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RESEARCH ARTICLE

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## THE FEDERAL CRIME OF CHILD-YOUNG PORNOGRAPHY ON INTERNET IN PERNAMBUCO STATE - BRAZIL FROM 2015 TO 2019

Luiz Vicente de Medeiros Queiroz-Neto<sup>1</sup>, Rosana Anita da Silva Fonseca<sup>\*1,2</sup>, Adriana Conrado de Almeida<sup>1,3</sup>, Aurélio Molina da Costa<sup>4</sup>, Magaly Buschatsky<sup>1,3</sup>, Gabriela Granja Porto<sup>1</sup>, Daniela Zarzar Pereira de Melo Queiroz<sup>1</sup> and Reginaldo Inojosa Carneiro Campello<sup>1</sup>

<sup>1</sup>Faculdade de Odontologia, Universidade de Pernambuco; <sup>2</sup>Instituto de Ciências Biológicas, Universidade de Pernambuco; <sup>3</sup>Faculdade de Enfermagem N. Sra. das Graças, Universidade de Pernambuco; <sup>4</sup>Faculdade de Ciências Médicas, Universidade de Pernambuco

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#### \*Corresponding author:

Rosana Anita da Silva Fonseca

### ABSTRACT

This article addresses the panorama of the federal crime of child-young pornography committed through the internet, in Pernambuco State, in Brazil. It has as its main goal to trace the profile of the accused, analyze the penalties applied, assess the duration of the processes and their obstacles, determine the level of compliance of the offered complaints, and evaluate whether there was an increase in the number of criminal actions and police inquiries in the period. For these aspects, the chosen method was a cross-sectional methodology, by using data collection in court cases and police inquiries, between 2015 and 2019. Results indicate that all the accused were men, most of them aged from 31 to 40 years old, not recidivist in sexual crimes using pseudonyms or fake profiles, did not practice sexual abuse, did not pay any bail to the police, had good social conduct, and only committed the crime to satisfy their own lust. The average of freedom restrictive sentences was 6 and half years, while fines were, on average, 10 minimal salaries and the whole duration of the process was about 9 months. For the authors, condemnations, even to high sentences for crime of child-young pornography, eliminate the sensation of impunity that exists in society about the theme, and still that speed predominated in criminal actions processed and judged in Federal Justice. Although one can register a growing number of federal cases on child-young pornography through Internet, during this study, it was not possible to watch a linear and exponential growth curve in the number of penal actions and police inquiries. Efficiency oriented the work of penal chasing, presenting 73% of condemnations and 82% of conformity from offered complaints in comparison with uttered sentences.

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## INTRODUCTION

The word PORNOGRAPHY comes from Greek words (porni) (whore) and (graphein) (write). It originally meant any work of art or literature that portrayed whore's life (Westlake, 2020). It means now videos or images produced with the aim of awakening an individual's sexual side (Holanda, 2004; Yu, Kågesten, Meyer, Reeuwijk & Lou, 2021; Mthemba, 2012). When pornography uses children and teenagers as central figure in this practice, it receives the name of child-youth pornography at producing printed or recorded material focusing or insinuating sexual acts of children and teenagers (Maür, 1999; Yu et al., 2021). The virtual network has become the main means of dissemination of this kind of pornography and the techniques used have been improving.

Criminal individuals with this kind of behavior applies codification and data sending, defying constantly expert investigation for this combat. Governmental authorities' worry about this type of crime is growing more and more, because of greater accessibility and online integration of children and youngsters. There is an important and necessary distinction between the terms child-youth pornography and pedophilia. While child-youth pornography is a crime provided for in law, pedophilia is a behavioral or personality disorder, characterized by compulsive attraction to children and teenagers (Seigfried-Spellar, 2018). In this context, a pedophile can be a sick individual, but if he does not commit any offense of sexual nature against children and teenagers, there is no reason to consider him a criminal. On the other hand, a person who commits crimes related to child-youth pornography is not necessarily a pedophile. This happens when the

criminal acts to satisfy his or other's lust or for obtaining financial advantage (Paixão, 2020). In Brazil, Law number 8.069/90 instituted the Child and Adolescent Statute. This law provides for crimes related to child-youth pornography in the articles 240 and 241 (A, B e C) (Brazil, 1990) (In the year of 2008, came into force the law n. 11.829, de 25/11/2008, that improved combat against production, sale and distribution of child-young pornography, as well as criminality level due to acquisition and possession of such material as photos or videos with explicit sex scenes, involving children or adolescent. (Art. 241-B of Statute of the Child and the Adolescent -ECA) (Brazil, 2008). This same law added to 2nd Article that "CHILD is a person up to uncompleted 12 (twelve) years old, and ADOLESCENT, that person between 12 (twelve) and 18 eighteen years old. Although commonly treated as child pornography, it is really child-youth pornography. Taking into consideration conducts those criminal sentences at ECA refer to that crime, it covers children and teenagers. This added coverage resulted in penalty to conducts described like child-young pornography, production and sharing (art. 241), exploration (art. 241-A), storing (art. 241-B) and simulation (art. 241-C) involving explicit sex or pornographic scenes. Article 241-E of that law n. 11.829/2008 covers implicit and libidinous sexual activities and sexual poses, which, even without the express display of genitals, constitute equally inappropriate situations (Moraes, 2021; Ilha da Silva, 2018). The federal crime of child-young is attribution of the Federal Public Ministry and competence of the Federal Justice, with focus on article 21-A of ECA, when it is present the requirement of internationality in the spreading of the pornographic content (Carlete & Obregón, 2020). This criterion implies obtaining the image, to know if it occurs in Brazil to be broadcast abroad, or if it is produced abroad to be spread in Brazil. Due to the growing popularization of internet, this kind of crime, especially for the larger accessibility to children and youth became more and more frequent. Thus, child-youth pornography, when practiced through an electronic device online or offline also characterizes a computer crime or cybercrime, respectively.

Computer crimes are those committed by using a computer, or any other device of this gender (mobile phone, notebook, tablet), even without internet. As for cybercrimes, they are those ones perpetrated through internet (Carlete & Obregón, 2020). As an example of computer crime, one can cite the insertion of fake data in information systems from article 313-A of the Penal Code, when the public server inserts data, he knows as untrue ones in the system he works. As for cybercrimes, they are divided into proper (or pure ones and improper (or common and mixed ones). The former ones are those that can only be committed through internet. The second ones had their typification in the legal system before internet and could add the possibility of being committed at internet or through it. Examples of them are: bank frauds typified in article 155, §§ 3rd and 4th, II, or 171, both from Penal Code; sale or exposition for sale, dissemination or storage of child-youth pornography in articles 241, 241-A and 241-B, all of them from ECA (Williams, Gama, Oliveira & D’Affonseca, 2021; Cortez, 2020). Threat: 147 from CP; computer device invasion (*hacking*): art. 154-A from the CP; persistent and obsessive chase (*stalking*): art. 147-A from the CP.

Then, depending on the way it occurs, the crime of child-youth pornography will be computer crime or cybercrime. This work outlines the current panorama of the federal crime of Child-youth pornography in Pernambuco State, Brazil, from 2015 to 2019. It focuses on such crime especially committed over the Internet. This topic, little explored at scientific community, attracts the attention of the competent authorities, because as time passes by, some pieces of news scare people, with crimes practiced even at home by members, and friends of the families, says the press, becoming urgent measures against this terrible problem to avoid worse consequences. This work presents the sociodemographic profile of the accused, does an analysis of the applied penalties to the criminals, evaluates the duration of legal proceeds, determines the level of compliance of the offered complaints, and assesses whether there was an increase in the number of criminal actions and police investigation in the period.

## METHODS

**Data collect:** This research used cross-sectional and retrospective methodology through data collection in police inquiries under the responsibility of the Federal Police in Pernambuco and in lawsuits filed by the Federal Public Ministry before the Federal Justice between 2015 and 2019. This work used the Electronic Lawsuits System of the Federal Justice and the Unique System of the Federal Public Ministry. After identifying the number of criminal actions in the Unique System, it was possible to separate these actions, year by year, allowing immersion to each one, to collect data from the accused and victims, as well as criminal and procedural aspects of the committed crimes. The research analyzed 33 (thirty-three) criminal actions, being 28 (twenty-eight) electronic and 5 (five) physical ones. Data collection suffered harm due to non-completion of some items. Data collection ended in the last days of October 2020. It received authorization from the Federal Justice and from the Federal Public Ministry, as well as approbation from the Ethics Committee of the Veterinary Hospital Oswaldo Cruz, under opinion 467. 963 of the Informed Consent Form, as there is no need for an interview.

**Use of Simulation software:** Absolute and relative frequencies (categorical variables) and measures of central tendency, position and dispersion (numerical variables) were all necessary to take in consideration. There was also crossing among some variables and the defendant's penalty to identify external factors to the judge's decision, like demographic and related variables, to try to explain the level of the performed acts. The test used for this verification was the one of Kruskal-Wallis, due to the low size of the sample. The level of significance was 5%. This way, the statistical findings are considered significant if the value-p is lower than 0.005. All the calculation followed the rules of the statistical programming language R, version 3.0.4.

## RESULTS AND DISCUSSION

The number of initiated and in progress police inquiries, between the years 2015 and 2019 are presented in Figure 1. In it, one watches a proportional relation between the numbers of initiated and in progress inquiries. It also shows that from 2016 to 2018, the number of inquiries was increased. This fact may be justified by the growing population and consequent number of Internet users in Pernambuco, that relate both socially and commercially, connected through electronic devices. On the other hand, both in the first year from the beginning of this polling service and the last year here studied, there was a reduction of the number. This is a surprising fact, because the world tendency is a proportional increase.

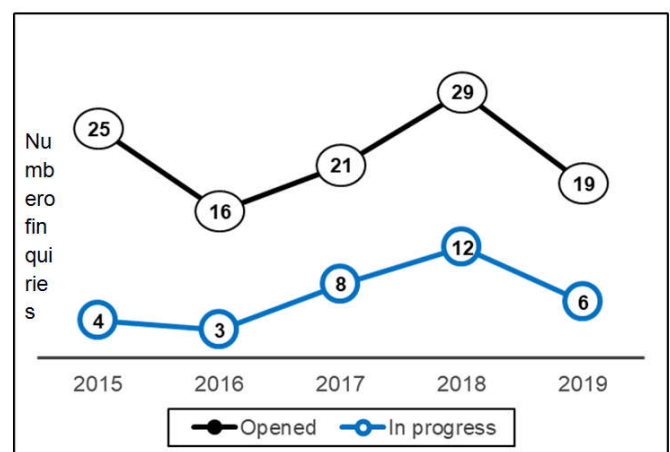


Figure 1. Total number of open and ongoing inquiries

The sample here studied constitutes of 33 defendants of child-young pornography in Pernambuco, a state in Brazil, whose sociodemographic variables in the period of 2015 to 2019, are on Table 1, as follows: PRPE denounced them and the defendants, at

most, (51.5%) are single individuals aged between 31 and 40 years old. Their more frequent profession was that one without superior level of schooling (45, 5%), prevalent education: high school level (24%) and uncompleted superior level (21.2%). And more, 15,2% were public servers, 33,3% had computer skills above medial level, 15,2 % of the defendants declared themselves homosexuals and 12,1% stated to be victims of sexual abuse when they were children. There were two who were repeat offenders in sexual crimes and 12,1% had attraction for boys, 21,2 % for girls and 6,1% for both sexes.

**Table 1. Demographic Variables of Defendants in Child-Young Pornography in Pernambuco State – Brazil from 2015 to 2019.**

Federal Judgement Body	PRM <sup>1</sup> PRPE <sup>2</sup>	6 (18.2%) 27 (81.8%)
Marital Status	Single	17 (51%)
	Married	5 (15.2%)
	Divorced	3 (9.1%)
	Separate	1 (3.0%)
Age	Underage or up to 30 years old	5 (15.2%)
		15 (45.5%)
		4 (12.1%)
Schooling	Basic Level (unc)	2 (6.1%)
	High School (unc)	1 (3.0%)
	High School	8 (24.2%)
	Superior (unc)	4 (12.1%)
	Superior	7 (21.2%)
	Post-graduate studies	1 (3.0%)
Profession	Without formation	15 (45.5%)
	Graduated	3 (9.1%)
	Graduation student	3 (9.1%)
	Related to computer	3 (9.1%)
Public server	Yes	5 (15.2%)
	No	19 (57.6%)
Computer knowledge	Yes	11 (33.3%)
	No	3 (9.1%)
Homosexual	Yes	5 (15.2%)
	No	2 (6.1%)
Previous Sexual abuse	Yes	4 (12.1%)
	No	27 (81.8%)
Sexual Attraction	Boys	4 (12.1%)
	Girls	7 (21.2%)
	Both	2 (6.1%)

PRM<sup>1</sup> stands for Republic Attorneys of the capital, and some counties Recife; PRPE<sup>2</sup> stands for Republic Attorneys of the other cities in Pernambuco State. Not presented Data were not included in the searches.

Just over half (51.5%) used a pseudonym or a fake profile, and almost a fifth (18.2%) had as their victims, babies or children at an early age. As for the mental insanity test, only a minority (12.1) had attributable result. The type of more frequent defense was through own lawyer (42.4%). The most prevalent behaviors were sharing and storage, with respectively 82.42% e 76.5 %, but only 12.1% were real abusers. The most used prison regime was the semi-open and the most committed crimes were 241<sup>a</sup> and 241B, respectively in 82.4 % and 76.5 % of the cases. About one third (30.3%) stored more than 1000 files, while 18.2% shared that quantity. The most frequent shared volume was 100 files or fewer 30.3%. Only 15.2% had physical records and the same percentage paid bail to the police. In the first instance most of the defendants were convicted (72%) and more than half (54.5%) appealed for freedom. A little more than a third (36.4%) of the cases became res-judicata for the Federal Public Ministry. There was only an award-winning collaboration agreement (Table 2). It is worth mentioning the registration of a non-criminal prosecution agreement, and accepted by the agent. Table 3 presents variables related to time between events (complaint, receipt of sentence, agreement of Federal Regional Tribunal of the 5th region TRF5), penalties and fines. The average time from receipt of the complaint to the sentence was 9 months and four days, while for those who were submitted to judgement at the TRF5 and became final and unappeasable to the MPF, two or three months and ten days passed, counting from the sentence data. The size of the conviction, in general, was from 3 to five months, according to the median, while

for those who went to TRF5, it was from 9 years, 4 months and 15 days.

**Table 2. Variables related to crimes, defense, judgement, recursion requests and defendants of Child-young Pornography, in Pernambuco State, from 2015 to 2019.**

Use of pseudonym or fake profile	Yes	17 (51.5%)
	No	1 (3.0%)
Victims: babies or toddlers	Yes	6 (18.2%)
	No	16 (48.5%)
Sexual Attraction	Boys	4 (12.1%)
	Girls	7 (21.2%)
	Both sexes	2 (6.1%)
Committed Crime	240 ECA	5 (15.2%)
	241A	28 (82.4%)
	241B	26 (76.5%)
	158 CP	1 (3.0%)
	217 CP	4 (12.1%)
		4 (12.1%)
Result of the mental insanity test	Imputable	4 (12.1%)
	Unimputable	0
Kind of Juridical Defense	Personal lawyer	14 (42.4%)
	Dative defender	1 (3.0%)
	DPU	12 (36.4%)
Defendant's conduct	Image production (video and photos)	5 (15.2%)
	Sharing	28 (82.4%)
	Storage	26 (76.5%)
	Embarassment	1 (3.0%)
	Vulnerable rape	4 (12.1%)
Considered abuser	Yes	4 (12.1%)
	No	24 (72.7%)
Initial prison regime	Open	1 (3.0%)
	Closed	8 (24.2%)
	Semi-open	15 (45.5%)
Appeal	Lawyer	14 (42.4%)
	DPU	7 (21.2%)
	MPF	5 (15.2%)
		5 (15.2%)
Sexual abuse victim	Yes	4 (12.4%)
Recidivism of sex crimes	No	27 (83.7%)
Volume of stored files (G)	Fewer than 100	2 (6.1%)
	Between 101 and 500	5 (15.2%)
	Between 501 and 1000	3 (9.1%)
	More than 1000	10 (30.3%)
		10 (30.3%)
Number of shared pornographic files	Fewer than 100	10 (30.3%)
	Between 101 and 500	2 (6.1%)
	Between 501 and 1000	1 (3.0%)
	More than 1000	6 (18.2%)
Physical acts	Yes	5 (15.2%)
	No	28 (84.8%)
Bail payment at the police	Yes	5 (15.2%)
	No	28 (84.8%)
Judged at first instance	Acquitted	3 (9.1%)
	Condemned	24 (72.7%)
Appeal for freedom	Yes	18 (54.5%)
	No	3 (9.1%)
Final and unappeasable to the MPF	Yes	12 (36.4%)
	No	4 (12.4%)
Award agreement	Yes	1 (3.0%)
	No	27 (81.8%)
Kind of juridical defense	Personal lawyer	14 (42.4%)
	Dative Defender	1 (3.0%)
	DPU	12 (36.4%)
		12 (36.4%)
Attendant's conduct	Image production (video and fotos)	5 (15.2%)
	Sharing	28 (82.4%)
	Storage	26 (76.5%)
	Embarassment	1 (3.0%)
	Vulnerable Rape	4 (12.1%)
Victims: Babies or toddlers in early age	Yes	6 (18.2%)
	No	16 (48.5%)
Sexual Attraction	Boys	4 (12.1%)
	Girls	7 (21.2%)
	Both sexes	2 (6.1%)
Committed crime	240 ECA	5 (15.2%)
	241A	28 (82.4%)
	241B	26 (76.5%)
	158 CP	1 (3.0%)
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		4 (12.1%)
Result of mental insanity test	Imputable	4 (12.1%)
	Unimputable	0
Kind of juridical defense	Personal lawyer	14 (42.4%)
	Dative defender	1 (3.0%)
	DPU	12 (36.4%)

£: 5 cases were installed, but one of them was still in progress up to the end of data collection of this study.

The fines for both cases showed median size of 10 minimal wages. Table 4 presents the crosses made in order to identify factors related to the defendants' actions, by using the sentence time as PROXY. With this strategy the statistically significant findings were: 1. the defendants accused by PRPE, processed and judged in Pernambuco's capital, had median sentence time 40% larger than those who were accused in the prosecutors of the Republic in the municipalities (inland) ( $p=0,02$ ); 2). The average sentence time of the defendants who did not have sexual preference for girls was seven times as large as for those who had this preference ( $p=0,02$ ).

**Table 3. Measures of central tendency and dispersion for the variables related to occurrence time of events, penalties and fines in days from Child-youth crimes, in Pernambuco State, from 2015 to 2019.**

Variable	Average	Median	IIQ*	N**
Time till sentence	11m14d	9m4d	5m28d	25
Sentence time until judgement TRF5	1a10m22d	2a3m	9m26d	3
Sentence time until the decision becomes final for MPF.	13d	10d	9d	7
Sentence size in days	12a10m24d	3a5m	22a21d	24
Sentence size TRF5 in days	14a19d	9a4m15d	14a5m1d	5
Fine (in SM)	12,4	10,0	5,1	21
Fine TRF5 (SM)	20,8	10,0	6,2	5

\* IIQ = Interquartil Interval; \*\* Indicates the number of defendants to whom the calculation can be applied.

In relation to age group, in spite of the results are not statistically significant ( $p=0,08$ ) there is a very clear pattern, where the defendants who are 30 years old or fewer, had the largest sentences and, being the median time four times as large and, older people had a tendency of reduction.

In our research when added the number of inquiries of the organs PRPE and PRMs, the total found initiated was 110 (Table 5), but 53.6% had to be filed, 14.5% were declined, and only 31.8% were in progress. In relation to the inquiries situation, according to the years in which they were opened (Table 5) the year of 2018, at PRPE, after two years of reduction in the brought number, was the largest one in the studied time series. On the other hand, 2018 was also the year of the largest number of filed cases (32%) As for in relation to PRMS, 2017 was the year with the largest number of opened and filed inquiries. (44%).

**Defendants' Profile<sup>1</sup> (or active subjects of crimes or denounced ones).** The defendants' professions are as diverse as possible. They registered themselves as general service assistant, bricklayer, receptionist, teacher, public server and lawyer, among others. There is not any link between the professions and the committed crimes. They are common ones. The most frequent age group is from 31 to 40 years old, with 15 people. They are grown-ups. There was no space for games. In just one case, the defendant relayed one photo of naked boys through Facebook, for thinking of it as a funny one, according to himself, and justice absolved him by lack of intent through a request from the MPF. One can perceive that crime authors are discerning people, who learned the technique of downloading P2P<sup>2</sup> programs,

storing and sharing photo and video files at Internet. There are lawyers and even with Master Degree. All accused ones were males<sup>3</sup>. That does not mean that a female cannot commit these crimes<sup>4</sup>. It is possible, in theory, of course. Simply there was not any in this research. The use of fake profiles is a keynote among perpetrators of this kind of crime. They seek to hide their real identity, for such reasons, some of them used female names, sisters' and other relatives' photographs, pretended to be younger, teenagers, among other practices. They also used easy language to attract and gain confidence from children and teenagers. Furthermore, always seeking for anonymity, criminals use unofficial web surfing like *deepweb*<sup>5</sup>; passwords with hundreds of characters, browsing on international sites, like Russian ones, and social networks from other countries. Internet is a fertile field for anonymity. For being in forums and communities at Internet, or even in *deepweb*, hidden services<sup>6</sup>, or for using TorChat<sup>7</sup>, persons think they are safe. They are not facing each other they hide behind the computer. This way they gain strength to commit crimes, supposing that no one can reach them and they will remain unpunished.

**Victims:** Childyoung Pornography victims has not uniform characteristics. There are groups, forums, communities and agents whose victims are *babies and toddlers*, other groups directed to boys, other ones to girls and groups that prefer mixed boys and girls. In this research we registered 6 (six) accused persons with preference to babies and toddlers. Among these victims there was a nephew less than 2 (two) years old, the baby son of a girlfriend/ex-lover. There was a case of daughter, sexually abused by her own father, which earned him a final and unappeasable conviction in the State Court of Pernambuco. He practiced new abuse actions against a girl since she was ten (10), until she was thirteen (13) when she lived in his house for some years. According to the victim, the abuser gave her somniferous to commit the first act. After that, it became routine. Still, among the girl victims, there was an embarrassed friend of the daughter, forced to send the criminal naked and sensual photos of hers, through Internet. There were also children encouraged to have sex with another child, even younger, of a young age (only 4 years old) and even siblings; suggestion and encouragement to use objects in the anus of the boy to masturbate himself, to practice sex with animals, shoot and send photos and videos produced. Disgusting conduct. Abuse cases, studied in this research, happened in environments in which there are relations of confidence and hospitality, as family and school, among others. This confirms just one of the characteristics of sexual abuse crimes. It is important to emphasize that the objective of this study does not cover subjective aspects of the sexual abuse victims, so that there were not any interviews and the existing data in the records were not enough. A future study will be able to face the theme. Furthermore, the question

Computers do not bring P2P<sup>2</sup> applications installed at factories. Thus, installation and use are voluntary acts from people interested in obtaining files at Internet. Such programs easily found in Internet allow free downloading and use. They are able to download songs and share childyoung pornography.

<sup>3</sup>Sexual arousal by image is a male sex characteristic

<sup>4</sup>To be checked: TJSP, 5th Criminal Chamber, Criminal Appeal n. 0002193-11.2015.8.26.0568, Rapporteur Judge: José Damião Pinheiro Machado Cogan, judged in 3/3/21.

<sup>5</sup>"Deepweb" is the given name to an Internet zone that can't be detected easily by traditional seeking motors, granting privacy and anonymity for its browsers. It is composed of a set of sites, forums and communities that usually debate illegal or immoral topics in terms of website consultation to "https://www.significados.com.br". Browsing in this internet zone is, many times, along with softwares that make it difficult or impede tracking, generate anonymity and do not leave any traces on the used computer, like "Tor Browser". The network TOR – The Onion Route covers up the IP (*internet protocol*) of the user, making the police identification inefficient.

<sup>6</sup> *Hidden Service* is a tool able to hide the physical location of several internet services, also provided by the network TOR. One has not access to these pages by common internet. It is necessary to be a TOR user and work along the "Tor Browser".

<sup>7</sup> It is a free and anonymous application of instant communication. It is not necessary the user's identification and it does not keep access log. Its purpose is to provide a means of communication between users of TOR network.

1 Although one tries to portray the denounced individuals' profile, in this research, the federal criminal expert Evandro Lorens states that "there is no specific profile". <<http://www.agenciadenoticias.uniceub.br/?p=14713>>.

2 This is a kind of technology called (peer to peer), used by several sharing file applications through the Internet, like EMULE, SHAREAZA, ARES GALAXY, LIMEWIRE, TOR, Torchat/TOX, TORRENT, among others. The peculiar characteristic of these programs is to allow direct sharing of files among computer users of these programs, without the presence of centralizing server. This way there is not any intermediate structure, what makes it easier their use for illegal activities.

According to the protocol characteristics of P2P<sup>2</sup> application, people who make files available for sharing on their computer, makes it possible, in real time, for any other user of the same application to access them, any place in the world, as long as they connected to Internet.

of sexual violence against child and adolescents is concern of the tutelary councils that have been fighting for a long time for these families<sup>8</sup>.

**Defense of the accused:** Practically private lawyers made half of the defenses of the defendants, while the other half counted on the Public Defense of the Union – DPU and on dative defender, what stands for a sharp mark.

**Crimes Committed:** Except light variations, the vast majority of the accused were denounced for the practice of conduct described on article 241-A from ECA, along with article 71 from CP and article

214 from ECA, in material contest (article 69 from CP). As a rule, this is the classification in 82.4 % of the offered complaints. One can state that it would be the basic rule offered by MPF. However, the penalty dosimetry has to weigh the quantity of stored files. That is what federal judges have done in the fixation of penalties in the cases of this research.

**Penalties:** There were fixed penalties from 4 to 110 years, 11 months and 8 days of reclusion. These are the limits of fixed penalties. They are extreme points. The penalty of 4 (four) years of reclusion was the lowest of the studied condemnations in this

**Table 4. Variables related to judgment of child-young Pornography defendants and sentence time in years, months and days in Pernambuco State, from 2015 and to 2019**

Variable	Category	Median	Average	IIQ*	p-Value
Profession Type	No college degree required	6y12d	10y5m6d	5y8m13d	0.26
	College degree required	5y10m12d	5y7m24d	8m20d	
	College Student	7y7m	8y8d	1y9m6d	
Trial place	Related to computer	7y10m15d	4y9m7d	52y3m15d	0,02
	PRMs (inland)	5 <sup>a</sup>	5 <sup>a</sup>	6m25d	
Public server	PRPE	7y12d	14y5m14d	4y5m15d	0,16
	No	7y12d	15y9m14d	4y7m	
Marital state	Yes	5y7m6d	5y7m11d	8m18d	0.17
	Not single	5y4m	6y9m2d	3y10m22d	
Computer knowledge	Single	6y5m	17y3m6d	5y11m8d	-
	No	5y4m	5y4m	-	
Homosexual	Yes	7y10m15d	20y1m15d	6y5m18d	0.44
	No	25 <sup>a</sup>	25 <sup>a</sup>	14y6m10d	
Attraction to boys	Yes	6y6m	28y3m1d	6y4m27d	0.20
	No	5y9m18d	11y8m26d	4y5m29d	
Attraction to girls	Yes	9y4m15d	33y10m10d	30y7m29d	0.02
	No	39y6m	54y2m21d	49y4m29d	
Attraction to both sexes	Yes	5y9m18d	6y9m27d	4y1m14d	-
	No	10y6m	26y11m21d	20y1m10d	
Age Group	Yes <sup>a</sup>	5 <sup>a</sup>	5 <sup>a</sup>	0,0	0.08
	Minor or up to 30	25y10m18d	42y3m15d	46y7m12d	
	31 up to 40	6y6m	7y6m6d	3y1m1d	
	41 up to 50	6y1m3d	6y11m5d	1y5m27d	
Kind of defense	51 or over	5y2m	6y2m15d	1y10m19d	0,57
	Personal lawyer	6y6m	17y8m14d	4y8m8d	
	DPU or Dative Defender	5y10m12d	7y3m4d	4y6m8d	

\* IIQ = Interquartile Interval; \*\* only one defendant presented sentence time.

**Table 5. Variables related to the defendant and sentence time in years, months and days**

Variable	Category	Median	Average	IIQ*	p-Value
Profession Type	No college degree required	6y12d	10y5m6d	5y8m13d	0.26
	College degree required	5y10m12d	5a7m24d	8m20d	
	College Student	7y7m	8y8d	1y9m6d	
Trial place	Related to computer	7y10m15d	41y9m7d	52y3m15d	0,02
	PRMs (inland)	5y	5y	6m25d	
Public Server	PRPE	7y12d	14y5m14d	4y5m15d	0,16
	No	7y12d	15y9m14d	4y7m	
Marital State	Yes	5y7m6d	5y7m11d	8m18d	0.17
	Not single	5y4m	6y9m2d	3y10m22d	
Computer knowledge	Single	6y5m	17y3m6d	5y11m8d	-
	No	5y4m	5y 4m	-	
Homosexual	Yes	7y10m15d	20y1m15d	6y5m18d	0.44
	No	25y	25y	14y6m10d	
Attraction to boys	Yes	6y6m	28y3m1d	6y4m27d	0.20
	No	5y9m18d	11y8m26d	4y5m29d	
Attraction to girls	Yes	9y4m15d	33y10m10d	30y7m29d	0.02
	No	39y6m	54y2m21d	49y4m29d	
Attraction to both sexes	Yes	5y9m18d	6y9m27d	4y1m14d	-
	No	10y6m	26y11m21d	20y1m10d	
Age Group	Yes <sup>a</sup>	5 <sup>a</sup>	5 <sup>a</sup>	0,0	0.08
	Minor or up to 30	25y10m18d	42y3m15d	46y7m12d	
	31 up to 40	6y6m	7y6m6d	3y1m1d	
	41 up to 50	6y1m3d	6y11m5d	1y5m27d	
Defense Type	51 or over	5y2m	6y2m15d	1y10m19d	0,57
	Personal Lawyer	6y6m	17y8m14d	4y8m8d	
	DPU or Dative Defender	5y10m12d	7y3m4d	4y6m8d	

\* IIQ = Interquartil Interval; \*\* only one defendant presented sentence time.

research. Defendant without criminal record, above-average computer knowledge, married, 52 years old, felt more interest in female children, defended by a dative defender; he shared about 300.000 files through Internet. The judge applied the principle of consumption. He decided, then, that the storing of article 241-B from ECA would be natural and necessary for sharing the article 241-A from ECA, too. As the privative penalty of freedom fixed was lower to 4 four years, it was replaced by 2 (two) restrictive penalties of right, consisting of provision of services to society and monetary provision. The judge also established a precautionary measure to accompany the daughter of the convicted person by social assistance. This aforementioned conviction is clearly in conflict with the penalties established in the other cases by the following reasons: 1) application of the consumption principle; 2) non-application of the criminal continuity of article 71 from CP; 3) By having in account the penalty of 4 (four) years of fixed confinement, the regime for serving the sentence was the open one. The deprivation of liberty during four years changed into two restrictive sentences of law, since it is not a crime committed with violence or serious threat to the person (art. 44, I, CP). Besides, there are convictions to hefty prison sentences, such as, for example, 39 years and 6 months, 15 years, 12 years and 3 months, 11 years, and 10 years and 6 months. They are cases where there is a differential such as rape of vulnerable being<sup>9</sup> (art. 217, CP), with a penalty from 8 to 20 years of imprisonment, which greatly increases the final quantum, or cases with well-differentiated numbers of shares and amount of stored pornographic material.

**Sentencing Regime:** The penalty of imprisonment must be served in a closed (the most severe), semi-open (the intermediate) or open (the lightest) regime. (art. 33, caput, CP). In closed regime, the execution of the penalty takes place in either maximum or medium security establishment; while in the semi-open regime the execution of the penalty occurs in either agricultural or industrial colony, or similar establishment. (art. 33, §1st, a, b e c, CP). Penalties depriving freedom must carry out progressively, according to the convict's merits, always observing the following criteria, except in cases of transfer to a more rigorous regime:

- That one condemned to a sentence of more than 8 years, must start serving it in a closed regime.
- That one condemned, but not a repeat offender, whose penalty exceeds four years, but does not exceed 8 (eight) years, will be able to serve it, from the beginning, in the semi-open regime.
- That one condemned, but not a repeat offender, whose penalty be four years or less, will be able to serve it, from the beginning, in the open regime. (art. 33, §2nd, CP).

There was only one case of imprisonment for 4 (four) years to be served in an open initial regime. It was from the interior of Pernambuco, becoming the lowest applied sentence. It was an isolated case. Of the 24 condemnations determined by the Federal Justice of

Pernambuco in the period, the semi-open regime was prescribed in 15 (fifteen) cases, what corresponds to 62,5% of condemnations; the closed regime in 8 cases with a percentage of 33,3% , and the open one, in just one case, what means 4,16% .

**Penalty of Fine:** Besides the penalty of liberty deprivation – imprisonment for 3 (three) to 6 (six) years, the legislator also imposed a penalty of fine to repress conducts describe in art. 241-A of ECA. It is thus, applied cumulatively, with the deprivation of freedom. This fine consists on the payment to the penitentiary fund of the amount fixed in the sentence and calculated in days of fine. It will have two phases. On the first phase the number of days, 10(ten) at least, and 360 (three hundred and sixty) at most. (article 49 of CP). There will be correspondence or proportionality with the applied penalty of freedom deprivation. On the second phase, the judge establishes the day of fine value, but this cannot be less than one thirtieth of the highest monthly minimum wage in effect, nor five times that wage. They are the minimum and maximum limits (art. 49, § 1st, CP). However, the judge must mainly attend to the accused's economic situation, which may increase up to three times if he considers that inefficient, although applied at most, (art. 60, caput e §1º, CP). There will be monetary correction of the amount of the fine, upon execution by its indices (art. 49, § 2nd, CP). According to Schmitt (2014, 307), the reason of the day-fine is to punish the agent with the value payment of a day's work, hence its relationship with the minimum wage, the smallest official income in the country. In the same sense, Bittencourt (2009, 561/562), stated that the day-fine value must correspond to earned income of the convict's day wage, considering his economic and equity situation. The fixed penalty of fine varied from 4.2 to 127 minimum wages, with median penalty of ten minimum wages. In general lines, this is the way one calculates the penalty of fine. It is the basic rule. There are no specific cases in relation to crimes of the articles 241 A to 241D all of ECA.

**Right to appeal in liberty:** The presence of pre-trial detention requirements in articles 311 to 316 of the Code of Criminal Procedure – CPP, determines whether the defendant can appeal the sentence in liberty. If he were under arrest during training, he cannot, but if he responded to the process in liberty, he can. In the research, there were 18 (eighteen) appeals in liberty, and only three of them did not obtain such right. Justice denied it in the most serious cases, especially when there was rape of vulnerable being. Nonetheless, of course, depending on the case, it is essential to keep specific precautionary measures other than imprisonment<sup>10</sup>.

**Police inquiries:** In table 4, one can see the number of police inquiries instituted, year after year, by the Federal Police, both in the PRPE (capital) and in the PRMs (inland). The number of police inquiries instituted is equivalent to the sum of the number of inquiries filed, declined, (sent to the State Court, for example) and in progress (which are being investigated). Among the most common filing

<sup>9</sup>Rape of vulnerable being (Included by Law n° 12.015, of 2009)

Art. 217-A. Having carnal conjunction or performing another libidinous act with someone under the age of 14 (fourteen) Penalty: Seclusion from 8 (eight) to 15 (fifteen) years § 1<sup>st</sup> The same penalty applies to that one who carry out actions described in the main section with someone who, due to illness or mental deficiency, does not have the necessary discernment for the practice of the act, or that, for any other cause, cannot offer resistance.

§ 2<sup>nd</sup>(VETOED)

§ 3<sup>rd</sup> If the conduct results in bodily injury of a serious nature

Penalty: Seclusion, from 10 (ten) to 20 (twenty) years.

§ 4<sup>th</sup> If the conduct results in death:

Pena - Seclusion, from 12 (twelve) to 30 (thirty) years.

§ 5<sup>th</sup> The penalties provided for in the main section and §§ 1st, 3rd and 4th of this article apply independently of the victim's consent or the fact that she had sex prior to the crime. Rape of vulnerable being (art. 217-A, caput and §§ 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>) and rape (art. 213, Caput and §§ 1<sup>st</sup> and 2<sup>nd</sup>) are heinous crimes (art. I, V and VI, of Law n. 8.072/90) and therefore, insusceptible to amnesty, grace, pardon and bail, and the sentence to be served integrally in closed regime.

10CPP: I – periodic appearance in court, within the term and under the conditions set by the judge, to inform and justify activities.

II – prohibition of access or frequency to determined places, when, due to circumstances related to the fact, the indicted or accused person must remain far from these places, to avoid the risk of new infractions

III – prohibition of keeping contact with determined person, when, due to circumstances related to the fact, the indicted or accused must stay away of that person.

IV – prohibition to leave the District, when permanence is convenient or necessary for investigation or instruction;

V – home permanence at night and on days off, when the investigated or accused person has fixed residence and work;

VI – suspension of the exercise of public function or activity of an economic or financial nature, when there is justified fear of using it for the practice of criminal offenses;

VII – provisional internment of the accused in the event of crimes, committed with violence or serious threat, when the experts conclude that they are non-imputable or semi-imputable (art. 26 of the Penal Code) and there is risk of repetition.

VIII – payment of bail, in the infractions that admit it, to ensure attendance at the proceedings, avoid obstruction of their progress or, in case of unjustified resistance to the court order.

causes, the failure to identify the perpetrator of the criminal conduct is the first one, as well as the absence of criminal materiality are always present. As for the declination to State Court happens when the Federal Justice is not competent to process and judge the cause, thus passing away attribution of the Federal Public Ministry, as the internationality of the criminal conduct under the terms of art.10, V, of the Federal Constitution of 1988. There was no condition to observe the sharing/divulgarion of files and videos of child-youth pornography at Internet, being just one case of storing of the article 241-B of ECA.

**Award-winning collaboration:** In the cases we analyzed, it was possible to verify the celebration of an award-winning collaboration in the period, carried out in the course of the criminal action. The agreement made it possible the reaching for other criminal of this modality, thus providing good fruit at the combat against child-youth pornography at Internet. Rodriguez and Christofolletti (2020) defend award-winning collaboration as a tool of combat against child-youth pornography. If we assume that, in these cases of child-youth pornography, the images and their hosts are the focus to fight against in Criminal Law, instead of consumers themselves, we can waive part of their penalty, if they an instrument of collaboration. They would overcome the enormous obstacles for identifying clubs, about which we talked in other works, but at this moment, it is worth summarizing in four points:

1) the difficulty of breaking the cryptography of materials; (2) the impossibility of coming across the real IPS, that distribute the material by concealment systems (3) the barriers, including the legal ones, undercover agents; 4) the advanced instruments of self-destruction of the clubs at the mere sign of danger of invasion. (Panic buttons).

**Non-criminal persecution NCP:** It is an innovation of Lawn. 13.964/20 (or Anticrime Package). There is a proposition of an agreement of non-criminal persecution by MPF. It is suitable as long as the requirements for art. 28 A11 of the Code Criminal Procedure (CPP) are present, added by the referred law where the minimal penalty is under four years. However, as the minimum sentence of the art. 241-A of ECA is 3 (three) years of imprisonment, if there is an increase in the penalty of the criminal continuity of art. 71 of CP the commission of 5 or more infractions, as a result of the sharings, an increase of 1/3, according to STJ, results in a minimum penalty of 4 (four) years of imprisonment. This way, ANPP innovation does not fit in crimes of art. 241-A, if the number of infractions is equal or upper 5 (five), respected the other requirements. Then, as a rule, the infractions number is significant; the application of ANPP has limited hypotheses. Although one considers restrict usage in crimes of art. 241-A of ECA, there is the tendency of new agreements. Its validity was from 01/23/2020, so there was no time enough to assess its application. Duration of processing of criminal actions: As a rule, speed prevails in criminal actions processed and judged by the Federal Justice. The median duration of the process (between the receipt by the Justice of the complaint offered by the MPF and the publication of the sentence) was about 9 (nine) months and 8 (eight) days. Exceptionally, the longest case occurred due to the initiation of an incident of mental insanity during a process, in the terms of the articles 140/154 of the Code of Criminal Process (CCP). That happened not only because of the defendant's move to another state of the federation, but also because of the Covid-19 pandemic, which made it difficult to schedule the psychiatric expertise. The complaint entered the justice in February 2018 and the case is still in progress. This case already lasts 2 (two) years and 8 (eight) months, much longer than all the others. In a study dated on 3/9/21, performed by a MPF public server, Marcelo Fontes, in , in the period of January 1st, 2015 to December 31st, 2019, the time between the notice and the date of knowledge of the judgement, ranged between 5 (five) months and 104 (one hundred and four) months, with an average of 18 (eighteen) months. Still, in the same study, in several processes, the time between the notice and the date of knowledge of the judgement varied between 1 (one) and 209 (two hundred and nine) months, with an average of 35 (thirty-five) months.

Provenance (conformity of criminal actions with the sentences handed down). In the period we are studying, of the 33(thirty-three) criminal actions filed, there were 24 (twenty-four) convictions, of which 6 (six) were *res judicata*, 3 (three) acquittals at the request of the MPF itself, and 5 (five) declinations of jurisdiction. This means an index of origin of the actions of the MPF quite high. It is about 72.72%, taking in consideration only 24 convictions, and 81.81% considering convictions and acquittals on demand. Growth in number of criminal actions and police inquiries. On the other side, the 33 (thirty-three) complaints are distributed as follows: 4 (four) in 2015; 3 (three) in 2016; 8 (eight) in 2017; 12 (twelve) in 2018; and 6 (six) in 2019. One can see that there was a growth in the actions number from 2016 to 2018, when the peak occurred, decaying, then in 2019 There was not, thus, a linear and exponential growth in the number of cases. The same goes for the number of police inquiries: growth in the number from 2015 to 2018, when there was a peak, and then, a decline in 2019. Statistically a period of 5(five) years is small to show a tendency

**Appeals of criminal actions:** However, although the 1st. (first) grade judges have sentenced, few got to the end, with final and unappeasable decision of the convictions, when the parties no longer have appeals. There are 18 (eighteen) appeals in the processes in progress, many of them since April 2018. Just 3 (three) of them were judged in the period. Therefore, the bottleneck in the duration of the processes occurs in the Federal Regional Court of the 5<sup>th</sup> (fifth) Region. The most common allegations raised by the defense are about jurisdictional competence, application of consumption principle, penalty dosimetry, absence of intent – We were unaware that files sharing downloaded by the P2P program was automatic – establishment of mental health examination, among other allegations. However, the Court may make small changes. The sentences are well founded and, this way, annulment of sentences and acquittals are not likely to occur. Only a few tinkering to the sentences, especially in highest convictions, can take place. As for the rest, the tendency is to maintain the decisions of lower instances. Proportion between the number of criminal actions and police inquiries at PRPE (capital) and PRMs (inland) Although the reduction in overall numbers, there was a higher incidence of child-youth pornography cases in the capital than in inland, in this period of study. Of the 33 (thirty-three) criminal actions that came to the file, 27 (twenty-seven) of them are from PRPE, 81.81% of the total, and just 6 (six) from the Municipal Attorneys – PRMs what stands for 18.18 of the total number. In addition, 110 police inquiries initiated in the period: 92 of PRPE, (83.63%) and 18 of PRMs (16.36%). Of the total, 59 went to the archive, 16 to refuse and 35 are in progress: 27 (77.14%) in the capital, and 8 (22.85%) in the interior. That just means that the number of cases is larger at PRPE. There is capacity, investigation, accusation, prosecution and Judgement, both on the part of the bodies in the interior, and those in the capital of the state. Perhaps we can say that it depends on the Internet capacity, which has some technical deficiencies in some places. To be sure, we would need a specific study.

**Significant Statistical Findings:** Table 4 presents the crossings made, in order to identify factors related to the defendants' acts, by using the sentence time as a *proxy*. Among the most significant findings we can point out: 1) The defendants who had their complaints, processes and judgements in the capital of Pernambuco, by the Attorneys Office, had an average time of sentence 40% longer than those defendants whose entire proceedings took place in the Attorneys Offices in the Municipalities in the interior of Pernambuco. 2) The median time of sentence for defendants who did not prefer girls, was 7 (seven) times as long than that for those with this preference. 3) Defendants who were 30 (thirty) years or less had longer sentences (four times as long), while the older the defendants, the greater the tendency to reduce their sentences. That happened because the most serious crimes occurred: 1) in the capital. 2) By defendants aged 30 or less, having cruel and disgusting, behavior and then condemned to long terms, although we can notice a reduction at getting older. 3) By defendants with sexual preference for too young boys or babies. Those crimes hurt completely helpless victims, in

relation of confidence and/or hospitality. They are cases with too strong and disgusting scenes, justifying, this way, a more forceful attitude of the state. In addition to the seriousness of the crimes, most of them occurred in the capital. Furthermore, all the complaints coming from the interior imputed only conduct of sharing and storage, without register of sexual abuse and/or other conducts that required a greater addition of penalty. The relation fixed penalty and defendant age in relation to child-youth pornography can be associated to the aging process itself, in which the person gains maturity and, as time passes by, and consequently, will not risk on the practice of this type of crime. However, this theme deserves a deeper study.

**Prevention:** Combating child-youth pornography on the Internet must occur preventively, with the necessity for sex education at school, and educational campaigns on radio, television, newspapers, magazines internet and other means of communication, as well as workshops, debates, films, among others. It is still very important that parents never leave children without supervision at Internet.

## CONCLUSION

**In this work, 33 (thirty-three) criminal actions were analyzed, being 28 (twenty-eight) electronic processes and 5 (five) physical processes from the records at the Federal Public Ministry of the State of Pernambuco. The data analyzed in this work will be summarized below.**

- The basic profile is: male sex person (100%), single (51.5%), several professions, without any exigence of college degree (44%), complete high school education (24.2%), age group from 31 to 40 years old (45.5 %) not public server (57.6%), no repeat offender in sex crimes (81.81%), used a pseudonym or false profile (51.5%). Still basic profile: computer knowledge above average (33.3%), did not undergo an insanity test and, when submitted, considered attributable, did not practice sexual abuse (72.7%), did not pay bail to the police (87.9%), self-declared homosexuals (15.2%), sexually abused in childhood/adolescence (12.1%), did not enter an award-winning collaboration agreement (81.8%). Still, with good conduct and stated that practiced the crime to satisfy his own lust.
- Defense by personal lawyers (42.4%), by DPU/ dative defender (39.39%), convicted in first instance (72.7%), semi-open initial regime (45.5%), appealed in freedom (54.5%), appealed through a lawyer (42.4%) or by DPU (21.2%), TRF5 judged the appeal.
- The complaint had, predominantly, as its base, the practice of sharing conduct in criminal continuity and storage, in a material contest (arts.241-A of ECA c/c art. art. 71 of CP and 214-B of ECA, c/c art. 69 of CP).
- The sentences restricting freedom ranged from 4 (four) to 110 (one hundred and ten years, eleven months, and eight days of reclusion, with average of 6 (six) years, four months, and thirty days. As for the fine, it varied from 4.2 to 127 minimum wages, with an average of 10 minimum wages.
- It is appropriate to agree on an award-winning collaboration in such crimes, registering one in the period, in terms of the art. 10 - A of Law n. 12.850/2013, what made it possible to enter criminal chains, advancing in several investigations and thus, achieving fruitful results.
- Although there is the register of just one non-criminal prosecution agreement – ANPP, innovation imposed in art. 28-A of Law n. 13.964/2019, the tendency is that new agreements occur in next years.
- Speed predominates in criminal actions processed and judged in the Federal Court, with an average duration of 9 (nine) months and 8 (eight) days, between the receipt by the court of the MPF complaint and the publication of the sentence.
- The obstacle for the reasonable duration of these processes one easily finds in the reviewing instance, TRF5, with only 16.67% of the appeals filed in the period.
- Although one registers a growing of number of federal cases on child-youth pornography at Internet in this period we are investigating, having its peak in 2018, we could not observe a linear and exponential growth curve in the number of criminal actions and police inquiries.
- The work of criminal prosecution bodies showed efficiency, presenting 72.72% of condemnations and 81.81% in conformity of the offered complaints with rendered sentences.
- Condemnation, especially to high sentences for child-youth pornography, reduces the sensation of impunity that exists in the society about the theme.
- 12. Sexual education and parents' supervision are fundamental on prevention of pornography crimes.

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