

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

AUDIT REPORT
OF
COUNTY PROSECUTING ATTORNEY
LAKE COUNTY, INDIANA
January 1, 2011 to December 31, 2011



FILED
09/24/2012

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COUNTY OFFICIALS

| <u>Office</u> | <u>Official</u> | <u>Term</u> |
|---|---------------------------------------|--|
| Prosecutor | Bernard A. Carter | 01-01-11 to 12-31-14 |
| President of the County Council | Ted Bilski Jerome Prince | 01-01-11 to 12-31-11 01-01-12 to 12-31-12 |
| President of the Board of County Commissioners | Roosevelt, Allen, Jr. Gerry Scheub | 01-01-11 to 12-31-11 01-01-12 to 12-31-12 |



DIALS OF LAKE COUNTY
AN EQUAL OPPORTUNITY EMPLOYER

STATE OF INDIANA

STATE BOARD OF ACCOUNTS
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ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

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We have audited the records of the County Prosecuting Attorney for the period from January 1 2011 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 Result and Comment. The financial transactions of this office are reflected in the Annual Report of Lake County for the year 2011.

STATE BOARD OF ACCOUNTS

June 26, 2012

COUNTY PROSECUTING ATTORNEY
LAKE COUNTY
AUDIT RESULT AND COMMENT

FINES AND FEES NOT CHARGED IN ACCORDANCE WITH STATUTES

An offender of certain criminal misdemeanors has the option of entering a Pretrial Diversion Program. Under this program the offender must abide by certain terms as agreed to in a formal written agreement between the County 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 \$5
Judicial Insurance Adjustment Fee \$1
Judicial Salaries Fee \$19
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 \$5
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)

Several cases from the Hammond Clerk's office were observed in which offenders who chose the Pretrial Diversion Program were charged only the Pretrial Diversion Fees; \$110 for 6 months or \$170 for 12 months. We are unaware of any circumstances under the statutes in which an offender can enter into a pretrial diversion program, without paying any other statutorily required fees.

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

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

- (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; . . ."

COUNTY PROSECUTING ATTORNEY
LAKE COUNTY
AUDIT RESULT AND COMMENT
(Continued)

Indiana Code 33-37-4-1 states in part:

"(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: . . .

- (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).
- (12) An automated record keeping fee (IC 33-37-5-21).
- (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."

COUNTY PROSECUTING ATTORNEY
LAKE COUNTY
EXIT CONFERENCE

The contents of this report were discussed on June 26, 2012, with Barbara L. McConnell, Chief Deputy Prosecuting Attorney, and Peter Villarreal, First Assistant Deputy Prosecutor. The Official Response has been made a part of this report and may be found on page 7.



Office of the Prosecuting Attorney
31st JUDICIAL CIRCUIT
LAKE COUNTY, INDIANA

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PROSECUTING ATTORNEY



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July 10, 2012

Mr. Bruce Hartman
State Board of Accounts
302 West Washington Street
Room E 418
Indianapolis, IN 46204-2765

RE: OFFICIAL RESPONSE

Dear Mr. Hartman:

It was brought to our attention that the Lake County Prosecutor's Office was not including all of the appropriate statutory fees. It was clerical error in our paperwork. The matter has since been corrected.

If you need any additional information, please feel free to contact me.

Sincerely,

Barbara L. McConnell
Chief Deputy Prosecuting Attorney

BMCC/ae