

[CAPTION]

I. ORDER ON SEX OFFENDER REGISTRATION REQUIREMENTS

Defendant, by counsel, having filed Motion for Determination of the Defendant's Sex Offender Registry requirements,

And the Court, being duly advised, now finds that the offense, conviction and sentence in this cause that would qualify Defendant as a sex or violent offender under current law occurred before Indiana's Sex Offender Registration Act was enacted and requiring the Defendant to register is an ex post facto punishment that is constitutionally prohibited. The Defendant is therefore not required to register as a sex or violent offender in the State of Indiana.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that Defendant, [Insert DOB, DOC #], is not required under Indiana law to register as a sex or violent offender based on his conviction in this case, and the Indiana Department of Corrections and the County Sheriff are directed to take such steps immediately as are required to remove his name from the Indiana Sex and Violent Offender Registry.

SO ORDERED this ____ day of _____, 20__.

(Judge's signature)

Distribution:

Prosecuting Attorney
Defendant's Attorney
County Sheriff

Indiana Department of Corrections, ATTN: Brent Myers, E329 IN Gov't Center South,
302 W Washington, Indianapolis, IN 46204

NOTE: Attorneys should contact the Department of Corrections to determine whether the contact and address above is still the proper contact and address.

I.C.1 1-8-8-22 sets forth the statutory procedure for petitioning for removal from the registry. The petition is to be filed in the “circuit or superior court of the county in which the offender resides. If the offender resides in more than one (1) county, the petition shall be filed in the circuit or superior court of the county in which the offender resides the greatest time. If the offender does not reside in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is employed the greatest time. If the offender does not reside or work in Indiana, but is a student in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is a student. If the offender is not a student in Indiana and does not reside or work in Indiana, the petition shall be filed in the county where the offender was most recently convicted of a crimes listed in section 5 of this chapter.”

A petition must: “(1) be submitted under the penalties of perjury; (2) list each of the offender’s criminal convictions and state for each conviction: (A) the date of the judgment of conviction; (B) the court that entered the judgment of conviction; (C) the crime that the offender pled guilty or was convicted of; and (D) whether the offender was convicted of the crime in a trial or pled guilty to the criminal charges; and (3) list each jurisdiction in which the offender is required to register as an ex offender or a violent offender.”

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). See also Vickery v. State, 932 N.E.2d 678 (Ind.Ct.App. 2010).

Lemmon v. Harris, 949 N.E.2d 803 (Ind. 2011) (converting Defendant’s ten-year registration requirement into a lifetime requirement when he committed his offense prior to the SVP statute’s enactment did not constitute retroactive punishment; the “by operation of law” clause of the SVP statute does not act to reopen a final judgment where the record is silent on whether the sentencing court made an SVP determination and thus does not offend the separation of powers provision of the Indiana Constitution).

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).

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; trial court thus properly dismissed the information charging Defendant with a violation of the statute).

Brogan v. State, 925 N.E.2d 1285 (Ind.Ct.App. 2010) (trial court did not err by denying Defendant’s motion to remove name from sex offender registry on jurisdictional grounds, because even though court was court of conviction, jurisdiction lies in county of residence; if defendant is incarcerated, he should file in the county of incarceration).

Clampitt v. State, 932 N.E.2d 1256 (Ind. Ct. App. 2010) (trial court erred in dismissing Defendant's Motion to Remove Status as Sexually Violent Predator (SVP) because it mistakenly concluded that it lacked jurisdiction over the motion. Recently amended version of I.C. 11-8-8-22(e) confers jurisdiction over Defendant's motion, as the statute allows the filing of such petitions in the circuit or superior court of the Defendant's county of residence).

State of Ohio Conviction Against Mikey Shawn Gambler, 939 N.E.2d 1128 (Ind.Ct.App. 2011) (trial court erred in ordering Defendant removed from the Indiana sex offender registry without providing notice to the appropriate parties or holding a hearing; Held, judgment reversed and remanded with order that trial court dismiss the case without prejudice subject to further proceedings in the event Defendant files a sufficient petition).

Herron v. State, 918 N.E.2d 682, (Ind.Ct.App. 2009) (Defendant, who was required by Arizona to register as a sex offender for life when he committed his offense in 1983, is a "sex offender" who is required to register for life under Indiana's Sex Offender Registration Act; no ex post facto problem).

Blakemore v. State, 925 N.E.2d 759 (Ind.Ct.App. 2010) (Defendant's agreement to register for his class C felony, sexual misconduct with a minor conviction in 1999 violated ex post facto; Regarding Defendant's failure to raise any constitutional concerns when pleading guilty, neither he nor his counsel could be expected to predict what amendments our legislature might make to sex offender registration act; thus, Defendant's failure to raise a non-existent constitutional issue does not preclude his existing ex post facto challenge).

Gonzalez v. State, 980 N.E.2d 312 (Ind. 2013) (where defendant had fully served his sentence for child solicitation, the trial court erred by denying his verified petition to remove his sex offender designation pursuant to Ind. Code 11-8-8-22 after the expiration of his ten-year registration period. The court held that the Ex Post Facto Clause of the Indiana Constitution prohibited retroactive application of a legislative amendment to the Sex Offender Registration Act to impose a lifetime registration requirement).

