

1 **4-963. Temporary order of protection and order to appear.**

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

3 STATE OF NEW MEXICO

4 COUNTY OF \_\_\_\_\_

5 \_\_\_\_\_ JUDICIAL DISTRICT

6 \_\_\_\_\_, Petitioner

7 v. No. \_\_\_\_\_

8 \_\_\_\_\_, Respondent

9 **TEMPORARY ORDER OF PROTECTION**

10 **AND ORDER TO APPEAR**

11 The court has reviewed the sworn petition alleging domestic abuse. The court having  
12 considered the petition, **FINDS** that the court has jurisdiction and that there is probable cause to  
13 believe that an act of domestic abuse has occurred. The court **ORDERS**:

14 [ ] 1. Respondent shall not write to, talk to, visit or contact the petitioner in any way except  
15 through petitioner's lawyer, if petitioner has a lawyer.

16 [ ] 2. Respondent shall not abuse the petitioner or the petitioner's household members in  
17 any way. "Abuse" means any incident by respondent against petitioner or petitioner's household  
18 member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault;  
19 (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to  
20 property; (7) repeatedly driving by a residence or work place; (8) telephone harassment; (9)  
21 stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.

22 [ ] 3. Respondent shall not ask or cause other persons to abuse the petitioner or the  
23 petitioner's household members.

1     4.    Respondent shall not go within \_\_\_\_\_ yards of the petitioner's home or school  
2    or work place. Respondent shall not go within \_\_\_\_\_ yards of the petitioner at all times  
3    except \_\_\_\_\_. If at a public place, such as a store,  
4    respondent shall not go within \_\_\_\_\_ yards of petitioner.

5     5.    \_\_\_\_\_ (first and last name of party) shall have  
6    temporary physical custody of the following child(ren):[\_\_\_\_\_]

<u>Child's Name</u>	<u>Date of Birth</u>
_____	_____
_____	_____

10    6.    With respect to the child(ren) named in the preceding paragraph, [ respondent   
11   ~~petitioner~~] \_\_\_\_\_ (first and last name of parent) shall have:

12             A.    No contact with the child(ren) until further order of this court and shall  
13   stay \_\_\_\_\_ yards away from the child(ren)'s school.

14             B.    Contact with the child(ren), subject to:  
15   \_\_\_\_\_

16    7.    Neither party shall remove the child(ren) named in the preceding paragraph from the  
17   State of New Mexico or disenroll the child(ren) from the child(ren)'s present school during the  
18   period of this temporary order of protection.

19    8.    The court may decide temporary child and interim support at the hearing listed below.  
20   Both parties shall bring to the hearing proof of income in the form of the two latest pay stubs or  
21   the federal tax returns from the previous year, proof of work related day-care costs and proof of  
22   medical insurance costs for the child(ren).

23    9.

1         A.     Respondent is ordered to immediately leave the residence at \_\_\_\_\_  
2     and to not return until further court order.

3         B.     Law enforcement officers are hereby ordered to evict respondent from the  
4     residence at \_\_\_\_\_.

5         C.     Respondent is ordered to surrender all keys to the residence to law  
6     enforcement officers.

7         10.    Law enforcement officers or \_\_\_\_\_ shall accompany  
8      respondent  petitioner to remove essential tools (*as specified in No. 13*), clothing, and  
9     personal belongings from the residence at \_\_\_\_\_.

10        11.    Neither party shall transfer, hide, add debt to, sell or otherwise dispose of the other's  
11     property or the joint property of the parties except in the usual course of business or for the  
12     necessities of life. The parties shall account to the court for all such changes to property made  
13     after the order is served or communicated to the party. Neither party shall disconnect the utilities  
14     of the other party's residence.

15        12.    This order supersedes any inconsistent prior order in Cause No. \_\_\_\_\_ and  
16     any other prior domestic relations order and domestic violence restraining orders between these  
17     two parties.

18        13.    Other: \_\_\_\_\_.

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

23     **HEARING**

1           IT IS FURTHER ORDERED that the parties shall appear in the \_\_\_\_\_  
2   Judicial District Court, Room \_\_\_\_\_, at \_\_\_\_\_, before  
3   \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date) for  
4   hearing on whether an extended order of protection against domestic abuse will be issued. Either  
5   party may bring witnesses or evidence and may be represented by counsel at this hearing.  
6   Respondent may file a Response to the Petition for Order of Protection from Domestic Abuse,  
7   see Form 4-962 NMRA, on or before the hearing. If the respondent fails to attend this hearing,  
8   an extended order may be entered by default against respondent and a bench warrant may be  
9   issued for respondent's arrest. If petitioner willfully fails to appear at this hearing, the petition  
10  may be dismissed. This order remains in force until \_\_\_\_\_, \_\_\_\_\_.

11 **If an order of protection is entered, the restrained party is prohibited from receiving,**  
12 **transporting, or possessing a firearm or destructive device while the order of protection is**  
13 **in place.** If at the hearing the court finds that the restrained party presents a credible threat to the  
14 physical safety of the protected party, the court shall order the restrained party (a) to immediately  
15 deliver any firearm in the restrained party's possession, care, custody, or control to a law  
16 enforcement agency, law enforcement officer, or federal firearms licensee while the order of  
17 protection is in effect, and (b) to refrain from purchasing, receiving, or possessing, or attempting  
18 to purchase, receive, or possess any firearm while the order of protection is in effect.

19 **[ ] DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR**  
20 **PERMISSION OF THE COURT.**

21 **ENFORCEMENT OF ORDER**

22           If the [~~respondent~~] restrained party violates any part of this order, the [~~respondent~~]  
23 restrained party may be charged with a crime, arrested, held in contempt of court, fined or jailed.

1 **SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES**

2           Upon the signing of this order by a district court judge, a law enforcement officer shall  
3 serve on the respondent a copy of this order and a copy of the petition. **A LAW ENFORCEMENT**  
4 **OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE THIS ORDER.**

5 [ ] I have reviewed the petition for order of protection and made recommendations to the  
6 district judge regarding its disposition.

7 \_\_\_\_\_

8 *(Signed)* Court telephone number

9 \_\_\_\_\_

10 *(Title)*

11 **SO ORDERED:**

12 \_\_\_\_\_

13 District Judge

Date and time approved

14 **USE NOTE**

15 1. The temporary order of protection and order to appear requires a proof of return of  
16 service. The committee has been informed that each local law enforcement agency has its own  
17 return of service form, which [~~that~~] will be used for this purpose.

18 2. Personal service of the temporary order of protection and order to appear will assure  
19 that the temporary order is fully enforceable. It is possible that actual notice to the respondent of  
20 the content of the temporary order will also suffice to bind the respondent to comply with the  
21 order. *Territory of New Mexico v. Clancy*, 7 N.M. 580, 583 (1894).

22 [Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May  
23 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; by

- 1 Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme
- 2 Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019.]