REPRESENTING DOMESTIC VIOLENCE SURVIVORS WITH PETS in Pennsylvania

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

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 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 well 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 Pennsylvania. We hope that this step-by-step approach simplifies the inclusion of pets in these 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.
There is growing recognition of the importance of considering the welfare of Petitioners’ companion animals when issuing protection orders. As of December 2016, 32 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). The federal Pet and Women Safety (PAWS) Act 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, Pet Protection Order legislation typically includes two types of statutory provisions that recognize the importance of considering the welfare of the victim's pets when issuing protection orders. First, such legislation 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 legislation will usually include a “stay away and/or pet custody” statutory provision, which specifically authorizes the court to restrain the abuser from harming an animal as part of the victim’s requested relief. Each type of provision 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.

Although Pennsylvania does not have this type of statutory provision, there are at least nine states, plus the District of Columbia, that do include animal abuse or threatened abuse as an underlying offense. Here is an example, from the District of Columbia law: “If, after the 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 the Petitioner's animal or an animal in the Petitioner's household, the judicial officer may issue a protection order...” DC Code §16-1005(c) [2014].

4 A comprehensive list of state Pet Protection Order laws as of December 2016 can be found at the Animal Legal & Historical Center website at https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders.

5 http://awionline.org/content/pet-and-women-safety-paws-act.
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 applicant to gain care, custody, or control over the pet. For example, the Wisconsin statutory scheme includes such provisions for the issuance of both temporary restraining orders and injunctions. Specifically, Wisconsin authorizes a court to order the Respondent “to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, to allow the Petitioner or a family member or household member of the Petitioner acting on his or her behalf to retrieve a household pet.” Wis. Stat. §§ 813.12(3)(a) for temporary restraining orders and 813.12(4)(a) for injunctions.

States Without Pet Protection Order Laws
Even if a state does not have a Pet Protection Order law, such as Pennsylvania, 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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STEPS FOR INCLUDING PETS IN 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 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.⁶

⁶ 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, Wisconsin makes it a criminal offense for any person to recklessly or intentionally injure or cause the death of a service dog. Wis. Stat. §§ 951.097(3) and (4) and 951.18(2s).
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 mean a lost opportunity for advocates and attorneys. Discussing 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. Accordingly, discussing pets as part of safety planning helps reduce the likelihood that a victim may decide not to leave the abusive home.

Discuss Resources for Pets

Although just over 100 of the approximately 2,500 domestic violence shelters allow pets, there is other assistance.

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.

Obtaining a protection from abuse order in Pennsylvania involves a two-step process. The first step is the filing of a petition in court for the issuance of a temporary protection from abuse order ("TPO"), which is intended to temporarily protect the individual seeking the protective order (the "Petitioner") from immediate and present danger of abuse. 23 Pa.C.S.A. § 6107(b). The second step involves a court hearing at a later date, usually no more than 10 business days, where both the Petitioner and the individual against whom the Petitioner is seeking an order (the "Respondent") can present evidence as to whether the court should issue a final protection order ("FPO") against the respondent. 23 Pa.C.S.A. §§ 6107-6108. The relevant law regarding each of these steps is described in greater detail below.

Temporary Restraining Orders

Any person who is 18 years old or older and any emancipated minor can file for a protective order, and if the Petitioner is under 18 years old, an adult guardian can file on the Petitioner’s behalf. 23 Pa.C.S.A. § 6106(a). If relief is sought for a minor child, a separate petition must be filed for that child, describing incidents involving abuse of that child.

The process for obtaining a TPO begins by filing a petition with the court in which the Petitioner includes facts supporting her claim of domestic abuse. This should be filed in the county where:

- the Petitioner resides;
- the Respondent resides; or
- where an abusive incident took place. 9

In order to satisfy the definition of “abuse,” the Petitioner must show that the Respondent engaged in the abusive conduct against her in the context of one of the following relationships:

- family or household members - this includes spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity;
- current or former sexual or intimate partners; or
- persons who share biological parenthood. 23 Pa.C.S.A. § 6102.

Here, the form petition includes a section on which the Petitioner can check a box next to the appropriate relationship. 10

Second, the Petitioner must show that the abusive conduct involved one or more of the following acts:

- Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviant sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.
- Placing another in reasonable fear of imminent serious bodily injury.
- False imprisonment.
- Physically or sexually abusing minor children.
- Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. Id. 11

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8 Pennsylvania also has separate legislation for obtaining “victims of sexual violence or intimidation” restraining orders. Such orders do not necessarily center around a familial or intimate relationship between the victim and the abuser. 42 Pa.C.S.A §62A. This manual only addresses the law and procedures related to domestic abuse restraining orders.

9 If the Petitioner fled her county to escape any further abuse, she may have the right to file in a different county or State. 23 Pa.C.S.A § 6103(b).

10 The form petition and other documents related to Pennsylvania protective orders (Philadelphia county examples) can be found at https://www.courts.phila.gov/pdf/forms/domestic-relations/Petition-for-Protection-From-Abuse-w-instructions.pdf.

11 23 Pa.C.S.A. § 6102 defines a minor as “an individual that is not an adult” and an adult as “an individual that is 18 years of age or older.”
On this part of the form petition, the Petitioner must include specific facts of the most recent incident of abuse, as well as prior incidents of abusive conduct, including who did what to whom, where, and when. It is recommended to include facts such as any serious danger of immediate harm, experience in the past leading to imminent physical harm, stalking, and any minors or family members who are subject to the abuse. In determining whether to issue the TPO, the court considers the potential danger posed to the Petitioner and the pattern of abusive conduct of the Respondent, and on the form petition, the Petitioner must check a box indicating whether “there is an immediate and present danger of further abuse from Defendant.” It is recommended to include any evidence or documentation of any incidents, to the extent possible.

A judge will review the petition once filed, and if the judge believes immediate protection is required, he/she will issue the TPO.

While Pennsylvania does not have an underlying offense provision concerning pets, the Petitioner should consider 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. This also may factor into the court’s decision about firearms. (See next section.)

Once issued, the TPO remains in effect until the court conducts the hearing on the petition, which typically must occur within 10 business days of filing the petition. 23 Pa.C.S.A. § 6107[a].

Final Protection Orders

Before the court can conduct a hearing, the Respondent must receive notice of the hearing date. 23 Pa.C.S.A. § 6107. Along with the notice, the court will advise the Respondent of his right to be represented by a lawyer, as well as of the fact that any firearms he owns may be seized, either temporarily or permanently. The court will also notify Respondent of the possibility that any protection order granted may be used to consider a final outcome in any further protection order or related proceedings. 23 Pa. C.S.A. § 6107. At the hearing, both parties can present evidence on the Petitioner’s claim of domestic abuse. In determining whether to issue an FPO against the respondent, the court will use the “preponderance of evidence” standard to determine if the Petitioner successfully proved that the abuse took place, factoring in the potential danger to the Petitioner. Id. Pending the hearing, in addition to ordering the Respondent to refrain from abusing the Petitioner, the court may choose to require the Respondent to temporarily relinquish any firearms, other weapons, or ammunition for the duration of the TPO if the petition demonstrates any of a variety of factors, one of which is if the abuse “includes... [the] killing or threatening to kill pets” 23 Pa. C.S.A. § 6107[b][3][ii][E][iii]. Under Pennsylvania law, the court has broad discretion to grant any protective order, or approve any consent agreement to bring about a cessation of abuse of the Petitioner or minor children. 23 Pa. C.S.A. § 6108. Therefore, Petitioners should be sure to request that the court include directives to protect any household pets, and especially mention any threats or past acts against the pets. If granted, the injunction can last up to three years. 23 Pa. C.S.A. § 6108[d]. However, it may be extended through the filing of a subsequent FPO and a further hearing process. 23 Pa. C.S.A. § 6108[e][i]. There is no
limit to the number of extensions that may be granted. 23 Pa. C.S.A. § 6108(e)(3). If the Respondent violates the FPO, he may be arrested, and the police, sheriff, or Petitioner may file charges of indirect criminal contempt against the Respondent for violation of the FPO. If the Respondent is found to have violated the FPO, he faces either a fine of not less than $300 and not more than $1,000 and imprisonment of up to six months, a fine of not less than $300 and not more than $1,000 and probation of up to six months; or an order for other relief, as may be provided for by the court. 23 Pa. C.S.A. § 6114(b)(1).

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**GATHERING EVIDENCE FOR THE HEARING**

Fact-Gathering Questions to Ask Your Client

Before completing the application in support of the requested protective 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 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 the Respondent 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 for the court to understand how the animal abuse fits into the cycle of violence. Because not everyone recognizes the value of a pet, 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

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12 The Plaintiff is also entitled to bring a private criminal complaint against them, if the violation was noneconomic in nature. 23 PA C.S.A. § 6113.1(a).
• Prior convictions for animal abuse
• Testimony of a police officer
• Testimony of a veterinarian

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

| DETERMINING RELIEF |
Before filing the petition or 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 application 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 Application
After you have ascertained the necessary facts, you will need to know how and where to include pets in the petition. The forms have a section where the Petitioner can request additional relief not already listed on the form. There, the Petitioner can request that the court order the Respondent to refrain from, among other things, hiding or harming a household pet, and allow the Petitioner access to retrieve a household pet. Describe any additional requested relief concerning the pet.

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 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/

| PENNSYLVANIA |
You can access the Petition for Temporary Restraining Order and/or Petition and Motion for Injunction Hearing at each county’s webpage or by contacting your local county clerk. Sample forms can be found at https://www.courts.phila.gov/pdf/forms/domestic-relations/Petition-for-Protection-From-Abuse-w-instructions.pdf. Make sure to confirm with your local court that the form you are using is the correct form and that it 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 Pennsylvania Protection from Abuse Orders
  http://www.womenslaw.org/laws_state_type.php?id=10027&state_code=PA
- Pennsylvania Coalition Against Domestic Violence
  Telephone: [717] 545-6000
  http://www.pcadv.org/ [main page]
  http://www.pcadv.org/Learn-More/Domestic-Violence-Topics/Protection-From-Abuse/
  [restraining order process]
  http://www.pcadv.org/Find-Help/Victim-Resources-PA/ [victim resources]
- Pennsylvania Bar Association – Protection from Abuse
  https://www.pabar.org/clips/protectionfromabuse.pdf [protection order process]
- Pennsylvania Law Help – Protection from Abuse
  http://www.palawhelp.org/resource/protection-from-abuse-7?ref=ArtGK [restraining order process and assistance]