



# Office of the Ohio Public Defender

Timothy Young, State Public Defender

## Testimony in Opposition of HB205 Enact Collin's Law Sponsor Representatives Ghanbari and Sheehy

Chair Manning, Vice Chair Bird, Ranking Member Robinson, and members of the House Primary and Secondary Education Committee, thank you for the opportunity to testify on behalf of the Office of the Ohio Public Defender (OPD) in opposition of House Bill 205 (HB205). I am Niki Clum, legislative liaison for OPD.

As this committee knows, the human brain is not fully mature until an individual reaches their mid-twenties.<sup>1</sup> Until that time, young people have a weaker ability to control their impulses and make good decisions.<sup>2</sup> This includes college-age adults, 18 to 25-year-olds, sometimes referred to as emerging adults. Emerging adults are highly susceptible to peer pressure.<sup>3</sup> The presence of peers increases risky behavior in these individuals because the presence of peers increases activity in the reward center of their brains.<sup>4</sup> 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.<sup>5</sup> "In light of these developmental characteristics,

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

<sup>2</sup> *Id.*

<sup>3</sup> 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).

<sup>4</sup> 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)

<sup>5</sup> 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 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*

it is unsurprising that social scientists have observed that emerging adulthood is a time when risky behavior—such as unprotected sex, substance use, and risky driving—peaks.”<sup>6</sup> 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 intelligent and promising 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.**<sup>7</sup> As this committee knows, HB205 enhances the offense of Hazing from a misdemeanor of the fourth degree to a misdemeanor of the second degree. HB205 also creates a new offense of Hazing when an individual recklessly coerces another to consume drugs or alcohol resulting in serious physical harm. This offense is a felony of third-degree. The research is clear that these enhanced penalties 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.

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“Brain Age” Under Emotional States and Risk Preference, 24 DEVELOPMENTAL COGNITIVE NEUROSCIENCE, 93, 93-94 (2017)

<sup>6</sup> 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)

<sup>7</sup> *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>.



The new felony Hazing offense under the bill does not require that the person intend for serious physical harm to result, rather the bill only requires that individuals act recklessly – meaning the person acts with a heedless indifference - as to whether serious physical harm could result. It is important to note that, under current law, courts have held that unconsciousness<sup>8</sup>, mental distress,<sup>9</sup> or even bruising<sup>10</sup> constitute “serious physical harm,” which means that if those injuries occur, a college kid would face a felony of third-degree and a possible 9 – 36 months in prison. If an individual is coerced by their fellow fraternity or sorority members to drink alcohol as part of the pledge process, and the person passes out at end of the night, all of their fraternity brothers or sorority sisters could face a felony of third-degree, as the hazing resulted in unconsciousness. Those individuals could also face a felony of third degree if the person falls as a result of their alcohol consumption and badly bruises their knee or elbow.

We have seen by recent events that if a person tragically dies as a result of being hazed, one of the offenses charged is involuntary manslaughter, a felony of the first or third degree depending on the circumstances. However, HB205 makes the offense of Hazing a felony of the third degree if no death results if the person was coerced into consuming alcohol or drugs. In addition to involuntary manslaughter, other felonies of third degree include Unlawful Sexual Conduct with a Minor, Gross Sexual Imposition, and Reckless Homicide. It bears asking if the behavior described above is on the same level of culpability as offenses that involve sexual misconduct and death. OPD submits to you the answer is a resounding “no.” This provision of HB205 is overly punitive and ineffective at changing behavior.

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<sup>8</sup> *State v. Czajka* 101 Ohio App.3d 564, 656 N.E.2d 9 (Cuyahoga, 1995). See, *State v. Thomas*, 6<sup>th</sup> Dist. Lucas No. L-17-1266, 2019-Ohio-1916, ¶159; *State v. Spaulding*, 2017-Ohio-7993, ¶13, 93 N.E.3d 1057 (Sandusky, 2017); *State v. Sales*, 9<sup>th</sup> Dist. Summit No. 20536, 2011-Ohio-2055, ¶19.

<sup>9</sup> *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*, 8<sup>th</sup> Dist. Cuyahoga No. 94709, 2011-Ohio-211.

<sup>10</sup> *State v. Jarrell*, 4<sup>th</sup> Dist. Scioto No. 08CA3205, 2009-Ohio-3753, ¶ 14, citing *State v. Worrell*, 10<sup>th</sup> Dist. Franklin No. 04AP-410, 2005-Ohio-1521, ¶47–51, rev'd on other grounds; *State v. Parks*, 5<sup>th</sup> Dist. Licking No. 99-CA-0076, 2000 WL 221968; *State v. Barbee*, 8<sup>th</sup> Dist. Cuyahoga App. No. 82868, 2004–Ohio–3126, at ¶ 60; *State v. Burdine–Justice*, 125 Ohio App.3d 707, 709 N.E.2d 551 (Butler, 1988).



The bill also makes it a felony of the third degree if administrators; employees; faculty members; teachers; consultants; alumni; volunteers; or organizations, including primary, secondary, post-secondary schools or education institutions; or a parent of a student in a school or educational institution recklessly permits the coerced consumption of drugs or alcohol resulting in serious physical harm. Again, these individuals do not need to know that the hazing is occurring or that serious physical harm will result, they just need to be reckless to the fact that it may happen. Despite having no intent for harm to result, and not actually being involved in the hazing, HB205 seeks to charge these individuals or entities on the same level as someone who purposely commits Tampering with Evidence or Fleeing and Eluding. Again, this provision is overly punitive given the lack of culpability of these individuals.

Additionally, the bill makes administrators; employees; faculty members; teachers; consultants; alumni; volunteers; or organizations, including primary, secondary, post-secondary schools or education institutions acting in their official capacity; or a parent of a student in a school or educational failing to report Hazing to law enforcement a misdemeanor of fourth degree or a misdemeanor of the first degree if serious physical harm results. Again, these individuals were not engaged in the Hazing, but they can be charged with a misdemeanor the same severity as knowingly committing domestic violence.

OPD believes there are better ways to spend taxpayer dollars than to incarcerate young individuals, their parents, and school faculty who may have no other criminal history, never intended to cause physical harm, or did not even engage in the hazing. Given what we know about the collateral consequences of a criminal conviction, HB205 will continue to punish these individuals for years after their release from incarceration, 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. HB205 will ruin these immature college kids lives just as they were getting started in life.

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 submit testimony today to the committee.

