

STATE OF WISCONSIN CIRCUIT COURT
BRANCH COUNTY

STATE OF WISCONSIN,
Plaintiff,

v.

Case No.
(the case no. for the sentence you want modified)

(your name as it appears on judgment of conviction)

Defendant.

**FORM NOTICE OF MOTION AND MOTION
FOR SENTENCE MODIFICATION DUE TO COVID-19**

Pursuant to *State v. Harbor*, 2011 WI 28, ¶ 36, 38, 797 N.W.2d 828 (2011), _____, the Defendant in the above-
(your name)

captioned case, moves this court for modification of his/her sentence, based upon the existence of a “new factor”, namely the COVID-19 pandemic. The basis for this motion is as follows:

1. On _____, the Defendant was convicted of the
(date you were convicted)
offense(s) of _____. On _____,
(list of offense(s) you were convicted of) (date you were sentenced)

the Defendant was sentenced as follows: _____
(explain what sentence you received on each count)

2. The circuit court has the “inherent authority to modify a sentence.” *State v. Trujillo*, 2005 WI 45, ¶ 10, 279 Wis. 2d 712, 721, 694 N.W.2d 933 (2005). “This inherent power can be used to prevent the continuation of unjust sentences and must be exercised within defined parameters.” *Id.* A new factor is one such parameter. *Id.* It is within the circuit court’s discretion to decide whether the new factor warrants sentence

modification. *Id.* at ¶ 11. Therefore, the defendant must first show by clear and convincing evidence that a new factor exists, and second, that the new factor justifies sentence modification. *State v. Harbor*, 2011 WI 28, ¶ 36, 38, 797 N.W.2d 828 (2011).

3. A new factor is “a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all the parties.” *Id.* at ¶ 40. Although the new factor must be highly relevant to the imposition of sentence, it does not need to frustrate the purpose of the original sentence. *Id.* at ¶ 48.

COVID-19

4. The COVID-19 pandemic warrants either a stay or modification of Mr. Doe’s sentence. At the time of Mr. Doe’s sentencing, no one knew about the widespread devastation the new strain of coronavirus, which causes COVID-19, would cause. As of March 30, 2020, COVID-19 has infected over 729,100 people, leading to at least 34,689 deaths worldwide.¹ In Wisconsin, there are over 1,112 confirmed cases and 13 deaths.² On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.³ Governor Evers declared a State of Emergency on March 12, 2020. On March 17, 2020, Governor Evers ordered that no more than 10 people congregate in a public place, and on March 23, 2020, Governor Evers issued a

¹ *Coronavirus Map: Tracking the Spread of the Outbreak*, The New York Times (March 30, 2020), at <https://nyti.ms/2U4kmud> (updating regularly).

² Outbreaks in Wisconsin, WI Department of Health Services, (March 29, 2020) <https://www.dhs.wisconsin.gov/outbreaks/index.htm> (updating regularly).

³ WHO Characterizes COVID-19 as a Pandemic, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS>.

“safer-at-home” order, requiring all businesses but those providing “essential services” to shut down.⁴

5. The CDC has issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions such as lung disease, heart disease, and diabetes—take immediate preventative actions, including avoiding crowded areas and staying at home as much as possible.⁵ With confirmed cases in Wisconsin that indicate community spread, we must take every necessary action to protect vulnerable populations and the community at large.

6. Public health and governmental officials are strongly urging the public to practice social distancing, but social distancing is impossible for imprisoned individuals, who are kept in close proximity to one another. Infectious diseases that are uncommon in the general public, such as tuberculosis, form wide-spread outbreaks in prisons. Moreover, Wisconsin’s prison system is currently 33% over capacity, and severely understaffed, which can only serve to worsen the problem.⁶

7. Incarceration creates the ideal environment for the transmission of contagious disease. Inmates regularly cycle in and out of jails from all over the country and world, and people who work in the facilities leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited in jails.⁷ Many people who are incarcerated also have chronic conditions which

⁴ Gov. Tony Evers to Order Wisconsinites to Stay at Home, Will Close Non-Essential Businesses, JS Online (March 23, 2020) at <https://www.jsonline.com/story/news/politics/2020/03/23/wisconsin-gov-tony-evers-issues-safer-place-order/2897821001/>.

⁵ *People at Risk for Serious Illness from COVID-19*, CDC (March 23, 2020) at <https://bit.ly/2vgUt1P>.

⁶ WisContext, <https://www.wiscontext.org/bumpy-path-efforts-cut-wisconsins-prison-numbers>.

⁷ Laura M. Maruschak et al. (2015). *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfji1112.pdf>.

make them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals “are at a special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe.”⁸ “Infection control is challenging in these settings.”⁹

8. Inmates are not the only people in the jails and prisons who are at risk. Members of prison and jail staff are also at high risk because of contact with other staff and inmates. There are already confirmed COVID-19 cases for staff and inmates in prisons and jails in Wisconsin. As of March 27, 2020, there have been confirmed staff cases in Waupun Correctional, Columbia Correctional, and the Milwaukee Secure Detention Facility and confirmed cases with inmates at the Dane County Jail.¹⁰ Unfortunately, it is likely COVID-19 could reach all of Wisconsin’s prisons and jails.

⁸ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

⁹ *Id.*

¹⁰ Wisconsin Department of Corrections, COVID-19 (Coronavirus) Information Home, [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx); *Two Dane County jail inmates test positive for COVID-19, results pending for 6 others* FOX6 (March 27, 2020) <https://fox6now.com/2020/03/27/2-dane-county-jail-inmates-test-positive-for-covid-19-results-pending-for-6-others/>

WHEREFORE, on the basis of the "new factor", the COVID-19 pandemic outlined above, the Defendant asks the court to modify his/her sentence as follows:

Dated this _____ day of _____, 2020.

Respectfully submitted,

(your signature)
(your typed or printed name)
(your address)
DEFENDANT PRO SE

cc: name and address of District Attorney

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