

[CAPTION]

MOTION FOR A TEST JURY TO DETERMINE PREJUDICE FROM PRE-TRIAL PUBLICITY

The Defendant, by counsel, respectfully requests this Court to order the Sheriff of [insert county] to secure the presence of twelve (12) citizens of this County who are eligible to be jurors as a test jury for examination by the Court and counsel for the State and the Defendant to determine the existence of prejudice and bias as a result of pre-trial publicity. In support of the Motion, the Defendant states the following:

1. The Defendant is charged with [insert offense(s)].
2. Defendant's case has received substantial and prejudicial media coverage.
3. The Defendant timely filed a Change of Venue, [CHOOSE ONE: which was denied OR has been taken under advisement]. Since the filing of the Change of Venue, the pre-trial publicity surrounding the case has not only continued, but has increased.
4. The Defendant is entitled to a fair and impartial jury. However, the burden is on the Defendant to show jurors, having seen publicity about case, cannot remain impartial.


Jarvis v. State, 441 N.E.2d 1 (Ind. 1982)


WHEREFORE, the Defendant, by counsel, respectfully requests this Court to order the Sheriff to secure the presence of twelve (12) citizens of [insert county] who are eligible to be jurors as a test jury for examination by the Court and counsel to determine the existence of prejudice and bias as a result of pre-trial publicity, and for all other relief just and proper in the premises.


(Signature)


CASE LAW

CASEBANK T.6.c

Burdine v. State, [515 N.E.2d 1085](#)  (Ind. 1987), *superseded by statute on other grounds* (trial court has no obligation to allow test jury; however, the trial court is not prohibited from allowing a test jury since the trial court has discretion to guide the course of proceedings before it).

Wilburn v. State, [442 N.E.2d 1098](#)  (Ind. 1982) (in alleging that jury is tainted because of exposure to pre-trial publicity or other information about case, the Defendant must show which jurors were exposed, what the prejudicial publicity was, or how jurors were harmed).

Clemens v. State, [610 N.E.2d 236](#)  (Ind. 1993) (Defendant did not show that he was harmed by failure to conduct a test jury to quantify community bias in support of his motion for change of venue and, in absence of showing of prejudice on part of the seated jurors, the trial court did not abuse its discretion in denying the motion for a test jury).

Ward v. State, [810 N.E.2d 1042](#)  (Ind. 2004) (juror responses on questionnaires and during voir dire established a prejudice against the Defendant requiring a change of venue; conviction reversed).

NOTE

It may be wise to attach an Affidavit or Exhibits of the continued pre-trial publicity since the denial or the filing of the change of venue.