

[CAPTION]

**MOTION TO DISMISS (EX POST FACTO)**

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

1. On [insert date], the State of Indiana filed an Information, charging the Defendant with a single count of Failure to Register as a Sex or Violent Offender, a Level 6 Felony.
2. The prosecution of the Defendant for the offense charged herein is barred for the same reasons the Indiana Supreme Court reversed the judgment of conviction in State v. Wallace, 905 N.E.2d 371 (Ind. 2009).
3. The sex offense that the Defendant was convicted of and for which the State accuses the Defendant of failing to register as a sex or violent offender in the case at bar occurred before the statutes collectively referred to as the *Indiana Sex Offender Registration Act* were enacted.
4. Specifically, the Defendant was convicted of the underlying sex offense in [insert court and date].
5. The statutes collectively referred to as the *Indiana Sex Offender Registration Act* were enacted in 1994.
6. Thus, as applied to the Defendant, the Act violates the prohibition on ex post facto law contained in the Indiana Constitution because it imposes burdens that have the effect of adding punishment beyond that which could have been imposed when his crime was committed.

WHEREFORE, the Defendant, by counsel, respectfully requests the Court to dismiss the Information, with prejudice, and for all other just and proper relief in the premises.

(Signature)

## CASE LAW

Jensen v. State, 905 N.E.2d 384 (Ind. 2009) (application of 2006 amendment to Indiana Sex Offender Registration Act requiring lifetime registration to Defendant who was previously only subjected to a ten-year registrations and who completed his executed sentence prior to amendment did not violate prohibition against ex post facto laws).

Hevner v. State, 919 N.E.2d 109 (Ind. 2010) (requiring the Defendant who was convicted of an offense that was added to the registry after he committed his offense but before his sentencing to register violates the Indiana constitutional protection against ex post facto laws; although a defendant cannot be convicted of crime under the residency restriction statute, I.C. 35-42-5-11, the court can restrict where the defendant lives as a condition of probation).

State v. Pollard, 908 N.E.2d 1145 (Ind. 2009) (retroactive application of the residency restrictions statute violates the Ex Post Facto Clause contained in the Indiana Constitution). But see Sewell v. State, 973 N.E.2d 96 (Ind.Ct.App. 2012) (Defendant's prosecution under 2006 amendment prohibiting sex offender to take up residence within 1,000 feet of youth program center did not violate state or federal ex post facto provisions; although Defendant was convicted before enactment of residency requirement, his residency decision occurred after the enactment of the statute).

Blakemore v. State, 925 N.E.2d 759 (Ind.Ct.App. 2010) (fact that Defendant agreed to "comply with the statutory requirements of registering with local law enforcement as a sex offender" in 1998 did not waive his future ex post facto argument under Wallace).

Lemon v. Harris, 949 N.E.2d 803 (Ind. 2011) (even though Defendant committed his crimes before Legislature created status of "sexually violent predator," the 2007 amendment to I.C. 35-38-1-7.5(b) makes him an SVP by operation of law, and the change in status does not violate Indiana's prohibition on ex post facto laws or the doctrine of separation of powers). See also Seales v. State, 4 N.E.3d 821 (Ind.Ct.App. 2014); Hollen v. State, 994 N.E.2d 1166 (Ind.Ct.App. 2013).

Gonzalez v. State, 980 N.E.2d 312 (Ind. 2013) (retroactive imposition of lifetime registration period under amended SORA as applied to Defendant, who had been convicted of soliciting a minor and completed his 10- year registration requirement under prior version of Act, violated ex post facto clause of Indiana Constitution).

Healey v. State, 986 N.E.2d 825 (Ind.Ct.App. 2013) (1995 amendment to SORA, which resulted in extending Defendant's sex offender registration requirement for 10 years, was punitive in effect and thus constituted ex post facto punishment in violation of state constitution; because Defendant was not permitted to seek review of the extension of his reporting requirement to 10 years, the extension appeared excessive in relation to purpose of public protection). But see Harlan v. State, 971 N.E.2d 163 (Ind.Ct.App. 2012) (application of SVP registration requirement to Defendant, following guilty plea to child molesting, did not violate state constitution's ex post facto clause; sex offender registration requirements had already taken effect at time of last incident of molestation, and there was no evidence that addition of SVP registration requirements were intended to constitute a punishment).

Gaither v. Indiana Dept. of Correction, 971 N.E.2d 690 (Ind.Ct.App. 2012) (probation condition requiring Defendant, a sex offender, to not reside within 1,000 feet of a school, did not violate prohibition on ex post facto laws, even though statute requiring sex offenders to register was not enacted until several years after Defendant committed offenses, because the only limitation on trial court's discretion in fashioning terms of probation is that conditions reasonably relate to Defendant's treatment and public safety).

Patrick v. Butts, 12 N.E.3d 270 (Ind.Ct.App. 2014) (Parole Board's order that Defendant participate in Sex Offender Management and Monitoring program did not violate ex post facto clause of Indiana constitution).

Tyson v. State, 51 N.E.3d 88 (Ind. 2016) (a sex offender required to register in any other state must also register in Indiana if he or she relocates to Indiana, regardless of when the initial sex crime was committed; requirement does not violate ex post facto clause).