

[CAPTION]

**MOTION FOR LEAVE TO TAKE DISCOVERY DEPOSITION OF
STATE'S EXPERT**

Comes now the Accused and moves the Court for an Order permitting him to take a discovery deposition of an expert witness designated by the State limiting its use to discovery only, and not to admission at any preliminary proceedings or trial of this cause without the express consent of the Accused, and as grounds therefor says:

1. The State has designated [INSERT NAME] as an expert witness to be offered at the trial of this cause on the issue of [INSERT ISSUE].
2. The Accused has sought and obtained the proposed witness's *curriculum vitae*, a copy of his written opinion, and a partial listing of the materials he relied upon in reaching his opinion.
3. The Accused does not know the identity of authorities the witness may have relied upon, whom he considers experts in his field, examination techniques employed in his examination, preliminary drafts of his written opinion, notes, diaries, emails and other evidences of materials affecting his opinion.
4. The deposition to be taken will provide the Accused with the opportunity to exercise his rights protected by the Constitutions of the State of Indiana and the United States to have the effective assistance of counsel to effectively confront and cross-examine witnesses.
5. The purpose of this deposition is to discover information which will enable the defense to adequately prepare for trial cross-examination.
6. The deposition should be limited to discovery purposes only, and not be available for introduction in any proceedings of law or equity without the availability of the deponent.

(Signature)

CASE LAW

Murphy v. State, 265 Ind. 116, 352 N.E.2d 479 (1976) (absent a showing that Defendant has no legitimate defense interest in support of his petition or that the State has a paramount interest to protect, criminal defendants have a right to discovery, including the taking of depositions from those persons listed as State's witnesses).

Johnson v. State, 179 Ind.App. 28, 384 N.E.2d 1035 (1979) (where State did not show that Defendant had no legitimate defense interest in deposing State's surprise expert witness or that State had a paramount interest to protect, Defendant had a right under rules of procedure to take deposition of surprise witness or discovery purposes).