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IN THE SUPERIOR COURT OF [_____] COUNTY
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

NAME OF CLIENT,

Defendant

Case No.

**DEFENDANT’S MOTION FOR
PRETRIAL RELEASE**

I. RELIEF REQUESTED

COMES NOW, [CLIENT NAME], the defendant, and moves this Court for
RELEASE FROM CUSTODY.

This relief is authorized by CrR 3.2, and is supported by the following statement of
facts, authority and argument, as well as any argument presented at the time and place herein
scheduled for the hearing.

II. STATEMENT OF FACTS

[Mr./Ms. _____] is currently charged with [offense(s)]. Bail is currently
set at \$ [amount]. At the [_____]hearing], held on [date] the court set bail and imposed the
following conditions of release [conditions].

1 [Mr./Ms. _____] is among the individuals most at risk for serious illness,
2 complications, and death resulting from COVID 19. [fill in details of client's individual
3 circumstances or situation].

4 Jails, by design, are at high risk for transmission of communicable disease such as the
5 COVID 19. Some of the most basic disease prevention measures are difficult or impossible
6 behind bars, including frequent hand washing or using hand sanitizer, cleaning and sanitizing
7 communal spaces and social distancing. Moreover, separating sick people from well people
8 is a challenge in jail settings. The medical staff is often stretched thin before an outbreak
9 occurs.

10 Illness in local jails puts the greater community at risk. Jails are constantly churning
11 prisoners in and out on a regular basis, and correctional, medical and other staff come and go
12 daily.

13 **III. ARGUMENT**

14 **A. THE DEFENDANT DOES NOT HAVE TO DEMONSTRATE A**
15 **CHANGE IN CIRCUMSTANCES TO SUPPORT A MOTION FOR**
16 **RELEASE.**

17 Superior Court Criminal Rule CrR 3.2 prescribes the circumstances under which a
18 party may seek modification of bail. There are two subsections that address modification
19 because the prerequisites are different for the state and for the defendant. Subsection (j),
20 which applies to motions by in-custody defendants, states, in relevant part:

21 (j) Review of Conditions

22 (1) At any time after the preliminary appearance, *an accused who*
23 *is being detained due to failure to post bail may move for*
24 *reconsideration of bail.* In connection with this motion, both
25 parties may present information by proffer or otherwise. If

1 deemed necessary for a fair determination of the issue, the court
2 may direct the taking of additional testimony.

3 CrR 3.2(j)(1) (emphasis added).

4 A defendant can ask the court to reconsider previously set bail setting at any time, for
5 any reason, or without a reason, so long as the defendant meets the requirement of being in
6 custody. CrR 3.2(j)(1). The same is not true for a defendant who is out of custody or for the
7 State.

8 Subsection (k), which allows the Court to change a previous order setting bail only if
9 certain circumstances exist, applies to motions by the State. Subsection (k) states, in relevant
10 part:

11 (k) Amendment or Revocation of Order

12 (1) The court ordering the release of an accused on any condition
13 specified in this rule may at any time *on change of circumstances,*
14 *new information, or showing of good cause* amend its order to
15 impose additional or different conditions of release.

16 (2) Upon a showing that the accused has willfully violated a
17 condition of release, the court may revoke release and may order
18 forfeiture of any bond [. . .] Release may be revoked only if the
19 violation is proved by clear and convincing evidence.

20 CrR 3.2(k)(1), (2) (emphasis added).

21 Thus [Mr./Ms XXXX] need not prove any change of circumstance or additional facts in
22 order to obtain this Court's reconsideration of the previous bail setting.

23 **B. THE CURRENT PUBLIC HEALTH CRISIS DUE TO COVID 19**
24 **REQUIRES COURTS TO RECONSIDER BAIL AND TAKE MEASURES**
25 **TO REDUCE JAIL POPULATIONS.**

COVID 19, the novel coronavirus, is currently widely circulating in Washington
State. The State of Washington Department of Health is providing updated information about

1 the current conditions in Washington.¹ [insert data from local county Department of Public
2 Health].

3 Local and state governments are taking extraordinary measures to contain the spread
4 of the virus in order to both limit the threat of harm to individuals and reduce the impact this
5 virus will have on community medical systems. Individuals age 60 and over and those with
6 underlying medical conditions are at greater risk of complications and serious illness due to
7 COVID 19 than are members of the general population.

8 On March 11, 2020, Washington Governor Jay Inslee announced new community
9 strategies and social distancing plans and banned events with more than 250 people attending
10 in Pierce, King and Snohomish Counties.² As he says in his news release dated March 11,
11 2020, “This is an unprecedented public health situation and we can’t wait until we’re in the
12 middle of it to slow it down...We’ve got to get ahead of the curve. One main defense is to
13 reduce the interaction of people in our lives³

14 **C. PRETRIAL RELEASE IS THE PRESUMPTION**

15 In Washington, release of a person accused of a crime before trial without financial
16 conditions is presumed. CrR 3.2(a). The prosecutor bears the burden to overcome the
17 presumption of release.
18

19 Money bail may only be imposed as a last resort, after a court finds no less restrictive
20 conditions will assure court appearance, or will prevent the likely commission of future crime, or
21

22 ¹ The Washington State Department of Health has a page on its website dedicated to COVID 19, found at
<https://www.doh.wa.gov/Emergencies/Coronavirus> (last visited on [date])

23 ² Governor’s March 11, 2020 Proclamation 20-07, found at <https://www.governor.wa.gov/sites/default/files/20-07%20Coronavirus%20%28tmp%29.pdf> (last visited on [date])

24 ³ *Inslee issues emergency proclamation that limits large events to minimize public health risk during COVID-19*
25 March 11, 2020, found at <https://www.governor.wa.gov/news-media/inslee-issues-emergency-proclamation-limits-large-events-minimize-public-health-risk> (last visited March 12, 2020).

1 will prevent the intimidation of witnesses or other interference with the administration of justice.

2 *Id.*

3 The court rule requires the court to consider a number of important individual factors
4 when determining whether a person poses a risk of committing a violent crime or interfering
5 with the administration of justice. The court may not rely upon just the charge, criminal history
6 and any history of failure to appear. CrR 3.2(c),3.2(e). Factors that relate to the individual
7 include:

8 A history of responding to legal process, particularly court orders to appear;

9 Employment status and history, enrollment in education or training;

10 Participation in counseling or a treatment program;

11 Participation in volunteer work in the community, school or cultural activities;

12 Receipt of financial assistance from the government;

13 Family ties and relationships;

14 Reputation, character and mental condition;

15 The willingness of responsible members of the community to vouch for the reliability of
16 the accused and who may be willing to assist the individual comply with conditions of
17 release;

18 Any other factor demonstrating the accused's ties to the community.

19 Furthermore, the court must consider the whether any of condition of release listed in
20 CrR 3.2(d), or any other condition that the court deems appropriate, would address the court's
21 concerns before imposing bail.

22 In this case, the following factors and circumstances support the release of **Mr./Ms.**

23 **[Defendant]:** _____

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D. THE COURT MUST CONSIDER [Mr./Ms. DEFENDANT]'S ABILITY TO PAY IF SETTING BAIL.

The court must consider the individual's financial resources and ability to pay when setting any bail amount. See CrR 3.2(b)(7), 3.2 (d)(6).

IV. CONCLUSION

For the reasons and the authorities cited in support thereof, defendant respectfully requests this Court to

release Mr./Ms [defendant name] on their personal recognizance; or

to reduce bail to the following amount \$ [_____];

impose the following conditions of release:

DATED: [date]

Respectfully submitted,

Attorney name/WSBA
LAW OFFICE NAME
Attorney for [NAME OF CLIENT]