

Section I: Introduction

Purpose of the Manual

For years, prominent health and law enforcement groups have recommended more vigorous enforcement of tobacco youth access laws. Support for enforcement comes from the Institute of Medicine, Attorneys General, voluntary health organizations, and the American Medical Association.¹ As part of a successful strategy to reduce youth access to tobacco through retail sources, compliance checks need to be more widespread and more frequent.

This manual is a guide for enforcement agencies that are or will be conducting California Penal Code section 308(a) [PC 308(a)] compliance checks in their local jurisdictions. This manual includes:

- Relevant laws
- Legal issues
- Tips and tools for working with prosecuting attorneys
- Merchant education strategies to utilize prior to the operations
- Guidelines for conducting PC 308(a) operations
- Information on how to incorporate media opportunities in conjunction with PC 308(a) decoy operations
- Lessons learned from local law enforcement agencies that have been conducting PC 308(a) operations
- Multiple resources for enforcement agencies to use for implementation and maintenance of PC 308(a) operations

Focus of the Manual

This manual focuses on PC 308(a), which prohibits any person, firm, or corporation from selling, giving, or in any way furnishing to a minor any tobacco product or paraphernalia when that person knows the minor's age or should know, given the circumstances. This statewide law has been in existence since the 1800s and is enforced at the local level.

In 2007, enforcement agencies in California were surveyed to assess the extent of enforcement of PC 308. The results indicated that, statewide, about one quarter of enforcement agencies conducted youth decoy operations in 2007, down from about

30 percent in 2004. The results also demonstrated that most law enforcement agencies enforce PC 308(b), a provision that penalizes youth for possessing tobacco, nearly three times as often as PC 308(a). In the 12 months previous to the survey:

- 27 percent of law enforcement agencies surveyed stated they conducted decoy operations;
- 65 percent of them reported issuing at least one citation to a merchant for illegal tobacco sales; and
- 90 percent of law enforcement agencies reported they had issued at least one citation to minors for possession of tobacco.²

This imbalance is of concern because research has not demonstrated that issuing youth citations for tobacco product possession is an effective tobacco use prevention intervention. However, over the past decade, multiple studies have demonstrated that unannounced retailer compliance checks are very effective in reducing the rate of illegal tobacco sales to minors.

Rationale for Enforcement

Even though all 50 states have youth access laws prohibiting minors from purchasing cigarettes, more than 78 million packs of cigarettes are purchased by youth each year.³ As of April 2001, there were 490 local tobacco control laws that regulated the sale of tobacco in California alone. As mentioned above, however, only 27 percent of local enforcement agencies surveyed reported conducting one or more compliance checks in the previous year.

It is clear that regular enforcement of tobacco sales laws makes it more difficult for youth to buy cigarettes. The success of these efforts, however, is contingent upon routine compliance checks and enforcement of tobacco sales laws. Data from routine compliance checks in 16 cities with varying enforcement schedules show that cities performing quarterly checks had lower purchase rates than cities inspecting merchants only once a year.⁴

Additionally, businesses that received regular compliance checks were more likely to keep cigarettes behind a counter and more likely to post signs announcing local or store policies regarding the sale of tobacco to minors.⁴

Public Support for Enforcement

According to the California Adult Tobacco Survey (2005), enforcement agencies have community support for PC 308(a) activity. The following findings demonstrate public support for enforcement of youth access laws:

- 98 percent of Californians agreed that communities should enforce laws to prevent selling cigarettes to minors;
- 83 percent of Californians agreed that storeowners should have a license to sell cigarettes, as they do with alcohol.⁵

Enforcement of Penal Code 308(a): A High Priority

The Stop Tobacco Access to Kids Enforcement (STAKE) Act Program, enacted in 1994, is California's response to the federal Synar Amendment, which requires states to: a) enact and enforce laws that make it illegal to sell tobacco to minors; b) reduce the rate of illegal sales to no more than 20 percent; c) conduct annual random scientific surveys to assess compliance with youth access laws; and, d) report the results of those scientific surveys to the federal overseeing agency and the Center for Substance Abuse Prevention.

The Synar Amendment also empowers the United States Department of Health and Human Services to penalize states whose illegal sales rates exceed 20 percent. Up to 40 percent of a state's block grant funds may be withheld.⁶ For California, this amounts to approximately \$100 million dollars for the Department of Alcohol and Drug Programs (ADP).

Most states conduct compliance checks in accordance with provisions of the Synar Amendment. The STAKE Act is enforced by the California Department of Public Health, Food and Drug Branch. Local jurisdictions are also involved in enforcing statewide youth access laws. Some local jurisdictions also enforce youth access provisions of local ordinances, like tobacco retailer licensing. In California, PC 308(a) is enforced by local law enforcement agencies (e.g., police departments, sheriff's offices).

In 2008, the annual California Youth Tobacco Purchase Survey found that the illegal sales rate of tobacco products to youth increased from 10.7 percent in 2007 to 12.6 percent.⁷ In 2004, the illegal sales rate was 14 percent, considerably higher than the current rate. Although rates varied from 2004 to 2008, no statistically significant changes occurred, indicating that the rate of illegal tobacco sales to minors has plateaued. Undoubtedly, local enforcement efforts contributed to the initial drops in illegal sale rates. However, the continuation and expansion of local enforcement efforts is essential to future decreases in illegal tobacco sales to minors. In recent years, nontraditional retailers such as donut shops, delis, and discount stores sold at much higher rates than traditional types of stores such as supermarkets, convenience stores and liquor stores. This indicates that local enforcement efforts should include nontraditional retailers in compliance checks.

The California Department of Public Health, California Tobacco Control Program (CTCP) and the California Attorney General's Office strongly encourage local law enforcement agencies to use this manual to conduct PC 308(a) operations in California's cities and counties because regular enforcement of PC 308(a) is needed in order to prevent illegal sales of tobacco to minors in California.

References

1. Forster, J.L., Wolfson, M. Youth Access to Tobacco: Policies and Politics. *Annual Review Public Health*. 1998;19(8): 203-235.
2. Rogers, T., Feighery, E.C., Haladjian, H.H. *Current Practices in Enforcement of California Laws Regarding Youth Access to Tobacco Products and Exposure to Secondhand Smoke*. Sacramento, CA: California Department of Public Health; 2008.
3. The Toll of Tobacco in California, Campaign for Tobacco-Free Kids, 2005.
<http://tobaccofreekids.org/reports/settlements/toll.php?StateID=CA>
4. Radecki, T.E. 16 Cities: Merchants Responsibility, 3-4/yr Checks Better. *Drug Free Youth News*, 7, 1-2.
5. California Adult Tobacco Survey 2005.
6. Center for Substance Abuse Prevention. *Synar Regulation Implementation: Report to Congress on FFY 1997 State Compliance*. Rockville, MD: Substance Abuse and Mental Health Services Administration, 1997.
7. Youth Tobacco Purchase Survey, 2008.

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Section II: California Penal Code Section 308(a)

The Law

California Penal Code 308(a) prohibits the sale of tobacco products to minors and provides that:

- No person, business, firm or corporation can sell, give, or in any way furnish tobacco products to a minor
- A “minor” is any person under 18 years old
- “Tobacco products” means any tobacco product including but not limited to cigarettes, cigarette papers, or other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance
- Selling tobacco products to a minor is a misdemeanor.

The full text of California Penal Code Section 308 reads:

308.(a) Every person, firm, or corporation which knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or

subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.

(c) Every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall upon conviction be punished by a fine of ten dollars (\$10) for the first offense and fifty dollars (\$50) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

Legal Issues

This section looks at the legal issues related to PC 308(a) including elements of the crime (e.g., who can be prosecuted and for what conduct), affirmative defenses, and discovery issues. The elements of the crime must be understood prior to enforcing the law. Those elements should be considered in the context of how a reasonable person would expect the law to operate and what the legislative purpose was in passing the law. Court decisions can further refine the elements. The enforcement agency and the prosecuting agency can develop guidelines related to issues of discovery and evidence.

Elements of the Crime and Who to Prosecute

There is discussion in the field as to who should be prosecuted for the sale of tobacco products to a minor. Some focus on the clerk at the time of the sale; others believe the business manager, owner or corporation has the ultimate liability for their employees. The discussion varies based on the legal interpretation of the word “knowingly” in the California Penal Code Section 308(a), to be discussed later in this section. The owner or corporation is usually criminally prosecuted only if there have been multiple violations at the same location. When a civil action is pursued under

the Unfair Competition Law (California Business and Professions Code Section 17200) the clerk and the storeowners can be named as defendants even for the first violation. The standard of proof for a civil law makes it easier to prove that the owner is liable for the acts of employees. The decision of who to prosecute for a PC 308(a) violation requires an agreement between your agency and your prosecuting attorney. Following are some legal issues to discuss:

- Most law enforcement agencies conducting youth decoy operations will issue a misdemeanor citation for PC 308(a) to the store clerk making the sale to the minor. The agency then sends a letter or makes personal contact with the business manager or owner regarding the violation.
- In some cases the clerk is a minor supervised by an adult or the store manager. Whether or not to cite the minor clerk and the adult clerk, just the minor clerk, or just the adult clerk, should be discussed ahead of time.
- When subsequent offenses occur at the same location, it is up to each agency and their prosecuting attorney to decide if they should issue a citation to just the clerk or cite the owner/manager as well. In making this decision, the prosecuting attorney may consider:
 1. Documentation of the educational material and violation notices sent to the owner or manager of the business to show that the owner/manager knows that his/her employee has sold tobacco products to a minor. The owner/manager has the ultimate liability for his/her employees. They must train and develop a system to ensure that their employees do not sell tobacco products to minors.
 2. Documentation of prior violations and citations issued to clerks.
 3. If the issuance of a citation is not feasible, the officer may seek criminal prosecution via complaint with the prosecuting attorney.

Case Law and Issuing Citations

- There is case law related to issuance of citations to owners or managers on duty and their liability as an aider and abettor to the crime.¹
- There is case law related to issuance of citations to owners not on duty and the personal liability of the corporate officers as an aider and abettor to the crime.²
- When a clerk or owner is issued the citation, the violation is a misdemeanor offense and he/she is entitled to a jury trial. (See penalties later in this section for further dispositions.)

Understanding the Legalese of the Crime

Beyond determining the person to be held responsible for the crime, there are two parts to a violation of PC 308(a):

1. The act (actus reus)
 - A person “. . . sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, etc. . . .”
2. The intent (mens rea)
 - The violation of PC 308(a) is a general intent crime,³ yet, it includes the word “knowingly”. CALJIC (California Jury Instructions for Criminal Trials) defines “knowingly” as: “. . . knowledge of the existence of the facts in question. Knowledge of the unlawfulness of any act or omission is not required.”
 - The Comment section of CALJIC 1.21 also explains that “a requirement of knowledge in a penal statute . . . is not a requirement that the act be done with any specific intent.”
 - The word “knowingly” was added in 1980 to the language of Assembly Bill 2442 during the legislative process. AB 2442 was primarily a “tobacco and drug paraphernalia” bill. The “guts” of the bill added the following language to PC 308(a): “. . . or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substances . . .”⁴
 - In short, this means simply the act of selling tobacco products to a minor when the clerk knows it is illegal to sell to a minor is sufficient for a PC 308(a) violation.
 - It is important to be sure that the minor appears to be under 18 years of age, so that a reasonable person (the clerk) would believe the person attempting to purchase the tobacco is not 18 years old.

The Affirmative Defense

A key point is to document whether or not the clerk took any action to identify the age of the minor. This can involve several observations of the clerk’s either overt actions or lack of action to determine the minor’s age. The officer needs to document in the report if the clerk looked at the minor’s identification or correctly used an electronic device to determine the minor’s age. Youth decoys cannot use false or counterfeit identification to purchase tobacco products because this would create an affirmative defense.

1. PC 308(a) provides an affirmative defense if there is “proof that the defendant, or his or her employee or agent,
 - Demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision.
 - Presented evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal

government, or subdivision or agency thereof, including but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.”

2. The same affirmative defense is found in Business and Professions Code Section 25660 relating to alcohol violations. The seller is not strictly liable because the Legislature has furnished a procedure whereby he may protect himself, namely Section 25660. ⁵
3. Most prosecuting attorneys’ position is that the interpretation to be given to PC 308(a) should be the same interpretation already given to BP 25660 and the courts have upheld that opinion to this point.

Discovery Issues

The defendant has the right to confront the accuser and any records or documentation related to the investigations, including the identity of the decoy.

Records

The defense attorney can have access to copies of police reports and records of the recent and previous operations. This could include access to any videotapes or recordings of the operations.

Youth Decoys

The defense can request access to any information related to the youth decoy in an attempt to show that the decoy appeared to be 18 years of age. Most agencies refer to youth decoys by a witness number or John Doe in their reports, then wait until the defense files a discovery motion. Sometimes the prosecuting attorney will agree to plea-bargain a case to an infraction to retain the identity of the decoy, but usually only if the decoy has extenuating circumstances. Items the defense attorney could be entitled to include:

- Photos of the youth decoys on the day of the operation
- Access to the identification used by the decoy during the operation
- The identity of the youth decoy, which the court will usually limit to name and date of birth
- A copy of the decoy’s birth certificate at trial to prove age
- An interview of the decoy by the defense, the court will usually allow this to be an in-camera hearing or arranged by the police department at the prosecuting attorney’s office.

Officers

The discovery issue could in fact attack the credibility of the officer observing the violation just as it does in any criminal prosecution.

Penalties

PC 308(a) is a misdemeanor. The penalty to be imposed, however, is dependent upon the decisions of the prosecuting attorney as follows:

1. The defendant can be charged criminally by the prosecuting attorney, which involves a fine (\$200 first offense, \$500 second offense, and \$1,000 third offense), probation or possible imprisonment. In some jurisdictions, the prosecuting attorney may allow the defendant to plea-bargain the charge to an infraction (fine only).
2. The defendant can be pursued civilly by the prosecuting attorney, which involves only a fine. Subsequent violations have increased fines/penalties.

The Big Gun: California's Unfair Competition Law (Business and Professions Code Section 17200)

Another state law, California's Unfair Competition Law (UCL) is contained in Business and Professions Code Section 17200. A violation by a *business* of *any* tobacco control law (or, in fact, *any* law at all) is automatically a *separate* violation of the UCL. (For example, a Federal Express truck that is speeding is also simultaneously violating the UCL because it is gaining an unfair competitive advantage by breaking the law.) Violations of the UCL can result in a civil fine of up to \$2,500 for each violation and a court injunction prohibiting future violations. Thereafter, violations of the court injunction can result in a fine of up to \$6,000 per violation. Clearly, enforcing a violation of a tobacco control law through the UCL can cost a business much more than the actual penalty of the underlying tobacco law: a possible \$2,500 fine under the UCL for selling tobacco to minors versus \$200 under PC 308(a).

The UCL is a civil law and must be filed like any other civil lawsuit; it is not a law that local law enforcement agencies can use directly. A prosecuting attorney, however, can file suit based upon the UCL and can use evidence collected by local law enforcement to prove the case. Local law enforcement agencies should request that their prosecuting attorney file a UCL lawsuit when a business violates tobacco control laws, scoffs at local enforcement efforts, or simply considers the penalties to be part of the cost of doing business.

References

1. Aids and abets — defined in *California Jury Instructions, Criminal* (CALJIC) 6th ed. (West Group, 1996)
3.01: A person aids and abets the commission or attempted commission of a crime when he or she,
 - with knowledge of the unlawful purpose of the perpetrator and
 - with the intent or purpose of committing, encouraging, or facilitating the commission of the crime, by act or advice aids, promotes, encourages or instigates the commission of the crime.
 - A person who aids and abets the commission or attempted commission of a crime need not be personally present at the scene of the crime.
 - Mere presence at the scene of a crime, which does not itself assist the commission of the crime, does not amount to aiding and abetting.
 - Mere knowledge that a crime is being committed and the failure to prevent it does not amount to aiding and abetting.
2. Personal liability of the corporate officers
 - *Sea Horse Ranch v. Superior Court of San Mateo County*, California Court of Appeals (1994), 24 Cal. App. 4th 446.
 - The business entity, i.e.: the “firm” or “corporation”
 - Proceedings against corporations: California Penal Code Sections 1390-1397.
3. General Criminal Intent defined:
“To constitute general criminal intent it is not necessary that there should exist an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he/she is acting with general criminal intent, even though he/she may not know that his/her act or conduct is unlawful.” CALJIC 3.30
4. Interpretation of the word “knowingly”. 1980 amendment: Assembly Bill 2442 (Stat. 1980, Chap. 542).
5. California Business and Professions Code 25660
 - *Provigo Corp. v. Alcoholic Beverage Control Appeals Board* (1994) 7 Cal. 4th 561 “1994 California Supreme Court decision in *Provigo Corp. v. Alcoholic Beverage Control Appeals Board*.”

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Section III: Working with the Prosecuting Attorney's Office

Meet with the Prosecuting Attorney

Prior to a youth decoy operation for PC 308(a), it is important to meet with the prosecuting attorney, who may be the city attorney or district attorney. Sometimes agencies do not do this because they think PC 308(a) cases will be filed just like other criminal cases. However, PC 308(a) violations typically pose many questions for prosecutors. There are several factors that prosecutors consider when looking at filing criminal charges for PC 308(a). Remember PC 308(a) is a misdemeanor and could potentially result in a jury trial. Each prosecutor has a different set of legal standards for what the protocols should be for youth decoy operations.

The officer and/or investigator familiar with the enforcement of PC 308(a) that will be filing the complaints should meet with the prosecuting attorney's office to discuss the issues and prosecution. Specifically, try to meet with the attorney or attorneys who file and prosecute these cases. This will allow the prosecuting attorney's office to provide input and work through any potential barriers. This should occur before any youth decoy operations are conducted.

Issues to Discuss

The officer or officers who meet with the prosecuting attorney's office have to be prepared. This includes having the protocols the department wants to use written down in a professional format or in a short presentation. The officer needs to be able to explain each protocol and the rationale behind it. If there is resistance to proceed because prosecution of PC 308(a) is a low priority, the officer should remind the attorney(s) that funding for most of the court diversion programs is dependent on funding tied to achieving a low illegal sales rate under the Synar Amendment. The prosecuting attorney also receives 25 percent of the criminal penalty for cases successfully prosecuted.

Several elements of a decoy operation that should be discussed with the prosecuting attorney's office are covered in depth in other sections of the manual. These issues include:

- Amount of retailer or merchant education required (see Section IV)
- Who to prosecute (see Section II)
- Operational guidelines (see Section V)
 - Age of youth decoys
 - Should youth decoys carry identification
 - Can youth decoys lie about their age
 - Purchasing protocols
 - Immunity letter
 - Evidence necessary for prosecution

Support for the prosecution of PC 308(a) cases is a key component in your enforcement efforts. Do not end the discussion with the prosecuting attorney's office after one meeting. Offer to give a short presentation to all the attorneys on staff and even the judges if necessary. Promptly address any problems that arise and work to resolve the issues. If changes need to be made after the first youth decoy operation, consult the prosecuting attorney's office before making any final decisions. Remember to keep the dialogue going and periodically contact the prosecuting attorney to make sure no new concerns have arisen. *A Tip Sheet for working with prosecuting attorneys is included in Section III of the Resources Section.*

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Section IV: Merchant Education

A Starting Point

A variety of merchant education strategies has been used throughout California to help reduce sales of tobacco to minors. Merchant education is merely a beginning. To affect permanent change in your store environments, education must be combined with strong enforcement and media strategies.

Merchant education can be done in a time-efficient, streamlined manner that is not labor intensive. Education is needed only to the extent that the prosecuting attorney believes it would aid in prosecution later on. In some California counties and cities, prosecuting attorneys request that law enforcement agencies educate the merchant about the pending PC 308(a) operations prior to conducting the compliance checks. (Standardized letters or educational pamphlets can be sent.) Find out at the initial meetings with the prosecuting attorneys if they want this education initiated.

Do not re-invent the wheel on merchant education. This manual contains sample forms and materials, as well as references for free merchant education resources.

Compiling a Master List of Tobacco Retailers

There are several streamlined ways to compile a list of tobacco retailers. Please refer to Section V of this manual for specifics on how to compile a reliable, working list of tobacco retailers.

Developing Your Materials

Materials for educating merchants are readily available for use and some are available in languages other than English, e.g., Spanish, Vietnamese and Punjabi. Sample merchant education materials that are included in this manual and/or available through the Tobacco Education Clearinghouse of California (TECC) include the following:

- A cover letter, with brief introduction of your enforcement policy, which could be co-signed by your local chief of police, sheriff and/or your local prosecutor. *See Sample Letter to Notify Owners of Upcoming Enforcement in Section IV of the Resources Section.*

- Copy of local, state and federal laws that apply to the retailer. These can be found in the California state brochure *Tobacco Control Laws that Affect Retail Businesses*, available from TECC (800) 258-9090, ext. 103, or at www.TobaccoFreeCatalog.com. See the sample brochure in Section IV of the Resources Section.
- STAKE Act signs for posting at each register. They contain a phone number for use by the public to report sales of tobacco to minors and are required by state law to be posted at all cash registers in retail locations selling tobacco. (“We Card” and other tobacco industry issued signs are not sufficient under the law.) STAKE Act signs are available from TECC, (800) 258-9090, ext. 103, or at www.TobaccoFreeCatalog.com. See the sample sign in the back pocket of this binder.
- License ID Guide adhesive sign which shows what to look for when checking a California driver license or ID before selling tobacco products or alcohol. Signs are available from TECC, (800) 258-9090, ext. 103, or at www.TobaccoFreeCatalog.com. See the sample sign in the back pocket of this binder.
- Merchant Education materials in Spanish, Vietnamese and Punjabi, developed by the San Jose Police Department. See the sample Tobacco Compliance cards in English, Spanish, Chinese, Korean, Vietnamese, and Punjabi in the back pocket of this binder.

Outreach to Merchants

Outreach to merchants is very important and two of the most common approaches for merchant education are: 1) distribution of educational materials, and 2) employee training. Many agencies choose to use a combination, depending on resources and the specific goals of the enforcement effort. Following are brief descriptions of each approach.

Distribution of Educational Materials

A common merchant education strategy is the distribution of educational materials to store owners and managers. This strategy uses educational packets designed for retailers such as those mentioned above. Here are some suggestions for steps to take:

1. Identify the stores. Education prior to enforcement can be community-wide or area-specific.
2. Identify the objectives. Be clear and specific with storeowners and managers about the changes that need to be made.
3. Contact retailers by mail or in person if you have the time and personnel. Tips for visits include:
 - Leave STAKE Act signs and educational brochures
 - Be concise and specific
 - Leave contact information in case owners have questions in the future

Merchant and Employee Training

Most retailers are not familiar with either the name or the exact requirements for most federal, state or local laws and ordinances that effect tobacco sales in their stores. Although the State of California periodically sends educational materials and STAKE Act signs to more than 40,000 retailers who may sell tobacco, most chain stores receive their information on the laws from their corporate headquarters; most independent retailers receive information on new tobacco laws from tobacco company distributors.

You can find the retailer self-education presentation called *Stop Tobacco Sales to Youth: California Retailers and Youth Tobacco Laws* at <http://www.tcsstore.org/appendix/RetailerPresentation07.pdf>.

When clerks are hired, retailers typically go over the rules for checking ID and explain the consequences for the clerk if an illegal sale is made. Many storeowners require clerks to sign a document indicating that they understand the rules and consequences.

The California Department of Public Health, California Tobacco Control Program (CTCP) has posted a retailer self-education presentation called *Stop Tobacco Sales to Youth: California Retailers and Youth Tobacco Laws* online. The website address is <http://www.tcsstore.org/appendix/RetailerPresentation07.pdf>. See a copy of this presentation in Section IV of the Resources Section. Accompanying the Tobacco Retailer Presentation is an introductory letter to retailers and a clerk quiz. The California Department of Public Health is providing this training pursuant to Business & Professions Code, Section 22974.8. This law requires that training be provided to licensed California tobacco retailers who have received a warning letter from the State Board of Equalization following a first conviction of a state law which prohibits selling, giving or furnishing tobacco products to persons under the age of 18.

Local law enforcement agencies may want to look into merchant and employee education programs conducted by California Alcoholic Beverage Control (ABC), known as LEAD — Licensee Education on Alcohol and Drugs. At the request of local enforcement agencies, ABC has occasionally included tobacco control information in trainings given to store clerks and owners. For more information on LEAD trainings, call ABC in Sacramento, Everest Robillard, at (916) 419-2526.

Tobacco Control Publications

- ***Tobacco Control Laws That Affect Retail Businesses** – brochure**
An easy-to-read summary of important tobacco control laws that affect retail businesses.
<http://www.cdph.ca.gov/programs/tobacco/Pages/CTCPRetailerResources.aspx>
- ***Avoiding Fines & Penalties When Selling Tobacco** – information kit**
This information kit contains all the following items:
STAKE Act (adhesive sign), *Tobacco Control Laws* (brochure), preventing tobacco sales to minors posters, *License ID Guide* (adhesive sign).
<http://www.TobaccoFreeCatalog.org>
- ***Tobacco Laws Affecting California – 2009* – booklet**
A complete list and analysis of tobacco control laws relevant to California.
<http://www.phlpnet.org/tobacco-control> via the hyperlink “Publications.”

- ***Stop Tobacco Sales to Youth: California Retailers and Youth Tobacco Laws – training presentation*** (revised January 2007)

A Tobacco Retailer Presentation designed as a self-education tool for use by California tobacco retailers and their employees. Accompanying the training presentation is an introductory letter to retailers and a clerk quiz.
<http://www.tcsstore.org/appendix/RetailerPresentation07.pdf>

*Copies of these materials are provided in the back pocket of this binder.

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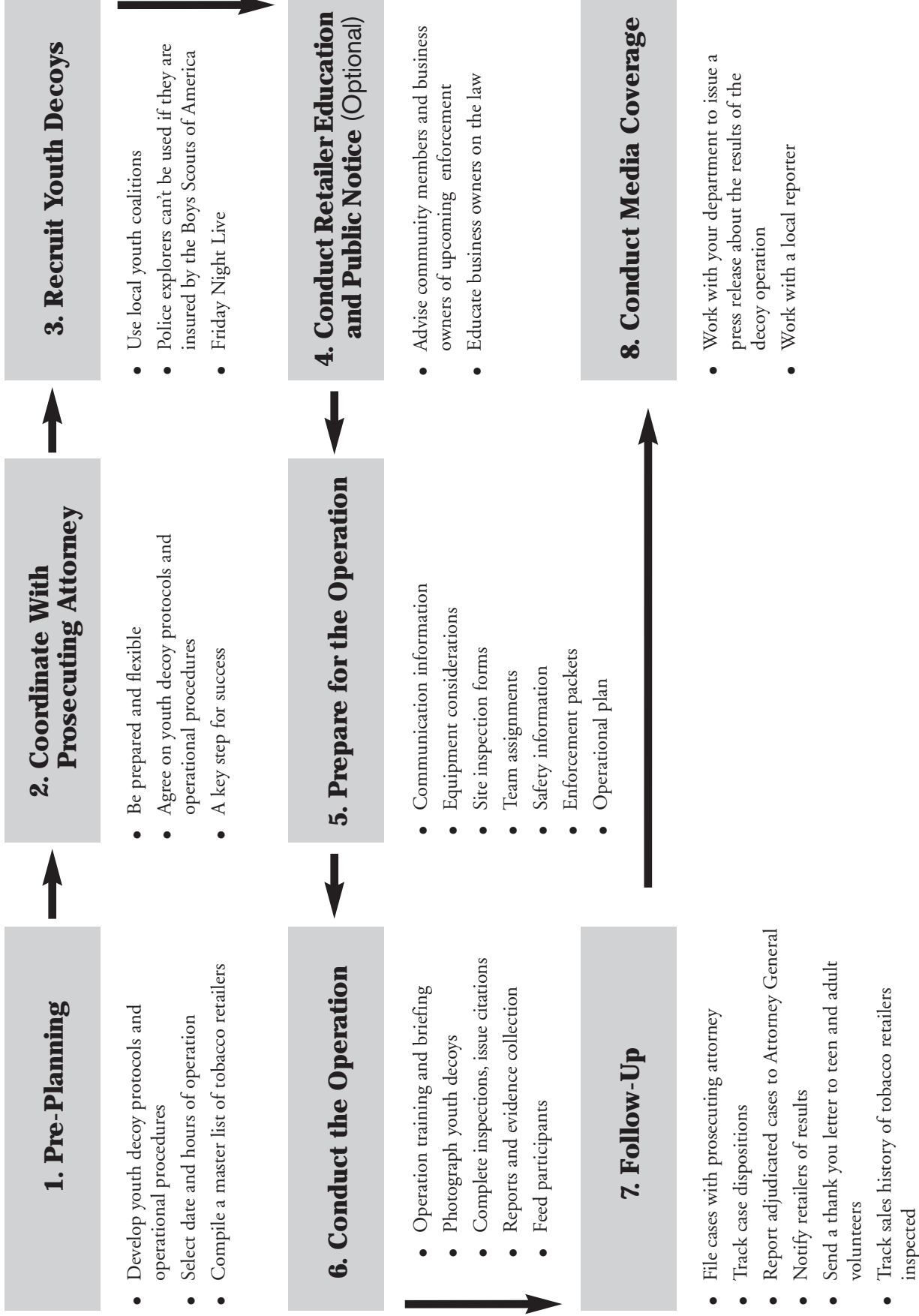
Section V: Operational Guidelines

Elements of an Effective Operation

As with any decoy operation, a youth decoy operation to check retailer compliance with the provisions of PC 308(a) is complex. It requires careful planning in order to complete efficiently and safely. Once the decision is made to conduct a youth decoy operation, a supervisor or specific officer should be assigned to carry out the planning, implementation and follow-up activities that are necessary components of an effective operation. One officer responsible for all components of the operation can ensure a smoother operation.

There are eight major steps to conducting an effective decoy operation. Each major step is discussed in this section with detailed information and advice. *Please see the following page for a flowchart of these eight steps.*

Steps to Conduct an Effective Decoy Operation



Step 1. Pre-Planning

Develop Operational Procedures

The first step is to draft operational procedures to review with the prosecuting attorney. These should specify: (a) youth decoy policies; (b) team composition; (c) how the operation will be conducted; (d) how evidence will be gathered and documented; and (e) information that will be included in reports.

(a) Youth Decoys

There are several important decisions to make about youth decoys: how old the decoys should be, should they carry ID, and should they falsify their age if asked. Because there are pros and cons to each option, your prosecuting attorney and your department should agree on the protocol to be used for the decoy operation.

Age:

Youth who are involved in decoy operations must be under the age of 18. Most law enforcement agencies engage youth decoys who are 15 or 16 years old. The youth should look their age. If a decoy looks like he or she is 28 years old, it may create an affirmative defense in court for the clerk who sold the tobacco. Decoys who are 17 years old may provide more accurate results in terms of retailer compliance with the law. There are, however, some drawbacks. Prosecuting attorneys want youth decoys to be youthful in appearance and may refuse to file if your youth decoys are 17 years old. Youth who are 17 at the time of the operation may be 18 by the time a case goes to court, which may weaken your case. Or, they may have moved away for school. Youth decoys must be photographed prior to the start of an operation to show what they were wearing and their appearance during the operation.

Identification:

Whether the youth decoys will carry identification must be decided prior to conducting the operation. Some agencies choose not to have their youth decoys carry any type of identification because minors attempting to purchase tobacco products typically do not have identification. Other agencies require their youth decoys to carry a California Identification Card or Driver License. Not carrying identification may make it easier to recruit decoys since most youth do not take the time to go to the Department of Motor Vehicles to get any type of identification until they get their driver license. A disadvantage to not carrying an ID is that it is fairly common for a clerk to “look” at an ID and still sell tobacco products to a minor.

Youth responses to questions about age:

Deciding if the youth decoys will lie or tell the truth about their age is another decision that needs input from the prosecuting attorney. Some prosecuting attorneys and departments do not want their youth decoys to falsify their age; but minors purchasing tobacco products in real life do not tell the truth when questioned by a clerk. The law does support allowing youth decoys to lie about their age. Business and Professions Code Section 22950 permits STAKE Act decoys to lie and requires clerks to verify age with valid identification.

(b) Team Composition

There is more than one way to compose a youth decoy operation team. Each agency must decide what works for them when setting protocols for conducting the operation. Most law enforcement agencies use teams that consist of one peace officer, one adult chaperone and one youth decoy. The adult chaperone's primary responsibility is to ensure the youth's safety when the peace officer is not present.

Adult chaperones can be community members who are interested in assisting the law enforcement agency, staff from the local health department, reserve officers, citizen's patrol, and police officers. Community members are usually willing to help; this aids in fostering community support for enforcement (but remember they are not trained). Reserve officers are ideal because they have peace officer authority, training in departmental procedures and are no cost to the department. Citizen patrol members also have some training and are familiar with radio procedures.

Some agencies will use two peace officers and will rotate them between entering the store with the youth decoy and remaining in the vehicle to operate the wire equipment. However, this does increase the personnel costs of the operation. Sometimes if resources are slim one team of four (two peace officers and two youth decoys) will go out together and conduct all of the site inspections. A word of caution about this approach that may make the operation ineffective: retailers may use a phone tree to alert other retailers that a youth decoy operation is in progress after the first citation is issued. If multiple teams are inspecting locations simultaneously, the likelihood of a retailer phone tree decreases. Additionally, peace officers conducting site inspections should have some type of experience working an undercover assignment.

(c) How the Operation Is Conducted

Your prosecuting attorney and your department should agree on the protocol you plan to use for the decoy operation, since law enforcement agencies can use a variety of protocols when in the store. Following are examples of two commonly used protocols.

Some law enforcement agencies work in teams of three (officer, adult chaperone, and youth decoy). The undercover officer enters the location about 5–10 seconds prior to the youth decoy to ensure the location is secure. The officer tries to position him/herself near the counter to hear the transaction between the clerk and the youth decoy. The youth decoy enters the location and walks up to the counter or gets in the checkout line. The youth decoy places the buy money on the counter and requests the tobacco products. After the youth decoy attempts the buy (whether successful or not) he/she immediately leaves the location and returns to the vehicle where the adult chaperone is waiting. If a sale is not made, the officer may make a small purchase or just leave. If a sale is made, the officer immediately approaches the clerk, identifies him/herself and recovers the buy money. The clerk is issued a misdemeanor citation and notice to be booked. The officer also recovers the change and tobacco product from the youth decoy to book them as evidence. In addition, the youth decoy wears a wire and the tape is booked as evidence.

Some agencies conduct youth decoy operations without sending an officer in first. The youth decoy is alone inside the location because the officers would be recognized in the stores even in plainclothes. In these cases, the officer goes in after the sale and the youth decoy identifies the clerk who sold the tobacco product.

The use of an audio or video recording device is highly recommended. Many cases will never go to trial and your youth decoys will not be subjected to a court trial if the transcript of the transaction is made available. Pager wires and video camera backpacks are available from the Department of Justice Bureau of Investigation's Technical Operations Unit at (916) 227-4142.

(d) Gathering Evidence

Most agencies book the following as evidence:

- Tobacco product
- Change
- Photocopy of the buy money
- Recording of the transaction
- Receipt if available

Some agencies, however, will not book all of the evidence. Instead, they take a picture of the youth decoy with the clerk, tobacco and change, and attach it to the report. Before deciding to use this approach, check with the prosecuting attorney; many want the evidence available for court and a photo will not be sufficient. Officers should follow their agency procedures relating to documentation of evidence.

(e) Information in Reports

Each agency's crime and arrest reports are formatted slightly differently and officers also write differently. Provide officers with a sample report containing all the elements necessary for prosecution to ensure the reports are consistent from one officer to another, and from each operation to the next. Name and date of birth of the youth decoys are discoverable, but you can make arrangements with the prosecuting attorney not to include their names in the report and refer to them as John Doe, Jane Doe or by a witness number. *See Sample Report Narrative in Section V of the Resources Section.*

Section V of the Resources Section includes operational procedures that have been used by the Montebello Police Department and others. The California Department of Public Health' Guidelines for PC 308(a) Operations are also included. These examples can be modified for individual needs and use.

Select Date and Hours of Operation

Choose dates that are several weeks in advance so there is sufficient time to prepare for the operation. The youth decoy operation should end no later than 9:00 p.m. as the youth may need to go to school the next day. Typically, the operations should be conducted during the afternoon or early evening hours on weekdays, or late morning/early afternoon on weekends.

Develop a List of Locations

Compile a list of all the tobacco retailers in your jurisdiction. Each location should be visited or called to verify whether they sell tobacco products. California surveillance data demonstrates that non-traditional tobacco retailers, such as donut shops, gift stores, dollar stores, and deli's sell tobacco to minors at a rate higher than traditional retailers. The list should include some non-traditional types. Once a complete list of tobacco retailers is compiled, it will only require periodic updating. Here are suggestions for compiling the list of tobacco retailers:

- Jurisdictions with tobacco license ordinances can easily obtain a list of retailers that sell tobacco products. In some areas the local health department may already have a list.
- The California Board of Equalization (BOE) maintains a current database of all licensed tobacco retailers in California and will provide a free list of local retailers for enforcement activities. Please direct your questions or requests to Rebecca Olivas at Rebecca.Olivas@boe.ca.gov or (916) 327-7209.

Identify the number of retail outlets that will be included in the operation. To some extent, the number of locations may be limited by the number of available department personnel. The locations should be randomly selected from each reporting district or geographic area and evenly distributed throughout the city. Locations previously cited for a PC 308(a) violation should also be targeted as repeat offenders for one year. The department should inspect any location for which a complaint about tobacco sales to minors has been received.

Step 2. Coordinate with the Prosecuting Attorney

Coordination with the prosecuting attorney prior to conducting the first youth decoy operation is critical. The prosecuting attorney must be committed to filing cases based on the agreed upon operational procedures. Obtain the prosecuting attorney's approval of all provisions and procedures to avoid problems after the decoy operation is completed.

In addition to reviewing the operational procedures described above, ascertain if the prosecuting attorney will require an immunity letter for the youth decoys. It is not necessary to have the letter of immunity if you are a law enforcement agency and the youth decoy is working with a peace officer. When agencies such as local health departments conduct independent youth decoy purchase surveys without peace officers, they must get a letter of immunity from the prosecuting attorney.

For a free list of local retailers for your enforcement activities, contact the California Board of Equalization, Rebecca Olivas at (916) 327-7209 or Rebecca.Olivas@boe.ca.gov.

Step 3. Recruit Youth Decoys

Youth decoys may be recruited from community youth leadership groups, cultural groups, youth groups concerned about substance abuse, high schools, service clubs and from youth recommended by other buyers. (Note: Police Explorers affiliated with the Boy Scouts of America cannot be used due to the Boy Scouts insurance policy.) Friday Night Live has youth coalitions statewide. The local health department may be able to assist with recruiting youth decoys as well. Most health departments have access to youth coalitions that may be good sources for decoys. It is particularly helpful to have one adult transport the youth decoys to the station if they are part of a coalition or youth organization right after school instead of using parents. This will increase your participation rate. Also, consider having one extra youth decoy available for each operation in case there is a “no show” at the last minute.

The skills and abilities of the youth conducting the purchases, as well as various demographic characteristics of the youth, could all affect sales rates. Depending on the total number of stores surveyed, in general, the more youth decoys the better. Divide the total number of stores in the survey and plan on youth doing no more than 25 stores or 25 percent of the total. This will decrease the likelihood that overall results are based solely on one or two youth, which could introduce bias. A clerk will be less suspicious if the ethnicity of the youth decoy matches the ethnicity of the neighborhood surrounding that store. To date, there is no data that has found a difference in the sales rates between boys and girls.

Recruiting Guidelines

Following are some sample guidelines when recruiting youth:

- All decoys shall be less than 18 years old at the time of any undercover decoy operation
- Decoys shall not have any gang affiliation
- Decoys shall not have an arrest history
- Decoys should be reliable and enthusiastic
- Decoys' appearance should be consistent with their age (less than 18 years old) and environment

Youth Decoy Application and Parental Approval

Some agencies have prospective youth decoys fill out an application before being approved to participate. The application provides an officer with the necessary information to ensure the youth decoy does not have a criminal record and that the agency has all their pertinent contact information. Youth decoys must have a signed parental consent form. Some parents may have reservations about allowing their child to participate. Take the time to explain how the operation is conducted and how their child's safety is important. Some parents are concerned about a friend or neighbor

observing their child purchase tobacco products. For their own comfort and safety, youth decoys should not be assigned to do buys in the area where they live or go to school. *See Section V of the Resources Section for a sample consent form and application.*

Rewarding and Acknowledging Youth Decoys

Providing youth decoys with a meal at the end or beginning of the operation goes a long way to retain their assistance for future operations. Letters of recommendation and credit for community service hours necessary for graduation are useful incentives. Most agencies acknowledge youth decoy participants by providing a letter for his or her college application package. This letter should describe the youth's participation and the important role this youth played in trying to decrease tobacco use among his/her peers. Because youth know that demonstrating some type of community service is important to college admissions personnel, this letter has proven to be an invaluable additional incentive for participation in the statewide survey; for many participants getting this letter alone makes the experience worth it.

Step 4. Conduct Retailer Education and Public Notice (optional)

This step is optional. Some prosecuting attorneys require retailer education and prior notification of an upcoming decoy operation because they believe that potential violators should be warned before being cited. Many city and county administrators appreciate being able to say everyone was educated before any youth decoy operations occurred. If they happen to receive complaints from tobacco retailers who were cited, they can point to the community-wide education efforts. If required, educate all the retailers one time before any youth decoy operations occur. *See Section IV of the manual for information and examples of this activity.*

Step 5. Prepare for the Operation

Once the above steps are completed, make the final preparations for the operation. Here is a list of the activities that need to be completed prior to the operation.

- Notify the communications supervisor of the operation dates and times at least two weeks beforehand. The communications supervisor can then ensure that proper staffing is available. Identify a frequency for the operation and list it in the operational plan. Provide a copy of the operational roster and locations to the communications personnel prior to the start of the operation.
- Confirm the date and location of the operation with all of the personnel for the operation. Include reminders to youth that parental consents must be submitted when they arrive for training. Remember that youth often need frequent reminders. Provide direction about proper attire: peace officers will be working in an undercover capacity and should wear the appropriate plain clothes; chaperones should wear plain clothes; youth decoys should wear clothing appropriate for school.

- Prepare a site inspection form that officers complete after the inspection of each location. The form should include:
 - Date and time of inspection
 - Information about the business and the decoy who attempted the buy
 - Location where the appropriate signs were posted
 - Whether the decoy was asked his/her age and for identification
 - The specifics of the citation, if one is issued (e.g., citation number, daily report number, party cited, and type of tobacco purchased)

See Section V of the Resources Section for a sample Site Inspection Form.

- Make team assignments by dividing your list of locations that you compiled in Step 1 into teams. Each team should be assigned the same number of locations. Locations should be grouped by geographic area. Teams' assignments should be based on geographic area to decrease the amount of time needed to travel from one location to the next.
- Arrange for the appropriate number of vehicles and radios. If possible, use recording equipment, including video, audio, photographic and other audio/visual recording equipment to record and document an operation. Recording equipment is available from Department of Justice Bureau of Investigation's Technical Operations Unit at (916) 227-4142.
- Obtain cash for buys following department procedure. Photocopy the cash for retrieval/reporting purposes. If the buy money is retrieved after every buy, three \$5 bills per team is recommended. If you decide not to retrieve the buy money, estimate how much money the youth decoys will need.
- Compile safety rules and address safety issues for all participants. Review them in the training and include copies in the team enforcement packets. The compliance check is conducted to ascertain whether businesses are complying with laws related to the sale of tobacco products to minors. Therefore, chaperones and youth decoys should be instructed to:
 - Follow all directions given by the peace officers
 - Wear a seat belt at all times while the vehicle is in motion
 - Refrain from arguing with the clerk if the buy is turned down
 - Pick up and pay for tobacco products at the counter, if they are readily accessible
 - Never return to the store after the purchase has been made
 - Refrain from loitering outside the business; return to the car immediately

- Remain in the vehicle at all times (adult chaperones)
- Communicate all problems, questions, or concerns to the officer in charge
- Refrain from getting involved in any potential altercation between the officer or any other person
- Prepare an operational plan. Be sure to include:
 - The mission
 - Date and time
 - Operational roster with assignments
 - Equipment assignments
 - Location assignments
 - Communications information
 - Safety information
 - Closest hospital in case of a medical emergency
- Notify the watch commander prior to the operation and provide him/her with an operational plan.
- Prepare enforcement packets for each team. Enforcement packets should include:
 - An operational plan
 - Safety rules
 - Site inspection forms
 - Buy money
 - Pen
 - Citation book and court date
 - Evidence seals
 - Evidence envelope
 - Report forms
 - Report exemplar

Step 6. Conduct the Operation

- Prepare a training room. Ensure adequate seating, disposable plates and utensils for food, sign-in sheets, camera, team assignments and team packets. Immediately prior to the training, order the meal for participants; feed the participants either during the briefing or use it as a time to debrief after the operation is complete.
- Operation training and briefing of youth decoys, chaperones, and officers should be scheduled to start about 30 minutes to one hour prior to the start

of the operation. Be sure to have a sign-in sheet; nametags are optional for participants to use during the training; be sure that they are removed before going out to conduct the operation. Following is a recommended agenda:

- Participants sign in and submit their consent forms (Note: youth cannot participate if they do not have a parental consent form)
- Photograph youth decoys
- Ask all participants to introduce themselves
- Distribute team assignments; ask them to sit with their team members
- Review operational procedures
- Distribute enforcement packets to each team
- Review safety rules to ensure participants' understanding
- Conduct a role play with youth practicing how to ask for a pack of cigarettes or the tobacco product they will attempt to purchase and the procedures for attempting the purchase
- Review how to complete the site inspection form with officers
- Answer questions
- Following the training, start the operation. All teams go to their designated districts and should return upon completion of their inspections. The supervisor in charge of the operation should be available to respond to officers' locations during the operation. Some teams will move faster than others. Monitor how many locations each team has left; do not be afraid to reassign locations to different teams so that every team can finish at about the same time.
- Immediately following the operation, the supervisor should conduct a debriefing after all the teams have returned to determine how many stores were in violation and if any teams encountered any unusual situations. Thank all participants. Be sure all youth decoys have transportation home. Ensure all the officers complete their reports and book the evidence.

Step 7. Follow-Up

- As soon as possible, complete follow-ups for filing against clerks and owners in violation. Ensure that each case has all of the documentation that the prosecuting attorney has asked for in filing these cases and that the protocols that the prosecuting attorney agreed to for youth decoy operations were followed. If building a case against the owner of a location, be diligent about keeping accurate records; submit the case only if the necessary documentation has been obtained. Present complete cases to the prosecuting attorney's office for filing.

Remember to forward information on your adjudicated cases to

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

- Work with your press office to issue a press release about the results of the decoy operation. Media coverage conveys to the community and to the retailers that the law enforcement agency has identified this as a high priority to the extent that it has allocated resources to it. *See Section VI of this manual for tips on working with the media.*
- It is important to notify retailers of the results of the decoy operation. This sends a message to them that your department is serious about this law and that they are being checked for compliance. Send out letters to businesses in violation of PC 308(a), as well as congratulation letters to businesses in compliance. *See Section V of the Resources Section for sample letters.*
- Send out letters of appreciation to all volunteers. *See Section V of the Resources Section for a sample letter.*

Keep all the information from the site inspection forms in a simple database to track the citations, noting which locations have been inspected and which locations are repeat violators. Remember to share this information with your local health department. The Attorney General's (AG's) Office also finds the information on adjudicated cases particularly helpful for their work in tobacco enforcement. Because the AG's office can only act on cases that have been adjudicated, if feasible, track citations to their final disposition on the database. Please forward information on your adjudicated cases to Alan Lieberman, Deputy Attorney General, Office of the Attorney General, Tobacco Litigation and Enforcement Section, P.O. Box 944255 Sacramento, CA 94244-2550.

Step 8. Conduct Media Coverage

Work with your press office to issue a press release about the results of the decoy operation. Media coverage conveys to the community and to the retailers that the law enforcement agency has identified this as a high priority for the community to the extent that it has allocated resources to it. *See Section VI of this manual for tips on working with the media.*

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Section VI: Tips on Working with the Media

Including Media in Enforcement Efforts

Local media are important communication channels for delivering tobacco education and prevention messages, and will play an important role in announcing your department's PC 308(a) enforcement program, along with the results of the operations to the community. Whether your department is trying to build support for enforcement efforts among the public and elected officials, or trying to create peer and public pressure on storeowners to obey the law, media coverage will help you raise awareness and garner support. Media coverage can also be used to remind storeowners that stopping the sale of tobacco to minors is a serious goal of your department. Lastly, local media can help your department gain the deserved recognition for a job well done.

To include media as part of your PC 308(a) enforcement efforts, first become knowledgeable about the law and the compliance statistics for your community. Also, it is critical to know your department's press policy and to find out if there is a departmental Information Officer. If so, get to know him or her; work closely with this person to release the enforcement program announcements and results. If there is a local reporter who works with your department on a regular basis, call him or her.

Media Tips and Tools

The following media relations tips, tools, and reminders will assist your department in their efforts to promote PC 308(a) enforcement in your community.

Rounding Up Your Resources

Use your local statistics to demonstrate a lack of compliance that needs to be changed, or show the results following a series of compliance checks.

Identify possible spokespersons such as:

- Your agency's Information Officer
- Local prosecuting attorney
- Storeowners who obey and support the law

Identify supportive organizations such as:

- County health department's tobacco control program (*See the list of local tobacco control projects in Section IX, Local Lead Agency Information.*)
- American Cancer Society, American Lung Association or American Heart Association
- School TUPE (Tobacco Use Prevention and Education) Coordinator

Releasing Results of Your Enforcement Program to the Public

Here are the steps to follow to create an effective press release:

- Decide which message you are trying to send.
 - Introducing the program
 - Announcing upcoming operations
 - Releasing results from an operation
- Write down the facts to include in a press release.
- State key messages first; keep them simple.
- Follow the format found in this manual. *See sample press releases in Section VI of the Resources Section.*
- Remember: a press release is not a police report.

Sending a Press Release

- Follow your agency's policy for approval of a press release
- Know press deadlines
- Try for a slow news day, if possible
- Fax the release

Who to Send a Press Release to

- Local press contacts
- Local newspapers
- Local television stations
- AM/FM news radio stations
- Chamber of Commerce

Have your spokespersons available for interviews and to answer questions after the press release is issued. Remember to provide contact information for your spokespersons with the press release.

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Section VII: Lessons Learned

From the Field

For those agencies considering conducting PC 308(a) operations, here are some helpful tips from local law enforcement agencies:

- **Ask, Ask, Ask:**

Never hesitate to ask questions of those currently conducting these operations. They can point you in the right direction: how to work with the prosecuting attorney on this issue, recruiting youth decoys, operational guidelines to use for the PC 308(a) compliance check, etc. *See Additional Resources in the Resources Section for enforcement agency contact information.*

- **Do Not Re-Invent the Wheel:**

Collaborate with enforcement agencies currently conducting these operations to find out what type of data collection systems they use, what information they collect during site inspections, how they recruit youth decoys, etc.

- **Involve Key Players Early On:**

It is very important to involve people, e.g., the prosecuting attorney and police chief, in the planning and implementation of these operations. Get their buy-in early on so that you have their support throughout these operations.

- **Build a Relationship with the Prosecuting Attorney's Office:**

This is a key component to successful prosecution. Each prosecutor has a different set of legal standards for what the protocols should be for youth decoy operations so it is critical that the officer who will be filing the PC 308(a) complaints meet with the prosecuting attorney's office to discuss the issues and prosecution. Always keep the dialogue going and periodically contact the prosecuting attorney's office to make sure they are up to speed with the latest protocols and procedures for the PC 308(a) operations. Collaboration with the prosecuting attorney's office can allow the office to pursue Unfair Competition Law Complaints against retailers who sell tobacco to minors. This can result in large fines being levied against the business owner and not just the clerks who sell. These fines will then force retail owners to comply with the law and to train their employees on the importance of thoroughly checking IDs prior to selling the tobacco products.

- **Collaborate with Local Health Departments:**
Local health departments can be a great resource for valuable statistics, data collection tools, youth decoy recommendations and youth purchase survey rates for the county.
- **Partner with Community Agencies:**
It is helpful to partner with community agencies to assist with the recruitment of youth decoys. Some examples of community agencies to partner with are the American Lung Association, Friday Night Live groups and Campfire Boys and Girls Clubs.

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Section VIII: Other Laws That Regulate the Store Environment

Beyond PC 308(a)

Tobacco control is a priority in California and, as a result, the state has enacted numerous laws regulating tobacco. Laws restricting youth access to tobacco form an important subset of these laws. Section II of this manual addressed the most important state law that local law enforcement can enforce that explicitly regulates youth access to tobacco, California PC 308(a). This section includes summaries of other state tobacco control laws that regulate various aspects of retail tobacco sales and marketing that may be enforced by local law enforcement agencies, and examples of local laws that may have been passed in your jurisdiction.

The Stop Tobacco Access to Kids Enforcement Act

Two state laws explicitly regulate youth access to tobacco. PC 308(a), covered in Section II, is the state law most often enforced by local law enforcement agencies. The other state law is the Stop Tobacco Access to Kids Enforcement Act, the STAKE Act (Business and Professions Code Sections 22950 through 22959), which is a civil statute enforced by the Food and Drug Branch (FDB) of the California Department of Public Health. Although the statute allows the FDB to contract with local agencies to enforce the STAKE Act, as of 2008 local law enforcement agencies and other state agencies have the authority to enforce the provisions of the STAKE Act. Local coordination with STAKE Act investigators and the sharing of information can have significant benefits.

Other State Laws That Affect the Store Environment

Local law enforcement efforts to reduce youth access to tobacco must focus on PC 308(a). Local law enforcement officers, however, should consider a number of additional state laws when inspecting a retailer's compliance with tobacco laws. Following is a summary of these laws.

State Tobacco Retailer Licensing Law

1. Does the retailer have a state tobacco retailer's license?

Every person in the business of selling cigarettes or other tobacco products must possess a valid license (e.g., not suspended or revoked) issued by the California State Board of Equalization (the BOE) for each location at which tobacco products are sold. Note that state licenses may only issue for a fixed location so most “mobile vendors” do not qualify.

If a retailer engages in the business of tobacco sales after notification by a law enforcement agency or the BOE that unlicensed sales by a retailer are illegal, in addition to the initial violation, each day counts as a separate violation. Products offered for sale after such notification are subject to seizure and are deemed forfeited.

Citation: California Business and Professions Code Sections 22972, 22980.2.

Penalty: **Misdemeanor.** Violators are subject to a fine of not more than \$5,000, or not more than one year in county jail, or both. (California Business and Professions Code Section 22981.) Tobacco products offered for sale following notification that such sales are illegal may be seized. (California Business and Professions Code Section 22980.2.)

2. Is the retailer's state tobacco retailer's license visible to the public and conspicuous?

A retailer must conspicuously display the state tobacco retailer's license issued by the BOE at each retail location in a manner visible to the public.

Citation: California Business and Professions Code Section 22972.

Penalty: **Misdemeanor.** Violators are subject to a fine of not more than \$5,000, or not more than one year in county jail, or both. (California Business and Professions Code Section 22981.) An additional penalty of \$500 also applies. (California Business and Professions Code Section 22974.5.)

3. Does the retailer have invoices for tobacco purchases available for inspection?

Retailers must save all invoices for the previous four years showing all tobacco purchases and demonstrating that such purchases were made legally (e.g., from a licensed retailer, distributor, or manufacturer). The invoices for all purchases made within the last year must be kept at the retail location. Upon request, invoices must be made available to a law enforcement officer or a BOE investigator during normal business hours.

Citation: California Business and Professions Code Section 22974.

Penalty: **Misdemeanor.** Violators are subject to a fine of not more than \$5,000, or not more than one year in county jail, or both. (California Business and Professions Code Section 22981.)

4. Does the retailer possess any unstamped packages of cigarettes?

Packages of cigarettes without the required tax stamp may be seized and are deemed forfeited. Note that black (or gray) market cigarettes are also illegal under the tax code (see entry 5 in “Other State Laws to Enforce” below).

Citation: California Business and Professions Code Section 22974.3.

Penalty: **Misdemeanor.** For a violation of *less than 20* packages of unstamped cigarettes, violators are subject to a fine of \$1,000, or not more than one year in county jail, or both. For a second violation within five years, violators are subject to a fine of not less than \$2,000 but not more than \$5,000, or not more than one year in county jail, or both.

For a violation of *20 or more* packages of unstamped cigarettes, violators are subject to a fine of \$2,000, or not more than one year in county jail, or both. For a second violation within five years, violators are subject to a fine of not less than \$5,000 but not more than \$50,000, or not more than one year in county jail, or both. (California Business and Professions Code Section 22974.3.)

Other State Laws to Enforce

1. Are bidis for sale?

It is illegal for a store to sell, distribute, or import “bidis” (also known as “beedies”), unless the store legally prohibits minors. Bidis are defined as products containing tobacco wrapped in temburni leaf or tendu leaf. An example of a store that may legally prohibit minors is a store that sells only tobacco products and prohibits entry by minors.

Citation: California Penal Code Section 308.1.

Penalty: **Misdemeanor** (or a civil penalty of \$2,000 per violation).

2. Is the store selling cigarettes in packs with less than 20 cigarettes?

Cigarettes may not be manufactured, distributed, sold, or offered for sale in packages of less than 20 cigarettes.

Citation: California Penal Code Section 308.3.

Penalty: **Infraction** (or a civil penalty of \$200 for the first violation, \$500 for the second violation, and \$1,000 for each subsequent violation).

3. Is the store selling loose tobacco in packages containing less than 0.60 ounces?

Roll-your-own and spit tobacco may not be manufactured, distributed, sold, or offered for sale in a package containing less than 0.60 ounces of tobacco.

Citation: California Penal Code Section 308.3.

Penalty: **Infraction** (or a civil penalty of \$200 for the first violation, \$500 for the second violation, and \$1,000 for each subsequent violation).

4. Is the store selling cigarettes in other than properly labeled original packaging?

Cigarettes may not be sold except in the original packaging of the manufacturer or importer which meets all federal labeling requirements.

Citation: California Penal Code Section 308.2.

Penalty: **Infraction**.

5. Are black (or gray) market cigarettes for sale?

It is illegal to possess or sell any package of cigarettes without the required tax stamp (i.e., black or gray market cigarettes).¹ Note that unstamped cigarettes are also illegal under the state licensing law (see entry 4 in “State Tobacco Retailer Licensing Law” above).

Citation: California Revenue and Taxation Code Section 30474.

Penalty: **Misdemeanor**. Violators are subject to a fine of up to \$1,000 and/or imprisonment for up to one year; and, in addition, a separate fine of \$200.

6. Is there a properly worded and posted STAKE Act sign at each point of sale?

Every store that sells tobacco must post a boldly printed, contrasting-color sign in a conspicuous place at each point of purchase containing the following words:

<p>The Sale of Tobacco Products to Persons Under 18 Years of Age Is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5ASK-4-ID. Business and Professions Code Section 22952.</p>

The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (3.66 inches by 8.5 inches), and the required notice must meet specified font sizes. Retailers may obtain these signs for free from the Tobacco Education Clearinghouse of California (800) 258-9090, ext. 103, or at www.TobaccoFreeCatalog.org.

NOTE: The tobacco industry’s “We Card” signs do **NOT** satisfy this requirement.

Citation: California Penal Code Section 308(c).

Penalty: Violators are subject to a fine of \$200 for the first offense, and \$500 for each additional violation.

7. If the store sells alcohol, are advertising signs covering more than 33% of the windows and doors?

Alcohol retailers may not have advertising signs of any sort, including tobacco, that exceed one-third of the square footage of windows and clear doors (e.g., glass).

Citation: California Business and Professions Code Section 25612.5(c)(7).

Penalty: **Misdemeanor.** Violators are subject to a fine of not more than \$1,000 or not more than six months imprisonment. (California Business and Professions Code Section 25617.)

8. Is anyone smoking inside?

Smoking is prohibited in an “enclosed space” at a “place of employment” (any place where employment is carried on).²

Citation: California Labor Code Section 6404.5.

Penalty: **Infraction.** Violators are subject to a fine of up to \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third and for each subsequent violation within one year.

9. Is anyone smoking while preparing food?

Employees may not use tobacco in any form in locations where food is prepared, served, or stored, or where utensils are cleaned or stored.

Citation: California Health and Safety Code Section 114020(d).

Penalty: **Misdemeanor.** Violations are punishable by a fine of \$25-\$1,000, or by imprisonment in the county jail for a term up to six months, or both. (California Health and Safety Code Section 113935.)

10. Are minors in possession of tobacco products or paraphernalia?

It is unlawful for any person under the age of 18 years to purchase, receive, or possess any tobacco product or paraphernalia.

Citation: California Penal Code Section 308(b).

Penalty: Violators are subject to a fine of \$75 or 30 hours of community service work.

Other State Laws to Note

Other laws related to tobacco sales exist for which local law enforcement citations are inappropriate because enforcement can only be accomplished by filing a civil lawsuit. Usually a prosecuting attorney, city attorney, county counsel, or the state attorney general can file such a lawsuit. Although law enforcement officers do not directly file civil lawsuits, officers can still gather evidence of a violation that can later be used in a lawsuit. Regardless, the simple fact of a violation, pointed out by an officer, may encourage voluntary compliance. These laws include:

- No tobacco product or tobacco paraphernalia may be sold through a “self-service display,” which is the open display of a product that is accessible to the public without the assistance of the clerk. Limited exceptions apply for: (1) otherwise legal vending machines in **bars**; and (2) for some non-cigarette tobacco products sold in a **tobacco store** if the store *at all times* excludes minors unless accompanied by a parent or legal guardian. (California Business and Professions Code Section 22962.)
- Retailers **must check the ID** of any tobacco purchaser who reasonably appears to be under 18 years of age. (California Business and Professions Code Section 22956.)
- Tobacco products may not be sold through **vending machines**, unless the vending machine is located in an adults-only facility and is at least 15 feet from the entrance. (California Business and Professions Code Section 22960.)

For a complete list and analysis of tobacco control laws relevant to California, see *Tobacco Laws Affecting California* available from the Technical Assistance Legal Center at (510) 444-8252 or online at <http://www.phlpnet.org/tobacco-control> via the hyperlink “Publications.”

Local Laws That Affect the Store Environment

In addition to state law, many communities have passed local laws to further limit tobacco sales and tobacco use. The existence of these laws can greatly enhance local law enforcement efforts to restrict youth access to tobacco. A list of the local tobacco control laws that have been enacted can be obtained from the local county health department. Examples of local laws include:

- In addition to the required state license to sell tobacco, local communities may require a **tobacco retailer license** or permit to sell tobacco (if a retailer violates the license requirements, the privilege of selling tobacco may be suspended or revoked);

- A ban on **mobile vending** (sales of tobacco from vehicles or on foot). Note that a state license may only issue for a fixed location so most “mobile vendors” do not qualify;
- A **self-service display** ban for all tobacco products. Note that citations may not be issued for violations of the state law that bans the self-service display of tobacco products because enforcement can only be accomplished by filing a civil lawsuit;
- A requirement imposing a **minimum age for clerks** who sell tobacco;
- A **mandatory “ID-check”** requirement;
- **Outdoor “no smoking”** areas around doorways and windows;
- A limit on **advertising in store windows** (no more than 10% of the surface area covered); and
- A ban on certain **physical types of signs** (“A-frame” or sandwich board signs). Note that to be legal under the First Amendment, a sign ban must apply to all products equally and must not depend on the “content” of the sign. For instance, a local law cannot legally ban only tobacco but allow shampoo advertisements.

References

1. The term “gray market” refers to cigarettes that were produced in the U.S. for export (and were therefore exempt from federal and state taxes), and then re-imported into the U.S. for sale at below-market prices.
2. There are very limited exceptions to this law that do not apply to the vast majority of stores. For a complete list of exceptions, see *Tobacco Laws Affecting California* available from the Technical Assistance Legal Center at (510) 444-8252 or online at <http://www.phlpnet.org/tobacco-control> via the hyperlink “Publications.”

Tab Divider

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Section IX: Local Lead Agency Information

Contact List

Alameda County, Tobacco Control Program
1000 Broadway, Suite 500
Oakland, CA 94607
(510) 208-5921

Alpine County, Health Education Programs
75B Diamond Valley Road
Markleeville, CA 96120
(530) 694-2146

Amador County, Tobacco Reduction
10877 Conductor Blvd., Suite #400
Sutter Creek, CA 95685
(209) 223-6670

City of Berkeley, Project Tobacco
1947 Center Street, 2nd floor
Berkeley, CA 94704
(510) 981-5309

Butte County, Tobacco Education Program
202 Mira Loma Drive
Oroville, CA 95965
(530) 538-6109

Calaveras County, Tobacco Prevention Program
891 Mountain Ranch Road
San Andreas, CA 95249
(209) 754-6592

Colusa County, Tobacco Education
251 East Webster Street
Colusa, CA 95932
(530) 458-0266

Contra Costa County, Tobacco Prevention Project
597 Center Avenue, Suite #115
Martinez, CA 94553
(925) 313-6825

Del Norte County, Tobacco Use Prevention Program
880 Northcrest Drive
Crescent City, CA 95531
(707) 464-3191

El Dorado County, Tobacco Use Prevention Program
929 Spring Street
Placerville, CA 95667
(530) 621-6142

Fresno County, Tobacco Prevention Program
P. O. Box 11867
1221 Fulton Mall, 2nd floor, EPS
Fresno, CA 93775
(559) 445-3276

Glenn County, Tobacco Education Program
240 North Villa Street
Willows, CA 95988
(530) 865-6735

Humboldt County, Tobacco Free Humboldt
908 7th Street
Eureka, CA 95501
(707) 441-5569

Imperial County, Tobacco Education Program
935 Broadway
El Centro, CA 92243
(760) 482-4908

Inyo County, Tobacco Control Program
163 May Street
Bishop, CA 93514
(760) 872-4245

Kern County, Public Health Tobacco Program
1800 Mount Vernon Avenue, 1st floor
Bakersfield, CA 93306
(661) 868-0489

Kings County, Tobacco-Free Partnership
330 Campus Drive
Hanford, CA 93230
(559) 582-3211

Lake County, Tobacco Control
896 Lakeport Blvd.
Lakeport, CA 95453
(707) 262-1611

Lassen County, Public Health Tobacco Use Reduction Program
1345 B Paul Bunyan Road
Susanville, CA 96130
(530) 257-9600

City of Long Beach, Tobacco Education Program
3820 Cherry Avenue
Long Beach, CA 90807
(562) 570-7955

Los Angeles County, Tobacco Control Program
3530 Wilshire Blvd., 8th floor
Los Angeles, CA 90010
(213) 351-7811

Madera County, Tobacco Control
14215 Road 28
Madera, CA 93638
(559) 675-7893

Marin County, Tobacco Education Program
10 North San Pedro Road, Suite 1013
San Raphael, CA 94903
(415) 507-2559

Mariposa County, Tobacco Education Program
P. O. Box 5
Mariposa, CA 95338
(209) 966-3689

Mendocino County, Tobacco Control
1120 South Dora Street
Ukiah, CA 95482
(707) 472-2695

Merced County, Tobacco Use Prevention Program
260 East 15th Street
Merced, CA 95340
(209) 381-1130

Modoc County, Tobacco Education Program
441 N. Main Street
Alturas, CA 96101
(530) 233-6311

Mono County, Tobacco Education Program
P. O. Box 3329
437 Old Mammoth Road, Suite Q
Mammoth Lakes, CA 93546
(760) 924-4621

Monterey County, Tobacco Control Program
1270 Natividad Road
Salinas, CA 93906
(831) 755-4796

Napa County, Tobacco Control Program
2261 Elm Street
Napa, CA 94559
(707) 259-8691

Nevada County, Tobacco Use Prevention and Education Program
500 Crown Point Circle, Suite 110
Grass Valley, CA 95945
(530) 265-1732

Orange County, Tobacco Use Prevention Program

P. O. Box 355, Building 38K
405 West 5th Street
Santa Ana, CA 92701
(714) 834-3547

City of Pasadena, Tobacco Control Program

1845 North Fair Oaks Avenue
Pasadena, CA 91103
(626) 744-6050

Placer County, Tobacco Prevention Program

11484 B Avenue
Auburn, CA 95603
(530) 889-7125

Plumas County, Tobacco Use Reduction Program

270 County Hospital Road, Suite 206
Quincy, CA 95971
(530) 283-6456

Riverside County, Tobacco Control Project

4065 County Circle Drive
Sherman Building, Health Education Branch
Riverside, CA 92503
(951) 358-7168

Sacramento County, Tobacco Education Program

9719 Lincoln Village Drive, Suite 300 A
Sacramento, CA 95827
(916) 875-6012

San Benito County, Tobacco Education Program

1111 San Felipe Road, Suite 102
Hollister, CA 95023
(831) 636-4011

San Bernardino County, Tobacco Use Reduction Now (TURN) Program

351 North Mountain View Avenue, 2nd floor
San Bernardino, CA 92415-0010
(909) 387-6280

San Diego County, Tobacco Control Resource Program

P. O. Box 85222, MS P-507
San Diego, CA 92186-5222
3851 Rosecrans Street
San Diego, CA 92110
(619) 692-5514

San Francisco County, Tobacco-Free Project

30 Van Ness Avenue, Suite 2300
San Francisco, CA 94102
(415) 581-2447

San Joaquin County, Smoking & Tobacco Outreach and Prevention Project (STOPP)

P. O. Box 2009
1601 East Hazelton Avenue
Stockton, CA 95205
(209) 468-5610

San Luis Obispo County, Tobacco Control Program

2180 Johnson Avenue
San Luis Obispo, CA 93401
(805) 781-5564

San Mateo County, Tobacco Prevention Program

225 37th Avenue
San Mateo, CA 94403
(650) 573-2012

Santa Barbara County, Tobacco Prevention Settlement Program

300 San Antonio Road
Santa Barbara, CA 93110
(805) 681-5407

Santa Clara County, Tobacco Prevention and Education Project

976 Lenzen Avenue, Suite 1800
San Jose, CA 95126
(408) 792-5526

Santa Cruz County, Tobacco Education Program

P. O. Box 962
Santa Cruz, CA 95061
(831) 454-7558

Shasta County, Tobacco Education Program

2650 Breslauer Way
Redding, CA 96001
(530) 245-6857

Sierra County, Tobacco Use Reduction Program

P. O. Box 1019
202 Front Street
Loyalton, CA 96118
(530) 993-6709

Siskiyou County, Tobacco Education Project

806 South Main Street
Yreka, CA 96097
(530) 841-2126

Solano County, Tobacco Prevention & Education Program

275 Beck Avenue
MS 5-240, 2nd Floor
Fairfield, CA 94533
(707) 784-8901

Sonoma County, Tobacco Education Program

490 Mendocino Avenue, Suite 202
Santa Rosa, CA 95401
(707) 565-6680

Stanislaus County, Tobacco Education Program

830 Scenic Drive, Bldg #3
Modesto, CA 95353
(209) 558-5657

Sutter County, Tobacco Education & Prevention Program

1445 Veterans Memorial Circle
Yuba City, CA 95993
(530) 822-7215

Tehama County, Tobacco Education Program

P. O. Box 400
Red Bluff, CA 96080
(530) 527-6824

Trinity County, Tobacco Education Program

P. O. Box 1470
1 Industrial Park Way
Weaverville, CA 96093
(530) 623-8215

Tulare County, Tobacco Control Project

1062 South K St.
Tulare, CA 93274
(559) 687-6003

Tuolumne County, Tobacco Prevention and Education Program

20111 Cedar Road North
Sonora, CA 95370
(209) 533-7464

Ventura County, Tobacco Education Program

3147 Loma Vista Road
Ventura, CA 93003
(805) 652-3231

Yolo County, Tobacco Education Program

137 North Cottonwood Street, Suite 2600
Woodland, CA 95695
(530) 666-8616

Yuba County, Tobacco Education Program

5730 Packard Avenue, Suite 100
Marysville, CA 95901-6132
(530) 749-6328