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STUDENTS FALL VICTIM TO HAZING EPIDEMIC: UNITY AT WHAT COST?

*Helene Bruckner**

I. INTRODUCTION

As many college students do every year, nineteen year old Timothy Piazza decided to pledge to the Beta Theta Pi fraternity.¹ However, on the night of February 2, 2017, Piazza was not aware that this night of pledging would be his last few hours on earth.² The hazing activities revolved around the forced consumption of large amounts of alcohol.³ As a result, Piazza became very intoxicated,⁴ which led to his falling down a staircase where he suffered a traumatic and ultimately fatal brain injury.⁵

The Beta Theta Pi⁶ fraternity brothers hazed Piazza when the activities commenced with “The Gauntlet,” which is a sequence of drinking events where the pledges consume various drinks in about

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¹ Caitlin Flanagan, *A Death at Penn State*, ATLANTIC 93, 94 (2017).

² *Id.*

³ *Id.* at 104.

⁴ *Id.*

⁵ *Id.* at 105.

⁶ In 2009, eight years prior to Piazza’s death, Penn State suspended the Beta Theta Pi fraternity because of a fight at the fraternity house, a tailgate party, and other drinking violations. Lori Falce, *Beta Theta Pi has History of Issues at Penn State, Other Colleges*, CTR. DAILY LIVE (Feb. 8, 2017), <http://www.centredaily.com/news/local/education/penn-state/article131605324.html#storylink=cpy>. During the 1990s, Beta Theta Pi released its “Man of Principle” initiative when it enacted a “100% hazing-free pledge program,” and instituted an “alcohol-free recruitment.” *The Men of Principle Initiative*, BETA THETA PI: MEN OF PRINCIPLE, <http://beta.org/about/men-of-principle-initiative/> (last visited May 7, 2018).

two minutes to complete the challenge.⁷ The hazing began with all the pledges collectively finishing a handle of vodka.⁸ Next, the pledges entered the fraternity house, took a shot of vodka, and ran down the hallway to “shotgun”⁹ a beer.¹⁰ After shotgunning the beer, the underage pledges were forced to drink wine from a bag as the brothers poured beer all over them.¹¹ In order to complete “The Gauntlet,” the students directed the pledges to “make a shot in beer pong” and if they missed the cup, “they had to chug a beer.”¹²

After the pledges completed “The Gauntlet,” the Beta Theta Pi fraternity hosted a social gathering with a female sorority.¹³ At around 10:30 pm, Piazza was visibly intoxicated and required assistance from one of the Beta Theta Pi brothers to walk.¹⁴ During the party, Piazza stumbled around the house and fell down the basement stairs.¹⁵ After falling down the stairs, Piazza’s brothers then carried him back up the stairs, observed visible bruising on his limp body and put him on a couch.¹⁶ As Piazza’s unresponsive body remained on the couch, one of the brothers poured liquid on him, but Piazza did not respond.¹⁷ Another brother attached a backpack¹⁸ to Piazza to ensure that he did

⁷ Christian Alexandersen, *They Call it ‘The Gauntlet’: What Penn State Student Drank at Frat Party?*, PENN LIVE (May 5, 2017), http://www.pennlive.com/news/2017/05/they_call_it_the_gauntlet_what.html.

⁸ *Id.* A handle is 1.75 liters of liquor, which is equivalent to 40 shots. Jess Novak, *A Handle of Vodka Holds How Many Drinks?* DAILY MEAL (Jan. 25, 2016), <https://www.thedailymeal.com/handle-vodka-holds-how-many-drinks>.

⁹ “Shotgunning” is a way to consume a beer very quickly by poking a hole in the side of the can to drink from, while opening the tab on top to allow the beer to be drunk faster. *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Alexandersen, *supra* note 7.

¹³ Ronnie Polaneczky, *Opinion/Penn State Frat Death: Why Didn’t the Women Call for Help?*, PITTSBURG POST-GAZETTE (May 11, 2017), <http://www.post-gazette.com/news/education/2017/05/11/Penn-State-frat-death-women-piazza-pledge-beta-theta-pi/stories/201705110164>.

¹⁴ Sarah Vasile, *Timeline: The Events from the Night Surrounding the Death of Timothy Piazza*, USA TODAY C. (May 6, 2017), <http://college.usatoday.com/2017/05/06/timeline-the-events-from-the-night-surrounding-the-death-of-timothy-piazza/>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ When a highly intoxicated person passes out, his friends may affix a backpack onto the person to keep him on his side to prevent him from rolling over onto his back and choking on his own vomit. This is commonly referred to as “backpacking,” “JanSporting,” or “the dunk pack.” However, doctors state that this is a misconception and it will not prevent someone from choking on his vomit. For example, McCrae Williams was a freshman lacrosse player at Lafayette College, who died on September 11, 2017, because of a night of heavy drinking.

not roll over and choke on his own vomit.¹⁹ Fifteen minutes later, that same brother decided to sit on Piazza's legs and prevent him from moving.²⁰ The fraternity's "Pledge Master" checked on Piazza and slapped him on the face three times.²¹

On February 3rd at 1:00 am, Piazza vomited and twitched on the couch.²² Piazza's brothers "backpacked" him to prevent him from rolling over onto his back.²³ Highly intoxicated, Piazza spent the next five hours attempting to stand up only to fall back down onto the floor.²⁴ Piazza's fraternity brothers slapped Piazza again in their quest to help him regain consciousness.²⁵ At 5:00 am, Piazza stood up and stumbled into the lobby where he fell again, this time into an iron railing and tumbled head first into the front door.²⁶ Piazza's limp body was lying on the ground where he clutched his abdomen.²⁷

During the next two hours, Piazza's brothers observed him on the floor and even took videos of him while he suffered in pain, just hours away from his death.²⁸ At around 10:00 am, Piazza's brothers discovered him in the basement since he had fallen down the basement stairs again.²⁹ His brothers carried him back upstairs to the couch³⁰ and shook his unconscious body in another attempt to wake him.³¹ They then covered Piazza's cold, lifeless body with a blanket and cleaned the blood from his face.³² According to the detective on the case, some of the brothers attempted to dress him while others cleaned

Although Williams's incident did not involve hazing activities, his friends "backpacked" him to help keep him from rolling over onto his back. Doctors urge students that "if someone is that drunk that you are considering putting a backpack on them, you need to call 911." Brian X. McCrone, *Why Do College Kids Think a Backpack Can Save a Drunk Friend's Life?* NBC PHILA. (Sept. 20, 2017), <https://www.nbcphiladelphia.com/news/local/Jansporting-College-Kids-Using-Backpacks-to-Prop-Up-Intoxicated-Friends-446166633.html>.

¹⁹ Vasile, *supra* note 14.

²⁰ Vasile, *supra* note 14.

²¹ Vasile, *supra* note 14.

²² Vasile, *supra* note 14.

²³ Vasile, *supra* note 14.

²⁴ Vasile, *supra* note 14.

²⁵ Vasile, *supra* note 14.

²⁶ Vasile, *supra* note 14.

²⁷ Vasile, *supra* note 14.

²⁸ Vasile, *supra* note 14.

²⁹ Vasile, *supra* note 14.

³⁰ Vasile, *supra* note 14.

³¹ Vasile, *supra* note 14.

³² Vasile, *supra* note 14.

up any “evidence of beer and alcohol.”³³ Finally, at 10:48 am, one of the fraternity brothers called 911, but never informed emergency services that Piazza had fallen down the stairs.³⁴ On February 4th at 1:23 am, Piazza was pronounced dead at the hospital.³⁵

According to the surgeon at the hospital, Piazza suffered a “shattered” spleen, which was likely worsened by the slapping and multiple hits he endured.³⁶ His abdomen contained “four liters of ‘old, dark blood.’”³⁷ Piazza had respiratory failure due to a collapsed lung, a skull fracture, and multiple traumatic brain injuries, which all contributed to his death.³⁸

This appalling event is one of the most horrific incidents this country has seen in hazing cases.³⁹ Every year, more than half of college students partake in some form of hazing.⁴⁰ While hazing rituals commonly occur in Greek life and athletics, they have played a role in recreational clubs, academic clubs, and even in honor societies.⁴¹ Hazing rituals come in many shapes and sizes and range from forced consumption of alcohol to beatings and humiliation of pledges,⁴² to partaking in sexual activities.⁴³ Although most students do not die in hazing incidents as Timothy Piazza did, according to a

³³ Gio Benitez & Emily Shapiro, *Ex-Penn State Frat Member’s Text: ‘I Don’t Want to go to Jail for This’*, ABC NEWS (July 10, 2017), <http://abcnews.go.com/US/penn-state-fraternity-members-return-court-case-pledges/story?id=48509715>.

³⁴ Vasile, *supra* note 14.

³⁵ Vasile, *supra* note 14.

³⁶ Hilary Hanson, *Fraternity and Members Face Hundreds of Charges in Timothy Piazza Hazing Death*, HUFFINGTON POST (May 6, 2017), https://www.huffingtonpost.com/entry/beta-theta-pi-penn-state-hazing-timothy-piazza_us_590e3636e4b0e7021e9834e1.

³⁷ *Id.* The average adult weighing between 150 to 180 pounds has about 4.5-5.7 liters of blood in their body. *How Much Blood Is in Your Body and How Much You Can Lose*, HEALTHLINE, <https://www.healthline.com/health/how-much-blood-in-human-body#how-much-blood-can-you-lose> (last visited May 8, 2018).

³⁸ Hanson, *supra* note 36.

³⁹ “Gruesome” Video Key Part of Prosecution’s Case in Penn State Hazing Death, CBS NEWS, <https://www.cbsnews.com/news/timothy-piazza-death-penn-state-surveillance-tape-beta-theta-pi-hazing/> (June 12, 2017).

⁴⁰ Div. of Student Affairs, *Important Hazing Statistics*, UNIV. MARYLAND, http://thestamp.umd.edu/hazing/hazing_statistics (last visited May 8, 2018).

⁴¹ Elizabeth Allan & Mary Madden, *Hazing in View: Students at Risk*, NAT’L STUDY STUDENT HAZING, Mar. 11, 2008, at 15.

⁴² *What Hazing Looks Like*, HAZING PREVENTION, <http://hazingprevention.org/home/hazing/facts-what-hazing-looks-like/> (last visited May 8, 2018).

⁴³ *Hazing on School Campuses: What Parents and Students Need to Know*, STOP HAZING, <http://www.stophazing.org/hazing-school-campuses-parents-students-need-know/> (last visited May 8, 2018).

study by Hank Nuwer, at least one college student has died every year in a hazing-related death since 1970.⁴⁴

This Note recommends the amendment of the Higher Education Act (“HEA”) of 1965⁴⁵ to incorporate the proposed Report and Educate About Campus Hazing Act (“REACH Act”), which attempts to track hazing incidents.⁴⁶ The HEA was enacted in 1965 “to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education.”⁴⁷ The Clery Act is a part of HEA⁴⁸ that requires colleges and universities to collect, publish, and distribute campus crime statistics that are not collected anywhere else.⁴⁹ Currently, the Clery Act does not require the collection of

⁴⁴ Hank Nuwer, *Hazing Deaths*, HANK NUWER’S HAZING CLEARINGHOUSE, <http://www.hanknuwer.com/hazing-deaths/> (last visited May 8, 2018).

⁴⁵ 20 U.S.C. § 1092 (2018).

⁴⁶ Report and Educate About Campus Hazing Act, H.R. 2926, 115th Cong. § 1 (2017).

⁴⁷ Higher Education Act, AM. ASSOC. OF COLLEGIATE REGISTRARS ADMISSIONS OFFICERS, <https://www.gpo.gov/fdsys/pkg/STATUTE-79/pdf/STATUTE-79-Pg1219.pdf> (last visited May 8, 2018).

⁴⁸ In 1990, the Clery Act was enacted after Jeanne Clery was raped and murdered in her college dorm room by a classmate. Clery’s parents fought to have colleges and universities publicly disclose the campus crime statistics. Since 1990, the Clery Act has required colleges and universities that participate in federal student aid programs to disclose this information annually. *Clery Act*, SAFE CAMPUS LLC, <http://safecampuses.biz/clery-act/> (last updated Mar. 16, 2018). In 2013, Congress amended the Clery Act to incorporate the Campus Sexual Violence Elimination Act (“Campus SaVE Act” or “SaVE”). SaVE provides victims of campus sexual violence with enhanced rights and provides the college community with sexual violence educational prevention programs. *Campus SaVE Act*, SAFE CAMPUS LLC, <http://safecampuses.biz/clery-act/campus-save-act/> (last updated Mar. 16, 2018).

⁴⁹ HEA requires the higher education institution to report on:

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) of the following criminal offenses reported to the campus security authorities or local police agencies:

- (I) murder;
- (II) sex offenses, forcible or nonforcible;
- (III) robbery;
- (IV) aggravated assault;
- (V) burglary;
- (VI) motor vehicle theft;
- (VII) manslaughter;
- (VIII) arson;

hazing statistics and the enactment of the REACH Act would compel higher education institutions to keep track of and report hazing incidents that may occur on or off campus.⁵⁰

At the state level, hazing laws vary from the definition of “hazing” to the fines and jail time associated with hazing violations.⁵¹ This Note also explores the loopholes in state legislation and advocates for an anti-hazing education component for high school and college students.⁵² New York State’s Dignity for All Students Act (“DASA”), which aims to provide public school students with a discrimination and bully-free environment, should be amended to include anti-hazing training for students and educators.⁵³ This revised Act could serve as a model for other states throughout the country to help combat the hazing epidemic that is plaguing our high schools and colleges.⁵⁴

This Note is divided into six parts. Part II will discuss the history of hazing and the current state statutes on hazing. Part III explores who hazes and who is hazed, and the impacts of hazing on students. Part IV recommends closing a loophole in some states’ hazing definitions and recognizing mental injury that may result from hazing. Part V analyzes the REACH Act and supports its implementation. Part VI advocates the implementation of an anti-hazing education program and amending New York State’s DASA to include hazing and when amended it should be adopted by every state

(IX) arrests of person referred for campus disciplinary action for liquor law violations drug-related violations, and weapon possessions; and
 (ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice; and
 (iii) of domestic violence, dating violence, and stalking incidents that were reported to campus security authorities or local police agencies.

20 U.S.C. § 1092(f).

⁵⁰ H.R. 2926.

⁵¹ HANK NUWER, *THE HAZING READER* 179 (2004).

⁵² 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, 327 (2008).

⁵³ *The Dignity for All Students Act*, N.Y. ST. EDUC. DEP’T, <http://www.p12.nysed.gov/dignityact/> (last updated Dec. 28, 2017).

⁵⁴ *Waiting for College to Talk About Hazing is Much Too Late*, TIMES-PICAYUNE (Sept. 26, 2017), http://www.nola.com/opinions/index.ssf/2017/09/fraternity_hazing.html.

to help combat discrimination, bullying, and hazing that may take place in other states' high school communities.

II. HISTORY OF HAZING AND HAZING TODAY IN THE UNITED STATES

Unfortunately, Timothy Piazza is not the first student to experience hazing that led to a premature death.⁵⁵ Hazing dates back centuries to its origins in Ancient Greece and Rome.⁵⁶ Students in the Middle Ages in European universities were hazed.⁵⁷ Even Martin Luther participated in hazing, as he believed that it made the students stronger by preparing them for the challenges they would endure as adults.⁵⁸ Legalized in England during the nineteenth century, schools supported and encouraged hazing because they believed that hazing taught obedience.⁵⁹

⁵⁵ In 2011, Robert Champion, a member of the Florida A&M University band, died in a hazing incident. As a part of the band's initiation, Champion endured the "hot seat" and "crossed over." In the "hot seat" the band kicked, punched, and hit Champion with drum mallets and sticks. After this physical violence, Champion "soldiered" his way to the back of the bus to "cross over." Because of this beating, Champion went into cardiac arrest and died. Mallory Simon, *Witnesses: FAMU Drum Major Beaten with Drum Mallets in Hazing Gauntlet*, CNN (May 25, 2012), <https://www.cnn.com/2012/05/24/justice/famu-hazing-documents/index.html>. During another hazing incident in 2005, Matthew Carrington performed calisthenics in raw sewage while he was forced to answer trivia questions and do pushups. While being blasted by fans of cold air, Carrington urinated and vomited all over himself. Carrington was ordered to drink water from a five-gallon jug that was continuously filled multiple times. Eventually, Carrington collapsed and had a seizure. However, the frat did not initially call an ambulance. Carrington died from water intoxication that caused his brain and lungs to swell. Elaine Korry, *A Fraternity Hazing Gone Wrong*, NPR (Nov. 14, 2005), <https://www.npr.org/templates/story/story.php?storyId=5012154>. In 2013, Chun "Michael" Deng died in a hazing ritual that took place in Pennsylvania. "Deng was blindfolded, forced to wear a heavy backpack and then repeatedly tackled as part of the fraternity's Crossing Over initiation ceremony. He was knocked unconscious and later died at a hospital." Associated Press, *4 Ex-Fraternity Members get Jail in Pledge's Hazing Death*, BOS. HERALD (Jan. 8, 2017), http://www.bostonherald.com/news/national/2018/01/4_ex_fraternity_members_get_jail_in_pledges_hazing_death.

⁵⁶ SUSAN LIPKINS, PREVENTING HAZING: HOW PARENTS, TEACHERS, AND COACHES CAN STOP THE VIOLENCE, HARASSMENT, AND HUMILIATION 3 (2006). Students and their "special mentor" had a relationship that necessitated "servitude, kidnapping, and sexual favors." *Id.*

⁵⁷ Students would drink "concoctions" made of urine and endure skin scrapings from their ears. *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

A. Hazing in the United States

In the United States, hazing has been practiced for hundreds of years.⁶⁰ Dating back to 1657 at Harvard University, several upperclassmen hazed the freshmen and were fined for their actions.⁶¹ In 1818, Harvard University students created the secret society of the Medical Faculty Society, which brought chaos to the campus.⁶² The society had initiation rituals that exposed new members to risky activities that would have resulted in their expulsion from the university.⁶³ In 1873, New York had its first case of hazing at Cornell University, which resulted in the death of Mortimer Leggett.⁶⁴ Throughout the mid-1800s, hazing traditions were prevalent in the United States Armed Forces.⁶⁵ These traditions led Congress to prohibit all forms of military hazing in the United States' first anti-hazing statute in 1874.⁶⁶ While hazing was rampant in the military, it was also taking place in other institutions.⁶⁷

⁶⁰ *Id.* at 4.

⁶¹ RONALD W. HOLMES, HOW TO ERADICATE HAZING 18 (2013).

⁶² LIPKINS, *supra* note 56, at 4.

⁶³ LIPKINS, *supra* note 56, at 4.

⁶⁴ Deborah Gesenway, *The Sad Tale of Mortimer Leggett*, CORNELL DAILY SUN, Mar. 20, 1981, at 6. As a part of Kappa Alpha's initiation, the brothers left Mortimer Leggett blindfolded during a "moonlight stroll" in unknown woods and left him to find his way back to the chapter house. While walking through the woods Leggett fell to his death down a 37-foot cliff. *Id.*

⁶⁵ Acquaviva, *supra* note 52, at 311. Naval seamen physically humiliated junior midshipmen to demonstrate their superiority over them. Acquaviva, *supra* note 52, at 311.

⁶⁶ GREGORY PARKS & STEFAN M. BRADLEY, ALPHA PHI ALPHA: A LEGACY OF GREATNESS, THE DEMANDS OF TRANSCENDENCE 280 (2012).

⁶⁷ Darryll M. Halcomb Lewis, *The Criminalization of Fraternity, Non-Fraternity and Non-Collegiate Hazing*, 61 MISS. L.J. 111, 118 (1991).

In 1894, New York was the first state to enact a hazing statute⁶⁸ followed by Illinois in 1901.⁶⁹ From the 1900s to the 1920s, Greek organizations grew on college campuses throughout the country.⁷⁰ In the 1930s, when the Great Depression hit, Greek memberships dropped due to the unaffordability of fees associated with the organizations.⁷¹ After World War II, hazing picked up in the Greek organizations with the veterans who returned from war bringing their “boot camp mentality.”⁷² During a liberation movement in the 1960s and 1970s, Greek organizations diminished because they were considered pro-establishment.⁷³

According to Hank Nuwer’s study, from 1969 to 2017, there has been at least one hazing-related death each year.⁷⁴ These deaths stemmed from hazing activities in fraternities and athletics, with a

⁶⁸ New York’s first anti-hazing statute was enacted in 1894 and stated:

It shall be unlawful for any person to engage in or aid or abet what is commonly called hazing, in or while attending any of the colleges, public schools or other institutions of learning in this state, and whoever participates in the same shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars, or imprisonment not less than thirty days nor more than one year, or both, at the discretion of the court.

Whenever any tattooing or permanent disfigurement of the body limbs or features of any person may result from such hazing, by the use of nitrate of silver or any like substance, it shall be held to be a crime of the degree of mayhem, and any person guilty of the same shall, upon conviction, be punished by imprisonment for not less than three nor more than fifteen years.

HAZING, ANNOTATED CONSOLIDATED LAWS OF THE STATE OF NEW YORK 3925 (Matthew Bender & Co., 1909).

⁶⁹ Lewis, *supra* note 67, at 119. The Illinois statute defined hazing as:

[A]ny pastime or amusement, engaged in by students or other people in schools, academies, colleges, universities, or other educational institutions of this state, or by people connected with any of the public institutions of this state, whereby such pastime or amusement is . . . for the purpose of holding up any student, scholar or individual to ridicule for the pastime of others.

HAZING, LAWS OF THE STATE OF ILLINOIS 145 (1901).

⁷⁰ Dara Aquila Govan, *Hazing Out the Membership Intake Process in Sororities and Fraternities: Preserving the Integrity of the Pledge Process Versus Addressing Hazing Liability*, 53 RUTGERS L. REV. 679, 685 (2001).

⁷¹ *Id.*

⁷² *Id.* at 686.

⁷³ *Id.*

⁷⁴ HANK NUWER’S HAZING CLEARINGHOUSE, *supra* note 44. As of May 8, 2018, there have been no reported deaths from hazing for 2018.

majority of them involving alcohol.⁷⁵ In 1978, Chuck Stenzel died in a hazing accident involving alcohol.⁷⁶ Stenzel's death led to the creation of the "Committee to Halt Useless College Killings" ('CHUCK').⁷⁷ CHUCK's mission was to raise awareness about the dangers of hazing and the unnecessary risks that occur, which led to an increasing number of states that enacted anti-hazing legislation.⁷⁸ Following CHUCK, twelve states enacted hazing statutes during the 1980s,⁷⁹ and by 1990 twenty-five states had laws to regulate hazing.⁸⁰

B. Current Hazing Laws

Currently, forty-four states have anti-hazing laws.⁸¹ Seven of these states impose a duty to report on a person who has knowledge of

⁷⁵ *Id.*

⁷⁶ In 1978, Chuck Stenzel, a student at Alfred University, was joining a fraternity. The fraternity brothers took Stenzel from his bed and locked him in the trunk of a car. In order to be let out of the trunk, the brothers forced him to "consume a pint of whisky, a six-pack of beer and a bottle of wine." Stenzel passed out on "a bed in the frat house" where he eventually died alone. Dean Schabner, *Hazing Claiming Younger Victims*, ABC NEWS (Oct. 17, 2003), <http://abcnews.go.com/US/story?id=96824&page=1>.

⁷⁷ Lewis, *supra* note 67, at 119 n.35, citing from Eileen Stevens, *A Fraternity Ritual Killed My Son*, REDBOOK, Feb. 1986, at 27. Eileen Stevens founded CHUCK in 1978 after her son died on February 25, 1978, during a Klan Alpine Fraternity initiation activity involving alcohol poisoning at Alfred University in Massachusetts. *Id.*

⁷⁸ Eileen Stevens, the founder and president of CHUCK, stated that she is directing her efforts toward "life-threatening, dangerous hazing, where there is a total disregard for human life, and dangerous, unnecessary risks are taken." She emphasizes that "[s]he is not anti-fraternity . . . simply anti-abuse." Lewis, *supra* note 67, at 119 n.36 citing Webbe, *Hazing: Sometimes a Lethal Game*, CHRISTIAN SCIENCE MONITOR, 1980 at 33.

⁷⁹ Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, and Wisconsin. Lewis, *supra* note 67, at 119-20 n.37.

⁸⁰ Lewis, *supra* note 67, at 119-20 n.37.

⁸¹ Alaska, Hawaii, Montana, New Mexico, South Dakota, and Wyoming are the six states that do not have laws on hazing. *Hazing Law – Interactive State Map*, HAZING PREVENTION, <https://hazingprevention.org/home/hazing/statelaws/> (last visited May 7, 2018). Reported hazing incidents or allegations have occurred in five of the states that do not have hazing statutes. Hazing traditions have occurred on the University of New Mexico Women's Soccer team involving excessive alcohol consumption and "'inappropriate gestures' with frozen hot dogs and kiss[ing] the buttocks of upperclassmen." Associated Press, *New Mexico Women's Soccer Hazing: Frozen Hot Dogs, Kissing Butts*, N.Y. POST (Nov. 7, 2014), <https://nypost.com/2014/11/07/new-mexico-womens-soccer-hazing-frozen-hot-dogs-kissing-butts/>. Lawsuits have been filed in South Dakota and Wyoming regarding a fraternity's hazing incidents. Nick Hytrek, *Former USD Student Sues Fraternity in Alleged Hazing Incident*, SIOUX CITY J. (Feb. 7, 2013), http://siouxcityjournal.com/news/local/crime-and-courts/former-usd-student-sues-fraternity-in-alleged-hazing-incident/article_81f41bd8-8ada-

a hazing incident.⁸² For example, Massachusetts' anti-hazing statute provides a fine up to one thousand dollars for a failure to report a hazing violation.⁸³ Nineteen states have barred consent as a defense,⁸⁴

507a-b04a-35d5cccfd17.html; see Gazette News Service, *UW Settles Hazing Lawsuit*, BILLINGS GAZETTE (Mar. 7, 2008), http://billingsgazette.com/news/state-and-regional/wyoming/uw-settles-hazing-lawsuit/article_30602096-7f77-54bf-ba8e-922dfdd7cf1.html. Hazing activities have occurred in a high school in Alaska. The Associated Press, *7 Students Disciplined for Juneau Hazing*, FAIRBANKS DAILY NEWS-MINER (Aug. 28, 2014), http://www.newsminer.com/news/alaska_news/students-disciplined-for-juneau-hazing/article_2ac8d80a-2ef2-11e4-813b-001a4bcf6878.html.

⁸² Alabama and South Carolina's hazing statutes require a person with knowledge of hazing to report this information to the "chief executive officer of the appropriate school, college, university, or other educational institution in this state." ALA. CODE § 16-1-23 (Lexis through the end of the 2018 Regular Session); S.C. CODE ANN. § 16-3-520 (Lexis through all legislation signed and in effect as of the 2018 legislative session).

Arkansas law requires any information of hazing to be reported to an "appropriate administrative official of the school, college, university, or other educational institution in Arkansas." ARK. CODE ANN. § 6-5-202 (Lexis through all laws of the 2018 Regular Session). Illinois's hazing statute imposes a duty to report hazing on "school officials," which has been defined to include "any and all paid school administrators, teachers, counselors, support staff, and coaches and any and all volunteer coaches employed by a school, college, university, or other educational institution of this State." 720 ILL. COMP. STAT. ANN. 5/12C-50.1 (Lexis through P.A. 100-585 of the 2018 Regular Legislative Session).

Massachusetts and New Hampshire laws require reporting the hazing to appropriate law enforcement officials. MASS. ANN. LAWS CH. 269, § 18 (Lexis through Act 68 of the 2018 Legislative Session); N.H. REV. STAT. ANN. § 631:7 (Lexis through the 2018 Regular Session). Texas law classifies the failure to report hazing as a Class B misdemeanor. TEX. EDUC. CODE § 37.152 (Lexis through the 2017 Regular Session and 1st C.S., 85th Legislature).

⁸³ Reporting Hazing Offense; Penalty for Failure to Report Violation:

Whoever knows that another person is the victim of hazing as defined in section seventeen and is at the scene of such crime shall, to the extent that such person can do so without danger or peril to himself or others, report such crime to an appropriate law enforcement official as soon as reasonably practicable. Whoever fails to report such crime shall be punished by a fine of not more than one thousand dollars.

MASS. ANN. LAWS CH. 269, § 18 (Lexis LexisNexis, Lexis Advance through Act 68 of the 2018 Legislative Session).

⁸⁴ CONN. GEN. STAT. § 53-23a (Lexis through Public Acts 1-244 of the 2017 Regular Session); FLA. STAT. ANN. § 1006.63 (Lexis through all legislation signed and in effect as of the 2018 Regular Session chs. 1-2, 4-9, 11-23, 25-68, 70-109, 112-15, 117-25, 127-93); GA. CODE ANN. § 16-5-61 (Lexis through the 2017 Regular Session of the General Assembly); IND. CODE ANN. § 35-42-2-2.5 (Lexis through P.L.210-2018, with a gap of P.L.189-2018, from the Second Regular Session of the 120th General Assembly); IOWA CODE § 708.10 (Lexis through 2018 Regular Session of the 87th General Assembly); MD. CODE ANN., Crim. Law § 3-607 (Lexis through April 24, 2018, including Chapters 1-7, 11, 12, 16, 34, 35, 37 to 40, 64, 65, 69, 79, 80, 142, 147, 199, 200, and 325, Acts 2018); MASS. ANN. LAWS ch. 269, § 17 (Lexis through Act 68 of the 2018 Legislative Session); MICH. COMP. LAWS SERV. § 750.411t (Lexis through 2018 Public Act 119, with a gap of Public Act 116); MO. REV. STAT. § 578.365 (Lexis through all legislation approved as of April 9, 2018); NEB. REV. STAT. ANN. § 28-311.07 (Lexis through the 2018 105th Second Session); NEV. REV. STAT. ANN. § 200.605 (Lexis through

and eighteen states prohibit “mental or emotional” harm under their statutes.⁸⁵

Of the forty-four state anti-hazing statutes, all have varying fees and jail time for a hazing violation.⁸⁶ The Michigan statute provides that if the hazing acts result in a death, a person found guilty could face up to fifteen years imprisonment or a \$10,000 fine, or both.⁸⁷ A violation of the Florida anti-hazing statute may result in a first-degree misdemeanor with up to one-year imprisonment or a felony of the third-degree with imprisonment of up to five years.⁸⁸ Meanwhile, Colorado classifies a hazing violation as a class three misdemeanor, which has a minimum fine of \$50 to a maximum fine of \$750, six months in jail, or both.⁸⁹ Other states, such as Arizona, adopted an anti-hazing statute that requires public educational institutions to “adopt, post and enforce a hazing prevention policy,”

Seventy-Ninth Regular Session (2017)); N.H. REV. STAT. ANN. § 631:7 (Lexis through Act 15 of the 2018 Regular Session); N.J. STAT. § 2C:40-4 (Lexis through New Jersey 218th First Annual Session, L. 2018, c. 7 and J.R. 4); OR. REV. STAT. ANN. § 163.197 (Lexis through Chapter 49 of the 2018 Legislative Session); S.C. CODE ANN. § 16-3-540 (Lexis through all legislation signed and in effect through chs. 127-34, 136-37, 142, 150 of session 122-2); TEX. EDUC. CODE § 37.154 (Lexis through the 2017 Regular Session and 1st C.S., 85th Legislature); UTAH CODE ANN. § 76-5-107.5 (Lexis through the 2017 First Special Session); VT. STAT. ANN. tit. 16, § 570j (Lexis through Chapter 89 and Municipal Act 15 of the 2017 adjourned session (2018)); W. VA. CODE § 18-16-2 (Lexis through all legislation effective as of March 10, 2018). “Many states have passed hazing statutes that say a victim’s consent for some or all of the proceedings has no bearing in the prosecution of a case.” HANK NUWER, *HIGH SCHOOL HAZING: WHEN RITES BECOME WRONGS* 27 (2000).

⁸⁵ Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Kentucky, Maine, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, and West Virginia.

⁸⁶ NUWER, *supra* note 51, at 179.

⁸⁷ MICH. COMP. LAWS SERV. § 750.411t (Lexis through 2018 Public Act 119, with a gap of Public Act 116). Stating that a person found guilty of hazing is punishable as follows:

- (a) If the violation results in physical injury, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.
- (b) If the violation results in serious impairment of a body function, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both.
- (c) If the violation results in death, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

⁸⁸ FLA. STAT. ANN. § 1006.63 (Lexis through all legislation signed and in effect as of the 2018 Regular Session chs. 1-2, 4-9, 11-23, 25-68, 70-109, 112-15, 117-25, 127-93).

⁸⁹ COLO. REV. STAT. § 18-9-124 (Lexis through all Laws passed and signed in the First Regular and First Extraordinary Sessions of the 71st General Assembly (2017)).

yet there are no fines or imprisonments associated with the violation of the hazing policies.⁹⁰ The forty-four states with hazing legislature have varying fines, different sentences, and various definitions of hazing and what they cover, which has led some people to call for a more comprehensive federal anti-hazing statute.⁹¹

C. Should Hazing Be Covered Under State Law or Federal Law?

Advocates of anti-hazing legislation argue that Congress should enact a federal anti-hazing statute⁹² that would impose stricter penalties for hazing violations.⁹³ The proposed statute would combat hazing by “defin[ing] hazing and provid[ing] for a consistent method to investigate acts of hazing,”⁹⁴ and would provide “clear consequences for hazardous hazing.”⁹⁵ However, others believe that a “federal law would duplicate state law”⁹⁶ causing more problems and therefore their efforts should focus on the enactment of anti-hazing laws in the remaining six states.⁹⁷

There are two sides to imposing tougher punishments for hazing violations, which create many challenges in hazing prevention.⁹⁸ Proponents of stricter laws demand more stringent legal

⁹⁰ ARIZ. REV. STAT. § 15-2301 (Lexis through First Regular Session of the Fifty-Third Legislature (2017), all legislation, the First Special Session of the Fifty-Third Legislature (2018), and emergency legislation from the 2018 2nd Regular Session, effective as of April 12, 2018).

⁹¹ David Hosansky, *Preventing Hazing: Can Tougher Laws Stop Violent Rituals?*, CQ RESEARCHER (Feb. 8, 2013), <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2013020800>.

⁹² LIPKINS, *supra* note 56, at 150. Susan Lipkins and Karen Savoy have proposed the National Hazing Prevention Act (NHPA). This Act would “provide funding for a toll-free anonymous number to report hazing, as well as establish university-based centers to create prevention and intervention programs and to train professional to implement them.” LIPKINS, *supra* note 56, at 150.

⁹³ Deborah L. Cohen, *Clearing Up Hazing: Opponents are Pushing for Stricter Laws*, ABA J. (Oct. 2012), http://www.abajournal.com/magazine/article/clearing_up_hazing_opponents_are_pushing_for_stricter_laws/.

⁹⁴ Hosansky, *supra* note 91.

⁹⁵ Hosansky, *supra* note 91.

⁹⁶ Hosansky, *supra* note 91.

⁹⁷ Hosansky, *supra* note 91.

⁹⁸ Hosansky, *supra* note 91.

consequences to deter hazing.⁹⁹ The other side believes stricter laws may drive hazing underground.¹⁰⁰ A “code of silence”¹⁰¹ already surrounds hazing, and the enactment of more stringent legislation may drive hazing farther underground and surround it with even greater secrecy.¹⁰²

Some oppose anti-hazing laws because they believe hazing makes people better and stronger and that it is a tradition and a rite of passage.¹⁰³ In the Alfred University Study, some athletes responded that hazing is a valuable part of growing up and creates team chemistry, and others claimed that it makes you mentally stronger and tougher.¹⁰⁴ In Hank Nuwer’s book, *The Hazing Reader*, the author shared various emails he received from people “who want hazing to continue.”¹⁰⁵ In a *Sports Illustrated* opinion piece, Richard Hoffer stated “[w]e’re all for college and pro hazing” because it “builds camaraderie and teaches humility.”¹⁰⁶

⁹⁹ LIPKINS, *supra* note 56, at 150. “I don’t think the laws have made a big difference,” says Maxwell of hazingprevention.org. “They send a message, but, in terms of their effectiveness, I don’t think they’re a good deterrent.” Hosansky, *supra* note 91.

¹⁰⁰ HANK NUWER, HIGH SCHOOL HAZING: WHEN RITES BECOME WRONGS 113 (2000). “[A] major challenge for Greek-letter leaders is dealing with secret or ‘underground’ hazing.” *Id.*

¹⁰¹ LIPKINS, *supra* note 56, at 87. “The code of silence is an unwritten understanding among any group of people not to tell if something happens that may be illegal, immoral, or unethical.” “The power behind the code of silence is based on fear, and this fear makes us not want to break the silence.” “Sometimes the fear is real and intimidation and threats are used. Sometimes the fear is implied, such as the fear of retribution or social isolation.” LIPKINS, *supra* note 56, at 87. “Fears of getting caught by authorities sometimes makes hazers conduct initiations secretly in remote places, a condition that can lead to deaths or serious injuries with no hospitals close by for help.” NUWER, *supra* note 100, at 50.

¹⁰² Brandon W. Chamberlin, *Am I My Brother’s Keeper?: Reforming Criminal Hazing Laws Based on Assumption of Care*, 63 EMORY L.J. 925, 936-37 (2014).

¹⁰³ Allan, *supra* note 41, at 29.

¹⁰⁴ *National Survey: Initiation Rites and Athletics for NCAA Sports Teams*, ALFRED UNIV. (Aug. 30, 1999), https://www.alfred.edu/sports_hazing/docs/hazing.pdf.

¹⁰⁵ NUWER, *supra* note 51, at xxi-xxii. Nuwer has received emails that defend hazing, stating “America is the land of the free [with] the freedom to join whatever group you want. . . . If I want to join a group that beats the crap out of me every day, I can.” Another email stated, “No wonder there are so many wimps in society today. EVERYBODY WANTS TO BE A VICTIM! Unless there is extreme physical harm being done then hazing amongst teams, social clubs/groups, etc. is good and a bonding experience. Once you’ve ‘been there, done that’ you’re proud of yourself and it is a brotherhood-bonding thing.” NUWER, *supra* note 51, at xxi-xxii.

¹⁰⁶ NUWER, *supra* note 51, at xxii (quoting *Sports Illustrated*’s Richard Hoffer from an opinion piece in September 13, 1999).

D. Hazing Laws in Pennsylvania

Timothy Piazza's tragic death was a direct result of a hazing incident.¹⁰⁷ On February 2, 2017, Piazza was forced to partake in pledging rituals for the Beta Theta Pi fraternity at Penn State University.¹⁰⁸ The main event for the pledges was "The Gauntlet," which involved the consumption of a tremendous amount of alcohol in a relatively short period.¹⁰⁹ It is estimated that as a result of the heavy drinking that led to Piazza's death at nineteen years old, his BAC was between .28 and .36 percent.¹¹⁰

Initially, the prosecution charged eighteen Beta Theta Pi fraternity brothers and the national fraternity in connection with Piazza's death.¹¹¹ Under Pennsylvania law, the charges included involuntary manslaughter, aggravated assault, providing alcohol to minors, tampering with evidence,¹¹² and hazing.¹¹³ On September 1, 2017, Magisterial District Judge Allen Sinclair dismissed the most serious charges of involuntary manslaughter and aggravated assault in the case.¹¹⁴ The charges that remained included hazing,¹¹⁵ as well as recklessly endangering another person¹¹⁶ and furnishing alcohol to

¹⁰⁷ Alexandersen, *supra* note 7.

¹⁰⁸ Alexandersen, *supra* note 7.

¹⁰⁹ The recovered video footage revealed that Piazza consumed 18 alcoholic drinks in one hour and 22 minutes. Shawn Annarelli & Jeremy Hartley, *New Evidence Shows Timothy Piazza was Given at least 18 Drinks in 1 Hour and 22 Minutes, DA Says*, CTR. DAILY TIMES (Nov. 13, 2017), <http://www.centredaily.com/news/local/crime/article184354873.html#storylink=cpy>.

¹¹⁰ Charles Thompson, *Forced Drinking or a Celebration? That's the Question Today in PSU Hazing Death Case*, PENN LIVE (July 11, 2017), http://www.pennlive.com/news/2017/07/forced_drinking_or_a_celebrati.html.

¹¹¹ *Id.*

¹¹² Inside the Beta Theta Pi house there were surveillance cameras that had footage from February 2, 2017, the night Piazza died. However, this footage was deleted. Sara Ganim, *Recovered Video Leads to New Charges in Penn State Fraternity Death*, CNN (Nov. 13, 2017), <http://www.cnn.com/2017/11/13/us/penn-state-fraternity-hazing-death/index.html>.

¹¹³ *Id.*

¹¹⁴ Ezra Kaplan & Lainey Moseley, *Penn State Hazing Death: Felony Charges Dismissed, 14 Frat Members to Stand Trial*, NBC NEWS (Sept. 1, 2017), <https://www.nbcnews.com/news/us-news/penn-state-hazing-death-felony-charges-dismissed-14-frat-members-n798076>.

¹¹⁵ 24 PA. STAT. ANN. § 5353.

¹¹⁶ 18 PA. CONS. STAT. ANN. § 6310.1: "Selling or furnishing liquor or malt or brewed beverages to minors." "[A] person commits a misdemeanor of the third-degree if he intentionally and knowingly sells or intentionally and knowingly furnishes, or purchases with the intent to sell or furnish, any liquor or malt or brewed beverages to a person who is less than 21 years of age." If convicted, a person "shall be sentenced to pay a fine of not less than \$1,000 for the first violation and a fine of \$2,500 for each subsequent violation."

minors.¹¹⁷ Under Pennsylvania law, all of these crimes are misdemeanors.¹¹⁸

Inside the Beta Theta Pi house there were surveillance cameras that had footage from the night Piazza died that the fraternity brothers deleted; however, the FBI recovered the previously deleted surveillance footage, which led to eight students charged in relation to Piazza's death.¹¹⁹ In November 2017, the charges were filed again against the twenty-six students facing various charges,¹²⁰ with a request for a new judge to hear the case.¹²¹ Currently, the Pennsylvania Attorney General Josh Shapiro is handling the case and on March 15, 2018, his office declared it will not pursue eight counts of felony aggravated assault in the case.¹²² On May 7, 2018, after three days of preliminary hearings with Judge Steven Lachman, the new judge announced eleven defendants will go to trial on charges of hazing and unlawful acts related to alcohol while dropping all charges of reckless endangerment and furnishing alcohol to a minor.¹²³

¹¹⁷ 18 PA. CONS. STAT. ANN. § 2705 “Recklessly endangering another person. A person commits a misdemeanor of the second-degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.”

¹¹⁸ Under Pennsylvania law, a second-degree misdemeanor may result in the maximum sentence of no more than two years' imprisonment. 101 PA. CODE § 15.66(6). A third-degree misdemeanor may result in no more than a year of imprisonment. 101 PA. CODE § 15.66(7).

¹¹⁹ Ganim, *supra* note 112.

¹²⁰ The charges include involuntary manslaughter, aggravated assault, providing alcohol to minors, tampering with evidence, and hazing. Katie Reilly, *Grand Jury Slams Penn State for 'Rampant and Pervasive' Fraternity Hazing After Tim Piazza's Death*, TIME (Dec. 15, 2017), <http://time.com/5066107/penn-state-tim-piazza-grand-jury-report-hazing/>.

¹²¹ Lori Falce, *11 Months After Piazza's Death, What has Changed?*, CTR. DAILY TIMES (Dec. 31, 2017), <http://www.centredaily.com/news/local/education/penn-state/article/192367404.html>.

¹²² All Things Considered, *Penn State Fraternity Death Brings New Attention to Hazing*, NPR (Feb. 2, 2018), <https://www.npr.org/2018/02/02/582670343/penn-state-fraternity-death-brings-new-attention-to-hazing>. The newly elected Centre County District Attorney Bernie Cantorna requested that Pennsylvania Attorney General Josh Shapiro take over the Piazza case due to a conflict of interest. Falce, *supra* note 121. Mike Deak, *Felony Assault Charges Dropped in Penn State Hazing Death*, USA TODAY (Mar. 15, 2018), <https://www.usatoday.com/story/news/nation-now/2018/03/15/tim-piazza-fraternity-hazing-case/430061002/>.

¹²³ The following is a list of the defendants in the case and the related charges. Ryan Burke: Hazing (four counts), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (four counts), and Purchase, Consumption, Possession or Transportation of Liquor or Malt or Brewed Beverages (one count). Joseph Gerard Ems: Hazing (one count), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (one count). Michael D. Fernandez: Hazing (two counts), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (two counts). Brian A. Gelb: Hazing (six counts), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (five counts). Reginald R.

Pennsylvania defines hazing as:

Any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a person . . . for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization. The term shall include, but not be limited to, any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug or other substance, or any other forced physical activity which could adversely affect the physical health and safety of the individual. . . . For purposes of this definition, any activity as described in this definition upon which the initiation or admission into or affiliation with or continued membership in an organization is directly or indirectly conditioned shall be presumed to be “forced” activity, the willingness of an individual to participate in such activity notwithstanding.¹²⁴

Anyone “who causes or participates in hazing”¹²⁵ commits a misdemeanor of the third-degree.¹²⁶ In Pennsylvania, a third-degree misdemeanor may result in the maximum sentence of not more than

Goeke: Hazing (one count), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (one count). Patrick E. Jackson: Hazing (two counts), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (two counts). Jonathan P. Kanzler: Hazing (two counts), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (two counts), and Purchase, Consumption, Possession or Transportation of Liquor or Malt or Brewed Beverages (one count). Joshua R. Kurczewski: Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (seven counts), and Purchase, Consumption, Possession or Transportation of Liquor or Malt or Brewed Beverages (one count). Aidan M. O’Brien: Hazing (one count), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (two counts), and Purchase, Consumption, Possession or Transportation of Liquor or Malt or Brewed Beverages (one count). Donald M. Prior: Hazing (four counts), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (three counts). Bo Han Song: Hazing (three counts), Unlawful Acts Relative to Liquor, Malt, and Brewed Beverages and Licensees (three counts), and Purchase, Consumption, Possession or Transportation of Liquor or Malt or Brewed Beverages (one count). Bret Pallotto, *Judge Announces Which Charges Head to Trial for 12 Former Beta Theta Pi Brothers*, CENTRE DAILY TIMES (May, 7, 2018), <http://www.centredaily.com/news/local/crime/article210484114.html>.

¹²⁴ 24 PA. STAT. ANN. § 5352.

¹²⁵ 24 PA. STAT. ANN. § 5353.

¹²⁶ *Id.*

one-year imprisonment¹²⁷ or \$2,500 fine.¹²⁸ If found guilty of hazing as a third-degree misdemeanor, under Pennsylvania law, the Beta Theta Pi fraternity members could serve less than a year in jail or pay a \$2,500 penalty.¹²⁹ According to the grand jury report, in this case, there was a call for a stronger state hazing law¹³⁰ and for the crime to “reflect the seriousness of the offense and not the lowest grade misdemeanor Pennsylvania has in its crime code.”¹³¹ Although the Pennsylvania hazing law language recognizes mental and physical injuries and closes the gap for athletic teams, some believe that the punishment does not fit the crime in cases of hazing deaths such as Timothy Piazza’s.¹³²

III. THE WHO, WHAT, WHEN, WHERE, AND WHY OF HAZING

Every year since the 1970s, at least one college student across the country has died in a hazing incident.¹³³ Although hazing has been occurring in this country for hundreds of years,¹³⁴ and we now have forty-four states with anti-hazing legislation,¹³⁵ students are still dying, becoming seriously injured, or suffering mental pain as a result of hazing.¹³⁶ To get to the root of the hazing epidemic it is helpful to understand hazing: who is hazed, who the hazer is, what is hazing,

¹²⁷ 101 PA. CODE § 15.66 (Lexis through 2017 legislation).

¹²⁸ 18 PA. CONS. STAT. ANN. § 1101 (LexisNexis, Lexis Advance through 2017 Regular Session Acts 1-82; P.S. documents are current through 2017 Regular Session Acts 1-82).

¹²⁹ *Id.* 101 PA. CODE § 15.66 (Lexis through 2017 legislation).

¹³⁰ Reilly, *supra* note 120. “There is no justice in a fine and *maybe* probation for the death of a 19 year old who will never graduate from college; never marry; never serve as his brother’s best man; never introduce his parents to their grandchildren,” the report said. “When young men recklessly leverage someone’s desire for friendship against him and direct him to guzzle enough alcohol to endanger his life so he can aspire to be ‘one of them,’ and it results in his death or seriously (sic) bodily injury, the crime they face in court should reflect the seriousness of the offense and not the lowest grade misdemeanor Pennsylvania has in its crimes code.” Reilly, *supra* note 120.

¹³¹ Reilly, *supra* note 120.

¹³² Reilly, *supra* note 120.

¹³³ HANK NUWER’S HAZING CLEARINGHOUSE, *supra* note 44.

¹³⁴ LIPKINS, *supra* note 56, at 4.

¹³⁵ HAZING PREVENTION, *supra* note 81.

¹³⁶ HANK NUWER’S HAZING CLEARINGHOUSE, *supra* note 44.

when and where does hazing take place, and why do students haze each other.¹³⁷

A. Who Hazes and Who is Hazed?

There is no one profile of a person who hazes others.¹³⁸ Typically, the hazers are the leaders of the group and are often senior members.¹³⁹ Usually, the hazers have very high standing in the group because of their “size, status, abilities, or personality.”¹⁴⁰ The hazer may be the troublemaker or the bully, but the star athlete or team captain may also be the hazer.¹⁴¹ Most likely, these hazers were once victims of hazing themselves, and now they believe it is their turn to haze the newcomers.¹⁴² Often, the victims of hazing are the newcomers with low social status in the group.¹⁴³ Frequently, the newcomers assume and accept the idea that they will endure hazing through the pledging rituals.¹⁴⁴

B. What are Hazing Activities?

Hazing has been broken down into two categories: subtle hazing and harassment hazing.¹⁴⁵ Subtle hazing is when the hazing actions go against the “sorority or fraternity standards of conduct, behavior, and good taste.”¹⁴⁶ Moreover, subtle hazing is an activity¹⁴⁷

¹³⁷ S. Daniel Carter, *Bi-Partisan Anti-Hazing Bill in Congress Draws Widespread Support*, HUFFINGTON POST (June 21, 2017), https://www.huffingtonpost.com/entry/bi-partisan-anti-hazing-bill-in-congress-draws-widespread_us_594ac56ce4b062254f3a5b0a.

¹³⁸ LIPKINS, *supra* note 56, at 26.

¹³⁹ LIPKINS, *supra* note 56, at 26.

¹⁴⁰ LIPKINS, *supra* note 56, at 26.

¹⁴¹ LIPKINS, *supra* note 56, at 26-27.

¹⁴² LIPKINS, *supra* note 56, at 26-27.

¹⁴³ LIPKINS, *supra* note 56, at 28.

¹⁴⁴ LIPKINS, *supra* note 56, at 29.

¹⁴⁵ StopHazing.org creates two categories of hazing: subtle hazing and harassment hazing. Helen Oliff, *Lifting the Haze Around Hazing*, EDUC. DIGEST 23 (2002).

¹⁴⁶ *Id.*

¹⁴⁷ These activities include but are not limited to:

[N]ever doing anything with pledges, enforcing periods of silence for pledges, writing profess reports on pledges, sending pledges on scavenger hunts for meaningless objects, assigning phone or house duties to pledges that are not assigned to other members of the group, scaring pledges about what may happen during initiation, and requiring pledges to carry pledge handbooks or paddles everywhere to get signatures.

Id.

that “ridicules, humiliates, or embarrasses” a newcomer.¹⁴⁸ Harassment hazing is defined as “[a]nything that causes mental anguish or physical discomfort” or “confuses, frustrates, or causes undue stress” to a newcomer.¹⁴⁹

The most common hazing practice among all types of student groups¹⁵⁰ is excessive alcohol consumption, followed by humiliation, isolation, and sleep deprivation.¹⁵¹ Students will participate in high-risk, humiliating, physically and mentally painful, even illegal, activities just to fit in with a student group.¹⁵² Some of the physical activities include paddling,¹⁵³ beating,¹⁵⁴ punching,¹⁵⁵ branding,¹⁵⁶

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ “Student groups” include fraternities, sororities, athletic teams, intramurals sports, club sports, performing art groups, recreation clubs, academic clubs, honor societies, religious groups, cultural-based groups, and student government. Allan, *supra* note 41, at 15.

¹⁵¹ Allan, *supra* note 41, at 16.

¹⁵² The National Study of Student Hazing responses indicated that at least some percentage of students have experienced hazing that requires the student to:

Participate in a drinking game, [s]ing or chant by self or with select others of groups in public in a situation that is not a related event, game, or practice, [a]ssociate with specific people and not others, [d]rink large amounts of alcohol to the point of getting sick or passing out [d]eprive [them]sel[ves]of sleep, [b]e screamed, yelled, or cursed at by other members, [d]rink large amounts of a non-alcoholic beverage, [b]e awakened during the night by other members, [a]ttend a skit or roast where other members of the group are humiliated, [e]ndure harsh weather conditions without appropriate clothing, [p]erform sex acts with the opposite gender, [w]atch live sex acts, [w]ear clothing that is embarrassing and not part of a uniform, [g]et a tattoo or pierce a body part, [s]have head or other body parts, [or] [b]e transported and dropped off in an unfamiliar location.

Allan, *supra* note 41, at 16-23.

¹⁵³ In 2016, Terrance Bennett pledged to Tau Kappa Epsilon at Johnson and Wales University in Rhode Island. According to Terrance, the fraternity’s brothers blindfolded him on the floor in a “hostage position” with his hands behind his head and beat him with boat paddles. Terrance was hospitalized because of the beating because his skin was split open causing the blood pool and infection, which resulted in his liver shutting down. Lucy Waterlow & Erica Tempesta, *College Student Recalls How He Was Brutally Beaten with Boat Paddles, Urinated on and Branded During Horrific Hazing Ritual in New Documentary Exposing a Very Dark Side of Fraternities*, DAILY MAIL (June 22, 2016), <http://www.dailymail.co.uk/femail/article-3654776/College-student-recalls-brutally-beaten-boat-paddles-urinated-branded-horrific-hazing-ritual-new-documentary-exposing-dark-fraternities.html>.

¹⁵⁴ Simon, *supra* note 55. Robert Champion’s band members punched, kicked, and hit him in a hazing incident that caused him to go into cardiac arrest and die. Simon, *supra* note 55.

¹⁵⁵ LIPKINS, *supra* note 56, at 20-21.

¹⁵⁶ Amon Carter was branded by his fraternity brothers while he was passed out during a night of drinking. His brothers used a hot coat hanger to stamp the fraternity letters on his

restraining,¹⁵⁷ confinement,¹⁵⁸ physical degradation,¹⁵⁹ and physical exhaustion.¹⁶⁰

Most hazing incidents involve the consumption of alcohol.¹⁶¹ Alcohol plays a big part in Greek life hazing,¹⁶² athletic hazing,¹⁶³ and even high school hazing.¹⁶⁴ The new members are hazed through peer pressure or even coerced into consuming copious amounts of alcohol,¹⁶⁵ which can be extremely dangerous¹⁶⁶ or even deadly, as it

buttock. The branding left Carter with second and third-degree burns that required surgery to repair the damage to his buttock. Sarah Netter, *Texas Fraternity Brother Branded, Family Furious Over Ritual*, ABC NEWS (Jan. 29, 2010), <http://abcnews.go.com/wn/texas-fraternity-brother-branded-family-furious-ritual/story?id=9688654>.

¹⁵⁷ Five football players from Wheaton College in Illinois were charged in a hazing incident for unlawful restraint of one of their freshman teammates. The hazers restrained the freshman victim with duct tape wrapped around his wrists and legs. The hazers carried him to their car and bound him with more duct tape as they removed his underwear and tried to insert an object into his rectum. The victim cried for them to stop, and the hazers beat him instead. The hazers left the victim half-naked and restrained in the middle of a baseball field without his cell phone to call for help. The victim suffered two torn shoulder labrums that required surgery. Stacy St. Clair & Christy Gutowski, *In Hazing Case, Wheaton College Players Suspended from Team, and Another Turns Himself In*, CHI. TRIB. (Sept. 20, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-wheaton-college-hazing-met-20170919-story.html>.

¹⁵⁸ William Flowers was pledging to Zeta Beta Tau at the Monmouth College chapter. During the initiation activities, he was “to dig his grave in the sand and lie in it.” Unfortunately, the sand caved in, and Flowers suffocated and died. Acquaviva, *supra* note 52, at 318-19.

¹⁵⁹ The amount of physical degradation and humiliation that occurs is endless. Sorority pledges have had to stand naked on running washing machines to have their “jiggly” areas marked and have been ranked according to their breast size. Hollie McKay, *Mean Girls: Humiliating Hazing Still a Problem at College Sororities*, FOX NEWS (Sept. 25, 2014), <http://www.foxnews.com/entertainment/2014/09/25/mean-girls-dangerous-hazing-growing-problem-at-college-sororities.html>.

¹⁶⁰ Kristin High, 22, and Kenitha Saafir, 24, were both pledging to the Alpha Kappa Alpha Sorority at California State University, Los Angeles. As a part of the hazing ritual, High and Saafir did calisthenics on the beach after engaging in other physical activities. The hazers directed the girls to walk backwards into the ocean. Due to their physical exhaustion and the height of the waves, the girls were knocked over by a wave and drowned. *Sorority Accused of Hazing in \$100 Million Suit*, CNN (Sept. 24, 2002), <http://www.cnn.com/2002/LAW/09/23/sorority.death/index.html>.

¹⁶¹ NUWER, *supra* note 51, at 139. “Alcohol and hazing. The two . . . go together. Rarely do we have a problem that does not also include alcohol.” NUWER, *supra* note 51, at 139.

¹⁶² NUWER, *supra* note 51, at 139. LIPKINS, *supra* note 56, at 24.

¹⁶³ Student-athletes “tend to drink about twice as much as the general student population.” NUWER, *supra* note 100, at 81.

¹⁶⁴ NUWER, *supra* note 100, at 23.

¹⁶⁵ LIPKINS, *supra* note 56, at 24.

¹⁶⁶ LIPKINS, *supra* note 56, at 24. Some students may endure severe hangovers or require medical attention such as having their stomachs pumped, or broken or fractured bones. LIPKINS, *supra* note 56, at 24.

was for Timothy Piazza.¹⁶⁷ The hazers pressure the newcomers into consuming alcohol either indirectly or directly.¹⁶⁸ The indirect type involves “the easy accessibility of alcohol and reinforcement to drink by observing others.”¹⁶⁹ The direct type is when the hazers urge the newcomers to drink or suffer punishment.¹⁷⁰ Alcohol consumption during hazing events leads to fights, sexual abuse, car accidents, injuries, and death.¹⁷¹ Half of the respondents in the Alfred University Study stated they “were required to participate in drinking contests or alcohol-related hazing.”¹⁷² When alcohol is involved, especially in high volumes, hazing becomes more dangerous with inebriation and the inability to make decisions.¹⁷³ Although drug abuse may be prevalent in Greek life, drugs do not play as large of a role in hazing incidents as alcohol does.¹⁷⁴

While hazing can affect students physically, it may also affect them mentally.¹⁷⁵ Mental pain affects many students, sometimes even longer than physical pain as they carry it with them.¹⁷⁶ The psychological and emotional harm from hazing includes “anger, fear, nightmares, and suicidal tendencies.”¹⁷⁷ Moreover, some victims have poor academic performance after a hazing incident,¹⁷⁸ and some have “difficulty eating, sleeping, and concentrating.”¹⁷⁹ Even more

¹⁶⁷ Vasile, *supra* note 14.

¹⁶⁸ NUWER, *supra* note 51, at 177.

¹⁶⁹ NUWER, *supra* note 51, at 177.

¹⁷⁰ NUWER, *supra* note 51, at 177.

¹⁷¹ NUWER, *supra* note 51, at 177. “According to the National Interfraternity Conference, which in 1998 studied traumatic incidents among its members, alcohol was present in ninety-five percent of falls from high places, ninety-four percent of fights, ninety-three percent of sexual-abuse incidents, eight-seven percent of automobile accidents, sixty-seven percent of all falls on fraternity property, and forty-nine percent of hazing incidents. Alcohol use was a factor in eighty percent of injuries resulting in paralysis and in just under ninety percent of deaths.” NUWER, *supra* note 51, at 177.

¹⁷² ALFRED UNIV., *supra* note 104.

¹⁷³ NUWER, *supra* note 100, at 44-45.

¹⁷⁴ *Drinking and Drug Abuse in Greek Life*, ADDICTION CTR., <https://www.addictioncenter.com/college/drinking-drug-abuse-greek-life/> (last updated Feb. 14, 2018). Hazing activities usually involve alcohol to some extent, and can lead to alcohol poisoning, accidents and even death. *Id.*

¹⁷⁵ Acquaviva, *supra* note 52, at 316.

¹⁷⁶ The physical activities may include a symbolic activity or a physical challenge. The psychological activities are often humiliating acts, which usually cause more pain to the newcomer. LIPKINS, *supra* note 56, at 14-15.

¹⁷⁷ Acquaviva, *supra* note 52, at 316.

¹⁷⁸ Acquaviva, *supra* note 52, at 317.

¹⁷⁹ Acquaviva, *supra* note 52, at 317.

troublesome is that fifteen percent of victims later considered suicide.¹⁸⁰

C. When Does Hazing Begin?

About half of college students have already experienced hazing in high school.¹⁸¹ According to the Alfred University Study published in 1999,¹⁸² over 1.5 million high school students were “subjected to some form of hazing each year,”¹⁸³ mostly humiliating acts,¹⁸⁴ and a majority of these students “did not perceive even the most dangerous initiation activities as hazing.”¹⁸⁵

The National Study of Student Hazing found that forty-seven percent of respondents reported that they experienced hazing at least once while they were in high school,¹⁸⁶ and five percent said they first encountered hazing in middle school.¹⁸⁷ High school hazing is not nearly as severe or deadly as it is in college,¹⁸⁸ but the hazing still involves “alcohol consumption, paddlings, or savage beatings—which could easily cause permanent injury or death.”¹⁸⁹ Generally, hazing does not occur before twelve years old;¹⁹⁰ however, some educators have made efforts to inform middle and high school students of the dangers of hazing.¹⁹¹ Often, school districts do not implement a formal policy until after a hazing tragedy occurs.¹⁹² At that point it is too late

¹⁸⁰ *What are the Consequences of being Hazed?*, ALFRED UNIV., https://www.alfred.edu/hs_hazing/consequences.cfm (last visited May 8, 2018).

¹⁸¹ Allan, *supra* note 41, at 32.

¹⁸² ALFRED UNIV., *supra* note 104.

¹⁸³ LIPKINS, *supra* note 56, at 29.

¹⁸⁴ LIPKINS, *supra* note 56, at 29.

¹⁸⁵ LIPKINS, *supra* note 56, at 29.

¹⁸⁶ Allan, *supra* note 41, at 32. “Forty-seven percent of respondent’s report experiencing at least one hazing behavior while in high school, including 51% of the male and 45% of the female respondents. However, 84% of those who reported experiencing a hazing behavior do not consider themselves to have been hazed.” Allan, *supra* note 41, at 32.

¹⁸⁷ NUWER, *supra* note 100, at 78.

¹⁸⁸ NUWER, *supra* note 100, at 23.

¹⁸⁹ NUWER, *supra* note 100, at 23.

¹⁹⁰ LIPKINS, *supra* note 56, at 53. “While bullying may begin in early elementary school, hazing generally does not occur until children are older.” Caudill (CMS) Kathy, *What is Hazing?*, NAT’L FED’N ST. HIGH SCH. ASS’N (July 24, 2014), <https://www.nfhs.org/sports-resource-content/starwhat-is-hazing/>.

¹⁹¹ NUWER, *supra* note 100, at 23.

¹⁹² NUWER, *supra* note 100, at 23.

for the hazing victim because the damage was already done.¹⁹³ Middle and high schools need to be proactive and educate students on hazing to prevent it from happening in schools and later in college.¹⁹⁴

D. Where Does Hazing Take Place?

Hazing may take place on campus¹⁹⁵ or off campus,¹⁹⁶ but a majority of it takes place off campus in private.¹⁹⁷ Surprisingly, about one-half of students indicated the hazing occurred during the day.¹⁹⁸ Students also reported that friends, coaches, family, and advisors have some knowledge of hazing in some cases.¹⁹⁹ Some students claimed that they believed that coaches or advisors were aware of the hazing behavior;²⁰⁰ other students indicated that alumni were present during the hazing activity.²⁰¹ In states like Massachusetts, there is a penalty for “whoever knows that another person is the victim of hazing” and fails to report this knowledge.²⁰² The penalty in Massachusetts for a failure to report is a fine of one thousand dollars or less.²⁰³ While there have been efforts by most of the states to implement anti-hazing legislation, hazing is still occurring in colleges and high schools across the country.²⁰⁴

¹⁹³ TIMES-PICAYUNE, *supra* note 54. In hazing expert Walter M. Kimbrough’s opinion, we as a society have “waited to treat hazing instead of trying to vaccinate against it.” He says we need a “hazing vaccine” to combat the hazing “before the disease has taken root.” Kimbrough states that all the studies, policy reviews, shorter pledge periods are not going “to treat a 600-year-old problem after it has taken root in the host.” Instead, he advocates a proactive education of middle and high school students about hazing to prevent it from occurring. *Id.*

¹⁹⁴ TIMES-PICAYUNE, *supra* note 54.

¹⁹⁵ Allan, *supra* note 41, at 24. On campus, hazing may take place in the locker rooms or on the school bus. It is typically when the hazing “participants perceive a lack of adult supervision [and] [t]hey do not believe that outsiders or authorities will intervene to stop the activities.” *Definitions*, INSIDE HAZING, <https://www.insidehazing.com/definitions/> (last visited May 7, 2018).

¹⁹⁶ Allan, *supra* note 41, at 24.

¹⁹⁷ Allan, *supra* note 41, at 24. Around forty-six percent of off campus hazing takes place in private in comparison to the eleven percent that occurs off campus in public. Allan, *supra* note 41, at 24.

¹⁹⁸ Allan, *supra* note 41, at 24.

¹⁹⁹ Allan, *supra* note 41, at 25.

²⁰⁰ Allan, *supra* note 41, at 25.

²⁰¹ Allan, *supra* note 41, at 25.

²⁰² MASS. ANN. LAWS ch. 269, § 18 (Lexis through Act 109 of the 2017 Legislative Session).

²⁰³ *Id.*

²⁰⁴ HANK NUWER’S HAZING CLEARINGHOUSE, *supra* note 44.

E. Why do Students Haze?

Hazing occurs because, for some students, it brings a “sense of belonging.”²⁰⁵ Many of these students would rather go through humiliating, painful, and degrading acts of hazing for initiation into a group than not fit in.²⁰⁶ While some may think that hazing is similar to bullying on campus, Dr. Susan Lipkins²⁰⁷ states that the characteristics of hazing are “very different from other kinds of violence that occur[s] among teens and adults.”²⁰⁸ Lipkins believes that groups haze to “maintain a hierarchy”²⁰⁹ for the group with a “specific social structure.”²¹⁰

The senior members want the newcomers to understand the hierarchy of the group, and that as newcomers they have a lower status than the senior members.²¹¹ The senior members enforce the hierarchy by having the newcomers “respect²¹² their ‘elders’” through the hazing process.²¹³ The newcomers are deemed to have less power than those who have already been “established” and accepted as a member of the group.²¹⁴ When the newcomer completes the initiation process, the

²⁰⁵ Oliff, *supra* note 145, at 22.

²⁰⁶ Oliff, *supra* note 145, at 22.

²⁰⁷ Susan Lipkins is a psychologist who has researched and interviewed many hazers and hazing victims. Her research focuses on the psychology of hazing. LIPKINS, *supra* note 56, at 171. Hazing and bullying have some similar characteristics in that they both utilize physical, verbal, or social violence and involve a power imbalance between the bully and the victim or the hazer and the hazed. However, bullying is not used to gain membership into a group, whereas hazing ends when the newcomer gains admission into the group. Hazing typically takes place over a few weeks or months, while bullying is a repeated unwanted aggressive behavior by a bully to the victim that may take place for a long time. *Hazing vs. Bullying*, STOP HAZING, <https://www.stophazing.org/hazing-vs-bullying/> (last visited May 7, 2018).

²⁰⁸ LIPKINS, *supra* note 56, at 13.

²⁰⁹ LIPKINS, *supra* note 56, at 13.

²¹⁰ LIPKINS, *supra* note 56, at 15.

²¹¹ LIPKINS, *supra* note 56, at 15.

²¹² LIPKINS, *supra* note 56, at 15. Lipkins stated the idea of “respect” is prevalent in the Greek organizations, while in athletics the “respect” concept is more of a “dominance” idea that the seniors believe they have over the underclassmen. LIPKINS, *supra* note 56, at 15.

²¹³ LIPKINS, *supra* note 56, at 15.

²¹⁴ LIPKINS, *supra* note 56, at 15.

newcomer is a member of the group with higher status, and the cycle begins again with the next group of new members.²¹⁵

While hazing and bullying are similar in that both involve a “ringleader” and bystanders,²¹⁶ hazing is more institutionalized and focuses on initiation rites into a club, organization, or athletic team.²¹⁷ The significant difference between the two is that bullying is an attempt to exclude another person from the activities, while hazing is a condition for acceptance into the group.²¹⁸

The hazing cycle becomes a tradition that repeats²¹⁹ and has some significance to the group.²²⁰ These traditions often involve a physical activity or a psychological piece.²²¹ Typically, the senior members take weeks or months to prepare and plan their group’s initiation activities.²²² The newcomers will be required to show that they are “worthy” of becoming a member through a long process of pledging events,²²³ all culminating at the initiation ceremony where the pledges are deemed members of the group.²²⁴ Most humans desire membership in a group which provides a feeling of safety and belonging.²²⁵ The students believe that going through the initiation process will bring the group closer because they all shared the experience.²²⁶

²¹⁵ LIPKINS, *supra* note 56, at 15.

²¹⁶ Caudill, *supra* note 190.

²¹⁷ Caudill, *supra* note 190.

²¹⁸ Caudill, *supra* note 190.

²¹⁹ LIPKINS, *supra* note 56, at 91. “Every time a hazing occurs, everyone involved is likely to repeat the behavior, increasing the number and severity of hazing. Conversely, every time a hazing is stopped, the chain is broken; decreasing the likelihood that hazing will be done by those students again.” LIPKINS, *supra* note 56, at 91.

²²⁰ LIPKINS, *supra* note 56, at 14-15.

²²¹ LIPKINS, *supra* note 56, at 14-15. The physical activities may include a symbolic activity or a physical challenge. The psychological activities are often humiliating acts, which usually cause more pain to the newcomer. LIPKINS, *supra* note 56, at 14-15.

²²² LIPKINS, *supra* note 56, at 14-15.

²²³ LIPKINS, *supra* note 56, at 14-15. The initiation process may span from four weeks to an entire semester. LIPKINS, *supra* note 56, at 14-15.

²²⁴ LIPKINS, *supra* note 56, at 14-15.

²²⁵ LIPKINS, *supra* note 56, at 36.

²²⁶ LIPKINS, *supra* note 56, at 15.

F. Why is it so Hard to Combat Hazing?

Hazing is hard to combat because students are not likely to report the hazing activity.²²⁷ A majority of students who have experienced hazing did not report it to a campus official.²²⁸ Half of those students indicated that they would not report the hazing incident because they would not want to get their group or team in trouble.²²⁹ Sometimes students that are hazed will try to minimize hazing and characterize it as “no big deal,” “no one was harmed,” or they did not “consider the hazing to be extreme or troubling.”²³⁰ Others believe that it was their choice to participate in the hazing, so they did not think they should report it.²³¹ Some do not realize they were hazed until a later point in time.²³² Frequently, the students who claimed they were happy and willing to undergo hazing do not report it.²³³

Every time hazing is not reported the cycle continues.²³⁴ Moreover, when a university does not hold the hazer responsible for his or her actions, the hazing is reinforced because it is as if the university is condoning the hazing behaviors.²³⁵ Furthermore, students are not likely to discuss their hazing experiences with coaches, advisors, college staff, or faculty,²³⁶ but are more likely to talk about it

²²⁷ Allan, *supra* note 41, at 28.

²²⁸ Allan, *supra* note 41, at 28.

²²⁹ Allan, *supra* note 41, at 28-30. Fifty-four percent of the students indicated “other” as to the reason why they did not report the hazing activity. Twenty percent of the responses for not reporting the hazing activity was because the student was “afraid of negative consequences . . . from the other team or group member.” Fourteen percent indicated in their responses that they were “afraid other members of the team or group would find out I reported it and I would be an outsider.” Nine percent indicated they did not know where to report it to, and eight percent responded they were afraid they “might be hurt by the team or group members if they learned I had reported it.” Allan, *supra* note 41, at 28-30.

²³⁰ Allan, *supra* note 41, at 29.

²³¹ Allan, *supra* note 41, at 29.

²³² Allan, *supra* note 41, at 30.

²³³ Allan, *supra* note 41, at 29.

²³⁴ LIPKINS, *supra* note 56, at 109.

²³⁵ LIPKINS, *supra* note 56, at 109.

²³⁶ Allan, *supra* note 41, at 25-26. A reported seven percent of students indicated they would discuss the hazing activity with a coach or advisor and five percent would discuss it with a college staff or faculty member. Allan, *supra* note 41, at 25-26.

with a friend²³⁷ or family member.²³⁸ Students may post a picture of the hazing activity online,²³⁹ where other students, staff, and administrators learn of the incident through the circulation of these photos on social media.²⁴⁰ With a deeper understanding of hazing, and forty-four states that have enacted anti-hazing statutes, why does hazing still occur every year to high school and college students across the country?

IV. PROBLEMS WITH STATES' HAZING STATUTES

Hazing is very difficult to define and many states define it differently.²⁴¹ A New York court stated, "it would have been an impossible task if the legislature had attempted to define hazing specifically."²⁴² What some states consider hazing, others may not.²⁴³ Some of the current state statutes create challenges in the fight against hazing because they do not specify "athletic teams" in the statute's language²⁴⁴ and others do not recognize mental harm.²⁴⁵ States need to amend their statutes to eliminate the loopholes for athletic teams to hold athletes responsible for hazing activities that occur on the team and recognize the mental pain that may result from hazing.²⁴⁶

The problem with some statutory definitions of hazing is that they create a loophole for athletic teams through the state's definition of hazing.²⁴⁷ Hazing is sometimes defined as "any humiliating or dangerous activity expected of you to join a group"²⁴⁸ or for "initiation."²⁴⁹ For example, the Maryland statute defines hazing as

²³⁷ Allan, *supra* note 41, at 26. Forty-eight percent of students stated they would talk to a friend about the hazing activity and forty-one percent would talk to another group member about it. Allan, *supra* note 41, at 26.

²³⁸ Allan, *supra* note 41, at 26. A reported twenty-six percent of students indicated they would discuss it with a family member. Allan, *supra* note 41, at 26.

²³⁹ Allan, *supra* note 41, at 26. Forty-two percent of students reported posting the hazing photos themselves. Allan, *supra* note 41, at 26.

²⁴⁰ Allan, *supra* note 41, at 26.

²⁴¹ Acquaviva, *supra* note 52, at 308.

²⁴² *People v. Lenti*, 253 N.Y.S.2d 9, 13 (Cnty. Ct. 1964).

²⁴³ Chamberlin, *supra* note 102, at 974-77.

²⁴⁴ Acquaviva, *supra* note 52, at 327.

²⁴⁵ Acquaviva, *supra* note 52, at 306-08.

²⁴⁶ Acquaviva, *supra* note 52, at 306-08.

²⁴⁷ Acquaviva, *supra* note 52, at 313-15.

²⁴⁸ ALFRED UNIV., *supra* note 104.

²⁴⁹ Acquaviva, *supra* note 52, at 306.

subjecting a student to risk of bodily injury “for the purpose of an initiation into a student organization of a school, college, or university.”²⁵⁰ The problem with this definition is it creates a loophole for athletic teams because athletes are already part of the group when they make the team.²⁵¹ Definitions such as these limit the hazing to “initiation” into student organizations or joining a group and this may limit the application of the hazing statute to student organizations that have an initiation.²⁵² The New Hampshire Hazing Statute expanded the definition to include an “act [that] is a condition of initiation into, admission into, continued membership in or association with any organization.”²⁵³ This statute could serve as a model because it expands the hazing definition to include language such as “continued membership” or “association with” which will close up the loophole for athletic teams and any other organizations that may have slipped through this crack.²⁵⁴

Many state statutes fail to recognize the mental harm that results from a hazing incident.²⁵⁵ The New York statute only recognizes the physical harm caused by a hazing act.²⁵⁶ In New York, a person is guilty of hazing “when, in the course of another person’s initiation into or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person and thereby causes such injury.”²⁵⁷ As hazing incidents result in mental harm for many students, states need to acknowledge this and incorporate psychological damage into their statutes.²⁵⁸ Moreover, the mental harm can affect victims just as much as physical harm, if not more, because in some cases the victim’s psychological injury may lead to

²⁵⁰ MD. CODE ANN., Crim. Law § 3-607.

²⁵¹ Acquaviva, *supra* note 52, at 313-15.

²⁵² Acquaviva, *supra* note 52, at 323 n.118.

²⁵³ N.H. REV. STAT. ANN. § 631:7(I)(d)(2).

²⁵⁴ Acquaviva, *supra* note 52, at 306.

²⁵⁵ HAZING PREVENTION, *supra* note 81. Only eighteen states’ statutes recognize mental harm. HAZING PREVENTION, *supra* note 81.

²⁵⁶ N.Y. PENAL LAW § 120.16 (Consol., Lexis Advance through 2017 released chapters 1-402).

²⁵⁷ *Id.*

²⁵⁸ Acquaviva, *supra* note 52, at 316; *see* LIPKINS, *supra* note 56, at 24-26. Hazing victims may have some recourse against a hazer under tort law for intentional torts. Marc Edelman, *Addressing the High School Hazing Problem: Why Lawmakers Need to Impose a Duty to Act on School Personnel*, 25 Pace L. Rev. 15, 27 (2004).

suicidal thoughts.²⁵⁹ In less extreme cases, the mental harm that results from hazing may lead to poor academic performance,²⁶⁰ to the student's transferring out of the school,²⁶¹ physical or emotional pain,²⁶² fear,²⁶³ or nightmares.²⁶⁴ While there are problems with some of the state anti-hazing statutes, there is also a need to collect more data on hazing statistics to have a greater understanding of the hazing incidents across the country.²⁶⁵

V. THE REACH ACT

In 1965, during President Lyndon Johnson's Great Society campaign, he approved the HEA to strengthen educational resources and provide financial assistance for higher education.²⁶⁶ In 2008, the enactment of the Higher Education Opportunity Act reauthorized HEA.²⁶⁷ Under HEA, higher education institutions are required to collect and publish campus crime statistics because of the adoption of the Clery Act in 1990.²⁶⁸ The Clery Act modified HEA in 1990 as a result of Jeanne Clery's death.²⁶⁹ Jeanne Clery was a college student who was raped and murdered in her college dorm room by a classmate.²⁷⁰ After Clery's death, her parents fought to have colleges and universities publicly disclose the crime statistics.²⁷¹ Under the current legislation, colleges and universities are not required to collect hazing statistics.²⁷²

²⁵⁹ *Supra* notes 156-61. Acquaviva, *supra* note 52, at 316.

²⁶⁰ Marc Edelman, *How to Prevent High School Hazing: A Legal, Ethical and Social Primer*, 81 N.D. L. REV. 309, 310 (2005).

²⁶¹ LIPKINS, *supra* note 56, at 26.

²⁶² Edelman, *supra* note 260, at 310.

²⁶³ Edelman, *supra* note 260, at 310.

²⁶⁴ Edelman, *supra* note 260, at 310.

²⁶⁵ Carter, *supra* note 137.

²⁶⁶ *Higher Education Act Media Kit*, LBJ PRESIDENTIAL LIBR., <http://www.lbjlibrary.org/mediakits/highereducation/> (last visited May 8, 2018).

²⁶⁷ *Higher Education Opportunity Act – 2008*, U.S. DEP'T EDUC., <https://www2.ed.gov/policy/highered/leg/hea08/index.html> (last updated June 25, 2010).

²⁶⁸ 20 U.S.C. § 1092(f).

²⁶⁹ SAFE CAMPUS LLC, *supra* note 48.

²⁷⁰ SAFE CAMPUS LLC, *supra* note 48.

²⁷¹ Ken Gross & Andrea Fine, *After Their Daughter is Murdered at College, Her Grieving Parents Mount a Crusade for Campus Safety*, PEOPLE (Feb. 19, 1990), <http://people.com/archive/after-their-daughter-is-murdered-at-college-her-grieving-parents-mount-a-crusade-for-campus-safety-vol-33-no-7/>.

²⁷² 20 U.S.C. § 1092(f).

The two major studies conducted on hazing were in 1999 and 2008.²⁷³ Moreover, there are no federal governmental agencies for students to report hazing to, nor is there an official program that tracks hazing incidents.²⁷⁴ The REACH Act²⁷⁵ is proposed federal legislation to amend HEA and more specifically the Clery Act to require higher education institutions to disclose hazing incidents in their published campus crime statistics to have a better understanding of hazing.²⁷⁶

The proposed REACH Act defines hazing as:

[A]ny intentional, knowing, or reckless act committed by a student, or a former student, of an institution of higher education, whether individually or in concert with other persons, against another student that- (I) was committed in connection with an initiation into, an affiliation with, or the maintenance of membership in, any organization that is affiliated with such institution of higher education; and (II) contributes to a substantial risk of physical injury, mental harm, or degradation or causes physical injury, mental harm or personal degradation.²⁷⁷

Moreover, the proposed REACH Act would require higher education institutions to provide students with an educational program on “hazing awareness, hazing prevention, and [the] institution’s policies on hazing.”²⁷⁸

Congress should adopt the proposed REACH Act under the Clery Act because since 1970, at least one college student has died each year in a hazing-related incident.²⁷⁹ The first step in combating

²⁷³ In 1999, Alfred University conducted the *National Survey: Initiation Rites and Athletics for NCAA Sports Teams Study*. The study worked to establish a baseline of information on hazing in intercollegiate athletics and is comprised of 61,258 student-athletes responses from 224 colleges. ALFRED UNIV., *supra* note 104. Dr. Elizabeth J. Allan and Dr. Mary Madden, conducted a second student in 2008 titled *Hazing in View: College Students at Risk*. Their research documented problems that students face when hazed, such as a physical injury, psychological harm, and even death. The study is based on 11,482 survey responses from undergraduate students from 53 college and universities. Allan, *supra* note 41.

²⁷⁴ LIPKINS, *supra* note 56, at 7.

²⁷⁵ This bill was introduced and sponsored by Congressman Patrick Meehan (R-PA) and Congresswoman Marcia L. Fudge (D-OH) on June 15, 2017. H.R. 2926.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ HANK NUWER’S HAZING CLEARINGHOUSE, *supra* note 44.

hazing is to have an understanding of the extent of the problem.²⁸⁰ The proposed REACH Act would require colleges and universities to report their hazing statistics and would provide greater insight into the number of hazing acts that are occurring in colleges and universities.²⁸¹ Moreover, the proposed Act would also require institutions to educate students on hazing.²⁸² REACH goes beyond the requirements of state statutes because the states do not require colleges and universities to track hazing incidents.²⁸³ Furthermore, REACH imposes the education component, which is key to combating hazing.²⁸⁴

VI. ANTI-HAZING EDUCATION PROGRAM AND THE AMENDMENT OF NEW YORK STATE'S DIGNITY FOR ALL STUDENTS ACT

Our middle and high schools need anti-hazing education programs to combat hazing.²⁸⁵ Before students graduate from high school, secondary schools need to implement an anti-hazing policy²⁸⁶ in addition to a hazing education program to prevent hazing from occurring.²⁸⁷ Currently, high school health courses cover subjects such as substance abuse, bullying, and sexual violence.²⁸⁸ Due to the close connection between these topics and hazing, high schools should require an anti-hazing component to be taught to its students as well,²⁸⁹ especially because about half of the incoming college freshmen have already experienced hazing in high school.²⁹⁰ Furthermore, as the newcomers on campus, these freshmen will want to join collegiate athletic programs, Greek life, or other various organizations where

²⁸⁰ Carter, *supra* note 137.

²⁸¹ H.R. 2926.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ TIMES-PICAYUNE, *supra* note 54. Hazing expert Walter M. Kimbrough advocates a proactive education of middle and high school students about hazing to prevent it from occurring. TIMES-PICAYUNE, *supra* note 54.

²⁸⁵ TIMES-PICAYUNE, *supra* note 54.

²⁸⁶ NUWER, *supra* note 100, at 122-25.

²⁸⁷ LIPKINS, *supra* note 56, at 150.

²⁸⁸ N.Y. ST. EDUC. DEP'T, *supra* note 53. *Learning Standards for Health, Physical Education, and Family and Consumer Sciences at Three Levels*, N.Y. ST. EDUC. DEP'T, <http://www.p12.nysed.gov/ciai/health/healthPEFACSLearningStandards.pdf> (last updated 2017).

²⁸⁹ "Alcohol and hazing. The two . . . go together. Rarely do we have a problem that does not also include alcohol." NUWER, *supra* note 51, at 139.

²⁹⁰ *Hazing Education Initiative*, DREXEL UNIV. STUDENT LIFE, http://drexel.edu/studentlife/get_involved/programs_events/Hazing/Initiative/ (last visited May 7, 2018).

they will be at risk of hazing.²⁹¹ These students need to be educated on the dangers of hazing and learn how to prevent them.²⁹²

New York State enacted the Dignity for All Students Act (“DASA”),²⁹³ which took effect July 1, 2012.²⁹⁴ DASA seeks to provide public school students with a “safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, a school bus and/or at a school function.”²⁹⁵ Under DASA, School Boards of Education are required to address the DASA Act in their school’s code of conduct.²⁹⁶ Moreover, under DASA, all applicants applying for a teaching certification after December 31, 2013, must complete a DASA training workshop.²⁹⁷ The amendment of DASA to include hazing prevention would go beyond the scope of the REACH Act because it would require middle schools and high schools to provide students with hazing free environments.²⁹⁸ Moreover, DASA would provide teachers with the tools to combat hazing in secondary schools.²⁹⁹ This would supplement the hazing awareness and prevention programs that would be required in higher education institutions under the REACH Act if Congress enacted it.³⁰⁰

The DASA Act should be expanded to include hazing because hazing, like bullying and discrimination, leads to an unsafe, unsupportive, and hazardous environment for students.³⁰¹ As DASA requires all New York State certified teachers to receive training on preventing discrimination, bullying, and harassment,³⁰² teachers

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ “The Dignity Act was signed into law on September 13, 2010 and took effect on July 1, 2012. Amendments to the act are effective as of July 1, 2013.” N.Y. ST. EDUC. DEP’T., *supra* note 53. “The original legislation amended State Education Law by creating a new Article 2 – Dignity for All Students.” N.Y. ST. EDUC. DEP’T., *supra* note 53.

²⁹⁴ N.Y. ST. EDUC. DEP’T, *supra* note 53.

²⁹⁵ N.Y. ST. EDUC. DEP’T, *supra* note 53.

²⁹⁶ N.Y. ST. EDUC. DEP’T, *supra* note 53.

²⁹⁷ *DASA Training Information Applicants for Certification*, N.Y. ST. EDUC. DEP’T, <http://www.highered.nysed.gov/tcert/certificate/dasa-applicant.html> (last updated Feb. 1, 2018).

²⁹⁸ N.Y. ST. EDUC. DEP’T, *supra* note 53.

²⁹⁹ H.R. 2926.

³⁰⁰ *Id.*

³⁰¹ N.Y. ST. EDUC. DEP’T, *supra* note 53.

³⁰² N.Y. ST. EDUC. DEP’T, *supra* note 297.

seldom receive hazing prevention training.³⁰³ DASA should be amended to incorporate hazing and provide teachers with hazing prevention education for implementation in their schools. Modifying DASA to include hazing and providing educators with tools to fight hazing would be an enormous step in the battle against hazing.

VII. CONCLUSION

Timothy Piazza, Chuck Stenzel, Mortimer Leggett, and countless others are victims of avoidable deaths that our country has seen because of hazing. Every year, hazing results in physical injuries, mental harm, and even death to students across the nation.³⁰⁴ The United States needs to combat hazing to prevent these unnecessary deaths from occurring every year. Although there has been a hazing-related death annually since the 1970s, we need more data on the number of hazing incidents that occur throughout our country to understand the full extent of the problem.³⁰⁵

States need to amend their current anti-hazing statutes to close the loopholes for athletics and recognize the mental harm that results from hazing.³⁰⁶ Congress should amend the Clery Act and enact the proposed REACH Act to require colleges to collect data and provide statistics on hazing acts.³⁰⁷ Additionally, the education component of the REACH Act will be the “vaccine” to fight the hazing “disease” before it takes root in future generations.³⁰⁸ DASA needs to be amended to include hazing prevention and serve as a model for other state laws to provide students with a safe environment free from discrimination, bullying, and hazing.³⁰⁹ As the amended DASA would provide educators with training on hazing prevention, teachers can begin to eliminate hazing through education on hazing prevention.³¹⁰ Implementing these changes could cure the country of the hazing

³⁰³ Alexandra Pannoni, *High Schools Work to Build Awareness of Hazing*, U.S. NEWS (Oct. 13, 2014), <https://www.usnews.com/education/blogs/high-school-notes/2014/10/13/high-schools-work-to-build-awareness-of-hazing>.

³⁰⁴ Flanagan, *supra* note 1, at 94.

³⁰⁵ Carter, *supra* note 137.

³⁰⁶ Acquaviva, *supra* note 52, at 327.

³⁰⁷ H.R. 2926.

³⁰⁸ TIMES-PICAYUNE, *supra* note 54.

³⁰⁹ N.Y. ST. EDUC. DEP'T, *supra* note 53.

³¹⁰ N.Y. ST. EDUC. DEP'T, *supra* note 297.

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epidemic and save the lives of college students, so they do not fall victim as Timothy Piazza did.