

[CAPTION]

MOTION TO DISMISS (FAILURE TO REGISTER)

The Defendant, by counsel, moves this Court, pursuant to I.C. 35-34-1-4, to dismiss the Information herein. In support of this Motion, the Defendant states the following:

1. An Information was filed on [insert date], charging the Defendant with Failure to Comply with Sex and Violent Offender Registration, Level 6 Felony, purportedly in violation of Ind. Code 11-8-8-17(a).

2. Such Information filed in this cause is defective under Ind. Code 35-34-1-4 because the facts stated in the Information do not constitute an offense.

3. In the event that the facts stated in the Information do constitute an offense, the Information is defective under Ind. Code 35-34-1-6 because the statute defining such offense is unconstitutional or otherwise invalid.

4. In accordance with Criminal Rule 3, a memorandum stating specifically the grounds for dismissal is filed herewith.

WHEREFORE, Defendant moves this Court to dismiss the Information herein and for all just and proper relief.

(Signature)

CASE LAW

Wallace v. State, 878 N.E.2d 1269, 1278 (Ind.Ct.App. 2008) (although Defendant argued that there was not enough time to have violated his duty to register annually when it was alleged he failed to register on or about January 5, 2004, the fact that he had never registered made the variance between the proof at trial and the information harmless), *rev'd on other grounds and sum. aff'd on all other grounds by* 905 N.E.2d 371 (Ind. 2009).

Montgomery v. State, 14 N.E.3d 76 (Ind.Ct.App. 2014) (charge for failure to register as sex offender based on Defendant's failure to register with appropriate law enforcement agency in county where he moved after he entered guilty plea to failure to register based on his failure to reside at address where he had registered initially was not barred by reason of previous prosecution).

Johnson v. State, 925 N.E.2d 793 (Ind.Ct.App. 2010) (convicted sex offender who moved out of state without informing law enforcement could not be convicted of failure to update his registration as a sex offender every 90 days, since 90-day registration requirement only applied to people who resided, worked, or attended school in state).

Doe v. Prosecutor, Marion County, Indiana, 705 F.3d 694 (7th Cir. 2013) (prior version of I.C. 35-42-4-12, which provided blanket ban on social media for registered sex offenders, violates First Amendment).