



- 1 2. On February 29, 2020, Governor Jay Inslee declared a state of emergency related to  
2 COVID-19. [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf)  
3 [05%20Coronavirus%20%28final%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf)
- 4 3. On March 11, 2020, Gov. Inslee issued a Proclamation prohibiting public gatherings of  
5 250 people or more. [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)  
6 [07%20Coronavirus%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)
- 7 4. According to the Governor’s Proclamation “COVID-19 is a respiratory disease that  
8 spreads easily from person to person and may result in serious illness or death, has been  
9 confirmed in 9 counties of Washington State resulting in 24 deaths, with significant  
10 community spread in King, Pierce, and Snohomish counties.”  
11 [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)  
12 [07%20Coronavirus%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)
- 13 5. The Proclamation further states that “To reduce spread of COVID-19, the United States  
14 Centers for Disease Control and Prevention and the Washington State Department of  
15 Health (DOH) recommend implementation of community mitigation strategies to  
16 increase containment of the virus, including cancellation of large gatherings and social  
17 distancing in smaller gatherings and implementation of limitations on large gatherings  
18 and use of social distancing prevent initial exposure and secondary transmission to our  
19 most vulnerable populations, and are especially important for people who are over 60  
20 years old and those with chronic health conditions due to the higher risk of severe illness  
21 and death from COVID-19.”  
22 [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)  
23 [07%20Coronavirus%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)

- 1 6. On March 11, 2020, under an order from King County Health Officer Dr. Jeff Duchin,  
2 Public Health prohibits large gatherings of more than 250 people. In addition, the local  
3 order prohibits events of less than 250 people, unless measures are taken by event  
4 organizers to minimize risk. *See* [https://publichealthinsider.com/2020/03/11/new-limits-](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)  
5 [on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)
- 6 7. According to the King County Department of Public Health, “These actions are the most  
7 available and effective tools to help slow the spread of the virus in our community – and,  
8 importantly, to reduce the number of potential deaths caused by COVID-19. By slowing  
9 the spread, we have a chance to protect those family, friends and neighbors who are at  
10 risk for severe illness.” *See* [https://publichealthinsider.com/2020/03/11/new-limits-on-](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)  
11 [large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)
- 12 8. At present, there are approximately 2,000 individuals in the Department of Adult and  
13 Juvenile Detention (DAJD) custody (about 35 in juvenile detention and the remainder at  
14 the King County Correctional Facility in Seattle and the Regional Justice Center in Kent).  
15 [https://www.kingcounty.gov/~media/courts/detention/documents/2020-02 -](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en)  
16 [\\_KC\\_DAR.ashx?la=en](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en) (p. 3)
- 17 9. At present, approximately 66 people are incarcerated related to misdemeanor sentences.  
18 [https://www.kingcounty.gov/~media/courts/detention/documents/2020-02 -](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en)  
19 [\\_KC\\_DAR.ashx?la=en](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en) (pg. 13)
- 20 10. At present approximately 172 people are incarcerated due to felony sentences.  
21 [https://www.kingcounty.gov/~media/courts/detention/documents/2020-02 -](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en)  
22 [\\_KC\\_DAR.ashx?la=en](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en) (pg. 11)

1 11. As with any “congregate setting,” infectious diseases thrive in correctional facilities.

2 And, compared to prisons that have more stable populations, the challenges of containing  
3 the virus is greater for jails, where people are incarcerated directly from the community.

4 12. Dr. Marc F. Stern, MD, at the University of Washington School of Public Health, has  
5 made a number of suggestions to jails managing the impact of COVID-19. One  
6 recommendation is “downsizing”:

7 **Bucket 2: Dealing with the effects of COVID-19 among staff**

8 1. Downsizing

Talk with prosecutors and judges ahead of time to develop a plan if you need to downsize.

- 9 a. Are there people you can release on their own recognizance? Do you have a priority list (who  
do you release if you need to downsize by 5%? 10%? etc.)?  
10 b. Are there alternatives to arrest for certain crimes, or, in dire situations, are there crimes for  
11 which your patrol division will not arrest?

12 See <https://assets.documentcloud.org/documents/6796536/Suggestions-for-Jails-3-5-20.pdf>

13 **III. Argument**

14 The Eighth Amendment protects against cruel and unusual punishment, and the Supreme  
15 Court long ago held that individuals cannot be detained under conditions that are “likely to cause  
16 serious illness and needless suffering[.]” *Helling v. McKinney*, 509 U.S. 25, 33, 113 S.Ct. 2475,  
17 125 L.Ed.2d 22 (1993) (citing *Hutto v. Finney*, 437 U.S. 678, 682, 98 S.Ct. 2565, 57 L.Ed.2d  
18 522 (1978)). This is because the Eighth Amendment bars “punishments which are incompatible  
19 with ‘the evolving standards of decency that mark the progress of a maturing society.’” *Estelle v.*  
20 *Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (affirming that violations occur  
21 were officials interfere with prescribed or recommended treatment). Indeed, the Eighth  
22 Amendment protects against “mingling of inmates with serious contagious diseases with other . .  
23 . inmates.” *Helling*, 509 U.S. at 34 (citing *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974)).

24 Continued incarceration in the King County Correctional Facility subjects CLIENT to an  
unreasonable risk of exposure to COVID-19 that is directly at odds with medical advice and the

1 Governor’s directive to engage in “social distancing.” This is cruel and unusual punishment. To  
2 avoid this constitutional violation CLIENT must be released.

3 CrR/CrRLJ 7.8(b)(5) provides that –

4 On motion and upon such terms as are just, the court may relieve a party from a final  
5 judgment, order, or proceeding for the following reasons:...

6 (5) Any other reason justifying relief from the operation of the judgment

7 Pursuant to CrR 7.8(b)(5), defense moves for CLIENT’S sentencing order dated XX to be  
8 modified to allow for their immediate release. Such release is essential since incarcerated  
9 individuals (especially those who are pregnant, over age 60, have chronic health conditions, or  
10 have a weakened immune system) are extremely vulnerable to COVID-19 and immediate action  
11 must be taken to mitigate that vulnerability. Key to slowing down the spread of the virus is social  
12 distancing, which can prevent initial exposure and secondary transmission to our most vulnerable  
13 populations.

14 Our legal system bears a unique responsibility to protect incarcerated persons who,  
15 because of their loss of liberty, lack the ability to protect themselves. Immediate action to release  
16 CLIENT by amending their sentencing order must be taken to try and protect the health of  
17 CLIENT and other individuals at the jail.

18 [ADDITIONAL DETAILS RE: CLIENT/OFFENSE-- CLIENT will return to their community  
19 where they will be supported by XXXX. ]

#### 20 **IV. Conclusion**

21 Given the grave risks for individuals and staff in the King County Jail, CLIENT, who has less  
22 than XXX days/weeks left to serve on their sentence, should be released to the community to  
23 better protect their safety as well as the safety of individuals who will remain at the jail.

1 CLIENT's release will help reduce the jail population, hopefully allowing for recommended  
2 distance between individuals during this public health crisis.

3  
4 DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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6 \_\_\_\_\_  
7 ATTORNEY NAME, WSBA #  
8 Attorney for CLIENT  
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