

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 1/24/24
Bill No: HB 225

Sponsor: Rep. Joshua N. Hernandez
Short Title: Creating Crime of Hazing

Agency Name and Code AOC 218
Number: _____
Person Writing Charlene Romero
Phone: 505-490-5149 **Email** aoccar@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 225 would create new crimes of Hazing and Aggravated Hazing, create a Hazing Online Reporting Portal and create a requirement to provide hazing prevention education.

Section 1 of HB 225 defines Hazing and Aggravated Hazing and provides penalties.

Hazing is defined as “an act, intentionally or recklessly committed against a student or a prospective student of an education entity:

- (1) in connection with initiation into, affiliation with, holding office in or maintaining membership in any student organization, student body or student athletic team or club, regardless of whether the student organization, student body or student athletic team or club is officially recognized, sanctioned or authorized by an educational entity;
- and
- (2) when the act creates a substantial risk of physical or mental injury to the student or prospective student.”

Hazing includes “any act committed as part of a student's recruitment, initiation, pledging, admission into or affiliation with a student organization, athletic team, club or living group or any pastime or amusement engaged in with respect to such an organization, athletic team, club or living group that causes or is likely to cause bodily danger, physical harm or serious psychological or emotional harm to a student or other person attending an educational entity, including causing, directing, coercing or forcing a person to consume any food, liquid, alcohol, drug or other substance that subjects the person to risk of such harm, regardless of the student's willingness to participate.”

The Bill sets the penalty for hazing as a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978.

The Bill makes failure to report incident(s) of hazing by a teacher, professor, coach or other staff member of an educational entity, who knew or reasonably should have known of the hazing incident, a misdemeanor offense punishable pursuant to Section 3-19-1 NMSA 1978. Failure to report would also constitute “good and just cause for suspension or revocation of any educator licensure under the School Personnel Act.”

The Bill defines aggravated hazing as “an unlawful act, intentionally committed against a person who is a student of prospective student of an education entity:

(1) in connection with initiation into, affiliation with, holding office in or maintaining membership in any student organization, student body or student athletic team or club, regardless of whether the student organization, student body or student athletic team or club is officially recognized, sanctioned or authorized by an educational entity;

and

(2) when such act causes painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body of the student or prospective student or causes substantial mental harm to the student or prospective student.”

The Bill sets the penalty for aggravated hazing as a fourth degree felony punishable pursuant to “the provisions of this section unless otherwise provided in this section.”

The Bill provides for a perpetrator of hazing or aggravated hazing who is under the age of eighteen to be considered for services under the Delinquency Act, “including services and pre-adjudication diversion by probation and parole.”

The Bill exempts activities or conduct officially sanctioned by an educational entity that furthers legitimate curricular, extracurricular or military training program goals from being considered hazing.

The Bill also prohibits the consent or acquiescence of the person against whom the hazing was directed as a defense.

The Bill defines an “education entity” as a public or private school serving kindergarten through twelfth grade students or a public or private post-secondary educational institution.

Section 2 of HB 225 creates the Hazing Online Reporting Portal.

HB 225 directs the higher education department to create and maintain a statewide online reporting portal for reporting incidents of hazing and aggravated hazing at educational entities.

The Bill requires the reporting portal to be created and maintained within the higher education department, staffed by a full-time director and one part-time personnel member selected by the secretary of higher education.

The Bill requires the higher education department (staff of the Hazing Online Reporting Portal) to

- provide referrals and resources for individuals reporting hazing or aggravated hazing crimes
- work in coordination with the department of public safety and local law enforcement to report hazing crimes
- report hazing or aggravated hazing to the office of civil rights of the United States department of education.

The Bill makes a complaint, and any information provided with the complaint, including the identity of the complainant, made through the online reporting portal exempt from the Inspection of Public Records Act.

The Bill requires educational entities to report annually regarding hazing:

- (1) for public or private schools serving kindergarten through twelfth grade students, to the public education department information as required by that department;
- and
- (2) for public or private post-secondary educational institutions, to the higher education department information as required by that department.

As used in this section, the Bill defines “educational entity” as either a:

- (1) public or private school serving kindergarten through twelfth grade students; or
- (2) public or private post-secondary educational institution."

Section 3 of HB 225 creates a requirement for a public or private post-secondary to provide electronic or in person hazing prevention education “on the signs and dangers of hazing as well as the institution’s prohibition on hazing” to employees, including student employees. The prevention education is to be provided at the beginning of each academic year and at the beginning of each academic term for new employees.

Section 4 of HB 225 amends Section 14-2-1 NMSA 1978, right to inspect public records – exceptions. The Bill amends Paragraph L to add “complaints and the information provided with the complaints, including the identity of any complainants, made through the statewide online reporting portal to report an incident or incidents of hazing” as one of the exceptions to the right to inspect public records. The current Paragraph L is renumbered as Paragraph M.

Section 5 of HB 225 makes an appropriation of \$500,000 from the general fund to the higher education department for use in FY25 for the implementation of a statewide hazing reporting online portal, hiring and training of online portal staff, and any necessary software for the online portal. Any unexpended or unencumbered balance remaining at the end of FY25 would revert to the general fund.

Section 6 of HB 225 sets the following effective dates:

- July 1, 2024 for Sections 1 and 3 through 5
- July 1, 2025 for Section 2

FISCAL IMPLICATIONS

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 commenced prosecutions, and 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.

SIGNIFICANT ISSUES

New Mexico is one of six states that do not have anti-hazing laws. According to a USA Today

article published in October 2023, while most states have anti hazing laws, the definitions of hazing, as well as the criminal penalties imposed, differ, sometimes significantly. Depending on the state, the penalties for hazing activities range from fines to a felony charge, depending on the seriousness of the bodily harm, including death. The article also references the costs incurred by educational entities resulting from hazing incidents. In June 2023, New Mexico State University “agreed to pay \$8 million dollars to settle a lawsuit over hazing allegations in the men’s basketball program.” (See <https://www.usatoday.com/story/news/education/2023/10/13/hazing-state-laws-differ-offer-uneven-protection-to-college-students/71076327007/#:~:text=Six%20states%20E%88%92%20Alaska%2C%20Hawaii%2C,the%20criminal%20penalties%20they%20impose.>)

Section 2 of HB 225 requires the creation of an online reporting portal for hazing incidents. This section also requires public and private schools serving kindergarten through twelfth grade to make annual reports to the public education department of “information required by that department”. A similar requirement is created for public or private post-secondary educational institutions for reporting to the higher education department information required by that department. The Bill does not provide any requirements, or guidance, as to the information that is to be obtained through the online reporting portal. Since two different departments are setting requirements for reporting, the information required for by each department may differ.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 55 also creates a new crime of Hazing.

TECHNICAL ISSUES

Section 1, Paragraph F, defines the penalty for aggravated hazing as a fourth degree felony “pursuant to the provisions of this section unless otherwise provided in this section.” There is no penalty definition for a fourth degree felony in Section 1 of the Bill.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

