

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

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

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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 SFC→SFC→SJC→; ~~CREATING A PRESUMPTION THAT POSTTRAUMATIC STRESS DISORDER IS PROXIMATELY CAUSED BY EMPLOYMENT FOR LAW ENFORCEMENT OFFICERS AND EMERGENCY MEDICAL SERVICES FIRST RESPONDERS~~←SJC←SFC←SFC. SFC→SJC→~~PROVIDING THAT MAGISTRATE SALARIES SHALL BE PROVIDED BY THE LEGISLATURE.~~←SJC←SFC

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

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

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

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

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

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

(6) no more than fifty percent of the replacement salaries of municipal and county law enforcement

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personnel of municipalities or counties rated as class 1 in Paragraph (1) of Subsection C of Section 29-13-4 NMSA 1978 participating in basic law enforcement training; ~~and~~

(7) ~~[contingent upon the availability of funding and until June 30, 2021]~~ a law enforcement officer retention payment in the amount of seven thousand five hundred dollars (\$7,500); provided that:

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

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

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

(8) recruiting, providing bonuses for and training law enforcement officers engaged in community-oriented

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policing.

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

C. Amounts distributed from the fund shall be expended only pursuant to approved budgets and upon duly executed vouchers approved as required by law."

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

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

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

- (1) a felon;
- (2) a person subject to an order of protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or
- (3) a person convicted of any of the following crimes:
  - (a) battery against a household member pursuant to Section 30-3-15 NMSA 1978;
  - (b) criminal damage to property of a household member pursuant to Section 30-3-18 NMSA 1978;
  - (c) a first offense of stalking pursuant

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to Section 30-3A-3 NMSA 1978; or

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

B. A felon found in possession of a firearm shall be guilty of a ~~[fourth]~~ third degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act ~~[provided that the violation of and the sentence imposed pursuant to this subsection shall be increased to a violation of and the sentence for a third degree felony if the person has previously been convicted of a capital felony or a serious violent offense provided in Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978]~~.

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

D. As used in this section:

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

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

(b) any type of weapon by whatever name

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known that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell that is generally recognized as particularly suitable for sporting purposes; or

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

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

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

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

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

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

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

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

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

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

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

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a youthful offender, the sentence imposed by this subsection may be increased by three years.

C. If the case is tried before a jury and if a prima facie case has been established showing that a firearm was ~~used~~ brandished in the commission of the offense, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court and if a prima facie case has been established showing that a firearm was ~~used~~ brandished in the commission of the offense, the court shall decide the issue and shall make a separate finding of fact thereon.

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

~~SFC→SJC→SECTION 4. A new section of the New Mexico Occupational Disease Disablement Law is enacted to read:~~

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

~~A. As used in this section:~~

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

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~~emergency aid; and~~

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

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

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

~~D. When the presumption created in this section does not apply, it shall not preclude a law enforcement officer~~

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~~or emergency medical services first responder from demonstrating a causal connection between employment and condition or injury by a preponderance of evidence in a court of competent jurisdiction.~~

~~E. Medical treatment based on the presumption created in this section shall be provided by an employer as for a job-related condition or injury unless and until a court of competent jurisdiction determines that the presumption does not apply. If the court determines that the presumption does not apply or that the condition is not job-related, the employer's workers' compensation insurance provider shall be reimbursed for health care costs by the medical or health insurance plan or benefit provided for the law enforcement officer or emergency medical services first responder by the employer."~~ ←SJC←SFC

SFC→SJC→~~SECTION 4. Section 34-1-9 NMSA 1978 (being Laws 1993, Chapter 278, Section 1, as amended) is amended to read:~~

~~"34-1-9. SALARIES OF JUSTICES, JUDGES AND MAGISTRATES.--~~

~~A. Justices of the state supreme court shall each receive an annual salary as provided by the legislature. The chief justice of the supreme court shall receive an annual salary that is two thousand dollars (\$2,000) more than the annual salary of a justice of the supreme court.~~

~~B. The chief judge of:~~

~~(1) the court of appeals shall receive an~~

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~~annual salary that is ninety-five percent of the annual salary of the chief justice of the supreme court;~~

~~(2) a district court shall receive an annual salary that is ninety-five percent of the annual salary of the chief judge of the court of appeals; and~~

~~(3) a metropolitan court shall receive an annual salary that is ninety-five percent of the annual salary of the chief judge of a district court.~~

~~C. The presiding magistrate of a magistrate district where three or more divisions operate as a single court shall receive an annual salary that is seventy-five percent of the annual salary of the chief judge of a metropolitan court.~~

~~D.) C. Notwithstanding any other provision of law or any other provision of this section, the annual salaries of the following judges [and magistrates] shall be established as follows:~~

~~(1) a judge of the court of appeals shall receive an annual salary that is ninety-five percent of the annual salary of a justice of the supreme court;~~

~~(2) a district court judge shall receive an annual salary that is ninety-five percent of the annual salary of a judge of the court of appeals; and~~

~~(3) a metropolitan court judge shall receive an annual salary that is ninety-five percent of the annual~~

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salary of a district court judge

~~[(4) a full-time magistrate shall receive an annual salary that is seventy-five percent of the annual salary of a metropolitan court judge;~~

~~(5) a half-time magistrate shall receive an annual salary that is fifty percent of the annual salary of a full-time magistrate; and~~

~~(6) a quarter-time magistrate shall receive an annual salary that is twenty-five percent of the annual salary of a full-time magistrate].~~

D. Magistrates shall receive an annual salary as provided by the legislature.

~~E. [For fiscal year 1995 and all subsequent fiscal years] The annual salary for justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall be [established] provided by the legislature in an appropriations act.~~

~~F. No additional salaries shall be paid to justices, judges or magistrates on account of services rendered the state. Justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall receive per diem and mileage for necessary travel on official business of the court as provided in the Per Diem and Mileage Act."~~ ←SJC ←SFC

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SECTION SFC→5←SFC SFC→4←SFC. EFFECTIVE DATE.--The  
effective date of the provisions of this act is July 1, 2020.

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