

**PEDOPHILIA - FROM DENOUNCEMENT TO CONVICTION: A LITERATURE
REVIEW****PEDOFILIA - DA DENÚNCIA À CONDENAÇÃO: REVISÃO DA LITERATURA****LA PAEDOPHILIA - DENOUNCES Y CONDENACION: LITERATURE REVIEW****ABSTRACT**

Introduction: the increase of child pornography is proportional to the availability of material on the internet. Sex Offenders use the Internet to find, identify and contact children to practice sexual offenses. **Objective:** present new questions about pedophilia on the Internet and present the case from the complaint to the conviction of the molester. **Method:** a literature review and case monitoring through forensics. **Result:** the literature shows the importance of the petition for the opening of the investigation, identification and punishment of the aggressor. **Conclusion:** new questions have arisen regarding the pedophilia/internet and the complaint is an important key against sex crimes involving children and adolescents.

Keywords: Pedophilia, Internet, Forensic Medicine.

RESUMO

Introdução: o aumento da pornografia infantil é proporcional à disponibilidade de material na internet. Os criminosos sexuais utilizam a internet para encontrar, identificar e contatar menores para a prática de ofensas sexuais. **Objetivo:** apresentar novas questões sobre a pedofilia na internet e apresentar um caso a partir da denúncia até a condenação do molestador através de dados secundários. **Método:** revisão da literatura e acompanhamento de caso de investigação forense. **Resultado:** a literatura apresenta a importância da denúncia para abertura das investigações, identificação e punição do agressor. **Conclusão:** novas questões surgiram com relação à pedofilia/internet e a denúncia é uma importante chave contra crimes sexuais envolvendo crianças e adolescentes.

Palavras chaves: Pedofilia, Internet, Medicina Legal.

RESUMEN

Introducción: el aumento de la pornografía infantil es proporcional a la disponibilidad de material en Internet. Los delincuentes sexuales usan el Internet para buscar, identificar y contactar a los niños a practicar delitos sexuales. **Objetivo:** presentar nuevas preguntas sobre la pedofilia en Internet y presentar un caso de la queja a la condena del agresor. **Método:** una revisión de la literatura y el caso monitoreo a través de la ciencia forense. **Resultado:** la literatura muestra la importancia de la queja a la apertura de la investigación, identificación y sanción del agresor. **Conclusión:** han surgido nuevas preguntas con respecto a la pedofilia/internet y la queja es una clave importante contra los delitos sexuales que involucran a niños, niñas y adolescentes.

Palabras clave: Pedofilia, Internet, Medicina Legal.

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INTRODUCTION

The increase of Internet use proportionally coincides with the cybercrime, including sexual exploitation of children and adolescents.¹

Cases of pedophilia crimes are more common than we think, as it has been seen in many disclosures in the last years, especially after the constitution of the "Parliamentary Inquiry Committee (PIC) on Pedophilia", in the Brazilian Senate. Investigation of complaints is not easy, because it involves embarrassment of the victims, who, many times, spend their lives without disclosing the sexual abuse suffered.²

Pedophilia, or pedosexuality, is a sexual disorder defined as the sexual preference for children, individuals up to 12 years old, or adolescents, individuals aged between 12 and 18.²

According to the International Classification of Diseases (ICD), pedophilia is a mental disorder, which can manifest in people who have incomplete or delayed mental development.³

In recent years, Brazil has adopted a number of important laws, which have improved the fighting and punishment of crimes against children and adolescents. Law 11.829/2008, which

changed the Statute of the Child and Adolescent (ECA) - Statute of the Child and Adolescent, is an important tool against pedophilia in computer network, as it includes as a crime the possession, storage of photos and images of children and adolescent pornography, online seduction, grooming, purchase, acquisition, exhibition and sale of any type of material exhibiting adolescents in violence situation.^{3,4}

In November 2009, the tool was made available to fight pedophilia in the Internet. Federal Police (FP), in partnership with the SaferNet Brazil and endorsement of Interpol launched an online form in order to make faster the receipt of complaints of child pornography, besides racial crimes, prejudice against minorities and incentives to genocide, practiced through the Internet.^{1,5}

Complaint is an important tool to the opening of the police investigations against child and adolescent pornography. In the legal field, quality of protocols, fulfilling of the notices and the forensic training of health and human area professionals involved are essential to the identification of the aggressor and attention to the victim health.⁵

Online aggressors commonly

identify and find their victims in chat rooms⁶, and more recently, through groups formed in *WhatsApp*.⁷ Internet development and other computer and Blackberry smartphone mediated communications are used for production and dissemination of a variety of sexual deviant behaviors such as pedophilia.^{8,9}

According to data from the report on infant pornography on the Internet, traffic of children and adolescents and normative frameworks related⁸, diffusion of the content is essentially male, with young people ranging between 25 and 40 years old, and from reasonable to good socioeconomic status.¹⁰

The connection between the consumption of pornography and sexual offenses of contact is not clear. The Internet has eased the production, distribution and consumption of pornography in general and, specifically the illegal, as well as the infant one.¹¹ For that reason, it has become an instrument to study the computer users suffering from deviant behavior.¹²

This study was done after some debate carried out in the training course to form multipliers for the National Program of Integrated and Referential Actions (PAIR) to confront the children and

adolescents sexual violence, held in Minas Gerais state and the decision of reporting the case followed up through secondary data.

The relevance of the topic is due to the increasing numbers of pedophilia cases on the Internet. Knowledge production on this subject is important for discussion on multipliers, parents or guardians, teachers, professionals and, especially, officers training, who work with children and adolescents in conditions of vulnerability and use the internet to establish relations.

It is important to building continued training of professionals who work in the local network in defense of children and adolescents that are victims of molesters, in the areas of prevention, protection, care, defense and accountability, with technical and methodological support in a continuous way. Material production, such as this paper, may contribute to the encouragement and stimulate the denouncement, in addition to providing study materials to improve public policies.

The objective of this paper is to present a review of the literature on pedophilia in the Brazilian legal field, with a focus on the framework of sexual crimes, including those involving pedophilia on

the internet, applying the ECA and the Law 11.829/2008. In addition, it aims to analyze the denouncement as a determinant tool for opening of police investigation procedures against sexual abusers of child and adolescent victims through internet use.

THEORETICAL BACKGROUND

Studies show that sexual crimes initiated on the internet suggest a profile of molesters who do not use physical violence against their victims.¹³

The molesters adopt the "strategy of deception", act slowly, convincingly and with a sense of opportunity, covering up their ages and sexual intentions.¹⁴ Then, vulnerable victims are groomed, first in chat rooms, then being invited to a conversation in a private environment¹⁴ and groups of *WhatsApp*.⁷

The majority of sexual crimes on the internet involve adult men who use the virtual environment to meet and seduce minors in conditions of vulnerability to sexual encounters¹³. In most of the cases, the victims are aware of chatting with adults online. The study National Juvenile Online Victimization (N-JOV) reveals that only 5% of the molesters pretended to be teenagers when they met potential victims online.¹³

Normally, they use information

published in profiles on social networks to identify potential victims. In a longitudinal study, 1,051 arrested molesters were interviewed.¹⁵ Result analysis shows that from the 1,051 prisons, 569 were a consequence from the commercial sexual exploitation of minors facilitated by the internet.

The offenders were divided into two main categories: those who used the internet to buy or sell access to minors identified for sexual purposes, including child pornography production (36% of cases), and those who used the internet to buy or sell images of child pornography, but did not produced (64% of cases). Offenders who try to profit from the children sexual exploitation had a higher probability of criminal background for sexual and non-sexual offenses.¹⁵

New issues arise in relation to images of pornography in the virtual space. Recent reports from professionals in the area of sexual crimes investigation on the internet highlight a worrying trend: the auto production of pornography.¹⁶

In addition, more and more molesters are making themselves invisible to parents or guardians, moving in lines of virtual access, increasingly restricted to children and adolescents.¹⁷ It is a worrying factor, since some parents do not

have digital skills to safeguard their children from virtual molesters.¹⁷

Virtual space offers the possibility of face-to-face anonymity to molesters who have difficulties of personal relationship.¹⁸ Molesters make use of electronic communication, such as instant messaging, email and chat rooms to meet and develop close relationships with their victims.¹³

The grooming process and sexual exploitation of children and adolescents over the internet is complex. It is necessary to understand and characterize the profile of the harasser, the characteristics of virtual actions, alert potential victims and publicize the importance of denouncement.⁷

In an exploratory study, which analyzed 51 molesters convicted of sexual crime initiated by the internet, it is pointed out that they used online chat rooms as social and sexual output.

Two subgroups were identified: one group motivated to contact to get involved in offline sexual behavior with a teenager and another one led by the fantasy of becoming involved with a teenager in an online cybersex environment with the intention to offline contact.¹⁹

In a study conducted in the United States, the authors concluded that if the

law was applied and the computer operators, who produced and distributed child pornography material using the internet, were arrested sexual crimes against children and adolescents would decrease by up to 30%.²⁰ However, the authors believe that the results of the survey can be used for the formulation of knowledge and empirical understanding of the scope and characteristics of trafficking of child pornography in social networks. Such studies can be used to fight the problem. Moreover, investigation software tools can be strategically used to help law enforcement and prioritize investigations.²⁰

METHOD

It is a literature review and a description of a pedophilia case. This study began from group discussions and follow-up reports of pedophilia cases. Scientific background is based on scientific publications relevant to the topic available in print and electronic formats.

Literature review was performed in databases such as Latin American and Caribbean Health Sciences (LILACS) and Medical Literature Analysis and Retrieval System Online (MEDLINE), Pubmed, documents published in the Federal Official Gazette of Brazil, Brazilian Penal Code, by using keywords: pedophilia,

internet, child sexual violence, sexual offenses (indexed), sexual exploitation, forensic and child pornography (not indexed). Publications were obtained for a period of research from 2005 to 2015, in addition to the citation of Law no. 11,829 of the Presidency of the Republic of Brazil of fight to child pornography and criminal pedophilia, which changes the Statute of the Child and Teenager of 2008 and a basic handbook of criminology, 2009.

There were 30 productions selected and then, categorized. The findings showed that there was a greater interest in the topic after 2008, predominantly publications in journals that value the reasons that led the harasser to conviction. The articles selected were responding to the question of how the molesters were arrested as a result of crimes of pedophilia.

The empirical part of this paper aims to understand a case situated in the context of real life, with support and theoretical foundation in the literature review presented.

In order to comply with the goal it was done the consultation and analysis of procedural documents relating to the case in question, as well as information gathered in investigative process. It is presented a case study developed from

secondary data. In a case in which the molester made contact with the victim through Internet, denouncement has been made, investigations were opened, resulting in conviction. The endorsement of the event has the purpose to elucidate the involvement of the children and adolescents defense agencies in the national and international agreement. The assembly of the case was based on documentary analysis available in the acts of the Federal Public Ministry (MPF) of Brazil.

The Harasser was investigated from a complaint, that a person would be keeping contact with children via internet in chat rooms in a city in the interior of Minas Gerais, Brazil.

The analysis of selected studies, in relation to the research design, the case study and action of the defense of children and adolescents in Brazil, is presented in a descriptive manner, which enables to observe, describe and discuss fundamentals, with a view to gather and add knowledge produced on the theme explored in the review.

RESULTS AND DISCUSSION

The Brazilian legislation does not typify a crime that has the *nomem juris* of "pedophilia", being that the criminal

pedophile has been punished mainly for offences: crime of rape, crime of indecent assault and crime of corruption to the minor.⁹

Regardless of the legislation, pedophilia via the internet involves vulnerable children and adolescents, who do not yet have insight of risk, which makes them targets of the abuser. The possibility of meeting of unknown people offers the pedophile opportunity to pretend to be a child or a teenager and start a virtual friendship, especially in chat rooms.¹² Although, recent researches have published that one of the characteristics of the molesters is not lying about age.⁷

Pedophiles use sites of relationships for approaching unknown people, create bonds of affection, involve children and adolescents in their network, which can create an expectation and anxiety for knowing that virtual individual. The process used by pedophiles is called *Internet Grooming* that comprises the initial contact to exploitation or sexual abuse.⁹

Despite the international scientific literature indicate the need for diagnosis and accurate treatment, many punished or convicted sex offenders are released from prisons without any diagnostic evaluation or psychosocial intervention.¹³

Experiences of neglect and intrafamily violence, experience of sexual abuse and lack of parental supervision in childhood have been linked to the development of sexually inappropriate behavior in adulthood.⁵ Pedophilia is a psychiatric disorder that is difficult to diagnose and treat. Nevertheless, a significant portion of those who suffer from the disease can respond to medical and psychological treatment.²⁰

The complainant is an important tool for opening of investigations; however, more and more molesters are making themselves invisible to parents and/or guardians and servants of the network for the protection of children against sexual offenses over the internet, especially with the constant digital technological innovations.¹⁵

Data from digital pedophilia must be used to strategically fight the problem and cooperate with investigations and law enforcement.¹⁶ It is important the development of computer programs for monitoring of potential cases of pedophilia on the internet, especially in chat rooms and more recent in groups of *WhatsApp*.

Crime and the complaint, presentation of the case

The case presented in this work starts from secondary data; on June 20,

2006, the SaferNet Brazil sent to the Attorney General's Office in São Paulo, in the form of screening by means of social networking sites, the report of the distribution of pornography published in the global network of computers through *Orkut*. The news-crime came with the identification of a profile that was publishing photos of pornography of children and adolescents in the practice of sexual act with adults and other images of child pornography. The owner of the profile used two *e-mail addresses*. From then on, he began to calculate the criminal fact, primarily in the context of judicial section of São Paulo.

Data provided by Yahoo and Telecommunications Company of Central Brazil allowed the location of access to *e-mail accounts* in Minas Gerais, Brazil. The analysis of the messages revealed a stream of photo files and videos of pornographic and pedophilic content over the Internet.

Having the list of electronic addresses where the messages were sent to, it was found out that the accused person used various names to connect over the internet. Even though the accused denied being responsible for the addresses of access and destination for dissemination of photographs of children in sexual practice with adults on the internet, several

addresses directed to the denounced, therefore being unacceptable that he was not aware of the criminal practice. In addition to that, he sought to get closer to companions who were mothers with children in order to not being observed the plan for the practice of pedophilia.

Moreover, in the household of the accused it was confiscated hard disks, tapes, videos, which after the analysis, pointed out the existence of thousands of photos containing scenes of pornography involving children and adolescents. Records were found of conversations of the program Messenger® (MSN) with reference to pornography, catches of screens on which it is seen files of pornographic content and an audio file containing recording with voice of a child.

When publishing, freely and consciously, scenes of explicit sex and pornographic images involving children and adolescents, the accused incurred in the penal type of the article 241 of ECA. The publications sent from email addresses used by the accused were being performed repeatedly, making focus on increasing the penalty provided for in Article 71 of the Penal Code.³ Evidence and clues were added by a psychological study that identified pathological sexual interest of the defendant for children and adolescents.

In March 2009, having in view the material of crime, disclosure on *Orkut* and more emails sent, the sum of penalties were done, in accordance with Article 69 of the Penal Code, to establish as the total custodial sentence the sum of eight years' imprisonment, in addition to a fine, according to the Criminal Code, art. 49, fixed in 50 days-fine, corresponding to 1/30 of the minimum wage at the time of violation, with monetary correction.³

Custodial sentence should be fulfilled in the initial semi-open system, in accordance with the arts, 33, paragraph 2, b and 35 of the Penal Code.³

The case in question is provided in the ECA (Law no. 8.069/1990), currently in Articles 241-A and 241-B, after the changes by Law n° 11.829/2008.³ There was proof of the materiality of the crime and the MPF has applied the sentencing of the defendant by the practice of the typical fact consolidated by the article 241 of Law no. 8.069/90 c/c article 71 of the Brazilian Penal Code. The base penalty involving custodial sentence was set at three years imprisonment for each of the crimes committed, disclosure in *Orkut* and sending of electronic messages. The

provisional release of the accused was denied because it could facilitate the recurrence with new involvement of minors.

The unfolding of this work aims at stimulating the complaint and contributing to the formation of agents by the civil society in the process of surveillance of social vulnerability. Action articulated between institutions and government departments, organizations and civil society groups with a proposal to expand and improve the reception, identification and appropriate referral of cases to the communities and the development of effective strategies for the prevention of cases of pedophilia on the Internet.

CONCLUSION

Dialed complainant access is the most important means for opening of police investigations against sexual crimes involving children and adolescents. It is also important the development of *online* forms to formalize complaints together with the improvement of computer programs and *smartphones* to identify molesters' profile.

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