



North Carolina Criminal Law

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Discovery in Delinquency Cases

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The Juvenile Code provides explicit procedure for discovery in juvenile delinquency matters. This procedure does not mirror the law that governs discovery in criminal matters. The statutes also do not address the constitutional obligation for disclosure of certain exculpatory evidence under the standard established in *Brady v. Maryland*, 83 S.Ct. 1194 (1963). This post explains both the statutory framework for and constitutional obligation regarding discovery in delinquency cases.

Statutory Right to Discovery

Article 23 of Subchapter II of Chapter 7B of the General Statutes contains the state law regarding discovery in delinquency matters.

Juvenile Statutory Right to Discovery Triggered by Motion

Under G.S. 7B-2300, the juvenile is entitled to certain discovery in a delinquency proceeding after the juvenile makes a motion for those items. While the juvenile's statutory right to discovery is predicated on this motion, the prosecutor is allowed to voluntarily disclose information in the absence of such a motion when that disclosure is "in the interest of justice." G.S. 7B-2300(f).

Materials That Must be Disclosed to the Juvenile

After making a motion, the juvenile is entitled to certain materials. The statute generally refers to the obligation of the "petitioner" to provide these materials but is unclear about who the petitioner is in this context. Petitioner is defined as "[t]he 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 procedure for initiating a delinquency court action involves a range of entities including a complainant, the Division of Juvenile Justice (DJJ), and sometimes the prosecutor. See **Article 17** and **18** of Subchapter II of Article 7B of the General Statutes. In practice, it is the prosecutor, as the attorney representing the State in the matter, who has access to the evidence and who decides what to present as evidence in court. It therefore seems reasonable to read the word petitioner as synonymous with the term prosecutor throughout the discovery statute.

After making the appropriate motion, the juvenile is entitled to inspect and copy the following:

- Any relevant written or recorded statements within the possession, custody, or control of the prosecutor and made by the juvenile. G.S. 7B-2300(a)(1).
- Any relevant written or recorded statements within the possession, custody, or control of the prosecutor and made by any other party charged in the same action. G.S. 7B-2300(a)(1). However, the Juvenile Code allows only one juvenile to be charged in a delinquency petition. **G.S. 7B-1802**. Joinder is also not referenced in the Juvenile Code. It is therefore unlikely that any delinquency proceeding will involve multiple parties who are charged in the same action.
- Books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof when those things are both 1) within the possession of the prosecutor or any law enforcement officer who is investigating the alleged matter and 2) material to the preparation of the defense, are intended for use by the petitioner as evidence, or were obtained from or belong to the juvenile. G.S. 7B-2300(c).
- Results of physical or mental examinations or of tests, measurements, or experiments made in connection with the case, within the possession, custody, or control of the prosecutor. G.S. 7B-2300(d).

In addition, after making the appropriate motion, the juvenile is entitled to:

- The substance of any oral statement, in written or recorded form, made by the juvenile or any other party charged in the same action. G.S. 7B-2300(a)(2).

- The names of people to be called as witnesses. This provision includes that the juvenile's motion can include a request for the copy of the record of any witnesses under the age of 16 and that the prosecutor must provide such record if it is accessible to them. This provision has included reference to age 16 since the modern Juvenile Code was established and it was not amended when the age of juvenile jurisdiction was raised from 16 to 18 in 2019. **S.L. 2017-57, §§ 16D.4.(a)–16D.4.(tt)**, amended by **S.L. 2024-17 § 1**. It appears that the original intent of this provision was to provide access to the delinquency record of any witness. Maintenance of age 16 in this statute under the current law of juvenile jurisdiction excludes delinquency records that may now include adjudications of delinquency based on offenses committed at ages 16 and 17. This may be an area where the prosecutor would want to engage in voluntary disclosure in the interest of justice as allowed by G.S. 7B-2300(f).
- Any physical evidence or sample of it or tests or experiments made in connection with it when the evidence is available to the prosecutor or any law enforcement officer investigating the matter and the prosecutor intends to offer it at trial. The juvenile is permitted to inspect, examine, and test any such evidence, subject to appropriate safeguards. G.S. 7B-2300(d).

The juvenile's statutory right to discovery does not include any other reports, memoranda, or internal documents made by the prosecutor, law enforcement officers, or others acting on behalf of the prosecutor in connection with the investigation or prosecution of the case or statements made by witnesses or the prosecutor to anyone acting on behalf of the prosecutor if those things are not explicitly included in the materials described above. G.S. 7B-2300(e).

Prosecutor's Statutory Right to Discovery Also Triggered by a Motion

Like the juvenile's statutory right to discovery, the prosecutor has a statutory right to certain discovery from the juvenile. This right is also triggered through a motion, this time a motion made by the prosecutor.

Materials That Must be Disclosed to the Prosecutor

The prosecutor is entitled to the names of people the juvenile intends to call as witnesses. G.S. 7B-2301(a). The prosecutor has additional rights to disclosure of certain documents, tangible objects, reports of examinations, and tests, but only if

the court previously ordered any disclosure to the juvenile. Prosecutorial access to these materials is therefore only available if the juvenile makes a motion for and is granted discovery. Under these circumstances, the prosecutor is entitled to

- inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof which are within the possession, custody, or control of the juvenile and which the juvenile intends to introduce in evidence. G.S. 7B-2301(b).
- inspect and copy results of physical or mental examinations or of tests, measurements, or experiments made in connection with the case within the possession and control of the juvenile which the juvenile intends to introduce in evidence or which were prepared by a witness whom the juvenile intends to call if the results relate to the witness's testimony. G.S. 7B-2301(c).
- inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it if the juvenile intends to offer the evidence or tests or experiments made in connection with the evidence in the case. G.S. 7B-2301(c).

Statutory Right to Discovery May Be Limited Based on Good Cause

The court is allowed to deny, restrict, or defer discovery or inspection otherwise allowed under the statute at any time on written motion of a party and a finding of good cause. G.S. 7B-2302(a). If a party files such a motion, the court is permitted to allow that party to submit supporting affidavits or statements to the court for in camera inspection. G.S. 7B-2302(b). If the court grants the request for limitation of discovery, any material submitted to the court in camera must be available to the Court of Appeals in the event of an appeal. *Id.*

The Duty to Disclose is Ongoing

A party has an ongoing duty to promptly notify the other party of additional evidence or the name of each additional witness when the party

- is subject to a disclosure order issued under the statute,
- discovers additional evidence before or during the hearing or decides to use additional evidence, and

- the evidence is or may be subject to discovery or inspection under the statute. G.S. 7B-2302.

Juvenile Statutory Discovery Provisions Substantially Different Than Criminal Law Discovery Provisions

The Juvenile Code provisions described above vary substantially from the criminal law provisions that govern discovery. **Section 3 of Session Law 2004-154** made significant changes to the criminal law that governs discovery, including a shift to open file discovery. See **A Rare Opinion on Criminal Discovery in North Carolina** by Professor John Rubin for more information on North Carolina's shift to open file discovery in criminal cases. The prior version of the criminal discovery statutes included many of the same provisions that are in the current Juvenile Code. There were no accompanying changes to the Juvenile Code discovery provisions when the shift in the criminal law occurred.

Contained in **Article 48 of Chapter 15A of the General Statutes**, the statutory provisions regarding discovery in criminal matters include, among other things, that a request for voluntary discovery must be made before a motion requesting discovery can be filed (G.S. 15A-902(a)), restrictions as to when a voluntary request for discovery can be made (G.S. 15A-902(d)), the defendant's right to the "complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation of the crimes committed or the prosecution of the defendant" (G.S. 15A-903(a)), several pieces of information that the State is not required to disclose (G.S. 15A-904), and sanctions available to the court when a party fails to comply with required disclosure (G.S. 15A-910). None of these provisions are mirrored in the Juvenile Code. It is therefore critical to consult the Juvenile Code when determining the scope and procedure related to statutory discovery in delinquency cases.

Constitutional Right to Exculpatory Material and Material Impeachment Information

As established in **Brady v. Maryland, 373 U.S. 83 (1963)**, due process requires that the prosecutor disclose material exculpatory evidence. Due process also requires

that the prosecution provide the defense with material information that could be used to impeach a prosecution witness. **Giglio v. United States, 405 U.S. 150** (1972). My criminal law colleagues have blogged about the scope of these constitutional requirements many times, including in **Brady, Materiality, and Disclosure: Turner V. United States** (Jeff Welty), **Does Brady Apply After a Conviction?** (Jeff Welty), **More on Officer Misconduct and Giglio** (Jeff Welty), and **The Confidential Informant File: What Is It and When Must It Be Disclosed to the Defense?** (Daniel Spiegel). The question of whether these rights apply in delinquency cases must be answered to fully understand the prosecutor's discovery obligation in those matters. There are no North Carolina cases or statutes that directly answer this question.

Juveniles Have a Constitutional Right to Due Process in Delinquency Matters

It is clear that the juvenile respondent in a delinquency proceeding has a constitutional right to due process. This right was first identified by the U.S. Supreme Court in **In re Gault, 387 U.S. 1 (1967)**. See **Due Process Rights and Children: Fifty Years of In re Gault – Part One** by former faculty member LaToya Powell for more information on the scope of due process rights recognized in *Gault*. The Juvenile Code also recognizes that due process of law must be assured in a delinquency adjudicatory hearing through the court's protection of the juvenile's rights, including "[a]ll rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury." **G.S. 7B-2405(6)**.

In addition, the Court of Appeals of North Carolina held that juveniles are entitled to the same due process protections as adults in proceedings where a loss of liberty is possible, **Matter of Mikels, 31 N.C.App. 470 (1976)**, and that procedural standards for juveniles are required to be at least as strict as the standards for adults, **In re N.J., 221 N.C.App. 427 (2012)**. Given this body of law, it seems apparent that the due process rights to material exculpatory evidence and material witness impeachment evidence apply in delinquency cases. Courts across the county have found this to be true. See, e.g., **State ex rel. L.V., 66 So.3d 558 (2011)**(Louisiana), **T.C. v. State, 2010 Ark. 240 (2010)**(Arkansas), **Matter of J.D.B., 326 Or.App. 237 (2023)**(Oregon), **Matter of Evan U., 244 A.D.2d 691 (1997)** (New York), and **In re R.D., 44 A.3d 657 (2021)**(Pennsylvania). The application of the constitutional rights recognized in *Brady* and *Giglio* may mean that information otherwise not required to be disclosed to the juvenile under G.S. 7B-2300(e) must be disclosed for due process reasons.

Discovery in Delinquency Cases Must Comply with Statutory and Constitutional Requirements

Discovery in delinquency cases is a procedural area where the court and parties must be especially aware of the unique statutory requirements in Article 23 of the Juvenile Code. The more recent statutory structure for discovery in criminal matters largely does not apply in delinquency cases. At the same time, the criminal constructs established by *Brady* and *Giglio* regarding sharing material exculpatory evidence and material witness impeachment information do apply in delinquency matters. The topic of discovery highlights just how niche delinquency law can be.