A Game of Hits: Effectively Investigating and Punishing Domestic Violence in Major League Baseball

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Abstract

Domestic violence is no longer swept under the rug in Major League Baseball (“MLB”).[[1]](#footnote-1) Before 2015, MLB did not have a policy to direct the investigations[[2]](#footnote-2) of players accused of domestic violence.[[3]](#footnote-3) Before 2015, MLB also did not have a policy to direct the discipline[[4]](#footnote-4) of players who were found to have committed domestic violence. After other sports leagues, such as the National Football League (“NFL”), were embroiled in controversy due to their handling of domestic violence allegations, MLB instituted in August 2015 its first policy on confronting domestic violence.[[5]](#footnote-5)

Part I of this Note will provide a background of domestic violence in MLB. Part II argues the policy should allow outside experts to aid the Commissioner’s Office in investigating allegations of domestic violence. The outside experts will help avoid conflicts of interest. Part III argues that when investigating allegations, the Commissioner should have the discretion to place the suspected player on paid administrative leave for up to sixty days. Part IV argues that punishments for domestic violence should at minimum be sixty games. The conclusion will provide a summary of the preceding arguments.

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Introduction

Less than two days after he was arrested for allegedly hitting his wife in the head twice, MLB player Brett Myers was pitching for the Philadelphia Phillies.[[6]](#footnote-6) After the game, Myers said, “My teammates have been great. They’ve been behind me 100 percent.”[[7]](#footnote-7) The Phillies manager and general manager pledged their support for Myers and chose to let him play without even discussing the possibility of sitting out.[[8]](#footnote-8) A spokesman for MLB said, “We have to wait until the justice system runs its course before we can really comment on it.”[[9]](#footnote-9)

Witnesses said that on a Friday morning in June 2006, Myers hit his wife Kim Myers and dragged her by the hair near the team hotel.[[10]](#footnote-10) Witnesses made multiple 911 calls.[[11]](#footnote-11) When the police arrived, Kim had a swollen face and was crying.[[12]](#footnote-12) Myers was arrested on charges of assault and battery and later released after posting bail.[[13]](#footnote-13) At trial, the judge acknowledged that Myers hit his wife but dismissed the charge because Kim decided she did not want to move forward with the case.[[14]](#footnote-14) Myers, the top pitcher for the Phillies at the time, was “treated as a celebrity by court officers, who shook his hand and patted him on the back. One told him, ‘[g]ood luck, it will be all right,’ while another said, ‘[n]ice seeing you again.’”[[15]](#footnote-15) Myers was not disciplined by MLB and the following season signed a nearly $26 million contract with the Phillies.[[16]](#footnote-16) The Myers case is not an isolated incident. Many incidents in MLB and other professional sports show that improvements are needed in the present policy.

MLB instituted its first domestic violence policy in August 2015. This Note will review the history of domestic violence in MLB, analyze the new policy’s effectiveness, and suggest recommendations for how to improve the policy. Part I will provide a history of the MLB domestic violence policy. Part II will argue that the investigation of domestic violence should not only involve the Commissioner. Part III will argue that during the investigations of allegations of domestic violence, the policy should permit, but not require, MLB to place a player on paid administrative leave for up to sixty days. Part IV will argue that when the investigation finds that a player committed domestic violence, the minimum punishment for domestic violence should be sixty games. Finally, I will restate the importance of implementing these recommendations in my conclusion.

I. History of the MLB Domestic Violence Policy

The MLB policy is its first on domestic violence.[[17]](#footnote-17) Previously, the collective bargaining agreement (“CBA”) between players and ownership involved a voluntary treatment program for off-field violent conduct.[[18]](#footnote-18) The voluntary treatment program allowed the Commissioner or a team to impose discipline if a player was charged with a crime involving domestic violence. In 2014, the year before the policy was introduced, former Commissioner Bud Selig said that he could not remember the last time there was a domestic violence incident in MLB. “We haven’t had any cases I’m happy to say for a long, long time. I can’t remember when the last time was.”[[19]](#footnote-19)

*A. Pre-policy History of Domestic Violence in MLB*

Despite Selig’s inability to remember prior incidents of domestic violence in MLB, Wilfredo Cordero, then of the Boston Red Sox, was arrested in 1997 after threatening to kill his wife during a domestic dispute in the presence of police.[[20]](#footnote-20) After accusations that Cordero hit a former wife while she was pregnant, the Red Sox, but not MLB, suspended Cordero for eight games.[[21]](#footnote-21) The suspension was equivalent to almost 5% of the season.[[22]](#footnote-22) Cordero pled guilty to assault and battery, making threats, and violating a restraining order.[[23]](#footnote-23)

In 2005, police visited then Dodgers outfielder Milton Bradley three times on domestic violence calls.[[24]](#footnote-24) The team did not discipline Bradley, and he was nominated that year for the Roberto Clemente Award, which “recognizes the player who best exemplifies the game of baseball, sportsmanship, community involvement and the individual’s contribution to his team.”[[25]](#footnote-25) As mentioned above, in 2006 Myers was arrested and the charges were dismissed because Kim Myers said she did not want to pursue the proceeding.[[26]](#footnote-26)

*B. Post-policy History of Domestic Violence in MLB*

Several high-profile MLB players have recently been investigated for committing domestic violence. First, Jose Reyes, then of the Colorado Rockies, was arrested on October 31, 2015 in Hawaii after he allegedly had an argument with his wife that turned physical.[[27]](#footnote-27) It was reported that Reyes’s wife had injuries to her left leg and scratches on her neck.[[28]](#footnote-28) Reyes pled not guilty to a charge of domestic violence and MLB investigated the situation.[[29]](#footnote-29) On February 23, 2016, Reyes was placed on administrative leave until the case was resolved.[[30]](#footnote-30) Prosecutors dropped the case after Reyes’s wife refused to cooperate.[[31]](#footnote-31) However, MLB suspended Reyes fifty-one games for his actions, or 31% of the season.[[32]](#footnote-32) Reyes served his suspension and was reinstated June 1, 2016.[[33]](#footnote-33)

Second, Aroldis Chapman, then of the Cincinnati Reds, admitted to firing eight gunshots on October 30, 2015 in the garage of his Miami-area home following an argument with his girlfriend.[[34]](#footnote-34) She told police he also choked her and pushed her against a wall.[[35]](#footnote-35) Police did not observe any injuries or redness anywhere on her neck or chest.[[36]](#footnote-36) The state attorney chose not to press charges due to conflicting stories, no cooperating witnesses, and no physical injuries.[[37]](#footnote-37) On March 1, 2016, Chapman was suspended for thirty games, or approximately 20% of the season.[[38]](#footnote-38) The suspension came after nearly a week of negotiations between (1) MLB’s Chief Legal Officer, Dan Halem; (2) MLB Players Association (“MLBPA”) Chief Counsel Dave Prouty; and (3) Chapman’s lawyer, Jay Reisinger.[[39]](#footnote-39) Chapman was the first baseball player suspended under the policy.[[40]](#footnote-40) The suspension was unpaid and Chapman lost approximately $2 million in salary.[[41]](#footnote-41) Despite Chapman stating that he did not hurt his girlfriend, he chose not to appeal the suspension.[[42]](#footnote-42) Chapman served his suspension and was reinstated in May 2016.[[43]](#footnote-43)

One reason Chapman chose not to appeal was related to free agency.[[44]](#footnote-44) A free agent is a “professional athlete who is free to sign a contract to play for any team.”[[45]](#footnote-45) An athlete must have six years of service time in order to become a free agent.[[46]](#footnote-46) The thirty-game suspension allows Chapman to complete his sixth year of service time by the end of the 2016 season.[[47]](#footnote-47)

Third, Yasiel Puig of the Los Angeles Dodgers was reportedly involved in an argument with his sister at a Miami bar in November 2015.[[48]](#footnote-48) The argument reportedly turned physical.[[49]](#footnote-49) Puig shoved his sister and then got into a fight with a bouncer who tried to break up the argument.[[50]](#footnote-50) Charges were not filed and MLB announced that Puig would not be suspended, as the evidence did not support the assault allegation.[[51]](#footnote-51)

Finally, Hector Olivera, then of the Atlanta Braves, was suspended for eighty-two games, or half the season, for violating the policy after he was arrested in April 2016 and charged with misdemeanor assault and battery.[[52]](#footnote-52) According to a public information officer, “the female victim showed bruising and was transported to a local hospital with non life-threatening [sic] injuries.”[[53]](#footnote-53) Olivera was convicted in September 2016 of misdemeanor assault and sentenced to ninety days in jail.[[54]](#footnote-54) Olivera only spent ten of them in jail after the judge suspended the majority of the sentence.[[55]](#footnote-55)

*C. Implementation of the Domestic Violence Policy in MLB*

In July 2014, football player Ray Rice was initially suspended two games for an assault charge.[[56]](#footnote-56) During the suspension, video was released that showed Rice punching his then-fiancée inside an elevator in Atlantic City, New Jersey, and then dragging her out of the elevator.[[57]](#footnote-57) The NFL said it had not seen the video before the suspension was announced.[[58]](#footnote-58) The NFL then suspended Rice indefinitely.[[59]](#footnote-59) Rice appealed the suspension and an arbitrator forced the NFL to reinstate Rice.[[60]](#footnote-60) The NFL Commissioner was asked to resign by journalists and the National Organization for Women, but he stayed in office.[[61]](#footnote-61)

MLB acknowledged “it was really the Ray Rice incident that brought this issue [domestic violence] to the forefront.”[[62]](#footnote-62) Released August 21st, 2015, the policy was a collaborative effort between MLB and the MLBPA.[[63]](#footnote-63) The parties consulted with over twenty-five groups with expertise in the fields of domestic violence and sexual assault.[[64]](#footnote-64) The specifics of the policy are discussed in Part I, section E.

*D. Domestic Violence Policies in Other Sports*

Comparing the policies of other sports is helpful for understanding the state of domestic violence in professional athletics. In August 2014, the NFL enacted a policy that suspends an athlete for a minimum six games without pay for domestic violence, or approximately 40% of the season.[[65]](#footnote-65) A second violation for domestic violence is a lifetime suspension.[[66]](#footnote-66) The NFL, unlike MLB, has a specific length of punishment for domestic violence.[[67]](#footnote-67) Commissioner Roger Goodell, rather than an independent arbitrator, will hear appeals by players who are penalized.[[68]](#footnote-68) Unlike the MLB policy, which involved negotiations between MLB and the MLBPA, the NFL policy did not involve negotiations between the NFL and the NFL Players Association (“NFLPA”),[[69]](#footnote-69) and so the NFLPA criticized the league for unilaterally imposing the policy.[[70]](#footnote-70) A unilateral policy could lead to an antitrust legal challenge.[[71]](#footnote-71)

Antitrust laws promote competition and protect consumers from anticompetitive business practices.[[72]](#footnote-72) “Rules affecting players’ hours, wages and other working conditions must be collectively bargained or they can be challenged under antitrust law.”[[73]](#footnote-73) Since the suspension is without pay, a unilateral policy does impact wages.[[74]](#footnote-74) The NFL has federal antitrust protection, but that may change.[[75]](#footnote-75) A bill was filed in September 2015 to strip the league of its federal antitrust protection.[[76]](#footnote-76)

The National Basketball League’s (“NBA”) CBA addresses unlawful violence.[[77]](#footnote-77) The CBA requires the NBA to suspend players for a minimum of ten games, or approximately 12% of the season, after players are convicted or plead guilty to a violent felony.[[78]](#footnote-78) Unlike the MLB policy, the NBA policy does have specific suspensions for players who commit a violent felony.[[79]](#footnote-79)

The National Hockey League (“NHL”) in early 2016 implemented seminars to educate players on domestic violence.[[80]](#footnote-80) In 2013, the NHL added a provision to its CBA that allows the Commissioner to investigate off-field conduct detrimental to the NHL.[[81]](#footnote-81) Domestic violence was not specifically mentioned.[[82]](#footnote-82) The Commissioner said a new domestic violence policy was not needed because “our players know what is right and wrong.”[[83]](#footnote-83) However, the Commissioner previously suspended player Slava Voynov indefinitely following a domestic violence arrest on charges he “choked, kicked and punched his wife, and threw her into a television.”[[84]](#footnote-84) When Voynov ignored the suspension and showed up to a pregame skate, he was not punished.[[85]](#footnote-85) Rather, his team was given a $100,000 fine.[[86]](#footnote-86) When legal authorities investigated player Patrick Kane for sexual assault, the NHL waited for a charge to be filed before taking any disciplinary action.[[87]](#footnote-87) Unlike the NHL CBA, the MLB policy does allow the Commissioner’s Office to investigate even if charges are not filed, such as in the Puig and Chapman situations.[[88]](#footnote-88)

The United States Soccer Federation (“U.S. Soccer”) allows suspensions for major misconduct, such as a conviction or pleading no contest to a major misdemeanor or felony.[[89]](#footnote-89) But U.S. Soccer does not have a domestic violence policy. In 2014, U.S. Soccer player Hope Solo was charged with two misdemeanor counts of fourth-degree domestic violence.[[90]](#footnote-90) Following her arrest, the U.S. Soccer team allowed her to remain on the team during the investigation.[[91]](#footnote-91) ESPN’s *Outside the Lines* “found no evidence that U.S. Soccer contacted prosecutors or police involved with the case.”[[92]](#footnote-92) Unlike U.S. Soccer, the MLB policy explicitly allows the Commissioner’s Office to investigate allegations of domestic violence.[[93]](#footnote-93) With the context of other sports’ policies in mind, it is appropriate to evaluate the specifics of the MLB policy.

*E. Terms of the Policy*

The policy has a joint policy board, which is composed of experts in the field of domestic violence, and two representatives each from the MLBPA and the Commissioner’s Office.[[94]](#footnote-94) The board evaluates, and where appropriate, supervises the treatment of athletes.[[95]](#footnote-95) An expert member of the board submits a treatment plan[[96]](#footnote-96) to the full board for approval.[[97]](#footnote-97) A treatment plan may require the player to undergo psychological evaluations, attend counseling, comply with court orders, relocate away from his partner, and relinquish all weapons.[[98]](#footnote-98)

The Commissioner’s Office investigates all allegations of domestic violence in the baseball community.[[99]](#footnote-99) The athlete must cooperate with the investigation, including availability for an interview.[[100]](#footnote-100) The Commissioner, Rob Manfred, can place a player accused of domestic violence on paid administrative leave for up to seven days while the allegations are investigated before making a disciplinary decision.[[101]](#footnote-101) Manfred can alternatively place the player on paid leave until legal proceedings are complete.[[102]](#footnote-102) He can discipline an athlete immediately after the administrative leave concludes, or he may reinstate the player and defer disciplinary action until the resolution of criminal charges.[[103]](#footnote-103) A player can immediately challenge the administrative leave before an arbitration panel.[[104]](#footnote-104)

The Commissioner can discipline a player who commits domestic violence for just cause, which means “a reason that is legally acceptable or sufficient.”[[105]](#footnote-105) There is no minimum or maximum punishment under the policy.[[106]](#footnote-106) The Commissioner can issue the discipline he believes is appropriate based on the severity of the conduct.[[107]](#footnote-107) The authority to discipline is independent of whether the player is convicted or pleads guilty to a crime.[[108]](#footnote-108) Any disciplinary suspension is without pay and the player does not accumulate major league service.[[109]](#footnote-109) A player can challenge his discipline before an arbitration panel.[[110]](#footnote-110) The panel consists of a representative from MLB and the MLBPA, and an impartial arbitrator.[[111]](#footnote-111) The appeal is also governed by the just cause standard.[[112]](#footnote-112) When challenging, the player cannot rely on prior precedent and past practice of punishing players for engaging in domestic violence.[[113]](#footnote-113)

The policy requires education for all players about domestic violence.[[114]](#footnote-114) A confidential twenty-four hour hotline staffed by a team of experts in domestic violence was established for players and their families.[[115]](#footnote-115) The policy requires MLB and the MLBPA to provide resources to players’ families, including referral information, websites, hotline numbers, and outreach facilities.[[116]](#footnote-116) MLB and the MLBPA must develop an annual program of community outreach that can include public service announcements and domestic violence awareness days.[[117]](#footnote-117)

*1. Workable Aspects of the Policy*

MLB should be applauded for creating a collectively bargained domestic violence policy at a time when many other sports have not. The ability to discipline a player regardless of whether there is a criminal investigation is important. Many victims of domestic violence refuse to testify against their significant others, which can destroy a prosecutor’s case.[[118]](#footnote-118) Between fifty to eighty percent of domestic violence cases in the United States are dismissed and most of the remaining cases are resolved through misdemeanor plea deals.[[119]](#footnote-119)

The policy forbids players from using prior precedent when arguing a suspension. If otherwise, the player could point to lenient suspensions, or even no suspensions, in prior years when domestic violence was not punished the way it is today. Using prior precedent would allow athletes to persuade MLB to give light punishments. While MLB does get certain aspects correct, there are a number of improvements that can be made.

II. Domestic Violence Allegations in MLB

As mentioned before, the Commissioner’s Office investigates all allegations of domestic violence in the baseball community.[[120]](#footnote-120) The office was created in 1921 in response to the Black Sox Scandal in 1919, when eight members of the Chicago White Sox took bribes from gamblers to intentionally lose the World Series.[[121]](#footnote-121) Baseball’s reputation was damaged, and the Office of the Commissioner was created to maintain the integrity of the game.[[122]](#footnote-122)

The baseball team owners elect the Commissioner. Conversely, the owners can also vote to oust the Commissioner, as happened in 1992 with Fay Vincent.[[123]](#footnote-123) Essentially, team owners employ the Commissioner. While the Commissioner is the figurehead of MLB, and has the authority to act in the best interests of baseball, unhappy ownership can make a Commissioner’s life difficult.[[124]](#footnote-124) Vincent said upon resigning, “I cannot govern as Commissioner without the consent of owners to be governed.”[[125]](#footnote-125)

*A. How Allegations of Domestic Violence Are Investigated*

MLB’s top investigator, Bryan Seeley, a former assistant U.S. attorney, prepares reports on athletes investigated for domestic violence.[[126]](#footnote-126) Once the reports are complete, they are turned over to Commissioner Manfred, who then decides on disciplinary action.[[127]](#footnote-127) While the joint disciplinary agreement between MLB and the MLBPA gives the Commissioner discretion to investigate allegations, there is the possibility that the owners could try to influence the Commissioner’s investigation. For example, if the investigated player is popular, like Reyes, Chapman, and Puig, his suspension could cause a loss of fan attendance at games.[[128]](#footnote-128) An owner could try to avoid the suspension by trying to convince the Commissioner to mandate treatment and counseling, rather than a suspension from games.[[129]](#footnote-129)

*B. Dangers of Having the Commissioner’s Office Investigate the Allegations*

One example of owner influence occurred when star quarterback Tom Brady was suspended by the NFL for four games after taking part in the deflation of footballs that were used during a 2015 championship game.[[130]](#footnote-130) The media reported that Goodell was “being pushed by a small handful of influential owners to hold firm on the four-game suspension.”[[131]](#footnote-131) Goodell did hold firm, and the U.S. District Court of the Southern District of New York in September 2015 vacated the suspension.[[132]](#footnote-132)

Even if the Commissioner is able to avoid the influence of team owners, the policy does not give specific instructions of how to investigate. While the policy is new and the players currently under investigation are the first since the policy was put into effect, the policy is vague on how to effectively investigate. MLB’s top investigator prepares the reports, but it is unclear whether the investigator speaks with policy experts in the field of domestic violence. The dangers of internalizing the investigatory process parallel the military’s chain of command process.

*1. A Case Study in the Military*

In the military, rape is reported up the chain of command.[[133]](#footnote-133) The alleged victim’s supervisor decides whether to pursue an investigation.[[134]](#footnote-134) This can be problematic, as the commanding officer may decide to not investigate.[[135]](#footnote-135) For example, Valerie Gene Davis, a member of the military, alleged that her service-member husband assaulted her.[[136]](#footnote-136) Davis later discovered that her husband was having an affair with his supervisor.[[137]](#footnote-137) The husband’s supervisor met with Davis’s command team and “[b]oth parties agreed it best to sweep the issue under the rug.”[[138]](#footnote-138)

United States Senator Kirsten E. Gillibrand, of New York, proposed legislation in 2014 to allow military prosecutors, rather than commanding officers, to decide which sexual assault cases to try.[[139]](#footnote-139) The bill was rejected in committee.[[140]](#footnote-140)

*2. MLB Policy’s Similarities to the Chain of Command Policy*

In MLB, allowing the Commissioner’s Office alone to investigate domestic violence has similar dangers to the military chain of command policy. Both keep the issue of domestic violence in-house, rather than bringing in outside third parties. In Davis’s situation, people within the military decided the resolution. While we can only speculate if going outside the chain of command would have made a difference for Davis, at least it would bring unbiased people into the decision-making.

In the MLB context, allowing the Commissioner’s Office by itself to investigate means that internal people are going to be looking into the allegations. The relationship between the Commissioner and team owners was discussed above, and that is relevant here. While we can only speculate about whether the outcome of an investigation would be different if outside experts were brought in, we should remove any doubt and bring the experts into the process.

The Commissioner’s Office could argue that it wants to keep the investigations solely in-house by invoking the “best interests of baseball” rationale. The rule goes back nearly 100 years to the Black Sox scandal, when the owners gave the Commissioner “the power to take action against clubs or players if he believes they’ve done something that strikes at the integrity of the game or the public trust in it.”[[141]](#footnote-141) Yet the precedent of allowing the Commissioner’s Office to oversee domestic violence investigations in the past has created lenient punishments, and in many cases, none at all. The same infrastructure is not going to work, and a change is needed.

*C. Require Experts in the Field of Domestic Violence to Take Part in the Investigations*

To avoid the above concerns, expert policy makers in the field of domestic violence should take part in the investigations of domestic violence incidents. Other professional sports have taken steps to involve experts in tackling domestic violence. For example, the NFL hired (1) a former prosecutor who headed the Manhattan district attorney’s sex crimes unit;[[142]](#footnote-142) (2) a former executive who founded an organization whose goal is to stop domestic violence; [[143]](#footnote-143) and (3) the former head of the National Coalition Against Domestic Violence.[[144]](#footnote-144) The former prosecutor’s emphasis “will be on the evaluation process of incidents of alleged domestic violence and sexual assault. She will advise [the Commissioner and his staff] on disciplinary matters involving violations of law or of the Personal Conduct Policy.”[[145]](#footnote-145)

MLB should also use experts to evaluate incidents of alleged domestic violence. One idea is to require a three-person panel: (1) MLB Commissioner Manfred; (2) an outside expert; and (3) an official from the MLBPA. The panel will investigate domestic violence incidents and decide whether to punish athletes. For example, if we were to analyze the Myers situation under this guideline, Manfred, the expert, and an official from the MLBPA would have reviewed the evidence and decided whether to punish Myers for committing domestic violence.

At minimum, having the outside the expert and the official from the MLBPA will allow the Commissioner to have less unilateral authority.

III. Administrative Leave

The Commissioner’s Office is allowed to place an athlete accused of domestic violence on paid administrative leave for up to seven days while the allegations are investigated before making a disciplinary decision.[[146]](#footnote-146) If there is a pending legal proceeding, the Commissioner can place the player on leave indefinitely until the proceeding is complete.[[147]](#footnote-147) But if there is no legal proceeding, the policy does not say whether the Commissioner may put the athlete on leave indefinitely.

*A. Seven-day Maximum for Administrative Leave Is Ineffective*

While the seven-day leave may sound like a good policy on its face, it does have risks. For example, the investigation could continue beyond seven days. It would create a bad image if the player were then allowed to return to the team while the investigation was ongoing.[[148]](#footnote-148) At Hobart and William Smith College in 2014, a school investigation for sexual assault lasted twelve days and received criticism in the *New York Times* for, among other defects, proceeding before rape-kit results were known, and for not showing medical records indicating trauma to two of the three panel members.[[149]](#footnote-149) The Department of Education Office of Civil Rights (“OCR”) estimates that a typical investigation for sexual assault should take sixty days.[[150]](#footnote-150)

*B. Permissive Sixty-day Paid Administrative Leave*

MLB should follow the OCR and permit, but not require, MLB to place a player on paid administrative leave for sixty days while the allegations are investigated, whether or not there is a criminal charge. In the Myers situation, he would have been immediately put on administrative leave after the arrest. He would not have started the game. Instead, he would be placed on leave while MLB was investigating. An athlete placed on sixty-day administrative leave would not be tarnished as guilty, because if the athlete were found innocent after an investigation and was not suspended, the media would publish the finding of innocence. The media has published findings of innocence before.

For example, in April 2014, NBA Minnesota Timberwolves player Dante Cunningham was arrested and charged with felony domestic assault.[[151]](#footnote-151) In August 2014 the charge was dropped for lack of “proof beyond a reasonable doubt for the charged offense.”[[152]](#footnote-152) The media subsequently reported on Lynch’s innocence.[[153]](#footnote-153)

In August 2014, NFL Seattle Seahawks player Marshawn Lynch was accused of assaulting a woman in the state of Washington.[[154]](#footnote-154) Police later discovered that Lynch had an alibi and charged the woman with making a false statement to police.[[155]](#footnote-155) The media subsequently reported on the finding of innocence.[[156]](#footnote-156)

A permissive sixty-day leave is better than a required sixty-day leave because it is possible that within days of the arrest the allegations are proved baseless. For example, if it was discovered in the Myers case a few days after the arrest that the allegations were false, then he would have been taken off administrative leave and been allowed to play in a game. The same scenario would apply even if he were not arrested, but was instead only accused of domestic violence, such as in the Chapman and Puig situations.

The athlete would be paid while he is on leave, and a maximum of sixty days would allow MLB to make a thorough investigation.

IV. Punishing Athletes for Committing Domestic Violence

*A. Discipline Is Discretionary*

Under the MLB policy, “[t]here is no minimum or maximum penalty prescribed . . . but rather the Commissioner can issue the discipline he believes is appropriate in light of the severity of the conduct.”[[157]](#footnote-157) While there is a joint policy board with three experts in the field of domestic violence, the board only evaluates and, if necessary, supervises the psychological treatment of the player.[[158]](#footnote-158) The board does not decide on a player’s suspension,[[159]](#footnote-159) but instead, the Commissioner decides on the suspension.[[160]](#footnote-160) While it is important that athletes undergo treatment to ensure that domestic violence does not reoccur, arguably the most visible punishment is a suspension. The suspension takes the athlete away from the team, upsets fans, and potentially impacts the team’s performance on the field due to the loss of a talented player.

The thirty-game suspension of Chapman gives MLB a precedent for future suspensions under the policy. While Chapman will lose $2 million in salary and miss approximately 20% of the baseball season, the policy should mandate a minimum suspension of sixty games (40% of the season) for athletes who are found to commit domestic violence at the conclusion of an investigation.

A lack of a minimum penalty of sixty games for domestic violence sends a message that domestic violence is not taken seriously. A lack of a minimum penalty could subject MLB to the scrutiny that the NFL faced in the Ray Rice punishment. And a lack of a minimum sixty-day punishment for an athlete who commits domestic violence would send a message that baseball minimizes the seriousness of domestic violence.

*B. MLB Should Have a Minimum Suspension for Domestic Violence*

In other sports, such as the NFL, a first time offense of domestic violence results in a six-game suspension, and with a shorter season, those six games equate to sixty MLB games.[[161]](#footnote-161) Rodney Austin, a free agent, was suspended six games in September 2015 after he was “found guilty of four misdemeanor charges, including two for assault, after a domestic violence incident” in April 2015 in North Carolina.[[162]](#footnote-162) The NFL is a good example to follow because it sets a precedent for MLB to have a sixty-game minimum suspension. There are other case studies that show similar suspension lengths for athletes involved in off-the-field conduct.

Greg Hardy of the NFL’s Dallas Cowboys was suspended for four games after an arrest on domestic-abuse charges.[[163]](#footnote-163) Since the NFL season is shorter than MLB’s season, the four-game suspension equates to forty MLB games.[[164]](#footnote-164) Hardy was initially suspended for ten NFL games, which equals 100 MLB games.[[165]](#footnote-165)

Jeff Taylor of the NBA was suspended for twenty-four games in 2014 after pleading guilty to domestic violence charges.[[166]](#footnote-166) Taylor assaulted a woman at a hotel in Michigan in September 2014.[[167]](#footnote-167) Since the NBA has a shorter season, twenty-four games in the NBA equal forty-seven MLB games.[[168]](#footnote-168)

While not in the domestic violence context, it is also helpful to compare suspensions for off-field conduct for other crimes. For example, Josh Gordon, of the NFL’s Cleveland Browns, was suspended for ten games in September 2014 for marijuana use.[[169]](#footnote-169) In 2012, Miami Marlins pitcher Juan Carlos Oviedo was suspended for eight weeks after engaging in age and identity fraud.[[170]](#footnote-170) During the eight-week period, the Marlins played in forty-seven games.[[171]](#footnote-171)

It could be argued that it is better to leave the handling of domestic violence to the criminal justice system. However, this argument does not consider the societal role of athletes. Like it or not, athletes are role models. Millions of people come to see them play each season.[[172]](#footnote-172) Many children grow up having a favorite player. Children wear the uniforms of their favorite players, imitate their batting stances, and follow the athletes in the news. The ways that athletes treat other people, including spouses and family members, will send a message to society. An athlete’s conduct will influence how young people develop relationships as they enter adolescence and adulthood.

Of course parents and relatives play the dominant role in the upbringing of children, but the reality is that kids idolize the popular athletes of the day. Donald Fehr, formerly the head of the MLBPA, said, “anybody who is in the public eye is foolish if he doesn’t recognize that he or she is paid attention to by other people and kids if you’re in sports or entertainment.”[[173]](#footnote-173)

While the criminal system does handle domestic violence, in many cases the charges against athletes are dismissed even when there is compelling evidence. For example, Rice’s aggravated assault charge in New Jersey was dismissed after he completed a one-year pretrial intervention program that included anger management.[[174]](#footnote-174) A former prosecutor familiar with domestic violence cases called the dismissal very unusual, and said that in less than 1% of all domestic violence, aggravated assault-type cases in New Jersey, the defendant participates in the program.[[175]](#footnote-175)

In the case of Chapman, he admitted to police that he fired eight gunshots in his garage following an altercation with his girlfriend.[[176]](#footnote-176) Yet he was not arrested or charged.[[177]](#footnote-177) The MLB policy implicitly takes into account the lack of arrests in the criminal system for domestic violence, as the policy says “[p]rior precedent and past practice of disciplining players for engaging in an act of domestic violence . . . may not be relied upon by a player to support a challenge to the severity of his discipline.”[[178]](#footnote-178) Since players are role models and many times the criminal system does not press charges or sentence athletes despite compelling evidence of domestic violence, MLB does have a great interest in punishing a player for domestic violence. The NFL’s domestic violence policy and the case studies above provide the precedent for MLB to have a minimum suspension length of sixty games. Due to the seriousness of domestic violence in the family and its criminal nature, in the best interests of baseball the discipline imposed following an investigation should be a minimum sixty-game suspension.

Conclusion

“Players are husbands, fathers, sons and boyfriends,” said Tony Clark, the Executive Director of the MLBPA.[[179]](#footnote-179) “And as such [MLB] want[s] to set an example that makes clear that there is no place for domestic abuse in our society.”[[180]](#footnote-180) The world is watching as MLB investigates athletes accused of domestic violence. The Chapman punishment will set a precedent for future athletes under the policy who commit domestic violence. In previous years, MLB has performed minimal internal investigations for accusations of domestic violence. A judge acknowledged that Myers hit his wife, yet MLB decided not to issue a suspension.

This Note demonstrates that the current MLB domestic violence policy can conduct better investigations by involving experts in the process. There will be less pressure to conduct a quick investigation if MLB is permitted, but not required, to place an athlete on paid administrative leave for up to sixty days. After an investigation is complete and an athlete is found to have committed domestic violence, minimum punishments should be sixty games. These recommendations will move MLB in the right direction towards a successful domestic violence policy.

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