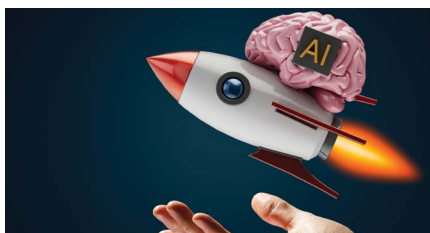


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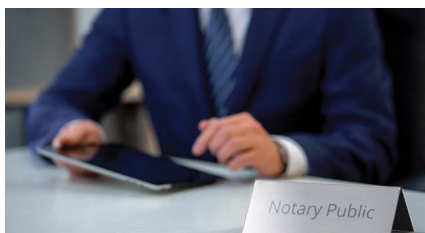
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# What Lawyers Can Do When Pet Abuse and Domestic Violence Intersect

By Amy Molloy Bogardus

**A**nimal abuse is so tightly linked to domestic violence that it is unlikely to find abuse of a partner or child in a house with pets where abuse of the pet is not also present.<sup>1,2</sup> Often, this connection is simply called “the link.”<sup>3</sup> When someone hurts an animal, the question is, who will be next?<sup>4</sup> Harming the family pet can be a way for the partner to instill fear, to foster coercion and to compel secrecy from victims, and when a partner gives away or kills the pet, victims are taught that they can just as easily be killed or seriously injured as well.<sup>5,6</sup> Animal abuse is often part of an intergenerational cycle of violence in which children living in a household with domestic violence and animal abuse absorb unhealthy attitudes and family norms that they pass down to future family members.<sup>7</sup>

Through the collaborative efforts of many individuals and various volunteer and professional organizations, New York State continues to enact legislation to end the link between domestic violence and animal abuse. What follows are ways attorneys can best serve the protective needs of clients and their pets.

The status of animals under New York law was explained in a June 14, 2022 ruling by the Court of Appeals:

[a]lthough nonhuman animals are not “persons” to whom the writ of habeas corpus applies, the law already recognizes that they are not the equivalent of “things” or “objects.” Unquestionably, nonhuman animals are sentient beings that, albeit without liberty rights, have been afforded many special protections by the New York Legislature – long considered a leader in animal welfare.<sup>8</sup>

The level of protective rights available to your clients and their animals is based upon the legal classification New York has assigned to that animal. The terms companion animal and pet are used interchangeably in this article as they are referred to in Agriculture and Markets Law Section 350(5). A pet or companion animal is defined as any dog or cat and any other domesticated animal<sup>9</sup> normally maintained in or near the household of the owner or person who cares for such other domesticated animal.<sup>10</sup> Be aware that farm animals<sup>11</sup> are usually not considered companion animals,<sup>12</sup> and special protections are afforded to service animals.<sup>13</sup>

Enhancing your knowledge is the first step in the process of creating a legal strategy customized to your client’s needs and goals for their pet. In my view, your journey begins by developing an empathetic understanding of the bond between your clients and their pets and the ways partners exploit that bond as a power and control tool.<sup>14</sup> Being genuinely empathetic requires us to learn about others – their history, their reality, and their world.<sup>15</sup> A victim’s inability to bring his or her pet to a residential domestic shelter may intensify the risks and negative consequences associated with domestic violence, all of

which can affect your client’s decision making.<sup>16</sup> If they fear their beloved pet being harmed or killed if they leave, their actual safety options are significantly narrowed. Victims are often isolated from family, friends, and then their pets, which places victims at higher risk for returning to their abusive and violent homes.<sup>17</sup>

## Identifying the Presence of an Animal Within Your Client’s Environment

A simple and easy-to-use tool is your client intake form. By adding a few more questions to your existing standard form, you can quickly identify the existence of animals and gain valuable insight and information into your client’s situation and the actual challenges they are navigating.<sup>18</sup> Consider making “Do you care for or reside with an animal?” one of your intake questions. Using this open-ended language increases the likelihood that your client will self-identify the existence of a pet in their life, including one that may be owned by their partner. The client may be relieved that you both recognize and respect their concerns early on as you build a trusting lawyer-client relationship. Other factual areas<sup>19</sup> you may wish to explore are:

- current and past veterinary care of pets;
- negative and positive treatment of animals in the household;
- responses to animal maltreatment;
- the impact of the pet’s situation upon a victim’s decision to leave or stay with a partner;
- exposure of children to animal maltreatment; and
- changes in their partner’s use of violence.

Also consider adding some of these suggested questions:<sup>20</sup>

- How many animals have you lived with in the past five years?
- Does your pet receive periodic veterinary care? If yes, who is your veterinarian?
- Has your partner helped care for these pets?
- Has the welfare of your pet impacted your decisions or actions?
- Have you noticed any change in your partner’s willingness to harm your pet?
- Has anyone else ever seen or heard your pet being harmed?
- How did you feel after your pet was harmed?

The information that you collect during this intake process will impact your legal strategy. Your client’s answers may expose the efforts of the abusive partner to diminish your client’s ability to care for their pet. It may also



expose the abusive partner's attempts to manipulate or gaslight your client by reframing the abusive partner's animal mistreatment as corrective discipline.<sup>21,22</sup> As discussed later, veterinary records and the observations of a veterinarian may be a crucial supportive element regarding your client's legal burden of proof. Amplify the effectiveness of your representation by proactively developing relationships with local victim advocate providers and veterinarians and by identifying local resources that can support your client and their animal, including local pet-friendly domestic violence shelter options and respite or foster care support from animal assistance organizations.<sup>23</sup> If your region does not yet have a network of these supportive services,<sup>24</sup> start a community-wide conversation to create one; there are many entities that provide guidance and funding opportunities to help start those services locally.<sup>25</sup>

## Some Legal Tools That May Assist Domestic Violence Victims and Their Pets

While there are still more gains to be achieved, New York State has enacted several useful pieces of legislation to assist victims in ending the environment of abuse created when domestic violence and animal abuse intersect. Below are a few legal tools to consider.

### 1. Orders of protection can afford specified protection to pets

Back in July 2006, New York amended the Family Court Act and Criminal Procedure Law to give judges the ability to add a condition to an order of protection that requires a respondent "to refrain from intentionally injuring or killing, without justification any companion

**"In New York, a domestic violence victim has a conditional right to have their service animal accompany them to a residential domestic violence shelter so long as the accompaniment does not create an undue burden."**

Lastly, if applicable, be prepared to discuss with your client how to develop a safety plan for their pet. A "safety plan" is a tool frequently employed by domestic violence victims or other crime victims that provides a checklist of things to do when there is danger. If your clients could benefit from a safety plan for their pet, they may also need a safety plan for themselves. Be sure to have your client work with a domestic violence program worker who is trained in safety plan development. In this context, the safety plan for pets<sup>26</sup> could include:

- creating a grab-and-go bag with pet food and supplies, any medications, and copies of pet registration documentation and veterinary records;
- identifying a reliable person who can be an emergency pet caretaker;
- having food, medication, exercise or other pet care-related instructions ready;
- alerting dog walkers or animal day care providers;
- changing veterinary providers; and
- confirming veterinary office and emergency pet care designee have copies of any legal documents discussing their pet.

animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household." <sup>27,28,29</sup> In September 2008, the Legislature enacted a much needed follow-up amendment to the 2006 statute authorizing orders of protection to protect pets.<sup>30,31</sup> Except for family offenses, custody and parent-initiated PINS cases, the petitioner is a government entity, a prosecuting or presentment agency, not the alleged victim of family violence who requires protection, and there was no language addressing orders of protection in matrimonial cases.<sup>32</sup> By substituting the phrase "person protected by the order" for "petitioner" and adding similar provisions to protect pets to Sections 240 and 252 of the Domestic Relations Law, the 2008 amendments broadened the scope of protection intended for pets.<sup>33,34</sup> The goal of these amendments is to help break the cycle of violence and neutralize or eliminate tactics that partners used to control and force victims to stay in dangerous situations.<sup>35</sup> New York courts have not engaged in any significant legal discussion of the inclusion of pets in orders of protection.<sup>36</sup>

As described below, evidence of animal abuse may corroborate your client's domestic violence victimization. For example, veterinary records can document a pet's fractured ribs that occurred when the pet tried to defend your client from their partner's attack.<sup>37</sup> Presenting evidence of pet abuse can increase the likelihood that the

court will grant your client's request to include their pet in any order of protection. Even if no physical or documentary evidence exists, the court may find testimony from your client of their observations or the observations from a non-party witness sufficiently compelling. If there are injuries (physical or emotional) to the animal caused by the abusive party, consider calling friends, family, animal care providers (dog walkers, cat sitters, doggie day-care), veterinarians or others who have witnessed changes in the pet's health or demeanor.

## **2. Codification of best interest analysis for possession determination of a pet within domestic relations matters**

Effective Oct. 25, 2021, when awarding possession of the parties' companion animal in all domestic relations matters, New York courts shall consider the best interest of the companion animal and any other factors which the court shall expressly find to be just and proper.<sup>38</sup> This is not a novel concept; some courts determining exclusive pet possessions have used a "best interests of all concerned" standard, even in non-marital situations.<sup>39</sup> When the parties are not governed by domestic relations law, a custodial claim for the parties' pet may be brought as a replevin action since family court proceedings do not address the distribution of property, and a small claims court can only issue monetary relief, not the return of property.

There are several areas to explore as you build your case to establish that your client should be awarded exclusive possession of their pet. First, identify and quantify your client's past, present and future emotional and financial efforts for the care of their pet, as well as your client's ability to commit time, energy and finances for their pet's needs.<sup>40</sup> Through your direct case and cross-examination, document your client's superior intimate knowledge of their pet's physical and emotional needs, your client's ability to spend significant time caring for their pet, and the ingrained presence their pet has in your client's life, which can be demonstrated by the role your client's friends and family have taken in the care of their pet.<sup>41</sup> As part of your legal strategy, determine the existence of documentation<sup>42</sup> and witness testimony that can collaborate your client's claim for exclusive possession of the pet. Veterinary records and photos or videos of your client interacting with their pet may also be helpful in proving your client's positive role in the welfare of their pet and satisfying a best interest legal analysis. If necessary, consider offering testimony from an animal behaviorist or other expert who can explain how the animal's best interest will be better met by your client.

While mediation may be an excellent tool for many families struggling to resolve animal disputes,<sup>43</sup> this option is generally unavailable in divorce matters involving domestic violence due to safety concerns and dynamics of power and control.<sup>44</sup>

## **3. Cohabitation access for your client's animal at a residential domestic violence shelter**

In New York, a domestic violence victim has a conditional right to have their service animal<sup>45</sup> accompany them to a residential domestic violence shelter so long as the accompaniment does not create an undue burden.<sup>46</sup> However, there is no formalized right for a pet. Instead, the regulations for general operational standards issued by the Department of Social Services state "[r]esidential programs for victims of domestic violence may have policies that permit residents to have emotional support/comfort animals and/or pets accompany residents."<sup>47</sup> Therefore, each shelter can determine its own policies regarding pet accompaniment. Many residential shelters often have established relationships with animal shelters and private residential networks that provide temporary housing arrangements for a victim's pet.<sup>48</sup> By having preexisting knowledge and established relationships with your local animal shelters and veterinarians, you are in a better position to assist and advocate for your client.

## **4. Protection of pets during the execution of an eviction warrant**

Housing instability is a challenge that many domestic violence victims face, which has an increased negative impact upon pet owners.<sup>49,50</sup> In August 2018, New York State amended the eviction warrant process by adding subsection 2(b) to Section 749 of the Real Property Actions and Proceedings Law. This amendment directs officers serving an eviction warrant to check the property for the presence of a companion animal and to coordinate the safe removal of such animals with the evictee.<sup>51</sup> New York State ensures that the safety and wellbeing-of a pet is not compromised when a tenant is evicted.<sup>52</sup> Although safe housing can give survivors pathways to freedom, there are many barriers that prevent survivors from maintaining or obtaining safe and affordable housing.<sup>53</sup>

## **5. Impact of a conviction pursuant to Sections 353 or 353-a of Agriculture and Markets Law**

A district attorney's office may pursue animal abuse charges against your client's partner, such as overdriving, torturing and injuring animals or failure to provide proper sustenance and aggravated cruelty to animals. These charges may be prosecuted whether domestic violence charges are pursued in criminal or civil court. Explain to your client the different ways an animal abuse conviction may impact your client and their abusive partner. Your client's petition in family court may be corroborated and strengthened by a successful prosecution of the misdemeanor offense of overdriving, torturing and injuring animals, and failure to provide proper sustenance (Agri. & Mkts. Law Section 353) or the felony offense of aggravated cruelty to animals (Agri. & Mkts.

Law Section 353-a).<sup>54</sup> In addition, the sentencing court may impose a term of imprisonment<sup>55</sup> and bar the convicted animal abuser, those who were criminally culpable in the abuse and those who could or should have acted to prevent the abuse, from owning or having custody of any other animals, other than farm animals, for a time period deemed reasonable by the court.<sup>56,57</sup> Be aware that fact patterns can exist when the barring of pet ownership directly affects your client, i.e., your client continues to reside with the convicted partner, or the prosecution argues that your client should have prevented the abuse. Therefore, you should be prepared to advocate for your client if either of those situations may arise.

A local district attorney's office can prove animal abuse charges through the admission of the pet's medical records; testimony from a veterinarian describing the pet's injuries or results from a necropsy (examination of a dead animal); testimony from animal control officers of their observations and any notification calls received by law enforcement; testimony from neighbors<sup>58</sup> documenting any observations or sounds relating to the abuse; and photographic evidence. Aggravated cruelty to animals can also be proven through cumulative evidence establishing that a defendant's unjustifiable, intentional conduct caused an animal to suffer immensely for an extended time prior to dying.<sup>59</sup>

## 6. The changing role of veterinarians

Effective Feb. 27, 2022, New York State empowered veterinarians by making them<sup>60</sup> mandated reporters of suspected animal cruelty if they reasonably and in good faith suspect that a companion animal's injury, illness or condition is the result of animal cruelty.<sup>61</sup> In addition, New York State permits veterinarians to disclose a pet's medical record to officials responding to and investigating complaints of animal abuse.<sup>62</sup> This new role makes veterinarians valuable allies in commencing a criminal investigation and ending the environment of abuse surrounding your client and their pet. In many cases the person bringing in an animal to the veterinarian may not volunteer information about abuse – for instance, where the person is afraid to report it because they fear for their safety or the animals' safety.<sup>63</sup>

## Conclusion

Through the collaborative efforts of many individuals and various volunteer and professional organizations, New York State continues to enact legislation to end the link between domestic violence and animal abuse. When you incorporate these tools into your legal strategy, you increase the likelihood of achieving your client's goals, providing holistic representation and creating helpful caselaw.



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30. Senate Introducer's Memo in Support, Bill Jacket, 2008 N.Y. Laws ch. 532 at 6, New York State Archives, et al., <https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/23363> (last accessed Sept. 26, 2022).
31. *Id.*
32. *Id.*
33. N.Y. Family Court Act §§ 352.3, 446, 551, 759 and 1056 as amended by 2008 N.Y. Laws ch. 532, §§ 1–5.
34. New York Domestic Relations Law §§ 240, 252 as amended by 2008 N.Y. Laws ch. 532, §§ 6–7.
35. Letter from Assemblywoman Linda B. Rosenthal, July 21, 2006, Bill Jacket, 2006 N.Y. Laws ch. 253 at 3, New York State Archives, et al., <https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/24728> (last accessed Sept. 13, 2022).
36. *See, e.g., Jisselle F. v Jose T.*, 162 A.D.3d 572, 572–73 (1st Dep't 2018).
37. Phillips, *supra* note 4, at 51.
38. N.Y. Dom. Rel. Law § 236(5)(d)(15)(16), as amended by 2021 N.Y. Laws ch. 509, § 1.
39. *See, e.g., Mundo v. Weatherson*, 74 Misc. 3d 1215(A) (Civ. Ct., N.Y. Co. 2022); *Finn v. Anderson* 64 Misc. 3d 273 (City Ct., Jamestown 2019); *Mitchell v. Snider*, 51 Misc. 3d 1229(A) (Civ. Ct., N.Y. Co. 2016); *Ramseur v. Askins*, 44 Misc. 3d 1209(A) (Civ. Ct., Bronx Co. 2014); *Raymond v. Lachmann*, 264 A.D.2d 340 (1st Dep't 1999).
40. *See L.B. v. C.C.B.*, 2022 WL 7855133 at \*2–6, 2022 N.Y. Slip Op. 22320 (Sup. Ct., Kings Co. 2022); *C.B.-C. v. W.C.*, 2022 WL 5336150 at \*9–10, 2022 N.Y. Slip Op. 22315 (Sup. Ct., Nassau Co. 2022); *Mundo*, 74 Misc. 3d at \*3–4.
41. *See Mundo*, 74 Misc. 3d at \*3–4.
42. *Shaloo v. Zarrour*, 70 Misc. 3d 1218(A) (Sup. Ct., Queens Co. 2021); *see also Finn*, 64 Misc. 3d at 274–79.
43. *See generally*, Veronica Dagher, *A Dog's Bark Is Better Than Litigation's Bite*, Wall St. J., April 30, 2012, <https://www.wsj.com/articles/SB10001424052702303299604577325653177858284> (last accessed Oct. 7, 2022).
44. *What Is Mediation?*, Womenslaw.org, <https://www.womenslaw.org/laws/ny/custody/basic-info-and-definitions/what-mediation> (last accessed Oct. 26, 2022); proposed New York Rules of Chief Admin of Cts [22 N.Y.C.R.R.] § 160 [1/13/22], <https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/Request-for-Public-Comment-ADR-rules-web.pdf>, <http://www.nycourts.gov/rules/comments/index.shtml> (last accessed Oct. 26, 2022).
45. *Supra* note 15.
46. N.Y. Social Services Law § 459-b.
47. 18 N.Y.C.R.R. § 452.9(a)(5)(iii).
48. New York State Domestic Violence Animal Shelter Database, New York State Coalition Against Domestic Violence, <https://www.domesticviolenceanddisaster.org/shelter-search> (last accessed Oct. 24, 2022).
49. Domestic Violence, Housing, and Homelessness, National Network to End Domestic Violence, [https://nnev.org/wp-content/uploads/2019/07/Library\\_TH\\_2018\\_DV\\_Housing\\_Homelessness.pdf](https://nnev.org/wp-content/uploads/2019/07/Library_TH_2018_DV_Housing_Homelessness.pdf) (last accessed Oct. 24, 2022).
50. Nick Kerman, et al., *A Multilevel Intervention Framework for Supporting People Experiencing Homelessness with Pets*, 10 *Animals* 1869, 1 at 2 (2020), <https://www.mdpi.com/2076-2615/10/10/1869/htm> (last accessed Oct. 7, 2022).
51. N.Y. Real Property Actions and Proceedings Law § 749(2)(b), as amended by 2018 N.Y. Laws ch. 205, § 1.
52. Assembly Memorandum in support, Bill Jacket, 2008 N.Y. Laws ch. 205 at 5, New York State Archives, <https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/76915>.
53. Monica McLaughlin, et al., *Housing Needs of Survivors of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, 2022 National Low Income Housing Coalition Advocate Guide, ch. 6 at 6–8, [https://nlihc.org/sites/default/files/2022-03/2022AG\\_6-02\\_Housing-Needs-Victims-Domestic-Violence.pdf](https://nlihc.org/sites/default/files/2022-03/2022AG_6-02_Housing-Needs-Victims-Domestic-Violence.pdf) (last accessed Oct. 7, 2022).
54. On May 10, 2022, the Senate passed S960; this legislation proposed the removal of the term “serious” from the “serious physical injury” language of Agri. & Mkts. Law § 353-a, <https://www.nysenate.gov/legislation/bills/2021/s960>. As of October 27, 2022, A02152 is in the agriculture committee; [https://nyassembly.gov/leg/?default\\_fld=%0D%0A&leg\\_video=&bn=A02152&term=&Actions=Y](https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=A02152&term=&Actions=Y).
55. N.Y. Penal Law § 55.10(1), (2); Agri. & Mkts. Law § 353-a(3).
56. Senate Memorandum in support, Bill Jacket, 1995 N.Y. Laws ch. 669 at 5; New York State Archives, <https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/40785>.
57. Agri. & Mkts. Law § 374(8)(c); *see, e.g., People v. Valdez*, 181 A.D.3d 981, 984–86 (3d Dep't 2020); *People v. Brinkley*, 174 A.D.3d 1159, 1167–68 (3d Dep't 2019), *lv. denied*, 34 N.Y.3d 979 (2019).
58. *See People v. Facey*, 127 A.D.3d 1256, 1256–57 (3d Dep't 2015).
59. *See Valdez*, 181 A.D.3d at 986; *see also People v. Degiorgio*, 36 A.D.3d 1007, 1009 (3d Dep't 2007), *lv. denied*, 8 N.Y.3d 921 (2007), *cert. denied*, 552 U.S. 999 (2007).
60. N.Y. Education Law § 6714(2)(a) (Educ. Law), as amended by 2021 N.Y. Laws ch. 546, § 1; *see also* Senate Introducer's Memorandum in Support, Bill Jacket 2021 N.Y. Laws ch. 546 at 5, New York State Archives, <http://www.archives.nysed.gov/research/featured-topic-bill-and-veto-jackets> (2021 Bill Jacket can be found at this website once it has been uploaded by the New York State Archives).
61. Agri. & Mkts. Law §§ 351, 353, and 353-a.
62. Educ. Law § 6714(2)(b), as amended by 2021 N.Y. Laws ch. 546, § 1.
63. Report from N.Y.C. Bar Association Animal Law Committee, dated May 2021, Bill Jacket 2021 N.Y. Laws ch. 546 at 18–21, <http://www.archives.nysed.gov/research/featured-topic-bill-and-veto-jackets> (2021 Bill Jacket can be found at this website once it has been uploaded by the New York State Archives).