

DISCOVERY
JUVENILE
DELINQUENCY COURT

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DISCOVERY
7B-2300
ALWAYS have right to it
not just felony
not just after PC hearing
Upon motion by the juvenile
(does NOT say written)

Entitled to

- (a) All statements of juv & Co-R
- (b) List of State's witnesses (w/juv record)
- (c) Documents/tangible evidence from ADA/LEO material to defense/ to be used by petitioner / obtained from juv.
- (d) Test reports & Sample of physical evid.

Differences

Differs only slightly from adult ct:
No mention of experts (giving notice & CV)
Best Practice: give it, if plan to use it

No mention of "complete files" ("open file")
But should be able to get all within 7B-2300 & 7B-2405

BRADY

Constitutional issues DO apply to kids!

7B-2405- Conduct of Adj. hearing:
Court "SHALL protect...rights of juvenile"
(5) right of discovery
(6) ALL rights afforded adult offenders (except: bail, jury & self-rep)

Reciprocal Discovery

7B-2301 Tracks what State has to give you
Witness list & reports/evidence you intend
to use at trial

DIFFERS FROM ADULT: (15A-905c)
NO requirement to give notice of specified
defenses

Best practice?: give it, if plan to use
(& doesn't hurt you)

Protective Orders

7B-2302

Either party can get:

Upon WRITTEN motion
& GOOD CAUSE shown

Court MAY deny, restrict, defer disclosure
(in camera review for BRADY material)

Continuing Duty

7B-2303

“subject to compliance with order
issued...shall promptly notify”

Applies to ADA & defense atty!

Can use to add witness you left off, if
discover need DURING trial

Timing

Get ALL discovery before you decide what to do!

Request continuance if needed

Is State's continuance:

St. v. Cook, 362 NC 285 (reversible error to not grant MTC – harmless in this case)

Pre-Disposition Investigation 7B-2413

BEWARE 5th Amendment problems!
NOT admissible prior to dispo (7B-2408)

GET dispo report & risk/needs assessment
before trial (but ADA should NOT get it)

Check your local rules

Discovery from Others

Who?

School	Phone records
DSS	Internet records
Medical	Bank records
Mental Health	Business records
JCC	Video surveillance tapes
	LEO Internal Affairs
	Victims
	Witnesses

SCHOOL

Your client's entire file: 115C
grades, IEP, suspensions, manifestation results...

Maybe victim's- partial:
if prior fights and claiming self-defense
if Brady info?

DSS

Your client's entire file= "absolute right"
7B-2901(b) &
In re: J.L. (2009 NC App LEXIS 1494)

Victim's file = partial:
CPS investigation in sex cases
Prior allegations that were recanted

Penn v. Ritchie, 480 Us 39 (1987)

Defense requests/subpoenas documents.
State may try to quash.
Judge MUST do in camera review &
Release ALL Brady material &
Seal all for appellate review.

NOT just for DSS records!!!

MEDICAL & MH

Your client's entire files="absolute right"
7B-2901(b) & In re: JL

Victim's file – partial:
medical records of alleged injury
bills to prove restitution amounts
MH records – in camera, if Brady info

Juv. Court Counselor

Your client's entire file - 7B-3001(b)(1)

And NC JOIN records!

CAVEAT: 7b-2408 & 5th Amendment!
Inadmissible pre-adjudication
Should not even be shown to ADA!

OTHERS

Phone, internet, business, bank, LEO
Victim's NTO?

ANY evidence "material to your defense"!

ASK FOR IT!! - preserve record
Constitutionalize: Brady, "due process"

Subpoena or Court Order?

Try subpoena first

If State tries to quash, have hearing & in
camera review of records requested
(BRADY always applies!)

Need court order for bank records – 53B
BUT ADA should have to get & disclose

Motion to Compel

After signed order for discovery
or after non-compliance w/ voluntary.

Don't HAVE to do written request
(unlike 15A)

7B-2301(f) "nothing prohibits voluntary"

ADA has duty to get it for you!

Private Investigator

Juvenile has RIGHT to investigator

Can do Ex Parte Motion

Showing:

Specify reasons why need investigator

Allege "Necessary for defense"

Reasonable amount

(w/ right to ask for more)

Mental Health Evaluations

Can do Ex Parte motion for eval of client:

competency to proceed

diminished capacity

transfer issues

Forensic eval for Juvenile's competency

Look at ability to aid atty in defense

issues!

Motions to Seal

7B-3000(c)

Protect your kids privacy!

JCC puts Mental Health and SOSE with the disposition report in clerk's file.

Order any sensitive info sealed after disposition hearing.

FINGERPRINTS

7B-2102

CAN print/photo at "arrest" IF:

10+yo AND

offense is non-divertible by 7B-1701

(NOT non-divertible by JCC!)

Otherwise LEO needs NTO

SHALL print/photo AFTER adjudication of
10+yo of a felony

NonTestimonial Orders

To get prints, photo, blood, saliva, urine,
hair, voice, writing sample, put in line-up.

Can ONLY do for felony petitions

ONLY by ADA application (AOC-J-204)

State can/does get it without notice to atty

Juv. CAN ask for NTO if will aid in defense
7B-2107

NTO Suppression

Application MUST set out:

Facts establishing PC for felony

Facts of reasonable suspicion YOUR
juvenile committed it

Reasons why NTO info will be material

Get copy & ask client about specifics for
suppression issues

**Destruction Orders
7B-2102(e) & 2108**

No petition filed within 1 year

No PC found

Juv not adjudicated (case dismissed)

Under 13- no felony adjudication (2108)

LEO must certify back to clerk that they
destroyed prints/photos (7B-2108(6))
