

[CAPTION]

MOTION FOR SEVERANCE OF COUNTS

The Defendant, by counsel, respectfully requests this Court, pursuant to I.C. 35-34-1-11(a) to sever the counts in this cause. In support of this Motion, the Defendant states the following:

1. The Defendant is charged with [insert offense(s)].

2. The Defendant is scheduled to be tried on the above charges on [insert date].

3. [Insert, if applicable: Because these charges were joined in the same information solely on the ground that they are of the same or similar character, the Defendant has the right to have the offenses severed from one another].

4. The Defendant will be denied a fair determination of his guilt or innocence, will be prejudiced in his defense and denied substantial rights for the following reasons if he/she is tried on the above charges at one trial:

a. By trying the charges together, the State is attempting to circumvent the protections against prior bad act evidence set forth in Indiana Rule of Evidence 404(b);

b. _____;

c. _____;

5. This Court has the authority and discretion pursuant to I.C. 35-34-1-11(a) to order a severance of the trial of the above charges.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to grant his/her Motion For a Severance of the Counts, appropriately sever the charges, and for all other relief just and proper in the premises.

(Signature)

REFERENCES


CASEBANK D.6.b


I.C. 35-34-1-11(a) (severance of offenses)


I.C. 35-34-1-12(a) (a defendant must move for severance of crimes or motion for separate trial before the commencement of trial, except if the grounds for the motion were not previously known until trial).


I.C. 35-34-1-12(b) (the defendant must renew a denied motion for severance before the close of all evidence during trial; failure to renew will waive issue)


CASE LAW


Davidson v. State, [558 N.E.2d 1077](#)  (Ind. 1990) (IC 35-34-1-11(a) grants the Defendant an absolute right to severance of offenses which have been joined solely on ground that they are of same or similar character).





Grimes v. State, [454 N.E.2d 388](#)  (Ind. 1983) (whether charges are severed for trial generally lies within trial court's sound discretion and clear error must be demonstrated for Supreme Court to intervene; the trial court can sua sponte join charges).


Pardo v. State, [585 N.E.2d 692](#)  (Ind.Ct.App. 1992) (fact that two groups of theft charges at issue were committed by breaking into cars, and that they occurred within two and one half months of each other was not sufficient to show that they were parts of a single scheme or plan; Defendant was entitled to have offenses tried separately).


Goodman v. State, [708 N.E.2d 901](#)  (Ind.Ct.App. 1999) (the trial court improperly denied the Defendant's motion for severance of burglary, theft and receiving stolen property charges; the crimes were not connected together in any apparent manner, as all involved different victims, different property, and different locations over period of about one month; nor were they part of single scheme or plan to steal property).


Martin v. State, [488 N.E.2d 1160](#)  (Ind.Ct.App. 1986) (the trial court erred in joining failure to appear and escape charges with arson charges; escape and offense for which the Defendant was incarcerated at time of the offense are separate/unrelated offenses for purposes of habitual offender statute).

Hatchett v. State, [503 N.E.2d 398](#)  (Ind. 1987) (although he filed no written motion for severance, the Defendant made his desire for separate trial clear and adequately preserved issue for review).

Wilkerson v. State, [728 N.E.2d 239](#)  (Ind.Ct.App. 2000) (the Defendant received ineffective assistance of counsel due to his counsel's failure to move for severance of charges against him; although both crimes were sexual assaults that occurred in Anderson by perpetrator gaining entry to victim's home through a window late at night, the crimes were not so strikingly similar as to say that they were part of single scheme or plan; the Defendant was prejudiced because he would not have been exposed to consecutive sentences if tried separately). See also Maymon v. State, [870 N.E.2d 523](#)  (Ind.Ct.App. 2007), *aff'd*, in part, on reh'g, [875 N.E.2d 375](#) ; but see Davidson v. State, [763 N.E.2d 441](#)  (Ind. 2002).

Stevens v. State, [580 N.E.2d 274](#)  (Ind.Ct.App. 1991) (although Defendant made pre-trial motion for severance, he waived his right to have offenses tried separately by his failure to renew motion during trial).

Philson v. State, [899 N.E.2d 14](#)  (Ind.Ct.App. 2008) (because Defendant's rape and child molest charges are based on sexual acts against his siblings in the same house over the same time period, 2005-2006, and that the rapes surfaced in the course of the investigation into the molestations, the crimes were sufficiently linked together such that severance was not mandated; Kirsch, J., dissenting)

Philson v. State, [899 N.E.2d 14](#)  (Ind.Ct.App. 2008) (fact that juvenile was acquitted of rape charges, which were the charges upon which the trial court's automatic jurisdiction was based, does not divest the trial court of its jurisdiction over a joined child molest conviction; legislature has not included a mechanism for transferring jurisdiction back to the juvenile court upon the acquittal of the only automatic adult criminal jurisdiction charge).