**NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE**

**[County name] COUNTY DISTRICT COURT DIVISION**

**FILE NO.: \_\_ JB \_\_\_\_**

**STATE OF NORTH CAROLINA EMERGENCY MOTION FOR**

**PRE-ADJUDICATION**

**RELEASE DUE TO PUBLIC HEALTH**

**v. AND SAFETY THREAT POSED BY**

**COVID-19 PANDEMIC**

***CLIENT NAME*,**

**Juvenile**

**NOW COMES** the juvenile, by and through counsel, and moves this Court for immediate release from pre-adjudication detention. The Juvenile requests that the Court grant the motion, or, alternatively, hold an emergency secure custody hearing on this motion and allow the parties to appear by phone, or in a hearing in a neighboring county.

As the novel coronavirus that causes COVID-19 has spread across the globe, hundreds of thousands of people have been infected and thousands of people have died.[[1]](#footnote-1) There is no known cure. Development of a vaccine is likely at least 12 months away.[[2]](#footnote-2) The county jail has never confronted a global health pandemic like this one.[[3]](#footnote-3) The facility is unequipped either to prevent transmission of COVID-19 among detainees and staff or to isolate and treat individuals who become infected. For the reasons set forth below, the juvenile’s ongoing pre-adjudication detention poses an imminent threat to the juvenile’s life and to the health and safety of the community from a deadly infectious disease.

Under these unique circumstances, the Court must release the juvenile on appropriate conditions, at least until the resolution of this outbreak.

1. **BACKGROUND**
2. Procedural History
3. The juvenile was placed in secure custody on XX and charged with XX.
4. The court is bound by criteria set forth in N.C.G.S. §7B-1903 in determining whether continued custody is warranted.
5. According to N.C.G.S. §7B-1906(f), the court may impose appropriate restrictions on the liberty of a juvenile who is released from custody, to include electronic monitoring and/or house arrest.
6. It is also the State’s burden to provide the court by clear and convincing evidence that no less intrusive alternative will suffice (N.C.G.S. §7B-1906(d)).
7. The Public Health Crisis
8. On March 11, 2020, the World Health Organization declared a global pandemic.[[4]](#footnote-4) Citing “deep[] concern[] both by the alarming levels of spread and severity, and by the alarming levels of inaction,” it called for countries to take “urgent and aggressive action.”[[5]](#footnote-5)
9. On March 10, 2020, Governor Cooper declared a State of Emergency. He stated “(t)he health and safety of North Carolinians is our top priority. We are taking the necessary steps to ensure that North Carolina is prepared and responding to this virus, and this order helps us do that. …. Thought we are still in the early stages in North Carolina, time is a valuable resource and we must work together to slow the spread while we can.” Governor Cooper’s action identified COVID-19 as an imminent threat to the health and safety of the community, requiring emergency protective actions. Since then, normal life has ceased. Businesses, restaurants, schools, government offices, and churches are closed. People who have control over their bodies are self-isolating to prevent contracting or spreading this deadly disease.
10. People at high risk of severe illness from COVID-19 were recommended to avoid large groups of people as much as possible. This includes gatherings such as concert venues, conventions, church services, sporting events and crowded social events. People at high risk were also recommended to avoid cruise travel and non-essential air travel.
11. All facilities that serve as residential establishments for high-risk persons described above should limit visitors and restrict all visitors who have respiratory illness or potential exposure to COVID-19. These establishments include nursing homes, independent and assisted living facilities, correctional facilities, and facilities that care for medically vulnerable children.
12. Since the emergency declaration, Governor Cooper has entered an Executive Order prohibiting the gathering of more than 100 persons. He further recommends that people avoid gatherings of more than 50 persons.
13. All public schools, grades K-12, have been closed.
14. The President of the United States urged that gatherings of more than 10 persons be avoided for the two weeks ending March 29, 2020.
15. Governor Cooper has closed all dine-in facilities, so that they operate only as take-out or drive-through.
16. Colleges and universities have sent their students home, and are operating online classes.
17. Workers are urged to work from home or to work remotely.
18. Chief Justice Beasley has ordered all cases to be continued until April 16, 2020, with certain exceptions.
19. Judge [\_\_\_] and Judge [\_\_\_] have ordered the continuance of all criminal and juvenile matters, with certain exceptions relating to First Appearances, Probation Violations for persons in custody, Probable Cause Hearings for persons in custody, and pleas for persons in custody.
20. The District Attorney’s Office has closed their offices to the public, and is now working on rotating shifts for their employees.
21. As of March 19, 2020 there are 10,442 diagnosed cases in the U.S., spanning all 50 states, Washington, D.C., Guam, Puerto Rico and the U.S. Virgin Islands. At least 150 people have died in the U.S., according to the Centers for Disease Control.[[6]](#footnote-6)
22. The number of people infected is growing exponentially. The death toll in Italy, which began experiencing this epidemic about a week earlier than the first diagnosed American case, saw a rise of 30% overnight in the 24 hours between March 5, 2020, and March 6, 2020 and a rise of 25% on March 15 alone—a day that killed 368 people in Italy.[[7]](#footnote-7) Experts predict similar rapid growth in the United States.
23. The numbers of people diagnosed reflect only a portion of those infected;[[8]](#footnote-8) very few people have been tested, and many are asymptomatic transmitters.[[9]](#footnote-9) Thousands of people are carrying a potentially fatal disease that is easily transmitted—and few are aware of it.
24. The current estimated incubation period is between 2 and 14 days.[[10]](#footnote-10) Approximately 20% of people infected experience life-threatening complications, and between 1% and 3.4% die.[[11]](#footnote-11)
25. The virus is thought to spread through respiratory droplets or by touching a surface or object that has the virus on it.[[12]](#footnote-12) Thus, infected people—who may be asymptomatic and not even know they are infected—can spread the disease even through indirect contact with others.
26. Accordingly, officials and experts urge “social distancing”—isolating oneself from other people as much as possible.[[13]](#footnote-13) Social distancing is virtually impossible inside a juvenile detention center.
27. Other federally recommended precautions include frequent hand-washing, alcohol-based hand sanitizers, and frequent cleaning *and* disinfecting of any surfaces touched by any person.[[14]](#footnote-14)
28. It is virtually impossible to engage in these basic preventive measures in a detention center.
29. During pandemics, jail facilities (and detention centers) become “ticking time bombs” as “[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases.”[[15]](#footnote-15) As Dr. Jaimie Meyer, an expert in public health in jails and prisons, recently explained, “[T]he risk posed by COVID-19 in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected.” *See* Exhibit 1, Declaration of Dr. Jaimie Meyer (“Meyer Decl.”) ¶ 7 (Mar. 15, 2020). This is due to a number of factors: the close proximity of individuals in those facilities; their reduced ability to protect themselves through social distancing; the lack of necessary medical and hygiene supplies ranging from hand sanitizer to protective equipment; ventilation systems that encourage the spread of airborne diseases; difficulties quarantining individuals who become ill; the increased susceptibility of the population in jails and prisons; the fact that jails and prisons normally have to rely heavily on outside hospitals that will become unavailable during a pandemic; and loss of both medical and correctional staff to illness. *Id.* ¶¶ 7-19.[[16]](#footnote-16)
30. When coronavirus suddenly exploded in China’s prisons, there were reports of more than 500 cases quickly spreading across five facilities in three provinces.[[17]](#footnote-17) In Iran, 54,000 prisoners were temporarily released to protect them and to protect the community from propagation of an outbreak.[[18]](#footnote-18)
31. Youth incarcerated at a detention center:
    1. Are typically housed in close proximity to others and unable to distance themselves;
    2. Spend significant time in communal spaces, such as eating areas, recreation rooms, bathrooms, and cells or holding areas, and they are unable to choose to do otherwise;
    3. Live in spaces with open toilets within a few feet of their beds, and unable to access a closed toilet that would not aerosolize bodily fluids into their living spaces;
    4. Are constantly within six feet of other people, likely none of whom have been tested for COVID-19, and they are unable to choose to do otherwise;
    5. Must physically touch others or be touched by others, such as correctional officers and medical staff, many of whom have not been tested for COVID-19, and they are unable to opt out of this contact;
    6. Are frequently subjected to intimate contact by correctional staff, many of whom have not been tested for COVID-19, during searches of their person, including having those staff place their hands inside of people’s mouths and other body cavities;
    7. Lack recommended access to soap, water, tissues, and paper towels;
    8. Lack access to hand sanitizer that complies with CDC guidelines.
32. Youth in detention centers may also lack access to quality, efficient medical care. Although a youth in secure custody can request to see a member of the medical staff, those requests take significant time to process.
33. This combination of lack of adequate sanitation, close quarters, and limited medical capacity create an intolerably dangerous situation, putting detainees, jail staff, and the communities they belong to at greater risk of illness and death—without any compelling need. The constant cycling of people in and out of the jail[[19]](#footnote-19) makes containment impossible, even if visitations are stopped.[[20]](#footnote-20) This same constant cycling of youth in detention applies as well.
34. Science shows that, within jails and prisons, isolation, segregation, and lockdown are ineffective against COVID-19, Meyer Decl. ¶ 10, and regardless, the jail does not have the physical space to accomplish these efforts for the current jail population. COVID-19 can survive in the air, so separation in a facility where there is still other movement of people, and occasional interaction, will not contain it. Surfaces are still touched–inside cells, in bathrooms, and in transport, at the very least. Further, the reality is that some contact with others, whether through close proximity or actual contact, is inevitable. Kitchen staff, intake staff, officers and medical staff all interact with incarcerated people as a matter of course, even on lockdown.
35. Release Serves Public Health and Community Safety
36. [CLIENT-DEPENDENT SECTION ABOUT PARTICULAR VULNERABILITY, IF ANY—If especially compelling add to front page of motion].
37. [PARAGRAPH ABOUT RELEASE PLAN – WHERE WILL CLIENT GO, ANY RELEVANT CONDITIONS, ETC—AS MUCH DETAIL AS POSSIBLE].
38. In Dr. Meyer’s words, “[r]educing the size of the population in jails and prisons is crucially important to reducing the level of risk both for those within those facilities and for the community at large.” Meyer Decl. ¶ 37. In this unique moment, release *enhances* the safety of other people and the community—and is necessary to protect the juvenile’s own health and safety. The juvenile must be able to exercise self-protective measures in a sanitary, disinfected space, and to maintain social distance from other community members to flatten the curve of the virus’s spread.
39. When the juvenile was initially placed in secure custody, circumstances were different; this Court must consider the stark change in circumstances.
40. **ARGUMENT**

COVID-19 is causing an unprecedented public health crisis that underscores the constitutional requirement that pre-adjudication detention be a last resort. In this case, the juvenile does not have the option of posting bond, and so the juvenile is still in secure custody. In this specific case, there is a less intrusive means that will guarantee the public safety and ensure the juvenile’s appearance at the next court date.

In this case, the court’s initial decision regarding secure custody must be revisited because of changed circumstances: the government’s interest in ongoing detention cannot be justified where detention itself exacerbates an ongoing and devastating public health crisis and brings a heightened risk of illness and death to youth inside and outside the detention center. This Court should identify conditions of release that better protect public health and safety, and it must do so urgently.

1. The Conditions In the Detention Center Amid An Unprecedented Epidemic Temporarily Violate the Juvenile’s Due Process Rights

The Due Process Clause imposes obligations on the government to meet the basic needs of the people its jails and youth held in its detention centers, who rely on the government for food, clothing, and necessary medical care. A failure to provide sustenance for inmates “may [] produce physical ‘torture or a lingering death.’” *Estelle v. Gamble,* 429 U.S. 97, 103 (1976) (internal quotation omitted).

The due process rights of a pretrial detainee “are at least as great as the Eighth Amendment protections available to a convicted prisoner.” *City of Revere v. Mass. Gen. Hosp*., 463 U.S. 239, 244 (1983). Those rights are violated if he is “incarcerated under conditions posing a substantial risk of serious harm,” and the “state of mind is one of ‘deliberate indifference’ to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal citation omitted); *see, e.g.*, *Hardy v. District of Columbia*, 601 F.Supp.2d 182, 190 (D.D.C. 2009) (violation of constitutional rights of pretrial detainee if the officials “knowingly disregarded a substantial risk of serious harm of which they were aware”). Continuing to detain the juvenile if alternatives exist to protect the community and prevent flight while placing the juvenile in mortal danger of contracting and spreading an infectious disease constitute deliberate indifference to the juvenile’s health and safety. The juvenile’s detention, under these new circumstances, constitutes an independent due process violation that the Court must remedy.

1. **Conclusion**

WHEREFORE, for the reasons stated above, as well as any other reasons that become apparent to the Court, the juvenile respectfully requests that the Court grant this Emergency Motion and order that the juvenile be released on appropriate conditions prior to the adjudicatory hearing.

Respectfully submitted this the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Attorney]

Attorney for Juvenile

State Bar No. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

THIS CERTIFIES that a copy of the foregoing has been served upon the Assistant District Attorney, by one of the following means: (1) By delivering a copy personally; (2) By leaving a copy at the office with the secretary; (3) By telecopying said papers to the office; or (4) By depositing it, enclosed in a postpaid, properly addressed wrapper in a post office or other depository under the exclusive care and custody of the United States Postal Service.

This the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2020.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Attorney]

Attorney for Juvenile

1. The World Health Organization has officially classified the spread of Covid-19 as a global pandemic. *See* World Health Organization, Director-General Opening Remarks (March 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020. [↑](#footnote-ref-1)
2. Saralyn Cruickshank, “Experts Discuss Covid-19 and Ways to Prevent Spread of Disease,” John Hopkins Mag. (Mar. 17, 2020), https://hub.jhu.edu/2020/03/17/coronavirus-virology-vaccine-social-distancing-update [↑](#footnote-ref-2)
3. Given COVID-19’s contagiousness and relatively high death rate, particularly in vulnerable populations, the President ordered a 15-day directive to avoid gatherings in groups of more than 10 people. The President’s Coronavirus Guidelines for America, Whitehouse.gov (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20\_coronavirus-guidance\_8.5x11\_315PM.pdf. [↑](#footnote-ref-3)
4. *See supra* note 1. [↑](#footnote-ref-4)
5. *Id.*; *see also* “Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says,” NPR (March 11, 2020), https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says. [↑](#footnote-ref-5)
6. Centers for Disease Control, Coronavirus 2019, https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html [↑](#footnote-ref-6)
7. “Italy coronavirus deaths near 200 after biggest daily jump,” Crispian Balmer & Angelo Amante, Reuters (Mar. 6, 2020), https://www.reuters.com/article/us-health-coronavirus-italy/italy-coronavirus-deaths-near-200-after-biggest-daily-jump-idUSKBN20T2ML. [↑](#footnote-ref-7)
8. Melissa Healy, “True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say,” L.A. Times(Mar. 10, 2020), https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA. [↑](#footnote-ref-8)
9. Roni Caryn Rabin, “They Were Infected with the Coronavirus. They Never Showed Signs,” N.Y. Times (Feb. 26, 2020, updated Mar. 6, 2020), <https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html>; Aria Bendix, “A Person Can Carry And Transmit COVID-19 Without Showing Symptoms, Scientists Confirm,”, Bus. Insider (Feb. 24, 2020), https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms. [↑](#footnote-ref-9)
10. “Coronavirus Disease COVID-19 Symptoms,” Centers for Disease Control (updated: Feb. 29 2020), https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html. [↑](#footnote-ref-10)
11. Vox, *Why Covid-19 is worse than the flu, in one chart*, <https://www.vox.com/science-and-health/2020/3/18/21184992/coronavirus-covid-19-flu-comparison-chart>. [↑](#footnote-ref-11)
12. Centers for Disease Control, Coronavirus Factsheet (Mar. 3, 2020), https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf. [↑](#footnote-ref-12)
13. *See supra* notes 2 & 3. [↑](#footnote-ref-13)
14. Centers for Disease Control, Steps to Prevent Illness: https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html?CDC\_AA\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention-treatment.html; *see also supra* notes 2 & 3. [↑](#footnote-ref-14)
15. *See* Saint Louis University, “Ticking Time Bomb,” *Prisons Unprepared For Flu Pandemic*, ScienceDaily (2006), <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>. [↑](#footnote-ref-15)
16. “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; *See also* Dr. Anne Spaulding, Coronavirus and the Correctional Facility: for Correctional Staff Leadership, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID\_for\_CF\_Administrators\_3.9.2020.pdf [↑](#footnote-ref-16)
17. Claudia Lauer & Colleen Long, “US prisons, jails on alert for spread of coronavirus,” AP News (Mar. 7, 2020), https://apnews.com/af98b0a38aaabedbcb059092db356697. [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *See Peter Wagner & Emily Widra*, “No need to wait for pandemics: The public health case for criminal justice reform,” Prison Policy Initiative (Mar. 6, 2020), https://www.prisonpolicy.org/blog/2020/03/06/pandemic. [↑](#footnote-ref-19)
20. Premal Dharia, “The Coronavirus Could Spark a Humanitarian Disaster in Jails and Prisons,” Slate (Mar. 11, 2020), https://slate.com/news-and-politics/2020/03/coronavirus-civil-rights-jails-and-prisons.html [↑](#footnote-ref-20)