

**Proposed Rule**  
LSA Document #22-230

DIGEST

Adds [205 IAC 4](#) to establish procedures and processes for the review, investigation, determination, and hearing of applications for compensation filed with the Indiana criminal justice institute in accordance with [IC 5-2-23](#). Effective January 1, 2023.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

**[205 IAC 4](#)**

SECTION 1. [205 IAC 4](#) IS ADDED TO READ AS FOLLOWS:

**ARTICLE 4. RESTITUTION FOR WRONGFULLY INCARCERATED PERSONS**

**Rule 1. General Provisions; Definitions**

**[205 IAC 4-1-1 Purpose](#)**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#)

**Sec. 1. The purpose of this article is to establish procedures and processes for the review, investigation, determination, and hearing of applications filed with the institute in accordance with [IC 5-2-23](#).**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-1](#))*

**[205 IAC 4-1-2 Definitions](#)**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#)

**Sec. 2. The definitions in this rule apply throughout this article.**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-2](#))*

**[205 IAC 4-1-3 "Actually innocent" defined](#)**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23-2](#)

**Sec. 3. "Actually innocent" has the meaning set forth in [IC 5-2-23-2](#).**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-3](#))*

**[205 IAC 4-1-4 "Applicant" defined](#)**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#); [IC 29-3-1-6](#)

**Sec. 4. "Applicant" means an individual, or the individual's guardian, as defined in [IC 29-3-1-6](#), who is filing an application under [IC 5-2-23](#).**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-4](#))*

**[205 IAC 4-1-5](#) "Application" defined**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#)

**Sec. 5. "Application" means an application for compensation and corresponding documentation submitted to the institute under [IC 5-2-23](#).**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-5](#))*

**[205 IAC 4-1-6](#) "Board of trustees" defined**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-6-4](#); [IC 5-2-23](#)

**Sec. 6. "Board of trustees" refers to the board of trustees of the institute under [IC 5-2-6-4](#).**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-6](#))*

**[205 IAC 4-1-7](#) "Institute" defined**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-6-3](#); [IC 5-2-23](#)

**Sec. 7. "Institute" means the Indiana criminal justice institute, as established by [IC 5-2-6-3](#).**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-7](#))*

**[205 IAC 4-1-8](#) "Political subdivision" defined**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#); [IC 36-1-2-13](#)

**Sec. 8. "Political subdivision" has the meaning set forth in [IC 36-1-2-13](#).**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-8](#))*

**[205 IAC 4-1-9](#) "Subcommittee" defined**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#)

**Sec. 9. "Subcommittee" refers to the subcommittee of the board of trustees designated to review applications under this article.**

*(Indiana Criminal Justice Institute; [205 IAC 4-1-9](#))*

**[205 IAC 4-1-10](#) Institute duties**

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#)

**Sec. 10. The institute shall do the following:**

**(1) Prescribe forms for the processing of applications.**

**(2) Review and investigate applications to determine applicants' eligibility for compensation under [IC 5-2-23](#).**

**(3) Issue preliminary recommendations to the subcommittee regarding the approval or denial of applications.**

**(4) Issue to applicants final determinations made by the board of trustees regarding the approval or denial of applications.**

## Rule 2. Application Submission and Investigation

### [205 IAC 4-2-1](#) Application requirements

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#)

**Sec. 1. (a) An application must meet the following requirements:**

**(1) Is submitted according to the timeline in [IC 5-2-23-8](#)(a) and on the form prescribed by the institute, which includes the following information:**

**(A) Name, gender, date of birth, marital status, address, email address, and telephone number of the exoneree.**

**(B) Name, address, email address, telephone number, and relationship of the applicant to the exoneree if the applicant is not the exoneree.**

**(C) The cause number of the original case, court of jurisdiction, date of conviction, type of crime convicted of, time of incarceration post-conviction, and date the conviction was reversed, vacated, pardoned, or set aside.**

**(D) Information regarding the exoneration, including:**

**(i) the form of exoneration (sentence vacated, pardon, conviction set aside, conviction reversed, or other);**

**(ii) the cause number of the exoneration case;**

**(iii) the name of the court issuing the exoneration order;**

**(iv) the name of the judicial officer; and**

**(v) whether the case is still pending.**

**(E) Information regarding any civil actions relating to the original conviction, including:**

**(i) whether the exoneree has been awarded or received restitution, damages, or any other monies in connection with the exoneration;**

**(ii) the cause number;**

**(iii) the name of the court;**

**(iv) the name of the judicial officer;**

**(v) the amount of the award;**

**(vi) whether the case is still pending;**

**(vii) whether the settlement is confidential; and**

**(viii) any other cases related to the exoneree's conviction.**

**(2) Includes the following documentation:**

**(A) A certified order of conviction.**

**(B) A certified order of sentencing.**

**(C) A chronological case summary.**

**(D) A certified order vacating, reversing, or setting aside the conviction (if applicable).**

**(E) An official pardon from the governor containing the seal of the state of Indiana pardoning the applicant of the conviction (if applicable).**

**(F) Any settlement, damages, or restitution orders (if applicable).**

**(G) Any documentation or information illustrating that the applicant meets the definition of "actually innocent" as set forth in [IC 5-2-23-2](#).**

**(H) Any additional documentation or information that the applicant may want the institute to consider in determining the applicant's eligibility for compensation.**

**(3) Contains a completed release and waiver of liability as set forth in [IC 5-2-23-4](#).**

**(4) Contains a certification that the applicant is actually innocent as defined by [IC 5-2-23-2](#).**

**(5) Is executed and certified by the applicant.**

**(6) Is filed and submitted with the institute in person or by fax, U.S. mail, or express courier service.**

**(b) Applications shall be reviewed by the institute staff to ensure completeness. If an application is determined to be incomplete by the institute staff, written notice shall be provided to the applicant identifying what additional information must be provided to consider the application complete.**

**(c) An applicant shall provide the institute with any additional documentation or information within**

sixty (60) days of the institute's request. The applicant may request additional time to supply the institute with the requested documentation or information, but an extension of time may not exceed one hundred twenty (120) days, absent a showing of good cause by the applicant.

(d) An application considered to be incomplete due to the applicant's failure to provide additional documentation or information within the time frame specified in subsection (c) may be denied at the institute's discretion.

(Indiana Criminal Justice Institute; [205 IAC 4-2-1](#))

#### [205 IAC 4-2-2](#) Application investigation

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#)

Sec. 2. (a) Once an application is complete, the institute staff shall begin its investigation to determine the applicant's eligibility for compensation.

(b) During the course of its investigation, the institute staff may contact the applicant to request other relevant documentation the institute believes is necessary to determine the applicant's eligibility for compensation.

(c) During the course of its investigation, the institute staff may obtain additional information regarding the application by contacting interested parties, including but not limited to, the following:

- (1) The law enforcement agency or agencies that investigated the criminal offense or offenses.
- (2) Other agencies that investigated the criminal offense or offenses.
- (3) The prosecuting attorney's office in the county where the criminal offense or offenses were charged or prosecuted.
- (4) The prosecutor or prosecutors that charged or prosecuted the criminal offense or offenses, if no longer employed by the prosecuting attorney's office specified in subdivision (3).
- (5) The attorney or attorneys that represented the applicant in any criminal or civil proceeding related to the criminal offense or offenses.
- (6) Trial courts and judicial officers that tried the criminal offense or offenses.
- (7) Other courts and judicial officers that were involved with the applicant's criminal proceedings.
- (8) Political subdivisions.
- (9) Local government or governments.
- (10) The Indiana parole board or clemency commission.
- (11) The Indiana department of correction.
- (12) The Indiana office of the attorney general.
- (13) The Indiana state public defender.
- (14) Victims of the criminal offense or offenses.
- (15) Identified counsel for individuals or agencies listed in subdivisions (1) through (14).
- (16) Other individuals or entities considered necessary by the institute to determine an applicant's eligibility for compensation.

(Indiana Criminal Justice Institute; [205 IAC 4-2-2](#))

### Rule 3. Eligibility Determinations

#### [205 IAC 4-3-1](#) Preliminary recommendation

Authority: [IC 5-2-23-9](#)

Affected: [IC 5-2-23](#); [IC 5-14-3-4](#)

Sec. 1. (a) Once the institute completes its review and investigation, the institute staff shall prepare a preliminary recommendation concerning an application. The recommendation shall state whether an application is recommended for approval or denial. The institute's preliminary recommendation shall be considered deliberative and confidential, and not subject to disclosure under [IC 5-14-3-4\(b\)\(6\)](#).

(b) The institute's preliminary recommendation shall be referred to the subcommittee for discussion and deliberation. Upon completion of the subcommittee's discussion and deliberation, the subcommittee shall either accept the institute's recommendation or adopt its own recommendation.

(Indiana Criminal Justice Institute; [205 IAC 4-3-1](#))

#### **[205 IAC 4-3-2](#) Final determination and appeal rights**

Authority: [IC 5-2-23-9](#)

Affected: [IC 4-21.5](#); [IC 5-2-23](#)

Sec. 2. (a) The subcommittee shall present its recommendation to the board of trustees for final determination. The board of trustees' final determination shall state the reason or reasons for approval or denial of an application and shall be sent via first class U.S. mail to the applicant.

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

(Indiana Criminal Justice Institute; [205 IAC 4-3-2](#))

#### **[Notice of Public Hearing](#)**

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