

**DOMESTIC RELATIONS FORMS
FORM 4-965**

**Supreme Court Approved
June 24, 2019**

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

2 [Click here for PDF version of Order of Protection cover page]

3 _____ Judicial District
4 _____ County, New Mexico
5 Case No. _____

Order of Protection

Amended Order

PROTECTED PARTY (PETITIONER RESPONDENT)

PROTECTED PARTY IDENTIFIERS

First Middle Last
And/or on behalf of minor family member(s): (list name and DOB)

Date of Birth of Protected Party
Other Protected Persons/DOB

v.

RESTRAINED PARTY

RESTRAINED PARTY IDENTIFIERS

First	Middle	Last	SEX	RACE	DOB	HT	WT
Relationship to Protected Party:			EYES	HAIR	SOCIAL SECURITY #		
Restrained Party's Address			DRIVERS LICENSE #		STATE	EXP DATE	

Distinguishing Features

CAUTION:

- Weapon Involved
- Credible Threat. Firearm Delivery Ordered.

THE COURT HEREBY FINDS:

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.

Additional findings of this order follow on succeeding pages.

THE COURT HEREBY ORDERS:

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

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

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

The terms of this order shall be effective until

WARNINGS TO RESTRAINED PARTY:

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

As a result of this order, it ~~may be~~ 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.

Only the court can change this order.

Page 1 of ____

Judge's signature on last page

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

2 **ADDITIONAL PAGES¹ OF**
3 **ORDER OF PROTECTION**

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

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

8 *(check only applicable paragraphs)*

9 **1. FINDING OF CREDIBLE THREAT**

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

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

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

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

22 **[1-]2. NOTICE, APPEARANCES AND STATUS**

23 Petitioner was present.

1 Petitioner was represented by counsel.

2 Respondent was present.

3 Respondent was represented by counsel.

4 Respondent was properly served with a copy of the petition, temporary order of protection
5 prohibiting domestic abuse and order to appear.²

6 Respondent was properly served with a copy of the petition and order to appear.²

7 Respondent received actual notice of the hearing and had an opportunity to participate in
8 the hearing.²

9 Petitioner was properly served with a copy of the counter-petition and order to appear.²

10 Petitioner was properly served with a copy of the temporary order and order to appear.

11 Petitioner received actual notice of the hearing and had an opportunity to participate in the
12 hearing.²

13 The relationship of the parties is that of an "intimate partner" as defined in 18 USC Section
14 921 (a)(32). (*See* ~~2(B)~~ 3(B) below)

15 ~~2.~~**3. CONSEQUENCES OF ENTRY OF ORDER OF PROTECTION**

16 Violation of this order by the [respondent petitioner] restrained party can have serious
17 consequences, including:

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

21 B. If you receive, transport, or possess a firearm or destructive device while the order
22 of protection is in effect, you may be charged with a misdemeanor, which is punishable by
23 imprisonment for up to three (3) years.

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

8 ~~[C.]~~D. If you are not a citizen of the United States, violation of this order [~~may~~] will have
9 a negative effect on your application for residency or citizenship.

10 **~~[3.]4.~~ FINDING OF DOMESTIC ABUSE**

11 An act of domestic abuse was committed by [] respondent [] petitioner that necessitates
12 an order of protection. [] Petitioner [] Respondent is the protected party under this order.

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

15 Restrained party presents a credible threat to the physical safety of the protected party, who
16 is a household member.

17 Restrained party shall deliver any firearm in the restrained party's possession, care,
18 custody, or control to a law enforcement agency, law enforcement officer, or federal firearms
19 licensee while the order of protection is in effect, and shall refrain from purchasing, receiving, or
20 possessing, or attempting to purchase, receive, or possess, any firearm while the order of protection
21 is in effect.

22 **~~[4.]6.~~ DOMESTIC ABUSE PROHIBITED**

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

9 Respondent Petitioner] The restrained party shall not ask or cause other persons to
10 abuse the other party or any other household members.

11 **5.7. CONTACT PROHIBITIONS**

12 Respondent Petitioner] The restrained party shall stay [_____] 100 yards
13 away from the other party, the other party's home and any workplace at all times, unless at a public
14 place, where the respondent petitioner] restrained party shall remain [_____] 25
15 yards away from the other party except as specifically permitted by this order.

16 Respondent Petitioner] The restrained party shall not telephone, talk to, visit, or
17 contact the other party in any way except as follows: _____
18 _____.

19 The parties may contact each other by telephone regarding medical emergencies of
20 minor children;

21 Other: _____
22 _____.

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

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

2 **[Protected party's addresses**

3 _____ *(home address)*

4 _____ *(work address)*

5 _____ *(city)*

6 _____ *(if applicable, tribe or pueblo)*

7 _____ *(state and zip code)]*

8 Protected Party

9 _____

10 Home address _____ City, State, Zip Code

11 _____

12 Work Address _____ City, State, Zip Code

13 _____

14 Tribe/Pueblo (if applicable) _____ State and Zip Code

15 **[6.]8. COUNSELING**

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

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

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

4 ~~[Petitioner]~~ 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 **[7-]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

11 **[8-]10. PROVISIONS RELATING TO SUPPORT**

12 The court's orders regarding support issues for the parties are found in the Custody, Support
13 and Division of Property Attachment of this order of protection.^{[3]4}

14 **[9-]11. PROPERTY, DEBTS AND PAYMENTS 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.^{[3]4}

17 **[10-]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 Section 40-13-6 (D) NMSA 1978, only the
21 restrained party can be arrested for violation of this order.

22 **[11-]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
5 hearing.

6 IT IS FURTHER ORDERED^[4]⁵: _____
7 _____.

8 **~~[12.]14.~~ NOTICE TO LAW ENFORCEMENT AGENCIES**

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

11 Respondent Petitioner] _____ (name) is ordered to surrender all
12 keys to the residence to law enforcement officers.

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

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

17 **~~[13.]15.~~ NOTICE TO PARTIES**

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

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

22 **~~[14.]16.~~ RECOMMENDATIONS**

23 I have:

1 reviewed the petition for order of protection;
2 reviewed the counter-petition for order of protection;
3 conducted hearings on the merits of the petition;
4 after notice and hearing, I prepared this order as my recommendation to the district
5 court judge regarding disposition of the request for order of protection. If any party disagrees with
6 the recommendations, that party may, but is not required to, file written objections and a request
7 for hearing on those objections with the district court within ten (10) days. A copy of those
8 objections and a request for hearing must be served by mail on the other party.

9 _____

10 Signed

11 _____

12 Title

13 Court's telephone number: _____

14 The court has reviewed the recommendations and adopts them. This order remains in effect unless
15 and until it is modified by a district court judge or it expires. If objections are filed the court may
16 conduct a hearing to resolve the objections. (*See* Rule 1-053.1(H)(1)(a) NMRA).

17 **SO ORDERED:**

18 _____

19 District Judge

Date

20 A copy of this order was hand delivered faxed mailed to respondent
21 respondent's counsel on _____ (*date*)⁵₆.

22 A copy of this order was hand delivered faxed mailed to petitioner
23 petitioner's counsel on _____ (*date*).

1 _____

2 Signed

3 _____

4 Title

5 **USE NOTE**

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

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

11 3. The federal definition of “intimate partner” under the Gun Control Act, 18 U.S.C.
12 Section 921(a)(32), is narrower than the state definition of “household member” under the Family
13 Violence Protection Act, NMSA1978, Section 40-13-2(E). Thus, while the parties subject to this
14 order must be household members as a matter of state law, the court also must determine whether
15 they are intimate partners and therefore subject to 18 U.S.C. Section 922(g)(8), as described in
16 Paragraph 2(B), above.

17 ~~[3-]~~4. See Form 4-967 NMRA for the Custody, Support and Division of Property Order
18 attachment.

19 ~~[4-]~~5. If appropriate, an order providing for restitution may be included in this paragraph.

20 ~~[5-]~~6. Respondent or petitioner should be served at the time this order is issued, before
21 leaving the courthouse. If a default order is issued, service upon the non-attending party shall be
22 made by mail or by personal service. See Section 40-13-6(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.]

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

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

20 The legislature, of course, lacks power to provide by statute for an arrest procedure that
21 violates the New Mexico Constitution. *Campos v. State*, 117 N.M. 155, 158, 870 P.2d 117, 120
22 (1994). To avoid having the Supreme Court give approval to a form containing language of
23 questionable constitutional validity, the committee did not use the statutory language in the portion

1 of the final order describing the power of a law enforcement officer to make a warrantless arrest
2 for the misdemeanor crime (Section 40-13-6(D) NMSA 1978), of violating the final order of
3 protection. The committee substituted more general language, which does not prejudge the
4 constitutional issue.

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