

[CAPTION]

**OBJECTION TO STATE’S MOTION TO LEAVE TO AMEND  
INFORMATION AND ADD HABITUAL OFFENDER ENHANCEMENT**

The Defendant, by counsel, respectfully objects to the State’s Motion to Leave to Amend Information and Add Habitual Offender Enhancement. In support of the Objection, the Defendant states the following:

1. On [insert date], the State charged the Defendant with [insert offense(s)].
2. At the Defendant’s initial hearing, this Court set the omnibus date as [insert date].
3. A jury trial is scheduled for [insert date].
4. On [insert date], the State filed its Motion for Leave to Amend Information and Add Habitual Offender Enhancement.
5. Pursuant to Ind. Code 35-34-1-5(e), an amendment to include a habitual offender charge under Ind. Code 35-50-2-8 must be made no later than ten (10) days after the omnibus date. However, upon a showing of good cause, the Court may permit the filing of a habitual offender charge at any time before the commencement of the trial.
6. The State has failed to adequately state “good cause” to add the belated habitual offender charge. All of the evidence supporting the habitual offender charge was in the possession of the State prior to the statutory deadline.
7. Moreover, due to the short time period between the filing and the trial, the Defendant does not have adequate time to prepare for the habitual offender phase, and thus, is substantially prejudiced by the State’s belated filing. Thus, the late filing violates the Defendant’s due process right to a fair trial and his Sixth Amendment and Article I, Section 13 right to effective assistance of counsel.
8. An amendment after the deadline requires adequate notice and an opportunity to be heard before leave of Court may be obtained to permit the amendment. Ind. Code 35-34-1-5(d).

WHEREFORE, the Defendant, by counsel, respectfully objects to the State's Motion for Leave to file Amendment Informant and Add Habitual Offender Enhancement, requests this Court to schedule a prompt hearing on the issues and thereafter deny the State's Motion for Leave, and for all other relief just and proper in the premises.

(Signature)

## CASE LAW

## CASEBANK E.9.b; A.5

Roell v. State, 655 N.E.2d 599, 601 (Ind.Ct.App. 1995) (decisions interpreting the general habitual offender statutes are applicable to resolution of issues under the habitual substance offender statute). See also Falls v. State, 797 N.E.2d 316 (Ind.Ct.App. 2003).

Hooper v. State, 779 N.E.2d 596 (Ind.Ct.App. 2002) (no good cause shown; Court must find that the State has shown that there is good cause to allow the late amendment, and not just cause).

Attebury v. State, 703 N.E.2d 175, 179 (Ind.Ct.App. 1998) (“the legislative mandate is clear and cannot be ignored by the judiciary: ‘good cause’ for the late addition must be affirmatively shown by the State prior to an habitual offender charge being filed late.”), *disapproved of on other grounds*, Williams v. State, 735 N.E.2d 785 (Ind. 2000).

Williams v. State, 735 N.E.2d 785 (Ind. 2000) (where the trial court permits late filing of habitual offender charge, the Defendant must move for continuance in order to preserve propriety of the trial court’s order for appeal, even if the Defendant is seeking speedy trial; the Defendant can seek more time to prepare for habitual question and still proceed on schedule for speedy trial of main charge; disapproving of Attebury, *supra*, which held that the Defendant did not waive claim by failing to ask for a continuance).

Falls v. State, 797 N.E.2d 316 (Ind.Ct.App. 2003) (Defendant’s failure to seek continuance of trial either when trial court allowed State to file habitual offender charge, or when trial date was subsequently set, did not waive Defendant’s claim that trial court erred in allowing late filing, where trial date had not been set when late filing was allowed, and Defendant’s claim concerned State allegedly failing to show good cause for late filing, not that Defendant was unable to prepare defense).

Watson v. State, 776 N.E.2d 914 (Ind.Ct.App. 2002) (where the Defendant was unable to show how the additional habitual offender charge would impair preparation of his defense, and the Court found that the State was not in possession of the necessary information to make a determination of the eligibility of the habitual offender charge, late amendment was proper). See also Blanchard v. State, 802 N.E.2d 14, 39-40 (Ind.Ct.App. 2004); Mitchell v. State, 712 N.E.2d 1050 (Ind.Ct.App. 1999).

Singleton v. State, 889 N.E.2d 35 (Ind.Ct.App. 2008) (in attempted murder prosecution, trial counsel was not ineffective for failing to object to State’s late filing of habitual offender charge).

Jackson v. State, 938 N.E.2d 29 (Ind.Ct.App. 2010) (State demonstrated good cause for delay where State was unsure whether it would be able to obtain the records necessary to charge Defendant as habitual offender, and Defendant was not prejudiced by late filing because a continuance was granted and Defendant had 17 months between filing and trial to prepare a defense).

White v. State, 963 N.E.2d 511 (Ind. 2012) (Defendant failed to preserve claim in connection with State’s untimely filing of habitual offender charge, and trial court’s failure to make finding of good cause with respect thereto, where Defendant never objected or responded to State’s motion to file habitual offender charge, did not request continuance or express any issue with belated filing at initial hearing on charge, and failed to raise issue during trial).

Nunley v. State, 995 N.E.2d 718 (Ind.Ct.App. 2013) (State not permitted to amend information to delete habitual offender allegation of prior conviction for possession of cocaine, which was not permissible predicate offense, and to add additional prior theft convictions; amendment was one of substance, as it was essential to allegation that Defendant was habitual offender, amendment prejudiced Defendant’s

substantial rights by drastically changing available defense that State had not alleged convictions that would support habitual offender finding, amendment was not requested until after jury empaneled, and State admitted that there was no good cause for having failed to allege prior theft convictions in original information).

Campbell v. State, 19A-CR-2414 (Ind.Ct.App. 2021)

Trial court abused its discretion in allowing the belated filing of an habitual offender enhancement one business day before trial without requiring or making any finding of good cause for the tardiness.