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Loyola Public Interest Law Reporter

# AMERICA'S "DIRTY LITTLE SECRET": DOMESTIC SEX TRAFFICKING OF MINORS & A CALL FOR STATE ACTION

*by* CAITLIN CASEY

Carissa Phelps became a victim of sex trafficking at the age of 12.<sup>1</sup> After running away from a group home where her mother abandoned her a few years earlier, Phelps "befriended" an older man.<sup>2</sup> Trolling the streets for homeless girls, he would offer them food, clothing and a place to stay.<sup>3</sup> However, food and shelter came with a condition: Phelps was forced to sell her adolescent body for sex and to give all of her earnings to her "provider."<sup>4</sup>

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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Federal law continued to expand with the Trafficking Victims Protections Reauthorization Act in 2003, 2005 and 2008.<sup>20</sup> And, encouragingly, the Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2011, a bill currently pending in the Senate, is poised to provide more than \$2 million per year for victim shelters and services such as counseling, legal assistance, education and job training.<sup>21</sup>

While there has been progress throughout the past decade, significant strides must still be made, particularly at the state level. State legislation, in addition to greater mobilization and coordination among state-level entities, is imperative in combating sex trafficking.<sup>22</sup> Federal law, while crucial, is not sufficient alone.<sup>23</sup> State and local law enforcement officers encounter minors that are victims of domestic sex trafficking more routinely and must apply state law, not just federal law, when charging traffickers.<sup>24</sup>

Further, even when reports of trafficking are brought to federal attention, it is often difficult to get federal prosecutors to take these cases, as their focus is primarily on prosecuting larger, high-impact organized crime ventures.<sup>25</sup> Therefore, in addition to federal law, "each state should have a complete legal package that includes adequate penalties for traffickers, as well as definitions of these crimes that mirror the federal statutes," Prof. Jody Raphael of DePaul University College of Law argues.<sup>26</sup>

A recent study by the Polaris Project, the leading U.S. human trafficking advocacy organization, analyzed the legal frameworks in place in each state and compared the states' current legislation with a comprehensive anti-trafficking legal framework formulated by its policy committee.<sup>27</sup> The comprehensive framework established 10 "must-have" legislative categories to effectively investigate trafficking networks, prosecute offenders and aid victims.<sup>28</sup>

The study revealed that while 45 states have sex trafficking statutes, fewer than a dozen states come close to meeting the 10 required categories.<sup>29</sup> What is more, nine states – Alaska, Arkansas, Colorado, Massachusetts, Montana, South Carolina, South Dakota, West Virginia and Wyoming – are lagging significantly in enacting legislation.<sup>30</sup> These states have either failed to enact basic human trafficking provisions at all or the minimal provisions that they have adopted are inadequate to address the problem present within their states.<sup>31</sup>

## 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.

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.

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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](http://www.huffingtonpost.com/john-w-whitehead/children-of-the-night-chi_b_115348.html).

2 *Id.*

3 *Id.*

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](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/the-demand-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 MALTREATMENT 18 (Feb. 2010), available at <http://www.unh.edu/ccrc/pdf/Mitchell%202010%20conceptualizing.pdf>.

20 *Id.*

21 Cassandra Clifford, *Domestic Minor Sex Trafficking Bill Gets a New Breath of Life on Capitol 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.*

24 *Id.*

25 *Id.*

26 *Id.*

27 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.*

29 *Id.*

30 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-laws-to-stop-human-trafficking/>.

31 *Id.*

32 Interview with Louis Longitano, Supervisor, Human Trafficking Unit, Cook County State's Attorney's Office (Oct. 14, 2011).

33 *Id.*

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).

37 Raphael, *supra* note 11.

38 Richter, *supra* note 8.

39 Raphael, *supra* note 11.

40 Richter, *supra* note 8.

41 Raphael, *supra* note 11.

42 Richter, *supra* note 8.