LUMEN ET VIRTUS
ISSN: 2177-2789

CRIMINAL LIABILITY FOR THE DISSEMINATION OF INTIMATE CONTENT OF CHILDREN AND ADOLESCENTS ON THE INTERNET

https://doi.org/10.56238/levv16n47-048

Submitted on: 17/03/2025 **Publication date:** 17/04/2025

Ingrid Victória Oliveira Souza[1], Clóvis Marques Dias Júnior[2].

ABSTRACT

The present study investigates the criminal liability for the dissemination of intimate media of children and adolescents on the internet, analyzing the legal challenges and gaps in the Brazilian legal system. The objective is to understand how virtual sexual crimes are treated in national legislation, identify the applicable penalties and examine the case law of the Superior Court of Justice on the subject. The methodology used is qualitative and explanatory, based on bibliographic review, documentary analysis and jurisprudential research. The results indicate that the unauthorized dissemination of intimate images of minors represents a serious violation of fundamental rights and a threat to children's digital safety. Although there are legal mechanisms to punish such crimes, enforcement faces challenges such as the difficulty of identifying offenders, the transnational nature of crimes, and the need for collaboration between digital platforms and authorities. The importance of updating legislation and preventive measures is emphasized. It is concluded that there is a need for regulatory improvement and expansion of educational initiatives to prevent virtual crimes against minors.

Keywords: Sexual Crimes. Children and Adolescents. Internet.

[1] Student of the Bachelor of Laws course at the Institute of Higher Education of Southern Maranhão E-mail: ingridvihhtoria@hotmail.com
[2] PhD student in Law (CEUB). Master in Teacher Training in Educational Practices (UFMA). Specialist in Constitutional Law, Public Management and Criminal Procedure. Professor of the Bachelor's Degree in Law at the Institute of Higher Education of Southern Maranhão – IESMA/Unisulma
E-mail: clovisjrs@gmail.com

INTRODUCTION

This article deals with the penalization of the dissemination of intimate media of children and adolescents on the internet, analyzing the legal challenges faced by the Brazilian legal system in the face of this reality. The research seeks to understand the applicability of existing rules, as well as to identify gaps and difficulties in the effectiveness of penalties imposed on offenders.

The growing digitalization of society has brought significant advances, but also numerous legal and social challenges, especially with regard to the protection of children and adolescents against sexual crimes in the virtual environment. The dissemination of intimate media without consent, when it involves minors, constitutes a crime of child sexual exploitation, under the terms of the Statute of the Child and Adolescent (Brasil, 1990), constituting a serious violation of the fundamental rights of childhood.

The choice of the theme is justified by its social and legal relevance, in view of the irreversible damage caused to the victims, ranging from psychological shocks to lasting social stigmas. In addition, there is a need to improve the current regulations, in order to ensure the effectiveness in the prevention and repression of this criminal practice, ensuring the full protection of children and adolescents, as recommended by Brazilian legislation (Brasil, 1990).

From a legal point of view, the study is based on essential normative frameworks such as the Penal Code (Brazil, 1940), the Statute of the Child and Adolescent (Brazil, 1990), Law No. 13,718/2018, which deals with the criminalization of the non-consensual disclosure of intimate images (Brazil, 2018), and the Civil Rights Framework for the Internet (Law No. 12,965/2014) (Brazil, 2014), which establishes guidelines for the accountability and removal of illegal content.

Still, the practical application of these laws encounters obstacles, such as the anonymity of offenders and the dispersion of data storage servers on a global scale.

Among the key concepts that underlie this research, sexual crimes on the internet, child pornography, digital protection of children and adolescents, criminal accountability and legal mechanisms of control and repression in cyberspace stand out.

The guiding problem of the present work is: how does the Brazilian legislation address and penalize the exposure of intimate media of children and adolescents on the internet, and what are the legal challenges faced in the application of these laws?

The research aims to: analyze the process of penalization of the disclosure of intimate media of children and adolescents in Brazil; understand the legal treatment given to virtual

sexual crimes against minors; identify the penalties provided for in the current legislation; and examine relevant judgments on the subject.

The structure of the article includes: introduction and justification of the research; analysis of the applicable legislation; discussion of the main legal challenges; and, finally, the final considerations with proposals for normative improvement.

METHODOLOGY

The present research adopts a qualitative and explanatory approach. According to Gil (2010), qualitative research aims to understand complex phenomena from the perspective of the participants, being suitable for the analysis of subjective and contextual aspects. Explanatory research, on the other hand, aims to identify the causes and effects of certain phenomena, seeking causal relationships between variables and events.

In this sense, the qualitative research will allow a deeper understanding of the legal, social and interpretative nuances related to the criminalization of the disclosure of intimate media involving children and adolescents on the internet. The explanatory nature, in turn, will be fundamental to identify the factors that hinder or enable criminal liability in these cases.

The methodological steps will be divided sequentially and logically. Initially, an in-depth survey of the national legislation related to the protection of children and adolescents against the exposure of intimate media on the internet will be carried out. This stage will involve the analysis of article 241 of the Statute of the Child and Adolescent (ECA), the Penal Code and Law No. 13,718/2018, which deals with the criminalization of illicit sexual conduct practiced against vulnerable people (Brasil, 2018). In addition to the legal framework, academic articles, legal studies, technical reports and documents issued by public and private organizations focused on the promotion of children's rights will be examined, in order to theoretically support the object of the research and understand the complexity of the problem investigated.

The second stage will consist of data collection through document analysis, focusing on judicial decisions extracted from the websites of the Superior Court of Justice (STJ), as well as opinions and reports published by government agencies. This collection aims to identify jurisprudential patterns, controversies, and recurring interpretations.

After collection, the data will be organized into thematic categories, based on previously defined legal criteria. The analysis will follow a critical approach, aimed at identifying legislative gaps and practical challenges in the application of the rules, considering the perspective of the full protection of children and adolescents.

To obtain data, the documentary research technique will be used, which, according to Lakatos and Marconi (2019), consists of the systematic analysis of legal and institutional documents as the primary source of information.

As for the method of approach, the deductive method will be adopted, starting from general and abstract rules, such as legal provisions, to analyze concrete cases (Severino, 2017). In addition, the monographic method will be applied, centered on the specific and in-depth analysis of a single theme, according to the guidelines indicated by Gil (2010), with the objective of producing a critical reflection and contributing in an original way to the academic and legal debate.

RESULTS

The analysis of legislative and jurisprudential data shows that, although the Brazilian legal system provides for criminal liability for the dissemination of intimate media of children and adolescents, there are still significant obstacles to its effective application. Among the main challenges are the identification of perpetrators, the difficulty in collecting digital evidence, and the limited cooperation of online platforms.

The Superior Court of Justice has played a fundamental role in recognizing the autonomy of the crimes provided for in articles 241-A and 241-B of the ECA and in expanding the concept of child pornography, even without explicit nudity. Despite these advances, the results point to the need to strengthen legal mechanisms, promote digital education, and expand the accountability of content providers, aiming at the full protection of minors in the virtual environment (STJ, 2023).

DISCUSSION

This section is intended for a critical and in-depth analysis of the main legal aspects related to the dissemination of intimate media of children and adolescents on the internet. Initially, the phenomenon of sexual crimes in the digital environment will be contextualized , highlighting the social and legal impacts of these conducts. Next, the criminal treatment conferred by the Brazilian legal system will be discussed, with emphasis on the specific norms of the Statute of the Child and Adolescent and the Penal Code. Subsequently, the jurisprudential contributions of the Superior Court of Justice in the interpretation and application of laws in cases of virtual sexual violence against minors will be examined. Finally, the performance of the STJ in concrete situations will be analyzed, highlighting the need for legal and institutional improvement for the effective confrontation of these crimes.

SEXUAL CRIMES IN THE DIGITAL SPHERE

According to Benakouche (2024), the internet had its origin during the Cold War, in the 1960s, being conceived as a strategic project of the United States Department of Defense. Its primary objective was the development of a decentralized and resilient communication network, capable of ensuring the exchange of information even in scenarios of military attacks. This initial network, known as ARPANET, established connections between research centers and universities, promoting scientific and technological integration between North American institutions.

Over time, the technology went beyond military limits, being gradually incorporated into the international academic environment, which made it possible to disseminate it in various parts of the world. In Brazil, although the implementation of the internet occurred later, the network was quickly adopted by universities and higher education institutions, reflecting the transformations that were already being operated abroad (National Geographic Brasil, 2024).

According to Santi et al. (2024), excessive use of social networks can compromise users' mental health, especially by contributing to social isolation, anxiety, and disconnection from the real world. Dependence on these platforms, according to the authors, has the potential to replace interpersonal relationships and harm social development, especially among adolescents (Santi et al., 2024).

Additionally, the presence of sites with pornographic and violent content, accessible to adults and children and adolescents, who often do not have the discernment to distinguish right from wrong, being legally considered incapable (Agência Senado, 2023) stands out.

Federal delegate Rafaella Vieira Lins Parca, from the Coordination for the Repression of Cybercrime related to Child and Adolescent Sexual Abuse, points out that there is a relationship between the consumption of pornography and the increase in the circulation of images of child sexual abuse on the internet. According to her, aggressors influenced by these materials tend to replicate criminal behavior, enticing children and adolescents on social networks, through fake profiles. The images obtained are used as an extortion tool for the production of new content (Agência Senado, 2023).

With the expansion of access to virtual space and the increase in electronic devices, sexual crimes on the internet have become a progressive concern for society and the authorities. Such crimes are considered a serious violation of human rights and can occur both nationally and internationally.

In the international context, the Lanzarote Convention stands out, signed on October 25, 2007, in the city of Lanzarote, Spain, and in force since July 1, 2010. To date, it has been

ratified by all 46 member states of the Council of Europe. This international treaty aims to prevent and combat the sexual exploitation and abuse of children, protect the rights of victims and promote international cooperation in this area. The convention establishes measures to criminalize various forms of child sexual abuse, implement prevention policies and ensure adequate assistance to victims (Council of Europe, 2007).

Also noteworthy is the Convention on Cybercrime, signed in Budapest, Hungary, on November 23, 2001. This convention, ratified by the Federative Republic of Brazil and incorporated through Decree No. 11,491, of April 12, 2023, establishes that Brazilian authorities will have at their disposal a new instrument for investigations of cybercrimes, as well as other criminal offenses, which involve obtaining electronic and digital evidence stored in other countries (Brazil, 2023).

Sexual crimes are crimes that are characterized by being illegal acts of a sexual nature, characterized by the absence of consent, exploitation, abuse or any other behavior that violates the sexual dignity of the victim. These crimes cover various illicit conducts, such as rape, rape of a vulnerable person, indecent assault, sexual harassment, child pornography and sexual assault against children. In addition, they include practices such as sexual violence through fraud, sexual embezzlement, and obscene acts (Pereira; Silva, 2022).

In the context of child and adolescent protection, the material object of these crimes is the child and adolescent, as defined by the Statute of the Child and Adolescent (Brasil, 1990). According to article 2, a child is considered to be a person up to 12 years of age, and an adolescent is one between 12 and 18 years of age. The legislation also protects individuals under 14 years of age, as well as victims affected by mental illness or disability who do not have the discernment to practice the sexual act or who cannot offer resistance (Greco, 2022).

Thus, any sexual activity involving these victims is presumed to be criminal, regardless of consent, reinforcing the need for strict measures to curb such practices and ensure the full protection of minors.

THE CRIMINAL TREATMENT OF THE DISCLOSURE OF INTIMATE MEDIA OF CHILDREN AND ADOLESCENTS

To legally analyze the criminalization of the dissemination of intimate media of children and adolescents on the internet, it is essential to understand the legal framework that governs these crimes. In the Brazilian legal system, the Statute of the Child and Adolescent criminalizes both the possession and dissemination of this type of content, as provided for in

article 241-A, which provides for a penalty of imprisonment of 3 to 6 years, in addition to a fine (Brasil, 1990).

Law No. 13,718/2018, which amended the Penal Code, reinforced the punishment for the unauthorized dissemination of images of a sexual nature, especially when they involve minors.

An example is the typification of the rape scene, which provides for an increase in the penalty if the crime is motivated by "revenge pornography", when the offender has had an intimate relationship with the victim or intends to humiliate her (Brasil, 1990). This legislation seeks to expand the protection of victims and curb the dissemination of this material, aggravating the penalties for offenders.

In this way, these rules aim to hold accountable those who produce, distribute or disseminate content of child sexual exploitation, ensuring the full protection of children and adolescents and preventing the violation of their privacy and dignity.

> Article 241-A. Offering, exchanging, making available, transmitting, distributing, publishing or disseminating by any means, including by means of a computer or telematic system, photography, video or other record that contains an explicit or pornographic sex scene involving a child or adolescent: (Included by Law No. 11,829, of 2008). Penalty – imprisonment, from 3 (three) to 6 (six) years, and fine. (Included by Law No. 11,829 of 2008). § 1 The same penalties are incurred by those who: (Included by Law No. 11,829 of 2008); I – ensures the means or services for the storage of photographs, scenes or images referred to in the caput of this article; (Included by Law No. 11,829, of 2008);II – ensures, by any means, access by computer network to the photographs, scenes or images referred to in the caput of this article. (Included by Law No. 11,829, of 2008); § 2 The conducts typified in items I and II of § 1 of this article are punishable when the person legally responsible for the provision of the service, officially notified, fails to disable access to the illicit content referred to in the caput of this article. (Included by Law No. 11,829, of 2008);

In addition, article 241-B of the Statute of the Child and Adolescent holds criminally liable the agent who acquires, possesses or stores child pornographic material, or any record of explicit sex scenes involving minors. Thus, it is evident that the criminal type aims to protect the image of the child and adolescent, with the objective of preventing the dissemination of these photographs (Brasil, 1990).

On the other hand, it is important to note that article 241-A differs from article 241-B of the ECA. While article 241-A deals with the dissemination of child pornographic material, article 241-B, in turn, criminalizes the possession or storage of this type of content, providing for a penalty of imprisonment from 1 to 4 years, in addition to a fine.

The Superior Court of Justice has established a position according to which the possession and sharing of child pornography are separate criminal offenses. In the judgment of Topic 1,168, it was recognized that articles 241-A and 241-B deal with autonomous legal behaviors, ruling out the application of the principle of consumption. Justice Reynaldo

Soares da Fonseca pointed out that the conducts can occur in isolation, allowing the recognition of the material competition (STJ, 2023).

At the same time, Brazilian legislation imposes on internet providers the obligation to remove illegal content involving children and adolescents. Inertia can lead to civil and criminal penalties (Brasil, 2014).

Crimes committed through the internet, also called atypical projection of the norm, are not explicitly provided for in its provisions, since the Brazilian Penal Code dates from 1940. In this way, most virtual crimes are simplified versions of real crimes facilitated by the use of technology. Therefore, it is up to Criminal Law, as a defender of the safeguarding of legal interests, to identify the potential risks involved (Dias; Borges; Santos, 2020).

However, the existence of international norms and national penal provisions that foreshadow the increase in penalties for crimes committed against minors, such as children and adolescents, show the seriousness of the violation of fundamental and human rights that sexual crimes on the virtual network represent. Therefore, legislation is not sufficient and criminal justice authorities need additional capacities, especially law enforcement and the judiciary. The main challenges they face are posed by new technologies, the collection of electronic evidence and international cooperation.

However, there are still significant gaps on the topic.According to Silva (2024), virtual or cybercrimes are illicit acts committed in the digital environment that violate current legislation. These crimes include practices such as hacking into computer devices, electronic embezzlement, and other online fraud. The author emphasizes the importance of understanding these infractions for the proper application of laws and the protection of internet users.

Additionally, Lemos Leite (2014, p. 15) points out that the internet allows criminals to access victims' information with great ease, that is, people are not always safe in the *online* world, which facilitates the gradual increase in virtual crimes. The definition of cybercrime, internet crimes, computer crimes, among other denominations, is relatively recent compared to the crimes studied many years ago.

Continuing, Rogério Greco (2022, p. 388) points out that the internet has been used as a means to lure victims into the "clutches of true sexual psychopaths, since lives are destroyed in exchange for small moments of stupid and imbecile pleasure". It also points out that the globalized world lives and witnesses the actions of pedophiles, who use numerous and despicable artifices, in order to practice some sexual act with children and adolescents, not escaping their unhealthy defects even newborns.

Current criminal doctrines address the concept of sexual crimes on the internet. They point out that the virtual environment can be used both as a means for the practice of common crimes and as a space for the perpetration of crimes in which technology constitutes the protected legal good.

At the same time as technological advances, it was found that it was difficult to combat cybercrimes, since they also evolve constantly. Consequently, several opportunities arise to obtain illicit profit.

In addition, Cassanti (2014) opines that the internet not only facilitated illegal access to information and goods, but also gave rise to a distinct virtual reality because users shaped a specific language for this environment. Some fundamental rights of citizens, protected by the Federal Constitution, were violated, including equality, privacy and dignity, given the extreme difficulty in identifying offenders.

THE SUPERIOR COURT OF JUSTICE AND SEXUAL CRIMES ON THE INTERNET WITH CHILD AND ADOLESCENT VICTIMS

Given this scenario, it is evident that the Brazilian legal system is very obsolete due to sexual crimes on the internet. These infractions must also be combated by a more advanced investigative power, since most active agents have a more efficient understanding of technology, and the Penal Code, created in 1940, does not have sufficiently specific or effective provisions to deal with the complexity of media dissemination involving children and adolescents (Brasil, 1940).

The fight against sexual crimes committed against children and adolescents in the digital environment requires, in addition to effective legislation, jurisprudential action consistent with constitutional principles and international commitments assumed by Brazil in the area of human rights. The Superior Court of Justice (STJ) has consolidated important precedents that expand the protective scope of the Statute of the Child and Adolescent in the face of contemporary challenges imposed by new technologies.

In this sense, the Court has been showing firmness when dealing with cases of sexual violence against minors on the internet, making it clear that this type of crime requires quick, sensitive responses committed to the defense of childhood. One of the most relevant judgments in this context is the one that defined that it is not necessary to display explicit nudity for an image involving a child or adolescent to be considered pornographic. The Sixth Panel of the Superior Court understood that, even in the face of photographs or videos in which the private parts are not exposed, if there is a sexual connotation, suggestive poses or

indications of exploitation, the crime provided for in article 241 of the ECA can be configured (STJ, 2022).

This understanding reinforces the interpretative line previously defended by Justice Laurita Vaz, rapporteur of the appeal, writes that the interpretation of the Statute of the Child and Adolescent is not clear and must be interpreted according to the principle of full protection, as mentioned in its article 6, generally needs to give importance to the social purposes in which the law is directed, the requirements of the common good, individual and collective rights and duties, and the peculiar condition of children and adolescents as people in development. And he continues:

> [...] It is essential for the ordinary courts to verify whether, despite the fact that the victims' private parts are not visible in the scenes that make up the evidence (for example, by the use of some type of clothing) contained in the records, the sexual purpose of the images, sensual poses, as well as evidence of sexual exploitation, obscenity or pornography are present [...] (STJ, 2022, online).

Thus, the dissemination of intimate photos or videos of children and adolescents in the digital environment represents a severe violation of their fundamental rights, in addition to constituting a criminal offense with serious consequences. The phenomenon known as "*sexting*", especially when it involves minors, has led different countries to create specific legislation to punish the practice and protect the victims (Pereira; Silva, 2023). This measure seeks to recognize that non-consensual exposure can affect young people emotionally in a deep and lasting way.

The Superior Court of Justice, in view of this reality, has played an essential role in defining the legal directions in the face of crimes that are reinvented with technological advances. Cases of child pornography, virtual harassment, and sexual exploitation mediated by social networks or apps have required the Judiciary to respond quickly, consistently, and appropriately to the severity of the situations faced (STJ, 2023).

The Court also consolidated its understanding of the autonomy between the crimes of articles 241-A and 241-B of the ECA, as seen in the judgment of Theme 1,168. In this judgment, the Court established the thesis that the possession and distribution of child pornographic material are legally distinct conducts, not communicated by consumption. In other words, storing and sharing pornographic images of minors constitute autonomous crimes, with their own criminal consequences. The decision reinforces that the principle of consumption, by which the crime-means is absorbed by the crime-end, does not automatically apply in cases involving multiple forms of violation of the rights of the child. It is argued that storage can occur in an isolated and voluntary way, just as file sharing can occur without necessarily keeping the content in possession for a prolonged period (STJ, 2023).

Such differentiation is crucial to ensure the effectiveness of criminal prosecution and to prevent repeated and organized practices from being confused with sporadic or less serious acts. By admitting the material concurrence and allowing the sum of the penalties, the STJ sends a clear message to society and offenders: each act of abuse and dissemination of child pornography constitutes an autonomous violation and demands a proportional and rigorous criminal response.

With the entry into force of Law No. 13,441/2017, which amended the Statute of the Child and Adolescent, it introduced police infiltration in virtual environments to investigate crimes against minors. The STJ has consolidated the understanding that this measure is essential to combat criminal networks that operate on the internet. Recent decisions reinforce the validity of evidence obtained by this means, provided that the principles of legality and proportionality are respected (STJ, 2020).

In HC 598.051/RS, Justice Rogério Schietti Cruz stressed that, given the complexity and secrecy surrounding digital crimes, infiltration is often the only effective way to identify the perpetrators and collect robust evidence (Brasil, 2020). The analysis reinforces that the use of this investigative technique does not affront procedural guarantees, as long as it is judicially authorized and supervised by the Judiciary,

Another relevant point is the typification of the enticement of minors via the internet. The STJ has interpreted that the simple attempt to contact a minor for sexual purposes already constitutes a crime, even if there is no physical meeting between the perpetrator and the victim. This position is in line with the full protection provided for in article 227 of the Federal Constitution (Brasil, 1988).

The judgment of the AgRg in HC 616.456/SC, with the rapporteurship of Justice Sebastião Reis Júnior, confirms this position. The Court understands that the harmful potential of the conduct lies in the risk it imposes on the psychic and moral formation of the minor, and not only in its physical consummation. This perspective values prevention and early protection, as imposed by the principle of the best interest of the child, provided for in article 227 of the Federal Constitution (Brasil, 1988).

In addition, the way the Superior Court of Justice has interpreted the Civil Rights Framework for the Internet shows that digital platforms can no longer hide behind the idea of neutrality. In judging Special Appeal 1.880.344/SP, Justice Nancy Andrighi was clear in stating that companies that intermediate virtual relationships, such as social networks and content sites, do have responsibility when they fail to act in the face of illegal situations. In the case in question, the Court understood that, when notified of illegal content, these platforms must take concrete measures to prevent the damage from continuing or repeating itself. Otherwise,

they may be held civilly liable. In the words of the Minister, "digital platforms that act as intermediaries in legal transactions can be held civilly liable if they do not adopt the necessary measures to prevent or mitigate damages" (Brasil, 2021, p. 15).

This type of understanding signals an important change in the way the Judiciary sees the role of technology companies. The jurisprudence of the STJ has sought to balance freedom of expression and the open functioning of the internet with the need to protect fundamental rights, especially when the safety and dignity of children and adolescents are at stake.

Today, these companies are expected to have efficient reporting channels, act quickly to remove abusive content, and collaborate with investigations when they are triggered. More than providing a virtual space, they need to take care of what happens inside it. Jurisprudence, therefore, goes beyond punishment, it points to a model of shared responsibility, where all actors in the digital sphere (State, companies and users) have a role to play.

In view of these advances, the importance of an increasingly integrated action between countries and investigative bodies is perceived. The STJ, by signing agreements with international entities and interpreting national legislation in line with constitutional principles and human rights treaties, contributes to making the fight against these crimes more effective, expanding the possibilities of criminal accountability and, above all, protection of victims.

CONCLUSION

The present study aimed to analyze the Brazilian legal system with regard to criminal liability for the dissemination of intimate content of children and adolescents on the internet. The research demonstrated how the national legislation, combined with the jurisprudence of the Superior Court of Justice, has been facing the challenges brought about by the practice of virtual sexual crimes, especially those involving victims in situations of special vulnerability.

Normative instruments such as the Statute of the Child and Adolescent (Brazil, 1990), the Penal Code (Brazil, 1940), the Civil Rights Framework for the Internet (Brazil, 2014) and Law No. 13,718/2018 (Brazil, 2018), as well as recent judgments of the STJ (STJ, 2023) were examined. It was found that there are advances in the normative formulation and in the recognition of the seriousness of crimes, especially with regard to the differentiation between possession and sharing of child pornographic material, the accountability of internet providers and the validation of digital investigation methods such as virtual infiltration.

Thus, it is verified that the Brazilian legal system, although it contemplates legal instruments aimed at repressing the dissemination of intimate content involving minors, still

faces significant challenges regarding the effectiveness and speed in the criminal accountability of the perpetrators of these crimes. As Greco (2022) points out, the punishment of digital crimes involving children and adolescents must be based on the principle of full protection, ensuring the dignity and rights of victims in line with the Federal Constitution and international treaties ratified by Brazil.

In this sense, it is essential to continuously improve legislation, implement public policies for digital education, and strengthen the articulation between state agencies and technological platforms. In addition to the criminal response, prevention and social awareness must occupy a central position in the formulation of strategies aimed at reducing the incidence of these behaviors.

The study shows that criminal accountability, when integrated with preventive and educational actions, should compose a robust and articulated public policy, capable of ensuring not only the effective punishment of offenders, but, above all, the construction of a safer, more ethical and protective digital environment for children and adolescents.

THANKS

I thank God first for giving me strength in the most challenging moments, wisdom in decisions and faith to move forward. Without His constant presence, this journey would not have been possible.

I would like to express my most sincere gratitude to Professor Clóvis Marques Dias Júnior, for all the guidance dedicated during the preparation of this article. His patience, his advice and his deep knowledge were fundamental for my training and for the realization of this project.

To my parents, Delzeli and José, and to my brother, Stheven, who have always been my base. Thank you for believing in me, for all the support, encouragement and unconditional love. You were essential for me to get here.

I thank my internship tutors with affection, who accompanied me with attention and dedication, contributing significantly to my training. In particular, I am grateful to Maíla and Larissa, who, with generosity and wisdom, introduced me to the rights of children and adolescents during my work in the Criminal Court. This experience awakened in me a deep interest and a true love for this essential area of Law.

To my parents, Delzeli and José, and to my brother, Stheven, who have always been my base. Thank you for believing in me, for all the support, encouragement and unconditional love. You were essential for me to get here.

To my friends, thank you for never doubting my ability and for being by my side in the most difficult and important moments of graduation.

To my cousins, Jessica and Jean, my affection for all the emotional support and for the light and inspiring interaction during this journey. Having people like you by my side is a gift. You have made this journey so much more joyful and meaningful, and I am deeply grateful for all that we have shared over the years.

To my grandmother, Maria Vitória (*In Memoriam*), who passed away during my graduation, but who accompanied me with her love, her advice and her kindness for 22 years. I will take with me all his teachings and the affection he always gave me. This achievement is also yours, grandma.

Without these people, I wouldn't be fulfilling my biggest dream today: to become a great professional. My achievement is also yours. Thanks!

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