REPRESENTING DOMESTIC VIOLENCE SURVIVORS WITH PETS in New Mexico

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

 footing text:

Any families in the United States have companion animals. The 2015-2016 National Pet Owners Survey reported that 65 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 companion animals 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 over 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 laws that allow for the inclusion of pets on protection order and/or include animal abuse in the definition of domestic violence, pets are still rarely included in petitions and final protection orders.

This manual is intended to serve as an educational tool for attorneys and advocates working with pet-owning domestic violence victims in New Mexico. Even though New Mexico law does not expressly allow for the inclusion of pets on protection orders, other provisions can be used to achieve this end. We hope that this step-by-step approach simplifies the inclusion of pets in restraining 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].

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.
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 July 2016, 30 states, the District of Columbia, and Puerto Rico have 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 introduced by Representatives Katherine Clark (D-Mass.) and Ileana Ros-Lehtinen (R-Fla.) 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 30, plus D.C. 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. While New Mexico does not have either provision as part of its domestic abuse legislation, each type 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. There are at least seven other states, plus the District of Columbia, that include animal abuse or threatened abuse as an underlying offense. Below is an example from the District of Columbia law.

“If, after hearing, the judicial officer finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner or against petitioner’s animal or an animal in petitioner’s household, the judicial officer may issue a protection order...” D.C. Code § 16-1005(c) [2014].

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. Below is an example from the Maryland law.

“The final protective order may include any or all of the following relief: ...award temporary possession of any pet of the person eligible for relief or the respondent.” Md. Code Ann., Fam. Law § 4-506(d) [13] [2014].

States Without Pet Protection Order Laws

Even if a state such as New Mexico does not have a Pet Protection Order statute, a petitioner 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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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.
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 restraining order laws, including any individual law addressing Pet Protection Orders specifically.
3. If applicable, 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 companion animals during the initial conversation with the petitioner. The question should be broad enough to determine whether she owns a pet, a pet lives in her home or her abuser’s home, or whether she has a service or therapy animal.⁵

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? [service animal? therapy animal?]
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, eyewitnesses, police reports?

It is not uncommon for domestic violence 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 threatened the victim’s pets can be a valuable tool for illustrating the extent of the abuser’s controlling and violent behavior.

Knowing whether someone has a pet not only helps to get the animal out of the abusive situation, but it also allows for comprehensive safety planning. It has been reported that up to 48 percent of victims do not leave their abusive situation for fear of leaving a pet behind.⁶ Discussing pets as part of safety planning thus helps reduce the likelihood that a victim may decide not to leave the abusive home.

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⁵ 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. For example, New Mexico makes it a criminal offense for any person to harass or injure a police dog, a police horse, or fire dog. N.M. Stat. Ann. § 30-18-13

⁶ Cases of animal cruelty in NM domestic violence should be referred to criminal prosecutors. NMSA § 30-18-1 (intentionally or maliciously torturing, mutilating, injuring, or poisoning an animal; or maliciously killing) is the primary felony animal cruelty provision in New Mexico. Violation of this statute is a felony punishable by prison for 18 months. Reptiles are not considered “animals” for purposes of this statute.

Discuss Resources for Pets

Although only 106 of the approximately 2,500 domestic violence shelters in the US allow pets (and in New Mexico only 28 of 229 domestic violence shelters allow pets), there is other assistance.

Once it is determined that the petitioner has a companion animal, it is important to work with her to figure out her immediate needs and to 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.

“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).

NEW MEXICO DOMESTIC ABUSE PERSONAL PROTECTION ORDER LAWS

To secure a domestic abuse restraining order, called an “Order of Protection” in New Mexico, one should petition the court under the Family Violence Protection Act in order to prevent a household member from committing more acts of domestic abuse. After the initial filing of petition there is an ex parte hearing. The relevant law is described in further detail below.

Family Violence Protection Act

Under the “Family Violence Protection Act” (Chapter 40, Article 13 NMSA 1978), “domestic abuse” means any incident by a household member against another household member resulting in:

- physical harm;
- severe emotional distress;
- bodily injury or assault;
- a threat causing imminent fear of bodily injury by any household member;
- criminal trespass;
- criminal damage to property;
- repeatedly driving by a residence or work place;
- telephone harassment;
- stalking;
- harassment; or
- harm or threatened harm to children.

An Order of Protection (OFP) means a court order granted for the protection of victims of domestic abuse. It can order an abuser to stay away from the victim and her children, stop all contact with the victim, move out of the house, and/or obey orders concerning property. It can also prevent the abuser from owning weapons.

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8 SAF-T Shelters [Updated June 2016]: http://alliephillips.com/saf-tprogram/saf-t-shelters/
9 Including only organizations that provide emergency shelter. Only around 20 NM shelters assist with housing services. https://www.domesticshelters.org/nm/new-mexico-domestic-violence-help-statistics#.V2hVjLsrLcs
10 This includes anyone who thinks she is at risk of domestic violence, even if she is not a legal citizen. “The New Mexico Family Violence Protection Act protects anyone who is a victim of domestic abuse, regardless of immigration status.” http://www.nmcourts.gov/cgi/prose_lib/docs/SRL_Domestic_Violence.pdf
or ammunition. The Order can also award temporary custody, visitation, and child support.\textsuperscript{7}

Sections 40-13-3:1[A][4] and [5] of the FVPA provide that a victim in a domestic abuse case shall not be required to pay for “the filing, issuance or service of a petition for an order of protection” or for “the filing, issuance or service of an order of protection.”

Privacy Rights and Requests
Petitioner can obtain an Order of Protection without providing notice to the respondent if she believes that irreparable harm would result if she told the respondent about the petition before coming to court. The OFP petition form includes a box petitioner can check to request that the court not reveal her address to the respondent either before or after the hearing.\textsuperscript{8}

Also in the initial 4-961 “Petition for order of protection from domestic abuse,” the petitioner may check boxes to indicate what specific requests she is asking of the court in this section of the form (see right).

Petitioner may specifically request that the respondent have no contact with her pet/s or animals by utilizing the last bullet option. Petitioner should check the “other” relief section on the petition form and attach a document regarding any requested relief regarding her pet/s and/or therapy animal/s.

In order to support her claim of domestic abuse, the petitioner must prove two requirements. First, the petitioner must show that she has a qualifying domestic relationship with respondent, i.e., that the respondent is her: current or former spouse; someone with whom she has a child; another family member; someone with whom she has an ongoing relationship; or someone who

I REQUEST THAT THE COURT ORDER
check all that you want

A. [ ] that the respondent not contact me, not abuse me and that the respondent stay away from my residence and [place of employment] and [school].

B. [ ] 1. that the respondent shall immediately leave [my] [our] residence at

   [ ] 2. that the respondent provide me with temporary suitable alternative housing.

C. [ ] that the respondent shall not sell, remove, pawn, hide, destroy or damage any property owned by me or the two of us jointly.

D. [ ] that law enforcement officers assist me in retrieving my clothing and personal belongings from the residence at

E. [ ] that I be given temporary custody of the [child] [children] listed in this petition.

F. that until the court hearing:
   [ ] respondent shall have the following contact with the [child] [children]:

   [ ] respondent shall have no contact with the [child] [children].

G. [ ] that the respondent shall pay: support for the [child] [children] support for [me].

H. [ ] that the respondent shall pay me for the damage and medical bills resulting from the abuse.

I. [ ] other relief that is necessary to resolve this domestic abuse problem (list or describe what relief is necessary):
has stalked or sexually assaulted her. The OFP petition form includes a section on which the petitioner can check a box next to the appropriate relationship.

Second, the petitioner must include on the OFP petition specific facts regarding the abusive conduct. The court will issue a Temporary Order of Protection (also called an ex parte hearing because only one side is talking to the judge at this point) if there is probable cause that the alleged abuse happened. Note that the petitioner need not have hard evidence such as a police report, medical report, report of an administrative agency, or physical signs of abuse or violence in order to secure an OFP. Petitioner should be sure to include detailed information regarding prior abusive conduct including any prior acts of animal abuse. Prior acts of animal abuse are relevant to demonstrate how the respondent’s actions placed the petitioner in fear of violence as stated above as well as how the respondent’s conduct fits into the cycle of abuse. [Even though New Mexico has no statute explicitly allowing for animal abuse to be admitted as a “prior bad act,” the argument should still be made when the types of abuse are being described.] Animal abuse should be found relevant under NM Stat § 40-13-2(D)(2) as, among other things, (b) “severe emotional distress”; (d) “a threat causing imminent fear of bodily injury by any household member”; and (f) “criminal damage to property.”

It should take only a day to find out if a Temporary Order of Protection is issued, and petitioners are recommended to include as much information as they can on their petition to assist the decision. If the judge or domestic violence commissioner finds probable cause, then s/he signs the Temporary Order and sets a hearing date on the Petition within ten working days. The order is valid until a hearing is set, which is usually within ten days.

If probable cause is not found and the Temporary Order is not granted, a hearing should be set within seventy-two hours at which both parties appear.

After a hearing has occurred and witness testimony has been provided, a judge can decide whether to make a “Permanent” Order of Protection, which lasts for one year but can be extended upon request.

Ex Parte Emergency Orders of Protection

The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse following an incident of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known. NMSA 40-13-3.2(A).

Upon a probable cause finding that domestic abuse has occurred, the court may order emergency relief in the form of preventing the restrained party from committing or threatening to commit more abuse, preventing the restrained party from contacting the protected party, and granting temporary custody of minor children to the protected party. Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection. NMSA 40-13-3.2(C) and (G).

An ex parte OFP is effective when a judge signs it but expires after 72 hours or at the end of the next judicial day, whichever time is latest. NMSA 40-13-3.2(E)
Fact-Gathering Questions to Ask Your Client

Before completing the petition in support of the requested restraining 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 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 pet. Also, inquire as to whether any photographs were taken of the pet. 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 pet? What did she do after the pet was hurt? Did this cause her to do or not do something? [For example, as a result of physically harming the pet, your client chose not to leave the home as she had previously intended to do.]

Remember, it is extremely important that the court understand 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 New Mexico’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 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 New Mexico’s form OFP petition does not have specific sections for pets, the petitioner should include any requested relief concerning her pet on the “Other” section of the petition.
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”

• WomansLaw.org
  http://www.womenslaw.org/index.php

NEW MEXICO

Domestic Violence Shelters in New Mexico that allow animals or provide referrals to such shelters:


You can access full information on personal protection orders including applicable forms at http://www.nmcourts.gov/forms.aspx. 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
  New Mexico Domestic Violence Protection Orders
  http://www.womenslaw.org/laws_state_type.php?id=10017&state_code=NM&open_id=all

• The New Mexico Coalition Against Domestic Violence
  http://www.nmcadv.org/ [Main page]

• New Mexico Domestic Violence Benchbook

• Community Against Violence
  http://www.taoscav.org/

• Domestic Violence Resource Center
  http://www.resourcecenter.info
  http://www.dvrcnm.org/