

**[CAPTION]**

**DEFENDANT'S MOTION IN LIMINE CONCERNING LIMITATIONS ON SCOPE OF  
CROSS-EXAMINATION OF DEFENSE WITNESSES**

The Defendant, by counsel, respectfully moves this Court as follows:

1. The Defendant is charged in two counts with the offenses of Child Molesting [insert specific offense].
2. The Defendant is scheduled to be tried on these charges on [insert date].
3. Counsel for the defense has reason to believe that at trial the State may seek to question certain defense witnesses concerning the allegations of this case and/or the witnesses' knowledge of such allegations.
4. Several of the Defendant's witnesses will be called to testify solely about the lack of opportunity for the Defendant to have committed the acts complained of. In other words, these witnesses will not be testifying as to the Defendant's or the complaining witness' character, or any facts relating to child molestation, but only to the lack of opportunity for the commission of the alleged acts. [Modify as necessary to fit your facts].
5. Several of these witnesses are children or merely acquaintances of the Defendant or his family, who have no need to be subjected to the specifics of the emotionally laden charges at hand, which could cause them undue embarrassment.
6. During direct examination, should Defendant not raise any issues or subjects related to the alleged acts involved, or his general character, but instead confine his questioning of these witnesses to activities and attendance during the time in question, any questions from the State related to the allegations involved or knowledge thereof would be outside the scope of direct examination, and therefore not proper. Indiana Rule of Evidence 611(b); Solomon v. State, 439 N.E.2d 570 (Ind. 1982).
7. Allowing this type of questioning under the circumstances set forth above could lead to undue distress to the witnesses, especially the child witnesses, and is not necessary or relevant to the State's case.

Jackson v. State, 535 N.E.2d 1173 (Ind. 1989) (trial court has the discretion to determine the manner in which a party questions a young witness, especially concerning embarrassing subject matters).

8. Additionally, if the State is allowed to engage in this type of questioning outside the scope of direct examination, the result would be to allow the State to repeatedly put the allegations before the jury without cause, and therefore significant prejudice to the Defendant would result. Any probative value of the questioning would significantly outweigh the unfair prejudice and cumulative effect of the questioning, and thus, violated Indiana Rule of Evidence 403.

9. A motion in limine specifically requiring the State to obtain the Court's permission before initiating such questioning is necessary in this situation. Defendant cannot cure the harm by objection because the harm derives from the question asked and not the witness' response.

WHEREFORE, the Defendant, by counsel, requests that this Motion in Limine be granted; requests this Court to order the State of Indiana not to interrogate defense witnesses concerning the allegations of this case and/or the witnesses' knowledge of such allegations, unless similar subject matter or character testimony is elicited by Defendant on direct examination, without first obtaining the express permission of this Court outside the presence and hearing of the jury; and to 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)

## REFERENCES

## CASEBANK 0.5.e

Indiana Rule of Evidence 611(b) ("Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.")

## CASE LAW

Lycan v. State, 671 N.E.2d 447 (Ind.Ct.App. 1996) (proper scope of cross-examination is a matter within the trial court's discretion and appellate courts will reverse only upon a showing of abuse of that discretion; here, the State was entitled, on cross-examination of detective, to question him concerning extensive list of weapons purchased by the Defendant from a local gun dealer, after the Defendant, on direct examination, elicited testimony that the Defendant had purchased a weapon similar to, but with serial number different from, the weapon that killed victim).

Hudson v. State, 496 N.E.2d 1286 (Ind. 1986) (scope of cross-examination includes any matter which tends to modify, explain, or rebut the witness' testimony on direct).

Marcum v. State, 725 N.E.2d 852 (Ind. 2000) (trial court correctly limited cross-examination where witness repeatedly denied memory of prior statements).

McCarthy v. State, 749 N.E.2d 528 (Ind. 2001) (in child molesting prosecution, where Defendant was teacher charged with molesting two students, it was error to deny Defendant the opportunity to cross-examine complaining witness's (CW's) mother about having filed a Notice of Tort Claim against school. Error in this case was harmless, because Defendant was allowed to cross-examine the mother about discrepancies between her testimony & that of her daughter, & about having helped her daughter prepare her trial testimony, effectively demonstrating her bias & implying that the accusations were fabricated).