

Legal Perspectives, Recommendations on State Concussion Laws

BY LEE GREEN, J.D.

All 50 States and District of Columbia

Following the January 30, 2014 signing by Governor Phil Bryant of the Mississippi Youth Concussion Act, every state in the nation and the District of Columbia now has a sports concussion law establishing mandatory protocols regarding issues such as removal from action, return-to-play (RTP) procedures, credentialing requirements for individuals providing RTP clearance, concussion education programs for coaches, concussion information for student-athletes and parents, baseline cognitive testing for student-athletes, return-to-learn (RTL) procedures related to resuming academic work, and the scope of the law's application.

Not all state concussion laws address all of these issues – significant variations exist between the legal requirements set forth in state statutes – and it is incumbent upon athletics personnel to read and implement the precise mandates of their state's legislation. To obtain the full-text of a state's concussion statute, use the search engine on the website of the *National Conference of State Legislatures* at www.ncsl.org (keywords: concussion + name of state).

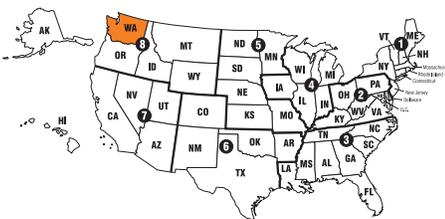
The Mississippi law, which mandates immediate removal from play of any student-athlete suspected of having sustained a head injury, prohibits same-day return to action, and requires clearance by a "health-care provider" before RTP, does not require coaches to complete a concussion education course, does not mandate that information be provided to student-athletes and parents designed to enlighten them regarding the symptoms and long-term implications of head injuries, does not incorporate any RTL procedures, and does not cover youth sport athletes other than those in school-sponsored

sports programs for students in grades 7-12. The law does mandate that parents of student-athletes receive a copy of each school's concussion policy and that concussion education materials endorsed by the State Department of Health (SDH) "be made available" for the education of athletics personnel, student-athletes and parents (in March of 2014, the SDH endorsed the Centers for Disease Control's online course *Heads Up: Concussion in Youth Sport*). The Mississippi law broadly defines the "health-care provider" authorized to provide RTP clearance as including not just licensed physicians, but also physicians' assistants and nurse practitioners.

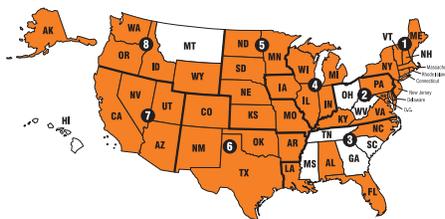
A Model State Concussion Law

The first state law to be enacted – Washington's 2009 *Zackery Lystedt Law* – imposes an extensive set of requirements on school and non-school-sponsored, youth sports programs. The statute is named after a football player who was injured late in the second quarter of a 2006 game when his head struck the ground after he tackled an opponent. Video of the incident shows Lystedt lying on the ground in a state of near-unconsciousness with his hands clutching both sides of his helmet. He was removed from the game for the last three plays of the half, but he was returned to action at the beginning of the third quarter. During the second half, Lystedt collapsed on the field, was transported to a hospital, and underwent life-saving surgery to remove part of his skull to relieve the pressure from his badly-damaged and rapidly-swelling brain. He suffered several strokes, spent a week on a ventilator and was in a coma for three months. It was nine months before he was able

State Concussion Laws In Effect As Of July 1, 2009



State Concussion Laws In Effect As Of January 1, 2012



State Concussion Laws In Effect As Of September 1, 2014



to speak his first word, more than a year before he regained any movement in his limbs, and more than 20 months before he was able to be removed from a feeding tube.

The *Zackery Lystedt Law* addresses a wide range of RTP and education issues for coaches, student-athletes and parents. Considered to be a model statute, it contains numerous key components:

1. All organizations operating sports programs for athletes under the age of 18, **including both schools and youth sports organizations** [emphasis added] must provide **education programs and materials** to inform **coaches, parents and student-athletes** about the nature and risks of concussions and **on an annual basis a concussion information form must be signed by each athlete and his or her parents/guardians**.
2. An athlete suspected of having sustained a concussion during any sports activity including practice or competition **must be immediately removed from action** and **cannot be returned to play on the same day**.
3. An athlete suspected of having sustained a concussion cannot return to action until having been evaluated by a licensed health-care provider **trained in the evaluation and management of concussions** and **receiving written clearance from that provider**.

According to a study completed in March 2014 by the *Education Commission of the States* (available full-text at www.ecs.org), 25 of the state statutes follow the *Zackery Lystedt Law* model in mandating concussion education for coaches. Forty of the laws require student-athletes and parents to sign concussion information forms (although it is unclear from the study whether schools provide meaningful concussion education to those athletes and parents or whether the mandate is implemented via a form-over-substance signing of paperwork). Thirteen of the statutes extend the scope of the law's coverage beyond school sports programs to include non-school-sponsored, youth sports. Only four of the state laws require baseline testing, although the practice has been voluntarily implemented by hundreds of districts across the country as an additional tool to be utilized as part of RTP protocols. The study also identified two emerging innovations still in the experimental stage – a pin-prick blood test developed at the Cleveland Clinic for measuring the level of a specific protein that leaks from the brain into the bloodstream following a traumatic brain injury and an iPad application also developed at the Cleveland Clinic for using the tablet as a gyroscope that can detect balance problems indicating a traumatic brain injury.

An emerging trend is for state legislatures or state associations to enact laws or regulations focused on concussion prevention. On July 22, 2014, California Governor Jerry Brown signed into law a bill limiting high school football teams to three hours of full-contact

practice per week in-season and prohibiting full-contact practice out-of-season. The University Interscholastic League, Texas' state association, now limits full-contact practice to 90 minutes per week. The Arizona Interscholastic Association limits full-pads pre-season practices to half or less of all practices. It is likely that in the near future more legislatures and associations will address prevention, thereby increasing the need for ongoing professional development by athletics personnel regarding new mandates impacting their programs.



Photo provided by 20/20 Photographic, Mt. Pleasant, Michigan.

Recommendations

- Athletics administrators, coaches, athletics trainers and other school athletics personnel should carefully read their state concussion legislation to ensure that they fully understand all of the specific mandates required by the law (consult the NCSL website noted above).
- Athletics personnel should read their state association concussion protocols to ensure that they understand each of the specific mandates set forth in association regulations. Some state associations impose more stringent requirements regarding the prevention and treatment of concussions than are imposed in state law. For instance, Nebraska's state concussion law requires only that education on traumatic brain injuries "be made available" to athletics personnel, yet the Nebraska School Activities Association mandates that all coaches annually complete a concussion education course.
- Athletics directors should include in their annual in-service training programs for coaches, athletics trainers and other

athletics personnel coverage of the specific mandates of the state's concussion legislation and state association regulations regarding concussions. The full-text of both the state law and state association requirements should be included in coaching handbooks.

- Athletics directors or head athletic trainers should create and enforce mandatory use of a Concussion Incident Form/Concussion Clearance Form on which a coach or trainer will provide a brief description of any suspected head injury to a student-athlete, document the RTP protocol that is employed, and to which may be attached the written RTP clearance by the appropriate medical personnel.
- Even if the school uses a web-based system for the completion and signing of sports participation paperwork by student-athletes and parents, athletics directors and coaches should ensure that at each preseason meeting of athletes and parents, concussion information and education is discussed extensively in order to emphasize the negative, long-term implications of head injuries and to overcome the culture of resistance among student-athletes and parents to reporting incidents for fear of losing playing time, a starting position, an opportunity to play in a big-rivalry game, or the chance to play before college coaches in the recruiting process.

- School athletics personnel should clarify for student-athletes and parents that the school retains the right to refuse to grant medical clearance for an athlete's RTP if evidence is provided by any qualified individual (a coach, athletic trainer or other appropriate medical professional) that the athlete remains concussion-symptomatic. Many of the recent head injury-related deaths and injuries resulting in permanent brain damage in high school sports have occurred in situations where qualified school personnel believed that the student-athlete was still symptomatic and that RTP was not yet safe, yet they acquiesced to a written clearance provided by a doctor who had been pressured by an athlete or parents anxious for a speedier-than-warranted return to action.
- Athletics directors should coordinate efforts with appropriate school administrators to ensure that not only are appropriate RTP protocols being followed, but that safe RTL (return to learn) procedures are implemented and communicated to athletics personnel, student-athletes and parents. ☉

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