

**[TRIAL COURT CAPTION]**

**MOTION FOR APPEAL BOND**

The Defendant, by counsel, respectfully requests this Court set an appeal bond. In support of the Motion, the Defendant would show the Court as follows:

On [insert date], the Defendant was convicted of [insert offenses], and on [insert date], the Defendant was sentenced to [insert sentence].

1. The Defendant is appealing his conviction.
2. This Court has the discretion to admit the Defendant to bail pending appeal being that the Defendant's sentence is suspendible. I.C. 35-33-9-1.
3. The Defendant poses no risk of flight. He has demonstrated his reliability to this Court, as he was out on bond pre-trial.
5. The Defendant's family is in the County, where he will remain if allowed to make bond.
6. The Defendant poses no risk to the community as that he was out on bond pre-trial.
7. There is a good probability that the Defendant will succeed on appeal. [insert brief summary of issue].
8. The Defendant will abide by whatever conditions the Court imposes, including checking in with probation routinely or home detention.
9. The Defendant promises to faithfully prosecute his appeal, abide by the order and the judgment of this Court, surrender himself in execution of the judgment if the appeal be affirmed or dismissed, and surrender himself to the trial court if required by the judgment upon reversal. See I.C. 35-33-9-3.

WHEREFORE, the Defendant respectfully requests this Court to stay the Defendant's judgment of conviction, set an appeal bond for him, and for all other relief just and proper in the premises.

(Signature)

## REFERENCES

## CASEBANK G.2.d

I.C. 35-33-9-1 et seq.

I.C. 35-33-9-1 (a person convicted of an offense who has appealed or desires to appeal the conviction may file a petition to be admitted to bail pending appeal. The person may be admitted to bail pending appeal at the discretion of the court in which the case was tried, but he may not be admitted to it if he has been convicted of a Class A felony or a felony for which the court may not suspend the sentence under I.C. 35-50-2-2).

## CASE LAW

Atkins v. State, 550 N.E.2d 342, 343 (Ind. Ct. App. 1990) (right to bail pending appeal is not required by the Indiana Constitution; it is a matter of legislative grace).

Willis v. State, 492 N.E.2d 45 (Ind.Ct.App. 1986) (following denial of bail pending appeal by the trial court, the Defendant may properly petition appellate court to be let to bail pending appeal; appellate court ordered the Defendant let to bail).

Tyson v. State, 593 N.E.2d 175 (Ind. 1992) (appellate court's review is not de novo, however, nor is it limited to review of the trial court's abuse of discretion; review lies somewhere in middle, with court having ability to examine factors pertinent to bail decision, but granting the trial court appropriate deference on issues where the trial court is in best position to judge; because of presumption of guilt after conviction, the Defendant bears burden of demonstrating compelling reasons to allow him to remain free pending appeal; three factors to consider are: 1) probability of reversible error at trial, 2) risk of flight, and 3) potential dangerousness of the Defendant; Factors 2 and 3 involve deference to the trial court, while factor 1 does not; to succeed in showing probability of reversible error, the Defendant must convince the court not just that there are meritorious issues for appeal, but that his case will probably be reversed on appeal; with regard to factor 3, the court found that burden is on the Defendant to show he is not dangerous).