

Active enforcement of minors' access laws: a moral and ethical imperative

Several years ago Sergeant "Buzz" Talbot demonstrated how easy it is to prevent merchants from selling tobacco to minors.¹ In the US, he championed an enforceable law into enactment, and then enforced the law through a programme of routine test purchases by youths. The proportion of merchants who made illegal sales to the youth inspectors hovered around zero on repeated rounds of compliance testing, and the proportion of regular smokers in the junior high school dropped by 69%.¹ Efforts to reduce youth access to tobacco have also been rewarded with sizable reductions in tobacco use among youths in other communities.^{2,3}

Given the importance of preventing smoking among youths, it has been a great disappointment that it is so difficult to convince many health authorities to cooperate with enforcement efforts, let alone to champion such measures. In this issue of *Tobacco Control*, Carruthers and Macdonald report on the effect of the policy of the Health Department of Western Australia of enforcing a youth access law only when a complaint was received.⁴ Youths were able to purchase cigarettes in 89% of their attempts. Despite the abysmal failure of their passive approach to enforcement, the Health Department rejects the adoption of routine compliance testing as "unethical".⁴

Selling tobacco to minors is unethical. Failing to act to prevent harm to children is unethical. Preventing such harm through a fair programme of merchant education, training, and compliance testing is not only ethical, it is a moral duty.⁵

Like driving an automobile, selling tobacco is a privilege that should be granted only to those who can do so without violating the law or endangering the lives of others. In the US, would-be drivers must demonstrate to law enforcement officials the ability to drive safely and legally. Drivers who do not demonstrate continued compliance risk the loss of their licence.

Compliance testing is the "road test" for tobacco merchants. Merchants have a legal responsibility to positively establish that a customer has attained the legal age before selling a tobacco product. They are told that, as a condition of being granted a licence to sell tobacco, they will be required to demonstrate that they are conducting tobacco sales legally. If merchants are educated and forewarned, there can be no question about the fairness or legality of routine compliance testing.

The article by Biglan *et al*, also published in this issue of *Tobacco Control*, provides a fine example of how routine compliance testing can be initiated in a way that is open, honest, and fair to merchants.⁶ This report describes the effects of an intense merchant education and training programme. In this case, merchants were rewarded for *not* selling to minors during compliance tests. Anyone with concerns over the fairness of compliance testing might take the cue to start by rewarding good behaviour, and only later punishing the bad. Initial "punishments" can consist of mandatory educational programmes.

Biglan *et al* are the first to acknowledge the limitations of relying solely on education. In my opinion, merchant education is not a practical long-term alternative to enforcement. First, we cannot be satisfied with the compliance rates achieved by intense merchant education,

typically about 75%.^{1,7} With 25% of tobacco vendors selling to minors, it would take no more than a few days for youths to learn which vendors to patronise.

The impact of education probably stems in part from a fear of prosecution. If enforcement does not follow education, improvements in merchant compliance tend to disappear.⁷ In Petaluma, California, a remarkable 96% compliance rate was achieved with education alone, but when officials made it clear that offending merchants would not be prosecuted, compliance fell quickly to 11%.⁸

Not only is merchant education less effective than compliance testing, but the educational programmes that have produced results have been far more costly than enforcement would have been.

What is needed is an enforcement system that will remain effective as long as tobacco is sold.⁹ Such a system requires the designation of an enforcement agency, with funding adequate to hire enough inspectors to conduct the required compliance tests. Funding can be through licensing fees or a small tax on tobacco. Violations are best handled through administrative sanctions to keep all parties out of the court system.

We know that routine compliance tests of all tobacco vendors several times each year can achieve and maintain compliance at close to 100%. If officials propose another method of enforcement, the burden falls upon them to demonstrate that their remedy affords children the same degree of health protection as is achievable through compliance testing.

In most places, current youth access laws were not designed to make enforcement either possible or practical. If the public is concerned, however, laws can be changed. The best place to start is to follow the example of Carruthers and Macdonald by conducting a survey to demonstrate how easily youths can buy tobacco.⁴ This can be followed by a merchant education effort drawing upon some of the ideas used by Biglan *et al*.⁶ If compliance is not maintained near 100%, it is time to pressure lawmakers to improve the law and institute enforcement. Given all we know about the dangers of tobacco, to fail to enforce these laws effectively is unconscionable.

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4 Carruthers S, Macdonald C. The availability of cigarettes to minors in Perth, Western Australia. *Tobacco Control* 1995; 4: 49-52.

5 DiFranza JR. Ethical considerations in the conduct of studies involving youth access to tobacco. *Tobacco Access Law News* 1992; 16: 1-4.

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