

YOUTH TOBACCO POSSESSION LAWS

POLICY ANALYSIS



Canadian Cancer Society **Société canadienne du cancer**

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Acknowledgments

This paper represents the views of the Canadian Cancer Society on the issue of laws that penalize youth for the attempted purchase, purchase, possession, or use of tobacco products. The purpose of the paper is to facilitate informed debate on an important emerging issue in tobacco control.

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The Canadian Cancer Society is a national, community-based organization of volunteers, covering 3,000 urban and rural communities Canada-wide. The Society's mission is the eradication of cancer and the enhancement of the quality of life of people living with cancer. Thirty percent of all cancer deaths are caused by tobacco use.

The Canadian Cancer Society achieves its mission through research, education, patient services, and influence on public policy, supported by volunteers and funds raised in communities across Canada.

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Youth Tobacco Possession Laws: Policy Analysis

Overview of the Issue

The policy of penalizing youth for the purchase, attempted purchase, possession, or use of tobacco products is an emerging issue in tobacco control. While youth possession laws¹ in various forms have become popular among legislators in recent years, particularly in the U.S., members of the tobacco control community remain divided over the relative merits of such a policy. It is hoped that this paper will help stimulate and inform the debate over youth possession laws among both tobacco control advocates and policy-makers.

In the United States, 42 states have implemented some type of youth possession law. In some cases, the laws have been part of a broader effort to keep tobacco out of the hands of children. In many cases, tobacco companies have aggressively campaigned for such laws in an effort to prevent the passage of more effective anti-tobacco measures. (Mosher, 1995)

In Canada, the issue has also begun to garner public and political attention. In 1999, the province of Alberta passed a private member's bill that would authorize communities in Alberta to enact such a provision. The bill has not yet been proclaimed into law. In 2000, tobacco companies gained significant media coverage of their call for a law that would make it illegal for youth to possess or use tobacco. In a speech in December 2000 before the Canadian Club, Imperial Tobacco President Bob Bexon indicated his company's intention to press governments for such a law, "possibly linking it to a penalty that had real salience to youth, like the suspension of driving privileges." (Sturino, 2000)

There are a number of reasons why the issue has recently come to the fore:

- Youth smoking rates increased during the 1990's, after a sustained period of decline, in most Canadian provinces and U.S. states, despite significant anti-tobacco programming in most jurisdictions.
- The level of non-compliance among retailers with laws that prohibit the *sale* of tobacco to minors remains unacceptably high. Despite years of active enforcement, approximately 30% of tobacco retailers in Canada continue to sell tobacco to underage youth. Very few jurisdictions have been able to achieve and sustain a high rate of compliance.
- Although high levels of retailer compliance can reduce youth *access* to tobacco products, there is little evidence that reduced access translates into reduced tobacco *use*

¹ The term "youth possession laws" will be used throughout the paper to refer broadly to any law which penalizes youth for one or more of the following: the purchase, attempted purchase, possession, or use of tobacco products.

among young people. Researchers speculate that compliance may have to exceed 90% in order to have an impact on youth consumption of tobacco products.

- The tobacco industry, with the support of the retail community, has been actively lobbying for the enactment of possession laws, both in the U.S. and in Canada.

There are many variations of what are generally labeled “youth possession” laws, in terms of the offence itself, the penalty imposed, and the agency responsible for enforcement:

Offences

- purchase;
- attempt to purchase;
- possession;
- use.

Penalties

- confiscation of tobacco product;
- fine/ticket;
- community service;
- tobacco use and/or cessation counselling;
- suspension of driver’s license;
- jail time.

In some jurisdictions, police officers have a choice concerning what sanction they impose. In Buffalo Grove, Illinois, for example, an ordinance was passed in 1998 granting the youth officer in charge of enforcement the options of issuing a \$50 ticket, sentencing the youth to perform community service, or mandating participation in a smoking cessation program. (*Chicago Tribune*, April 1998)

In Tucson, Arizona, a youth caught in possession of tobacco is issued a citation to appear in court. If the youth fails to appear in court to answer the charge, then his driver’s license is suspended. If the youth does not yet have a driver’s license, he is “locked out” from obtaining driver’s license until the age of eighteen. (Woodward, 2000) A youth found guilty of possession is issued a \$40 fine and required to attend a two-hour tobacco information class, which emphasizes the politics of tobacco. For a second or subsequent conviction, the youth must attend an eight-week cessation course taught by the Lung Association.

In Pennsylvania, students caught with tobacco on school property are fined up to \$50 and are required to pay court costs, for a maximum of \$125. (Slade, 2000)

The state of Massachusetts is developing a law that would allow police and school administrators to confiscate tobacco products but not penalize minors in possession of tobacco. (Woodward, 2000)

Enforcement Agency

- police;
- health unit staff;
- bylaw officer;
- teachers, school personnel, parent monitors (for offences on school grounds only).

As the list indicates, there are several possible agencies that can be made responsible for enforcing all or part of the prohibition against youth tobacco use, possession, or purchase. The appropriateness of the enforcement agency depends on the human and financial resources available, the support of the agency in question and the community at large, the precise nature of the offence, and the potential penalty involved. For example, parent monitors may be an effective way to control tobacco possession and/or use on school grounds; however, if the process requires a court appearance and the possible laying of charges, then a law enforcement official would be a more appropriate choice.

Status of Possession Laws

U.S.A.

As of 1998, all but eight U.S. states had laws prohibiting the purchase, attempted purchase, possession, or use of tobacco products by minors. Most of these laws were enacted or updated during the 1990's. (CDC, 2000) The most common provision is the prohibition on the purchase of tobacco by youth, with 33 states having such a law on their books. Only nine states prohibit purchase, possession, and use by minors. What is not known is the extent to which these restrictions are actively enforced in each state. (CDC, 1999) In addition, many communities have local ordinances that render it unlawful for youth to possess, purchase, or use tobacco.

Canada

In Canada, laws prohibiting tobacco *sales* to minors have been put in place by the federal, provincial, and municipal governments, some dating back almost a century. The 1908 federal *Tobacco Restraint Act*, which remained on the books until replaced by the 1994 *Tobacco Sales To Young Person's Act*, also included a fine for *possession* of tobacco by minors under the age of sixteen. This provision was virtually never enforced, however. In Saskatchewan, the *Minors Tobacco Act* of 1965 prohibited any minor under the age of sixteen from procuring tobacco, "either directly or indirectly," but there was no penalty for violation. The failure to enforce these laws rendered the prohibition on youth possession of tobacco meaningless.

No level of government in Canada has implemented a law in recent years making it illegal for youth to purchase, possess, or use tobacco products. However, in 1999 the province of Alberta passed a private member's bill, the *Prevention of Youth Tobacco Use Act*, that would prohibit youth from possessing or consuming tobacco in a public place. Once the law has been proclaimed, regulations will be passed to permit enactment in selected communities only. The criteria for the selection of communities and the details governing implementation have not yet been determined.

Arguments in Favour of Youth Possession Laws

Diminish Social Acceptability of Youth Smoking

One of the strongest arguments for youth possession laws is that they have the potential to diminish the social acceptability of youth smoking. Many young people who take up smoking do so because they perceive it to be "cool," something that will help them fit in with their friends. Smoking takes on a whole new meaning, however, when it becomes an illegal activity and not merely something that adults disapprove of or discourage. Most youth are law-abiding and the normative aspect of law might help some kids resist peer pressure to smoke.

According to the 1994 *Report of the U.S. Surgeon General on Preventing Tobacco Use Among Young People*,

"How adolescents perceive their social environment may be a stronger influence on behaviour than the actual environment. For example, adolescents consistently overestimate the number of young people and adults who smoke. Those with the highest overestimates are more likely to become smokers than are those with more accurate perceptions. Similarly, those who perceive that cigarettes are easily accessible and generally available are more likely to begin smoking than those who perceive more difficulty in obtaining cigarettes." (US Department of Health and Human Services, 1994)

It must be emphasized, however, that the mere existence of a law prohibiting youth from purchasing or possessing tobacco will do nothing to change the perception among youth of the easy accessibility of tobacco nor diminish the social acceptability of youth smoking in the absence of aggressive and sustained enforcement of the law.

Serve as Deterrent

As with tobacco tax increases, one of the goals of youth possession laws is to make the cost of tobacco use prohibitive to the youth market. With the appropriate penalty and active enforcement, youth possession laws could serve as a deterrent, particularly to non-smokers and to experimental, non-addicted smokers. As noted above, research has found that “youths’ perceptions of decreased access to cigarettes were associated with reduced rates of progression to established smoking.” (Siegel, 1999) Postponing the age at which youth experiment with tobacco is also beneficial, since the earlier an individual becomes addicted to tobacco, the greater their chance of developing a tobacco-related disease.

Woodridge, Illinois

The experience in Woodridge, Illinois, is often cited as proof of the effectiveness of youth possession laws. In 1989, the community of Woodridge implemented a set of measures to prevent youth access to tobacco:

- mandatory licensing of all tobacco retailers,
- a prohibition against tobacco sales to minors, including fines and license suspension for repeat offenders,
- a \$25 fine for tobacco possession by a minor less than 18 years,
- school-based anti-tobacco education, and
- an active enforcement program involving quarterly compliance checks of all retailers.

Eighteen months after implementation of the program, illegal sales had decreased from 70% to less than 5%, and youth smoking rates had declined by 50%. (Jason, 1996) Particularly noteworthy is the fact that Woodridge has been able to sustain these achievements over the medium term. Seven years after the law came into effect, compliance remained above 80% and the prevalence of regular smoking among high school students was at 8%, half the rate of neighbouring communities that did not actively enforce access laws. (Jason, 1999)

Unfortunately, the research fails to identify whether the reduction in youth smoking is due to the rigorous enforcement of the prohibition on sales to minors or on youth possession of tobacco, or a combination of the two.

It is also important to note that Woodridge’s success in reducing youth smoking rates has rarely been replicated elsewhere. There are a number of possible reasons for this. Woodridge is a relatively small community of 26,000, with only 25-30 tobacco retailers. The small size means that quarterly compliance checks are feasible, both in terms of time

required and cost. The program has the active support of the Mayor, who is also the Tobacco Commissioner, and the police department and in fact was spearheaded by Officer Bruce Talbot. (Jason, 1991)

Florida Tobacco Program

The highly successful Florida campaign to reduce youth smoking (called the Florida Tobacco Pilot Program) includes enforcement of prohibitions against sales to underage youth and purchase and possession by minors as one of five strategic components of the program. The enforcement component is aimed at fulfilling two program goals—reducing the availability and accessibility of tobacco products to youth and changing attitudes about tobacco. While retailer and youth compliance are treated as inter-related components, the emphasis is clearly placed on the role and responsibility of the retailers. (Florida Tobacco Pilot Program, 1998)

Local law enforcement personnel are placed in retail stores (posing as clerks or shoppers) to train retail employees in techniques to prevent tobacco sales to minors and to issue civil citations to underage youth who attempt to purchase tobacco. It is believed that being issued a citation will deter the adolescent cited as well as his/her friends from attempting to buy tobacco in the future:

“Those youth face the consequences of their actions. They share their experience with peers, and create doubt in their social networks about the wisdom of future tobacco purchases, knowing the clerk may be a law enforcement officer.”

A second strategy in Florida is to create “Tobacco Influence-Free Zones” around schools and other areas where youth congregate by providing frequent retailer compliance checks and increased tobacco possession investigations in these areas. Underage youth who attempt to smoke or are seen using tobacco are immediately issued a civil citation. Community members are encouraged to become active participants in ensuring that youth do not have access to tobacco by calling a toll-free number (888-NO UNDERAGE) to report suspected illegal sales to minors.

Another strategy to decrease youth access to tobacco is eliminating/reducing the possibility that youth can obtain or succeed in using false identification. Law enforcement officers are developing expertise in methods used to manufacture and distribute false identification and retailers are trained to improve their ability to identify false identification. Furthermore, youth are charged for attempted use of false identification (a fine of up to \$500 or a one year incarceration).

The enforcement effort is supported by a multi-media education program that informs target audiences about the youth possession provisions of the law and the consequences for violating the law. The program is aimed at three key audiences: adults, students in grades 4-10, and primary school children. These targets were chosen to concentrate on youth

before they make the decision to use tobacco products.

The research and evaluation component of the Florida Program is closely linked to all other program areas. In addition to monitoring success in reducing the accessibility of tobacco to youth through increased enforcement of sales-to-minors and youth possession laws, the extent to which youth attitudes about tobacco are related to enforcement activities will be assessed.

Early evaluations of the Florida Program have shown substantial short-term declines in youth tobacco use. Current smoking decreased by 40% among middle school students (from 18.5% to 11.1%) and by 18% among high school students (from 27.4% to 22.6%). (Bauer, 2000) The greatest declines in youth smoking occurred among:

- youth in counties with the highest enforcement of access laws;
- students who received anti-tobacco education in school; and
- youth living in a county whose Community Partnership was rated “excellent” or “average.” (*Surgeon General, 2000*)

While it is impossible to separate the effect of the access laws from the other components, the data indicates that the enforcement of the access provisions may have a positive impact. More research is required to understand the impact of the prohibition on possession independent of other factors. Likewise more research is needed, as is the case with Woodridge, to determine the relative role played by enforcement of the youth possession prohibition as opposed to enforcement of the age of sale provision in deterring youth tobacco use. Further research is also needed to understand the impact of possession laws on young people’s attitudes toward smoking.

Send Consistent Message

Arguably the strongest argument in support of youth possession laws is that without them, youth are given a contradictory message about the dangers of tobacco use. On the one hand, youth are taught that tobacco is an addictive, highly toxic product, and yet there are no legal restrictions on their ability to purchase, possess, or use the product. According to Officer Bruce Talbot who pioneered the highly effective approach to minimize youth *access* to tobacco in Woodridge, Illinois, “Laws that ban only the *sale* of tobacco are, in effect, ‘adolescent smokers’ rights laws.” (Talbot, 1992) The fact that youth can smoke openly in public with impunity implies that the product is not that harmful. The existence of a prohibition against youth tobacco possession or use alone without rigorous enforcement, however, could have the opposite effect to that intended, sending the message that youth smoking is not that serious a problem.

There is evidence that youth themselves support eliminating this “mixed message,” and treating tobacco products like alcohol, whose sale is restricted to adults only in a limited number of government-controlled outlets. In an on-line (and therefore uncontrolled) survey

of youth in Saskatchewan, 88% of whom were between the ages of 10-19, 75% agreed that it should be illegal for youth to possess tobacco products and 55% agreed that being fined for possession would deter them from smoking. The data does not provide a breakdown of responses between smokers and non-smokers. Likewise, numerous adolescents participating in the youth consultations conducted by the Saskatchewan Special Committee on Tobacco Control recommended that youth be charged for possession of tobacco, believing it would be an effective means of reducing tobacco use. In its report to the Saskatchewan Legislature, the Committee recommended that the Government “implement legislation that prohibits youth, under the age of 18, from using and possessing tobacco products” as a means of denormalizing tobacco use in the eyes of children and youth. (Special Committee on Tobacco Control, 2000)

Render Compliance A Shared Responsibility

Prohibiting youth from purchasing tobacco products results in shared responsibility for the tobacco sales transaction between the retailer and the purchaser. Retailers may be more supportive of sales-to-minors laws if they believe they are not expected to shoulder complete responsibility for youth access to tobacco. There is evidence that the business sector supports a policy that would take some of the onus away from the seller and place it on the buyer:

“Committee members [Alberta Committee For Responsible Tobacco Retailing] are already engaged in retailer compliance programs such as Operation I.D. However, Alberta distributors and retailers believe that they cannot and should not bear the entire responsibility for under-age tobacco consumption and purchases.” (Alberta Committee For Responsible Tobacco Retailing, 1997)

It is important to note that this Committee is sponsored by the major Canadian tobacco manufacturers.

Keep Tobacco Off of School Grounds

Another argument for youth possession laws is that they assist school boards in effectively enforcing a prohibition against tobacco use on school grounds. School officials argue that the deterrent value of a fine or some other civil penalty for smoking on school property is much greater than a detention or other school-imposed sanction.

By banning smoking on school property, younger students and non-smokers are less exposed to smoking role models, helping to correct the widespread belief that tobacco use by adolescents is the norm. Furthermore, there is some evidence that smoking bans on school property *do* reduce tobacco use among the affected students. (Wakefield, 1999)

Arguments Against Youth Possession Laws

Supported By Tobacco Industry

For many in the tobacco control community, the fact that the tobacco industry actively supports youth possession laws is reason enough to oppose them. Tobacco manufacturers, wholesalers, and retailers actively lobby for youth possession laws. These organizations have a vested financial interest in ensuring that young people continue to take up smoking. For the manufacturers, youth represent their future market, since the vast majority of smokers start before the age of 18. (Health Canada, 1994) For the retailer, illegal tobacco sales to minors are worth roughly 4% of the tobacco market, or about 54 million packages each year (of 25 cigarettes). This amounts to an estimated \$250-\$300 million in revenue from illegal tobacco sales to underage youth. (Physicians for a Smoke-free Canada, 1996)

Tobacco manufacturers and their allies also have a long history of advocating for ineffective measures that often contain hidden agendas or are known to be counterproductive. One of the messages promoted by the tobacco industry that enhances the appeal of smoking to youth is that smoking is a pleasure reserved *for adults only*. As Julia Carol, spokesperson for Americans For Non-Smokers' Rights explains, this is precisely the message that underlies youth possession laws:

“And what message are young people receiving about tobacco under a criminalisation scheme? Only one: they cannot smoke because they are not old enough. It is foolish to reinforce the cigarette companies' advertisements portraying tobacco use as adult behaviour” (Carol, 1992)

Another effect of youth possession laws (and a goal of the tobacco companies who advocate for them) is they help to redirect both public and political attention away from more effective interventions, such as tax increases, advertising bans, and enforcement of sales laws, and lull the public into believing that the problem of youth tobacco use has been solved. Although presented as measures intended to reduce illegal sales to underage youth, these bills in fact “are Trojan horses that will make compliance all but impossible to achieve.” (DiFranza, 1996)

A study of access bills introduced by pro-tobacco legislators in U.S. states revealed that these bills share several characteristics that undermine their effectiveness, such as restricting enforcement authority to an agency with inadequate resources. Another common provision makes it illegal for minors to purchase tobacco. Without an appropriate legislative exemption or special immunity from the prosecuting attorney (Advocacy Institute, 1998), youth cannot be used as test purchasers to perform compliance checks of retailers. It is well-documented in the research that regular compliance checks accompanied by adequate

penalties are the cornerstone of an effective program to generate retailer compliance with access laws. (Canadian Cancer Society, 1998)

Enforcement Resources Diverted From Retailers

Retailer compliance with sales-to-minors laws remains at unacceptable levels in most jurisdictions, and insufficient resources are devoted to enforcement of these laws at present. In Canada, for example, federal government funding for enforcement of the *Tobacco Act*, which includes the youth access provisions, permits less than one compliance check to be performed per retailer per year (Canadian Cancer Society, 1998), despite the fact that researchers have found that the most cost-effective enforcement schedule requires retailers to be checked every three or four months. (Jason, "Alternative Enforcement Schedules," 1996) A major and valid concern is that youth possession laws would divert scarce enforcement resources away from the most important sources of the access problem—the tobacco industry and the tobacco vendors.

Possession laws furthermore shift responsibility for the problem of youth access away from the suppliers of the addictive drug to the victims. In effect, penalizing youth is a form of victim-blaming, in which public attention is transferred to the "delinquent kids" away from the industry that targets them with intense promotional activities and profits heavily from their subsequent addiction. Such has been the case with the enforcement of alcohol laws. One study found that underage drinkers were arrested for possession of alcohol 47 times more often than vendors were arrested for selling to minors. (DiFranza, 1996)

A study of the enforcement of a 1992 law in Minnesota prohibiting the purchase, attempted purchase, and possession of tobacco by minors conducted in 222 cities across the state likewise found that the police were far more likely to penalize minors than merchants. More than 90% of the cities studied reported some action to enforce the possession law, with more than 40% applying serious penalties. In contrast, only 25% of the same cities reported enforcement action against retailers for selling tobacco to minors, with serious penalties applied in less than 10% of cities. (Forster, 1996) Enforcement records from the Florida campaign also showed that considerably more youth—4.5 times more—were cited for violations than were retailers. (What is not known is the relative proportion of enforcement actions and resources directed at youth versus retailers in the state.) During the first year of the Florida Program, the enforcement section

- issued 6,921 possession citations;
 - conducted 7,500 compliance checks;
 - made 1,568 arrests for sales to minors; and
 - filed 104 administrative cases against tobacco license holders.
- (Florida Tobacco Pilot Program, 1998)

Enforcement Resources Insufficient

Even if there were no risk of diverting resources (funding and manpower) away from enforcing retailer compliance, the amount of funding necessary to provide effective enforcement of youth possession laws remains a valid concern. Given the large number of youth relative to the number of retailers in any given community, proper enforcement of a youth possession law would be extremely expensive. Failure to adequately enforce the prohibition on purchasing or possessing tobacco seriously undermines the message concerning the harmfulness of tobacco use the law was intended to convey. Moreover, experience shows that “any short term positive gains [i.e. reduced youth smoking] tend to erode quickly when enforcement eases up, which is an inevitability.” (Cismoski, 1994)

Ineffective enforcement (whether due to insufficient resources or to enforcement officers not taking the issue seriously) may actually encourage youth to flout the law and have the opposite effect of that intended—it may “create a climate of disrespect for the law and a counter-culture of law-breaking teens . . . who gain self-esteem and the admiration of their peers by flaunting adult authority.” (Kelder, 1997)

Youth Smoking Over-Emphasized

One of the criticisms of youth access laws, including provisions against tobacco purchase, possession or use by minors, advanced by noted anti-tobacco activist and researcher Stanton Glantz is that they shift public and political attention and tobacco control resources away from interventions that focus on the overall population. Population-based approaches, such as workplace smoking bans and measures that diminish the social acceptability of tobacco use, are known to be more effective in reducing adult smoking prevalence and in turn decreasing youth tobacco use.

Youth smoke in large part to emulate adult behaviour. By focusing on youth access issues, the tobacco control community inadvertently reinforces one of the tobacco industry’s underlying messages: ‘kids shouldn’t smoke, but if you want to look and act like an adult, then do it.’ As Glantz summarizes, “the best way to keep kids from smoking is to reduce tobacco consumption among everyone.” Glantz also points out that the war on illicit drugs has shown clearly that “law enforcement and supply controls cannot prevent people from getting addictive drugs that are profitable to sell.” Therefore, it is imperative that tobacco control strategies place their emphasis on measures to reduce the *demand* for tobacco among youth and adults as opposed to measures to control the *supply* of tobacco to youth. (Glantz, 1996)

Lack of Evidence

The strongest argument against the use of youth possession laws is that there is no scientific evidence from controlled studies that demonstrate their effectiveness in inhibiting youth

tobacco use, although there is some anecdotal evidence. As many skeptics point out, the success of the city of Woodridge, Illinois, in maintaining high levels of retailer compliance and in reducing youth tobacco use has only been replicated in a few other individual communities, in uncontrolled studies.

May Be Counter-Productive

Although some people believe that the normative aspect of a law prohibiting youth from possessing tobacco might help some kids resist peer pressure to smoke, there is some evidence to suggest that this might only have an influence on young people who are not likely to smoke regardless of the policies in place. For others, making it illegal to purchase, possess, or use tobacco might increase the appeal of tobacco as a “forbidden fruit”—a symbol of rebellion. Internal tobacco company marketing documents from the 1980’s support this view:

“For the young smoker, the cigarette is not yet an integral part of life. . . . For them, a cigarette, and the whole smoking process, is part of the illicit pleasure category . . . [a] declaration of independence and striving for self identity. . . .” (Glantz, 1996)

Additional research from the files of the tobacco companies on “FUBYAS—First Usual Brand Young Adult Smokers” further suggests that possession laws might be counterproductive, encouraging the association between smoking and rebellion against establishment values. Based on detailed research on “young adult smokers” (a euphemism for starting smokers), tobacco companies segmented youth into five categories: goody-goodies; punkers; rockers; burn-outs; party-partiers. The “goody-goodies” are those who would not likely smoke regardless of the anti-smoking policies in place. For youth in the remaining four categories, a penalty for tobacco use or possession may serve to reinforce their sense of alienation from society, rather than encourage them to comply with the law. (Hirschhorn, 2000)

Research on adolescent behaviour has found a correlation between smoking and a variety of problem behaviors, including alcohol, cigarette, marijuana, and other illicit drug use and abuse, delinquency, antisocial behavior, precocious and unsafe sexual practices, and academic failure or low expectations for academic achievement. (Biglan, 1995) Forty percent of the youth cited for possession in the Tucson, Arizona program, for example, were already on active probation for another unrelated offence. (Woodward, 2000) Similarly, other research supports the association between smoking and rebellion, finding that youth who smoke are “twice as likely to engage in risk-taking behaviour,” such as having been in a fight, ridden a motorcycle or mini-bike, or enjoyed risky activities. (DeBon, 1996)

Potential for Abuse

There is concern, substantiated by anecdotal evidence, that the police use suspected tobacco possession as a pretext to search youth for illicit drugs or weapons. The documented correlation between tobacco use among youth and delinquent behaviour, as discussed earlier, gives weight to the concern that possession laws will be enforced not for their own sake but as a means to another end. Similarly, there is a concern that enforcement may be selectively based on gender, race or class. (Advocacy Institute, 1998)

Value of Penalties Questionable

As stated earlier, a wide variety of penalties are imposed for violations of youth tobacco possession laws, ranging from cessation counselling, to fines, to jail time. Most of the penalties have significant downsides, with the exception of mandatory anti-tobacco education and cessation counselling. This consequence recognizes that youth caught purchasing, possessing, or using tobacco may be addicted and may be unable to break the addiction without some assistance, despite the presence of a law intended to deter them from smoking.

Monetary fines are a widely-used penalty. In theory, fines serve to make the cost of tobacco use prohibitive to the price-sensitive youth market. While a fine may be an effective deterrent for some youth, a low fine (relative to the high disposable income of many working youth) combined with a low risk of getting caught significantly undermines the deterrent value of the penalty. Furthermore, if the violator is unable to pay the fine, he/she risks a more severe punishment.

The loss of a valued privilege, for example suspension of the driver's license, is considered by many, including tobacco companies, to be the most effective deterrent. However, the violator may continue to drive without a license, resulting in considerably harsher consequences if caught. For those under the age of 16—those most likely to be merely experimenting with tobacco use—who are too young to drive, a related penalty is a legal block to obtaining a driver's license at a later date. This is a much less immediate, less tangible consequence and therefore not likely to be as effective as a fine or license suspension.

Another common penalty, particularly for violating a prohibition against tobacco possession or use on school property, is suspension from school. Critics point out that suspension merely “creates new opportunities for young people to engage in other, and potentially more serious, risk taking behavior (e.g., serious crimes).” (Schwartz, 1999)

Community service is considered by many to be a fitting penalty and a valuable education tool, particularly if it is relevant to the offence. Youth could be required, for example, to work with cancer or emphysema patients in health care settings; to help non-profit health agencies involved in tobacco control; or to assist in implementing anti-smoking programs.

A potential downside, however, is that many communities lack the resources necessary to coordinate and supervise the community placements.

The most serious penalty, detention in a juvenile facility or jail, serves to criminalize youth for falling prey to the powerful marketing machine of the tobacco industry. Incarcerating youth whose only “crime” is smoking alongside those who have committed serious crimes will likely do little to address the tobacco use and may give rise to much more serious behavioural problems.

Positions of Major International Organizations

U.S. Surgeon General, U.S. State Attorneys General

The 2000 U.S. Surgeon General's Report on *Reducing Tobacco Use* devotes considerable attention to the issue of youth access laws, but offers little comment on efforts to regulate the purchase, attempted purchase, possession, or use of tobacco by minors. The Report merely reiterates the recommendation of the 1994 Working Group of State Attorneys General that "such laws should be considered only after effective retail regulations are already in place." (Surgeon General, 2000)

U.S. Centers For Disease Control

The seminal report on *Best Practices for Comprehensive Tobacco Control Programs* recently produced by the highly-respected Centers for Disease Control is silent on the question of youth possession laws. With regard to regulations to control minors' access to tobacco products, the report makes recommendations concerning *sales* restrictions only:

"The small body of evidence examining the effects of active enforcement [of age of sale laws] on youth smoking suggests that it is an important and essential element of a comprehensive effort to reduce young people's use of tobacco."

Furthermore because young people obtain tobacco from social sources as well as retail outlets, the report concludes that "it is critical that minors' access restrictions be combined with a comprehensive tobacco control program that reduces the availability of social sources and limits the appeal of tobacco products." The CDC document does not mention youth possession laws, likely due to a lack of evidence either for or against the practice.

World Health Organization

The World Health Organization has not taken an official policy position on youth possession laws. A 1999 report from an international consultation meeting on examining approaches to reduce youth tobacco use found some evidence to support the imposition of youth access laws, including penalties for possession or use by youth:

"Access laws, including those penalizing youth for possessing or using tobacco products, may contribute to reduced availability of tobacco to youth and can be effective in shaping community norms around tobacco. However, compliance rates are problematic and have to be very high to contribute to significant reductions in youth smoking." (World Health Organization, 1999)

The report also concludes that experience indicates that access measures are more effective when implemented as part of a comprehensive tobacco control strategy.

Discussion

There are convincing arguments that penalizing minors for buying, possessing, or using tobacco could serve to alter public perception regarding the acceptability of youth smoking and could render tobacco products less accessible to young people—ultimately helping to reduce the use of tobacco by youth. The evidence that possession laws actually produce the intended effect is limited, however. A few uncontrolled studies of community programs to reduce youth access, which have included youth possession laws, have yielded impressive results. The Florida Tobacco Pilot Program has achieved substantial reductions in prevalence in every grade in middle and high school in the short-term. An important finding from the Program is that the best results were achieved in communities with a multi-pronged tobacco control program and the highest enforcement of the access laws, including the provision outlawing tobacco possession by youth. However, the extent to which enforcement of the possession provision had an impact on youth smoking versus enforcement of the retail sales provision [or other program elements](#) is not known.

The arguments against youth possession laws are compelling, as is the fact that the most respected voices in tobacco control have not endorsed such a policy. The Centers For Disease Control is silent on the issue in their compendium of *Best Practices* in tobacco control. The U.S. Surgeon General and the states Attorneys General recommend that more research be conducted to determine the impact of policies prohibiting youth purchase or possession, since there is very little scientific evidence that clearly demonstrates that youth possession laws serve to reduce youth tobacco use. As a result, the U.S. Advocacy Institute made the following recommendation in its *State Tobacco Control Briefing Paper* on policies to reduce youth access to tobacco:

“No study has evaluated whether the passage or enforcement of tobacco possession laws has a positive effect on youth’s attitudes or behavior regarding tobacco. In the absence of any scientific evidence that making the possession of tobacco illegal is beneficial, it would be premature to adopt this approach as federal, state or local law.” (Advocacy Institute, 1998)

Youth possession laws are also rejected by many within the health community on purely ethical grounds—penalizing children for tobacco possession or use is “the ultimate misplacing of responsibility.” (Glantz, 1996) The argument is that adults have a responsibility to protect children, and adult retailers have a responsibility to ensure that youth do not have access to tobacco by upholding the law that prohibits them from selling tobacco products to minors. Cismoski carries the argument of adult responsibility even farther:

“Those responsible for the current stature of tobacco in our society are adults. That we entice children and youths, either directly by modeling or indirectly by allowing tobacco to be indiscriminately glamorized and peddled to the young by irresponsible business interests, and then turn around and criminalize them for the very behavior they have been encouraged to emulate amounts to institutionalized entrapment.” (Cismoski, 1994)

Effective enforcement of possession laws would be highly costly, given the large number of young people, and would divert already insufficient enforcement resources away from the retail sector. Furthermore, there is a legitimate concern that imposing a law and then failing to enforce it adequately would be counter-productive, undermining the goal of demonstrating the extent to which society regards youth smoking as a serious social and health issue.

Recommendations

Given the balance of arguments and the lack of sufficient evidence substantiating that laws prohibiting the purchase, attempted purchase, possession, or use of tobacco by minors serve to reduce youth tobacco use, it would be premature to recommend the implementation of such laws at this time.

However, the existence of some evidence suggesting that such laws *may* play a useful role in helping to decrease youth access to tobacco and youth smoking rates makes it inadvisable to reject such laws outright. Therefore, we recommend an incremental approach, whereby the conditions outlined below would have to be met *prior to* the implementation of any youth possession law.

A possession law should only be considered as one element of a long-term, well-funded, and comprehensive strategy to reduce tobacco use among children and adults. As a minimum, the strategy should include the following measures:

- high tobacco taxes;
- mandatory smoke-free workplaces and public places;
- restrictions on tobacco product promotion;
- a mass media counteradvertising campaign;
- curriculum-based anti-tobacco education; (Wakefield, 1999)
- a strongly enforced prohibition on the supply of tobacco to minors, such that the level of retailer compliance achieved is at least 85%. (Rigotti, 1997)

Effective enforcement of the prohibition on the supply of tobacco to minors requires that the following conditions be met:

- The resources devoted to the enforcement of the prohibition on tobacco *sales* to minors should be sufficient to ensure at least one compliance check per retailer per year.
- The protocol for retailer compliance checks should be strengthened to reflect the latest research findings.
- The prohibition against third party (social) supply to minors should be adequately enforced to ensure that social sources do not merely replace compliant retailers as a source of tobacco for young people.
- A long-term, adequately-funded enforcement plan, based on best practices, should be in place to ensure that the focus remains on those who *supply* tobacco to minors.

Once a comprehensive tobacco control plan has been put in place and the prohibition on the supply of tobacco to minors is effectively enforced, then the introduction of laws that penalize youth can be considered—but an incremental approach should be taken. The following recommendations are consistent with those being advocated by the Alberta Tobacco Reduction Alliance in relation to the implementation of the private members bill prohibiting youth possession. (ATRA, 2000)

- A youth possession law should be implemented on a trial basis only at the community level, prior to the adoption of such a law at the provincial or national level.
- The pilot should take place in a community where retailer compliance has continued to be 85% or higher.

- A research plan should be put in place prior to implementation of the law to allow pre- and post-test data to be collected and analyzed. A demographically similar community that has adopted a comparable multifaceted tobacco control plan and has achieved a comparable rate of retailer compliance, but does not have a possession law should be identified and studied for comparison purposes.

Another possible introductory step could be increasing enforcement efforts and penalties related to the use of false identification by youth attempting to purchase tobacco. More research is needed, however, on the efficacy of this approach. Given limited resources and the potential for abuse of a possession law, consideration should be given to limiting the law to a prohibition on the purchase or attempted purchase of tobacco by a minor.

Reference List

- Advocacy Institute. *State Tobacco Control Policy Briefing Papers: Policies to Reduce Youth Access to Tobacco*. Taken from "www.scarcnet.org/pubs/briefs/youthaccess.htm." Based on a paper by JR DiFranza and NA Rigotti, 1998.
- Alciati, Marianne H. et al. "State laws on youth access to tobacco in the United States: measuring their extensiveness with a new rating system." *Tobacco Control* 1998; 7: 345-352.
- Alberta Committee For Responsible Tobacco Retailing. "Presentation to the Standing Policy Committee on Health Planning." October 1997.
- ATRA (Alberta Tobacco Reduction Alliance). *Youth Possession Laws and Youth Access*. 2000.
- Bauer, UE et al. "Changes in Youth Cigarette Use and Intentions Following Implementation of a Tobacco Control Program: Findings From the Florida Youth Tobacco Survey, 1998-2000." *JAMA* 2000; 284(6): 723-728.
- Biglan, Anthony et al. "Peer and Parental Influences on Adolescent Tobacco Use." *Journal of Behavioral Medicine* 1995; 18(4): 315-330.
- Canadian Cancer Society. *Enhancing the Effectiveness of Access Laws To Reduce Tobacco Sales to Minors*. September 1998.
- Carol, Julia. "It's a good idea to criminalise purchase and possession of tobacco by minors—NOT!" *Tobacco Control* 1992; 1(4): 296-7.
- Cismoski, Joseph. "Blinded by the light: The folly of tobacco possession laws against minors." *Wisconsin Medical Journal* 1994; 93(11): 591-598.
- Crossroads Regional Health Authority. "Draft Action Plan for Bill 208, *Prevention of Youth Tobacco Use Act*." January 2000.
- DeBon, Margaret and Kleasges, Robert. "Adolescents' perceptions about smoking prevention strategies: a comparison of the programmes of the American Lung Association and the Tobacco Institute." *Tobacco Control* 1996; 5: 19-25.
- DiFranza, Joseph et al. "A Model for the Efficient and Effective Enforcement of Tobacco Sales Laws." *American Journal of Public Health* 1998; 88(7): 1100-01.
- DiFranza, Joseph and Godshall, William. "Tobacco industry efforts hindering enforcement of the ban on tobacco sales to minors: actions speak louder than words." *Tobacco Control* 1996; 5: 127-131.
- Forster, Jean and Wolfson, Mark. "Youth Access to Tobacco: Policies and Politics." *Annual Review of Public Health* 1998; 19: 203-35.
- Forster, Jean et al. "The Effects of Community Policies to Reduce Youth Access to Tobacco." *American Journal of Public Health* 1998; 88(8): 1193-1198.

- Forster, Jean et al. "Survey of city ordinances and local enforcement regarding commercial availability of tobacco to minors in Minnesota, United States." *Tobacco Control* 1996; 5: 46-51.
- Glantz, Stanton. "Editorial: Preventing Tobacco Use—The Youth Access Trap." *American Journal of Public Health* 1996; 86(2): 156-58.
- Health Canada. *Survey on Smoking in Canada, Cycle 1*. "Fact Sheet 5: Profile of Youth Aged 15-19." August 1994.
- Hirschhorn, Norbert. "Tobacco Industry Tactics—How They Target Youth Worldwide." Presentation to 11th World Conference on Tobacco or Health. Chicago, Illinois. 6 August 2000.
- Jacobson, Peter D. and Wasserman, Jeffrey. "The Implementation and Enforcement of Tobacco Control Laws: Policy Implications for Activists and the Industry." *Journal of Health Politics, Policy and Law* 1999; 24(3): 567-598.
- Jason, LA, Berk M, Schnopp-Wyatt DL, Talbot B. "Effects of Enforcement of Youth Access Laws on Smoking Prevalence." *American Journal of Community Psychology* 1999; 27(2): 143-60.
- Jason, LA et al. "Long-term Findings From Woodridge In Reducing Illegal Cigarette Sales To Older Minors," *Evaluation & the Health Professions* 1996; 19(1): 3-13.
- Jason, LA et al. "Reducing the Illegal Sales of Cigarettes to Minors: Analysis of Alternative Enforcement Schedules." *Journal of Applied Behavior Analysis* 1996; 29: 333-344.
- Jason, LA et al. "Active Enforcement Of Cigarette Control Laws In The Prevention Of Cigarette Sales To Minors." *JAMA* 1991; 266: 3159-61.
- Kelder, Graham. *The Perils, Promises and Pitfalls of Criminalizing Youth Possession of Tobacco*. Taken from "www.tobacco.neu.edu/tcu/3-97/ypfinal.htm."
- Lantz, Paula et al. "Investing in youth tobacco control: a review of smoking prevention and control strategies." *Tobacco Control* 2000; 9: 47-63.
- Mosher, James F. "The Merchants, Not the Customers: Resisting the Alcohol and Tobacco Industries' Strategy to Blame Young People for Illegal Alcohol and Tobacco Sales." *Journal of Public Health Policy* 1995; 16(4): 412-432.
- N.A. "Ordinance Adds Options For Punishing Underage Smokers." *Chicago Tribune*. April 21, 1998.
- N.A. *State by State Tobacco Law Analysis*. Taken from "www.cstorecentral.com/register/resource/resource/statebystate.html."
- Office of the Governor, State of Florida. *Florida Tobacco Pilot Program: Formal Strategic Plan*. June 1998. Taken from "www.state.fl.us/tobacco."
- Physicians for a Smoke-free Canada. "Federal and provincial government revenues from illegal sale of cigarettes to minors." 9 September 1996.

- Rigotti, Nancy, DiFranza Joseph et al. "The Effect of Enforcing Tobacco Sales Laws on Adolescents' Access to Tobacco and Smoking Behavior." *The New England Journal of Medicine* 1997; 337: 1044-51.
- Schwartz, Ira M. and Wong, Caroline. "Preventing and Stopping Children From Smoking and Using Tobacco Products: Promising Policies and Strategies." Center For the Study of Youth Policy, School of Social Work, University of Pennsylvania. 1999-2000. Taken from "www.kidspolicy.org/publication2.html."
- Siegel, Michael et al. "The Effect of Local Tobacco Sales Laws on Adolescent Smoking Initiation." *Preventive Medicine* 1999; 29: 334-342.
- Slade, David. "Tobacco forces decry fines for minors." *The Morning Call*. 19 November 2000.
- Special Committee on Tobacco Control. *First Report to the Legislative Assembly of Saskatchewan*. May 2000.
- Sturino, Idella. "Imperial Tobacco head says youth should be prohibited from possessing tobacco." *The (Montreal) Gazette*. 12 December 2000.
- Sutton, Charyn. "Editorial: A hard road: finding ways to reduce teen tobacco use." *Tobacco Control* 2000; 9: 1-2.
- Talbot, Bruce. "Adolescent smokers' rights laws." *Tobacco Control* 1992; 1(4): 294-5.
- Testimony in the Alberta Legislature on Bill 208, *Prevention of Youth Tobacco Use Act*. 22 February 1999. 5 May 1999. 11 May 1999. 30 November 2000. 1 December 1999. 7-8 December 1999.
- U.S. Centers for Disease Control and Prevention. *State Tobacco Activities Tracking & Evaluation System*. 2000. Taken from "www2.cdc.gov/nccdphp/osh/state/."
- U.S. Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs*. 1999.
- U.S. Centers for Disease Control and Prevention. "State Laws on Tobacco Control—United States, 1998." *Morbidity and Mortality Weekly Report, CDC Surveillance Summaries* 1999; 48(SS-3): 22-62.
- U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General*. 2000.
- U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*. 1994.
- U.S. Food and Drug Administration. "FDA FY2001 Performance Plan; Section 2.7, Tobacco." Taken from "www.fda.gov/ope/fy01plan/tobacco01.html."
- Wakefield, Melanie and Chaloupka, Frank. *Effectiveness of Comprehensive Tobacco Control Programs in Reducing Teenage Smoking: A Review*. July 1999.

Woodward, Skip. “Youth & Policy: Access, Possession, Criminalization—How Far Should We Go?” Presentation to the 11th World Conference on Tobacco or Health, Chicago, Illinois, 8 August 2000.

Working Group of State Attorneys General. *No Sale: Youth, Tobacco and Responsible Retailing: Findings and Recommendations for Developing Responsible Retail Sales Practices and Legislation to Eliminate Illegal Tobacco Sales to Minors*. 1994. Taken from “www.sailor.lib.md.us/docs/tobacco/no_sale/no_sale.htm.”

World Health Organization, UNICEF, Singapore Ministry of Health, Singapore Cancer Society. *Final Conference Report: International Consultation on Tobacco and Youth: What in the World Works?* Singapore. 28-30 September, 1999.