

## ARTICLE 5. RELEASE AUTHORITY FOR JUVENILES

### Rule 1. Release Procedure

#### 210 IAC 5-1-1 Definitions; administrative procedures

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-13-6

Sec. 1. (a) The following definitions and administrative procedures shall be applicable in the operation of the releasing authority for juveniles:

- (1) "Administrative review committee" shall make all decisions relating to the release of juveniles to community supervision.
- (2) "Chairperson" means the chairperson of the administrative review committee or the community supervision revocation committee.
- (3) "Commissioner" means the chief executive of the department.
- (4) "Commitment" means an order of a juvenile court placing a juvenile in the care, custody, and wardship of the department.
- (5) "Community supervision" means the conditional release of a juvenile before the time of a mandatory and unconditional discharge from a commitment.
- (6) "Community supervision revocation committee" shall conduct all community supervision revocation hearings.
- (7) "Community supervision revocation hearing" means a formal hearing afforded by the department to determine if a violation of the conditions of community supervision has occurred.
- (8) "Community supervision violation" means noncompliance with a condition of community supervision by the juvenile.
- (9) "Community supervision violator" means a juvenile who has violated a condition of community supervision.
- (10) "Department" means the department of correction.
- (11) "Director, juvenile transition program" means the person responsible for the day-to-day casework monitoring of all juveniles in the community, approving all special conditions of the community supervision release agreement, and the commissioner's designee to release all juveniles from contract facilities.
- (12) "Discharge" means an unconditional release of a juvenile from a commitment.
- (13) "Field staff" means department employees who supervise juveniles in the community.
- (14) "Hearing officer" means the administrative officer who conducts a preliminary hearing.
- (15) "Juvenile" means a delinquent child, which is a person who is adjudged delinquent by a juvenile court and committed to the department of correction. This definition shall be deemed to include status juveniles.
- (16) "Placement" means the place of residence of the juvenile upon release.
- (17) "Preliminary hearing" means a hearing to determine whether probable cause exists to believe that a violation of a community supervision condition has occurred.
- (18) "Review" means a hearing granted by the administrative review committee for a juvenile who has not met institutional criteria for release recommendation.
- (b) The requirements for the administrative review committee shall be as follows:
  - (1) The administrative review committee shall be comprised of four (4) members. The chairperson shall be the facility superintendent or designee and the other three (3) members shall be from the education department, treatment department, and custody department as designated by the commissioner.
  - (2) All decisions of the administrative review committee shall be unanimous.
  - (3) The administrative review committee shall meet in accordance with a schedule approved by the chairperson.

*(Department of Correction; 210 IAC 5-1-1; filed Apr 17, 1985, 9:45 am; 8 IR 1125; readopted filed Nov 15, 2001, 10:42 a.m.: 25 IR 1269; filed Jun 17, 2003, 9:25 a.m.: 26 IR 3544)*

#### 210 IAC 5-1-2 Release recommendation by the facility; committee criteria for granting release

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-8-5; IC 11-13-6

Sec. 2. (a) Criteria for community supervision shall be based on the following:

- (1) The committing offense.
- (2) Facility adjustment.

(3) Achievement of treatment goals established according to the juvenile's individual risk and needs.

The treatment staff shall review the juvenile's progress at regular intervals. Upon completion of facility requirements as approved by the facility head, the juvenile shall be recommended for community supervision consideration to the facility administrative review committee.

(b) Requirements for discharge from commitment shall be as follows:

(1) Determinate sentence juveniles shall be discharged by the administrative review committee in accordance with the commitment order.

(2) Juveniles who are at least eighteen (18) years of age may be considered for community supervision or discharge by the administrative review committee.

(c) The commissioner, pursuant to authority vested in him or her under IC 11-8-2-5(b)(2), may designate the authority to release or discharge juveniles from commitment. When a release from commitment is by discharge, the commissioner, or his or her designee, shall certify the discharge to the clerk of the committing court.

(d) The commissioner shall designate a person or persons to:

(1) release juveniles from a contract facility via community supervision or discharge; and

(2) discharge all juveniles from community supervision.

*(Department of Correction; 210 IAC 5-1-2; filed Apr 17, 1985, 9:45 am; 8 IR 1125; readopted filed Nov 15, 2001, 10:42 a.m.: 25 IR 1269; filed Jun 17, 2003, 9:25 a.m.: 26 IR 3545)*

### **210 IAC 5-1-3 Community supervision or discharge; consideration, reviews, denials, conditions statement**

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-8-5; IC 11-13-6

Sec. 3. (a) The administrative review committee shall review the treatment team's recommendations regarding the juvenile's progress in treatment and interview the juvenile to determine release to community supervision or discharge, whichever is appropriate. A juvenile who has not received a facility recommendation for community supervision shall be reviewed by the administrative review committee at least every twelve (12) months.

(b) A juvenile under consideration for community supervision or discharge shall be afforded the following:

(1) At least seven (7) days' (excluding Saturday, Sunday, or holidays) advance written notice that he or she is being considered for community supervision or discharge.

(2) Access to records and reports to be considered by the committee making the release determination in accordance with IC 11-8-5.

(3) An opportunity to appear before the committee, speak in his or her own behalf, and present documentary evidence.

(c) In all cases where community supervision is denied, the chairperson shall give the juvenile written notice of the denial and the reason or reasons for the denial including the following:

(1) No juvenile may be denied community supervision solely on the basis that appropriate placement is not available in the community to which he or she will return.

(2) The committee shall provide written notice to the juvenile that he or she has the right to appeal the administrative review committee decision.

(d) When a juvenile is released to community supervision, he or she shall be given a written statement of the community supervision conditions imposed by the department. Signed copies of this statement shall be forwarded to any person charged with his or her supervision and retained by the department including the following:

(1) The conditions shall be signed by the chairperson of the administrative review committee or the director of the juvenile transition program.

(2) The administrative review committee shall explain the conditions of community supervision to the juvenile, the juvenile shall acknowledge receipt of the conditions by his or her signature, and the juvenile's signature shall be witnessed.

(3) The community supervision conditions for juveniles released from juvenile facilities shall be as follows:

(A) I will report to my supervising field staff by telephone within twenty-four (24) hours of arrival at my approved residence unless I have received other written instructions.

(B) I understand it is my responsibility to maintain contact with my field staff by making myself available through home visits, office visits, school visits, work visits, telephone contacts, and written reports as directed. I understand that my

field staff has the authority to search or inspect my person or personal property without a search warrant at any time.

(C) I will obey all federal, state, and local laws.

(D) I understand that I must immediately notify my field staff any time I am arrested, ticketed, or contacted by any law enforcement agent.

(E) I agree not to use or possess alcohol or any controlled substance. I agree not to remain at any place where alcohol or controlled substances are present and being illegally consumed.

(F) I understand that I may not, at any time, possess a firearm, loaded or unloaded, knife, weapon, or any other device, equipment, chemical substance, or other material that could be used to cause harm or serious bodily injury to another person.

(G) I agree not to associate with persons adjudicated or convicted of a criminal offense including any person currently on parole or probation unless authorized by my field staff.

(H) I understand that I must obtain written permission from my field staff to purchase a motorized vehicle (automobile, truck, motorcycle, or moped) or obtain an identification card, beginner's driving permit, or driver's license.

(I) I will be at my approved residence during curfew hours and during the hours designated by my parent or guardian and field staff unless I have obtained permission in advance to be at another location.

(J) I understand that I must obtain written permission from my field staff before leaving Indiana for any reason, for example, day visit, holiday visit, family illness, funeral, or vacation. Verbal permission from field staff shall be obtained for travel within Indiana.

(K) I agree to:

(i) participate in an approved educational or vocational school program; or

(ii) be gainfully employed when work is available or participate in an approved community service program.

(L) I understand that I must notify my field staff if I am unable to fulfill my obligations for employment, community service project assignment, or educational or vocational school program.

(M) I understand that "Placement Failure", the need for emergency medical, psychiatric, or psychological evaluation, or any life-threatening situation may be cause for a temporary return to a facility.

(N) I will comply with all orders and special conditions imposed by the department. Additional terms and conditions of community supervision may be added at any time during the community supervision period upon recommendation of the field staff and approval of the director of the juvenile transition program.

(4) The administrative review committee may impose special conditions to community supervision. The juvenile shall be given notice of and a copy of these conditions. A copy of these conditions shall be placed in the official record of the applicable juvenile.

(5) The commissioner's designee shall be authorized to impose special conditions on juveniles upon the request of the field staff supervising that juvenile. The juvenile shall be given notice of and a copy of these conditions. A copy of these conditions shall be placed in the official record of the applicable juvenile.

(6) The administrative review committee shall inform the juvenile that he or she has the right to appeal the decision of the administrative review committee to the commissioner's designee in writing within seven (7) calendar days.

*(Department of Correction; 210 IAC 5-1-3; filed Apr 17, 1985, 9:45 am; 8 IR 1126; readopted filed Nov 15, 2001, 10:42 a.m.; 25 IR 1269; filed Jun 17, 2003, 9:25 a.m.; 26 IR 3545)*

#### **210 IAC 5-1-4 Community supervision revocation**

Authority: IC 11-13-6-2

Affected: IC 11-8-2-5; IC 11-13-6; IC 33-1-7-2

Sec. 4. (a) Procedure for conducting preliminary hearings are *[sic., is]* as follows:

(1) Field staff shall submit a written report of the alleged community supervision violation or violations to the commissioner's designee when there is reasonable belief to believe the juvenile has violated a condition of community supervision.

(2) The commissioner's designee shall review the report of alleged violation or violations and determine whether or not a warrant should be issued. If a warrant is issued, a hearing officer shall conduct a preliminary hearing. The commissioner, by the authority vested in him or her under IC 11-8-2-5(b), may delegate his or her authority to issue warrants.

(3) The hearing officer shall be impartial and have no involvement in the reporting or investigation of the alleged violation

or violations.

(4) The hearing officer shall provide the juvenile and his or her parents, guardians, or custodians written notice of the following:

- (A) The date, time, and place of the hearing.
- (B) The community supervision condition or conditions alleged to have been violated.
- (C) The procedures and rights applicable to that hearing.
- (D) If probable cause is found to exist, his or her right to a revocation hearing and the procedures and rights applicable to that hearing.
- (E) The possible sanctions if a violation is found.

(5) In connection with the preliminary hearing, the juvenile is entitled to the following:

- (A) Appear and speak in his or her own behalf.
- (B) Call witnesses and present documentary evidence.
- (C) Confront and cross-examine witnesses unless the hearing officer finds that to do so would subject the witness to a substantial risk of harm.
- (D) A written statement of the findings of fact and the evidence relied upon.

(6) The juvenile's parents, guardians, or custodians are entitled to be present at the hearing.

(7) If the hearing officer determines that probable cause does not exist to believe the juvenile violated a condition of community supervision, the charge shall be dismissed.

(8) If the hearing officer determines from the evidence presented that there is probable cause to believe that the juvenile violated a condition of community supervision, but the hearing officer does not believe that there is sufficient reason for return to the facility, the hearing officer may continue the juvenile on community supervision pending the community supervision revocation hearing. Any special condition imposed by the hearing officer as a result of continued placement on community supervision shall be discussed with, and approved by, the commissioner's designee, prior to its imposition.

(9) If the hearing officer determines from the evidence presented that there is probable cause to believe that the juvenile violated a condition of his or her community supervision and the juvenile should be confined pending a revocation hearing, the juvenile shall be arrested on the department's warrant and returned to a juvenile facility pending a community supervision revocation hearing.

(10) In a case where the alleged violation of community supervision is based on a criminal conviction or a delinquency adjudication, the preliminary hearing need not be held.

(11) Unless good cause for the delay is established in the record of the preliminary hearing, the community supervision violation charge shall be dismissed if the preliminary hearing is not held within ten (10) days after the date of arrest on the department's warrant.

(b) Procedures for conducting community supervision revocation hearings are as follows:

(1) The community supervision revocation hearing shall be presided over by the commissioner's designee and two (2) members designated by the facility superintendent. The commissioner's designee shall serve as chairperson. The committee shall meet in accordance with a schedule established by the chairperson.

(2) A juvenile confined at a juvenile facility due to an alleged community supervision violation shall be afforded a community supervision revocation hearing by the community supervision violation committee within sixty (60) days of his or her arrest on the department's warrant.

(3) An alleged community supervision violator who is not confined prior to the community supervision revocation hearing shall be afforded a hearing within one hundred eighty (180) days after the order was issued for his or her appearance at the community supervision revocation hearing or the date of his or her arrest on the community supervision violation warrant, whichever is earlier.

(4) Unless good cause for delay is established in the record of the revocation hearing, the revocation charge shall be dismissed if the revocation hearing is not held within the time limits established in subdivisions (2) and (3).

(5) Within seventy-two (72) hours of a juvenile's return to a juvenile facility (excluding Saturday, Sunday, or holidays) as an alleged community supervision violator, the facility shall notify the juvenile that he or she has the right to be represented by counsel at a revocation hearing and, if indigent, to have counsel appointed for him or her, including the following:

- (A) The juvenile shall sign a statement indicating his or her understanding of the right to counsel and whether he or she desires to have counsel represent him or her at the revocation hearing.

- (B) If the juvenile desires to be represented by counsel, but cannot afford such representation, the housing facility shall notify the public defender's office that the alleged community supervision violator desires counsel at the revocation hearing.
- (6) The housing facility shall provide the juvenile and his or her parents, guardian, or custodian written notice of the revocation hearing at least seven (7) days in advance of the hearing. The written notice shall include the following:
- (A) The date, time, and place of the hearing.
  - (B) The community supervision condition or conditions alleged to have been violated.
  - (C) The procedures and rights applicable to such hearing.
  - (D) The possible sanctions if a violation is found.
- (7) The juvenile shall be afforded those safeguards enumerated in subsection (a)(5) and may offer evidence in mitigation of the alleged violation.
- (8) The juvenile's parents, guardians, or custodians are entitled to be present at the revocation hearing and shall be so advised by the housing facility.
- (9) If it is determined from the evidence presented that the juvenile did not commit a violation of community supervision, the charge or charges shall be dismissed.
- (10) If the committee finds that the juvenile did violate a condition or conditions of community supervision, it may continue the juvenile on community supervision, with or without modifying the conditions, or revoke the community supervision and order the juvenile confined, including the following:
- (A) If the juvenile is continued on community supervision with modified conditions, he or she shall be given written notification of the modification or modifications.
  - (B) If community supervision is revoked, the committee shall inform the juvenile that he or she will be reconsidered for community supervision on a specific date or that he or she will be reconsidered when he or she again completes the facility criteria for release.
- (11) The chairperson shall provide the community supervision violator with a written statement of the reasons for the committee's action if community supervision is revoked. The juvenile has the right to appeal the decision of the community supervision revocation committee.
- (12) The community supervision revocation committee shall consider the following:
- (A) The alleged violator's overall community adjustment including, but not limited to, the following:
    - (i) School or work.
    - (ii) Completion of community supervision goals.
    - (iii) Previous violations committed while on community supervision.
  - (B) The alleged community supervision violator's past juvenile history and the nature of his or her committing offense.
  - (C) The nature of the violation committed by the alleged community supervision violator and the events and circumstances surrounding the violation.
- (13) The community supervision revocation committee shall inform the juvenile that he or she has the right to appeal the decision of the community supervision revocation committee to the commissioner's designee in writing within seven (7) calendar days.

*(Department of Correction; 210 IAC 5-1-4; filed Apr 17, 1985, 9:45 am: 8 IR 1127; readopted filed Nov 15, 2001, 10:42 a.m.: 25 IR 1269; filed Jun 17, 2003, 9:25 a.m.: 26 IR 3548)*

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