

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2940
 SPONSOR: Senator Campbell
 SUBJECT: Hazing
 DATE: March 26, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 1006.63, F.S., to create criminal penalties for hazing. It also amends the definition of hazing and provides exceptions for customary athletic events and any activity that furthers a legal and legitimate objective. It requires a person convicted of the crime of hazing to attend a 4-hour hazing education course in addition to any other penalty, and provides that consent of the victim is not a defense. Finally, the bill provides nothing in the act is to be construed to create a civil cause of action that would not otherwise exist.

This bill substantially amends sections 1001.64 and 1006.63 of the Florida Statutes:

II. Present Situation:

Section 1006.63, F.S., includes a lengthy definition of hazing. The core of the definition is that hazing is “any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student for the purpose of initiation or admission into or affiliation with any postsecondary institution.” The definition provides a non-exclusive list of activities that constitute hazing, including a variety of actions that could affect the physical health or safety of a student or subject the student to extreme mental stress.

A Florida public or non-public postsecondary education university whose students receive state student financial assistance must have an anti-hazing policy and must adopt rules pursuant to the policy to prohibit hazing regardless of whether it occurs on or off of the campus. For individuals at community colleges or state universities, the penalties for hazing can include fines, withholding of diplomas or transcripts, and probation, suspension, or dismissal from the school. An organization that authorizes hazing in blatant disregard of the rules may lose permission to operate on campus property or under the sanction of the institution.

There is no specific criminal penalty for the act of hazing, although the actions involved in the hazing incident may constitute a crime, such as battery, for which the offender is criminally prosecuted. The principal problem for prosecuting such offenses is that the applicable crimes usually require an element that the act occur intentionally or against the will of the victim. For example, under s. 784.03(1)(a), F.S., the offense of battery occurs when a person actually and intentionally touches another “against the will of the other, or intentionally causes bodily harm to another person.” Similarly, under s. 784.011, F.S., the crime of assault requires a well-founded fear on the part of the victim that the violence threatened by word or act is imminent. Similarly, the offense of false imprisonment, under s. 787.02(1)(a), F.S., means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and “against his or her will.” All of these offenses may be difficult to prove in hazing incidents, because the defense may assert that the victim willingly participated in the criminal act.

Recently there have been several apparent hazing incidents in Florida which resulted in the serious injury or death of students. Last December, the University of Central Florida suspended the Sigma Alpha Epsilon fraternity for one year over a suspected hazing incident which involved the head-on collision of two trucks on a campus road. During the incident, which occurred in the early morning of October 16, 2003, some of the young men in one of the trucks apparently had their hands bound with duct tape. Several of the students were hurt, including one whose nose was severely cut, and alcohol was suspected to have been involved.¹

In February of this year, the Florida Agricultural and Mechanical University settled a civil suit for \$15, 000 with a student who had been hazed in 1998 while a member of the Marching 100 band. He was hospitalized and permanently injured after being paddled 300 times.²

Perhaps the most tragic recent hazing incident to receive public attention was the November 2001, drowning death of Chad Meredith, an eighteen year old freshman at the University of Miami. After several hours of drinking with two officers of a fraternity that he was interested in joining, Meredith and the officers attempted to swim across a lake near campus. Meredith, who had a blood alcohol level of 0.13, drowned within 34 feet of the shore.³ Although the fraternity contended that the incident was not a fraternity-sanctioned hazing event, a jury awarded Meredith’s family a \$12.6 million verdict in a negligence suit based on hazing.

III. Effect of Proposed Changes:

Section 1 of the bill amends the definition of hazing in s. 1006.63(1), F.S., to include “pressuring or coercing a person into violating state or federal law.” It also clarifies that hazing can be committed by an act other than those specified in the definition. In addition, it excludes “customary athletic events or other similar contest or competitions” and “any activity or conduct that furthers a legal and legitimate objective” from the definition.

¹ Damron, David “UCF Suspends Fraternity for 1 Year Over Accident the School Said it Determined Sigma Alpha Epsilon Members Were Involved in Hazing.” *Orlando Sentinel*, December 11, 2003.

² Yeager, Melanie “Settlement Reached in Hazing Complaint” *Tallahassee Democrat*, February 11, 2004.

³ Arthur, Lisa “2 Peers Sued in Death of UM Student” *Miami Herald*, February 2, 2004.

In new subsection (2) of s. 1006.63, F.S., the bill creates the third-degree felony offense of hazing. A person commits this form of hazing when he or she intentionally or recklessly orders, directs, pressures, or coerces another person who is a member of or applicant to a student organization to engage in conduct that: (1) results in the person's death or serious bodily injury; or (2) creates a substantial risk of physical injury to the person and causes such injury or death. Because this offense is not ranked in the Criminal Punishment Code's Offense Severity Ranking Chart, it is considered to be a Level 1 offense for which the minimum permissible punishment is a non-prison sanction.

Section 1006.63(3), F.S., is a new first-degree misdemeanor form of hazing that is committed when, in the course of another person's initiation into or affiliation with any organization, a person intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to the other person or a third person.

New s. 1006.63(4), F.S., provides that a court must order attendance and completion of a 4-hour hazing education course for any person who is sentenced for committing hazing. The court may also impose a condition of drug or alcohol probation.

Section 1 of the bill also creates a new s. 1006.63(5), F.S., providing that consent of the victim is not a defense to the offense of hazing. It is also not a defense if the conduct or activity that resulted in the death or injury was not part of an official organizational event or was not otherwise sanctioned or approved by the organization.

Section 2 of the bill amends s. 1001.64, F.S., to conform a cross-reference to Section 1's additions and renumbering of s. 1006.63, F.S.

Section 3 provides that the acts shall not be construed to constitute grounds for a civil cause of action that is not otherwise provided in law.

Section 4 establishes an effective date of October 1, 2004, and provides that the act applies to offenses committed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet evaluated the impact of this bill. However, staff does not anticipate that CJIC will forecast a significant impact upon prison bed space requirements.

VI. Technical Deficiencies:

“Hazing” is defined in s. 1006.63(1), F.S., but the word is not used in setting forth the elements of the new criminal offenses that are created by this bill. Therefore, it is not clear whether the courts will infer a requirement that the conduct which results in a hazing victim’s death or serious bodily injury must be one of the types of conduct described in the definition.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
