

[CAPTION]

**IMMUNITY AGREEMENT**

The State of Indiana, by Deputy Prosecuting Attorney, and the Defendant, by counsel, hereby enter into the following stipulation:

WHEREAS, the State of Indiana wishes to procure the testimony of the Defendant with regard to his knowledge of facts relating to charged and uncharged conduct against the Defendant and/or [insert name of individual against whom the Defendant will be testifying], with regard to which Defendant has knowledge;

WHEREAS, the State of Indiana wishes that the Defendant be available to testify truthfully in sworn statement, at deposition, trial or other hearing relating to [insert name of individual against whom the Defendant will be testifying];

WHEREAS, the Defendant maintains a right, pursuant to the United States and Indiana Constitutions, to remain silent as to said charges, and to refuse to so testify or incriminate himself;

WHEREAS, the Defendant and the State desire to enter into a negotiated plea agreement in matters pending before this Court, as well as matters under investigation but not as yet filed, pursuant to which the Defendant shall agree to testify truthfully at any subsequent deposition, trial or hearing regarding charges filed or under investigation involving [insert name of individual against whom the Defendant will be testifying];

NOW THEREFORE, IT IS AGREED AND STIPULATED THAT:

1. Defendant shall provide sworn statement, deposition and trial testimony regarding his involvement and/or knowledge of the involvement of others, in relation to any activities, conspiracies, communications and/or facts relating to any matters currently pending in which [insert name of individual

against whom the Defendant will be testifying] is a defendant, or in which he is or has been the subject of investigation.

2. The State of Indiana shall be barred from use of any sworn statement, deposition or trial testimony procured pursuant to the agreement herein, any contents thereof, or any information contained therein or derived therefrom, the fact that such statement, deposition or trial testimony was even taken, or the fact that the stipulation herein was ever made, in the instant, or any future State or Federal prosecution against the Defendant, whether presently ongoing or not.

3. The State of Indiana shall be barred from use of any statement, deposition or trial testimony related to the stipulation herein, or derivative therefrom, against any third person or persons, whether in the proceeding herein, or any State or Federal prosecution, whether presently ongoing or not, until and unless a formal plea agreement between the State the Defendant is entered into, disposing of all pending matters in this Court, as well as any and all potential charges which are now, or have been, under investigation by, or are known to, the State and/or its law enforcement entities, such agreement to be signed, and filed of record with the relevant Court(s), and approved and ordered by said Court (s), which plea agreement provides for and allows such use.

IN WITNESS WHEREOF, the undersigned have executed this Stipulation as of [insert date].

(Signature of Defendant)

(Signature of Prosecutor)


(Signature of Attorney)


## REFERENCES


CASEBANK L.7.c; B.10.f; O.5.c


I.C. 35-37-3-1 et. seq. (procedure for granting use immunity)


## CASE LAW



Abner v. State, [479 N.E.2d 1254](#)  (Ind. 1985) (immunity agreement which purported to grant the Defendant transactional immunity in fact granted only use immunity or was void; immunity statute in effect at time of the Defendant's agreement permitted only granting of use immunity; if prosecutor attempted to grant the Defendant transactional immunity, it was beyond his authority to do so).

Bullock v. State, [397 N.E.2d 310](#)  (Ind.Ct.App. 1979) (the Defendant entered an agreement that if she testified before grand jury against target, charge of shoplifting would be dismissed; because the Defendant was never called to testify and case against target was dismissed, the trial court properly denied dismissal of subsequent charge of shoplifting although the Defendant was available to testify).

Brown v. State, [725 N.E.2d 823](#)  (Ind. 2000) (the trial court did not err in overruling the Defendant's objection to State's evidence, which he argued was derived from his immunized testimony in his co-conspirators' trial; once immunized, any evidence that witness gives, or evidence derived from that evidence, may not be used in any criminal proceeding against that witness; the State has a heavy burden of proving that all evidence it proposes to use was derived from legitimate source wholly independent of compelled immunized testimony).

Bussberg v. State, [827 N.E.2d 37](#)  (Ind.Ct.App. 2005) (a probationer may be forced to give testimony when immunity is given at probation hearing; this testimony does not run afoul of I.C. 35-37-3-3, the immunity statute, which states any evidence given "may not be used in any criminal proceeding against that witness" as a probation revocation hearing is not a criminal proceeding).

In Re Cudworth, [815 N.E.2d 1019](#)  (Ind.Ct.App. 2004) (the trial court properly found Defendant in contempt for failing to testify after being given use immunity; the trial court had authority to provide use immunity for Defendant's trial which was taking place in another county and Defendant did not purge himself from contempt when, prior to the State resting, he offered to testify).

Nybo v. State, [799 N.E.2d 1146](#)  (Ind.Ct.App. 2003) (court improperly relied on the Defendant's immunized testimony to aggravate Defendant's sentence). See also Neff v. State, [849 N.E.2d 556](#)  (Ind. 2006).