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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 126
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Criminal Justice

Primary Sponsors: Sens. Kunze and Gavarone

Local Impact Statement Procedure Required: No

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Highlights

- The bill may increase the administrative costs of state institutions of higher education to (1) update and then carry out policies regarding hazing, (2) report violations of the policy, and (3) provide students with an anti-hazing educational program and provide anti-hazing training to all staff and volunteers of organizations recognized by or operating under the sanction of the institutions.
- The bill may also increase the administrative costs of the Department of Higher Education to adopt a statewide educational plan for preventing hazing at institutions of higher education.
- 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 be filed or shift from the jurisdiction of a municipal or county court to that of a court of common pleas because of the penalty enhancements.
- A small number of additional offenders may be sentenced each year 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: (1) changes the laws governing disciplinary policies and procedures with respect to hazing at public and private institutions of higher education, and (2) enhances the criminal penalties for hazing prohibition violations.

State institutions of higher education

Anti-hazing policies and violation reporting

The bill requires each public and private institution of higher education to adopt an anti-hazing policy and publish it on its website. The policy must include rules prohibiting hazing; a method to enforce the policy; and penalties for such behavior, including fines, the withholding of a diploma or transcript, revocation of permission for an organization to operate on campus, probation, suspension, dismissal, and expulsion. It appears that most state institutions of higher education 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.

Beginning with the 2022-2023 academic year, the bill also requires each public or private institution of higher education to report all violations of its anti-hazing policy on its website. The report must include the name of any organization charged with violating the institution's anti-hazing policy or state law regarding hazing, the date and general description of the violation, any investigation and findings by the institution and any penalties imposed, and the date on which the matter was resolved. The initial report must include information on any incidents of hazing during the last five years and must be completed by January 15, 2023, and updated twice a year thereafter. State institutions of higher education may incur some administrative costs to develop and maintain the report of violations.

Hazing educational program

Additionally, public and private institutions of higher education must provide students with an in-person or online educational program on hazing, including at least one opportunity for students to complete the program during a new student orientation session. Each institution must verify each student's attendance at the program. The bill prohibits a student who does not attend the program from participating in an organization recognized by or operating under the sanction of the institution. Each institution must also provide anti-hazing training for all staff and volunteers of these organizations. State institutions of higher education may incur some costs to develop the education programs and ensure that students, staff, and volunteers have received the mandatory training. Costs will vary depending on how the educational program and training are administered. Some institutions may already offer similar hazing prevention and education programs.

Department of Higher Education model policy and training guidelines

The bill may increase the administrative costs of the Department of Higher Education by requiring the Chancellor of Higher Education to develop and disseminate a statewide educational plan for preventing hazing at public and private institutions of higher education. The plan must include a model anti-hazing policy and guidelines regarding anti-hazing education and training for all students, employees of the institution, and organizations recognized by or operating under the sanction of the institution.

Criminal penalty for hazing and hazing-related behavior

The bill modifies the definition of hazing and enhances the criminal penalty for those that commit the 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 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 misdemeanor of the second degree. The bill also creates two new criminal distinctions:

1. Recklessly participating in or permitting hazing when the hazing includes coerced consumption of alcohol or drugs of abuse that results in serious physical harm, a violation of which is a felony of the third degree; and
2. 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, a violation of which is a misdemeanor of the fourth degree, or, if the hazing causes serious harm, a misdemeanor of the first degree.

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 a hazing incident.

The table below summarizes the maximum penalties available to the sentencing court for hazing crimes under current law and the bill.

Comparison of Maximum Fines and Sentences for Hazing		
Offense	Current Law	The Bill
Recklessly participating in or recklessly permitting the hazing of another person		2nd degree misdemeanor: Fine of up to \$750 Jail stay of up to 90 days
Recklessly participating in or recklessly permitting hazing when the hazing includes coerced consumption of alcohol or drugs of abuse that results in serious physical harm (new distinction in the bill)	4th degree misdemeanor: Fine of up to \$250 Jail stay of up to 30 days	3rd degree felony: Fine of up to \$10,000 Definite prison term of 9, 12, 18, 24, 30, or 36 months
Recklessly failing to immediately report knowledge 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, certain criminal conduct that may be more difficult to prosecute under current law will likely 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 estimate the number of these cases that could be elevated from a lower level offense to a higher level misdemeanor or felony offense, or how many additional cases may be created in local trial courts.

Based on several national surveys, it appears that hazing incidents often go unreported to law enforcement authorities. In 2007, two University of Maine professors conducted a national study of hazing among nearly 11,500 college students. The survey found that 55% of college students involved in various student organizations or teams experienced hazing, but that 95% of those individuals did not report the event to campus officials.¹

In order to examine statistics focused on Ohio, LBO staff contacted the Office of Criminal Justice Services (OCJS) to obtain available data on hazing incidents from the Ohio Incident Based Reporting System (OIBRS).² In 2018, OCJS found three reported alleged criminal incidents of hazing. For 2019, there were ten incidents reported. The OIBRS data would not include incidents reported directly to a prosecutor. It should also be noted that if charges were filed for a hazing incident that resulted in the death or physical injury of a student or students, it would typically be listed as a higher level offense and multiple charges may have been filed.

Adjudication data from the Ohio Courts Network was also examined and the pattern of cases was similar to those found in OIBRS: relatively small numbers of hazing cases adjudicated statewide annually. Of those that were adjudicated, most were tied to multi-offender events in which the victim was seriously injured or died.

Local fiscal effects

The bill's penalty enhancements and the possibility of additional cases may increase the costs that a common pleas, municipal, or county court incurs in processing cases, as it may extend the time and effort required for their disposition. Some of the additional costs could be offset with additional fine revenues. In addition, some cases may shift from a lower level court (municipal or county) to that of a court of common pleas if the charges related to the hazing case rise from a misdemeanor to a felony under the bill. 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

¹ Allan, Elizabeth J. and Madden, Mary. *Hazing in View: College Students at Risk: Initial Findings from the National Study of Student Hazing*. March 2008, accessible online at https://www.stophazing.org/wp-content/uploads/2014/06/hazing_in_view_web1.pdf.

² OIBRS is a voluntary reporting program in which Ohio law enforcement agencies can submit crime statistics directly to the state and federal government. At this time, the number of law enforcement agencies submitting data to OIBRS represents approximately 80% of the population. OIBRS does not reflect final charging data or eventual sentencing, but it may provide a sense of the overall number of violations of an offense.

2. Generate additional court cost and fee, and fine revenues for counties, while causing a loss in analogous municipal court cost and fee, and fine revenues.

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

Because of the bill's penalty changes, additional offenders could be sentenced to a state prison, juvenile correctional facility, or community control sanctions. The annual incarceration/supervision 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 44,000 does not generate a significant increase in DRC's annual GRF-funded incarceration expenditures. In FY 2020, DRC's annual cost per inmate averaged \$30,558 (\$83.72 average cost per day x 365 days).³ DRC's marginal annual 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.

The Department of Youth Services' (DYS) average daily population is currently 463.⁴ The marginal cost to add a juvenile to that population is around \$33 per day, or about \$12,000 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 Rehabilitation and Correction, monthly fact sheet, February 2021, accessible online at <https://drc.ohio.gov/Portals/0/Feb%202021%20Fact%20Sheet.pdf>.

⁴ Ohio Department of Youth Services, monthly fact sheet, March 2021, accessible online at <https://www.dys.ohio.gov/static/About+DYS/Communications/Reports/Monthly+Fact+Sheets/DYS+Monthly+Fact+Sheet+March+2021.pdf>.