

TOBACCO 21

A “Tobacco 21” policy limits sales of tobacco products to customers age 21 and older. It does not punish youth for possessing, purchasing or attempting to purchase tobacco, nor does it require sales clerks to be 21 years old.

Tobacco 21 delays smoking initiation

- ❖ Tobacco 21 prohibits tobacco sales to anyone younger than 21, the period during which the vast majority of smokers become addicted.¹
- ❖ Approximately **96% of smokers begin smoking before age 21**² with most beginning before age 16.³ Smokers frequently transition from experimentation to addiction between the ages of 18 and 21.⁴
- ❖ Youth get their cigarettes from social sources,⁵ most of whom are peers ages 18 to 21.⁶ Today, there are more 18 and 19 year olds in high school than in past years;⁷ thus, permitting tobacco sales to 18 or 19 year olds no longer makes sense.
- ❖ Few 21 year olds travel within high school social circles; **Tobacco 21 will effectively remove this critical source of tobacco,⁸ thereby delaying or preventing smoking initiation.⁹**

Starting later means fewer addicted, long-term smokers

- ❖ Evidence shows **the younger the age of initiation, the greater the risk of nicotine addiction**, heavy daily smoking and difficulty quitting.¹⁰
- ❖ Adolescents are particularly susceptible to the “rewarding” effects of nicotine.¹¹ In fact, nicotine addiction (which can develop at low levels of exposure, well before established daily smoking¹²) causes three out of four young smokers to continue smoking into adulthood, even if they intended to quit after a few years.¹³
- ❖ We now know the brain continues to develop until approximately age 25,¹⁴ particularly in ways that affect impulsivity, addiction¹⁵ and decision making.¹⁶ Thus, science does not support permitting the sale of nicotine to 18 year olds.
- ❖ **Delaying smoking initiation reduces the likelihood of ever starting!** It also reduces the number of regular smokers¹⁷ and immediate, mid- and long-term health effects of smoking to an individual.¹⁸

Stopping the tobacco epidemic requires policies that delay and prevent smoking initiation.¹⁹

- ❖ Tobacco industry survival depends on youth tobacco use and addiction.²⁰ Without policy intervention,²¹ the industry will continue to successfully entice youth to use their products.²²
- ❖ Despite declines in New York State’s smoking rate, 2.1 million adults continue to smoke statewide.²³
- ❖ African Americans, non-Hispanic multiple race individuals, the mentally ill, LGBT individuals and individuals of low-socioeconomic status or lower education smoke at higher rates compared to the general population.²⁴
- ❖ Despite declines in youth smoking rates, 7.3% of New York high school students and 1.2% of New York middle school students reported smoking cigarettes in 2014.²⁵ **Without sustained action, nearly 874,000 New York youth alive in 2014 are projected to become smokers, and an estimated 280,000 of them will die prematurely.²⁶**



"[T]he base of our business is the high school student."

-Lorillard Tobacco Company

"[Youth] represent tomorrow's cigarette business...they will account for a key share of total [sales] for at least the next 25 years."

-R.J. Reynolds Tobacco Company

Tobacco 21 can be effective even as a local policy.

- ❖ In 2005 Needham, MA became the first municipality to implement Tobacco 21. The city realized a significantly greater reduction in youth smoking compared to surrounding communities immediately following adoption of Tobacco 21, despite the mobility of Needham youth.²⁷
- ❖ All Needham tobacco retailers remain in business ten years after stopping tobacco sales to 18-20 year olds.²⁸
- ❖ New York jurisdictions are taking notice. With the implementation of Tobacco 21 policies in New York City and Suffolk County, half of all New Yorkers are covered by the policy.²⁹

Tobacco 21 policies have broad public support.³⁰

- ❖ Three out of four American adults (and 70% of cigarette smokers) favor Tobacco 21.³¹
- ❖ Tobacco 21 will not harm business—only 2% of national cigarette sales are made to 18-20 year olds.³² Because declines in smoking occur gradually, retailers will have time to adjust to the changing market conditions.³³ Additionally, Tobacco 21 will make ID checks easier for New York retailers.³⁴
- ❖ Despite initial resistance to raising the legal drinking age to 21, the policy resulted in lower rates of youth drinking.³⁵ Additionally, the alcohol industry was unharmed.³⁶
- ❖ Tobacco 21 is gaining momentum; one state and 84 local jurisdictions in eight states have adopted Tobacco 21³⁷ (and more are considering it³⁸).



Tobacco 21 is most effective when it is a part of a comprehensive tobacco control plan.³⁹

- ❖ Comprehensive tobacco control policies (which include high excise taxes, smoke-free laws, effective enforcement of youth access restrictions, mass-media campaigns and accessible cessation services) are associated with reduced tobacco use among adolescents and adults.⁴⁰ Importantly, **comprehensive policies are associated with decreased youth smoking prevalence.**⁴¹
- ❖ A strong Tobacco 21 policy will include electronic nicotine delivery devices (ENDS). ENDS are currently the most common nicotine products used by high school and middle school students⁴² and ENDS use has been associated with an increased likelihood of cigarette smoking.⁴³

Examples of Tobacco 21 policies:

Jurisdiction	Description
Hawaii	Prohibits sale of tobacco products, including electronic cigarettes, to persons under age 21 <i>HI Rev. Stat. §709-908 (as amended by Act 122 of 2015 Session Laws).</i>
Suffolk County, NY	Prohibits the sale of tobacco products, including electronic cigarettes, and herbal cigarettes to persons under age 21. <i>Suffolk Cty, NY Local Law §792(A)(2).</i>
New York, NY	Prohibits the sale of tobacco products, including electronic cigarettes, to persons under age 21. <i>NYC Admin. Code. §17-706</i>
Needham, MA	Prohibits the sale of tobacco products or nicotine delivery products to persons under age 21. <i>Needham, MA: Board of Health Regulation §1.6.1</i>

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¹ U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING—50 YEARS OF PROGRESS, 708 (2014) [hereinafter 2014 SG REPORT]; U.S. DEP'T. OF HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS, A REPORT OF THE SURGEON GENERAL, 134 (2012) [hereinafter 2012 SG REPORT].

² 2012 SG REPORT, *supra* note 1 at 268, Table 3.1.9; *see also* CAMPAIGN FOR TOBACCO FREE KIDS, INCREASING THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21, 1 (2015)

³ 2012 SG REPORT, *supra* note 1 at 268, Table 3.1.9; *see* E. Croghan et al., *The importance of social sources of cigarettes to school students*, 12 TOBACCO CONTROL 67, 67 (2003).

⁵ *Id.* at 69-70; *see also id.* at 68 (74% of occasional smokers report obtaining cigarettes from social sources); Leslie A. Robinson et al., *Changes in Adolescents' Sources of Cigarettes*, 39 J. ADOLESCENT HEALTH 861, 865 (2006); Leslie A Robinson et al., *Gender and Ethnic Differences in Young Adolescents' Sources of Cigarettes*, 7 TOBACCO CONTROL 353, 357 (1998);

⁶ INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, PUBLIC HEALTH IMPLICATIONS OF RAISING THE MINIMUM AGE OF LEGAL ACCESS TO TOBACCO PRODUCTS, 6-15 (2015) [hereinafter IOM REPORT]; Joseph R DiFranza et al., *Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws*, 10 TOBACCO CONTROL 323, 327 (2001); CAMPAIGN FOR TOBACCO FREE KIDS, WHERE DO YOUTH SMOKERS GET THEIR CIGARETTES?, 1-2 (January 6, 2015) [hereinafter CTFK CIGARETTES]; *see also* Sajjad Ahmad, *Closing the youth access gap: The projected health benefits and cost savings of a national policy to raise the legal smoking age to 21 in the United States*, 75 HEALTH POLICY 74, 75 (2005); ; Kurt M Ribisl et al, *Which Adults Do Underaged Youth Ask for Cigarettes?*, 89 AM. J. PUBLIC HEALTH, 1561, 1562.

⁷ CTFK CIGARETTES; Jonathan P. Winickoff et al., *Retail Impact of Raising Tobacco Sales Age to 21 Years*, AM. J. PUBLIC HEALTH, e1 (September 2014) [hereinafter *Retail Impact*]; Ribisl, *supra* note 6 at 1562.

⁸ Ahmad, *supra* note 6 at 75; Winckoff, *Retail Impact*, *supra* note 7 at e1.

⁹ Youth are unlikely to obtain cigarettes from other sources. *See* IOM REPORT, *supra* note 6 at 5-19 (importance of social sources has increased since 1997); *see also id.* at 5-9 (no evidence youth are using illicit channels to get cigarettes); *see also id.* at 5-9 (bans on non-commercial distribution of cigarettes unenforced).

¹⁰ IOM REPORT, *supra* note 6 at 2-21; *see also id.* at 4-14 (“A younger age of initiation is associated with an increased risk of many adverse health outcomes, such as a hospital inpatient stay in the past year and lifetime risk of respiratory disease, especially chronic obstructive pulmonary disease, ad lung cancer”); 2014 SG REPORT, *supra* note 1 at ; *see also* Winickoff, *Retail Impact*, *supra* note 7 at

¹¹ IOM REPORT, *supra* note 6 at 3-13 and 3-16; Winickoff, *Retail Impact*, *supra* note 7 at e3.

¹² IOM REPORT, *supra* note 6 at 2-20.

¹³ CAMPAIGN FOR TOBACCO FREE KIDS, INCREASING THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21, 2 (2015) (citing 2012 SG REPORT).

¹⁴ IOM REPORT, *supra* note 6 at 3-12.

¹⁵ Winickoff, *Retail Impact*, *supra* note 7 at e1.

¹⁶ IOM REPORT, *supra* note 6 at 3-14; *see also id.* at 3-8 (“The development of some cognitive abilities, such as understanding risks and benefits, is achieved by age 16. However, many areas of psychosocial maturity, including sensation seeking, impulsivity, and future perspective taking continue to develop and change through late adolescence and into young adulthood.”); *see also id.* at 3-12 (“While the development of some cognitive abilities is achieved by age 16, the parts of the brain most responsible for decision making, impulse control, sensation seeking, future perspective taking, and peer susceptibility and conformity continue to develop and change through young adulthood.”); Alexander C. Wagenaar and Traci L. Toomey, *Effects of Minimum Drinking Age Laws: Review and Analyses of the Literature from 1960 to 2000*, J. STUDIES ON ALCOHOL, Suppl. 14, 220, 222 (2002).

¹⁷ IOM REPORT, *supra* note 6 at S-6 and S-3.

¹⁸ IOM REPORT, *supra* note 6 at 8-20. Short-term/immediate health effects include: nicotine addiction, inflammation, impaired immune status, oxidative stress, and respiratory symptoms which render the individual more susceptible to other adverse health outcomes such as acute illness and a reduced capacity to heal wounds. Intermediate health effects include: subclinical atherosclerosis, impaired lung function, susceptibility to lung disease, Type 2 diabetes, periodontitis, and adverse surgical outcomes/wound healing (among others) which also lead to reduced productivity and absenteeism. Long-term health effects include: cancer, vascular disease, COPD, RA, and bone disease. Maternal/fetal health effects include: decreased likelihood of conception, pregnancy complications, and impairment of fetal development. *Id.* at 8-12 to 8-18

¹⁹ *See* Ahmad, *supra* note 6 at 74 (finding that efforts to prevent youth smoking initiation could produce health benefits seven times greater than efforts to promote adult smoking cessation).

²⁰ *See* RJ Reynolds, “Estimated Change in Industry Trend Following Federal Excise Tax Increase,” September 10, 1982, Bates Number 513318387/8390, <http://legacy.library.ucsf.edu/tid/tib23d00;jsessionid=211D4CCF0DBD25F9DC2C9BB025239484.tobacco03> (“If a man has never smoked by age 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one.”); *see also* August 30, 1978Lorillard memo from Achey to CEO Curtis Judge about the “fantastic success” of Newport. Bates No. TINY0003062 (“Our profile taken locally shows this brand [Newport] being purchased by black people (all ages), young adults (usually college age), but the base of our business is the high school student.”); *see also* September 30, 1974 R.J. Reynolds Tobacco Co. marketing plan presented to the company’s board of directors. Bates No. 501421310-1335 (“They represent tomorrow’s cigarette business. . . As this 14-24 age group matures, they will account for a key share of the total cigarette volume -- for at least the next 25 years.”)



- ²¹ Tobacco use is driven by industry marketing tactics; comprehensive tobacco control programs are necessary to combat industry actions and includes implementation of evidence based policies. 2012 SG REPORT, *supra* note 1 at ES-7, 8, 487, 508, 540, 601, and 851-852.
- ²² 2012 SG REPORT, *supra* note 1 at ES-5 and 508 (industry marketing, particularly at the point of sale, causes youth smoking.)
- ²³ See Press Release, Governor of New York, Governor Cuomo Announces New York's Smoking Rates Reduced to Lowest Levels in Recorded State History (June 8, 2015), <https://www.governor.ny.gov/news/governor-cuomo-announces-new-yorks-smoking-rates-reduced-lowest-levels-recorded-state-history> (last accessed August 2, 2015) (adult smoking rate was 14.5% in 2014); see also New York State Behavioral Risk Factor Surveillance System (2014) (weighted adult population for 2014 was 14,461,387).
- ²⁴ CTRS FOR DISEASE CONTROL & PREVENTION, CURRENT CIGARETTE SMOKING AMONG ADULTS IN THE UNITED STATES, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/ (2013); IOM REPORT, *supra* note 6 at 2-9 (tobacco use is more common among those with mental illness, but nature of relationship remains unclear); see also LEGACY, TOBACCO FACTSHEET: YOUTH AND SMOKING, 2-3 (Results from 2009 show more than twice as many LGB students have smoked before age of 13 compared to heterosexual students; they smoke more than heterosexual counterparts; LGBT young adults smoke more than heterosexual young adults; Youth smoking increases with decreasing levels of parental education; more 19-22 year olds NOT enrolled in a 4 year college are smokers (compared to those who ARE enrolled in college).
- ²⁵ NEW YORK STATE DEPARTMENT OF HEALTH, BUREAU OF TOBACCO CONTROL, TRENDS IN SMOKING PREVALENCE AMONG NEW YORK STATE YOUTH, Statshot Vol. 8, No.1 (January 2015)
- ²⁶ AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, PREVENTING MILLIONS OF LIVES LOST TO TOBACCO USE: MAKING THE NEXT GENERATION TOBACCO-FREE, <http://www.acscan.org/content/wp-content/uploads/2014/02/Potential-for-Millions-Lives-Lost-to-Tobacco-Use.pdf> (February 2014) (accessed August 17, 2015); see also NEW YORK STATE DEPARTMENT OF HEALTH, SMOKING AND TOBACCO USE-CIGARETTES AND OTHER TOBACCO PRODUCTS, https://www.health.ny.gov/prevention/tobacco_control/ (accessed August 17, 2015).
- ²⁷ Shari Kessel Schneider, *Community Reductions in Youth Tobacco Smoking After Raising the Minimum Tobacco Sales Age to 21*, TC ONLINE FIRST (June 12, 2015) 3-4; Winickoff, *Retail Impact*, *supra* note 7 at e3.
- ²⁸ Winickoff, *Retail Impact*, *supra* note 7 at e3 (while high school smoking rate declined by 47% in 4 years following age increase, no retailers went out of business as of 2014).
- ²⁹ See U.S. DEPT. OF COMMERCE, STATE & COUNTY QUICKFACTS, <http://quickfacts.census.gov/qfd/states/36/3651000.html> (2013 New York City population estimate) and <http://quickfacts.census.gov/qfd/states/36/36103.html> (2013 Suffolk County population estimate).
- ³⁰ Jonathan P Winickoff et al., *Public Support for Raising the Age of Sale for Tobacco to 21 in the United States*, TC ONLINE FIRST (April 15, 2015); King et al., *Attitudes toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults*, AM. J. OF PREVENTIVE MED. 1, 3 (July 15, 2015); see Ahmad, *supra* note 6 at 76
- ³¹ King, *supra* note 29 at 3.
- ³² Winickoff, *Retail Impact*, *supra* note 7 at e2 (uses number of cigarettes consumed by 18-20 year olds, so includes sales to those individuals as well as to others on behalf of those individuals.)
- ³³ Winickoff, *Retail Impact*, *supra* note 7 at e2.
- ³⁴ NEW YORK, DEPARTMENT OF MOTOR VEHICLES, NEW YORK'S NEW DRIVER LICENSE, available at <http://dmv.ny.gov/driver-license/nys-new-driver-license>.
- ³⁵ Winickoff, *Retail Impact*, *supra* note 7 at e2
- ³⁶ Winickoff, *Retail Impact*, *supra* note 7 at e2.
- ³⁷ TOBACCO21.ORG, <http://tobacco21.org/wp-content/uploads/2014/02/Tobacco-21-Cities-new17.pdf> (accessed August 17, 2015); CAMPAIGN FOR TOBACCO-FREE KIDS, STATES AND LOCALITIES THAT HAVE RAISED THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21, https://www.tobaccofreekids.org/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (July 14, 2015).
- ³⁸ See e.g., TOBACCO21.ORG, <http://tobacco21.org/breaking-news/>.
- ³⁹ IOM REPORT, *supra* note 6 at 6-20.
- ⁴⁰ 2012 SG REPORT, *supra* note 1 at ES-7.
- ⁴¹ *Id.* at ES-7, 696 and 854; see also IOM REPORT, *supra* note 6 at 6-20; see generally CENTER FOR PUBLIC HEALTH AND TOBACCO POLICY, TOBACCO RETAIL LICENSING: LOCAL REGULATION OF THE NUMBER, LOCATION AND TYPE OF TOBACCO RETAIL ESTABLISHMENTS IN NEW YORK (2013) (effectiveness of limiting/reducing density of tobacco retail outlets and youth access); see also CENTER FOR PUBLIC HEALTH AND TOBACCO POLICY, TOBACCO PRICE PROMOTION: LOCAL REGULATION OF DISCOUNT COUPONS AND CERTAIN VALUE-ADDED SALES (2013) (effectiveness of maintaining high prices on tobacco products and youth access); see also CENTER FOR PUBLIC HEALTH AND TOBACCO POLICY, CAUSE AND EFFECT: TOBACCO MARKETING INCREASES YOUTH TOBACCO USE (2012).
- ⁴² Rene A. Arrazola et al., *Tobacco Use Among Middle and High School Students-United States, 2011-2014*, 64 MMWR 381, 381 (April 2015).
- ⁴³ Lauren M. Dutra and Stanton A. Glantz, *E-cigarettes and conventional cigarette use among US adolescents: A cross-sectional study*, 168 JAMA PEDIATRICS 610, 610 (2014); Adam M. Leventhal et al., *Association of Electronic Cigarette Use with Initiation of Combustible Tobacco Product Smoking in Early Adolescence*, J. OF THE AM. MED. ASSOC., <http://jama.jamanetwork.com/article.aspx?articleid=2428954> (2015).

