

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

[McKinney's Consolidated Laws of New York Annotated](#)
[Penal Law \(Refs & Annos\)](#)
[Chapter 40. Of the Consolidated Laws \(Refs & Annos\)](#)
[Part Three. Specific Offenses](#)
[Title H. Offenses Against the Person Involving Physical Injury, Sexual Conduct, Restraint and Intimidation](#)
[Article 120. Assault and Related Offenses \(Refs & Annos\)](#)

McKinney's Penal Law § 120.16

§ 120.16 Hazing in the first degree

Currentness

A person is guilty of hazing in the first degree when, in the course of another person's initiation into or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person and thereby causes such injury.

Hazing in the first degree is a class A misdemeanor.

Credits

(Added L.1983, c. 716, § 1. Amended [L.1988, c. 86, § 1.](#))

Editors' Notes

PRACTICE COMMENTARY

by William C. Donnino

In 1983, “hazing” was added as a single-degree offense. L.1983, c. 716. In 1988, hazing was divided into two degrees, by renaming the single degree “hazing in the first degree” [[Penal Law § 120.16](#)], and adding “hazing in the second degree” [[Penal Law § 120.17](#)]. L.1988, c. 86.

The criminalization of hazing is an outgrowth of the public dismay at the injuries, and even deaths, occasioned by the initiation rites of school fraternities. The statute, however, applies to initiation into, or affiliation with, “any” organization.

In form, “hazing in the first degree” closely parallels the wording of “reckless endangerment in the second degree” [[Penal Law § 120.20](#)]. The three significant differences are: (1) “hazing in the first degree” defines the culpable mental state as acting either intentionally or recklessly; (2) “hazing in the first degree” requires creation of a substantial risk of only “physical injury” [defined [Penal Law § 10.00\(9\)](#)], unlike “reckless endangerment” which requires a substantial risk of “serious physical injury” [defined in [Penal Law § 10.00\(10\)](#)]; and (3) “hazing in the first degree,” unlike “reckless endangerment,” requires the causing of physical injury.

Thus, “hazing in the first degree” attempted to fill a theoretical void between misdemeanor assault and reckless endangerment. In the absence of a specific intent to cause physical injury, an intentional misdemeanor assault would be inapplicable [Penal Law § 120.00(1)]. In the absence of a substantial risk of serious physical injury, reckless endangerment would be inapplicable [Penal Law § 120.20]. There may, however, be some overlap between reckless misdemeanor assault [Penal Law § 120.00(2)] and hazing in the first degree. Even so, there may also be some added deterrent value from a criminal statute specifically directed at and named after the activity of hazing.

In 1988, “hazing in the second degree” [Penal Law § 120.17] was added and it replaced the simultaneously-repealed statute of harassment as it applied to a student who, with intent to harass, annoy or alarm another person, engages in hazing [former Penal Law § 240.25(4)]. L.1988, c. 86. The sponsors of the 1988 legislation appeared concerned that both the intent requirement and the lack of definition of what constituted hazing in that former harassment statute rendered that statute ineffective to deal with the problem of hazing when no physical injury resulted from such conduct.

To meet those concerns, “hazing in the second degree” is defined in the same manner as “hazing in the first degree,” except that there is no requirement that physical injury be actually caused. Thus, given an initiation or affiliation proceeding with any organization, hazing in the second degree requires that the defendant “intentionally” or “recklessly” engage in conduct which “creates a substantial risk of physical injury” to a person.

As with the crime of “reckless endangerment,” it is the culpable mental state coupled with the imminent risk of injury which constitutes the gravamen of the offense of hazing in the second degree. See *People v. Davis*, 72 N.Y.2d 32, 530 N.Y.S.2d 529, 526 N.E.2d 20 (1988). With “reckless endangerment,” however, the risk must be of “serious physical injury,” an exceptionally significant level of injury. With hazing, the risk need be only of “physical injury.” Thus, as the sponsors of the law intended, “hazing in the second degree” casts a broad net and may induce those who engage in the practice of hazing to reconsider, since such conduct, even without the actual infliction of physical injury, may constitute an offense.

Notes of Decisions (2)

McKinney's Penal Law § 120.16, NY PENAL § 120.16
Current through L.2018, chapters 1 to 187.