

Texas STEP's

Minor in Possession of Tobacco (MIP)

While not funded as part of the grant, it is critical that MIP enforcement occurs as part of your communities overall initiative.

Definition of Cigarette and Tobacco Product

Under Health & Safety Code §161.251, “cigarette” and “tobacco product” has the meaning assigned by Tax Code §154.001 and §155.001 respectively.

- “Cigarette” means a roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and that is not a cigar.
- “Tobacco product” means
 - a cigar
 - smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and any other form of tobacco suitable for smoking in a pipe or as a cigarette
 - chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suited for chewing
 - snuff or other preparation of pulverized tobacco, or
 - an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

A Minor in Possession (MIP)

Health & Safety Code §161.252

Possession, Purchase, Consumption, or Receipt of Cigarettes or Tobacco Products by Minors Prohibited

Provisions of the Law

An individual who is younger than 18 years of age commits an offense if the individual:

- Purchases, consumes, or accepts a cigarette or tobacco product.
- Possesses a cigarette or tobacco product except in the presence of an adult parent, a guardian, or a spouse of the individual.
- Falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false in order to obtain a cigarette or a tobacco product

Exceptions to these provisions are:

- If the individual that is younger than 18 years or age is in the presence of an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties.
- If the minor is participating in an inspection or test of compliance in accordance with §161.088.

Penalties for MIP-Tobacco

- The officer who witnesses the offense may issue a citation or a warning.
- The offense under this section is a Class C misdemeanor.
- The minor is required to attend an 8 hour tobacco awareness class. (If the minor resides in an area of the state in which access to a tobacco awareness program is not available, then the minor is required to perform 8 to 12 hours of tobacco-related community service instead of attending the tobacco awareness class.)
- The offense is punishable by a fine not to exceed \$250.
- The minor can incur a six-month delay or loss of driver's license based on the court's decision as stated in the following laws.

Health & Safety Code §161.253

Tobacco Awareness Program; Community Service

Provisions of the Law

- The court shall suspend execution of sentence (§161.252) and require the defendant to attend a tobacco awareness program.
- The court may require the parent or guardian to attend the tobacco awareness program with the defendant.
- The tobacco awareness program is available in languages other than English, if requested.
- If a tobacco awareness program is not readily available, the court shall require the defendant to perform 8 to 12 hours of community service instead of attending the tobacco awareness program.
- The tobacco awareness program and the tobacco-related community service are remedial and are not punishment.
- The defendant shall present to the court, in a manner required by the court, evidence of satisfactory completion of the tobacco awareness program or the tobacco-related community service within 90 days after the date of the conviction.

Health & Safety Code §161.254

Drivers License Suspension or Denial

Provisions of the Law

- If the minor fails to provide evidence of satisfactory completion of the tobacco awareness program or the tobacco-related community service (§161.253), within the period specified time allowed, the court shall order the Department of Public Safety (DPS) to suspend or to deny issuance of any driver's license or permit to the defendant.
- The order must specify suspension or denial, not to exceed 180 days after the date of the order.
- The minor will be notified by the DPS of court action through the mail.

Health & Safety Code §161.255

Expungement of Conviction

Provisions of the Law

- An individual convicted of an offense under §161.252 may apply to the court to have the conviction expunged.
- The court shall order the conviction be expunged from the individual's record permanently if the court finds that the individual satisfactorily completed the tobacco awareness program or the tobacco-related community service as ordered by the court.

Health & Safety Code §161.256

Jurisdiction of Courts

Provisions of the Law

A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may:

- Impose a requirement that a defendant attend a tobacco awareness program or perform tobacco related community service.
- Order the suspension or denial of a driver's license or permit.

As stated in Health & Safety Code §161.252, for youth the maximum fine is not to exceed \$250. State law does not establish a fine for first, second or third offenses for minor in possession of cigarettes or a tobacco product. This is an example of one of the issues that can be addressed with your judge.

Encourage establishment of a fine for repeat offenders such as:

1st offense - \$100 fine

2nd offense - \$150 fine

3rd offense - \$250 fine (maximum fine allowed by law)

- Establish substitutes for fines. Make sure the judges understand that in addition to requiring attendance at a tobacco awareness class, they can order minors to perform community service. Provide them with the following list of suggested community service activities developed by the Department of State Health Services (formerly Department of Health).

Suggested Community Service Activities

If the minor resides in an area of the state in which access to a tobacco awareness program is not available, the Youth Access to Tobacco Law (SB 55) of 1997 allows municipal judges the option of sentencing minors who have been cited for purchase or possession of tobacco to do community service instead of attending a tobacco awareness class. Examples of appropriate community service activities are:

- Volunteer in a hospital, radiation or cancer center assisting patients with treatments or therapy.
- Attend a Better Breather's Club meeting and write a report on the experience.
- Attend a Lost Chord Class or Laryngectomy Class and write a report on the experience.
- Write a report from information gained from an interview with a smoker or Lost Chord Club member.
- Write a report from information gained from an interview with a dentist on the hazards of smokeless (spitting) tobacco, and smoking.
- Do research on the facts about tobacco use and addiction.

- Take a poll of smokers regarding how they started and if they want to quit.
- Conduct an Operation Storefront (Available from the Texas Department of State Health Services - Office on Tobacco Prevention and Control).
- Appear in front of Teen Court for their sentence.

Example of an inappropriate community service activity is:

- Use minor as decoy in tobacco stings.