

**The Right to Confrontation:**  
**Cross-Examination of Child Victims**  
**In Sex Offense Cases**

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**Great Cross-Examination Begins with Great Preparation**

I. Statutory Discovery

- **Upon filing of a motion, 7B – 2300 entitles you to:**
  - **Written or recorded statements of your client**
  - **Written or Recorded Statements of all co-defendants**
  - **The substance of any oral statement made by your client and/or co-defendants – must be written down or recorded.**
  
  - **Names of persons to be called as witnesses and**
  - **A copy of the record of witnesses**
  
  - **Books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects or portions thereof which are:**
    - ✓ **In the possession, custody, or control of the petitioner, prosecutor, or any law enforcement officer conducting an investigation of the matter alleged AND**
    - ✓ **Which are material to the preparation of the defense, are intended for use by the petitioner as evidence, or were obtained or belong to the juvenile.**
  
  - **Reports of Examinations and Tests**

Try out these:

**State v. Cunningham, 108 N.C.App. 185, 423 S.E.2d 802 (1992)**

**State v. Dunn, 154 N.C.App. 1, 571 S.E.2d 650 (2002), rev. denied, 356 N.C. 685, 578 S.E.2d 314 (2003)**

**State v. Ryals, 635 S.E.2d 470, 2006 N.C.App. LEXIS 2161**

**State v. Fair, 164 N.C.App. 770, 596 S.E.2d 871 (2004)**

**Entitled to more than just naked results of State's laboratory analysis.**

- ✓ **Results or reports of physical or mental examinations of tests, measurements, or experiments**
- ✓ **Inspection, examination, and testing of physical evidence by defendant.**
- ✓ **Laboratory protocol documents**
- ✓ **Tests performed or utilized by experts to reach their conclusions**
- ✓ **Reports documenting "false positives" in the laboratory results**
- ✓ **Credential of individuals who performed the tests**

**II. Don't Forget About:**

**Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963)**

**Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1986)**

**Setting the Atmosphere (This Is Serious)**

**III. Motion to Sequester the Witnesses**

**Based on 15A-12225:**

**Upon motion of a party the judge may order all or some of the witnesses other than the defendant (juvenile) to remain outside of the courtroom until called to testify, except when a minor child is called as a witness the parent or guardian may be present while the child is testifying even though the parent or guardian is to be called subsequently.**

**Motions in Limine barring irrelevant or prejudicial evidence**

## **Some Basic Thoughts on Cross-Examining Children**

- 1. Cross-examination, particularly of children, is about the job, not the knock-out.**
- 2. Children are more intuitive than adults. They are more attentive to non verbal cues. Therefore, the tone of voice, inflection, and body language are much more significant in communicating with a child than with an adult.**
- 3. Recognize your fears – but get past them. Focus on your client’s plight.**  
**Natural empathy for a child who has been sexually abused**  
**Communicating with children**  
**Talking about sex with a child**  
**Talking about sex in front of strangers**

- 4. DO NOT ATTACK THE WITNESS – no matter how tempting**

**Your primary goal is to show a credible contradiction of fact. This can be accomplished through cross-examining a child as if the facts stated were true, then perfecting impeachment through other witnesses**

**Example: child says father touched her on Thursday night when mother was working. You may seek to cross the child by talking about mom’s routine before she goes to work, how long she is at work, what she does when she gets home, etc. Then, bring in mom’s employer with work records showing that mom has Thursday nights off.**

- 5. Remember children are hostile to questioning. “What are you doing?”  
“Nothing.”**
- 6. Use simple language. Good child witness questions are usually not much more than five words. As the number of words in the question increases, the ability of the child to understand the question decreases.**
- 7. Avoid confrontation with the child. Remember to watch the tone of voice, inflection, body language. Take on an inquisitive, interested, and conversational tone when questioning a child**
- 8. Avoid appearing like you are dominating the child. Have court staff hand child documents or objects (if necessary) instead of doing it yourself.**
- 9. Listen to the witness and try to understand what the child means instead of giving adult meaning to what they say.**
- 10. Don’t ramble. Have a plan and purpose for questioning.**