

Prosecuting Intimate Partner Violence and Animal Cruelty

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Most perpetrators of intimate partner violence seek to exert various measures of control over their victims and will utilize any means necessary to gain that control. Abusers will employ tactics that range from emotional abuse and isolation to threats, intimidation, and physical violence.² And while control of the victim is the ultimate goal, victims themselves are not the only targets of these tactics. Abusers may also threaten and commit acts of violence against the victim's children, family members, and even their pets. According to the American Humane Association:

- 71% of pet-owning women entering women's shelters reported that their batterer had injured, maimed, killed, or threatened family pets for revenge or to psychologically control victims; 32% reported that their children had hurt or killed animals.
- 68% of battered women reported violence toward their animals; 87% of these incidents occurred in the presence of the women, and 75% in the presence of the children, to psychologically control and coerce the women.
- 13% of intentional animal abuse cases involve domestic violence.
- Between 25% and 40% of battered women are unable to escape abusive situations because they worry about what will happen to their pets or livestock should they leave.³

These alarming statistics demonstrate the connection between animal cruelty and intimate partner violence. In order to adequately protect victims of abuse and their pets and hold offenders accountable for their actions, prosecutors, and allied professionals must work together in a coordinated fashion. This coordination allows them to better identify, investigate, and prosecute acts of animal cruelty. It also facilitates the investigation into other related crimes – specifically domestic violence, which may co-occur with animal cruelty.

A coordinated community response requires collaboration among all allied professionals who may be working on these issues: e.g., police, prosecutors, advocates, domestic violence shelters, health care professionals, veterinary professionals, or humane society personnel. When these professionals collaborate, communicate and cross-train each other, they improve their response both collectively and individually. Because victims intersect the system in different places, a coordinated response increases the likelihood of identifying and responding to animal cruelty and domestic violence. There are several questions communities can ask to assess the level of coordination:

- If a victim brings an injured pet to the veterinarian, does the vet know to ask questions regarding domestic violence indicators?
- Can the vet provide information about available resources for victims of domestic violence?
- If police are investigating an incident of animal cruelty, do they know to ask questions regarding any abuse in the home – specifically domestic violence?
- If police are investigating an incident of domestic violence, do they know to ask questions regarding abuse of pets?
- Are all professionals aware of resources that may be available to provide temporary care for the victim's pets while she is in the process of relocating to a place of safety?

The coordinated community response not only increases the awareness of these allied professionals so they can effectively assist victims and their pets, but also educates victims so that they are able to report these incidents and take steps to protect themselves and their pets. Victims may be more willing to cooperate with the prosecution and to follow through with a safety plan when they are confident that their concern about the well-being of their pets is one that is taken seriously.

In several jurisdictions, the statutes concerning orders of protection specifically provide that a defendant may be barred from having contact with the victim's pets or harming them in any way.⁴ Even in jurisdictions with no specific provision, however, pets are generally considered to be property and can be temporarily awarded to the victim like any other property. The court should order the abuser to refrain from injuring or damaging the pet, just as it would order the abuser to refrain from damaging other property belonging to the victim or jointly owned by the parties.

Police presence at a domestic violence crime scene is often the result of a 911 call made by the victim, a family member, or a neighbor. In a response focused on the immediate act(s) of domestic violence, it is possible for officers to overlook other, less obvious, signs of abuse such as ongoing stalking behavior or animal cruelty. Inquiry about such acts may provide important contextual evidence of domestic abuse in the relationship and may result in additional criminal charges. Victims may not know to report these behaviors to police or prosecutors, so it is important that officers and investigators ask victims about any history of animal cruelty or prior acts that might support a stalking charge. Training for law enforcement and allied professionals, including animal protection personnel, should include information on recognizing indicators of co-occurring animal abuse and domestic violence.

Domestic violence victims face many negative consequences as a result of participating in the prosecution of their batterers—consequences that often cause them to recant their report or to decide it is no longer safe to participate in the process. A coordinated community response that provides victims with access to advocacy and other support services may encourage continued victim participation; however, evidence-based investigation will enhance the likelihood of a successful prosecution even without the victim's participation. An evidence-based investigation begins at the scene. Upon arrival at the scene, officers should first address any emergency concerns and thoroughly assess the situation to determine the location and status of all persons, weapons, and pets. Officers should seize any weapons used during the incident including any household objects used as weapons. Once the scene is secure, officers should collect, record or document the following evidence: statements made at the scene by the victim and other witnesses, including any age-appropriate children who may be present or neighbors who may have heard the incident; any statements made at the scene by the defendant; observations about the emotional demeanor of the victim and any children; description and photographs of visible injuries to all parties, including pets; complaints of pain or observation of signs of internal injury (such as limping or a raspy voice); photographs of the scene; recordings of 911 calls; releases for medical records of the victim and treatment records for the victim's pets; and a history of prior acts of domestic violence, including threats or abuse directed toward the victim's pets. Neighbors and family members also may be able to provide critical evidence of the history of an abuser's treatment of the victim's pet in order to defeat a claim that the injury to the pet was by mistake or accident.

Any statements made at the scene—by victims, witnesses, or perpetrators—can be crucial to an officer's ability to ensure the safety of victims and responding emergency personnel. Such statements should be documented because they provide context to the incident and are critical to the prosecutor's preparation for trial. Additionally, any statements whose primary purpose is to aid police to meet an ongoing emergency are considered to be nontestimonial⁵ and, therefore, not subject to a defendant's Sixth Amendment right of confrontation.⁶ Where such statements also come within an exception to the hearsay rule (such as excited utterances), they will be admissible at trial if the declarant is unavailable to testify. Officers should also ask if the victim has spoken to anyone else about the incident (or any previous incidents). Such questions may reveal the existence of other nontestimonial statements the victim may have made to a family member, neighbor, or friend. If those statements also satisfy an exception to the hearsay rule, they will, likewise, be admissible at trial even if the victim is not available to testify.

Police and prosecutors should also regularly ask the victim about any efforts by the abuser to prevent the victim from testifying, both in the past and as the case moves forward to trial. If a defendant intentionally makes a victim unavailable for trial, the prosecutor should seek to introduce the unavailable victim's statements under the doctrine of forfeiture by wrongdoing. Forfeiture by wrongdoing is a longstanding exception to a defendant's Sixth Amendment right of confrontation: where a defendant has intentionally made a witness unavailable through his own wrongdoing, he forfeits his right to confront and cross-examine the witness.⁷ Wrongdoing can include both intimidation and inducements not to testify. The history of the abusive relationship, including threats or acts of cruelty to the victim's pets, can provide evidence of wrongful conduct intended to dissuade the victim from testifying.

While thorough investigations may allow prosecutors to proceed to trial without the victim's testimony, equally important is the task of educating judges and juries about the dynamics of domestic violence. Such effort is necessary if these fact-finders are to understand the evidence in its proper context so they can hold the offenders accountable. Voir dire may provide an opportunity for jurors who have some knowledge about domestic violence to educate other members of the jury. Many jurisdictions allow the prosecution to call expert witnesses to explain domestic violence dynamics and common victim behavior. And even though a judge or jury may be reluctant to convict a defendant of domestic violence without the victim's testimony, they may not have the same difficulty convicting a defendant of animal cruelty.

Finally, prosecutors and all allied professionals must keep victim safety at the forefront of their decision-making. Among the important questions to consider are:

- Does the victim have a safety plan that includes the safety of her pet?
- Do we inquire regularly of the victim how things may have changed since the original safety plan was created?
- Will your judge include pets in an order of protection?
- Are there domestic violence shelters in your area that will house pets?
- If not, are there no-cost animal shelters or rescue groups that will temporarily house a pet in a domestic violence situation?
- Do victims know about the services available to them and their pets?
- Does the community know that your office treats domestic violence and animal cruelty seriously?

A coordinated community response to co-occurring animal abuse and domestic violence, together with the effective use of strategies to permit successful prosecution in the absence of active participation by the victim, will promote the safety and well-being of victims and their pets while holding the offender accountable for the abuse of all victims in the household.

ENDNOTES

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² *Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROGRAM, <http://www.theduluthmodel.org/pdf/PowerandControl.pdf>.

³ *Facts About Animal Abuse and Domestic Violence*, AMERICAN HUMANE ASSOCIATION, <http://www.americanhumane.org/interaction/support-the-bond/factsheets/animal-abuse-domestic-violence.html>.

⁴ See e.g., ARIZ. REV. STAT. ANN. § 13-3602 (2012); D.C. CODE § 16-1005 (2012); N.Y. FAM. CT. ACT. § 446 (MCKINNEY 2012).

⁵ *Crawford v. Washington*, 541 U.S. 36 (2004). Nontestimonial statements are less formal statements, not made for purposes of establishing past events for possible future prosecution.

⁶ *Davis v. Washington*, 547 U.S. 813 (2006).

⁷ FED. R. EVID. 804(b)6, and many state codes, have codified forfeiture by wrongdoing as an exception to the rule against hearsay.

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