

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1002

Chapter 288, Laws of 2009

(partial veto)

61st Legislature
2009 Regular Session

OFFENDER DISCHARGE--NO-CONTACT ORDERS

EFFECTIVE DATE: 07/26/09

Passed by the House April 16, 2009
Yeas 96 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 13, 2009
Yeas 45 Nays 0

BRAD OWEN

President of the Senate

Approved April 30, 2009, 10:37 a.m.,
with the exception of Section 4 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE HOUSE BILL
1002** as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 1, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1002

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

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; creating a new section; and declaring an emergency.

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 purposes of this subsection (2), a no-contact order is
36 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 a separate no-contact
7 order by filing a petition in the sentencing court and paying the
8 appropriate filing fee associated with the petition for the separate
9 no-contact order. This filing fee does not apply to an offender
10 seeking a certificate of discharge when the offender has a no-contact
11 order separate from the judgment and sentence.

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

19 (B) The clerk of the court shall send a copy of the new no-contact
20 order to the individuals protected by the no-contact order, along with
21 an explanation of the reason for the change, if there is an address
22 available in the court file. If no address is available, the clerk of
23 the court shall forward a copy of the order to the prosecutor, who
24 shall send a copy of the no-contact order with an explanation of the
25 reason for the change to the last known address of the protected
26 individuals.

27 (ii) Whenever an order under this subsection (2) is issued, the
28 clerk of the court shall forward a copy of the order to the appropriate
29 law enforcement agency specified in the order on or before the next
30 judicial day. The clerk shall also include a cover sheet that
31 indicates the case number of the judgment and sentence that has been
32 discharged. Upon receipt of the copy of the order and cover sheet, the
33 law enforcement agency shall enter the order into any computer-based
34 criminal intelligence information system available in this state used
35 by law enforcement agencies to list outstanding warrants. The order
36 shall remain in this system until it expires. The new order, and case
37 number of the discharged judgment and sentence, shall be linked in the

1 criminal intelligence information system for purposes of enforcing the
2 no-contact order.

3 (iii) A separately issued no-contact order may be enforced under
4 chapter 26.50 RCW.

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

7 (3) Every signed certificate and order of discharge shall be filed
8 with the county clerk of the sentencing county. In addition, the court
9 shall send to the department a copy of every signed certificate and
10 order of discharge for offender sentences under the authority of the
11 department. The county clerk shall enter into a database maintained by
12 the administrator for the courts the names of all felons who have been
13 issued certificates of discharge, the date of discharge, and the date
14 of conviction and offense.

15 ~~((+3))~~ (4) An offender who is not convicted of a violent offense
16 or a sex offense and is sentenced to a term involving community
17 supervision may be considered for a discharge of sentence by the
18 sentencing court prior to the completion of community supervision,
19 provided that the offender has completed at least one-half of the term
20 of community supervision and has met all other sentence requirements.

21 ~~((+4) Except as provided in subsection (5) of this section,~~) (5)
22 The discharge shall have the effect of restoring all civil rights lost
23 by operation of law upon conviction, and the certificate of discharge
24 shall so state. Nothing in this section prohibits the use of an
25 offender's prior record for purposes of determining sentences for later
26 offenses as provided in this chapter. Nothing in this section affects
27 or prevents use of the offender's prior conviction in a later criminal
28 prosecution either as an element of an offense or for impeachment
29 purposes. A certificate of discharge is not based on a finding of
30 rehabilitation.

31 ~~((+5))~~ (6) Unless otherwise ordered by the sentencing court, a
32 certificate of discharge shall not terminate the offender's obligation
33 to comply with an order ~~((issued under chapter 10.99 RCW))~~ that
34 excludes or prohibits the offender from having contact with a specified
35 person or coming within a set distance of any specified location that
36 was contained in the judgment and sentence. An offender who violates
37 such an order after a certificate of discharge has been issued shall be

1 subject to prosecution according to the chapter under which the order
2 was originally issued.

3 ~~((6))~~ (7) Upon release from custody, the offender may apply to
4 the department for counseling and help in adjusting to the community.
5 This voluntary help may be provided for up to one year following the
6 release from custody.

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

9 (1)(a) Whenever an order is granted under this chapter, chapter
10 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a
11 valid foreign protection order as defined in RCW 26.52.020, and the
12 respondent or person to be restrained knows of the order, a violation
13 of any of the following provisions of the order is a gross misdemeanor,
14 except as provided in subsections (4) and (5) of this section:

15 (i) The restraint provisions prohibiting acts or threats of
16 violence against, or stalking of, a protected party, or restraint
17 provisions prohibiting contact with a protected party;

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

20 (iii) A provision prohibiting a person from knowingly coming
21 within, or knowingly remaining within, a specified distance of a
22 location; or

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

25 (b) Upon conviction, and in addition to any other penalties
26 provided by law, the court may require that the respondent submit to
27 electronic monitoring. The court shall specify who shall provide the
28 electronic monitoring services, and the terms under which the
29 monitoring shall be performed. The order also may include a
30 requirement that the respondent pay the costs of the monitoring. The
31 court shall consider the ability of the convicted person to pay for
32 electronic monitoring.

33 (2) A peace officer shall arrest without a warrant and take into
34 custody a person whom the peace officer has probable cause to believe
35 has violated an order issued under this chapter, chapter 7.90, 9.94A,
36 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection
37 order as defined in RCW 26.52.020, that restrains the person or

1 excludes the person from a residence, workplace, school, or day care,
2 or prohibits the person from knowingly coming within, or knowingly
3 remaining within, a specified distance of a location, if the person
4 restrained knows of the order. Presence of the order in the law
5 enforcement computer-based criminal intelligence information system is
6 not the only means of establishing knowledge of the order.

7 (3) A violation of an order issued under this chapter, chapter
8 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid
9 foreign protection order as defined in RCW 26.52.020, shall also
10 constitute contempt of court, and is subject to the penalties
11 prescribed by law.

12 (4) Any assault that is a violation of an order issued under this
13 chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW,
14 or of a valid foreign protection order as defined in RCW 26.52.020, and
15 that does not amount to assault in the first or second degree under RCW
16 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in
17 violation of such an order that is reckless and creates a substantial
18 risk of death or serious physical injury to another person is a class
19 C felony.

20 (5) A violation of a court order issued under this chapter, chapter
21 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid
22 foreign protection order as defined in RCW 26.52.020, is a class C
23 felony if the offender has at least two previous convictions for
24 violating the provisions of an order issued under this chapter, chapter
25 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid
26 foreign protection order as defined in RCW 26.52.020. The previous
27 convictions may involve the same victim or other victims specifically
28 protected by the orders the offender violated.

29 (6) Upon the filing of an affidavit by the petitioner or any peace
30 officer alleging that the respondent has violated an order granted
31 under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or
32 74.34 RCW, or a valid foreign protection order as defined in RCW
33 26.52.020, the court may issue an order to the respondent, requiring
34 the respondent to appear and show cause within fourteen days why the
35 respondent should not be found in contempt of court and punished
36 accordingly. The hearing may be held in the court of any county or
37 municipality in which the petitioner or respondent temporarily or
38 permanently resides at the time of the alleged violation.

1 ***NEW SECTION. Sec. 4. This act is necessary for the immediate**
2 **preservation of the public peace, health, or safety, or support of the**
3 **state government and its existing public institutions, and takes effect**
4 **immediately.**

**Sec. 4 was vetoed. See message at end of chapter.*

Passed by the House April 16, 2009.

Passed by the Senate April 13, 2009.

Approved by the Governor April 30, 2009, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 1, 2009.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 4,
Engrossed Substitute House Bill 1002 entitled:

"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."

Section 4 contains an emergency clause. An emergency clause is to be
used where it is necessary for the immediate preservation of the
public peace, health or safety or whenever it is essential for the
support of state government. I do not believe an emergency clause is
needed to implement this legislation.

For this reason, I have vetoed Section 4 of Engrossed Substitute House
Bill 1002.

With the exception of Section 4, Engrossed Substitute House Bill 1002
is approved."