



Policy Change for Health Equity:

Holding Commercial Tobacco Retailers Accountable Instead of Penalizing Youth for Addiction

SB 5129: Concerning the possession of vapor, vapor products, tobacco, and tobacco products by minors” sponsored by Senators Saldaña, Darneille, Nguyen, Nobles, Stanford and C. Wilson

When Tobacco to 21 was passed it rightfully omitted penalties for commercial tobacco use and possession on those ages 18-20 years old. SB 5129 extends this decriminalization of tobacco and vape use or possession to all youth under age 21. The American Public Health Association and 30 other groups recently released a commercial tobacco policy guide *“Decriminalizing Commercial Tobacco: Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control”* which calls upon states to remove penalties on youth for tobacco use or possession.ⁱ

What does the bill do? SB 5129 is an equitable approach to commercial tobacco control by preventing law enforcement the ability to detain, ID and question a youth suspected of possession or attempt to purchase commercial tobacco or vapor products, a practice that disproportionately impacts youth of color and LGBTQ youth.

Why is this bill needed?

- **Youth of color and LGBTQ youth are disproportionately targeted by the criminal justice system, to great harm:** Youth of color and LGBTQ youth are much more likely to be stopped and questioned by police than white youthⁱⁱⁱⁱ, which can lead to deadly consequences.^{ivv} Some law enforcement agencies claim that they need to be able to stop, ID, and question youth who may be suspected of using tobacco or vapor products in order to ascertain their age and catch clerks who are selling to minors. This approach is likely to lead to more harm than good. Law enforcement still has an effective way to monitor the sale of these products by using proven retailer compliance checks, which puts the focus of the sale on the retailer and not the industry targeted youth.
- **Putting the blame on youth is a *Tobacco Industry* tactic:** For decades, the tobacco industry has intentionally targeted communities of color and youth to become addicted to their deadly products. The tobacco and vape industries continue to spend millions of dollars advertising their highly addictive products and making them appealing to youth,^{vi} while at the same time promoting tobacco [Possession Use and Purchase \(PUP\) laws](#) that penalize and blame youth for tobacco use rather than holding retailers accountable for selling to youth.^{vii} For the past ten years Washington State has allowed vaping products with youth appealing flavors and youth appealing devices to flourish, creating a new generation of people addicted to nicotine. Youth of color and LGBTQ youth are more likely to use tobacco and vape products.

“Youth of color should not be criminalized when they are the victims of racist, targeted marketing of highly addictive tobacco products made to appeal to youth. Instead, retailers should be held accountable for not selling to youth.”

- **Criminalizing youth does not prevent retailers from making underage sales:** 12.2% of tobacco retailers still sell to underage youth^{viii}. The most effective way to prevent youth access to tobacco is through retail compliance checks and holding retailers accountable.

Frequently Asked Questions:

Q: Don't we need to have laws and penalties to prevent kids from using tobacco?

A: Penalizing and criminalizing youth as a prevention strategy and to comply with the law is ineffective^{ix} and perpetuates a history of health inequity and discrimination in this country. Instead we should hold the industry and retailers accountable through the evidence-based policies and effective strategy of compliance checks.

Q: What's the harm in law enforcement talking to youth to see if a store sold tobacco to them?

A: In order for law enforcement to prove that an underage sale occurred they must ask the young person to provide ID. It is not required and uncommon for young people to have a state-issued ID. The situation can easily escalate to a potentially serious confrontation if the young person does not have ID or perceives they are being targeted unfairly by police.

Q: Shouldn't law enforcement confiscate tobacco products from underage youth?

A: There is no evidence that law enforcement's removal of tobacco products from a young person addicted to nicotine encourages them to stop using. On the contrary there is a long history of police harassment and targeting of youth of color and LGBTQ youth that have serious negative consequences. It is difficult to determine the age of someone just by appearance, which can also lead to targeting young adults who are of legal age.

Q: Does this mean kids can smoke or vape at school without consequences?

A: No, this bill only removes criminal penalties on the possession or use of tobacco. Youth will still view the legal age to be 21. Schools can still have consequence for use on school grounds and OSPI encourages schools to take a non-punitive approach to addiction issues^{xi}. See the OSPI policy summary: <https://www.k12.wa.us/sites/default/files/public/studentdiscipline/pubdocs/Student%20Discipline%20Policies-Substance%20Use%20and%20Possession%202020.pdf>

Q: Shouldn't we provide more resources for prevention, compliance checks and more therapeutic ways to work with youth who are using tobacco or vapor products?

A: Yes! One bill can't do it all. This bill protects youth and holds retailers accountable. We encourage law enforcement, partners and elected officials to push for more legislation to support equitable investments to increase compliance checks through local health jurisdictions, prevention education activities, and community-based cessation.

**Prepared by the Tobacco, Marijuana and Other Drug (TMOD) Workgroup of the Healthy King County Coalition.
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Citations:

ⁱ Tobacco Control Enforcement for Racial Equity: Decriminalizing Commercial Tobacco Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control. November 2020.

ⁱⁱ 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):237-243.

ⁱⁱⁱ Livingood WC, Woodhouse CD, Sayre JJ, Wludyka P. Impact Study of Tobacco Possession Law Enforcement in Florida. *Health Educ Behav*. 2001;28(6):733-748.

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- ^{iv} Simson D. Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline. 61 UCLA Law Review 506. 2014. <https://www.uclalawreview.org/exclusion-punishment-racism-and-our-schools-a-critical-race-theory-perspective-on-school-discipline-2/>. Accessed January 23, 2019.
- ^v Hrywna M, Adler RK, Delnevo CD, Slade JD. Content Analysis and Key Informant Interviews to Examine Community Response to the Purchase, Possession, and/or Use of Tobacco by Minors. Journal of Community Health. 2004;29(3):209-216.
- ^{vi} <https://www.doh.wa.gov/YouandYourFamily/Tobacco/HealthEquity>
- ^{vii} PUP in Smoke, ChangeLab Solutions <https://www.changelabsolutions.org/product/pup-smoke>
- ^{viii} [FFY 2020 Annual Synar Report](#) found that 12.2% of tobacco retailers in WA State sold tobacco to a minor.
- ^{ix} Jason LA, Pokorny SB, Adams M. A randomized trial evaluating tobacco possession-use-purchase laws in the USA. Social Science & Medicine. 2008;67(11):1700-1707.
- ^x Loukas A, Spaulding C, Gottlieb NH. Examining the Perspectives of Texas Minors Cited for Possession of Tobacco. Health Promotion Practice. 2006;7(2):197-205.
- ^{xi} OSPI Student Discipline Policies: Substance Use and Possession:
<https://www.k12.wa.us/sites/default/files/public/studentdiscipline/pubdocs/Student%20Discipline%20Policies-Substance%20Use%20and%20Possession%202020.pdf>