



The Legislature  
of the  
State of New Mexico

54th Legislature, 1st Session

LAWS 2019

CHAPTER 261

SENATE BILL 204, as amended

Introduced by

SENATOR CANDACE RUTH GOULD AND SENATOR JACOB R. CANDELARIA  
SENATOR ELIZABETH "LIZ" STEFANICS  
REPRESENTATIVE REBECCA L. DOW



FOR THE LEGISLATIVE HEALTH AND  
HUMAN SERVICES COMMITTEE

# CHAPTER 261

## AN ACT

1  
2 RELATING TO HEALTH; ENACTING A SECTION OF THE PUBLIC SCHOOL  
3 CODE AND AMENDING A SECTION OF THE LYNN AND ERIN  
4 COMPASSIONATE USE ACT TO ALLOW THE POSSESSION, STORAGE AND  
5 ADMINISTRATION OF MEDICAL CANNABIS IN CERTAIN SCHOOL  
6 SETTINGS.

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. A new section of the Public School Code is  
10 enacted to read:

11 "MEDICAL CANNABIS--POSSESSION--STORAGE--ADMINISTRATION--  
12 RESTRICTION--EXEMPTIONS.--

13 A. Except as provided pursuant to Subsection C of  
14 this section, local school boards and the governing bodies of  
15 charter schools shall adopt policies and procedures to  
16 authorize the possession, storage and administration of  
17 medical cannabis by parents and legal guardians, or by  
18 designated school personnel, to qualified students for use in  
19 school settings; provided that:

20 (1) a student shall not possess, store or  
21 self-administer medical cannabis in a school setting;

22 (2) a parent, legal guardian or designated  
23 school personnel shall not administer medical cannabis in a  
24 manner that creates disruption to the educational environment  
25 or causes other students to be exposed to medical cannabis;

1 (3) a written treatment plan for the  
2 administration of the medical cannabis is agreed to and  
3 signed by the principal or the principal's designee of the  
4 qualified student's school and the qualified student's parent  
5 or legal guardian; and

6 (4) before the first administration of  
7 medical cannabis in a school setting, the qualified student's  
8 parent or legal guardian completes and submits documentation  
9 as required by local school board or charter school rules  
10 that includes a:

11 (a) copy of the qualified student's  
12 written certification for use of medical cannabis pursuant to  
13 the Lynn and Erin Compassionate Use Act; and

14 (b) written statement from the  
15 qualified student's parent or legal guardian releasing the  
16 school and school personnel from liability, except in cases  
17 of willful or wanton misconduct or disregard of the qualified  
18 student's treatment plan.

19 B. A school board or the governing body of a  
20 charter school may adopt policies that:

21 (1) restrict the types of designated school  
22 personnel who may administer medical cannabis to qualified  
23 students;

24 (2) establish reasonable parameters  
25 regarding the administration and use of medical cannabis and

1 the school settings in which administration and use are  
2 authorized; and

3 (3) ban student possession, use,  
4 distribution, sale or being under the influence of a cannabis  
5 product in a manner that is inconsistent with the provisions  
6 of this subsection.

7 C. The provisions of Subsection A of this section  
8 shall not apply to a charter school or school district if:

9 (1) the charter school or school district  
10 reasonably determines that it would lose, or has lost,  
11 federal funding as a result of implementing the provisions of  
12 Subsection A of this section; and

13 (2) the determination is appealable by any  
14 parent to the secretary, based on rules established by the  
15 department.

16 D. A public school, charter school or school  
17 district shall not:

18 (1) discipline a student who is a qualified  
19 student on the basis that the student requires medical  
20 cannabis as a reasonable accommodation necessary for the  
21 student to attend school;

22 (2) deny eligibility to attend school to a  
23 qualified student on the basis that the qualified student  
24 requires medical cannabis as a reasonable accommodation  
25 necessary for the student to attend school or a

1 school-sponsored activity; or

2 (3) discipline a school employee who refuses  
3 to administer medical cannabis.

4 E. As used in this section:

5 (1) "certifying practitioner" means a health  
6 care practitioner who issues a written certification to a  
7 qualified student;

8 (2) "designated school personnel" means a  
9 school employee whom a public school, charter school or  
10 school district authorizes to possess, store and administer  
11 medical cannabis to a qualified student in accordance with  
12 the provisions of this section;

13 (3) "medical cannabis" means cannabis that  
14 is:

15 (a) authorized for use by qualified  
16 patients in accordance with the provisions of the Lynn and  
17 Erin Compassionate Use Act; and

18 (b) in a form that is not an aerosol  
19 and cannot be smoked or inhaled in particulate form as a  
20 vapor or by burning;

21 (4) "qualified student" means a student who  
22 demonstrates evidence to the school district that the student  
23 is authorized as a qualified patient pursuant to the Lynn and  
24 Erin Compassionate Use Act to carry and use medical cannabis  
25 in accordance with the provisions of that act;

1 (5) "school" means a public school or a  
2 charter school;

3 (6) "school setting" means any of the  
4 following locations during a school day:

5 (a) a school building;

6 (b) a school bus used within the state  
7 during, in transit to or in transit from a school-sponsored  
8 activity;

9 (c) a public vehicle used within the  
10 state during, in transit to or in transit from a  
11 school-sponsored activity in the state; or

12 (d) a public site in the state where a  
13 school-sponsored activity takes place; and

14 (7) "written certification" means a  
15 statement in a qualified student's medical records or a  
16 statement signed by a qualified student's certifying  
17 practitioner that, in the certifying practitioner's  
18 professional opinion, the qualified student has a  
19 debilitating medical condition and the certifying  
20 practitioner believes that the potential health benefits of  
21 the medical use of cannabis would likely outweigh the health  
22 risks for the qualified student. A written certification is  
23 not valid for more than one year from the date of issuance."

24 SECTION 2. Section 26-2B-5 NMSA 1978 (being Laws 2007,  
25 Chapter 210, Section 5) is amended to read:

1 "26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON  
2 THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

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

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

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

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

14 (a) in the workplace of the qualified  
15 patient's or primary caregiver's employment; or

16 (b) at a public park, recreation  
17 center, youth center or other public place.

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

24 C. If a licensed producer sells, distributes,  
25 dispenses or transfers cannabis to a person not approved by

1 the department pursuant to the Lynn and Erin Compassionate Use  
2 Act or obtains or transports cannabis outside New Mexico in  
3 violation of federal law, the licensed producer shall be  
4 subject to arrest, prosecution and civil or criminal penalties  
5 pursuant to state law." \_\_\_\_\_

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Howie C. Morales  
Howie C. Morales, President  
Senate

Lenore M. Naranjo  
Lenore M. Naranjo, Chief Clerk  
Senate

Brian Egolf  
Brian Egolf, Speaker  
House of Representatives

Lisa M. Ortiz McCutcheon  
Lisa M. Ortiz McCutcheon, Chief Clerk  
House of Representatives

Approved by me this 4<sup>th</sup> day of April, 2019

Michelle Lujan Grisham  
Governor Michelle Lujan Grisham  
State of New Mexico