



Tobacco Enforcement Best Practices Roundtable Kern County Sheriff's Office – March 9, 2011

Outcomes Report: Best Practices, Challenges, and Solutions

I. Introduction

The California Department of Public Health (CDPH), California Tobacco Control Program (CTCP) is committed to developing statewide strategies that will support local enforcement of tobacco sales laws. To this end, CTCP hosted four regional, interactive Tobacco Enforcement Best Practices Roundtables. The goals of the Roundtables were:

- 1) To gather law enforcement, public health professionals, program administrators, and other enforcement personnel in order to stimulate the sharing of local successes and challenges; and
- 2) To disseminate a Summary Report of the best practices that emerged from all four Roundtables and to develop and disseminate a Roundtable Planning Toolkit as a way to support the coordination of similar Roundtables by local jurisdictions.

Convened on March 9, 2011, the focus of the third regional Roundtable was on the administration and enforcement of local Tobacco Retailer Licensing (TRL) ordinances, Penal Code 308(a), and the Stop Tobacco Access to Kids Enforcement (STAKE) Act. Participants included representatives from nine cities in five counties. The counties represented included: Santa Barbara; Kings; Tulare; Kern; and Fresno. Participating statewide enforcement agencies included: the California Board of Equalization (BOE); California Alcoholic Beverage Control (ABC); and California Department of Public Health, Food and Drug Branch, STAKE Unit. This Outcomes Report highlights best practices, challenges, and possible solutions in enforcing tobacco sales laws in this region. The following pages contain a summary of the cumulative knowledge and experience shared during small group discussions and a large group debrief. CTCP is pleased to share this Outcomes Report with the law enforcement and public health communities.

If you have questions or comments, or would like to obtain a copy of other regional roundtable Outcomes Reports, please contact Mary Strode, CTCP STAKE Act Coordinator, at Mary.Strode@cdph.ca.gov or at (916) 449-5496.

II. Best Practices

ADMINISTRATIVE	<ol style="list-style-type: none">1) Require retailers that violate youth sales laws to attend educational training through a local tobacco retail licensing ordinance. This training could be modeled on existing BOE, California Department of Alcoholic Beverage Control (ABC), or STAKE trainings.2) Use an administrative penalty system, rather than a judicial penalty system, to cite violators.
ENFORCEMENT	<ol style="list-style-type: none">1) Selecting retailers for decoy operations:<ul style="list-style-type: none">• Focus on retailers with complaints of illegal tobacco sales• Focus on stores within a certain radius of high schools or tobacco specialty stores• Try to check all stores in smaller jurisdictions• Check repeat violators more often2) Recruiting youth decoys:<ul style="list-style-type: none">• Match the demographics of decoys to that of the community; decoys should also be youthful in appearance• Partner with Explorer programs or medical or science academies at high schools• Collaborate with other programs, such as ABC, to share decoys• Provide volunteer hours, which many high school students are required to have to graduate; or offer small stipends or gift cards3) Using a youth decoy script to limit the ways in which violating retailers can challenge a violation while maintaining a “natural” decoy operation.4) Evidence gathered should include photos of the decoy, decoy identification, and consummated purchase on the day of the operation.5) Decoys should request a tobacco item other than Marlboros, as this is a common product purchased during sting operations.
OTHER	<ol style="list-style-type: none">1) Communicate outcomes of local violations to state enforcement agencies:<ul style="list-style-type: none">• Forward to BOE, STAKE, and ABC local offices (Use Tracking and Reporting Illegal Tobacco Sales to Minors: A How-to Guide for Projects Funded by the California Tobacco Control Program as a resource)• Retailers can be included to a list of known violators, which triggers greater surveillance2) Local media buys can be used to either promote or expose retailers based on their compliance with tobacco sales laws.3) TRL ordinances are a strategy to sustain funding for local enforcement efforts.

III. Challenges and Potential Solutions

CHALLENGE	POTENTIAL SOLUTIONS
<p>Decoy Operations</p>	<p>RECRUITMENT</p> <ul style="list-style-type: none"> • Recruit youth decoys from existing networks (Explorer program, high school programs, etc.) • Select decoys that fit demographic of community • Use decoys from another town to avoid clerk recognition of the youth • Seek to recruit youthful decoys, as retailers may challenge the age of decoys in court (avoid facial hair, etc.) <p>TRAINING</p> <ul style="list-style-type: none"> • Script the youth purchase and keep it simple to limit the defense for a retailer that sells • Train decoys to know how to respond during buy operations with role playing, and information on how to remain safe <p>OPERATIONS</p> <ul style="list-style-type: none"> • Use a standard undercover protocol when completing youth decoy operations • Acting natural is important to success • Enact protocols to protect decoy from reprisal by retail clerk or owner (e.g. using youth decoys in operation outside of the area in which they live) • Every law enforcement agency is different, and immunity letters may not be necessary if law enforcement is present, as it is at the discretion of law enforcement to cite youth violators
<p>Phone Tree</p>	<ul style="list-style-type: none"> • Wait to inform retailer of illegal sale until next day (exception: if citing under PC 308(a), the citation is issued immediately) • Make small protocol changes by asking for chew or flavored cigars or even for a single cigarette • Retailers expect decoy operations during weekday afternoons; attempt operations during mornings, nights, weekends • Use multiple teams acting simultaneously • If retailers are selling to local youth they personally know, use decoys from out of the area • Have decoy buy other items in addition to tobacco (note: this may expose operation to challenges by retailer)

CHALLENGE	POTENTIAL SOLUTIONS
Evidence Gathering	<ul style="list-style-type: none"> • Be sure to have a photo of the decoy, picture of ID used, picture of marked bill • All taken the day of the operation
Lack of resources	<ul style="list-style-type: none"> • A TRL ordinance can fund enforcement operations • Use TRL as a self-sustaining model • If TRL fees are too low, it will not cover the cost of ordinance enforcement and administration of the licensing program • ABC allows retailers to pay a fee instead of facing a suspension. The fee is based on sales percentage from stores • Active enforcement by law enforcement personnel is less challenging with a dedicated source of revenue
Political opposition to enforcement	<ul style="list-style-type: none"> • Compare revenue from tobacco sales to cost of license fee when presenting to city council • Talk about health risks of tobacco use by minors • Utilize media to build public support • Work with tobacco coalitions to mobilize around TRL ordinance • An option when TRL is not available is to cite owner not clerk by prosecuting under unfair business practices regulations (State Business and Professions Code Section 17200)
Tobacco retail licensing	<ul style="list-style-type: none"> • Before issuing a local license, makes sure the retailer is in compliance with the state tobacco license • Create a one-step process for adjudication; this would allow for a license suspension or other penalty to be implemented without involving a local DA or court system • Tie violations of federal, state, and local licenses to a violation of the local TRL
Adjudication	<ul style="list-style-type: none"> • Require violating retailers to attend educational training • BOE and the Attorney General's Office should be notified to add retailer to list of known violators, which may subject the retailer to increased penalties • Send PC308(a) violations to ABC
Reporting outcomes	<ul style="list-style-type: none"> • Issue a press release; host a press conference • Report violations to local Health Department, Sheriff • Post list of violators on the Health Department website

CHALLENGE	POTENTIAL SOLUTIONS
State and local collaboration	<ul style="list-style-type: none"> • The state STAKE Unit is available to coordinate with local enforcement on youth tobacco purchase surveys (YTPSs) • The STAKE Unit can provide data on past decoy operations in local jurisdictions • BOE can share information on retailers with local DAs • STAKE provides notification to local law enforcement prior to and following sting operations • Local enforcement should also notify STAKE when conducting decoy operations

IV. Resources

California Department of Public Health, California Tobacco Control Program:
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California Office of the Attorney General, Tobacco Litigation and Enforcement Unit:
Alan Lieberman, Deputy Attorney General
Phone: (916) 323-3705
E-mail: Alan.Lieberman@doj.ca.gov

California Board of Equalization Regional Office:
Dennis Forrest, Supervising Investigator
Phone: 559-440-5431
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California Alcoholic Beverage Control:
Armando Gonzales, District Administrator
Phone: 818-501-5017
E-mail: armando.gonzalez@abc.ca.gov

General Accounting Office (GAO) report: ILLICIT TOBACCO: Various Schemes Are Used to Evade Taxes and Fees
Available: www.gao.gov/new.items/d11313.pdf

Point-of-Sale Annotated Resource List
Available: www.tcsstore.org/appendix/updated.html

Food and Drug Administration Center for Tobacco Products
www.fda.gov/tobaccoproducts/