

No. _____

38124-9

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

82567-0

IN RE THE PERSONAL RESTRAINT PETITION OF:

SCHAWN JAMES CRUZE,

PETITIONER.

FILED
COURT OF APPEALS
DIVISION II
08 JUL 28 PM 12:05
STATE OF WASHINGTON
DEPUTY

PERSONAL RESTRAINT PETITION

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 JUL 28 PM 4:05

Jeffrey E. Ellis #17139
Attorney for Mr. Cruze

Law Offices of Ellis, Holmes
& Witchley, PLLC
705 Second Ave., Ste. 401
Seattle, WA 98104
(206) 262-0300 (ph)
(206) 262-0335 (fax)

PETITIONER MAY FILE THE
PETITION WITHOUT PAYMENT OF
A FILING FEE

[Signature]
COURT CLERK

7/28/08

A. STATUS OF PETITIONER

Schawn J. Cruze (Cruze) challenges his 1997 Clark County persistent offender finding and subsequent life sentence. (No. 97-1-00428-4). Cruze is currently in prison serving that sentence. This is Cruze's first PRP attacking that judgment.

B. FACTS

The relevant facts are simple. Cruze was charged and convicted of a second degree assault—an assault involving his brother. *Cruze does not challenge his conviction in this PRP.*

At sentencing, the trial court found that Cruze's 1996 conviction for possession of methamphetamine while armed with a firearm ("Possess Cont. Substance Methamphetamine with Firearm") was a prior "most serious offense." As the attached documents show, Cruze was convicted of a firearm, as opposed to a deadly weapon enhancement. *See Special Verdict Form, Judgment and Sentence, and Warrant of Commitment.* Just as importantly, Cruze's current judgment (finding that he is a persistent offender) describes the prior conviction as involving a firearm enhancement.

In addition to the VUCSA with a firearm conviction, Clark was convicted in 1991 of assault in the second-degree (also not at issue).

As a result of these two convictions, the trial court found that Cruze was a "persistent offender" and sentenced him to life in prison.

Cruze appealed and raised a number of claims related to the conduct of the trial, but did not raise sentencing error. His conviction was affirmed on appeal.

This is Cruze's first PRP.

C. ARGUMENT

1. INTRODUCTION

The definition of a "most serious offense" includes any felony committed with a "deadly weapon" verdict. *See* former RCW 9.94A.030(21)(t). It does *not* include a felony committed with a "firearm" enhancement. Thus, an un-enumerated felony (like a VUCSA) committed with a firearm enhancement does not fall within the statutory definition of a "most serious offense."

Cruze was convicted of the latter, not the former. *As a result, he is not a persistent offender.* This error is apparent from the face of Cruze's judgment. The fact that Cruze was convicted of VUCSA with a firearm enhancement is made even clearer by an examination of the documents in Cruze's VUCSA file. In addition, because Cruze is not a persistent offender the life sentence imposed by the Court was in excess of the Court's jurisdiction (10 years for a Class B offense). Finally, Cruze is "actually innocent" of the persistent offender status that resulted in his life

sentence. As a result, Cruze can bring this challenge despite the fact his conviction has been final for more than one year.

2. FIREARM ENHANCEMENTS ARE DISTINCT AND DIFFERENT FROM DEADLY WEAPON ENHANCEMENTS

It is clear and undisputed that Cruze was previously convicted of possession of methamphetamine with a firearm enhancement. Cruze's jury verdict (No. 96-1-01536-9) clearly shows he was convicted of a "firearm" enhancement, not a deadly weapon. Further, consistent with his jury verdict his *Judgment and Sentence* describes the conviction as possession of methamphetamine "with firearm enhancement" (on page 1), and (on page 2) distinguishes between firearms and deadly weapons, checking the "firearm" box and leaving the "deadly weapon" box blank, and imposes the enhancement term (18 months) for a firearm. Thus, it is clear that Cruze was convicted of a "firearm" and not a "deadly weapon" verdict. *See also Letter of Deputy Prosecutor Meyers dated June 18, 2008* acknowledging that "Cruze was convicted of Possession of Methamphetamine while armed with a Firearm."

Because this fact is apparently undisputed, Cruze spends his time addressing the legal consequence of this historically settled fact.

Both at the time of Cruze's current conviction and now, the definition of a "most serious offense" includes any felony committed with a "deadly weapon" enhancement. The question posed by this PRP is whether

a firearm enhancement is the same as *or* is distinct from a deadly weapon. The answer, as both the plain language of the statute and the cases interpreting that language make clear, is the latter. Further, if there is any ambiguity about whether the definition of a “most serious offense” includes a firearm enhancement, the rule of lenity mandates resolving that ambiguity and interpreting the law in Cruze’s favor.

At the time the Three Strikes law was passed the definition of a “most serious offense” included any felony with a “deadly weapon verdict under RCW 9.94A.125.” *See* former RCW 9.94A.030(21)(t). At that time, it was overwhelming clear that the “deadly weapon” verdict did not include a “firearm enhancement” for the simple reason that *no such enhancement existed*. Although the statutory citation to the “deadly weapon” enhancement in the definition of “most serious offense” has changed over time (it is now .602), the definition of a “most serious offense” has never been amended to include firearm enhancements.

To state it simply: firearm enhancements are not the same as deadly weapon enhancements.

As the Supreme Court of Washington explained in *State v. DeSantiago*, 149 Wn.2d 402, 68 P.3d 1065 (2003), before 1995 only one deadly weapon enhancement existed. In 1995, the Legislature enacted, without amendment, Initiative 159, the “Hard Time for Armed Crime”

ballot initiative intended to increase sentences for armed crime. *State v. Brown*, 139 Wn.2d 20, 25, 983 P.2d 608 (1999) (citing Laws 1995, ch. 129; *In re Charles*, 135 Wn.2d 239, 246, 955 P.2d 798 (1998); Washington Sentencing Guidelines Comm'n, *Adult Sentencing Guidelines Manual*, cmt. at II-67 (1997)). This new law sought to increase the punishment for armed crimes. *Charles*, 135 Wn.2d at 246. It also sought to differentiate between crimes committed with a firearm and those committed with some other deadly weapon. *Id.*; see also RCW 9.94A.533. The Hard Time Act “split the previous deadly weapon enhancement into *separate enhancements* for firearms and for other deadly weapons.” *State v. Brown*, 139 Wash.2d 20, 25, 983 P.2d 608 (1999) (emphasis added).

This point was more recently underscored in *State v. Recuenco*, 163 Wn.2d 428, 180 P.3d 1276 (2008), where Recuenco was charged and convicted of committing an assault with a deadly weapon, albeit a gun. The issue on appeal was whether the error was harmless—whether deadly weapons and firearms were legally interchangeable such that a judge could impose a firearm enhancement, if supported by the facts. The Court found that the two enhancements were not interchangeable, repeatedly drawing distinctions between deadly weapon and firearm enhancements.

The Court began by noting that there is a difference in the amount of prison time imposed for an enhancement with a “deadly weapon” and for an enhancement for a “firearm.” It then noted that the State opted to charge

Recuenco with the lesser enhancement of “deadly weapon.” The Court further noted that a review of the record “answers any question about whether the error occurred,” because after the jury returned its verdict and in response to *Recuenco*'s motion to vacate, the prosecutor informed the court: “ ‘[T]he method under which the state is alleging and the jury found the assault [] committed was by use of a deadly weapon.’ ” *Recuenco I*, 154 Wash.2d at 160, 110 P.3d 188 (quoting report of proceedings). The prosecutor went on to clarify, “ ‘in the crime charged and the enhancement the state alleged, there is no elements [sic] of a firearm. The element is assault with a deadly weapon.’ ” *Recuenco I*, 154 Wash.2d at 160, 110 P.3d 188 (quoting report of proceedings).

The *Recuenco* court found that the error was not harmless because deadly weapon and firearm enhancements were not one in the same. “*Recuenco* was charged with assault with a deadly weapon enhancement, and he was convicted of assault with a deadly weapon enhancement, but he was erroneously sentenced with a firearm enhancement.” “In this situation, harmless error analysis does not apply. Therefore, we vacate the firearm sentence and remand for correction of the sentence.” 163 Wash.2d at 442.

Thus, it is clear that the two enhancements are distinct. Although (at least since the creation of the separate firearm enhancement) it is counter-intuitive to include the less serious “deadly weapon” enhancement and not

the more serious “firearm” in the definition of a most serious offense, that is precisely what the statute does.

To be clear, Cruze does not allege that his VUCSA with a firearm conviction is in error. To the contrary, he was charged and a jury properly convicted him of that crime. Cruze’s point is that the crime is not a strike.

If there is any ambiguity in the definition of most serious offenses, the ambiguity must be resolved in Cruze’s favor. When a sentencing provision is reasonably subject to differing interpretations, an interpretation most favorable to the criminal defendant is adopted. *See State v. Roberts*, 117 Wash.2d 576, 586, 817 P.2d 855 (1991).

It is true that the rule of lenity applies only when a statute is ambiguous. *In re Personal Restraint of Sietz*, 124 Wn.2d 645, 652, 880 P.2d 34 (1994). A statute is ambiguous only if it is susceptible to two or more reasonable interpretations. A statute is not ambiguous merely because different interpretations are “conceivable.” *State v. Hahn*, 83 Wn .App. 825, 831, 924 P.2d 392 (1996) (citing *State v. Sunich*, 76 Wn.App. 202, 206, 884 P.2d 1 (1994)). “Unless the defendant has made a threshold showing of ambiguity, we derive the meaning of a statute from the wording of the statute itself, and do not engage in statutory construction or consider the rule of lenity.” *Geschwind v. Flanagan*, 121 Wn.2d 833, 840-41, 854 P.2d 1061 (1993).

However, here it is the State, not Cruze, who will have difficulty establishing that the clear language of the statute is ambiguous. However, the rule of lenity does not run in the State's favor. Thus, even if the State could demonstrate some degree of ambiguity, it would only mean that Cruze's proposed interpretation must be adopted.

3. CRUZE'S LIFE SENTENCE WAS IN EXCESS OF THE COURT'S JURISDICTION; HIS JUDGMENT IS FACIALLY INVALID; AND CRUZE IS ACTUALLY INNOCENT OF THE PERSISTENT OFFENDER FINDING MAKING THIS PETITION TIMELY.

RCW 10.73.090 establishes a one-year time limit for collateral attack on a judgment. More than one has elapsed since this conviction was final. However, the one-year time limit does not apply if a judgment is invalid on its face. RCW 10.73.090. Further, there is an additional statutory exception to the one year time bar where a sentence exceeds the Court's jurisdiction. RCW 10.73.100(5). Both exceptions apply here.

A judgment is "invalid on its face" if that document alone reveals an infirmity. *In re Pers. Restraint of LaChapelle*, 153 Wash.2d 1, 100 P.2d 805 (2004) (an improperly calculated sentence is invalid on its face). A judgment and sentence is invalid on its face if it exceeds the maximum duration allowed by statute and the alleged defect is evident on the face of the document without further elaboration. *See In re Pers. Restraint of Hemenway*, 147 Wash.2d 529, 532, 55 P.3d 615 (2002); *In re Pers. Restraint of Goodwin*, 146 Wash.2d 861, 866, 50 P.3d 618 (2002); *In re*

Pers. Restraint of Thompson, 141 Wash.2d 712, 718-19, 10 P.3d 380 (2000).

Cruze's judgment is invalid on its face because it shows he was sentenced as a persistent offender based on a crime that is not a most serious offense. Thus, no time bar applies.

In addition, RCW 10.73.090 provides that a defendant can challenge a sentence that has been final for more than one year when, according to RCW 10.73.100(5), the sentence imposed was in excess of the court's jurisdiction. *In re Goodwin*, 146 Wash.2d 861, 50 P.3d 618 (2002).

Here, the jurisdiction for Cruze's assault conviction (without the persistent offender finding) was up to 10 years. RCW 9A.20.021. Thus, Cruze's erroneous life sentence exceeded that jurisdiction.

In addition, Petitioner's actual innocence of the "persistent offender" finding provides a basis for the equitable tolling of the time bar statute. *See Souter v. Jones*, 395 F.3d 577, 599-602 (6th Cir. 2005).

To begin, the one-year time bar is subject to equitable tolling. *See State v. Littlefair*, 112 Wn. App. 749, 760, 51 P.3d 116 (2002), *review denied* 149 Wn.2d 1020 (2003) (noting that at least three Court of Appeals criminal cases have applied equitable tolling); *State v. Robinson*, 104 Wn. App. 657, 667, 17 P.3d 653, *review denied*, 145 Wash.2d 1002, 35 P.3d 380 (2001) (recognizing that RCW 10.73.090 can be equitably tolled, but declining to toll it in the particular case); *In re Personal Restraint Petition*

of Hoisington, 99 Wn. App. 423, 993 P.2d 296 (2000) (holding that "[t]he doctrine of equitable tolling applies to statutes of limitation but not to time limitations that are jurisdictional;" that RCW 10.73.090 "functions as a statute of limitation and not as a jurisdictional bar[;]" and thus that RCW 10.73.090 "is subject to the doctrine of equitable tolling."). Equitable tolling is a remedy that "permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed." *State v. Duvall*, 86 Wn.App. 871, 874, 940 P.2d 671 (1997). In *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986), the Supreme Court recognized a narrow exception to the doctrine of procedural default where a constitutional violation has "probably resulted" in the conviction of one who is "actually innocent" of the substantive offense. *Id.*, at 496. Accord, *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995). This exception was extended to claims of capital sentencing error in *Sawyer v. Whitley*, 505 U.S. 333, 112 S.Ct. 2514, 120 L.Ed.2d 269 (1992). Acknowledging that the concept of " 'actual innocence' " did not translate neatly into the capital sentencing context, the Supreme Court limited the exception to cases in which the applicant could show "by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty under the applicable state law." *Id.*, at 336.

The exception has been further extended to error resulting in the imposition of an unauthorized sentence (*Wainwright v. Sykes*, 433 U.S. 72, 91, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977)), especially where that sentence is increased as a result of an improper recidivist finding. See *Spence v. Superintendent*, 219 F.3d 162, 170-71 (2d Cir. 2000) (actual innocence exception applies in non-capital context. Exception depends not on the nature of the penalty, but on whether the error undermined the accuracy of the guilt or sentencing determination); *United States v. Mikalajunas*, 186 F.3d 490 (4th Cir. 1999) (Actual innocence exception applies to noncapital, habitual offender sentencings).

While state courts have not fully discussed the “actual innocence” exception, it has long recognized that the incorrect calculations involving prior convictions involve a miscarriage of justice. “Moreover, a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice.” *In re Restraint of Johnson*, 131 Wn.2d 558, 569, 933 P.2d 1019 (1997).

The analysis in *Johnson* accords with early cases in this state, which drew a distinction between errors in a judgment resulting from some error or irregularity occurring at or before trial, and sentences imposed without jurisdiction or in excess of that authorized by law. While a judgment and sentence could not be successfully challenged on habeas corpus if it were merely erroneous, sentences in excess of lawful authority could be

successfully challenged. *See e.g., In re Casey*, 27 Wash. 686, 690, 68 P. 185 (1902). The rule was stated: " '[W]hen the court has jurisdiction of the person and the subject matter, and *the punishment is of the character prescribed by law*, habeas corpus will not lie for the release of a prisoner because of mere errors, irregularities, and defects in the sentence which do not render it void.' " *Gossett v. Smith*, 34 Wash.2d 220, 223-24, 208 P.2d 870 (1949) (emphasis added) (quoting A.B. Shepherd, Annotation, *Illegal or Erroneous Sentence as Ground for Habeas Corpus*, 76 A.L.R. 460, 469 (1932)). If, however, the court lacked the " 'authority to render the particular judgment,' " the judgment was " 'fatally defective and open to collateral attack.' " *Id.* at 224, 208 P.2d 870 (quoting 75 Utah 245, 284 P. 323, 76 A.L.R. at 469). *See also In re Goodwin*, 146 Wn.2d 861, 868-69, 50 P.3d 618 (2002).

Here, Cruze is innocent of being a "persistent offender" because his VUCSA with a firearm conviction does not constitute a strike.

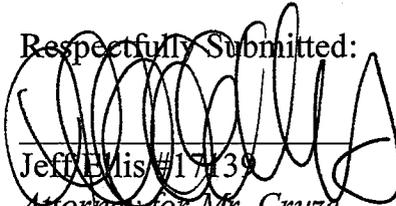
Of course, this Court does not need to wade into the vagaries of "actual innocence," if it finds his judgment facially invalid or his sentence in excess of the trial court's jurisdiction. In any event, it is clear that Cruze's petition is timely.

D. CONCLUSION AND PRAYER FOR RELIEF

For more than ten years now, Cruze has been under a persistent offender sentence despite the fact that he is not a persistent offender. Cruze's 1996 conviction for VUCSA with a firearm is not a strike. Based on the above, this Court should vacate Cruze's persistent offender finding and remand this case for re-sentencing.

DATED this 21st day of July, 2008.

Respectfully Submitted:



Jeff Ellis #17139
Attorney for Mr. Cruze

Law Offices of Ellis, Holmes
& Witchley, PLLC
705 Second Ave., Ste. 401
Seattle, WA 98104
(206) 262-0300 (ph)
(206) 262-0335 (fax)

Appendix A ~
Current Judgment and Sentence

FILED
JUL 02 1997

JoAnne McBride, Clerk, Clark Co.

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

STATE OF WASHINGTON,
Plaintiff,

vs.

SCHAWN JAMES CRUZE,

Date of Birth: 02/24/73

SID#: WA14987772

Defendant.

No. 97-1-00428-4

97 9 02823 9

JUDGMENT AND SENTENCE
(PRISON - PERSISTENT
OFFENDER)

I. HEARING

1.1 A sentencing hearing was held this date, the defendant appearing in person, and with his counsel, the undersigned attorney, the State being represented by the undersigned Deputy Prosecuting Attorney, and the Court having afforded each counsel the right to speak, and having asked the defendant if he wished to make a statement in mitigation of punishment, and having heard and considered the arguments presented, the Court now enters the following:

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on the 11th day of JUNE, 1997 by plea of guilty verdict of the jury bench trial of the crimes of:

Count I: ASSAULT IN THE SECOND DEGREE

in violation of RCW 9A.36.021 (1) (a), a Class B Felony

Committed on or about MARCH 20, 1997

as charged in the Information.

The offense charged in Count I is a Domestic Violence offense as that term is defined in RCW 10.99.020 (3).

48

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are as set forth in the Declaration of Criminal History attached hereto.

2.3 SENTENCING DATA:

2.3.1 The maximum terms for the above crimes are:

Count I: 10 years years and/or \$ 70,000.00
 Count II: RCW 9A.04A.120 (4) except as provided in years and/or \$ _____
 Count III: prison which becomes life in years and/or \$ _____
 Count IV: _____ years and/or \$ _____

2.3.2 The offender score, seriousness level, standard range without the enhancements, enhancements and presumptive sentencing range which includes the applicable enhancements for this defendant, all in months, based upon the criminal history related above are as follows:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS (F, DW, SZ)	TOTAL RANGE WITH ENHANCEMENTS
I:	<u>9</u>	<u>IV</u>	<u>63-84 months</u>		Ms
II:	_____	_____	<u>see paragraph 4.6 below</u>	<u>subject to 9A.04A.120(4)</u>	Ms
III:	_____	_____	_____	_____	Ms
IV:	_____	_____	_____	_____	Ms

2.3.3 The following crimes encompass the same criminal conduct and count as one crime in determining criminal history: Counts: _____

2.3.4 [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.4 [] EXCEPTIONAL SENTENCE. Circumstances found to exist which justify an exceptional sentence [] above [] below the presumptive sentencing range are attached as Attachment A and incorporated by reference as if fully set forth herein. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

[] An exceptional sentence is stipulated to by the parties.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The Court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's

1 financial resources and the likelihood that the defendant's status will change. The Court finds that the
2 defendant (has) (does not have) the ability to pay legal financial obligations as imposed below.

3 **III. JUDGMENT**

4 3.1.1 The Court has jurisdiction over the defendant and the subject matter.

5 3.1.2 The defendant is GUILTY of the Counts and Offenses listed in Paragraph 2.1.

6 3.4 There do (not) exist substantial and compelling reasons justifying an exceptional sentence outside
7 the presumptive sentencing range.

8 **IV. SENTENCE AND ORDER**

9 The court, having determined that no legal cause exists to show why sentence should not be
10 pronounced, now, therefore,

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

12 4.1 The defendant shall pay the following to the Clerk of the Superior Court:

13 \$ To be set

Restitution. RCW 9.94A.142

To be Paid to: _____

Victim(s) and amounts to be set by separate court order.
The addresses of the victims shall be withheld and provided confidentially to the Clerk.

15 \$ 500.00

Victim's Assessment, RCW 7.68.035

16 \$ 110.00

Criminal Filing Fee (Court Costs) RCW 9.94A.120

17 \$ 550.00

Appointed Attorney Fees, after credit of \$ _____ prepaid to
Indigent Defense Cost Recovery, RCW 9.94A.120

18 \$ _____

Court Appointed Defense Investigator/Expert and other defense
costs, RCW 9.94A.120

19 \$ _____

Fine. RCW 9A.20.021

20 \$ _____

Drug Fund Contribution. RCW 9.94A.120

To be paid within _____ years.

21 \$ _____

Crime Lab Fee. RCW 43.43.690

22 \$ _____

Other Costs for: _____

23 \$ _____

Costs of Incarceration. RCW 9.94A.145

1 The Court specifically finds that the defendant [] does [] does not have the means to pay for the
2 cost of incarceration at the rate of \$ 50.00 per day.

3 The above total may not include any or all the restitution, which may be set by later order of the court.
4 An agreed restitution order may be entered. The restitution is joint and several with _____

5 Payment shall not be less than \$ _____ per month or if left blank, the amount shall be set by the
6 Department of Corrections. Payments shall commence on _____ and shall continue [] weekly
7 [X] monthly or as set by the Department of Corrections and shall be paid in full prior to expiration of
8 legal financial supervision. All payments shall be in accordance with the policies of the Clerk.

9 An award of the costs on appeal and collateral attacks imposed on a defendant may be added to the total
10 legal financial obligations above. RCW 10.73.

11 [X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW
12 36.18.190.

13 Pursuant to RCW 10.82.090, the financial obligations imposed in this Judgment shall bear interest from
14 the date of the Judgment until payment in full, at the rate applicable to civil judgments.

15 [XX] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA
16 identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency,
17 the county or Department of Corrections, shall be responsible for obtaining the sample prior to the
18 defendant's release from confinement. RCW 43.43.754

19 4.3 The defendant shall not have any contact with the victim(s), _____
20 including but not limited to personal, verbal, written, electronic, telephonic or through a third person.

21 [] This condition is for the statutory maximum sentence of _____ years.

22 [] **DOMESTIC VIOLENCE: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE
23 UNDER CHAPTER 10.99 RCW AND WILL SUBJECT A VIOLATOR TO ARREST;
24 ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS
ORDER IS A FELONY.**

A Domestic Violence Protection Order is separately entered and the clerk of the court shall
forward a copy of the Domestic Violence order on or before the next judicial day following
filing to the Clark County Sheriff's Department.

[] **HARASSMENT: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER
CHAPTER 9A.46 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.**

A Harassment No Contact Order is separately entered and the clerk of the court shall
forward a certified copy of the order to the victim. The Clerk shall contact the Clark County

1 Prosecuting Attorney's Victim/ Witness unit to obtain the address for mailing.

2 **4.6 Persistent Offender.**

3 [XX] The court finds that the crime of which Defendant has been convicted in Count I is a most
4 serious offense and that before the commission of the crime in Count I, the defendant had been
5 convicted on at least two separate occasions of felonies which are "most serious offenses" as define
6 by RCW 9.94A.030(23), and of the two or more previous convictions for most serious offenses, at least
one conviction occurred before the commission of the other most serious offense(s) for which the
defendant was previously convicted.

7 The prior convictions are listed in the attached declaration of Criminal History. The defendant is
8 sentenced as follows:

9 4.6.1 Pursuant to RCW 9.94A.120(4), the defendant is sentenced to a term of total confinement
in the custody of the Department of Corrections as follows:

10 **Count I: Life in Prison Without Possibility of Parole or Early Release**

11 The term of confinement herein imposed is consecutive to the sentence in Clark County Cause
12 Number(s) 96-1-01536-9.

13 4.6.2 The actual number of months of total confinement is: life in prison months. (The mandatory
14 firearm and deadly weapons enhancement term or terms shall be served consecutively to each other and
consecutively to all other sentencing provisions.)

15 4.6.3 Credit for time served prior to this date of 0 days is given, said confinement being solely
16 related to the crimes for which the defendant is being sentenced.

17 4.7 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in
full.

18 4.8 Other: _____
19 _____

20 4.9 The bail or release conditions previously imposed are hereby exonerated and the Clerk shall
21 disburse any bail previously posted to the appropriate person.

22 **V. NOTICES AND SIGNATURES**

23 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Except as otherwise provided, no petition or
24 motion for any form of post-conviction relief, other than a direct appeal, may be filed more than one

1 year after the date of this Judgment and Sentence or, if a direct appeal is filed, the date the appellate
2 court issues a mandate disposing of the appeal pursuant to RCW 10.73.

3 5.4 RESTITUTION HEARING. [] Defendant waives any right to be present at any restitution
4 hearing (sign initials): _____

5 5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may
6 not own, use or possess any firearm unless your right to do so is restored by a court of record. (The
7 court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable
8 identification, to the Department of Licensing along with the date of conviction or commitment). RCW
9 9.41.040, 9.41.047

10 DONE in Open Court and in the presence of the defendant this 2 day of ^{July} June, 1997.

11 Barbara D. Johnson
12 JUDGE OF THE SUPERIOR COURT
13 Print Name: Barbara D. Johnson

14 [Signature]
15 Attorney for Defendant
16 WSBA # 14882
17 Print Name: PERRY BULL

18 Philip A. Meyers
19 Deputy Prosecuting Attorney
20 WSBA # 8246
21 Print Name: Philip A. Meyers

22 Revised signature - destroyed
23 Defendant first document prepared

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

STATE OF WASHINGTON,
Plaintiff,

No. 97-1-00428-4

vs.

SCHAWN JAMES CRUZE,
Defendant.

DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	SCORE
I: Unlawful Possession of Firearm I II: Possess Cont. Substance Methamphetamine with Firearm (RCW 9.94A.125)	Clark County, WA 96-1-01536-9	11/14/96	1/30/97	2
I: Assault II II: Assault II	Clark County, WA 91-1-00850-7	8/21/91	1/9/92	4
Theft II	Clark County, WA 94-1-01257-6	9/28/94	12/21/94	1
I: Possession of Stolen Property I II: Unlawful Possession of Firearm	Clark County, WA 95-1-00562-4	3/27/95	5/19/95	1
Burglary II	Clark County, WA Juvenile	8/13/86	11/24/86	0 (over 23)

[] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360.

DATED this 2 day of July, 1997.

Defendant
[Signature]
Attorney for Defendant

[Signature]
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL
HISTORY - 7

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98668
(206) 699-2261

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CLARK

3 STATE OF WASHINGTON,)
4 Plaintiff,)

No. 97-1-00428-4

5 vs.)

WARRANT OF COMMITMENT
TO STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

6 SCHAWN JAMES CRUZE,)

7 Date of Birth: 02/24/73)

8 Defendant.)

9 STATE OF WASHINGTON)
10 :ss
11 COUNTY OF CLARK)

12 THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of
13 Washington, Department of Corrections, Officers in charge of correctional facilities of the State of
14 Washington:

14 GREETING:

15 WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State
16 of Washington for the County of Clark of the crime(s) of:

16 Count I: ASSAULT IN THE SECOND DEGREE

17 Count II: _____

18 Count III: _____

19 Count IV: _____

20 and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment
21 in such correctional institution under the supervision of the State of Washington, Department of
22 Corrections, and shall be designated by the State of Washington, Department of Corrections pursuant
23 to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon
24 and made a part hereof,

23 NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the
24 transportation officers of the State of Washington, Department of Corrections, authorized to conduct
defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate
facility to receive defendant from said officers for confinement, classification and placement in such
correctional facilities under the supervision of the State of Washington, Department of corrections, for

WARRANT OF COMMITMENT - 1

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98663
(206) 699-2261

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a term of confinement of :

Count I: Life in Prison Without Possibility of Parole or Early Release

Count II: _____ months

Count III: _____ months

Count IV: _____ months

The defendant has credit for 0 days served.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS, Honorable *Michael Olson*

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS 2 day
of July, 1997.

JOANNE McBRIDE, Clerk of the
Clark County Superior Court

By: *Jennifer Olson*
Deputy



1 I, JoAnne McBride, Clerk of the Clark County Superior Court, certify that the foregoing is a full,
2 true and correct copy of the Judgment and Sentence in the above-entitled action, now on record
3 in this office.

4 WITNESS my hand and seal of the said Superior Court affixed this _____ day
5 of _____, 19____.

6 Clerk of said County and State,

7 by: _____
8 Deputy Clerk

9 OFFENDER IDENTIFICATION

10 OFFENDER'S NAME: SCHAWN JAMES CRUZE

11 DOB: 02/24/73 SEX: MALE RACE: WHITE

12 SID # WA14987772

13 FBI # 55809NA1

14 JUDGE: BARBARA D. JOHNSON

15 FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix
16 his or her fingerprints and signature thereto.

17 Clerk of the Court: Jennifer Olson, Deputy Clerk. Dated: July 2, 1997

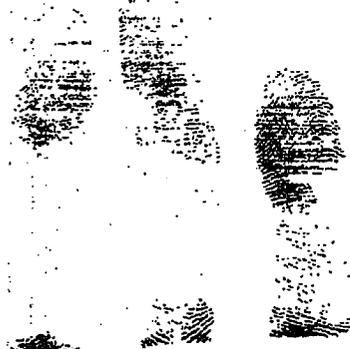
18 DEFENDANT'S SIGNATURE: refused to sign

19 Left four fingers taken simultaneously

20 Left Thumb

21 Right Thumb

22 Right four fingers taken simultaneously



*Big & Small
Burdette
JL/3/97*

**Appendix B ~
Documents Related to VUCSA with a Firearm Conviction**

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

STATE OF WASHINGTON,)

Plaintiff,)

No. 96-1-01536-9

vs.)

WARRANT OF COMMITMENT
TO STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

Shawn James Cruz)

Date of Birth: 2/24/73)

Defendant.)

STATE OF WASHINGTON)

COUNTY OF CLARK)
:ss

THE STATE OF WASHINGTON, to the Sheriff of Clark County,
Washington, and the State of Washington, Department of
Corrections, Officers in charge of correctional facilities of the
State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in
the Superior Court of the State of Washington of the County of
Clark of the crime(s) of:

Count I: Unlawful Possession of a Firearm

Count II: Unlawful Possession of a Controlled Substance

Count III: Methamphetamine, with Firearm Enhancer

Count IV: _____

and Judgment has been pronounced and the defendant has been
sentenced to a term of imprisonment in such correctional
institution under the supervision of the State of Washington,
Department of Corrections, and shall be designated by the State
of Washington, Department of Corrections pursuant to RCW 72.13,
all of which appears of record; a certified copy of said judgment
being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain
the defendant until called for by the transportation officers of
the State of Washington, Department of Corrections, authorized to
conduct defendant to the appropriate facility, and this is to
command you, said Superintendent of the appropriate facility to
receive defendant from said officers for confinement,

WARRANT OF COMMITMENT - 1

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VANCOUVER, WASHINGTON 98668
(206) 599-2201

classification and placement in such correctional facilities under the supervision of the State of Washington, Department of corrections, for a term of confinement of :

Count I: 66-118-84 months
Count II: 13 months
Count III: _____ months
Count IV: _____ months

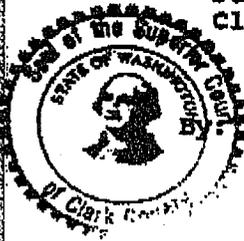
The defendant has credit for 0 days served.

And these presents shall be authority for the same
HEREIN FAIL NOT.

WITNESS, Honorable [Signature]

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS 30 day of January, 1997.

JOANNE McBRIDE, Clerk of the
Clark County Superior Court



[Signature]
Deputy

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WARRANT OF COMMITMENT - 2

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98660
(206) 426-2201

I, JoAnne McBride, Clerk of the Clark County Superior Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this _____ day of _____, 19____.

Clerk of said County and State,

by: _____, Deputy Clerk

OFFENDER IDENTIFICATION

OFFENDER'S NAME Shawn James CRUZE

DOB: 2/24/73 SEX: M RACE: W

SID # WA 14987772

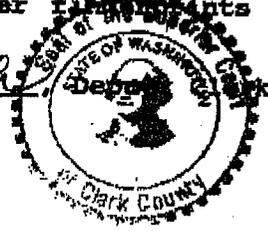
FBI # 55809 NA1

JUDGE Bennett

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: Kerry C. Welch

Dated: 1-30-97



DEFENDANT'S SIGNATURE: _____

Left four fingers taken simultaneously



Left thumb



Right Thumb



Right four fingers taken simultaneously



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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CLARK

3 STATE OF WASHINGTON,
4 Plaintiff,

No. 96-1-01536-9

5 vs.

97 9 00429 1

6 SCHAWN JAMES CRUZE,

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY
PLACEMENT)

7 Date of Birth: 2/24/73

8 SID#: WA14987772

FILED

9 Defendant.

JAN 30 1997

I. HEARING

JoAnne McBride, Clerk, Clark Co.

10 1.1 A sentencing hearing was held and the defendant, being
11 personally present, and represented by his/her undersigned
12 attorney, with the State being represented by the undersigned
13 Deputy Prosecuting Attorney, and the court having afforded
14 each counsel the right to speak, having asked the defendant if
15 he/she wished to make a statement in mitigation of punishment,
16 and having heard and considered the arguments presented and
17 the Court now enters the following:

II. FINDINGS

18 There being no reason why judgment should not be pronounced,
19 the Court FINDS:

20 2.1 CURRENT OFFENSE(S): The defendant was found guilty on
21 the 16 day of January, 1997 by
22 plea jury-verdict bench trial of the crimes of:

23 Count I: Unlawful Possession of a Firearm in the
24 FIRST DEGREE.
in violation of RCW 9A.04.040(1)(a)

Committed on or about 11/14/96

Count II: Unlawful Possession of a Controlled Substance -
methamphetamine with Firearm in Home
in violation of RCW 69.50.401(d)

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 1
(Rev. 6-96)

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1250 FRANKLIN
P.O. BOX 6000
VANCOUVER, WASHINGTON 98668
(360) 509-2261

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601 x
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1 Committed on or about _____
2 Count III: _____
3 _____
4 in violation of RCW _____
5 Committed on or about _____
6 Count IV: _____
7 _____
8 in violation of RCW _____
9 Committed on or about _____
10 as charged in the (_____ Amended) Information.

11 A special verdict/finding was returned, having been
12 specially alleged and proven, indicating the use of a firearm
13 as defined by RCW 9.41.010 and 9.94A.125 at the time of the
14 commission of the crimes charged in Count(s) 2.

15 A special verdict/finding was returned, having been
16 specially alleged and proven, indicating the use of a deadly
17 weapon other than a firearm as defined by RCW 9.94A.125 at
18 the time of the commission of the crimes charged in Count(s)
19 _____.

20 A special verdict/finding was returned, having been
21 specially alleged and proven, indicating that the crime was
22 sexually motivated as defined in RCW 9.94A.127 at the time of
23 the commission of the crimes charged in Count(s) _____.

24 A special verdict/finding was returned, having been
specially alleged and proven, indicating that the offense
occurred in either a school, a public park, or a public
transit stop shelter, or within the 1000 feet perimeter of
either school grounds or a school bus route stop or a civic
center designated as a drug-free zone by a local government
authority or on either a school bus or on a public transit
vehicle, as defined in RCW 69.50.435 at the time of the
commission of the crimes charged in Count(s) _____.

The defendant was convicted of vehicular homicide which
was proximately caused by a person driving a vehicle while
under the influence of intoxicating liquor or drug or by the
operation of a vehicle in a reckless manner and is therefore

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 2
(Rev. 6-96)

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(360) 682-2281

1 a violent offense. RCW 9.94A.030
 2 [] Additional misdemeanor offenses pertaining to this cause
 3 number are contained in a separate sentencing order.
 4 [] The offense charged in Count(s) _____ is/are
 5 Domestic Violence offense(s) as that term is defined in RCW
 6 10.99.020 (3).
 7 [] The State has moved to dismiss Count(s) _____.

8 2.2 CRIMINAL HISTORY: Prior convictions constituting
 9 criminal history for purposes of calculating the offender
 10 score are as set forth in the Declaration of Criminal History
 11 attached hereto.

12 2.3 SENTENCING DATA:

13 2.3.1 The maximum terms for the above crimes are:

14 Count I: 10 years and/or \$ 20,000
 15 Count II: 5 years and/or \$ 10,000
 16 Count III: _____ years and/or \$ _____
 17 Count IV: _____ years and/or \$ _____

18 2.3.2 The offender score, seriousness level, standard
 19 range without the enhancements, enhancements and presumptive
 20 sentencing range which includes the applicable enhancements
 21 for this defendant, all in months, based upon the criminal
 22 history related above are as follows:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS (F, DW, SZ)	TOTAL RANGE WITH ENHANCEMENTS
I:	<u>5</u>	<u>7</u>	<u>57-75</u>	_____	<u>57-75</u> Mos
II:	<u>6</u>	<u>1</u>	<u>12-14</u>	<u>18</u>	<u>30-32</u> Mos
III:	_____	_____	_____	_____	_____ Mos
IV:	_____	_____	_____	_____	_____ Mos

23 2.3.3 The following crimes encompass the same criminal
 24 conduct and count as one crime in determining criminal

JUDGMENT AND SENTENCE
 (PRISON - COMMUNITY PLACEMENT) - 3
 (Rev. 6-96)

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 1200 FRANKLIN
 P.O. BOX 5000
 VANCOUVER, WASHINGTON 98660
 (360) 688-2211

1 history: Counts: _____

2 2.3.4 [] Other current convictions listed under
3 different cause numbers used in calculating the offender score
4 are (list offense and cause number): _____

4 2.4 [] EXCEPTIONAL SENTENCE. Circumstances found to exist
5 which justify an exceptional sentence [] above [] below the
6 presumptive sentencing range are attached as Attachment A and
7 incorporated by reference as if fully set forth herein. The
8 Prosecuting Attorney [] did [] did not recommend a similar
9 sentence.

7 [] An exceptional sentence is stipulated to by the
8 parties.

8 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The Court
9 has considered the defendant's past, present and future
10 ability to pay legal financial obligations, including the
11 defendant's financial resources and the likelihood that the
12 defendant's status will change. The Court finds that the
13 defendant has (____ does not have) the ability to pay legal
14 financial obligations as imposed below.

12 2.6 [] For violent, most serious offenses, or armed
13 offenders, recommended sentencing agreements or plea
14 agreements are attached. If no formal written plea agreement
15 exists, the agreement is as set forth in the Statement on Plea
16 of Guilty.

15 III. JUDGMENT

16 3.1.1 The Court has jurisdiction over the defendant and the
17 subject matter.

18 3.1.2 The defendant is GUILTY of the Counts and Offenses
19 listed in Paragraph 2.1.

19 3.2 [] The Court DISMISSES Counts _____.

20 3.3 [] The defendant is found NOT GUILTY of Counts _____.

21 3.4 There do (not) exist substantial and compelling reasons
22 justifying an exceptional sentence outside the presumptive
23 sentencing range.

24 IV. SENTENCE AND ORDER

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 4
(Rev. 6-96)

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1700 FRANKLIN
P.O. BOX 6000
VANCOUVER, WASHINGTON 98660
(206) 426-2261

The court, having determined that no legal cause exists to show why sentence should not be pronounced, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

4.1 The defendant shall pay the following to the Clerk of the Superior Court:

\$ _____ Restitution. RCW 9.94A.142
[] To be Paid to: _____

[] Victim(s) and amounts to be set by separate court order.

The addresses of the victims shall be withheld and provided confidentially to the Clerk.

\$ 500.00 Victim's Assessment, RCW 7.68.035

\$ 110.00 Criminal Filing Fee (Court Costs) RCW 9.94A.120

\$ _____ Appointed Attorney Fees, after credit of \$ _____ prepaid to Indigent Defense Cost Recovery, RCW 9.94A.120

\$ _____ Court Appointed Defense Investigator/Expert and other defense costs, RCW 9.94A.120
Fine. RCW 9A.20.021

\$ 500.00 Drug Fund Contribution. RCW 9.94A.120

\$ 100.00 To be paid within 2 years. Crime Lab Fee. RCW 43.43.690

\$ _____ Extradition Costs. RCW 9.94A.120

\$ _____ Costs for Emergency Response (Vehicular Assault/Vehicular Homicide Offenses, \$ 1,000. Maximum - RCW 38.52)

\$ _____ Other Costs for: _____

\$ _____ Costs of Incarceration. RCW 9.94A.145

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 5
(Rev. 6-96)

CLARK COUNTY PROSECUTING ATTORNEY
1209 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98603
(360) 490-3267

1 The Court specifically finds that the defendant [] does
2 [] does not have the means to pay for the cost of
incarceration at the rate of \$ 50.00 per day.

3 The above total may not include any or all the restitution,
4 which may be set by later order of the court. An agreed
restitution order may be entered. The restitution is joint
5 and several with _____.

6 [X] The Department of Corrections may immediately issue a
Notice of Payroll Deduction. RCW 9.94A.200010

7 Payment shall not be less than \$ 100⁰⁰ per month or if
8 left blank, the amount shall be set by the Department of
9 Corrections. Payments shall commence on release
10 and shall continue [] weekly [] monthly or as set by the
Department of Corrections and shall be paid in full prior to
11 expiration of community placement supervision. All payments
12 shall be in accordance with the policies of the Clerk.

13 An award of the costs on appeal and collateral attacks imposed
14 on a defendant may be added to the total legal financial
15 obligations above. RCW 10.73.

16 [X] The defendant shall pay a monthly community supervision
17 fee to the Department of Corrections. The amount, manner and
18 due dates of the payments shall be as established by the
19 policies and procedures of Department of Corrections and state
law.

20 [X] The defendant shall pay the costs of services to collect
unpaid legal financial obligations. RCW 36.18.190.

21 Pursuant to RCW 10.82.090, the financial obligations imposed
22 in this Judgment shall bear interest from the date of the
23 Judgment until payment in full, at the rate applicable to
24 civil judgments.

4.2 [] HIV TESTING. The Southwest Washington Health
Department or it's designee shall test and counsel the
defendant for HIV as soon as possible and the defendant shall
fully cooperate in the testing. (RCW 70.24.340)

[] DNA TESTING. The defendant shall have a blood
sample drawn for purposes of DNA identification analysis and
the defendant shall fully cooperate in the testing. The

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 6
(Rev. 6-96)

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1200 FRANKLIN
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(360) 699-2281

1 appropriate agency, the county or Department of Corrections,
2 shall be responsible for obtaining the sample prior to the
defendant's release from confinement. RCW 43.43.754

3 4.3 The defendant shall not have ANY contact with the
4 victim(s), _____
5 including but not limited to personal, verbal, written,
6 electronic, telephonic or through a third person.

7 [] This condition is for the statutory maximum
8 sentence of _____ years.

9 [] DOMESTIC VIOLENCE: VIOLATION OF THIS ORDER IS A
10 CRIMINAL OFFENSE UNDER CHAPTER 10.99 RCW AND WILL
11 SUBJECT A VIOLATOR TO ARREST; ANY ASSAULT OR
12 RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS
13 ORDER IS A FELONY.

14 A Domestic Violence Protection Order is separately
15 entered and the clerk of the court shall forward a
16 copy of the Domestic Violence order on or before
17 the next judicial day following filing to the Clark
18 County Sheriff's Department.

19 [] HARASSMENT: VIOLATION OF THIS ORDER IS A CRIMINAL
20 OFFENSE UNDER CHAPTER 9A.46 RCW AND WILL SUBJECT A
21 VIOLATOR TO ARREST.

22 A Harassment No Contact Order is separately entered
23 and the clerk of the court shall forward a
24 certified copy of the order to the victim. The
Clerk shall contact the Clark County Prosecuting
Attorney's Victim/ Witness unit to obtain the
address for mailing.

4.6 The defendant is sentenced as follows:

4.6.1 The defendant is sentenced to a term of confinement
which includes the enhancements as follows:

Count I: _____ 66 _____ months
Count II: _____ 13 + 18 _____ months
Count III: _____ _____ months

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 7
(Rev. 6-96)

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 8000
VANCOUVER, WASHINGTON 98660
(509) 596-2261

Count IV: _____ months

the terms herein are to run concurrent to each other except for the portion of those counts for which there is a finding of a firearm or other deadly weapon which shall be served consecutively, and ~~concurrent/consecutive with Cause Number(s)~~
to 18 month enhancement

The actual number of months of total confinement is: 24 months. (The mandatory firearm and deadly weapons enhancement term or terms shall be served consecutively to each other and consecutively to all other sentencing provisions.)

4.6.2 Confinement shall continue commence immediately commence on 2/30/97.

4.6.3 Credit for time served prior to this date of _____ is given, said confinement being solely related to the crimes for which the defendant is being sentenced.

4.6.4 The term or terms of confinement imposed herein shall be served consecutive to any other term of confinement which the defendant may be sentenced to under any other cause in either district court or superior court, unless otherwise specified herein.

COMMUNITY PLACEMENT\CUSTODY

4.7 The defendant shall be on community placement under the charge of the Department of Corrections for offenses requiring community placement and shall be on community custody under the charge of the Department of Corrections for any and all sex offenses for the period of time provided by law, and shall faithfully comply with the conditions listed below and shall follow explicitly the instructions, rules and regulations of the Department of Corrections during the period of community placement\custody. The placement\custody begins either upon completion of the term of confinement (post release supervision) or at such time as the defendant is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150.

ALL OF THE FOLLOWING CONDITIONS OF COMMUNITY PLACEMENT\CUSTODY APPLY TO THE DEFENDANT AND SHALL BE IN EFFECT UNLESS A CONDITION IS WAIVED BY THE COURT.

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - B
(Rev. 6-96)

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98008
(206) 499-2261

- 1 1. Defendant shall report and be available for contact
2 with the assigned community corrections officer as
3 directed;
- 4 2. Defendant shall work at a Department of
5 Corrections' approved education or employment
6 program, and/or community service as directed or
7 shall be actively seeking employment;
- 8 3. Defendant shall not possess or consume controlled
9 substances except pursuant to lawfully issued
10 prescriptions. Defendant shall notify his/her
11 community corrections officer on the next working
12 day when a controlled substance has been medically
13 prescribed. Defendant shall submit to random urine,
14 breath and/or other testing to detect the usage of
15 controlled substances as requested by his/her
16 community corrections officer.
- 17 4. Defendant shall pay supervision fees as determined
18 by the Department of Corrections.
- 19 5. The residence location and living arrangements of
20 the defendant shall be subject to the prior
21 approval of the Department of Corrections and shall
22 not be changed without the knowledge and permission
23 of the community corrections officer.

24 Defendant shall fully comply with all the conditions
imposed below that have been stipulated to, imposed by statute
or are found to be crime related:

Defendant shall remain within prescribed geographical
boundaries, to-wit: as established by his/her community
corrections officer.

Defendant shall personally obtain written permission
from his/her corrections officer prior to leaving the county
permanently.

Defendant shall not be in the company of any person
known by him/her to be violating any federal, state or local
criminal laws.

Defendant shall not commit any like offenses.

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 9
(Rev. 6-96)

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98004
(360) 589-2261

1 Defendant shall notify his/her community corrections
2 officer within forty eight (48) hours of any arrest or
3 citation.

4 Defendant shall not initiate or permit communication
5 or contact with persons known to him/her to be convicted
6 felons, or presently on probation, community supervision or
7 parole for any offense, juvenile or adult, except immediate
8 family. Additionally, the defendant shall not initiate or
9 permit communication or contact with the following persons:

10 Defendant shall not initiate or permit communication
11 or contact with persons known to him/her to be substance
12 abusers.

13 Defendant shall not possess or use any paraphernalia
14 that can be used for the ingestion or processing of controlled
15 substances or that can be used to facilitate the sale or
16 transfer of controlled substances including scales, pagers,
17 cellular phones and police scanners.

18 Defendant shall not frequent known drug activity
19 areas or residences.

20 Defendant shall not use or possess alcoholic
21 beverages at all / to excess. The defendant will / will not
22 be required to take monitored antabuse per his/her community
23 corrections officer's direction, at his/her own expense, as
24 prescribed by a physician.

25 Defendant shall undergo an evaluation for treatment
26 for alcohol / drug / mental health / anger management
27 treatment and fully comply with all recommended treatment.

28 Defendant shall enter into, cooperate with, fully
29 attend and successfully complete all in-patient and out-
30 patient phases of an alcohol / drug / mental health / anger
31 management treatment program as established by the community
32 corrections officer and/or the treatment facility.

33 Treatment shall be at the defendant's expense and
34 he/she shall keep his account current.

35 Defendant shall submit to urine, breath or other
36 screening whenever requested to do so by the treatment program

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 10
(Rev. 6-96)

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 6000
VANCOUVER, WASHINGTON 98006
(206) 499-2201

1 staff and/or the community corrections officer.

2 [] Defendant shall not be in any place where alcoholic
3 beverages are sold by the drink for consumption or are the
4 primary sale item.

5 [] Defendant shall attend and successfully complete a
6 shoplifting awareness educational program as directed by the
7 community corrections officer.

8 [] Defendant shall attend and successfully complete the
9 victim awareness educational program as directed by the
10 community corrections officer.

11 [] Defendant's privilege to operate a motor vehicle is
12 suspended/revoked for a period of one year.

13 [] Defendant shall not operate a motor vehicle without
14 a valid driver's license and proof of liability insurance in
15 his/her possession.

16 [] Defendant shall not enter into or frequent business
17 establishments or areas that cater to minor children without
18 being accompanied by a responsible adult. Such establishments
19 may include but are not limited to video game parlors, parks,
20 pools, skating rinks, school grounds, malls or any areas
21 routinely used by minors as areas of play/recreation.

22 [] Defendant shall not have any unsupervised contact
23 with minors. Minors mean persons under the age of 18 years.

24 [] Defendant shall enter into, cooperate with, fully
25 attend and successfully complete all in-patient and out-
26 patient phases of a sexual deviancy treatment program as
27 established by the community corrections officer and/or the
28 treatment facility. "Cooperate with" means the offender shall
29 follow all treatment directives, accurately report all sexual
30 thoughts, feelings and behaviors in a timely manner and cease
31 all deviant sexual activity.

32 [] Defendant shall submit to periodic polygraph
33 examinations at the direction of his/her community corrections
34 officer to insure compliance with the conditions of community
35 placement\custody.

36 [] Defendant shall submit to periodic plethysmograph

37 JUDGMENT AND SENTENCE
38 (PRISON - COMMUNITY PLACEMENT) - 11
39 (Rev. 6-96)

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 8000
VANDOLIVER, WASHINGTON 98566
(360) 699-2261

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examinations at the direction of his/her community corrections officer to insure compliance with the conditions of community placement\custody.

[] Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.

[X] Defendant shall sign necessary release of information documents as required by the Department of Corrections.

[X] Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.

[] Other: _____

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.

4.10 Other: _____

4.11 The bail or release conditions previously imposed are hereby exonerated and the Clerk shall disburse it to the appropriate person.

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Except as otherwise provided, no petition or motion for any form of post-conviction relief, other than a direct appeal, may be filed more than one year after the date of this Judgment and Sentence or, if a direct appeal is filed, the date the appellate court issues a mandate disposing of the appeal pursuant to RCW 10.73.

5.2 LENGTH OF SUPERVISION. The defendant shall remain under the court's jurisdiction and be supervised by the Department

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 12
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CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98668
(206) 897-8901

1 of Corrections for a period of ten (10) years after the last
2 date of release from confinement pursuant to this sentence or
3 any felony sentence or the date of entry of the sentence or
4 any felony sentence, whichever occurs later, to monitor the
5 defendant's compliance with the payment of the legal financial
6 obligations. RCW 9.94A.145

7 **5.3 NOTICE OF INCOME-WITHOLDING ACTION.** If the court has
8 not ordered an immediate notice of payroll deduction in
9 paragraph 4.1, you are notified that the Department of
10 Corrections may issue a notice of payroll deduction without
11 notice to you if you are more than 30 days past due in monthly
12 payments in an amount equal to or greater than the amount
13 payable for one month. RCW 9.94A.200010. Other income-
14 withholding action under RCW 9.94A may be taken without
15 further notice. RCW 9.94A.200030

16 **5.4 RESTITUTION HEARING.** [] Defendant waives any right to
17 be present at any restitution hearing (sign initials): _____

18 **5.5** Every violation of this Judgment and Sentence is
19 punishable by up to 60 days of confinement. RCW 9.94A.200

20 **5.6 FIREARMS.** You must immediately surrender any concealed
21 pistol license and you may not own, use or possess any firearm
22 unless your right to do so is restored by a court of record.
23 (The court clerk shall forward a copy of the defendant's
24 driver's license, identicard, or comparable identification, to
the Department of Licensing along with the date of conviction
or commitment). RCW 9.41.040, 9.41.047

5.7 [] SEX OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.
Because this crime involves a sex offense, you are required to
register with the sheriff of the county of the state of
Washington where you reside. You must register immediately
upon being sentenced unless you are in custody, in which case
you must register within 24 hours of your release.

If you leave the state following your sentencing or release
from custody but later move back to Washington, you must
register within 30 days after moving to this state or within
24 hours after doing so if you are under the jurisdiction of
this state's Department of Corrections.

If you change your residence within a county, you must
send written notice of your change of residence to the county
sheriff at least 14 days before moving and must register again
with the sheriff within 24 hours of moving. If you change

JUDGMENT AND SENTENCE
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1200 FRANKLIN
P.O. BOX 5000
VANCOUVER, WASHINGTON 98666
(360) 690-2261

your residence to a new county within this state, you must send written notice of the change of address at least 14 days before moving to the county sheriff of your new county of residence and must register with that county sheriff within 24 hours of moving. You must also send written notice of your change of address to the county sheriff with whom you last registered within ten days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

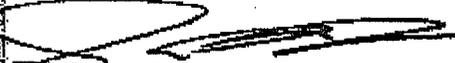
5.8 Persistent Offense.

The crime(s) in count(s) II is/are "most serious offenses(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (23 & 27(a)), 9.94A.120(4) *

The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030 (27)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

DONE in Open Court and in the presence of the defendant this 30 day of January, 1997.


JUDGE OF THE SUPERIOR COURT
Print Name: R. Bennett


Attorney for Defendant
WSBA # 2012
Print Name: James Dunn


Deputy Prosecuting Attorney
WSBA # 13750
Print Name: _____


Defendant

JUDGMENT AND SENTENCE
(PRISON - COMMUNITY PLACEMENT) - 14
Rev. 6-96)

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P.O. BOX 5050
VANCOUVER, WASHINGTON 98660
(360) 509-2251

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

STATE OF WASHINGTON,
Plaintiff,
vs.
SCHAWN JAMES CRUZE,
Defendant.

NO. 96-1-01536-9

COURT'S INSTRUCTIONS TO THE JURY

DATED this 16 day of January, 1997.

Roger A. Bennett
JUDGE ROGER A. BENNETT

FILED
JAN 16 1997
JoAnne McBride, Clerk, Clark Co.

Received by Jennifer Olson
Deputy Clerk
at 9:34 a.m.

17

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,) No. 96-1-01536-9
)
 v.)
)
 SCHAWN JAMES CRUZE,) SPECIAL VERDICT FORM
)
 Defendant.)

We, the jury, return a special verdict by answering as follows:

Was the defendant Schawn James Cruze, armed with a firearm at the time of the commission of the crime in Count II?

ANSWER:

YES
("Yes" or "No")

Roger McAllister
FOREMAN

Verdict received
3:56 p.m.

17-0

Appendix C ~
Letter from Prosecutor



ARTHUR D. CURTIS
PROSECUTING ATTORNEY

CURT WYRICK
CHIEF DEPUTY

DENNIS M. HUNTER
CHIEF CRIMINAL DEPUTY

E. BRONSON POTTER
CHIEF CIVIL DEPUTY

SHARI JENSEN
ADMINISTRATOR

June 18, 2008

Mr. Jeff Ellis
Attorney at Law
Ellis, Holmes & Witchley, PLLC
705 Second Avenue, Suite 401
Seattle, WA 98104

Re: (1) State of Washington v. Shawn James Cruze
Clark County Cause No. 96-1-01536-9
(2) Your letter of April 11, 2008

Mr. Ellis,

Your above referenced letter to our Prosecuting Attorney, Mr. Curtis, was referred to me for review. I am the Deputy Prosecuting Attorney who prosecuted Shawn Cruze in Clark County Cause No. 97-1-00428-4, which resulted in his conviction and sentence as a persistent offender. Your letter raises a question about one of the predicate convictions, in Clark County Cause No. 96-1-01536-9, wherein Cruze was convicted of Possession of Methamphetamine while armed with a Firearm.

The contention in your letter seems to be that because the definition of a "most serious offense" in effect at the time of Cruze's crime only refers to felony offenses "with a deadly weapon special verdict under RCW 9.94A.125" [*former* RCW 9.94A.030(23)(t)], a conviction with a "firearm" enhancement is not a "most serious offense".

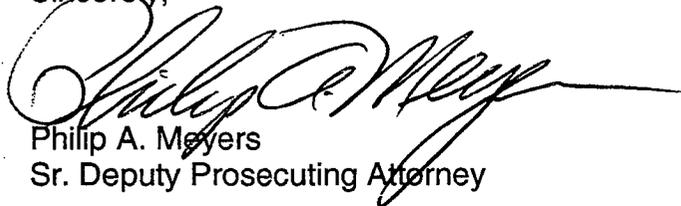
After reviewing the file and the conviction record, and the authorities you cited in your letter, I cannot agree that there is any defect in Cruze's conviction in Cause No. 96-1-01536-9.

Your letter points to the recent Washington Supreme Court decision of State v. Recuenco, 163 Wn. 2d 428, 180 P. 3d 1276 (2008) as supporting your proposition. There are at least two reasons why Recuenco does not support your argument. First, unlike the Recuenco case, the jury in Cruze's case actually returned a special verdict finding that Cruze was armed with a firearm. Therefore, there was no Blakely violation in Cruze's case, and Recuenco is inapposite. Secondly, Recuenco does not stand for the proposition that a firearm enhancement is not a strike. In fact, if anything, Recuenco suggests just the opposite because it suggests that "firearm" and "deadly weapon" enhancements are

identical under RCW 9.94A.125. That is so, because, as the court noted, the definition of a deadly weapon under that section still includes a firearm.

I therefore see no legal defect in Shawn Cruze's conviction and sentence. Accordingly our office will oppose any effort to modify the conviction and sentence.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip A. Meyers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Philip A. Meyers
Sr. Deputy Prosecuting Attorney

Appendix D ~
Legislative History of Firearm Enhancement

HOUSE BILL REPORT

HI 159

As Reported By House Committee On:
Corrections

Sponsors: People of the State of Washington.

Brief History:

Committee Activity:

Corrections: 1/10/95, 1/17/95 [DP].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass. Signed by 9 members: Representatives Ballasiotes, Chair; Blanton, Vice Chair; Sherstad, Vice Chair; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Koster; Radcliff; K. Schmidt and Schoesler.

Minority Report: Do not pass. Signed by 2 members: Representatives Cole and Dickerson.

Staff: Rick Neidhardt (786-7841).

Background: Initiative 159 amends numerous statutes dealing with penalties for armed crime. Many of these same statutes were amended in 1994 (E2SHB 2319) to increase penalties for armed crime. Some of the 1994 amendments were conditioned on the passage of a funding referendum last November. The voters approved Referendum 43 at last November's election, thereby retaining the increased penalties in law. For this reason, references in this analysis to current law include the effects of the 1994 legislation.

Deadly Weapon Enhancements. Under the Sentencing Reform Act, adult felony sentencing involves calculation of standard sentence ranges. For example, a standard range might be 12 to 14 months. Sentencing judges then use these standard ranges in sentencing a defendant, although under certain circumstances the judges can go above or below this range or impose an alternative sanction.

Under current law, standard sentence ranges are increased for certain crimes if the conviction includes a finding that the offender (or an accomplice) was armed with a deadly weapon. The following lengths of time are added to the standard range for the following crimes:

- Two years for rape 1, robbery 1, and kidnapping 1;
- 18 months for burglary 1;
- One year for escape 1, kidnapping 2, theft of livestock 1 or 2, drug offenses, burglary 2 committed in non-dwellings, and all violent offenses that are not otherwise eligible for the two-year or 18-month enhancement.

Other felonies do not receive these deadly weapon enhancements.

First Degree Reckless Endangerment. The crime of first degree reckless endangerment is committed by recklessly discharging a firearm from a motor vehicle in a manner which creates a substantial risk of death or serious physical injury.

The crime has a seriousness level of V, which yields a standard range of six to 12 months of confinement for a first-time offender. The crime is a class B felony (maximum punishment of 10 years of confinement).

Theft of Firearms. Under current law, theft of a firearm has a seriousness level of V, which yields a standard sentence range of six to 12 months for a first-time offender. The offense is a class C felony (maximum punishment of five years).

Possession of Stolen Firearms. Under current law, possession of a stolen firearm has the same penalty as theft of a firearm.

Unlawful Possession of a Firearm. Current law criminalizes the possession of a firearm by persons who have been previously convicted of certain offenses. The convictions that render this possession illegal are: serious offenses, domestic violence offenses, harassment offenses, felonies in which a firearm was used or displayed, felony drug offenses, and certain repeat DWI offenses. Possession of a firearm is also illegal for adults who were previously involuntarily committed under certain mental health laws and for people under the age of 18, subject to some exceptions.

Unlawful possession of a firearm does not currently include within its scope juveniles who were previously involuntarily committed for mental health treatment.

The crime of unlawful possession of a firearm has a seriousness level of III, which yields a standard sentence range of one to three months for a first-time offender. The crime is a class C felony (maximum punishment of five years).

Restoring Right to Possess Firearm. Under a law passed in 1994, certain people who would otherwise be covered by the statutory definition of unlawful possession of a firearm may have their right to possess a firearm restored.

People who are subject to unlawful possession of a firearm because they received three DWI convictions within a five-year period can have their rights restored by

petitioning the court and showing they have had five continuous years without further conviction for an alcohol-related offense.

People who are subject to unlawful possession of a firearm because they were previously involuntarily committed for mental health treatment can have their rights restored by petitioning the court and showing that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur.

The 1994 law does not provide similar procedures for the other classes of people who are subject to unlawful possession of a firearm.

Aggravated First Degree Murder. Aggravated first degree murder is defined as premeditated first degree murder coupled with the presence of additional "aggravating circumstances."

Current law specifies a list of aggravating circumstances, which includes: killing certain governmental officers; committing murder for pay; killing multiple victims; committing murder to conceal a crime or a person's identity; and committing murder during or immediately in flight from certain enumerated crimes, including residential burglary.

The sentence for aggravated first degree murder is either the death penalty or life imprisonment without possibility of release or parole.

Burglary. Under current law, first degree burglary is committed when a person unlawfully enters a dwelling, with intent to commit a crime, if the person either is armed with a deadly weapon or assaults another person. If these same acts are committed in a building other than a dwelling, the crime committed is instead second degree burglary.

First degree burglary has a seriousness level of VII, which yields a standard sentence range of 15-20 months for a first-time offender, although if the offender was armed, an additional 18 months is added to the standard range. First degree burglary is a class A felony (maximum punishment of life imprisonment).

Second degree burglary has a seriousness level of III, which yields a standard sentence range of one to three months for a first-time offender, although if the offender was armed, an additional 12 months is added to the standard range. Second degree burglary is a class B felony (maximum punishment of 10 years).

Sentencing Documents and Plea Agreements. Judgment and sentence forms are completed whenever a defendant is convicted of a felony. The forms state the crime of conviction and the sentence being imposed. In cases where a plea agreement is reached between the defendant and the prosecutor and is approved by the judge, the

judgment and sentence forms do not necessarily include the terms of the plea agreement.

The Sentencing Guidelines Commission is authorized to collect information from sentencing documents for all adult felons. The commission may further establish a computerized sentencing information system that tracks this information for each individual superior court judge.

Prosecuting Standards. Current law sets out recommended (non-binding) standards to guide prosecutors in making their charging decisions. The recommended standards distinguish between crimes against persons and other crimes. For crimes against persons, the standards recommend charges be filed, subject to some exceptions, if sufficient admissible evidence exists which, when considered in light of the most plausible, reasonably foreseeable defense, would justify conviction by a reasonable and objective fact-finder. For "crimes against property/other crimes," the standards recommend charges be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

Current law lists 41 felonies as being crimes against persons, including various degrees of murder, kidnapping, assault, assault of a child, rape, rape of a child, robbery, arson, burglary, manslaughter, extortion, indecent liberties, incest, vehicular homicide, vehicular assault, child molestation, and other offenses.

Juvenile Offenders. Juvenile offenders who are prosecuted under the Juvenile Justice Act are sentenced according to a disposition scheme that is different from the adult sentencing scheme. Juveniles are directly subject to adult sentencing provisions only if they are prosecuted as adults.

As in the adult system, juvenile sentencing involves calculation of standard ranges. That calculation is based in part on the crime's "offense category" which is based on the seriousness of the offense. Unless the Legislature has specified an offense category for a particular offense, the offense category is determined by the offense class (A, B, C, gross misdemeanor, misdemeanor). Consequently, the offense category for theft of a firearm, possession of a stolen firearm, and unlawful possession of firearms is "C." The offense category for reckless endangerment in the first degree is "B." The Legislature can directly amend the juvenile disposition standards or can indirectly amend them by changing the classification of a crime that does not have specified offense category.

Another way the Legislature can indirectly affect the disposition scheme for juveniles is to create new crimes or degrees of crimes or to change the definition of crimes.

Summary of Initiative: Deadly Weapon Enhancements. The Initiative applies deadly weapon enhancements to all felonies, except for theft of a firearm, possessing a stolen firearm, unlawfully possessing a firearm, first degree reckless endangerment, possession of a machine gun, and use of a machine gun in a felony.

If the deadly weapon is a **firearm**, the enhancements are:

Five years for class A felonies;
Three years for class B felonies; and
18 months for class C felonies.

If the deadly weapon is **other than a firearm**, the enhancements are:

Two years for class A felonies;
One year for class B felonies; and
Six months for class C felonies.

Each of these enhancements is doubled for an offender who has previously received a firearm enhancement or a deadly weapon enhancement under these new provisions. For example, a class A felony committed with a firearm yields a 10-year enhancement if the offender has a previous conviction with a deadly weapon finding.

The deadly weapon enhancements are mandatory and cannot be served concurrently with any other sentence.

An offender cannot earn good-time credits or other earned early release time for any portion of the sentence that results from a deadly weapon enhancement.

First Degree Reckless Endangerment. The seriousness level is raised to level VII, which yields a standard sentence range of 15-20 months for a first-time offender.

Theft of Firearms. The seriousness level is raised to level VI, which yields a standard sentence range of 12-14 months for a first-time offender. The crime is changed from a class C felony to a class B felony, thereby increasing the maximum penalty to 10 years' imprisonment. Each firearm is to be treated as a separate offense.

Possession of Stolen Firearms. The crime is changed from a class C felony to a class B felony, thereby increasing the maximum penalty to 10 years' imprisonment. The seriousness level is unchanged, as the 1994 law (E2SHB 2319) already had set the level at V. Each firearm is to be treated as a separate offense.

Unlawful Possession of a Firearm. The crime is separated into two degrees.

Unlawful possession of a firearm in the first degree is committed when the person's previous conviction was for a crime from the following list:

- a crime that is defined as a serious offense;
- residential burglary;
- first degree reckless endangerment; and
- Class A and B felony drug offenses.

Unlawful possession of a firearm in the second degree encompasses every other way in which the crime can be committed under the current law.

Unlawful possession of a firearm in the second degree can also be committed by a juvenile involuntarily committed for mental health treatment pursuant to RCW 71.34.090.

The crime in the first degree is assigned a seriousness level of VII, which yields a standard sentence range of 15-20 months for a first-time offender. The crime is a class B felony, creating a maximum sentence of 10 years.

The crime in the second degree has the same penalty provisions as does the current law, i.e., a seriousness level of III and categorization as a class C felony.

If the person is also serving time for possession of a stolen firearm or stealing a firearm, the time served for unlawful possession of firearms must be served consecutively with the other offenses.

Restoring Right to Possess Firearm. The eligibility for restoring the right to possess a firearm is expanded. People with a previous conviction that subjects them to committing unlawful possession of a firearm can petition the court to re-gain their right to possess a firearm. The right can be restored if five or more consecutive years have passed without being convicted of a crime, as long as the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.360. People with previous convictions for sex offenses or class A felonies are not eligible under this provision.

Aggravated First Degree Murder. The number of aggravating circumstances is expanded to include murders committed: in order to gain or further membership in an organization; during the course of a drive-by shooting; or, to avoid being sentenced to life imprisonment under the "Three Strikes, You're Out" Initiative. The Initiative also purports to add residential burglaries, but this addition was already made in a 1994 law (HB 2392).

Burglary. First degree burglary is no longer limited to dwellings; the crime can now be committed in any building.

Sentencing Documents and Plea Agreements. All recommended sentencing agreements and plea agreements are public documents and are to be recorded on the judgment and sentence form in cases involving violent offenses, most serious offenses, a deadly weapon finding, possession of a machine gun, possession of a stolen firearm, first degree reckless endangerment, theft of a firearm, unlawful possession of a firearm, and use of a machine gun in a felony.

In cases involving these offenses, the judgment and sentence forms shall also include a section where the judges are to record their reasons for going outside the standard sentence range.

In these same cases, the judgment and sentence forms are to be sent to the Sentencing Guidelines Commission, which must compile annual and cumulative judicial records comparing each judge's sentencing practices to the standard ranges. The commission must make these comparative records available to the public.

Prosecuting Standards. The following crimes are to be treated as crimes against persons for purposes of the recommended prosecuting standards: crimes with a deadly weapon verdict, possession of a machine gun, possession of a stolen firearm, reckless endangerment 1, theft of a firearm, unlawful possession of a firearm in the first or second degree, and use of a machine gun in a felony.

Juvenile Offenders. The Initiative indirectly increases juvenile offender penalties by raising theft of a firearm and possession of a stolen firearm to class B felonies; by creating the crime of first degree unlawful possession of a firearm and establishing that crime as a class B felony; and by expanding the definition of first degree burglary to include burglaries of all buildings, not just dwellings.

Miscellaneous. Various agencies within the criminal justice system are authorized, but not required, to notify offenders of the penalties for armed crime.

As a technical matter, three sections from the 1994 session laws are repealed, and the underlying statutes are amended in their place.

Appropriation: None.

Fiscal Note: Available.

Effective Date: If passed by the Legislature and not referred to the people for a vote, the Initiative goes into effect ninety days after adjournment of the session in which it was passed.

Testimony For: We need to send a message that armed crime will be severely punished. The costs of imposing longer sentences are justified by the benefits of

protecting the public from armed criminals. The Initiative's fiscal impact will be mitigated by the deterrent effect of the new penalties. By distinguishing between enhancements for guns and those for other deadly weapons, and further distinguishes among the three classes of felonies, the Initiative makes deadly weapon enhancements more proportional to the seriousness of the criminal act. Crimes involving guns deserve higher enhancements than those involving other deadly weapons. Armed criminals need to be held accountable for their acts and not given second chances. The highest priority is public safety. The Initiative will stop people from carrying weapons. We need to incarcerate armed criminals and keep them there for longer periods of time. A person in prison cannot harm the public. Citizens want strong solutions like this one. Increasing the length of incarceration has caused a decrease in crime rates. Judges need to be held accountable for their sentences.

Testimony Against: We already have deadly weapon enhancements. The cost of enforcing the new penalties is substantial. Corrections costs have been steadily increasing even though the crime rate has remained flat. Repressive legislation is not the answer. The death penalty is wrong and should be reserved for the most serious murders. Too much reliance has been placed on building more prisons. Deadly weapon enhancements do not deter criminals; they do not think about getting caught. Giving greater enhancements for guns than for other deadly weapons can lead to unfair results. Earned early release is an important tool for managing inmates. The Initiative might adversely impact the rights of those involuntarily committed for mental health treatment.

Testified: John Carlson, Chairman of I-159 campaign (in favor); Dave LaCourse, Coordinator of I-159 campaign (in favor); Representative Tom Campbell (in favor); Laurie Willman, victim of armed crime (in favor); Cheryl Terry, victim of armed crime (in favor); Sheryl Kinard, victim of armed crime (in favor); Perry Buck, attorney (opposed); Ed Mead, National Lawyers Guild (opposed); Tony Lee, Washington Association of Churches (opposed); John Ladenburg, Pierce County Prosecutor (in favor); Jim Krider, Snohomish County Prosecutor (in favor); Norm Maleng, King County Prosecutor (in favor); Bernardean Broadous, Thurston County Prosecutor (in favor); Larry Fehr, Washington Council on Crime and Delinquency (no position); Tom Rolfs, Department of Corrections (no position); Elizabeth Ambrose, Washington Protection and Advocacy System (opposed); Mike Patrick, Washington State Council of Police Officers (in favor); Roger Swayze, Seattle resident (opposed); and Brian Judy, National Rifle Association (in favor).

