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**To: Senate Workforce and Higher Education Committee**  
**From: Kevin Werner, Policy Director**  
**Date: June 2, 2021**  
**Re: Opponent Testimony for Senate Bill 126**

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Chairman Johnson, Vice Chair Cirino, Ranking Member Williams and members of the Senate Workforce and Higher Education Committee, thank you for the opportunity to testify today on Senate Bill 126. My name is Kevin Werner and I am the policy director at the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems. OJPC has concerns regarding Senate Bill 126.

We understand the intention of what the bill seeks to do: to prevent future tragedies like what happened to Collin Wiant, Stone Foltz, Tyler Perino and countless other victims of hazing. We understand the bills also seeks to hold those accountable for preventable and senseless trauma, harm and death. However, we believe the bill should seek best practices for organization-wide behavior modification and change of culture instead of increasing criminal penalties and creating new offenses.

To be clear, there are some parts of the bill OJPC thinks are needed improvements to the Revised Code. For example, changing the *mens rea* standard for the offense of hazing from “reckless” to “knowing” establishes better policy and gets at the intentionality of the hazing behavior we all agree is despicable and want to root out. OJPC is also supportive of educational components of the bill, including that colleges and universities develop anti-hazing policies for all organizations affiliated with the institution, that colleges and universities track hazing violations and conduct anti-hazing education for students and staff alike. Perhaps the most consequential inclusion within the bill is the application to “organizations” in Sec. 2903.31 (4). The bill sponsors and drafters appropriately and comprehensively apply the educational and preventative provisions to the correct groups where hazing occurs.

If SB 126 consisted solely of enacting new sections 2903.311, 3333.0417 and 3345.19, we would wholeheartedly support the bill. Those sections of the bill will educate our young people and be more effective at rooting out the hazing behavior the bill seeks to disrupt and end.

SB 126 increases the penalties for hazing from a fourth-degree misdemeanor to a first-degree misdemeanor. Effectively, the bill changes the penalties from a potential 30-day jail term and a maximum fine of \$250 to a potential six-month jail term and a maximum fine of \$1,000. If the hazing results in physical harm, then the offense becomes a fifth-degree felony—consisting of a prison term and decades of



collateral sanctions recent general assemblies have passed bills to reverse. For example, last year the 133<sup>rd</sup> General Assembly passed HB 263, which helped ease collateral sanctions for individuals who need to obtain a professional license for their occupation.

The bill establishes a new offense of aggravated hazing, a second-degree felony. This new offense employs the standard of “reckless” instead of “knowing,” which means prosecutors will have to meet a lower threshold when charging future defendants with this enhanced charge. OJPC contends that offenses that are substantially similar are already in Ohio’s Revised Code, namely in this instance, felonious assault. Creating a new offense for one that already is in operation is not an issue of need, it is an issue of prosecutorial discretion. In a recent investigative series by *The Columbus Dispatch*, the newspaper noted that in the past 25 years, only 5 incidents of hazing had been filed in courts close to the largest universities in Ohio.<sup>1</sup> In this instance, as in many instances when the legislature duplicates a law, there is a conflict in *mens rea* standards. The new offense of “aggravated hazing” uses a reckless indifference standard, but the already established offense of felonious assault uses a knowingly standard. A reasonable person can see that felonious assault already covers the new crime of aggravated hazing. And because we’re duplicating with different standards, we now have a situation where its easier for a prosecutor to charge aggravated hazing than felonious assault even though they contain the same elements—causing serious physical harm to another.

The two other new offenses created by the bill—supporting hazing and failure to report hazing—are rife with problems and interpretation issues. For example, is an intoxicated college student who attends a frat party and witnesses binge drinking at risk of supporting hazing? Say this student walks into a room where other drunk fraternity members are running a beer bonging tournament where rushing participants wind up with alcohol poisoning. The student witnessed the chants and got a sense as to what was happening but did nothing to curb the hazing. The student thinks, “*wow, this is bad and I want nothing to do with this,*” so she leaves the room. Later she’s asked about what she saw and what she did. Does she need to be read her *Miranda* rights by the campus police? If one of the students pledging the fraternity gets so sick that he dies, does she—and any other witnesses at the party—get charged with a third-degree felony? OJPC does not trivialize the harm and the trauma done to countless families beyond the Wiants, Foltzs and Perinos. Rather, we recognize that

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<sup>1</sup> Hendrix, Sheridan and Mike Wagner. *The Columbus Dispatch*, “Collin’s Law passes through the Ohio House, would increase penalties for hazing, bullying.” November 20, 2020.



increasing penalties and creating new crimes does not deter bad behavior. Study after study has supported this maxim.<sup>2</sup>

Even though we are opponents to the legislation because part of it employs a solution time and again has been proven to be ineffective—*upping penalties doesn't deter bad behavior*—we are not indifferent to the cause of ending and preventing hazing. Rather, we are supportive of efforts to eradicate the harm and trauma hazing has on people. But we have a different idea about how we get at Ohio's hazing problem.

Our idea is rooted in the idea of employing what has been proven to work in the fight against hazing. I give Ohio college and university personnel credit for being part of this conversation. Indeed, those institutions, through their action and inaction, have a role to play changing their campus culture. So too, do the Greek organizations operating on college and university campuses. But at this point in time, after decades of trauma and abuse by organizations who ritualize hazing and those who intentionally or unintentionally enable hazing, Ohioans need to know we are using only the very best practices and proven approaches borne out by data-driven frameworks. In the limited literature I have reviewed and the organizations I have learned about on this subject, I have yet to find a single organization whose mission is hazing prevention who recommends or advocates increasing penalties as a tactic tested and proven to work.

The posture is, as noted by some proponents, “we are currently assessing, and will continue to adapt...or [the criminal provisions] will send a clear message that hazing is not to occur at our institutions...[the bill]...will help to create a culture change around hazing.”

Mr. Chairman, you aptly noted in a previous hearing that what we have is a failure of leadership. We agree with that assessment. We happen to disagree with the notion that increasing penalties and creating new offenses will deter the behavior.

The Ohio Justice & Policy Center urges the committee to amend SB 126 and remove the provision Section 2903.31. We believe the other parts of the bill are an appropriate first step. We are grateful to the sponsors for their work on this issue. We are profoundly, profoundly heartbroken for the Wiant family, the Foltz family, the Perino family and the thousands of others unnamed who have been hurt and traumatized by hazing.

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<sup>2</sup> National Institute of Justice, “Five Things About Deterrence,” June 5, 2016, [nij.ojp.gov](http://nij.ojp.gov): <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>; Nagin, Daniel S. “Deterrence in the Twenty-First Century.” *Crime and Justice*, vol. 42, no. 1, 2013, pp. 199–263. JSTOR, [www.jstor.org/stable/10.1086/670398](http://www.jstor.org/stable/10.1086/670398) Accessed 2 June 2021; Harding, David J. et al, “A natural experiment study of the effects of imprisonment on violence in the community,” *Nature Human Behavior*, vol. 3, 2019, pp.671-677. Nature.com, <https://www.nature.com/articles/s41562-019-0604-8>



RE: OPPONENT TESTIMONY  
SENATE BILL 126  
JUNE 2, 2021  
PAGE 4

In closing, I think this snippet of reporting by *The Columbus Dispatch* strikes the right balance on the policy solution needed to eradicate hazing:

“...but it will take more than passing a law to snuff out hazing. It will take universities educating its students about the dangers of hazing and cracking down on student organizations that put members’ safety and well-being at risk. It will take parents like Shari and Cory (Foltz), like Kathleen and Wade (Wiant) sacrificing their time and tears to see change through at the state and federal levels. It will take alumni and donors of fraternities and sororities calling on their national organizations to increase scrutiny of their beloved chapters and hold them accountable. It will take people like Tyler (Perino) and other Greek life members to break their code of silence to share the horror of hazing they endured. And it will take young men in fraternities across the county to stop giving their loyalty to a ritual that can kill and start giving it to the young men like Collin (Wiant) and Stone (Foltz), who they call brothers.”

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