



## LOWERING THE AGE OF CRIMINAL RESPONSIBILITY IN BRAZIL<sup>1</sup>



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### ABSTRACT

This article discusses the controversial proposal to reduce the age of criminal responsibility in Brazil, currently set at 18 years by the Federal Constitution. The analysis is based on a historical-legal perspective, highlighting the evolution of legislation that deals with the criminal responsibility of children and adolescents, as well as the arguments for and against the change. Defenders of the reduction claim that it would combat impunity and reduce crime, while critics point out that this measure would represent a setback in children's rights, in addition to failing to address the structural causes of violence, such as social inequality, lack of access to education, and economic exclusion. The work also highlights that the Brazilian prison system, already overloaded and inefficient, does not favor the rehabilitation of young people, and may even increase their recidivism in crime. In contrast to the reduction proposal, the study defends the strengthening of public policies aimed at youth, such as quality education, social inclusion and crime prevention programs. The research seeks to examine the possibilities and implications of lowering the age of criminal responsibility, evaluating the arguments in favor of this measure, while considering the opposing points of view, using a deductive research method and a qualitative documentary approach.

**Keywords:** Age of criminal responsibility. Responsibility. Adolescence. Public policies.

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## INTRODUCTION

The reduction of the age of criminal responsibility is a topic that has raised intense debates in the Brazilian legal, political and social scenario for decades. Amid a growing sense of public insecurity and the increased exposure of crimes committed by adolescents, society often turns its eyes to the proposal of stricter criminal accountability for young people between 16 and 18 years of age (DE SOUZA; GUALDA, 2021)

However, the discussion goes beyond the simple confrontation of juvenile crime, reaching structural issues such as social inequality, ineffectiveness of public policies and the selectivity of the penal system.

According to Lenzi (2023), the age of criminal responsibility is the legal criterion used to determine the age from which a person can be criminally tried as an adult. In Brazil and in several countries around the world, the age of criminal responsibility is set at 18 years. This age is considered a boundary that marks the transition between adolescence and adulthood, determining the way the act will be judged. The Federal Constitution lists the age of majority can be defined in article 228, which states "Minors under eighteen years of age are criminally unimputable, subject to the rules of special legislation.

This article aims to analyze the main arguments for and against the reduction of the age of criminal responsibility, in the light of the Federal Constitution of 1988 and the Statute of the Child and Adolescent (ECA), in addition to reflecting on possible viable and effective alternatives to face youth violence.

The research seeks to contribute with a critical and reasoned look at an agenda that, although recurrent, requires caution, empathy and commitment to human rights and the construction of a fairer society.

The issue of lowering the age of criminal responsibility in Brazil has been widely investigated in studies and academic works. This study proposes to analyze the theme using a deductive research method and will be a qualitative documentary approach, focusing on Criminal Law and incorporating perspectives from other areas, such as sociology and psychology.

Thus, considering the current scenario of violence in the country and the growing involvement of minors in criminal activities, the discussion about lowering the age of criminal responsibility becomes increasingly pertinent.

Thus, the main objective of this research is to address the "Reduction of the age of criminal responsibility". The study adopts a bibliographic approach, investigating the main historical arguments and concepts that underpin this discussion in a holistic manner.

The research seeks to examine the possibilities and implications of lowering the age of criminal responsibility, evaluating the arguments in favor of this measure, while considering the opposing points of view, using a deductive research method and a qualitative documentary approach.

## **HISTORICAL AND LEGAL OVERVIEW OF THE AGE OF CRIMINAL RESPONSIBILITY IN BRAZIL**

With the Proclamation of Independence of Brazil, in 1830, the first Penal Code of the imperial period was instituted, which established full criminal liability from the age of 14. According to this order, children under the age of seven were totally exempt from criminal liability. Those aged between seven and fourteen years could be held responsible, as long as they demonstrated discernment at the time of the action practiced (DE SOUZA; GUALDA, 2021).

After the Proclamation of the Republic, in 1889, the Criminal Code of the Empire was replaced by the Criminal Code of the Republic of the United States of Brazil, instituted by Decree No. 847/1890. This new code considered children under the age of nine to be exempt from criminal liability. However, if a minor committed a crime, it was up to the judge to request an evaluation to verify that he had sufficient discernment to understand his actions and distinguish between right and wrong (DE SOUZA; GUALDA, 2021).

In 1923, the first Juvenile Court was established in Brazil, through Federal Decree No. 16,273/23, located in Rio de Janeiro, then the capital of the country. At the same time, the so-called Doctrine of the Rights of Minors began to be consolidated (DE SOUZA and GUALDA apud LOPES, 2006, p. 44).

This new legal perspective emerged as a reaction to the degrading conditions faced by incarcerated children and adolescents, who were kept in the same spaces as adults, without any distinction in treatment. From then on, child protection gained more relevance, being strengthened with the Geneva Declaration of the Rights of the Child, adopted by the League of Nations in 1924, which formally recognized the existence of specific rights for children (LIRA, 2019).

With the enactment of the Penal Code in 1940, a new milestone was established with regard to criminal liability. The rule began to consider the immaturity of minors under 18 years of age as a determining factor for their exclusion from the criminal sphere. According to the code, minors were not treated as criminally responsible, being completely exempt from criminal sanctions (art. 23), being subject only to educational measures provided for in specific legislation (MANSUR, 2019).

During the government of Getúlio Vargas, the Assistance Service for Minors (SAM) was created, which, although it had the objective of protection, functioned in a similar way to a prison system aimed at adolescents. The SAM adopted strict disciplinary practices, with correctional and repressive characteristics, inspired by boarding schools and correctional houses. This structure later gave rise to FUNABEM, which would later become FEBENS (LIRA, 2019).

The Federal Constitution of 1988, in a pioneering way in relation to the Doctrine of Full Protection, began to incorporate the essential principles of this approach into the Brazilian legal system, especially in articles 227 and 228.

Article 227. It is the duty of the family, society and the State to ensure the child and adolescent, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life, in addition to safeguarding them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression. [...] Article 228 - Minors under eighteen years of age are not criminally liable, subject to the norms of special legislation.

These provisions guarantee the absolute priority of the rights of children and adolescents, recognizing them as subjects of rights and ensuring them full protection by the family, society and the State. Following the Federal Constitution and due to the constituent movement of 1986, what could be called the Brazilian version of the United Nations Convention on the Rights of the Child emerges, that is, the ECA, Statute of the Child and Adolescent.

This panorama demonstrates that Brazilian legislation has evolved in order to guarantee specific protection to young people in conflict with the law, reflecting a concern not only with accountability, but with the promotion of rights, education and social reintegration of these individuals.

## **ARGUMENTS IN FAVOR OF LOWERING THE AGE OF CRIMINAL RESPONSIBILITY**

Over time, there has been an increase in the visibility of cases involving minors in serious offenses, which has generated debates about the effectiveness of socio-educational measures and the need for reforms in the juvenile justice system. This concern has intensified with the emergence of "law and order" movements in various parts of the world, which have pushed for stricter policies regarding young offenders (LIRA, 2019).

Advocates of lowering the age of criminal responsibility argue that adolescents are fully capable of discerning between right and wrong before the age of 18. They claim that, in many cases, young people aged 16 or 17 commit serious crimes, such as homicides and rapes, and should be held more severely accountable (SOUZA, 2019).

Impunity, in the view of these defenders, contributes to the feeling of insecurity in society and encourages the practice of crimes, since young offenders feel protected by current legislation. In addition, the reduction of the age of criminal responsibility is seen as a response to the increase in youth violence.

For Moore (2019), statistical data show that the participation of adolescents in violent crimes has grown, and many argue that society needs more effective mechanisms to combat this reality. It is argued that the application of harsher penalties would have a deterrent effect, discouraging young people from engaging in criminal activities.

Thus, the Commission on Constitution and Justice and Citizenship (CCJ) of the Chamber of Deputies approved the Proposed Amendment to the Constitution (PEC) No. 171/1993, which proposes to reduce the age of criminal responsibility from 18 to 16 years. The issue gained great repercussion in 2015, especially after the vote — marked by intense debates and controversies — that resulted in the approval of the aforementioned PEC by the Chamber of Deputies, through a much questioned legislative maneuver (MANSUR, 2019). The original proposal for the PEC was presented on August 19, 1993 by the then federal deputy Benedito Domingos, from the Progressive Party of the Federal District. The text suggested the reduction of the age of criminal responsibility to 16 years in any type of crime, proposing the modification of article 228 of the Federal Constitution, which currently establishes that: "Minors under eighteen years of age, subject to the rules of special legislation, are criminally unimputable".

With the approval, a special commission will be formed to evaluate the proposal in detail. If it is approved in two rounds in the Chamber of Deputies and in two more votes in the Federal Senate, the measure could become law. However, its processing may still be challenged in the Federal Supreme Court (STF).

Among the arguments in favor of the PEC, the allegation that the modification of article 228 of the Federal Constitution of 1988 does not represent a violation of fundamental rights and guarantees stands out, since, according to the defenders, the proposal does not remove rights, it only redefines the criteria for criminal accountability (MANSUR, 2019).

In addition, many defenders of PEC 171/1993 claim that the change would allow the State to confront the strategic use of adolescents by organized crime. According to this perspective, criminal groups take advantage of the non-imputability of minors to employ them in drug trafficking and other illicit activities, knowing that, even in the event of arrest, the legal consequences would be mild (LIRA, 2019).

Another point highlighted is the desire of the majority of the population. Opinion polls have revealed, over the years, that most Brazilians support lowering the age of criminal responsibility, especially in cases of heinous crimes, such as homicides and rapes. For these citizens, the measure would represent a fairer response in the face of the seriousness of certain behaviors practiced by adolescents (MANSUR, 2019).

Finally, it is argued that Brazil should align its criminal legislation with that of more developed countries, such as the United States, where minors, from the age of 12, can be held criminally responsible as adults in several states of the federation. For those in favor of change, this would demonstrate that the adoption of stricter rules is not incompatible with development and the protection of human rights (MANSUR, 2019).

### **ARGUMENTS AGAINST LOWERING THE AGE OF CRIMINAL RESPONSIBILITY**

On the other hand, opponents of lowering the age of criminal responsibility maintain that the solution to juvenile crime lies not in more severe punishment, but in prevention and rehabilitation. They highlight that adolescents are in a phase of psychological and emotional development, and that imprisonment in adult prison systems can have devastating effects, contributing to recidivism and perpetuating the cycle of crime (SILVA, 2019).

Critics also point to the ineffectiveness of the Brazilian prison system, which suffers from overcrowding, poor conditions and lack of rehabilitation programs, placing adolescents in this environment could further aggravate the situation, instead of promoting their social reintegration. In addition, scholars argue that criminal accountability should be proportional to the cognitive and moral development of young people, who, according to research, are not yet fully formed at the age of 16 or 17 (GONÇALVES, 2020).

For Lira (2019), the discussion about the age of criminal responsibility involves not only legal issues, but also social and educational ones. Lowering the criminal age can be seen as a shortcut that ignores structural problems, such as the lack of access to quality education, job opportunities, and effective public policies for youth. The early criminalization of young people can reinforce social stigmas and hinder the recovery and reintegration of these individuals.

Critics of the reduction of the age of criminal responsibility of the PEC 171/1993 argue that this measure affronts one of the stony clauses of the 1988 Federal Constitution, that is, a principle that cannot be changed even by constitutional amendment. Article 228 clearly establishes that minors under 18 years of age are criminally unimputable (MANSUR, 2019).

Another point raised is that the Brazilian prison system, widely criticized by national and international organizations due to its precarious conditions,

does not favor the rehabilitation of young people. Inserting adolescents aged 16 and 17 in this environment would not bring benefits to their social reintegration, and may even aggravate their situation (DE SOUZA; GUALDA, 2021).

It is also argued that the pressure to reduce the age of criminal responsibility stems, in large part, from isolated cases that have gained media repercussion, but do not reflect the statistical reality. According to data from the National Public Security Secretariat, adolescents between the ages of 16 and 18 are responsible for less than 1% of crimes committed in the country – and, specifically in cases of homicides and attempts, this rate drops to about 0.5%. (MANSUR, 2019).

For those who oppose the measure, the focus should be on public policies aimed at education, the protection of children and the fight against social inequalities.

In 2013, for example, the IBGE registered almost half a million children between 5 and 13 years of age in a situation of child labor. In addition, the country still faces a high rate of illiteracy, with approximately 13 million people aged 15 and over who cannot read or write (MANSUR, 2019).

Finally, there is a consensus among experts that the change would affect, above all, poor and black youth from the peripheries. This is because this is the predominant profile among incarcerated people in Brazil.

A study by the Federal University of São Carlos (UFSCar) revealed that 72% of the Brazilian prison population is made up of black people, which demonstrates the selectivity of the penal system and the risk of further deepening racial and social inequalities (MANSUR, 2019).

## **ALTERNATIVES TO LOWERING THE AGE OF CRIMINAL RESPONSIBILITY: PREVENTION MEASURES AND PUBLIC POLICIES**

Faced with the discussions about lowering the age of criminal responsibility, many experts argue that the most effective way to deal with juvenile crime is not in repression, but in prevention. The creation and strengthening of public policies aimed at children and adolescents are pointed out as fundamental strategies to reduce violence and promote social inclusion (SOUZA, 2019).

Investing in quality education is one of the main alternatives advocated. The school must be a space for integral education, capable of offering not only knowledge, but also cultural, sports and professional opportunities. Full-time education programs, access to technology and teacher training are measures that increase the chances of development of



children and young people, moving them away from involvement with crime (DE SOUZA; GUALDA, 2021).

Another important point is the expansion of social assistance policies. Many young people in conflict with the law come from contexts of extreme vulnerability, marked by poverty, family abandonment and the absence of the State. The creation of community centers, psychosocial support programs, insertion in the labor market, and family monitoring can make a difference in the trajectory of these adolescents (LIRA, 2019).

In addition, the strengthening of the socio-educational measures provided for in the Statute of the Child and Adolescent (ECA) is essential. Such measures, when applied appropriately and with sufficient structure, have the potential to promote accountability and, at the same time, the social reintegration of young offenders. The challenge is to ensure that these programs are no longer just punitive and become, in fact, educational and transformative (GONÇALVES, 2020).

It is not intended to deny that the life of children and adolescents today is very different from those of the last century. However, with technological advancement and the greater speed of all types of information, the controversy that there is an early development is fueled.

For Souza, (2019):

It is not denied that there is more information available to young people, but accepting this fact is not the same as saying that these young people absorbed all kinds of useful teachings for their maturation, determined and grew when they received the bombardment of information. This phase of life continues to be more vulnerable, even more malleable in the formation of concepts. It is also worth noting that in this bombardment of available information, not all of it is correct, reliable or positive; information and disinformation are shared.

Thus, there is no guarantee that technological progress and greater access to information will really contribute to young people developing their socialization and awareness of the implications of their actions over time more quickly.

For Souza (2019), he also highlights that, considering the historical and social context of Brazil, marked by deep inequalities, the current stage of special legislation aimed at holding adolescents in conflict with the law accountable actually represents an advance in criminal policies — a progress that should not suffer setbacks.

Regarding the change in age to define who is criminally imputable or not imputable, taking into account the supposed anticipation of maturity and entry into adulthood — attributed to greater access to information —, it is possible to perceive, based on the data presented, that this trend is not sustained in the light of historical analysis (GONÇALVES, 2020).

The first article of the Civil Code reinforces that all people are



holders of rights and duties, regardless of age, even recognizing the rights of the unborn child. In addition, it guarantees special protection to children and adolescents, especially with regard to the issue of criminal imputability, in view of Law No. 10,406/02 – Brazilian Civil Code, which is established as follows:

Article 1 Every person is capable of rights and duties in the civil order.  
Article 2 - The civil personality of the person begins from birth with life, but the law safeguards, from conception, the rights of the unborn child.  
Article 3 The following are absolutely incapable of personally exercising the acts of civil life: I- those under sixteen years of age;  
II- those who, due to mental illness or deficiency, do not have the necessary discernment to practice these acts;  
III- those who, even for transitory reasons, are unable to express their will

We realize, therefore, that the rights of children and adolescents both in the Federal Constitution, in the Brazilian Civil Code and in special law, even though they are expressed, are still controversial as well as the discussion about the age of criminal responsibility.

Finally, the State must invest in public security policies that prioritize the prevention of violence, based on intelligence, community presence, and articulation with areas such as health, education, and culture. Long-term security will only be achieved by building a fairer society, where everyone has real opportunities for development.

## CONCLUSION

The discussion about lowering the age of criminal responsibility in Brazil is complex and involves legal, social, psychological and historical aspects. Although the proposal to change the criminal age finds significant support from the population, especially in the face of crimes that cause great social commotion, it is essential to analyze the issue critically and responsibly. The simple change in legislation does not guarantee the reduction of juvenile crime, especially in a country marked by deep social inequalities and a flawed and overcrowded prison system.

The current legislation, especially the Statute of the Child and Adolescent, represents an advance in the field of protection and accountability of young people in conflict with the law, offering socio-educational measures aimed at rehabilitation and social reintegration. Lowering the age of criminal responsibility would be a setback that disregards the structural factors that lead so many adolescents to crime, such as the lack of access to education, decent work and social assistance.

Therefore, more effective than punishing early is investing in public policies for prevention, quality education, opportunities for youth, and a justice system that promotes

responsibility with a focus on transformation. The search for sustainable and humane solutions must prevail over short-sighted and punitive responses.

It is necessary to understand that the adolescent in conflict with the law is not just a number in the criminal statistics, but a being in formation, often a victim of social exclusion and the omission of the State itself. Treating youth with repression will not solve the structural problems that put them at risk; on the contrary, it tends to perpetuate cycles of violence and marginalization.

Thus, the maintenance of the age of criminal responsibility at 18 years of age, as provided for in the Federal Constitution, should be understood not as an act of impunity, but as a choice of civilization, which bets on recovery, full protection and investment in the future of Brazilian youth. True justice is built not only with penalties, but with opportunities.

## REFERENCES

1. Brasil. (1988). Constituição da República Federativa do Brasil de 1988. Presidência da República. [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)
2. Brasil. (1990). Lei nº 8.069, de 13 de julho de 1990: Estatuto da Criança e do Adolescente. Diário Oficial da União. [https://www.planalto.gov.br/ccivil\\_03/leis/l8069.htm](https://www.planalto.gov.br/ccivil_03/leis/l8069.htm)
3. Brasil. (2002). Lei nº 10.406, de 10 de janeiro de 2002: Institui o Código Civil. Diário Oficial da União. [https://www.planalto.gov.br/ccivil\\_03/leis/2002/l10406.htm](https://www.planalto.gov.br/ccivil_03/leis/2002/l10406.htm)
4. De Souza, S. L., & Gualda, L. C. (2021). Maioridade penal no Brasil: Uma perspectiva histórica. In CONEDU: Escola em tempos de conexões (Vol. 2, pp. XX–XX). Editora Realize. [https://editorarealize.com.br/editora/ebooks/conedu/2021/ebook2/TRABALHO\\_EV150\\_MD7\\_SA100\\_ID190\\_30092021140429.pdf](https://editorarealize.com.br/editora/ebooks/conedu/2021/ebook2/TRABALHO_EV150_MD7_SA100_ID190_30092021140429.pdf)
5. Gonçalves, V. R. P. (2020). A construção da imagem do adolescente autor de ato infracional por jornais online mineiros [Master's dissertation, Universidade Vale do Rio Verde]. Biblioteca de Três Corações.
6. Lira, C. F. (2019). Da historicidade dos tratados de proteção aos direitos da criança e do adolescente e sua aplicabilidade perante o Tribunal Penal Internacional [Master's dissertation, Faculdade Damas da Instrução Cristã]. Biblioteca da Faculdade Damas da Instrução Cristã.
7. Mansur, T. S. (2019). Produção científica e política na discussão sobre a redução da maioridade penal [Doctoral dissertation, Universidade Federal do Espírito Santo]. Biblioteca Central da UFES.
8. Moore, T. C. M. (2019). As medidas socioeducativas e a redução da maioridade penal: Um estudo de caso a partir das percepções dos operadores do direito [Master's dissertation, Universidade Estadual do Norte Fluminense Darcy Ribeiro]. Biblioteca Nacional.
9. Silva, K. C. (2019). Tolerância à violência policial como expressão da discriminação [Doctoral dissertation, Universidade Federal da Paraíba]. Biblioteca Central da Universidade Federal da Paraíba.
10. Sindorski, R. M. (2020). Conversação política online sobre a redução da maioridade penal: Uma análise comparativa das fanpages Quebrando o Tabu, Movimento Brasil Livre e Senado Federal entre 2015 e 2018 [Master's dissertation, Universidade Federal do Paraná]. Biblioteca Central da UFPR.
11. Souza, P. J. S. (2019). O problema da maioridade penal: As propostas de redução da idade penal e suas implicações político-criminais diante da efetividade do sistema prisional e da concepção de adolescência [Master's dissertation, Pontifícia Universidade Católica do Rio Grande do Sul]. Repositório PUCRS.