

_____ Judicial District _____ County, New Mexico Case No. _____	<h2 style="margin: 0;">Order of Protection</h2> <p style="margin: 0;"><input type="checkbox"/> Amended Order</p>
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PROTECTED PARTY ([] PETITIONER [] RESPONDENT)

First	Middle	Last

And/or on behalf of minor family member(s): (list name and DOB)

PROTECTED PARTY IDENTIFIERS

Date of Birth of Protected Party

Other Protected Persons/DOB

V.

RESTRAINED PARTY

First	Middle	Last

Relationship to Protected Party: _____

Restrained Party's Address

RESTRAINED PARTY IDENTIFIERS

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY #		
		Not used in New Mexico		
DRIVERS LICENSE #		STATE	EXP DATE	

Distinguishing Features _____

CAUTION:

Weapon Involved

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

Additional findings of this order follow on succeeding pages.

THE COURT HEREBY ORDERS:

- That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.
- That the above named Restrained Party be restrained from any contact with the Protected Party.
- Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until _____ , _____ .

WARNINGS TO RESTRAINED PARTY:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands under 18 U.S.C. Section 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it may be unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. Section 922(g)(8). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the court can change this order.

4-965. Order of protection, mutual, non-mutual.

[Family Violence Protection Act,
Sections 40-13-1 to 40-13-8 NMSA 1978]

**ADDITIONAL PAGES¹ OF
ORDER OF PROTECTION**

THIS MATTER came before the court on the _____ day of _____,
_____ through a hearing on the [] petitioner's [] respondent's request for an order prohibiting
domestic abuse.

The court further **FINDS, CONCLUDES AND ORDERS:**

(check only applicable paragraphs)

1. NOTICE, APPEARANCES AND STATUS

- Petitioner was present.
- Petitioner was represented by counsel.
- Respondent was present.
- Respondent was represented by counsel.
- Respondent was properly served with a copy of the petition, temporary order of protection prohibiting domestic abuse and order to appear.²
- Respondent was properly served with a copy of the petition and order to appear.²

- Respondent received actual notice of the hearing and had an opportunity to participate in the hearing.²
- Petitioner was properly served with a copy of the counter-petition and order to appear.²
- Petitioner was properly served with a copy of the temporary order and order to appear.
- Petitioner received actual notice of the hearing and had an opportunity to participate in the hearing.²
- The relationship of the parties is that of an "intimate partner" as defined in 18 USC Section 921 (a)(32). (*See* 2.b below)

2. CONSEQUENCES OF ENTRY OF ORDER OF PROTECTION

Violation of this order by the respondent petitioner can have serious consequences, including:

- A. If you violate the terms of this order, you may be charged with a misdemeanor, which is punishable by imprisonment of up to three hundred sixty-four (364) days and a fine of up to one thousand dollars (\$1,000) or both. You may be found in contempt of court.

- B. If you are the spouse or former spouse of the other party, an individual who cohabitates with or has cohabitated with the other party, or if you and the other party have had a child together, federal law prohibits you from possessing or transporting firearms or ammunition while this order is in effect. If you have a firearm or ammunition, you should immediately dispose of the firearm or ammunition. Violation of this law is a federal crime punishable by imprisonment for up to ten (10) years and a fine of up to two hundred fifty-thousand dollars (\$250,000).
- C. If you are not a citizen of the United States, violation of this order may have a negative effect on your application for residency or citizenship.

3. FINDING OF DOMESTIC ABUSE

An act of domestic abuse was committed by respondent petitioner that necessitates an order of protection. Petitioner Respondent is the protected party under this order.

4. DOMESTIC ABUSE PROHIBITED

Respondent Petitioner shall not abuse the other party or members of the other party's household. "Abuse" means any incident by one party against the other party or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat by petitioner or respondent causing

imminent fear of bodily injury to the other party or any household member; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by petitioner's or respondent's or a household member's residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; or (11) harm or threatened harm to children in any manner set forth above.

Respondent Petitioner shall not ask or cause other persons to abuse the other party or any other household members.

5. CONTACT PROHIBITIONS

Respondent Petitioner shall stay _____ yards away from the other party, the other party's home and any workplace at all times, unless at a public place, where the respondent petitioner shall remain _____ yards away from the other party except as specifically permitted by this order.

Respondent Petitioner shall not telephone, talk to, visit or contact the other party in any way except as follows: _____
_____.

The parties may contact each other by telephone regarding medical emergencies of

minor children;

Other _____
_____.

The parties may attend joint counseling sessions at the counselor's discretion.

(Unless the court has sealed the protected party's address, include it below.)

Protected party's addresses

_____ *(home address)*

_____ *(work address)*

_____ *(city)*

_____ *(if applicable, tribe or pueblo)*

_____ *(state and zip code)*

6. COUNSELING

Respondent shall attend counseling at _____, contacting that office within five (5) days. The respondent shall participate in, attend and complete counseling as recommended by the named agency.

Petitioner shall attend counseling at _____, contacting that office within five (5) days. The petitioner shall participate in, attend and complete counseling as recommended by the named agency.

Respondent shall report to _____, for a drug [and] alcohol screen by _____, _____ (*date*) with the results returned to this court.

Petitioner shall report to _____, for a drug [and] alcohol screen by _____, _____ (*date*) with the results returned to this court.

Other counseling requirements: _____

_____.

7. CUSTODY

[] The court's orders regarding the minor child(ren) are addressed in the Custody, Support and Division of Property Attachment of this order of protection.³

8. PROVISIONS RELATING TO SUPPORT

[] The court's orders regarding support issues for the parties are found in the Custody, Support and Division of Property Attachment of this order of protection.³

9. PROPERTY, DEBTS AND PAYMENTS OF MONEY

[] The court's orders regarding property, debts and payment of money are found in the Custody, Support and Division of Property Attachment of this order of protection.³

10. PARTIES SHALL NOT CAUSE VIOLATION

While this order of protection is in effect the protected party should refrain from any act that would cause the restrained party to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6 (D) NMSA 1978, only the restrained party can be arrested for violation of this order.

11. ADDITIONAL ORDERS

Review hearing. The parties are ordered to appear for a review hearing on the _____ day of _____, _____, at _____ (a.m.) (p.m.). Failure to appear may result in the issuance of a bench warrant for your arrest or dismissal of this order.

Any party ordered to attend counseling shall bring proof of counseling to the review hearing.

IT IS FURTHER ORDERED⁴: _____
_____.

12. NOTICE TO LAW ENFORCEMENT AGENCIES

ANY LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.

Respondent Petitioner is ordered to surrender all keys to the residence to law enforcement officers.

Law enforcement officers or _____ shall be present during

any property exchange.

- This order supersedes prior orders in _____ County, State of _____, Cause No. _____ to the extent that there are contradictory provisions.

13. NOTICE TO PARTIES

This order does not serve as a divorce and does not permanently resolve child custody or support issues.

To make a request to extend this order, the protected party should return to the court with a copy of this order at least three weeks before the order expires.

14. RECOMMENDATIONS

I have:

- reviewed the petition for order of protection;
- reviewed the counter-petition for order of protection;
- conducted hearings on the merits of the petition;

[] after notice and hearing, I prepared this order as my recommendation to the district court judge regarding disposition of the request for order of protection. If any party disagrees with the recommendations, that party may, but is not required to, file written objections and a request for hearing on those objections with the district court within ten (10) days. A copy of those objections and a request for hearing must be served by mail on the other party.

Signed

Title

Court's telephone number: _____

The court has reviewed the recommendations and adopts them. This order remains in effect unless and until it is modified by a district court judge or it expires. If objections are filed the court may conduct a hearing to resolve the objections. (*See* Rule 1-053.1(H)(1)(a) NMRA).

SO ORDERED:

District Judge

Date

A copy of this order was hand delivered faxed mailed to respondent respondent's counsel on _____ (date)⁵.

A copy of this order was hand delivered faxed mailed to petitioner petitioner's counsel on _____ (date).

Signed

Title

USE NOTES

1. The first page of this order of protection shall be in the uniform format preceding the heading for additional pages of the order.
2. This order may be entered only after a hearing at which respondent received actual notice and at which respondent had an opportunity to participate if 18 U.S.C. Section 922 is to apply to this order.
3. See Form 4-967 NMRA for the Custody, Support and Division of Property Order attachment.
4. If appropriate, an order providing for restitution may be included in this paragraph.

5. Respondent or petitioner should be served at the time this order is issued, before leaving the courthouse. If a default order is issued, service upon the non-attending party shall be made by mail or by personal service. *See* Section 40-13-6(A) NMSA 1978.

[Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May 1, 2001; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]

Committee commentary. — The Family Violence Protection Act provides that "a peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order" of protection entered pursuant to the Act. Section 40-13-6(C) NMSA 1978.

This statute would allow a warrantless misdemeanor arrest for conduct occurring outside the presence of the officer and would not require exigent circumstances in addition to probable cause. That a misdemeanor must occur in the presence of the arresting officer is a long standing common law requirement for a warrantless misdemeanor arrest. *Eg. State v. Luna*, 93 N.M. 773, 777, 606 P.2d 183, 187 (1980). The "exigent circumstances" requirement is mandated by the New Mexico Constitution. *Campos v. State*, 117 N.M. 155, 159, 870 P.2d 117, 121 (1994) ("[F]or a warrantless arrest to be reasonable it must be based upon both probable cause and sufficient exigent circumstances."). Absent the exigent circumstance that the misdemeanor is committed in the presence of the officer, *id.*, ("If an officer observes the person arrested committing a felony, exigency will be presumed."), the New Mexico Constitution appears to bar blanket authority to make warrantless arrests for misdemeanors committed outside the presence of the officer.

The legislature, of course, lacks power to provide by statute for an arrest procedure that violates the New Mexico Constitution. *Campos v. State*, 117 N.M. 155, 158, 870 P.2d 117, 120 (1994). To avoid having the Supreme Court give approval to a form containing language of questionable constitutional validity, the committee did not use the statutory language in the portion of the final order describing the power of a law enforcement officer to make a warrantless arrest for the misdemeanor crime (Section 40-13-6(D) NMSA 1978), of violating the final order of protection. The committee substituted more general language, which does not prejudge the constitutional issue.

The general provisions of the order of protection, including injunctive orders, "shall continue until modified or rescinded . . . or until the court approves a subsequent consent agreement. . . ." Section 40-13-6(B) NMSA 1978. In contrast, "[a]n order of protection . . . involving custody or support shall be effective for a fixed period of time not to exceed six months". *Id.* The custody or support "order may be extended for good cause upon motion . . . for an additional period of time not to exceed six months", *id.*, unless "the order supersedes or alters prior orders of the court" pertaining

to child custody or child support. *See* Section 40-13-5(C) NMSA 1978. In the latter situation, "the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action". *Id.*