

[NEW MATERIAL]

1 4-965

2 *[Standard simplified order of protection, Family Violence*
3 *Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]*

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9

_____ JUDICIAL DISTRICT COURT
COUNTY OF _____
STATE OF NEW MEXICO

10

Petitioner _____

11

12

v.

No. _____

13

14

15

Respondent _____

16

17

**ORDER OF PROTECTION¹
AGAINST RESPONDENT**

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19

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21

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*This order is an order of protection under 18 U.S.C.
Section 922, 18 U.S.C. Section 2265 and Section
40-13-6(D) NMSA 1978. This order shall be accorded full
faith and credit by the courts of every state and Indian
Tribe and shall be enforced as if it were the order of such
other State or Tribe.*

27

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

28

29

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31

The court, having determined that it has legal jurisdiction
over the parties and the subject matter, **FINDS, CONCLUDES AND
ORDERS:**

32

33

34

(check only applicable paragraphs)

35

36

37

1. NOTICE AND APPEARANCES

38

39

Petitioner was present.

40

Petitioner was represented by counsel.

41

Respondent was present.

42

Respondent was represented by counsel.

43

Respondent was properly served with a copy of
the petition, temporary order of protection
prohibiting domestic abuse and order to appear.

44

45

Respondent was properly served with a copy of
the petition and order to appear.

46

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48

49

Respondent received actual notice of the hearing
and had an opportunity to participate in the

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1 hearing.²
2
3
4

5 **2. CONSEQUENCES OF ENTRY OF ORDER OF PROTECTION**
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7 Violation of an order of protection by the respondent
8 can have serious consequences, including:
9

10 A. If you violate the terms of this order, you may be
11 charged with a misdemeanor, which is punishable
12 by imprisonment of up to 364 days and a fine of
13 up to \$1,000.
14

15 B. If you are an "intimate partner" of petitioner (the
16 spouse of petitioner, an individual who lives with
17 or has lived with petitioner, or if you and
18 petitioner have had a child together), federal law
19 prohibits you from possessing or transporting
20 firearms or ammunition while this order is in
21 effect. If you have a firearm or ammunition, you
22 should immediately dispose of the firearm or
23 ammunition. Violation of this law is a federal
24 crime punishable by imprisonment for up to 10
25 years and a fine of up to \$250,000.
26

27 C. If you are not a citizen of the United States, entry
28 of this order may have a negative effect on your
29 application for residency or citizenship.
30

31 **3. FINDING OF DOMESTIC ABUSE**
32

33 An act of domestic abuse was committed by
34 respondent that necessitates an order of protection.
35

36 **4. DOMESTIC ABUSE PROHIBITED**
37

38 [] The respondent shall not abuse the petitioner or
39 members of petitioner's household. "Abuse"
40 means any incident by respondent against
41 petitioner or another household member resulting
42 in (1) physical harm; (2) severe emotional
43 distress; (3) bodily injury or assault; (4) a threat
44 by respondent causing imminent fear of bodily
45 injury to petitioner or any household member; (5)
46 criminal trespass; (6) criminal damage to
47 property; (7) repeatedly driving by petitioner's or
48 a household member's residence or work place;
49 (8) telephone harassment; (9) stalking; (10)

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1 harassment; or (11) harm or threatened harm to
2 children in any manner set forth above.

3
4 [] Respondent shall not ask or cause other persons
5 to abuse the petitioner or any other household
6 members.

7
8 **5. CONTACT PROHIBITIONS**

9
10 [] Respondent shall stay _____ yards away
11 from petitioner, petitioner's home and petitioner's
12 workplace at all times, unless at a public place,
13 where the respondent shall remain _____
14 yards away from the petitioner except as
15 specifically permitted by this order.

16
17 [] Respondent shall not telephone, talk to, visit or
18 contact the petitioner in any way except as
19 follows:

20
21 1. The parties may contact each other by
22 telephone regarding medical emergencies of
23 minor children;

24
25 2. _____
26 _____
27 _____
28 _____.

29
30 [] The parties may attend joint counseling sessions
31 at the counselor's discretion.

32
33 *(Unless the court has entered an order sealing petitioner's address, include*
34 *address of residence and employment for petitioner)*

35 **Petitioner's addresses**

36 _____ (home address)
37 _____ (work address)
38 _____ (city)
39 _____ (if applicable, tribe or
40 pueblo)
41 _____ (state and zip code)

42
43 **6. COUNSELING**

44
45 [] The respondent shall attend counseling at
46 _____, contacting that office
47 within five (5) days. The respondent shall
48 participate in, attend and complete counseling as
49 recommended by the named agency.

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- The 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.
- The respondent petitioner shall report to _____, for a drug [and] alcohol screen by _____, _____ (date) with the results returned to this court.
- Other counseling requirements:

_____.

7. PROVISIONS RELATING TO CHILDREN

- The court's findings regarding the minor child(ren) are addressed in the attached Counseling, Custody, Support and Division of Property Order³ of this Mutual Order of Protection.

8. PROVISIONS RELATING TO SUPPORT

- Temporary support shall be paid by respondent to petitioner in the amount of \$_____ per month payable _____.
- Respondent shall provide suitable alternative housing to petitioner and any children to whom the respondent owes a legal obligation of support. This shall be provided as follows:

_____.

9. PROPERTY, DEBTS AND PAYMENTS OF MONEY

- Neither party shall transfer, conceal, encumber or otherwise dispose of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life. Each party shall account to the court for all such transfers, encumbrances and expenditures made by that party after the order is entered.

This means that you shall not give away, hide,

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1 add debt to, sell or pawn the property.

2
3 [] The parties' property shall be temporarily
4 distributed as set forth in the attached Counseling,
5 Custody, Support and Division of Property
6 Order³.

7
8
9 **10. PETITIONER SHALL NOT CAUSE VIOLATION**

10 Petitioner shall refrain from any act the purpose or
11 effect of which is to cause an act of non-compliance by
12 respondent.⁴

13
14
15 **11. ADDITIONAL ORDERS**

16 **IT IS FURTHER ORDERED⁵:**

17 _____

18 _____

19 _____.

20
21
22 **12. EFFECTIVE DATE OF ORDER; EXTENSION; MODIFICATION**

23 This order is effective upon filing with the clerk of the
24 court.

25 This order [with the exception of the orders in
26 Counseling, Custody, Support and Division of
27 Property Order³, if any] shall continue until
28 _____ (date), or until modified or
29 rescinded by the court.

30
31
32
33 **13. NOTICE TO LAW ENFORCEMENT AGENCIES**

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

36 [] The respondent is ordered to surrender all keys to
37 the residence to law enforcement officers.

38 [] Law enforcement officers or
39 _____ shall be present
40 during any property exchange.

41 [] This order supersedes prior orders in
42 _____ County, State of _____,
43 Cause No. _____ to the extent
44 that there are contradictory provisions.

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1 **14. NOTICE TO PARTIES**

2
3 This order does not serve as a divorce and does not
4 permanently resolve child custody or support issues.
5

6 **15. RECOMMENDATIONS**

7
8 I have:

- 9 reviewed the petition for order of protection;
10 conducted hearings on the merits of the petition;
11 after notice and hearing as indicated in this order

12 I prepared this order as my recommendation to
13 the district court judge regarding disposition of
14 requests for order of protection.
15
16

17 _____
18 Signed

19 _____
20 _____
21 _____
22 Title

23 _____
24 Court's telephone number:
25 _____
26

27 **SO ORDERED:**

28
29 _____
30 _____
31 _____
32 District Judge

Date

33
34 A copy of this order was hand delivered faxed
35 mailed to

36 respondent respondent's counsel on
37 _____ (date)⁶.

38
39 A copy of this order was hand delivered faxed
40 mailed to

41 petitioner's petitioner's counsel on
42 _____ (date).

43
44
45 _____
46 Signed

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Title

[Approved, effective November 1, 1999 until November 1, 2000.]

USE NOTES

1. This order of protection is directed only against the respondent. So called mutual orders of protection binding on the petitioner as well as the respondent are not entitled to full faith and credit unless certain procedural requirements are met. *See* 18 U.S.C. Section 2265(c) and Section 40-13-6(D) NMSA 1978. To assure compliance with federal requirements, the court normally should enter separate orders unless the requirements for entry of a Mutual Order of Protection (Form 4-966A) are met. Form 4-966 provides an appropriate order of protection against petitioner. Two other forms, Form 4-970 and 4-971, are available for use in appropriate cases upon stipulation of the parties. However, neither Form 4-970 nor 4-971 is entitled to full faith and credit and neither form complies with the provisions of the "Brady Bill" 18 U.S.C. Section 922.
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 for the Counseling, Custody, Support and Division of Property Order.
4. A violation of this provision may result in a finding of contempt of court, punishable by fine, imprisonment or both.
5. If appropriate, an order providing for restitution may be included in this

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1 paragraph.

- 2
3 6. The respondent may be served at the
4 time this order is issued. If the
5 respondent is not present at the time
6 this order is issued, service upon the
7 petitioner shall be made by delivering a
8 copy to the petitioner. *See* Section
9 40-13-6(A) NMSA 1978.

10
11 COMMITTEE COMMENT

12
13 The Family Violence Protection Act provides that "a
14 peace officer shall arrest without a warrant and take into
15 custody a person whom the peace officer has probable
16 cause to believe has violated an order" of protection entered
17 pursuant to the Act. Section 40-13-6(C) NMSA 1978.

18
19 This statute would allow a warrantless misdemeanor
20 arrest for conduct occurring outside the presence of the
21 officer and would not require exigent circumstances in
22 addition to probable cause. That a misdemeanor must occur
23 in the presence of the arresting officer is a long standing
24 common law requirement for a warrantless misdemeanor
25 arrest. *Eg. State v. Luna*, 93 N.M. 773, 777, 606 P.2d 183, 187
26 (1980). The "exigent circumstances" requirement is
27 mandated by the New Mexico Constitution. *Campos v. State*, 117
28 N.M. 155, 159, 870 P.2d 117, 121 (1994) ("[F]or a
29 warrantless arrest to be reasonable it must be based upon
30 both probable cause and sufficient exigent circumstances.").
31 Absent the exigent circumstance that the misdemeanor is
32 committed in the presence of the officer, *id.*, ("If an officer
33 observes the person arrested committing a felony, exigency
34 will be presumed."), the New Mexico Constitution appears
35 to bar blanket authority to make warrantless arrests for
36 misdemeanors committed outside the presence of the
37 officer.

38
39 The legislature, of course, lacks power to provide by
40 statute for an arrest procedure that violates the New Mexico
41 Constitution. *Campos v. State*, 117 N.M. 155, 158, 870 P.2d
42 117, 120 (1994). To avoid having the Supreme Court give
43 approval to a form containing language of questionable
44 constitutional validity, the committee did not use the
45 statutory language in the portion of the Final Order
46 describing the power of a law enforcement officer to make
47 a warrantless arrest for the misdemeanor crime (Section
48 40-13-6(D) NMSA 1978), of violating the Final Order of
49 Protection. The committee substituted more general

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1 language, which does not prejudice the constitutional issue.
2

3 The general provisions of the order of protection,
4 including injunctive orders, "shall continue until modified
5 or rescinded . . . or until the court approves a subsequent
6 consent agreement. . . ." Section 40-13-6(B) NMSA 1978.
7 In contrast, "[a]n order of protection . . . involving custody
8 or support shall be effective for a fixed period of time not to
9 exceed six months". *Id.* The custody or support "order may
10 be extended for good cause upon motion . . . for an
11 additional period of time not to exceed six months", *id.*,
12 unless "the order supersedes or alters prior orders of a
13 court" pertaining to child custody or child support. *See*
14 Section 40-13-5(C) NMSA 1978. In the latter situation,
15 "the court may enter an initial order of protection, but the
16 portion of the order dealing with child custody or child
17 support will then be transferred to the court that has or
18 continues to have jurisdiction over the pending or prior
19 custody or support action". *Id.*

20 DBD::DB2::st execute failed: [IBM][CLI
21 Driver][DB2/6000] SQL0530N The insert or update value
22 of the FOREIGN KEY
23 "DBUSER.BILLDETAIL.SQL980508102800170" is not
24 equal to any value of the parent key of the parent table.
25 SQLSTATE=23503
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