

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.

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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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Criminal Justice Drug Testing Act

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

Summary

This Act would require probation, corrections, and parole agencies to develop drug testing plans for those under their supervision. The agencies would be authorized to drug test all classes of crime. However, they would be required to drug test persons convicted of intoxicated driving, persons convicted of drug related offenses, or persons with a history of illegal drug use.

The Act would require agencies to distribute a written statement explaining their drug testing program, and would require them to establish procedural, confirmation, chain of custody, confidentiality, and record-keeping safeguards.

Persons who refuse to submit to a drug test or who test positive would have their probation, intensive probation, parole, work release, electronic home detention, or any intermediate sentence being served in lieu of incarceration, revoked.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act shall be known and may be cited as the Criminal Justice Drug Testing Act.

Section 2. {Definitions.} As used in this Act:

(A) "Agency" means any governmental organization, or organization acting under the authority of the government, which has jurisdiction and responsibility for persons charged with, or convicted of, criminal or motor vehicle offenses or child abuse or neglect.

(B) "Announced Drug Testing" means drug testing of a defendant when the defendant has been provided with the time, date, and location of a drug test.

(C) "Defendant" means a person, adult or juvenile, who is charged with, or convicted of, a criminal or motor vehicle offense or child abuse or neglect who is under the jurisdiction of any agency.

(D) "Drug test" means a test administered for the purpose of determining the presence of absence of a prohibited drug or the metabolites of a prohibited drug in a person's bodily fluids or respiration.

(E) "Initial test" means the first drug test on a defendant to determine the presence or absence of prohibited drugs or their metabolites in specimens.

(F) "Officer" means an employee or agent of an agency who has responsibility for the sentencing, surveillance, evaluation, treatment, or custody of defendants.

(G) "On-site drug test" means a drug test where the specimen collection and drug test is performed in the presence of the defendant either at:

- (1) an agency facility, or
- (2) in a location where an officer is performing his/her lawful duty.

(H) "Prescription or nonprescription medicine" means a drug prescribed for use by a duly licensed physician, dentist, or other medical practitioner licensed to issue prescriptions, or a drug that is authorized for general distribution and use in the treatment of human diseases, ailments, or injuries pursuant to the Federal Food Drug and Cosmetic Act, 52 Stat.1040 (21 U.S.C. 301 et seq).

(I) "Prohibited drug" means any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or non-prescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate inhalation.

(J) "Reasonable suspicion" means a belief that a defendant is using or has used prohibited drugs drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, which may be based upon, among other things:

- (1) observable phenomena, such as direct observation of prohibited drug use and/or the physical symptoms or manifestations of being under the influence of a prohibited drug;
 - (2) abnormal conduct or erratic behavior;
 - (3) a report of prohibited drug use provided by a reliable and credible source;
 - (4) evidence that a defendant has tampered with a drug test;
 - (5) evidence that a defendant is involved in the use, possession, sale, solicitation, or transfer of prohibited drugs.
- (K) "Specimen" means a tissue or product of the human body chemically capable of revealing the presence of prohibited drugs in the human body.
- (L) "Unannounced drug test" means selecting defendants for drug testing using a mechanism that:
- (1) results in an equal probability that any defendant from a group of defendants subject to the selection mechanism will be selected; and
 - (2) does not give an officer discretion to waive the selection of any defendant selected under the mechanism.

Section 3. {Agency plans and coordination.}

- (A) Agencies shall prepare a drug testing plan that shall include:
- (1) drug testing goals including:
 - (a) surveillance of defendants for the protection of society;
 - (b) deterrence of criminal behavior;
 - (c) rehabilitation of defendants;
 - (2) procedures for staff training;
 - (3) plans for logistical support;
 - (4) specimen collection procedures;
 - (5) laboratory selection and/or on-site testing procedures;
 - (6) chain of custody procedures;
 - (7) reporting of drug test results;
 - (8) guidelines on providing notice to defendants;
 - (9) the circumstances under which drug testing is authorized.
- (B) All drug testing plans and procedures shall be reviewed and dated annually.
- (C) Each agency shall appoint a drug testing program coordinator who shall coordinate the agency's drug testing plan.

Section 4. {Drugs to be tested.} All agency plans may require drug tests for any prohibited drug and shall conduct drug tests for marijuana, cocaine, amphetamines, barbiturates, opiates, and phencyclidine (PCP).

Section 5. {Drug testing authorization.} Whenever a defendant has a history of prohibited drug use or a conviction of a prohibited drug-related offense, drug testing shall be required. A defendant has a history of prohibited drug use and/or a prohibited drug offense under the following circumstances:

- (A) the defendant admits to prohibited drug use or having been convicted of a prohibited drug-related offense;
- (B) the defendant has a record of a conviction of prohibited drug-related offense;
- (C) the defendant has a history of drug or alcoholism treatment;
- (D) an officer has a report from a reliable and credible source that the defendant is using or has used prohibited drugs or has a history of prohibited drug use or a conviction for a prohibited drug-related offense;
- (E) there is reasonable suspicion that the defendant is using or has used prohibited drugs.

Section 6. {Types of testing authorized.} All drug testing conducted by agencies shall be in conformity with the standards established in this Act and all applicable regulations promulgated pursuant to this Act. Each agency plan shall authorize unannounced, announced, and reasonable suspicion drug testing and the circumstances under which each type of testing will occur.

Section 7. {Testing Methodologies authorized.} A drug test shall be an immunoassay of one of four types:

- (A) radio immunoassay (RIA);
- (B) latex agglutination inhibition immunoassay (LAI);

(C) enzyme immunoassay (EIA);

(D) fluorescence polarization immunoassay (FPIA).

Section 8. {Classes of offenses for which drug testing is authorized.}

Drug testing is authorized for all classes of offenses including criminal, motor vehicle, and child abuse and neglect. The offense may or may not be related directly to prohibited drugs.

Section 9. {Discretion of officers to require drug tests and to apply sanctions.}

(A) Officers shall be authorized to require that defendants submit to drug testing when the officer in his or her professional opinion believes that testing is authorized by the agency plan or when the officer determines that the defendant has a history of drug use or there is a drug-related offense.

(B) If the defendant refuses to submit to a drug test or if the defendant has a positive drug test result that has not been successfully contested or explained by the defendant, an officer may apply any lawful sanction for discipline, revocation, or contempt normally available to the officer when a defendant violates any lawful order or request of an officer.

Section 10. {Presumption of proof and admissibility of drug test results.}

(A) A positive drug test result obtained in accordance with this Act on a specimen provided by a defendant shall be presumptive proof of the use of a prohibited drug by the defendant.

(B) A report of a drug test result that has been obtained in accordance with this Act shall be admissible in any hearing conducted by an agency as a business record exception to the hearsay rule.

Section 11. {Drug testing following a sentence.} All initial drug tests authorized by the Act, or by any agency, shall occur within 30 days of a sentence or a release from custody.

Section 12. {Drug testing as punishment or discipline.} No defendant shall be required to submit to a drug test solely as a means of punishment or discipline.

Section 13. {Procedures and defendant protection.}

(A) All specimen collection and testing for prohibited drugs under this Act shall be performed in accordance with the following procedures:

(1) Specimens shall be collected in a manner that is reasonably calculated to prevent substitution of specimens and that will reasonably preclude specimen contamination or adulteration of specimens. Specimen donation may be observed. Donation of the specimen shall be observed by a person of the same sex as the defendant when an officer of the same sex is available. Observation must be direct and continuous.

(2) Specimen collection shall be documented, and the documentation procedures may include:

(a) chain of custody procedures to reasonably preclude the likelihood of erroneous identification of test results;

(b) an opportunity for the defendant to provide any information that he/she considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug test, and may be taken in to account in interpreting any positive results.

(3) Specimen storage and transportation to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration.

(4) All drug testing shall conform to scientifically accepted analytical methods and procedures, and all initial drug tests shall be performed within 48 hours of specimen collection.

(5) A specimen for a drug test may be taken or collected by a qualified person employed by a licensed laboratory or a person deemed qualified by an agency.

(B) A defendant shall have the right to obtain a copy of the drug test report prior to any agency hearing regarding the imposition of sanctions on the defendant for having a positive drug test result or for refusing to submit to a lawful drug test requirement.

Section 14. {On-site drug testing.} On-site drug testing is authorized by this Act.

Section 15. {Preventing adulteration.}

(A) To ensure that a defendant does not adulterate a specimen when donating a specimen, an officer, or other person authorized by an agency, is authorized to:

(1) conduct a frisk search of the defendant to determine if adulterants are stored on the defendant's body or clothes;

(2) require that the defendant wash his/her hands prior to specimen donation.

(B) It shall be unlawful for a person to intentionally or willfully alter, replace, or dispose of a specimen, or to alter, remove, or replace the identification labels of a specimen, or to

commit any other act for the purpose of producing an incorrect result. Any person who violates the provisions of this paragraph shall be guilty of a [cite class of offense-misdemeanor or felony].

Section 16. {Chain of custody.}

(A) Except for on-site drug tests, all drug tests conducted under this Act shall provide for the following chain of custody protection:

- (1) The defendant shall be properly identified using a driver's license or similar official identification.
 - (2) The defendant shall register at the collection site using his/her name or an identification number.
 - (3) The specimen container shall be labeled with the defendant's identification (name or number), and the defendant shall initial the container label or test kit label indicating it is his/her specimen. The defendant shall affix the label to the specimen container.
 - (4) A chain of custody form shall be completed, and it shall accompany the specimen to the laboratory.
- (B) In the case of an on-site test, the officer conducting the test shall complete an on-site drug test result form that shall serve as the drug test result report and chain of custody form. The form shall indicate the drug test result and shall be signed by the officer in the presence of the defendant. The defendant shall be provided the opportunity to sign the form indicating it is a report on his/her specimen. The defendant shall have been properly identified to the officer who shall note it on the drug test form.

Section 17. {Drug test result reports.} All drug test results must have indicia of reliability to include the following:

- (A) The report must be on agency or laboratory letterhead with the name and address of the laboratory or agency that performed the test and the positive identification of the person tested.
- (B) The officer administering the on-site test, or the appropriate person in a laboratory, must sign and date the report.
- (C) The report shall list the prohibited drugs tested for, the results, and the drug test methodology utilized.
- (D) The report shall not disclose the presence or absence of any physical or mental condition or of any drug other than the specific prohibited drug and/or its metabolites that an agency requests to be identified.

Section 18. {Release of drug test results.} Results of drug tests shall be released only as follows:

- (A) to the defendant;
- (B) to other persons with the written consent of the defendant;
- (C) to medical personnel to meet the medical needs of the defendant;
- (D) pursuant to a court order;
- (E) to qualified personnel who have a legitimate audit or program coordination function; or
- (F) to agency officers on a need-to-know basis.

Section 19. {Record-keeping.} Each agency shall keep proper records to include:

- (A) chain of custody forms and drug test result reports;
- (B) records of drug test results including the number of unannounced tests, announced tests, and reasonable suspicion tests;
- (C) records of supplies and reagent dating;
- (D) documentation of training for test operators of on-site tests;
- (E) equipment maintenance records.

Section 20. {Civil immunity.}

(A) Agency officers, drug testing coordinators, other responsible officials, and drug test manufacturers shall have immunity from civil liability under state law for any good faith implementation of a drug test plan or procedure, training, manufacture of drug test, or any conduct arising out of this Act.

(B) Civil liability shall only be established by clear and convincing evidence that a drug test was knowingly and purposefully administered, or, with respect to the manufacturer, manufactured in bad faith and in violation of this Act.

Section 21. {Confirmation of drug test results.}

(A) If, in the discretion of an officer, a confirmation of a drug test result is desirable, drug tests may be confirmed by one of three methods:

- (1) an admission of drug use by the defendant;
- (2) a re-test on the same device used in the initial test;

(3) a more specific alternative method.

(B) Nothing in this section shall be deemed to require confirmation of a drug test arising out of this Act.

Section 22. {Reporting for drug testing.} If a defendant is required to submit to a drug test, he/she shall report for the drug test within 24 hours of being notified or as otherwise required by the agency.

Section 23. {Notice of drug testing.}

(A) All defendants shall be provided in writing with the following notice of drug testing:

(1) types of testing authorized;

(2) a list of all drugs for which the defendant might be tested. Each drug shall be described by its brand name or common name, as applicable, as well as its chemical name;

(3) the specimen(s) required to be submitted;

(4) a statement describing the testing procedures;

(5) consequences of a refusal to take a drug test including that a refusal to take a drug test may be used against the defendant in an agency hearing;

(6) consequences of a positive or negative drug test result including that a positive drug test result may be used against the defendant in an agency hearing;

(7) the responsibility of the defendant submitting to the drug test to report his/her use of a prescription or nonprescription medicine.

(B) The defendant submitting to the test shall sign a statement to indicate his/her knowledge and understanding of the information set forth in the notice. A failure to sign the statement shall not invalidate the results of any drug test.

Section 24. {Officer training.}

(A) Each agency shall establish a program to train and certify persons to collect specimens and conduct on-site drug tests.

(B) Agencies may designate employees for this training and certification, and may utilize any person so trained and certified to conduct the on-site drug tests.

Section 25. {Pretrial drug testing.} This Act authorizes orders prohibiting defendants who are released on bail from using prohibited drugs and requiring drug testing for those defendants who have a history of prohibited drug use or prohibited drug-related offenses and providing for sanctions for violations of the orders including the revocation of release, punishment for contempt, or other sanctions deemed appropriate by the court.

Section 26 . {Drug testing as a condition of probation.}

(A) When imposing a sentence to probation, the court may require such conditions as it deems appropriate, and may include any one or more of the following:

(1) an order instructing the defendant to refrain from the use of alcohol or of prohibited drugs;

(2) an order to submit to announced or unannounced drug testing for prohibited drugs.

(B) Upon any evidence of a history of prohibited drug use or a conviction for a prohibited drug offense on the part of the defendant, the court shall require as a condition of probation that the defendant submit to announced or unannounced drug testing for prohibited drugs.

Section 27. {Intensive probation supervision.}

(A) Defendants enrolled in an intensive probation program who have a history of prohibited drug use or a conviction of a prohibited drug offense, shall be required to remain drug free and allow administration of drug and alcohol tests as required by Subsection (B) of this Section or as required by an officer, and they may be required to participate in an approved drug rehabilitation program.

(B) Unannounced tests shall be administered not less than once per week for persons enrolled in intensive probation supervision.

(C) The following shall be considered permissible reasons for revocation of intensive probation:

(1) if a defendant at any time refuses to undergo drug testing as authorized by this Act or has a positive drug test result from a drug test administered in accordance with this Act;

(2) failure to successfully complete the required drug rehabilitation program;

(3) violation of any term or condition of the probation authorized by this Act or of any term or condition of the applicable drug rehabilitation program.

(D) A defendant whose intensive probation is revoked will be required to serve out his/her term of incarceration.

(E) An action for violation under this section may be brought by an officer or prosecutor.

Section 28. {Ordering incarcerated defendants to submit to drug tests.} Incarcerated defendants may be required to submit urine for analysis under any of the following circumstances:

(A) an officer believes that there is reasonable suspicion to suspect the defendant of using or possessing drugs;

(B) a supervising officer, in accordance with an agency plan, orders all defendants in a particular housing unit to submit drug tests. Such orders shall be in writing and this authority may not be delegated;

(C) an officer orders drugs tests for any defendants returning from furlough or other unsupervised temporary release from custody;

(D) upon recommendation of an officer as part of a sanction for a prohibited drug or alcohol related infraction;

(E) an officer requires a defendant to submit to drug testing in accordance with an agency plan;

(F) there is a need to drug test for the purpose of deterring and controlling the introduction of contraband into a custodial setting;

(G) a defendant has a history of prohibited drug use or a conviction of a prohibited drug-related offense.

Section 29. {Drug testing for defendants on parole.} In addition to other requirements imposed on defendants as a condition of parole or release to mandatory supervision, on evidence of a history of prohibited drug use or a conviction of a prohibited drug-related offense, a defendant shall be required to submit to drug testing.

Section 30. {Work release.} Defendants may be required to submit to a drug test as a condition of a work release application or sentence. A refusal to submit to drug testing, or a positive drug test result, may be a basis for refusing to admit the defendant into the program or to revoke the work release and return the defendant to incarceration.

Section 31. {Treatment drug testing.} Nothing in this Act shall be construed to prevent alcoholism or drug abuse treatment programs who provide treatment to defendants from requiring drug testing as part of their treatment plans for defendants.

Section 32. {Funding.}

(A) The agencies shall pay for the costs of developing and implementing their drug testing plans from funds made available through the Drug Testing Program Fund. All monies collected or appropriated pursuant to this section shall be forwarded to the *[cite appropriate agency]* to be deposited in a revolving fund to be known as the "Drug Testing Program Fund" which shall be distributed by the *[cite appropriate agency]* for agency drug testing programs.

(B) In addition to any disposition authorized by any other statute indicating the dispositions that can be ordered for conviction of *[cite state controlled substance act]*, every person convicted of *[cite state controlled substances act]* shall pay a surcharge of \$200 for a first offense and \$300 for a second offense and \$500 for every offense thereafter, which shall be deposited in the Drug Testing Program Fund.

(C) In addition to any disposition authorized by any other statute indicating the dispositions that can be ordered for a conviction of a violation of *[cite state controlled substance act]*, every person convicted of *[cite state controlled substance act]* shall pay a fee of \$100 for each drug test that shall be assessed to each defendant who is required to submit to drug testing, which shall be deposited in the Drug Testing Program Fund.

(D) Nothing in this Act shall be deemed to affect or suspend any other criminal sanctions imposed pursuant to *[cite controlled substance act]*.

(E) All surcharges and fees provided for in this Act shall be collected as provided for collection of fines and restitution in *[cite appropriate state law]*.

Section 33. {Intoxicated driving.}

(A) In addition to the requirements otherwise set forth in law concerning the restoration of a suspended or revoked driver's license, any defendant whose driver's license has been suspended for a violation of *[cite intoxicated driving statute]* shall, as a condition for the restoration of that license, submit to a drug test for the purpose of determining the presence or absence of any prohibited drug.

(B) A defendant subject to the provisions of this Act shall be given 10 days notice prior to the date on which he/she shall be required to submit to a drug test. Prior to, or at the time of, the drug test, the defendant shall have the opportunity to submit medical documentation to verify his or her use of a prescription or nonprescription medicine.

(C) If the drug test required under the provisions of this section indicate the presence of a prohibited drug, the *[state motor vehicle agency]* shall so notify the defendant tested and inform the defendant that his/her license shall not be restored and that the forfeiture of the defendant's right to operate a motor vehicle over the highways of this state remains in effect.

(D) A defendant who, pursuant to the provisions of this Act, is denied the restoration of his/her driver's license and right to operate a motor vehicle over the highways of the state, shall not be permitted to submit another motor vehicle agency] shall so notify the

defendant tested and inform the defendant that his/her license shall not be restored and that the forfeiture of the defendant's right to operate a motor vehicle over the highways of this state remains in effect.

(D) A defendant who, pursuant to the provisions of this Act, is denied the restoration of his/her driver's license and right to operate a motor vehicle over the highways of the state, shall not be permitted to submit another specimen for testing for 120 days from the date the agency notified the defendant that his/her driver's license had not been restored.

(E) The results of the drug tests conducted pursuant to the provisions of this Act shall be made available only to the agency and to the defendant.

(F) The result of any drug test conducted for the purposes of driver license restoration shall not be used in any civil or criminal proceeding against the defendant tested.

(G) The agency may charge a fee of \$50 for the restoration of any license that has been suspended or revoked by reason of the licensee's violation of any of the provisions of this Act or any regulation adopted pursuant thereto and, in the case of a license suspended for a violation of *[the state intoxicated driving law]*, any additional charge the agency shall determine is necessary to cover the actual cost of providing the drug testing required under the provisions of this chapter.

Section 34. {Physician-patient relationship.} A physician-patient relationship is not created between a defendant and an agency or any person performing or evaluating the drug test, solely by the establishment or implementation of a drug testing plan.

Section 35. {Retroactivity.} This Act shall not be retroactive and shall not abrogate the right of an agency under State law to conduct drug tests prior to the effective implementation date of this Act. A drug test conducted by an agency before the effective date of this Act is not subject to this Act.

Section 36. {Rules.} The commissioners of the agencies shall promulgate rules and regulations necessary to effect the purposes of this Act in accordance with the *[state administrative procedures act]*. They shall include rules and regulations concerning the establishment of plans, procedures, and standards for all the technical aspects of drug testing including, but not limited to:

- (A) the collection of specimens;
- (B) procedures to ensure the integrity of the chain of custody;
- (C) technical standards and authority of the agency personnel; and
- (D) the training and authority of the agency personnel conducting those tests.

Section 37. {Annual report.} Each agency shall submit an annual report on the implementation of its drug testing plan to the Governor and the legislature.

Section 38. {Federal compliance.} The drug testing procedures provided here do not apply to defendants subject to drug testing pursuant to:

- (A) federal regulations that specifically preempt state and local regulation of drug testing with respect to such defendants;
- (B) federal regulations or requirements enacted or implemented in connection with the operation of federally regulated facilities;
- (C) federal contracts; or
- (D) state agency rules that adopt federal regulations applicable to the interstate component of a federally regulated activity.

Section 39. {Severability clause.}

Section 40. {Repealer clause.}

Section 41. {Effective date.}

ALEC's Sourcebook of American State Legislation 1995

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**Center for Media
and Democracy's
quick summary:**

This bill is part of a set of 1995 bills that perpetuates the failed "War on Drugs," raises privacy concerns, and wastes taxpayer resources with no benefit. It authorizes agencies to require that all persons charged with a crime be drug tested, even if no probable cause exists to suspect a person of being a drug user. While the results of the drug test would be admissible in court, only the possession (or manufacture or sale) of drugs is a crime, not the failure of a drug test: without something more, a person cannot be penalized for failing a drug test. However, the results of the drug test could be used to attack the character of a defendant, making the judge or jury biased against the defendant. This would open the door to a conviction for a non-drug related crime not based on evidence, but bias (which runs against America's Constitutional Due Process guarantees).