



The American Law Institute's Revised Model Penal Code: Weakening Sex Trafficking Prosecutions and Heightening Risks for Child Sex Trafficking Victims

Background

The American Law Institute (ALI) is a nonprofit organization composed of judges, lawyers, and professors who provide recommendations to clarify and update the common law. The Model Penal Code (MPC) is designed to guide state legislatures on updating and standardizing state criminal laws. Revisions to the MPC are presented as legal recommendations to revise state laws and impact state/federal court cases. ALI is in the final stages of approving revisions to the ALI Model Penal Code: Sexual Assault and Related Offenses (the Revised Code).

If adopted by states, portions of the Revised Code raise significant child safety concerns. Children will be endangered by the Revised Code's limitations on prosecuting sex trafficking and its removal of most protections provided by sex offender registries.

Weakening Sex Trafficking Prosecutions (Code § 213.9)

The Revised Code weakens sex trafficking prosecutions in three significant aspects, all of which create serious child endangerments when a child is victimized by a trafficker.

The Revised Code removes "advertising" from the list of acts that can be used by a prosecutor to prove that an individual has engaged in trafficking. This revision contradicts the federal Trafficking Victims Protection Act, which includes "advertises" as an act that can be used to establish trafficking. Given the increasing volume of trafficking crimes that are facilitated on websites through online advertisements, it is essential to recognize "advertising" as an act that constitutes trafficking. While the Code would consider "advertising" to be a different crime that would not require registration on the sex offender registry, by diverging from the federal definition, the Revised Code reduces the criminal acts that can be used as a basis to prosecute trafficking.

The Revised Code requires identifying a trafficker or third party controlling a trafficking victim to establish the crime of sex trafficking. This revision protects an individual victimizing the child while negatively impacting children victimized through commercial sexual exploitation. A child may be so substantially controlled and terrorized by their experience, that they cannot identify their trafficker. In other instances, children may be targeted by someone looking to buy a child for sex who takes advantage of their need to survive, even if they are not actively controlled by a trafficker. Under the Revised Code, these children will no longer be identified as child sex trafficking victims and will be excluded from legal protections and resources they should receive. The Revised Code also excludes criminal liability for buyers of commercial sex by removing "obtains", "solicits", and "patronizes" from the list of acts that can be used to establish trafficking. This effectively excludes criminal liability for buyers of commercial sex under the trafficking statute. This revision safeguards buyers of commercial sex acts and overlooks the fact that buyers' criminal conduct drives the sex trafficking industry.

Late additions to the draft Revised Code aimed to mitigate the impact of these changes, not by fixing the problems they create, but by pointing elsewhere to existing less-serious, non-trafficking crimes (Promoting, Complicity, Patronizing) as alternatives to holding offenders accountable for exploiting trafficking victims. These revisions are not careful reform and do not maintain or improve protections for child victims.

Potential Impact

The Revised Code benefits traffickers and buyers who victimize children through sex trafficking. It also increases the probability that trafficked children will suffer negative outcomes by making prosecution of those who victimize them more difficult and diminishing their access to recovery services that they are entitled to under child sex trafficking laws.