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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.

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

1 police officers' survivors fund at a minimum amount of three
2 hundred fifty thousand dollars (\$350,000);

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

6 (6) no more than fifty percent of the
7 replacement salaries of municipal and county law enforcement
8 personnel of municipalities or counties rated as class 1 in
9 Paragraph (1) of Subsection C of Section 29-13-4 NMSA 1978
10 participating in basic law enforcement training;

11 (7) a law enforcement officer retention
12 payment in the amount of seven thousand five hundred dollars
13 (\$7,500); provided that:

14 (a) the distribution is requested by a
15 municipality or county law enforcement agency that on January
16 1, 2018 had a staffing vacancy rate of at least ten percent
17 to retain a law enforcement officer who is certified in
18 accordance with the Law Enforcement Training Act and has at
19 least twenty years of actual service credit earned under a
20 municipal police member coverage plan as determined by the
21 public employees retirement association;

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

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

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

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

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

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

19 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
20 TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

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

24 (1) a felon;

25 (2) a person subject to an order of

1 protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978;
2 or

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

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

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

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

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

12 B. A felon found in possession of a firearm shall
13 be guilty of a third degree felony and shall be sentenced in
14 accordance with the provisions of the Criminal Sentencing
15 Act.

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

21 D. As used in this section:

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

24 (a) any explosive, incendiary or poison
25 gas: 1) bomb; 2) grenade; 3) rocket having a propellant

1 charge of more than four ounces; 4) missile having an
2 explosive or incendiary charge of more than one-fourth ounce;
3 5) mine; or 6) similar device;

4 (b) any type of weapon by whatever name
5 known that will, or that may be readily converted to, expel a
6 projectile by the action of an explosive or other propellant,
7 the barrel or barrels of which have a bore of more than one-
8 half inch in diameter, except a shotgun or shotgun shell that
9 is generally recognized as particularly suitable for sporting
10 purposes; or

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

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

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

24 (a) less than ten years have passed
25 since the person completed serving a sentence or period of

1 probation for the felony conviction, whichever is later;

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

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

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

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

12 "31-18-16. BRANDISHING OF FIREARM--ALTERATION OF BASIC
13 SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

14 A. When a separate finding of fact by the court or
15 jury shows that a firearm was brandished in the commission of
16 a noncapital felony, the basic sentence of imprisonment
17 prescribed for the offense in Section 31-18-15 NMSA 1978
18 shall be increased by three years, except that when the
19 offender is a serious youthful offender or a youthful
20 offender, the sentence imposed by this subsection may be
21 increased by one year.

22 B. For a second or subsequent noncapital felony in
23 which a firearm is brandished, the basic sentence of
24 imprisonment prescribed in Section 31-18-15 NMSA 1978 shall
25 be increased by five years, except that when the offender is

1 a serious youthful offender or a youthful offender, the
2 sentence imposed by this subsection may be increased by three
3 years.

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

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

16 SECTION 4. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2020. _____