

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Education and Cultural Affairs
From: Hillary Risler, Esq., Legislative Analyst
Date: 2/17/2021
Subj: **LD 104, “An Act To Protect the Health of Student Athletes by Requiring the Establishment of Procedures To Report Concussions (Brennan)”**

SUMMARY

This bill requires the Commissioner of Education to create a procedure by which school administrative units and private schools report annually the number of student athletes who experience concussive and other head injuries while participating in school activities and athletics.

During the public hearing, the sponsor suggested making the procedure voluntary by changing the “shall” to a “may.”

TESTIMONY

Proponents:

- While the protocols and education efforts related to concussions have advanced since previous legislation was passed, the legislation did not include a provision for data collection, and DOE does not currently collect statewide data on the number of concussions that occur each year
- There is an initiative through Colby College, but not all schools participate; establishing a procedure for all schools to report concussions to DOE would streamline data collection, which could aid in the development of guidelines for concussion prevention and treatment
- The bill should be expanded to include a procedure for reporting concussions for all students, not just athletes

Opponents: None

Neither For Nor Against:

- Support for the development of a reporting tool to allow for the gathering of data, but also concern that this data is being gathered only from athletics

BACKGROUND INFORMATION:

Title 20-A: EDUCATION
Part 1: GENERAL PROVISIONS
Chapter 3: DEPARTMENT OF EDUCATION
Subchapter 2: COMMISSIONER

§254. Educational duties

The commissioner shall have the following educational duties.

17. Model policy for management of concussive and other head injuries. In consultation with organizations representing school principals, school boards, school superintendents, athletic directors, athletic trainers, sports medicine practitioners, the Acquired Brain Injury Advisory Council established in [Title 34-B, section 19001](#) and other interested parties, the commissioner shall develop a model policy on the management of concussive and other head injuries in school activities and athletics.

Title 20-A: EDUCATION
Part 2: SCHOOL ORGANIZATION
Chapter 101: GENERAL PROVISIONS
Subchapter 1: SCHOOL BOARDS

§1001. Duties of school boards

School boards shall perform the following duties.

19. Adoption of policy to manage concussive and other head injuries. Beginning January 1, 2013, the school board of each public school and the governing body of each private school enrolling more than 60% of its students at public expense in this State shall adopt and implement a policy on the management of concussive and other head injuries in school activities and athletics that is consistent with the model policy developed by the commissioner in accordance with section 254, subsection 17.

The department's model policy is available on their website:

<https://www.maine.gov/doe/schools/safeschools/healthed/concussion>

ISSUES FOR CONSIDERATION:

- FERPA - The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. FERPA generally prohibits the improper disclosure of personally identifiable information derived from education record. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.
- Joint Guidance from the federal Department of Education on HIPAA and FERPA: <https://studentprivacy.ed.gov/resources/joint-guidance-application-ferpa-and-hipaa-student-health-records>
- Maine Department of Education Data Reporting and Suppression Policies (<https://www.maine.gov/doe/data-reporting/privacy>)

COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:

- The committee requested more information on the current program (the Head Injury Tracker (“HIT”) App that athletic trainers are currently using to report information to the Maine Concussion Management Initiative) utilized for recording, tracking, and reporting data on concussions, including but not limited to:
 - What information is gathered?
 - What is the status of the data in terms of privacy, aggregation, and who maintains it?
 - What are the weaknesses to the program?
 - Are there any efforts currently underway to provide more access to data?
- An overview of what happens in schools that do not have athletic trainers (and/or only have a part-time nurse) as far communication and how concussion protocols are handled.

DOE and Mike Burnham from MPA are available for the work session to provide more information.

- Other state laws: NCSL has a database of State laws on traumatic brain injuries enacted between 2009 and 2014: <https://www.ncsl.org/research/health/traumatic-brain-injury-legislation.aspx>

State Laws on Concussion Data Reporting

State	Statutory Provision
<p>Connecticut Conn. Gen. Stat. Sec. 10-149e</p>	<p>School districts to collect and report occurrences of concussions. Report by Commissioner of Public Health.</p> <p>(a) For the school year commencing July 1, 2014, and annually thereafter, the State Board of Education shall require all local and regional school districts to collect and report all occurrences of concussions to the board. Each report shall contain, if known: (1) The nature and extent of the concussion, and (2) the circumstances in which the student sustained the concussion.</p> <p>(b) For the school year commencing July 1, 2015, and each school year thereafter, the State Board of Education shall send a concussion report to the Department of Public Health containing all of the information received pursuant to subsection (a) of this section.</p> <p>(c) Not later than October 1, 2015, and annually thereafter, the Commissioner of Public Health shall report, in accordance with section 11-4a, to the joint standing committees of the General Assembly having cognizance of matters relating to children and public health on the findings of the concussion report provided to the department pursuant to subsection (b) of this section.</p>
<p>Hawaii Hawaii Concussion Law Act 262</p>	<p>The department of kinesiology and rehabilitation science of the University of Hawaii, the department of education, and the Hawaii High School Athletic Association shall jointly develop a concussion monitoring and educational program for school athletics that requires:</p> <p style="padding-left: 40px;">(6) Continuous data collection and monitoring of concussions in school athletics, including neuropsychologist review of computerized neuropsychological tests</p>
<p>Illinois 105 Ill. Comp. Stat. Ann. 25/1.20</p>	<p>§ 1.20. Concussion reporting.</p> <p>(a) Beginning with the 2016-2017 school year, an association or other entity that has, as one of its purposes, promoting, sponsoring, regulating, or in any manner providing for interscholastic athletics or any form of athletic competition among high schools and high school students within this State shall require all member schools that have certified athletic trainers to complete a monthly report on student-athletes at the member school who have sustained a concussion during a school-sponsored activity overseen by the athletic trainer or when the athletic director is made aware of a concussion sustained by a student during a school-sponsored event. All reporting must be anonymous as it relates to student names.</p> <p>(b) Beginning with the 2017-2018 school year, the association or entity to which this Section applies shall compile the data reported under subsection (a) of this Section during the previous school year into an annual report and submit copies of this report to the General Assembly, as provided in Section 3.1 of the General Assembly Organization Act.</p>

PRELIMINARY FISCAL IMPACT STATEMENT:

- Not yet determined
- Potential State Mandate?