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## RETURN TO PLAY IN PA: THE NEED FOR INCREASED PROTECTION FOR YOUTH ATHLETES IMPACTED BY CONCUSSIONS

### I. TRACEY YATSKO'S STORY: AN INTRODUCTION TO PENNSYLVANIA'S CONCUSSION LEGISLATION

Imagine one high school basketball game-changing the trajectory of your entire life.<sup>1</sup> This is what happened to Tracey Yatsko.<sup>2</sup> In 2005, during a high school basketball game, Yatsko went up for a rebound and hit her head against another player.<sup>3</sup> Yatsko immediately began to experience symptoms of a concussion.<sup>4</sup> Despite making her coaches aware of her symptoms and continuing to vocalize and exhibit signs of a concussion, Yatsko played in another game the next day.<sup>5</sup> Subsequently, Yatsko collapsed due to her untreated concussion but, surprisingly, was not taken to the hospital until later that night.<sup>6</sup> Unfortunately, Yatsko faced a long and grueling recovery process filled with serious health problems and medical

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1. For further discussion of Tracey Yatsko's story, see *infra* notes 2–9 and accompanying text.

2. See *Yatsko v. Berezwick*, No. 3:06-CV-2480, 2008 WL 2444503, at \*1 (M.D. Pa. June 13, 2008) (establishing Yatsko, her head basketball coach, her assistant basketball coach, and her school district as parties to lawsuit for alleged claims for violations of substantive and procedural due process rights, failure to institute and enforce safety standards in interscholastic athletics, and two claims of negligence).

3. See *id.* (describing Yatsko's starting position on basketball team and how she struck heads with another player).

4. See *id.* (explaining that Yatsko informed her coach that she "hit her head, had a headache, and was in a great deal of pain" and that her coach told Yatsko's mother that Yatsko "had been 'bumped around in the game.'").

5. See *id.* (explaining that Yatsko played in basketball game despite having symptoms of concussion during school and telling her coaches "she had suffered a concussion in the previous game."). Before the heightened awareness surrounding concussion symptoms and states passing concussion legislation, student athletes frequently sustained concussions, underestimated the consequences or severity, and continued participation in practices and games. See Stefanie Loh, *Safety in Youth Sports Act Aims to Safeguard Youths With Concussions*, PATRIOT-NEWS (Jan. 27, 2011, 4:33 PM), [https://www.pennlive.com/midstate/2011/01/safety\\_in\\_youth\\_sports\\_act\\_aim.html](https://www.pennlive.com/midstate/2011/01/safety_in_youth_sports_act_aim.html) [<https://perma.cc/2FVA-CHZN>] (describing another high school student athlete who sustained concussion and played in games afterward despite severe headache).

6. See *Yatsko*, 2008 WL 2444503, at \*1 (describing circumstances surrounding Yatsko's collapse in locker room). Yatsko's head basketball coach informed Yatsko's mother of her collapse and suggested that she take her daughter to the hospital. See *id.* (explaining Yatsko's desire to play in game when Yatsko's mother questioned why Yatsko played with head injury).

expenses that stemmed directly from her untreated concussion.<sup>7</sup> Yatsko also dealt with symptoms that lasted far beyond her initial concussion that impacted her education and employment opportunities.<sup>8</sup> However, Yatsko used her story while advocating for the Pennsylvania's Safety in Youth Sports Act ("SYSA"), hoping to share her experience so that others would not suffer as she did.<sup>9</sup>

In 2012, the Pennsylvania Legislature passed the SYSA.<sup>10</sup> The SYSA intended to limit the number of youth concussions and assist in managing concussions among student athletes.<sup>11</sup> Pennsylvania joined a nationwide movement when it passed the state's first concussion law.<sup>12</sup> This movement originated in Washington with the Zackery Lystedt Law.<sup>13</sup>

After a decade having passed with Pennsylvania's SYSA enacted, this Comment evaluates whether it is time for Pennsylvania to update its concussion legislation.<sup>14</sup> Section II provides back-

7. *See id.* (describing Yatsko's health problems as "serious brain injuries, aggravation of cerebral concussion and permanent sequelae therefrom, blurred vision, loss of balance, headaches and depression.")

8. *See* Loh, *supra* note 5 (discussing severity of concussions in relation to Pennsylvania's concussion law and how Yatsko's concussion impacted her life after high school). Other proponents of Pennsylvania's concussion law included NFL executives, former Philadelphia Eagles football players, and high school field hockey goalie. *See id.* (comparing field hockey player's experience to Yatsko's and offering support for Pennsylvania's concussion law).

9. *See* Staff Reports, *Pa. Lawmakers Push for Concussion Response Bill*, TRICOUNTY INDEPENDENT (Jan. 28, 2011, 3:16 AM), <https://www.tricountyindependent.com/story/news/2011/01/28/pa-lawmakers-push-for-concussion/63634216007/> [<https://perma.cc/J5A2-E5JH>] (offering Yatsko's concussion story in reference to Pennsylvania's concussion legislation).

10. *See* 24 PA. STAT. AND CONS. STAT. §§ 5321–23 (West 2012) (providing Pennsylvania's first concussion statute).

11. *See The Safety in Youth Sports Act*, UPMC LIFE CHANGING MEDICINE, <https://www.upmc.com/services/sports-medicine/services/concussion/about/safety-youth-sports-act#:~:text=IN%202012%2C%20the%20Pennsylvania%20General,brain%20injuries%20among%20student%20athletes> [<https://perma.cc/Z4JW-FHBQ>] (last visited Mar. 13, 2023) (discussing and emphasizing importance of Pennsylvania's concussion legislation).

12. *See* Alan Schwarz, *States Taking the Lead Addressing Concussions*, N.Y. TIMES (Jan. 30, 2010), <https://www.nytimes.com/2010/01/31/sports/31concussions.html> [<https://perma.cc/WMV2-4CGB>] (describing implementation of state concussion legislation as "resembling a music style or weather pattern" because "what started in the Pacific Northwest is wafting across the United States").

13. *See Find Out More About Zackery Lystedt Law*, NFL (Aug. 29, 2015, 10:06 AM), <https://www.nfl.com/news/find-out-more-about-zackery-lystedt-law-0ap200000339066> [<https://perma.cc/2AEU-D3AZ>] (discussing introduction of first state concussion law in Washington known as Zackery Lystedt Law). Shortly after Washington passed this law, many other states passed similar laws. *See id.* (noting support and urgency for other states to pass concussion legislation).

14. For further discussion of why Pennsylvania should update its concussion legislation, see *infra* notes 169–182 and accompanying text.

ground on state concussion laws, highlights common provisions among concussion legislation, and describes Pennsylvania's concussion statute.<sup>15</sup> Section III analyzes why Pennsylvania should update its concussion legislation and offers effective methods for doing so.<sup>16</sup> Section IV concludes by arguing that Pennsylvania should update its concussion legislation, provides the reasons why it must do so, and describes ways that it could effectively improve the current legislation.<sup>17</sup>

## II. NATION FACING CONCUSSIONS HEAD ON: BACKGROUND ON STATE CONCUSSION STATUTES

### A. Trending Provisions in State Concussion Statutes

Today, every state has a concussion law to help protect young athletes.<sup>18</sup> However, the protections and requirements of these statutes vary among the states, and many states amended their concussion laws after first introducing them.<sup>19</sup> To this day, these variations persist between states.<sup>20</sup>

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15. For further discussion of state concussion statutes, common provisions in concussion statutes, and Pennsylvania's concussion statute, see *infra* notes 18–101 and accompanying text; see also 24 PA. STAT. AND CONS. STAT. §§ 5321–23 (West 2012) (providing Pennsylvania's concussion statute).

16. For further discussion why and how Pennsylvania should update its legislation, see *infra* notes 169–182 and accompanying text.

17. For a summary of this Comment's analysis, see *infra* notes 166–182 and accompanying text.

18. See Kelly L. Potteiger, Adam J. Potteiger, William Pitney & Paul M. Wright, *An Examination of Concussion Legislation in The United States*, 16 INTERNET J. OF ALLIED HEALTH SCIS. & PRAC. 2 1, 2 (2018) (“All 50 states and the District of Columbia currently have legislation regarding sport-related concussions.”).

19. See Howard Fendrich & Eddie Pells, *States' Youth Concussion Laws Vary in Strength*, ALBUQUERQUE J. (Jan. 30, 2015, 12:02 AM), <https://www.abqjournal.com/533408/states-youth-concussion-laws-vary-in-strength.html> [https://perma.cc/K6XY-LU8S] (discussing differences among state concussion laws in 2015); see also Francis X. Shen, *Are Youth Sports Concussion Statutes Working?*, 56 DUQ. L. REV. 7, 11–12 (2018) (highlighting amendments made by many states, including: expansion of law, improving existing requirements, and concussion prevention). Some state laws did not specify the age or grades covered by the law. See Fendrich & Pells, *supra* (discussing aspects that many state laws did not address). Other states did not clarify whether the law applied to public and private schools. See *id.* (specifying that “[c]ertain laws make clear they cover public and private schools, others refer only to public schools, while some don't say at all”). Additionally, many state laws did not introduce a mechanism to hold individuals and schools accountable for violating the law. See *id.* (commenting on speed that concussion laws were introduced and passed with and noting that “expensive enforcement mechanisms in the bills would have caused many to fail”).

20. See Lee Greene, *State Legislatures Continue to Update Concussion Laws*, NAT'L FED'N OF STATE HIGH SCH. ASS'N (Nov. 15, 2018), <https://www.nfhs.org/articles/state-legislatures-continue-to-update-concussion-laws/> [https://perma.cc/Z7CE-9VJS] (showing study results to be twenty-five states that followed Washington's

Washington was the first state to enact a concussion law.<sup>21</sup> Named after a football player who suffered a concussion during a high school football game, Washington's statute became known as the Zackery Lystedt Law.<sup>22</sup> This statute served as a model for many other states.<sup>23</sup> The statute's provisions included signed head injury information sheets, removal from play, and return to play.<sup>24</sup> However, not all states followed the model set forth by Washington, and many states updated their concussion laws after their first enactment.<sup>25</sup> In addition to the varying provisions among state concussion laws, states differ significantly regarding whether their legislation applies to private and public schools.<sup>26</sup>

All states' concussion laws include removal from play provisions and require medical clearance to return to play.<sup>27</sup> For medi-

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model that mandated concussion education for coaches, forty states that required concussion information forms to be signed by students and parents, thirteen states that included non-school-sponsored youth sports in addition to school sports, and four states that required baseline testing).

21. *See id.* (discussing history of state concussion laws and explaining that Washington's concussion statute was "first state law to be enacted").

22. *See id.* (providing Zackery Lystedt's story as support and motivation for Washington to enact first state concussion law).

23. *See id.* (explaining issues that Washington's law tackled and its effect on "schools, administrators, coaches, student-athletes and parents.").

24. *See* WASH. REV. CODE § 28A.600.190(2)–(4) (West 2009) (providing requirements of Washington's state concussion statute, otherwise known as Zackery Lystedt law). Head injury information sheets are intended to "inform and educate coaches, youth athletes, and their parents and/or guardians of the nature and risk of concussion and head injury including continuing to play after concussion or head injury." *See* § 28A.600.190(2) (noting purpose of guidelines, information, and forms distributed to coaches, athletes, parents and guardians).

25. *See* Greene, *supra* note 20 ("[S]ignificant variations exist between the legal requirements set forth in the various statutes."). More specifically, many states updated concussion laws "to improve procedures for dealing with sports-related head injuries or to correct deficiencies" in original laws. *See id.* (describing updates to state concussion laws). Although state concussion laws contain variations from Washington's original concussion statute, there are still significant similarities and a shared purpose throughout state concussion legislation. *See* Krystal L. Tomei, Christopher Doe, Charles J. Prestigiacomo & Chirag D. Gandhi, *Comparative Analysis of State-Level Concussion Legislation and Review of Current Practices in Concussion*, 33 NEUROSURGICAL FOCUS at E11, 7 (2012) ("Slight differences exist among these legislative efforts; however, the legislations' main goals, which resonate throughout the varying renditions, are to improve recognition of concussion and standardize a process for clearing concussed student athletes for return to play.").

26. *See State Legislation And Policy*, SHAPE AMERICA, <https://www.shapeamerica.org/standards/guidelines/Concussion/state-policy.aspx> [<https://perma.cc/N3XF-PZZ9>] (last visited Apr. 18, 2023) (estimating that twenty-percent of states had concussion laws that applied to private schools and public schools).

27. *See Sports Concussion Policies and Laws: Information for Parents, Coaches, and Schools & Sports Professionals*, CDC <https://www.cdc.gov/headsup/policy/index.html> [<https://perma.cc/3RCE-82DS>] (last visited Apr. 18, 2023) ("[A]ll 50

cal clearance, states differ over who the appropriate personnel is to provide the medical clearance.<sup>28</sup> Some states require licensed healthcare providers to issue a medical clearance.<sup>29</sup> Other states specify that the licensed healthcare provider must have specialized training in evaluating and managing concussions.<sup>30</sup> Finally, some states only allow physicians to provide youth athletes with medical clearance to return to play.<sup>31</sup>

Most states also require an athlete's parents or guardians to complete and sign an information sheet or informed consent form before the student can resume participating in the athletic activity.<sup>32</sup> Notably, the signed information sheets include a general concussion education component, which typically serves as an acknowledgement of receipt of the concussion information, thus implicitly acting as an independent form of concussion information.<sup>33</sup> In general, concussion information sheets explain what a

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states have a Return to Play law.”). Although return to play provisions are not consistent among all fifty states, the provisions generally include mandatory removal from play, mandatory bench times, required medical clearance, required training or education, and informed consent. *See Implementing Return to Play: Learning from the Experiences of Early Implementers*, CDC, [https://www.cdc.gov/headsup/pdfs/policy/RTP\\_Implementation-a.pdf](https://www.cdc.gov/headsup/pdfs/policy/RTP_Implementation-a.pdf) [<https://perma.cc/JD8V-ZRWC>] (last visited Mar. 12, 2023) (providing typical requirements of return to play laws).

28. *See State Legislation and Policy*, *supra* note 26 (indicating whether clearance was required by licensed physician, select providers, or any provider trained in concussion management was state-dependent).

29. *See, e.g.*, VA. CODE ANN. § 22.1-271.5 (West 2019) (requiring evaluation by “appropriate licensed health care provider”).

30. *See, e.g.*, MD. CODE ANN. HEALTH-GEN. § 14-501 (West 2014) (requiring youth athletes to obtain medical clearance from “licensed health care provider trained in the evaluation and management of concussions” to return to play); *see also* CONN. GEN. STAT. ANN. § 10-149c (West 2014) (requiring written clearance from “licensed health care professional trained in the evaluation and management of concussions”).

31. *See, e.g.*, TEX. EDUC. CODES ANN. § 38.157 (West 2011) (permitting student or student's parent or guardian to choose “treating physician” to provide medical clearance).

32. *See, e.g.*, TENN. CODE ANN. § 68-55-502 (West 2014) (requiring signed information sheet for youth athlete's participation in practice or competition). Tennessee's concussion law specifies what the information must be. *See id.* (requiring “[w]ritten information related to the recognition of symptoms of head injuries,” “[t]he biology and the short-term and long-term consequences of a concussion written in layman's terminology,” “[a] summary of state board of education rules and regulations relative to safety regulations for the student's participation in extracurricular athletic activities,” and “[t]he medical standard of care for post-concussion participation or participation in an extracurricular athletic activity”). However, many states do not go so far as to specify what the information sheet must include. *See, e.g.*, MICH. COMP. LAWS § 333.9156 (West 2018) (requiring generally signed statement acknowledging receipt of concussion educational materials).

33. *See, e.g.*, DEL. CODE ANN. tit. 16, § 3005L (West 2017) (requiring concussion information sheet distribution to youth athletes and parents or guardians); *see*

concussion is, how to recognize common signs, and the best courses of action to take if someone believes a student has a concussion.<sup>34</sup>

The requirement for coaches and other supervising individuals to participate in concussion training is less prevalent among state concussion laws.<sup>35</sup> For example, Michigan requires “coach[es], employee[s], volunteer[s], and other adult[s] . . . to participate in the concussion awareness training program . . . once every 3 years” with allowances for more frequent training.<sup>36</sup> In Michigan, the concussion awareness training course is a quiz that takes approximately twenty minutes and requires each question to be answered correctly.<sup>37</sup> Other states, like Rhode Island, require the completion of a training course and an annual refresher course but do not state specific requirements for the courses.<sup>38</sup> Moreover, some states do not require concussion training at all.<sup>39</sup>

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*also* N.J. STAT. ANN. § 18A:40-41.2 (West 2017) (mandating educational fact sheet regarding sports-related concussions to be distributed). In New Jersey, the concussion law specifies that the information sheet is an “educational fact sheet” to be signed by the youth athletes and their parents or guardians that provides information about head injuries. *See id.* (indicating relationship between information sheet and concussion information).

34. *See Concussion Information Sheet*, CDC, [https://www.cdc.gov/headsup/pdfs/youthsports/parent\\_athlete\\_info\\_sheet-a.pdf](https://www.cdc.gov/headsup/pdfs/youthsports/parent_athlete_info_sheet-a.pdf) [<https://perma.cc/7U7Z-2Z8F>] (last visited Apr. 2, 2023) (showing CDC Heads Up concussion information sheet).

35. *See, e.g.*, MICH. COMP. LAWS ANN. § 333.9156 (West 2018) (discussing Michigan’s concussion awareness training program); *see also* 16 R.I. GEN. LAWS § 16-91-3(b) (West 2014) (providing Rhode Island’s concussion training course and refresher course annually required by statute).

36. *See* MICH. COMP. LAWS ANN. § 333.9156 (West 2018) (describing concussion awareness training requirements). Although Michigan’s law requires periodic review of the concussion program and makes recommendations about the frequency of the training program, the statute lacks any further details regarding the training program. *See* § 333.9155 (stating only that “the department shall make the . . . training program . . . available to the public on the department’s internet website” and “available to all individuals required to participate . . . and to any interested individual” “as soon as they are available”).

37. *See Michigan Sport-Related Concussion Training Certification*, MICH. ONLINE GLOB. CLASSROOM, <https://learn.online.umich.edu/courses/course-v1:MichiganOnline+MCC101+2021/about> [<https://perma.cc/WU9Z-62A5>] (last visited Mar. 12, 2023) (describing key components of course and stating practical components of obtaining certification).

38. *See* 16 R.I. GEN. LAWS ANN. § 16-91-3(b) (West 2014) (providing training and refresher course completion requirement). Rhode Island’s statute provides that “[t]raining may consist of videos, classes, and any other generally accepted mode and medium of providing information.” *See id.* (providing requirements for coaches, volunteers, school nurses, teachers, and teachers’ aides regarding concussion training).

39. *See, e.g.*, ARIZ. REV. STAT. ANN. § 15-341(b) (2022) (lacking any formal concussion training program for sports-related concussions); *see also* S.C. CODE ANN. § 59-63-75 (2013) (discussing no concussion training requirements); *see also*

Few states require the school district to notify parents or guardians when their child is removed from play due to a concussion.<sup>40</sup> This results in additional responsibilities for coaches and health-care providers because the responsibility to report student athletes' potential concussions will fall on them.<sup>41</sup> Furthermore, few states adopted policies within their concussion legislation that guide when and how a student athlete can return to classes, otherwise known as return-to-learn policies.<sup>42</sup> Of the states with return-to-learn policies, some states require a student to fulfill a specified return-to-learn protocol before being allowed to return to their athletic activity.<sup>43</sup>

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Greene, *supra* note 20 (indicating some states do not have concussion training requirements).

40. See Jessica A. Cremer, *Examining the Role of Parents in Concussion Legislation Across the United States* (2016) (graduate student professional paper, on file with ScholarWorks at University of Montana) ("Only four states . . . require parental notification once an athlete sustains a suspected concussion.").

41. See *id.* (describing how coaches, officials, and health care providers will have responsibility to report whether youth athletes sustained concussion when parental notification requirements are lacking in state concussion laws). The study concluded that, for most states, a parent's lack of obligation to report whether their child has a concussion shifts the responsibility of whether to report to the children's coaches. See *id.* (explaining problems that may result from reporting responsibility falling on individuals with less personal relationships with athletes suspected of sustaining concussions).

42. See *id.* (providing that twelve states included return-to-learn policies in concussion statutes). "Return-to-learn (RTL) procedures are intended to mitigate concussion symptoms and accelerate recovery as concussed students reintegrate into school. These protocols can take the form of 'academic adjustments', 'academic accommodations', or 'academic modifications.'" See Jonathan Howland, Holly Hackman, Alcy Torres, Julia Campbell & Jonathan Olshaker, *It Is Time to Rewrite State Youth Sports Concussion Laws*, *BMJ OPEN SPORT & EXERCISE MEDICINE* at 2 (2021) (internal footnote omitted) (defining and describing return-to-learn procedures).

43. See, e.g., 105 ILL. COMP. STAT. ANN. 5/22-80 (West 2022) (providing five requirements that must be met before "[a] student removed from an interscholastic athletics practice or competition under this Section" is allowed to practice or compete again). First, the student must be "evaluated . . . by a treating physician, . . . an athletic trainer, an advanced practice registered nurse, or a physician assistant . . ." See *id.* (providing who can evaluate student for concussion signs and symptoms). Second, the student must have "successfully completed each requirement of the return-to-play protocol established . . . necessary for the student to return to play . . ." See *id.* (requiring successful completion of protocol for return to play). Third, the student must have "successfully completed each requirement of the return-to-learn protocol . . . necessary for the student to return to learn . . ." See *id.* (requiring successful completion of protocol for return to learn). Fourth, "the treating physician, the athletic trainer, or the physician assistant [must have] provided a written statement indicating that . . . it is safe for the student to return to play and return to learn . . ." See *id.* (requiring written statement by evaluator). Finally, the student and student's parent or guardian must have "acknowledged that the student has completed the requirements of the return-to-learn play and return-to learn protocols necessary for the student to return to play," provided the written statement from the person with authority to provide



Beyond states' original concussion laws, many states have expanded, or are seeking to expand, their concussion legislation by implementing brain injury awareness days or months.<sup>44</sup> In California, a recently vetoed bill would have required the Surgeon General to create a Commission on Chronic Traumatic Encephalopathy and Youth Football to provide recommendations to reduce the risk to athletes participating in youth tackle football.<sup>45</sup> California focused on football by enacting the Youth Football Act, which authorizes prehospital emergency care to injured athletes.<sup>46</sup> California also amended its Youth Sports Concussion and Sudden Cardiac Arrest Prevention Protocols to expand the definition of "youth sports organization."<sup>47</sup>

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medical clearance to "the person responsible for compliance with the return-to-play and return-to-learn protocols," and "have signed a consent form." *See id.* (requiring acknowledgement of completion of protocol, receipt of evaluator's written statement, and signed consent form).

44. *See State Legislation and Policy*, *supra* note 26 (showing states to designate brain injury awareness periods); *see, e.g.*, OHIO REV. CODE ANN. § 5.2277 (West 2022) ("The ninth day of July is designated as 'Traumatic Brain Injury Awareness Day' to increase public awareness of traumatic brain injuries.").

45. *See AB 1348*, OPENSTATES, <https://openstates.org/ca/bills/20212022/AB1348/> [<https://perma.cc/TB99-Y4XK>] (last visited Mar. 13, 2023) (stating last action as "[v]etoed by Governor"). California legislation provides that chronic traumatic encephalopathy ("CTE") is a degenerative brain disease that "is suspected to be linked to participation in contact sports such as boxing and football." *See AB-1348 Youth Athletics: Chronic Traumatic Encephalopathy*, CAL. LEGIS. INFO. (Sept. 1, 2022, 9:00 PM), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB1348](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1348) [<https://perma.cc/N74C-GTLU>] (defining CTE). The California bill also notes that CTE can "cause mood and behavioral symptoms" and "result in impaired cognitive function . . ." *See id.* (describing impact of CTE).

46. *See 2019 CA A 2300*, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:CA2019000A2300&ciq=ncsl9&client\\_md=1124e8442f520e79c37e5aefedd98a0d&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:CA2019000A2300&ciq=ncsl9&client_md=1124e8442f520e79c37e5aefedd98a0d&mode=current_text) [<https://perma.cc/UR8M-6ASC>] (last visited May 12, 2023) (showing that "CA A 2300" was enacted in September of 2020 and that it specifically authorized "prehospital emergency medical care or rescue services" for "injured youth tackle football participants"); *see also* CAL. HEALTH & SAFETY CODE § 124240 (West 2020) (providing law known as California Youth Football Act). California's Youth Football Act states that "[t]he certified emergency medical technician, state-licenses paramedic, or higher-level licensed medical professional shall have the authority to provide prehospital emergency medical care or rescue services consistent with their certification or license . . ." *See* CAL. HEALTH & SAFETY CODE § 124241 (West 2020) (noting who is authorized to provide prehospital emergency medical care or rescue services).

47. *See AB 379: Amendments to The Youth Sports Concussion And Sudden Cardiac Arrest Prevention Protocols*, KEENAN & ASSOCS. (Oct. 3, 2019), <https://www.keenan.com/Resources/Briefings/Briefings-Detail/ab-379-amendments-to-the-youth-sports-concussion-and-sudden-cardiac-arrest-prevention-protocols> [<https://perma.cc/D86X-4P3S>] (describing California's expansion of definitions in state's concussion laws); *see also* CAL. HEALTH & SAFETY CODE § 124235(b)(4) (West 2020) (defining youth sports organization as "an organization, business, nonprofit entity, or a local governmental agency that sponsors or conducts ama-

In 2016, Delaware enacted legislation establishing procedures for minors showing concussion symptoms during youth athletic activities and creating return-to-play guidelines.<sup>48</sup> Idaho enacted legislation in March 2016 that required a biennial review of concussion and head injury guidelines, required written confirmations and acknowledgments of the guidelines and risks associated with participating in youth athletic activities, and necessitated return to play requirements.<sup>49</sup> In 2015, Illinois enacted the Youth Sports Concussion Safety Act, which contains provisions regarding educational materials about concussions and head injuries, specifies who must meet the Act's requirements, and provides an emergency action plan.<sup>50</sup> Michigan improved its concussion awareness program by requiring completion of the program once every three years.<sup>51</sup> Additionally, Michigan's legislation implements a periodic review of the program itself.<sup>52</sup>

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teur sports competitions, training, camps, or clubs in which persons 17 years of age or younger participate.”).

48. See 2015 DE H 404, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:DE2015000H404&ciq=ncsl9&client\\_md=5728010121855f4b640980f67f4c66a2&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:DE2015000H404&ciq=ncsl9&client_md=5728010121855f4b640980f67f4c66a2&mode=current_text) [<https://perma.cc/Q5S6-HE6R>] (last visited May 12, 2023) (discussing “DE H 404,” which was approved in September 2016 and is titled “Concussion Protection Standards”); see also DEL. CODE ANN. tit. 16, § 3004L (West 2017) (discussing procedures to protect youth athletes related to concussions).

49. See 2016 ID H 557, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:ID2016000H557&ciq=Ncsl9&client\\_md=E2d6cd77141e6af8cb808d680134493f&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:ID2016000H557&ciq=Ncsl9&client_md=E2d6cd77141e6af8cb808d680134493f&mode=current_text) [<https://perma.cc/53G4-XEGJ>] (showing “ID H 557” and the requirements that it sets forth); see also IDAHO CODE ANN. § 33-1625 (West 2016) (identifying “Concussion and head injury guidelines and requirements”).

50. See 2015 IL S 7, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:IL2015000S7&ciq=Ncsl9&client\\_md=DA17964620f1d99e5b77f2bbf10fecbc&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:IL2015000S7&ciq=Ncsl9&client_md=DA17964620f1d99e5b77f2bbf10fecbc&mode=current_text) [<https://perma.cc/TR8L-9PF7>] (providing that Illinois's Youth Sports Concussion Safety Act was enacted in August 2015); see also 410 ILL. COMP. STAT. ANN. 145/1–145/10 (West 2015) (providing Illinois' concussion legislation).

51. See 2017 MI S 352, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:MI2017000S352&ciq=ncsl9&client\\_md=2831094ccdd48b9fe68ae36a78297eb5&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:MI2017000S352&ciq=ncsl9&client_md=2831094ccdd48b9fe68ae36a78297eb5&mode=current_text) [<https://perma.cc/MY8Z-9DGA>] (showing requirements of “MI S 352,” which was approved in October 2017); see also MICH. COMP. LAWS ANN. § 333.9155 (West 2018) (discussing Michigan's concussion awareness training program requirements).

52. See MICH. COMP. LAWS ANN. § 333.9155 (West 2018) (requiring department to “periodically review the training program”). In recent litigation regarding Michigan's concussion-protection statute, the Michigan Court of Appeals addressed whether Michigan's statute imposed a legal duty on coaches and concluded that “the statute imposes a legal duty on the part of coaches and other covered adults to remove a youth athlete who is suspected of sustaining a concussion from further involvement in covered athletic activities.” See *Randall v. Mich. High Sch. Ath. Ass'n*, 965 N.W.2d 690, 703 (Mich. Ct. App. 2020) (stating legal duty imposed by statute).

States continued to expand concussion legislation through efforts to adopt policies and specify concussion protocol guidelines.<sup>53</sup> The state of Montana enacted a law in 2017 that “[r]equire[d] non-public schools, and youth athletic organizations to adopt concussion protocol policies and procedures.”<sup>54</sup> Before the 2017 law, Montana commissioned an interim study regarding youth concussion protection laws.<sup>55</sup> In New Mexico, the state required training for youth athletes specific to brain injuries.<sup>56</sup> Furthermore, in legislation enacted in 2016, New Mexico extended the amount of time that a student must not participate in an athletic activity due to possible brain injury.<sup>57</sup> Oregon took strides in 2018 to expand the type of healthcare professionals allowed to give medical release to concussed youth athletes.<sup>58</sup> Tennessee enacted the Safe Stars Act, establishing safety and health requirements for youth athletic activities.<sup>59</sup> This abundance of legislation demonstrates that states are responding to the seriousness of youth sports-related concus-

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53. See, e.g., N.M. STAT. ANN. § 22-13-31 (West 2021) (discussing youth athletic policies and procedures).

54. See 2017 MT H 487, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:MT2017000H487&ciq=ncsl9&client\\_md=90079b57351813041654c5ab36dd8c17&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:MT2017000H487&ciq=ncsl9&client_md=90079b57351813041654c5ab36dd8c17&mode=current_text) [<https://perma.cc/W7QF-ZB4G>] (showing that Montana’s “Youth Athlete Protection Laws” was enacted in May 2017); see also MONT. CODE ANN. § 20-7-1303 (West 2017) (discussing adoption of youth athletic policies and procedures).

55. See 2015 MT HJR 26, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:MT2015000HJR26&ciq=Ncsl9&client\\_md=C09e22d074a120e4a4932d3641273e24&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:MT2015000HJR26&ciq=Ncsl9&client_md=C09e22d074a120e4a4932d3641273e24&mode=current_text) [<https://perma.cc/7UL4-XXE9>] (discussing “MT HJR 26” and the interim study).

56. See *id.* (discussing law enacted in April 2017 that is marked as “NM S 38”); see also N.M. STAT. ANN. § 22-13-31(C) (West 2021) (“Each school district shall ensure that each coach participating in school athletic activities and each student athlete in the school district receives training . . .”).

57. See N.M. STAT. ANN. § 22-13-31(B) (West 2021) (providing student may not return to athletic activity sooner than “two hundred forty hours from the hour in which the student athlete received a brain injury”).

58. See 2018 OR S 1547, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:OR2018000S1547&ciq=ncsl9&client\\_md=2c0110e0cedcc2bec23df409c0275af9&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:OR2018000S1547&ciq=ncsl9&client_md=2c0110e0cedcc2bec23df409c0275af9&mode=current_text) [<https://perma.cc/Z6RQ-85CV>] (discussing Oregon’s Qualified Health Care Professionals and Youth Injuries Act); see also OR. REV. STAT. ANN. § 336.490 (West 2019) (discussing health care professionals in relation to qualification for management of sports-related concussions).

59. See 2021, TN S 1259, STATE NET, [https://custom.statenet.com/public/resources.cgi?id=ID:bill:TN2021000S1259&ciq=Ncsl9&client\\_md=D87eb77858205039e9b7b408647003e5&mode=current\\_text](https://custom.statenet.com/public/resources.cgi?id=ID:bill:TN2021000S1259&ciq=Ncsl9&client_md=D87eb77858205039e9b7b408647003e5&mode=current_text) [<https://perma.cc/27D7-9BDU>] (providing that Tennessee’s Safe Stars Act was enacted in April 2021); see also TENN. CODE ANN. § 49-6-3601–3603 (West 2021) (discussing requirements of Tennessee’s Safe Stars Act).

sions by taking concrete steps to reduce the harm students face in athletic activities.<sup>60</sup>

## B. Pennsylvania Tackles Youth Concussions: The Safety in Youth Sports Act

Pennsylvania's state concussion statute is the Safety in Youth Sports Act ("SYSA").<sup>61</sup> The Act took effect on July 1, 2012.<sup>62</sup> The Pennsylvania Department of Health ("DOH") described the statute's intent as "requir[ing] all school entities to develop return to play policies for student athletes with concussions" and to require training for coaches.<sup>63</sup> Pennsylvania was the thirty-second state to establish concussion legislation.<sup>64</sup>

Pennsylvania State Senator Patrick Browne first introduced the Act, which Pennsylvania's Governor Tom Corbett later signed.<sup>65</sup> In

60. See Andrew W. Albano, Jr., Carlin Senter, Richard H. Adler, Stanley A. Herring & Irfan M. Asif, *The Legal Landscape of Concussion: Implications for Sports Medicine Providers*, 8 SPORTS HEALTH 465, 465 (2016) (explaining that concussion legislation aims to "prevent mild traumatic brain injuries and the potential long-term sequelae of these injuries in youth athletics.")

61. See 24 PA. STAT. AND CONS. STAT. §§ 5321-5323 (West 2012) (designating Pennsylvania's concussion statute's short title as "Safety in Youth Sports Act").

62. See *2011 Act 101*, PENNSYLVANIA GENERAL ASSEMBLY, <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2011&sessInd=0&act=101> [<https://perma.cc/7UKK-Q7J9>] (last visited Sept. 3, 2022) (enacting Safety in Youth Sports Act); see also §§ 5321-5323 (West 2012) (showing effective date as July 1, 2012).

63. See *Concussion Management*, PA. DEP'T OF HEALTH, <https://www.health.pa.gov/topics/school/Pages/Concussion.aspx> [<https://perma.cc/3GXX-H3PJ>] (last visited Sept. 3, 2022) (providing Pennsylvania resources to aid in concussion management). The Pennsylvania DOH aims to "promote healthy behaviors, prevent injury and disease, and to assure the safe delivery of quality health care for all people in Pennsylvania." See *About the Department of Health*, PA. DEP'T OF HEALTH, <https://www.health.pa.gov/About/Pages/About.aspx> [[HTTPS://PERMA.CC/96RK-47GC](https://perma.cc/96RK-47GC)] (last visited Apr. 2, 2023) (stating DOH's mission).

64. See *Governor's Message, November 14, 2011*, THOMSON REUTERS WESTLAW EDGE (Nov. 14, 2011), [https://1.next.westlaw.com/Document/I03B33BA0321711E1BF5D981388F4EB66/View/FullText.html?navigationPath=%2fRelatedInfo%2fv1%2fkLegislativeMaterials%2fnav%3fdocGuid%3dNE5AB15101B0011E1AE7282E3F3502C9B%26midlineIndex%3d6%26warningFlag%3dnull%26planIcons%3dnull%26skipOutOfPlan%3dnull%26sort%3ddefault%26category%3dlegislativeMaterials&listSource=RelatedInfo&list=LegislativeMaterials&rank=6&ppcid=992f4654360741738ac4fb6bec0ffa95&originationContext=LegislativeMaterials&transitionType=reportsRelatedItem&contextData=\(Sc.History\\*oc.Search\)&firstPage=true&bhcp=1](https://1.next.westlaw.com/Document/I03B33BA0321711E1BF5D981388F4EB66/View/FullText.html?navigationPath=%2fRelatedInfo%2fv1%2fkLegislativeMaterials%2fnav%3fdocGuid%3dNE5AB15101B0011E1AE7282E3F3502C9B%26midlineIndex%3d6%26warningFlag%3dnull%26planIcons%3dnull%26skipOutOfPlan%3dnull%26sort%3ddefault%26category%3dlegislativeMaterials&listSource=RelatedInfo&list=LegislativeMaterials&rank=6&ppcid=992f4654360741738ac4fb6bec0ffa95&originationContext=LegislativeMaterials&transitionType=reportsRelatedItem&contextData=(Sc.History*oc.Search)&firstPage=true&bhcp=1) [<https://perma.cc/WW6B-ZUGQ>] (quoting Governor Corbett as saying "Pennsylvania joins 31 other states in establishing legislation.")

65. See *Safety in Youth Sports Act Becomes Law in Pennsylvania*, HOPEWELL AREA, <https://www.hopewellarea.org/Downloads/Concussion%20Information.pdf> [<https://perma.cc/F2E6-6LUN>] (Apr. 2, 2023) (providing who signed and introduced Act).

general, “this bill establishe[d] standards for managing concussions to student athletes.”<sup>66</sup> The former president of the Pennsylvania Psychological Association, Dr. Mark Hogue, explained the importance of this bill in regard to athletes’ lives.<sup>67</sup> During a ceremonial signing of the SYSA, Governor Corbett stated, “[o]ur hope is that this bill will reduce the risk of long-term damage for student athletes who suffer concussions or other brain-related trauma while participating in sports.”<sup>68</sup> Substantively, the SYSA begins with a section that provides definitions of specific words and phrases within the statute.<sup>69</sup>

### 1. *Meet, Educate, and Train*

The subsequent section of the SYSA and the main portion of the Act is comprised of nine parts.<sup>70</sup> The first section of the statute discusses educational materials.<sup>71</sup> It requires that the DOH and the Department of Education (“DOE”) work to develop guidelines.<sup>72</sup>

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66. *See id.* (explaining Act’s general standards).

67. *See id.* (“This new law will be extremely important to any athlete who suffers a concussion. Athletes who return to play prematurely are at risk of a second concussion, which can be life-threatening.”).

68. *See id.* (describing Pennsylvania’s reasoning and importance of signing this bill into law).

69. *See* 24 PA. STAT. AND CONS. STAT. § 5322 (West 2012) (providing definitions specific to SYSA). The statute defines “appropriate medical professional,” “athletic activity,” “interscholastic athletics,” and “school entity.” *See id.* (providing words and phrases defined in SYSA). An “appropriate medical professional” includes licensed physicians and licensed psychologists who have training specific training in concussion evaluation and management. *See id.* (defining appropriate medical professional). An “athletic activity” includes interscholastic athletics, athletic competitions sponsored by school entities, noncompetitive cheerleading sponsored by school entities, and practices and scrimmages for any activity within the statute. *See id.* (defining athletic activity). “Interscholastic athletics” are defined as athletic contests or competitions between school entities. *See also* 24 PA. STAT. AND CONS. STAT. § 16-1602-A (West 2000) (defining interscholastic athletics). Lastly, “school entity” is defined in the Public School Code of 1949 as “[a] public school, school district, nonpublic school or private school in this Commonwealth other than a private or nonpublic school which elects not to become a member of the association.” *See* 24 PA. STAT. AND CONS. STAT. § 16-1602-A (West 2000) (defining school entity).

70. *See* § 5323 (breaking SYSA down into sections “a” through “i” and titled as “[c]oncussions and traumatic brain injuries”).

71. *See* § 5323(a) (discussing development of educational materials as set forth by Pennsylvania’s DOH and Department of Education and distribution of educational materials to student athletes).

72. *See id.* (explaining that guidelines should be “to inform and educate students participating in . . . an athletic activity” and that it should provide information to parents and coaches about risk of concussions). The Pennsylvania DOE aims “to ensure that every learner has access to a world-class education system that academically prepares children and adults to succeed as productive citizens” and “to establish a culture that is committed to improving opportunities throughout

In accordance with this provision, the DOH provides a link to “BrainSTEPS” on its website.<sup>73</sup> The DOH describes BrainSTEPS as “a school re-entry program aimed at facilitating a return to school for students who have sustained a brain injury.”<sup>74</sup> The statute also requires that students participating in athletic activities and their parents or guardians sign an acknowledgment that they have reviewed the necessary concussion information before the student is allowed to participate in the activity.<sup>75</sup>

The next section of the SYSA is the informational meeting section.<sup>76</sup> According to the statute, “[a] school entity may hold an informational meeting prior to the start of each athletic season for all ages of competitors regarding concussions and other head injuries, the importance of proper concussion management, and how preseason baseline assessments can aid in the evaluation, management, and recovery process.”<sup>77</sup> The language of this section acts in the “permissive sense” rather than the “imperative sense.”<sup>78</sup> Thus,

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the commonwealth by ensuring that technical support, resources, and optimal learning environments are available for all students, whether children or adults.” See *Mission and Vision*, PA DEP’T OF EDUC., <https://www.education.pa.gov/Pages/Mission.aspx#:~:text=Our%20Mission,to%20succeed%20as%20productive%20citizens> [<https://perma.cc/27CE-VDJ8>] (stating DOE’s mission).

73. See *Concussion Management*, PA. DEP’T OF HEALTH, <https://www.health.pa.gov/topics/school/Pages/Concussion.aspx> [<https://perma.cc/8ANH-VVG4>] (last visited Sept. 3, 2022) (“BrainSTEPS consulting teams support school teams in the development and implementation of educational plans following student acquired brain injury (ABI).”).

74. See *Frequently Asked Questions Regarding Act 101: The Safety in Youth Sports Act*, PA DEP’T OF HEALTH, <https://www.health.pa.gov/topics/Documents/Programs/TBI/Safety%20in%20Youth%20Sports%20Act%20FAQ.pdf> [<https://perma.cc/75UN-5B9V>] (last visited Sept. 3, 2022) (detailing that it helps schools to “develop educational programs, academic interventions, strategy implementation and monitoring of students”); see also *BrainSTEPS Brain Injury School Consulting Program in Pennsylvania*, BRAINSTEPS, <https://brainsteps.net/home> [<https://perma.cc/52JW-VFML>] (last visited May 11, 2023) (discussing functions of BrainSTEPS and offering concussion information). BrainSTEPS currently offers resources for making student referrals, parent consent, causes of brain injuries, general concussion education, and trainings. See *id.* (showing overview of resources offered by BrainSTEPS).

75. See § 5323(a) (stating requirements of students and parents or guardians prior to participating in athletic activity regarding educational materials).

76. See § 5323(b) (providing second section of SYSA).

77. See *id.* (providing what may be discussed in meetings and who may attend meetings).

78. See *101 Pa. Code § 15.143*, CASETEXT, <https://casetext.com/regulation/pennsylvania-code-rules-and-regulations/title-101-general-assembly/part-i-legislative-reference-bureau/subpart-c-legislative-drafting-manual/chapter-15-statutes/subchapter-c-style-and-language/words-and-phrases/section-15143-shall-and-may> [<https://perma.cc/USH5-EM6F>] (last visited Sept. 3, 2022) (explaining that duty is expressed using “shall” and that right, power, or privilege is expressed using “may”).

although the statute allows schools to hold an informational meeting, it is not an express duty.<sup>79</sup> Consequently, because schools are only encouraged to hold informational meetings, individuals may request meetings or take further steps if they believe the school is not complying with the SYSA.<sup>80</sup>

Regarding training courses, Pennsylvania's concussion statute requires coaches to complete a training course and further provides that they should not be allowed to coach until they complete the training course.<sup>81</sup> The SYSA specifically provides the organizations approved to offer concussion management certification training courses.<sup>82</sup> The statute also specifies that coaches must complete the training course before returning to coaching.<sup>83</sup>

## 2. *Removal from Play and Return to Play Requirements*

The SYSA's removal from play provision outlines when an athlete should be removed from play and who makes this determination.<sup>84</sup> The Act requires a "game official, coach from the student's team, certified athletic trainer, licensed physician, licensed physical therapist or other official designated by the student's school entity" to make that decision.<sup>85</sup> Subsequently, the SYSA's return to play section requires that an "appropriate medical professional" evaluate and clear the student before that student resumes play.<sup>86</sup> This section is less specific than the removal from play section regarding

79. *See id.* (indicating that "may" language is permissive language and does not connote duty).

80. *See PA Safety in Youth Sports Act*, UPMC HEALTH BEAT (Dec. 21, 2013), [https://share.upmc.com/2013/12/youth-sports-act-part-one/?\\_ga=2.119690575.635331906.1663117082-320127330.1663117082](https://share.upmc.com/2013/12/youth-sports-act-part-one/?_ga=2.119690575.635331906.1663117082-320127330.1663117082) [<https://perma.cc/62G2-WPJU>] (designating athletic department and athletic trainers as resources for parents to request informational meetings and offering Pennsylvania DOH or Pennsylvania DOE as options for parents to submit report if believed to be necessary).

81. *See* § 5323(e) (providing that coach must complete concussion management certification training course once per school year).

82. *See id.* (offering "the [CDC], the National Federation of State High School Associations or another provider approved by the [DOH]" as approved organizations).

83. *See id.* (specifying what coaches must complete in order to coach).

84. *See* § 5323(c) ("A student who . . . exhibits signs or symptoms of a concussion or traumatic brain injury while participating in an athletic activity shall be removed by the coach from participation at that time.").

85. *See id.* (stating who makes decision whether student should be removed from play).

86. *See* § 5323(d) (providing what is required by statute before student can return to playing their sport).

who can make the determination.<sup>87</sup> It simply provides that a coach cannot allow a student to return to play until they have been cleared by an “appropriate medical professional.”<sup>88</sup> The statute also allows certified medical professionals to consult if necessary to decide whether a student can return to play.<sup>89</sup> However, a provider without concussion evaluation and management training is not qualified.<sup>90</sup> Subsequently, some medical organizations have provided experts who can offer advice and services to individuals and families impacted by concussions.<sup>91</sup>

### 3. *Penalties for Non-Compliance*

In the enforcement section, the statute establishes penalties for first, second, and third violations.<sup>92</sup> For first violations, coaches are suspended for the remainder of the season.<sup>93</sup> For second violations, coaches are suspended for the remainder of the season and for the following season.<sup>94</sup> For third violations, coaches are permanently suspended from coaching.<sup>95</sup> As of 2016, Pennsylvania was the only state to have an enforcement mechanism for its state concussion law.<sup>96</sup> The SYSA also encourages other “sponsors of youth athletic activities not specifically addressed” to follow the Act’s

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87. *See id.* (providing medical professional must provide clearance before student can return to play and that school has discretion to designate who appropriate medical professionals are).

88. *See id.* (stating requirements for when student can to return to play).

89. *See id.* (providing who medical professionals may consult).

90. *See* UPMC Health Beat, *supra* note 80 (clarifying and providing more detail about who qualifies as “appropriate medical professional”).

91. *See id.* (stating that UPMC Sports Medicine Concussion Program has “multidisciplinary team of providers” trained in concussion management, including neuropsychologists, primary care physicians specializing in sports medicine and rehabilitation, rehabilitation therapists, physical therapists, and athletic trainers).

92. *See* § 5323(f) (establishing minimum penalties that take effect two years after effective date of statute). According to the Pennsylvania DOH, school entities are responsible for enforcing violations of the SYSA. *See Frequently Asked Questions Regarding Act 101: The Safety in Youth Sports Act*, *supra* note 74 (adding that school entities are also responsible for policing violations). Additionally, the penalties established by the SYSA are only minimum penalties and school entities may establish greater penalties for violations. *See id.* (providing that the school entities’ governing bodies set and enforce penalties).

93. *See* § 5323(f) (providing penalty for first violation).

94. *See id.* (providing penalty for second violation).

95. *See id.* (providing penalty for third violation).

96. *See* David Ratcliff, *Ringling the Courthouse Bell*, 28 JTILA TRIAL 28, 29 (2016) (contrasting increase in emergency room visits for sports-related concussions with fact that less than half of schools have full time athletic trainers available and Pennsylvania being only state with enforcement mechanism).



guidelines.<sup>97</sup> This recommendation could include groups not associated with public schools, such as Little Leagues or soccer associations.<sup>98</sup>

The final section of the statute addresses civil liability.<sup>99</sup> The two-part section first provides that “nothing in this act shall be construed to create, establish, expand, reduce, contract or eliminate any civil liability on the part of any school entity or school employee.”<sup>100</sup> Second, the statute provides immunity for coaches who act in accordance with the removal from play and return to play provisions of the statute.<sup>101</sup>

### III. THE SAFETY IN YOUTH SPORTS ACT HITS THE COURTS: AN ANALYSIS OF WHETHER PENNSYLVANIA MUST UPDATE CONCUSSION LAW

#### A. Concussion Statutes Create Positive Impact, but is it Hit and Miss?

Studies suggest that state concussion laws positively impact the physical wellbeing of youth athletes.<sup>102</sup> After Connecticut passed its concussion law in 2010, medical professionals sought to determine its impact on emergency department visits for sports-related concussions.<sup>103</sup> Connecticut was an optimal state to conduct this study because it was the first state to pass a concussion statute that included a removal from play provision.<sup>104</sup> The findings showed that imple-

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97. See § 5323(g) (indicating section of SYSA titled “Other youth athletic activities”).

98. See *Youth Sports Concussion Laws in PA, NJ*, CHILDREN’S HOSPITAL OF PHILADELPHIA (Apr. 2014), <https://www.chop.edu/health-resources/youth-sports-concussion-laws-pa-nj> [<https://perma.cc/5HE2-D5XZ>] (offering examples of what “other activities” could include).

99. See § 5323(i) (providing civil liability section of SYSA).

100. See *id.* (setting standard for civil liability and creating exception for second part of civil liability section regarding coaches).

101. See *id.* (providing civil liability immunity for coaches if they act in accordance with certain provisions of SYSA).

102. For further discussion of the effects of state concussion legislation on the physical wellbeing of youth athletes, see *infra* notes 103–132 and accompanying text.

103. See Thomas Trojian, Pina Violano, Matthew Hall & Charles Duncan, *The Effects of a State Concussion Law on The Frequency of Sport-Related Concussions as Seen in Two Emergency Departments*, INJURY EPIDEMIOLOGY 2, 1 (Feb. 26, 2015), <https://doi.org/10.1186/s40621-015-0034-7> [<https://perma.cc/RK6F-8AZT>] (describing purpose and background of study with basis in Connecticut’s concussion law, which requires evaluation of concussed student athletes by healthcare professionals).

104. See *id.* (explaining when Connecticut’s law requires student athletes to be removed from play and to whom law applies).

menting Connecticut's concussion law resulted in an increased number of emergency department visits for sports-related concussions.<sup>105</sup> Additionally, the study prompted a recommendation to the legislature to expand the existing law.<sup>106</sup> Specifically, the researchers suggested that the law be expanded to include younger age groups and that a greater positive impact would be felt if the law included "summer camps, travel teams, and all-star teams."<sup>107</sup>

Unlike Connecticut, Pennsylvania's concussion law is not limited to the high school population.<sup>108</sup> In a study of youth athletes from Pennsylvania and Michigan, researchers assessed the level of concussion knowledge by parents and athletes at the youth sports level.<sup>109</sup> The participants included parents and youth athletes currently participating in sports.<sup>110</sup> The study recognized the importance of educating parents and youth athletes about concussions because of the low number of healthcare professionals at youth sports events.<sup>111</sup> The study's results indicated that although there were "favorable knowledge scores," misunderstandings existed re-

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105. *See id.* at 4 (finding significant increase in emergency department visits). Specifically, the study found that emergency department visits increased significantly for high school aged athletes after Connecticut's concussion law was enacted. *See id.* at 5 ("The number of [sport-related concussions] in the 14-to-18-year-old age group significantly increased . . ."). Additionally, the study did not report a change in the rate of emergency department visits during the summer or a significant change in adults. *See id.* (discussing study's results and noting "[n]o difference in the rate of [emergency department] visits were seen pre and post law in the summer time for any group . . . [and] [t]here was no significant change in the number of [sport-related concussions] in the adult population . . .").

106. *See id.* at 6 (reporting that high school football coaches recommended expansion of law to cover youth populations and high school age groups). The study also suggested expanding the law to cover sports at all levels. *See id.* (noting that expansion to all levels maintain mandated removal for athletes with head injuries).

107. *See id.* (explaining that study did not indicate increased sports-related concussions during summer months, resulting in conclusion that law, as currently written, does not affect summer sports-related concussions).

108. *See* 24 PA. CONS. STAT. § 16-1602-A (2000) ("'Interscholastic athletics.' All athletic contests or competitions conducted between or among school entities situated in counties of the second class, second class A, third class, fourth class, fifth class, sixth class, seventh class and eighth class.").

109. *See* Erica Beidler, Abigail C. Bretzin, Ara J. Schmitt & Amy Phelps, *Factors Associated With Parent and Youth Athlete Concussion Knowledge*, 80 JOURNAL OF SAFETY RESEARCH 190, 190 (2022) (explaining how this scientific study differed from other studies in field).

110. *See id.* at 192, Table 1 (showing that participants included boys and girls who played football, ice hockey, lacrosse, soccer, or multiple sports at time of study). The average age of youth athletes in the study was eleven years. *See id.* at 191 (describing study's participants and specifying average age of participants).

111. *See id.* at 196 (recognizing that onsite availability of appropriate healthcare professionals is low for youth sports).

garding concussion signs and symptoms.<sup>112</sup> Ultimately, the study highlighted the lack of resources for youth sports and the increased vulnerability of youth athletes, which served as significant motivation to increase concussion knowledge among parents and youths.<sup>113</sup> Although Pennsylvania's statute incorporates education and training on concussions, this study emphasized the educational component.<sup>114</sup> Furthermore, the study noted that athletes' reliance on individuals without medical training to recognize signs and symptoms of concussions bolsters the importance of concussion education and awareness in youth athletics.<sup>115</sup>

The legislature may not be the sole solution for increasing concussion awareness.<sup>116</sup> Some medical organizations insist that Pennsylvania's state concussion legislation aids "players, parents, coaches, and health professionals" to raise awareness and to help prevent youth concussions.<sup>117</sup> The organizations further assert that the SYSA "raises awareness and recognition of . . . complex injur[ies]" and "helps to ensure better clinical management for all student-athletes."<sup>118</sup>

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112. *See id.* (stating specific outcome of the study). The study obtained "total knowledge score[s] . . . by summing correct responses ranging from 0 to 47 with a higher score indicating greater knowledge." *See id.* at 191 (explaining method for calculating total knowledge scores and meaning of higher scores).

113. *See id.* at 196 (discussing practical applications of study). Youth sports and athletes' lack of resources and increased vulnerability were compared to collegiate and professional athletes. *See id.* (comparing resources in post-high school settings to resources in youth athletics).

114. *See* 24 PA. STAT. AND CONS. STAT. §§ 5323(a) & (e) (West 2012) (providing educational materials and training course provisions of SYSA).

115. *See* Erica Beidler et al., *supra* note 109, at 196–97 (suggesting "multi-faceted education techniques" as best approach for raising concussion awareness).

116. *See Brain Injury School Consulting Program in Pennsylvania, supra* note 74 (indicating program's purpose as "build[ing] a bridge connecting the medical, rehabilitation, education sectors and families following student (K-12) acquired brain injury" through "brain injury-related consultation [and] training to school, staff, students, [and] parents"); *see also* HEADS UP to Youth Sports, CDC, <https://www.cdc.gov/headsup/youthsports/> [<https://perma.cc/HT7L-NPW3>] (last visited Nov. 3, 2022) (indicating that HEADS UP "provides important information on preventing, recognizing, and responding to a concussion"). Pennsylvania's DOH provide both BrainSTEPS and HEADS UP in relation to concussion management. *See Concussion Management*, DEPARTMENT OF HEALTH, <https://www.health.pa.gov/topics/school/Pages/Concussion.aspx> [<https://perma.cc/TGT5-HPJE>] (last visited Nov. 3, 2022) (offering programs and organizations to assist Pennsylvania schools with concussion management).

117. *See The Safety in Youth Sports Act*, UPMC SPORTS MEDICINE, <https://www.upmc.com/services/sports-medicine/services/concussion/about/safety-youth-sports-act> [<https://perma.cc/ATR7-X5TW>] (last visited Sept. 13, 2022) (providing information from University of Pittsburgh Medical Center's discussion of SYSA).

118. *See* UPMC Health Beat, *supra* note 80 (discussing how SYSA protects youth from concussions and helps to promote early recognition).

Another issue related to state concussion statutes is compliance.<sup>119</sup> One study assessed schools' compliance with state laws and the impact of sports medicine on the quality of protocols in place.<sup>120</sup> The participants in this study consisted of over 180 Pennsylvania high schools.<sup>121</sup> The study provided an analysis of high school's compliance with the SYSA regarding sports-related concussion protocols.<sup>122</sup> Most high school protocols properly implemented the removal from play and written medical clearance requirements.<sup>123</sup> However, over half of the studied high schools' protocols did not include sports-related concussion education.<sup>124</sup> Additionally, only approximately one-quarter of the high school protocols discussed the implications for violations of the statute.<sup>125</sup> The researchers interpreted this data to predict that "local-level policies may not be written to the rigor necessary to ensure athlete safety as state laws intended."<sup>126</sup> Despite this conclusion, the study noted that state concussion laws have a positive impact overall.<sup>127</sup>

Some researchers recommend that state concussion laws should incorporate return-to-learn policies.<sup>128</sup> Notably, Pennsylvania's concussion statute does not include a return-to-learn provision.<sup>129</sup> In a study conducted by researchers who recommend return-to-learn policies, the researchers explained that the objec-

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119. For further discussion of compliance issues related to the SYSA, see *infra* notes 120–127.

120. See Erica Beidler, Cailee E. Welch Bacon, Nicholas Hattrup, Cassidy Powers, Lilly Saitz & Tamara C. Valovich McLeod, *Going Beyond the State Law: Investigating High School Sport-Related Concussion Protocols*, 57 JOURNAL OF ATHLETIC TRAINING 32, 32 (2022) (discussing study's objective).

121. See *id.* (providing that participants in study were 184 Pennsylvania high schools).

122. See *id.* at 35 (discussing mandatory state law components provided by SYSA).

123. See *id.* at 35–36 (discussing whether high school protocols included removal from play and medical clearance prior to returning to play).

124. See *id.* (noting number of high school protocols to include concussion education); see also 24 PA. STAT. AND CONS. STAT. § 5323(b) (West 2012) (lacking language that requires schools to hold informational meetings, which is part of education provision of statute).

125. See Beidler et al., *supra* note 120, at 136 (providing number of high school protocols to include language about "violation repercussions").

126. See *id.* (making this prediction after assessing number of high school protocols to reflect requirements provided by Pennsylvania's concussion law).

127. See *id.* at 137 (assessing impact of numerous state concussion laws and finding overall positive impact).

128. See Howland et al., *supra* note 42 (suggesting that "state youth sports concussion laws should be revised so that they include [return-to-learn] provisions that apply to all students, athletes and non-athletes alike").

129. See 24 PA. STAT. AND CONS. STAT. § 5323 (West 2012) (revealing that statute does not include any language for return to learn); see also Howland et al.,

tives of return-to-learn policies are “to mitigate concussion symptoms and accelerate recovery as concussed students reintegrate into school.”<sup>130</sup> Although some states have added return-to-learn protocols in their state concussion laws, the majority have not.<sup>131</sup> Consequently, legislation is needed to create consistency among school policies.<sup>132</sup>

### B. Construing Civil Liability Leaves Pennsylvania Courts Confused

The Pennsylvania court system’s first encounter with the SYSA occurred in *M.U. v. Downingtown High School East*.<sup>133</sup> In this case, a high school soccer player brought suit against her soccer coach, her coach’s training company, and her school district after sustaining a permanent injury from a collision during a soccer game.<sup>134</sup> The student alleged four counts in the amended complaint, including a claim under 42 U.S.C. § 1983, negligence, recklessness, and the recovery of medical costs.<sup>135</sup> The athlete’s counsel suggested that the SYSA was “instructive on the standard of care owed with regard to student athletes and concussions.”<sup>136</sup> The court, however, explained that Section 1983 liability could not be independently based on a violation of state law.<sup>137</sup> Additionally, for the tort claims, the court clarified that the statute “may extend immunity to those

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*supra* note 42, at 1 (explaining that Pennsylvania does not require return-to-learn policy by law).

130. See Howland et al., *supra* note 42, at 2 (discussing what return-to-learn policies can do if implemented).

131. See *id.* (providing that in 2016, eight states had return-to-learn provisions in their concussion laws and that other states have since added this to their concussion laws).

132. See *id.* (reporting that there will be variance among school policies without return-to-learn legislation).

133. See *M.U. v. Downingtown High Sch. E.*, 103 F. Supp. 3d 612, 616-17 (E.D. Pa. 2015) (establishing case about injuries sustained by high school soccer player); see also Jonathon E. Cross, *Heads Up And Watch Out! Potential Liability for Traumatic Brain Injury Pursuant to The Safety in Youth Sports Act*, MARTINDALE (Jan. 5, 2018), [https://www.martindale.com/legal-news/article\\_marshall-dennehey-warner-coleman-goggin-pc\\_2505196.htm](https://www.martindale.com/legal-news/article_marshall-dennehey-warner-coleman-goggin-pc_2505196.htm) [<https://perma.cc/VY6L-AV2>] (explaining that Pennsylvania’s court system has struggled to determine impact of statute’s civil liability language).

134. See *M.U.*, 103 F. Supp. 3d at 617 (stating facts of case).

135. See *M.U.*, 103 F. Supp. 3d at 618 (stating counts asserted in *M.U.*’s amended complaint); see also 42 U.S.C. § 1983 (1996) (providing statute to provide civil action for deprivation of rights).

136. See *id.* at 624 (providing argument advanced by *M.U.*’s counsel at oral argument).

137. See *id.* at 625 (explaining why violation of SYSA did not provide for Section 1983 liability and suggesting possible state tort law claim).

who are not otherwise immune, but it cannot abrogate immunity for those covered by the Tort Claims Act.”<sup>138</sup> For these reasons, the high school soccer player could not successfully utilize the SYSA in her lawsuit.<sup>139</sup>

The court’s conclusion, in this case, left open the possibility that a plaintiff could establish negligence per se if the procedures within the Act were not followed.<sup>140</sup> As the court discussed, applying this theory to those who violate the SYSA would create automatic liability when student athletes sustain concussions.<sup>141</sup> But, the result of this case makes it evident that the statute’s civil liability language is unclear in application.<sup>142</sup> Notably, the cases involving injuries sustained from concussions during high school athletic events could have had very different outcomes if Pennsylvania had passed a concussion statute before 2011.<sup>143</sup>

Pennsylvania federal courts again faced a lack of clarity in Pennsylvania’s concussion legislation when the court decided the case, *R.B. v. Enterline*.<sup>144</sup> In this case, a high school cheerleader filed a complaint against her former cheerleading coach.<sup>145</sup> However, as related to Pennsylvania’s concussion statute, the court found that the Plaintiff’s reliance on the SYSA was misplaced be-

138. *See id.* at 631 (applying civil liability section of SYSA to M.U.’s tort claim against coach). Under the Federal Tort Claims Act, “the federal government . . . recognizes liability for the negligent or wrongful acts or omissions of its employees acting within the scope of their official duties.” *See Federal Tort Claims Act*, United States House of Representatives, <https://www.house.gov/doing-business-with-the-house/leases/federal-tort-claims-act> [<https://perma.cc/C5JU-Q28W>] (last visited Mar. 12, 2023) (explaining function of Federal Tort Claims Act).

139. *See Cross, supra* note 133 (concluding that counts in amended complaint were dismissed without prejudice); *see also M.U.*, 103 F. Supp. 3d at 625 (“While M.U. could possibly argue that [coach’s] failure to abide by SYSA constitutes negligence per se under state tort law, [the SYSA] is inapplicable to the constitutional standard of care.”) (internal footnote omitted).

140. *See Cross, supra* note 133 (stating that court’s conclusion was “cryptic statement” that created possible negligence per se argument).

141. *See Greene, supra* note 20 (“In application, the legal theory of negligence per se means that anyone who causes harm to another while violating black-letter law . . . is presumed to have acted with a lack of reasonable care and will therefore be held responsible to the injured party in a form of strict or automatic liability.”).

142. *See Cross, supra* note 133 (explaining that Pennsylvania’s court system has struggled to determine impact of SYSA’s civil liability language).

143. *See Mann v. Palmerton Area Sch. Dist.*, 872 F.3d 165, 175 (3d Cir. 2017) (finding significant that Pennsylvania did not “pass legislation that mandated training for coaches to prevent concussion until November 9, 2011, and the legislation did not even go into effect until July of 2012”).

144. *See R.B. v. Enterline*, 304 F. Supp. 3d 456, 459 (M.D. Pa. 2018) (holding coach immune from liability because willful misconduct claim sounded in negligence).

145. *See id.* (providing background of case).

cause it “merely expands immunity to coaches acting in accordance with it,” but it “does not eliminate the immunity under the Tort Claims Act for those who do not act in accordance with it.”<sup>146</sup> In so finding, the court held the SYSA does not eliminate immunity under the Tort Claims Act for those who do not comply with it.<sup>147</sup>

Thus, although Pennsylvania took a step forward when it passed the SYSA in 2011, it remains unclear whether the Act creates civil liability for those covered by the statute.<sup>148</sup> Additionally, it is unclear how traditional defenses will impact any potential civil liability created under the SYSA.<sup>149</sup> What is clear is that the SYSA at least created the potential for liability when a high school athlete sustains injuries from a concussion during a school-sponsored athletic event.<sup>150</sup>

### C. Off The Hook on a Technicality

A finding that some organizations are not liable under the SYSA suggests that the statute’s definition section needs updated.<sup>151</sup> In *Hites v. Pa. Interscholastic Athletic Association*,<sup>152</sup> The plaintiffs sought damages for concussion injuries sustained during a high

146. *See id.* at 460 (referring to opinion written by court in June 2017 where issue of SYSA was also discussed).

147. *See id.* (explaining that SYSA expands immunity to coaches who comply with it but does not eliminate immunity for those who are out of compliance).

148. *See Cross, supra* note 133 (expressing that caselaw creates confusion regarding status of civil liability for coaches and school districts).

149. *See id.* (specifying traditional defenses such as governmental immunity and high standard for Fourteenth Amendment claims). Some students who suffer sports-related concussions may not be awarded damages. *See Skillpa v. Pa. Interscholastic Athletic Ass’n*, GD-17-002366, 2022 WL 17495988, (Pa. Ct. Com. Pl., 5th Jud. Dist. 2022) (providing verdict and settlement summary for no damages for Shane Skillpa who filed lawsuit after suffering from untreated concussion during participation in high school football). Skillpa sought five million dollars in damages for pain and suffering and lost future wages. *See Paula Reed Ward, Allegheny County Jury Rules Against Former West Mifflin Football Player in Concussion Case*, TRIB LIVE (Sep. 23, 2022, 3:55 PM), <https://triblive.com/local/allegheny-county-jury-begins-deliberating-in-west-mifflin-concussion-case/> [<https://perma.cc/NES2-83YX>] (stating issue in case as “whether Skillpa’s health problems now stemmed from that initial concussion and subsequent hits he took in the days after – or from something else entirely”).

150. *See Teenage Soccer Girl’s Head Injury Leads to Lawsuit Against Coach*, ROBERT PEIRCE & ASSOCIATES (Jan. 25, 2015), <https://www.peircelaw.com/blog/2015/january/teenage-soccer-girls-head-injury-leads-to-lawsuit/> [<https://perma.cc/99DF-Z48U>] (suggesting families who have children injured in manner covered by SYSA may have available legal options).

151. For further discussion of organizations who are not liable under the SYSA, see *infra* notes 158–165 and accompanying text.

152. *Hites v. Pa. Interscholastic Athletic Ass’n*, No. 8 C.D. 2017, 2017 WL 4507367, \*1 (Pa. Commw. Ct. 2017).

school game, and the Commonwealth Court of Pennsylvania addressed whether the claims could be brought given the effect of the SYSA.<sup>153</sup> The Pennsylvania Commonwealth Court provided the context for which the SYSA was introduced.<sup>154</sup> This case involved three plaintiffs, but only two sustained their concussions after the enactment of the SYSA.<sup>155</sup> For this reason, the trial court determined that the SYSA applied to only two of the plaintiffs.<sup>156</sup> In its analysis, the trial court found that “the [SYSA] must be considered when evaluating whether a duty should be imposed on the PIAA as a basis for the Complaint’s allegations of negligence.”<sup>157</sup>

The Commonwealth Court outlined the Pennsylvania Interscholastic Athletic Association’s (“PIAA”) arguments.<sup>158</sup> The PIAA specifically argued that the requirements outlined in the SYSA are directed at schools and that, although “the Legislature was aware of the PIAA,” it chose to direct the requirements at schools, coaches, and medical professionals, which the PIAA is not.<sup>159</sup> Finally, the PIAA argued that while it may be considered a “sponsor of youth athletic activities,” the sponsors are only encouraged to follow the SYSA.<sup>160</sup> For these reasons, the PIAA argued that “the SYSA imposes no duty on the PIAA” and that no further record was re-

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153. *See id.* at \*1 (discussing negligence claims presented to court). The Pennsylvania Interscholastic Athletic Association, also known as the PIAA, is an organization whose function “is to develop and enforce rules regulating interscholastic athletic competition.” *See A Principals’ Organization, Principle-Based*, PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, <https://www.piaa.org/about/story.aspx> [<https://perma.cc/PS8K-LPE9>] (last visited Sept. 21, 2022). The Commonwealth Court of Pennsylvania is one of two intermediate appellate courts in Pennsylvania and primarily handles “matters involving state and local governments and regulatory agencies.” *See Learn, THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA*, <https://www.pacourts.us/learn/> [<https://perma.cc/47NE-RPAY>] (last visited Sept. 21, 2022) (describing structure and function of Pennsylvania’s court system).

154. *See Hites*, 2017 WL 4507367, at \*8 (explaining that in Plaintiff’s argument, SYSA not relied on to create duty, but to describe “minimum standards of care for interscholastic athletics”).

155. *See id.* at \*10 (explaining that SYSA was effective as of July 2012, which was before concussion of one plaintiff but after concussions of other two plaintiffs).

156. *See id.* at \*11 (noting specifically that SYSA had to be considered regarding “allegations of the PIAA’s duty” toward the plaintiffs).

157. *See id.* at \*12 (providing determination made by trial court prior to appeal).

158. *See id.* at \*15–16 (detailing PIAA’s argument that negligence claims are for legislature, which is made clear through enactment of SYSA).

159. *See id.* at \*16 (outlining PIAA’s argument pertaining to specific sections of SYSA).

160. *See id.* at \*17 (discussing application of section “g” of SYSA to PIAA).



quired to address the impact of the SYSA on the negligence claim.<sup>161</sup>

In its analysis, the Commonwealth Court found that “[n]o error [was] apparent in the trial court’s decision to overrule the PIAA’s preliminary objection to Plaintiffs’ negligence claims on the ground that, based on the enactment of the SYSA, those claims involve non-justiciable issues reserved for the Legislature.”<sup>162</sup> Regarding the SYSA’s application to the PIAA, the court observed that “[n]oticeably absent from the SYSA is any mention of the PIAA.”<sup>163</sup> Furthermore, the court presumed that the General Assembly likely did not intend to “eliminate civil suits such as the suit filed by Plaintiffs here against the PIAA.”<sup>164</sup> Thus, the court determined that dismissing the negligence claims would be premature based on the enactment of the SYSA.<sup>165</sup>

#### D. Steps to Push PA Youth Concussion Legislation Forward

Pennsylvania was the 35th state to enact a concussion law.<sup>166</sup> However, unlike many states that amended their original concussion laws, Pennsylvania’s concussion statute remains unchanged.<sup>167</sup> Although Pennsylvania adopted a resolution to designate a month as Brain Injury Awareness Month, the state has not updated its concussion law since it was first enacted in 2012.<sup>168</sup>

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161. *See id.* (providing PIAA’s ultimate conclusion as to SYSA and how it believes trial court should have proceeded).

162. *See id.* (setting forth court’s conclusion as to preliminary objection to negligence claims).

163. *See id.* at \*18 (discussing application of SYSA to PIAA).

164. *See id.* (offering stance on what legislature likely intended through its enactment of SYSA).

165. *See id.* (concluding whether it was proper to dismiss negligence claims); *see also Pennsylvania High School Students’ Concussion Class Action Allowed to Proceed*, LAWINSPORT (Oct. 11, 2017), <https://www.lawinsport.com/topics/item/pennsylvania-high-school-students-concussion-class-action-allowed-to-proceed> [<https://perma.cc/T5AC-BEXW>] (discussing Commonwealth Court’s decision to allow interlocutory appeal of trial court’s ruling and affirm trial court in high school athletes’ class action lawsuit brought against PIAA).

166. *See* Bryan Toporek, *Youth-Concussion-Law Watch: Pa. Makes 35*, EDUCATIONWEEK STUDENT WELL-BEING (Nov. 15, 2011), <https://www.edweek.org/leadership/youth-concussion-law-watch-pa-makes-35/2011/11> [<https://perma.cc/2PA6-WYZZ>] (quoting Governor Corbett: “We all know that athletes just want to get back into the game, but this bill says: ‘Hold on. Take your time [ ]’”); *see also* Howland et al., *supra* note 42 (explaining that all fifty states passed concussion legislation between 2009 and 2014); *see also* 24 PA. STAT. AND CONS. STAT. § 5323 (West 2012) (showing the year it was enacted as 2012).

167. *See* 24 PA. STAT. AND CONS. STAT. § 5323 (West 2012) (showing only version of law to be one effective as of July 1, 2012).

168. *See Governor Josh Shapiro Declares March Brain Injury Awareness Month*, BRAIN INJ. ASSOC. OF PA., <https://biapa.org/governor-josh-shapiro-declares-march>

Nevertheless, Pennsylvania needs to update the current status of its concussion legislation.<sup>169</sup> Studies show the positive impact that return-to-learn policies can have on student athletes impacted by sports-related concussions.<sup>170</sup> Pennsylvania's concussion statute, however, does not have a return-to-learn provision like many other states.<sup>171</sup> Additionally, despite concussion legislation, schools often fail to comply with the statute's requirements.<sup>172</sup>

Likewise, the Legislature needs to clarify the civil liability provision of the statute, which currently creates more confusion than clarity.<sup>173</sup> Then, it would become clearer when civil liability attaches to a failure to adhere to the statute's requirements.<sup>174</sup> Additionally, the definitions of some words and phrases within the statute likely need revision.<sup>175</sup> Specifically, the Legislature should strongly consider editing the definition of "school entity" to include sports organizations, such as the PIAA.<sup>176</sup> As the law currently stands and as the courts have confirmed, organizations like the PIAA lack a duty under the statute because they are not included within the definition of "school entity."<sup>177</sup>

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brain-injury-awareness-month/ [<https://perma.cc/R6T4-UJCT>] (last visited May 12, 2023) (providing resolution to designate March 2017 as "Brain Injury Awareness Month").

169. For further discussion of Pennsylvania's current concussion legislation, see *supra* notes 61–101 and accompanying text.

170. For further discussion of the potential effects of return-to-learn policies, see *supra* notes 128–132 and accompanying text. Schools have implemented return-to-learn policies for students in states that do not have mandated return-to-learn legislation. See Howland, *supra* note 42 (discussing solution reached by states without mandated return-to-learn concussion legislation).

171. See 24 PA. STAT. AND CONS. STAT. § 5323 (showing SYSA lacks return-to-learn provision).

172. For further discussion of compliance issues, see *supra* notes 119–127 and accompanying text.

173. See Cross, *supra* note 133 (suggesting Pennsylvania courts unsure of how to apply civil liability provision).

174. For further discussion of the potential impact on civil liability, see *supra* notes 133–150 and accompanying text.

175. For further discussion of who is covered by the Act, see *supra* note 69 and accompanying text, and notes 151–165 and accompanying text.

176. See 24 PA. STAT. AND CONS. STAT. § 16-1602-A (West 2000) (defining "school entity"). For example, California amended its definition of youth sports organization in its state concussion legislation. For further discussion of California amending the definition of youth sports organizations, see *supra* note 47 and accompanying text. Previously, California's definition designated specific sports that qualified as a youth sports organization. See AB 379, *supra* note 47 (specifying that there were twenty-seven sports that fulfill youth sports organization definition). Thus, California's amendment to this definition expanded its overall scope. See *id.* (explaining how removal of the specific sports provisions expanded definition).

177. See 24 PA. STAT. AND CONS. STAT. § 5322, *supra* note 69 (revealing that current definition of "school entity" does not include PIAA).

Finally, the Pennsylvania legislature could further protect youth athletes by adopting provisions similar to what other states have already implemented.<sup>178</sup> The SYSA could be expanded to require parents or guardians to notify the proper authorities when their child sustains a concussion.<sup>179</sup> It could also require on-site trainers and baseline concussion testing rather than leaving these considerations to individual schools and organizations.<sup>180</sup> Lastly, Pennsylvania could bolster its current concussion education provision by providing a more comprehensive training program supported by updated medical research.<sup>181</sup> By revising and updating the SYSA, the Pennsylvania legislature would be taking meaningful strides to prioritize youth athlete safety and hold violators accountable.<sup>182</sup>

#### IV. CONCLUSION

Pennsylvania enacted the SYSA to “establish[ ] standards for managing concussions and traumatic brain injuries to student athletes; assign[ ] duties to the [DOH] and the [DOE]; and impos[e] penalties.”<sup>183</sup> When the SYSA was first enacted, Dr. Nathan Kegel, a clinical neuropsychologist, opined that the increasing occurrence of concussions due to high competition among youth sports led to Pennsylvania’s decision to implement the SYSA.<sup>184</sup> By 2020, there were 17,107 children with sports-related concussions in Pennsylvania.<sup>185</sup> Although Pennsylvania’s sports concussion legislation

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178. For further discussion of why the legislature should update the SYSA, see *supra* notes 166–182 and accompanying text.

179. For further discussion of parental notification regarding youth athlete concussions, see *supra* notes 40–41 and accompanying text.

180. See Cremer, *supra* note 40 (encouraging baseline neuropsychological testing of student athletes and presence of athletic trainers at recreational and athletic events).

181. See, e.g., Lesley Lueke, *High School Athletes and Concussions*, 32 J. LEGAL MED. 483, 497 (2011) (suggesting yearly concussion training would assist Pennsylvania in maintaining up to date concussion management and awareness without utilizing legislative efforts).

182. For further discussion of why the legislature should update the SYSA, see *supra* notes 166–181 and accompanying text.

183. See 2011 Act 101, *supra* note 62 (stating functions of SYSA).

184. See UPMC Health Beat, *supra* note 80 (providing motivation for implementation of SYSA).

185. See 2020 Highlights of Pennsylvania’s Traumatic Brain Injury Advisory Board, 2020 TBI ANNUAL REPORT, <https://www.health.pa.gov/topics/Documents/Programs/TBI/2020%20TBI%20Annual%20Report.pdf> [<https://perma.cc/SM2L-UY7K>] (last visited Apr. 9, 2023) (providing concussion-related statistics for Pennsylvania in 2020). The 2020 TBI Annual Report also discussed the PATS Concussion Education Program (“PATS”), which “provides educational trainings throughout all of Pennsylvania (PA), both rural and urban areas, both of which

has been effective, the thousands of sports-related concussions in recent years indicate that Pennsylvania's legislation has great strides left to take.<sup>186</sup>

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experience significant health disparities.” *See id.* (providing functions of PATS). Since its establishment, PATS has worked to provide concussion education and training. *See id.* (discussing PATS Concussion Toolbox App, training, education, and advertisements meant to raise concussion awareness).

186. For further discussion of ways that Pennsylvania could effectively update its concussion legislation, see *supra* notes 166–182 and accompanying text.

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