

Disclosure of Probation Records

Approved August 2005

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POLICY

The Wells County Probation Department follows rules of confidentiality imposed by local, state, and federal authorities. The records used and maintained by the Wells County Probation Department are the courts' files and are used for supervising the probation of juvenile and adult offenders, and preparing Presentence and Predisposition Reports: unauthorized use of these records for any other purpose is prohibited. The records contained in the Probation Department are considered temporary collections of information, notes, and memorandums for the Court, and not depositories of official court records; therefore, release of any record contained therein will be released only by authorization of the Indiana Supreme Court Administrative Rule 9, the Wells Circuit Court, or Wells Superior Court. Unless otherwise enumerated in this policy, the Court will consider release of any other record when a written request is made to the chief probation officer specifying the record to be released and for what purpose the record will be used. *The Chief Probation Officer, or a designee, shall be responsible for responding to any agency or person requesting information from the Probation Department files.*

PROCEDURES

The Probation Department will generally give written or oral summarizations of any records contained herein but, at its discretion, may provide copies of documents to a requester of records. Anyone requiring certified copies of the authentic records should make their request to the appropriate agency or person.

I. Adult

- 1) The Wells County Probation Department will maintain an *Authorization to Release and Exchange Information* form (Appendix A) for each individual with whom it has an active file. Each authorization shall expire at the conclusion of the subject's involvement with this department. The authorization will allow the probation department to exchange information with any agency or person deemed appropriate, by the probation department, for the supervision or investigation of the subject.

- 2) The Wells County Probation Department will maintain an *Authorization for Release of Information: Mental Health/Substance Abuse* form (Appendix B) for each individual with whom it has an active file, and who has been ordered to participate in mental health or substance abuse counseling. Each authorization shall expire at the conclusion of the subject's involvement with this department. The authorization shall allow the probation department to exchange information with the courts, prosecuting attorney, and the subject's attorney for the purpose of reporting on the subject's diagnosis and status with treatment.
- 3) The Court has authorized the following records to be released to an agency or person, as deemed appropriate by the Probation Department, when the agency or person presents a written request for specific information, and the request is accompanied by a valid consent to release confidential information:
 - i) Drug test results;
 - ii) Indication that the person satisfied or failed to satisfy a condition of probation requiring participation in a mental health or substance abuse program (and all records if the release specifically authorizes substance abuse or mental health records);
 - iii) Probation conditions;
 - iv) Redacted law enforcement reports;
 - v) Redacted presentence reports;
 - vi) Court case summaries, orders, motions, petitions, affidavits, and informations;
 - vii) Offender's name, offense, conviction date, and supervision release date, case notes; and,
 - viii) Personal identification information (social security number, date and place of birth, address, phone number, physical description).
- 4) The Court has authorized the following records to be released to the Wells County prosecuting attorney's office and victims assistant, the offender, the offender's attorney, a probation department, law enforcement agency, and/or the community corrections department upon written request (verbal request may be permitted if requestor is familiar to this department) stating that the information will be used for the purpose of juvenile/criminal proceedings or activity involving the offender:
 - i) Probation conditions;
 - ii) Indication that the person satisfied or failed to satisfy a condition of probation requiring participation in a mental health or substance abuse program;
 - iii) Law enforcement reports;
 - iv) Court case summaries, orders, motions, petitions, affidavits, and informations;
 - v) Offender's name, offense, conviction/adjudication date, and supervision release date, case notes;
 - vi) Health insurance information; and,
 - vii) Personal identification information (social security number, date and place of birth, address, phone number, physical description).
 - viii) Presentence reports
 - a) to law enforcement agencies only when complying with IC 11-8-8-9 [*Sex Offender Registry*]
 - b) to probation departments only when the request is for the preparation of a presentence report.

- 5) The following information is public information and may be released to any person requesting information, whether or not a valid release form is available:
- i) Adult offender's name, offense, conviction date, and probation release date; and,
 - ii) Court case summaries and orders.

II. Juveniles

- 1) The Wells County Probation Department will maintain an *Authorization to Release and Exchange Information* form (Appendix A) for each individual with whom it has an active file. Each authorization shall expire at the conclusion of the subject's involvement with this department. The authorization shall allow the probation department to exchange information with any agency or person deemed appropriate, by the probation department, for the supervision or investigation of the subject.
- 2) The Wells County Probation Department will maintain an *Authorization for Release of Information: Mental Health/Substance Abuse* form (Appendix B) for each individual with whom it has an active file, and who has been ordered to participate in mental health or substance abuse counseling. Each authorization shall expire at the conclusion of the subject's involvement with this department. The authorization shall allow the probation department to exchange information with the courts, prosecuting attorney, and the subject's attorney to report on the subjects' diagnosis and status with treatment.
- 3) The Wells County Probation Department will maintain an *Authorization for Release of Information: Mental Health/Substance Abuse* form (Appendices C and D) for each individual with whom it has an active file, and who has an order to participate in mental health or substance abuse counseling. Each authorization shall expire at the conclusion of the subject's involvement with this department. The authorization shall allow the probation department to exchange information with the Department of Family and Children, Division of Family Resources, treatment program, residential facility, or detention center to report on the subject's diagnosis and status with treatment.
- 4) The Court has authorized the following records to be released to an agency or person, as deemed appropriate by the Probation Department, when the agency or person presents a written request for specific information, and the request is accompanied by a valid consent to release confidential information:
 - i) Drug test results;
 - ii) Indication that the person satisfied or failed to satisfy a condition of probation requiring participation in a mental health or substance abuse program (and all records if the release specifically authorizes substance abuse or mental health records);
 - iii) Probation conditions;
 - iv) Redacted law enforcement reports;
 - v) Redacted predisposition, preliminary inquiry, and status/progress reports;
 - vi) Court case summaries, orders, motions, petitions, affidavits, and informations;

Disclosure of Probation Records (Confidentiality)

- vii) Offender's name, offense, conviction date, and supervision release date, case notes; and,
 - viii) Personal identification information (social security number, date and place of birth, address, phone number, physical description).
- 5) The Court has authorized the following records to be released to the prosecuting attorney's office, the victim's assistant's office, offender, the offender's attorney or guardian ad litem, the juvenile's parent (or guardian, custodian), a probation department, law enforcement agency, community corrections department, juvenile detention/placement facility, Indiana Department of Correction, the Department of Child Services, Division of Family Resources, and/or any "persons to determine appropriateness of certain out-of-home placements" if a written request (verbal request may be permitted if requestor is familiar to this department) is made stating that the information will be used for the purpose of juvenile/criminal proceedings or activity involving the offender, or after a reasonable effort was made to obtain a signed *Authorization to Release and Exchange Information* form and the information will be used for determining an appropriate disposition:
- i) Predisposition, Preliminary Inquiry, and status/progress reports;
 - ii) Indication that the person satisfied or failed to satisfy a condition of probation requiring participation in a mental health or substance abuse program;
 - iii) Probation and informal adjustment conditions;
 - iv) Law enforcement reports;
 - v) Court case summaries, orders, motions, and petitions;
 - vi) Child's name, offense, adjudication date, and supervision release date, case notes;
 - vii) Health insurance information; and,
 - vii) Personal identification information (social security number, date and place of birth, address, phone number, physical description).

III. Filing Confidential Information with the Court (Green Paper Rules)

Whenever the Probation Department enters documents into the courts' records, it will discern which information is confidential as described by law and Supreme Court Rule, and take precautions to protect confidential information. Confidential information, as described by the Indiana Supreme Court in Public Access to Court Records Handbook will be appropriately redacted by either blacking out selected information or by replacing the entire document with the prescribed form (Appendix E).

- 1) Adult (Confidential information to be redacted includes defendant's Social Security No., drug test, psychological tests, victim's/witnesses' Social Security No., address, phone numbers, date of birth and other information specifically identifying them)
 - i) Presentence Reports shall be filed in the courts on light green paper. All copies to parties (prosecutor, defense attorney, defendant, judge's working copy) will be on white paper.
 - ii) Violation and Modification Petitions shall be on white paper if no part of the petition or attachments are confidential. If the petition includes any confidential information, a redacted copy will be filed and accompanied by an un-redacted copy on green.
 - iii) Restitution Petitions shall be filed with a redacted copy, accompanied by an un-redacted copy on green.

2) Juvenile

- i) Predispositional and Progress Reports shall be filed in the court on light green paper. All copies to parties (i.e., prosecutor, defense attorney, juvenile, guardian ad-litem) will be on white paper.
- ii) Preliminary Inquiries (including attachments) requesting a Petition for Delinquency shall be submitted as an un-redacted copy on green.
- iii) Preliminary Inquiries requesting a Program of Informal Adjustment shall be submitted to the court on white paper and un-redacted.
- iv) Modification Petitions shall be on white paper if no part of the petition or attachments are confidential. If the petition includes any confidential information, a redacted copy will be filed and accompanied by an un-redacted copy on green paper.
- v) Parental Participation Petitions shall be filed un-redacted on white paper.

IV. Response to Requests

When a request is made for the records of the Wells County Probation Department, a written response will be made within a reasonable time after receiving the request. Response templates contained in the department files should be used in response; however, oral responses may be made to probation departments and other agencies with whom this department frequently interacts.

As a courtesy, and subject to the conditions of this policy and other applicable laws and rules, a request for a comprehensive criminal history in Wells County will be provided as department resources permit.

The Chief Probation Officer will respond to all **closed** files contained within the Probation Department, and Probation Officers may respond to **open** files under their supervision. If the request for records is made by subpoena for records unrelated to the underlining case from which the subpoena originated the chief probation officer must be notified.

V. Personnel Files

Personnel files shall be released according to applicable laws. Therefore, the release of any records of an agent (or applicant for employment) of the Wells County Probation Department shall be limited to:

1. Name
2. Compensation
3. Job title
4. Job description
5. Education and training
6. Previous work experience
7. Dates of first and last days of employment or service
8. Information relating to the status of any formal charges against the employee; and information concerning disciplinary actions in which final action has been taken and that resulted in employee being suspended, demoted, or discharged.

REFERENCE CITATIONS

IC 5-14-3-4: Records Exempted from disclosure

Disclosure of Probation Records (Confidentiality)

IC 11-13-1-8(b) (3): Rules and regulations prescribing minimum standards for probation officers

IC 11-13-4-3: Judicial Conference as compact administrator; administrative rules

IC 31-37-17-6: Disclosure (predispositional reports)

IC 31-37-18-7: Provision of copies of dispositional report

IC 31-38-2-5: Confidential information (local coordinating committees)

IC 31-39-1-1: Application of chapter (confidentiality of juvenile records)

IC 31-39-2-5: Prosecuting attorney and staff

IC 31-39-2-6: Attorney or staff of OFC or DOC

IC 31-39-2-9: Person providing services to child or family

IC 31-39-2-12: Parties to criminal or juvenile delinquency proceedings

IC 31-39-2-13: Victim of delinquent act or victim's family; disclosure in civil action

IC 31-39-3-3: Public access to juvenile delinquency records

IC 35-38-1-13: Confidentiality of presentence report or memoranda

<http://www.state.in.us/legislative/ic/code/>

Indiana Supreme Court Administrative Rule 9– Public Access to Court Records Handbook: Confidentiality of

Court Records <http://www.in.gov/judiciary/admin/pubs/access.html>

42-CFR-2: Confidentiality of alcohol and drug abuse patient records

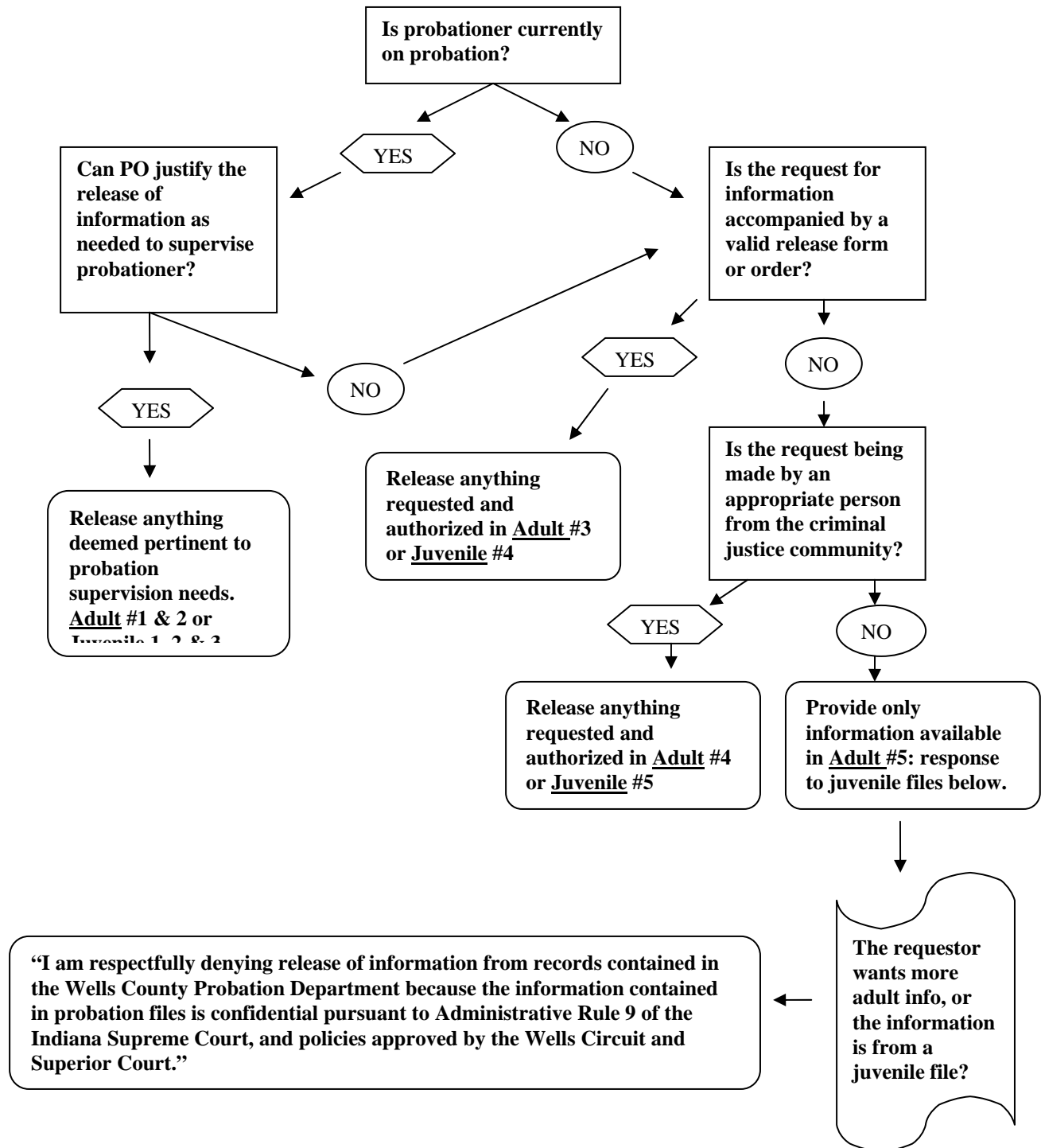
http://www.access.gpo.gov/nara/cfr/waisidx_02/42cfr2_02.html

Indiana Probation Standards IV-A-1.4: Release of Information <http://www.in.gov/judiciary/probation/docs/standards/standards.pdf>

Office of the Public Access Counselor: Handbook on Indiana's Public Access Laws

http://www.in.gov/pac/files/pac_handbook.pdf

Flowchart for when to release information from Probation Department files



Appendix A
“General Release”

AUTHORIZATION TO RELEASE AND EXCHANGE INFORMATION

I authorize the *Wells County Probation Department* to obtain any information in your files pertaining to my employment, medical, educational, credit, criminal, juvenile, military, mental health, psychological and psychiatric evaluation and treatment, and substance abuse testing and treatment records, including but not limited to duration of employment, summary of contacts, academic achievement, attendance, disciplinary actions, and current status. I hereby direct you to release such information upon request of bearer. This release is executed with full knowledge and understanding that the information obtained is for the official use of the *Wells County Probation Department*.

I hereby authorize the *Wells County Probation Department* to exchange any information, including Presentence/Predisposition Reports, with another entity, person, or agency that is deemed appropriate and necessary by the *Wells County Probation Department*, for enabling the *Wells County Probation Department* to provide more comprehensive services in my program of supervision, probation, or pre-sentence or pre-dispositional investigations.

I hereby release you, as the custodian of such records, and any school, college, university, or other educational institution, hospital or other repository of medical records, credit bureau, criminal justice agency, lending institution, consumer reporting agency, or retail business establishment including its officers, employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may at any time result to me, my heirs, family, or associates because of compliance with this authorization and request to release information, or any attempt.

This information is for the official use of the *Wells County Probation Department* and is valid as long as my file is active with the *Wells County Probation Department* or I request, in writing, that the *Authorization to Release and Exchange Information* be voided.

Date

Signature

Witness

Full Name (printed or typed)

Parent(s) or Guardian, if required

Attorney, if available

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rev.10/02

**WELLS COUNTY PROBATION DEPARTMENT
AUTHORIZATION FOR RELEASE OF INFORMATION
Mental Health/Substance Abuse**

**Appendix B
"Judicial Counseling
Release"**

I, _____, request and authorize the representatives of the
(Name of Client)
Wells County Probation Department to disclose any mental health and substance abuse treatment records obtained pursuant to my (____ **supervision** or ____ **presentence/predisposition investigation**) to the Wells Circuit and Superior Courts, Wells County prosecuting attorneys, and my attorney of record for the purpose of (____ **probation supervision** or ____ **presentence/ predisposition investigation**).

Specify the treatment period of the information to be released: _____.

I hold harmless the Wells County Probation Department in regard to the use of information authorized for release or exchange. I understand that this form is not required as a condition for treatment and that it may be revoked by me at any time, except to the extent that action has already been taken. I knowingly and voluntarily waive the Indiana law provision that the consent expire in sixty days and specify this consent remain in effect until (____ **termination of my probation supervision** or ____ **upon sentencing**.) Any further disclosure of information sent in reliance on this authorization is prohibited except upon specific consent of the person to whom it pertains.

I have read and understand the above and acknowledge that it was properly completed prior to my signature. A photocopy of this authorization is as authentic as the original signed Authorization of Release. An original will be retained in the Medical Record.

Client's Signature: _____

Date: _____

Legally Responsible other Signature: _____

Date: _____

Witness: _____

Date: _____

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rev. 10/02

WELLS COUNTY PROBATION DEPARTMENT
AUTHORIZATION FOR RELEASE OF INFORMATION
Mental Health/Substance Abuse

Appendix C
"DCS" Counseling
Release"

I, _____, request and authorize the representatives of the
(Name of Client)
Wells County Probation Department to disclose any mental health and substance abuse treatment records obtained pursuant to my (____ **supervision** or ____ **presentence/predisposition investigation**) to the Department of Child Service, Division of Family Resources, Wells County Division for the purpose of (____ **probation supervision** or ____ **presentence/ predisposition investigation**).

Specify the treatment period of the information to be released: _____

I hold harmless the Wells County Probation Department in regard to the use of information authorized for release or exchange. I understand that this form is not required as a condition for treatment and that it may be revoked by me at any time, except to the extent that action has already been taken. I knowingly and voluntarily waive the Indiana law provision that the consent expire in sixty days and specify this consent remain in effect until (____ **termination of my probation supervision** or ____ **upon sentencing**.) Any further disclosure of information sent in reliance on this authorization is prohibited except upon specific consent of the person to whom it pertains.

I have read and understand the above and acknowledge that it was properly completed prior to my signature. A photocopy of this authorization is as authentic as the original signed Authorization of Release. An original will be retained in the Probation Department's records.

Client's Signature: _____

Date: _____

Legally Responsible other Signature: _____

Date: _____

Witness: _____

Date: _____

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rev. 10/02

WELLS COUNTY PROBATION DEPARTMENT
AUTHORIZATION FOR RELEASE OF INFORMATION
Mental Health/Substance Abuse

Appendix D
“Other Agency
Counseling Release”

I, _____, request and authorize the representatives of the
(Name of Client)
Wells County Probation Department to disclose any mental health and substance abuse treatment records obtained pursuant to my (____ **supervision** or ____ **presentence/predisposition investigation**) to _____ for the purpose of (____ **probation supervision** or **presentence/**
(Treatment facility)
predisposition investigation).

Specify the treatment period of the information to be released: _____

I hold harmless the Wells County Probation Department in regard to the use of information authorized for release or exchange. I understand that this form is not required as a condition for treatment and that it may be revoked by me at any time, except to the extent that action has already been taken. I knowingly and voluntarily waive the Indiana law provision that the consent expire in sixty days and specify this consent remain in effect until (____ termination of my probation supervision or ____ upon sentencing.) Any further disclosure of information sent in reliance on this authorization is prohibited except upon specific consent of the person to whom it pertains.

I have read and understand the above and acknowledge that it was properly completed prior to my signature. A photocopy of this authorization is as authentic as the original signed Authorization of Release. An original will be retained in the Probation Department’s records.

Client’s Signature: _____

Date: _____

Legally Responsible other Signature: _____

Date: _____

Witness: _____

Date: _____

Appendix E
Page insert for use when
entire pages are redacted
from documents.

**All missing attachments
are confidential documents
as defined by
Indiana Supreme Court
Administrative Rule 9
and not available
for public access**

Appendix F
Template letters for
responding to requests
for information from
probation files.

Response Template for Denying Records from Probation Files

«DateOfLetter»

«ProbationOfficersName»

«ProbationDepartment»

«Address»

«CityStateZip»

FAX No: «FaxNo»

RE: «Defendant»

This office received your recent [request] [subpoena] to obtain [testimony] [records] of the Wells County Probation Department. The personnel and records of this department are governed by Federal and State codes, judicial rules, and department policy regarding disclosure of information. Specifically, the information you requested is excluded from public access by Administrative Rule 9 (G)(1)(xv) of the Indiana Supreme Court.

The Wells Circuit and Superior Courts have established departmental policy to permit the release of specific information under certain circumstances. I encourage you to contact me to learn if the specific information you seek may be disclosed under department policy. Otherwise, if you desire to pursue access to any other information, you must seek:

- a. an order under Administrative Rule 9(G)(3) from the court having jurisdiction of the case declaring the information accessible because it is essential to the resolution of litigation;
- b. a release of information from each person to whom the sought information pertains under Administrative Rule 9 (G)(3); or
- c. an order for release by filing a verified request to obtain access under Administrative Rule 9 (I).

If you are successful in obtaining an order or release, you will be provided the information sought upon production of the order or release.

I look forward to working with you to determine what information we may be able to provide in your case.

Respectfully,

Gregory E. Werich
Chief Probation Officer

Enclosure

Response Template for Records from Probation Files

«DateOfLetter»

«ProbationOfficersName»

«ProbationDepartment»

«Address»

«CityStateZip»

FAX No: «FaxNo»

RE: «Defendant»

Pursuant to your written request for the aforementioned individual's records in Wells County, I offer the following summarized response: **(delete this note and the following choices that do not apply)**

- Please refer to the attached report.

-

Offense Date	Case Number/Offense	Disposition
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- No Record was located in any records available to this office.

This response is based on records available in and to the Wells County Probation Department, including the records of the Wells County Prosecutor and the Wells County Clerk; records contained by other county agencies (i.e., Bluffton City Court, law enforcement agencies) may not be reflected. This summary is also not a certified document, but for general reference purposes only.

Respectfully,

Gregory E. Werich
Chief Probation Officer

Enclosure ?