

COURT ADDRESS	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff In the interest of CLIENT , a minor child and concerning PARENT NAME , Respondent	
MEGAN A. RING Colorado State Public Defender Atty name, bar # Trial Office Address Telephone:	
σ COURT USE ONLY σ	
	Case No. Division:
FORTHWITH MOTION FOR BOND MODIFICATION TO ALLOW FOR IMMEDIATE RELEASE	

[Name of client] respectfully moves for an emergency modification of bond under section 19-2-509(3) in order to help prevent a public health outbreak of novel coronavirus, COVID-19 in our local detention facilities and community. **[He/She]** requests that the Court grant this motion, or, alternatively, hold an emergency hearing on this motion and allow the parties to appear by phone.

In support, **[Name]** states the following:

1. **NAME is currently being held in Detention on [a no bond hold / awaiting placement with DHS / \$ BOND AMOUNT, which HE/SHE cannot post].**

2. On March 11, 2020, the World Health Organization announced that that the outbreak of COVID-19, a respiratory illness caused by a novel coronavirus, is a pandemic. This virus is both highly contagious and deadly. “. . . [W]e are deeply concerned both by the alarming levels of spread and severity, and by the alarming level of inaction.”¹ Current estimations are that between 20% and 80% of the world’s population will contract the virus. The current estimations of the rate of fatality fall between 1% and 6% of those who contract the virus.

3. The situation is rapidly developing in Colorado. Colorado already has many cases identified across geographic regions of the state. The Governor declared a state of emergency on March 10, 2020. On March 11, 2020, the University of Colorado and Colorado State cancelled classes. On March 12, 2020, travel advisories were announced for the high country because of a virus cluster

¹ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

identified in Aspen. That same evening school districts around the state announced cancellation of classes through at least the end of March.

4. The spread of the virus is accomplished through both airborne mechanisms (sneezing), touching of surfaces that are contaminated, and most commonly through touching other humans carrying the virus. It then enters the body through the mouth, nose, or eyes and infects the respiratory system.

5. There is currently no vaccine or cure. The most effective strategies to prevent spread is thorough hand washing and sanitizing with alcohol-based cleaners, avoiding touching of the face, and “social distancing.”

6. Care around personal hygiene will not be enough to slow the spread of this disease. Public health officials across the country are asking that people engage in social distancing to help “flatten the curve.”² Social distancing involves avoiding human contact with all but a few other people. State and local leaders, as well as private event organizers, are cancelling group events across the country. Colleges, universities, and local public schools are cancelling classes.

7. The same factors that make cruise ships hotbeds³ for contagion spread, are the same conditions for jails and detention facilities: many people living in a closed space, shared ventilation, common food preparation space, communal living/bathing/toileting/eating, limited ability to leave the facility when symptomatic or after potential exposure to the virus. Further, jails and detention facilities face the additional challenge of “jail churn”⁴ where juveniles and other members of the community regularly move in and out of the facility bringing illnesses with them into the jail and then after infection out to the community.

8. There is no effective way for **DETENTION FACILITY** to accomplish the important task of creating social distance between juveniles. **[INFORMATION ABOUT CURRENT BED SPACE AT DETENTION FACILITIES- See data from DYS Management Reference Manual attached or your local JSPC monthly reports]**. Further, this particular detention facility has significant capacity and infrastructure challenges to creating distance between juveniles **[WHATEVER IS TRUE FOR YOUR DETENTION FACILITY: OLD JAIL WITH OLD VENTILATION, COMMUNAL SHOWERS AND TOILETS, INFREQUENT WASH OF BED SHEETS AND CLOTHES, SHARED CELLS, LIMITED ACCESS TO HANDWASHING STATIONS, RULES AGAINST HAND SANITIZER, LIMITATIONS ON ACCESS TO TOILET PAPER AND TISSUE, ETC.]**

² What flattening the curve means and why it is important: <https://www.nbcnews.com/science/science-news/what-flatten-curve-chart-shows-how-critical-it-everyone-fight-n1155636>.

³ The CDC is currently recommending that travelers defer cruise ship travel worldwide. “Cruise ship passengers are at increased risk of person-to-person spread of infectious diseases, including COVID-19.” <https://wwwnc.cdc.gov/travel/page/covid-19-cruise-ship>

⁴ “The pathway for transmission of pandemic influenza between jails and the community is a two-way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility. On release from jail, infected inmates can also spread infection into the community where they reside.” *Pandemic Influenza and Jail Facilities and Populations*, American Journal of Public Health, October, 2009.

9. When COVID-19 suddenly exploded in China's prisons, there were reports of more than 500 cases spreading across five facilities in three provinces. Earlier this month, in Iran, 54,000 inmates were temporarily released amid concerns around the virus.⁵

10. The risk of community spread poses a unique threat to vulnerable populations, specifically including persons under treatment or suffering conditions that created immunosuppression (immunotherapy and chemotherapy). These health conditions are more common among incarcerated persons:

Health condition	Prevalence of health condition by population			
	Jails	State prisons	Federal prisons	United States
Ever tested positive for Tuberculosis	2.5%	6.0%		0.5%
Asthma	20.1%	14.9%		10.2%
Cigarette smoking	n/a	64.7%	45.2%	21.2%
HIV positive	1.3%	1.3%		0.4%
High blood pressure/hypertension	30.2%	26.3%		18.1%
Diabetes/high blood sugar	7.2%	9.0%		6.5%
Heart-related problems	10.4%	9.8%		2.9%
Pregnancy	5.0%	4.0%	3.0%	3.9%

Health conditions that make respiratory diseases like COVID-19 more dangerous are far more common in the incarcerated population than in the general U.S. population. Pregnancy data come from our report, [Prisons neglect pregnant women in their healthcare policies](#), the CDC's [2010 Pregnancy Rates Among U.S. Women](#), and data from the [2010 Census](#). Cigarette smoking data are from a 2016 study, [Cigarette smoking among inmates by race/ethnicity](#), and all other data are from the 2015 BJS report, [Medical problems of state and federal prisoners and jail inmates, 2011-12](#), which does not offer separate data for the federal and state prison populations. Cigarette smoking [may be part of the explanation](#) of the higher fatality rate in China among men, who are far more likely to smoke than women.

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11. CLIENT is at particular risk of serious illness or death if exposed to this virus because CLIENT is [diabetic AND/OR suffering from lung or heart disease AND/OR taking immune-suppressant medication AND/OR receiving chemotherapy AND/OR has severe asthma.]

AND/OR CLIENT is currently exhibiting symptoms consistent with contraction of the virus, specifically [SYMPTOMS: fever/cough/shortness of breath]

AND/OR: CLIENT believes that HE/SHE has been exposed to someone suspected of suffering from COVID-19 within the last 2-14 days. According to the CDC, after exposure symptoms of contraction of the virus may not occur for up to two weeks later.

12. [Name] cannot afford to pay the monetary bail/should not be forced to sit in detention simply because the department of human services has not yet found a suitable placement/ whatever the circumstance of detention is.

REQUEST FOR RELIEF: IMMEDIATE RELEASE WITHOUT A HEARING WILL HELP MITIGATE THE RISK

⁵ <https://apnews.com/af98b0a38aaabedbc059092db356697>

⁶ *No need to wait for pandemics: The public health case for criminal justice reform*, Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2020/03/06/pandemic/>

13. Consequently, CLIENT requests that in order to keep HIM/HER safe from infection and to keep the community, DYS staff, employees and visitors of the Court, and other juveniles safe that the Court immediately grant HIS/HER release from detention without a hearing. Where the Court determines that additional conditions of release are necessary, CLIENT requests that the Court notify counsel in the event there is an objection, and where there is no objection enter those conditions without a hearing and order DYS to serve them on the CLIENT at the time of release.

14. If the Court declines to grant this motion, CLIENT requests a forthwith emergency hearing to address the issue. Counsel does not object to having the juvenile or the parties appear by phone.

**REQUEST FOR RELIEF: CONTINUED DETENTION WILL RESULT IN THE
HARMFUL SEPARATION AND DISENGAGEMENT OF THE JUVENILE WITH
HIS/HER FAMILY**

15. DYS, in response to this growing health crisis, has restricted visitation with juveniles for non-essential individuals. Only essential individuals, including professionals and those necessary for legal or medical needs, will be allowed entry into the detention facility. DYS stated in a letter to families, “We understand that our youth connecting with family members is incredibly important, and in lieu of visits, youth centers will be initiating contact via phone or virtual visitation, when possible.”⁷

16. A variety of research findings suggest that family is critical to the development of children and the main source of a child’s primary emotional, social, cultural, and spiritual development.⁸

17. “Research [also] suggests that youths in the justice system are disproportionately more likely to have mental health and behavioral issues and to recidivate in the months and years following their release from residential facilities...However, reconnecting with family during reentry is an important step to successful reintegration and can begin even before release. In-person visits and other methods of social support, such as phone calls and letter writing, play an important role in minimizing the stress and isolation attributed to system involvement; these methods also improve how justice-involved youths may adjust to probation or incarceration.”⁹

18. “Research has also found that youths in residential facilities who have more positive family relationships during justice involvement are less likely to become depressed over time and thus exhibit greater overall emotional well-being.”¹⁰

19. “One study found that family visitation for incarcerated adolescents who committed serious offenses resulted in rapid declines in depressive symptoms over time, when compared with adolescents who received no visits from parents. The effects were cumulative; that is, the greater the number of visits youths received from family, the greater their decrease in symptoms.”¹¹

⁷ DYS Family Guidance, letter from Anders Jacobson to families of incarcerated youth dated March 11, 2020

⁸ *Family Engagement in Juvenile Justice*, Office of Juvenile Justice and Delinquency Prevention (OJJDP), <https://www.ojjdp.gov/mpg/litreviews/Family-Engagement-in-Juvenile-Justice.pdf>

⁹ *Id.* at pg 7-8.

¹⁰ *Id.* at pg. 8.

¹¹ *Id.*

20. Similarly, a study of incarcerated children in Ohio found that there was a positive relationship between regular visitation by family and maintaining good behavior and improved school performance.¹²

21. Limiting [THE JUVENILE]'s contact with his family and restricting visits puts HIS/HER mental health and ability to be reintegrated successfully back in the community at risk.

22. Without school and a limited staff, children will be detained in cells alone more frequently. If there is an outbreak or positive screen for the virus children will be held in isolation. Social distancing and isolation of people who are incarcerated can be traumatizing. For children in the midst of their normal development it can be particularly detrimental.¹³

23. Further, DYS has a Pandemic Plan that calls for seclusion or quarantine of all incoming youth until such time as their health status can be confirmed.¹⁴ Youth will immediately face complete disruption of their everyday lives by being separated from their families and detained and secluded from others, and this will compound the stress they are already feeling during these uncertain times where entire communities are feeling unrest.

RELEASING THE JUVENILE IS SMART PUBLIC HEALTH POLICY AND ALLOWED FOR BY CURRENT LAW

24. The monetary condition of bail does not improve public safety or court appearance rates. *See* Michael Jones, Pretrial Justice Institute, *Unsecured Bonds: The Most Effective and Efficient Pretrial Release Option* (2013) (reporting results of a study of over 1,900 defendants from 10 Colorado counties); *Brown*, 338 P.3d at 1286. **Rather, ongoing detention under the circumstances of a public health crisis diminishes public safety. Court appearances in fact should be managed without the personal appearance of the defendant while COVID-19 remains a public health emergency.**

25. A monetary condition of bond is not reasonable given the circumstances. A court must consider “the individual characteristics of each person in custody, including the person’s financial condition.” §16-4-103(3)(a). “A monetary condition of release must be reasonable[.]” §16-4-103(4)(a). **This Court must take into the account the defendant’s particular health and exposure factors as well as community safety – both considerations weigh in favor release.**

26. The most effective way to ensure court appearance is the same way the dentist ensures an office appearance: phone calls, text messages, emails, or a combination of the three. These methods, along with many others, are authorized by statute. *See* § 19-2-507(5)(b.5), 16-4-

¹² *Id.*

¹³ David E. Arredondo, *Child Development, Children’s Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 Stanford Law & Pol. Review 13 (2003).

¹⁴ *The Division of Youth Services Pandemic Plan Adapted by the Medical Oversight Unit*, p. 14, <https://drive.google.com/file/d/0B6RNEF9DYEdYbWhLNWNZRXR3UFU/view>

105(8). **Such conditions would allow for effective social distancing and “unnecessary pretrial incarceration[.]”** § 16-4-103(4)(c).

27. This Court has jurisdiction to modify conditions of bond. *See* § 19-2-509(3), 16-4-109(1), C.R.S. (“the court . . . may increase or decrease the financial conditions of bond, may require additional security for bond, may dispense with security theretofore provided, or may alter any other condition of bond.”)

28. Further, the legislature has made it clear that holding children in detention should be the last resort:

The general assembly declares that the placement of children in a detention facility exacts a negative impact on the mental and physical well-being of the child, and such detention may make it more likely that the child will reoffend. Children who are detained are more likely to penetrate deeper into the juvenile justice system than similar children who are not detained, and community-based alternatives to detention should be based on the principle of using the least-restrictive setting possible and returning a child to his or her home, family, or other responsible adult whenever possible consistent with public safety. It is the intent of the general assembly in adopting section 19-2-507.5 and amending sections 19-2-212, 19-2-507, and 19-2-508 to limit the use of detention to only those children who pose a substantial risk of serious harm to others or that are a flight risk from prosecution.

§ 19-2-211.5

29. Ongoing detention under the circumstances of a public health crisis diminishes public safety.

30. Finally, detention centers must provide adequate medical care. “To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. A prison's failure to provide sustenance for inmates ‘may actually produce physical torture or a lingering death.’” *Estelle v. Gamble*, 429 U.S. 97, 103, 97 (1976) (quoting *In re Kemmler*, 136 U.S. 436, 447 (1890)).

31. If a detention center fails to fulfill this obligation, the courts have a responsibility to remedy the resulting Eighth Amendment violation. *See Hutto v. Finney*, 437 U.S. 678, 687, n. 9 (1978). Courts must be sensitive to the State's interest in punishment, deterrence, and rehabilitation, as well as the need for deference to experienced and expert prison administrators faced with the difficult and dangerous task of housing large numbers of [people]. *See Bell v. Wolfish*, 441 U.S. 520, 547–548 (1979). Courts nevertheless must not shrink from their obligation to “enforce the constitutional rights of all ‘persons,’ including prisoners.” *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (*per curiam*).

32. This Court's jurisdiction over the juveniles in this courthouse imposes on the Court an obligation to exercise its powers to protect the individual litigants as well as the community it serves. Where national or state leaders are not acting with sufficient speed to address this public health disaster, this Court must. Release of incarcerated juveniles will be the single most powerful way this

Court can protect those children, as well as the many people working in detention facilities, and ultimately the community at large.

WHEREFORE the juvenile requests that this Court immediately reconsider the monetary condition of bond/the no bond hold/whatever the impediment to release from detention is without a hearing and order the juvenile's release on personal recognizance. Where the Court declines to order immediate release or sets additional bond conditions for release, the juvenile requests that the Court notify counsel or schedule an emergency hearing that may be conducted by phone.

MEGAN A. RING
Colorado State Public Defender

/s/
Attorney name, bar #

Certificate of Service

I hereby certify that on DATE, I served the foregoing document by e-filing same to all opposing counsel of record.