REPRESENTING DOMESTIC VIOLENCE SURVIVORS WITH PETS
in Texas

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

The Animal Welfare Institute wishes to thank and acknowledge Cooley, LLP, and its team for their contributions to the drafting of this manual.

Representing Domestic Violence Survivors with Pets in Texas


Table of Contents

3 Why Should Pets be Included in Protection Orders?
4 Overview of the Legal Landscape
5 Steps for Including Pets in Protection Orders
10 Forms & Resources

¹
Why Should Pets Be Included in Protection Orders?

Many 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 Texas. 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].

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.
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 August 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). 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 to 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 Texas does not have this type of statutory provision, there are at least seven 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 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...” DC Code § 16-1005(c) [2014].

A comprehensive list of state Pet Protection Order laws as of September 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.

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. The Texas statutory scheme includes such provisions for the issuance of both temporary and final protection orders. Specifically, Texas authorizes a court, in issuing a protective order, to prohibit “any party” from “removing a pet…” and to prohibit “the person found to have committed family violence” from harming, threatening or interfering with the care, custody or control of a pet, companion animal, or assistance animal . . . “ Tex. Family Code §§ 85.021 and 85.022.

States Without Pet Protection Order Laws

Even if a state 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.

---

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 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. Texas law refers to service and therapy animals as “assistance animals” and provides that it is a crime to “assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal.” Tex. Human Resources Code § 121.003(j) and Tex. Penal Code § 42.091. In addition, Texas also imposes criminal sanctions for cruelty to all animals. Tex. Penal Code §§ 42.092 and 42.09.
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 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].

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.

Texas Family Violence Protective Order Laws

Texas law provides that any adult member of a family or household may seek relief in the form of a protective order by filing an application with the court describing her claim of family violence. Tex. Fam. Code § 82.002. As described in greater detail below, Texas’s protective order laws allow the abused victim to obtain both

8 For the definition of certain terms, see Tex. Fam. Code §§ 71.0021, 71.003, 71.005 and 71.006. With regard to family violence under Tex. Fam. Code § 71.004(3), an application for a protective order to protect the applicant may be filed by a member of the dating relationship, regardless of whether the member is an adult or a child. Tex. Fam. Code § 82.002(b).
short-term relief, in the form of a temporary ex parte protective order ("TPO"), and long-term relief through a final protective order.

Against Whom Can the Victim Obtain a Protective Order?

Victims of family violence can obtain protection against “family or household members,” which the law defines as a relationship between:

- current or former spouses;
- a blood relative, such as a parent, sibling or child;
- current or former domestic partners;
- biological parents or foster parents of the victim’s child or children;
- individuals presently or formerly living together;
- former spouses or dating partners of the applicant’s spouse or dating partner.9

Victims can also obtain relief against someone with whom they had a “dating relationship,” defined as a “relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.” Tex. Fam. Code § 71.0021(b).

Completing and Filing the Complaint

The party seeking relief (called the “applicant”) may file her complaint in the district court in the county in which either she resides or her alleged abuser (called the “respondent”) resides or the county where the family violence occurred. Tex. Fam. Code § 82.003. The applicant must complete the form application and either an accompanying affidavit or declaration10 by describing who committed the family violence, when it occurred, who was abused, and by describing the family violence [together, the “Application”].11 Note that many counties in Texas have developed their own forms, which they prefer or even require.12

By statute, “family violence” is defined to include [among other things]:

- an act that is intended to result in physical harm, bodily injury, assault, or sexual assault;
- a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; and
- physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm.13

By statute, “dating violence” is defined as an act, other than a defensive measure to protect oneself, that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.14

---

9 Tex. Fam. Code §§ 71.0021, 71.003, 71.005 and 71.006
10 If the applicant completes and submits with the application a notarized affidavit detailing the family violence, then the applicant’s date of birth and address will be kept confidential. If the applicant completes and submits with the application a declaration, then the applicant’s date of birth and address become the public information.
13 Tex. Fam. Code § 71.0004.
Although Texas does not have an underlying offense provision concerning pets, the applicant should consider whether she wants to include prior animal abuse or threats of abuse in her Application. Importantly, prior acts of animal cruelty could be relevant in showing how the respondent’s actions placed the applicant in fear of physical injury to herself or her pet, and may therefore demonstrate how the respondent’s conduct fits into the cycle of violence. The Application allows the applicant to request that the court “[p]rohibit the Respondent from harming, threatening, or interfering with the care, custody, or control of the [identified] pet, companion animal or assistance animal.”

If the applicant needs protection immediately at the time she files her Application and cannot wait for a subsequent hearing involving the respondent, she can ask the court to issue a TPO by checking the appropriate box on the Application. The court will then determine the applicant’s request for a TPO as expeditiously as possible in an ex parte proceeding. Tex. Family Code § 83.001. Upon a finding that there is a clear and present danger of family violence, the court may immediately issue a temporary ex parte order. Tex. Family Code § 83.001. Among other interim relief, the court “may direct a respondent to do or refrain from doing specified acts” and may exclude a respondent from the residence. Tex. Family Code § 83.006. If entered, the TPO remains in effect for the time specified in the TPO, not to exceed 20 days, but it may be extended for additional 20-day periods under certain circumstances. Id. However, the respondent can move to vacate the TPO prior to the hearing, which motion the court must hear and determine as soon as possible. Tex. Family Code § 83.004.

The Hearing for a Final Protective Order

Within 14 days after the applicant files her Application (unless the applicant requests a later date), the court must conduct a hearing on her request for a final protective order, during which both the applicant and respondent can present evidence regarding the applicant’s requested relief. Upon a finding that family violence has occurred and is likely to occur in the future, the court may grant a final protective order applying to the person found to have committed the violence. Tex. Family Code § 85.001. In addition to ordering the respondent to refrain from abusing the applicant, the court may prohibit a respondent from “removing a pet, companion animal, or assistance animal . . . from the possession or actual or constructive care of a person named in the order” and from “harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal . . . that is possessed by or is in the actual or constructive care of a person protected by an order or by a member of the family or household of a person protected by an order.” Tex. Family Code § 85.022. The final protective order can be in effect up to two years, or longer if the court finds that the respondent caused serious bodily injury to the applicant or a member of the applicant’s family or household or if the respondent was the subject of two or more previous protective orders protecting the applicant and both such protective orders contained findings that the respondent had committed family violence and was likely to commit family violence in the future. Tex. Family Code § 85.025. Violation of a temporary or final protective order constitutes a criminal offense, which subjects the respondent to punishment as provided by law. Tex. Penal Code § 5.071.

Section 6.k. of the Application.

A court may render an order applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order. Tex. Fam. Code § 85.001(a)(2). Rather than proceeding with the hearing, the parties can voluntarily request that the court enter a consent agreement, which will include certain relief, as agreed to by the parties. Tex. Fam. Code § 85.005.
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
- Prior convictions for animal abuse
- Testimony of a police officer
- Testimony of a veterinarian

Check evidence rules in Texas to develop a response to possible objections to their admissibility.
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 ascertained the necessary facts, you will need to know how and where to include pets in the Application. As discussed above, the orders to prevent family violence section of the Application includes a box that the applicant can check concerning relief related to any animals. Specifically, the applicant can ask that the court prohibit the respondent from “harming, threatening, or interfering with the care, custody, or control of” a pet, companion or assistance animal. See Application, Section 6 “Orders to Prevent Family Violence.” The petitioner can also check the “Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence” box on the complaint, where she can then describe any additional requested relief concerning her pet. [id]

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
• WomansLaw.org http://www.womenslaw.org/index.php
• Ahimsa House National Directory of Safe Havens http://ahimsahouse.org/wordpress/directory/

|| TEXAS


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

• Texas Advocacy Project has information on filing for Pro Se Protective Orders in English, Spanish and Vietnamese: 1-800-374-HOPE (4673) http://www.texasadvocacyproject.org/documents.php
• Texas Council on Family Violence http://www.tcfv.org
• Women’s Shelters in Texas http://www.womenshelters.org/sta/texas
• ADVA, which provides legal advocacy for abuse victim in Texas, including a link to helpful resources: http://avda-tx.org/client-resources/1931883