REPRESENTING DOMESTIC VIOLENCE SURVIVORS WITH PETS in Florida

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

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 victims 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, victims 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, LGBT individuals or homeless victims – but the mention of pet-owning victims is less common. Accordingly, it should not be surprising 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 Florida. Even though Florida law does not expressly allow for the inclusion of pets in protection orders, other provisions in the law can be used to achieve this end. 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.

“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].
OVERVIEW OF THE LEGAL LANDSCAPE

There is growing recognition of the importance of considering the welfare of petitioners’ companion animals when issuing protection orders. As of April 2015, 28 states, the District of Columbia, and Puerto Rico have laws explicitly allowing for the inclusion of pets in civil protection orders [so-called “pet protection order” laws]. The Pet and Women Safety Act (PAWS Act), H.R. 1258, was reintroduced in the 114th Congress by Representatives Katherine Clark (D-Mass.) and Ileana Ros-Lehtinen (R-Fla.). Among other things, this legislation would enhance the protections afforded by state pet protection order laws by including pets under federal statutes pertaining to stalking, protection order violations, and restitution.

In general, there are two ways by which pets can be specifically included in protection orders, though they are not mutually exclusive. First, state 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, the law may include a “stay away and/or pet custody” statutory provision specifically authorizing the court, as part of the victim’s requested relief, to restrain the abuser from harming an animal. Florida law includes the former provision but not the latter. Each concept 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 Florida, there are at least seven states, plus the District of Columbia, that include actual or threatened animal abuse as an underlying offense. In Florida, a court is authorized to issue a protection order to protect any person “who is either a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence.” Fla. Stat. § 741.30(1)(a). “In determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court shall consider ... whether the respondent has intentionally injured or killed a family pet.” Fla. Stat. § 741.30(6)(b)(4).

Stay Away and/or Pet Custody Provisions
In states with this type of statutory provision, courts are specifically authorized to order the defendant to stay away from the pet and/or allow the plaintiff to gain care, custody or control over the pet.

States Without Pet Protection Order Laws
Even if a state, such as Florida, does not have a pet protection order law, an abuse victim should still include incidents of pet abuse or threatened abuse in her complaint or petition and request that the court include pets in the property or “other relief” section of the protection order to protect the pets.

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4 For 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.

5 As part of its restraining order statute for “individuals in danger,” Florida does have an underlying offense provision based on the intentional injury or killing of a family pet, as described above. Fla. Stat. § 741.30(6)(b)[4]. However, specific standing rules apply. See FN 11 and accompanying text.

6 “Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member or any family or household member by another family or household member. Fla. Stat. § 741.28(2).

7 For example: Maine authorizes a court to issue an order concerning “the care, custody or control of any animal,” and to enjoin the defendant from “injuring or threatening to injure” any such animal. 19-A M.R.S. § 4006(5-A); and 19-A M.R.S § 4007(1)(E-1) and (N).
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.

**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.8

**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 eyewitnesses?

It is not uncommon for victims 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, victims are in crisis, and may feel so rushed that they forget to mention pet concerns. Therefore, failing to ask about pets during intake can lead to a lost opportunity for advocates and attorneys. As such, being able to discuss how the abuser has threatened the victim’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 the pet get out of the abusive situation, but it also allows for comprehensive safety planning. Indeed, it has been reported that as many as 48 percent of victims do not leave their abusive situation for fear of leaving a pet behind.9 Accordingly, discussing pets as part of safety planning helps reduce the likelihood that a victim may decide not to leave the abusive home.

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8Some 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. Florida makes it a criminal offense for any person to recklessly or intentionally obstruct, intimidate, jeopardize the safety of, or injure or cause the death of a service dog. *Fla. Stat.* § 4.3.081(1) - (4). The penalties range from misdemeanors of the first or second degree to third degree felonies. Id. Additionally, a person convicted of such crime “must make full restitution for all damages that arise out of or are related to the offense, including incidental and consequential damages incurred by the service animal’s user.” Id. at [4][a].

Discuss Resources for Pets

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

Once it is determined that the victim has a pet, it is important to work with her to figure out her immediate needs and safety plan. 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.

“It 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].

|| FLORIDA DOMESTIC ABUSE PROTECTION ORDER LAWS

Obtaining a domestic abuse restraining order in Florida involves a two-step process. Fla. Stat. § 741.30(5)(a). The first step is the filing of a petition in court for the issuance of a temporary restraining order (“TRO”), which is intended to temporarily protect the petitioner from immediate danger of physical harm. Id. The second step involves a court hearing at a later date, usually no more than 15 days, where both the petitioner and respondent can present evidence as to whether the court should issue a more permanent order – an injunction – against the respondent. Id. at (5)(c). The relevant law regarding each of these steps is described in greater detail below.

Temporary Restraining Orders
The process for obtaining a TRO begins by filing a petition with the court in which the person seeking the TRO (the “petitioner”) includes facts supporting her claim of domestic abuse. Fla. Stat. §§ 741.30(3)(a) and (3)(b). In order to satisfy the definition of “domestic abuse,” the petitioner must prove two requirements.

Florida also has separate legislation for obtaining “dating violence” and “sexual violence” restraining orders. Fla. Stat. § 784.046. However, this manual only addresses the law and procedures related to domestic abuse restraining orders.

In Florida, a Temporary Restraining Order (“TRO”) is commonly referred to as a temporary “injunction for protection.” Fla. Stat. § 741.30. For purposes of this manual, the term TRO will be used instead.
First, the petitioner must show that the respondent engaged in the abusive conduct against her in the context of one of the following relationships:

- An adult family member or adult household member against another adult family member or adult household member;\(^{12}\)
- An adult against his or her adult former spouse;
- An adult against an adult with whom the individual has experienced dating violence;\(^{13}\) or
- An adult against an adult with whom the person has a child in common.

*Fla. Stat. §§ 741.28(3) and 784.046(d).*

Here, the form TRO petition includes a section on which the petitioner can check a box next to the appropriate relationship.\(^{14}\)

Second, the petitioner must show that the abusive conduct involved:

- Assault or battery;
- False imprisonment;
- Kidnapping;
- Sexual assault or battery;
- Stalking; or
- Any criminal offense resulting in physical injury or death of a family or household member.

*Fla. Stat. § 741.28(2).*

Alternatively, even if the petitioner is not the victim of the acts described above, she may nonetheless file a petition for a TRO if she “has reasonable cause to believe she is in imminent danger of becoming the victim of any act of domestic violence.” *Fla. Stat. § 741.30(1)(a).* “In determining whether a petitioner has reasonable cause to believe she is in imminent danger of becoming a victim of domestic violence, the court shall consider … :”

- The history between the petitioner and respondent, including threats and domestic violence;
- Whether the respondent has attempted to harm the petitioner;
- Any kidnapping or harm to petitioner’s children by respondent;
- Whether respondent has a criminal history of violence;
- Whether the respondent has destroyed personal property of petitioner; or
- Whether the respondent has intentionally injured or killed a family pet [emphasis added].

*Id. at (6)(b).*\(^{15}\)

On this part of the form TRO petition, the petitioner must include specific facts of the abusive conduct, including who did what to whom, where, and when. “If it appears to the court that an immediate and present danger of domestic violence exists,” the court may grant the TRO, “pending a full hearing.” *Id. at (5)(a).* Therefore, discuss with the petitioner whether she wants to include prior animal abuse or threats of abuse in the petition. Importantly, prior acts of animal cruelty could be relevant in showing how the respondent’s actions placed the petitioner in fear of immediate physical injury to herself or her pet, and may therefore demonstrate how the respondent’s conduct fits into the cycle of violence.

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\(^{12}\)“Family or household member” means “spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether or not they have been married.” *Fla. Stat. § 741.28(3).* “With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.” *Id.*

\(^{13}\)“Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.” *Fla. Stat. § 784.046(d).* Determining whether dating violence has occurred requires consideration of the duration of the relationship, the nature of sexual expectation between the parties, and the frequency and type of interaction between the parties. *Id.*


\(^{15}\)This list is not exhaustive. See *Fla. Stat. § 741.30(6)(b)(1-10)* for a complete list of factors.
The court is not required to give the respondent notice prior to making its decision on the petition. Fla. Stat. § 741.30(5). Once issued, the TRO remains in effect until the court conducts an injunction hearing on the petition, which typically must occur within 15 days after the court grants the TRO. Id. at [5][c].

Injunctions

Before the court can conduct a hearing on the injunction, the petitioner must serve the respondent with a copy or a summary of her petition, along with a notice of the hearing date. Fla. Stat. § 741.30(4). Because the TRO itself will include the hearing date, it is advisable that the petitioner serve the respondent with a copy of the TRO as well. At the hearing, both parties can then present evidence on the petitioner’s claim of domestic abuse. In determining whether to issue the injunction, the court must determine whether “the petitioner is either the victim of domestic violence as defined [above] or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.” Fla. Stat. § 741.30(6)(a). If granted, “the terms of an injunction … shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction.” Fla. Stat. § 741.30(6)(c). If the respondent violates the injunction (or the TRO), he faces a mandatory batterers’ intervention program [if the court finds willful violation] in addition to paying economic damages for any injury caused to the victim. Fla. Stat. § 741.31(6). “Damages include costs and attorneys’ fees for enforcement of the injunction.” Id.

Even if the court does not find reasonable grounds to issue the TRO based on the initial petition, the petitioner may still request that the court conduct a hearing on the issuance of an injunction against the respondent. (This is an option only if the grounds for denial are based solely on no appearance of an immediate and present danger of domestic violence) Fla. Stat. § 741.30(5)(b).

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 violence.

If the defendant has threatened to harm your client’s pet, ask your client what the defendant specifically said. The statement should be allowed in as evidence 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 defendant made when he threatened the pet.

If the defendant 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 defendant 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., as a result of physically harming the animal, 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 defendant 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 Florida’s evidence rules to develop a response to possible objections to their admissibility.

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**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 form 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**

After you have researched the relevant laws and ascertained the necessary facts, you will need to know how and where to include pets in the petition. To supply this information, you should ask questions about who owns the pet and who generally takes care of the pet. Specifically, ask the petitioner whether she would like to ask for custody of the pet. If the petitioner is concerned that the abuser may come after her pet, she may also want to ask that the court order the respondent to stay away from the pet in addition to herself. Next, you will need to determine where on the petition pet abuse and relief should be placed.

Because Florida’s form TRO petition does not have specific sections for pets, the petitioner should include any pet-related abuses on the “Case History” section of the petition, attaching additional forms if necessary. “If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant [the TRO] … and may grant such relief as the court deems proper.” *Fla. Stat. § 741.30 (5)(a).* Thus, including specific occurrences of violence against pets may help the petitioner to convince the court that such relief is necessary.
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 http://awionline.org/safe-havens. Such programs may include domestic violence shelters that provide housing for companion animals and also 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:
• National Resource Center on Domestic Violence
  “Why Pets Mean So Much: The Human-Animal Bond in the Context of Intimate Partner Violence”
  http://vawnet.org/nrcdv-publications/?type=TA%20Guidance
• WomansLaw.org
  http://www.womenslaw.org/index.php
• Ahimsa House
  National Directory of Safe Havens
  http://ahimsahouse.org/wordpress/directory/

FLORIDA

You can access the Petition for Temporary Restraining Order and/or Petition and Motion for Injunction Hearing at http://www.flcourts.org/core/fileparse.php/293/urlt/980a.pdf. 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:
• WomansLaw.org
  Florida Domestic Violence Protection Orders
  http://www.womenslaw.org/laws_state_type.php?id=64&state_code=FL [basic information]
  http://www.womenslaw.org/laws_state_type.php?id=496&state_code=FL [preparing your case]
• The Florida Coalition Against Domestic Violence
  http://www.fcadv.org [main page]
  http://www.fcadv.org/centers [shelter programs]
• Florida Council Against Sexual Violence
  http://www.fcasv.org [main page]
  http://www.fcasv.org/sites/default/files/SBVictim%20Rights%206-11Final251adds.pdf [sexual battery victims assistance]
• Florida Department of Children and Families: Domestic Violence
  http://www.myflfamilies.com/service-programs/domestic-violence [main page]