

HOUSE BILL REPORT

ESHB 1002

As Amended by the Senate

Title: An act relating to allowing a certificate of discharge to be issued when an existing order excludes or prohibits an offender from having contact with a specified person or business, or coming within a set distance of any specified location.

Brief Description: Allowing a certificate of discharge to be issued when an existing order excludes or prohibits an offender from having contact with a specified person or business, or coming within a set distance of any specified location.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Appleton and Hasegawa).

Brief History:

Committee Activity:

Judiciary: 1/14/09, 1/29/09 [DPS].

Floor Activity

Passed House: 2/13/09, 95-0.

Senate Amended.

Passed Senate: 4/13/09, 45-0.

Brief Summary of Engrossed Substitute Bill

- Allows a court to issue a certificate of discharge to an offender who has completed all the requirements of his or her sentence, despite the existence of a no-contact order.
- Requires the court, upon issuing a certificate of discharge, to issue a separate no-contact order if the no-contact order is contained in the offender's judgment and sentence.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Courtney Barnes (786-7194)

Background:

When a felony offender has completed all the requirements of his or her sentence, the Secretary of the Department of Corrections or the Secretary's designee notifies the sentencing court. The sentencing court discharges the offender and provides the offender with a certificate of discharge. A certificate of discharge has the effect of:

- restoring all civil rights lost by operation of law, except for the right to bear arms, as the result of conviction; and
- terminating the sentencing court's jurisdiction to enforce the requirements of the sentence.

Among the civil rights restored are the right to vote, serve on a jury, and hold public office.

Engrossed Second Substitute Senate Bill 6400 (E2SSB 6400).

In March 2000, the Legislature passed domestic violence legislation, E2SSB 6400, which added a statutory provision affecting certificates of discharge. This provision specifies that the issuance of a certificate of discharge "shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW . . . that was contained in the judgment and sentence." RCW 9.94A.637(5).

State v. Miniken.

In May 2000, two months after the passage of E2SSB 6400 and a month before its provisions became effective, Division I of the Washington Court of Appeals held that a no-contact order issued or extended at sentencing is a "requirement of the sentence." *State v. Miniken*, 100 Wn. App. 925, 929 (2000). Under the Sentencing Reform Act of 1981, a court has the authority to prohibit an offender from having contact with individuals for a period longer than the sentence imposed but not beyond the allowable sentence. When a defendant is convicted of an offense with the maximum allowable sentence of life in prison, a court may issue a no-contact order that continues in effect for the life of the offender.

In *Miniken*, the defendant was convicted of a non-domestic violence offense and completed his prison sentence. A no-contact order was issued pursuant to his conviction with the maximum possible term of life. The defendant had otherwise satisfied his community placement and financial obligations. The no-contact order was the only condition remaining in effect when he requested the sentencing court issue a certificate of discharge. The Court of Appeals upheld the sentencing court's denial of Miniken's request for a certificate of discharge, finding that a "no-contact order is properly characterized as a 'requirement of sentence' and the sentencing court retains jurisdiction until the offender's completion of his or her sentence requirements." The court's decision in *Miniken* establishes that the existence of a valid no-contact order may prevent the sentencing court from issuing a certificate of discharge.

The March 2000 statutory provision affecting certificates of discharge in cases of domestic violence no-contact orders has yet to be construed by the courts. The provision may be

interpreted to permit the issuance of a certificate of discharge to an offender notwithstanding a valid domestic violence no-contact order imposed at the time of conviction, despite the court's explicit rejection of this proposition for a non-domestic violence offender in *Miniken*.

Summary of Engrossed Substitute Bill:

Despite the existence of a no-contact order, a certificate of discharge may be issued to an offender who has completed all the requirements of his or her sentence. For the purposes of issuing a certificate of discharge, a no-contact order is not a requirement of the offender's sentence.

If a no-contact order is only contained in the offender's judgment and sentence, the offender must petition the court to issue a certificate of discharge and a separate no-contact order. The court is required to issue the separate no-contact order under a new civil cause number. The no-contact order is issued for the remaining term and conditions as the no-contact order contained in the judgment and sentence. The separate no-contact order is not a modification of the offender's sentence. The separately issued no-contact order may be enforced under chapter 26.50 RCW.

An offender whose no-contact order is contained only in the judgment and sentence must pay a filing fee associated with the petition for the separate no-contact order. The filing fee does not apply to an offender seeking a certificate of discharge when the offender has a no-contact order separate from the judgment and sentence.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment requires the court to send a copy of the new no-contact order to the individual protected by the order. The court must also include an explanation of the reason for the new no-contact order. If the court does not have an address for the individual protected by the order the court must forward a copy of the order to the prosecutor. The prosecutor is required to send a copy of the order and explanation of the reason for the new no-contact order to the last known address of the individual protected by the order.

The Senate amendment requires the court to forward a copy of the new no-contact order to the appropriate law enforcement agency specified in the order on or before the next judicial day. The clerk is required to include a cover sheet that indicates the case number of the discharged judgment and sentence. The Senate amendment requires the law enforcement agency to enter the order into any computer-based criminal intelligence information system available in the state that is used by law enforcement agencies to list outstanding warrants. The Senate amendment requires the new order and case number of the discharged judgment and sentence to be linked in the criminal intelligence information system for the purposes of enforcing the no-contact order.

The Senate amendment adds an emergency clause.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill removes the distinction between domestic violence no-contact orders and other types of no-contact orders. The bill allows offenders to have a certificate of discharge when all requirements of their sentence are complete, despite the existence of a no-contact order. Under the current law, felony offenders who have been convicted of a non-violent crime are not able to receive a certificate of discharge because of a no-contact order, even though offenders who have a domestic violence no-contact order can receive a certificate of discharge. For example, a person convicted of a non-violent felony theft crime is not eligible to receive a certificate of discharge if he or she has a current no-contact order. The certificate of discharge restores the offender's right to vote, which is very important to offenders who wish to move on with their lives, have their civil rights restored, and have their criminal records cleared. The certificate of discharge also starts the clock for the waiting period to clear the offender's criminal record. The certificate of discharge would not terminate the offender's obligation to comply with the no-contact order. The certificate of discharge is not issued until the offender had completed all the terms of their sentence, including restitution and community supervision. A certificate of discharge does not restore the right to possess a firearm.

(With concerns) The bill needs to be refined. The practical effect of a certificate of discharge is that it terminates the sentencing court's jurisdiction to enforce the no-contact order. The intent of the bill is good, but the responsibility to the victims needs to be addressed. Absent a stand alone no-contact order, victims may not be protected if the no-contact order is only included in the judgment and sentence. Upon issuing a certificate of discharge, the judgment and sentence is closed. A no-contact order cannot be enforced if it is only in the judgment and sentence. It may be a better idea to call the certificate of discharge "conditional" or "partial" if an offender has a no-contact order. The offender's civil rights would be restored, but the court could still enforce the no-contact order.

(Opposed) None.

Persons Testifying: (In support) Representative Appleton, prime sponsor; John Sinclair, Washington Association of Criminal Defense Lawyers; and Molly Matters.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys; and Dave Johnson, Washington Coalition of Crime Victim Advocates.

Persons Signed In To Testify But Not Testifying: None.