

10.4 Juvenile’s Statutory Right to Discovery

- 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
-

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).

Counsel should also include in the discovery motion a request for copies of any waiver forms read to or signed by the juvenile during questioning. Counsel should then review the waiver forms 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* § 11.4I, Knowing, Willing, and Understanding Waiver of Rights.

B. Within the Possession, Custody, or Control

The State is required to produce the statements described above if they are “within the possession, custody, or control” of the State. G.S. 7B-2300(a). Thus, any information subject to discovery received by the State must be disclosed to the juvenile. These materials could include statements within DSS reports, psychological evaluations, or reports of school resource officers. *See, e.g.*, G.S. 7B-307(a) (DSS must report to the district attorney evidence of child abuse, and law enforcement must coordinate its investigation with the protective services investigation). 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 State is therefore obligated to produce the required materials and information, 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 people to be called as witnesses. If the juvenile files a motion under G.S. 7B-2300 requesting disclosure of the State’s witness list, the trial court must grant the motion. *See In re A.M.*, 220 N.C. App. 136, 138 (2012) (holding that the trial court erred by “failing to allow [the juvenile’s] motion in limine, continue the case, or find another way to remedy a situation created by the petitioner’s failure to comply with the plain mandate of N.C. Gen. Stat. § 7B-2300(b).”). 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, Rules of Evidence (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.
- 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. For example, counsel may be able to obtain copies of 911 calls directly from law enforcement under G.S. 7B-3001. *See infra* § 10.8, Other Sources of

Information. 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. A sample motion to preserve rough notes of investigators is available on the [Office of the Juvenile Defender website](#).

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 based on language in the version of G.S. 15A-903 in effect at the time, which is similar to the language that currently exists in G.S. 7B-2300(d)). 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 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 hearing 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 State is not required under Article 23 of the Juvenile Code 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 requirement under Article 23 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 sometimes referred to as “work product.” This provision does not override other rights to obtain information, however.

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.

Further, according to G.S. 7B-3001(b), which appears in a separate article of the Juvenile Code, a juvenile is entitled to “examine and obtain copies” of law enforcement records and files concerning the juvenile. *See infra* § 10.8, Other Sources of Information. Counsel should therefore request copies of law enforcement files concerning the juvenile under

the authority in G.S. 7B-3001(b) to obtain information that would normally be protected from disclosure under the work production exception in G.S. 7B-2300(e).

In addition, if the witness has reviewed the material before testifying—for example, an officer may review his or her report or a witness his or her statement—the juvenile should request disclosure under Rule 612 of the North Carolina Rules of Evidence, which authorizes the court to order disclosure.

G. Consequences of Juvenile Obtaining a Discovery Order

Except for the names of the juvenile's witnesses, the State's statutory right to discovery depends 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* § 10.10, 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. Local rules are authorized by G.S. 7A-34 and Rule 2(d) of the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure, if they are supplemental to and not inconsistent with acts of the General Assembly. These rules may expand the information available to the juvenile or 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. Local rules for each district are available on the [Administrative Office of the Courts website](#).