

Document: Proposed Rule, **Register Page Number:** 25 IR 1200
Source: January 1, 2002, Indiana Register, Volume 25, Number 4
Disclaimer: This document was created from the files used to produce the official (printed) Indiana Register.
However, this document is unofficial.

TITLE 210 DEPARTMENT OF CORRECTION

Proposed Rule
LSA Document #01-358

DIGEST

Amends 210 IAC 1-6 concerning the collection, maintenance, and release of offender and juvenile records. Adds 210 IAC 1-10 to establish standards for the offender tort claim process. Amends 210 IAC 5 concerning release authority for juveniles. Effective 30 days after filing with the secretary of state.

210 IAC 1-6-1	210 IAC 1-6-7
210 IAC 1-6-2	210 IAC 1-10
210 IAC 1-6-3	210 IAC 5-1-1
210 IAC 1-6-4	210 IAC 5-1-2
210 IAC 1-6-5	210 IAC 5-1-3
210 IAC 1-6-6	210 IAC 5-1-4

SECTION 1. 210 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

Rule 6. Collection, Maintenance, and Release of Offender and Juvenile Records

210 IAC 1-6-1 Definitions

Authority: IC 11-8-5-2

Affected: IC 4-1-6; IC 11-8-5-1

Sec. 1. **The following definitions** ~~Data Subject shall mean an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars in a personal information system. For record keeping purposes of the Department of Correction the data subject shall be referred to as an "offender".~~ **apply throughout this article:**

(1) "Department" ~~shall mean~~ **means** the department of correction.

(2) "Juvenile" **means a person who is adjudged delinquent by a juvenile court and committed to and under the legal control of the department.**

(3) "Offender" ~~shall mean a person~~ **means an adult** committed to and under the legal control of the department ~~This shall include probationers whose records are handled through the interstate compact administrator in the department. (See Data Subject) for committing a criminal offense.~~

(4) "Official record" ~~shall mean~~ **means** the record prepared and maintained by the department for each offender **and juvenile** received into the ~~actual physical~~ **physical** care and custody of the department. ~~and which provides the source of all~~ **The record shall include, but is not limited to,** written, printed, or ~~mimeographic~~ **electronic** materials, **documents, or data** pertaining to services, ~~program,~~ **programs,** and all other official actions performed on behalf of that offender **or juvenile**. These records are identified by the same offender **or juvenile** name as received on the commitment order, ~~and are~~ assigned a department number as an identifier, **and compiled and maintained as part of an offender/juvenile packet.**

(Department of Correction; Offender Records, Art I; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1199)

SECTION 2. 210 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

210 IAC 1-6-2 Classification of information

Authority: IC 11-8-5-2

Affected: IC 11-8-5-2

Sec. 2. ~~Classification~~. The department shall collect, maintain, and use only that offender **or juvenile** personal information that is relevant and necessary to accomplish the statutory ~~purpose~~ **purposes** of the agency. All offender **or juvenile** information collected and retained by the department shall be ~~identified according to~~ **classified in** the following ~~classifications~~: **manner**:

~~(A)~~ **(1)** Unrestricted information shall include only information pertaining to ~~the an~~ offender ~~which that~~ is considered by law ~~or court order as to be~~ public information. Certain information normally considered **restricted or** confidential may be considered unrestricted ~~or public~~ information if there is a compelling public interest ~~consistent with the conditions set forth in IC 4-1-6-1.~~ **in disclosure. Unrestricted information is accessible by any person, with the exception of offenders to whom the information does not pertain, upon specific written request.**

(2) Restricted information shall include, but is not limited to, the following:

- (A) Education, medical, sex offender, substance abuse, disciplinary, criminal, or employment records.**
- (B) Finger and voice prints.**
- (C) Photographs.**
- (D) Institutional summaries.**
- (E) Psychiatric and psychological reports.**
- (F) Social history reports.**
- (G) Progress reports.**
- (H) Educational and vocational reports.**

~~(B)~~ **(3)** Confidential information shall include, personal or private information concerning the offender including, but is not limited to, his education, medical history, criminal or employment records, finger and voice prints, photographs of his presence, institutional summaries, social history reports, progress reports, educational, vocational and the following:

- (A) Offender diagnostic reports. Confidential information shall, also, include medical, psychiatric and psychological reports;**
- (B) Criminal intelligence information, and information of clinical reports emanating from an approved drug or substance abuse program consistent with prevailing law or promulgated regulations.**
- (C) Information that, if disclosed, might result in physical harm to that person or other persons.**
- (D) Information obtained upon promise of confidentiality.**
- (E) Internal investigation information.**

All juvenile records shall be considered confidential. Any other information required by law or promulgated rule to be maintained as confidential.

(4) All offender information obtained from other agencies, organizations, or sources shall be held to the same degree of confidentiality as that designated by the generating source.

(Department of Correction; Offender Records, Art II; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1199)

SECTION 3. 210 IAC 1-6-4 IS AMENDED TO READ AS FOLLOWS:

210 IAC 1-6-4 Inspection rights of offenders and juveniles

Authority: IC 11-8-5-2

Affected: IC 4-1-6-3; IC 4-1-6-8

Sec. 4. ~~Right of Inspection by an Offender~~: (a) An offender or a person designated **in writing** by an offender as his **or her** agent may inspect those portions of the **offender's own** official record classified as ~~confidential with the~~ following exceptions:

(1) Medical, psychological, psychiatric data, or clinical data produced as a consequence of the offender's involvement in a substance abuse program, may not be released to the offender or his agent. These records may be released to a physician, psychologist or psychiatrist designated in writing by the offender.

(2) Criminal intelligence information including reports or statements of witnesses concerning institutional conduct or conduct while on parole wherein appear names of or identifying information concerning witnesses may be withheld consistent with provisions in law. Information so classified shall be subject to periodic review by the official responsible for the maintenance of these records to determine if grounds still exist for their retention.

unrestricted and restricted.

(b) An offender or a person designated **in writing** by an offender as his **or her** agent may inspect his **or her** official record consistent with the following:

- (1) The requestor shall provide proper identification ~~upon request to the person authorizing the release.~~
- (2) ~~If the requestor is other than the offender, the request shall be accompanied by and a notarized statement by signed release from the offender identifying the person acting as his or her agent and specifying the documents to be released.~~
- (3) ~~An offender~~ (2) A **person** committed to or under the legal control of the department or on probation to a court may not act as an offender's **or juvenile's** agent. If doubt exists as to the identity of the offender's **or juvenile's** agent or the validity of the release, the offender **or juvenile** shall be contacted for verification when possible.
- (4) (3) If the offender's ~~notarized letter of signed~~ release is not on file with the ~~institution or facility~~ or is not presented upon making the request, the requestor shall be advised that he **or she** may obtain such consent from the offender or file a formal request for access **records** with the department. The requestor shall be advised in the event the request is denied to direct the appeal to the ~~executive director as appropriate,~~ **deputy commissioner** of the adult or **Youth Authority operations**, who shall notify the requestor of his **or her** decision within thirty (30) days. If the ~~executive director~~ **deputy commissioner** disapproves the request, an appeal may be taken within thirty (30) days to the commissioner of ~~Corrections,~~ **the department** who shall review the request and notify the requestor of his **or her** decision within thirty (30) days.

(c) ~~The above restrictions do not preclude access by authorized department personnel who have an official interest in an offender's records as a consequence of statutory functions or responsibilities of the department. Juveniles may not have access to their own records or the records of other juveniles or offenders. Juvenile records may be released to a parent or legal guardian or a legal representative of the juvenile, parent, or legal guardian, upon specific written request unless the release of such record or records is contrary to the health, welfare, or safety of the juvenile. The cost of copying records under this section shall be assessed to the requestor and shall be consistent with approved schedules. In the event a request for access to records is denied, the requestor shall be advised to direct his or her appeal to the deputy commissioner of juvenile services, who shall notify the requestor of his or her decision within thirty (30) days. If the deputy commissioner disapproves the request, an appeal may be taken within thirty (30) days to the commissioner of the department, who shall review the request and notify the requestor of his or her decision within thirty (30) days. (Department of Correction; Offender Records, Art IV; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1200)~~

SECTION 4. 210 IAC 1-6-5 IS AMENDED TO READ AS FOLLOWS:

210 IAC 1-6-5 Challenge of information by offender; investigation; change of record

Authority: IC 11-8-5-2

Affected: IC 4-1-6-5

Sec. 5. ~~Challenge of Information by the Offender.~~ (A) ~~The~~ An offender must give a notice to the department that he wishes to **may** challenge, correct, or explain information contained within his **or her** record **in accordance with IC 4-1-6-5.**

(B) ~~The challenge must pertain to specific documents and/or issues within that record.~~

(C) ~~An investigation shall be made under the authorization of the facility or division head to determine the status or content of such reports as alleged by the challenger. The investigator shall determine if the reports challenged are properly a part of the record and in fact do contain the elements that are challenged and ascertain the source of the challenged information.~~

(D) ~~If the challenged data was generated or received by other sources than the department, the offender should then be advised to direct his request to change or delete such information to the contributing agency, and the offender in turn should be advised of the last known address of the contributing agency or person.~~

(E) ~~If after such an investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained for statutory responsibilities or related services, it shall be promptly corrected or deleted.~~

from the offender's record:

(F) When such a change in the record does occur each division or facility holding or retaining a duplicate record of such information shall be advised to correct those copies or duplicates accordingly.

(G) If a dispute concerning information in an offender record is not resolved by the investigation the offender shall be so notified and must be advised that he may file a statement of not more than two hundred (200) words setting forth his position:

(H) If there is an addition, deletion or statement of offender's position, the department official responsible for maintaining that record shall then advise the offender of any previous recipient and supply the previous recipient a copy of the addition, deletion or offender's statement of position, in accordance with provisions of IC 4-1-6-5:

The department official notifying any previous recipient shall require an acknowledgement that the additions, deletions or offender's statement of position has been received. (*Department of Correction; Offender Records, Art V; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1200*)

SECTION 5. 210 IAC 1-6-6 IS AMENDED TO READ AS FOLLOWS:

210 IAC 1-6-6 Access to information

Authority: IC 11-8-5-2

Affected: IC 4-1-6-8; IC 4-1-6-8.6

Sec. 6. ~~Access to or Release of Confidential Information to Persons Other than the Offender or His Agent.~~ (a) Courts and personnel authorized by a court shall have access to the department's offender records consistent with the following:

(1) ~~All specific court orders pertaining to individual documents or the entire offender record records shall cause the record, in whole or part, as appropriate, such records to be copied or released by the record records supervisor immediately pursuant to those orders: the terms of the court order, including the following:~~

(A) ~~The record repository shall reflect in a manner prescribed by the department the whereabouts of records so removed and when they were removed and the name of the employee authorizing the transfer of the record from the department to the court.~~

(B) ~~No offender record or documents contained therein shall be altered or omitted prior to or during the transmittal of the official record to the court.~~

(2) ~~Probation officers preparing pre-sentence reports shall have access to an offender's record but may not remove the record from the immediate record storage area. Copies of the record may be made available consistent with price schedules approved by the Department of Administration. Probation officers may have access to "confidential" sections of the offender's record excluding medical, psychological, or psychiatric data, or clinical data produced as a consequence of the offender's involvement in a substance abuse program, and criminal intelligence information in the absence of a specific court order.~~

(3) ~~(2) If access to an offender's record was granted under compulsory legal process other than that initiated by the offender, himself, reasonable effort shall be made to notify the offender prior to release of the information.~~

(b) ~~Attorneys An attorney representing offenders an offender may have access to an offender's file a client's records consistent with the following procedures:~~

(1) ~~If the attorney is requesting a review and copies of the official record as the offender's agent, then the attorney is to be charged for the cost of reproductions consistent with approved schedules.~~

(2) ~~The attorney may have access to all confidential material unrestricted and restricted information in the offender's record except medical, psychological or psychiatric data, or clinical data produced as a consequence of the offender's involvement in a substance abuse program. These records may be released to a physician, psychologist or psychiatrist designated in writing by to the same extent as the offender.~~

(3) ~~Access by an attorney to the confidential section of records in the packet official record shall occur if be accompanied by a court order to that effect: specifying the documents to be released.~~

(4) ~~An attorney representing an offender may designate in writing a physician, psychologist, or psychiatrist to whom confidential medical, psychological, or psychiatric information may be released.~~

(5) In the absence of a specific court order to the contrary a charge shall be made for reproductions of records requested by an attorney consistent with approved schedules. In the event the request is made by the Public Defender's Office at the State level such charges may be "I.D." (Inter-Departmental) billed consistent with established procedures for such billing.

(c) Release to a person or agency providing a lawful service **on behalf of the department, or** related to or on behalf of **the an** offender **or juvenile** shall be limited to those documents related to the service performed and shall include confidential **and restricted** information consistent with ~~these rules~~ **this rule** or ~~unless as~~ otherwise ~~prohibited~~ **permitted** by law, **including the following:**

(1) Upon release of such information or the providing of duplicate copies, the material shall be clearly marked as to how the information is classified.

(2) A record shall be made by the ~~record~~ **records** supervisor of all such inspections noting the **following:**

(A) The requestor's name, agency, or function represented.

(B) The purpose of the request.

(C) The date access was granted. ~~and~~

(D) The name of the person granting access.

This record shall be then made a part of the offender's record.

(3) Such access shall be limited to law enforcement agencies performing a criminal investigation or agencies providing a lawful service to the ~~agency~~ **department** or offender **or juvenile** wherein the direct benefit to the offender **or juvenile** is clearly indicated **and in response to a written request.**

(d) Release to ~~persons other than the offender, his agent or attorney of information~~ **Unless otherwise previously specified in this rule, release of offender records** shall be restricted to information classified as "~~Public Information~~" **unrestricted and all juvenile records shall be held confidential** unless there is a compelling public interest in releasing specific portions of the material classified **restricted or confidential**. Such a request shall be immediately forwarded to the division ~~head~~ or facility ~~head~~ responsible for ~~the~~ keeping of these records for the final decision to release information so classified. A written notice of such a release shall be incorporated into the offender's **or juvenile's** record in the same manner prescribed in the prior section.

(e) All authorized department personnel or contract personnel who have an official interest in an offender's or juvenile's records as a consequence of statutory functions or department responsibilities, delegated or otherwise, shall have appropriate access to offender and/or juvenile records. (*Department of Correction; Offender Records, Art VI; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1201*)

SECTION 6. 210 IAC 1-6-7 IS AMENDED TO READ AS FOLLOWS:

210 IAC 1-6-7 Research purposes; request for access to information

Authority: IC 11-8-5-2

Affected: IC 4-1-6-8.6

Sec. 7. ~~Disclosures of Offender Information for Research Purposes.~~ All requests for access to offender records to provide for research shall be made known to the ~~appropriate Executive Director of the Department of Correction~~ **director of planning services** in written form. Such requests shall include the name of the agency or organization performing the research, the names of the ~~staff~~ persons directly responsible for **the following:**

(1) Conducting such research.

(2) The purpose of such research.

(3) How the research is to be performed. ~~and~~

(4) What measures will be taken to assure the proper protection of classified information.

Approval of such requests will then be granted or denied consistent with provisions of IC 4-1-6-8.6 **and department procedures.** (*Department of Correction; Offender Records, Art VII; filed Jul 30, 1979, 2:25 p.m.: 2 IR 1202*)

SECTION 7. 210 IAC 1-10 IS ADDED TO READ AS FOLLOWS:

Rule 10. Offender Tort Claim Process

210 IAC 1-10-1 Personal property tort claims

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 1. (a) This rule applies only to those tort claims filed by offenders either currently committed to the department and confined in a department facility or who were committed to and confined in the department and who have alleged a loss of personal property due to actions or omissions by the department.

(b) Only those claims where an offender is attempting to recover compensation, either monetary compensation or replacement of property, for the loss of personal property are subject to this rule. This loss must be alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, officers, employees, or contractors. For the purpose of this rule, "personal property" means any property that offenders are allowed to possess, excluding state-issued property and contraband, in accordance with the department's administrative procedures for Policy 02-01-101, "offender personal property". (*Department of Correction; 210 IAC 1-10-1*)

210 IAC 1-10-2 Time limit for filing a claim

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 2. An offender must file a claim pursuant to this rule no later than one hundred eighty (180) days after the date of the alleged loss. Claims filed after this time frame has elapsed shall not be considered and shall be returned to the offender. (*Department of Correction; 210 IAC 1-10-2*)

210 IAC 1-10-3 Claim filing

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 3. (a) In those cases where an offender alleges that the department or its agents have lost, damaged, or destroyed personal property belonging to the offender, the offender may file a claim for compensation. The offender shall complete the NOTICE OF LOSS OF PROPERTY–TORT CLAIM form. Each facility shall ensure that copies of this form are made available in the offender law library, offender housing units, or other suitable location. The offender also may obtain this form from his or her counselor.

(b) The offender will be required to complete this form by providing as much information as possible when describing the item lost and the manner in which it was lost. The offender is to attach any supporting documents or information to this form. When the form is completed, the offender is to submit the form to the facility head's office. The offender shall also send a copy of the claim, including all supporting documents, to the department's Tort Claim Administrator, Division of Legal Services, Indiana Government Center-South, 302 West Washington Street, E334, Indianapolis, Indiana 46204. (*Department of Correction; 210 IAC 1-10-3*)

210 IAC 1-10-4 Claim investigation

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 4. (a) The facility head shall designate a staff person to act as the facility's tort claims investigator. The tort claims investigator shall have access to all areas of the facility in order to investigate claims and make recommendations for settlement if applicable.

(b) The duties of the facility tort claims investigator shall include the following:

- (1)** Receiving the NOTICE OF LOSS OF PROPERTY–TORT CLAIM form from the facility head.
- (2)** Reviewing this form and any accompanying documentation.
- (3)** Investigating the claim made by the offender, including the following:
 - (A)** Interviewing staff and the offender as necessary.
 - (B)** Reviewing all pertinent documents, including personal property inventories, or commissary requests.
 - (C)** Completing any other actions necessary to be able to make a recommendation on the claim.

- (4) Making a recommendation concerning the settlement of the claim and complete the tort claims investigator's section of the RECOMMENDATION ON TORT CLAIM form.
- (5) Submitting the RECOMMENDATION ON TORT CLAIM form to the department's tort claims administrator.
- (6) Meeting with the offender to discuss proposed settlement of claim as applicable.
- (7) Meeting with offender after receipt of settlement from attorney general's office and advise as to settlement of claim and complete all necessary paperwork.
- (8) Maintaining files of all property loss tort claims filed by offenders at the facility.

(Department of Correction; 210 IAC 1-10-4)

210 IAC 1-10-5 Claim administration

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 5. (a) The commissioner of the department shall appoint a staff person within the division of legal services to act as the tort claims administrator for all claims regarding loss of property by offenders. This staff person shall report to the director of the division of legal services.

(b) The duties of the tort claims administrator shall include the following:

- (1) Receiving copies of the NOTICE OF LOSS OF PROPERTY-TORT CLAIM form submitted by offenders.
- (2) Assigning a sequential case number to each notice received.
- (3) Advising the facility tort claims investigator and the offender as to the case number assigned to the claim.
- (4) Receiving copies of the RECOMMENDATION ON TORT CLAIM form from the facility tort claims investigator.
- (5) Reviewing all documents and forms received from the offender and the facility tort claims investigator.
- (6) Requesting additional information from the facility or the offender, as necessary.
- (7) Making a recommendation to the office of the attorney general concerning settlement of the claims, including the following:
 - (A) Completing the AMENDMENT TO TORT CLAIM form in cases where the claim appears appropriate but the amount requested is not correct.
 - (B) Forwarding the AMENDMENT TO TORT CLAIM form to the facility tort claims investigator as necessary.
 - (C) Receiving the completed AMENDMENT TO TORT CLAIM form from the facility tort claims investigator.
 - (D) Completing the tort claims administrator section of the RECOMMENDATION ON TORT CLAIM form.
- (8) Submitting all documentation to the office of the attorney general for final review and action.
- (9) Maintaining a file on all property loss tort claims filed in the department.
- (10) Serving as the department liaison with the office of the attorney general for property loss tort claims.

(Department of Correction; 210 IAC 1-10-5)

210 IAC 1-10-6 Office of the attorney general

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 6. The office of the attorney general shall receive the recommendation and documentation submitted by the department's tort claims administrator. In acting upon the claim, staff assigned by the attorney general shall consider the recommendation of the department to determine whether to deny the claim or make a recommendation to the governor for approval to make payment. All payments of claims shall be made in accordance with applicable statutes governing the payment of tort claims. *(Department of Correction; 210 IAC 1-10-6)*

210 IAC 1-10-7 Claim settlement

Authority: IC 34-13-3-7

Affected: IC 34-13-3

Sec. 7. (a) The attorney general shall submit all checks for payment of property loss claims to the tort claims administrator. The tort claims administrator shall record the check amount and make a copy of the check. The tort claims administrator then shall send the check to the tort claims investigator of the facility housing the offender.

(b) The tort claims investigator shall meet with the offender and advise the offender that the claim has been settled and the amount of the settlement. The investigator shall have the offender sign all necessary documents indicating acceptance and receipt of the settlement. Following the acceptance of the settlement by the offender, the tort claims investigator shall give the check to the designated staff in the facility's business office to be placed in the offender's inmate trust fund account.

(c) In those cases where the offender has been released from the department prior to the settlement of the claim, the tort claims administrator may mail the check to the offender at the address provided with the NOTICE OF LOSS OF PROPERTY-TORT CLAIM form, to the offender's parole agent for delivery or to the offender's last known address. The administrator shall make a record that the payment was received, including a copy of the check, indicate that the check was mailed, the address to which the check was mailed, and the date. The administrator shall request that the claimant return the signed receipt form. When the receipt is received, the administrator shall forward it to the office of the attorney general. (*Department of Correction; 210 IAC 1-10-7*)

SECTION 8. 210 IAC 5-1-1 IS AMENDED TO READ AS FOLLOWS:

ARTICLE 5. RELEASE AUTHORITY FOR JUVENILES

Rule 1. Release Procedure

210 IAC 5-1-1 Definitions; administrative procedures

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-13-6

Sec. 1. (a) The following definitions and administrative procedures shall be applicable in the operation of the ~~parole~~ releasing authority for juveniles:

(1) "Administrative review committee" shall be comprised of four (4) members. The chairman shall be the holding facility superintendent. The other three (3) members shall be administrative designees representing the facility treatment program, education program, and custody department.

~~"Commissioner" means the chief executive of the department.~~

(2) "Chairperson" means the chairperson of the juvenile parole administrative review committee or the community supervision revocation committee.

(3) "Commissioner" means the chief executive of the department.

(4) "Commitment" means an order of a juvenile court placing a juvenile offender in the care, custody, and wardship of the department. ~~of correction.~~

(5) "Community supervision" means the conditional release of a juvenile before the time of a mandatory and unconditional discharge from a commitment.

(6) "Community supervision revocation committee" means the juvenile parole committee made up of the commissioner's designee as chairperson and two (2) members appointed by the facility superintendent. The committee is responsible for conducting community supervision revocation hearings.

(7) "Community supervision revocation hearing" means a formal hearing afforded by the department to determine if a violation of the conditions of community supervision has occurred.

(8) "Community supervision violation" means noncompliance to a condition of community supervision by the juvenile.

(9) "Community supervision violator" means a juvenile who has violated a condition of community supervision.

(10) "Department" means the department of correction.

(11) "Director, juvenile transition program" means the person responsible for the day-to-day casework monitoring for all juveniles in the community and approval of all special conditions of the community

supervision release agreement, designated by the commissioner to release all juveniles from contract facilities.

(12) "Discharge" means an unconditional release of an offender a juvenile from a commitment.

(13) "Field staff" means department employees who provide supervision to juveniles in the community.

(14) "Hearing officer" means the administrative officer who conducts a preliminary hearing.

"Offender" (15) "Juvenile" means a delinquent offender, juvenile, which is a person who is adjudged delinquent by a juvenile court and committed to the department of correction. This definition shall be deemed to include status offenders: juveniles.

"Parole" means the conditional release of an offender to community supervision before the time of a mandatory and unconditional discharge from a commitment.

"Parole revocation hearing" means a formal hearing afforded an offender by the department to determine if a violation of the conditions of parole has occurred.

"Parole violation" means non-compliance to a condition of parole by an offender.

"Parole violator" means an offender who has violated a condition of parole.

(16) "Placement" means the place of residence of the juvenile upon release.

(17) "Preliminary hearing" means a hearing to determine whether probable cause exists to believe that a violation of a parole community supervision condition has occurred.

"Regular parole applicant" means an offender who has completed all institutional requirements as approved by the commissioner.

(18) "Review" means a hearing granted by the parole committee to an offender administrative review committee for a juvenile who has not met institutional criteria for release recommendation.

"Special parole applicant" means an offender who has completed all institutional requirements as approved by the commissioner, but who was committed to the department for an offense against a person.

(b)(+) The requirements for the administrative review committee shall be as follows:

(1) The administrative review committee shall be comprised of three (3) four (4) members. The chairperson shall be from the parole services section facility superintendent or designee and the other two (2) three (3) members shall be from the institution where the committee is meeting: education department, treatment department, and custody department as designated by the commissioner.

(2) The commissioner administrative review committee shall appoint the chairperson; and the superintendent of the institution shall appoint the institutional members: make all decisions relating to release to community supervision.

(3) The committee shall make all decisions relating to:

(A) parole release;

(B) parole revocation;

(C) discharge from parole;

(D) discharge from commitment.

(4) (3) All decisions of the parole administrative review committee shall be by majority vote: unanimous.

(5) (4) The administrative review committee shall meet in accordance with a schedule approved by the chairperson.

(Department of Correction; 210 IAC 5-1-1; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1125)

SECTION 9. 210 IAC 5-1-2 IS AMENDED TO READ AS FOLLOWS:

210 IAC 5-1-2 Release recommendation by the facility; committee criteria for granting release

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-8-5; IC 11-13-6

Sec. 2. (a) Institutional Facility criteria shall be as follows:

(1) General requirements: Criteria for parole selection community supervision shall be based on the following:

(A) The committing offense. institutional

(B) Facility adjustment. and

(C) Achievement of treatment goals established according to the offender's juvenile's individual risk and needs.

The treatment staff shall assist the offender in setting goals and shall review the offender's juvenile's progress at regular intervals. Upon completion of institution/facility facility requirements as approved by the institution/facility facility head, the offender juvenile shall be recommended for parole community supervision consideration to the

department of correction parole committee for juveniles: **facility administrative review committee.**

(2) Early release recommendations: The institution/facility head, as guardian of the offender, may, upon the recommendation of the treatment staff, or at his own discretion, recommend an offender for release prior to the offender completing the general requirements.

(3) Special parole applicants (offenses against person): The same criteria for release shall be utilized for all offenders. However, offenders who have committed an offense against a person shall be interviewed by the juvenile parole committee, which will make a decision regarding the offender's release.

(4) **(2) Requirements for discharge from commitment shall be as follows:**

A recommendation for discharge from commitment shall not be made to the parole committee unless the offender has attained the age of eighteen (18) at the time of recommendation. However, an offender may be recommended for discharge from commitment prior to attaining the age of eighteen (18), if special circumstances exist.

(A) Determinate sentence juveniles shall be discharged by the administrative review committee in accordance with their sentence.

(B) Juveniles who are at least eighteen (18) years of age may be considered for community supervision or discharge as determined by the administrative review committee.

(b) Parole committee criteria: (1) Institutional adjustment: The parole applicant's overall adjustment in the institution including, but not limited to, academic progress, completion of treatment goals, work/study performance, and adherence to rules and regulations governing offenders.

(2) Past offense record: The parole committee shall review the applicant's past offense record as to the offender's potential for successful parole.

(3) Nature of offense: Circumstances surrounding the offense for which two (2) juveniles are currently committed.

(3) The commissioner, pursuant to authority vested in him or her under IC 11-8-2-5(b)(2), may designate the authority to release or discharge juveniles from commitment. When a release from commitment is by discharge, the commissioner, or his or her designee, shall certify the discharge to the clerk of the committing court.

(4) The commissioner shall designate a person or persons to:

(A) release youth from a contract facility via community supervision or discharge; or

(B) discharge all youth from community supervision.

(Department of Correction; 210 IAC 5-1-2; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1125)

SECTION 10. 210 IAC 5-1-3 IS AMENDED TO READ AS FOLLOWS:

210 IAC 5-1-3 Community supervision or discharge; consideration, reviews, denials, conditions statement

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-8-5; IC 11-13-6

Sec. 3. (a) Procedure for considering parole or discharge of regular parole applicants: (1) The head of each juvenile institution or facility shall prepare a list of all offenders eligible for release consideration and shall transmit such list to the chairperson:

(A) The list shall be prepared weekly.

(B) The list shall contain a recommendation concerning parole or discharge.

(2) The chairperson shall review such list and consider each offender's attainment of release criteria. The chairperson shall then make a determination as to each offender's parole, discharge, or need to appear before the parole committee. The chairperson shall return to the institutional head the approved list with a signed parole release agreement, or a signed discharge certificate, on those offenders authorized for release.

(3) Those offenders whose release has not been approved by the chairperson shall be interviewed by the juvenile parole committee. The committee shall then make a decision regarding the offender's release.

The administrative review committee shall review the treatment team's recommendations regarding the

juvenile's progress in treatment and interview the juvenile to determine release to community supervision or discharge, whichever is appropriate. Mandatory review for a juvenile who has not received a facility recommendation for community supervision shall be reviewed by the administrative review committee at least every twelve (12) months.

(b) Procedure for considering parole or discharge for special parole Applicants: (1) Offenders who have completed institutional criteria for release but who were committed for an offense against a person, shall be interviewed by the juvenile parole committee. This includes, but is not limited to, offenses, the nature of which includes arson, robbery, rape, child-molesting, kidnapping, homicide, battery, and attempt or conspiracy to commit such an act.

(2) Based upon the interview and the parole committee criteria, the committee shall then make a decision regarding the offender's release.

(c) Mandatory review: (1) Offenders who have not received an institutional recommendation for parole or discharge shall have their cases reviewed and be interviewed by the juvenile parole committee at least every twelve (12) months.

(2) Based upon the mandatory interview and institution and parole committee criteria, the committee shall make a decision regarding the offender's release.

(d) Prior to the committee making a determination to grant or deny parole, the offender shall be provided by the housing institution or facility with the following: (1) at least seven (7) days (excluding Saturday, Sunday, or holidays) advance written notice that he is being considered for release.

(2) Access in accordance with IC 11-8-5 to records and reports to be considered by the committee in making the release determination.

(3) An opportunity to appear before the committee, speak in his own behalf and present documentary evidence.

(e) In all cases where parole is denied, the chairperson shall give the offender written notice of the denial and the reason for denial: (1) No offender may be denied parole solely on the basis that appropriate quarters are not available in the community to which he will return.

(2) No offender will be denied parole without an interview. The interview shall be conducted by the juvenile parole committee.

(f) The commissioner, by authority vested in him under IC 11-8-2-5(b)(2); may delegate the authority to discharge offenders from commitment to a member of a parole committee. When a release from commitment is by discharge, the commissioner, or his designee, shall certify the discharge to the clerk of the committing court.

(g) When an offender is released on parole he shall be given a written statement of the conditions imposed by the department. Signed copies of this statement shall be forwarded to any person charged with his supervision and retained by the department: (1) The conditions shall be signed by the chairperson of the committee.

(2) The housing institution shall explain the conditions of parole to the offender, the offender shall acknowledge receipt of the conditions by his signature, and the offender's signature shall be witnessed.

(3) The parole conditions for offenders released from juvenile institutions shall be as follows:

(A) I will report within twenty-four (24) hours after my arrival at my destination either by mail, telephone, or personal visit, as directed to my supervising parole agent.

(B) I will faithfully comply with any orders and conditions imposed by the department of correction.

(C) I will obey all laws (state, federal, and local ordinances).

(D) I agree not to associate with persons with a previous criminal record, or adjudicated delinquents, including both adults and juveniles currently on parole or probation, unless otherwise authorized by my supervising parole agent.

(E) I agree to be gainfully employed when work is available, if not in a full-time school program.

(F) I understand that I must consult with my supervising parole agent for permission to:

- (i) open a bank checking account;
- (ii) borrow money or go into debt;
- (iii) purchase an automobile in my name;
- (iv) obtain a driver's license;
- (v) possess and/or use any firearms;
- (vi) change my residence or school program
- (vii) marry or file for divorce;
- (viii) travel outside counties adjacent to my county or residence or outside the state of Indiana.

(G) I understand that placement failure or the need for medical attention or psychiatric or psychological evaluation is cause for return temporarily to the institution.

(H) I agree to participate in any special treatment program established by the department of correction for juvenile parolees upon the recommendation and approval of the chairperson of the juvenile parole committee.

(4) The committee may impose special stipulations to parole. These conditions shall be made a part of the official record on each offender involved. The offender shall be given a copy of these conditions. The committee may also impose special stipulations to parole at any time during the parole period upon recommendation of the parole agent. The offender shall be given notice and a copy of these conditions.

(b) A juvenile under consideration for community supervision or discharge shall be afforded the following rights:

- (1) At least seven (7) days' (excluding Saturday, Sunday, or holidays) advance written notice that he or she is being considered for community supervision or discharge.
- (2) Access in accordance with IC 11-8-5 to records and reports to be considered by the committee making the release determination.
- (3) An opportunity to appear before the committee, speak in his or her own behalf, and present documentary evidence.

(c) In all cases where community supervision is denied, the chairperson shall give the juvenile written notice of the denial and reasons for denial, including the following:

- (1) No juvenile may be denied community supervision solely on the basis that appropriate placement is not available in the community to which he or she will return.
- (2) The juvenile has the right to appeal the administrative review committee decision.

(d) When a juvenile is released to community supervision he or she shall be given a written statement of the community supervision conditions imposed by the department. Signed copies of this statement shall be forwarded to any person charged with his or her supervision and retained by the department, including the following:

- (1) The conditions shall be signed by the chairperson of the administrative review committee or the director of the juvenile transition program.
- (2) The administrative review committee shall explain the conditions of community supervision to the juvenile, the juvenile shall acknowledge receipt of the conditions by his or her signature, and the juvenile's signature shall be witnessed.
- (3) The community supervision conditions for juveniles released from juvenile facilities shall be as follows:
 - (A) I will report to my supervising field staff by telephone within twenty-four (24) hours of arrival at my approved residence, unless I have received other written instructions.
 - (B) I understand it is my responsibility to maintain contact with my field staff by making myself available through home visits, office visits, school visits, work visits, telephone contacts, and/or written reports as so directed. I understand that my field staff has the authority to search and/or inspect my person or personal property without a search warrant at any time.
 - (C) I will obey all federal, state, and local laws.
 - (D) I understand that I must immediately notify my field staff any time I am arrested, ticketed, or contacted by any law enforcement agent.
 - (E) I agree not to use or possess alcohol or any controlled substance. I agree not to remain at any place where

alcohol or controlled substances are present or being illegally consumed.

(F) I understand that I may not, at any time, possess a firearm, loaded or unloaded, knife, weapon, or any other device, equipment, chemical substance, or other material that could be used to cause harm or serious bodily injury to another person.

(G) I agree not to associate with persons adjudicated or convicted of a criminal offense, including any person currently on parole or probation, unless authorized by my field staff.

(H) I understand that I must obtain written permission from my field staff to purchase a motorized vehicle (automobile, truck, motorcycle, or moped) to obtain an identification card, beginner's driving permit, or driver's license from the state of Indiana, bureau of motor vehicles.

(I) I will be at my approved residence during curfew hours and during the hours designated by my parent or guardian and field staff unless I have obtained permission in advance to be at another location.

(J) I understand that I must obtain written permission from my field staff before leaving Indiana for any reason, for example, day visit, holiday visit, family illness, funeral, or vacation. Verbal permission from field staff shall be obtained for travel within Indiana.

(K) I agree to participate in:

(i) an approved educational or vocational school program; or

(ii) if I am not enrolled in an approved educational or vocational school program, I understand that I must be gainfully employed, when work is available, participate in an approved community service program.

(L) I understand that I must notify my field staff if I am unable to fulfill my obligations for scheduled employment, community service project assignment, or educational or vocational school program.

(M) I understand that "Placement Failure", the need for emergency medical, psychiatric or psychological evaluation, or any life-threatening situation may be cause for a temporary return to a facility.

(N) I will comply with my orders and special conditions imposed by the department. Additional terms and conditions of community supervision may be added at any time during the community supervision period, upon recommendation of the field staff and approval of the director of the juvenile transition program.

(4) The administrative review committee may impose special conditions to community supervision. The juvenile shall be given notice and a copy of these conditions. A copy of these conditions shall be placed in the official record of the applicable juvenile.

(5) The commissioner's designee shall be authorized to impose special conditions on juveniles upon the request of the field staff supervising that juvenile. The juvenile shall be given notice and a copy of these conditions. A copy of these conditions shall be placed in the official record of the applicable juvenile.

(6) The administrative review committee shall inform the juvenile that they have the right to appeal the decision of the administrative review committee to the commissioner's designee.

(7) The juvenile has the right to appeal the decision of the administrative review committee of the commissioner's designee. This appeal must be done in writing within seven (7) calendar days.

(Department of Correction; 210 IAC 5-1-3; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1126)

SECTION 11. 210 IAC 5-1-4 IS AMENDED TO READ AS FOLLOWS:

210 IAC 5-1-4 Community supervision revocation

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-13-6; IC 33-1-7-2

Sec. 4. (a) ~~Procedures~~ **Procedure** for conducting preliminary hearings **are as follows:**

(1) ~~A parole agent~~ **Field staff** shall submit a written report of alleged ~~parole~~ **community supervision** violation to the assistant supervisor of parole; juvenile; **commissioner's designee** when reasonable suspicion exists to believe the ~~parolee~~ **there is reasonable belief to believe the juvenile** has violated the conditions of ~~parole~~ **community supervision**.

(2) The assistant supervisor of parole; juveniles; **commissioner's designee**, shall review the report of alleged ~~violation~~ **violations** and determine whether or not a warrant should be issued. If a warrant ~~should be~~ **is** issued, a hearing officer shall be assigned to conduct the preliminary hearing.

~~(A)~~ The commissioner, by authority vested in him **or her** under IC 11-8-2-5(b), may delegate ~~this~~ **his or her** authority to issue warrants. ~~to the assistant supervisor of parole; juveniles:~~

~~(B)~~ The hearing officer conducting the preliminary hearing shall be a person other than the one who reported; or investigated; the alleged violation:

(3) The hearing officer conducting the preliminary hearing shall be impartial and have no involvement in the reporting or investigation of the alleged violation.

~~(3)~~ **(4) The hearing officer shall, upon receipt of notification to schedule a preliminary hearing, provide the offender juvenile and his or her parents, guardians, or custodians written notice of the following:**

(A) The date, time, and place of hearing.

(B) The ~~parole~~ **community supervision** conditions alleged to have been violated.

(C) The procedures and rights applicable to that hearing.

(D) If probable cause is found to exist, his ~~or her~~ right to a revocation hearing and the procedures and rights applicable to that hearing.

(E) The possible sanctions if a violation is found.

~~(4)~~ **(5) In connection with the preliminary hearing, the offender juvenile is entitled to the following:**

(A) Appear and speak ~~in~~ **on** his ~~or her~~ own behalf.

(B) Call witnesses and present documentary evidence.

(C) Confront and cross examine witnesses, unless the hearing officer finds that to do so would subject the witness to a substantial risk of harm, and have a written statement of the findings of fact and the evidence relied upon.

~~(5)~~ **(6) The offender's juvenile's parents, guardians, or custodians are entitled to be present at the hearing.**

~~(6)~~ **(7) If the hearing officer determines that there is not probable cause to believe that does not exist to believe the offender juvenile violated a condition of his parole community supervision, the charge shall be dismissed.**

~~(7)~~ **(8) If the hearing officer determines from the evidence presented that there is probable cause to believe that the offender juvenile violated a condition of parole community supervision, but in his or her judgment, the hearing officer does not feel that it is sufficient reason for return to the institution facility, the hearing officer may continue the offender juvenile on parole. However, if there is a special condition of the continuance, the condition must be discussed with, and approved by the chairperson of the parole committee prior to its having effect. community supervision. Any special condition imposed by the hearing officer as a result of continued placement on community supervision shall be discussed with, and approved by, the commissioner's designee, prior to its imposition.**

~~(8)~~ **(9) If the hearing officer determines from the evidence presented that there is probable cause to believe that the offender juvenile violated a condition of his parole or her community supervision and the offender should appear before the parole committee for a revocation hearing, the offender juvenile should appear for a revocation hearing, the juvenile shall be arrested on the department's warrant and returned to a juvenile institution facility pending a parole community supervision revocation hearing.**

~~(9)~~ **(10) In a case where the alleged violation of parole community supervision is based on a criminal conviction or a delinquency adjudication, the preliminary hearing need not be held.**

~~(10)~~ **(11) Unless good cause for the delay is established in the record of the preliminary hearing, the parole community supervision violation charge shall be dismissed if the preliminary hearing is not held within ten (10) days after seventy-two (72) hours from the date of arrest on the department's warrant.**

(b) Procedures for conducting ~~parole~~ **community supervision** revocation hearings are as follows:

(1) The community supervision revocation hearing shall be presided over by the commissioner's designee and two (2) members designated by the facility superintendent. The commissioner's designee shall serve as chairperson. The committee shall meet in accordance with a schedule as deemed by the chairperson.

~~(1)~~ **(2) A juvenile** confined at a juvenile ~~institution facility~~ due to an alleged **community supervision** violation of ~~parole conditions~~ shall be afforded a **parole community supervision** revocation hearing by the ~~juvenile parole community supervision violation~~ committee within sixty (60) days of his or her arrest on the department's warrant.

(3) An alleged parole community supervision violator who is not confined prior to the parole community supervision revocation hearing shall be afforded such a hearing within one hundred eighty (180) days after the order was issued for his or her appearance or the date of his or her arrest on the parole community supervision violation warrant, whichever is earlier. later.

(4) Unless good cause for delay is established in the record of the revocation hearing, the revocation charge shall be dismissed if the revocation hearing is not held within the time limits established in subdivisions (2) and (3).

~~(2)~~ **(5) Within 48 seventy-two (72) hours of an offender's a juvenile's return to a juvenile institution facility (excluding Saturday, Sunday, or holidays) as an alleged parole community supervision violator, the institution facility shall notify the offender juvenile that he or she has the right to be represented by counsel at a revocation**

hearing and, if indigent, to have counsel appointed for him or her, **including the following:**

(A) The ~~offender~~ **juvenile** shall sign a statement indicating his or her understanding of **the** right to counsel and whether he or she desires to have counsel represent him or her at the revocation hearing.

(B) If the ~~offender~~ **juvenile** desires to be represented by counsel, but cannot afford such representation, the housing ~~institution~~ **facility** shall notify the public defender's office that the ~~parolee~~ **alleged community supervision violator** desires counsel at the revocation hearing.

~~(3)~~ **(6)** The housing ~~institution~~ **facility** shall provide the ~~offender~~ **juvenile** and his **or her** parents, guardian, or custodian written notice of the revocation hearing at least seven (7) days in advance of the hearing. The written notice shall include **the following:**

(A) The date, time, and place of the hearing.

(B) The ~~parole~~ **community supervision** conditions alleged to have been violated.

(C) The procedures and rights applicable to such hearing.

(D) The possible sanctions if a violation is found.

~~(4)~~ **(7)** The ~~offender~~ **juvenile** shall be afforded those safeguards enumerated in ~~(a)(4)~~ **of this section subsection (a)(5)** and may offer evidence in mitigation of the alleged violation.

~~(5)~~ **(8)** The ~~offender's~~ **juvenile's** parents, guardians, or custodians are entitled to be present at the revocation hearing, and shall be so advised by the housing ~~institution~~ **facility**.

~~(6)~~ **(9)** If it is determined from the evidence presented that the ~~offender~~ **juvenile** did not commit a violation of ~~the conditions of parole~~, **community supervision**, the charge **or charges** shall be dismissed.

~~(7)~~ **(10)** If the committee finds that the ~~offender~~ **juvenile** did violate a condition **or conditions** of ~~parole~~, **community supervision**, it may continue the ~~offender~~ **juvenile** on ~~parole~~ **community supervision**, with or without modifying the conditions, or revoke the ~~parole~~ **community supervision** and order the ~~offender~~ **juvenile** confined, **including the following:**

(A) If the ~~offender~~ **juvenile** is continued on ~~parole~~, **community supervision**, with modified conditions, he or she shall be given written notification of the modification **or modifications**.

(B) If ~~parole~~ **community supervision** is revoked, the committee shall inform the ~~offender~~ **juvenile** that he or she will be reconsidered for ~~parole~~ **community supervision** on a specific date or that he or she will be reconsidered when he or she again completes the ~~institutional~~ **facility** criteria for release.

~~(8)~~ **(11)** The chairperson shall provide the ~~parolee~~ **community supervision violator** with a written statement of the reasons for the committee's action if ~~parole~~ **community supervision** is revoked. **The juvenile has the right to appeal the decision of the community supervision revocation committee.**

~~(9)~~ Unless good cause for the delay is established in the record of the revocation hearing, the revocation charge shall be dismissed if the revocation hearing is not held within the time limits established in ~~(b)(1)~~ **of this section.**

~~(10)~~ **(12)** The ~~parole~~ **community supervision revocation** committee shall consider the following at a revocation hearing:

(A) ~~Community adjustment:~~ The alleged violator's overall community adjustment shall be considered, including, but not limited to, **the following:**

(i) School or work.

(ii) Completion of ~~parole~~ **community supervision** goals. ~~and~~

(iii) Previous violations committed while on ~~parole~~: **community supervision**.

(B) ~~Past offense record:~~ The alleged ~~parolee~~ **community supervision violator's** past juvenile history shall be considered, along with the nature of his **or her** committing offense.

(C) ~~Nature of current violation:~~ The exact nature of the violation committed by the alleged ~~parolee~~ **community supervision violator** and the events and circumstances surrounding the violation shall be considered.

~~(11)~~ The procedures contained in ~~(b)~~ **of this section** shall be deemed to apply to ~~parole~~ **revocation hearings** when the alleged ~~parole~~ **violator** was not confined due to the alleged ~~parole~~ **violation** prior to the revocation hearing.

(13) The community supervision revocation committee shall inform the juvenile that he or she has the right to appeal the decision of the community supervision revocation committee to the commissioner's designee. This appeal must be done in writing within seven (7) calendar days.

(Department of Correction; 210 IAC 5-1-4; filed Apr 17, 1985, 9:45 a.m.: 8 IR 1127)

SECTION 12. 210 IAC 1-6-3 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 5, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Department of Correction will hold a public hearing on proposed amendments concerning the collection, maintenance, and release of offender and juvenile records, the offender tort claims process, and release authority for juveniles. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E334 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Diane Mains
Staff Counsel
Department of Correction