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133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Primary and Secondary Education

Primary Sponsor: Rep. Greenspan

Local Impact Statement Procedure Required: No

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Highlights

- The bill may minimally increase the administrative costs of school districts and other public schools to update and then carry out policies and procedures regarding harassment, intimidation, or bullying.
- The bill's changes to the criminal offense of hazing may have a minimal net annual fiscal effect on local criminal and juvenile justice systems. A relatively small number of new cases requiring adjudication may arise or shift subject matter jurisdictions. The result may be a small increase or decrease in the annual operating costs and revenues generated by these systems.
- The bill's penalty enhancements for hazing may result in a small number of additional offenders sentenced to a state prison or juvenile correctional facility. The fiscal effect would be no more than a minimal annual increase in the GRF institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services.

Detailed Analysis

The bill changes the laws governing school disciplinary policies and procedures with respect to harassment, intimidation, and bullying (hereafter referred to as simply "bullying") at public schools and colleges. It also enhances the criminal penalties for a hazing violation. The fiscal implications of these provisions are discussed below.

District policies regarding bullying

The bill may minimally increase the administrative costs of school districts and other public schools to update and then carry out policies and procedures regarding bullying. Current law requires that districts and schools establish policies that prohibit bullying of other students and specify procedures for school personnel in reporting, documenting, responding to, and

investigating incidents, including disciplinary procedures for any student guilty of that behavior. The bill requires districts and schools to update these policies to be evidenced-based or evidenced-informed and to also:

- Require the district to take a disciplinary action against a student who commits such an offense;
- Prohibit bullying of school administrators, employees, faculty members, teachers, consultants, or volunteers and hazing;
- Require maintenance of a record for each incident under the policy verifying that the custodial parent or guardian was notified of an incident;
- Include a disciplinary procedure for any student guilty of retaliation against a student, administrator, employee, faculty member, teacher, consultant, or volunteer of the district or school who reports an incident of bullying;
- Require school boards to review the policy at least once every three years, updating it as necessary based on the review; and
- Limit application of these policies to students in grades 4-12.

While the adoption of a policy on disciplinary actions is mandatory, the punishment generally is up to the discretion of the district, in accordance with current law on school disciplinary authority. The bill authorizes any of the following penalties, as deemed appropriate: (1) detention for up to the equivalent of ten school days, (2) in-school suspension for up to ten school days, (3) out-of-school suspension for up to ten school days, or (4) an alternative form of discipline aligned with guidelines adopted by the district board of education, provided these guidelines meet certain criteria.

In general, current law permits districts and schools to suspend students from school for up to ten school days and, subject to certain exceptions, expel students for up to 80 school days for violations of the district's or school's code of conduct. There may be some additional incidents and corresponding disciplinary actions due to the bill's expanded definition of bullying, though districts presumably already discipline such behavior in one form or another. Some district policies LBO reviewed currently prohibit bullying against both students and school personnel.

School responsibilities and optional activities

During a student's detention or suspension for bullying, the bill requires a district or school to (1) permit the student to complete all missed school work (the district or school may, but is not required to, offer tutoring and academic support to the student for this purpose), (2) permit the student to take any required state assessments in the student's regular school setting, and (3) prohibit the student from participating in any extracurricular activities. Item (1) above may increase teacher workload to prepare lessons or materials for a student to complete while suspended. The bill also requires districts and schools, when issuing detentions for bullying, to adhere to due process procedures that are similar to those applicable to suspensions and expulsions, including notification and appeals processes. These provisions are unlikely to have more than a minimal fiscal effect, however, as school districts usually suspend

students for verified bullying incidents rather than issue detentions, according to the Buckeye Association of School Administrators (BASA).

The bill permits, but does not require, districts and schools to offer or coordinate counseling or intervention services and offer tutoring and academic support for both the offender and for the victim of the offense. Also, students subject to detention or suspension under the bill may be required to complete community service according to an age-appropriate plan developed by the student's district or school or other additional measures deemed appropriate by the district board or school governing authority. Districts and schools may incur additional costs if they opt to implement these services. Ultimately, the costs of any of these optional supports or community service plans will depend on the details of the arrangements.

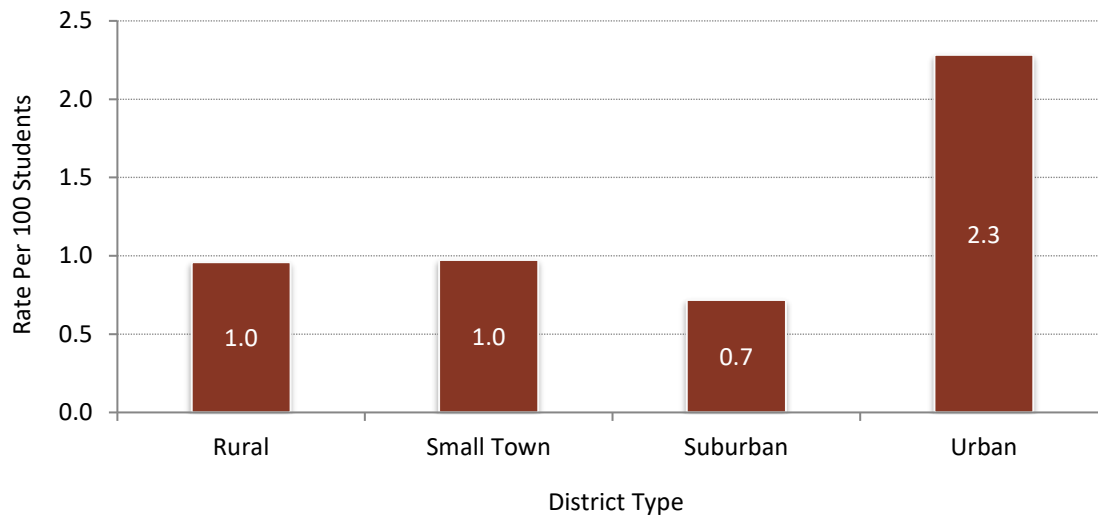
Background on discipline for bullying

As a point of reference, school districts and other public schools reported a statewide total of 20,831 occurrences of discipline for harassment or intimidation for the 2018-2019 school year to the Ohio Department of Education (ODE). Table 1 below displays the number and percentage of the various disciplinary actions for harassment or intimidation that year.

Table 1. Discipline Imposed by Districts and Schools for Harassment or Intimidation, 2018-2019 School Year		
Discipline Imposed	Occurrences	Percentage
Out-of-school suspension	13,699	65.8%
In-school suspension	4,632	22.2%
In-school alternative discipline	1,371	6.6%
Emergency or other removal	852	4.1%
Expulsion	277	1.3%
Total	20,831	100%

As shown in the table, districts and schools primarily impose out-of-school suspensions for students disciplined for harassment or intimidation. In general, the frequency of the problem varies across the state. See the chart below, which illustrates, by district type, the average rate per 100 students of disciplinary occurrences due to harassment or intimidation for FY 2019. Urban districts tended to have the highest rates of discipline, averaging 2.3 occurrences per 100 students, while other district types averaged between 0.7 and 1.0 occurrences per 100 students.

Average Rate Per 100 Students of Disciplinary Occurrences Due to Harassment or Intimidation by District Type, FY 2019



State Board of Education model policy and best practices

Under continuing law, the State Board of Education must develop a model policy to prohibit harassment, intimidation, or bullying in order to assist school districts in developing their own policies.¹ The bill may increase the administrative costs of ODE by also requiring the Department to provide each school district with evidence-based best practices regarding policies to prohibit that behavior. The bill requires the State Board to review the model policy and ODE to review the best practices at least once every four years and update them as necessary based on the reviews.

State institutions of higher education

The bill requires state institutions of higher education to adopt a policy regarding bullying and hazing. The policy must include penalties for such behavior, including sanctions, fines, the withholding of a diploma or transcript, probation, suspension, and expulsion. It appears that most state institutions have policies in place that are similar to the policy required in the bill. Those state institutions of higher education that have not adopted a policy that meets the bill's requirements may incur some administrative costs to implement and enforce such a policy.

Criminal penalty for hazing

The bill modifies the definition of hazing and enhances the criminal penalty for those that commit this offense. Under current law, hazing is any act of *initiation* into any student or other organization that creates substantial risk of causing mental or physical harm to any person, including coercing another, including the victim, to do any such act. The bill broadens the definition of hazing to include any act to *continue or reinstate* membership in or affiliation

¹The State Board's model policy is available online at https://saferschools.ohio.gov/content/anti_harassment_intimidation_and_bullying_model_policy.

with any student or other organization that creates substantial risk of causing mental or physical harm to any person, including coercing another to consume alcohol or a drug of abuse. Current law prohibits a person from recklessly participating in the hazing of another and prohibits administrators, employees, or faculty members of public or private educational institutions from recklessly permitting the hazing of any person. In addition to modifying the definition of hazing, the bill expands the current law prohibition against recklessly permitting hazing by including in the provision teachers, consultants, alumni, and volunteers of any organization, including the educational institutions that are subject to the current law prohibitions.

The bill increases the penalty for reckless hazing from a misdemeanor of the fourth degree to a felony of the fifth degree. The bill also creates two new criminal distinctions: (1) for recklessly participating in or permitting hazing that causes serious physical harm, which would result in a stiffer penalty of a felony of the third degree, and (2) for recklessly failing to immediately report to law enforcement that a person associated with a school or organization has suffered (or faces the threat of) physical or mental harm that reasonably indicates hazing is occurring or has occurred, which would result in a misdemeanor of the fourth degree – or of the first degree if the hazing causes serious harm. Both of these distinctions also apply to parents or guardians in addition to those mentioned above, while the latter only applies to those who knew about – or had reasonable cause to suspect – a hazing incident. Table 2 below summarizes the maximum penalties available to sentencing authorities for hazing crimes under current law and the bill.

Offense	Current Law	Proposed
Recklessly participating in or recklessly permitting the hazing of another person	4th degree misdemeanor: Fine of up to \$250 Jail stay of up to 30 days	5th degree felony: Fine of up to \$2,500 Prison term of up to 1 year
Recklessly participating in or recklessly permitting hazing that causes serious physical harm (new distinction in the bill)		3rd degree felony: Fine of up to \$10,000 Prison term of up to 5 years
Recklessly failing to immediately report knowledge or reasonable cause of a hazing incident (new distinction in the bill)		4th degree misdemeanor: Fine of up to \$250 Jail stay of up to 30 days 1st degree misdemeanor (if the hazing causes serious harm): Fine of up to \$1,000 Jail stay of up to 180 days

By expanding the definition of hazing offenses, certain conduct that may be more difficult to prosecute under current law will become somewhat easier to prosecute. As a result, the bill may lead to additional cases for criminal justice systems to prosecute and adjudicate. In addition, some individuals may face more severe sanctions for hazing offenses. Since no statewide tabulation of hazing charges is readily available, it is problematic to precisely estimate the number of these cases that could be elevated from a fourth degree misdemeanor to a fifth degree felony or how many additional cases may be created in Ohio courts. For informational purposes, LBO staff reviewed charge data available from the Franklin County Municipal Court and the Montgomery County Clerk of Courts. There were no hazing charges filed in either jurisdiction from 2017 to 2019. However, an internet search reveals isolated cases of criminal hazing charges filed elsewhere in the state in recent years. Thus, it appears that the filing of hazing charges is a relatively infrequent event, making it unlikely that the bill will create many additional criminal or juvenile delinquency cases.

Local fiscal effects

The bill's penalty enhancements and the possibility of additional cases may increase the annual costs that a municipal court, court of common pleas, or county court incurs in processing cases, as it may extend the time and effort required to prosecute, defend, and adjudicate them. Some of the additional costs could be offset with additional fine revenues. Also, cases of a person recklessly participating in or permitting hazing (whether it causes serious physical harm or not) will be elevated out of the misdemeanor subject matter jurisdiction of a municipal court or a county court and into the felony subject matter jurisdiction of a county court of common pleas. Thus, elevating such cases could simultaneously: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues. Also, the new misdemeanor distinction of recklessly failing to report knowledge or reasonable cause of hazing or the threat of hazing could increase municipal criminal justice system revenues as well as expenditures. Since there are likely to be relatively few cases affected by the bill, any associated fiscal effects are likely to be minimal.

State fiscal effects

As a result of the bill's penalty changes, additional offenders could be sentenced to a state prison or juvenile correctional facility. The annual incarceration costs for the Department of Rehabilitation and Correction (DRC) are likely to be no more than minimal. This is because a relatively small increase in an existing prison population of about 45,000 does not generate a significant increase in DRC's annual GRF-funded incarceration expenditures. Although DRC's annual cost per inmate currently averages \$30,558 (\$83.72 average cost per day x 365 days),² the marginal cost of adding a relatively small number of additional offenders to that population is lower, between \$3,000 and \$4,000 per offender per year.

² Ohio Department of Rehabilitation and Correction, monthly fact sheet, September 2020, accessible online at <https://drc.ohio.gov/Portals/0/September%20fact%20sheet.pdf>.

The Department of Youth Services' (DYS) average daily population is currently 463.³ The marginal cost to add a juvenile to that population is around \$26 per day, or about \$9,400 per year. This suggests that adding a relatively small number of juveniles to that population in any given year will result in no more than a minimal increase in DYS's annual institutional care and custody costs.

A few additional felony and misdemeanor convictions stemming from the bill may generate a negligible annual amount of state court cost revenue that is collected locally and forwarded for deposit to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). State court costs for a felony total \$60, of which Fund 5DY0 and Fund 4020 each receive \$30. Such costs for a misdemeanor total \$29, of which Fund 5DY0 receives \$20 and Fund 4020 receives \$9.

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³ Ohio Department of Youth Services, monthly fact sheet, November 2020, accessible online at <https://www.dys.ohio.gov/static/About+DYS/Communications/Reports/Monthly+Fact+Sheets/DYS+Monthly+Fact+Sheet+November+2020.pdf>.