

ARTICLE 6. CRIMINAL HISTORY RECORD INFORMATION

Rule 1. Release of Criminal History Record Information (Repealed)

(Repealed by State Police Department; filed Mar 6, 1984, 2:47 pm: 7 IR 813)

Rule 1.1. Criminal History Record Information

240 IAC 6-1.1-1 Applicability of rule

Authority: IC 10-11-2-10; IC 10-13-3

Affected: IC 4-1-6; IC 5-14-3

Sec. 1. The following rules and regulations [240 IAC 6-1.1], when promulgated, shall govern the collection, release and review of criminal history record information from the central repository of the Indiana state police department. *(State Police Department; 240 IAC 6-1.1-1; filed Mar 6, 1984, 2:47 pm: 7 IR 810; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935)*

240 IAC 6-1.1-2 Definitions

Authority: IC 10-11-2-10; IC 10-13-3

Affected: IC 4-1-6; IC 5-14-3

Sec. 2. (a) "Criminal justice agency" for these purposes shall mean:

(1) Courts

(2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

Included in this definition are the following:

(A) enforcement officers

(B) prosecutors

(C) authorized probation officers

(D) correctional institutions

(b) "Department" means the Indiana state police department.

(c) "Criminal history record information" means information collected by criminal justice agencies and maintained in a manual or automated file on individuals consisting of identifiable descriptions and notations of arrests, detention, indictment, or other formal criminal charge, and any disposition arising therefrom, including sentencing, correctional supervision, and release. Essentially, to qualify for inclusion in the definition, the individual records so assembled must contain both:

(1) Identification descriptions sufficient to identify the subject of the record.

(2) Notations regarding any formal criminal justice transactions involving the identified individual.

(d) "Disposition" means information disclosing that criminal proceedings have been concluded.

(e) "Executive order" means an order of the chief executive of the state which has the force of law and which is published in a manner permitting regular public access thereto.

(f) "Council" means the security and privacy council created under HEA 1041.

(g) "Limited criminal history" means information with respect to any arrest, indictment, information, or other formal criminal charge, which must include a disposition. However, information about any arrest, indictment, information, or other formal criminal charge which occurred less than one (1) year before the date of a request shall be considered a limited criminal history even if no disposition has been entered.

(h) "Inspection" means visual perusal and includes the right to make memoranda abstracts of the information.

(i) "Release" means the furnishing of a copy, or edited copy, of criminal history data.

(j) "Reportable offenses" means all felonies and those Class A misdemeanors which the superintendent may designate.

(k) "Request" means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:

(1) reasonably insures the identification of the subject of the inquiry; and

(2) contains a statement of the purpose for which the information is requested.

(State Police Department; 240 IAC 6-1.1-2; filed Mar 6, 1984, 2:47 pm: 7 IR 810; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935)

240 IAC 6-1.1-3 Collection and release of information

Authority: IC 10-11-2-10; IC 10-13-3

Affected: IC 4-1-6; IC 5-14-3

Sec. 3. (a) The department or any other criminal justice agency may provide criminal history record information to, or receive criminal history record information from, any other criminal justice agency as follows:

(1) Upon promulgation of these rules and regulations [240 IAC 6-1.1], no criminal history record information shall be released by the department to any noncriminal justice organization or individual except as permitted by these regulations [240 IAC 6-1.1], federal and state statute, court order, executive order, or pursuant to a specific user agreement.

(2) The department may maintain an authorized dissemination list, of all persons and/or agencies authorized to receive criminal history record information.

(b) A noncriminal justice organization or individual requesting limited criminal history must complete a request form and tender the necessary fee.

(c) When disseminating criminal history record information to noncriminal justice organizations and individuals, the department shall edit the criminal history record information so that the recipient receives only that data to which he is entitled.

(d) When disseminating criminal history record information, the department shall maintain a record showing the organization or individual to whom the information is disseminated, reason for or authority of release, the date of dissemination, the record subject and the items released.

(e) The limitations on dissemination stated in this chapter [240 IAC 6-1.1] shall not apply to any of the following:

(1) wanted person posters or announcements

(2) original records of entry, such as a police blotter

(3) court records of public proceedings

(4) published court or administrative opinions or public, judicial, administrative, or legislative proceedings

(5) records of traffic offenses maintained by the bureau of motor vehicles

(6) announcements of executive clemency

(f) Nothing in this chapter [240 IAC 6-1.1] shall prevent the department from making public announcements concerning individuals within the custody of, and/or, under the supervision of, the department. Nothing in this chapter [240 IAC 6-1.1] shall prevent the department from making a general public announcement concerning the progress of an ongoing investigation.

(g) The department may compile and disseminate statistical reports derived from criminal history record information, provided individual identities are not ascertainable. (*State Police Department; 240 IAC 6-1.1-3; filed Mar 6, 1984, 2:47 pm: 7 IR 810; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935*)

240 IAC 6-1.1-4 Contents of records

Authority: IC 10-11-2-10; IC 10-13-3

Affected: IC 4-1-6; IC 5-14-3

Sec. 4. (a) Content of criminal history record information shall be confined to the following:

(1) Criminal history record information shall be understood to be confined to that generally contained in "rap sheets". That is to say, such information shall be confined to a recording of personal identifying facts based on fingerprints and of the results of an arrested individuals movement through the various formal stages of the criminal justice process, from arrest through trial, if any, disposition and release.

(2) The following rules apply to criminal history record information:

(A) Individual record information entered in a persons file shall be relevant to the purpose for which the file was created.

(B) Misdemeanors, other than selected Class A's, drunk, and traffic records where the case did not result in imprisonment or probation supervision shall not be entered in criminal history record files, though may be kept in a noncriminal history file, unless a second or subsequent conviction would result in a felony violation.

(*State Police Department; 240 IAC 6-1.1-4; filed Mar 6, 1984, 2:47 pm: 7 IR 811; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935*)

240 IAC 6-1.1-5 Review of information by subject of record

Authority: IC 10-11-2-10; IC 10-13-3

Affected: IC 4-1-6; IC 5-14-3

Sec. 5. (a) Each individual shall have the right to review manual or automated criminal history record information relating to him. The department (central repository) shall make available facilities and personnel necessary to permit such reviews. Such reviews shall be conducted in accordance with the following procedure:

(1) Such reviews shall occur only within the facilities of the department, central repository, and only under the supervision and in the presence of a designated employee or agent of the department. The files and records made available to the individual, shall not be removed from the premises of the department.

(2) Such reviews may, at the discretion of the department, be limited to ordinary daylight business hours, excluding weekends and holidays. Such reviews shall be permitted only after payment of the required fee for review and copy and after proper verification that the requesting individual is the subject of the criminal history record information which he seeks to review.

(3) Such reviews shall be permitted an individual or his legal representative or legal counsel only after proper verification that the requesting individual is the subject of the criminal history record information which he seeks to review. A legal representative or legal counsel shall have proper notarized legal documentation as to his capacity to represent such individual.

(4) A record of each such review shall be maintained by the department. Each record of such review shall be completed and signed by the supervisory employee or agent present at the review. The form shall include a recording of the name of the reviewer, the date of the review and whether or not any exception was taken to the accuracy, completeness or content of the information reviewed.

(5) The reviewing individual may make written summary or note in his own handwriting of the information reviewed, and may take with him such notes. Such individuals may make a copy of the original.

(6) Each reviewing individual shall be informed of his rights to challenge under these regulations [240 IAC 6-1.1]. Each such individual shall be informed that he may submit written exceptions as to the information, content, completeness or accuracy to the criminal justice agency who originated the information.

(7) Should the individual elect to submit such exceptions to central repository files, he shall be furnished the appropriate forms and a copy of that portion which he wishes to challenge. The individual shall record on the exception form that portion of the record which he challenges and the reason for such challenge. One copy of the form shall be forwarded to the review officer of the department, the second copy shall be forwarded to the hearing committee chairman and the third copy shall be retained by the central repository. The department shall in each such case cause to be conducted a review as established in the procedures for challenges to the accuracy or completeness of criminal history record information. The individual shall be informed in writing of the results of the review. Should the audit disclose errors or omissions in the information, the department shall cause appropriate alterations or additions to be made to the information and upon request shall cause notice of such alterations or additions to be given to the individuals involved, and any other departments in this or any other jurisdiction to which that criminal history record information has previously been disseminated. Upon request, the individual will be provided a list of all noncriminal justice agencies to which this information has been disseminated.

(State Police Department; 240 IAC 6-1.1-5; filed Mar 6, 1984, 2:47 pm; 7 IR 811; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935)

240 IAC 6-1.1-6 Challenge of information; review by hearing committee

Authority: IC 10-11-2-10; IC 10-13-3

Affected: IC 4-1-6; IC 5-14-3

Sec. 6. (a) Any person who believes that criminal history record information which refers to him is inaccurate, or incomplete, must request the originating criminal justice agency in this state to modify, or supplement that information. Should the originating department be the Indiana state police and should the Indiana state police decline or fail to act, or should the individual believe a decision pertaining to his criminal history to be otherwise unsatisfactory, the individual may request review by the hearing committee.

(1) The hearing committee shall consist of a chairman, and two other members appointed by the superintendent of state police from within that department.

CRIMINAL HISTORY RECORD INFORMATION

(b) Such request to the committee shall be in writing. Each request shall include a concise statement of the alleged deficiencies of the criminal history record information, shall state the date and result of any review by the department, and shall append a sworn verification of the fact alleged in the request signed by the individual.

(c) Upon receipt of each such request, the review officer shall examine the criminal history record information in question and provide the committee a written summary of his review and findings.

(d) The review officer, selected by the superintendent from among his staff, shall, upon the basis of the request and/or the summary and any other statements or documents provided by the individual or by the department, determine whether there is prima facie *[sic.]* evidence that the criminal history record information is inaccurate, or incomplete. Should the review officer find that there is no such evidence, the individual may appeal the decision to the committee. Should the review officer find that there is such evidence, the committee shall review the summary, statements and/or documents and issue findings.

The individual may challenge for cause any members of the committee. Each such challenge shall be decided by a majority vote of the full committee. "All hearings will take place in Marion County, Indianapolis, Indiana at a location designated by the committee."

(e) The committee may require the individual or the department to file written statements, arguments or documentary materials. It may impose such reasonable time requirements for these purposes as it deems appropriate. Unless the individual waives in writing his right to a hearing, the committee shall conduct a public hearing at which the individual may appear with counsel, may present evidence, and may examine and cross examine witnesses. Hearings may be conducted in an informal manner and without recourse to the technical common-law rules of evidence required in proceedings in judicial courts, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact if substantial, reliable and probative evidence supports such determination.

(f) The committee shall issue written findings and conclusions, in which any relief to which it believes the individual is entitled shall be fully and specifically described. Findings and conclusions, shall be adopted by a majority vote of the committee and furnished to all parties involved. (*State Police Department; 240 IAC 6-1.1-6; filed Mar 6, 1984, 2:47 pm: 7 IR 812; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935*)

240 IAC 6-1.1-7 Appeals from hearing committee

Authority: IC 10-11-2-10; IC 10-13-3

Affected: IC 4-1-6; IC 4-21.5; IC 5-14-3

Sec. 7. (a) Should the individual or department with custody or control of the information in question believe the findings or conclusions of the committee to be unsatisfactory, the individual or department must seek relief from the civil courts in this state in accordance with procedures outlined in the Administrative Adjudication Act, IC 4-22-1 *[Repealed by P.L.18-1986, SECTION 2. See IC 4-21.5.]*.

(b) Where the final disposition of a request includes an order that criminal history record information be modified, or supplemented, that order shall be promptly communicated by the committee to the department who will take the appropriate action. The department shall in each such case promptly transmit the terms of the order to all criminal justice agencies within this state to which that criminal history record information has previously been disseminated. Upon request, the individual will be provided a list of all noncriminal justice agencies to which this information has been disseminated.

(c) Records challenged under the provisions of these regulations *[240 IAC 6-1.1]* shall be deemed to be accurate, complete and valid until otherwise ordered by the committee or until adjudicated by a court of law. (*State Police Department; 240 IAC 6-1.1-7; filed Mar 6, 1984, 2:47 pm: 7 IR 813; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935*)

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