COMBATING THE SEXUAL EXPOSURE OF CHILDREN AND ADOLESCENTS ON SOCIAL NETWORKS: LIMITS AND CHALLENGES IN THE IMPLEMENTATION OF LAW 15.280/2025

ENFRENTAMENTO DA EXPOSIÇÃO SEXUAL INFANTOJUVENIL NAS REDES SOCIAIS: LIMITES E DESAFIOS NA APLICAÇÃO DA LEI 15.280/2025

ENFRENTAMIENTO DE LA EXPOSICIÓN SEXUAL INFANTOJUVENIL EN LAS REDES SOCIALES: LÍMITES Y DESAFÍOS EN LA APLICACIÓN DE LA LEY 15.280/2025

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ABSTRACT

This article examines the applicability of Law No. 15,280/2025 to crimes involving the sexual exposure of children and adolescents, in light of the incompatibility between its provisions and the Statute of the Child and Adolescent. Such incompatibility may give rise to a situation of *novatio legis in pejus* and infringe the constitutional principles of comprehensive protection and proportionality (Cunha; Ávila, 2025). In this context, the study analyzes the normative conflict arising from the coexistence of Article 218-C of the Brazilian Criminal Code with the criminal provisions established under the Statute of the Child and Adolescent, proposing a systematic and constitutionally oriented interpretation of the legal framework aimed at ensuring greater legislative coherence and the effective protection of children's and adolescents' rights.

Keywords: Child and Adolescent Sexual Exploitation. Law nº 15.280/2025. Untermassverbot. *Novatio legis in pejus.* Constitutional Criminal Law.

RESUMO

Este trabalho analisa as possibilidades de aplicação da Lei nº 15.280/2025 aos crimes que envolvem a exposição sexual de crianças e adolescentes, diante da incompatibilidade de seu conteúdo com o Estatuto da Criança e do Adolescente, o que pode ocasionar situação de *novatio legis in pejus* e violar os princípios constitucionais da proteção integral e da proporcionalidade da norma (Cunha; Ávila, 2025). Nesse contexto, busca-se examinar o conflito normativo instaurado a partir da coexistência do artigo 218-C do Código Penal com os tipos penais previstos no ECA, propondo uma interpretação sistemática e constitucionalmente orientada do ordenamento jurídico, capaz de assegurar maior coerência legislativa e efetiva tutela dos direitos da criança e do adolescente.

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Palavras-chave: Exploração Sexual Infantojuvenil. Lei 15.280/2025. Untermassverbot. *Novatio legis in pejus*. Direito Penal Constitucional.

RESUMEN
Este trabajo analiza las posibilidades de aplicación de la Ley n.º 15.280/2025 a los delitos que implican la exposición sexual de niños, niñas y adolescentes, ante la incompatibilidad de su contenido con el Estatuto de la Niñez y la Adolescencia, lo que puede ocasionar una situación de *novatio legis in pejus* y vulnerar los principios constitucionales de la protección integral y de la proporcionalidad de la norma (Cunha; Ávila, 2025). En este contexto, se busca examinar el conflicto normativo instaurado a partir de la coexistencia del artículo 218-C del Código Penal con los tipos penales previstos en el Estatuto, proponiendo una interpretación sistemática y constitucionalmente orientada del ordenamiento jurídico, capaz de asegurar una mayor coherencia legislativa y una tutela efectiva de los derechos de la niñez y la adolescencia.

Palabras clave: Explotación Sexual Infantojuvenil. Ley 15.280/2025. Untermassverbot. *Novatio legis in pejus*. Derecho Penal Constitucional.

1 INTRODUCTION

Developed since 1957 with the ARPANET, the World Wide Web (Internet), as we know it today, gave rise to the so-called Information Age, allowing various types of long-distance interactions and facilitating Internet users' access to information that is difficult to access, diffuse in several books (Vale; Costa; Alves Jr., 2001).

Also, the survey of the ICT Kids Online Brazil 2024 survey, draws attention to the fact that 93% of the Brazilian population belonging to the age group of 9 to 17 years uses the internet, demonstrating the great presence and strength of the child and adolescent audience on the networks, which has grown exponentially since the advent of the COVID-19 pandemic (Internet Steering Committee in Brazil, 2022).

Thus, technological evolution has come with its benefits and risks, one of them being the early sexual exposure of children and adolescents, which in 2020 ranked 5th among the most reported human rights violations on Dial 100, a free reporting channel developed in 2018 by the Brazilian government (Brazil; Ministry of Human Rights and Citizenship, 2020).

The main aggravating factor for crimes of this nature is the lack of adequate parental supervision in digital environments, given that most Brazilian families are not able to carry it out (CartaCapital, 2025), which, added to the vulnerability of children and adolescents, massively enhances the means for criminal consummation, as could be observed in a case on the social network *Discord.*

In the event, a group of pedophiles and sexual abusers used online games as a space for sexual enticement of minors, aiming to invite them to a private group of the aforementioned social network, in order to obtain sexual or degrading content from the victims, using "revenge porn" or "*revenge porn"* (STJ, 2025) as blackmail for the continuity of the production of illicit digital media (G1, 2024).

Thinking about combating these criminal conducts, in 2008, legislators implemented criminal types to the Statute of the Child and Adolescent to criminalize digital sexual crimes involving minors, and belatedly, after social mobilizations, there were several legislative changes through the enactment of the Henry Borel Law (Law 14.344/2022) and more recently, the Digital Statute of the Child and Adolescent (Law 15.211/2025).

While the Henry Borel Law was a pioneer in implementing the system of emergency protective measures for crimes against children and adolescents (art. 16, Law 14,344/2022), the Digital Statute of the Child and Adolescent, in turn, despite not having a criminal nature, regulated numerous practices and conducts carried out in different digital environments that could have the presence of the public that protects the rule.

After the advent of the aforementioned norms, at the end of 2025, through Law 15,280/2025, the legislator implemented to the Penal Code, Criminal Procedure and the Penal Execution Law (LEP) not only the increase in penalties and the implementation of fines for conducts against sexual dignity, but also a new system of protective measures for victims, similar to what has already been provided for in the Maria da Penha and Henry Borel Laws.

However, by describing the victims in a generic way in the criminal types, the normative ends up aggravating penalties applicable to conducts related to sexual crimes committed against those who have reached the age of majority, raising relevant controversy as to the norm applicable to the specific case, generating a clash between the procedural guarantees of the defendant and the rights of the victim.

In this sense, this work intends to seek a possible solution to the conflict of norms, exploring the studies of Rogério Sanches and Thiago Pierobom (2025) on the *legis* in question, explaining through the doctrinal thesis the relevance of preserving and balancing the procedural guarantees consolidated by the Penal Code, together with the proportionality and effectiveness of the norm (Roxin; Greco, 2024).

2 MATERIALS AND METHODS

The present research adopts a qualitative approach, of exploratory and descriptive nature, inserting itself in the field of Criminal and Constitutional Law, with emphasis on dogmatic and normative analysis. The study seeks to understand the application of Law No. 15,280/2025 in the fight against child and adolescent sexual exposure on digital networks, especially in the face of possible incompatibilities of the rule with the Statute of the Child and Adolescent and constitutional principles structuring the Brazilian penal system.

As a methodological procedure, bibliographic and documentary research was carried out, based on the analysis of pertinent national legislation, notably the Constitution of the Federative Republic of Brazil of 1988, the Statute of the Child and Adolescent (Law No. 8,069/1990), the Penal Code and Laws No. 15,280/2025 and No. 15,211/2025. In addition, national and foreign doctrinal works relevant to the theme were examined, as well as scientific articles published in qualified legal journals.

The documentary research also made use of secondary empirical data, extracted from institutional reports and journalistic articles from widely credible outlets, such as SaferNet Brasil, G1 and Folha de S. Paulo, used exclusively to contextualize the phenomenon of child and adolescent sexual exposure in the digital environment. The data analysis was conducted using the hypothetical-deductive method, articulating the normative and doctrinal references with the factual reality presented, in order to identify legislative inconsistencies and propose

legally grounded solutions, in line with the constitutional principles of full protection and criminal proportionality.

3 BRIEF HISTORY OF THE REGULATIONS FOR THE DIGITAL PROTECTION OF CHILDREN AND ADOLESCENTS

In the 2000s, the democratization of the use of the *Web* was combined with the popularization of Lan Houses, expressly recognized by parliamentarians as centers of digital inclusion (Chamber of Deputies, 2011), which were used by children and adolescents at the time to access games and social networks, under payment of a fixed amount per hour of use of the computers made available (Nascimento; Fragoso, 2024).

In this sense, even though the internet was in its infancy, it was already possible to observe the beginning of its use as a means for criminal activities, demonstrating how the digital sphere, from the outset, was a potentially hostile environment, as Castells (2001) warned:

> In the year 2000, governments around the world were already taking seriously the threat of what they labeled "cybercrime". It had become clear that the infrastructure of computer communications, on which the wealth, information, and power in our world depend, was extremely vulnerable to invasion, interference, and destruction. Incessant waves of viruses and worms roam the Internet, hackers break through firewalls, credit card numbers are stolen, political activists take control of websites, files from military computers are transferred from one place to another in the world, and confidential software can even be extracted from Microsoft's internal network.

With this in mind, after the first legislative changes to the Statute of the Child and Adolescent aimed specifically at the digital protection of children and adolescents (Law No. 11,829/2008), the Brazilian legal system recognized the need for criminal repression of criminal digital conduct against minors, through various measures such as the prohibition of sales of games with explicit violence popular among this age group, such as *Bully* and *Counter Strike* (G1; Folha de São Paulo, 2008).

Over the years, the worsening of the rates of verbal and sexual violence against children and adolescents (Safernet, 2025), added to the intensification of the presence of minors, has highlighted the need for a broader and more articulated normative response. In this scenario, the legislator's performance began to be driven by relevant social mobilizations and cases of great repercussion, culminating in the enactment of Law No. 14,344/2022, known as the Henry Borel Law. This legal diploma inaugurated its own system of emergency protective measures aimed at the guardianship of children and adolescents who are victims of violence, recognizing the urgency of preventive and protective mechanisms that would go

beyond the mere criminal punishment of the aggressor, approaching a model of full and priority protection.

In continuity with this process of expanding normative protection, Law No. 15,211/2025, called the Digital Statute of the Child and Adolescent, was enacted, which, although not of a criminal nature, plays a relevant role in the regulation of practices and conducts developed in digital environments that involve children and adolescents. This statute establishes guidelines for the performance of digital platforms, imposes duties of prevention, transparency and cooperation, and seeks to mitigate the risks arising from the early exposure of children and adolescents in the virtual environment. Thus, the rule reinforces the preventive dimension of digital protection, complementing the existing repressive system, although without directly resolving the conflicts of typification and criminal application.

It is in this context of progressive normative densification that Law No. 15,280/2025 is inserted, which, at the end of 2025, promoted substantial changes in the Penal Code, the Code of Criminal Procedure, and the Penal Execution Law. The regulation was not limited to the intensification of penalties and the imposition of financial penalties for crimes against sexual dignity, but also instituted a new system of protective measures for victims, inspired by the models already consolidated by the Maria da Penha Law and the Henry Borel Law. Such a legislative initiative reveals an attempt to standardize and strengthen the criminal and procedural protection of victims of sexual violence.

3.1 CHANGES ARISING FROM LAW 15,280/2025

Law No. 15,280/2025 represents another milestone in the process of increasing the criminal protection of sexual dignity in the Brazilian legal system, inserting itself in a context of growing social and institutional concern with sexual violence, especially in the digital environment. The regulation promoted relevant changes in the Penal Code, the Code of Criminal Procedure and the Penal Execution Law, with the declared objective of strengthening the mechanisms of repression and protection for the victims of these crimes.

In terms of substantive Criminal Law, the law increased the penalties for various crimes against sexual dignity, expanding the cumulative application of fines for conducts, in order to reach the agent's assets as a means of combating recidivism, and promoting the restructuring of criminal types related to the production, dissemination and sharing of illicit sexual content.

In this context, the modification of article 218-C of the Penal Code stands out, whose penalty, prior to the advent of the rule, consisted of 1 to 5 years if the fact did not constitute a more serious crime, coming into force as follows:

> Article 218-C. Offering, exchanging, making available, transmitting, selling or exposing for sale, distributing, publishing or disseminating, by any means - including by means of mass communication or computer or telematic system -, photography, video or other audiovisual record that contains a scene of rape or rape of a vulnerable person or that advocates or induces its practice, or, without the victim's consent, a sex scene, nudity, or pornography:
> Penalty – imprisonment, from 4 (four) to 10 (ten) years, and a fine, if the fact does not constitute a more serious crime.

With the reading of the type, it is observed that, on purpose, the description of the victims is made in a generic way, in order to cover and protect all citizens harmed by those who commit such conduct, however, the legislator's option ends up generating legislative insecurity because it goes against the Statute of the Child and Adolescent, as provided for in the following topic.

4 INCOMPATIBILITY OF LAW 15,280/2025 WITH THE ECA: *NOVATIO LEGIS IN PEJUS*

Despite the progress represented by Law No. 15,280/2025 in strengthening the criminal protection of sexual dignity, its application raises relevant problems of normative compatibility when confronted with the Statute of the Child and Adolescent. This is because the new wording given to article 218-C of the Penal Code establishes a higher penalty than that provided for analogous conducts typified in the ECA, even when the victim is a child or adolescent.

In fact, while article 218-C of the Penal Code provides for a penalty of four to ten years of imprisonment, going against articles 241 and 241-A of the Statute of the Child and Adolescent, *in verbis:*

> Article 241. Selling or exposing for sale a photograph, video or other record that contains an explicit or pornographic sex scene involving a child or adolescent: (Text given by Law No. 11,829, of 2008)
> Penalty – imprisonment, from 4 (four) to 8 (eight) years, and fine. (Text given by Law No. 11,829, of 2008)
> 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)

Such a discrepancy reveals a relevant legislative inconsistency, insofar as the legal system now provides for a more severe sanction for crimes committed against adult victims

than for those committed against children and adolescents, subjects constitutionally protected by full and priority protection, proportional to the seriousness of the conduct practiced, in light of the principle of the best interest of the child and adolescent (art. 227 of the Federal Constitution of 1988).

The situation generates uncertainty as to the applicable rule, especially in view of the silence and non-compliance of the legislator with the provisions of the ECA. The automatic application of Law No. 15,280/2025 generates a legal clash between the procedural guarantees of the defendant and the effective criminal judicial protection of the victims.

In this sense, a *novatio legis in pejus is configured*, implying the worsening of the defendant's situation, in affront to the principles of legality and legal certainty, as well as, on the other hand, the exclusive maintenance of the application of the ECA may result in deficient criminal protection for the victims, in disagreement with the constitutional mandate provided for in article 227 of the Federal Constitution.

The legislator's carelessness entrusts the solution of the conflict of norms to jurisprudence and doctrines. Therefore, in order to find the balance point between the parties to the Criminal Procedure, we proceed to analyze the possible solution to the aforementioned legal clash, in the light of the principle of prohibition of deficient protection of legal assets.

5 POSSIBLE SOLUTIONS TO THE NORMATIVE CONFLICT

Thus, the application of article 218-C to crimes involving children and adolescents is more in line with the Federal Constitution, with the warrant of qualified criminalization provided for in article 227 and with the requirement of coherence and proportionality of the penal system. In this scenario, Rogério Sanches and Thiago Pierobom (2025) substantiate:

> In this scenario, two interpretative solutions are presented:
> (a) Application of the specialty criterion: it is argued that arts. 241 and 241-A of the ECA continue to regulate, as special rules, all situations involving victims under 18 years of age. By this logic, the specialty does not depend on a greater or lesser penalty; it is enough that the rule is specifically aimed at the protection of children and adolescents. Thus, even after the increase in the penalty of article 218-C, the types of the ECA would continue to prevail whenever the victim is a minor.
> (b) Application of article 218-C also when the victim is under 18 years of age: a second school of thought maintains that, in view of the new legislative order, article 218-C should prevail whenever its penalty is more severe, regardless of the victim's age. This solution seeks to avoid flagrant disproportionality and unreasonableness, as it would be inadmissible – and constitutionally inappropriate – for the system to punish less severely conducts that affect children and adolescents, a group whose protection is reinforced by the Constitution itself. Article 227, § 4, of the Federal Constitution establishes a true warrant for qualified criminalization, determining that sexual crimes involving children and adolescents are punished with special rigor. It is not acceptable

that the ordinary law results, even if involuntarily, in deficient protection of the most vulnerable.
For us, in view of the disharmony created by the legislative change, the solution that is best in line with the Constitution – and with the principle of maximum protection of children and adolescents – is the second. Thus, it is understood that article 218-C should also apply when the victim is under 18 years of age, preventing objectively more serious conducts from being punished with lower penalties, in violation of material proportionality and the constitutional mandate of reinforced protection.

In this scenario, the doctrinaires point out two doctrinal-interpretative currents, where the first sustains the prevalence of the criminal types of the ECA, based on the criterion of specialty, arguing that the statutory norms continue to govern, exclusively, the conducts involving victims under 18 years of age, regardless of the sentence imposed, since the specialty derives from the protective purpose of the norm, and not of its abstract gravity.

The second current, in turn, defends the application of article 218-C of the Penal Code also to conducts involving children and adolescents, whenever the penalty provided for in the *legis* de *ultima ratio* is more severe than the specific norm, *in casu*, the ECA. Such an understanding seeks to avoid deficient criminal protection for child and adolescent victims and is supported by article 227, paragraph 4, of the Federal Constitution, which enshrines a true warrant of qualified criminalization for sexual crimes committed against this vulnerable group.

The automatic adoption of the first school of thought can lead to insufficient criminal protection of the victims, out of step with the constitutional requirement of proportionality of the norm, which translates into adequacy, necessity and proportionality, completely failing to fulfill the function of the norm (Roxin; Greco, 2024) by establishing a more severe penalty for sexual crimes against adults.

The authors' understanding is in line with the principle of prohibition of deficient protection, adopting the bias addressed that one should, above all, also analyze the untermassverbot (Gonçalves, 2025) in the balance between the prerogatives and guarantees of the active and passive poles of the criminal process, recalling the main role of Criminal Law as *ultima ratio*.

Furthermore, the direct application of the nova *legis* also observes the positive obligations of the State (Fischer; Pereira, 2023), which are related to their duty-to-act, considering that the focus on state action through an exclusively negative bias (Kuhn, 2025), centered only on the containment of punitive power, proves to be insufficient in the face of contemporary demands for effective protection of fundamental legal goods.

Applied to the normative conflict arising from Law No. 15,280/2025, the doctrinal thesis allows for the application of article 218-C of the Penal Code also to conducts involving

underage victims, whenever this interpretation proves to be more appropriate for the full and proportional protection of children and youth. Such a solution does not imply relativization of the defendant's procedural guarantees, but, on the contrary, concretizes the normative meaning itself by avoiding both punitive excess and deficient criminal protection.

6 RESULTS AND DISCUSSION

The normative analysis carried out, combined with empirical data from institutional reports and recent judicial decisions, shows a significant growth in reports of child and adolescent sexual abuse and exploitation in the digital environment. Online gaming platforms and social networks have been used as instruments of enticement, exposure and blackmail of children and adolescents, increasing the damage and the difficulty of repressing these conducts.

The data analyzed indicate that technological advances have not been accompanied, in the same proportion, by a harmonious updating of the penal system, which contributes to regulatory gaps and inconsistent state responses. The use of digital platforms as instruments of enticement and sexual exposure expands the scope of the damage and makes it difficult to stop violence, requiring the State to act more effectively and proportionately in criminal law.

In this scenario, the punitive discrepancy between the Penal Code and the Statute of the Child and Adolescent proves to be incompatible with the seriousness of the observed phenomenon. The exclusive application of the ECA rules, with penalties lower than those provided for in the Penal Code, may result in an insufficient state response, unable to fulfill its preventive and symbolic function, in addition to disregarding the technological context that enhances contemporary sexual violence.

The discussion demonstrates that the adoption of the thesis developed by Cunha and Ávila (2025) offers a legally adequate solution to the conflict, by allowing a constitutionally oriented interpretation of criminal legislation, which harmonizes the protection of victims with respect for the fundamental guarantees of the accused. It is an approach that avoids both punitive excess and state omission, promoting greater coherence and effectiveness to the penal system.

7 FINAL CONSIDERATIONS

The present study sought to analyze the possibilities of applying Law No. 15,280/2025 to crimes of child and adolescent sexual exposure, given the incompatibility between its provisions and the rules provided for in the Statute of the Child and Adolescent. It was found

that the punitive discrepancy between the legal diplomas generates legal uncertainty and can result both in violation of procedural guarantees and in deficient criminal protection for victims.

From the study of the doctrinal theses set forth in the article, it was possible to sustain an interpretative solution that reconciles the fundamental rights of the accused with the constitutional duty of full protection of children and adolescents, proposing the application of article 218-C of the Penal Code to conducts involving underage victims. Such an approach is more compatible with proportionality, the effectiveness of the criminal norm and the constitutional commitments assumed by the Brazilian State.

Finally, it is recognized that the theme demands further study, especially in the context of jurisprudence and the practical application of the rules analyzed, in view of the constant evolution of digital technologies and the forms of sexual violence associated with them.

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