

[CAPTION]

**DEFENDANT’S OFFER OF STIPULATIONS AND MOTION IN LIMINE REGARDING
EVIDENCE OF DEFENDANT’S PRIOR CRIMINAL HISTORY**

Defendant, by counsel, offers the following stipulations and respectfully requests that this Court order the State, through its prosecutors and its witnesses, not to mention, refer to, interrogate about, or attempt to convey to the jury in any manner any documentary or testimonial evidence regarding Defendant’s prior criminal history. In support of this Motion, Defendant states the following:

1. Defendant is prepared to stipulate to the following:

“[Insert Defendant’s name] stipulates that he was required to register as a sex or violent offender at all times relevant to this case.”

2. Our appellate courts have held the following:

While it is generally true that the State is entitled to prove its case by evidence of its own choice, and that a criminal defendant may not stipulate his or her way out of the full evidentiary force against him or her, the United States Supreme Court has determined that this general rule has virtually no applicability where the point at issue is a defendant’s legal status that is independent of criminal behavior later charged against him or her.

Hines v. State, 794 N.E.2d 469, 473 (Ind. Ct. App. 2003), aff’d, 801 N.E.2d 634 (Ind. 2004) (citing Old Chief v. United States, 519 U.S. 172 (1997)).

3. In Old Chief, the U.S. Supreme Court held that where a defendant offers to stipulate his status as a felon in a prosecution for being a felon in possession of a firearm, the trial court abuses its discretion under Evidence Rule 403 by permitting the prosecution to introduce the full record of the defendant’s prior felony conviction. Old Chief, 519 U.S. at 191. Stated differently, the Court held that where the prior conviction was used only to prove status, the introduction of the record for the prior conviction was more prejudicial than probative. Id.

4. Indiana has incorporated Old Chief's holding in several cases. The most analogous case to Defendant's case is McClain v. State, 898 N.E.2d 409 (Ind.Ct.App. 2008). In McClain, the State charged the Defendant with Class D felony failing to register when he failed to report to law enforcement his current address. At trial, the Defendant offered to stipulate to his status as a sex offender and to the fact that he had listed his sister's address as his current address on the registration form. The State rejected the Defendant's proposed stipulation and instead offered the registration form into evidence. The trial court admitted the form into evidence over the Defendant's objection.

In reversing the Defendant's conviction and remanding for a new trial, the Court of Appeals held that the evidence should have been excluded because the probative value of the registration form, in light of the Defendant's proposed stipulation, was outweighed by the danger of unfair prejudice. Id. at 410-11. In so holding, the Court cited to Old Chief and noted "the general rule that the State can choose its evidence still applies to all but proof of a defendant's criminal status." Id. at 411 n.1.

5. Defendant believes that the State intends to introduce into evidence the registration form(s) that Defendant was required to fill out and sign, as well as documentary evidence regarding Defendant's prior criminal conviction.

WHEREFORE, Defendant, by counsel, respectfully requests that this Court: (1) determine that the State should accept Defendant's proposed stipulations and grant his motion in limine; (2) order the State, through its prosecutors and witnesses, not to mention, refer to, interrogate about, or attempt to convey to the jury in any manner, either directly or indirectly, any documentary or testimonial evidence regarding Defendant's prior criminal convictions without the permission of this Court, outside the presence and hearing of the jury; and (3)

instruct the State and its witnesses not to make any reference to the fact that this Motion has been filed and granted, and to warn each of the State's witnesses to strictly follow these same instructions.

(Signature)