**STATE OF MICHIGAN**

 **IN THE MACOMB COUNTY CIRCUIT COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

 **Lower Court No.** \_\_\_\_\_\_\_\_\_

 Plaintiff-Appellee

 **Honorable \_\_\_\_\_\_\_\_\_\_\_\_**

-vs-

 Defendant-Appellant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

 **MOTION TO MODIFY TERMS OF PROBATION**

 **NOW COMES**\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and through his attorneys, and moves this Honorable Court to modify the terms of his probation and states the following in support:

 1. Mr./Ms. \_\_\_\_\_\_\_\_pled guilty/no contest to (or was found guilty of) \_\_\_\_\_\_\_\_\_\_\_, before the Honorable \_\_\_\_\_\_\_\_\_in the Macomb County Circuit Court.

 2. Mr./Ms. \_\_\_\_\_\_\_\_ was sentenced to \_\_\_\_ years probation, with \_\_\_\_\_ months in the \_\_\_\_\_\_\_ for a probation violation (add if necessary).

 3. Mr./Ms.\_\_\_\_\_\_\_\_ now moves this Court to modify the terms of his/her probation to permit an early release from jail. According to MCL 771.2(5), the “court may amend the order [of probation] in form or substance at any time.” Defendant requests a reduction of the jail sentence, not a reduction of the probationary term (an early termination of probation would require a 28-day notice period under MCL 771.2(2)).

 4. As the Court knows, COVID-19 is an unprecedented global health crisis which calls for immediate action to save lives. COVID-19 spreads rapidly between people who are within six feet of one another. COVID-19 causes very severe illness, including death, and there is no approved vaccine or medication to treat patients.

5. On March 23, 2020 Governor Whitmer issued an emergency executive order to “suspend activities that are not necessary to sustain or protect life.”[[1]](#footnote-1) The purpose of this order is to mandate that people isolate in their homes to mitigate the spread of this deadly contagion.

 6. The Michigan Supreme Court also issued Administrative Order No. 2020-1, urging all state courts to “take any . . . reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 crisis.” The order further instructs courts “to take into careful consideration public health factors arising out of the present state of emergency . . . b) in determining any conditions of probation.”[[2]](#footnote-2)

7. The Federal Government, the State of Michigan, and all public health authorities now implore – and in some instances – require – “social distancing” and staying home. According to the Centers for Disease Control (CDC), social distancing “means remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible.” See [www.CDC.gov](http://www.CDC.gov). But social distancing is impossible to accomplish in a jail setting, which was not designed or built to provide individual inmates with individual space.

8. Jails will be the epicenter of this public health crisis absent swift action.[[3]](#footnote-3) Jails across America are releasing inmates including in nearby Cleveland, Ohio.[[4]](#footnote-4) For example, New Jersey just entered a statewide consent decree to release what appears to be most of its inmates serving jail sentences. See *In The Matter of the Request to Commute or Suspend County Jail Sentences*, Consent Order, issued March 22, 2020, (Docket No. 084230) available at <https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf>.

9. Of course, protection of society has long been considered one of the four primary goals of punishment. See e.g., *People v Snow*, 386 Mich 586, 592 (1972), citing *Williams v New York*, 337 US 241 (1949). In this extraordinary crisis, we are at a juncture where public safety is best accomplished by people sheltering in their homes to mitigate spread of this contagion between prisoners, jail staff, and the community at large.

10. Mr./Ms. \_\_\_\_\_\_\_ is particularly vulnerable due to advanced age of \_\_\_\_\_\_\_.

11. An early release from jail would be consistent with the four goals of sentencing (punishment, deterrence, protection of society and rehabilitation). Moreover, he/she will have served \_\_\_ months of his \_\_\_ month sentence. A reduction of the jail term is not inconsistent with the goals of punishment, deterrence, rehabilitation, and most importantly public safety.

12. Under these unprecedented circumstances, Mr./Ms. \_\_\_\_\_\_ would request an early release from the jail to serve the remainder of his probationary sentence.

 **WHEREFORE**, Mr./Ms. \_\_\_\_\_\_\_\_\_\_ respectfully requests that this Honorable Court grant his motion to modify the terms of his probation to remove or reduce the jail sentence.

 Respectfully submitted,

 BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Executive Order 2020-21 available at <[https://www.michigan.gov/whitmer/0,9309,7-387-90499\_90705-522626--,00.html](https://www.michigan.gov/whitmer/0%2C9309%2C7-387-90499_90705-522626--%2C00.html)> [↑](#footnote-ref-1)
2. See Administrative Order No. 2020-01 (March 15, 2020), *available at* <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf>. [↑](#footnote-ref-2)
3. Amanda Klonsky, *An Epicenter of the Pandemic Will be Jails and Prison, If the Inaction Continues,* New York Times (March 16, 2020) <<https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>> [↑](#footnote-ref-3)
4. Allen Kim, *Cities in the US move to lower inmate populations as coronavirus fears grow*, CNN (March 16, 2020) <<https://www.cnn.com/2020/03/16/us/inmates-released-jail-coronavirus-trnd/index.html>> [↑](#footnote-ref-4)