

# 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: Justice Appropriations Committee

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BILL: CS/CS/SB 782

SPONSOR: Justice Appropriations Committee, Criminal Justice Committee and Senators Campbell and Bullard

SUBJECT: Student Hazing

DATE: April 26, 2005

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

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

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## I. Summary:

The purpose of this legislation, named for Chad Meredith, a student at a Florida university who died in a hazing incident, is to expand the definition of hazing as it applies to postsecondary institutions; create language prohibiting high school hazing; and establish penalties and prohibit defenses for hazing at either level.

This committee substitute prohibits hazing at a high school for grades 9 through 12. The committee substitute further amends the current definition of hazing found in s. 1006.63, F.S., to include actions "for purposes, including, but not limited to, initiation or admission into or affiliation with any organization operating under the sanction of a postsecondary institution." The committee substitute excludes from the definition of hazing customary athletic events or other similar contests or competitions.

The committee substitute also creates new criminal offenses for hazing at the high school or college level and provides a penalty of a third degree felony or first degree misdemeanor depending on the amount of physical injury. A sentencing court is required to order the defendant to attend and complete a 4 hour hazing education course and may also impose a condition of drug or alcohol probation.

This committee substitute provides that certain general defenses to a criminal action are not applicable to the crime of hazing, particularly, the consent of the victim, whether the hazing was an approved sanctioned event, or done as a condition of membership.

Language is added to clarify that this legislation should not be construed to prevent the state attorney from prosecuting for a more general offense than hazing when those events occur in the same criminal transaction or episode.

This committee substitute creates an unnumbered section of the Florida Statutes and substantially amends ss. 1006.63 and 1001.64, 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. In December 2003, 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.<sup>1</sup>

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<sup>1</sup> 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.

In February 2004, 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.<sup>2</sup>

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.<sup>3</sup> 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.

While hazing is usually associated with postsecondary institutions, 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>4</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>5</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 he described the incidents as "ordinary horsing around," and stated that he was neither harmed nor embarrassed.

At present, no Florida laws specifically prohibit hazing in high school.

### **III. Effect of Proposed Changes:**

#### **Hazing at High Schools Prohibited**

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 the high school.

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

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<sup>2</sup> Yeager, Melanie "Settlement Reached in Hazing Complaint" *Tallahassee Democrat*, February 11, 2004.

<sup>3</sup> Arthur, Lisa "2 Peers Sued in Death of UM Student" *Miami Herald*, February 2, 2004.

<sup>4</sup> Kimberly Williams, *High School hazing Incidents May fuel Expanded Penalties*, PALM BEACH POST (Feb. 26, 2005).

<sup>5</sup> Stephen Hudak, *Wrestlers in Hazing Won't Be Prosecuted*, ORLANDO SENTINEL (March 10, 2005).

- 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 committee substitute 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 committee substitute 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.

Proposed section (6) clarifies that these provisions may not be construed to prevent the state attorney from prosecuting for a more general offense than hazing which results from the same criminal transaction or episode as the hazing.

### **Hazing at Postsecondary Institutions Prohibited**

This provision conforms the hazing provisions applicable to high schools to postsecondary educational institutions. To do that, the committee substitute 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 committee substitute 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.

Language is similarly added to s. 1006.63, F.S., as above, which clarifies that this statute may not be construed to preclude the state attorney from prosecuting a more general offense than hazing which results from the same criminal offense as the hazing.

#### **Remaining Proposed Legislation**

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

Section 5 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 states that the act shall take effect July 1, 2005, and 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:**

The Criminal Justice Estimating Conference has determined that this committee substitute would have an insignificant prison bed impact on the Department of Corrections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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

None.

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