

[CAPTION]

**APPLICATION FOR RELEASE ON RECOGNIZANCE OR REDUCTION  
OF BAIL**

The Defendant, by counsel, respectfully requests this Court, pursuant to Ind. Code § 35-33-8-5(c), to authorize his/her release on recognizance or in the alternative to reduce the amount of bail to an amount no higher than is reasonably required to assure the Defendant's appearance in Court. In support of this Motion, the Defendant states the following:

1. On [insert date], an [indictment/information] was filed charging the Defendant with [insert offense(s)].
2. Thereafter, bail was set in the amount of [insert bail amount].
3. Because the background information to be produced at the hearing requested herein creates a strong inference that Defendant will appear as required, the Defendant should be released on his/her own recognizance or be admitted to bail in a reasonable, and lower, amount.
4. Article 1, Section 17 of the Indiana Constitution makes all offenses bailable, unless the charge is murder or treason (since repealed) and the State proves by a preponderance of the evidence that the “proof is evident or the presumption strong.” Under Article 1, Section 17, the sole purpose of bail is to guarantee the appearance of the accused at trial. *Brown v. State*, 322 N.E.2d 708 (Ind. 1975).
5. Excessive bail is prohibited by the Eighth and Fourteenth Amendments to the United States Constitution and the Indiana Constitution, Article 1, Section 16, which provides: “Excessive bail shall not be required.” Bail is excessive where the amount set represents a figure set higher than reasonably calculated to assure defendant’s presence at trial. *Hobbs v. Lindsey*, 240 Ind. 74, 162 N.E.2d 85 (1959).
6. The [insert amount of bail] violates the Defendant's statutory right set forth in Ind. Code § 35-33-8-4 and constitutional rights pursuant to Article I, Sections 16 and 17 of the Indiana Constitution because:
  - (a) The amount is not commensurate with the past record and conduct of Defendant.  
*Sherelis v. State*, 452 N.E.2d 411 (Ind. Ct. App. 1983).

- (b) The amount is not commensurate with the nature of the offense charged.
- (c) The amount is not commensurate with the Defendant's family ties in the community, his/her employment and character, his/her length of residence in the community, or his/her record of appearance at court proceedings.
- (d) The amount is clearly excessive and not considerate of the financial ability of the Defendant. *Hobbs v. Lindsey*, 240 Ind. 74, 162 N.E.2d 85 (1959).
- (e) The amount was set, pursuant to Ind. Code § 35-33-8-3.1(a), to assure the physical safety of another person or the community. "In providing a constitutional right to bail, the Indiana Constitution affords a greater right than that provided by the United States Constitution." *Ray v. State*, 679 N.E.2d 1364, 1366 (Ind.Ct.App. 1997). Indiana Courts have consistently construed the right to bail as interrelated to the presumption of innocence and to have one purpose, assure the Defendant's presence. *Brown v. State*, 322 N.E.2d 708, 262 Ind. 629 (1975); *Sherelis v. State*, 452 N.E.2d 411 (Ind.Ct.App. 1983).

7. The amount of bail presently required is greater than the amount reasonably required to assure the Defendant's appearance in Court. *Stack v. Boyle*, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951).

8. The amount of bail presently required is unreasonable and excessive and, thus, violates the prohibitions of Article 1, Sec. 16, of the Indiana Constitution and the Eighth and Fourteenth Amendments to the United States Constitution.

9. The amount of bail presently required infringes upon Defendant's right to assistance of counsel, as guaranteed by Article 1, Sec. 13, of the Indiana Constitution and the 6th and 14th Amendments to the United States Constitution, in that the Defendant's detention before trial imposes an unreasonable burden on Defendant and counsel in the preparation of his/her defense.

10. The amount of bail presently required denies the Defendant equal protection of the laws, in violation of the 14th Amendment to the United States Constitution because:

- (a) It denies Defendant the right to be at liberty prior to trial, a right extended to wealthier persons similarly situated, solely because of Defendant's financial inability to execute a

[insert amount] bail bond.

- (b) The amount of bail presently required is considerably greater than the bail customarily required for the alleged offense.
- (c) Defendant is entitled to an individualized bail determination, by an impartial decision maker, at which time the defendant is entitled to an opportunity to be heard and to present evidence in support of [his/her] claim of inability to pay. *Odonnell v. Harris Cty.*, 2018 U.S. App. LEXIS 14578 (5th Cir. June 1, 2018). If the defendant is unable to afford bail, further detainment of the defendant “without meaningful consideration of other possible alternatives infringes on both due process and equal protection requirements.” *Id.* (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978)).
- (d) A lack of individualized bail determinations and use of standard bail schedules violates the Equal Protection Clause of the Fourteenth Amendment by “treating otherwise similarly-situated defendants differently based solely on their relative wealth.” *Odonnell v. Harris Cty.*, 2018 U.S. App. LEXIS 14578 (5th Cir. June 1, 2018).
- (e) Further, the inability to pay bail can result in a higher likelihood of the defendant pleading guilty, more likely that the defendant receives a longer sentence, and more likely to bear the social costs of incarceration. *Odonnell v. Harris Cty.*, 2018 U.S. App. LEXIS 14578 (5th Cir. June 1, 2018). The imposition of bail may actually increase the likelihood of unlawful behavior. See Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 786-87 (2017).
- (f) This hearing or individualized determination must occur within 48 hours of arrest. Co. of Riverside v. McLaughlin, 500 U.S. 44, 56-57 (1991).

11. The amount of bail presently required without an individualized determination further denies the Defendant due process by failing to provide the defendant with prompt judicial review, by an impartial decision maker within 48 hours of arrest, at which time the defendant is entitled to an opportunity to be heard and to present evidence in support of their claim of inability to pay. *Co.*

*of Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991).

WHEREFORE, the Defendant requests:

- A. A prompt hearing on bail reduction be held.
- B. The Defendant be released on his/her own recognizance pending the final disposition of the charges herein.
- C. In the alternative, he/she be admitted to bail in the lowest amount reasonable to assure his/her appearance in Court.

(Signature)

[CAPTION]

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR RELEASE ON  
RECOGNIZANCE OR REDUCTION OF BAIL**

I, \_\_\_\_\_, after being first duly sworn, do state as follows:

1. I currently live at [insert defendant's address]
2. [My/Our Family's] income is [insert total from below] per month.

My Wages (_____ per hour x _____ hours per month)	_____
Unemployment Compensation:	_____
AFDC/TANF Benefits:	_____
SSI/SSD Benefits:	_____
Child Support:	_____
Other: _____	_____
	+
<b>Total =</b>	_____

2. My employment history for the last two years in reverse chronological order is as follows:

Employed from: \_\_\_\_\_, 201\_ to \_\_\_\_\_, 201\_. Income (monthly): \_\_\_\_\_  
Employer: \_\_\_\_\_

Employed from: \_\_\_\_\_, 201\_ to \_\_\_\_\_, 201\_. Income (monthly): \_\_\_\_\_  
Employer: \_\_\_\_\_

Employed from: \_\_\_\_\_, 201\_ to \_\_\_\_\_, 201\_. Income (monthly): \_\_\_\_\_  
Employer: \_\_\_\_\_

3. My spouse's [if applicable] employment history for the last two years in reverse chronological order is as follows:

Employed from: \_\_\_\_\_, 201\_ to \_\_\_\_\_, 201\_. Income (monthly): \_\_\_\_\_  
Employer: \_\_\_\_\_

Employed from: \_\_\_\_\_, 201\_ to \_\_\_\_\_, 201\_. Income (monthly): \_\_\_\_\_  
Employer: \_\_\_\_\_

Employed from: \_\_\_\_\_, 201\_ to \_\_\_\_\_, 201\_. Income (monthly): \_\_\_\_\_  
Employer: \_\_\_\_\_

4. [I/We] currently have \_\_\_\_\_ in the bank.

5. [My/Our] combined assets total [insert total from below] and include:

Real Estate:	_____
Automobiles:	_____
Other: _____	_____

Other: \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Other: \_\_\_\_\_

+  
**Total =** \_\_\_\_\_

6. [My/My Family's] expenses total [insert total from below] per month:

Housing (Rent, Contract, or Mortgage): \_\_\_\_\_  
 Utilities (Gas, Electric, Water, Phone, etc.): \_\_\_\_\_  
 Food: \_\_\_\_\_  
 Child Care: \_\_\_\_\_  
 Medical Bills: \_\_\_\_\_  
 Transportation: \_\_\_\_\_  
 Insurance (car, medical, and/or property): \_\_\_\_\_  
 Child Support: \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Other: \_\_\_\_\_

+  
**Total =** \_\_\_\_\_

7. The following dependent(s) are currently in my care: [insert children or another dependent's name(age)].

8. [Additional Information, which can and should include any expected major changes in income or expenses, money owed to arrestee and spouse, and any additional information the arrestee wishes to provide to help explain the inability to pay].

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_  
 Petitioner

STATE OF INDIANA )  
 ) SS:  
 COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, who, after being first duly sworn, stated that the foregoing representations were true and correct to the best of his knowledge and belief.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
 Notary Public  
 Resident of \_\_\_\_\_ County

My Commission Expires: \_\_\_\_\_

## REFERENCES

## CASEBANK B.2.a; B.2.c; B.2.f

U.S. Constitution, Eight and Fourteenth Amendments

Indiana Constitution, Art. 1, §§ 16 and 17

I.C. 35-33-8-4 (amount of bail; order; facts taken into account)

I.C. 35-33-8-5 (alteration or revocation of bail)

I.C. 35-33-8-5(c) (“when the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in section 4(b) of this chapter, which reasonably suggests that the defendant recognizes the court's authority to bring the defendant to trial, the court may reduce bail. However, the court may not reduce bail if the court finds by clear and convincing evidence that the factors described in I.C. 35-40-6-6(1) (A) and I.C. 35-40-6-6(1) (B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community”).

## CASE LAW

Ray v. State, 679 N.E.2d 1364 (Ind.Ct.App. 1997) (in providing constitutional right to bail, Indiana Constitution, Art. 1, § 17 affords greater right than that provided by United States Constitution; evidence that the Defendant had prior conviction for stalking same victim was insufficient, as matter of law, to support bail revocation under IC 35-33-8-5; community safety is a consideration in setting, not revoking, bail).

Hobbs v. Lindsey, 240 Ind. 74, 162 N.E.2d 85 (Ind. 1959) (bail set at figure higher than amount reasonably calculated to fulfill principal purpose of assuring accused party's presence in court is excessive).

Sherelis v. State, 452 N.E.2d 411 (Ind.Ct.App. 1983) (where the Defendant was an established resident with strong family and community contacts, with a fine reputation, no previous criminal record, bail of \$1,000,000 was excessive).

Sneed v. State, 946 N.E.2d 1255 (Ind.Ct.App. 2011) (in dealing in methamphetamine prosecution, \$25,000 bail was not excessive, but trial court abused its discretion by requiring a cash-only payment of bail and denying Defendant's request for the option of a surety bond).

Mott v. State, 490 N.E.2d 1125 (Ind.Ct.App. 1986) (Elkhart County bail schedule (set forth in opinion) did not violate the Defendant's constitutional right to bail where it denied posting of 10% cash bond to those charged with class A and B felonies).

Schmidt v. State, 746 N.E.2d 369 (Ind.Ct.App. 2001) (Article I, Section 17 of the Indiana Constitution is silent as to when the right to bail attaches; while judge, in her discretion, may allow bail to be posted immediately after arrest, right to bail does not vest until the initial hearing).

Matter of Brettin, 723 N.E.2d 913 (Ind.Ct.App. 2000) (order increasing the Defendant's bail constituted alteration of previous amount and therefore entitled the Defendant to hearing pursuant to I.C. 35-33-8-5; however, if bail is set on additional charges, I.C. 35-33-8-4 permits the trial court to make bail determination ex parte, without a hearing).

U.S. v. Salerno, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) (where legislature mandates

detention on basis of compelling interest other than prevention of flight, the Eighth Amendment does not require release on bail).

Traylor v. State, 817 N.E.2d 611 (Ind.Ct.App. 2004) (there was no due process violation in the decision to arrest the Defendant immediately, without a hearing, since the court held a hearing as soon as possible, within three days thereafter). But see I.C. 35-33-8-5(d), I.C. 35-33-8-7(a) and I.C. 35-33-8-8(a) (only circumstance when the trial court is authorized to issue an arrest warrant prior to a hearing on bond revocation, i.e., when the Defendant has failed to appear).

Samm, Jr. v. State, 893 N.E.2d 761 (Ind.Ct.App. 2008) (although bond set within the bond schedule is presumed to be reasonable, bond set outside the bond schedule is not presumed to be unreasonable; although trial court abused its discretion by failing to acknowledge uncontroverted evidence of several of the factors listed I.C. 35-33-8-4, the \$100,000 cash only bond for multiple dealing charges, including a Class A felony, was not excessive).

Reeves v. State, 923 N.E.2d 418 (Ind.Ct.App. 2010) (trial court abused its discretion in denying motion to reduce bail because it failed to state a nexus between the criteria for bail in Ind. Code 35-33-8-4 (b) and bond of \$1.5 million (with no 10% cash bail allowed)).

Riverside County, Calif. V. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991) (the Fourth Amendment requires prompt judicial determination of probable cause as a prerequisite to extended pretrial detention following warrantless arrest; individuals must be given a probable cause hearing within 48 hours).