

ESHB 1002 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 04/13/2009

1 Strike everything after the enacting clause and insert the
2 following:

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

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

13 (1)(a) When an offender has completed all requirements of the
14 sentence, including any and all legal financial obligations, and while
15 under the custody and supervision of the department, the secretary or
16 the secretary's designee shall notify the sentencing court, which shall
17 discharge the offender and provide the offender with a certificate of
18 discharge by issuing the certificate to the offender in person or by
19 mailing the certificate to the offender's last known address.

20 (b)(i) When an offender has reached the end of his or her
21 supervision with the department and has completed all the requirements
22 of the sentence except his or her legal financial obligations, the
23 secretary's designee shall provide the county clerk with a notice that
24 the offender has completed all nonfinancial requirements of the
25 sentence.

26 (ii) When the department has provided the county clerk with notice
27 that an offender has completed all the requirements of the sentence and
28 the offender subsequently satisfies all legal financial obligations
29 under the sentence, the county clerk shall notify the sentencing court,

1 including the notice from the department, which shall discharge the
2 offender and provide the offender with a certificate of discharge by
3 issuing the certificate to the offender in person or by mailing the
4 certificate to the offender's last known address.

5 (c) When an offender who is subject to requirements of the sentence
6 in addition to the payment of legal financial obligations either is not
7 subject to supervision by the department or does not complete the
8 requirements while under supervision of the department, it is the
9 offender's responsibility to provide the court with verification of the
10 completion of the sentence conditions other than the payment of legal
11 financial obligations. When the offender satisfies all legal financial
12 obligations under the sentence, the county clerk shall notify the
13 sentencing court that the legal financial obligations have been
14 satisfied. When the court has received both notification from the
15 clerk and adequate verification from the offender that the sentence
16 requirements have been completed, the court 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 (2)(a) For purposes of this subsection (2), a no-contact order is
21 not a requirement of the offender's sentence. An offender who has
22 completed all requirements of the sentence, including any and all legal
23 financial obligations, is eligible for a certificate of discharge even
24 if the offender has an existing no-contact order that excludes or
25 prohibits the offender from having contact with a specified person or
26 business or coming within a set distance of any specified location.

27 (b) In the case of an eligible offender who has a no-contact order
28 as part of the judgment and sentence, the offender may petition the
29 court to issue a certificate of discharge and a separate no-contact
30 order by filing a petition in the sentencing court and paying the
31 appropriate filing fee associated with the petition for the separate
32 no-contact order. This filing fee does not apply to an offender
33 seeking a certificate of discharge when the offender has a no-contact
34 order separate from the judgment and sentence.

35 (i)(A) The court shall issue a certificate of discharge and a
36 separate no-contact order under this subsection (2) if the court
37 determines that the offender has completed all requirements of the
38 sentence, including all legal financial obligations. The court shall

1 reissue the no-contact order separately under a new civil cause number
2 for the remaining term and under the same conditions as contained in
3 the judgment and sentence.

4 (B) The clerk of the court shall send a copy of the new no-contact
5 order to the individuals protected by the no-contact order, along with
6 an explanation of the reason for the change, if there is an address
7 available in the court file. If no address is available, the clerk of
8 the court shall forward a copy of the order to the prosecutor, who
9 shall send a copy of the no-contact order with an explanation of the
10 reason for the change to the last known address of the protected
11 individuals.

12 (ii) Whenever an order under this subsection (2) is issued, the
13 clerk of the court shall forward a copy of the order to the appropriate
14 law enforcement agency specified in the order on or before the next
15 judicial day. The clerk shall also include a cover sheet that
16 indicates the case number of the judgment and sentence that has been
17 discharged. Upon receipt of the copy of the order and cover sheet, the
18 law enforcement agency shall enter the order into any computer-based
19 criminal intelligence information system available in this state used
20 by law enforcement agencies to list outstanding warrants. The order
21 shall remain in this system until it expires. The new order, and case
22 number of the discharged judgment and sentence, shall be linked in the
23 criminal intelligence information system for purposes of enforcing the
24 no-contact order.

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

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

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

37 ((+3)) (4) An offender who is not convicted of a violent offense
38 or a sex offense and is sentenced to a term involving community

1 supervision may be considered for a discharge of sentence by the
2 sentencing court prior to the completion of community supervision,
3 provided that the offender has completed at least one-half of the term
4 of community supervision and has met all other sentence requirements.

5 ~~((4) Except as provided in subsection (5) of this section,))~~ (5)
6 The discharge shall have the effect of restoring all civil rights lost
7 by operation of law upon conviction, and the certificate of discharge
8 shall so state. Nothing in this section prohibits the use of an
9 offender's prior record for purposes of determining sentences for later
10 offenses as provided in this chapter. Nothing in this section affects
11 or prevents use of the offender's prior conviction in a later criminal
12 prosecution either as an element of an offense or for impeachment
13 purposes. A certificate of discharge is not based on a finding of
14 rehabilitation.

15 ~~((5))~~ (6) Unless otherwise ordered by the sentencing court, a
16 certificate of discharge shall not terminate the offender's obligation
17 to comply with an order ~~((issued under chapter 10.99 RCW))~~ that
18 excludes or prohibits the offender from having contact with a specified
19 person or coming within a set distance of any specified location that
20 was contained in the judgment and sentence. An offender who violates
21 such an order after a certificate of discharge has been issued shall be
22 subject to prosecution according to the chapter under which the order
23 was originally issued.

24 ~~((6))~~ (7) Upon release from custody, the offender may apply to
25 the department for counseling and help in adjusting to the community.
26 This voluntary help may be provided for up to one year following the
27 release from custody.

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

30 (1)(a) Whenever an order is granted under this chapter, chapter
31 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a
32 valid foreign protection order as defined in RCW 26.52.020, and the
33 respondent or person to be restrained knows of the order, a violation
34 of any of the following provisions of the order is a gross misdemeanor,
35 except as provided in subsections (4) and (5) of this section:

36 (i) The restraint provisions prohibiting acts or threats of

1 violence against, or stalking of, a protected party, or restraint
2 provisions prohibiting contact with a protected party;

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

5 (iii) A provision prohibiting a person from knowingly coming
6 within, or knowingly remaining within, a specified distance of a
7 location; or

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

10 (b) Upon conviction, and in addition to any other penalties
11 provided by law, the court may require that the respondent submit to
12 electronic monitoring. The court shall specify who shall provide the
13 electronic monitoring services, and the terms under which the
14 monitoring shall be performed. The order also may include a
15 requirement that the respondent pay the costs of the monitoring. The
16 court shall consider the ability of the convicted person to pay for
17 electronic monitoring.

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

29 (3) A violation of an order issued under this chapter, chapter
30 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid
31 foreign protection order as defined in RCW 26.52.020, shall also
32 constitute contempt of court, and is subject to the penalties
33 prescribed by law.

34 (4) Any assault that is a violation of an order issued under this
35 chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW,
36 or of a valid foreign protection order as defined in RCW 26.52.020, and
37 that does not amount to assault in the first or second degree under RCW
38 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in

1 violation of such an order that is reckless and creates a substantial
2 risk of death or serious physical injury to another person is a class
3 C felony.

4 (5) A violation of a court order issued under this chapter, chapter
5 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid
6 foreign protection order as defined in RCW 26.52.020, is a class C
7 felony if the offender has at least two previous convictions for
8 violating the provisions of an order issued under this chapter, chapter
9 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid
10 foreign protection order as defined in RCW 26.52.020. The previous
11 convictions may involve the same victim or other victims specifically
12 protected by the orders the offender violated.

13 (6) Upon the filing of an affidavit by the petitioner or any peace
14 officer alleging that the respondent has violated an order granted
15 under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or
16 74.34 RCW, or a valid foreign protection order as defined in RCW
17 26.52.020, the court may issue an order to the respondent, requiring
18 the respondent to appear and show cause within fourteen days why the
19 respondent should not be found in contempt of court and punished
20 accordingly. The hearing may be held in the court of any county or
21 municipality in which the petitioner or respondent temporarily or
22 permanently resides at the time of the alleged violation.

23 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 immediately."

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27 On page 1, line 4 of the title, after "location;" strike the
28 remainder of the title and insert "amending RCW 9.94A.637 and
29 26.50.110; creating a new section; and declaring an emergency."

EFFECT: Includes as part of the underlying bill, language to ensure that a party protected under a no-contact order is notified of the change from the original contact order and number to the new contact order and number.

Adds an emergency clause which was part of the companion bill in the senate.

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