

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

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



FILED
08/24/2012

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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Auditor	Stephanie Campbell	01-01-09 to 12-31-12
Prosecuting Attorney	Tim Bookwalter	01-01-11 to 12-31-14
President of the County Council	Darrel L. Thomas	01-01-11 to 12-31-12
President of the Board of County Commissioners	Gene Beck Kristina Warren	01-01-11 to 12-31-11 01-01-12 to 12-31-12



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
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ROOM E418
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TO: THE OFFICIALS OF PUTNAM COUNTY

We have audited the records of the County Prosecuting Attorney for the period from January 1, 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 Putnam County for the year 2011.

STATE BOARD OF ACCOUNTS

August 8, 2012

COUNTY PROSECUTING ATTORNEY
PUTNAM COUNTY
AUDIT RESULT AND COMMENT

PRETRIAL DIVERSION FEES

As stated in the prior three audit reports, Pretrial Diversion Agreements executed by the Prosecuting Attorney include an option for the payment of prescribed "donations" to both the Pretrial Diversion Fund and to the Putnam County Community Corrections department in lieu of completing community service. The donations are a charge in addition to the statutorily required user fees. The statutes do not specifically allow for the charging of donations to either of these funds.

Indiana Code 33-37-4-1(c) states:

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

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

Indiana Code 33-39-1-8(e) states in part

"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; . . . "

Indiana Code 33-39-1-8(h) states: "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."

COUNTY PROSECUTING ATTORNEY
PUTNAM COUNTY
EXIT CONFERENCE

The contents of this report were discussed on August 9, 2012, with Tim Bookwalter, Prosecuting Attorney. The Official Response has been made a part of this report and may be found on pages 6 through 18.



Office of Prosecuting Attorney

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

OFFICIAL RESPONSE

August 16, 2012

State Board of Accounts
Attn: Bruce Hartman, State Examiner
302 W. Washington, Room E418
Indianapolis, IN 46204

RE: Putnam County Prosecutor's Office; Audit Results and Comments

Dear Mr. Hartman:

This will serve as the official response to the recent "Audit Results and Comments" provided to this office.

I. PRE-TRIAL DIVERSION FEES

Pre-Trial Diversion Agreements are governed by Indiana Code 33-39-1-8. These are agreements entered into by the State and the defendant on certain misdemeanors that were allowed by the Statute.

Your comments draw the "legal conclusion" that persons who buy out of community service work are paying a pre-trial diversion fee. This is incorrect, they have already agreed to pay the fees, this is an additional "provision" of the Agreement allowed under I.C. 33-39-1-8(e).

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

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

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

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

These agreements have been approved by the Court. In the last three (3) years the Court stopped signing pre-trial diversion agreement because of the burden it placed on the court staff to pull the court file from the clerk's office each time one was filed.

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

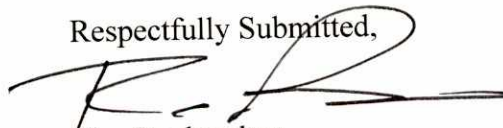
Attached hereto as Exhibit Three is Putnam County Ordinance No. 2011-6-20 wherein the Commissioners approved the buy-outs.

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

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

Our reasoning was based upon the decision in Mueller, Evans vs. State of Indiana, 837 N.E.2d 298 (2005). As I read the case you should not selectively enforce a statute if the selection was based upon an unjustifiable standard such as race, religion, or other arbitrary classifications.

Respectfully Submitted,



Tim Bookwalter
Putnam County Prosecutor

TB/lo

Enclosures

EXHIBIT 1

STATE OF INDIANA
COUNTY OF PUTNAM

IN THE PUTNAM SUPERIOR COURT
2007 TERM
CAUSE NO. ~~XXXXXXXXXX~~

STATE OF INDIANA

Vs

~~XXXXXXXXXX~~
Defendant

FILED
~~XXXXXXXXXX~~

PRE-TRIAL DIVERSION AGREEMENT

Mary J. Watts
CLERK PUTNAM SUPERIOR COURT

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

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

The State agrees to dismiss without prejudice Counts: _____.

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

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

TERMS OF PRE-TRIAL DIVERSION AGREEMENT

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

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

Putnam County Clerk
PO Box 546
Greencastle, IN 46135

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

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

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

Defendant: _____ Attorney (for Defendant): _____
 Address: _____
 City: _____
 State: _____ Zip: _____
 DOB: _____ Height: _____ Weight: _____
 Hair: _____ Eyes: _____ Dated: _____

APPROVAL OF COURT

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

Dated this _____ day of _____, 2007.

EXHIBIT 2



Charles D. Bridges, Judge

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

February 2, 2009

Timothy Bookwalter

Putnam County Prosecutor

4th Floor, Courthouse

Greencastle, IN 46135

Tim,

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

Sincerely,

Charles D. Bridges

Judge, Putnam Superior Court

EXHIBIT 3



* 2 0 1 1 0 0 2 7 8 5 2 *

OPAL SUTHERLIN

PUTNAM COUNTY RECORDER

06/21/2011 10:43:10AM

REC FEE:\$0.00

RECORDED AS PRESENTED

PUTNAM COUTNY ORDINANCE NO. 2011-6-20

Comes now the Putnam County Board of Commissioners and passes the following ordinance concerning the Prosecutor's deferral program and pre-trial diversion program.

A. Funds derived from a deferral program or a pre-trial diversion program may be disbursed for one (1) or more of the following purposes:

- (1) Personnel expenses related to the operation of the program.
- (2) Special training for:
 - a. a prosecuting attorney;
 - b. a deputy prosecuting attorney;
 - c. prosecutor's office support staff personnel, or
 - d. a law enforcement officer.
- (3) Employment of a deputy prosecutor or prosecutorial support staff.
- (4) Victim's assistance.
- (5) Electronic legal research.
- (6) Office equipment, including computers, computer software, communication devices, office machinery, furnishings, and office supplies.
- (7) Expenses of a criminal investigation and prosecution.
- (8) An activity or program operated by the prosecuting attorney that is intended to reduce or prevent criminal activity, including:
 - a. Substances abuse;
 - b. Child abuse;
 - c. Domestic abuse;
 - d. Operating while intoxicated; and
 - e. Juvenile delinquency.
- (9) Any other purpose that benefits the office of the prosecuting attorney or law enforcement that is agreed upon by the county fiscal body and the prosecuting attorney that includes but is not limited to mental health and animal control.

B. That funds can also be placed in the pre-trial diversion fund that are derived from offenders who have opted to buy out of any community service component at the rate of ten dollars (\$10.00) per hour so long as the Judge having jurisdiction over said case agrees to such program.

*

The foregoing was passed by the Putnam County Commissioners this ²⁰~~10~~ day of
June, 2011.



Gene Beck
Gene Beck, President
Putnam County Commissioners

Kristina Warren
Kristina Warren
Putnam County Commissioners

Nancy Fogle
Nancy Fogle
Putnam County Commissioners

ATTEST:

Stephanie Summitt-Campbell
Stephanie Summitt-Campbell

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY,
THAT I HAVE TAKEN REASONABLE CARE TO
REDACT EACH SOCIAL SECURITY NUMBER IN
THIS DOCUMENT, UNLESS REQUIRED BY LAW."

NAME: Stephanie Campbell

Prepared By Tim Bookwalter

EXHIBIT 4

STATE OF INDIANA)
) SS:
COUNTY OF VERMILLION)

IN THE VERMILLION CIRCUIT COURT
2008 TERM

STATE OF INDIANA

VS.

CAUSE NO. ~~XXXXXXXXXX~~

PRE-TRIAL DIVERSION AGREEMENT

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

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

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

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

1. *The Defendant shall perform 24 hours of Community Service to be monitored by West Central Community Corrections program and be responsible for any fees associated with the same. He shall complete his Community Service hours within 60 days of the date of this Agreement.*
2. *The Defendant shall voluntarily contribute \$240.00 to the Vermillion County Asset Forfeiture Fund #329.*

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

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

SO AGREED this _____ day of _____, 2008.

State of Indiana

Counsel for Defendant