

# THE LINK BETWEEN STATE CRUELTY LAWS AND DOMESTIC VIOLENCE LAWS AND REMEDIES

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*Domestic Violence Awareness Month Kickoff CLE:  
The Connection Between Domestic  
Violence And Animal Cruelty*

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# LEGAL SUPPORT FOR A HOLISTIC APPROACH TO FAMILY VIOLENCE

## *The “Link”*



(Ascione, Arkow, 1999)

# LEGAL SUPPORT FOR A HOLISTIC APPROACH TO FAMILY VIOLENCE

- Ethical Implications of the “Link”
- Legal Recognition of the “Link”
- Using Animal Cruelty as a Basis for Domestic Violence Cases
  - Orders of Protection
  - DV Petitions
  - Petitions for Arrest
  - Evidence of animal cruelty as “prior bad acts”
  - Evidence of animal cruelty in family violence cases involving children
- Other Remedies in DV Cases Involving Animals
  - Court-ordered Counseling
  - Restitution

**ETHICAL IMPLICATIONS  
OF “THE LINK”**

# ETHICAL IMPLICATIONS OF THE LINK

## ❖ Attorneys Have Ethical Obligations to Understand the Link Between Animal Cruelty and Family Violence

- ❖ *Attorney Competence*
- ❖ *Attorney Communication with Clients*

## ❖ Application of Ethical Obligations

- ❖ *Attorney for Victim*
- ❖ *Prosecutor*
- ❖ *Defense Attorney*
- ❖ *Judges*

# ATTORNEY COMPETENCE

## ❖ NY Rules of Professional Conduct, Rule 1.1(a)

“A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

### ➤ Ethical duty to understand:

- ✓ The “Link” and application of animal cruelty to:
  - ❖ domestic violence case
  - ❖ other family violence issues (child welfare/custody)
  - ❖ prosecution and sentencing in other crimes
- ✓ What remedies available to your client in a DV situation involving animals

# ATTORNEY COMMUNICATION WITH CLIENTS

## ❖ NY Rules of Professional Conduct, Rule 1.4

(a)(2) “A lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished”

(b) “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

### ➤ Ethical duty to explain to client:

- ✓ How animal cruelty will impact his/her case (victim, offender)
- ✓ Remedies available to a client in a DV situation involving animals

# ETHICAL IMPLICATIONS OF THE LINK

## *Examples of Application of Ethical Rules to Attorneys:*

### ❖ **Attorney for family violence victim**

- *E.g.*, Understand that an act of animal cruelty can constitute basis for DV petition, order of protection.

### ❖ **Prosecutor**

- *E.g.*, Understand how animal cruelty impacts DV, child abuse/neglect cases.
  - Prosecution of animal cruelty may ultimately prevent or uncover other violent crimes against people.
  - Animal cruelty conviction may trigger heavier penalties for abusers in other crimes.

### ❖ **Defense Attorney**

- *E.g.*, Understand scope of protection order, how acts of violence against animals can impact your client in other cases (DV, child neglect), sentencing, child custody, etc.

### ❖ **Judges**

- ❖ *E.g.*, Understand ability to include animals in order of protection *sua sponte*.
- ❖ Understand importance of rehabilitative sentencing, psychological counseling, restitution, etc.
- ❖ *See also* Part 100 of the Rules of the Chief Administrative Judge (New York Rules)
  - ❖ Section 100.3(B)(1): “A judge shall be faithful to the law and maintain professional competence in it.”
  - ❖ Section 100.3(C)(1): “A judge shall .... maintain professional competence in judicial administration.”



**LEGAL RECOGNITION  
OF “THE LINK”**

# LEGAL RECOGNITION OF “THE LINK”

- ❖ All 50 states have animal cruelty statutes that include felony penalties for aggravated cruelty.
- ❖ Most felony provisions enacted 1990 - early 2000s in response to heightened recognition of the link between animal cruelty and other forms of violence.
  - ❖ Enactment of NY felony cruelty laws (1999)
    - ❖ NYS legislature findings: “[t]he **connection between animal abusers and violence towards humans**” (*See* N.Y.S. Assembly Memo in Support of L. 1999, ch. 118, 1999 N.Y. Sess. 1584-85).
  - ❖ Amendment of NY Family Court Act to include orders of protection for pets (2006)
    - ❖ NYS legislature findings: “**often abusers, in an effort to control and threaten their partners, harm or kill their pets.**” (*See* Justification memo for Assembly Bill 10767-2006/ Senate Bill No. 7691-2006).

**USING ANIMAL  
CRUELTY AS A BASIS  
FOR DOMESTIC  
VIOLENCE CASES**

# ORDERS OF PROTECTION

- **Animal cruelty can serve as the basis for a protective order.**
- **Animals can be included in protective orders.**

USING  
ANIMAL  
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# UTILIZING EVIDENCE OF ANIMAL CRUELTY AS A BASIS FOR PROTECTIVE ORDER

- **Animal cruelty as the basis of temporary order of protection in DV case:**
- ❖ **NY: Temporary order of protection may be issued for “good cause shown,” including “prior incidents of abuse” and, “extent of past or present injury, threats” NY FAM CT § 828(1)(a).**
  - **Incidents of animal abuse in family violence context can constitute “good cause shown”**
    - *E.g. abuse of animal to threaten, intimidate or control a family member*
    - *Note: Arrest/criminal proceedings for animal cruelty offense not required to demonstrate “good cause”*

# UTILIZING EVIDENCE OF ANIMAL CRUELTY AS A BASIS FOR PROTECTIVE ORDER

## ➤ Animal cruelty as the basis of final order of protection in DV case:

- ❖ NY: Final order of protection may be issued upon a finding of “the existence of aggravating circumstances” as defined in section 827. NY FAM CT § 842.
  - ❖ “aggravating circumstances” include “the exposure of any family member or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner’s family or household.” NY FAM CT §827.
- **Incidents of animal abuse in family violence context can constitute “aggravated circumstances”**
  - E.g. abuse of animal to threaten, intimidate or control a family member
  - *Note: Arrest/criminal proceedings for animal cruelty offense not required to demonstrate “aggravating circumstances”*

# UTILIZING EVIDENCE OF ANIMAL CRUELTY AS A BASIS FOR PROTECTIVE ORDER

## ➤ Laws in other states specifically identify animal cruelty as a basis for protective orders

### ❖ Illinois

- ❖ Injuring or killing an animal with the intent to threaten a family member may be considered an act of domestic violence. *See, e.g.*, Ind. Code Ann. § 31-9-2-42 (4).

### ❖ Florida

- ❖ Abuse or killing of a pet considered a factor for a domestic violence injunction. *See, e.g.*, Fla. Stat. § 741.30(3)(b); § 741.30(6)(b)(4).

### ❖ Pennsylvania

- ❖ Killing or threatening to kill a pet constitutes abuse that can provide grounds for granting a temporary protection order. *See* 23 Pa.C.S. § 6107 (b)(3)(ii)(E)(II)).

**INCLUDING ANIMALS IN  
ORDERS OF  
PROTECTION/DV  
INJUNCTION**



# INCLUDING FAMILY PETS IN AN ORDER OF PROTECTION/DOMESTIC VIOLENCE INJUNCTION

- **Orders of Protection can cover all family members – including animals.**
- **Abusers face same consequences for violation of OP for pets as with any other OP violation.**
- **Pet OP provides added level of protection for DV victims.**

# INCLUDING FAMILY PETS IN AN ORDER OF PROTECTION/DOMESTIC VIOLENCE INJUNCTION

## States with Laws that Include Animals In Orders of Protection

- New York
- Arizona
- Arkansas
- California
- Colorado
- District of Columbia (D.C)
- Connecticut
- Hawaii
- Illinois
- Louisiana
- Maine
- Maryland
- Massachusetts
- Minnesota
- Nevada
- New Jersey
- North Carolina
- Ohio
- Oklahoma
- Oregon
- Puerto Rico
- Tennessee
- Texas
- Vermont
- Washington
- West Virginia
- Kentucky

# NEW YORK LAW PERMITS ANIMALS TO BE INCLUDED IN ORDERS OF PROTECTION

## Family Court Order of Protection

“Any order of protection issued pursuant to this section may require the petitioner or the respondent to **refrain from intentionally injuring or killing, without justification, any companion animal** the respondent knows to be **owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.**” NY FAM CT §842 (i).

- *Note: Family Court Orders of Protection do not require an underlying criminal offense.*

# NEW YORK LAW PERMITS ANIMALS TO BE INCLUDED IN ORDERS OF PROTECTION

## Criminal Court Order of Protection for Victims of Family Offenses

A protective order “may require the defendant to **refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by the victim or a minor child residing in the household.**” N.Y. CPL. LAW § 530.12(1)(f).

- *Note: Criminal Court Orders of Protection do require an underlying criminal proceeding.*

# **UTILIZING EVIDENCE OF ANIMAL CRUELTY AS A BASIS FOR A DOMESTIC VIOLENCE CASE**

# UTILIZING EVIDENCE OF ANIMAL CRUELTY AS A BASIS FOR A DOMESTIC VIOLENCE CASE

## ■ Animal cruelty as the basis of domestic violence petition:

- ❖ Petition may be based on allegation of “disorderly conduct, harassment, stalking, menacing or reckless endangerment” toward a petitioner or a family member. NY FAM CT §821.
- ❖ Prohibited conduct broad enough to include acts of animal cruelty or threats of animal cruelty in a family violence context.
  - ❖ Disorderly conduct (N.Y. PEN. LAW §240.20: engaging in “violent” or “threatening behavior” with an intent to cause “annoyance or alarm”)
  - ❖ Menacing (N.Y. PEN. LAW § 120.15: “intentionally places or attempts to place another person in fear of... physical injury”)
  - ❖ Criminal mischief (N.Y. PEN. LAW § 145.00: “intentionally damages property of another person”)

# UTILIZING EVIDENCE OF ANIMAL CRUELTY AS A BASIS FOR A DOMESTIC VIOLENCE CASE

## ■ Animal cruelty as the basis of petition for arrest of domestic violence abuser:

- ❖ Petition for arrest may be issued where “aggravating circumstances exist which require the immediate arrest of the respondent.” NY FAM CT §827.
  - ❖ “aggravating circumstances” include “the exposure of any family member or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner’s family or household.” NY FAM CT §827.
  - Cite incidents of animal abuse in family violence context as “aggravated circumstances”
    - *E.g.* abuse of animal to threaten, intimidate or control a family member

# UTILIZING EVIDENCE OF ANIMAL CRUELTY AS A BASIS FOR A DOMESTIC VIOLENCE CASE

**Animal cruelty incidents in DV context  
admissible as “prior bad acts” in DV cases.**

❖ Relevant to show motive, intent, etc.

➤ *People v. Archbold*, 40 A.D.3d 403 (1 Dept. 2007) (Evidence of a series of uncharged crimes and bad acts, committed by defendant against victim, were admissible in domestic violence prosecution to prove element of forcible compulsion, to explain relationship between defendant and victim and to place events in question in a believable context, particularly since defendant raised issue of victim's delay in reporting charged criminal conduct, and to establish intent, motive and identity).



**UTILIZING EVIDENCE OF  
ANIMAL CRUELTY IN  
FAMILY VIOLENCE  
CASES INVOLVING  
CHILDREN**

# UTILIZING EVIDENCE OF ANIMAL CRUELTY IN FAMILY VIOLENCE CASES INVOLVING CHILDREN

## ❖ Child neglect or abuse petition may be based on animal cruelty incidents.

Child neglect defined to include psychological harm and risk of physical harm. See FCA §1012(f)(i)(B).

### ➤ Exposing children to domestic violence constitutes child neglect.

- See *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 371 (2004).
- Rationale: Witnessing abuse causes emotional harm and signifies risk of physical injury.

### ➤ Exposing children to animal abuse may constitute child neglect

- ❖ Same rationale as with DV exposure:
  - ❖ Emotional harm from witnessing violence against a family pet;
  - ❖ Abuser may harm animals as a means of terrorizing children or partners;
  - ❖ Risk of physical injury to children.

# USING EVIDENCE OF ANIMAL CRUELTY AS A FACTOR IN CUSTODIAL DECISIONS

- ❖ Evidence of a parent's acts of violence or threatened violence against animals may be considered a factor in custody determinations.
  - ❖ N.Y. Dom. Rel. §240: Courts must consider parent's acts of domestic violence and acts of child abuse or neglect.
    - ❖ Both DV and child abuse/neglect may be themselves based on animal abuse
    - Parent's acts of animal abuse = relevant factor in custody

# **ATTORNEY ETHICS AND UTILIZING ANIMAL CRUELTY IN DV AND FAMILY VIOLENCE CASES**

# ATTORNEY ETHICS AND UTILIZING ANIMAL CRUELTY IN DV AND FAMILY VIOLENCE CASES

## *ETHICS: Attorney Competence and Communication Obligations*

- ❖ **Responsibility to utilize suspected animal cruelty in a family violence context.**
  - ❖ Understand and advise client on how animal cruelty can impact a case.
    - ❖ Basis for protective order or domestic violence petition.
    - ❖ Basis for child neglect, custody determinations.
  - ❖ Inform client of availability of OP for pets.
    - ❖ Recommend including pet even if pet has not yet been threatened or harmed.
  
- ❖ **Consider reporting/encourage client to report suspected animal cruelty to authorities.**
  - ❖ Documentation of animal cruelty evidence for use in representing DV clients.
  - ❖ Added protection for DV client.

# OTHER REMEDIES IN DV CASES INVOLVING ANIMALS

# OTHER REMEDIES IN DV CASES INVOLVING ANIMALS

➤ **Court-ordered Counseling**

➤ **Restitution for Victims**

# COURT-ORDERED COUNSELING

## Courts may order psychological counseling for DV offenders to address animal cruelty.

- N.Y. PEN. LAW § 65.10(2); *see also People v. Letterlough*, 86 NY2d 259 (1995).

### ❖ Attorney Ethics

- ❖ Prosecutors: Recommend psychological counseling for animal cruelty offenders to avoid recidivism.
- ❖ Judges: Consider including psychological counseling for animal cruelty offenders in sentencing to avoid recidivism.



# RESTITUTION FOR FAMILY VIOLENCE VICTIMS WHOSE PETS ARE HARMED BY ABUSERS

❖ **DV Victims may seek restitution for out of pocket expenses associated with DV case.**

## ❖ Restitution – Orders of Protection

- “Any order of protection issued pursuant to this section may require the petitioner or the respondent: to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order” (NY FAM CT §842(h)).

## ❖ Restitution – Criminal conviction

- “the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby...” (N.Y. PEN. LAW § 60.27(1); See also N.Y. PEN. LAW § 65.10).

# RESTITUTION FOR FAMILY VIOLENCE VICTIMS WHOSE PETS ARE HARMED BY ABUSERS

❖ Prosecutors are obligated to petition the Court to order restitution for DV victims in criminal proceeding (N.Y. PEN. LAW § 60.27(1)).

❖ Petition for restitution must reflect animal cruelty restitution where applicable

❖ Judges are required to order restitution where sought “unless the interests of justice dictate otherwise” (N.Y. PEN. LAW § 60.27(1)).

❖ “In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record.” (N.Y. PEN. LAW § 60.27(1)).

❖ Court must order restitution for victim’s pets absent special circumstances

# RESTITUTION FOR FAMILY VIOLENCE VICTIMS WHOSE PETS ARE HARMED BY ABUSERS

## ❖ **Examples of restitution in DV/animal cruelty situation:**

- Reimbursement of veterinary bills (animal injured by abuser)
- Reimbursement of “value” of animal (animal killed by abuser)
- Return of animal (animal kidnapped or given away by abuser)
- Reimbursement of counseling expenses for victim and victim’s children exposed to animal abuse
- Reimbursement of pet therapy expenses (to address abused animal’s psychological needs)

# RECOVERY FOR DAMAGES BY FAMILY VIOLENCE VICTIMS WHOSE PETS ARE HARMED BY ABUSERS

- ❖ Some states allow recovery for emotional distress and punitive damages under statutory right of action for family violence victims whose animals were abused or killed
  - ❖ Illinois (510 Illinois Compiled Statutes 70/16.3)
    - ❖ Recovery of owner's damages caused by cruelty (including emotional distress suffered by owner).
    - ❖ Recovery of punitive damages of up to \$25,000 for each act of abuse or neglect the animal was subjected to.
    - ❖ Recovery of owner's attorney's fees.

# **ATTORNEY ETHICS AND REMEDIES IN DV CASES INVOLVING ANIMALS**

# RESTITUTION FOR FAMILY VIOLENCE VICTIMS WHOSE PETS ARE HARMED BY ABUSERS

## ETHICS: *Competent Representation*

- ❖ **Attorney for Victim:** Is client entitled to restitution or damages recovery for animal abuse/neglect?
- ❖ **Prosecutors:** Does restitution petition reflect victim's out of pocket costs related to animal cruelty?
- ❖ **Judges:**
  - ❖ Must order restitution to victim for animal cruelty where sought “unless the interests of justice dictate otherwise”.
  - ❖ Do circumstances support finding of restitution to victim for animal cruelty *sua sponte*?

# CONCLUSION

- **Competent representation requires holistic approach to DV cases**
- **Ethical duty to understand how animal cruelty impacts DV case**