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SUPREME COURT  
STATE OF WASHINGTON  
2007 FEB 26 P 2: 26

CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Jayson Loren Edward Bush

NO. 79834-6

PERSONAL RESTRAINT PETITION

Petitioner's Full Name

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of the form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, Jayson L. E. Bush, C/O Trageser Law Office, P.S. 1428 West Northwest Blvd. Spokane, Washington 99205.

Apply for relief from confinement. I am  am not  now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: Mr. Bush is in custody serving the remainder of his original sentence (Spokane County Superior Court Cause No. 96-1-02141-6) which had been commuted by former Governor Gary Locke on May 25, 2004.

1. The court in which I was sentenced is: Spokane County Superior Court.
2. I was convicted of the crime of: Three counts of Assault in the First Degree.
3. I was sentenced after (check one) Trial  Plea of Guilty  on 1997 \_\_\_\_\_  
Date of Sentence
4. The Judge who imposed sentence was Judge Kato.

PERSONAL RESTRAINT PETITION

- 1 -

TRAGESER LAW OFFICE P.S.  
TIMOTHY D. TRAGESER • ATTORNEY AT LAW  
MARLA L. POLIN • ATTORNEY AT LAW  
1428 W. NORTHWEST BLVD.  
SPOKANE, WASHINGTON 99205  
(509) 327-3993 • FAX (509) 327-2060

1 5. My lawyer at trial court was Mr. Kenneth Knox (WSBA #14667),  
Name and Address if known

2 Spokane County Public Defender's Office 1033 West Gardner Avenue Spokane, WA 99201.

3 6. I did \_\_\_ did not (X) appeal from the decision of the trial court. (If the answer is that I did),  
4 I appealed to:

5 \_\_\_\_\_  
Name of court or courts to which appeal took place

6 7. My lawyer for my appeal was: N/A  
7 Name and address if known or write "none"

8 The decision of the appellate court was \_\_\_\_\_ was not \_\_\_\_\_ published. (If the answer is that it  
9 was published, and I have this information) the decision is published in \_\_\_\_\_

10 8. Since my conviction I have \_\_\_\_\_ have not (X) asked a court for some relief from my  
11 sentence other than I have already written above. (If the answer is that I have asked, the court I  
12 asked was \_\_\_\_\_ Relief was denied on

12 Name of court

13 \_\_\_\_\_  
Date of Decision or, if more than one, all dates)

14 (If you have answered in question 7 that you did ask for relief), the name of your lawyer in the  
15 proceedings mentioned in my answer was \_\_\_\_\_

15 Name and address if known

16 \_\_\_\_\_  
17 9. If the answers to the above questions do not really tell about the proceedings and the courts,  
18 judges and attorneys involved in your case, tell about it here: In 1997, Mr. Bush plead guilty to  
19 three counts of Assault in the First Degree (Spokane County Superior Court Cause No. 96-1-  
20 02141-6). He was sentenced to 93 months incarceration on each count, to be served  
21 consecutively. Former Governor Gary Locke granted Mr. Bush a Conditional Commutation of  
22 Sentence on May 25, 2004, commuting the remainder of his sentence and imposing twenty-four  
23 (24) months of community custody. On April 8, 2006, Mr. Bush was charged with Assault of a  
24 Child in the Third Degree (Spokane County Superior Court Cause No. 06-1-01206-3). The  
charging document was later amended to include, in the alternative, one count of Assault in the  
Fourth Degree (DV). On January 31, 2007, Mr. Bush entered a twenty-four (24) month  
Stipulated Order of Continuance on two counts of Assault in the Fourth Degree (DV). Attached  
and labeled Exhibit "A" is a copy of the SOC. These charges will be dismissed at the end of the  
twenty-four month period provided Mr. Bush abides by the Court's directives (i.e. no further  
assaultive behavior).

25 From the onset of this matter, this writer made numerous attempts to consult with  
26 Governor Gregoire and her attorney, Mr. Richard E. Mitchell, regarding the status of Mr. Bush's

1 commuted sentence. Attached and labeled Exhibit "B" is a copy of this writer's Certificate of  
2 Counsel outlining in detail the correspondence between these parties. Mr. Bush's criminal  
3 matter was continued on two separate occasions due to Governor Gregoire's flagrant disregard  
4 for Mr. Bush's legal welfare. Both this writer and Deputy Prosecuting Attorney Kelly Fitzgerald  
5 contacted Mr. Mitchell requesting clarification on the terms of the Commutation. Each request  
6 was summarily ignored. As a direct result of the Governor's failure to act, the parties were  
7 forced to proceed in the dark and were unable to negotiate this matter.

8 The second continuance came after the jury pool was sworn in by the Honorable Judge  
9 Jerome Leveque. During a pre-trial hearing, it became apparent to Judge Leveque that Mr. Bush  
10 could not competently proceed to trial without a clear understanding of the status of his  
11 commuted sentence. At that time, the jury pool was excused and this writer was directed to  
12 contact Mr. Mitchell. This writer once again attempted to contact Governor Gregoire and Mr.  
13 Mitchell to ascertain the status of Mr. Bush's conditional commutation. These requests were  
14 again ignored until Judge Leveque signed an Order Compelling Mr. Mitchell's presence at a pre-  
15 trial hearing. Attached and labeled Exhibit "C" is a copy of the Order Compelling Mr.  
16 Mitchell's attendance at the hearing.

17 It was not until that hearing that Mr. Mitchell, acting as Governor Gregoire's attorney,  
18 informed the parties, on the record, that Mr. Bush's Conditional Commutation had been revoked  
19 on May 30, 2006 and that the outcome of this criminal trial was irrelevant.

20 As such, Mr. Bush, the Petitioner, now seeks review of the revocation of the Conditional  
21 Commutation of his 1997 sentence.

## 22 B. GROUNDS FOR RELIEF:

23 (If I claim more than one reason for relief from confinement, I will attach sheets for each reason  
24 separately, in the same way as the first one. The attached sheets should be numbered "First  
25 Ground", "Second Ground", "Third Ground", etc). I claim that I have two reason(s) for this  
26 court to grant me relief from the conviction and sentence described in Part A.

### First Ground (First, Second, etc)

1. I should be given a new trial or released from confinement because (State legal reasons why  
you think there was some error made in your case which gives you the right to a new trial or  
release from confinement): Mr. Bush is has a Constitutional right to Due Process. "A personal  
restraint petitioner may obtain relief by showing either a constitutional violation or a violation of  
the laws of the state of Washington." In the Matter of the Personal Restraint of Jeffrey Liptrap,  
127 Wn.App. 463, 469, 111 P.3d 1227 (2005), citing RAP 16.4(c)(2), (6); In re Personal  
Restraint of Cashaw, 123 Wn.2d 138, 148, 866 P.2d 8 (1994). "The constitutional provision  
declaring that no person shall be deprived of life, liberty or property without due process of law,  
is not limited to judicial proceedings, but extends to every proceeding which may interfere with

1 those rights, whether judicial, administrative or **executive.**" State v. C.M. Moore, 7 Wash. 173, 177, 34 P. 461 (1893)(emphasis added), citing Stuart v. Palmer, 74 N.Y. 183.

2 Contained within the constitutional protection of due process is an individual's right to  
3 Notice and Opportunity to be Heard. "Both the Washington and United States Constitutions  
4 provide that no person shall be deprived of "life, liberty, or property, without due process of  
5 law". State deprivation of these protected interests is unconstitutional unless accompanied by  
6 adequate procedural safeguards. Our Supreme Court has held that our due process protection is  
7 largely coextensive with that of the United States Constitution." Edmonds Shopping Center  
8 Associates, et al. v. The City of Edmonds, 117 Wn.App. 344,367, 71 P.3d 233 (2003). "There is  
9 no vested right in any particular remedy or form of proceeding... The essential elements of due  
10 process of law are notice and opportunity to defend, but due process does not require that any  
11 particular form of proceedings be observed, but only that the same shall be regular proceedings  
12 in which notice is given of the claim asserted and an opportunity to defend against it." White v.  
13 Powers, 89 Wash. 502, 507, 154 P. 820 (1916).

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Second Ground  
(First, Second, etc)

11 Mr. Bush was denied the fundamental protection against arbitrary and capricious exercise  
12 of governmental authority. "[N]o person shall be deprived of his property without due process of  
13 law. The courts have never attempted to define with precision the meaning of the phrase 'due  
14 process of law,' or its equivalent from the Magna Charta, 'the law of the land.' This, not because  
15 of any uncertainty as to the meaning, but rather because of the inability to encompass within the  
16 brief terms necessary to a definition all of the multifarious matters to which the phrase is  
17 applicable. Broadly speaking, its purpose is to protect the individual against arbitrary action on  
18 the part of the state; that is, to secure the citizen against any arbitrary deprivation of his rights  
19 relating to his life, liberty, or property." State v. Seattle Taxicab & Transfer Co., 90 Wash. 416,  
20 430, 156 P. 837 (1916).

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2. The following facts are important when considering my case. (After each fact statement put  
the name of the person or persona who know the fact and will support your statement of the fact.  
If the fact is already in the record of your case, indicate that also) Mr. Bush was denied his  
constitutional right to notice and opportunity to be heard prior to the Governor exercising her  
gubernatorial powers. There is currently no process or procedure currently in place by which an  
individual can be heard and defend themselves prior to a governor revoking a previously  
commuted sentence.

Each of the referenced letters are attached in what is labeled Exhibit "B". In a letter  
dated May 4, 2006, Governor Gregoire informed Mr. Bush that his Conditional Commutation  
would be revoked if the charges against him were not dismissed by May 30, 2006. Prior to the  
May 30, 2006 deadline, this writer contacted the Governor and was informed that she was out of  
the Country until June – well past the deadline. In addition to requesting a hearing or an  
opportunity to speak with the Governor prior to her exercising her gubernatorial powers, this  
writer inquired as to materials the Governor would be willing to review prior to making her final

1 decision. When each of those requests were ignored, this writer presented the Governor with a  
2 mitigation package for her review. This writer promptly contacted Mr. Mitchell after receiving  
3 no indication that the Governor had received the previous correspondence. Mr. Mitchell had the  
4 audacity to inform this writer that Governor Gregoire was "busy" and he could not promise that  
5 she would even review the earlier correspondence. Based on those flippant statements and the  
6 Governor and Mr. Mitchell's callous disregard for Mr. Bush's liberty, this writer asserts that Mr.  
7 Bush was, most assuredly, denied any process or opportunity to be heard on the matter of his  
8 Commuted sentence.

9 Furthermore, Mr. Bush was also denied the Constitutional protection against the arbitrary  
10 and capricious exercise of a state actor's power. Attached and labeled Exhibit "D" is a copy of  
11 Mr. Bush's original Commutation of Sentence as signed by former Governor Gary Locke. The  
12 original commutation provides that Mr. Bush's Conditional Commutation would be revoked in  
13 the event that he, 'commits any offense classified as a felony or gross misdemeanor'. This writer  
14 immediately sought clarification from the Governor regarding the term 'commits'. Mr. Bush had  
15 been arrested on the charge of Assault of a Child in the Third Degree, but had not been  
16 convicted. This writer also sought clarification regarding the standard of proof necessary to  
17 revoke this Conditional Commutation. Governor Gregoire and Mr. Mitchell utterly ignored  
18 these continual requests for clarification and guidance.

19 As a direct result of not understanding the status of the commuted sentence and which  
20 action would invoke revocation, Mr. Bush was forced to blindly prepare for trial after he was  
21 unable to negotiate his case. By refusing to identify the parameters of these essential terms,  
22 Governor Gregoire was permitted to exercise her gubernatorial powers pursuant with any whim  
23 she so desired. By not having a concrete process in place, Governor Gregoire is free to exercise  
24 her powers without fear of being held accountable for her actions.

25 Governor Gregoire's decision to revoke Mr. Bush's Conditional Commutation has  
26 resulted in re-imposing the prison term remaining from the original sentence. Sixteen years  
remain for Mr. Bush to serve until his release from custody. Despite this extreme deprivation of  
liberty, the Governor has yet to issue a formal Order of Revocation. Mr. Bush remains  
incarceration at the Spokane County Jail.

In a recent newspaper article, Mr. Mitchell is quoted saying, "there is no avenue for  
appeal". Attached and labeled Exhibit "E" is a copy of the Spokesman Review Article dated  
January 31, 2007. This writer questions whether Mr. Mitchell has the authority to make  
decisions in this matter or to speak on the Governor's behalf.

Governor Gregoire cannot be permitted to continue to make decisions in a vacuum. She  
cannot exercise her powers in an arbitrary manner without any accountability for her actions.  
Such a decision would be a clear violation of Mr. Bush's Constitutional Rights.

3. The following reported court decisions (indicate citations if possible) in cases similar to mine  
show the error I believed happened in my case. (If none are known, state "None Known". "None  
Known"

4. The following statutes and constitutional provisions should be considered by the court. (If  
none are now, state, "None Known") Constitutional provision of Due Process, including the right  
to Notice and Opportunity to be Heard and the protection against arbitrary and capricious use of  
power; Wash. Const. Art. I, § 3 (2007).

1 5. This petition is the best way I know to get the relief I want, and not other way will work as  
2 well because: This writer requested a hearing or an opportunity to be heard and present  
3 mitigating evidence before Governor Gregoire prior to her issuing her decision to revoke Mr.  
4 Bush's Conditional Commutation. See Exhibit "B". This writer also requested a hearing or  
5 opportunity to be heard and present mitigating evidence before the Board of Clemency and  
6 Pardons prior to the Governor issuing her decision to revoke the commuted sentence. See  
7 Exhibit "B". Each of these attempts was futile. This writer attempted to file a Personal Restraint  
8 Petition with the Court of Appeals, Division III. These pleadings were returned and this writer  
9 was informed the Washington State Supreme Court was the proper avenue for relief in this  
10 matter.

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C. STATEMENT OF FINANCES:

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do \_\_\_ do not (X) ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.

2. I have \$ \_\_\_\_\_ in my prison or institution account.

3. I do \_\_\_ do not \_\_\_ ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a layer.

4. I am \_\_\_ am not \_\_\_ employed. My salary or wages amount to \$ \_\_\_\_\_ a month. My employer is \_\_\_\_\_.  
Name and address of employer

5. During the past 12 months I did \_\_\_ did not \_\_\_ get any money from a business, profession or other form of self-employment. (If I did, it was \_\_\_\_\_  
Type of self-employment

And the total income I received was \$ \_\_\_\_\_.

6. During the past 12 months I:

Did \_\_\_ Did Not \_\_\_ Receive any rent payments. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not \_\_\_ Receive any interest. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not \_\_\_ Receive any dividends. If so, the total I received was \$ \_\_\_\_\_

1 Did \_\_\_ Did Not \_\_\_ Receive any other money. If so the total I received was  
\$ \_\_\_\_\_

2 Do \_\_\_ Do Not \_\_\_ Have any cash except as said in question 2 of Statement of Finances. If so  
3 the total amount of cash I have is \$ \_\_\_\_\_.

4 Do \_\_\_ Do Not \_\_\_ Have any savings or checking accounts. If so, the total amount in all  
5 accounts is \$ \_\_\_\_\_

6 Do \_\_\_ Do Not \_\_\_ Own stocks, bonds or notes. If so, their total value is: \$ \_\_\_\_\_.

7 7. List all real estate and other property or things of value which belong to you or in which you  
8 have an interest. Tell what item or property is worth and how much you owe on it. Do not  
list household furniture and furnishings and clothing which you or your family need.

9 Items Value

10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_

13 8. I am \_\_\_ am not \_\_\_ married. If I am married, my wife or husband's name and address is:

14 \_\_\_\_\_  
15 \_\_\_\_\_

16 .  
17 9. All of the persons who need me to support them are listed below:

18 Name & Address Relationship Age

19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_

23 10. All the bills I owe are listed here:

24 Name & Address of Creditor Amount

25 \_\_\_\_\_  
26 \_\_\_\_\_

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D. REQUEST FOR RELIEF:

I want this court to:

\_\_\_\_\_ Vacate my conviction and give me a new trial.

\_\_\_\_\_ Vacate my conviction and dismiss the criminal charges against me without a new trial.

(X) Other: vacate Governor Gregoire's arbitrary decision to revoke Mr. Bush's Conditional Commutation and provide him with an opportunity to be heard. Mr. Bush was not convicted of this crime and has not violated the terms of the original Conditional Commutation.

(Please Specify)

1 E. OATH OF PETITIONER

2  
3 STATE OF WASHINGTON )  
4 ) ss.  
5 COUNTY OF Spokane )  
6

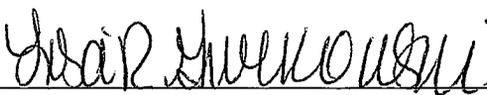
7 After being first duly sworn, on oath, I depose and say: That I am the attorney for the  
8 petitioner, that I have read the petition, know its contents, and I believe the petition is true.

9   
10 \_\_\_\_\_  
11 Timothy D. Trageser, WSBA #18704  
12 Attorney for Petitioner

13   
14 \_\_\_\_\_  
15 Marla L. Polin, WSBA #36657  
16 Attorney for Petitioner

17 SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of February  
18 2007



19   
20 \_\_\_\_\_  
21 Notary Public in and for the State of Washington  
22 Residing at Spokane County  
23 08.06.07

24 If a notary is not available, explain why none is available and indicate who can be contacted to  
25 help you find a Notary.  
26 \_\_\_\_\_  
\_\_\_\_\_

1 I declare that I have examined this petition and to the best of my knowledge and belief it  
is true and correct.

2 DATED This \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

3  
4 \_\_\_\_\_  
(Signature Here)

# Exhibit “A”

FILED

FEB 01 2007

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

Superior  
IN THE ~~DISTRICT~~ COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE  
 MUNICIPAL DEPARTMENT - CITY OF SPOKANE

X STATE OF WASHINGTON  
CITY OF SPOKANE

Plaintiff,

v.

Jayson E. Bush

Defendant(s).

No. 06-1-01200-3

PA#

STIPULATION TO POLICE REPORTS AND  
ORDER OF CONTINUANCE (SOC) FOR

24 MONTHS

Twenty four months

THIS MATTER comes before the undersigned Judge/Court Commissioner on the joint motion of the City of Spokane/State of Washington and the Defendant.

THE PARTIES AGREE THAT THIS SOC APPLIES TO THE FOLLOWING OFFENSE(S):

Fourth Assault D.V. Maximum penalty 365 days in jail and \$5000 fine

Fourth Assault D.V. Maximum penalty 365 days in jail and \$5000 fine

Maximum penalty \_\_\_ days in jail and \$ \_\_\_ fine

CAUTION: Most Domestic Violence convictions result in the loss of the right to possess firearms and ammunition and may result in the imposition of a 2 year No Contact Order as to the alleged victim.

THE PARTIES AGREE THAT THE COURT IS AUTHORIZING A CONTINUANCE OF THIS MATTER TO ALLOW THE ENTRY OF AN ORDER OF DISMISSAL REGARDING THE FOLLOWING OFFENSE(S): Fourth Assault D.V. Two Counts

I. STIPULATION TO ADJUDICATIONS OF COMPLIANCE, REVOCATION AND OF GUILT BASED UPON POLICE REPORTS AND OTHER SUBSTANTIVE EVIDENCE (CrRLJ 6.1.2(b)).

A. Treatment Review Hearing:

Defendant understands and agrees that the Court will set periodic treatment review hearings to determine the Defendant's compliance with the Terms and Conditions specified in this SOC. Hearings regarding compliance will be conducted, and compliance determined by a preponderance of the evidence, in the same manner as a probation revocation proceedings conducted pursuant to CrRLJ 7.6. Defendant further understands and agrees that if the Court determines that there is reason to believe that that the Defendant is not in compliance with the relevant Terms and Conditions specified in this SOC, it will set a Revocation Hearing to determine if the SOC should be revoked and the defendant proceed to a bench trial on the charges subject to the SOC.

B. Revocation Hearing:

In the event that: (1) the Court has determined in a treatment review hearing there is reason to believe that that the Defendant is not in compliance with the relevant Terms and Conditions specified in this SOC; or (2) there is an allegation by the Prosecuting Attorney outside a treatment review hearing that the defendant is not in compliance with the relevant assessment, evaluation or treatment conditions specified in this SOC; or (3) that there is an allegation that the Defendant has violated any other term or condition of the SOC, the Court will conduct a revocation hearing. Revocation hearings to determine if the SOC should be revoked and the defendant proceed to a bench trial on the charges subject to the SOC will be conducted, and revocation determined, by a preponderance of the evidence, in the same manner as a probation revocation proceedings conducted pursuant to CrRLJ 7.6. At the time of such revocation hearing the Defendant stipulates and agrees that the Court will review the following items, each of which shall be deemed to be both accurate and admissible for the purposes of such hearing: (1) records and / or reports from any agency providing treatment to the defendant under the terms of this SOC, including all documents, test results and photographs attached or annexed thereto; and (2) any police reports relating to the incident(s) alleged to constitute a violation of the terms and conditions of the SOC, including all documents and photographs attached or annexed thereto. Defendant further understands and agrees that if the Court determines that the Defendant is not in compliance with the Terms and Conditions specified in this SOC, it will either maintain the SOC or revoke the SOC and proceed immediately to a bench trial, or set a time for such bench trial. In either case, such bench trial will be conducted as outlined below.

C. Bench Trial:

Defendant understands and agrees that if the Defendant has been determined to have violated or failed to comply with any of the terms and conditions set forth in this SOC at a Revocation Hearing and the Court has terminated the SOC, the Court will conduct a bench trial to determine the defendant's guilt on each the charges subject to the terms of the SOC and which are identified above. Such determination of guilt shall be made according to the standard of proof of beyond a reasonable doubt.

Defendant understands that normally, as a Defendant in a criminal action, he/she has the right to object to the admissibility and to contest the evidence presented against him or her and to present evidence on his/her own behalf. Defendant also understands and agrees that he/she is giving up the right to contest and object to the evidence in the police reports and all other relevant evidence submitted at the bench trial and also gives up the right to present evidence on his/her own behalf.

At the time of such bench trial, the Defendant stipulates and agrees that the Court will decide if the Defendant is guilty of the crimes specified above based solely on the following forms of evidence, as they may be submitted by the prosecution at trial, and each of which shall be deemed to be both accurate and admissible for the purposes of such trial: (1) the police reports relating to the incident upon which the SOC was granted, including all documents and photographs attached or annexed thereto; and (2) any sworn written declarations of witnesses or the alleged victim.

If the Court finds the Defendant guilty according to the procedures and standards specified for such bench trial, the Court can impose any sentence up to the maximum penalty as stated above.

*Record has been made as to evidence that will be presented and considered.*

II. TERMS AND CONDITIONS

During his/her participation in the SOC program, the Defendant shall comply with the following terms and conditions:

*Does not apply*  
~~1. As a mandatory condition of this SOC, the defendant understands and agrees that he or she is absolutely and solely responsible for providing proof of compliance with the Terms and Conditions stated herein to the Spokane Regional Domestic Violence Team. Proof of compliance shall be deemed to include a statement in writing from a certified treatment provider approved by the court that the defendant is in compliance with the terms and conditions of the specified treatment program.~~ (MP) JJB KAK

*Does not apply*  
~~2. Treatment Programs. Defendant acknowledges that he or she has received a referral to a certified treatment agency from the Prosecuting Attorney. It is the Defendant's absolute and sole responsibility to contact the treatment provider to make arrangements to complete the required evaluation and treatment, if required. Defendant shall obtain an assessment or evaluation and shall attend, complete, and show proof of completion of any recommended treatment or education program(s) as follows:~~ (MP) JJB KAK

- Domestic Violence Perpetrator Assessment and Treatment, unless ineligible
- Alcohol/Drug Assessment and Treatment if deemed necessary
- Anger Management Program
- Other: \_\_\_\_\_

Defendant is informed and understands that he/she will be required to pay for the evaluation(s) and any recommended treatment, unless special arrangements are made.

3. Commit no criminal law violations. *Further assault law violations*

4. Do not possess or consume any alcohol or any non-prescribed drugs. *NO contact w/ Robin Nelson w/out adult supervision. Comply w/ CPS conditions. NO use of corporal punishment w/ any minor.*

X 5. Comply with all other orders of the Court, including those which may prohibit contact with the alleged victims(s) or any alleged witnesses. (MP) JJB

6. Pay restitution in the sum of \$ \_\_\_\_\_ to \_\_\_\_\_ (NAME)

The restitution shall be paid at the rate of \$ \_\_\_\_\_ per month. The first payment is due on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Restitution shall be paid through the Clerk of the Court, as indicated:

- Clerk of the Spokane County District Court  
PO Box 2352  
Spokane, WA 99210-2352
- Clerk of the Spokane Municipal Court  
1100 W. Mallon  
Spokane, WA 99260

PLEASE NOTE: In order to receive proper credit for restitution payments, the case number under which restitution is being made, \_\_\_\_\_, MUST appear on the check, draft, money order or cashier's check used for payment.

X 7. *Both courts shall run consecutive for a total of 48 months of supervision. If SOC is violated defendant stipulates to a term of 24 months confinement (12 mos consecutive).*

*Does not apply*  
Defendant is to report to Friendship Diversion Services within 48 hours of signing this order. A fee of up to \$300.00 may be charged for this monitoring agency.

X 9. Other: *If revocation of commutation is upheld through appellate process SOC will be vacated and dismissed. If revocation not upheld this order shall remain in full force and effect.*

III. WAIVER OF PRIVILEGE - RELEASE OF AGENCY TREATMENT INFORMATION

Defendant hereby waives any privilege that may exist between defendant and any treating agency, health care provider, counselor or therapist for treatment ordered and referred to herein. Defendant agrees that he / she will sign a release and / or disclosure authorization, at the time of his / her initial appointment for assessment or evaluation. Such release and / or disclosure shall be in whatever form and by whatever title deemed necessary by the treating agency, health care provider, counselor or therapist to permit direct disclosure by the treating agency, health care provider, counselor or therapist to both the Court and Prosecuting Attorney any and all information concerning Defendant's evaluation, treatment, and compliance with the counseling or treatment program entered herein. The Defendant shall provide the Prosecuting Attorney with a copy of such release and / or disclosure authorization **within 10 days** following its execution by the Defendant. The Prosecuting Attorney may consider the failure of the defendant to sign such a release and / or disclosure authorization and /or failure to deliver a copy thereof to the Prosecuting Attorney within the time required herein as a violation of this agreement and, as a consequence, may request the Court to find the Defendant has failed to comply with the Terms and Conditions of this SOC.

IV. ACKNOWLEDGMENT AND WAIVERS OF JURY TRIAL AND SPEEDY TRIAL (CrRLJ 6.1.1(a) and CrRLJ 3.3(j)).

Defendant acknowledges that he/she has the right to a jury trial and the right to a trial within 60 or 90 days from the first appearance. By signing below, the defendant gives up the right to a jury trial including the right to hear and question witnesses, the right to call witnesses on his/her own behalf, the right to testify on his/her own behalf, and gives up the right to a speedy trial for an additional 30 days beyond the expiration date of this Order set forth in Section VI.

V. STATE OF WASHINGTON'S/CITY OF SPOKANE'S AGREEMENT

STIPULATED ORDER OF CONTINUANCE

The State of Washington or City of Spokane agrees that if the defendant has complied with every condition contained herein the charges shall be dismissed with prejudice on the date set forth in Section VI.

VI. ORDER OF CONTINUANCE

THE COURT HAVING CONSIDERED THE MOTION, EXHIBITS, AND ARGUMENTS OF COUNSEL, and having found that a Stipulated Order of Continuance (SOC) is appropriate, hereby orders this matter continued to the 31 day of Jun., 2009, to be dismissed at that time subject to the terms and conditions listed above.

*UNLESS COMMUTATION  
REVOCAATION IS REVERSED.*

VIII. FIRST TREATMENT COMPLIANCE REVIEW HEARING

Defendant shall appear in Court on the \_\_\_ day of \_\_\_\_\_, 200\_\_ at \_\_\_:\_\_\_, \_\_\_m. for the first treatment compliance hearing. Defendant's appearance is mandatory. The Court will expect the Defendant to have completed the intake or evaluation and have started any recommended treatment before that date.

*KAR*

IX. IMMEDIATE PARTIAL DISMISSAL OF CHARGES:

IT IS HEREBY ORDERED that the following charge(s) under the above-captioned cause number(s) be, and hereby is/are, DISMISSED WITH PREJUDICE:

Charge: \_\_\_\_\_

Charge: \_\_\_\_\_

DATED THIS 31 day of June, 2009.

*[Signature]*  
Judge/Court Commissioner

Defendant's Signature & Phone No.: X Jansen J.E. Bush

Defendant's Street Address W. 706 Providence

Spokane, WA 99205

Attorney for Defendant: [Signature] WSBA 36057

Deputy Prosecuting Attorney: [Signature] WSBA 26103

- White copy: Court
- Green copy: Defendant
- Yellow copy: Prosecutor
- Pink copy: Treatment Provider
- Goldenrod: Defense Counsel

# Exhibit “B”

COPY  
ORIGINAL FILED

JAN 04 2007

JAN 04 2007

THOMAS R. FALLOQUIST  
SPOKANE COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,

Plaintiff,

v.

JAYSON L.E. BUSH,  
WM 07/05/1979

Defendant.

No. 06-01-01206-3

CERTIFICATE OF COUNSEL IN  
SUPPORT OF MOTION FOR ORDER  
FOR SUBPOENA AND ORDER  
COMPELLING ATTENDANCE AT  
HEARING

I, Marla L. Polin, under penalty of perjury under Washington State law, certify that:

1. Governor Gary Locke granted defendant, Mr. Jayson L.E. Bush, a Conditional Commutation of Sentence on May 25, 2004, "provided, that in the event Mr. Bush commits any offense classified as a felony or gross misdemeanor in the State of Washington, this Conditional Commutation is revoked and the sentence imposed by the court reinstated". *Attached and labeled as Exhibit "A" is a copy of the Conditional Commutation of Jayson Loren Edward Bush.*

2. On April 8, 2006, Mr. Bush was arrested and charged with Assault of a Child in the Third Degree. *Attached and labeled as Exhibit "B" is a copy of the Information.*

3. Mr. Dennis Westensee, CCO III filed a temporary detainer on Mr. Bush at the beginning of this case. At the end of that detainer period, this writer filed Motion for a Bond Reduction Hearing to have Mr. Bush released pending Trial. The next day, this writer was

CERTIFICATE OF COUNSEL

TRAGESER LAW OFFICE P.S.  
TIMOTHY D. TRAGESER • ATTORNEY AT LAW  
MARLA L. POLIN • ATTORNEY AT LAW  
1428 W. NORTHWEST BLVD.  
SPOKANE, WASHINGTON 99205  
(509) 327-3993 • FAX (509) 327-3920

1 informed that Governor Gregoire had placed an **indefinite** detainer on Mr. Bush due to the  
2 Conditional Commutation.

3 4. On May 4, 2006, this writer received a letter from Governor Gregoire, advising Mr.  
4 Bush of the following: "I have reviewed the photographs of the alleged victim's injuries, police  
5 incident reports, statement of probable cause and filings under the above-reference cause number  
6 including affidavit of facts. As a direct consequence of your pending prosecution, I am writing to  
7 advise you that effective May 30, 2006, your Conditional Commutation is revoked, subject only to  
8 a showing by you that charges against you have been dismissed prior to the effective date of this  
9 revocation". *Attached and labeled as Exhibit "C" is a copy of Governor Gregoire's letter dated*  
10 *May 4, 2006.*

11 5. This writer has made numerous attempts to contact Governor Gregoire and her  
12 General Counsel, Mr. Richard E. Mitchell to discuss Mr. Bush's current legal situation. Hearings  
13 and meetings with the Governor have been requested and denied. Procedural guidance and  
14 clarification on key issues have also been requested and denied. *Attached and labeled as Exhibit*  
15 *"D" is a copy of the letters sent to Mr. Mitchell and Governor Gregoire over the course of this*  
16 *case.*

17 6. This writer, in a letter dated December 12, 2006, made specific inquiry as to the  
18 following issues:

- 19 (a) Has Mr. Bush's commuted sentence already been revoked?  
20  
21 (b) If Mr. Bush's commuted sentence has been revoked, is he now serving time on  
22 that original sentence?  
23  
24 (c) If Mr. Bush pleads to a crime that is classified as a **misdemeanor only**, will his  
25 Conditional Commutation still be revoked?  
26

1 Prosecuting Attorney Kelly Fitzgerald has indicated that these charges would likely be dismissed if  
2 Mr. Bush's commuted sentence had already been revoked. All parties wanted to avoid  
3 unnecessarily putting the alleged victim, a young child, through the process of testifying before a  
4 jury if Mr. Bush's commuted sentence would be revoked regardless of the outcome of these  
5 pending criminal matters. To date, this writer has still received **no response** as to these inquiries.

6 7. This writer has received what can only be described as minimal response from Mr.  
7 Mitchell. He will only advise that, "the Governor has not changed her position articulated in her  
8 May 4, 2006 letter. If the Governor chooses to change her position, please rest assured that I will  
9 promptly advise you". This has been his singular response to this writer's numerous and specific  
10 inquiries. *Attached and Labeled as Exhibit "E" are Mr. Mitchell's responses to this writer.*

11 8. Governor Gregoire and Mr. Mitchell have continually refused to communicate with  
12 this writer concerning Mr. Bush's current legal predicament. They have refused to identify the  
13 current legal status of Mr. Bush's commutation situation and have refused to answer any of this  
14 writer's written inquiries. It is outrageous and unacceptable that the Governor has issued an  
15 **indefinite** detainer on Mr. Bush, infringing on his liberty and denying him his Constitutional right  
16 to Due Process, but is unwilling to communicate and discuss how these matters may be resolved.  
17

18 9. Defendant Mr. Jayson L.E. Bush was scheduled to begin Jury Trial on January 2,  
19 2007. All parties were present and ready to proceed. Judge Leveque swore in a panel of 55 jurors  
20 and delivered to them detailed juror questionnaires. However, prior to Trial beginning, those  
21 present became concerned that this lack of communication and guidance from the Governor's  
22 office has resulted in Mr. Bush being unable to make an informed decision regarding his pending  
23 criminal matters. At that time, Judge Leveque ordered the jurors home, instructing them to return  
24 next Monday at 9:00 a.m. A Hearing has been scheduled for January 8, 2007 at 8:30 a.m. to  
25

26 CERTIFICATE OF COUNSEL

resolve the issues surrounding the Commutation.

1  
2 10. Mr. Richard E. Mitchell is a necessary witness to this case. He is employed as the  
3 General Counsel to Governor Gregoire and is in the best position to answer the questions posed by  
4 the Court and the parties regarding the status of Mr. Bush's Conditional Commutation. Mr.  
5 Mitchell has been kept abreast of this writer's inquiries and has received a copy of each of the  
6 letters addressed to the Governor. Answers to this writer's questions are needed before Mr. Bush  
7 can begin Trial to ensure any action taken by him is knowing and voluntary.

8  
9 11. Based on this gross lack of communication and guidance from the Governor and her  
10 General Counsel, this writer respectfully moves the Court for an Order to Subpoena Mr. Richard E.  
11 Mitchell, General Counsel for Governor Gregoire, commanding his telephonic appearance at the  
12 hearing scheduled for Monday January 8, 2007 at 8:30 a.m.

13  
14 Dated at Spokane, Washington this 4<sup>th</sup> day of January, 2007.

15  
16 

17 Marla L. Polin, WSBA #36657  
18 Attorney for Defendant

# Exhibit "A"

CONDITIONAL COMMUTATION  
OF  
JAYSON LOREN EDWARD BUSH

To All To Whom These Presents Shall Come, Greetings:

Whereas, on September 22, 1996 Jayson Loren Edward Bush, then 17 and without any prior criminal history, was involved in a drive by shooting. Mr. Bush pled guilty to three counts of first degree assault. He was sentenced to 93 months on each count to be served consecutively for a total of 23 years and three months. His earned release date would be October 18, 2016; and

Whereas, prior to this incident, Mr. Bush, who is of Cape Verdean descent and is bi-racial, had reportedly been the victim of racial harassment at his high school. As a result of this harassment, Mr. Bush transferred to a different high school and began to carry a gun. The night of the shooting, Mr. Bush was picked up from work by two friends. While they were driving, a Mustang with three young men from Mr. Bush's former high school pulled up along side the car and words were exchanged. The argument escalated as the cars entered a residential area. Mr. Bush and his friends temporarily lost sight of the Mustang, but later saw the driver and passengers getting out of the car. According to Mr. Bush, at that point, several of the men started shouting and running toward the vehicle that he was in. Mr. Bush reports that he then panicked and fired at the unoccupied Mustang and then fired into the air. While shooting, Mr. Bush hit one young man in the in the thigh, which required surgery; and

Whereas, while in prison, Mr. Bush has become a religious person, embracing Islam and working to change himself. He has completed his GED and is completing a correspondence course for a Bachelors Degree program in Islamic Studies and Arabic. He has also completed an Anger and Stress Management Course. Mr. Bush has a great deal of support in the community, including the National Association for the Advancement of Colored People; and

Whereas, the Clemency and Pardons Board was favorably impressed by the extent to which Mr. Bush has taken responsibility for his past actions and has turned his life around. The Board believes he has been adequately punished, has been rehabilitated, and that further incarceration would serve no purpose; and

Whereas, I have reviewed all pertinent facts and circumstances surrounding this matter, the circumstances of the crime, and the unanimous recommendation of the Clemency and Pardons Board, and in light of the foregoing, I have determined that the best interests of justice will be served by this action; and

NOW, THEREFORE, I, Gary Locke, by virtue of the power vested in me as Governor of the state of Washington, grant to Jayson Loren Edward Bush this Conditional Commutation, commute the remainder of the sentence imposed to a term of community custody not to exceed the normal term imposed by the sentencing court (twenty-four months), SUBJECT TO THE FOLLOWING CONDITIONS:

Mr. Bush shall:

1. Report regularly to a community corrections officer as directed by the Department of Corrections;
2. Pay a monthly supervision fee as directed by the community corrections officer;
3. Notify the Department of Corrections prior to any changes of address or employment;
4. Remain in the geographic area as directed by the community corrections officer;
5. Not possess, receive, ship, or transport a firearm, ammunition, or explosives;
6. Not possess or use alcohol or possess or use any controlled substances without a prescription;
7. Submit to regular and random urinalysis and breathalyzer testing, as directed by the community corrections officer;
8. Participate in substance abuse evaluation as directed by the community corrections officer, and follow-up on any recommendations from such evaluation;
9. Participate in a chemical dependency evaluation as directed by the community corrections officer, and follow-up on any recommendations from such evaluation;
10. Participate in chemical dependency and substance abuse support groups, as directed by the community corrections officer;
11. Not associate with any drug users or dealers;
12. Participate in electronic monitoring, if deemed appropriate by the community corrections officer;
13. Participate in any mental health evaluation as recommended by the community corrections officer, and follow-up on any recommendations from such evaluation; and,
14. Comply with all standard conditions, recommendations, and instructions of community placement as directed by the community corrections officer and with all other applicable conditions imposed by the sentencing court.

Violation of any of the above conditions shall result in sanctions as deemed appropriate by the Department of Corrections. **PROVIDED**, that in the event Mr. Bush commits any offense classified as a felony or gross misdemeanor in the State of Washington, this Conditional Commutation is revoked and the sentence imposed by the court reinstated without the benefit of sentence reduction credit, whereupon Mr. Bush shall be immediately returned to the Washington Corrections Center or any such other facility as the Secretary of Corrections deems appropriate. The Department of Corrections shall provide a written report to the Clemency and Pardons Board regarding the violation of any condition of this Conditional Commutation.



IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be affixed at Olympia this 25<sup>th</sup> day of May Two Thousand Four

Gray F. Laker  
Governor of Washington

BY THE GOVERNOR:

[Signature]  
Secretary of State  
ASST.

# Exhibit "B"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON )  
 )  
 ) Plaintiff, ) INFORMATION  
 ) (INFO) 06101206-3  
 ) No. )  
 )  
 ) v. )  
 )  
 ) KELLY A. FITZGERALD  
 ) Deputy Prosecuting Attorney  
 )  
 )  
 ) JAYSON E. BUSH  
 ) BM 07/05/79  
 )  
 )  
 ) Defendant(s). ) PA# 06-9-23304-0  
 ) RPT# 002-06-0102733  
 ) RCW 9A.36.140(1)DV-F (#05497)  
 )

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

ASSAULT OF A CHILD IN THE THIRD DEGREE, committed as follows: That the defendant, JAYSON E. BUSH, in the State of Washington on or about April 08, 2006, being eighteen (18) years of age or older, did, with criminal negligence, cause bodily harm to CRCN-S, a child under the age of thirteen (13) years, by means of a weapon or other instrument or thing likely to produce bodily harm and/or which was accompanied by substantial pain that did extend for a period sufficient to cause considerable suffering,

Deputy Prosecuting Attorney  
WSBA #26203

**DEFENDANT INFORMATION:**

JAYSON E. BUSH  
Address: 706 W PROVIDENCE AVE SPOKANE WA 99205-2991  
Height: 6'01"  
Eyes: Bro  
SID #: 018197949

**COPY**  
Weight: 160  
DOL #  
DOC #

Hair: Bro  
State:  
FBI NO. 600306DB2

INFORMATION

Page 1

SPOKANE COUNTY PROSECUTING ATTORNEY  
COUNTY CITY PUBLIC SAFETY BUILDING  
SPOKANE, WA 99260 (509) 477-3662

# Exhibit "C"

CHRISTINE O. GREGOIRE  
Governor



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • [www.governor.wa.gov](http://www.governor.wa.gov)

May 4, 2006

Jayson Loren Edward Bush  
Spokane County Jail  
West 1100 Mallon Street  
Spokane, WA 99205

c/o Dennis L. Westensee, CCO III  
Washington State Department of Corrections  
1821 North Maple Street  
Spokane, WA 99205

VIA FACSIMILE and FIRST CLASS MAIL

Re: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06101206-3

Dear Mr. Bush,

On May 25, 2004, former Governor Gary Locke granted you a Conditional Commutation that released you from prison on the condition that you successfully complete twenty-four months of Community Custody supervision and not violate any conditions of the commutation. You were released from prison on June 1, 2004, and the term of your supervision expires on May 31, 2006.

The last paragraph of your Conditional Commutation states:

"[I]n the event Mr. Bush commits any offense classified as a felony or gross misdemeanor in the State of Washington, this Conditional Commutation is revoked and the sentence imposed by the court reinstated without the benefit of sentence reduction credit, whereupon Mr. Bush shall be immediately returned to the Washington Corrections Center...."

The Department of Corrections recently advised me that on or about April 8, 2006, Spokane law enforcement officers arrested you for, and subsequently charged you with, a felony for Assault of a Child in the Third Degree under RCW 9A.36.031(d). I have reviewed the photographs of the alleged victim's injuries, police incident reports, statement of probable cause and filings under

Jayson Loren Edward Bush  
May 4, 2006  
Page 2

the above-reference cause number including affidavits of facts. As a direct consequence of your pending prosecution, I am writing to advise you that effective May 30, 2006, your Conditional Commutation is revoked, subject only to a showing by you that charges against you have been dismissed prior to the effective date of this revocation.

Sincerely,



Christine O. Gregoire  
Governor

Encl. (1) May 25, 2005, Commutation

cc: Richard E. Mitchell, General Counsel  
Kate McLachlan, Assistant Attorney General  
Copy also sent to J. Bush residence: 706 W. Providence Ave., Spokane, WA 99205-2991

CONDITIONAL COMMUTATION  
OF  
JAYSON LOREN EDWARD BUSH

To All To Whom These Presents Shall Come, Greetings:

Whereas, on September 22, 1996 Jayson Loren Edward Bush, then 17 and without any prior criminal history, was involved in a drive by shooting. Mr. Bush pled guilty to three counts of first degree assault. He was sentenced to 93 months on each count to be served consecutively for a total of 23 years and three months. His earned release date would be October 18, 2016; and

Whereas, prior to this incident, Mr. Bush, who is of Cape Verdean descent and is bi-racial, had reportedly been the victim of racial harassment at his high school. As a result of this harassment, Mr. Bush transferred to a different high school and began to carry a gun. The night of the shooting, Mr. Bush was picked up from work by two friends. While they were driving, a Mustang with three young men from Mr. Bush's former high school pulled up along side the car and words were exchanged. The argument escalated as the cars entered a residential area. Mr. Bush and his friends temporarily lost sight of the Mustang, but later saw the driver and passengers getting out of the car. According to Mr. Bush, at that point, several of the men started shouting and running toward the vehicle that he was in. Mr. Bush reports that he then panicked and fired at the unoccupied Mustang and then fired into the air. While shooting, Mr. Bush hit one young man in the in the thigh, which required surgery; and

Whereas, while in prison, Mr. Bush has become a religious person, embracing Islam and working to change himself. He has completed his GED and is completing a correspondence course for a Bachelors Degree program in Islamic Studies and Arabic. He has also completed an Anger and Stress Management Course. Mr. Bush has a great deal of support in the community, including the National Association for the Advancement of Colored People; and

Whereas, the Clemency and Pardons Board was favorably impressed by the extent to which Mr. Bush has taken responsibility for his past actions and has turned his life around. The Board believes he has been adequately punished, has been rehabilitated, and that further incarceration would serve no purpose; and

Whereas, I have reviewed all pertinent facts and circumstances surrounding this matter, the circumstances of the crime, and the unanimous recommendation of the Clemency and Pardons Board, and in light of the foregoing, I have determined that the best interests of justice will be served by this action; and

NOW, THEREFORE, I, Gary Locke, by virtue of the power vested in me as Governor of the state of Washington, grant to Jayson Loren Edward Bush this Conditional Commutation, commute the remainder of the sentence imposed to a term of community custody not to exceed the normal term imposed by the sentencing court (twenty-four months), SUBJECT TO THE FOLLOWING CONDITIONS:

Mr. Bush shall:

1. Report regularly to a community corrections officer as directed by the Department of Corrections;
2. Pay a monthly supervision fee as directed by the community corrections officer;
3. Notify the Department of Corrections prior to any changes of address or employment;
4. Remain in the geographic area as directed by the community corrections officer;
5. Not possess, receive, ship, or transport a firearm, ammunition, or explosives;
6. Not possess or use alcohol or possess or use any controlled substances without a prescription;
7. Submit to regular and random urinalysis and breathalyzer testing, as directed by the community corrections officer;
8. Participate in substance abuse evaluation as directed by the community corrections officer, and follow-up on any recommendations from such evaluation;
9. Participate in a chemical dependency evaluation as directed by the community corrections officer, and follow-up on any recommendations from such evaluation;
10. Participate in chemical dependency and substance abuse support groups, as directed by the community corrections officer;
11. Not associate with any drug users or dealers;
12. Participate in electronic monitoring, if deemed appropriate by the community corrections officer;
13. Participate in any mental health evaluation as recommended by the community corrections officer, and follow-up on any recommendations from such evaluation; and,
14. Comply with all standard conditions, recommendations, and instructions of community placement as directed by the community corrections officer and with all other applicable conditions imposed by the sentencing court.

Violation of any of the above conditions shall result in sanctions as deemed appropriate by the Department of Corrections. **PROVIDED**, that in the event Mr. Bush commits any offense classified as a felony or gross misdemeanor in the State of Washington, this Conditional Commutation is revoked and the sentence imposed by the court reinstated without the benefit of sentence reduction credit, whereupon Mr. Bush shall be immediately returned to the Washington Corrections Center or any such other facility as the Secretary of Corrections deems appropriate. The Department of Corrections shall provide a written report to the Clemency and Pardons Board regarding the violation of any condition of this Conditional Commutation.



IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be affixed at Olympia this 25<sup>th</sup> day of May Two Thousand Four

Gray F. Loefer  
Governor of Washington

BY THE GOVERNOR:

[Signature]

Secretary of State  
ASST.

# Exhibit "D"

# TRAGESER LAW OFFICE

ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201

TELEPHONE: (509) 742-6680

May 10, 2006

Governor Christine Gregoire  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

RE: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-01-01206-3

Dear Governor Gregoire:

Please be advised that this office currently represents Jayson L.E. Bush, d.o.b. 07/05/79, regarding the alleged Assault of CRCN-S. Mr. Bush was granted a Conditional Commutation by former Governor Gary Locke on May 28, 2004.

On April 18, 2006, Mr. Bush was Arraigned on the charge of Assault of a Child in the Third Degree. Trial is currently scheduled for June 12, 2006. Mr. Bush is incarcerated at the Spokane County Jail pending adjudication of this matter. Discovery is in the preliminary stages and will not be concluded for several weeks. Your letter reads, "I have reviewed the photographs of the alleged victim's injuries, police incident reports, statement of probable cause and filings..." However, this office has not received any photographs, Child Protective Service Records, or medical reports although we have requested them. The alleged victim has not been made available for an interview. By making a decision to revoke the Conditional Commutation before the discovery process is complete is unfair and unjust.

The Conditional Commutation reads: "[I]n the event Mr. Bush commits any offense classified as a felony or gross misdemeanor in the state of Washington, this Conditional Commutation is revoked..." In your letter dated May 4, 2006, you advised, "I am writing to advise you that effective May 30, 2006, your Conditional Commutation is revoked, subject only to a showing by you that charges against you have been dismissed prior to the effective date of this revocation." Obviously, you have already concluded that Mr. Bush is responsible for the crime charged.

Mr. Bush was granted the Conditional Commutation, "SUBJECT TO THE FOLLOWING CONDITIONS...". The Commutation then lists fourteen conditions Mr. Bush must abide by. None of these conditions include "commit no law violations". The paragraph reading 'commits

any offense classified as a felony or gross misdemeanor' is vague. It permits for an arbitrary and capricious interpretation of the term 'commits' and who decides it. This requirement is not followed by any explanation or definitional section as to the term in question. The only fair resolution as to (1) the definition of 'commits' and (2) when does a person 'commit' an act would be to allow a jury to make such a determination. Juries are in the best position to make such decisions because they are instructed as to both the elements of the offense charged and any defenses that can be considered. Your letter is unclear as to whether your office has considered either.

By concluding that Mr. Bush has 'committed' this offense, you are summarily denying him Due Process without the Constitutional protections of opportunity and notice to be heard. We object to your acting as the sole finder of fact. This violates the Fundamental Principles of Due Process. This premature determination that Mr. Bush has 'committed' the present offense completely negates the legal process. You refer to the injured party as "the alleged victim", yet you conclude that Mr. Bush 'committed' this offense. The two notions are mutually exclusive. You presume that simply because he was charged, he is necessarily guilty of this crime. This is contrary to the very foundation of our legal system.

While I appreciate your decision not to revoke Mr. Bush's Conditional Commutation if a dismissal of charges can be secured, such a decision without any other consideration or extension of time would be unfair. The power to dismiss pending criminal charges only lies with the Superior Courts. At this early juncture, a dismissal would occur only upon a Motion made by the Prosecuting Attorney's Office. To my knowledge, that office is not moving to dismiss the case. Mr. Bush's only option for vindication is to proceed to a jury trial, which is not set until June 12, 2006.

"In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, **to have a speedy and public trial by an impartial jury** of the county in which the offense is charged to have been committed and the right to appeal in all cases." Wash. Const. Art. I, §22 (2006) (emphasis added).

If a judicial Order dismissing the matter is sufficient to allow Mr. Bush's Conditional Commutation to remain in effect, you should also consider an acquittal by jury equally sufficient. Setting an unrealistic and unattainable deadline of less than thirty days is both factually and legally impossible to meet. Furthermore, your conclusion that Mr. Bush has 'committed' the alleged offense is premature considering such a conclusion was made without any input from Mr. Bush or his legal counsel. A Defendant's fate generally is not determined by a single individual. But, if it is to be done this way, it should be done with out haste and with all the facts and proper legal argument presented. With all due respect, your decision as to whether Mr. Bush has 'committed' the present offense should not be made until after the case is adjudicated.

Mr. Bush is now twenty-seven years of age. Former Governor Gary Locke wrote: "[W]hile in prison, Mr. Bush has become a religious person, embracing Islam and working to change himself. He has completed his GED and is completing a correspondence course for a Bachelors

Degree program in Islamic Studies and Arabic...Mr. Bush has a great deal of support in the community, including the National Association for the Advancement of Colored People..." It appears that former Governor Gary Locke consulted with the Clemency and Pardons Board prior to granting the Conditional Commutation. Yet it appears you have made your decision to revoke without consulting the same entities. We are confident that Mr. Bush's release was not considered or granted in a hasty manner. Therefore, his revocation should be given the same attention.

As such, we respectfully request that you extend your May 30, 2006 deadline until after the case is tried before a jury. In addition, we would very much like an opportunity to personally speak with you prior to you issuing your final decision.

Thank you for your attention to this matter.

Sincerely,



Timothy David Trageser  
Attorney at Law, WSBA #18704



Marla Leza Conrad  
Attorney at Law, WSBA #36657

cc: Mr. Richard Mitchell, General Counsel  
Ms. Kate McLachlan, Assistant Attorney General  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L.E. Bush

TRAGESER LAW OFFICE  
ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201  
TELEPHONE: (509) 742-6680

May 17, 2006

Ms. Kate McLachlan  
US Attorney General's Office  
1116 West Riverside Avenue  
Spokane, Washington 99201

RE: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-01-01206-3

Dear Ms. McLachlan:

It is my understanding from our discussion on May 16, 2006 that the Clemency and Pardons Board, pursuant with RCW 9.94A.885, does not believe it has the statutory authority to advise the Governor of the State of Washington on the issue of the revocation of Mr. Bush's Conditional Commutation. As such, the Board will not convene and allow Mr. Bush an opportunity to be heard on this matter prior to revocation.

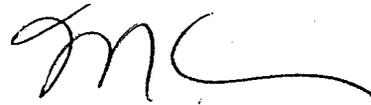
Please reconsider this refusal and grant Mr. Bush a Hearing so he may present mitigating factors, affidavits and live witness testimony prior to any decision regarding the Conditional Commutation of his earlier sentence.

Thank you for your attention to this matter.

Sincerely,



Timothy D. Trageser  
Attorney at Law, WSBA #18704



Marla L. Conrad  
Attorney at Law, WSBA #36657

Cc: Governor Christine Gregoire  
Mr. Richard E. Mitchell, General Counsel  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L. E. Bush

TRAGESER LAW OFFICE  
ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201  
TELEPHONE: (509) 742-6680

May 17, 2006

Mr. Richard Mitchell - General Counsel  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

RE: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-01-01206-3

Dear Mr. Mitchell:

While I appreciate you speaking to me yesterday regarding Mr. Bush's revocation, frankly, I am disappointed by your attitude and tone taken during our conversation. The fact that you were annoyed that my office would even telephone you to inquire whether you received our correspondence on Mr. Bush's behalf is offensive. It appeared that you were angry that we would have the nerve to challenge the Governor's decision to revoke Mr. Bush's release and that we are not entitled to voice our objections. When asked if the Governor had an opportunity to review our letter, you advised that, "she is busy and cannot respond to all inquiries". This response is not well taken.

The Washington State Constitution provides, "[t]he pardoning power shall be vested in the governor..." Wash. Const. Art. III, §9 (2006). It is the Governor's duty, when granted powers under the Constitution, to exercise those powers in a responsible manner. At this point, we are led to believe that you cannot guarantee that the Governor will even review our objections and requests regarding Mr. Bush's case. This is especially true since you have advised that the Governor is currently out of the country and not expected to return until the end of the month, which, coincidentally, is the deadline set in this matter. Your office did not even have the courtesy or professional integrity to advise that you had received our letter on Mr. Bush's behalf. In order to work within the confines of the time limits set by the Governor, it is our position that you have a duty as General Counsel to the Governor to respond to our inquiries without additional prompting from this office.

The purpose of this letter is to request that you allow a procedure or process by which Mr. Bush can have an opportunity to be heard on the issue of his revocation. Based on our conversation yesterday and the initial letter from the Governor, it appears that it is your opinion that Mr. Bush is not entitled to this opportunity.

---

FERNWELL BUILDING - 505 W. RIVERSIDE AVENUE - SUITE 500  
SPOKANE, WASHINGTON 99201 - TELEPHONE (509) 742-6680

I met with Deputy Prosecuting Attorney Ms. Kelly Fitzgerald regarding the Governor's offer not to revoke provided Mr. Bush's pending case is dismissed by May 30, 2006. Ms. Fitzgerald was unwilling, at this early juncture, to move to dismiss the charges.

Lastly, I have been advised that the Governor's Office directed that the Department of Corrections lodge a detainer against Mr. Bush on May 5, 2006, the day after this office noted for Hearing a Motion for Bond Reduction on the pending criminal matter. This was done even though the original detainer lodged against Mr. Bush was removed. As far as I am concerned, this is an inappropriate practice on the part of the Department of Corrections done only to serve the interests of the Governor's Office, and not to serve the purpose of the statute governing detainees.

Thank you for your attention to this matter.

Sincerely,



Timothy D. Trageser  
Attorney at Law, WSBA #18704



Marla Leza Conrad  
Attorney at Law, WSBA #36657

Cc: Governor Christine Gregoire  
Ms. Kate McLachlan, Assistant Attorney General  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L. E. Bush

TRAGESER LAW OFFICE  
ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201  
TELEPHONE (509) 742-6680

May 24, 2006

Clemency and Pardons Board  
Office of the Governor  
Legislative Building  
P.O. Box 40002  
Olympia, Washington 98504-0002

Attn: Melynda Campbell

RE: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-01-01206-3

Dear Ms. Campbell:

Please be advised that this office currently represents Mr. Jayson L. E. Bush, d.o.b. 07/05/79, regarding the alleged assault of CRCN-S. Mr. Bush was granted a Conditional Commutation by former Governor Gary Locke on May 28, 2004.

On April 18, 2006, Mr. Bush was Arraigned on the charge of Assault of a Child in the Third degree. Trial is currently scheduled for September 11, 2006. Governor Christine Gregoire has advised she will revoke Mr. Bush's Conditional Commutation if the pending case is not dismissed prior to May 30, 2006. As such, we are requesting a formal hearing before the Clemency and Pardons Board whereby Mr. Bush may present evidence on his behalf prior to any final decision regarding the revocation of his Conditional Commutation.

Thank you for your attention to this matter.

Sincerely,

  
Timothy D. Trageser, WSBA #18704  
Attorney at Law

  
Marla L. Conrad, WSBA #36657  
Attorney at Law

Cc: Governor Christine Gregoire  
Mr. Richard E. Mitchell, General Counsel  
Mr. Dennis Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Ms. Kate McLachlan, Assistant Attorney General  
Mr. Jayson L. E. Bush

TRAGESER LAW OFFICE  
ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201  
TELEPHONE: (509) 742-6680

May 26, 2006

Governor Christine Gregoire  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

RE: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-01-01206-3

Dear Governor Gregoire:

As you are aware this office requested a hearing, meeting with you, or at a minimum an informal opportunity to be heard regarding Mr. Bush's Conditional Commutation revocation. On today's date we received a letter from Mr. Richard E. Mitchell advising that no revocation hearing would be held prior to you exercising your "revocation powers". The letter failed to address our previous request for an opportunity to be heard, even if it were to be done informally. We feel that Mr. Bush should be given an equal opportunity to be heard since the only information you have considered thus far, was delivered to you ex parte by the State without any opportunity for us to respond.

Because of the lack of guidance or any assurance that any information provided to you by this office would be reviewed, we have decided to enclose the following documents and respectfully request that you review them prior to making your final decision. The enclosed documents and materials are from individuals who know Mr. Bush best. This package includes the following:

1. Letter from Mr. and Ms. Raymond Bush;
2. Letter from Mr. Michael Bush;
3. Letter from Mr. Cary Snow;
4. Spokesman Review article (August 15, 2004);
5. Information taken from the "Washington State Commission on African American Affairs" web-site entitled, "Justice for Jayson Bush"; and
6. Letter from Ms. Victoria Woodards and Ms. Regina Jones dated May 24, 2004.

As requested earlier, we are asking that you delay your final decision until after Mr. Bush's matters are adjudicated in the Spokane County Superior Court. If however you move

forward, we are asking that you consider the enclosed materials as valid and credible reasons not to revoke Mr. Bush's Conditional Commutation.

Thank you for your attention to this matter.

Sincerely,



Timothy D. Trageser, WSBA #18704  
Attorney at Law



Marla L. Conrad, WSBA #36657  
Attorney at Law

Enclosures

Cc: Ms. Kate McLachlan, Assistant Attorney General  
Mr. Richard E. Mitchell, General Counsel  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L. E. Bush

Mrs. M'Liss M. Bush  
W. 706 Providence  
Spokane WA 99205

Governor Christine Gregoire  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

Honorable Governor Gregoire

We are writing to you on behalf of our son, Jayson Loren Edward Bush, who is currently on a Department of Corrections hold in Spokane, Washington, due to being held on what I firmly believe in my heart to be a false charge of domestic violence against a child.

In writing this letter to you, my husband and I find so many emotions running through our souls, and we are having a very difficult time in finding the words to express to you what we know and believe is the truth about my son Jayson, and how he has truly changed from the time of his incarceration at an early age to his freedom less than two years ago.

First off, we want to convey to you that the day Governor Locke and the Pardons and Clemency Board gave Jayson his freedom, Jayson and his family understood completely the rules and conditions that were set forth in his release. There has not been one day since our son's release that he did not take these conditions serious, or his family. We believe that the lack of any type of violation or infractions while under the supervision of his Community Corrections Officer shows just how seriously Jayson took the conditions of his release, and has done nothing but comply from the date of his release from the Department of Corrections. Jayson understood just what it would mean if he didn't comply... and his actions up to the date of his arrest shows just that. We firmly believe there is more behind these allegations, and a court of law will undoubtedly unearth this fact. It states in our Nations Constitution that one has the right to due process to include being tried by one's peers. We implore you and demand that our son be given his constitutional rights as a citizen to be heard in the people system, our courts.

Jayson has been employed from the first day of his release from the Department of Corrections, and there was not a day from the date of his release that he was not employed. Within in the first two months of his release from

prison Jayson saved every dime he earned to purchase his first car, it was a 1988 Bonneville, it was not fancy, but it was his, his first, and it was a major milestone in his life. From there his dream was to own a sports car just like his brother's, and what did he do? He saved, and saved and saved, and finally on his own, with his own credit he bought his dream car, a Honda S2000!

Since Jayson's release he contacted his Community Corrections Officer with any question that he might have to ensure he didn't jeopardize his freedom. Once when Jayson became extremely ill he refused to take any type of medication that could be purchased over the counter until he contacted his Community Corrections Officer to get clearance of what he could or could not take, if there was any doubt, Jayson or his father would make contact to ensure there was total compliance at all times.... There has been NO question we feared in asking, because we all were totally aware of how one small mistake could send Jayson back to prison, and that was not and is not an acceptable option to anyone in this family.

Prison is not an acceptable way of life for our family. We are law abiding citizens, and as parents to two sons we as parents expect nothing less than that in their behavior as well. Yes, we understand that Jayson has a record, and as a family we have dealt with this each day. If there was a time when Jayson might have tried to succeed in something and might have been told no due his felony record we didn't allow pity. Pity and blame is not in our vocabulary, to not try to succeed due to one's mistakes in life is no reason not to try and better one's self... and we as Jayson's parent's did not allow him to fall in to the trap that many people fall into once leaving prison, failure on our part or Jayson's part was totally unacceptable.

From the day that Jayson was released from prison, he has been goal oriented, responsible, and driven to succeed. Jayson only wanted in life what everyone else in life desires as well and that is to make a living, find someone to love, have children and enjoy life. So I ask you, why would Jayson jeopardize his freedom with only one month left remaining on his commutation, which he has worked so hard to achieve. The only conclusion that we as a family can come up with is that there is something seriously wrong with what he is charged with, and that there needs to be a major investigation into these allegations, and we ask that you give his lawyers the opportunity to defend what we believe is the truth, that Jayson Bush is innocent.

Very Respectfully

A handwritten signature in cursive script that reads "Raymond M'Liss Bush". The signature is written in dark ink and is positioned below the typed name.

Raymond and M'Liss Bush

Wednesday, May 24, 2006

Governor Christine Gregoire  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

Honorable Governor Gregoire

I am writing this letter on behalf of Jayson Loren Edward Bush. Jayson was granted a commutation of sentence on June 1, 2004 after a long hard fought process. Since Jayson's release from Airway Heights Correction Center he has not had a single infraction or write-up by his DoC Community Corrections Officer, Dennis Westense. I as Jayson's brother can and will vouch for his diligence in making sure that he was complying to the regulations set forth upon him by Governor Gary Locke and the DoC. I on more than a numerous occasion joined Jayson when he would make his bi-monthly checks with his CCO, which often were greeted with a response of confusion as to why Jayson was even there. Jayson would often have to remind Mr. Westense that he was there to check in.

Jayson upon release from custody was immediately employed and stayed employed up to the day he was taken back into custody. Jayson also began taking college courses at Spokane Falls Community College. He only stopped taking courses because he was awaiting my entry into the same college so that I could help him adjust to the workload and study habits required for such a level of education.

I write this letter myself, absolutely confused at the situation that has yet again been presented to my family and more specifically my brother, Jayson Bush. Yet again Jayson is being denied his right granted to him in the Constitution of the United States under Amendment VI, which states, that he has the right to be tried by an impartial jury of the state and district wherein the crime shall have been committed... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense (United States Constitution Amendment VI).

I also believe by placing a DoC hold on Jayson he is being held with excessive reasoning based on his compliance with the regulations set forth upon him by Gov. Locke and the DoC. This to me is also a breach of his Constitutional right granted by Amendment VIII, which states, Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted (United States Constitution Amendment VIII). By placing such a hold that will not allow for his posting a bond because said hold is indefinite to the amount of time that it would take for the Governor to make a decision regarding his stay of clemency is no different than holding him prisoner with no definitive sentencing timeframe and in doing so is being denied his Constitutional right to Due Process.

Jayson has done his part by complying with the stipulations of his commutation of sentence and he went above and beyond what was required. I find it hard sitting here today writing this letter knowing that he is being confined with an indefinite time when he has done nothing to constitute such action against him. I also find it unnerving that Jayson is being held to a deadline that is not only impractical but also more so improbable to meet. How is the court giving him due process if his sentence is reinstated before he is even tried for his alleged charge? By doing so he will have been denied every aspect of the rights set forth by the judicial powers of the Constitution.

I, removing myself completely from any relation to Jayson, but rather as a law abiding and voting citizen of this country look at this situation with utter disbelief that the rights given to each and every citizen of this country can be so easily overlooked and set aside. I over the last month have still not found any way of understanding how the stipulations set upon Jayson are justified and/or legal.

I go back to December 19, 2003 when Jayson was granted clemency by the Washington State Clemency and Pardons board. How is it that those five individuals could vote unanimously in favor of commutation and report such decision to the Governor yet now the sole decision of Jayson's sentence is left with one person, the governor of Washington State? Yes, Governor Locke had the ultimate say in Jayson's commutation but he made his decision in large part due to the report forwarded to him by the Clemency and Pardons board. I would hope that Jayson would be given the same or similar opportunity because otherwise the purpose of having such a committee is null and void.

I conclude this letter again, by saying; Jayson complied with the stipulations of his clemency. He followed the rules and he reported in to his CCO with regularity every month. I feel this should have had a large influence on placing a hold on Jayson. He complied and is being punished further even though he complied. There is no logical reason for Jayson to be denied the ability for bond based on that fact. Jayson has set rights granted to him by the Government of this country and those rights are being denied with out neither reason nor explanation. Please take into consideration the things that I have mentioned previously and allow Jayson the opportunity to express said rights granted to him.

Thank you,



Micheal Bush  
5526 N Lindeke  
Spokane Wa, 99205

To Whom It May Concern:

Jayson E. Bush was in good standing as a Snow's Auto employee. He showed up on time for his scheduled shifts and performed his duties as asked. He was a quick learner and loved to work. I never witnessed any behavior that was less than professional.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Snow', with a long horizontal flourish extending to the right.

Cary Snow  
President

**SPOKESMANREVIEW.COM**

5

"You might think you are free in this country, but every one of us has one foot in jail." M'Liss Bush, mother of Jayson Bush

## Road to freedom

**Man's 24-year sentence smacked of injustice to those who helped him get home**

Kevin Graman

Staff writer

August 15, 2004

In 1996, Jayson Bush made a mistake that cost him his freedom.

It was a time when police hailed drive-by shootings as evidence that youth gangs threatened the city and politicians demanded that courts sentence juveniles to adult time for adult crime. It was a bad time for a mixed-race teenager from Spokane's North Side to mess up.

Jayson Bush admits that he was wrong when he responded to racial slurs with anger. He regrets accepting a gun from a friend to protect himself. He knows he deserved to be punished for firing the gun to scare off his tormentors, injuring one of them.

But he did not deserve to be locked in prison until his 40s, he said.

Late last year, the Washington state Board of Clemency and Pardons unanimously recommended that his nearly 24-year sentence for three counts of first-degree assault be commuted to time served. On May 28, Gov. Gary Locke gave his parents, Ray and M'Liss Bush, their son back after eight years behind bars.

"The hardest thing was the night they took him away and the day they gave him back to me," M'Liss Bush said. "You might think you are free in this country, but every one of us has one foot in jail. All it takes is one stupid mistake and not enough money."

The 25-year-old man who emerged from the Airway Heights Corrections Center early this summer has changed. He is determined not to let his past define his future. He is holding down two jobs and going back to school. He is no longer the quick-tempered youth who could not walk away from trouble.

"Before, if you call me 'nigger,' I'm in your face," he said. "Now, I try to make you realize the ignorance of what you say."

As for his parents, they will never forget the students at Gonzaga University's Center for Law and Justice, the NAACP or any of the other advocates who took up their son's cause – a cause Carl Mack, president of Seattle-King County NAACP recently called "the greatest civil rights victory I have ever won in my life."



Jayson Bush's family – brother Micheal, mother M'Liss and father Ray – stood behind him during his eight years in prison. Gov. Gary Locke signed the papers releasing Bush from his 24-year sentence. (Photos by Colin Mulvany/The Spokesman-Review)

## Shooting and arrest

Jayson Bush's childhood ended at 17 when he was arrested at Rogers High School two days after a Sept. 22, 1996, incident described by police as a drive-by shooting. An 18-year-old was struck in the upper thigh by a bullet that had apparently ricocheted off a solid object, shattering his femur.

Today, court records and clemency board documents paint a clearer picture of the incident.

Bush, whose mother is white and whose father is African American, lived in the Garland neighborhood. M'Liss Bush is a secretary at Fairchild Air Force Base. Ray Bush, retired from the Air Force, is head of security for Holy Family Hospital.

Jayson Bush attended Rogers after transferring from North Central High School, "where he became the object of constant harassment and threatened with physical violence" from students, according to a report to the clemency board from the law clinic.

"This particular group mostly consisted of juniors and seniors who were identified as a white-power crowd," Bush said in a hand-written letter to the board.

When Bush complained to the NC principal, he was told "throughout life we are going to be called many things we don't like," according to the report.

Bush went to Spokane Police Officer Percy Watkins, who persuaded his parents to take their son out of NC. But the teen continued to run into his tormentors, and the threats persisted. This group, Bush said, had assaulted other minority students, including one who was pulled from a car window and severely beaten.

"I truly believed that they would have tried to seriously hurt me if they had the chance," Bush wrote the board. "I kept thinking what if they find out where I live or catch me walking home from school, what was I going to do then. Many people think that this sort of thing only happened in the 1950s or 1960s, but it doesn't, and because I was the only kid who would stand up for myself, I was their main target."

So Bush got a .357-caliber revolver from a friend, who took it from her father's collection.

Two weeks later, Bush was picked up at the restaurant where he worked nights by a couple of friends in a Nissan Pathfinder. Soon they were confronted in northeast Spokane by some of Bush's tormentors from North Central, who were riding in a Ford Mustang. Words were exchanged. The vehicles went separate ways. The occupants of the Pathfinder, disoriented in an unfamiliar neighborhood, stumbled upon the Mustang again. Its occupants were now out of the car, shouting and running toward the Pathfinder.

"I panicked and fired a shot at the empty Mustang and then fired a few times into the air, hoping to scare away the oncoming group," Bush wrote.

One of the five victims of the shooting admitted to police "he was attempting to provoke the driver and the occupants of the Pathfinder to stop their vehicle" so that he could fight with them, according to police records.

Bush was arrested at his high school on Sept. 24, 1996, at 2:30 p.m. Neither school officials nor police

contacted his parents until 10 p.m. In that time, Bush confessed to the crime, but on the advice of a public defender who was working on another case, he refused to sign it. He was charged as an adult with five counts of first-degree assault, one for each of the teenagers who could have been injured.

Awaiting trial

Bush spent a year in the Spokane County Jail awaiting trial. In his written statement to the clemency board, he claims his public defender, Kenneth Knox, would sign the jail register as having visited his client when he had not.

"I was unaware Mr. Knox had been at the prison since he never came to speak with me," Bush wrote. "This occurred more than six times throughout the representation. Throughout the entire six-month period during which Mr. Knox represented me, I only met with him on four occasions."

Contacted for this report, Knox, who still works for the county public defender's office, scoffed at Bush's allegation.

Knox encouraged Bush to accept a plea bargain offered by the county prosecutor's office and plead guilty to three counts of first-degree assault.

"Knox kept saying if I go to trial in Spokane, I'll never get out," Bush said. " 'You'll get a white judge, a white prosecutor and white jury, and in these times, they'll put you away for a long time,' " he said his attorney told him.

Bush rejected the deal at first until Knox approached his parents, telling them their son faced the possibility of 88 years in prison, Bush and his parents said. The Bushes considered selling their home to afford another attorney.

"I did not want my parents to sell our family home, so I decided to accept the plea agreement," Bush later wrote. He was sentenced Sept. 26, 1997.

Bush now says he did not realize he would be serving his sentence – 93 months on each of three counts of first-degree assault – consecutively until after his sentencing. Even though it was the low end of the sentencing range and there would be no "gun enhancements" of five years per count, Bush would have to serve nearly 24 years in prison.

"I didn't ever know about 24 years until I got back to the jail," Bush said. "I never heard from Kenneth Knox again until the year 2000, when an inmate said, 'Let me file an appeal for you,' and then we started trying to get my file."

Knox denies not informing Bush of the sentence and said it was the best deal he could have expected, considering that the police had an extensive confession and that Bush took detectives on "a guided tour" of the crime scene.

"No way we would have got out of that trial with less," Knox said.

Finding God in prison

Bush describes prison as "like waking up in hell every day." He believes he survived by embracing

Islam soon after arriving at the corrections center in Shelton, Wash., in 1997.

"Prison is an environment where you have to grow up real quick," Bush said. "You have two choices: Go down the road that will make you a career criminal ... or take the other road and become a person who can use that experience as a means to change your life. I know I chose the second of the two roads."

But while his religion gave him structure, it also created problems for him, especially after Sept. 11, 2001.

During the year he spent in the county jail, Bush obtained his general equivalency diploma. In prison, he pursued a degree through correspondence in Islamic studies and learned Arabic. He became a leader of the Muslim inmates at the state prison in Walla Walla and because of his good behavior was transferred to the Airway Heights prison in 1998.

At Airway Heights, Bush said, he encountered discrimination by prison staff because of his religion and because he stood up for the rights of minority prisoners. A prison official denied this.

"I had a big target on my back because I spoke out," Bush said. He said he was subject to more cell searches than other prisoners, "pat-downs" were more physical than necessary, and prison staff made his parents' visits difficult. For example, M'Liss Bush said she was not permitted to cover her head for Muslim service she attended while visiting her son.

A week after 9-11, Bush's cell received a more extensive search than usual, and he was placed in segregation.

"After Sept. 11, the heat was on the Muslim community, particularly me because I was the leader," Bush said. "I told my father I was going to the hole."

Time in segregation, where lights are continually kept on, routines are disrupted and shackles are used, is considered punishment by inmates. Bush believes he was sent there for being Muslim. During his time in the hole, Bush said he was questioned by corrections officers about his religion, Palestinians, Jews and Osama bin Laden. They asked him where his father was from and whether he was from Afghanistan.

"They try to break you in the hole," Bush said.

James Key, associate superintendent at the Airway Heights Corrections Center, acknowledged that Bush's cell was searched Sept. 18, 2001, that he was placed in "administrative segregation" on Sept. 19 and questioned by officers during an investigation prompted by an informant's tip.

"We received confidential information that Mr. Bush was utilizing his work computer in correctional industries to possibly generate inflammatory materials," Key said.

The investigation turned up "nothing inflammatory regarding his Muslim faith," and Bush was returned to his unit, Key said. He denied Bush's charge that he had been singled out because he was Muslim and said "all the policies and procedures were followed" to ensure prison security.

Nevertheless, the events at the prison prompted the Bush family to seek the help of the Spokane NAACP. It was the third time Bush's case had been brought before the civil rights organization. This

time, the family's pleas were heard by Florence Brassier, then president of the Spokane chapter.

Appeal for justice

Brassier calls the Bush case "one of the most satisfying things I have ever been involved in."

In the fall of 2001, she said, the Bushes brought two concerns before the NAACP.

"They had been experiencing unpleasantness from Airway Heights staff, anti-Muslim comments directed toward the family, and they were frightened for him and whether he would be transferred," Brassier said. "But most of all, they wanted to know what we could do about the sentence."

Brassier brought their concerns to Speedy Rice, then head of University Legal Assistance at the Gonzaga Law School. After Rice's departure from Gonzaga, his successor, George Critchlow, directed law student Genevieve Mann to interview Bush at the prison in December 2002. Her mission was to ensure his civil rights were being protected.

The clinic sponsored by the law school gives students credit toward their degrees for providing free legal help under supervision. The clinic typically handles such cases as predatory lending, consumer protection, civil rights and prisoner rights – not commutation.

But Mann came away from the interview believing that Bush did not belong in prison, and she persuaded Critchlow to allow her to pursue the commutation case. She worked on the case until May 2003, when she was about to have a baby. She then handed her work off to two other Gonzaga law students, Vicky Scollon and Michiko Fjeld.

"If I never do anything else in my legal career, I'll feel like I did something," Mann later said of the Bush case.

Under the supervision of Critchlow, now interim dean of the law school, Scollon and Fjeld prepared a thorough presentation for the clemency board. They detailed the mitigating circumstances in the case, the lack of preparation by Bush's counsel, and provided letters from prospective employers who would hire Bush. In the fall of 2003, they even secured a resolution in support of Bush by the regional NAACP.

Included in Bush's clemency packet were examples of other teenagers who received far lesser sentences for greater offenses, including those of Joshua Kaczor, sentenced to 10 years, and Kory Ludwig, sentenced to two years, after being convicted in 1997 of murdering a Spokane cab driver.

A letter to the board from Brad Reed, then chairman of the Spokane Human Rights Commission, read:

"It is clear in my mind that he (Bush) was made an example of. I urge you to act and make this exemplary inmate and young man the right kind of example. Accept his sacrifice of the past seven years, and set him free."

Scollon and Fjeld saw in Bush a truly repentant inmate.

"He did commit a crime and deserved to be punished," Fjeld said. "But the extreme nature of the sentence left you with a sense of injustice. You wanted to do it for him, for his family and society and

ourselves. I could not imagine what it would be like if we failed."

'A difference can be made'

Many of Bush's advocates who were present at his clemency hearing cited the heartfelt testimony of Bush's younger brother, Micheal, as swaying the board members. Others credit the NAACP's Carl Mack, who made an impassioned plea to one of the two members representing law enforcement on the board. But Mack believes Bush owes his freedom to his own videotaped testimony.

"Jayson said what he did was stupid. Second, he apologized to the victims. Third, he said, 'These conflicts would come to me every now and then, and I responded wrongly to one of them. Here (in prison), I have to deal with conflict in a nonviolent manner every day,' " Mack recounted. "And I started crying because I knew this young man had grown up."

The Spokane County Prosecutor's Office took a neutral position on Bush's request for commutation, letting the board decide the case on its own merits, said Jack Driscoll, chief criminal deputy prosecutor. By statute, the office notified the victims of Bush's crime. None protested commutation. None could be reached for comment.

"We had a chance to look over his package, which was very well put together," Driscoll said. "It showed Bush did very well in prison." He added that he has seen only three such commutations in the six years since he has been chief deputy prosecutor.

"I will never look at the legal system the same way again," Scollon said. "Because I know that a difference can be made. Injustices do occur and severely impact not just one person's life, but a whole group of people."

Bush walked out of prison on June 1 of this year and into the arms of his father, mother and brother.

"They gave me my life back," M'Liss Bush said. "They fought for him, and they didn't have to. Now our youngest son has his brother back."

Bush is now holding down two jobs, as a construction worker for Scollon Enterprises, owned by Vicky Scollon's husband, Douglas, and as a waiter at the Wall Street Diner. Bush will enroll this week at Spokane Falls Community College and hopes to pursue a law degree from Gonzaga University. His interest is in civil rights, and he would like to help minority kids avoid the mistakes he made.

"One thing that prison taught me is that as a kid you have the world available to you. All you have to do is put your mind to it. But you don't realize that when you're a kid because you don't think clearly."

# WASHINGTON STATE COMMISSION ON AFRICAN AMERICAN AFFAIRS

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## Community Involvement

### JUSTICE FOR JAYSON BUSH

The Commission was contacted by counsel for Jayson Bush, a young African American man from Spokane, regarding Jayson's sentence commutation request before Governor Locke. Jayson had served eight years of a 23+ year sentence for an offense committed when he was 17 years old.

The Commission worked with Ms. Michiko Fjeld and Jayson's family in the final stages of the commutation request. The following documents tell Jayson's story and the compelling case before Governor Locke regarding commuting Jayson's sentence:



[Letter from Michiko Fjeld to Regina Jones, outlining Jayson's case and requesting the Commission's assistance;](#)

[Second letter from Michiko Fjeld providing more information;](#)

[Letter to Governor Locke from the Commission;](#)

[Email from Michiko Fjeld immediately following Governor Locke's decision in the case; and](#)

[Email from Michiko Fjeld regarding Jayson's release from prison.](#)

The Commission has extended an invitation to Jayson, his family and his legal team to join us at our Commission meeting in Spokane on September 17. We hope they will be available to share with the community their observations about this case and Washington's criminal justice system. We wish this reunited family well!

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# WASHINGTON STATE COMMISSION ON AFRICAN AMERICAN AFFAIRS

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## Community Involvement

### JUSTICE FOR JAYSON BUSH Second Letter from Michiko Fjeld

Dear Ms. Jones,

Thank you very much for responding so quickly. Here is the information you have requested. I hope it is helpful and I do look forward to speaking with you on Monday. I will be available to speak from 11-2:30 at which time I will be going out to the prison to visit with Jayson. This is a very stressful time for him as the Governor's approval is his last hope. He has already served 8 years of his sentence and is not set to be released until sometime around 2013.



1. The young man who was shot has recovered fully from his injuries (damage to his femur). He was given an opportunity to attend a restitution hearing and the sentencing hearing, however, he did not attend either. Jayson has paid off all of the fines related to the shooting and wrote the victim a letter of apology. The victim was also supposed to be notified of the commutation hearing but he did not attend or write to the board. Further, of all the hearings we heard that day, the prosecution was present for every case but ours where the state did not send anyone to represent the state's interest.

2. Yes, Vicky and I personally researched this area and found that during approximately the same time period Jayson was going through sentencing and such there were three other teenagers who committed similar crimes and who were charged and sentenced to lesser degrees.

a. 17 year old Emily Rose Welk, shot two men, killing one, during an argument over beer. She was sentenced to 11 1/2 years.

b. Jushoua Kaczor and Kory Ludwig, convicted of murdering a cab driver, sentenced to ten years and two years, respectively.

3. The sentencing guidelines, had he been prosecuted as a juvenile would have served a maximum of four years when he would have reached the age of maturity (21).

4. I am in regular contact with Jennifer Jolly, the Governor's attorney. She is very helpful and has told me that the Governor has reviewed the file and is considering the matter. In her opinion, the reason he has not made a decision is that we are asking for Jayson's immediate release. He does not take these matter lightly and in the past 1 1/2 or 2 years he has only granted 1-2 sentence commutations to time served.

5. We tried to contact the victim, but he never got back in touch with us. I think that Vicky spoke with him or one of the five boys present and was told that he would not be opposed to commutation if Jayson is truly sorry. However, he never put it into writing.

Thank you so much for taking the time to review this information. We are very dedicated to Jayson's cause because there is no doubt in our minds that justice was not served. Jayson was a kid when this incident occurred. He asked for help on several occasions, from his high school principle and counselors, his parents, teachers, etc. and nobody was able to get him the help he needed to cope with the racial harassment he faced on a daily basis. He was not equipped, as a 17 year old boy, to productively deal with the situation. What happened is a tragedy for the victim, the victim's family, Jayson, and Jayson's family.

This young man has spent over 8 years in prison. He has been in custody since he was picked up at 2:00 in the afternoon at his high school (the high school never contacted his parents to tell them their son had been taken away by the police during school hours). He has paid his debt to society. He is a mature, intelligent, thoughtful young man and his talents are being wasted.

We would appreciate any help you would be willing and able to give us. I am happy to meet with you or send you more information. I have a drawer full of papers on this matter. Thank you again for your time and consideration.

Sincerely,

E. Michiko Fjeld

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## Community Involvement

### JUSTICE FOR JAYSON BUSH Letter from Michiko Fjeld

My name is Michiko Fjeld and I am a second year law student at Gonzaga School of Law. I am also a legal intern at University Legal Assistance (ULA), a legal aid clinic at the law school. Through my work at ULA, I had the opportunity to work on a sentence commutation case involving a young man named Jayson Bush. Jayson's case went before the Washington State Clemency and Pardon's Board in December of 2003 where he received a 5-0 vote in favor of commuting his sentence to time served. We are now waiting on Governor Locke's decision. I am writing to you today on the recommendation of Ms. V Anne Smith, Spokane's NAACP President, to ask for your support in our efforts to commute Jayson's sentence.



Jayson is currently serving a sentence of over 23 years for a crime he committed as a juvenile. His case is very compelling due to the circumstances surrounding the crime and his ultimate sentencing.

Jayson was 17 at the time of the offense. He was a college bound high school student with no criminal history and a good reputation among his teachers and peers. Throughout his high school years, Jayson, who is bi-racial, confronted almost daily harassment and bodily threats from a group of boys who identified themselves as a white power group. He was ultimately forced to transfer to another school to avoid further harm.

Unfortunately, changing schools did not solve the problem. Jayson continued to see the young men around town and threats persisted. The unrelenting harassment, the beating and hospitalization of another student of color, and fear of physical injury led Jayson to believe that he needed to secure a gun for his protection. Two weeks after he obtained the gun, he was once again confronted by the group of young men who had terrorized him.

The confrontation began when a car carrying some of the boys from his previous high school came upon the car carrying Jayson. The boys began yelling racial slurs and the two cars followed each other for a few miles and agreed to meet at a park to fight. Jayson and his friends were unfamiliar with the area and became lost. They had decided to find a main road and go home. While searching for a familiar location, they drove past the group of boys they had confronted earlier who were getting out of their car.

The driver of Jayson's vehicle slowed down and yelled through his window. The boys from the other car immediately rushed toward Jayson's car in a threatening manner. Jayson, fearful of being pulled out of the car, panicked and fired warning shots into the air in an attempt to scare away the on-coming group. One of the bullets ricocheted off a solid object and struck a young man from the other car in the leg. The driver of Jayson's vehicle saw the group appear to disperse and drove off. They were unaware that anyone was hit.

The police came to Jayson's school two days later and placed him under arrest. He

was taken into custody at 2:00 in the afternoon and his parents were not notified of his detainment until 10:00 that night. He was questioned for eight hours without counsel at which time he gave a confession.

The prosecution initially charged him with one count of first degree assault and held him as a juvenile. However, after he refused to sign the confession he was re-charged with five counts of first degree assault (because there were five people present at the shooting) and was automatically moved to adult facilities to be tried as an adult.

Jayson had two different public defenders and spent over a year in jail before being sentenced. His attorney adamantly discouraged him from going to trial and went so far as to tell him that he would most likely be convicted by a jury because he is black. Jayson's attorney ultimately lead him to believe that he should accept a plea agreement of three counts of first degree assault, carrying a term of 24 years, because going to trial would likely lead to an 80 year sentence. Jayson accepted this plea agreement and is currently serving his eighth year of a 23 year and 3 months sentence. He is now 24 years old and is serving his eighth year in prison.

During and since the time of Jayson's sentencing, juveniles committing far more heinous crimes have received significantly shorter sentences. Jayson had no prior criminal history at the time of his arrest and was on a college track. His life was cut short by hate and bad decision making that goes with the immaturity and inexperience of youth.

Jayson has been a model prisoner and has thus far managed to use his time in prison productively. Jayson finished his GED and went on to enroll at American Open University where he is working on a bachelor's degree. He is the elected leader (Imam) of the Muslim population at Airway Heights and has a reputation as a peace keeper.

My partner, Vicky Treadwell, and I went before the Washington State Clemency and Pardons Board, on Jayson's behalf, December 19, 2003 to ask for a recommendation of sentence commutation to time serve. We based our request on the several theories: excessive sentencing, inadequate representation, and mitigating circumstances. The Board unanimously voted in Jayson's favor and recommended that the Governor commute his sentence to time served.

Governor Locke has the final say in granting Jayson's commutation and he has not yet decided this matter. Since Jayson's hearing, we have asked people in our community to send letters and postcards asking Governor Locke to follow the Board's recommendation and commute Jayson's sentence to time served. We would truly appreciate any help you are willing to lend this cause. Please contact me if you have any questions or concerns.

Thank you for your attention to this matter.

Sincerely,

E. Michiko Fjeld  
Legal Intern

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## Community Involvement

### JUSTICE FOR JAYSON BUSH

#### Email from Michiko Fjeld Regarding Jayson's Release from Prison

Regina,

I thought you would like to know that Jayson was released from prison today. I was able to there with his family, my partner, and our supervising attorney. The look of relief on Jayson's face is something I will never forget. It was a very touching moment. Thank you once again for all of your help. I hope that someday you will have an opportunity to meet this amazing young man.

Take care,

Michiko



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## Community Involvement

### JUSTICE FOR JAYSON BUSH

#### Email from Michiko Fjeld following Governor Locke's Decision

Regina,

I am not sure if you have already heard the news, but Governor Locke commuted Jayson's sentence to time served today. I want to thank you for all of your help and support. Myself and the Bush family are very grateful that you were willing to take time to give us advice and to speak with the Governor.

I hope we will be able to work together again in the future. If you ever need help with anything and you believe I may be able to offer aid, do not hesitate to call. It is a lovely feeling to know that you and people like you are in this great State and willing to fight for equal rights and justice.

Thank you again,

E. Michiko Fjeld



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STATE OF WASHINGTON  
COMMISSION ON AFRICAN AMERICAN AFFAIRS

1210 Eastside St. S.E. P.O. Box 40926, Olympia, Washington 98504-0926 (360) 753-0127 [yourcaa@caa.wa.gov](mailto:yourcaa@caa.wa.gov)  
[www.wa.gov/caaa](http://www.wa.gov/caaa)

*Victoria Woodards,  
Chair, Pierce County*

May 24, 2004

*Zelma Jackson,  
Vice Chair,  
Tri-Cities*

Governor Gary Locke  
Office of the Governor  
Post Office Box 40002

*Karen Boone,  
Spokane County*

Olympia, Washington 98504-0002

*Darryl Cook,  
King County*

RE: Jayson Bush

*Darrell Fields,  
Kitsap County*

Dear Governor Locke:

*Earl Ford,  
Clark County*

The Commissioners and staff of the Commission on African Affairs are united in urging commutation of the 23-year sentence of Jayson Bush to the eight years he has already served.

*Malcolm Oliver,  
Whatcom County*

*Edna Brooks-Pittman,  
Yakima County*

Jayson's case is compelling. As a teenager, at the age of 16, Jayson Bush responded to racist bullying in a manner that has forever changed his life. Jayson committed a crime, and has been punished. Without restating the case, Jayson's sentence of more than 23 years for first-degree assault is by any reasonable standard, disproportionate to both the severity of his crime and to the lack of permanent injury to the victim. The unopposed, unanimous vote by the Washington State Clemency and Pardons Board in favor of commuting Jayson's sentence acknowledges that Jayson has paid sufficiently for the crime he committed.

*Bill Reed,  
Snohomish County*

*Regina J. Jones, J.D.,  
Executive Director*

We ask that you grant Jayson Bush a second chance while he is young enough to create a fresh start. We have been in contact with Jayson's counsel and with Jayson's family. We are persuaded that Jayson is remorseful for his crime, has a loving and responsible family waiting to guide and support him, and is not a danger to the community or to the victim. Jayson need not remain a statistic representing sentencing disparity in the Washington criminal justice system.

Sincerely,

Victoria Woodards  
Chair

Regina J. Jones, J.D.  
Executive Director

"Improving the quality of life of African Americans"

# TRAGESER LAW OFFICE

TIMOTHY D. TRAGESER, ATTORNEY AT LAW  
MARLA L. CONRAD, ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201

August 4, 2006

Mr. Richard E. Mitchell  
Office of the Governor  
P.O. Box 40002  
Olympia, WA 98504-0002

RE: Revocation of Conditional Commutation of Sentence  
Jayson L.E. Bush, d.o.b. 7/05/1979

Dear Mr. Mitchell:

As you know, this office, in a letter dated May 10, 2006, requested either a Hearing or an opportunity to communicate with the Honorable Governor Christine Gregoire regarding the issue of Mr. Bush's sentence commutation revocation. The Governor had set a deadline of May 30, 2006 by which all charges against Mr. Bush had to be dismissed or else the Conditional Commutation would be revoked. The current charges against Mr. Bush are currently set for Trial on September 11, 2006.

You advised in your letter dated May 23, 2006 "there was no specific requirement that a revocation hearing be held prior to the Governor's exercise of her revocation powers" and that "if the Governor chooses to do so, I will promptly advise you". You also advised telephonically that the Governor was "busy, and could not review everything that came across her desk". To date, this office has received no other response from you as to the Governor's intent or the status of the numerous requests or pleas made on behalf of Mr. Bush. I am curious, where exactly does the indefinite detention of citizens fall within the Governor's list of priorities?

You might be reminded that Mr. Bush is being held on a Department of Corrections Detainer directed by the Governor, after a Bond Reduction Hearing had been scheduled on the pending criminal matters. Your office's position that "you will let us know" regarding the status and decision of the Governor is unacceptable. Not only have you taken the position that Mr. Bush is not entitled to Due Process, you have also made the Governor completely inaccessible to those who rely upon her to exercise her Gubernatorial duties for which she swore to uphold. This idea that an individual can be imprisoned in the Governor's **dungeon** with no access to the castle is not well taken and I can assure you will be addressed by the highest courts of this State or the United States. The actions, or lack thereof, taken by your office is a prime example of why the United States Constitution was created.

Finally, Mr. Mitchell, your own legal position that Mr. Bush retains absolutely no civil liberties unless you say so, is insulting to the entire legal community and will be squarely addressed at a later date.

Thank you for your attention to this matter.

Sincerely,



Timothy D. Trageser  
Attorney at Law, WSBA #18704



Marla L. Conrad  
Attorney at Law, WSBA #36657

cc: American Civil Liberties Union  
Governor Christine Gregoire  
Ms. Kate McLachlan, Assistant Attorney General  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L.E. Bush

# TRAGESER LAW OFFICE

TIMOTHY D. TRAGESER, ATTORNEY AT LAW  
MARLA L. CONRAD, ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201

August 28, 2006

Mr. Richard E. Mitchell  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

Re: Revocation of Conditional Commutation of Sentence  
Jayson L.E. Bush, d.o.b. 7/05/1979

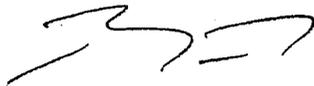
Dear Mr. Mitchell:

In a letter dated August 4, 2006, this office requested a response or some indication of the Governor's position regarding the status of Mr. Bush's sentence commutation revocation. To date, we have yet to receive any response from your office. Mr. Bush remains incarcerated pursuant to a Department of Corrections Detainer issued at the direction of the Governor.

Please contact this office immediately upon receipt of this letter and advise of the Governor's position regarding this issue.

Thank you for your attention to this matter.

Sincerely



Timothy D. Trageser  
Attorney at Law, WSBA #18704



Marla L. Conrad  
Attorney at Law, WSBA #36657

cc: Governor Christine Gregoire  
Ms. Kate McLachlan, Assistant Attorney General  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L.E. Bush

# TRAGESER LAW OFFICE

TIMOTHY D. TRAGESER, ATTORNEY AT LAW  
MARLA L. POLIN, ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201

December 12, 2006

Governor Christine Gregoire  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

RE: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-01-01206-3

Dear Governor Gregoire:

As you know, this office has been requesting either a Hearing or an opportunity to communicate with you concerning the issue of Mr. Bush's sentence commutation revocation for quite some time. In a letter dated September 26, 2006, Mr. Richard E. Mitchell, your General Counsel, advised that you had not changed your earlier position as stated in your letter dated May 4, 2006.

The May 4, 2006 letter advised that if Mr. Bush committed 'any offense classified as a felony or gross misdemeanor' his Conditional Commutation would be revoked.

We are currently attempting to negotiate Mr. Bush's case with the prosecuting attorney, Ms. Fitzgerald. These negotiations have been stalled by the lack of guidance we have continually received from your office. In order to fully negotiate Mr. Bush's case, we are requesting clarification on the following issues:

- 1) Has Mr. Bush's commuted sentence already been revoked?
- 2) If Mr. Bush's commuted sentence has been revoked, is he serving now serving time on that original sentence?
- 3) If Mr. Bush pleads to a crime that is classified as a **misdemeanor only**, will his Conditional Commutation still be revoked?

We would appreciate some guidance on these issues. Mr. Bush is scheduled to begin Trial on January 2, 2007. All of us would like to avoid unnecessarily putting the child through the process of testifying before a jury. As you know, this can be a very traumatic experience. Clarification on these issues may help resolve this matter short of a jury trial.

Thank you for your attention to this matter.

Sincerely,



Timothy D. Trageser, WSBA #18704  
Attorney at Law



Marla L. Polin, WSBA #36657  
Attorney at Law

---

Cc: Ms. Kate McLachlan, Assistant Attorney General  
Mr. Richard E. Mitchell, General Counsel  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L. E. Bush

# TRAGESER LAW OFFICE

TIMOTHY D. TRAGESER, ATTORNEY AT LAW  
MARLA L. POLIN, ATTORNEY AT LAW

FERNWELL BUILDING  
505 W. RIVERSIDE, SUITE 500  
SPOKANE, WASHINGTON 99201

December 26, 2006

Mr. Richard E. Mitchell  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

Re: Revocation of Conditional Commutation of Sentence  
Jayson L.E. Bush, d.o.b. 7/05/1979

Dear Mr. Mitchell:

In a letter dated December 12, 2006, this office requested clarification on the following issues:

1. Has Mr. Bush's commuted sentence already been revoked?
2. If Mr. Bush's commuted sentence has been revoked, is he now serving time on that original sentence?
3. If Mr. Bush pleads to a crime that is classified as a **misdemeanor only**, will his Conditional Commutation still be revoked? We believe this may be a possibility.

To date, we have yet to receive any response from your office. Mr. Bush is scheduled to begin Trial on January 2, 2007. As previously indicated, all the parties would like to avoid unnecessarily putting the child through the process of testifying before a jury. Without any guidance, we will have no alternative other than to go to trial and have the child to testify before the jury. As you know, this can be a very traumatic experience.

Your immediate response is requested as to the above-listed issues in an effort to best resolve this case for all parties involved.

Thank you for your attention to this matter.

Sincerely



Timothy D. Trageser, WSBA #18704  
Attorney at Law



Marla L. Polin, WSBA #36657  
Attorney at Law

Cc: Governor Christine Gregoire  
Ms. Kate McLachlan, Assistant Attorney General  
Mr. Dennis Westensee, CCO III  
Ms. Kelly Fitzgerald  
Mr. Jayson Bush

# TRAGESER LAW OFFICE

TIMOTHY D. TRAGESER, ATTORNEY AT LAW  
MARLA L. POLIN, ATTORNEY AT LAW

1428 W. NORTHWEST BLVD.  
SPOKANE, WASHINGTON 99205

January 3, 2007

Mr. Richard Mitchell - General Counsel  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

Re: State v. Bush  
Superior Court Cause #06-01-01206-3  
Revocation of Conditional Commutation of Sentence

Dear Mr. Mitchell:

Be advised that on today's date we began the Jury Trial of Jayson L. Bush in the above-referenced matter. A copy of the Amended Information is enclosed. Prior to today's Trial I brought to the Courts attention a number of issues relating to Mr. Bush's commuted sentence. Specifically, I advised the Court that Mr. Bush's commutation documentation, signed by Governor Locke, provided for revocation only if Mr. Bush "committed" any offense classified as a Felony or Gross Misdemeanor. There is an ambiguity as to whether or not a Misdemeanor would invoke revocation. I advised the Court that we have made several attempts to contact you to resolve this ambiguity, but received no response.

The Governor's letter dated May 4, 2006, provided that Mr. Bush's commuted sentence would be revoked at the end of May 2006, if the pending criminal charge was not dismissed. Several issues arouse this morning causing the Court and all the parties serious concerns.

First, Governor Gregoire's interpretation of the term "commit" is unclear. Has an individual 'committed' an offense simply because they have been arrested and the State has filed charges? Or, is this an issue best resolved by a jury when they are asked to convict an individual of the crime. I advised the Court that I had contacted your office on numerous occasions for clarification, but received no response.

Second, the State indicated that it would consider reducing Mr. Bush's charge to a Misdemeanor in exchange for a plea of guilty, but could not proceed without assurance from your office that this would not result in a revocation of his commuted sentence. The general concern is that if Mr. Bush pleads to a Misdemeanor without such assurance, you may still revoke his commutation and we will be back before the Court on a Motion to Withdraw the Guilty Plea,

---

1428 WEST NORTHWEST BOULEVARD  
SPOKANE, WASHINGTON 99205 - TELEPHONE (509) 327-3993

placing us in the same position we were in today. Without any guidance from your office, there is also concern as to whether any decision made by Mr. Bush would be knowing, intelligent and voluntary. The general consensus is that any decision made by Mr. Bush would be made only in an effort to avoid revocation of his commuted sentence. This forces Mr. Bush to make a Hobson's' choice. Either plead guilty to a Misdemeanor that may not revoke his Conditional Commutation, or go to Trial in an attempt to be acquitted – which is what the Governor demands in order not to revoke.

The Court, after swearing in 55 jurors and delivering to them juror questionnaires relating to this case, was forced to order them all home for the week in an effort to resolve these foundational issues. They have been ordered not to discuss this case. The Court was also not happy that the alleged victim was put on hold for another week and Mr. Bush is continuing to be detained pending resolution of these matters.

This matter has been set for hearing next Monday, January 8, 2006, at 8:30 a.m. At that time, the Court expects my office to report on the following questions:

- (1) Has Mr. Bush's commutation already been revoked? Deputy Prosecuting Attorney Kelly Fitzgerald, based on a previous conversation with Attorney Richard Mitchell, believes the commutation has already been revoked.
- (2) Will a plea to a Misdemeanor revoke Mr. Bush's commutation? Thus far, Mr. Bush has avoided pleading to a Misdemeanor because Governor Gregoire has indicated that she would revoke his commutation unless all criminal charges are dismissed. This is despite the fact that the original commutation allows for a revocation only in the event Mr. Bush "commits" either a Felony or a Gross Misdemeanor.
- (3) What is the Governor's office position regarding the definition of "commit"? Can the Governor make an independent decision based on her own legal standard as to whether or not Mr. Bush committed an offense or is it the Governor's position that the word "commit" equates to criminal convictions?

Finally, there is concern that Governor Gregoire's interpretation of the original commutation contract and her requirement for a complete dismissal of all criminal offenses significantly alters the terms of the original commutation and may amount to a unilateral breach of the contract.

In summary, the Court has continued the Trial for one week because Mr. Bush has not been delivered the appropriate guidance and information from the Governor's office that is necessary for him to make an informed decision as to how to proceed with his pending criminal case. The Court discharged 55 perspective jurors for the week and ordered them back to the Superior Court on Monday, January 8, 2007. At that time, a hearing will be held and the Court will make inquiry as to whether or not any of these issues has been resolved. If there is no immediate response from your office, the Court has advised that it will entertain any Motion on shortened time for issuance of Subpoenas, Writ of Mandamus, or any other relief necessary to ensure Mr.

Bush can make a knowing, intelligent and voluntary decision as to how to proceed with his criminal matter.

The Court has directed me to file this letter within the Superior Court file and I will attach all previous correspondence with your office. I will also be delivering a copy of all previous correspondence to your office along with an Affidavit of Counsel to Judge Leveque for his consideration. If these inquiries are not answered by your office, I will move the Court for a dismissal of the above-stated charges on the basis that you have effectively taken away Mr. Bush's right to resolve this matter by way of plea agreement.

Thank you for your attention to this matter.

Sincerely,



Timothy D. Trageser  
Attorney at Law



Marla L. Polin  
Attorney at Law

Enclosure

Cc: Governor Christine Gregoire  
Ms. Kate McLachlan, Assistant Attorney General  
Mr. Dennis L. Westensee, CCO III  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Jayson L. E. Bush

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON )  
 ) AMENDED  
 ) INFORMATION  
 )  
 ) Plaintiff, )  
 )  
 ) No. 06-1-01206-3  
 ) v. ) KELLY A. FITZGERALD  
 ) Deputy Prosecuting Attorney  
 )  
 ) JAYSON E. BUSH ) PA# 06-9-23304-0  
 ) BM 07/05/79 ) RPT# CT I - II: 002-06-0102733  
 ) ) RCW CT I: 9A.36.140(1)DV-F (#05497)  
 ) ) CT II: 9A.36.041DV-CA-G (#05459)  
 ) Defendant(s). ) (AMINF)  
 )

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: ASSAULT OF A CHILD IN THE THIRD DEGREE, committed as follows: That the defendant, JAYSON E. BUSH, in the State of Washington on or about April 08, 2006, being eighteen (18) years of age or older, did, with criminal negligence, cause bodily harm to CRCN-S, a child under the age of thirteen (13) years, by means of a weapon or other instrument or thing likely to produce bodily harm and/or which was accompanied by substantial pain that did extend for a period sufficient to cause considerable suffering,

COUNT II: FOURTH DEGREE ASSAULT- CHILD ABUSE/DOMESTIC VIOLENCE, committed as follows: That the defendant, JAYSON E. BUSH, in the State of Washington, on or about April 08, 2006, did intentionally assault CRCN-S,

Deputy Prosecuting Attorney  
WSBA # 26203

**DEFENDANT INFORMATION:**

JAYSON E. BUSH  
Address: 706 W PROVIDENCE AVE SPOKANE WA 99205-2991  
Height: 6'01"  
Eyes: Bro  
SID #: 018197949

Weight: 160  
DOL #:  
DOC #:

Hair: Bro  
State:  
FBI NO. 600306DB2

AMENDED INFORMATION  
AMINF

Page 1

COPY

SPOKANE COUNTY PROSECUTING ATTORNEY  
COUNTY CITY PUBLIC SAFETY BUILDING  
SPOKANE, WA 99260 (509) 477-3662

# Exhibit "E"



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

P.O. Box #90002 · Olympia, Washington 98504-0002 · (360) 753-6780 · [www.governor.wa.gov](http://www.governor.wa.gov)

May 23, 2006

Marla Leza Conrad  
Attorney at Law  
Fernwell Building  
505 W. Riverside Avenue, Suite 500  
Spokane, WA 99201

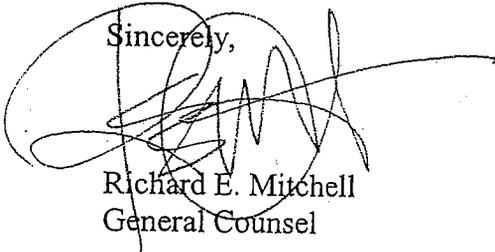
Re: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-01-01206-3

Dear Ms. Conrad,

This is to acknowledge receipt of your letter dated May 17, 2006, to the Governor's Office. It appears that my cautious manner was regrettably misperceived. As you know, we have received your letter dated May 10, 2006, in which you requested reconsideration of the Governor's conditional revocation of Mr. Bush's pardon.

I note that the Clemency and Pardons Board has declined to provide Mr. Bush a hearing on his pardon revocation and does not believe that it has the authority to advise the Governor on this issue. Since there is no specific requirement that revocation hearings be held prior to the Governor's exercise of her revocation powers, if the Governor chooses to do so I will promptly advise you.

Sincerely,



Richard E. Mitchell  
General Counsel

cc: Kate McLachlan, Assistant Attorney General

CHRISTINE O. GREGOIRE  
Governor



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

September 26, 2006

Marla L. Conrad, Attorney at Law  
Trageser Law Office  
Fernwell Building  
505 W. Riverside, Suite 500  
Spokane, WA 99201

VIA FACSIMILE and FIRST CLASS MAIL

Re: Revocation of Conditional Commutation of Sentence  
Spokane Superior Court Cause No. 06-1-01206-3

Dear Ms. Conrad:

Further to my letter dated May 23, 2006, Assistant Attorney General Kate McLachlan's letter dated the same day, and in response to your various letters to Governor Gregoire, my Executive Assistant and me, dated May 24 (two separate letters), 25, 26 (two separate letters), 30, August 4 and August 28, the Governor has not changed her position articulated in her May 4, 2006, letter. If the Governor chooses to change her position, please rest assured that I will promptly advise you. In the meantime, if you are willing to advise me on the status of the above-noted matter that would be most helpful.

Sincerely,

Richard E. Mitchell  
General Counsel

cc: Ms. Kate McLachlan, Assistant Attorney General  
Ms. Kelly Fitzgerald, Deputy Prosecuting Attorney  
Mr. Dennis L. Westensee, CCO III



# Exhibit “C”

JAN 04 2007

**COPY**  
ORIGINAL FILED

JAN 04 2007

THOMAS R. FALLQUIST  
SPOKANE COUNTY

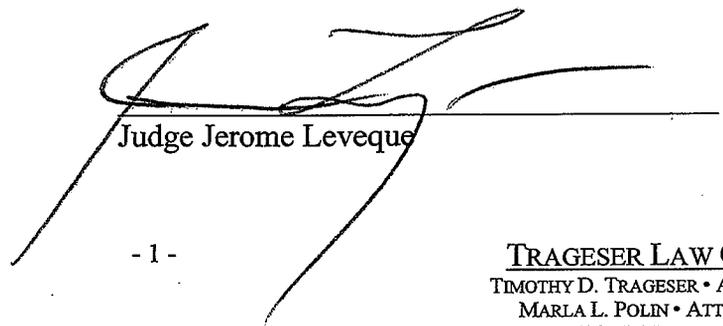
**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE**

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 06-01-01206-3
v.	)	
	)	EX PARTE ORDER COMMANDING
JAYSON L.E. BUSH,	)	APPEARANCE AT HEARING
WM 07/05/1979	)	
Defendant.	)	

THIS MATTER having come before the undersigned judge of the above entitled court upon the Motion of the defendant for an Ex Parte Order Commanding Appearance at Hearing, and the court having considered the same, the records on file herein, and the court being otherwise fully advised,

IT IS ORDERED that Defendant's Motion for Ex Parte Order Commanding Appearance at Hearing shall be granted. IT IS FURTHER ORDERED that Mr. Richard E. Mitchell shall be permitted to appear telephonically on Monday January 8, 2007 at 8:30 a.m.

DATED this 4 day of January, 2007.



Judge Jerome Leveque

ORDER FOR SUBPOENA

**TRAGESER LAW OFFICE P.S.**  
 TIMOTHY D. TRAGESER • ATTORNEY AT LAW  
 MARLA L. POLIN • ATTORNEY AT LAW  
 1428 W. NORTHWEST BLVD.  
 SPOKANE, WASHINGTON 99205  
 (509) 327-3993 • FAX (509) 327-3920

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Presented by:



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Marla L. Polin, WSBA #36657  
Attorney for Defendant

# Exhibit “D”

CONDITIONAL COMMUTATION  
OF  
JAYSON LOREN EDWARD BUSH

To All To Whom These Presents Shall Come, Greetings:

Whereas, on September 22, 1996 Jayson Loren Edward Bush, then 17 and without any prior criminal history, was involved in a drive by shooting. Mr. Bush pled guilty to three counts of first degree assault. He was sentenced to 93 months on each count to be served consecutively for a total of 23 years and three months. His earned release date would be October 18, 2016; and

Whereas, prior to this incident, Mr. Bush, who is of Cape Verdean descent and is bi-racial, had reportedly been the victim of racial harassment at his high school. As a result of this harassment, Mr. Bush transferred to a different high school and began to carry a gun. The night of the shooting, Mr. Bush was picked up from work by two friends. While they were driving, a Mustang with three young men from Mr. Bush's former high school pulled up along side the car and words were exchanged. The argument escalated as the cars entered a residential area. Mr. Bush and his friends temporarily lost sight of the Mustang, but later saw the driver and passengers getting out of the car. According to Mr. Bush, at that point, several of the men started shouting and running toward the vehicle that he was in. Mr. Bush reports that he then panicked and fired at the unoccupied Mustang and then fired into the air. While shooting, Mr. Bush hit one young man in the in the thigh, which required surgery; and

Whereas, while in prison, Mr. Bush has become a religious person, embracing Islam and working to change himself. He has completed his GED and is completing a correspondence course for a Bachelors Degree program in Islamic Studies and Arabic. He has also completed an Anger and Stress Management Course. Mr. Bush has a great deal of support in the community, including the National Association for the Advancement of Colored People; and

Whereas, the Clemency and Pardons Board was favorably impressed by the extent to which Mr. Bush has taken responsibility for his past actions and has turned his life around. The Board believes he has been adequately punished, has been rehabilitated, and that further incarceration would serve no purpose; and

Whereas, I have reviewed all pertinent facts and circumstances surrounding this matter, the circumstances of the crime, and the unanimous recommendation of the Clemency and Pardons Board, and in light of the foregoing, I have determined that the best interests of justice will be served by this action; and

NOW, THEREFORE, I, Gary Locke, by virtue of the power vested in me as Governor of the state of Washington, grant to Jayson Loren Edward Bush this Conditional Commutation, commute the remainder of the sentence imposed to a term of community custody not to exceed the normal term imposed by the sentencing court (twenty-four months), SUBJECT TO THE FOLLOWING CONDITIONS:

Mr. Bush shall:

1. Report regularly to a community corrections officer as directed by the Department of Corrections;
2. Pay a monthly supervision fee as directed by the community corrections officer;
3. Notify the Department of Corrections prior to any changes of address or employment;
4. Remain in the geographic area as directed by the community corrections officer;
5. Not possess, receive, ship, or transport a firearm, ammunition, or explosives;
6. Not possess or use alcohol or possess or use any controlled substances without a prescription;
7. Submit to regular and random urinalysis and breathalyzer testing, as directed by the community corrections officer;
8. Participate in substance abuse evaluation as directed by the community corrections officer, and follow-up on any recommendations from such evaluation;
9. Participate in a chemical dependency evaluation as directed by the community corrections officer, and follow-up on any recommendations from such evaluation;
10. Participate in chemical dependency and substance abuse support groups, as directed by the community corrections officer;
11. Not associate with any drug users or dealers;
12. Participate in electronic monitoring, if deemed appropriate by the community corrections officer;
13. Participate in any mental health evaluation as recommended by the community corrections officer, and follow-up on any recommendations from such evaluation; and,
14. Comply with all standard conditions, recommendations, and instructions of community placement as directed by the community corrections officer and with all other applicable conditions imposed by the sentencing court.

Violation of any of the above conditions shall result in sanctions as deemed appropriate by the Department of Corrections. **PROVIDED**, that in the event Mr. Bush commits any offense classified as a felony or gross misdemeanor in the State of Washington, this Conditional Commutation is revoked and the sentence imposed by the court reinstated without the benefit of sentence reduction credit, whereupon Mr. Bush shall be immediately returned to the Washington Corrections Center or any such other facility as the Secretary of Corrections deems appropriate. The Department of Corrections shall provide a written report to the Clemency and Pardons Board regarding the violation of any condition of this Conditional Commutation.



IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be affixed at Olympia this 25<sup>th</sup> day of May Two Thousand Four.

Gray F. Loebe  
Governor of Washington

BY THE GOVERNOR:

Secretary of State  
ASST.

# Exhibit “E”

Jayson Bush is escorted from Superior Court Judge Jerome Leveque's courtroom Tuesday during a break in his third-degree assault trial.



COLIN MULVANY - The Spokesman-Review

# New charges erase man's second chance

BY KEVIN GRAMAN

Staff writer

Second chances like the one Jayson Bush received 2 1/2 years ago are very rare. Bush may have squandered his.

Jury selection began Tuesday in the trial of the 27-year-old Spokane man accused of assaulting a child with a belt buckle. Regardless of the outcome, conviction or acquittal, it appears Bush is returning

to prison.

On May 30, Gov. Chris Gregoire revoked the second chance that was granted Bush two years earlier by her predecessor, Gov. Gary Locke, who commuted a 24-year sentence imposed on Bush when he was just 17 years old.

Commutation of a sentence is rare, according to Richard Mitchell, Gregoire's

See **PRISON, A9**

January 31, 2007 • Wednesday • Page A9

## T PAGE/BUSINESS

### PRISON

Continued from A1

general counsel. He believes that Locke invoked the executive power only once during his eight years in office.

Locke commuted Bush's sentence to time served, less than eight years, on the unanimous recommendation of the Washington state Board of Clemency and Pardons.

The case for commutation was made by students at Gonzaga University's Center for Law and Justice, as well as the NAACP, on behalf of Bush, who is of African American and Anglo American ancestry.

Carl Mack, then-president of the Seattle-King County NAACP, called Bush's commutation "the greatest civil rights victory I have ever won in my life."

Bush's parents, Ray and M'Liss Bush, of Spokane, also pleaded for leniency for their son, who they said had been the victim of discrimination and racial harassment by white youths at North Central High School in Spokane.

Bush continued to be harassed, they said, after transferring to Rogers High School; he was arrested in September 1996 and accused of firing a pistol at a group of young men in what police described as a drive-by shooting.

Bush maintained that he had fired in a panic and only to scare off the group, but an 18-year-old

was struck in the upper thigh by a bullet that had apparently ricocheted off a solid object.

Fearing being tried in Spokane with "a white judge, a white prosecutor and white jury," Bush said, he accepted his public defender's advice to plead guilty. On Sept. 26, 1997, he was sentenced to 93 months on each of three counts of first-degree assault to be served consecutively.

Now, 10 years later, it appears Bush will have to return to prison to finish serving the approximately 16 years he has left on the sentence.

That is because Locke's pardon was conditional on Bush staying out of trouble for two years.

"In the event Mr. Bush commits any offense classified as a felony or gross misdemeanor in the state of Washington, this conditional commutation is revoked and sentence imposed by the court reinstated without benefit of sentence reduction credit," read Locke's decree.

In April, 23 months after Bush was released from prison, he was arrested and charged with third-degree assault of the 13-year-old son of Bush's girlfriend. Police accused Bush of striking the boy repeatedly with the buckle of a belt because of "lying and missing school assignments," according to court documents.

Last week, Bush, who is being held in the Spokane County Jail, and the boy's mother applied for a marriage license. Requests to

interview Bush in jail went unanswered on Tuesday.

Bush's attorney, Marla Polin, has appealed Gregoire's decision, which she said she learned was definitive at a Jan. 8 hearing before Spokane County Superior Judge Jerome Leveque.

This presented significant difficulty for Bush's defense, Polin said. Would his commutation still be revoked if he pleaded to a lesser charge? Or was successfully defending the felony charge his only hope of avoiding prison?

"That has not been answered," Polin said.

Polin also complained that by revoking Bush's commutation before his trial, Gregoire was denying him the constitutional guarantee of a presumption of innocence.

"By concluding that Mr. Bush has 'committed' this offense, you are summarily denying him due process without constitutional protections of opportunity and notice to be heard," Polin wrote the governor.

Mitchell, however, said there is no avenue for appeal.

"The governor's exercise of her gubernatorial authority to revoke the conditional pardon was entirely within the law," Mitchell said on Tuesday.

The power of pardon is "not a judicial concept," Mitchell said, it is granted exclusively by the state Constitution to the governor.

Bush's trial continues this week in Leveque's courtroom.