§ 170.35 Motion to dismiss information, simplified information, prosecutor's information or misdemeanor complaint; as defective.

1. An information, a simplified information, a prosecutor's information or a misdemeanor complaint, or a count thereof, is defective within the meaning of paragraph (a) of subdivision one of section 170.30 when:

(a) It is not sufficient on its face pursuant to the requirements of section 100.40; provided that such an instrument or count may not be dismissed as defective, but must instead be amended, where the defect or irregularity is of a kind that may be cured by amendment and where the people move to so amend; or

(b) The allegations demonstrate that the court does not have jurisdiction of the offense charged; or

(c) The statute defining the offense charged is unconstitutional or otherwise invalid.

2. An information is also defective when it is filed in replacement of a misdemeanor complaint pursuant to section 170.65 but without satisfying the requirements stated therein.

3. A prosecutor's information is also defective when:

(a) It is filed at the direction of a grand jury, pursuant to section 190.70, and the offense or offenses charged are not among those authorized by such grand jury direction; or

(b) It is filed by the district attorney at his own instance, pursuant to subdivision two of section 100.50, and the factual allegations of the original information underlying it and any supporting depositions are not legally sufficient to support the charge in the prosecutor's information.