REPRESENTING DOMESTIC VIOLENCE SURVIVORS WITH PETS in Colorado

A Manual for Domestic Violence Attorneys & Advocates
Helping Survivors Obtain Protection Orders
In one survey, 71% of pet-owning survivors of domestic violence reported that their abuser threatened, injured or killed their pets.¹


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The Animal Welfare Institute wishes to thank and acknowledge Hogan Lovells US LLP—and in particular Sarah Cummings and Blair Warner—and Noel Franklin, JD, of Colorado, for their contributions to the drafting of this manual.
Many families in the United States have companion animals. The 2013-2014 National Pet Owners Survey reported that 68 percent of all American households have at least one pet. Unfortunately, pets can also become victims of domestic violence. Domestic abusers harm pets and service animals just as they physically harm their partners and children. Animal abuse can become part of the cycle of power and control, as abusers use pets to prevent their victims from leaving or seeking help. Because there are few resources for survivors with pets, these threats are often successful, keeping victims and their pets trapped in a cycle of abuse.

Despite numerous research studies and anecdotal accounts of the co-occurrence of domestic violence and animal abuse, survivors with pets still lack adequate services. Domestic violence intake interviews do not typically involve questions about the presence of pets, and according to the Sheltering Animals & Families Together (SAF-T) website, there are just around 100 pet-friendly domestic violence shelters out of over 2,500 shelters nationwide. However, there are about 1,300 other programs that provide some level of assistance to victims with companion animals. Also, domestic violence organizations often list resources for special-needs populations on their websites or in factsheets, such as resources for individuals with disabilities or who are homeless, or LGBT individuals, but the mention of pet-owning survivors is less common. It should not be surprising, then, that even though over half of the states have pet protection order laws, pets are still rarely included in petitions and final orders.

This manual is intended to serve as an educational tool for attorneys and advocates working with pet-owning domestic violence victims in Colorado. We hope that this step-by-step approach simplifies the inclusion of pets in protection orders, allowing victims to take control of their lives and escape abuse with their pets.

WHY SHOULD PETS BE INCLUDED IN PROTECTION ORDERS?

“One does not have to personally value companion animals to acknowledge that others may and that exploring those relationships can add much to our understanding and treatment of children and families. Recognition that animals play a significant role in the lives of many people needs further attention in social work.” Risley-Curtiss et al., Animal-Human Relationships in Public Child Welfare, Child Welfare [2010].

More than 1 out of every 3 women in the US have been physically abused, raped, and/or stalked by an intimate partner during their lifetimes. Black et al., 2010 Summary Report, The National Intimate Partner and Sexual Violence Survey.

More households in the US have a pet than have a child. American Humane Association, Facts about Animal Abuse & Domestic Violence.

The information provided in this manual should not be considered legal advice.

While recognizing that men are also victims of domestic abuse, we use the pronouns “she” and “her” because the vast majority of victims are women. See generally, Domestic Violence Facts, The Nat’l Coal. Against Domestic Violence, available at http://www.ncadv.org/files/DomesticViolenceFactSheet[National].pdf. Please note, however, that this manual is also meant to assist advocates serving pet-owning male victims of domestic violence.
There is growing recognition of the importance of considering the welfare of petitioners’ companion animals when issuing protection orders. As of November 2014, 27 states, the District of Columbia, and Puerto Rico had adopted some form of legislation explicitly allowing for the inclusion of pets in civil protection orders (so-called “Pet Protection Order” laws). A federal bill was recently introduced by Representatives Katherine Clark (D-Mass.) and Ileana Ros-Lehtinen (R-Fla.) that would enhance the protections afforded by state Pet Protection Order laws by including pets under federal laws pertaining to stalking, protection order violations, and restitution, among other provisions.

In general, there are two ways by which pets can be specifically included in protection orders, though they are not mutually exclusive. First, the law may include abuse or threatened abuse of an animal as an “underlying offense,” which, by itself, can form the factual basis for the issuance of a protection order. Second, a state’s law may include (as 27, plus the District of Columbia and Puerto Rico, have done) a “stay away and/or pet custody” statutory provision specifically authorizing the court to restrain the abuser from harming an animal as part of the petitioner’s requested relief. The Colorado legislative scheme includes both types of statutory provisions, each of which is described in greater detail below.

Underlying Offense Provisions
Again, in states with this type of statutory provision, animal abuse can qualify as an underlying offense that may warrant the issuance of the protection order. Including Colorado, there are at least seven states, plus the District of Columbia, that have these statutory provisions. For example, in Colorado, a court is authorized to issue a protection order to prevent, among other conduct, “domestic abuse,” C.R.S. § 13-14-104.5(1)(a)(ii), which is defined to include “any act, attempted act, or threatened act of violence against… an animal owned, possessed, leased, kept, or held by either of the parties or by a minor child of either of the parties, which threat, act, or attempted act is intended

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4For a comprehensive list of the state Pet Protection Order laws, visit the Animal Legal & Historical Center website at https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders.

5The term “domestic abuse” is generally defined to mean “any act, or threatened act of violence, stalking, harassment, or coercion that is committed by any person against another person to whom the actor is currently or was formerly related, or with whom the actor is living or has lived in the same domicile, or with whom the actor is involved or has been involved in an intimate relationship.” C.R.S. § 13-14-101(2).
to coerce, control, punish, intimidate, or exact revenge upon either of the parties or a minor child of either of the parties.” C.R.S. § 13-14-101(2)(b).

Stay Away and/or Pet Custody Provisions

In states with this type of statutory provision, courts are specifically authorized to order the respondent to stay away from the pet and/or allow the petitioner to gain care, custody, or control over the pet. The Colorado statutory scheme includes such a provision for the issuance of all types of civil protection orders. Specifically, for the protection of the petitioner, Colorado law authorizes a court to “restrain[] a party from molesting, injuring, killing, taking, transferring, encumbering, concealing, disposing of or threatening harm to an animal owned, possessed, leased, kept, or held by any other party or a minor child of any other party,” and to “[s]pecify arrangements for possession and care” of a party’s animal. C.R.S. §§ 13-14-103(1)(b) [V] and [VI] [emergency protection orders] and C.R.S. §§ 13-14-105(1)(g) and (1)(h) [all protection orders].

States Without Pet Protection Order Laws

Even if a state does not have a Pet Protection Order law, a petitioner should still include incidents of pet abuse or threatened abuse in her complaint or petition and request that the court include companion animals in the property or “other relief” section of the protection order to protect the pets.

To ensure that petitioners with pets can effectively utilize the protections afforded by existing laws, this manual outlines four steps that advocates should take when assisting a petitioner with pets:

1. Ask the petitioner whether she has a pet, service animal, therapy animal, or whether any animals live in the home.
2. Research your state’s protection order laws, including any individual law addressing Pet Protection Orders specifically.
3. Include animal abuse in the underlying offense portion of the petition and gather evidence to present at the hearing.
4. Determine what relief the petitioner is seeking regarding the pet and be sure to request that such relief is included in any temporary or final order.

**ADVOCATES: STEPS FOR INCLUDING PETS**

4Colorado courts are also authorized to issue protection orders to prevent emotional “abuse of the elderly or of an at-risk adult,” C.R.S. § 13-14-104.5[1](a)(III), which is defined to include repeated acts that “constitute threats or acts of violence against, or the taking, transferring, concealing, harming, or disposing of, an animal owned, possessed, leased, kept, or held” by the elderly or at-risk adult. C.R.S. § 13-14-101(2)(f).
ASK ABOUT PETS

The first and most important step is for attorneys and advocates to ask about the presence of pets during the initial conversation with the petitioner. The question should be broad enough to determine whether the petitioner owns a pet, a pet lives in her home or her abuser’s home, or whether she has a service or therapy animal.¹

Sample Questions

1. Do you have a pet?
2. Does an animal live in your home?
3. Do you have a service or therapy animal?
4. Has your abuser ever harmed your pet or threatened to harm your pet?
5. Where is your pet right now?
6. Is your pet safe?
7. Do you want to ask that the court grant you custody of your pet?
8. Do you want to ask that the court order your abuser to stay away from your pet?
9. Do you have anything that might help us prove that the abuser has threatened or hurt the animal, e.g., veterinary bills or records, photographs, or eyewitneses?

It is not uncommon for survivors with pets to not volunteer that they have a pet. Often they feel that there are no resources for their pets so it is pointless to raise it. Also, survivors are in crisis and may feel so rushed that they forget to mention pet concerns. It is important to realize that failing to ask about pets during intake can mean a lost opportunity for advocates and attorneys; being able to discuss how the abuser has treated the petitioner’s pets can be a valuable tool to illustrate the extent of the abuser’s controlling and violent behavior.

Knowing whether someone has a pet not only helps to get the pet out of the abusive situation, but it also allows for comprehensive safety planning. Because it has been reported that up to 48 percent of survivors do not leave their abusive situation for fear of leaving a pet behind, discussing pets as part of safety planning helps to reduce the likelihood that a survivor may decide not to leave the abusive home.²

Some states have adopted separate laws addressing harm to service animals. Depending on the jurisdiction, harming, injuring, or killing a service animal may constitute a separate crime.


Discuss Resources for Pets

Fewer than 100 of the approximately 2,500 domestic violence shelters allow pets.

Once it is determined that the petitioner has a pet, it is important to work with her to figure out her immediate needs and safety plan accordingly. If the pet is in danger at home, ask her if she has any friends or family who can take care of the pet. Or, if she has financial resources, work with her to find short-term boarding facilities or hotels that allow pets. If your client needs safe housing for her pet, visit the Resources section of this manual for specific options. Be sure to discuss the differences between on-site pet housing (where pets are allowed to stay with their owners at domestic violence shelters) and other programs that typically house pets off-site in foster homes, boarding facilities, veterinary clinics, or animal shelters.


⁵It is important for agencies to acknowledge that pets are part of the family and that families experiencing domestic violence will need safety plans for their pets.” Allie Phillips, Understanding the Link between Violence to Animals and People, Nat’l Dist. Attorneys Assoc. 12 [June 2014].
The term “protection order” is separately defined as an order that prohibits a restrained person from, among other things, harming or threatening to harm an animal. C.R.S. § 13-14-101(2.4)(a). However, to satisfy the definition of domestic abuse, the respondent must be someone: (1) who is or was formerly related to the petitioner; (2) who lives or has lived with the petitioner; or (3) with whom the petitioner has or had an intimate relationship. Id. The petitioner need not have had a sexual relationship with the respondent for a finding that an intimate relationship existed. Id.

Once the Complaint is filed, the court is then required to set a hearing at the earliest possible time, which may be ex parte, meaning that the respondent need not be notified of, or present at, the hearing. C.R.S. § 13-14-104.5(4). After considering all relevant evidence concerning the safety and protection of the petitioner, the presiding judge can issue a TPO if the judge finds there is sufficient cause that the petitioner is in imminent danger of further abuse or threats. C.R.S. §§ 13-14-104.5(7)(a) and (8). The judge must issue the order using the standardized TPO form, C.R.S. § 13-14-104.5(2), which includes stock language restraining the respondent from harming or threatening to harm an animal owned or kept by the petitioner. See Form JDF 398. The form TPO also includes a section where the judge can order such other relief against the respondent as the judge deems appropriate. Id.

At the time the judge issues the TPO, he/she must also issue a citation directing the respondent to appear before the court at a date no more than fourteen days after issuance of the TPO to show cause why the judge should not make the TPO permanent. C.R.S. §§ 13-14-104.5(8) and (10). Copies of the Complaint, TPO, and citation must then be served upon the respondent. C.R.S. § 13-14-104.5(10).

The instructions and forms for obtaining each type of protection order can be found at www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=24.
Permanent Protection Orders

At the date of the hearing set forth in the citation, the parties are then able to present additional evidence regarding the appropriateness of the protection order. C.R.S. § 13-14-106(1)(a). After reviewing the entire evidentiary record, if the judge finds by a preponderance of the evidence that the respondent “has committed acts constituting grounds for issuance of a civil protection order and that unless restrained will continue to commit such acts or acts designed to intimidate or retaliate” against the petitioner, the judge is required to either make the TPO permanent or enter a separate PPO. This means that the restraining order has no expiration date and lasts forever unless it is subsequently modified or dismissed by the court. C.R.S. § 13-14-108. Importantly, unlike with a TPO, the judge need not find imminent danger to the petitioner in order to issue a PPO. If the respondent fails to attend the hearing and was properly served with the TPO and citation, it is not necessary to re-serve the PPO on the respondent. Violation of the PPO constitutes a criminal offense, and subjects the respondent to punishment as provided by law.

Similar to the form TPO, the form PPO includes stock language generally restraining the respondent from harming or threatening to harm an animal owned or held by the petitioner, and also includes a blank section authorizing the judge to order any other necessary relief. See Form JDF 399.

Emergency Protection Orders

When the courts are not opened for regularly scheduled business hours, a local law enforcement officer is authorized to seek an EPO on behalf of the petitioner when the officer has reasonable grounds to believe that the petitioner “is in immediate and present danger of domestic abuse, assault, stalking, sexual assault or abuse.” C.R.S. § 13-14-103(1)(e). Based on the officer’s representations, a judge made available during non-business hours is then authorized to issue either a written or verbal ex parte EPO, which lasts until the close of the next judicial business day, unless otherwise continued by the court. C.R.S §§ 13-14-103(1)(e) and (f). As noted above, the Colorado statutory scheme allows for the inclusion in EPOs of specific restraining provisions related to the respondent’s interaction with animals. C.R.S §§ 13-14-103(1)(b)(V) & (VI). In fact, the model EPO form includes optional relief, which allows the judge to order that the respondent “[s]hall not molest, injure, kill, take, transfer, encumber, conceal, dispose of, or threaten harm to an animal owned, possessed, leased, kept or held by any other party.” See Form JDF 394.

GATHERING EVIDENCE FOR THE HEARING

Fact-Gathering Questions to Ask Your Client

Before completing the Complaint in support of the requested protection order, you should ask these questions of your client to gather information about the extent of animal abuse:

- Did the respondent threaten to harm your pet?
- Did the respondent actually physically harm your pet?
- How did the animal abuse affect you?

The answers to these questions will help you gather evidence for the hearing and present the court with a comprehensive picture of the scope of the violence.
If the respondent has threatened to harm your client’s pet, ask your client what the respondent specifically said. The statement should be admissible as an admission by a party opponent. Figure out where and when the statement occurred, and whether it is possible that someone else heard the threat [i.e., perhaps a neighbor heard the threat, or maybe the threat was made in the presence of a friend or family member]. Encourage your client to recount any physical gestures that the respondent made when he threatened the pet.

If the respondent physically hurt the pet, make sure to get as much detail as possible. It is important that you ask whether the animal was taken to the vet as a result. If so, think about whether you need to subpoena the veterinary records and/or the veterinarian who saw the animal. Also, inquire as to whether any photographs were taken of the animal. If the abuse is recent, take photographs to document the abuse.

Tell your client to think back to the context of each specific incident. What had she and the respondent been doing leading up to the event? What does she think motivated him to hurt the animal? What did she do after the animal was hurt? Did this cause her to do or not do something? [E.g., because her pet was physically harmed, your client chose not to leave the home as she had previously intended to do.]

Remember, it is extremely important that the court understands how the animal abuse fits into the cycle of abuse. Because not everyone recognizes the value of companion animals, being able to show that the respondent used the pet as a pawn to keep your client in the abusive situation will legitimize the significance of the animal abuse.

Evidentiary Issues

There are several common pieces of evidence that you may want to introduce:

- Statements made by the respondent
- Veterinary records
- Photographs of injuries
- Evidence of prior animal abuse
- Prior convictions for animal abuse
- Testimony of a police officer
- Testimony of a veterinarian

Check Colorado’s evidence rules to develop a response to possible objections to their admissibility.

|| DETERMINING RELIEF

Before attending the hearing, you need to determine what type of relief your client wishes to seek. It is a good idea to fill out the model Complaint together, outlining the specific relief your client is seeking.

Questions to Ask about Desired Relief

- Do you want the respondent to be ordered to refrain from harming your pet?
- Do you want the respondent to stay away from your pet?
- Do you want to ask for custody of the pet?

Including Pet Relief in the Complaint

As discussed above, both the model TPO and PPO include stock language restraining the respondent from harming or threatening the petitioner’s pet. Specifically, these orders include the following restraint:
The Court Orders that you, the Restrained Person, shall not contact, harass, stalk, injure, intimidate, threaten, touch, sexually assault, abuse, or molest the Protected Persons named in this action, or harm, take, transfer, conceal, or dispose of or threaten harm to an animal owned, possessed, leased, kept or held by any Protected party...

See Forms JDF 398 and 399 [emphasis added]. Even so, the petitioner should specify in the form Complaint any specific relief she might want concerning her pet, even if such relief is duplicative of the stock language above. Here, she can mark a box on the model Complaint that requests the judge to order the respondent to “refrain from molesting, injuring, taking, transferring, encumbering, concealing, or disposing of or threatening harm to an animal owned, possessed, leased, kept or held by me or my minor child[ren], or other protected persons.” See Form JDF 402, ¶ 7.f. The form Complaint also allows the petitioner to specify any arrangements for possession and care of the pet. Id. Finally, the petitioner can check the “Other” box on the Complaint, where she can then describe any additional relief concerning her pet. Id., ¶ 7.i.

FORMS & RESOURCES

|| GENERAL

For a state-by-state, zip-code-searchable listing of safe haven programs, visit the Animal Welfare Institute’s Safe Havens Mapping Project at https://awionline.org/safe-havens. Such programs may include domestic violence shelters that provide housing for companion animals, facilities that house only animals, and programs that provide assistance with finding safe housing.

Additional guidance for advocates assisting pet-owning victims is available at the following resources:

|| COLORADO

You can electronically access the Verified Complaint/Motion for Civil Protection Order, Temporary Civil Protection Order, Permanent Civil Protection Order, and Emergency Civil Protection Order at http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=24. Make sure to confirm with your local court that the form you are using is up-to-date.

Additional guidance for advocates assisting pet-owning victims with civil protection orders and available shelters is available at the following resources: