



### Evidence-Based Talking Points: Penalties against Youth and Young Adults

- **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 Americans who die from tobacco use each year.<sup>1</sup>**
  - Major tobacco companies spend roughly \$9.5 billion a year to market their products and 96% of that is point-of-sale marketing.<sup>2</sup> Over 90% of youth report exposure to cigarette and smokeless tobacco marketing,<sup>3</sup> and nearly 80% of youth report exposure to e-cigarette advertisements.<sup>4</sup> E-cigarette companies are not required to report their marketing expenditures.<sup>5</sup>
  - The industry has long targeted black, indigenous, and LGBTQ+ communities causing persistent, egregious health disparities.<sup>6</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 reached epidemic proportions.<sup>7</sup>
  - National data shows this trend as well, high school use of e-cigarettes jumped from 11.7% to 20.8% in 2018, a figure that is higher than the youth use of any tobacco product in 2016 or 2017.<sup>8</sup>
- **These consequences cause a ripple effect of harm for the penalized young people, their families, and their school communities.** Laws and policies have historically penalized the underage purchase, use, and possession of the same commercial tobacco products that the industry marketed to those young people. These penalties are often found in school policies, punishing the possession and use of commercial tobacco products on school grounds, and in public health ordinances (e.g., licensing codes and clean indoor air ordinances), punishing the purchase, use, and possession (PUP) of commercial tobacco products by youth and young adults. In schools, students may face suspension, expulsion, or criminal sanctions if the school policy penalizes students for possession or use. Under municipal ordinances, youth and young adults may face administrative fines and criminal penalties for purchase, use, or possession. These punitive measures can have lasting impacts.
  - No research to date demonstrates that youth penalties reduce youth use of tobacco products.<sup>9</sup>
    - One reason these policies may be ineffective is because the youth user is addicted to nicotine. Nicotine is an extremely potent addictive chemical that permanently alters the brain chemistry of youth, resulting in a deeper, longer addiction that lasts into adulthood.<sup>10</sup>
    - Youth tobacco product users need cessation support and resources to break the cycle of addiction. To the extent there is a need to address youth behavior – especially in the school environment – it should be focused on helping the student break addiction and succeed academically, socially, and developmentally.
  - Even seemingly modest administrative fines can be detrimental to youth and their families, especially for youth of low socioeconomic status.
  - Unpaid fines can lead to criminal charges.

- Criminal charges for youth have the potential to impact their entire lives and future success. Early interactions with the criminal justice system can complicate their education, housing, employment, and civic opportunities for the rest of their lives.
  - Suspensions and expulsions can also lead to an array of serious educational, economic, and social problems for young people and their communities, including affecting their educational and employment opportunities and increasing the likelihood of involvement with law enforcement and introduction into the criminal justice system.<sup>11</sup>
  - Suspensions and expulsions do not just impact the suspended or expelled youth. When youth are suspended and expelled from a school, the entire student body is affected. Schools with higher rates of suspensions and expulsions have lower school-wide achievement and standardized test scores.<sup>12</sup>
- **Criminal and school penalties have historically been assessed, enforced, and prosecuted in a discriminatory manner.**
- Minnesota Department of Education discipline incident data show significant disparities in suspensions and expulsions in schools across the state for indigenous and black students, students of color, and students with disabilities. These same disparities exist for juvenile low-level criminal offenses in Minnesota.<sup>13</sup>
  - Minimum legal sales age laws that penalize youth tobacco users for PUP can increase interactions with police and can lead to other charges. Interactions with police are not always safe for youth of color.
  - 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>14</sup>
- **A tobacco retail licensing code regulates the businesses that sell tobacco products. As such, the focus of a licensing code should be on the behavior of the licensees.**
- **Laws penalizing young people have historically been and are currently promoted by the industry to divert limited enforcement resources away from retailers and to draw attention away from the industry's predatory marketing tactics and the industry's intentional selling of products that are designed to be incredibly addictive.<sup>15</sup>**
- Minnesota data shows that youth are more likely to be cited for violating youth access laws than retailers. Minnesota's 2017 annual Synar report found that underage persons were cited 3.6 times more often than retailers and assessed a fine 2.6 times more often than retailers.<sup>16</sup>
  - JUUL has hired scores of lobbyists in states around the country and provided draft T21 legislation in several states that include harsh penalties against youth and young adults for PUP. In some cases, the penalties in these draft bills are more punitive for young people than they are for licensed retailers.

Public Health Law Center Resources on this topic:

- ❖ Our updated Sample School Policy is almost finished and will be announced soon. You can also find it on our website, [publichealthlawcenter.org](http://publichealthlawcenter.org), when it is available.
- ❖ A short resource on alternative penalties in schools is available [here](#).
- ❖ Our updated model policy includes a context box with more information on the removal of PUP provisions, available [here](#).

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- <sup>1</sup> U.S. Department of Health and Human Services. (2014). *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
- <sup>2</sup> Federal Trade Commission. (2018). *Federal Trade Commission Cigarette Report for 2016*. Washington, D.C.: Federal Trade Commission.; Federal Trade Commission. (2018). *Federal Trade Commission Smokeless Tobacco Report for 2016*. Washington, D.C.: Federal Trade Commission.
- <sup>3</sup> Dube, S.R., Arrazola, R.A., Lee, J., Engstrom, M., & Malarcher, A. (2013). Pro-Tobacco Influences and Susceptibility to Smoking Cigarettes Among Middle and High School Students—United States, 2011. *J. Adolesc. Health*, 52(Suppl 5), S45-S51.
- <sup>4</sup> Marynak, K., Gentzke, A., Want, T.W., Neff, L., & King, B.A. (2018). Exposure to Electronic Cigarette Advertising Among Middle and High School Students—United States, 2014-2016. *MMWR*, 67(10), 294-299.
- <sup>5</sup> U.S. Department of Health and Human Services. (2016). *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
- <sup>6</sup> Rising, J. & Alexander, L. (2011). Marketing of menthol cigarettes and consumer perceptions. *Tobacco Induced Diseases*, 9(Suppl 1), S2.; U.S. Department of Health and Human Services. (1998). *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*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.; Smith, E.A. & Malone, R.E. (2003). The Outing of Philip Morris: Advertising Tobacco to Gay Men. *Am. J. Public Health*, 93(6), 988-993.
- <sup>7</sup> Minnesota Department of Health. (2018, February 15). *New survey shows Minnesota youth tobacco use rising for the first time in 17 years* [Press release]. Retrieved from <https://www.health.state.mn.us/news/pressrel/2018/youthtob021518.html>; U.S. Food & Drug Administration. (2018, September 12). *Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to address epidemic of youth e-cigarette use* [Press release]. Retrieved from <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620185.htm>
- <sup>8</sup> Gentzke, A.S., Creamer, M., Cullen, K.A., Ambrose, B.K., Willis, G., Jamal, A., & King, B.A. (2019). *Vital Signs: Tobacco Product Use Among Middle and High School Students – United States, 2011-2018*. *MMWR*, 68(6), 157-164.
- <sup>9</sup> Wakefield, M., & Giovino, G. (2003). Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*, 12(Suppl 1), i6–i13.
- <sup>10</sup> U.S. Department of Health and Human Services. (2016). *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
- <sup>11</sup> Lamont, J. H., Devore, C. D., Allison, M., Ancona, R., Barnett, S. E., Gunther, R., et al & Young, T. (2013). Out-of-school suspension and expulsion. *Pediatrics*, 131(3), e1000-e1007. <http://www.ncsl.org/documents/fsl/aap-out-of-school-suspension-and-expulsion.pdf>
- <sup>12</sup> U.S. Department of Education. (2014). *Guiding Principles: A Resource for Improving School Climate and Discipline*. Washington, D.C.: U.S. Department of Education.
- <sup>13</sup> Minnesota Juvenile Justice Advisory Committee. (2016). *2016 Annual Report to Governor Mark Dayton and the Minnesota State Legislature*. St. Paul, MN: Minnesota Department of Public Safety.
- <sup>14</sup> Miethe T.D. & Moore, C.A. (1985) Socioeconomic Disparities under determinate sentencing systems: A comparison of Preguideline and postguideline practices in Minnesota." *Criminology* 23: 337 – 46.
- <sup>15</sup> Wakefield, M., & Giovino, G. (2003). Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*, 12(Suppl 1), i6–i13.

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<sup>16</sup> Minnesota Department of Human Services. (2017). *Annual Synar Report*. St. Paul, MN: Minnesota Department of Human Services.