

[CAPTION]

MOTION FOR IMMEDIATE SETTING OF BAIL

The Defendant, by counsel, respectfully requests this Court to immediately set bail in the above-entitled cause pursuant to Ind. Code § 35-33-8-4 and Indiana Criminal Rule 26. In support of the Motion, the Defendant states the following:

1. The Defendant in the above-entitled cause is charged with [insert offense(s)].
2. No bail has been set in this cause.
3. On [insert date], the Defendant was arrested and has been in continuous custody since that date.
4. The Defendant is [insert age] and has resided in [insert county] for [insert number of years].
5. The Defendant currently resides at [insert address] and has resided at that residence for [insert number of years]. If released upon reasonable bail, the Defendant would remain within the jurisdiction of this Court at [insert address] and would appear in Court each and every time this cause is before the Court.
6. The Defendant is [insert marital status] and has provided for his/her spouse and children for a period in excess of [number of years].
7. The Defendant has been employed at [insert employer] for a period of [insert time at job] and has been a steady and reliable employee.
8. The Defendant is the sole provider for his/her family, and if he/she remains in custody, will lose his/her job, and his/her family will be without support.
9. The Defendant has never forfeited a bail bond.
10. The Defendant has strong ties in this community as both his/her parents and his/her siblings reside in [insert county].
11. The Defendant is a high school/college graduate, receiving his/her diploma/degree in

[insert year].

12. The Defendant does not have an extensive criminal or juvenile record.

13. The Defendant has no prior criminal history making him/her a low risk with respect to flight to avoid criminal prosecution.

14. The Defendant is not a risk to the community. Nevertheless, any consideration when setting bail of a factor other than those relating to the assurance that the Defendant will appear for Court violates Article I, § 17 of the Indiana Constitution.

15. The Defendant assures the Court that he/she will provide the Court or such person or persons as the Court may designate, and his/her attorney, with a current address at all times while this case is pending where notices may be sent to him/her.

16. The Defendant has a constitutional right to bail. Ind. Const., Art. I, Section 17; U.S. Const. Amend. VIII. In fact, the Defendant has a greater constitutional right to bail under the Indiana Constitution than the U.S. Constitution. *Ray v. State*, 679 N.E.2d 1364 (Ind. Ct. App. 1997). In order to afford the Defendant this constitutional right, bail must be set immediately, or in the very least, at the initial hearing. *Schmidt v. State*, 746 N.E.2d 369 (Ind. Ct. App. 2001). The defendant also has a constitutional right to an initial hearing within 48 hours of arrest. *Co. of Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991).

17. The defendant has a constitutional right to have an individualized determination made regarding their ability 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)). A lack of individualized 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.” *Id.* 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. *Id.* 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).

WHEREFORE, the Defendant respectfully requests this Court to set bail in an amount no higher than is reasonably required to assure the appearance of the Defendant in Court, and to set this matter for a hearing within 48 hours of the arrest of the defendant to make an individualized assessment and for all other relief just and proper in the premises.

(Signature)

[CAPTION]

AFFIDAVIT IN SUPPORT OF MOTION FOR IMMEDIATE SETTING 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: _____	_____
	+
Total =	_____

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.b; B.2.c

U.S. Constitution, Eighth and Fourteenth Amendments

Indiana Constitution, Art. I, Sections 16 and 17

I.C. 35-33-8-3.2 (conditions of bail)

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

I.C. 35-33-7-1 (timing of initial hearing)

CASE LAW

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).

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).

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)).

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).

NOTE

If the court refuses to set bail at the initial hearing or fails to hold an initial hearing within the required statutory time period, relief can be sought through the filing of a Writ of Habeas Corpus in the Circuit or Superior Court of the county in which the Defendant is being unconstitutionally held.