

# 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.)

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Prepared By: Education Committee

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BILL: SB 782

SPONSOR: Senator Campbell

SUBJECT: Student Hazing

DATE: March 30, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hermanson</u>	<u>O'Farrell</u>	<u>ED</u>	<b>Favorable</b>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill, entitled the Chad Meredith Act, prohibits hazing at a high school with grades 9 through 12. Hazing is defined as any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student, including but not limited to, initiation or admission into or affiliation with any organization operating under the sanction of a high school with grades 9 through 12. The bill includes specific examples of hazing, however it exempts customary athletic events or other similar contests or competitions and activity or conduct that furthers a legal and legitimate objective.

The bill also creates new criminal offenses for hazing, punishable under s. 775.082 or s. 775.083, F.S. A person commits a third-degree felony when the hazing results in a serious bodily injury or death to the other person. A person commits a first-degree misdemeanor when the hazing creates a substantial risk of physical injury or death to the other person.

As part of the sentence imposed for either the misdemeanor or felony hazing conviction, the court is required to order the defendant to attend and complete a 4-hour hazing-education course. The bill also gives the court the discretion to impose a condition of drug or alcohol probation.

The victim's consent is not a defense to hazing, nor is the claim that the conduct or activity that resulted in the death or injury of a person was not part of an official organizational event or not sanctioned by the organization, or was not done as a condition of membership to an organization.

The bill conforms the existing antihazing provisions by applying the bill's language defining and prohibiting hazing at high schools with grades 9 to 12 to postsecondary institutions.

The bill does not provide grounds for any civil cause of action except as otherwise provided by law.

The bill applies to hazing offenses committed on or after July 1, 2005.

This bill creates an unnumbered section of the Florida Statutes and substantially amends ss. 1006.63 and 1001.64 of the Florida Statutes.

## II. Present Situation:

Current law defines hazing as 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 organization operating under the sanction of a postsecondary institution.<sup>1</sup> Hazing is usually associated with initiation into a fraternal organization, club or team. Hazing incidents are usually only reported when an incident results in harm or even death to either those involved or a third party.

In 2001, University of Miami student Chad Meredith drowned attempting to swim across a lake with two officers of Kappa Sigma fraternity. It was reported that Meredith wanted to join Kappa Sigma. Although the fraternity officers claimed the incident was not a fraternity-sanctioned hazing event, a jury awarded Meredith's family a \$12.6 million verdict in a civil negligence suit.<sup>2</sup>

Also in 2001, a freshman marching band member at Florida A&M University spent five days in the hospital and underwent four surgeries after he was beaten in a hazing incident. The five fellow band members were criminally prosecuted and received sentences of one year probation.<sup>3</sup> In 2003, the Sigma Alpha Epsilon fraternity at the University of Central Florida was suspended for one year because of a hazing incident involving a head-on collision of two trucks on a campus road where some of the passengers' hands were bound by duct tape. At least one student ended up in the hospital, but no criminal charges were filed.<sup>4</sup>

While hazing is usually associated with postsecondary institution, there have been recent reports of hazing occurring in high schools. In January 2005, soccer players at an Orlando school were suspended after they dropped a 15-year old teammate on her head while trying to dunk her in a toilet.<sup>5</sup> Also in January 2005, three Deltona High School wrestlers, ages 15, 16 and 17, were suspended from school for hog-tying two teammates and burning one with a grill igniter twenty times.<sup>6</sup> The State Attorney's Office decided not to prosecute, stating that the wrestlers lacked criminal intent. The attorneys also based their decision not to prosecute on the fact that one of the victims "participated in similar activity" against the other victim, and one of the same victims provided a sworn statement to the lawyer of one of the students suspended for hazing in which

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<sup>1</sup> Section 1006.63, F.S.

<sup>2</sup> Lisa Arthur, *Two Peers Sued in Death of UM Student*, MIAMI HERALD (Feb. 2, 2004).

<sup>3</sup> Jessie-Lynne Kerr, *Ex-FAMU Student Wins Hazing Case; Jury Hands Five Charged in the Band-Related Incident a \$1.8 million punishment*, THE FLORIDA-TIMES UNION (Nov. 5, 2004).

<sup>4</sup> *UCF probes crash*, MIAMI HERALD (Oct. 24, 2003); David Damron, *UCF suspends Fraternity for 1 year over accident the school said it determined Sigma Alpha Epsilon members were involved in hazing*, Orlando Sentinel (Dec. 11, 2003).

<sup>5</sup> Kimberly Williams, *High School hazing Incidents May fuel Expanded Penalties*, PALM BEACH POST (Feb. 26, 2005).

<sup>6</sup> Stephen Hudak, *Wrestlers in Hazing Won't Be Prosecuted*, ORLANDO SENTINEL (March 10, 2005).

he described the incidents as “ordinary horsing around,” and stated that he was neither harmed nor embarrassed.

*Current law:*

Section 1006.63, F.S., defines hazing as “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 organization operating under the sanction of a postsecondary institution.” The section further provides that hazing includes, but is not limited to, “any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug or other substance, or other forced physical activity which could adversely affect the physical health or safety of the student, and also includes any activity which would subject the student to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in extreme embarrassment, or other forced activity which could adversely affect the mental health or dignity of the student.

Public and nonpublic postsecondary educational institutions whose students receive state student financial assistance are required to adopt a written antihazing policy. Under the adopted policy, the educational institution must also adopt rules prohibiting students or other persons associated with any student organization from engaging in hazing. In addition, the educational institution must provide a program for the enforcement of the adopted rules, and must also adopt appropriate penalties for violations of the rules. The antihazing policy, rules and penalties must be distributed to each student enrolled in the institution and must be included in the bylaws of every organization operating under the sanction of the institution.

The penalties at community colleges and universities may include:<sup>7</sup>

- Fines;
- Withholding of diplomas or transcripts pending compliance with the rules or payment of fines; and
- Probation, suspension or dismissal.

If an organization at a community college or state university authorizes hazing in blatant disregard for the antihazing rules, the educational institution may rescind permission for that organization to operate on campus property or to otherwise operate under the sanction of the institution. In addition, section 1006.63 specifies that all antihazing penalties are in addition to any penalty imposed for violation of any criminal laws or for violation of any other rule of the institution to which the violator may be subject.

Section 1001.64, F.S., provides that each community college board of trustees has authority for policies related to students, including student activities. The section also provides that each board must adopt a written antihazing policy, provide a program for the enforcement of such rules, and adopt appropriate penalties for violations of such rules pursuant to 1006.63(1)-(3). At present, no state of Florida laws specifically prohibit hazing in high school.

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<sup>7</sup> s. 1006.63, F.S.

Currently, there is no specific criminal offense for hazing, although the state may decide to prosecute a person under another criminal offense, including battery, assault or false imprisonment. Under s. 784.03(1)(a), battery occurs when a person actually and intentionally touches another person against the will of the other, or intentionally causes bodily harm to another person. Under s. 784.011, assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Under s. 787.02, false imprisonment means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against the person's will. Although these criminal charges can be brought against a person accused of hazing, the state can have difficulty proving the elements one of the aforementioned criminal offenses because, among other defenses, the accused might assert that the victim consented to participate in the act.

### III. Effect of Proposed Changes:

*Section 1:* provides a popular name—the “Chad Meredith Act.” This names the act for the University of Miami student who drowned in a hazing incident.

*Section 2:* This section defines “hazing” to mean any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student at a high school with grades 9 through 12 for purposes, including but not limited to, initiation or admission into or affiliation with any organization operating under the sanction of a high school with grades 9 through 12.

This section also provides that hazing includes, but is not limited to:

- Pressuring or coercing the student into violating state or federal law,
- Any brutality of a physical nature, such as whipping, beating, branding, exposure to the elements, forced consumption of any food, liquor, drug, or other substance, or other forced physical activity that could adversely affect the physical health or safety of the student, and
- Any activity that would subject the student to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct that could result in extreme embarrassment, or other forced activity that could adversely affect the mental health or dignity of the student.

In addition, this section provides that hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal or legitimate objective.

The bill also creates two criminal offenses for hazing, and defendants can be charged with either one depending upon the result of the hazing act or conduct.

*Serious bodily injury or death:* A person commits a third-degree felony, punishable as provided in s. 775.082 or s. 775.083, F.S., when the hazing results in serious bodily injury or death of such other person.

*Substantial risk of injury or death:* A person commits hazing, a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S., when the hazing creates a substantial risk of physical injury or death to such other person.

This provision also requires that the court order a person sentenced under a third-degree felony or first-degree misdemeanor hazing charge to attend and complete a 4-hour hazing-education course. In addition, the court may also impose a condition of drug or alcohol probation.

The bill further provides that it is not a defense to a charge of hazing that:

- Consent of the victim has been obtained;
- The conduct or activity that resulted in the death or injury of a person was not part of an official organizational event or was not otherwise sanctioned or approved by the organization; or
- The conduct or activity that resulted in death or injury of the person was not done as a condition of membership to an organization.

Consent of the victim cannot be raised as a defense in any hazing criminal offense. However, presumably the defense that the hazing was not part of an official organizational event or otherwise sanctioned or approved and the defense that the conduct or activity was not done as a condition of membership to an organization only apply to third-degree felony hazing charges, because death or actual injury are required elements.

*Section 3:* This provision conforms the hazing provisions applicable to high schools to postsecondary educational institutions. To do that, the bill potentially broadens the definition of hazing by adding the words “including but not limited to” to the purpose for which the action or situation occurs. The law currently states that hazing occurs for the purpose of initiation or admission into or affiliation with any organizations operating under the sanction of a postsecondary institution. The bill also removes “forced calisthenics” from the list of actions that hazing includes.

This section also adds the sentence specifying that hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal or legitimate objective. Adding the term “legitimate,” may cause ambiguity in interpretation.

*Section 4:* This section amends s. 1001.64(8)(e), F.S., by conforming the cross-reference to the amended s. 1006.63.

*Section 5:* This section states that nothing in this act shall be construed to constitute grounds for any civil cause of action that is not otherwise provided by law.

*Section 6:* This section states that the act shall take effect July 1, 2005, and shall apply 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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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