Data Privacy Concerns Associated with College Athletes' Use of Wearable Technology

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I. Introduction

Billy Beane once said, "If he's a good hitter, why doesn't he hit good?"[1] With the use of wearable technologies becoming ever prevalent in college sports, coaches can have an answer to this question and many more almost instantaneously.[2] Wearable technology, such as Fitbits and Oura Rings, generate biometric data about an individual athlete, which can then be aggregated to derive insight on collegiate sports teams.[3] The use of wearable technology can have a positive impact on a team's success[4]; however, the lack of regulation of the collection of college athletes' biometric data poses serious privacy concerns for individual athletes.[5]

II. Regulatory Gaps in the Use of College Athletes' Biometric Data

Currently, the NCAA does not regulate the use or collection of biometric data in its bylaws.[6] Furthermore, even though college athletes' biometric data is typically collected to monitor player safety and improve player performance, it likely is not protected by HIPAA.[7] HIPAA applies to three types of entities: health plans, health care clearinghouses, and health care providers.[8] Business associates of covered entities are also covered under HIPAA, but only if they are performing work on behalf of the covered entity.[9] College athletic teams are neither a covered entity nor a business associate of a covered entity, and thus not subject to HIPAA regulations.[10] Moreover, in 2016, the Department of Health and Human Services confirmed that new and emerging health technologies such as those being used to collect biometric data, are not covered by HIPAA.[11] The lack of regulation by the NCAA, combined with the lack of protection under HIPAA, means that college athletes do not have adequate means of protecting the biometric data collected by their teams.

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[1] Or, rather, Brad Pitt playing Billy Beane in the critically acclaimed sports biographical film *Moneyball*. MONEYBALL (Columbia Pictures 2011).
[2] Sarah M. Brown & Katie M. Brown, *Should Your Wearables Be Shareable? The Ethics of Wearable Technology in Collegiate Athletics*, 32 MARQ. SPORTS L. REV. 97, 97 (2021).
[3] Marie-Claire Najjar, *Legal and Ethical Issues Arising from the Application of Data Analytics and Artificial Intelligence to Traditional Sports*, 33 ALB. L.J. SCI. & TECH. 51, 58 (2023).
[4] Brown & Brown, *supra* note 2, at 98.
[5] Gilbert Smolenski, *When the Collection of Biometric and Performance Data on College Athletes Goes Too Far*, 54 WAKE FOREST L. REV. 279, 294 (2019).
[6] *Id.* at 289; *see generally, 2025-2026 NCAA Division I Manual*, NCAA (Aug. 30, 2025), https://www.ncaapublications.com/productdownloads/D126.pdf [https://perma.cc/PVN8-CKRC].
[7] Smolenski, *supra* note 5, at 289.
[8] *Id.*
[9] *Id.*
[10] *Id.* at 292.
[11] *Id.* at 293.

III. College Athletes Lack Bargaining Power

One data privacy concern arises from the unique position college athletes occupy compared to youth and professional athletes, regarding the ability to protect their own interests.[12] Youth athletes are owed a fiduciary duty by their parent or guardian, and professional athletes have the benefit of collective bargaining power.[13] On the other hand, college athletes are often left to fend for themselves.[14] In an ideal world, coaches, universities, or even the NCAA would help look out for collegiate athletes, but in reality, those parties often have interests adverse to each other and to the individual athletes with whom they interact.[15] While all of these parties have an interest in college athlete biometric data, the lack of bargaining power college athletes have creates an inherent power imbalance.[16] This is demonstrated by universities selling their athletes' data without their knowledge or consent, putting them at huge disadvantage by causing them to potentially miss out on opportunities—some of which they may not have been aware.[17]

For example, in 2016, the University of Michigan signed a contract with Nike that gave Nike the right to player-generated data in exchange for extra gear and equipment for the football team.[18] Moreover, this contract was negotiated without telling the players or getting their permission.[19] As a result, Nike not only owns the data collected from the football team and players during games, practices, and other program activities, but Nike also has the right to use the data in various ways—including use in marketing, advertising, promotions, and much more.[20]

IV. Universities Use Data for Decision-Making

In addition to sponsorship deals, some universities collect athletes' biometric data to aid in decision-making about their sports programs and athletes.[21] Schools such as The Ohio State University use athletes' data to make decisions about operational aspects such as recruiting and roster management and scholarship and budget modeling.[22] Coaches can make decisions regarding individual athletes on their team by accessing the data collected from wearable technology.[23] Wearable technology allows coaches to monitor how many hours an athlete sleeps, the amount of

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[12] Anthony Studnicka, *The Emergence of Wearable Technology and the Legal Implications for Athletes, Teams, Leagues and Other Sports Organizations Across Amateur and Professional Athletics*, 16 DEPAUL J. SPORTS L. 195, 208–09 (2020).
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Brown & Brown, *supra* note 2.
[17] Brown & Brown, *supra* note 2, at 102.
[18] Studnicka, *supra* note 12, at 198. *See also*, William Nelson, *Michigan-Nike Contract: The School Seizes and Sells New Player Data*, BOSU (Aug. 31, 2016), https://brewonsouthu.wordpress.com/2016/08/31/michigan-nike-contract-the-school-seizes-and-sells-new-player-data/ (last visited Sept. 19, 2025), [https://perma.cc/J3U6-4ER5].
[19] *See* Studnika, *supra* note 12.
[20] *Id.*
[21] Brown & Brown, *supra* note 2; *see also*, *Dept. of Athletics Announces Center for Sports Intelligence & Strategy*, OSU Athletics (Jun. 12, 2025), https://ohiostatebuckeyes.com/news/2025/6/12/general-dept-of-athletics-announces-center-for-sports-intelligence-strategy (last visited Sept. 19, 2025), [https://perma.cc/P5FJ-DVVD].
[22] OSU Athletics, *supra* note 21.
[23] Smolenski, *supra* note 5, at 295–96.

alcohol an athlete consumes, and more.[24] While there are some benefits to wearable technology—such as protecting the health and safety of athletes by allowing coaches to track how players recover from injury—standards should be put in place to ensure that the athlete is aware of their rights before they wear it.[25]

Moreover, the collection of this data can seriously impact an athlete's career.[26] Access to an athlete's biometric data can give recruiters information about an athlete's underlying health risks.[27] The nature of this data makes it highly valuable information for teams seeking to fill their roster and can be a powerful bargaining chip when negotiating professional contracts.[28] Because there are no federal regulations or protections for the data, professional sports organizations such as the NFL could theoretically obtain an athlete's biometric data to help make hiring decisions.[29] For example, Catapult Sports is a sports performance analytics company providing service, as of September 2025, to all 32 NFL teams and numerous Power 5 schools.[30] Thus, it would be convenient for NFL teams to potentially access college athletes' biometric data by requesting the data (or access to the data) over Catapult Sports' cloud-based service.[31] Granting access to college athletes' biometric data before the draft could increase the risk of NFL teams misinterpreting data, which in turn could result in college athletes not being given the opportunity to play professionally.[32] It is also worth noting that the high value of athletes' biometric data makes it especially vulnerable to attack from hackers.[33]

V. A Possible Solution?

It is clear that safeguards need to be put in place to protect college athletes from exploitation, whether intentional or unintentional. The collection of college athletes' biometric data has become so routine that some college athletes simply do not know what data is being collected and how it is being used.[34] Further, because of the disparity in bargaining power between universities and athletes, even if they do know how their data is being collected and used, college athletes may be forced into sharing private data to avoid repercussions with the university or team.[35] The lack of transparency, coupled with the ambiguity surrounding the management of

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[24] Alicia Jessop, *Examining the Fourth Amendment and Biometric Data Privacy Law Implications of NCAA Athletes' Mandated Use of Athlete Biometric Data Tracking Devices,* 40 CARDOZO ARTS & ENT. L.J. 81, 98–99 (2022); *see also* Alex Shultz, *Why Is this Wearable-Tech Company Helping College Teams Track How Often Athletes Sleep, Drink, and Have Sex?*, Deadspin (Apr. 12, 2017), https://deadspin.com/why-is-this-wearable-tech-company-helping-college-teams-1794218363/ (last visited Sept. 19, 2025), [https://perma.cc/7QGD-H8R7].
[25] Jessop, *supra* note 24; Smolenski, *supra* note 5, at 296.
[26] Smolenski, *supra* note 5, at 294.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] CATAPULT, https://catapultsports.com/us/catapult-one-team-football/ (last visited Sept. 19, 2025), [https://perma.cc/AY73-RNNQ].
[31] Smolenski, *supra* note 5, at 294; *see also* CATAPULT, https://catapult.com/privacy-policy (last visited Sept. 19, 2025), [https://perma.cc/TK6J-HXA3].
[32] Smolenski, *supra* note 5, at 295.
[33] Studnicka, *supra* note 12, at 210.
[34] Brown & Brown, *supra* note 2, at 115.
[35] Brown & Brown, *supra* note 2, at 114.

athletes' biometric data, means players may not fully comprehend the extent to which they have waived their privacy rights, and how little control they have over how universities use their data.[36]

As the use of wearable technology continues to grow in college athletics, it will be important for the federal government to enact legislation protecting college athletes' biometric data. In the meantime, one way to tackle the concerns addressed in this post is for the NCAA to create guidelines to protect college athletes' biometric data.[37] This could be accomplished through a committee that already exists within the NCAA and that is composed of attorneys, athletes, and academics focused on athlete biometrics.[38] Action needs be taken soon, as the collection of biometric data poses serious data privacy concerns for college athletes, and the use of wearable technology in college athletics continues to proliferate.

[36] Smolenski, *supra* note 5, at 296.
[37] Brown & Brown, *supra* note 2, at 114; *see also* Smolenski, *supra* note 5, at 300.
[38] Brown & Brown, *supra* note 2, at 115.