

# Criminal Liability for the Tobacco Industry and its Executives

Tobacco products kill more people than alcohol, AIDS, car accidents, illegal drugs, murders and suicides combined.<sup>1</sup> Tobacco is the leading cause of preventable death globally, and a fifth of all deaths in the United States are attributable to tobacco.<sup>2</sup> But tobacco itself is not the primary problem; rather it is the actions and inactions of tobacco companies that are causing widespread death and disease. As a World Health Organization (WHO) publication pointed out “Tobacco use is unlike other threats to global health. Infectious diseases do not employ multinational public relations firms. There are no front groups to promote the spread of cholera. Mosquitoes have no lobbyists.”<sup>3</sup>

Despite decades of litigation and regulation, some of it very successful, tobacco corporations are still manufacturing and producing a product that kills people by the millions and prevalence of tobacco use as well as the number of tobacco users remains high. Civil litigation and regulation, while necessary, is not enough to protect citizens from tobacco corporations. ASH’s criminal liability program seeks to hold tobacco corporations and their executives criminally responsible for tobacco related deaths.

## What crimes could they be held responsible for?

The exact crime and its definition will depend on which state or country brings legal action; criminal law varies from jurisdiction to jurisdiction. However, these are some of the potential charges:

- **Manslaughter** - recklessly causing the death of another human being.<sup>4</sup>
- **Causing a catastrophe** - causing potentially widespread injury or damage (this charge is only available in a limited number of jurisdictions).<sup>5</sup>
- **Reckless endangerment** - placing another person in danger of death or serious bodily injury.<sup>6</sup>
- **Endangering the welfare of a child** - knowingly endangering the child's welfare by violating a duty of care, protection or support (in some jurisdictions, this only applies to a parent or guardian).<sup>7</sup>

## Support for a criminal case:

- **The Oregon Supreme Court** - not only discussed the “the possibility of severe criminal sanctions, both for the individual who participated and for the corporation generally,” but stressed that these actions could “constitute at least second-degree manslaughter.”<sup>8</sup>
- **President of Uruguay** – “In the world, 8 million people die each year from smoking tobacco. This is mass murder.”<sup>9</sup>
- **Former CEO of the American Cancer Society John Seffrin** - “We must begin to treat the [tobacco] industry as the unpunished, unrepentant criminals they are.”<sup>10</sup>
- **The industry itself** - Ernest Pepples, an industry lawyers, wrote: ‘If we admit that smoking is harmful to heavy smokers, do we not admit that BAT has killed a lot of people each year for a very long time? ...might it not be argued that we have been ‘willfully’ killing our customers...?... I foresee serious criminal liability problems.’”<sup>11</sup>

<sup>1</sup> Center for Disease Control and Prevention (CDC), Health Effects of Cigarette Smoking, available at [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/).

<sup>2</sup> Id.

<sup>3</sup> World Health Organization (WHO), Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization (July 2000) available at [http://www.who.int/tobacco/en/who\\_inquiry.pdf](http://www.who.int/tobacco/en/who_inquiry.pdf).

<sup>4</sup> Model Penal Code §210.3.

<sup>5</sup> Model Penal Code §220.2.

<sup>6</sup> Model Penal Code § 211.2.

<sup>7</sup> Model Penal Code § 230.4.

<sup>8</sup> Williams v. Philip Morris, Inc., 127 P.3d 1165, 1176-77 (2006).

<sup>9</sup> BBC. Obama impressed with progress in Mujica's Uruguay(May 12 2014), available at <http://www.bbc.com/news/world-latin-america-27383896>.

<sup>10</sup> Harvard Gazette, A Deadly Foe (Feb. 28, 2013) available at <http://news.harvard.edu/gazette/story/2013/02/a-deadly-foe/>.

<sup>11</sup> David Kessler, A Question of Intent: A Great American Battle with a Deadly Industry 370 (Public Affairs, 2001).