



Tobacco Enforcement Roundtable: Best Practices, Challenges, and Solutions May 2009

I. Introduction

Background:

In the summer of 2007, the California Department of Public Health (CDPH), California Tobacco Control Program (CTCP) convened its Point of Sale Practices advisory group to discuss possible statewide strategies that could support local enforcement of illegal sales of tobacco laws. Through these discussions, the Tobacco Enforcement Best Practices Roundtable Project was conceptualized. The primary goals of this project are: 1) to convene three to four regional, interactive roundtables focused on the enforcement of illegal sales of tobacco laws in geographically diverse regions of California between 2008 and 2011, in order to stimulate the sharing of local challenges and best practices; and 2) to disseminate a summary of roundtable outcomes and a roundtable planning toolkit to California's tobacco control community as a way to stimulate and support the implementation of similar roundtables by local jurisdictions.

First Regional Roundtable:

The first regional roundtable was successfully convened in Glendale, California on September 10, 2008. The focus of this roundtable was on the administration and enforcement of local tobacco retailer licensing (TRL) ordinances. Roundtable participants represented 14 diverse jurisdictions in Los Angeles County. At the time of the event, these jurisdictions were either actively enforcing a local TRL ordinance or were about to begin enforcement operations.

Second Regional Roundtable:

The second regional roundtable was successfully convened in Walnut Creek, California on May 8, 2009. The focus of this roundtable was on the administration and enforcement of TRL ordinances, Penal Code (PC) 308(a), and the Stop Tobacco Access to Kids Enforcement (STAKE) Act. Roundtable participants represented 6 counties and 17 cities in the Bay Area including Santa Clara, San Mateo, Marin, San Francisco, Alameda, Contra Costa, Berkeley, Dublin, Walnut Creek, San Ramon, South San Francisco, Oakland, Sunnyvale, Richmond, Fremont, Hayward, San Pablo, Albany, and Pacifica.

Roundtable Outcomes:

CTCP is pleased to share this summary report highlighting best practices, challenges and possible solutions from the second regional roundtable (the report from the first regional roundtable was disseminated in October 2008). These experiences and recommendations were identified through small group discussions and a large group debrief. Although future regional roundtables are still to come, as well as an analysis report summarizing key findings from all of the roundtables convened, CTCP hopes that this interim report will help enhance tobacco



enforcement efforts around the state. If you have any questions or comments or would like to obtain a copy of the first regional roundtable summary report, please contact Mary Strode, CTCP's STAKE Act Coordinator, at Mary.Strode@cdph.ca.gov or at (916) 449-5496.

II. Administrative Best Practices, Challenges, and Possible Solutions: Common Themes

Administrative Best Practices:

- Maintain clear and open communication between departments.
- Have a point person within a jurisdiction to coordinate interagency communication.
- Create (or use existing) informational and educational brochures to increase merchant awareness.
- Contact the health department for a complete list of retailers; update list frequently.
- Use municipal code to adjudicate citations; avoid going through the District Attorney (DA).
- Match youth decoys with community demographics.
- Openly communicate with prosecutor on youth decoy operation protocols and evidence gathering to support citations.

Administrative Challenges and Possible Solutions:

Challenge:	Possible Solutions:
DA does not follow through on citations	<ul style="list-style-type: none"> • Coordinate and communicate with Attorney General's Office (AG)—seek AG's help with addressing DA challenges. • Seek more information from the courts—find out what information they need. • Use municipal code to adjudicate citations; avoid going through DA. • Set up a special prosecution team composed of City Attorney's staff, deputized to act as a DA. • TRL administrative process is independent of the criminal process unless your TRL ordinance requires an adjudicated criminal case (e.g., PC 308[a]).
Not receiving violation data from state enforcement agencies	<ul style="list-style-type: none"> • Build relationships between state and local law enforcement agencies.



Inaccurate retailer list	<ul style="list-style-type: none"> • Cross-check Board of Equalization’s (BOE) tobacco retailer list with other tobacco retailer lists such as those used by the CDPH, Food and Drug Branch (FDB), STAKE Act Program. • Obtain a retailer list from the local health department. • Keep local tobacco retailer list updated by requesting data frequently. • Support legislation to make tobacco retailer licenses available on the Internet.
Lack of retailer education/awareness	<ul style="list-style-type: none"> • Create (or use existing) informational/educational brochures. • Retailers have the right to refuse sale: include this information in retailer education training.
Lack of funding	<ul style="list-style-type: none"> • Designate a point person within the law enforcement agency to seek enforcement grant funds (e.g., from public health department); collaborate with community partners on county-wide grants (grant money makes enforcement a priority). • Pass a TRL ordinance with fees and fines earmarked specifically for enforcement of the ordinance.

**III. Enforcement Best Practices, Challenges, and Possible Solutions:
Common Themes**

Enforcement Best Practices:

- Provide youth decoys with incentives (gift cards, cash, etc.).
- Send youth decoys in groups of two instead of sending them in by themselves.
- Have youth “act like themselves” (i.e., have keys in hand as they walk into retail shop; have their cell phone with them).
- Organize youth in one meeting place.
- Drop off/pick up youth for sting operations to ensure their attendance.
- Use 15-to16-year-old youth for decoy operations.
- Work with your City Attorney to issue misdemeanors to help bring violators into compliance.
- Bring community members on board to help identify violators, share resources, provide support for the program, and recruit youth for decoy operations.
- Use a similar protocol during every operation so that the data from year to year is comparable; trends in increases and decreases will be more valid.
- Request and obtain a sales receipt from retailers during sting operations.



Enforcement Challenges and Possible Solutions:

Challenge:	Possible Solutions:
Inappropriate decoys	<ul style="list-style-type: none"> • Use 15- to 16-year-old youth. • Provide in-depth training to youth decoys. • Utilize PC 308(a) training video. • Match youth with community demographics. • Pay youth for participation per store (STAKE pays \$5 per store, \$10 per hour); offer gift cards, food, movie certificates.
Unpredictable youth and lack of decoys	<ul style="list-style-type: none"> • Have youth sign up as a city volunteer, not an Explorer. • Arrange transportation for youth. • Recruit youth from community coalitions and high school tobacco education classes. • Utilize children of police as youth decoys. • Contact school counselors, job programs and local health departments for a list of interested youth (i.e., those that have recently participated in a youth tobacco purchase survey). • Use county pool of youth for all cities in the county. • If the decoy or police officer knows the merchant or shops there regularly, delete store from the operation, or switch out the youth/officer.
Retention of youth decoys	<ul style="list-style-type: none"> • Encourage youth to enroll in STAKE Act youth decoy program.
Retailer phone trees	<ul style="list-style-type: none"> • Prioritize retailer decoy operations (visit stores most likely to violate first, and those least likely to violate last). • Conduct simultaneous sting operations in geographically separate areas of your jurisdiction.



Citations not filed/no follow-through on citations	<ul style="list-style-type: none"> • Have law enforcement participate in tobacco retail licensing hearings. • Build relationship with prosecutors. • Utilize local media to call attention to the need to hold non-compliant retailers accountable. • Request tobacco product sales receipt from retailers following stings.
Low retailer compliance	<ul style="list-style-type: none"> • Use media to issue press releases on non-compliant retailers, publish violators and the illegal sales rate. • Use media to publish positive press on compliant retailers; celebrate community health, and encourage community to support compliant retailers. • Invite media to press conference where city dignitary (e.g., Mayor) gives awards to compliant merchants. • Send merchants Tobacco-Free Hero awards for keeping tobacco away from youth.
Enforcement of tobacco laws not a high priority	<ul style="list-style-type: none"> • Consider overtime pay for youth decoy operations or obtain grant money to cover cost of youth decoy operations. • Set up separately funded TRL program.

IV. Information Sharing and Other Suggestions: Common Themes

Information Sharing:

- Request updated data frequently from BOE, local health departments, and STAKE to ensure an accurate tobacco retailer list.
- Find out from BOE which tobacco retailers are violating laws in your community; contact your regional BOE representative.
- Contact FDB for data on violators.
- Utilize California Online Database for Enforcement database to log inspection information and citations.

Other Suggestions:

- Community advocacy agencies can be a strong source of support for your program; actively collaborate with these groups.



V. Administrative Challenges and Best Practices: Comments from all three breakout groups

Administrative Challenges:

- Difficult to obtain report from court regarding courts' decision on violation—not communicated to administration automatically.
- Information from the court on the result of the cases is not automatically communicated, and the window of time to suspend the license closes quickly.
- Difficult to obtain adjudicated case information from FDB in order to suspend the license.
- PC 308(a) violations are usually against the clerk, not the store.
- DA is hesitant to fine store owners.
- PC 308(a) violations dismissed by the DA.
- Retailers can argue extenuating circumstances in licensing hearing (to suspend the license) which limits the revocation time of the license.
- Reduction of fines hurts enforcement.

Administrative Best Practices:

- Ask law enforcement to ensure that retailers are not selling during their revocation period and that tobacco has been removed from the shelf.
- Issue a re-inspection fee.
- Coordinate multiple agencies with a specific point person per agency to increase efficiency.
- Notify the AG about adjudicated cases in the local community for possible future enforcement action at the state level.
- When putting together a tobacco retailer licensing policy, involve everyone who would work on the ordinance (city attorney, police, etc.) to work out the details.
- Combining alcohol and tobacco license fees may enable jurisdiction to pass a higher license fee.
- Officer writing citation tracks it through to adjudication. Once case is adjudicated, officer delivers case to tobacco control program within health department; health department sends hearing date notice to store owner.
- Send PC 308(a) violations to a community court as an alternative. Store clerk pays money to community court (no criminal fine or penalty). Money goes towards court programs; reduces contest at hearings. Citation goes to health department for Directors hearing and suspension of license.
- Enforce the provisions of the STAKE Act rather than PC 308(a).
- Communicate with City Attorney, City Manager; use Business and Profession Code, and/or STAKE Act to get DA to prosecute PC 308(a) citations.
- Periodically revisit administrative policies and procedures and make any needed adjustments.



VI. Enforcement Challenges and Best Practices: Comments from all three breakout groups

Enforcement Challenges:

- Varying protocols for youth decoy identification (ID); checking ID not part of PC 308(a) protocol.
- Clerks may assume if youth have ID they are old enough to purchase tobacco.
- Clerks not checking IDs.
- Some jurisdictions have protocols that do not allow decoys to lie—contributes to an artificially low sales rate because in reality, youth lie.
- African Americans are often uncomfortable participating as youth decoys due to cultural issues with police.
- Boy Scouts from the Explorers program cannot be used as youth decoys because their insurance does not cover decoy work, only regular Explorer duties. If Scouts are to be used they must be considered volunteers outside of the Explorers program.
- DA perception that some youth decoys look too old.
- How to deal with the issue of “shoulder tapping.”
- Confusion about PC 308(a) versus STAKE Act protocols.
- Retailers with names that sound similar or who are related use this tactic to get out of prosecution.
- Retailers report decoy car makes and models to the retailer phone tree.
- Retailers lack knowledge; language barrier.
- Difficult to get DA to prosecute PC 308(a) sting citations.
- FDB case results not routinely communicated to locals.

Enforcement Best Practices:

- Recruit youth from other city programs.
- Recruit children of officers as they are easier to track and can continue to participate in alcohol stings once they reach 18 years of age.
- Conduct youth decoy trainings at local high schools.
- Peer-to-peer trainings; Partner new decoys with veterans.
- Have a pool of youth from different backgrounds.
- Law enforcement from different cities within a county form a partnership to create a pool of youth decoys.
- Ideal youth decoy is a 16-year-old with a driver's license who looks older.
- Pair a youth decoy with no ID with another youth who has an ID.
- Conduct decoy operations in groups.
- Prepare youth to attend court hearings.
- Decoy operations should be realistic. Scenario: youth holding cell phone and car keys during a buy; youth buying youth-popular brand cigarettes such as Black & Milds/Swishers.
- Keep everything—receipts, picture of youth, clerk, and money from buy, obtain statement from youth decoy and tobacco product as evidence.



**Tobacco Enforcement Best Practices Roundtable
Walnut Creek Police Department, California
May 8, 2009**

- Law enforcement could begin rumors of sting operations to keep retailers in compliance in months between compliance checks.
- Spread decoy operation out geographically to avoid phone tree.
- Cross-check retailer lists with BOE, STAKE Act program, local health department.
- Encourage retailers to incorporate scanning technology to check IDs (\$400-\$1,000).
- Send congratulatory letters to compliant retailers.
- Criminal and civil (TRL) are two separate processes unless your ordinance requires adjudication through a criminal process.
- Communicate with the DA before decoy operations—seek their requirements.
- Let DA know that documentation and education was provided to retailers ahead of time, otherwise there might not be a conviction.
- Explain retailer non-compliance and show documentation to DA.
- Communicate with DA to ensure that case will not be thrown out due to decoy appearance.
- Process citation as an infraction to avoid DA prosecution. Citation goes through traffic court, includes the same minimum penalty for clerks.
- If a TRL ordinance is in place, the only requirement to revoke a license is proof of sale of cigarettes (infraction or misdemeanor status not an issue).
- Seek AG support; have them communicate with the DA's office (sensitive approach).
- Form a "special prosecution team" (e.g., a team of deputized City Attorney staff) that is focused on following up with cases so that the DA does not need to.
- Share enforcement information (PC 308(a), TRL, STAKE Act) with state enforcement agencies (e.g., BOE, FDB, AG).
- Cite and seize illegal cigarettes—a good way to suspend non-compliant retailers and curb tax-related issues due to license removal.
- Have citation adjudicated before hearing—helps to avoid uneven enforcement process.

VII. Information Sharing and Resource Needs: Comments from all three breakout groups

Resource Needs:

- Connect with supportive groups who can provide funding assistance (e.g., incentives for youth).
- Need readily available retailer education and training resources.
- Adjudicated data from STAKE Act would be helpful.



Other Suggestions:

- Make local enforcement of illegal sales to minors laws a priority for city council members.
- Build interdepartmental support for local tobacco retailer licensing programs (e.g., police departments, health departments, city offices).
- Involve the community in supporting ongoing tobacco enforcement and making it a priority (e.g., work with a community collaborative and/or with community members to conduct a community needs assessment).
- Listen to community input regarding illegal sales activity.
- Use retailer educational material from local health departments and CTCP.

VIII. Key State Agency Contacts

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