

**ATTORNEY GENERAL'S OFFICE OF
THE REPUBLIC**

PUBLIC PROSECUTOR'S OFFICE OF COSTA RICA
JUDICIARY POWER

CIRCULAR

**22-ADM-
2008**



ADMINISTRATIVE CIRCULAR

IN ACCORDANCE WITH ARTICLES 1, 13, 14 AND 25 OF THE ORGANIC LAW OF THE PUBLIC PROSECUTOR'S OFFICE, THE FOLLOWING INSTRUCTIONS OF THE ATTORNEY GENERAL ARE BROUGHT TO THE ATTENTION OF THE PROSECUTORS, WHICH MUST BE CARRIED OUT IMMEDIATELY, IN ORDER TO CREATE AND MAINTAIN UNITY OF ACTION AND INTERPRETATION OF THE LAWS IN THE PUBLIC PROSECUTOR'S OFFICE.

IN ACCORDANCE WITH THE INTERNAL CONTROL LAW AND FGR CIRCULAR NO. 10-2006, IT IS THE RESPONSIBILITY OF THE DEPUTY PROSECUTORS TO ENSURE THAT THEY ARE KNOWN AND APPLIED BY THE PROSECUTORS ASSIGNED TO THEIR PROSECUTOR'S OFFICE.

FRANCISCO DALL'ANESE RUIZ
ATTORNEY GENERAL OF THE
REPUBLIC
October 17, 2008
[ORIGINAL SIGNED] [ORIGINAL SIGNED]

The following rules are intended to standardize and optimize the procedures for sexual offenses and criminalization of violence against women.

1. - SEXUAL OFFENSES

1.1. - INTERVIEWING AND REPORTING CHILD VICTIMS AND WITNESSES OF SEX CRIMES AND DOMESTIC VIOLENCE.

Considering the best interest of the minor, in application of the guidelines to reduce the revictimization of minors in criminal proceedings and the protocols on victims' rights, in the case of victims and/or witnesses of sexual crimes and crimes derived from domestic violence, where the victim or witness is a minor, the respective interview and/or complaint will be received by the prosecutor in charge, in his or her office or other place with conditions conducive to privacy in the reception of the report.

1.2. - MANDATORY ACCOMPANIMENT.

In addition, the prosecutor must comply with the provisions of articles 120 and 123 of the Childhood and Adolescence Code, for which he or she must communicate and coordinate with the Social Work and Psychology office, so that the minor victim or witness is accompanied during the proceedings by a professional from that department.

In the event that the Social Work and Psychology office does not have personnel to provide accompaniment, the prosecutor will record this in the investigation file.

1.3. - REFERRAL TO THE CHILD AND ADOLESCENT SEXUAL VIOLENCE PROGRAM.

All minors, victims of sexual crimes and crimes derived from intra-family violence must be referred to this program attached to the Department of Social Work, which has offices throughout the country, regardless of the act.

(See annex number 01).

1.4. - PSYCHOSOCIAL ASSESSMENTS BY THE INTERDISCIPLINARY TEAM.

When the prosecutor has requested a psychosocial assessment from the Interdisciplinary Team and the latter requires support from the judicial authority in order to obtain collateral sources of information (such as the seizure of clinical records from the National Children's Trust), it is the obligation of the prosecutor in charge of the process to provide the expert with the information of interest.

When the victim presents himself/herself for the assessment without identification documents, the officials of the Interdisciplinary Team should coordinate with the prosecutor, in cases where the prosecutor's office has photographic equipment, to take a photograph of the victim, so that it may be included in the expert's reference protocol, in order to be able to accredit the identity of the victim. It is important to note that the photograph taken is for identification purposes and should be handled as reserved evidence, with prior informed consent.

1.5. - TAKE INTO ACCOUNT THE OPINION OF THE MINOR.

When the expert explains to the minor victim, his parents or accompanying relative about informed consent and the right of abstention, in the event that his parents or representatives express their opposition to the expert opinion, but the minor shows his interest in being evaluated and in making reference to the facts under investigation, his opinion must be taken into account, considering his age and degree of emotional maturity. The foregoing, in accordance with the provisions of our legislation, which recognizes that minors are entitled to the right to be heard.

minors as subjects of rights (105 of the Childhood and Adolescence Code).

1.6. - INTERVENTION OF THE PATRONATO NACIONAL DE LA INFANCIA.

In investigations where the minor is at risk, either because the reported facts occur in the family environment, and this does not constitute an appropriate resource to protect the child or adolescent, due to the existence of conflicting interests, or because the minor has no home or no family support, the prosecutor must immediately coordinate with the Office of the National Child Welfare Agency, the search for a family resource or, failing that, an institutional resource for the temporary custody of the minor. By constitutional and legal mandate, this institution is responsible for the defense, protection, care and assistance of the rights of minors.

1.-7.- RESERVED TEST.

In investigations of sexual crimes or crimes derived from domestic violence, where there are photographs of child pornography or of minors with lesions on their face or body, the prosecutor or the prosecutor in charge of the process must prepare a file of reserved evidence and take the necessary precautions to ensure that the images of minors are not released indiscriminately. (See Article 225 of the Code of Criminal Procedure and Article 27 of the Code of Childhood and Adolescence).

1.8. - APPLICATION OF ANTIRETROVIRALS.

1.8.1. In those crimes involving carnal access (rape, consensual sexual intercourse, paid sexual intercourse with a minor and pimping), the application of retrovirals should be done within 72 hours after the potentially contagious event. For this reason, if the expiration of this period is near, the victim shall be referred to the nearest hospital without delay, and subsequently the pertinent investigation procedures shall be carried out. (ANNEX 02).

1.8.2. When the victim goes to the prosecutor's office or to the office of the Judicial Investigation Agency to report the facts and the expiration of the 72-hour maximum period is near, the prosecutor, prior to receiving the report, must immediately proceed to the corresponding hospital center (depending on the place where the facts occurred), inserting a summary of the facts within the official report.

1.8.3.- The prosecutor in charge of the investigation should inform the victim of the existence of the treatment and indicate that it is up to the medical professional to determine and decide on the appropriateness and timeliness of antiretroviral treatment.

1.8.4.- In the same way, the prosecutor should be very clear in the official letter requesting the application of this treatment, indicating that it is a request, and that it will be the medical professional who will determine whether or not to apply antiretroviral drugs, since it is a medical act.

1.8.5.- In order to comply with the institutional policy of reducing secondary victimization, the prosecutor must provide a copy of the complaint with the request.

2. - LAW ON CRIMINALIZATION AND DOMESTIC VIOLENCE

2.1. - THE OBLIGATION TO EXHAUST THE INVESTIGATION TRANSCENDING THE INTEREST OF THE VICTIM.

In all the facts constituting the crimes contained in the Law on the Penalization of Violence against Women and the Criminal Code that are of public action, it is the duty of the prosecutor to collect useful and pertinent evidence to prove the fact, even when the victim has expressed her disinterest in the process, Even if the victim has expressed her disinterest in the process, and has even requested the investigation to be closed, or has expressly stated that she does not wish to file a complaint, other peripheral sources of investigation should be used and the means of proof should be expanded, including interviews with police officers, neighbors, the examination of clinical records, etc.

When it is necessary to summon the victim to receive a complaint, the prosecutor may use the telephone as a means of summoning, however, this method may not be used to inform the victim of her rights, such as the right of abstention, nor may it be used as the only means to conclude the investigation.

2. 2.- ATTENTION TO CASES OF INMATES IMPRISONED FOR CRIMES DERIVED FROM DOMESTIC VIOLENCE IN AVAILABILITY.

The available prosecutor, when informed of a case of domestic violence (whether offenses contained in the Penal Code or in the Law on the Penalization of Violence against Women) as crimes of public action, must be informed in detail of the facts, and not merely indicate to the administrative police by telephone, the obligation to present the detainee to the Court.

Domestic Violence or leave it to your order until the following day. See circular number 15-2008, in the items entitled "CAU- TELAR MEASURES/PROTECTIVE MEASURES, URGENT MATTERS AND MATTERS INVOLVING A DETAINED DETAINED PERSON".

2.3. DUTY OF COMMUNICATION.

Prosecutors are reminded of Circular 15-2003 of the Secretariat of the Supreme Court of Justice, related to the duty to inform the Ministry of the Interior of Police and Public Security (See Annex 03), when ordering the release of a detainee for crimes of domestic violence and the Law on the Penalization of Violence against Women.

When the prosecutor decides to release or request a change of the pre-trial detention for another less serious precautionary measure in cases of domestic violence, he or she must first comply with the aforementioned circular by notifying the office of the Public Force of the place where the offended party lives.

Likewise, when the prosecutor requests the provisional detention of an accused person, he/she shall expressly remind the Criminal Judge, in the event that the request is not granted, of the duty imposed by the aforementioned circular. See annex number 04. Circular number 109, regarding the telephone number where the release of the aggressor must be communicated.

3.- REJECTIONS

Due to the legal nature of domestic violence offenses and the sensitivity of the subject matter, it is not appropriate to resort to a system of mass oral dismissals using a single cassette, as long as the dismissal is requested after a single period of time.

The court must be duly grounded on the insufficiency of the evidence, after having exhausted all means of proof.

4.- CRIME OF ABDUCTION OF A MINOR.

When the reported facts are typical of the crime of child abduction, and the existence of conflicting interests is evident (where a relative: parents, grandparents, aunts, uncles, etc. is the reported person), the prosecutor must request the presence of an official of the National Child Welfare Agency, to determine the appropriate family or institutional resource for the surrender and temporary custody of the minor. It is not the power of the prosecutor to decide to whom the child or adolescent will be handed over.

5.- PSYCHOSOCIAL OR PSYCHO-LOGICAL ASSESSMENTS

The prosecutor should consider that, in the case of sexual crimes and crimes derived from domestic violence, the expert's report is an important means of evidence, without considering that not having this evidence is an impediment to file an indictment, it is important to remember that our procedural system is governed by the principle of freedom of evidence, Article 182 of the Code of Criminal Procedure.

6.- MEDICAL-LEGAL OPINION.

6.1. - It is the responsibility of the prosecutor in charge of the process to ensure that the official letter addressed to the forensic medical clinic requesting the medical evaluation of the offended person contains the correct information: file number, crime, name of the judicial authority ordering the expert opinion and name of the

office to which the medical-legal opinion should be sent, as well as clearly indicating the type of expertise requested: the areas to be assessed, time of incapacity, determining the type of injuries (do not use formulas from previous cases to avoid errors).

6.2. - Remember that if the reported fact is a sexual abuse where there was no carnal access, it is not necessary to assess the genital area, therefore, in case a forensic medical assessment is required, clearly explain the reason for the expertise and the areas to be examined, in order to reduce the re-victimization of the offended person.

6.3. - In addition, when the victim has been treated in a center of the Costa Rican Social Security Fund (Ebais, clinics or hospitals) or in a private practice, it is the obligation of the prosecutor or prosecutor in charge of the process to send to the forensic expert the medical document (epicrisis, door leaf, medical certificate, etc.) where the victim's medical attention is recorded.

6.4. - If the facts reported do not show that the victim has been carnally accessed, it is inappropriate to ask the forensic physician to evaluate the paragenital or genital area.

6.5. - When the account of the facts shows that during the commission of the abuse, there may have been a transfer of evidence from the aggressor to the victim: biological fluids, such as saliva, semen, blood, etc., the prosecutor in charge of the case must inform the forensic doctor so that he or she can coordinate the collection of the respective samples in the Forensic Science laboratories.

6.6. Remember that samples of urine, blood, semen, etc., can also be collected in all hospitals in the country, being unnecessary and revictimizing, the transfer of samples of urine, blood, semen, etc., to other hospitals in the country, being unnecessary and revictimizing.

The victim's body was taken to the Forensic Science Laboratory in San Joaquin de Flores.

7.- CONCEPT OF DE FACTO RELATIONSHIP IN THE LAW CRIMINALIZING VIOLENCE AGAINST WOMEN (CRIMINALIZATION LAW)

The Penalization Law establishes (Art. 2) the scope of application as marital relationships as well as de facto relationships, whether declared or not. Likewise (Art. 3) it defines as sources of interpretation the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Convention on the Elimination of all Forms of Discrimination against Women, international instruments that develop the concept of domestic unity with the following requirements: "Article 2:

Violence against women shall be understood to include physical, sexual and psychological violence:

a. that takes place within the family or domestic unit or in any other interpersonal relationship, whether or not the aggressor shares or has shared the same domicile as the woman, and that includes, among others, rape, mistreatment and sexual abuse";

In relation to the normative element, "de facto relationship declared or not" it is convenient to transcribe in the pertinent part, **vote 101-2008 of the Court of the II Judicial Circuit of Alajuela, Ciudad Quesada**, when it states: "... It is known that for the existence of a de facto situation only that circumstance is sufficient, whether the situation exists, whether a man and a woman cohabit maritally, circumstances that are only verified in practice. The norm does NOT indicate that in order to consider a union as de facto, a certain period of time is required. That is to say, an undeclared de facto union is a de facto union only for a certain period of time.

The most common occurrences in practice are the judicial endorsement. In order to grant judicial recognition, the requirements and procedures must be followed as set forth in numeral 242 of the Family Code, which provides that in order for the de facto union to have **"all the patrimonial effects of a legally formalized marriage...."**The same must be **"public, notorious, unique and stable for more than three years, between a man and a woman who are legally capable of contracting marriage"** and that in order to achieve this judicial recognition the interested party may request the Court to recognize the de facto union, through the abbreviated civil procedure. They are two different situations, numeral 1 of the Law of Penalization of Violence against Women clearly indicates that it covers those who maintain a de facto union **"de- clarified"** either through the abbreviated civil procedure provided for in numeral 242 of the Family Code **"or not"** whether the interested parties have not resorted to civil proceedings for its pronouncement. The three-year period of cohabitation is only indicated for the relationship to be legally recognized and to have the same effects as marriage. In such a way that the de facto union, for the same reason of being a simple union of two persons, is not required to be declared to be a de facto union, since it is a merely factual question, and what must be proved, obviously, is that: that the two persons live together maritally...".

ANNEX 1.



JUDICIARY EXECUTIVE DIRECTORATE
DEPARTMENT OF SOCIAL WORK AND PSYCHOLOGY

Telephone: 295 3722, 295 3724 San José, Costa Rica

**REFERENCE FROM FSCALIA
TO THE DEPARTMENT OF SOCIAL WORK AND PSYCHOLOGY**

The Social Work and Psychology Departments operate two programs whose population served comes from the Prosecutor's Office with a reference that indicates the type of attention that person requires; in order to provide a better service to the users and avoid secondary re-victimization, it is important to channel the referrals as follows:

To the Child and Adolescent Sexual Violence Attention Program:

As established in article 123 of the Childhood and Adolescence Code.

1. **Request to accompany** the person listed as a victim (minors or adults with disabilities) at the time of filing the complaint or appearing in any part of the judicial process, including the time of the debate.

2. **Request for attention in the socio-educational program.** The program provides support and guidance regarding the judicial process, individual intervention in four sessions or less, according to the needs of the user population, and group attention at the discretion of the Social Work professional; the latter as long as the physical space and the minimum conditions necessary for group attention are available. The type of attention (individual or group) and the number of sessions is defined by the professional in charge of the program.

As determined by the Prosecutor's Office.

- **Request for social expertise to** know the social and family conditions in which the minor or adult with disabilities listed as a victim interacts.

To the Interdisciplinary Team:

Request for Psychosocial Assessment in the following cases:

- Victims of sex crimes of any age and sex.
- Victims of domestic violence in criminal proceedings, of any age and sex.
- Victims referred under the law criminalizing violence against women.

Attached is a table showing the places where there are Social Work and Psychology offices, the programs they attend that are coordinated with the Prosecutor's Office and the existence of interdisciplinary teams.

Regional Offices	The Child and Adolescent Sexual Violence Care Program is in operation	Interdisciplinary Team	Where to take the agenda
Alajuela	Yes	1 Ordinary and 1 Extraordinary	Team
Carthage	Yes	1 ordinary	Team
Desamparados	Yes	1 ordinary (vespertino)	Pavas Prosecutor's Office
Greece	Yes	No (Alajuela attends him)	-----
Guadalupe	Yes	1 ordinary	Prosecutor's Office
Hatillo	No (attends Unprotected)	No	-----
Heredia	Yes	1 ordinary	Team
Liberia	Yes	1 ordinary	Team
Santa Cruz	Yes	No (Served by Nicoya)	-----
Nicoya	Yes	1 ordinary	Team
Lemon	Yes	1 ordinary	Team
Brokers	Yes	1 ordinary	Prosecutor's Office
Golfito	Yes	No (Attended by Correidores)	-----

Perez Zeledon	Yes	1 ordinary	Prosecutor's Office
Puntarenas	Yes	1 regular and 1 extra-ordinary	Prosecutor's Office
Puriscal	Yes	1 extraordinary	Pavas Prosecutor's Office
Quepos	Yes	No (Attended by Punta- renas)	-----
Guápiles	Yes	1 ordinary	Team
San Carlos	Yes	1 regular and 1 extra-ordinary	Team
San Ramon	Yes	No (Alajue- la attends him)	-----
San Jose	Yes	1 ordinary	Prosecutor's Office
Turrialba	Yes	No (Carte- go attends)	-----

ANNEX 2:

List of national hospitals that apply antiretroviral treatment:

- Rafael Angel Calderón Guardia: East of San José, Limón and Cartago.
- San Juan de Dios: San José center.
- Mexico: West of San José, Guanacaste, Alajuela and Heredia.

- Monseñor Sanabria: Puntarenas.
- National Children's Hospital

ANNEX 3: CIRCULAR NO. 15-2003

Subject: Due notification to the Ministry of the Interior, Police and Public Security, in matters of domestic violence.

TO ALL JUDICIAL AUTHORITIES IN THE COUNTRY THAT DEAL WITH DOMESTIC VIOLENCE MATTERS

PLEASE BE ADVISED THAT:

The Superior Council, in session No. 03-03, held on January 21, 2003, Article XLIII, at the request of the Ministry of the Interior, Police and Public Security, decided to inform the Ministry that in cases where the release of a prisoner with a history of domestic aggression is ordered, this must be notified to the Ministry with due notice, in order to increase the protection measures for both the victim and her family members.

San José, February 19, 2003. -

Silvia Navarro Romanini

General Secretary

ANNEX 4

CIRCULAR NO. 109-08

SUBJECT: New fax number to which release orders should be sent for persons with a history of domestic assault.

THE PENAL AUTHORITIES OF THE COUNTRY ARE HEREBY INFORMED THAT:

The Superior Council, in session No. 41-03 of June 3, 2008, article LV, decided to inform the country's penal authorities that the new fax number to which they must send the r e l e a s e orders of those persons with a history of domestic aggression is 2226-1117 of the office against Domestic Violence of the Ministry of Public Security.

San José, June 25, 2008.

Silvia Navarro Romanini

1 time.-(61370) Secretary General.