

**DOMESTIC RELATIONS FORMS
FORM 4-965**

**Supreme Court Approved
November 1, 2020**

1 4-965. Order of protection, mutual, non-mutual.

_____ Judicial District _____ County, New Mexico	Order of Protection [] Amended Order
Case No. _____	

2

PROTECTED PARTY ([] PETITIONER [] RESPONDENT) <div style="border: 1px solid black; height: 30px; width: 100%;"></div> First Middle Last And/or on behalf of minor family member(s): (list name and DOB) _____ _____	PROTECTED PARTY IDENTIFIERS <div style="border: 1px solid black; height: 30px; width: 100%;"></div> Date of Birth of Protected Party Other Protected Persons/DOB _____ _____
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V.

RESTRAINED PARTY <div style="border: 1px solid black; height: 30px; width: 100%;"></div> First Middle Last Relationship to Protected Party: _____ Restrained Party's Address _____ _____	RESTRAINED PARTY IDENTIFIERS <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;">SEX</td> <td style="width:15%;">RACE</td> <td style="width:15%;">DOB</td> <td style="width:15%;">HT</td> <td style="width:15%;">WT</td> </tr> <tr> <td>EYES</td> <td>HAIR</td> <td colspan="3">SOCIAL SECURITY #</td> </tr> <tr> <td colspan="5" style="text-align: center;">Not used in New Mexico</td> </tr> <tr> <td colspan="2">DRIVERS LICENSE #</td> <td>STATE</td> <td colspan="2">EXP DATE</td> </tr> <tr> <td colspan="5" style="height: 20px;"></td> </tr> </table> Distinguishing Features _____ _____	SEX	RACE	DOB	HT	WT	EYES	HAIR	SOCIAL SECURITY #			Not used in New Mexico					DRIVERS LICENSE #		STATE	EXP DATE						
SEX	RACE	DOB	HT	WT																						
EYES	HAIR	SOCIAL SECURITY #																								
Not used in New Mexico																										
DRIVERS LICENSE #		STATE	EXP DATE																							

CAUTION:

- [] Weapon Involved
- [] Credible Threat. Firearm Delivery Ordered.

3

THE COURT HEREBY FINDS:

4 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.

5

6 [] Additional findings of this order follow on succeeding pages.

7

THE COURT HEREBY ORDERS:

8

[] That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.

9

[] That the above named Restrained Party be restrained from any contact with the Protected Party.

10

[] Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until , .

11

WARNINGS TO THE RESTRAINED PARTY:

12

13 This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and 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.

14

15 As a result of this order, it is 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) and NMSA 1978, Section 30-7-16, and may be unlawful under 18 U.S.C. Section 921(a)(32). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

16

17

18

Only the court can change this order.

Page 1 of _____

Judge's signature on last page

19

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

2 **ADDITIONAL PAGES¹ OF ORDER OF PROTECTION**

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

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

7 (*check only applicable paragraphs*)

8 **1. FINDING OF CREDIBLE THREAT**

9 [] The restrained party presents a credible threat to the physical safety of the protected party
10 or a member of the protected party's household. The court's order regarding relinquishment of
11 firearms is addressed in paragraph five (5) of this order of protection.

12 [] The restrained party presents a credible threat to the physical safety of the protected party,
13 who is a household member.

14 [] The restrained party shall, within forty-eight (48) hours, deliver any firearm in the
15 restrained party's possession, care, custody, or control to a law enforcement agency, law
16 enforcement officer, or federal firearms licensee while the order of protection is in effect, and shall
17 refrain from purchasing, receiving, or possessing, or attempting to purchase, receive, or possess,
18 any firearm while the order of protection is in place.

19 [] The restrained party is responsible for ensuring that the firearm delivery receipt is filed in
20 this case within seventy-two (72) hours of entry of this order.

21 **2. NOTICE, APPEARANCES, AND STATUS**

22 [] [~~Petitioner~~] The petitioner was present.

23 [] [~~Petitioner~~] The petitioner was represented by counsel.

1 [~~Respondent~~] The respondent was present.

2 [~~Respondent~~] The respondent was represented by counsel.

3 [~~Respondent~~] The respondent was properly served with a copy of the petition, temporary
4 order of protection prohibiting domestic abuse and order to appear.²

5 [~~Respondent~~] The respondent was properly served with a copy of the petition and order to
6 appear.²

7 [~~Respondent~~] The respondent received actual notice of the hearing and had an opportunity
8 to participate in the hearing.²

9 [~~Petitioner~~] The petitioner was properly served with a copy of the counter-petition and
10 order to appear.²

11 [~~Petitioner~~] The petitioner was properly served with a copy of the temporary order of
12 protection prohibiting domestic abuse and order to appear.

13 [~~Petitioner~~] The petitioner received actual notice of the hearing and had an opportunity to
14 participate in the hearing.²

15 The relationship of the parties is that of an “intimate partner” as defined in 18 [~~USC~~] U.S.C.
16 Section 921 (a)(32). (*See* [~~3(B)~~] 3 below.)³

17 **3. CONSEQUENCES OF ENTRY OF ORDER OF PROTECTION**

18 Violation of this order by the restrained party can have serious consequences, including:

19 A. If you violate the terms of this order, you may be charged with a misdemeanor,
20 which is punishable by imprisonment of up to three hundred sixty-four (364) days and a fine of up
21 to one thousand dollars [~~(\$1,000)~~] (\$1,000.00), or both. You may be found in contempt of court.

22 B. If you receive, transport, or possess a firearm or destructive device while the order
23 of protection is in effect, you may be charged with a misdemeanor, which is punishable by

1 imprisonment for up to [~~three hundred and sixty-four~~] three hundred and sixty-four (364) days and
2 a fine of up to [~~one thousand~~] one thousand dollars (\$1,000.00).

3 C. If you are the spouse or former spouse of the other party, an individual who
4 cohabitates with or has cohabitated with the other party, or if you and the other party have had a
5 child together, federal law also prohibits you from possessing or transporting firearms or
6 ammunition while this order is in effect. If you have a firearm or ammunition, you should
7 immediately dispose of the firearm or ammunition. Violation of this law is a federal crime
8 punishable by imprisonment for up to ten (10) years and a fine of up to [~~two hundred fifty-~~
9 ~~thousand~~] two hundred and fifty thousand dollars [~~(\$250,000)~~] (\$250,000.00).

10 D. If you are not a citizen of the United States, violation of this order will have a
11 negative effect on your application for residency or citizenship.

12 **4. FINDING OF DOMESTIC ABUSE**

13 An act of domestic abuse was committed by [] the respondent [] the petitioner that
14 necessitates an order of protection. [] [~~Petitioner~~] The petitioner [] [~~Respondent~~] The respondent
15 is the protected party under this order.

16 **5. FINDING THAT THE RESTRAINED PARTY PRESENTS A CREDIBLE
17 THREAT TO THE PROTECTED PARTY'S PHYSICAL SAFETY, ORDER**

18 [~~Restrained~~] The restrained party presents a credible threat to the physical safety of the
19 protected party, who is a household member.

20 [~~Restrained~~] The restrained party shall deliver any firearm in the restrained party's
21 possession, care, custody, or control to a law enforcement agency, law enforcement officer, or
22 federal firearms licensee while the order of protection is in effect, and shall refrain from

1 purchasing, receiving, or possessing, or attempting to purchase, receive, or possess, any firearm
2 while the order of protection is in effect.

3 **6. DOMESTIC ABUSE PROHIBITED**

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

12 The restrained party shall not ask or cause other persons to abuse the other party or any
13 other household members.

14 **7. CONTACT PROHIBITIONS**

15 The restrained party shall stay [~~400~~ one hundred (100)] yards away from the other party,
16 the other party's home, and any [~~workplace~~ work place] at all times, unless at a public place, where
17 the restrained party shall remain [~~25~~ twenty-five (25)] yards away from the other party except as
18 specifically permitted by this order.

19 The restrained party shall not telephone, talk to, visit, or contact the other party in any way
20 except as follows: _____

21 _____.

22 [] The parties may contact each other by telephone regarding medical emergencies of
23 minor children;

1 The restrained party shall not post or cause another to post anything about the
2 protected party on any form of social media, including, but not limited to, Facebook, Twitter,
3 Instagram, or Snapchat. This prohibition includes posts about the protected party's family
4 members, significant other, and children.

5 Other: _____
6 _____.

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

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

9 Protected Party

10 _____

11 Home address City, State, Zip Code

12 _____

13 Work Address City, State, Zip Code

14 _____

15 Tribe/Pueblo (if applicable) City, State, Zip Code

16 _____

17 **8. COUNSELING**

18 ~~Restrained~~ The restrained party shall attend counseling at _____,
19 contacting that office within five (5) days. The restrained party shall participate in, attend, and
20 complete counseling as recommended by the named agency.

21 ~~Protected~~ The protected party shall attend counseling at _____,
22 contacting that office within five (5) days. The protected party shall participate in, attend, and
23 complete counseling as recommended by the named agency.

1 ~~[Restrained]~~ The restrained party shall report to _____, for a
2 drug [and] alcohol screen by _____, _____ (date) with the results returned to
3 this court.

4 ~~[Protected]~~ The protected party shall report to _____, for a drug [and]
5 alcohol screen by _____, _____ (date) with the results returned to this court.

6 Other counseling requirements: _____
7 _____.

8 **9. CUSTODY**

9 The court's orders regarding the minor child(ren) are addressed in the Custody, Support
10 and Division of Property Attachment of this order of protection.^{[3]4}

11 **10. PROVISIONS RELATING TO SUPPORT**

12 The court's orders regarding support issues for the parties are found in the Custody,
13 Support and Division of Property Attachment of this order of protection.⁴

14 **11. PROPERTY, DEBTS, AND ~~[PAYMENTS]~~ PAYMENT OF MONEY**

15 The court's orders regarding property, debts, and payment of money are found in the
16 Custody, Support and Division of Property Attachment of this order of protection.⁴

17 **12. PARTIES SHALL NOT CAUSE VIOLATION**

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

22 **13. ADDITIONAL ORDERS**

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

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

5 IT IS FURTHER ORDERED⁵: _____

6 _____.

7 **14. NOTICE TO LAW ENFORCEMENT AGENCIES**

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

10 _____ (name) is ordered to surrender all keys to the residence to law
11 enforcement officers.

12 Law enforcement officers or _____ shall be present during any
13 property exchange.

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

16 **15. NOTICE TO PARTIES**

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

19 To make a request to extend this order, the protected party should return to the court with
20 a copy of this order at least three (3) weeks before this order expires.

21 **16. RECOMMENDATIONS**

22 I have:

23 reviewed the petition for order of protection;

1 Signed
2 _____
3 Title

4 **USE NOTES**

5 1. The first page of this order of protection shall be in the uniform format preceding
6 the heading for additional pages of the order.

7 2. This order may be entered only after a hearing at which the respondent received
8 actual notice and at which the respondent had an opportunity to participate if 18 U.S.C. Section
9 922 is to apply to this order.

10 3. The federal definition of “intimate partner” under the Gun Control Act, 18 U.S.C.
11 Section 921(a)(32), is narrower than the state definition of “household member” under the Family
12 Violence Protection Act, [~~NMSA 1978~~] NMSA 1978, Section 40-13-2(E). Thus, while the parties
13 subject to this order must be household members as a matter of state law, the court also must
14 determine whether they are intimate partners and therefore subject to 18 U.S.C. Section 922(g)(8),
15 as described in Paragraph [~~2(B)~~] 2, above.

16 4. See Form 4-967 NMRA for the Custody, Support and Division of Property Order
17 attachment.

18 5. If appropriate, an order providing for restitution may be included in this paragraph.

19 6. [~~Respondent~~] The respondent or the petitioner should be served at the time this
20 order is issued, before leaving the courthouse. If a default order is issued, service [~~upon~~] on the
21 non-attending party shall be made by mail or by personal service. See NMSA 1978, Section 40-
22 13-6(A)[~~NMSA 1978~~].

1 [Approved, effective November 1, 1999 until July 1, 2001; approved, as amended, effective May
2 1, 2001; as amended by Supreme Court Order No. 07-8300-020, effective September 17, 2007; by
3 Supreme Court Order No. 08-8300-040, effective December 15, 2008; as amended by Supreme
4 Court Order No. 19-8300-009, effective for all orders issued on or after July 1, 2019; as amended
5 by Supreme Court Order No. 19-8300-015, effective for all cases pending or filed on or after
6 December 31, 2019; as amended by Supreme Court Order No. 20-8300-010, effective for all cases
7 pending or filed on or after December 31, 2020.]

8 **Committee commentary.** — The Family Violence Protection Act provides that “a peace
9 officer shall arrest without a warrant and take into custody a person whom the peace officer has
10 probable cause to believe has violated an order” of protection entered pursuant to the Act. NMSA
11 1978, Section 40-13-6(C)[~~NMSA 1978~~].

12 This statute would allow a warrantless misdemeanor arrest for conduct occurring outside
13 the presence of the officer and would not require exigent circumstances in addition to probable
14 cause. That a misdemeanor must occur in the presence of the arresting officer is a [~~long-standing~~]
15 long-standing common law requirement for a warrantless misdemeanor arrest. [~~E.g.~~] E.g., State v.
16 Luna, 1980-NMSC-009, ¶ 11, 93 N.M. 773, [777,] 606 P.2d 183, 187[~~-(1980)~~]. The “exigent
17 circumstances” requirement is mandated by the New Mexico Constitution. Campos v. State, 1994-
18 NMSC-012, ¶ 1, 117 N.M. 155, [159,] 870 P.2d 117, 121[~~-(1994)~~] (“~~[F]or~~ For a warrantless
19 arrest to be reasonable it must be based upon both probable cause and sufficient exigent
20 circumstances.”). Absent the exigent circumstance that the misdemeanor is committed in the
21 presence of the officer, *id.*[~~;~~] (“If an officer observes the person arrested committing a felony,
22 exigency will be presumed.”), the New Mexico Constitution appears to bar blanket authority to
23 make warrantless arrests for misdemeanors committed outside the presence of the officer.

1 The [~~legislature~~] Legislature, of course, lacks power to provide by statute for an arrest
2 procedure that violates the New Mexico Constitution. *Campos*, 1994-NMSC-012, ¶ 7 [~~v.~~
3 *State*, 117 N.M. 155, 158, 870 P.2d 117, 120 (1994)]. To avoid having the Supreme Court give
4 approval to a form containing language of questionable constitutional validity, the committee did
5 not use the statutory language in the portion of the final order describing the power of a law
6 enforcement officer to make a warrantless arrest for the misdemeanor crime (NMSA 1978,
7 Section 40-13-6(D)[~~-NMSA-1978~~]), of violating the final order of protection. The committee
8 substituted more general language, which does not prejudge the constitutional issue.

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

20 [As amended for stylistic compliance by Supreme Court Order No. 20-8300-010, effective for all
21 cases pending or filed on or after December 31, 2020.]