

[CAPTION]

**WAIVER OF TRIAL BY JURY AND MOTION TO SET FOR BENCH TRIAL (Felony)**

The Defendant, by counsel, waives his right to trial by jury in this cause and moves the Court to schedule a bench trial in this matter at its earliest convenience. In support of this Motion, the Defendant states the following:

1. The Defendant can read, write and understand English and has completed [insert number] years of schooling.
2. The Defendant has been fully advised by the Court and by counsel of his constitutional right to trial by jury in the above-captioned cause, and the Defendant understands his constitutional right to a trial by jury.
3. Defendant hereby waives his constitutional right to a trial by jury in the above-captioned cause and asks that this cause be submitted to the Court without intervention of a jury.
4. No person has made any promise or suggestion of any kind to the Defendant, or within his knowledge to anyone else, that the Defendant would receive any favors, special treatment or any other form of leniency if the Defendant would decide to waive his right to a jury trial in this case.
5. No person has made any threat of any kind to him, or within his knowledge to anyone else, to coerce him into waiving his right to a jury trial in this case.
6. The Defendant freely, knowing and voluntarily made and executed the waiver of his right to a jury trial.


WHEREFORE, the Defendant, by counsel, hereby waives his right to a jury trial guaranteed by the Indiana and U.S. Constitutions and requests this Court to set this matter for a bench trial at the court's earliest convenience, and for all other relief just and proper in the premises.


Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_.


\_\_\_\_\_  
Attorney's signature



\_\_\_\_\_  
Defendant's signature


## CASE LAW

Anderson v. State, [833 N.E.2d 119](#)  (Ind.Ct.App. 2005) (where trial counsel files a waiver of jury trial without D's signature, record is insufficient to show personal waiver of jury).

Lewis v. State, [911 N.E.2d 76](#)  (Ind.Ct.App. 2009) (Marion County Prosecutor's Office's policy to refuse to waive jury trials for Class D felonies in Court 8 did not deprive Defendants of certain constitutional protection; defendant and the prosecuting attorney, with the assent of the court, may submit the trial to the court. All other trials must be by jury. I.C. 35-37-1-2).

Arnold v. State, [460 N.E.2d 494](#)  (Ind. 1984) (trial court did not err in denying Defendant's motion to waive jury trial made on morning trial was scheduled to start; state did not object, but trial court stated that because jury already was present, it would not assent to waiver).

Kellams v. State, [849 N.E.2d 1110](#)  (Ind. 2006) (although defendant was advised of his right to a jury trial, personally indicated that he understood the right, and was in court when his lawyer told the judge that the Defendant assented to a bench trial, the judge never communicated personally with the Defendant to determine whether he understood his right to a jury trial and that he was waiving the right; nor did the Defendant ever sign a waiver of his right to jury; because the trial court did not secure a waiver from the Defendant personally, the record does not show that the waiver was voluntary). See also Zakhi v. State, [560 N.E.2d 683](#)  (Ind.Ct.App. 1990).

Gonzalez v. State, [757 N.E.2d 202](#)  (Ind.Ct.App. 2001) (to knowingly waive jury trial, the Defendant does not have to be made aware that jury nullification is consequence of choice to waive jury trial).

Woodward v. State, [770 N.E.2d 897](#)  (Ind.Ct.App. 2002) (defendant's earlier waiver of jury trial was effective upon transfer from one room of Marion Superior Ct. criminal division to another, which is not considered a change of venue).