

The Lynn And Erin Compassionate Use Act

AN ACT RELATING TO CONTROLLED SUBSTANCES; ALLOWING THE MEDICAL USE OF CANNABIS; ENACTING THE LYNN AND ERIN COMPASSIONATE USE ACT; AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT; PROVIDING PENALTIES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Lynn and Erin Compassionate Use Act" in honor of Lynn Pierson and Erin Armstrong.

Section 2. PURPOSE OF ACT.--The purpose of the Lynn and Erin Compassionate Use Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.

Section 3. DEFINITIONS.--As used in the Lynn and Erin Compassionate Use Act:

A. "adequate supply" means an amount of cannabis, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver that is determined by rule of the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months and that is derived solely from an intrastate source

B. "debilitating medical condition" means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admitted into hospice care in accordance with rules promulgated by the department; or
- (8) any other medical condition, medical treatment or disease as approved by the department;

C. "department" means the department of health;

D. "licensed producer" means any person or association of persons within New Mexico that the department determines to be qualified to produce, possess, distribute and dispense cannabis pursuant to the Lynn and Erin Compassionate Use Act and that is licensed by the department;

E. "practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act;

F. "primary caregiver" means a resident of New Mexico who is at least eighteen years of age and who has been designated by the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act;

G. "qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card issued pursuant to the Lynn and Erin Compassionate Use Act; and

H. "written certification" means a statement in a patient's medical records or a statement signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient. A written certification is not valid for more than one year from the date of issuance.

Section 4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF CANNABIS.

A. A qualified patient shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply.

B. A qualified patient's primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of cannabis for medical use by the qualified patient if the quantity of cannabis does not exceed an adequate supply.

C. Subsection A of this section shall not apply to a qualified patient under the age of eighteen years, unless:

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(1) the qualified patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian or person having legal custody of the qualified patient; and

(2) a parent, guardian or person having legal custody consents in writing to:

(a) allow the qualified patient's medical use of cannabis;

(b) serve as the qualified patient's primary caregiver; and

(c) control the dosage and the frequency of the medical use of cannabis by the qualified patient.

D. A qualified patient or a primary caregiver shall be granted the full legal protections provided in this section if the patient or caregiver is in possession of a registry identification card. If the qualified patient or primary caregiver is not in possession of a registry identification card, the patient or caregiver shall be given an opportunity to produce the registry identification card before any arrest or criminal charges or other penalties are initiated.

E. A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

F. A licensed producer shall not be subject to arrest, prosecution or penalty, in any manner, for the production, possession, distribution or dispensing of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

G. Any property interest that is possessed, owned or used in connection with the medical use of cannabis, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials. Any such property interest shall not be forfeited under any state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Cannabis, paraphernalia or other property seized from a qualified patient or primary caregiver in connection with the claimed medical use of cannabis shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or primary caregiver is entitled to the protections of the provisions of the Lynn and Erin Compassionate Use Act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

H. A person shall not be subject to arrest or prosecution for a cannabis-related offense for simply being in the presence of the medical use of cannabis as permitted under the provisions of the Lynn and Erin Compassionate Use Act.

Section 5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.

A. Participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

(1) criminal prosecution or civil penalties for activities not authorized in the Lynn and Erin Compassionate Use Act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis; or

(3) criminal prosecution or civil penalty for possession or use of cannabis:

(a) in a school bus or public vehicle;

(b) on school grounds or property;

(c) in the workplace of the qualified patient's or primary caregiver's employment; or

(d) at a public park, recreation center, youth center or other public place.

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical use of cannabis program to avoid arrest or prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. If a licensed producer sells, distributes, dispenses or transfers cannabis to a person not approved by the department pursuant to the Lynn and Erin Compassionate Use Act or obtains or transports cannabis outside New Mexico in violation of federal law, the licensed producer shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

Section 6. ADVISORY BOARD CREATED--DUTIES

The secretary of health shall establish an advisory board consisting of eight practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology.

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The practitioners shall be nationally board-certified in their area of specialty and knowledgeable about the medical use of cannabis. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society. A quorum of the advisory board shall consist of three members. The advisory board shall:

- A. review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;
- B. accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;
- C. convene at least twice per year to conduct public hearings and to evaluate petitions, which shall be maintained as confidential personal health information, to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis;
- D. issue recommendations concerning rules to be promulgated for the issuance of the registry identification cards; and
- E. recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers.

Section 7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT RULES--DUTIES.

A. No later than October 1, 2007, and after consultation with the advisory board, the department shall promulgate rules in accordance with the State Rules Act to implement the purpose of the Lynn and Erin Compassionate Use Act. The rules shall:

- (1) govern the manner in which the department will consider applications for registry identification cards and for the renewal of identification cards for qualified patients and primary caregivers;
- (2) define the amount of cannabis that is necessary to constitute an adequate supply, including amounts for topical treatments;
- (3) identify criteria and set forth procedures for including additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis. Procedures shall include a petition process and shall allow for public comment and public hearings before the advisory board;
- (4) set forth additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis as recommended by the advisory board;
- (5) identify requirements for the licensure of producers and cannabis production facilities and set forth procedures to obtain licenses;
- (6) develop a distribution system for medical cannabis that provides for:
 - (a) cannabis production facilities within New Mexico housed on secured grounds and operated by licensed producers; and
 - (b) distribution of medical cannabis to qualified patients or their primary caregivers to take place at locations that are designated by the department and that are not within three hundred feet of any school, church or daycare center;
- (7) determine additional duties and responsibilities of the advisory board; and
- (8) be revised and updated as necessary.

B. The department shall issue registry identification cards to a patient and to the primary caregiver for that patient, if any, who submit the following, in accordance with the department's rules:

- (1) a written certification;
- (2) the name, address and date of birth of the patient;
- (3) the name, address and telephone number of the patient's practitioner; and
- (4) the name, address and date of birth of the patient's primary caregiver, if any.

C. The department shall verify the information contained in an application submitted pursuant to Subsection B of this section and shall approve or deny an application within thirty days of receipt. The department may deny an application only if the applicant did not provide the information required pursuant to Subsection B of this section or if the department determines that the information provided is false. A person whose application has been denied shall not reapply for six months from the date of the denial unless otherwise authorized by the department.

D. The department shall issue a registry identification card within five days of approving an application, and a card shall expire one year after the date of issuance. A registry identification card shall contain:

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- (1) the name, address and date of birth of the qualified patient and primary caregiver, if any;
- (2) the date of issuance and expiration date of the registry identification card; and
- (3) other information that the department may require by rule.

E. A person who possesses a registry identification card shall notify the department of any change in the person's name, address, qualified patient's practitioner, qualified patient's primary caregiver or change in status of the qualified patient's debilitating medical condition within ten days of the change.

F. Possession of or application for a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for a governmental agency to search the person or property of the person possessing or applying for the card.

G. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names on the list shall be confidential and not subject to disclosure, except:

- (1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the Lynn and Erin Compassionate Use Act;
- 2) to authorized employees of state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of a registry identification card; or
- (3) as provided in the federal Health Insurance Portability and Accountability Act of 1996.

Section 8.

Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read: "30-31-6. SCHEDULE I.

The following controlled substances are included in Schedule I

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

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| (1) acetylmethadol; | (15) diethylthiambutene; | (29) morpheridine; |
| (2) allylprodine; | (16) dimenoxadol; | (30) noracymethadol; |
| (3) alphacetylmethadol; | (17) dimepheptanol; | (31) norlevorphanol; |
| (4) alphameprodine; | (18) dimethylthiambutene; | (32) normethadone; |
| (5) alphasmethadol; | (19) dioxaphetyl butyrate; | (33) norpipanone; |
| (6) benzethidine; | (20) dipipanone; | (34) phenadoxone; |
| (7) betacetylmethadol; | (21) ethylmethylthiambutene; | (35) phenampromide; |
| (8) betameprodine; | (22) etonitazene; | (36) phenomorphan; |
| (9) betamethadol; | (23) etoxeridine; | (37) phenoperidine; |
| (10) betaprodine; | (24) furethidine; | (38) piritramide; |
| (11) clonitazene; | (25) hydroxypethidine; | (39) proheptazine; |
| (12) dextromoramide; | (26) ketobemidone; | (40) properidine; |
| (13) dextrorphan; | (27) levomoramide; | (41) racemoramide; and |
| (14) diampromide; | (28) levophenacylmorphan; | (42) trimeperidine; |

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

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| (1) acetorphine; | (9) etorphine; | (17) myrophine; |
| (2) acetyldihydrocodeine; | (10) heroin; | (18) nicocodeine; |
| (3) benzylmorphine; | (11) hydromorphenol; | (19) nicomorphine; |
| (4) codeine methylbromide; | (12) methyl-desorphine; | (20) normorphine; |
| (5) codeine-N-oxide; | (13) methyl-dihydromorphine; | (21) pholcodine; and |
| (6) cyprenorphine; | (14) morphine methylbromide; | (22) thebacon; |
| (7) desomorphine; | (15) morphine methylsulfonate; | |
| (8) dihydromorphine; | (16) morphine-N-oxide; | |

C. any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

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| (1) 3,4-methylenedioxy amphetamine; | (7) 4-methyl-2,5-dimethoxy amphetamine; | (13) N-ethyl-3-piperidyl benzilate; |
| (2) 5-methoxy-3,4-methylenedioxy amphetamine; | (8) ibogaine; | (14) N-methyl-3-piperidyl benzilate; |
| (3) 3,4,5-trimethoxy amphetamine; | (9) lysergic acid diethylamide; | (15) psilocybin; |
| (4) bufotenine; | (10) marijuana; | (16) psilocyn; |
| (5) diethyltryptamine; | (11) mescaline; | (17) tetrahydrocannabinols; and |
| (6) dimethyltryptamine; | (12) peyote, except as otherwise provided in the Controlled Substances Act; | (18) hashish; |

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol as Schedule I controlled substances does not apply to the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

Section 9.

Section 30-31-7 NMSA 1978 (being Laws 1972, Chapter 84, Section 7, as amended) is amended to read: "30-31-7. SCHEDULE II.

A. The following controlled substances are included in Schedule II:

- (1) any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
- (a) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;
 - (b) any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of the substances referred to in Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;
 - (c) opium poppy and poppy straw;
 - (d) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions that do not contain cocaine or ecgonine;
 - (e) marijuana, but only for the use by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act; and
 - (f) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol, but only for the use by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act.
- Marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol shall be considered Schedule II controlled substances only for the purposes enumerated in the Controlled Substances Therapeutic Research Act or the Lynn and Erin Compassionate Use Act;
- (2) any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:
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| (a) alphaprodine; | (e) diphenoxylate; | (i) |
| (b) anileridine; | (f) fentanyl; | levomethorphan; |
| (c) bezitramide; | (g) hydromorphone; | (j) levorphanol; |
| (d) dihydrocodeine; | (h) isomethadone; | (k) meperidine; |

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(l) metazocine;	4-cyano-1-methyl-4-	(u)
(m) methadone;	phenylpiperidine;	phenazocine;
(n) methadone--intermediate,	(s) pethidine--	(v) piminodine;
4-cyano-2-dimethylamino-4,	intermediate--B,	(w)
4-diphenyl butane;	ethyl-4-phenyl-	racemethorph
(o) moramide--intermediate,	piperidine-4-	an; and
2-methyl-3-morpholino-1, 1-	carboxylate;	(x)
diphenyl-propane-carboxylic	(t) pethidine--	racemorphan;
acid;	intermediate--C,	
(p) oxycodone;	1-methyl-4-	
(q) pethidine;	phenylpiperidine-4-	
(r) pethidine--intermediate--A,	carboxylic acid;	

(3) unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) amphetamine, its salts, optical isomers and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) methamphetamine, its salts, isomers and salts of isomers; and
- (d) methylphenidate; and

(4) controlled substances added to Schedule II by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of the practitioner's professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to the ultimate user the methadone in such container. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of up to five thousand dollars (\$5,000), or both."

Section 10. TEMPORARY PROVISION.

A. During the period between July 1, 2007 and thirty days after the effective date of rules promulgated by the department of health pursuant to Subsection A of Section 7 of the Lynn and Erin Compassionate Use Act, a person who would be eligible to participate in the medical use of cannabis program as a qualified patient, but for the lack of effective rules concerning registry identification cards, licensed producers, cannabis production facilities, distribution system and adequate supply, may obtain a written certification from a practitioner and upon presentation of that certification to the department of health, the department shall issue a temporary certification for participation in the program. The department of health shall maintain a list of all temporary certificates issued pursuant to this section.

B. A person possessing a temporary certificate and the person's primary caregiver are not subject to arrest, prosecution, civil or criminal penalty or denial of any right or privilege for possessing cannabis if the amount of cannabis possessed collectively is not more than the amount that is specified on the temporary certificate issued by the department of health.

C. A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act on or after July 1, 2007.

Section 11. SEVERABILITY.

If any part or application of the Lynn and Erin Compassionate Use Act is held invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of the Lynn and Erin Compassionate Use Act shall not interfere with the remaining protections provided by that act.

Section 12. EFFECTIVE DATE.

The effective date of the provisions of this act is July 1, 2007.