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ENGROSSED SUBSTITUTE HOUSE BILL 1002

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State of Washington

61st Legislature

2009 Regular Session

By House Judiciary (originally sponsored by Representatives Appleton and Hasegawa)

READ FIRST TIME 02/03/09.

1 AN ACT Relating to allowing a certificate of discharge to be issued  
2 when an existing order excludes or prohibits an offender from having  
3 contact with a specified person or business, or coming within a set  
4 distance of any specified location; amending RCW 9.94A.637 and  
5 26.50.110; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that restoration of  
8 the right to vote and serve on a jury, for individuals who have  
9 satisfied every other obligation of their sentence, best serves to  
10 reintegrate them into society, even if a no-contact order exists.  
11 Therefore, the legislature further finds clarification of the existing  
12 statute is desirable to provide clarity to the courts that a  
13 certificate of discharge shall be issued, while the no-contact order  
14 remains in effect, once other obligations are completed.

15 **Sec. 2.** RCW 9.94A.637 and 2007 c 171 s 1 are each amended to read  
16 as follows:

17 (1)(a) When an offender has completed all requirements of the  
18 sentence, including any and all legal financial obligations, and while

1 under the custody and supervision of the department, the secretary or  
2 the secretary's designee shall notify the sentencing court, which shall  
3 discharge the offender and provide the offender with a certificate of  
4 discharge by issuing the certificate to the offender in person or by  
5 mailing the certificate to the offender's last known address.

6 (b)(i) When an offender has reached the end of his or her  
7 supervision with the department and has completed all the requirements  
8 of the sentence except his or her legal financial obligations, the  
9 secretary's designee shall provide the county clerk with a notice that  
10 the offender has completed all nonfinancial requirements of the  
11 sentence.

12 (ii) When the department has provided the county clerk with notice  
13 that an offender has completed all the requirements of the sentence and  
14 the offender subsequently satisfies all legal financial obligations  
15 under the sentence, the county clerk shall notify the sentencing court,  
16 including the notice from the department, which shall discharge the  
17 offender and provide the offender with a certificate of discharge by  
18 issuing the certificate to the offender in person or by mailing the  
19 certificate to the offender's last known address.

20 (c) When an offender who is subject to requirements of the sentence  
21 in addition to the payment of legal financial obligations either is not  
22 subject to supervision by the department or does not complete the  
23 requirements while under supervision of the department, it is the  
24 offender's responsibility to provide the court with verification of the  
25 completion of the sentence conditions other than the payment of legal  
26 financial obligations. When the offender satisfies all legal financial  
27 obligations under the sentence, the county clerk shall notify the  
28 sentencing court that the legal financial obligations have been  
29 satisfied. When the court has received both notification from the  
30 clerk and adequate verification from the offender that the sentence  
31 requirements have been completed, the court shall discharge the  
32 offender and provide the offender with a certificate of discharge by  
33 issuing the certificate to the offender in person or by mailing the  
34 certificate to the offender's last known address.

35 (2)(a) For the purposes of this subsection (2), a no-contact order  
36 is not a requirement of the offender's sentence. An offender who has  
37 completed all requirements of the sentence, including any and all legal  
38 financial obligations, is eligible for a certificate of discharge even

1 if the offender has an existing no-contact order that excludes or  
2 prohibits the offender from having contact with a specified person or  
3 business or coming within a set distance of any specified location.

4 (b) In the case of an eligible offender who has a no-contact order  
5 as part of the judgment and sentence, the offender may petition the  
6 court to issue a certificate of discharge and separate no-contact order  
7 by filing a petition in the sentencing court and paying the appropriate  
8 filing fee associated with the petition for the separate no-contact  
9 order. This filing fee does not apply to an offender seeking a  
10 certificate of discharge when the offender has a no-contact order  
11 separate from the judgment and sentence.

12 (i) The court shall issue a certificate of discharge and separate  
13 no-contact order under this subsection (2) if the court determines that  
14 the offender has completed all requirements of the sentence, including  
15 any and all legal financial obligations. The court shall reissue the  
16 no-contact order separately under a new civil cause number for the  
17 remaining term and under the same conditions as contained in the  
18 judgment and sentence.

19 (ii) A separately issued no-contact order may be enforced under  
20 chapter 26.50 RCW.

21 (iii) A separate no-contact order issued under this subsection (2)  
22 is not a modification of the offender's sentence.

23 (3) Every signed certificate and order of discharge shall be filed  
24 with the county clerk of the sentencing county. In addition, the court  
25 shall send to the department a copy of every signed certificate and  
26 order of discharge for offender sentences under the authority of the  
27 department. The county clerk shall enter into a database maintained by  
28 the administrator for the courts the names of all felons who have been  
29 issued certificates of discharge, the date of discharge, and the date  
30 of conviction and offense.

31 ~~((+3))~~ (4) An offender who is not convicted of a violent offense  
32 or a sex offense and is sentenced to a term involving community  
33 supervision may be considered for a discharge of sentence by the  
34 sentencing court prior to the completion of community supervision,  
35 provided that the offender has completed at least one-half of the term  
36 of community supervision and has met all other sentence requirements.

37 ~~((+4) Except as provided in subsection (5) of this section,)~~ (5)  
38 The discharge shall have the effect of restoring all civil rights lost

1 by operation of law upon conviction, and the certificate of discharge  
2 shall so state. Nothing in this section prohibits the use of an  
3 offender's prior record for purposes of determining sentences for later  
4 offenses as provided in this chapter. Nothing in this section affects  
5 or prevents use of the offender's prior conviction in a later criminal  
6 prosecution either as an element of an offense or for impeachment  
7 purposes. A certificate of discharge is not based on a finding of  
8 rehabilitation.

9 ~~((5) — Unless — otherwise — ordered — by — the — sentencing — court, — a  
10 certificate of discharge shall not terminate the offender's obligation  
11 to comply with an order issued under chapter 10.99 RCW that excludes or  
12 prohibits the offender from having contact with a specified person or  
13 coming within a set distance of any specified location that was  
14 contained in the judgment and sentence. An offender who violates such  
15 an order after a certificate of discharge has been issued shall be  
16 subject to prosecution according to the chapter under which the order  
17 was originally issued.))~~

18 (6) Upon release from custody, the offender may apply to the  
19 department for counseling and help in adjusting to the community. This  
20 voluntary help may be provided for up to one year following the release  
21 from custody.

22 **Sec. 3.** RCW 26.50.110 and 2007 c 173 s 2 are each amended to read  
23 as follows:

24 (1)(a) Whenever an order is granted under this chapter, chapter  
25 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a  
26 valid foreign protection order as defined in RCW 26.52.020, and the  
27 respondent or person to be restrained knows of the order, a violation  
28 of any of the following provisions of the order is a gross misdemeanor,  
29 except as provided in subsections (4) and (5) of this section:

30 (i) The restraint provisions prohibiting acts or threats of  
31 violence against, or stalking of, a protected party, or restraint  
32 provisions prohibiting contact with a protected party;

33 (ii) A provision excluding the person from a residence, workplace,  
34 school, or day care;

35 (iii) A provision prohibiting a person from knowingly coming  
36 within, or knowingly remaining within, a specified distance of a  
37 location; or

1 (iv) A provision of a foreign protection order specifically  
2 indicating that a violation will be a crime.

3 (b) Upon conviction, and in addition to any other penalties  
4 provided by law, the court may require that the respondent submit to  
5 electronic monitoring. The court shall specify who shall provide the  
6 electronic monitoring services, and the terms under which the  
7 monitoring shall be performed. The order also may include a  
8 requirement that the respondent pay the costs of the monitoring. The  
9 court shall consider the ability of the convicted person to pay for  
10 electronic monitoring.

11 (2) A peace officer shall arrest without a warrant and take into  
12 custody a person whom the peace officer has probable cause to believe  
13 has violated an order issued under this chapter, chapter 7.90, 9.94A,  
14 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection  
15 order as defined in RCW 26.52.020, that restrains the person or  
16 excludes the person from a residence, workplace, school, or day care,  
17 or prohibits the person from knowingly coming within, or knowingly  
18 remaining within, a specified distance of a location, if the person  
19 restrained knows of the order. Presence of the order in the law  
20 enforcement computer-based criminal intelligence information system is  
21 not the only means of establishing knowledge of the order.

22 (3) A violation of an order issued under this chapter, chapter  
23 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid  
24 foreign protection order as defined in RCW 26.52.020, shall also  
25 constitute contempt of court, and is subject to the penalties  
26 prescribed by law.

27 (4) Any assault that is a violation of an order issued under this  
28 chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW,  
29 or of a valid foreign protection order as defined in RCW 26.52.020, and  
30 that does not amount to assault in the first or second degree under RCW  
31 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in  
32 violation of such an order that is reckless and creates a substantial  
33 risk of death or serious physical injury to another person is a class  
34 C felony.

35 (5) A violation of a court order issued under this chapter, chapter  
36 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid  
37 foreign protection order as defined in RCW 26.52.020, is a class C  
38 felony if the offender has at least two previous convictions for

1 violating the provisions of an order issued under this chapter, chapter  
2 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid  
3 foreign protection order as defined in RCW 26.52.020. The previous  
4 convictions may involve the same victim or other victims specifically  
5 protected by the orders the offender violated.

6 (6) Upon the filing of an affidavit by the petitioner or any peace  
7 officer alleging that the respondent has violated an order granted  
8 under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or  
9 74.34 RCW, or a valid foreign protection order as defined in RCW  
10 26.52.020, the court may issue an order to the respondent, requiring  
11 the respondent to appear and show cause within fourteen days why the  
12 respondent should not be found in contempt of court and punished  
13 accordingly. The hearing may be held in the court of any county or  
14 municipality in which the petitioner or respondent temporarily or  
15 permanently resides at the time of the alleged violation.

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