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## America's "Dirty Little Secret": Domestic Sex Trafficking of Minors and a Call for State Action

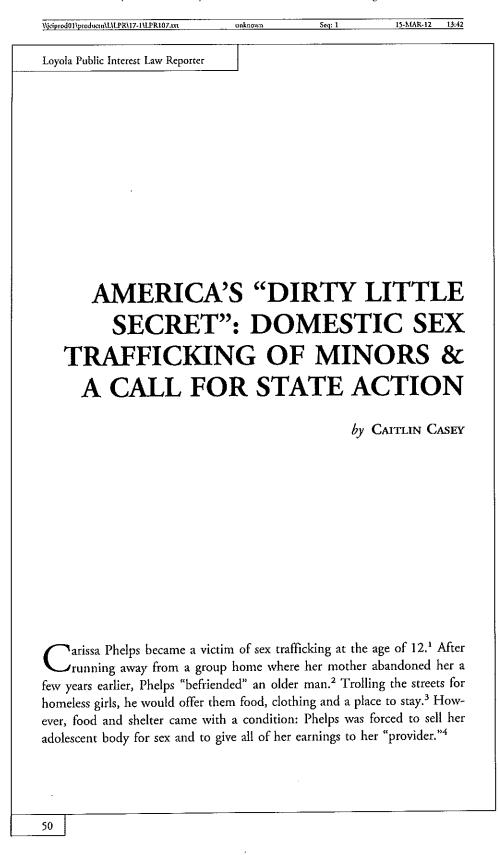
Caitlin Casey

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While the exact number is unknown, it is estimated that Phelps is one of thousands of American children exploited for sex.<sup>5</sup> In the domestic sex trafficking of minors, children are commercially and sexually exploited within U.S. borders.<sup>6</sup> It has been called America's "dirty little secret," as most Americans are unaware that it infects suburbs, towns and cities across the nation.<sup>7</sup> While sex trafficking is a fast-growing criminal enterprise globally, the United States is a particularly active and profitable venue.<sup>8</sup>

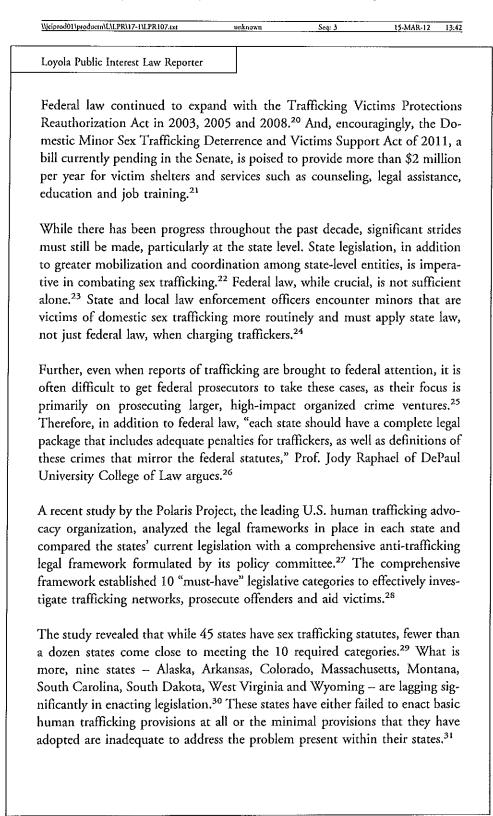
Over the past several decades, sex trafficking of minors has become an increasingly popular organized crime operation.<sup>9</sup> Runaway and homeless children are easily accessible, the demand is high (and therefore extremely profitable for traffickers), and the risk of repercussions is fairly minimal, especially compared to drug and weapon trafficking.<sup>10</sup> Due to the covert nature of the crime and the frequency of underreporting, the total number of victims in the United States is not exact.<sup>11</sup> While current figures are speculative, all research clearly demonstrates the significance of the problem.<sup>12</sup> The U.S. Department of Justice, for example, estimates that roughly 100,000 to 300,000 minors are victimized by child sex trafficking each year, with the average age of entry at 13.<sup>13</sup>

CURRENT & FEDERAL STATE LEGISLATION

The federal government has only within the past decade formally acknowledged the epidemic scope of child sex trafficking.<sup>14</sup> In 2000, Congress passed the Trafficking Victims Protection Act ("TVPA"), the first federal law specifically enacted to prevent victimization of both children and adults and to prosecute perpetrators of human trafficking.<sup>15</sup> The TVPA explicitly defined domestic minor sex trafficking.<sup>16</sup> Critically, this legislation emphasized that, when prosecuting a trafficker, prosecutors need not prove that a perpetrator took the victim by force, fraud or coercion.<sup>17</sup> Even if the child claims to engage in prostitution "voluntarily," proof that the victim is under the age of 18 is sufficient to constitute sex trafficking of a child.<sup>18</sup>

Since the TVPA's enactment, numerous public interest and victims advocacy groups have formed to generate awareness and inspire action. As a result, the U.S. Department of Justice has encouraged law enforcement agencies to move away from viewing prostitution among juveniles as a form of delinquency engaged in by runaways, and instead to view these youth as victims of commercial sexual exploitation.<sup>19</sup>

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A CALL TO ACTION

The disconcerting results of the Polaris Project study signal the broad lack of awareness and inaction at the state level. Many states continue to address sex trafficking as a form of sex crime, yet this approach has proved ineffective for the past several years.<sup>32</sup> Sex trafficking is much more than an isolated sex crime against one individual.<sup>33</sup> It is a form of both reoccurring domestic violence and organized crime, and it requires separate laws and a dedicated focus from law enforcement and prosecutors.<sup>34</sup>

To fight trafficking within their communities, states must not only expand criminal statutes and make sentences more stringent but must also implement tools to better effectuate arrests and prosecute traffickers.<sup>35</sup> Louis Longitano, supervisor of the Human Trafficking Unit at the Cook County State's Attorney's Office, stresses that "law enforcement needs access to the tools used to investigate other forms of organized crime such as wiretaps and other forms of electronic surveillance."<sup>36</sup> Further, arrests must be made frequently and should be highly publicized, in an effort to deter others from continuing to recruit young girls.<sup>37</sup>

In addition to expanding criminal statutes to prosecute traffickers, legislatures must place a renewed emphasis on curbing demand. While the purchase of sexual acts is a crime in most states, the penalties imposed have been insufficient to deter customers, or "johns."<sup>38</sup> Raphael notes, "As long as there is a demand for children's bodies, traffickers will work to meet those demands."<sup>39</sup> Thus, instituting severe penalties against "johns," in addition to the trafficker, will discourage them from seeking out and exploiting minors and thus diminish the financial return to traffickers.<sup>40</sup> As Raphael emphasizes, "Those who take advantage of children sexually must be a part of the equation."<sup>41</sup> States must make an impact on both the demand and supply side of exploitation.<sup>42</sup>

While state legislation is not the only tool in combating sex trafficking of minors, it is a critical component that serves as a building block for cooperation and coordination between law enforcement, prosecutors and victim advocacy organizations. Despite advances in federal law, child sex trafficking continues to flourish because of inadequate state legislative action and inability to deter both traffickers and "johns" with consistent local prosecution.

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Wciprod01\productn\L\LPR\17-1\LPR107.tat unknown Seq: 5 15-MAR-12 13:42 Loyola Public Interest Law Reporter For far too long, many states have either ineffectively addressed or simply ignored the presence of sex trafficking of minors and victims like Carissa Phelps. Domestic sex trafficking of minors is an epidemic, and states must act now before it spreads. Notes 1 John W. Whitehead, Children of the Night: Child Prostitution is America's Dirty Little Secret, HUFFINGTON POST, July 29, 2008, http://www.huffingtonpost.com/john-w-whitehead/children -of-the-night-chi\_b\_115348.html. 2 Id. Id, 3 4 Id. 5 Id. (The exact number of American children exploited for sex today is not known. Best estimates are based anecdotal information and on research by advocacy groups and the U.S. Department of Justice.) 6 National Report on Domestic Minor Sex Trafficking: America's Prostituted Children, SHARED HOPE INT'L (May 2009), http://www.sharedhope.org/Portals/0/Documents/SHI\_National\_ Report\_on\_DMST\_2009.pdf ("Commercial sexual exploitation includes but is not limited to child prostitution, pornography, and/or stripping"). 7 Whitehead, supra note 1. 8 Kathleen Richter, The Demand for Exploitation: Domestic Minor Sex Trafficking in the U.S., PROSPECT J. INT'L AFF. (Jan. 2011), http://prospectjournal.ucsd.edu/index.php/2011/01/thedemand-for-exploitation-domestic-minor-sex-trafficking-in-the-u-s/. 9 Id. 10 Id. 11 Email interview with Jody Raphael, Senior Research Fellow and Visiting Professor of Law, DePaul University College of Law (Oct. 12, 2011), 12 Id. 13 Richter, supra note 8. 14 SHARED HOPE INT'L, supra note 6. 15 Id.; see TVPA, 22 USC §7101 (2000). 16 Id. 17 Id. 18 Id. 19 Kimberly J. Mitchell, David Finkelhor, & Janis Wolak, Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study, 15 CHILD MAL-TREATMENT 18 (Feb. 2010), available at http://www.unh.edu/ccrc/pdf/Mitchell%202010%20 conceptualizing.pdf. 20 Id. Cassandra Clifford, Domestic Minor Sex Trafficking Bill Gets a New Breath of Life on Capitol 21 Hill, FOREIGN POLICY ASSOC. (Mar. 2011), http://foreignpolicyblogs.com/2011/03/16/domestic-minor-sex-trafficking-bill-gets-a-new-breath-of-life-on-capital-hill/. 22 Raphael, supra note 11. 23 Id. 54

15-MAR-12 13:42 Seq: 6 Wciprod011productn/L/LPR/17-1/LPR107.txt unknown No. 1 • Fall 2011 Id. 24 Id. 25 Id. 26 RATED STATE LAWS 2011, POLARIS PROJECT (Aug. 2011), available at http:// www.polarisproject.org/what-we-do/policy-advocacy/state-policy/current-laws. (The anti-trafficking legal framework includes statutes: 1) defining sex trafficking and 2) labor trafficking and providing criminal sanctions; 3) establishing asset forfeiture and instituting investigative tools; 4) providing training on human trafficking to a wide variety of professionals - including law enforcement, judges, public defenders, prosecutors, child protective services, probation officers, and social service outreach workers - and/or establishing a human trafficking task force, commission, or advisory committee; 5) posting a human trafficking hotline; 6) protecting sex trafficked minors through Safe Harbor programs; 7) lowering the burden of proof for sex trafficking of minors; 8) providing for victim assistance and 9) access to civil damages; and 10) vacating convictions for sex trafficking victims). 28 Id. Id. 29 Chuck Neubauer, Nine States Lag in Law to Stop Human Trafficking, WASH. TIMES, Aug. 25, 2011, available at http://www.washingtontimes.com/news/2011/aug/25/nine-states-lag-in-30 laws-to-stop-human-trafficking/. 31 Īd. Interview with Louis Longitano, Supervisor, Human Trafficking Unit, Cook County 32 State's Attorney's Office (Oct. 14, 2011). Id. 33 34 Id. 35 Id. (Illinois and New York were among the first states to expand their criminal laws and institute comprehensive statutes specifically aimed at combating minor sex trafficking. Illinois recently passed the Illinois Safe Children's Act of 2010, making all children under the age of 18 immune from prosecution for prostitution under any circumstance. If law enforcement encounters a child exploited in prostitution, the child may be taken into temporary protective custody. Law enforcement must notify the Department of Child and Family Service, which in turn must initiate an investigation into child abuse within 24 hours. The law also raises penalties, limits the availability of affirmative defenses for those exploiting minors, and provides the possibility of additional funding for services to survivors of human trafficking and prostitution through expanded vehicle impoundment fees. Additionally, the law expanded law enforcement's ability to engage in wiretapping during investigations into human trafficking crimes); see Governor Quinn Signs Law to Protect Children from Sexual Exploitation, ILL. GOV'T NEWS NET. (Aug. 20, 2010), http://www.illinois.gov/pressreleases/ShowPressRelease.cfm?SubjectID=3&RecNum= 8790. 36 Id. (Electronic surveillance includes officer safety overhears, consensual overhears, vehicle tracking devices and non-audio surveillance by pole-cameras). Raphael, supra note 11. 37 Richter, supra note 8. 38 Raphael, supra note 11. 39 Richter, supra note 8. 40 Raphael, supra note 11. 41

42 Richter, supra note 8.

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