

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 6, 35 & 113

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO PUBLIC SAFETY; EXPANDING PERMISSIBLE EXPENDITURES FROM THE LAW ENFORCEMENT PROTECTION FUND; PROVIDING THAT THE PENALTY FOR A FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE IS A THIRD DEGREE FELONY; INCREASING THE SENTENCING ENHANCEMENTS FOR BRANDISHING OF A FIREARM IN A NONCAPITAL FELONY; CREATING A PRESUMPTION THAT POSTTRAUMATIC STRESS DISORDER IS PROXIMATELY CAUSED BY EMPLOYMENT FOR LAW ENFORCEMENT OFFICERS AND EMERGENCY MEDICAL SERVICES FIRST RESPONDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 29-13-7 NMSA 1978 (being Laws 1983, Chapter 289, Section 7, as amended) is amended to read:

"29-13-7. EXPENDITURE LIMITATION--CONTROL.--

A. Except as provided for the academy in Subsection

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underscored material = new
[bracketed material] = delete

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1 B of this section, amounts distributed from the fund shall be
2 expended only for the following:

3 (1) the repair and purchase of law enforcement
4 apparatus and equipment, including the financing and
5 refinancing thereof, that meet minimum nationally recognized
6 standards;

7 (2) the purchase of law enforcement equipment,
8 including protective vests, for police dogs;

9 (3) expenses associated with advanced law
10 enforcement planning and training;

11 (4) maintaining the balance of the peace
12 officers', New Mexico mounted patrol members' and reserve
13 police officers' survivors fund at a minimum amount of three
14 hundred fifty thousand dollars (\$350,000);

15 (5) complying with match or contribution
16 requirements for the receipt of federal funds relating to
17 criminal justice programs;

18 (6) no more than fifty percent of the
19 replacement salaries of municipal and county law enforcement
20 personnel of municipalities or counties rated as class 1 in
21 Paragraph (1) of Subsection C of Section 29-13-4 NMSA 1978
22 participating in basic law enforcement training; ~~[and]~~

23 (7) ~~[contingent upon the availability of~~
24 ~~funding and until June 30, 2021]~~ a law enforcement officer
25 retention payment in the amount of seven thousand five hundred

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1 dollars (\$7,500); provided that:

2 (a) the distribution is requested by a
3 municipality or county law enforcement agency that on January
4 1, 2018 had a staffing vacancy rate of at least ten percent to
5 retain a law enforcement officer who is certified in accordance
6 with the Law Enforcement Training Act and has at least twenty
7 years of actual service credit earned under a municipal police
8 member coverage plan as determined by the public employees
9 retirement association;

10 (b) the municipality or county law
11 enforcement agency provides seven thousand five hundred dollars
12 (\$7,500) in matching funds to the law enforcement officer; and

13 (c) the distribution and the matching
14 funds paid to a law enforcement officer shall not constitute
15 the officer's base salary or wages and shall not be considered
16 to be salary or otherwise be used to determine a pension for
17 the purposes of the Public Employees Retirement Act; and

18 (8) recruiting, providing bonuses for and
19 training law enforcement officers engaged in community-oriented
20 policing.

21 B. For the academy, amounts distributed from the
22 fund shall be expended only for providing tourniquet and trauma
23 kits and training on the use of tourniquet and trauma kits
24 pursuant to Section 29-7-7.7 NMSA 1978.

25 C. Amounts distributed from the fund shall be

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1 expended only pursuant to approved budgets and upon duly
2 executed vouchers approved as required by law."

3 SECTION 2. Section 30-7-16 NMSA 1978 (being Laws 1981,
4 Chapter 225, Section 1, as amended) is amended to read:

5 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
6 TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

7 A. It is unlawful for the following persons to
8 receive, transport or possess a firearm or destructive device
9 in this state:

10 (1) a felon;

11 (2) a person subject to an order of protection
12 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

13 (3) a person convicted of any of the following
14 crimes:

15 (a) battery against a household member
16 pursuant to Section 30-3-15 NMSA 1978;

17 (b) criminal damage to property of a
18 household member pursuant to Section 30-3-18 NMSA 1978;

19 (c) a first offense of stalking pursuant
20 to Section 30-3A-3 NMSA 1978; or

21 (d) a crime listed in 18 U.S.C. 921.

22 B. A felon found in possession of a firearm shall
23 be guilty of a [~~fourth~~] third degree felony and shall be
24 sentenced in accordance with the provisions of the Criminal
25 Sentencing Act [~~provided that the violation of and the sentence~~

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1 ~~imposed pursuant to this subsection shall be increased to a~~
2 ~~violation of and the sentence for a third degree felony if the~~
3 ~~person has previously been convicted of a capital felony or a~~
4 ~~serious violent offense provided in Paragraph (4) of Subsection~~
5 ~~L of Section 33-2-34 NMSA 1978].~~

6 C. Any person subject to an order of protection
7 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted
8 of a crime listed in Paragraph (3) of Subsection A of this
9 section who receives, transports or possesses a firearm or
10 destructive device is guilty of a misdemeanor.

11 D. As used in this section:

12 (1) except as provided in Paragraph (2) of
13 this subsection, "destructive device" means:

14 (a) any explosive, incendiary or poison
15 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge
16 of more than four ounces; 4) missile having an explosive or
17 incendiary charge of more than one-fourth ounce; 5) mine; or 6)
18 similar device;

19 (b) any type of weapon by whatever name
20 known that will, or that may be readily converted to, expel a
21 projectile by the action of an explosive or other propellant,
22 the barrel or barrels of which have a bore of more than one-
23 half inch in diameter, except a shotgun or shotgun shell that
24 is generally recognized as particularly suitable for sporting
25 purposes; or

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1 (c) any combination of parts either
2 designed or intended for use in converting any device into a
3 destructive device as defined in this paragraph and from which
4 a destructive device may be readily assembled;

5 (2) the term "destructive device" does not
6 include any device that is neither designed nor redesigned for
7 use as a weapon or any device, although originally designed for
8 use as a weapon, that is redesigned for use as a signaling,
9 pyrotechnic, line throwing, safety or similar device;

10 (3) "felon" means a person convicted of a
11 felony offense by a court of the United States or of any state
12 or political subdivision thereof and:

13 (a) less than ten years have passed
14 since the person completed serving a sentence or period of
15 probation for the felony conviction, whichever is later;

16 (b) the person has not been pardoned for
17 the felony conviction by the proper authority; and

18 (c) the person has not received a
19 deferred sentence; and

20 (4) "firearm" means any weapon that will or is
21 designed to or may readily be converted to expel a projectile
22 by the action of an explosion or the frame or receiver of any
23 such weapon."

24 SECTION 3. Section 31-18-16 NMSA 1978 (being Laws 1977,
25 Chapter 216, Section 5, as amended) is amended to read:

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1 "31-18-16. [~~USE~~] BRANDISHING OF FIREARM--ALTERATION OF
2 BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

3 A. When a separate finding of fact by the court or
4 jury shows that a firearm was [~~used~~] brandished in the
5 commission of a noncapital felony, the basic sentence of
6 imprisonment prescribed for the offense in Section 31-18-15
7 NMSA 1978 shall be increased by [~~one year~~] three years, and the
8 sentence imposed by this subsection shall be the first [~~year~~]
9 three years served, [~~and shall not be suspended or deferred;~~
10 ~~provided~~] except that when the offender is a serious youthful
11 offender or a youthful offender, the sentence imposed by this
12 subsection may be increased by one year.

13 B. For a second or subsequent noncapital felony in
14 which a firearm is [~~used~~] brandished, the basic sentence of
15 imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be
16 increased by [~~three~~] five years, and the sentence imposed by
17 this subsection shall be the first [~~three~~] five years served,
18 [~~and shall not be suspended or deferred; provided~~] except that
19 when the offender is a serious youthful offender or a youthful
20 offender, the sentence imposed by this subsection may be
21 increased by three years.

22 C. If the case is tried before a jury and if a
23 prima facie case has been established showing that a firearm
24 was [~~used~~] brandished in the commission of the offense, the
25 court shall submit the issue to the jury by special

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1 interrogatory. If the case is tried by the court and if a
2 prima facie case has been established showing that a firearm
3 was ~~used~~ brandished in the commission of the offense, the
4 court shall decide the issue and shall make a separate finding
5 of fact thereon.

6 D. As used in this section, "brandished" means
7 displaying or making a firearm known to another person while
8 the firearm is present on the person of the offending party
9 with deliberate intent to intimidate a person."

10 SECTION 4. A new section of the New Mexico Occupational
11 Disease Disablement Law is enacted to read:

12 "[NEW MATERIAL] OCCUPATIONAL CONDITION--POSTTRAUMATIC
13 STRESS DISORDER--PRESUMPTION.--

14 A. As used in this section:

15 (1) "emergency medical services first
16 responder" means a person who is licensed by the department of
17 health and who is employed as a full-time non-volunteer within
18 the emergency medical services system to provide initial
19 emergency aid; and

20 (2) "law enforcement officer" means a full-
21 time or part-time commissioned law enforcement officer of a
22 police or sheriff's department that is part of or administered
23 by the state or a political subdivision of the state.

24 B. If a law enforcement officer or emergency
25 medical services first responder is diagnosed with

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1 posttraumatic stress disorder by a physician or psychologist
2 that results in physical impairment, primary or secondary
3 mental impairment or death, and the condition was not revealed
4 during an initial employment medical screening examination or
5 during a subsequent medical review pursuant to the Occupational
6 Health and Safety Act and rules promulgated pursuant to that
7 act, the condition is presumed to be proximately caused by
8 employment as a law enforcement officer or emergency medical
9 services first responder.

10 C. The presumption created in Subsection B of this
11 section may be rebutted by a preponderance of evidence in a
12 court of competent jurisdiction showing that the law
13 enforcement officer or emergency medical services first
14 responder engaged in conduct or activities outside of
15 employment that posed a significant risk of developing the
16 condition.

17 D. When the presumption created in this section
18 does not apply, it shall not preclude a law enforcement officer
19 or emergency medical services first responder from
20 demonstrating a causal connection between employment and
21 condition or injury by a preponderance of evidence in a court
22 of competent jurisdiction.

23 E. Medical treatment based on the presumption
24 created in this section shall be provided by an employer as for
25 a job-related condition or injury unless and until a court of

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1 competent jurisdiction determines that the presumption does not
2 apply. If the court determines that the presumption does not
3 apply or that the condition is not job-related, the employer's
4 workers' compensation insurance provider shall be reimbursed
5 for health care costs by the medical or health insurance plan
6 or benefit provided for the law enforcement officer or
7 emergency medical services first responder by the employer."

8 SECTION 5. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2020.

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underscoring material = new
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