**IN THE CIRCUIT COURT COOK COUNTY, ILLINOIS**

**JUVENILE JUSTICE AND CHILD PROTECTION DEPARTMENT**

**JUVENILE JUSTICE DIVISION**

**IN THE INTEREST OF )**

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 **A MINOR )**

**MEMORANDUM IN SUPPORT OF MOTION FOR IMMEDIATE RELEASE**

NOW COMES Minor Respondent, (hereinafter “Minor”), by and through his attorney, **XXXXXXXXX**, and pursuant to705 ILCS 405/1-2, 705 ILCS 405/5-501, and 705 ILCS 405/5-7A *et seq.*, respectfully requests that this Honorable Court release Minor from detention. In support of this motion, Minor states as follows:

**STATEMENT OF FACTS**

***COVID-19 Outbreak***

1. On March 11, 2020, the World Health Organization (“WHO”) deemed COVID-19 a pandemic.[[1]](#footnote-1) This new strain of coronavirus is both highly contagious and deadly.[[2]](#footnote-2)
2. Two days later, on Friday, March 13, the President declared a national disaster. This came after Governor Pritzker declared all counties in Illinois as a disaster area.[[3]](#footnote-3)
3. Later that evening, Chief Judge Timothy C. Evans entered General Administrative Order 2020-01, rescheduling and continuing all matters (with some exceptions) in Cook County for a period of 30 days beginning March 17. During this 30-day period, Juvenile Justice Division judges would only preside over detention hearings and demands for trial.
4. On March 30, 2020, Chief Judge Timothy Evans issued an amended court order extending the closure of courts to May 18, 2020.
5. On May 1, 2020, Chief Judge Timothy Evans issued an amended court order extending the closure of courts to May 31, 2020.
6. In Illinois, the number of people diagnosed with COVID-19 continues to increase.
7. According to the Centers for Disease Control and Prevention (“CDC”), there is no current vaccine or drug available to treat COVID-19.[[4]](#footnote-4) The Illinois Department of Public Health therefore encouraged “community-based interventions such as school dismissals, event cancellations, social distancing, and creating employee plans to work remotely [to] help slow the spread of COVID-19.”[[5]](#footnote-5)
8. In Chicago, schools are closed, public events have been cancelled, and people are ordered to stay home. All restaurants and bars have been ordered closed, other than for takeout and delivery.[[6]](#footnote-6) The city, the county, and the nation, are in a state of paralysis.

***Current Conditions at the Juvenile Temporary Detention Center***

1. The Cook County Juvenile Detention Center (“JTDC”) is currently housing approximately 130 Juvenile Justice youth.
2. Nancy B. Jefferson Alternative School (the public school operating inside JTDC) will remain closed until at least May 30, 2020.
3. Recreation time, programs, and family visits, including with parents and guardians, have been suspended. Attorney visits have been restricted to telephonic only, and only when JTDC staff is available to arrange the phone conversations.
4. Detained children are confined to their housing pods 24 hours a day. Other than watching television (when available), there is little to do.
5. There are four behavior levels at JTDC. Newly detained youth start at level one and are promoted to higher levels with continued good behavior over a specified amount of time, usually several weeks. Youth gain privileges at each level, such as additional phone minutes and the ability to play cards. Since it can take several weeks to be promoted to a higher level, newly detained youth have less phone contact with their families and access to fewer activities on their pods.
6. If there is a staff shortage, there is a possibility that youth will be confined to their individual cells.

***Minor’s Circumstances:***

1. Minor is **XXXXXXXXX** years old and has been in custody at the Juvenile Temporary Detention Center (“JTDC”) since .
2. He is charged with **XXXXXXXXX** and his next court date is set for status on **XXXXXXXXX**. Minor also has a pre-trial case set for status on **XXXXXXXXX**.

**APPLICABLE LAW**

The Illinois General Assembly’s intent in creating the juvenile justice system was to create “a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively.” 705 ILCS 405/5-101(1). One of the primary purposes of the Juvenile Court Act (“JCA”) is to rehabilitate youth by developing “educational, vocational, social, emotional, and basic life skills.” 705 ILCS 405/5-101(1)(c).

 The JCA instructs courts to administer the act with “a spirit of humane concern” and expresses a strong preference for children to be with their families and in their homes while awaiting trial. 705 ILCS 405/1-2; *see also* 705 ILCS 405/5-101(2)(e) (stating that these juvenile justice policies are designed to “allow minors to reside within their homes whenever possible and appropriate and provide support necessary to make this possible.”). The JCA also underscores that pretrial detention and removal of a child from their home is an exceptional measure, to be taken only “when [the child’s] welfare or safety or the protection of the public cannot be adequately safeguarded without removal.” 705 ILCS 405/1-2(1).

In order to remove a child from his or her home, the JCA requires courts to find that there is an “immediate and urgent necessity for the protection of the minor or of the person or property of another that the minor be detained or placed in a shelter care facility.” 705 ILCS 405/5-501(2). When determining whether there is “immediate and urgent necessity”, the court is to consider the following factors, among others:

1. the nature and seriousness of the alleged offense;
2. the minor’s record of delinquency offenses, including whether the minor has delinquency cases pending;
3. the minor’s record of willful failure to appear following the issuance of a summons or warrant;
4. the availability of non-custodial alternatives, including the presence of a parent, guardian or other responsible relative able and willing to provide supervision and care for the minor and to assure her or her compliance with a summons.

705 ILCS 405/5-501(2).

**ARGUMENT**

1. **Minor’s Release from Custody is in the Interest of Public Health**

With numerous confirmed cases of COVID-19 in Illinois, the courts must take action to protect the especially vulnerable populations and, in turn, the community at large. The spread of COVID-19 is significantly heightened when large numbers of people are confined together. Confirmed cases of COVID-19 spread rapidly through closed spaces and insular communities. Just as the virus has spread in nursing homes and on cruise ships, once present, the virus will spread quickly in detention facilities. The same factors that make cruise ships breeding grounds[[7]](#footnote-7) for contagion are present in detention centers: 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, detention centers face the additional challenge of population turnover[[8]](#footnote-8), as members of the community regularly move in and out of the facility, bringing illnesses with them into the detention center and/or return to the external community after being infected.

There are currently about 130 Juvenile Justice youth detained at JTDC, and another 30 who are being held under “Automatic Transfer” laws. A detention center is a micro-community through which people, not just juveniles, move through daily. Members of this community include detainees, corrections officers, case workers, medical staff, administrative staff, attorneys, treatment providers, clergy, and, until recently, friends and family of detained juveniles. Reducing the spread of the COVID-19 in JTDC helps to mitigate the spread of the COVID-19 in the larger community.

In China, COVID-19 rapidly spread across its prisons and jails. As of February 25, there were 555 confirmed infections in five prisons of three provinces — Hubei, Shandong, and Zhejiang. As of February 29, 806 people in Wuhan city prisons were infected by the virus.[[9]](#footnote-9) It is almost certain that this will be the case in jails, detention centers, and prisons across the United States.[[10]](#footnote-10) Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”[[11]](#footnote-11) Recognizing the unique risks to jail populations, courts across Iran granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.[[12]](#footnote-12)

Separating sick from well people to prevent the spread of disease can be nearly impossible in jails, detention centers, and prisons given security and other considerations of correctional facilities. The ability to isolate (moving sick individuals to a separate area) or quarantine (separation of people who have been exposed to contagious disease) may not even be possible in the limited space of detention facilities.

Despite the myriad changes being made throughout the justice system, children who are presumed innocent are still being processed into the facility. Detention facilities incubate and amplify infectious diseases putting not just detainees but staff and consequently the outside community at greater risk.[[13]](#footnote-13) Indeed, continued detention places Minor, other detained youth, JTDC staff, and her attorneys, at a heightened risk of contracting COVID-19.

1. **Continued Detention Could Lead to Serious Physical and Psychological Harm**

Continued detention of Minor undermines the goals of the JCA and could lead to serious physical and psychological consequences. *See* 705 ILCS 405/5-101. Under the JCA, there is a presumption against detention and a focus on least-restrictive alternatives and keeping children in their homes.

Without school, programs, recreational time, and visits, youth at JTDC are confined to their assigned pods 24 hours a day. If there are staff shortages, youth will likely be detained in cells alone more frequently. Solitary confinement of youth, for any reason, is detrimental to their physical and psychological well-being. The Human Rights Watch and ACLU explain in their comprehensive report on the impact of juvenile solitary confinement that:

Experts assert that young people are psychologically unable to handle solitary confinement with the resilience of an adult. And, because they are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate, or make more likely, short and long-term mental health problems. The most common deprivation that accompanies solitary confinement, denial of physical exercise, is physically harmful to adolescents’ health and well-being.[[14]](#footnote-14)

If there is an outbreak or positive screen for the virus, Minor and other detained children are likely to 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.[[15]](#footnote-15) The outbreak of COVID-19 and subsequent government responses will result in fear and anxiety throughout our population. Children are at a particular risk to experience that fear and anxiety.[[16]](#footnote-16) Parents and guardians are the most able to provide the best support for their children.[[17]](#footnote-17)

1. **Given the Extraordinary Circumstances of the COVID-19 Pandemic, Minor’s Release is Appropriate**

 To the extent that Minor was initially detained based on considerations of public safety, that purported use of custody is undermined during a global pandemic. As explained above, drastic changes have been made on a global scale to “flatten the curve” and to reduce the spread of COVID-19. Recognizing the Court’s previous finding of urgent and immediate necessity, for the safety of Minor, other detained children, JTDC staff, and the community, we request that the Court modify its order from secured detention to home confinement with EM.

In addition to COVID-19 concerns, the JCA supports Minor’s release. One of the facts courts are to consider when making custodial determinations is the availability of non-custodial alternatives to incarceration, including the presence of a parent who is willing to provide supervision and EM. *See* 705 ILCS 405/5-501(2); 705 ILCS 405/5-7A *et seq*. This public health emergency highlights the need to utilize non-custodial alternatives like Saura and EM to ensure the health and safety of Minor and the community. Placement at Saura or Home confinement monitored by EM will hold Minor accountable for his actions, ensure he appears at all future court dates, and allow the court to monitor Minor’s compliance.

Minor’s Parents, , are willing and able to provide supervision and care of Minor.

**CONCLUSION**

 This is a public health emergency – one in which time is of the essence. The sooner we take action to prevent the spread of this virus, the safer our community will be. The graph[[18]](#footnote-18) below demonstrates the urgency of this crisis. If one case of COVID-19 is averted today, roughly 2,400 infections will be averted, nearly 4 times what will be averted if we wait one week.[[19]](#footnote-19)



WHEREFORE, Minor Respondent, **XXXXXXXXX**, respectfully requests that this Honorable Court grant her Motion to Release and continue his case when his regular Judge, the Hon. **XXXXXXXXX**, will be presiding.

Respectfully submitted,

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**XXXXXXXXX**

1. Dr. Tedros Adhanom Ghebreyesus, World Health Organization Director-General’s opening remarks at the media briefing on COVID-19 (Mar. 11, 2020), *available at* https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last accessed Mar. 15, 2020). [↑](#footnote-ref-1)
2. “WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction.” *Id.*  [↑](#footnote-ref-2)
3. Gubernatorial Disaster Proclamation (Mar. 9, 2020), *available at* https://www2.illinois.gov/sites/gov/Documents/APPROVED%20-%20Coronavirus%20Disaster%20Proc%20WORD.pdf (last accessed Mar. 15, 2020). [↑](#footnote-ref-3)
4. *How to Protect Yourself*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html (last accessed Mar. 15, 2020). [↑](#footnote-ref-4)
5. Preventing COVID-19 Spread in Communities, Illinois Department of Public Health, http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/preventing-spread-communities (last accessed Mar. 15, 2020). [↑](#footnote-ref-5)
6. Gregory Pratt, Dan Petrella, and Jamie Munks, *Pritzker Announces all Bars, Restaurants will be Closed Monday Night Through March 30, Delivery and Pick-Up Will Be Available*, Chicago Tribune (Mar. 15, 2020), *available at* https://www.chicagotribune.com/coronavirus/ct-coronavirus-all-restaurants-to-close-20200315-vqniup2pa5e65bb33ics26rloq-story.html (last accessed Mar. 15, 2020). [↑](#footnote-ref-6)
7. The CDC is currently recommending that travelers defer cruise ship travel worldwide. *See* *COVID-19 and Cruise Ship Travel*, CDC, https://wwwnc.cdc.gov/travel/page/covid-19-cruise-ship (last accessed Mar. 15, 2020). [↑](#footnote-ref-7)
8. “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. [↑](#footnote-ref-8)
9. *Prisons and Jails are Particularly Vulnerable to Covid-19 Outbreaks*, The Justice Collaborative, https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf (last accessed Mar. 15, 2020). [↑](#footnote-ref-9)
10. On Saturday, March 14, a correctional facility in Philadelphia quarantined inmates and staff after an employee tested positive for COVID-19. CBS3 Staff, *Coronavirus Update: 34 George W. Hill Correctional Facility Employees, Inmates Being Self-Quarantined After Employee Tests Positive For COVID-19*, CBS Philly (Mar. 14, 2020), *available at* https://philadelphia.cbslocal.com/2020/03/14/george-w-hill-correctional-facility-employee-tests-positive-for-covid-19/?fbclid=IwAR27cr5mO6WhiG\_zI88f8j379cCT3souC9NNBIOjeJg6yOBjsGHXjI8ywUE (last accessed Mar. 15, 2020). In Chicago, Sherriff Dart suspended jail visits and evictions after deputies encountered a person showing symptoms of COVID-19. *See supra* note 7. [↑](#footnote-ref-10)
11. Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020), https://www.cnn.com/2020/03/10/politics/mike-pompeo-iran-release-detained-americans-coronavirus/index.html (last accessed Mar. 15, 2020). [↑](#footnote-ref-11)
12. Claudia Lauer and Colleen Long, *US Prisons, Jails on Alert for Spread of Coronavirus*, Associated Press (March 7, 2020), https://apnews.com/af98b0a38aaabedbcb059092db356697 (last accessed Mar. 15, 2020). [↑](#footnote-ref-12)
13. Kelsey Kauffman, *Why Jails are Key to ‘Flattening the Curve’ of Coronavirus*, The Appeal (Mar. 13, 2020), *available at* https://theappeal.org/jails-coronavirus-covid-19-pandemic-flattening-curve/ (last visited Mar. 15, 2020). [↑](#footnote-ref-13)
14. *Growing Up Locked Down, Youth in Solitary Confinement in Jails and Prisons Across the Country*, Human Rights Watch & ACLU (October 2012), p. 2, *available at* https://www.aclu.org/sites/default/files/field\_document/us1012webwcover.pdf (last visited Mar. 15, 2020). [↑](#footnote-ref-14)
15. 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). [↑](#footnote-ref-15)
16. *Manage Anxiety & Stress*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html?CDC\_AA\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fcoping.html (last accessed Mar. 15, 2020) (providing information about how to prepare for COVID-19). [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. Siobhan Roberts, *The Exponential Power of Now*, The New York Times (Mar. 13, 2020), *available at* https://www.nytimes.com/2020/03/13/science/coronavirus-math-mitigation-distancing.html (last accessed Mar. 15, 2020). [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)