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COMMENT

GET YOUR HEAD IN THE GAME: LEGISLATION ADDRESSING CONCUSSIONS IN YOUTH SPORTS AND ITS DEVELOPMENT IN MARYLAND

By: Elisabeth Koloup*

Imagine having to bury your 17-year-old son whose death resulted from an untreated concussion four days prior, when he was tackled in a high school football game. That nightmare became a reality in September of 2009 for the parents of Andrew Swank, a student-athlete at Valley Christian High School in Spokane, Washington.¹ Andrew exited the game complaining of nausea and a headache after a hard tackle, but returned to play without question, only to collapse to the ground in the third quarter. Andrew is just one of approximately 120 youth athletes who have died in the past two years from untreated or neglected head injuries sustained during athletic competition.²

Concussions and other mild brain injuries have long been a leading cause of Traumatic Brain Injury (“TBI”) and death throughout the world. The National Conference of State Legislation reported that approximately 1.7 million people suffer from a TBI annually, with over 52,000 of those

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¹ See Dana Rebik, *Spokane Teen Dies From Football Concussion*, WEB REPORTER (Sept. 28, 2009), <http://www.q13fox.com/news/kcpq-092809-footballplayerdiesdana,0,7603618.story>.

² Terry Zeigler, *Alliance for Youth Sports Safety: A Call to Action*, SPORTSMID (Mar. 20, 2011), http://www.sportsmd.com/SportsMD_Articles/id/355.aspx.

injuries resulting in death.³ Concussions are of particular concern. Although typically resulting only in short-term disruption of brain function, concussions are the source of approximately 75% of TBIs every year, and can lead to more serious long-term effects if not properly treated.⁴ The most common causes of concussions are falls, motor vehicle crashes, being struck by or against objects, and assaults.⁵ However, the percentage of concussions due to sports injuries is increasing.⁶ While sports-related concussions have primarily drawn attention in the professional sports realm, especially the National Football League⁷, concussions are often overlooked as a serious concern among youth sports. Between 1997 and 2007, over fifty percent of all concussions, resulting in emergency hospital visits by children between the ages of 8 and 19, were sports-related.⁸

A concussion is a dangerous injury because the symptoms are hard to recognize, often downplayed, and not properly treated before players return to competition. Further, unlike broken bones or contusions to other body parts, brain injuries are serious in that they pose a risk of permanent damage that could affect one's mental capacity, motor skills, or memory—functions necessary to live competently.⁹ Youth athletes in particular are susceptible to lasting damage caused by concussions for

³ *Traumatic Brain Injury Legislation*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/issues-research/health/traumatic-brain-injury-legislation.aspx> (last updated Mar. 2012).

⁴ *Iowa Awareness Month Fact Sheet*, BRAIN INJURY ASS'N OF AM., <http://www.biausa.org/Default.aspx?SiteSearchID=1192&ID=/search-results.htm> (last visited Mar. 18, 2012) (scroll down page and click on "2012 Brain Injury Awareness Fact Sheet" hyperlink).

⁵ *Traumatic Brain Injury Legislation*, *supra* note 3.

⁶ *Sports-Related Head Injury*, AM. ASS'N OF NEUROLOGICAL SURGEONS (June 2009), [http://www.aans.org/Patient Information/Conditions and Treatments/Sports-Related Head Injury.aspx](http://www.aans.org/Patient%20Information/Conditions%20and%20Treatments/Sports-Related%20Head%20Injury.aspx) (noting that about 21 percent of annual TBIs are sports-related for both adults and children). According to a recent study, sports are the second leading cause of TBI behind motor vehicle accidents for youth ages 15 to 24. Lindsay Barton, *Concussion Statistics in High School Sports*, MOMSTEAM (Nov. 5, 2011), <http://www.momsteam.com/health-safety/concussion-rates-high-school-sports>.

⁷ In 1994, the NFL commissioner estimated that at least one concussion occurs in every 3.5 NFL games. Alexander N. Hecht, *Legal and Ethical Aspects of Sports-Related Concussions: The Merrill Hoge Story*, 12 SETON HALL J. SPORT L. 17, 20 (2002).

⁸ Bruce H. Stern, *Child Sports Related Concussions Have Doubled*, STARK & STARK (Sept. 13, 2010), <http://www.braininjurylawblog.com/brain-injury-news-child-sports-related-concussions-have-doubled.html>.

⁹ *Protect – Watch Your Head*, THE FRANKLIN INST., <http://www.fi.edu/learn/brain/head.html> (last visited Mar. 31, 2012).

several reasons, including underdeveloped brain tissue, frequent neglect, and oversight.¹⁰

Only in recent years has the concern for sports-related concussions in professional, amateur, and youth sports begun to surface.¹¹ This is not only because of the rapidly increasing number of sports-related concussions resulting from artificial surfaces, insufficient equipment, more relaxed rules concerning contact, and a more intense, win-at-all-costs mentality, but also due to increased public awareness.¹²

While several professional athletes have resorted to litigation in order to gain compensation for brain injuries they sustained¹³, there are still no universal measures in place to prevent lasting brain injuries in professional sports. However, in order to regulate the health and safety measures that come with the increasing number of brain injuries in youth sports, the federal government has proposed various bills and several states have adopted legislation addressing this issue.¹⁴ The purpose of the legislation is to reduce the effects of concussions caused in youth sporting events by implementing certain policies, which include the education of youth players, parents, and coaches of the dangers of concussions and mandating that any youth player with a head injury be seen by an appropriate licensed health care provider before being allowed to return to play.¹⁵ While all states have at least considered legislation addressing concussions in youth sports, the overall success rate in preventing extensive brain injury will depend on how narrowly tailored the law is to accomplish the state's specific interest.

The legally relevant inquiry then, is whether Maryland's law addressing concussions in youth sports will be successful. More specifically, will Maryland's government have enough resources and funding to sustain its policy? Will Maryland's government feel pressure from surrounding states to eventually develop and expand on its current law? Finally, while legislation addressing sports-related concussions might prove successful in reducing long-term damage caused by concussions in youth sports, will legislation make an impact on

¹⁰ Linda Balsiger, M.S., CCC-SLP, *Sports and Head Injuries – What You Need to Know*, BEND LANGUAGE & LEARNING, <http://www.bendlanguageandlearning.com/Sports%20and%20Head%20Injuries-What%20You%20Need%20to%20Know.pdf> (last visited Apr. 8, 2012).

¹¹ *Traumatic Brain Injury Legislation*, *supra* note 3.

¹² *See infra* Part III.

¹³ *See Hecht*, *supra* note 7, at 20.

¹⁴ *See SportsConcussions.org*, *Concussion Laws, School and Medical Resources*, SPORTSCONCUSSIONS, <http://www.sportscconcussions.org/laws.html> (last visited Apr. 8, 2012).

¹⁵ Christopher Giza & Gerard Giola, *Core Principles of Youth Sports Concussions*, FEDERAL & HASSON, http://www.federalhasson.com/index.php?option=com_content&view=article&id=333%3Acore-principles-of-youth-sports-concussionlegislation&catid=68%3Acatastrophic-injury-articles&Itemid=108&lang=en (last visited Apr. 8, 2012).

professional, Olympic, and college sports as well?

With a focus on concussions in youth sports, this paper will first address the general medical implications and history of concussions in the United States. Next, it will delve into the development of brain injury as a concern specifically in sports, both professional and amateur. The second half of this paper will then discuss current federal and state legislation, both proposed and enacted. Various state laws will be compared and contrasted, including a lengthy discussion of Maryland's recently enacted law and predictions about its future success. The paper will conclude with a discussion about the future impact of state and federal laws addressing brain injury in youth sports on higher-level sports, such as professional, Olympic, and collegiate sports.

I. CONCUSSIONS, SYMPTOMS, QUALIFICATIONS TO DIAGNOSE AND TREAT, RISKS, TREATMENT, AND POTENTIAL SOLUTIONS

The definition of "concussion" has evolved, and continues to evolve, as a result of differing expert opinions and new discoveries regarding symptoms and side effects.¹⁶ Today, the term "concussion" is generally defined as a clinical syndrome characterized by immediate and transient impairment of neural functions, such as alteration of consciousness or disturbance of vision or equilibrium, generally due to mechanical forces such as jarring from a blow, fall, or the like.¹⁷ Up until the 1980's, concussions as a whole received little medical attention, while doctors and neurologists dedicated most of their time to moderate and more severe brain injuries.¹⁸ However, in the last three decades, concussions have been taken more seriously as they have been found to cause TBI if neglected and not properly treated.¹⁹ Recent media attention publicizing the growing number of TBIs resulting from concussions has increased

¹⁶ MARK LOVELL ET. AL., *TRAUMATIC BRAIN INJURY IN SPORTS: AN INTERNATIONAL NEUROPSYCHOLOGICAL PERSPECTIVE* 24 (2004).

¹⁷ Andy Llaguno, *Concussions: URI Sports Medicine*, CSTV, http://grfx.cstv.com/photos/schools/uri/genrel/auto_pdf/concussions.pdf (last visited Apr. 7, 2012); *Concussion Definition*, DICTIONARY.COM, <http://dictionary.reference.com/browse/concussion> (last visited Jan. 7, 2012).

¹⁸ LOVELL ET. AL., *supra* note 16, at 24. Because concussions typically result in only short-term disruption to the brain, and the majority of patients suffering from concussions tend to recover quickly and completely, concussions have been regarded as mild brain injuries. *Id.*

¹⁹ Due to underreporting, the exact amount of concussions sustained annually is not exact. However, experts estimate that at least 6 in every 1,000 Americans sustain a concussion annually. J. David Cassidy et al., *Incidence, risk factors and prevention of mild traumatic brain injury: Results of the WHO Collaborating Centre Task Force on Mild Traumatic Brain Injury*, 36 J. REHAB. MED. 28, 43 (2004); see also Thomas A. Hammeke, *Sports Concussions a Growing Concern*, MED. COLL. OF WIS., http://classroom.springisd.org/webs/whstrainer/upload/sports_concussions_a_growing_concern.htm (last visited Apr. 8, 2012).

public awareness, as well as alerted health care providers, organizations, and lawmakers of the need to devote more time and attention to the prevention and treatment of concussions.²⁰

With the growing concern associated with concussions, doctors and neurologists have acknowledged that those suffering from the injury need timely emergency response care to ensure that long-term brain damage does not result.²¹ However, initially recognizing the existence of a concussion is arguably the hardest part of the process. Concussions are notoriously difficult to recognize because they are internal injuries often invisible by outer appearance alone.²² Therefore, common symptoms occurring immediately, and even up to weeks after the injury, are typically relied upon in order to diagnose a concussion.²³ The most common symptoms of a concussion include, but are not limited to: nausea; dizziness or balance problems; double or fuzzy vision; sensitivity to light or noise; a headache; a “sluggish” feeling; a tired feeling; a “foggy,” or “groggy” feeling; confusion; and trouble concentrating or remembering.²⁴ While these are some of the most common, other symptoms resulting from a concussion will vary depending on the person and circumstances surrounding the injury.²⁵ Therefore, each case must be evaluated individually.²⁶

Because of the varying number of concussion symptoms and the difficulty recognizing them, it is key that those diagnosing or evaluating a potential concussion are properly qualified and trained.²⁷ While only doctors can officially diagnose concussions, it is advantageous if non-physicians are able to recognize the signs and symptoms of concussions at an early stage, “provid[ing] for the implementation of proper management for even the least severe injury,” in order to minimize “the risk of a negative outcome” and maximize “the probability of the [player]

²⁰ GARY S. SOLOMON ET AL., *THE HEADS-UP ON SPORT CONCUSSION* 17 (2006).

²¹ *Traumatic Brain Injury Legislation*, *supra* note 3; Zeigler, *supra* note 2.

²² LOVELL ET. AL., *supra* note 16, at 26. The American College of Sports Medicine reported that over 85% of all concussions are undiagnosed. Quiana Burns, *Ready For Some Football & Concussions?*, ABC NEWS (Aug. 31, 2006), <http://abcnews.go.com/Health/story?id=2379230>.

²³ BRAIN INJURY ASS'N OF AM., *supra* note 4. Because concussions are so difficult to recognize, those believed to have sustained a concussion are directed to immediately report their conditions and seek medical attention. *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Concussion Signs and Symptoms*, WISPORTSCONCUSSION.ORG, http://www.ampmontana.com/docs/concussions/concussion_signs_and_symptoms.pdf (last visited Apr. 8, 2012).

²⁷ Steven P. Broglio & Kevin M. Guskiewicz, *Concussion in Sports: The Sideline Assessment*, SPORTS HEALTH: A MULTIDISCIPLINARY APPROACH (July 28, 2009), <http://sph.sagepub.com/content/1/5/361>.

returning to competition...."²⁸ Clinical evaluations are currently considered the most effective means for recognizing and treating concussions because a bright-line standard diagnostic tool to manage concussions has yet to be established.²⁹ Ideally, concussions may be best recognized and treated given one's medical history, personality, and habits.³⁰ However, absent this knowledge, a licensed health care provider or someone trained to diagnose concussions should take the following steps for effective diagnosis.

First, the injured person should be evaluated for consciousness.³¹ If remaining in an unconscious state, he or she should be immediately taken to a medical facility for further professional treatment.³² If the injured person returns to a conscious state, the next step requires sharp observation and palpation of the injured person, including attention to any deviation from normal speech pattern, pupil size, reaction to light, fluidity of eye movement in multiple directions, pulse and blood pressure.³³ If none of those symptoms exist, the person is not likely in danger of a more serious injury.³⁴ However, further evaluation must take place in order to determine if a concussion exists, which may include special assessments testing neurocognitive status (memory, concentration, and exertional maneuver skills) and postural control, such as the ability to maintain balance and cranial nerve integrity.³⁵ In order for a non-physician to recognize these tendencies, he or she must be properly educated in recognizing concussions and may use special written tests designed to aid in the process.³⁶

Although one concussion may not cause serious or permanent brain damage, there are several risks associated with concussions, especially if ignored or not properly treated. Aside from causing seizures, cervical spine injuries, skull fractures, and intercranial bleeding, receiving multiple concussions can cause post-concussive syndrome, post-traumatic encephalopathy, or second impact syndrome, which have all been determined to drastically increase the chance of permanent brain damage or even death.³⁷

²⁸ John W. Powell, *Cerebral Concussion: Causes, Effects, and Risks in Sports*, J. ATHL. TRAIN., July-Sept. 2001, at 310.

²⁹ Broglio, *supra* note 27, at 361.

³⁰ *Id.*

³¹ Broglio, *supra* note 27, at 362.

³² *Id.* at 363.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Broglio, *supra* note 27, at 362, 364 (see figure 1 and figure 2).

³⁷ Llaguno, *supra* note 17. Post concussion syndrome occurs when neurological or cognitive problems in the brain become chronic. *Id.* Second impact syndrome is present when

Once it has been established that a concussion exists, proper treatment and care must be provided in order that the patient make a full and complete recovery. If determined that the concussion is a “grade 1” concussion, the main manner of treatment is rest and continued observation for the remainder of the day.³⁸ This is a common method of concussion treatment.³⁹ If the concussion is considered “grade 2,” a trained professional should evaluate it and sports-related activities should be discontinued until all symptoms have completely cleared.⁴⁰ Lastly, if determined to be a “grade 3” concussion, which generally involve a loss of consciousness, proper treatment should include immediate evaluation by a medical professional and might require that the patient remain in a medical facility until all symptoms clear.⁴¹

In order to limit the number of concussions from occurring in the future, diagnose cases of TBI, and respond to and rehabilitate TBI patients effectively, several methods have been undertaken by both federal and local governments, as well as higher-level athletic organizations. One such method involves the creation of federal and state funded programs and organizations to increase public awareness, support brain injury research and prevention, promote cost effective services to treat concussions and other brain injuries, educate the public on the dangers of brain injury, and advocate for change on behalf of those injured or affected by the implications of brain injury, among many other causes.⁴² Second, forty-eight states and the District of Columbia have enacted legislation specifically addressing TBI concerns, including surveillance mechanisms to track the incidence and severity of TBI, TBI in correctional facilities, TBI in war veterans, and licensing guidelines for TBI treatment facilities.⁴³ In addition, professional, Olympic, and collegiate committees have established various guidelines and standards for evaluating and treating players with concussions, although they are hardly enforced.⁴⁴ Finally, thirty-four states and the District of Columbia have enacted legislation specifically targeting concussions in youth sports.⁴⁵ While not all states have officially adopted laws aiming to

a second injury occurs before the person has recovered. *Id.* at 7. This may occur after receiving multiple concussions over a period of months or years. *Id.*

³⁸ *What's the Treatment for a Concussion?*, HEALTH-CARES.NET, <http://neurology.healthcares.net/concussion-treatment.php> (last visited Apr. 8, 2012).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² BRAIN INJURY ASS'N OF AM., <http://www.biausa.org/About-Us/about-brain-injury-association.htm> (last visited Jan. 7, 2012); *Traumatic Brain Injury Legislation*, *supra* note 3.

⁴³ *Traumatic Brain Injury Legislation*, *supra* note 3.

⁴⁴ Powell, *supra* note 28.

⁴⁵ *Traumatic Brain Injury Legislation*, *supra* note 3.

prevent lasting effects of concussions, several states and the federal government have proposed, or have pending, laws that are likely to be passed within the next few years.⁴⁶

II. DEVELOPMENT OF SPORTS-RELATED CONCUSSIONS: A HISTORY

Mainly due to the growing brutality and effects of body-on-body action, contact sports, including football, baseball, hockey, wrestling, soccer, lacrosse, boxing, and basketball, have become leading causes of concussions.⁴⁷ Concussions sustained in sporting events can be especially dangerous, as returning to play before full recovery can result in permanent brain damage and death.⁴⁸ Until the early 1980's, concussions were not a major concern in the world of sports.⁴⁹ However, when the media began to release several news stories of professional athletes retiring as a result of multiple concussions in the 1990's, doctors and the general public became more aware of concussions as a legitimate concern in sports.⁵⁰ In response, doctors and researchers began to dedicate more time and attention to the growing severity of unreported and improperly treated concussions.⁵¹ Despite increased awareness, the number of sports-related concussions continues to grow each year.⁵² Since it is unlikely that the number of sports-related concussions will decrease any time soon, the focus must turn to minimizing the risks and managing the effects of concussions to prevent further, more extensive brain damage.

Professional sports undoubtedly receive the most media attention concerning sports-related injuries. Therefore, head injuries sustained by professional athletes, as opposed to amateur and youth athletes are generally more widely known. However, concussions occur just as

⁴⁶ *Traumatic Brain Injury Legislation*, *supra* note 3.

⁴⁷ LOVELL ET. AL., *supra* note 16, at 4.

⁴⁸ Janice Lloyd, *High School Athletes Face Serious Concussion Risks*, USA TODAY (May 4, 2009), http://www.usatoday.com/news/health/2009-05-04-concussions_N.htm; *Head Games: Everything You Need To Know About Concussions*, ESPN RISE (Sept. 1, 2010), <http://rise.espn.go.com/all-sports/articles/2010/08/31-Concussions-from-magazine.aspx>.

⁴⁹ LOVELL ET. AL., *supra* note 16, at 43.

⁵⁰ *Id.* at 25.

⁵¹ During this time period, a variety of assessment protocols, grading scales, and return-to-play criteria were developed. SOLOMON, *supra* note 20, at 93.

⁵² See Hecht, *supra* note 7, at 19; *Sports-Related Concussions: Background and Significance*, UNIV. OF PITTSBURGH: DEP'T OF NEUROLOGICAL SURGERY, <http://www.neurosurgery.pitt.edu/trauma/concussion.html> (last visited Apr. 8, 2012). Statistics show that by participating in a contact sport, an individual athlete is at a 19% chance of receiving a concussion for every year he or she participates in that contact sport. *Id.* Further, about 380,000 recreational and sports-related concussions sustained by people of all ages occur every year in the United States alone. *Head Games: Everything You Need To Know About Concussions*, *supra* note 48.

frequently among amateur athletes, at both the collegiate and Olympic levels, as well as at the youth level.⁵³ Although a brutal, win-at-all-costs mentality is generally associated with higher level sports, youth sports from recreational to high school levels, have slowly evolved to embody a similar mentality, driven largely by parents. However, this is just one of the many reasons why the concussion rate in youth sports has grown over the last century.⁵⁴ How did sports-related head injuries become so prevalent in children, where the level of competition is generally milder compared to professional, college, and Olympic sports? Unfortunately, a movement toward the professionalization of youth sports, combined with insufficient equipment and more evolved, relaxed rules for competition, places youth athletes at a greater risk for serious head injury.

A. *The Professionalization of Youth Sports*

Theoretically, youth sports are regarded as fun pastimes—a chance for children to get together with their friends a few days per week and get some exercise. Win or lose, children supposedly participate in sports to gain specialized skills while gaining a sense of sportsmanship and teamwork.⁵⁵ Nevertheless, amateur and youth sports in particular, are becoming more and more professionalized. In other words, youth sports have increasingly assumed many characteristics exemplified in professional sports, including: a focus on participation as a means to an end (i.e., college scholarship); single sport specialization; early single sport specialization; intense year round training; private coaching; an increased emphasis on winning; and a decrease in the importance of education.⁵⁶

In the late 1920's, youth sports leagues were created in order to foster a sense of community, allow parents to congregate in a social atmosphere, and to provide wholesome activities for children in order that they avoid troublesome behavior. Pop Warner football, for example,

⁵³ Of the estimated 3,800,000 sports-related concussions occurring annually, approximately 2,470,000 (about 65%) are sustained by children between the ages of 5 and 18. *Heads Up: Concussion in Youth Sports*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, DIV. OF INJURY RESPONSE, http://www.cdc.gov/concussion/pdf/Heads_Up_Activity_Report_Final-a.pdf (last visited Apr. 8, 2012) [hereinafter *HHS Concussion Report*].

⁵⁴ *Id.* In the last decade, the amount of concussions sustained by youth athletes has nearly doubled. *An Alarming Rise in Concussions in Youth Sports*, THEJOURNALTIMES.COM (Sept. 4, 2010, 5:15 PM), http://www.journaltimes.com/news/opinion/editorial/article_41e14f4a-b7d2-11df-9436-001cc4c03286.html.

⁵⁵ Steve Silverman, *Problems with Youth Sports*, LIVESTRONG.COM, <http://www.livestrong.com/article/93625-problems-youth-sports> (last updated May 3, 2011).

⁵⁶ Daniel Gould, *The Professionalism of Youth Sports and Its Impact on Girls*, MICHIGAN STATE UNIV., TUCKER CENTER FOR RESEARCH ON GIRLS AND WOMEN IN SPORT (Spring 2006), <http://www.cehd.umn.edu/tuckercenter/media/DLS-2006-Spring-Gould-Handout.pdf>.

officially started by former college athlete Glenn Scobey “Pop” Warner in 1929, was created to stop city youths from vandalizing property as a pastime and involve them in a constructive activity.⁵⁷ The league surpassed that goal in the local community, as it expanded to include over 3,000 teams by the 1960’s.⁵⁸ Pop Warner football currently consists of over 5,000 teams nationwide.⁵⁹ Similarly, Carl Stotz founded Little League Baseball in 1939 “as a way to teach [children] the ideals of sportsmanship, fair play and teamwork.”⁶⁰ Little League Baseball has grown to become the world’s largest organized youth sports program, while continuing to embrace its original ideals.⁶¹

Media attention followed the rapid growth of youth sports leagues. Although professional and college sports dominate the media today, youth sports competitions are increasingly aired on local, and even national television and radio, and featured in popular periodicals.⁶² Further, it is becoming more common for youth championships to be held in college and professional venues, allowing for more fans and public attention.⁶³ This media attention undoubtedly contributes to the increased exposure of these youth athletes to the public, including college, Olympic, and professional coaches and scouts. Because of their size, popularity among youth athletes, and the media attention they receive, nationally known youth league games and tournaments such as Pop Warner Football and the Little League Baseball World Series have become central recruiting venues for college and professional scouts, thus intensifying the nature of youth sports as a means to a successful athletic future, rather than for recreational purposes.⁶⁴

The competitive, ends-driven environment that soon came to replace the original social purpose of youth sports is not only the result of the above-mentioned leagues, but is also due to the behavior of parents. After a few years of attending youth sporting events for social and

⁵⁷ *History of the Organization*, POP WARNER, <http://www.popwarner.com/aboutus/history.asp> (last visited Apr. 8, 2012).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *History of Little League*, LITTLE LEAGUE ONLINE, <http://www.littleleague.org/learn/about/historyandmission.htm> (last visited Apr. 8, 2012).

⁶¹ *Id.*

⁶² DAVID BOURNE, et al., *From Media to Stadiums, The Dollars are Flowing to Youth Sports*, STREET & SMITH’S SPORTSBUSINESS JOURNAL (Aug. 2, 2010), <http://www.sportsbusinessjournal.com/article/66410>.

⁶³ For example, in Baltimore, Maryland, two local rival high schools, Loyola Blakefield and Calvert Hall College, compete in M&T Bank Stadium every Thanksgiving in what has become known as “Turkey Bowl.”

⁶⁴ Daniel Frankl, *Recruiting Practices in Youth Sports: Who’s Winning?* (Jan. 6, 2002), available at http://instructional1.calstatela.edu/dfrankl/CURR/kin380/PDF/Recruiting-in-Youth_Soccer.pdf.

leisurely enjoyment, parents started to view their child's athletic talent as a sign of social status, and have since been pressuring their children to perform at high levels in order to win and attract attention.⁶⁵ Because athletic talent has historically been a valued quality, the prospect that a child could become a sports star is particularly appealing to parents.⁶⁶ With this mentality and the heavy value placed on athletic talent and success, parents of youth athletes have gradually instilled in their children a win-at-all-costs mind set, where winning is often valued over sportsmanship and teamwork—qualities that youth sports were originally meant to achieve.⁶⁷ In fact, parents often react inappropriately from the sideline, and undoubtedly behind closed doors, often resorting to physical and verbal abuse towards their child when his or her athletic performance is perceived as unacceptable.⁶⁸

In order to achieve the "win at all costs" standard, parents will stop at nothing to see that their young athletes receive the best training available. This may include paying top dollar for the most experienced or well-known trainer in the community, traveling far distances for a particular team, school, or coach, or even forcing children to specialize in a particular sport from an early age, in order to streamline focus and skill.⁶⁹ In recent years, parents have even started to push weight lifting at an early age, despite studies showing the drawbacks of excessive muscle growth in young children.⁷⁰ Along with obtaining paramount training, parents are also compelling their young athletes to train harder, and for more hours every week, in order to maximize their potential.⁷¹ As a result of extended hours and an increased emphasis placed on athletics, education is taking a backseat to sports, and children are not receiving the academic encouragement or support from parents and coaches necessary to succeed in the classroom.⁷²

⁶⁵ MARK HYMAN, UNTIL IT HURTS: AMERICA'S OBSESSION WITH YOUTH SPORTS AND HOW IT HARMS OUR KIDS 22 (2009).

⁶⁶ *Id.* at 21.

⁶⁷ See *supra* notes 55-60 and accompanying text.

⁶⁸ Michael Kanters, *Parents and Youth Sports: The Good, the Bad and Why We Need Them — Research Update*, PARKS AND REC. (Dec. 2002), available at http://findarticles.com/p/articles/mi_m1145/is_12_37/ai_96620906.

⁶⁹ *Id.*

⁷⁰ See generally Caetlyn R. Campbell, *The Danger of Weightlifting in Children and Young Adolescents*, HELIUM, <http://www.helium.com/items/698195-the-danger-of-weightlifting-in-children-and-young-adolescents> (last updated Nov. 16, 2007) (explaining the dangers of excessive weightlifting by young children).

⁷¹ James White & Gerald Masterson, *Problems in Youth Sports*, FAMILYRESOURCE.COM, <http://www.familyresource.com/parenting/sports/problems-in-youth-sports> (last visited Apr. 8, 2012).

⁷² *Id.*

In a sense, youth sports leagues and teams are like businesses. While, unlike professional athletes, money is not directly involved as a reward for competing, parents are willing to spend tens of thousands of dollars, as well as over 70 hours per week, for their children to participate in sports.⁷³ Despite the push for youth athletes to succeed at the amateur level, only a small percentage of youth athletes actually move on to compete at a higher level.⁷⁴ Although most parents are aware of the adverse statistics, and could choose to allot their money to other valuable extracurricular activities, they continue to dedicate their time and money with hopes that their child will one day make it to the top. High schools are also treating youth sports as a business. Team tryouts are a highly political process, and millions of dollars are now invested to implement state of the art athletic facilities, including turf fields and spacious arenas—all to attract higher-level coaches and scouts and to appeal to the best young student-athletes.⁷⁵

Aside from the small probability of athletic success beyond the high school level, there are several other factors that parents fail to consider when pressuring their children into making sports a priority, especially at an early age. Forcing young athletes to specialize in a specific sport may allow them to flourish in one specific skill; however, it is more likely that that child will get burnt out at an early age and not even want to compete at the next level.⁷⁶ Studies suggest that children should remain athletically well-rounded to avoid burn-out and a premature peaking of talent.⁷⁷ Similarly, children whose parents force them into intensive, year-round training tend to get injured or suffer from fatigue at a young age.⁷⁸ This can often lead young athletes to quit the sport or become

⁷³ Travel, club, and Olympic development sports programs, among others, are often necessary for a youth athlete to get recognition from college coaches, and potentially receive a college scholarship. However, the fees associated with such teams can go well into the tens of thousands of dollars each year. Karen Datko, *The High Cost of Youth Sports*, MSN.COM, <http://money.msn.com/saving-money-tips/post.aspx?post=673566d4-b94f-4f33-a1bf-39fb416498f> (last visited April 19, 2012). Further, many parents choose to pay for their child to attend certain private high schools that might allow them a better athletic opportunity and gain more exposure than attending the local public school.

⁷⁴ Kirk Mango, *Part 2: Specialization In Youth Sports, Good or Bad?*, CHICAGONOW (May 14, 2010), <http://www.chicagonow.com/blogs/athletes-sports-experience/2010/05/part-2-specialization-in-youth-sports-good-or-bad.html>.

⁷⁵ Bourne, *supra* note 62.

⁷⁶ White, *supra* note 71.

⁷⁷ It is desirable for young athletes to peak around prime recruiting periods to stand out from their peers in order to get attention from higher-level scouts. *Id.* For college-bound athletes, this period would generally be in one's junior year of high school, or first two college seasons if aiming to move to the professional level. *Id.*

⁷⁸ See generally Joseph Baker, *Early Specialization in Youth Sport: A Requirement for Adult Expertise?*, 14 HIGH ABILITY STUDIES 88 (2003), available at <http://www.yorku.ca/>

unable to continue at a higher level.⁷⁹ Finally, the considerable emphasis that society places on winning and the desire to be the best also tends to cause parents, as well as their children, to approach competition with a more aggressive attitude and pay less attention to their own health and safety.⁸⁰

B. *Insufficient Equipment and Progressive Rules*

In addition to the professionalization of youth sports, concussions are prevalent in youth contact sports as a result of insufficient protective equipment and evolved rules allowing for more aggressive play. It is the aggressive nature of contact sports that continues to attract a majority of sports fans. As a result of the popularity, contact sports, especially football, basketball, lacrosse, hockey, and baseball, have grossed more money than other sports over time.⁸¹ In order to maintain and increase such popularity among contact sports, rules have evolved to encourage audience excitement.⁸² Athletes have not only gotten stronger and fitter with modernized weight lifting and exercise equipment, but relaxed rules for competition allow for more aggressive play and contact.⁸³ Even though equipment tends to improve with modernized technology, it remains relative to the gradual increase in strength of youth athletes and the ever-intensifying aggressive play of youth sports. Studies show, for example, that although manufacturers continue to improve helmet design to maximize protection, the contact and strength associated with major contact sports render helmets inadequate.⁸⁴ Similarly, women's lacrosse

bakerj/High%20Ability%20Studies%20paper.pdf (analyzing the benefits and consequences of year-round training by youth athletes).

⁷⁹ *Id.*

⁸⁰ Daniel Gould, *The Professionalization of Youth Sports: It's Time to Act!*, 19 CLINICAL J. SPORT MED. 81, 81-82 (2009).

⁸¹ Cyril Thomas, *Sports Fans and Violent Behavior*, HELIUM, <http://www.helium.com/items/171693-sports-fans-and-violent-behavior> (last visited Jan. 7, 2012); see also Jaime Langton, *The Top Five Reasons Soccer Will Never Make it Big in America*, YAHOO VOICES (Jan. 26, 2012), <http://voices.yahoo.com/the-top-five-reasons-soccer-will-never-5205395.html?cat=9>.

⁸² *A Brief History of the Game*, ALAMEDA HIGH SCH. (Nov. 16, 2002), <http://www.hornetfootball.org/documents/football-history.htm>.

⁸³ William Rhoden, *To Lower Violence, Escalate the Penalty*, N.Y. TIMES, Oct. 18, 2010, available at <http://www.nytimes.com/2010/10/19/sports/football/19rhoden.html>.

⁸⁴ Manufacturers have yet to create a helmet that is 100% effective in preventing brain injury, but they continue to research and develop in order to do so. Frederic Frommer, *Consumer Product Safety Agency Working on Football Helmets*, ASSOCIATED PRESS, Dec. 6, 2010, available at http://www.startribune.com/templates/Print_This_Story?sid=111223159. Hockey helmets have a shelf life of 5 years and become a hazard if used after expiration. *Concussion Confidential*, ESPN.COM (Dec. 19, 2010), <http://sports.espn.go.com/espn/news/story?id=5925876>. This can especially become a problem in youth sports where funding is generally less than at the college and professional levels and youth players are often left with used or worn equipment. *Id.*

recently began to require the use of protective goggles after players sustained an excessive amount of face and head injuries resulting from more aggressive body and stick contact permitted by a series of new rules.⁸⁵

All of the downfalls associated with youth sports today create a paradox. Parents enroll their children in youth sports hoping that they will succeed and continue on to compete at higher levels, or one day receive a scholarship. However, the opposite commonly occurs, as the competitive, cutthroat environment, insufficient equipment, and progressive rules that have overcome youth sports increase the number of lasting injuries, quitters, and burnouts. In fact, all of these factors contribute to the large number of concussions that youth athletes suffer every year.⁸⁶ In order to solve this problem and increase awareness, several states and the federal government have recently adopted, or have proposed, legislation addressing concussions in youth sports.⁸⁷ But are laws the answer? Why is it that, after recognizing this problem over 30 years ago, the number of sports-related concussions and their dangerous effects remain a serious concern? Laws may be necessary to prevent sports-related concussions from producing severe brain damage, but will they be successful in ultimately limiting the occurrence of such injuries?

III. LEGISLATION ADDRESSING CONCUSSIONS IN YOUTH SPORTS

Although concussions are a legitimate concern throughout all levels of sports, there is a particular concern for concussions in youth athletes.⁸⁸ This concern is reflected in recent legislation, as the only laws yet to address sports-related concussions, or any concussions for that matter, are directed at youth athletes.⁸⁹ Besides society's general emphasis on protecting children, and the fact that most sports-related concussions are sustained by youth, there are several reasons why federal and state governments take special interest in protecting young athletes.

First, children and teenagers are more susceptible to brain damage

⁸⁵ Studies show that requiring female lacrosse players to wear eyewear decreased the rate of head injuries by 51%. Dwight A. Webster, et al., *Head and Face Injuries In Scholastic Women's Lacrosse With and Without Eyewear*, 31 MED. SCI. SPORTS EXERC. 938, 938 (1999).

⁸⁶ White, *supra* note 71; *see also* Frommer, *supra* note 84.

⁸⁷ *State Concussion Laws*, SPORTSCONCUSSIONS.ORG, <http://www.sportsconcussions.org/ibaseline/state-laws/statelaws.html> (last visited Mar. 3, 2012).

⁸⁸ Children sustain the highest number of concussions per year among all age groups, including sports-related concussions. A. H. Ropper, et al., *Clinical Practice, Concussion*, 356 NEW ENG. J. MED. 166, at 166-72 (2007); *HHS Concussion Report*, *supra* note 53, at 6.

⁸⁹ *Concussion Legislation by State*, NFL HEALTH & SAFETY, <http://nflhealthandsafety.com/zackery-lystedt-law/states> (last updated Nov. 28, 2011).

than adults because their brains are not fully developed.⁹⁰ In addition, children are more vulnerable to head injuries because they have considerably larger heads and weaker necks than adults.⁹¹

Second, the pressure to perform placed on youth athletes by their parents makes them less inclined to come forward and report their head injuries.⁹² Children are more likely to return to play or remain in competition after sustaining a head injury, for fear of failure and underachievement.⁹³ Further, children are less likely to recognize the symptoms of a concussion.⁹⁴ Although recent legislation requires certain states to educate youth athletes, parents, and coaches to better recognize the signs, symptoms, and dangers of concussions, the reality is that without this education, most of these athletes, parents, and coaches are ignorant as to whether a concussion has occurred.⁹⁵

Third, while adult athletes competing at higher levels have the capacity to understand the risks of injury involved in contact sports, and can make their own educated decisions about whether to assume those risks⁹⁶, children are frequently driven by their parents to enter into a sport and are not aware of the risks involved in competing.⁹⁷

Fourth, it is less likely that concussions will be properly assessed without the presence of trained staff at youth sporting events.⁹⁸ College, Olympic, and professional sports generally require medical staff to be present at all sporting events as a safety measure for their athletes.⁹⁹

⁹⁰ The brain “does not fully mature until at least the mid-20s [sic].” Brenda Patoine, *Sports Concussions & The Immature Brain*, THE DANA FOUNDATION, <http://www.dana.org/media/detail.aspx?id=25076> (last visited Jan. 7, 2012). Therefore, if a concussion occurs while a brain is still developing, there is a greater chance that permanent brain damage will occur. *Id.*

⁹¹ *Id.*

⁹² Erin Graham, *Hard Knocks*, CHILD. HOSP. BOSTON (Winter 2010), http://www.childrenshospital.org/dream/winter10/images/dream_win10.pdf.

⁹³ In order to avoid comments questioning their “toughness or [lack] of heart,” young athletes will avoid reporting even serious injuries. See Tripp Underwood, *Children’s Expert Pushes for Concussion Safety*, THRIVING, CHILDREN’S HOSPITAL BOSTON’S PEDIATRIC HEALTH BLOG (June 11, 2010), <http://childrenshospitalblog.org/childrens-expert-pushes-for-concussion-safety>.

⁹⁴ Graham, *supra* note 92.

⁹⁵ SPORTSCONCUSSIONS.ORG, *supra* note 87.

⁹⁶ See *Chairman: Brian Urlacher Just Honest*, ESPN.COM, http://espn.go.com/chicago/nfl/story/_id/7580002/chicago-bears-chairman-says-brian-urlacher-being-honest-concussions (last updated Feb. 16, 2012, 11:49 AM) (acknowledging Patrick Mannelly’s statement that “[t]his isn’t something [where] you play hurt . . . [t]his is your life.”).

⁹⁷ See Robyn Abree, *Contact Sports and Concussions: A Real Threat to Student Athletes*, THE GRADY JOURNAL (May 30, 2011), <http://www.gradyjournal.com/?p=5913>.

⁹⁸ Terry Zelgler, *Certified Athletic Trainers Needed at the High School Level*, SUITE101.COM (Oct. 18, 2010), <http://www.suite101.com/content/certified-athletic-trainers-needed-at-the-high-school-level-a298412>.

⁹⁹ *Id.*

While a majority of these trainers lack proper education and training regarding concussions, their attention and concern alone provide more protection for those athletes.¹⁰⁰ In comparison, youth sports leagues and organizations often lack funding and concern to require trained staff at events. Thus, parents, coaches, and the players themselves become solely responsible for the assessment and treatment of concussions.¹⁰¹ Unfortunately, this creates a conflict of interest, as parents and coaches are typically too focused on winning and athletic achievement to take their children seriously and pay them proper attention when an injury occurs, which increases the chance of severe brain injury among these youth athletes.¹⁰² As New York State Senator Daniel Squadron stated, “[t]he first piece is [to] make sure that coaches catch the signs early to help prevent these injuries. And then make sure there’s an independent medical professional making the return-to-play decision so that you don’t have the issues of someone related to the team making the decision.”¹⁰³

In order to decrease the rate of brain damage among youth athletes, legislation is specifically designed to target these key concerns. While most states and the federal government have shown interest and concern over the problem of concussions in youth sports, only thirty-four states and the District of Columbia have actually passed laws as a solution to the problem.¹⁰⁴ However, several other states, as well as the federal government have proposed legislation awaiting approval by respective legislatures.¹⁰⁵ Each of these laws is different, but all share the same core principles--education, identification and protection, and medical evaluation.¹⁰⁶ The education principle is intended to increase awareness among the key “stakeholders”¹⁰⁷ of youth sports and “focuses on developing a working understanding of what a concussion is, recognizing

¹⁰⁰ See *id.*

¹⁰¹ Over half of the high schools in the country do not have athletic trainers and, coincidentally, high school athletes sustained over 130,000 injuries from 2005-2008. Patrick Dolan, *Football Leads List for Violent Blows*, THISWEEKSPORTS.COM (Oct. 7, 2010, 9:21 am), <http://www.thisweeknews.com/live/content/bexley/stories/2010/08/11/sports/football-leads-list-for-violent-blows.html>; *Head Games: Everything You Need To Know About Concussions*, *supra* note 48.

¹⁰² 41% of youth athletes that have sustained concussions return to play prematurely, as the result of improper assessment or neglect. Press Release, California Assembly Member Mary Hayashi, Assembly Member Hayashi Introduces Comprehensive Legislation To Tackle Sports-Related Injuries (Jan. 14, 2010), available at <http://asmdc.org/members/a18/newsroom/press-releases/item/2940-assemblymember-hayashi-introduces-comprehensive-legislation-to-tackle-sports-related-injuries>.

¹⁰³ Alan Schwarz, *States Taking the Lead Addressing Concussions*, N.Y. TIMES, Jan. 30, 2010, available at <http://www.nytimes.com/2010/01/31/sports/31concussions.html>.

¹⁰⁴ Barton, *supra* note 6.

¹⁰⁵ See *id.*

¹⁰⁶ Giza, *supra* note 15.

¹⁰⁷ This term refers to student athletes, parents, and coaches. *Id.*

its signs and symptoms, understanding the risks of not taking action, and knowing the appropriate steps to take when a concussion is suspected.”¹⁰⁸ Laws further require official certification for key stakeholders, acknowledging that they have completed the necessary training and education.¹⁰⁹

Education and training as the first principles of legislation will hopefully serve to increase the amount of reported head injuries by youth athletes, as well as decrease overall improper assessment and treatment, which is the second core principle of legislation.¹¹⁰ With the awareness and knowledge of the dangers of concussions, athletes sustaining concussions will be kept out of competition until making a full recovery. Even without a trainer or medical staff present at youth sporting events, these laws should equip key stakeholders with the ability to recognize, assess, and properly handle concussions. These laws will hopefully place a check on senseless parents and coaches stressing the importance of winning over the health and safety of the athlete.

The third principle requires further evaluation by a Licensed Health Care Professional (hereinafter referred to as “LHCP”), specifically one trained in concussion evaluation and management, once an athlete is removed from competition with a head injury.¹¹¹ In most states, in order to return to competition after sustaining a concussion, the athlete must be fully recovered and receive written consent by the LHCP conducting the evaluation.¹¹² Professional evaluation will not only ensure proper treatment for injured youth athletes, but will also prevent premature return to competition, thereby decreasing the overall risk of TBI and long-term brain damage.¹¹³

Some laws go so far as to establish sanctions for the failure to comply with guidelines set forth regarding concussion education and training and assessment.¹¹⁴ Other laws state that tort law will apply in the case of gross negligence or willful misconduct when handling concussions among youth athletes.¹¹⁵ Such punitive measures will further ensure a

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Giza, *supra* note 15.

¹¹³ See generally Kate Huvane Gamble, *A New Game Plan for Concussion: As new research on the danger of concussions is uncovered, treatment on sports sidelines is changing—from the little leagues to the professional level*, 7(1) *NEUROLOGY NOW* 28-31, 35 (Feb./Mar. 2011), available at <http://patients.aan.com/resources/neurologynow/index.cfm?event=home.showArticle&id=ovid.com%3A%2Fbib%2Fovftdb%2F01222928-201107010-00011> (emphasizing the importance of professional evaluation of a child following a head injury).

¹¹⁴ See, e.g., 105 MASS. CODE REGS. 201.005 (2012).

¹¹⁵ See Barton, *supra* note 6; see also WASH. REV. CODE § 4.24.660 (2009).

check on parents and coaches to make proper, law-abiding decisions for the health and safety of youth athletes.

However, the issue of liability has proven problematic for some states. Idaho, for example, passed a weak law, solely requiring “[t]he state Board of Education to develop guidelines and information to educate coaches, youth athletes, and parents/guardians about the nature and risk of concussions and head injury...”¹¹⁶ It has yet to pass a stronger law due to the concern that coaches and schools will be held liable for failing to remove a concussed player from play, or allowing a player to return to play before properly treating his or her concussion.¹¹⁷ It is, therefore, important that such laws strike a balance between accountability for proper concussion management and protecting against unwarranted lawsuits, which could lead to a chilling effect on coaching.¹¹⁸

A. Federal Legislation, the ConTACT Act, and the Protecting Student Athletes from Concussions Act

In 2009, Senator Robert Menendez first introduced the Concussion Treatment and Care Tools Act, otherwise known as the “ConTACT Act,” to the United States Congress.¹¹⁹ Prior to the ConTACT Act, the federal government remained hands-off in terms of regulating sports, and had neglected to address the growing concern of brain injury in general.¹²⁰ However, as awareness of the dangers of improper assessment and treatment of concussions has spread, so too has support from national organizations and individuals who are striving to find a solution.¹²¹ The

¹¹⁶ Lindsay Barton, *Youth Sports Concussion Safety Laws: Idaho*, MOMSTEAM, <http://www.momsteam.com/idaho/youth-sports-concussion-safety-laws-idaho> (last updated Mar. 31, 2011); see also IDAHO CODE ANN. § 33-1625 (West 2011).

¹¹⁷ Gordon Johnson, *Idaho Concussion Bill Held Up Over Liability Concerns*, JUSTICE AND AMERICAN POLITICS (Mar. 20, 2010), <http://www.subtlebraininjury.com/blog/2010/03/idaho-concussion-bill-held-up-over-liability-concerns.html>.

¹¹⁸ Many state laws include a legal immunity clause to ensure that school districts and private, non-profit athletic programs acting in compliance with concussion laws remain immune from liability in the event of the injury or death of a youth athlete. See e.g., Barton, *supra* note 6.

¹¹⁹ *Special Report: Concussions in Athletes: Where Are We and What To Do Now?*, JACKSON LEWIS: ATTORNEYS AT LAW, Jan. 2010, available at http://www.naia.org/fls/27900/1NAIA/resources/trainers/NAIA_ConcussionsinAthletesSpecialReport.pdf?DB_OEM_ID=27900. Thirty congressmen and women from various states also sponsored the act. See *Bill Summary & Status: H.R. 1347*, THE LIBRARY OF CONGRESS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.1347>: (last visited Jan. 7, 2012).

¹²⁰ See JACKSON LEWIS: ATTORNEYS AT LAW, *supra* note 119.

¹²¹ Along with the sponsors and various states backing federal legislation, the Brain Injury Association of America, Health Resources and Services Administration, and Sarah Jane Brain Project, among dozens of others, were created to raise awareness and money to decrease the rate of brain injuries occurring every year in the U.S. BRAIN INJURY ASS'N OF AM., <http://www.biausa.org/policy.htm> (last visited Jan. 7, 2012); Health Resources and Services Administration, *Traumatic Brain Injury Program*, U.S. DEPT. OF HEALTH AND HUMAN

ConTACT Act was passed by the U.S. House of Representatives,¹²² but never became law, and has since been replaced by the Protecting Student Athletes from Concussions Act of 2011.¹²³ The Protecting Student Athletes from Concussions Act of 2011 aims to standardize proper care and management for sports-related concussions sustained by youth athletes ages five to eighteen by establishing federal guidelines as a basic framework for concussion management among the states and providing federal grants only to conforming states in order to help offset the costs associated with compliance.¹²⁴

If it had passed, the ConTACT Act would have required the Department of Health and Human Services to assemble a team of medical, athletic, and educational stakeholders to establish guidelines for concussion management, including proper procedures for clearing athletes to return to play and pre-season neurological testing of youth athletes.¹²⁵ Now, the Protecting Student Athletes from Concussions Act, if enacted, will set forth express regulations with which state educational agencies must comply.¹²⁶ Although several states have adopted their own legislation, once passed, the Protecting Student Athletes from Concussions Act will require that all states minimally implement its basic policies in order to receive federal aid.¹²⁷ Enacting or incorporating the federal regulations could be problematic for non-conforming states already struggling to enact or maintain their own concussion laws due to insufficient state funding and/or resources.¹²⁸

SERVICES, <http://www.hrsa.gov/getthehealthcare/conditions/traumaticbraininjury/> (last visited Jan. 7, 2012); THE SARAH JANE BRAIN PROJECT, <http://www.thebrainproject.org/> (last visited Jan. 7, 2012).

¹²² The House of Representatives passed the bill on September 30, 2010. THE LIBRARY OF CONGRESS, *supra* note 119.

¹²³ On November 11, the Senate received the ConTACT Act bill and referred it to the Committee on Health, Education, Labor, and Pensions for further review, where it ultimately died. *Id.* Congressman Timothy Bishop introduced the Protecting Student Athletes from Concussions Act of 2011 on Jan. 1, 2011. *Bill Summary & Status: H.R. 469*, THE LIBRARY OF CONGRESS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h469>: (last visited Apr. 8, 2012). On February 25, 2011, the bill was referred to the House committee and currently awaits review by the Subcommittee on Early Childhood, Elementary, and Secondary Education. *Id.*

¹²⁴ H.R. 469, 112th Cong. (1st Sess. 2011-12), *available at* <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.469>.

¹²⁵ THE LIBRARY OF CONGRESS, *supra* note 119.

¹²⁶ H.R. 469, 112th Cong., (1st Sess. 2011-12), *available at* <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.469>. Specific regulations will include: an established concussion safety and management plan; posting of specific information on concussions; and specific concussion response and return-to-play guidelines. *Id.*

¹²⁷ *Id.*

¹²⁸ See Greg Kohntopp, *New Federal Guidelines Aim To Reduce Risks of Injury in Youth Sports*, THE INDEPENDENT (Oct. 10, 2010, 8:44 am), *available at* <http://www.indeonline.com/schools/x1722966312/New-federal-guidelines-aim-to-reduce-risks-of-injury-in-youth-sports>.

Although most states will likely find a way to comply with the Protecting Student Athletes from Concussions Act and receive federal assistance, the question remains whether its policies will actually be observed and taken seriously among the majority of states, particularly in states currently without their own legislation. Will it be enough to further expose the concern of concussions in youth sports and influence additional states to expand their own laws? While questions such as this will remain unanswered until further progress is made, federal legislation is at least a step in the right direction. Minimally, it will reach youth athletes and organizations below the high school level, which have yet to see any regulation in several states. While many states without official legislation have still implemented policies regarding concussion management for high school sports, they lack regulations for younger youth athletes.¹²⁹ However, experts suggest that because states have direct control over education, state legislation regarding concussion management, as opposed to a federal law, might be the most effective way to address the issue.¹³⁰

B. Legislation Among the States

Washington was the first state to enact a law addressing concussions in youth sports in May of 2009.¹³¹ Since then, thirty-three other states and the District of Columbia have enacted similar laws and ten other states including Florida, Hawaii, Nevada, New Hampshire, Wisconsin, Michigan, Ohio, Tennessee, South Carolina, and Maine have proposed legislation awaiting approval.¹³² While some state laws are more relaxed or weaker than others, they all share most of the same guiding principles.¹³³

¹²⁹ Many youth leagues are not part of a larger parent organization, which would provide standards or guidelines for concussion management. *Id.* Without standards, many youth leagues remain unregulated. *Id.*

¹³⁰ Schwarz, *supra* note 103.

¹³¹ The law, also referred to as the “Zachary Lystedt Law,” was enacted after 13-year-old football player, Zachary Lystedt, incurred permanent brain damage after being allowed to return to play in a middle school game after suffering a concussion. See Gregg Bell, *Washington State: Tough New Sports Concussion Law*, SEATTLE TIMES, May 14, 2009, available at http://seattletimes.nwsourc.com/html/localnews/2009221971_apsportsconcussio nlaw1stdwritethru.html.

¹³² Barton, *supra* note 6. As of January 2010, over 24 states were predicted to pass laws or make serious progress regarding concussion legislation within the year. Schwarz, *supra* note 103. In 2010, 16 states proposed laws addressing this concern. Krystina Lucido, *Concussions In Youth Sports Stop More Than Just The Game*, CSNBALTIMORE.COM (Jul. 12, 2010, 1:05 pm), <http://www.csnbaltimore.com/07/16/10/Concussions-In-Youth-Sports-Stop-More-Th/landing.html?blockID=272538&feedID=6772>. Today, there are only 6 states that are not considering youth concussion legislation. Barton, *supra* note 6.

¹³³ Concussion laws in Idaho, Vermont, and Wyoming, while recently enacted, are considered “weaker” than the others because each fails to address one of the following

First, each strong law requires some level of education and/or training program for all, or some, of the key stakeholders participating in youth sports prior to the start of every season.¹³⁴ The education and training generally focuses on the nature and risk of concussions, criteria for removal from and return to play, risks of not reporting the injury, and the risks of continuing to play.¹³⁵ The majority of state laws give state school districts and interscholastic activities commissions the authority to design their own education programs and concussion guidelines.¹³⁶ On the other hand, some states only require coaches to receive training on the dangers of the improper management of concussions in order to properly recognize concussion symptoms and seek proper medical treatment for an athlete that has sustained a concussion.¹³⁷ Along with the required training and education programs, most states also require youth athletes and their parents or guardians to read a concussion information sheet and

principles: the education of youth athletes and their parents or guardians; the requirement that youth athletes and their parents or guardians sign a concussion information form; removal of a youth athlete who appears to have suffered a concussion from play or practice at the time of the suspected concussion; and the requirement that a youth athlete be cleared by a licensed health care professional trained in the evaluation and management of concussions before returning to play or practice. Barton, *supra* note 6.

¹³⁴ Barton, *supra* note 6.

¹³⁵ See, e.g., Lindsay Barton, *Youth Sports Concussion Safety Laws: Texas*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sport-concussion-safety-law-texas> (last updated June 24, 2011).

¹³⁶ See Lindsay Barton, *Youth Sports Concussion Safety Laws: Washington State*, MOMSTEAM, <http://www.momsteam.com/Washington/Washington-state-sports-concussion-law-takes-lead-in-concussion-safety> (last updated Feb. 9, 2012); see also Lindsay Barton, *Youth Sports Concussion Safety Laws: Virginia*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-virginia> (last updated Jan. 2, 2012); Lindsay Barton, *Youth Sports Concussion Safety Laws: Rhode Island*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-rhode-island> (last updated Jan. 2, 2012); Lindsay Barton, *Youth Sports Concussion Safety Laws: Texas*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sport-concussion-safety-law-texas> (last updated June 24, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: New Jersey*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-new-jersey> (last updated Feb. 17, 2012); Lindsay Barton, *Youth Sports Concussion Safety Laws: Massachusetts*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-massachusetts> (last updated Mar. 13, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: Oklahoma*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-oklahoma> (last updated Mar. 13, 2011).

¹³⁷ See Lindsay Barton, *Youth Sports Concussion Safety Laws: Oregon*, MOMSTEAM, <http://www.momsteam.com/health-safety/concussion-safety/law-rules/youth-sports-concussion-safety-laws-oregon> (last updated Mar. 13, 2011); see also Lindsay Barton, *Youth Sports Concussion Safety Laws: New Mexico*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-new-mexico> (last updated Mar. 31, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: Connecticut*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-connecticut> (last updated Mar. 13, 2011).

sign a participation consent form every year prior to the start of the season.¹³⁸

Second, most state laws require immediate removal of an athlete diagnosed with, or merely suspected to have sustained, a concussion during competition.¹³⁹ Texas, on the other hand, only mandates that an athlete be removed from play if he or she is rendered unconscious.¹⁴⁰ After removal from play, every strong state law then specifies rules for allowing that athlete to return to play.¹⁴¹ In the majority of these states, athletes are allowed to return to play only after undergoing evaluation by an LCHP trained in concussion management and after receiving written, signed clearance, or consent, from that LCHP that the athlete is symptom-free and may return to play.¹⁴² In these states, an athlete removed from play may return the day the injury was sustained, provided he or she meets the established criteria.¹⁴³ However, in Oregon, Arizona, New York, Texas, and New Mexico, while an athlete must still be evaluated by an LCHP and receive written consent in order to return to play, he or she cannot, under any circumstances, return to play within 24 hours after sustaining the injury.¹⁴⁴ The New Mexico law further extends the period

¹³⁸ See, e.g., Lindsay Barton, *Youth Sports Concussion Safety Laws: Washington State*, MOMSTEAM, <http://www.momsteam.com/Washington/Washington-state-sports-concussion-law-takes-lead-in-concussion-safety> (last updated Feb. 9, 2012).

¹³⁹ Barton, *supra* note 6.

¹⁴⁰ See, e.g., Lindsay Barton, *Youth Sports Concussion Safety Laws: Texas*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sport-concussion-safety-law-texas> (last updated June 24, 2011).

¹⁴¹ Barton, *supra* note 6.

¹⁴² See Lindsay Barton, *Youth Sports Concussion Safety Laws: Washington State*, MOMSTEAM, <http://www.momsteam.com/Washington/Washington-state-ports-concussion-law-takes-lead-in-concussion-safety> (last updated Feb. 9, 2012); see also Lindsay Barton, *Youth Sports Concussion Safety Laws: Rhode Island*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-rhode-island> (last updated Jan. 2, 2012); Lindsay Barton, *Youth Sports Concussion Safety Laws: New Jersey*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-new-jersey> (last updated Feb. 17, 2012); Lindsay Barton, *Youth Sports Concussion Safety Laws: Massachusetts*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-massachusetts> (last updated Mar. 13, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: Oklahoma*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-oklahoma> (last updated Mar. 13, 2011).

¹⁴³ See *supra* note 142 and accompanying text.

¹⁴⁴ See Lindsay Barton, *Youth Sports Concussion Safety Laws: Oregon*, MOMSTEAM, <http://www.momsteam.com/health-safety/concussion-safety/law-rules/youth-sports-concussion-safety-laws-oregon> (last updated Mar. 13, 2011); see also Lindsay Barton, *Youth Sports Concussion Safety Laws: Arizona*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-arizona> (last updated Feb. 17, 2012); Lindsay Barton, *Youth Sports Concussion Safety Laws: New York*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports/concussion-safety-laws-new-york> (last updated Nov. 14, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: New Mexico*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-new-mexico> (last updated Mar. 31, 2011).

of time to one week.¹⁴⁵

Lastly, numerous state laws, including Washington, Massachusetts, Alaska, Pennsylvania, and New York, address liability. These laws grant legal immunity to various state school districts, private, non-profit athletic programs, and volunteers acting in compliance with the concussion law in the event of an injury or death.¹⁴⁶ The Massachusetts law also allows for a penalty that may be dealt to any school official, coach, or trainer found in violation of any policies set forth by the law.¹⁴⁷

In addition to the major guidelines mentioned in the majority of state laws, some states go even further to address additional concerns for concussion management in youth sports. Massachusetts' law, for example, expressly prohibits encouragement of dangerous play and requires all schools to keep accurate records of their compliance with the law.¹⁴⁸ Further, New Mexico's law expressly encourages youth athletes to report the injuries of their teammates, and broadens the scope of concussions to all "brain injuries" in order to encourage a full reporting of head injuries, including concussions.¹⁴⁹ Finally, Rhode Island's law requires coaches to not only receive proper concussion education and training before the start of each season, but also to complete a National Federation of High Schools concussion course before commencing the season.¹⁵⁰

¹⁴⁵ Lindsay Barton, *Youth Sports Concussion Safety Laws: New Mexico*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-new-mexico> (last updated Mar. 31, 2011).

¹⁴⁶ See H.B. 15, 2011-12 Leg., 1st Sess. (Alaska) (enacted); see also Lindsay Barton, *Youth Sports Concussion Safety Laws: Washington State*, MOMSTEAM, <http://www.momsteam.com/Washington/Washington-state-ports-concussion-law-takes-lead-in-concussion-safety> (last updated Feb. 9, 2012); Lindsay Barton, *Youth Sports Concussion Safety Laws: Massachusetts*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-massachusetts> (last updated Mar. 13, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: Pennsylvania*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-pennsylvania> (last updated Nov. 11, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: New York*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports/concussion-safety-laws-new-york> (last updated Nov. 14, 2011); Lindsay Barton, *Youth Sports Concussion Safety Laws: Alaska*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-alaska> (last updated Mar. 13, 2011).

¹⁴⁷ See Lindsay Barton, *Youth Sports Concussion Safety Laws: Connecticut*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-connecticut> (last updated Mar. 13, 2011) (noting that Connecticut law provides that the State Board of Education may revoke the coaching license of any coach found to have violated a rule).

¹⁴⁸ Lindsay Barton, *Youth Sports Concussion Safety Laws: Massachusetts*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-massachusetts> (last updated Mar. 13, 2011).

¹⁴⁹ Barton, *supra* note 145.

¹⁵⁰ Lindsay Barton, *Youth Sports Concussion Safety Laws: Rhode Island*, MOMSTEAM, <http://www.momsteam.com/health-safety/youth-sports-concussion-safety-laws-rhode-island> (last updated Jan. 2, 2012).

To date, seemingly every state enacting legislation has shown significant improvement in terms of concussion management and prevention.¹⁵¹ Although many youth programs within these states have reported an increased number of concussions, it is likely because of an increase in reported concussions in general, which is the very goal of the legislation.¹⁵² Hopefully the statistics will influence the remaining states to implement their own laws. Washington's Zachary Lystedt Law has served as a model for most other state laws.¹⁵³ Because it has proven successful, other states can now draft their laws more quickly, while still tailoring them to their specific needs. Although concussion laws are proposed, or are being discussed, in several additional states, concerns still exist regarding the capability to enact and/or further desired policies, including concerns of cost¹⁵⁴ and trouble finding enough medical personnel willing to comply with the law.¹⁵⁵ Such concerns, however, especially those related to cost, will be alleviated provided the Protecting Student Athletes from Concussions Act of 2011 is passed by Congress, granting necessary aid to conforming states struggling to implement or maintain such legislation.

C. Legislation in Maryland

Maryland recently became the 18th state to enact a law addressing concussions in youth sports with the passing of Senate Bill 771 and House Bill 858 on May 19, 2011.¹⁵⁶ The new law, which became effective July 1, 2011, reflects the state's recognition that concussions are among the top health and safety concerns currently facing youth sports in

¹⁵¹ Recent studies show the rate of TBI caused by concussions in high school and college level football programs has decreased over the last 3 years. See *Study: Concussions in College Football Have Leveled Off*, CBSSPORTS (Feb. 24, 2010), <http://www.cbssports.com/collegefootball/story/12973296/study-concussions-in-college-football-have-leveled-off/rss>.

¹⁵² *States Consider Youth Concussion Laws*, ASSOCIATED PRESS, available at <http://sports.espn.go.com/espn/news/story?id=4865622> (last updated Jan. 28, 2010) (reflecting the idea that instead of trying to prevent sports-related concussions that will continue to occur at a growing rate, laws will be most helpful in managing the effects of concussions once sustained and reported, to prevent further, more severe brain damage).

¹⁵³ Schwarz, *supra* note 103.

¹⁵⁴ *Id.* Some states, such as New York, are concerned that the desired policy of requiring doctors on every sideline would be too expensive to implement successfully. *Id.*

¹⁵⁵ In order to get the funding they need to implement federal concussion guidelines, youth sports organizations may be forced to increase participation fees and costs associated with becoming a coach, thereby reducing the amount of youth athletes and coaches able or willing to participate. Kohntopp, *supra* note 128.

¹⁵⁶ See generally S. 771, 429th Leg., Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/sb/sb0771f.pdf> (codified at MD. CODE ANN., EDUC. § 7-433 (West 2011)); see also H.D. 858, 429th Leg., Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/hb/hb0858f.pdf> (codified at MD. CODE ANN., EDUC. § 7-433 (West 2011)).

Maryland.¹⁵⁷ As a result of this concern, the Maryland Public Secondary Schools Athletic Association (hereinafter referred to as the “MPSSAA”) has also implemented its own policies aimed at preventing long-term damages caused by concussions.¹⁵⁸ As the highest organizational authority over youth sports in Maryland, the MPSSAA regulates the interscholastic activities of public high schools to ensure that the activities contribute to the entire educational program of the state.¹⁵⁹ Part of the MPSSAA’s mission is to safeguard the mental, physical, and moral welfare of youth athletes by providing up-to-date information to players, parents, and coaches on the intrinsic risks of youth sports and appropriate safety measures.¹⁶⁰

In 2011, the MPSSAA implemented concussion policies for public schools and youth sports and began to require all coaches from member public high schools to undergo concussion training prior to the start of each season.¹⁶¹ Other counties also began to take initiative to regulate their own high schools by posting signs illustrating the risks associated with sports-related concussions to increase awareness, and by requiring background checks and certification for coaches prior to each season.¹⁶²

While the MPSSAA and certain counties exerted some control over Maryland public high schools regarding concussions, private high schools, elementary and middle schools, and other lower levels of youth sports remained unregulated. As a result, some felt that Maryland would not get ahead in terms of concussion management until a law was passed.¹⁶³ There was pressure for Maryland to conform to the national trend of adopting concussion legislation, and with support from Maryland congressmen, delegates, and lobbyists, legislation addressing concussions in youth sports was within reach.

In October 2010, a bill was passed by the Maryland Senate, but subsequently died in the House of Delegates for failure by its sponsors to tighten its language in time for session.¹⁶⁴ While this first attempt at such legislation ultimately failed, it was still successful in demonstrating statewide support for, and the necessity of, a law to regulate the growing

¹⁵⁷ See *Concussions*, MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION, <http://www.mpssaa.org/HealthandSafety/Concussions.asp> (last visited Apr. 8, 2012).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Jeff Newman, *Legislators Tackle How to Reduce Youth Concussions*, SOUTHERN MARYLAND NEWSPAPERS ONLINE, Jan. 28, 2011, available at <http://www.somdnews.com/apps/pbcs.dll/article?AID=/20110128/News/301289966&template=PrinterFriendlysomd>.

¹⁶³ Joce Sterman, *Does Maryland Need a Law to Combat Concussions?*, ABC2NEWS.COM (Oct. 31, 2010), <http://www.abc2news.com/dpp/news/health/concussions/does-maryland-need-a-law-to-combat-concussions>.

¹⁶⁴ Newman, *supra* note 162.

concern for concussions in youth sports. Thus, on February 4, 2011, a group of Maryland delegates introduced Senate Bill 771, followed by the introduction of House Bill 858 on February 11, 2011.¹⁶⁵ Soon after, on May 19, 2011, Maryland Governor Martin O'Malley signed both bills into law.¹⁶⁶

Like other states, concussions are the most commonly reported injury in children and adolescents who participate in sports in Maryland.¹⁶⁷ Maryland further recognizes that the risk of catastrophic injury or death is significant when a concussion is not properly evaluated and managed.¹⁶⁸ In order to effectively address such concerns, Maryland legislation is directed towards concussion recognition and management for student athletes under the age of 18 years, or any physically or mentally disabled person, at all levels of youth sports throughout the state.¹⁶⁹ Additionally, the Maryland concussion law is modeled after Washington's Zackary Lystedt Law, incorporating many of Washington's guidelines, but also adding its own provisions in order to best serve the needs of the state.¹⁷⁰

Specifically, the Maryland law consists of three major components.¹⁷¹ First, the Maryland concussion law requires that the Maryland Department of Education, along with the Department of Health and Mental Hygiene, each county board, the MPSSAA, Maryland Athletic Trainers Association, Brain Injury Association of Maryland, and representatives of health care providers who treat concussions, to develop and implement programs providing awareness and training to coaches, youth athletes, and parents.¹⁷² The programs include, among other relevant topics, education on the nature and risk of concussions, the criteria for return to play, and the risks of not reporting injury and continuing to play.¹⁷³ In order to be eligible, a further program must be

¹⁶⁵ Foremost among supporters for Maryland legislation were Maryland Delegate Sheila E. Hixson and Maryland Senator Joan Carter Conway. See S. 771, 429th Leg., Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/sb/sb0771f.pdf> (codified at MD. CODE ANN., EDUC. § 7-433 (West 2011)); see also H.D. 858, 429th Leg., Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/hb/hb0858f.pdf> (codified at MD. CODE ANN., EDUC. § 7-433 (West 2011)).

¹⁶⁶ *House Bill 858*, THE MD. GEN. ASSEMBLY, <http://mlis.state.md.us/2011rs/billfile/hb0858.htm> (last visited Apr. 8, 2012); see also *Senate Bill 771*, THE MD. GEN. ASSEMBLY, <http://mlis.state.md.us/2011rs/billfile/sb0771.htm> (last visited Apr. 8, 2012).

¹⁶⁷ H.D. 858, 429th Leg., Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/hb/hb0858f.pdf>; S. 771, 429th Leg., Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/sb/sb0771f.pdf>.

¹⁶⁸ H.D. 1, 429th Leg., Reg. Sess. (Md. 2011), available at <http://mlis.state.md.us/2011rs/bills/hb/hb001f.pdf>.

¹⁶⁹ *Id.*

¹⁷⁰ Lucido, *supra* note 132.

¹⁷¹ See generally MD. CODE ANN., EDUC. § 7-433 (West 2011).

¹⁷² EDUC. § 7-433(b)(1).

¹⁷³ *Id.*

implemented to verify that all coaches have received information and education about the state concussion program.¹⁷⁴ In addition to such training and education programs, in order to participate, the Maryland law requires that youth athletes and their parents or guardians annually review a concussion information sheet and sign a consent form prior to the start of each season.¹⁷⁵

Second, the law mandates that if any player is so much as suspected to have sustained a concussion or any head injury in a practice or game, he or she must be immediately removed from play.¹⁷⁶ That athlete may not return to play until he or she has been evaluated by a LHCP trained specifically in concussion evaluation and management and that the LHCP has given the athlete written clearance to return to play.¹⁷⁷

Compared to other states, Maryland's law falls right down the middle in terms of its regulations. All of its provisions are in accordance with the majority of state laws.¹⁷⁸ In addition, the Maryland law allows the MPSSAA, and other internal associations, to exercise great deference in regulating youth sports of all levels within the state.¹⁷⁹ Maryland's law seems promising in that it most closely resembles Washington's largely successful law. However, because of those similarities, Maryland could face some of the same obstacles that Washington continues to battle.

While the Zachary Lystedt Law has been an overall success in increasing the number of reported concussions and reducing the number of lasting brain injuries resulting from concussions in youth sports, issues still remain.¹⁸⁰ For example, despite the requirements set forth in the law, a high school football player's hospital discharge papers, after he was treated for a concussion, were reported to state "may return to play when able."¹⁸¹ One school was reported to only require on-site medical attention for varsity games.¹⁸² Clearly both of these instances were in violation of the proper legal standard of care.¹⁸³ Further, school boards have used the immunity defense to avoid parents' requests to enhance the procedures for enforcing the concussion law.¹⁸⁴ These instances show the lack of ability to enforce the law and effectively implement its procedures

¹⁷⁴ EDUC. § 7-433(b)(2).

¹⁷⁵ EDUC. § 7-433(b)(3).

¹⁷⁶ EDUC. § 7-433(c)(1).

¹⁷⁷ MD. CODE ANN., EDUC. § 7-433(c)(1)-(2) (West 2011).

¹⁷⁸ Barton, *supra* note 6.

¹⁷⁹ EDUC. § 7-433(b)(1).

¹⁸⁰ See Alan Schwarz, *Despite Law, Town Finds Concussion Dangers Lurk*, N.Y. TIMES, Sept. 22, 2010, available at <http://www.nytimes.com/2010/09/23/sports/23concussion.html>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

without proper oversight. In addition, by including an immunity provision causing coaches to fear the repercussions of failing to properly comply with the law, and preventing parents from challenging current procedures in order to protect their children, Maryland could see a decline in youth sports participation altogether.

Additionally, Maryland will potentially face its own challenges in ensuring the overall success of the law. First, according to members of the MPSSAA, Maryland faces a logistical problem in allowing the MPSSAA to implement the concussion training and education program.¹⁸⁵ Members argue that while the MPSSAA should be able to successfully oversee the guidelines in state public schools, it could become overwhelmed in managing the program for the hundreds of private schools, recreational, club, and amateur leagues across the state and as a result, will not have the desired effect.¹⁸⁶ However, the MPSSAA is not alone in overseeing the program. As the law states, several other entities are ordered to aid the MPSSAA in the creation and implementation of such guidelines.¹⁸⁷ The MPSSAA could also create specific committees for the purpose of carrying out and overseeing the programs if it needed additional assistance.

Second, there is concern that school systems will not be able to effectively oversee the statewide program without more detailed directions regarding the extent of their authority.¹⁸⁸ Without a more specific delegation of power, school systems will be left to ponder the extent of their duties beyond the students attending those schools.¹⁸⁹ To minimize this concern, lawmakers could tighten the language of the law in the future. The State Department of Education, in creating the policy as a part of the state program, could also expressly state those duties. Knowing the extent of their authority over young student-athletes will allow school systems to more accurately and effectively carry out the law.

The third major concern, as in many other states, is cost. Although the total cost of implementing the concussion law in Maryland has yet to be calculated, several lawmakers are wary that Maryland will not always be able to afford its underlying programs and enforcement procedures.¹⁹⁰ Despite Maryland's ability to fund the passing of the law, there is also doubt that it will be able to afford extended programs in the future, such as the desired pre-season neurological testing for all youth athletes or the requirement of certified trainers at every youth sporting event. However,

¹⁸⁵ Newman, *supra* note 162.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

based on the amount of money the Maryland government gives to other state programs, it should be able to at least maintain its concussion law.¹⁹¹ Further, even in the event that Maryland should lack sufficient state funds, it could always raise taxes or force athletes to pay higher participation fees. In addition to state funding and aid, Maryland could also utilize federal aid once the Protecting Student Athletes from Concussions Act is passed, as well as money from private groups and organizations willing to help fund state programs.

Finally, the state could face the problem of finding sufficient medical personnel to attend all youth sporting events. Although the legislation requires the training and education of coaches, parents, and athletes on how to recognize and treat concussions, trainers are arguably necessary to successfully manage the effects of concussions in accordance with the law. On-site trainers are ideal to ensure objective assessment and the highest level of care for youth athletes, as parents and coaches often have conflicting interests.¹⁹² However, finding enough medical staff to attend all youth sporting events should not pose a significant hardship, given the possibility of federal funding and the fact that other states with similar budgets have found a way to make it work.¹⁹³

Furthering these concerns, other Marylanders argue that such legislation is unnecessary based on the ability of school systems and the MPSSAA to successfully create and enforce their own concussion management programs.¹⁹⁴ In addition to leaving the state association in charge of concussion regulation and management, Maryland could alternatively put individual counties or schools in charge of regulating their youth athletic teams. Another solution would be to crack down on sports safety regulations by focusing on improving safety equipment or tightening rules on contact.

While concussion legislation may not be the only solution to improving concussion management throughout Maryland, it is the most practical and efficient method to accomplish the state's goal of managing the negative effects of concussions. Legislation, if drafted

¹⁹¹ See Zak Koeske, *Laws Aim to Protect Student Athletes With Concussions, but Money Is Lagging*, POLITICS DAILY (Apr. 8, 2011), <http://www.politicsdaily.com/2010/11/08/laws-aim-to-protect-school-athletes-with-concussions-but-money/>. Howard County spends around \$400,000 per year in order to carry out its concussion management procedures. *Id.* However, the county itself receives most of its money from the National Federation of State High School Associations, which provides free resource materials to schools requesting educational support. *Id.*

¹⁹² See Ann Marimow, *D.C. Bill Would Protect Athletes*, WASH. POST, Sept. 22, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/22/AR2010092105365.html>.

¹⁹³ *Id.*

¹⁹⁴ See *supra* notes 161, 162 and accompanying text.

unambiguously and implemented properly, has the effect of producing quick results, under which schools, coaches, parents, and athletes are legally required to obey. Legislation targeting the effects of concussions, rather than prevention, avoids changing the rules of the game. This circumvents a decline in public interest, uncooperative parties, uncertainty as to specific duties and obligations among stakeholders, and prolonged technological developments necessary for effective safety equipment.

Some argue that Maryland's law addressing concussions in youth sports will ultimately fail based chiefly on concerns associated with oversight, vagueness, cost, and inadequate on-site medical staff.¹⁹⁵ However, Maryland concussion legislation is likely to succeed in the long run. With time, lawmakers will more narrowly construe the language of the law and the benefits derived from successfully incorporated programs are certain to outweigh the above-mentioned concerns. Further, Maryland has had the benefit of learning from the successes and failures of laws in other states and has used that information to its advantage in order to draft the best possible law for its needs.

Concussions in youth sports are an obvious problem, not just in Maryland, but throughout the entire nation. Until 2009, the rate of TBIs in youth athletes resulting from sports-related concussions was growing each year among the 50 states, particularly due to the professionalization of amateur sports. Since the recognition of concussions as a major problem in sports, however, legislation has been the most utilized and widespread solution, exuding positive results in every applicable state thus far. Unfortunately, the concern for sports-related concussions rises high above the youth level. In order to fix the entire problem and have any influence on higher-level sports, every state needs to get on board and adopt concussion legislation. If all states enact concussion legislation, a statement will be made to the NCAA, Olympic Committee, and every professional association and organization that TBI caused by sports-related concussions is no laughing matter. The fact that over thirty states passed laws within the last two years and ten others have since proposed laws, demonstrates the power and influence of such legislation. Therefore, the establishment of Maryland's concussion law will not only help Maryland by following a proven trend, it will also be taking one small, yet necessary step to help manage the effects of sports-related concussions on a larger scale.

¹⁹⁵ See *supra* notes 185-94 and accompanying text.

IV. CONCLUSION

As evidenced above, sports-related concussions, especially in youth sports, have become a major concern. While we cannot control the trend towards commercialization or professionalization of youth sports and the effects that come with them, including an increased number of concussions, we can control the long-term health and safety of youth athletes. Laws regulating concussion assessment and management will significantly help prevent lasting or permanent brain damage in youth athletes, which is far more important than merely preventing concussions from occurring in the first place. As sports remain an integral part of society today, it is of the utmost importance that we protect the athletes subjected to such life-threatening circumstances as permanent brain damage. State legislation addressing sports-related concussions in youth sports is a start, but there are already signs that such laws may soon regulate higher-level sports as well. Maryland's recently enacted concussion law will not only protect youth athletes throughout the state, but will also influence higher-level sports to adopt similar regulations in order to protect their athletes as well.

Even if laws only exist to regulate concussion management in youth sports, all levels of sports will reap the benefits of healthier, less burnt-out players. Decreasing the number of lasting brain injuries at the earliest possible stage will ensure that a greater number of players are healthy as they continue onto the next level. Similarly, alerting parents, coaches, and youth athletes of the serious risks associated with mismanaging concussions could result in a movement away from the hardnosed culture prominent in today's society that values winning above the health and safety of athletes. Despite the message these laws are sending to society, are they enough to disenchant parents and coaches from the win-at-all-costs mentality? Will these laws actually inspire parents and coaches to help protect their children? If the risks of serious brain injury are not enough to revert the trend, it is scary to think what will come next. When it comes to youth sports, should the cost of winning really be that high?