



Ohio Prosecuting Attorneys Association

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House Bill 360
Interested Party Testimony
March 13, 2018

Chair Brenner, Vice-Chair Slaby, Ranking Member Fedor and members of the House Education and Career Readiness Committee, thank you for the opportunity to provide interested party testimony on House Bill 360, a bill to help combat bullying and hazing.

Our Association is generally supportive of House Bill 360. We feel that the legislation provides a much needed update to the definition of hazing and to the prohibition on recklessly permitting hazing in Revised Code section 2903.31. These changes will provide prosecutors with some additional, much needed, discretion in hazing cases.

That said, we did want to make the committee aware of a potential issue created by the substitute version of the bill that was adopted on February 27. The substitute bill creates a new division (C)(1) within R.C. 2903.31 that provides that "No person shall knowingly participate in the hazing of another when the hazing causes serious physical harm to the other person." The bill makes the penalty for a violation of this division a felony of the fourth degree.

Under current law, knowingly causing serious physical harm to another is felonious assault, a felony of the second degree. Because the language of proposed R.C. 2903.31 overlaps substantially with the definition of felonious assault our concern is that this could be interpreted by a court of appeals as reducing the penalty for knowingly causing serious physical harm from a felony of the second degree to a felony of the fourth degree when that serious physical harm results from hazing. This concern arises from rules of statutory construction and caselaw stating that special provisions, in this case hazing, prevail over general provisions, in this case felonious assault, unless the general provision is the later adoption.

I want to be clear that there is no guarantee that a court would rule this way. It is possible that courts will find that the hazing statute and felonious assault statute can be reconciled with one another and that the higher penalty for felonious assault would still apply under appropriate circumstances. There is enough overlap, however, that we believe reasonable minds could differ. What we really wish to prevent is someone who deserves punishment for felonious assault escaping with a lower level felony conviction due merely to the fact that the felonious assault occurred during a hazing. We feel that this would be a great disservice to the victim of such an offense and would reduce the deterrent effect of current law.

Thank you again for the opportunity to testify. I would be happy to answer any questions.