

**4-973. Emergency order of protection against respondent.**

[Family Violence Protection Act,  
Section 40-13-3.2 NMSA 1978]

STATE OF NEW MEXICO

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

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

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

v.

No. \_\_\_\_\_

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

**EMERGENCY ORDER OF PROTECTION AGAINST RESPONDENT**

The court has reviewed the sworn written statement for an emergency order of protection. The court having considered the statement, **FINDS** that the court has jurisdiction, that there is reasonable cause to believe that an act of domestic abuse has occurred and that petitioner or a household member will suffer immediate and irreparable injury, loss, or damage unless the court enters this order. The court

**ORDERS:**

**1. NO CONTACT**

- A. Respondent shall not write to, talk to, visit, or contact the petitioner in any way except through petitioner’s lawyer, if petitioner has a lawyer.
- B. Respondent shall not abuse the petitioner or the petitioner’s household members in any way. “Abuse” means any incident by respondent against petitioner or another household member resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.
- C. Respondent shall not ask or cause other persons to abuse the petitioner or the petitioner’s household members.
- D. Respondent shall not go within \_\_\_\_\_ yards of the petitioner’s home or school or workplace.

***(Unless the court has entered an order sealing petitioner’s address, include address of residence and employment for petitioner.)***

Petitioner’s addresses

\_\_\_\_\_ (home address)

\_\_\_\_\_ (work address)

\_\_\_\_\_ (city)

\_\_\_\_\_ (if applicable, tribe or pueblo)  
\_\_\_\_\_ (state and zip code)

**2. CHILDREN**

A. Petitioner shall have temporary physical custody of the following child(ren): \_\_\_\_\_

B. Respondent shall [have] [not have] visitation with the child(ren) during the term of this order.

C. Neither party shall remove the child(ren) from the State of New Mexico or allow anyone else to do so.

**3. PROPERTY AND RESIDENCE**

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

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

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

D. Law enforcement officers or \_\_\_\_\_ shall assist respondent to remove essential tools, clothing, and personal belongings from the residence at \_\_\_\_\_.

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

**4. OTHER ORDERS SUPERSEDED**

This order supersedes any other domestic relations order and domestic violence restraining orders between these two parties.

**5. PETITIONER'S DUTY**

While this order of protection is in effect, petitioner should refrain from any act that would cause the respondent 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.

**6. EFFECTIVE AND EXPIRATION DATE OF THIS ORDER**

A. Upon service of this order on respondent, this order becomes effective on respondent.

B. This order expires seventy-two (72) hours after the time approved by the judge or at 5:00 p.m. on the next business day of the court, whichever time is latest.

**7. PETITION FOR ORDER OF PROTECTION OR RESTRAINING ORDER**

Petitioner may file a petition for a temporary and permanent order of protection based on the same allegations of domestic abuse.

**8. ENFORCEMENT OF ORDER**

If the respondent violates any part of this order, the respondent may be charged with a crime, arrested, held in contempt of court, fined, or jailed.

**9. SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES**

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the respondent a copy of this order and shall carry out the other provisions of this order.

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

**SO ORDERED:**

\_\_\_\_\_  
District Judge

\_\_\_\_\_  
Date and time approved

STATE OF NEW MEXICO

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

\_\_\_\_\_ JUDICIAL DISTRICT COURT

**RETURN OF SERVICE**

I, \_\_\_\_\_ (*name of law enforcement officer*) affirm under penalty of perjury under the laws of the State of New Mexico that I am a certified law enforcement officer for \_\_\_\_\_ (*name of agency*) and I personally served the respondent with a signed copy of this emergency order of protection against respondent upon the respondent in \_\_\_\_\_ County, New Mexico on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (*date*) at \_\_\_\_\_ (a.m.) (p.m.).

\_\_\_\_\_  
Signature of law enforcement officer

\_\_\_\_\_  
Title and agency

**USE NOTES**

1. This emergency order of protection against respondent requires an affidavit of service. See NMSA 1978, § 40-13-3.2.
2. Personal service of the emergency order of protection will assure that the

emergency order is fully enforceable. It is possible that actual notice to the respondent of the content of the emergency order will also suffice to bind the respondent to comply with the order. *Territory of New Mexico v. Clancy*, 1894-NMSC-012, ¶ 1, 7 N.M. 580, 37 P. 1108.

3. The person who serves the respondent with a copy of this order should also “immediately provide the petitioner with a signed copy of the order.” See NMSA 1978, § 40-13-3.2(B)(3).

[Approved, effective November 1, 1999 until July 1, 2001; as amended, effective August 29, 2000; approved, effective May 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; as amended by Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme Court Order No. 14-8300-023, effective for all pleadings and papers filed on or after December 31, 2014.]