When Pros Become Cons: Ending the NFL’s History of Domestic Violence Leniency

I. Introduction

On February 15, 2014, Baltimore Raven’s Ray Rice delivered a horrifying punch to his then-fiancée (now-wife), Janay Palmer, leaving her unconscious in the elevator of the Revel Hotel and Casino in Atlantic City, New Jersey.\(^1\) Rice proceeded to drag Palmer’s incapacitated body out of the elevator by her shoulders, while the hotel surveillance camera recorded it all on video.\(^2\) Upon obtaining and viewing the disturbing video, a grand jury increased Rice’s simple assault charges to aggravated assault in the third degree.\(^3\) However, Rice was subsequently granted entry into a one-year pretrial intervention program (“PTI”),\(^4\) in which he will be spared of jail time, probation and a criminal record if he does not commit another offense.\(^5\)

Before the National Football League (“NFL”) made any efforts to obtain the full video of Rice’s assault on Palmer, the NFL’s Commissioner Robert Goodell was satisfied with a two-game suspension as punishment for Rice.\(^6\) With five days until Ray Rice could return to the

---


field, the full video of his assault on Janay Palmer was released to the media. Almost immediately, the Ravens unanimously voted to terminate Rice’s contract and the NFL suspended Rice indefinitely. Though the NFL eventually punished Rice more severely, the sad truth is that Rice’s initial lenient punishment by the NFL and the criminal justice system is not uncommon.

As a testimony to their desire to protect victims of domestic violence, New Jersey legislators and the NFL began taking measures to toughen their domestic violence policies. While it is a step in the right direction, it has come after decades of the NFL and the legal system failing to respond appropriately to domestic violence and, unfortunately, both fall short of providing a long-term remedy to domestic violence. However, New Jersey and the NFL can learn how to focus on the survivor of domestic violence from the Department of Defense (“DoD”). Consistent with the armed forces, states should allocate a percentage of their crime victim compensation funds specifically to domestic violence survivors. Accordingly, the NFL should provide transitional compensation to survivors of domestic violence by NFL players.

This Comment examines the NFL’s new domestic violence policies, and proposes that the NFL should adopt a transitional compensation policy. Also, this Comment recommends that federal funds should be apportioned directly to domestic violence survivors. Part II discusses the discretionary power granted to the NFL Commissioner, allowing for the enforcement of the Personal Conduct Policy (“PCP”), and the Commissioners use of the power since the NFL’s inception. Part III dissects the NFL’s updated PCP and domestic violence awareness platform, as well as the changes made to New Jersey’s domestic violence laws. Lastly, Part IV examines 10

---

7 Id.
8 Louis Bien, supra note 3.
9 Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
10 Bari Zell Weinberger, supra 5
U.S.C. § 1059 and suggests that the NFL and state lawmakers can learn from the DoD in constructing an effective domestic violence law or policy.

II. The Commissioner’s History of Responding to Domestic Violence

While Ray Rice has unintentionally brought domestic violence to the attention of NFL executives, violent acts by players against women have plagued the NFL for decades.\(^\text{12}\) Between 2006 and 2015 alone, Roger Goodell has seen more than 50 domestic violence incidents with at least 16 not concluding in discipline from the NFL.\(^\text{13}\)

The NFL Commissioner has unilateral authority to discipline players for acts of domestic violence, justified in contract and property law. The Commissioner’s authority is established through the NFL’s Constitution and Bylaws; the Collective Bargaining Agreement (“CBA”) with the National Football NFL Players Association (“NFLPA”); the NFL’s Uniform Player Contract; and the NFL’s property rights in reputation, goodwill, and sales.\(^\text{14}\) The NFL’s foundational documents utilize expansive language that accords the Commissioner broad discretion,\(^\text{15}\) by granting the Commissioner disciplinary authority whenever a player’s conduct is “detrimental to


the integrity of, or public confidence in, the game of professional football.”

Further, the Constitution and Bylaws grant the Commissioner “complete authority” to determine whether a player is “guilty of conduct detrimental to the welfare of the NFL or professional football.” Additionally, each player contractually agrees to the Commissioner’s “sole authority to discipline” and “sole discretion to determine whether their conduct is detrimental to the NFL” through the Uniform Player Contract.

Since the 1990s, NFL Commissioners have progressively exercised their disciplinary power in response to the increasing number of players involved in domestic violence. The NFL Commissioners have grown from not disciplining domestic abusers, to punishing “crimes of violence,” to specifically outlining domestic violence as “conduct detrimental to the integrity of and public confidence in” the NFL. Now, the NFL imposes discipline for “actual or threatened dating violence [and] domestic violence” and makes “available assistance to victims and families.” Although to some it seems that Roger Goodell “just doesn’t get it,” the NFL and Goodell have a history of progressively addressing domestic violence.

A. The Violent Crime Policy (“VCP”) Era

---

16 NFL CBA, supra note 16, art. LXXVII, § 1(a).
17 NFL Const., supra note 16, art. VIII, § 8.13(A).
18 NFL CBA, supra note 16 app. A, § 15.
19 Suzanne Janusz, supra note 15, at 118.
20 Id. at 118-19.
23 Assoc. Press, supra note 11.
24 See Brant Webb, Unsportsmanlike Conduct: Curbing the Trend of Domestic Violence in the National Football NFL and Major NFL Baseball, 20 AM. U. J. GENDER SOC. POL’Y & L. 741, 752 (2012) (stating that the NFL’s Violent Crime Policy was the “only one of its kind among major U.S. sports”).
Before the first conduct policy was adopted, the NFL’s former Commissioners did not exercise their disciplinary powers frequently.\(^{25}\) Actually, a NFL Commissioner had never disciplined a convicted domestic abuser prior to 1997, even though 56 players were reported to the police for domestic violence between 1989 and 1994.\(^{26}\) In response to the pervasive issue, Commissioner Tagliabue brought in a domestic violence expert, psychologist Lem Burnham, in the early 1990s.\(^ {27}\) Burnham advised the NFL to adopt a zero-tolerance policy that would ban any player convicted of a domestic violence offense, and he also crafted an educational platform that included presentations for players and NFL employees.\(^ {28}\) However, some still viewed domestic violence as a problem that the NFL should leave for the criminal justice system to address, which resulted in the NFL overlooking ample opportunities to address the increasing domestic violence problem.\(^ {29}\)

Until the late 1990s, the only criminal offense that barred an athlete from playing in the NFL was murder.\(^ {30}\) In 1997, former NFL Commissioner Paul Tagliabue adopted the NFL’s VCP in response to the increase of NFL players associated with domestic violence.\(^ {31}\) The NFL was the only professional sports league at the time to have a written formal policy regarding discipline of athletes who were accused or convicted of domestic violence.\(^ {32}\) The VCP allowed the

\(^{25}\) Suzanne Janusz, supra note 15, at 118.
\(^{28}\) Id.
\(^{29}\) Id.
\(^{31}\) Brant Webb, supra note 26, at 752.
\(^{32}\) Suzanne Janusz, supra note 15, at 106.
Commissioner to suspend or fine a player charged with any “crime of violence” as the Commissioner deemed fit and ordered mandatory clinical evaluations and counseling.\footnote{Id. at 119.} Any admission of guilt could mean a fine or suspension without pay for the player, including players entering into a PTI such as seen in the Ray Rice situation.\footnote{Mark Fainaru-Wada & Steve Fainaru, \textit{supra} note 29.} However, the VCP precluded immediate action by the Commissioner until the criminal justice system concluded its process of imposing a punishment.\footnote{Bethany P. Withers, \textit{supra} note 28, at 168.} In the first two years of the VCP’s implementation, the number of players arrested for violent crimes dropped from 38 players in 1997 to 26 players in 1999.\footnote{Id. at 169.} Yet, the Commissioner did not actually order a suspension after a domestic violence conviction until 2000.\footnote{Mark Fainaru-Wada & Steve Fainaru, \textit{supra} note 29.} Thus, the VCP proved insufficient due to the lack of enforcement of the policy and the resulting, nonexistent discipline for players’ misconduct.\footnote{Robert Ambrose, \textit{supra} note 32, at 1100.}

\textbf{B. The PCP Era}

In 2000, the NFL expanded the VCP to include other criminal conduct along with violent crimes, and accordingly renamed it the Personal Conduct Policy.\footnote{Brant Webb, \textit{supra} note 26, at 753.} However, between 2000 and 2007, the newly established PCP had the same downfalls as its predecessor regarding NFL sanctions in the absence of criminal charges. On April 10, 2007, Commissioner Goodell further expanded the PCP to authorize the imposition of discipline even in the absence of criminal charges.\footnote{Id. at \textit{supra} note 26, at 753.} Additionally, Goodell expanded the PCP to include “coaches, other team employees, owners, and all others that work in the NFL” because the NFL expects all NFL-related employees to conduct themselves in a responsible, lawful way that promotes the values of the
Lastly, without drastically changing the policy’s language by specifying the amount of time or money, Goddell warned violators that they would face longer suspensions and larger fines.\textsuperscript{42} Commissioner Goodell’s unprecedented discipline of the strengthened PCP seemingly began to resolve the NFL’s domestic violence problem because the number of reported domestic violence incidents decreased by 20 percent.\textsuperscript{43} Also, individual teams punished many more players for domestic violence with fines and suspensions up to three games.\textsuperscript{44} However, out of the 48 players punished under the NFL’s PCP between 2000 and 2014, the NFL only suspended players for one game or not at all in 88 percent of the cases.\textsuperscript{45} Only 15 players were forced to sit out of one game without pay, while 27 players received no suspension at all.\textsuperscript{46}

But that was all due to change once the video of Ray Rice punching Janay Palmer unconscious in an elevator emerged. On February 15, 2014, both Rice and Palmer were arrested at the Revel Hotel and Casino in Atlantic City, New Jersey and charged with simple assault.\textsuperscript{47} Palmer’s charges were later dropped,\textsuperscript{48} while Rice still faced the simple assault charge, which carries a maximum penalty of restitution or a fine not to exceed $1,000.\textsuperscript{49} By February 19, 2014, Rice’s lawyer had worked out a plea deal with a local prosecutor in Atlantic City municipal court, which required Rice to enter into counseling and not be involved in any other incidents for

\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Bethany P. Withers, supra note 28, at 170.
\textsuperscript{44} Id. at 173.
\textsuperscript{45} Mark Fainaru-Wada & Steve Fainaru, supra note 29.
\textsuperscript{46} Id.
\textsuperscript{47} Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
\textsuperscript{48} Id.
\textsuperscript{49} N.J. STAT. ANN. § 2C:43-3(c) (West 2015).
90 days in exchange for dismissal of the case.\textsuperscript{50} Before the plea deal was finalized, the Atlantic City prosecutor decided to take the case to a grand jury and present the full video as evidence.\textsuperscript{51}

On March 27, 2014, the grand jury indicted Ray Rice, increasing the charge of simple assault to felony aggravated assault in the third degree for “attempting to cause significant bodily injury, and/or purposely or knowingly causing such injury, and/or recklessly causing such injury under extreme indifference to the value of human life.”\textsuperscript{52} Rice faced a maximum prison sentence of five years with the new charge,\textsuperscript{53} but his lawyer was persistent in convincing the prosecutors to place Rice in a PTI.\textsuperscript{54} The prosecutors initially rejected PTI as an option; however, they were persuaded to sign off on a PTI program after Rice’s lawyer presented them with nearly 30 letters of support from Rice’s coaches, friends, and teammates.\textsuperscript{55}

Rice was placed in a one-year PTI program and, upon completion, Rice’s felony aggravated assault charge will be dismissed.\textsuperscript{56} The arrest would remain on his record, but without a conviction.\textsuperscript{57} Under the terms of the PTI, Rice was required to pay a $125 enrollment fee; attend and complete anger management counseling; and be supervised for compliance with the program by a representative of the probation division for 12 months.\textsuperscript{58} Although New Jersey prosecutors defend that Rice received the same treatment as any other first-time offender in

\textsuperscript{50} Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
\textsuperscript{51} Id.
\textsuperscript{52} Id. See also N.J. STAT. § 2C:12-1 (West 2015) (defining simple and aggravated assault).
\textsuperscript{53} N.J. STAT. § 2C:43-6(a)(3) (West 2015).
\textsuperscript{54} Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
similar circumstances, the New Jersey Senate President commented, “If everything was done right and [the punishment] was acceptable, then [New Jersey has] to change [the] laws.”

Rice’s lenient punishment was an unusual result for defendants charged with felony aggravated assault because PTI is intended for “victimless crimes” and in criminal cases that do not involve violence. Less than one percent of all assault and aggravated assault cases in New Jersey were resolved by PTI. Conversely, courts tend to steer domestic violence cases toward counseling programs instead of incarceration when the cases involve first-time offenders, survivors who decline prosecution, or survivors who stay in a relationship with the abuser. All three are present with Ray Rice and Janay Palmer, who married the day after the indictment.

On July 24, 2014, Commissioner Goodell announced that Ray Rice would receive a two-game suspension without pay based on the portion of the video that had been released to the media, which exposed Ray Rice kicking and dragging Janay Palmer’s limp body halfway out of the elevator. Amid heavy criticism, Commissioner Goodell later defended his decision with the fact that Rice was not disciplined by the criminal justice system but rather put in a PTI program. Consequently, Ray Rice lost $235,000 per game during his two-game suspension, resulting in a total loss of $470,000.

60 ESPN News Servs., supra note 60.
61 Id.
62 Bari Zell Weinberger, supra note 5.
63 Louis Bien, supra note 3.
64 Jill Martin & Steve Almasy, supra note 2.
65 Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
66 Darren Heitner, supra note 1.
On August 28, 2014, Roger Goodell again recognized the shortcomings of the PCP and its application that led to Ray Rice’s initial lenient punishment. Based on personal regret and the mounting public pressure from other players, women’s rights advocates, and domestic violence experts, Commissioner Goodell believed that the NFL fell short in its treatment of the Rice case and admitted in a letter to the NFL’s 32 owners that he just “didn’t get it right.” Goodell continued, “Simply put, we have to do better. And we will.” He concluded that the NFL’s approach on domestic violence called for sweeping changes in education, evaluation, and support, as well as enhanced discipline. Accordingly, Goodell dissolved the Commissioner’s original discretion to fine, suspend, or banish players, and mandated a six-game suspension without pay for the first domestic violence offense and a lifetime ban for a second, with the opportunity to apply for reinstatement after one year. A six-game suspension was four times what the average suspension had been for domestic violence and an unprecedented consequence for a first offense of any kind in the NFL; a lifetime ban from the NFL after a repeat offense was the harshest punishment for all second-time offenders. The provision seemingly applied prospectively because nearly two months had passed since Goodell announced the new policy and Rice was still expected to return to the field for the Ravens’ third game.

---

67 Louis Bien, supra note 3.
68 Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
69 Id.
70 Mark Fainaru-Wada & Steve Fainaru, supra note 29.
71 Louis Bien, supra note 3.
73 Id.
74 Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
When the full video of the elevator incident was released to the public, the societal reaction was yet again powerful. The Ravens responded by terminating Ray Rice’s five-year, $35 million contract, in which he was expected to earn $9.53 million for his last three years. Within an hour of the Ravens’ release, the NFL suspended Rice indefinitely. Additionally, Rice lost all of his endorsement deals, including Nike. Stores, such as Dick’s Sporting Goods and Modell’s, pulled Rice’s jerseys from their racks and EA Sports said that it would delete Rice from the popular Madden NFL 15 video game. While Goodell and the NFL have continually acknowledged and attempted to correct deficiencies in the NFL’s conduct policy regarding domestic violence, the Ray Rice incident was proof that the NFL had not gotten it right just yet.

### III. The Aftermath of the Ray Rice Incident

The leniency of Ray Rice’s punishments from the criminal justice system and the NFL sparked an intense, societal outcry. Not only was society disgusted by the NFL’s failure to take domestic violence seriously enough, but people also began to realize that our legal system fails at responding appropriately to domestic violence. Seemingly, the NFL would not be criticized for its leniency in domestic violence punishments if the legal system had adequately policed the violent behavior. Although New Jersey is frequently praised as having some of the most stringent domestic violence laws in the nation, the Ray Rice incident was just an example of how 

---

75 Louis Bien, supra note 3.
76 Darren Heitner, supra note 1.
77 Don Van Natta Jr. & Kevin Van Valkenburg, supra note 4.
79 Id.
80 Bari Zell Weinberger, supra note 5.
82 Id.
far these laws still have to go in order to properly protect survivors and punish offenders.\textsuperscript{83}

\textbf{A. New Jersey Legislation}

On September 15, 2014, New Jersey lawmakers used the vile images of Ray Rice and Janay Palmer in the elevator to combat domestic violence.\textsuperscript{84} The New Jersey Assembly approved a six-bill package, designed to expand protections for survivors and provide law enforcement with better tools to deal with offenders.\textsuperscript{85} The bills include proposals to create a 15-member task force to review current law and practices in New Jersey dealing with domestic violence.\textsuperscript{86} The bills also develop a self-defense justification for survivors of domestic abuse who are pushed to use force against an attacker who they have a restraining order against; require defendants of domestic violence cases, who are on probation or have their sentence suspended, to attend domestic violence counseling; and mandate law enforcement officers to search domestic violence restraining order registries upon each arrest.\textsuperscript{87} Lastly, the six-bill package permits an underage witness or survivor of any age to testify by closed circuit television in prosecutions for offenses involving domestic violence, which attempts to remedy the amount of dropped cases due to fear of testifying in person.\textsuperscript{88} Next, it is expected that the New Jersey Senate President will push the bills through the Senate to New Jersey’s Governor, with hopes of a fast process so that lives can be saved and attackers can finally get the punishment they deserve.\textsuperscript{89}

\textbf{B. The NFL’s Updated PCP}

\textsuperscript{83} Bari Zell Weinberger, \textit{supra} note 5.
\textsuperscript{85} Id.
\textsuperscript{86} Id.
\textsuperscript{87} Id.
\textsuperscript{88} Bari Zell Weinberger, \textit{supra} note 5.
\textsuperscript{89} S. Jersey Times Editorial Bd., \textit{supra} note 86.
In response to the Ray Rice domestic violence incident, the NFL enacted an updated PCP in early December 2014, with what Commissioner Goodell believed to be the appropriate balance of all competing interest. Three domestic violence experts were appointed as senior advisers, in order to counsel the NFL on how to shape the policies and programs relating to domestic violence.” Lisa Friel was the head of the Sex Crimes Prosecution Unit in the New York County District Attorney’s Office for over a decade. Jane Randel is the co-founder of No More, a campaign against domestic violence and sexual assault. Rita Smith was the executive director of the National Coalition Against Domestic Violence (“NCADV”). Commissioner Goodell stated, “Each brings special knowledge and experience in these issues and will ensure that our efforts reflect the professionalism that should characterize everything the NFL does.” In addition to the senior advisers, many others contributed to the updated PCP, including NFL club presidents, current and former players, and police, prosecutorial and military organizations.

In a memorandum to NFL chief executives and club presidents regarding the new policy, Goodell outlined principles that guided the work of the NFL. The NFL was guided by the responsibility of occupying a position in the American society that requires leadership and

---

91 Assoc. Press, supra note 11.
92 Id.
93 Id.
94 Id.
96 Memorandum from Roger Goodell, NFL Comm’r, for NFL Chief Execs. and Club Presidents, supra note 92.
97 Id.
accountability; the necessity that the educational and other services that the NFL provides and the disciplinary procedures that the NFL uses supports their standards of conduct; and the understanding that the standards and policies will only be meaningful if they are continuously reviewed and everyone in the NFL understands that the standards and policies reflect the core of what the NFL stands for.\textsuperscript{98} Also, Goodell acknowledged that domestic violence is a complex and difficult subject and that it is impossible to create a “perfect policy,” but the NFL will seek to continuously refine and improve the “living policy.”\textsuperscript{99} Lastly, Goodell mentioned that the vast majority of individuals associated with the NFL conduct themselves according to the highest personal standards and the NFL’s policies have always been intended to ensure that their reputation was not tainted by the misconduct of a few.\textsuperscript{100}

The updated PCP’s new measures to combat domestic violence begin by expanding NFL-funded assistance to victims and families, and not only violators.\textsuperscript{101} A Critical Response Team will provide the resources to assist violators, survivors, and families, including counseling, social and other services, clergy, medical professionals, and specialists in dealing with children and youth.\textsuperscript{102} Clinical evaluations and appropriate counseling, education, or other treatment for violators are no longer mandatory but are still offered.\textsuperscript{103} However, the NFL employees’ decision to make use of these clinical services is considered a positive factor when determining

\textsuperscript{98}Id.
\textsuperscript{99}Id.
\textsuperscript{100}Id.
\textsuperscript{101}Updated PCP, supra note 24.
\textsuperscript{102}Id.
\textsuperscript{103}Compare id. ("Anyone arrested or charged with conduct that would violate this policy will be offered a formal clinical evaluation . . .") (emphasis added), with PCP, supra note 23 ("[P]ersons arrested, charged or otherwise appearing to have engaged in conduct prohibited under this policy generally will be required to undergo a formal clinical evaluation.") (emphasis added).
discipline. The updated PCP also obligates NFL clubs to promptly report any matter that comes to their attention that may constitute a policy violation. Clubs are required to educate their employees on the obligation to report and employees have a similar obligation to report possible violations. The policy outlines the human resources or legal staff who should be contacted, states that a failure to report an incident will be grounds for disciplinary action, and assures that all reports will be addressed promptly and confidentially.

The updated PCP then allows for the NFL Special Counsel for Investigations to initiate an independent investigation, consisting of interviews and information gathered from law enforcement agencies, court records, and independent investigations. The Commissioner appointed Lisa Friel, one of the senior advisers, to the position of Special Counsel for Investigations. NFL employees are required to cooperate and be fully responsive and truthful with the Special Counsel for Investigations and a failure to cooperate or be truthful will result in separate grounds for disciplinary action. Additionally, the NFL prohibits any retaliation or threat of retaliation against a survivor or witness, which will also result in a separate disciplinary action.

Next, the updated PCP allows the Special Counsel for Conduct to impose initial discipline rather than the Commissioner. The Commissioner appointed Todd Jones, former

---

104 Updated PCP, supra note 24.
105 Id.
106 Id.
107 Id.
108 Id.
110 Updated PCP, supra note 24.
111 Id.
112 Compare id. (“Initial decisions regarding discipline will be made by a disciplinary officer, a
director of the Bureau of Alcohol, Tobacco, and Firearms, to the position of Special Counsel for Conduct.\textsuperscript{113} Others with expertise in appropriate backgrounds such as law enforcement, academia, judicial and public service, and mental health may also assist the disciplinary officer.\textsuperscript{114} The NFL employee may appeal the decision of the Special Counsel for Conduct, as appropriate under the CBA.\textsuperscript{115} Although the Commissioner’s role in disciplinary proceedings has been reduced due to the input of chief executives, the Commissioner’s disciplinary decision-making is preserved in the context of appeals.\textsuperscript{116} The Commissioner may also consult a panel of independent experts to recommend a decision on the appeal.\textsuperscript{117}

Further, the updated PCP allows for paid administrative leave for an individual formally charged with a crime of violence, an individual who is believed to have violated the policy after independent investigation, or an individual who is suspected of committing a crime of violence but requires further investigation.\textsuperscript{118} Paid leave will generally last until the NFL makes a disciplinary decision and any appeal of that decision is resolved in full.\textsuperscript{119} The updated PCP also creates a baseline suspension of six games without pay for first-time violations involving domestic violence, dating violence, and other forms of family violence, with considerations being given to any aggravating or mitigating factors.\textsuperscript{120} The presence of possible aggravating factors, including similar misconduct before joining the NFL or committing an act against a member of the league office staff who will be a highly-qualified individual with a criminal justice background.”), \textit{with} PCP, \textit{supra} note 23 (“Upon conclusion of the investigation, the Commissioner will have full authority to impose discipline as warranted.”).

\textsuperscript{113} James Brady, \textit{supra} note 111.
\textsuperscript{114} Updated PCP, \textit{supra} note 24.
\textsuperscript{115} Memorandum from Roger Goodell, NFL Comm’r, for NFL Chief Execs. and Club Presidents, \textit{supra} note 92.
\textsuperscript{116} \textit{Id}.
\textsuperscript{117} Updated PCP, \textit{supra} note 24.
\textsuperscript{118} \textit{Id}.
\textsuperscript{119} \textit{Id}.
\textsuperscript{120} \textit{Id}.
particularly vulnerable person, may warrant a longer suspension.¹²¹ A second offense of this nature will result in permanent banishment from the NFL, in which the NFL employee may petition for reinstatement after one year.¹²² Also, the updated PCP notes that a violation of the policy can be found regardless of whether the NFL employee is charged with or convicted of a crime.¹²³ The Commissioner’s goal underlying the revised discipline policy was to have a layered process with clear steps, defined procedures, and substantive expertise.¹²⁴

Lastly, the updated PCP includes the addition of a Conduct Committee, made up of NFL owners, to ensure that the policy remains current and consistent with the best practices and evolving legal and social standards.¹²⁵ The members of the Conduct Committee are Michael Bidwill, owner of the Cardinals’ and the Committee Chair; Arthur Blank, Falcons’ owner; Clark Hunt, Chiefs’ owner; Dee Haslam, wife of Browns’ owner; Charlotte Jones Anderson, Cowboys’ Executive Vice-President and chair of The NFL Foundation; George McCaskey, Bears’ owner; Robert McNair, Texans’ owner; and Warrick Dunn and John Stallworth, former NFL players that are part of NFL ownership.¹²⁶ The Conduct Committee will meet annually and recommend any appropriate changes in the policy, “including investigatory practices, disciplinary levels or procedures, or service components.”¹²⁷ Consistent with the purpose of including substantive expertise into the updated PCP, the Conduct Committee may seek advice from a broad and diverse group of outside experts regarding the best practices in academic, business, and public

¹²¹ Id.
¹²² Id.
¹²³ Id.
¹²⁴ Memorandum from Roger Goodell, NFL Comm’r, for NFL Chief Execs. and Club Presidents, supra note 92.
¹²⁵ Updated PCP, supra note 24.
¹²⁷ Updated PCP, supra note 24.
sector settings.\textsuperscript{128} The Conduct Committee will review the developments in other settings and receive regular reports from the Special Counsel for Investigation and Conduct in order to recommend the appropriate changes to the PCP.\textsuperscript{129} Based on the downfalls of the past policies, Commissioner Goodell addressed major flaws in constructing the updated PCP.

\textbf{C. NFL’s Educational and Philanthropic Support}

In addition to the updated PCP, the NFL named Anna Isaacson, the NFL’s former vice president of community affairs and philanthropy, as the vice president of social responsibility.\textsuperscript{130} In her previous position, Isaacson led the NFL’s internal work relating to how the NFL addressed issues of domestic violence and related social issues.\textsuperscript{131} As the vice president of social responsibility, Isaacson oversees the development of the full range of education, training, and support programs in relation to domestic violence.\textsuperscript{132}

On December 19, 2014, before the updated PCP was enacted, the NFL conducted mandatory education sessions for all league and club office personnel, owners, cheerleaders, coaches, and players in order to raise awareness of and work to end domestic violence.\textsuperscript{133} The goal of the 45-minute education sessions is to create a baseline knowledge about domestic violence and an understanding that NFL employees and players must hold each other accountable to prevent future family violence.\textsuperscript{134} The sessions build on the basics with blunt

\footnotesize{\begin{itemize}
\item \textsuperscript{128} \textit{Id.}
\item \textsuperscript{129} \textit{Id.}
\item \textsuperscript{130} Assoc. Press, supra note 11.
\item \textsuperscript{131} \textit{Id.}
\item \textsuperscript{132} \textit{Id.}
\item \textsuperscript{134} Lindsay H. Jones, \textit{NFL Educates Teams on Basics of Domestic Violence, Sexual Assault}, USA TODAY (Nov. 12, 2014, 3:11 PM), http://www.usatoday.com/story/sports/nfl/players/2014/11/12/nfl-begins-educating-teams-}

18
definitions of domestic violence; establish that silence is no longer a solution; and clarify the
signs of an unhealthy relationship, from control issues and jealousy that escalates into verbal and
physical abuse. Additionally, the presentations include a video segment of current and past
NFL players’ testimonies of growing up in a household where domestic violence was
commonplace, which seem to be the most impactful part of the presentation.

The presentation is available and highly encouraged to the families and friends of players
and staff, including anyone living in a player or NFL employee’s house or a significant other.
The idea to extend the program beyond the players and staff was a recommendation of the
official players’ wives organization, Off The Field, and was the first time that their opinions have
been included in policy decisions. Off The Field also suggested a formal system designed to
provide a non-punitive approach that significant others can take when red flags arise within their
families because the members believed that it is vital and critical to create opportunities to
resolve domestic violence issues before they escalate and potentially ruin both the lives of the
players’ family and the players’ career.

Moreover, the NFL, in collaboration with the NO MORE campaign and the Joyful Heart
Foundation, aired a series of public service announcements featuring current and former NFL
stars during every game broadcast during the 2014-2015 season (including the Super Bowl), in
order to urge a national conversation on domestic violence. Although subtle, the discussion of

employees-on-basics-of-domestic-violence-sexual-assault/18921855/.

135 Id.
136 Id.
137 Id.
138 Id.
139 Id.
140 NFL.com, supra note 128. See also Jane McManus, When it Comes to Domestic Violence,
Heat is Still on for Roger Goodell, ESPNW (Jan. 30, 2015), http://espn.go.com/espnw/news-
commentary/article/12253583/when-comes-domestic-violence-heat-for-roger-goodell.
these issues during such high-profile sporting events is the first of its kind, which disrupted the norm and sparked dialogue amongst fans and others.\textsuperscript{141} The NFL also expanded its educational efforts by providing age-appropriate character development and healthy relationship education, including dating/domestic violence programming, to those who play, coach, or manage college, high school, and youth football programs.\textsuperscript{142} According to the new executive director of the NCADV, it appears that the NFL has most of the education program right.\textsuperscript{143}

On the philanthropic side, the NFL extended its support to domestic violence awareness and prevention groups.\textsuperscript{144} As a result of the intense scrutiny of the NFL’s domestic violence issues, there was a dramatic increase in calls to national and local domestic violence organizations, which consequently led to an increase in unanswered calls and texts.\textsuperscript{145} To help rectify a situation that the NFL felt responsible for, the NFL entered into a multi-year partnership with the National Domestic Violence Hotline and the NFL’s financial support of $5 million annually helped to immediately add staff to assist with call volume.\textsuperscript{146} Yet, the feedback and criticism of the NFL’s actions are ample and include both positive and negative aspects.

**IV. Finding the Appropriate Balance**

Although Roger Goodell attempted to remedy the long-standing issue of domestic violence in the NFL, questions regarding whether Goodell is truly committed to solving the problem still linger. While the additions to the PCP were commendable and substantial, the Commissioner did not appropriately balance all of the competing interest like he believed that he did because the updated PCP fails to focus on the survivors. Survivors of domestic violence are

\textsuperscript{141} NFL.com, *supra* note 128. *See also* Jane McManus, *supra* note 142.
\textsuperscript{142} NFL.com, *supra* note 128.
\textsuperscript{143} Lindsay H. Jones, *supra* note 136.
\textsuperscript{144} NFL.com, *supra* note 128.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
only an afterthought in the updated PCP because the NFL does provide direct financial assistance, but rather punishes the abuser and supports service providers. Since many survivors of domestic violence remain in the abusive relationship because of their financial dependence on the abusers, it is necessary to financially support the survivors in addition to assisting the service providers and punishing the abusers. In an effort to comprise the most beneficial and comprehensive domestic violence prevention policy, the NFL should add a provision to their Constitution and Bylaws that is similar to 10 U.S.C. § 1059, which provides dependents of military service members with financial compensation when separated for dependent abuse. Furthermore, state lawmakers should also mimic the efforts of the military by allocating a portion of the federally provided crime victim compensation funds directly to domestic violence survivors in order to provide more immediate help.

A. Section 1059 of Title 10 of the United States Code

In 1999, the DoD realized that domestic violence was a pervasive problem throughout every branch of the military and decided to take action in response to the problem. Similar to the NFL’s view that domestic violence by NFL employees is “detrimental to the integrity of, or public confidence in, the game of professional football,” the DoD deemed domestic violence as “an offense against the institutional values of the Military Services of the United States of America.” In response to the domestic violence problem, the DoD established various policies and procedures, which included transitional compensation for abused dependents.

---

150 Memorandum from Paul Wolfowitz, Deputy Def. Sec’y, to the Secretaries of the Military
Section 1059 of Title 10, United States Code, establishes transitional compensation to present or former spouses of service members when the service member has been administratively separated from the military, sentenced to forfeiture of pay and allowances by a court-martial, or separated from active duty pursuant to a court-martial due to a dependent-abuse offense. In any domestic violence incident that culminates in punitive action, the service member does not have the ability to provide support to a spouse or dependents through military pay. The United States is authorized, under 10 U.S.C. § 1059, to pay interim financial compensation to spouses and former spouses of abusive service members in order to encourage survivors of domestic violence to come forward and also to provide survivors with continuing support. The transitional compensation benefits also include all of the privileges available to a dependent of a service member, such as medical benefits and relocation expenses.

The transitional compensation payments are made monthly, and the duration of the compensation is dependent upon the remaining service obligation of the abusive service member. The compensation will last for the lesser between 36 months or the unserved portion of the service member’s military enlistment contract. However, the duration of benefits will

---

151 Kathlene J. Somerville, supra note 151.
157 Instruction No. 1342.24 from U.S. Dep’t of Def., supra note 157.
not be less than twelve months.\textsuperscript{159} The monthly amount of the transitional compensation is equal to that awarded to dependents after a service-related death, under 38 U.S.C. § 1311(a)(1), and the monthly rate will increase for each dependent child that the spouse or former spouse has custody of and resides in the same household.\textsuperscript{160} The transitional compensation statute provides that payment commences on the date that the separation action is initiated or when the court-martial sentence is announced, if the sentence includes a punitive discharge or forfeiture of all pay.\textsuperscript{161} The transitional compensation can last for up to 36 months, but will cease once the survivor remarries or cohabitates with the abuser.\textsuperscript{162} However, the payments will not resume in the event of a subsequent divorce or after cohabitation with the abusive service member.\textsuperscript{163}

By allocating transitional funding, the DoD intended to address one of the main reasons that survivors, both inside and outside of the military, choose not to report abuse.\textsuperscript{164} Thus, transitional compensation attempts to remedy the threat of financial retribution and provide survivors with financial assistance to support their transition out of the abusive relationship.\textsuperscript{165}

\textbf{B. States’ Use of Crime Victim Compensation for Domestic Violence}

The DoD codified the transitional compensation statute in 1994,\textsuperscript{166} yet state victim compensation programs were first enacted in 1964.\textsuperscript{167} Congress addressed the needs of victims of violent crime twenty years after the first state victim compensation program by enacting the

\begin{flushright}
\textsuperscript{159} 10 U.S.C. § 1059 (e)(2) (2012).
\textsuperscript{160} 10 U.S.C. §§ 1059 (f)(1)-(2) (2012). \textit{See also} 38 U.S.C.A. §§ 1311 (a)(1)-(2) (stating that the monthly payment is $1,154, with an additional $246 per dependent child).
\textsuperscript{162} 10 U.S.C. §§ 1059 (g)(1)-(2) (2012).
\textsuperscript{163} 10 U.S.C. §§ 1059 (g)(1)-(2) (2012).
\textsuperscript{164} Margaret Rose Kuzma, \textit{Taking Care of Its Own: Comparing the United States Military’s Transitional Compensation Program with State Victim Compensation Programs}, 1 DePaul J. of Women, Gender & the Law 77, 81 (2011).
\textsuperscript{165} \textit{Id.} at 82.
\textsuperscript{166} \textit{Id.} at 78.
\textsuperscript{167} \textit{Id.} at 88 (“In 1964, California enacted the first state victim compensation program.”).
\end{flushright}
Victims of Crime Act of 1984 ("VOCA"), which provides federal funding to eligible state crime victim compensation programs. Additionally, the federal statute expressly prohibits the denial of compensation to a victim because the victim’s familial relationship to the offender or the sharing of a residency by the victim and the offender. Thus, states are federal funded to directly reimburse survivors of domestic violence through crime victim compensation programs.

While VOCA does not set aside a certain amount of funds for domestic violence crimes, many of the financial needs of domestic violence survivors are addressed through the various crime victim compensation programs, such as medical and hospital expenses, mental health counseling, attorney’s fees, and relocation expenses. The funding provided by the federal government accomplishes a unique goal by making domestic violence survivors financially whole, which is not achieved through other domestic violence services or legislation.

In pursuit of the most survivor-centered domestic violence prevention program, the federal government should explicitly state in VOCA that a certain percentage of the funds that the state receives should be apportioned to domestic violence survivors. Moreover, VOCA should provide a comprehensive list of the expenses that are continually necessary for domestic violence survivors so that states have an understanding of the unique needs and services of domestic violence survivors.

---


170 See generally CAL. GOV’T CODE § 13957.2 (West 2015) (mental health counseling); N.J. STAT. ANN. § 52:4B-8 (West 2015) (attorney fees and costs); OR. REV. STAT. § 147.035 (2015) (medical and hospital expenses); S.D. CODIFIED LAWS § 23A-28B-19 (2015) (any economic loss, to include loss of earning and future earnings, security devices, and loss of economic benefits or support to dependents); VERNON’S ANN. TEXAS C.C.P. ART. 56.42 (West 2015) (relocation expenses, including rental deposit, utility connections, expenses related to the moving of belongings, motor vehicle mileage expenses, and meals, transportation, and lodging for out-of-state moves).

171 Njeri Mathis Rutledge, *supra* note 170, at 249.
domestic abuse survivors. States will then be compelled to change their crime victim
compensation programs to satisfy the requirements of the federal statute. Once states adhere to
the uniform guidelines for VOCA, private entities will have a thorough program to emulate.

C. NFL Recommendations

When the NFL updated the PCP, the drafters were able to research and incorporate state,
federal, and private domestic violence prevention policies. The NFL failed to do justice to the
survivors of domestic violence because the policy drafters did not incorporate a transitional
compensation policy, which have been used throughout the country for over fifty years.\textsuperscript{172}

As Roger Goodell and the NFL quickly found out, domestic violence is a very
complicated issue that cannot be easily solved. Power and control are the underlining motives
behind the cycle of domestic abuse,\textsuperscript{173} and leaving the abusive relationship becomes extremely
dangerous for survivors because of the physical and financial risks that it poses.\textsuperscript{174} The NFL
failed to consider that the survivors of domestic violence could encounter more abuse, even after
leaving the relationship, caused by the lack of funding towards the care of the survivors.\textsuperscript{175} As
such, financial dependence is a significant factor in domestic violence survivors’ decision to
remain in the abusive relationship.\textsuperscript{176}

\textsuperscript{172} Margaret Rose Kuzma, \textit{supra} note 166, at 78.
\textsuperscript{173} Laurie S. Kohn, \textit{supra} note 149, at 246.
\textsuperscript{175} Tara Culp-Ressler, \textit{You Shouldn’t Ask Why Janay Rice Stayed}, THINKPROGRESS (Sept. 9,
\textsuperscript{176} Jonathan Cohn, \textit{The NFL Owes Domestic Violence Victims a Big, Fat Check}, NEW REPUBLIC
(Sept. 15, 2014), http://www.newrepublic.com/article/119455/nfl-domestic-violence-league-
should-fund-research-help-victims.
\textsuperscript{176} Njeri Mathis Rutledge, \textit{supra} note 170, at 228.
The cycle of domestic violence can cease, for some, if the survivors are able to become economically independent from their abusers.\textsuperscript{177} The NFL can support survivors in their attempt to lead economically independent lives, similar to the DoD, by providing direct financial support to domestic violence survivors in order to assist with relocation, medical bills, and any other financial needs.\textsuperscript{178} The NFL could incorporate a provision into their Constitution and Bylaws and Uniform Player Contracts that require payments to the transitional compensation fund from a player’s lost wages if found to be in violation of the updated PCP.

The NFL certainly has enough revenue to adequately provide transitional compensation to victims of domestic violence at the hands of NFL employees. In 2013, NFL revenues were more than $9 billion, and Commissioner Goodell intends to increase that amount to $25 billion by 2027.\textsuperscript{179} Although the $5 million donation to the National Domestic Violence Hotline was substantial and necessary, the NFL can easily do more. The $5 million contribution should be taken in context given the almost $10 billion that the NFL brings in yearly and the $10 million per year that is spent on the Super Bowl halftime show.\textsuperscript{180} As Connecticut Senator Richard Blumenthal stated, “If the NFL is serious about its commitment to combatting domestic violence, it could contribute many times more.”\textsuperscript{181} In order to focus on the care and support of survivors of domestic violence, the NFL could use a portion of their revenue annually to finance the transitional compensation program. Rather than setting up a foundation to fund domestic violence programs, the NFL could use their revenue to directly support survivors.

\begin{footnotes}
\item[177] Jonathan Cohn, supra note 177.
\item[178] Laurie S. Kohn, supra note 149, at 246-247.
\item[179] Jonathan Cohn, supra note 177.
\item[181] Id.
\end{footnotes}
violence services or contributing to existing organizations, the NFL should mimic the efforts of the DoD by providing transitional compensation to dependent survivors of domestic violence in order to mitigate the financial hardships that typically occur.

While the NFL use 10 U.S.C. § 1059 as a guideline, the NFL should consider making one significant change to the policy. Section 1059 of Title 10 requires that the victim of domestic violence be married to the abuser at the time of the abusive incident in order to receive transitional compensation. However, victims of domestic violence by NFL members are not always married to the abuser at the time of the abuse, like Janay Palmer. When the Conduct Committee meets to discuss possible additions and revisions to the updated PCP, they should consider providing transitional compensation to any victim of domestic violence regardless of their marital status, or lack thereof, to the NFL employee. The NFL will be able to support a wider range of survivors and encourage those that are financially dependent on their abuser to leave the relationship.

V. Conclusion

Despite the intense criticism that the NFL has received over the years regarding their inaction to the domestic violence problem, Commissioner Goodell and his predecessors consistently took progressive steps in combatting the issue. The progression hasn’t always been viewed as momentous though because the actions were not typically expansive or thorough. The updated PCP allowed Goodell to set the example for other professional sport leagues and private companies. In order to provide a comprehensive domestic violence prevention program, states and the NFL must provide direct, transitional compensation to victims of domestic violence.