

PENALIZING KIDS FOR BUYING, POSSESSING, OR SMOKING CIGARETTES

Throughout the country, over 40 states have already enacted laws that penalize kids who buy, possess, or use cigarettes or other tobacco products. Some of these laws were proposed to help reduce underage smoking and other tobacco use by making kids more directly and personally responsible for their own ill-advised decisions to buy or use tobacco products.

In many cases, however, the tobacco companies have successfully supported these youth-penalty laws as alternatives to other laws that would produce larger and more rapid reductions in underage tobacco use. Even worse, the tobacco companies have used the passage of youth-penalty laws to get additional provisions enacted that make implementing or enforcing other tobacco control efforts more difficult. Accordingly, both existing youth-penalty laws and any new proposals must be carefully evaluated to make sure they will not end up impeding other tobacco control efforts or otherwise diverting attention from the need for strong laws aimed at protecting children and punishing adults who sell to children.

In addition, youth-penalty laws should not unfairly punish or stigmatize children who became addicted either when they were too young to know better or as a direct result of the tobacco industry's aggressive marketing to kids. Nor should they treat young children as primary wrongdoers instead of those adults who knowingly market or sell tobacco products to kids.

Concerns With Youth-Penalty Laws

Many of the laws and proposals to establish youth penalties have major problems:

- Because of tobacco company influence, youth-penalty laws often end up being passed instead of much more effective tobacco control strategies, such as increasing the price of cigarettes, restricting tobacco company marketing, or implementing new programs and counter-advertising to prevent and reduce tobacco use among kids.
- Establishing new youth penalties can divert the police from their efforts to stop retailers from illegally selling tobacco products to kids, especially since the new laws typically fail to provide any additional enforcement resources. But stopping retailers who profit from selling to underage buyers is a proven way to reduce both youth access to tobacco and underage use, and such sales can be stopped only by ongoing rigorous enforcement.
- Laws that penalize children for possession of tobacco products that are not strictly enforced can breed disrespect for the law by young people, thereby having a negative effect.
- In at least twelve states, the youth-penalty laws directly preempt more effective state and local tobacco control laws already in effect and forbid cities and towns from passing any new tobacco control laws that are broader or stronger than the state's.
- Youth-penalty laws sometimes make it extremely difficult to enforce the laws forbidding tobacco sales to kids because they make it illegal to use underage buyers in "sting" operations to identify retailers that knowingly sell to kids (which is the most effective way to catch these lawbreaking retailers). Some of the laws even make it illegal for anyone but the police or other specified state enforcement personnel to run operations to identify retailers that illegally sell to kids, thereby blocking community groups, researchers, or state health officers from monitoring retailer compliance.

- Some of the new youth-penalty laws actually subject underage smokers to hundreds of dollars in fines, court hearings, and even (in Kansas and Oklahoma) jail time. Prosecuting young kids in that way is clearly excessive. It is also unreasonable when little is done to restrict the tobacco companies' aggressive marketing efforts, which are responsible for many kids becoming addicted to tobacco in the first place and too little is done to penalize retailers who illegally sell tobacco products to children.
- Virtually all of the new youth-penalty laws fail to ensure that teens already addicted to cigarettes or spit tobacco have somewhere they can go to get help quitting. In fact, most of the laws do not even give addicted underage users who violate the law the option of entering a formal cessation program. This focus on punishing underage addicts rather than helping them get the treatment and assistance they need to quit is not only mean-spirited but medically foolish.
- The move to penalize children has taken place without any empirical evidence that these laws actually reduce tobacco use among children. The impact of the laws now in effect should be carefully studied before additional ones are enacted.

Conclusion

It is important to hold all adults responsible who market or sell tobacco products to kids. More study needs to be done to determine whether laws that also punish children are also effective tobacco control tools. But in no event should these laws be enacted as a mechanism for impeding either the passage or the enforcement of a comprehensive tobacco control program to reduce tobacco use among children.

Sources of Additional Information

Welch, C. (ed.), *State Legislated Actions on Tobacco Issues*, American Lung Association (December 31, 1999).