



The American Law Institute's Revised Model Penal Code: Removal of Violent, Sexual Crimes Against Children from Sex Offender Registry

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.

Removing Violent, Sexual Crimes Against Children from Sex Offender Registries (Code § 213.11A)

The Revised Code does not include numerous severe crimes against children as registrable offenses. Offenders convicted of kidnapping, attempted kidnapping, online enticement, and child sexual abuse material (CSAM) crimes would no longer have to register as a sex offender under the Code. This single revision will create severe dangers to children victimized by crimes of sexual violence.

Removal of Kidnapping: While nonfamilial child kidnappings are relatively rare, when a child is kidnapped by a stranger, there is considerable risk the child will be sexually assaulted and murdered. In many cases, the kidnapping of a child is a direct means to obtain a child to rape and sexually abuse.

Removal of Online Enticement/Online Distribution of Child Sexual Abuse Material (CSAM): The Revised Code's failure to recognize online enticement and crimes relating to the online production, distribution, and possession of CSAM as registrable crimes reverts to an outdated legal paradigm that recognizes only "hands-on" abuse and disregards the explosive growth in online child sexual exploitation. Offenders engage in online enticement to solicit sexually explicit images and in-person sexual contact with a child. These offenders are usually unknown to the child and have multiple child victims. Offenders who distribute CSAM online commonly also have access to or will attempt to access children to commit hands-on sexual abuse. Far from being a passive crime, CSAM frequently involves extreme violence, sadistic acts, and horrific sexual abuse and torture of children, including infants and is perpetrated through sharing of images as well as sextortion and live-streaming abuse. Distribution of CSAM is not a victimless crime, and it is well-documented that children suffer from the distribution of their CSAM in addition to, and apart from, the hands-on abuse.

Removal of Several Types of Sex Trafficking Crimes: The Revised Code weakens the definition of sex trafficking and removes forms of trafficking as registrable offenses based primarily on a false conclusion that individuals who promote and advertise sex with a child – as well as buyers who directly pay to sexually abuse a child – are less culpable and less likely to commit another sex offense in the future. The reality is that buyers complete the transaction of trafficking and generate the marketplace for commercialized sexual violence involving children.

Potential Impact

The Revised Code demonstrates a lack of understanding regarding the offender's motivation and the criminal nature of kidnapping, crimes relating to CSAM, and online enticement when perpetrated against a child. The sex offender registry was created precisely to address perpetrators of these violent, sexual crimes against children and to remove offenders of these crimes from registration puts children at increased risk for victimization.