PRACTICAL GUIDE TO FIGHT AGAINST DOMESTIC AND GENDER VIOLENCE

GENERAL COUNCIL OF THE JUDICIARY

OBSERVATORY AGAINS DOMESTIC AND GENDER VIOLENCE

INDEX

INTRODUCTION

Within the framework of the Observatory against Domestic and Gender Violence, the Group of Experts in this matter, consisting of Judges appointed by the General Council of the Judiciary, has prepared this Guide.

The aim is to provide professionals working in this field with a useful tool so that they can properly deal with the most recent changes to the Criminal Procedure Act (LECRIM) and the Criminal Code.

This Guide has been elaborated from a practical point of view in order to facilitate its consultation:

- The analysis is carried out article by article

- The study of each article begins with a comparison table:

- **The column on the left shows the previous wording of the article**
- **The column on the right includes the new wording of the article and innovations are highlighted in bold**

- After that, the most outstanding aspects of the new regulation are detailed.

1.- REFORMS ON THE CRIMINAL PROCEDURE ACT (LECRIM)

1.1.- PRE-TRIAL PROVISIONAL DETENTION

- Precepts affected:
  - **Articles 503, 504, 505, 506, 507, 508, 509, 510, 511 529, 530, 539** and **544 bis**
- Changes made by the following Acts:
  - **Organic Act 13/2003 of October 24** (BOE 27 October) which came into force on the day following its publication
  - **Act 15/2003 of 25 November** (BOE November 26, 2003) amending the Criminal Code, which entered into force the day following its publication
- **Articles analysed by María Jesús Millán de las Heras, Pilar Perez Alhambra.**

1.1.1.- Article 502: jurisdiction and proportionality

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
While the proceedings are in the summary process, the order of pre-trial provisional detention can only be issued by the Examining Judge, or the Judge who has dealt with the first formalities, or the Judge who, by virtue of committee or as an interim, is performing the others' functions.	**1. The order of pre-trial provisional detention may be Judged by the Judge or examining Judge who has dealt with the first formalities, as well as the criminal Court who has also dealt with the proceedings.** **2. Pre-trial provisional detention will only be ordered when it is objectively necessary in accordance with the provisions of the following articles, and when there are no other measures which are less burdensome as for the right to freedom and which would lead to the same results that pre-trial provisional detention.** **3. The Court will take into account in order to order pre-trial provisional detention the impact this may have on the defendant, considering his circumstances, the fact which is subject to the proceedings and the type of penalty that could be imposed.** **4. Pre-trial provisional detention will under no circumstances be ordered when the investigations carried out rationally show that**

	the fact does not constitute a crime or that it was committed but there was a justification. **END OF ARTICLE 502**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. It regulates article 502 of the Criminal Procedure Act (LECRIM) in a more detailed and accurate way in accordance with the new organizational structure of the Judiciary the jurisdiction to decide on the pre-trial provisional detention of the defendant, charged and convicted.

2. It also establishes the criteria of suitability, necessity and proportionality in the strict sense that should govern any restrictive measures restricting fundamental rights agreed by the Court with jurisdiction on the matter.

3. In any case, pre-trial provisional detention is proscribed when the fact does not constitute a crime or when there has been a justification. That is, pre-trial provisional detention can only be issued when investigations reveal that there has been a typical fact, that is, a fact which is regulated as a crime in the Criminal Code, and which is illegal.

1.1.2.- Article 503: requirements

Former provisions of the Criminal Procedure Act (LECRIM)	***Current precept of the Criminal Procedure Act (LECRIM)***
The requirements in order to issue pre-trial provisional detention are the following: 1st That the proceedings include a fact which has the characteristics of a crime. 2nd That the Penalty assigned is higher than the lesser imprisonment sentence, or that, even when the Penalty assigned is lower or inferior, the	**1. The pre-trial provisional detention may only be ordered under the following requirements:** **1st That the proceedings show the existence of one or more facts that have the characteristics of crimes which are punished with Penalties of a maximum equal or superior**

Judge considers that pre-trial provisional detention is necessary by considering the record of the defendant, the circumstances of the fact, the social alarm that it has produced or the frequency in which similar cases are produced. When the Judge has ordered pre-trial provisional detention in cases of crimes that envisage a Penalty which is lower than the highest imprisonment, may, at its discretion, leave it without effect, if the circumstances taken into account had changed, and agree the release of the defendant with or without bail. 3rd That the proceedings have enough grounds to believe that the person against whom the pre-trial provisional detention is to be ordered is criminally responsible for the crime committed.	**to two years' imprisonment, or with imprisonment of a shorter length if the defendant had criminal records which had not been cancelled or subject to cancellation, arising from conviction of an intentional crime.** **If the alleged charges were more than one, they shall be governed under the special rules to impose Penalties as provided in Section 2nd of Chapter II of Title III of Book I of the Criminal Code.** **2nd That the proceedings have enough grounds to believe that the person against whom the pre-trial provisional detention is to be ordered is criminally responsible for the crime committed.** **3rd That pre-trial provisional detention aims any of the following purposes:** **a) Ensure the presence of the defendant in the process where it can be reasonably inferred that there is risk to escape.** **In order to assess the existence of this danger there will be a comprehensive examination of the nature of the event, the severity of the Penalty that could be imposed on the defendant, his/her family situation, work and economic situation, as well as the imminence to hold the oral proceedings, particularly in those cases where it is appropriate to initiate proceedings for the quick trials regulated under Title III of Book IV of this Act.** **It will be adequate to order pre-trial provisional detention on the grounds of this case when, by examining the criminal record arising from the proceedings, there were at least two requirements for his summon and search by means of any judicial body within the previous two years. In these cases the limit on the Penalty which sets the ordinal 1st of this paragraph will not be applicable.** **b) To prevent the concealment, alteration or destruction of relevant sources of evidence for prosecution in cases where there is a substantial and specific risk.** **It will not be adequate to order pre-trial provisional detention on the grounds of this case, when this danger tries to be inferred solely by the right of defence or the lack of cooperation by the defendant during the investigation.** **In order to assess the existence of this danger, there will be an examination concerning the defendant's ability to access on his own or thanks to third parties to the sources of evidence or to influence other defendants, witnesses, experts or others who might be.**

	c) To avoid that the defendant may act against the legal rights of the victim, especially when she is one of the persons referred to in Article 173.2 of the Criminal Code. In these cases, the limit on the Penalty that sets the ordinal 1st of this paragraph will not be applicable. **2. Pre-trial provisional detention may be also ordered when there are conditions stated in ordinals 1st and 2nd of the previous section, in order to avoid the risk that the defendant committed other crimes.** **In order to assess this risk there will be an examination of the circumstances of the action and the seriousness of the crimes which might be committed. Pre-trial provisional detention may only be ordered on the grounds of this case when the alleged crime has been intentional.** **However, the limit specified in ordinal 1st of the preceding paragraph shall apply where the defendant's record and other information or circumstances that brings the Judicial Police or arising from the proceedings, could reasonably infer that the defendant is acting in concert with another person or other people in an organised way so as to commit crimes or criminal with certain regularity.** **END OF ARTICLE 503**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. These articles include the requirements that are necessary to order a pre-trial provisional detention.

2. The first two requirements were already covered by the previous wording. That is, that the facts have the characteristics of a crime whose maximum Penalty is equal or superior to two years' imprisonment, or even less, if the defendant had criminal records which had not been cancelled or subject to cancellation, arising from conviction of an intentional crime, and the process have sufficient grounds to consider the defendant as criminally liable. That is, that there is evidence enough to believe that the action constitutes a crime that in the Criminal Code leads to a Penalty equal or higher than two years' imprisonment and that the fact is attributed to the person against whom the precautionary custodial injunction will be ordered.

3. Intentional crimes and cases where there are several facts will be taken into consideration and in, when establishing the ceiling of Penalty in the abstract in accordance with regulations established in the Criminal Code.

4. The third section is the one which contains new regulations. It establishes the objectives to be met through pre-trial provisional detention, which are the following: ensuring the presence of the defendant at the trial when there is risk to escape, preventing the concealment, destruction or alteration of evidence, and preventing the defendant from acting against the victim's legal rights, especially it is the case of domestic violence. There is therefore a special reference to the persons protected by Article 173.2 of the Criminal Code and the type of violence committed against them, and the measure may be ordered without the limit of the maximum Penalty mentioned for the two years' imprisonment crime being a requirement.

5. Pre-trial provisional detention may also be issued even though there were not any of the purposes above expressed but when the aim is to avoid the risk that the defendant commits other crimes.

1.1.3.- Article 504: length or term

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
Pre-trial provisional detention will also be convenient when circumstances under the first and the third section of the previous article are given and when the defendant failed to appear without lawful justification at the first call or summon of the Judge or Court, or whenever they may deem necessary. Notwithstanding the preceding article, even though the crime leads to a higher imprisonment that the lesser imprisonment sentence, if the defendant has no criminal record or they must be considered cancelled, or when it may reasonably be believed that the defendant will not aim to evade justice and, furthermore, the crime does not produce social alarm or is one which is frequently committed in the territory where the Judge or Court dealing with the case exercise jurisdiction, they may agree, on bail, the release of the defendant. The defendant that is held pre-trial provisional detention is entitled to have his case dealt with as a priority and with special care. The Judge or Court responsible for his case and the public prosecutors, each of them within their	**1. Pre-trial provisional detention will last as long as it deems necessary in order to achieve any of the purposes specified in the previous article and as long as there are grounds justifying it.** **2. When pre-trial provisional detention had been ordered under the provisions of paragraph a) or c) of section 1.3 or section 2 of the previous article, its length should not exceed one year if the crime leads to imprisonment exceeding three years, or two years if the imprisonment sentence which corresponds to the crime is more than three years. However, when there are circumstances to foresee circumstances that the case may not be Judged in those terms, the Court may, as provided in article 505, decide by means of an order a sole extension of up to two years if the crime led to imprisonment exceeding three years or up to six months if the crime led to a Penalty which does not exceed three years.** **If the defendant is convicted, pre-trial provisional detention may be extended to the limit of half the sentence actually imposed,**

jurisdiction, will care under their responsibilities about the fact that the detention is not prolonged beyond what is strictly necessary. The situation of pre-trial provisional detention will not exceed three months when the corresponding Penalties of crimes committed is the arrest for a period from one to six months, and they will not exceed one year when the prison sentence is considered a lesser one, or two years if the Penalty is considered a higher one. In these last two cases, if there are circumstances that evidence that the case will not be Judged in these terms and that the defendant could evade justice, the prison may be extended to two and four years respectively. Prolonged pre-trial provisional detention will be agreed by a Court order, after hearing the defendant and the public prosecution service. Once the defendant has been convicted, pre-trial provisional detention may be extended to the limit of half the sentence imposed when the sentence has been appealed. Possible time delays which are not attributable to the Judiciary will not be taken into account when calculating the time limits established in this article. Once freedom has been granted over the time limits provided for pre-trial provisional detention, the first paragraph of this article shall also apply.	**when the sentence has been appealed.** **3. When detention has been agreed under the provisions of section 1.3 b) of the previous article, the term will not exceed six months.** **However, when solitary confinement or reporting restrictions have been ordered, if before the deadline set in the previous paragraph either the solitary confinement or the reporting restrictions had been lifted, the Judge or Court will have to justify the continuity in pre-trial provisional detention.** **4. The granting of freedom over the deadlines for pre-trial provisional detention will not prevent it from being re-ordered in the event that the defendant, without lawful reason, fails to appear at any call or summon of the Judge or Court.** **5. For computation of the deadlines in this article the time that the defendant has been arrested or arrested pending trial for the same cause will be taken into account. However, possible time delays which are not attributable to the Judiciary will be excluded,** **6. When pre-trial provisional detention exceeds the third of its maximum, the Judge or Court dealing with the case and the public prosecution will respectively communicate the situation to the president and the chief prosecutor of the appropriate Court, in order to take the measures required to accelerate action as quickly as possible. For this purpose, the proceedings shall have preference over all others.** ***(Paragraph added by Organic Act 15/2003)*** **END OF ARTICLE 504**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. Article 504 of the Criminal Procedure Act (LECRIM) includes, as it did the previous article, the term of pre-trial provisional detention, establishing a general clause in the first paragraph with reference to the objectives, so that whilst there are still goals and reasons that led to the ordering of such measure, this will be continued, although the legislator sets the following time limits.

2. These time limits are:

- If pre-trial provisional detention has been agreed to ensure the presence of the defendant in the process or to avoid the risk that the defendant committed other crimes or otherwise affecting legal rights of the victim -being here where cases of abuse must be included-, its length should not exceed one year if the crime led to an imprisonment not exceeding three years or two years if the sentence of imprisonment for the crime was more than three years.
- When the case can not be Judged on the terms which have been ordinarily provided, the extension of the pre-trial provisional detention is established, by means of judicial appearance and at the request of the prosecution for a period of up to two years if the crime corresponds to an imprisonment sentence higher than three years, and for a period up to six months if the crime corresponds to an equal or shorter sentence term.
- If there had been a conviction had been appealed, provisional detention may be extended up to the limit of the sentence actually imposed.
- If pre-trial provisional detention has been agreed to prevent the concealment, destruction or alteration of evidence, their length should not exceed six months.

  ?? The time that the defendant had been arrested or arrested pending trial for the same cause will be taken into account in order to calculate the terms, although possible time delays which are not attributable to the Judiciary will not be considered.
- When pre-trial provisional detention is ordered as solitary confinement or reporting restrictions, on lifting any of them, the continuity of the reasons that brought about those measures will have to be detailed; apart from that, as we will see when considering appeals, this order may be appealed.

The granting of freedom over the deadlines for pre-trial provisional detention will not prevent it from being re-ordered in the event that the defendant, without lawful reason, fails to appear at any call or summon of the Judge or Court.

1.1.4.-Article 505: procedure and summons

Former provisions of the Criminal Procedure Act (LECRIM)	***Current precept of the Criminal Procedure Act (LECRIM)***

Article 504 bis 2 From the moment when the person under arrest is brought before the examining magistrate or tribunal to deal with the cause, unless probation without bail has been decreed, a Court appearance will be convened within seventy-two hours, which will include the public prosecution as well as other prosecutors, and the defendant parties, who shall be assisted by a lawyer of their choice or appointed ex officio. The Public Prosecution Service and the person defendant, assisted by his/her lawyer, have the obligation to appear. At that hearing, there will be details of all evidence that may be showed at the moment or within twenty-four hours, but in no case exceed the seventy-two hours indicated before. If at such appearance, any of the parties so requested, after hearing every person's declarations, the Court shall decide on whether or not to order pre-trial provisional detention or probation. If none of the parties urge the Court, the Judge will necessarily agree on the cessation of the arrest and the immediate release of the defendant. If for any reason, the hearing can not be held, the Judge shall order pre-trial provisional detention or probation, if there are suppositions and risk of escape. However, the hearing will be once again convened within seventy-two hours, and take the corresponding disciplinary as for the not holding the appearance. If they were not deemed adequate, there will be the possibility to appeal the probation rulings before the Provincial Court.	**1. If the person under arrest is brought before the examining magistrate or Court dealing with the case, unless probation without bail has been decreed, a Court appearance will be convened where the public prosecution or other prosecutors may require pre-trial provisional detention or probation on bail.** **In the cases of proceedings under Title III of Book IV of this Act, this process hall be dealt with as laid down in Article 798, except that the hearing had been held previously.** **2. The appearance provided for in the preceding paragraph shall be held within the shortest possible time within 72 hours of after bringing the person under arrest before a Judge. Those summoned will be the defendant, who will be assisted by a lawyer of his/her choice or appointed ex officio, the public prosecution and other prosecuting parties. The hearing will also be held in order to request pre-trial provisional detention or probation.** **3. At that appearance, if the public prosecution service or any prosecution required the order of pre-trial provisional detention or probation on bail of the defendant, those concurring may make allegations and suggest the evidence that can be showed at the moment or within the 72 hours mentioned before in the preceding paragraph.** **4. The Court will decide on whether or not to order the imprisonment or the imposition of bail. If none of the parties request so, the immediate release of the defendant who was in custody will be decreed.** **5. If for any reason the hearing can not be held, the Judge or Court may decide pre-trial provisional detention, if there are suppositions under Article 503, or probation bail. However, within the next 72 hours, the Court will convene a new appearance and take the corresponding disciplinary as for the not holding the hearing.** **6. If the person under arrest is brought before a Judge who is different from the Judge or Court who is examining the case, and this latter could not deal with it within 72 hours, the other Judge will consider it in accordance with what it is provided in the preceding paragraphs. However, once the Judge or Court initially examining the case receives the proceedings, they shall hear the defendant, assisted by his/her lawyer as soon as possible and issue the appropriate decision.** **END OF ARTICLE 505**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. This article regulates the former judicial appearance of article 504 bis 2 of the Criminal Procedure Act (LECRIM), which was necessary to order the pre-trial provisional imprisonment of the defendant, and which was introduced into our legislation in the 1995 Act. Its regulation is more detailed, especially when referring to cases in which it was doubtful whether to convene the hearing or not −in cases of bail− or cases where the hearing could not be held by the Court that ordered pre-trial provisional detention because the person under arrest had not been brought to Court.

2.The Judge receives the person under arrest and, except when probation without bail has been agreed, he/she shall summon the parties to a hearing, which the person under arrest together with his/her lawyer must attend, as well as public prosecutors and other prosecuting parties.

3. Such hearing shall be held within 72 hours, and in that period the parties may request the use of evidence as they deem necessary to support their claims. However, the third paragraph of that article provides that if the Public Prosecution Service or any prosecution require the pre-trial provisional detention or his/her probation on bail, those who are present will be able to make their allegations or suggest the evidence that they consider appropriate to be shown within seventy-two hours. It seems that the Public Prosecution Service or the prosecuting party that has requested the pre-trial provisional detention or probation on bail, can not apply for the checking of certain evidence because it is assumed that had already provided it, prior to the injunction request. However, this is not acceptable since it breaks the principle of contradiction which is to govern all of these appearances or mini-procedures required to agree or deny a preliminary measure as important as it is pre-trial provisional detention or probation on bail, and even to decide about the value thereof.

3. It also provides that the hearing will be convened by the Judge so as to order pre-trial provisional detention or probation on bail of the free defendant, that is, when a defendant fails to appear in Court and the summons become warrant in accordance with article 487 of the Criminal Procedure Act (LECRIM), the Judge shall convene the hearing or the parties request it.

4. The paragraph provides that if no party requests pre-trial provisional imprisonment or the imposition of a bond, the Judge will necessarily agree on provisional release without bail of the defendant. That is, when the Judge considers that the defendant could be ordered pre-trial provisional detention or probation on bail because he/she considers that there are any of the requirements or purposes set out above, he/she shall convene the hearing, and then, if no one requests any of these precautionary measures, the defendant will be set free.

5. If the hearing can not be held within 72 hours, the Judge shall, whether there are any of the assumptions and goals outlined above, pre-trial provisional detention or probation on bail will be ordered, and the hearing will be reconvened in prison within the term of 72 hours.

6 The sixth paragraph includes the cases where the person under arrest is brought before a Judge who is different from the Judge or Court who is examining the case, and this latter could not deal with it within 72 hours in order to hold the appearance to order provisional imprisonment. In these cases, the legal solution is to summon the parties to a Court appearance and decide on the injunction to be agreed or rejected if deemed that the assumptions outlined above do not exist, on the Judge who receives the person under arrest, with the obligation to immediately send it to the Judge initially studying the case, who, as soon as possible, and in any event no later than 72 hours after receiving the person under arrest- he/she will hold a hearing with the person defendant, accompanied by his/her lawyer and will issue the appropriate decision.

1.1.5.- Article 506: committal or imprisonment order

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
	1. The resolutions to be issued on the personal situation of the defendant will be in the form of Court orders. The order for pre-trial provisional detention or the order for the extension of pre-trial provisional detention shall state the grounds on which the measure is considered necessary and proportionate and the purposes that justify its adoption. **2. If the matter had been declared *sub judice*, the committal or imprisonment order shall express those data, which in order to keep reporting restrictions, are to be omitted from the copy to be notified to the defendant. Anyway, the notification will always include a**

	brief description of the alleged offence and which of the purposes specified in Article 503 are intended to achieve by means of imprisonment. Once the confidentiality of the judicial investigations is lifted, a full copy of the order will immediately be notified to the person under arrest. **3. The orders concerning the personal situation of the defendant will be brought to the attention of those who have been directly offended and hurt by the crime whose safety could be affected by the resolution.** **END OF ARTICLE 506**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. All decisions affecting the defendant's personal circumstances will logically take the form of a Court order and never of a ruling and it will be processed separately.

2. The order must be detailed as required by Article 120 EC for judgments and logically for Court orders, especially those that restrain fundamental rights.

3. If the matter was *sub judice*, those data which, in case that the defendant was aware of them could jeopardize the purpose of reporting restrictions will be omitted. Anyway, the order will include a brief description of the alleged offence and the purposes sought by the interim measure. When reporting restrictions have been lifted the order shall be fully notified and it will be subject to appeal.

4. In order to protect the rights and security of victims injured or offended by the crime, all decisions affecting the defendant's personal circumstances will be notified to them.

1.1.6.- Article 507: appeals

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
Article 504 Reform appeals or ordinary appeals may be lodged against the orders that mandate pre-trial provisional detention, the extension of pre-trial provisional detention or probation	**1 Appeals may be lodged against the orders that decree, extend or refuse pre-trial provisional imprisonment or agree to the release of the defendant, as provided in Article 766, which will have preferential processing. The appeal against the committal or imprisonment order must be brought in within**

Article 504 bis 2, last paragraph An appeal may be lodged before the Provincial Court concerning the appropriateness of rulings ordering probation on bail. *Article 518* Orders decreeing or refusing imprisonment or release may be appealed without suspension of judgment.	**30 days.** **2. Where under the provisions of section 2 of the previous article, the committal or imprisonment order has not been fully reported to the defendant, he/she may also appeal the full order once this has been notified, in accordance with the provisions of the preceding section.** **END OF ARTICLE 507**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. **Appeals may be lodged against the orders that decree, extend or refuse pre-trial provisional imprisonment or agree to the release of the defendant**. The appeals may be reform appeals, subsidiary appeals or directly recourse on appeal, both of them being processed in accordance with article 766 of the Criminal Procedure Code, but they will have to be resolved within a maximum period of 30 days. The appeal shall be admitted into a single effect.

2. When reporting restrictions had been decreed and the order had not been fully notified to the defendant, when reporting restrictions are lifted, the defendant may appeal against the order in its entirety in accordance with article 766 of the Criminal Procedure Code.

1.1.7.- Article 508: house arrest or arrest in any other centre

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
Article 505 second paragraph The Judges may order attenuated imprisonment due to illness of the defendant when internment may lead to serious danger in health.	1. The Judge or Court may order that the pre-trial provisional detention of the defendant be materialised at home, with the necessary surveillance measures, when due to illness of the defendant, his/her internment may lead to serious danger in health. The Court may authorise the defendant to leave his/her home during the hours needed to treat his/her illness, always accompanied by accurate monitoring. 2. In cases where the defendant was subjected to detoxification or treatment for drug dependency and imprisonment might frustrate the outcome of such treatment, that detention measure may be replaced by the entry into an official centre or a legally recognised organization in order to continue that treatment, provided that the facts subject to proceedings are previous to them. In this

	case, the defendant may not leave the centre without authorization from the Judge or Court which has ordered the measure. *(Wording given by Organic Act 15/2003)*. **END OF ARTICLE 508**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. It regulates home arrest as an alternative to pre-trial provisional detention in cases which, on account of the defendant's disease internment would involve serious risk to health.

2. It adds a second paragraph under Organic Act 15/2003 referring to treatment or detoxification of drug addicts in detoxification centres authorized to do so.

1.1.8.- Articles 509 and 510: solitary confinement for prisoners or persons under arrest

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
Article 506 The ***arrested or prisoners' solitary confinement*** may only last for the time absolutely necessary to evacuate the appointments made in the investigations relating to the offence giving rise to the procedure, provided it does not generally last longer than five days. Article 508 The Court dealing with the case may, under its responsibility, order that the prisoner be confined again after having lifted the first solitary confinement, if the cause had reasons for it, but the second confinement can not last for more than three days, except as provided in the preceding article. It will instruct the processing of the operative part of a detailed order in which order the new confinement. The defendant will be instructed about the dispositive part of the detailed order which decrees the new confinement.	1. The Examining Judge or Court may exceptionally order the ***arrested or prisoners' solitary confinement*** in order to prevent the persons allegedly involved in the events under investigation from circumventing the course of justice, since they may act against legal rights of the victims, hide, alter or destroy evidence related to the commission of the crime, or the possibility of committing new crimes. 2. The solitary confinement will last as long as it is strictly necessary to urgently implement the measures designed to avoid the dangers referred to above. Solitary confinement can not be extended beyond five days. In cases where imprisonment is agreed on the grounds of a crime referred to in Article 384 bis or other crimes committed in an organised manner by two or more persons, solitary confinement may be extended for another term not exceeding five days. However, in these same cases, the Judge or Court dealing with the matter may order that the prisoner be confined again after having lifted the first solitary confinement, provided that the subsequent development of the proceedings had reasons for it. In any case, this second solitary confinement will not exceed three days. 3. The order for the solitary confinement or its

	extension, where appropriate, must be detailed and therefore state the reasons why it has been taken. *(Wording given by the LO 15/2003)*. **END OF ARTICLE 509**

Former provisions of the Criminal Procedure Act (LECRIM)	***Current precept of the Criminal Procedure Act (LECRIM)***
Article 506 second paragraph The person in solitary confinement may attend with the appropriate precautions to the expert proceedings to which he/she is entitled according to this Act, providing his/her presence can not defeat the purpose of solitary confinement. *Article 507* If the appointments were to be undertaken outside the peninsular territory, or long distance, the solitary confinement may last as long as it is prudentially necessary in order to avoid conspiracy. *Article 509* The prisoner in solitary confinement will be allowed to have books and personal effects provided by him, as long as the Examining Judge considers them adequate. *Article 510* The Examining Judge may also allow the prisoner in solitary confinement, if he/she so requested, a warranting desk when, in his/her view, there is no problem for that, but in ruling to grant it, there will be the necessary measures to avoid frustrating the personal effects of the solitary confinement. *Article 511* The prisoner in solitary confinement may not deliver or receive any letter or paper, unless it is through and licensed by the Judge, who will examine its contents to allow or deny its process.	**1. The person in solitary confinement may attend with the appropriate precautions to the proceedings to which he/she is entitled according to this Act, providing his/her presence can not defeat the purpose of solitary confinement.** **2. The prisoner in solitary confinement will be allowed to have the personal effects provided by him, as long as the Examining Judge considers that they do not defeat the purpose of solitary confinement.** **3. The prisoner can not make or receive any type of communication. However, the Judge or Court may authorize those communications that do not frustrate the purpose of solitary confinement and adopt, where necessary, appropriate action.** **4. The prisoner held in solitary confinement that so requests shall be entitled to be examined by a second forensic medical examiner appointed by the Court with jurisdiction to deal with the facts. *(This paragraph was has been written by Organic Act 15/2003)*** **END OF ARTICLE 510.**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF ARTICLES 509 AND 510

1. These two articles, articles 509 and 510 of the Criminal Procedure Act (LECRIM) have been amended by Organic Act 15/2003, and they regulate pre-trial provisional detention in solitary confinement as well as the corresponding requirements, deadlines and goals.

2. This new regulation is more consistent with the principles of the current legal system than the former, which had clearly turned out obsolete.

3. The period of pre-trial provisional detention in solitary confinement may not last longer than the strictly necessary time to urgently carry out the proceedings seeking to prevent from any general purpose that have been previously referred and that Article 509.1 of the Criminal Procedure Act (LECRIM) once again reiterates.

4. In any case, it may not last for more than five days, unless we are in the presence of any of the crimes referred to in Article 384 bis or in the case of organized crime, since the communication of the people under arrest or that of the prisoners may negatively affect the development of the proceedings. In this case, solitary confinement may be extended for a period of five days.

1.1.9.- Article 511: execution of the committal or imprisonment order and release order

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
Article 505 Two warrants will be issued n order to put the committal or imprisonment order into effect: one committed either to the Court bailiff or gatekeeper, or the Judicial Police officer in charge of its implementation, and another one to the Director of the establishment which is to receive the prisoner. (...) The warrant will provide the data s concerning the committal or imprisonment order, the name, surnames, nature, age, state and address of the defendant, if they were available, the crime giving rise to the proceedings, whether it is *ex officio* or *ex parte*, and if the detention is to be	**1. Two warrants will be issued n order to put the committal or imprisonment order into effect: one committed to the Judicial Police or officer in charge of its implementation, and another one to the Director of the establishment which is to receive the prisoner.** **The warrant will provide the personal data of the defendant, the crime giving rise to the proceedings, and if the detention is to be with or without solitary confinement.** **2. Prison directors will not allow any person under arrest without a warrant of arrest delivered to them.** **3. Once the order to release the prisoner has been issued, a warrant addressed to the**

with or without solitary confinement. Prison directors will not allow any person under arrest without a warrant of arrest delivered to them.	**prison director will be immediately.** **END OF ARTICLE 511**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. This article regulates how pre-trial provisional detention is to be conducted. Two warrants are to be issued: one addressed to the judicial officer or Judicial Police officer in charge of physically moving the inmate to the penitentiary, and another one to the Director of the latter so that he/she accepts the prisoner as such. This way, prison directors will never admit anyone unless he/she is accompanied by a warrant of arrest including the complete personal data of the defendant, the crime that he/she has committed and whether the detention is to be in solitary confinement or not. In case that the warrant did not include this last requirement, the prisoner will be without solitary confinement, but this matter will be sent to the attention of the corresponding Court in order to clarify that aspect. In any case, prisoners will not be admitted if there were doubts concerning their identity or their personal data were not clear or they had suffered scrapes or scratches.

2. Once the release order has been issued, it shall immediately be sent to the prison director of the penitentiary centre where he was admitted so as to be released immediately.

1.1.10.- Article 529: probation

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
When the defendant was prosecuted on the grounds of a crime which leads to a lesser or shorter imprisonment, and which was not included in item 3rd of article 492, nor his/her pre-trial provisional detention has been ordered by applying provisions in articles 503 and 504 of this Act, the Judge or Court dealing with the case will decide whether the defendant has to give bail or not in order to continue on probation. In the same order, if the Judge orders the bail, he/she shall determine the quality and quantity	**When pre-trial provisional detention has not been ordered, the Judge or Court will decide, in accordance with article 505, whether the defendant has to give bail or not in order to continue on probation.** **In the same order, if the Judge orders the bail, he/she shall determine the quality and quantity which is to be provided.** **This order will be notified to the defendant, the Public Prosecution Service and other prosecutors, and it may be appealed in**

which is to be provided. This order will be sent to the Public Prosecution Service, and notified to the particular complainant and the defendant, and it may be appealed in a single effect.	**accordance with article 507.** **END OF ARTICLE 529**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. In order to determine whether the defendant is to be set on bail, it is necessary to convene the parties to a judicial appearance as regulated by Article 505 of the Criminal Procedure Act (LECRIM).

2. The order resolving parole on bail will fix the quantity and quality of the bail. Naturally, when it is time for the parties to make allegations, these may also be made in relation to this point.

3. The order resolving parole on bail in will be notified to all parties and also to those who may be harmed by that measure even though they were not part in the process; that is, the victims, so that they can take the necessary measures in order to guarantee their safety, in accordance with Article 506.3. of the Criminal Procedure Act (LECRIM).

4. This order may be subject to reform appeal, subsidiary appeal or directly recourse on appeal in accordance terms under article 766 of the Criminal Procedure Act (LECRIM) and no later than 30 days.

1.1.11.- Article 530: duties for person on probation

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
The defendant to be on probation, with or without bail, will constitute "apud acta" obligation to appear in the days that were notified in the respective order, as many times as he/she was called before the Judge or Court dealing with the cause.	**The defendant to be on probation, with or without bail, will constitute "apud acta" obligation to appear in the days that were notified in the respective order, as many times as he/she was called before the Judge or Court dealing with the cause. In order to guarantee that this obligation is fulfilled, the Judge or Court may order the confiscation of his/her passport by justifying the reasons to do so.** **END OF ARTICLE 530**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. It includes the obligation *apud acta* as for the person who is on probation, with or without bail, which was regulated in the former regulation.

2. As a novelty, it includes the confiscation of the passport in order to guarantee the accomplishment of that obligation.

1.1.12.- Article 539 (3rd and 4th paragraph): aggravation of conditions of the defendant

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
However, if according to the Judge or Court there was risk of escape, an order to reform the preliminary measure or even imprisonment if the accused was free shall be issued, but the corresponding Court appearance indicated above shall be convened within seventy-two hours. Whenever the Judge or Court understands that it is convenient to order the freedom of the defendant or to modify the terms of probation by establishing more favourable ones as for the defendant, the Judge or Court may officially amend them at any time and without submitting it to the request of a party.	**In order to resolve pre-trial provisional detention or probation on bail of a free defendant or in order to worsen the conditions as for probation on bail, the application of the Public Prosecution Service or any prosecutor will be required, and it will be resolved upon conclusion of the Court appearance referred to in Article 505.** **However, if according to the Judge or Court there were the suppositions of Article 503, an order to modify the measure, or even imprisonment if the defendant was free shall be issued, but the corresponding Court appearance indicated above will have to be convened within seventy-two hours.** **END OF ARTICLE 539, 3rd and 4th**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. In order to worsen the conditions as for probation, the application of the Public Prosecution Service or any prosecutor will be required.

2. If however, according to the Judge or Court there were the suppositions of Article 503, an order to worsen those measure, or even pre-trial provisional detention shall be issued, and the Court appearance indicated in article 505 of the Criminal Procedure Act (LECRIM) be convened within seventy-two hours

1.1.13.- Article 544 bis (last paragraph): non-fulfilment of the precautionary measures

Former provisions of the Criminal Procedure Act (LECRIM)	*Current precept of the Criminal Procedure Act (LECRIM)*
If the defendant does not fulfil the precautionary measures agreed upon by the Judge or Court, taking into account the incidence of the failure, the reasons, the gravity and the circumstances in which that failure has occurred, new precautionary measures could be ordered, which would involve greater limitation of his/her personal freedom, without prejudice as for the responsibilities that the breach might bring about.	**If the defendant does not fulfil the precautionary measures agreed upon by the Judge or Court, the Court appearance indicated in article 505 will be convened in order to decree pre-trial provisional detention under the terms in article 503, the order of protection under article 544 ter, or any other precautionary measure implying greater limitation as for the defendant's personal freedom. In doing so, the incidence of the failure, the reasons, the gravity and the circumstances will be taken into consideration, but that will have no prejudice as for the responsibilities that the breach might bring about.** ***(Written in accordance with Organic Act 15/2003).*** **END OF ARTICLE 544 BIS**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1. When measures the restraining order or the order not to contact with the victim or not to go to certain places have been broken, the Judge will convene a Court appearance in accordance with article 505 of the Criminal Procedure Act (LECRIM) in order to decree pre-trial provisional detention of the defendant, aggravation of the defendant's personal situation or the order of protection for the victim with all its consequences as for the criminal, civil and social spheres.

2. This article has undergone a second reform by Organic Act 15/2003 in order to highlight those aspects relating to the protection of the victim in cases of domestic abuse and, above all, violence against women. In this sense, any breach of a precautionary measure provided in Article 544 bis will make that the Judge or Court convene the appearance as in article 505 of the Criminal Procedure Act (LECRIM) and order the arrest of the defendant, if necessary; the parties will be summoned and they may request an aggravation of the defendant's probation status, or even pre-trial provisional detention. The Judge will order what he/she considers appropriate by

justifying the reasons and citing in particular the arguments in relation to the danger concerning the victim's legal rights, including life.

1.2.- QUICK TRIALS FOR CRIMES OR OFFENCES ON THE GROUNDS OF DOMESTIC VIOLENCE

- Precepts affected:
  - **Articles 795, 796, 797, 798, 801, 962, 965** and **966 of the Criminal Procedure Act (LECRIM)**
- Changes made by the following Acts:
  - **Organic Act 15/2003 of October 25** (BOE November 26, 2003) amending the Criminal Code, which entered into force the day following its publication
- **Articles analysed by Isabel Tena Franco**

1.2.1.- Article 795: sphere of activity

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	***Current wording included in the Criminal Procedure Act (LECRIM)***
"1. Without prejudice to other special proceedings, proceedings under this Title shall apply to the investigation and prosecution of crimes punishable by imprisonment not exceeding five years, or with any other punishment, whether single, joint or alternative, which do not exceed ten years, whatever its amount, provided the criminal proceedings is instituted under a police report and that the Judicial Police have arrested one person and has brought him/her to the Court on duty, or that even without arresting that person, he/she has been summoned to appear before the Court on duty because of being charged in the police report, and furthermore, there is any of the following circumstances:	"1. Without prejudice to other special proceedings, proceedings under this Title shall apply to the investigation and prosecution of crimes punishable by imprisonment not exceeding five years, or with any other punishment, whether single, joint or alternative, which do not exceed ten years, whatever its amount, provided the criminal proceedings is instituted under a police report and that the Judicial Police have arrested one person and has brought him/her to the Court on duty, or that even without arresting that person, he/she has been summoned to appear before the Court on duty because of being charged in the police report, and furthermore, there is any of the following circumstances:
1st That it is a question of flagrant crimes. For these purposes, it will be considered a flagrant crime, the crime which was being committed or that which has just been committed when the offender has been caught *in flagranti*. The term caught *in flagranti* does not only apply to the	1st That it is a question of flagrant crimes. For these purposes, it will be considered a flagrant crime, the crime which was being committed or that which has just been committed when the offender has been caught *in flagranti*. The term caught *in flagranti* does not only apply to the

offender who has been arrested at the time of committing the crime, but also to the offender or the person subject to persecution who has been caught immediately after committing that crime, if persecution continued or had not been suspended as long as the offender is not out of reach for those who persecute him/her. It will also be considered an *in flagranti* criminal, that who have been found immediately after committing a crime, will some effects, instruments or traces which lead to suspect about his/her involvement in it.	offender who has been arrested at the time of committing the crime, but also to the offender or the person subject to persecution who has been caught immediately after committing that crime, if persecution continued or had not been suspended as long as the offender is not out of reach for those who persecute him/her. It will also be considered an *in flagranti* criminal, that who have been found immediately after committing a crime, will some effects, instruments or traces which lead to suspect about his/her involvement in it.
2nd That it is one of the following crimes:	**2nd That it is one of the following crimes:**
a) Crimes of injury, coercion, threats or physical or psychological violence usually committed against the persons referred to in Article 153 of the Criminal Code.	**a) Crimes of injury, coercion, threats or physical or psychological violence usually committed against the persons referred to in Article 17.2 of the Criminal Code.**
b) Crimes of larceny.	***b) Crimes of larceny.***
c) Crimes of theft.	***c) Crimes of theft.***
d) Crimes of larceny and theft of vehicles.	***d) Crimes of larceny and theft of vehicles.***
e) Crimes against traffic safety.	***e) Crimes against traffic safety.***
3rd That it is a crime whose instruction is assumed to be simple.	**f) Crimes of damage referred to under article 263 of the Criminal Code.**
2. Proceedings under this Title shall not apply to the investigation and prosecution of those crimes that may be associated with one or other crimes which are not in the preceding section.	**g) Crimes against public health under article 368, second subsection of the Criminal Code**
3. This procedure does not apply where it is appropriate to establish reporting restrictions as provided in Art. 302.	h) Flagrant crimes concerning intellectual property under articles 270, 273, 274 and 275 of the Criminal Code.
4. Regulations of Title II of this Book concerning summary procedures shall additionally apply to all matters which are not expressly provided in this Title."	3rd That it is a crime whose instruction is assumed to be simple.
	2. Proceedings under this Title shall not apply to the investigation and prosecution of those crimes that may be associated with one or other crimes which are not in the preceding section.
	3. This procedure does not apply where it is appropriate to establish reporting restrictions as provided in Art. 302.
	4. Regulations of Title II of this Book concerning summary procedures shall additionally apply to all matters which are not expressly provided in this Title."
	END OF ARTICLE 795

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Regarding Organic Act 15/2003 of 25 November on Domestic Violence (in force since 27.11.2003 in regard to the precept that we are dealing with) has adapted the

content of art.795.1.2nd to the amendment of Articles 153 and 173 of the Criminal Code made by Organic Act 11/2003 of specific measures as for public safety, domestic violence and social integration of foreigners. Hence the earlier reference in the article to "Crimes of injury, coercion, threats or physical or psychological violence usually committed against the persons referred to in section 153 of the Criminal Code" has been replaced by "Crimes of injuries, coercion, threats or physical or psychological violence usually committed against the persons referred to the article 173.2 of the Criminal Code."

2nd) The precept still includes within the scope of the quick trials crimes such as injury, coercion, threats and physical or psychological violence usually committed in the field of domestic violence. However, there is the peculiarity that, given the wider subjective scope of domestic violence crimes, quick trials will deal with cases in which the active subject, that is, the aggressor, exercises his violence against his spouse or the person who is or has been linked to him by a similar emotional relationship even without cohabitation, or against the descendants, ascendants, brothers or sisters by nature, adoption or affinity, whether they are the aggressor's or those of the spouse or partner, or against minors or disqualified persons that live with the aggressor or who are subject to the aggressor's authority, guardianship, foster care or *de facto* curatorship of the spouse or cohabitant, and finally, violence against the person who has any other relationship which is built into the core of their family life, as well as violence against those who, due to their particular vulnerability, are under custody or care in public or private centres.

1.2.2.- Article 796: Judicial Police actions (summons by means of the Security Forces)

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	***Current wording included in the Criminal Procedure Act (LECRIM)***
"1. Without prejudice to what it is provided in Title III of Book II and the provisions of Chapter II of Title II of this Book, the Judicial Police shall carry out the following formalities for as long as it proves essential and, in any case, during the time of detention:	"1. Without prejudice to what it is provided in Title III of Book II and the provisions of Chapter II of Title II of this Book, the Judicial Police shall carry out the following formalities for as long as it proves essential and, in any case, during the time of detention:
1st Without prejudice to obtaining the assistance referred to under the ordinal 1st in Art. 770, the Judicial Police shall ask the physician or health workers who had treated the person offended for	1st Without prejudice to obtaining the assistance referred to under the ordinal 1st in Art. 770, the Judicial Police shall ask the physician or health workers who had treated the person offended for

copy of the report on the assistance provided in order to add it to police report. Apart from that, the presence of a forensic medical examiner will also be requested when the person who had to be recognised could not go to the Court on duty within the period provided in Art. 799.	copy of the report on the assistance provided in order to add it to police report. Apart from that, the presence of a forensic medical examiner will also be requested when the person who had to be recognised could not go to the Court on duty within the period provided in Art. 799.
2nd The Judicial Police will inform the person to whom the fact is attributed, even in the event of failure to arrest the right that allows him to appear before the Court on duty assisted by a lawyer. If the defendant does not explicitly announce his intention to appear in Court assisted by a lawyer, the Judicial Police will apply the Bar for the appointment of a lawyer ex officio.	2nd The Judicial Police will inform the person to whom the fact is attributed, even in the event of failure to arrest the right that allows him to appear before the Court on duty assisted by a lawyer. If the defendant does not explicitly announce his intention to appear in Court assisted by a lawyer, the Judicial Police will apply the Bar for the appointment of a lawyer ex officio.
3rd The Judicial Police will summon the person has been denounced in the police statement so that he/she appears before the Court on duty on the date and time indicated to him/her when there has been no arrest. The defendant will be cautioned about the consequences of failing to appear before the Court on duty the date of the police summons.	3rd The Judicial Police will summon the person has been denounced in the police statement so that he/she appears before the Court on duty on the date and time indicated to him/her when there has been no arrest. The defendant will be cautioned about the consequences of failing to appear before the Court on duty the date of the police summons.
4th The Judicial Police will also summon the witnesses, the offended and injured so that they appear in the Court on duty at the time and day that has been indicated. In the same way, the witnesses will also be cautioned about the consequences of failing to appear before the Court on duty the date of the police summons.	**4th The Judicial Police will also summon the witnesses so that they appear in the Court on duty at the time and day that has been indicated. In the same way, the witnesses will also be cautioned about the consequences of failing to appear before the Court on duty the date of the police summons. It will not be necessary to summon the personnel of Security Forces who have taken place in the police statement provided they have included their declaration thereof."**
5th The Judicial Police will summon for the same day and time he entities referred to in Article 117 of the Criminal Code, in the case that their identity is given.	5th The Judicial Police will summon for the same day and time he entities referred to in Article 117 of the Criminal Code, in the case that their identity is given.
6th The Judicial Police will forward to the Institute of Toxicology, the Institute of Legal Medicine or corresponding lab the seized substances whose analysis would be relevant. These entities shall immediately proceed to the requested analysis and send the result to the Court on duty by the quickest means and in any case, before the date and time when to the persons mentioned in the above regulations have been summoned. If it was possible to transfer those analyses within that period, the Judicial Police may practice the analysis itself, without prejudice to the corresponding judicial review.	6th The Judicial Police will forward to the Institute of Toxicology, the Institute of Legal Medicine or corresponding lab the seized substances whose analysis would be relevant. These entities shall immediately proceed to the requested analysis and send the result to the Court on duty by the quickest means and in any case, before the date and time when to the persons mentioned in the above regulations have been summoned. If it was possible to transfer those analyses within that period, the Judicial Police may practice the analysis itself, without prejudice to the corresponding judicial review.
7th Alcohol tests will be carried out in accordance with provisions concerning road safety legislation. However, when performing a blood test or something of the like, the medical personnel will be required do those tasks and to forward the results to the Court on duty by the quickest means and in any case, before the date and time of the subpoena referred to in the regulations above.	7th Alcohol tests will be carried out in accordance with provisions concerning road safety legislation. However, when performing a blood test or something of the like, the medical personnel will be required do those tasks and to forward the results to the Court on duty by the quickest means and in any case, before the date and time of the subpoena referred to in the regulations above.
8th If it was not possible to send some object that should be assessed to the Court on duty, the presence of the expert or specific department shall	

immediately be requested in order to examine and issue an expert report. This report may be delivered orally to the Court on duty. 2. In order to perform the subpoena referred to in the previous section, the Judicial Police shall fix the date and time of the appearance in coordination with the Court on duty. For this purpose, the General Council of the Judiciary, in accordance with the provisions of article 110 of Organic Act on the Judiciary, shall issue appropriate regulations for the management of the duty services in the Preliminary Investigation Courts in relation to exercising these subpoenas, in coordination with the Judicial Police. 3. If the emergency so require, the summons may be made by any media, even verbally, without prejudice to record its content on the relevant minutes.	8th If it was not possible to send some object that should be assessed to the Court on duty, the presence of the expert or specific department shall immediately be requested in order to examine and issue an expert report. This report may be delivered orally to the Court on duty. 2. In order to perform the subpoena referred to in the previous section, the Judicial Police shall fix the date and time of the appearance in coordination with the Court on duty. For this purpose, the General Council of the Judiciary, in accordance with the provisions of article 110 of Organic Act on the Judiciary, shall issue appropriate regulations for the management of the duty services in the Preliminary Investigation Courts in relation to exercising these subpoenas, in coordination with the Judicial Police. 3. If the emergency so require, the summons may be made by any media, even verbally, without prejudice to record its content on the relevant minutes. **4. For the purposes of the application of the procedure under this title, when the Judicial Police was aware of the commission of an incardinated fact in any of the circumstances referred to in section 1 of Article 795, for which, when the alleged perpetrator has not been arrested or located, but it is presumed that his/her identification and location will be quick, the investigations which have been initiated will continue and they shall be entered on a single police statement, which will be sent to the Court on duty as soon as the suspect is arrested or summoned in accordance with what it is provided in the preceding paragraphs, and in any event, within five days. In these cases, the preliminary investigation of the cause will exclusively correspond to the Court on duty which received the police report. The provisions under this section have no prejudice to the fact of immediately informing the Judge on duty and the public prosecution service of the commission of the act and the continuation of investigations for its proper record".** **END OF ARTICLE 796**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has changed the content of article 796.1.4th of the Criminal Procedure Code (LECRIM) in the sense those members of the Security Forces

who have taken part in the police report do not necessarily need to be summoned provided their statement has been indicated therein. As an actual fact, their statement was often considered unnecessary for the purposes of the investigation, and apart from that, in this case, the Judge could always ask for their declaration as urgent proceedings under the legal provisions established in article 797.1.8th of the Criminal Procedure Code (LECRIM).

2nd) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has introduced a new section, section number 4 in article 796 of the Criminal Procedure Code (LECRIM) in order to facilitate the rapid prosecution of crimes whose author, without having been arrested or located, is presumed to be quickly identified and located. The law entitles the Judicial Police to record all research on a single police report to be sent to Court, once the defendant has been arrested or summoned. In any event, the Court with jurisdiction to prosecute the crime will be the Court on duty which receives that police report. It specifies the reform of the jurisdiction of Court that receives the police report in order to deal with the quick trial. Furthermore, it solves doubts which, before the reform, could appear as for cases of extended police reports and the Judge with jurisdiction to work on them.

1.2.3.- Article 797: urgent proceedings

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	***Current wording included in the Criminal Procedure Act (LECRIM)***
1.The Court on duty, after receiving the police report, together with the corresponding objects, tools and evidence, if any, will initiate, if necessary, urgent proceedings. Without prejudice to any other functions assigned, it will carry out, where relevant, the following procedures in the order which proves most convenient according to the circumstances, with the active participation of the Public Prosecution Service. 1st It will manage to get the criminal records of the persons arrested or charged by the quickest means. 2nd If it was necessary for the legal classification of the crimes charged: a) It will seek, if it has not been received, the expert reports requested by the Judicial Police. b) It will order the forensic medical examiner, where relevant and proportionate to and if it had not been done before, to examine the people who have appeared in Court and to issue the	**"1.The Court on duty, after receiving the police report, together with the corresponding objects, tools and evidence, if any, will initiate, if necessary, urgent proceedings. No appeal can be lodged against that. Without prejudice to any other functions assigned, it will carry out, where relevant, the following procedures in the order which proves most convenient according to the circumstances, with the active participation of the Public Prosecution Service.** 1st It will manage to get the criminal records of the persons arrested or charged by the quickest means. 2nd If it was necessary for the legal classification of the crimes charged: a) It will seek, if it has not been received, the expert reports requested by the Judicial Police.

corresponding expert report. c) It will order an expert to value the goods or items seized and brought to Court, if it had not been done before. 3rd It will take the statement of the person under arrest who has been brought before a Court or that of the person who, being charged by the terms of the police report, has appeared at the police summons, as provided in Article 775. In case of failure to appear at that police summons before the Court on duty, this Court may apply the provisions under article 487. 4th It will take the statement of the witnesses summoned by the Judicial Police who have appeared. in Court. In case that these witnesses fail to appear to these police summons before the Court on duty, this Court may apply the provisions under article 420. *5th It will carry out the information prescribed in article 776.* 6th It will carry out the line-up identification of the person charged if it was relevant and the witness was there. 7th It will order, if deemed necessary, the confrontation between witnesses and people charged or just between those charged. *8th It will order the subpoena, even verbal, of people who are considered necessary to appear in Court.* 9th It will order that any proceedings which may be carried out on the spot or within the period specified in the article 799 be practised. 2. Where, by reason of place of residence of a witness or victim or otherwise, it could be reasonable feared that some evidence would be impossible to show in the trial, or would even motivate its suspension, the Judge on duty will immediately examine that evidence and he/she will ensure, in any case, the possibility of contradiction between the parties. Such formality should be documented in suitable medium for recording and reproducing sound and image or through minutes authorized by the Court Clerk, and mentioning the participants. For the purposes of its assessment as a proof in the ruling, the party is interested in doing so should require that the recording is played at the trial or literally read in terms of art. 730.	b) It will order the forensic medical examiner, where relevant and proportionate to and if it had not been done before, to examine the people who have appeared in Court and to issue the corresponding expert report. c) It will order an expert to value the goods or items seized and brought to Court, if it had not been done before. 3rd It will take the statement of the person under arrest who has been brought before a Court or that of the person who, being charged by the terms of the police report, has appeared at the police summons, as provided in Article 775. In case of failure to appear at that police summons before the Court on duty, this Court may apply the provisions under article 487. 4th It will take the statement of the witnesses summoned by the Judicial Police who have appeared. in Court. In case that these witnesses fail to appear to these police summons before the Court on duty, this Court may apply the provisions under article 420. **5th It will carry out, in any case, the information prescribed in article 776.** 6th It will carry out the line-up identification of the person charged if it was relevant and the witness was there. 7th It will order, if deemed necessary, the confrontation between witnesses and people charged or just between those charged. **8th It will order the subpoena, even verbal, of people who are considered necessary to appear in Court. In this case, Security Forces will not be summoned as long as their statements have been already recorded in the police report, unless exceptionally, when considered essential in order to take any of the measures described in the following article.** 9th It will order that any proceedings which may be carried out on the spot or within the period specified in the article 799 be practised. 2. Where, by reason of place of residence of a witness or victim or otherwise, it could be reasonable feared that some evidence would be impossible to show in the trial, or would even motivate its suspension, the Judge on duty will

	immediately examine that evidence and he/she will ensure, in any case, the possibility of contradiction between the parties. Such formality should be documented in suitable medium for recording and reproducing sound and image or through minutes authorized by the Court Clerk, and mentioning the participants. For the purposes of its assessment as a proof in the ruling, the party is interested in doing so should require that the recording is played at the trial or literally read in terms of art. 730. **3. The lawyer appointed for the defence will also have legal authorization to represent his/her client in all proceedings to be verified before the Judge on duty."** **END OF ARTICLE 797**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Organic Act 13/2003 of 24 October (in force since 28.10.2003) changed the content of the article 797.1. of the Criminal Procedure Act (LECRIM), in solely the sense that it precludes the appeal of the Judge's order to initiate urgent proceedings; this impossibility to lodge an appeal is consistent with the what already established and it is established by law in cases such as when the Judge, considering that the proceedings carried out are enough, orders to follow as established in Chapter IV (Article.798.2 of the Criminal Procedure Act) or when the Court orders the opening of oral proceedings (Article 800 of the Criminal Procedure Act).

2nd) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has changed the content of Article 797.1.5th of the Criminal Procedure Act (LECRIM), in the only sense that it establishes that the information to be given to the person charged should be that included in the content of articles 109 and 110 of the Criminal Procedure Act (LECRIM) and communicated by the corresponding Judge on duty. This case is simply the assumption that such information has not been given yet by the Judicial Police. This interpretation must be construed according to the new legal text of the article 776 as for the regulation of pre-trial practice, which subordinates the information that we are referring to, to the assumption that it has not previously been communicated by the Judicial Police.

3rd) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has changed the content of article 797.1.8th of the Criminal Procedure Act (LECRIM) in line with the reform made in article 796.1.4. of the Criminal Procedure Act (LECRIM). The Judicial Police should not summon to the Court on duty those members of the Security Forces who have already taken part in the police report as long as their statement has been recorded therein. For the same reason, the Judge on duty will not summon them unless their presence is deemed essential. As an actual fact, their statement was often considered unnecessary for the purposes of the investigation, and apart from that, in this case, the Judge could always ask for their declaration as urgent proceedings under the legal provisions established.

4th) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has introduced a new section in the article in question, namely, the third. Article 797.3 of the Criminal Procedure Code (LECRIM) grants the defence lawyer the representation of his/her client for the proceedings to be made before the Judge on duty. Obvious practical purposes justify the introduction of this article that we are dealing with, whose content is consistent with the rules laid down for pre-trial proceedings.

1.2.4.- Article 798: court appearance with both parties concerning the adequacy of the proceedings and measures implemented

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	***Current wording included in the Criminal Procedure Act (LECRIM)***
"1. Then, the Judge will hear the parties and the Public Prosecution Service arguing which of the rulings provided for in the next section is the most appropriate and should be taken. Moreover, all prosecuting parties and the Public Prosecution Service may require that any precautionary measure be taken against the person charged or, where appropriate, against the person with civil responsibility, without prejudice to the fact that those or other measures have been taken before.	"1. Then, the Judge will hear the parties and the Public Prosecution Service arguing which of the rulings provided for in the next section is the most appropriate and should be taken. Moreover, all prosecuting parties and the Public Prosecution Service may require that any precautionary measure be taken against the person charged or, where appropriate, against the person with civil responsibility, without prejudice to the fact that those or other measures have been taken before.
2. The Judge on duty shall issue an order with any of these contents:	2. The Judge on duty shall issue an order with any of these contents:
1st *In the event that the proceedings taken are considered to be sufficient, the Judge will issue an oral order, which should be documented and shall not be subject to appeal, ordering to follow the procedure of the next chapter, unless it considers appropriate, any of the decisions provided for in*	**1st *In the event that the proceedings taken are considered to be sufficient, the Judge will issue an oral order, which should be documented and shall not be subject to appeal, ordering to follow the procedure of the next chapter, unless it considers appropriate, any of the decisions***

the first three ordinal numbers of section 1 of art. 779, in which case, the Judge will issue an order.	***provided for in regulations 1st and 3rd of section 1 of art. 779, in which case, the Judge will issue an order.*** **If the Judge on duty considers offence the fact that would have led to formal proceedings, he/she will immediately order proceedings as provided in Article 963.**
2nd In the event that the proceedings taken are considered to be insufficient, the Judge will order that the proceedings be continued as pre-trial proceedings of the shortened procedure. The Judge will point out and detail what formalities are unnecessary to conclude the investigation of the cause or what circumstances make it impossible.	2nd In the event that the proceedings taken are considered to be insufficient, the Judge will order that the proceedings be continued as pre-trial proceedings of the shortened procedure. The Judge will point out and detail what formalities are unnecessary to conclude the investigation of the cause or what circumstances make it impossible.
3. When the Judge issues the order taking any of the previous decisions included under the first three ordinals of section 1 of art. 779, the Judge will also include those precautionary measures which are considered appropriate to take against the person charged and, where appropriate, against the person with civil responsibility. Those appeals provided in Art. 766 against the precautionary measures included in the ruling of the Judge may be lodged. When the Judge on duty issues an oral order so as to continue with the proceedings, the adoption of precautionary measures will obey what it is provided in section 1 of art. 800.	3. When the Judge issues the order taking any of the previous decisions included under the first three ordinals of section 1 of art. 779, the Judge will also include those precautionary measures which are considered appropriate to take against the person charged and, where appropriate, against the person with civil responsibility. Those appeals provided in Art. 766 against the precautionary measures included in the ruling of the Judge may be lodged. When the Judge on duty issues an oral order so as to continue with the proceedings, the adoption of precautionary measures will obey what it is provided in section 1 of art. 800.
4. Apart from that, the Judge will decide whether it is appropriate or not to return those objects which had been seized."	4. Apart from that, the Judge will decide whether it is appropriate or not to return those objects which had been seized." **END OF ARTICLE 798**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has changed the content of article 798.2.1st of the Criminal Procedure Act (LECRIM), in the sense that, in the event that the Judge on duty, after taking urgent measures which had been agreed, deems appropriate to initiate proceedings for offences, hi/she will immediately order proceedings, since it must not be relegated to a further time. The reform is in line with the provision made for quick prosecutions of offences and solves some questions that arose in practice concerning proceedings in cases when urgent measures had turned into quick prosecutions of offences.

1.2.5.- Article 801: plea bargaining

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	*Current wording included in the Criminal Procedure Act (LECRIM)*
1. Without prejudice to the application in this case of Art. 787, the defendant may plea bargain to the Court on duty and the Court will issue the corresponding consent order and will also send all proceedings to the Criminal Court which is in charge of the execution of the sentence, when there is any of the following circumstances:	**1. Without prejudice to the application in this case of Art. 787, the defendant may plea bargain to the Court on duty and the Court will issue the corresponding consent order, when there is any of the following circumstances:**
1st That there is not private prosecution and the Public Prosecution Service has requested the opening of the oral trial and thus, conferred by the Court on duty, he/she had presented bill of indictment.	1st That there is not private prosecution and the Public Prosecution Service has requested the opening of the oral trial and thus, conferred by the Court on duty, he/she had presented bill of indictment.
2nd That the facts subject to indictment have been considered as a crime punishable by up to three years imprisonment with a fine of whatever amount or other punishment of a different nature which do not exceed ten years.	2nd That the facts subject to indictment have been considered as a crime punishable by up to three years imprisonment with a fine of whatever amount or other punishment of a different nature which do not exceed ten years.
3rd That, in the case of imprisonment, the sentence requested or the amount of penalties requested, reduced by one third, does not exceed two years in prison.	3rd That, in the case of imprisonment, the sentence requested or the amount of penalties requested, reduced by one third, does not exceed two years in prison.
2. Within the scope defined in the previous section, the Court on duty will perform the monitoring of the consent provided under the terms provided in art. 787 and will dictate, if any, plea bargaining, which will impose the penalty requested reduced by one third, and if the sentence was custodial, decide whether it is appropriate or not to suspend it or replace it.	**2. Within the scope defined in the previous section, the Court on duty will perform the monitoring of the consent provided under the terms provided in art. 787 and will orally dictate, if any, plea bargaining, which will be documented in accordance with the terms provided under section 2 of article 789, in which it will impose the penalty requested reduced by one third, even this entails a penalty which is lower than the minimum provided for in the Criminal Code. If the public and private prosecution express that they are not going to pledge an appeal against that, the Judge will, in the same proceeding, orally declare that the sentence is final, and if the sentence was custodial, he/she will decide whether it is appropriate or not to suspend it or replace it.**
3. In order to decide, where appropriate, to suspend the prison sentence, it will be enough, under the provisions of art. 81.3rd of the Criminal Code, with the commitment as for the defendant to meet civil liabilities which may have been caused in the reasonable period that the Court on duty sets. Apart from that, in cases provided under art. 87.1.1st of the Criminal Code it is necessary to have a certificate by means of a service or centre, either private or public but duly accredited or recognised, certifying that the defendant is dishabituated or receiving treatment for this purpose; in these cases, it will be enough in order to accept the plea bargaining and agree to suspend the prison sentence, with the fact that the defendant commits to obtain such certification within the reasonable time that the Court sets.	3. In order to decide, where appropriate, to suspend the prison sentence, it will be enough, under the provisions of art. 81.3rd of the Criminal Code, with the commitment as for the defendant to meet civil liabilities which may have been caused in the reasonable period that the Court on duty sets. Apart from that, in cases provided under art. 87.1.1st of the Criminal Code it is necessary to have a certificate by means of a service or centre, either private or public but duly accredited or recognised, certifying that the defendant is dishabituated or receiving treatment for this purpose; in these cases, it will be enough in order to accept the plea bargaining and agree to suspend

4.- If there was any private prosecutor in the case, the defendant may, in his/her defence, plea bargain down to the most serious of the charges as provided in the preceding paragraphs."	the prison sentence, with the fact that the defendant commits to obtain such certification within the reasonable time that the Court sets. **4. Once the consent order has been issued and the actions referred to in section 2 have been practiced, the Judge on duty will decide whether it is appropriate or not to release or send the defendant to prison and he/she will carry out the corresponding requirements. Then, the Judge will refer the proceedings together with the sentence, to the Criminal Court which is to continue its execution.** 5. If there was any private prosecutor in the case, the defendant may, in his/her defence, plea bargain down to the most serious of the charges as provided in the preceding paragraphs." **END OF ARTICLE 801**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has redrafted the content of article 801.2 of the Criminal Procedure Act (LECRIM). On the one hand, it allows the Judge to sentence the consent order orally, which is much faster since the minutes will be only include the decision and a brief motivation, which permits to relegate its wording to a further time so that it does not slows down other proceedings or actions corresponding to the Court on duty. On the other side, and dispelling any doubts that the previous wording could produce, it bears in mind the possibility that the penalty which is finally imposed, due to being reduced by one third, it may result inferior to the threshold laid down in the Criminal Code.

Finally, it also provides for the express statement by the Judge as for the finality of the sentence for the assumption that the public and private prosecution parties express their intention not to appeal.

2nd) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has redrafted section four, and therefore taking its previous contents the new section, which is section fifth. Article 801.4 of the Criminal Procedure Act (LECRIM) definitively solves the doubts raised by the personal situation of the defendant who is finally convicted by means of a final sentence of consent.

Therefore, it must be the Judge on duty the one who, after orally issuing the plea bargaining decision, decide whether to release imprison the person convicted, for which purposes shall, where appropriate, make the corresponding requirements as for the decision taken. Subsequently, the Judge on duty will send the proceedings to the Criminal Court for so as to continue with the execution of the sentence. Therefore, the new precept grants the Judge on duty the power to initiate the implementation of the mandatory penalty imposed under plea bargaining sentence as for the convicted person's personal situation.

1.2.6.- Article 962: offence trial before the Court on duty

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	***Current wording included in the Criminal Procedure Act (LECRIM)***
"*1. When the Judicial Police has knowledge of a fact characterized as an offence as in articles 617 or 620 of the Criminal Code, if the person offended is one of the persons referred to in Art.153 of the same Code, as well as in art. 623.1 of the Criminal Code when the offence is flagrant, the prosecution of which corresponds to the Examining Court which is going to receive the police report or another of the same judicial district, will immediately proceed to summon the persons listed in ordinal numbers 3rd and 4th of art 796 to the Court on duty. In making such summons, the persons summoned shall be informed about the respective consequences of failure to appear in the Court on duty.* *They will also be informed about the fact that the offence trial may be immediately held in the Court on duty, even though they to appear, and that they have to appear with the evidence that they want to use for their defence. The complainant and the respondent o the person injured will be informed about their rights under the terms in the articles 109, 110 and 967.* 2. The defendant will be briefly informed about the facts which constitute the complaint and about the right that he/she has to be assisted by a lawyer in order to appear in Court. In any case, this information will be handed in written form. 3. In these cases, the Judicial Police will submit the police report to the Court on duty where the proceedings and summons and, if that is the case, the complaint of the complainant which have been implemented are recorded.	**"1. When the Judicial Police has knowledge of a fact characterized as in article 617, in article 623.1 when it is flagrant, or article 620 of the Criminal Code , if the person offended is one of the persons referred to in Art.173.2 of the same Code, the prosecution of which corresponds to the Examining Court which is going to receive the police report or another of the same judicial district, will immediately proceed to summon the persons offended and injured, the complainant, the defendant and the witnesses so that they can testify about the facts.** **In making such summons, the persons summoned shall be informed about the respective consequences of failure to appear in the Court on duty.** **They will also be informed about the fact that the offence trial may be immediately held in the Court on duty, even though they to appear, and that they have to appear with the evidence that they want to use for their defence. The complainant and the respondent o the person injured will be informed about their rights under the terms in the articles 109, 110 and 967.** 2. The defendant will be briefly informed about the facts which constitute the complaint and about the right that he/she has to be assisted by a lawyer in order to appear in Court. In any case, this information will be handed in written form. 3. In these cases, the Judicial Police will submit the police report to the Court on duty where the proceedings and summons and, if that is the case,

4. For the realization of the summons referred to in this article, the Judicial Police shall fix the time of the hearing in coordination with the Court on duty. For this purpose, the General Council of the Judiciary, in accordance with the provisions of art. 110 of Organic Act on the Judiciary shall issue appropriate regulations for the management of duty services in the Examining Courts in connection with the practice of these subpoenas, in coordination with the Judicial Police."	the complaint of the complainant which have been implemented are recorded. 4. For the realization of the summons referred to in this article, the Judicial Police shall fix the time of the hearing in coordination with the Court on duty. For this purpose, the General Council of the Judiciary, in accordance with the provisions of art. 110 of Organic Act on the Judiciary shall issue appropriate regulations for the management of duty services in the Examining Courts in connection with the practice of these subpoenas, in coordination with the Judicial Police." **END OF ARTICLE 962**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has redrafted the content of article 962.1 of the Criminal Procedure Act (LECRIM) by adapting the precept to the Criminal Code in relation with domestic violence introduced by Organic Act 11/2003 of 29 September. In this sense, the reference to the lack of domestic violence injuries has been omitted, since that has become a crime under article 153 of the Criminal Code; apart from that, the reference to those offended as for the lack of threats, coercion and abuse of Article 620 of the Criminal Code is in the new area referred to in article 173.2 of the Criminal Code.

2nd) On the other hand, the reform remains in the field of rapid prosecution of flagrant crimes of larceny under article 623.1 of the Criminal Code and it broadens its scope to any lack of injuries.

1.2.7.- Article 965: impossibility to hold an offence trial during the duty service

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	*Current wording included in the Criminal Procedure Act (LECRIM)*
"1. If an immediate trial was impossible to be held, the Court on duty will follow the following regulations: *1st If it is considered that the jurisdiction corresponds to a Court of a different judicial district or to a Magistrate's Court within the party,*	**"1. If an immediate trial was impossible to be held, the Court on duty will follow the following regulations:** **1st If the jurisdiction for the prosecution corresponds to the same Examining Court , it will, in any case, proceed to fixing the date for**

it will forward the proceedings so that they fix a date for the trial and subpoenas. *2nd If the jurisdiction for the prosecution corresponds to the same Examining Court on duty or to another Examining Court within the judicial party, it will, in any case, proceed to fixing the date for the trial of offences and the corresponding summons the promptest possible day and, in any event, no later than seven days. The designation and summons are made within a period not exceeding two days in the case of offences specified in arts. 617 or 620 of the Criminal Code, if the person offended is one of the persons referred to in Art. 153 of the Code, and the offence typified in art. 623.1 of the Criminal Code, where flagrant.* *The subpoenas will be made as for the Public Prosecution, unless the offence was persecuted only ex parte, as for the plaintiff or complainant, if any, as for the accused and witnesses and experts who could give an account of the facts.* *2. When the offence trial is not to be held before the same Court, that Court will do the designation and summons for the days and times which are predetermined for this purpose as for Court trials. For this purpose, the General Council of the Judiciary, in accordance with the provisions of art. 110 of Organic Act on Judiciary, shall issue appropriate regulations for the management, in coordination with the prosecution, of the designation of offences trials carried out by the Courts on duty so as to be held before other Examining Courts of the same judicial district.*	**the trial of offences and the corresponding summons the promptest possible day and, in any event, no later than seven days.** **2nd If it was considered that the jurisdiction to hold the trial corresponds to a different Court, , it will forward the proceedings so that they fix a date for the trial and subpoenas according to the previous regulation.** **2. The General Council of the Judiciary, in accordance with the provisions of art. 110 of Organic Act on Judiciary, shall issue appropriate regulations for the management, in coordination with the prosecution, of the designation of offences trials"** **END OF ARTICLE 965**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Organic Act 15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has redrafted the content of article 965 of the Criminal Procedure Act (LECRIM). The reform omits the designation of the offence trial and the corresponding summons, which the Court on duty was to carry out before, in the events that, due to the impossibility to hold the trial during the duty service, the jurisdiction for the trial moved to a different Court of the same judicial district. With the reform, the designation will only be made by the Court on duty respecting the legal maximum period of seven days in case that it has jurisdiction to decide over the facts, since in the case that it is another Court of the same judicial district, or if it is another Court of another district, the Court on duty will merely submit them the proceedings. The Court

which has the jurisdiction is the one that will carry out the designation and the corresponding subpoena respecting the legal time limit of seven days.

1.2.8.- Article 966: Court summons

Former provisions of the Criminal Procedure Act (LECRIM) which is repealed	***Current wording included in the Criminal Procedure Act (LECRIM)***
"The designations and summons of the offences trials will be made in the manner and terms provided in the previous article, also in the cases when they are not held in the Court on duty".	**"The summons to hold the offence trial provided under the previous article will be made as for the Public Prosecution Service, except for those cases referred to in section 2 of article 969, as for the complainant, the defendant and the witnesses so that they can testify about the facts.** **END OF ARTICLE 966**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1st) Organic Act15/2003 of 25 November (in force since 27.11.2003 in regard to the precept that we are dealing with) has redrafted the content of article 966 of the Criminal Procedure Act (LECRIM). The new version of this article is merely a consequence of the reform of the preceding article. On the one hand, it removes the reference to the period of the offence trial, namely a maximum of seven days, since such provision is already incorporated in the preceding article 965 in its new form. On the other hand, the new content specifies those to be summoned to the trial, namely the Public Prosecution Service, except for offences indictable only upon complaint of the offended or injured, complainant, defendant, witnesses and experts, as concretised by the preceding article 965 in its previous wording.

1.3.- VICTIM'S STATUS IN SPANISH CRIMINAL PROCEEDINGS

- Summary chart with the legal regime of the victim of a crime in Spanish criminal proceedings.
- By Joaquín Delgado Martín, Lawyer working in the State Council for the Judiciary.

1. INICIATING PROCEEDINGS
2. REDRESSING OF DAMAGES
3. DIGNITY
4. INFORMATION
5. PROTECTION
6. PARTY STATUS

WARNING: The rights contained in sections 1 to 5 correspond to the victim of the crime even if it is not a party within the criminal proceedings.

1.3.1.- Rights in the beginning of the proceedings

1. INICIATING PROCEEDINGS	Right to initiate proceedings as for criminal offences which are semiprivate,	• Private prosecution as for private crimes • Lawsuit in crimes or offences which are considered as semiprivate or

	semipublic or private	semipublic

1.3.2.- Right to redress of the damage

2. REDRESSING OF DAMAGES	Right to redress of the damage suffered due to the crime committed	• Possible civil actions • Defence of the victim's interests through the Public Prosecution Service • Redress with charge under provisions in Act 35/95

1.3.3.- Right to dignity

3. DIGNITY	Right to the victim's dignity in all the proceedings in which she takes part	• As a general rule, everything which is aimed to eliminate or diminish secondary victimization (sections 22 and following of the Letter of the Citizens' Rights in relation to Justice) • Specific treatment for specially vulnerable victims: minors, the elderly, disabled…(sections 26 and following of the Letter of the Citizens' Rights in relation to Justice) • Avoid the confrontation victim versus aggressor: domestic violence (art. 544 ter 4,3rd LECR) and minors (arts. 448,3rd and 707,2nd LECR)

1.3.4.- Right to information

4. INFORMATION	Right to receive information on aspects of criminal procedure relevant to the protection of their interests, although they are not a party to the process	• Offering of actions (arts 109, 110, 776 and 771.1st LECR) • Obligation to provide **punctual information:** o On the possibility to redress and have access to free legal assistance (Art. 15 Act 35/95) o Designation of the trial (date and place) and Judgement decreed (Art. 15 Act35/95) o Sentence ordered (arts 785.3, 789.4, 973.2 and 976.3 LECR) o Criminal proceedings which may affect the victim's safety in cases under art. 57 of the Criminal Code (art. 109 LECR) o Order of protection (art. 544 ter LECR) • Obligation to provide **permanent information** as for: o Procedural situation of the

		person charged (art. 544ter LECR) o Precautionary measures (art. 544 ter LECR) o Penitentiary situation of the aggressor (art.544 ter LECR)

1.3.5.- Right to protection

5. PROTECTION	Right to an adequate level of protection of the victim's safety when there is a serious risk of reprisals or repeated acts of violence	• Protection of the victim when the victim also acts as a witness: Act 19/94 • Order of protection of article 544 ter LECR (criminal, assistance and social protection measures) • Criminal measures aimed to guarantee protection: o Pre-trial provisional detention o Article 13 LECR o Prohibitions 544 bis LECR o Article 158 Civil Code o Others

1.3.6.- Party status

6. PARTY STATUS	Right to obtain party status upon meeting the requirements of the legal regulations.	• Simplifying requirements to be a party: private prosecution is not necessary (art. 961.2 LECR) • Once the party to the criminal proceedings status has been obtained: complete possibilities to act as a party within the legal framework

2.- CRIMINAL CODE REFORMS

- Precepts which have been affected:

  o Articles 37, 39, 40, 46, 48, 49, 57, 83, 84, 88, 153, 173, 468, 617 and 620 Criminal Code

- Amendments made by the following Acts:

  o Organic Act 11/2003, 29 de September (BOE 30 September 2003) which entered into force the day following its publication

  o Organic Act 15/2003, 25 November, (BOE 26 November 2003), amending the Criminal Code, which entered into force on 1st October 2004

- Articles analysed by Vicente Magro Servet and Inmaculada Montalbán Huertas

2.1.- REFORMS AS FOR THE GENERAL PART

2.1.1.- Article 37: penalty of permanent location

Former provisions of the Criminal Code which is repealed	*Current wording included in the Criminal Code*
1. The weekend arrest shall have a term of thirty-six hours and will be equal, in any event, to two days of imprisonment. As a maximum, only twenty-four weekends may be imposed as arrest, unless the penalty is imposed as a substitute for another penalty as another type of deprivation of liberty, in which case its lifetime will be that resulting from the application of the regulations contained in art. 88 of this Code. 2. Fulfilment of the penalty will take place on Fridays, Saturdays or Sundays in the prison which is nearest to the domicile of the person under arrest. Notwithstanding the preceding paragraph, if circumstances dictate so, the Judge or sentencing Court may order, by reaching an agreement with the defendant and after hearing the Public Prosecution Service, that the weekend arrest be fulfilled on different days during the week, or, if there was not a prison in the judicial district where the convicted person resides, whenever possible,	**1. The permanent location will last for up to twelve days. Compliance requires the prisoner to remain at home or in a particular place fixed by the Judge at sentencing.** **2. If the defendant so requests and the circumstances so warrant, after hearing the Public Prosecution Service, the Judge or sentencing Court may order the sentence is served on Saturdays and Sundays or on a non-continuous basis.** **3. If the offender fails to comply with the penalty, the Judge or sentencing Court will deduce testimony to proceed in accordance with the requirements of art. 468.** **END OF ARTICLE 37**

in local deposits. 3. If the offender committed two unjustified absences, the supervising Judge, without prejudice to deduct testimony for the breach of conviction, may decide that the arrest be executed on a continuous basis. 4. The other circumstances as for the execution will be established by following regulations in accordance with the provisions of the Prisons Act, whose rules will be additionally applied supplementary for cases not expressly provided in this Code.	

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- Organic Act 15/2003 of 25 November, by which Organic Law 10/95 of 23 November the Criminal Code is amended, suppresses the penalty of weekend arrest. This amendment shall enter into force on 10 October 2004.

2.- The penalty weekend arrest is replaced, as appropriate, by the imprisonment of short length – of three months or more in the crimes - r by a sentence of work on behalf of the community or the penalty of permanent location. The abolition of the penalty of the weekend arrest is justified in the Explanatory Memorandum of the mentioned Act since its practical application has not been satisfactory.

2.- The penalty of permanent location is a novelty introduced by Organic Act 15/2003, which according to its Explanatory Memorandum, seeks to provide a criminal response to minor criminal offences and avoid the harmful effects of confinement in prisons. It is based on the implementation of new technological measures and they are expected to make that the penalty be fulfilled at home or in a different location selected by the Judge or Court for a period not exceeding twelve days, whether consecutive or during weekends, according to the Judge or sentencing Court depending on what they consider more appropriate.

2.1.2.- Article 39: penalties depriving of rights

Former provisions of the Criminal Code which is repealed	*Current wording included in the Criminal Code*
The penalties depriving of rights are: a) Absolute disqualification	The penalties depriving of rights are: a) Absolute disqualification

b) The special disqualification for public employment or office, profession, work, industry or trade, or of parental rights, guardianship, custody or curatorship, right to passive suffrage or any other right. c) The suspension of employment or public office. d) Disqualifications from driving motor vehicles and mopeds. e) Deprivation of the right to possess and carry weapons. f) Deprivation of the right to reside in certain places or go to them, the prohibition of approaching the victim, or those of relatives or other persons identified by the Judge or Court, or to communicate with them.	b) The special disqualification for public employment or office, profession, work, industry or trade, or of parental rights, guardianship, custody or curatorship, right to passive suffrage or any other right. c) The suspension of employment or public office. d) Disqualifications from driving motor vehicles and mopeds. e) Deprivation of the right to possess and carry weapons. f) Deprivation of the right to reside in certain places or go to them, the prohibition of approaching the victim, or those of relatives or other persons identified by the Judge or Court, or to communicate with them. **i) Work on behalf of the community.** **END OF ARTICLE 39**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- The following penalties are now considered in an autonomous and independent way: the penalty depriving of the right to reside in certain places or to go to them, the prohibition of approaching the victim or those of relatives or other persons identified by the Judge or Court, and the prohibition of communication with the victim or those of relatives or other persons identified by the Judge or Court.

2.- These penalties which were included in the art. 39 of the Criminal Code were included in section 4th of article 1 of Organic Act 14/1999 of 9 June, amending the Criminal Code of 1995, on protection of victims of abuse and of the Criminal Procedure Act ("BOE" 10 June). The reform gives each of them a letter in art. 39, becoming f), g) and h) with autonomy and independence so as to order some or all of them by considering the particular circumstances.

2.1.3.- Article 40: catalogue of penalties depriving of rights

Former provisions of the Criminal Code which is repealed	*Current wording included in the Criminal Code*
The absolute disqualification penalty will last for six to twenty years, except as exceptionally stated under the other provisions of this Code; the special disqualification of six months to twenty years; the	1. The absolute disqualification penalty will last for six to twenty years; the special disqualification from three months to twenty years and suspension of employment or public office from three months

special disqualification, from six months to twenty years of suspension of employment or public office; deprivation of the right to drive motor vehicles and motorcycles and the deprivation of the right to possess and carry weapons, from three months to ten years; and the deprivation of the right to reside or go to certain places and work on behalf of the community, from one day to one year.	to six years. 2. The penalty of deprivation of the right to drive motor vehicles and motorcycles and the deprivation of the right to possess and carry weapons will last for three months. 3. The deprivation of the right to reside or go to certain places will last **up to ten years**, the prohibition of approaching the victim, or those of relatives or other persons, or to communicate with them will last from one month to **ten years**. 4. The penalty of work on behalf of the community, from one day to one year. 5. The length of each of these penalties will be that established in the preceding sections except the precepts of the present Code exceptionally say so. **END OF ARTICLE 40**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- The deprivation of the right to reside or go to certain places is extended from six months to five years as reflected in the repealed regulation to a penalty of up to ten years length.

2.- The penalty of prohibition to approach to the victim or relatives or people designated by the Judge is extended from up to five years as it was formerly established to a term of one month to ten years.

2.1.4.- Article 46: special disqualification to exercise parental authority, guardianship, curatorship, care or foster care

Former provisions of the Criminal Code which is now modified	***Current wording included in the Criminal Code***

Special disqualification for the exercise of parental authority, guardianship, curatorship, care of foster care deprives the convict of the rights attached to the first, and marks the extinction of the others, as well as the disqualification to obtain appointments to such positions during the length of the sentence.	Special disqualification for the exercise of parental authority, guardianship, curatorship, care of foster care deprives the convict of the rights attached to the first, and marks the extinction of the others, as well as the disqualification to obtain appointments to such positions during the length of the sentence. **The Judge or Court may decide about this penalty as for all or some of the minors who are under the parental authority of the person convicted, by bearing in mind the circumstances of the case.** **END OF ARTICLE 46**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- Organic Act 15/2003 maintains the special disqualification for the exercise of parental authority, guardianship, curatorship, care or foster care as penalty depriving of rights.

2.- It explicitly introduces the power of the Court or trial Court to determine, in light of the circumstances of the case, the scope of the penalty in relation to minors who are dependent on the prisoner, so that the penalty may be in respect of all or any of the children subject to parental authority, guardianship, curatorship, care or foster care of the offender.

2.1.5.- Article 48: penalty forbidding to approach the victim or any of her relatives

Former provisions of the Criminal Code which is now modified	*Current wording included in the Criminal Code*
The deprivation of the right to reside in certain places or go to them prevents the prisoner from going back to the place where the crime was committed, or to the place where the victim or her family reside, if they were different. The prohibition of approaching the victim, or those of relatives or other persons identified by the Judge or Court, prevents the convict from approaching them wherever they are, as well as approaching such persons' homes, their places of work or any other place which may be frequented by them. The prohibition of communication with the	**"1.** The deprivation of the right to reside in certain places or go to them prevents the prisoner from **reside or go** to the place where the crime was committed, or to the place where the victim or her family reside, if they were different. **2.** The prohibition of approaching the victim, or those of relatives or other persons identified by the Judge or Court, prevents the convict from approaching them wherever they are, **as well as approaching such persons' homes, their places of work or any other place which may be frequented by them; apart from that, visitation, communication and accommodation as for the children which,**

victim, or those of relatives or other persons identified by the Judge or Court, prevents the prisoner from establishing written, verbal or visual contact with any of them, either by any communication means, information technology or through telematic way.	**where appropriate, had been recognized in civil ruling, will be suspended until the full implementation of this penalty.** **3.** The prohibition of communication with the victim, or those of relatives or other persons identified by the Judge or Court, prevents the prisoner from establishing written, verbal or visual contact with any of them, either by any communication means, information technology or through telematic way. **4. The Judge or Court may order that the monitoring of these measures be carried out by means of those electronic items considered suitable.** **END OF ARTICLE 48**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- An important novelty in Organic Act15/2003 is that disqualification involving the prohibition of approaching the victim or others, implies the legal consequence of suspension "ex lege" of visitation, communication and accommodation as for the children set in the civil ruling. The automatic suspension of visitation will continue until full compliance with the penalty of prohibition to approach.

2.- Note that this article provides an automatic suspension of visitation concerning the children, only for the case of penalty banning to approach the victim, her family or some particular persons as specified. However, it is not for the other two modes involving the prohibition of living and going to certain places, or prohibiting communication with the victim or other particular persons.

3.- It gives legal cover to the judicial power to order the use of electronic means to monitor the enforcement of penalties prohibiting residence, approach and communication. The regulation does not establish criteria for whether it is the aggressor or rather the victim the one who has to carry the technical item. This way, there are two possibilities: on the one hand, there may be electronic devices as for the monitored release of the convict (homelink) in order to detect the breach of the prohibition of approximation; on the other hand, victims may be provided with technical means such

as tele-alarms, mobiles or bracelets with GPS satellite tracking, in order to activate an alarm at the police station where they are connected.

2.1.6.- Article 49: penalty of work on behalf of the community

Former provisions of the Criminal Code which is repealed	*Current wording included in the Criminal Code*
The work on behalf of the community, which can not be imposed without the consent of the prisoner, force the defendant to provide his/her cooperation unpaid in certain activities of public utility. The hours shall not exceed eight hours a day and conditions are as follow:	"The work on behalf of the community, which can not be imposed without the consent of the prisoner, force the defendant to provide his/her cooperation unpaid in certain activities of public utility, which may include, in relation to crimes of similar nature committed by the convict, redressing of damage or support or assistance to victims. The hours shall not exceed eight hours a day and conditions are as follow:
1st. The execution will take place under the control of the Judge or sentencing Court that, for this purpose, may request reports on the performance of work to the public entity or association of public interest where the person charged is providing those services.	**1st**. The execution will take place under the control of the Judge of penitentiary surveillance who, for that purpose**, will request reports on the performance of work to the public entity or association of public interest where the person charged is providing those services.**
2nd.They will not commit an outrage against the prisoner's dignity.	2nd.They will not commit an outrage against the prisoner's dignity.
3rd. The work on behalf of the community will be provided by the public administration, which may establish the corresponding agreements as for this purpose.	3rd. The work on behalf of the community will be provided by the public administration, which may establish the corresponding agreements as for this purpose.
4th. They will have the protection afforded to prisoners by prison regulations concerning Social Security.	4th. They will have the protection afforded to prisoners by prison regulations concerning Social Security.
5th. They will not be subject to the achievement of economic interests.	5th. They will not be subject to the achievement of economic interests.
Other circumstances as for their execution will be established by the appropriate regulation in accordance with the provisions of the Prisons Act, whose terms will be additionally applied in any other case which is not expressly provided in this Code.	**6th. The Penitentiary Social Services, once the necessary verifications have been checked, will submit to the Judge of penitentiary surveillance the incidents which are relevant to the execution of the sentence and in any case, if the prisoner:** **a) is absent from work for at least two working days, provided that this involves a voluntary refusal on his part to serve the sentence.** **b) notwithstanding the requirements of person responsible at work, his performance was significantly inferior to the minimum required.** **c) opposed or continuously and consistently failed the instructions given by the person responsible at work concerning its proper development.** **d) due to any or other reason, his conduct was such that the person responsible at work**

	refused to continue having the offender working in the centre. **Once the report has been assessed, the Judge of penitentiary surveillance may resolve whether he is to continue in the same centre, send the convicted to another centre in order to complete its execution, or deem that the prisoner has failed to comply with the penalty.** **Failure to comply will entail deducting testimony to proceed in accordance with article 468.** **7th. If the prisoner was missing from work due to a cause which is justified, that will not be construed as abandonment of the activity. However, the work which is lost will not be counted in the liquidation of the conviction, in which the days or hours actually worked out of the total which had been imposed shall be detailed."** **END OF ARTICLE 49**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- The development of the sentence consisting of work on behalf of the community has entailed a major change in the reform carried out in the Criminal Code, because, apart from a better regulation, the execution is submitted to the Judge of penitentiary surveillance instead of to the Judge or sentencing Court and the scheme for non-compliance is disciplined as set above in the Explanatory Memorandum.

2.- Its execution is subject to the Judge of penitentiary surveillance, not to the Judge or sentencing Court, as it was before, being considered within the execution of the penalty itself in the field of the Judge of penitentiary surveillance.

3.- In the event that the convict should fail to work due to a justified cause, there shall be no pay that day in the liquidation of the conviction without further action added, but, of course, whenever it was warranted according to the Judge of penitentiary surveillance.

2.1.7.- Article 57: prohibitions to be imposed on sentences

Former provisions of the Criminal Code which is repealed	*Current wording included in the Criminal Code*
The Judges or Courts, in the crimes of homicide, abortion, injuries, against freedom, torture and crimes against personal integrity, sexual freedom and indemnity, privacy, the right to self-image and the inviolability of the home, honour, heritage and socio-economic order, depending on the gravity of the facts or the danger that the offender represents, may establish in their judgments, within the time period that they indicate, which in no case will exceed five years, to impose one or more of the following prohibitions: a) To approach to the victim, or relatives or other persons identified by the Judge or Court. b) To communicate with the victim, or relatives or other persons identified by the Judge or Court. c) To return to the place where the crime was committed or to go where the victim or her family resides, if they are different. The prohibitions set forth in this Article may also be imposed, for a period not exceeding six months, on the grounds of committing offences against persons as provided under articles 617 and 620 of this Code.	The Judges or Courts, in the crimes of homicide, abortion, injuries, against freedom, torture and crimes against personal integrity, sexual freedom and indemnity, privacy, the right to self-image and the inviolability of the home, honour, heritage and socio-economic order, depending on the gravity of the facts or the danger that the offender represents, may agree in their judgments **to impose one or more prohibitions as set forth in article 48, for a period not exceeding ten years if the crime was serious or five if it were less severe.** **Notwithstanding the foregoing, if the person convicted was sentenced to imprisonment and the Judge or Court agreed to the imposition of one or more of these bans, these will last from one to ten years more than the term of imprisonment imposed on the sentence if the crime was serious, and from one to five years more, if it was less severe. In this case, both the imprisonment and the prohibitions mentioned above will be necessarily accomplished by the offender in a simultaneous manner.** **2.For the cases of crimes mentioned in the first paragraph of the first section of this article, committed against the person who is or was the spouse, or against the person who is or has been linked to the person convicted by a similar emotional relationship even without cohabitation, or against descendants, ascendants, brothers or sisters, either by nature, adoption or marriage, whether their own or those of the spouse or person living with the offender, or against minors or persons considered as legally unfit person who are subject to the parental authority, guardianship, curatorship, care, foster care or custody of fact of the spouse or cohabitant, or person linked by any other relationship but also integrates core of the family life, or also crimes against those who, because of their particular vulnerability, are under the authority or care of public or private centres, in all these cases, the application of the penalty provided in section two of article 48 will be imposed for a period not exceeding ten years if the crime was serious or five if it was less severe, without prejudice to the second paragraph the previous section.** **3. Prohibitions in article 48 may also be imposed for a period not exceeding six months on the grounds of committing crimes against the persons referred to in articles 617 and 620.** **END OF ARTICLE 57**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- The previous regulations stated the limitation of the prohibitions mentioned for a period of five years, whereas with this reform, these prohibition measures may be imposed for a period not exceeding ten years if the crime was serious or five if it was less severe.

2.- A second paragraph is included in this article, which is a novelty because if the Judge imposes imprisonment on the sentence and one or more of the prohibitions in art. 48 of the Criminal Code, this ban will be established for a period which will not be longer than that corresponding to the imprisonment. This rise in the length of the prohibition measure above the imprisonment sentence will be, according to the Judge, for periods of 1 to 10 years if the crime was serious and from 1 to 5 if it was less severe.

This is to ensure that after completion of the imprisonment sentence, the offender has some post-banning measures that prevent, for example, from approaching the victim, among others. At the same time, it establishes the simultaneous implementation of custodial sentences and prohibition measures in order to avoid that, during a permission to leave the prison, the offender can approach the victim.

3.- The 2nd section of art. 57 of the Criminal Code includes the obligation to order the measure provided in art. 48.2 of the Criminal Code (the prohibition of approximation) in the case of passive subjects referred to in art., 173.2 of the Criminal Code. This measure is mandatory in these cases and not discretional as for the Judge, given that it uses the term "in all these cases". The term shall not exceed 10 years in the case of a serious crime and five if it is less severe.

4.- The option to include prohibition measures in the ruling as those in art. 48 is maintained in cases of crimes against the persons specified in arts.617 and 620 for a period not exceeding 6 months. However, in cases of domestic violence only the reference to art. 620 2. would be affected. This punishes those that cause another person a threat, coercion, insults or unfair or mild harassment since they constitute the crime in art. 153; those cases were previously covered by arts. 617 and 620.1. of the Criminal Code.

2.1.8.- Article 83: suspension of the execution of the penalty

Former provisions of the Criminal Code which is now modified	*Current wording included in the Criminal Code*
1. The suspension of the execution of the penalty will be conditioned to the fact that the defendant will not commit other crimes within the period fixed by the Judge or Court as in art. 80 of this Code. In the event that the suspended sentence was imprisonment, the Judge or sentencing Court, if deemed necessary, may also condition to this suspension the compliance of the obligations or duties that may be set from the following: 1st) Prohibition to go to certain places. 1st bis) Prohibition to approach the victim or those relatives or other persons identified by the Judge or Court, or to communicate with them. 2nd) Prohibition to leave without authorization from the Judge or Court of the place where the offender resides. 3rd) To personally appear before the Court or tribunal, or public service as designed by them to report their activities and justify them. 4th) To participate in training programs, labour programs, cultural programs, driver education or sex education programs or the like. 5th) To perform such other duties that the Judge or Court considers appropriate for the social rehabilitation of the prisoner, subject to prior approval, unless they violate the offender's dignity as a person. 2. The relevant departments or services shall inform the Judge or sentencing Court, at least every three months on the compliance with the rules of conduct imposed.	1. The suspension of the execution of the penalty will be conditioned to the fact that the defendant will not commit other crimes within the period fixed by the Judge or Court as in art. 80 of this Code. In the event that the suspended sentence was imprisonment, the Judge or sentencing Court, if deemed necessary, may also condition to this suspension the compliance of the obligations or duties that may be set from the following: 1st Prohibition to go to certain places. **2nd** Prohibition to approach the victim or those relatives or other persons identified by the Judge or Court, or to communicate with them. 3rd Prohibition to leave without authorization from the Judge or Court of the place where the offender resides. **4th** To personally appear before the Court or tribunal, or public service as designed by them to report their activities and justify them. **5th** To participate in training programs, labour programs, cultural programs, driver education or sex education programs or the like. **6th** To perform such other duties that the Judge or Court considers appropriate for the social rehabilitation of the prisoner, subject to prior approval, unless they violate the offender's dignity as a person. **If they were crimes under articles 153 and 173.2 of this Code, the Judge or Court will condition, in all cases, the suspension of the penalty to the compliance of the obligations or duties under regulations 1st and 2nd of this section.** 2. The relevant departments or services shall inform the Judge or sentencing Court, at least every three months on the compliance with the rules of conduct imposed. **END OF ARTICLE 83**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- Organic Act 15/2003 amends section 1 of article 83 with the sole objective of replacing the wording of section bis by the ordinal subsequent number and, therefore, order the numeration which makes reference to the obligations or duties of that article.

2.- In the case of convictions for crimes of articles 153 and 173.2, it introduces the legal obligation to condition the suspension of the execution the compliance with the prohibition to appear in certain places and the prohibition to approach the victim, or those of relatives or other persons identified by the Judge or Court, or to communicate with them (rules of conduct 1st and 2nd of the same art. 83.1).

2.1.9.- Article 84: revocation of the suspension of the execution of the penalty

Precept of the Criminal Code which is kept	*Current wording included in the Criminal Code*
1. If the subject committed an offence during the period of suspension fixed, the Judge or Court shall revoke that suspension of execution of the penalty. 2. If the subject did not fulfil the obligations or duties imposed during the period of suspension, the Judge or Court may decide as appropriate and after hearing the parties: a) To replace the conduct rule imposed by a different one b) To extend the deadline for suspension provided that in no circumstances exceed five years. c) To revoke the suspension of execution of the penalty, if the breach was repeated.	**A new section, section 3, is added to article 84 with the following wording:** **3. In the cases in which the suspended penalty was that of imprisonment on the grounds of offences under articles 153 and 173.2 of this Code, the breach by the defendant of the obligations or duties set out in numbers 1 and 2 of the first section of article 83 of this Code shall determine the revocation of the suspension of the execution of the penalty."** **END OF ARTICLE 84.3**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

It expressly provides that failure to comply with one of the measures will lead to a mandatory suspension of execution of the penalty and the corollary imprisonment as stipulated in section 1 of art. 85 of the Criminal Code.

2.1.10.- Article 88: substitute penalty for imprisonment

Former provisions of the Criminal Code which is now modified	*Current wording included in the Criminal Code)*
1. Judges or Courts may replace, after hearing the parties, in the same sentence, or later in a detailed ruling, prior to beginning the execution, those imprisonment penalties not exceeding one year for weekend arrest or a fine, although the law does not provide such penalties for the crime in question, when the personal circumstances of the defendant, the nature of fact, the defendant's conduct and in particular, the effort to redress the damage so warrant, provided that they are not usual prisoners. Each week of imprisonment shall be replaced by two weekend arrests, and each day of imprisonment shall be replaced by two shares of the fine. In these cases the Judge or Court may also impose the monitoring of one or more of the obligations or duties provided for in art.83 of this Code. The Judges or Courts may exceptionally replace imprisonment sentences not exceeding two years to unusual prisoners when from the circumstances of the fact and those of the person convicted, it could be inferred the fulfilment of those could thwart the purposes as for prevention and social reintegration. In these cases, the replacement shall be conducted under the same conditions and in the same terms and conversion modules set out above. 2. The Judges or Courts may also, subject to approval of the accused, replace arrest weekend penalties by fine or work on behalf of the community. In this case, each weekend arrest will be replaced by four instalments of a fine or two days of work. 3. In the event of breach or non-fulfilment as for the whole or part of the alternative sanction, the imprisonment or weekend arrest	1. Judges or Courts may replace, after hearing the parties, in the same sentence, or later in a detailed ruling, prior to beginning the execution, those imprisonment penalties not exceeding one year for weekend arrest or a fine **or work on behalf of the community**, although the law does not provide such penalties for the crime in question, when the personal circumstances of the defendant, the nature of fact, the defendant's conduct and in particular, the effort to redress the damage so warrant, provided that they are not usual prisoners, **by substituting every day in prison for two instalments of the fine or a day or work.**. In these cases the Judge or Court may also impose the monitoring of one or more of the obligations or duties provided for in art.83 of this Code, **if they have not been established as a penalties in the sentence, for a time not exceeding the length of the penalty which is substituted.** The Judges or Courts may exceptionally replace **imprisonment sentences not exceeding two years to unusual prisoners for a fine or a fine and work on behalf of the community,** when from the circumstances of the fact and those of the person convicted, it could be inferred the fulfilment of those could thwart the purposes as for prevention and social reintegration. In these cases, the replacement shall be conducted under the same conditions and in the same terms and conversion modules set out above**, for the fine penalty.** **In the event that the defendant had been convicted of an crime under article 173.2 of the Code, the imprisonment penalty may only be replaced by work on behalf of the community. In these cases, the Judge or**

penalties initially imposed will be executed by discounting, where appropriate, the time that have been fulfilled, according to the conversion rules set out respectively in the above paragraphs. 4. Penalties which substitute other penalties may, in no case, be once again replaced.	**Court will additionally impose, apart from enrolling the defendant to specific programs of rehabilitation and psychological treatment, the monitoring of the obligations or duties provided for in numbers 1 and 2 of the first section of article 83 of this Code.** 2. In the event of breach or non-fulfilment as for the whole or part of the alternative sanction, the imprisonment or weekend arrest penalties initially imposed will be executed by discounting, where appropriate, the time that have been fulfilled, according to the conversion rules set out respectively in the above paragraphs. 3. Penalties which substitute other penalties may, in no case, be once again replaced. **END OF ARTICLE 88**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- As a result of abolishing the weekend arrest penalty with Organic Law 15/2003, those references that there was have been amended as a substitute penalties for prison penalties imposed on unusual prisoners.

2.- As alternatives to imprisonment not exceeding one year - or exceptionally two years - the fine penalty is maintained and the penalty of work on behalf of the community is also incorporated, by substituting each day in prison for two instalments of the fine or a day of work.

3.- Organic Act 15/2003 contains express provision that in case of conviction for usual domestic violence - as defined in article 173.2 of the Criminal Code - imprisonment can not be replaced by fines. It can only be replaced by work on behalf of the community and the Judge or Court shall imperatively impose two rules of conduct: first, the enrolment to specific programs of rehabilitation and psychological treatment, secondly, the prohibition to go to certain places, the prohibition to approach the victim, or those of relatives or other persons identified, as well as the prohibition to communicate with them.

2.2.- REFORMS AS FOR THE SPECIAL PART

2.2.1.- Article 153: crime of assault and battery in the domestic sphere

Former provisions of the Criminal Code which is now repealed	*Current wording included in the Criminal Code)*
Former art. 153 is now part of art. 173.2 of the Criminal Code	**"The person who in a slight way threatens another with weapons or other dangerous instruments any of the persons referred to in article 173.2, except for those referred to in the preceding section of this article shall be punished with imprisonment from three months to one year or work in the community benefits from thirty-one to eighty days, and in any case, deprivation of the right to possess and carry weapons in one to three years. Additionally, where the Judge or Court deems it appropriate in the interest of the minor or disqualified person involved, it will pronounce disqualification as for parental authority, guardianship, curatorship, or foster care up to five years."** **END OF ARTICLE 153**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- Those conducts which were considered as offences or misdemeanours in the regulation of the Criminal Code which is now repealed are now considered as crimes, when the facts mentioned before are committed against some of the people mentioned in art. 173.2 of the Criminal Code, and which were before included in art. 153.

2.- The purpose is to increase the punishment of such actions against the persons by taking into account the special circle of passive subjects and their relationship with the aggressor. Thus, the first two forms of aggression that are now considered as crimes were enacted before in art. 617.1 and 2 of the Criminal Code, which sanctioned the infliction of injuries which do not constitute a crime and the person who hits or maltreats another one.

3.- The advantage of including these types of crimes in art. 153 is contained in the actual Explanatory Memorandum of Act 11/2003 stating that "behaviours that are considered in the Criminal Code as injuries offences, when committed in the domestic sphere they will be then considered as crimes, which opens the possibility to impose imprisonment and, in any case, the penalty of deprivation of the right to possess and carry weapons. Therefore, it technically complies with the offence regulated in art 617 of the Criminal Code."

2.2.2.- Article 173.2: crime of violence on a usual basis

Former provisions of the Criminal Code which is now modified	*Current wording included in the Criminal Code)*
Former art. 153 is now part of art. 173.2 of the Criminal Code. Art. 153 ex Organic Act 11/2003 said the following: The person who usually exercises physical or mental violence against the person who is or was a spouse or person who is or has been linked to him in a steady way by a similar emotional relationship, or against one's own children or those of the spouse or partner, or against wards, ascendants or persons considered as legally unfit living with the aggressor or are subject to the parental authority, guardianship, curatorship, foster care or custody of either fact, shall be punished with imprisonment from six months to three years, without prejudice to the penalties that could correspond to the crimes or offences that would have materialized in acts of physical or psychological violence. In order to appreciate the habitually referred to above, the number of violent acts that have been accredited shall be considered, as well as their temporal proximity, regardless of whether such violence has been exercised on the same or different victims, of those referred to in this article, and of whether those violent acts have already been prosecuted or not."	1. The person who inflicts a degrading treatment to someone and seriously undermines that person's moral integrity will be punished with imprisonment from six months to two years. **2.** The person who usually exercises physical or mental violence against the person who is or was a spouse or person who is or has been linked to him in a steady way by a similar emotional relationship**, even without cohabitation, or against descendants, ascendants, brothers or sisters, either by nature, adoption or affinity, whether their own or those of the spouse or person living with the offender, or against minors or persons considered as legally unfit persons** who are living with the offender or subject to the offender's parental authority, guardianship, curatorship, care, foster care or custody of fact of **the spouse or cohabitant, or against a person linked by any other relationship but who also integrates the core of the family life, as well as violence against those who, because of their particular vulnerability, are under the authority or care of public or private centres, will be punished with imprisonment from six months to three years, deprivation of the right to possess and carry weapons from two to five years, and, where appropriate, when the Judge or Court deems appropriate to the interests of the minor or persons considered as legally unfit person, the disqualification for the exercise of parental authority, guardianship, curatorship, care, foster care for a period of one to five years,** without prejudice to the penalties that could correspond to the crimes or offences that would have materialized in acts of physical or psychological violence.

	Penalties will be imposed at the upper half when one or more of the violent actions were perpetrated in the presence of children, or using weapons, or taking place in the shared home or the home of the victim, or by breaking a penalty of those referred to in article 48 of this Code or a precautionary measure, a security measure or a prohibition or of the same nature. **3.** In order to appreciate the habitually referred to in the preceding **section**, the number of violent acts that have been accredited shall be considered, as well as their temporal proximity, regardless of whether such violence has been exercised on the same or different victims, of those referred to in this article, and of whether those violent acts have already been prosecuted or not." **END OF ARTICLE 173**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- The plan to combat crime - presented by the Government on 12 September 2002 - provided for a series of actions including legislative measures, by making special emphasis on measures to enhance public safety, combat domestic violence and promote social integration of foreigners. Organic Act 11/2003, of 29 September was issued in pursuance of this plan and entered into force on 1 October 2003.

2.- With regard to domestic violence crimes committed in an usual basis, the Explanatory Memorandum of Organic Act11/2003 highlights the objective to achieve better systematic, by removing it from the Title III of the Criminal Code - dedicated to Injuries- to Title VII dealing with "Tortures and other crimes against the person's moral integrity", and moving to integrate number 2 of art. 173, in order to identify the legal right protected by the criminal type in a more properly way.

3.- Along with the marriage relationship, present or past, new art. 173.2 introduces the variable that "similar emotional relationship even without cohabitation" as a link between the active and the passive subject that permits to apply the crime of violence on a usual basis. This extension wants to accommodate the attacks by those who have or

have had an emotional relationship without having lived together, because "reality shows that in many cases the conduct described occurs very often in relationships that have never lived together" according to amendment number 177 as presented by the Socialist Parliamentary Group and number 143 presented by the Catalan Parliamentary Group.

4.- The new art. 173.2 extends the circle of potential victims or passive subjects, following the report of the State Chief Prosecutor and the General Council of Judicial Power, in the sense of including to the following people:

- 4.1. Descendants of the active subject -in addition to children, who were already included in the previous legislation-, or those of the spouse or partner, ascendants of the active subject and also those of the spouse or partner; and brothers or sisters by nature, adoption or affinity, provided that these relatives are part of the core of the family life.

- 4.2. Persons covered by any other relationship which is built into the core of their family life. Cohabitation is required even though there are no parental bonds as mentioned above.

- 4.3. Persons who due to their special vulnerability are under the custody or care of public or private centres. This is to protect particularly vulnerable victims, minors, persons considered as legally unfit or elderly living in nursing homes on a regular or permanent -not interim- as if that was their home and where they may have a position of weakness against stronger people.

5.- The reform introduces the deprivation of the right to possess and carry weapons from two to five years as a mandatory additional penalty.

6.- The reform introduces as a facultative penalty, by considering the best interests of the minor or persons considered as legally unfit, the special disqualification of custody, guardianship, curatorship, foster care or care.

7.- As aggravated actions -with penalties in their upper half- it says the following:

- 7.1. When one or more of the violent actions have been perpetrated in the presence of minors.

- 7.2. When using weapons.

- 7.3. When carried out in violation of a penalty of those referred to in article 48 of this Code or a precautionary measure, security measure or prohibition of the same nature. In these cases, it makes reference to cases of a breach of penalties and protective precautionary measures.

2.2.3.- Article 468: crime of breach of conviction or measure

Former provisions of the Criminal Code which is repealed	*Current writing included in the Criminal Code*
Those who materially break their conviction, security measure, imprisonment, precautionary measure, conduction or custody, shall be punished with imprisonment from six months to a year if they were deprived of their liberty, and a fine of twelve to twenty four months in the other cases.	**1 Those who materially break their conviction, security measure, imprisonment, precautionary measure, conduction or custody, shall be punished with imprisonment from six months to a year if they were deprived of their liberty, and a fine of twelve to twenty four months in the other cases.** **2.For the other cases, a fine of twelve to twenty four months will be imposed except where the prohibitions unaccomplished are those referred to in section two of article 57 of this Code, in which case the penalties which may be imposed are that of prison from three months to one year or that of work on behalf of the community from ninety to one hundred and eighty days.** **END OF ARTICLE 468**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.-The previous text of this article sanctioned with a fine of 12 to 24 months the any breach of conviction, security measure, precautionary measure, conduction or custody when the author of the breach was not in a prison, a circumstance that had led to unfair situations which sanctioned with a fine breaches of prohibition measures as those in art. 48 and 57 of the Criminal Code, as an example.

2.- In cases of breach of the prohibition measures of art. 57.2 in relation to art. 48, the penalty to be imposed shall be imprisonment from three months to one year or that of work on behalf of the community from ninety to one hundred and eighty days, when the author was deprived of liberty. If they were not, imprisonment would only be applied in cases of breach of the prohibition measures under art. 48 in relation to art. 57.2 of the Criminal Code.

3.- In cases on non-fulfilment of measures depriving to live or go to certain places, or the prohibition to approach or communicate with the victim or relatives as well as the individuals designated by the Judge, custodial sentence may be imposed even if the offender was free but it was a case of domestic violence case. It is interesting to point out, however, that if such bans were taken in cases other than those on any of the persons in the art. 173.2 of the Criminal Code, the punishment would be to impose a fine of 12 to 24 months, since section 2 of art. 57 referred to in section 2nd of art. 468 of the Criminal Code is limited to the facts related to the commission of any criminal types in art. 57.1 of the Criminal Code when the victim was one of the persons in art. 173.2 of the Criminal Code.

4.- In the case of breach of the above measures as for approaching, living or communicating when taken as precautionary measures, prison (as stated above) can not be applied since art. 57.2 refers to penalties, not to precautionary measures. The literal wording of art. 468.2 of the Criminal Code does not allow prison on the grounds of breach of the restraining order taken as precautionary measure as in art. 544 bis LECRIM within the system, for example, of the Order of Protection approved by Act 27/2003 of 31st July.

2.2.4.- Article 617: offence on the grounds of abuse

Former provisions of the Criminal Code which is now repealed	***Current wording included in the Criminal Code)***

1. The person who, by any means or process causes another person an injury or offence defined in this Code shall be punished with arrest from three to six weekends or with a fine of one to two months. 2. The person who hit or maltreat another person without causing injury will be punished with arrest from one to three weekends or with a fine of ten to thirty days. When the injured party is one of the persons referred to in article 153, the penalty will be the arrest of three to six weekends or a fine of one to two months, taking into account the possible economic impact that the sentence could have on the victim or on all members of the family unit.	"1 The person who, by any means or process causes another person an injury or offence defined in this Code shall be punished with the penalty of permanent location from six to twelve days or with a fine from one to two months. 2. The person who hit or maltreat another person without causing injury will be punished with **the penalty of permanent location** from two to six days or with a fine from ten to thirty days." **END OF ARTICLE 617**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- The same conduct which is punished as an offence in this art. 617 of the Criminal Code has been remitted to art. 153 of the Criminal Code when the passive subject is one of the persons in art. 173.2 of the Criminal Code.

2.- It is the only case of the Criminal Code in which the fact is configured as an offence or misdemeanour not in response to the action itself, but to the passive subject who receives the attack.

2.2.5.- Article 620: offence as for threats, coerione, injuries or unfair humiliation

Former provisions of the Criminal Code which is now modified	*Current wording included in the Criminal Code)*
The following shall be punished by a fine of ten to twenty days: 1st) Those who slightly threaten another person with weapons or other dangerous instruments, or who throw others out into an argument, unless it is on just defence, and unless the action constitutes a criminal offence. 2nd) Those who slightly threat, coerce, insult or unfairly harass someone else. The facts described in the previous two numbers will only be prosecuted if the person	The following shall be punished by a fine of ten to twenty days: 1st) Those who slightly threaten another person with weapons or other dangerous instruments, or who throw others out into an argument, unless it is on just defence, and unless the action constitutes a criminal offence. 2nd) Those who slightly threat, coerce, insult or unfairly harass someone else. The facts described in the previous two numbers will only be prosecuted if the person offended or his/her legal representative makes a formal

offended or his/her legal representative makes a formal complaint.	complaint. **In the cases of the second section of this article, if the injured party is one of the persons referred to in article 173.2, the penalty will be that of the permanent location from four to eight days, always in a different home and away from the victim, or alternatively, work on behalf of the community from five to ten days.** **In these cases the complaint referred to above is not required, except when those injuries are to be prosecuted.** **END OF ARTICLE 620**

ISSUES TO HIGHLIGHT AS FOR THE NEW REGULATION OF PROVISIONS

1.- Article 620 is the only remainder as for domestic violence offences. After Organic Act 15/2003, possible domestic violence offences refer to threats without a weapon or dangerous instrument, coercions, insults or unfairly harassments in a mild way to some of the persons referred to in art. 173.2. The exception to prosecute minor injuries ex officio is maintained, which requires making a complaint the person offended or that person's legal representative.

2.- The penalty of weekend arrest is replaced by the penalty of permanent placement from 4 to 8 days. For domestic violence cases -those where the victim is one of the persons referred to in art. 173.2 of the Criminal Code- the penalty of the permanent location is to be served in a different home and away from the victim. The aim is to avoid the effects of the former house arrest, where the person convicted could serve the sentence of deprivation of liberty at home, with the family and with the victim.

3.- The penalty of fine is suppressed and the penalty work on behalf of the community from 5 to 10 days is introduced instead as an alternative to the penalty of permanent location.