

FISCAL NOTE
 [First Reprint]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 84 and 2093
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 24, 2021

SUMMARY

- Synopsis:** Requires institutions of higher education and public and nonpublic high schools and middle schools to adopt anti-hazing policies; expands activities encompassing criminal hazing and upgrades penalties for engaging in these activities.
- Type of Impact:** Annual State expenditure and revenue increases; annual expenditure and revenue decreases for municipalities; annual expenditure increases for institutions of higher education and local school districts
- Agencies Affected:** Department of Law and Public Safety; the Judiciary; Office of the Public Defender; Department of Corrections; State Parole Board; Municipalities; Public and Independent Institutions of Higher Education; Local School Districts

Office of Legislative Services Estimate

Annual Fiscal Impact	
State Expenditure Increase	Indeterminate
State Revenue Increase	Indeterminate
Municipal Expenditure Decrease	Indeterminate
Municipal Revenue Decrease	Indeterminate
Institutions of Higher Education Expenditure Increase	Indeterminate
Local School District Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) concurs with the Judiciary that it is not possible to determine the impact the bill would have on Judiciary revenue or expenditures but that any impact is likely to be marginal.

- The OLS estimates that this bill could marginally increase annual State operating expenditures and revenues by an indeterminate amount by upgrading the act of hazing to a crime of the fourth degree and modifying the scope of hazing activities that are deemed unlawful. The bill also upgrades hazing that results in bodily injury to a crime of the third degree. Currently, hazing is considered a disorderly persons offense and cases are adjudicated in municipal courts. The upgraded criminal offense means that the State would now incur costs to prosecute and adjudicate more cases and would receive an indeterminate amount of revenue from court fines and fees while municipalities will no longer incur the court expenses or collect any of these revenues.
- The upgrade of aggravated hazing to a crime of the third degree from a crime of the fourth degree is not expected to have any State expenditure impact as there is a presumption of non-incarceration for first-time offenders of crimes of the third degree. However, it is noted that the upgraded charge carries a higher potential fine, thereby resulting in a potential State revenue increase.
- The OLS finds that public institutions of higher education, independent institutions of higher education, boards of education of local school districts with a high school or middle school, and nonpublic high schools and middle schools may incur costs to provide a program for the enforcement of policies against hazing. Public and independent institutions of higher education may incur additional costs to maintain a report including information on all violations of the institution's anti-hazing policies and federal and State laws related to hazing that are reported to the institutions.
- The bill may also result in indeterminate State revenue gains as student or fraternal organizations or institutions of higher education that are found to promote or facilitate a person to commit an act of hazing or aggravated hazing would be subject to fines created under the bill.

BILL DESCRIPTION

This bill requires institutions of higher education and public and nonpublic high schools and middle schools to adopt anti-hazing policies; expands the activities that encompass criminal hazing; and upgrades the penalties for engaging in these activities.

The bill requires institutions of higher education, boards of education of school districts with a high school or middle school, and the governing board or chief school administrator of a nonpublic school with a high school or middle school, to adopt a written anti-hazing policy. The institutions and schools are required to provide a program for the enforcement of the anti-hazing policy and adopt penalties for violations of the policy.

Under the bill, an institution of higher education is required to maintain a report for violations reported to the institution, which includes information on all violations of the institution's anti-hazing policy and federal and State laws related to hazing. The institution is required to post the report on the institution's website. The first report posted after the effective date of the bill is required to include information concerning violations that were reported to the institution for the five consecutive years prior to the effective date of the bill, to the extent the institution has retained that information. The report is to be updated biannually on January 1 and August 1.

The bill upgrades hazing to a crime of the fourth degree and aggravated hazing to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. The bill also sets forth liability for any student or fraternal organization, or institution of higher education, which knowingly or recklessly promotes or facilitates a person to commit an act of hazing. The entity would be subject to a fine of not more than \$5,000 for each hazing violation and \$15,000 for each violation of aggravated hazing.

Under current law, hazing is generally described as conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury. The provisions of the bill broaden the types of activities which would be considered hazing to include any conduct that causes, coerces, or forces another person to:

(1) violate federal or State criminal law;

(2) consume any food, liquid, alcoholic liquid, drug or other substance which subjects the other person to a risk of emotional or physical harm;

(3) endure brutality of a physical nature, including whipping, beating, branding, calisthenics, or exposure to the elements;

(4) endure brutality of a mental nature, including activity adversely affecting the mental health or dignity of the individual, sleep deprivation, exclusion from social contact or conduct that could result in extreme embarrassment;

(5) endure brutality of a sexual nature; or

(6) endure any other activity that creates a reasonable likelihood of bodily injury to the person.

The bill also upgrades hazing that results in bodily injury to a crime of the third degree.

Immunity from prosecution for hazing would be offered to any person, student or fraternal organization, or institution of higher education, as well as another person acting in concert with the person, organization, or institution if 9-1-1 is called or other emergency services contacted. In order for this immunity to apply, the caller and, if applicable, person acting in concert with the caller would have to remain on the scene with a person injured as a result of hazing and cooperate with emergency services upon their arrival.

FISCAL ANALYSIS

JUDICIAL BRANCH

Although the Judiciary did not provide a fiscal note on this version of the bill, it did submit a fiscal note on a prior version of the bill indicating that it is unable to estimate with any certainty the impact this bill would have on the court system (e.g. - number of new cases, impact on pleas, impact on trial rate, etc.). As a result, the Judiciary is unable to determine the impact the bill would have on Judiciary revenue or expenditures.

However, data collected from Promis/Gavel (the Judiciary's automated criminal case tracking system), indicates that in calendar years 2018, 2019 and 2020 there were no convictions for disorderly persons hazing and no convictions for fourth-degree aggravated hazing. As a result, upgrading these offenses/crimes would likely have minimal impact on judicial resources.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Judiciary that it is not possible to determine the impact the bill would have on Judiciary revenue or expenditures but that any impact is likely to be minimal.

It is possible that this bill may result in various expenditure and revenue impacts to various State and local government entities, but these impacts are likely to be marginal. The State could

have higher expenditures and revenues under the bill while municipal expenditures and revenues would decrease as relevant cases will now be prosecuted and adjudicated in State court rather than municipal court. The extent of these expenditure and revenue impacts is unknown and will be a factor of the number of instances of criminal hazing occurring annually.

State Government Expenditures: The bill could increase annual State operating expenditures by an indeterminate amount by upgrading hazing to a crime of the fourth degree and by modifying the scope of what would be considered hazing. The bill also upgrades hazing that results in bodily injury to a crime of the third degree. Currently, a person commits the disorderly persons offense of hazing if, in connection with initiation of applicants to or members of a student or fraternal organization, the person knowingly or recklessly organizes, promotes, facilitates, or engages in any conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury. A disorderly persons offense is punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

Currently, hazing is considered a disorderly persons offense and cases are adjudicated in municipal courts. The following State agencies could potentially incur caseload and expenditure increases under the upgraded offenses: a) the Department of Law and Public Safety would have to prosecute additional cases; b) the Judiciary would have to adjudicate additional complaints; c) the Office of the Public Defender would have to represent additional low-income criminal defendants; d) the Department of Corrections (DOC) would potentially have to house and care for more individuals who are sentenced to longer prison terms; and e) the State Parole Board would potentially have to supervise the return to society of additional convicts.

The OLS has no information on the additional caseload and expenditures that the bill may impose on affected State departments and agencies as the number of hazing crimes that will be committed is unknown. Regarding incarceration, the OLS notes that there is a presumption of non-incarceration for first-time offenders of crimes of the third and fourth degrees. If the bill results in certain individuals being incarcerated in State facilities, the DOC would incur additional costs. Data obtained from the DOC indicate that the average annual cost to house an inmate in a State prison facility during FY 2019 totaled \$50,191. However, the OLS notes that because the DOC is currently experiencing a reduction in the State-sentenced prison population, the department should be able to house any additional inmates attributable to the bill within its current institutional facilities at a much lower marginal cost of \$8.60 per day, or \$3,139 annually, per inmate for food, wages and clothing.

The upgrade of an aggravated hazing offense from a third degree crime to a fourth degree crime is not expected to have any State expenditure impact as there is a presumption of non-incarceration for first-time offenders of crimes of the third degree. However, it is noted that the upgraded charge carries a higher potential fine, thereby resulting in a potential State revenue increase. A person is currently guilty of aggravated hazing if serious bodily injury results. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Local Government Expenditures: The OLS anticipates the bill could reduce the annual caseloads and operating expenditures of municipal courts and prosecutor offices because the act of hazing is currently a disorderly persons offense. Under the provisions of the bill, this crime would be upgraded to a crime of the fourth degree and hazing that results in bodily injury would be upgraded to a crime of the third degree. Adjudication of these crimes would occur in State courts.

State Government Revenues: Any additional State cost attributable to the bill may be offset, in part, by additional and larger fines and penalties imposed by the courts on defendants convicted of having committed the upgraded crimes; however, the State's ability to collect criminal fines and

penalties has historically been limited. The OLS notes that a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both; meanwhile, a crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

Under the bill, the State may also experience revenue increases as a result of cases in which fines are issued to student or fraternal organizations or institutions of higher education that knowingly or recklessly promote or facilitate a person to commit an act of hazing (\$5,000 for each violation) or aggravated hazing (\$15,000 for each violation).

Institutions of Higher Education And School Expenditures: The OLS also finds that public institutions of higher education, independent institutions of higher education, boards of education of local school districts with a high school or middle school, and nonpublic high schools and middle schools may incur costs to provide a program for the enforcement of policies against hazing. Public and independent institutions of higher education may incur additional costs to maintain a report including information on all violations of the institution's anti-hazing policies and federal and State laws related to hazing that are reported to the institutions.

Section: Education

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This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).