

SUBJECT: Revising the definition of hazing and qualifications for immunity

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 6 ayes — C. Turner, Stucky, Frullo, Howard, E. Johnson, Pacheco

1 nay — Schaefer

4 absent — Button, Smithee, Walle, Wilson

SENATE VOTE: On final passage, April 11 — 26-5 (Creighton, Hancock, Hughes, Nelson, and Schwertner)

WITNESSES: *On House companion bill, HB 1482:*

For — Judson Horras, North American Interfraternity Conference; Jay Maguire, Parents and Alumni for Student Safety; Michael Shawn Cumberland; Debra Debrick

Against — (*Registered, but did not testify:* CJ Grisham)

BACKGROUND: Education Code ch. 37, subch. F defines and creates offenses related to hazing. Hazing is defined as any intentional, knowing, or reckless act, occurring on or off the campus of an educational institution, by one person alone or acting with others, directed against a student, that endangers the mental or physical health or safety of a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in an organization. The definition includes a list of examples.

Penal Code sec. 1.07 defines coercion as a threat, however communicated:

- to commit an offense;
- to inflict bodily injury in the future on the person threatened or another;
- to accuse a person of any offense;

- to expose a person to hatred, contempt, or ridicule;
- to harm the credit or business repute of any person; or
- to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

**DIGEST:** SB 38 would revise the definition of hazing, provide criteria for immunity from prosecution or civil liability for hazing in certain circumstances, allow for alternative venues for the prosecution of hazing offenses, and require post-secondary educational institutions to report to students information on hazing.

**Definition.** SB 38 would revise the definition of "hazing" to include an act involving coercing a student to consume an alcoholic beverage, liquor, or drug, by applying the Penal Code definition of "coercion." The bill would remove from the definition's list activities that included:

- intimidating or threatening the student with ostracism;
- subjecting the student to extreme mental stress, shame, or humiliation;
- adversely affecting the mental health or dignity of the student or discouraging the student from entering or remaining registered in an educational institution; or
- activities that would be reasonably expected to cause a student to leave the organization or institution rather than submit to such acts.

**Immunity.** The bill would provide immunity from civil or criminal liability to any person who voluntarily reported a specific hazing incident involving a student to an institution of higher education if the person:

- reported the incident before being contacted by the institution concerning the incident or otherwise being included in the institution's investigation of the incident; and
- cooperated in good faith throughout any institutional process regarding the incident, as determined by the dean of students or other appropriate official of the institution.

Immunity provided by the bill would extend to participation in any judicial proceeding resulting from the institution's investigation. A person would not be immune if the person reported on the person's own act of hazing or if the person reported on an act of hazing in bad faith or with malice.

**Venue.** SB 38 would allow a county attorney, district attorney, or criminal district attorney to prosecute a hazing offense in a county in which the offense did not occur if the venue was in the same county as the educational institution at which a victim of the offense was enrolled. Such a change in venue only could occur with the written consent of a prosecuting attorney of a county in which the offense otherwise could be prosecuted.

**Reporting.** By the 14th day before the first class day of each spring and fall semester, each postsecondary educational institution would be required to distribute to each student enrolled at the institution a summary of the hazing subchapter of the Education Code, as well as a copy, or an electronic link to a copy, of a report on hazing committed on or off campus by an organization registered with or recognized by the institution.

The report would have to include information on each disciplinary action taken by the institution against an organization for hazing, and each conviction of hazing by an organization, during the three years preceding the date the report was issued. For each incident, the report would show:

- the name of the organization disciplined or convicted;
- the date on which the incident occurred or the citation was issued;
- the date on which the institution's investigation was initiated;
- a general description of the incident, the violations of the institution's code of conduct or the criminal charges, the findings of the institution or the court, and any sanctions imposed by the institution or fines imposed by the court; and
- the date on which the institution's disciplinary process was resolved or on which the conviction was final.

The report would have to be updated to include information on each disciplinary process or conviction not later than the 30th day after the process was resolved or the conviction became final. The report could not include personally identifiable student information and would have to comply with the federal Family Educational Rights and Privacy Act of 1974.

Each postsecondary educational institution would have to develop and post the report by January 1, 2020. Students who attended student orientation would have to receive notice about the nature and the availability of the report.

The bill would take effect September 1, 2019, and would apply only to an offense committed or a cause of action that accrued on or after the effective date.

**SUPPORTERS  
SAY:**

SB 38 would encourage reporting of hazing by witnesses, facilitate prosecution of perpetrators, and improve a student's ability to choose an organization that would not partake in harmful initiation practices.

Current law on hazing is too vague for many prosecutors to successfully pursue such a case, and perpetrators often conduct hazing away from campus. SB 38 would address these issues by creating a firm penalty for coercing a student to consume alcohol or drugs and by allowing for a district or county attorney to prosecute a hazing offense in the same county as the school in which the victim was enrolled.

Students who are hazed can suffer socially and psychologically. SB 38 would help prevent such adverse experiences by ensuring that students had a list of organizations that were known to engage in hazing. This, along with the immunity the bill would provide to those who reported hazing, would deter organizations from engaging in such behavior and help other students avoid harmful situations.

**OPPONENTS**

While well intended, SB 38 would implement language that was too broad

SAY: to be properly enforced. Postsecondary institutions still would have to define and investigate hazing, and the broad language of the statute could lead to impaired impartiality.