YOUTH ACCESS TO CIGARETTES

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YOUTH ACCESS TO CIGARETTES

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EXECUTIVE SUMMARY

PURPOSE

To assess the enforcement of State laws prohibiting the sale of cigarettes to minors.

BACKGROUND

As part of his initiative on smoking, Secretary Sullivan asked the Office of Inspector General to survey States regarding their laws on the sale of cigarettes to minors. He wanted to know the extent to which the laws are enforced, the nature of enforcement activities and the most effective practices.

Research has documented that millions of youth smoke, despite the existence of laws in 44 States and the District of Columbia prohibiting the sale of cigarettes to minors. Yet, a Journal of the American Medical Association article estimates that more than 3 million American children under age 18 consume 947 million packs of cigarettes yearly.

METHODOLOGY

The study team interviewed State health and law enforcement agencies to document any enforcement activity; conducted in-depth studies of 11 specific active State and local enforcement efforts; and completed 1200 interviews in 18 States with students, parents, vendors and other adults to assess the public's knowledge and awareness of laws prohibiting the sale of cigarettes to minors.

FINDINGS

- Youth access laws are not being enforced.
- Children can easily buy cigarettes.
- Areas of active enforcement are few; they rely on local leadership.
- Active enforcement involves a variety of techniques, primarily administrative in nature.
  - Among the most common approaches are licensing, fines, stings, restrictions on vending machines, and warning signs.

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INTRODUCTION

PURPOSE

To assess the enforcement of State laws prohibiting the sale of cigarettes to minors.

BACKGROUND

As part of his initiative on smoking, Secretary Sullivan asked the Office of Inspector General to survey States regarding their laws on the sale of cigarettes to minors. He specifically wanted to know the extent to which the laws are enforced, the nature of enforcement activities and the most effective practices. Although the Surgeon General reports that most States have youth access laws, there is little information on their enforcement.

Research has documented that children smoke. Each day more than 3,000 children start smoking. A Journal of the American Medical Association article estimates that more than 3 million American children under age 18 consume 947 million packs of cigarettes yearly. Additionally, 75 percent of current adult smokers started smoking before their 18th birthday. The Annual High School Seniors Survey, conducted in 1987 by the University of Michigan, reports that approximately one out of every five high school seniors smoke daily, and that over half the seniors who smoked began smoking by the eighth grade.

According to a study by the Minnesota Tobacco-Free Youth Project, the earlier a child starts using tobacco, the more likely it is that he/she will be unable to quit. The same study found that more than one-half of high school seniors who smoke daily have tried to quit without success.

States have responded to the fact that children smoke by passing laws that prohibit the sale of cigarettes to minors. Currently, 44 States and the District of Columbia have such laws. The age at which children are no longer considered minors ranges from 15 to 19, with 18 being the most common. These are not new laws; most were enacted between 1890 and 1920 as a result of pressure from activists who were trying to prevent young boys from smoking. As recently as 1964, 48 States had laws prohibiting the sale of cigarettes to minors, but some were repealed because they were considered unenforceable. In at least 11 States vendors must post signs stating it is illegal to sell cigarettes to minors.

Penalties for violation of these laws vary greatly -- from a $2 fine in Washington D.C., to a maximum of a $3,000 fine and/or a year in jail in Minnesota. In most States the penalty is a fine and/or jail. Despite the fact that virtually all States license the sale or distribution of cigarettes, only four have license revocation as a penalty for selling to minors. Most States leave enforcement to local law enforcement officials. However, in Florida and New Hampshire, State taxation agencies have the responsibility; in Massachusetts, it is the State Department of Public Health.

Indications that enforcement may be weak came not only from the observable fact that teens are smoking, but also from a number of studies and from controlled purchases or "stings" that demonstrated children can and do buy cigarettes. Dozens of such local "stings" have been run by researchers, local reporters, police, and health departments to test youth access laws. Generally, minors were able to purchase cigarettes illegally about 80 percent of the time.

Additionally, in 1987, nearly 90 percent of a sample of Minnesota 10th graders who smoked regularly reported that it was *very easy* to obtain cigarettes despite a State law. In the 1987 "National Adolescent Student Health Survey" of 1100 students, 73 percent of the 8th and 10th graders said it was very easy to buy; 13 percent said its fairly easy. Also in 1987, 90 percent of a sample of New Jersey high school students who smoked said they could *always* or *nearly always* buy cigarettes.

METHODOLOGY

Data collection was performed in three stages. Initially, the study team interviewed each State health and law enforcement agency where access laws exist to document enforcement activity. Interviews were conducted with a person designated in each State as the tobacco contact person in response to a request from the Association of State and Territorial Health Officials. This tobacco contact person described his/her awareness of enforcement activities as well as perceived problems with enforcement. The law enforcement official contacted was the State-designated National Crime Information Center (NCIC) contact, who was asked to provide statistics on the enforcement of these State statutes.

In the second stage of the inspection the team studied specific State and local enforcement efforts. An extensive literature review and contact with State officials, experts and academics in the youth smoking field indicated 10 local areas and one State, Florida, where enforcement was actively occurring. Individual communities actively enforcing youth access laws are located in California, Illinois, Massachusetts, Michigan, Minnesota, New York, Pennsylvania, Utah and Washington. In-person and telephone interviews, using open-ended discussion guides, were utilized to study these special enforcement efforts.

In the third stage, OIG staff assessed the public's knowledge and awareness of laws prohibiting the sale of cigarettes to minors. A questionnaire was developed, and almost 1200 interviews in urban and suburban settings were completed during April. The interviews took place in over 300 communities in eighteen States: California, Connecticut, Colorado, Georgia, Illinois, Kansas, Maryland, Massachusetts, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, Vermont, Virginia, Washington and Wisconsin. The subjects interviewed included 295 vendors, 322 students and 561 other adults. These adults included 112 school officials, 95 law enforcement officials, 87 public health officials and 250 parents. The number of respondents varies by each question.

FINDINGS

Youth Access Laws Are Not Being Enforced, and Children Can Easily Buy Cigarettes.

State officials report that laws are not being enforced.

Two-thirds of State health department officials indicate that there is virtually no enforcement of their State law; another fifth say it is minimal.

Nearly half of the State health officials believe the law is not being enforced because it is not a priority. "People don't get excited about tobacco," explained one health official. The general sentiment is captured in another official's response that "people feel [that] there are more important issues that must be enforced." Other State health officials cite both a lack of funding and difficulty in enforcing the law as reasons for nonenforcement.

State-level police data also confirm the minimal level of enforcement. The majority of NCIC control agencies contacted could not provide actual numbers on violations and enforcement. Of the 44 States with laws prohibiting the sale of cigarettes to minors, only five could provide any statistical information on vendor violations:

STATE	1989 VENDOR VIOLATIONS
Alaska	8
Connecticut	0
Florida	16
New York	8
Vermont	0

A notable area of statistical accomplishment is Utah which in 1989 issued 4476 violations to minors for purchasing and/or possessing tobacco.

Law enforcement officials in the remaining States report that municipalities are either not required to report such minor offenses, or that all such offenses are lumped together in a miscellaneous category and cannot be accessed separately.

Discussions with local law enforcement officials further confirm the impression that little is being done. More than three-quarters interviewed from 78 communities around the country do not think youth access laws are being enforced in their communities. In fact, 76 of 89 (85%) report that they do not know of anyone ever being caught breaking this law.

Local public health officials agree. More than two-thirds interviewed believe the law is not being enforced in their local area; 64 of 73 respondents (88%) do not know of anyone ever being caught under this law.

Community respondents also note lack of enforcement.

More than three-quarters of respondents in the community also say youth access laws are not being enforced. This includes 246 of 320 student respondents (77%) and 429 of 559 adults (77%) including law enforcement officials. Half of the vendors surveyed agree.

Respondents in the community also do not know anyone who has ever been caught selling cigarettes to minors; 206 of 255 student respondents (81%) and 421 of 488 adult respondents (86%) do not know anyone who has ever been caught. The majority of vendors, 227 of 268 (85%), are likewise unaware of anyone ever being caught.

Respondents also say children can easily buy cigarettes in their community. The majority of adult and student respondents, 477 of 560 adults (84%) and 269 of 319 students (84%), consider it easy. Of 159 children who say they have smoked, 139 (87%) claim that it is easy to buy cigarettes. About two-thirds of the vendors agree.

Despite easy access and lack of enforcement, most respondents are, nevertheless, aware of the youth access law in their State. Three-quarters of students know of these laws. Similarly, 479 of 552 responding adults (86%), including 90 of 94 law enforcement officials (96%), are aware of them. Most store clerks, managers and owners, 266 of 292 (91%), know it is illegal to sell cigarettes to minors. When asked how they became aware of these laws, vendors most often mentioned that it is common knowledge, while others report that their employer informed them.

Lack of enforcement is due to apathy.

Overall, both adults and vendors suggest apathy as the major reason why these laws are not being enforced. Of the 429 adult respondents who believe the law is not enforced, 97 (23%) believe that the law is not a priority with the police or limited resources for enforcement exist. Ninety-five (22%) say the law is not a community priority and no one really cares about it. Ninety-three (22%) blame vendors for not caring who they sell to and just wanting the profits from sales. Only 17 adult respondents (4%) blame a lack of awareness of the law.

Vendors generally agree with adult respondents. Of the 145 vendor respondents who believe the law is not enforced, 30 (21%) say that vendors in general do not care who they sell to and find it inconvenient to check identification. Thirty (21%) believe that the police are too busy to enforce the law and 28 (19%) suggest public apathy.

Other respondents in the community attribute nonenforcement to, as one respondent noted, "a lack of political pressure to have police or anyone else enforce it." Others believe that teens would get cigarettes anyway, especially from vending machines, and that the law is too difficult to enforce.

The majority of experts in the youth smoking field and officials in the communities taking local initiative believe these laws are a low police priority. "The police don't acknowledge it as a problem," one respondent explained. As one local official noted, "Local cops have more than they can handle. They don't have time for this law." One expert commented that "enforcement is not occurring because the community is not making a fuss about it." Others cite a lack of leadership and the absence of an identifiable person or agency responsible for enforcement.

The majority of the law enforcement officials confirm that it is not a priority and say they have more important issues to address. As one officer notes, "The law is not important enough to have officers using their time to enforce it." Local law enforcement agencies also mention reluctance to take these cases into the congested court systems, noting that prosecution of criminal laws is not only time consuming but costly.

Areas of Active Enforcement Are Few; They Rely on Local Leadership.

Local leadership exists in nearly all active enforcement areas.

Eleven active enforcement initiatives were identified and contacted; all but one (Florida) were local initiatives supported by the community. These areas include:

Solano County, CA	Woodridge, IL
Brookline, MA	Leominster, MA
Marquette County, MI	Minneapolis, MN
White Bear Lake, MN	Allentown, PA
Layton, UT	King County, WA

In eight of these areas, local laws have been established and are being enforced, while in the remaining three the State law is being enforced.

In some States, these active communities have served as examples for other municipalities which have now also adopted similar enforcement policies. There may be more than one active town in each area; however, interviews were held only with those who first became active.

Generally, these enforcement initiatives have resulted from community concern and local leadership. In Woodridge, a local junior high school principal became concerned when a young student was seen purchasing cigarettes in a nearby store, and asked the youth officer from the local police department if it was illegal. After some research, the officer discovered it was, in fact, illegal. The officer then helped write a town ordinance prohibiting sale to minors and possession by minors. In the last year, three vendors' licenses have been suspended and over 30 minors have been ticketed. Many surrounding towns followed his lead and adopted similar local ordinances.

In Massachusetts, in response to an apparent lack of enforcement of the youth access law, the State Health Department asked local health departments to take on the responsibility. So far, two have accepted and are issuing tickets to violators. Both towns have adopted the State law as a local public health law, thus allowing enforcement by local health inspectors.

Information obtained at a smoking conference showing that nine percent of seventh graders smoke motivated the Allentown Health Department to look into enforcement of the State's law. In its first test of the law, it found that all 15 of its 15 test stores sold cigarettes to minors.

In Solano County California, the Cancer Control Program, concerned about the public health effect of teens smoking, encouraged three local police departments to enforce the State's law. These efforts resulted in 31 arrests.

Active Enforcement Involves a Variety of Techniques, Primarily Administrative in Nature.

Among the most commonly used techniques are licensing, fines, stings, restrictions on vending machines, and warning signs.

Licensing appears to be an effective tool in enforcing youth access laws.

Of the eleven active programs contacted, eight provide for revocation or suspension of the vendor's license following a prescribed number of violations. While all States license the production, distribution or sale of tobacco, only 31 license vendors; the remaining States license the wholesaler or the distributor. The source of these licenses varies; some are issued locally and others are issued by the State. Suspending a vendor's right to sell cigarettes for a period of time has greater impact than a fine, according to active enforcers. Since sales can account for hundreds of dollars of a store's daily intake, a minor monetary fine, in contrast, is relatively painless to pay. Also, a vendor who is forced to turn customers away may lose customers. Officials in these communities agree that a license revocation penalty causes vendors to obey the law. They point to the virtually self-enforcing alcohol laws as models.

Three types of license revocation were identified in the active communities. In Florida, the law prohibiting the sale of tobacco to minors is enforced by the Division of Alcoholic Beverages and Tobacco. Vendors who violate cigarette access laws can and do have their license to sell alcohol suspended. This occurred 16 times last year. In Brookline and Leominster, where the law is enforced by the local health department, vendors lose their food licenses. The first license was suspended recently. In the remaining sites, tobacco licenses issued locally to vendors are revoked when misused. In all three cases, suspensions are for a period of days for the first offense and longer for each added offense. One active enforcer stressed the importance of making these punishments reasonable. "If you make it too severe, you'll lose that crucial community support."

License fees vary greatly and can be used in many ways. Fees charged for these vendor licenses range from $5 for 3 years in Marquette County, MI to $210 for 3 years in King County, WA. In some areas (King County and Florida) fees are earmarked to pay for enforcement, while in others (Brookline) they fund tobacco and health education programs.

Civil fines work better than criminal penalties.

While criminal offenses must work their way through the criminal justice system, civil offenses are generally handled administratively. Seen as a viable alternative in the enforcement of youth access laws, they are used in six of the eleven active communities. Civil penalties expedite enforcement through the use of non-traditional enforcement officials (i.e., health inspectors, licensing inspectors, etc.), and avoid needlessly clogging the criminal justice system. In Minnesota, the penalty for selling to a minor is a gross misdemeanor, which if enforced, could mean jail for the clerks who sell. However, when three clerks in Ramsey were arrested for selling to minors, there was a public outcry for more lenient penalties. Minneapolis thus chose to punish violators civilly, going after the owner's license rather than the clerk.

In Florida, the access laws are criminal and violators must appear in court. Criminal court judges, however, feel strongly that these violators should not be burdened with a criminal record for such a common offense. The judges issue fines, but the violators are not adjudicated as guilty and, therefore, avoid criminal records. In some California criminal courts, judges have suspended sentences and have only issued fines. They also believe that criminal penalties do not fit this crime.

In Leominster and Brookline, sanitarians and public health officials issue tickets on which the fines are outlined. Cases are handled entirely by the health department; the police are not involved.

Overall, civil penalties are well received by active communities. When asked why other State youth access laws are generally not enforced, a majority of active community respondents believe it is because it is not a police priority; some blame public apathy. They feel that people, while not wanting children to purchase cigarettes, believe that police should be concentrating on more important issues, like illegal drugs and rape.

Police involved in actively enforcing these laws believe that the laws should be civil as opposed to criminal and would be more appropriately enforced by health departments and licensing officials. One of the more successful police enforcers stated, "The police department should not enforce this law. Citizens would argue there's not enough manpower. The health department is a more appropriate arm because it is not an offensive crime. It is a health issue - an administrative issue."

Limited placement allows for vending machines in places that do not normally allow children anyway (i.e., bars, offices or factories). Currently, only 6 percent of State health departments interviewed report that their youth access laws limit the placement of vending machines, but half suggest limiting placement.

Locking devices require the installation of a relatively inexpensive device that inactivates the machine until a clerk triggers the power, thus allowing the clerk to check the age of the purchaser. Utah experimented with locking devices recently with limited success. Reportedly, clerks would simply activate the machine without checking the age of the purchaser. Since locking devices require employee participation, they are often not as effective in busy places, such as bars or restaurants, where employees are more likely to simply activate the machine.

Sixteen municipalities in Minnesota recently banned cigarette vending machines entirely. These bans have generally been well received and are expected to lead to stricter enforcement of over-the-counter sales. The remaining 42 percent of State health department officials say that total bans are the only way to prevent teens from using vending machines.

Warning signs remind both clerks and customers that sale to minors is illegal.

Currently, seven of the eleven active communities require vendors to post signs at the point of sale stating that it is illegal to sell to minors. Similarly, 55 percent of State health departments say vendors in their States are required to post warning signs. In Massachusetts, vendors must place these signs in such a way that they face the clerk as a constant reminder. In Utah, innovative designs and neon colors have been used to make signs distributed by local health departments more noticeable. In addition to signs, Woodridge clerks wear buttons reminding customers of the new ordinance. While enforcement experts stress that signs alone are not enough to stop illegal sales, they are a constant reminder to both children and employees.

Experts believe that making tobacco laws similar to alcohol laws would be an effective enforcement mechanism.

Enforcement in Florida, conducted by the Division of Alcoholic Beverages and Tobacco, is the same for alcohol and tobacco sales to minors, although ages differ (21 and 18, respectively). Three other States with similar alcohol/tobacco control agencies are not actively enforcing tobacco access laws, although they have the authority. At least two alcohol control agencies (ME, WA) report that their State legislatures are considering authorizing them to enforce existing tobacco access laws. Sixty percent of State health department respondents believe that the alcohol enforcement model would work for tobacco, and point to the license revocation provision in particular. Those who feel that the alcohol enforcement model would not work for cigarettes cite the extremely high number of tobacco vendors, which far exceeds the number of alcohol vendors.

Those proposing new youth access legislation are cautioned not to preempt any already existing local activity.

Officials in charge of active enforcement initiatives based on locally enacted ordinances caution that State laws should not preempt stronger local legislation. As a case in point, California recently passed a State law which precludes municipalities from enacting tobacco control laws.

Opinions vary as to whether or not to make it illegal for minors to possess cigarettes.

In five of the eleven sites contacted, it is illegal for a child to possess cigarettes. Enforcement experts believe this makes enforcement easier, serves as an additional deterrent and gives the vendor leverage when refusing to sell to minors. Penalties for youth violators range from 5 hours of community service to a $50 fine. In two areas enforcement is directed at the minor as opposed to the vendor: ticketing teens and suspending them from school and extra-curricular activities for possessing cigarettes is central to Utah's approach; White Bear Lake, MN brings them to the police station when caught in possession of cigarettes. California notes that caution must be used when performing stings in communities where possession or purchase is illegal. These minors must either be police agents or have special police permission.