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Criminal Justice, Higher Education, Public Education

Hazing law now includes coerced over-consumption of alcohol

December 5 — A Texas law that took effect September 1 makes it a crime under the state’s hazing law to coerce a student to consume a drug or to consume an alcoholic beverage in an amount that would lead a reasonable person to believe that the student was intoxicated. Supporters of the law, enacted as [SB 38](#) by Zaffirini, said it addresses one of the most deadly forms of hazing.

The new law changes the Education Code definition of “hazing” to add the alcohol-specific conduct to other specific behaviors, including physical brutality or behaviors such as sleep deprivation or exposure to the elements that subject a student to an unreasonable risk of harm or that adversely affect a student’s mental or physical health or safety. The bill removed language that supporters said was vague and difficult to enforce.

The law uses Penal Code definitions of “coerce,” which includes communicating a threat to expose a person to contempt or ridicule, and of “intoxicated,” which means not having the normal use of mental or physical faculties or having a blood alcohol concentration of 0.08 or more.

SB 38 also expands the definition of an “organization” that can commit hazing to include a student government, a band or musical group, and academic, athletic, cheerleading, or dance teams, including any group that participates in a National Collegiate Athletic Association competition.

Enacted in 1995, the state’s hazing law targets certain behaviors directed against a student for purposes related to membership in an organization. Education Code ch. 37, [subch. F](#) makes hazing a student at an educational institution, including a public or private high school, a crime for which a person or an organization can be punished. A person commits a hazing offense if the person engages in hazing; solicits, encourages, aids or attempts to aid another in hazing; recklessly permits hazing to

occur; or has firsthand knowledge of the planning of a specific hazing incident or of an incident that has occurred and fails to report it in writing to the appropriate institutional official.

Failing to report is a class B misdemeanor, punishable by up to 180 days in jail and an optional fine of up to \$2,000. Hazing that causes serious bodily injury is a class A misdemeanor, punishable by up to one year in jail and an optional fine of up to \$4,000. Hazing that causes a person’s death is a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000.

An organization commits hazing if it condones or encourages hazing or if an officer or any combination of members, pledges, or alumni commits or assists in the hazing. An organization found to have committed hazing may be fined from \$5,000 to \$10,000 or up to double the amount of property damage or expenses incurred by an injured person.

New reporting requirements. During testimony on the bill, supporters of SB 38 said they could find no examples of individuals or organizations being criminally charged with hazing in recent years. Hazing incidents often are subject to disciplinary action by institutions of higher education according to internal policies and student conduct codes.

Under the new law, each public and private postsecondary educational institution must post a report on its website by January 1, 2020, detailing convictions and disciplinary actions taken by the institution against any organizations for hazing during the preceding three years. The report must name the organization disciplined or convicted and describe the incident and findings of the institution or court. It may not include personally identifiable student information. Students attending an institution’s orientation must be told about the report and where to find it online.

The new law also addresses when a person who reports a specific hazing incident is immune from prosecution or civil liability under the hazing law. To be immune, the person must report the incident voluntarily before being contacted by an educational institution and must cooperate throughout any institutional investigation. Immunity does not apply to persons who report their own act of hazing or report an incident in bad faith or with malice.

The lieutenant governor has charged the Senate Criminal Justice Committee with monitoring the implementation of SB 38 and recommending any needed improvements to the law.

— Janet Elliott

Public Health

New law prevents sale of certain cough medicine to minors

December 18 — A new Texas law, [HB 1518](#) by Coleman, prohibits businesses from selling certain over-the-counter medicines to minors. Supporters say the goal of the legislation is to prevent teens from using cough medicine as a gateway drug to more dangerous substances.

The new law prohibits the sale to minors of over-the-counter medicines containing dextromethorphan, a cough suppressant found in drugs like Mucinex, NyQuil, and Robitussin. Supporters cite a study conducted in 2018 by the National Institute on Drug Abuse that found one in 30 teens abuse over-the-counter cough medicine containing dextromethorphan.

Dextromethorphan is considered a safe ingredient when used as directed, but when taken in high doses or abused, can create a euphoric effect and lead to addiction and harmful side effects like seizures, hallucinations, coma, and death.

HB 1518 prohibits a business from dispensing, distributing, or selling dextromethorphan to a customer under 18 years old. Before issuing dextromethorphan over the counter, a business must require identification verifying the customer is at least 18 years old unless it can be reasonably presumed from the customer's outward appearance that the customer is at least 27 years old.

The new law specifies that it does not require businesses to maintain transaction records or store dextromethorphan in a specific location. It also does not apply to the sale of any product dispensed by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose.

Under the new law, a county or district attorney must issue a warning to a business for a first violation. After a warning, a business is liable to the state for a civil penalty of \$150 for the second violation and \$250 for each subsequent violation. It is a defense in an action brought under the law that the business made a good faith effort to comply with the law and that the customer presented an apparently valid proof of identification.

Texas joins 18 other states, including California, Florida, and New York, that have passed laws prohibiting the sale of dextromethorphan to minors. Supporters of such legislation say it strengthens the connection between pharmacies and their surrounding communities and increases awareness, particularly among the teen population, of the risks of consuming dextromethorphan in large doses. Supporters also note that minors will still be able to buy medicine to treat a cough or cold that does not contain dextromethorphan.

The U.S. House of Representatives in January 2019 introduced [H.R. 863](#), the Dextromethorphan Abuse Prevention Act, which would establish a national minimum age requirement of 18 to buy over-the-counter cough medicine containing dextromethorphan. H.R. 863 was referred to the House Committee on Energy and Commerce but has not been heard in committee.

— Alison Hern