



# **2020 Juvenile Defender Conference**

## **August 14, 2020 and August 25, 2020**

### **Zoom Webinar**

Sponsored by the  
The University of North Carolina School of Government and  
Office of Indigent Defense Services

# **ELECTRONIC COURSE MATERIALS**

\*This PDF file contains “bookmarks,” which serve as a clickable table of contents that allows you to easily skip around and locate documents within the larger files. A bookmark panel should automatically appear on the left-hand side of this screen. If it does not, click the icon—located on the left-hand side of the open PDF document—that looks like a dog-eared page with a ribbon hanging from the top.



## 2020 Juvenile Defender Conference

### Session I: Friday, August 14, 2020

- 12:00 to 12:15      **Welcome**  
*Timothy Heinle, Civil Defender Educator*  
UNC School of Government, Chapel Hill, NC
- 12:15 to 1:30      **Juvenile Speech Development & Interrogations, Part I [75 min]**  
*Dr. Shameka Stanford, Asst. Professor of Communication Sciences & Disorders,*  
*Juvenile Forensics Speech-Language Pathologist*  
Howard University, Washington D.C.
- 1:30 to 1:45      Break
- 1:45 to 2:30      **Juvenile Speech Development & Interrogations, Part II [45 min]**  
*Dr. Shameka Stanford, Asst. Professor of Communication Sciences & Disorders,*  
*Juvenile Forensics Speech-Language Pathologist*  
Howard University, Washington D.C.
- 2:30 to 3:30      **Confession Suppression: What to do with Juvenile Statements [60 min]**  
*David W. Andrews, Assistant Appellate Defender*  
Office of the Appellate Defender, Durham, NC

### Session II: Tuesday, August 25, 2020

- 12:00 to 12:15      **Welcome**  
*Timothy Heinle, Civil Defender Educator*  
UNC School of Government, Chapel Hill, NC
- 12:15 to 1:45      **Sex Offender Registration and Notification Act (SORNA) [90 min]**  
*Terri Johnson, Assistant Juvenile Defender*  
Office of the Juvenile Defender, Statesville, NC
- 1:45 to 2:00      Break
- 2:00 to 3:00      **Representing 16-17-year-olds in Juvenile & Superior Court [60 min]**  
*Aleta Ballard, Attorney*  
Ballard Law Firm, Smithfield, NC
- 3:00 to 4:00      **Case Planning – Using Discovery to Get What You Want [60 min]**  
*Mary Stansell, Juvenile Chief*  
Wake County Public Defender Office, Raleigh, NC

Reclaiming  
*J.D.B. v. North Carolina*  
 2020 Juvenile Defender Conference  
 David Andrews, Assistant Appellate Defender

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**Roadmap**

- The defense bar in NC and across the country is struggling to suppress juvenile confessions
- This presentation will offer ideas for litigating *Miranda* custody, *Miranda* waiver, and voluntariness claims with the goal of creating better outcomes and, potentially, better case law

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Part I:  
 The Fall

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## 2011

- “It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.”

– *J.D.B. v. North Carolina*, 564 U.S. 261 (2011)

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## 2013

- “[T]he ‘evolution of juvenile justice standards’ has not made its way to [the] waiver doctrine.”

– Note, *Juvenile Miranda Waiver and Parental Rights*, 126 Harv. L. Rev. 2359 (2013).

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## 2016

- “[W]ithout an unambiguous, unequivocal invocation of [the 16-year old] defendant’s right under N.C.G.S. § 7B-2101(a)(3), law enforcement officers had no duty to ask clarifying questions or to cease questioning.”

– *State v. Saldierna*, 369 N.C. 401 (2016)

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## 2018

▪ “[T]he United States Supreme Court has explicitly held that the totality-of-the-circumstances test for determining the validity of waivers of a defendant’s *Miranda* rights is equally applicable to adults and juveniles . . . with a juvenile’s age being a relevant, but not determinative, factor in the required analysis.”

– *State v. Saldierna*, 371 N.C. 407 (2018)

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## 2019

▪ *J.D.B.* “was a 5-4 decision that would almost certainly go the other way today. So the longevity of *J.D.B.* as far as its authority is *certainly to be questioned*.”

– Glenn Cole, Assistant District Attorney  
(Mecklenburg County)

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## Part II: Begin Again

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## Context

- In many cases, the State's strongest evidence against the juvenile is the juvenile's own statement
- One of the most powerful tools to keep the juvenile's statement out is ***the motion to suppress***
- Be sure to use the motion to suppress in your cases

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## First things first

- Be clear on the legal arguments you present to the court
- It is easy to conflate or confuse potential arguments
- Confusing arguments make for confusing rulings

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## Three main arguments

- Custodial interrogation without proper warnings under *Miranda* and N.C. Gen. Stat. § 7B-2101
- Lack of a voluntary, intelligent, and knowing waiver of *Miranda* rights or rights under N.C. Gen. Stat. § 7B-2101
- Coerced or involuntary statement

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### Other arguments

- The client asked for a family member who qualified as a parent, guardian, or custodian
- The client confessed during questioning with a family member who was *not* a parent, guardian, or custodian
- Officers pressured the juvenile to re-initiate questioning after the juvenile invoked his/her rights

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### Totality of the Circumstances

- The common thread with each of the three main arguments is the *totality of the circumstances*
- That is, the court must determine whether – under the totality of the circumstances – the juvenile was in custody, the juvenile gave a valid waiver of his/her *Miranda* rights, or the juvenile’s confession was voluntary

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### Totality of the circumstances

- The totality of the circumstances test is imperfect
- It grants judges significant leeway without firm guidelines
- It has been criticized as creating a “pro-admissibility” standard

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### What can we do?

- Remind the judge that at a suppression hearing, “the **burden is upon the state** to demonstrate the admissibility of the challenged evidence.” *State v. Cheek*, 307 N.C. 552, 557 (1983)

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### What can we do?

- Remind the judge that the totality of the circumstances is not merely a list or recitation of factors
- The test should be applied in service of the relevant legal question
- It should **not** be used to retroactively justify the actions of the interrogating officers

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### What can we do?

- Think critically about how each of the individual factors are tilted against juveniles
- Use the totality of the circumstances to show all the ways adults exert **control** over juveniles or otherwise **pressure** children to act in certain ways
- Avoid thinking of age solely as its own factor; use age to inform all of the other factors

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### What can we do?

- **Hire an expert** in adolescent psychology or psychiatry to testify at the suppression hearing about research into juvenile confessions
- The expert could also evaluate your client and testify about any mental health issues, or intellectual or developmental disabilities your client might face

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### What can we do?

- There are sample motions for funds to hire an expert on the IDS and Juvenile Defender websites
- Contact the Office of the Juvenile Defender for a list of potential expert witnesses
- If the motion is denied, object in open court based on due process and the right to the effective assistance of counsel

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### What can we do?

- Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 Psych. Pub. Pol. and L. 3 (1997)
- A significant proportion of delinquent juveniles have an “incomplete comprehension of the concept and meaning of a right as it applies to adversarial legal proceedings”

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### What can we do?

- *Haley v. Ohio*, 332 U.S. 596, 599 (1948)
- *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962)
- *J.D.B. v. North Carolina*, 564 U.S. 261 (2011)

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### What can we do?

- Don't accept the status quo
- Think creatively about possible arguments
- Brainstorm with colleagues

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## Part III: *Miranda* Custody Arguments

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### Was the child in custody?

- The question is whether a reasonable person in the suspect's position would have believed he or she was "taken into custody or otherwise *deprived of his freedom of action in any significant way.*" *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (emphasis added)
- Custody depends on the **objective circumstances** of the interrogation. *Stansbury v. California*, 511 U.S. 318, 323 (1994)

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### Was the child in custody?

- "[W]e cannot believe that a lad of tender years is a match for the police . . ." *Haley v. Ohio*, 332 U.S. 596, 599 (1948)
- "If a juvenile is more susceptible to police coercion during a custodial interrogation, then the same juvenile is also more susceptible to the impression that he is, in fact, in custody in the first instance." *Alvarado v. Hickman*, 316 F.3d 841, 843 (9th Cir. 2002)

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### "Deprived of his freedom of action . . ."

- Think of custody in terms of **control**
- That is: *Did the juvenile have any meaningful control over the interview?*
- Note that the legal status of children is generally one of limited autonomy and subordination to adult authority

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## Was the child in custody?

- The Supreme Court has recognized that children generally have a “lack of control over their immediate surroundings . . . .” *Roper v. Simmons*, 543 U.S. 551, 555 (2005)
- In *Schall v. Martin*, 467 U.S. 253, 265 (1984), the Court stated outright that “juveniles, unlike adults, are *always in some form of custody*.” (emphasis added)

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## A hypothetical

- Officers suspect your client, a 15-year old boy with no history in adult or juvenile court, was involved in a break-in. They arrange with his mother to interview him at his house the following day. They show up, enter the house at the mother’s request, and sit down. They are not in uniform or armed. They explain to your client that the interview is voluntary.
- Before anything else happens: *Is the juvenile in custody?*

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## Factors

- Who arranged the interview? A parent, a police officer, a school administrator?
- Who took the juvenile to the interview? A parent, a police officer, a school administrator?

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**Factors**

- Where was the interview? Police station, patrol car, school, the juvenile's home?
- In *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), the Supreme Court noted that a student, "whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action," is in a "far different position" than an adult for purposes of determining custody

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**Factors**

- How long was the interview?
- Did the officers tell the juvenile how long the interview would be or ask to interview the juvenile for a specific period of time?

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**Factors**

- What did the officers tell the juvenile? What did the officers *not* tell the juvenile?
- Did the officers make clear that the juvenile could leave?
- If officers said the juvenile could leave, what were the officers' exact words? Did the officers say the juvenile could leave *when the interview ended*?

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### Factors

- If the juvenile was interrogated at home, did any adults tell the juvenile he was allowed to leave the house?
- “[S]ince respondent was in his own home, where could he have gone if he wanted to leave?” *In re D.L.H., Jr.*, 32 N.E.3d 1075 (Ill. 2015) (Burke & Freeman, JJ., specially concurring)

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### Factors

- *In re D.A.C.*, 225 N.C. App. 547 (2013) will be an obstacle
- The Court held in *In re D.A.C.* that the juvenile was not in custody in part because he was interviewed by officers in his own yard with his parents nearby

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### Factors

- Do your best to distinguish your case from *In re D.A.C.*
- In addition, be sure to present evidence on all the ways your client had no control over the interview or was otherwise unable to avoid the interview
- Note that there was no expert testimony in *In re D.A.C.* or any indication of how old the juvenile was

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### Incorporating age into the analysis

- “Neither officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children *without accounting for the age of the child subjected to those circumstances.*” *J.D.B. v. North Carolina*, 564 U.S. 261, 276 (2011)
- Expert testimony on how an objective adolescent would have viewed the circumstances of interrogation is relevant *if not necessary* to account for the child’s age

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### Studies show . . . .

- Juveniles likely feel more constrained than adults when questioned by police officers
- Younger juveniles are more compliant with authority figures

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### Age

- Remember that older juveniles are susceptible to many of the same issues as younger juveniles
- “The features of youth identified in *Roper* and *Graham* simply do not magically disappear at age seventeen—or eighteen for that matter.” *State v. Sweet*, 879 N.W.2d 811, 838 (Iowa 2016)

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## Part IV: *Miranda* Waiver Arguments

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### Did the juvenile voluntarily waive his *Miranda* rights?

- The court must determine whether the juvenile knowingly and voluntarily waived his right to silence and his right to counsel. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)
- The court must evaluate the juvenile’s age, experience, education, background, and intelligence, and determine whether he has the “capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” *Id.*

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### Did the juvenile voluntarily waive his *Miranda* rights?

- If the juvenile waives his *Miranda* rights, “a heavy burden rests on the government” to demonstrate that the waiver was knowing, voluntary, and intelligent. *Miranda v. Arizona*, 384 U.S. 436, 475 (1966) (emphasis added)

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### Children cannot waive a right they don't understand

- A child is often “unable to know how to protect his own interests or how to get the benefits of his constitutional rights.” *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962)
- “Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions . . . . Parents can and must make these judgments.” *Parham v. J.R.*, 442 U.S. 584, 603 (1979)

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### Children often feel pressure to talk to officers

- “[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.” *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011)
- “An extensive body of literature demonstrates that juveniles are ‘more suggestible than adults, may easily be influenced by questioning from authority figures . . . .’” *In re Elias V.*, 237 Cal. App. 4th 568, 578 (2015)

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### Incorporating age into the analysis

- Remember that a waiver analysis involves an inquiry into whether the juvenile had the capacity to understand *Miranda* warnings, the nature of the right to silence and the right to counsel, and the consequences of waiving those rights
- Expert testimony is vital to that analysis

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### Incorporating age into the analysis

- Expert testimony is essential to explaining limitations that juveniles face when confronted with a *Miranda* waiver
- Without expert testimony, you will be unable to explain specific limitations that your client faces

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### Studies show . . .

- Adolescents are more likely to waive rights
- Adolescents often do not know how to invoke their rights
- Younger adolescents have difficulty understanding *Miranda* Rights

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### Studies show . . .

- Juveniles often misunderstand the concept of a right
- Many juveniles incorrectly believe that a right is conditional or that a judge could penalize the juvenile for asserting a right

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## Part V: Voluntariness Arguments

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### Was the juvenile pressured into confessing?

- The “greatest care” must be taken to ensure that a juvenile’s confession is voluntary. *In re Gault*, 387 U.S. 1, 55 (1967)
- To be voluntary, a confession must be “the product of an essentially free and unconstrained choice by its maker.” *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961)

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### Continued hypothetical

- After officers enter your client’s house and explain that the interview is voluntary, they begin questioning the client about the break-in. When the client denies involvement, one of the officers states that the client is not being truthful. The client’s mother demands that the client “man up” and tell the truth. The client then confesses to breaking into a neighbor’s house.
- *Is the confession voluntary?*

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### Factors

- Did the juvenile have any experience with law enforcement? *Spano v. New York*, 360 U.S. 315, 321 (1959)
- Did the officers engage in trickery or deceit? *Frazier v. Cupp*, 394 U.S. 731, 739 (1969); *State v. Jackson*, 308 N.C. 549, 581 (1983)

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### Factors

- Did the officers accuse the juvenile of lying? *State v. Pruitt*, 286 N.C. 442, 458 (1975)
- Did the juvenile deny he was guilty? *State v. Edwards*, 78 N.C. App. 605, 608 (1985)

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### Factors

- Did the officers use the juvenile's family or friends to obtain the confession? *Spano v. New York*, 360 U.S. 315, 321 (1959); *Culombe v. Connecticut*, 367 U.S. 568, 608 (1961)
- Did the officers offers the juvenile hope of relief from the charges? *State v. Pruitt*, 286 N.C. 442, 458 (1975)

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## Factors

- The “incompetencies associated with youth” include an “inability to deal with police officers . . . .” *Miller v. Alabama*, 567 U.S. 460 (2012)

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## Racial disparities in interrogations

- Black suspects “might be at more risk of being targeted as lying during interrogations than White suspects because of cross-cultural differences in nonverbal communication styles, which could cause Black suspects to appear more deceptive and police investigators to put more pressure on them to confess.”
  - Cynthia J. Najdowski, *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects Are at Risk for Confessing Falsely*, 17 Psych. Pub. Pol. and L. 562, 563 (2011)

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## The totality of the circumstances

- For a recent discussion of an involuntary confession, be sure to review the opinion in *State v. Lynch*, No. COA19-358, slip op. (N.C. Ct. App. May 19, 2020)
- The opinion contains a lengthy discussion of many of the factors at play in voluntariness claims

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### Incorporating age into the analysis

- “It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.” *J.D.B. v. North Carolina*, 564 U.S. 261, 264-65 (2011)

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### Incorporating age into the analysis

- Hire an expert to evaluate your client for age-related susceptibilities or other limitations, such as mental illness, developmental delays, or intellectual disabilities
- Remember that the Supreme Court recognized long ago that a child is an “easy victim of the law.” *Haley v. Ohio*, 332 U.S. 596, 599 (1948)

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## Part III: Issue Preservation

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## Four ways to default

- Failure to include an affidavit in the suppression motion
- Failure to include the right to appeal in plea negotiations
- Failure to object at trial or the adjudication hearing
- Failure to raise the N.C. Constitution

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## The affidavit

- “We have held that defendants by failing to comply with statutory requirements set forth in N.C.G.S. 15A-977 waive their rights to contest *on appeal* the admission of evidence on constitutional or statutory grounds.” *State v. Holloway*, 311 N.C. 573, 578 (1984) (emphasis added)

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## Plea negotiations

- “The plea bargaining table does not encircle a high stakes poker game . . . . As such, it is entirely inappropriate for either side to keep secret any attempt to appeal the conviction.” *State v. Reynolds*, 298 N.C. 380 (1979)

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# Plea negotiations

**Answers**

10. Do you understand that if the Court finds that the acts alleged in the petition were committed as part of criminal gang activity, the Court must enter a disposition one level higher than would otherwise be permitted in this case? (10) \_\_\_\_\_

11. Do you now personally admit the charges? (11) \_\_\_\_\_

12. (a) Did you in fact commit the acts alleged in the petition(s)? (12a) \_\_\_\_\_  
 (b) (Admit admission)  
 (1) Do you now consider it to be in your best interest to admit committing the charges just described? (12b1) \_\_\_\_\_  
 (2) Do you understand that, upon your Admit admission, you will be treated as if you committed the acts alleged in the petition(s) regardless of whether you admit that you committed the acts? (12b2) \_\_\_\_\_

13. Do you understand that arrangements with the prosecutor involving admissions are allowed and you can discuss your arrangement with me without waiving any charge(s)? (13) \_\_\_\_\_

14. Have you personally admitted the admission as a part of an arrangement with the prosecutor? (14) \_\_\_\_\_

15. The prosecutor and your lawyer have informed the Court that there have been prior discussions involving your admission. The following arrangement with respect to your admission has been entered into: \_\_\_\_\_

(a) Is this arrangement a plea arrangement? (15a) \_\_\_\_\_  
 (b) Do you now personally accept this arrangement? (15b) \_\_\_\_\_

16. Other than this arrangement between you and the prosecutor, has anyone made any promises or threatened you in any way to cause you to admit these charges? (16) \_\_\_\_\_

17. Do you make this admission of your own free will and do you fully understand what you are doing? (17) \_\_\_\_\_

18. Do you have any questions about what has just been said to you or about anything else connected with your case?(18) \_\_\_\_\_

I have read or heard read all of these questions and understand them. The answers are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in order to have the Court accept my admission in this case. I have read and understand the consequences of my admission and I am not being coerced or forced to do so.



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# Plea negotiations

STATE VERSUS # 06 CRS 3406

Name or defendant: Deborah Duvelap Hatley

15. (if applicable) The prosecutor, your lawyer, and you have informed me that the following contains all the terms and conditions of your plea:

The defendant expressly retains the right to appeal the Court's previous denial of her motion to suppress in this case and her plea of guilty is conditional upon her right to appeal that decision pursuant to GS 15A-593(d).

\_\_\_\_\_  
 \_\_\_\_\_

Case No.	Charge	Disposition	Date of Disposition	Case No.	Date of Disposition	Case No.	Date of Disposition
6	06CR03714	1	Driving while Impaired	7/6/06	20-132-1	19	2/1/20

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# The objection

- A pretrial ruling on a motion to suppress is “preliminary,” which means the juvenile must object when evidence is offered during the trial or adjudication hearing. *State v. Waring*, 364 N.C. 443 (2010)
- The failure to object when the evidence is admitted subjects the argument to plain error review on appeal. *State v. Stokes*, 357 N.C. 220 (2003)

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**The N.C. Constitution**

- N.C. Const. art. I, § 19: Due Process
  
- N.C. Gen. Stat. art. I, § 23: Right to Counsel, Privilege Against Self-Incrimination

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**The N.C. Constitution**

- Protections under the state constitution must be given a “liberal interpretation in favor of its citizens . . .” *Corum v. Univ. of N.C.*, 330 N.C. 761, 783 (1992)
  
- The State has a “greater duty” to protect the rights of juveniles in delinquency cases. *In re T.E.F.*, 359 N.C. 570, 575 (2005)

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## NC JUVENILE SEX OFFENDER REGISTRATION & SORNA

### I. NC GENERAL STATUTES

#### A. Article 25 of Juvenile Code

##### 1. 7B-2509

a. In any case in which a juvenile is at least 11 years of age at the time of the offense,

b. is adjudicated delinquent for committing a violation of G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first degree forcible rape), G.S. 14-27.22 (second degree forcible rape), G.S. 14-27.4 (first degree statutory rape), G.S. 14-27.27 (second degree forcible sexual offense), or G.S. 14-27.29 (first degree statutory sexual offense),

c. the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes.

d. Note:

#### B. Article 27A Sex Offender and Public Protection Registration Programs Part 4. Registration of certain Juveniles Adjudicated for Certain Offenses

##### 1. 14-208.26 Registration

a. Duplicates language of 7B-2509

b. The determination of whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing.

c. Subsection (a1) includes commission of the enumerated offenses as well as attempt, conspiracy, or solicitation of another to commit any of those offenses as well as aiding and abetting any of those offenses.

##### 2. 14-208.27 Change of address

a. Juvenile Court Counselor (JCC) shall provide written notice no later than 3<sup>rd</sup> business day after change to sheriff of initial county of registration.

- b. Sheriff shall immediately notify DPS.
  - c. If move is to another county within NC, DPS shall notify sheriff of new county of juvenile's new address.
- 3. 14-208.28 Verification of registration information semiannually
  - a. Every year on the anniversary of juvenile's initial registration date and six months after that date, sheriff shall mail a verification form to the JCC for the juvenile.
  - b. JCC shall return form within 3 business days of receipt of form.
  - c. JCC and Juvenile shall sign the form. Indicate any change of address on the form.
- 4. 14-208.29 Registration is not public but...
  - a. Information regarding juvenile is not public record and not available for public inspection.
  - b. Registration information shall be maintained separately by the sheriff and released only to law enforcement agencies and local boards of education. Registry information for any juvenile enrolled in local school administrative unit shall be forwarded to the local board of education.
- 5. 14-208.30 Termination of registration
  - a. Requirement to register automatically terminates on the juvenile's 18<sup>th</sup> birthday or when jurisdiction of the juvenile court with regard to the juvenile ends, whichever occurs first.
- 6. 14-208.31 Criminal Information Network
  - a. DPS shall include registration information in the Criminal Information Network as set forth in G.S. 143B-905.
  - b. DPS shall maintain registration information permanently even after registrant's reporting requirements expire; however, the records shall remain confidential in accordance with Article 32 of Chapter 7B.
- 7. 14-208.32 Juvenile's transferred to Superior Court

a. Juveniles who are tried and convicted as an adult are subject to adult registry requirements.

II.

# North Carolina Juvenile Sex Offender Registration and SORNA

Advising Juvenile Clients Charged with Sex Offenses of State and Federal Consequences

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Charged when he was 15 of a crime involving molestation in Washington State, Luke Heimlich's juvenile records became public when he failed to register after enrolling in school at Oregon State. MLB refused to draft Heimlich as a result.



STATEMENT OF LUKE HEIMLICH

I have taken responsibility for my conduct when I was a teenager. As a 16 year old, I was placed on juvenile court probation and ordered to participate in an individual counseling program. I'm grateful for the counseling I received, and since then, I realized that the only way forward was to work each day on becoming the best person, community member and student I can possibly be. I understand that many people like me are unfortunately, but I hope that I can eventually be judged for the person I am today.

I'm so proud of my team's accomplishment and don't want to be a distraction. Therefore, I've respectfully requested to be excused from playing at this time.

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### NC Sex Offender Registration Statutes and Juveniles: 1. 7B-2509

a. In any case in which a juvenile is at least **11 years of age** at the time of the offense,

b. is adjudicated delinquent for committing a violation of G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first degree forcible rape), G.S. 14-27.22 (second degree forcible rape), G.S. 14-27.4 (first degree statutory rape), G.S. 14-27.27 (second degree forcible sexual offense), or G.S. 14-27.29 (first degree statutory sexual offense),

c. the judge, upon a finding that the juvenile is a **danger to the community**, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes.

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NC Sex Offender Registration Statutes and Juveniles:  
2. 14-208.26 Registration Generally

- a. Duplicates the language of 7B-2509 but adds, "the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff."
- b. The determination of whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing.
- c. Subsection (a1) includes the commission of the enumerated offenses as well as attempt, conspiracy, solicitation of or aiding and abetting any of those offenses.

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NC Sex Offender Registration Statutes and Juveniles:  
3. 14-208.7 Information Required in Registry

- A. A person moving to NC from out of state must register within 3 days of establishing a residence or within 15 days, whichever comes first.
- B. A nonresident worker or student with a reportable conviction or who is required to register in the person's state of residency is required to register where they work or attend school.

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NC Sex Offender Registration Statutes and Juveniles:  
3. 14-208.7 Information Required in Registry

C. Registry information includes:

- i. Person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, driver's license number and home address.
- ii. The type of offense for which the person was convicted, the date of conviction and the sentence imposed.
- iii. A current photograph taken by the sheriff at the time of registration.
- iv. The person's fingerprints taken at the time of registration.
- v. The name and address of any educational institution the person attends or expects to attend.
- vi. The name and address of employment at any institute of higher learning.
- vii. Any online identifier the person uses or intends to use.

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NC Sex Offender Registration Statutes and Juveniles:  
4. 14-208-27 Change of Address While Registered

- a. Juvenile Court Counselor (JCC) shall provide written notice no later than the 3<sup>rd</sup> business day after the change to the sheriff of the initial county of registration.
- b. The Sheriff shall immediately notify DPS.
- c. If the move is to another county within NC, DPS shall notify the sheriff of the new county of juvenile's new address.

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NC Sex Offender Registration Statutes and Juveniles:  
5. 14-208.28 Verification of Registration Semiannually

- a. Every year on the anniversary of juvenile's initial registration date and six months after that date, sheriff shall mail a verification form to the JCC.
- b. JCC and juvenile shall sign the form indicating any change of address and return the form within 3 business days of receipt.

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NC Sex Offender Registration Statutes and Juveniles:  
6. 14-208.29 Registration is not public (CAUTION: but SORNA)

Information is not public record but is released to law enforcement agencies and local boards of education. Registry information for any juvenile enrolled in local school shall be forwarded to board of education.

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**NC Sex Offender Registration Statutes and Juveniles:**  
Termination of Registration, Criminal Information Network & Juvenile's Transferred

- 7. **14-208.30 Termination of Registration**
  - a. Requirement to register automatically terminates on the juvenile's 18<sup>th</sup> birthday or when jurisdiction of the juvenile court with regard to the juvenile ends, whichever occurs first.
- 8. **14-208.31 Criminal Information Network**
  - a. DPS shall **maintain registration information permanently even after registrant's reporting requirements expire**; however, the records shall remain confidential in accordance with Article 32 of Chapter 7B.
- 9. **14-208.32 Juvenile's transferred to Superior Court**
  - a. Tried & convicted as adult subject to adult registry requirements.

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Practice



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- 1. Read 7B-2509 in conjunction with 14-208.26 et al.
- 2. Be prepared to argue "danger to community" at disposition. Note that notice is not explicitly required.
- 3. Adult punishments and registration should be discussed with clients 16 & 17 and with clients who could be transferred. **Note that this includes more than the enumerated offenses in 7B-2509.**

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**TIPS**

4. Request records in juvenile files such as CESH (comprehensive evaluation of sexual harm) evaluations be sealed.

5. Note that juvenile adjudications may be utilized as 404(b) evidence in subsequent prosecution as an adult.  
"Admissible evidence may include evidence of offense committed by a juvenile if it would have been a Class A, B<sub>1</sub>, B<sub>2</sub>, C, D, or E felony..."

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**Sex Offender Registration and Notification Act (SORNA codified at 42 U.S.C. § 16911)**



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**History/Background**

- SORNA, also known as the Adam Walsh Act, passed in July of 2006 and replaced the Jacob Wetterling Act which had set up baselines for state sex offender registration programs. Megan's Law was part of the Wetterling Act.
- Every state has enacted some kind of registration procedure that complied with the Wetterling Act and Megan's Law.

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### Two Primary Objectives of SORNA

- Creation of a new federal offense for failure to register as sex offender.
- Establishment of new baseline sex offender registry standards for jurisdictions to achieve.

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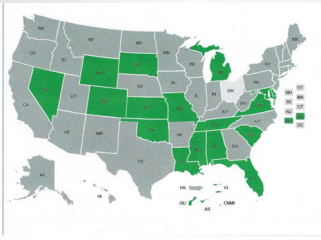
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### Compliance with SORNA



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### Compliance with SORNA

Eighteen states are currently in compliance with SORNA:

AL, CO, DE, FL, KS, LA, MD, MI, MS, MO, NV, OH, OK, SC, SD, TN, VA, & WY.

US Territories in Compliance:

American Samoa, Guam, Commonwealth of the Northern Mariana Islands and U.S. Virgin Islands.

Tribal Jurisdictions:

135 Tribal Jurisdictions are in compliance including Cherokee Nation and Eastern Band of Cherokee Indians.

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**Registration Requirements under SORNA**

- Under SORNA, persons convicted of sex offenses and non-parental kidnapping of a minor must register. **NOTE: this includes sex offenses other than those enumerated in 7B-2509.**
- Any sex offense with a victim under age 12 would require registration under federal law.
- **SORNA requires juveniles at least 14 years of age at the time of an offense who are adjudicated delinquent for a crime comparable to or more severe than an aggravated sexual abuse crime as defined by federal law to register as sex offenders.**

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**§2241. Aggravated sexual abuse**

(a) By Force or Threat.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act—

- (1) by using force against that other person; or
- (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

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**§2241. Aggravated sexual abuse (cont)**

(b) By Other Means.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

- (1) renders another person unconscious and thereby engages in a sexual act with that other person; or
- (2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—
  - (A) substantially impairs the ability of that other person to appraise or control conduct; and
  - (B) engages in a sexual act with that other person; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

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**§2241. Aggravated sexual abuse (cont)**

(c) With Children.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person **who has not attained the age of 12 years**, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(d) State of Mind Proof Requirement.—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

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**Registration Requirements under SORNA**

- Finding of guilty triggers registration. However, under SORNA, adjudications count.
- Some states and jurisdictions have partially adopted SORNA.
- Some jurisdictions require registration when a person has been civilly committed, received a withheld adjudication, been found "not guilty by reason of insanity" or incompetent to stand trial, or when ordered to register by a probation officer.

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**Registration Requirements under SORNA**

- SORNA does not require jurisdictions to disclose information about juveniles on public registries. However, it allows states to implement more restrictive requirements so traveling or moving is an issue.
- Registration requirements following a move across state lines vary by state. "Move" can include attending school, placement in a group home or treatment facility, and overnight stays.

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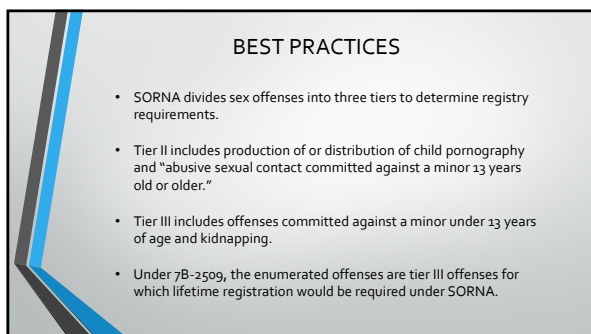
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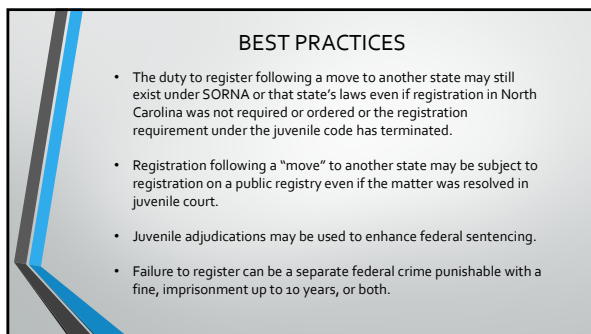
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**BEST PRACTICES**

- Note: The tiers are more expansive than the NC juvenile code registry requirements and may lead to registration for juveniles adjudicated of other offenses should they move to another jurisdiction.
- Sexting could be Tier I or Tier II offense and may require registration of adjudicated juvenile following move to another jurisdiction.
- Advise all juvenile clients charged with enumerated sex offenses as well as other sex offenses of collateral consequences of adjudication including registration following move out of state. (Don't forget "move" can include school, out of home placement and overnight stays.)

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**BEST PRACTICES**

- Remember immigration consequences. Deportation and inability to file a family-based immigrant petition on behalf of any beneficiary may be issue. Consultation with an immigration attorney may be necessary.
- Tribal issues could exist. SORNA creates possibility for federally recognized tribes to register sex offenders who live, work or attend school on tribal lands even when state does not require it. Tribes have inherent power to exclude outsiders from their territory as well. Consultation with attorneys familiar with tribal laws for particular tribe may be necessary.

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**Resources**



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North Carolina General Statutes

- a. N.C. Gen. Stat. § 7B-2509
- b. N.C. Gen. Stat. § 14-208.26 to 14-208.32
- c. N.C. Gen. Stat. § 143B-905 (Criminal Information Network)
- d. N.C. Gen. Stat. § 3000, 3001 (Juvenile records)
- e. N.C. Gen. Stat. § 3100, 3101 (Disclosure of Juvenile Info.)
- f. N.C. Gen. Stat. § 3200 (Expunction)

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Federal Statutes

- a. 42 USC § 16901 (Purpose of SORNA)
- b. 42 USC § 16911 (SORNA)
- c. 18 USC § 2241 (aggravated assault statute)
- d. 18 USC § 3142(c) (mandatory bail conditions—transfer cases and 16, 17 year old clients, this may be unconstitutional)
- e. 18 USC § 2250 (federal offense of failure to register as sex offender)

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Other Resources

- a. [www.ojp.usdoj.gov](http://www.ojp.usdoj.gov) U.S. Department of Justice Office of Justice Programs
- b. [www.ncsl.org](http://www.ncsl.org) National Conference of State Legislatures
- c. [www.smart.gov/sorna.htm](http://www.smart.gov/sorna.htm) Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (Office of Justice Programs)
- d. [www.nccrimallaw.sog.unc.edu/sorna-tier-chart/](http://www.nccrimallaw.sog.unc.edu/sorna-tier-chart/) (Chart for all tiers which is open to debate. Intended only as a guide)

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### Other Resources

- e. [www.njcn.org/uploads/digitalibrary/SNAPSHOT\\_web10-28.pdf](http://www.njcn.org/uploads/digitalibrary/SNAPSHOT_web10-28.pdf)  
National Juvenile Justice Network (NJNN) (for a listing of state by state requirements)
- f. <https://ncjuveniledefender.com> North Carolina Office of the Juvenile Defender

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### OJD Team




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### Where to Find OJD?

- 1 [Njuveniledefender.com](http://Njuveniledefender.com)
- 2 Twitter: @NCOJD
- 3 Facebook: NC Office of the Juvenile Defender



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REPRESENTING  
16 & 17 YEAR  
OLD CLIENTS  
IN JUVENILE  
AND SUPERIOR  
COURT

ALETA R. BALLARD  
ARB@ARALLARDLAWFIRM.COM  
919-209-0669

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**TRANSFER FROM JUVENILE TO SUPERIOR COURT**

<p><b>A – G FELONIES</b></p> <ul style="list-style-type: none"> <li>• FINDING OF PROBABLE CAUSE</li> <li>• RETURN OF BILL OF INDICTMENT</li> <li>• <b>MANDATORY TRANSFER</b></li> </ul>	<p><b>H OR I FELONIES</b></p> <ul style="list-style-type: none"> <li>• FINDING OF PROBABLE CAUSE</li> <li>• <b>DISCRETIONARY TRANFER</b></li> </ul>
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**PROBABLE CAUSE A-G FELONIES**

- MUST BE HELD WITHIN 90 DAYS OF THE JUVENILE'S FIRST APPEARANCE ON A CLASS A-G FELONY PETITION
- TIME LIMITED CAN BE EXTENDED FOR GOOD CAUSE
- WAIVER OF PROBABLE CAUSE MUST BE DONE IN WRITING AND INCLUDES STIPULATION TO FINDING PROBABLE CAUSE
- NOT REQUIRED IF THERE HAS BEEN A JUDICIAL FINDING THAT A BILL OF INDICTMENT HAS BEEN RETURNED

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**WHAT HAPPENS WHEN THERE IS A TRUE BILL**

**7 B - 2200.5(A)(1)**

- JUVENILE MUST RECEIVE NOTICE THAT BILL OF INDICTMENT HAS BEEN RETURNED AS A TRUE BILL
- THE DISTRICT COURT MUST THEN MAKE A FINDING THAT A TRUE BILL OFINDICTMENT HAS BEEN RETURNED
- UPON THIS JUDICIAL FINDING THESE CASES ARE REQUIRED TO BE TRANSFERRED TO SUPERIOR COURT

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**PRE-TRIAL RELEASE**  
**7 B - 2204**

- ONCE AN ORDER OF TRANSFER IS ENTERED THE JUVENILE HAS A RIGHT TO PRETRIAL RELEASE
- THE DISTRICT COURT MUST DETERMINE THE CONDITIONS OF PRETRIAL RELEASE
- MUST IMPOSE 1 OF THE FOLLOWING:
  - WRITTEN PROMISE TO APPEAR
  - UNSECURED BOND
  - PLACEMENT IN THE CUSTODY OF A DESIGNATED PERSON OR ORGANIZATION
  - SECURED BOND
  - HOUSE ARREST WITH ELECTRONIC MONITORING

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**PRE-TRIAL RELEASE**

- JUDGE MUST IMPOSE WRITTEN PROMISE, UNSCURE BOND, OR PLACEMENT IN THE CUSTODY OF DESIGNATED PERSON OR ORGANIZATION UNLESS SUCH WILL NOT ENSURE APPEARANCE AS REQUIRED
- IF JUDGE MAKE FINDINGS THAT THE JUVENILE WILL POSE A DANGER OF INJURY TO PERSON, IS LIKELY TO RESULT IN THE DESTRUCTION OF EVIDENCE, SUBORNATION OF PERJURY, OR INTIMIDATION OF POTENTIAL WITNESSES THE FOLLOWING MUST BE IMPOSED:
  - RELEASE ON A SECURE BOND, HOUSE ARREST WITH ELECTRONIC MONITORING MUST BE ORDERED
  - FORM AOC-CR-922 RELEASE ORDER

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**PROBABLE CAUSE  
H-I FELONIES**

- MUST BE HELD WITHIN 15 DAYS OF THE JUVENILES FIRST APPEARANCE
- APPLIES IN ALL FELONY CASES IN WHICH A JUVENILE IS ALLEGED TO HAVE COMMITTED A CLASS H OR CLASS I FELONY AT AGE 16 AND 17
- CAN BE CONTINUED FOR GOOD CAUSE
- JUVENILE CAN WAIVE HEARING IF DONE IN WRITING AND IF THE WAIVER IS ACCOMPANIED BY STIPULATION TO A FINDING OF PROBABLE CAUSE

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**DISCRETIONARY TRANSFER**

- TRANSFER IS ONLY TRIGGERED BY A MOTION FROM THE PROSECUTOR, DEFENSE COUNSEL, OR THE COURT ITSELF
- CAN BE SET AT THE CONCLUSION OF THE PROBABLE CAUSE HEARING
- CAN OCCUR IMMEDIATELY FOLLOWING THE FINDING OF PROBABLE CAUSE IF THE JUVENILE RECEIVED NOTICE OF THE PROSECUTION'S INTENT TO SEEK TRANSFER AT LEAST 5 DAYS PRIOR TO THE PROBABLE CAUSE HEARING
- MUST BE CONTINUED AT JUVENILE'S REQUEST IF THE DID NOT RECEIVE THE REQUIRED NOTICE

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**TRANSFER HEARING**

• " 7B-2203. Transfer hearing. (a) At the transfer hearing, the prosecutor and the juvenile may be heard and may offer evidence, and the juvenile's attorney may examine any court or probation records, or other records the court may consider in determining whether to transfer the case. (b) In the transfer hearing, the court shall determine whether the protection of the public and the needs of the juvenile will be served by transfer of the case to superior court and shall consider the following factors: (1) The age of the juvenile; (2) The maturity of the juvenile; (3) The intellectual functioning of the juvenile; (4) The prior record of the juvenile; (5) Prior attempts to rehabilitate the juvenile; (6) Facilities or programs available to the court prior to the expiration of the court's jurisdiction under this Subchapter and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts; (7) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and (8) The seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult. (c) Any order of transfer shall specify the reasons for transfer. When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony. (d) If the court does not transfer the case to superior court, the court shall either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause. (1979, c. 815, s. 1; 1983, c. 532, s. 1; 1994, Ex. Sess., c. 22, s. 27; 1998-202, s. 6; 2015-58, s. 1.3.)

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**WHAT HAPPENS TRANSFER HEARINGS**

- AT THE TRANSFER HEARING, THE PROSECUTOR, AND THE JUVENILE MAY BE HEARD
- MAY OFFER EVIDENCE
- THE JUVENILE'S ATTORNEY MAY EXAMINE ANY COURT OR PROBATION RECORDS, OR OTHER RECORDS THE COURT MAY CONSIDER IN DETERMINING WHETHER TO TRANSFER THE CASE

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**TRANSFER HEARING FACTORS  
7B-2203**

- AGE OF THE JUVENILE
- MATURITY OF THE JUVENILE
- THE INTELLECTUAL FUNCTIONING OF THE JUVENILE
- THE PRIOR RECORD OF THE JUVENILE
- PRIOR ATTEMPTS TO REHABILITATE THE JUVENILE
- FACILITIES OR PROGRAMS AVAILABLE TO THE COURT WHILE TO RETAINS JURISDICTION AND HOW THE JUVENILE WOULD BENEFIT
- WHETHER THE OFFENSE WAS AGGRESSIVE , VIOLENT, PREMEDITATED, OR WILLFUL
- THE SERIOUSNESS OF THE OFFENSE AND WHETHER THE PUBLIC REQUIRES PROTECTION

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**ADDITIONAL REQUIREMENTS UPON  
TRANSFER  
7B-2603**

- FINGERPRINTING OF THE JUVENILE (7B-2201(A))
- SUBMISSION OF THOSE FINGERPRINTS TO THE SBI ONCE TRANSFERRED TO SUPERIOR
- DNA SAMPLE (7B-2201(B))
- IT IS ALSO NECESSARY FOR THE PROSECUTION TO OBTAIN AN INDICTMENT OF WAIVER OF INDICTMENT (15A-642)
  - IF TRANSFER IS APPEALED INDICTMENT SHOULD OCCUR AFTER APPEAL IS COMPLETE (7B-2603(C))

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**APPEAL OF TRANSFER HEARING**

- IMMEDIATELY APPEALABLE FROM DISTRICT COURT
- NOTICE MUST BE IN OPEN COURT OR IN WRITING IN 10 DAYS AFTER TRANSFER ORDER IS ENTERED
- SUPERIOR COURT IS REQUIRED TO HOLD HEARING TO SEE IF TRANSFER WAS ABUSE OF DISCRETION
- SUPERIOR COURT'S ORDER IN AN APPEAL IS BY STATUTE AN INTERLOCUTORY ORDER THAT IS ONLY APPEALABLE TO THE COURT OF APPEALS FOLLOWING CONVICTION IN SUPERIOR COURT
  - RIGHT TO THIS APPEAL IS ONLY PRESERVED IF DEFENDANT IS FOUND GUILTY AT TRIAL
  - NO RIGHT TO APPEAL IF CONVICTED AS A GUILTY PLEA

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**STRATEGIES TO STAY OUT OF SUPERIOR COURT**

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**CONSTITUTIONAL CHALLENGES**

Thompson v. Oklahoma, 487 US 816 (1998)

- US Supreme Court Case: invalidating the imposition of the death penalty on juveniles under 16 years of age
- Juveniles are more vulnerable, more impulsive and less self-disciplined than adults
- Juveniles may have less capacity to control their conduct
- Juveniles do not think in long range terms like adults
- Youth crime is a combination of not only juvenile's fault but failure of family, school, and the social system

Kent v. United States, 381 US 541 (1966)

- Have observed the importance and aims of specialized courts for handling criminal acts committed by juveniles
- Rooted in social welfare philosophy rather than corpus juris
- Designated as civil vs. criminal
- Determining needs of the juvenile and of society instead of adjudicating criminal conduct
- Measures of guidance and rehabilitation for juvenile not to fix criminal responsibility, guilt, and punishment

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**CONSTITUTIONAL CHALLENGES**

**GRAHAM V. FLORIDA**

- Three significant gaps between juveniles and adults
  - Lack maturity and an undeveloped sense of responsibility
    - Leads to recklessness, impulsivity, and heedless risk-taking
  - More vulnerable to negative influences and outside pressures
    - Including from their family and peers
    - They have limited control over their own environment
  - A child's character is not as "well formed" as an adult.
    - Traits are "less fixed" and his actions less likely to be "evidence of irremediably depravity"

**MILLER V. ALABAMA**

- US Supreme Court case that held that mandatory life sentences for juveniles were unconstitutional and violates the Eight Amendment's prohibition on "cruel and unusual punishment."
- Miller does not mean juveniles cannot receive life without parole however it cannot be a mandatory or automatic sentence
- The courts held that "such a scheme prevents those meting out punishment from considering a juvenile's "lessened culpability" and greater "capacity for change"
- It runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious felonies

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**NEGOTIATION STRATEGIES**

- REPLACE THE PETITIONS
  - BURGLARY TO BREAKING/ENTERING
  - SALE OF COCAINE TO PWISD COCAINE OR POSSESSION OF COCAINE
  - FELONY ASSAULT TO CLASS A1 ASSAULT
  - COMMON LAW ROBBERY TO LARCENY FROM THE PERSON

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**REVERSE WAIVER**

**7 B - 2 2 0 0 . D**

- ONLY TRIGGERED BY A JOINT MOTION OF THE PROSECUTOR AND THE JUVENILE'S ATTORNEY
- MUST BE REMANDED BACK TO DISTRICT COURT FOR JUVENILE PROCESSING
- ONCE JOINT MOTION IS MADE THE SUPERIOR COURT IS REQUIRED TO REMAND CASE TO DISTRICT COURT
- COURT REQUIRED TO ORDER EXPUNCTION OF THE REMANDED CHARGES AND EXPUNCTION OF ANY DNA RECORDS STORED IN THE STATE DNA DATABANK
- ONLY APPLIES TO CASES ALLEGEDLY COMMITTED BY YOUTH 16 AND 17

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Planning Ahead  
for Success!

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Getting What You Want  
through Discovery

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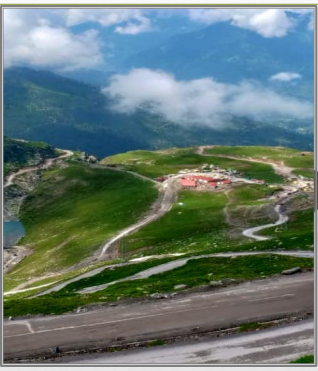
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Two types of  
discovery

Where & How  
to get it

How to USE it



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Attorney  
&  
Counselor At Law

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What is the PURPOSE of juvenile court?!

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## What are your goals?

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Express Advocacy:  
 What does your client want?

How do you get there?  
 Need to know WHAT happened & WHO is my kid?

Good advocacy = presenting WHOLE kid

GREAT advocacy = presenting the WHOLE kid  
 from the KID'S perspective!

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## PURPOSE of juvenile court?

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THAT TEACHIN LADY ASKED ME WHAT COMES AFTER A SENTENCE I TOLD HER, AN APPEAL

REMEMBER HOW MUCH YOU WANTED A COMPACT CAR YOU WOULDN'T HAVE TO GAS UP.... AND HOW MUCH YOU HATE RAISING UP FALL LEAVES?

FIRST PRIZE: MOST POSITIVE SPIN ON BAD NEWS

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## Dispositional options: What does your client SAY they want?

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Dismissal / Trial

- Admit to offense & probation  
 or admit lesser & probation
- Adjudication but no disposition
- "ADA" Deferral with conditions
- Deferral programs: Teen Ct / Mediation
- Extended continuance (w/services)

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**Two types of Discovery**

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Legal: WHAT happened?  
"Personal": WHO is my kid?  
These overlap:  
You will get LOTS more than the State does  
What you get is YOURS (unless use it)

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**Legal: WHAT happened?**

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You get this from the State:  
LEO reports & Videos, Victim's Medical records  
Don't forget to GET your own:  
Ethical duty to conduct your OWN investigation

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**Personal: WHO is my client?**

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Get for this yourself - from your client, family, friends, JCC, school, church, boss...  
You don't HAVE to use it!  
You don't have to turn over UNLESS you use it

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**Discovery statute**  
**7B-2300**

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Don't forget Constitutional rights to it, too!

Do written motions:  
Constitutionalize the issue (Due Process)  
Preserve it!

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**Continuing Duty**  
**7B-2303**

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

Applies to ADA & defense atty!

Can use to block witness State left off list  
CAVEAT: this goes both ways too.

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**Reciprocal Discovery**  
**7B-2301**

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Tracks what State has to give you:  
Witness list & reports/evidence you intend to use at trial

NO requirement to give notice of specified defenses  
BUT...best practice? Give it, if you plan to use

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**Motion to Compel**

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AFTER signed order for discovery  
to get more/specific docs

Anything referenced in reports but not given:  
Ex: videos, digital evidence, victim's records

Also things you suspect may be out there (and helps you):  
Ex: body/car cams, LEO personnel files

ADA has duty to get it for you!

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**Brady v. Maryland**  
373 U.S. 83 (1963)

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DA has duty to turn over exculpatory material  
favorable to defendant or impeachment evidence

Constitutional issues DO apply to kids!  
Read & quote it often: *Gault* -387 US 1 (1967)

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**Giglio v. United States**  
405 U.S. 150 (1972)

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DA duty to turn over information pertaining to credibility of  
witnesses

Ex: deals with co-respondents (immunity, lesser plea)

BUT also: LEO's disciplinary files!  
(prior excessive force investigations of your cop)

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## Timing

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Get ALL discovery before you decide what to do!

Request continuance if needed:  
 State's continuance – b/c duty to provide discovery  
 In re A.M. 220 N.C.App. 136 (2012)

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## WHAT can you get?

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LEO reports/videos	ANY evidence “material to your defense”!
JCC complete file	
School records	
Medical/MH records	ASK FOR IT!
Your OWN evaluations	Constitutionalize
	Brady & Due Process

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## WHERE do you get it?

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LEO	Internet/Social Media
School	Phone records
DSS	Bank records
Medical	Business records
Mental	Video surveillance tap
Health	Cell phones
JCC	LEO Internal Affairs
	Victims
	Witnesses
	Prior attorneys!

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## WHO should get it?

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<p>ADA (The State):</p> <ul style="list-style-type: none"> <li>LEO reports/video</li> <li>Victim's information</li> <li>Witness statements</li> <li>Bank records</li> </ul>	<p>YOU (your investigator):</p> <ul style="list-style-type: none"> <li>Everything else!</li> <li>Witness statements (b/c they may change)</li> <li>Internet search</li> <li>YOUR kid!</li> </ul>
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## SCHOOL

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Your client's entire file:

- FERPA (by parent-signed release)
- Look for: grades, IEP, suspensions, manifestation results...

Maybe victim's- partial: (court order)

- if prior fights and claiming self-defense
- if Brady info?

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## DSS

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Your client's entire file= absolute right =7B-302(2)

- By ex parte court order

Victim's file = partial: (by court order) =7B-302(4)

- Through Motion to Compel ADA
- CPS investigation(s) in sex cases (should be in discovery)
- Prior allegations that were recanted (Brady)

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**Penn v. Ritchie**  
**480 US 39 (1987)**

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Defense subpoenas documents –State will try to quash  
OR request through compelled discovery

Judge MUST:  
do in camera review &  
release ANY Brady material &  
seal ALL for appellate review

NOT just for DSS records!!!

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**MEDICAL  
& MENTAL HEALTH**

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Your client's - entire files =absolute right  
by HIPPA release – parent signature  
Kid's signature for SubAbuse info

Victim's file – partial: (by Motion to Compel ADA)  
MUST give:  
medical records if alleged injury  
bills to prove restitution amounts

MH records – Ritchie Motion & in camera review to release  
Brady info

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**Subpoena or Court Order?**

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Try subpoena first  
If State tries to quash, have hearing & in camera review of  
records requested = BRADY always applies

Usually need court order for bank records – BUT ADA should  
have to get & disclose

Remember Ex Parte orders for things ADA can't get for you  
or shouldn't see

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**Your Client's Mental Health Evaluations**

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Can do Ex Parte motion for eval of client:  
competency to proceed/capacity to stand trial  
diminished capacity  
transfer hearings  
suppression motions

Forensic evaluation for Juvenile's competency:  
Look at "ability to aid atty in defense" issues!

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**Juvenile Court Counselor**

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Your client's entire file - (request form)  
READ - NC JOIN records!  
New = "gang evaluation" – ask for it

ADA can't get it  
but YOU can show portions– if helps you!

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**Court Counselor's Pre-Disposition Investigation**

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GET dispo report & risk/needs assessment before trial

BEWARE 5<sup>th</sup> Amendment problems!  
NOT admissible prior to disposition (7B-2408)

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## Private Investigator

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Juvenile has RIGHT to investigator  
 Can do Ex Parte Motion  
 Template Motion on OJD web page

Showing:  
 Specify reasons why need investigator  
 (ex: gather evidence & witness statements)  
 Allege "Necessary for defense"  
 Reasonable amount (w/ right to ask for more)

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Case Organization

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Now that I have it all,  
 WHAT do I do with it?!



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### Dispositional options: What does your client REALLY want?

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Dismissal

OR no probation:  
 Extended continuance (w/services)  
 Deferral programs (Teen Ct / mediation)  
 Deferral with conditions  
 Adjudication but no disposition

Admit to a lesser offense & probation

Trial

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**Prepare for TRIAL**

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Review ALL legal evidence - including your own (remember ADA doesn't have this)

Strengths, weaknesses, (Aces up your sleeve)

Be ready to FIGHT so you know the balance

Prepare your case:  
file motions  
prepare witnesses

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**Then get Creative!!**

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Meet with ADA:  
Present your client! (not just your case)

WHY this case SHOULD be dismissed/pled to lesser  
Evidentiary problems (beware revealing Aces)

ALSO the personal reasons: (why SHOULD defer)  
"here to get them help"  
Why THIS kid doesn't need that "help"

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**If you don't ask, you don't get!**

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Purpose of Juv Ct: rehabilitation (not punishment)

Cite studies:  
Adolescent brain science = lower culpability  
Systemic: the deeper into system, worse recidivism

Creative deferral agreements

"Selective prosecution" motions

Honey catches more than vinegar

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**Make your own  
Disposition Report!**

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GOOD things about kid & family/community/school support  
Other sources: teacher, coach, church, boss, relatives, neighbors  
Your client's OWN exhibits: apology letters, social media, trophies/awards, essays  
Rick's client – presented a power point for the judge!

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**CAVEAT**

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Be careful with all that has been used/put in court file  
Protect your kid's future!  
SEAL any personal information:  
Order ANY sensitive info sealed after disposition hearing:  
MH evaluation, SOSE, whole JCC Disposition report?  
Templates on OJD web page

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