



## PENALIZING KIDS FOR BUYING, POSSESSING, OR SMOKING CIGARETTES

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All the states prohibit retailers from selling tobacco products to minors. In addition, 46 states have also enacted laws that subject kids who purchase, use, or possess cigarettes or other tobacco products with various penalties ranging from small fines to jail time.<sup>1</sup> Massachusetts, Nevada, New Jersey, and New York have not implemented any such youth penalty laws.

Some of these laws were proposed to help reduce underage smoking and other tobacco use by making kids more directly and personally responsible for buying or using tobacco products. In many cases, however, the tobacco companies and their allies have 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 can 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. In that way, youth-penalty laws shift blame from industry promotional activities to the victims.<sup>2</sup> Similarly, youth penalty laws treat children as the primary wrongdoers, instead of focusing on those adults and businesses who profit from knowingly selling tobacco products to kids.

### **Concerns With Youth-Penalty Laws**

Many of the existing laws and new 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. It also appears that youth penalty laws are more difficult to enforce systematically than sanctions against retailers; and they can create confusion as to who should be responsible for enforcing which laws relating to tobacco product sales to youth. On the other hand, 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 call for excessive penalties or 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 jail time (e.g. in Oklahoma and Idaho). Such excessive penalties and prosecutions against children are even more unreasonable when little is done to restrict the tobacco companies' aggressive marketing efforts that reach and influence children or to stop 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 other tobacco products have somewhere they can go to get help quitting so they can obey the law. In fact, most of the laws do not even give addicted underage users who violate the law the option or opportunity 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 clear 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.

### **Evidence addressing Penalizing Youth for Tobacco Possession, Use, and Purchase of Tobacco**

- A study done in Texas in 2006 examined the perspectives of Texas youth after having been cited for tobacco possession. Although youth cited acknowledged that the law was meant to deter youth from smoking, they also indicated that there was no purpose to it and that it could actually lead to continuation. The study further suggests that youth cited for possession are not deterred because they are addicted to cigarettes, implying that interventions should focus more on cessation programs.<sup>3</sup>
- After examining New Jersey youth penalty laws, a 2004 study suggested that cessation treatment rather than punishment may be a more effective measure to reduce youth smoking. It further suggests that youth may be deterred from seeking help for their addiction should they be punished for breaking the law.<sup>4</sup>
- A 2003 study reviewing literature and reasons for youth penalty laws concluded that such laws were unlikely to "significantly reduce youth smoking." The reasons given included a low likelihood of being caught, uncertain punishment, delay between detection and punishment, and high chances of youth being able to evade detection.<sup>5</sup>
- A *Journal of Drug Education* study reviewed the debate regarding youth penalty laws. While it acknowledges that such laws can be effective in conjunction with programs that reduce youth access, it also suggests that more research needs to be done studying the effects of the youth penalties on kids.<sup>6</sup>

***Campaign for Tobacco-Free Kids, June 2011 / Jessica Guilfoyle***

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<sup>1</sup> American Lung Association, State Legislated Action on Tobacco Issues, 2011, <http://www.lungusa2.org/slati/>.

<sup>2</sup> Canadian Cancer Society, *Youth tobacco possession laws: policy analysis*, September 2001.

<sup>3</sup> Loukas, A, et al., "Examining the Perspectives of Texas Minors Cited for Possession of Tobacco," *Health Promotion Practice* 7(2):197-205, 2006.

<sup>4</sup> Hrywna, M, et al., "Content Analysis and Key Informant Interviews to Examine Community Response to the Purchase, Possession, and/or Use of Tobacco by Minors," *Journal of Community Health* 29(3):209-216, 2004.

<sup>5</sup> Wakefield, M, & Giovino, G, "Teen Penalties for Tobacco Possession, Use, and Purchase: Evidence and Issues," *Tobacco Control* 12:i6-i13, 2003.

<sup>6</sup> Jason, LA, et al., "Youth Tobacco Sales-to-Minors and Possession-Use-Purchase Laws: A Public Health Controversy," *Journal of Drug Education*, 35(4):275-290, 2005.