STATE OF NORTH CAROLINA ) IN THE GENERAL COURT

---------- COUNTY ) OF JUSTICE

 ) SUPERIOR COURT DIVISION

 ) FILE NO. -------------

 )

--------------------, )

 Petitioner, )

 v. )

 )

\_\_\_\_\_\_, Sheriff, \_\_\_\_\_ County, )

In his official capacity as )

Administrator of \_\_\_ Jail, )

 )

Respondent. )

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

PETITION FOR WRIT OF HABEAS CORPUS

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TO THE HONORABLE -----------------, SUPERIOR COURT JUDGE:

Pursuant to N.C. Const. art 1, § 21 and N.C. Gen. Stat. § 17-1, *et seq*., Petitioner \_\_\_\_\_\_\_, through undersigned counsel, respectfully petitions this Court for its writ of habeas corpus and release from imprisonment. Petitioner is unlawfully restrained of (his/her) liberty by the \_\_\_\_\_ County Jail in violation of the Fourteenth Amendment of the United States Constitution and art. 1, sec. 19 of the North Carolina Constitution.

STATEMENT OF FACTS

1. Petitioner has been diagnosed with [briefly describe nature of mental health issues]
2. On \_\_\_\_\_, Petitioner was charged with \_\_\_\_ offense.
3. On \_\_\_\_\_, undersigned counsel filed a motion for a competency evaluation with the Court.
4. On \_\_\_\_, Petitioner was evaluated.
5. On \_\_\_\_, the Court held a competency hearing and found Petitioner incapable to proceed.
6. On \_\_\_\_, the Court ordered petitioner be transferred to \_\_\_\_ Hospital for restoration services.
7. As of the present date, Petitioner remains incarcerated at \_\_\_ County Jail, awaiting restoration services. Petitioner’s detention awaiting admission to \_\_ Hospital has lasted for \_\_\_ months.
8. \_\_\_\_ County Jail is not equipped to provide the care, treatment, or restoration services Petitioner requires.
9. Petitioner has significantly decompensated in this time he/she has waited transfer to \_\_\_ Hospital for restoration services.

\*Note to defense counsel to beef up facts specific to individual case, especially details about the nature of the mental health issues faced by the petitioner and decompensation in jail.

REASONS WHY WRIT SHOULD ISSUE

1. **Petitioner may prosecute the writ.**

“Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed.” N.C. Const. art. 1, § 21; N.C. Gen. Stat. § 17-1. The party seeking relief or any person acting on his behalf may apply for the writ of habeas corpus with any one of the superior court judges. N.C. Gen. Stat. §§ 17-5 & 6. Generally, “every person imprisoned or restrained of his liberty within this State, for any criminal or supposed criminal matter, or on any pretense whatsoever” may prosecute a writ of habeas corpus “to inquire into the cause of such imprisonment or restraint, and, if illegal, to be delivered therefrom.” N.C. Gen. Stat. § 17-3. In other words, “[e]very person imprisoned in this State, regardless of whether such imprisonment stems from a criminal or civil matter, may apply for the writ of habeas corpus.” *State v. Daw*, No. 174PA21 at 11-12 (N.C.S.C. Aug. 13, 2024). “[I]f it appears on the return to the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases . . . [w]here, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.” N.C. Gen. Stat. § 17-33(2).

Here, Petitioner has been detained in jail awaiting admission to the\_\_ Hospital for restoration services for \_\_ months, and alleges that his/her lengthy detention violates the Fourteenth Amendment’s due process clause and art. 1, sec. 19 of the North Carolina Constitution. Petitioner is authorized by state statute and the constitution to prosecute this petition before this Court.

1. **The continued incarceration of Petitioner violates his/her Due Process Rights.**

Petitioner’s prolonged detention in jail is not reasonably related to determining whether their capacity to proceed can be restored; Petitioner is therefore being held in violation of the Fourteenth Amendment and art. 1, sec. 19 of the North Carolina Constitution. The prosecution of a person who, by reason of mental health or cognitive disability, is incapable of understanding the legal proceedings against them or assisting in their own defense, violates the due process clause. *Dusky v. United States*, 362 U.S. 402 (1960); *see e.g.*, *State v. Collins*, 169 N.C. 323, 324 (1915) (The Law of the Land Clause is “held to be the equivalent of ‘due process of law’ as it is expressed in federal Constitution[].”). Individuals suspected of being incapable to proceed to trial can be detained only for the “reasonable period of time necessary” to determine whether their capacity may be restored in the foreseeable future. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Petitioner has been found incapable to proceed and has been awaiting transfer to a state-designated mental health facility for over \_\_ days in violation of his/her due process rights. Such a prolonged period of incarceration is unreasonable and unnecessary, and amounts to an “act, omission or event” occurring after a period of lawful custody. Petitioner is thus entitled to be discharged.

At any time during criminal proceedings, the prosecution, defense, or judge may question the defendant’s capacity to proceed. N.C. Gen. Stat. § 15A–1002(a). Once a defendant is found incapable to proceed, the Court may refer them for involuntary commitment. N.C. Gen. Stat. § 15A–1003(a). If the Court finds the reasonable grounds to believe the defendant meets the criterion for involuntary commitment, the court may commit the defendant to a state-designated mental health facility where they may receive restoration services. N.C. Gen. Stat. § 122C-271(b)(3).

Petitioner was ordered to such a facility on \_\_\_ and as of the date of this filing has not yet been transferred, in violation of his/her substantive due process rights. Due process requires the state action to (1) have a legitimate objective, and (2) be implemented by means that are objectively reasonable. *State v. Womble*, 277 N.C. App. 164, 183 (2021). Petitioner’s prolonged detention is not reasonably related to restoring his or her capacity, as Petitioner is awaiting, but not receiving, restoration services during their detention.  *See* *Jackson*, 406 U.S. at 738 (“At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.”); *see also United States v. Donnelly*, 41 F.4th 1102, 1106 (9th Cir. 2022) (six-month detention awaiting inpatient restoration treatment is impermissible); *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1106, 1121-1123 (9th Cir. 2003) (affirming injunction requiring detainees to be admitted to state hospital within seven days of a court finding of incapacity to proceed and deeming wait times of one to five months impermissible); *United States v. McCarthy*, No. 5:21-CR-61-RBD-PRL, 2023 WL 8291666, at \*3 (M.D. Fla. Nov. 22, 2023) (pre-hospitalization detention of five months violates due process); *United States v. Reeves,* No. 321CR00047KDBDCK, 2023 WL 5736944, at \*3 (W.D.N.C. Sept. 5, 2023) (pre-hospitalization detention of nine months “simply cannot be squared with” *Jackson*); *Trueblood v. Washington State Dep’t of Soc. & Health Servs.*, No. C14-1178-MJP, 2016 WL 4418180 (W.D. Wash. Aug. 19, 2016) (mandating seven-day limit to detention awaiting hospitalization for restoration services); *United States v. Smith*, 764 F. Supp. 2d 541, 545 (W.D.N.Y. 2011) (defendant’s due process rights were likely violated by ten-week pre-hospitalization detention in county jail); *Advoc. Ctr. for Elderly & Disabled v. Louisiana Dep’t of Health & Hosps*., 731 F. Supp.2d 603, 620-21 (E.D. La. 2010) (finding waits of six to nine months for restoration treatment likely violated the Due Process Clause); *Terry ex. rel. Terry v. Hill*, 232 F. Supp.2d 934, 938, 944 (E.D. Ark. 2002) (wait times of over six months for restoration treatment violated the due process clause); *see also United States v. Wayda*, 966 F.3d 294, 309 (4th Cir. 2020) (affirming district court dismissal of a civil commitment proceeding where the government detained the defendant for six months after he was deemed incompetent to proceed before initiating commitment proceedings); *Disability L. Ctr. v. Utah*, 180 F. Supp.3d 998, 1004 (D. Utah 2016) (denying motion to dismiss due process claims brought by pretrial detainees awaiting competency restoration services where “it is not uncommon for these individuals to remain incarcerated in county jails for six months or more”).

 Petitioner’s prolonged detention undermines the state’s interest in restoration, because Petitioner is decompensating without appropriate mental health care, making it less likely his/her capacity can be restored.[[1]](#footnote-1) Furthermore, petitioner is a pretrial detainee, not yet convicted of the charges against him/her. As such, he/she has a liberty interest in freedom from punishment. *Bell v. Wolfish*, 411 U.S. 520, (535) (1979). “[V]alid pretrial detention assumes a punitive character when it is prolonged significantly[.]” *United States v. Theron*, 782 F.2d 1510, 1516 (10th Cir. 1986). Petitioner’s prolonged incarceration at the \_\_\_ County jail no longer bears a “reasonable relation” to the purpose of detention and has become unconstitutionally punitive.

1. **The continued incarceration of Petitioner is a violation of his/her Procedural Due Process Rights.**

Petitioner is also being detained in violation of his/her procedural due process rights under the Fourteenth Amendment and art. 1, sec. 19 of the North Carolina Constitution. Petitioner’s prolonged detention without restoration services constitutes punishment without trial is rendering him/her unable to contribute meaningfully and expeditiously to his/her defense. Procedural due process inquiries must balance (1) “the private interest affected,” (2) “the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards,” and (3) “the Government’s interest, including the . . . administrative burden that additional or substitute procedures would entail.” *State v. Thompson*, 349 N.C. 483, 498 (1998) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Freedom from incarceration is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see generally* *Bulova Watch Co., Inc. v. Brand Distributors of North Wilkesboro, Inc.*, 285 N.C. 467, 477 (1974) (“The term ‘liberty, as used in [art. 1, sec. 19], is as extensive as the same term as used in the Fourteenth Amendment to the Constitution of the United States.”).

First, Petitioner has a clear liberty interest in not being incarcerated without having been convicted of a crime. *Mink*, 322 F.3d at 1121; *Meachum v. Fano*, 427 U.S. 215, 224 (1974). Second, since being ordered to a state hospital, Petitioner has received no restoration treatment that might enable him/her to participate in his/her own defense. As a result, undersigned counsel has been unable to prepare a defense for Petitioner. *See, e.g.,* *Mink*, at 1119 n.10 (affirming that prolonged detention of incapable defendants violated due process because “[p]ersons unfit to proceed and held in county jails for more than a brief period suffer delays in receiving restorative treatment, which delays their return to competency, prolonging their criminal cases and making it difficult for their attorneys to learn from their clients about the crime or crimes charged, to identify witnesses, and to enter into plea negotiations.”). And third, the state has no legitimate interest in continuing Petitioner’s incarceration absent restoration services. *Trueblood v. Washington State Dep’t of Soc. & Health Servs.*, 73 F. Supp.3d 1311, 1316 (W.D. Wash. 2014) (“There is, however, no legitimate independent interest in delays within the system because delays undermine the state's ‘primary governmental interest’ of bringing the accused to trial.”).

CONCLUSION

 For the aforementioned reasons, Petitioner “though the original imprisonment was lawful, [] by some act, omission, or event which has taken place afterwards” – Petitioner’s continued incarceration while awaiting admission to a state-run mental health facility, – he/she “has become entitled to be discharged.” N.C. Gen. Stat. § 17-33.

 Wherefore, Petitioner respectfully requests this Court to issue a writ of habeas corpus and:

1. Order Petitioner’s immediate release;
2. Alternatively, immediately order Respondents to bring Petitioner before this Court at a time and place to be set by the Court for a hearing, pursuant to N.C. Gen. Stat. §§ 17-13, -15, -32.

 This \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

EXHIBITS

1. Charging docs
2. Motion for competency evaluation
3. Order for evaluation
4. Evaluation
5. Order for commitment
6. Anything else

VERIFICATION

The undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having been duly sworn, says and deposes that she is counsel of record for the Petitioner in this matter, that the factual allegations contained herein are all derived from undersigned counsel’s examination of the court file in the Petitioner’s case available from the Clerk of Court, and that on the basis of undersigned counsel’s examination of these documents, undersigned counsel is informed and believes the allegations herein to be true and accurate.

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

Attorney for Petitioner

Sworn and subscribed before me

this \_\_\_\_ day of \_\_\_, 20\_\_.

Notary Public: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, North Carolina

My commission expires: \_\_\_\_\_\_\_\_\_\_

CERTIFICATE OF SERVICE

 I hereby certify that a copy of the foregoing Petition for Writ of Habeas Corpus, exhibits, and Verification have this day been served by first-class mail, postage prepaid upon:

Sheriff

District Attorney

Respectfully submitted, this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Attorney for Petitioner

1. Staats, M. L. P., Kivisto, A. J., & Connell, R. E. (2021). The role of cognitive functioning in predicting restoration among criminal defendants committed for inpatient restoration of competence to stand trial. *International Journal of Law and Psychiatry*, 74, 101654; Toofanian Ross, P., Padula, C. B., Nitch, S. R., & Kinney, D. I. (2015). Cognition and competency restoration: Using the RBANS to predict length of stay for patients deemed incompetent to stand trial. *The Clinical Neuropsychologist*, *29*(1), 150-165. [↑](#footnote-ref-1)