

SENATE BILL REPORT

ESHB 1002

As Reported by Senate Committee On:
Human Services & Corrections, March 17, 2009

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

Committee Activity: Human Services & Corrections: 3/13/09, 3/17/09 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Jennifer Strus (786-7316)

Background: A criminal sentence may include a term of incarceration; a term of supervision in the community (community custody); an obligation to pay legal financial obligations; or a combination of incarceration, community custody, and legal financial obligations. When an offender has completed all the requirements of that offender's sentence, including the payment of any and all legal financial obligations, the offender may obtain a certificate of discharge.

A certificate of discharge has the effect of restoring all civil rights lost by operation of law, except the right to bear arms, as the result of conviction. Among the civil rights restored include the right to vote, serve on a jury, and hold public office. The certificate of discharge also terminates the sentencing court's jurisdiction to enforce requirements of the sentence.

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.

Unless otherwise ordered by the court, a certificate of discharge does not terminate the offender's obligation to comply with an order that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence.

Summary of Bill (Recommended Amendments): 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 that offender's 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 must 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.

The clerk of the court must send a copy of the new no contact order to the individuals protected in the no contact order. If no address is available, the clerk must forward a copy of the new no contact order to the prosecutor who must send a copy of the new order, along with an explanation of why a new no contact order was issued, to the last known address of the protected individuals.

When a no contact order is issued, the clerk of the court must forward a copy of the order to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency must enter the order into any computer-based criminal intelligence information system available and used by law enforcement agencies to list outstanding warrants. The new no contact order and the case number of the discharged judgment and sentence must be linked in the computer system for purposes of enforcing the order.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Adds language to ensure that a party protected under a no contact order has notice that a new order was issued. Also the new order must be listed on a criminal intelligence computer system used by law enforcement for outstanding warrants.

Adds an emergency clause.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: This bill will assist offenders to have their civil rights restored while also protecting the subjects of the no contact orders.

OTHER: There are concerns about how the civil no contact order will work. Under the current language, it is not clear that the protected person will receive notice of the new no contact order or the method by which that person can enforce it. No contact orders are generally entered into data systems so that law enforcement knows when a no contact order exists for enforcement purposes. It is not clear in this bill how that would work under the circumstances presented in the bill.

Persons Testifying: PRO: Gavin Thukinton, Columbia Legal Services; Bob Cooper, Mark Muenster, Washington Defender's Association and Washington Association of Criminal Defense Attorneys.

OTHER: Grace Huang, Washington Coalition Against Domestic Violence.