

ACTION PROTOCOL OF SECURITY AND COORDINATION BODIES AND FORCES WITH JUDICIARY ORGANISMS FOR THE PROTECTION OF VICTIMS OF DOMESTIC AND GENDER-BASED VIOLENCE

(Approved by the Technical Committee of the Judiciary Police's National Coordination Commission on June 28, 2005, after adapting the previous protocol to the modifications of the LO 1/2004 on the Provisions of the Integral Protection against Gender-Based Violence)



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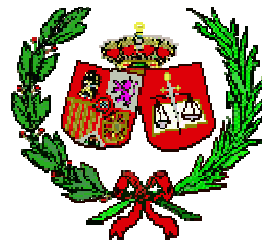
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INTRODUCTION.-

The Organic Law 1/2004 of December 28, concerning the Integral Protective Measures against Gender-based Violence contemplates in article 31 and article 3 and referring to Security Forces and Bodies that will take into consideration the *Action Protocol of Coordination and Security Bodies and Forces with Judiciary Organisms for the protection of victims of domestic and gender-based violence.*

The Monitoring Commission approved this protocol for the Implementation of the Protection Order on June 10, 2004 and by the Judiciary Police National Coordination Commission on September 27, 2004.

The Technical Commission formed by the National Commission for the Implementation of the Courts on Violence Against Women¹, has worked on the adequacy of this Protocol to the context of the Organic Law (referred to by Integral Law). The text was approved by the aforementioned National Commission and by the Judiciary Police National Coordination Commission on June 8th and June 28th 2005, respectively.

¹ ***The National Commission for the Implementation of the Courts on Violence Against Women is formed by the following institutions and bodies: Ministry of Justice, Ministry of Interior, General Council for the Judiciary Power, Attorney Generals' Office, the relevant Ministries of the Autonomous Community of Galicia, the Basque Country, Autonomous Community of Andalucía, Catalonia Autonomous Community, Autonomous Community of Valencia, Government of the Canary Islands, Government of Navarra, Autonomous Community of Madrid, General Council for the Practice of Law, and the General Council of Attorneys.***

I.- ACTION OF SECURITY BODIES AND FORCES FOR THE PROTECTION OF VICTIMS OF DOMESTIC AND GENDER-BASED VIOLENCE

Aiming at providing preferential assistance and protection to women subjected to violent behavior within the familial sphere, and to attenuate to the fullest degree the effects of such mistreatment, the presence of specialized officials will be potentiated in all the Units of the Security Forces and Bodies. These officials will be trained and skilled in domestic and gender-based violence and specifically capacitated in risk-assessment tools and indicators.

I.A.- ACTION IN THE PHASE OF POLICE INVESTIGATION

As soon as the Security Forces and Bodies have information of a possible case constituting an infraction on subjects of domestic and gender-based violence, the Security Forces and Bodies will execute the following actions:

1.- Due to its relevance for the establishment of judicial and law enforcement measures that should be adopted in each case, and for the order of priorities to be assigned for the monitoring of such measures, inquiries will be conducted to determine the existence and the intensity of the victim being at risk, and more concretely:

- The victim will be informed of her rights to legal aid under the terms detailed in appendix 1 of this protocol.
- If there are witnesses and victims, then the next course of action is to take their testimonies and statements.
- Testimonies will be gathered urgently on mistreatments by the alleged aggressor, and on his personality and possible addictions if there is evidence of a previous penal infraction. These testimonies should be gathered from neighbors, family acquaintances, from the laboral, social services and educational spheres and from offices for victims' assistance.

- Also previous police interventions and reports in relation to the victim or the alleged aggressor, also on his background and possible aggression reports issued by any medical services.
- In relation to the persons involved, previous protective measures enacted by the Judicial Authority will be checked. In this sense and in all cases, the police will proceed to consult the data available in the Central Registry for the Protection of Domestic Violence Victims.
- Mechanisms will be established to allow fluid and permanent communication between the victims and the correspondent Security Force or Body in order to immediately provide the necessary data for an around-the-clock risk-assessment evaluation. According to the resources available, the following should be considered in order to provide the aforementioned services:
 - Such a task will be assigned to specialized personnel trained in the assistance and protection of victims of domestic violence. A contact number will be given to the victim for permanent and direct communication with the officials assigned for individualized attention.
 - If necessary, technical tools and mechanisms will be facilitated that will allow for fluid, fast and permanent communication with the appropriate security force or body.

2.- Once the facts and the existing risk are assessed, the advisability of adopting specific measures directed at the preservation of life, physical integrity and the rights and legitimate interests of the victims and her family, among other things:

- Personal protection that, according to the risk level occurred could include permanent protection for 24 hours a day.
- Information/formation on the adoption of self-protection measures.
- To assure that the victim is informed in a clear and easy way about the content, procedures and effects of an order of protection and other measures

of protection and security envisaged in the Integral Law; i.e., the social services, victims attention offices, and the coordination points at your disposition.

- In the case the victim is an undocumented illegal alien, information will be provided about the right to regularize her immigration status for humanitarian reasons, according to the terms stipulated in articles 45.4 a and 46.3 of the Immigration Law.

3.- The security bodies and forces shall also proceed to confiscate weapons and/or dangerous tools that could be found in the family house or in possession by the aggressor.

4.- When the magnitude of the crime and/or the risk deems necessary, the aggressor will be detained and put into legal disposition.

I.B.- TO FILE THE REPORT AND TO GATHER THE TESTIMONIAL.

All Security Forces and Bodies will gather in the testimonies, the proceedings and minimum contents annexed in the present Protocol that will be delivered to the Judiciary Police Coordination Technical Committee for its approval. Once approved, the document will be furnished to the judicial organisms, the Attorney Generals' Ministry and other organisms and institutions represented within the National Commission for the Implementation of the Courts on Domestic Violence Against Women.

The testimonies will reflect the amount of existing background data and references to any type of abuse and mistreatments by the alleged aggressor, obtained as a result of the investigations, as explained in the epigraph I.A in this Protocol.

The inspection and the victims' declaration will be documented, whenever possible, by taking pictures or through other media resources (video, etc.) that would

enable the Judiciary Authority greater expediency in the evaluation of the concurrent incident and circumstances.

The Unit of the Security Forces and Bodies in charge of taking the testimony as a result of the penal infraction in matters of domestic violence, or whether requested by the Protection Order, will adopt the necessary measures in order to safeguard the access to the competent Judicial Authority (Courts on Violence against Women, Magistrate's Court, etc.) of the victims, her legal representative, of the applicant, of the accused or alleged aggressor and of the possible witnesses.

Therefore, during the testimonial's transmittal, data will be compiled that might possibly lead to the identification, localization and control of the alleged aggressor (friendships, telephone numbers, home, workplace, vehicles, pictures, videos, etc.) in such a way that his testimony would be included as part of the prosecution that will guarantee the further summons before the judicial body.

The Police Unit will prepare all necessary arrangements to avoid concurrence within the same room of both the aggressor and the victim, as well as her children and family members.

In all cases, the Judicial Police's action will take into account the criteria established by the Judicial Police's National Coordination Commission.

I.C.- ACTION IN THE CONTROL AND MONITORING OF THE JUDICIARY MEASURES OF PROTECTION AND SAFETY.

Once the Judicial Body receives the communication of the resolution, the operative unit responsible for monitoring and controlling the agreed measures, will attain to the following criteria:

1.- An individualized test of existing risks should be undertaken in order to calibrate the applicable measures to the different situations that could emerge. To assess a diagnosis and the motivation of the objective risky situation, the data and the background check gathered during the investigation and preparation of testimonies

will be taken into account. Also the ones furnished by the judicial authority (see the epigraph III.D, articles 2 and 3 of the present protocol) and the ones that could be furnished by the social services, Attention Offices for Victims or the assigned Coordination Point.

2.- A content analysis of the judicial resolution will be required. In order to determine what elements could contribute to enhance the victim's safety, it is indispensable to know the exact content of the judicial resolutions' dispositions (number of meters or spatial sphere of the proximity prohibition, adequate technological tools to verify the accomplishment....)

3.- To adopt adequate protective measures according to the risk or threat and should concur with a concrete action. For example, 24 hours police custody, electronic surveillance for the accused, to assign cellular phones, partial police surveillance, etc. Therefore, the following considerations should be taken into account:

- The victim cannot use the order of protection in an accommodating manner.
- The police control enacted by the order of protection or restraining order will be directed towards the aggressor to the fullest extent

4.- Monitoring reports should be prepared upon request by the judicial body for deliver to the relevant judicial authority or whenever is needed by the Security Forces and Bodies.

5.- In the case of restoration of coexistence, change of residence, or victims withdrawal from the order of protection, the Security Forces and Bodies will notify the judicial body of such changes in order to proceed to adopt measures deemed appropriate.

II.- EFFECTIVE ACCOMPLISHMENT OF RESTRAINING ORDERS.

Understanding the importance of restraining orders for the efficacy of protection systems for victims, conditions will be established to guarantee its accomplishment.

II.A.- SPATIAL AND TEMPORAL RANGES OF RESTRAINING ORDERS.

When the judicial body determines the concrete content of the restraining order as referred in articles 57 CP (penalty), 105.1 g) CP (safety measures), 83.1,1° and 1 °bis CP (conditions for the suspension of penalty), 93 CP (rules of conduct to maintain the conditional freedom), 544 bis LECR (restraining orders or protecting measures for the victim) and 64LO 1/2004 (measures of exit of residence, restraint or suspension of communication) the establishment of a considerable spatial range is suitable in order to enable quick police responses and avoid even visual contact between victim and the accused. Therefore the subpoena will determine the distance, the date of enactment and the end of the restraining order. It is advised to keep a distance of at least 500 meters.

II.B.- DETENTION OF THE RESPONSIBLE PERSON BY SECURITY FORCES AND BODIES.

The risky situation worsens for the victim when there is an intentional breach of the restraining order by the accused person, in which case the immediate detention of the offender will be sought, as well as in the cases of the article 468 CP, as in the assumptions envisaged by the articles 153.3 CP (injury, to batter or threat with a weapon or hazardous tools in breach of the restraint), 173.2, paragraph 2° CP (crime of usual violence in breach of the restraint), 171.4 and 5 CP (crime of lesser threats in breach of the restraining order) and 172.2 CP (crime of lesser coercion in breach of the restraining order). Subsequently, the detainee will be put into judicial disposition urgently, accompanied with his corresponding testimony. This proceeding will be reported to the Public Prosecutor.

II.C.- APPEARANCE IN COURT DUE TO BREACH OF RESTRAINING ORDER.

When the detainee is put in front of the relevant Judge (Courts on Violence Against Women or Judge on Duty), the Judge will call for the required controlled appearance of the accused person according to the 505 LECR for the application of the temporary incarceration according to the article 503 or of other temporary measure that requires for a greater restraint of the accused person, for which the nature of the breach, the reasons, circumstances and gravity will be taken into account without perjury of the responsibilities emanating from the breach.

With the enactment of an order of protection should be taken into account the content of the hearing for the application of the Order as required by the article 544 ter LECR (article 544ter.4.2° LECR). On the other hand, in the procedural understanding for “expedite hearing due to offense” (Title III from Book IV LECR), the aforementioned hearing, whenever possible, will coincide with the hearing of the article 798 LECR, in case there is a request for an Order of Protection (articles 501.2,2° and 544ter, 4,2° LECR).

For Court appearances, the following will be summoned: the accused person that shall be assisted by an assigned public defender or by one chosen by him, and the Public Prosecutor’s Office to the other attending counterparts. When the Court is in session for an Order of Protection hearing, the victim and her attorney and the person requesting the Order if different from the victim, will also be summoned.

II.D.- POSSIBLE ADOPTION OF TEMPORARY IMPRISONMENT OR OTHER PROTECTIVE MEASURES FOR THE VICTIM.

Once the Court appearance is held, and if the case fulfills all legal requirements, the judicial body could adopt the following measures:

- Temporary imprisonment. In conformity with the content of the article 503.1,3° c LECR in relation to the article 544 bis LECR last paragraph (according to the understanding of both precepts as given by the Organic Law of 13/2003 of

October 24), the infringement of the restraining order will entirely shape the imposition of temporary imprisonment.

- Other preventive or protective measures, included those envisaged in the articles 48 CP and 544 bis LECR goes in detriment of the freedom of movement and circulation of the accused person (article 64 LO 1.2004).

Before holding the hearing as stipulated by the article 505, it will be required of the Public Defender or of the accused person to do a request in order to agree whether to impose temporary imprisonment or temporary freedom bail. Any other preventive measure could be adopted by the Judiciary Authority on duty or by counterpart's request.

III.- COMMUNICATION BETWEEN JUDICIARY ORGANISMS AND SECURITY BODIES AND FORCES.

The communication between the relevant Administrative Bodies of the Department of Justice and the Security Forces and Bodies will be possible through the establishment of an agile information exchange system that will be in charge of the urgent notification of incidents that could alter the victims' security and that will be based on the following detailed principles:

III.A.- OPTIMIZATION OF THE WORKINGS OF THE CENTRAL REGISTRY FOR THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE.

Necessary mechanisms will be put in place for the optimization of the operation of the Central Registry for the Protection of Victims of Domestic Violence, considered by the Law 27/2003, of July 31st, in reference to the Order of Protection, and regulated by the Royal Decree 355/2004, of March 5th:

- Fact checking and docketing by the judiciary bodies through information and communication technologies (ICT's) regulated in the Royal Decree 355/2004 of March 5th and in the ICT's administrative dispositions in order to guarantee

the fast and safe transmission of all information that the judiciary authorities should communicate to the Central Registry, safeguarding the confidentiality of personal data or information under the regulations stipulated by the applicable legislation.

- To expedite the registration in the Central Registry and the access to its content by the Judiciary Police according to the Royal Decree 355/2004.

III.B.- INFORMATION AND COMMUNICATION TECHNOLOGY'S CONNECTION BETWEEN SECURITY FORCES AND BODIES.

An information exchange system will be explored for the documentation sharing between penal judiciary bodies and Security Forces and Bodies:

- The information exchange system will be installed in a safe environment that would guarantee confidentiality of information sharing.
- The connection between the Justice Administration and the Security Forces network will be established through the "Judicial Neutral Point" set within the General Council of the Judiciary Power. The connections and installations settled within the jurisdiction of the Autonomous Community would be made through the connection points authorized by each Justice Administration and with the electronic communication networks available.
- The Justice Administration will proceed to develop and implement all information applications necessary within the framework of agreed guidelines, coordinated and enacted by the Monitoring Commission, all in conformity with the dispositions of article 230.5, 2º LOPJ.

Until the electronic communications network for document sharing is fully developed, the remittance of documents will be enhanced by faxing the resources as well as sent through conventional means.

III.C.- SECURITY FORCES AND BODIES' COMMUNICATION WITH JUDICIARY BODIES.

The judicial claim in matters of domestic and gender-based violence or request of restraining or security order delivered to the police precinct shall be remitted and sent without delay by any expedited means, including the information and communication technologies, to the relevant Judicial Authority accompanied by the testimony filed as part of the police report. The police report should be processed through conventional means, or by any other established for "expedited trials".

For these purposes, the Judicial Police will take into account the dispositions in articles 40 and 47 of the Guidelines 5/1995 of June 7th, about the accessorial aspects of judiciary protocols, modifications by the Guidelines Agreement 1/2005 of the General Council of Judicial Power's plenary, referred as to respectively, to the correspondent functions corresponding to the Duty Court in substitution of the Examining Magistrates' Court and of the Violence Against Women Court (article 40) and the criteria to schedule the summons, on the grounds of "expedited trials" (article 47). ***Annexed II.***

As general understanding, when the issue is about events related to gender-based violence, the judicial police will remit the testimonies and the requests for orders of protection and other preventive measures to the relevant Court on Violence against Women (measures like protection of the victims' residence and turning the detainee over to the police). The judicial police will also schedule citations for both parties to appear before the Court.

Nonetheless, if both parties cannot appear before a Court in session within the adequate jurisdiction, the detainee will be turned over to the Court on Duty in order to regularize his personal status.

As in the case described in the latter, the requests for orders of protection and other preventive measures will be remitted to the Court on Duty with jurisdiction over the incident, notwithstanding when the request is placed in a different location from the location of the incident the case will be remitted to the Court on Duty with

jurisdiction over the location of the incident, taking into consideration the urgency of the case. Both parts will be summoned to appear before the Court in order to hold the hearing according to the article 544 ter of the Criminal Prosecution Law. Simultaneously, both parties will be summoned to the Court of Violence against Women on the grounds of expedited trial or immediate infringement, non-applicable only in cases where both parties cannot attend the hearing before the relevant Court due to geographical limitations or of other kind.

The summons referred in the article 796 LECrim, before the Courts on Violence against Women, will take into consideration the envisaged item in the new article 47 from the Guidelines of Accessorial Aspects.

If the circumstances of the inquiry do not allow the expedited delivery of all testimonies to the Judicial Authority due to the absence of procedural considerations, and to the urgency of the case as to the victims condition as well, then is required the adoption of urgent measures to press the charges and the Order of Protection attached to the testimonies and report gathered, finishing the report with the required procedures.

The Judicial Police will keep the Public's Defender Office, the Judicial Authority and the Office for the Attention of Victims permanently informed about the incidents they might have knowledge of and that could affect the content or extent of the restraining measures adopted, specifically those stressed in the epigraph I.C. item 5 of the present Protocol.

III.D.- COMMUNICATION BETWEEN JUDICIAL BODIES AND SECURITY FORCES AND BODIES.

1.- Court resolutions

The Judicial Authority will inform about the resolution of the Court to relevant Security Forces and Bodies within a jurisdiction or according to the case, to the

designated checkpoints in each territory, those resolutions decreeing an order of protection, preventive measures and other actions for the victims security, also their modification and gathering stipulated during the preliminary investigation, those intermediate in infringement proceedings, as for those kept in the sentence or at the time of adjudication or ruling during the processing of future appeals. (Article 69 Integral Law)

On the other hand, the effective compliance of the order contained in the articles 5.1,2° and 6.2,2° of the Royal Decree 355/2004 of March 5th will be guaranteed by the judicial bodies, by which the Central Registry for the Protection of Victims of Domestic Violence is regulated: a copy of the judicial order to the Judiciary Police of the sentence (penalty or security measure imposed in definitive ruling) and of the protective measures, orders of protection, and security and protective measures passed by the Court. To that effect, the models annexed in the Royal Decree 355/2004 will be used, as well as the communications and information exchange system for resource sharing as mentioned in the epigraph III.B of the present Protocol. Likewise, in order to communicate immediately to the Judiciary Police of any modification of the precautionary measures, or of the stipulated protection and security measures, the judicial bodies will also send a notification of current modifications.

2.- Reports

In order to facilitate the individualized tests of the threat experienced by the victim the judicial body will also remit to all geographically relevant Security Forces and Bodies a copy of the existing social, psychological or background reports of the victim, the accused or the family.

In this regard:

- The judicial body could entrust the Forensic Team a draft of a report on the concurrence of risk-based indicators taking into consideration trends in the victims' life, in the accused life, in the incident basis for the report and on the psycho- social circumstances of the family. For these purposes, the Authorities with jurisdiction over Justice Administration' personnel and services matters should proceed to approve the corresponding Protocols.

- Likewise, the judicial body, if deemed appropriate, will order the drafting of reports by social workers and psychologists working for the Office of Attention to Victims, Social Psychology Teams and other entities that would offer services to the Justice Authority.

3.- Background check

Even if the Judiciary has ruled in the case or the status of the case, the Judicial Authority will inform security forces and bodies of the existence of other opened criminal investigations against the accused. Also the Authority will include data available in the Registry, placed there according to the GPJ' 3/2003 Guidelines of April 9th about domestic violence criminal distribution and on-line registry.

4.- Other data sharing

The Judiciary will always inform the relevant Security Bodies and Forces and the Attorney General's Office about any incidents that might hinder the safety of the victim.

In any case, the Judiciary will inform the police of the Courts' resolution, enabling the order of protection or restraining order in order to notify the accused of such Court resolution.

5.- Reception of communications

The Judiciary will remit the communications referred in items 1, 2, 3 and 4 of the present epigraph to Security Forces and Bodies in jurisdiction, or according to the case, to the assigned checkpoints within a given territorial jurisdiction.

The police unit receiving the communication will forward it without delay to the corresponding Security Forces and Bodies unit relevant in domestic violence issues (Police National Body-SAM, UPAP—Civil Police-EMUME-Autonomous Police or Local Police). Likewise, coordination mechanisms will be enacted within diverse

Security Bodies and Forces (Police National Body, Civil Police, Autonomous Police and Local Police), foreseen in current legislation and in its protocol.

The police unit that had received the communication of order of protection or restraining order from the Judiciary, as well as its report and corresponding changes, will shall proceed to enter this data, as soon as possible, into the National Database of Warrants (Base de Datos de Señalamientos Nacionales-BDSN).

IV.- ROLE OF THE JUDICIARY

When appropriate, the Judiciary will certify the well-being of the victim of gender-based violence as set forth by articles 23, 26 and 27 of the LO 1/2004; and the body will act according to the Guidelines 2/2005 of the States' Judiciary.

The prosecutors in compliance with the victims' tuitive procedure bestowed upon them by current legislation, and in conformity with guidelines enacted by the States' Judiciary on this matter, will guarantee that the victims of gender-based violence or domestic violence are informed in a clear and transparent manner. The information provided should include the duty of notifying the procedures in articles 109 and 110 LECrim, the measures enacted in the Law 35/1995, if applicable, and the measures in LO 1/2004 on the victims' protection and security, and the existence of the telephone assistance program when the case is about a victim of gender-based violence.

The Prosecutor, through its bodies will keep the institutional communication with judicial, police, sanitary and victims' assistance institutions, as well as with bar associations, in order to facilitate an effective cooperation when responding to cases of domestic or gender-based violence.

The prosecutor on duty in the Court of Violence against Women will be in charge at the state level of coordinating and supervising the proceedings of the Sections against Violence against Women of the different District Attorneys in matters of domestic and gender-based violence, requiring the States' Public Prosecutor the emission of the suitable instructions (art.18 quater Law 50/1981 added by LO 1/2004).

On territorial matters, the Sections against Violence against Women in the Tribunals of the Supreme Court and in the Provincial Courts, the supervision and coordination proceedings will be executed by the District Judiciary's Representative appointed by enacting of (art.22.6 Law 50/1981 according to draft LO 1/2004).

V.- TO CONVEY STATISTICAL DATA

Police precincts, the General Council for the Judiciary Power and the States' Public Defender are committed to draft reports periodically on the territorial repercussions of gender-based and domestic violence and will communicate with the Judiciary in order to evaluate decision-making policies in matters of geographic organization of any judicial branch or system.

The reports mentioned in the latter will also be sent to the Autonomous Communities in reference to the repercussion of domestic and gender-based violence within its jurisdictions, in order to plan, develop and execute domestic violence policies.

VI.- ACTION PROTOCOLS IN THE AUTONOMIC SPHERE

In conformity with the guidelines and the current general framework established in this Protocol, the Autonomous Communities with their own autonomous police and with legal power to establish Action Protocols within their jurisdiction for the protection of victims of domestic and gender-based violence.

ANNEX I: BASIC CONTENTS TO INCLUDE IN THE TESTIMONIES

1.- DECLARATION OF THE VICTIM

Before the beginning of testimonies, the victim will be informed of their right to request legal aid and representation and when necessary, a pro bono attorney should be provided in an expedited way. The victim also has the right to hire a private lawyer. If requested by the victim and where this service is available, the Court will provide a Court's legal aid attorney on duty 24 hours a day. The Court will provide the elements of the case and its testimonies and reports.

Accordingly, the victim will be asked for injuries inflicted by the aggressor, and in such cases:

- a) Attached to the report will be any document reporting the victims' medical assistance in a hospital or emergency room.
- b) The victim will be offered hospitalization to receive medical care, attaching the medical report to the police report
- c) Written in the report, will be the victim's decline for medical assistance and through the indicated procedure, the injuries visible. The victim will be asked if pictures could be taken for inclusion in the police report.

The victim will also be asked if she has received assistance from any social services agencies (local social services, women's care centers, offices for the attention of victims). If the victim has received any kind of social or medical assistance, the reports drafted by the social worker, and psychologists will be added to the victims' testimony as supporting documents in the victims' case. If the supporting documents/evidence is provided by the social worker or by the victim, the victim should authorize the attachment of these documents for the aforementioned purposes.

Taking into consideration the victims' emotional situation, her behaviors and mood should be considered and the victim should be allowed to express all her feelings without interruption or reservations, ensuring that the testimony is as detailed and thorough as possible.

Firstly, the victim will be asked about essential aspects of the investigation that will allow the investigator or police officer to guarantee the victims' safety and that of her children, and that will ease the capture of the aggressor.

Once the victims declaration is completed, the testimony should be completed as well having gathered as much data and information as possible. In all cases, it will be requested of the victim that they provide all supporting information without altering the due process and avoiding inadequate questions or comments for the successful completion of the police investigation.

2.- FACTS ABOUT THE VICTIM AND THE AGRESSOR

- Affiliation of the victim or battered persons
- Affiliation of the aggressor or aggressors.
- Address and telephone number.
- Family relation, relationship or of other kind between the victim and the aggressor.
- Length of coexistence
- Aggressors' trade or career.
- Aggressors' workplace.
- Aggressors' financial situation.
- Aggressors' behaviour on family responsibilities.
- Description of the aggressor's personality and temperament.
- Health (illnesses, medical treatments, etc.)
- Aggressors' addictions.
- Places most frequented by the aggressor.

- Weapons carried by the aggressor (if the person has a license or an illegal weapon, or if he carries weapons due to the nature of his work)
- If the aggressor has vehicles.
- Most recent picture of the victim or victims.
- Most recent picture of the aggressor.

3.- FACTS ABOUT THE FAMILY

- Family members, and according to the case, if the victim and the aggressor have children or not, or if they live together or not. The victim and the aggressor should provide the ages and names of all family members.
- Ongoing divorce or separation proceedings in the Court which the current case is taking place or has taken place and the decision undertaken in terms of properties owned by both parties and custody of children, in those cases that the persons involved have children together.
- The work situation of the victim.
- Victim's financial situation.
- The victims' financial dependency to the aggressor
- Work situation of other victims living with the victim of domestic or gender-based violence (ascendants and descendents)
- The situation of children living and depending on the victim, if there are any.
- Places frequented by the victim or the victims (places of employment, universities, schools, etc.)

4.- INFORMATION ABOUT HOUSING AND PERSONAL ASSETS

- Marital Agreement (income, separate property marital regime....)
- Type of family housing (homeowner, renter, etc.)
- The security system the place of residence has, if any.
- Location of the place of residence (in a community or property)
- Properties owned by the victim or the aggressor.

- Vehicles owned by the victim.
- Family or close relatives that could help the victim in any way.

5.- EVENTS

- Description of the events. The narrative about the events should be clear, concise and should follow a chronological order. The victim will be asked to narrate the events in her own words, and it should be transcribed by the official without alteration or modification in order to record the events in a forthright manner.
- Location of the incidents.
- Date or dates of the event or events.
- The aggressors' motives to commit the act.
- Type of mistreatment: physical, psychological and emotional. The abuse should be narrated in detail, avoiding generalities and generic expressions in order to recreate the kind of insults, threats and abuses experienced by the victim, to the best possible extent.
- Means used.
- Victim's health (illnesses, medical treatments, etc.)
- Other previous similar events, even if never reported to the police.
- Reports made on past events, if you remember when and before whom.
- If the victim has an order of protection
- If the incident took place in front of children.
- If another family member or person living in the home has been subjected to mistreatment by the accused. In this case, the victim should be advised of the possibility of requesting an order of protection for the other victim.
- Witnesses that could corroborate the reported incidents (family members, friends, neighbors)

6.- REQUEST OF SECURITY AND PROTECTION MEASURES.

The victim will be informed of the ability to request an Order of Protection or other restraining order or security measure, in addition to the content, transactions and repercussions of such Order. In this case, the application will be completed and will be sent to the relevant Court along with the testimony.

7.- APPEARANCE AND DECLARATION IN COURT OF THE ACCUSED

The accused person's complete background will be explained.

The filing of the declaration of the accused will aim for an exhaustive understanding of the incident in order to facilitate the police investigation and the resolution to be adopted by the Judiciary.

The victims' responses will be compared to the questions asked to the accused in order to clarify the incident under scrutiny and investigation.

8.- DECLARATION OF THE WITNESSES

The witnesses' background will be explained.

After the identification of all the witnesses present in Court, the questions will be asked with the intent to clarify the incident and confirm the declarations made by the victim and the alleged aggressor. In all cases, the following questions should be made:

- If the person witnessed the incident or (was told about the incident).
- Can she/he provide a description of the incident.
- Does she/he have knowledge of other incident(s) that have occurred at other times.

- Did the witness provide the victim with assistance at the time of any previous incidents.
- If the witness resides in the neighbor of the victim and aggressor, can the witness describe the usual behavior of victim and aggressor within the community.
- What is the relationship of the witness to both the victim and aggressor.

9.- TESTIMONY BY THE POLICE AGENTS THAT INTERVENED TO AID THE VICTIM

As part of the police report, it is indispensable to consign the individual detailed declarations of each police agent that intervened in aiding the victim with an explanation of all the actions and proceedings executed by each police agent.

At some point in the investigation the police should begin gathering the parties' testimonies and the declarations in preparation for the upcoming attendance of the victim in Court accompanied by the policemen that intervened in the incident/s under investigation (whether as part of his duty or by request of a third party). Attached at the beginning of the police testimony to be presented in Court, there should be a log and all supporting documentation gathered under the aforementioned police investigation.

10.- POLICE PROCEDURES AND VERIFICATION OF THE COMPLAINT

To draft the testimony implies undergoing all necessary procedures in order to offer an account of all actions executed by the Judicial Police and the Police Forensic Investigation Department for the inquiry and verification of the alleged incidents.

The evidence gathered after the police inspection and all the means of evidence used for the investigation of the incidents will be used as part of these proceedings.

The inspection proceedings will be documented, whenever possible with pictures or other media (video, etc) that would allow the Judiciary to obtain a clear understanding of the incidents and its surrounding circumstances.

As an integral aspect of these proceedings, a community report should be drafted for the gathering of all possible data for the inquiry on the background of these incidents. More specifically, the inquiry will be focused on victim-aggressor relationship, information about previous aggressions and the couples' reputation in the community. The sources of information should be fully identified (personal identification card will not be necessary).

11.- DETENTION PROCEEDINGS AND INFORMATION ON DETAINEE RIGHTS

When the reported person is detained, the police will execute the detention and inform the detainee of rights, only if there is enough evidence that the detainee committed a criminal act, or breached a judicial restraining order, or if the detainee represents a threat to the victim based on the situation and surrounding incident.

12.- PROCEEDING TO SEIZE WEAPONS

This proceeding will be executed when those weapons owned by the alleged aggressor are seized and handed over to the Judiciary. Secondly, the local governmental authorities will be notified if there is a need to nullify a license to bear arms. Likewise, if the alleged aggressor needs to bear arms as part of his trade, (for example he is a member of the Security Bodies and Forces) his immediate supervisor will be notified of the incidents he has been implicated in.

13.- TO PROVIDE OTHER RELEVANT BODIES AND AGENCIES WITH THE ALLEGED AGGRESSORS' BACKGROUND DATA

In this proceeding all background information on the alleged aggressor will be

gathered from Police' databases, specifically all information on incidence related to gender-based violence.

Likewise, the information available in the Judiciary's Central Registry of Domestic Violence about the victim and aggressor, and on all penal background and measures undertaken and adopted previously as consequence of an order of protection or Court's restraining order.

14.- TO FILE AND DOCKET THE MEDICAL, PSYCHOLOGICAL AND SOCIAL REPORTS.

If the victim has received medical attention, the medical report drafted on the case should be attached to the testimony.

The reports drafted by social services, centers for women's attention, offices for the attention of victims, or other local agencies that have been in charge of the social or psychological attention of the victim and have made interviews, explorations or evaluations about the victim and her social environment, should be included as part of the victims' file as delivered by the victim or by the supporting agencies.

15.- PROCEEDING FOR PRECAUTIONARY MEASURES ADOPTED FOR THE PROTECTION OF THE VICTIM

This proceeding will be undertaken in order to inform the Judiciary of the police measures adopted in a precautionary manner in order to protect the victim when there is a threat made against her, until the appropriate resolution is ruled.

In the case the victim moves from her current residence, a Court will draft a confidential notification for the Judiciary with the new contact information of the victim.

16.- PROCEEDING FOR A RISK ASSESSMENT

If the victim is experiencing greater danger from the aggressor, and taking into account the victims' testimony, the Instructor will notify the relevant agencies through a memo.

17.- PROCEEDING TO REFER THE TESTIMONY TO THE JUDICIAL BODY

18.- DOCUMENTS TO BE ATTACHED

1. Report of the doctor on the victims' injuries and/or pictures of the injuries
2. Request for an Order of Protection
3. Detention order and information on detainees' rights (if applicable)
4. Reports from the social services offices, women's attention centers or center for the assistance of victims, whether they were provided by the victim or by the aforementioned centers or services.
5. Any other document giving account of any other proceeding not considered in the appropriate protocol.

APPENDIX II: THE PLENARY OF THE JUDICIAL POWERS'
GENERAL COUNCIL'S STATUTORY AGREEMENT 1/2005 OF APRIL
27th. BY WHICH THE REGULATION 5/1995 WAS MODIFIED ON ITS
JUDICIAL PROCEEDINGS' ACCESORIAL ASPECTS (B.O.E number
109 of May 7, 2005)

EXPOSITION OF MOTIVES

The next enactment of the Organic Law 1/2004, of December 28th about Integral Protection Measures against Gender-Based Violence, which fourth disposition at the end authorizes the Judicial Power' General Council to dictate the necessary guidelines within a period of six months in order to organize the designations, adequate the Court services to the new Courts on Violence against Women and the Judicial Police's Coordination and its relevant Court. The Law also requires modifying urgently the guidelines of the ongoing Regulations on Accessorial Aspects of the Judiciary Actions that regulates the Court services, its workings and proceedings and their coordination between the Courts and the Judicial Police.

According to article 62 of the aforementioned Law, the Court services are regulated. Also urgent actions by the Courts on Violence against Women are regulated like the following: the regularization of the detainees' personal situation due to crimes where such Court has jurisdiction, and the resolution and the requests for the implementation of the orders of protection for the victims of such crimes.

The modification of article 47 of the Regulation becomes necessary in order to adapt it to the needs stemming from the aforementioned legal provisions, aiming at the facilitation of the accomplishment of the coordination requisites stipulated in the article 54 of the Law,

By virtue thereof, the Judicial Powers' General Council, enacted by the powers ascribed in article 110.2 of the Judicial Powers' Organic Law, and previous to the

hearing proceeding envisioned in article 110.3 of the same Law, and adopted in the April 27, 2005 meeting, the following agreement detail the following provisions:

Article 1.

Articles 40 and 47 of the Regulations 5/1995 of June 7th concerning the Accessorial Aspects of the Judicial Actions are drafted in the following manner:

Article 40

“1. The reception and opening of an administrative file is jurisdiction of the Courts on duty, and according to the case, also the due process concerning the testimonies, reports, complaints and lawsuits filed during Court workings. Also, falling under the jurisdiction of the Court on duty, and if necessary are the first proceedings on criminal cases, and among them the precautionary measures for the protection of the victim and the adoption of necessary resolutions on the detainee or detainees’ safety when taken to the Court, the holding of expedite trials on infringements envisioned in the Criminal Procedural Code, the arrangement of urgent proceedings and other actions assigned to the Court on Duty in the Criminal Procedural Code’s Title III in the Book IV. Also under Courts responsibility falls the execution of further urgent actions that cannot be postponed and among them are the attributions assigned by Law to the Courts on duty and to the Courts on Violence against Women.

Those actions will be deemed as urgent according to article 183 of the Judiciary Power’s Organic Law.

2. In all judicial districts, the general guidelines on delegation of responsibilities will determine the Judicial Body that would be in charge of tracking the matter of the cases received by the Court on Duty and could select the Court that would perform such procedural tasks and the formulation of given procedures that are part of the competence of the Court on duty.

3. Likewise, the adoption of precautionary measures will be a task for the Courts on Duty in those cases that the persons are objects to the application of the Organic

Law 5/2000 of January 12 regulating the legal responsibilities of the minors, or the execution of restriction measures of fundamental rights for given persons. Also the Court on duty will have jurisdiction over cases if there is a need for restriction measures out of Juvenile Court working hours, as well as whenever there is not a Court on duty in a given Juvenile Court jurisdiction, as it is accustomed in this kind of jurisdictional bodies. Therefore, the Court on duty in charge of offering services will substitute the corresponding Juvenile Court. After the Court decision is adopted, the Court on duty will report the relevant body of this resolution and will turn over the juvenile or child to them.

4. Also the detention of those accused for the alleged participation in the crime, falling under the jurisdiction of the Courts on Violence against Women, will be a competency of the Court on Duty. The Court on duty will be in charge of processing the orders of protection requested by the victim, as long as the requests are presented and the detainees will be turned over to the Judiciary Courts during hearing hours. The Court on duty in charge of the services will act as the substitute for the Court on Violence Against Women. After the decision is adopted, the Court on duty will send a report of the proceedings to the relevant body and will turn over the accused.

5. The Court on duty performing such services as a substitute in each judicial jurisdiction will be informed of those urgent needed actions as stipulated in article 70 of the Law 1/2000 of January 7 of Civil Prosecution Proceedings. For example, to enact Senior Judges as their counterparts in the Civil Registry' Offices and those situations falling under the contentious-administrative proceedings the fifth item's second paragraph of the article 8 of the Law 29/1998 of July 13. The application of the aforementioned proceedings will be allowed as long as it is exercised in an expedited way and during hearings' off hours of those bodies in charge of such proceeding. After the adequate proceeding is performed, a report of the procedures executed will be sent to the relevant body or the assigned office, according to the case.

6. In those judicial jurisdictions where there is a separation between the First Instance Criminal Court and the Magistrates' Court and as far as the workload requires it, the relevant Government Tribunal and attended by the Judges Board will

be able to propose to the General Council of Judicial Power the establishment of a special proceeding to meet the actions that cannot be delayed and that might appear within the civil jurisdiction or the Civil Registry sphere on a nonworking day and time.

7. Likewise, the Judges Board could instruct the Court on duty to offer services, governmental in scope, which might require continuous offering of services.

Article 47.

1. In terms of the coordination between the Courts on duty, Courts on Violence against Women and the Judicial Police in the formulation of summons as described in the articles 796, 799 bis and 962 of the Criminal Prosecution Code, the allocation of temporary spaces for those summons made by the Judicial Police before the Courts on duty and the Courts' on Violence against Women will be performed through an Summons Scheduled Agenda ("Agenda Programada de Citaciones"- APC-) that will detail available times and Courts. In matters of Courts' on Violence against Women, the available time to be scheduled will only compromise working days and on hearing times; the summons will be scheduled for the nearest available day and in cases with no available time, the Court date will be chosen from the next available day. The time allocations for the Court date should take into consideration the following aspects:

I. In case there is more than one Court on duty and Court on Violence against Women within the relevant jurisdiction for Urgent Proceedings ("Diligencias Urgentes"), the summons will be made by the relevant Court on Violence against Women according to the relevant sharing of duties, and to the agreements adopted in the plenary of the Judicial Police's Provincial Commission on Coordination.

II. Foreign witnesses and temporary displaced citizens will have preference upon the scheduling day and time in order to facilitate the use of testimonies and evidence gathered beforehand even if the victim is not available at the date and time scheduled as part of the summon, according to item 2 of the article 797 of the Criminal Prosecution Code.

2. In order to coordinate the schedule of hearings between the Courts on duty, the Court on Violence against Women, the Criminal Court and the Provincial Prosecutors Office.

To the effects envisioned in article 800.3 of the Criminal Prosecution Law, the Courts on duty and the Courts on Violence against Women will directly execute the search and seizure warrants. Also will schedule hearings on causes considered as “quick prosecution” (“enjuiciamiento rapido”), as long as the case is resumed with a ruling according to what is envisioned in article 801 of the Criminal Prosecution Law.

The Magistrates’ Court on duty according to the article 54.2 of the Organic Law 1/2004 about the Measures of Integral Protection against Gender-Based Violence, had to resolve about a detainees’ personal situation due to incidents under jurisdiction of the Court’ on Violence against Women. According to this protocol the Court will summon or send the subpoena to the accused person to appear in front of this Court, also should summon the victim and the witnesses, in case his freedom is decreed. In it the detainee is imprisoned, along with the corresponding order, the imprisonment order will fall under jurisdiction of the Court’ on Violence against Women.

The schedule of hearings in cases considered quick prosecution (“enjuiciamiento rapido”) would be made according to the Scheduled Agenda of Indictments. It aims at setting turns for indictments between Criminal Courts with the periodicity determined by the Board of Judges, who shall be approved by the Supreme Court’s Governmental Courtroom and notified to the General Council of Judicial Power.

When lacking such an agreement, the following additional norms will govern:

a.- In the jurisdictions with more than five Criminal Courts, a daily shift will be set in place from Monday to Friday when one of the Criminal Courts will keep the agenda in its entirety in order to allow Courts on duty within the jurisdiction to directly indict the parts to hold the trials on these cases. According to article 800.3 of the Criminal Prosecution Law, the indictments by the Courts on duty will take place to the earlier date after the deadline to expose the defense arguments, if the accused person had been absent from the hearing. The maximum amount of indictments as part of this

procedure will be fifteen and consequently, when this benchmark has been passed, the next indictment should be sent for the next available day.

b.- In those jurisdictions with more than one Criminal Court and less than six, a weekly turn will be established where one of the Criminal Courts will reserve the agenda from Monday to Friday to allow the Courts on duty within the jurisdiction to send the indictments directly for the trials for the new urgent prosecution proceeding. In that weekly turn, the indictments will be sent for the first working day within a week, with a limit of fifteen indictments, proceeding then to send the indictment for the next workday within a week, successively.

c.- In those jurisdictions with one Criminal Court, it will reserve the agenda for one or two days in a weekly basis, from Monday to Friday, in order for the Courts on duty to send the indictment for the trials of the new urgent prosecutions proceeding.

3. In those judicial jurisdictions with more than one Magistrates' Court, the Government Rooms of the Supreme Court, and as requested by the Board of Judges, will adapt the guidelines for the allocation of tasks of these Court aiming at enabling the Courts on duty to monitor all the infringements as denounced through testimonies or police reports.

In those cases, according to articles 965.2 of the Criminal Prosecution Law, the Magistrates' Courts on duty should directly send indictments for the minor offense proceedings before other Magistrates' Courts in the same judicial district, due to inability to prosecute. Such indictment will be made on workdays and in hearing hours, on the next date possible within the schedule of the Magistrates' Court.

4. About the collaboration protocols.

In order to guarantee the effectiveness of the dispositions in the next Chapter, protocols will be established in collaboration with the provincial sphere within the Judicial Polices' Provincial Commissions. Likewise, within the scope of the respective judicial parties, protocols and specific collaborations could be established between the Judicial Police, the District's Attorney, and the respective Judges Boards, represented by the Dean Judge making possible the incorporation of the

collaboration of Lawyers and Clerks Associations or Bars, the Judiciary and Autonomous Communities. Lastly, protocols could be established within the Autonomous Communities allowing for bodies to be incorporated establishing similar representations.

The Judicial Polices' Provincial Commissions will be heard previous to the criteria establishment for the indictment for hearings by the corresponding Governmental Courtrooms, and will inform them on the incidents and disconnections among the criteria established by the Governmental Courtroom and the judicial bodies indictments.

5. The Joint Commission on Expedite Trials.

Within the jurisdiction of each Autonomous Community, a Joint Commission for the monitoring of Expedited Trials will be formed by the President of the Supreme Courts representing the Governmental Court, by a representative from the Judiciary and the Autonomous Community, a by a representative from the Attorney Generals' Office and by one representative from the Clerks' Bar.

This commission will gather and analyze data provided by the judicial bodies about the amount of procedures processed and hold as expedite trials, number of suspensions and its causes, timelines, and will inform periodically to the Judicial Powers' General Council to the effects envisioned in articles 46.1.

6. About the complementary governmental measures.

The Government Courtrooms and the Boards of Judges enacted by its normal governmental attributions and subject to the terms of the present Regulation, will approve the complementary norms that in subjects of sharing of responsibilities, internal regime, substitutions, or other matters under its competencies might deem appropriate.

Article 2.

To set out the publication in the States' Official Bulletin ("Boletín Oficial del Estado") with the actualized layout of the current Regulations with its new approved norms or

the modification of the previous one, or with rather disposed in article 2.2 of the Agreement of June 7 1995. In the plenary of Judicial Powers' General Councils, attached as Annex I within the current Agreement.

The present Agreement will go into effect the following day after its publication in the States' Official Bulletin.

Signed on the day twenty-seven of the year two thousand and five in Madrid by the President of the General Council of Judicial Power, FRANCISCO JOSÉ HERNANDO SANTIAGO.-