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## FISCAL IMPACT REPORT

Stapleton/Nibert/  
 Trujillo CH//Alcon/  
**SPONSOR** Herrera      **ORIGINAL DATE** 2/5/19      **HB** 352  
**LAST UPDATED** \_\_\_\_\_  
**SHORT TITLE** Create Crime of Hazing      **SB** \_\_\_\_\_  
**ANALYST** Edwards

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Law Office of the Public Defender (LOPD)  
 Administrative Office of the Courts (AOC)  
 New Mexico Attorney General (NMAG)  
 Public Education Department (PED)

#### Responses Not Received From

Higher Education Department (HED)  
 Administrative Office of the District Attorney (AODA)

### SUMMARY

#### Synopsis of Bill

House Bill 352 makes hazing a misdemeanor pursuant to Section 31-19-1 NMSA 1978. The bill defines hazing as a person who is a student of a public or private post-secondary educational institution who willfully puts another student or prospective student in a situation that presents a danger, either mentally or physically, for the purpose of induction, initiation, admission, or maintenance of membership in an organization, whether the organization is officially recognized or sanctioned by the educational institution.

The bill excludes coaching, training, conditioning, physical education, customary athletic events or school sanctioned events from the definition of hazing.

## FISCAL IMPLICATIONS

Most likely there will be minimal fiscal impact as a result of this bill as the acts specified in the bill that result in bodily harm to another could potentially be prosecuted under existing criminal statutes. As there is already a possibility to adjudicate harm stemming from hazing, this analysis assumes there would not be a marked increase in cases flowing through the judicial system due to the passage of this bill.

AOC explains there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and an increase in commenced prosecutions, as well as appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

LOPD could incur additional budget impact as a result of the bill, but the exact amount is hard to estimate.

Creation of any new crime is likely to create new prosecutions and, therefore, additional clients for LOPD. It is impossible to predict how substantial an increase in workload LOPD attorneys and staff would see from the passage of House Bill 352. However, news reports of recent hazing incidents nationwide suggest at least the possibility that many charges will result. Moreover, hazing implicates the type of group activity that would likely lead to multiple individuals being charged. With multiple co-defendants comes the need for conflict counsel. Thus, hazing, when charged, is likely to result in expenditures for contract attorneys outside of LOPD's ordinary workforce to ensure that each codefendant receives conflict free representation. This, in turn, will result in expenditures on multiple contract attorneys' fees.

In any case, barring some other way to reduce indigent defense workload, any increase in the number of prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. If more of these higher-penalty trials result, LOPD and the DAs will need to hire more trial attorneys with greater experience, and, again, this will also require more investigators, experts and court resources. An LOPD Assistant Trial Attorney's mid-point salary including benefits is \$102.2 thousand in Albuquerque/Santa Fe and \$109.4 thousand in the outlying areas (due to salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$2,300 with start-up costs of \$3,128; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$77.1 thousand.

## SIGNIFICANT ISSUES

PED [explains](#) New Mexico is one of only six states that does not have an anti-hazing law, although the 44 states that do have anti-hazing laws vary in both definition and penalties.

PED also explains, citing Prevention Through Education, that 47 percent of students are hazed before they enter high school. House Bill 352 provides current students or prospective students protections against hazing. Since many high school students in New Mexico spend time on post-secondary educational institution campuses to earn dual high school-college credit and because there are a number of high school campuses co-located on post-secondary educational institution

campuses in the state, House Bill 352 would apply to select high school students on post-secondary educational institution campuses.

The Attorney General’s staff explains that “the terms and limitations of ‘mental or physical health’ are not defined in House Bill 352. Without clear definitions, the crime might be found unconstitutionally void, as it does not provide standards or guidelines; it arguably therefore allows subjective and ad hoc application and does not provide individuals of ordinary intelligence a fair opportunity to determine whether their conduct is prohibited. *See, e.g., City of Chicago v. Morales*, 527 U.S. 41 (1999); *State v. Laguna*, 1999-NMCA-152, ¶ 25, 128 N.M. 345.”

The Law Office of the Public Defender also expresses concern the bill may be too broadly worded.

The language of House Bill 352 is rather vague. [Most likely,] the bill was [...] intentionally composed broadly, in order to encompass a variety of actions that would qualify as hazing to a layperson’s understanding. However, the danger is of penalizing any action or the creation of any situation that intentionally or recklessly endangers another student, mentally or physically is that the law would be interpreted by law enforcement officers and prosecutors to include unintended behavior. It is clear that the actions are to be between college students involved in an activity association, such as a student club, an athletics squad, a fraternity, sorority, etc., but it remains an open question whether the relationship between offender and victim needs to be one in which coercion, or a power-imbalance, would naturally exist. Furthermore, where the type of action taken by the perpetrator remains undefined, such a law could result in challenges on the basis of ‘void-for-vagueness’ under the 5th Amendment or the rule of lenity. *See State v. Laguna*, 1999-NMCA-152; and see, *State v. Morales*, 2010-NMSC-036.

## **ADMINISTRATIVE IMPLICATIONS**

PED states that, in the short term, the department would have to notify public school districts and charter schools about this change to the state’s Criminal Code, and the protections against hazing that are legally provided, as it relates to students on post-secondary private or public educational institutional campuses. This can be accomplished with existing PED resources and staff.

## **TECHNICAL ISSUES**

AOC states “as mentioned in an analysis for a similar bill introduced in 2017 (House Bill 200), the bill specifies that hazing occurs when a student creates a situation that recklessly or intentionally endangers the health of another student. A ‘situation’ is incapable of forming mens rea. The sponsor may wish to consider amending the bill so that it is the student who recklessly or intentionally creates a situation that endangers another student. The public (including defendants and juries) and legal professionals (such as law enforcement, prosecutors and defense attorneys, and judges) may find the definition of ‘hazing’ too complex to determine exactly what conduct is prohibited, and exactly how a person’s conduct may violate the statute.”

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