

ESSB 5628: Concerning cyber harassment, addressing concerns in the case of Rynearson v. Ferguson, and adding a crime of cyberstalking.

The Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association have concerns with ESB 5628.

We believe the language adding an element to cyber harassment for causing distress or fear for safety brings it in line with standard for criminal harassment, which we support.

However, we have concerns with the following provisions:

- We oppose the proposal to create a felony-level crime, both in the case of criminal justice participants and election officials.
- We oppose the proposal to create a felony of cyber harassment in violation of protection order. We are concerned that prosecutors could weaponize the statute to charge an ordinary first-offense violation of a no-contact order as a felony simply because it was done via text, messaging app, or other social media applications – covering a majority of modern forms of communication.
- The provision that creates a crime out of sending “anonymous or repeated” electronic communication violates the first amendment, and there is nothing in the legislation specifying that content be specifically inappropriate.
- The consent provision in the cyberstalking provision creates a gray area for situations where devices on the same account may have built-in applications that allow you to track other devices. It is unclear if this would be considered without consent if the other person was unaware or ignorant of the capability and it was never discussed.

For more information, contact:

Neil Beaver: (509) 979-9550 or neil.beaver@gmail.com.