

## **OBJECTION TO STATE'S MOTION TO REVOKE BOND**

Comes now the Defendant, [name], by counsel, and states his objection to the State's Motion to Revoke Bond, specifically, that the State of Indiana has failed to allege a valid legal basis for the revocation of [name]'s bond, and in support of said motion states as follows:

I. **TO THE EXTENT THAT HENDRICKS COUNTY LOCAL RULE LR32-CR-00 RULE 2(A)(3) IS INTERPRETED TO AUTHORIZE THE REVOCATION OF BAIL OR RECOGNIZANCE FOR THE COMMISSION OR ARREST FOR ANY OTHER CRIMINAL OFFENSE, IT IS IN CONFLICT WITH IND. CODE § 35-33-8-5, IND. CONST. ART 1, § 17, AS WELL AS THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND IND. CONST. ART. 1, § 12 AND IS INVALID AS A MATTER OF LAW**

In its motion to revoke [name]'s bond, the State has alleged that [name] committed the offenses of possession of marijuana, a class B misdemeanor, and possession of paraphernalia, a Class C" Misdemeanor.

Ind. Code § 35-33-8-5(d)(1)(c) states that a court may revoke bail or personal recognizance for violation of "any condition of the defendant's current release order." Hendricks County Local Rule LR32-CR-00 Rule 2(A)(3) lists as a condition of release that "the defendant shall not commit or be arrested for another criminal offense." However to the extent that this provision has been interpreted as authorizing a Hendricks County trial court to revoke bail or personal recognizance based upon an allegation that a defendant committed or was arrested for *any* criminal offense it is in

direct conflict with Ind. Code Ind. Code § 35-33-8-5 in several aspects and is thus invalid.

Ind. Code § 34-8-1-4 states that “Indiana courts may establish rules for their own government, supplementary to and not conflicting with the rules prescribed by the supreme court or any statute. (emphasis added). See also *State ex. rel. Commons v. Pera*, 987 N.E.2d 1074, 1078 (Ind. 2013): “[W]hile trial courts may establish local rules for their own governance, those local rules may not conflict with the rules established by this Court or by statute.” This is true even though local rules are approved by order of the Indiana Supreme Court. See *Pera*, 987 N.E.2s at 1078, quoting Ind. Code § 34-8-1-3 (local rule was “not a rule of this Court governing practice and procedure "promulgated and tak[ing] effect under the rules adopted by the supreme court.”) See also *Ind. Dept. of Child Services v. N.E. (In re J.T.D.)*, 21 N.E.3d 824, 829 (Ind. 2014): “[A] local rule cannot override a statute.”

Ind. Code § 35-33-8-5(d)(1)(E) identifies the specific types and levels of offenses necessary to justify alteration or revocation of bail, specifically “a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court’s authority to bring the defendant to trial.” Hendricks County Local Rule LR32-CR-00 Rule 2(A)(3) imposes no such limitation; literally any offense, regardless of level and indifferent to whether it demonstrates instability and a disdain for the court’s authority to bring the defendant to trial could be uses to justify revocation or alteration of bail.

A basic and fundamental rule of statutory construction is that “a more detailed and specific statute prevails over a more general statute when the two conflict.” *State v. Lake Superior Court, Room Three*, 500 N.E.2d 737, 739 (Ind. 1986). Ind. Code § 35-33-8-5(d)(1)(E) is specific as to the types of offenses that may be used as justification for the alteration or revocation of bail. To the extent that Hendricks County Local Rule LR32-CR-00 Rule 2(A)(3) allows for alteration or revocation for any offense, it is in conflict with a “rule prescribed...by statute” and is invalid.

Further, to the extent that Hendricks County Local Rule LR32-CR-00 Rule 2(A)(3) allows for alteration or revocation of bail based upon only the arrest for any offense, it is in conflict not only with Ind. Code § 35-33-8-5(d)(1)(E), which only allows for alteration or revocation of bail based upon “clear and convincing evidence...[the defendant] committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court’s authority to bring the defendant to trial,” but also Ind. Const. art 1, §§16 and 17, as well as the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and Ind. Const. art. 1, § 12.

Art 1, § 16 of the Indiana Constitution prohibits excessive bail. Bail “may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence that the defendant poses a risk to the physical

safety of another person or the community." Ind. Code § 35-33-8-4(b). As the court stated in *Satterfield v. State*, 30 N.E.3d 1271, 1275 (Ind. Ct. App. 2015).

The right to bail is "a traditional and cherished right." *Bozovichar v. State*, 230 Ind. 358, 103 N.E.2d 680, 681 (Ind. 1952), abrogated on different grounds by *Fry v. State*, 990 N.E.2d 429 (Ind. 2013). As such, "[t]he right to freedom by bail pending trial is an adjunct to that revered Anglo-Saxon aphorism which holds an accused to be innocent until his guilt is proven beyond a reasonable doubt." *Hobbs v. Lindsey*, 240 Ind. 74, 162 N.E.2d 85, 88 (Ind. 1959). "Unless [that right] is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." *Stack v. Boyle*, 342 U.S. 1, 4, 72 S. Ct. 1, 96 L. Ed. 3 (1951). Despite the broad language, the right to bail, as enshrined in the Indiana Constitution, is not unqualified as "[o]ffenses, other than murder or treason, shall beailable by sufficient sureties. Murder or treason shall not beailable, when the proof is evident, or the presumption strong." Ind. Const. art. I, § 17. Because of these strictly defined qualifiers in the case of murder or treason, each request for bail in those instances must be reviewed upon its individual merits. Thus, the denial of the right to award bail where the proof of guilt is not evident or the presumption of guilt is not strong would be a deprivation of liberty without due process of law, in violation of the Constitution, which would – rightly – call for prompt corrective action. See *Ex Parte McDaniel*, 86 Fla. 145, 97 So. 317, 318 (Fla. 1923). Ultimately, though, the criminal jurisprudence of Indiana and any corresponding discussion of bail is founded on a presumption of individual innocence. See *Bozovichar*, 103 N.E.2d at 681; see *U.S. v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987) ("[L]iberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

Hendricks County Local Rule LR32-CR-00 Rule 2(A)(3) is incompatible with this "traditional and cherished right" and the concept of due process embodied in the Indiana and United States Constitution – it allows for revocation based upon proof only of an arrest. Such evidence is insufficient to even revoke probation, where an individual has actually been convicted, and where the State's burden of proof is by a preponderance, not "clear and convincing." See, e.g., *Martin v. State*, 813 N.E.2d 388,

390 (Ind. Ct. App. 2004): “It has long been established that an arrest alone does not warrant the revocation of probation. The same holds true for the fact that charges were filed against a probationer.” It is self-evidentially insufficient to revoke bail, where a Defendant is cloaked with the presumption of innocence while awaiting trial.

### CONCLUSION

The Indiana Legislature has spoken clearly with regards to the severity and nature of offenses necessary to justify alteration or revocation of bail, as well as the level of proof necessary to demonstrate that those offenses occurred; it is apparent that the legislative intent is to prevent an individual from being deprived of his liberty while awaiting trial based merely upon the allegation of the commission of a minor offense, or offenses that fail to demonstrate instability and a disdain for the court’s authority to bring the defendant to trial. It is likewise clear that the legislative intent is that alteration or revocation of bail is not to be used as punishment, a “gotcha” that the defendant is alleged to have committed an offense so that he can be held without bond indefinitely until trial, as leverage to coerce a guilty plea.

Wherefore, as the court lacks a legal and factual basis to revoke [name]’s release [name] objects to the State’s Motion to Revoke Bond, and for all other appropriate relief.

Respectfully Submitted,