

HB 1449: Coercive control

The Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA) are opposed to HB 1449, which creates a new crime called coercive control.

This bill is a laudable first step toward addressing a significant social problem. However, the proposed legislation is seriously flawed from a due process point of view. The language contains a number of vague or undefined terms. Perhaps the most important term that goes undefined is what constitutes “forcible compulsion”. While there is such a term defined in the rape statutes, this bill does not attempt to import that definition.

Other important terms are undefined, as well, leaving huge holes to be filled with the interpretations of law enforcement and prosecutors. The bill does not define how many instances of control constitute a “course of conduct.” Is it two, three, or more? Is there a temporal connection required? Does each instance have to be proven beyond a reasonable doubt? What is the *mens rea*, or intent requirement? The bill does not define one, and liability seems to be mostly premised on the state of mind of the complainant. The bill does not set out a “reasonable person” standard instead of the potentially subjective reaction of the complaining witness.

How much of a limitation or restriction is required for there to be liability? Contrast, for example, the unlawful imprisonment statute, which requires a substantial interference with a person’s liberty or freedom of movement.

Section 2’s discussion of “consent” is also somewhat problematic, in that the alleged perpetrator might not be expected to know if apparent consent is in some way being coerced. Again, the lack of an intent element or *mens rea* requirement would render the bill subject to challenges under the due process clause of the state or federal constitution.

The offending behaviors in the statute are so broad as to be weaponized against members or marginalized communities and to criminalize conduct which is not actually dangerous.

The committee should not pass this bill without substantial revisions to make it less susceptible to constitutional challenges, so that there is fair warning about what conduct is prohibited, and reasonable knowledge that the new law will make Washington state residents safer.

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