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IN THE SUPERIOR COURT OF [_____] COUNTY

IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

[CLIENT NAME],

Defendant

Case No. [number]

MOTION, DECLARATION AND
MEMORANDUM IN SUPPORT OF
DEFENDANT’S MOTION FOR
RELIEF FROM JUDGMENT

I. MOTION

COMES NOW, [CLIENT NAME], the defendant, and moves this Court for RELIEF FROM JUDGMENT based on the new and rapidly evolving crisis posing serious individual and public health risks resulting from the current COVID-19 worldwide pandemic. [Insert specific relief requested, i.e., resentencing hearing, stay of sentence, conversion of sentence to some other form, release from custody until crisis has passed].

The relief is authorized by CrR 7.8(b), 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.

1 [NAME]'s heightened risk of serious illness or death due to [CLIENT NAME]'s
2 medical condition.

3 5. The CDC has identified specific risk factors for individuals who are at an increased
4 risk of experiencing serious illness and death if infected with COVID 19, including
5 those age of 65 and over, and those with the following conditions: chronic lung
6 disease, moderate to severe asthma, serious heart conditions, severe obesity (BMI of
7 40 or higher), chronic kidney disease undergoing dialysis, liver disease and people
8 who are immunocompromised.¹

9 6. [Insert if client has increased risk factors][CLIENT NAME] has a documented
10 medical condition that puts them at a high risk for serious illness or death if they
11 contract COVID 19.[Insert medical condition details]. A letter from [CLIENT
12 NAME]'s treating doctor is attached hereto as Exhibit [____]. In this letter, Dr. [Dr.
13 name] discusses [CLIENT NAME]'s diagnosis and explains interaction of this
14 diagnosis and the risks of COVID 19.

15 7. [Insert if client has no risk factors] Even though client does not have any of the
16 heightened risk factors for serious illness or death if he contracts COVID-19, he may
17 suffer serious illness or death if he is confined to a jail or prison during an outbreak.
18 Although the majority of individuals who become seriously ill or die of COVID-19
19 have CDC identified risk factors, not all do. News reports on COVID 19 demonstrate
20 that otherwise healthy people without any risk factors have fallen seriously ill and
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24 _____
25 ¹ Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (Last visited Apr. 24, 2020)

1 died due to COVID-19, including the recent story that the first person to die of this
2 virus was an otherwise healthy woman in California.²

3 I certify and declare under penalty of perjury under the laws of the State of Washington that
4 the foregoing is true and correct.

5 SIGNED in _____, Washington, this ___ day of ____, 2020.

6
7 _____
8 **[attorney/WSBA #]**
9 *Attorney for Defendant*

10 **III. STATEMENT OF FACTS REGARDING COVID-19.**

11 1. COVID-19 is a global pandemic that endangers the United States.³ The first confirmed
12 case of COVID-19 in Washington and in the United States occurred on January 21, 2020.
13 Thereafter Washington became the initial epicenter of COVID-19 in the United States.
14 COVID-19 continues to spread in Washington. As of [date], there were [number]
15 confirmed cases of COVID-19 in Washington and [number] Washington deaths⁴

16 2. COVID-19 is 10–34 times more deadly and 3–5 times more times infectious than the flu.⁵
17 Common symptoms of COVID-19 include fever, cough, and shortness of breath,⁶ but
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19 ² *A Seemingly Healthy Woman's Sudden Death is Now the First Known US Coronavirus-Related Fatality*, April 23,
20 2020, <https://www.cnn.com/2020/04/23/us/california-woman-first-coronavirus-death/index.html> (last accessed April
21 28, 2020).

22 ³ *Coronavirus 2019 (COVID-19): Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION
23 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last updated March 26, 2020).

24 ⁴ The Washington State Department of Health has a page on its website dedicated to COVID 19, found at
25 <https://www.doh.wa.gov/Emergencies/Coronavirus>

26 ⁵ *Compare Tedros Adhanom, World Health Organization (WHO) Director General, Opening remarks at the media
27 briefing on COVID-19 (March 3, 2020),* [https://www.who.int/dg/speeches/detail/who-director-general-s-opening-
28 remarks-at-the-media-briefing-on-covid-19---3-march-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
29 Compare With the Flu?*, THE NEW YORK TIMES (March 27, 2020), [https://www.nytimes.com/article/coronavirus-vs-
30 flu.html](https://www.nytimes.com/article/coronavirus-vs-flu.html).

31 ⁶ *Coronavirus Disease 2019 (COVID-19): Symptoms*, CENTERS FOR DISEASE CONTROL AND PREVENTION
32 <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last reviewed March 20, 2020).

1 many may have mild or moderate symptoms or no symptoms at all.⁷ Other patients may
2 experience severe symptoms requiring intensive medical intervention; particularly,
3 individuals age 60 and over or those with underlying medical conditions.⁸ However, even
4 with 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 infected
6 persons are contagious and can rapidly transmit the virus from person to person without
7 proper public health interventions.⁹

- 8 3. [modify and insert updated data here] By April 1, 2020, the United States surpassed other
9 nations, leading the world—including China—with 186,101 confirmed COVID-19 cases,
10 and 3,603 deaths.¹⁰ At that same time, White House modelling predicted the death of up
11 to 240,000 Americans and the infections of millions without extraordinary, decisive
12 action.¹¹ Nationally, as of April 10, 2020, there were 459,165 confirmed cases of
13 coronavirus in the United States and 16,570 deaths.¹²
- 14 4. Local and state governments are taking extraordinary measures to contain the spread of
15 the COVID-19 to limit the threat of harm to individuals and reduce the impact on
16 community medical systems. On March 11, 2020, Washington Governor Jay Inslee
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19 ⁷ *Id.*

20 ⁸ *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 ⁹ *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 ¹⁰ 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
23 4/2/2020

24 ¹¹ *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)

25 ¹² Daily statistics for the US can be found at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#2019coronavirus-summary> (last accessed April 10, 2020).

1 announced new community strategies and social distancing plans, including a statewide
2 ban on events with more than 250 people in Pierce, King and Snohomish Counties.¹³ On
3 March 13, 2020, Governor Inslee closed down K-12 schools statewide.¹⁴ On March 16,
4 2020, Governor Inslee announced the immediate closure of all restaurants, bars,
5 entertainment venues and recreational facilities. He placed limits on gatherings to 50
6 people and only if social distancing measures were maintained.¹⁵ On March 23, 2020,
7 Governor Inslee issued a statewide order requiring residents to stay home except for trips
8 for essentials and closed all non-essential businesses, in his “Stay Home Stay Healthy”
9 order.¹⁶ On April 5, 2020, the Washington Department of Health recommended that
10 Washington residents wear face masks anytime they must go out and cannot guarantee
11 they can stay six feet away from others.¹⁷

14 IV. STATEMENT OF FACTS REGARDING SPREAD OF COVID 19 IN WASHINGTON JAILS AND PRISONS.

- 15 1. On March 18, 2020, the Supreme Court entered Order 25700-B-606 all state and
16 municipal courts to significantly reduce operations based on the finding that many
17 court facilities in the state are ill-equipped to effectively comply with social
18 distancing and other public health requirements.¹⁸

20 ¹³ <https://www.governor.wa.gov/news-media/inslee-issues-emergency-proclamation-limits-large-events-minimize-public-health-risk>(last accessed April 10, 2020).

21 ¹⁴ <https://www.governor.wa.gov/news-media/inslee-announces-statewide-school-closures-expansion-limits-large-gatherings>(last accessed April 10, 2020).

22 ¹⁵ <https://www.governor.wa.gov/news-media/inslee-announces-statewide-shutdown-restaurants-bars-and-expanded-social-gathering-limits>(last accessed April 10, 2020).

23 ¹⁶ <https://www.governor.wa.gov/news-media/inslee-announces-stay-home-stay-healthy%20order>(last accessed April 10, 2020).

24 ¹⁷ <https://www.seattletimes.com/seattle-news/health/washington-health-officials-following-cdc-guidance-recommend-wearing-cloth-face-coverings-to-slow-spread-of-coronavirus/>

25 ¹⁸ See <http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19>

- 1 2. COVID-19 has infected Washington State correctional facilities. [Modify and/or insert
2 updated data here] On March 28, 2020, the Department of Corrections announced that an
3 inmate at the Monroe Correctional Facility tested positive for COVID-19.¹⁹ The press
4 release failed to account for how the virus was introduced into the prison population.²⁰
5 According to the DOC website, as of April 24, 2020, at least five DOC prison facilities
6 and one Community Custody office had at least one infection.²¹ On April 24, 2020, 104
7 inmates were in isolation and 1,002 were in quarantine.²² Snohomish County Jail
8 discovered its first positive COVID-19 case, an individual booked March 25, 2020.²³
- 9 3. [Modify and/or insert updated data here]. As of April 14, 2020, 27 staff and six patients
10 at Western State Hospital also tested positive for COVID-19, one patient has died.²⁴
11 Sheriffs, prosecuting attorneys, Department of Corrections inmates and staff, and
12 Western State staff and patients are all inextricably linked to local justice systems.
13 Continuing detention only reinforces the routes of infection and ensures future spread.

14 V. ARGUMENT

15 A. The Court has authority to hear this motion and to grant relief requested.

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

23 ²⁰ *Id.*

24 ²¹ COVID-19 Information, DOC, <https://www.doc.wa.gov/news/covid-19.htm> (accessed April 24, 2020).

25 ²² *Id.*

²³ *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/>.

²⁴ *At Western State Hospital, Coronavirus Infections Add Pressure to a Psychiatric Facility Already Facing Challenges*, Seattle Times April 13, 2020, <https://www.seattletimes.com/seattle-news/health/at-western-state-hospital-coronavirus-infections-add-pressure-to-a-psychiatric-facility-already-facing-challenges/> (last accessed Apr. 14, 2020).

1 Superior Court Criminal Rule CrR 7.8(b) provides for relief from judgment in certain
2 limited circumstances. Specifically, 7.8(b)(5) provides support for the post-conviction relief
3 requested in this motion. The rule states:

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 (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in
7 obtaining a judgment or order;
- 8 (2) Newly discovered evidence which by due diligence could not have been
9 discovered in time to move for a new trial under rule 7.5
- 10 (3) Fraud (whether heretofore denominated intrinsic or extrinsic),
11 misrepresentation, or other misconduct of an adverse party
- 12 (4) The judgment is void; or
- 13 (5) ***Any other reason justifying relief from the operation of judgment.***

14 CrR 7.8(b)(*emphasis added*).

15 Relief is warranted because this public health crisis is recent, new, deadly and rapidly
16 evolving. The serious impact and nature of the COVID-19 outbreak is presents a change in the
17 circumstance and new information that was not available to the court at the time of the original
18 sentencing hearing. Governor Inslee did not declare a State of Emergency in Washington until
19 February 29, 2020 and did not take dramatic measures to encourage social distancing until
20 March 11, 2020, when he began limiting the size of public gatherings. The Governor did not
21 order Washington residents to stay at home except for essentials until March 23, 2020. The
22 sentencing hearing in this case occurred on [insert date of sentence], prior to state action in
23 response to COVID-19.

24 Under CrR 7.8(b)(5), a court may relieve a party from a final judgment for “[a]ny other
25 reason justifying relief from the operation of judgment.” The circumstances that make up the
“other reason” that justifies relief must not have been in existence at the time of the initial
judgment or order. *State v. McGuire*, ____ Wn.App.2d ____, 456 P.3d 1193, 1196 (2020) (when

1 reason to modify no contact order was defendant's right to parent in light of newly born child,
2 that reason was not in existence when the court entered the order even though both defendant and
3 protected party were aware of protected party's pregnancy), *State v. Klump*, 80 Wn.App. 391,
4 909 P.2d 317 (1996)(defendant was entitled to reconsideration of his state sentence that had been
5 ordered to run consecutively to federal sentence, which was subsequently reversed; reversal of
6 federal sentence after imposition of state sentence qualified as an extraordinary circumstance,
7 and defendant filed motion within three months of reversal of federal sentence, which was
8 reasonable time). The circumstances must also be extraordinary. *State v. Smith*, 159
9 Wn.App.694, 247 P.3d 775 (2011) (Spokane County's elimination of partial confinement
10 options, such as work crew and work release, was extraordinary circumstance that allowed judge
11 to resentence defendants).

12 The court can correct a sentence imposed based on significant change or new information
13 that is material to the circumstances of the sentence.

14 The SRA prohibits early release. But it does not, or at least does not appear to, prohibit
15 the traditional discretion extended to a sentencing judge to correct a sentence based on
16 unforeseen circumstances, here the unanticipated termination of the partial confinement
17 programs.

18 *State v. Smith*, 159 Wn.App.at 699.

19 Here, the COVID-19 crisis in Washington prisons and jails is an extraordinary
20 circumstance that was not in existence and not foreseeable when the court originally sentenced
21 [CLIENT NAME]. When the court sentenced [CLIENT NAME] on [date], it was not clear that
22 COVID-19 would spread to impact incarcerated people. Because the full extent and threat posed
23 by the coronavirus pandemic was not known by the parties or court at the time of sentencing,
24 defense counsel did not make the court acutely aware of [CLIENT NAME]'s diagnosis of
25

1 _____, which puts them at high risk of severe complications if infected with COVID19. The
2 unprecedented crisis of a pandemic that has spread to Washington is also a change in
3 circumstances is at least as extraordinary as the elimination of work crew and work release.

4 [include if accurate:] A motion for relief from judgement pursuant to CrR 7.8(b) is timely
5 if it is brought within a year of the judgment or order it seeks to challenge. RCW 10.73.090(1).
6 In this case, [CLIENT NAME]'s final judgment was entered on [date], which is well within the
7 one year deadline.

8 The extraordinary change in circumstances warrants consideration of relief from final
9 judgment. under CrR 7.8(b)(5). Mr. [CLIENT NAME] requests [insert relief requested].
10

11 **B. The Court should grant relief to protect [CLIENT NAME] as well as the greater**
12 **community.**

13 The court should consider resentencing [CLIENT NAME] based on the increased public
14 health risk as well as the individual risk for [CLIENT NAME]. The purposes of the Sentencing
15 Reform Act (SRA) are served if the court accounts for the individual and public risks associated
16 with imposing incarceration pursuant to sentence during a pandemic. The SRA provides:

17 The purpose of this chapter is to make the criminal justice system accountable to the
18 public by developing a system for the sentencing of felony offenders which structures,
19 but does not eliminate, discretionary decisions affecting sentences, and to:

- 20 (1) Ensure that the punishment for a criminal offense is proportionate to the
21 seriousness of the offense and the offender's criminal history;
22 (2) Promote respect for the law by providing punishment which is just;
23 (3) Be commensurate with the punishment imposed on others committing similar
24 offenses;
25 (4) *Protect the public*;
(5) Offer the offender an opportunity to improve himself or herself;
(6) *Make frugal use of the state's and local governments' resources*; and
(7) Reduce the risk of reoffending by offenders in the community.

1 RCW 9.94A.010 (*emphasis added*).

2 Crowded jails and prisons put both the individuals residing within them at greater risk of
3 contracting an infectious disease, as well as those who work or volunteer in jails and prisons.
4 Individuals who work or volunteer in jails and prisons will bring spread the illness to their
5 families and community.

6 According to a report on prevention and control of COVID-19 in jails by the World
7 Health Organization (WHO), jails, by design, are at high risk for transmission of communicable
8 disease such as COVID-19.²⁵ Some of the most basic disease prevention measures are difficult or
9 impossible behind bars, including frequent hand washing or sanitizing, sanitizing communal
10 spaces, and social distancing.²⁶ The patients and staff at Western State Hospital live and work
11 near one another, yet maintain greater social distance than personnel and inmates in a jail where
12 bunks and common spaces are crowded, but the disease spread quickly there nonetheless.
13 Moreover, separating sick from healthy people is a challenge in jail settings.²⁷ Medical staff is
14 typically stretched thin without a pandemic. Prisons and jails constantly churn inmates in and out
15 – along with correctional, medical, and other staff coming and going multiple times in a day.²⁸

17 Washington courts must act to curb the spread of COVID-19 in jails and prisons.
18 Reducing the inmate population is what the court can do to “flatten the curve.”²⁹ Flattening
19 the curve means reducing the rate of transmission to prevent overtaxing hospitals and
20

21 ²⁵ *Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance*,
22 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-
in-prisons.pdf?ua=](http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=).

23 ²⁶ *Id.*

24 ²⁷ *Supra* note 27.

25 ²⁸ *Id.*

²⁹ Siobhan Roberts, *Flattening the Coronavirus Curve*, THE NEW YORK TIMES (March 27, 2020),
<https://www.nytimes.com/article/flatten-curve-coronavirus.html>.

1 treatment supplies. If infection sweeps through the jail, hundreds of inmates will overwhelm
2 the already-overtaxed local medical centers. COVID-19 spreads at an exponential rate: a
3 single case can multiply to an overwhelming number of infections within days.³⁰ Population
4 reduction reduces the spread within the justice system and keeps treatment more manageable
5 if the jail is compromised.

6 It is incumbent upon the Court to release individuals before the jail becomes non-
7 functional and unable to house even the highest-level offenders. Due to the seriousness of the
8 pandemic and its ability to spread silently, reducing the jail population is the only way the
9 court can effectively contain the virus and provide treatment to those who need care. The
10 death of vulnerable inmates or tertiary persons cannot be undone. This situation is one that is
11 unprecedented in the last century. As the spread of COVID-19 continues to worsen, this court
12 has an opportunity to lead the State by taking the action necessary to protect the community
13 that it serves.

14 **VI. CONCLUSION**

15 The current crisis caused by the worldwide COVID-19 pandemic calls for extraordinary
16 measures, including action to bring about significant reduction of jail and prison populations in
17 order to comply with the social distancing and other mandated public health measures. To
18 quote Washington's Governor Jay Inslee in his news release dated March 11, 2020.

19
20 This is an unprecedented public health situation and we can't wait until we're in the
21 middle of it to slow it down... We've got to get ahead of the curve. One main defense is
22 to reduce the interaction of people in our lives.³¹

23 ³⁰ 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>.

24 ³¹ *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 On March 16, 2020, as Governor Inslee closed down restaurants, bars, and other places
2 to gather in public, he told the residents in Washington,

3
4 If we are living a normal life, we are not doing our jobs as Washingtonians. We cannot
5 do that anymore. We need to make changes, regardless of size. All of us need to do
6 more. We must limit the number of people we come in contact with. This is the new
7 normal.”³²

8
9 The “new normal” requires courts to carefully consider the appropriateness and impact
10 of sentencing individuals to confinement in jails and prisons.

11 For all the above reasons, the Defense respectfully requests the Court utilize its
12 authority under CrR 7.8(b) and grant relief from final judgment by amending the judgment and
13 sentence to allow [CLIENT NAME] to [insert specific relief requested]. As an alternative, the
14 defense is respectfully requesting that the Court release [CLIENT NAME] and give him a new
15 commitment date for a time that the coronavirus pandemic has passed (defense proffers a
16 tentative date of September 1, 2020, subject to further review by this Court if the pandemic has
17 not yet passed).

18 DATED: [date]

19 Respectfully submitted,

20 _____
21 Attorney name/WSBA #
22 **LAW OFFICE NAME**
23 Attorney for [NAME OF CLIENT]

24 ³² *Inslee announces statewide shutdown of restaurants, bars and expanded social gathering limits*, found at
25 <https://www.governor.wa.gov/news-media/inslee-announces-statewide-shutdown-restaurants-bars-and-expanded-social-gathering-limits>. (last visited Apr. 10, 2020)