

STORE

Strategic Tobacco Retail Effort

**Tracking and
Reporting Illegal
Tobacco Sales to Minors:
A How-to Guide for
Projects Funded
by the California Tobacco
Control Program**

February 2008

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I. Acknowledgements

This How-to Guide was inspired and created by the Enforcement Subcommittee of the California Tobacco Control Program (CTCP) Point of Sale Practices (POSP) Workgroup. The CTCP would like to acknowledge Ellen Feighery, Public Health Institute (PHI), for spearheading the development of this tool. The following members of the POSP Workgroup also made significant contributions: Alan Lieberman, California Attorney General's Office; Randy Silva, California Board of Equalization; Randy Kline, Technical Assistance Legal Center at PHI; and Dawn Dunn, Santa Barbara County Public Health Department.

II. Purpose statement and background

The purpose of this How-to Guide is two-fold: 1) to encourage CTCP-funded projects to track and report information to the California Attorney General's Office (AG) and the California Board of Equalization (BOE) about stores that have been found guilty of selling tobacco to minors; and 2) to provide CTCP-funded projects with assistance in performing this type of effort. This Guide is an **optional** technical assistance tool and, while it is primarily intended for Local Lead Agencies (LLAs) that have retailer licensing ordinances in place or are working on the adoption of such policies, this Guide may also be of assistance to other LLAs.

The Enforcement Subcommittee of the POSP Workgroup has identified the tracking and reporting of locally adjudicated sales to minors cases (those cases with final legal or court-related dispositions, e.g., guilty, pled "no contest," paid fine, etc.) to the above-mentioned State agencies as an important strategy to further stimulate retailer compliance with sales to minors laws. The research literature indicates that higher and

more stringent penalties serve to deter retailers from selling tobacco to minors. Since both the AG and BOE have the authority to stimulate or impose additional penalties through their enforcement efforts, local information on final dispositions can be applied to cases that are being built against stores in violation of sales to minors laws.

Definition of Terms

Adjudicated: settled judiciously, e.g., a violation that resulted in a guilty verdict, a "no contest" plea, the assessment of a fine, etc.

This How-to Guide includes:

- Information about laws relevant to the work of the AG and BOE;
- Suggestions on how to track violations to their final disposition;
- Recommended procedures for reporting violations; and
- Tools and tips for success.

Enforcement of illegal tobacco sales to minors laws is dynamic, and as such, this How-to Guide will be updated periodically by the Enforcement Subcommittee of the POSP Workgroup. Updates will include changes to existing laws and other events that impact the retail environment. Therefore, we encourage agencies who have been tracking and reporting adjudicated sales to minors information to the AG and BOE and/or are planning to do so to notify Mary Strode so she can follow up with you on your progress and assess the usefulness of this How-to Guide.

III. Laws relevant to the enforcement efforts of the California Attorney General's Office and the California Board of Equalization

The AG and the BOE are interested in receiving information about retailers found guilty of selling tobacco to minors by local jurisdictions. These violations may have been incurred under enforcement of Penal Code (PC) 308(a), the STAKE Act or local licensing ordinances that are predicated on an illegal tobacco sale to a minor. Both of these State agencies can only use information on adjudicated cases (defined previously).

California Board of Equalization (BOE)

Under the California Cigarette and Tobacco Products Licensing Act of 2003 (Business and Professions Code Section 22972; 22980.1), the BOE can use adjudicated violations for illegal sales to minors under PC 308(a) or the STAKE Act to build a case against the retailer. Multiple violations may result in progressively higher fines for the first three convictions within 12 months, and the possibility of license suspension of 90 days upon the 4th – 7th violations within 12 months. License revocation may occur upon the 8th violation within twenty-four months. Therefore, it is important to report locally adjudicated cases to the BOE in order to maximize penalties. Note: the BOE may only impose these penalties if the annual California Department of Public Health statewide Youth Tobacco Purchase Survey finds that 13 percent or more of youth were able to purchase cigarettes.

California Attorney General's Office (AG)

The AG's Office is interested in receiving information on adjudications of violations of PC 308(a), the STAKE Act and local licensing violations that are based on an illegal sale to a minor. The AG primarily uses this information in two ways:

- (1) To identify retailers/chains with a particularly high number or rate of violations, for possible contact regarding entering into an Assurance of Voluntary Compliance (AVC) to adopt tobacco retailing 'best practices' or for litigation for unfair business practices.
- (2) To report violations of state or local laws to the chains with whom the AG has AVCs, i.e., 7-Eleven, ARCO, Wal-Mart, Exxon Mobil, Chevron, 76, Rite-Aid, Walgreens, CVS, Kroger (Ralphs, Quik Stop) and Safeway, so the corporation can take follow-up corrective actions.

In the past, the AG also has reported violations concerning sales to minors to cigarette companies such as Philip Morris USA (PM USA) which have policies that sanction violators that participate in their promotional programs by suspending sales promotions and related incentive payments for specified periods of time.

The AG can only act on adjudicated cases of local licensing violations that are based on an illegal sale to a minor. For these purposes, the AG does not act on violations that are limited to other provisions of a licensing ordinance, (e.g., failure to post a sign or presence of a self-service display). Typically, licensing violations are premised on an illegal sale to a minor and the notice of a hearing will specify the factual basis for asserting a violation, (e.g., a clerk sold to a minor).

IV. Models for tracking violations to their final disposition

Violations of local licensing ordinances are prosecuted in two different ways. Some licensing ordinances (e.g., Santa Barbara and Contra Costa) use a two-step process. First, the offending clerk or retailer is prosecuted in court for selling tobacco to a minor. Once the court determines that the clerk or retailer was guilty of the sale or the fine is paid, (i.e., the case has been adjudicated), the process of determining the licensing penalty begins.

Other licensing ordinances (e.g., San Francisco and Riverside) impose license-related penalties that are predicated on a PC 308(a) violation for making an illegal tobacco sale to a minor, but do not prosecute the PC 308(a) violation in court before imposing license-related penalties. Instead, the city or county provides an opportunity for the retailer to object to the license-related penalty in an “administrative” hearing. Once a determination of liability for selling tobacco to a minor has been rendered and the case has been closed, the violation may be reported to the State agencies. Local Lead Agencies (LLAs) with this approach are involved in the penalty and hearing phases so they can readily track licensing violations to final disposition.

The process of tracking PC 308(a) violations in jurisdictions without local licensing ordinances is more challenging. Typically, local law enforcement agencies do not track citations to their final dispositions. Ideally, the LLA and/or their law enforcement partner would use the California Online Database for Enforcement (CODE) database or another tracking system to track PC 308(a) citations.

LLAs without local licensing ordinances that are situated in smaller jurisdictions may have an easier time following PC 308(a) violations to their final disposition than LLAs covering large metropolitan areas. A procedure used by the Santa Barbara County Tobacco Prevention Settlement Program provides a good model for tracking:

Step 1. Establish relationship and system with Court Records Office

Ask your collaborators in law enforcement or the District Attorney’s (DA’s) office if they can refer you to someone in the court records office. Contact the appropriate court records office to let them know that you will be following up on citations issued for illegal sales to minors. Confirm with them the approximate amount of time it takes for a citation to be resolved to final disposition and the best way to obtain final dispositions from them. Also offer to pay for any copies. Ask about the most efficient way to obtain information, (e.g., come to their office to collect, via email, interoffice mail, or mail).

Step 2. Identify information needed to track violations

Obtain copies of the police department’s or sheriff’s reports and citations for each violation. The report contains the information needed to track the violation. Keep track of violations by defendant’s name, date of birth, and date of violation. It is not recommended that cases be tracked by citation number because different numbers are assigned at different levels – the sheriff assigns a citation number, the DA assigns a

case number, and the court assigns a court number. The store name is not relevant for tracking dispositions, since the violations are tracked in relation to the defendant (clerk who made the sale and was issued the citation). If a clerk is cited it is important to track repeat violations (this may also be reported to State agencies). However, it is important to match the case/defendant to the specific store where the violation occurred because subsequent actions by the BOE and AG are directed at the store, not the clerk.

Step 3. Request information from the Court Records Office

In Santa Barbara, it takes from one to two months for a citation to be adjudicated and the case to be closed, so allow adequate time before contacting the Records Office. Provide them with the information obtained in Step 2. Request certified copies of the Criminal Minute Orders for each of the defendants from the Records Office. In addition to other information, this document contains information on how the defendant pled and the amount of the fine. Upon receipt of this information, forward adjudicated violations to the AG and BOE.

Source: Dawn M. Dunn, M.P.H., Santa Barbara County Public Health Department, Tobacco Prevention Settlement Program.

V. Recommended procedure for reporting adjudicated information to the AG and BOE

The AG and BOE prefer to receive local data on an Excel spreadsheet with the date of investigation, name and address of store, type of violation, and the date of adjudication. The spreadsheet needs to be accompanied by a letter signed by someone who can attest to the accuracy of the information and that they are final adjudications, (e.g., the fine was paid). Attached are examples of letters and Excel spreadsheets used by the California Department of Public Health/Food and Drug Branch and the San Francisco Tobacco Free Project to transmit information about adjudicated cases to the AG.

The contacts in the AG's Office and the BOE have assured the Enforcement Subcommittee of the POSP Workgroup that they will notify local agencies of the actions that have been taken on the stores that have been reported to them. For example, when the AG receives notification from retail chains of actions taken on the violations that have been reported to them, the AG will forward those results back to the local reporting agency. It is also recommended that you send follow-up emails to the State contacts if you have not heard from them within three months of your transmittal.

Key Contacts

Attorney General's Office (AG)

Alan Lieberman, Deputy Attorney General
Office of the Attorney General
Tobacco Litigation and Enforcement Section
P.O. Box 944255
Sacramento, CA 94244-2550
916-323-3705
Alan.Lieberman@doj.ca.gov

Board of Equalization (BOE)

Randy Silva, Investigations Division
450 N Street, MIC 42
Sacramento, CA 95814
916.323.3964
Randy.Silva@boe.ca.gov

For technical assistance or to share progress on use of this Guide, contact:

California Tobacco Control Program (CTCP)

Mary Strode, STAKE Act Coordinator
P.O. Box 997377, MS 7206
Sacramento, CA 95899-7377
916.449.5496
mary.strode@cdph.ca.gov

VI. Tracking systems

As previously mentioned, CODE is an optional enforcement data tracking tool that CTCP-funded projects and/or their law enforcement partners can utilize to enter site inspection data and results of youth decoy operations. However, at this point in time, CODE does not have the capacity to track cases through to adjudication. In the future, CTCP plans to improve the functionality of the database. Despite its current limitations, CODE can still be a helpful tool for local jurisdictions who want to improve the way they are tracking compliance with tobacco control laws. CODE trainings are offered by CTCP on an as-needed basis. Staff from local jurisdictions may sign up for a training by contacting Mary Strode at 916-449-5496 or mary.strode@cdph.ca.gov.

CTCP encourages local tobacco control project staff to discuss this How-to Guide with their law enforcement partners and reach out to other local jurisdictions to find out what tracking systems or tools are being used.

Sample Letter



City and County of San Francisco
Gavin Newsom
Mayor

TOBACCO FREE PROJECT
Department of Public Health
Population Health and Prevention
Community Health Education Section
Community Health Promotion & Prevention Branch

August 15, 2006

Alan Lieberman, Deputy Attorney General
Office of the Attorney General
Tobacco Litigation and Enforcement Section
P.O. Box 944255
Sacramento, CA 94244-2550

REF: Penal Code 308a Violations

Mr. Lieberman:

The San Francisco Police Department conducts enforcement of Penal Code 308a, which prohibits tobacco sales to minors, for the Tobacco Free Project of the San Francisco Department of Public Health through a work order agreement. As the Tobacco Free Project Director, I am responsible for developing the Memorandum of Understanding between the Police and Public Health Departments, assuring that enforcement operations are conducted based on the MOU, collecting monthly data from the Police Department, tracking the police decoy operation data and referring retailer establishments that sold tobacco to minors for enforcement of our local tobacco permit ordinance.

Attached, please find a report of adjudicated cases for the period between May 1, 2006 and June 30, 2006. The report lists retail establishments which sold a tobacco product to a minor during youth decoy enforcement operations conducted by the San Francisco Police Department. The report lists only those cases which are considered closed. The report shows the date of the citation for violation of Penal Code 308a issued, (contact date), business name and address, police case number, business name, address and type of business.

Should you have any questions, please contact me at (415) 581-2448.

Sincerely,

A handwritten signature in cursive script that reads "Alyonik Hrushow".

Alyonik Hrushow
Tobacco Free Project Director

30 Van Ness Avenue, Suite 2300
San Francisco, California 94102

www.dph.sf.ca.us

Macintosh HD:Users:ekoland:Desktop:ABC how to:Alphabet how to:SF documents:SF letter to AG 8 14 06[1].doc
581-2492

Phone: (415) 581-2448
Fax: (415)

Sample Excel Spreadsheet

Case#	Contact Date	Violation Code	Business Name	Address	Business Type
60493213	5/9/2006	I	Speedee Food Mart	4199 Mission	Service Station
60493229	5/9/2006	I	Mission Valero	3400 Mission	Service Station
60520349	5/16/2006	I	Chevron	1000 Harrison	Service Station
60520355	5/16/2006	I	Moscone Shell	300 - 5th Street	Service Station
60627161	6/13/2006	I	Union 76	1400 19th Avenue	Service Station
60660945	6/22/2006	I	Parks Farmers Market	400 Irving	Grocery Store (Produce Sold)
60660951	6/22/2006	I	Pipe Dreams	1376 Haight	Tobacco Shop
60660967	6/22/2006	I	Lou Guerreros Union 76	443 Divisadero	Service Station
60660973	6/22/2006	I	Emblem Market	736 Divisadero	Grocery Store (Produce Sold)
	Total =	9			