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### EDITORIAL ARTICLE

## Cibervictims with disabilities: Victimological issues and forensic challenges<sup>☆</sup>



## Cibervíctimas con discapacidad: cuestiones victimológicas y retos forenses

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There is scientific evidence for the high degree of vulnerability of individuals with disabilities to be victims of violence or abuse,<sup>1</sup> especially child sexual abuse.<sup>2</sup> Although some studies find that a similar proportion of minors with disabilities suffer the same types of abuse as other children,<sup>3</sup> the majority of studies find a higher incidence of sexual abuse, especially in minors with mental disabilities.<sup>4,5</sup> In fact, situations of physical abuse and sexual violence may reach figures that show a three times greater incidence in minors with disabilities than is the cases with their peers who have no disability.<sup>6</sup> Although few studies exist which analyse the risk of victimisation in individuals with a mental disorder, the prevalence of victimisation in this population has been found to be from 2 to 4 times greater than is the case in the general population, and the number of victims is higher than the number of aggressors.<sup>7</sup>

On the other hand, individuals with intellectual or developmental disability have found other ways of forming relationships and participating,<sup>8</sup> enjoying the same advantages as the rest of the population,<sup>9,10</sup> although they are also more likely to become victims of inappropriate behaviour in internet. Thus studies such as those by Didden et al.,<sup>11</sup> Jenaro et al.<sup>12</sup> and Wells and Mitchell<sup>13</sup> conclude that people

with intellectual or development disability have a higher probability of suffering cyber-bullying.

Likewise, young people with learning difficulties or a disability may also experience sexual victimisation online, with the disadvantage that they will probably have fewer resources to deal with these situations, or they may be more affected by them. Thus Livingstone et al.<sup>14</sup> observe that young Europeans (aged from 11 to 16 years old) with a physical or mental handicap or who belong to a discriminated minority are at greater risk online, especially in terms of high-risk contacts (such as communicating with unknown individuals online or seeing and receiving sexual messages); they also feel greater discomfort due to such encounters. In turn, from an ecological point of view Whittle et al.<sup>15</sup> state that intellectual disability is a risk factor for experiencing online grooming, which consists of the process of seduction and capture of a minor by an adult with the intention of sexually abusing them. In their study, Wells and Mitchell<sup>13</sup> found that the young people who were in special education services are more likely to send sexual images of themselves and take part in sexual online behaviours, and that they are more vulnerable to experiencing discomfort due to such experiences.

In this respect Hernández et al.<sup>16</sup> have described some of the particular problems which arise when expertly evaluating cyber-bullying, sexting and gender violence, when they interact, in the context of a sentimental relationship through ICT, with slight psychological disability and sensory disability. We agree with the authors in their analysis, although we also add other complementary considerations regarding cyber-victimisation and the case law tendency in the field of sexual consent, most especially taking into

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account the cultural and behavioural standards of those known as digital adolescents.<sup>17,18</sup> The case presented by Hernández et al. is a clear example of multiple online victimisation<sup>19</sup> involving different forms of abuse of the same victim by means of ICT. Some authors, when an abusive situation arises in internet between adults, suggest using the terms online harassment or cyber-stalking, while reserving the term cyber-bullying for cases in which electronic aggression occurs between minors who are peers, given that the terms originated in traditional school bullying, referring to those cases of aggression between peers characterised by the hostile intent of the perpetrator, repetition or reiteration of the aggressive behaviour and the imbalance in power between the victim and the perpetrator.<sup>20</sup> The different forms of such cyber-aggression include outing or the divulgence of secrets (using internet to send or display material about the victim that contains sensitive, private or humiliating information, including re-sending private messages or images) and cyber-threats (online attacks that include highly intimidating threats to cause harm).<sup>21</sup>

The exchange of usually self-produced sexually explicit images or videos using smartphones is known as sexting (combining sex+texting), and it has quickly become a global phenomenon among adolescents as well as adults.<sup>22</sup> Although these forms of behaviour seem to be voluntary and agreed by those involved, they may also take place within a context of abuse or domination online or offline, as a form of gender or dating violence, cyber-bullying or to take revenge on someone who had once been the boy- or girlfriend of the perpetrator (revenge porn).<sup>23</sup> As many authors state, sexting is an important risk factor for experiencing other forms of victimisation such as online harassment, cyber-bullying, sextorsion or revenge porn.<sup>23</sup>

Cyber-bullying and sexting are often linked. The diffusion of intimate images without consent or the threat to do so if economic demands are not satisfied (sextorsion) may be part of a dynamic of violence and subjection by means of which the aggressor systematically, repeatedly and deliberately abuses their victim. This may also be considered to be cyber-harassment,<sup>24</sup> as was the case presented by Hernández et al.<sup>16</sup> This situation of being defenceless may be associated with the personal characteristics of the subject, among which low self-esteem stands out, together with difficulties in establishing relationships and a physical or mental disability.<sup>11</sup> Additionally, these characteristics may contribute to the creation and maintenance of a dynamic of social isolation, trapping the victim and involving the participation not only of the direct aggressors, but also other young people-spectators who rarely intervene to cease the cyber-harassment. These spectators will aggravate the victim's feelings of being insignificant and defenceless, undermining his capacity to explain the situation and ask for help.

Finally, and in connection with sexual consent and the increased difficulty in deciding whether consent was freely given in cases of psychological disability, the recent reform of the penal code must not be forgotten (in Organic Law 1/2015, of 30 March). The new article 183 adds a very important new consideration which, *mutatis mutandis*, may be applied to cases in which the victim suffers some kind of psychological disability: "*The free consent of the person under the age of sixteen years old will exclude penal*

*responsibility for the offenses described in this chapter, when the author is an individual close to the minor in age and degree of development or maturity*". Given this, it will be necessary to see how this is interpreted in case law and forensic praxis, as it would seem reasonable for similar criteria to be applied when evaluating the freedom of consent to sexual relations between individuals with psychological disabilities. This question should be studied in detail in the light of case law in cases of sexual abuse by means of undue advantage in which the victim, according to expert reports, lacked the necessary emotional-sexual maturity to understand the nature of the relationship.

Thus definitively, the absence of a suitable sex education and associated legal aspects, difficulty in understanding and expressing consent and in recognising abusive situations, combined with the desire to meet other people using Internet and the ease of establishing intimate relationships online, may most especially place individuals with a disability at risk of suffering sexual cyber-victimisation.<sup>25,26</sup>

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