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## Civil Rights & Judiciary Committee

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### HB 1426

**Brief Description:** Creating a civil protection order to prevent impaired driving.

**Sponsors:** Representatives Davis, Jacobsen, Walen, Griffey, Fitzgibbon, Berg, Ryu, Duerr, Goodman, Doglio, Salahuddin, Fosse and Leavitt.

#### Brief Summary of Bill

- Creates a new type of a civil protection order called an Impaired Driving Protection Order (IDPO).
- Specifies the requirements for IDPO petitions and hearings, standards for issuing a temporary or full IDPO, types of relief available, and procedures for modifying and terminating an IDPO.

**Hearing Date:** 1/28/25

**Staff:** Yelena Baker (786-7301).

#### Background:

Washington law allows residents to petition a court to seek protection from harmful or threatening behavior via several types of civil protection orders. Protection orders are available for persons subjected to domestic violence, sexual assault, stalking, harassment, and vulnerable adult abuse. In addition to protection orders that allow a court to protect a particular individual, there exists an extreme risk protection order (ERPO), which allows a court to prohibit a person from possessing, purchasing, accessing, or receiving a firearm if the person poses a significant risk of harm to self or others by having firearms.

State law specifies who may petition for a protection order and when a person may file a petition on behalf of another person, such as a minor or vulnerable adult. In most cases, electronic

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service of process is permitted, but personal service by law enforcement is required for ERPOs and certain other cases.

With respect to all protection orders, a court may issue a temporary protection order or a full protection order. Temporary protection orders are orders that are issued before the court has decided whether to issue a full protection order and may be issued without prior notice to the respondent. Full protection orders are orders issued after notice has been provided to the respondent, and the parties have had the opportunity for a full hearing before the court, or the parties have agreed to resolve the petition without a hearing. The standard for issuing each type of a protection order and mechanisms for renewing, modifying, or terminating orders are specified by statute.

When entering a protection order, the court may grant broad relief to protect the petitioner, including entering relief to restrain a person from having contact with or threatening another person or to exclude the person from certain locations or coming within a specified distance of certain locations, among many other forms of relief. When entering an ERPO, the court must order the respondent to surrender to the local law enforcement all firearms in the respondent's custody or possession, and any concealed pistol license issued to the respondent. If a full ERPO is entered, the court must direct law enforcement to revoke any concealed pistol license issued to the respondent.

Generally, a violation of the restraint provisions and certain other provisions of a protection order is a gross misdemeanor offense. A violation of some orders is a class C felony if the person violating the order has two prior convictions for violations of a similar order or if the violation involved an assault or reckless endangerment. A person who violates an ERPO is guilty of a gross misdemeanor and is additionally prohibited from having a firearm for a period of five years from the date the existing ERPO expires.

### **Summary of Bill:**

A new type of a civil protection order called an Impaired Driving Protection Order (IDPO) is created, and the requirements for IDPO petitions and hearings, standards for issuing, modifying, and terminating IDPOs, and remedies and enforcement provisions are specified.

#### Impaired Driving Protection Order Petitions.

A petition for an IDPO may be filed by the intimate partner or family member of the respondent, a law enforcement agency, a prosecutor, or an interested person, as that term is defined in the bill.

The petition must allege that the respondent poses a significant danger of causing personal injury to self or others by driving or having physical control of a motor vehicle while under the influence of intoxicating liquor. The petition must include any information known to the petitioner regarding the respondent's history of driving or having physical control of a motor vehicle while under the influence of intoxicating liquor and identify any information the

petitioner is able to provide about vehicles driven by the respondent.

#### Hearing on an Impaired Driving Protection Order Petition.

In a hearing on an IDPO petition, the court may examine under oath or consider sworn declarations of the petitioner, the respondent, and any witnesses, and ensure that a reasonable search has been conducted for the respondent's criminal history records and civil protection order history.

In determining whether grounds for an IDPO exist, the court may consider any relevant evidence, including corroborated evidence of alcohol misuse by the respondent, corroborated evidence that the respondent has driven or had physical control of a motor vehicle while under the influence of intoxicating liquor, and the history of the respondent's prior arrest, deferred prosecution, or conviction for a violation of an offense involving alcohol.

#### Temporary Impaired Driving Protection Orders.

With or without a hearing, the court may issue an ex parte temporary IDPO, pending a full hearing, if:

- it appears from the petition and any additional evidence that the respondent has engaged in conduct that serves as a basis for an IDPO; and
- the petitioner alleges that serious immediate harm or irreparable injury could result if an IDPO is not issued immediately without prior notice to the respondent.

When entering a temporary IDPO, the court may grant broad relief, including the forms of relief available under a full IDPO. However, the court may not order a form of relief that would not be feasible or appropriate for the respondent to comply with before a full hearing.

If a temporary IDPO is denied, the court must set a full hearing on the petition within specified timelines, unless the court determines the petition does not contain prima facie allegations to support the issuance of an IDPO. If the court declines to issue a temporary IDPO or to set a hearing, the court must state the reasons in writing.

#### Full Impaired Driving Protection Orders.

The court may not issue a full IDPO unless the respondent has been provided with notice and the opportunity for a hearing. A full IDPO must include a statement of the grounds supporting the issuance of the order.

The court must issue an IDPO if the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by driving or having physical control of a motor vehicle while under the influence of intoxicating liquor.

In issuing the full IDPO, the court may grant relief for at least one year, unless the petitioner specifically requested relief for a shorter period of time. The court may also enter a permanent IDPO.

### Relief under Impaired Driving Protection Orders.

The court has broad discretion to grant the relief the court deems proper and may order the respondent to:

- have a functioning ignition interlock device (IID) installed on all motor vehicles operated by the respondent;
- submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system;
- comply with the 24/7 sobriety program;
- refrain from consuming any alcohol; or
- obtain a substance use disorder evaluation and comply with the treatment recommendations.

If the court imposes the IID restriction on the respondent as part of the IDPO, the court must immediately notify the Department of Licensing (DOL) of the restriction. The DOL must attach or imprint a notation on the respondent's driving record, stating that the respondent may operate only a motor vehicle equipped with a functioning IID.

### Renewal of Impaired Driving Protection Orders.

At least 105 days before an IDPO expires, the court must notify the petitioner of the impending expiration, and the petitioner may request a renewal of the IDPO within 90 days before the expiration.

If after notice the respondent does not contest the renewal motion and the petitioner does not seek to modify the IDPO, the IDPO may be renewed on the basis of the petitioner's motion and state of the reason for renewal.

In determining whether to renew an IDPO, the court must consider all relevant evidence presented by the petitioner and follow the IDPO hearing procedures. The court must renew an IDPO if the court finds by a preponderance of the evidence that the requirements for the issuance of the IDPO continue to be met.

A renewed IDPO has a duration of one year, subject to termination or further renewal.

### Modification and Termination of Impaired Driving Protection Orders.

For every 12-month period that an IDPO is in effect, the respondent may submit one written request for a hearing to modify or terminate the IDPO.

The court shall modify or terminate an IDPO if the court finds that the respondent met his or her burden of proving by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent no longer poses a significant danger of causing personal injury to self or others by driving or having physical control of a vehicle while under the influence of intoxicating liquor.

In determining whether there has been a substantial change in circumstances, the court may consider any relevant evidence, including evidence that the respondent:

- complied with the IID restrictions and never attempted to start a vehicle with a breath alcohol concentration at levels that exceed the specific alcohol set point established by the IDPO;
- complied with the 24/7 sobriety program monitoring; and
- completed a substance use disorder evaluation and any recommended treatment.

If the court authorizes removal of an IID restriction, the court must immediately notify the DOL, and the DOL must release any attachment, imprint, or notation on such person's driving record relating to the IID restriction.

#### Violations and Enforcement of Impaired Driving Protection Orders.

The clerk of the court must forward a copy of an IDPO to the law enforcement agency specified in the order, and the agency must enter the order into a computer-based criminal intelligence information system used by law enforcement agencies to list outstanding warrants. Entry into the system constitutes notice to all law enforcement agencies of the existence of the IDPO, and the order is fully enforceable in any county in the state.

A person with knowledge that he or she is subject to an IDPO and who drives or has physical control of a vehicle while out of compliance with any requirement of the IDPO is guilty of a gross misdemeanor. The sentencing court must consider extending the provisions of the existing IDPO for five years from the date the existing order expires.

Any person who files an IDPO petition knowing the information in the petition to be materially false or with the intent to harass the respondent is guilty of a gross misdemeanor.

#### Impaired Driving Protection Order Training for Peace Officers.

The Criminal Justice Training Commission must develop training for law enforcement personnel regarding IDPO orders.

The training must be provided to all new and current peace officers within the specified timelines and must include information on the appropriate use of IDPO orders by a law enforcement agency to prevent alcohol-impaired driving and the relief available under an IDPO. The training must also include information regarding the circumstances in which a peace officer may conduct a lawful motor vehicle stop based exclusively or primarily on a third-party report that a driver is driving the vehicle or has physical control of the vehicle while under the influence of intoxicating liquor.

#### Miscellaneous Provisions.

Conforming revisions are made to state law regarding ignition interlock devices and the 24/7 sobriety program to include references to the newly created IDPO.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill contains multiple effective dates. Please see the bill.