



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 recently passed 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 include "advertising" as an act that can be used to establish the crime of trafficking. 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 that a trafficker or third party controlling the trafficking victim must be identified in order to establish the crime of sex trafficking. This revision provides additional protection for the 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 forced to engage in commercial sex to survive and be victimized by the person buying them, but not be under the active control of a trafficker. Under the Revised Code, these children will no longer be identified as victims of child sex trafficking and will be excluded from the legal protections and resources they should receive under the laws.

The Revised Code also excludes any criminal liability for buyers of commercial sex by removing "receives" and "obtains" from the list of acts that can be used to establish trafficking. This effectively excludes criminal liability for buyers of commercial sex except for the actual sex crimes they commit. This revision safeguards buyers of commercial sex acts and overlooks the fact that buyers' criminal conduct drives the sex trafficking industry.

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.