

Emergency Rule
LSA Document #21-199(E)

DIGEST

Temporarily adds provisions to outline the process for the investigation, review, determination, and hearing of applications for compensation from the exoneration fund. Statutory authority: [IC 5-2-23-9](#). *NOTE: The original emergency document, LSA Document #19-573(E), posted at [20191106-IR-205190573ERA](#), effective November 1, 2019, expires June 30, 2021. Effective June 30, 2021. Expires December 31, 2022.*

SECTION 1. The definitions of this SECTION apply throughout this document:

- (1) "Actually innocent" has the meaning set forth in [IC 5-2-23-2](#).
- (2) "Applicant" means an allegedly wrongfully incarcerated individual, or the individual's guardian, as defined in [IC 29-3-1-6](#), who is filing for compensation from the fund.
- (3) "Application" means the application, the applicable documentation listed in SECTION 5 of this document, and additional documents or forms required by the institute.
- (4) "Board of trustees" means the board of trustees of the institute, as defined in [IC 5-2-6-4](#).
- (5) "Director" means the director, or the director's designee, of the institute.
- (6) "Fund" means the exoneration fund, established by [IC 5-2-23-7](#).
- (7) "Institute" means the criminal justice institute, established by [IC 5-2-6-3](#).
- (8) "Political subdivision" has the meaning set forth in [IC 36-1-2-13](#).

SECTION 2. The purpose of this document is to facilitate implementation and compliance with [IC 5-2-23](#) by establishing procedures for the investigation, review, determination, and hearing of an application for compensation from the fund filed with the institute.

SECTION 3. The institute shall do the following:

- (1) Prescribe forms for the processing of applications for the fund.
- (2) Investigate applications for the fund.
- (3) Make determinations regarding applications for the fund.
- (4) Issue preliminary recommendations from the director of the institute regarding an applicant's approval or denial for compensation from the fund.
- (5) Issue final determination orders from the institute's board of trustees regarding an applicant's approval or denial for compensation from the fund.

SECTION 4. (a) The institute staff shall accept all applications for the fund filed in compliance with this document.

(b) An application for the fund must:

- (1) Be submitted according to the timeline in [IC 5-2-23-8\(a\)](#) and on the form prescribed by the institute.
- (2) Contain a release and waiver of liability, pursuant to [IC 5-2-23-4](#).
- (3) Contain a certification of actually innocent, pursuant to SECTION 1(1) of this document.
- (4) Be filed with the institute in person, through the institute's website, by fax, by U.S. mail, express courier service, or through the institute's prescribed electronic process.
- (5) Be executed by an applicant.

(c) Applications shall be reviewed by the institute staff to ensure completeness.

(d) If an application is determined incomplete by the institute staff, written notice shall be provided to an applicant. The written notice shall include a statement identifying how the application is incomplete and how an applicant can bring the application into compliance.

(e) An applicant, within thirty (30) days of receipt of a request for additional information, must supply the information to the institute staff or request an extension of time through the director. The director will not approve a request for an extension of time for a period longer than ninety (90) days from the date of the request for extension of time by an applicant. The request for an extension of time must be in writing and signed by an applicant.

(f) If an applicant does not provide the additional information required to bring the application into compliance within the period of time allowed by the institute, the director shall issue a preliminary recommendation of denial due to lack of information.

(g) The director's preliminary recommendation shall then be referred to the institute's board of trustees. The institute's board of trustees will review the director's recommendation and documents in support of the director's preliminary recommendation. The institute's board of trustees shall issue a final determination order stating the reason or reasons for denial of an application. The final determination order shall be sent by first class, U.S. mail, to the applicant's last known address on file with the institute.

(h) An applicant who disagrees with the institute's board of trustees' final determination order may request administrative review of the final determination order, in accordance with [IC 4-21.5](#).

SECTION 5. As part of the institute staff's investigation, the institute staff shall verify an applicant's eligibility for compensation. The institute staff may request documentation from an applicant including, but not limited to, the following:

- (1) A certified court order of the vacation, reversal, or setting aside of an applicant's criminal conviction, pursuant to [IC 5-2-23](#).
- (2) A document from the governor of Indiana, containing the seal of Indiana, pardoning an applicant, pursuant to [IC 5-2-23](#).
- (3) An executed waiver from an applicant, as required under [IC 5-2-23-4](#).
- (4) Additional information or documentation the institute considers relevant to determine eligibility for compensation under the fund.

SECTION 6. (a) An application, when accepted as complete by the institute staff, shall be investigated by the institute staff to determine eligibility of an applicant's claim.

(b) All applicants under [IC 5-2-23](#) shall cooperate with the institute staff in order to be eligible for compensation from the fund. In the event that such cooperation is refused or denied, the institute staff may, at the discretion of the director, deny an application.

(c) The institute staff may investigate and obtain written verification of all events and claims to the greatest degree possible, including:

- (1) law enforcement agency or agencies that investigated the criminal offense(s);
- (2) other agencies that investigated the criminal offense(s);
- (3) prosecuting attorney or attorneys that charged or prosecuted the criminal offense or offenses;
- (4) trial courts and judicial officers that tried the criminal offense or offenses;
- (5) other courts and judicial officers that were involved with the applicant's exoneration;
- (6) political subdivisions;
- (7) local government(s);
- (8) Indiana parole board or clemency commission;
- (9) Indiana department of correction;
- (10) victims of the criminal offense(s);
- (11) Indiana office of the attorney general;
- (12) identified counsel for any of the above individuals or agencies; or
- (13) other evidence or documentation deemed necessary by the institute staff to determine validity of an application.

(d) Upon receipt of a complete and signed application, along with other forms or documentation requested by the institute staff, the institute staff shall promptly begin the investigation and processing of the application.

(e) Upon completion of the investigation of processing of the application, the institute staff shall prepare a recommendation concerning an application. The recommendation shall state whether an applicant is recommended for approval or denial for compensation from the fund.

(f) All investigations and recommendations by the institute staff shall be considered deliberative and not subject to disclosure under Ind. Code 5-14-3-4(b)(6) [[IC 5-14-3-4\(b\)\(6\)](#)].

(g) All recommendations shall be delivered to the director of the institute, along with all documentation reviewed by the institute staff in making its recommendation. The director shall review the

recommendation. If the director disagrees with the institute staff's recommendation in whole or in part, the director shall remand the application to the institute staff for further investigation.

(h) Upon approval of the institute staff's recommendation by the director, the director's preliminary recommendation shall be referred to the institute's board of trustees. The board of trustees will review the director's preliminary recommendation and documents in support of the director's preliminary recommendation. The institute's board of trustees shall issue a final determination order stating the reason or reasons for approval or denial of an application. The final determination order shall be sent by first class, U.S. mail, to the applicant's last known address on file with the institute.

(i) An applicant who disagrees with the institute's board of trustees final determination order may request administrative review of the final determination order, in accordance with [IC 4-21.5](#).

SECTION 7. This document is effective June 30, 2021.

SECTION 8. This document expires on December 31, 2022.

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Filed with Publisher: May 18, 2021, 12:18 p.m.

Posted: 06/09/2021 by Legislative Services Agency

An [html](#) version of this document.