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Arizona Makes Hazing A Crime

Timothy M. Burke, Fraternal Law Partners, tburke@manleyburke.com

As of September 24, 2022, the state of Arizona now has criminalized hazing and the planning or organizing of hazing.¹ Also known as Jack’s Law, the enactment memorializes Jack Culolias, who drowned while heavily intoxicated following an alleged fraternity hazing event in 2012.

The new Arizona law defines hazing as being, “for the purpose of pre-initiation activities, pledging, initiation, holding office” and so on; forcing “a minor or a student to engage in or endure” activities such as sexual humiliation; conduct which causes severe mental distress; the consumption of any food, non-alcoholic liquid, alcoholic liquid, drugs, or other substance that poses a substantial risk of death, physical injury, or emotional harm; confinement in a small space or significant sleep deprivation; and physical brutality including paddling, branding, and electric shock.

Under Arizona’s law, a person who transported the minor or student that was experiencing a significant medical emergency as a result of hazing, or who reports the medical emergency to 911 and fully cooperates with law enforcement, may not be charged with hazing.

As with laws in many other states, it makes it clear that a victim’s consent to be hazed is no defense.

¹ Ariz. Rev. Stat. § 13-1215.

Until the final paragraph, the law does not mention fraternity or sorority, and instead refers to an “organization.” But in the final paragraph, it defines organization to mean “any official fraternity, sorority, association, corporation, order, society, corps, cooperative, club, service group, social group, band, spirit group, athletic team, or similar group, whose members are primarily students at, or former students of, a high school or post-secondary institution.”²

The law declares hazing to be a Class 1 misdemeanor, which carries with it up to six-months incarceration, a \$2500 fine, and three (3) years of probation. If the hazing results in a person’s death, it is a Class 4 felony, which includes up to 3.75-years incarceration a, \$150,000 fine, and four (4) years of probation.

Merely helping to plan or organize hazing is also made a crime. That includes agreeing with one or more person(s) that at least one of them will engage in hazing and one takes a step to do so, and intentionally or knowingly doing anything that “is any step in a course of conduct planned to culminate in committing hazing.”³

An individual may not be charged if they renounce the intent to go forward with the hazing or “takes active steps to thwart the planned hazing from occurring.”⁴

A violation of the crime of hazing planning or organizing is a Class 2 misdemeanor, which subjects the guilty party to up to four (4) months of incarceration, a \$750 fine, and two (2) years of probation.

Hawaii, Montana, South Dakota, Wyoming, New Mexico, and Alaska are the only states that still do not make hazing a crime.

² Ariz. Rev. Stat. § 13-1215(G).

³ Ariz. Rev. Stat. § 13-1216.

⁴ *Id.*

**Sam Martinez Hazing Death:
Sam's Law and its Impact on Greek Organizations**

Stephen R. Bernstein, Stephen R. Bernstein Law Offices, srb@srbernstein.com

Sam Martinez, a 19-year-old student at Washington State University (WSU), pledged the Alpha Tau Omega (ATO) fraternity in July of 2019. He died on the morning of November 12, 2019, from acute alcohol poisoning, after having attended a fraternity function called “Big-Little Night” the night before. The big brother assigned to Sam and one other pledge gave them a half-gallon of rum, the equivalent of forty (40) shots, to share between the two.

Sam Martinez’s parents said university officials missed multiple opportunities to curb a culture of hazing at WSU, and that they lost their son because of that negligence. In July 2020, they sued WSU and multiple fraternity defendants, including ATO national, the local chapter, and the property owner, along with several individual members. In the Complaint, the family argued that WSU had a duty to protect students from foreseeable harm and enforce Washington state hazing laws. The Complaint specifically alleged that WSU documented a troubled history at ATO fraternity dating back to 2013.¹

Specifically, the Complaint asserted that “WSU continuously promoted, sanctioned and recognized ATO...despite being aware of continuing violations of alcohol, hazing, and other student conduct rules... WSU breached their duty to their students when it failed to curtail ongoing dangerous activities.”²

University attorneys argued that WSU “did not owe a legal duty to protect Sam from the harm he suffered because of the illegal conduct of other adults at a private, off-campus

¹ Complaint, *Martinez v. Wash. St. Univ.*, No. 20-2-11998-9 SEA (Wash. Sup. Ct.).

² *Id.* at *28.

establishment....[ATO] sought and was granted recognition by the University...the relationship agreement is facilitative and supportive, not controlling or micromanaging.”

A judge granted summary judgment in favor of Washington State University, stating there was “no ‘special relationship’ between the plaintiff and [WSU] that would create a duty owed to the plaintiff by [the University].”³ Sam Martinez’s parents appealed the decision. The family settled the lawsuit with the fraternity defendants for an undisclosed amount.

Police and university investigations both found the events leading up to Sam Martinez’s death constituted “illegal hazing.” In June 2021, fifteen (15) ATO members were each criminally charged with supplying liquor to minors, a gross misdemeanor that carries a maximum sentence of one year in jail and up to a \$5,000 fine. Seven (7) fraternity members were sentenced to between 1-19 days in jail for serving alcohol to minors. Washington State University removed ATO’s recognition of the Chapter, and the ATO national revoked its charter. The Chapter can seek reinstatement in 2026.

In a statement to the *New York Times*, Martinez’ family said the penalties were “insulting compared to the devastating consequences of their actions, which directly led to Sam’s death, and the loss we are living with for the rest of our lives.”⁴

Sam’s parents became strong advocates for legislation to prevent similar tragedies. On March 30, 2022, “Sam’s Law”⁵ was signed by Washington Governor, Jay Inslee, although a bill to increase the penalties and statute of limitations for hazing did not pass.

As a refresher, Sam’s Law requires each public and private institution of higher education to:

³ *Martinez v. Wash. St. Univ.*, No. 20-2-11998-9 SEA, at *2 (Wash. Sup. Ct. Mar. 24, 2022).

⁴ Johnny Diaz, *15 Men Charged in Connection with Death of Fraternity Pledge*, N.Y. TIMES (June 3, 2021).

⁵ WASH. REV. CODE § 28B.10.906.

1. Prohibit hazing off campus, as well as on campus, in its code of conduct.
2. Provide students with an educational program on hazing and the dangers of and prohibition on hazing as part of new student orientation sessions, including information regarding hazing awareness, prevention, intervention, and the institution's policy on hazing. The educational program must be posted on each institution's public website for parents, legal guardians, and volunteers to view.
3. Create institutional materials on student rights and responsibilities given to student organizations, athletic teams, or living groups, either electronically or in hard copy form, that include a statement on the institution's anti-hazing policy and on the dangers of hazing.
4. Establish a hazing prevention committee to promote and address hazing prevention. Fifty percent of the committee positions must include students currently attending the higher education institution with at least one position filled by a student from a student organization, athletic team, or living group. The other fifty percent of the committee positions should include at least one faculty or staff member and one parent or legal guardian of a student currently enrolled at the institution.
5. Maintain and publicly report actual findings of violations by any student organization, athletic team, or living group of the public or private institution of higher education's code of conduct, anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault.
6. Provide hazing prevention education on the signs and dangers of hazing as well as the institution's prohibition on hazing to employees, including student employees, either in person or electronically.

7. Ensure that any person who witnesses hazing or has reasonable cause to believe hazing has occurred or will occur and makes a report in good faith is not be sanctioned or punished for the violation of hazing unless the person is directly engaged in the planning, directing, or act of hazing reported.

Greek organizations that operate affiliated chapters at public or private universities in the State of Washington must be cognizant of Sam's Law, and the duties the statute imposes. Sam's Law requires social fraternity and sorority organizations to:

1. Notify the public or private institution of higher education before chartering, rechartering, opening, or reopening a local chapter or operating at the public or private institution of higher education.
2. Notify the public or private institution of higher education when the organization instigates an investigation of a local chapter at the public or private institution of higher education for hazing or other activity that includes an element of hazing, such as furnishing alcohol to minors.
3. Provide the results of such investigation and a copy of the full findings report to the public or private institution of higher education's student conduct office.
4. Certify in writing and provide weblinks to any public or private institution at which a chapter is seeking to obtain or maintain recognition, showing that the landing pages of all websites owned or maintained by the local chapter contain a full list for the previous five years of all findings of violations of anti-hazing policies, state or federal laws relating to hazing, alcohol, drugs, sexual assault, or physical assault, or the institution's code of conduct against the local chapter.

To comply with Sam’s Law, Washington State University now publishes a “Student Organization Policy Violation Report” on its website. The report lists student organizations who have been investigated for violating the Washington Administrative Code (WAC), and details how the University conducted investigations and held groups accountable. The University website also includes the following disclaimer:

Fraternity and sorority chapter facilities are not owned, operated, nor managed by Washington State University. Each chapter facility and Greek letter organization is controlled by its respective national organization, local chapter and/or housing corporation. Students and families should familiarize themselves with the policies and culture of each organization prior to joining.⁶

All Greek organizations that operate affiliated or unaffiliated chapters at universities in the State of Washington must be cognizant of RCW 9A.20.021.

While Sam’s Law (Section 28B.10.906) arguably does not apply to Greek organizations not affiliated with universities, a different portion of Washington’s state hazing law, Section 28B.10.901, clearly imposes criminal sanctions and strict liability on both individuals and organizations, and even individual directors. Section 28B.10.901 neither mentions nor distinguishes the relationship between the organization and the university:

Hazing prohibited—Penalty.

1. No student, or other person in attendance at any public or private institution of higher education, or any other postsecondary educational institution, may conspire to engage in hazing or participate in hazing of another.
2. A violation of this section is a misdemeanor, punishable as provided under RCW 9A.20.021.
3. Any organization, association, or student living group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the

⁶ *Fraternity & Sorority Life*, WASH. ST. UNIV., <https://gogreek.wsu.edu> (last visited Nov. 11, 2022).

organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

Sam's Law is a zero-tolerance hazing law that *requires* an organization to lose recognition from the university if found responsible for hazing or else the university will be in violation of state law. Failure of a social fraternity or sorority organization to comply results in automatic loss of recognition until such time that the organization comes into compliance with those subsections.

Another Foltz-Related Lawsuit Filed Against BGSU

Ilana Linder, Fraternal Law Partners, Ilana.Linder@manleyburke.com

A few months ago, the family of Stone Foltz, a BGSU student who passed away following the Pi Kappa Alpha Chapter's Big/Little night, filed a civil lawsuit against Bowling Green State University (BGSU) in the Ohio Court of Claims.¹ That case is still pending.

Before that, BGSU was served with a different lawsuit related to Stone Foltz's death, this one filed by Chase Weiss, a former Pi Kappa Alpha member, in the Northern District (federal) Court of Ohio. Weiss, who was suspended by BGSU for eight (8) years following the University's investigation into Stone's death, brought several claims against BGSU, along with several BGSU employees in their individual and official capacities, that related to potential violations of procedural due process. For example, Weiss claimed that the University's refusal to allow him to proceed in a separate, rather than group, hearing, along with the school's admission of hearsay

¹ See Gracie Woodyard, *Stone Foltz Parents Sue Bowling Green State University*, 176 FRATERNAL L. 1, 5 (Sept. 2022).

statements during the hearing and inflammatory/prejudicial statements contained in the notice of allegations, deprived him of procedural due process protections. Weiss also took issue with the hearing panel's refusal to allow him to cross-examine his "accuser."

The Defendants all moved to dismiss the Complaint, mostly on the ground that the federal district court lacked jurisdiction to hear claims brought against a public college in Ohio. The federal court agreed, promptly dismissing all claims against BGSU and the employees (in their official capacities). Simply put, Weiss sued in the wrong court by not bringing his suit in the Court of Claims. Additionally, even if the claims had been brought in the correct court, sovereign immunity would have applied to protect the state employees who were acting in their official capacities, further warranting dismissal.

With respect to the claims asserted against the employees in their individual capacities, the court went on to dismiss all but one of Weiss's claims. Here, the Court was not convinced that the admission of any hearsay statements or allegations containing inflammatory or prejudicial remarks deprived Weiss of any procedural protections. Rather, the Court reasoned that not only do the formal rules of evidence not apply during university disciplinary proceedings, but also that Weiss's ability to address and refute any such statements during his hearing satisfied the minimal due process requirements.

The only claim that survived dismissal at this stage was Weiss's belief that he should have been able to cross-examine his accuser, and that the hearing panel chair's refusal to allow him to do so constituted a due process violation. Accordingly, this single claim against only the hearing panel chair is allowed to proceed, for now.

Unlike in a common Title IX matter, in which there is an identifiable "accuser," in university disciplinary matters such as this one, it is the University, not a single person, that is

technically the “accusing” or “reporting” party. To the extent Weiss was permitted to ask questions of the University’s investigator(s), he arguably was provided an opportunity to “cross-examine” his “accuser.” Accordingly, just because this claim survived the (low-bar) standard applicable to motions to dismiss, it is unlikely that this claim will ultimately succeed. It appears the court may have confused the cross-examination standard applicable in cases involving party-credibility issues, such as sexual misconduct/Title IX cases, with the due process requirements applicable in a matter like this in which the credibility of the parties is not at the heart of the issue.

Weiss has already filed a Notice of Appeal, seeking to challenge the court’s dismissal of the majority of his claims. We will continue to monitor this case and provide updates as the matter proceeds.

**Injunction Issued Against the Theta Xi Chapter of
Delta Tau Delta at Eastern Michigan University**

Timothy M. Burke, Fraternal Law Partners, tburke@manleyburke.com

On January 5, 2022, as reported in the January issue of *Fraternal Law*, the Prosecutor of Washtenaw County, on behalf of the State of Michigan and joined by the City of Ypsilanti, sued the Theta Xi Chapter of Delta Tau Delta (the “Chapter”) at Eastern Michigan University, alleging the Chapter to be a public nuisance. The Complaint described some eighteen (18) alleged sexual assaults at the chapter over a period of years, explained how numerous people faced criminal charges, and sought to control the Chapter and address allegations of illegal alcohol consumption occurring on chapter-controlled property.

In addition to this lawsuit, individual victims filed suits against a number of fraternities, local chapters, and alleged perpetrators. Some of those claims remain pending while others have been settled.

Earlier this year, the Court, in the case brought on behalf of the State and City, issued a Final Judgment and Order for Injunction (“Injunction”) that was based on an agreement and stipulation reached by all three parties (the City, the County prosecutor on behalf of the State, and the Chapter). That Injunction puts the Washtenaw County Prosecutor in control of many aspects of chapter conduct.

For at least one calendar year from the date of the Injunction, no alcohol may be on any chapter-controlled property,¹ no matter the age of the person possessing it. Additionally, no more than five (5) guests may be present on any chapter-controlled property at any time. Guests are defined as individuals who do not reside at the property and are not members of the Chapter.

In the Prosecutor’s sole discretion, the Prosecutor “may agree to allow for limited exceptions to this guest restriction to allow non-social gatherings, such as philanthropic or academic events,” which the Prosecutor must permit or deny, in writing.

After the Injunction has been in place for a full year, the Prosecutor and Chapter “will confer in good faith” to determine whether the Chapter has substantially complied with the terms of the Injunction. If not, the initial restrictions will remain in place for another year. However, if substantial compliance has been achieved, certain terms will be liberalized.

For example, while there will still be a prohibition against underage drinking on chapter-controlled property, and alcohol would continue to be prohibited in any situation in which there

¹ The Injunction broadly defines chapter “controlled property” to include the chapter house, any future chapter houses, any fraternity annex houses, any location where four or more members of the Chapter reside, “or any proxy location within defendant’s control.”

are five or more guests on the property, the Chapter could begin to host more events without prior approval from the Prosecutor. Such events could include philanthropic, community oriented, academic, or similar gatherings (so long as there is no alcohol). However, if the Chapter wanted to host such a gathering with more than ten (10) guests, at least seven-days advance notice would have to be provided to the Prosecutor. The Prosecutor could object to the gathering proposal based on a fear that terms of the Injunction will be violated. If the prosecutor fails to withdraw the objection, the Chapter may not host the event.

In addition to the guest and alcohol limitations, the Chapter must conduct annual trainings on sexual assault, bystander awareness, and reasonable alcohol consumption. Such training “shall be subject to the Prosecutor’s advance approval to insure they adequately address the cessation and prevention of public nuisance conditions alleged in the Complaint.” The Chapter is obligated to provide documentation that its members have attended such training and must also ensure “escalating internal enforcement of the requirement, up to and including the removal of the member from the organization” who fails to attend the trainings.

Within one year of the issuance of the Injunction, the Chapter must host a fundraiser for a nonprofit organization—mutually agreed upon by the Chapter and the Prosecutor—that provides assistance to survivors of sexual assault.

Further, the Chapter must post the contact information for Eastern Michigan University’s Title IX Office on all the chapter-controlled properties.

The Injunction will remain in place for ten (10) years unless otherwise terminated by stipulation of the parties or further order of the Court.

To the best of Fraternal Law’s knowledge, this is the first instance where a county prosecutor has had such a role in controlling the conduct of a fraternity chapter.

The Elusive “Fairness” of University Investigative Processes

Haellie Gordon,¹ Fraternal Law Partners, hgordon@manleyburke.com

On May 4, 2022, the Theta Delta Chi chapter (the “Chapter”) at Stanford University (the “University”) filed a complaint against the University following the revocation of the Chapter’s recognition for six (6) years.² The University’s decision came in response to the drug-related death of chapter member Eitan Wiener. The Chapter’s complaint alleges various procedural issues in the University’s investigation and hearing process, including the University’s failure to disclose/turn over all evidence to the Chapter, the hearing panel’s failure to interview witnesses, and the failure to allow the Chapter to cross-examine said witnesses.³ The Chapter also claims the six-year suspension is not consistent with precedent, as no precedent was reviewed, and the sanction was ultimately too severe. The Chapter requests the Court order the University to set aside the findings and interim suspension issued against the Chapter.⁴

While this case has not gained much progress since May, the claims and relief sought are strikingly similar to those in *Alpha Nu Association of Theta Xi v. USC*.⁵ In that case, Theta Xi’s local chapter sought to set aside USC’s decision to revoke its recognition for six (6) years.⁶ USC’s decision came in response to complaints regarding hazing and underage alcohol consumption by

¹ Haellie Gordon is a legal intern at Manley Burke and is a second-year law student at the University of Cincinnati.

² Pet. for Writ of Admin. Mandate, *Theta Delta Chi Ch. v. Hicks*, No. 22CV398711 (Santa Clara Sup. Ct. Cal., May 4, 2022).

³ *Id.*

⁴ *Id.*

⁵ *Alpha Nu Assoc. of Theta Xi v. Univ. of S. Cal.*, No. B303269 (Cal. Ct. App. 2d Dist. March 3, 2021).

⁶ *Id.*

the Chapter. In its Complaint, the local chapter cited unfair procedures and a lack of evidentiary support for USC's factual findings in the investigation process.⁷

In the *Alpha Nu* decision, the appellate court noted that administrative agencies are given considerable latitude in the investigative and disciplinary process with regard to the precision, formality, and matters reasonably implied therein. As such, a university's findings do not need to be extensive or detailed. Instead, the school's decision only must inform the parties and reviewing courts of the theory upon which they arrived at their final findings.⁸ Additionally, the *Alpha Nu* court found that an administrative hearing does not have to include all the safeguards and formalities of a criminal trial to be considered fair, such as cross examinations, especially when assertions are sufficiently supported by credible evidence. Instead, fairness in the decision-making process of administrative agencies only requires adequate notice, reasonable opportunity to respond, and a fair and unbiased decision-maker.⁹

The *Alpha Nu* court went on to hold that USC adequately revealed its analytic route from evidence to action in its final suspension of the chapter's recognition, therefore providing adequate notice. Further, the local chapter had received an adequate opportunity to review and produce evidence, satisfying the reasonable opportunity to respond requirement. Finally, the Court held USC only considered those allegations that had ample evidentiary support, satisfying the unbiased decision-making process component.¹⁰

Based on the countless similarities between the two cases, the Theta Delta Chi chapter at Stanford University faces an uphill battle in its requests for greater procedural safeguards and ultimately the reinstatement of their recognition at the University. *Alpha Nu* demonstrates the great

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

latitude afforded to universities in their investigative and decision-making processes with regard to what constitutes as “fair,” and signifies potential weaknesses in Theta Delta Chi’s case.

The goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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