



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB126 Collin's Law / Anti-Hazing Sponsors Senators Kunze and Gavarone

Chair Johnson, Vice Chair Cirino, Ranking Member Williams, and members of the Senate Workforce and Higher Education Committee, thank you for the opportunity to testify in opposition of SB126 on behalf of the Office of the Ohio Public Defender (OPD). I am Niki Clum, legislative liaison for OPD.

The human brain is not fully mature until an individual reaches their mid-twenties.¹ Until that time, young people have a weaker ability to control their impulses and make good decisions.² This includes college-age adults, 18 to 25-year-olds, sometimes referred to as emerging adults. Emerging adults are highly susceptible to peer pressure.³ The presence of peers increases risky behavior in these individuals because the presence of peers increases activity in the reward center of their brains.⁴ Research also shows that in emotionally charged situations, the brains of 18- to 21-year-olds behave more like the brains of 16- or 17-year-olds. In these situations, emerging adults have less self-control and deficient judgement.⁵ “In light of these developmental characteristics, it is unsurprising that social scientists have observed that emerging adulthood is a time when risky behavior—such as unprotected

¹ Nancy Guberti, M.S., C.N., *5 Stages of Human Brain Development*, <http://nancyguberti.com/5-stages-of-human-brain-development/>

² *Id.*

³ Bianca E. Bersani, et al., Thinking About Emerging Adults and Violent Crime 3 (2019); citing Melissa S. Caulum, *Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 WIS. L. REV. 729, 731-32 (2007); see also Andrew Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 N.Y.U. REV. L. & SOC. CHANGE 139, 163 (2016) (citing to research that found antisocial peer pressure was a highly significant predictor of reckless behavior in emerging adults age 18 to 25); Alexander Weingard et al., *Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards*, 17 DEV. SCI. 71 (2013).

⁴ Antoinette Kavanaugh, *A Wrinkle in Time: Resilience and the Adolescent Brain's Ability to Changes*, 2018 Juvenile Defender Summit, May 11, 2018; citing Chein, Albert, O'Brien, Uckert and Steinberg (2011)

⁵ Bianca E. Bersani, et al., Thinking About Emerging Adults and Violent Crime 3 (2019); citing Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional*

sex, substance use, and risky driving—peaks.”⁶ Simply put, when college kids are together and/or in stressful situations, their ability to appreciate long-term consequences is depleted. When we talk about hazing on college campuses, it is important to remember that the individuals who are engaging in hazing have immature brains and suffer from deficiencies in judgement. This is why we see college kids engaging in hazing and even hazing their friends.

It is natural to hope that making the penalties for an offense harsher will cause less people to commit that offense. However, the evidence is clear that **harsher penalties do not deter behavior**.⁷ As this committee knows, SB126 enhances the offense of hazing from a misdemeanor of the fourth degree to a misdemeanor of the first degree. Additionally, the offense is elevated to a felony of the fifth degree if physical harm results, and a felony of the second degree if serious physical harm results. These enhancements will not deter people from engaging in hazing. This is particularly true for the age group we are discussing because their level of brain development makes it more likely they will engage in risky behavior and discount longer-term consequences when their peers are present – like their fellow fraternity, sorority, or social club members.

To be clear, OPD is not opposing the educational components of SB126. OPD is supportive of those provisions in the bill. OPD is opposed to the provisions in the bill that enhance the penalties for

Contexts, 27 PSYCHOL. SCI. 549, 549-562 (2016); Laurence Steinberg, et al, *Are Adolescents Less Mature Than Adults? Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop,”* 64 AM. PSYCHOL., 583, 583-594 (2009); Marc D. Rudolph et al., *At Risk of Being Risky: The Relationship Between “Brain Age” Under Emotional States and Risk Preference,* 24 DEVELOPMENTAL COGNITIVE NEUROSCIENCE, 93, 93-94 (2017)

⁶ Id.; quoting Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study,* 41 DEV. PSYCHOL. 625, 632, 634 (2005)

⁷ *Five Things About Deterrence*, National Institute of Justice, Office of Justice Programs, <https://nij.gov/fivethings/pages/deterrence.aspx>; citing Daniel S. Nagan, *Deterrence in the Twenty First Century*, 2013; see also David J. Harding, *Do Prisons Make Us Safer? New research that prisons prevent far less violent crime than you might think*, Scientific American, June 21, 2019, <https://www.scientificamerican.com/article/do-prisons-make-us-safer/>; *Locked In: The True Causes of Mass Incarceration-and How to Achieve Real Reform*, John Pfaff, Feb. 2017; *Until We Reckon: Mass Incarceration, and a Road to Repair*, Danielle Sered, March 5, 2019; *Deterrence: States Without the Death Penalty Have had Consistently Lower Murder Rates*, Death Penalty Information Center, 2014, <https://deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates>.



hazing and that create new offenses for failing to report hazing to law enforcement, which ranges from misdemeanors of the fourth degree to felonies of the third degree. To get down to brass tacks, SB126 aims to punish the behavior of immature college kids. This bill will put those immature college kids in prison – for up to eight years⁸ - and saddle them with a felony on their record. Even if we assume the education components of the bill work, and these college kids will know the potential penalties of their behavior prior to acting, it is still highly unlikely those penalties will deter their behavior. First, these kids do not go into these situations thinking someone will be seriously hurt or killed. That is not the goal. Second, as previously discussed, we know their brain development makes it harder for them to exercise good judgement and to appreciate long-term consequences. Finally, many of these incidents involve alcohol, which can make common sense go out the window for adults of any age. Enhancing the penalties from a misdemeanor of the fourth degree to a felony will not deter the behavior of these immature, often drunk, college kids.

Under SB126, hazing becomes a felony of the fifth degree when the victim simply suffers physical harm. It is important to note that, under current law, “physical harm” is established when there is any visible mark on the victim,⁹ or even if there is no mark, if the victim claims they experienced pain.¹⁰ Courts have held that unconsciousness¹¹, mental distress,¹² or even bruising¹³ constitute “serious physical harm,” which means that if those injuries occur, a college kid would face a felony of a second

⁸ Felonies of the second degree carry a presumption of prison for 2- 8 years. Felonies of the third degree carry neither a presumption for or against prison, but a possible prison sentence of 9 – 36 months. Felonies of the fifth degree carry a presumption against prison, but a possible prison sentence of 6 – 12 months.

<https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/judPractitioner/felonyQuickRef.pdf>

⁹ *Westlake v. Filiaggi*, 8th Dist. Cuyahoga No. 93599, 2010-Ohio-4481, ¶15; *Westlake v. Filiaggi*, 8th Dist. Cuyahoga No. 93599, 2010-Ohio-4481, ¶15.

¹⁰ *In re Bowers* 11th Dist. Ashtabula No. 2002-A-0010, 2002-Ohio-6913.

¹¹ *State v. Czajka* 101 Ohio App.3d 564, 656 N.E.2d 9 (Cuyahoga, 1995). See, *State v. Thomas*, 6th Dist. Lucas No. L-17-1266, 2019-Ohio-1916, ¶59; *State v. Spaulding*, 2017-Ohio-7993, ¶13, 93 N.E.3d 1057 (Sandusky, 2017); *State v. Sales*, 9th Dist. Summit No. 25036, 2011-Ohio-2505, ¶19.

¹² *State v. Cooper*, 139 Ohio App.3d 149, 743 N.E.2d 427 (Clermont, 2000); *State v. Cooper*, 139 Ohio App.3d 149, 743 N.E.2d 427 (Clermont, 2000); *State v. Carpenter*, 8th Dist. Cuyahoga No. 94709, 2011-Ohio-211.

¹³ *State v. Jarrell*, 4th Dist. Scioto No. 08CA3250, 2009-Ohio-3753, ¶ 14, citing *State v. Worrell*, 10th Dist. Franklin No. 04AP-410, 2005-Ohio-1521, ¶47–51, rev'd on other grounds; *State v. Parks*, 5th Dist. Licking No. 99-CA-0076, 2000 WL 221968; *State v. Barbee*, 8th Dist. Cuyahoga App. No. 82868, 2004–Ohio–3126, at ¶ 60; *tate v. Burdine–Justice*, 125 Ohio App.3d 707, 709 N.E.2d 551 (Butler, 1988).



degree pursuant to SB126. For reference, other felonies of the second degree include offenses like abduction, aggravated arson, and sexual battery of a minor under thirteen. The difference between hazing and those offenses is that, while the person should have known better, he or she may have never intended to cause harm to the victim. They did not engage in hazing with the intent to kill or seriously injure their friend. We shouldn't forget that they are immature, often drunk, college kids. OPD believes there are better ways to spend taxpayer dollars than to incarcerate young individuals in prison who may have no other criminal history and never intended to cause physical harm. Additionally, SB126 will continue to punish these individuals for years after their release from prison, probably the rest of their lives. A felony conviction can severely hinder an individual's ability to obtain employment, housing, financial aid, professional licenses, and social services. SB126 will ruin these immature college kids lives just as they were getting started in life.

SB126 also has a potential constitutional problem as it may be found void for vagueness. The bill specifies that hazing includes causing, forcing, or soliciting another to do any act that may "[c]ause a substantial risk of emotional harm to another."¹⁴ However, the bill specifies hazing does not include any "[r]easonable and customary organizational training, contests, competitions, or events;" and lawful protected speech.¹⁵ Perhaps a social club has a tradition of having pledges run an obstacle course – that may create a substantial risk of emotional harm, and physical harm, for the less athletic pledges. Should the members of that social club be prosecuted for misdemeanor of the first degree and face up to six months in jail or a felony if physical harm results for this activity? A sorority may have a tradition of pledges participating in a bikini contest. That may cause great emotional harm as it may feel demeaning to some. Should those individuals be prosecuted? A fraternity may require their pledges to wear funny costumes to class. Personally, I would have no problem with that, but that may cause a substantial risk of emotional harm for some people. Should the fraternity be prosecuted? Let us not

¹⁴ R.C. 2903.31(A)(3)(a)(iii), Lines 29 – 30.

¹⁵ R.C. 2903.31(A)(3)(b), Lines 31 – 37.



forget that the bill requires anyone who witnesses hazing to report it law enforcement. If the classmates of these pledges fails to tell law enforcement that a co-ed came to class in a chicken suit, should they be prosecuted for a misdemeanor of the first degree as the bill requires?¹⁶ The bill also requires the professor to be prosecuted for a misdemeanor of the fourth degree if he or she fails to report the hazing.¹⁷ How is anyone supposed to know if these activities are “reasonable and customary organizational training, contests, competition, or events;” or if they “cause a substantial risk of emotional harm to another.” Individuals who simply guess wrong should not be subject to criminal prosecution and possible jail or prison time.

I also want to be clear that OPD is not condoning any hazing, particularly violent and dangerous behavior by college kids. Proponents spoke of hazing going beyond obstacle courses and silly costumes. They spoke of hazing that involved beatings and physical torture. These activities are already illegal, and, in most cases, punishable by a felony offense, like felonious assault and involuntary manslaughter, if warranted under the circumstances. As one of the proponents said during testimony, those extreme acts of violence are not the standard hazing most college kids encounter. SB126’s definition of hazing is too broad and the penalties in SB126 are too punitive for the consensual acts of hazing where harm is not intended. Additionally, SB126 specifies that individuals can be charged with hazing and any other offense that may be applicable.¹⁸ The bill encourages prosecutors to stack charges to apply pressure to these college kids, who may have little or no experience with the criminal justice system, to ensure they plead guilty instead of having a trial. Some of these individuals may have a reasonable defense, however, these young people, will probably be too scared to go to trial because SB126 ensures they face severe penalties for the charge of hazing as well as any other felony the prosecutor may charge.

¹⁶ R.C. 2903.31(F), Lines 74 – 84.

¹⁷ R.C. 2903.311(B) & (C), Lines 118 – 129.

¹⁸ R.C. 2903.31(H), Lines 95 -101.



Finally, OPD would like to express our deepest sympathies to families who have lost a child because of hazing. That is an unimaginable pain. It is understandable that such a terrible situation makes this legislature want to act. However, we cannot solve one tragedy with another, and bad facts make bad law. This legislature needs to fight the temptation to make drastic changes to our criminal justice system after a tragic event. Good public policy should be based on data and research in consultation with experts, not from a place of sadness, fear, or anger.

Thank you for the opportunity to testify before your committee. I am happy to answer questions at this time.

