

THE HAZING TRIANGLE: RECONCEIVING THE CRIME OF FRATERNITY HAZING

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Abstract

For decades, legislators have struggled to deter fraternity hazing. In 2017, the hazing death of a Penn State sophomore garnered national attention and prompted legislators to amend Pennsylvania's existing antihazing law. In response, the Timothy J. Piazza Antihazing Law made hazing punishable as a felony offense and instituted reporting guidelines for educational institutions across Pennsylvania.

However, despite the Piazza Law's enhanced criminal penalties against individual hazers, college administrators have pushed back against its institutional reporting requirements. Even more troubling, the Piazza Law's penalties fail to acknowledge the immense power colleges and fraternities possess in propagating and concealing hazing. Consistent findings from legal, sociological, and psychological scholarship suggest that for legislation to best deter future hazing injuries and deaths, greater criminal and civil penalties must be placed upon schools and fraternities.

Drawing on an extended case study and scholarship from numerous disciplines, this note posits that host institutions, fraternities, and individual hazers form a "triangle" of hazing culpability that has been neglected or misconstrued by legislatures, leading to laws that fail to deter fraternity hazing. To rectify this issue, this note provides a blueprint for states to restructure their antihazing statutes to impose more meaningful penalties upon fraternities and their host institutions while maintaining criminal sanctions against individual hazers.

* J.D. Candidate, The Pennsylvania State University, Penn State Law, 2021. This note is dedicated to the memory of Timothy Piazza and all other men and women who have lost their lives to hazing. They are martyrs in the ongoing quest to understand and eradicate this difficult problem. I also wish to thank Dr. Robert Farrell for his helpful comments on this note.

INTRODUCTION

Beta Theta Pi, a fraternity in existence since 1839, strives “[t]o develop men of principle for a principled life.”¹ On February 2, 2017, that commitment to principle was compromised when fraternity brothers at The Pennsylvania State University (“Penn State”)’s Alpha Upsilon chapter of Beta Theta Pi forced a Penn State pledge,² named Timothy Piazza, to consume eighteen drinks in eighty-two minutes, witnessed him fall down a flight of stairs, filmed his unconscious body for hours using cell phone cameras, and attempted to destroy evidence of their activities before ultimately summoning outside help.³

In 2018, the Pennsylvania General Assembly enacted the Timothy J. Piazza Antihazing Law (hereinafter Piazza Law or Law) in response to the incident at Beta Theta Pi.⁴ While Pennsylvania’s Piazza Law necessarily increases criminal penalties on hazing perpetrators,⁵ this note argues that the Piazza Law places criminal penalties on one-off actors that are disproportionate with the comparatively light penalties it places on universities and fraternities.⁶

This note will specifically address fraternity hazing in the collegiate setting.⁷ Part I of this note explores the interplay between fraternities, host institutions,⁸ and hazing, and provides a review of the body of scholarship and law that has arisen in response to fraternity hazing.⁹ Part II explores antihazing law’s interplay with real-world actors through an extended case study of Pennsylvania antihazing law and Timothy Piazza’s 2017 hazing-related death at Penn State.¹⁰ Part III frames the issue of fraternity hazing through what it dubs the “Hazing Triangle” and explores how this “triangle” operates in the context of the Piazza Law.¹¹ Part IV suggests an “inversion” of the Hazing Triangle that places greater civil and criminal culpability upon fraternities and host institutions.¹² Finally, Part V provides a brief summation of this note’s policy recommendations and briefly suggests a path forward for scholars and commentators tackling the issue of fraternity hazing.¹³

1. See *About Beta Theta Pi*, BETA THETA PI, <https://beta.org/about/about-beta-theta-pi/> (last visited Apr. 12, 2020).

2. This note uses the term “pledge” to mean a person attempting to gain admission into a fraternity.

3. Mike Deak, *Parents Sue Penn State Frat Brothers over Tim Piazza’s Hazing Death*, BRIDGEWATER COURIER NEWS (Feb. 5, 2019, 7:00 AM), <https://bit.ly/2wlk2yW/>.

4. See 18 PA. STAT. AND CONS. STAT. ANN. §§ 2801–11 (West 2020).

5. See *infra* Part III.C.1.

6. See *infra* Part III.

7. While this note’s analysis and recommendations are largely applicable to sorority hazing as well, this note’s specific focus is on fraternity hazing.

8. This note uses the term “host institution” to refer to a school, college, or university that houses, partners with, or officially recognizes a fraternity.

9. See *infra* Part I.

10. See *infra* Part II.

11. See *infra* Part III.

12. See *infra* Part IV.

13. See *infra* Part V.

I. BACKGROUND

This part provides a history and overview of fraternities and fraternity hazing,¹⁴ reviews the legal and sociological scholarship on antihazing law,¹⁵ and explores current contemporary antihazing statutes.¹⁶

A. *The Historical Relationship Between Fraternities and Host Institutions*

The role of Greek¹⁷ life at American host institutions has progressed in various stages since seniors at Union College formed Kappa Alpha, the first social fraternity, in 1825.¹⁸ While nineteenth-century fraternities provided independence from collegiate austerity,¹⁹ early twentieth-century fraternities emphasized prestige and the exclusion of minorities from their ranks.²⁰ The current iteration of Greek life on American college campuses is marked by media portrayals glamorizing a party lifestyle.²¹ Currently, thirteen percent of male students enrolled in host institutions full time are fraternity members²² and the total value of fraternity houses nationwide totals at least three billion dollars.²³

Because of their financial might, nationally recognized fraternities provide “tremendous financial savings” to host institutions in terms of providing student housing, which expands the total number of students host institutions may admit.²⁴ Fraternities also serve host institutions in several other important respects.²⁵ For example, fraternities provide host institutions with “distributed discipline” wherein administrators with busy agendas can maintain orderly student conduct through the use of Greek alumni and chapter presidents who (ostensibly) model appropriate behavior for students on an interpersonal level.²⁶ Also, donations from alumni involved in Greek life are higher than donations from non-Greek students.²⁷

14. See *infra* Part I.A.

15. See *infra* Part I.B.

16. See *infra* Part I.C.

17. Where the term “Greek” is used in this note, it is meant synonymously with “fraternity.”

18. See ALEXANDRA ROBBINS, *FRATERNITY: AN INSIDE LOOK AT A YEAR OF COLLEGE BOYS BECOMING MEN* 37–43 (2019).

19. See *id.* at 37–38.

20. See *id.* at 39–42.

21. See *id.* at 42–43.

22. See *id.* at 43.

23. See Caitlin Flanagan, *The Dark Power of Fraternities*, ATLANTIC (Sept. 9, 2019, 2:00 PM), <https://bit.ly/2SOmZp>.

24. See *id.*

25. See Vox, *Why Colleges Tolerate Fraternities*, YOUTUBE (Sept. 24, 2018), <https://bit.ly/2OYcsAz>.

26. See *id.*

27. See *id.* Greek alumni possess considerable financial influence over their host institutions. See, e.g., NICHOLAS L. SYRETT, *THE COMPANY HE KEEPS: A HISTORY OF WHITE COLLEGE FRATERNITIES* 161 (2009) (noting that host institutions’ financial dependence on fraternities had solidified by the close of the nineteenth century because of “purse string[]” control by fraternity alumni who largely dominated host institutions’ trustee boards); Katherine Mangan, *Who Helps and Hurts in Fighting Unruly Frats*, CHRON. HIGHER EDUC. (Aug. 30, 2017), <https://bit.ly/2AqSSZz> (“An investment executive was so enraged by his chapter’s suspension for hazing at Salisbury University that he withdrew a \$2-million donation to the institution.”).

While fraternities serve a need for student belonging, they can also “overwhelm their members with programming” and “romanticize the past.”²⁸ Political lobbying by fraternities has led Congress to include freedom-of-association clauses in higher education bills to secure fraternities’ place on campuses.²⁹ At least one commentator has suggested that this causes host institutions to operate from a weakened position vis-à-vis fraternities.³⁰ In the latter twentieth century, the large-scale rejection of *in loco parentis*³¹ liability for colleges and the enactment of the National Minimum Drinking Age Act³² triggered a social shift toward private partying that was an ideal situation for fraternities seeking to hide drinking activities from university and public scrutiny.³³ However, rising insurance costs resulting from numerous lawsuits in the 1980s caused many fraternities to self-insure under what is now dubbed the Fraternal Information and Programming Group (the Group).³⁴ Over thirty fraternities are members of the Group, and many fraternities who are not Group members self-insure under analogous schemes.³⁵ Self-insured fraternities shift financial responsibility onto their undergraduate members, whose families sometimes subsidize the venture through the families’ own homeowner’s insurance policies.³⁶

B. *Fraternity Hazing and Antihazing Law*

While definitions vary, hazing can be characterized as “any action taken or any situation created intentionally that causes embarrassment, harassment or ridicule and risks emotional and/or physical harm to members of a group or team, whether new or not, regardless of the person’s willingness to participate.”³⁷ Over 250 hazing deaths have occurred at American schools since

28. See ROBBINS, *supra* note 18, at 49 (noting that undergraduate chapter members “binge-drink and haze, all to make it like it *was* [and] real life imitates the cinematic portrayals, too. It’s a cycle that feeds on itself”) (emphasis added).

29. See Flanagan, *supra* note 23.

30. See *id.*

31. See *In Loco Parentis*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“Of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent.”).

32. See 23 U.S.C.A. § 158 (West 2020).

33. See Flanagan, *supra* note 23; see also *Bradshaw v. Rawlings*, 612 F.2d 135, 138 (3d Cir. 1979) (“[T]he modern American college is not an insurer of the safety of its students . . . [T]he modern college student [is] an adult . . . capable of protecting [his] own self-interests.”). For a critique of the shift away from *in loco parentis* liability for fraternities, see Gregory E. Rutledge, *Hell Night Hath No Fury Like A Pledge Scorned ... and Injured: Hazing Litigation in U.S. Colleges and Universities*, 25 J.C. & U.L. 361, 378 (1998) (noting that despite universities “almost becom[ing] immune to liability for injuries to their students, even when the injury is on campus,” fraternities have faced increased litigation since the law’s shift from host-institutional liability).

34. See Flanagan, *supra* note 23 (noting that, according to the group’s policy manual, either a third-party vendor or group members themselves must supply alcohol at fraternity parties to circumvent social host and dram shop theories of liability).

35. See *id.*

36. See JOHN HECHINGER, *TRUE GENTLEMEN: THE BROKEN PLEDGE OF AMERICA’S FRATERNITIES* 31–33 (2017).

37. *What Hazing Looks Like*, HAZINGPREVENTION.ORG, <https://bit.ly/2SLL8Xn> (last visited Apr. 12, 2020).

the 1800s,³⁸ and at least one person has died in connection with fraternity hazing each year for the past two decades.³⁹ Almost all hazing deaths since 1970 are attributable to fraternity or sorority incidents.⁴⁰ Seventy-three percent of fraternity and sorority members report that they have experienced hazing.⁴¹ Although a nexus exists between Greek life and excessive drinking,⁴² forced alcohol consumption is by no means the sole reason why which fraternity hazing can or does occur.⁴³

Hazing continues at American fraternities each year “through a victim-to-perpetrator cycle” in which “students convince themselves that . . . the hazing was itself beneficial.”⁴⁴ Although almost all fraternities now promulgate written antihazing policies,⁴⁵ belief in hazing’s positive role nonetheless permeates fraternity culture.⁴⁶ Fraternities often place teenage members in charge of

38. See Chris Quintana & Max Cohen, *Young Men Have Died in Fraternities Every Year for 2 Decades, But Frats Are Slow to Change*, USA TODAY (Sept. 5, 2019, 1:40 PM), <https://bit.ly/37sYNbm>.

39. See *id.* Hazing is hardly the sole liability facing fraternities, however. See Flanagan, *supra* note 23 (noting, inter alia, that twenty-three percent of liability claims against fraternities involved assault and battery, and fifteen percent of claims involved sexual assault).

40. See S. Brian Joyce & Jenny Nirh, *Fraternity and Sorority Hazing*, in CRITICAL PERSPECTIVES ON HAZING: A GUIDE TO DISRUPTING HAZING CULTURE 52, 55 (Cristóbal Salinas Jr. & Michelle L. Boettcher eds., 2018).

41. See *id.*

42. See Michael John James Kuzmich, Comment, *In Vino Mortuus: Fraternal Hazing and Alcohol-Related Deaths*, 31 MCGEORGE L. REV. 1087, 1093 (2000).

43. Although most fraternity hazing deaths from 1970 to 2017 involved alcohol, no alcohol-related hazing deaths occurred until 1940, largely because chapters did not use alcohol “as a litmus test of new member readiness” until this time. See Hank Nuwer, *Hazing in Fraternities and Sororities: A Primer*, in HAZING: DESTROYING YOUNG LIVES 24, 34 (Hank Nuwer ed., 2018). Further, hazing persists in Black Greek organizations, see Paul Ruffins, *The Persistent Madness of Greek Hazing*, BLACK ISSUES IN HIGHER EDUC., June 25, 1998, at 14, despite evidence that Black college students tend to drink less. See Walter M. Kimbrough, *The Hazing Problem at Black Fraternities*, ATLANTIC (Mar. 17, 2014), <https://www.theatlantic.com/education/archive/2014/03/the-hazing-problem-at-black-fraternities/284452/>. Additionally, one meta-analysis of drinking among fraternity members concluded that “alcohol interventions show limited efficacy in reducing consumption and problems among fraternity and sorority members.” See Lori A.J. Scott-Sheldon et al., *Alcohol Interventions for Greek Letter Organizations: A Systematic Review and Meta-Analysis, 1987 to 2014*, 35 HEALTH PSYCHOL. 670, 670 (2016).

44. See Brandon W. Chamberlin, Comment, *“Am I My Brother’s Keeper?”: Reforming Criminal Hazing Laws Based on Assumption of Care*, 63 EMORY L.J. 925, 962 (2014) (explaining that hazing victims tend to become perpetrators themselves); see also ROBBINS, *supra* note 18, at 123 (attributing hazing to a need for group survival); Jamie Ball, *This Will Go Down on Your Permanent Record (But We’ll Never Tell): How the Federal Educational Rights and Privacy Act May Help Colleges and Universities Keep Hazing a Secret*, 33 SW. U. L. REV. 477, 481 (2004) (noting that hazing “capitalizes on the dangerous intersection of vulnerability and daring that is characteristic of college-aged men and women.”); Stephen Sweet, *Understanding Fraternity Hazing: Insights from Symbolic Interactionist Theory*, 40 J.C. STUDENT DEV. 355, 362 (concluding that hazers believe their “abuse of recruits is a desirable part of entry” into fraternities).

45. See David W. Bianchi & Michael E. Levine, *Hazing Horrors: Who’s Accountable?*, TRIAL, June 2019, at 53, 55.

46. In an editorial for the *Philadelphia Tribune*, a lawyer and former fraternity member extolled the use of fraternity hazing provided that it does not involve “verbal and physical abuse.” See Michael Coard, *Can Greek Hazing Be a Good Thing?*, PHILA. TRIB., Sept. 28, 2017, at 7A (“[I]f you ask me if I was ever hazed when I pledged, I would say no – even if I was.”). Other former fraternity members echo this sentiment. See ROBBINS, *supra* note 18, at 119–20 (quoting, anonymously, a former national fraternity officer whose fraternity hazed a member that ultimately died: “Hazing

hazing, leading to “arbitrary and sometimes dangerous power and punishments.”⁴⁷ Additionally, a credible body of evidence suggests that during fraternities’ early history, host institutions not only tolerated hazing, but in fact *encouraged* fraternities to haze.⁴⁸ In 1915, the University of Illinois’s dean of men declared that fraternity hazing was a form of “horse-play” that “determine[d] what a man possesses, whether he has a streak of ‘yellow’ or whether he has stamina.”⁴⁹ Early twentieth-century child development specialists echoed educators’ attitudes on hazing, declaring that fraternity hazing was “a natural, even beneficial, part of a boy’s growing up.”⁵⁰ Psychologist G. Stanley Hall wrote in a 1904 book on adolescence that Greek hazing freed young men from the “petticoat control” of women.⁵¹

Recent scholarship suggests that for policy makers to reduce student hazing deaths, they must first grapple with hazing’s social and psychological catalysts.⁵² The psychological underpinnings of hazing activity on the part of pledges and fraternity members include “normalcy bias,”⁵³ the “bandwagon effect,”⁵⁴ and the “normalization of deviance.”⁵⁵ In addition, the “groupthink”

works . . . hazing creates an unusually strong bond between people . . . and the toughness also creates the illusion of reaching a worthwhile goal.”).

47. See ROBBINS, *supra* note 18, at 77.

48. See Hank Nuwer, *How Schools May Have Facilitated and Operationalized Hazing: An Interview with Peter F. Lake*, in HAZING: DESTROYING YOUNG LIVES, *supra* note 43, at 205, 205 (noting that host institutions provided spaces architecturally designed as secluded “hazing spaces,” and that clear evidence shows that some institutions “operationalized” hazing); Cristóbal Salinas Jr. & Michelle L. Boettcher, *History and Definition of Hazing*, in CRITICAL PERSPECTIVES ON HAZING: A GUIDE TO DISRUPTING HAZING CULTURE, *supra* note 40, at 3, 7 (noting that hazing was once a graduation requirement in higher education because students “needed to be properly groomed.”). A present-day example of this institutional recognition of hazing is Penn State Altoona, who, on its web site, notes that paddles “are often seen as a gift in the world of fraternities” and are often given as an “honor.” See *Fraternity and Sorority Life Terminology*, PENN STATE ALTOONA, <https://altoona.psu.edu/offices-divisions/student-affairs/student-civic-engagement/be-involved/fraternity-sorority-life/terminology> (last visited May 30, 2020). In the same informational article, the school acknowledges that fraternity “initiation ceremon[ies]” are secret. See *id.*

49. See SYRETT, *supra* note 27, at 152.

50. See HECHINGER, *supra* note 36, at 52.

51. See *id.* at 53.

52. See, e.g., Gregory S. Parks & Sarah J. Spangenburg, *Hazing in “White” Sororities: Explanations at the Organizational-Level*, 30 HASTINGS WOMEN’S L.J. 55, 117–18 (2019).

53. See *id.* at 97–98 (defining “normalcy bias” as “a mental state of denial that people enter when they are faced with a disaster [which] leads individuals to inaccurately reorder information to create a more optimistic outcome”); see also Bianchi & Levine, *supra* note 45, at 52 (noting that peer pressure in hazing cases causes pledges to do things that they would “never do outside of a pledging event.”).

54. See Parks & Spangenburg, *supra* note 52, at 101 (defining the “bandwagon effect” as a situation where individuals tend to make decisions based on a larger group’s social influence); see also Gregory S. Parks & Tiffany F. Southerland, *The Psychology and Law of Hazing Consent*, 97 MARQ. L. REV. 1, 53 (2013) (noting that “pledges may perceive that if they stick it out for another day . . . they will finally be members” and that this belief “may be particularly pronounced in groups, like pledge classes, where the individual’s identity is submerged for the sake of the group’s identity . . .”); Jared S. Sunshine, *A Lazarus Taxon in South Carolina: A Natural History of National Fraternities’ Respondeat Superior Liability for Hazing*, 5 CHARLOTTE L. REV. 79, 137 (2014) (noting that “the pledging process is like a contract of adhesion—you take it or leave it—and leaving it may be hard for pledges who have invested much of their time and themselves in their fraternity-to-be.”).

theory of social psychology, which attempts to explain how the psychological need for group cohesion and consensus stifles individual dissent,⁵⁶ has been applied to the fraternity hazing context by hazing researcher Hank Nuwer.⁵⁷ Nuwer posits that “Groupthink” causes individual pledges to engage in acts they would normally dismiss as deplorable solely at the prospect of obtaining a fraternity’s acceptance.⁵⁸ Another researcher, James C. Arnold, has applied research on cult psychology to fraternities and concluded that “chapters that haze use cult-like systematic manipulation . . . to effect psychological and social influence.”⁵⁹ Researcher Stephen Sweet’s social-psychological analysis of fraternity hazing concluded that hazers “manipulate pledges’ definitions of self in a conscious manner” during the pledge process.⁶⁰ Echoing these commentators, courts deciding hazing cases have noted the inherent power inequities between fraternities and their members.⁶¹

In light of these social and psychological factors,⁶² other scholars have expressed concern that statutory responses may be ineffective deterrents to fraternity hazing when aimed at the fraternity members themselves.⁶³ Scholarly concern over ineffective statutory response⁶⁴ is magnified by the concern that “hazing laws will drive even innocuous initiation activities further underground.”⁶⁵ In one qualitative study analyzing college faculty attitudes

55. See Parks & Spangenburg, *supra* note 52, at 113 (noting that “[c]ontinued deviance within an organization becomes normalized when there is persistence of the deviance within the organization’s culture and policies”).

56. See IRVING JANIS, *GROUPTHINK* 9 (1982).

57. Nuwer dubs his theoretical adaptation “Greekthink.” See Nuwer, *supra* note 43, at 27–28.

58. See *id.* at 27.

59. See *id.* at 28; see also Justin M. Burns, Comment, *Covering Up an Infection with A Bandage: A Call to Action to Address Flaws in Ohio’s Anti-Hazing Legislation*, 48 AKRON L. REV. 91, 117 (2015) (“[H]azing actions target a specific group of individuals whom the group demeans as ‘not good enough’ to be part of a group”); Hank Nuwer, *Greek Letters Don’t Justify Cult-Like Hazing of Pledges*, CHRON. HIGHER EDUC., Nov. 26, 1999, at B7 (“Cut off from the day-to-day life of the college, fraternity and sorority recruits develop . . . ‘enforced dependency.’”).

60. Sweet, *supra* note 44, at 359.

61. See, e.g., *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 507 N.E.2d 1193, 1198 (Ill. App. Ct. 1987) (noting that “The social pressure that exists once a college or university student has pledged into a fraternal organization is so great that compliance with initiation requirements places him or her in a position of acting in a coerced manner”); *Nisbet v. Butcher*, 949 S.W.2d 111, 116 (Mo. Ct. App. 1997) (noting that “If great social pressure was applied [to the pledge] to comply with the membership ‘qualifications’ of the [[organization], [the plaintiff] may have been blinded to the danger”).

62. See *supra* notes 52–61 and accompanying text.

63. See, e.g., Gregory S. Parks et al., *Belief, Truth, and Positive Organizational Deviance*, 56 HOW. L.J. 399, 407 (2013) (“[W]here law may serve as a norm-orienting factor in the lives of individuals, it may play a less significant role in shaping organization members’ behavior — given organizational beliefs, culture, and needs.”).

64. See, e.g., Skylar Reese Croy, *When the Law Makes the Lords of Discipline Actual Lords: Lessons on Writing Criminal Hazing Statutes*, 39 U. LA VERNE L. REV. 224, 253–54 (2018) (suggesting that “general criminal laws and hazing laws seem to have done little to deter hazing” because ambiguity in hazing statutes has increased prosecutorial discretion in pressing hazing charges).

65. See Chamberlin, *supra* note 44, at 958 (noting, as an example, that reports of hazing have increased in black Greek-letter organizations since a 1990 pledging ban); see also Bryce E. Johnson, *Please Tell Me You Caught That on Video! Social Media’s Role in the Hazing Problem and Common Sense Solutions to Reduce the Prevalence of Hazing*, 39 U. LA VERNE L. REV. 62, 76 (2017) (noting that

about felony antihazing statutes, multiple study participants “felt very strongly that felony hazing laws were not effective at curtailing hazing activity at their institutions,” while only two of six found the penalty effective.⁶⁶ One such faculty member elaborated:

I don’t think it’s been effective. Students do hear . . . through the national news . . . about felony offenses involving hazing, but I don’t think at my particular institution it’s necessarily hit home. I don’t think students necessarily understand the gravity of the hazing that they’re engaged in, and the potential repercussions from the illegal activity they’re engaged in.⁶⁷

Student observations from a qualitative study at Alfred University uncovered similar skepticism toward the efficacy of antihazing policy.⁶⁸ Finally, although most hazing scholarship focuses on state-law solutions, a handful of commentators have suggested that Congress can or should enact federal antihazing legislation.⁶⁹

C. *Criminal Antihazing Statutes*

Currently, forty-four states and the District of Columbia criminalize hazing in some form,⁷⁰ but six states have not codified hazing into their criminal statutes.⁷¹ Only twelve states classify hazing as a felony.⁷² Most existing antihazing statutes criminalize hazing as a misdemeanor resulting in a fine.⁷³

antihazing policies should target prevention, not punishment, because individual chapter regulation “drives hazing underground”).

66. See Damon C. Richardson, *University Officials’ Perceptions About Felony Hazing Laws* (2014) (unpublished Ph.D. dissertation, Barry University) (on file with author).

67. See *id.*

68. See Nicole Somers, *College and University Liability for the Dangerous Yet Time-Honored Tradition of Hazing in Fraternities and Student Athletics*, 33 J.C. & U.L. 653, 655 (2007). The “influential” study quoted a student who did not “see any possible or realistic method in which to limit, let alone eliminate,” hazing. See *id.* at 673, 655. The efficacy of statutory solutions notwithstanding, fraternities themselves may be able to effect positive behavioral changes in students through behavioral modeling. See ROBBINS, *supra* note 18, at 292 (suggesting that traditional notions of masculinity play a role in hazing and that “better male-specific resources . . . could help fraternity brothers understand why they feel pressured and present more varied representations of gender roles”). Robbins also cites a 1996 study which found that student behavior shifted depending on whether students attended parties at “high-risk” or “low-risk” fraternities. See *id.* at 82. The 1996 study suggested that fraternities might “solve entrenched, long-term campus problems that top-down policy changes have failed to fix” by establishing new norms. See *id.*

69. See Devon M. Alvarez, *Death by Hazing: Should There Be a Federal Law Against Fraternity and Sorority Hazing?*, J. MULTIDISCIPLINARY RES., Summer 2015, at 43, 58–59; Darryll M. Halcomb Lewis, *The Criminalization of Fraternity, Non-Fraternity and Non-Collegiate Hazing*, 61 MISS. L.J. 111, 151–53 (1991); Joshua A. Sussberg, Note, *Shattered Dreams: Hazing in College Athletics*, 24 CARDOZO L. REV. 1421, 1490.

70. See Nuwer, *supra* note 43, at 24. For a “statutory appendix” of antihazing laws by state, see Chamberlin, *supra* note 44, at 974.

71. See *States with Anti-Hazing Laws*, STOPHAZING.ORG, <http://www.stophazing.org/states-with-anti-hazing-laws/> (noting that Alaska, Hawaii, Montana, New Mexico, South Dakota, and Wyoming currently do not have hazing laws).

72. See Madeline Holcombe, *3 Fraternity Brothers Sentenced to Jail in Penn State Hazing Death*, CNN (Apr. 3, 2019, 4:22 AM), <https://cnn.it/37u7ZMv>.

73. See A. Chris Gajilan, *Greek Life More Popular than Ever, Despite Recent Controversy and Deaths*, CNN (Dec. 8, 2018, 12:16 AM), <https://cnn.it/2wlkkG2>.

Despite the increase in state statutes targeting fraternity hazing, reported hazing deaths have remained steady for the past forty years.⁷⁴

Additionally, fraternities are rarely prosecuted in connection with student deaths.⁷⁵ Despite fraternity hazing's long history, the first criminal charge against a fraternity for a hazing-related death did not occur until 1998, when Phi Gamma Delta was indicted by a Boston grand jury for criminal manslaughter and misdemeanor hazing in connection with the death of an eighteen-year-old pledge at the fraternity's Massachusetts Institute of Technology chapter.⁷⁶ Notably, the District Attorney prosecuting Phi Gamma Delta did not pursue individual charges against chapter members, claiming that "the traditions and actions of the fraternity as a whole . . . were responsible The individuals claimed to be acting more as a group in following the spirit and traditions of the fraternity house."⁷⁷ No defendant appeared in court on the chapter's behalf, the chapter disbanded, and local police retained a warrant in case the chapter ever attempted to reorganize.⁷⁸ Among the forty-four states that have sought to eradicate hazing is Pennsylvania, where hazing persists despite having been outlawed for decades.⁷⁹

II. CASE STUDY: ANTIHAZING LEGISLATION IN PENNSYLVANIA

This part explores Pennsylvania's antihazing law before and after a major hazing incident within one of its public host institutions, Penn State.⁸⁰ In so doing, this part seeks to place the existing commentary on antihazing policy⁸¹ into a framework useful for extended analysis.

A. 1987–2017: Pennsylvania's Initial Antihazing Statute and Incidents

Pennsylvania's first antihazing statute took effect in 1987.⁸² Title 24, section 5351 of the Pennsylvania Consolidated Statutes classified hazing as a

74. See Chamberlin, *supra* note 44, at 955; see also *Hazing Deaths Database: Unofficial Hazing Clearinghouse & Watchdog Site*, HANKNUWER.COM, <http://www.hanknuwer.com/hazingdeaths.html> (last updated Apr. 18, 2020) (listing the college students who have died due to hazing, initiation, and pledging-related activities since 1838). Nuwer's database of hazing-related deaths has become an oft-cited source among hazing experts because the federal government does not track hazing incidents. See Katie Reilly, *College Students Keep Dying Because of Fraternity Hazing. Why Is It So Hard to Stop?*, TIME (Oct. 11, 2017), <https://bit.ly/37w5mtE>.

75. See R. Brian Crow & Colleen McGlone, *Hazing and the Law and Litigation: What You Need to Know*, in HAZING: DESTROYING YOUNG LIVES, *supra* note 43, at 299, 299 (noting that criminal prosecutions of hazing occur infrequently); see also Kuzmich, *supra* note 42, at 1123 (noting that the first hazing death-related criminal charge against a fraternity did not occur until the 1990s).

76. See Kuzmich, *supra* note 42, at 1123.

77. See *id.* at 1124.

78. See *id.* at 1124–25.

79. See *infra* Part II.

80. See *infra* Part II.A, II.B, II.C, II.D.

81. See *supra* Part I.A and B.

82. See 24 PA. CONS. STAT. §§ 5351–54 (1986).

third-degree misdemeanor.⁸³ Section 5352 defined “hazing” as “[a]ny action or situation which recklessly or intentionally endangers the mental or physical health or safety of a student . . . for the purpose of initiation [into] . . . any organization.”⁸⁴ Section 5354 required institutions to create and post written antihazing policies on a publicly accessible website.⁸⁵ It also required institutions to enforce policies through penalties that, though enumerated through examples, were left to the discretion of the institution.⁸⁶ A 2016 amendment to Pennsylvania’s antihazing statute broadened the statute’s reach from “student[s]” to “person[s]” and added secondary schools to its protective ambit.⁸⁷

Only a handful of Pennsylvania judicial opinions found occasion to examine the original statute’s text. In *Kenner v. Kappa Alpha Psi Fraternity, Inc.*,⁸⁸ the Pennsylvania Superior Court conducted a duty-of-care analysis through the use of a factor-balancing test⁸⁹ to conclude that a fraternity’s members owed a duty to the fraternity’s pledges to protect the pledges from harm.⁹⁰ Additionally, in *Commonwealth v. Pi Delta Psi, Inc.*,⁹¹ the Pennsylvania Superior Court reversed a trial court decision that barred a criminally liable national fraternity from conducting business in Pennsylvania for ten years under Pennsylvania’s then-current antihazing statute.⁹² As rationale for its decision, the Superior Court cited a lack of legislative authorization for the fraternity’s statewide ban,⁹³ as well as the fraternity’s lack of amenability to statewide “excommunicat[ion],” because of its status as a corporation.⁹⁴

In the years preceding Timothy Piazza’s death at Beta Theta Pi,⁹⁵ hazing was far from unknown at Penn State.⁹⁶ In 2009, the Piazza scandal was foreshadowed when freshman Joseph Dado, whose blood alcohol level was

83. *See id.* § 5351. In Pennsylvania, third-degree misdemeanors are punishable by a term of imprisonment not to exceed one year. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 106(b)(8) (West 2020).

84. *See* 24 PA. CONS. STAT. § 5352.

85. *See id.* § 5354(a)(3).

86. *See id.* § 5354(b)(2).

87. *See* 2016 Pa. Legis. Serv. 3016. (West).

88. 808 A.2d 178 (Pa. Super. Ct. 2002)

89. *See id.* at 182 (noting that factors indicating a duty of care include (1) the relationship between the parties, (2) the social utility of an actor’s conduct, (3) the foreseeable nature of the incurred harm and nature of the risk imposed, (4) the consequences of imposing the duty upon the actor, and (5) the overall public interest in a proposed solution).

90. *See id.* at 183.

91. 211 A.3d 875 (Pa. Super. Ct. 2019), *appeal denied*, 221 A.3d 644 (Pa. 2019).

92. *See id.* at 892.

93. *See id.*

94. *See id.* (citing *Case of Sutton’s Hospital*, 77 Eng. Rep. 960 (K.B. 1612)). The defendant, Pi Delta Psi, had a preestablished antihazing policy, developed “at least in part” in response to insurance needs. *See* Timothy M. Burke, *Guilty! A National Fraternity Criminally Convicted*, FRATERNAL L., Nov. 2017, at 1, 1–3, <https://bit.ly/2wl05Ix>.

95. *See* Deak, *supra* note 3.

96. *See* Camila Domonoske, *Grand Jury Report on Penn State Hazing Finds ‘Indignities and Depravities’*, NPR (Dec. 15, 2017, 3:15 PM), <https://n.pr/2SsTowx>; *State College Should Be Cringing at Being Named ‘Pennsylvania’s Drunkest City,’* LANCASTERONLINE (Dec. 4, 2017), <https://bit.ly/39IX2s9>.

double the Commonwealth's legal limit of 0.08%,⁹⁷ fell to his death down a campus stairwell during a fraternity party.⁹⁸ In 2013, a Penn State Phi Sigma Kappa pledge was held at gunpoint, forced to drink excessively, and given the choice between snorting cocaine or enduring videotaped sodomy.⁹⁹ In 2014 and 2015, two parents of Penn State students warned school officials about hazing events.¹⁰⁰ The parents claimed the school ignored the complaints.¹⁰¹ In 2015, a Kappa Delta Rho pledge, who claimed that Penn State ignored his complaints of fraternal hazing, filed a civil suit against Penn State.¹⁰² A judge subsequently dismissed the pledge's claims¹⁰³ despite the pledge's allegations of "cigarette burns to his chest, forced drinking of hard liquor until he vomited[,] and force[d] drinking from a bucket filled with a concoction of hot sauce, liquor, cat food, urine and other liquid."¹⁰⁴ Finally, in 2017, Timothy Piazza died during a pledging incident which garnered nationwide media attention.¹⁰⁵

B. 2017: The Hazing Death of Timothy Piazza and Its Aftermath

In 2017, nineteen-year-old Timothy J. Piazza was a sophomore at Penn State.¹⁰⁶ On February 2, 2017, Piazza attended a "Bid Acceptance Night" at Beta Theta Pi's Penn State chapter, Alpha Upsilon.¹⁰⁷ The fraternity had been a fixture at Penn State since 1888 and was the school's second-oldest fraternity.¹⁰⁸ However, in the seven years immediately preceding Piazza's death, 23 of Beta Theta Pi's 144 chapters nationwide were confirmed to have hazed pledges.¹⁰⁹ Upon Piazza's arrival at the fraternity house on February 2, fraternity members led Piazza and other pledges to the house's basement.¹¹⁰ There, fraternity members required the pledges to consume a bottle of vodka amongst themselves.¹¹¹ After consuming the bottle together, pledge leaders directed

97. See *State College Should Be Cringing at Being Named "Pennsylvania's Drunkiest City," supra* note 96.

98. See *id.*

99. See Domonoske, *supra* note 96.

100. See Richard Pérez Pena & Sheryl Gay Stolberg, *Prosecutors Taking Tougher Stance in Fraternity Hazing Deaths*, N.Y. TIMES (May 8, 2017), <https://nyti.ms/39AikIc>.

101. See *id.*

102. See Geoff Rushton, *Judge Dismisses Hazing Claims Against Penn State in Fraternity Case*, STATECOLLEGE.COM (Dec. 13, 2016, 3:27 PM), <https://bit.ly/2OYqIJD>.

103. See *id.*

104. See Domonoske, *supra* note 96.

105. See *infra* Part II.B.

106. See Bret Pallotto, *It's Been 2 Years Since Tim Piazza's Death at Penn State. Here's What's Happened Since*, CTR. DAILY TIMES (Feb. 2, 2019, 3:50 PM), <https://bit.ly/39Drwvm>.

107. See *Piazza v. Young*, 403 F. Supp. 3d 421, 427 (M.D. Pa. 2019).

108. See Benjamin Wallace, *How a Fatal Frat Hazing Became Penn State's Latest Campus Crisis*, VANITY FAIR (Oct. 3, 2017), <https://bit.ly/2uF9cDx>.

109. See ROBBINS, *supra* note 18, at 126. Similarly, Beta Theta Pi's Penn State chapter had gained a troublesome reputation. See Caitlyn Flanagan, *Death at a Penn State Fraternity*, ATLANTIC (Nov. 2017), <https://www.theatlantic.com/magazine/archive/2017/11/a-death-at-penn-state/540657/> (A simple trip through the archives of *The Daily Collegian* . . . revealed [that] the Alpha Upsilon chapter . . . was an outfit in which a warm day might bring the sight of a brother sitting, with his pants pulled down, on the edge of a balcony, while a pledge stood on the ground below, his hands raised as though to catch the other man's feces."). The national leaders of Beta Theta Pi temporarily shut down the Penn State chapter in 2009. See *id.*

110. See *Piazza*, 403 F. Supp. 3d at 427.

111. See *id.*

Piazza and other fraternity hopefuls to participate in “the Gauntlet.”¹¹² During the Gauntlet, fraternity members required pledges to quickly finish alcoholic drinks laid out on a series of tables.¹¹³

In total, Piazza consumed eighteen alcoholic drinks in the span of eighty-two minutes, causing his blood alcohol concentration to rise to between 0.28 and 0.36%.¹¹⁴ Witnesses described Piazza as “intoxicated” and “stuporous,” and he was helped to a couch on the fraternity house’s first floor by fraternity members.¹¹⁵ At 11:20 p.m., Piazza got up from the couch, walked across the room, and fell down a flight of stairs leading to the fraternity house’s basement.¹¹⁶ The fall rendered Piazza unconscious.¹¹⁷ While unconscious, Piazza vomited several times.¹¹⁸ Brendan Young, the fraternity’s chapter president, acknowledged the fraternity’s potential liability via text messages to fellow members.¹¹⁹ Other fraternity members attempted to forcibly rouse Piazza into consciousness, and several fraternity members discouraged those present from calling 911.¹²⁰ Ultimately, an unidentified fraternity member contacted emergency help more than eleven hours after Piazza’s initial fall.¹²¹ Fraternity members were later found to have made attempts to cover their actions by sending text messages to others about cleaning evidence, erasing surveillance camera footage, and eliminating text message evidence from Piazza’s phone.¹²² On February 4, 2017, Timothy Piazza died from complications of his injuries, which included a skull fracture and brain hemorrhaging.¹²³

In the incident’s wake, Penn State authorities disciplined thirteen individual members of the school’s Beta Theta Pi chapter.¹²⁴ Five were expelled and six were suspended from the university.¹²⁵ Several Beta Theta Pi members withdrew from Penn State amid the prospect of university discipline.¹²⁶ Pennsylvania prosecutors criminally charged twenty-eight of Beta Theta Pi’s Penn State chapter members, with seventeen of the members entering guilty pleas.¹²⁷ The chapter members who were eventually convicted received jail

112. *See id.*

113. *See id.*

114. *See Deak, supra* note 3. Blood alcohol concentrations between 0.35 and 0.40 can cause loss of consciousness and coma. *See What Is BAC?*, STAN. U. OFF. ALCOHOL POL’Y & EDUC., <https://stanford.io/2HsZNI2> (noting that (last visited Apr. 12, 2020)).

115. *Piazza*, 403 F. Supp. 3d at 428.

116. *See id.*

117. *See id.*

118. *See id.* at 429.

119. *See Deak, supra* note 3 (“Young had previously sent a message to another member, ‘Make sure the pledges clean the basement and get rid of any evidence of alcohol.’”).

120. *See id.*

121. *See Piazza*, 403 F. Supp. 3d at 430.

122. *See id.*

123. *See id.* at 430–31.

124. *See Susan Snyder, PSU Releases Report on Hazing, First One Under New Tim Piazza Law, INQUIRER* (Jan. 15, 2019, 6:31 PM), <https://bit.ly/3bCSWDw>.

125. *See id.*

126. *See id.*

127. *See Pallotto, supra* note 106.

sentences of less than one year each.¹²⁸ Within two weeks of Piazza's death, Penn State revoked recognition of Beta Theta Pi for a minimum of five years.¹²⁹ The revocation was later converted into a permanent ban.¹³⁰ A grand jury presentment released in December 2017 recommended numerous policy changes, including harsher hazing penalties by host institutions, greater state funding for Greek life offices, and legal reforms.¹³¹ The presentment found Penn State's hazing problem to be "rampant and pervasive" and criticized the university's failure to revoke fraternal recognition as a regulatory measure.¹³²

In 2019, Timothy Piazza's parents filed a civil action in the Middle District of Pennsylvania against various Beta Theta Pi members.¹³³ The complaint alleged negligence, negligence per se, civil conspiracy, battery, and intentional infliction of emotional distress.¹³⁴ The defendants filed a motion to dismiss all causes of action alleged in the complaint.¹³⁵ In construing Pennsylvania's then-current antihazing law,¹³⁶ the Middle District of Pennsylvania denied the defendants' motion to dismiss on counts of negligence per se,¹³⁷ civil conspiracy,¹³⁸ and battery¹³⁹ but granted a motion to dismiss the claim for intentional infliction of emotional distress.¹⁴⁰ In a separate proceeding, other fraternity members attempted to challenge the constitutionality of Pennsylvania's then-current hazing law on vagueness grounds.¹⁴¹ Both the trial court and the appellate court did not ultimately rule on the defendants' constitutional challenge.¹⁴²

C. 2018: *The Timothy J. Piazza Antihazing Law*

128. See Aaron Katersky & Morgan Winsor, *4 Penn State Fraternity Brothers Sentenced for Pledge's Hazing Death*, ABC NEWS (Apr. 3, 2019, 6:52 AM), <https://abcn.ws/39BXrfj>.

129. See Wallace, *supra* note 108.

130. See Eric Italia, *Pennsylvania Fraternities Write Letter to State Legislators Supporting "Tim's Law,"* COED (Apr. 6, 2018, 4:07 PM), <https://bit.ly/2UX2SSm>.

131. See Steve Connelly, *Full Grand Jury Report in Penn State Greek Life Investigation*, ONWARD ST. (Dec. 15, 2017, 10:45 AM), <https://bit.ly/39Feygy>.

132. See Min Xian, *Grand Jury Says Hazing "Rampant and Pervasive" at Penn State*, WPSU (Dec. 15, 2017), <https://bit.ly/2uEUAnG>.

133. See *Piazza v. Young*, 403 F. Supp. 3d 421, 431 (M.D. Pa. 2019).

134. See *id.* at 431-42.

135. See *id.* at 431.

136. Pennsylvania's former antihazing law was codified at 24 PA. CONS. STAT. §§ 5351-54 (1986).

137. See *Piazza*, 403 F. Supp. 3d at 439 (noting that "if criminal statutes are to be used when determining the existence of a duty, this Court cannot ignore the anti-hazing statute in effect at the time of Defendants' conduct, which criminalized the 'forced consumption of any . . . liquor, drug[,] or other substance . . . which could adversely affect the physical health and safety of the individual'"). The Middle District's ruling on negligence per se in the context of hazing was something of an aberration. See Kuzmich, *supra* note 42, at 1126 (observing that while the presence of state hazing statutes has been helpful to courts' analyses, jurisdictions with hazing statutes have nonetheless been hesitant to apply principles of negligence per se in hazing cases).

138. See *Piazza*, 403 F. Supp. 3d at 441.

139. See *id.* at 442.

140. See *id.* at 443.

141. See *Commonwealth v. Casey*, 218 A.3d 429, 430 (Pa. Super. Ct. 2019).

142. See *id.* Although the plaintiffs claimed that the statute "create[d] an unconstitutional mandatory presumption in Pennsylvania's favor and that the statute [was] vague and overbroad," the Pennsylvania Superior Court rejected this claim on narrower procedural grounds. *Id.*

Several months after Timothy Piazza's death, Pennsylvania's then-senate majority leader, Jake Corman, sponsored a bill¹⁴³ designed to amend Pennsylvania's existing antihazing statute.¹⁴⁴ Timothy Piazza's parents and their attorney lent public support to the bill.¹⁴⁵ Penn State's Interfraternity Council, which governs the university's Greek life,¹⁴⁶ supported the bill with a letter to state legislators that advocated tougher legal penalties for hazing perpetrators.¹⁴⁷ The Pennsylvania State Senate passed the bill on April 18, 2018, by a vote of 49-0.¹⁴⁸ In October 2018, after unanimous passage in both chambers of the Pennsylvania legislature, Pennsylvania's then-governor signed the bill into law.¹⁴⁹

Legislative history for the Piazza Law is scant.¹⁵⁰ In the news media, Senator Corman emphasized two legislative goals for the Piazza Law: preventing death or serious injury, and creating "a model for changing anti-hazing laws nationwide."¹⁵¹ During a session of the Pennsylvania Senate's General Assembly, Senator Corman cited the bill's goal as providing "proper deterrence" for hazing.¹⁵² In his brief remarks, Senator Corman expounded on the bill's proposed amendments to the state's existing antihazing law:

[Timothy Piazza's parents] have channeled their pain and anguish . . . to make sure that other parents, such as myself or anyone else who is sending a child to college, will never have to go through what they have gone through. . . . We do have laws on the books [but] they are very difficult for the prosecutors around the State to prosecute because they are inflexible, meaning no matter what the type of incident that may have happened, whether it be fairly minor or something more significant, prosecutors are limited to a Misdemeanor 3, and so it may not be appropriate for the act that was committed. So, in this update, what we have done has now given prosecutors much more flexibility¹⁵³

143. See S.B. 1090, 202d Gen. Assemb., Sess. Of 2018 (Pa. 2018).

144. See Sarah Shearer, *Pennsylvania Senate Passes Antihazing Law*, PITT. NEWS (Apr. 20, 2018), <https://bit.ly/37BaUDn>.

145. See CBS This Morning, *Piazza Parents: Penn State Reforms "Good Start" But More Needs to Be Done*, YOUTUBE (Aug. 23, 2017), <https://www.youtube.com/watch?v=pG3Amwf1390> (The Piazzas' attorney, Tom Kline, stated that "law is a great deterrent We're looking to change the law. We believe that stiffer penalties will mean deterrence, and that's a key.").

146. See Elissa Hill, *'Tim's Law' Anti-Hazing Bill Passes Through PA Senate*, ONWARD ST. (Apr. 18, 2018, 1:34 PM), <https://bit.ly/2UX0sTQ>.

147. See *id.*

148. See *id.*

149. See *Anti-Hazing Law Named for Penn St. Student Heads to Gov. Wolf's Desk*, CBS PITT. (Oct. 15, 2018, 5:57 PM), <https://cbsloc.al/39DBoW1>.

150. The cited document represents the only known debate of this bill. See Commonwealth of Pa. Legis. Journal, 202nd at 328 (Pa. 2018) [hereinafter *Legislative History*].

151. See Sarah Rafacz, *Tim Piazza Anti-Hazing Law Unanimously Approved by Pa. Senate Committee*, CTR. DAILY TIMES (Mar. 27, 2018, 1:40 PM), <https://bit.ly/2V5Plmn>.

152. See *Legislative History*, *supra* note 150, at 328. Senator Corman noted that "particularly this type of hazing, is something we need to take a stand on and need to discourage in Pennsylvania." See *id.*

153. See *id.*

Senator Corman also emphasized the bill's penalties for schools and fraternities¹⁵⁴ and touted the virtue of the bill's safe harbor provisions.¹⁵⁵ Senator Corman concluded his remarks by assuaging potential worries that the bill presented "an attack on Greek life."¹⁵⁶ No other senators contributed remarks during debates.¹⁵⁷

The Timothy J. Piazza Antihazing Law took effect on November 19, 2018,¹⁵⁸ and redefined "hazing" as follows:

A person commits the offense of hazing if the person intentionally, knowingly or recklessly, for the purpose of initiating, admitting or affiliating a minor or student into or with an organization, or for the purpose of continuing or enhancing a minor or student's membership or status in an organization, causes, coerces or forces a minor or student to do any of the following:

- (1) Violate Federal or State criminal law.
- (2) Consume any food, liquid, alcoholic liquid, drug or other substance which subjects the minor or student to a risk of emotional or physical harm.
- (3) Endure brutality of a physical nature, including whipping, beating, branding, calisthenics or exposure to the elements.
- (4) Endure brutality of a mental nature, including activity adversely affecting the mental health or dignity of the individual, sleep deprivation, exclusion from social contact or conduct that could result in extreme embarrassment.
- (5) Endure brutality of a sexual nature.
- (6) Endure any other activity that creates a reasonable likelihood of bodily injury to the minor or student.¹⁵⁹

Hazing remains a summary offense except when a person subjects victims to a risk of "emotional or physical harm,"¹⁶⁰ in which case hazing becomes a third-

154. *See id.* ("[I]f a university, such as Penn State . . . [is] not taking an active role to discourage and prevent hazing . . . there could be liability."); ("[N]ational organizations of Greek life, are not, again, putting out the proper discouragement for this type of behavior . . ."). For a discussion of the effectiveness of these penalties, see *infra* Part III.C.2 and C.3.

155. *See* Legislative History, *supra* note 150, at 328 ("I think one of the problems we have had is people do not want themselves to get into trouble, and so therefore they do not call . . . to make sure the person in distress is taken care of.").

156. *See id.* (Greek life "is a very important part of the college life, and [it does] wondrous things and things that you can be very proud of, but certain things over time have to become things of the past.").

157. *See id.*

158. *See* 18 PA. STAT. AND CONS. STAT. ANN. §§ 2801–11 (West 2020).

159. *See id.* § 2802.

degree misdemeanor.¹⁶¹ Hazing constitutes a third-degree misdemeanor “if it results in or creates a reasonable likelihood of bodily injury to the minor or student.”¹⁶² The statute now includes a heightened offense—“aggravated hazing”¹⁶³—for offenders who cause serious bodily injury or death and either (1) act with reckless indifference¹⁶⁴ to health and safety; or (2) cause, coerce, or force consumption of an “alcoholic liquid.”¹⁶⁵ Aggravated hazing constitutes a third-degree felony.¹⁶⁶

Additionally, “organizations”¹⁶⁷ or “institutions”¹⁶⁸ that “intentionally, knowingly or recklessly promote[] or facilitate[]” a statutory violation are subject to fines of not more than \$5000 for hazing offenses and fines of not more than \$15,000 for aggravated hazing offenses.¹⁶⁹ Organizational hazing violations are subject to equitable relief¹⁷⁰ to be determined by a court of law.¹⁷¹

The Piazza Law prohibits defenses based on the putative consent of students or minors.¹⁷² The statute also prohibits defenses based on the approval

160. *See id.* In Pennsylvania, summary offenses are punishable by a term of imprisonment not to exceed ninety days. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 106(c)(2).

161. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 2802(b)(2).

162. *See id.* Third-degree misdemeanors are punishable by a term of imprisonment not to exceed one year. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 106(b)(8).

163. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 2803(a).

164. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 302(b)(3) (West 2020) (defining recklessness as “consciously disregard[ing] a substantial and unjustifiable risk that the material element exists or will result from [one’s] conduct.” Conscious disregard of the risk must “involv[e] a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation.”). *See id.*

165. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 2803(a)(2).

166. *See id.* § 2803(b). Third-degree felonies are punishable by a term of imprisonment not to exceed seven years. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 106(b)(4).

167. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 2801 (West 2020) (defining an “organization” as “[a] fraternity, sorority, association, corporation . . . social or similar group, whose members are primarily minors, students or alumni of the organization, an institution or secondary school”).

168. *See id.* (defining “institution” as “an institution located within this Commonwealth authorized to grant an associate or higher academic degree.”).

169. *See* 18 PA. STAT. AND CONS. STAT. ANN. §§ 2804–05 (West 2020) (enumerating organizational and host-institutional hazing violations).

170. *See Equitable Remedy*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A remedy, [usually] a nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usu. monetary damages, cannot adequately redress the injury . . . Also termed equitable relief; equitable damages.”).

171. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 2804. *But see id.* § 2805 (leaving equitable relief for institutional hazing unaddressed).

172. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 2806 (West 2020). Consent has been explicitly eliminated as a defense to hazing in at least twenty states. *See* Chamberlin, *supra* note 44, at 943. Commentators disagree as to whether the statutory abrogation of consent as a defense to criminal hazing culpability is sound policy. *Compare* Melissa Dixon, *Hazing in High Schools: Ending the Hidden Tradition*, 30 J.L. & EDUC. 357, 361 (2001) (“the idea that someone cannot consent to an illegal activity . . . is common to many areas of the law, including . . . criminal law”); *and* Sarah Hernandez, *Dying to Get in, Dying to Get High: Examining the Role of Proximate Cause in Criminal Hazing and Drug-Induced Homicide Cases*, 56 CRIM. L. BULL. 85, 86 (2020) (arguing that hazing consent defenses prevent proximate cause issues because they eliminate victims’ voluntary acts as intervening causes), *with* Chamberlin, *supra* note 44, at 960 (“[many factors that seem to demonstrate the impossibility of consenting to hazing also mitigate the perpetrators’ culpability . . .”).

or sanction of schools and host institutions.¹⁷³ Organizations in violation of the statute can be directed to forfeit property involved in a hazing incident under court order.¹⁷⁴ The Piazza law maintains the institutional policy requirements of the previous state statute¹⁷⁵ but now mandates yearly institutional reports detailing hazing incidents.¹⁷⁶ Additionally, the Piazza Law's "safe harbor" provision provides criminal immunity for individuals who seek medical attention for another.¹⁷⁷

Former Centre County prosecutor Stacy Parks Miller, who handled the criminal charges in the Piazza incident, expressed concern about the statute's efficacy.¹⁷⁸ Tracy Maxwell, the founder of HazingPrevention.org, a watchdog website, echoed Miller's doubt.¹⁷⁹

D. 2018—Present: Responses from Pennsylvania Fraternities and Host Institutions

In 2019, per the requirements of the Piazza Law,¹⁸⁰ Penn State released its first mandated Hazing Report of all hazing incidents from 2013 to 2018.¹⁸¹ In total, Penn State disclosed thirty incidents and one pending investigation in the report.¹⁸² After the Piazza Law's enactment, Penn State shifted responsibility for investigating and adjudicating fraternity misconduct from independent Greek life-governing councils to university staff.¹⁸³ Additional institutional reforms included (1) Penn State's hiring of 14 new staff members in Student Affairs who

173. See 18 PA. STAT. AND CONS. STAT. ANN. § 2804 (1986).

174. See *id.* § 2807.

175. Compare 24 PA. CONS. STAT. § 5354(a)(3) (1986), with 18 PA. STAT. AND CONS. STAT. ANN. § 2809 (West 2020).

176. See 18 PA. STAT. AND CONS. STAT. ANN. § 2809 (West 2020) (mandating that such reports shall include names of report subjects, dates of incidents, and general descriptions of any violations).

177. See *id.* § 2810. The individual claiming immunity must establish (1) contact with a law enforcement officer based on reasonable belief that another was in need of medical attention, (2) reasonable belief that the individual was the first to contact security or law enforcement, (3) the providing of one's own name to security or law enforcement, and (4) that the individual remained with an individual needing assistance until relevant personnel arrived. See *id.*

178. See David Dekok, *Pennsylvania Law to Make Hazing Punishable as Felony*, REUTERS (Oct. 19, 2018, 6:05 AM), <https://reut.rs/2wmIPCL> (Miller commented, "'While I am very pleased to see a new felony for cases like Tim's, I am concerned there is now less leverage for prosecutions for the more commonplace hazing cases.'"); see also Reilly, *supra* note 74 (quoting Miller as stating that the legal changes are inadequate because "[i]t's the same system . . . still broken. It's not aggressive enough, and it won't save lives."). Similar skepticism shrouded the enactment of Texas's "tough" 1987 hazing law, which precipitated a slew of plea bargains, but few trials, in its first decade of existence. See Debbie Graves & Claire Osborn, *Barrientos Frustrated by Hazing Law's Lack of Use; UT Pledge Who Drowned at Fraternity Party Is Remembered*, AUSTIN AM.-STATESMAN, May 4, 1995, at B1.

179. See Dekok, *supra* note 178 ("'It doesn't matter how tough the law is if local prosecutors don't have the stomach to enforce it,' Maxwell said.'").

180. See 18 PA. STAT. AND CONS. STAT. ANN. § 2809.

181. See *The Pennsylvania State University Hazing Report*, PENN ST. OFF. ETHICS & COMPLIANCE, https://universityethics.psu.edu/sites/universityethics/files/penn_state_hazing_report_january_2019.pdf (last visited Apr. 14, 2020).

182. See *id.*

183. See Penn State Greek-Letter Orgs to Face Change as Aggressive New Measures Launch, PENN ST. NEWS (Aug. 21, 2017), <https://bit.ly/2uPIgRh>.

were tasked with monitoring Greek life organizations, (2) a minimum grade point average of 2.5 required of all fraternity hopefuls, (3) a national “scorecard” system to inform parents and new members of fraternity conduct,¹⁸⁴ and (4) a “no tolerance” policy that revoked university recognition of fraternities who violate state law.¹⁸⁵

The Timothy J. Piazza Center for Fraternity and Sorority Research and Reform (the Center) was established at Penn State in January 2019.¹⁸⁶ The Center’s formation continues the work of the now-defunct Center for Fraternity and Sorority Research at Indiana University, which was created in 1979.¹⁸⁷ The Center studies hazing from a “data-driven perspective.”¹⁸⁸ The Center’s director, Steve Veldkamp, concluded on the basis of the Center’s data studies that “[fraternal] organizations are mostly positive,” but also that “there are significant problems in term[s] of hazing . . . when it is bad it is really bad.”¹⁸⁹

In the wake of its institutional hazing reforms, Penn State officials declined a request to discuss Greek life policy on camera, and a number of unidentified Penn State fraternity members declined to speak on camera pursuant to a directive from their fraternity’s leaders at the national level.¹⁹⁰ Currently, fraternities at Penn State require students who “rush”¹⁹¹ to do so via

184. The national scorecard system spearheaded by Penn State collects aggregated national data on fraternities. See *Carnegie Mellon Will Not Participate in Piazza Center National Fraternity Scorecard*, PIIT. POST-GAZETTE (Nov. 21, 2019, 11:59 AM), <https://www.post-gazette.com/news/education/2019/11/21/Carnegie-Mellon-University-hazing-fraternities-alcohol-Piazza-Penn-State-colleges/stories/201911210143>. While more than fifty universities agreed to submit data to the project, Pennsylvania’s Carnegie Mellon University declined to share data on its fraternities, citing the adequacy of its own procedures and of its antihazing “working group.” See *id.*

185. See *Penn State Greek-letter Orgs to Face Change as Aggressive New Measures Launch*, *supra* note 183; see also *Fraternity and Sorority Social Monitoring*, PENN ST. STUDENT AFF., <https://bit.ly/3bGQMmj> (last visited Apr. 12, 2020) (noting that the university (1) restricts Greek life organizations by allowing a limit of ten socials per semester, (2) prohibits day-long events, (3) limits allowable alcoholic consumption at socials to beer and wine, (4) limits indoor and outdoor events to the legal capacity of a Greek house, and (5) limits alcohol service at social events to legally designated RAMP servers).

186. See *About the Piazza Center*, PENN ST. STUDENT AFF., <https://studentaffairs.psu.edu/piazzacenter/about> (last visited Apr. 12, 2020). According to its website, the Center “seeks to build on and amplify professional practice that changes the hearts and minds of students, alumni, headquarters, and campuses by studying the efficacy of how practitioners advise chapters differently, change campus policies, and implement educational programs to create change.” See *id.*

187. See Marielle Mondon, *Two Years After Hazing Death, Penn State Launches Multimillion-Dollar, Greek Life Research Center*, PHILLYVOICE (Jan. 22, 2019), <https://bit.ly/2OXoNVY>.

188. See Centre County Gazette and Vincent Corso, *Fraternity Fallout: Changing the Negative, Keeping the Positives*, STATECOLLEGE.COM (Feb. 18, 2020, 5:00 AM), <https://www.statecollege.com/news/local-news/fraternity-fallout-changing-the-negative-keeping-the-positives,1482515/>.

189. See *id.*

190. See VICE News, *Penn State Is Still Keeping Secrets on Frat Row*, YOUTUBE (Feb. 2, 2018), <https://www.youtube.com/watch?v=pG3Amwf1390>.

191. A “rush” is a “series of social events and gatherings that allow prospective and current fraternity or sorority members to get to know each other. Each institution has its own particular style for conducting rush. Rush lasts anywhere from a week to several weeks.” See

an online application that instructs them to report hazing incidents directly to the school's interfraternity council rather than to police or Penn State authorities.¹⁹²

III. THE HAZING TRIANGLE

The Piazza Law's amendments to existing state antihazing law enable prosecutors to seek stronger criminal penalties for individual hazing perpetrators.¹⁹³ However, the Law's penalties upon individual actors, as discussed in the following section, are flawed in spite of their necessity.¹⁹⁴ Further, the Piazza Law falls short of its intended goals¹⁹⁵ insofar as it penalizes the actions of fraternities¹⁹⁶ and host institutions¹⁹⁷ disproportionately with the actions of individual hazing perpetrators.¹⁹⁸ This part posits that the Piazza Law and other antihazing statutes' chief flaws are best understood through a theoretical lens that this note dubs "The Hazing Triangle."¹⁹⁹ The final sections of this part deal with each of these shortcomings in turn.²⁰⁰

A. *An Unsolved Problem*

Until now, scholarly recommendations for amending hazing statutes have tended to suggest modest alterations such as adding a clause that would include athletic hazing to a statute's protective ambit²⁰¹ or including mental harms²⁰² or intent²⁰³ within a statutory definition of hazing. The Piazza Law largely responds to such scholarly proposals²⁰⁴ but nonetheless, fraternity hazing continues in earnest.²⁰⁵ Furthermore, other scholarly suggestions for hazing deterrence methods have hedged their bets too strongly on voluntary compliance.²⁰⁶ For example, Chamberlin's proposed reform seeks to place

Jackie Burrell, *Fraternity and Sorority Rush—What Are They?*, THOUGHTCO. (July 16, 2019), <https://bit.ly/2SsUkRw>.

192. See *Penn State Is Still Keeping Secrets on Frat Row*, *supra* note 190. But see Nuwer, *supra* note 43, at 24 (asserting that interfraternity councils should relinquish governance of campus Greek life to university control). Ultimately, this note argues that host institutions would be ill-equipped to administer such governance. See *infra* Parts III.C.3, IV.B.

193. See 18 PA. STAT. AND CONS. STAT. ANN. §§ 2802–03 (West 2020).

194. See *infra* Part IV.A.

195. See *supra* notes 151–52 and accompanying text.

196. See *infra* Part III.C.2.

197. See *infra* Part III.C.3.

198. See *infra* Part III.C.1.

199. See *infra* Part III.B.

200. See *infra* Part IV.C.

201. See Gregory L. Acquaviva, *Protecting Students from the Wrongs of Hazing Rites: A Proposal for Strengthening New Jersey's Anti-Hazing Act*, 26 QUINNIPIAC L. REV. 305, 327 (2008)

202. See Croy, *supra* note 64, at 258.

203. See Burns, *supra* note 59, at 117.

204. See 18 PA. STAT. AND CONS. STAT. ANN. § 2802 (West 2020).

205. See, e.g., Chamberlin, *supra* note 44, at 927; Dara Aquila Govan, Note, "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, 710–13 (2001) (proposing that fraternities should voluntarily renounce hazing rituals).

206. See, e.g., Chamberlin, *supra* note 44, at 963–64 (advocating an omission theory of liability for hazing perpetrators).

criminal liability on immediate participants or supervisors of hazing activities once a person has been “rendered helpless.”²⁰⁷ However, because Chamberlin also criticizes existing antihazing laws for driving hazing further underground,²⁰⁸ his proposal for an omission theory of hazing liability is vulnerable to criticism on the grounds that hazing perpetrators may overestimate their ability to haze safely under such a doctrine²⁰⁹ and may therefore continue to carry out these rituals in the same clandestine manner that Chamberlin’s proposal seeks to thwart.²¹⁰ Chamberlin’s high confidence in the ability of hazing perpetrators to “become their brothers’ keepers,”²¹¹ as well as his reassurance that “[g]roups that haze generally care deeply about their members,”²¹² does little to explain why fraternities, such as Beta Theta Pi, would wait eleven hours before summoning aid for a dying recruit.²¹³

B. A Proposed Solution

Courts have grappled with the assignment of liability in fraternity hazing long before the Piazza Law’s enactment.²¹⁴ Likewise, almost every state has enacted an antihazing statute²¹⁵ while, simultaneously, the hazing death curve has failed to flatten.²¹⁶ Legislatures should recognize and incorporate into their antihazing statutes the concept that fraternity hazing necessarily involves a “triangle” of three interrelated actors—individuals, fraternities, and host institutions—and that statutory duties and penalties assigned to each should reflect the realities of hazing psychology and criminal deterrence.²¹⁷ For criminal antihazing statutes to deter bad actors effectively, such statutes should “not be limited to a single class of persons.”²¹⁸ However, the Piazza Law and other

207. See *id.* at 963–64.

208. See *id.* at 973.

209. Many criminal offenders tend to overestimate their ability to avoid punishment. See, e.g., Paul H. Robinson, *The Difficulties of Deterrence as a Distributive Principle*, in *CRIMINAL LAW CONVERSATIONS* 105, 107 (Paul H. Robinson et al. eds., 2009).

210. See Chamberlin, *supra* note 44, at 973.

211. See *id.* A brief aside on the irony of the Comment’s title (“Am I My Brother’s Keeper?”) is worthwhile. The title’s namesake verse is pulled from an Old Testament chapter that, in context, undermines Chamberlin’s theory rather than bolsters it: “it came to pass, when they were in the field, that Cain rose up against Abel his brother and killed him.” *Genesis* 4:8.

212. Chamberlin, *supra* note 44, at 970–71. For a stark contrast to Chamberlin’s assertion, see Nuwer, *supra* note 43, at 29 (noting that “[n]othing incurs the collective wrath of a hazing group’s members more than a pledge that refuses to cower and reports hazing . . . the group treats the unhappy quitter as a pariah with disdain [and] even threats”). It is also worthwhile to observe that most of the victims Chamberlin would seek to protect would not in fact be “members,” but pledges seeking admission to the fraternity, thus undermining Chamberlin’s premise.

213. See *Piazza v. Young*, 403 F. Supp. 3d 421, 430 (M.D. Pa. 2019).

214. See A. Catherine Kendrick, Comment, *Ex Parte Barran: In Search of Standard Legislation for Fraternity Hazing Liability*, 24 *AM. J. TRIAL ADVOC.* 407, 407 (2000).

215. See *supra* note 70 and accompanying text.

216. See, e.g., Crow & McGlone, *supra* note 75, at 299 (“The dearth of hazing litigation seems at odds with the continued prevalence of hazing . . .”); Chamberlin, *supra* note 44, at 927

217. For a discussion of the psychological underpinnings of fraternity hazing, see *supra* Part I.B.

218. Amie Pelletier, *Regulation of Rites: The Effect and Enforcement of Current Anti-Hazing Statutes*, 28 *NEW ENG. J. ON CRIM. & CIV. CONFINEMENT* 377, 413 (2002); see also Nicholas Bittner, Comment, *A Hazy Shade of Winter: The Chilling Issues Surrounding Hazing in School Sports and the Litigation That*

antihazing statutes do, in fact, single out “persons” as the “tip” of the hazing triangle,²¹⁹ making individual deterrence an object of disproportionate statutory focus.²²⁰

C. *Application: Examining the Piazza Law Through the Lens of the Hazing Triangle*

The three sections below discuss each “point” of the hazing triangle within the context of the Piazza Law.²²¹

1. *Individual Deterrence*

By punishing aggravated hazing as a felony²²² and defining hazing broadly,²²³ the Timothy J. Piazza Antihazing Law responds to critics who have lamented a lack of felony penalties against individuals who cause bodily injury or death by hazing.²²⁴ The Piazza Law’s increased sentencing mandates will therefore punish individuals who carry out the physical acts that can lead to deadly outcomes like those seen in the Piazza case,²²⁵ and appropriately so. However, empirical research suggests that criminalization of the individual within the hazing context will not, in fact, *deter* future hazing incidents.²²⁶ Rather, the “certainty of apprehension, not the severity of the ensuing legal consequence,” is necessary to effectively deter criminal behavior.²²⁷ Further, the manipulation of substantive criminal law rules do not materially affect deterrence.²²⁸ More specifically, research that has examined legal deterrents against the contravening social norms of college students in the context of music piracy and underage drinking suggests that legal prohibitions do not meaningfully change college student behaviors.²²⁹

Because of these realities, fraternity members and other students who fall within the Piazza Law’s ambit are unlikely to take greater notice or caution than they would have under an earlier version of the statute, or indeed, under

Follows, 23 JEFFREY S. MOORAD SPORTS L.J. 211, 254 (2016) (“[T]he individuals most at fault are not necessarily the ones holding the paddle or the bottle of alcohol.”).

219. *See, e.g.*, CAL. PEN. CODE § 245.6(d) (West 2020); FLA. STAT. ANN § 1006.135(3)(a) (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. §§ 2802-03 (West 2020).

220. *See infra* Part III.C.1.

221. *See infra* Part IV.C.1–C.3.

222. *See* 18 PA. STAT. AND CONS. STAT. ANN. § 2803(b).

223. *See id.* § 2802(a).

224. *See, e.g.*, Pelletier, *supra* note 218, at 413; Dekok, *supra* note 178.

225. *See supra* Part II.B.

226. *See generally* Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. 199 (2013) (compiling said research data); *see also* Robinson, *supra* note 209.

227. *See* Nagin, *supra* note 226, at 199.

228. *See* Robinson, *supra* note 209, at 105. For a similar argument, *see* KARL N. LEWELLYN, *THE BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW AND LAW SCHOOL* 118 (2018) (1930) (arguing that a society’s basic order “grows . . . not from law, but . . . from the process of education”) (italics omitted).

229. *See* Chamberlin, *supra* note 44, at 956; *see also* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV 1175, 1179 (1989) (suggesting that “[r]udimentary justice requires that those subject to the law must have the means of knowing what it prescribes”).

no statute at all.²³⁰ Therefore, the Piazza Law's bolstered criminal penalties²³¹ may not take on special significance for individual fraternity members, particularly because "in a group [they] experience[] an identity shift so as to think in terms of group interests rather than personal interests."²³² Further, because hazing occurs covertly, the fact that offenders often overestimate their ability to avoid detection²³³ presents unique challenges for hazing deterrence at the individual level. For these reasons, the Piazza Law's heightened criminal sanctions against individual hazing perpetrators, although necessary, cannot stand on their own as effective deterrents.

2. Fraternity Deterrence

Though "deterrence . . . should be the ultimate goal of hazing laws,"²³⁴ the Piazza Law's "organizational hazing" provisions²³⁵ will fail to deter fraternities, whose social norms have often condoned hazing,²³⁶ from continuing to promote or allow hazing. First, by restricting a fraternity's liability solely to money damages²³⁷ and the forfeiture of fraternity property,²³⁸ the Piazza Law signals to fraternities that hazing's costs can be absorbed through an organization's financial stature. The Piazza Law's "organizational" fines (which are notably identical in dollar amount to the Piazza Law's "institutional" fines against host institutions)²³⁹ are fines that national fraternities with large budgets will easily absorb—even if such fraternities are found guilty on many counts of organizational hazing.²⁴⁰ The ability of fraternities to pay away hazing violations presents a troublesome prospect because hazing deterrence can only occur if an antihazing statute's target perceives the threatened cost of punishment as exceeding a perceived gain from crime.²⁴¹ Further, even assuming that the Piazza Law's fines are adequately calibrated to deter an

230. See Robinson, *supra* note 209, at 106 ("[S]tudies show a general ignorance of criminal law rules. People assume the law is as they think it should be [and] substitute their own intuition of justice . . . for the actual legal rules.").

231. See 18 PA. STAT. AND CONS. STAT. ANN. § 2803(b) (West 2020).

232. See Robinson, *supra* note 209, at 107; see also Parks et al., *supra* note 63, at 407. For a practical application of this principle, see *supra* note 77 and accompanying text.

233. See Robinson, *supra* note 209, at 107.

234. See Croy, *supra* note 64, at 258; see also Johnson, *supra* note 65, at 76.

235. See 18 PA. STAT. AND CONS. STAT. ANN. § 2804.

236. See *supra* note 46 and accompanying text.

237. See 18 PA. STAT. AND CONS. STAT. ANN. § 2804 (imposing a maximum fine of \$15,000 in cases of "aggravated hazing"). For other examples of states that penalize fraternities through fines, see Table 1.

238. See *id.* § 2807.

239. Compare *id.* § 2804 (, with *id.* § 2805.

240. Though, of course, fraternities vary in size and financial means, many established fraternities could bear the financial brunt (negative press notwithstanding) of the Piazza Law's maximum allowable fine. See, e.g., Tema Flanagan, *Greek Life Property Value: Fraternities and Sororities with the Largest and Most Valuable Properties*, HOUSE METHOD (Mar. 10, 2020), <https://housemethod.com/home-warranty/greek-life-property-value/> (finding, based on a survey of 1300 fraternity-owned properties, that the average fraternity property value exceeded \$1 million).

241. See Robinson, *supra* note 209, at 107; see also HECHINGER, *supra* note 36, at 251 ("Economists and public-health scholars agree that raising the cost of a behavior can reduce its prevalence.").

organization from “promot[ing] or facilitat[ing] hazing,”²⁴² statutory fines often do not deter offenses committed by corporations or other organizations, regardless of the fine’s amount.²⁴³

The Piazza Law’s nonmonetary organizational penalties are similarly lacking in deterrent power. Although the Law’s forfeiture subsection allows for the forfeiture of a convicted fraternity’s assets,²⁴⁴ a close reading of the subsection’s text reveals that the subsection merely *permits* a court to force forfeiture of fraternity assets.²⁴⁵ The subsection leaves the ability to order such a forfeiture completely within the discretion of an individual judge.²⁴⁶ The forfeiture penalty’s deterrent power is further watered down by a number of exceptions,²⁴⁷ one of which allows fraternities to sidestep the forfeiture penalty simply by successfully petitioning the court for a return of property.²⁴⁸ These permissive attributes of the forfeiture subsection render the loss of a fraternity’s real property a less-than-likely prospect, and by extension, a halfhearted hazing deterrent.

The lenient monetary and equitable penalties the Piazza Law imposes on fraternities ignore the powerful social role fraternities play in preserving hazing.²⁴⁹ By extending jail sentences to the subjects of hazing indoctrination, but extending only fines and (possible) property losses to the indoctrinators themselves, the Piazza Law has introduced a wildly inequitable statutory scheme. Applying the Law’s text to a hypothetical scenario, an eighteen-year-old fraternity member who recklessly, but upon orders from above, injures someone in a drinking ritual will face the lifetime of stigma that a felony conviction brings,²⁵⁰ while the fraternity that created the cultural and situational antecedents necessary to propagate hazing²⁵¹ will face comparatively minuscule

242. See 18 PA. STAT. AND CONS. STAT. ANN. § 2805.

243. See, e.g., Zach Greenberg & Adam Goldstein, *Baking Common Sense into the FERPA Cake: How to Meaningfully Protect Student Rights and the Public Interest*, 44 J. LEGIS. 22, 28–32 (2017) (noting that, despite misinterpretation by colleges, FERPA, a federal statute, has never been enforced, deeming it “a meaningless deterrent”); Ezra Ross & Martin Pritikin, *The Collection Gap: Underenforcement of Corporate and White-Collar Fines and Penalties*, 29 YALE L. & POL’Y REV. 453, 525–26 (2011) (concluding, based on an empirical analysis, that criminal fines against corporate entities are rare). Additionally, calibrating fine amounts to the losses suffered by victims of violent crimes is difficult. See Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193, 1202 (1985).

244. See 18 PA. STAT. AND CONS. STAT. ANN. § 2807.

245. See *id.*

246. See *id.* (“Upon conviction . . . the court may . . . direct the defendant to forfeit property which was involved in the violation for which the defendant was convicted.”).

247. See *id.*

248. See *id.* (referencing 42 PA. STAT. AND CONS. STAT. ANN. § 5806 (West 2020)).

249. See Chamberlin, *supra* note 44, at 962; see also Edward N. Stoner II & John Wesley Lowery, *Navigating Past the “Spirit of Insubordination”: A Twenty-First Century Model Student Conduct Code with a Model Hearing Script*, 31 J.C. & U.L. 1, 77 n.89 (2004) (“Hazing is a complex social problem that is shaped by power dynamics . . .”).

250. See, e.g., Crosby Hipes, *The Impact of a Felony Conviction on Stigmatization in a Workplace Scenario*, INT’L J. L., CRIME & JUST., Jan. 25, 2019, at 89, 96 (“For ex-offenders, the label of a criminal record, if it is disclosed, can lead to deeply negative stereotyping and discrimination. This is even when the details of the crime committed are unknown, and even when compared to another stigmatized category of person.”).

251. See ROBBINS, *supra* note 18, at 49; Nuwer, *supra* note 43, at 29.

punishments (if, indeed, it is prosecuted at all). The Piazza Law's failure to penalize fraternities commensurately with their would-be members provides fraternities, many of whom exert strong psychological influence on members and pledges,²⁵² scarce disincentive to halt hazing practices that have served fraternity purposes for generations.²⁵³ Ultimately, the Law's disproportionate penalties ensure that the cycle of hazing will continue as future generations join Greek ranks, students underestimate their chances of being caught, and fraternities regard state law as a mere stumbling block to carrying out the generations-old tradition of hazing.²⁵⁴

3. *Host-Institutional Deterrence*

Just as the Piazza Law ignores the powerful ability of fraternities to propagate or curb hazing in accordance with legal incentives, it also subjects host institutions to ineffectual mandates that do little to control hazing's causes. In fact, the Law's mandate that host institutions self-report hazing violations²⁵⁵ presents multiple undesirable consequences.²⁵⁶

By allowing host institutions to comply with its mandates through the host institutions' own staff, procedures, and policy judgments,²⁵⁷ the Piazza Law surrenders the proper administration of antihazing policy to institutions with a vested interest in reporting fewer and less serious hazing incidents so as not to jeopardize their own images²⁵⁸ or invoke liabilities under state law.²⁵⁹ Even if a state government could safely entrust colleges with administering the Piazza Law, early commentary on Penn State's narrow interpretation and application of the Law's reporting requirement²⁶⁰ suggests that host institutions will interpret the Piazza Law contrary to legislative intent,²⁶¹ leading to undesirable results.²⁶² Further, the Piazza Law's directive ignores a powerful

252. See *supra* notes 52–61 and accompanying text.

253. See ROBBINS, *supra* note 18, at 117–20.

254. Organizations often perceive the prospect of civil damages as an “unguided missile” that “may or may not strike them” and, accordingly, such organizations fail to adopt more cautious behavior. See E. Donald Elliott, *Why Punitive Damages Don't Deter Corporate Misconduct Effectively*, 40 ALA. L. REV. 1053, 1057 (1989).

255. See 18 PA. STAT. AND CONS. STAT. ANN. § 2809 (West 2020).

256. See Dixon, *supra* note 172, at 359 (noting that requiring host institutions to develop antihazing policies is a measure “without any real teeth”).

257. See 18 PA. STAT. AND CONS. STAT. ANN. § 2808; see also *Fraternity and Sorority Social Monitoring*, *supra* note 185.

258. See Sweet, *supra* note 44, at 358 (“[C]olleges and universities add to the problem of estimating hazing by deliberately avoiding inquiry into hazing incidents for fear of damaging institutional reputations.”) (citations omitted).

259. See 18 PA. STAT. AND CONS. STAT. ANN. § 2808.

260. See Christine Vendel, *Penn State Didn't Report Football Player's Hazing Allegations, But Should It Have Under State Law?*, PENNLIVE.COM (Jan. 16, 2020), <https://bit.ly/2Ht22Vu>.

261. See *id.*; see also *supra* notes 152–54 and accompanying text.

262. See, e.g., Shashi Marlon Gayadeen, *Ritualizing Social Problems: Claimsmakers in the Institutionalization of Anti-Hazing Legislation* 25 (2011) (unpublished Ph.D. dissertation, University of Buffalo, State University of New York) (on file with author) (noting that where antihazing statutes contain ambiguities, organizations interpreting the statutes will either (1) define their own acceptable standards or (2) change their current practices to accommodate their perceived legal duties).

elephant in the room: fraternities with powerful alumni and reliable donors who exert social pressures on host institutions to preserve broad privileges for Greek institutions.²⁶³

More specifically, the Piazza Law's requirement that host institutions report "all violations of the institution's antihazing policy . . . that are reported to the institution"²⁶⁴ has been unevenly interpreted by Pennsylvania host institutions.²⁶⁵ Despite the reporting requirement's plain text, at least three Pennsylvania colleges have opted to include only "substantiated" hazing violations in their mandated Piazza Law reports.²⁶⁶ Among the three colleges is Timothy Piazza's alma mater Penn State, whose spokesperson proffered that reporting unsubstantiated claims under the Piazza Law "does not acknowledge that initial reports of alleged hazing do not always match the definition of hazing (and thus should not be listed as such,) nor does it provide an accurate picture of actual misconduct that may be taking place." However, officials from the Piazza Law's original sponsor's office confirmed, on request for comment, that the Law's text "did contain language that supports reporting of all incidents."²⁶⁷ Further, the long-standing rule that Pennsylvania courts should construe remedial clauses and statutes liberally to best effect their purposes²⁶⁸ cuts against Penn State's narrow approach to the Piazza Law.²⁶⁹

If, in fact, educating students is a host institution's most effective method of preventing student victimization,²⁷⁰ then hazing laws that mandate host-institutional reporting should do so in unambiguous language. Host institutions

263. See Eric Kelderman, *Why Colleges Don't Do More to Rein in Frats*, CHRON. HIGHER EDUC. (Mar. 27, 2015), <https://www.chronicle.com/article/Why-Colleges-Don-t-Do-More/228841> ("Cracking down on fraternities faces big hurdles, such as upsetting powerful alumni and donors who were members of those groups. But some colleges and national associations have taken it upon themselves to limit their responsibilities chiefly because of the cost and potential legal liability."); *Why Colleges Tolerate Fraternities*, *supra* note 25.

264. See 18 PA. STAT. AND CONS. STAT. ANN. § 2809(a). Arguably, a reporting requirement is unnecessary as hazing awareness has greatly increased due to the ubiquity of social media evidence. See generally Johnson, *supra* note 65.

265. See Vendel, *supra* note 260.

266. See *id.* Penn State spokesperson Lisa Powers has declared that the University "'has decided that publishing the name of organizations accused of hazing, but then found not guilty of this violation, definitely has the potential to unfairly paint those organizations (as well as all of their members) with a broad brush of misconduct, for which there were no supportable findings.'")

267. See *id.*

268. See, e.g., *In re A.B.*, 987 A.2d 769, 775 (Pa. 2009); *Verona v. Schenley Farms Co.*, 312 A.317, 320 (Pa. 1933).

269. An argument that the reporting requirement ought to be construed narrowly because of its penal nature, see 1 PA. STAT. AND CONS. STAT. ANN. § 1928(b)(1) (West 2020), similarly falls short because the Piazza law enumerates no penalties for a host institution's failure to report, see 18 PA. STAT. AND CONS. STAT. ANN. § 2808 (West 2020), in spite of the Pennsylvania judiciary's mandate that penal statutes must specify fines and punishments. See *Commonwealth v. Stone and Co.*, 788 A.2d 1079, 1082 (Pa. Commw. Ct. 2011) (citing *Commonwealth v. Henderson*, 663 A.2d 728, 733 (Pa. Super. Ct. 1995)).

270. See Kelly W. Bhirdo, Note, *The Liability and Responsibility of Institutions of Higher Education for the On-Campus Victimization of Students*, 16 J.C. & U.L. 119, 135 (1989); see also Douglas Fierberg & Chloe Neely, *A Need for Transparency: Parents, Students Must Make Informed Decisions About Greek-Life Risks*, in HAZING: DESTROYING YOUNG LIVES, *supra* note 43, at 42, 48.

approach the law “collectively and institutionally,”²⁷¹ and they often bury legal disputes by settling when they predict that disputes with “bad facts” will, if litigated to final judgment, create precedents unfavorable to host institutions.²⁷² Therefore, the apparent willingness of host institutions to parse the Piazza Law’s language narrowly²⁷³ despite its remedial purposes²⁷⁴ suggests that host institutions will engage in selective compliance in order to serve their public relations and financial goals.²⁷⁵

Even assuming the prudence of legislatures placing universities at the helm of hazing disclosure and policing, the role of host institutions in curtailing hazing may still prove problematic. The director of Penn State’s recently installed Piazza Center for Fraternity and Sorority Research and Reform, Steve Veldkamp, cited Penn State’s “seed money” and the mentorship of older students in creating “stable organizations” as essential to hazing prevention.²⁷⁶ However, while Veldkamp’s “mentorship” approach may reduce hazing at fraternities where safe behaviors are modeled by all members,²⁷⁷ mentorship alone is unlikely to eradicate fraternal hazing when such behavior has become “the spirit and tradition” of a fraternity.²⁷⁸ Further, Veldkamp’s mentorship approach does not respond adequately to the psychological “victim-to-perpetrator cycle”²⁷⁹ seen in fraternity hazers. This cycle tends to suggest that older fraternity members will be unable or unwilling to denounce hazing within a mentorship role.²⁸⁰ Indeed, the acquiescence of Beta Theta Pi’s chapter president during the Piazza incident²⁸¹ demonstrates that fraternity “mentors” may themselves be incentivized to condone or propagate hazing. One fraternity “adviser” acknowledges the shortcomings of fraternal mentorship firsthand:

When, as a fraternity adviser, I talk to my guys, and I tell them, “Look, you’ve got to stay within the boundaries of the school’s rules and the state law, or you could be expelled, or you could go to prison,” they’re going to look at me like I’m lying to them because *I am* They know that on paper, supposedly you could be expelled and supposedly you could be prosecuted, but the odds are really, really against that ever happening.²⁸²

271. See ROBERT D. BICKEL & PETER F. LAKE, *THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY: WHO ASSUMES THE RISKS OF COLLEGE LIFE?* 89 (1999).

272. See *id.* at 90. Because of this tendency, the authors note that “[u]niversity law has the risk of being what university lawyers say it is.” *Id.* at 90–91 (emphasis added).

273. See Vendel, *supra* note 260.

274. See *supra* notes 152–54 and accompanying text.

275. See Alvarez, *supra* note 69, at 55–56 (“Universities have a self-serving interest in making sure their reputation and federal funding remain intact Reporting hazing incidents does not serve [their] efforts to maintain . . . standing among prospective applicants.”).

276. See Centre County Gazette & Vincent Corso, *supra* note 188.

277. See ROBBINS, *supra* note 18, at 292.

278. See Kuzmich, *supra* note 42, at 1124.

279. See Chamberlin, *supra* note 44, at 962.

280. See *id.*

281. See Deak, *supra* note 3.

282. See Naomi Andu, *To End Hazing, Students Must Be Individually Punished or Prosecuted, Advocates Tell Texas Lawmakers*, TEX. TRIB. (Feb. 11, 2020, 5:00 PM), <https://www.texastribune.org/2020/02/11/end-hazing-punish-students-not-just-organization->

Because the ability of host institutions to self-police and self-report can be easily abused,²⁸³ states should appoint one independent commissioner tasked with monitoring and reporting on fraternal organizations and hazing violations.²⁸⁴ By doing so, the Piazza Law can avoid the biases inherent in self-policing for which it presently allows.

IV. INVERTING THE TRIANGLE: AMENDING CRIMINAL ANTIHAZING STATUTES TO ACHIEVE OPTIMAL HAZING DETERRENCE

This note has identified the Piazza Law's statutory weaknesses vis-à-vis the three main actors who play a pivotal role in either the propagation or eradication of fraternity hazing: individual students,²⁸⁵ fraternities,²⁸⁶ and host institutions.²⁸⁷ As a corollary to the shortcomings of the Piazza Law's conception of what this note has dubbed the "Hazing Triangle,"²⁸⁸ this part suggests that state legislatures who enact anti-hazing laws should "invert" the Hazing Triangle by enacting stronger criminal penalties for fraternities and their host institutions.²⁸⁹ In "inverting the triangle," the focus of criminal deterrence will shift to fraternities and host institutions, whom this note has suggested require greater statutory oversight and penalization,²⁹⁰ and whose clout and influence can stem the fraternity hazing tide more powerfully than the criminalization of individual actors.²⁹¹

A. *Imposing Criminal Penalties upon Fraternities Found Guilty of "Organizational Hazing"*

To invert the triangle, the Piazza Law and other statutes must sanction fraternities more meaningfully. In this regard, Professor Robinson's blueprint for meaningful criminal deterrence provides a useful starting point:

[R]ule manipulation can, under the right circumstances . . . have an effect on conduct . . . where there [is]: good communication of the legal rule manipulation, meaningful punishment rates, a perceived substantial punishment threat against only a moderate benefit from crime, [and] an improved ability to reliably gauge how to calibrate

texas-advocates-say/ (quoting Jay Maguire, founder of "Parents and Alumni for Student Safety") (emphasis added).

283. See *supra* notes 266–69 and accompanying text.

284. See Andu, *supra* note 282 ("[U]niversities need to focus on ensuring investigations are conducted by impartial third parties"). Consider, too, that four major fraternity hazing incidents occurred at Penn State before the death of Timothy Piazza finally triggered a major response. See *supra* notes 96–104 and accompanying text.

285. See *supra* Part III.C.1.

286. See *supra* Part III.C.2.

287. See *supra* Part III.C.3.

288. See *supra* Part III.B.

289. See *infra* Part IV.A and B.

290. See *supra* Part III.B.

291. See *supra* Part III.C.2 and 3.

punishment amount. . . . Unfortunately, the existence of these conditions is the exception rather than the rule.²⁹²

Despite the importance of meaningful penalties against fraternities, only seventeen states specifically enumerate financial or equitable criminal sanctions against fraternities for hazing crimes.²⁹³ Table 1 provides an overview of these “organizational hazing” offenses.

Table 1: Antihazing Statutes That Directly Penalize Fraternities²⁹⁴

State	Nature of Penalty	Acts or Omissions Required for Fraternity Hazing Offense
Alabama	Automatic loss of host-institutional recognition where hazing occurred; mandatory loss of public funding ²⁹⁵	Fraternity must “knowingly permit[]” hazing to be conducted by a person subject to its “direction or control” ²⁹⁶
Arizona	Automatic loss of host-institutional recognition where hazing occurred ²⁹⁷	Fraternity must “knowingly permit[], authorize[], or condone[]” hazing ²⁹⁸
Connecticut	Automatic loss, for at least one year, of host-institutional recognition at any school statewide; automatic fine ²⁹⁹	Fraternity must “engage in hazing” ³⁰⁰
Delaware	Possible loss of host-institutional recognition where hazing occurred ³⁰¹	Fraternity must “authorize[] hazing in blatant disregard” of statute ³⁰²
Florida	At public host institutions, possible loss of host-institutional recognition where hazing occurred ³⁰³	Fraternity must “authorize[] hazing in blatant disregard” of statute ³⁰⁴
Louisiana	Possible loss of host-institutional recognition where hazing occurred (minimum of four years if hazing results	Fraternity representative or officer must know of hazing incident and fail to report it to

292. See Robinson, *supra* note 209, at 112.

293. See Table 1.

294. The table’s use of the term “possible” indicates that the statute *permits* a court to enforce the penalty in question. The term “automatic” indicates that the statute demands the penalty in question.

295. See ALA. CODE § 16-1-23(e) (2020).

296. See *id.*

297. See ARIZ. REV. STAT. ANN. § 15-2301(A)(10) (2020).

298. See *id.*

299. See CONN. GEN. STAT. ANN. § 53-23a(c) (West 2020)

300. See *id.* § 53-23a(b). The statute does not differentiate the acts required of an organizational hazer from those required of an individual hazer. See *id.*

301. See DEL. CODE ANN. tit. 14, § 9304(b)(3) (West 2020).

302. See *id.*

303. See FLA. STAT. ANN. § 1006.63(8)(b) (West 2020).

304. See *id.*

	in serious bodily injury); possible fine; possible forfeiture of public funding ³⁰⁵	law enforcement ³⁰⁶
Maine	Automatic loss of host-institutional recognition where hazing occurred ³⁰⁷	Fraternity must “authorize[]” hazing ³⁰⁸
Nebraska	Automatic fine ³⁰⁹	None required ³¹⁰
New Hampshire	Misdemeanor ³¹¹	Fraternity must either “knowingly permit[] or condone” hazing, “negligently fail[] to take reasonable measures” to prevent hazing, or fail to report hazing to law enforcement ³¹²
Oklahoma	Misdemeanor; possible fine; possible loss of host-institutional recognition, for a minimum of one year, where hazing occurred ³¹³	Fraternity must “engage or participate in hazing” ³¹⁴
Oregon	Possible fine ³¹⁵	Fraternity is guilty if fraternity, or one of its members, “intentionally” hazes ³¹⁶
Texas	Possible fine ³¹⁷	Fraternity commits hazing if it “condones or encourages” hazing or if any combination of its members hazes ³¹⁸
Pennsylvania	Possible fines and equitable relief to be determined by a court ³¹⁹	Fraternity must “intentionally, knowingly, or recklessly promote[] or facilitate[]” hazing ³²⁰
Utah	Misdemeanor ³²¹	Unspecified ³²²
Vermont	Automatic loss of host-institutional recognition where hazing occurred ³²³	Fraternity must “knowingly permit[], authorize[], or condone[]” hazing ³²⁴

305. See LA. STAT. ANN. § 14:40.8(B)(1)(a)(i) – (iii) (2020).

306. See *id.* § 14:40.8(B)(1)(a).

307. See ME. REV. STAT. tit. 20-A, § 10004(3)(C) (2020).

308. See *id.*

309. See NEB. REV. STAT. ANN. § 28-311.06(3) (West 2020).

310. See *id.* (“If the offense of hazing is committed for the purpose of initiation into . . . an organization . . . operating under the sanction of a [host institution] and such offense is committed by members . . . such organization shall be punished by a fine of not more than ten thousand dollars.”).

311. See N.H. REV. STAT. ANN. § 631:7(II)(b) (2020).

312. See *id.* § 631:7(II)(b)(1)-(3).

313. See OKLA. STAT. ANN. tit. 21, § 1190(D) (West 2020).

314. See *id.* § 1190(A) (West 2020).

315. See OR. REV. STAT. ANN. § 163.197(2)(a) (West 2020).

316. See *id.* § 163.197(1) (West 2020).

317. See TEX. EDUC. CODE ANN. § 37.153(b) (West 2020).

318. See *id.* § 37.153(a).

319. See 18 PA. STAT AND CONS. STAT. ANN. § 2804 (West 2020).

320. See *id.* § 2804(a).

321. See UTAH CODE ANN. § 76-5-105.5(3) (West 2020).

322. See generally *id.* § 76-5-105.5.

Washington	Automatic loss of host-institutional recognition at any public school within the state ³²⁵	Fraternity must knowingly permit hazing ³²⁶
West Virginia	Possible loss of host-institutional recognition where hazing occurred ³²⁷	Fraternity must “authorize[] hazing in blatant disregard” of statute ³²⁸

Many of the “organizational hazing” penalties enacted by the seventeen states above, such as severance of a host-institutional relationship, suggest a legislative willingness to hold fraternities to account for their role in hazing. An organizational conception of fraternity hazing culpability recognizes, *inter alia*, the long-standing concept of accessories after the fact in criminal law.³²⁹ Nonetheless, this note suggests that each of the seventeen legislative schemes, in isolation, will punish fraternities but not ultimately prevent them from continuing to propagate hazing crimes.

As such, the Piazza Law and other antihazing statutes should strengthen fraternity deterrence in two ways. First, criminal fines against fraternities should not be statutorily capped. Instead, the monetary value of criminal fines for organizational hazing violations should be left to the determination of a factfinder in criminal cases. This will ensure that fine amounts are not insufficient deterrents to well-funded fraternities,³³⁰ and alternatively, that smaller fraternities are not sanctioned disproportionately with larger fraternities.

Second, and perhaps more controversial, all criminal antihazing statutes should follow the lead of the seventeen states that currently hold fraternities criminally liable for hazing,³³¹ and criminal hazing statutes generally should explicitly declare the organizational crime of hazing as a strict liability offense.³³² The legislative enactment of strict liability criminal statutes offers at least two important advantages.³³³ First, strict liability eliminates the

323. See VT. STAT. ANN. tit. 16, § 178(b) (West 2020).

324. See *id.*

325. See WASH. REV. CODE ANN. § 28B.10.902(2) (West 2020).

326. See *id.*

327. See W. VA. CODE ANN. § 18-16-4(b)(2) (West 2020).

328. See W. VA. CODE § 18-16-4(b)(2) (1995).

329. Accessories after the fact can be held criminally liable for assisting another person in avoiding arrest or prosecution for committing an already completed offense. See, e.g., *People v. Zierlion*, 157 N.E.2d 72, 73 (Ill. 1959). Additionally, fraternities could not, under this theory, escape criminal liability even if they enacted formal policies against chapter hazing. See Henry J. Amoroso, *Organizational Ethos and Corporate Criminal Liability*, 17 CAMPBELL L. REV. 47, 51 (1995) (“[Criminal] acts may be imputed to the corporation, even if they are forbidden and against corporate policy or express instructions.”) (citing *United States v. Gold*, 743 F.2d 800 (11th Cir.), *cert. denied*, 469 U.S. 1217 (1984)).

330. See *supra* notes 239–43 and accompanying text.

331. See Table 1.

332. See *Strict-Liability Crime*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“An offense for which the action alone is enough to warrant a conviction, with no need to prove a mental state; specif., a crime that does not require a mens rea element, such as traffic offenses and illegal sales of intoxicating liquor.”).

333. Assaf Hamdani, *Mens Rea and the Cost of Ignorance*, 93 VA. L. REV. 415, 422 (2007).

administrative burdens of verifying defendants' mental states.³³⁴ In the case of hazing, such a lessening of the mens rea required for fraternity culpability will disallow fraternities from disavowing the actions of their constituent members as being unrelated to fraternity oversight. Second, and more important for purposes of fraternity hazing, strict liability crimes improve deterrence³³⁵ by ensuring that actors who cannot exercise a basic level of care do not engage in certain behaviors.³³⁶ When employed by legislatures, strict criminal liability "shift[s] the burden of acting within the law onto . . . persons who stand in a responsible relation to the harm."³³⁷ Within the organizational context, strict liability crimes produce stronger incentives for organizational leaders to supervise organizational activities because, under a statutory scheme where their ignorance of wrongdoing is irrelevant to fault, organizational leaders become compelled to exercise oversight of such activities.³³⁸ Because hazing is a dangerous activity that fraternities are in good stead to thwart as collective entities, strict organizational liability for organizational hazing has the potential to reduce fraternity hazing incidents. Further, other dangerous activities affecting impressionable victims, such as the sale of intoxicating liquor to minors, have also been the subject of strict liability crimes.³³⁹

Critics of this strict liability approach may argue that a more forgiving mens rea standard, such as criminal negligence, better suits organizational hazing.³⁴⁰ However, legislatures shaping criminal statutes must ensure that juries, who "may be ill-suited to decide what is reasonable in complex high risk activities,"³⁴¹ such as hazing, do not reinvent reasonableness standards on an ad hoc basis.³⁴² Further, in states, such as Ohio, where *individual* hazing has been treated as a strict liability offense, prosecutors have not "run amuck" in their enforcement of the statute.³⁴³ Nonetheless, in an attempt to best balance the policy ramifications of strict liability crimes against crimes requiring a showing of mental state, this note suggests a common ground—that organizational hazing offenses targeting fraternities should reflect a tiered mens rea approach based on the severity of hazing.³⁴⁴ Such an evening of group and individual culpability for fraternity hazing will not only acknowledge the powerful role that fraternities as organizations play in perpetuating hazing,³⁴⁵ but will also

334. See *id.*

335. See *id.*

336. See *id.* at 424.

337. George Jugovic, Jr., *Legislating in the Public Interest: Strict Liability for Criminal Activity Under the Pennsylvania Solid Waste Management Act*, 22 ENVTL. L. 1375, 1392-93 (1992).

338. See Hamdani, *supra* note 333, at 447.

339. Laurie L. Levenson, *Good Faith Defenses: Reshaping Strict Liability Crimes*, 78 CORNELL L. REV. 401, 419 (1993) (noting that strict liability "shifts the risks of dangerous activity to those best able to prevent a mishap").

340. Courts, additionally, are reluctant to infer strict liability where doing so "would criminalize a broad range of apparently innocent behavior." See *State v. Anderson*, 5 P.3d 1247, 1251 (Wash. 2000) (en banc).

341. Levenson, *supra* note 339, at 421.

342. See *id.*

343. Croy, *supra* note 64, at 260.

344. See *infra* Part IV.C.1.

345. See Chamberlin, *supra* note 44, at 962.

cause fraternity leaders to recognize the probability of punishment for hazing³⁴⁶ and to adjust their actions accordingly.³⁴⁷ Extending the scope of organizational criminal liability to fraternity hazing is particularly apropos because such liability “prompts organizations to more rigorously police their agents,”³⁴⁸ and in the context of hazing, local chapters essentially act as agents of national governing bodies.³⁴⁹

B. Ensuring the Compliance of Host Institutions Through Specific and Enforceable Statutory Requirements

In conjunction with the “inverted” triangle’s bolstered criminal penalties for fraternities,³⁵⁰ host institutions must likewise hold up their ‘side’ of the triangle alongside the fraternities with whom they associate. In this regard, antihazing statutes must achieve multiple ends simultaneously. First, to avoid institutional biases,³⁵¹ statutory disclosure requirements like the Piazza Law’s³⁵² must clearly delineate the administrative role of the host institution bound to comply with the statute.³⁵³ Appropriate penalties against the institution for failure to comply with reporting requirements must also be statutorily codified in an unambiguous manner. Further, antihazing statutes must require public host institutions (and private host institutions who accept state funding) to sever institutional recognition and funding from fraternities who are found criminally liable for any hazing offense.³⁵⁴ This statutory requirement will force

346. See LLEWELLYN, *supra* note 228, at 16 (“[I]n the case of legislation on crimes . . . commands are public. They can be learned of by the interested parties. And to a large degree the interested parties foresee what the officials will now do, and reshape their own affairs in consequence.”).

347. Importantly, this note does not suggest that applying organizational culpability involves eschewing individual culpability. Both parties must be held accountable because if individual members are absolved of blame completely, the antihazing statute would “enforce the idea that members can hide within the organization.” See Joyce & Nirh, *supra* note 40, at 59.

348. See Daniel L. Cheyette, *Policing the Corporate Citizen: Arguments for Prosecuting Organizations*, 25 ALASKA L. REV. 175, 185 (2008).

349. See, e.g., Whitney L. Robinson, *Hazed and Confused: Overcoming Roadblocks to Liability by Clarifying a Duty of Care Through a Special Relationship Between a National Greek Life Organization and Local Chapter Members*, 49 U. MEM. L. REV. 485, 514 (2019).

350. See *supra* Part IV.A.

351. See *supra* notes 266–69 and accompanying text; see also Nuwer, *supra* note 59 (noting that “administrators . . . view pledges as willing participants rather than susceptible victims of cult-like groups; as a result, they punish hazers too lightly”).

352. See 18 PA. STAT. AND CONS. STAT. ANN. § 2804(a) (West 2020).

353. See Fierberg & Neely, *supra* note 270, at 45–48 (arguing that host institutions owe a duty to students to inform them fully and accurately of Greek life risks, and that “opaque descriptions” of misconduct are insufficient protections for students).

354. This approach would not be unprecedented. See, e.g., FLA. STAT. ANN. § 1006.63(8)(b) (West 2020) (“In the case of an organization at a Florida College System institution . . . that authorizes hazing in blatant disregard of such rules, penalties may also include rescission of permission for that organization to operate on campus property or to otherwise operate under the sanction of the institution.”); W. VA. CODE ANN § 18-16-4(b)(2) (West 2020) (echoing Florida’s “rescission of permission” language nearly verbatim). This approach is also necessary considering the Pennsylvania Superior Court’s reluctance to “excommunicate” a fraternity from the Commonwealth without express statutory authorization. See *Commonwealth v. Pi Delta Psi, Inc.*, 211 A.3d 875, 892 (Pa. Super. Ct. 2019), *appeal denied*, 221 A.3d 644 (Pa. 2019). Finally, this approach was recommended by the grand jury presentment in the aftermath of the Beta Theta Pi hazing scandal. See Xian, *supra* note 132.

host institutions to approach troublesome fraternities with a “tough love” attitude and compel host institutions to approach their reporting and disclosure requirements with greater concern.

C. *Lifting the Haze: Model Statutory Text for a Post-Piazza Collegiate World*

To address the lack of legal deterrence that state antihazing statutes have placed on fraternities and host institutions, this section provides a model “Organizational Hazing” statutory section that intends to achieve two functions: (1) to acknowledge the available literature’s insights on how incentives drive or deter fraternity hazing and (2) to bridge the penological gaps that exist among state statutes that criminalize organizational hazing.³⁵⁵

The author’s aim in providing this model statutory text is, specifically, to inform the legislative drafting of an organizational hazing offense that ensures organizational and host-institutional deterrence. As such, this model text does not include otherwise necessary features of antihazing statutes, such as definitions of hazing and bodily injury, or a consent clause. Additionally, although this note argues that legislatures should impose penalties where host institutions have been found not to comply with specific reporting requirements, legislatures will necessarily differ as to how host-institutional reporting requirements are to be delegated and enforced. Some legislatures, for instance, may appoint an individual commissioner to investigate whether host institutions comply with the statute, or may even create a civil enforcement mechanism against host institutions for any citizens who become aggrieved by reporting requirement oversights. Therefore, despite this note’s argument that these requirements should be enforceable (if enacted), this model text does not include such a section.

1. LEGISLATIVE PURPOSE.

The legislature recognizes that the act of hazing, as defined by the legislature, can cause serious bodily injury, psychological harm, and death. The legislature also recognizes that organizations, as defined in this section, often exercise undue coercion and psychological influence upon individual actors who commit hazing. In enacting this section, as well its strict liability penalties against organizational hazing, it is the intent of the legislature to create strict criminal liability for organizations who commit the crime of hazing because of the severe nature and consequences of the activity.

2. DEFINITIONS.

The term “organization” shall include student organizations, associations, fraternities, sororities, corporations, and student living groups. The term “host institution” shall include any private or public school, college, or university that recognizes or affiliates with a fraternity.

355. See Table 1.

3. ORGANIZATIONAL HAZING.

a. Any organization that negligently permits hazing to be conducted by its members, or by others subject to its direction or control, commits a misdemeanor and such organization

(1) shall forfeit all official recognition, approval, rights, and privileges of being an organization organized or operating at an institution of higher education, for a period to be determined by a court but not less than two years; and

(2) may be subject to any such fines or forfeiture of any property involved in the offense as the court deems equitable based on the circumstances of the hazing violation(s).

b. Where any person or group of persons who are members of an organization, or who are subject to the organization's direction and control, commit hazing that results in bodily injury or death, such organization

(1) shall forfeit permanently all official recognition, approval, rights, and privileges of being an organization organized or operating at any host institution in this state; and

(2) may be subject to any such fines or forfeiture of any property involved in the offense as the court deems equitable based on the circumstances of the hazing violation(s).

V. CONCLUSION

The Piazza Law, although laudable in its ambitions, falls short of its legislative objectives by placing insufficient penalties upon fraternities and host institutions – two actors that can curb the spread of hazing more effectively than the individual hazing perpetrators that the Piazza Law and other statutes primarily target.³⁵⁶ This note argues that this problem should be solved in two ways.³⁵⁷ First, the Piazza Law and other antihazing statutes should impose greater penalties upon fraternities.³⁵⁸ Second, antihazing statutes should specifically enumerate responsibilities and corresponding liabilities for host institutions and should appoint an independent commissioner to oversee antihazing statutes' directives.³⁵⁹

As an intended “model for changing anti-hazing laws nationwide,”³⁶⁰ the Piazza Law's text has already become a near-verbatim boilerplate for a pending antihazing bill in New Jersey.³⁶¹ Doubtless other states will follow Pennsylvania's and New Jersey's lead in strengthening their antihazing statutes

356. See *supra* Part III.

357. See *supra* Part IV.

358. See *supra* Part IV.A.

359. See *supra* Part IV.B.

360. See *supra* note 151 and accompanying text.

361. See N.J.S.B. 2093, 219th Leg., Reg. Sess. (N.J. 2020), <https://legiscan.com/NJ/text/S2093/2020>.

as further fraternity hazing incidents saturate the news media. Because of the Piazza Law's emerging role as a model statute,³⁶² state legislatures must consider carefully how this new trend in antihazing legislation may not produce the deterrent results hoped for. Ultimately, it is the aim of this note that its "inverted triangle" approach to antihazing policy will mark the start of an extended scholarly and public dialogue on how best to achieve fraternity hazing deterrence.

362 See *supra* notes 151, 361 and accompanying text. This note's analytical framework and conclusions are applicable to all current and future antihazing statutes. Further, the interplay discussed herein between state legislatures, host institutions, fraternities, and individuals are of general applicability, despite this note's use of Pennsylvania law and events as its primary objects of analysis.