

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

AUDIT REPORT

OF

COMMUNITY CORRECTIONS

FAYETTE COUNTY, INDIANA

January 1, 2007 to December 31, 2011



**FILED**  
07/19/2012



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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Director of Community Corrections	William Newkirk	01-01-07 to 12-31-12
Chairman of the Community Corrections Advisory Board	Adrian Ellis	01-01-07 to 12-31-12
President of the County Council	Richard Pflum, Jr. Barton Barker Duane Risselman Ronald E. Cox	01-01-07 to 12-31-07 01-01-08 to 12-31-08 01-01-09 to 12-31-10 01-01-11 to 12-31-12
President of the Board of County Commissioners	Chad Lee Richard Pflum, Jr.	01-01-07 to 12-31-08 01-01-09 to 12-31-12



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF FAYETTE COUNTY, INDIANA

We have audited the records of the Community Corrections for the period from January 1, 2007 to December 31, 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 Fayette County for the years 2007, 2008, 2009, 2010, and 2011.

STATE BOARD OF ACCOUNTS

March 6, 2012

COMMUNITY CORRECTIONS  
FAYETTE COUNTY  
AUDIT RESULTS AND COMMENTS

**EXCESS PAYMENTS TO COMMUNITY CORRECTIONS EMPLOYEES**

From 2007 through 2011, payments totaling \$84,000 were made to Regenstrief Community Youth Center for the Thinking for a Change program. The claims were signed by the Director of the Fayette County Community Corrections, William Newkirk. The Thinking for a Change program is a program of the County and was funded with grant proceeds from the State of Indiana Community Corrections grant fund. It has been discovered that a portion of these payments to the Youth Center were subsequently paid to Fayette County Community Corrections employees for facilitating the program sessions that may have been held at the Youth Center's facility. The payments by the Youth Center to the County Community Corrections employees were by Youth Center check or cash. Steven Bills, Community Corrections Supervising Field Officer, received payments totaling \$36,000 for the period January 2007 through December 2011. Lisa Day, currently a Juvenile Probation Officer for the Fayette County Probation Department, received payments totaling \$12,800 for the period January 2007 through June 2009. Jessica Pflum, Community Corrections Case Worker, received payments totaling \$15,200 for the period July 2009 through December 2011. The County employees were not employees of the Youth Center and amounts paid by the Youth Center were not adjusted by payroll tax withholdings or other withholdings, nor were Form 1099s issued by the Youth Center with respect to these payments. The payments from the Youth Center received by Steven Bills, Lisa Day, and Jessica Pflum were not included as part of the compensation for these individuals as approved by the County Council in the Salary Ordinance for any of the years mentioned above.

According to Robert Gibbs, Director of the Regenstrief Youth Center, the arrangement was made by himself and Steven Bills, currently serving Fayette County Community Corrections as the Supervising Field Officer. William Newkirk, as Fayette County Community Corrections Director, was aware that the County employees were being paid by the Youth Center. No conflict of interest forms were filed by the individuals involved.

The County Community Corrections employees were certified facilitators of the Thinking for a Change program. The costs for travel to the State Community Corrections facilitators training site were paid by Fayette County, and the training was received during their regular working hours for Fayette County Community Corrections.

Indiana Code 36-2-7-2 states:

"Except as otherwise provided by sections 6, 9, and 13 of this chapter, the compensation fixed for county officers and employees under this title is in full for all governmental services and in lieu of all:

- (1) fees;
- (2) per diems;
- (3) penalties;
- (4) costs;
- (5) interest;
- (6) forfeitures;

COMMUNITY CORRECTIONS  
FAYETTE COUNTY  
AUDIT RESULTS AND COMMENTS  
(Continued)

- (7) percentages;
- (8) commissions;
- (9) allowances;
- (10) mileage; and
- (11) other remuneration;

which shall be paid into the county general fund."

The community corrections grant agreement between the Indiana Department of Correction and Fayette County includes Section 10. Compliance with Laws, Part B which states in part:

"The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code 4-2-6, IC 4-2-7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004." "If the Grantee or its agents violate any applicable ethical standards, the Department may, in its sole discretion, terminate this Grant Agreement immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under Indiana Code 4-2-6-12 and 4-2-7, and under any other applicable laws."

Indiana Code 4-2-6-5.5(a) states in part:

"A current state officer, employee, or special state appointee shall not knowingly: . . .

- (3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
  - (A) of substantial value; and
  - (B) not properly available to similarly situated individuals outside state government."

Indiana Code 4-2-6-7(b) states:

"A state officer, employee, or special state appointee may not receive compensation:

- (1) for the sale or lease of any property or service which substantially exceeds that which the state officer, employee, or special state appointee would charge in the ordinary course of business; and
- (2) from any person whom the state officer, employee, or special state appointee knows or, in the exercise of reasonable care and diligence should know, has a business relationship with the agency in which the state officer, employee, or special state appointee holds a position."

COMMUNITY CORRECTIONS  
FAYETTE COUNTY  
AUDIT RESULTS AND COMMENTS  
(Continued)

Indiana Code 4-2-6-9(a) states:

"A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment."

Indiana Code 35-44-1-3(c) Conflict of Interest states in part:

"It is not an offense under this section if: . . .

- (6) A public servant who makes a disclosure that meets the requirements of subsection (d) or (e) and is:
  - (A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and **performs duties for the governmental entity unrelated to the contract or purchase; . . .**" (our emphasis)

We are requesting Steven Bills repay \$36,000, Lisa Day repay \$12,800, and Jessica Pflum repay \$15,200 which represents payments beyond their salaries as approved by County Council. (See Summary of Charges, page 17)

## **CONTRACTS**

Payments totaling \$84,000 were made by Fayette County Community Corrections to the Regenstrief Community Youth Center to conduct the Thinking for a Change program for the period January 2007 through December 2011 without a contract.

Payments made or received for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts. Accounting and Uniform Compliance Guidelines Manual for Counties, Chapter 1)

COMMUNITY CORRECTIONS  
FAYETTE COUNTY  
EXIT CONFERENCE

The contents of this report were discussed on March 6, 2012, with Richard Pflum, Jr., President of the Board of County Commissioners; Ronald E. Cox, President of the County Council; Adrian Ellis, Chairman of the Community Corrections Advisory Board; and William Newkirk, Director of Community Corrections.

The contents of this report were discussed on March 6, 2012 with Steven Bills, Community Corrections Supervising Field Officer; Jessica Pflum, Community Corrections Case Manager; and Lisa Day, Juvenile Probation Officer. The Official Responses have been made a part of this report and may be found on pages 8 through 16.

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May 3, 2012

**VIA FACSIMILE: 317-232-4711**

Mr. Paul D. Joyce  
Deputy State Examiner  
Indiana State Board of Accounts  
302 W. Washington Street  
Room E418  
Indianapolis, Indiana 46204-2765

**Re: Notice of Result of Examination to Steven Bills**

**Explanation and Demand for Relief**

Dear Mr. Joyce:

Please be advised that my office represents Mr. Steven Bills in regard to the captioned matter.

Following is the explanation relative to the State Board of Accounts examination report.

Mr. Bills received pay from Regenstrief Youth Center for teaching services he provided by teaching in the evening hours after his work at Community Corrections. The pay vouchers he signed were signed at Regenstrief Youth Center when he picked up his wage for teaching a State program entitled "Thinking for a Change".

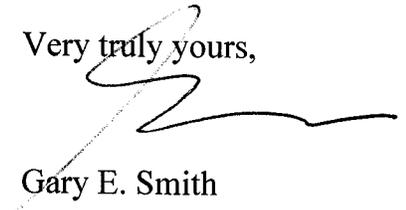
As background to becoming employed to teach the "Thinking for a Change" program, Mr. Bills was advised by the Community Correction's Director, Mr. Bill Newkirk, also Mr. Bills' supervisor, to talk to the youth center Director, Mr. Bob Gibbs, attempt to explain the State sponsored "Thinking for a Change" program, and inquire of Mr. Gibbs if the Youth Center would be interested in administrating the program. Also, Mr. Bills was asked to explain, if Regenstrief Youth Center was interested in administrating the program, he (Mr. Bills) and Lisa Day were certified trainers of T4C

and would be available to teach (the program). Mr. Gibbs indicated Regenstrief Youth Center would be interested in administrating the program and this was reported to Mr. Bills. Mr. Bills said he would get something in writing from the Youth Center.

Sometime thereafter Mr. Bills was told by Mr. Newkirk that he could begin teaching classes for the Youth Center. Mr. Bills taught evenings, usually teaching twice a week at the Youth Center. The classes were attended by juveniles who were ordered to attend the classes by a Fayette County Court or Fayette County Probation Department.

Mr. Bills taught as he agreed to do and was paid as agreed. The part-time evening teaching was not part of his day job with the Community Corrections Department and he never took time from his day job for the Regenstrief program. Simply stated, Mr. Bills agreed to teach and Regenstrief Youth Center agreed to pay for his teaching. Mr. Bills taught and Regenstrief paid.

Very truly yours,



Gary E. Smith  
Attorney At Law

Established 1918

April 30, 2012

**VIA FACSIMILE (317) 232-4711**

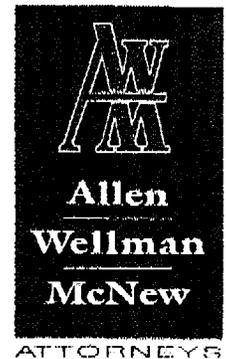
Paul D. Joyce, CPA  
 Deputy State Examiner  
 State Board of Accounts  
 302 W. Washington Street  
 Room E418  
 Indianapolis, IN 46204

RE: Jessica Pflum

Dear Mr. Joyce:

I had sent to you on April 24, 2012 a letter requesting a meeting with you pursuant to your letter to Ms. Pflum of April 17, 2012 wherein you had suggested Ms. Pflum could appear in person to make an explanation relative to the State Board of Accounts report. Subsequent thereto, I called your office and spoke to you regarding that meeting at which time it became clear to me that the offer to meet in person and/or explain in writing was going to be met with deaf ears and I found your demeanor to be unprofessional after having extended to Ms. Pflum the opportunity to explain her position. However, with that said, there is one issue that at the end of the day will need to be addressed.

Assuming the State Board of Accounts is in fact correct, which Ms. Pflum disagrees, it is without question that the classes were conducted at times other than Ms. Pflum's regular hours of employment to which she devoted five to six hours each week during the times those classes were in session which would be over and above her regular forty hour work week at Community Corrections. You are suggesting that Ms. Pflum then not be paid for her time which exceeded her forty hour work week which would raise questions both State and Federal as to wage and labor laws. In my conversation with you, you continued to state that Ms. Pflum was not entitled to any monies for the teaching of that class from the grant. However, I would beg to differ in that there were specific line items in the grants for contracts and other payments and that is where Ms. Pflum received those monies which when based on what her hourly wage was and what her time and one-half would be come very close to



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matching up to the number of hours spent by Ms. Pflum as it relates to the monies received by her. Ms. Pflum never engaged in any contract negotiations or grant applications during the relevant period of time nor did Ms. Pflum ever use her position to take an unfair advantage of an employment situation but was instead paid for time spent over and above her forty hour work week and was paid directly from the Youth Center. Be that as it may, the bottom line here is that Ms. Pflum regardless of whatever circumstance the State Board of Accounts may find, is entitled to be compensated for the work that was done.

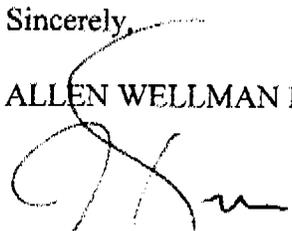


You had indicated to me that you would contact me this week regarding the meeting and Ms. Pflum is willing to do that, however, I wanted to point out the above to you as it became obvious to me that this becomes the very crux of the situation Ms. Pflum and the others find themselves in and what amounts to what Ms. Pflum believes to be an erroneous State Board of Accounts report.

Again, I would appreciate meeting with you to discuss the above and answer any other questions you may have. Thanking you in advance.

Sincerely,

ALLEN WELLMAN McNEW, LLP



James W. McNew  
JWM/dmh

cc: Jessica Pflum

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OF COUNSEL:  
RYAN C. FOX  
RAYMOND J. HAFSTEN, JR.  
ROBERT D. KING, JR.

April 24, 2012

Paul D. Joyce, CPA  
Deputy State Examiner  
State Board of Accounts  
302 West Washington Street  
Room E418  
Indianapolis, Indiana 46204-2765

Re: *Lisa Day*

Dear Mr. Joyce:

Please be advised that Lisa Day has retained the services of John H. Haskin & Associates. We are in receipt of your correspondence dated April 17, 2012, and we accept your invitation to provide a written explanation of the situation through Ms. Day's point of view. After reviewing this letter, if you have any questions or concerns, do not hesitate to contact Ryan P. Sink or myself at 317-955-9500.

First and foremost, Ms. Day is not responsible for paying the State of Indiana \$12,800.00 because she performed the work and fulfilled the purpose under the state grant for the Thinking for a Change program. Quantum meruit, also known as unjust enrichment, applies when one performs services for another, which enriched or provided a benefit, and allowing one to keep the benefit without payment would be unjust. *Troutwine Estates v. Comsub Design and Engineering, Inc.*, 854 N.E.2d 890, 897 (Ind. Ct. App. 2006). Regardless of whether the grant money was distributed in a way approved by the State of Indiana, Ms. Day performed services and is entitled to payment under the theory of quantum meruit.

There should be no dispute that Ms. Day did perform work and teach classes for the Thinking for a Change program. Her services occurred outside of working hours, and outside of her normal job duties. Fayette County, Indiana, refused to pay Ms. Day overtime wages for this

work, and Fayette County promised payment to Ms. Day in the amount of \$800.00 per class. Ms. Day successfully completed these services, thereby fulfilling the consideration of the agreement, and providing a benefit to Fayette County and a benefit to the State of Indiana.

In the event the state of Indiana seeks reimbursement for the \$12,800.00 paid to Ms. Day for these services, then Ms. Day may counterclaim the State of Indiana for quantum meruit, and implead Fayette County under a theory of quantum meruit. Ms. Day performed work and fulfilled the intent and purpose of the grant money, and the State of Indiana and Fayette County cannot reasonably expect for someone to perform work without being paid. From any objective perspective, the intent and purpose of the grant was successfully fulfilled. There is no allegation that money was used for not performing work. These juveniles received education and self improvement tools from Ms. Day, and they benefitted from the grant money and services provided by Ms. Day.

Second, Ms. Day did not establish the method of payment under the grant. She is not responsible for the method of payment of services under the grant for the Thinking for a Change program. The audit by the Indiana State Board of Accounts clearly states that Robert Gibbs, Director of the Riegenstrief Youth Center, and Steven Bills, Field Officer of Fayette County Community Corrections, arranged the services and method of payment under this program. Bill Newkirk, Director of Community Corrections, created the grant application, and was aware of how the grant money was being used to pay for services. Ms. Day was a passive participant. She provided services, and was paid for her services in a manner established by three (3) separate people. Ms. Day did not setup the method of payment, and she should not be held responsible for the bad judgment of other individuals.

Third, the Indiana State Board of Accounts alleges that Ms. Day violated Ind. Code § 36-2-7-2. However, this code provision only applies to county employees, and Ms. Day is currently a state employee. Even when considering the 2007 through 2009 time period, Ind. Code § 36-2-7-2 does not include grant money, or money paid pursuant to an independent contractor relationship with the county. This provision basically says that a county employee cannot be paid additional monies, on top of their ordinary salary, for fees, per diems, penalties, costs, interests, forfeitures, percentages, commissions, allowances, mileage, and other remuneration which is supposed to enter the general fund. This provision does not cover work performed by Ms. Day outside of her official duties and responsibilities as a Juvenile Officer and Case Manager from 2007 through 2009. It does not prohibit Ms. Day from working as an independent contractor outside of her normal hours and job duties, which is what happened here. Fayette County and other individuals chose to pay Ms. Day in this manner, and they are the individuals who should be held responsible.

Fourth, you accused Ms. Day of violating ethics rules for state employees, but the Indiana State Board of Accounts failed to mention that alleged ethical violations of state employees “must” go through the Ethics Commission, which would preclude any action by the Attorney General’s Office to collect these monies against Ms. Day. Ind. Code § 4-2-6 *et seq.* provides that alleged ethics violations of state employees must first have probable cause, can be rejected by the Ethics Commission, and due process must be given, including a hearing. In 2000, the Indiana

Supreme Court, in *LTV Steel Co. v. Griffin*, 730 N.E.2d 1251 (Ind. 200), held that “[i]t is clear from this regulatory scheme that the legislature intended the Ethics Commission to have exclusive jurisdiction to establish a code of ethics for the conduct of state business, and to adjudicate alleged violations thereof.” *Id.* at 1258. Otherwise, each state agency would interpret the code of ethics in their own particular way, resulting in a lack of uniformity among state employees.

Here, if you continue to accuse Ms. Day of violating ethics rules applicable to state employees, then the Indiana State Board of Accounts has placed the cart ahead of the horse, and concluded that Ms. Day committed an ethical violation without properly going through the necessary procedures under Ind. Code § 4-2-6 *et seq.* In the event the Attorney General files in court against Ms. Day and alleges violations of ethical rules applicable to state employees without going through the Ethics Commission, this will provide grounds for a motion to dismiss.

Fifth, Ms. Day did not violate the plain language of Ind. Code § 4-2-6-5.5(a), which states:

- (a) A current state officer, employee, or special state appointee shall not knowingly:
- (1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual’s recusal from matters so central or critical to the performance of the individual’s official duties that the individual’s ability to perform those duties would be materially impaired;
  - (2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment;
  - (3) use or attempt to use the individual’s official position to secure unwarranted privileges or exemptions that are (A) of substantial value; and (B) not properly available to similarly situated individuals outside of state government.

The audit omitted very important language when citing this code provision. Let us examine each basis separately to see if the known facts here establish a violation by Ms. Day. Under the first part of subsection (1), the question is whether Ms. Day knowingly accepted other employment of a substantial value which was “inherently incompatible” with her responsibilities as a probation officer. The answer is clearly “no.” She knowingly accepted compensation for services under the Thinking for a Change Program with the county, but these services do not conflict with her job duties and responsibilities as a probation officer.

Under the second part of subsection (1), the question is whether Ms. Day knowingly accepted employment involving compensation of a substantial value if the responsibilities of that employment required her recusal from certain matters. The answer to this question is also clearly “no.” She never had to recuse herself from any matters because of her involvement with the

Thinking for a Change Program. Therefore, Ms. Day did not violate subsection (1), as alleged by the Indiana State Board of Accounts.

Under subsection (2), the issue is whether Ms. Day knowingly accepted employment with the county that would require her to disclose confidential information. There should be no dispute that Ms. Day never disclosed any confidential information.

Under subsection (3), the question is whether Ms. Day knowingly used her position of a Juvenile Officer/ Case Manager to secure unwarranted privileges that are a substantial value and not properly available to similarly situated individuals outside of state government. This a loaded question, and Ms. Day will prevail on many grounds under this code provision. First, other individuals outside of state government, including but not limited to Steven Bills and Jessica Pflum, received more money under the grant than Ms. Day for their services with Thinking for a Change. This proves that the grant benefits were afforded to similarly situated individuals outside of state government. Second, there is no evidence that Ms. Day knowingly used her position as a probation officer to secure work with Thinking for a Change, and this work was not available to non-state employees. The Indiana State Board of Accounts will not be able to prove any violation of Ind. Code § 4-2-6-5.5(a).

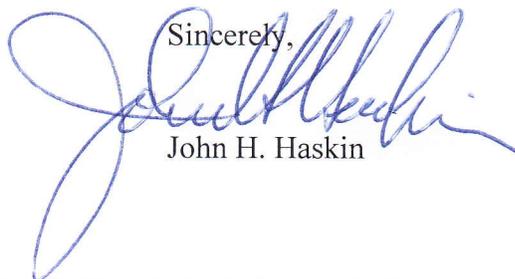
Next, the Indiana State Board of Accounts alleges that Ms. Day violated Ind. Code § 4-2-6-7(b), which states that “[a] state officer, employee, or special state appointee may not receive compensation: (1) for the sale or lease of any property or service which substantially exceeds that which the state officer, employee, or special state appointee would charge in the ordinary course of business, and (2) from any person whom the state officer, employee, or special state appointee knows or, in the exercise of reasonable care and diligence should know, has a business relationship with the agency in which the state officer, employee, or special state appointee holds a position.”

To prove a violation of this section, the State must prove that Ms. Day provided services which “substantially exceeds” that which Ms. Day would charge in the ordinary course of business, and the State must also prove that the exceedingly high compensation comes from a person or entity that has a business relationship with the State. No facts support a violation of this code section, because payment given to Ms. Day for her services with Thinking for a Change cannot be characterized as substantially or exceedingly high. The amount of compensation was dictated to Ms. Day by others. She did not set the price, and Ms. Day, along with others, received the same amount of compensation for teaching the classes. Further, there is no evidence that the county or the club provided extra compensation to Ms. Day and others because of any relationship with the State of Indiana.

There is an allegation that Ms. Day violated Ind. Code § 4-2-6-9(a), but this section only prohibits state employees from voting or making a decision in a matter where the employee has a financial interest in the outcome of the matter. As stated above, Ms. Day did not establish the grant or method of payment. She did not vote or make any decision on Thinking for a Change where she held a financial interest in the outcome of the matter. Therefore, Ms. Day did not violate Ind. Code § 4-2-6-9(a).

For these reasons, we respectfully request that your department rescind and revoke your examination conclusion that Ms. Day owes the State of Indiana \$12,800.00.

Sincerely,



John H. Haskin

cc: *Lisa Day*  
*2110 East Lola Road*  
*Connersville, IN 47331*

COMMUNITY CORRECTIONS  
FAYETTE COUNTY  
SUMMARY OF CHARGES

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Excess Payments to Community Corrections			
Employees, pages 4 through 6:			
Steven Bills, January 1, 2007 -			
December 31, 2011	\$ 36,000	\$ -	\$ 36,000
Lisa Day, January 1, 2007 -			
June 30, 2009	12,800	-	12,800
Jessica Pflum, July 1, 2007 -			
December 31, 2011	<u>15,200</u>	<u>-</u>	<u>15,200</u>
Totals	<u>\$ 64,000</u>	<u>\$ -</u>	<u>\$ 64,000</u>

This report was forwarded to the Office of the Indiana Attorney General and the local prosecuting attorney.

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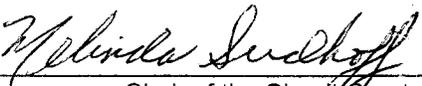
AFFIDAVIT

STATE OF INDIANA )  
                                  )  
FAYETTE COUNTY )

I, Robin White, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records of the Community Corrections, Fayette County, Indiana, for the period from January 1, 2007, to December 31, 2011, is true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Field Examiner

Subscribed and sworn to before me this 16 day of April, 2012

  
\_\_\_\_\_  
Clerk of the Circuit Court