



May 27, 2021

Professor Stephen J. Schulhofer, Reporter
Professor Erin E. Murphy, Associate Reporter
Professor Richard L. Revesz, Director
Ms. Stephanie A. Middleton, Deputy Director
The American Law Institute
4025 Chestnut Street
Philadelphia, PA 19104-3099

Re: ALI Model Penal Code on Sexual Assault and Related Offenses

Dear Professors Schulhofer, Murphy, and Revesz and Ms. Middleton:

As President and CEO of the National Center for Missing & Exploited Children (NCMEC), I am writing to raise significant concerns relating to child endangerments that would be precipitated by the proposed ALI Model Penal Code: Sexual Assault and Related Offenses, Tentative Draft No. 5 (the Proposed Code). NCMEC's concerns arise specifically from certain proposed revisions set forth in Section 213.9 relating to Sex Trafficking and Section 213.11 relating to Sentencing and Collateral Consequences of Conviction.

We recognize the important work ALI has undertaken to modernize and update Article 213 of the Model Penal Code for the first time in almost 60 years and acknowledge the range of differing public opinions that exist regarding the scope and goals of current sex offender registration and notification processes. However, in light of the serious child endangerments presented by the current version, and to protect children and victims of sexual assault, NCMEC urges ALI to revise certain elements of the draft Model Code, which will still enable ALI to achieve many of the updates and reform goals instituted throughout the Model Code.

I. Background on NCMEC's Work to Prevent and Combat Child Sexual Exploitation

As background, NCMEC is a private, non-profit organization created as a grassroots response to an unthinkable tragedy. In 1981, 6-year-old Adam Walsh was with his mother in a Florida shopping mall when he vanished without a trace. The search for Adam revealed many inadequacies that plagued missing children investigations at the time. Revé and John Walsh endured 10 excruciating days searching for Adam before he was found murdered 100 miles away. The Walshes channeled their grief and came together with other child advocates to create NCMEC in 1984. Over the past 37 years, NCMEC has grown to become the leading nonprofit organization and the nation's congressionally designated clearinghouse and resource center to help find missing children, reduce child sexual exploitation, and prevent child victimization.

A. Sex Offender Tracking Team (SOTT)

NCMEC created the Sex Offender Tracking Team (SOTT) in 2006. As part of our work to protect children from sexual exploitation, SOTT provides analytical technical assistance to law enforcement on unresolved cases of missing and sexually exploited children that may involve noncompliant sex offenders. Today SOTT continues to support these cases and also conducts analysis on cases of attempted and actual child abductions and online child sexual exploitation, including child sex trafficking, for potential links with noncompliant sex offenders. Since the creation of SOTT, NCMEC analysts have fulfilled over 191,342 requests for technical assistance regarding noncompliant registered sex offenders and potential crimes against children.

In addition to responding to technical assistance requests, SOTT analysts support NCMEC's clearinghouse role by: (1) serving as a liaison among state registries, the U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), and other federal, state and local law enforcement agencies relating to cases involving crimes against children and noncompliant sex offenders; and (2) conducting biannual surveys of state sex offender registries as part of our clearinghouse role to compile and share information regarding national and state programs impacting child safety.

B. CyberTipline

NCMEC created the CyberTipline (<https://www.missingkids.org/gethelpnow/cybertipline>) in 1998 to serve as an online mechanism for members of the public and electronic service providers (ESPs) to report incidents of suspected child sexual exploitation, including: child sex trafficking; online enticement of children for sexual acts; child sexual molestation; child pornography; child sex tourism; unsolicited obscene materials sent to children; misleading domain names; and misleading words or digital images. Since its creation over 23 years ago, NCMEC's CyberTipline has received over 90 million reports. In 2020, NCMEC received over 21 million reports containing more than 65 million images, videos, and related reported content. Many reports of child sexual exploitation NCMEC receives now routinely include videos of the rape and sexual assault of children and verbal enticement and grooming of children for sexual abuse, including sexual blackmail or sextortion.

C. Child Victim Identification Program (CVIP)

NCMEC created CVIP (<https://www.missingkids.org/theissues/csam>) in 2002 to keep track of which children depicted in sexually abusive imagery had been rescued by law enforcement and which children had not been identified and potentially were still in abusive situations. Today, NCMEC operates CVIP for three central purposes: (1) to help identify and locate unidentified child victims depicted in sexually abusive content; (2) to provide recovery services and restitution support to child survivors and their families; and (3) to help verify when sexually abusive images of identified children are distributed online. Since CVIP was created in 2002, NCMEC has processed over 330 million images and videos and has helped law enforcement identify over 19,200 children depicted in images and videos of online sexual abuse.

II. Evolution of the Sex Offender Registry Program and Its Role in Child Safety

The evolution of federal legislation governing the registration and public notification of convicted sex offender information outlines a clear intent to increase public safety, including the safety of children. Twenty-seven years of legislation to better inform the public about potential safety risks in their community would be unraveled if the proposed Model Code were enacted in its current form. Additionally, the intent of the Sex Offender Registration

and Notification Act (SORNA) to set minimum, consistent standards relating to sex offender registration and notification requirements would be undermined, once again allowing for “sex offender state shopping” and putting the public at risk.

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, enacted in 1994, was the first federal law to set standards for how states could share registration and discretionary notifications with the public relating to convicted sex offenders. Two years later, after the rape, abduction, and murder of 7-year-old Megan Kanka in New Jersey by her neighbor, a convicted sex offender, Megan’s Law was passed. Megan’s Law amended the Wetterling Act to require public notification of registered sex offenders and to allow state registries to disclose registered sex offender data to help protect the public. Also in 1996, the Pam Lychner Sexual Offender Tracking and Identification Act was passed, which allowed certain information relating to sex offenders to be shared as necessary for background checks. In 2003, Congress continued to enhance the public safety benefits of providing information about convicted registered sex offenders by passing the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act. This Act required states to have a public sex offender website and the Department of Justice to maintain a website linking to each state site. In 2006, on the twenty-fifth anniversary of the abduction and murder of Adam Walsh, the Adam Walsh Child Protection and Safety Act established SORNA to set federal standards for sex offender registration and notification, in part to create minimum, uniform standards.

III. NCMEC’s Feedback on the Proposed Code

Through NCMEC’s work on child sexual exploitation cases and registered sex offenders, we are aware of the importance of forming decisions based on data rather than individual or extreme case examples that evoke particular emotional responses. NCMEC recognizes that academics, advocates, families, and the law enforcement community often approach sex offender registration issues from conflicting vantage points. States also have differed in how broadly they have adopted the minimum standards for sex offender registration and notification set out in SORNA,¹ sometimes causing public confusion. NCMEC acknowledges that continued refinements of state law could provide more clarity around SORNA and is pleased to find common ground with the Proposed Code in rejecting unconditional opposition to all sex-offense registration regimes.

It is critical to emphasize that support for sex offender registration and notification protocols from advocates such as NCMEC is not, as the Model Code states, generated by emotion or intuition,² but by the horrific sexual victimization of children and the complex, lengthy recovery processes survivors endure. To suggest that advocates’ positions are driven by emotion minimizes the substantive and complex case work accomplished by many advocacy organizations. For over 37 years, NCMEC has served the interests of children who were kidnapped, raped, sexually abused, enticed online, sextorted, trafficked for rape and sexual abuse, and exploited through the distribution of online sexually abusive imagery by perpetrators who were on sex offender registries and perpetrators who were first-time offenders under the law. NCMEC’s policy positions are informed by the

¹ It is unclear why the Proposed Code refers to SORNA as an “unfunded mandate,” when it is not a statutory mandate, but a program that uses federal funding grants to encourage state implementation of minimum registration and notification standards.

² Proposed Code, page 488.

more than 90 million reports of child sexual exploitation, 103,000 reports of child sex trafficking, and 3,432 reports of children abducted by non-familial members that we have worked on since 1984.

NCMEC sets out below its specific concerns relating to certain aspects of the Proposed Code's revisions to the sex offender registration and notification laws. Wherever possible, NCMEC has proposed revised language that would protect the interests of children while maintaining the reform goals of ALI.

A. The Proposed Code Creates Significant Dangers to Children by Diverging from the Federal Trafficking Statute and Removing Severe Sexual Crimes Against Children as Registrable Offenses

1. Proposed Code Diverges from Federal Trafficking Statute

Section 213.9 of the Proposed Code sets forth a diminished definition of sex trafficking that diverges from the federal Trafficking Victims Prevention Act (TVPA)³ in two significant ways. First, while the TVPA includes “advertises” as a predicate act that can be used to establish trafficking, the Proposed Code omits this act for reasons that are unexplained.⁴ The inclusion of advertising as a predicate act for trafficking is needed to capture the increasing volume of trafficking crimes that occur primarily through online exploitation. By diverging from the federal definition, the Model Code diminishes the criminal acts that can be used as a basis to prosecute trafficking and thereby complicates these prosecutions. NCMEC strongly recommends the Model Code mirror the TVPA's definition of trafficking and not delete “advertises”.

Second, the TVPA specifically notes that if a defendant had a reasonable opportunity to observe a trafficking victim, then the Government need not prove the defendant knew or recklessly disregarded the fact that the victim was under 18 years old. In contrast, the Proposed Code would require the Government to prove a higher standard that the perpetrator knew, but recklessly disregarded the fact, that the victim was under 18 years old. The Proposed Code does not explain its recommendation for this higher standard. Under the Proposed Code, a defendant could assert as an affirmative defense that they did not know the victim was a child and shift the burden of proof to prove they had explicit knowledge of the child's age.⁵ Many times crucial information demonstrating a buyer was aware of a child's age, including photos or text from online ads indicating a child is being sold for sex, will not be available or will be extremely difficult to access. This proposed change serves only to benefit those perpetrators committing the crime of selling and buying a child for rape and sexual abuse and makes it more difficult to prosecute these offenders. NCMEC strongly recommends the Model Code mirror the TVPA's knowledge standard relating to underage trafficking victims. While these issues under Section 213.9 are unrelated to the broader registration concerns that are a focus of this letter, both of these divergences from the TVPA would make the crime of child sex trafficking more difficult to prosecute and would severely disadvantage child victims.

2. Removal of Kidnapping, Online Enticement, Sex Trafficking, and Crimes Relating to Child Sexual Abuse Material as Registrable Offenses Severely Endangers Children

The Model Code acknowledges that “special burdens can be defended on the basis that sex crimes, being distinctively harmful and unsettling, warrant exceptional effort to prevent them. And of course this is especially

³ 15 U.S.C. § 1591.

⁴ Proposed Code, pages 413-414.

⁵ For further commentary, see https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-1.4_2020.pdf.

true for sexual offenses against children.”⁶ However, the Model Code removes the most severe crimes against children, including kidnapping, attempted kidnapping, online enticement, sex trafficking, and child sexual abuse material crimes, as offenses that trigger registration and notification. This revision ignores the reality that these crimes are sexually motivated, cause long-lasting harm to victims, and frequently have a high offender to child victim ratio. This single change in the Proposed Code will cause significant danger to children victimized by crimes of sexual violence – precisely the crimes for which the Adam Walsh Act, as the precursor to SORNA, was enacted to address.

In 2020 alone, NCMEC received almost 80 reports relating to nonfamilial kidnapping⁷, 37,872 reports relating to online enticement of a child for sexual abuse, 15,879 reports relating to child sex trafficking, and 21,669,264 reports relating to online distribution of child sexual abuse material. While the Proposed Code suggests it is limiting registration to offenses “that most strongly arouse public concern,”⁸ it is without question that the kidnapping, enticement for sexual abuse, sale for rape, and distribution of images and videos depicting a child’s rape and sexual abuse also are crimes that strongly arouse public concern.

In NCMEC’s experience, the nonfamilial kidnapping of a child is relatively rare, but when it occurs it causes considerable risk that the child will be sexually assaulted and murdered. In the last 5 years, NCMEC has handled 422 children abducted by non-familial⁹ members. Of those children who were recovered, 17 were victims of a sexual crime during their abduction, including sexual assault and rape. The same is true for *attempted* nonfamilial abductions which occur more frequently. Through NCMEC’s analysis of 18,335 attempted abductions, it is clear that individuals who attempt to abduct a child are not doing so for companionship or to form a parental relationship, but to sexually abuse a child.¹⁰ NCMEC’s analysis found that of the 20,840 suspects involved in attempted abduction incidents (some incidents involved more than one suspect), there were 6,674 known arrests, and of those arrests, 809 (12%) were registered sex offenders at the time. Force was used in attempted abductions of children in a third (34%) of incidents. NCMEC’s analysis underscores that kidnapping of a child is included in many state registration laws precisely because in a majority of cases it is a direct means to obtain a child to rape and sexually abuse.¹¹

⁶ Proposed Code, page 527.

⁷ A nonfamily abduction is defined as the unauthorized taking, retention, luring, confinement, or concealment of a child younger than the age of 18 by someone other than a family member (someone not related to the child by blood or marriage).

⁸ Proposed Code, page 516.

⁹ In this context, “non-familial” is used to designate an individual not related to the child by blood or marriage.

¹⁰ Several tragic cases of child abduction involving sexual abuse highlight the danger to children if kidnapping is removed as a registrable offense, including: (1) Joseph Duncan, a repeat offender who abducted, sexually assaulted, and murdered multiple children before being apprehended; (2) Ariel Castro, who kidnapped and raped two children during a prolonged confinement; (3) Tad Cummins, a teacher who groomed, abducted, and sexually abused his 15 year old student; (4) Roy Ratliff, who kidnapped and raped two teenage girls at gunpoint; (5) John Gardiner, a registered sex offender convicted of the rape, abduction, and murder of multiple children; and many other less publicly known examples from cases worked every day by the staff at NCMEC.

¹¹ NCMEC’s analysis of sexual motivation to kidnap a child tracks studies of kidnappings in the general population as well. A NISMART (National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children) analysis of stereotypical kidnappings known to law enforcement released in 2016 found that 63% of kidnapping victims were sexually assaulted during confinement. See <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/249249.pdf>.

By eliminating online enticement and crimes relating to the online distribution of child sexual abuse imagery, the Model Code reverts to a past crime paradigm that recognizes only “hands-on” abuses and disregards the explosive growth in online child sexual exploitation perpetrated globally over the past two decades. The distribution of child sexual abuse material online is not a victimless or lesser crime than a hands-on offense. In NCMEC’s experience, it is common for perpetrators who have distributed child sexual abuse imagery online at some point also to have or seek access to children to perpetuate hands-on sexual abuses. Additionally, far from being a passive crime, the child sexual exploitation imagery distributed online frequently involves extreme violence, sadistic acts, and horrific sexual abuse and torture of children, including infants.

Second, it is well-documented that children victimized by the distribution of their sexually abusive images online suffer harm in addition to, and different from, the hands-on abuse inflicted on them. Because the online distribution of images never ends, child victims live with this perpetual harm into adulthood, and new cycles of abuse are created each time additional perpetrators share these images online, and use them not only for their own self-gratification, but also to normalize the sexual abuse of children and entice additional children into abuse.¹²

Similarly, with regard to online enticement, NCMEC’s analysis of tens of thousands of these reports submitted to our CyberTipline indicate that many cases involved multiple child victims, perpetrators who were unknown to the child victim, and perpetrators motivated solely by an interest in soliciting sexually explicit images of children and meeting a child for sexual contact.¹³

The removal of sex trafficking as a registrable offense is equally baseless and endangers children. The Model Code’s conclusion that the motivation of trafficking is primarily economic disregards that a majority of children are lured into trafficking through sexual assault or coerced into remaining in a trafficking situation through the threat of rape and sexual abuse. The selling of a child to others for rape and sexual abuse does generate economic gains for the trafficker, but fundamentally it is commercializing the perpetuation of sexual violence committed against a child. To remove the sex trafficking of a child from the list of registrable offenses subverts the central goals of registration and notification.

The harm to children outlined above by the removal of kidnapping, online distribution of child sexual abuse material, online enticement, and sex trafficking from the list of registrable offenses undermines the very purpose of having a sex offender registry for child-related crimes. There simply are no more serious sexual offenses that

¹² Substantial scholarship has been produced relating to the impact of the online distribution of sexually abusive imagery on victims and the use of such imagery by offenders to normalize and perpetuate the sexual abuse of children. *See, e.g., Captured on Film: Survivors of Child Sex Abuse Material Are Stuck in a Unique Cycle of Trauma* (2019), <https://www.missingkids.org/content/dam/missingkids/pdfs/Captured%20on%20Film.pdf> (explaining impact of perpetual re-victimization that occurs to child victims as their sexually abusive images are re-circulated online); <https://www.justice.gov/criminal-ceos/child-pornography> (describing lifetime of revictimization inflicted on many survivors by re-distribution of online imagery); CANADIAN CENTRE FOR CHILD PROTECTION, SURVIVORS’ SURVEY: EXECUTIVE SUMMARY 2017 7, 10, 28–31, https://protectchildren.ca/pdfs/C3P_SurvivorsSurveyExecutiveSummary2017_en.pdf (explaining that recording of child sexual abuse has a “significant, lifelong impact on the victim” that “can persist into adulthood and may significantly reduce the ability of survivors to cope with day-to-day stressors, maintain healthy relationships, and reach their full potential in educational and economic pursuits”).

¹³ In a recent analysis of over 5,000 online enticement reports, NCMEC determined that in almost 1 in 4 reports (23%) the offender had additional child victims; 90% of reported offenders were unknown to the child victim in real life; and enticement was motivated by offenders’ interest in obtaining sexually explicit images of children (60%) or meeting for sexual contact with children (32%).

can be committed against a child. NCMEC strongly urges ALI to revise the Model Code so these crimes against children remain included as registrable offenses.

B. Access to Registry Information by Private Entities Conducting Background Checks for Child-Serving Positions is Essential for Child Safety

The Proposed Code would compromise the efforts of child-serving businesses and non-profit organizations to obtain essential background check information on applicants for employment and volunteer opportunities by permitting only government law enforcement agencies to access registry information.¹⁴ This proposed limitation would create significant child safety risks for substantial numbers of school-age children. Based on a Pew Research Center survey conducted in 2015,¹⁵ 73% of school-age children play sports, 60% participate in religious instruction or youth groups, and 54% have taken lessons in music, dance, or art. These activities are often supported by organizations such as mentoring programs, sports leagues, scouting and out-of-school programs that universally conduct background and screening checks using private entities to determine if adult applicants have been convicted of a crime that would disqualify them from interacting with children. The proposed Model Code would leave these child-serving businesses and organizations with no feasible means to determine if they are hiring an offender who has been convicted of raping or committing a sexual crime against a child. This would put children at significant risk and likely result in child-serving businesses and organizations closing their doors due to an inability to provide a safe environment for children.

NCMEC acknowledges that productive discussions can occur around the current levels of accessibility of detailed registry information by the general public. However, prohibiting private entities entirely from accessing information for demonstrated and discrete hiring purposes does not enhance goals of reintegration or rehabilitation of ex-offenders and is an extreme response that unnecessarily endangers children by preventing reasoned decisions regarding the hiring of individuals with access to children. While the Model Code cites a government study stating a concern from the FBI relating to the ability of nongovernmental entities to adequately protect and store criminal history information¹⁶, this does not justify barring these entities from accessing highly relevant information that is limited to past sexual crimes. Furthermore, private organizations are subject to certain legal requirements under the Fair Credit Reporting Act (FCRA) and state consumer reporting laws when conducting background checks on individuals that serve to protect individuals' privacy rights and ensure proper use of their personal information. These federal and state regulatory protections apply to individuals who are subject to third-party background checks and provide individuals a summary of their rights and guidance on the adverse action process if the background check has negative results.

From 2003 to 2011, NCMEC ran a pilot background check program for youth-serving nonprofit organizations. NCMEC's experience running this program demonstrated that approximately 6.2% of individuals who applied to volunteer to work with children had a prior criminal history of child abuse. Despite knowing they would be subject to a criminal history check, these individuals still pursued opportunities to work with children. This demonstrates that individuals with an interest in sexually abusing children will actively seek to gain access to children. Some applicants had criminal histories including homicides, sexual assaults, child endangerment, abuse and neglect of a child, and rape, and some were registered sex offenders. Within a subset of applicants who had criminal records and applied to volunteer at nonprofit organizations: 42% of applicants had a criminal record in a state other than

¹⁴ Proposed Code, page 491.

¹⁵ Pew Research Center, Parenting in America: Outlook, Worries, Aspirations are Strongly Linked to Financial Situation, December 17, 2015, http://www.pewresearch.org/wp-content/uploads/sites/3/2015/12/2015-12-17_parenting-in-america_FINAL.pdf.

¹⁶ Proposed Code, page 579.

where they applied to volunteer; 23% of applicants had a different name on their criminal record than the one they used to apply to volunteer; and 6% of applicants applied with a different date of birth than the one in their criminal history. Equally concerning, more than half of applicants with a criminal record indicated on their application papers that they had no criminal record.

The results of NCMEC's pilot background check program are especially alarming when considering both recidivism rates for sex offenders and the underreporting of sex crimes. A brief published by the SMART Office's Sex Offender Management Assessment and Planning Initiative on adult sex offender recidivism found "the observed sexual recidivism rates of sex offenders range from about 5 percent after 3 years to about 24 percent after 15 years".¹⁷ Given that sex crimes are vastly underreported, it follows that observed recidivism rates are underestimates of the actual re-offense rates of sex offenders.

If private organizations and businesses are barred from accessing information relating to registered offenders who have committed sexual crimes against children, then these entities will be faced with the untenable choice of hiring individuals without a background check to care for children or shutting down their businesses and terminating their child-serving programs. NCMEC strongly recommends ALI revise the Model Code to permit continued access by child-serving entities for the purpose of conducting background checks on applicants who will interact with children. Without the ability to vet individuals for sexual crimes against children, children will be endangered or parents will be compelled to avoid enrolling children in a range of day care, sporting and afterschool programs.

C. Importance of Maintaining Certain Key Identifiers During the Registration Process

The Model Code removes several key identifiers from the registry requirements including date of birth, fingerprints, palm prints, DNA sample, passport, driver's license/identification card information, and Internet identifiers. In NCMEC's experience, removal of Internet identifiers and date of birth is especially problematic. As crimes of online sexual exploitation have exploded in volume, the ability to record registered offenders' Internet identifiers is crucial to enhance the protection of children online. NCMEC has worked on hundreds of cases in which registered sex offenders have re-offended against children online. Examples of these cases include: (1) a registered sex offender who had sexually abused a 4-year-old girl was found to have 20 different online profiles, at least one of which he used to communicate with children; (2) a registered sex offender who abused a child was found to be using multiple email addresses to sexually exploit child victims; and (3) a registered sex offender with multiple convictions for sexually abusing children was found to be using multiple email addresses and social networking profiles to commit additional sexual crimes against children. Based on these and countless other examples of cases NCMEC has worked on, NCMEC strongly recommends ALI not remove Internet identifiers to the registration process as crucial means to intervene and keep children safer when a registered offender is re-offending online.

Having run the pilot background check program for 8 years, NCMEC is well aware that certain pieces of identifying information are crucial to avoid mistaken identity when conducting background checks. The date of birth is one such key piece of information that enables clear identification to be made and errors in mistaken identity to be avoided. For the safeguard it provides, NCMEC recommends ALI not remove date of birth from the registration process.

¹⁷ <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/recidivismofadultsexualoffenders.pdf>.

D. Limiting Registration to Second Offenses Disregards Rights of Victims of First Offenses and Unnecessarily Endangers Subsequent Victims

NCMEC is troubled by the Model Code’s exclusion of a first-time offense for sexual assault by physical force from registrable offenses.¹⁸ The Model Code provides no justification for requiring two offenses of sexual assault by physical force before an offender is required to register. There is no rationale to deprive the first child victim of a sexual assault by physical force of full remedies under the law or to deprive society from the protective benefits of registration and notification of an initial crime of this type. NCMEC is aware that offenders who commit sex crimes often are repeat offenders, and this is commonly accepted even though sex crimes are woefully underreported. NCMEC strongly recommends ALI not disregard the rights of first victims and endanger the public by requiring that an offender sexually assault two children by physical force before being compelled to register.

E. Applying Age Parameters for Registration of Child Sexual Assaults Severely Harms Victims

The Model Code also is silent on any benefits to introducing age parameters limiting registration for sexual assault of a minor to cases in which the child is younger than 12 years old and the perpetrator is 21 years old or older and limiting registration of incestuous sexual assault of a minor to cases in which the victim is under the age of 16. Under the Model Rule, a 19-year-old would be permitted to rape a 13-year-old without having to register and a father would be permitted to rape his 16-year-old daughter without having to register. These gaps in registration serve only to provide relief to perpetrators who commit heinous, violent sexual crimes against children. There is no rationale for these proposed changes, and they diminish these crimes against children and ignore the rights of child victims. NCMEC urges ALI to remove these age parameters from the Model Code so that children of all ages can be protected from sexual assault and abuse.

Thank you in advance for your review of the concerns raised in this letter on behalf of NCMEC’s mission and the children and families we serve. We strongly encourage you to give serious consideration to the negative impact on child safety arising from the portions of the Proposed Code that we have identified and to adopt NCMEC’s revisions to ensure children are not put at risk for sexual exploitation. We would welcome an opportunity to discuss our concerns with you in person, to provide you with additional information regarding the sexual exploitation cases we have worked on, and to provide further recommendations on how the Model Code could better protect child victims while still fulfilling your ultimate policy goals.

Please do not hesitate to reach out if you have any questions.

Sincerely,



John F. Clark
President and CEO

¹⁸ Proposed Code, pages 546-547.