

Extending the Civil Liability Provision in the Texas Heartbeat Act to Create Fan Lawsuits Against Professional Athletes

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I. INTRODUCTION

People love sports. Americans, in particular, are fanatical about their favorite sports, favorite teams, and favorite players.¹ For many fans, their lives and schedules revolve around watching and following their team. Professional athletes are role models, whether they want to be or not, with young fans idolizing them and often emulating their behavior. That is why it is so disappointing, and at times devastating, to find out that yet another professional athlete has been arrested for, or accused of, a violent crime. Beyond the effect on the victim, the player’s actions also tarnish the player, the team, and the sport itself. Meanwhile, the fans who invest so

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1. See Nick DiMengo, *10 (Really Strange) Times People Took Being a Sports Fan Too Far*, BLEACHER REP. (June 9, 2016), <https://bit.ly/3TlkIK9>.

much of their time and money into following the sport are left with no recourse.

This Article proposes a possible solution for those fans that hopefully will serve as a deterrent for athletes' potential violent criminal behavior. This proposal would allow fans to directly sue a professional athlete who is arrested for a violent crime, or, in the event of an accusation but no arrest, a player who has been punished by their respective league for that accusation. The fan need not be the victim of the crime or even be associated with the crime; rather, this new law would allow for a civil lawsuit and compensation to the fan because of the particular fan's ties to the sport and the direct effect of the athlete's actions on the reputation of the sport.

The genesis of and support for this law come directly from the Texas Heartbeat Act² ("Heartbeat Act").³ The act of performing an abortion after a certain point in the pregnancy is against the law in Texas, but the enforcement comes in the form of a civil lawsuit by a member of the public.⁴ This relatively recent law allows for members of the public to directly sue anyone who performs, or aids and abets, an abortion.⁵ The person who brings the lawsuit can receive monetary compensation from the individual who performed the abortion.⁶ Much like the Heartbeat Act, this Article's proposed law would allow a fan to recover monetarily from the professional athlete.

Part II of this Article will give a sample of the many incidents of professional athletes arrested for violent crimes. Part III discusses the National Football League's (NFL) and Major League Baseball's (MLB) personal conduct policies and the penalties associated with them. Next, Part IV examines the Texas Heartbeat Act and its provision allowing for lawsuits by members of the public. Part V proposes a new law for fans to sue professional athletes directly, either for being arrested for a violent crime, or for being accused of a violent crime and then punished by their league. This Article will conclude by explaining the need for this new law and its planned deterrent effect.

2. The Authors are not expressing a position on the substance of the Texas Heartbeat Act and other similar laws, but rather are only applying the structural components of the law dealing with civil liability to other aspects of society.

3. Texas Heartbeat Act, TEX. HEALTH & SAFETY CODE §§ 171.201–.212 (West 2021).

4. *See id.* § 171.208(a).

5. *See id.*

6. *See id.* § 171.208(b)(2).

II. PROFESSIONAL ATHLETES ARRESTED FOR VIOLENT CRIMES

Unfortunately, the sheer number of arrests of professional athletes across various sports would be too voluminous to list.⁷ Instead, this Part will focus on some of the more recent and high-profile violent crime arrests.

A. *Miles Bridges*

In June 2022, Miles Bridges of the National Basketball Association's (NBA) Charlotte Hornets was arrested and charged with three felonies after assaulting his girlfriend in front of their two children.⁸ This incident led to his girlfriend, Mychelle Johnson, being hospitalized.⁹ Bridges, a restricted free agent at the time, was arrested the night before NBA free agency began.¹⁰ Johnson shared pictures of the injuries she sustained from the alleged attack, along with a video from her son describing what occurred.¹¹ Despite this, the Hornets did not revoke their qualifying contract offer to Bridges.¹² Additionally, the NBA has not penalized Bridges because under the NBA's Collective Bargaining Agreement (CBA), the league and teams cannot punish players for arrests or accusations alone.¹³

B. *Henry Ruggs*

Henry Ruggs is a former NFL wide receiver for the Las Vegas Raiders. He played in the 2020 and 2021 seasons¹⁴ before being cut by the Raiders in November 2021 due to his involvement in a horrific car crash that killed a woman and her dog.¹⁵ Ruggs was driving 156 miles per hour

7. See *NFL Players Arrest Database: Records Since 2000*, USA TODAY, <https://bit.ly/3SyyGr7> (last visited Oct. 20, 2022).

8. See James Dator, *The Charges Against Miles Bridges and How the NBA Domestic Violence Policy Works*, SBNATION (July 20, 2022, 10:18 AM EDT), <https://bit.ly/3ySCuML>.

9. See Joe Rivera, *Miles Bridges Arrested: Latest News, Updates as Free Agent Faces Domestic Violence Charges*, SPORTING NEWS (Oct. 12, 2022), <https://bit.ly/3CNTnJK>.

10. See Steve Reed, *Hornets Forward Miles Bridges Arrested on Eve of Free Agency*, NBA (June 30, 2022, 2:22 PM), <https://on.nba.com/3yWVj1h>.

11. See Joseph Zucker, *Report: Hornets Didn't Pull Miles Bridges' Qualifying Contract Offer Following Arrest*, BLEACHER REP. (July 19, 2022), <https://bit.ly/3yWrRZc>.

12. See *id.*

13. See *Collective Bargaining Agreement*, NBA 124 (Jan. 9, 2017), <https://bit.ly/3i18R6l>. As explained below in Part III, other professional leagues allow for punishment of players based on accusations alone.

14. See *Henry Ruggs III*, PRO FOOTBALL REFERENCE, <https://bit.ly/3eONfZG> (last visited Aug. 14, 2022).

15. See Paul Gutierrez, *Las Vegas Raiders Release WR Henry Ruggs III, Who Faces Two Felony Charges in Fatal Crash*, ESPN (Nov. 3, 2021), <https://es.pn/3yWNYik>.

with a blood alcohol level of 0.16—twice the legal limit in Nevada¹⁶—when he crashed into the tail end of 23-year-old Tina Tintor’s Toyota Rav4, killing her.¹⁷ Ruggs was not seriously injured, but he was sent to the hospital following the crash.¹⁸ The District Attorney initially charged Ruggs with DUI resulting in death.¹⁹ Ruggs also had a loaded gun in the car at the time of the crash, and the District Attorney intends to file charges for possession while under the influence, as well as a second felony DUI for the injuries to Ruggs’ passenger.²⁰ If convicted on all of his charges, Ruggs could face up to 46 years in prison.²¹ His case is still pending.²²

C. Antonio Brown

Antonio Brown has been accused of violence throughout his career as an NFL player.²³ In January 2020, Brown faced criminal charges for assaulting a driver, Anton Tumanov,²⁴ who worked for a moving company that had just helped Brown move from California to Florida.²⁵ Brown had an outstanding fee of \$4,000 that he refused to pay to the moving company.²⁶ Tumanov purported to have left before violence ensued, but not before Brown threw a rock at Tumanov’s truck, causing significant damage.²⁷ The moving company forced Tumanov to return to Brown’s residence and demand the outstanding \$4,000 on top of the money needed to fix the damage to the truck.²⁸ When Tumanov returned, Brown and his

16. See *Legal Las Vegas BAC Levels*, DE CASTROVERDE, <https://bit.ly/3DfVG9I> (last visited Aug. 15, 2022).

17. See *Judge Allows Henry Ruggs to Stay on House Arrest Despite Missed Breath Alcohol Test*, SPORTS ILLUSTRATED (Nov. 22, 2021), <https://bit.ly/3eNDv1L>.

18. See Elizabeth Merrill & Anthony Olivieri, *The Case of Henry Ruggs III and a Distraught Family Desperate for Answers*, ESPN (July 12, 2022), <https://es.pn/3EV8aVD>.

19. Kyle Wilcox, *Ex-Raider Henry Ruggs III Formally Charged with DUI in Deadly Crash*, 3 NEWS (Nov. 10, 2021), <https://bit.ly/3TTpL3R>.

20. See Paul Gutierrez, *Henry Ruggs III Drove 156 MPH Seconds Before Fatal Crash, Prosecutors Say*, ESPN (Nov. 3, 2021), <https://es.pn/3De2rst>.

21. See *id.*

22. Ruggs is set to have a preliminary hearing on September 7, 2022, to determine if he will stand trial in state court. See Merrill & Olivieri, *supra* note 18. A judge also ruled months after the crash that the results of a blood-alcohol test Ruggs’ lawyers argued were wrongfully obtained can be used by the prosecution as evidence. See Patrik Walker & Shanna McCarriston, *Henry Ruggs Arrest: Judge Rules Results of a Blood-Alcohol Test Can Be Used as Evidence in the Case*, CBS (July 13, 2022, 1:40 PM ET), <https://bit.ly/3yWUYf6>.

23. See Chris Bumbaca, *Antonio Brown’s Abrupt Exit from Sunday’s Game Just the Latest in Long Line of Controversies*, USA TODAY (Jan. 3, 2022, 10:32 AM ET), <https://bit.ly/3TuoaSu>.

24. See *Antonio Brown Sued over Alleged Violent Encounter . . . with Moving Truck Driver*, TMZ SPORTS (May 14, 2021, 9:56 AM PT), <https://bit.ly/3EYLHXX>.

25. See Paul Kasabian, *Antonio Brown Facing 3 Criminal Charges After Alleged Assault in January*, BLEACHER REP. (Apr. 3, 2020), <https://bit.ly/3gjzz9j>.

26. See *id.*

27. See *id.*

28. See *id.*

trainer, Glenn Holt, physically assaulted him, damaged his truck further, and damaged other people's belongings inside the truck after stealing Tumanov's keys.²⁹ Brown was charged with burglary with assault or battery, burglary of an unoccupied conveyance, and criminal mischief.³⁰ In June 2020, Brown agreed to a plea deal with prosecutors that included probation, community service, and anger management courses.³¹ Brown is no longer playing football in the NFL.³²

D. Greg Hardy

A final example of violent behavior by a professional athlete can be found in former NFL player Greg Hardy. In 2014, while Hardy was playing for the NFL's Carolina Panthers, he was convicted of assaulting his former girlfriend, Nicole Holder.³³ On the night of the assault, police found Holder barefoot and bruised.³⁴ She stated that she did not believe Hardy would face any consequences for his abusive behavior.³⁵ It may have immediately seemed that her belief was unfounded; Hardy was cut from the Panthers, lost more than a season of football, and was convicted of assault at a bench trial.³⁶ However, this punishment was short-lived. The charges were not only dismissed upon appeal, but also expunged from his permanent record³⁷—all before he had the chance to serve his 18 months of probation.³⁸ Hardy went on to play for the Dallas Cowboys after his charges were dropped, but lasted only 12 games before not being re-signed due to public backlash.³⁹ No other NFL team signed Hardy, and he transitioned into fighting in the Ultimate Fighting Championship (UFC).⁴⁰

While these examples are stark, they are not unique. In fact, the amount of arrests of professional athletes is staggering. 1 in every 45 NFL

29. See Rob Goldberg, *TMZ: Antonio Brown Allegedly Assaulted Truck Driver, Threw Rock at Vehicle*, BLEACHER REP. (Jan. 22, 2020), <https://bit.ly/3Ep4GIV>.

30. See *Antonio Brown Faces Yet Another Legal Battle*, NBC SPORTS BOS. (Jan. 24, 2020), <https://bit.ly/3MMANpM>.

31. See Jeremy Bergman, *Antonio Brown Pleads No Contest in Battery Case, Gets Probation*, NFL (June 12, 2020, 4:10 PM), <https://bit.ly/3TGKTKW>.

32. See Jack Baer, *Antonio Brown Says He Will Not Play Football in 2022*, YAHOO! SPORTS (May 28, 2022), <https://yhoo.it/3VDGryF>.

33. See Mike Chiari, *Greg Hardy Assault—Allegation Details Revealed by Deadspin Report*, BLEACHER REP., <https://bit.ly/3SeGded> (last visited Oct. 20, 2022).

34. See Diana Moskowitz, *This Is Why NFL Star Greg Hardy Was Arrested for Assaulting His Ex-Girlfriend*, DEADSPIN (Nov. 6, 2015, 12:57 PM), <https://bit.ly/3EUmqEp>.

35. See *id.*

36. See *id.*

37. See *id.*

38. See Danish Ansari, *Why Did UFC Heavyweight Greg Hardy Get Cut from Dallas Cowboys?*, SPORTSKEEDA (Jan. 17, 2022), <https://bit.ly/3COfcZG>.

39. See *id.*

40. See *id.*

players will be arrested.⁴¹ Since 2000, 134 NFL players have been arrested for domestic violence.⁴² While intimate partner violence makes up 15% of all crimes committed in the United States,⁴³ it makes up 55% of NFL arrests.⁴⁴ And these issues are not limited only to the NFL.⁴⁵

Given the systemic problem of violent behavior by professional athletes, professional sports leagues have attempted to deter and punish athletes by creating their own policies outside of the justice system. While some of these attempts are explained below, incidents of violent crimes by professional athletes ultimately have not been affected by league policies. More needs to be done.

III. PROFESSIONAL SPORTS LEAGUES' PERSONAL CONDUCT POLICIES

Personal conduct policies are part of the routinely renegotiated CBAs between a professional sports league and its Players' Association. For example, two major professional sports leagues, the NFL and MLB, have personal conduct policies in their CBAs that allow for both leagues to punish players, even if they have not been arrested or convicted of a crime.⁴⁶

41. Krizzia Paolyn, *The Facts About Crime Rates in Pro Sports This 2022*, GLOBALTEL (Mar. 7, 2022), <https://bit.ly/3DcRqIa>.

42. See *NFL Player Arrests Database*, *supra* note 7.

43. *Statistics*, NCADV, <https://bit.ly/3MP1cVo> (last visited Oct. 20, 2022).

44. See *NFL Player Arrests Database*, *supra* note 7.

45. Regarding the MLB, in 2021, Atlanta Braves outfielder Marcell Ozuna was arrested and charged with aggravated assault by strangulation, a felony. If Ozuna completes a diversion program, the felony charge will be dropped to a misdemeanor. The MLB retroactively suspended Ozuna for 20 regular season games. See *MLB Retroactively Suspends Atlanta Braves OF Marcell Ozuna for 20 Games for Violating Domestic Violence Policy*, ESPN (Nov. 29, 2021), <https://es.pn/3grZ5tf>. In the National Hockey League (NHL), Austin Watson was arrested and charged with domestic violence in 2018. Watson struck his girlfriend, the mother of his child, publicly at a Shell gas station. The NHL suspended Watson for 27 games. See Emily Kaplan, *Austin Watson Serves Domestic Violence Suspension, Returns to Predators*, ESPN (Nov. 14, 2018), <https://es.pn/3DfuJTx>. Even professional golf is not exempt from players' violent acts. Tom Pernice Jr. was recorded on audio threatening and punching his then-girlfriend MaryAnn O'Neil after a poor showing at the 2021 Regions Tradition event. O'Neil claims Pernice has a long history of lashing out after poor performances. Pernice quietly served a 30-day suspension and took anger management classes, but despite facing felony charges, he continues to play. See Jessica Luther & Jon Wertheim, *She Reported a PGA Player for Domestic Violence. What Didn't Happen Next*, SPORTS ILLUSTRATED (July 27, 2022), <https://bit.ly/3VMt5Qq>.

46. The NFL has a non-exhaustive list of fourteen prohibited behaviors:

Actual or threatened physical violence against another person, including dating violence, domestic violence, child abuse, and other forms of family violence; Assault and/or battery, including sexual assault or other sex offenses; Violent or threatening behavior toward another employee or a third party in any workplace setting; Stalking,

A. *NFL Personal Conduct Policy*

The NFL and its players recently signed a new CBA in 2020 that will extend through the 2030 season.⁴⁷ Under the NFL's Personal Conduct Policy, any person employed by the NFL must conduct themselves in a manner that does not cause a detriment to, or harm the integrity of, the league.⁴⁸ The policy explicitly states that the mere absence of criminal activity is insufficient to meet the required standard of conduct.⁴⁹ The

harassment, or similar forms of intimidation; Illegal possession of a gun or other weapon (such as explosives, toxic substances, and the like), or possession of a gun or other weapon in any workplace setting; Illegal possession, use, or distribution of alcohol or drugs; Possession, use, or distribution of steroids or other performance enhancing substances; Crimes involving cruelty to animals as defined by state or federal law; Crimes of dishonesty such as blackmail, extortion, fraud, money laundering, or racketeering; Theft-related crimes such as burglary, robbery, or larceny; Disorderly conduct; Crimes against law enforcement, such as obstruction, resisting arrest, or harming a police officer or other law enforcement officer; Conduct that poses a genuine danger to the safety and well-being of another person; and Conduct that undermines or puts at risk the integrity of the NFL, NFL clubs, or NFL personnel.

Under the "Discipline" section of the Personal Conduct Policy, it states:

A player violates this policy when he has a disposition of a criminal proceeding (as defined), or if the league's investigation demonstrates that he engaged in conduct prohibited by the Personal Conduct Policy. In cases where a player is not charged with a crime, or is charged but not convicted, he may still be found to have violated the Policy if the credible evidence establishes that he engaged in conduct prohibited by this Personal Conduct Policy.

Personal Conduct Policy: League Policies for Players 2016, NFL 2, 5 (2016), <https://bit.ly/2J9trym>.

The MLB Commissioner can place players on administrative leave once they are accused of domestic violence, sexual assault, or child abuse. *See New MLB Domestic Violence Policy Has No Maximum, Minimum Penalties*, ESPN (Aug. 21, 2015), <https://es.pn/3seQyfS>.

47. *See* Grant Gordon, *NFL Player Vote Ratifies New CBA Through 2030 Season*, NFL (Mar. 15, 2020, 3:14 AM), <https://bit.ly/3grK9v5>.

48. *See Personal Conduct Policy*, *supra* note 46, at 1.

49. The policy states:

It is not enough simply to avoid being found guilty of a crime. We are all held to a higher standard and must conduct ourselves in a way that is responsible, promotes the values upon which the League is based, and is lawful. Players convicted of a crime or subject to a disposition of a criminal proceeding . . . are subject to discipline. But even if the conduct does not result in a criminal conviction, players found to have engaged in [a list of 14 enumerated behaviors] will be subject to discipline.

policy opens with a list of three categories of behavior that would warrant disciplinary action by the league: (1) conduct that is illegal, dangerous, or irresponsible; (2) conduct that damages the league's reputation or the reputation of others in the league; and (3) conduct that undercuts public respect or support.⁵⁰

Under the policy, the NFL appoints a Disciplinary Officer that is agreed upon and jointly-paid by the Players' Association and the NFL.⁵¹ The Disciplinary Officer is responsible for investigating an incident and making a decision about what type of discipline the player should face.⁵² The Disciplinary Officer's decision is usually not final—the NFL Commissioner can both increase and decrease any punishment the Disciplinary Officer doles out—but if the Disciplinary Officer recommends no disciplinary action take place, the case is over.⁵³

A couple of examples illustrate how the NFL's Personal Conduct Policy works. Recently, quarterback Deshaun Watson of the NFL's Cleveland Browns was suspended for 11 games due to sexual harassment and sexual assault allegations against him.⁵⁴ Twenty-five women filed civil lawsuits against Watson, but one was dropped for privacy reasons

Id. at 2. Take, for example, Kareem Hunt. While he was never arrested for a violent crime, Hunt was cut from the Kansas City Chiefs in November 2018 due to a video that surfaced of him knocking down and kicking a woman at a downtown Cleveland hotel near where Hunt had an apartment. The police were called to the incident, but no arrests were made. See Ken Belson, *Kareem Hunt Is Cut by Chiefs After a Video Showed Him Attacking a Woman*, N.Y. TIMES (Nov. 30, 2018), <https://nyti.ms/3VI2aWb>. Hunt was placed on the Commissioner's exempt list, meaning he could not practice, play, or participate in any games, shortly before he was dropped by the Chiefs. But he was then quickly picked up by the Cleveland Browns. See *Cleveland Browns Sign Running Back Kareem Hunt 2 Months After Video Showed Star Running Back Kicking a Woman*, INSIDER (Feb. 11, 2019, 2:39 PM), <https://bit.ly/3TmrBEP>.

Though Henry Ruggs was cut from the Raiders and not re-signed by another team, he was never officially punished by the league. See Mike Florio, *Is Henry Ruggs Holding out Hope of an Eventual Return to Football?*, YAHOO! LIFE (July 12, 2022), <https://yhoo.it/3eMAy1k>. Antonio Brown was suspended for eight games following his charges. See Nick Shook, *Free-Agent WR Antonio Brown Suspended Eight Games*, NFL (July 31, 2020, 2:31 PM), <https://bit.ly/3Dg75GH>. Greg Hardy was suspended for 10 games without pay. See *Greg Hardy Suspended Ten Games Without Pay*, NFL (Apr. 22, 2015, 9:09 AM), <https://bit.ly/3gs2poc>.

50. See *Personal Conduct Policy*, *supra* note 46, at 1.

51. See Mike Florio, *Understanding the NFL's New Process for Imposing Discipline Under Personal Conduct Policy*, NBC SPORTS (May 5, 2022, 10:34 AM EDT), <https://bit.ly/3gk5Rkx>.

52. See *id.*

53. See *id.*

54. See *Browns QB Deshaun Watson Suspended 11 Games, Fined \$5 Million Following Settlement Between NFL, NFLPA*, NFL (Aug. 18, 2022, 12:24 PM), <https://bit.ly/3EsELjD>.

and 20 have been settled confidentially as of June 2022.⁵⁵ Three of the four remaining lawsuits have reportedly been settled, but the conditions of the settlements are not currently known.⁵⁶ In addition to having most of his cases settled, two Texas grand juries declined to indict Watson on any criminal charges.⁵⁷ Nonetheless, after a three-day hearing between the NFL and the Players' Association, Sue L. Robinson, the appointed Disciplinary Officer, ruled Watson must serve a six-game suspension in accordance with the Personal Conduct Policy's six-game minimum for any sexual assault involving physical force or with someone who does not give consent.⁵⁸ In preparation for this potential suspension, Watson and the Browns structured his new contract with the team to lower the amount of money he made in his first year so that financially, the suspension would not be as severe.⁵⁹ The NFL appealed Judge Robinson's decision,⁶⁰ which resulted in a settlement, with Watson ultimately agreeing to an 11-game suspension and a five million dollar fine.⁶¹

Ben Roethlisberger is another high-profile quarterback that was suspended under the NFL's Personal Conduct Policy. In 2010, he was suspended for six games without pay after being accused of sexually assaulting a 20-year-old college student in a Georgia bar.⁶² Roethlisberger was never arrested or formally charged for his actions during the incident, but he was nonetheless still suspended.⁶³ The suspension made Roethlisberger the first NFL player ever to be suspended without being arrested or charged with a crime.⁶⁴ Roethlisberger's suspension left no doubt that the NFL intends to employ a higher standard of conduct than that of state law enforcement and criminal codes.⁶⁵

55. See Joe Rivera, *Deshaun Watson Lawsuit Update: New Accuser Files Claim Against Browns QB, Alleges Sexual Misconduct*, SPORTING NEWS (Oct. 31, 2022), <https://bit.ly/3i0LoCa>.

56. See Madeline Coleman, *Deshaun Watson to Serve Six-Game Suspension, Per Ruling*, SPORTS ILLUSTRATED (Aug. 1, 2022), <https://bit.ly/3TWg6KD>.

57. *Id.*

58. *See id.*

59. See Jacob Camenker, *Deshaun Watson Contract, Explained: Why a Suspension Won't Have Much Impact on Browns QB's Earnings with Cleveland*, SPORTING NEWS (Aug. 18, 2022), <https://bit.ly/3EZi7kU>.

60. See Jake Trotter, *NFL Appeals Ruling That Deshaun Watson of Cleveland Browns Should Be Suspended Six Games*, ESPN (Aug. 3, 2022), <https://es.pn/3Se80f3>.

61. See *Browns QB Deshaun Watson Suspended*, *supra* note 54.

62. See Judy Battista, *Roethlisberger Suspended for 6 Games*, N.Y. TIMES (April 21, 2010), <https://nyti.ms/3grx7gY>.

63. *See id.*

64. See Chris Mortensen, *Roethlisberger Suspended by NFL*, ESPN (Apr. 21, 2010), <https://es.pn/3Dd3vNu>.

65. Commissioner Roger Goodell wrote to Roethlisberger:

My decision today is not based on a finding that you violated Georgia law, or on a conclusion that differs from that of the local prosecutor. That said, you are held to a higher standard as an NFL player, and there

Nevertheless, while the NFL holds its players to a high standard under its policy, the process of disciplining a player is bureaucratic and often ends with players suffering minimal penalties.⁶⁶ Indeed, Watson and the Browns created an end-run-around the future suspension by back-loading his contract. Guaranteeing a severe financial punishment in addition to any league penalties, however, would create a more successful mode of discipline and deterrence.

B. *MLB Personal Conduct Policy*

The MLB has a more specific Personal Conduct Policy than the NFL. The policy was enacted as part of CBA negotiations in 2015, and it gives the MLB's Commissioner the ability to discipline players for acts of domestic abuse, sexual assault, and child abuse.⁶⁷ While the policy does establish a committee that will aid in evaluating and supervising discipline or treatment if necessary, the agreement gives the MLB's Commissioner near unilateral power to discipline players because it does not establish any maximum or minimum penalties, and it does not require the player to be arrested, convicted, or enter a guilty plea.⁶⁸

The process for disciplining a player is detailed in the MLB's CBA and begins in the Commissioner's Office.⁶⁹ The Commissioner's Office will notify the Players' Association that it plans to investigate a claim against a player, and the Commissioner, if he chooses, can place the player on immediate administrative leave.⁷⁰ From there, the player can petition to be taken off leave, and an evaluation of the allegation, including family outreach and internal investigations, begins.⁷¹ Ultimate punishment could

is nothing about your conduct in Milledgeville that can remotely be described as admirable, responsible, or consistent with either the values of the league or the expectations of our fans.

Battista, *supra* note 62.

66. Ben Roethlisberger suffered merely a six-game suspension, and Deshaun Watson only an eleven-game suspension. While these penalties are more severe than what the NFL has done historically, it is still a relatively minor punishment for the two players, both of whom made millions of dollars throughout their careers. *See Deshaun Watson*, SPOTRAC, <https://bit.ly/3TmbfSP> (last visited Aug. 14, 2022) (\$96,762,978 in career earnings); *Ben Roethlisberger*, SPOTRAC, <https://bit.ly/3MN1B9o> (last visited Aug. 14, 2022) (\$267,286,864 in career earnings).

67. *See* Dave Brown, *MLB Enacts Domestic Violence, Sexual Assault, and Child Abuse Policy*, CBS (Aug. 21, 2015, 1:34 PM ET), <https://bit.ly/3CR0GQJ>.

68. *See id.*

69. *See Joint Domestic Violence, Sexual Assault and Child Abuse Policy*, MLB 2 (2016), <https://atmlb.com/3gsxkR1>.

70. *See id.*

71. *See id.* at 2–3.

range from nothing to suspension without pay, as well as sanctions on the player's respective club as well.⁷²

As for how the MLB's Personal Conduct Policy operates, an example assists. Trevor Bauer, a pitcher for the Los Angeles Dodgers, was suspended for two seasons in 2022 after being accused of multiple acts of sexual assault.⁷³ Lindsey Hill claimed that she first met up with Bauer on April 21, 2021, after meeting him on Instagram, and that he performed several sexual acts on her without consent.⁷⁴ A hospital intake form from the day after the incident indicated that Hill had suffered head and facial trauma, but a CT scan and an MRI were unable to confirm this diagnosis.⁷⁵ Bauer denied the incident was nonconsensual, but after an investigation in accordance with the MLB's domestic abuse policy, the league handed down a 324-game suspension that Bauer intends to appeal.⁷⁶ While there ended up being no criminal charges brought against Bauer by the Los Angeles County District Attorney's Office, and Hill's request for a permanent restraining order against Bauer was denied, the status of his suspension remains unchanged.⁷⁷

Despite various professional sports leagues' personal conduct policies, players continue to engage in violent acts, necessitating the creation of a law that would supplement the respective leagues' current policies and ultimately result in more of a deterrent to professional athletes. And that is where the Texas Heartbeat Act might provide some guidance.

IV. TEXAS HEARTBEAT ACT

Considering the amount of violent criminal conduct that professional athletes have engaged in—even with penalties built into their league contracts—it is clear that the current consequences are not effective in curbing this behavior. However, a provision in the 2021 Texas Heartbeat Act may offer a previously unprecedented way to deter violent criminal behavior by professional athletes.

72. *See id.* at 5–6.

73. Dani Mohr, Peter Socotch & Marc Lancaster, *Trevor Bauer Sexual Assault Allegations, Explained: Dodgers Pitcher Suspended 2 Years by MLB*, SPORTING NEWS (Apr. 29, 2022), <https://bit.ly/3MOB4Zi>.

74. *See id.*

75. *See id.*

76. *See Dodgers: ESPN Insider Believes Trevor Bauer's Suspension Likely to Be Reduced*, FANNATION (May 25, 2022, 11:00 AM EDT), <https://bit.ly/3yXGTxV>.

77. *See* Alden Gonzalez, *Everything We Know About Trevor Bauer's Grievance Hearing Against MLB*, ESPN (May 23, 2022), <https://es.pn/3MODaIE>.

The Heartbeat Act is a law designed to restrict abortions more tightly.⁷⁸ It provides a private citizen the right to sue any person who helps someone get an abortion after the detection of a fetal heartbeat,⁷⁹ which usually occurs around six weeks after gestation.⁸⁰ The Heartbeat Act states that a person who does not work for the Texas government can sue anyone who helps someone get an abortion in any way, whether this help is provided by a medical provider, an insurance company, or a family member who gave the person seeking an abortion a ride to the clinic.⁸¹ If a party succeeds in their lawsuit under the Act, they could be awarded \$10,000 for each abortion that the defendant performed, aided in, or abetted.⁸² This Act is designed to avoid judicial review by using private citizens to enforce abortion restrictions, rather than the state.⁸³ In addition,

78. At the time the Heartbeat Act was ratified, abortions were protected under federal law through the first trimester, after which the state could regulate, but not outlaw, the procedure. *See Roe v. Wade (1973)*, CORNELL L. SCH., <https://bit.ly/2YtMxDd> (last visited Aug. 15, 2022). The Heartbeat Act banned most abortions after the detection of a fetal heartbeat, which can occur as early as six weeks into pregnancy. *See Texas “Heartbeat” Abortion Law*, AM. COLL. PHYSICIANS, <https://bit.ly/3VNM911> (last visited Aug. 15, 2022). Idaho became the first state to pass a similar abortion ban that expanded the rights of the “preborn child[’s]” family to sue abortion providers. *See Kate Zernike, Idaho Is First State to Pass Abortion Ban Based on Texas’ Law*, N.Y. TIMES (Mar. 14, 2022), <https://nyti.ms/3DeKg5X>. Oklahoma followed in Texas’ footsteps in 2022 with a bill that contained broad civil enforcement provisions. *See Veronica Stracqualursi, Oklahoma GOP Governor Signs 6-Week Abortion Ban Modeled After Texas Law That Allows Civil Enforcement*, CNN POL. (May 7, 2022, 3:37 PM EDT), <https://cnn.it/3MQmkJx>. These new laws are part of a national debate that has only been enflamed with the June 2022 overruling of *Roe v. Wade*. This Article will be setting aside all of the political debate around the content of the Heartbeat Act and other laws like it. Instead, this Article will examine the structure of the Heartbeat Act and what it could mean for changing the landscape of professional athlete crime rates.

79. The pertinent enforcement provision of the Texas Heartbeat Act states:

Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who: (1) performs or induces an abortion in violation of this subchapter; (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this chapter . . .

TEX. HEALTH & SAFETY CODE § 171.208(a).

80. *See How Early Can You Hear Baby’s Heartbeat on Ultrasound and by Ear?*, HEALTHLINE, <https://bit.ly/2wN75L2> (last visited Nov. 17, 2022).

81. *See* TEX. HEALTH & SAFETY CODE § 171.208(a).

82. *See id.* § 171.208(b)(2) (“[S]tatutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced in violation of this subchapter . . .”).

83. *See* Elanor Klibanoff, *Supreme Court Again Declines to Intervene in Challenge to Texas Abortion Law*, TEX. TRIB. (Jan. 20, 2022, 3:00 PM CT), <https://bit.ly/3i5Av2c>.

the penalty falls on those performing abortions, not those receiving abortions.⁸⁴

The Heartbeat Act has survived every legal challenge it has faced to date. Most of the legal challenges to the law have dealt with the constitutionality of abortions, but others have focused on whether state officials are indirectly allowed to enforce the law.⁸⁵ Remaining challenges to the Heartbeat Act have also subsequently failed.⁸⁶

In a recent opinion piece, Alan Dershowitz discussed the Heartbeat Act's potential expansion into other areas of society.⁸⁷ Using the same logic of private enforcement to avoid violating the Constitution, Dershowitz proposed that more liberal states could claim that the ownership of private handguns should be deterred for the safety of everyone, and then pass legislation that allows private citizens to sue anyone who owns, attempts to buy, or sells or attempts to sell a handgun.⁸⁸ Subsequently, California created a law to do exactly what Dershowitz suggested.⁸⁹ This law is a near replica of, and follows the reasoning of, the Heartbeat Act, and if the Heartbeat Act's United States Supreme Court success is any indication, it might also be upheld. Thus, there is reason to believe that such a law targeting professional athletes' misconduct could be similarly effective.

V. NEW PROPOSED LAW REGARDING PROFESSIONAL ATHLETES

This Article proposes a new law that would allow fans to sue professional athletes for civil damages if the player is arrested for a violent

84. See Katie Keith & Timothy S. Jost, *Texas Finds a Way to Block Most Abortions, for Now*, COMMW. FUND (Sept. 8, 2021), <https://bit.ly/3Os4VYc>.

85. See *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 533 (2021) (allowing suit against licensing officials to continue but dismissing other defendants, such as state judges and officials, stating that "state-court judges are not proper defendants in this lawsuit because they are 'in no sense adverse' to the parties whose cases they decide").

86. See *Planned Parenthood of Greater Tex. Surgical Health Servs. v. City of Lubbock*, 542 F. Supp. 3d 465, 496 (N.D. Tex. 2021) (dismissing case for lack of jurisdiction); see also *United States v. Texas*, 566 F. Supp. 3d 605, 693 (W.D. Tex. 2021) (granting preliminary injunction that prevented courts from hearing Heartbeat Act cases, but not overruling the law).

87. See Alan M. Dershowitz, *How to Mess with Texas' Anti-Abortion Bounty? Apply It to Gun Sales*, THE HILL (Sept. 10, 2021, 3:16 PM ET), <https://bit.ly/3gqPzqc>.

88. See *id.*

89. Specifically, the California law allows private citizens to bring civil suits against anyone who imports, distributes, manufactures, or sells any assault style weapon, .50-caliber rifle, gun without a serial number, or any parts that could be used to build a banned firearm. If the plaintiff is successful in their suit, they are awarded at least \$10,000 per weapon, in addition to legal fees. See Shawn Hubler, *Newson Raises His Profile with Hardball Tactics, Starting with a Gun Bill*, N.Y. TIMES (July 22, 2022), <https://nyti.ms/3MRa7UR>.

crime, or if the player is accused—not arrested—and punished by their respective league for a violent crime while the player is under contract with a professional team or associated with a professional league in the United States.⁹⁰ When a professional athlete is arrested for a violent crime (or accused and then punished by their league), it harms the league's reputation, and this law would allow a fan to sue the player directly and receive monetary compensation.⁹¹ This right for a fan to sue a player follows directly from the civil lawsuit provisions of the Heartbeat Act.⁹² Under the Heartbeat Act, anyone who aids a person in seeking or performing an abortion outside of the tight constraints laid out in the Act can be sued by a member of the public for each abortion they aid and abet.⁹³ The same principle would apply to this new law: any player arrested for a violent crime, or accused and then punished by their league, would be liable to the fan. The fan would only have to prove that the player-defendant was arrested for a violent crime, or, in the event of an accusation and punishment by a league, that the league handed down a final punishment against the player.⁹⁴

A. *Who Is a “Fan” Under the Law?*

If a fan can sue a professional athlete under this proposed law, then an important threshold question is who is a “fan?” Any person who is not a player, employee, or owner in the same professional sports league or association as the player-defendant that possesses an interest in the sport

90. This law should be a state law and could be enacted in states that have at least one professional sports team or host professional sporting events. 26 states have at least one NBA, NFL, NHL, or MLB sports team. *See States Without Professional Sports Teams*, WORLDATLAS, <https://bit.ly/3MLXF8Z> (last visited Aug. 15, 2022).

91. While similar to *Le Mon v. National Football League*, a 2019 lawsuit brought by a New Orleans Saints fan in reaction to a perceived bad call, there is a key difference. In *Le Mon*, the plaintiffs alleged that the NFL and the game officials conspired to commit fraud during the 2019 NFC Championship game between the New Orleans Saints and the Los Angeles Rams. *See Le Mon v. Nat'l Football League*, 277 So. 3d 1166, 1167 (La. 2019). The plaintiffs claimed they had grounds to sue because they were season ticket holders in addition to being present at the game in question. *See id.* While the lower court allowed the case to proceed, the Louisiana Supreme Court ruled in favor of the NFL, explaining that the plaintiffs were not part of the class of people who could claim damages in the event the NFL engaged in a conspiracy. *See id.* at 1167–68. Ultimately, the plaintiffs were trying to litigate the game-time actions of the officials, something the court declined to permit. *See id.* at 1168 (citing *Mayer v. Belichick*, 605 F.3d 223, 237 (3d Cir. 2010)). Our new law is not attempting to regulate game-time actions or change anything about the function of the game; rather, it is a punitive action meant to prevent bad behavior from ever occurring.

92. *See* TEX. HEALTH & SAFETY CODE § 171.208.

93. *See id.* § 171.208(a).

94. As soon as a player is arrested for a violent crime, the fan can file their lawsuit under this law. The fan does not have to wait for any league punishment prior to suing unless the player is only accused and not arrested. In the event of the latter, the fan must wait for the league's punishment to be handed down and all appeals to have been exhausted.

that the player participates in is considered a fan and has standing to file suit. In order for a fan to have an “interest” in the sport, and thereby qualify to bring suit under this law, the fan must have either: (1) purchased a ticket to at least one game or match of that professional league in the season most recent to the player’s arrest; or (2) purchased the rights to view the particular sport either through a television season pass or through any other available media outlet during the season most recent to the player’s arrest. The fan would have to attach proof of one of these conditions as an exhibit to their complaint.⁹⁵ Finally, because there are many individuals who would qualify as a “fan,” only one plaintiff may file suit against an athlete under this law—any subsequent lawsuits would be precluded.

B. Types of Crimes Included

Not every crime would give a fan a cause of action under this new law. However, any violent crime that a player is arrested for, or suffered league penalties from, serves as sufficient grounds to bring a suit. Violent crimes include, but are not limited to, murder, manslaughter, forcible rape, robbery, aggravated assault, and domestic violence. Nonviolent drug or traffic offenses do not serve as grounds to bring suit under this law. But should a player commit a violent offense while driving, like Henry Ruggs, or in association with drugs, they are not exempt from the reach of this law.

C. Compensation Under the Law

If a plaintiff succeeds in a suit under this new law, what do they get? Just like the Heartbeat Act, the compensation for a successful suit will be monetary.⁹⁶ The new law will establish a minimum award of \$175,000⁹⁷ for each year of jail time a criminal conviction for the particular crime would have carried.⁹⁸ Thus, a crime that carries a single-year prison

95. States are not bound by Article III of the United States Constitution’s standing requirement. *See, e.g., Soto v. Great Am. LLC*, 165 N.E.3d 935, 941 (Ill. App. Ct. 2020) (noting that a plaintiff who lacks standing in federal court may have standing in state court). Therefore, any state that adopts this new proposed law should include these conditions for a fan suit.

96. *See* TEX. HEALTH & SAFETY CODE § 171.208(b)(2).

97. Given that professional athletes are generally very well-compensated, the damages amount in our law is much higher than the Heartbeat Act to help create the intended deterrence.

98. It is not uncommon for laws to have damages that act punitively and serve as a deterrent for future actions. For example, under the Clayton Act, civil damages act as treble damages. *See, e.g., 15 U.S.C. § 15(a)*. Thus, an antitrust violation entitles a plaintiff to three times their actual damages. *See id.* Treble damages are a form of punitive damages meant to dissuade someone from engaging in a particular action or behavior. In the case of antitrust, it is to dissuade people and businesses from engaging in unfair competition. *See Private Treble Damage Actions Under Federal Antitrust Law*, MAHLER L. FIRM LLC, <https://bit.ly/3DfyCI5> (last visited Aug 15, 2022). In the case of this new proposed law, the

sentence would result in a \$175,000 award for a successful plaintiff.⁹⁹ Below is a non-exhaustive chart that demonstrates this principle, using the state of Pennsylvania as an example.¹⁰⁰

Crime	Offense Gravity Score	First Offense Criminal Sentencing (years)	Equivalent Fine
Assault with Attempt to Murder	12	5	\$875,000
Aggravated Assault	6-12	5	\$875,000
Rape	12	5	\$875,000
Rape of a Minor	14	9	\$1,575,000
Abusive Sexual Contact	9	2	\$350,000
Stalking or Domestic Violence	6	1	\$175,000
Assault by Use of Assault Weapons	8	1.5	\$262,500
1st Degree Murder	15	life	\$2,000,000
2nd Degree Murder	15	life	\$2,000,000
Voluntary Manslaughter	11	4	\$700,000
Involuntary Manslaughter	6	1	\$175,000

For each new offense a player commits, they can be sued again. This suit could be filed by the same fan who brought a suit against the original transgression, or by another fan entirely. A player cannot be sued for the same offense twice, but if the player is arrested in the future for committing the same type of crime (or accused and punished by their league), the damages recoverable in the new suit would be doubled. Additionally, just as second offense damages are twice as much as first offense damages, third offense damages are twice as large as second offense damages. The damages would continue to be doubled for each new offense. The chart below demonstrates this.¹⁰¹

damages are used to dissuade professional athletes from engaging in future violent behavior.

99. In the event the league punishes a player when there is an accusation but no arrest, the resulting compensation for the fan would still track with the above chart based on the crime that forms the basis of the accusation. In Deshaun Watson's situation, for example, each individual accusation would constitute a separate violation for purposes of fan compensation, but would be consolidated into one fan lawsuit.

100. Values on this table are calculated based on the Pennsylvania Crimes Code Offenses in conjunction with the Pennsylvania Basic Sentencing Matrix to provide an example based on one state's sentencing scheme. *See* 204 PA. CODE § 303.15 (2021).

101. *See id.*

Crime	First Offense	Second Offense	Third Offense
Assault with Attempt to Murder	\$875,000.00	\$1,750,000.00	\$3,500,000.00
Aggravated Assault	\$875,000.00	\$1,750,000.00	\$3,500,000.00
Rape	\$875,000.00	\$1,750,000.00	\$3,500,000.00
Rape of a Minor	\$1,575,000.00	\$3,150,000.00	\$6,300,000.00
Abusive Sexual Contact	\$350,000.00	\$700,000.00	\$1,400,000.00
Stalking or Domestic Violence	\$175,000.00	\$350,000.00	\$700,000.00
Assault by Use of Assault Weapons	\$262,500.00	\$525,000.00	\$1,050,000.00
1st Degree Murder	\$2,000,000.00	\$4,000,000.00	\$8,000,000.00
2nd Degree Murder	\$2,000,000.00	\$4,000,000.00	\$8,000,000.00
Voluntary Manslaughter	\$700,000.00	\$1,400,000.00	\$2,800,000.00
Involuntary Manslaughter	\$175,000.00	\$350,000.00	\$700,000.00

The statute of limitations for suits under the new law will mirror the particular state statute of limitations for the crime that forms the basis of the suit. Therefore, any qualified fan will have an opportunity to file suit from the date the arrest becomes public knowledge—or, in the event of an accusation and no arrest, the date the league’s final punishment becomes public knowledge—until the time prescribed by the state’s criminal statute of limitations elapses. For example, in Pennsylvania, there is a five-year statute of limitations for aggravated assault.¹⁰² Therefore, the statute of limitations for a fan to file a lawsuit for an aggravated assault-based offense would be five years from the date the arrest or the league’s final punishment becomes public knowledge.

Finally, it must be noted that a lawsuit under this new law does not negate a victim’s right to sue. Regardless of whether a civil suit under the new law has already occurred or is currently pending, the victim still maintains the ability to press their own charges and file their own lawsuits. And even if the victim has filed a lawsuit or sought criminal charges, fans would still be able to sue under the new law.

VI. CONCLUSION

Violent crime by professional athletes is a well-documented problem in society. Leagues have taken steps to mitigate criminal and violent behavior in the form of personal conduct policies, but violent behavior nonetheless persists. Adding the additional deterrent of fan civil lawsuits in the event of arrests or accusations with subsequent league punishment would help prevent professional athletes from engaging in violent

102. See 42 PA. STAT. AND CONS. STAT. ANN. § 5552(b)(1) (West 2019).

behavior, while also bolstering the professional reputation of the leagues and sports themselves.