In the

County, Ohio

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| State of Ohio,  Plaintiff,  v.  ,  Defendant. | :  :  :  :  : | Case No.  Judge |

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**DEFENDANT’S MOTION TO MODIFY BAIL**

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The Defendant pursuant to Ohio Rules of Criminal Procedure Rule 46(E) respectfully requests that this Court modify the current bail to a personal recognizance bond. The bases for this Motion are fully set forth in the attached Memorandum in Support.

Respectfully submitted,

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Counsel for Defendant

**MEMORANDUM IN SUPPORT**

The Defendant respectfully requests this Court for an order modifying the current bail to a personal recognizance bond.

This Court has jurisdiction to modify its bail decisions. Ohio Revised Code §2937.222(D)(1); Ohio Rules of Criminal Procedure Rule 46(E). When, after reviewing all the circumstances, this Court “is of the opinion that the accused will appear as required, before or after conviction,” a recognizance bond is appropriate. O.R.C. §2937.29. Here, the circumstances have changed in a way that justifies modification of the Defendant’s current bail to a recognizance bond.

**1. THE COVID-19 PANDEMIC IN OHIO**

On March 9, 2020, Governor Mike DeWine announced that three people in Ohio tested positive for COVID-19 and declared a state of emergency.[[1]](#footnote-1) Two days later, Governor DeWine announced the existence of COVID-19’s community spread in our State and further restricted large gatherings of Ohioans.[[2]](#footnote-2) Dr. Amy Acton, the director of Ohio’s Department of Health, conservatively estimates that 1% of Ohio’s population has a current COVID-19 infection.[[3]](#footnote-3) To prevent further spread, Ohioans have been asked to routinely wash their hands and engage in social distancing practices.

**2. COUNTY JAILS ARE AT HIGH RISK DURING A PANDEMIC**

Jails are not—nor should they be—hermetically sealed. As people finish serving local sentences, resolve their cases, or are released pre-trial, they may leave incarceration. Additionally, people who work in jails leave and return every day. Viruses may enter jails and other places of confinement in many ways.[[4]](#footnote-4) Once such an infection is present in a jail, it is uniquely difficult to prevent spread even using intentional tools and policies.[[5]](#footnote-5)

We have seen examples of carceral spread of COVID-19 in other countries. When coronavirus suddenly exploded in China’s prisons, there were reports of more than 500 cases spreading across five facilities in three provinces. In Iran, 54,000 inmates were temporarily released back into the country amid virus fears.[[6]](#footnote-6) Decreasing the size of a jail population during a pandemic outbreak can do more than protect the people who live in the jail; it can also reduce the risk of the jail becoming a site of cluster infection, thereby protecting the entire community.

**3. THIS CHANGE IN CIRCUMSTANCES JUSTIFIES A BAIL MODIFICATION**

Criminal Rule 46(C) requires that this Court “consider all relevant information” when setting bail. The impact of COVID-19 within a jail must be factored into this Court’s analysis. And, even in light of the factors that led to the initial setting of a monetary bond, Criminal Rule 46(B) provides a number of ways that—pending trial—this Court may ensure that the community is protected, and the Defendant appears at trial. Among other conditions, this Court may consider placing the Defendant under house-arrest or electronic monitoring, placing the Defendant in the custody of a specific individual or community organization, and regulating the Defendant’s contact with any witnesses, including the victim in the case. Criminal Rule 46(B)(1)-(7).

**4. DEFENDANT IS A HIGH-RISK INDIVIDUAL**

Individuals who are elderly and/or suffer from chronic medical conditions like heart disease, diabetes, and lung disease are at higher risk of serious complications from COVID-19.[[7]](#footnote-7) The Defendant is in a high-risk category, because \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The Defendant is indigent and is unable to pay a bond. The Defendant is a high-risk individual. The risk presented by a COVID-19 outbreak in the jail to a high-risk individual significantly changes the circumstances that this Court must consider when evaluating the form of Defendant’s pre-trial bond. Consequently, Defendant respectfully requests that this Court release him on a personal recognizance bond during the pendency of his trial.

Respectfully submitted,

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Counsel for Defendant

Certificate of Service

I hereby certify that a copy of the foregoing Motion was served on , by ordinary US Mail postage pre-paid, this \_\_\_\_ day \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

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Counsel for Defendant

1. <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/signs-emergency-order-regarding-coronavirus-response> [↑](#footnote-ref-1)
2. <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/fourth-confirmed-case-covid19-limits-access-to-nursing-homes-assisted-living-facilities> [↑](#footnote-ref-2)
3. <https://www.wcpo.com/news/national/coronavirus/dewine-confirms-fourth-covid-19-case-will-issue-new-rules-for-mass-gatherings-in-ohio> [↑](#footnote-ref-3)
4. Ndeffo-Mbah et. al. (June 2018), “Dynamic Models of Infectious Disease Transmission in Prisons and the General Population,” Epidemiol Rev.; 40(1): 40-57. [↑](#footnote-ref-4)
5. Turner and Levy (Aug. 2009), “Pandemic Influenza Preparedness and Response Planning: Guidelines for Community Corrections,” American Probation and Parole Association, available at: <https://www.appa-net.org/eweb/docs/appa/pubs/PIPRP.pdf> (noting the challenges of effectively enforcing quarantine procedures in prisons because of overcrowding, movement issues, and movement between prisons and the community). [↑](#footnote-ref-5)
6. [https://apnews.com/af98b0a38aaabedbcb059092db356697](about:blank) [↑](#footnote-ref-6)
7. <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>. [↑](#footnote-ref-7)