

Legislative Analysis



GARRET'S LAW: ANTI HAZING

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Senate Bill 783 (Substitute H-1)
Sponsor: Sen. Michelle McManus

Senate Bill 784 (Substitute H-1)
Sponsor: Sen. Nancy Cassis

House Committee: Criminal Justice
Senate Committee: Judiciary

First Analysis (4-19-04)

BRIEF SUMMARY: The bills would prohibit hazing activities at educational institutions and provide penalties.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and local units of government. The bills' impact would depend on the exact numbers of misdemeanor and felony convictions obtained under Senate Bill 783, and how the sentences for those convictions differed from sentences that might have been obtained under existing statutes, such as those proscribing assault. To the extent that the numbers or length of misdemeanor sentences for probation or jail increased, costs to local units of government would increase. To the extent that numbers or length of felony sentences increased, additional costs could be incurred by the state (for felony probation supervision or prison incarceration) or counties (for jail time). Average annual costs in the current fiscal year are reported to be about \$1,800 for felony probation supervision, and about \$28,000 for prison incarceration.

THE APPARENT PROBLEM:

A well-known study by Alfred University found that 79 percent of male and female athletes that play for a team under the auspices of the National Collegiate Athletic Association (NCAA) report being hazed in college. Five percent reported being first hazed in middle or junior high school, and 42 percent were first hazed in high school. The researchers estimated that more than 1.5 million high school students experience hazing each year.

Though long viewed as a rite of passage or horseplay among peers, hazing incidents have resulted in serious physical injuries, serious psychological injuries, suicide, and death. Recently, stories have been reported by the media of injuries incurred in hazing incidents in Illinois involving a girls' powder puff football team and in Long Island, New York with a boy's football team. In Michigan, a Ferris State University student died after participating in an unofficial fraternity hazing party that involved heavy drinking. The University of Michigan chapter of Sigma Chi was kicked off campus last fall after a

pledge suffered kidney failure from a hazing incident that included being deprived of food and water and being forced to do calisthenics. In a well-publicized case, twelve-year-old Garret Drogosch suffered a seriously broken leg and other injuries from forced participation in “eighth-grade hit day”, an annual tradition held on the last day of football practice at his Northville middle school in which the younger players stand still with arms at their sides while taking hits from the eighth-grade members of the team. Before passing out, Garret said that he heard bones cracking and the coaches laughing. Garret was hospitalized for several days, has had two operations already with more scheduled in the future, was confined to a wheelchair for two months, and has endured months of physical therapy and rehabilitation. The local police chief was recorded in media reports as not considering the incident to be “hazing” and doubting that criminal charges would be filed.

Forty-three states have some type of law prohibiting hazing, and Florida is considering legislation to toughen their anti-hazing laws by including criminal penalties in the more serious cases. Many believe that Michigan should also enact anti-hazing laws. In response to concerns raised by incidents occurring in Michigan and other states, legislation has been proposed to define hazing and create criminal penalties.

THE CONTENT OF THE BILLS:

The bills would make it a crime to engage in hazing activities at an educational institution, establish penalties, provide exceptions, and define terms. The bills would take effect 90 days after enactment.

Senate Bill 783 would amend the Michigan Penal Code (750.411t) to enact “Garret’s Law”, a new section of law that would criminalize hazing. Under the bill, it would be a crime to engage in or participate in the hazing of another. The bill would apply to a person who attended, was employed by, or was a volunteer of an educational institution.

The bill would not apply to an individual who was the subject of the hazing, regardless of whether he or she allowed himself or herself to be hazed. In addition, the bill would not apply to an activity that was normal and customary in an athletic, physical education, military training, or similar program sanctioned by the educational institution. Further, consent to or acquiescence with the hazing on the part of the victim could not be a defense to a prosecution under the bill.

Definitions. The bill would define important terms including “educational institution”, “organization”, and “pledge”. “Hazing” would be defined as an intentional, knowing, or reckless act by a person who acted alone or with others that was directed against an individual and that the person knew or should have known would endanger the physical health or safety of the individual, and that was done for the purpose of pledging, initiation into, affiliation with, participation in, holding office in, or maintaining membership in any organization. With the exception noted above for regular and common activities sanctioned by the educational institution, hazing would include:

- Physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity.
- Physical activity, such as sleep deprivation, exposure to the elements, confinement in a small space, or calisthenics that subjected the other person to an unreasonable risk of harm or that adversely affected the physical health or safety of the individual.
- Activity that involved consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance that subjected the individual to an unreasonable risk of harm or that adversely affected the physical health or safety of the individual.
- Activity that induced, caused, or required an individual to perform a duty or task that involved the commission of a crime or an act of hazing.

Penalties. If the violation resulted in physical injury, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$1,000, or both.

A violation resulting in serious impairment of a body function would be a felony punishable by up to five years imprisonment, a fine of not more than \$2,500, or both. “Serious impairment of a body function” would mean the term as defined in Section 479a of the Penal Code.

If the violation resulted in the death of the person who was hazed, it would be a felony punishable by up to 15 years imprisonment, a fine of not more than \$10,000, or both.

Senate Bill 784 would amend the Code of Criminal Procedure (777.16t) to specify that hazing resulting in serious impairment would be a Class E felony with a five-year maximum term of imprisonment and hazing resulting in death would be a Class F felony with a 15-year maximum term of imprisonment.

The bill is tie-barred to Senate Bill 784.

HOUSE COMMITTEE ACTION:

The House substitutes made the following changes to the bills.

Senate Bill 783.

- Applied the bill’s prohibitions to a person who is a volunteer of an educational institution.
- Increased the maximum imprisonment for a violation causing serious impairment of a body function from one year to five years.
- Included “participating in” in the definition of “hazing” so that actions done for the purpose of participating in any organization would also constitute hazing.
- Specified that the bill would take effect 90 days after enactment.

Senate Bill 784. The committee substitute added an effective date and specified that hazing resulting in serious impairment would be a Class E felony with a five-year maximum term of imprisonment.

ARGUMENTS:

For:

Incidents of hazing at schools and colleges appear to be on the rise and appear to be more violent than in the past. Even serious injuries and deaths have occurred in recent hazing incidents. Long considered by some to develop discipline, build character, and strengthen bonds between team and club members, hazing is a form of victimization. Actually, research by Alfred University reported that hazing is far from harmless – it is humiliating, violent, and dangerous. According to Brian Rahill, founder of a web site on hazing and himself a victim of college hazing, “Hazing is about the abuse of power and violation of human dignity.”

Some feel that existing laws, such as assault and battery statutes, should suffice in dealing with hazing at the criminal level. However, some prosecutors say that a component of an assault and battery charge – that the act is intended against the victim’s will - makes prosecution of a hazing incident difficult. Often, the victim has consented in whole or in part to the hazing. Under the bills, compliance or consent on the part of the victim would not be a factor. Instead, the bills would look at the act and the level of physical harm incurred by the victim. It is time that Michigan join the 43 other states that have enacted anti hazing-laws and treat hazing for what it is – a crime.

For:

Hazing is vastly underreported by victims. Hazing, like the crime of date rape before it, has not always been viewed seriously, even by law enforcement agencies. Perpetrators often are either not charged at all, or receive very small penalties in light of the harm to the victim. In the case of the Ferris State University student who died of alcohol poisoning after a college hazing party, one participant, who originally was charged with involuntary manslaughter (a 15-year felony), was allowed to plead guilty to furnishing alcohol to a minor causing death. Though that crime carries a maximum penalty of 10 years in prison, the man was instead sentenced to 10 months in the county jail and three years of probation. In another Michigan case involving a high school basketball player being violently beaten with a wooden coat hanger by his teammates, the police laughed when he reported the incident.

Enactment of the bills would send a strong message to law enforcement officers, court personnel, and the general public that hazing will not be tolerated and will be treated as a crime. In time, as confidence increases that violators will be prosecuted and the stigma felt by hazing victims lessens, the reporting of hazing incidents should also increase.

For:

Some of the school shootings over the last few years revealed that the shooter had either been the target of bullying or the perpetrator of assaults on other students on school property, yet these incidents had never been reported to the police and violent crimes

committed off campus by some of the school shooters had never been reported to the school authorities by the police. Many believed that greater mutual disclosure between local law enforcement agencies and schools might have identified the situations before they reached such an explosive end. To address the concern, Michigan enacted Public Act 102 of 1999, which required the superintendent of public instruction, attorney general (AG), and director of the Department of State Police (DSP) to adopt, publish, and distribute to school boards, county prosecutors, and local law enforcement agencies a statewide school safety information policy. The policy was required to identify the types of incidents occurring at schools that must be reported to law enforcement agencies and to establish procedures to be followed when such an incident occurred at a school. The legislation also allowed the policy to require law enforcement agencies to notify school administrators of crimes committed nearby the school or that involved students or staff as victims or perpetrators.

Though incidents involving physical assaults, homicide, bomb threats, robbery, and others are included on the list of incidents that require reporting to the police, hazing is not included. Apparently, this is because Michigan law does not identify hazing as a civil or criminal offense. Without being a reportable offense, it is left to the discretion of the school administrators whether or not to contact the police. Plus, if an off-campus hazing incident does come to the attention of police, it would not necessarily be reported to the schools that those involved in the incident attended. Passage of the bills may encourage the AG, superintendent of public schools, and director of the DSP to revise the policy to include hazing as a reportable offense. This is a necessary component to school and community efforts to reduce school-related violence.

For:

Senate Bill 783 appropriately extends the penalties for hazing to school employees and volunteers who encourage, require, or otherwise participate in hazing. In the Meads Mill Middle School incident where Garret Drogosch was injured, the coaches took an active part in instructing the seventh grade students “to stand with their arms by their sides and take the hits” and to “just suck it up” (“Boy Recalls Terror of Team Hazing”, The Detroit News, 3-10-04). Although the coaches were removed from their coaching positions, they are still teaching and have not incurred other penalties.

For:

Most colleges and universities have already adopted stringent anti hazing policies, which may include expulsion from the college. However, such internal disciplinary mechanisms usually mean that the proceedings are not open to public scrutiny. Indeed, a victim may not even be informed as to the punishment, if any, levied on his or her offender. By placing hazing in the criminal statutes, more incidents of hazing on college campuses should come to the attention of local law enforcement agencies; those involving physical injury could then be prosecuted under the bills.

Further, criminalizing hazing will also bring awareness that it is not an acceptable college “activity”; thus more students may be encouraged to report incidents to college authorities. Not all hazing results in physical injury, and therefore not all will be prosecutable under the bill. However, as students are encouraged to report incidents to

school authorities, the schools with anti-hazing policies will be able to investigate and levy sanctions if appropriate.

For example, last fall, a Michigan State University student who became aware that a fellow student had been victim of a hazing reported the incident to BadJocks.com. BadJocks then contacted the university. In that incident, a female freshman soccer player had, as part of an initiation ceremony, been covered with Depends (adult diapers) and had her legs spray painted with red and white paint to simulate, in the victim's words, "a giant tampon". The woman was then forced to sing the MSU fight song at the top of her lungs for an hour. BadJocks contacted the MSU athletic department and initially received a denial of the allegations. However, the director of the athletic department later released a public statement that said, "We certainly never condone any type of initiation. While there was no physical or emotional abuse, we don't find this to be acceptable behavior. This matter has been addressed swiftly and will be dealt with internally."

Against:

Senate Bill 783 is an important, first step in appropriately criminalizing hazing that results in physical injury or death. However, it is incomplete. First, it only applies to educational institutions. Yet, hazing also occurs in the workplace and among professional, community, and social organizations. In early March, a 47 year-old man was killed during an initiation ritual conducted at a Masonic Lodge in the state of New York. In that incident, the inductee was placed 20 feet from a man holding a gun and then blindfolded. Cans were placed on a platform around the man's head and the plan was that when the gun, which was supposed to contain blanks, was fired, another man would knock the cans off the platform with a stick. Reportedly, the intent was "to create a state of anxiety", according to news reports. Unfortunately, the shooter also had a loaded pistol in another pocket and got the guns mixed up. The inductee, who was shot in the face at close range, died.

This is not an isolated incident. Hank Newer, an established authority on hazing, tracks reported incidents of occupational, organizational, and educational hazing. His research reveals that the majority of reported workplace hazing incidents involve public servants such as law enforcement officers and fire fighters. In a 2000 incident, a corrections officer at a California prison was ambushed and stabbed in what appeared to be retaliation for reporting acts of hazing at the prison. Unfortunately, many cases of hazing in the workplace and in professional or social organizations go unreported and unprosecuted. Therefore, expanding the scope of the bill to include workplace hazing and hazing activities conducted in organizations outside of an educational institution would be an important step and would further send the message to society at large that hazing is an unacceptable and criminal activity – in any setting and at any age.

Against:

Researchers and lawyers specializing in hazing cases generally define hazing as including humiliating incidents and those likely to cause serious psychological injury. Indeed, the Michigan Association of School Boards, in a recommendation to local school boards, exhorted those local boards to adopt a hazing policy that included in its definition of

hazing acts meant to induce embarrassment and humiliation as well as acts that created mental discomfort. Yet, the bills would only include incidents in which the victim suffered physical harm.

In 1998, a student wrestler at Traverse City Central High School was held down by three teammates and had his face forced into the naked buttocks of a fourth wrestler. This caused feces to be smeared on the victim's face. According to news reports, the assistant coach, when told about the incident, ridiculed the victim in front of the entire class. No criminal charges were ever brought, though a civil suit was brought against the perpetrators. Though not physically injured, the young man involved suffered psychological and emotional injuries. After the assault, he moved to another town, became suicidal, and was hospitalized for trauma. ("It should not take a lawsuit for hazing to stop in school", Traverse City Record Eagle, May, 2, 2001)

More recently, a 14-year-old boy in East Lansing took his life after a hazing incident in which he was assaulted by older students and smeared with raw eggs and syrup on the last day of school. According to a Lansing State Journal article printed in fall of 2003, experts say "communities don't take seriously group hazing, which is psychologically damaging even when not physically damaging to victims."

Therefore, some recommend that the bill be amended to include as hazing acts that result in serious psychological harm. The sentencing guidelines already use, as part of the scoring variables when determining an appropriate sentence range for felony offenses, whether the victim suffered serious psychological injury requiring professional treatment. Therefore, the inclusion of psychological harm should not be an unfamiliar component in the prosecution of criminal cases.

Along the same vein, it is not clear how a case would be prosecuted, or if it would be prosecuted under the bill, if the hazing was a contributory or primary factor in the victim later taking his or her life. In the case of the 14 year-old East Lansing boy, news reports related that the police chief said that the department did consider the boy's death the result of hazing. However, since the boy's death was not linked to physical injuries that resulted from the attack, and without the inclusion of psychological harm, the incident wouldn't appear to fit the parameters of Senate Bill 783. Yet, isn't death by emotional wounds just as important to penalize as death by physical wounds?

Response:

Including incidents that do not result in physical injury but only "psychological" injury could be problematic. After all, do we want to criminally charge someone for hurting another person's feelings? And, since people respond differently on an emotional level to relatively similar events, how would a standard for evidencing harm be established? Perhaps the psychological injury aspect, which includes embarrassment and humiliation, would be better addressed at the institutional level through immediate and follow-up counseling for the victim and appropriate punishment for the perpetrators as set forth in the institution's internal anti-hazing policy.

Against:

Some believe the definition of hazing also needs to be expanded to include acts of a sexual nature. Unlike crimes typically prosecuted under the criminal sexual conduct (CSC) statutes and other sex crimes such as seduction, acts of a sexual nature that are part of hazing are not for sexual gratification, but are meant to humiliate and subjugate the victim.

Further, conviction under the CSC laws and for certain other sex crimes would trigger inclusion on the state's Sex Offender Registry (SOR). Under the Sex Offenders Registration Act, only convictions of certain listed offenses require registration as a sex offender. However, a recent attorney general advisory appears to require offenders convicted of any sex crimes involving a victim less than 18 years of age to be placed on the registry even if the crime for which they were convicted is not one of the listed offenses. According to a report in the Detroit Free Press on March 24, 2004, "the advisory was designed to bring the Department of Corrections in line with a recent Michigan Court of Appeals ruling" that said that "defendants may be listed on the registry for any crime 'that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.'"

This goes against the current movement to reduce the number of young offenders from inclusion on the registry who do not represent a threat of being a sexual predator. Since the sexual acts involved in hazing do not usually indicate that the perpetrator is a sexual predator, prosecutors may be reticent about charging them under any sex-related statutes if it means the person would have to be placed on the registry for 25 years to life. It would be unfortunate if such cases fell through the cracks and perpetrators went unpunished. Therefore, it would be more appropriate to include and to prosecute sexual assaults that are a part of a hazing incident under Garret's Law rather than trying to fit these acts into the CSC laws or other sex-related criminal offenses.

POSITIONS:

The Department of State Police supports the bills. (3-31-04)

The Association of School Counselors supports the bills. (3-31-04)

A representative of the Michigan Association of School Psychologists indicated support for the bills. (3-31-04)

The Prosecuting Attorneys Association of Michigan (PAAM) has no formal position on the bills, but supports the concept. (3-31-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.