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Serial homicide in Brazil: the need for a differentiated legal approach to mental disorders

Serial homicide in Brazil: the need for a differentiated legal approach to mental disorders

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SUMMARY

Serial homicide represents one of the greatest challenges in contemporary criminal law, especially in Brazil, where there is still no specific legal classification for this type of crime. The analysis developed in this study sought to understand how the Brazilian legal system deals with serial killers with mental disorders, highlighting the limitations of current regulations and the absence of a differentiated regulatory framework. Legislation such as the Penal Code, the Penal Enforcement Law, the Federal Constitution, and the Psychiatric Reform Law were examined, as well as
of recent bills, such as Bill 1035/2023. The research, conducted through a literature review, highlighted the need for a legal approach that reconciles the protection of society, the recognition of fundamental rights, and the interface with mental health. It is concluded that Brazil
lacks specific legislation capable of aligning social defense, security measures and appropriate treatment for serial killers.
Keywords: serial homicide. Criminal law. Mental health. Imputability. Security measures.

ABSTRACT

Serial homicide represents one of the greatest challenges of contemporary criminal law, especially in Brazil, where there is still no specific legal classification for this type of crime. The analysis developed in this study sought to understand how the Brazilian legal system deals with serial killers who have mental disorders, highlighting the limitations of the current rules and the absence of a differentiated regulatory framework. Legislation such as the Penal Code, the Penal Execution Law, the Federal Constitution, and the Psychiatric Reform Law were examined, as well as recent bills, such as PL 1035/2023. The research, conducted through a literature review, evidenced the need for a legal approach that reconciles the protection of society, the recognition of fundamental rights, and the interface with mental health. It is concluded that Brazil lacks specific legislation capable of aligning social defense, security measures, and adequate treatment of serial killers.

Keywords: serial homicide. Criminal law. Mental health. Imputability. Security measures.

1. INTRODUCTION

The issue of serial homicides presents itself as a highly complex challenge in legal and social scope, especially when considering the interface between mental health, dangerousness and criminal liability. The Brazilian legal system does not yet have a specific legislation to address the phenomenon of serial killers, which creates gaps in the application of justice and social protection. When analyzing the topic, it becomes evident that the Brazilian penal system operates under

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traditional concepts of imputability and non-imputability, which do not always reach the peculiarity of cases in which mental disorders are combined with patterns of repetitive violence and systematic (Moreira, 2018).

Psychopathy, often associated with serial killers, has been the subject of intense debates between forensic psychiatry and criminal law. In most cases, psychopathy is not considered a mental illness, but a personality disorder, which, from a legal perspective, does not ensure the application of non-imputability. This framework generates controversy as to the type of applicable sanction, since individuals diagnosed as homicidal psychopaths demonstrate an absence of remorse, recidivism and high social risk (Bezerra, 2015).

From the perspective of forensic psychology, the construction of the criminal imputability of the serial killer needs be rethought. The current classification, which often considers such individuals accountable, ignores the severity of the risk they pose to society. The literature indicates that the legal model current legislation is not capable of offering effective responses to these cases, since, although condemned, the serial killers remain within the common prison system, without supervision adequate, which increases recidivism and perpetuates social insecurity (Silva, 2023).

Authors investigating the criminal treatment of homicidal psychopaths highlight the difficulty to reconcile the concepts of criminal sanctions with measures that effectively guarantee protection social. Brazilian criminal law, based on a retributive model, proves insufficient when applied to highly dangerous subjects, who tend to reoffend even after long periods of imprisonment. This limitation of the legal system highlights the urgency of discussing alternative mechanisms, capable of combining punishment and permanent removal of individuals who demonstrate patterns of serial homicide (Baptista, 2015).

The role of psychiatric custody and treatment hospitals is often highlighted as central to the debate, as they represent the institutional space destined for those who, due to illness mental, are declared unaccountable. However, it is questioned whether these places actually comply with a preventive social function or perpetuate a model of exclusion, marked by precariousness structural and absence of effective reintegration policies (Martinez, 2016).

A critical analysis of the practices of Brazilian psychiatric hospitals reinforces the need for rethink the treatment given to individuals with mental disorders who have committed serious crimes. Recent studies show that, in many cases, these spaces do not offer support adequate therapeutic, serving more as human deposits than as institutions of recovery. This reality exposes not only the failure of the system, but also the contradiction between the theory of security measures and their daily practice (Waquim, 2024).

In the context of criminal liability, psychopathy remains a point of tension. Although the Brazilian criminal law tends to classify psychopaths as accountable, the literature shows that their

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peculiar psychological condition compromises the ability to develop social bonds and to slow down homicidal impulses. This situation raises the question of whether a custodial sentence is sufficient to neutralize the social risk, or whether stricter measures aimed at distancing would be necessary definitive of these individuals from social interaction (Rocha, 2021).

Classical authors have already pointed out, decades ago, that mental illness in Brazilian criminal law involves three fundamental concepts: non-imputability, irresponsibility and dangerousness. These elements structure the application of security measures, but reveal limitations when confronted with the figure of the serial killer, who often does not fit the criteria of illness classical mental. The existing gap creates legal uncertainty and opens space for discussions about the need to create specific legislation (Peres; Nery Filho, 2002).

More recent research reinforces the importance of considering the presence of disorders mental or personality disorders in cases of violent crimes, such as matricide, parricide and filicide. These studies show that psychological disorders play a relevant role in criminal motivation, directly influencing the assessment of criminal liability. The analysis of Brazilian cases demonstrate that the interface between mental health and crime remains as little explored field, but of fundamental relevance for the improvement of legal practices (Valença et al., 2021).

The legal and criminological literature converges on the finding that the legal system Brazilian law is not prepared to deal with serial killers. The lack of a criminal type specific makes it difficult to individualize the sentence and compromises the adoption of appropriate measures of social protection. The issue is not only punitive, but also one of collective security, since that recidivism in this type of crime is statistically high and the risk of new crimes remains latent (Moreira, 2018).

This problem raises reflections on the need to reformulate criminal legislation Brazilian, incorporating specific devices that take into account the gravity and peculiarity of the serial homicides. Alongside this, there is a demand for public policies that integrate health mental and the penal system, in order to address the problem in its complexity. The debate, therefore, is limited to the academic sphere, but reaches the practical life of society, which requires protection against highly dangerous agents (Silva, 2023).

The present study has as its theme “Serial Homicide in Brazil: The Need for a Differentiated Legal Approach to Mental Disorders”, seeking to contribute to the debate about the need for legislative reforms that include serial homicide as a category criminal law itself. We also intend to discuss how law can be linked to forensic psychology and mental health policies to offer effective responses to the phenomenon.

Thus, the general objective of the article is to investigate the gap in the legal system

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Brazilian in relation to serial homicide, analyzing the need for a differentiated approach in front of criminals with mental disorders. As specific objectives, we seek to examine the current legal treatment of homicidal psychopaths, identify the limitations of the measures of security and discuss legislative proposals that address the seriousness of these crimes. The justification of the study lies in the social and legal relevance of the topic, considering the high risk that such individuals represent and the urgency of rethinking the role of criminal law in protecting the community.

2. METHODOLOGY

The present study was developed through a narrative literature review, with the aim of objective of identifying, analyzing and synthesizing academic, qualitative and legislative production on serial homicides, criminal liability and mental disorders in the Brazilian context. This type of research is relevant to understand how different authors, areas of knowledge and legal regulations have been addressing the issue, allowing the construction of a critical reflection about legislative gaps and social demands for greater security and collective protection.

For the selection of material, books, scientific articles, theses, dissertations were considered, monographs and official reports published in Portuguese and English, between 2000 and 2025. Furthermore, current legal diplomas were analyzed, such as the Brazilian Penal Code and the Law of Psychiatric Reform, as well as bills being processed in the National Congress that deal with violent crime and the accountability of individuals with mental disorders.

Bibliographic searches were carried out in national and international academic databases. international, such as SciELO, PubMed, Google Scholar and institutional repositories of universities, as well as on official legislative portals, such as the website of the Chamber of Deputies, Federal Senate and Planalto Palace. Descriptors such as “serial homicide,” “serial killer,” “criminal imputability”, “psychopathy”, “security measures” and “mental illness in criminal law”.

The inclusion criteria included works that directly addressed imputability criminal justice of serial killers, the role of forensic psychology in the assessment of mental disorders, the application of security measures and the legal-social function of custody hospitals. Also studies that linked mental health and violent crime were included, allowing for greater scope of analysis. The exclusion criteria were restricted to non-scientific productions, texts opinions without theoretical basis and documents that are out of date in relation to current legislation.

After collection, the material was organized systematically, prioritizing critical analysis and interpretative of the works, in order to highlight convergences, divergences and gaps present in the literature. This stage made it possible to build an overview of how doctrine, jurisprudence and forensic psychology understands the phenomenon of serial homicide, with special attention to the interface between mental health, imputability and public safety.

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3. RESULTS AND DISCUSSION

The analysis of the legal norms that permeate criminal liability and the interface with mental health, over the last five decades, reveals a path marked by advances, significant continuities and gaps in the Brazilian legal system. The 1940 Penal Code, still in force, continues to be the main normative instrument for defining imputability and security measures, but has undergone specific changes over time, mainly with the 2019 Anti-Crime Package. The 1984 Penal Enforcement Law consolidated guidelines for the compliance with sentences and security measures, providing parameters for custody and assessment of dangerousness.

With the Federal Constitution of 1988, fundamental rights were constitutionalized, including the dignity of the human person and due process, elements that impacted directly the debate on non-imputability and treatment of individuals with mental disorders in conflict with the law. From 2001 onwards, with the Psychiatric Reform Law, the policy of deinstitutionalization, prioritizing care in freedom, which generated tensions when confronted with cases of extreme danger, such as serial killers.

In recent years, legislative projects such as PL 1035/2023, which proposes the classification of serial homicide in the criminal system, gained prominence, reflecting a social demand for more appropriate legal responses to extremely serious crimes. The proposal seeks to fill historical gaps, bringing to the debate the need for criminal and mental health policies specific to these cases.

In this context, the following table presents an extensive comparison between the main Brazilian legal norms of the last 50 years, highlighting their changes, impacts practical and the gaps that still exist in tackling serial crimes. The objective is clearly summarize the legislative evolution and expose the points of convergence and divergence between the normative diplomas, allowing you to see how Brazilian legislation has been structured – or left unstructured – to deal with the phenomenon of serial homicide associated with disorders mental.

Table 1 – Comparison between the main Brazilian legal norms of the last 50 years.

Standard/Instrument	Milestone	Year Temporal (Last) 50 Years)	Theme Central	What Changed	Comparison With Previous Period	Impact Practical	Gaps (Serial Killers)

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Decree-Law 2.848/1940 – Penal Code (arts. 26, 97, 121)	1940	Historical basis; Imputabili of nucleus. us	age; Interpretations depends 2025 use by subsequent changed limits murder (art. 121)	Maintained as Before 1975: consolidated as specific laws non-imputability (art. 26) and homicide measures e.g., penalty and other points.	already current; post-1975 when the t patient; semi/imp punctual cha for exempt from the sum of; (p.) Law measures of 13.964/2019 security (art. 97).	Defines Absence typification periods 1975– changes mental reference is of forwarded of security; there is no specific type for 'serial murder'.	current dad of response security assessment;
Law 7.210/1984 – Law of Criminal Enforcement (LEP)	1984 Marco	Institutionalized of feathers and measures of security; objectives defi organization control deadlines age dangers	Before: regime of Does rules for execution of penalties and measures fra 1984: unification security; red objectives and non-imputa oversight.	not deal with Execution Basis for crimina execution plus custody and serial killers; (1984– mented; after treatment measures 2025) able guidelines stop compliance defines; resocializ evaluation. expertise revaluation.			security focused on the individual case, without a specific policy for serial crimes.
Federal Constitution of 1988 – art. 5 (fundamental rights)	1988 New or	der Rights and Const citizen constitution; (	titutionalized Before: absence of constitutional 1988–2025) due and materials; beacon after: parameters process; of dignity and; health policies proportionality/hu criminal protection from the perspective mental and execution manity. of life of human rights.	guarantees; procedural guarantees	answers merely segregation states; requires proportional age jurisdictional control.		There is no specific guideline for serial killers; there is tension between social defense and individual guarantees.
Law 10.216/2001 – Law from the Reform Psychiatry	2001	Rights Policy Prioritizing people's freedom, and community services; dis (2001–2025) with mental; redirection assistance	mental health, care, of orders in protection against abuses.	Before: asylum emphasis; after: deinstitutionalization and CAPS.	It affects measures of and dangerous treatment of unaccountable ; presses for alternatives the forensic asylums.		Operational doubt when there is high security persistent; tensions care in freedom x social defense.
Law 13.964/2019 – Anti-Crime Package and	2019	Criminal procedural reforms (2019–2025)	Perfection oments and CP/CPP/ created figures and LEP; procedural limit adjustments; penalty; reinforced execution. disciplinary regime r	Amended art. 75 of the Criminal Code (maximum time of compliance), in	Before: framework prior to 2019; after: escalation to specific, greater detailing of multiple homicides; procedural.	It results in added penalties indirect reflection in cases series.	It did not create a specific criminal type; did not resolve guidelines for long-term custody for extreme dangerousness.

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Bill 2023 **1035/202 3 – Serial killer classification**	Legislative proposal (processing)	Creation of concept specific high criminal penalty in series' different 121,	Proposes definition and Before: absence of minimum Standardizes to type; after response (if approved): criminal and the 'murderer with compliance in classification and execution execution differentiated hospital. psychiatric/establish similar cement.		in context (art.) health §§) mental; focus on social defense.	Under discussion as to constitutionality of, diagnostic criteria and interface with Law 10.216/2001.	
CPP (Decree-Law 3.689/19 41) – changes s relevant (Law s 13.964/2 019)	2019	Criminal proceedings (1975–	Procedure Revisions entos; judge of procedural; 2025) reinforcement the guarantees proportionality and controls (suspension); in the investigation and assurance and measures process.	Before: previous regime affects the Anti-Crime Package; after: greater persecution of crimes legality control (still under debate).	multiple; does not create its own path for serial killers.	Proceedings without special procedures for serial crimes; dependence on psychological/ psychological expert evidence iatric.	
Official CP compilations (Plateau) – consolidated text of	2025	Consolidation Consultation Updates consolidated dispositives (arts. 26, 97, 121, 75 etc.)	s of the wording as after supervening laws.	Makes reading easier reforms.	Reference not suppre interpretation contemporary type and.	Consolidation does absence of specific.	
Publications officers – LEP (compilation and guides)	2024	Updates and Execution Consolidates criminal; contemporary practical understanding. of execution custody; discipline updates long-term reading by r; expert s	Organizes interpretation	Supports management Without protocol guides LEP assessments.	of measures security.	specific to the power serial crimes.	
2024 **Portal Ministry of the Health - legislation the of mental health**		Public Policies, Standards and Consolidates Links and Greater Articulation (2001– guidelines (Intersectoral frames Health Law - 2025) from RAPS; 10.216/2001 and acts of justice. rights and infra-legal). psychosocial care			Guidance for treatment and care in freedom.	General guidelines do not resolve cases very high persistent danger.	
News Chamber of the Deputy you – summary of Bill 1035/2020 3	2023	Legislative disclosure	Penalty Proposes execution in Lack of forecast Signals Processing; minimum in hospital/establishment express control guidance. psychiatric then similar for constitutional defense hospital; long period. social. legal definition of serial killer			of; expert criteria.	

Source: The authors (2025).

The table below allows you to view, in a structured way, the evolution of Brazilian regulations. related to homicide, imputability and mental health, with emphasis on the last fifty years. The The “Norm/Instrument” column identifies the main legal diplomas or legislative projects analyzed, showing that the core of the legal system is still concentrated in the 1940 Penal Code,

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but it is constantly reinterpreted by subsequent laws, by the 1988 Constitution and by standards of mental health, such as Law 10.216/2001.

The “Year” column reinforces the chronology of each regulatory framework, allowing us to understand the temporality of legislative advances. It is noted that, although we have a half-year interval century, few instruments have substantially changed the way the legal system deals with highly dangerous individuals, revealing a certain legislative stagnation on the subject.

The column “Timeframe (last 50 years)” shows the period of validity and relevance. practice of the standards, placing them within the proposed time frame. This perspective shows that, even after the redemocratization and consolidation of the 1988 Constitution, the related changes to imputability and security measures were specific and did not create specific categories for serial homicides.

In the “Central Theme” column, the main axes of each standard are highlighted, from the definition from criminal non-imputability to mental health policy and recent attempts to classify the serial killer. This panorama makes it clear that there is an effort to integrate legal and psychiatric, but without sufficient articulation for exceptional cases of serial crimes.

The “What’s Changed” column summarizes the innovations brought by each device. It can be seen that, while the Psychiatric Reform Law transformed the care model, the Anti-Crime Package toughened criminal enforcement, and PL 1035/2023 represents the first explicit attempt to create a criminal type for serial killers. Each change points to different paths, not always convergent, in the social and legal response.

The “Comparison with previous period” column offers a historical look, allowing visualize ruptures and continuities. It is clear that many of the transformations were incremental, without major progress in the construction of a specific regulatory framework for serial killers, maintaining if the dependence on generic devices applied to common homicides.

In the “Practical Impact” column, you can see how each standard impacted the reality of the system. criminal and health. While the Constitution guaranteed fundamental rights, the 1984 LEP established procedures for custody and treatment, but there are still weaknesses in the execution of security measures, especially when the danger is permanent.

In turn, the column “Gaps (serial killers)” reveals the central point of the discussion: the absence of specific devices to deal with the serial killer. This gap reinforces the need for its own legal classification, since the current system deals with these cases only as a sum of homicides, ignoring the different severity of the phenomenon.

Finally, the “Link” column guarantees access to the official versions of legal diplomas and projects. legislative bodies, ensuring transparency and verifiability of information. In addition to allowing direct consultation of primary sources, this reference strengthens the reliability of the analysis carried out.

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Thus, the interpretation of the table shows that, although there are specific advances, Brazil still lacks legislation capable of reconciling constitutional guarantees, mental health and defense social, in order to offer appropriate responses to serial homicide. The construction of a specific legal framework is essential to fill historical gaps and ensure greater collective protection.

CONCLUSION

The present study showed that serial homicide remains a legal challenge, social and psychological in Brazil. Despite advances in criminal legislation and mental health policies, there is still no specific criminal type that takes into account the complexity of this phenomenon, which limits the legal system's ability to offer adequate responses to high levels of danger of these individuals.

The analysis showed that current legislation is based on general provisions of the Penal Code and of the Penal Enforcement Law, without mechanisms capable of distinguishing serial homicide from others intentional crimes against life. This lack of specific classification contributes to cases of extreme gravity are treated under common parameters, without recognizing systematic recurrence as a differentiating element.

At the same time, the legal system faces tensions between the need for protection of the community and the guarantee of fundamental rights. This dilemma is accentuated in cases where the serial killer presents mental disorders or psychopathic traits, requiring the articulation between mental health and the penal system in a balanced and effective manner.

The debate on imputability and security measures proved to be central, revealing that the Current legal instruments still rely on traditional models, which are often insufficient to neutralize the threat posed by individuals who do not demonstrate the ability to social reintegration. This situation reinforces the need to rethink institutional practices and custody spaces intended for these subjects.

The study also highlighted the importance of recent legislative projects that seek to classify serial homicide, representing an attempt to adapt Brazilian criminal law to the new social demands. These proposals, although still in progress, reveal the recognition of the gravity of the issue and point to the urgency of a regulatory framework that ensures both criminal liability regarding social defense.

In summary, the results obtained allow us to conclude that there is a path to be followed in construction of a differentiated legal approach to serial homicides. The integration between law, forensic psychology and public mental health policies are essential to address the problem in its entirety, without reducing the issue to punishment alone, but also considering measures

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preventive and protective.

Finally, it is reaffirmed that the development of specific legislation is a necessity urgent, not only to fill legal gaps, but also to ensure greater security collective and offer responses proportional to the severity of this type of crime. Strengthening of the interdisciplinary debate and the critical review of existing practices represent fundamental steps for the evolution of the Brazilian legal system in the face of this challenge.

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