



ALBUQUERQUE POLICE DEPARTMENT  
FIELD SERVICES ORDERS

SOP 4-25

Effective: 4/25/18 Review Due: 4/25/19 Replaces: 1/14/16

**4-25 DOMESTIC VIOLENCE**

**4-25-1 Purpose**

It is the policy of the Department to enforce laws dealing with domestic abuse and to take appropriate action in cases involving domestic abuse.

**4-25-2 Policy**

The policy establishes deadlines for investigating a domestic violence incident. It provides guidance on conducting investigations, identifying the predominant aggressor, restraining orders and ensuring the safety of the victim and relating parties.

**4-25-3 Definitions**

A. Domestic Violence/Abuse

Any incident resulting in physical harm, bodily injury or assault, or a threat causing imminent fear of such harm by any household member.

B. Household Member

A spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the Crimes Against Household Members Act.

Household members are defined by Statute 30-3-11 (as of July 1, 2010):

Household members	Non-household members
Married couples/divorced couples	Brother/sister Aunt/uncle/cousin
Current or former boyfriend or girlfriend	Niece/nephew Current or former sibling-in-law
Parents or co-parent (child in common)	
Mother-in-law or father-in-law	Current or former step-grandparent Current or former brother/sister-in-law
Grandparent or grandparent-in-law	Minor or adult children
Continuing personal relationship	

C. Predominant Aggressor

The person determined to be the most significant, rather than the first aggressor. In identifying the predominant aggressor, the officer shall consider the intent of the law



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to protect victims of domestic violence between the persons involved and whether either person acted in self-defense.

D. Emergency Restraining Order (ERO)

Is issued after normal court hours (when they are closed) when the facts are sworn to by a sworn law enforcement officer to a District Court judge, which can be done telephonically. An ERO is only good for 72 hours or until the next day the courts are open to account for holidays, etc. (whichever is longer) and only approved when the respondent's (offender) location is known (so they can be served).

E. Temporary Restraining Order (TRO)

May be issued in response to a petition filed in DV court alleging act(s) of domestic violence against the Petitioner. The petition is reviewed by a DV Commissioner and if approved, is countersigned by a District Court judge. Because the process is ex-parte, a hearing is scheduled, usually within 2 weeks at which time both parties (petitioner and respondent) may present evidence to the court. The TRO is not considered "active" until the respondent has been personally served.

F. Order of Protection

If the Commissioner hearing the facts finds that an act(s) of domestic violence have occurred, the TRO may be extended for a period of time decided by the Commissioner (usually 1-2 years) and is now considered an "order of protection" or OP (Losing the temporary). These are also referred to in the vernacular as "restraining orders."

**4-25-3 Rules and Procedures**

A. Investigation

1. Officers responding to requests for assistance shall take whatever steps are reasonably necessary to protect the victim(s) from further domestic abuse Including the following:
  - a. Officers may arrest the alleged offender where it has been determined arrest is reasonably necessary to protect the victim(s) from further domestic abuse.
  - b. Officers will enforce the provisions of valid court orders of protection if one exists. (see Section 4-25-3, D; "Enforcement of Orders of Protection")
  - c. Officers will advise the victim of the procedures and remedies available under the Family Violence Protection Act, i.e., the right to file a written statement or request for an arrest warrant, and the availability of domestic violence shelters, medical care, counseling, other services, and the importance of preserving evidence.



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- d. Upon request of the victim, the officer shall arrange for transportation to a shelter, safe refuge, or medical facility, for victims of domestic abuse. When it is possible, and the Sheriff's Department is available, arrangements can be made for transportation to destinations substantially outside the city limits but within Bernalillo County. A reasonable effort to resolve the situation locally is sufficient until other arrangements can be made at a more appropriate time.
  - e. Officers shall, upon request of the victim, accompany the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children in care of the victim.
2. Determining whether to issue a summons or effect an arrest:
- a. As stated in the Warrantless Arrest Act, Section 31-1-7, NMSA 1978, officers may arrest a person without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or battery upon a household member.
  - b. An officer shall issue a summons if there is probable cause. On-site arrest is not always required; however, officers shall arrest the alleged offender where it has been determined arrest is reasonably necessary to protect the victim(s) from further domestic abuse, or when exigent circumstances necessitate an arrest.
  - c. When an arrest is made, officers shall charge domestic violence offenses under the Assault Against a Household Member Section 30-3-12, NMSA 1978, and Battery Against a Household Member Section 30-3-15, NMSA 1978. These laws can be used even when no order of protection exists. This does not preclude the application of felony charges arising out of domestic violence incidents, if and when such probable cause exists. If felony charges are appropriate, the arrest and applicable charges will be handled by SOP 2-14, or NMSA 1978 as applicable.
  - d. If issuing a summons or effecting an arrest, it is incumbent upon the officers at the scene of a domestic violence incident to determine the predominant aggressor.
  - e. Dual arrests shall not be made for domestic violence offenses. Summons cannot be issued for both parties arising out of the same incident.
  - f. When dealing with persons who may be affected by a behavioral health disorder or a behavioral health crisis, officers shall refer to SOP 2-19, Response to Behavioral Health issues, in particular 2-19-8 regarding diversion from jail when appropriate.
  - g. When an arrest has been made under this section, but the offender is taken to the hospital for treatment, an officer will stay with the prisoner until the prisoner can be transported to the Metropolitan Detention Center or PTC and booked. Hospital holds will not be placed on prisoners arrested under the Family Violence Protection Act (Domestic Violence), even when the applicable charges involve only misdemeanor offenses. The transporting officer is responsible for remaining with and guarding the prisoner.



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- h. Officers shall complete a standard Albuquerque Police Department offense and incident report on all domestic violence investigations.

3. Criminal Complaints

- a. When a subject is arrested for a charge committed by a household member against a household member, the arresting officer shall list the charge in the "Charges" portion of the criminal complaint as a domestic violence incident. For example, when a household member is charged with battery against a household member (30-3-15) and harassment (30-3A-2), the "charges" portion of the complaint should read "Domestic Violence, Battery against a Household Member, Harassment" The bottom of the complaint where each section is listed, should read "31-1-7, 30-3-15, 30-3A-2". This procedure shall be followed for all domestic situations where an offender is arrested or summoned following a domestic violence incident.
- b. Officers will not offer or accept any waivers of prosecution in any domestic violence case.
- c. Handwritten statements from the victim(s) and witness(es) will be obtained at the scene, whenever possible.
- d. Officers shall scan all domestic violence statements to be included with their report. The handwritten statement will be turned into the supervisor to be logged and sent to Report Review.
- e. Any visible injuries relating to the battery shall be documented and photographed to be used as evidence for prosecution whenever possible. Lapel cam footage will not meet this requirement, a Crime Scene Specialist (CSS) or supervisor will need to take photographs of any injuries.
- f. Officers shall have available and provide to victims the necessary court petition forms and instructions (Domestic Violence Packets) for their completion. These forms are available in both English and Spanish.
- g. All officers should utilize the following guidelines in determining the need to locate and arrest an offender in domestic violence.
- h. If an offender is still at or near the scene of a domestic violence case, the officer shall, when arrest is reasonably necessary to protect the victim from further domestic abuse, make every reasonable attempt to place the offender under arrest, rather than merely issuing a criminal summons, where there is probable cause to believe that the person has committed an assault or a battery upon a household member.
- i. If an offender has fled the scene of a domestic violence case, before officer's arrival, and cannot be located at or near the scene of the domestic violence, a summons or warrant will be issued for the offender.
- j. Officers should take whatever steps that are reasonably necessary to protect the victim from further domestic abuse that may include writing an arrest warrant.
- k. On all domestic violence calls when an officer requests authorization to change the call to something other than a domestic violence, the supervisor will conduct a thorough investigation before granting the change.



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Additionally, the officer will supply sufficient remarks in the “added remarks” to justify the change in the status of the call.

4. Encountering and Assisting Individuals with Behavioral Health Issues on a DV Call SOP 2-19 (Response to Behavioral Health Issues) applies to investigations and responses in cases involving Domestic Violence or Abuse. The steps outlined below are not intended to supersede the provisions of SOP 2-19, and in the event of any inconsistency, the provisions of SOP 2-19 control.
  - a. All Officers who respond to domestic disturbance calls must familiarize themselves with [SOP 2-19: Response to Behavioral Health Issues](#).
  - b. If an officer is called to a domestic disturbance and is informed by dispatch or discovers through investigation that the individual whose behavior, criminal or otherwise, appears to stem from a behavior health disorder, the Officer shall:
    - i. immediately call for assistance from an Enhanced Crisis Intervention Team (eCIT) officer;
    - ii. if the situation is determined to be a crisis, request a Mobile Crisis Team (MCT);
    - iii. while waiting for eCIT officer, MCT, or supervisor to arrive, Officers shall de-escalate and calm the situation as much as possible: see SOP 2-19-7;
    - iv. if a MCT is not available and the Officer believes the individual to be a danger to themselves or others, the Officer may transport the individual to UNMH or another available mental health evaluation facility. See SOP 2-19-8; NMSA 43-1-10; and
    - v. officers shall reasonably accommodate the disabilities of an individual who either has a behavioral health disorder, or is perceived to have a behavioral health disorder.
  - c. Officers shall not transport an individual whose behavior, criminal or otherwise, appears to stem from a behavioral health disorder, to MDC or PTC solely for the purpose of getting mental health treatment for the person. Mental health evaluation and treatment facilities may be used for that purpose.
  - d. An arrest or charge is not necessary to transport the individual to UNMH or other mental health treatment or evaluation facility if the individual who has or appears to have a behavioral health disorder or who is experiencing a behavioral health crisis presents a likelihood of serious harm to himself/herself or others, including danger to himself/herself due to grave passive neglect, and that immediate detention is necessary to prevent such harm (NMSA 1978 §43-1-10).



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- e. If an individual's apparent criminal behavior appears to stem from a behavioral health disorder and he or she would be better served at a treatment location rather than in a criminal justice setting, Officers should seek such interventions in lieu of arrest or criminal charges. See SOP 2-19-8(C).
- f. Officers shall not arrest individuals who have or appear to have behavioral health issues solely because they are resisting the assistance of their friends, family members, care givers, or officers, unless exigent circumstances are present and transporting the individual to a treatment location would be inappropriate.

B. Order of Protection

1. An Order of Protection is issued by any state district court judge under the Family Violence Protection Act and is granted for the protection of victims of domestic abuse with a specific expiration date, valid for the period listed by the court.
2. A victim of domestic abuse may petition the district court under the Family Violence Protection Act for an Order of Protection. The Department is required to keep blank petition forms for distribution to victims of domestic violence. These forms will be available at all police substations and will be in possession of police officers for distribution to victims. Officers should familiarize themselves with these forms and their implication to instruct family violence victims seeking such relief.

C. Emergency Order of Protection (EOP)

1. EOP may be obtained to the provisions of this subsection, where there is neither a temporary order of protection nor an order of protection that is in effect.
2. Officers are authorized to obtain an emergency order of protection after regular business hours. Officers responding to a domestic violence incident shall complete an application for an EOP when appropriate, adhering to the following guidelines:
  - a. Probable cause exists that an act of domestic violence/abuse has occurred.
  - b. The victim wants an order of protection issued.
  - c. The victim and/or children are in danger of or believe they are in danger of receiving additional acts of domestic violence/abuse.
  - d. Once the location of the restrained part is known by the officer a supervisor will approve the requesting of an order of protection from a judge.
3. If the conditions above exist, officers will complete Sections 1 through 4 of the Application (Order of Protection), APD Form 3094.



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4. Officers must contact a district court judge for approval.
  - a. Permanent numbers to all district court judges can be obtained through ECC or the on-call victim advocate.
  - b. Officers must provide the judge a brief description of the facts surrounding the incident.
  - c. Officers must provide the judge with viable reasons/facts as to why the EOP should be granted.
  - d. If the EOP is denied, officers will indicate in the report the name of the judge and the reason denied.
5. After approval by the judge, sections 7 through 9 (the actual EOP) will be filled out indicating judge's approval.
6. EOP will be distributed as follows:
  - a. The original white copy (top page) will be hand-carried immediately to the Bernalillo County Sheriff's Department, Warrants Section.
  - b. The yellow copy will be given to the victims.
  - c. If the offender is at the scene, serve the offender his/her copy (pink copy) and complete proof of service portion of the EOP.
  - d. The goldenrod copy will be scanned and logged in the sergeant's report log.
7. If the offender is not present, leave the EOP with the victim/protected party.
8. If officers are responding to a call where an EOP has already been approved by a judge and the offender is present but has not been serviced, officers will:
  - a. Obtain the EOP from the victim/protected party and serve the offender.
  - b. Complete a Return of Service Form. These forms should be available at all substations.
  - c. The original Return of Service will be hand-carried to the Bernalillo County Sheriff's Office, Warrants Section, immediately.
  - d. The officer will scan and submit the goldenrod copy to be retained with the original report.

D. Temporary Orders of Protection

1. Temporary Orders of Protection are granted by a judge at the 2nd Judicial District Court, during normal business hours.
2. Initial temporary Orders of Protection are granted as non-mutual and apply to only one party, therefore, can only be violated by the restrained part. Initial orders are valid until the listed date; then a hearing is held on whether the order should be extended for six months or more.



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3. After the hearing date noted on the temporary Order of Protection, an order of protection may be granted for an extended period.

E. Out-of-State Protective Orders

1. All out-of-state protective orders shall be enforced as written.
2. All out-of-state protective orders are presumed valid upon presentation to law enforcement officers and under full faith and credit.
3. Out-of-state orders do not have to be filed in district court to be valid and enforceable.
4. Officers will ensure that out-of-state protective orders are not confused with no-contact orders.

F. Civil Service of Court Orders

1. Officers shall serve district court Orders of Protection under the following circumstances only:
  - a. If the officer is requested to do so.
  - b. The restrained party must be physically served with the order.
  - c. The protected party must have a copy of the valid district court order in his possession.
  - d. Before serving the restrained party with the court order, officers will have ECC contact the Warrants Section of the Bernalillo County Sheriff's Office and determine if the order has already been served.
    - i. If service has not been made, officers will promptly serve the Order of protection on the respondent.
    - ii. If service has been made and the Order of protection prohibits the restrained party from being on the premises.
    - iii. The officer will complete a police report and thoroughly document the incident.
2. Any officer serving a civil district court order as outlined above will fill out a 'Sheriff's Return of Service' form and hand carry the original to the Bernalillo County Sheriff's Office, Warrants Division, immediately.

G. Enforcement of Orders of Protection

1. An Order of Protection shall be deemed valid if the following criteria are met:
  - a. The order states the name of the protected and restrained parties.
  - b. The order contains the date it was issued.
  - c. The order has an expiration date and has not expired.



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- d. The order contains the name of the issuing court.
  - e. The order is signed by, or on behalf of a judicial officer.
2. When an Order of Protection is presented to an officer by the complainant, the officer shall:
- a. Officers will deem if the order is valid using the above-noted criteria.
  - b. Determine if the conduct is prohibited by the order.
  - c. Attempt to confirm the order through BCSO Warrant Division or NCIC.
  - d. If it is determined the restrained party has not been served, or they are unable to confirm the service, the officer shall serve the restrained party with a copy of the restraining order and file a return of service through BCSO warrants.
  - e. If the officer has probable cause to believe that the Order of protection has been violated, he may arrest the restrained party for the violation of the order, but only when an arrest is reasonably necessary to protect the protected party from further domestic abuse. NMSA 40-13-6 (D); 40-13-7(B).
  - f. If the officer has probable cause to believe that the Order of Protection has been violated, the officer shall charge a violation of an Order of Protection.
  - g. Officers shall, upon request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution or service of an order of protection.
  - h. Officers shall, upon request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution or service of an order of protection.
  - i. Officers shall enforce the provisions of custody as outlined in the court Order of Protection that directs removing a child or children from the non-custodial parent or guardian.
3. Orders of protection must be enforced per NMSA 40-13-6D, "Service of Order". A peace officer may arrest without a warrant and take into custody a person whom the peace officers had probable cause to believe has violated order under this section.

#### H. Victim Notification

1. The arresting officer at the scene of a domestic abuse incident will ask the victim the following:
  - a. The telephone number and email address where she/he may be contacted personally.
  - b. If a telephone number is not available, a telephone number where a message can be left for the victim to provide notification of offender release.
  - c. The officer will get an address where notification can be made.
2. The arresting officer will complete the Victim Notification Information Worksheet (PD 3075) and telephone the New Mexico Offender Release Notification System



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at 768-CARE (2263) with the telephone number(s) and or address(es) where the victim can be notified.

3. The arresting officer shall complete the Albuquerque Police Department Pre-booking worksheet (PD 3068). This worksheet contains a section for the Domestic Violence Notification ID# and the CADS number.
4. Upon notification by MDC to the Albuquerque Police Department's Emergency Communications Center that the offender is released from custody, the Communications Center will make every reasonable attempt to notify the victim in accordance to the information provided by the arresting officer.
5. In the rare case where no telephone is available, Emergency Communications will create a 10-10 event and dispatch an officer to make notification at the victim's location.

I. Social Support for Victims

1. Officers will enforce the provisions of valid court Orders of Protection.
2. Officers will advise the victim of the procedures and remedies available under the Family Violence Protection Act, i.e., the right to file a written statement, criminal complaint, or request for an arrest warrant, and the availability of domestic violence shelters, medical care, counseling, other services, and the importance of preserving evidence.
3. Upon the request of the victim, the officer shall provide or make reasonable efforts to arrange for transportation to a shelter, safe refuge, or medical facility, for victims of domestic abuse.
4. When it is possible, and the Sheriff's Department is available, arrangements can be made for transportation to destinations substantially outside the city limits but within Bernalillo County. A reasonable effort to resolve the situation locally is sufficient until other arrangements can be made at a more appropriate time.
5. Police Service Aides should be utilized whenever possible or practical. However, it is the officer's responsibility to make sure that the mandate of the court is carried out.
6. Officers shall, upon request of the victim, accompany the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children in the care of the victim.



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7. Officers shall, upon request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution or service of the Order of Protection.
8. Officers will give victim a Domestic Violence packet.