

2018

Legislative Update: Tackling CTE: A Wave of State Legislation is Coming to Ban Youth Tackle Football

Bruce Winters

Follow this and additional works at: <https://lawcommons.luc.edu/clrj>



Part of the [Family Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Bruce Winters, *Legislative Update: Tackling CTE: A Wave of State Legislation is Coming to Ban Youth Tackle Football*, 38 CHILD. LEGAL RTS. J. 178 (2020).

Available at: <https://lawcommons.luc.edu/clrj/vol38/iss2/9>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Children's Legal Rights Journal by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

Legislative Update:

Tackling CTE: A Wave of State Legislation is Coming to Ban Youth Tackle Football

By: Bruce Winters

In January of 2018, the New York State Assembly re-introduced legislation that would ban children under the age of 12 from participating in youth tackle football. Closely thereafter, the Illinois General Assembly introduced legislation that too would ban children under age 12 from participating in youth tackle football. Following their lead, the Maryland General Assembly introduced legislation in February of 2018 that would ban children under age 14 from participating in tackle football. Additionally, in February, legislation was introduced in the California State Assembly that would ban tackle football for youth until they reach high school. This surge of tackle ban legislation has come quickly and, as we get further into 2018, more states are expected to follow suit. This article will seek to provide background for the sudden wave of bills banning youth tackle football while also comparing these legislative efforts to similar measures taken in other youth sports in the past decade.

I. THE SCOURGE OF CTE, ITS EFFECTS ON THE BRAIN, AND THE INCREASED RISK FOR YOUNG BRAINS

The purpose of the proposed tackle-ban bills is to prevent repeated blows to the head caused by tackling. Anyone with a passing interest in football or other contact sports will know that, in the past decade, concussions and their effect on the human brain have been a hot point of contention, especially for youth. However, research into Chronic Traumatic Encephalopathy (CTE)¹ has increasingly shown that the primary risk factor for developing CTE later in life is not the number of concussions sustained, but instead, exposure to repeated sub-concussive blows to the head over an extended length of time. As evidence of this, one in five NFL players diagnosed with CTE had never previously been diagnosed with a concussion.

CTE was first described in the sport of boxing in 1928 as “punch drunk syndrome.” Research on the topic, however, was limited, and focused mainly on boxers and military veterans; it wasn’t until 2005, when former Pittsburgh Steelers player Mike Webster was diagnosed with CTE, that the focus shifted to football. Since then, concussions and CTE have been a staple of controversy across football and sports in general, especially in light of the high-profile suicides and murders committed by players later found to be suffering from CTE, such as Junior Seau,

¹ Chronic Traumatic Encephalopathy (CTE) is a degenerative brain disease found in the brains of persons subjected to repeated head impacts, especially athletes and military personnel. CTE is caused by the Tau protein which forms in clumps in the brain, it gradually spreads and, in the process, kills brain cells. Persons suffering CTE experience problems with thinking and memory, including memory loss, confusion, impaired judgment, and eventually progressive dementia, these symptoms increase as time goes on. Symptoms affecting mood and behavior occur more quickly than cognitive effects, with many not experiencing serious cognitive impairment until later in life. *See* What is CTE?, CONCUSSION LEGACY FOUNDATION, <https://concussionfoundation.org/CTE-resources/what-is-CTE> (last visited March 14, 2018).

Jovan Belcher, and Aaron Hernandez. A recent study of 111 deceased former NFL player's brains by the CTE Center at Boston University found that 110 of those players had CTE.

With a critical lens on CTE in the NFL, naturally, there has been an increased focus on the effects of repeated head impacts in youth football as well. Research has shown that two of the key indicators of CTE are: (1) the length of time over which a person has been exposed to repeated sub-concussive head impacts, and (2) the age at which the person's exposure to these head impacts began. Athletes who are exposed to head impacts at a young age are more susceptible to CTE, and those who experience head impacts before age twelve have worse outcomes than those whose exposure began after age twelve.

At the youth level, depending on age, a child playing tackle football will experience 200-500 sub-concussive head impacts per season. This number increases as the child ages, with the average high school football player experiencing 600 sub-concussive impacts per season. At the collegiate level, the average increases to around 1,000. These impacts are especially harmful to younger children, as research has shown that the impacts suffered in youth level are comparable to those suffered by collegiate football players, in terms of the level of force put on the brain during impact. Children are also more susceptible to traumatic impact in many ways. Young brains under age 12 have not fully developed myelin, or white matter, which protects the axons of the brain. Without this myelin, axons can be destroyed by impacts, resulting in slower communication across the brain. Furthermore, as important brain structures are not fully developed until the early teenage years and blood-flow to the brain is lower in children, repeated brain trauma from head impacts can impede these important development milestones. Recently, the New York Times reported on the impacts a collegiate football player experienced in a single game, finding that the average g-forces exerted on his skull during these impacts was the equivalent of the player crashing his car into a wall at 30 miles per hour. The player experienced *sixty-two* of these impacts during the single game observed.

While it is the sub-concussive head impacts that are the primary cause of CTE, the data on concussions alone in youth sports are cause for concern. Young children are the most susceptible age group to concussions. Sports-related concussions are the cause of more than half of all emergency room visits for children ages 8 to 13. A child that has had a concussion is one-and-a-half times more likely to sustain a second concussion, and a child that has suffered two concussions is three times as likely to sustain a third. On top of this, young people who play football are unlikely to report symptoms of a concussion, fifty-percent of high school athletes and seventy-percent of college athletes have failed to report experiencing concussion symptoms.

II. THE PROPOSED BILLS

The four bills introduced thus far are relatively identical. Each begins with a statement of purpose that largely speaks to protecting young children from the dangers of CTE caused by repeated head impacts in contact sports. The bills differ slightly in their reach, with some explicitly targeting tackle football, and others expansively covering numerous sports. Maryland's bill explicitly covers five sports—football, ice hockey, field hockey, soccer, and rugby—and has a catchall provision for any non-enumerated physical activity with a high-risk of head injury. The

Illinois bill, on the other hand, only addresses youth football; it does not restrain any other contact sports. Each bill also differs in the age groups that it restricts from playing tackle football, ranging from 11 years old to “high school” student. Finally, only the New York bill identifies what the consequence for violating the ban would be—a \$2,000.00 fine on the youth sports league or organization for each child playing in violation of the ban. The other three statutes—Illinois, Maryland, California—do not state what the consequence of non-compliance would be for youth sports organizations in those states.

California – Safe Youth Football Act

The *Safe Youth Football Act* was announced by two members of the California State Assembly in early February of 2018, to date, however, the bill has yet to be introduced and thus this Legislative Update is unable to analyze the text of the bill. The proposed California legislation would ban all tackle football before children have entered high school. High contact elements of football programs would only be allowed in high school football. The announcement of this bill was supported with extensive research highlighting the high risk of long-term neurological consequences that young children exposed to tackle football face.

Maryland

The Maryland legislation may be the most expansive of the four bills introduced thus far. Under the proposed legislation, HB 1210, elementary and middle school age children are prohibited from participating in “physical sports” on public fields or spaces. The bill states:

- (3) “Physical Sport” means:
- (I) Tackle Football;
 - (II) Soccer in which head butting of the ball is allowed;
 - (III) Ice hockey in which checking is allowed;
 - (IV) Field hockey in which checking is allowed;
 - (V) Tackle rugby; and
 - (VI) Any other sport in which physical activity results in a high risk of head injury

The bill also takes substantial measures to increase support for youth suffering concussions. All high school players participating in the aforementioned “physical sports” would be required to participate in an online course on the risk of head injuries and submit a certificate of completion to the director of the youth sports program. Coaches would also be required to participate in this training. Furthermore, the bill requires that any student suspected of sustaining a head injury (concussion or other) be removed from play or practice and not allowed to continue until they have submitted a written clearance from a medical professional trained in head injuries. The bill also requires that youth sports programs using public facilities submit a statement of compliance with the bill's requirements to the appropriate County Board each year. The bill does not apply to youth sports played on private fields or facilities; however, the ban would apply to any private school team playing in a public space.

Illinois – “Dave Duerson Act to Prevent CTE”

The proposed Illinois legislation (HB 4341), short titled “CTE Prevention Act,” defines “tackle football” as “any practice or game of American football where physical contact is used to force opposing players to the ground.” The bill states that, “[a] child under the age of 12 may not participate in tackle football offered by an organized youth sports program.” “Organized Youth Sports Program” includes any athletic program offered to children by an organized entity, such as a public or private school, park district, or athletic association. In its purpose section, the bill recognizes that CTE is caused by repetitive hits to the head over a period of years, specifically acknowledging sub-concussive hits as an important risk factor. It also recognizes that children exposed to tackle football before the age of 12 are at greater risk of neurological impairment.

New York – “John Mackey Youth Football Protection Act”

The proposed New York legislation (bill number A01269A) was originally introduced in January of 2017; this same bill was reintroduced and referred to the Assembly’s Health Committee on January 3, 2018. The bill states that, “[n]o child eleven years old or younger shall play, practice, or otherwise engage in organized tackle football.” Tackle is defined in the bill as “to physically impede the forward movement of a player who is in possession of the ball to the extent that... forward movement is stopped... or the player is forced to touch some part of his or her body to the ground other than the player’s hands or feet.” The proposed legislation would impose a fine of up to \$2,000 if a school or youth league allows a child 11 years old or younger to participate in tackle football. The bill’s justification is, again, that repeated sub-concussive and concussive blows negatively impact brain development and prohibiting tackle football under age 12 will allow bodies to mature to a point where it is safer for children to play tackle football.

III. SIMILAR MEASURES BY OTHER SPORTS

As the risk caused by concussions came to the forefront in the late-2000’s, a wave of legislation from 2009 to 2014 saw all fifty states and the District of Columbia pass “return to play” laws, which govern concussion training in youth sports and appropriate responses to incidents where concussions may result (the Maryland bill discussed in this article expands and amends Maryland’s “return to play” law). These “return to play” laws had the effect of increasing concussion reporting, in fact the number of concussions reported in 9 high school sports for the 2010-2015 more than doubled the number of concussion reported between 2005-2010.

In response to the increased awareness and incidence of sub-concussive and concussive impacts, several governing bodies of youth sports have taken substantial measures to address head impact in young children. In 2015, the United States Soccer Federation banned all heading for children 10 years old and under, and limited heading for children ages 11 to 13. US Lacrosse followed suit, making any checking that involves head-to-head or stick-to-head contact a penalty for teams at the under-14 level and below. US Hockey has also eliminated checking for players under 12 years; intentional contact is only allowed at age 13 and up. To date, youth football is the largest contact sport to not implement a policy that effectively limits or bans aspects of the game that cause repeated head impacts.

IV. FOOTBALL'S RESISTANCE TO REDUCING THE RISK OF HEAD IMPACT

It wasn't until March of 2016 that the NFL officially recognized that there was any link between CTE and tackle football. This recognition came after years of sustained efforts to deny and discredit any scientific evidence of the link. For several years, the NFL and USA Football promoted a program called "heads up football" that emphasized education for coaches on how to properly teach tackling and the proper form for children to tackle. The NFL and USA Football lauded the success of this program in preventing concussions and reducing injuries, with the NFL investing vast sums of money to sell the program to parents and youth leagues. They claimed that the program had reduced injuries by over 70% and reduced concussions by 30% based on an independent study, they went so far as to make these claims in front of Congress. However, when that study was investigated by the New York Times, the data showed that there was no meaningful reduction or effect on concussions, and the reduction in injuries was significantly less than what the NFL claimed.

Similarly, the NFL has touted advancements in helmet technology as the future of concussion prevention. The NFL has a habit of publishing rankings of the most effective helmets, or those that provide the most protection. These rankings, however, have no meaning to youth football, as their performance cannot be extrapolated from NFL impacts to high school or youth. Research has also shown that helmets are not a foolproof method of concussion prevention, because helmets are designed to protect the skull and absorb impacts to the skull. However, as one helmet manufacturer put it, "Think of a carton of eggs. We've figured out how to protect the shells and keep them from cracking, but if you shake an egg, the yolk can still get scrambled. So, it's unwise to expect a helmet to do something it's not designed to do." In addition, the Federal Trade Commission has even found that helmet companies' claims about concussion reduction are unsubstantiated.

As expected, the NFL, USA Football, and Pop Warner Football have not come out in support of the proposed legislation to ban tackle football. Pop Warner has come out as opposed to the bills, providing experts that state that there is no increased risk of harm for children under the age of 12. Pop Warner has also stated that legislators should not be able to tell parents what sports their children can play. The NFL and USA Football have not yet taken a stance on the issue. Opponents of the ban fear that it will reduce the number of children who play football. Enrollment in youth tackle football has steadily decreased since 2010. Between 2010 and 2012, enrollment in Pop Warner football programs dropped 9.8%, or 23,612 youth players. The primary reason cited by parents who pull their kids out of football is the risk of serious and long-lasting brain injuries caused by tackle football. At the same time, flag and touch football have seen their enrollments increase annually for the past several years.

V. NECESSITY OF THESE BILLS

These bills are likely to continue appearing in state legislative bodies across the country, as parent fear increases about the long-lasting implications of high contact sports and enrollment in youth tackle football increases. These bills are a necessary response to the lack of response by youth football to reduce head impacts for its' youngest players. As one former NFL player put it,

“The NFL has had a quarter-century to deal with this problem and is still suiting up 5-year-olds in body armor... I think [measures to protect children’s long-term cognitive health] have to come from a higher power.” Although the measures are seen by some as the end of youth football, many advocates point to the heightened enrollment in flag and touch football as a shift in how parents want their children to play football at early ages. That tackle football enrollment continues to decline because of health concerns, these legislative efforts should be seen as a way of preserving football as a cornerstone of American sporting culture for generations to come.

SOURCES

Adam Zielonka, *Maryland Bill to Ban Tackle Football Under 14 is Officially Filed*, WASH. TIMES (Feb. 8, 2018), www.washingtontimes.com/news/2018/feb/8/maryland-bill-tackle-football-ban-under-14-officia/.

Ben Strauss, *U.S. Soccer, Resolving Lawsuit, Will Limit Headers for Youth Players*, N.Y. TIMES (Nov. 9, 2015), www.nytimes.com/2015/11/10/sports/soccer/us-soccer-resolving-lawsuit-will-limit-headers-for-youth-players.html?_r=0.s

CHRIS NOWINSKI & ROBERT CANTU, CONCUSSION LEGACY FOUNDATION, *FLAG FOOTBALL UNDER 14: AN EDUCATION CAMPAIGN FOR PARENTS* (Jan. 17, 2018), www.concussionfoundation.org/sites/default/files/Documents/FFu14_White_Paper_01.18.18.pdf

CTE Prevention Act, H.B. 4341, 100th Gen. Assemb. (Ill. 2018).

Debra Gordon, *From the Legislature to the Field: “Return-to-Play” Laws and Youth Concussions*, GWU PUB. HEALTH ONLINE BLOG (Mar. 29, 2016), www.publichealthonline.gwu.edu/blog/return-to-play-laws-youth-concussions/

Edwin Rios, *California is the Fourth State in a Month to Propose Banning Youth Tackle Football*, MOTHER JONES (Feb. 9, 2018), www.motherjones.com/media/2018/02/california-is-the-fourth-state-in-a-month-to-propose-banning-youth-tackle-football/

Jack Moore, *The Limits of Football Helmets*, THE ATLANTIC (Feb. 5, 2016), www.theatlantic.com/health/archive/2016/02/super-bowl-football-helmet-concussion/460092/.

Jane. E. Brody, *Concussions Can Occur in All Youth Sports*, N.Y. TIMES WELL BLOG (Aug. 24, 2015), well.blogs.nytimes.com/2015/08/24/concussions-can-occur-in-all-youth-sports/?ref=health&_r=0.

N.Y. Legis. Assemb. AO-1269. Reg. Sess. 2017-2018 (N.Y. 2017).

Julie DiCaro, *Repetitive Hits, Concussions, and a Mother’s Long Goodbye to Youth Football*, WASH. (Sept. 12, 2017), www.washingtonpost.com/news/parenting/wp/2017/09/12/repetitive-hits-cte-and-my-long-goodbye-to-youth-football/?utm_term=.f25f1dfb656b.

Ken Belson, *N.F.L. Official Affirms Link Between Playing Football and C.T.E.*, N.Y. TIMES (Mar. 14, 2016), www.nytimes.com/2016/03/15/sports/football/nfl-official-affirms-link-with-cte.html.

Md. H.D. 1210, 2018 Leg., 438th Sess. (Md. 2018).

OFFICE OF ASSEMBLYMEMBER KEVIN MCCARTY, *Assemblymembers McCarty and Gonzalez Fletcher Announce “Safe Youth Football Act” to Protect Children from Brain Injury*, (Feb. 8, 2018), a07.asmdc.org/press-releases/20180208-assemblymembers-mccarty-and-gonzalez-fletcher-announce-safe-youth-football.

Phillip H. Montenegro, et al., *Cumulative Head Impact Exposure Predicts Later-Life Depression Apathy, Executive Dysfunction, and Cognitive Impairment in Former High School and College Football Players*, 34 J. OF NEUROTRAMA VOL. 2, 328 (Jan. 15, 2017).