

**[CAPTION OF COUNTY OF PROPER JURISDICTION AS SET FORTH IN
I.C. 11-8-8-22(d)]**

**PETITIONER’S VERIFIED PETITION FOR RELIEF FROM RETROACTIVE APPLICATION
OF STATUTE**

Petitioner, in person and by counsel, respectfully petitions this Court, pursuant to Indiana Code section 11-8-8-22, for relief from retroactive application of the Indiana Sex Offender Registration Act (“INSORA”). In support of this Petition, Petitioner states the following:

1. On [insert date], Petitioner committed the offense of [insert offense].
2. On [insert date], Petitioner was convicted of [insert offense] after he [chose one: pled guilty or had a jury or bench trial]. On [insert date], the [insert Court] entered judgment of conviction against Petitioner for this offense in [insert cause number].
3. On [insert date], the [insert Court] sentenced Petitioner to [insert sentence].
4. CHOSE ONE: Either Petitioner will be released to parole on [insert date] or Petitioner was released from prison on [insert date].
5. LIST ALL COUNTIES IN WHICH PETITIONER MUST REGISTER
FOR INTANCE: Petitioner is employed and will reside in [insert county]. This is the only county with which he will be required to register.
6. The Indiana Department of Correction has advised Petitioner that he is required to register as a sexually violent predator on the registry.
7. The Indiana General Assembly first adopted INSORA in July 1994.
8. On April 30, 2009, the Supreme Court of Indiana handed down its opinion in Wallace v. State, 905 N.E.2d 371 (Ind. 2009). In Wallace, the Court held that

INSORA violated the prohibition contained in the Indiana Constitution against *ex post facto* laws where the defendant, at the time that he committed his offense, was not required to register as a sex offender.

9. Similar to the defendant in Wallace, when Petitioner allegedly committed the offenses on [insert date], he was not required to register as a sex offender because the registry did not even exist at that time OR his offense was not listed on the registry at that time. Thus, requiring Petitioner to register as a sex offender now violates the *Ex Post Facto* Clause contained in the Indiana Constitution.

10. Petition has the following prior convictions: [insert list of convictions with date of each conviction, court and state that entered the conviction, the crime the offender pled guilty to or was convicted of and whether the offender was convicted of the crime in a trial or pled guilty to the criminal charges] Or Petitioner has no prior convictions.

11. Upon the filing of the petition, Ind. Code 11-8-8-22(e) directs the court to (1) summarily dismiss the petition; or (2) give notice to the Department of Corrections, the attorney general, the sheriff of the county where the offender resides, and the prosecuting attorneys of the county where the petition was filed, the county where the offender was most recently convicted of a sex offense, and the county where the offender resides.

12. The date set for hearing must not be less than 60 days after the court gives notice under Ind. Code 11-8-8-22(e).

WHEREFORE, Petitioner, by counsel, respectfully requests that this Court (1) set a hearing on this Petition with notice to the proper parties, and (2) following the hearing, grant this Petition by finding that (a) the law requiring Petitioner to register has changed since the date

upon which Petitioner allegedly committed the triggering offenses; and (b) Petitioner is not required to register as a sex offender, and for all other relief just and proper in the premises.

VERIFICATION

I affirm under penalties for perjury that the foregoing representations are true.

Petitioner

(Signature of Attorney)

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on the following, via U.S. Mail, postage prepaid, on this [insert date]:

[name], Chief Counsel
Indiana Department of Correction
302 West Washington Street, Room E-334
Indianapolis, Indiana 46204

Indiana Attorney General [name]
Indiana Government Center South
302 West Washington Street
Indianapolis, Indiana 46204

Prosecutor of each county in which Petitioner must register

Prosecutor of county in which Petitioner was convicted

Sheriff of the county in which the Petitioner resides

(Signature of Attorney)

[CAPTION]

STIPULATION

The undersigned Prosecuting Attorney advises the Court that he has reviewed the Motion to Determine Sex Offender Registration Requirements filed by the Defendant herein, and stipulates that pursuant to Wallace v. State, 905 NE 2d 371 (Ind. 2009) the Defendant is not required to register as a sex or violent offender based on his conviction in this case, whereby the relief requested in the petition must be granted under the current law.

DATED: _____

Prosecuting Attorney

[CAPTION]

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).