

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

SPECIAL INVESTIGATION REPORT
OF

TOWN COURT
TOWN OF MERRILLVILLE
LAKE COUNTY, INDIANA

February 26, 2006 to April 21, 2011



FILED
09/22/2011

TABLE OF CONTENTS

| <u>Description</u> | <u>Page</u> |
|--|-------------|
| Officials | 2 |
| Transmittal Letter | 3 |
| Audit Results and Comments: | |
| Background Information and Procedures | 4-5 |
| Bond Collections Not Deposited | 5-6 |
| Public Official Bond and Insurance | 6 |
| Audit Costs - Missing Funds | 6 |
| Condition of Records | 6-9 |
| Adjustments to Bonds | 9 |
| Checks Issued for Release of Bonds | 10 |
| Destruction of Public Records - Police Receipts | 10 |
| Collection of Restitution | 10-11 |
| Receipt Issuance | 11-12 |
| Fines and Fees Not Charged in Accordance With Statutes | 12-14 |
| Electronic Ledgers in Court View | 15 |
| Exit Conference | 16 |
| Official Response | 17-28 |
| Summary | 29 |
| Affidavit | 31 |

OFFICIALS

| <u>Office</u> | <u>Official</u> | <u>Term</u> |
|----------------------------------|--------------------|----------------------|
| Town Court Judge | George C. Paras | 01-01-04 to 12-31-10 |
| | Gina L. Jones | 01-01-11 to 12-31-11 |
| Town Court Administrator | Daniel T. Bozich | 01-01-06 to 04-20-11 |
| | (Vacant) | 04-21-11 to 04-24-11 |
| | Mattie Collins | 04-25-11 to 12-31-11 |
| Clerk-Treasurer | Rose Ann Antich | 11-25-05 to 12-31-07 |
| | Eugene M. Guernsey | 01-01-08 to 12-31-11 |
| President of the Town Council | Richard Hardaway | 01-01-06 to 12-31-06 |
| | Shawn Pettit | 01-01-07 to 12-31-07 |
| | Ronald Widing | 01-01-08 to 12-31-08 |
| | John D. Shudick | 01-01-09 to 12-31-09 |
| | Richard Hardaway | 01-01-10 to 12-31-10 |
| | Thomas Goralczyk | 01-01-11 to 12-31-11 |



STATE OF INDIANA
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TO: THE OFFICIALS OF THE TOWN OF MERRILLVILLE

We have audited the records of the Town Court for the period from February 26, 2006 to April 21, 2011, 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 Reports of the Town of Merrillville for the years 2006 through 2009.

STATE BOARD OF ACCOUNTS

June 10, 2011

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS

BACKGROUND INFORMATION AND PROCEDURES

The Town of Merrillville established a Town Court in accordance with state statutes. The Town Court oversees cases involving infractions (IF), ordinance violations (OV), criminal misdemeanors (CM), and small claims (SC). Examples of infractions would include failure to signal a lane change, sound a horn, or failure to yield. Ordinance violations would include speeding, disregarding a stop sign, and loud noise violations. Criminal misdemeanors include driving while intoxicated, underage drinking, battery, and resisting arrest. Because criminal misdemeanors are more serious charges, an offender is arrested, escorted to jail, and required to post a bond in order to be released from jail.

A defendant is required to post a bond, but in rare instances, may be released on their own recognizance based upon a decision by the Town Judge. Defendants who are required to post a bond to be released from jail must post the bond with the Town Court Office. When the Town Court Office is closed, the defendant may remit the bond payment to the Merrillville Police Department, which will subsequently remit the payments to the Town Court for processing. The Police Department, as well as the Town Court, will only accept cash or surety bonds.

When collections are accepted by the Police Department the cash is counted and a duplicate handwritten receipt is prepared, as well as a duplicate "Order of Release." The white copy of the receipt and "Order of Release" is given to the person remitting the bond payment and the yellow copy of the receipt is retained in the receipt book. The "Order of Release" indicates only the offender's name, but the receipt will indicate the name of the person who remitted the payment, as well as the offender's name. The collections from each offender, as well as the yellow copy of the "Order of Release," is then placed into a manila envelope and the offender's name, charges, police case number, date, amount of bond, and the officer's name is written on this envelope. The envelope is then sealed by the officer who accepted the payment and issued the receipt. If there is a surety bond (insurance policy), the surety bond is included in the envelope along with a \$5.00 cash collection for the death benefit fee, which is required for all bond postings.

The envelopes containing the Police Department Collections on bonds are picked up the next business day by a Town Court employee for processing. During the period covered by this report, it was common practice that one employee from the Town Court was responsible for collecting and processing the Police Department collections of bonds. This employee was Virliissa (Lisa) Crenshaw. For the Town Court to process a bond payment accepted by the Police Department, a Town Court receipt must be issued, and a court docket established.

The Town Court processed payments and established the dockets electronically. In 2006, the Court was transitioning from Key Court, a computerized court software processing program, to Court View, another computerized court software processing program which is operated by the Lake County Courts, and installed in various City and Town courts in Lake County. In 2006, all new cases were to be entered into the Court View system. Key Court was still available to the Town Court for processing existing cases which had not yet been moved to Court View.

When a receipt is entered for a new case into either software program a cause number is automatically assigned by the computer software. A cause number is the method used by the courts to file handwritten dockets. Dockets are maintained by the Court Clerks, Judge, or the Bailiff to record all significant correspondences and judgments regarding a single case. Within the computer software programs, electronic dockets are also maintained by the Court Clerks. The information in the electronic dockets should mirror the information in the handwritten dockets.

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

If an offender does not post a bond prior to the charges being filed with the Prosecutor, it is possible to establish a cause number electronically without a receipt being issued.

At the end of each day, all receipts processed (through either software program) were provided to Daniel T. Bozich, former Town Court Administrator. He was responsible for posting all receipts for bonds to the Register of Trust Funds, Prescribed General Form 102 (Trust Register). Additionally, he was responsible for preparing the deposit ticket and taking the collections to the bank for deposit.

Bond payments had to be entered into the Register of Trust Funds, Prescribed General Form 102, as bond payments are to be held until the case is disposed of, at which time the bond payment may be released back to the defendant, or it may be used to pay court costs, fines, and/or attorney or other court related fees.

BOND COLLECTIONS NOT DEPOSITED

During the period covered by this report, not all bond collections from the Police Department could be traced to receipts in either Court View or Key Court, nor could they be traced to the Trust Register. Thus, the collections were not deposited into the Town Court's bank account. The following are the numbers of cases and bond collections, by year, that were not receipted or deposited:

| <u>Fiscal Year</u> | <u>Number of Cases</u> | <u>Bond Collections Not Receipted or Deposited</u> |
|----------------------|----------------------------|--|
| 07-28-06 to 07-27-07 | 1 | \$ 500 |
| 07-28-07 to 07-27-08 | 43 | 28,350 |
| 07-28-08 to 07-27-09 | 151 | 97,215 |
| 07-28-09 to 07-27-10 | 156 | 106,935 |
| 07-28-10 to 07-27-11 | <u>105</u> | <u>77,325</u> |
| Totals | <u><u>456</u></u> | <u><u>\$ 310,325</u></u> |

The clerk of a city or town court shall:

1. Issue all process of the court, affix the seal of the court to the process, and attest to the process;
2. Keep a complete record and docket of all cases, showing: the name of a person who was arrested and brought before the court; the disposition of the case; and an account of the fees, fines, penalties, forfeitures, judgments, executions, decrees, and orders in as near the same manner as the records are kept by the clerk of the circuit court; and
3. Collect all fees, fines, penalties and forfeitures, judgments, executions, and money accruing to the city or town from the enforcement of ordinances. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

Indiana Code 5-13-6-1(d) states:

"A city (other than a consolidated city) or a town shall deposit funds not later than the next business day following the receipt of the funds in depositories:

- (1) selected by the city or town as provided in an ordinance adopted by the city or the town; and
- (2) approved as depositories of state funds."

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or non-feasance in office of any officer or employee may be the personal obligation of the responsible officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Since customarily, only one employee was responsible for collecting the cash bonds from the Police Department, and their subsequent recording in the Court's computer software, we requested that Virlyssa Crenshaw, former Court Clerk, reimburse the Town Court \$310,325 for bond collections not receipted or deposited. (See Summary, page 29)

PUBLIC OFFICIAL BOND AND INSURANCE

The Town of Merrillville has a Public Official Bond which covers the judges. The bond is with Western Surety Company and provides \$5,000 of coverage for the Judge at the Town Court.

The Town of Merrillville has Crime Insurance Policy which covers employee theft. The policy is with the Great Northern Insurance Company and provides \$50,000 of coverage with a \$1,000 deductible for employees of the Town of Merrillville.

AUDIT COSTS - MISSING FUNDS

The State of Indiana incurred additional audit fees in the investigation of the missing funds, due to bond collections which were not receipted or deposited in the amount of \$310,325.

Audit costs incurred because of theft or shortage may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Page 4)

CONDITION OF RECORDS

The following deficiencies relate to the Town Court:

Traffic Tickets:

1. Per the electronic dockets in Court View, as well as the fees posted in the Court View Software, it was indicated that the defendant agreed to a plea agreement. For

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

tickets, this would mean that the defendant had agreed to the terms of the pretrial diversion program, sometimes referred to by the Town Court as a deferred prosecution, but a signed plea agreement was not located for audit. Due to the lack of a signed plea agreement, we could not determine if the costs assessed or posted as collected were accurate.

2. Instances were observed in which a defendant was ticketed with infractions and/or ordinance violations, as well as a criminal misdemeanor; however, the electronic dockets only indicate the lesser charges of the infractions and/or ordinance violations. Because of the lack of documentation, we could not determine if the criminal charges were dismissed through proper channels, or if the cases involving the criminal charges were simply not established. Furthermore, it could not be determined if a bond had been collected on the criminal charges.

Establishing and maintaining cases:

1. Numerous cases remain open in excess of two years without a bond being posted, and amounts owed. For some of these cases, the only entry made was to establish the case, while others have numerous entries for rescheduling court dates and, possibly, the issuance of a bench warrant. Per a report from the Data Processing Department at Lake County, for the period January 1, 2007 to April 20, 2011, there are 1,167 open criminal cases with no active warrants or future hearing dates. A large number of these cases are over 1,000 days old. The Data Processing Department personnel explained that this report is available to the Town Court staff for review, but to our knowledge no one at the Town Court had been reviewing this report to pursue resolution of these cases.
2. Numerous court dates can be assigned to defendants without documenting the reason for the rescheduling. Additionally, Clerks are not recording court appearance dates or the resolutions of cases.
3. Surety Bonds were not always entered on the electronically generated docket or handwritten dockets.
4. The handwritten court dockets initialized by the Court Clerks, and updated by the Bailiff and Court Clerks, could not always be located for audit.

Closing Cases:

1. With the Court View software, Clerks establish cases by either establishing the type of offense, for which fees will be assessed, or by receipting the bond. Clerks can use electronic codes to indicate the reasons for the case being closed. These electronic codes are established universally for all courts using the Court View software, or users can determine their own codes. In most cases, if the electronic codes are used the fees assessed will also be discharged. During our audit period, numerous cases were observed being closed without any fees being assessed and/or without including any notation as to the reason for closing the case without the collection of fees. In most cases the "termination code," which is the electronic code provided by Court View software to enable a Clerk to close a case and provide the reason for closing the case, indicates "Dismissed," "Dismissed RJO," or "Unterminated." Most of these codes were found to have been user determined codes, not the universally established codes.

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

2. The same employee could create, update, and close the case while also being responsible for collecting court costs, fees, fines and the bond without any oversight, review, or approval from management.

Collection and Posting of Bonds:

Some cases for which bonds were collected (based upon receipts issued by the Police Department) were never entered into the system; thus, there were no formal charges pending against the defendant. For some of these cases, the two year statute of limitations has expired, which may affect the ability to prosecute.

Bond collections were noted on the sleeve of the handwritten docket, but a bond receipt could not be located for audit, nor was the bond posted to the Trust Register.

For one case, two different invalid cause numbers were developed in the Key Court Software, while a legitimate cause number was developed in Court View for the lesser infraction charge. The lesser infraction charge was dismissed one (1) day after the bond on the criminal misdemeanor charge was receipted by Virilissa Crenshaw, former Court Clerk, into the Key Court Software. Also, regarding this same case, Virilissa Crenshaw, former Court Clerk, receipted the bond into the Key Court Software 113 days after the date it was receipted by the Police Department. The bond was receipted and posted by Virilissa Crenshaw, former Court Clerk, six days after the check date to return the bond to the defendant.

For some cases, the bond amounts receipted by Virilissa Crenshaw, former Court Clerk, did not agree to the amounts receipted by the Police Department for bonds. For example, a bond in the amount of \$1,500 was receipted by the Police Department on July 22, 2010. On that same date, the bond was receipted by Virilissa Crenshaw, former Court Clerk, but in the amount of \$1,000. Another bond was receipted by the Police Department on November 17, 2010, in the amount of \$1,000, but the receipt issued by the Town Court (a different Court Clerk) was in the amount of \$1,500. For a third case, Virilissa Crenshaw, former Court Clerk, did not post a \$200 bond that was collected by the Police Department for the individual's release after a bench warrant was issued. In looking at the electronic docket for this case, it is noted that a bench warrant was issued on November 13, 2009, which was served on September 1, 2010. Next, there is an entry on September 9, 2010, for failure to appear, warrant served and cancelled, which should have created interest as to why someone who was picked up on a warrant and who did not post a bond, could fail to appear for a court date. It should be noted, however, that there was a bond collected and posted in the amount of \$500 on August 27, 2010, for someone with the same first and last name, but for a different charge.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

A judge of a city or town court shall provide, at the expense of the city or town, all books, dockets, papers, and printed blanks necessary for the discharge of the duties of the court. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

ADJUSTMENTS TO BONDS

When a person is charged with a criminal misdemeanor, a bond is required for a specific dollar amount established by the Town Court depending on the type of offense. A predetermined schedule of the required bond amounts are maintained by the Town Court and the Police Department. The charging Police Officer prepares an "Order," which documents the offense(s), and the bond amount in accordance with the schedule.

A report provided by the Data Processing Department at Lake County on May 10, 2011, showed that since the inception (early 2006) of Court View to May 10, 2011, there are 3,526 criminal cases entered by the Town Court for which a bond was required but a receipt of a bond was not posted in the Court View system.

An incarcerated individual who attends a bond hearing may request to have his bond reduced. Reductions made at the bond hearing should be documented in the dockets maintained in Court View, as well as the handwritten dockets; however, based upon discussions with Gina L. Jones, Town Court Judge, and the Police Chief, bond reductions can be made via a phone conversation with the Town Court Judge. Written documentation of such conversations is not maintained. The "Order" is not always revised and, when a revision is noted, it is not clear as to why the revision is made, or as to who approved the revision; therefore, we could not determine the legitimacy of reductions.

Indiana Code 33-35-3-7 states, "A judge of a city or town court shall provide, at the expense of the city or town, all books, dockets, papers, and printed blanks necessary for the discharge of the duties of the court."

Indiana Code 35-33-8-4 (a):

"The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail."

Indiana Code 35-33-8-5(a) states:

"Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause."

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

CHECKS ISSUED FOR RELEASE OF BONDS

In an effort to conceal the misappropriation of bond collections, several instances were discovered in which a bond for one defendant was released to pay attorneys or court costs for another defendant whose bond was diverted as discussed in the comment entitled "Bond Collections Not Receipted or Deposited." Some of these checks that were issued were written by Virilissa Crenshaw, former Court Clerk, who was responsible for the missing bond payments. For the checks she issued, a signature stamp of George C. Paras, former Town Court Judge, and Gina L. Jones, Town Court Judge, signatures were used to sign the checks. For the most part, Daniel T. Bozich, former Town Court Administrator, was responsible for issuing checks, using only his handwritten signature. It is not known if Daniel T. Bozich, former Town Court Administrator, or George C. Paras, former Town Court Judge, gave consent to the Office Clerks, namely Virilissa Crenshaw, to issue checks using a signature stamp. Gina L. Jones, Town Court Judge, advised she did not issue such authorization.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

DESTRUCTION OF PUBLIC RECORDS – POLICE RECEIPTS

Receipts issued by the Police for bond payments were destroyed prior to date allowed by statute. The Police shredded 52 boxes of receipts and other records dating prior to April 22, 2008, on January 19, 2011. According to statute, public records are to be maintained for three years from the time the records were originally filed. Because the Police receipts from dates prior to April 22, 2008, were destroyed, our audit procedures were limited.

Indiana Code 5-15-6-3(b) states:

"All public records which, in the judgment of the commission, have no official or historical value, and which occupy space to no purpose in the offices and storerooms of the local government of a county, shall be destroyed or otherwise disposed of. Except as provided in this section, such records shall not be destroyed until a period of at least three (3) years shall have elapsed from the time when the records were originally filed, and no public records shall be destroyed within a period of three (3) years if the law provides that they shall be kept for a longer period of time, or if the law prohibits their destruction."

COLLECTION OF RESTITUTION

Defendants, as a condition of probation, may be ordered by the Town Court to pay restitution to an injured party. When restitution is ordered, since it is a condition of probation, it is the responsibility of the Probation Officer to collect, and verify restitution is paid in full. Restitution may only be paid in the

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

form of a money order made payable to the injured party. Restitution may be collected by the Court Clerks, who will simply hold the money orders for the Probation Officer. Receipts are not issued for the collection of restitution by either the Probation Officer or the Court Clerks. Payments of restitution are to be noted on the Court case files.

Indiana Code 35-50-5-3(c) states in part:

"When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to: . . .

(2) a probation department that shall forward restitution or part of restitution to:

- (A) a victim of a crime;
- (B) a victim's estate; or
- (C) the family of a victim who is deceased."

The clerk of a city or town court shall:

1. Issue all process of the court, affix the seal of the court to the process, and attest to the process;
2. Keep a complete record and docket of all cases, showing: the name of a person who was arrested and brought before the court; the disposition of the case; and an account of the fees, fines, penalties, forfeitures, judgments, executions, decrees, and orders in as near the same manner as the records are kept by the clerk of the circuit court; and
3. Collect all fees, fines, penalties and forfeitures, judgments, executions, and money accruing to the city or town from the enforcement of ordinances. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

RECEIPT ISSUANCE

The Town Court issues receipts for various fines and fees, including cash bonds. The receipts issued by the Town Court are computer generated. Whenever the computer system is malfunctioning, a plain piece of paper is used, in lieu of any prescribed receipt form, to note from whom the money is received, the dollar amount, and case information. It is stamped with the Town Court's stamp and

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

provided to the individual making the payment. Notes are maintained by the Court Clerk's so that when the computer system is restored the information can be entered into the system and a computer generated receipt can be issued. The notes are then destroyed. Because the original source document was not maintained for audit, we could not determine if amounts subsequently received agreed to the documentation provided to the offender.

Receipts shall be issued and recorded at the time of the transaction; for example, when cash or a check is received, a receipt is to be immediately prepared and given to the person making payment. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

FINES AND FEES NOT CHARGED IN ACCORDANCE WITH STATUTES

Pretrial Diversion Program

An offender of certain criminal misdemeanors has the option of entering a "pretrial diversion program." Under a "pretrial diversion program," the offender must abide by certain terms as agreed to in a formal written agreement between the Prosecutor and the offender. The offender is then required to pay fees allowed by Indiana statutes as follows:

- Deferred Prosecution Fee \$120
- Public Defense Administration Fee \$3
- Judicial Insurance Adjustment Fee \$1
- Judicial Salaries Fee \$18
- Court Administration Fee \$5
- DNA Sample Processing Fee \$2
- Document Storage Fee \$2
- Highway Worksite Zone Fee \$0.50 (for a driving offense)
- Automated Recordkeeping Document Fee \$7.00
- Pretrial Diversion Fee:
 - Initial User's fee \$50 and
 - Monthly user's fee \$10 (for each month the person remains in the program, which is at least 6 months)

During the course of the audit, several cases were observed in which offenders chose a "pretrial diversion program" for which the only fee or cost collected was the deferred prosecution fee of \$120.

We are unaware of any circumstances under the statutes in which an offender can enter into a "deferred prosecution," only paying a Deferred Prosecution Fee and not any other statutorily required fees.

Criminal Misdemeanors

Some defendants were assessed court costs of \$70 for a criminal misdemeanor charge. In accordance with statutes, the court costs for criminal misdemeanors should be \$120.

Indiana Code 33-39-1-8 states in part:

"(d) A prosecuting attorney may withhold prosecution against an accused person if:

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

- (1) the person is charged with a misdemeanor;
 - (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney;
 - (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending; and
 - (4) the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council.
- (e) An agreement under subsection (d) may include conditions that the person:
- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-37-4-1; . . .
- (h) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-37-8."

Indiana Code 33-37-4-1 states:

"(a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A marijuana eradication program fee (IC 33-37-5-7).
- (3) An alcohol and drug services program user fee (IC 33-37-5-8(b)).
- (4) A law enforcement continuing education program fee (IC 33-37-5-8(c)).
- (5) A drug abuse, prosecution, interdiction, and correction fee (IC 33-37-5-9).
- (6) An alcohol and drug countermeasures fee (IC 33-37-5-10).
- (7) A child abuse prevention fee (IC 33-37-5-12).
- (8) A domestic violence prevention and treatment fee (IC 33-37-5-13).
- (9) A highway work zone fee (IC 33-37-5-14).
- (10) A deferred prosecution fee (IC 33-37-5-17).
- (11) A document storage fee (IC 33-37-5-20).

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

- (12) An automated record keeping fee (IC 33-37-5-21).
- (13) A late payment fee (IC 33-37-5-22).
- (14) A sexual assault victims assistance fee (IC 33-37-5-23).
- (15) A public defense administration fee (IC 33-37-5-21.2).
- (16) A judicial insurance adjustment fee (IC 33-37-5-25).
- (17) A judicial salaries fee (IC 33-37-5-26).
- (18) A court administration fee (IC 33-37-5-27).
- (19) A DNA sample processing fee (IC 33-37-5-26.2).

(c) Instead of the criminal costs fee prescribed by this section, except for the automated record keeping fee (IC 33-37-5-21), 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."

Indiana Code 33-37-5-17 states:

"(a) This section applies to actions in which the court defers prosecution under IC 33-39-1-8.

(b) In each action in which prosecution is deferred, the clerk shall collect from the defendant a deferred prosecution fee of one hundred twenty dollars (\$120) for court costs."

Ordinance Violations and Infractions

Several instances were observed in which defendants were charged excessive court costs for ordinance violations. Defendants were charged court costs of \$95.00; however the statute establishes court costs at \$70.00 for infractions and/or ordinance violations.

Indiana Code 33-37-4-2(a) states:

"Except as provided in subsections (d) and (e), for each action that results in a judgment:

- (1) for a violation constituting an infraction; or
- (2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10); the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70)."

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

ELECTRONIC LEDGERS IN COURT VIEW

City and Town Courts are required to maintain, in accordance with Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, a City/Town Cash Book Prescribed Form 213CT, and a Register of Trust Funds, Prescribed General Form 102. For a majority of the Town Court's entries to the Court View software system, these prescribed forms have been replaced with electronically generated ledger equivalents. Daniel T. Bozich, former Town Court Administrator, opted to maintain the prescribed City/Town Cash Book, Prescribed Form 213CT, and the prescribed Register of Trust Funds, General Form 102, manually and forgo updating the electronic ledger equivalents in Court View. For the most part, the receipt activity of the electronic ledgers should be accurate because receipts were generated through the electronic software that generates the electronic ledger, except as discussed in the comment entitled "Bond Collections Not Receipted or Deposited"; however, the disbursement activity is nonexistent, because all checks were handwritten, and never posted to the electronic ledgers. Thus, the electronic equivalent of the Trust Register indicates the cash balance of funds held in trust as of May 9, 2011, was overstated.

All checks issued were handwritten instead of being electronically generated. The Court View software has the capability of electronically issuing checks which would be posted to the electronic cash book and trust register. Additionally, had the Court View software been used correctly, when trust funds (cash bonds) were applied to pay court costs, a "bond applied" function would have removed the bond amount from the trust register and applied the costs to the appropriate fee categories in the cash book. A receipt would be generated noting the bond was applied, and there would not have been a need to issue either a handwritten or electronic check to transfer the funds; thus, reducing the potential for errors or the misapplication of costs.

At all times, the manual and computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

TOWN COURT
TOWN OF MERRILLVILLE
EXIT CONFERENCE

The contents of this report were discussed on August 2, 2011, with Gina L. Jones, Town Court Judge; Thomas Goralczyk, President of the Town Council; Dave Barron, Operations Commander of the Merrillville Police Department; Mattie Collins, Town Court Administrator; Joseph Petruch, Chief of Police Merrillville Police Department; Jim Donohue, Assistant Chief of Police; Eugene M. Guernsey, Clerk-Treasurer; Kenneth Woodside, Town Court Administrator – Civil Division; Daniel T. Bozich, former Town Court Administrator; and George C. Paras, former Town Court Judge. The official response has been made a part of this report and may be found on pages 17 through 28.



Town of Merrillville Court

7820 BROADWAY
MERRILLVILLE, INDIANA 46410
(219) 756-6185 • Fax (219) 756-1775

JUDGE GINA L. JONES

August 10, 2011

State Board of Accounts
Attn: Bruce Hartman, State Examiner
302 West Washington Street, Rm E 418
Indianapolis, IN 46204-2765

RE: OFFICIAL RESPONSE

Dear Sir;

As presiding Judge of the Merrillville Town Court, this letter shall serve as my OFFICIAL RESPONSE to the Audit Results and Comments discussed on August 2, 2011.

Having been sworn into office January 2011, upon the discovery of financial inconsistencies, I immediately contacted the State Board of Accounts and the Indiana State Police. The Court fully cooperated with their investigation and shall continue to do so. As a Judicial Officer, I am bound by the Judicial Canons and can not expound on any criminal investigation. The audit results and comments shall be reviewed and assessed. Many of the suggested internal protections have already been implemented. I am committed to making any policy or procedure changes we deem necessary to improve the functionality of the Court.

I appreciate the time and effort by your staff during the audit.

Sincerely,

Judge Gina L. Jones
Merrillville Town Court

Cc: State Board of Accounts
Porter County Administration Center

RESPONSE TO DRAFT COMMENTS TO SBOA AUDIT OF THE MERRILLVILLE TOWN COURT

It has recently come to light that Ms. Verlissa Crenshaw, a former employee of the Merrillville Town Court, engaged in a highly coordinated and extensive criminal scheme that resulted in her theft of cash funds posted by or for criminal defendants with the Merrillville Police Department as cash bonds securing their release from jail in connection with criminal cases pending in the Merrillville Town Court during her employment with the Court during the period of time between July 28, 2006, and July 27, 2011. Due to such criminal activities, the SBOA has recently conducted and concluded an audit of the Merrillville Town Court to determine the nature and scope of Ms. Crenshaw's theft.

Judge George C. Paras, the current Judge of the Lake Circuit Court and the former Judge of the Merrillville Town Court, was provided with the SBOA's Draft Comments to the audit that it has completed regarding Ms. Crenshaw's conduct.

While Judge Paras has no evidence to dispute the SBOA's initial calculation of the amount of funds that Ms. Crenshaw allegedly embezzled from the Merrillville Town Court, Judge Paras was not consulted during the SBOA's audit process for the most recent audit. Accordingly, Judge Paras feels it important to provide additional information to the SBOA as to the management and operations of the Merrillville Town Court during his term so that the SBOA can conclude its final audit report upon Ms. Crenshaw's conduct.

Moreover, certain sections within the Draft Comments address matters that are wholly unrelated to Ms. Crenshaw's activities and make serious allegations against the Merrillville Town Court's management and operations. In light of the allegations made in these sections, as set forth below, it is of utmost importance that the SBOA consider the matters raised herein before issuing any Final Audit Report addressing such matters. Certainly, the SBOA has no interest in issuing a Final Audit Report upon matters wholly unrelated to Ms. Crenshaw's theft or reporting on such matters without fully considering the actual operations of the Merrillville Town Court.

I. COURT OPERATIONS, PRACTICES, AND PROCEDURES

A. Ms. Crenshaw's Employment with the Merrillville Town Court

Ms. Crenshaw was hired as a deputy clerk of the Merrillville Town Court. Ms. Crenshaw came to the Court with practical experience regarding clerical matters and presented highly favorable personal and professional recommendations.

As a deputy clerk of the Merrillville Town Court, Ms. Crenshaw's job responsibilities included the processing criminal misdemeanor cases and pleadings filed with the Court, the receipt of funds paid to the Court, answering telephonic inquiries made by the public and attorneys upon pending misdemeanor matters, issuing receipts for funds paid to the Court, issuing receipts for bonds paid to the Court, opening and closing cases, and assigning cases case numbers.

B. Court Staffing and Internal Practices

Judge Paras is and was at all times aware of the necessity of internal controls within the Court to insure the accuracy of the Court's financial information and records and efficiency of operations, including the segregation of duties and safeguarding controls over cash and all other assets. Judge Paras is and was also aware of the necessity of controls for the receipting, disbursing, and accounting for the financial activities of the Court to avoid the risk of invalid transactions and inaccurate records and of his obligation during his term to provide at the expense of the town all books, dockets, papers, and printed blanks necessary for the discharge of the duties of the Court.

To such ends, during his term as the Judge of the Merrillville Town Court, Judge Paras employed a Chief Clerk/Court Administrator, Mr. Daniel Bozich, who was responsible for managing the Court's staff, maintaining the Court's financial records, and assisting in the overall management of day-to-day court operations. Mr. Bozich regularly attended the annual SBOA training and continuing education program regarding his duties and responsibilities. As a court administrator Mr. Bozich maintained regular communications with the SBOA upon the Court's financial operations.

In addition to a Court Administrator, during Judge Paras' term, a court staff with assigned and segregated duties staffed the Merrillville Town Court. Such staff included three (2) full-time clerks for the Court's Criminal Division, one (1) full-time clerk for the Court's Civil Division, a part-time clerk for the Criminal Division, a part-time clerk for the Civil Division, three (1) full-time bailiffs and two (2) part time bailiffs. While the Court was able to operate with such staff, additional staffing was required but the Merrillville Town Council was unable to accommodate a larger court staff given the Town's precarious financial situation. Had more staff been made available to the Court, it is likely that Ms. Crenshaw would have faced more difficulty in accomplishing her scheme.

Ms. Crenshaw worked in close physical proximity to the other clerks of the Criminal Division and Mr. Bozich. Her day-to-day activities were undertaken in plain view of her fellow employees and Mr. Bozich, none of whom were able to detect her criminal activity.

C. Financial Practices/Management of Court Funds

Mr. Bozich's primary duty as the Court Administrator was to properly account and disburse funds coming into the Court from fines court cost and bonds to the proper governmental entities and persons in proportion to their entitlement pursuant to the statutes governing their distribution or as instructed by the SBOA. Mr. Bozich always conferred with Judge Paras regarding this process and in the event any issues arose or there were any questions regarding any cost or how it was to be distributed, Mr. Bozich would confer directly with SBOA administrators, usually Mr. Charlie Pride. This practice appeared to be working well since all yearly audits conducted by the SBOA found no deficiencies in the financial management of the court.

While the Court's practices were intended to prevent the types of activities Ms. Crenshaw committed, she was able, through what is clearly a carefully orchestrated pattern of criminal activity, to successfully avoid detection by her fellow employees, the Court Administrator, the

Judge, referees, and judges *pro tempore* of the Court, and the SBOA for a period of time extending back to 2006.

D. Check Signing Authority

As indicated in the Draft Comments, Mr. Bozich was authorized to issue checks by his sole signature. However, in the interest of clarifying the remaining issues upon this matter raised in the Draft Comments, during Judge Paras' term, no employee of the Merrillville Town Court, including Ms. Crenshaw, was authorized to use Judge Paras' judicial signature stamp on checks of any nature whatsoever including checks for the release of bonds.

II. MATTERS UNRELATED TO CRENSHAW'S THEFT

The Draft Comments include several sections addressing issues or matters wholly unrelated to Ms. Crenshaw's theft that must be more fully addressed and considered by the SBOA before inclusion of the same in any final audit report that it may issue.

First, the Draft Comments include a section entitled "Condition of Records," which purports to document deficiencies in the Court's maintenance and closing of files in ordinance violation, infraction, and criminal cases. Next, the Draft Comments include a section entitled "Adjustments to Bonds," which is seemingly intended to address Court practices for the modification of bonds. Third, the Draft Comments include a Section entitled "Collection of Restitution." Finally, a significant portion of the Draft Comments is entitled "Fines and Fees not Charged in Accordance with Statute."

A. Condition of Records

As to the condition of records maintained by the Merrillville Town Court, the Comments raise three primary purported concerns with such records: (1) an alleged failure to include "plea agreements" in ordinance violation and infraction cases, (2) statements about the number of open criminal cases, and (3) comments about the rescheduling of criminal cases.

As to the claim of a failure to document "plea agreements" in ordinance violation and infraction cases, it should first be noted that the use of the term "plea agreement" is a misnomer in connection with such matters. Under Indiana law, ordinance violations and infractions are civil in nature, not criminal. Indeed, such cases are commenced by the issuance of a summons to appear before the Court at a scheduled date and time, not by the issuance of an information and/or the issuance of warrant for arrest.

While high-volume courts hearing ordinance violations and infractions along with criminal cases may even themselves refer to the agreed disposition of ordinance violations and infractions as "plea agreements," it is more appropriate to refer to such agreements as what they in fact are – the settlement of civil claim amongst a complaining party (the State or the Town of Merrillville) and the named defendant.

Regardless of terminology, the civil nature of ordinance violations and infractions is most germane to the purported failure to document “plea agreements” in such cases. As civil cases, such matters may be resolved even by the presentation of an oral agreement upon the Court’s record and/or by the submission of a written settlement instrument with the Court.

During Judge Paras’ term as Judge of the Merrillville Town Court, the disposition of all ordinance violation and infraction cases coming before the Court for a hearing or trial, whether by agreement or adjudication, was clearly noted upon the face of the file envelope by a judicial officer conducting such hearing. It was common during Judge Paras’ term for written settlement instruments to be submitted to the Court in ordinance violation and infraction cases. It was also common for parties to appear before the Court and present an oral agreement.

In any event, any concerns by the SBOA regarding the disposition of ordinance violations and infractions can be resolved by reviewing the Court’s **record of proceedings**. While not required to do so, Judge Paras directed that the Merrillville Town Court maintain a record of all proceedings before it in all infractions, ordinance violations and criminal cases. Such system included the real time audio recording of all sessions of the Court and recorded the disposition of all cases coming before the Court for a hearing or trial.

Next, as to the condition of records, the Draft Comments include statements as to the disposition of criminal cases where lesser ordinance violations and infractions were also charged against a common defendant. While the Draft Comments indicate difficulty in determining whether a criminal case was commenced or closed in such instances, it should be noted that separate case numbers were assigned to a common defendant for ordinance violations, infractions, and criminal charges.

By way of example, if a defendant was charged with a misdemeanor driving offense and was also ticketed for an infraction, such defendant was assigned a case number for the infraction and a separate case number for the misdemeanor. The disposition of the criminal case cannot be determined solely by looking to the disposition of the ordinance violation or infraction and instead must be determined by reference to the case number assigned to the criminal charge. In many instances the infraction or the ordinance violation would be disposed of and the misdemeanor would remain pending, because the infraction or ordinance violation may be a compliance issue or disposition of these offenses would enable the removal any suspension of a persons driving privileges.

Third, the Draft Comments address a number of open criminal cases pending before the Court and raise questions about the Court’s practice of continuing criminal cases.

The SBOA should note that high volume of cases processed by the Merrillville Town Court in any given year. The open criminal cases referred to in the comments represent a small overall percentage of the total number of criminal cases handled by the Court.

In many instances, given the nature of the criminal cases pending before the Merrillville Town Court, defendants simply fail to appear before the Court. It is not common nor advisable for a Court to dismiss a criminal case simply because a Defendant has not appeared before it as such

failure may be with good cause or may indicate that a Defendant is simply not aware that a criminal case has been filed against him or her.

Finally, and in a similar vein, the allegations regarding the continuance of criminal cases pending before the Merrillville Town Court are of great concern as the Draft Comments fail to account for the myriad of reasons that a criminal case may be continued. During Judge Paras' administration, criminal cases could be continued only upon a written motion of an attorney who had formally appeared in a case or by appearing before the Court and asking the Court for a continuance. All self-represented persons also had to appear in open court or advise the Court in writing of their request and reason for the continuance. For any cases where there were no written motions for a continuance, those persons or their attorneys would have appeared in open court to request the continuance and the reasons for the continuance would be on the **record**.

Also a continuance in a criminal case can be granted for any number of reasons, including allowing a defendant the opportunity to comply with a statute or allowing them time to retain their own private attorney thereby sparing the public the expense of a public defender and affording a criminal defendant the opportunity to select an attorney of his or her choice.

Each case must be adjudicated on its own unique set of facts and circumstances, including the granting of a single or even several continuances in a given criminal case. While some may think it "efficient" to adopt a single unitary policy as to continuances, such a policy hardly comports with the procedural and substantive protections afforded to defendants.

In any event, as stated above, the Court maintained a **real-time audio record** of all matters coming before the Court for a hearing or trial. Once again, any concerns regarding the granting of continuances in a criminal case, either one or several, are best addressed by a review of the Court's record and not by generalizations regarding the Court's practices based on data provided by the Lake County Data Department Court View program which is noted for its unreliability and frequent crashing that requires the manual backup of financial records.

B. Adjustments to Bonds

At all times during Judge Paras' administration, proper procedures were employed and followed for the reduction of bonds in criminal cases, including the conducting of an initial bond hearing at which a criminal defendant's bond was determined and/or the setting of an appropriate bond or other order by the Court upon the commencement of a criminal case.

It is difficult to determine, based on the Draft Comments and the other statements therein regarding Crenshaw's theft of cash bonds posted by criminal defendants with the Merrillville Police Department, how the Court's handling of the adjustment of bonds that it had already set is relevant to Ms. Crenshaw's theft of the cash bonds posted by defendants with the Merrillville Police Department regardless of how such bonds were each initially determined and set by the Court.

C. Collection of Restitution

The Draft Comments include a section entitled “Collection of Restitution.” Once again, it is difficult to determine the relevance of such section to the issue of Ms. Crenshaw’s theft of cash bonds posted by criminal defendants with the Merrillville Police Department. Moreover, the Comments include no allegations that restitution paid through the Merrillville Town Court was not properly forwarded to victims or that Ms. Crenshaw’s criminal activities extended to restitution funds paid by a criminal defendant to a victim through the Merrillville Town Court.

D. Fines and Fees not Collected in Accordance with Statute

This section of the Draft Comments contains some of the most serious allegations against the operation and management of the Court during Judge Paras’ term and against the current court administration.

Aside from the fact that this section of the Draft Comments has no connection with Ms. Crenshaw’s criminal activities, the conclusions recited within this section are simply mistaken and are based on an apparent misapprehension of the distinction between Pretrial Diversions and Deferral of Prosecution Agreements in connection with both criminal misdemeanor cases and ordinance violations cases before the Merrillville Town Court.

1. Under-Collection of Fees in Misdemeanor Pre-Trial Diversions/Deferrals

Given the serious nature of the statements made in the Draft Comments regarding the Merrillville Town Court’s handling of Pretrial Diversions and Deferral of Prosecution Plea Agreement, such statements are set forth below *verbatim*:

An offender of certain criminal misdemeanors has the option of entering a “pretrial diversion program.” Under a “pretrial diversion program,” the offender must abide by certain terms as agreed to in a formal written agreement between the prosecutor and the offender. The offender is the required to pay fees allowed by Indiana statutes as follows:

Deferred prosecution fee \$120

Public Defense Administration Fee \$3

Judicial Insurance Adjustment Fee \$1

Judicial Salaries Fee \$18

Court administration Fee \$5

DNA Sample Processing Fee \$2

Document Storage Fee \$2

Highway Worksite Zone Fee \$0.50 (for a driving offense)

Automated Recordkeeping Document Fee \$7.00

Pretrial Diversion Fee:

Initial User’s fee of \$50 and

Monthly user’s fee \$10 (for each month the person remain in the program which is at least 6 months)

During the course of the audit, several cases were observed in which offenders chose a “pre-trial diversion program” for which the only fees and costs collected was the deferred prosecution fee of \$120.00

We are unaware of any circumstances under the statutes in which an offender can enter into a “deferred prosecution,” and only paying a Deferred Prosecution Fee and not any other statutory required fees.”

The comments then go on to quote, in part, the following statutes: I.C. 33-39-1-8; 33-37-4-1; and I.C. 33-37.5-17.

The Draft Comments are troubling and of great concern as it seems that they are based on a misapprehension of the difference between Pre-Trial Diversions and Deferral of Prosecution.

At the outset is important to note the difference between a Pretrial Diversion and a Deferral of Prosecution. These different, yet similar, vehicles may be used by a prosecutor to dispose of a criminal case without a trial and are merely part of the several means available to prosecutors to efficiently dispose of cases. In the simplest of terms, each of these pre-trial resolution mechanisms do exactly what their respective names imply: a Pretrial Diversion literally “diverts” a case away from adjudication while a Deferral of Prosecution delays or “defers” the adjudication of a case or the imposition of an agreed upon sentence if the terms of the Deferral of Prosecution Agreement are not followed.

A Pretrial Diversion is most commonly allowed to certain criminal defendants through pre-trial diversion programs that various county prosecutors throughout the State of Indiana may implement in their respective jurisdictions. Such programs are typically made available to first-time non-violent and/or non-alcohol related misdemeanor offenders and set forth certain minimum criteria that all those participating in such programs must meet.

A Pretrial Diversion typically includes (i) the charging of the various costs set forth in the Draft Comments, including an initial Pre-Trial Diversion Fee and a monthly user fee, and (ii) the imposition of certain conditions that a criminal defendant must meet in order to obtain the ultimate benefit of the pre-trial diversion, a dismissal of the criminal case.

Pre-Trial Diversions are generally entered into at the outset of a criminal case and are often based on a prosecutor’s own review of a given file that may demonstrate a qualified defendant.

Under a Pre-Trial Diversion, a Defendant is not required to plead guilty to any charge, and upon entry into a Pre-Trial Diversion program, a prosecutor halts the case against the defendant so that the defendant can meet the diversion conditions. These conditions can include the payment of the fees and costs, probation, counseling and community service, among others.

If a defendant meets the conditions of a given Pretrial Diversion program, then the case is dismissed. If, however, a defendant fails to meet the conditions of the Pretrial Diversion program, prosecutors can move the case forward to trial as if no diversion had taken place; there

is, however, no pre-determined or agreed upon sentence or sanction that is left to be imposed if the defendant so fails; instead, the defendant must be tried.

While similar in the ultimate result reached, a Deferral of Prosecution is not the same as a Pretrial Diversion, as the Draft Comments seemingly imply.

Instead of being implemented through a broad program like Pre-Trial Diversions, a Deferral of Prosecution is typically the result of direct negotiations amongst an attorney (public defenders or private attorneys) and a prosecutor. Moreover, a Deferral of Prosecution may be entered into at any point in a criminal case. Also any questions regarding cases before the Merrillville Town Court in which Deferral of Prosecution Agreements were presented to the Court, could be resolved by reviewing the Court's **record of proceedings.**

A Deferral of Prosecution Agreement typically provides that in exchange for and in consideration of the defendant paying a certain agreed upon amount and fulfilling any and all other conditions imposed on him or her by such agreement, the State will dismiss the criminal case. A Deferral of Prosecution Agreement may simply provide that the State may resume prosecution if a defendant fails to meet his or her obligations or may even provide for an agreed upon sentence or sanction that will be imposed by a court upon proper notification to it of a defendant's failure to comply with her or her Deferral of Prosecution Agreement.

Throughout city and town courts in Lake County, the distinction between Pretrial Diversions and Deferral of Prosecution Agreements is stark and pronounced. The typical result of such plea negotiations amongst the Lake County Prosecutor and defense attorneys resulting in a Deferral of Prosecution Agreement is the payment of a \$120.00 Deferred Prosecution Fee by a defendant together with such defendant complying with any and all other negotiated and agreed upon terms of a Deferral of Prosecution Agreement.

Other courts in Lake County accept Deferral of Prosecution Agreements with fees the same as or similar to those accepted in the Merrillville Town Court and specifically as follows:

| | |
|-------------------------|------------------|
| Crown Point City Court | \$120.00 |
| Lowell Town Court | \$120.00 |
| Schererville Town Court | \$120.00 |
| Gary City Court | No Fee – MI & IF |
| Lake Station City Court | No Fee |
| Hammond City Court | Fee Varies |
| East Chicago City Court | \$165.50 |
| Hobart City Court | \$159.00 |

Those “several cases” referred to in the Draft Comments of defendants obtaining a “pretrial diversion program” for which “the only fees and costs collected was the deferred prosecution fee of \$120.00,” were not in fact instances of defendants in the Merrillville Town Court obtaining a “pretrial diversion,” but of defendants whose attorneys obtained Deferral of Prosecution Agreements on their behalf through direct negotiations with and upon the agreement of the Lake County Prosecutor.

The practices of the Merrillville Town Court with respect to the acceptance of Pretrial Diversions and Deferral of Prosecution Agreements was disclosed to the SBOA by the Court's past Court Administrator, Mr. Bozich, who maintained regular contact with Mr. Pride of the SBOA on such matters. Finally, the SBOA had ample opportunity to call attention to any actual deficiency in Merrillville Town Court practices upon Pretrial Diversions and/or Deferral of Prosecution Agreements through the several audits that the SBOA conducted of the Court in the past but no mention was made of any such defects or deficiencies until the issuance of the Draft Comments.

At no time did the Merrillville Town Court fail to assess proper all appropriate and required fees in connection with Pretrial Diversions and/or Deferrals of Prosecution before it and the statements to the contrary in the Draft Comments are erroneous and should be removed.

2. *Overcharging Court Costs in Ordinance Violations and Infractions*

As with the provisions of the Draft Comments purporting to address Pretrial Diversions and Deferral of Prosecution Agreements, the Draft Comments also include troubling claims as to the Court's assessment of costs against defendants in ordinance violation cases.

Given the gravity of the allegations made in the Draft Comments upon this subject, such allegations are set forth below *verbatim*:

Several instances were observed in which Defendants were charged excessive court costs for ordinance violations. Defendants were charged court costs of \$95.00; however the statute establishes that court costs at \$70.00 for infractions and/or ordinance violations.

Indiana Code 33-37-4-2(a) states, "Except as provided in subsections (d) and (e), for each action that results in a judgment:

(1) for a violation constituting an infraction; or

(2) for a violation of an ordinance of a municipal corporation (as defined in I.C. 36-1-2-10) the Clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy (\$70).

Once again, the distinction between Pretrial Diversions and Deferral of Prosecution Agreements set forth above is germane to the allegations made in the foregoing section of the Draft Comments. Also, a review other provisions of I.C. 33-37-4-2 cited within the foregoing excerpt is also required to fully address the allegation that the Merrillville Town Court "charged excessive court costs for ordinance violations."

I.C. 33-37-4-2(e) provides in its entirety as follows:

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), except for the automated record keeping fee (IC 33-37-5-21), the clerk shall collect a deferral program fee if an agreement between a prosecuting

attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is:

- (1) an initial user's fee not to exceed fifty-two dollars (\$52); and
- (2) a monthly user's fee not to exceed ten dollars (\$10) for each month the person remains in the deferral program.

The \$95.00 fee referred to in the foregoing excerpt of the Draft Comments was not an assessment of excessive court costs by the Merrillville Town Court against defendants in ordinance violation cases, but rather such \$95.00 fee was the fee typically agreed to by the Merrillville Town Attorney with defense attorneys in negotiating Deferral of Prosecution agreements and consisted of **\$70.00** court cost and **\$25.00** initial fee which is authorized by the statute because any amount can be assessed as long as it does not exceed **\$52.00**.

The fee accepted by the Merrillville Town Court for Deferral of Prosecution Agreements for ordinance violations is the same or similar to such fees accepted by other court throughout Lake County and specifically as follows:

| | |
|-------------------------|----------|
| Crown Point City Court | \$100.00 |
| Lowell Town Court | \$70.00 |
| Schererville Town Court | \$95.00 |
| Gary City Court | \$173.00 |
| Lake Station City Court | \$111.50 |

As explained above, a Deferral of Prosecution Agreement is not an adjudication of a case, but rather, is a means of disposing of cases in the pre-trial phase of a case. Accordingly, a Deferral of Prosecution Agreement amongst the Town of Merrillville and defendants in ordinance violations does not require the mere assessment of \$70.00 in court costs pursuant to I.C. 33-37-4-29(a)(b), but instead the payment of the deferral fee set required by I.C. 33-37-4-2(e).

As with the practices of the Merrillville Town Court as to Pretrial Diversions and Deferral of Prosecution Agreements, the Court's practices as to the Town's Deferral Program for Ordinance Violations was disclosed to the SBOA by the Court's past Court Administrator, Mr. Daniel Bozich, who maintained regular contact with Mr. Pride of the SBOA on such matters. Finally, the SBOA had ample opportunity to call attention to any actual deficiency in Merrillville Town Court practices upon Ordinance Violation Deferrals through the several audits that the SBOA conducted of the Court in the past but no mention was made of any such defects or deficiencies until the issuance of the Draft Comments.

At no time did the Merrillville Town Court charge excessive fees to defendants in ordinance violations cases appearing before it and statements in the Draft Comments to such effect are inaccurate and should be removed from any final audit report issued by the SBOA in connection with its recent audit of the Court.

III. LACK OF CONSULTATION WITH JUDGE PARAS DURING AUDIT PROCESS

As the SBOA is aware Judge Paras is no longer the presiding Judge of the Merrillville Town Court as he was elected to serve as Judge of the Lake County Circuit Court. Also the Court Administrator during Judge Paras' term, Mr. Bozich, was fired by the current judge, therefore, Judge Paras had no direct or indirect input in nor was he consulted by the SBOA's auditors about any issues raised in the audit and in the Draft Comments during the audit process and was provided the Draft Comments only after the audit process was completed and afforded limited to respond to the same. Judge Paras believes that if he were consulted many of the matters raised in the audit would have been resolved.

Judge Paras appreciates the efforts of the SBOA in determining the extent of Ms. Crenshaw's criminal activity and welcomes the SBOA's issuance of its Final Audit Report upon such matters. However, the SBOA's Final Audit Report should not include inaccurate information about the Court's practices upon matters wholly unrelated to Ms. Crenshaw's criminal activities.

TOWN COURT
TOWN OF MERRILLVILLE
SUMMARY

| | <u>Charges</u> | <u>Credits</u> | <u>Balance Due</u> |
|---|-------------------|----------------|--------------------|
| Virlessa Crenshaw, former Court Clerk: Bond Collections Not Deposited, pages 5 and 6 | <u>\$ 310,325</u> | <u>\$ -</u> | <u>\$ 310,325</u> |

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