



#### About the Author

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By [Richard Louv](#) on July 16th, 2014

## THE CRIMINALIZATION OF NATURAL PLAY: It's Time to Look for Solutions

In July, *Slate* and other news organizations reported on a mother who was charged with a crime for letting her nine-year old child play alone in a park. The daughter was taken into custody.

Stories like that keep coming, creating furor and debate in the blogosphere. Subsequent reporting sometimes reveals more factual and moral complexity than the initial headlines indicated. Still, the decades-long slide toward the criminalization of natural play continues — in both dramatic and subtle ways.



What about a serious investigation of the underlying issues and potential solutions? Somebody needs to step to the plate.

Four years ago, in this space, I offered a modest proposal for a national — or preferably international — forum on Children, Nature and the Law. Such a forum would engage leaders from the legal profession and insurance industry, educators, health care folks, policy-makers, and grassroots leaders of the children and nature movement.

In coming months, the [Children & Nature Network](#) will be

working on a plan to make this forum happen. Let us know if you'd like to help.

*Here's the original proposal, with an update or two:*

As a powerful deterrent to natural play, fear of liability and the law ranks right behind the bogeyman. Parents are afraid to let their kids build a tree house in the backyard. School administrators are afraid to create natural play places (even though they tend to produce fewer injuries than playgrounds with typical play structures). In July 2005, The Fort Lauderdale (Fla.) Sun-Sentinel reported that Broward County schools had erected “no running” signs at 137 elementary schools, as one of several steps to cut down on injuries and lawsuits. Playground merry-go-rounds and swings were already history.

In some communities, young people who try to recreate their parents' childhoods may face misdemeanor charges or see their parents sued. Such legal barriers are not only created by public government but also by private government.

Most residential communities built in the past three or four decades are controlled by covenants and restrictions, and private governments — community associations — that, in extreme cases, have voted to ban outdoor play by children who live in those communities.

One woman told me her community association banned chalk drawing on the sidewalks. Just try to put up a basketball hoop in some of these neighborhoods, let alone let the kids build a fort or tree house in the field beyond the cul de sac. In some planned communities, adult officials will tear down that fort or tree house within days. Too often, city governments do the same thing.

Other stringent restrictions on children's outdoor play spring from efforts to protect nature from human population pressures. In my city, it is illegal to “injure, destroy, cut or remove any tree ... [or] plant ... growing in any city-owned park ... without written permission from the city manager.” But what exactly constitutes “to injure?” Does a child seriously injure a tree by climbing it? Some think so. It's true that some community associations and public governments work hard to accommodate or encourage natural play. But because of fear of litigation, and pressure from parents themselves, the psychological and legal landscape has changed. Girl Scouts can no longer climb trees at Girl Scout camp. Kids all over the country are hearing a double message from the adult world: Get off the couch,

go outside, but oh, by the way, we don't really want you *doing* anything out there. Other than organized sports.

This isn't an exaggeration. Parents know this. Teachers know it. But our institutions, legal profession, and sometimes even law enforcement haven't received the memo. That's why we need a Forum on Children, Nature and the Law.

The legal profession, including consumer attorneys, would find such a conversation to be in their interest. Depending on which study one chooses to believe, in the United States, the public's urge to sue may be rising, holding steady or even falling. Uncertainty about such statistics is aggravated by the fact that most lawsuits are settled out of court and are poorly tracked. And no one keeps track of the number of threatened lawsuits — which may have more impact on public behavior than judges and juries. In fact, there are consumer attorneys who attribute ulterior motives to some public officials who raise the specter of potential lawsuits, which may be easier and cheaper than investing public funds in, say, new playgrounds or lifeguards. Whatever the truth, perception rules.

Legal fear has infected the culture," argues Philip K. Howard, author of "The Death of Common Sense" and "The Collapse of the Common Good." Howard is founder of Common Good, a bipartisan coalition with advisory board members ranging from conservative to liberal.

Howard wants to help restore reliability to law — to come up with ways to determine acceptable or healthy levels of risk. "Polls and focus groups show that educators will do almost anything to avoid the unpleasantness of legal hearings, says Howard. Confronting this perception will require action on several fronts: the introduction of comparative risk as a legal and social standard, new applications of insurance, and the design and legal protection of public play areas.

This approach transcends the current definition of tort reform, which focuses almost entirely on capping the size of awards in lawsuits.

True, some kind of tort reform is needed, but sometimes it takes a huge settlement to change the behavior of a powerful offender. And capping damages or blocking access to the courts does little to reduce the number of lawsuits. Nor does the traditional approach to tort reform serve to educate the public about the nature of risk; some are beneficial — small risks taken early (and the natural world is good

place to take those risks) can prepare children to avoid more onerous risks later in life.

Want a real risk? Check out the rise in child obesity. Pediatricians now worry that the current sedentary generation of children will be the first in our history to have a lower life expectancy than their parents' generation.

So, what might be on the agenda of a national or international Forum on Children, Nature and the Law?

– **A nationwide review of laws governing private land and recreation, especially involving children.** This review should be done with the goal of protecting both the child's safety and the child's right to play in natural settings. As part of this conversation, community associations should review their covenants to decide where they stand on the criminalization of nature play. Public governments should do the same. This is not only a question of the letter of the law, but also the spirit.

– **A review of legal, social and economic barriers to nature experience, and equity of access to nature, depending on the economic and ethnic makeup of families neighborhoods.** Are restrictions on and the criminalization of play especially harsh in neighborhoods where where family income is lowest, work hours longest, safe play areas scarce, and good child care unavailable or too expensive?

– **How to balance legitimate concern about the destruction of nature** with the need to develop, through personal experience, a future constituency for conservation. One long-term remedy: rather than lift restrictions on truly endangered habitat, preserve or create more natural places to play—including natural parks, and the vacant lots and ravines and backyards of our own neighborhoods.

– **How to support the creation of new kinds of play spaces where experience in nature can be encouraged,** with a reasonable amount of risk, and supervised by play supervisors who know how to let kids be kids. (As long as cities continue to overdevelop housing tracts and under-develop parks and other sites for natural

play, our regional parks and beaches will be crushed by demand, necessitating ever more stringent enforcement.)

– **A survey of legislation or regulation already on the books that can protect natural play.** For example, Good Samaritan laws, or laws that in some states provide liability protection for ranchers or farmers when hunters or anglers come on their land. Which of these protections can be replicated or adapted for natural play?

– **Common Good calls upon judges and legislatures to create clearer standards on who can sue for what.** Among other proposed changes, Philip K. Howard calls for the creation of public risk commissions that would examine areas of our lives that have been radically changed, “such as our enjoyment of outdoors and children’s play.”

– **How are other countries facing this issue?** (Great Britain is arguably moving faster toward this goal than the United States, particularly by their approach to comparative risk, an idea that is either muted or nonexistent in our judicial system, where juries tend to perceive all risk as bad. “There is an important question of freedom at stake, said one British magistrate. Does the law require that all trees be cut down, because some youth may climb them and fall?”)

– **Can community or environmental organizations offer group insurance policies** similar to ones that exist for, say, skateboard parks? Do current homeowner insurance policies typically offer enough coverage? How can schools and parents buy extra liability insurance to give them the peace of mind necessary to allow kids to build that fort or treehouse?

– **How can parents, schools, parks and other institutions find a reassuring medium between paralyzing fear and total freedom?** Some examples: [Family Nature Clubs](#), private insurance policies, making parks (many are safe places, but budget cuts can hurt in more than one way) and streets safer, creating [drop-in playgrounds](#), and techniques for becoming “[hummingbird parents](#)” rather than helicopter parents. A legal forum could issue practical recommendations for parents and others to apply immediately.

While we wait for legal reform, Bay Area environmental attorney Brian Schmidt has offered an idea that just might help. To liberate natural play, he suggests the creation of what he calls a Leave No Child Inside Legal Defense Fund, a

foundation that would pay the legal defense costs of select institutions and individuals who encourage children to go outdoors, but are then hit with frivolous lawsuits. If nothing else, such a fund would send a public message that natural play is still valued.

Sending that message would be a primary goal of a Forum on Children, Nature and the Law. Such a forum would produce policy recommendations, but it should also publish a free online pamphlet for parents, educators, policy-makers and others, offering practical suggestions for how to start making changes now.

Let us know if you'd like to help make this happen.

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***A note from The Children & Nature Network:** C&NN is eager to begin a discussion about legal issues related to children and nature. Many of us have long talked about the barriers in this area, but we want to take action. On April 7-9, 2015, C&NN will host an international conference where this will be one of the key topics. The final day of the conference will include a forum on Children, Nature, and the Law where grassroots leaders and experts will come together to devise a long-term plan. If you want to be involved, please email Margaret Lamar, the organizer of this event, at [margaret@childrenandnature.org](mailto:margaret@childrenandnature.org).*