



Photo: Counter Tobacco

# Youth Purchase, Use, or Possession Penalties (PUP)

Through licensing and related regulations, local governments (cities and counties) have the opportunity to broadly regulate the sale of commercial tobacco<sup>1</sup> and related devices and products (such as electronic cigarettes) in the retail environment. This fact sheet provides an overview of penalties for youth purchase, use, or possession of tobacco products. It is one in a series of resources providing Minnesota-specific information on local tobacco retail licensing and point-of-sale policy options.

## Background

Historically, many retail licensing and other “youth access” laws have included penalties for underage people who purchase, use, or possess (or attempt to purchase, use, or possess) tobacco products. There is no evidence demonstrating that these laws are effective in reducing youth initiation, use of, or addiction to tobacco products.<sup>2</sup>

Raising further concern, the tobacco industry heavily lobbied for PUP penalties as a way to divert enforcement attention and resources away from the retailers who sell to underage persons and toward youth, many of whom may already be addicted. For example, Juul Labs

has hired scores of lobbyists around the country and provided draft Tobacco 21 legislation in several states that include harsh penalties against youth and young adults for PUP.<sup>3</sup> In some cases, the penalties in these draft bills are more punitive for young people than they are for licensed retailers. Closer to home, Minnesota data shows that youth are more likely to be cited for violating youth access laws than are retailers. A 2020 Minnesota Annual Synar Report on youth access enforcement found that underage persons were cited 4.6 times and assessed fines 2.2 times more often than owners and clerks.<sup>4</sup>

As described below, there are many public health, health equity, and social justice reasons for not including PUP penalties in licensing laws.

## State and Federal Law

Federal commercial tobacco control laws, including the 2009 Family Smoking Prevention and Tobacco Control Act, have never included PUP penalties. When the federal minimum legal sales age for tobacco products increased from 18 to 21 in December 2019, no PUP penalties were added. In May 2020, Minnesota raised the state's minimum legal sales age for tobacco products to 21.<sup>5</sup> When amending the state youth access law, Minnesota specifically removed PUP penalties for underage people to advance health equity and social justice.

## The Tobacco Industry's Role in Promoting Addiction

The tobacco industry systematically targets youth, seeking to maintain profits by attracting and addicting new users to their products in an effort to replace the 480,000 American consumers who die from tobacco use each year.<sup>6</sup>

- Cigarette and smokeless tobacco companies spend roughly \$9.5 billion a year to market their products and 96 percent of that is point-of-sale marketing.<sup>7</sup>
- Over 90 percent of youth report exposure to cigarette and smokeless tobacco marketing,<sup>8</sup> and nearly 80 percent of youth report exposure to e-cigarette advertisements.<sup>9</sup>
- The industry has long targeted Black, indigenous, and LGBTQ+ communities, causing persistent, egregious health disparities.<sup>10</sup>
- The industry's huge investment in marketing is working. In Minnesota, a nearly 20-year downward trend in youth commercial tobacco use has been reversed, and youth e-cigarette use across the nation has again reached epidemic proportions.<sup>11</sup>

## Research on PUP Penalty Effectiveness

No research to date clearly demonstrates that youth PUP penalties reduce youth use of tobacco products.<sup>12</sup> While some studies have attempted to demonstrate the effectiveness of these policies, they have produced mixed results.<sup>13</sup> In addition, studies that find a reduction in youth use of tobacco products do not properly consider the effect of other tobacco enforcement policies that were in effect at the same time. Those studies are based on self-reported data from youth

who may be afraid to answer truthfully because of the existing penalties. Finally, the studies used small, non-random samples, making it hard to decipher the real effects of the PUP penalties.<sup>14</sup> These issues led one researcher to conclude, "Overall, there are only a handful of empirical studies relating PUP laws to change in youth smoking. Based on these studies, it is difficult to conclude there are strong positive effects from PUP laws. Some of the studies suggest small effects for some subgroups, such as low-risk, younger students. However, in assessing the value of PUP laws, it is important to consider the net effects of these laws, rather than focusing upon one positive or negative aspect."<sup>15</sup> Ultimately, even if youth tobacco use was slightly reduced when PUP penalties are included in a licensing ordinance, other unintended and lifelong consequences outweigh any potential benefits.<sup>16</sup>

## PUP Penalties Are Ineffective and Have Unintended, Lifelong Consequences

One reason these policies may be ineffective is because the youth user is addicted to nicotine. An extremely potent and addictive chemical, nicotine permanently alters the brain chemistry of youth, resulting in a deep, long addiction that lasts into adulthood.<sup>17</sup>

- Emerging research into effective interventions to address addiction demonstrates that penalties are not effective at treating addiction.<sup>18</sup> In fact, being penalized tends to increase addiction rather than break it.
- Youth who use tobacco products need cessation support and resources to break the cycle of addiction. A holistic approach helps young people break addiction and succeed socially, educationally, and economically.

PUP provisions that include fines rather than criminal penalties are still problematic. Even seemingly modest administrative fines can be detrimental to youth and their families, especially youth of low socioeconomic status. Also, unpaid fines have the potential to lead to criminal charges if youth or their families cannot pay on time. Criminal charges for youth have the potential to impact their entire lives and future success. Early interactions with the criminal justice system can harm their education, housing, employment, and civic opportunities for the rest of their lives. Research shows that socio-economic factors are contributors to, and risk factors for, youth use of tobacco products.<sup>19</sup> Instead of

reducing youth use of tobacco, the rippling effects of PUP penalties on youth and their families create risk factors that may make youth more likely to use tobacco products.

## Discriminatory Enforcement

Criminal penalties have historically been assessed, enforced, and prosecuted in a discriminatory manner. In Minnesota, disparities exist in the enforcement of low-level criminal offenses, like PUP, especially for those who are Black, indigenous, people of color (BIPOC), and people with disabilities.<sup>20</sup> Additionally, as is apparent throughout the country, PUP laws and similar policies can be used by law enforcement to target BIPOC people, either for the crime itself or to try to provoke other criminal charges. Interactions with the police are often unsafe for BIPOC people. Furthermore, some tobacco control ordinances that include PUP provide for prosecutorial discretion, allowing city and county attorneys to determine whether to move forward with misdemeanor prosecution or an alternative penalty. Studies show racial disparities in prosecutorial

discretion as well.<sup>21</sup> Including penalties and enforcement mechanisms that create a system where discrimination and harm to BIPOC people can and does occur creates further public health harm. The best way to safeguard against these inequities and promote public health is to omit these provisions entirely.

## Final Considerations

While state law allows jurisdictions to adopt penalties that are more restrictive than state law, PUP penalties should be removed for the public health, health equity, and social justice reasons outlined above. Doing so would align with Minnesota's updated state statute as well as federal law, which has never penalized underage persons. In addition, jurisdictions should consider focusing enforcement resources on the compliance of retailers — those who illegally sell these products — rather than on targeted, addicted young people. This approach is also logistically easier than criminalizing individual youth, as retailers can be checked for compliance in a systematic and predictable way.

## Contact Us

Please feel free to contact the Public Health Law Center at 651-290-7506 or [publichealthlaw@mitchellhamline.edu](mailto:publichealthlaw@mitchellhamline.edu) with any questions about the information included in this fact sheet or to discuss concerns you may have about implementing these policy options.

## Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit: <http://www.keepitsacred.itcml.org>. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.
- 2 Melanie Wakefield & Gary Giovino, *Teen Penalties for Tobacco Possession, Use, and Purchase: Evidence and Issues* 12 TOBACCO CONTROL 16 (2003).
- 3 Liz Essley Whyte et al., *Big Tobacco's Surprising New Campaign to Raise the Smoking Age*, CTR. FOR PUB. INTEGRITY (May 23, 2019), <https://publicintegrity.org/politics/state-politics/copy-paste-legislate/big-tobaccos-surprising-new-campaign-to-raise-the-smoking-age>.
- 4 MINN. DEP'T HUM. SERVS., ANNUAL SYNAR REPORT: FFY 2020, MN (2020), [https://mn.gov/dhs/assets/2020-synar-report\\_tcm1053-414216.pdf](https://mn.gov/dhs/assets/2020-synar-report_tcm1053-414216.pdf).
- 5 H.F. 331, 91st Leg., Reg. Sess. (Minn. 2020), <https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/88>.
- 6 U.S. DEP'T HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), <https://www.cdc.gov/tobacco/sgr/50th-anniversary/index.htm>.



- 7 FEDERAL TRADE COMMISSION CIGARETTE REPORT FOR 2019 (2021), [https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2019-smokeless-tobacco-report-2019/cigarette\\_report\\_for\\_2019.pdf](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2019-smokeless-tobacco-report-2019/cigarette_report_for_2019.pdf); see also U.S. DEP'T HEALTH & HUMAN SERVS., E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2016) (e-cigarette companies are not required to report their marketing expenditures), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf).
- 8 Shanta R. Dube et al., *Pro-Tobacco Influences and Susceptibility to Smoking Cigarettes Among Middle and High School Students — United States, 2011*, 52 J. ADOLESCENT HEALTH S45 (2013).
- 9 Kristy Marynak et al., *Exposure to Electronic Cigarette Advertising Among Middle and High School Students — United States, 2014–2016*, 67 MORBIDITY & MORTALITY WKLY. REP. 294 (2018).
- 10 Joshua Rising & Lori Alexander, *Marketing of Menthol Cigarettes and Consumer Perceptions*, 9 TOBACCO INDUCED DISEASES S2 (2011); U.S. DEP'T HEALTH & HUMAN SERVS., TOBACCO USE AMONG U.S. RACIAL/ETHNIC MINORITY GROUPS — AFRICAN AMERICANS, AMERICAN INDIANS AND ALASKA NATIVES, ASIAN AMERICANS AND PACIFIC ISLANDERS, AND HISPANICS: A REPORT OF THE SURGEON GENERAL (1998); Elizabeth Smith & Ruth Malone, *The Outing of Philip Morris: Advertising Tobacco to Gay Men*, 93 AM. J. PUB. HEALTH 988 (2003).
- 11 Press Release, Minn. Dep't Health, *New Survey Shows Minnesota Youth Tobacco Use Rising for the First Time in 17 Years* (Feb. 15, 2018), <https://content.govdelivery.com/accounts/MNMDH/bulletins/1db3105>; Press Release, U.S. Food & Drug Admin., *Statement from FDA Commissioner Scott Gottlieb, M.D., on New Steps to Address Epidemic of Youth E-Cigarette Use* (Sept. 11, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-steps-address-epidemic-youth-e-cigarette-use>.
- 12 Wakefield, *supra* note 2.
- 13 DeAnn Lazovich et al., *A Pilot Study to Evaluate a Tobacco Diversion Program*, 91 AM. J. PUB. HEALTH 1790 (2001); William C. Livingood et al., *Impact Study of Tobacco Possession Law Enforcement in Florida*, 28 HEALTH EDUC. & BEHAV. 733 (2001); cf. Wakefield, *supra* note 2, ¶10 (discussion of the limitation of these studies).
- 14 Wakefield, *supra* note 2.
- 15 *Id.*
- 16 Laura Bach, *Youth Purchase, Use, or Possession Laws Are Not Effective Tobacco Prevention*, Campaign for Tobacco-Free Kids (Sept. 20, 2018), <https://www.tobaccofreekids.org/assets/factsheets/0074.pdf>.
- 17 U.S. DEP'T HEALTH & HUMAN SERVS., *supra* note 6.
- 18 NAT'L RESEARCH COUNCIL, *INFORMING AMERICA'S POLICY ON ILLEGAL DRUGS: WHAT WE DON'T KNOW KEEPS HURTING US* (The National Academies Press ed., 2001).
- 19 U.S. DEP'T HEALTH & HUMAN SERVS., *PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL* 427 (2006).
- 20 See Perry Moriearty, *Racial Disparities in the Minnesota Criminal Justice System*, Univ. Minn. L. Sch. (Jan. 2020), <https://www.house.leg.state.mn.us/comm/docs/b5447814-8afe-4898-b491-61c0b7fb6a28.pdf>; Press Release, ACLU Minn., *ACLU Releases Data Showing Racial Disparities in Low Level Arrests in Minneapolis* (Oct. 27, 2014), <https://www.aclu-mn.org/en/press-releases/aclu-releases-data-showing-racial-disparities-low-level-arrests-minneapolis>; *Low Level Offenses in Minneapolis: An Analysis of Arrests and their Outcomes*, COUNCIL ON CRIME & JUST. 35 (2004), <https://static.prisonpolicy.org/scans/ccj/LowLevelOffenseStudyFinal11.09.04.pdf>; see also Jana Hollingsworth, *Average Felony Bail in Duluth Shows Racial Disparities, Group Says*, STAR TRIBUNE (Mar. 17, 2022), <https://www.startribune.com/average-felony-bail-in-duluth-shows-racial-disparities-group-says/600156910>.
- 21 Terance Miethe & Charles Moore, *Socioeconomic Disparities Under Determinate Sentencing Systems: A Comparison of Preguideline and Postguideline Practices in Minnesota*, 23 CRIMINOLOGY 337 (1985).