



# Considerations for a Federal Criminal Prohibition on Hazing

November 26, 2024

A long-standing governmental interest is keeping students safe. One harm befalling students and raising concerns with some lawmakers is hazing—which [generally consists](#) of inflicting pain, discomfort, or ritualized humiliation on a student, or coercing a student to participate in the experience, usually as a condition of initial or ongoing membership in a social organization or athletic team. Congress has banned hazing at the [U.S. Naval Academy](#) and has directed the superintendents of the Naval Academy, [U.S. Military Academy \(West Point\)](#), and [U.S. Air Force Academy](#) to issue regulations preventing the practice. Outside of the service academy context, Members of Congress have introduced several bills (*e.g.*, [H.R. 5646](#), 118<sup>th</sup> Congress; [S. 209](#), 118<sup>th</sup> Congress; [H.R. 2525](#), 117<sup>th</sup> Congress; [S. 775](#), 117<sup>th</sup> Congress; [S. 774](#), 117<sup>th</sup> Congress; [H.R. 662](#), 116<sup>th</sup> Congress) addressing hazing.

Hazing is also of interest at the state level. By one [count](#), 44 of the 50 states have anti-hazing laws. The state statutes vary significantly, revealing issues of disagreement among the states on fundamental issues, such as who should be protected from and punished for hazing and what conduct should be prohibited. This Sidebar identifies these substantive points of departure and offers examples of how states have responded differently to them. In doing so, this Sidebar provides Congress with a list of some key components of a potential federal effort to criminalize hazing as well as a sense of the options that Congress could have for each component.

This Sidebar enumerates and examines the general core components of a criminal anti-hazing statute: (1) applicability (who is subject to and protected by the law, such as those seeking membership into fraternities and sororities, athletic teams, or other on-campus entities), (2) the jurisdictional basis (whether Congress has the constitutional authority to regulate hazing), (3) the prohibited conduct (what type of action constitutes hazing, such as forcing a fraternity pledge to ingest alcohol), (4) the mental state accompanying the prohibited conduct (whether the prohibited conduct has to be committed purposefully, knowingly, recklessly, or negligently), (5) the relevance of consent (whether hazing occurs even if the victim willingly participates in the prohibited conduct), and (6) the punishment (what consequences perpetrators may face if they engage in hazing). The Sidebar begins by providing background on hazing. It then discusses the core components of anti-hazing legislation, giving examples of different approaches for these components from both state law and current federal law governing the service academies. It concludes with considerations for Congress.

**Congressional Research Service**

<https://crsreports.congress.gov>

LSB11247

## Background on Hazing

Hazing has [ancient origins](#)—there is evidence of its existence in Greece, Rome, as well as the Middle Ages. Today, the practice of hazing persists in educational institutions. According to a 2008 U.S. Department of Education report, 55% of college students and 47% of high school students have [experienced](#) hazing—defined in the report as a membership-dependent activity that “humiliates, degrades, abuses, or endangers” the victim. An academic [study](#) similarly concluded that hazing on college campuses is “widespread,” adding that “[a]lcohol consumption, humiliation, isolation, sleep-deprivation and sex acts are hazing practices common across student groups.” One scholar [testified](#) before a Senate committee that “[v]arsity athletic teams (74%) and fraternities and sororities (73%) haze at the highest rates.” A Government Accountability Office [report](#) suggested that hazing in the military remains prevalent with hazing incidents understated on the order of “potentially tens of thousands of incidents.”

## Components of Anti-Hazing Legislation

This section identifies some of the core components of anti-hazing laws and provides examples of how different jurisdictions have chosen to address these components.

### Applicability

The question of who is subject to and protected by a prohibition on hazing varies by state. Some states do not limit who may face criminal liability for hazing or the contexts in which covered hazing occurs. For example, [Louisiana](#) forbids “any person” from committing an act of hazing. Other jurisdictions subject only a subset of individuals to the hazing prohibition. [Michigan’s](#) hazing law applies only to an individual “who attends, is employed by, or is a volunteer of an educational institution.” With respect to who is protected by these laws, in general states cover those who are seeking initial or ongoing membership in an organization or institution. For example, [Kentucky](#) makes it unlawful to haze a “minor or student for the purpose of recruitment, initiation into, affiliation with, or enhancing or maintaining membership or status within any organization.” Likewise, [Iowa](#) prohibits student participation in certain “forced activities,” defined by the state as “any activity which is a condition of initiation or admission into, or affiliation with, an organization, regardless of a student’s willingness to participate in the activity.” The federal [statute](#) governing hazing at the Naval Academy applies more generally to all midshipmen at the Academy.

### Jurisdictional Basis

A federal anti-hazing law would need to be [predicated](#) on a [jurisdictional basis](#), or a constitutional source of congressional authority. For example, a federal hate crimes [statute](#) prohibits people from committing a hate crime provided that they traveled in interstate commerce or used a [channel](#) or [instrumentality](#) of interstate commerce to effectuate the offense. Thus, the statute is grounded in the congressional power to regulate [interstate commerce](#). Similarly, a federal anti-hazing law that includes some interstate character—for example, a requirement that the perpetrator cross state lines or use an interstate means of communication, such as the internet—in connection with the crime would likely shroud the statute in valid congressional authority.

In the absence of an interstate link, Congress may look to federal civil rights laws as a blueprint for jurisdiction. [Title II](#) of the Americans with Disabilities Act of 1990 and [Section 504](#) of the Rehabilitation Act of 1973 apply to [public educational institutions](#) and educational institutions that [receive federal financial assistance](#), respectively. A federal anti-hazing law also could apply to these categories of schools, which would encompass “almost all” schools in the country—leaving only a “handful” of private schools untouched by such a law.

## Prohibited Conduct

Another core component of any federal criminal law is an *actus reus*, or “guilty act.” This requirement identifies the **behavior** that society has an interest in preventing or punishing through the law. Put differently, criminal liability generally cannot attach **without proof** of a defendant committing the proscribed conduct. In describing such conduct, a jurisdiction may also identify an outcome that must occur or be intended for the crime to have taken place. For example, a crime may describe only the act, such as an assault; or it may encompass an assault (act) that causes serious bodily injury (result). Similarly, prohibited conduct in an anti-hazing law may capture an action alone (e.g., assaulting a student), or an action combined with a result (e.g., assaulting a student that results in bodily injury).

States with anti-hazing laws have declared a wide range of conduct to be off-limits. Some states have adopted a broader list of what constitutes hazing, extending it to threats to health and safety, as well as mental or emotional anguish. **Arkansas**, for example, prohibits, among other things, “striking, beating, bruising, or maiming” the victim in addition to acts designed to cause “ignominy, shame, or disgrace among his or her fellow students [or] humbling the pride, stifling the ambition, or impairing the courage of the student attacked.” Some states provide a general prohibition against harm along with a specific, but non-exhaustive, list of prohibited conduct. **Idaho**, for example, makes it unlawful 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,” among other things, “nudity,” “compelled ingestion of any substance,” “physical assaults,” “participation . . . in boxing matches, excessive number of calisthenics, or other physical contests,” “transportation and abandonment of the person,” “confinement of the person to unreasonably small, unventilated, unsanitary or unlighted areas,” or “sleep deprivation.” **Connecticut** also supplies a non-exhaustive list of prohibited acts, such as “requiring indecent exposure of the body,” “subject[ing] the person to extreme mental stress, such as sleep deprivation or extended isolation from social contact,” “any assault upon the person,” or “requiring . . . any other physical activity which could adversely affect the health or safety of the individual.”

Other jurisdictions, by contrast, limit hazing to physical results, such as death or bodily injury, and do not provide representative examples of what may constitute hazing. One such state, **Kansas**, forbids “any act which could reasonably be expected to result in great bodily harm, disfigurement or death, or which is done in a manner whereby great bodily harm, disfigurement or death could be inflicted.” More concisely, the prohibited conduct in **Indiana** is “forcing or requiring” a person “to perform an act that creates a substantial risk of bodily injury.”

In addition to prohibiting affirmative acts, some jurisdictions have also banned omissions, specifically failing to render aid to a victim. **Louisiana**, for example, makes it unlawful for a “person at the scene of an emergency who knows that another person has suffered serious bodily injury” to fail to “give reasonable assistance to the injured person,” if the person at the scene can provide such assistance “without danger or peril to self or others.” The state also requires “any person who engages in reckless behavior that results in the serious bodily injury of any person” to “give reasonable assistance to the person,” subject to the same caveat. These laws may implicate situations in which individuals are hazed and abandoned.

With respect to the service academies, for the **Naval Academy**, Congress has selected a definition of hazing that has a broad scope. That anti-hazing statute provides that hazing occurs when a “midshipman suffers or is exposed to any cruelty, indignity, humiliation, hardship, or oppression, or the deprivation or abridgement of any right.” The statute does not give representative examples of actions that may constitute hazing under this definition. For the **Naval Academy**, **West Point**, and the **Air Force Academy**, Congress has delegated the authority to prescribe regulations preventing “hazing” to the superintendents of these institutions, subject to approval of the Secretaries of their respective branches. For **West Point** and the **Air Force Academy**, Congress has authorized the superintendents to define hazing again subject to the same approval mechanism. Pursuant to these congressional directives, the **Air Force Academy** and

the U.S. Navy (for midshipmen at the Naval Academy) and West Point have published anti-hazing policies. Although the federal statutes creating the other two service academies—the [U.S. Coast Guard Academy](#) and the [U.S. Merchant Marine Academy](#)—do not similarly direct them to develop anti-hazing policies, both have issued policies on hazing (see [here](#) and [here](#)).

Most jurisdictions appear to have expressly indicated what does *not* constitute prohibited conduct. [California](#), for example, has stipulated that hazing “does not include customary athletic events or school-sanctioned events,” while [Colorado](#) similarly exempts “customary athletic events or other similar contests or competitions” and “authorized training activities conducted by members of the armed forces of the state of Colorado or the United States” from the ambit of unlawful hazing.

If Congress were to enact a criminal law prohibiting hazing outside of the service academy context, it would need to decide which conduct—such as physical assaults and forced activities—to include as hazing for purposes of the law, and whether to include results—such as conduct that causes death or serious bodily injury—as an element of prohibited hazing. Congress also would need to elect whether to enumerate such conduct in an exhaustive or non-exhaustive fashion, whether to include omissions in rendering aid, and whether to include specific activities that do not constitute hazing.

## Mental State

The Supreme Court has [recognized](#) that crime consists of the “concurrence of an evil-meaning mind with an evil-doing hand.” Accordingly, another core component of a federal criminal law is the criminal actor’s mental state, or *mens rea*. A mental state requirement ensures that criminal law applies [only](#) to those who are culpable, morally blameworthy, and deserving of punishment. A mental state requirement also draws [distinctions](#) between those who are more culpable than others. Though differing words and phrases may be used to describe different mental states, the Model Penal Code (MPC), often referenced by courts, offers useful [terms](#) for the hierarchy of mental states in criminal law. According to the [MPC](#),

- a **purposeful** (or intentional) act is one in which the actor commits an act *and* desires the outcome of the act;
- a **knowing** act is one in which the actor has knowledge of a high degree of certainty that if they follow through with a certain course of action, a certain result will follow, *but* the actor does not desire that result;
- a **reckless** act is one in which the actor *has* an awareness of a substantial risk that taking a course of action will lead to a certain outcome, and the actor takes the risk anyway; and
- a **negligent** act is one in which the actor *lacks* awareness that the act will lead to a particular outcome, but a reasonable person exercising ordinary caution would have known that that the act would lead to a certain result.

States are not uniform in what level of culpability applies to the conduct proscribed by their particular anti-hazing laws. Some have indicated that multiple mental states may be sufficient to violate the statute. For example, [Maine](#) bans the prohibited conduct if it is “recklessly or intentionally” committed; [Michigan](#) requires a qualifying “intentional, knowing, or reckless act”; and [New Jersey](#) demands a showing that the act was committed “knowingly or recklessly.”

## Consent to Participation

According to one organization’s [tally](#), 29 states provide, in some form, that a victim’s consent to participating in the prohibited conduct is irrelevant for purposes of determining whether the perpetrator engaged in hazing. [Virginia](#), for example, defines hazing as endangering the health or safety of, or inflicting bodily injury on, a student “regardless of whether the student . . . so endangered or injured participated voluntarily in the relevant activity.”

## Penalties

When lawmakers enact federal criminal [statutes](#) prohibiting certain conduct, they also establish the [penalties](#) for violations of these statutes. A prospective federal hazing law would need to set the punishment for hazing. According to [Hamilton](#), a prohibition without statutory penalties would amount to “nothing more than advice or recommendation.”

In some states, hazing may be designated as a misdemeanor or a felony depending on the circumstances. In [Pennsylvania](#), for example, hazing that “results in or creates a reasonable likelihood of bodily injury to the minor or student” is a misdemeanor, but rises to the level of a third-degree felony if certain aggravating circumstances are present. [Michigan](#) also employs a graduated penalty structure: if the hazing results in physical injury, “the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both,” whereas hazing resulting in serious impairment of a bodily function is a “felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both,” and hazing resulting in death is a “felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.” The U.S. Sentencing Guidelines contain suggested penalty ranges for related offenses, such as [aggravated assault](#), [assault](#), and [harassment](#) that may be useful analogues for use in considering a federal anti-hazing statute.

## Considerations for Congress

Congress has shown interest, as exemplified by bills introduced in the 116<sup>th</sup> through the 118<sup>th</sup> Congresses, in addressing hazing at the federal level. As lawmakers continue to craft legislation in this context, Members may want to consider whether their proposals cover the components identified in this Sidebar and may draw upon the approaches taken by the states and by Congress in the context of the service academies to address each of these components.

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