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STATE OF WASHINGTON

[REDACTED] COUNTY DISTRICT COURT

STATE OF WASHINGTON,) Case No.:
Plaintiff,)
v.) **MOTION IN SUPPORT OF RELIEF
MR. PREVIOUSLY SENTENCED,) FROM FINAL JUDGMENT**
Defendant.)

MOTION

COMES NOW the defendant, [REDACTED] Mr. Previously Sentenced, by and through his attorney, [REDACTED], and moves this Court for an order amending the Judgment and Sentence to allow [REDACTED] Mr. Previously Sentenced to [add request for court: serve the remainder of his sentence on EHM/suspend the remainder of jail time/convert jail to community service, etc]. This motion is based on CrRLJ 7.8(b), the inherent authority of the court, the following motion, and the records it cites. As an alternative remedy, the defense is seeking release and a new commitment date so that [REDACTED] Mr. Previously Sentenced can serve the remainder of his sentence after the pandemic has passed.

DATED this _____ day of _____, 2020.

FACTS REGARDING MR. PREVIOUSLY SENTENCED

In this section point out facts that make your client a strong candidate for modification of their sentence, for example, medical conditions that make the client particularly vulnerable to COVID 19, a short amount of time left to serve in jail, the fact that the sentence is for a minor or non-violent crime, or the client's history of showing up to court.

1. Mr. Previously Sentenced pleaded guilty to/was found guilty of _____ on _____, 2020. The Court imposed a sentence the same day of 364/90 days with _____ days suspended. Mr. Previously sentenced began serving the jail portion of that sentence on _____, 2020.
 2. After Mr. Previously Sentenced's sentencing, the coronavirus pandemic became a major concern in the United States. Because it had not yet developed into a major threat in the United States at the time of sentencing, prior defense counsel did not tailor their arguments at sentencing to center around the outbreak or Mr. Previously Sentenced's placement in a CDC High Risk Category. In other words: there are significant amounts of new information not considered by the Court at the time of sentencing.
 3. Mr. Previously Sentenced has a documented medical condition that puts him at high risk for COVID19. [insert medical condition details]

4. A letter from Mr. Previously Sentenced's treating doctor for this condition is attached hereto as Exhibit A. In this letter, Dr. A discusses Mr. Previously Sentenced's diagnosis and explains that diagnosis puts Mr. Previously Sentenced at high risk of death if he contracts COVID 19.
 5. Certain factors have been disclosed by the Centers of Disease Control that identify high risk members of the public including those who are over the age of 60, those who have underlying medical conditions such as diabetes, COPD or other respiratory illnesses, those who are HIV positive, those who have heart disease, and those who have compromised liver functions caused by hepatitis. Given his diagnosis of [REDACTED], Mr. Previously Sentenced is in heightened risk category. The official CDC release identifying these risk categories is available on line.¹

FACTS REGARDING COVID 19

COVID-19 is a global pandemic that endangers the United States, including Washington.² COVID-19 is 10–34 times more deadly and 3–5 times more infectious than the flu.³ Common symptoms of COVID-19 include fever, cough, and shortness of breath,⁴ but many may have mild or moderate

¹ It is also available online at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html

² *Coronavirus 2019 (COVID-19): Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last updated March 26, 2020).

³ Compare Tedros Adhanom, World Health Organization (WHO) Director General, Opening remarks at the media briefing on COVID-19 (March 3, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-march-2020>, with Denise Grady, *How Does the Coronavirus Compare With the Flu?*, THE NEW YORK TIMES (March 27, 2020), <https://www.nytimes.com/article/coronavirus-vs-flu.html>.

⁴ Coronavirus Disease 2019 (COVID-19): Symptoms, CENTERS FOR DISEASE CONTROL AND PREVENTION <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last reviewed March 20, 2020).

1 symptoms or no symptoms at all.⁵ Other patients may experience severe
2 symptoms requiring intensive medical intervention; particularly, individuals age
3 60 and over or those with underlying medical conditions.⁶ However, even with
4 hospitalization and intensive treatment, thousands of individuals have died as a
5 result of this infection. Regardless of the type or severity of symptoms, all
6 infected persons are contagious and can rapidly transmit the virus from person to
7 person without proper public health interventions.⁷

8 As of April 1, the United States leads the world—including China—with
9 186,101 confirmed COVID-19 cases, and 3,603 deaths.⁸ As of April 1, White
10 House modelling predicts the death of up to 240,000 Americans and the
11 infections of millions without extraordinary, decisive action.⁹ Nationally, by March
12 29, there were more than 139,000 cases of coronavirus and at least 2,425
13 deaths.¹⁰

14 Local and state governments are taking extraordinary measures to contain
15 the spread of the virus to limit the threat of harm to individuals and reduce the
16 impact on community medical systems. On March 11, Washington Governor Jay
17 Inslee announced new community strategies and social distancing plans,
18 including bans on events with more than 250 people in Pierce, King and

19 ⁵ *Id.*

20 ⁶ *Id.*; *Coronavirus Disease 2019 (COVID-19) People Who Are At Higher Risk*, CENTERS FOR DISEASE CONTROL
AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last reviewed March 31, 2020).

21 ⁷ *Coronavirus Disease 2019 (COVID-19): How It Spreads*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last reviewed March 4, 2020).

22 ⁸ Nicole Chavez et al., *US has more known cases of coronavirus than any other country*, CNN (March 27, 2020),
<https://www.cnn.com/2020/03/26/health/coronavirus-thousand-deaths-thursday/index.html>, *Coronavirus Disease 2019 (COVID-19)*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>, last visited 4/2/2020

23 ⁹ *Coronavirus Live Updates: Grim Models Project High U.S. Toll in Months-Long Crisis*, THE NEW YORK TIMES,
<https://www.nytimes.com/2020/03/31/world/coronavirus-news.html> (last updated March 31, 2020 at 11:45am PST)

24 ¹⁰ Madeline Holcombe & Dakin Andone, *US coronavirus cases top 139,000 as Trump extends social distancing
guidelines until April 30*, CNN (March 29, 2020), <https://www.cnn.com/2020/03/29/health/us-coronavirus-wrap-sunday/index.html>.

1 Snohomish Counties.¹¹ As he stated in his new release, “[t]his is an
2 unprecedented public health situation and we can’t wait until we’re in the middle
3 of it to slow it down . . . We’ve got to get ahead of the curve. One main defense is
4 to reduce the interaction of people in our lives.”¹² On the fifteenth, Washington
5 Governor Inslee announced the immediate two-week closure of all restaurants,
6 bars, and entertainment and recreational facilities, as well as additional limits on
7 large gathers above 50 people. Effective midnight of the sixteenth, food service
8 may still be offered to-go or delivery.¹³ On April 5, 2020, the Washington
9 Department of Health recommended that Washington residents wear face masks
10 anytime they cannot guarantee they can stay six feet away from others.¹⁴

11 This situation is only getting worse day-by-day. To quote Governor Inslee:
12 “If we are living a normal life, we are not doing our jobs as Washingtonians. We
13 cannot do that anymore. We need to make changes, regardless of size. All of us
14 need to do more. We must limit the number of people we come in contact with.
15 This is the new normal.”¹⁵

FACTS REGARDING THE SPREAD OF COVID 19 IN JAILS

17 On March 18, the Supreme Court entered Order 25700-B-606 providing
18 statewide authority to all courts based on the finding that many facilities in the
19 State are ill-equipped to effectively comply with social distancing and other public
20 health requirements.

21 ¹¹ Proc. by the Governor 20-07, (March 11, 2020), <https://www.governor.wa.gov/sites/default/files/20-07%20Coronavirus%20%28tmp%29.pdf>.

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

23 ¹³ *Inslee announces statewide shutdown of restaurants, bars and expanded social gathering limits*, MEDIUM (March 16, 2020), <https://medium.com/wagovernor/inslee-announces-statewide-shutdown-of-restaurants-bars-and-expanded-social-gathering-limits-bb19095b2251>.

24 ¹⁴ <https://www.seattletimes.com/seattle-news/health/washington-health-officials-following-cdc-guidance-recommend-wearing-cloth-face-coverings-to-slow-spread-of-coronavirus/>

25 ¹⁵ *Id.*

1 COVID-19 has infected Washington State correctional facilities. On March
2 28, the Department of Corrections announced that an inmate at the Monroe
3 Correctional Facility tested positive for COVID-19.¹⁶ The press release failed to
4 account for how the virus was introduced into the prison population.¹⁷ As of April
5 2, at least five DOC facilities and one Community Custody office had at least one
6 infection.¹⁸ One hundred sixty-five inmates were in isolation and 897 were in
7 quarantine.¹⁹ Snohomish County Jail discovered its first positive COVID-19 case,
8 an individual booked March 25.²⁰

9 As of March 26, five staff and several patients at Western State Hospital
10 also tested positive.²¹ Four days later, the Western State count rose to 12
11 workers and four patients infected with one patient already dead.²² Sheriffs,
12 prosecuting attorneys, Department of Corrections inmates and staff, and Western
13 State staff and patients are all inextricably linked to local justice systems.
14 Continuing detention only reinforces the routes of infection and ensures future
15 spread.

16 According to a report on prevention and control of COVID-19 in jails by the
17 World Health Organization, jails, by design, are at high risk for transmission of
18 communicable disease such as COVID-19.²³ Some of the most basic disease

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20 ¹⁶ Press release, Washington State Department of Corrections (DOC), Incarcerated Patient at Snohomish County
Medical Center Tests Positive for COVID-19 (March 28, 2020),
<https://www.doc.wa.gov/news/2020/03282020p.htm>.

21 ¹⁷ *Id.*

22 ¹⁸ *COVID-19 Information*, DOC, <https://www.doc.wa.gov/news/covid-19.htm> (last updated April 2, 2020).

23 ¹⁹ *Id.*

24 ²⁰ *Man Booked into Snohomish County Jail Tests Positive for COVID-19*, KIRO-7 NEWS (April 1, 2020)
<https://www.kiro7.com/news/local/man-booked-into-snohomish-county-jail-tests-positive-covid-19/3W6HWDMQXZG5TBG22ND5OOIZBE/>.

25 ²¹ *More than a dozen coronavirus cases, 1 death at Western St. Hospital*, KOMO NEWS (March 30, 2020),
<https://komonews.com/news/coronavirus/more-than-a-dozen-coronavirus-cases-1-death-at-western-st-hospital>.

²² *Id.*

²³ *Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance*,
WORLD HEALTH ORGANIZATION: REGIONAL OFFICE FOR EUROPE (Mar. 15, 2020),
http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-

1 prevention measures are difficult or impossible behind bars, including frequent
2 hand washing or sanitizing, sanitizing communal spaces, and social distancing.²⁴
3 The patients and staff at Western State Hospital live and work near one another,
4 yet maintain greater social distance than personnel and inmates in a jail where
5 bunks and common spaces are crowded, but the disease spread quickly there
6 nonetheless.²⁵ Moreover, separating sick from healthy people is a challenge in
7 jail settings.²⁶ Medical staff is stretched thin and the jail constantly churns inmates
8 in and out – along with correctional, medical, and other staff coming and going
9 multiple times in a day.²⁷

10 Inmates remain at continual risk. They lack any control over their
11 conditions: they cannot control their access to sanitation materials, ability to
12 distance, or who they associate with. There is no way to know how many people
13 are infected throughout the local homeless and marginalized population.²⁸ This
14 same population continues to be booked into jails, and the population is exposed
15 even if those infected are promptly released.

16 Waiting until [REDACTED] Jail has a confirmed case undermines
17 preventative measures and will likely require a costly triage: Mass quarantine and
18 releases in droves without proper care or stability plans. COVID-19 has a long
19 incubation period and many of those infected have mild or no symptoms—yet are
20 still contagious.²⁹ Even those who have recovered may still be contagious, with

21 [in-prisons.pdf?ua=](#)

22 ²⁴ *Id.*

23 ²⁵ *Supra* note 19.

24 ²⁶ *Supra* note 27.

25 ²⁷ *Id.*

26 Matt Driscoll, *Three more COVID-19 cases at Tacoma homeless shelter; vulnerable moved to downtown hotel*, THE NEWS TRIBUNE (March 25, 2020), <https://www.thenewstribune.com/news/coronavirus/article241499986.html>.

27 Jillian Mock, *Asymptomatic Carriers Are Fueling the COVID-19 Pandemic. Here's Why You Don't Have to Feel Sick to Spread the Disease*, DISCOVER (March 26, 2020), <https://www.discovermagazine.com/health/asymptomatic-carriers-are-fueling-the-covid-19-pandemic-heres-why-you-dont>.

some in China testing positive even after an initial negative results post-recovery.³⁰ One study from *Science* indicates that the prevalence of undocumented cases is fueling the pandemic and estimates that 79% of new infections are caused by undocumented cases making containment extremely difficult.³¹ Symptoms are not a reliable indicator of transmissibility. Waiting to act until identifying an infected person in the jail will be too late and an unknown number of staff and inmates will already be exposed. Then, containment will be impossible. Jail population reduction is the only plausible safeguard.

It is equally important to bear in mind that indigent individuals seeking release are not the only persons implicated or endangered by COVID-19. Jail overcrowding also endangers other in-custody individuals, the deputies, and other personnel who must enter to provide essential services. The risks do not end with those directly linked with the jail. Each person entering and exiting the jail endangers their families. As explained by Robert Greifinger, a physician who spent 25 years working on health care issues inside the nation's prisons and jails: "since jail and prison staff and prisoners tend to be younger, one thinks initially that it's not going to be a big problem . . . But remember that staffs work shifts, they come in and out of the facility, and they may be bringing that infection home to people who have compromised immune systems."³² The jail is an incubator which increases the risk even to those with a tertiary connection.³³

³⁰ Emily Feng & Amy Cheng, *Mystery In Wuhan: Recovered Coronavirus Patients Test Negative ... Then Positive*, NPR (March 27, 2020), <https://www.npr.org/sections/goatsandsoda/2020/03/27/822407626/mystery-in-wuhan-recovered-coronavirus-patients-test-negative-then-positive>.

³¹ Ruiyun Li et al., *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2)*, *SCIENCE* (March 16, 2020), <https://science.sciencemag.org/content/early/2020/03/24/science.abb3221>.

³² Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus 'Incubators'*, NPR (March 13, 2020), <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>.

³³ See also Letter from Sarah Fortune, MD, Director, TB Research Program at the Ragon Institute of MGH, MIT, and Harvard, Re: The Threat of COVID-19 in Jails and Prisons (undated) (Attachment 5).

1 It must be the Court that acts to curb COVID-19. Reducing inmate
2 population is what the court can do to “flatten the curve.”³⁴ Flattening the curve
3 means reducing the rate of transmission to prevent overtaxing hospitals and
4 treatment supplies. If infection sweeps through the jail, hundreds of inmates will
5 overwhelm the already-overtaxed local medical centers. COVID-19 spreads at an
6 exponential rate: a single case can multiply to an overwhelming number of
7 infections within days.³⁵ Population reduction reduces the spread within the
8 justice system and keeps treatment more manageable if the jail is compromised.
9 It is incumbent upon the Court to release its inmates before the jail becomes non-
10 functional and unable to house even the highest-level offenders. Due to the
11 seriousness of the pandemic and its ability to spread silently, reducing the jail
12 population is the only way the court can effectively contain the virus. The death of
13 vulnerable inmates or tertiary persons cannot be undone. This situation is one
14 that is unprecedented in the last century. As the spread of COVID-19 continues
15 to worsen, this court has an opportunity to lead the State by taking the action
16 necessary to protect the community that it serves.

17

18 **The Court Has Authority Under 7.8(b)(2) and (5) To Hear This Motion And Grant**
The Relief Requested

19

20 CrRLJ 7.8(b) allows a court to “relieve a party from a final judgment, order, or
21 proceeding” for any one of five reasons. Under CrRLJ 7.8(5), a court may relieve a party
22 from a final judgment for “[a]ny other reason justifying relief from the operation of

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24 ³⁴ Siobhan Roberts, *Flattening the Coronavirus Curve*, THE NEW YORK TIMES (March 27, 2020),
<https://www.nytimes.com/article/flatten-curve-coronavirus.html>.

25 ³⁵ Ethan Siegel et al., *Why 'Exponential Growth' Is So Scary For The COVID-19 Coronavirus*, FORBES (March 17, 2020), <https://www.forbes.com/sites/startswithabang/2020/03/17/why-exponential-growth-is-so-scary-for-the-covid-19-coronavirus/#28742e954e9b>.

judgment.” The circumstances that make up the “other reason” that justifies relief must
1 not have been in existence at the time of the initial judgment or order. *State v. McGuire*,
2 _____ Wn. App.2d _____, 456 P.3d 1193, 1196 (2020) (when reason to modify no contact
3 order was defendant’s right to parent in light of newly born child, that reason was not in
4 existence when the court entered the order even though both defendant and protected
5 party were aware of protected party’s pregnancy). The circumstances must also be
6 extraordinary. *State v. Smith*, 159 Wn.App. 694 (2011) (Spokane County’s elimination
7 of partial confinement options, such as work crew and work release, was extraordinary
8 circumstance that allowed judge to resentence defendants).

Here, the COVID 19 crisis in Washington prisons and jails is a circumstance that
9 was not in existence when the court originally sentenced Mr. Previously Sentenced.
10 When the court sentenced Mr. Previously Sentenced on _____, it was not clear
11 that COVID 19 would spread to impact incarcerated people. Because the full extent and
12 threat posed by the coronavirus pandemic was not known by the parties or court at the
13 time of sentencing, defense counsel did not make the court acutely aware of Mr.
14 Previously Sentenced’s diagnosis of _____, which puts him at high risk of severe
15 complications if infected with COVID19. The unprecedeted crisis of a pandemic that
16 has spread to Washington is also a change in circumstances is at least as extraordinary
17 as the elimination of work crew and work release.

A motion pursuant to CrRLJ 7.8 is timely if it is brought within a year of the
18 judgment or order it seeks to challenge. CrRLJ7.8(b). In this case, Mr. Previously
19 Sentenced’s final judgment was entered on _____, which is well within the year
20 deadline.

The extraordinary change in circumstances warrants consideration of relief from final judgment and amendment of the J&S under CrRLJ 7.8(b) (5). Mr. **Previously Sentenced** requests that the court alter his sentence so that he can serve its remainder on EHM. In the alternative, Mr. **Previously Sentenced** requests that this court release him from commitment at this time and impose a later commitment date for Mr. **Previously Sentenced** to serve the remainder of his sentence.

CONCLUSION

For all the above reasons, the Defense respectfully requests the Court utilize its authority under CrRLJ 7.8(b) and grant relief from final judgment by amending the judgment and sentence to allow for **Mr. Previously Sentenced** to serve the remainder of his sentence on EHM. As an alternative, the defense is respectfully requesting that the Court release **Mr. Previously Sentenced** and give him a new commitment date for a time that the coronavirus pandemic has passed (defense proffers a tentative date of September 1, 2020, subject to further review by this Court if the pandemic has not yet passed).

The Court's time and attention to this urgent matter is greatly appreciated.

SIGNED in _____, Washington, this _____ day of _____, 2020.

, WSBA #