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Hazed and Confused: The Roehm Incident and the Necessity of Hazing Legislation

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“Hazing is an extraordinary activity that, when it occurs often enough, becomes perversely ordinary as those who engage in it grow desensitized to its inhumanity.”¹

I. INTRODUCTION

In Fall 2012, the Great Falls School District in Central Montana was shocked by a high school hazing scandal.² The perpetrator, senior Alex Mauricio Botina-Roehm (Roehm), was accused of “power gobbling” – a term used to describe an action in which victims are picked up in the shower by their crotch – by freshman members of the Great Falls High School football team.³ Apparently, such incidents had been occurring for a number of weeks against multiple victims, each of whom was too afraid to expose such matters.⁴ As a result of eventual reporting, however, Roehm was charged with felony sexual intercourse without consent and two counts of sexual assault.⁵ Roehm also faced

¹ See HANK NUWER, WRONGS OF PASSAGE 31-32 (1999) (arguing that group negligence, failure to recognize severity of hazing situations, and misplaced trust are often cause of hazing deaths).
³ See id. (detailing that, in addition to accusations of “power grabbing”, Roehm also allegedly stuck his thumb up freshman teammate’s rectum).
expulsion from Great Falls. In August, these charges were reduced to three counts of misdemeanor assault, as the judge stated he did not believe such acts were sexually motivated. Although Roehm was only sentenced to six months of probation, such incidents serve as an example of the frequency of athletic hazing incidents and the need for deterrence.

Furthermore, the Great Falls school administration was criticized for its two month delay in investigating the incident. Although the administration asserts that it dealt with the matter as soon as it was aware of the incident, it is unclear whether the matter was immediately reported due to confusion over child abuse reporting procedures. In fact, Great Falls Superintendent Cheryl Crawley admitted that such requirements are unclear and incomprehensive.

See also Kristen Cates, Great Falls Hires Investigator in Football Hazing Incident, USA TODAY: SPORTS, Nov. 17, 2011, http://www.usatoday.com/sports/preps/football/story/2011-11-17/Great-Falls-football-hazing/51270714/1 (reporting that detective Bruce McDermott did not believe two alleged victims were only persons subjected to such activity). According to McDermott, it was likely other victims were involved, but because these individuals were friends with Roehm, the activity was considered consensual. See id. (explaining McDermott’s opinion of alleged victims). On the other hand, victims of non-consensual activity must exhibit much more courage to report such abuses. See id. (detailing McDermott’s opinion of alleged victims and why early victims failed to report likely incidences).

6 See id. (stating that Roehm had been expelled from school district as direct result of this hazing incident).
7 See Kay Rossi, Charges Dismissed in Great Falls High School Hazing Incident, 3KRTV.com, Apr. 5, 2012, http://www.krtv.com/news/charges-dismissed-in-great-falls-high-school-hazing-incident/ (reporting ruling of Roehm’s case). Judge Sandefur is reported as saying, “Potential consequences such as requiring the teen to register as sex offender or do minimum of four years in prison were too harsh for the alleged conduct”. See id. (quoting Judge Sandefur on Roehm decision).
8 See id. (recounting Roehm’s reduced sentences and defense attorney’s appreciativeness of court’s careful consideration of stated incident).
10 See id. (concluding that such possible delay was result of unclear reporting procedures that failed to articulate mandatory actions). See also Kay Ross, GFPS Superintendent Addresses “Hazing” Incident, Dec. 9, 2011, 3KRTV.COM, http://www.krtv.com/news/gfps-superintendent-addresses-hazing-
The Great Falls incident exemplifies a gap in the law. Such a deficiency can occur when a law is either ambiguous or conflicts with other laws, such as the child abuse reporting laws in Roehm’s case. However, such inconsistencies can also represent a situation in which the law does not explicitly permit or prohibit a given activity. To date, Montana is one of only six states that do not have any state legislation against hazing. It is failures such as this that allow hazing incidents, such as the one that occurred in Great Falls, to potentially avoid being investigated. In order to remove the uncertainty that occurred after the incident in Great Falls and deter future criminals like Roehm, it is necessary that Montana and other states that lack anti-hazing legislation or adequate legislation adopt comprehensive regulations immediately.

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12 See Bunnin, infra note 13 and accompanying text (defining phrase “gap in the law”).
13 See NICHOLAS BUNNIN, BLACKWELL REFERENCE ONLINE (2004), available at http://www.blackwellreference.com/public/tocnode?id=g9781405106795_chunk_g978140510679513_ss1-19 (articulating that such gaps fail to determine particular legal issues and prevent conflict resolutions).
14 See id. (stating alternative definition of gap in law).
16 See Smith, supra note 5 and accompanying text (asserting investigation of Roehm’s actions was extremely delayed). Inquiry into the incident might never have been conducted if one of the victim’s grandmothers had not reported it to police. See id. (emphasizing potential for greater delay).
Section II(A) will describe the definition and rationales of hazing.\textsuperscript{18} Section II(B) will explain the ancient practice of hazing and early hazing in America.\textsuperscript{19} Next, Section II(C) will discuss hazing in Greek life.\textsuperscript{20} Section II(D), will continue on to hazing in athletics.\textsuperscript{21} In the final section, part (A) will discuss the inclusion of “athletic teams” in hazing prohibitions.\textsuperscript{22} Part (B) will then describe protections against the psychological effects of hazing.\textsuperscript{23} Part (C) will discuss the “consent is not a defense” provision.\textsuperscript{24} Finally, part (D) will consider whether to grant discretion to universities.\textsuperscript{25}

II. THE EVOLUTION OF HAZING

A. What is hazing and why do individuals haze?

To haze is to “subject freshmen, newcomers, etc. to abusive or humiliating tricks and ridicule.”\textsuperscript{26} The word itself is derived from American English student slang from the 1850s, which posits that someone who had been hazed had been “subject to cruel horseplay.”\textsuperscript{27} Today, hazing is an extremely prevalent and troublesome issue, as one study reported that almost eighty percent of college athletes were identified as having engaged in hazing activities.\textsuperscript{28}

\textsuperscript{18} For a further discussion of hazing background, see infra notes 26-39.
\textsuperscript{19} For a further discussion of early hazing practices, see infra notes 40-67.
\textsuperscript{20} For a further discussion of fraternal hazing, see infra notes 68-77.
\textsuperscript{21} For a further discussion of hazing in athletics, see infra notes 78-121.
\textsuperscript{22} For a further discussion of “athletic teams” in anti-hazing statutes, see infra notes 130-164.
\textsuperscript{23} For a further discussion of the mental effects of hazing, see infra notes 165-187.
\textsuperscript{24} For a further discussion of the consent defense in hazing legislation, see infra notes 188-201.
\textsuperscript{25} For a further discussion of universities’ discretion in anti-hazing laws, see infra notes 202-211.
\textsuperscript{26} See Hazing, \textsc{dictionary.com unabridged}, http://dictionary.reference.com/browse/hazing?s=t (last visited Sept. 9, 2012) (adding that traditional nautical definition of hazing is to “harass with unnecessary or disagreeable tasks.”).
\textsuperscript{27} See id. (adding that “hazing” can also be derived from 1840 nautical sense of “punish[ment] by keeping at unpleasant and unnecessary hard work”). “Hazing” is also attributed to the 1670s term \textit{hawze} “to terrify, frighten, confound”, and from the mid-fifteenth century term \textit{haser} “to irritate, annoy”. \textit{See id.} (detailing alternative origins of “hazing”).
\textsuperscript{28} See Elizabeth Allan and Mary Madden, \textit{Hazing in View: College Students at Risk}, UNIVERSITY OF MAINE: COLLEGE OF EDUCATION AND HUMAN
There are a number of theoretical perspectives of why individuals engage in hazing practices, and multiple factors likely account for this motivation. Evolutionary psychology points to the fact that it is human nature to desire affiliation, and hazing increases such bonds. Furthermore, a lack of external consequences encourages hazing because perpetrators may feel unlikely to be punished. Perpetrators may be more likely to engage in such practices due to cognitive dissonance, or the tendency to minimize harmful practices when an individual perceives him or herself to be a rational, intelligent person. Individuals may also be more likely to haze when they have strong beliefs about masculinity or exhibit anti-social personalities. Furthermore, a person is more
likely to commit an act of hazing once they have experienced hazing, or have a strong desire to exert power and control over others.\textsuperscript{34} Still others may haze to “continue the tradition” or because they know no other way of communicating.\textsuperscript{35}

Victims may acquiesce to hazing due to beliefs regarding conformity and obedience to authority.\textsuperscript{36} Other hazing targets may downplay and accept such practices as a rite of passage.\textsuperscript{37} Victims may also be more likely to consent to hazing when they exhibit low self-esteem and a desire for intimacy.\textsuperscript{38} Finally, suppressing others.” See id. (describing negative personality traits associated with hazing).

\textsuperscript{34} See Hazing.Cornell.edu: a Revealing Look at Hidden Rites, CORNELL.EDU, http://www.gannett.cornell.edu/hazing/issues/research.cfm (last visited Sept. 11, 2012) (indicating that hazing victims often become perpetrators). Individuals subjected to hazing are at a much greater risk of committing acts of hazing against others to satisfy a desire for revenge. See id. (stating influence of revenge on hazing propensity). Others may haze in order to satisfy an innate desire to exert control over others. See id. (finding motive of revenge to be significant factor in likelihood to haze).

\textsuperscript{35} See Hazing: Your Actions Make a Difference, PURDUE UNIVERSITY, http://www.purdue.edu/hazing/warning_signs.shtml (last visited Sept. 11, 2012) (arguing further that, “those who haze are never the true leaders of an organization. In fact, hazers may eventually be the leading cause of the organization's downfall.”).

\textsuperscript{36} See Hazing.Cornell.edu: a Revealing Look at Hidden Rites, CORNELL.EDU, http://www.gannett.cornell.edu/hazing/issues/research.cfm (last visited Sept. 11, 2012) (finding that research has demonstrated that social context can influence hazing practices). For example, in Stanley Milgram’s classic study, subjects followed the commands of superiors to send what they believed to be dangerous electric shocks to patients. See id. (providing example of how those who engage in hazing are influenced by social context).

\textsuperscript{37} See id. (observing that, like many rites of passages in life, victims are likely to endure hazing practices because of perceived notion that it is necessary step in entering exclusive group). The notion that hazing practices were a necessary rite of passage first became prevalent in American higher education, where high school freshman were often subjected to physical hazing and servitude by upperclassmen. See id. (reporting emergence of hazing in American education). Such behavior was widely accepted as a compulsory step in becoming an upperclassman. See id. (indicating prevalence of hazing in education). In fact, hazing acts even became a gauge of masculinity. See id. (stating possible explanation for hazing practices). See also Jonathan Zimmerman, \textit{Hazing Rituals Are Not Rites of Passage}, NEWSWORKS, Jan. 17, 2012, http://www.newsworks.org/index.php/local/thats-history/32461-hazing-rituals-are-not-rites-of-passage (arguing that hazing has been historically viewed as rite of passage in higher education).

\textsuperscript{38} See Hazing.Cornell.edu: a Revealing Look at Hidden Rites (finding that hazing perpetrators often exhibit low self-esteem). “Self-esteem is bolstered by a sense of
hazing is more likely to occur when the victim has a fear of reprisal or feels that there is a lack of alternatives to being hazed.39

B. General History of Hazing

1. Ancient Practice

The practice of hazing is an ancient tradition.40 In fact, hazing incidents can be traced back to the year 387 B.C.E. when Plato commented on the inhumane nature of the way young boys interacted with each other.41 In 371 C.E., St. Augustine at Carthage described the hazing of newcomers by the “overturners” or modern-day subverters.42 St. Augustine condemned their behavior as “riotous pranks” and criticized such actions as “insolently torment[ing] the modesty of the un-initiates, which they outraged without reason save to make sport and thence to feed their malicious mirth.”43 Although St. Augustin...
Augustine distinguishes himself from those who participated in such behavior, he acknowledges that he did associate with the subverters and enjoy their friendship.\footnote{44}

Hazing practices continued to plague universities throughout the fourteenth and fifteenth centuries.\footnote{45} In 1340, for example, the University of Paris outlawed hazing under the penalty of expulsion.\footnote{46} France continued to exemplify anti-hazing sentiments, epitomized by the anti-hazing Fraternity of St. Sebastian.\footnote{47} Such measures were likely taken as a result of widespread penalism, a system of hazing prevalent in Europe during this time period.\footnote{48} Under this system, “older students regarded newcomers as savages who needed to undergo hardships to prove themselves worthy of admission into the company of educated men.”\footnote{49} For example, hazing acts included stealing money from younger students, physically abusing them, or forcing them to dress in humiliating attire.\footnote{50} In fact, German monk Martin Luther hazed new students at the University of Wittenberg in 1539.\footnote{51} Luther is even quoted as telling his pupils, “You’ll be subjected to hazing all your life . . . so this test is only a symbol of human life and subjected to such disgraceful behavior. See id. (discussing hypocritical nature of critics).

\footnote{44} See id. (acknowledging this fact reluctantly). St. Augustine then immediately following stated his disgust of their behavior. See id. (noting reproach for hazing).

\footnote{45} See HANK NUWER, THE HAZING READER 1 (2004) (reporting that hazing practices were extremely frequent during era of proliferation of universities).

\footnote{46} See id. (discussing similar events that occurred in Europe). For example, one institution in Heidelberg, Germany required new students to wear embarrassing yellow-billed caps. See id. (providing example of hazing in twelfth century).

\footnote{47} See id. (stating that this particular fraternity was established at Avignon in Southern France).

\footnote{48} See HANK NUWER, BROKEN PLEDGES: THE DEADLY RITE OF HAZING 117 (1990) (describing how penalism began in the early fifteenth century in Europe and was confined to mainly academic settings).

\footnote{49} See id. (reporting that by year 1600, master’s students needed official certification from their university that documented they had survived “equivalent of a Middle Ages hell night”).

\footnote{50} See id. (citing example of requiring new students to wear cap and beanie for duration of one year). In fact, this practice emigrated to America where some fraternities at universities, such as Phillips University, still require such practices. See id. (noting existence of penalism in United States).

\footnote{51} See id. at 118 (stating that Luther “made neophytes wear silly ‘yellow bills’ (horns) on their heads and basted them in win to wash away, symbolically, their pasts and ‘former unbridled natures.’”).
in its misfortunes and castigations.”

Fortunately, penalism has since disappeared from the continent.

In England, the practice of fagging was prevalent in elite universities. Fagging has been defined as, “the right exercised by the older boy to make the younger do what he likes, and what the younger one generally dislikes.” Under this system, each new student essentially became a servant to an upperclassman in order to teach the newcomer proper manners and humility. However, oftentimes such behavior became extremely degrading, even resulting in a number of injuries, suicides, and deaths.

2. Early Hazing in America

One of the earliest hazing incidences in America occurred in 1682 when a Harvard student was expelled for hazing. Joseph Webb was formally accused of hazing after a series of complaints detailed Webb demanding personal favors from freshman at the university. Webb also allegedly subjected said freshman

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52 See id. (quoting Martin Luther). Luther further stated to his pupils that “When you hold important offices in the future, burghers, peasants, nobles and your wives will harass you with various vexations. When this happens, don’t go to pieces. Bear you cross with equanimity and your troubles without murmuring . . . Say that you first began to be hazed in Wittenberg when you were a young man, that now that you have become a weightier person you have heavier vexations to bear.”). See id. (quoting Martin Luther’s advice to students on hazing).
53 See id. at 117 (arguing that, unfortunately, many men were “humiliated, injured and killed” before this occurred).
54 See HANK NUWER, BROKEN PLEDGES: THE DEADLY RITE OF HAZING 117 (reporting that such activity “flourished in prep schools and was occasionally practiced at Cambridge and Oxford.”).
55 See id. (arguing that although this is regrettable behavior, it is human nature of boys to behave in such way, as opposed to conscious malicious conduct).
56 See id. at 118 (stating that new pupils often performed basic chores for upperclassmen, such as errands, cleaning or anything upperclassmen desired).
57 See id. (citing poet Percy Bysshe Shelley who criticized such practice as “brutal and degrading”). However, the practice continued in some institutions, such as Eton, until the late twentieth century. See id. (noting prevalence and violent nature of hazing).
59 See id. (recounting Webb’s abusive behavior and negligence in upholding his duties as student at Harvard).
to physical abuse when they refused to comply.\textsuperscript{60} However, upon Webb’s sincere confessions of these offenses to the administration, he was re-admitted into the college.\textsuperscript{61}

Few documented reports of hazing occurred until 1873, when the New York Times published an article exposing hazing practices in military institutions.\textsuperscript{62} Although the article’s scope is confined to hazing at West Point, it acknowledges that similar practices likely occurred throughout the country in both military and non-military institutions.\textsuperscript{63} The article criticizes the cadets for their immature behavior, especially in light of the fact that the Secretary of War was present at West Point when such incidents occurred.\textsuperscript{64} The author then describes a few hazing anecdotes.\textsuperscript{65} For example, some cadets were forced to complete tasks or errands in impossible time frames, or even sing and dance for officers’ amusement and entertainment.\textsuperscript{66} Other sources discuss more serious forms of hazing during this time, such as a practice called yanking in which upperclassmen “picked up the blankets upon which a cadet was sleeping in order to do mischief to him.”\textsuperscript{67}

\textsuperscript{60} See id. at 303-04 (describing how Webb struck Freshmen and how Webb himself confessed to physically abusing students).

\textsuperscript{61} See id. at 304 (stating university granted his re-admission upon good behavior and condition that Webb must publicly read and acknowledge his confession in College Hall).

\textsuperscript{62} See Hazing at the Academy—an Evil that Should be Routed Out—A plea for the Strangers, NY TIMES, June 6, 1873 (arguing that, although most of public believed that hazing had been abolished due to order from War Department, hazing did still occur).

\textsuperscript{63} See id. (stating that not only is hazing occurring at West Point, but that “there is probably not [a] large school in the country, either civil or military, where hazing does not exist to some extent.”).

\textsuperscript{64} See id. (criticizing such behavior by stating that, “... it is not in human nature-or in boy nature at least-to let slip an opportunity to have a little fun by annoying one who is friendless in a strange place, and whom we know is at our mercy.”).

\textsuperscript{65} See id. (articulating hazing incidents at West Point). For example, one cadet’s luggage and food was confiscated by his peers upon arrival. See id. (reporting hazing incident). The hazers also forced the cadet to call them “sir” and salute them at every opportunity, as well as required the cadet to memorize lengthy portions of their regulations verbatim, which took the cadet almost 300 attempts to complete. See id. (describing one cadet’s recollection of being hazed).

\textsuperscript{66} See id. (reporting that, more alarmingly, cadets often did not know that officers lacked enforcement mechanisms to penalize them if they failed to complete such tasks or instructions).

\textsuperscript{67} See Hank Nuwer, BROKEN PLEDGES: THE DEADLY RITE OF HAZING 119 (reporting that this practice occurred during late 1860s and has appeared under various terminologies, depending on campus). This behavior occurred at both
C. Hazing in Greek Life

Although American Greek life was first established in the late eighteenth century, the first documented hazing incidents did not occur until more than a century later. In 1776 the first fraternal organization, Phi Beta Kappa, was established. The fraternity was founded as a literary society that expressed views on the Revolution, and had both social, as well as academic, purposes. Hazing in Greek organizations, however, did not become popular until the 1880s. The first documented hazing incident occurred in 1873 at Cornell University when a young man was blindfolded and taken for a walk by members of the fraternity Kappa Alpha. After the blindfold was removed, the pledge was ordered to find his way back to campus. The pledge and his two hazers fell off of a cliff and the pledge suffered severe injuries that lead to his death. Hazing practices were frequent during this era and often involved physical abuse, as opposed to pressures involving alcohol. Afterwards, hazing incidents dropped military and non-military institutions. See id. (describing where hazing took place).

68 See id. (stating when fraternities were established). See also Nuwer, infra note 71 and accompanying text (citing when hazing in Greek life first began).

69 See Hank Nuwer, Broken Pledges: The Deadly Rite of Hazing 119 (stating that this was first definitive fraternal organization, as there were other social groups that pre-dated Phi Beta Kappa).

70 See id. (explaining that, due to its academic nature, Phi Beta Kappa had rule against drunkenness that had ten shilling fine as penalty).

71 See id. at 119-120 (stating that although hazing in fraternities became more common, it remained mostly East Coast phenomenon for first twenty or so years of its establishment).

72 See id. at 119 (arguing that this incident was undisputedly first hazing death to receive widespread media attention).

73 See id. (commenting that event occurred at night, and all three men were unfamiliar with terrain).

74 See id. (reporting ironically similar incident that occurred at Cornell University in 1899). In that event, the Kappa Alpha fraternity again required a pledge to walk through unfamiliar terrain, this time in Geneva, NY. See id. (describing similar hazing event). The pledge, Edward Fairchild Berkeley, also died when he fell into a canal. See id. (noting that hazing can be fatal).

75 See Hank Nuwer, Broken Pledges: The Deadly Rite of Hazing 119 (detailing one incident involving University of Georgia’s Zeta Chi fraternity). For example, a fraternity brother, Fraser, played a joke on the other members of the fraternity by forcing pledges into a dark room and telling them to stick out their tongues so that they could be branded. See id. (describing background of hazing incident). When the pledges refused to comply, Fraser took out a pistol and pointed it at the pledges, unknown to them that it contained only blanks. See id.
significantly during both World War I and World War II. However, since the end of World War II, and the resulting return of a significant portion of the male population, hazing in Greek life has steadily risen.

D. Hazing in Athletics

Contrary to evidence of past fraternal hazing, the history of hazing in athletics in the United States is far less documented and comprehensive. Although many consider athletic hazing to be a rite of passage in good spirit, other individuals and organizations are dedicated to eradicating such practices. Such staunch opponents argue that it detracts from the enjoyment of the game, as well as seriously affects personal growth in younger athletes. Others argue that athletic hazing regulations should fall somewhere between a complete ban and a (detailing hazing event). As a result, two of the pledges jumped out of a window and broke their ankles. See id. (reporting effects of hazing incident). Other pledges suffered minor injuries. See id. (describing early violent hazing incident at University of Georgia).

76 See id. at 120 (stating that fraternity membership greatly decreased when young men began to be drafted in large amounts).

77 See id. at 121 (articulating how increase in hazing correlated to fraternity membership). Moreover, hazing incidents may have also increased during this era as a result of the physically strenuous conditions that males often faced during war. See id. (arguing influence of war on hazing propensity). In fact, one Texas A&M dean in 1947 even blamed hazing for the fact that forty-eight percent of its students dropped out of the university after a single semester. See id. (describing increase in hazing post-World War II). For the latest research on hazing prevalence, see Allan, infra notes 96-104 and accompanying text (describing University of Maine study).

78 See Matt Burt, Your Call: What’s Your Take on Hazing Rituals in Sports?, TSN, July 26, 2010, http://www.tsn.ca/nfl/story/?id=328549 (arguing that there is little documented information available on hazing in athletics). However, there is “a long, fabled history of hazing in the sports world”. See id. (indicating hazing has occurred for many years). The article also argues that hazing in athletics has “been around forever”; therefore, the focus of hazing discussion should be whether it still belongs in modern society. See id. (stating that, although not necessarily reported, athletic hazing is prevalent).

79 See id. (contrasting athletes who view hazing as comical with organizations and websites that focus solely on eliminating hazing from athletics).

80 See id. (arguing that hazing tends to have disparate effect on youth, whose body types and athletic abilities range significantly leaving some to be more likely to be victims of hazing).
hands-off approach.\textsuperscript{81} One such controversial manifestation of athletic hazing has occurred in the National Football League (NFL).\textsuperscript{82} For example, in 2011 Dallas Cowboys receiver Dez Bryant, a rookie, refused to carry the equipment of veteran teammates.\textsuperscript{83} In refusing to accept this NFL tradition, Bryant stated that he feels like he, "was drafted to play football, not carry another player’s pads."\textsuperscript{84} However, as a result of Bryant’s refusal to submit to such hazing practices, veteran teammate Roy Williams warned Bryant that Bryant would have to take him out to dinner as punishment.\textsuperscript{85} The dinner included a majority of the Cowboys players and left Bryant with a $54,896 bill.\textsuperscript{86}

Such practices are common in the NFL, and they are usually regarded as relatively innocent compared to other manifestations of hazing.\textsuperscript{87} However, some

\textsuperscript{81}See id. (discussing how restrictions on hazing in athletics should turn on degree of severity of incident). It is likely that a blanket ban on hazing would be too intrusive, yet the absence of any regulation could be dangerous. See id. (discussing which approach to hazing is best).

\textsuperscript{82}See Mike Bresnahan, In Pro Sports, Hazing is Out of the Shadows . . . and on the Wane, L.A. TIMES, Aug. 22, 2011, http://articles.latimes.com/2011/aug/22/sports/la-sp-sports-hazing-20110823 (stating that there is well-established tradition in NFL of “. . . rookies being tied to goal posts, singing off-key songs in front of teammates and donning silly costumes at training camp.”).

\textsuperscript{83}See id. (reporting what Cowboys Coach Garrett told reporters). Even though Coach Garrett told reporters that, "There's not going to be anything demeaning in any way that a rookie has to do," he thus acknowledged hazing practices. See id. (quoting Dallas Cowboys football coach).

\textsuperscript{84}See Calvin Watkins, Roy Williams Pays Back Dez Bryant, ESPN.COM, Sept. 29, 2010, http://sports.espn.go.com/dallas/nfl/news/story?id=5626300 (observing that although Bryant attempted to end hazing, he was also quoted later as stating that he was unaware of tradition).

\textsuperscript{85}See id. (adding that Williams also threatened that Bryant would have to buy Williams new pair of shoes).

\textsuperscript{86}See id. (reporting hazing incident at Pappas Bros. Steakhouse). Bryant originally invited only the offensive players to the restaurant, but Williams invited the defensive players as well to be sure he got the message. See id. (reporting background of hazing incident). At the dinner, players ordered almost everything on the menu, even ordering and taking home bottles of wine off of the 90-page wine list. See id. (detailing hazing event). Some wine on the menu, such as a bottle of Chateau Latour, cost $9,000. See id. (describing financial hazing of Dallas Cowboys player).

\textsuperscript{87}See Mike Bresnahan, In Pro Sports, Hazing is Out of the Shadows . . . and on the Wane, L.A. TIMES, Aug. 22, 2011, http://articles.latimes.com/2011/aug/22/sports/la-sp-sports-hazing-20110823 (stating that although new players will still have to carry veteran teammates’ equipment, “no eyebrows will be shaved and no awful haircuts will be given.”).
experts argue that such hazing practices have “a negative impact on people and their self-esteem. It makes it hard to feel inspired. It could affect your trust . . . It’s hard to see what’s redeeming about hazing people.” Furthermore, athletic hazing, like fraternal hazing, has the potential to cause physical injury. For example, in 1998, New Orleans Saints rookies Cam Cleeland and Jeff Danish were injured after being “gang-rushed” by teammates.

Not only is hazing common in the NFL and professional sports, but it is also an extremely prevalent and serious issue in collegiate athletics. The publication of a small number of surveys, such as one conducted by Cornell University in 2002-03, have unveiled the widespread practice of hazing in athletic programs. Although the Cornell survey was not confined to athletic hazing, the results indicated that in general, males, athletes, and members of Greek life were

88 See id. (quoting Bob Corb, director of sport psychology program at UCLA). Corb also acknowledged that, although he understands the rookie mentality for the need to prove oneself, this should be done by putting in more hours and working harder on technique in the sport itself. See id. (arguing for alternative to hazing). In other words, the whole premise behind hazing serves no practical or positive function. See id. (arguing that alternative methods to hazing are more effective and produce similar results).
89 See id. (indicating that this is particularly pertinent to sport of football). Because many football players tend to be very muscular, as well as the fact that there is often a sizeable number of rookies in any given season, this increases the likelihood of hazing. See id. (noting reasons why hazing in football is common).
90 See id. (reporting hazing incident against rookies in professional football). The article states that, “Cleeland sustained an eye injury after being clubbed by a bag of coins, and Danish was hospitalized after being shoved through a window.” See id. (stating facts of hazing event). “Danish won an undisclosed sum after suing the Saints, an assistant coach and half-dozen players for more than $650,000 in damages.” Id. (detailing hazing event and its consequences).
more likely than other students to have participated in hazing practices. The study concluded that thirty-seven percent of individuals surveyed had been involved in at least one form of hazing. On the other hand, only twelve percent of students identified themselves as having been hazed, indicating that, “some students either do not realize or do not agree that they have been hazed.”

Another influential study on hazing was conducted at the University of Maine (“Maine”) in 2008. The study first acknowledged that hazing is an area that has traditionally been overlooked and under-studied. This is especially problematic considering that the Maine study concluded that fifty-five percent of the undergraduate respondents had experienced hazing. The study also found that hazing is most prevalent in athletics and Greek life, but is also common in

93 See id. (indicating that fraternity members in particular associated heavily with hazing, as over three-fourths of members indicated they had participated in at least one form of hazing).
94 See id. (summarizing forms of hazing). The forms of hazing are summarized as: “Participating in a drinking contest/games, being deprived of sleep, carrying around unnecessary objects or items, being required to remain silent or being silenced, having food thrown at you or other new members, being kidnapped or transported and abandoned, acting as a personal servant to others . . .” See id. (listing forms of hazing).
95 See id. (indicating that such statistic is problematic in light of fact that thirty-seven percent of same individuals admitted to engaging in at least one form of hazing). See also Hazing.Cornell.edu: a Revealing Look at Hidden Rites, supra note 92 and accompanying text (indicating prevalence of hazing).
96 See Elizabeth Allan and Mary Madden, Hazing in View: College Students at Risk, UNIVERSITY OF MAINE: COLLEGE OF EDUCATION AND HUMAN DEVELOPMENT, March 11, 2008, http://www.hazingstudy.org/publications/hazing_in_view_web.pdf (noting that survey is based on analysis of 11,482 responses of undergraduate students from fifty-three universities, as well as over 300 interviews conducted at eighteen of those universities).
97 See id. (describing lack of publications on hazing). Until the Maine study, the most comprehensive study was conducted by Alfred University in 1999. See Dr. Hoover, infra. notes 105-118 and accompanying text (summarizing Alfred University survey and its impact).
98 See Allan (defining “hazing” and summarizing those who haze). The study defined hazing as, “. . . any activity expected of someone joining or participating in a group that humiliates, degrades, abuses, or endangers them regardless of a person’s willingness to participate.” See id. (noting acts that constitute hazing). Broken down further, sixty-one percent of males and fifty-two percent of females had experienced hazing through a team or organization. See id. (reporting differences in hazing experiences based on sex).
academic and recreational clubs. Among the most common forms of hazing were alcohol consumption, humiliation, isolation, sleep deprivation, and sex acts. Furthermore, not only is hazing widespread, but knowledge of the behavior extends beyond those engaged in the hazing. In fact, many students consider hazing a part of campus culture. Moreover, despite this prevalence, students are unlikely to report such incidents to public officials. Most

99 See id. (reporting hazing rates in variety of social organizations). Varsity athletes experienced the most hazing, with seventy-four percent of respondents reporting hazing experiences. See id. (stating most prevalent group). The next most prevalent group was Greek life with seventy-three percent of those surveyed engaging in hazing, then club sports with sixty-four percent. See id. (detailing second most likely demographic to haze). Performing arts organizations experienced hazing at a rate of fifty-six percent, service fraternities and sororities at fifty percent, intramural teams at forty-nine percent, recreation clubs at forty-two percent, academic clubs at twenty-three percent, and honor societies at twenty percent. See id. (discussing prevalence of hazing in different groups).

100 See id. (concluding that “Overall, it appears college students are participating in unacceptable, high-risk, and potentially illegal behaviors in order to belong to a student group or team.”). The most popular forms of hazing include: participating in drinking games, singing in public forums, associating with certain people, drinking in large amounts, depriving oneself of sleep, being yelled at, performing skits, wearing inappropriate clothing, performing sex acts, etc. See id. (detailing common manifestations of hazing).

101 See id. (describing public aspects of hazing). Coaches, families, and friends often have knowledge of the hazing activities, as approximately half of the reported incidents were exposed on social media websites. See id. (indicating common knowledge of hazing). Furthermore, one in four participants indicated that the hazing occurred on campus, and nearly half of the hazing incidents took place during daylight hours. See id. (concluding hazing is oftentimes common knowledge).

102 See Elizabeth Allan and Mary Madden, Hazing in View: College Students at Risk, UNIVERSITY OF MAINE: COLLEGE OF EDUCATION AND HUMAN DEVELOPMENT, March 11, 2008, http://www.hazingstudy.org/publications/hazing_in_view_web.pdf (implying high knowledge and acceptance rates of hazing). In fact, sixty-nine percent of students indicated awareness of hazing on campus, while twenty-four percent reported witnessing hazing incidents first-hand. See id. (reporting widespread knowledge of hazing occurrences).

103 See id. (announcing lack of reported cases). Ninety-five percent of those surveyed stated they did not report hazing incidences. See id. (concluding great reluctance to report). The most common rationales for this failure are: not wanting to get teammates in trouble, fear of negative consequences, and the highly popular “other” category. See id. (describing common reasons individuals fail to report hazing).
alarming, such failures may be the result of a clear gap between students engaging in hazing and their unwillingness to label the behavior as such.\textsuperscript{104}

In 1999, Alfred University (“Alfred”) conducted one of the largest and most comprehensive studies on collegiate athletic hazing to date.\textsuperscript{105} The study surveyed all National Collegiate Athletic Association (“NCAA”) directors and senior student affairs officers, a random sample of 3,000 NCAA coaches and 10,000 athletes from 224 NCAA institutions.\textsuperscript{106} In detailing an executive summary of the results, the study concluded that in general, more than a quarter million individuals experienced some form of hazing in order to join a college athletic team.\textsuperscript{107}

Interestingly, under the definition of hazing that the study employed, only forty-five percent of respondents reported that they had heard of or knew about hazing on his or her campus.\textsuperscript{108} However, when asked about the athletes’ own

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\item See id. (stating that while fifty-five percent of respondents engage in hazing, ninety-one percent do not view their own experiences as such). Possible reasons for this disparity include the fact that many students define hazing as a violent, aggressive act and do not recognize more subtle, yet still destructive, means of hazing. See id. (arguing that such lack of acceptance could have negative consequences).
\item See Dr. Nadine Hoover, National Survey: Initiation Rites and Athletics for NCAA Sports Teams, ALFRED UNIVERSITY, Aug. 30, 1999, http://www.alfred.edu/sports_hazing/docs/hazing.pdf (summarizing Alfred University survey). Alfred University, with the assistance of the National Collegiate Athletic Association, conducted a national survey in order to define the scope of hazing practices, identify perceptions about what is appropriate and what is inappropriate hazing behavior, and to develop strategies to prevent hazing. See id. (stating purposes of survey).
\item See id. (adding that response rate was between twenty and thirty percent, and that results for NCAA athletes alone were based on data from 2,027 respondents).
\item See id. (reporting statistics on prevalence of athletic hazing). Alfred University derived those statistics from the fact that “over 325,000 athletes at more than 1,000 National Collegiate Athletic Association schools participated in intercollegiate sports during 1998-99”, and extrapolating the percentage of college athletes found to have been hazed from the Alfred University survey onto those figures. See id. (detailing method in how survey was conducted).
\item See id. (defining hazing). The Alfred survey defined hazing as, “any activity expected of someone joining a group that humiliates, degrades, abuses or endangers, regardless of the person’s willingness to participate. This does not include activities such as rookies carrying the balls, team parties with community games, or going out with your teammates, unless an atmosphere of humiliation, degradation, abuse or danger arises.” See id. (describing definition of hazing). This definition was printed clearly at the top of each form. See id. (reporting how hazing was defined and presented in survey).
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experiences, eighty percent reported being subject to behavior typical of hazing.\textsuperscript{109} As a result, the survey concluded that athletes tend to be reluctant in articulating personal experiences as hazing.\textsuperscript{110}

The study also determined that one in five collegiate athletes have been subject to unacceptable and potentially illegal hazing.\textsuperscript{111} As far as the involvement of alcohol in hazing practice, the study concluded that half of the athletes were required to participate in drinking related activities or hazing involving alcohol.\textsuperscript{112} More alarmingly, the use of alcohol in team-related events begins early, as the study found that forty-two percent of respondents indicated that they consumed alcohol on recruitment visits, a likely indication of possible hazing.\textsuperscript{113} Moreover, when asked about hazing in athletics before college, forty-two percent indicated that they had been hazed in high school and five percent stated they had been hazed in middle school.\textsuperscript{114} However, one survey on high

\textsuperscript{109} See id. (adding that only twelve percent had reporting being hazed for athletics, which contrasts sharply with eighty percent acknowledging hazing practices in team initiations).

\textsuperscript{110} See Dr. Nadine Hoover, \textit{National Survey: Initiation Rites and Athletics for NCAA Sports Teams}, ALFRED UNIVERSITY, Aug. 30, 1999, http://www.alfred.edu/sports_hazing/docs/hazing.pdf (stating that although students acknowledge hazing behavior, they were reluctant to label such practices as “hazing”). This reluctance is understandable, given the high number of states in which hazing is illegal and therefore students fear reprisal. See id. (providing possible explanation as to why students have been hesitant to discuss involvement in hazing). See also \textit{Hazing.Cornell.edu: a Revealing Look at Hidden Rites}, supra note 95 and accompanying text (indicating further reluctance of athletes to acknowledge behavior that he or she had engaged in as constituting form of hazing).

\textsuperscript{111} See Dr. Hoover (defining “questionable hazing”). The Alfred study defined “questionable hazing” acts as: “Being yelled, cursed or sworn act; piercing, head shaving, or branding; participating in calisthenics not related to a sport; associating with specific people, not others; acting as personal servant to players of the field; being forced to deprive oneself of food, sleep, or hygiene; consuming extremely spicy/disgusting concoctions.” See id. (listing actions that qualify as “questionable hazing”).

\textsuperscript{112} See id. (adding that two in five athletes surveyed consumed alcohol on recruitment visits).

\textsuperscript{113} See id. (indicating that this forty-two percent projects to 136,160 recruits nationally per year). Such visits are often the first step in the process of acceptance onto a team, and therefore the practice of hazing can often begin in high school. See id. (noting how hazing practices begin early in the recruitment process).

\textsuperscript{114} See id. (arguing that, because many more athletes have reported being subjected to hazing behaviors than those admitting that they were hazed, these numbers are likely significantly higher).
school hazing indicated that younger athletes tend to be more desensitized to hazing and are less likely to report or acknowledge such incidents.\textsuperscript{115}

Furthermore, the Alfred University study concluded that engaging in mild forms of hazing was also a good indication of more serious hazing practices, as more than eighty percent of athletes subjected to questionable hazing activities were found to also engage in unacceptable activities.\textsuperscript{116} In fact, a staggering two-thirds of athletes surveyed were subjected to humiliating hazing, while only one in five athletes responded that they had engaged in positive initiations.\textsuperscript{117} Finally, the study concluded that the demographics most at risk are (1) male, (2) non-Greek, and (3) located on a college campus in either the Eastern or Southern United States.\textsuperscript{118}

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\textsuperscript{115} See id. (finding that older students are more likely to recognize hazing). Freshmen and sophomores acknowledge hazing behavior significantly less than juniors and seniors, even though the majority of conduct that all grades are exposed to is objectionable and enough to merit categorization as hazing. See id. (noting that such disparity is in no part related to severity of hazing actions).
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\textsuperscript{116} See Dr. Hoover, supra note 111 and accompanying text (detailing “questionable hazing” behavior). See also Dr. Hoover, infra. note 117 and accompanying text (defining “humiliating hazing” practices).
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\textsuperscript{117} See Dr. Nadine Hoover, National Survey: Initiation Rites and Athletics for NCAA Sports Teams, ALFRED UNIVERSITY, Aug. 30, 1999, http://www.alfred.edu/sports_hazing/docs/hazing.pdf (describing “humiliating hazing” or unacceptable activities). The Alfred study defines these types of hazing as: “Destroying or stealing property; engaging in or simulating sexual acts; being tied up, taped, or confined in small space; being paddled, whipped, beaten, kicked; beating others.” See id. (defining “humiliating” hazing). Positive initiations, on the other hand, involve such activities as trips or ropes courses. See id. (listing actions that qualify as “humiliating hazing” for purposes of survey).
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\textsuperscript{118} See id. (articulating most at-risk demographics for hazing). The Alfred study also concludes that swimmers, divers, soccer players and lacrosse players were the most at risk. See id. (reporting highest hazing demographic). However, football players were most at risk for being involved in dangerous and potentially illegal hazing. See id. (stating other athletes likely to haze). Although non-Greeks were found to engage in hazing more than Greek-affiliated athletes, the presence of a Greek system on campus was a good indication of hazing. See id. (comparing hazing in Greek life and athletics). Furthermore, women were more likely to be involved in alcohol-related hazing than other forms of hazing. See id. (summarizing hazing differences between sexes). Finally, southern and Midwestern campuses were found to have the greatest incidents of dangerous and potentially illegal forms of hazing. See id. (describing factors such as sport, sex, Greek life, and location of college all influence hazing tendencies).
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The Alfred University survey unearthed a previously poorly-documented and understood facet of the college athlete experience. As a result of the survey, many no longer view hazing as confined to Greek life or the military. Such findings should not, and are likely to not, be ignored.

III. HAZING LEGISLATION: THE ESSENTIAL ELEMENTS

Currently, state anti-hazing statutes are woefully inadequate in addressing recent outbreaks of hazing incidents. One of the most significant deficiencies in anti-hazing legislation is the lack of provisions that apply to athletics, specifically. Many other statutes fail to provide language that adequately

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120 See id. (stating that hazing is now recognized part of athletics). The article announces that, “After decades, perhaps even a century, of hazing of athletes by athletes is getting its first thorough public examination. Once seemingly the province of fraternities and the military, hazing has emerged from the shadows. A series of initiation-related incidences gone wrong has forced the world of sports to look inward to quantify and address any problems.” See id. (acknowledging how hazing has come to be associated with athletics).

121 See id. (indicating importance of Alfred survey). Although there may be many universities where hazing in athletics does not occur, the fact that eighty percent of athletes across the nation have been hazed is a pattern that cannot be ignored. See id. (arguing that results of survey are indicative of severe problem in athletics).

122 See State Anti-Hazing Laws, supra note 15 and accompanying text (noting that six states do not even have hazing statues: Alaska, Hawaii, Montana, New Mexico, South Dakota and Wyoming).

123 See, e.g., 24 PA. CONS. STAT. ANN. §§ 5351-54 (West 2012) (presenting Pennsylvania’s anti-hazing statute). The Pennsylvania statute, for example, only proscribes hazing acts conducted by “organizations”, and not by athletic teams or participants specifically. See id. at § 5351 (indicating definition of hazing). Hazing is defined as “Any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a student . . . for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization . . .” (emphasis added). See id. (noting definition of hazing does not include activity of athletic groups). See also, VA. CODE ANN. § 18.2-56 (West 2012) (articulating Virginia’s anti-hazing statute). Even more problematic, other states, such as Virginia, list a number of groups in their anti-hazing statutes, but fail to include athletic teams with such
addresses the mental health effects of hazing.\textsuperscript{124} Moreover, many states have not included provisions that outlaw consent as a defense to hazing acts.\textsuperscript{125} Finally, many states have not granted discretion to universities or school districts to enforce hazing provisions, a step which can deter hazing both on college campuses and in secondary education.\textsuperscript{126} On the other hand, states that have organizations. \textit{See id.} ( contrasting hazing in Virginia with Pennsylvania). For example, Virginia includes groups such as a “club, organization, association, fraternity, sorority, or student body”, but fails to mention athletics. \textit{See id.} ( discussing organizations specifically prohibited from hazing in Virginia’s statute). \textit{But see NEV. REV. STAT. ANN. § 200.605} (West 2012) (detailing Nevada’s anti-hazing statute). In Nevada, on the other hand, hazing is defined as “an activity in which a person intentionally or recklessly endangers the physical health of another person for the purpose of initiation into or affiliation with a student organization, academic association or athletic team at a high school, college or university in this state.” (emphasis added) \textit{See id.} ( noting that Nevada’s anti-hazing law applies to athletics specifically). \textsuperscript{124} \textit{See, e.g., MICH. COMP. LAWS ANN. § 750.411t} (West 2012) (stating Michigan’s anti-hazing statute). Under Michigan’s anti-hazing law, for example, hazing is defined as “an intentional, knowing, or reckless act by a person acting alone or acting with others that is directed against an individual and that the person knew or should have known endangers the physical health or safety of the individual . . .” \textit{See id.} ( defining hazing under Michigan statute). However, note that Michigan’s statute includes the “physical health or safety of an individual”, which does not encompass mental effects (emphasis added). \textit{See id.} ( implying Michigan law does not address necessary characteristics). \textit{But see KY. REC. STAT. ANN. § 164.375} (West 2012) (stating Kentucky’s anti-hazing law). Kentucky’s statute, on the other hand, prohibits “any action or situation which recklessly or intentionally endangers mental or physical health . . . for the purpose of initiation into or affiliation with any organization” (emphasis added). \textit{See id.} ( defining hazing in Kentucky). \textsuperscript{125} \textit{See, e.g., ALA. CODE § 16-1-23} (West 2012) (presenting Alabama’s anti-hazing statute). In Alabama, for example, hazing is defined as “Any willful action taken or situation created, whether on or off any school, college, university, or other educational premises, which recklessly or intentionally endangers the mental or physical health of any student.” \textit{See id.} ( defining hazing in Alabama). Nowhere in the statute does it state that consent is not a defense. \textit{See id.} ( arguing deficiency in Alabama’s statute). \textit{But see, Md. CODE ANN., Criminal Law § 3-607} (West 2012) (articulating Maryland’s anti-hazing statute). In Maryland’s statute, on the other hand, “The implied or express consent of a student to hazing is not a defense under this section”. \textit{See id.} (distinguishing Maryland’s statute with Alabama’s on basis of inclusion of state provision). \textsuperscript{126} \textit{See, e.g., N.C. Gen. Stat. Ann. § 14-35} (West 2012) (stating North Carolina’s anti-hazing legislation). In North Carolina, for example, hazing laws prohibit certain conduct that occurs in schools and universities. \textit{See id.} ( defining hazing in North Carolina). Nowhere does it allow such schools to establish their own
incorporated all or most of the above provisions, such as Vermont, have faced few hazing issues.\textsuperscript{127} Although it is important to note that even in states with comprehensive statutes hazing may still occur, each element of the statute serves an important deterrence function.\textsuperscript{128} Therefore, in order to most effectively discourage and adequately address hazing issues, states such as Montana should adopt the above-mentioned criterion into its anti-hazing statute.\textsuperscript{129}

means of enforcement. See \textit{id.} (noting North Carolina’s definition and application of hazing). \textit{But see} Minn. Stat. Ann. \textsection{} 121A.69 (West 2012) (reporting Minnesota’s anti-hazing statute). In Minnesota, for example, “Each school board shall adopt a written policy governing student or staff hazing . . . the policy must include reporting procedures and disciplinary consequences for violating the policy. Disciplinary consequences must be sufficiently severe to deter violations and appropriately discipline prohibited behavior.” See \textit{id.} (distinguishing Minnesota’s statute on grounds that it grants discretion to school districts).\textsuperscript{127} See \textsc{Vt. Stat. Ann.} tit. 16 \textsection{} 140a (defining terms in Vermont’s anti-hazing statute). Vermont’s anti-hazing statute is one of the most comprehensive off all states’ legislation. See \textit{id.} (concluding Vermont statute is prime example for other states). First, the act outlaws hazing conducted by a “. . . fraternity, sorority, athletic team, association, corporation, order, society, corps, cooperative, club, or other similar group, whose members primarily are students at an educational institution, and which is affiliated with the educational institution.” See \textit{id.} (finding that Vermont’s statute applies specifically to athletics). Furthermore, it not only protects against the mental effects of hazing, but also states that consent is not a defense to hazing acts. See also \textsc{Vt. Stat. Ann.} tit. 16 \textsection{} 140b (West 2012) (defining hazing to include mental effects and excluding consent as defense). Finally, Vermont requires that “Each school board shall develop, adopt, ensure the enforcement of and make available . . . harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner.” See also \textsc{Vt. Stat. Ann.} tit. 16, \textsection{} 570 (West 2012) (concluding Vermont also grants discretion of hazing enforcement to school districts).\textsuperscript{128} See \textit{Bruechner, supra} note 120 and accompanying text (arguing Vermont has comprehensive statute and few hazing issues).\textsuperscript{129} See generally \textit{Bruechner v. Norwich University}, 169 Vt. 118 (1999) (holding University of Vermont hockey team liable for hazing). This case was the most serious hazing incident in Vermont in recent history. See \textit{id.} (describing background of hazing in Vermont). See also Jayson Moy, \textit{Lawsuit Filed Over Vermont Hazing Incident}, USCHO, Dec. 11 1999, http://www.uscho.com/1999/12/11/lawsuit-filed-over-vermont-hazing-incident/ (noting that Vermont Governor Howard Dean referred to situation as “crisis”). However, this case was decided in 1999, whereas the Vermont anti-hazing statute was incorporated into the 2000 Session Laws. See, \textit{e.g.}, 16 V.S.A. \textsection{} 140a (concluding that since the enactment of comprehensive anti-hazing legislation, Vermont has faced few hazing issues).
A. Inclusion of “Athletic Teams” in Hazing Prohibitions

Statutory provisions that specifically proscribe athletic teams from hazing are a fundamental element in thorough hazing legislation, but one that is frequently overlooked. Not only do some states fail to articulate such language, but such omissions are likely intentional, as demonstrated by inclusions of similar organizations.

Like many states, Florida’s anti-hazing statute does not specifically apply to athletic teams. In one of the more widely publicized hazing incidents in recent history, Florida A&M drum major Robert Champion was killed. After performing at the Florida Classic, Champion was required to “cross” the bus, or reach the back of the bus, after receiving beatings from fellow band-members. In this case, Champion was struck with “hands, drumsticks, bass drum mallets, straps and even an orange cone,” which proved to be so brutal that Champion passed away a few hours later. Medical reports cited “hemorrhagic shock

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130 See, e.g., IOWA CODE ANN. § 708.10 (West 2012) (reporting Iowa’s hazing statute, which does not apply to athletics specifically). See also DEL. CODE ANN. tit. 14, § 9302 (West 2012) (indicating Delaware’s anti-hazing legislation, which also does not directly apply to athletics). See also OKLA. STAT. ANN. TIT. 21, § 1190 (West 2012) (stating similar Oklahoma law that lacks such provision).
131 See VA. CODE ANN. § 18.2-56, supra note 123 and accompanying text (citing Virginia’s anti-hazing statute). See also WASH. REV. CODE ANN. § 28B.10.901 (West 2012) (citing Washington’s anti-hazing legislation). Similarly, Washington’s statute states that “Any organization, association, or student living group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing . . .” See id. (noting contrast between lack of athletic provisions and inclusion of other groups in statute).
132 See FLA. STAT. ANN. § 1006.63 (West 2012) (describing Florida’s anti-hazing statute). Under Florida law, hazing includes any “. . . initiation or admission into or affiliation with any organization operating under the sanction of a postsecondary institution.” See id. (noting statute does not directly apply to athletic organizations).
134 See id. (explaining overview of hazing incident). The event occurred after a football game in Orlando on November 19, 2011. See id. (stating background of hazing event). At least fifteen band-members participated in the beatings. See id. (describing further details of the incident).
135 See id. (reporting mechanism of Champion’s untimely death). Before death, Champion complained of feeling sick and collapsed. See id. (detailing
caused by blunt-force trauma” as the cause.\(^\text{136}\) If the Florida anti-hazing statute included a provision specifically aimed at athletic teams, not only could this have helped save Champion’s life by better informing athletic team members of the legal ramifications of hazing, but it could have resulted in an easier suit against Champion’s harassers.\(^\text{137}\) Moreover, because Florida’s law is relatively comprehensive otherwise, it is precisely the inclusion and enforcement of an anti-hazing provision directly applied to athletics that may have prevented this tragedy.\(^\text{138}\)

Most alarmingly, some statutes specifically exempt athletic practice or competitions from hazing laws.\(^\text{139}\) For example, Connecticut’s anti-hazing act does not apply to, “an action sponsored by an institution of higher education which requires any athletic practice, conditioning, or competition or curricular

Champion’s death). Similarly, fellow band-member Lissette Sanchez was also hazed the same night. See id. (comparing Sanchez’s experience with Champion’s). She was required to sit in the “hot seat” of the bus, where she hunched over and was struck on the back with drumsticks. See id. (describing hazing event). When Ms. Sanchez later crossed the bus, she briefly lost consciousness. See id. (discussing similar hazing of band-member). Keon Hollis, “... a fellow drum major and Mr. Champion’s friend, crossed the bus shirtless just before Mr. Champion that Saturday night. The crowd piled on top, pushing and pulling and beating. Afterward, Mr. Hollis threw up.” See id. (reporting more hazing from different band-member). Hollis later stated that he agreed to the hazing in order to be accepted by the other band members. See id. (citing further example of hazing).

\(^{136}\) See id. (stating Champion’s cause of death). In total, eleven people were charged with felony hazing and two were charged with misdemeanors. See id. (describing punishments for Champion’s death).

\(^{137}\) See Robbie Brown, Charges Are Planned in Florida A&M Hazing Death, NY TIMES, May 1 2012, available at, http://www.nytimes.com/2012/05/02/us/florida-am-hazing-death-charges-planned.html?_r=0 (reporting that criminal charges were filed against perpetrators after six month investigation).

\(^{138}\) See id. (presenting Florida’s anti-hazing law). Florida’s anti-hazing statute contains a provision whereby consent of the victim is not a defense. See id. (arguing Florida’s law is deficient). It also defines hazing to include “... any action or situation that recklessly or intentionally endangers the mental or physical health ... ” See id. (defining hazing further under Florida law). Finally, the statute requires “Public and nonpublic postsecondary educational institutions whose students receive state student financial assistance must adopt a written anti-hazing policy. ... ” See id. (noting that Florida’s anti-hazing law contains remaining three provisions).

\(^{139}\) See CONN. GEN. STAT. ANN. § 53-23a, supra note 140 and accompanying text (arguing Connecticut’s legislation exempting athletic activity is inadequate). See also IDAHO CODE ANN § 18-917, infra note 150 and accompanying text (concluding that Idaho’s anti-hazing law is not comprehensive).
activity,” which could create room for hazing.\footnote{See CONN. GEN. STAT. ANN. § 53-23a (West 2012) (articulating Connecticut’s hazing legislation). Connecticut’s statute bans “Requiring the ingestion of any substance or any other physical activity which could adversely affect the health or safety of the individual”. See id. (defining hazing in Connecticut). However, the law provides an exemption for athletic practices including “conditioning”, which creates a gap in which hazing could legally occur. See id. (arguing that Connecticut’s exemption for athletics creates room for hazing to occur).}

In fact, Connecticut has experienced many hazing issues, such as one incident at Trumbell High School.\footnote{See Robert McFadden, Hazing Scandal At High School Horrifies Town in Connecticut, NY TIMES, Feb. 25 2000, available at http://www.nytimes.com/2000/02/25/nyregion/hazing-scandal-at-high-school-horrifies-town-in-connecticut.html?pagewanted=all&src=pm (reporting high school wrestling hazing incident). In this case, “Jeremy Dommu, [eighteen], a senior and a team captain, was charged with felonious assault, unlawful restraint, conspiracy and reckless endangerment and could face up to [ten] years in prison if convicted . . . Daniel Scinto, 18, also a team captain, was arrested on five charges, including felonious assault, punishable by up to five years in prison.” See id. (describing initial arrests after incident). A third team member was also arrested shortly after. See id. (reporting hazing details). In addition, five juvenile team members were charged with assault and unlawful restraint. See id. (indicating scope of scandal). As a result, seven of the students were suspended indefinitely and face an expulsion hearing. See id. (detailing juvenile and academic punishments).}

In this case, eight members of the wrestling team subjected young teammates to humiliating and brutal attacks over the course of one month.\footnote{See id. (describing hazing events generally). Over a month-long period, three victims were tied up with training tape, one was shoved into a shower, another had garbage dumped on him, and another was dragged around the gymnasium floor. See id. (detailing hazing acts).}

In one particular incident described by reporters as “nightmarish,” a fifteen year old was shoved into a wall and tied-up in a locker-room while teammates forced a plastic knife into his rectum.\footnote{See id. (reporting worst incident of Trumbell hazing). In response, Debbie Boles, co-president of the Parent-Teacher-Student Association stated, "People in town [were] outraged over this.” See id. (concluding hazing event had severe impact). In fact, Ralph Iassonga, Superintendent of Trumbell, stated that "This has had a severe impact on the school. It has resulted in a disruption of the educational process, and we expect to enact new measures to ensure that nothing like this happens again." See id. (indicating further community outrage). Finally, Charles Reppenhagen, a Trumbull senior, stated, "I think it’s disgusting. I don’t know what could bring someone to do that. A lot of people weren’t surprised to find out that there was hazing going on. But what it was -- and the extent it was taken to -- there was no one who wasn’t shocked. No one." See id. (describing public reaction to hazing incidences).}

Unfortunately, all three victims did not voluntarily report the
abuse.\textsuperscript{144} Other hazing incidents have been less severe, but nonetheless reflect the ineffectiveness of Connecticut’s hazing statute.\textsuperscript{145} For example, when Jeremy Lamb, University of Connecticut basketball player, was asked as a freshman whether he would have to carry older teammates’ equipment, he suspiciously responded “no comment.”\textsuperscript{146} Just as with the Florida anti-hazing statute, the Connecticut anti-hazing statute could be more effective if broadened to cover athletic practice.\textsuperscript{147} In essence, by specifically exempting hazing in this context, the Connecticut law has provided hazing with a loophole in the athletic environment.\textsuperscript{148}

Similarly, Idaho’s anti-hazing statute grants an analogous exemption for athletic conduct.\textsuperscript{149} Under Idaho’s provision, hazing does not include “customary athletic events or similar contests or competitions, and is limited to those actions taken, and situations created in connection with initiation into or affiliation with any group or organization.”\textsuperscript{150} Such exceptions are an implicit acquiescence of

\textsuperscript{144} See id. (stating victims’ hesitancy in reporting). None of the three victims reported these incidents to coaches, parents or school officials “apparently because they regarded it as part of the ritual of team membership.” See id. (indicating reluctant to report indecent). In fact, it was only after one parent questioned her son about bruises on his arms and reported the issue that officials were alerted. See id. (concluding reporting delay could have been more significant). The hazing occurred without the knowledge of the coach for the duration. See id. (describing how acceptance of hazing often deters progress).

\textsuperscript{145} See Gillett, supra note 146 and accompanying text (describing Lamb’s potential luggage-carrying duties for senior basketball teammates). But see McFadden, supra note 141 (detailing violent hazing act).


\textsuperscript{147} See supra note 138 and accompanying text (stating deficiencies in Florida’s anti-hazing statute).

\textsuperscript{148} See Brown, supra note 139 and accompanying text (arguing Connecticut’s hazing law neglects to include provisions banning athletic teams from hazing).

\textsuperscript{149} See IDAHO CODE ANN § 18-917, supra note 150 (discussing Idaho’s hazing law and athletic exception). See also CONN. GEN. STAT. ANN. § 53-23a, supra note 140 and accompanying text (reciting Connecticut’s similar anti-hazing legislation and athletic practice exception).

\textsuperscript{150} See IDAHO CODE ANN § 18-917 (West 2012) (reciting Idaho’s anti-hazing law). Under the Idaho statute, to haze means to “subject a person to bodily danger or physical harm or a likelihood of bodily danger or physical harm, or to require, encourage, authorize or permit that the person be subjected to . . .” See id. (defining hazing in Idaho). The statute then lists examples of hazing. See id. (explaining statute further). However, “customary athletic events or similar contests or competitions” are an exception to the law’s ban on hazing. See id.
hazing confined to stated circumstances. Under such statutes, hazing incidents still occur, such as a football hazing incident at Blackfoot High School. In this scandal, five players forcibly penetrated, battered, and restrained victims on the school bus and in the locker-room. Because Idaho’s anti-hazing statute exempts athletic conduct, three of the five perpetrators went unpunished and currently play on college teams, thus indicating that Idaho’s statute continues to be ineffective.

Contrarily, states such as North Carolina specifically outlaw athletic teams from hazing. Under North Carolina’s anti-hazing statute, organizations such as (noting deficiency in statute). This implicitly allows hazing to occur, as long as it is conducted at an “athletic event”, which could encompass a broad range of activities such as pregame locker-room rituals. See id. (noting Idaho’s law intentionally does not apply to athletic events).

See McFadden, supra note 142-143 and accompanying text (arguing athletic exception allows hazing to occur in athletic events and contests).

See Laura Zuckerman, High School Hazing Probe Embroils Boise State Football Player, REUTERS, Dec. 16 2010, http://www.reuters.com/article/2010/12/17/us-idaho-hazing-idUSTRE6BG0DS20101217 (reporting football hazing at Blackfoot High). Deputy Prosecutor Randy Smith, however, stated "Hazing is an inadequate term since it wasn’t a once-and-done kind of thing but an over-and-over kind of thing, with one victim experiencing it multiple times." See id. (indicating severity of conduct). Smith is determined to prove that each of the team members suffered, and some one more than one occasion. See id. (indicating such events were more than isolated incidents).

See id. (describing hazing events). In Idaho, moreover, a conviction on forcible sexual penetration with a foreign object can bring a life sentence. See id. (indicating severity of hazing acts). Furthermore, area residents were outraged over the incident, especially in light of the fact that all of the defendants were star athletes in a small town. See id. (reporting response to hazing incident). As Superintended Scott Crane stated, "This has impacted us harshly on all sides of the issue: the defendants, the victims, the families. We’re a small town and it is very difficult to deal with." See id. (emphasizing severe impact of hazing acts).

See id. (stating current status of three of accused). Those charged are “Anthony Clarke, now a freshman wide receiver at Boise State University, Nathan Walker, a tight end for the Idaho State University Bengals, Logan Chidester, a freshman on the football team at Carroll College in Montana.” See id. (reporting details of accused). Fortunately, all have been suspended, although the universities have been unwilling to comment on the duration of suspension. See id. (suggesting potential future problems if perpetrators continue to play). Tyson Katseanes of Blackfoot, Idaho was also indicted, as well as a fifth, unnamed minor. See id. (reporting remaining offenders).

“a school group, including any society, athletic team, fraternity or sorority, or other similar group” are banned from hazing. As a result, the few hazing incidents that have occurred in North Carolina are uncertain, such as one event at Johnson C. Smith University. Here, a number of students were suspended and sanctioned for assaulting other students in a hazing ritual. However, the students were found guilty on very little evidence after the burden was placed on the accused to prove his or her innocence. Some were even convicted by the judicial board for being hazed or witnessing hazing and failing to report the conduct to officials.

156 See N.C. GEN. STAT. ANN. § 14-35 (West 2012) (describing North Carolina’s hazing law). Under this statute, “It is unlawful for any student in attendance at any university, college, or school in this State to engage in hazing, or to aid or abet any other student in the commission of this offense . . .” Hazing is defined as the following: “to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group.” See id. (defining hazing under North Carolina statute). Such offenses constitute a Class Two misdemeanor. See id. (indicating degree of severity).


158 See id. (describing events that lead to accusations). However, Cureton, one of the accused, stated that he had been considering pledging Alpha Phi Alpha fraternity and had not even begun the process of pledging when he received a letter from the administration indicating that there was a problem. See id. (suggesting accusations were false, or at least premature). Fifteen other students were also accused of similar acts and received punishments. See id. (indicating the scope of accusations).

159 See id. (finding punishments unjust). In fact, “According to Cureton, the evidence against him was flimsy, mainly based around two anonymous emails and a photo of a bruise that did not show any faces.” See id. (describing scant evidence against accused). A judicial board made up of faculty, staff, and students found all fifteen students guilty. See id. (stating outcome of charges). Two of the students were suspended. See id. (reporting harshest sentences). The remaining students lost scholarships, campus housing, and were fined in accordance with the University’s Code of Conduct. See id. (reporting scope of punishments).

160 See id. (stating basis of convictions). Cureton indicated he was accused of being hazed, as he never witnessed hazing take place. See id. (suggesting punishment is undeserved). However, the University is standing by all punishments it rendered to the fifteen students. See id. (reporting University response). It is likely that the University’s reaction was particularly harsh in light
Similarly, in a hazing incident at T. Wingate Andrews High School, five members of the junior varsity basketball team were accused of slapping a teammate in the face with a water bottle and dropping him into a trashcan.\textsuperscript{161} Although this clearly constitutes hazing, canceling the season for the entire team was criticized as an unnecessarily harsh punishment.\textsuperscript{162}

Therefore, despite the fact that hazing still occurs in North Carolina, the harsh punishments and ambiguous accusations indicate that the state’s specific hazing ban against athletes may have a deterrent effect.\textsuperscript{163} On the other hand, such provisions may only decrease the likelihood of hazing rather than prevent it, especially in light of the fact the North Carolina’s statute lacks the remaining three criterion of a successful anti-hazing statute.\textsuperscript{164}

B. Protections Against the Psychological Effects of Hazing

Statutory language that includes protections against mental health effects is essential to ensuring the comprehensibility of hazing legislation, but is a provision that many states lack.\textsuperscript{165} One such state is Indiana.\textsuperscript{166} Under Indiana
law, hazing is defined as “a person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person.”

Because Indiana does not proscribe psychological effects of hazing, it limits the hazing definition to only those actions which result in bodily injury. Therefore, Indiana’s high level of hazing incidents could be attributed to its narrow definition of hazing in its anti-hazing statute.

For example, every summer, the varsity cheerleading squad at Reitz Memorial High School attends an elite camp at the University of Tennessee for team training and bonding. In Summer 2012, however, a hazing incident occurred in which upperclassmen forced new members to strip and perform lap dances. The upperclassmen treated the dances as a contest, criticizing and judging the rookies until most were in tears. Many of the girls continued to be engage in acts which endanger the physical health or safety of a student . . .”  See id. (finding the statute lacks any mention of mental injuries).


See IND. CODE ANN. § 35-42-2-2 (West 2012) (stating Indiana’s anti-hazing statute). In the same provision, hazing is also defined as “A person who recklessly, knowingly, or intentionally inflicts serious bodily injury on another person; or performs hazing resulting in serious bodily injury to a person.” See id. (noting that nowhere in the statute does it include infliction of mental or psychological harm).

See supra note 159 and accompanying text (defining hazing in Indiana).

See IND. CODE ANN. § 35-42-2-2, supra note 167 and accompanying text (indicating Indiana’s statute does not cover mental effects of hazing).

See Barry Petchesky, Indiana Cheerleader Hazing, DEADSPIN, Aug. 30 2012 http://deadspin.com/indiana-cheerleader-hazing/ (describing context of hazing incident). The team has been attending the camp, held by the Universal Cheerleaders Association, for over one decade. See id. (stating tradition of cheerleading team attending camp).

See id. (discussing hazing event). Furthermore, “The juniors went into the bathroom and all pooped in the same toilet, intentionally not flushing. The sophomores were then locked in the bathroom and told that if they flushed they would be in trouble. After locking them in a stall with a poop-filled toilet . . .” the underclassmen were forced to perform the lap dances on the upperclassmen. See id. (reporting full context of hazing incident).

See id. (indicating severity of hazing). The upperclassmen insulted the rookies, calling them fat and ugly. See id. (reporting hazing details). They even criticized one girl’s boyfriend, forcing her to perform four lap dances because she “wasn’t doing them right.” See id. (noting increased punishment). One of the girls even peed herself because she was so frightened. See id. (concluding those hazed were extremely upset).
upset weeks later, indicating not only psychological stress but also the ineffectiveness of Indiana’s anti-hazing statute in outlawing such abuse.\textsuperscript{173}

A similar incident occurred in Oklahoma when freshman Kathleen Peay was initiated onto the University of Oklahoma women’s soccer team.\textsuperscript{174} On a road trip to the University of New Mexico, coaches brought the athletes to an abandoned elementary school.\textsuperscript{175} Peay was dragged from the van, blindfolded, and forced to wear an adult diaper.\textsuperscript{176} A banana was placed in her mouth to simulate oral sex, and whipped cream and honey were sprayed in her hair to imitate ejaculation.\textsuperscript{177} Peay was extremely humiliated by the incident and to this day cannot discuss the event without crying.\textsuperscript{178} Although Oklahoma’s statute does protect against the psychological effects of hazing, New Mexico has no

\textsuperscript{173} See id. (stating impact of hazing event). Many girls were harassed in the following weeks, especially those who reported the incident to school officials. See id. (suggesting explanation for continued psychological effects). Indiana’s anti-hazing law, moreover, does not outlaw the type of behavior that causes such mental effects. See IND. CODE ANN. § 35-42-2-2, supra note 167 and accompanying text (concluding this deficiency may have contributed to stated incident).

\textsuperscript{174} See Greg Garber, It’s Not All Fun and Games, ESPN.COM, June 3 2002, http://espn.go.com/otl/hazing/wednesday.html (suggesting initiation was hazing). Peay played defense and forward for the University of Oklahoma in the 1997-98 season. See id. (stating Peay’s background).

\textsuperscript{175} See id. (reporting background of hazing event). The incident occurred in October 1997, Peay’s freshman year on the team. See id. (stating time-frame of incident).

\textsuperscript{176} See id. (describing hazing details). In fact, Peay had been hiding in one of the vans, frightened by a hazing rumor that she had heard the night before. See id. (suggesting psychological trauma). Peay and two other freshmen were all subjected to the same treatment. See id. (indicating scope of hazing).

\textsuperscript{177} See id. (detailing hazing acts). In fact, on one occasion when Peay spit out the banana, another was shoved into her mouth. See id. (suggesting physical pressure). There was also a relay race involving pickles and condoms. See id. (reporting more hazing abuses).

\textsuperscript{178} See id. (stating Peay’s emotional reaction). Peay stated that she was “Forced to do things she shouldn’t have happened. I felt embarrassed, belittled, and humiliated.” See id. (reporting initial reaction). In fact, two and one half years later, she still feels insecure and lost, afraid to leave her home. Some psychologists have diagnosed her with post-traumatic stress disorder. See id. (suggesting severe psychological trauma). Peay reported the incident to school officials, despite teammates’ resistance. See id. (describing events after hazing incident). Soon after, Peay’s coach resigned, citing “personal and family reasons.” See id. (reporting ramifications of hazing event).
hazing law, and therefore allows such degrading events to occur within its borders.\textsuperscript{179} Similarly, California law also does not protect against the psychological effects of hazing.\textsuperscript{180} This deficiency contributes to California’s high rates of hazing.\textsuperscript{181} In fact, because it is widely known that one can receive strict repercussions for causing physical harm to others while engaging in hazing, such knowledge increases “soft” hazing, or behavior that affects others psychologically.\textsuperscript{182}

Conversely, states such as Rhode Island have anti-hazing statutes that include conduct that causes extreme mental effects.\textsuperscript{183} This may contribute to the

\textsuperscript{179} See OKLA. STAT. ANN. TIT. 21, § 1190 (West 2012) (defining Oklahoma’s anti-hazing statute). Oklahoma law prohibits the endangerment of one’s mental health, which includes any activity “. . . which would subject the individual to extreme mental stress, such as prolonged sleep deprivation, forced prolonged exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual.” See id. (defining hazing in New Mexico). New Mexico, on the other hand, has no such law. See id. (describing prohibited psychological effects of hazing under Oklahoma law).

\textsuperscript{180} See CAL. PENAL CODE § 245.6 (West 2012) (describing California’s anti-hazing statute). In California, hazing is defined as “. . . any method of initiation or pre-initiation into a student organization or student body . . . which is likely to cause serious bodily injury to any former, current, or prospective student of any school, community college, college, university, or other educational institution in this state.” See id. (noting California’s hazing law does not apply to psychological effects of hazing).

\textsuperscript{181} See Scott Semmler, Nonviolent Hazing Still Happens at SJSU Greek Organizations, Source Says, THE SPARTAN DAILY, Dec. 6 2011, http://spartandaily.com/44828/hazing-at-sjsu (describing increase in hazing). On the other hand, one fraternity member at SJSU stated that recent hazing incidents, such as the 2005 event at Chico State University in which a pledge died from being forced to drink gallons of water, have made Greek organizations more reluctant to haze. See id. (indicating possible explanation for decrease in hazing).

\textsuperscript{182} See id. (describing change in hazing practices). Current hazing practices at SJSU, for example, are more likely to involve cleaning fraternity houses of depriving pledges of sleep. See id. (concluding hazing is less severe). As one fraternity member states, hazing incidents are “Not violent anymore. They’re more along the lines of messing with them mentally.” See id. (arguing psychological hazing is now more prevalent). The student indicated that pledges are no longer forced to drink, although it does look better if pledges go “above and beyond” what is required. See id. (suggesting that some coercion, although subtle, may still occur).

\textsuperscript{183} See R.I. GEN. LAWS § 11-21-1 (West 2012) (defining Rhode Island’s anti-hazing statute). In Rhode Island, hazing is defined as conduct that “. . . willfully
few reported hazing incidents in Rhode Island, especially those involving psychological effects. At the University of Rhode Island, for example, hazing in Greek life has decreased dramatically from the 1980s and 1990s due to a “symphonic cultural change, with an underlying melody of student leadership and responsibility.” Such change is especially important to deter hazing in light of the fact that most hazing injuries are mental, not physical. Thus, Rhode Island’s minimal number of reported hazing incidents could be attributed to the inclusion of mental effects of hazing in its statute.

C. “Consent is Not a Defense” Provision

The exclusion of consent as a defense for hazing offenders is fundamental in deterring hazing incidents, but unfortunately many states lack such language in or recklessly endangers the physical or mental health of any student or other person.” See id. (defining hazing in Rhode Island). Such conduct cannot subject “... the student or other person to extreme mental stress, including extended deprivation of sleep or rest or extended isolation.” See id. (concluding Rhode Island’s statute proscribes psychological effects of hazing.

184 See Wendy Roworth, Greek Life-Back on Track, UNIVERSITY OF RHODE ISLAND, http://www.uri.edu/news/releases/index.php?id=3491 (last visited Oct. 7 2012) (stating low prevalence of hazing). In fact, Vice President of the University of Rhode Island Thomas Dougan stated that “Hazing is an issue that we continue to address vigorously through education and zero tolerance enforcement.” See id. (indicating possible explanation for decrease in hazing incidents).

185 Id. (describing decrease in Greek life hazing). Possible explanations for such changes include: the University of Rhode Island received a $4.3 million grant from the National Institute on Alcohol Abuse and Alcoholism; the fact that all fraternities became substance-free in 2005; Greek houses now have live-in advisors; freshmen orientation now has a component on hazing in Greek life; the Greek system adopted a moratorium on beginning of the year parties; all new Greek members are now required to complete a 101 course that addresses such subjects as hazing, alcohol, community service, scholarship, and leadership. See id. (describing reasons why hazing and alcohol has significantly decreased in Greek life).

186 See Hayley Beitman, Next Wave: Anti Hazing Laws, MICHIGAN STATE UNIVERSITY, Apr. 6 2012, http://news.jrn.msu.edu/bullying/2012/04/06/united-states-hazing-laws/ (arguing importance of provisions protecting against mental effects). Glenn Stutzky, clinical social worker at Michigan State University, argues that mental and emotional effects of hazing are much more prevalent. See id. (citing further authority).

187 See Roworth, supra note 184 and accompanying text (reporting relative lack of hazing in Rhode Island).
their statutes.\textsuperscript{188} For example, Alabama’s anti-hazing statute contains no such provision.\textsuperscript{189} Such a deficiency likely played a role in the controversial outcome in \textit{Ex Parte Barren}.\textsuperscript{190} In this case, Jason Jones, while pledging a fraternity at Auburn University, was subjected to repeated physical abuse and humiliating behavior.\textsuperscript{191} The court, however, held that Jones knew and voluntarily assumed the risks of hazing.\textsuperscript{192} If Oklahoma’s statute did not allow consent as a defense to

\textsuperscript{188} See, \textit{e.g.}, \textit{Wash. Rev. Code Ann.} § 28B.10.900 (West 2012) (reporting Washington’s anti-hazing statute). Hazing in Washington is defined to include “. . . any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm . . .” \textit{See id.} (concluding Washington’s law does not contain consent not defense provision). \textit{See also Kan. Stat. Ann.} § 21-5418 (West 2012) (reporting Kansas’ hazing legislation). In Kansas, hazing is defined as “. . . recklessly coercing, demanding or encouraging another person to perform, as a condition of membership in a social or fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death . . .” \textit{See id.} (noting that there is no consent is not defense language).

\textsuperscript{189} See \textit{ Ala. Code} § 16-1-23 (2012) (stating Alabama’s anti-hazing law). Under Alabama law, hazing is defined as “Any willful action taken or situation created, whether on or off any school, college, university, or other educational premises, which recklessly or intentionally endangers the mental or physical health of any student.” \textit{See id.} (noting that nowhere in statute is there “consent is not defense” provision).

\textsuperscript{190} See Catherine Kendrick, \textit{Ex Parte Barran: In Search of Standard Legislation for Fraternity Hazing Liability}, 24 \textit{Am. J. Trial Advoc.} 407, 415-16 (2000) (arguing case outcome should have been different if judges applied common sense). Kendrick states that many college students experience the, “. . . great pressures associated with fraternity life and that compliance with the initiation requirements . . . Thus, we believe that fair-minded persons in the exercise of impartial judgment could reasonably infer that Jones's decision to remain a pledge, under the circumstances, was, in fact, not voluntary.” \textit{See id.} (finding court incorrectly decided case).

\textsuperscript{191} \textit{See Ex Parte Barran v. Kappa Alpha Order, Inc.}, 730 So.2d 203, 204-05 (Ala. 1998) (holding plaintiff consented to hazing). Jones was forced to jump into a ditch filled with urine, feces, and vomit; receive paddlings; eat foods such as peppers, hot sauce, and butter; perform chores for fraternity members; appear regularly at 2 a.m. meetings; accept numerous beatings. \textit{See id.} (describing hazing Jones was forced to endure).

\textsuperscript{192} \textit{See id.} at 203 (holding consent is not defense). The court stated that “(1) pledge knew and appreciated risks inherent in hazing, and (2) pledge voluntarily exposed himself to hazing, supporting fraternity's assumption of the risk defense.” \textit{See id.} (describing holding further).
hazing, Jones’s hazers would have been held liable for their actions.\textsuperscript{193} Such an outcome is noticeably inconsistent with case law from states outlawing consent as a defense, demonstrating that such provisions are necessary in order to protect plaintiffs such as Jones.\textsuperscript{194}

Similarly, New York also allows hazing perpetrators to invoke consent as a defense.\textsuperscript{195} Sadly, the absence of a provision denying consent as a defense to hazing allowed the death of nineteen year old Armin Partamian, a student at the State University of New York at Geneseo, to be under-prosecuted.\textsuperscript{196} If New York had had such a ban, Partamian’s hazers could have been prosecuted for hazing in addition to negligent homicide, therefore likely resulting in a greater and more just sentence.\textsuperscript{197}

\textsuperscript{193} See Kendrick, \textit{supra} note 190 and accompanying text (arguing Ex Parte Barren was incorrectly decided).

\textsuperscript{194} See \textit{id.} (indicating court’s decision was unreasonable). One commenter further stated that, unlike the Alabama decision in Ex Parte Barron, most jurisdictions have found that fraternities owe a duty of care to pledges. \textit{See id.} (contrasting other courts’ rulings with Alabama’s in Ex Parte Barron). Furthermore, such cases indicated that fraternities “. . . may be liable for hazing related injuries or deaths because the fraternity created the danger by requiring certain actions by the pledge, which resulted in injury to the pledge.” \textit{See id.} (concluding consent as defense is not available). “Few cases have failed to find that a duty of care existed for the [fraternity]. . .” \textit{See id.} at 419-20. (arguing decision is inconsistent with other states’ precedents).

\textsuperscript{195} See N.Y. PENAL LAW § 120.16 (McKinney 2012) (stating New York’s anti-hazing statute). Hazing in New York is defined as when an individual “. . . 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.” \textit{See id.} (noting absence of consent not defense provision).


\textsuperscript{197} See \textit{id.} (describing hazing death). Three members of the organization were charged with hazing, criminally negligent homicide and tampering with evidence. \textit{See id.} (stating criminal charges). All three men forced Partamian to drink an excessive amount of alcohol, and one of the accused removed Partamian’s pledge shirt before calling the police to report his death. When the police arrived, Partamian had a blood alcohol level of .55, nearly seven times the legal limit. \textit{See id.} (summarizing details of hazing death).
One the other hand, states such as Ohio have enacted hazing laws that prohibit a consent defense. Unsurprisingly, there are few hazing claims in Ohio. In fact, in 2011 the Ohio Court of Appeals recently dismissed one case because the conduct in question was held to not constitute hazing. Even when hazing incidents do occur, such as one at Youngstown State University, the punishments enacted are severe enough to deter future conduct.

D. Granting Discretion to Universities

Mandating that universities establish individual anti-hazing policies increases deterrence and decreases hazing incidents, but unfortunately most states have not adopted such policies. Massachusetts, for example, has no such

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198 See OHIO REV. CODE ANN.§ 2307.44 (West 2012) (stating Ohio’s hazing law). Under Ohio law, “The negligence or consent of the plaintiff or any assumption of the risk by the plaintiff is not a defense to an action brought pursuant to this section.” See id. (stating language of consent provision).

199 See Golden, supra note 200 and accompanying text (exemplifying case of failed hazing claim).


201 See Nine Men Indicted in Ohio Fraternity Hazing Case, ASSOCIATED PRESS, Mar. 17 2012, http://www.foxnews.com/us/2012/03/17/men-indicted-in-ohio-fraternity-hazing-case/ (reporting hazing incident). At Youngstown State in 2012, nine men were indicted for assaulting two fraternity pledges. See id. (stating details of hazing charges). In response, the university suspended the fraternity for fifteen years, with an additional ten year probation period. See id. (describing university response). As vice president of student affairs Jack Fahey stated, the punishment “...sends a clear message across campus and the community that YSU will not tolerate such behavior and will work to ensure that any student organization or individual that participates in such behavior is removed from the university.” See id. (suggestions severe nature of punishment).

202 See, e.g., COLO. REV. STAT. ANN. § 18-9-124 (West 2012) (reciting Colorado’s anti-hazing statute). In Colorado, hazing is defined as “... any activity by which a person recklessly endangers the health or safety of or causes a risk of bodily injury to an individual for purposes of initiation or admission into or affiliation with any student organization.” See id. (defining hazing in Colorado and noting it does not give universities right to establish own policies). See also MD. CODE ANN., Criminal Law § 3-607 (West 2012) (stating Maryland’s anti-hazing law). Maryland’s statute states that “A person may not recklessly or intentionally do an act or create a situation that subjects a student to the risk of serious bodily injury for the purpose of an initiation into a student organization of a school, college, or university.” See id. (noting absence of authority to universities).
provision and as a result, was the location of one of the most widely publicized hazing scandals.²⁰³

Scott Krueger was described as a “reserved, respected achiever,” graduating seventh in his high school class and earning varsity letters in three sports.²⁰⁴ Krueger began his freshman year at the Massachusetts Institute of Technology and pledged the Phi Gamma Delta fraternity.²⁰⁵ At an initiation party, however, Krueger and other pledges were forced to drink an excessive amount of alcohol, forcing Krueger into a coma from which he never awoke.²⁰⁶

²⁰³ See MASS. GEN. LAWS ANN. ch. 269 § 17 (West 2012) (stating Massachusetts’ anti-hazing legislation). In Massachusetts, hazing is defined as any “. . . conduct or method of initiation into any student organization, whether on public or private property, which willfully or recklessly endangers the physical or mental health of any student or other person.” See id. (suggesting lack of discretion to educational institutions). Massachusetts also lacks a provision proscribing hazing for athletic teams specifically. See id. (stating further deficiencies in Massachusetts’ hazing statute).


²⁰⁵ See Sarah Wright, DA Details “Reckless Conduct” by Fraternity in 1997 Krueger Death, M.I.T. NEWS, Sept. 23 1998, http://web.mit.edu/newsoffice/1998/da-0923.html (reporting setting of hazing death). Krueger expressed anxiety about the upcoming event to his twin sister and to other pledges. See id. (indicating potential for danger at party). Before the initiation party, the pledge trainer advised the pledges that the party was mandatory. See id. (detailing events before hazing incident). At the party, the pledges were told to gather in a room to watch the movie Animal House and collectively drink a certain amount of alcohol. See id. (describing background of event).

²⁰⁶ See id. (reporting Krueger’s cause of death). Krueger remained in a coma for forty hours until he was pronounced dead on Monday, September 29, 1997. See id. (stating final details of death). The official medical cause of death was acute alcohol intoxication and aspiration, or choking on vomit. See id. (reporting cause of death). Krueger’s attorney described the cause as the "... wanton and reckless conduct on the part of the Phi Gamma Delta fraternity, its officers and its members in promoting and orchestrating the 'Animal House' drinking event, supplying an inherently dangerous amount of alcohol, and then abandoning Scott Krueger when he was in dire need of medical treatment.” See id. (citing official causes of death).
Sadly, if Massachusetts had established a more comprehensive hazing statute, it is possible that Krueger may still be alive today.\textsuperscript{207}

Conversely, states such as Oklahoma grant discretion to universities to establish their own hazing policies that are at least as strict as state legislation.\textsuperscript{208} As a result, Oklahoma has suffered from few hazing incidents and has severely punished hazing perpetrators.\textsuperscript{209} In fact, after one Oklahoma State University hazing scandal, the administration was criticized for reacting too harshly.\textsuperscript{210} Nevertheless, such strict policies are essential to deter hazing.\textsuperscript{211}

\textsuperscript{207} See MASS. GEN. LAWS ANN. ch. 269 § 17, supra note 203 and accompanying text (describing Massachusetts’s hazing legislation and its deficiencies).

\textsuperscript{208} See OKLA. STAT. ANN. TIT. 21, § 1190 (West 2012) (defining Oklahoma’s anti-hazing legislation). Oklahoma law mandates that, “A copy of the policy or the rules and regulations of the public or private school or institution of higher education which prohibits hazing shall be given to each student enrolled in the school or institution and shall be deemed to be part of the bylaws of all organizations operating at the public school or the institution of higher education.” See id. (indicating higher education institutions have authority to establish own hazing policies).

\textsuperscript{209} See, e.g., Weaver, infra note 210 and accompanying text (indicating hazing incident with severe reactions).

\textsuperscript{210} See Patti Weaver, Lawyer: OSU Ban Will Kill Chapter, TULSA WORLD, Mar. 17 2007, http://www.tulsaworld.com/site/printerfriendlystory.aspx?articleid=070317_1_A13_pSTIL74336&r=8640 (exemplifying strong reaction of university to hazing). In this case, six members of the Alpha Phi Alpha fraternity were charged with hazing a pledge. See id. (reporting accusations in incident). As a result, Oklahoma State University has suspended the fraternity for fifteen years. See id. (stating consequences of hazing event). Furthermore, fraternity members are only allowed on campus to attend classes and use the library, not eat meals or attend church, as one member frequently does. See id. (describing punishment university has placed on fraternity). In response, one fraternity member stated that she had received numerous phone calls from fraternity and community members stating that the ban was too harsh. See id. (indicating response to fraternity’s punishment). One individual even stated that such an action had the effect of killing the chapter entirely. See id. (detailing public response to university’s punishment of fraternity).

\textsuperscript{211} See id. (indicating importance of university policies). In response to criticism over the Oklahoma State University’s prescribed punishment, the university has defended itself by stating that “We believe we’re sending a strong message we're not going to tolerate hazing. Any Greek organization on campus needs to understand hazing brings strong consequences.” See id. (reporting university’s response to criticism).
IV. CONCLUSION

Hazing has become a nationwide epidemic.\textsuperscript{212} To combat such abuses, states must adopt legislation that applies to athletics specifically, protects against psychological harm, outlaws consent as a defense for perpetrators and grants discretion to universities.\textsuperscript{213} It is important to remember, however, that with each of these elements correlation does not necessary imply causation.\textsuperscript{214} Some state statutes that contain certain elements may nevertheless still experience hazing, while other legislative acts may lack one or more elements, but have relatively little hazing.\textsuperscript{215} However, it is imperative that states such as Montana recognize that each of these elements serve an essential function in hazing legislation and that, taken together, they can greatly decrease the likelihood that hazing incidents will occur.\textsuperscript{216}

\textsuperscript{212} See Dr. Hoover, supra note 109 and accompanying text (reporting prevalence of hazing in collegiate athletics).
\textsuperscript{213} For a further discussion of the important elements in anti-hazing legislation, see supra notes 123-126 and accompanying text.
\textsuperscript{214} See 24 PA. CONS. STAT. ANN. § 5354, supra note 215 and accompanying text (noting that hazing may still occur in states with strong statutes).
\textsuperscript{215} See, e.g., 24 PA. CONS. STAT. ANN. § 5354 (West 2012) (describing Pennsylvania’s anti hazing statute). Pennsylvania law requires that “Each institution shall adopt a written anti-hazing policy and . . . rules prohibiting students or other persons associated with any organization operating under the sanction of or recognized as an organization by the institution from engaging in any activity which can be described as hazing.” See id. (concluding that Pennsylvania’s statute grants discretion to universities to adopt anti-hazing policies). But see Lauren Paul Fired in Hazing Inquiry, ESPN.COM, April 12 2012, http://espn.go.com/college-sports/story/_/id/7827828/franklin-marshall-coach-lauren-paul-fired-hazing-inquiry (exemplifying hazing incident at Pennsylvania college). In this case, eleven players were suspended from the Franklin and Marshall women’s lacrosse team. See id. (reporting facts of hazing event). Lauren Paul, the national championship winning head coach, was also fired. See id. (noting hazing incident, despite Pennsylvania’s inclusion of discretion to university provision).
\textsuperscript{216} See Bruechner, supra note 120 and accompanying text (arguing Vermont has comprehensive statute and few hazing issues).