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Covering Up an Infection with a Bandage: A Call to Action to Address Flaws in Ohio's Anti-Hazing Legislation

Justin M. Burns
jmb349@zips.uakron.edu

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**COVERING UP AN INFECTION WITH A BANDAGE: A
CALL TO ACTION TO ADDRESS FLAWS IN OHIO’S ANTI-
HAZING LEGISLATION**

*Justin M. Burns**

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I. INTRODUCTION

Otter:Flounder, I am appointing you pledge representative to the social committee.

Flounder:Gee Otter, thanks. What do I have to do?

Otter: It means you have to drive us to the Food King.

ANIMAL HOUSE (Universal Pictures 1978)¹

Hazing hit Hollywood when *Animal House* presented a satirized version of the wild side of fraternity life: binge drinking, hazing, toga parties, drug use, and harmless pranks.² While some argue that *Animal House*-type hazing is a myth,³ real-life testimonials say otherwise. *Rolling Stone* interviewed Andrew Lohse, a former fraternity pledge at Dartmouth University, who revealed that the *Animal House* life is not just on the big screen:

I was a member of a fraternity that asked pledges, in order to become a brother, to: swim in a kiddie pool of vomit, urine, fecal matter, semen, rotten food products; eat omelets made of vomit; chug cups of vinegar, which in one case caused a pledge to vomit blood; drink beer poured down fellow pledges' ass cracks . . . among other abuses.⁴

Lohse's critics admitted that hazing occurred but argued the hazing he experienced was the exception and not the norm.⁵ However, recent events suggest otherwise. In 2003, investigators in Nevada found evidence that sexual harassment, hazing, and inappropriate behavior occurred with rookie firefighters during training.⁶ In 2005, pictures surfaced of players on the Northwestern University women's soccer team

* J.D. Candidate, The University of Akron School of Law, 2015. Editor-in-Chief, 2014-2015 *Akron Law Review*. M.S., College Student Personnel, The University of Tennessee, 2012. B.S. in Atmospheric Science, The Ohio State University, 2007. The author wishes to thank the staff of the *Akron Law Review* for its editorial assistance; his family for instilling the values of faith, family, and fortitude; former colleagues while a staff member at the International Headquarters of the Fraternity of Phi Gamma Delta (FIJI); and his fellow fraternity brothers from The Ohio State University Chapter of Phi Gamma Delta for instilling a passion for the impact that a true, values-oriented fraternity and college experience can have on college students.

1. ANIMAL HOUSE (Universal Pictures 1978); see *Animal House (1978) Quotes*, IMDb, <http://www.imdb.com/title/tt0077975/quotes> (last visited Nov. 9, 2014).

2. See *Fraternal Organizations*, STOPHAZING, <http://www.stophazing.org/hazing-in/fraternal-organizations/> (last visited Nov. 12, 2014).

3. *The Myths*, FRATERNITYINFO.COM, <http://www.fraternityinfo.com/the-myths/> (last visited Nov. 12, 2014).

4. Janet Reitman, *Confessions of an Ivy League Frat Boy: Inside Dartmouth's Hazing Abuses*, ROLLING STONE (Mar. 28, 2012), available at <http://www.rollingstone.com/culture/news/confessions-of-an-ivy-league-frat-boy-inside-dartmouths-hazing-abuses-20120328>.

5. Snowden Wright, *In Defense of Hazing*, N.Y. DAILY NEWS (Apr. 12, 2012), <http://www.nydailynews.com/opinion/defense-hazing-article-1.1059984>.

6. The Federal Bureau of Land Management investigated wrongdoing in October 2003. A government spokesperson stated that recruits were "demeaned and humiliated by being forced to wear children's dolls around their necks . . .," and female recruits were sexually harassed. George Knapp, *Alleged Hazing of Rookie Firefighters*, 8 NEWS NOW (last updated Oct. 17, 2003, 4:53 PM), <http://www.8newsnow.com/story/1484351/alleged-hazing-of-rookie-firefighters>.

blindfolded, covered in marker, some with hands bound behind their backs, and some giving lap dances to the men's soccer team players as punishment.⁷ In 2010, a freshman at the University of Nebraska was paralyzed after being ordered to construct and then jump into a makeshift pool.⁸ In 2012, a Florida college band member was hazed during a ritual meant for future lead drum majors; he later lost his life after being kicked and beaten with drumsticks and mallets.⁹ In early 2013, three New York high school students used their fingers to penetrate a victim and threatened rape unless the victim touched another's penis in a hazing-related incident.¹⁰ In December 2013, a fraternity pledging ritual (referred to as "Glass Ceiling" or "The Gauntlet") involved blindfolded new members carrying heavy items while being tackled, which resulted in a student death.¹¹ And as recent as March 2014, six students at the University of Akron in Ohio faced hazing charges after repeatedly beating a probationary fraternity member with a wooden paddle, which resulted in hospitalization.¹²

University studies confirm that hazing is common. A study from the University of Maine found that 55% of college students experienced hazing in varsity athletics, fraternities and sororities, club sports, military groups, marching bands, honor societies, and athletic clubs.¹³ A study from Alfred University showed that hazing is not just a college activity, but also infects high schools: 48% of high school students belonging to student groups reported being hazed, with 25% of those hazed before the

7. Chris Sprow, *Northwestern Women's Soccer Team Suspended After Hazing*, N.Y. TIMES (May 16, 2006), http://www.nytimes.com/2006/05/16/sports/soccer/16hazing.html?_r=1&.

8. George Diepenbrock, *Lawsuit Filed After Injury at KU Fiji Party Moving to Douglas County*, LAWRENCE JOURNAL-WORLD (Jan. 27, 2012), <http://www2.ljworld.com/news/2012/jan/27/lawsuit-filed-after-injury-fiji-party-moving-dougl/>.

9. Michael Muskal, *FAMU Hazing-Death Victim Allegedly Requested Rite*, L.A. TIMES (May 23, 2012), <http://articles.latimes.com/2012/may/23/nation/la-na-nn-famu-hazing-interviews-20120523>.

10. Frank Miller, Mitch Abramson, & Ben Chapman, *Exclusive Photo: Bronx High School of Science Athletes Caught in the Hazing Action*, N.Y. DAILY NEWS (Mar. 10, 2013, 3:00 AM), <http://www.nydailynews.com/new-york/education/h-s-athletes-caught-hazing-action-article-1.1284134>.

11. Peter Jacobs, *Baruch College Freshman's Death from Fraternity Pledging Ritual Ruled a Homicide*, BUS. INSIDER (Feb. 14, 2014, 12:36 PM), <http://www.businessinsider.com/baruch-college-frat-death-ruled-homicide-2>.

12. Karen Farkas, *University of Akron Alpha Phi Alpha Fraternity Members Charged with Hazing*, PLAIN DEALER (Feb. 27, 2014, 3:54 PM), http://www.cleveland.com/metro/index.ssf/2014/02/university_of_akron_alpha_phi.html.

13. ELIZABETH J. ALLAN & MARY MADDEN, NAT'L STUDY OF STUDENT HAZING, HAZING IN VIEW: COLLEGE STUDENTS AT RISK (2008), available at http://umaine.edu/hazingresearch/files/2012/10/hazing_in_view_web.pdf.

age of 13.¹⁴ Just recently, an Ohio teenager was indicted for hazing when he and his teammates sat on the victim's stomach, smacked his buttocks, removed the victim's pants, and anally raped him using a plastic straw.¹⁵ The teenager was placed on probation, ordered to perform 40 hours of community service, required to apologize to the victim and his family, and must register as a sex offender for the rape incident.¹⁶

Hazing is not just a student and education problem – it is a society problem. In Orange County, California, rookie firefighters were held down while their hair was shaved.¹⁷ When asked about the behavior, the firefighters referred to it as “normal camaraderie” that “happened hundreds of times.”¹⁸ In Los Angeles, a firefighter filed a lawsuit against the Los Angeles Fire Department alleging racial discrimination after colleagues placed dog food in his spaghetti during a hazing-related prank.¹⁹ The Battalion Chief acknowledged that hazing existed within the department.²⁰ In 1998, Jeff Danish, a first-year player in the National Football League, was hit with fists and bags of coins during a hazing-related activity, resulting in injuries.²¹ Similar hazing occurs during professional internships.²² This treatment occurs in the workplace on a

14. *High School Hazing: Executive Summary*, ALFRED U., http://www.alfred.edu/hs_hazing/executive_summary.cfm (last visited Nov. 9, 2014). There are several examples of hazing in high schools from across the country. *See, e.g.*, John Higgins, *Nine Garfield High Students Disciplined for Hazing, Two Get 20-Day Suspensions*, SEATTLE TIMES (Oct. 18, 2013, 4:40 PM), <http://blogs.seattletimes.com/today/2013/10/nine-garfield-high-students-disciplined-for-hazing-two-get-20-day-suspensions/> (students paddled and wearing diapers); *High School Football Players Charged with Battery After Alleged Hazing*, FOX NEWS (Nov. 6, 2013), <http://www.foxnews.com/us/2013/11/06/high-school-football-players-charged-with-battery-after-alleged-hazing/> (publishing article from Associated Press) (students charged with battery in suspected football hazing).

15. *In re R.D.U.*, No. 24225, 2008-Ohio-6131, at ¶ 8 (Ct. App. Nov. 26, 2008).

16. *Id.* at ¶ 2.

17. Tony Saavedra, *13 O.C. Firefighters Punished in Hazing*, ORANGE CTY. REP. (Jan. 29, 2013), <http://www.ocregister.com/taxdollars/strong-479016-firefighters-hazing.html>.

18. *Id.*

19. Beth Barrett & Kerry Cavanaugh, *\$1.43 Million Deal in LAFD-Hazing Suit*, L.A. DAILY NEWS (Sept. 21, 2007, 9:00 PM), <http://www.dailynews.com/general-news/20070922/143-million-deal-in-lafd-hazing-suit>.

20. Greg Krikorian, *L.A. Fire Department Probes Alleged Hazing*, L.A. TIMES (Apr. 21, 2007), <http://articles.latimes.com/2007/apr/21/local/me-hazing21> (“‘The Fire Department has zero tolerance for any kind of behavior that involves hazing, racial discrimination or mistreatment of people,’ Battalion Chief Kwame Cooper said late Friday.”).

21. *Pro Football: Former Saints Rookie Describes Hazing*, N.Y. TIMES (Aug. 28, 1998), <http://www.nytimes.com/1998/08/28/sports/pro-football-former-saints-rookie-describes-hazing.html>.

22. HANK NUWER, WRONGS OF PASSAGE: FRATERNITIES, SORORITIES, HAZING, AND BINGE DRINKING 197 (1999) (referencing research done by Henry K. Silver, M.D. and quoting Dr. Scott Saucier: “Just as fraternity hazing can cross the line, the same can occur during the internship.”).

weekly basis, which takes the form of criticizing, bullying, and withholding information.²³ Rather than an exception to the norm, hazing is quite commonplace.²⁴

There have been some attempts to address the problem. For example, the United States Coast Guard requires hazing awareness training for recruits and future leaders.²⁵ The National Federation of State High School Associations established reporting policies and protocols for member high schools.²⁶ Educational institutions adopt anti-hazing policies and create programs to help students and constituents identify and report the activity.²⁷ Finally, most states condemn hazing through the legislature: 44 states have passed anti-hazing legislation.²⁸

Ohio enacted its anti-hazing legislation in 1983, which defined hazing as “doing any act or coercing another . . . that causes or creates a substantial risk of causing mental or physical harm to any person.”²⁹ The act constitutes hazing only when two further elements are met.³⁰ First, hazing can only occur during an act of initiation.³¹ Second, the initiation

The culture within the medical profession could stem from a “suck it up” mindset meant to teach practical medicine and perpetuated by “old school docs” that had to go through the experience. See Martha Frase-Blunt & Anthony C. Hall, *Rude Medicine: Are Hazing, Harassment, and Abuse an Inevitable Part of Training?*, NEW PHYSICIAN, May-June 2007, available at <http://www.amsa.org/AMSA/Homepage/Publications/TheNewPhysician/2007/tnp372.aspx>.

23. See Lana Brown & Donna Middaugh, *Nurse Hazing: A Costly Reality*, MEDSURG NURSING, Sept.-Oct. 2009, at 305, available at http://www.amsn.org/sites/default/files/documents/practice-resources/healthy-work-environment/resources/MSNJ_Brown_18_05.pdf (referencing studies and providing examples from the U.S. workplace).

24. See, e.g., Madison Gray, *Charges Filed in Hazing Death of Florida A&M Drum Major*, TIME (May 2, 2012), <http://newsfeed.time.com/2012/05/02/charges-filed-in-hazing-death-of-florida-am-drum-major/>; Liz Young, *Ohio State Crew Club Team Faces Suspension Sentence for Hazing*, LANTERN (Apr. 29, 2013), <http://thelantern.com/2013/04/ohio-state-crew-club-team-faces-suspension-sentence-for-hazing-2/>; Dan Whitcomb, *Three Charged with Hazing in California Student's Death*, REUTERS (Mar. 12, 2013, 6:14 PM), <http://www.reuters.com/article/2013/03/12/us-usa-hazing-charges-idUSBRE92B10V20130312>.

25. United States Coast Guard, Commandant Instruction 1610.1 (Jan. 13, 1991), available at http://www.uscg.mil/directives/ci/1000-1999/CI_1610_1.pdf.

26. Kathy Caudill, *Laws and Policies About Hazing*, NAT'L FED'N ST. HIGH SCH. ASS'NS (July 24, 2014), <http://nfhs.org/sports-resource-content/laws-and-policies-about-hazing/>.

27. See discussion *infra* Part III.C. Bowling Green State University in Ohio created an online training program to educate constituents on hazing, what to do if it occurs, and how to recognize when it is happening. The program is available to the public. BGSU Student Conduct, *Hazing Education Program*, PREZI (Apr. 30, 2014), <https://prezi.com/nlokbhpzhp-f/hazing-education-program/>.

28. *States With Anti-Hazing Laws*, STOPHAZING, <http://www.stophazing.org/laws/states-with-anti-hazing-laws/> (last visited Nov. 3, 2014).

29. OHIO REV. CODE ANN. § 2903.31 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)).

30. See *Golden v. Milford Exempted Vill. Sch. Dist. Bd. of Educ.*, No. CA2010-11-092, 2011-Ohio-5355, at ¶ 23 (Ct. App. Oct. 17, 2011).

31. *Id.*

must be into a student organization.³² A person violating the statute is guilty of hazing, which is a fourth-degree misdemeanor.³³

Ohio's statute is flawed in two ways. First, the statute focuses its application only on "initiation" into "organizations." Second, the statute's criminal sanction is ineffective and punishes only the "act" of initiation without condemning the motivation behind it. This Comment focuses on the second of these flaws, which has two parts.

First, Ohio's statute is a strict-liability offense.³⁴ In strict liability cases, the perpetrator requires no mental state to commit a crime.³⁵ However, defining hazing as only an act and not the manifestation of any mental state ignores social science research. The research suggests that while the act done may well be dangerous, the motivation behind the act comes from a mindset of power over another, influence, and authority.³⁶ By positioning the offense in strict liability, however, the *act* becomes the focus, rather than the offender's reason for doing so. Second, positioning the offense as a fourth-degree misdemeanor ignores the potential damage caused by hazing behavior. Because a hazing charge has a low penalty, hazing may not be charged absent other criminal charges.³⁷

This Comment proposes changing Ohio's anti-hazing statute into a penalty-enhancement statute, which would elevate the hazing charge to one level higher than any underlying criminal offense. Penalty-enhancement systems "increase criminal sentences based on the details of an offense or the characteristics of a defendant."³⁸ For example, in February 2014, six fraternity men from the University of Akron paddled a new member over the course of several weeks.³⁹ They were charged with first-degree misdemeanor assault and hazing.⁴⁰ Under a penalty-enhancement statute, if the offenders were found guilty of committing first-degree misdemeanor assault, their hazing charge would increase by

32. *Id.*

33. OHIO REV. CODE ANN. § 2903.31(C).

34. *Id.*; State v. Brown, 630 N.E.2d 397, 402 (Ohio Ct. App. 1993) (noting that unlike assault, hazing "does not require proof of any intention or purpose").

35. State v. Schlosser, 681 N.E.2d 911, 916 (Ohio 1997).

36. See discussion *infra* Part III.A.iii.; see also NUWER, *supra* note 22, at 37; Susan P. Stuart, *Warriors, Machismo, and Jockstraps: Sexually Exploitative Athletic Hazing and Title IX in the Public School Locker Room*, 35 W. NEW ENG. L. REV. 377, 394 (2013) (describing the hierarchy in teams and how hazing reinforces superior positions over new members).

37. See discussion *infra* Part III.A.ii.; discussion *infra* Part III.D.

38. Sarah French Russell, *Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing*, 43 U.C. DAVIS L. REV. 1135, 1137 (2010).

39. Farkas, *supra* note 12.

40. *Id.*

one level to a fifth-degree felony because the criminal offense was committed while hazing.⁴¹ This approach would strengthen Ohio's attempt to prevent hazing by punishing the offender for the underlying criminal offense and the reason the offender committed the offense in the first place.

In response to the hazing problem and the deficiencies in Ohio's anti-hazing statute, the Ohio General Assembly ought to clarify its prohibition on hazing and strengthen its penalties. This Comment analyzes the current status of Ohio's anti-hazing law against social science research. Part II of this Comment defines hazing and traces its development through history as the product of personal and community development theories. Part III summarizes trends in state-based hazing laws and analyzes Ohio's hazing definition and criminal sanctions. Part IV explains the flaws in Ohio's statute and proposes alternative language. Finally, the Comment concludes with a call to action for community leaders to take action and cure the underlying disease, rather than use a bandage to cover up the hazing problem.

II. DEFINING HAZING AND ITS ORIGINS

This section discusses the difficulty in defining hazing behaviors, describes the evolution of hazing as part of culture, and concludes with a survey of community and personal development theories that have converged to create an environment allowing hazing behaviors to spread.

A. A Vague Idea

Hazing is an amorphous idea that takes on different meanings in different contexts.⁴² Difficulty in definition is the nature of the beast, or as Justice Oppido explained in his interpretation of a New York anti-

41. There is a significant difference between a first-degree misdemeanor assault sanction and a fifth-degree felony. For a fifth-degree felony, a prison term "shall" be between six and twelve months. OHIO REV. CODE ANN. § 2929.14(5) (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)). For a first-degree misdemeanor, the sentence is jail for not more than 180 days. *Id.* § 2929.24(1). For comparison, hazing, a fourth-degree misdemeanor, can only be punished by not more than 30 days in jail. *Id.* § 2929.24(4). Therefore, it is already likely that the punishment for the first-degree misdemeanor assault charge will "swallow up" any sanction for the fourth-degree misdemeanor hazing charge.

42. SUSAN LIPKINS, PREVENTING HAZING: HOW PARENTS, TEACHERS, AND COACHES CAN STOP THE VIOLENCE, HARASSMENT, AND HUMILIATION 2 (2006); Gregory L. Acquaviva, *Protecting Students from the Wrongs of Hazing Rites: A Proposal for Strengthening New Jersey's Anti-Hazing Act*, 26 QUINNIPIAC L. REV. 305, 306-08 (2008); A. Catherine Kendrick, Comment, *Ex Parte Barran: In Search of Standard Legislation for Fraternity Hazing Liability*, 24 AM. J. TRIAL ADVOC. 407, 409-13 (2000).

hazing statute: “It would have been an impossible task if the legislature [had] attempted to define hazing specifically. Fraternal organizations and associations have never suffered for ideas in contriving new forms of hazing.”⁴³

Hazing encompasses a broad spectrum of behavior and is generally something that humiliates, degrades, abuses, or endangers someone.⁴⁴ Some organizations often add additional elements. For example, the Fraternal Information and Programming Group (FIPG), an organization promoting risk management education and programming for fraternities and sororities, focuses hazing on something “intentionally” done to others that causes harm.⁴⁵ Colleges and universities have also weighed in,⁴⁶ such as the University of Cincinnati in Ohio, which defines hazing as an activity that occurs during new member initiations and during times of “continued affiliation” (i.e., post-initiation).⁴⁷ Hazing definitions all carry a general theme: do not haze.⁴⁸ However, depending on how hazing is

43. *People v. Lenti*, 253 N.Y.S.2d 9, 13 (N.Y. Cnty. Ct. 1964).

44. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1041 (1986). For example, hazing could be anything from requiring new members to refer to other members with titles (e.g. “Mr.”), personal servitude, forced alcohol consumption, public nudity, name-calling, and sleep deprivation. *Types*, STOPHAZING, <http://www.stophazing.org/hazing-information/types/> (last visited Nov. 3, 2014). Some authors consider hazing to be a subset of “bullying.” *See, e.g.*, Diane M. Holben & Perry A. Zirkel, *School Bullying Litigation: An Empirical Analysis of the Case Law*, 47 AKRON L. REV. 299, 307 (2014) (including “hazing” as a search term to collect case law discussing student-on-student bullying).

45. FRATERNAL INFORMATION & PROGRAMMING GROUP, INC., FIPG RISK MANAGEMENT MANUAL 8 (2013) [hereinafter FIPG MANUAL], available at http://cmssites.theginsystem.com/uploads/fipg/userfiles/FIPG_MANUAL.pdf. The full definition in the FIPG Manual is: “Any action taken or situation created, intentionally, whether on or off fraternity premises, to produce or that causes mental or physical discomfort, embarrassment, harassment, or ridicule.” *Id.* at 33.

46. For further example, the University of Akron (Akron, Ohio) defers to the state definition. *See* University of Akron: Office of Greek Life Programs, Dep’t of Student Life Hazing Policy Compliance Form, UA Hazing Policy, available at <https://www.uakron.edu/dotAsset/770311.pdf> (last visited Nov. 12, 2014). Kent State University (Kent, Ohio) also defers to the state definition, but adds that hazing is something intentionally created “to produce mental or physical discomfort, embarrassment, harassment or ridicule.” Kent State University, Policy Details: University Policy Regarding Hazing, Policy 4-07, available at http://www2.kent.edu/policyreg/policydetails.cfm?customel_datapageid_1976529=2038038 (last visited Nov. 9, 2014).

47. University of Cincinnati, Student Organizations: Hazing Policy, Rule 3361:40-03-12(B)(2) (Dec. 21, 1990), available at http://www.uc.edu/content/dam/uc/trustees/docs/rules_40/40-03-12.pdf:

[P]articipating in or allowing any or coercing another, including the victim, to do any act that creates a substantial risk of causing mental or physical harm to any person. A forced or coerced activity shall also be considered hazing when the initiation or admission into, or continued affiliation with, a university organization is directly or indirectly conditional upon performing that activity. . . .

48. For other examples of groups using different definitions, see Amie Pelletier, Note, *Regu-*

defined and which groups are regulated, an act could be permitted in one instance while prohibited in another. Rather than evaluate one element or advocate for the strength of one definition as compared to another, this Comment combines these elements and focuses more on the impact of such a definition in the criminal justice system.

StopHazing, an organization devoted to disseminating information about hazing, provides a suitable definition for the purposes of this Comment to help distinguish a hazing activity from a non-hazing one:

[A]ny activity expected of someone joining a group (or to maintain full status in a group) that humiliates, degrades or risks emotional and/or physical harm, regardless of the person's willingness to participate.⁴⁹

This is a workable definition for this Comment for four reasons. First, the definition includes both mental and physical harm, which mirrors the approach taken by the State of Ohio.⁵⁰ Second, the definition recognizes that hazing can occur during both initiation and continued membership in an organization.⁵¹ Third, the definition does not restrict itself solely to student organizations, which impliedly recognizes that hazing can occur in groups of people outside of the educational context.⁵² Finally, the definition explicitly removes a person's willingness to participate in the activity, which removes any doubt as to the doctrine of consent.⁵³

lation of Rites: The Effect and Enforcement of Current Anti-Hazing Statutes, 28 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 377, 378-81 (2002).

49. *Types*, *supra* note 44. StopHazing originally formed in 1992 by a group of students and college administrators in an attempt to lobby the New Hampshire legislature to adopt an anti-hazing law. *About Us*, STOPHAZING, <http://www.stophazing.org/about/> (last visited Nov. 12, 2014). Today, the organization's website serves as a resource for approximately 30,000 visitors per month and now includes hazing research and resources to assist communities with hazing prevention. *Id.*

50. *See* discussion *supra* Part III.B.

51. Hazing can occur during initiation and after a person is already a member of the group. *See* Gregory S. Parks & Tiffany F. Southerland, *The Psychology and Law of Hazing Consent*, 97 MARQ. L. REV. 1, 4 (2013) (describing how a college band member was hazed to death by joining a sub-group within the band). In response to hazing concerns, some groups rush members through initial recruitment to immediate membership. For example, Sigma Phi Epsilon, an international men's social fraternity, has a multi-tiered "Balanced Man Program" that provides new members with immediate membership, rather than requiring the men to participate in the typical pledging and new member education process. SIGMA PHI EPSILON, BALANCED MAN PROGRAM GUIDE 8 (2012), available at <http://www.sigep.org/resourcedocs/chapter-operations/Balanced-Man-Program-Guide.pdf>.

52. *See, e.g.*, BROWARD CTY. BAR ASS'N, HAZING WITHIN THE WORKPLACE: ADULT EMPLOYEES MAY HAVE LEGAL RECOURSE IF HAZED (2012).

53. The law of consent has unique applications within hazing law. *See generally* Parks & Southerland, *supra* note 51.

B. Tracing Hazing to Its Roots

Hazing is the product of power, influence, and social hierarchies. Rather than an isolated incident, hazing is a part of American culture that dates back to the early days of civilized society. Dating as far back as 387 B.C., young men, seen as “ferocious beasts,” engaged in practical jokes, often risking personal injury.⁵⁴ After new members became part of an organization, they in turn hazed incoming members, denying any wrongdoing in the process.⁵⁵ Augustine described this phenomenon: “[The hazers] were rightly called Overturers since they had themselves been first overturned and perverted, tricked by those same devils who were secretly mocking them in the very acts by which they amused themselves in mocking and making fools of others.”⁵⁶

This rite of passage is typical to many aspects of culture.⁵⁷ Similar rites have been found in the tribes of Ambonwari of Papua, New Guinea; in Christian religions celebrating the transformation from child to adult;⁵⁸ and in welcoming students into a culture of academic honor.⁵⁹ This culture spread into the academe, as medieval universities resembled modern day fraternal groups with membership requirements, required dues, information withheld from outsiders, and trade secrets only available to members.⁶⁰

Early hazing took many forms, but mainly focused on separating active, full members from those still looking to gain admission. In European schools, newcomers were referred to as the “bejauni,” which roughly translates to the “yellow bills,” since newcomers wore yellow-billed hats until permitted into full membership.⁶¹ In Germany, young

54. NUWER, *supra* note 22, at 92.

55. *Id.* at 92-93.

56. *Id.* at 93.

57. *See id.* (“Even obtaining a license involved a process that was a type of hazing.”); *see also* LIPKINS, *supra* note 42, at 2 (describing rituals taking place during different developmental stages such as birth, death, and marriage). Some may even categorize the law school experience as one of these rites of passage. One student editorial categorized law schools this way: “You know, they first scare you to death, then work you to death, and finally bore you to death.” Jon Peters, *Scare You to Death, Work You to Death, and Bore You to Death*, NAT’L JURIST (Nov. 2, 2009), <http://www.nationaljurist.com/content/scare-you-death-work-you-death-and-bore-you-death>. For a description of how rituals, tradition, and violence occur in society and student organizations, see Ricky L. Jones, *The Historical Significance of Sacrificial Ritual: Understanding Violence in the Modern Black Fraternity Pledge Process*, 24 W.J. BLACK. STUD. 112, 118 (2000).

58. LIPKINS, *supra* note 42; *see* Jones, *supra* note 57, at 115 (describing the Christian tradition of baptism as a time of rebirth).

59. NUWER, *supra* note 22, at 93.

60. *Id.* at 94.

61. *Id.* at 95.

students were threatened with execution because their social status was similar to that of a witch, which only a symbolic ritual from the initiated could liberate.⁶² After transporting itself to the Americas, hazing at Harvard College focused on personal servitude, as “freshmen” became “errand boys” for upperclassmen.⁶³ This turned into practical jokes aimed at upsetting university administrators in the 19th century, which then transformed into more frequent and violent practices.⁶⁴ “Students with nothing more to show for their lives than a year of schooling grabbed the role of quasi-gatekeepers, elevating themselves in their own minds by belittling newcomers before permitting them to pass through the gates.”⁶⁵

Although this gatekeeping process is similar to ancient times, “modern hazing” is significantly more aggressive.⁶⁶ Rather than simply *threatening* torture, incoming members are *actually* tortured.⁶⁷ Even worse, surveys indicate that modern hazing is no longer confined to the schoolyard or fraternity house; instead, hazing has transcended many aspects of collegiate culture and the workplace, and it is on the rise.⁶⁸

C. Creating the Perfect Storm

The intersection of psychological and developmental needs creates the “perfect storm” for hazing to flourish.⁶⁹ Children and young adults yearn for close, personal relationships as they mature from infancy into adulthood.⁷⁰ These relationships appease basic human needs but also address developmental needs, as feelings of belonging are satisfied through traditions and initiation rites.⁷¹ A sense of belonging is a basic human

62. *Id.*

63. *Id.* at 101.

64. *Id.* at 102; James. P. Barber, “*Ever After Strictly and Rigidly Obeyed – With Some Exceptions*”: *Administrative Responses to Hazing in the 1870s*, ORACLE, Spring 2012, at 1; LIPKINS, *supra* note 42, at 4.

65. NUWER, *supra* note 22, at 98.

66. See Jones, *supra* note 57, at 115 (“Modern fraternity initiation rituals are not different from ancient ones in that they also seek to maintain some form of stability within organizations.”).

67. *Id.* at 118.

68. See Acquaviva, *supra* note 42, at 316 (summarizing recent studies). *But see* Brandon W. Chamberlin, Comment, “*Am I My Brother’s Keeper?*”: *Reforming Criminal Hazing Laws Based on Assumption of Care*, 63 EMORY L.J. 925, 932-33 (2014) (criticizing statistical reports for not fully explaining how some activities are included as hazing in some contexts but not in others).

69. *Definitions*, INSIDE HAZING, <http://www.insidehazing.com/why.php> (last visited Nov. 9, 2014) [hereinafter INSIDE HAZING].

70. Caroline F. Keating et al., *Going to College and Unpacking Hazing: A Functional Approach to Decrypting Initiation Practices Among Undergraduates*, 9 GROUP DYNAMICS: THEORY, RES., & PRAC. 104, 104 (2005).

71. INSIDE HAZING, *supra* note 69.

need.⁷² For students in particular, the ability to successfully integrate into a new community, especially one where their culture and beliefs are accepted and acknowledged, is a factor in college retention and success.⁷³

Scholars characterize communities based on four factors: membership, influence, integration and fulfillment of needs, and shared emotional connection.⁷⁴ First, *membership* is a feeling that someone has the right to belong to a group, and there are boundaries between those that belong and those that do not.⁷⁵ Second, *influence* focuses on a person's ability to influence the group and the group to influence its members.⁷⁶ Third, community focuses on the *integration* of members fulfilling their needs through community involvement.⁷⁷ Finally, a *shared emotional connection* focuses, in part, on a shared history.⁷⁸

These characteristics provide the structure for hazing activities.⁷⁹ First, hazing reinforces boundaries; members put nonmembers through tests before nonmembers can cross the boundary and become part of the group.⁸⁰ For example, new members may be required to consume large amounts of alcohol and memorize information to earn membership into the group.⁸¹ Those who cannot handle the stress or who do not succeed are "misfits" and undeserving of membership.⁸² Second, hazing reinforces hierarchy and influence by reinforcing an unequal status and separating "newbies" from "elders."⁸³ Third, hazing fulfills the need for belonging by bringing new members into a group; since the newcomers now share a common experience with existing members, they are now

72. See Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PSYCHOL. BULL. 497, 497-521 (1995) (reviewing literature focusing on the need to belong and maintain strong, and concluding that "[t]he need to belong can be considered a fundamental human motivation").

73. See generally UMI JENSEN, KAMEHAMEHA SCHOOLS, FACTORS INFLUENCING STUDENT RETENTION IN HIGHER EDUCATION (2011) (summarizing research conducted on student persistence and integration); see also Karen F. Osterman, *Students' Need for Belonging in the School Community*, 70 REV. EDUC. RES. 323, 323-67 (2000) (analyzing research on students of all ages in various educational settings and their performance).

74. David W. McMillan & David M. Chavis, *Sense of Community: A Definition and Theory*, J. CMTY. PSYCHOL., Jan. 1986, at 9.

75. *Id.*

76. *Id.* at 11.

77. *Id.* at 12.

78. *Id.* at 13.

79. See LIPKINS, *supra* note 42, at 14-16.

80. *Id.* at 14.

81. *Id.* at 14-15.

82. NUWER, *supra* note 22, at 41.

83. LIPKINS, *supra* note 42, at 15.

“partners in crime” with their hazers.⁸⁴ Finally, hazing provides a shared history between members by passing on a tradition.⁸⁵ “Traditions are the cornerstone of most hazing, and they’ve usually been passed down from previous generations of the group.”⁸⁶ Hazing becomes the mechanism by which new members can leave their past lives and join a world in which the more senior members live.⁸⁷

Within the educational setting, this process occurs when students progress through identity and moral development.⁸⁸ Chickering and Reisser developed a vector system showing how students progress through various levels of identity development.⁸⁹ Students learn to develop cognitive and manual skills, mature by learning to identify and manage their emotions, become independent and learn to develop meaningful relationships, develop self-esteem, and ultimately develop integrity.⁹⁰ Similarly, Kohlberg’s moral development theory outlines three levels of development.⁹¹ At the most basic level, adolescents cannot yet appreciate the importance of society’s rules and expectations and, therefore, work only to avoid punishment because their needs are more important than society’s needs.⁹² Individuals, particularly adults, work to abide by these rules because following the rules enhances their relationships with others and they recognize that breaking expectations affects others.⁹³ Finally, individuals begin understanding how they can improve themselves through individual choices and the importance of making appropriate choices for all of humanity.⁹⁴

Hazing flourishes in this environment. For example, a student with low self-esteem, one vector of development in Chickering and Reisser’s model,⁹⁵ may tolerate abuse because it provides a sense of acceptance and allows admittance into closed events.⁹⁶ Similarly, as students begin to understand how their perspective of morals interacts with that of society, they join groups and rationalize their behavior as beneficial to the

84. *See id.* at 16.

85. *Id.* at 14.

86. *Id.*

87. NUWER, *supra* note 22, at 54.

88. *See* ASS’N OF FRATERNITY/SORORITY ADVISORS, STUDENT DEVELOPMENT THEORY RESOURCE GUIDE: APPLICATION IN FRATERNITY/SORORITY ADVISING 3 (2013).

89. *Id.* at 4.

90. *Id.* at 4-5.

91. *Id.* at 13.

92. *Id.*

93. *Id.*

94. *Id.* at 14.

95. *Id.* at 5.

96. NUWER, *supra* note 22, at 42-43.

group, regardless of personal impact.⁹⁷ Victims of this activity are then primed to haze others once they rise to a level of power and prestige, and they follow the group's rules by showing new members who has the power and control within the group – the once hazed overturned to hazers.⁹⁸ Although part of the group, subgroups form and hazers act as the gatekeeper to continued membership.⁹⁹

This process creates strong social pressures forcing victims into compliance.¹⁰⁰ Psychological theories explain why victims continue to participate in these activities.¹⁰¹ Victims may initially be hesitant to participate but, once involved, find no way out.¹⁰² Victims fear losing the close bonds developed with peers, sacrifice personal identity for the sake of the group, submit to authority when provided with influential mentors, and continue participation for the sake of increased self-esteem because of the hope to join an organization held in high prestige.¹⁰³ For this reason, consent is not a valid defense for hazing allegations in many states, either by statute or by courts finding the victim's will was overpowered and unable to provide consent.¹⁰⁴

III. STATE HAZING MEASURES AND OHIO'S ANTI-HAZING LEGISLATION

Anti-hazing legislation is not new; however, states have been slow to adopt it. In 1874, Congress passed the first law targeting “plebe bedevilment” behavior (i.e., hazing) in the United States Naval Academy.¹⁰⁵ New York followed suit 20 years later with the first state-based

97. *Id.* at 50-51.

98. LIPKINS, *supra* note 42, at 107. This behavior persists for several reasons, but multiple psychological theories describe it. *See* Parks & Southerland, *supra* note 51, at 24-50 (referencing studies that indicate how individuals rationalize behavior while in groups and justify personal decisions).

99. *See* Parks & Southerland, *supra* note 51, at 4 (describing how a college band member was hazed to death by joining a sub-group within the band).

100. *Id.* at 20 (quoting *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 507 N.E.2d 1193, 1198 (Ill. App. Ct. 1987), which found “the social pressure that exists . . . is so great that compliance with initiation requirements places him or her in a position of acting in a coerced manner”).

101. *See id.* at 24-53 (using psychological theories to explain why individuals may succumb to hazing pressure).

102. *Id.* at 53.

103. *Id.* at 53-54. Some new members are better equipped to navigate these influences. For example, a fraternity pledge who heard of hazing stories from a family member or did research on the organization may be able to identify hazing when it occurs. *Id.* at 54. This background causes a student to evaluate hazing and the potential benefits differently, and it may cause him not to quickly accept hazing as a beneficial step in the process. *Id.*

104. *Id.* at 17.

105. Darryll M. Halcomb Lewis, *The Criminalization of Fraternity, Non-Fraternity and Non-*

anti-hazing statute.¹⁰⁶ By the 1990s, over 115 years after Congress passed its initial law, only about half of the American states had any anti-hazing legislation.¹⁰⁷

This section provides an overview of the current status of anti-hazing laws across the United States, paying particular attention to Ohio's statute. After providing an overview of the statute, two Ohio court cases are discussed regarding two specific elements required under Ohio's hazing definition. Finally, the section concludes by describing the law's criminal sanctions, which the following section describes are inadequate to address the hazing problem.

A. The Current Status of State-Based Anti-Hazing Legislation

Today, 44 states have anti-hazing legislation.¹⁰⁸ However, these statutes are far from uniform and are as diverse as the hazing activities themselves. While there may not be uniformity, the statutes generally prohibit conduct that has three elements: (1) a type of harm caused by hazing, (2) harm connected to organizations or against a class of individuals, and (3) hazing limited to certain situations related to stages of organization membership.¹⁰⁹

Within these three categories, states vary widely on the severity and type of harm required, whether it is limited to educational settings, the context within which hazing must occur, the severity of penalty, and whether a hazing victim can consent to the activity itself.¹¹⁰ For example, in Delaware, the legislature uses over 300 words to broadly define hazing as "acts" or "situations" that result in mental or physical harm or unsafe conditions, while also identifying at least 16 examples of hazing.¹¹¹ In Kansas's 64-word statute, only physical harm is prohibited,¹¹²

Collegiate Hazing, 61 Miss. L.J. 111, 116 (1991); *McKenzie v. State*, 748 A.2d 67, 81 n.3 (Md. Ct. Spec. App. 2000).

106. *McKenzie*, 748 A.2d at 81 n.3.

107. Halcomb Lewis, *supra* note 105, at 119.

108. *States with Anti-Hazing Laws*, *supra* note 28. For a thorough analysis of the various state statutes, see Chamberlin, *supra* note 68, at 974 (Statutory Appendix).

109. Chamberlin, *supra* note 68, at 938.

110. *See id.* at 938-44 (referencing a survey of national hazing laws and discussing the application of the three generally-found elements in different state statutes).

111. DEL. CODE ANN. tit. 14, § 9302 (West, Westlaw through 79 laws 2014, ch. 428). Other states also enumerate hazing examples. *See, e.g.*, ARK. CODE ANN. §§ 6-5-201-6-5-204 (West, Westlaw through end of 2014 Second Extraordinary Session), IOWA CODE ANN. § 708.10 (West, Westlaw through legislation from the 2014 Reg. Sess.), MO. ANN. STAT. §§ 578.360-365 (West, Westlaw through the end of the 2014 Reg. Sess. of the Gen. Assembly).

112. KAN. STAT. ANN. § 21-5418 (West 2012).

whereas Pennsylvania's law also includes mental harm.¹¹³ Some states condition hazing as only occurring in certain stages of organization membership, such as initiations, whereas other states cover all activities.¹¹⁴ States also vary as to the type of mental state one must have to commit the crime of hazing. For example, similar to the view taken by FIPG, the State of Alabama defines hazing as a "willful" action.¹¹⁵ In contrast, the State of Florida includes "reckless" behavior, which asks whether a person could reasonably foresee that his or her actions would result in the harm suggested by the statute.¹¹⁶

In Ohio, the hazing law uses less than 60 words, provides no hazing examples, requires no mental state, and punishes both physical and mental harm; however, unless the activity is an "act of initiation" "into any student or other organization," an activity cannot possibly fall under Ohio's definition.¹¹⁷

There have been calls for uniformity in hazing legislation and a strengthening of its penalties. In 1991, Professor Darryll M. Halcomb proposed a federal law addressing interstate travel for the purposes of hazing and a uniform definition.¹¹⁸ In 2012, Representative Frederica Wilson, who earned the nickname "The Haze-Buster" for her efforts to denounce hazing in her own sorority, announced plans to propose an anti-hazing bill limiting access to federal funds for students sanctioned by universities for hazing violations.¹¹⁹ And just recently, in January 2014,

113. 24 PA. CONS. STAT. ANN. §§ 5351-5354 (West 2006). The statute does not include "criminal offense," but includes "willfully destroys or removes public or private property," which would classify as another criminal offense.

114. Chamberlin, *supra* note 68, at 941 (internal citations omitted) ("Only five states' statutes are written so broadly as to encompass any activity connected with a group. All other statutes are limited to certain contexts, such as initiation or situations endured as a condition of continued membership.").

115. ALA. CODE § 16-1-23 (West, Westlaw through Act 2014-9 of the 2014 Reg. Sess.). The Supreme Court of Nevada decided a landmark hazing case in 1979. *Davies v. Butler*, 602 P.2d 605 (Nev. 1979). In *Davies*, the parents of a deceased college student brought a wrongful death action against the Sundowners, a social drinking club at the University of Nevada in Reno. *Id.* at 607. The hazing activities involved mass consumption of alcohol, physical shoving, and verbal hazing as members poured alcohol down the initiate's throat. *Id.* at 607-08. The Supreme Court of Nevada determined that hazing is not merely negligent behavior; hazing is willful and wanton conduct. *See id.* at 607-16.

116. Hazing Prohibited, FLA. STAT. ANN. § 1006.63(1) (West, Westlaw through Ch. 272 (End) of the 2013 1st Reg. Sess. of the 23rd Leg.); *see* *Lewek v. State*, 702 So. 2d 527, 530-31 (Fla. Dist. Ct. App. 1997) (differentiating between reckless driving and willful activity).

117. OHIO REV. CODE ANN. § 2903.01(A) and § 2903.31 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)); *see* discussion *infra* Part III.C (describing required components of hazing as found by Ohio courts).

118. Halcomb Lewis, *supra* note 105, at 151-53.

119. Press Release, Rep. Frederica Wilson, Congresswoman Wilson Announces Framework

Representative Alan Grayson introduced a similar bill prohibiting students found guilty of a state-based criminal hazing law from receiving federal financial aid.¹²⁰ While there may be no uniform law on the horizon, the hazing conversation is very relevant and ongoing.

B. Ohio's Anti-Hazing Law

In 1983, Ohio enacted its anti-hazing law, which remains unchanged from its original form:

(A) As used in this section, “hazing” means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.

(B)(1) No person shall recklessly participate in the hazing of another.

(2) No administrator, employee, or faculty member of any primary, secondary, or post-secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person.

(C) Whoever violates this section is guilty of hazing, a misdemeanor of the fourth degree.¹²¹

The law establishes both criminal and civil sanctions and holds not just the hazers liable, but also national directors of organizations that allow the hazing to happen and primary, secondary, and post-secondary institutions.¹²²

Considering hazing is difficult to define and articulate,¹²³ defendants have already raised constitutional challenges to Ohio's hazing statute.¹²⁴ First, a defendant can assert an overbreadth defense, which argues that the hazing definition not only regulates hazing behavior, but also

for Anti-Hazing Legislation (May 31, 2012), <http://wilson.house.gov/press-releases/congresswoman-wilson-announces-framework-for-anti-hazing-legislation/>.

120. H.R. 3898, 113th Cong. (2nd Sess. 2014).

121. OHIO REV. CODE ANN. § 2903.31.

122. *Id.* § 2307.44.

123. See discussion *supra* Part II.A.

124. *Carpetta v. Pi Kappa Alpha Fraternity*, 100 Ohio Misc.2d 42 (Ct. Com. Pl. 1998). Many other states have also addressed vagueness and overbreadth arguments, though all generally find that their statute does not violate constitutional principles. See, e.g., *People v. Anderson*, 591 N.E.2d 461, 467 (Ill. 2003) (“Viewing the hazing statute interpreted correctly, it is clear that defendants’ overbreadth argument fails.”); *Morton v. State*, 988 So. 2d 698, 702-03 (Fla. Dist. Ct. App. 2008) (finding Florida law not void for vagueness).

“regulate[s] pure First Amendment rights.”¹²⁵ Second, a defendant can assert a vagueness defense, which argues that the statute’s “prohibitions are not clearly defined” and the defendant is not on notice as to what conduct is illegal.¹²⁶

The Lucas County Court of Common Pleas addressed both of these constitutional defenses in *Carpetta v. Pi Kappa Alpha Fraternity*.¹²⁷ In addressing overbreadth, the court found the scope of the statute does not expressly inhibit First Amendment freedoms because the statute addresses the *acts* causing harm, not protected speech.¹²⁸ The court also disposed of the vagueness argument, though it noted that the phrase “mental harm” was “too unclear and imprecise.”¹²⁹ Regardless, as the statute was applied to the defendants in the case, the problematic portions of the statute could be severed; and because other portions of the statute were not impermissibly vague, the statute was not void.¹³⁰

C. Ohio Courts Find Two Required Elements

Ohio courts have not explained how to separate hazing from non-hazing activities.¹³¹ However, *Golden v. Milford Exempted Village School District Board of Education*¹³² and *Dutch v. Canton City Schools*¹³³ found two elements critical to Ohio’s definition.

First, the activity must occur during an act of initiation.¹³⁴ In *Golden*, a ninth-grade student athlete was pinned down, punched, and had another student’s genitalia rubbed on his face and attempted to be forced into his mouth.¹³⁵ The purpose behind these activities was to “make the other players not want to play basketball the next season.”¹³⁶ The activities were not designed to initiate the boys into a student organization, but were “habitual acts of aggression . . . [meant] to intimidate and dominate others.”¹³⁷ Other team members indicated that they did not sanction the

125. *Carpetta*, 100 Ohio Misc.2d at 51.

126. *Id.* at 56 (citing *Grayned v. Rockford*, 408 U.S. 104, 108 (1972)).

127. *Id.* at 49.

128. *Id.* at 58.

129. *Id.* at 57.

130. *Id.* at 59.

131. See *Golden v. Milford Exempted Vill. Sch. Dist. Bd. of Educ.*, No. CA2010-11-092, 2011-Ohio-5355, at ¶ 23 (Ct. App. Oct. 17, 2011).

132. See generally *id.*

133. See generally *Dutch v. Canton City Sch.*, 157 Ohio App. 3d 80, 2004-Ohio-2173, 809 N.E.2d 62.

134. *Golden*, 2011-Ohio-5355 at ¶ 22.

135. *Id.* at ¶ 6.

136. *Id.* at ¶ 26.

137. *Id.*

activities, nor were they part of a team tradition or acts on behalf of the basketball team itself.¹³⁸ Regardless of how immoral or ridiculous the behavior, the activities were not sanctioned by the group or meant to initiate anyone onto the team; therefore, the acts were not prohibited under Ohio's hazing statute.¹³⁹

Second, the act of initiation must be into a student organization.¹⁴⁰ In *Duitch*, which occurred before *Golden*, two upper-class students approached a freshman student enjoying his lunch in the school cafeteria.¹⁴¹ The upper-class students told the younger student there was a jazz band meeting in the restroom.¹⁴² Upon entering the restroom, the freshman attempted to leave after becoming suspicious as to why several older students stood in the bathroom waiting for him to arrive.¹⁴³ Before he could leave, an upperclassman said, "Welcome to McKinley," and pushed him into the restroom as a swarm of students punched him with closed fists and kicked him.¹⁴⁴ Despite being "lured into the restroom" under the false "impression that [the freshman] was attending a jazz band meeting," the court found no hazing occurred because the assault was not meant to initiate him into a student organization, but rather into the student body.¹⁴⁵

Both *Golden* and *Duitch* applied the anti-hazing statute in the civil context, but the statute also provides for criminal punishment, which this Comment argues should be amended to reflect not the act of hazing, as *Carpetta* referenced,¹⁴⁶ but the reason individuals do it.

D. The Law Within the Criminal Context

A fundamental principle of law is that a person has a civic duty to behave within certain limits, and when he fails to do so, "he will be subjected to disagreeable consequences by way of imprisonment or compulsory payment of money."¹⁴⁷ Society justifies criminal punishment because criminal behavior affects all of society, and punishment expresses

138. *Id.*

139. *Id.* at ¶ 28.

140. *See id.* at ¶ 23.

141. *Duitch v. Canton City Sch.*, 157 Ohio App. 3d 80, 2004-Ohio-2173, 809 N.E.2d 62, at ¶ 24.

142. *Id.* at ¶ 27.

143. *Id.*

144. *Id.*

145. *Id.* at ¶ 30.

146. *Carpetta v. Pi Kappa Alpha Fraternity*, 100 Ohio Misc.2d 42, 56 (Ct. Com. Pl. 1998).

147. Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 461 (1897).

society's "moral outrage" for a person's breach of duty.¹⁴⁸ "Shaming sanctions are punishments that are directed primarily at publicizing an offender's illegal conduct in a way intended to reinforce the prevailing social norms that disapprove of such behavior and thus to induce an unpleasant emotional experience to the offender."¹⁴⁹ Since this punishment also inflicts pain on the offender, the utilitarian and retributivist approaches justify causing such pain as compensating for the pain to the victim.¹⁵⁰ Aside from these justifications, sentencing judges have wide latitude to determine sentences, including focusing on a person's motive for committing the condemned behavior.¹⁵¹

Ohio's anti-hazing law has a criminal element: a person guilty of hazing is guilty of a fourth-degree misdemeanor.¹⁵² Under Ohio's sentencing guidelines, a fourth-degree misdemeanor results in not more than 30 days in jail.¹⁵³ But as a stand-alone crime, the statute may not be sufficient to address the real hazing problem. In many instances, existing criminal statutes already cover harassment and violent hazing. Murder and assault are already crimes, just as are kidnapping and theft.¹⁵⁴ A Maryland appellate court saw a similar issue with Maryland's statute.¹⁵⁵ In responding to the defendant's overbreadth arguments, the court noted, "the statute reaches only conduct that is *already proscribed under other Maryland criminal statutes*."¹⁵⁶

148. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 1-2 (6th ed. 2012).

149. Note, *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116 HARV. L. REV. 2186, 2187 (2003).

150. See generally DRESSLER, *supra* note 148, at 11-25.

151. *Wisconsin v. Mitchell*, 508 U.S. 476, 487 (1993).

152. OHIO REV. CODE ANN. § 2903.31(B)(2) (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)).

153. *Id.* § 2929.24(A)(4).

154. *Id.* § 2903.02 (murder); § 2903.13 (assault); § 2905.01 (kidnapping); § 2911.21 (criminal trespass); § 2913.03 (theft).

155. *McKenzie v. State*, 748 A.2d 67, 71 (Md. Ct. Spec. App. 2000). For comparison, the full statute appears below:

(a) *Haze defined*.—In this section "haze" means doing any act or causing any situation which recklessly or intentionally subjects a student to the risk of serious bodily injury for the purpose of initiation into a student organization of a school, college, or university.

(b) *Violation constitutes misdemeanor; penalty*.—A person who hazes a student so as to cause serious bodily injury to the student at any school, college, or university is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500, or imprisonment for not more than 6 months, or both.

(c) *Consent of student not defense*.—The implied or expressed consent of a student to hazing may not be a defense under this section.

MD. CODE Art. 27 § 268H (1957, 1996 Repl. Vol.). This section was replaced by MD. CODE ANN., CRIM. LAW, § 2-607 (West, Westlaw through ch. eff. July 1, 2014, of the 2014 Reg. Sess. of the Gen. Assemb.). The language was not substantively changed.

156. *McKenzie*, 748 A.2d at 72 (emphasis added).

The reality is that hazing often involves other criminal acts and that hazing charges become practically unenforceable under the current statutory scheme. For example, in *State v. Brown*, a graduate student at an Ohio university assisted in a sorority initiation and was charged and convicted of complicity for assault and hazing after probationary members were slapped, pushed, punched, and paddled (known as “taking wood”).¹⁵⁷ In *In re J.P.*, another Ohio case, two juveniles were convicted of complicity to commit assault and unlawful restraint after inserting two fingers into the victim’s anal cavity (an activity known as the “bandit”) in a situation a witness described as hazing.¹⁵⁸ In *In re R.D.U.*, a student at an Ohio high school was convicted of both rape and hazing.¹⁵⁹ In fact, not a single Ohio hazing case could be found where the government charged hazing without some other offense attached for the same incident.¹⁶⁰

As StopHazing recognized, hazing roughly falls into three subcategories: (1) subtle hazing, which emphasizes a power imbalance and is harmless; (2) harassment hazing, which causes emotional anguish and aims to confuse; and (3) violent hazing, which has the potential to cause actual harm.¹⁶¹ The organization also lists examples of each of these categories, such as name-calling, threats, sexual simulation, and paddling.¹⁶² Since existing criminal penalties cover most of the violent hazing, other activities that may fall under the broader hazing definition already do not rise to the level of condemned conduct. Other activities, such as requiring new members to always carry six pennies in their pockets, are considered hazing by some definitions, but do not rise to the level of criminal hazing, let alone any other criminal penalty.¹⁶³ Because hazing is already charged with other offenses – usually offenses carrying

157. *State v. Brown*, 630 N.E.2d 397, 399 (Ohio Ct. App. 1993).

158. *In re J.P.*, No. 84473, 2005-Ohio-3390, at ¶ 2 (Ct. App. June 30, 2005).

159. *In re R.D.U.*, No. 24225, 2008-Ohio-6131, at ¶ 2 (Ct. App. Nov. 26, 2008).

160. The author acknowledges that legal databases often only carry appellate and notable cases. After searching through WestlawNext, Lexis Advance, and Bloomberg, not a single Ohio case appeared showing hazing as a standalone charge.

161. *Types*, *supra* note 44.

162. *Id.*

163. The author is aware of many different “acts” of hazing from his professional experience working for an international men’s social fraternity, serving as a graduate assistant at two universities, and advising and mentoring different fraternities and sororities. Other examples of hazing activities include requiring “pledges” to clean rooms in a fraternity or sorority house; only allowing athletes to use the backdoor of a facility because they were not “good enough” to use the front, public entrance; band members receiving nicknames; and probationary members required to address upperclassmen and organization officers by the names of “sir” or “master.” While these activities would unlikely trigger criminal penalties, the rules and policies of the institutions hosting the organization or the organization’s rules likely qualified them as hazing activities.

harsher sanctions than the hazing charge – punishing the hazing becomes an afterthought; the coupled charges receive the sentence.¹⁶⁴ It is the statute’s approach toward criminalizing hazing that this Comment argues is neither adequate for the harm caused nor aligned with the real reason hazing occurs.

IV. PROPOSING A STATUTORY AMENDMENT

A fun prank went horribly wrong at Cornell University.¹⁶⁵ George Desdunes, a sophomore and future doctor, sat on a couch blindfolded with his wrists and ankles bound, as he downed shots of vodka, ate hot sauce and other food items, and vomited several times throughout the night.¹⁶⁶ After he passed out, his friends put him in the backseat of a car, drove him to a house, and laid him on a couch.¹⁶⁷ His friends “tilted his head” so “he would vomit on the floor and not choke” and then walked away to sleep.¹⁶⁸ The next morning, cleaners found George, unconscious and cold to the touch, without a single friend in sight.¹⁶⁹ The next person to see George saw him not on his side, but face up, on a gurney, covered with a sheet, with a 0.40% blood alcohol content.¹⁷⁰ George died at the hands of close friends, his fraternity brothers, during a ritualized activity.¹⁷¹

Absent other criminal charges, Ohio’s anti-hazing law categorizes

164. For example, consider the assault and hazing charges brought against University of Akron (Akron, Ohio) students in March 2014. *See* Farkas, *supra* note 12. The first-degree misdemeanor assault charge carries a definite jail term of not more than 180 days. OHIO REV. CODE ANN. § 2929.24(A)(1) (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)). In a search of the docket entries for the defendants, five of the six received 180 day jail sentences. Four of the five had 120 days suspended and 60 days in an alternative facility; one of the five received all 180 days suspended. One of the defendants plead guilty to only the hazing charge with the assault charge dismissed. Sentencing information was not available for this last defendant. Docket information is available online at the Akron Municipal Court at <https://courts.ci.akron.oh.us/> (follow “Search Records” hyperlink).

165. Michael Winerip, *When a Hazing Goes Very Wrong*, N.Y. TIMES (Apr. 12, 2012), http://www.nytimes.com/2012/04/15/education/edlife/a-hazing-at-cornell.html?pagewanted=all&_r=0.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* Blood alcohol content measures the amount of alcohol present in the bloodstream. *Blood Alcohol*, WEBMD, <http://www.webmd.com/mental-health/alcohol-abuse/blood-alcohol> (last visited Nov. 9, 2014). A 0.40% blood alcohol content causes a person to have trouble breathing, may induce a coma, and can lead to death. *Id.* at <http://www.webmd.com/mental-health/addiction/blood-alcohol?page=2>.

171. *See* Winerip, *supra* note 165.

those facilitating George's death as fourth-degree misdemeanants.¹⁷² This Comment argues that these criminal ramifications are not appropriate due to the statute's focus on the act of hazing rather than the reason behind it. By situating the offense as a low-level misdemeanor, society does not adequately punish hazers for the damage caused. This section proposes transforming the hazing law into a sentencing enhancement scheme similar to Ohio's ethnic intimidation laws. This way, a hazing charge reflects the reality of using underlying criminal offenses and also reflects the reality of the offender's evil motive during the act's commission.

A. *The Statute is Inadequate in Application*

Ohio's anti-hazing statute is flawed in three ways. First, by positioning hazing as a fourth-degree misdemeanor, the punishment does not fit the harm caused. Second, hazing cannot be enforced properly, as much of its enforcement depends on the existence of other criminal offenses. Finally, the hazing definition punishes the *act* of hazing, while the real evil deserving of punishment is the *motivation* for committing the act. This section explains each of these three flaws before comparing hazing activity to Ohio's ethnic intimidation laws.

1. Punishment

Hazing is a cruel and dangerous activity.¹⁷³ While hazing is evil, so, too, is punishment, as it requires society to do evil upon another person.¹⁷⁴ Rather than abolish punishment because it is evil, scholars justify it based upon utilitarian and retributivist philosophies.¹⁷⁵

Since utilitarians view punishment as a means to prevent future evil, punishment is permissible only when it reduces an evil.¹⁷⁶ To

172. See OHIO REV. CODE ANN. § 2903.31 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)).

173. The act itself can also have impacts. For example, the victim in *In re R.D.U.* became angry and upset, started sleeping more, became withdrawn from family members, and became obsessed with exercising. *In re R.D.U.*, No. 24225, 2008-Ohio-6131, at ¶ 9 (Ct. App. Nov. 26, 2008).

174. Ronald J. Rychlak, *Society's Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment*, 65 TUL. L. REV. 299, 300 (1990).

175. *Id.*

176. See Andrew R. Strauss, Note, *Losing Sight of the Utilitarian Forest for the Retributivist Trees: An Analysis of the Role of Public Opinion in a Utilitarian Model of Punishment*, 23 CARDOZO L. REV. 1549, 1557 (2002) (quoting JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION, IN THE WORDS OF JEREMY BENTHAM 83 (John Bowring ed., 1962)) (internal citations omitted) ("Since punishment is also mischief, it is justified only in as far as it promises to exclude some greater evil."). Although utilitarianism is popular, the approach

achieve its ends, utilitarians focus on deterring future crime by incapacitating and rehabilitating the offender.¹⁷⁷ Therefore, punishing hazing is appropriate if it lessens the activity, which produces a safer society.¹⁷⁸

Along utilitarian grounds, Ohio's anti-hazing statute is weak at best. It may be impossible to adequately assess whether 30 days in jail deters hazers not to haze; however, national trends are informative. Hazing is difficult to track,¹⁷⁹ though hundreds of hazing cases have appeared since 1995, evidencing a "culture of hazing."¹⁸⁰ According to Elliot Hopkins from the National Federation of State High School Associations, "[f]rom all the information we are gathering from around the country, [hazing] is definitely on the rise."¹⁸¹

If deterrence is the goal, the punishment is not working. In 1988, Kent State University in Ohio canceled its hockey season after 12 players were charged with various offenses stemming from shaving heads and bodies during an initiation party, which resulted in one student nearly dying after older students coerced him to consume high quantities of alcohol.¹⁸² In 1996, a high school football player received a suspended sentence, a fine, and community service after pleading no contest to haz-

has critics. See generally Michele H. Kalstein et al, *Calculating Injustice: The Fixation on Punishment as Crime Control*, 27 HARV. C.R.-C.L. L. REV. 575, 583 (1992). For example, the approach assumes that since societal happiness is the epitome, the offender's freedom and equality must be subordinate to it. *Id.* Similarly, the approach assumes would-be offenders act rationally and can be actually deterred by the potential penalty. *Id.*; Guyora Binder & Nicholas J. Smith, *Framed: Utilitarianism and Punishment of the Innocent*, 32 RUTGERS L.J. 115, 116 (2000).

177. Strauss, *supra* note 176, at 1556.

178. Rychlak, *supra* note 174, at 300.

179. As discussed throughout this Comment, hazing is difficult to define, oftentimes cloaked in secrecy, and victims fear reporting it to authorities. This trend is a novel realization. Gloria Goodale, *High School Hazing Trends Turning Toward Sexual Torture, Away from Traditional Pranks*, ALASKA DISPATCH (Sept. 28, 2012), <http://www.alaskadispatch.com/article/high-school-hazing-trends-turning-toward-sexual-torture-away-traditional-pranks> ("Like bullying, hazing is by its very nature difficult to track. 'Hazing is very underreported and difficult to put a number on . . . These things are typically done to prove one is worthy to be in the group' and speaking up would ruin that.").

180. In 2007, the National Collegiate Athletic Association (NCAA) published a guide for addressing hazing in collegiate athletics. NAT'L COLLEGIATE ATHLETIC ASS'N, BUILDING NEW TRADITIONS: HAZING PREVENTION IN COLLEGE ATHLETICS (2007), available at [http://caps.sdes.ucf.edu/docs/hazinghandbook0108\[1\].pdf](http://caps.sdes.ucf.edu/docs/hazinghandbook0108[1].pdf). The NCAA proposes a shared responsibility for addressing the hazing culture between the NCAA national office and educational institutions. *Id.* at 1. This shared responsibility, according to the NCAA, is necessary because the "Culture of Hazing" on college campuses "result[s] in serious physical or emotional injury" each year. *Id.* at 1.

181. Goodale, *supra* note 179.

182. *Sports Hazing Incidents*, ESPN, <http://espn.go.com/otl/hazing/list.html> (last visited Nov. 9, 2014).

ing for sodomizing other students with shampoo bottles.¹⁸³ In 2006, two high school coaches at Dublin Coffman High School in Ohio allegedly resurrected a hazing tradition while on a team trip to Tennessee, which involved holding a student down as another individual inserted fingers into the victim's rectum.¹⁸⁴ The coaches were convicted in a Memphis court and received jail time.¹⁸⁵ These concerns are similar to the trends and statistics noted throughout this Comment.¹⁸⁶

Retribution is a form of "just deserts," justifying punishment in the absence of some social benefit.¹⁸⁷ A hazer, therefore, should be hurt simply because of his evil act; punishment should be the infliction of pain in the amount of pain caused.¹⁸⁸ It is difficult to assess whether 30 days in jail matches the pain inflicted on a hazing victim. Superficially, imposing jail time could compensate for the assumed pain of the victim, notwithstanding instances where jail time is suspended, probation is given, or community service hours are substituted as punishment.¹⁸⁹

Herein lies the dilemma: if punishing the act of hazing is difficult to rationalize, how can punishment be improved? While this Comment argues that the punishment is indeed inadequate, especially considering the harm caused and the maximum sentence imposed, enforcement of the current statute is also critically flawed. Rather than punish for an instance of hazing, which is difficult to rationalize, the punishment should focus on addressing the motive behind the other criminal acts.

183. *Id.*

184. Simone Sebastian, *Ex-Lacrosse Player Sues Over Assault*, COLUMBUS DISPATCH (Mar. 30, 2007, 4:43 PM), http://www.dispatch.com/content/stories/local/2007/03/24/DubTrial.ART_ART_03-24-07_B1_L4666PK.html.

185. Simone Sebastian, *Former Dublin Lacrosse Coaches Get Jail Time for Assault*, COLUMBUS DISPATCH (Oct. 23, 2008, 6:40 AM), http://www.dispatch.com/content/stories/local/2008/10/23/lax_case.html. Defense attorneys questioned the credibility of the victim's story because the victim did not report the incident. *Id.* The assault aside, a court convicted another coach of the team for intimidating the victim in front of his team after learning about the accusation. *See generally* State v. Simpson, No. 07AP-194, 2007-Ohio-7018 (Ohio Ct. App. Dec. 27, 2007).

186. *See supra* Part II.

187. Michele Cotton, *Back with a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Punishment*, 37 AM. CRIM. L. REV. 1313, 1315-16 (2000). There are arguments both supporting and critiquing retribution justification. *See* Edward Rubin, *Just Say No to Retribution*, 7 BUFF. CRIM. L. REV. 17, 28 (2003). Retribution plays out in two ways. First, retribution can be viewed as an "eye for an eye" type of transaction. *Id.* Punishment is a form of repayment, and the offender pays back the pain he caused through punishment. *Id.* Second, the "just deserts" concept is that the offender should be punished simply because he or she committed an evil act. *Id.*

188. Cotton, *supra* note 187, at 1317.

189. *See, e.g., In re R.D.U.*, No. 24225, 2008-Ohio-6131, at ¶ 2 (Ct. App. Nov. 26, 2008); NUWER, *supra* note 22, at 169 (commenting on the lack of substantive punishment).

2. Enforcement

Since hazing already involves acts made criminal by the General Assembly, hazing is often charged only when other charges can be brought against the perpetrator.¹⁹⁰ One could hypothesize that coupling charges in this way is because of cost. Considering courts already encounter large caseloads¹⁹¹ and face budget cuts,¹⁹² prosecuting a single hazing misdemeanor may be too expensive.¹⁹³ While prosecuting a hazing case may bring another person to justice, the marginal cost¹⁹⁴ of one more low-level criminal prosecution could be high, considering the time it takes to investigate, interview witnesses, prosecute, sentence, and incarcerate. By attaching other counts, such as the rape in *In re R.D.U.*,¹⁹⁵ a fourth-degree misdemeanor accompanies other charges carrying longer sentences.¹⁹⁶ Thus, the marginal benefit¹⁹⁷ of adding charges makes the overall case more attractive. If the final decision to prosecute is an economic decision, the focus is on the difference between the marginal benefits and the costs.¹⁹⁸ If the marginal benefits exceed the costs, the pros-

190. See *supra* notes 152-153 and accompanying text.

191. ROBERT C. BORUCHOWITZ, AM. CONSTITUTION SOC'Y, DIVERTING AND RECLASSIFYING MISDEMEANORS COULD SAVE \$1 BILLION PER YEAR: REDUCING THE NEED FOR AND COST OF APPOINTED COUNSEL 1 (2010), available at http://www.acslaw.org/sites/default/files/Boruchowitz_-_Misdemeanors.pdf.

192. Joe Guillen, *New Ohio Criminal Sentencing Bill to Save Millions By Letting Inmates Out Early, Sending Low-Level Felons to Prison Alternatives*, PLAIN DEALER (June 27, 2011, 2:37 PM), http://www.cleveland.com/open/index.ssf/2011/06/new_ohio_criminal_sentencing_1.html.

193. In fiscal year 2012-2013, California spent more money on the prison system than on education. Hansook Oh and Mona Adem, *California Budgets \$1 Billion More to Prisons Than Higher Education and Leaves Students Hanging*, DAILY SUNDIAL (Sept. 19, 2012), <http://sundial.csun.edu/2012/09/california-budgets-1-billion-more-to-prisons-than-higher-education-and-leaves-students-hanging/>. In Ohio, prison sentences are not the only costs. For example, in Hamilton County, Ohio, pre-conviction expenses alone came to over \$100 million, or roughly \$42,000 per hour of operation. ELI BRAUN, OHIO JUSTICE & POLICY CTR., \$42,000 FOR A COURTHOUSE HOUR: THE COST OF PROCESSING ADULT CRIMINAL CASES IN HAMILTON COUNTY, OHIO 1 (2010). When including misdemeanor, felony, and traffic offenses, this represents an average of approximately \$661.21 per criminal case. *Id.* at 6. To put this in perspective, the budget for prosecuting these offenses is 3 and 1/2 times more than what is spent on public works (storm water management, roads, and highway maintenance), 14 times more than what is spent on environmental control (solid waste removal, air quality, and litter management), and close to 1 and 1/2 times more than what is spent on recreational activities (development, operation of professional athletic facilities, museums, and gardens). *Id.* at 7.

194. Marginal cost is "[t]he cost of an increase in an activity." MICHAEL PARKIN, ECONOMICS 11 (8th ed. 2008).

195. *In re R.D.U.*, No. 24225, 2008-Ohio-6131, at ¶ 2 (Ct. App. Nov. 26, 2008).

196. See discussion *infra* Part III.D.

197. Marginal benefit is "[t]he benefit that arises from an increase in an activity." PARKIN, *supra* note 194, at 11.

198. *Id.*

ecutor will choose to prosecute.¹⁹⁹

Again, however, this focuses on the acts that occur, rather than the damage caused and the reason the acts occur. Considering *In re R.D.U.*, the teenager was placed on probation, ordered to perform community service, required to apologize to the family, and must register as a sex offender for raping the victim.²⁰⁰ In the end, the hazing charge became an afterthought behind the rape charge.

3. Act and Not Motive

These two shortcomings emerge because the statute punishes the *act* of hazing without focusing on *why* that act was committed.²⁰¹ As the statute itself defines, *hazing* is “doing any *act . . .*”²⁰² On one hand, the statute attempts to rationalize punishment based on the specific act, which is normally some other criminal offense such as rape, assault, or kidnapping.²⁰³ And since prosecutors are likely to couple charges for these acts with the hazing charges, the other criminal charges trump the hazing charge and focuses punishment on the underlying criminal offense.²⁰⁴ This focus became clear as Ohio courts stripped the mental state needed for the crime and interpreted the statute as a strict-liability offense.²⁰⁵ However, hazing is not an act – hazing is an intent, reason, or goal behind an act that makes the mental state unique.

The mental state is unique for two reasons. First, hazing stems from a hierarchal relationship resulting in a power influence between the hazer and the hazzee.²⁰⁶ The Appellate Court of Illinois noted this unique relationship in *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*.²⁰⁷

199. *Id.* (discussing a hypothetical scenario to determine whether a person should study an extra hour to achieve a higher GPA); see also NUWER, *supra* note 22, at 169 (“At present it is usually only when an underage initiate dies as a result of a beating or in an alcohol-related incident that a prosecuting attorney will recommend that a case be heard by a grand jury to see if it will go to trial.”).

200. *In re R.D.U.*, 2008-Ohio-6131 at ¶ 2.

201. See OHIO REV. CODE ANN. § 2903.31(A) (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)) (*hazing* means *doing any act* or coercing another . . . *to do any act*) (emphasis added in footnote).

202. See *id.*

203. See discussion *infra* Part III.D. For an example of this coupling of charges, see *supra* note 164 and accompanying text.

204. See discussion *infra* Part III.D; see also *supra* note 164 and accompanying text.

205. Golden v. Milford Exempted Vill. Sch. Dist. Bd. of Educ., No. CA2010-11-092, 2011-Ohio-5355, at ¶ 23 (Ct. App. Oct. 17, 2011).

206. NUWER, *supra* note 22, at 37; Stuart, *supra* note 36 (describing the hierarchy in teams and how hazing reinforces superior positions over new members).

207. Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity, 507 N.E.2d 1193, 1198 (Ill. App. Ct. 1987).

In *Quinn*, the plaintiff was a probationary member in the defendant-fraternity, which required the plaintiff to consume large amounts of alcohol to become a member of the organization.²⁰⁸ As a result, the plaintiff suffered neurological damage to his arms and hands.²⁰⁹ In finding a cause of action against the defendants, the court noted, “[t]he social pressure that exists once a college or university student has pledged into a fraternal organization is so great that compliance with initiation requirements places him or her in a position of acting in a coerced manner.”²¹⁰ Citing *Quinn*, the Missouri Court of Appeals reached a similar holding by referencing that “[i]f great social pressure was applied [to the plaintiff] to comply with the membership ‘qualifications’ of the [organization], [the plaintiff] may have been blinded to the danger [the plaintiff] was facing.”²¹¹

This power dynamic involves intimidation and coercing someone to become a second-class citizen.²¹² Once hazed, the hazee looks forward to the opportunity to obtain a position of authority, which provides the power and control needed to release feelings of revenge and aggression developed during earlier hazing experiences.²¹³ The group reinforces this power and status by affirming the good the hazer has done for the group.

[G]roups such as fraternities and cadet corps tend to reward with power and status individuals who are perceived as making the group better. If hazers are perceived to be doing the group a service by teaching newcomers precedence and getting weaklings to “toughen up” or quit, they are rewarded with a kind of status. Why? Because the group likely concluded that the hazers are trying to uphold its quest for higher standards.²¹⁴

Second, hazing is unique because hazers suspend notions of morals and ethics to justify behavior as that of the group and not of the individual.²¹⁵ Moreover, since hazing activities go unreported for a number of reasons,²¹⁶ society cannot always hold hazers accountable.²¹⁷ Without this accountability, hazers fail to recognize their actions as cruel, and a

208. *Id.* at 1195.

209. *Id.*

210. *Id.* at 1198.

211. *Nisbet v. Butcher*, 949 S.W.2d 111, 116 (Mo. Ct. App. 1997).

212. *See Facts: What Hazing Looks Like*, HAZINGPREVENTION, <http://hazingprevention.org/home/hazing/facts-what-hazing-looks-like/> (last visited Nov. 9, 2014).

213. LIPKINS, *supra* note 42, at 107.

214. NUWER, *supra* note 22, at 38.

215. LIPKINS, *supra* note 42, at 108-10.

216. NUWER, *supra* note 22, at 40; INSIDE HAZING, *supra* note 69 and accompanying text.

217. LIPKINS, *supra* note 42, at 109.

culture cements.²¹⁸ With the culture in place, hazees transform into hazers and release cruelty on others in an environment where it appears society accepts the behavior.²¹⁹

The hazing cycle is then complete.²²⁰ The cycle began with newcomers succumbing to cruel treatment in exchange for feelings of inclusion and fear of being outcast.²²¹ After the transformation is complete, notions of right and wrong have been suspended, and the once-hazed proceed to haze others. Veterans engage in this behavior as a way to restore what they lost when their hazers hazed them.²²² Not only is hazing done with a fist of power, but the fist no longer views the act as wrong.

Therefore, hazing is much more than an “act” done onto others, and with any notion of mental capacity removed from enforcement of Ohio’s anti-hazing statute, the statute ignores social science research. In fact, hazing is not much of an act at all. The underlying crime or offense may be an act, but the act is in furtherance of some other goal, oftentimes shrouded in secrecy with cover stories created to tell authorities if discovered.²²³

The statute misses an opportunity to address the problem. The statute applied a bandage to the problem rather than addressing the real disease lurking beneath. A different approach does not have to involve revolutionizing criminal law, but rather can take the form of an approach already familiar to eradicating societal issues.

218. *Id.* at 110.

219. *See id.* at 106-10.

220. There are several first-hand accounts describing a hazee’s experience, which he or she detested but then welcomed once the hazee became the hazer. For example, consider this reflection:

When I was finally a sister, I adored bossing around the incoming pledges. I was mean to the new girls during line-ups. I sat in on almost all of the pledging activities though some of my friends would have to leave the room because they didn’t want to watch the newest pledge class squirm and cry. I hurled the same ridiculous questions at them that I’d gotten myself. *I did it, so they have to too*, goes the thinking. *It’s tradition so why should anyone be the exception?* Etc. I could hear and see myself being mean and I hated it, but I also wanted these girls to love the sisterhood the way I did when they were done pledging. Hazing felt, in a twisted way, like some kind of service. (You’d have to ask them how that worked out, though. It’s possible some aren’t my biggest fans.)

Tess Koman, *Confession: Why Getting Hazed by my Sorority Was Weirdly Worth It*, COSMOPOLITAN, Sept. 18, 2013, available at <http://www.cosmopolitan.com/advice/health/why-getting-hazed-by-my-sorority-was-weirdly-worth-it/>.

221. NUWER, *supra* note 22, at 40-41.

222. *Id.* at 37 (referring to this behavior as “revenge”).

223. Hazing activities often occur at night and are pre-planned to avoid intervention by authorities, and participants will develop a cover up story if found. INSIDE HAZING, *supra* note 69.

B. Hazing Parallels Hate Crime Legislation

In the mid-1980s, Cleveland, Ohio saw a pattern of racially motivated incidents.²²⁴ In a predominately white suburb, four individuals wearing sheets set a cross aflame in front of one home, which was the residence of a family that had already been victimized by racial slurs and threats for years.²²⁵ Cleveland saw several other race-related activities, which included cross-burning, swastikas painted near certain homes, and a firebombing resulting in death.²²⁶ The number of racial incidents doubled over the course of one year, which prompted strong reactions from church leaders, politicians, and the media.²²⁷ This prompted State Senator Lee Fisher to introduce Ohio's ethnic intimidation bill, which became effective on March 19, 1987.²²⁸

The racial hatred behind these actions is at the heart of hate crime legislation.²²⁹ The Supreme Court of the United States approved the use of a person's motive for sentencing enhancement in *Wisconsin v. Mitchell*.²³⁰ In *Mitchell*, the defendant targeted a young boy because of his race.²³¹ The jury convicted Mitchell of aggravated battery, which carried a maximum two-year sentence, but also found Mitchell "intentionally selected his victim because of the boy's race."²³² Because of this additional finding, the trial judge enhanced Mitchell's sentence to four years under Wisconsin's penalty enhancement statute, which increased punishment because the underlying crime targeted a person because of race, religion, or other classification.²³³

Before the U.S. Supreme Court's review, the Supreme Court of Wisconsin ruled this enhancement statute unconstitutional as a violation of the First Amendment.²³⁴ The court held that "[t]he statute is directed solely at the subjective motivation of the actor . . . [p]unishment of one's

224. Paul J. Becker, *The Creation of Ohio's Ethnic Intimidation Law: Triggering Events, Media Campaigns, and Interest Group Activity*, 23 AM. J. CRIM. JUST. 247, 247, 252 (1999).

225. *Id.* at 247.

226. *Id.*

227. *Id.* at 252-53.

228. *Id.* at 247, 252.

229. See Saul A. Green & Gary M. Felder, *Uniting Against Hate: Michigan's Aggressive Effort to End Hate Crime Violations Through Community Partnerships*, 80 MICH. B.J. 58, 59 (2001); see also Hate Crime Acts, 18 U.S.C. § 249 (2012).

230. *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

231. *Id.* at 480.

232. *Id.*

233. *Id.* at 480-81.

234. *State v. Mitchell*, 485 N.W.2d 807, 814 (Wis. 1992), overruled by *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

thought, however repugnant the thought, is unconstitutional.”²³⁵ The court found the statute impermissibly swept in protected conduct, such as Mitchell’s speech, which the government used as circumstantial evidence of racially-intentional selection.²³⁶ Thus, the majority reasoned, the statute must be unconstitutional because the statute punished subjective mental processes and not objective acts.²³⁷

Writing in dissent, Justice Shirley Abrahamson acknowledged, “when individuals are victimized because of their status, such as race or religion, the resulting harm is greater than the harm that would have been caused by the injurious conduct alone.”²³⁸ The Supreme Court of the United States agreed.²³⁹

The Supreme Court unanimously reversed the Wisconsin high court because bias-inspired conduct inflicts greater harm than the same conduct without such motivation.²⁴⁰ Bias-inspired crime could promote retaliation, distinct emotional pain, and unrest.²⁴¹ *Mitchell* confirmed that because of these additional concerns, the defendant’s motive could be a factor sentencing judges use in punishing conduct.²⁴² When a crime causes even greater harm because of an evil motive, society punishes offenders equally greater.²⁴³

Similar to Wisconsin, Ohio’s ethnic intimidation law provides enhanced penalties for crimes motivated by race, color, religion, or nation-

235. *Id.*

236. *Id.* at 815.

237. *Id.* at 817.

238. *Id.* at 818 (Abrahamson, J., dissenting).

239. *Wisconsin v. Mitchell*, 508 U.S. 476, 487-88 (1993).

240. *Id.*

241. *Id.* Racial stigmatization can also lead to humiliation, isolation, and self-hatred. Susan Gellman, *Sticks and Stones Can Put You In Jail, But Can Words Increase Your Sentence? Constitutional and Policy Dilemmas of Ethnic Intimidation Laws*, 39 UCLA L. REV. 333, 341 (1991). Despite society’s attempts to fix the problem, bigotry continues, which can lead to mental illness, psychosomatic diseases, feelings of failure, defeatism, and self-questioning of intelligence, competence, and self-worth. *Id.*

242. *Mitchell*, 508 U.S. at 485. While punishment can be aggravated for the defendant’s motive for killing based on pecuniary gain, an individual’s punishment may also be minimized for good motives. *Id.*

Motives are most relevant when the trial judge sets the defendant’s sentence, and it is not uncommon for a defendant to receive a minimum sentence because he was acting with good motives, or a rather high sentence because of his bad motives.

Id. (quoting 1 W. LEFAVE & A. SCOTT, *SUBSTANTIVE CRIMINAL LAW* § 3.6(b), 324 (1986)).

243. Edward M. Kennedy, *Hate Crimes: The Unfinished Business of America*, BOS. BAR J., Jan.-Feb. 2000, at 23 (discussing penalty enhancements for crimes motivated by hate: “The Court [in *Wisconsin v. Mitchell*] also affirmed the appropriateness of punishing a crime more severely when the crime causes a greater harm to society.”).

al origin.²⁴⁴ Similar to ethnic intimidation and hate crimes, hazing causes even greater harm than the underlying act.²⁴⁵ Hazing victims can suffer from anger, fear, suicidal tendencies, and poor academic performance.²⁴⁶ And “[b]ecause many hazing victims are deprived of dignity and traumatized to the point that the quality of their lives is permanently affected,” some experts consider hazing a human-rights violation.²⁴⁷ For some, the ritualized nature of hazing can cause severe psychological stress by reliving child abuse, public shame leading victims into depression, and nightmares and stress occurring many years after the hazing episode.²⁴⁸

The hazing culture mirrors the development of Ohio’s hate crime legislation: hazing actions target a specific group of individuals whom the group demeans as “not good enough” to be part of the group; the harm caused by hazing is greater than simply the act or crime itself; and hazing has become a part of society and transcended multiple aspects of the societal framework. Similar to hate crime legislation that focuses on *why* a person committed an offense, anti-hazing legislation must not focus on the specific *act* of hazing but on *why* a person committed that act.

The use of motive in determining criminal punishment is not without objection but is already part of the legal process.²⁴⁹ One critique is that a person cannot control one’s motive; therefore, it is unjust to punish him or her for such involuntary conduct.²⁵⁰ A second critique argues

244. OHIO REV. CODE ANN. § 2927.12 (West, Westlaw through files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)). One interpretation of Ohio’s ethnic intimidation law is that it requires a finding of guilt based on the defendant’s motive as an element of the underlying events. *State v. Wyant*, 624 N.E.2d 722, 726 (Ohio 1994) (Wright, J., dissenting). Assuming a person is not convicted because of victim selection, but because the law penalizes a person for a biased belief, the statute would violate the Ohio Constitution and the First Amendment. *Id.*

245. Hazing causes harm to many parties. *See* NUWER, *supra* note 22, at 56. Physical harm may be obvious, but hazing also causes psychological pain. *Id.* Hazing often has an audience, and there is fear and apprehension from bystanders. *Id.* Based on the personal experience of this Comment’s author, hazing has many other effects that may not be readily apparent. For example, national fraternity organizations incur costs to cover the increased liability industry-wide from a hazing culture. Campuses must devote extra time to anti-hazing programming and staff time to investigate and hold students accountable. Hazing also causes apprehension during organization recruitment, when recruiters and potential members discuss hazing, as new members are flooded with information from movies and hazing stories but may struggle to get the necessary information from active members.

246. Acquaviva, *supra* note 42, at 316-17.

247. *Id.* at 317 (quoting NUWER, *supra* note 22, at 33).

248. *See generally* Tracy Maxwell, *The Hidden Harm of Hazing: Shame*, in NAT’L HAZING PREVENTION WEEK 2011 GUIDEBOOK (HazingPrevention 2011), available at http://www.campuspeak.com/assets/uploads/NHPW_ResourceGuide_highres.pdf.

249. Carissa Byrne Hessick, *Motive’s Role in Criminal Punishment*, 80 S. CAL. L. REV. 89, 90-91 (2006).

250. *Id.* at 91.

that the government should remain neutral and should not advocate for one position or another.²⁵¹ However, juries already consider motive when determining the plausibility of a person committing the act.²⁵² The question of motive is also involved when evaluating whether a person murdered in the “heat of passion,” thus mitigating murder to manslaughter.²⁵³ The doctrines of self-defense, duress, and insanity all look at a person’s motive.²⁵⁴ In addition, the United States Code lists several aggravating factors in considering capital punishment that focus on why or for what reason a person committed homicide.²⁵⁵ Despite concerns about using motive, prosecutors already use it when presenting cases to juries.²⁵⁶

Looking at a person’s reason for committing a crime fulfills both the retributive and utilitarian justifications for punishment.²⁵⁷ For example, a white supremacist killing a man out of racial hatred is more reprehensible and deserving of greater punishment than a person killing a man for sexually abusing his or her own child.²⁵⁸ While there is little data supporting a causal connection between deterrence and motive-based sentencing enhancements, using a person’s reason for committing an offense can accomplish broader deterrence goals “only so long as criminal laws approximate moral wrongs.”²⁵⁹ For example, a person who paddles another may be convicted of assault; however, this Comment argues the person who does so by threat of withholding membership or social status is more blameworthy and deserving of more punishment than that associated with assault alone.

251. *Id.*

252. *Id.* at 94.

253. Carol S. Steiker, *Punishing Hateful Motives: Old Wine in a New Bottle Revives Calls for Prohibition*, 97 MICH. L. REV. 1857, 1863 (1999) (reviewing JAMES B. JACOBS & KIMBERLY POTTER, *HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS* (1998)).

254. *Id.* When motive is revealed, a person may actually be viewed less negatively. Some criminal acts, although inherently evil, are considered less evil under certain circumstances. See Hessick, *supra* note 249, at 111 (providing the example of “mercy killings”).

255. For example, federal code provides that the jury shall consider pecuniary gain as an aggravating factor when deciding whether to impose the death penalty for homicide. 18 U.S.C. § 3592(c)(8) (2012).

256. For example, a prosecutor would not normally need to prove a person’s motive to prosecute a simple bicycle theft case. However, by showing the jury a person’s motive for the theft, the jury may consider the motive as evidence of the crime. If the prosecutor shows that the defendant believed “it would serve [bike owners] right if they were ripped off,” a jury may be less likely to accept a defense that the defendant inadvertently took the bike. Hessick, *supra* note 249, at 94.

257. *Id.* at 112.

258. *Id.* at 113-14. Hessick also compares mercy killings with contract killers. *Id.* at 114. While the loss of life in both instances is equally evil, a person who profits from the death is more blameworthy in comparison to ending one’s life to end one’s suffering. *Id.*

259. *Id.* at 117-18.

Assessing blameworthiness is why sentencing is a fluid process.²⁶⁰ This fluidity allows judges to determine the blameworthiness of offenders and the amount of harm caused by a criminal action.²⁶¹ Especially in situations where motives are not dispositive of the underlying criminal liability, considering the reasons why a person committed a particular crime during sentencing allows judges to express society's moral outrage at the greater evil attached to standard criminal conduct.

Using hazing to enhance an underlying offense also prevents other charges from overshadowing the hazing motive and ensures society does not ignore serious hazing. An illustration is useful. Consider the situation in *Brown*, where the defendant paddled another person.²⁶² Assuming a conviction, the defendant is guilty of assault, a first-degree misdemeanor.²⁶³ Removing the hazing motive, the act is similar to other assaults when a person strikes another. However, the hazing ritual is different: the victim feels the need to succumb to the violence; the perpetrator may recognize the illegal conduct, but rationalize it as necessary to carry forward tradition; a blanket of secrecy protects the activity; younger members may then be discouraged from joining the organization or fear participation in the ritual. Recognizing the culture, schools begin regulating such conduct, and national organizations take on additional liability. This is far greater societal harm than harm to a single assault victim. Following the penalty enhancement scheme, hazing becomes a charge one-degree higher than the underlying criminal charge, and in *Brown*, hazing becomes a fifth-degree felony.

Admittedly, this approach does not capture all hazing activity. A shortcoming of this approach is that some hazing activity not rising to an underlying criminal offense is uncharged. While a broad spectrum of behavior could be categorized under the definition, activities not involving a criminal offense – scavenger hunts, quests, and road trips²⁶⁴ – would be excluded. This is a valid concern. But this limitation also helps to limit hazing's definition. As StopHazing recognized, some hazing is

260. See *id.* at 132-33 (describing the flexibility of criminal sentences).

261. *Id.* at 133-35.

262. *State v. Brown*, 630 N.E.2d 397, 399 (Ohio Ct. App. 1993).

263. In Ohio, assault is defined as “knowingly [causing] or attempt[ing] to cause physical harm to another or another’s unborn.” OHIO REV. CODE ANN. § 2903.13 (West, Westlaw through Files 1 to 140 and Statewide Issue 1 of the 130th GA (2013-2014)). The classification is explained in section 2903.13(C)(1).

264. From the author’s experience working in higher education and student affairs, these types of activities are often cited as “examples” of hazing activity. This likely stems from certain groups, such as FIPG, incorporating the examples into their anti-hazing statements. See generally FIPG MANUAL, *supra* note 45. This often leads to complaints that everything can be considered hazing. *Id.* at 35.

harmless and may not cause actual harm.²⁶⁵ Therefore, these activities, such as name-calling and assigning demerits, already do not rise to the level of conduct condemned by criminal law; otherwise, name-calling would be a criminal offense. Instead, campus judicial boards, school principals, and educational programming can address these activities before the perpetrators mature into more harmful conduct. This also allows young hazers who show symptoms of the hazing problem to receive attention by educators before their conduct crosses the line to become part of a criminal record. But when the underlying activity is a criminal offense, a hazing enhancement approach recognizes that the hazer's act is already condemned and that his or her motive for committing the act causes the act to be especially harmful.

C. Proposed Language

The intent of this Comment is to propose an alternative approach to penalizing offenders. While work can be done to improve Ohio's hazing definition, steps should be taken now to align the enforcement with social science research. By using an approach similar to Ohio's ethnic intimidation laws, criminal sanctioning should attack the hazer's motive, rather than the act alone. With the foregoing literature and analysis in mind, this Comment proposes amending the hazing definition and the criminal sanctioning to reflect the following:

(A) No person shall violate a section of the Revised Code resulting in a felony of the first, second, third, fourth, or fifth degree, or a misdemeanor of the first, second, third, or fourth degree,²⁶⁶ by reason of an initiation, process of gaining admission into, or continued affiliation with a group, when admission or affiliation is directly or indirectly conditional upon participating in the activity, regardless of the person's willingness to participate.

(B) Whoever violates this section is guilty of hazing. Hazing is an offense of the next higher degree than the underlying offense, the commission of which is a necessary element of hazing.

265. *Types, supra* note 44.

266. This language could be further limited to only include specific offenses. The author chose to leave this language broad, however, to allow more crimes included as underlying offenses. The misdemeanors end at the fourth degree to avoid including minor misdemeanors. *See, e.g.*, OHIO REV. CODE ANN. § 4511.21(P)(1)(a) (speed limits and assured clear distances) and § 4511.39 (failure to use turn and stop signals). The reason for this is merely because minor misdemeanors do not already receive definite jail terms. *See id.* § 2929.24 (showing jail terms for degrees of misdemeanors but not for minor misdemeanors).

This proposal reflects the five main points of this Comment. First, the underlying act is already made criminal by the criminal code. These offenses have corresponding mental states that allow courts to punish the criminal act itself while reserving punishment for hazing as a separate inquiry. Second, enforcement extends beyond initiation and applies to victim members who must endure the experience as a part of continued affiliation. Third, the application is not limited to student organizations, but extends to all groups. Fourth, consent is explicitly removed as a requirement. Finally, the definition allows courts to punish for the underlying crime and then punish for the added offense of hazing through the sentence enhancement approach.

V. CONCLUSION

Ohio's current anti-hazing statute went into effect on March 3, 1983.²⁶⁷ Has hazing not transformed itself enough to motivate even the slightest amendment in the past 30 years?

A bandage and a cure are different. A bandage momentarily covers up the problem, helps to avoid infection, and can make even the most painful vaccine seem the most exciting with bright colors and playful characters. Sometimes, what the bandage covers up becomes infected. That infection spreads when undetected, and the symptoms become more serious. Subsiding for a while and becoming tolerable, the disease then rears its ugly face and causes catastrophic damage.

Ohio put a bandage on the hazing problem with its statute in 1983. Although Ohio did "something" over 30 years ago to address the problem, the underlying disease infected schools and communities and spread as if left unaddressed.

The disease showed its face on October 30, 2013, when a sophomore at Wilmington College in Ohio was taken to the hospital following an initiation ritual.²⁶⁸ Other members of the organization blindfolded and stripped several students, rubbed them with a substance, and hit them with towels tied together in a way to inflict pain.²⁶⁹ One of those towels struck one student in the groin; he fell to the ground in pain as the ritual continued.²⁷⁰ Still in pain, he was taken to a local hospital where emer-

267. Ohio Laws and Rules are available to the public online, which includes the effective date of the current statute. The hazing statute is available at <http://codes.ohio.gov/orc/2903.31>.

268. Paula Toti, *New Details on Wilmington College Hazing Incident*, WKRC CINCINNATI: LOCAL 12, <http://www.local12.com/template/cgi-bin/archived.pl?type=basic&file=/news/features/top-stories/stories/archive/2013/11/wrczsvzo.xml#.UpIWqChqNGN> (last visited Nov. 12, 2014).

269. *Id.*

270. *Id.*

gency surgery removed one of his testicles.²⁷¹ As many as 20 students observed the ceremony, and after emergency surgery, the victim defended the group by stating that the injuries were accidental.²⁷²

Although national hazing laws are stronger from where they stood in the 1980s,²⁷³ Ohio's law is merely a bandage to cover up the disease lurking beneath. Katie Couric recently highlighted hazing on her national television show in a segment titled *Journalist Goes Undercover as Sorority Pledge*.²⁷⁴ Why a journalist would need to go "undercover" to get information is a topic for another paper; however, the segment discusses the reality: dangerous hazing is happening, hazing happens behind closed doors, hazing laws are not enforced, and hazing must be addressed more effectively.²⁷⁵ Unfortunately, the episode brought national attention to Ohio after the Wilmington College case was used as an example of hazing's dangerous consequences.²⁷⁶

Hazing can occur anywhere that new individuals enter into a larger group, where there are established hierarchies, or wherever notions of "earn your keep" resound. This could even occur as freshmen legislators, elected to effect change in the legislature, arrive in the chamber for the first time. Is there a pecking order? Is there a period when a newcomer speaking up seems out of line? Freshmen legislators eventually become veteran statesmen and women – and the cycle continues. The power, control, and hierarchical framework are not just for initiations into organizations, but can occur in politics and the workplace.

Ohio's approach to hazing legislation is simply not consistent with the goals of criminal law. The statute fails to deter, and the sentence is inadequate for the harm caused. The statute assumes the punishment is for the act of hazing, whereas the real evil is rooted in the motivation behind the act. Until the General Assembly attacks this reality, the hazing plague will continue.

To attack a disease, the best minds sit around a table, analyze vital signs, debate diagnoses, and methodically attack it. This Comment is not the cure, nor is it intended to be one. Reforming the statute is one piece of the diagnosis, but the cure must be a holistic approach that brings together educators, sociologists, lawmakers, and hazing experts. The pro-

271. *Id.*

272. *Id.*

273. NUWER, *supra* note 22, at 168.

274. *Katie Couric Show: Journalist Goes Undercover as Sorority Pledge* (ABC television broadcast June 3, 2014).

275. *Id.*

276. *Id.*

cess begins with a stronger and clearer law; however, the road to recovery happens with implementation and societal reform. Just as doctors and nurses rushed to care for the individuals mentioned in this Comment as they arrived to the emergency room, lawmakers, educators, and concerned citizens must rush toward the hazing problem with the same sense of urgency. How many deaths and injuries must occur before the marginal costs of diagnosing and curing a problem outweigh the ultimate benefit? Eradication is possible, but not by a statute written over 30 years ago.

It is time to go in another direction. After all, if a disease took over the body and kept rearing its ugly head despite wearing a bandage to cover it up, it is commonsense that at some point, someone would ask for a second opinion.