



## Episode Details:

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**Title:** Episode 24: Equitable Enforcement in Commercial Tobacco Control Policy

**Description:** In this episode, we talk with Natasha Phelps, a Lead Senior Staff Attorney at the Public Health Law Center, about the recent statement on “Decriminalizing Commercial Tobacco: Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control” that was released last year by a consortium of public health organizations. We take a deeper dive into that statement, discussing the values outlined in it as well as some practical ways to translate those values into action.

## Transcription:

**Mollie Mayfield:** You're listening to the counter tobacco podcast. [music] I'm your host for today, Managing Editor Mollie Mayfield. Today, we're going to be talking about equitable enforcement in commercial tobacco control and prevention. We've talked a little bit before on the podcast about how working towards health equity in tobacco prevention and control policy means considering equity at every stage of the policy process, including in planning for enforcement. We also mentioned the statement on Decriminalizing Commercial Tobacco: Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control that was released last year by a consortium of public health organizations. And today we're going to take a deeper dive into that statement, the values outlined in it, and some practical ways to translate those values into action. Our guest on the show today is Natasha Phelps, a lead senior staff attorney at the Public Health Law Center, where she provides legal technical assistance on commercial tobacco control and equitable public health policy issues to public health professionals and organizations, legal professionals, and advocates throughout the United States. Natasha also manages a team of attorneys at the Public Health Law Center that provides tailored legal technical assistance on local and state tobacco law and policy to communities, organizations, and governments in Minnesota. In addition to her work as an attorney, Natasha serves as the secretary on the Board of Directors of the Center for Black Health and Equity and teaches as an adjunct professor at the Mitchell Hamline College of Law. Prior to joining the Public Health Law Center, Natasha worked as a litigation associate at a private defense firm. And speaking of the Center, this podcast is also really part two to a conversation we had on their Black Body Health podcast last month. So, if you haven't checked that out yet, please do. Natasha, welcome to the podcast!

**Natasha Phelps:** Thank you for having me, Mollie. I'm so happy to be here.

**Mollie Mayfield:** So, I want to start off by asking kind of a big and broad question, which is what does equitable enforcement in the world of commercial tobacco prevention and control mean to you?

**Natasha Phelps:** Yeah, well, I think you already mentioned the statement on equitable enforcement that all of our groups came together to really reach a consensus on. But if I had to sum up what that statement says and what equitable enforcement means to me, it's really about just having a clear understanding of what health means. Whether we're talking about enforcement or research or community engagement or drafting a policy in every aspect of policy development, I think it's really important to have a holistic view of health, to be understanding the social,

economic, and environmental factors that not only lead us to a public health issue that needs to be addressed but also that can be affected by public health policy. And enforcement is just one component of that cycle. And so really what I think it means to have equitable enforcement in commercial tobacco policy is to not contribute to the problems that we are aiming to address. So, we're trying to improve health, but that also means that we are acknowledging employment as a means of health, that we are recognizing freedom as a means of health. And so, we really want to consider this when we're drafting enforcement. And if we do that, I really think that enforcement in commercial tobacco policy can actually be used to not only avoid contributing to a problem but actually to advance a resolution to a lot of those problems. So not only can we serve as – and can equitable enforcement in commercial tobacco serve as a tool to give people the resources that they hadn't previously had access to, but it can also help to engage in culture as a means of prevention that people maybe hadn't had access to. So, I think as long as enforcement and commercial tobacco is really grounded in an equitable intention, then that to me is great. And one way of getting there is just to have genuine and consistent work with communities that are really focused on helping the communities and then focusing any type of punitive measure on the industry. And that, to me, is what equitable enforcement in commercial tobacco really is about.

**Mollie Mayfield:**

Yes, thinking about all that context is so important, I think, in recognizing that anything that we do in the world of tobacco control is not happening in a vacuum, and all of those other factors have to be considered and to look at health more holistically, as you said.

So, in our deeper dive on the statement here on equitable enforcement and decriminalizing commercial tobacco. Let's take a look at each one of the four core values that's outlined in that statement. So, the first value is that *“commercial tobacco control laws and policies, including regulations on the sale and distribution of commercial tobacco products, are first and foremost public health measures.”* So what this means in practicality is having public health officials or non-police officials handle enforcement of tobacco control laws, ensuring that this is a civil or administrative enforcement process rather than a criminal one. So, from a legal perspective, what's the difference in these types of enforcement that we're talking about here?

**Natasha Phelps:**

Yeah, I think that's a really important clarification to make when we're actually starting to talk about equitable enforcement in commercial tobacco because there are many different enforcement or law enforcement agencies that are brought in when it comes to commercial tobacco regulation. And I think when we say enforcement, I think we automatically think about police, which is a part of the equation, or it has been traditionally. But there are other law enforcement agencies like Departments of Revenue, like offices that have to do with housing. There are many different law enforcement agents, depending on a type of commercial tobacco policy. But I think what this value really is getting back to is us being very intentional about not only being explicit about who is doing the enforcing in the policy, not just leaving it up to whatever makes sense. And once a policy is passed administratively, it'll just get figured out eventually. But also remember that when we're enforcing commercial tobacco policy, we really need to think about who is best equipped to be enforcing it. And so, from a legal perspective, the different types of enforcement do have to do with who's best equipped. But I don't think it always works out that way. I think often when we're talking about an enforcement of youth access laws, the default for local compliance checks is often the local police department. And so then sometimes communities will just fold in other local sales regulations into those youth access checks. And so, then you have police doing checks on flavored tobacco regulation, for example, pricing. And we really do need to question, are they actually most equipped to be enforcing these types of laws? And we know that the tobacco industry is very quick and responsive at looking for loopholes and creating new ways to get around flavored tobacco regulation. And so, from a legal perspective, there's a difference in who has the authority that's spelled out in the law to do it. And then sometimes, even if that authority is somewhat dictated

by federal law or state law-- so say, for example, in your state, the police are the only ones with the power to be able to regulate youth access laws, that doesn't mean that in an ordinance you can't authorize another department or agency to enforce other pieces of the local licensing ordinance or the local tobacco ordinance. And so yes there are different things to consider when it comes to authority but I think it's important to be creative in order to make sure that the enforcement agent is really the one that's best equipped to handle the policy regulation to enforce it.

**Mollie Mayfield:** Yeah. And I think I've heard you make a really great point about this before in terms of who is most equipped. That public health agents are often better equipped to enforce tobacco control laws. So, tell us a little bit about what you mean by that.

**Natasha Phelps:** Yeah. So as public health officials, whether that's on a local or state level, public health officials are, for the most part, they have their eye on what's going on in the commercial tobacco world. They know when the industry is creating new products that are entering the market that the general public and other law enforcement agencies just aren't aware of because they're not specializing in this field. So, one major example is these concept flavors or these color-blocked flavored tobacco products that really came onto the market once the regulation of flavored tobacco products started happening. And it left a lot of police who are charged with enforcing any flavored tobacco sales regulation perplexed because they didn't know what to do with those products because on their face, they did not appear to be a flavored product but any reasonable person could deduct that it was. But because their direction was to enforce pursuant to what the law says on its face, they might choose not to enforce in that way. And then that might require them to engage in conversation with public health and have a lot of training and retailer outreach and all of that versus just having public health doing that type of enforcement in the first place where they already have this information and they already have strategized about what other communities across the country are doing. And so, it's a quicker effort, it requires less resources, and so in that way, they are often better equipped to be the enforcement agents of those particular commercial tobacco laws.

Another example is if we're talking about smoke-free housing and a lot of the smoke-free policies, whether it's a city's clean indoor air policy or a landlord's smoke-free lease addendum, oftentimes the response is to involve the police to issue citations, etc, etc. But in this kind of new framework of equitable enforcement, one could envision that public health is often better equipped to enforce even those policies because they then can bring in the opportunity to provide resources, to provide education for cessation if you do want to attempt to quit use of commercial tobacco. And so, these are, I think, really important conversations that we need to have because they're being had outside of commercial tobacco, they're being had outside of public health. But it's really about who is most equipped to respond to the problem and often with commercial tobacco, we're talking about addiction, we're talking about tobacco industry tactics, we're talking about things that your standard police officer isn't necessarily equipped to respond to. So that's what I mean when I say that public health agencies often are better equipped to enforce commercial tobacco laws.

**Mollie Mayfield:** That's such a great point. So, another recommendation related to this overall value is to *“ensure revenues that come from commercial tobacco control laws, including tobacco taxes, are used to support public health objectives and advance health equity.”* And this helps to ensure that public health agencies actually have the funding they need to do those enforcement functions. And this may seem like a no-brainer. But it is often not necessarily the case that often tobacco tax revenue goes to the general fund, or it may go to a health fund. But it doesn't necessarily go specifically to support health equity. And that's what we need, given that there are significant disparities in both smoking rates and in resulting tobacco-related health outcomes because of the tobacco industry's targeted marketing as well as other structural factors, including structural racism that impact things like access to care.

So what might this type of funding stream look like or fund specifically?

**Natasha Phelps:**

Yeah. Well, I mean, I think you made a great point about the tax revenue and where that goes, and that continues to be an issue even when over the last year or two, we've actually seen quite a few states increasing their tobacco tax on all or certain tobacco products, which is really unfortunate because I think what the COVID-19 pandemic has showed us is that public health needs funding, and also commercial tobacco specifically needs funding, especially when we're dealing with a pulmonary respiratory [laughter] virus. But like you said, it doesn't often reason that ends up happening. But there are other funding streams that jurisdictions could consider in supporting this type of enforcement. And it certainly depends on whether a local government has the authority to license. And so, one funding stream is to use the licensing fees and allocate that in part to enforcement for these kind of, I'll call them, non-traditional enforcement agents just because, like I said-- we typically just looked at police as a standard enforcement agent, but definitely licensing fees if there are quite a few tobacco retailers in your jurisdiction that might end up being quite a substantial amount of money. And if it's not, we always recommend that the licensing fee for tobacco retailers be reassessed on an annual basis to ensure that it is enough to cover how much it costs to enforce commercial tobacco regulation on a local level. And if that needs to increase in order to support the type of enforcement that you want in your jurisdiction, then it needs to increase. And the justification for that is to have equitable public health policy, which is, as we know, very, very valid. The other type of funding stream that you can consider outside of taxes and outside of licensing fees does, again, rely on local governments' ability to license, but not just that. It can be-- if you are in, say, the state of Texas, for example, and you're able to have a standalone sales regulation for tobacco products, this option could still apply to you, because if you are able to assess a penalty on a local level for a local ordinance that regulates the sale of commercial tobacco products. For example, the fines that you assess against retailers could be allocated back into the enforcement of the policy. So, we have tax revenue. We have the licensing fees, and then we have fines that would come from retailers if they are violating local policy. So, there are many different ways that you can fund this. But the other thing I want to say is that it could cost money, but there may also be other ways in which you can offset the costs.

Perhaps in your jurisdiction there already organizations, maybe other government agencies but serving other organizations like public health organizations or restorative justice or community mediation service organizations that are already doing work and might already have funding to do work in your area, either with the court system or outside of the court system that you could work with to create an alternative enforcement structure for things like a parks policy, for example. You could establish a better relationship or establish a new relationship with those organizations to really create something that you find to be appropriate for responding to violations of commercial tobacco policy.

So, I think one of the biggest examples of this is in the K-12 commercial tobacco work where we've seen a lot of school districts having a really difficult time, not only responding to the youth vaping epidemic and tobacco use in schools but having a difficult time figuring out what to do with their limited resources to respond to the issue. And so, they may be looking to public health to help them do the education for a first and second and third violation with students because their school nurse is traveling between 12 different schools in the district and doesn't have time to sit down with every student who's caught with an e-cigarette to talk about the harms of nicotine. And so, yes, working with public health, but then also maybe public health can connect the school with the community mediation services that is already working with the court system or the school system on restorative justice. And so, I think there's ways to be creative, even if the funding stream is limited.

**Mollie Mayfield:** Yeah, there's a lot of different options. And I think that's one of the important things to keep in mind when looking at the statement and recommendations is that what this looks like on the ground in any given community is going to look a little bit different.

**Natasha Phelps:** Yeah

**Mollie Mayfield:** So that's all packed into the first value in the statement here. So, there's a lot to unpack in it, which is why we're devoting a whole episode to it. [laughter] So, the second value included in the statement is that, *"state and local government should reform or eliminate laws, policies, and enforcement practices that target individuals, especially youth, rather than businesses and industry actors."* So, you've talked a little bit about this already, but what this means is repealing existing purchase, use, and possession, or sometimes called PUP penalties and existing laws and not creating any new ones. So why are these types of penalties so important to eliminate?

**Natasha Phelps:** Yeah, I mean, I think really, Mollie, just the idea of what is the focus of really, truly eliminating the problem, which is commercial tobacco. It's not about the person who is using the product. It's really about how they came to become addicted to this product. And so, if we, at a surface level, are just allocating resources and energy and time to people who are just trying to feed their addiction, whether they're using a product in a park or they are a 17-year-old who is holding a pack of cigarettes on the corner. If we are just focusing all of the efforts on penalizing these people who are just really the byproduct of the tobacco industry's scheme, then I really don't think that we would be effective in actually moving towards a world where we do not have death and disease from commercial tobacco, which is the ultimate goal. And so, I think the idea of eliminating laws, policies, and enforcement practices that target individuals is really about reframing and refocusing on the root of the problem, which is the tobacco industry. And I think this is especially true when we're talking about penalties that penalize the purchase, use, and possession of commercial tobacco products. And we know for a fact that the tobacco industry or really the convenience store lobbyists have pushed across the country for these types of penalties because they don't want the focus to be on them. They think that in order to have a 50/50 or even keel penalty scheme, we need to also be punishing people who are the consumers as well as the retailers. But the retailers and then the major industry, they hold the responsibility. They're the ones that are profiting off of the death and disease. And then when we're talking about these PUP penalties, specifically, I think, for a long time, the commercial tobacco world has talked about PUP as it relates to underage people, people under the age of 21, or people under the age of 18. But saying PUP, it really can apply to anyone, right?

But I just want to speak specifically to young people for a moment because I think that really is highlighting, again, our ineffective strategy if we are focusing on young people because we know for a fact, all of us know and the tobacco industry's own documents show that the tobacco industry intentionally targets young people in order to create a whole new class of consumers. And so, why are we punishing people for being susceptible, vulnerable to this industry scheme? And I think it's really important that we take the opportunity to not punish, but really to support and potentially help rehabilitate young people who have, unfortunately, fallen under really the scheme of the tobacco industry. And so penalizing them is not helpful. And the CDC has stated that the most effective way to really prevent youth commercial tobacco use is through counseling and education. And so again, it's about providing support. And we definitely, definitely, like I said earlier, in the episode, we definitely want to make sure when we look at the holistic view of health, that we are not contributing to problems that already exists, to current inequities, like the school to prison pipeline, like mass incarceration. And when we focus on the individual, whether that's very young person or underage person or somebody who's over the age of 18 or 21, we really do want to know that any type of penalty, whether that's administrative or criminal, that can trigger additional penalties that we may not be aware of because of everybody's individual circumstance. So, for example, if somebody is

already on probation, and then they receive an administrative fine that they then don't pay, the collateral consequences can be much greater than was ever anticipated when drafting the ordinance. Or for somebody -- for a student in school to be suspended because they were using commercial tobacco products in school, the impact on their ability to get financial aid to go into higher education, to get employment-- I mean, the collateral damage from these seemingly limited penalties is often not just-- the train doesn't stop often just with just one penalty, especially when we're looking at groups that are already marginalized and more likely to have some type of condition that already exists, that will be aggravated by the penalties. So, these are just really important things to keep in mind, and definitely a reason to eliminate penalties against purchase, use, and possession.

**Mollie Mayfield**

Yes. And I'm so glad you talked about schools too because that's another of the recommendations that's outlined in the statement, is not just talking about eliminating those types of penalties at the point of sale, but also thinking about how we're enforcing these types of policies in schools and making sure that policies in school regarding the possession of a tobacco product also are not criminalizing that act, not involving law enforcement but instead focusing on restorative justice and referring students to cessation services. And yeah, I mean, I think it's important that you also brought up that the tobacco industry has had a hand in creating these purchase, and, possession provisions and policies across the country. And it's probably always wise to be suspicious of anything that the tobacco industry is supporting [laughter] in addition to all of the reasons that you just outlined as well.

**Natasha Phelps:**

Absolutely.

**Mollie Mayfield:**

So thinking then about the third value that's outlined in the guidance is that, *"enforcement practices and penalties for violations of commercial tobacco control laws should be proportional to the alleged violation and address health, equity, and social justice considerations."* So, the specific recommendations here are pretty concrete: to eliminate the use of physical force against people suspected or guilty of violating commercial tobacco control laws, to prohibit enforcement officials from initiating contact with an individual based on the individual's possession of a tobacco product, and to ensure that if commercial tobacco control laws are enforced against individuals as opposed to businesses that they do not include punitive measures, such as criminal penalties, fines, or mandatory community service. So I think a case in point here for what we're trying to avoid at the extreme end is the tragic killing of Eric Garner at the hands of law enforcement and to avoid any public health law that could lead to that type of situation.

So, Eric Garner was approached by police for selling untaxed cigarettes and that's not something that should have required force, much less the excessive force that led to his death. But that whole interaction could have also been avoided if tobacco control laws were enforced in a different way. And the goal of this public health guidance is to reduce tobacco addiction, and eliminate interactions between people of color and police officers that stem from public health laws, and to create public policies that alleviate racial injustice in enforcement of tobacco laws. And I think it's also important to talk about Eric Garner specifically here because the tobacco industry has also tried to exploit his story specifically and twist it as a reason not to support things like a ban on the sale of menthol cigarettes, a policy which would save lives and especially Black lives.

Do you want to say anything around the industry's scare tactics around this case? I'm thinking that folks may want to be aware of some of these arguments that may come up as they start to talk about equitable enforcement in their own communities?

**Natasha Phelps:**

Yeah, thank you for this question, Mollie, because I think it's a really important thing to talk about. The tobacco industry is not one to be commenting on this issue, just like you said, when it comes to PUP. Any time the tobacco industry is supportive of something, or trying to speak to

some type of civil right or human right issue, it's to their own benefit. That's just the pattern of who they are and what they do. And they have always, and continue to really appropriate and take advantage of very credible issues to scare communities that are marginalized based on race and ethnicity, or other marginalized identities, into opposing measures that actually would work in their favor. They push people into a corner that basically is no regulation, or regulation that will be extremely harmful. And we know that that's not the case. It's not so black and white, or either or. And so that's why we're talking about equitable enforcement, right? Because we know that public health policy is effective. It saves lives. And actually, the tobacco industry, if they are successful in their business plan, they're one of, if not the only industry in the world that, if they're successful in their business plan, people will die. So, for them to act as though they're caring of the well-being and viability of people is really a joke. And specifically, when it comes to Black people, certainly with their targeting of menthol and how quickly that can addict and kill Black consumers of menthol cigarettes. So, their predatory practices have been revealed in their tobacco industry litigation documents, so I don't need to really get into that. But I just want to say that they have really pushed on very serious issues in the public health work that's been done across the country. And it's been really discouraging and frustrating and distracting and difficult to overcome, because, like I said, these are very real issues.

Things like mass incarceration, the theft of freedom, talking about personal choice when a lot of communities are already under a lot of control, as they may say. Because they're very reliant on the protections of the government, but also resources from the government because of inequity. That's not their fault whatsoever. But just this idea of here comes the man, again, telling us what to do. They've taken advantage of that. They've taken advantage of the fear of incarceration and the theft of freedom in that way. Police brutality, like you mentioned Eric Garner, and murder and the excessive force that comes from that. This idea of taking advantage of this cultural genocide that has really happened out of slavery and colonization, where there are communities in the United States, specifically Black and Indigenous communities, but really specifically the Black community that, really, their entire history has been wiped from them from the kidnapping and enslavement of Africans. And so, culture is so important. And so, for them to have really permeated Black culture through their industry tactics, to now have menthol be a part of the culture, they have really taken advantage of this. They take advantage of politicians and organizations and cultural movements, the lack of resources and funding for them to really try to get in there and be a part of it. And so, I just really want to call them out specifically for just being really insidious actors. If anything is backed by the tobacco industry, like you said, it just really should be taken with a huge grain of salt, and really outright rejected.

But, like I said, this is a very serious issue when we're talking about things like Eric Garner, and the very real concern about how we regulate things, and whether that opens the door for these very real issues, right? Because you can write a law that is very positive and favorable, and actually even explicitly says, "you may not use any excessive force, you may not use physical force," but it's very important to continue to say that, regardless of how the law is written, if there is white supremacy, if there is an inequitable police power structure, we will continue to see excessive force and police violence and murder. We'll continue to see that because that is the way that the system is set up. And so, we just want to make sure that we're doing our part to try our best to avoid that. But there is no way -- that is a completely separate issue to act as though we can resolve the problem, the very real problem that is police brutality in this country. And so, I just want to be very clear about that. And when it comes to Eric Garner, I think that's a really clear example of what I just said, because the problem there, yes, he was being stopped and questioned about his alleged sale of untaxed cigarettes. Yes. And the City and State of New York was pushing a lot for enforcement of untaxed cigarettes. That's true, but

there was a line that was crossed in that interaction that removed itself from the conversation of what commercial tobacco policy should look like. And that came to the point where it got physical because it is police code of conduct. It is statutes that regulate what is excessive force, what amounts to a place where you can put someone under arrest. These are conversations that fall outside of public health regulation, commercial tobacco regulation. Once that police officer put Mr. Garner in a chokehold, he did so because of what he thought was resisting arrest. Like I said, that's a separate conversation. And then once he had him in the chokehold, after he deemed that he was resisting arrest, he thought that he could continue that force and didn't think it was excessive because of Mr. Garner's behavior that he was playing possum. This speaks to racism on a personal, interpersonal, structural level, because there is continued data to show that professionals, whether it's doctors or police officers, really do downplay the pain that is communicated. Just the testimony of black people saying, "This is how I feel. I'm ill. I don't feel well, blah, blah, blah." They are really minimizing that. And so, there are so many things at play that are even outside of commercial tobacco. The industry really boiling it down to this simplistic thing of, well, if they didn't tax cigarettes, this wouldn't be a problem. Or if they banned flavors, this will be a problem. That's just really convenient for them. Again, it's a way for them to shift the focus. And I think we should really resist that type of narrative. But at the same time, like you said, let's make sure that our policies are focused on engaging the right enforcement agents, really making sure that it's about supporting people outside of the industry, and really not adding to issues like police brutality and mass incarceration.

**Mollie Mayfield:** Absolutely. Yes. Thank you, Natasha, for all of those points. And yeah, I mean, I think that we're, of course, not going to solve everything with these specific guidelines, but it's about making sure that our roles within public health are not upholding this system of white supremacy and recognizing the system of structural racism that we're operating within and doing what we can to dismantle that. And not contribute to it.

**Natasha Phelps:** Absolutely. Exactly.

**Mollie Mayfield:** So thinking about some of the ways that this can be implemented, the final value that's outlined in this statement is that *"state and local governments should adopt legal and policy frameworks that facilitate the effective, equitable enforcement of commercial tobacco control laws by holding businesses and other industry accountable for violations."* So, we talked about this a little bit earlier, that one way to do this is through a tobacco retailer licensing, and we've covered licensing in a previous podcast episode so I won't go too into depth on what that is and what it means here. But the great news is that there is a system to do this that already exists and that is the best practice for many other reasons as well. Requiring retailers that want the privilege of selling tobacco to obtain a license from the state, county, or city to do so and allows tracking of who's selling, allows a dedicated funding stream to cover enforcement, again, that should be routed to public health agencies to conduct that enforcement, and provides a way to hold retailers accountable. And that license can be then suspended or revoked if the retailer continues to sell to underaged youth or otherwise violates the terms of the license.

And Natasha, you all at the Public Health Law Center actually have some great resources on licensing that I know I often use. Do you want to tell our listeners about those?

**Natasha Phelps:** Yeah, so we don't have a model licensing policy for the entire country, but we do have a model licensing policy for the state of Minnesota and the state of California, and the state of Florida. So just to give you a couple of examples from kind of across the country, we have a Midwest example, Western states example, and then Southern states example. But like you said, not all places are able to license. But I still think that our model licensing policies that we have for those states will be helpful even if you're just passing like a standalone non-licensing ordinance. But anyways, these models not only come with best-practice language that really is reflective of what we know works from across the country and language that we know has been tested and approved by the courts, but it also comes with shadow boxes that provide context about some



of the policy options and why we chose a specific language that we chose in order to write the model the way that we did. And so, I think our model policies, our model licensing policies are a great start, even just to have conversations about what a commercial tobacco policy might look like, a sales ordinance might look like. But then we also have these other resources that do kind of deep dives into different policy options for things that regulate the point of sale that are all located on our website [publichealthlawcenter.org](http://publichealthlawcenter.org). And if you want to really get started in just kind of figuring out what a licensing ordinance could look like in your area, if there's one that doesn't exist or maybe it does exist but it needs to be updated, I do think the models are a good place to start.

**Mollie Mayfield:**

Awesome, thank you. Yeah, I second that. I find them very useful and flexible. So, there are some additional best practices recommended in the statement. And I just want to highlight one here, which is to *“ensure that enforcement practices aimed at commercial tobacco, retail sales establishments occur in a data-driven, evidence-based and equitable manner.”* So, this means in part, that all retailers should be checked at least once a year with follow-ups if there are violations found. It also means that businesses in underserved communities are also not unfairly targeted, and we should also make sure that retailers have the resources that they need to be able to comply with the law, addressing any barriers they may face to doing so. And I think this is important to highlight. We do want to make sure that retailers are also treated equitably, and especially on the local level, relationships with retailers are also important. And the point here in shifting responsibility to the retailers is not to demonize them. Right? They're also stakeholders community often-- they are also often manipulated by the tobacco industry themselves, but they are also selling a product that's the number one cause of preventable death and disease and making money off of it. And we need to make sure that they are doing so in line with the local, state, and federal policies and to make sure that they're held accountable when they're not, rather than criminalizing youth for falling victim to the tobacco industry's pernicious and targeted marketing.

So, in thinking more about implementation, these recommendations in a statement are aspirational. While they're concrete, what this looks like on the ground, as we mentioned before, and the timeline for implementing them is going to look different in different places. So, some places may not yet have licensing in place or may not be able to due to preemption. Some places may have a licensing structure but need to make alterations to shift how the enforcement is carried out in terms of the agency that's responsible in removing those purchase, use, and possession provisions to focus on the retailer and industry actors instead.

So, Natasha, where would you recommend jurisdiction start with tackling some of these recommendations?

**Natasha Phelps:**

Yeah. I think it would be a good-- what would be good to do is to really figure out again of all of the regulations that are enforced in your jurisdiction which enforcement agencies are doing the enforcement. Just do some background research to figure out who's at play here and then maybe to identify and check with those agencies to see if, number one, there's any area in which they're not enforcing, because I think what I've heard from many communities is that they don't have communication with the actual enforcement agent for commercial tobacco policies. Even public health agencies, they haven't checked in for years or maybe ever, really, with the police that are doing the compliance checks or checking on or they're supposed to be enforcing flavored tobacco regulation or something like that. And then they check in with them, and it turns out that they stopped enforcing, or they enforce, but they're not enforcing in the way that public health assumed that they were. So just maybe identifying the agencies and then having those conversations to identify any areas where there are problems. The other thing I would recommend doing is taking a look at your Synar reports for your state and then again, engaging in a conversation with local law enforcement but just to identify if there are any disparities in enforcement. So, I'm not talking here necessarily based on race and ethnicity

and sexual orientation and gender but just really actually looking to see are the retailers being cited more often than young people are? Because this often is very telling of where the focus is of the enforcement agents. So, doing a little bit of background research I think will be really helpful when you're starting to consider adopting more equitable enforcement measures. And then also, since there are so many ways in which enforcement comes into play with tobacco, doing that check-in also with school districts, doing that check-in with housing authorities if there is some type of clean air ordinance that really impacts housing and public places and places of employment. Just doing really a check-in of all the enforcement agents that you're aware of in your jurisdiction that play a role in enforcing commercial tobacco policies and not just stopping at point of sale but maybe even looking outside of that as well. But if you're focused on point of sale, that's fine too. And then the other thing I would do is I would then maybe contact your local attorney, whether it's a city or county attorney, to ask them whether the court system already has in play some alternative agents that work with the city or the county on diversion programs? So, the city may already have a contract with restorative justice or community mediation services for things like diversion of criminal convictions, for example. And so, just being aware of what resources already exist might help you come up with a plan that doesn't cost as much money as you think it will. And so, doing a lot of background research, I think is really important. And then, finally, I think it would be really good for a jurisdiction to then look at their retailer education programs and to see whether there are any loopholes there that you might want to fill in with public health, and that can be a really collaborative effort as well. If you find that you can not use anyone but the police to enforce your sales policies in your jurisdiction, perhaps there can be some collaboration with retailer education.

And then, like I said, that will enhance your relationship with the current law enforcement so that they know at least that they're going to communicate with you if they run into problems, that they'll listen to you if you're saying, "Okay, you know what, here's a list of flavored tobacco products. Please, refer to our list when you are when you're enforcing these policies. Please, call us if there are any questions that come up and we can at least respond in a time-sensitive manner to questions on enforcement." So really building those relationships, if you cannot change them at this time. But I do think that that research process will help you identify ways that you might have a lot more flexibility than you think you do, even if you're up against limited funding. And then lastly, I just want to say for tackling some of the recommendations in the statement or just to make sure that you are definitely engaging with the community to talk to them about how the current policies are impacting the community but also talking to them about these creative, alternative, equitable enforcement solutions because they're the ones that are most impacted and should definitely be at the table and having these conversations.

**Mollie Mayfield:**

Absolutely. That's a really important piece of it as well. Thank you for bringing that up. And as folks are figuring out what this looks like in their community, doing their research as they have questions, so I want to make sure folks know they can find the statement posted on our website. It's also on the Center for Black Health and Equity's website along with some additional related resources. And we'll be sure to link to it in the show notes here. And if folks have additional questions or want some help thinking through what equitable enforcement looks like where you live or thinking through implementation strategy or messaging around these guidelines, please reach out to Counter Tools, to the Center for Black Health Inequity, ChangeLab Solutions, and for assistance with legal technical assistance, figuring out how to write or rewrite your local or state policies with these guidelines in mind with strong policy language that will stand up to any challenges, Public Health Law Center, ChangeLab Solutions, and Network for Public Health Law are all great resources for legal technical assistance.

Natasha, anything else that you want folks to know about these guidelines before we wrap up our show for the day here?

**Natasha Phelps:**

Well, I just want to say thank you for having me, Mollie, and I really just want to encourage people to look at this as an opportunity to create policy that is effective. And that's really what this is all about. It's not even just about doing the right thing or being in alignment with our messaging on equity, which it is about all of those things. All those things are very valid and important. But really, this is about effective public health policy. If we do, if we really start to think about what the cause and effect of commercial tobacco policy is, we know that we have to be really intentional about enforcement, and that's just necessary in order for us to cure some of the ills that we're seeing in our country and in our communities. So, this is just really about effective public health in general.

**Mollie Mayfield:**

Absolutely. Well, thank you so much, Natasha, for sharing your wisdom with us. That's all for our show today! And thank you, everyone, for listening. I look forward to you joining us again next time