



Education and Local Government Interim Committee

64th Montana Legislature

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TO: Education and Local Government Interim Committee Members

FROM: Pad McCracken, Research Analyst

RE: HJR 26 study and bill draft related to the Dylan Steigers Protection of Youth Athletes Act

DATE: March 22, 2016

At the January meeting, the committee requested staff prepare two items for the April meeting:

1. a bill draft reflecting the technical changes to current law recommended in Dr. Valerie Moody's report (including relevant fiscal analysis); and
2. background and summary of testimony related to previous discussions about expanding the current law to include nonschool sports.

This memo and the attached bill draft will attempt to fulfill those requests.

#1 Bill draft

The attached bill draft LC CONC strikes two references to athletic trainers in current law. The rationale for these amendments is that if athletic trainers are "licensed health care professionals" (LHCPS) as defined in the law, they should not be grouped with coaches, officials, athletes, and parents as needing to be provided with information about concussions or complete annual training regarding concussions. Other LHCPS are not listed in these sections, and the inclusion of athletic trainers may confuse an athletic trainer's role as an LHCP. (I included all sections of Title 20, chapter 7, part 13, for your reference and discussion; unamended sections will be removed from a final bill draft.) The [fiscal note](#) for Senate Bill No. 112 (2013), which created the Dylan Steigers Protection of Youth Athletes Act, stated that the bill would have minimal financial impact on school districts as it was anticipated that the Montana High School Association and the Montana School Boards Association would provide policies and procedures for the bill's implementation. There is no fiscal impact resulting from the minor technical changes contained in the attached bill draft.

#2 Including nonschool sports

The Dylan Steigers Protection of Youth Athletes Act was enacted through SB 112 in the 2013 session and sponsored by Sen. Anders Blewett. [As introduced](#), the bill applied only to school districts, was intended to be codified in Title 20 (Education), and defined "organized youth athletic activity" as "an athletic activity sponsored or sanctioned by a school or school district in which the participants are engaged in an athletic game or competition against another team, club, or entity, in practice, tryouts, training exercises, or sports camps, or in preparation for an athletic game or competition against another team, club, or entity." I underlined "or sanctioned" because

that wording received some scrutiny in the bill's initial hearing in the Senate Judiciary Committee and was stricken by the committee during executive action. (Sen. Robyn Driscoll's bill in 2015, SB 304, would have amended this wording back in--more on that later.)

At the hearing in Senate Judiciary on February 1, 2013, 27 proponents spoke in favor of the bill. There were no opponents or informational witnesses. Of these proponents, a number spoke in favor of the bill, but requested that the bill be expanded to include nonschool sports in order to protect a broader swath of Montana children; others spoke in favor of the bill and asked that the law not be expanded to include club sports, youth soccer, small fry football, etc. and that the "or sanctioned" language be removed to clarify that only school-sponsored sports are included under the law. (An example given about possible confusion related to the "or sanctioned" language was a youth indoor soccer league using a school gymnasium--does that qualify as "sanctioned" and therefore trigger the school district's responsibility to inform coaches, athletes, and parents of the dangers of concussions and ensure that signed documents are returned prior to a youth athlete's participation, as well as enforce the return-to-play protocols required under the bill?) The "or sanctioned" language was removed by Senate Judiciary in executive action, as was language limiting the health care professionals eligible to evaluate and clear athletes to return to participation to physicians, osteopaths, physician assistants, athletic trainers, or registered nurses. The other change by Senate Judiciary was to rewrite the final line of the "Purpose--intent" section from "It is not the intent of [sections 2 through 5] to create any new cause of action" to "[Sections 2 through 5] do not create a new cause of action."

The bill passed second reading in the Senate 33-17 and third reading 33-15 and was assigned to the House Education Committee. The hearing in House Education on March 15, 2013, again had 20-plus proponents and no opponents. Several proponents mentioned a concern for language related to the role and responsibility of LHCPs and stated that they were working with the sponsor on amendments addressing their concerns. Amendments addressing these concerns, including removal of "scope of practice" language and substituting "exhibiting signs, symptoms, and behaviors consistent with concussion" for "suspected of sustaining a concussion" were added to the bill by House Education in executive action on March 25, 2013. The bill passed second and third readings in the House, 80-20 and 76-22. The House amendments were concurred in by the Senate 43-7, and the bill passed third reading in the Senate 37-11 before being signed into law by the governor.

During the 2015 session, Sen. Driscoll introduced [Senate Bill No. 304](#) to revise the Steigers Act. The introduced bill included the following changes:

- required that a LHCP have training and scope of practice that include concussion evaluation and management;
- added back the "or sanctioned" language in defining "organized youth athletic activity";
- added language about "suspecting a youth athlete has sustained a concussion" to existing language about an athlete exhibiting signs of concussion (the "suspected" language was part of the original SB 112 in 2013 and was amended to "exhibiting signs").

These changes would have returned the law's language closer to the introduced version of SB 112.

The bill was heard in Senate Judiciary on February 19, 2015. In her introduction, Sen. Driscoll explained the return of the "or sanctioned" language as being sure that intramural sports offered by schools would be clearly included. One proponent mentioned that a shortcoming of SB 304 was that it still did not include nonschool "club sports". Sen. Diane Sands asked the sponsor why club sports were not included in the 2013 bill, and Sen. Driscoll responded that the YMCA had concerns about that and that she would be requesting an amendment for executive action to include club sports under the law.

During executive action, in Senate Judiciary on February 24, 2015, an amendment was moved by Sen. Doug Kary to remove the "or sanctioned" language. Sen. Nels Swandal expressed a concern that including sanctioned sports would place a much greater burden on districts, who would now be required to ensure that all participants, coaches, officials, parents involved in using a school's facilities for athletics had been informed and educated about concussion, while still leaving a large gap in concussion education for those club sports that do not use school facilities. The motion for this amendment failed 5-7.

Sen. Mary Sheehy Moe moved an amendment clarifying the language around "suspected concussion" by stating that an athlete should be removed if the athlete "has experienced an impact supporting the reasonable suspicion that the athlete has sustained a concussion." The motion for this amendment failed 6-6. The do pass motion on SB 304 failed 5-7, and the bill was tabled.

If the committee is interested in pursuing statutory changes to include nonschool sports under the Dylan Steigers Act, it will likely involve substantial changes clarifying just which entity is responsible for ensuring that athletes, parents, coaches, and officials are informed about concussions and for ensuring that return-to-play protocols are followed. Simply expanding the definition of "organized youth athletic activity" to include nonschool sports does not impose duties on the organizers of those sports and would likely cause confusion over the responsibilities of school districts.

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As of: March 18, 2016 (1:46pm)

LC CONC

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising laws related to protecting youth athletes from permanent injury and death related to concussion; amending section 20-7-1303, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

[THIS WORKING DRAFT INCLUDES ALL SECTIONS OF THE DYLAN STEIGERS PROTECTION OF YOUTH ATHLETES ACT FOR REFERENCE; UNAMENDED SECTIONS WILL BE REMOVED FROM A FINAL BILL DRAFT]

Section 1. Section 20-7-1301, MCA, is amended to read:

"20-7-1301. Purpose -- intent. (1) The legislature finds that protecting youth athletes from serious injury is a compelling state interest. The purpose of 20-7-1301 through 20-7-1304 is to prevent permanent injury and death to youth athletes in the state of Montana. To further this interest, the legislature finds:

(a) concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities;

(b) a concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull;

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(a) transient confusion, disorientation, or impaired consciousness;

(b) dysfunction of memory;

(c) loss of consciousness; or

(d) signs of other neurological or neuropsychological dysfunction, including:

(i) increased irritability;

(ii) lethargy;

(iii) vomiting;

(iv) headache;

(v) dizziness;

(vi) fatigue;

(vii) decreased balance; and

(viii) seizures.

(2) "Licensed health care professional" means a registered, licensed, certified, or otherwise statutorily recognized health care professional whose training includes the evaluation and management of concussions.

(3) "Organized youth athletic activity" means an athletic activity sponsored by a school or school district in which the participants are engaged in an athletic game or competition against another team, club, or entity, in practice, tryouts, training exercises, or sports camps, or in preparation for an athletic game or competition against another team, club, or entity.

(4) "Youth athlete" means an individual who is an active participant in an organized youth athletic activity."

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in an organized youth athletic activity after exhibiting signs, symptoms, or behaviors consistent with a concussion may not return to organized youth athletic activities until the youth athlete:

(a) no longer exhibits signs, symptoms, or behaviors consistent with a concussion; and

(b) receives an evaluation by a licensed health care professional and receives written clearance to return to play from the licensed health care professional. The written clearance must state:

(i) that the licensed health care professional has evaluated the youth athlete; and

(ii) that in the licensed health care professional's opinion, the youth athlete is capable of safely resuming participation in organized youth athletic activities."

{*Internal References to 20-7-1304:*
20-7-1301 20-7-1301 20-7-1302 }

NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective July 1, 2017, and applies to school years beginning after July 1, 2017.

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