ ] COUNTY

IN THE GENERAL COURT OF JUSTICE  
 DISTRICT COURT DIVISION  
 FILE NO. [ ]

STATE OF NORTH CAROLINA

)

v.

)

MOTION FOR

)

DISCOVERY AND

)

EXCULPATORY MATERIAL

[JS, A JUVENILE]

)

NOW COMES the Juvenile, by and through his attorney, and requests this Honorable Court, pursuant to N.C. Gen. Stat. §§ 7B-2300-2303, to require the District Attorney for Judicial District 35 to produce, divulge and permit counsel for the Juvenile to inspect, copy or photograph the following:

1. Any written or recorded statements made by the Juvenile within the possession, custody or control of the State or any of its law enforcement officials and any form reflecting the waiver of the Juvenile’s rights.
2. The substance of any oral statement relevant to the subject matter of the case made by the Juvenile, regardless of to whom the statement was made, within the possession, custody or control of the State, indicating to whom each such statement was made and the date each such statement was made.
3. All prior criminal records of the Juvenile, from any source as are available to the Office of the District Attorney.
4. The names of persons to be called as witnesses, including but not limited to a copy of the record of witnesses under the age of 16, if accessible to the State.
5. All books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the State which are intended for use by the State as evidence of any kind at the trial of the Juvenile, which may be material to the preparation to the Juvenile’s defense, or which were obtained from or belong to the Juvenile.
6. All results or reports of physical or mental examinations or of tests, measurements, or experiments, made in connection with the case, or copies thereof, within the

possession, custody, or control of the State, and any physical evidence, which may be offered as an exhibit or evidence in the case, including, but not limited to, any fingerprint or handwriting analysis made in connection with this case.

7. The Juvenile, through counsel, further requests that the District Attorney or his agents, pursuant to *United States v. Agurs* and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), disclose to, and permit counsel for the Juvenile to inspect, copy or photograph all evidence, of whatever kind within the possession or control of the State of North Carolina, or any of its law enforcement officials, which is favorable to, may be favorable to, or tends to be favorable to the Juvenile in this cause, or which may be material and relevant to the Juvenile's defense. This request for voluntary discovery of evidence favorable or tending to be favorable to the Juvenile includes, but is not necessarily limited to, the following items:
  - a. A copy of any prior criminal record available to the State or any of its law enforcement agencies of witnesses whom the State intends to or will offer as a witness on behalf of the State of the trial of the Juvenile.
  - b. A disclosure of all criminal charges known to the State of North Carolina or any of its law enforcement agencies pending against any person whom the State intends to or will offer as a witness on behalf of the State at the trial of the Juvenile.
  - c. All written, recorded, or oral statements made by any person who is a witness or an alleged witness to any of the transactions involving the offenses with which the Juvenile is charged, which statements written, recorded, or oral -- are inconsistent with the Juvenile's guilt of any of the charges against him, or which are or may tend to be favorable to the Juvenile on the issue of mitigation or punishment. This request for disclosure concerns witnesses or alleged witnesses to any of the transactions described in the petition(s) filed against the Juvenile, whether the State intends to call such person or persons as witnesses or not.

WHEREFORE, the Juvenile requests the Court to issue an Order compelling the State to provide the foregoing items of discovery pursuant to N.C. Gen. Stat. §§ 7B-2300-2303.

This the [ ] day of [ ], [ ].

-----  
 [ATTORNEY]  
 [ADDRESS]  
 [CITY, STATE, ZIP]  
 [TELEPHONE NUMBER]

\*\*\*\*\*

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the [NUMBER], Judicial District by deposit of said copy with [NAME], Assistant District Attorney.

This the [ ] day of [ ], [ ].

-----  
[ATTORNEY]



# Appendix 10-2

## Motion to Preserve the Rough Notes of Investigators

STATE OF NORTH CAROLINA

[ ] COUNTY

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

FILE NO. [ ]

IN THE MATTER OF

)

)

) MOTION TO PRESERVE

) THE ROUGH NOTES OF

[JS, A JUVENILE]

) INVESTIGATORS

NOW COMES, the Juvenile, through undersigned counsel, and respectfully moves this Court, pursuant to U.S. v. Agurs, 427 U.S. 97 (1976) and Brady v. Maryland, 373 U.S. 83 (1963), to order the prosecutor to preserve and turn over to the defense counsel any materials in the possession of the prosecutor and law enforcement agents which are favorable to the Juvenile, including the rough notes of all persons investigating this case with the [POLICE DEPARTMENT], including other sources employed or working with the [POLICE DEPARTMENT].

In order for the Juvenile to have access to these materials prior to the probable cause hearing, pre-adjudication or upon cross-examination at the adjudication hearing, it is absolutely necessary that the court enter an order requiring the state to investigate and preserve all of said rough notes and other related paper work.

WHEREFORE, the Juvenile respectfully requests that the prosecutor be ordered to respond to this request, in writing or in open court, to inquire of all investigating officers concerning the existence of this material, and if any such evidence or material exists, to require its preservation during the pendency of this case.

This the [ ] day of [ ], [ ].

-----  
 [ATTORNEY]  
 [ADDRESS]  
 [CITY, STATE, ZIP]  
 [TELEPHONE NUMBER]

\*\*\*\*\*

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the [NUMBER], Judicial District by deposit of said copy with [NAME], Assistant District Attorney.

This the [ ] day of [ ], [ ].

-----  
[ATTORNEY]