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POLICY AND ADMINISTRATIVE PROCEDURES
Manual of Policies and Procedures

Title
SEX AND VIOLENT OFFENDER REGISTRY APPEAL PROCESS

Legal References (includes but is not limited to)	Related Policies/Procedures (includes but is not limited to)	Other References (includes but is not limited to)
IC 11-8-8-1 <i>et seq.</i> IC 36-2-13-5.5 IC 36-2-13-5.6	01-07-101	

I. PURPOSE:

The purpose of this policy and its administrative procedures is to provide a mechanism to advise a person who is to be registered on a Sex and Violent Offender Registry of any information to be collected by the Department and transmitted to other authorities upon the offender’s discharge from a Department facility and to provide the offender with a method for challenging the information to be transmitted.

II. POLICY STATEMENT:

The Department may collect any necessary information regarding an offender under consideration for placement on a Sex and Violent Offender Registry before releasing that offender from a Department facility and transmit that information to other authorities for publication. In that event, the Department shall inform the offender, in writing, of the information to be transmitted; establish an administrative process by which an offender may challenge the accuracy of any information to be placed on a Sex and Violent Offender Registry or used to make a determination to place the offender on such a Registry, the appropriateness of transmitting that information, or both; and, inform the offender of the steps he or she must take in order to pursue such an administrative appeal.

III. DEFINITIONS:

For the purpose of this policy and its administrative procedures, the following definitions apply:

- A. **APPEAL:** The request by a Subject to have any information to be used in conjunction with the placement of an offender on a Sex and Violent Offender Registry reviewed with the intent of correcting, modifying or

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deleting the information or preventing its dissemination to a non-departmental authority.

- B. **APPEAL AUTHORITY:** The person designated by the Department to review appeals submitted under this administrative procedure.
 - C. **DEPARTMENT:** The Indiana Department of Correction.
 - D. **DEPARTMENT FACILITY:** A facility operated by the Department or by a private company under contract to the Department.
 - E. **MODIFY OR MODIFICATION:** To change, or a change in, the information in the Registry that is accessible by the public.
 - F. **NOTICE:** A written statement informing the Subject of his or her right to appeal information related to his or her placement on a Sex and Violent Offender Registry or the transmission of such information as provided in these administrative procedures. The Notice will include a copy of an Appeal Form.
 - G. **SPECIMEN:** A photocopy or other representation of the information concerning the Subject that the Department intends to forward to a non-Department official for publication. That information will advise the Subject:
 - 1. Whether he or she is required to register with local officials on a sex and violent offender registry;
 - 2. The length of time he or she is required to register;
 - 3. The offense or offenses that give rise to the requirement to register; and,
 - 4. Whether he is a “Sexually Violent Predator” under Indiana Code 35-38-1-7.5.
 - H. **SUBJECT:** A person about whom the Department has obtained information concerning one or more sex or violent offenses which the Department intends to forward to one or more non-Department officials for publication.
- IV. PROVIDING A NOTICE:

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- A. If the Department gathers information that a Subject has committed one or more sex or violent offenses in order to transmit that information to one or more public officials for publication upon the Subject's discharge from a Department facility, the Department will provide the Subject with a Specimen and a Notice.
- B. Except as provided herein, the Subject's Case Manager will provide the Subject with the Specimen and Notice when the Progress Report relating to the Subject's release is being prepared.
 - 1. If a Subject has not been confined within one or more Department facilities for sixty (60) continuous days immediately prior to his or her release, the Department will provide the Subject with the Specimen and Notice as promptly as reasonably possible after the Subject is first confined within a Department facility.
 - 2. If a Subject's scheduled release date is modified at a time that makes it not reasonably possible for the Department to provide the Subject with a Specimen and Notice sixty (60) days before the Subject is released, the Department will provide the Subject with the Specimen and Notice as promptly as reasonably possible after receiving notice of the modification of the scheduled release date.
- C. If a Subject is not permitted to possess materials such as a Specimen or a Notice, he or she will be permitted to review a Specimen and to note any error contained in it. The Subject will also be provided a copy of the Notice. If the Subject refuses to review the Specimen or Notice or both, the refusal will be deemed the equivalent of actual receipt of the document or documents refused. In such cases, the staff person delivering the Specimen and Notice to the offender shall write on the Notice that the offender refused to review the Specimen and Notice. A second staff person shall witness the Subject's refusal and sign the Notice as well. The Notice and Specimen shall be filed in the Subject's facility packet.
- D. When the Case Manager presents a Specimen and Notice to a Subject personally, he or she will note on copies of the Specimen and Notice whether a Specimen and a Notice were provided to the Subject and the date of such action. Additionally, any refusal to accept or to review either document or both shall be noted on the Notice. The staff person shall then enter his or her name legibly on the copies and ensure that they are placed in the Subject's facility packet. If the Subject refuses to accept or review the Notice and Specimen, a second staff person shall note on the Notice the Subject's refusal and sign and date the Notice.

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V. CONTENTS OF THE NOTICE:

The Notice will be provided on NOTICE OF INTENT TO PROVIDE INFORMATION TO SEX AND VIOLENT OFFENDER REGISTRY AND RIGHT TO APPEAL. (ATTACHMENT I) The NOTICE will include information advising the Subject of his or her ability to appeal and will provide instructions as to how this appeal may be submitted.

VI. APPEAL PROCEDURE:

Following the receipt and review of the Notice and any accompanying material, if the Subject believes that the requirement to register or the information to be shared with other authorities is incorrect, the Subject may submit an appeal for a review of the decision and information to the Department, Division of Registration and Victim Services. All appeals for review must be in accordance with these administrative procedures.

A. Scope of the review.

1. A Subject may assert in the request for review that no information should be forwarded to non-departmental authorities for publication.
2. A Subject may assert that the information to be transmitted is not accurate.
3. A Subject may make both arguments. That is, the Subject may assert both that no information should be transmitted to other authorities and that, even if information will be transmitted, the Department intends to transmit information that is not accurate.

B. Time for seeking review.

1. A Subject must seek review within twenty (20) calendar days of the day he or she receives copies of the Specimen and Notice or is presented with a Specimen and Notice if the Subject does not receive them. If the twentieth (20th) day is a Saturday, Sunday, or state holiday, the period is extended to the next day that is not a Saturday, Sunday, or state holiday. This period may be extended at the discretion of the Appeal Authority if the Subject shows good cause for such an extension.
2. The appeal will be deemed submitted on the day it is postmarked. For that reason, a Subject who desires to appeal should submit his or

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her appeal as soon as possible after receiving and reviewing the Notice and Specimen so that the appeal may be postmarked by the twentieth (20th) day following receipt of the Specimen and Notice. For Subjects housed in Department facilities, these appeals shall be considered Privileged Correspondence in accordance with Policy 02-01-103, "Offender Correspondence," and staff shall ensure that these appeals are processed promptly. Staff in Department facilities shall date stamp the envelope containing the appeal on the date that the appeal is received similar to the date stamping of Legal Correspondence to ensure that these appeals are not delayed in their transmission.

C. Grounds for review.

1. Subject may contend that no information should be forwarded to non-Departmental authorities for publication.
2. A Subject may contend that the information to be transmitted is not accurate.
3. A Subject may raise both of the above contentions in the same appeal.
4. A Subject may not appeal to the Department any change that occurs as the result of an appeal.

D. Method for submitting an Appeal.

1. A Subject may appeal by sending a letter of no more than two (2) pages to:

Director, Registration and Victim Services
Indiana Department of Correction
302 W. Washington St., Room E334
Indianapolis, IN 46204-2738
2. A Subject must state all grounds for appeal in the appeal letter. The Appeal Authority shall consider only those grounds that the Subject has set out in the Appeal.
3. If a Subject has any documentation supporting the appeal, a copy of that documentation should be submitted with the Appeal. No copies

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will be returned to the Subject, so the Subject should retain his or her own copy of any documentation being submitted for consideration.

E. Decision of the appeal.

1. The Director, Division of Registration and Victim Services, or designee shall serve as the Appeal Authority for the Department of Correction.
2. The Appeal Authority will number each appeal as it is received and will perform an initial review of all appeals in the order in which they are received.
3. After reviewing the Appeal and any copies of supporting documents, the Appeal Authority may decide that more information is needed. The Appeal Authority may request and review such other information, and may consult such people, including the Subject, as he or she believes is necessary or advisable to decide the appeal.
4. If the Appeal Authority discusses the matter with the Subject or another person or persons, any such discussion may be conducted by telephone, videoconferencing, or personal meeting. Any person so consulted may be placed under oath by a person authorized to administer oaths.
5. An appeal normally will be decided within thirty (30) days after the Appeal Authority receives the Appeal Form and any copies of supporting documents. If the Appeal Authority seeks additional information, the time for decision may increase as necessary to obtain and review that information.
6. If the Appeal Authority fails for any reason either to decide the appeal on the merits or to notify the Subject in writing that the period of appeal is being extended, the appeal will be deemed denied within thirty (30) days after the Appeal Authority receives the Appeal. Any notice of extension will specify the date by which the appeal will be decided. If the appeal is not decided upon the date so calculated, it will be deemed denied on the first day after that date that is not a Saturday, Sunday, or state holiday.
7. In reviewing the appeal, the Appeal Authority may render any of the following decisions:

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- a. Appeal granted, no information about the Subject relating to a conviction for a sex or violent offense will be forwarded to a non-departmental official for publication;
 - b. Appeal granted in part, not all information on the Specimen about the Subject relating to a conviction for a sex or violent offense will be forwarded to a non-Departmental official for publication; or
 - c. Appeal denied, information on the Specimen will be forwarded as originally intended.
8. A Subject may not appeal to the Department any change that occurs as the result of an appeal. A Subject has no right to further administrative review of any decision of the Appeal Authority.
 9. The Appeal Authority may grant an appeal in whole or in part even after the appeal has been deemed denied due to the passage of time.
 10. If the Appeal Authority grants a Subject's appeal in whole or in part, the Appeal Authority will modify the information to be forwarded to the non-departmental authorities at that time.
 11. If information has previously been forwarded to a non-departmental authority and the Appeal Authority grants the Subject's appeal in whole or in part, the Appeal Authority shall notify the non-departmental authority of the decision and request that the disputed information be changed or deleted.
 12. The Appeal Authority will notify a Subject in writing of his or her decision. If the Appeal Authority grants a Subject's appeal in whole or in part, he or she will send a Specimen of any modified information to the Subject along with the notification of the action taken.

VII. APPLICABILITY:

This policy and its administrative procedures are applicable to all Departmental facilities and offenders who are being placed on the Sex and Violent Offender Registry.

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Signature on File

Bruce Lemmon
Commissioner

1/25/11

Date