

[CAPTION]

MOTION IN LIMINE TO EXCLUDE EVIDENCE OF COURSE OF INVESTIGATION

The Defendant, by counsel, respectfully requests this Court exclude any evidence offered solely to prove the course of investigation. In support of this Motion, the Defendant would state the following:

1. The Defendant is charged with (insert charges).
2. The Defendant is scheduled to be tried on these charges on (insert date).
3. The Defendant has reason to believe the State intends to introduce evidence of why (insert description of State's witnesses, e.g. police officers, investigators, law enforcement officers, or Indiana Department of Child Services workers) proceeded in a particular manner. This would include testimony of the State witnesses' that based upon allegations or information received from (insert witness description, e.g., complaining witness, confidential informant, co-defendant) they inspected or evaluated certain items, interviewed certain persons, and made charging decisions or allegations.
4. Such background information is generally irrelevant in as much as an explanation of why the police or other State witnesses "did what they did may add nothing to the determination of the defendant's guilt or innocence." Kindred v. State, 973 N.E.2d 1245, 1252 (Ind. Ct. App. 2012) *reh'g denied* (quoting Wharton's Criminal Evidence § 4:447 (15th ed. 1997)).
5. Additionally, such background information is often offered as an excuse to admit hearsay statements for non-hearsay purposes, and as such has been a source of abuse by the State to effectively undermining defendants' rights to confront the witnesses against them. Jones v. Basinger, 635 F.3d 1030, 1046 (7th Cir. 2011).
6. (In cases with a child complaining witness: Further, when the course of

investigation activities are attributed to information or allegations from the child complaining witness, the testimony of the offering witness contains an inherent statement of the offering witness' belief that the information or allegations from the child complaining witness is reliable or truthful, violating Indiana Evidence Rule 704(b) which prohibits direct and indirect vouching testimony. See Hoglund v. State, 962 N.E.2d 1230 (Ind. 2012).)

7. Moreover, since such course of investigation testimony is minimally relevant, if relevant at all, the probative value is substantially outweighed by the danger of unfair prejudice caused by the testimony, and thus, the testimony should be excluded under Indiana Rule of Evidence 403. See, Mason v. State, 689 N.E.2d 1233, 1236 (Ind. 1997); Kindred, 973 N.E.2d at 1255.

WHEREFORE, the Defendant, by counsel, requests that this motion to exclude be granted; and requests this Court to order the State of Indiana, through its prosecutors and its witnesses, not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly any evidence offered solely to prove the course of investigation. The Defendant further requests this Court to instruct the parties as to the limits of such evidence, and to further instruct the State of Indiana and its witnesses not to make any reference to the fact that this Motion has been filed and granted, and to warn and caution each and every one of their witnesses to strictly follow these same instructions, and to grant all other relief just and proper in the premises.

(signature)