

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

& MEETINGS

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Insanity Defense Reform Act

Did you know the NRA--the National Rifle Association--was the corporate co-chair in 2011?

Summary

This Act would establish a procedure to determine if a defendant is mentally ill, dangerously mentally ill, or fit to stand trial. Defendants determined to be mentally ill would be placed in the custody of the department of health until they are fit to stand trial. Defendants determined to be dangerously mentally ill would be turned over to the department of corrections until such time as they may be fit to stand trial.

If a defendant is still not fit to stand trial after a significant period of time, essentially a period of time exceeding the anticipated sentence for his crime, the court may decide to dismiss the charges. The defendant's mental state during the commission of a crime may not be considered during prosecution but may be considered in deciding whether to incorporate treatment as part of the sentence.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act may be cited as the Insanity Defense Reform Act.

Section 2. {Mental condition not a defense and provision for treatment during incarceration.}

(A) Mental condition shall not be a defense to any charge of criminal conduct.

(B) If the court finds that a person convicted of a crime suffers from any mental condition requiring treatment, such person shall be committed to the board of corrections or such city or county official as provided by law for placement in an appropriate facility for treatment, having regard for such conditions of security as the case may require. In the event a sentence of incarceration has been imposed, the defendant shall receive treatment in a facility that provides for incarceration or less restrictive confinement. In the event that a course of treatment thus commenced shall be concluded prior to the expiration of the sentence imposed, the offender shall remain liable for the remainder of such sentence, but shall have credit for time incarcerated for treatment.

(C) Nothing herein is intended to prevent the admission of expert evidence concerning any state of mind which is an element of the offense, subject to the rules of evidence. Section 3. {Lack of capacity to understand proceedings.} No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or her or to assist in his or her own defense shall be tried, convicted, sentenced, or punished for the commission of an offense so long as such incapacity endures.

Section 4. {Examination of defendant.}

(A) Whenever there is reason to doubt the defendant's fitness to proceed as set forth in Section 2 of this Act, the court shall appoint at least one qualified psychiatrist or licensed psychologist or shall request the director of the department of health and welfare to designate at least one qualified psychiatrist or licensed psychologist to examine the report upon the mental condition of the defendant to assist counsel with defense or to understand the proceedings. The cost of examination shall be paid by the defendant if he or she is financially able. The determination of ability to pay shall be made in accordance with the laws of this state governing provisions of counsel to indigent defendants.

(B) Within three days, excluding Saturdays, Sundays, and legal holidays, of the appointment or designation, the examiner shall determine the best location for the examination. If practical, the examination shall be conducted locally on an outpatient basis.

(C) If the examiner determines that confinement is necessary for purposes of the examination, the court may order the defendant to be confined to a jail, hospital, or other suitable facility for that purpose for a period not exceeding 30 days. The order of confinement shall require the county sheriff to transport the defendant to and from the facility and shall notify the facility of any known medical, behavioral, or security requirements of the defendant. The court, upon request, may make available to the examiner any court records relating to the defendant.

(D) In such examination any method may be employed which is accepted by the examiner's profession for the examination of those alleged not to be competent to assist counsel in their defense.

(E) Upon completion of the examination a report shall be submitted to the court and shall include the following:

- (1) a description of the nature of the examination;
- (2) a diagnosis or evaluation of the mental condition of the defendant;
- (3) an opinion as to the defendant's capacity to understand the proceedings against him or her and to assist in his or her own defense;
- (4) when directed by the court, an opinion as to the capacity of the defendant to form a particular state of mind which is an element of the offense charged.

(F) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of defendant was the result of mental disease or defect.

(G) The report of the examination shall be filed in triplicate with the clerk of the court, who shall deliver copies to the prosecuting attorney and to counsel for the defendant.

(H) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(I) In addition to the psychiatrist or licensed psychologist, the court may appoint additional experts to examine the defendant.

(J) If the defendant lacks capacity to make informed decisions about treatment, the court may authorize consent to be given pursuant to the civil commitment laws of this state. A defendant lacks capacity to make informed decisions about treatment if, by reason of mental illness, after conscientious efforts at explanation, he is unable to achieve a rudimentary understanding of the purpose, nature, and possible significant risks and benefits of treatment.

(K) If the defendant was confined solely for the purpose of examination, he shall be released from the facility within three days, excluding Saturdays, Sundays, and legal holidays, following notification of completion of the examination.

Section 5. {Determination of fitness of defendant to proceed.}

(A) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the findings of the report filed pursuant to Section 4 of this act, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to examine the psychiatrist or licensed psychologist who submitted the report and to offer evidence upon the issue.

(B) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in Subsections (D) and (E) of this Section, and the court shall commit him to the custody of the director of the state Department of Health and Welfare for care and treatment at an appropriate facility of the Department of Health and Welfare or, if the defendant is found to be dangerously mentally ill, to the Department of Corrections for a period not exceeding 90 days. A defendant is considered dangerously mentally ill if he is in such mental condition that he needs supervision, evaluation, treatment, and care and if he presents a substantial risk of physical harm to other persons as manifested by violent behavioral evidence. For purposes of this section "facility" shall mean a state hospital, institution, or mental health center equipped to evaluate or rehabilitate such defendants. The order of commitment shall require the county sheriff to transport the defendant to and from the facility and require an evaluation of the defendant's mental condition at the time of admission to the facility, and a progress report on the defendant's mental condition.

The progress report shall include an opinion as to whether the defendant is fit to proceed or, if not, whether there is a substantial probability the defendant will be fit to proceed within the foreseeable future. If the report concludes that there is a substantial probability that the defendant will be fit to proceed in the foreseeable future, the court may order the continued commitment of the defendant for an additional 180 days. If at any time the director of the facility to which the defendant is committed determines that the defendant is fit to proceed, such determination shall be reported to the court.

(C) Each report shall be filed in triplicate with the clerk of the court, who shall deliver copies to the prosecuting attorney and to counsel for the defendant. Upon receipt of a report, the court shall determine, after a hearing if a hearing is requested, the disposition of the defendant and the proceedings against him. If the court determines that the defendant is fit to proceed, the proceeding shall be resumed. If at the end of the initial 90 days the court determines that the defendant is unfit and there is not a substantial probability the defendant will be fit to proceed within the foreseeable future or if the defendant is not fit to proceed after the expiration of the additional 180 days, involuntary commitment proceedings shall be instituted pursuant to the laws of this state in the court in which the criminal charge is pending.

(D) In its review of commitments, the state Department of Health and Welfare shall determine whether the defendant is fit to proceed with trial. If the defendant is fit to proceed, the court in which the criminal charge is pending shall be notified and the criminal proceedings may resume. If, however, the court is of the view that so much time has elapsed (excluding any time spent free from custody by reason of the escape of the defendant) since the commitment of the defendant that it would be unjust to

resume the criminal proceeding, the court may dismiss the charge.

Section 6. {Admissibility of statements by examined person.} A statement made by a person subjected to psychiatric or psychological examination or treatment pursuant to Sections 3, 4, or 7 of this Act, for the purposes of such examination or treatment shall not be admissible in evidence in any criminal proceeding against him on any issue other than the defendant's ability to assist counsel at trial or to form any specific intent which is an element of the crime charged, except that such statements of a defendant to a psychiatrist or psychologist as are relevant for impeachment purposes may be received subject to the usual rules of evidence governing matters of impeachment.

Section 7. {Forms of general verdict.} A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged.

Section 8. {Examination of defendant for evidence of mental condition; appointment of psychiatrists or licensed psychologists; hospitalization reports.}

(A) If there is reason to believe the mental condition of the defendant will be a significant factor at sentencing and for good cause shown, the court shall appoint at least one psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant. The cost of examination shall be paid by the defendant if he or she is financially able. The determination of ability to pay shall be made in accordance with the laws of this state governing provision of counsel to indigent defendants. The order appointing or requesting the designation of a psychiatrist or licensed psychologist shall specify the issues to be resolved for which the examiner is appointed or designated.

(B) In making such examinations, any method may be employed which is accepted by the examiner's profession for the examination of those alleged to be suffering from a mental illness or defect.

(C) The report of the examination shall include the following:

- (1) a description of the nature of the examination;
- (2) a diagnosis, evaluation or prognosis of the mental condition of the defendant;
- (3) an analysis of the degree of the defendant's illness or defect and level of functional impairment;
- (4) an assessment of whether treatment is available for the defendant's mental condition;
- (5) an analysis of the relative risks and benefits of treatment or non-treatment; and
- (6) an assessment of the risk of danger that the defendant may create to the public if at large.

(D) The report of the examination shall be filed in triplicate with the clerk of the court, who shall deliver copies to the prosecuting attorney and to counsel for the defendant.

(E) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(F) Nothing in this section is intended to limit the consideration of other evidence relevant to the imposition of sentence.

Section 9. {Consideration of mental illness in sentencing.}

(A) Evidence of mental conditions shall be received, if offered, at the time of sentencing of any person convicted of a crime. In determining the sentence to be imposed in addition to other criteria provided by law, if the defendant's mental condition is a significant factor, the court shall consider such factors as:

- (1) the extent to which the defendant is mentally ill;
- (2) the degree of illness or defect and level of functional impairment;
- (3) the prognosis for improvement or rehabilitation;
- (4) the availability of treatment and level of care required;
- (5) any risk or danger that the defendant may create for the public, if at large, or the absence of such risk;
- (6) The capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his conduct to the requirements of law at the time of the offense charged.

(B) The court shall authorize treatment during the period of confinement or probation specified in the sentence if, after the sentencing hearing, it concludes by clear and convincing evidence that:

- (1) the defendant suffers from a severe and reliably diagnosable mental illness or defect resulting in the defendant's inability to appreciate the wrongfulness of his or her conduct or to conform his conduct to the requirements of law;
- (2) without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the defendant;
- (3) treatment is available for such illness or defect; and

(4) the relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment.

(C) In addition to the authorization of treatment, the court shall pronounce sentence as provided by law.

Section 10. {Review of involuntary treatment.} The state Board of Corrections shall adopt procedures ensuring that treatment plans are developed for patients at the facility for whom the sentencing court has authorized treatment; that the relative risks and benefits or specific modes of treatment contained in such plans are explained, to the extent possible, to each patient; that when treatment is given over the objection of a patient, there is a review of the decision to provide treatment independent of the treating professional and that a statement explaining the reasons for giving treatment over objection of the patient shall be entered in the patient's treatment record over the signature of the facility administrator.

Section 11. {Transfer to non-correctional facilities.} Prisoners with a mental illness or defect committed to the Board of Corrections may be transferred to facilities of the state Department of Health and Welfare in accordance with rules adopted jointly by the two departments.

Section 12. {Severability clause.}

Section 13. {Repealer clause.}

Section 14. {Effective date.}

ALEC's Sourcebook of American State Legislation 1995

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