

PUP in Smoke

Why Youth Tobacco Possession and Use Penalties Are Ineffective and Inequitable



Laws prohibiting the possession, use, and purchase of tobacco products by minors — also known as *PUP laws* — are ineffective as deterrents to youth smoking and are often enforced inequitably. This fact sheet provides tobacco control advocates with effective alternatives, best practices, and resources.

What Are PUP Laws?

The early 1990s saw a large increase in laws prohibiting the possession, use, and purchase of tobacco products by minors — also known as *PUP laws*. In 1988, only 6 states prohibited possession of cigarettes by minors. By 1995, that number had tripled, and by 2001, 32 states prohibited youth possession.¹ The numbers and trends are similar for youth use and purchase prohibitions. Today, all 50 states and the District of Columbia have laws restricting the sale of tobacco to minors, and all but 7² also have PUP laws.³

Many states adopted PUP laws in response to escalating tobacco use by youth and a growing body of evidence on tobacco-related harms. However, the rise in PUP laws is also linked to Big Tobacco's response to the Synar amendment,⁴ which required states to enact and enforce laws prohibiting distribution and sale of tobacco products to minors. As states imposed restrictions on tobacco retail sales, the tobacco industry and retail merchants associations pressured lawmakers to penalize buyers and users as well as vendors.^{5,6}

Advocates for PUP laws hoped that the laws would play a central role in a multi-pronged approach to reducing youth initiation and smoking rates, but studies show little evidence of a deterrent effect over time.

Enforcement of PUP Laws

Big Tobacco targeted youth for decades, seeking to create new generations of customers addicted to its products. Instead of holding industry and retailers accountable, PUP laws shift responsibility to their victims – young consumers who are purchasing and using a deadly and highly addictive product. Enforcement mechanisms vary by jurisdiction, and penalties range from education and community service to fines and incarceration. Many jurisdictions suspend (or refuse to issue) driver's licenses for PUP law violations. Some jurisdictions require participation in smoking cessation or tobacco education classes, which are chronically underfunded and often insufficient to meet public health goals. Some jurisdictions even use school suspension as an enforcement tool.

For a policy to have a lasting deterrent effect, a potential offender must believe there is a high likelihood of detection and resulting punishment.⁷ There is no systematic surveillance of PUP laws, but existing data show that PUP laws are inconsistently and selectively enforced. Furthermore, data show that PUP laws are 4 times more likely to be enforced than the laws prohibiting retailers from selling tobacco products to youth in the first place.⁸ Finally, psychologists have found that punishment is not an optimal strategy for behavior change – a finding that is even more relevant when the behavior in question is addictive.⁹

PUP Laws Are Ineffective and Inequitable

ChangeLab Solutions does not include youth PUP provisions in its model ordinances because they are both ineffective and inequitable. PUP laws are unlikely to reduce youth initiation and smoking prevalence at the population level. Some researchers suggest that they are counterproductive, actually increasing smoking rates among youth who seek to engage in behavior deemed deviant or behavior associated with adulthood.

PUP laws are inequitable because they disproportionately affect youth of color. Youth of color – as well as LGBT youth, youth with disabilities, and boys – are more likely to smoke because these populations have been targeted via advertising and retailer placement by the tobacco industry.^{10,11} In addition to carrying a higher burden of tobacco-related harm, African American and Hispanic youth report higher citation rates than their white peers even after accounting for smoking frequency.¹² These findings mirror disparities recorded throughout criminal justice and school disciplinary systems.

Enforcement of PUP laws also disproportionately affects youth from low-income communities. High smoking rates are correlated with low income, and there are more tobacco retailers and advertisements in less affluent areas.¹³ Consequently, low-income youth are more likely to smoke and to be affected by PUP laws. A child with a job, a single parent, or 2 parents who work outside the home may struggle to complete community service or pay fines. If a violation results in suspension of a driver's license, travel to school, a job, or a community service site becomes more difficult. A child who is unable to complete community service or pay fines may be subject to escalating penalties that are increasingly difficult to resolve. Further, the resulting stress takes a toll on health and increases the likelihood of risky behaviors or involvement with juvenile justice, mental health, substance use, or other systems.¹⁴

PUP laws stigmatize youth who smoke, yet smoking is an addictive behavior promoted by a billion-dollar industry that directly and deliberately targets them. Stigma is not an effective public health intervention,



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and it may keep kids from seeking cessation treatment or education. Problematic behaviors such as smoking may be more likely to continue in the face of punishment (as opposed to cessation interventions) because punishment provides an incentive to hide the behavior and protect those engaged in it. In addition, long-term behavior correction is more likely to occur when those addressing the behavior are loved or trusted; thus, parents and teachers – not law enforcement – are best positioned to deter smoking by youth.¹⁵

Finally, PUP laws may divert law enforcement and policy resources away from more effective strategies, some of which are described in the next section.¹⁶

Alternatives and Best Practices

Jurisdictions that wish to curb youth smoking have a wide variety of effective, equitable options. ChangeLab Solutions offers model policies that incorporate many of these provisions:

Retailer-focused policies, including compliance checks with youth decoys

Comprehensive tobacco retailer licensing (TRL) policies imposed by states or local jurisdictions place responsibility on retailers rather than young consumers. With appropriate funding and enforcement, TRL policies have proven more effective than PUP laws in reducing youth initiation and ongoing tobacco use. Ideally, enforcement should include regular compliance checks that use youth decoys.

California's Department of Justice recently awarded a new wave of [tobacco control grants](#) to combat illegal sale and marketing of cigarettes and other tobacco products to minors. While these funds can be used in different ways, Oroville City Elementary School District's approach aligns with our recommended best practices. The district will use grant funds to implement a tobacco prevention program for students in grades 4-8 and to conduct retail enforcement operations near school campuses, targeting retailers who prey on youth rather than penalizing kids.

Limits on advertising

Although legal considerations make it difficult to eliminate all tobacco advertisements, local governments can effectively reduce youth exposure to Big Tobacco's advertising by limiting the amount of window signage of any kind.

Minimum pricing and pack size

Youth are particularly price-sensitive, and studies show that price controls reduce smoking prevalence and initiation. Combining policies that require both a minimum pack size and a minimum price for all tobacco products can make items that are particularly appealing to youth (such as single flavored cigarillos) more expensive and less accessible to youth.

Restrictions on flavored tobacco products

Most young people report that they used flavored products when they started smoking. Restricting flavored tobacco products to adult-only stores or prohibiting them entirely can reduce youth initiation of smoking.

In 2014, the City of Santa Cruz adopted [Ordinance 2014-04](#), which prohibited the use of e-cigarettes in smokefree areas, the sale of e-cigarettes to minors, and the possession or use of e-cigarettes by minors. Four years later, the City of Santa Cruz adopted [Ordinance 2018-19](#), repealing youth possession and use penalties and adopting robust prohibitions of flavored tobacco products in their place. Banning the sale of flavored tobacco products is an effective and equitable strategy that can reduce youth initiation and tobacco use rates.

Cessation resources

Finally, cessation and tobacco education programs are often under-resourced and tailored for adults. Programs that are sufficiently funded, youth-specific, and free of charge are crucial elements of a comprehensive anti-tobacco strategy aimed at youth.¹⁷



What's Next?

ChangeLab Solutions and many tobacco control organizations agree that PUP penalties are outdated, misguided, and ineffective. But it's important not to replace one bad policy with another. Getting rid of PUP laws could shift enforcement from police to schools. Research shows bias in school discipline practices, which disproportionately affect youth of color and low-income youth.¹⁸ Further, schools that primarily serve low-income youth are more likely to impose harsh punishments and use intense surveillance measures associated with higher suspension rates. These practices also have a disparate impact on students of color. For example, a black student's odds of being suspended have been found to be 2.7 times higher than those of a white student.¹⁹

As communities and school districts begin to address increasing use of vapor and electronic smoking devices by youth, it is important to consider the equity implications of different approaches. Decisionmakers must ask whether policies address the inequities that lead to different youth populations' use of tobacco products – and whether enforcement will lead to equitable outcomes rather than worsening inequities.

While youth tobacco use remains a pressing public health problem, public health agencies should promote effective solutions that place the blame where it belongs: on the tobacco industry and retailers who sell to youth.

Resources

Stanford University's research on the impact of tobacco advertising

http://tobacco.stanford.edu/tobacco_main/index.php

Stanford School of Medicine's fact sheets and educational units on vaping

<https://med.stanford.edu/tobaccopreventiontoolkit/E-Cigs.html>

ChangeLab Solutions' Comprehensive TRL Model Ordinance

www.changelabsolutions.org/publications/model-TRL-Ordinance

California Smokers' Helpline resources, including a mobile app and support via text message

www.nobutts.org/free-services-for-smokers-trying-to-quit

Campaign for Tobacco-Free Kids' fact sheet on youth PUP laws

www.tobaccofreekids.org/assets/factsheets/0074.pdf

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Notes

- ¹ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ² CA, MD, MA, NV, NJ, NY, DC.
- ³ States without PUP laws may still have local PUP ordinances.
- ⁴ U.S. Department of Health & Human Services. About the Synar Amendment and program. www.samhsa.gov/synar/about. Updated September 2017. Accessed March 5, 2019.
- ⁵ Lantz PM, Jacobson PD, Warner KE, et al. Investing in youth tobacco control: a review of smoking prevention and control strategies. *Tobacco Control*. 2000;9(1):47-63.
- ⁶ Jacobson PD, Wasserman J. *Tobacco Control Laws: Implementation and Enforcement*. Santa Monica, CA: RAND Corporation. www.rand.org/pubs/monograph_reports/MR841.html. 1997. Accessed March 5, 2019.
- ⁷ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ⁸ Forster JL, Komro KA, Wolfson M. Survey of city ordinances and local enforcement regarding commercial availability of tobacco to minors in Minnesota, United States. *Tobacco Control*. 1996;5(1):46-51.
- ⁹ Volkow ND, Baler RD, Goldstein RZ. Addiction: pulling at the neural threads of social behaviors. *Neuron*. 2011;69(4):599-602.
- ¹⁰ Bach, L. *Tobacco Company Marketing to Kids*. Washington, DC: Campaign for Tobacco-Free Kids. www.tobaccofreekids.org/assets/factsheets/0008.pdf. Accessed on March 5, 2019.
- ¹¹ American Lung Association, Campaign for Tobacco-Free Kids, American Cancer Society, et al. *Achieving Health Equity in Tobacco Control*. truthinitiative.org/sites/default/files/Achieving%20Health%20Equity%20in%20Tobacco%20Control%20-%20Version%201.pdf. Published December 8, 2015. Accessed on March 5, 2019.
- ¹² Gottlieb NH, Loukas A, Corrao M, McAlister A, Snell C, Huang PP. Minors' tobacco possession law violations and intentions to smoke: implications for tobacco control. *Tobacco Control*. 2004;13(3):237.
- ¹³ American Lung Association, Campaign for Tobacco-Free Kids, American Cancer Society et al. *Achieving Health Equity in Tobacco Control*. truthinitiative.org/sites/default/files/Achieving%20Health%20Equity%20in%20Tobacco%20Control%20-%20Version%201.pdf. Published December 8, 2015. Accessed on March 5, 2019.
- ¹⁴ Rew L, Horner SD. Youth resilience framework for reducing health-risk behaviors in adolescents. *J Pediatr Nurs*. 2003;18(6):379-388.
- ¹⁵ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ¹⁶ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*. 2003;12(suppl 1):i6-i13.
- ¹⁷ California Smokers' Helpline currently offers free alternative methods of cessation counseling such as a text message support system, available at www.nobutts.org/free-services-for-smokers-trying-to-quit.
- ¹⁸ Nance J. Student surveillance, racial inequalities, and implicit racial bias. *Emory Law J*. 2017;66(4):765-837.
- ¹⁹ Finn JD, Servoss, TJ. Misbehavior, suspensions, and security measures in high school: racial/ethnic and gender differences. *J Appl Res Child*. 2014;5(2).



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