

Task Force on Criminal Justice Reform

Spring Task Force Summit

Pittsburgh, PA

May 6, 2016

Task Force on Criminal Justice Reform

Spring Task Force Summit 2016 | Pittsburgh, Pennsylvania

Friday, May 6, 2016

2:00 - 4:30 PM

- 2:00 PM** **Call to Order**
Welcome and Introductions
- 2:05 PM** Panel Discussion: Civil Asset Forfeiture Reform. Maryland State Senator Michael Hough, and Holly Harris, Executive Director, Justice Action Network. Moderator: Rep. Lisa Billy.
- 2:35 PM** Panel Discussion: Reforming Juvenile Sex Offender Registry. Eli Lehrer, President, R Street Institute. Stacie Rumenap, President, Stop Child Predators. Moderator: Rep. Lisa Billy.
- 3:05 PM** Presentation: Community Recognizance Indigent Bond. Nick Wachinski, CEO, Lexington National Insurance Corporation. Second Speaker: TBD. Moderator: Rep. Lisa Billy.
- 3:50 PM** Presentation of New Proposed Model Policies: Marc Levin, Policy Director, Right on Crime. Introducer: TBD.
- 4:05 PM** Discussion of Model Policies for 5-Year Sunset Review (Retain, Amend or Sunset):
- 1. Criminal Intent Protection Act (mens rea)
 - 2. Resolution on DNA Testing and Victims' Rights
 - 3. Law Enforcement Officer Safety Equipment Fund Act
 - 4. Civil Liability For Employers Hiring Ex-Offenders Act
 - 5. Treating Accused Persons Fairly Act
- 4:15 PM** **For the Good of the Order**
- 4:30 PM** **Adjournment**

To access an electronic copy of these documents, please visit:
<http://www.alec.org/task-forces/criminal-justice-reform/>

I. New Proposed Model Policies

ALEC Model Resolution on Removing Youth Adjudicated Delinquent from the Adam Walsh Act

Summary

This resolution urges Congress to eliminate the federal mandate that states include juveniles on sex offender registries.

Section 1. Definitions

(A) “Juvenile” or “Youth” is a person who has not attained his or her eighteenth birthday who is handled in juvenile or family court. It may also include a person over eighteen but under twenty-one years of age accorded juvenile treatment if the act of juvenile delinquency occurred prior to his or her eighteenth birthday. See 18 U.S.C. § 5031. It does not include people under the age of 18 whose cases are handled outside of juvenile or family court.

(B) “Adjudication of Delinquency” is the violation of a law of the United States committed by a person prior to his or her eighteenth birthday which would have been a crime if committed by an adult. An adjudication of delinquency is not a criminal conviction in any effect. See 18 U.S.C. § 5031.

Section 2. Findings

WHEREAS, ALEC finds that strict laws pertaining to keeping the public safe from sexual assault and child sexual abuse serve the public interest;

WHEREAS, the juvenile justice system exists primarily to rehabilitate rather than punish those adjudicated juvenile delinquent and is intended to provide penalties in the “best interest” of those adjudicated delinquent; and

WHEREAS, well-established policies and procedures exist whereby prosecutors may bring adult criminal charges against those under the age of 18;

WHEREAS, extensive cost-benefit analysis shows that there are many costs, such as diminution of future employment, to the registration of those adjudicated in juvenile court;

WHEREAS, recidivism rates for those adjudicated juvenile delinquent for sex offenses are extremely low and research finds that including youth on registries does not further lower these recidivism rates;

WHEREAS, punishment and registration of people who commit sexual offenses within the boundaries of one state is properly the job of states though a provision, such as an interstate compact, is necessary for sharing information among states to address the issue of people listed on sex offender registries moving across state lines;

WHEREAS, The Federal Adam Walsh Act passed in 2006 includes the Sex Offender Registration and Notification Act (SORNA), which mandates that states include certain juveniles on sex offender registries or face monetary penalties; and

WHEREAS, since the passage of SORNA, only 18 states have been deemed in “substantial compliance” with the Act, and states have cited the juvenile requirement as the most common barrier to compliance.

Section 3. Conclusion

NOW THEREFORE, BE IT RESOLVED that [insert state] should urge Congress to amend the Adam Walsh Act to remove all federal penalties imposed on states that do not register those adjudicated juvenile delinquent of sex offenses.

DRAFT

Resolution in Support of Limiting the Inclusion of Youth on Sex Offender Registries

Summary

This resolution urges those states that continue to include juveniles on sex offender registries to provide accessible processes for removal once the registered individual is an adult and no longer determined to be a risk to public safety.

Section 1. Definitions

- (A) “Juvenile,” “Minor,” or “Youth” is a person who has not attained his/her eighteenth birthday who is handled in juvenile or family court. It may also include a person over eighteen but under twenty-one years of age accorded juvenile treatment if the act of juvenile delinquency occurred prior to his or her eighteenth birthday. See 18 U.S.C. § 5031. It does not include people under the age of 18 whose cases are handled outside of juvenile or family court.
- (B) “Adjudication of Delinquency” is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult. An adjudication of delinquency is not a criminal conviction in any effect. See 18 U.S.C. § 5031.

Section 2. Findings

WHEREAS, [State] finds that strict laws pertaining to keeping the public safe from sexual assault and child sexual abuse serve the public interest;

WHEREAS, the juvenile justice system exists primarily to rehabilitate rather than punish those adjudicated juvenile delinquent and is intended to provide penalties in the “best interests” of those adjudicated delinquent;

WHEREAS, well-established policies and procedures exist whereby prosecutors may bring adult criminal charges against those under the age of 18;

WHEREAS, recidivism rates for those adjudicated juvenile delinquent for sex offenses are extremely low and extensive research finds that including youth on registries does not further lower these recidivism rates;

WHEREAS, current federal law exposes states to the potential of federal funds being withheld if they do not include juveniles on sex offender registries;

WHEREAS, certain states have established mechanisms to remove those adjudicated delinquent as youth from sex offender registries once they are adults, without losing federal funds;

WHEREAS, punishment and registration of sex offenders who commit offenses within the boundaries of one state is properly the job of states though a provision, such as an **interstate**

compact, is necessary for sharing information among states to address the issue of people listed on sex offender registries moving across state lines;

WHEREAS, all federal penalties imposed on states that do not register those adjudicated juvenile delinquent as sex offenders should be removed; and

Section 3. Conclusion

THEREFORE, BE IT RESOLVED, in states which continue to include adjudicated juveniles on the sex offender registry, records of their registration should remain confidential and only available for purposes related directly to public safety, and the state should provide that adjudicated juveniles be removed from the sex offender registry automatically and their records sealed once they are adults if they have not been found guilty of subsequent sexual offenses and if there is no other reason to believe that they pose an ongoing danger to the public that would warrant registration.

THEREFORE, BE IT FURTHER RESOLVED, in states which continue to include adjudicated juveniles on the sex offender registry, states should provide some mechanism whereby those people on the sex offender registry who were adjudicated as juveniles can eventually be considered for deregistration from the sex offender registry, which could involve statutorily prescribed periods and/or judicial discretion, taking into account first and foremost a professional assessment of the degree to which the individual at that point poses a risk to public safety and secondarily the potential harm to the individual and their family of continued registration.

Correctional Services – Restrictive Housing – Report

Summary

FOR the purpose of requiring the state corrections agency on or before a certain date each year to submit certain data to the Governor's Office relating to the use of certain restrictive housing in correctional facilities; requiring the state corrections agency to make certain information available on the agency's website; defining a certain term; and generally relating to correctional facilities.

Model Legislation

Section 1. The following words have the meanings indicated.

- (a) In this section, "restrictive housing" means a type of detention that involves:
- (1) Removal of an inmate from the general inmate population, whether voluntary or involuntary;
 - (2) Placement of the inmate in a locked room or cell, whether alone or with another inmate; and
 - (3) The inability of the inmate to leave the room or cell for the vast majority of the day, typically 22 hours or more.
- (b) (1) On or before October 1 each year, the corrections agency shall submit data to the Governor's office, showing, by correctional facility:
- (i) the total population of the correctional facility;
 - (ii) the number of inmates who have been placed in restrictive housing during the preceding year by age, race, ethnicity, gender, classification of housing, and the basis for the inmate's placement in restrictive housing;
 - (iii) the number of inmates with serious mental illness that were placed in restrictive housing during the preceding year;
 - (iv) the definition of "serious mental illness" used by the agency in making the report;

(v) the number of inmates known to be pregnant or in the postpartum period when placed in restrictive housing during the preceding year;

(vi) the average and median lengths of stay in restrictive housing of the inmates placed in restrictive housing during the preceding year;

(vii) the number of incidents of death, self-harm, and attempts at self-harm by inmates in restrictive housing during the preceding year;

(viii) the number of inmates released from restrictive housing directly into the community during the preceding year;

(ix) any other data the agency considers relevant to the use of restrictive housing by correctional facilities in the state; and

(x) any changes to written policies or procedures at each correctional facility relating to the use and conditions of restrictive housing, including steps to reduce reliance on restrictive housing.

(xi) if possible, an estimate of the cost of total and per inmate cost of restrictive housing compared with the average cost per inmate of those in the general population.

(2) the agency shall make the information submitted in accordance with paragraph (1) of this subsection available on the agency's web site.

II. Sunset Review

Criminal Intent Protection Act

Summary

To protect persons from unjust punishment under vague or ambiguous criminal offenses by codifying default rules of application for criminal intent (*mens rea*) requirements within criminal law.

Model Policy

{Title, enacting clause, etc.}

Section 1. {Title.} This Act may be cited as the “The Criminal Intent Protection Act.”

Section 2. {Legislative Purpose and Findings.}

The purpose of this Act is to enact default rules of application to ensure that criminal intent (*mens rea*) requirements are adequate to protect persons against unjust charges and convictions where the law has heretofore failed to clearly and expressly set forth the criminal intent (*mens rea*) requirements in the text defining the offense or penalty.

Section 3. {Culpability Requirements.}

(A) Culpability Requirements.

(1) The provisions of this section shall apply to any criminal offense or penalty.

(2) Criminal Intent Required Unless Otherwise Provided – When the language defining a criminal offense or penalty does not specify the criminal intent required to establish an element of the offense or penalty, then such element shall be established only if a person acts:

(a) with the conscious object to engage in conduct of the nature constituting the element;

(b) with the conscious object to cause such a result required by the element;

(c) with an awareness of the existence of any attendant circumstances required by the element or with the belief or hope that such circumstances exist; and

(d) with either specific intent to violate the law or with knowledge that the person's conduct is unlawful.

(3) Prescribed Criminal Intent Requirement Applies To All Elements – When the language defining a criminal offense or penalty specifies the criminal intent required to establish commission of an offense or imposition of a penalty without specifying the particular elements to which the criminal intent requirement applies, such criminal intent requirement shall apply to all elements of the offense or penalty, including jurisdictional elements.

(4) For the purposes of this section, the following definitions apply:

(a) The term “criminal offense” shall include any portion of a statute, rule, or guidance that defines one or more elements of a violation of law that may be punished by a criminal penalty.

(b) The term “penalty” shall include any criminal fine, criminal restitution, criminal forfeiture, term of imprisonment or confinement, probation, debarment, or sentence of death imposed upon a defendant by the authority of the law and the judgment and sentence of a court.

(c) The terms “person,” “he,” and “actor” shall include any natural person, corporation, or unincorporated association.

(d) The term “rule” shall have the definition set forth in section ____ of this title and shall include any interpretive rule, guidance, or other agency publication that may have the effect of altering the scope of state criminal liability of any person or entity, but shall not include any order issued as part of an adjudication under section ____ of this title.

(e) The term “guidance” shall include any guidance, interpretative statement, or binding enforcement policy issued by any agency.

(f) The term “agency” shall have the definition set forth in Title 5, United States Code, Section 551(1) [or cite to state equivalent if applicable].

(g) The term “element” shall mean (i) such conduct, (ii) such attendant circumstances, or (iii) such a result of conduct as:

(i) is included in the description of the forbidden conduct in the definition of the offense; or

(ii) establishes the required kind of culpability; or

- (iii) negatives an excuse or justification for such conduct; or
- (iv) negatives a defense under the statute of limitations; or
- (v) establishes jurisdiction or venue.

Section 4. {Severability clause.}

If any provision of this [Act] or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of this [Act] and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 5. {Repealer clause.}

Section 6. {Effective date.}

Approved by ALEC Board of Directors on June 7, 2011.

Resolution on DNA Testing and Victims' Rights

Summary

A Resolution supporting states require that all sexual assault kits collected, where the case meets the criteria for CODIS (Combined DNA Index System) eligibility, are tested for DNA.

Model Resolution

WHEREAS, a primary role of state government is to ensure public safety; and

WHEREAS, the efficient use of DNA technology is paramount to helping law enforcement identify the guilty and to preserving and protecting victims' rights to justice and due process; and

WHEREAS, victims must go through the invasive and traumatizing process of having a sexual assault kit collected from their body just hours after being attacked; and

WHEREAS, the majority of sexual assault kits collected are not submitted to crime labs for DNA testing and hundreds of thousands of sexual assault kits are believed to be sitting in storage at state and local law enforcement agencies; and

WHEREAS, the sexual assault arrest rate for jurisdictions testing all sexual assault kits for DNA is as high as 70% while the national average arrest for sexual assault is 24%; and

WHEREAS, because sex offenders are usually serial offenders, testing of sexual assault cases when consent is the primary issue still results in generating valuable information to determine whether or not a case is prosecutable by establishing whether or not this same person was involved in other acquaintance sexual assault cases; and

WHEREAS, because sex offenders are usually serial offenders, testing of sexual assault cases when consent is the primary issue may also result in identification of perpetrators in unsolved stranger sexual assault cases; and

WHEREAS, public-private partnerships can be utilized to greatly increase the efficiency of existing spending on DNA testing further and minimize or completely eliminate the incremental cost to test all sexual assault cases; and

WHEREAS, Illinois has become the first state to enact legislation requiring all sexual assault kits be tested and other states and cities are currently modeling legislation based on that bill,

THEREFORE BE IT RESOLVED that [insert state here] supports state efforts to pass legislation requiring all sexual assault kits be tested for DNA.

Approved by the ALEC Legislative Board, June 7, 2011.

LAW ENFORCEMENT OFFICER SAFETY EQUIPMENT FUND ACT

Summary

The Act establishes a dedicated state law enforcement officer safety equipment fund to assist departments of public safety with the purchase of law enforcement officer safety equipment such as ballistic vests, electronic stun devices, on-officer cameras and surveillance equipment, and other law enforcement officer safety equipment. The Act also establishes an assessment to be levied on every civil penalty or fine imposed and collected by the courts that is a result of a citation issued by a peace officer for a civil traffic violation, a violation of a misdemeanor offense or any local ordinance relating to stopping, standing or operating a vehicle. This assessment will be equally divided between the state law enforcement officer safety equipment fund and the local agency that issues the citation.

{Title, enacting clause, etc.}

Section 1. {Title.} This Act may be cited as the “Law Enforcement Officer Safety Equipment Fund”

Section 2. {Congressional purpose.}

(A) The “law enforcement officer safety equipment fund” is created in the state treasury to be administered by the department of public safety. Interest earned on money in the fund shall be credited to the fund. Balances in the fund shall not revert at the end of any fiscal year.

(B) The law enforcement officer safety equipment fund consists of law enforcement officer safety equipment fees collected pursuant to the provisions of Section 2. from persons convicted or found responsible for a civil traffic violation, a violation of a misdemeanor offense or any local ordinance relating to stopping, standing or operating a vehicle, and any appropriations, gifts, grants or donations.

(C) All balances in the law enforcement officer safety equipment fund are subject to appropriation to the department of public safety for the purchase of law enforcement officer safety equipment such as ballistic vests, electronic stun devices, on-officer cameras and surveillance equipment, and other law enforcement officer safety equipment.

Section 3. {Assessment; Law Enforcement Officer Safety Equipment Fund.}

(A) In addition to any other penalty, fine, fee or assessment authorized by law, an additional assessment of ten (10) dollars shall be levied on every civil penalty or fine imposed and collected by the courts that is a result of a citation issued by a peace officer for a civil traffic violation, a violation of a misdemeanor offense or any local ordinance relating to stopping, standing or operating a vehicle. This assessment is not subject to any surcharge.

(B) The court in which the conviction or finding of responsibility occurred shall transmit the assessment to the appropriate county or city treasurer. The city or county treasurer shall transmit fifty (50) percent of the monies collected through the assessment to the state

treasurer. The state treasurer shall deposit these monies in the Public Safety Equipment Fund. The city or county treasurer shall transmit the other fifty (50) percent of the monies collected to the municipal treasurer in the jurisdiction of the law enforcement agency that issues the citation. The municipal treasurer shall transmit these monies to the law enforcement agency that issued the citation to be used to supplement, not supplant, monies available for protective armor or ballistic vests, electronic stun devices, on-officer camera and surveillance equipment, and other law enforcement officer safety equipment.

Section 4. {Severability clause.}

Section 5. {Repealer clause.}

Section 6. {Effective date.}

Approved by the ALEC Legislative Board, June 7, 2011.

CIVIL LIABILITY FOR EMPLOYERS HIRING EX-OFFENDERS ACT

Summary

This legislation would immunize employers who hire ex-offenders without a violent or sex offense from being sued on that basis alone.

{Title, enacting clause, etc.}

Section 1. {Title.} This Act may be cited as the “Civil Liability for Employers Hiring Ex-Offenders Act.”

Section 2. {Limitations on Liability for Hiring Employee or Independent Contractor Convicted of a Nonviolent, Non-sexual Offense.}

(A) A cause of action may not be brought against an employer, general contractor, premises owner, or other third party solely for hiring an employee or independent contractor who has been convicted of a nonviolent, non-sexual offense.

(B) In a negligent hiring action against an employer, general contractor, premises owner, or other third party for the acts of an employee or independent contractor that is based on a theory of liability other than that described by Subsection (a), the fact that the employee or independent contractor was convicted of a nonviolent, non-sexual offense before the employee or independent contractor's employment or contractual obligation with the employer, general contractor, premises owner, or other third party, as applicable, may not be introduced into evidence.

(C) This section does not preclude any existing cause of action for failure of an employer or other person to provide adequate supervision of an employee or independent contractor, except that the fact that the employee or independent contractor has been convicted of a nonviolent, non-sexual criminal offense may be introduced into evidence in the suit only if the employer:

- (1) knew of the conviction or was grossly negligent in not knowing of the conviction; and
- (2) the conviction was directly related to the nature of the employee's

or independent contractor's work and the conduct that gave rise to the alleged injury that is the basis of the suit.

(D) The protections provided to an employer, general contractor, premises owner, or third party under this section do not apply in a suit concerning:

- (1) the misuse of funds or property of a person other than the employer, general contractor, premises owner, or third party, by an employee or independent contractor, if, on the date the employee or independent contractor was hired, the employee or independent contractor had been convicted of a crime that includes fraud or the misuse of funds or property as an element of the offense, and it was foreseeable that the position for which the employee or independent contractor was hired would involve discharging a fiduciary responsibility in the management of funds or property;
- (2) the misappropriation of funds by an employee or independent contractor, if the employee or independent contractor was hired as an attorney and, on the date the employee or independent contractor was hired, the employee or independent contractor had been convicted of a crime that includes fraud or the misuse of funds or property as an element of the offense; or
- (3) a violent offense or an improper use of excessive force by an employee or independent contractor, if the employee or independent contractor was hired to serve as a law enforcement officer or security guard.

Section 3. {No Implication of Liability in Situations Not Covered by This Legislation.}

(A) This enactment shall not be interpreted as implying a cause of action exists for negligent hiring of an ex-offender in factual situations not covered by this enactment. In deciding whether liability exists in such cases, courts shall not presume that, because they are not covered in the protection herein, there is an legislative intent expressed through the passage of this enactment to extend liability in such cases where it is not already established.

Section 4. {Severability clause.}

Section 5. {Repealer clause.}

Section 6. {Effective date.}

Approved by the ALEC Legislative Board, June 7, 2011

THE TREATING ACCUSED PERSONS FAIRLY ACT

Summary

To protect persons from unjust criminal punishment for alleged violations of vague and unclear offenses by codifying the common-law rule of lenity and safeguarding due process rights.

{Title, enacting clause, etc.}

Section 1. {Title.} This Act may be cited as “The Treating Accused Persons Fairly Act of 2011”

Section 2. {Congressional Purpose.}

The purpose of this Act is to reduce the risk of injustice stemming from State and local criminal offenses and penalties that are vague or unclear. The [Legislature or General Assembly] intends to protect against such injustice by codifying the long-established rule of lenity and reinforce the principle of fair notice, which mandates that no conduct should be punished criminally by the government without sufficient notice that such conduct is unlawful.

Section 3. {Rules of Construction for Provisions of Law Defining Criminal Offenses or Penalties.}

(A) Rules of construction for provisions of law defining criminal offenses or penalties.

(1) Any provision of law defining criminal offenses or penalties, including but not limited to any statute, rule, or sentencing guideline that is:

(a) susceptible of more than one objectively reasonable interpretation in any aspect, including, but not limited to;

(i) the scope or definition of the prohibited conduct;

(ii) the element or elements that must be proved;

(iii) the *mens rea* that must be proved; or

(iv) the penalty to be imposed

shall be strictly construed against the government and construed in favor of the accused.

(2) For the purposes of this section, the following definitions apply:

(a) The term “criminal offense” shall include any portion of a state

statute, rule, or guidance that defines one or more elements of a violation of law that may be punished by a criminal penalty.

(b) The term “penalty” shall include any criminal fine, criminal restitution, criminal forfeiture, term of imprisonment or confinement, probation, debarment, or sentence of death imposed upon a defendant by the authority of the law and the judgment and sentence of a court.

(c) The terms “person” or “accused” shall include any natural

person and, where relevant, a corporation or an unincorporated association.

(d) The term “rule” shall have the definition set forth in section

_____ of this title and shall include any interpretive rule, guidance, or other agency publication that may have the effect of altering the scope of state criminal liability of any person or entity, but shall not include any order issued as part of an adjudication under section _____ of this title.

Section 4. {Severability clause.}

If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 5. {Repealer clause.}

Section 6. {Effective date.}

Approved by ALEC Board of Directors on June 7, 2011.

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