



Santa Clara Police

Training Flash



Tobacco Possession by Minors

Training Flash 2016-13 (“Changes to Penal Code 308”) outlined details of CA Senate Bill 7, which took effect 06-09-2016. The training flash included correspondence from County of Santa Clara District Attorney Jeffrey Rosen. SB7 raised the age from 18 to 21 of a person to whom tobacco, e-cigarettes, or vape products may lawfully be sold, given, or furnished (exemption active duty military personnel of at least 18 years of age).

The Bill also changed Penal Code 308 by excising the prohibition of possession of tobacco by a minor. Thus, law enforcement agencies could no longer cite a minor in possession of tobacco for PC 308(b). However, local town or city codes could enact citable sections prohibiting possession of tobacco by a minor.

On 01-15-2019 a modification to our Santa Clara City Code was presented to City Council and subsequently unanimously approved. The modification includes an addition of **SCCC §8.25.130**: *“It shall be unlawful for persons under the age of twenty-one (21) years to possess tobacco or tobacco products (including electronic smoking devices and e-liquids whether or not they contain nicotine or tobacco), as defined in Penal Code §308 and Business and Professions Code §22950.5, in the City of Santa Clara. This section shall not apply to active duty military personnel of at least 18 years of age.”*

This code now re-affirms an authority to investigate a matter involving a minor in possession of tobacco or tobacco products. It is the policy of the Santa Clara Police Department, however, that this new section be used for educational purposes (See **Manual Section 411.6 - Juvenile Citations**). Contacts involving those 17 years of age or younger should at most be documented with an informational Juvenile Contact Report for referral to the Juvenile Probation Officer **for education and diversion**; **NOT** a criminal or administrative citation. In most circumstances, a simple phone call from the officer at the scene to a parent or guardian may be enough to deter future tobacco use. Under **NO** circumstance should a juvenile be taken into custody for a violation of this new code.

If persons 18 to 20 years old are contacted in possession of tobacco or tobacco products, at most an Administrative, non-criminal citation may be issued (\$100 penalty) to the individual. Again, the officer could simply use the contact as an opportunity to educate the individual as opposed to issuing an administrative citation. That discretion is left up to the involved officer.