

**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

AUDIT REPORT  
OF  
COUNTY PROSECUTING ATTORNEY  
PUTNAM COUNTY, INDIANA  
January 1, 2008 to December 31, 2008



**FILED**

01/14/2010



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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Prosecuting Attorney	Timothy Bookwalter	01-01-07 to 12-31-10
President of the County Council	Mitchell Proctor	01-01-08 to 12-31-09
President of the Board of County Commissioners	Gene Beck	01-01-08 to 12-31-09



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF PUTNAM COUNTY

We have audited the records of the County Prosecuting Attorney for the period from January 1, 2008 to December 31, 2008, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of Putnam County for the year 2008.

STATE BOARD OF ACCOUNTS

October 27, 2009

COUNTY PROSECUTING ATTORNEY  
PUTNAM COUNTY  
AUDIT RESULTS AND COMMENTS

ASSET FORFEITURE FUND

County Ordinance 2005-3-7 established the Putnam County Prosecutor's Asset Forfeiture Fund. The fund receives deposits in the form of proceeds recovered in forfeiture actions. The ordinance specifies the fund "shall be appropriated for funding law enforcement activities, including, but not limited to, drug enforcement activities conducted by the Putnam County Sheriff's Department, the Greencastle City Police Department, the Indiana State Police Department, other special crime units, and for reimbursement of expenses incurred by the Prosecuting Attorney's Office in pursuing forfeiture and RICO actions." Purchases included utilities for the Putnam County Jail (\$61,846); a donation to the Humane Society of Putnam County for spay/neuter services (\$28,000) and van repair (\$2,000); contribution to DePauw Public Safety for the purchase of a digital phone logger (\$5,000); payment to National Advocacy Center for training scholarship for Putnam County Prosecutor (\$5,000); shelf filing cabinets for the Putnam County Prosecutor's Office (\$10,500); digital cameras; nine laptop computers; five vehicles for the Putnam County Sheriff's Office; two vehicles for the Putnam County Prosecutor's Office; one vehicle for the City of Greencastle Police Department; vehicle repairs; vehicle equipment; training; and Indiana State Police training. Payroll disbursements were also made to County Sheriff Deputies for hours worked on drug interdiction.

The Putnam County Prosecuting Attorney has a contract for legal services with an Attorney to represent him in all forfeiture proceedings instituted pursuant to IC 34-24-1 and 34-24-2 and as an agent and representative in all matters concerning referrals to the United States Attorney's Office or any other Federal Forfeiture proceeding. The contract for legal services specifies the attorney shall receive 33% of whatever may be recovered either by settlement or trial for a claim pursuant to IC 34-2-1 and 34-24-2. The Attorney utilizes Assignment of Property Agreements and Settlement Agreements to obtain voluntary surrender of drug suspects' property and/or money in a civil action, without court orders, and to subsequently disburse hundreds of thousands of dollars in cash and property for receipt to the Asset Forfeiture Fund.

Property confiscated pursuant to IC 34-24-1, regarding controlled substances, may be disposed of as ordered by a court. Property as used in this chapter includes cash and other assets. IC 34-24-1-4 and 34-24-1-6 require proceeds from the sale of property seized under this chapter and cash to be distributed in the following order:

1. To the sheriff to cover expenses of the sale.
2. To persons with a valid interest determined by the Court.
3. To the affected general fund for reimbursement of law enforcement costs.

Law enforcement costs determined by the Court must be deposited in the General Fund of the unit employing the law enforcement agency making the seizure. Any excess over the law enforcement costs must be transferred to the State Treasurer for deposit in the common school fund.

IC 34-24-1-4(d) states in part:

"If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter (1) determine the amount of law enforcement costs; and (2) order that:

COUNTY PROSECUTING ATTORNEY  
PUTNAM COUNTY  
AUDIT RESULTS AND COMMENTS  
(Continued)

(A) the property, if not money or real property, be sold under section 6 of this chapter, by the sheriff of the county in which the property was seized and if the property is a vehicle, this sale shall occur after any period of use specified in subsection (c);

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be (i) deposited in the general fund of the state or the unit that employed the law enforcement office that seized the property; . . .

(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of the state for deposit in the common school fund."

IC 34-24-1-6 Sec.6(b) states in part:

"When property is sold at a public sale under this chapter, the proceeds shall be distributed in the following order:

(1) First, to the sheriff of the county for all expenditures made or incurred in connection with the sale, including storage, transportation, and necessary repair.

(2) Second, to any person:

(A) holding a valid lien, mortgage, land contract, or interest under a conditional sales contract or the holder of other such interest; or

(B) who is a co-owner and has an ownership interest; up to the amount of that person's interest as determined by the court.

(3) The remainder, if any, shall be transferred by the sheriff to the appropriate fund as ordered by the court in section 4(d) of this chapter."

### ORDINANCES AND RESOLUTIONS

The County has an ordinance requiring appropriation of the Asset Forfeiture Fund. However, asset forfeiture funds were disbursed without appropriation.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Counties, Chapter 1)

### PRETRIAL DIVERSION AGREEMENTS

Pretrial diversion agreements executed by the Prosecuting Attorney provide for the payment of a prescribed "donation" to the Asset Forfeiture Fund and to Putnam County Community Corrections in lieu of completing community service. In 2009, prescribed "donations" were designated to the Pretrial Diversion Fund instead of the Asset Forfeiture Fund. These "donations" are in addition to the specific statutorily required fees. Further, the statute does not allow for the charging of donations to any of these funds.

COUNTY PROSECUTING ATTORNEY  
PUTNAM COUNTY  
AUDIT RESULTS AND COMMENTS  
(Continued)

IC 33-37-4-1(c) states:

"Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 requires payment of those fees by the accused person. The pretrial diversion program fee is:

- (1) an initial user's fee of fifty dollars (\$50); and
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program."

COUNTY PROSECUTOR  
PUTNAM COUNTY  
EXIT CONFERENCE

The contents of this report were discussed on October 27, 2009, with Timothy Bookwalter, Prosecuting Attorney. The official response has been made a part of this report and may be found on pages 8 through 26.



## Office of Prosecuting Attorney

Tim Bookwalter, Prosecutor  
64th Judicial Circuit  
Putnam County, Greencastle, IN

November 4, 2009

State Board of Accounts  
302 W. Washington Street, Room E418  
Indianapolis, IN 46204-2765

RE: County Prosecuting Attorney, Putnam County, Audit Results and Comments

### OFFICIAL RESPONSE

This will serve as the official response to the recent "audit results and comments" provided to this office.

#### I. ASSET FORFEITURE FUND

The official response to this Fund is attached hereto as was prepared by Chris Gambill, who is the forfeiture attorney hired by this office to handle forfeiture matters (see **Exhibit One**).

In addition to Mr. Gambill's comments, I would add clarification on some of the expenditures listed.

It is unclear from the expenditures if this only entails 2008. There was not two vehicles purchased for the Prosecutor's Office in 2008. There was a Ford Taurus bought in 2005 (used), and then traded on a Ford Taurus in 2008. This vehicle is driven by the investigator for our office, who is a detective.

Second, a comment was made concerning a donation to the Humane Society and van repair totaling \$30,000. This was donated after I was approached by the City of Greencastle. Without the funding there was a real possibility the Shelter would close. This presented a law enforcement problem. As you can see from the letters of Police Chief Sutherlin (see **Exhibit Two**) and Sheriff Fenwick (see **Exhibit Three**), law enforcement agencies would be detrimentally affected if the Shelter closed. The statistics presented to me were self explanatory. They showed me what a problem dog complaints are for law enforcement agencies in my community.

The bills paid for the Putnam County Jail were because the Sheriff's Department ran out of money part of the way through the year. Without Asset Forfeiture picking up those costs for the rest of the year, the deputies at the Sheriff's Department would not have been able to perform their duties.

All of these items in my opinion meet the requirements of the Asset Forfeiture Ordinance.

I have also turned down requests for items to be paid. In 2007, I did not agree with Judge Headley that a proper use of this money would be to purchase his courtroom new recording equipment to the tune of approximately \$50,000. I could not see the connection of recording equipment that is used 80% of the time on civil cases to have any relationship to law enforcement work.

However, your office, in a letter to Judge Headley (**see Exhibit Four**) said "our audit position would be to not take any exception to the use of the funds as described in your letter."

DePauw Public Safety is a law enforcement agency in my county and its officers make many arrests in Greencastle. These arrests are not just on DePauw's campus but throughout Greencastle.

The \$5,000 paid to the National Advocacy Center was to pay for training for Putnam County Prosecutors. We are, by law, considered to be law enforcement officers.

The shelf filing cabinets were purchased to house major closed files and evidence from law enforcement officers that my office has to retain throughout the appeal process.

## II. ORDINANCES AND RESOLUTIONS

I am enclosing a letter from Scott Hoff, the Putnam County Attorney (**see Exhibit Five**). This letter shows his recommendation that the claims flow through the County Commissioners, and not the County Council.

The ordinance contains an incorrect code section that applies to towns and not counties. Therefore, the County Attorney disagrees with your conclusion.

## III. PRE TRIAL DIVERSION AGREEMENTS

I do not agree with your legal conclusion that the Indiana Statute does not allow for the charging of donations to the Asset Forfeiture Fund or the Pre-Trial Diversion Fund.

Pre-Trial Diversion Agreements are governed by Indiana Code 33-39-1-8.

These are agreements entered into by the State and the defendant on certain misdemeanors that are allowed by the Statute.

The statute listed under 33-39-1-8(d) lists eight items that the agreement may include.

Additionally, I.C. 33-39-1-8(e) states that the agreement may also “include other provisions reasonably related to the defendant’s rehabilitation if approved by the Court.”

Attached as **Exhibit Six** is an example of one of the Pre-Trial Diversion Agreements. Paragraph 6(h) requires 16 hours of community work service or in the alternative a donation in lieu of the community service.

The donation alternative is reasonable because Putnam County is intersected by Interstate 70, and DePauw University is located in Greencastle, the county seat. Many arrests in the county are from people either out of state or out of county. Many of these people have found it difficult or impossible to perform community served in Putnam County because of that problem.

These agreements have been approved by the Court. In the last year the Court stopped signing pre-trial diversion agreements because of the burden it placed on the court staff to pull the court file from the clerk’s office each time one was filed.

The Court has continued to enforce the agreements, and the new Judge who took office January 1, 2009, has continued to approve of these agreements. His letter is attached hereto as **Exhibit Seven**.

I found out about this program from Vermillion County who had a similar problem to Putnam since it bordered Illinois and had a number of out-of-state defendants. The Vermillion County Pre-Trial Diversion Agreement is attached as **Exhibit Eight**.

Because we offer this program to out-of-state and out of county defendants we offer it to everyone.

Our reasoning was based upon the decision in Mueller, Evans v. State of Indiana, 837 N.E.2d 198 (2005). As I read the case you should not selectively enforce a statute if the selection was based upon an unjustifiable standard such as race, religion, or other arbitrary classifications.

Respectfully Submitted,



Tim Bookwalter  
Putnam County Prosecutor

TB/lo



LAW OFFICES

LARRY J. WAGNER  
CHRISTOPHER B. GAMBILLJAMES L. CRAWFORD  
1944-2003

October 29, 2009

State Board of Accounts  
302 West Washington Street, Rm E 418  
Indianapolis, IN 46204-2765Re: County Prosecuting Attorney, Putnam County, Audit Results and  
Comments

## OFFICIAL RESPONSE

The undersigned serves as the forfeiture attorney for the Putnam County Prosecutor. On August 27, 2008 I prepared an Official Response to a previous audit concerning the Putnam County Prosecutor's Asset Forfeiture Fund. I have been provided a copy of the new Audit Results and Comments prepared by the State Board of Accounts regarding this fund. It is my understanding that the Prosecutor will address some of the comments relating to expenditures, and the administration of expenditures, from this fund. My responsibilities end when deposits are made. Therefore, I will address comments made within this recent report concerning the procedures that I oversee. Those procedures would include the decision to file a forfeiture action, resolve a forfeiture action, and distribute the proceeds of a judgment or settlement.

## RESPONSE

The Audit Results and Comments regarding forfeiture actions are largely correct. However, there are statements contained within the Results and Comments that left uncorrected would alter substantially what may be deposited into the Putnam County Asset Forfeiture Fund and what would be required to be deposited in the State Common School Fund.

A common misunderstanding is that the Indiana Forfeiture Act was created as a means to obtain money to fund the Indiana Common School Fund. Such an assumption is both factually and historically incorrect.

The Common School Fund is the creation of the 1851 Indiana Constitution. It was created under Article 8 § 2 and provides as follows:

**§ 2 of Common school fund**

Section 2. The Common School fund shall consist of the  
Congressional Township fund, and the lands belonging thereto;  
The Surplus revenue fund;  
The Saline fund and the lands belonging thereto;

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The Bank Tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

**The fund to be derived from the sale of County Seminaries, and the moneys and property heretofore held for such Seminaries; from the fines and assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;**

All lands and other estate which shall escheat to the State, for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the Swamp Lands, granted to the State of Indiana by the act of Congress of the twenty eighth of September, eighteen hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes.

Once there is an understanding that the Common School Fund was established in the 1851 Constitution, the second question is when does a forfeiture "accrue." Black's Law Dictionary Fifth Edition (1979) defines accrue as follows:

The term is also used of independent or original demands, meaning to arise, to happen, to come into force or existence; to vest; as in the phrase, "The right of action did not accrue within six years."

The reference to the word "vest" within this definition makes it even more clear that what accrue means is a court judgment. Black's Law Dictionary Fifth Edition (1979) provides as follows:

**Vested.** Fixed; accrued; settled; absolute. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. To be "vested," a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from the demand of another.

Therefore, there must be a legal judgment before a forfeiture "accrues." That is why the Indiana Forfeiture Act contains specific language that a judgment must be entered in favor of the State before the application of the Common School Fund applies. Indiana Code 34-24-1-4 provides as follows:

IC 34-24-1-4

Hearing; burden of proof; disposition of seized property

Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

(c) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court, subject to section 5 of this chapter, shall order delivery to the law enforcement agency that seized the property. The court's order may permit the agency to use the property for a period not to exceed three (3) years. However, the order must require that, after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.

(d) **If the court enters judgment in favor of the state,** or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter:

- (1) determine the amount of law enforcement costs; and
- (2) order that:

**(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.**

The contrast between a “judgment” and a “settlement” has been clearly illuminated by the Indiana Supreme Court. In West v. State 79 N.E. 361 (1907) the Indiana Supreme Court said a “judgment” implies a final decision reached by a Court of competent jurisdiction in a due course of legal proceedings when the rights of the parties have been judicially settled.

The Indiana Supreme Court explained the legal significance between a settlement and a judgment by stating in Department of Local Government Financing v. Common Wealth Edison Company of Indiana Inc. 820 N.E. 2d 1222 (Ind. 2005) that in compliance of Rule 408 of the Indiana Rules of Evidence and the precedent of Four Winns Inc. v. Cincinnati Insurance Company 471 N.E 2d 1187 (Ind. App. 1984) by ruling “it provides that a settlement is neither a Judgment nor an admission of liability.”

The Indiana Forfeiture Act simply provides a civil cause of action. It is without dispute that government entities may file a variety of civil actions. A government entity can bring an action for a tort, a breach of contract, imminent domain, and other sorts of civil

lawsuits. Furthermore, like any other Plaintiff or Petitioner, a government entity in a civil action may seek to resolve the dispute either by a trial on the merits or by reaching a settlement with the other party. Thereafter, the resolution of the matter is not governed by the rules which apply to a "judgment" rather by the terms contained within the settlement agreement itself. There is no legal requirement that a "Court Order" be associated with a settlement agreement. In fact, when a civil action is commenced and a settlement agreement reached, a common resolution of the "lawsuit" is dismissed by the parties.

The Indiana Forfeiture Act actually provides exceptions to the rule that all monies from a forfeiture judgment be placed in the Common School Fund. The Indiana Forfeiture Act provided these exceptions including the cost of investigation of the underlying criminal case, the cost of the prosecution of the underlying criminal case, and the attorney fees for handling the forfeiture.

With an understanding of what the Indiana Constitution established and the exceptions which are granted under the Indiana Forfeiture Act, the correction of some statements contained within the "Audit Results and Comments" is necessary. The first comment that needs corrected is as follows:

"The Attorney utilizes Assignment of Property Agreements and Settlement Agreements to obtain voluntary surrender of drug suspects' property and/or money in a civil action, without court orders, and to subsequently disburse hundreds of thousands of dollars in cash and property for receipt to the Asset Forfeiture Fund."

First, a new recommendation has been made by the State of Indiana's Prosecutor's Council regarding the use of Assignment of Property Agreements. At the time of the last audit the undersigned utilized Assignment of Property Agreements. Since that time the Indiana Prosecutor's Council has recommended that Assignment of Property Agreements (these are agreements entered into before the actual filing of a forfeiture complaint) should no longer be utilized. At the 2008 Prosecutor's Council Winter Conference there was a presentation made recommending that such agreements be submitted to a Court for approval. However, later the Prosecutor's Council amended their position and indicated that they should no longer be used. They have not been used by the undersigned since receiving that advisory opinion from the Prosecutor's Council.

Secondly, the statement "without Court Order" suggests or implies that there should be a Court Order before monies are deposited in the Asset Forfeiture Fund. As explained above, a settlement agreement is when the parties resolve a civil dispute without a "judgment nor an admission of liability." If a judgment of forfeiture is entered, a Court Order for the distribution of the money forfeited is required. That Court Order provides an exception to the rule that all

monies from a forfeiture be placed in the Common School Fund.

The second misstatement is as follows:

“Property confiscated pursuant to Indiana Code 34-24-1 regarding controlled substances, may be disposed of as ordered by a court. Property as used in this chapter includes cash and other assets.”

It may be a minor point but “property confiscated” may include items not considered “seized property” for purposes of the Forfeiture Act. Property confiscated may be used as evidence which would not subject it to forfeiture. The seizure procedures are described in Indiana Code 34-24-1-2. The question of whether that property is subject to forfeiture is defined under Indiana Code 34-24-1-1. As noted previously, the disposal of this property by a Court is only triggered if a forfeiture “judgment” is rendered (See I.C. 34-24-1-4).

Another provision within the “Audit Results and Comments” which I would challenge is the following:

“Indiana Code 34-24-1-4 and 34-24-1-6 require proceeds from the sale of property seized under this chapter and cash to be distributed in the following order:

- 1) To the sheriff to cover expenses of the sale.
- 2) To persons with a valid interest determined by the Court.
- 3) To the affected general fund for reimbursement of law enforcement costs.”

Several errors are contained within this statement. The application of Indiana Code 34-24-1-4 and Indiana Code 34-24-1-6 is only triggered if a “judgment” is entered in favor of the Plaintiffs. In fact Indiana Code 34-24-1-4 (d) starts off as follows “**If** the Court enters judgment in favor of the state.” Thereafter, this part of the Act describes the order in which money is distributed. Under this Code Section the Court must first “determine the amount of law enforcement costs.” Law enforcement costs are defined under Indiana Code 34-6-2-73. For purposes of a forfeiture act law enforcement costs mean:

1. Expenses incurred by the law enforcement agency that makes the seizure and for the criminal investigation associated with the seizure.
2. Repayment of the investigative fund of a law enforcement agency that makes a seizure to the extent that the agency can identify a part of the money as having been expended from the fund.
3. The expenses of the prosecuting attorney associated with the costs of

proceedings associated with the seizure and offenses related to the seizure.

Thus, law enforcement includes the cost of the criminal investigation, other expenses by the law enforcement agency that actually makes the seizure, the attorney fees which may include reimbursement of time spent by the Prosecutor's office, or the payment of attorney fees of an attorney employed by the prosecuting attorney pursuant to Indiana Code 34-24-1-8. If a judgment is entered, any expenses in excess of the "law enforcement costs" are to be deposited in the Common School Fund.

Putnam County, like many if not most of all Indiana Counties has established a Seized Asset Fund by Ordinance. These local government entities have directed that monies which they are entitled to receive by "forfeiture judgment or settlement agreements" be placed in these accounts. Putnam County has such an ordinance and I have complied with its requirements by depositing in those accounts monies so received.

There has been a common misunderstanding with those not familiar with the Indiana Constitution, the legislative history of the Indiana Forfeiture Act, and the important legal distinctions between terms like "judgment" and "settlement." This misunderstanding is often held by non-lawyers but, admittedly, there are some lawyers who are also misinformed. The Forfeiture Act was passed to take profits from criminals (not just drug dealers) and to distribute monies back to law enforcement instead of to the Common School Fund. However, as the Indiana Supreme Court has explained, if a matter is resolved by settlement, the distribution of any monies obtained by means of this settlement are to be distributed pursuant to the terms of the agreement and not pursuant to the application of a statute regarding "judgments." The only reason that all monies seized from forfeitures and ordered forfeited pursuant to a judgment are not distributed to law enforcement agencies for use against crime is solely because our 1851 Constitution in establishing a Common School Fund funded it with "forfeitures which may accrue" right next to "monies derived from the sale of County seminaries." (Not to mention funding from the "sales of the swamplands").

Sincerely,

WAGNER, CRAWFORD AND GAMBILL

By: \_\_\_\_\_

Christopher B. Gambill

CBG/kat

# City of Greencastle

Ph: 765-653-2925

Fax: 765-653-5514



## Police Department

600 N. Jackson  
Greencastle, Indiana 46135

February 1, 2009

Mr. Don Lundberg  
Executive Director  
Indiana Disciplinary Commission

Dear Mr. Lundberg,

I am Chief Tom Sutherlin with the Greencastle Police Department. I am writing this letter to show my support of the \$30,000.00 that Putnam County Prosecutor Tim Bookwalter contributed to the Putnam County Humane Society and why.

It is my understanding that the money was given to the Humane Society to assist with the spayed and neutered program along with keeping the Humane Society open for operation. As you will see later in this letter, statistics will show that we have an animal control problem in Greencastle and Putnam County. With the Humane Society closed, it makes our job extremely difficult when comes to dealing with animal control issues. We have no way of detaining animals that are running at large, along with no way of detaining any vicious animal or any animal that has bitten someone. As you can see without the Humane Society, law enforcements hands are tied, because we have no other place to detain animals.

In 2007 Putnam County had approx. 558 dog complaints. Approx. 322 of the 558 occurred out in the County while 132 occurred within the city limits of Greencastle. The rest of the complaints that make up the 558 occurred in the small towns within Putnam County. Putnam County also reported 63 animal bites for 2007, along with 388 loose animal/livestock complaints. Putnam County had approximately 1,009 animal complaints in total for the year.

In 2008 Putnam County had approx. 457 dog complaints. The Greencastle Police Department records show that we had approx. 200 dog complaints within the city limits for 2008. Putnam County also reported approx. 62 dog bite complaints along with 318 loose animal/livestock complaints in 2008. Putnam County had approximately 827 animal complaints in total for the year.

As the Chief of Police I take great pride in the Greencastle Police Department being a police department that is professional and well respected in our Community. I feel that we should respond to all and resolve all complaints that come into the Greencastle Police Department. However, with the Humane Society closed that has become impossible to do. We have to tell people that our hands are tied when it comes to animal control complaints. We have no way of detaining animals running at large, and only respond in

# City of Greencastle

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Ph: 765-653-2925

Fax: 765-653-5514



# Police Department

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600 N. Jackson  
Greencastle, Indiana 46135

emergency situations. Just recently we had officers respond on two dogs running at large in a neighborhood chasing and attempting to bite the children outside playing. Once our officers were on scene one of the two dogs charged the officer and bit the officer's pant leg and boot. The officer was able to subdue the animal and it ran off. I was able to make arrangements with the shelter to house this vicious dog to get it off the street to prevent someone from being seriously hurt. However the officers were able to get the dog contained in the fence on its property and several violations were left with the property owner.

As you can see, it is situations as stated above that makes our job extremely difficult and frustrating with the Humane Society closed. With our Prosecutor willing and able to contribute money toward the Putnam County Humane Society to keep it open and operating makes our job easier along with making our Community and County safer. Mr. Bookwalter takes great pride in assisting the Putnam County Law Enforcement Agencies within Putnam County. He continues to show his support by purchasing equipment that is needed to make our job safer which makes our County a safer place to live.

I want to thank you for your time and assistance in this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "T. A. Sutherlin", written over a horizontal line.

Thomas A. Sutherlin  
Chief of Police  
Greencastle Police Department  
600 N. Jackson St.  
Greencastle, IN 46135

**PUTNAM COUNTY SHERIFF'S DEPARTMENT**Steve Fenwick, *Sheriff*

13 Keightly Road • P.O. Box 495 • Greencastle, Indiana 46135

Office: 765-653-3211

Jail Division: 765-653-1810

Office Fax: 765-655-2131

Jail Fax: 765-653-9337

Don Lundburg  
Indiana Supreme Court Disciplinary Commission

Dear Mr. Lundburg:

I am writing this letter on behalf of Tim Bookwalter, the Putnam County Prosecutor.

I understand that a disciplinary complaint has been filed against him in part because of a \$30,000 contribution made from the Asset Forfeiture Account.

The Humane Society operates the only animal shelter in our county. Animal control is a major law enforcement problem in our county as my officers are called on dog complaints on a regular basis. It has been temporarily closed in the past which creates a near crisis for my officers.

Chief Sutherland of the Greencastle Police Department has compiled county wide statistics that show the seriousness of the problem for law enforcement.

Law enforcement agencies in our county, along with elected officials, have been meeting to find a solution to this problem.

I am proposing that my department employ an animal control officer which the county does not have now.

The training and the equipment for that officer I am hoping will be paid out of the Asset Forfeiture Fund.

The funds that have been spent so far, and the ones that I hope will be spent in the future, have been done so to benefit the community.

Sincerely,



Steve Fenwick  
Putnam County Sheriff



# STATE OF INDIANA

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February 4, 2008

Honorable Matthew L. Headley  
Judge, Putnam Circuit Court  
Courthouse, 3<sup>rd</sup> Floor  
Greencastle, IN 46135

Re: Asset Forfeiture Fund

Dear Judge Headley:

We are in receipt of your letter dated December 31, 2007, regarding the use of funds held in the Putnam County Asset Forfeiture Fund to purchase audio recording devices for the court system. We have reviewed the copy of the Putnam County Ordinance included with your letter and relevant Indiana law concerning this issue.

Based on the facts as set forth in your letter and the law on this issue, our audit position would be to not take an exception to the use of the funds as you describe in your letter.

We would also like to identify an issue for consideration by the Prosecuting Attorney and the Board of County Commissioners. Our interpretation of I.C. 34-24-1-4(d)(2)(C)(i) is that the proceeds from the sale of forfeited property should be deposited in the general fund of the unit that employed the law enforcement officers that seized the property. The copy of the ordinance that you provided to us indicates that these proceeds are paid to the "Putnam County Prosecutor's Asset Forfeiture Fund".

If you have any questions about this matter or we can be of further assistance to you, please contact us.

Sincerely,

Bruce A. Hartman, CPA  
State Examiner

cc: Sharon Coopridner, Field Examiner  
Data File - Putnam County

# SCOTT A. HOFF

Attorney at Law

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January 22, 2009

Timothy Bookwalter  
One Courthouse Square  
Greencastle, IN 46135

Re: Asset Forfeiture Fund

Dear Mr. Bookwalter:

As you requested please find my summarization of several conversations about the asset forfeiture fund that took place in late spring 2008. As you will recall on the issue of how the funds should be dispersed I told you that the I.C. code quoted in the County Ordinance written in 2005 was incorrect in that it applies to towns and not to counties. That particular incorrect code section required that forfeiture funds be appropriated thru the county council. I then informed you that I could find no corresponding requirement or direction in any I.C. Code that related to whether the funds would be dispersed thru the claims process (County Commissioners) or the appropriations process (County Council).

Lacking any statutory guidance and based on 3 years of previous history with no objections by the State Board of Accounts I recommended that the dispersals continue to flow thru the claims process with oversight by the County Commissioners. I additionally informed you that this would be consistent with other unbudgeted funds within the county such as the Recorders Perpetuation Fund. My understanding is that the State Board of Accounts has issued a report but that they have not addressed the specific issue of Commissioner vs. Council oversight of the process of dispersal.

Sincerely,



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Scott A. Hoff

Enclosure

STATE OF INDIANA  
COUNTY OF PUTNAM  
STATE OF INDIANA

IN THE PUTNAM SUPERIOR COURT  
2007 TERM  
CAUSE NO. [REDACTED]

Vs

[REDACTED]  
Defendant

FILED

[REDACTED]

PRE-TRIAL DIVERSION AGREEMENT

*Marty J. Watts*  
CLERK PUTNAM SUPERIOR COURT

The State of Indiana, by its Prosecutor or Deputy Prosecutor for the 64<sup>th</sup> Judicial Circuit, and the Defendant, named above, pro se or with counsel, file the following executed Pre-Trial Diversion Agreement, pursuant to IC 33-14-1-7, in the above-entitled cause.

- 1. The Defendant states he/she has been properly arraigned on the charge(s) set forth in this cause and has entered a voluntary guilty plea to the charge(s) of: Count 1: Illegal Consumption of an Alcoholic Beverage and Count 2: Public Intoxication

The State agrees to dismiss without prejudice Counts: \_\_\_\_\_

- 2. Further, the Defendant has been read his/her advisement of rights by the Court or, in the alternative, has executed a waiver of the reading of said rights evidenced by the attached acknowledgement of rights and waiver of initial hearing form. (See Attached Rights and Waiver Form, If Applicable)
- 3. In consideration of the voluntary guilty plea, **and approval of the Court**, the State of Indiana agrees to defer entering judgment in this matter for a period of 12 months. In the event the Defendant successfully satisfies all terms of this agreement, as set forth below, and provides proof of the completion of said terms prior to expiration of the deferral to the Putnam County Prosecutor's Office, then the State of Indiana agrees to dismiss this cause.
- 4. **However, in the event the Defendant fails to show proof of completion of the terms and conditions within the prescribed time periods, then the State of Indiana may request a Review Hearing and a judgment of conviction may be entered against the Defendant, and sentencing shall be open to argument by both parties.**
- 5. All fines, fees, and restitution to be paid to the Putnam County Clerk's Office via Cash, Money Order or Cashier Check. No personal checks will be accepted.
- 6. The Defendant further acknowledges he/she fully understands the terms of this agreement, accepts the responsibilities hereunder, and voluntarily and without coercion executes this agreement.

(Page 1—See Back Page for Terms and Execution of Agreement)

TERMS OF PRE-TRIAL DIVERSION AGREEMENT

- (a) Obey all laws
- (b) Satisfactory completion of the **Putnam County Alcohol and Drug Program (PCADP)**.  
PCADP involves the combination of an alcohol/drug assessment or evaluation, educational classes, out-patient or in-patient treatment services, not using intoxicating substances, payment of appropriate program and monitoring costs, and executing a consent form with any alcohol/drug program for disclosure to the Prosecutor, PCADP, and the Court. Report to PCADP immediately on the 1st floor of the Courthouse. Phone (765) 653-4993. Minimum fee: \$300.00
- (c) Obtain and maintain a valid driver's license.
- (d) Satisfactory completion of the next available **Moving Beyond Abuse Program (MBA)**.  
MBA includes payment of \$220 program fee, attending all required sessions and executing a consent form with the MBA for disclosure to the Prosecutor and the Court. Report to Family Support Services (FSS) within one week. FSS is located at 24 W. Washington Street in Greencastle. Phone (765) 653-4820.
- (e) Satisfactory completion of the **Putnam County NCTI Misdemeanant Class (see attached form for registration and payment of fees for class)**.
- (f) Pay all outstanding checks, including penalty fees, to the check-holder; including any more checks that the Prosecutor's Office receives during deferral period.
- (g) Notify the Prosecutor's Office of any address change during the deferment period.
- (h) Complete 16 hours of community service through **Putnam County Community Corrections (PCCC)**.  
PCCC includes a program fee and executing a consent form with the PCCC for disclosure to the Prosecutor and the Court. PCCC is located on the 1st floor of the Courthouse. **Telephone: 765-653-5196.**  
OR in lieu of completing community service you may donate \$160.00 to the **Putnam County Asset Forfeiture Fund** plus donate \$16.00 to PCCC. If you decide to donate to the Asset Forfeiture Fund, payment should be paid in the Auditor's Office. Any payment to PCCC should be paid directly to their office.
- (i) Defendant agrees to have no contact with \_\_\_\_\_  
and for the Court to issue a formal no-contact order (see attached no-contact order).
- (j) Other terms: \_\_\_\_\_

- (k) Not to possess any firearm or any other deadly weapons.
- (l) Defendant agrees to pay restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_  
and for the Court to issue a restitution order. *Payment of restitution should be made in the Clerk's Office.*
- (m) Payment of all pre-trial diversion fees and clerk fees should be made payable to the Putnam County Clerk (no personal checks) and paid in the Clerk's Office or can be mailed to:

Putnam County Clerk  
PO Box 546  
Greencastle, IN 46135

- Clerk fee: \$145.00
- Public Defender fee: \$50
- Drug Interdiction fee (Fund #680-99): \$200
- Initial User's Fee: \$50.00 (includes 1<sup>st</sup> month's fee)
- Monthly Diversion Fee: \$10.00 for 11 additional months, totaling \$110.00
- TOTAL CLERK FEES DUE: \$ 305.00**

(n) \$ \_\_\_\_\_ to be released from bond to pay \_\_\_\_\_

I SWEAR OR AFFIRM I HAVE READ THIS AGREEMENT AND I UNDERSTAND AND AGREE TO THE TERMS SET FORTH.

Defendant: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
DOB: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_  
Hair: \_\_\_\_\_ Eyes: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Defendant  
\_\_\_\_\_  
Putnam County Prosecutor's Office  
Dated: \_\_\_\_\_

**APPROVAL OF COURT**

The Court having reviewed this Pre-Trial Diversion Agreement does now *approve* the agreement and takes the Defendant's plea of guilty under advisement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_



**Charles D. Bridges, Judge**

Putnam Superior Court  
3rd Floor, Courthouse  
Greencastle, IN 46135

Exhibit Seven

February 2, 2009

Timothy Bookwalter  
Putnam County Prosecutor  
4<sup>th</sup> Floor, Courthouse  
Greencastle, IN 46135

Tim,

As per our conversation last month, I intend to continue with Judge Lowe's Policy of allowing certain criminal Defendant's to perform Community Service as part of their sentence. And, in the alternative, a buy-out of the Community Service may be appropriate.

Sincerely,

Charles D. Bridges  
Judge, Putnam Superior Court

STATE OF INDIANA            )  
  ) SS:            IN THE VERMILLION CIRCUIT COURT  
COUNTY OF VERMILLION)            2008 TERM

STATE OF INDIANA

VS.

CAUSE NO. ~~XXXXXXXXXXXX~~

### ***PRE-TRIAL DIVERSION AGREEMENT***

*Comes now the State of Indiana, by its representative; and comes now the Defendant, in person, and by counsel, pursuant to I.C. 33-39-1-8, and enter into the following Agreement in resolution of the matters pending in the above-captioned cause:*

1. *The State of Indiana agrees to withhold prosecution of this cause of action for a period of one (1) year from the date of this Agreement. If the Defendant complies with the terms delineated in Paragraph #2, then the State of Indiana shall dismiss this Cause at the expiration of one (1) year.*
2. *The Defendant agrees to comply with the following terms and conditions:*
  - A. *The Defendant shall behave well and not violate any laws.*
  - B. *The Defendant shall pay deferral fees in the sum of Three Hundred and Twenty-eight Dollars (\$328.00), said sum consisting of the following:*
    - (1.) *\$120.00 for Court costs;*
    - (2.) *\$3.00 Public Defense Administration Fee;*
    - (3.) *\$1.00 Judicial Insurance Adjustment Fee;*
    - (4.) *\$18.00 Judicial Salaries Fee;*
    - (5.) *\$2.00 DNA Sample Processing fee;*
    - (6.) *\$5.00 Court Administration Fee;*
    - (7.) *\$2.00 Document Storage Fee*
    - (8.) *\$7.00 Automated Record Keeping Fee; and*
    - (9.) *\$50.00 Initial User's fee and \$10.00 for each month that the Defendant is on the program.*

*Said fees shall be paid at the time that this Agreement is filed with the Court and by his signature, the Defendant authorizes the payment of the same from his escrow account.*

- C. *The Defendant shall choose one of the following options:*

       1. *The Defendant shall perform 24 hours of Community Service to be monitored by West Central Community Corrections program and be responsible for any fees associated with the same. He shall complete his Community Service hours within 60 days of the date of this Agreement.*

       2. *The Defendant shall voluntarily contribute \$240.00 to the Vermillion County Asset Forfeiture Fund #329.*

*D. The Defendant shall promptly notify the Prosecutor's Office of any change in address.*

*This Agreement constitutes the entire Agreement between the parties, and the Defendant acknowledges that no promises have been made, or inducements given, which are not a part of this Agreement, and that he has entered into said Agreement freely, knowingly, and voluntarily.*

SO AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
State of Indiana

\_\_\_\_\_  
Counsel for Defendant