

INDIANA REGISTRATION APPEAL PROCEDURE FOR NON-INCARCERATED REGISTRANTS

Effective October 1, 2013

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## 1. Definitions.

a. **APPEAL:** A written document that a Local Subject submits to the Department in which the Local Subject claims (a) that the Local Law Enforcement Authority's Proposed Change or Refusal is incorrect, (b) that the Local Law Enforcement Authority has not correctly followed this procedure in reaching its decision to make a Proposed Change or a Refusal, or in notifying the Local Subject of its decision, or (c) that the Local Law Enforcement Authority has not correctly followed this procedure in ruling upon the Protest that the Local Subject submitted.

b. **DEPARTMENT:** The Indiana Department of Correction.

c. **LOCAL LAW ENFORCEMENT AUTHORITY:** (1) The chief of police of a consolidated city or (2) the sheriff of a county that does not contain a consolidated city.

d. **LOCAL SUBJECT:** A person whom a Local Law Enforcement Authority or the Department determines is subject to registration on the Registry but who is not confined in the custody of the Department

e. **PROPOSED CHANGE:** A Local Law Enforcement Authority's proposal to add public information to the Registry or to update the public information in the Registry in order to reflect a change in the residence, temporary location, employment, educational institution, appearance, conviction information, registration status, or other circumstance of a Local Subject, as required by the Indiana Code.

f. **PROPOSED POSTING DATE:** In the case of a Proposed Change, the date upon which the Local Law Enforcement Authority expects to enter the Proposed Change upon the Registry. In the case of a Refusal, the date upon which the Refusal becomes final for purposes of Protest.

g. **PROTEST:** A written document that a Local Subject submits to a Local Law Enforcement Authority in which the Local Subject claims either (a) that the Local Law Enforcement Authority's Proposed Change or Refusal is incorrect or (b) that the Local Law Enforcement Authority has not correctly followed this procedure in reaching its decision and notifying the Local Subject of its decision.

h. REFUSAL: A Local Law Enforcement Authority's refusal to update public information in the Registry in a manner proposed by a Local Subject in order to reflect a change in the residence, temporary location, employment, educational institution, appearance, conviction information, registration status, or other circumstance of a Local Subject, as required by the Indiana Code.

i. REGISTRY: The Indiana sex and violent offender registry web site established and maintained under Ind. Code §§ 11-8-2-12.4, 36-2-13-5.5.

j. SPECIMEN: A photocopy, screen shot, or other documentary representation of the public information concerning the Local Subject that the Local Law Enforcement Authority intends to publish through the Registry.

2. Substance of the procedure.

a. The general rule.

i. A Local Law Enforcement Authority shall notify a Local Subject in writing any time it

(a) proposes to enter a new Local Subject into the Registry; or

(b) proposes to change, to add to, or to subtract from public information previously entered into the Registry; or

(c) refuses a Local Subject's written request or notice to change, to add to, or to subtract from public information previously entered into the Registry.

ii. The notice provided under this section shall state

(a) in the case of a newly added Local Subject, all of the public information to be entered; and

(b) in the case of a change or addition of public information, all of the public information that will appear for the first time after the change or addition; and

(c) in the event of a removal of public information, all of the public information to be removed; and

(d) in the event of a refusal to change public information as requested by the Local Subject, the change that the Local Law Enforcement Authority refuses to make, as well as any change that the Local Law Enforcement Authority agrees to make; and

(e) a notice of the right to submit a Protest and an Appeal, as provided below in Subsection 12.b.

iii. When the Local Subject believes that the entry, change, or refusal will result in an error, the Local Subject has a right to protest, first to the Local Law Enforcement Authority and then, if necessary, by appeal to the Department.

iv. The Local Subject must raise all issues at the time of the Protest and any Appeal, and a failure to raise any issue at the first opportunity will result in a waiver of that issue.

v. This procedure allows for a single administrative protest followed by a single appeal within a specific time period, and does not permit a second or subsequent administrative challenge, to a Local Subject's inclusion in the Registry or to changes in the Registry or refusals to change the Registry, except that a new Protest and Appeal will be permitted when the Local Subject's circumstances change, such as when a court order changes the Local Subject's criminal status.

b. Exception for pre-existing Registry entries.

i. In addition to the rule stated above in Section 2 of this procedure, a Local Subject may raise before the Local Law Enforcement Authority one or more issues concerning the state of the Registry on the day this procedure is adopted.

ii. The issues that can be raised under this section are claims that the Registry:

(a) improperly includes the Local Subject;

(b) contains public information that is inaccurate and should be changed;

(c) contains public information that should not be contained in the Registry; and

(d) does not contain public information that it should contain.

iii. The Local Subject may raise any or all of these issues at any time after this procedure is adopted, but must do so in the first Protest he or she files. If the Local Subject files a Protest about any matter but does not raise any issues concerning the state of the Registry on the day this procedure is adopted, the Local Subject may not later submit a Protest concerning the state of the Registry on the day this procedure is adopted.

iv. If the Local Subject has challenged the Registry in court before this procedure was adopted, he or she may not raise any issue that was presented to the court and decided by the court.

c. Exceptions for incompetence.

A Local Subject may avoid a finding of waiver by showing that, at the time of the earlier Protest, Appeal, or both:

- i. he or she did not comprehend the nature of his or her challenge;
- ii. he or she was under the control of an improper or undue influence;
- iii. his or her actions were affected by deception or delusion; or
- iv. he or she was below the age required for entering into a valid contract as set by Ind. Code § 34-11-6-2 or current law.

d. Exception of challenge to lifetime registration.

- i. A Local Subject who is identified as being required to register for life may challenge that identification and assert that he or she is subject to a 10-year registration period.
- ii. The Local Subject must raise this issue no later than 10 years and 6 months after the Local Subject's registration for the relevant offense begins, and if the Local Subject does not raise the issue within that period he or she loses the right to raise it at all.
- iii. The period stated in Subsection 2.d.(ii) above is automatically tolled in the same manner as the registration period itself is tolled under Ind. Code § 11-8-8-19(a) or current law.
- iv. The Local Subject shall raise the issue of the length of registration in the same manner as any other request to change the Registry.
- v. The Local Subject may challenge the lifetime registration requirement one time only and loses the right to raise any grounds or argument regarding the length of his or her registration that is not presented in that challenge.
- vi. The right set out herein to challenge a lifetime registration requirement does not extend to a lifetime registration order that is issued by a court or that results from a judicial determination such as a finding that a Local Subject is a sexually violent predator.

3. Procedure to be followed by a Local Law Enforcement Authority.

- a. This procedure applies when a Local Subject has come to the jurisdiction of the Local Law Enforcement Authority in a manner other than directly following discharge from the custody of the Department, such as by relocating from another county or state, or following discharge from a jail. It does not apply when a person subject to inclusion in the Registry first comes to the jurisdiction of the Local Law Enforcement Authority directly from the custody of the Department, except that it does apply when the Local Law Enforcement Authority changes the public information placed, or to be placed, upon the Registry so that it is not the same as the public information the Department had disclosed to the Local Subject.
- b. When a Local Law Enforcement Authority plans to implement a Proposed Change, it creates a Specimen showing the public information about the Local Subject that the Registry will display, and advises the Local Subject of the date upon which it intends to display the public information.
- c. The Local Law Enforcement Authority gives a copy of the Specimen and notification of the date upon which it intends to display the public information to the Local Subject, either by personally delivering a copy to the Local Subject or by mailing a copy of the Specimen to the Local Subject by first-class mail.
- d. If the Local Law Enforcement Authority refuses to make a change, it notifies the Local Subject of its Refusal in writing and delivers a copy of the written notification to the Local Subject personally or by first-class mail addressed to the Local Subject's residential address listed on the Registry.
- e. A Local Law Enforcement Authority may combine notice of a Proposed Change with notice of a Refusal in the same personal delivery or the same mailing when both notices relate to the same Local Subject.

#### 4. The right of Protest.

The right of Protest arises only upon any of the following events:

- a. A Local Law Enforcement Authority notifies a Local Subject of a Proposed Change;
- b. A Local Law Enforcement Authority notifies a Local Subject of a Refusal;
- c. A combination of the above; or
- d. The passage of 30 calendar days, without any ruling, from the day a Local Subject requests or notifies the Local Law Enforcement Authority to change, to add to, or to subtract from public information previously entered into the registry.

#### 5. Available claims for Protest.

The Local Subject may raise any of the following claims in a Protest:

- a. The Local Law Enforcement Authority's Proposed Change would add the Local Subject to the Registry incorrectly because either
  - i. The Local Subject should not be added, or
  - ii. The public information about the Local Subject is incorrect or incomplete;
- b. The Local Law Enforcement Authority's Proposed Change would make the listed public information about the Local Subject incorrect or incomplete;
- c. The Local Law Enforcement Authority's Refusal makes the listed public information about the Local Subject incorrect or incomplete; or
- d. A combination of two or more of the foregoing claims.

6. Subjects of the Protest.

The Protest is limited to the specific change, or refusal to change, and therefore its subject matter is limited to:

- a. Adding the Local Subject to the Registry;
- b. The material to be newly added;
- c. Any material to be newly removed;
- d. Any material that should have been newly added or removed but was not added or removed due to the Local Law Enforcement Authority's Refusal;
- e. A combination of two or more of the foregoing matters.

7. Form of the Protest.

The Protest must:

- a. Be submitted by the Local Subject or by a person representing the Local Subject;
- b. Be in writing;
- c. Bear the signature of the Local Subject and the date of submission;
- d. Set out specifically both the claimed error and the reason why the Proposed Change, the Refusal, or both if applicable, would result in an incorrect entry in the Registry;
- e. Be served upon the Local Law Enforcement Authority either by delivering it personally to the Local Law Enforcement Authority's office or by first-class

mail, postage prepaid, correctly addressed to the office of the Local Law Enforcement Authority; and

f. Contain a mailing address at which the Local Subject wishes to be served with responses to his Protest and any Appeal.

8. Response of the Local Law Enforcement Authority.

a. The Local Law Enforcement Authority must respond to the Protest in writing, informing the Local Subject whether the Protest has been denied or granted; if the Protest has been denied in part and granted in part, the response must specify the action the Local Law Enforcement Authority will take.

b. The response may be delivered to the Local Subject:

i. Personally, by handing it to the Local Subject; or

ii. By first-class mail sent to the address specified in the Protest.

c. The response must notify the Local Subject in plain and simple language that

i. he or she has the right to appeal the decision to the Department;

ii. any Appeal must be submitted within 7 calendar days of the date of the response;

iii. that the Local Subject should consult the full set of rules, which are available both on-line and, for a fee, from the Local Law Enforcement Authority; and

iv. that a failure to follow all of the rules is likely to result in an unfavorable ruling.

9. The Appeal.

a. If the Local Subject is not satisfied with the response to the Protest, or if 30 days have passed since the day the Local Subject submitted the Protest to the Local Law Enforcement Authority, the Local Subject may submit an Appeal, which must:

i. Be in writing;

ii. Be submitted by the Local Subject or by a representative of the Local Subject;

iii. Be signed by the Local Subject and dated;

iv. Include copies of the Protest and the response, if any, received from the Local Law Enforcement Authority;

v. Claim:

(a) that the Local Law Enforcement Authority's Proposed Change or Refusal is incorrect,

(b) that the Local Law Enforcement Authority has not correctly followed this procedure in reaching its decision and notifying the Local Subject of its decision,

(c) that the Local Law Enforcement Authority has not correctly followed this procedure in ruling upon the Protest that the Local Subject submitted, or

(d) two or all of the foregoing;

vi. Set out specifically both the claimed error or errors and every reason why the Local Subject believes that the Proposed Change, the Refusal, or both if applicable, would result in an incorrect entry in the Registry; and

vii. Be delivered to the Department by personal delivery or by first-class mail, postage prepaid. In either case, the Appeal is to be sealed in an envelope addressed to

Director, Registration and Victim Services  
Indiana Department of Correction  
302 W. Washington St., Room E334  
Indianapolis, IN 46204-2738.

b. The Appeal may not raise any claim not presented to the Local Law Enforcement Authority in the Protest giving rise to the Appeal, except the claim, stated above, "that the Local Law Enforcement Authority has not correctly followed this procedure in ruling upon the Protest that the Local Subject submitted." Any other failure to present a claim to the Local Law Enforcement Authority shall be a waiver of that claim.

c. If the Local Subject wishes the Department to contact him or his representative, the Local Subject must request the Department to do so and explain why he or she believes that personal contact will help the Department to reach a correct decision.

#### 10. Ruling on the Appeal.

a. Before ruling, the Department may choose to contact the Local Subject or his or her representative by telephone, video, or face to face. The Department



may ask the Local Subject or his or her representative to meet with a representative of the Department informally.

b. The Department shall notify the Local Subject of its ruling in writing by first-class mail sent to the address specified in the Protest.

c. The Department shall notify the Local Law Enforcement Authority of its ruling in writing by first-class mail or by electronic means.

d. If the Department denies the Appeal, the act of mailing notice of the ruling shall conclude the matter. The denial shall specify the reasons for the decision of the Department and shall address the errors claimed by the Local Subject.

e. If the Department grants the Appeal, the Department may make appropriate adjustment in the Registry or may require the Local Law Enforcement Authority to do so.

#### 11. Time periods.

##### a. Implementing Proposed Changes and Refusals:

i. The Local Law Enforcement Authority must notify a Local Subject of a Proposed Change or a Refusal at least 7 calendar days before the Proposed Posting Date if notice is given to the Local Subject in person.

ii. The Local Law Enforcement Authority must notify a Local Subject of a Proposed Change or Refusal at least 10 calendar days before the Proposed Posting Date if notice is sent to the Local Subject by mail.

iii. If a Local Subject agrees to the Proposed Change in writing, the Local Law Enforcement Authority may implement the Proposed Change immediately.

iv. If a Local Subject files a Protest to a Proposed Change in compliance with the procedure set out herein, the Local Law Enforcement Authority may not implement the Proposed Change until it has ruled upon the Protest and transmitted written notice of the ruling to the Local Subject.

v. If a Local Subject files a Protest to a Refusal in compliance with the procedure set out herein but the Local Law Enforcement Authority fails to rule upon the Protest, the Local Subject may submit an Appeal to the Department as set out in Subsection 11.e.ii, below.

vi. If a Local Subject submits a Protest by mail within the time limit specified below in Subsection 11.b but the Local Law Enforcement Authority does not receive it before the Proposed Posting Date, the

Local Law Enforcement Authority must consider the Protest as if it had been received timely, rule upon it in accordance with this procedure, and provide proper and timely notice to the Local Subject. If such a Protest is granted, the Registry must be changed to conform to the ruling.

b. Time for Protesting:

i. If the Local Subject chooses to serve a Protest of a Proposed Change or of a Refusal by personal delivery, the Local Subject must deliver a copy of the Protest to the Local Law Enforcement Authority no later than the Proposed Posting Date.

ii. If the Local Subject elects to send a Protest of a Proposed Change or of a Refusal by mail, the envelope must be properly addressed and bear sufficient postage, and must be mailed at least 3 days before the Proposed Posting Date. The date upon which the Local Subject mailed the Protest will be proven by the postmark on the envelope.

c. Time for ruling on Protests: The Local Law Enforcement Authority shall notify the Local Subject of the ruling on the Protest within 7 calendar days of receiving the Protest.

i. The Local Law Enforcement Authority may notify the Local Subject of its ruling by delivering a copy of the ruling to the Local Subject personally; or

ii. The Local Law Enforcement Authority may notify the Local Subject of its ruling by first-class mail sent to the address specified in the Protest.

d. Time for implementing rulings:

i. If the Local Law Enforcement Authority denies a Protest to a Proposed Change, it shall notify the Local Subject of the decision, and may then implement the Proposed Change.

ii. If the Local Law Enforcement Authority denies a Protest to a Refusal, it shall notify the Local Subject of the decision but will need to take no further action.

iii. If the Local Law Enforcement Authority grants a Protest to a Proposed Change, it shall notify the Local Subject of the decision, and shall not implement the Proposed Change.

iv. If the Local Law Enforcement Authority grants a Protest to a Refusal, it shall notify the Local Subject of the decision, and shall implement the change the Local Subject requested.

e. Time for Appeal.

i. The Local Subject shall submit any Appeal to the Department within 7 calendar days of the day the Local Law Enforcement Authority delivers notice of its ruling:

a) If the Local Law Enforcement Authority delivers notice of its ruling to the Local Subject personally, then the Local Subject's time begins to run on the date of personal service; but

b) If the Local Law Enforcement Authority delivers notice of its ruling to the Local Subject by mail, the Local Subject's time begins to run 3 calendar days after the date the notice was placed in the mail, as shown by the postmark on the envelope.

ii. If the Local Law Enforcement Authority does not respond to the Protest within 30 days of the day upon which the Protest was submitted, the Local Subject shall submit any Appeal to the Department within 7 calendar days of the 30<sup>th</sup> day following submission of the Protest.

iii. An Appeal submitted personally to the Department is submitted on the day it is delivered to the Department.

iv. An Appeal submitted to the Department by first-class mail is submitted on the day it is placed in the mail, as shown by the postmark on the envelope.

f. Time for deciding the Appeal.

i. The Department shall decide the Appeal within 30 calendar days of the day upon which it receives the Appeal and shall notify the Local Subject of its decision in writing by first-class mail sent to the address specified in the Protest.

ii. The Department shall notify the Local Law Enforcement Authority of its ruling in writing by first-class mail or by electronic means.

12. Notices to Local Subjects.

a. Notice of this procedure

i. The Department shall publish these rules in a prominent place in that part of its web site that deals with sex and violent offenders and as part of the Registry.

ii. As provided above in Section 2, every Local Law Enforcement Authority shall provide written notice to the Local Subject.

(a) At the time the Local Subject first registers with the Local Law Enforcement Authority, and at such additional times, if any, as the Local Law Enforcement Authority deems appropriate, the notice shall inform the Local Subject of the existence and nature of this procedure in the language provided in Subsection 12.a.iii below.

(b) Whenever the Local Law Enforcement Authority proposes to modify an existing entry in the Registry or refuses a request filed under this procedure to update an existing Registry entry, the notice shall inform the Local Subject of the right to reconsideration in the language provided in Subsection 12.b below.

iii. The written notice required under Subsection 2.a.i.(a) and under Subsection 12.a.ii.(a) shall include the following language:

**Notice to all persons registering pursuant to the  
Indiana Sex Offender Registration Act. Be advised of  
the following:**

1. Indiana has adopted a procedure that allows you to file a formal complaint about changes made to the Sex and Violent Offender Registry entry about you, or about a refusal to make changes that you request to the Registry. The procedure allows you to file an appeal if your complaint is denied, but it has a number of rules that you must follow in order to preserve your rights to complain and to appeal.

2. Those rules provide, among other things, that if you file a formal complaint in the proper manner with the local official who maintains the Registry, and if that official does not respond to you within 30 days, you may ask the Indiana Department of Correction to review your complaint. The rules provide, however, that after the 30<sup>th</sup> day with no response from the local official, you must submit your request to the Department within 7 days. If you wait longer than 7 days, it will be too late and you will lose the right to have the Department of Correction consider any and all the issues raised in your complaint.

3. You may read a complete and current copy of the whole procedure on the part of the web site of The Indiana Department of Correction that deals with sex and violent offenders.

4. You also may read a complete and current copy at the Registry web site.

5. If you are prohibited by law, by rule, or by court order from visiting the web site of the Department of Correction and the Registry web site, this office will make one complete copy of the procedure for you for the same cost as the office charges for other, similar copies.

b. Notice of rights to obtain review

The notice provided by the Local Law Enforcement Authority under Subsection 2.a.i.(b) and (c) and under Subsection 12.a.ii.(b) shall include the following language:

**Your right to reconsideration of this action.  
Be advised of the following:**

1. You have the right to protest against the action described in this document, but you must act quickly or you will lose that right.

2. If you do protest and your protest is denied, you have a right to appeal that decision to the Indiana Department of Correction, but you must act quickly or you will lose that right.

3. There are specific rules that set out how, when, and to whom you may protest and appeal. If you do not follow those rules, you may lose the right to any review of the action described in this document. Those rules have been provided to you already, but you may read a complete and current copy of the whole procedure on the part of the web site of The Indiana Department of Correction that deals with sex and violent offenders. You also may read a complete and current copy at the Registry web site.