

Strategies for Reducing Bail – Written Motion to Give to the Judge

Sample form you can give the court explaining why your bail should be reduced (called a “Motion for Review of Release Conditions”):

You can use this sample written argument (called a “Motion for Review of Release Conditions”) to ask for an opportunity to explain to the judge why you cannot afford your bail and why it is unlawful for the judge to continue to hold you in jail.

Note: Submitting this Motion will not ensure that your bond will be reduced!

How to use this Motion:

See sample Motion on pages 7 to 11 for instructions on how to fill out the motion.

Instructions are written in **yellow**.

The individual who is detained should fill out the Motion on pages 2 to 6 with their personal information. They will have to ask to give it to the court or mail it to the court. They should get non-detained family members help to **bring supporting documents** that support what is explained in the Motion.

In court, the judge may ask you to explain what you describe in the motion.

***Important:** All information provided in these sample templates is provided to support people representing themselves in court. This information is provided for general informational purposes only. We have tried to make it as accurate and up-to-date as possible but laws can change and your individual situation may be different. No information in this guide should be understood as legal advice from ArchCity Defenders. We expressly disclaim all liability that results from actions taken or not taken in reliance on this guide. If you have further questions, please consult a lawyer. We do not intend this information as advertising or solicitation. By providing this information, we are not acting as your lawyer.*

IN THE MUNICIPAL COURT FOR THE CITY OF _____
STATE OF MISSOURI

CITY OF _____,)
)
 Plaintiff,)
)
 v.) Case No.: _____
)
 _____,)
)
 Defendant.)

MOTION FOR REVIEW OF CONDITIONS OF RELEASE

COMES NOW Defendant _____ and pursuant to Rules 33.01 and 33.05 of the Missouri Rules of Criminal Procedure, **requests that this Court grant Defendant release from incarceration upon a written promise to appear**, or, in the alternative, impose a set of nonfinancial conditions that will reasonably assure Defendant's appearance pursuant to Rule 37.15 and Rule 33.01(d) as Defendant remains incarcerated due solely to their inability to afford their bail.

This process and due consideration of alternatives is required by Rule 33.01(e) and the Missouri state constitution, and the due process and equal protection clauses of the United States Constitution. If this request is denied and the Court finds that the least restrictive conditions of release involve the imposition of financial conditions, Defendant requests that such condition be set no greater than _____. In support, Defendant states as follows:

1. Defendant is indigent under the laws of Missouri and the United States pursuant to RSMo § 600.086 based on their income compared to their expenses and the number of people dependent on them for support.
2. A complaint was issued in this cause number and Defendant is charged

with the following bailable offense(s):

_____. A bond was set at _____

without an explanation of why monetary conditions were required to assure Defendant's presence in court or the community's safety. No inquiry into Defendant's ability to pay to pay was made, nor were less restrictive options explored. Defendant has been confined since _____.

3. There have been and will continue to be significant consequences of prolonged detention on the Defendant, their family, and the community. These

consequences include: _____

_____. Continued detention of defendant costs taxpayers and does not promote public safety.

4. Individual factors in Defendant's life support their release on their own promise. These include:

a. Family Ties: _____

b. Employment: _____

c. Education: _____

d. Character: _____

e. Health conditions: _____

f. Length of Residence in Community: _____

g. Prior Record: _____

h. Record of Appearance at Court Proceedings: _____

5. If this court finds that a promise to appear is insufficient, there are alternatives to monetary release conditions that could assure defendant's presence in court. These include: _____.
6. Local rules clearly outline a presumption of release. Rule 37.15 states that "if an arresting officer has not released a person, the court shall order the person released upon the person's written promise to appear unless the court finds that the promise alone is not sufficient reasonably to assure the appearance of the person or the person poses a danger to a crime victim, the community, or any other person."
7. The right to liberty is a carefully protected constitutional right, including in the pretrial release context. As the Supreme Court has noted, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The court did not make a finding that the setting of a bond was necessary to assure the appearance of Defendant at trial. The court did not make a finding after a showing by the State of Missouri that Defendant is a danger to the crime victim, the community, or to any person. As a result, Defendant should be released upon his written promise to appear.
8. Missouri law provides that "[a]ny person charged with a bailable offense, at his or her appearance before an associate circuit judge or judge may be ordered released pending trial, appeal, or other stage of the proceedings against him on his personal recognizance, *unless* the associate circuit judge or judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required." §544.455 RsMo (emphasis added). Missouri Supreme Court Rule 33 also requires that any person charged with a bailable offense shall be entitled to release upon written

promise to appear *unless* the court has made a determination that such release will not reasonably assure the appearance of the accused. Rule 33.01 (a), (d). Without the required finding that a bond amount is necessary to assure the appearance of Defendant, Defendant must be released upon his written promise to appear.

9. There has been no showing in this case that a release conditions more restrictive than release upon written promise to appear is necessary to ensure defendant's appearance in court or that defendant poses a danger to the community. No evidence was presented to the court on this factor prior to the setting of the sua sponte bond, and no finding was made that there is a danger to the crime victim, the community, or any other person.
10. Even if the court finds Defendant should not be released on recognizance and orders conditions of release, due process and federal case law requires that the least restrictive means of conditioning release be selected. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983). In order to take into consideration the least restrictive means of release, a court must take into account Defendant's indigence in setting those conditions.
11. The Eighth Amendment to United States Constitution bars the imposition of excessive bail, as does the Missouri Constitution, each providing that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." United States Constitution, Amend. XIII; Missouri Constitution, Article I, Section 21. The United States Supreme Court has said that bail is "excessive" when it is "set at a figure higher than an amount reasonably calculated to fulfill" the purpose of assuring the presence of the accused at future proceedings. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). The Court further recognized that "[u]nless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its

meaning.” *Id.* at 4. There is no evidence in the record that the current level of bond is necessary to secure Defendant’s presence.

12. Although it is routine practice throughout Missouri that monetary bail is set shortly after arrest without any inquiry into the Defendant’s risk of flight, the danger presented by such Defendant, or the Defendant’s ability to pay. Indigent Defendants are then kept in jail, often for a month or more, until they are granted a formal hearing on the conditions of their release. At such hearing, judges customarily treat the bond as first set as presumptively correct unless the Defendant can show that some reduction in financial conditions is warranted. Nothing under federal or state law justifies these traditional practices. In fact, as set forth below, release without financial conditions is the legal presumption, absent certain specific findings. If a court nevertheless sets financial conditions without an analysis around a Defendant’s ability to pay, the conditions of release effectively serve as a mandatory detention order and violate Defendant’s due process and equal protection rights. This is unconstitutional and in violation of Missouri law.

13. WHEREFORE, Defendant requests an order releasing Defendant on his personal recognizance, or in the alternative _____.

Alternatively, should the Court deny this request, Defendant requests that any financial conditions not exceed _____.

Dated: _____

Respectfully submitted,

Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was given to the City of _____ on this date.

**MUNICIPAL COURT FOR THE CITY OF _____ [name of city]
STATE OF MISSOURI**

CITY OF _____ [name of city],)
)
Plaintiff,)
)
v.) Case No.: _____ [Case Number]
)
_____ [your name],)
)
Defendant.)

MOTION FOR REVIEW OF CONDITIONS OF RELEASE

COMES NOW Defendant _____ [Full name] and pursuant to Rules 33.01 and 33.05 of the Missouri Rules of Criminal Procedure, **requests that this Court grant Defendant release from incarceration upon a written promise to appear**, or, in the alternative, impose a set of nonfinancial conditions that will reasonably assure Defendant's appearance pursuant to Rule 33.01(d) as Defendant remains incarcerated due solely to their inability to afford their bail.

This process and due consideration of alternatives is required by Rule 33.01(e) and the Missouri state constitution, and the due process and equal protection clauses of the United States Constitution. If this request is denied and the Court finds that the least restrictive conditions of release involve the imposition of financial conditions, Defendant requests that such condition be set no greater than _____ [maximum bail amount Defendant could afford]. In support, Defendant states as follows:

1. Defendant is indigent under the laws of Missouri and the United States pursuant to RSMo § 600.086 based on their income compared to their expenses and the number of people dependent on them for support.

2. A complaint was issued in this cause number on _____ [date] charging Defendant with the following bailable offense(s): _____ [charges]. A bond was set at _____ [original bond amount] without an explanation of why monetary conditions were required to assure Defendant's presence in court or the community's safety. No inquiry into Defendant's ability to pay to pay was made, nor were less restrictive options explored. Defendant has been confined since _____ [date arrested].

3. There have been and will continue to be significant consequences of prolonged detention on the Defendant, their family, and the community.

_____ [consequences for individual, their family, their community of continued incarceration]. Continued detention of Defendant costs taxpayers of Missouri and does not promote public safety.

4. Individual factors in Defendant's life support their release on their own promise. These include [fill in with personal details]:

a. Family Ties: _____

b. Employment: _____

c. Education: _____

d. Character: _____

e. Health conditions: _____

f. Length of Residence in Community: _____

g. Prior Record: _____

h. Record of Appearance at Court Proceedings: _____

5. If this court finds that a promise to appear is insufficient, there are alternatives to monetary release conditions that could assure Defendant's presence in court. These include: _____ [Outline alternatives to paying bond that could still lead to that person coming to court].

6. Local rules clearly outline a presumption of release. Rule 37.15 states that "if an arresting officer has not released a person, the court shall order the person released upon the

person's written promise to appear unless the court finds that the promise alone is not sufficient reasonably to assure the appearance of the person or the person poses a danger to a crime victim, the community, or any other person."

7. The right to liberty is a carefully protected constitutional right, including in the pretrial release context. As the Supreme Court has noted, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The court did not make a finding that the setting of a bond was necessary to assure the appearance of Defendant at trial. The court did not make a finding after a showing by the State of Missouri that Defendant is a danger to the crime victim, the community, or to any person. As a result, Defendant should be released upon his written promise to appear.
8. Missouri law provides that "[a]ny person charged with a bailable offense, at his or her appearance before an associate circuit judge or judge may be ordered released pending trial, appeal, or other stage of the proceedings against him on his personal recognizance, *unless* the associate circuit judge or judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required." §544.455 RsMo (emphasis added). Missouri Supreme Court Rule 33 also requires that any person charged with a bailable offense shall be entitled to release upon written promise to appear *unless* the court has made a determination that such release will not reasonably assure the appearance of the accused. Rule 33.01 (a), (d). Without the required finding that a bond amount is necessary to assure the appearance of Defendant, Defendant must be released upon his written promise to appear.
9. There has been no showing in this case that a release conditions more restrictive than release upon written promise to appear is necessary to ensure Defendant's appearance in court or that Defendant poses a danger to the community. No evidence was presented to the court on this factor prior to the setting of the sua sponte bond, and no finding was made that there is a danger to the crime victim, the community, or any other person.

10. Even if the court finds Defendant should not be released on recognizance and orders conditions of release, due process and federal case law requires that the least restrictive means of conditioning release be selected. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983). In order to take into consideration the least restrictive means of release, a court must take into account Defendant's indigence in setting those conditions.
11. The Eighth Amendment to United States Constitution bars the imposition of excessive bail, as does the Missouri Constitution, each providing that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." United States Constitution, Amend. XIII; Missouri Constitution, Article I, Section 21. The United States Supreme Court has said that bail is "excessive" when it is "set at a figure higher than an amount reasonably calculated to fulfill" the purpose of assuring the presence of the accused at future proceedings. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). The Court further recognized that "[u]nless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." *Id.* at 4. There is no evidence in the record that the current level of bond is necessary to secure Defendant's presence.
12. Although it is routine practice throughout Missouri that monetary bail is set shortly after arrest without any inquiry into the Defendant's risk of flight, the danger presented by such Defendant, or the Defendant's ability to pay. Indigent Defendants are then kept in jail, often for a month or more, until they are granted a formal hearing on the conditions of their release. At such hearing, judges customarily treat the bond as first set as presumptively correct unless the Defendant can show that some reduction in financial conditions is warranted. Nothing under federal or state law justifies these traditional practices. In fact, as set forth below, release without financial conditions is the legal presumption, absent certain specific findings. If a court nevertheless sets financial conditions without an analysis around a Defendant's ability to pay, the conditions of release effectively serve as a mandatory detention order and violate Defendant's due process and equal protection rights. This is unconstitutional and in violation of Missouri law.

WHEREFORE, Defendant requests an order releasing Defendant on his personal recognizance, or in the alternative _____ [non-financial conditions requested that can replace money bail set] . Alternatively, should the Court deny this request, Defendant requests that any financial conditions not exceed _____ [max amount of bail that Defendant could afford].

Dated: _____ [date]

Respectfully submitted,

_____ [Write and sign your full name]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was given to the _____ [City] on _____ [date].

/s/ [signature] _____