

The Failure of Zero-Tolerance Policies in Addressing Hazing

Gregory S. Parks*

ABSTRACT

Hazing is a moral, legal, and existential issue that has spanned generations, cutting across institutions and organizations. A common approach to addressing it is zero-tolerance policies—whether in word or in practice. Zero-tolerance policies are designed to stamp out hazing by severely sanctioning perpetrators. The problem is that zero-tolerance policies, at best, do not deter deviant behavior. While the certainty of catching perpetrators deters, severe sanctions have long-been found to be of limited use in deterrence. At worst, zero-tolerance policies drive deviant conduct underground where it can become more perverse. Zero-tolerance policies do so because perpetrators wish not to be severely sanctioned; at the same time, they are not convinced that their conduct is problematic. This Article grapples with these issues in the context of hazing.

Table of Contents

I.INTRODUCTION	1
II.ZERO-TOLERANCE: A HAZING REMEDY	2
III.ZERO-TOLERANCE: A FAILED APPROACH	5
IV.SHIFTING FROM FAILURE (SEVERITY) TO SUCCESS (CERTAINTY)	7
V.CONCLUSION	8

I. INTRODUCTION

Hazing has been a persistent issue over generations and across organization-types.¹ For many, the default solution has been zero-

* Associate Dean of Strategic Initiatives and Professor of Law, Wake Forest University School of Law.

1. See Gregory S. Parks & Jasmine Burgess, *Hazing in the United States Military: A Psychology and Law Perspective*, 29 S. CAL. INTERDISC. L.J. 1 (2019); Gregory S. Parks & Matthew P. Hooker, *Organizational Ideology and Institutional Problem-solving: Hazing within Black Fraternities*, 44 L. & PSYCH. REV. 91 (2020); Gregory S. Parks & Katherine E. Wenner, *Making the Band: Hazing and an Analysis of Interpersonal Dynamics*, 18 VA. SPORTS & ENT. L.J. 35 (2018); Gregory S. Parks & Nicolette DeLorenzo, *Hazing in High*

tolerance policies. Zero-tolerance is generally intended to express the unacceptance of targeted behaviors that, if committed, will be severely punished, no matter how major or minor.² Zero-tolerance was originally developed as a United States Customs Service Policy in 1986. Attorney Peter Nunez first issued zero-tolerance policies for federal and state agencies to seize boats and vehicles transporting illegal drugs.³ By 1988, zero-tolerance policies were applied to a broad range of issues and conduct.⁴ The problem with zero-tolerance as an approach to address issues like hazing, which have civil and criminal legal implications, is that it reflects a fundamental misunderstanding as to the limits of sanctions in deterring behavior.⁵ In this Article, Part I explores the persistence of zero-tolerance policies as a remedial measure for hazing. Part II addresses why zero-tolerance fails as a remedy to hazing. Part III suggests how institutions and organizations could shift to a more effective approach.

II. ZERO-TOLERANCE: A HAZING REMEDY

Zero-tolerance policies have been enacted by a wide swath of institutions and organizations to combat hazing. For example, many leaders of National Pan-Hellenic Council (“NPHC”) organizations—i.e., historically and predominantly Black Greek-letter organizations⁶—have demonstrated support for the NPHC’s position of “zero-tolerance” for hazing.⁷ In response to various hazing incidents, organizations have

School Athletics: An Analysis of Victims, 29 MARQ. SPORTS L. REV. 451 (2019); Gregory S. Parks & Sabrina Parisi, *White Boy Wasted: Race, Sex, and Alcohol Use in Fraternity Hazing*, 34 WISC. J. L., GENDER & SOC’Y 1 (2019); Gregory S. Parks & E. Bahati Mutisya, *Hazing, Black Sororities, and Organizational Dynamics*, 43 L. & PSYCH. REV. 25 (2019); Gregory S. Parks & Sarah J. Spangenburg, *Hazing in “White” Sororities: Explanations at the Organizational-Level*, 55 HASTINGS WOMEN’S L.J. 55 (2019); Gregory S. Parks & Wendy Marie Laybourn, *Asian American Fraternity Hazing: An Analysis of Community-level Factors*, 22 ASIAN PAC. AM. L.J. 29 (2017).

2. See Russell J. Skiba & Kimberly Knesting, *Zero Tolerance, Zero Evidence: An Analysis Of School Disciplinary Practice*, NEW DIRECTIONS FOR YOUTH DEV., Winter 2001, at 17, 19–20; Parks & Mutisya, *supra* note 1, at 75; Rebecca Morton, *Returning “Decision” to School Discipline Decisions: An Analysis of Recent, Anti-Zero Tolerance Legislation*, 91 WASH. U. L. REV. 757, 757–58 (2014).

3. See Skiba & Knesting, *supra* note 2, at 18; Lynne Magor-Blatch, *Beyond Zero Tolerance: Providing a Framework to Promote Social Justice and Healthy Adolescent Development*, 28 THE AUSTL. EDUC. & DEV. PSYCH. 61, 61 (2011).

4. See Magor-Blatch, *supra* note 3, at 62; Morton, *supra* note 2, at 757.

5. See generally LAWRENCE M. FRIEDMAN, *IMPACT: HOW LAW AFFECTS BEHAVIOR* (2016) (highlighting that laws often fail to shape human behavior to a meaningful extent because it fails to address the factors that truly drive said behavior).

6. This Article uses the phrase “Greek-letter organization” interchangeably with “sororities and fraternities.”

7. See Linda Richardson Wilson, *The National Pan-Hellenic Council Leaders’ Perspectives on the Impact of Moral Thoughts and Actions on Hazing* (2018), at 107 (PhD dissertation, North Carolina Agricultural and Technical State University) (on file with author).

underscored their commitment to zero-tolerance policies. For example, in 2011, a Sigma Alpha Epsilon (“SAE”) pledge died from alcohol poisoning during a hazing incident.⁸ In light of the incident, SAE’s General Counsel stated that the fraternity had a zero-tolerance hazing policy.⁹

Universities have also bought into zero-tolerance policies as an appropriate remedy, and deterrent, for hazing.¹⁰ With the implementation of zero-tolerance policies, universities can suspend the offending fraternity or sorority, expel offending students, or pursue legal action in accordance with their state’s anti-hazing statute.¹¹ University administrators, especially newer ones, are typically strict in their application of zero-tolerance policies to address hazing.¹² For example, after the 2017 hazing death of Penn State Student Timothy Piazza as he sought membership into the Beta Theta Pi fraternity, the county district attorney released a series of policy recommendations for Greek-letter organizations moving forward from this incident.¹³ These recommendations included that Penn State University create a pledges’ bill of rights, a hazing hotline, and a zero-tolerance policy.¹⁴ Additionally, in 2019, Cornell University Student Antonio Tsialas died after alleged hazing by members of the Phi Kappa Psi fraternity.¹⁵ After being subjected to an intense, ritualized, Christmas-themed hazing, Tsialas’s body was found in a gorge at Fall Creek.¹⁶ Following this incident, Cornell University stated that the university had a zero-tolerance policy on hazing, and, if the allegations proved to be true, those responsible would be held accountable.¹⁷

Despite the similarities in many zero-tolerance hazing policies, these policies are not one-size-fits-all. Fraternities and sororities are not the sole focus of zero-tolerance hazing policies, and university administrations are not the sole source of such policies. Zero-tolerance policies have been

8. See Deborah L. Cohen, *Clearing up Hazing*, A.B.A. J., Oct. 2012, at 14, 15.

9. See *id.* at 18.

10. See Dara Aquila Govan, “Hazing Out” *The Membership Intake Process In Sororities and Fraternities: Preserving the Integrity of the Pledge Process Versus Addressing Hazing Liability*, 53 RUTGERS L. REV. 679, 704 (2001).

11. See *id.*

12. See Carolyn I. Eastlin, *Hazing Within Black Greek Letter Organizations: Perceptions of BGLO Members and Higher Education Administrators* (Spring 2018), at 81–82 (EdD dissertation, University of Louisiana at Lafayette) (on file with author).

13. See Susan McFarland, *Grand Jury Says Penn State Failed to Protect Pledges, Calls for Stronger Hazing Laws*, UPI (Dec. 15, 2017, 1:23 PM), <https://bit.ly/3wdNSia>.

14. See *id.*

15. See David Robinson, *Antonio Tsialas Death: Lawsuit Claims Christmas-Themed Hazing at Cornell Frat Linked to Probe*, PRESSCONNECTS (Jan. 29, 2020, 2:37 PM), <https://bit.ly/3qKQx1n>.

16. See *id.*

17. See *id.*

applied to athletic organizations and other extracurricular campus activities. For example, a member of Florida A&M University's ("FAMU") marching band, Robert Champion, died following a hazing ritual.¹⁸ In response, FAMU stated that the university had a zero-tolerance policy on hazing and every instance on their campus had been thoroughly investigated.¹⁹ In 2020, the Ball State University Student Government Association proposed adding zero-tolerance policies after deviant fraternity and sorority conduct, which included hazing incidents.²⁰ The policy would revoke university recognition of any fraternity or sorority that has participated in hazing.²¹

State legislatures have also embraced zero-tolerance approaches to address hazing. As of 2018, New York passed new legislation with zero-tolerance for hazing. This new law places criminal penalties of up to one year in jail for physical hazing, such as forced fighting or intensive exercise.²² Following the legislation's enactment, the New York State Governor reiterated the State's zero-tolerance policy on hazing after the legislation was signed into law.²³ In 2019, Ohio's Governor declared a forthcoming zero-tolerance policy towards hazing.²⁴ The proposed legislation, House Bill 310, would increase the penalty for hazing to a fourth-degree felony with up to eighteen months of incarceration and a \$5,000 fine if the injuries are serious.²⁵ The Ohio law will also impose criminal liability on any faculty members, administrators, or others who allow hazing to continue unpunished.²⁶ Tolerators of hazing could face a second-degree misdemeanor with up to ninety days in jail and a \$750 fine.²⁷ Ohio representatives have also lobbied to expand when hazing is punishable because, as of now, the current law limits hazing to initiation rites.²⁸

18. See Parks & Wenner, *supra* note 1, at 39.

19. See *id.* at 49–50.

20. See Grace McCormick, "Zero-Tolerance Policy" for Greek Life Sent to the University Senate, THE DAILY NEWS (Jan. 15, 2020, 8:57 PM), <https://bit.ly/3AqkqbO>.

21. See *id.*

22. See Kara Burke, *Revised Anti-Hazing Law Receives Acceptance, Criticism from Greek Life*, THE LAMRON (Sept. 6, 2018), <https://bit.ly/369xrJ1>.

23. See *id.*

24. See Ben Axelrod, *Ohio Gov. Mike DeWine to Announce New Anti-Hazing Initiative*, WKYC STUDIOS (July 26, 2021, 1:36 PM), <https://bit.ly/3nmtScn>.

25. See Jessie Balmert, 'Hazing is Destroying College Campuses.' After Fraternity Injuries, Ohio Moves to Crack Down on Hazing, CINCINNATI ENQUIRER (Nov. 14, 2019), <https://bit.ly/38V7XAJ>.

26. See *id.*

27. See *id.*

28. See *id.*

In addition to these proactive laws addressing hazing, other states have expanded their anti-hazing laws after deadly incidents. In California, after the death of Matthew Carrington in the basement of the Chi Tau fraternity, state lawmakers increased the penalty for hazing to a felony.²⁹ Similarly, Florida passed tougher hazing legislation after the death of Andrew Coffey.³⁰ Florida's new bill expands criminal liability to those who plan hazing events even if they do not attend the event themselves.³¹ The bill expands who can be a victim of criminal hazing from only pledges to current or former members of a fraternity or sorority.³² Furthermore, the new legislation provides immunity to students who call 911 if they witness hazing.³³ Additionally, Louisiana increased the penalty for hazing to up to five years in prison after the death of Max Gruver.³⁴

III. ZERO-TOLERANCE: A FAILED APPROACH

Although institutions and organizations, as well as state legislatures, have adopted these zero-tolerance policies to address hazing, these policies have failed to complete their intended purpose.³⁵ Looking to zero-tolerance policies in other domains highlights the woeful inadequacy of such an approach as a remedial measure.

In response to increasing instances of deadly violence and school shootings, such as the Columbine High School shooting, Congress passed the Gun-Free Schools Act (GFSA), which mandates a mandatory one-year expulsion for students possessing a firearm on school grounds.³⁶ Many anti-bullying programs emerged following the alleged bullying of the Columbine High School shooters.³⁷ A meta-analysis showed that anti-

29. See Dan McCarthy & Manley Burke, *More Hazing Charges at Chico State*, FRATERNAL L. NEWSLETTER (Sept. 2007), <https://bit.ly/3k12fDB>.

30. See Byron Dobson, *Gov. DeSantis Signs 'Andrew's Law', Enacting Tougher Hazing Measures*, TALLAHASSE DEMOCRAT (June 26, 2019, 9:56 AM), <https://bit.ly/39cB4Q5>.

31. See *id.*

32. See *id.*

33. See *id.*

34. See Natalie Anderson, *The Hazing Edition: Max Gruver Act Increases Penalties for Hazing in Louisiana*, LSU REVELLE (Sept. 10, 2018), <https://bit.ly/3z2DFGG>.

35. Carmel Sileo, *Fraternities Fail to Stem Tide of Binge-Drinking Deaths, Lawsuits Claim*, TRIAL MAG., OCT. 2004, at 14, 18.

36. David R. Dupper, *Does the Punishment Fit the Crime? The Impact of Zero Tolerance Discipline on At-Risk Youths*, CHILDREN & SCHS., Apr. 2010, at 67, 67 ("By the 1996-97 school year, 94 percent of U.S. public schools had zero-tolerance policies for firearms, 91 percent for other weapons, 88 percent for drugs, and 87 percent for alcohol.") (citing PHILLIP KAUFMAN, ET AL., DEP'T OF EDUC., INDICATOR OF SCHOOL CRIME AND SAFETY (2000)).

37. K. Borgwald & H. Theixos, *Bullying the Bully: Why Zero-Tolerance Policies Get a Failing Grade*, 8 SOC. INFLUENCE 149, 149 (2013).

bullying programs had no benefit in reducing instances of bullying but emanated an increase of covert bullying behaviors. These behaviors included cyber-bullying, ignoring, shunning, and intimidating the victim. Multifarious studies show that, although crime in public schools is down, these findings are not attributed to zero-tolerance policies. Arguably, zero-tolerance policies are postulated to have had little or no impact on the decline in overall school violence.

The National Center for Education Statistics reported that schools that rely heavily on stringent disciplinary policies continue to be less safe than schools that enforce limited elements of zero-tolerance.³⁸ Research has shown zero-tolerance to be inefficient in reducing or deterring violence and classroom disruptions or maintaining classroom safety.³⁹ Expulsion and suspension have shown to be counterproductive punitive actions associated with zero-tolerance policies.⁴⁰ Students' likelihood to drop-out of school, engage in delinquent or risky behaviors, seek out deviant peers, commit a crime, or abuse a substance or alcohol is increased following suspension or expulsion.⁴¹ This evidence indicates a correlation between suspension and school dropout.⁴² Developmental psychopathologists concur that during adolescent years, students are most susceptible to developing antisocial behaviors, displaying disruptive behaviors, and experiencing social and academic deficits.⁴³ Seclusion from teachers and peers are detrimental to students' social and academic success, as social bond is a critical augur in adolescents' delinquent behavior. Arguably, a balance between positive reinforcers and negative consequences, effective classroom management plans, and individual programming is a more effective strategy in creating safer school climates rather than removing students from their safety net of school.⁴⁴

38. See Russell J. Skiba & Reece L. Peterson, *School Discipline at a Crossroads: From Zero Tolerance to Early Response*, 66 EXCEPTIONAL CHILDREN 335, 337 (2000) (citing NAT'L CTR. FOR EDUC. STAT., NCES 98-030, VIOLENCE AND DISCIPLINE PROBLEMS IN U.S. PUBLIC SCHOOLS: 1996-97 (1998)).

39. Morton, *supra* note 2, at 758.

40. Parks and Mutisya, *supra* note 1, at 75.

41. See *id.*; see also Lan Liang & Jidong Huang, *Go Out or Stay In? The Effects of Zero Tolerance Laws on Alcohol Use and Drinking and Driving Patterns Among College Students*, 17 HEALTH ECON. 1261, 1267 (2008).

42. See Steven Teske, *A Study of Zero-tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents*, 24 J. CHILD & ADOLESCENT PSYCHIATRIC NURSING 88, 92 (2011).

43. See generally Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCH. REV. 674 (1993) (exploring different indicators in adolescence that often correlate with subsequent developments of antisocial behaviors).

44. See Skiba & Peterson, *supra* note 38, at 342.

An analogue can be found in parenting literature, which states that over-regulative and authoritarian parents obtain similar results as zero-tolerance policies.⁴⁵ Evidence shows that highly restrictive parents who rely on punishment and threats, or are more demanding and directive, may harm their children—i.e., undermine their children’s social competence and inflict psychological distress in them.⁴⁶ Analogous to authoritarian parents, zero-tolerance fails to provide substantial nurturance or understanding of the developmental and neurological immaturity of adolescents. Longitudinal research in the peer context further investigated the role of overregulation or under-regulation of adolescents. Results revealed that parental prohibition and disapproval of friendships lead to higher delinquency and a greater predicted involvement with deviant peers.⁴⁷

IV. SHIFTING FROM FAILURE (SEVERITY) TO SUCCESS (CERTAINTY)

Deterrence theory suggests that a person will violate the law if his expected utility from the deviant conduct exceeds his disutility from not engaging in such conduct.⁴⁸ Pursuant to deterrence theory, two factors are presumed to raise the costs associated with criminal conduct—the certainty of punishment and the severity of sanctions.⁴⁹ Certainty is the likelihood that a criminal will suffer consequences for his crime.⁵⁰ Severity is how extreme the sanction is that will be levied against a person for violating the law.⁵¹ The certainty of having one’s deviant behavior discovered is more powerful in preventing said behavior than severe

45. See Magor-Blatch, *supra* note 3, at 65.

46. See Ronnie Janoff-Bulman & Sana Sheikh, *Unintended Consequences of Moral "Over-Regulation,"* 3 EMOTION REV. 325, 325–26 (2011).

47. Loes Keijsers et al., *Forbidden Friends as Forbidden Fruit: Parental Supervision of Friendships, Contact with Deviant Peers, and Adolescent Delinquency* 83 CHILD DEV. 651, 661 (2012).

48. See A. Mitchell Polinsky & Steven Shavell, *The Economic Theory of Public Enforcement of Law*, 38 J. ECON. LITERATURE 45, 47 (2000) (indicating that a criminal will “commit the act if and only if his expected utility from doing so, taking into account his gain and the chance of his being caught and sanctioned, exceeds his utility if he does not commit the act”).

49. See Raymond Paternoster, *How Much Do We Really Know About Criminal Deterrence?*, 100 J. Crim. L. & Criminology 765, 776 (2010) (discussing certainty and severity as the main factors that inform deterrence theory).

50. Patrick J. Keenan, *The New Deterrence: Crime and Policy in the Age of Globalization*, 91 IOWA L. REV. 505, 519 (2006).

51. Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. 199, 203 (2013).

sanctions.⁵² In fact, harsher penalties provide little to no deterrent effect.⁵³ Moreover, harsher penalties may have unintended consequences with respect to deterrence. Harsher penalties may make sanctions less stigmatizing,⁵⁴ reduce conviction rates,⁵⁵ and increase crime.⁵⁶

Turning to what measures may be effective to reduce hazing, one analogue that has been proven as an effective means of increasing the certainty of catching deviant behavior emerges from the realm of financial decision-making.⁵⁷ Specifically, audits have been shown to serve as a useful deterrent.⁵⁸ However, auditing cannot be overused, as there needs to be a level of trust between those being audited and those doing the auditing.⁵⁹ Should there be excessive audits, the mutual trust between the two parties diminishes and further non-compliance is more likely to ensue.⁶⁰

V. CONCLUSION

In practical terms, legislators must consider that although there may be a trend toward adding more teeth—i.e., felony provisions—to anti-hazing statutes, harsh sanctions likely mean little in the way of deterrence. If the goal of these statutes is to deter rather than punish, legislators should focus attention on ways to nudge individual, institutional, and organizational actors towards casting more light on hazing within their

52. See Heather Mann et al., *What Deters Crime? Comparing the Effectiveness of Legal, Social, and Internal Sanctions Across Countries*, FRONTIERS IN PSYCH., Feb. 2016, at 1, 2.

53. See, e.g., Anthony N. Doob & Cheryl Marie Webster, *Sentence Severity and Crime: Accepting the Null Hypothesis*, 30 CRIME & JUST. 143, 146 (2003) (highlighting that more severe and less severe sentences have roughly the same effect in reducing crime).

54. Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 CRIME & JUST. 1, 22 (1998) (“For an event to be stigmatizing it must be relatively uncommon.”).

55. Tracey L. Meares et al., *Updating the Study of Punishment*, 56 STAN. L. REV. 1171, 1185 (2004) (“High penalties, instead of increasing conviction rates, may decrease them. As penalties increase, people may not be as willing to enforce them because of the disproportionate impact on those caught.”).

56. Tomislav V. Kovandzic et al., “Striking out” as Crime Reduction Policy: The Impact of “Three Strikes” Laws on Crime Rates in U.S. Cities, 21 JUST. Q. 207, 207, 234 (2004).

57. See Harold G. Grasmick & Robert J. Bursik, Jr., *Conscience, Significant Others, and Rational Choice: Extending the Deterrence Model*, 24 L. & Soc’y Rev. 837, 847 (1990).

58. See Liucija Birskyte, *Effects of Tax Auditing: Does the Deterrent Deter?*, 8 RSCH. J. ECON. BUS. & ICT, Dec. 2013, at 1, 5.

59. See SEBASTIAN BEER ET AL., DO AUDITS DETER OR PROVOKE FUTURE TAX NONCOMPLIANCE? EVIDENCE ON SELF-EMPLOYED TAXPAYERS 7 (2019).

60. See *id.*

purview. Institutions and organizations, if serious about preventing hazing, should focus attention on ways to more effectively unearth hazing. One proven method is auditing their high-risk student organizations or chapters.⁶¹ The audit should not be labelled as such, and it should not be narrowly focused on unearthing hazing. Rather, to maintain trust and to help such institutional and organizational sub-units become more broadly effective, “audits” should focus on a range of issues. As such, they should be holistic and affirmative rather than narrow and punitive. In closing, the role of potential sanctions should be seen as one small part, rather than the presumed response, of a broad array of tactics to address hazing.

61. Data should drive which organizations should be audited. For example, fraternities would likely be audited at a higher rate than the glee club. College chapters of a sorority would likely be audited at higher rates than alumni chapters.