

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/CS/SB 1080

INTRODUCER: Appropriations Committee; Education Committee; Criminal Justice Committee; and Senator Book

SUBJECT: Hazing

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Olenick</u>	<u>Sikes</u>	<u>ED</u>	<u>Fav/CS</u>
3.	<u>Forbes</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1080 amends and reorganizes the definition of hazing in section 1006.63, Florida Statutes, to include the perpetuation or furtherance of a tradition or ritual of any organization operating under the sanction of a postsecondary institution.

Currently, section 1006.63, Florida Statutes, protects persons who are members of or applicants to a student organization from hazing. The bill adds a person who is a former member of the organization as a person who is protected under section 1006.63, Florida Statutes.

Persons who solicit others to commit the crime of hazing or who plan any act of hazing may be prosecuted as if they actively participated in the hazing event under the provisions in the bill. If the hazing results in a permanent injury to the victim, the crime is a third degree felony.

Finally, the bill provides that a person who provides aid, before medical assistance, law enforcement, or campus security arrive on the scene or if an individual is the first to call 911 seeking medical attention for a hazing victim, and who otherwise cooperates with and assists first responders may not be prosecuted for the crime of hazing.

The bill is expected to have a positive insignificant prison bed impact, which means there may be an increase of 10 or fewer prison beds. See Section V. Fiscal Impact.

The bill is effective October 1, 2019.

II. Present Situation:

Hazing is defined in s. 1006.63(1), F.S., as any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student 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 act of 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;
- 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
 - Forced activity that could adversely affect the mental health or dignity of the student.¹

The crime of hazing is currently either a third degree felony² or a first degree misdemeanor,³ depending upon the degree of injury inflicted upon the victim. The third degree felony offense occurs when a person intentionally or recklessly commits any act of hazing upon another person who is a member of or an applicant to any type of student organization, and the hazing results in serious bodily injury or death of the victim.⁴ Hazing is a first degree misdemeanor if the act, committed under the same circumstances as the felony, creates a substantial risk of physical injury or death of the victim rather than actually inflicting that injury or death.⁵

It is not a defense to the crime of hazing that:

- The consent of the victim had 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

¹ Section 1006.63(1), F.S. Note that hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective.

² A third degree felony is punishable by up to 5 years in state prison and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

³ A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 1006.63(2), F.S.

⁵ Section 1006.63(3), F.S.

- The conduct or activity that resulted in death or injury of the person was not done as a condition of membership to an organization.⁶

Public and nonpublic postsecondary educational institutions whose students receive state student financial assistance must adopt a written anti-hazing policy and, under such policy, must adopt rules prohibiting students or other persons associated with any student organization from engaging in hazing.⁷

During the Board of Governors (BOG) January 31, 2019, meeting, a system-wide regulation was proposed that would prohibit hazing. The proposed regulation requires:⁸

- Each university board of trustees to establish an anti-hazing policy as part of the university's student code of conduct or as a separate regulation.
- Each university policy to provide a program for the enforcement of university anti-hazing regulations and the adoption of appropriate penalties that may range from the imposition of fines to expulsion, depending upon the severity of the violation for both individuals and organizations.
- The university to provide a copy of the anti-hazing policy to students and for each organization to include the policy as part of the students organization's bylaws and each university to make training opportunities available to students and student organizations that are designed to reinforce the policy and increase awareness of the dangers of hazing.

Additionally, the proposed regulation:

- Defines "hazing" consistent with the definition in section s. 1006.63, F.S.
- Sets forth circumstances that do not constitute a defense to allegations of hazing.

III. Effect of Proposed Changes:

The bill amends the definition of hazing in s. 1006.63, F.S., to include:

- Initiation, admission, or affiliation into or with any organization operating under the sanction of a postsecondary institution; and
- The perpetration or furtherance of a tradition or ritual.

The bill creates a third degree felony hazing crime under circumstances where the victim sustains a permanent injury from the hazing.

Currently, s. 1006.63, F.S., protects persons who are members of or applicants to a student organization from hazing. The bill adds a person who is a former member of the organization as a person who is protected under s. 1006.63, F.S.

⁶ Section 1006.63(5), F.S.

⁷ Section 1006.63(7), F.S. For example, *see* Rule 6C6-3.018, F.A.C., Prohibition of Hazing -- Procedures and Penalties. *See also* Tallahassee Democrat, Byron Dobson, *Florida Board of Governors approve adding anti-hazing policy in its operating guidelines*, February 1, 2019, available at <https://www.tallahassee.com/story/news/2019/02/01/florida-board-governors-approve-adding-anti-hazing-policy-its-operating-guidelines/2734129002/> (last viewed March 6, 2019).

⁸ Board of Governors, *Notice of Proposed New Regulation* (2019), available at https://www.flbog.edu/documents_regulations/proposed/NoticeofNewRegulation%206.021%20Hazing%20Prohibited.pdf.

Additionally, the bill would allow the prosecution of a person for the crime of hazing if the person solicits others to commit hazing or is actively involved in the planning of any act of hazing.⁹ Therefore, the bill would provide for prosecution of persons who were known to have planned the hazing or recruited others to participate in hazing, but who could not otherwise be identified as having actively participated in the act of hazing itself.

The bill states that if a person establishes all of the following, he or she may not be prosecuted¹⁰ for the crime of hazing under s. 1006.63, F.S.:

- The person was present at an event where, as a result of hazing, another person appeared to be in need of immediate medical assistance;
- The person was the first to call 911 or campus security to report the need for immediate medical assistance;
- The person provided his or her name, the address where the immediate medical assistance was needed, and a description of the medical issue to the 911 operator or campus security during the call;
- The person who called 911 or campus security remained at the scene with the other person in need of immediate medical assistance until a provider of medical assistance or law enforcement or campus security arrived at the scene; and
- The person cooperated with the provider of medical assistance and law enforcement personnel at the scene.¹¹

The bill also establishes that a person may not be prosecuted for the crime of hazing if, before medical assistance, law enforcement, or campus security arrived on the scene of a hazing event, the person rendered aid to the hazing victim. “Aid” includes but is not limited to:

- Rendering cardiopulmonary resuscitation to the victim,
- Clearing an airway for the victim to breathe,
- Using a defibrillator to assist the victim, or
- Rendering any other assistance to the victim which the person intended in good faith to stabilize or improve the victim’s condition while waiting for medical assistance, law enforcement, or campus security to arrive.

The bill is effective October 1, 2019.

⁹ Presumably it would be an affirmative defense to the crime of soliciting an act of hazing that the defendant under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose, after soliciting another person to commit the offense, persuaded such other person not to do so or otherwise prevented commission of the offense. *See* s. 777.04(5), F.S., and Fl.Std.Crim.JuryInstr.5.2, Criminal Solicitation.

¹⁰ Although the bill provides that the person cannot be prosecuted, practically speaking, the case will have to be reviewed by the State Attorney’s Office with jurisdiction over the offense for a determination that the statutory criteria establishing entitlement to immunity are met.

¹¹ The Florida Statutes provide for immunity from prosecution in another area of the law where swift action on the part of a potential suspect could save a life. Section 893.21(1), F.S., part of the “911 Good Samaritan Act” (Ch. 2012-36, L.O.F.), states: A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized ... for possession of a controlled substance if the evidence for possession of a controlled substance was obtained as a result of the person’s seeking medical assistance. *See Pope v. State*, 246 So.3d 1282 (Fla. 1st DCA 2018).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) considered the potential prison bed impact that may result from the bill at its meeting on February 27, 2019. The bill is expected to have a positive insignificant fiscal impact, which means there may be an increase of 10 or fewer prison beds.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹² The CJIC estimate is available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB727.pdf> (last viewed March 7, 2019).

VIII. Statutes Affected:

This bill substantially amends section 1006.63 of the Florida Statutes.

The bill reenacts section 1001.64 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on April 11, 2019:

The committee substitute reorganizes the definition of hazing to clarify that, in addition to the perpetration or furtherance of a tradition or ritual of any organization operating under the sanction of a postsecondary institution, the crime includes hazing relating to initiation into, admission into, or affiliation with any organization affiliated with any organization operating under the sanction of a postsecondary institution.

CS/CS by Education on March 26, 2019:

The Committee Substitute amends the bill by providing immunity from prosecution if an individual establishes that, before medical assistance, law enforcement, or campus security arrived on the scene of a hazing event, the person rendered aid to the hazing victim. “Aid” includes but is not limited to:

- Rendering cardiopulmonary resuscitation to the victim,
- Clearing an airway for the victim to breathe,
- Using a defibrillator to assist the victim, or
- Rendering any other assistance to the victim which the person intended in good faith to stabilize or improve the victim’s condition while waiting for medical assistance, law enforcement, or campus security to arrive.

CS by Criminal Justice on March 11, 2019:

The Committee Substitute amends the bill by:

- Including a *former member* of a student organization in those that are protected from hazing and eliminates any reference to a person who is *affiliated with* an organization.
- Eliminating any reference to *immunity from prosecution* in the bill to specify that a person *may not be prosecuted* for hazing if the person is the one who makes the first call to 911 for help and cooperates with first responders.
- Changing the effective date from July 1, 2019 to October 1, 2019.

B. Amendments:

None.