

[CAPTION]

**MOTION FOR INDIVIDUALIZED VOIR DIRE AND SEQUESTRATION OF JURORS
DURING VOIR DIRE (Child Molest)**

The Defendant, by counsel, respectfully requests this Court to allow counsel to voir dire the prospective jurors individually, separate and apart each from the other, and sequester the jurors from the Courtroom during the voir dire in order to prevent the jury the questions being asked individual jurors during part of voir dire. In support of this Motion, the Defendant states the following:

1. This case involves highly sensitive issues, being that the State has accused the Defendant of molestation.

2. Some of the prospective jurors answering the supplemental written questions submitted to them may reveal in their responses that their backgrounds or attitudes indicate prejudice or trauma which could make them inappropriate jurors in this cause.

3. Because of their initial responses, further inquiry into the terms, conditions, and circumstances leading to the responses is necessary to determine whether said jurors should be sworn in this cause.

4. Because of the very sensitive nature of the necessary inquiry, and the possible emotional reactions involved, public examination on these issues is not appropriate, and might result in less than candid responses.

5. Common sense and the experiences of other attorneys which have been relayed to this counsel, dictate that interviewing these jurors in chambers, or individually in a closed courtroom, would lead to freer and fuller discussion of the issues involved, and therefore provide a better determination as to the jurors' ability to sit on this case.

6. If jurors do not feel free to disclose their past experiences, their undisclosed experiences can result in a reversal of any conviction. Dye v. State, 784 N.E.2d 469 (Ind. 2003) (where juror failed to disclose that she had been a victim of sexual abuse when she was two, new trial was required in a case where the State accused, but did not charge, the Defendant of sexual abuse of one of the victims). Thus, it is best to learn about these experiences, biases and prejudices now rather than later.

7. Without individualized and sequestered voir dire on the subject of molestation, it will be impossible for the Defendant to find a fair and impartial jury as guaranteed by the Sixth Amendment to the U.S. Constitution and Article I, Section 13 of the Indiana Constitution.

WHEREFORE, the Defendant respectfully requests this Court to grant his Motion for partial individualized and sequestered voir dire of any prospective jurors who provide initial answers to the supplemental written questions submitted which indicate attitudes or past experience which could taint their ability to serve as prospective jurors in this cause, and for all other relief just and proper in the premises.

(Signature)

REFERENCES


CASEBANK D.9.d.1



Trial Rule 47 (D) (providing discretion to judge to control examination of jury by counsel).

Indiana Jury Rule 24 (requiring that the trial court examine a juror who has personal knowledge concerning a case outside of the presence of the rest of the jury if the person knowledge comes to light during trial)

CASE LAW

Ashby v. State 486 N.E.2d 469 (Ind. 1985) (trial court has broad discretion in regulating voir dire; no error in not granting the Defendant opportunity to have separate and individual voir dire of jury, where thirty minutes judge allotted parties to conduct additional voir dire gave ample opportunity to delve into possible racial prejudice among jurors).

Burris v. State, 465 N.E.2d 171 (Ind. 1984) (no right to a separate and individual voir dire in a capital case), *superseded by statute on other grounds*, Wrinkles v. State, 690 N.E.2d 1156 (Ind. 1997). Ashby v. State [486 N.E.2d 469](#)  (Ind. 1985) (trial court has broad discretion in regulating voir dire; no error in not granting the Defendant opportunity to have separate and individual voir dire of jury, where thirty minutes judge allotted parties to conduct additional voir dire gave ample opportunity to delve into possible racial prejudice among jurors).

Burris v. State, [465 N.E.2d 171](#)  (Ind. 1984) (no right to a separate and individual voir dire in a capital case), *superseded by statute on other grounds*, Wrinkles v. State, [690 N.E.2d 1156](#)  (Ind. 1997).