

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 137aa

52nd Legislature, 2nd Session, 2016

Tracking Number: .202910.3

Short Title: Student Athlete Brain Injury Protocols

Sponsor(s): Senator Michael S. Sanchez

Analyst: Kevin Force

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AS AMENDED

The Senate Judiciary Committee amendment strikes the initial explanatory language in the definition of “licensed health care professional,” so that this definition in Section 1 of the bill matches the corresponding definition in Section 2 by rendering them both as lists of specific professions that would qualify as a “licensed health care professional.”

The Senate Education Committee amendments:

- clarify that the medical release needed to permit a youth athlete to return to participation in athletic activity must be written; and
- add “a practicing physical therapist licensed pursuant to the *Physical Therapy Act*” to the definitions of “licensed health care professional” in both Section 1 and Section 2 of the bill.

Original Bill Summary:

SB 137 provides for enhanced safety protocols to protect student athletes and young people who participate in non-scholastic youth athletic activities from brain injury. The bill establishes procedures, parallel to those for brain injuries related to school athletics, for determining whether an athlete has been injured, and for allowing the injured youth athlete to return to participation. The bill also directs the Department of Health (DOH) to promulgate rules to establish safety protocols, as well as the nature and content of educational materials to be supplied to coaches, youth athletes, and their parents or guardians.

Fiscal Impact:

SB 137 does not contain an appropriation.

DOH estimates the cost of implementation of the bill to be an additional recurring \$11,000 in FY17 and FY18 from the General Fund.

At a Glance:

- SB 137 extends the period during which a student athlete is barred from participating in athletic activity following a head injury from one week, to 240 hours from the hour when the student received the injury.

- The bill also establishes requirements for non-scholastic youth athletic activity that parallel those already in law or proposed by this bill for school-related athletic activity, requiring persons offering such activities to follow these brain injury protocols.

Original Detailed Provisions:

Section 1 would amend Section 22-13-31 of the *Public School Code*, dealing with student athletes' brain injuries by:

- specifying that a student athlete who suffers a brain injury may not return to participation in athletic activity for at least 240 hours from the hour in which the student athlete suffers the injury;
- requiring that, in order for non-scholastic youth athletic activity to take place on school district grounds the superintendent of a school district must require the person offering the activity to certify that it will follow the protocols established in this bill; and
- defining "nonscholastic youth athletic activity" to mean an organized athletic activity in which the participants, a majority of whom are under 19 years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice to so compete, but does not include an elementary school, middle school, high school, college or university activity, or an activity that is incidental to a non-athletic program.

Section 2 proposes a new section of law that would apply provisions parallel to those in Section 22-13-31 NMSA 1978 to "youth athletes" and "youth athletic activities," including definitions specific to that section, for:

- "brain injury," which means a body-altering physical trauma to the brain, skull or neck caused by blunt or penetrating force, concussion, diffuse axonal injury¹, hypoxia-anoxia² or electrical charge;
- "licensed health care professional," identical to that found in Section 22-13-31 NMSA 1978;
- "youth athlete," which means an individual under 19 years of age who engages in, is eligible to engage in, or seeks to engage in a community athletic activity; and
- "youth athletic activity," which means an organized athletic activity in which the participants, a majority of whom are under 19 years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity, but does not include an elementary school, middle school, high school, college or university activity, or an activity that is incidental to a non-athletic program.

Section 2 of the bill also:

- prohibits a coach from allowing a youth athlete to participate in athletic activities if they have been diagnosed with a brain injury or if they exhibit signs and symptoms of a brain injury after a coach, league official, or youth athlete reports, observes or suspects a youth athlete has sustained a brain injury;

¹ "Diffuse axonal injury" is a brain injury in which damage in the form of extensive lesions in white matter tracts occurs over a widespread area.

² "Hypoxia-anoxia" is a condition of low oxygen or total depletion of oxygen.

- prohibits the youth athlete from returning to athletic activity any sooner than 240 hours from the hour in which the athlete suffers a brain injury, and only when he or she:
 - no longer exhibits any signs, symptoms, or behaviors consistent with brain injury; and
 - receives written medical release from a licensed healthcare professional;
- requires all youth athletic leagues to ensure that their coaches receive training, according to rules promulgated by DOH, that includes:
 - protocols and content consistent with current medical knowledge;
 - the nature and risk of brain injury associated with athletic activity;
 - recognition of signs, symptoms, and behaviors consistent with brain injury;
 - the need to alert appropriate medical professionals for urgent diagnosis and treatment; and
 - the need to follow medical direction for proper medical protocols;
- mandates that, at the beginning of each athletic season or participation in athletic activity, youth athletic leagues provide a brain injury information form to youth athletes and their parents or guardians that contains information that, according to rules promulgated by DOH, includes:
 - the nature and risk of brain injury resulting from athletic activity; and
 - the risk of continuing or returning to youth athletic activity after sustaining a brain injury; and
- prohibits the athletic league from allowing the youth athlete to begin or return to athletic activity until the athlete and his or her parents sign the information form.

Technical Issues:

Section 2 of the bill, which addresses non-scholastic youth athletic activity, mirrors current provisions that address students and school athletic activities and, in lieu of a school, address “youth athletic leagues” as the organization pertinent to the new requirements and responsible for youth athletes. SB 137 does not, however, include a definition for this term.

The Board of Nursing recommends changing references to “practicing certified nurse practitioner” to references to “Advanced Practice Registered Nurse licensed pursuant to the *Nursing Practice Act*.” The Board indicates that the recommended term is more inclusive of the practice of all such registered nurses, including Clinical Nurse Specialists, than the more restrictive “certified nurse practitioner.”

Substantive Issues:

Originally enacted during the 2010 regular legislative session, Section 22-13-31 NMSA 1978 required the New Mexico Activities Association (NMAA) to consult with the Brain Injury Advisory Council (BIAC) and school districts to promulgate rules regarding the training of athletic coaches on the issue of brain injuries. Title 6, Chapter 13 of the *New Mexico Administrative Code* addresses interscholastic activities and the procedure by which rule promulgated by the NMAA are approved by the Public Education Department (PED). SB 137

would require DOH, in consultation with BIAC, to promulgate corresponding rules for youth athletic activities.

According to the Centers for Disease Control and Prevention (CDC):³

- 31 percent of concussions occurred in a sports facility and 20 percent in a school facility;
- 71 percent of all sports- and recreation-related traumatic brain injury emergency department visits were among males; and
- 70.5 percent of sports- and recreation-related traumatic brain injury emergency department visits were among persons aged 10 through 19 years.

DOH indicates that United States emergency departments treat approximately 135,000 sports related traumatic brain injuries every year, including concussions for children 5 to 18 years old, who account for the majority of emergency room visits for sports-related traumatic brain injuries. Younger people are at greater risk of another concussion, long-term adverse affects of traumatic brain injury, delayed recovery and consequences of cumulative traumatic brain injury, such as increased severity of future injuries, dementia, and depression. DOH notes that student athletes should be evaluated by a healthcare professional experienced in traumatic brain injury before being permitted to return to play and, citing the International Concussion Consensus Guidelines, note that athletes should not return to play on the same day as a traumatic brain injury, and should only return to play in the absence of post-injury symptoms, on a progressive basis over the course of approximately one week.

Background:

In recent years, the issue of repeated brain trauma among professional athletes has been discussed with increasing frequency. Chronic traumatic encephalopathy (CTE), a progressive degenerative disease often found in those who have suffered repeated brain injury, including those that are, at least initially, asymptomatic. The syndrome is most commonly found in people who participate in certain contact sports, such as football, soccer, hockey, wrestling, boxing, and rodeo, among others. Symptoms of the disease include signs of dementia, such as aggression, memory loss, confusion and depression, and may appear years after the initial trauma.

The Department of Veterans Affairs partnered with Boston University on a survey of National Football League (NFL) players in 2015, finding indications of CTE in 96 percent of NFL players tested, and in 79 percent of all tested football players. Their research also indicated:

- out of 165 individuals who played football professionally or in college or high school before their deaths, 131 had evidence of CTE;
- 40 percent of those who tested positive were offensive or defensive linemen who come into contact with each other nearly every game, supporting past research that indicated repeated, relatively minor head trauma of the sort that occurs regularly in football and other sports that pose the greatest risk, not more violent episodes that may cause concussions.

In 2014, the Brain Injury Advisory council, a program of the Governor's Commission on Disability, contracted with the University of New Mexico Health Sciences Center Brain and Behavioral Institute survey on sports concussions among New Mexico youth. Data were

³ See, <http://www.cdc.gov/concussion/sports/facts.html>.

collected from 20,000 students who participated in school athletics and 7,000 students who participated in physical education (PE). Among its findings:

- 392 male and 206 female students were removed from athletics as a result of concussion;
- the rate of concussion among youth participating in sports was more than 2.5 times greater than the rate reported by a similar study in another state;
- the rate of concussion in PE was 60 percent higher than in sports;
- while nearly all of New Mexico's middle and high school coaches received the state-mandated training on concussions, it is less clear how many PE teachers or youth club sports coaches received similar training;
- more than 50 percent of New Mexico schools indicated there are inadequate resources to diagnose and manage concussions;
- less than 40 percent of schools in the state employ athletic trainers to assist in concussion management; and
- more than 70 percent indicated strong interest in more education and training.

Related Bills:

SB 149 *Shaken Baby Syndrome Educational Materials*

HB 11 *Shaken Baby Syndrome Educational Materials*

HB 180 *Student Athlete Brain Injury Appeals*