

## **The Criminal Protection for Children from the Crimes of Electronic Sexual Exploitation and Pornography under the Jordanian and Emirati Laws**

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### **Abstract**

*The present study aimed to shed a light on a very significant topic. To be specific, it sheds a light on the most significant crimes that emerged during the contemporary age. The crimes targeted in this study are related to information technology and a significant category of people in society (i.e. children). They are represented in electronic sexual exploitation and pornography crimes against children. The extent of committing electronic sexual exploitation and pornography crimes against children has been increasing significantly worldwide. Children in all countries are vulnerable for committing such crimes against them. This study is significant because it targets a category of people who constitute a great percentage of people in the Jordanian and Emirati societies (i.e. children). Legislators and researchers are responsible for searching for methods to protect children from such crimes. Hence, the present study aims to shed a light on the legal rules that are embedded in the Jordanian and Emirati laws for criminalizing the ones who commit such crimes against children. It aims at meeting this goal through analysing such legal rules and identifying the shortcomings in the Jordanian and Emirati laws in this regard. It aims at meeting this goal through comparing the Jordanian and Emirati legislations related to this crime with each other.*

**Keywords:** *Sexual exploitation, children, penal protection, electronic crimes, criminal responsibility.*

### **Introduction:**

Sexual exploitation of a child serves a major crime amongst the sexual crimes. It is usually carried out between a child and a person who is older than him / her. It is carried out in the aim of arousing the sexual desire of the criminal without taking into consideration the current and future psychological, and physical wellbeing of the child. It is carried out against the will of the child. It is carried out in the aim of exploiting the child sexually through having the criminal interacting with the child sexually. Such sexual interaction may be represented in: touching the child's sexual organs and other organs, kissing the child, or having a sexual intercourse of any type with the child. The types of sexual intercourse include: anal, vaginal and oral sexual intercourse.

Due to the emergence of internet and the prevalence of the use of electronic means, the commitment of sexual exploitation crimes against children became easier and new forms of such exploitation emerged. Such new forms don't require touching the child physically.

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They include: filming children engaging in real sexual activities or using simulation models involving children engaged in sexual activities. They include: filming children's sexual organs in a sexual manner in the aim of meeting the sexual desires of the criminal or others. They include: convincing children to display their sexual organs through seducing them. Such seduction may be carried out through the use of pornographic images for other children. Such images may be used to convince children to appear fully naked on camera or do sexual movements with convincing them that such acts are normal acts. Therefore, the researcher of the present study believes that the vulnerability of children and the technological development led to the emergence of new forms of sexual exploitation for children.

In the light of the aforementioned information, the present study is divided into three main sections. Those sections are:

The First Section: The crime of using electronic means to send or publish a work involving pornography or sexual exploitation related to children.

The Second Section: The crime of using electronic porn to manipulate children.

The Third Section: The crime of exploiting children in prostitution and porn activities.

The First Section: The crime of using electronic means to send or publish a material that includes child pornography or sexual exploitation for children.

The crime of using electronic porn refers to sending, or publishing a material that includes child pornography or sexual exploitation for children. It is a serious crime. It is considered as an infringement for the rights of children. It has negative impacts on the current and future psychological, and mental wellbeing of children.

The latter crime was mentioned in article (9 / a) of the Jordanian Cybercrime Law No. (27) of (2015). The latter article includes the following statement: the following: "Anyone who sends or publishes intentionally –via an information system or the web – an audible, readable, or visual material that includes porn or sexual exploitation for a person who didn't reach 18 years old shall be punished. This punishment is represented in imprisonment for a period that is not less than three months and doesn't exceed one year and paying a fine that is not less than three hundred Jordanian dinars and doesn't exceed five thousand Jordanian dinars".

Article (17) of the Emirati Law on Fighting against the Cybercrimes No. (5) of (2012) states the following: "A punishment involving imprisonment and paying a fine (that mustn't be less than two hundred fifty thousand Dirham and mustn't exceed five hundred thousand dirhams) or either shall be enforced on anyone who creates, manages or supervises a website that includes porn or gambling activities or things that infringe the public morals. It shall be enforced on anyone who transmits, sends, publishes or republishes –vial the web - a material that includes porn or gambling activities or things that infringe the public morals. It shall be enforced on anyone who produces, creates, designs, sends or stores a material that includes porn or gambling activities or things that infringe the public morals in the aim of exploiting others, distributing such a material or showing it to others. If the material involves porn that includes a juvenile whose age is less than 18 years or includes a content that aims to seduce juveniles, the criminal shall be imprisoned for a period that is not less than one year. He shall also incur a fine that is not less than five thousand Dirham and doesn't exceed one hundred fifty thousand Dirham".

The researcher of the present study sheds a light on the physical and moral elements of the crimes being targeted in the present study. He also sheds a light on the punishment enforced on the ones who commit such crimes:

The first sub-section: The physical element of the crime of sending or publishing a material that includes child pornography or sexual exploitation for children.

Based on article (9 / a) of the Jordanian Cybercrime Law No. (27) of 2015, it can be clear that the physical element of this crime is represented in the act of sending or publishing itself. The materials being sent when committing this crime may have an audible, readable, or visual form. They must include porn or sexual exploitation. The porn or sexual exploitation acts in such materials must be committed against a juvenile (i.e. a person whose age is less than 18 years). In addition, the process of sending or publishing such materials must be carried out through using an information system or the web.

The criminal act in this crime is represented in the act of sending or publishing itself. The legislator criminalized both acts. Committing either acts means that the physical element of the crime is deemed existent. Those two acts differ from each other in terms of scope. To be more specific, the term (sending) in this context refers to the process of sending a material that includes child pornography or sexual exploitation for children. As for the term (publishing) in this context, it refers to the process of transmitting such a material without determining the one(s) who will receive such a material. Therefore, the difference between (publishing) and (transmitting) is represented in the ones who can access the material that was sent or published.

The legislator treated the process of sending and publishing as being the same. For instance, a person may publish such a material and the receiver may decide to publish it. The criminal act is considered existent when sending or publishing the material. The process of sending the material may be carried out once or several times. In case it was carried out several times, it may be carried out in the same time or in different times. In case of sending the same material several times, all the sending acts shall be considered as one crime.

The sent material may be an audible material or readable material. The language being used in the material is not important. The visual material may be in the form of images or videos. The process of sending or publishing the material must be carried out through using an information system or the web. Hence, the legislator identified the electronic means used for committing the targeted crime (An-Nawayseh, 2017: 310).

The Jordanian legislator defines the information system through article (2) of the Jordanian Cybercrimes Law. The latter article includes the following statement: the following: "The information system is a set of programs, and tools that were created to create, send, receive, process, store, manage or present data or information in an electronic manner". The Jordanian legislator defines the information system as: "a system that connects several information systems with each other to offer access to data and information and retrieve them".

Based on the aforementioned definitions, it can be concluded that all the electronic means that can be used for sending and publishing a material can be used for committing the targeted crime. Without doubt, the mean used for committing this crime is considered as an essential element for considering this crime existent. Otherwise, the legal requirements for considering this crime existent shall not be met.

As for the Emirati legislator, he enacted article No. (17) of the Emirati Law on Fighting against the Cybercrimes No. (5) of (2012). Under the latter article, he criminalized several forms of acts that are carried out through the web and include porn or gambling activities. Those forms include the following:

- 1)- Creating, managing or supervising a website that includes porn, or gambling acts or something that infringes the public morals. Such forms also include: transmitting, sending, publishing or re-publishing a material that includes porn, or gambling acts or something that infringes the public morals.
- 2)- Producing, designing, preparing, sending, or storing a material that includes porn, or gambling acts or something that infringes the public morals in the aim of exploiting others, or passing or showing it to others through using the web.

Under article No. (18) of the latter law, the Emirati legislator criminalized everyone who holds intentionally a material that includes porn through using an electronic information system, the web, website, or any other technical mean.

Through article (1) of the Emirati Law on Fighting against the Cybercrimes, the Emirati legislator defines the meaning of the term (pornographic materials). He states in this article the following: "A pornographic material refers to any image, record, or another thing that is sexually arousing and includes sexual organs or actual or virtual sexual acts or simulation models for sexual acts made by a juvenile whose age is less than 18 years".

Article No. 1 of the Federal Law on Children Rights No. (3) of (2016) (Wadeemah Law) includes a definition for the term (children pornography). To be specific, it includes the following statement: "Children pornography refers to the production, presentation, publication, or exchange of an image, movie, or drawing that includes a child in an actual sexual act or in a simulation for such a sexual act through using any communication mean, social media platform, or any other mean".

Based on the aforementioned information, the researcher of the present study hopes that the Jordanian legislator shall enact a legislation that criminalizes the process of sending, publishing or exchanging an electronic material that includes child porn. He also hopes that the Jordanian legislator shall enact a legislation that criminalizes the possession of a material that includes child porn. He also hopes that the Jordanian legislator shall enact a legislation that defines the term (child pornography) as the Emirati legislator did. He also hopes that the Jordanian legislator shall enact a legislation that criminalizes the process of importing, producing, and selling electronic porn materials that include children (i.e. the ones whose ages are less than 18 years).

The researcher of the present study believes that it is necessary to re-draft the Jordanian legislations that address such crimes. He recommends addressing the shortcomings existing in the Jordanian legislations address such crimes. That should be done through criminalizing electronic porn in general and blocking all the porn websites as the Emirati legislator did. He believes that the Jordanian legislator should do that instead of criminalizing children porn only.

The second sub-section: The mental element of the crime of sending or publishing a material that includes child pornography or sexual exploitation for children.

The latter crime can't be considered existent unless it was committed in an intentional manner. In other words, the criminal must do the crime with realizing the nature of the criminal act. The sent or published material must include porn or sexual exploitation. It must include a person whose age is less than eighteen (18) years. The elements of this crime include the age of the victim. Therefore, it is necessary to identify the age of the victim. The criminal may defend himself / herself through stating that he / she didn't know the actual age of the victim. In other words, he / she may add that he / she thought that the porn-related content includes a person whose age is more than eighteen (18) years. Contrary to the Emirati legislator, it should be noted that the Jordanian legislator didn't criminalize electronic porn in general. In fact, the Emirati legislator criminalized electronic porn in general and enforced harsh punishments on the criminals who commit crimes related to electronic porn. The researcher of the present study believes that the approach adopted by the Emirati legislator is better than the approach adopted by the Jordanian legislator in this regard. That is because the approach adopted by the Emirati legislator contributes to promoting compliance with the public moral and ethics and fighting against the spread of electronic indecent materials that infringe public morals. To consider all the elements of the criminal intent as existent, the criminal must carry out the criminal act in an intentional manner. The criminal intent that is required in this crime is a general criminal intent. The reason that drives the criminal to commit the crime is not important. It may a sexual, or a business reason or etc.. (Shaker, 2019:105).

The third sub-section: The legal punishment enforced on the criminal who commits the crime of sending or publishing a material that includes child pornography or sexual exploitation for children.

Through article (9 / a) of the Jordanian Cybercrime Law, the Jordanian legislator punished the ones who commit such a crime through stating the following: “ This punishment is represented in imprisonment for a period that is not less than three months and doesn’t exceed one year and paying a fine that is not less than three hundred Jordanian dinars and doesn’t exceed five thousand Jordanian dinars”.

Through article (17) of the Emirati Law on Fighting against the Cybercrimes, the Emirati legislator enforced two punishments on the ones who commit this crime (i.e. imprisonment, and fine) or either. The latter fine mustn’t be less than two hundred fifty thousand Dirham and mustn’t exceed five hundred thousand dirhams. This is considered as a minor punishment. For instance, the Emirati legislator enforced a harsher punishment in case the electronic porn content includes a juvenile or was designed to seduce a juvenile. The latter harsher punishment is represented in imprisonment for a period that isn’t less than one year and paying a fine that isn’t less than five thousand Dirham and doesn’t exceed one hundred fifty thousand Dirham.

The Emirati legislator enforced a punishment on the ones who possesses –intentionally- a material that includes porn for a juvenile through using an electronic information system. The latter punishment is represented in imprisonment for a period that is not less than six month and paying a fine that is not less than one hundred fifty thousand Dirham and doesn’t exceed one million Dirham.

In the light of the aforementioned information, the researcher of the present study believes that the Emirati legislator is wise in terms of enforcing a harsher punishment when the crime is related to children. That contributes to deterring anyone from committing crimes that infringe the honour of children. The researcher of the present study hopes that the Jordanian legislator shall adopt the same approach adopted by the Emirati legislator in this regard. That can be done through enacting a legislative text that defines the meaning of (pornographic material that is related to a juvenile (i.e. a person whose age is less than eighteen years). Enacting such a legislative text is necessary because children ought to be protected more than other categories of people. That is because children are the ones who shall contribute to achieving development in the future. In addition, enacting such a legislative text shall maintain their psychological and cognitive wellbeing. It shall contribute to letting children have balanced personalities that are free from disorders, hate, fear, or grudge.

The second section: The crime of using electronic porn to manipulate children

Children are considered the easiest category of people to manipulate. That is because children have little experience, poor awareness and undeveloped cognitive abilities. It is because children are curious to know anything that’s new to them. It should be noted that he acts that target children and violate public moral and ethics on the web are considered serious and manipulate them much. Through such acts, children shall be tricked, and exploited sexually online and become victims.

This crime is criminalized based on article (9 / b) of the Jordanian Cybercrimes Law No. (27) of (2015). The latter article includes the following statement: “A punishment shall be enforced on anyone who uses an information system or the web intentionally for creating, preparing, storing, processing, presenting, printing, publishing or promoting porn acts in order to manipulate, or guide a person whose age is less than eighteen year or less or a person who’s disable psychologically or mentally or inciting him / her to commit a crime. It is represented in imprisonment for a period that is not less than two years and paying a fine that is not less than 1000 JDs and doesn’t exceed 5000 JDs”.

Article No. (2) of the Jordanian Law of the Rights of People with Disabilities No. (31) of (2007) defines the disabled person through stating the following: ‘‘A disabled person refers to anyone who suffers from a permanent full or partial failure in any sense of his senses. It also refers to anyone who suffers from a permanent full or partial failure in any ability of his / her physical, psychological, or mental abilities. Such a failure hinders this person from receiving education, becoming qualified, or working. It hinders this person from meeting the requirements of his / her daily life which are met by his / her normal peers’’.

Article (17) of the Emirati Law on Fighting against the Cybercrimes No. (5) of (2012) includes the following statement: ‘‘----- The same punishment shall be enforced on anyone who produces, creates, designs, sends or stores a material that includes porn or gambling activities or things that infringe the public morals in the aim of exploiting others, distributing such a material or showing it to others. If the material involves porn that includes a juvenile whose age is less than 18 years or includes a content that aims to seduce juveniles, the criminal shall be imprisoned for a period that is not less than one year. He shall also incur a fine that is not less than five thousand Dirham and doesn’t exceed one hundred fifty thousand Dirham’’.

In the light of the aforementioned information, the researcher of the present study sheds a light on the physical and moral elements of this crime through the text below.

The first sub-section: The physical element of the crime of using electronic porn to manipulate children.

The physical element of this crime is represented in having the criminal carrying out the criminal act itself through using an information system or the web. The information system and the web are considered the means used for committing the crime. The act is represented in creating, preparing, storing, processing, presenting, printing, publishing or promoting porn acts. The Jordanian legislator used several terms (i.e. creating, preparing, storing, processing, presenting, printing, publishing or promoting) to show caution and ensure that the criminal shall get punished for committing his / her criminal act. Despite that, the criminal may commit several criminal acts of those acts when committing his / her crime.

The term (creation) refers to the process of creating a pornographic material through using electronic means. In other words, it refers to the creation of a new material that didn’t exist before. Examples on such (creation) includes: taking porn photos, filming porn videos, drafting porn texts, and recording porn audio files. As for the term (preparing), it refers to the process of acquiring a pornographic material without having the criminal himself / herself engaged in creating this material. As for the term (electronic storing of a pornographic material), it can be carried out through using an electronic mean. Examples on such storing include downloading the pornographic material from a porn website and saving it on an electronic memory. As for the term (processing), it is represented in having the criminal making modifications to the pornographic material, or transferring the form of the pornographic material into another form. Doing that requires having good skills in using technology by the criminal. As for the term (presentation), it is represented in using any mean to make the pornographic material accessible by this category. As for the term (printing), it refers to the process of acquiring an offprint that includes the pornographic material. Examples on that include: printing porn photos and printing porn writings. As for the term (publishing), it is represented in transmitting the pornographic material through using an electronic mean without identifying the ones who shall access this material. As for the term (promotion), it is more specific than the term (publication). It is not represented only in displaying a pornographic material in a public or private manner. In fact, it must also include exerting effort by the criminal to make this material accessible and desirable by audience (AlNawayseh, 2017:314).

The aforementioned acts must be committed along with having porn activities (porn content) associated with them. They must target people whose ages are less than 18 years old (children) or people who suffer from psychological or mental disabilities (AlShawabkeh, 2015,121). The Jordanian legislator expanded the scope of the categories of people who are provided in protection through article (9 / b) of the Jordanian Cybercrimes Law. The researcher of the present study hopes that the Jordanian legislator shall modify the latter article to provide protection to the ones who suffer from psychological or mental disabilities from the crimes involving child pornography or sexual exploitation. That is because the latter category of people are in need for receiving penal protection from all types of sexual exploitation crimes.

Based on article (9 / b) of the Jordanian Cybercrimes Law, the Jordanian legislator criminalised the use of “an information system, or the web for creating, acquiring, storing, processing, presenting, printing, publishing or promoting porn acts”. The legislator identifies the meaning of the term (information system) through article (2) of the latter law. He defines it as a “a set of programs, and tools that were created to create, send, receive, process, store, manage or present data or information in an electronic manner” (Almomani, 2016:95).

As for the Emirati legislator, he adopted a similar approach to the one adopted by the Jordanian legislator when the former legislator enacted article (17/2) of the Emirati Law on Fighting against the Cybercrimes. Through the latter article, he criminalized the act of producing, creating, designing, sending, or storing a material that includes porn in the aim of seducing a juvenile.

It can be concluded that the Jordanian legislator elaborated the scope of criminalization when comparing him with the Emirati legislator. It can be concluded that the Jordanian legislator elaborated the types of such acts. The latter legislator identified the specific criminalized intent. Such an intent is represented in inciting the victim to commit a crime, manipulating the victim or guiding him / her while committing a crime. As for the Emirati legislator, he limited the criminal intent to seducing juvenile only.

For example, downloading a pornographic content through using electronic means is a primary step that precedes the step of preparing the porn material to be used. The act of saving refers to storing this material and making it accessible after preparing it. In this regard, those acts constitute the actual act of possessing a porn material. The latter act is criminalized. That means that the crime is considered existent once the criminal has possessions of the porn material through using tools that were designed to save electronic data. That applies even if the material wasn't uploaded to a computer in the aim of publishing, promoting, or displaying it (Almomani, 2016:95).

It should be noted that that the meaning of the term (children) is identified based on the age standard. To illustrate, the one whose age is less than eighteen (18) years is considered a child. As for the way of identifying the juveniles who suffer from psychological or mental disability, it is based on medical standards. Such medical standards are much broader than the aforementioned age standard. That is because the age standard is represented in numerical ranges only.

It is not necessary to consider this crime existent to have the criminal meeting his / her goal(s) that drove him / her to commit his / her criminal act. Such goals are represented in inciting the victim to commit a crime, or manipulating the victim or guiding him / her to commit a crime. In fact, it is enough to have the criminal exerting effort to commit his / her crime to consider the crime existent. That applies even if he / she didn't succeed in his / her intended goals. The goal sought from inciting, manipulating and guiding the victim to commit a crime differ. That applies though all of those acts are committed on the same categories of people who have incomplete legal eligibility or don't have any legal eligibility at all due to being a juvenile or having psychological or mental disability. Having the criminal manipulating or seducing his / her victim means that the criminal met

his / her intended goal through using the porn content. Manipulation or seduction is represented in having the sexual desire of the victim aroused. As for (guidance), it is represented in providing the victim with instructions that assist him / her in committing a crime. As for the term (incitement), it is represented in using the porn content for encouraging or motivating the victim to commit a crime (Shanteer, 2018:312).

In this regard, one may ask (In case the incitation act led committing a crime by the victim, would the inciter be held liable for the latter crime in addition to the incitation crime mentioned in article (9 / b) of the Cybercrimes Law?).

The answer to this question requires reviewing the general provisions regulating liability and being an accomplice. Under the Jordanian legislations, incitation and attempting to incite somebody are criminalized. In other words, incitation is criminalized even if the one being incited didn't commit the crime. Despite that, the legislator adds that the criminal must use means to incite the victim. In addition, using a porn material to incite an individual who don't have eligibility - due to a psychological or mental disability – to commit a crime shall make the inciter the person who committed the crime committed later on. That is because the inciter exploited the victim to commit the crime. In article (9 / b), the legislator didn't identify the type of crime that the criminal incited, guided or manipulated the victim to commit. That is considered as a shortcoming in the latter article. The latter article would have been written better in case the Jordanian legislator identified the type of crime instead of addressing that in a general manner (Kharashi, 2013:223).

The third sub-section: The mental element of the crime of using electronic porn to manipulate children.

Through article (9 / b), the legislator set the requirement of committing the crime intentionally. The latter article includes the following statement: "A punishment shall be enforced on anyone who uses an information system or the web intentionally for ...." Hence, this crime shall not be considered existent in case it was committed in an unintentional manner (i.e. by accident). In other words, being aware of the nature of the elements of the crime is essential to consider the crime existent. In addition, the (will) element must be existent when committing the crime. The criminal must have committed the act willingly to consider the crime existent. The legislator didn't require meeting the sought goals from carrying out the criminal act to enforce a punishment on him. It should be noted that the legislator didn't consider the presence of the general criminal intent as being enough. In fact, the legislator requires having a specific criminal intent in addition to the general criminal intent to consider the crime as being existent. The general criminal intent is represented in the acknowledgment of the criminal for the nature of his / her behaviour when committing it, and having the intention to the commit the act and reach the intended result. The specific criminal intent is represented in the goals set by the legislator for committing the crime. In this case, it is represented in the effort exerted by the criminal for manipulating a juvenile whose age is less than 18 years or a person who has a mental or psychological liability or inciting or guiding him to commit a crime ((AlNawayseh, 2017:318) or seducing the juvenile as it is suggested in Emirati laws.

The fourth sub-section: The legal punishment enforced on the criminal who commits the crime of using electronic porn to manipulate children.

Based on article (9 / b) of the Jordanian Cybercrimes Law No. (27) of (2015), the Jordanian legislator enforced a punishment on the ones commit this crime. Based on the latter article, this punishment is represented in "imprisonment for a period that is not less than two years and paying a fine that is not less than 1000 JDs and doesn't exceed 5000 JDs". It can be noticed that the legislator considers this crime as a type of felony.

Through article (17) of the Emirati Law on Fighting against the Cybercrimes No. (5) of (2012), the Emirati legislator enforced the following punishment on the ones who commit



this crime in its simple form: ‘‘a punishment involving imprisonment and paying a fine (that mustn’t be less than two hundred fifty thousand Dirham and mustn’t exceed five hundred thousand dirhams) or either’’ shall be enforced for committing this crime’’. In case the porn content targets a juvenile or was designed to seduce a juvenile, the Emirati legislator enforced a harsher punishment. This harsher punishment is represented in imprisonment for a period that is not less than one year and paying a fine that is not less than five thousand Dirham and doesn’t exceed one hundred fifty thousand Dirham.

The third section: The crime of exploiting children in prostitution and porn activities.

The term (prostitution) refers to having a person engaged in a sexual intercourse with anyone who wasn’t chosen based on emotional standards. That applies whether the former person did that in exchange for something or not (Asagheer, 1994:217). The term (prostitution) is considered a modern term for the Jordanian legislator. However, article (309 – 318) of the Penal Law criminalized the practices related to prostitution and brothels. It should be noted that the term (prostitution) is linked to males and females (Albatrawi, 2007:242).

The term (prostitution) can be also defined as the engagement of females or males in sexual acts for meeting their desires directly or indirectly and without taking anything into consideration. Males and females may be engaged in such acts (Hafez, 1994:14).

Based on the latter definition, prostitution may be carried out for meeting sexual desires in an illegitimate manner. That applies whether one decided to engage in acts of prostitution or was forced to engage in such acts (Abdullah, 2007:134).

Through article (9 / c) of the Jordanian Cybercrimes Law, the Jordanian legislator criminalized this crime. To be specific, the latter article includes the following statement: ‘‘A punishment shall be enforced on anyone who intentionally uses an information system or the web for exploiting a juvenile whose age is less than 18 years or exploiting a person suffering from a mental or psychological disability for engaging in prostitution or doing porn. This punishment is represented in temporary imprisonment with hard labor and paying a fine that is not less than five thousand (5000) JDs and doesn’t exceed fifteen thousand (15000) JDs’’

Through article (19) of the Emirati Law on Fighting against the Cybercrimes, the Emirati legislator states the following: ‘‘A punishment shall be enforced on anyone who incites or seduces someone to engage him / her in prostitution or assist him / her in doing that through using an information system or any technical mean. It is represented in imprisonment or paying a fine or either. The fine shall not be less than 250,000 Dirham and shall not exceed one million Dirham’’.

Thus, the crime of exploiting children in prostitution and porn activities requires having two elements to consider it existent (i.e. the physical and moral elements). The physical element (*actus reus*) is represented in the actual act that constitute the crime. The moral element (*mens rea*) is represented in the criminal intent. This intent is represented in the criminal’s intent to commit the criminal act itself. Further details are shown below:

The first sub-section: The physical element of the crime of exploiting children in prostitution and porn activities

Under article (27) of the Jordanian Cybercrimes Law No. (2015), the physical element of the crime of exploiting children in prostitution and porn activities is represented in the criminal’s actual use for any electronic mean for exploiting children in such activities. It is considered existent once the criminal carries out an act in the aim of seducing or persuading a child in the aim of exploiting him / her. Exploitation in the latter context refers to having the criminal achieving a specific interest. This interest may be a financial interest that is represented in making money from having a child engaged in porn or sexual activities. It may be a sexual interest that is represented in meeting the sexual

needs or desires of the criminal. The legislator criminalized the use of an information system or the web for committing the crime. The use of an information system or the web is legitimate, provided that the intention sought from such use is legitimate. However, the illegitimate intention sought from using either shall make the use illegitimate. This illegitimate intention in this regard is represented in the exploitation of a juvenile or a child who suffers from a psychological or mental disability for carrying out porn or prostitution acts. One presumes that having such an illegitimate intention along with the illegitimate use means that the crime elements are existent. However, that is not enough. From a practical perspective, there must be an evidence reflecting the presence of such an intention, such as: electronic messages or an advertisement targeting this category of people in a specific or general manner (Althabahi, 2013:78).

In article (9 / c), the Jordanian legislator should have referred to the prostitution of females and males. That is because protection shouldn't be granted to one gender only. In fact, protection should be granted to male and female juveniles and the males and females who suffer a psychological or mental disability. However, the Emirati legislator did well in referring to males and females in article (19) of the Emirati Law on Fighting against the Cybercrimes. The latter article includes the following statement: "to engage him / her in prostitution or assist him / her". Therefore, the Jordanian legislator must re-draft the legislative text to provide males and females with protection.

The crime of exploiting children in prostitution and porn activities is considered a felony. Despite that, it is not considered one of the crimes that involve attempt to commit. That is because this crime is considered as a formal crime that is considered existent once the criminal carries the criminal behavior and without waiting for the result to be reached.

Article (19) of the Emirati Law on Fighting against the Cybercrimes No. (5) of (2012), the Emirati legislator criminalizes anyone who incites or seduces someone to engage him / her in prostitution or assist him / her in doing that through using an information system or any technical mean. Under the latter article, he punishes the ones who do that with imprisonment and paying a fine. In case the victim is a juvenile, the criminal shall pay a fine and get imprisoned for a period that is not less than five years.

Thus, based on article (19) of the Emirati Law on Fighting against the Cybercrimes No. (5) of (2012), the physical element for this crime is represented in the actual commitment of the act. This act is represented in inciting or seducing a male or a female to engage him / her in prostitution or assist him / her in doing that. The Emirati legislator didn't require committing this criminal act in the aim of achieving a financial or sexual interest. He didn't require committing this criminal act for meeting the interest of others. In other words, he didn't require the criminal to be a person who acts on behalf of others to recruit females or males to engage them in sexual acts for meeting his sexual needs or others' sexual needs (Abdulqader, 2014:126).

The Emirati legislator shows much attention to children and criminalizes anyone who incites or seduces children to engage them in prostitution or assist them in doing that. The researcher of the present study believes that the Emirati legislator did well in terms using the term (incite) when addressing this crime. However, the Emirati legislator didn't criminalize the one who incites or seduces a female or male suffering from a psychological or mental disability. That is considered as a shortcoming in the Emirati legislations. The presence of this shortcoming requires re-drafting the legislative text and providing the females and males suffering from a psychological or mental disability with protection. Such protection was offered by the Jordanian legislator. It deters anyone from exploiting children due to their physical weakness and poor mental and psychological capabilities. Such weakness and poor capabilities make children easy to deceive.

The Second Sub-section: The moral element of the crime of exploiting children in prostitution and porn activities.

In this regard, under article (9 / c) of the Jordanian Cybercrimes Law, the Jordanian legislator considers the crime of exploiting children in prostitution and porn activities as an intentional crime. Under the latter article, the criminal must be realizing all the elements of the crime when committing it to consider the crime existent. In addition, he must be having the intention to commit the criminal behavior when committing the crime. This crime shall not be considered existent if the general criminal intent only is existent. To consider this crime existent, the general and specific criminal intents must be existent in pursuant to the Jordanian laws. The specific criminal intent is represented in the intention sought by the criminal from using an information system or the web for exploiting a juvenile - whose age is less than 18 years- or a person suffering from a mental or psychological disability in prostitution or porn activities. In case the one who committed the act had another intention, article (9 / c) of the Jordanian Cybercrimes Law No. (27) of (2015) shall not be applicable to him / her (Almana'seh & Alzo'bi,2020:178).

Based on the Emirati Law on Fighting against the Cybercrimes No. (5) of (2012), the Emirati legislator considers the crime of inciting a child to engage in prostitution as an intentional crime. The moral element in this crime is represented in the acknowledgment of the inciter with the nature of his / her act and the effect of the means he / she is using at the time of committing the act. It also involves the acknowledgment of the inciter that the child may commit a crime. It also involves the intention of the criminal to commit a crime.

The third sub-section: The legal punishment enforced on the criminal who commits the crime of exploiting children in prostitution and porn activities .

Under article (9 / c) of the Jordanian Cybercrimes Law No. (27) of (2015), the punishment for committing this crime is represented in temporary imprisonment with hard labor and paying a fine that is not less than five thousand (5000) JDs and doesn't exceed fifteen thousand (15000) JDs. The period of the latter imprisonment ranges between three years to fifteen years (3-15 years). The Jordanian legislator enforced a penal punishment on the one who commits this crime. That is because having the criminal's goals met means that the criminal's act in the virtual world turned into an actual act in the physical reality. The latter act is represented in having the child exploited sexually and involved in prostitution.

Through article (19) of the Emirati Law on Fighting against the Cybercrimes, the Emirati legislator enforced a punishment on anyone who incites or seduces a juvenile to engage him / her in prostitution or assist a juvenile in doing that through using an information system or any technical mean.

It should be noted that the Jordanian and Emirati legislators consider this crime as a felony. That reflects how serious this crime is.

### **Conclusion:**

The problem of this study is represented in the penal protection for children from the crimes of electronic sexual exploitation and pornography under the Jordanian and Emirati laws. After addressing this problem, the researcher of the present study reached several results and offered several recommendations. Those results and recommendations are listed below:

1)- The Jordanian and Emirati legislator provided children with protection from the crimes of electronic sexual exploitation and pornography. This protection is provided through criminalizing the ones who commit such acts. This criminalization can be seen

through article (9 / a, b, and c) of the Jordanian Cybercrimes Law. It can be also seen through articles (17, 18 and 19) of the Emirati Law on Fighting against the Cybercrimes.

2)- The Jordanian legislator doesn't criminalize electronic porn in general like the Emirati legislator did. The later legislator criminalizes electronic porn in general. He also enforced a harsher punishment in case the electronic porn content is related to a child. The researcher of the present study believes that the approach adopted by the Emirati legislator is better than the approach adopted by the Jordanian legislator. The approach adopted by the Emirati legislator aims to promote compliance with the public morals and ethics and preventing the publication of electronic materials that corrupt people and violate public morals.

3)- The researcher of the present study believes that the Emirati legislator did well when he enforced a harsh punishment on the ones who commit the crimes related to children. That shall deter anyone from committing crimes involving infringement for the honour of children.

4)- The researcher of the present study hopes that the Jordanian legislator shall adopt the same approach adopted by the Emirati legislator in this regard. That can be done through enacting a legislative text that defines the meaning of (pornographic material that is related to a juvenile (i.e. a person whose age is less than eighteen years). Enacting such a legislative text is necessary because children ought to be protected more than other categories of people. That is because children are the ones who shall contribute to achieving development in the future. In addition, enacting such a legislative text shall maintain their psychological and cognitive wellbeing. It shall contribute to letting children have balanced personalities that are free from disorders, hate, fear, or grudge.

5)- The Jordanian legislator expanded the scope of the categories of people who are provided in protection through article (9 / b) of the Jordanian Cybercrimes Law. The researcher of the present study hopes that the Jordanian legislator shall modify the latter article to provide protection to the ones who suffer from psychological or mental disabilities from the crimes involving child pornography or sexual exploitation. That is because the latter category of people are in need for receiving penal protection from all types of sexual exploitation crimes.

6)- It can be concluded that the Jordanian legislator elaborated the scope of criminalization when comparing him with the Emirati legislator. It can be concluded that the Jordanian legislator elaborated the types of such acts. The latter legislator identified the specific criminalized intent. Such an intent is represented in inciting the victim to commit a crime, manipulating the victim or guiding him / her while committing a crime. As for the Emirati legislator, he limited the criminal intent to seducing juvenile only.

7)- Using a porn material to incite an individual who don't have eligibility - due to a psychological or mental disability - to commit a crime shall make the inciter the person who committed the crime committed later on. That is because the inciter exploited the victim to commit the crime. In article (9 / b), the legislator didn't identify the type of crime that the criminal incited, guided or manipulated the victim to commit. That is considered as a shortcoming in the latter article. The latter article would have been written better in case the Jordanian legislator identified the type of crime instead of addressing that in a general manner.

8)- In article (9 / c), the Jordanian legislator should have referred to the prostitution of females and males. That is because protection shouldn't be granted to one gender only. In fact, protection should be granted to male and female juveniles and the males and females who suffer a psychological or mental disability. However, the Emirati legislator did well in referring to males and females in article (19) of the Emirati Law on Fighting against the Cybercrimes. The latter article includes the following statement: 'to engage him / her

in prostitution or assist him / her". Therefore, the Jordanian legislator must re-draft the legislative text to provide males and females with protection.

9)- The crime of exploiting children in prostitution and porn activities is considered a felony. Despite that, it is not considered one of the crimes that involve attempt to commit. That is because this crime is considered as a formal crime that is considered existent once the criminal carries the criminal behavior and without waiting for the result to be reached.

10)- The Emirati legislator shows much attention to children and criminalizes anyone who incites or seduces children to to engage them in prostitution or assist them in doing that. The researcher of the present study believes that the Emirati legislator is wise in terms using the term (incite) when addressing this crime. However, the Emirati legislator didn't criminalize the one who incites or seduces a female or male suffering from a psychological or mental disability. That is considered as a shortcoming in the Emirati legislations. The presence of this shortcoming requires re-drafting the legislative text and providing the females and males suffering from a psychological or mental disability with protection. Such protection was offered by the Jordanian legislator. It deters anyone from exploiting children due to their physical weakness and poor mental and psychological capabilities. Such weakness and poor capabilities make children easy to deceive.

11)- The researcher of the present study hopes that the Jordanian legislator shall enact a legislation that criminalizes the process of sending, publishing or exchanging an electronic material that includes child pornography. He also hopes that the Jordanian legislator shall enact a legislation that criminalizes the possession of a material that includes child pornography. He also hopes that the Jordanian legislator shall enact a legislation that defines the term (child pornography) as the Emirati legislator did. He hopes that the Jordanian legislator shall enact a legislation that criminalizes the process of importing, producing, and selling electronic porn materials that include children (i.e. the ones whose ages are less than 18 years).

12)- The researcher of the present study believes that it is necessary to re-draft the Jordanian legislations that address such crimes. He recommends addressing the shortcomings existing in the Jordanian legislations address such crimes. That should be done through criminalizing electronic porn in general and blocking all the porn websites as the Emirati legislator did. He believes that the Jordanian legislator should do that instead of criminalizing children porn only.

## References

- Abdul Qadir, Maryam Othman (2014). The penal protection for children under the Emirati law. The Publication Dar Dubai for Police Academy.
- Abdullah, Abdul Karim Abdullah (2007). Cybercrimes: A comparative study, Al-Halabi Publications on Rights, 1st edition.
- AlBatrawi, Abdul-Wahhab Omar (2007). Illustration for the crimes against people. The first edition, The Applied Science University, Kingdom of Bahrain.
- Aldhabahi, Abdullah Saif bin Issa (2013). Fighting against the crimes of sexual exploitation of children committed through the Internet. The first edition. Sharjah Police General Directorate. The Police Research Center, Sharjah.
- Almana'seh, Osama & Alzo'bi, Jalal; Alhawawshah, Sayel (2020). Cybercrimes. First edition. Dar Wael for Publication and Distribution, Amman.
- Almomani, Omar Muhammad Ismail (2016). The penal protection for children from the sexual exploitation on the Internet under the Jordanian legislations: A comparative study. MA thesis. Jarash University, Deanship of Scientific Research and Graduate Studies, Jordan.

AlNawayseh, Abdel-Ilah (2017), *Cybercrimes. Illustration for the substantive provisions embedded in the Cybercrimes Law. The first edition.* Dar Wael for publication and distribution, Jordan, Amman.

AlSaghir, Jamil Abdel-Baqi (1994). *The Penal Code: "The Special Section: Crimes Against Honor and Public Morals.* The second edition, Dar Al-Nahda Al-Arabiya

Alshawabkeh, Mohammad Ameen (2011). *The crimes committed through using the computer and the Internet "Cybercrimes".* The fourth edition, Dar Al Thaqafa for Publishing and Distribution, Amman.

Hafez, Magdy Mahmoud Moheb (2006). *The encyclopedia of the crimes infringing the public morals and honor.* Dar Al-Adala for Publishing and Distribution, Cairo.

[https://darwael.com/index.php?route=product/product&product\\_id=1144](https://darwael.com/index.php?route=product/product&product_id=1144)

<https://library.alistiqlal.edu.ps/book-13839-ar.html>

<https://library.alistiqlal.edu.ps/book-14706-ar.html>

Kharashi, Adel (2013). *The crimes of the sexual exploitation of children via the Internet and ways to fight against such crimes in pursuant to the penal legislations and the Islamic penal jurisprudence.* Al-Azhar University, Faculty of Sharia and Law, Egypt.

Shaker, Ahmed Abdel Halim (2019). *The penal protection for children from the sexual exploitation on the Internet under the Emirati law.* PhD dissertation. Ajman University, Faculty of Law, The United Arab Emirates (UAE).

Shanteer, Khadra (2018). *The cybercrimes targeting children: The crime of exploiting children sexually through the internet as a model.* The Journal of Politics and Law, Adrar University. A special issue, June.